2005-2006

HOUSE ENVIRONMENT & NATURAL RESOURCES

COMMITTEE MINUTES

HOUSE COMMITTEE
ENVIRONMENT AND NATURAL RESOURCES

COMMITTEE CHAIRS
Representative James A. Harrell, III
Representative Carolyn H. Justice

2005 SESSION

Committee Assistants
Beth LeGrande
Vivian Sherrell

ATTENDANCE

HOUSE ENVIRONMENT & NATURAL RESOURCES 2005-06

DATES	03-15-'05	03-22-'05	03-29-'05	04-07-'05	04-12-'05	04-19-'05	04-26-'05	05-03-'05	05-10-'05	05-17-'05	05-26-'05	05-31-'05			
REP. JIM HARRELL, III, CHAIR	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	P			
REP. LUCY ALLEN, VICE CHAIR	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				
REP. CURTIS BLACKWOOD	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			
REP. BILL DAUGHTRIDGE	P		P	P	P	P	P	P	P	P		P			
REP. PRYOR GIBSON	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			
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	P	P			
REP. PHILLIP HAIRE	P		P	P		P	P	P	P	P	P				
REP. VERLA INSKO	P	P	P	P	P	P	P	P	P			P			
REP. STEPHEN LaROQUE	P				P		P	P	P	P	P				
REP. PAUL LUEBKE	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			
REP. BILL McGEE	P	P	P	P		P	P	P	P	P	P	P			
REP. ED McMAHAN						P	P	P	P	P		P			
REP. BILL OWENS	P		P	P		P	P	P		P		P			
REP. JEAN PRESTON	P	P	P	P	P		P		P						
REP. BONNER STILLER			P	P		P	P	P	P	P		P			
REP. ALICE UNDERHILL	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			
REP. LARRY WOMBLE	P		P	P		P	P	P	P	P	P	P			

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



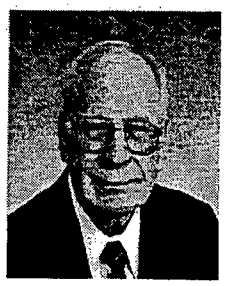
Rep. Curtis Blackwood



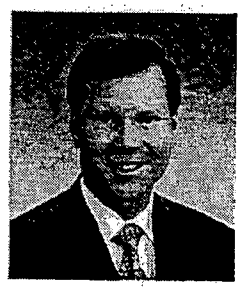
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Rep. Arlie F. Culp



Rep. Bill Daughtridge



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Rep. Mitch Gillespie



Rep. Melanie Wade Goodwin



Rep. Jim Gulley



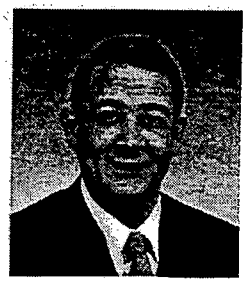
Rep. Joe Hackney



Rep. R. Phillip Haire



Rep. Verla Insko



Rep. Stephen A. LaRoque



Rep. Paul Luebke



Rep. Grier Martin

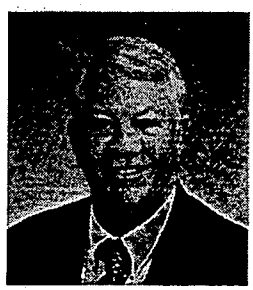
NORTH CAROLINA HOUSE OF REPRESENTATIVES
ENVIRONMENT AND NATURAL RESOURCES
2005 – 2006 SESSION



Rep. Bill McGee



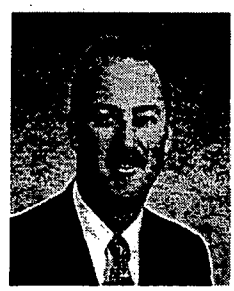
Rep. W. Edwin McMahan



Rep. Bill Owens



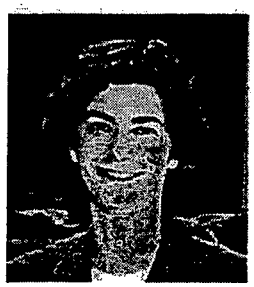
Rep. Jean R. Preston



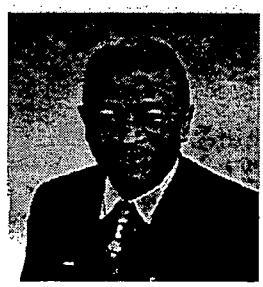
Rep. Bonner L. Stiller



Rep. Alice G. Underhill



Rep. Jennifer Weiss



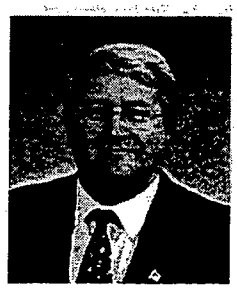
Rep. Larry Womble



Rep. Culpepper
Ex-officio



Rep. Cunningham
Ex-officio



Rep. Eddins
Ex-officio



Rep. Hackney
Ex-officio

Minutes

House Committee on Environment and Natural Resources
March 15, 2005

The House Committee on Environment and Natural Resources met on March 15, 2005 in Room 643 of the Legislative Office Building at 12:00 Noon for an organizational meeting. The following were present: Presiding Chair Carolyn Justice, Co Chair Jim Harrell, Vice Chairs L. Allen and Harrison, Representatives Blackwood, Carney, Culp, Daughtridge, Gibson, Goodwin, Gulley, Hackney, Haire, Insko, Laroque, Luebke, Martin, McGee, Owens, Preston, Underhill, Weiss, and Womble. Assisting with the meeting were George Givens – committee counsel, Jeffrey Hudson, - assistant committee counsel, Jennifer McGinnis – assistant committee counsel, Timothy Dodge – committee analyst, House Sergeant –At-Arms, and Pages.

Representative Justice called the meeting to order, and asked William G. Ross, Secretary of the Department of Environment and Natural Resources to make remarks. Secretary Ross said there were three themes for the Dept. of Environment and Natural Resources. (Attachment 1)

1. Importance of recognizing different kinds of connections
   a. People
   b. Economy and Environment
2. Importance of tapping power of innovation
3. Importance of tapping power of partnerships

Representative Justice then recognized Donald D. Redmond, Assistant Chief of Planning Section, Division of Air Quality, with the Department of Environment and Natural Resources Mr. Redmond discussed air quality issues and innovate approaches to reduce air pollution from mobile services such as:

1. Modification of the current highway use tax so that all or a portion of the highway use tax paid on a private passenger vehicle is based on the fuel efficiency rating of the vehicle (S.L.2004-161, Sec.19.10 (1)).
2. Modification of the current vehicle registration fee so that all or a portion of the annual vehicle registration renewal fee for a passenger vehicle is based on the vehicle miles traveled by the vehicle (S.L2004-161, Sec. 19.10(2)). (Attachment 2)

The meeting adjourned at 1:00 p.m.

Respectfully Submitted,

Rep. Carolyn Justice
Presiding Chair

Vivian Sherrell
Committee Assistant

Agenda
Visitor Registration
Attachments

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: **Tuesday, March 15, 2005**

TIME: **12:00 Noon**

LOCATION: **Room 643**

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

Respectfully,
Representative Carolyn Justice, Presiding Co-Chair
Chairs James Harrell, Co-Chair

I hereby certify this notice was filed by the committee assistant at the following offices at **2:00** on **March 10, 2005.**

___Principal Clerk
___Reading Clerk - House Chamber

Vivian Sherrell (Committee Assistant)

HOUSE COMMITTEE ON ENVIRONMENT AND NATURAL RESOURCES

AGENDA

12:00 noon Tuesday 15 March 2005
Room 643 Legislative Office Building

1. Call to order
   Representative Carolyn H. Justice, Presiding

2. Introductory remarks by Cochairs
   Representative Carolyn H. Justice
   Representative James A. Harrell, III

3. Introduction of members

4. Introduction of committee staff
   George F. Givens, Committee Counsel
   Jeffrey W. Hudson, Assistant Committee Counsel
   Jennifer L. McGinnis, Assistant Committee Counsel
   Timothy R. Dodge, Committee Analyst

   Vivian Sherrell, Committee Clerk
   Beth LeGrande, Committee Clerk

   Sergeants at Arms

   Pages

5. Remarks
   William G. Ross, Jr.
   Secretary of Environment and Natural Resources

6. Discussion of air quality issues and innovative approaches to reduce air pollution from mobile sources

   Modification of the current highway use tax so that all or a portion of the highway use tax paid on a private passenger vehicle is based on the fuel efficiency rating of the vehicle (S.L. 2004-161, Sec. 19.10(1))

   Modification of the current vehicle registration fee so that all or a portion of the annual vehicle registration renewal fee for a passenger vehicle is based on the vehicle miles traveled by the vehicle (S.L. 2004-161, Sec. 19.10(2))
   Donald D. Redmond, Assistant Chief
   Planning Section, Division of Air Quality, DENR

7. Adjourn

VISITOR REGISTRATION SHEET

Environment and Natural Resources — **Name of Committee**

March 15, 2005 — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
David Michael + family	Homeschool Leg. Days 4431 Deb. Wilmington, NC
Michael Nelson	Conservation Council
Molly Diggins	Sierra Club
Elizabeth Self	Sierra Club
Johanna Reese	DENR
Robin Smith	DENR
Kim Hibbard	NCLM
Debra Eidson	NCPIRG
Christine Wunsche	NCPIRG
Portia Manley	NCDOT / DMV
James Stevens	NCDOT / DMV

VISITOR REGISTRATION SHEET

Environment and Natural Resources — March 15, 2005

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Rick Techini	NC Assoc. of REALTORS
Henry Jones	Attorney Raleigh
Doug Lassiter	NCSTA
Richard Studenmund	The Nature Conservancy
David Knight	TNC
John McAlister	Duke Energy
Lisa Piercy	Duke Energy
Lucius Pullen	NC Mining Assoc.
Anita Watkins	NCLM
Rebecca Key	Rep. Gibson's office
Pam Myers	NCACC

VISITOR REGISTRATION SHEET

Environment and Natural Resources — March 15, 2005

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Colleen Kochanek	Holt, York, McDavis & High
DICK HAMILTON	WILDLIFE
Kurt Creamer	NC State University
Anne Tazewell	NC Solar Center / NCSU
Kathy Hawkins	Progress Energy
Jean Hankey	NCPC
Julie Woodson	NCPC
Theresa Kilgarlin	CAA
Lisa Mabe	NC Home Builders Assoc
Nancy Thompson	MCIC
John Cyrus	NCSG



ncdenr

North Carolina Department of
Environment and Natural Resources



William G. Ross Jr.
Secretary, Department of Environment and Natural Resources



Gov. Mike Easley appointed William G. Ross Jr. as secretary of the N.C. Department of Environment and Natural Resources on January 15, 2001. Ross, an attorney who specializes in environmental law, has broad civic and professional experience in a variety of land conservation and environmental protection efforts.

Ross, 53, is a native of Marion, N.C., and was a partner with the Greensboro and Raleigh law firm of Brooks, Pierce, McLendon, Humphrey & Leonard from 1986 until his appointment as head of the state's lead environmental stewardship agency. He joined the law firm as an environmental attorney in 1984.

During his time with the firm, Ross represented businesses, local governments and individuals. From 1979 to 1984, Ross served as Director of the Office of Legal Affairs of the Department of Natural Resources and Community Development, which was later reorganized to become DENR.

Ross has been a member and leader of many committees and organizations that focus on preserving open space, parks and greenways and on environmental education. They include The Nature Conservancy, the Guilford County Parks and Recreation Committee, the Piedmont Land Conservancy, the Raleigh Greenway Commission, the N.C. Environmental Education Fund and N.C. Environmental Defense.

Ross is the grandson of George Ross, who served as North Carolina's secretary of the Department of Conservation and Development, a predecessor of DENR, from 1949 to 1953 under Gov. Kerr Scott.

Ross received a bachelor's degree in history from Davidson College in 1969 and his law degree from the University of Virginia in 1972. He is married to Susan Gravely and has two daughters.

NCDENR,1601 Mail Service Center, Raleigh, NC 27699-1601 919-733-4984 Fax 919-715-3060 Disclaimer/Privacy

Attachment II

Highway Use Tax Based on Efficiency and Vehicle Registration Based on Vehicle Miles Traveled

January 2005 Study to the
Environmental Review Commission
N.C. General Assembly

North Carolina Department of Environment and Natural Resources
Division of Air Quality

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Introduction

The Studies Act of 2004 (S.L. 2004-161) requires:

> *SECTION 19.10. Highway Use Tax Based on Efficiency/Vehicle Registration Based on Vehicle Miles Traveled (S.B. 1374 – Clodfelter) – The Commission shall study both of the following:*
> 1. *Whether the State should modify the current highway use tax so that all or a portion of the highway use tax paid on a private passenger vehicle is based on the fuel efficiency rating of the vehicle.*
> 2. *Whether the State should modify the current vehicle registration fee so that all or a portion of the annual vehicle registration renewal fee for a passenger vehicle is based on the vehicle miles traveled by the vehicle.*
>
> *In its conduct of these studies, the Commission shall consider whether the modifications studied under subsection (a) of this section should be made on a revenue-neutral basis or should be made so as to generate additional revenue to be used to fund initiatives designed to improve air quality and the efficiency of the transportation system in the State.*

This report is offered in response to the Studies Act requirement. The basic approach to conducting this study was:

- Identify affected/interested state agencies and other parties;
- Identify the options and the pros and cons of each option;
- Identify considerations for implementation;
- Present this information to the Environmental Review Commission for its consideration/decision.

A variety of affected/interested state agencies and other parties were included in the development of this study:

- Department of Environment and Natural Resources, Division of Air Quality (DENR, DAQ);
- Department of Transportation, Division of Motor Vehicles (DOT, DMV);
- Department of Revenue;
- Department of Administration, State Energy Office;
- North Carolina Automobile Dealers Associations (NCADA);
- The Carolina Independent Automobile Dealers Association (CIADA);
- American Automobile Association (AAA);
- Environmental Defense;
- North Carolina Justice Center (NC Justice);
- Alliance of Automobile Manufacturers;
- North Carolina Trucking Association;
- North Carolina Petroleum Marketers Association;
- Triangle J Council of Governments;

- North Carolina Solar Center.

The goal of this report was to gather balanced information, report back to the ERC, and allow the ERC to decide how to proceed. The information is presented in a question and answer format.

Highway Use Tax Based on Efficiency

"The Commission shall study ... Whether the State should modify the current highway use tax so that all or a portion of the highway use tax paid on a private passenger vehicle is based on the fuel efficiency rating of the vehicle."

How much is North Carolina's current highway use tax?

North Carolina collects a 3 percent Highway Use Tax on vehicles in lieu of a state sales tax (General Statue 105-187.2). The tax is assessed each time a title is transferred. The maximum tax for commercial vehicles (vehicles with a weight greater than 26,000 pounds) is $1,000.00. All other vehicles are charged 3 percent with no ceiling. Money collected for the Highway Use Tax goes to the North Carolina Highway Trust Fund to improve the roads of North Carolina and to the state's General Fund (105-187-9).

Highway use tax may be remitted to either the Division of Motor Vehicles or to the Department of Revenue, depending on the type of transaction. The rate of tax collected depends on whether the tax is paid to DMV at the time the vehicle is titled or whether the tax is collected on the gross receipts from the lease or rental of a vehicle and the length of the lease or rental in question. If the tax is paid directly to DMV at the time of the titling of the vehicle, the rate of tax is 3 percent. The rate of alternate gross receipts tax on the lease or rental of a motor vehicle is either 3 percent for a long-term lease or rental of a year or greater, or 8 percent for a lease or rental for less than one year.

How much is the highway use fee for neighboring states?

North Carolina's highway use fee is midrange compared to its neighbors:

- Tennessee charges 7 percent, much higher than North Carolina's 3 percent.
- Virginia charges 3 percent, the same as North Carolina.
- South Carolina charges 5 percent, but has a $300 maximum. That makes South Carolina's charge higher than North Carolina's for vehicles up to $10,000, but less for vehicles over $10,000.

What are the benefits of adopting changes to the highway use tax?

The theory is that changes would encourage people to buy more fuel-efficient vehicles. The more fuel-efficient vehicles burn less gasoline, which results in less air pollution and lessens the state's dependency on imported oil. Changes to the highway use tax could also generate additional revenue to be used to fund initiatives to improve air quality and the efficiency of the transportation system.

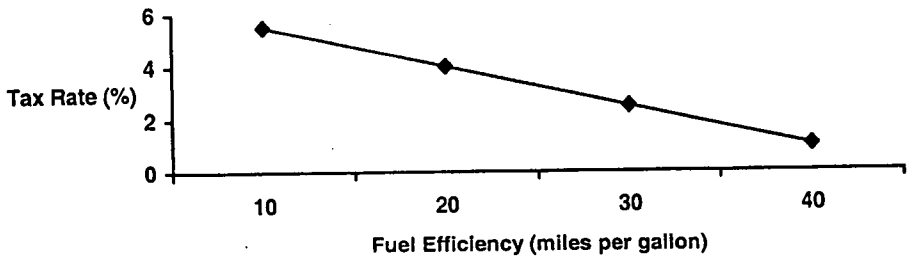
How would the tax on a particular vehicle be modified?

Three potential highway use tax structures are presented below.

- A "sliding scale" would change the current fixed 3 percent tax to a scale that assesses a higher tax for less efficient vehicles, and a lower tax for more fuel-efficient vehicles.
- A "feebate" would charge the current 3 percent tax on all vehicles, but then charge an additional fee to vehicles with lower fuel economy and pay a rebate to vehicles with higher fuel economy.
- A "3 percent plus" would charge the current 3 percent tax, plus an additional fee that is related entirely to fuel economy regardless of sales price.

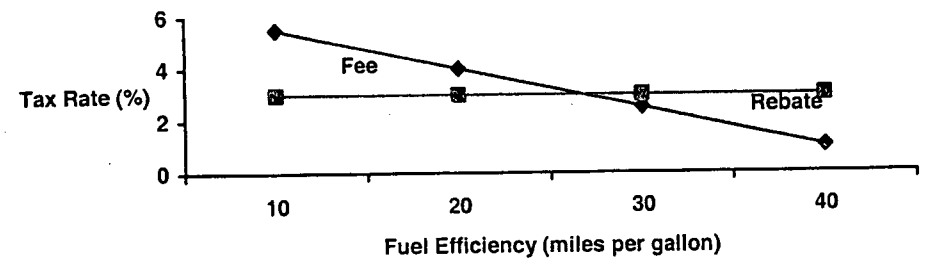
Note: Values depicted on the following graphs.are for illustrative purposes and are not recommendations.

"Sliding Scale" Highway Use Tax

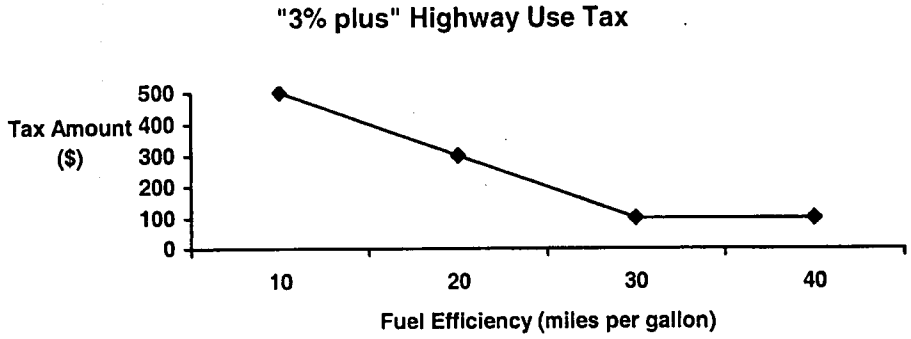


In the "sliding scale" tax structure, the tax varies depending on the fuel-efficiency of the vehicle. Vehicles with lower fuel economy would pay a higher tax; vehicles with higher fuel economy would pay a lower tax. Changes to the placement and slope of the scale affect the amount of revenue generated. If the change is to be revenue-neutral, then the scale replaces the existing tax structure. If the change is to generate revenue, then the scale is on top of the existing 3% tax rate.

"Feebate" Highway Use Tax



In the "feebate" tax structure, the current 3% tax remains in place, but the vehicle owner is then either charged an additional fee or paid a rebate. Vehicles with low fuel economy are charged the fee; vehicles with high fuel economy are given a rebate. The revenue generated in the feebate scheme may actually be identical to that in the sliding scale format, but it is presented differently to the vehicle owner. The feebate more clearly "rewards" consumer decisions.



In the "3 percent plus" tax structure, the current highway use tax remains in place, but an additional fee is charged above the 3 percent. The main difference from the previous examples is that the additional fee is based on fuel economy without regard to the value of the vehicle. Also, all vehicles pay something, since they all consume fuel and have emissions. But those with low efficiency pay more. The "3 percent plus" structure might also be a favorable option should it be desired to raise revenue to fund environmental, energy, or transportation projects, because it more clearly separates the highway use tax from the additional revenue.

Have other states taken similar measures?

Several other states are considering feebates, though none has implemented a feebate program yet. Connecticut and Rhode Island are studying feebates as a climate change strategy (reducing gasoline usage to reduce carbon dioxide emissions). California is studying feebates to reduce its dependency on gasoline imports.

At what amount would the revised tax rate affect purchasing behavior?

A fuel economy-based tax schedule works in two ways: it encourages auto manufacturers to incorporate new technologies to improve fuel economy, and it encourages consumers to buy more fuel-efficient vehicles. The higher the tax rate, the larger is its impact. Technological improvements are believed to provide more improvement than changes in consumer behavior. However, technological improvements are unlikely to be achieved based on a single state going it alone. That is not to say that North Carolina should not try; but we must expect that, at least initially, fuel economy improvements would come almost solely from consumer behavior instead of technological advancements. If North Carolina

implements a tax based on fuel economy, it may encourage other states to do so as well, which could than encourage the auto manufacturers to voluntarily incorporate new technology.

Two states, California and Connecticut, have estimated the fuel economy benefits of feebates (the second of the three tax structures described previously) .

In the California study:

- The average vehicle getting about 21 miles per gallon (mpg) would get neither a fee nor a rebate.
- A vehicle getting 30 mpg would get a rebate of about $2,600.
- A vehicle getting 15 mpg would pay a fee of about $3,500.
- The average fuel economy would improve by about 5 percent by 2020.
- The feebate program is revenue-neutral; the fees on less efficient vehicles pay the rebates on highly efficient vehicles (less program administrative costs).

The Connecticut study offers similar estimates:

- A vehicle getting 30 mpg would receive a rebate of about $1,070.
- A vehicle getting 15 mpg would pay a fee of about $2,260.
- The average fuel economy would improve by about 6% in 10-15 years.

In each case the feebate is based on a state acting alone, with little benefit from technological advances. A national feebate, or a group of states acting to create a de facto national feebate, would achieve fuel economy improvements of about 15% instead of 5-6%. The higher fuel economy would be due to manufacturers having market competition incentives to introduce new technologies.

On the other hand, empirical data suggests that changing consumer behavior may be very difficult for a popular product. SUVs are a good example. SUVs have been a popular product despite their relatively poor gas mileage. SUV popularity, as evidenced by sales, remains strong despite high gasoline prices this year. This may suggest that if a consumer is going to buy a certain vehicle regardless of the price of gasoline, they may also buy that vehicle regardless of the highway use tax.

Will a tax rate based on fuel economy create inequity?

A concern is whether a tax based on fuel economy would make it even harder for low-income citizens to afford a car. Low-income consumers often have negative net worth (their debts exceed their assets) and have little, if any, savings. As a result, they tend to purchase used cars with little or no down payment and often pay a higher interest rate. The regressive effect of a fuel efficiency-based tax schedule would depend on the availability of fuel-efficient used cars.

Without knowing the threshold for fuel efficiency for any of the efficiency-based tax schedules, it is difficult to assess how many vehicles are typically available in the used vehicle market that would result in rebates or lower tax assessments. This should be examined when setting thresholds to ensure an acceptable percentage of used vehicles with high fuel economy are available.

Will consumers be less inclined to purchase SUVs or pickup trucks?

Many consumers intend to buy the more popular SUVs, pickup trucks, or high end sports cars. Because of their relatively low fuel economy, an efficiency-based system would make these vehicles more expensive. If the efficiency-based tax rate was very high, this might make SUVs, pickup trucks, and high end sports cars less attractive to consumers. For consumers who are determined to buy one of these vehicles out of need or preference, they may decide to buy a lower end or used model to bring the overall price, including the tax, back within their price range.

How will consumers react to paying a higher fee?

Consider that the existing North Carolina highway use tax on a $30,000 vehicle is $900. Also consider that the finance charge on the loan for this vehicle might be about $4,000 (5 years at 5 percent). The current practice is that the purchaser finances the highway use tax along with the purchase price. While not trying to trivialize the tax, since it is included in the monthly car payment, the fee may be less noticeable than other vehicle expenses that the motorist pays out-of-pocket (e.g., insurance, personal property taxes, annual registration fee, gasoline, oil changes, new tires, etc.).

The situation is different with cash transactions. In cash transactions, a large fee is going to be very noticeable, and may even doom the purchase.

Will a North Carolina tax structure based on fuel economy ratings run afoul of federal CAFE standards?

Corporate Average Fuel Economy (CAFE) is the required average fuel economy for a vehicle manufacturer's entire fleet of passenger cars and light trucks for each model year. It applies to passenger cars and light trucks with a gross vehicle weight rating (GVWR) of 8,500 pounds or less manufactured for sale in the United States.

About ten years ago the State of Maryland enacted a feebate proposal that increases or decreases their 5 percent motor vehicle titling tax based on whether the vehicle has a lower or higher than average fuel economy rating. The federal government challenged the state legislation. The National Highway Traffic Safety

Administration found that the 1975 Federal Energy and Conservation Act preempted Maryland's law. There was a difference in opinion over whether Maryland's labeling requirements violated the federal statute or whether the feebate program itself was the issue. Regardless, the Maryland statute was repealed. Certainly it is an issue to examine closely before finalizing legislation in North Carolina.

How is the placement and slope of the tax scale established? How would it be adjusted?

Placement and slope of the scale are crucial to determining whether or not the program is revenue neutral and whether a specific vehicle pays more or less taxes. The two issues to consider are what data source to use and where to set the scale.

Regarding the data source, the fuel economy sticker in the window of a new car lists two mileage figures, one for city driving and the other for highway. Consideration should be made on which is most appropriate to achieve the tax program's goals. Consideration may also be given to using a "green car" figure that factors in the vehicle's emissions in addition to its fuel economy.

Once the source is determined, the placement and slope of the scale needs to be established. There could be a single slope or multiple slopes. For example, the average fuel economy could be 23 mpg, with vehicles above 23 mpg paying less and vehicles below 23 mpg paying more. Or it could be a range such that, for example, there is no change in the tax for vehicles getting from 20 mpg to 27 mpg, with vehicles above 27 mpg paying less and vehicles below 20 mpg paying more. The tax structures placement would need to be adjusted periodically to account for changes in the average fleet fuel economy. Adjustments to the scale may also be necessary to ensure that the program maintains its revenue goals (whether that is to be revenue neutral or not). Incorrect placement of the scale could result in the program having a surplus (it charged more in fees than the current tax structure); or it could result in a deficit (it collected less revenue than the current structure).

Would there be one tax schedule for all vehicles, or different schedules for different vehicle classes?

If there is a single schedule for all vehicles, the schedule could be perceived as an "SUV tax" – even if the program is revenue neutral. SUV's generally have poorer fuel economy than lighter vehicles, so would be more likely to pay the higher tax. Different schedules could be established for different classes of vehicles. But this could also lead to unpopular results, such as vehicles in one class paying lower taxes than other vehicles with better fuel economy.

The largest of the popular SUV's weigh more than 8500 pounds and may not be subject to federal fuel economy standards, so may not have a fuel economy rating.

For fairness, provision should be made to include such vehicles in any tax structure based on fuel economy.

Will the revised tax schedule apply only to new car sales, or to used cars, as well?

The current highway use tax applies to all sales. The tax would be less on used vehicles, as their value is less. There may be practical limitations to applying the fuel economy-based tax rate to all used vehicles, as historical figures for fuel economy may not be available for vehicles older than the 1984 model year.

If the program applies to used cars, consideration may be given to the vehicle's condition, mileage, and aftermarket modifications. With new cars, you would expect that all vehicles with the same fuel economy rating would get about the same gas mileage. But ten years later the fuel economy of cars with the same initial efficiency rating may differ drastically depending on the mileage, mechanical condition, and modifications.

Will the revised tax rate apply statewide or only in the areas with air quality problems?

In addition to air quality, the benefits of this program include reducing our dependence on imported oil and slowing down global climate change. These issues affect the entire state, so consideration should be made for a statewide program.

What will prevent people from out of state buying here to pay the lower tax? What will prevent people from buying out of state to avoid paying the higher tax?

This is certainly a situation to consider because a vehicle owner can register a vehicle to an out-of-state post office box. A significantly higher tax in North Carolina might result in cross-state-line purchases and subsequent "ghost" vehicle registrations in an adjoining state. This activity could result in a reduction in the collection of highway use tax in North Carolina, along with property taxes, vehicle registration fees and the like.

To avoid "ghost registrations," would the program require that the highway use tax always be collected at registration rather than at point of sale?

In a cash transaction, such as between two private parties, the new owner typically goes to the DMV to register the vehicle and pay the highway use tax. In a financed transaction, the dealer typically processes the registration through DMV to ensure that the lien is properly recorded. The dealer may also process registrations in cash transactions as a service to the customer. Requiring that the owner process the registration instead of the dealer may help defer the customer from claiming a ghost registration, but cause other problems instead. These problems include customer inconvenience, a separate payment for a large highway use tax, and possible incorrectly omitting a lien from the title.

Will there be exemptions?

Policy makers must be careful about exemptions. By nature, exemptions would more likely be granted to those paying the higher taxes, not those paying the lower taxes. Thus, exemptions reduce tax receipts, which could result in revenue shortfalls.

Would the program result in unintended consequences on fleet turnover?

Fleet turnover is the normal process of older vehicles being retired and replaced with new vehicles. Generally, newer vehicles are cleaner and more fuel-efficient than older vehicles of similar size. Thus, fleet turnover tends to improve air quality and fuel economy. However, if the highway use tax fee is set too high, it could encourage owners devoted to larger vehicles to hold onto their older vehicle longer. This would delay the fleet turnover cycle and defer some of its benefits.

Would the new tax schedule result in unintended consequences on vehicle miles traveled (VMT)?

Ownership of a more fuel-efficient car could encourage people to drive more. While many factors weigh into these decisions, the potential exists for an increase in total vehicle miles traveled through short and long trips because of a car's ability to go farther with less gasoline.

What start up issues need to be addressed?

There is concern about the program operating at a deficit, especially at start up of a feebate program. While the payment of the fees will come from the consumer, it is uncertain whether money will be available to pay the initial rebates. If a feebate program is revenue-neutral, this could be an ongoing daily issue. Some mechanism must be identified to make sure funds are available to cover the rebates.

Isn't there the potential to fraudulently misrepresent the transaction amount to avoid the fee?

Cash transactions may be susceptible to misrepresenting the sales price of a vehicle to reduce the fee, with the buyer and seller splitting the savings. Such actions can later affect such things as the personal property tax. Similar fraud may occur today anyway, but a large highway use tax may make it more likely.

Other opportunities for fraud must be considered during program design. For example, if a vehicle is subject to a rebate, two people might attempt to transfer

the title back and forth for the sole purpose of generating additional rebate transactions.

We've talked about implementation issues for the state agencies to consider, what issues are there for the dealer to consider?

Many small dealers still conduct their business manually, without using computers. The current 3 percent highway use tax is simple to compute. A tax schedule based on fuel economy may be difficult to accurately calculate. Such a schedule would almost surely need to be automated, possibly increasing the business expenses of the dealer.

Vehicle Registration Based on Vehicle Miles Traveled

"The Commission shall study... Whether the State should modify the current vehicle registration fee so that all or a portion of the annual vehicle registration renewal fee for a passenger vehicle is based on the vehicle miles traveled by the vehicle."

How much is North Carolina's current vehicle registration fee?

The current annual renewal fee for a private passenger vehicle is $20. An additional $5 Regional Transportation Authority Registration Tax is collected on vehicles registered in Wake, Durham, and Orange Counties.

How much is the vehicle registration fee for neighboring states?

North Carolina's vehicle registration fee is midrange compared to neighboring states.

- Virginia's fee is higher than North Carolina's. Virginia charges $29.50 for passenger vehicles weighing up to 4,000 lbs., $34.50 for those weighing more.
- Tennessee's $21.50 fee is slightly higher than North Carolina's.
- South Carolina's fee is less than North Carolina's, $24 every two years.

What are the benefits of charging a different registration fee based on the vehicle miles traveled (VMT)?

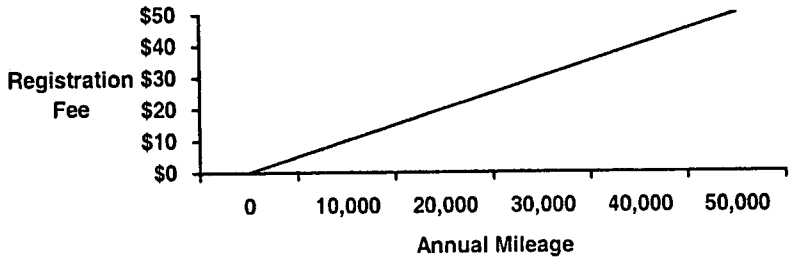
Charging a higher fee for those who drive more, while charging a lower fee for driving less could encourage citizens to drive less. Reducing the amount of VMT can provide several benefits to the state, including cleaner air and less congested highways.

How would the registration fee be modified?

Two examples of a modified vehicle registration fee are shown below. Values are illustrative, and not intended as a recommendation.

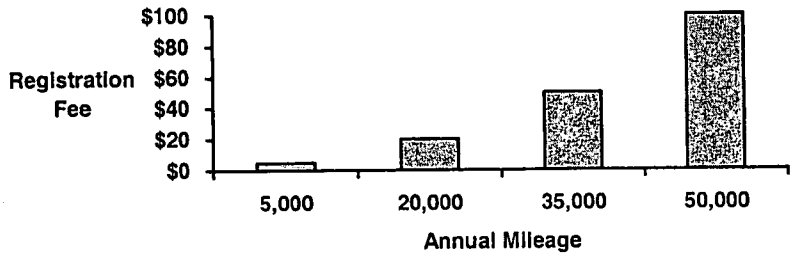
In the first example, the registration fee is variable and is a direct function of the annual mileage.

"Sliding Scale" Registration Fee



In the second, there is a series of "steps" with the fee being fixed on the range of mileage. This structure might be simpler to implement, and would be less dependent on precise recording of a vehicle's mileage.

"Stepped" Registration Fee



Do other states do this?

Illinois has an optional Mileage Tax Registration Fee for commercial vehicles. The registration fee varies depending on the vehicle's weight and number of miles operated. Illinois' registration fees are much higher than North Carolina's. The standard passenger vehicle registration fee is $78/year (North Carolina's is $20); a commercial truck weighing 8,001-12,000 lbs. pays $188 in Illinois. However, the commercial truck operator can apply for the mileage-based plate instead. The fee for a vehicle weighing less than 12,000 lbs is $113 (instead of $188) for the first 5,000 miles, and 0.026 cents per mile afterwards.

No other state bases the vehicle registration fee on miles traveled, but some have shown interest in basing other fees on miles traveled.

- A few trial programs base automobile insurance premiums on miles traveled.
- California is considering a tax on VMT to reduce gasoline demand.
- Oregon is considering replacing its gasoline tax with a mileage tax to maintain or increase tax revenue.

How much change does it take to affect motorist behavior? What are the emissions benefits?

There have been no direct studies of the emissions benefits of basing vehicle registration fees on miles traveled.

However, a California study that considers implementing a VMT tax to reduce gasoline consumption may provide useful information. In the California study, it was estimated that a two cents per mile tax on driving would reduce gasoline consumption by just under 3 percent. Gasoline consumption and VMT are related, so you could reasonably expect a $0.02/mile tax to reduce VMT by about 3 percent. A $0.02/mile tax would cost the average motorist $240 per year (assuming the average vehicle drives 12,000 miles per year). $240 is much higher than the current $20 annual registration fee.

California also considered replacing a portion of the registration fee with a gasoline tax surcharge. In this scenario, the average California motorist would pay less in annual registration fees but more in gasoline taxes. Those who drive more would pay more; those who drive less would save. This idea was estimated to result in about 1 percent reduction in gasoline consumption.

VMT and emissions are linear; a 3 percent reduction in VMT would result in a 3 percent reduction in emissions.

Will it create inequity?

There may be an argument that this is a regressive tax, since all motorists would pay the same regardless of income or value of their vehicle. Thus, the tax would make up a higher percentage of the total income for lower-income consumers, effectively reducing the amount of discretionary funds available to them for other purchases.

It may also be argued that a VMT-based registration fee would affect rural residents more than urban residents, since rural residents typically travel farther distances for basic services. In addition, an argument could also be made that this is unfair to suburban residents who made a decision to purchase a home away from the city center, and are now taxed at a higher rate after the fact because of that decision.

How will consumers react to paying a higher fee?

The actual amount of the vehicle registration fee is lower than other taxes, such as the highway use tax, personal property tax, or gasoline taxes, even if the registration fee is increased several fold. However, the annual vehicle registration fee is paid out-of-pocket, so it is much more noticeable to taxpayers. For example,

a $200 increase in the registration fee paid out-of-pocket would certainly be felt by most taxpayers. Unlike a $200 increase in the highway use tax, which is typically financed over a long term.

How would the state determine a vehicle's mileage to know how much to charge?

This would be a critical implementation issue to overcome. There is no current, accurate gathering of vehicle mileage. An odometer reading is currently taken during the annual vehicle inspection. In counties doing emissions inspections, the odometer reading is manually entered into the inspection results and electronically transmitted to DMV. In other counties, the odometer reading is hand-written onto paper; there is no electronic record. Additionally, there is no quality assurance performed on the odometer reading that the inspector manually enters into the inspection record. This could cause problems for the taxpayer (or the state) in case of mistakes, neglect, or fraud by the inspector.

As noted earlier, several states are studying mileage-based fees. They are experimenting with electronic methods to gather mileage information directly from the vehicles rather than rely on manually collected data. For instance, an insurance company that is doing a trial pay-as-you-drive (PAYD) insurance program uses a "black box" to gather mileage data. The black box connects directly to the vehicle's onboard diagnostic (OBD) connector (available on 1996 and newer vehicles only) to gather speed, time, and distance information. The motorist removes the black box from the vehicle, connects it to their personal computer, and then downloads the information to the insurance company.

There is also talk of future generations of vehicles having black box recorders similar to those in aircraft. Such technology would gather a host of information. But there is also concern about such technology intruding onto citizens' privacy by monitoring too much about their whereabouts.

Since mileage can only be determined for the previous year, but the vehicle registration fee is paid for the upcoming year, how would DMV know how much to charge?

It could be decided that the registration fee for the upcoming year is based on the mileage driven in the previous year. However, this still leaves the question of how to base the fee on a newly-acquired vehicle.

Revenue Neutral

"In its conduct of these studies, the Commission shall consider whether the modifications studied under subsection (a) of this section should be made on a revenue-neutral basis or should be made so as to generate additional revenue to be used to fund initiatives designed to improve air quality and the efficiency of the transportation system in the State."

How much revenue are we talking about?

During the most recent complete state fiscal year, the state collected over $500 million in highway use taxes. New vehicle services provided $266 million on 466,000 transactions; used vehicle services provided $281 million on 1.7 million transactions.

During the same period, the state collected $261 million in registration fees on 8.4 million vehicles.

Would a tax schedule based on fuel economy result in unintended consequences on revenue?

A consideration is the impact of improving fuel economy on fuel tax receipts. The highway use fee structure itself could be revenue neutral, but any resulting improved fuel efficiency could result in less gasoline consumption and, thus, decreased fuel tax receipts. In this scenario the state might see no change in the number of vehicles on the highway or the amount of miles driven on the highways, but have less money to maintain the roads.

If additional revenue were generated to fund air quality or transportation efficiency initiatives, how would it be administered?

Establishment of a Clean Air Trust Fund, similar to the Clean Water Management Trust Fund, may be the preferred method to administer the revenue. A Clean Air Trust Fund could include a diverse board to determine priority and direction, a competitive selection process for allocating the funds, a dedicated staff to oversee the funds, and regular reporting requirements to maintain accountability.

The Clean Air Trust Fund could in turn use the money to:

- Increase state or local air agency funds for specific programs;
- Upgrade computer systems for Revenue and DMV to administer program;
- Buyback programs for low-income car owners;
- Funding public transit – buses, light rail, etc.;
- Upgraded public facilities, e.g. green buildings or energy efficiencies.

Would these programs be limited to gasoline-powered vehicles, or would other fuels be included as well?

The federal "Fuel Economy Guide" includes values for hybrid-electric, ethanol flexible-fuel, diesel, propane, and compressed natural gas (CNG) vehicles. Increased purchases of these vehicles could have a significant impact on gasoline sales tax receipts.

Regardless of any change in consumer behavior, is there a compelling reason to change the tax structure anyway?

The situation may be that there are too many issues to make sufficiently drastic changes to the tax structure to directly produce significant improvements. However, small changes to the tax structure could generate additional revenue to indirectly result in improvements to the environment, fuel efficiency, or transportation system.

List of Acronyms

CAFE	Corporate Average Fuel Economy
DMV	Division of Motor Vehicles
ERC	Environmental Review Commission
GVWR	gross vehicle weight rating
HUT	Highway Use Tax
mpg	miles per gallon
OBD	onboard diagnostics
PAYD	pay as you drive
S.B.	Senate Bill
SUV	Sport Utility Vehicle
VMT	Vehicle Miles Traveled

References

California Air Resources Board report, "Appendix D: Reducing Petroleum Dependency in California" http://www.energy.ca.gov/fuels/petroleum_dependence/documents/2004-02-11_600-03-005A4.PDF

State of Connecticut Climate Change Website, http://www.ctclimatechange.com/

Feebate Management Models, http://www.wsu.edu/~forda/down20.html

Fuel Economy Guide, http://www.fueleconomy.gov/

Victoria Transport Policy Institute's Online TDM Encyclopedia, http://www.vtpi.org/tdm/

State of Oregon's Technology Evaluation for Implementation of VMT Based Revenue Collection Systems, http://www.oregon.gov/ODOT/TD/TP_RES/docs/Reports/TechEvalVMT.pdf

State of Oregon's Road User Fee Task Force website, http://www.odot.state.or.us/ruftf/

Progressive Casualty Insurance Company's TripSense website, https://tripsense.progressive.com/home.aspx

California Air Resources Board report, "Appendix C: Petroleum Reduction Options", http://www.energy.ca.gov/fuels/petroleum_dependence/documents/2003-10-28_600-03-005A3.PDF

Natural Resources Defense Council report "Fueling the Future", http://www.nrdc.org/air/transportation/calfuel/calfuel.pdf

Canadian editorial on feebates, http://www.policyalternatives.ca/index.cfm?act=news&do=Article&call=733&pA=BB736455

Canadian paper on environmental tax shifting http://www.policyalternatives.ca/index.cfm?act=news&do=Article&call=236&pA=BB736455

Center for Renewable Energy and Sustainable Technology discussion of feebates, http://sol.crest.org/efficiency/energywise_options/ch2-3.html

New York discussion on feebates and VMT reduction measures, http://www.ccap.org/NYGHG.htm

Massachusetts draft legislation to base excise tax based on fuel efficiency,
http://www.environmentalleague.org/Issues/Tax_Shifting/H3649_feebatebill.htm

Northwest Environment Watch discussion on feebates,
http://www.northwestwatch.org/reforms/feebates.asp

Texas study on environmental taxes, including feebates,
http://www.texascenter.org/feeproj/envirotaxes.pdf

Discussion of European feebates,
http://downloads.publish.csiro.au/ecos/ecos_download.cfm?article_id=EC121p24.pdf&issue_id=121&issue_year=2004

Canadian discussion on feebates,
http://www.ec.gc.ca/transport/offroad2004/discussionPaper/Discussion_Paper_5_e.htm#5.1

Rhode Island Greenhouse Gas Process
http://righg.raabassociates.org/

Attachment III

Highway Use Tax Based on Fuel Efficiency and Vehicle Registration Based on Vehicle Miles Traveled

Donnie Redmond
Department of Environment and Natural Resources
Division of Air Quality

Points to make

- What are the options?
- How much money is involved?
- Is it an effective way to modify behavior?
- Is it easy to administer?
- Are there equity issues?
- Is it legal? (highway use tax)

4

Studies Act of 2004

- S.L. 2004-161 requires ERC to study whether to:
  - Modify the current highway use tax based on the fuel efficiency rating of the vehicle
  - Modify the current vehicle registration fee based on the vehicle miles traveled by the vehicle
  - Revenue-neutral basis or generate additional revenue to fund initiatives to improve air quality and efficiency of the transportation system

2

Highway Use Tax

Modify tax based on fuel economy

Who was included in study

We were seeking input, but not necessarily consensus

- Department of Environment and Natural Resources, Division of Air Quality (DENR, DAQ)
- Department of Transportation, Division of Motor Vehicles (DOT, DMV)
- Department of Revenue
- Department of Administration, State Energy Office
- North Carolina Automobile Dealers Associations (NCADA)
- The Carolina Independent Automobile Dealers Association (CIADA)
- American Automobile Association (AAA)
- Environmental Defense
- North Carolina Justice Center (NC Justice)
- Alliance of Automobile Manufacturers
- North Carolina Trucking Association
- North Carolina Petroleum Marketers Association
- Triangle J Council of Governments
- North Carolina Solar Center

3

What are the options?

- Current highway use tax is 3%, paid when title is transferred
  - Tax on a $30,000 car is $900
- If your car has better fuel economy, you pay lower highway use tax
  - If you car has lower fuel economy, you pay higher highway use tax
- Three tax structures are included in the report

6

How much money is involved?

- Highway use tax is 3% of vehicle price, applied each time title is transferred
  - New vehicles raised $266 million on 466,000 transactions
  - Used vehicle raised $281 million on 1.7 million transactions

7

Are there equity issues?

- Concern about ability of low income citizens to afford fuel efficient vehicles
- Depends on whether the program includes all vehicle sales or just new ones
  - Program limited to new vehicles would have less effect on low income citizens
  - Program that includes used vehicles could be regressive, depending on how market reacts

10

Is it an effective way to modify behavior?

- There is debate on how much difference even a drastic change to the highway use tax will make
  - Studies show a national effort could improve fuel economy by 15%
    - The benefit for a single state may be only 5%
  - High gas prices have not discouraged SUV sales

8

Is it legal?

- Maryland instituted a "feebate" structure back in the '90s
  - Challenged by the Federal government
    - CAFE is Federal responsibility, not State
  - Maryland revoked the program
- The specific issue is not clear
  - Was it the entire program, or was it labeling requirements?
  - NC would need to carefully review the Maryland case

11

Is it easy to administer?

- Much of the current titling process is automated
  - Changes would require software updates
- New cars vs. older cars
  - Fuel economy data available back to '84 model
  - Fuel economy changes based on condition, maintenance, aftermarket
- Consider impact on highway fund

9

Vehicle Registration Fee

Modify fee based on vehicle miles traveled

What are the options?

- Current vehicle registration fee is $20, assessed annually
- If you drive more than "average", you would pay a higher registration fee
  - If you drive less, you pay a lower registration fee

13

How much money is involved?

- Annual vehicle registration fee is $20
  - Additional fees based on location and type of plate
  - $261 million on 8.4 million vehicles

14

Is it an effective way to modify behavior?

- There was little discussion on the vehicle registration fee
  - The general feeling was that the fee is too low to make much difference in how people drive
  - People spend much more on gasoline
    - $1,050/year for gasoline vs. $20 for registration
      - 12,000 miles/year, 20 mpg, $1.75/gallon
    - Comparatively, the registration fee is equivalent to pennies per gallon of gasoline

15

Is it easy to administer?

- Similar concerns as with highway use tax
- Much of the process is automated
  - Changes would require software updates
- Annual electronic record of odometer is not available in all counties

16

Are there equity issues?

- Could be considered a regressive tax, since all motorists would pay the same regardless of income or value of their vehicle, thus affecting low-income people more
  - That is no different from the current situation

17

Revenue

Should the changes be revenue neutral, or generate revenue for other projects

Revenue neutral?

- Revised fee structure (highway use tax or vehicle registration fee) could generate revenue to fund Clean Air Trust Fund
- If changes drastic enough to modify human behavior cannot be achieved, then small changes could still fund beneficial projects

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Contact Information

- Donnie Redmond
  - DENR, Division of Air Quality
  - (919)733-1481
  - donnie.redmond@ncmail.net

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MINUTES
HOUSE COMMITTEE ON
ENVIRONMENT AND NATURAL RESOURCES

Tuesday, March 22, 2005

The House Committee on Environment and Natural Resources met on Tuesday, May 22, 2005, in Room 643 of the Legislative Office Building at 12:00 Noon. The following members were present: Representative Carolyn Justice, Presiding Chair; Representative Pricey Harrison, Vice Chair; Representative Daniel McComas, Vice Chair; Representative Curtis Blackwood, Representative Russell Capps, Representative Arlie Culp, Representative Mitch Gillespie, Representative Melanie Goodwin, Representative Jim Gulley, Representative Verla Insko Representative Paul Luebke, Representative Bill McGee, Representative Jean Preston, and Representative Alice Underhill.
A Visitor Registration list is attached and made part of these minutes (Please see exhibit #1).

Representative Carolyn Justice, Presiding Chair, called the meeting to order. Representative Justice requested a moment of silence in memory of Representative John Hall. The Pages, Sergeant-at-Arms and Committee Counsel and his staff were recognized and thanked. Visitors were welcomed.

Richard Roger, DENR, was recognized to explain the 2005 Recycling Program at the DENR. (Please see exhibit # 2). The 2nd Statewide Conference on Values$ of Conservation was announced by Robin Smith, Assistant Secretary, DENR (Please see Exhibit #3).

HOUSE BILL 236, A BILL TO BE ENTITLED AN ACT TO LIMIT THE AUTOMATIC GRANT OF EXCLUSIVE JURISDICTION OVER PROPERTY ACQUIRED BY THE FEDERAL GOVERNMENT.
By motion from Representative Luebke, the Proposed Committee Substitute H236-PCS60239-RI-2 was adopted for consideration and moved forth for discussion. (Please see Exhibit #4). The motion passed. The Bill Analysis is attached (Please see Exhibit #5). Representatives Culpepper and Williams, primary sponsors, were recognized. Representative Culpepper emphasized that the bill was not a military unfriendly piece of legislation. He further stated that it is in the best interest of North Carolina and good government.

Representative Justice recognized committee members for questions and comments. Representative McComas offered an amendment to the Committee Substitute H236-PCS60239-RI-2 that inserts "Military Ocean Terminal at Sunny Point" to page 1, line 19 (Please see Exhibit #6). Upon motion the amendment was adopted for discussion. Discussed ensued.

Representative Justice recognized people from the audience to speak on the bill. Mayor Bonnie Sanders, Town of Roper, and Mayor Brian A. Roth, Town of Plymouth, were recognized to speak in support. Mayor Sanders cited preserving the strong historical value of the area. Mayor Roth submitted a map outlining the landing field emphasizing the problems to the migratory birds and dangers they pose to aircraft; a report by Robert J. Natter, Commander in Chief, US Atlantic Fleet, Department of Navy; and The Virginian-Pilot (Please see Exhibits #7, 8 & 9). Professor Tom Earnhardt, volunteer, was recognized to present a video by the Audubon Society from the NC Television Series featuring the Albemarle Peninsula and the uniqueness of the everglades. The December 2003 edition of *Wildlife in North Carolina* was distributed (Please see Exhibit #10).

Upon motion by Representative Pricey Harrison, the bill received a favorable report to the Committee Substitute H236-PCS60239-RI-2 as amended, which changes the title, unfavorable to original bill. The motion passed. Committee Report 2005 is attached (Please see Exhibit # 11).

There being no further business, Representative Justice, adjourned the meeting at 1:30 P.M.

Respectfully submitted,

Representative Carolyn Justice
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: **Tuesday, March 22, 2005**

TIME: **12 Noon**

LOCATION: **643 Legislative Office Building**

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

House Bill 236 - Federal Jurisdiction.
Representatives Culpepper and Williams

Respectfully,
Representatives Harrell and Justice
Chairs

I hereby certify this notice was filed by the committee assistant at the following offices at **11:30 a.m.** on **March 17, 2005.**

___Principal Clerk
___Reading Clerk - House Chamber

Beth LeGrande (Committee Assistant)

HOUSE COMMITTEE ON ENVIRONMENT AND NATURAL RESOURCES

AGENDA

12:00 Noon
Tuesday March 22, 2005
Room 643 Legislative Office Building

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

2. Introductory Remarks by Cochairs

3. Recognition of Pages

4. Bills for Consideration

   House Bill 236 - Federal Jurisdiction.
   Primary Sponsors, Representatives Culpepper and Williams

5. Adjourn

Exhibit #1

VISITOR REGISTRATION SHEET

NC HOUSE COMMITTEE ON
ENVIRONMENT AND NATURAL RESOURCES — MARCH 22, 2005

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Julie Woodson	NCPC
Nancy Thompson	MCIC
Risa Martin	NC Home Builders
Johanna Reese	DENR
Angie Harris	Maupin Taylor
Henry Hutan	N.C.S.D.A.
Rebecca Key	Rep. Gibson / intern
Jamy Comstock	NC-CSE
John Cyrus	NCSG
Robin Staudt	FreedomWorks / CSE of Orange Cty.
Nancy D. Jones	FreedomWorks / CSE of Guilford Co

VISITOR REGISTRATION SHEET

NC HOUSE COMMITTEE ON
ENVIRONMENT AND NATURAL RESOURCES — MARCH 22, 2005

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Mary Elizabeth Lyon	Freedom Works/CSE Greensboro, NC.
Charles Lee Jr.	Freedom Works/CSE Greensboro, N.C.
John Rhodes	Freedom Works/CSE Winston-Salem, NC
Celeste Stanley	Freedom Works/CSE Winston-Salem
Joyce Krawiec	Freedom Works/CSE Forsyth County
Elizabeth Rhodes	Freedom Works/CSE. Forsyth County
Ray Hoffler	Freedom Work/CSE, Orange County
Rachel Earnhardt	2533 York road
Linda Jolly	FREEDOM WORKS/CSE IREDELL COUNTY
Hal G Jolly	Freedom Works CSE Iredell
MARY BLACK	Freedom Works/CSE - Iredell Co.

VISITOR REGISTRATION SHEET

NC HOUSE COMMITTEE ON
ENVIRONMENT AND NATURAL RESOURCES — MARCH 22, 2005

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Buddy Hennec	Freedom Works/CSE - Iredell County
Allen Page	FreedomWorks /CSE - Alamance Co.
ALFRED ABDO, JR.	FREEDOM WORKS / CSE - FORSYTH Co.
AL HARTKOFF	FREEDOM WORKS/CSE - ORANGE CO
SIERRA HARTKOFF	"
Kya HARTKOFF	"
Kathleen Taylor	NO OLF - WASHINGTON - BRANSON CO.
CAROLYN W. HARDING	" " " " "
Betty DeBoer	NO OLF - Washington County
Jowell Thomas Cross	NO OLF - Washington County
Margaret Manning	NO-OLF - Washington - Board of County

VISITOR REGISTRATION SHEET

NC HOUSE COMMITTEE ON
ENVIRONMENT AND NATURAL RESOURCES — MARCH 22, 2005

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Neil Manning Jr	NO OLF - Beaufort Co.
Walt Sturgeon	NC Museum of Natural Sciences
Doris Morris	NO-OLF Washington County
Jennifer S. Allgood	NO-OLF Beaufort Co
JoAnn Tetterton	NO-OLF Washington County
Martha Gokey	NO-OLF Washington County
Ronnie Askew	NO-OLF Beaufort County
Charles H. White	NO-OLF Pasquotank County
Harrell Phelps	" Washington Co
Ben Nanney	NC Sierra Club
Jerry Beasley	NO OLF Beaufort Co.

VISITOR REGISTRATION SHEET

Name of Committee _____ Date _____

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE ASSISTANT

NAME	FIRM OR AGENCY
Myra Beasley	NO OLF, Beaufort Co.
Whit Howell	NO OLF, Beaufort Co.
Fred Howell	NO OLF Beaufort County, NC
Erin Kinsey	NC Conservation Network
Franky S. Koo	NOOLF
Kathy Hartkopf	NC Freedom Works / CSE
Nikki [illegible]	Sierra Club
Dennis Bowden	NO OLF
Hallas Boyd, Jr.	NO OLF.
Robin Smith	DENR
[illegible]	CAMA
Brian A. Roth	Mayor, Town of Plymouth
Lowell Jones	WRAL News
Edward Wilson	WRAL-TV
[illegible] SANDIFER	WNCT Daily News
Wade Rawlins	The News & Observer
Gary Robertson	AP
Bobbie Bunny Sanders	Mayor Roper
Tom Earnhardt	Exploring NC Television Series/Volunteer

Exhibit #2

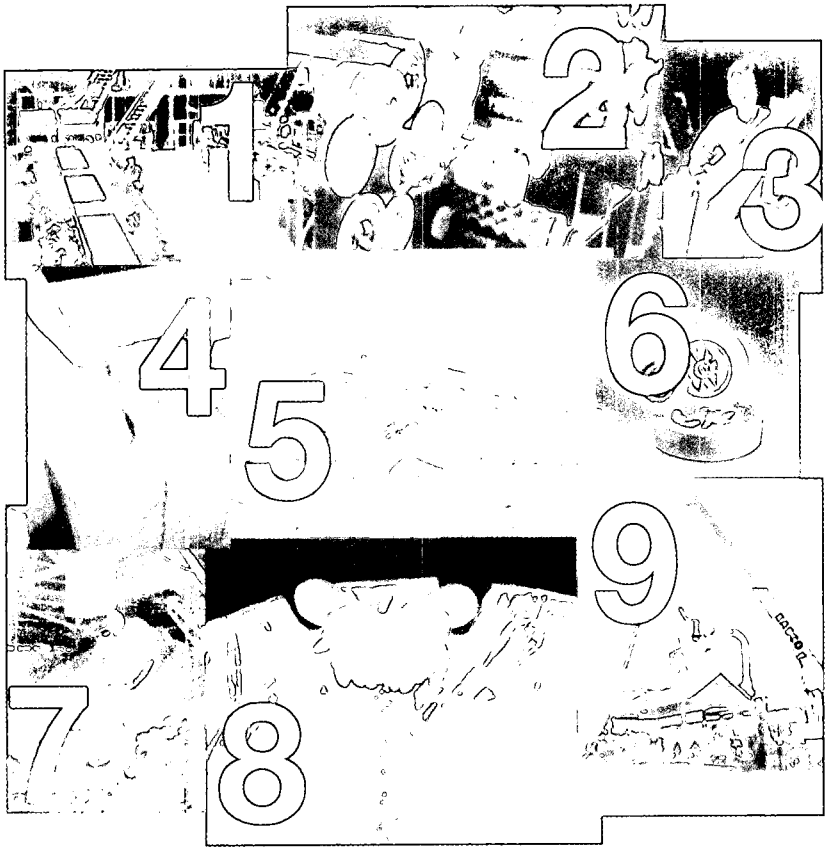
Recycling Means Business!

The Impact of Recycling on North Carolina's Economy



N.C. Department of Environment and Natural Resources
March 2005

Recycling Means Business!



From the cover:

1 - Recycle America Alliance (p. 46)
2 - Habitat ReUse Center (p. 32)
3 - Oaks Unlimited (p. 41)
(photo courtesy of *The Mountainer*, Waynesville)
4 - Elizabeth City Glass Inc. (p. 25)
5 - Nucor Corporation (p. 40)
6 - Roll-Tech LLC (p. 47)
7 - Union Gypsum (p. 53)
8 - Envision Plastics (p. 26)
9 - Scotland Neck Heart Pine Inc.(p. 48)

Recycling Means Business! is published by the N.C. Recycling Business Assistance Center, a program of the Division of Pollution Prevention and Environmental Assistance of the N.C. Department of Environment and Natural Resources.

Michael F. Easley, Governor, North Carolina
William G. Ross Jr., Secretary, Department of Environment and Natural Resources

Division of Pollution Prevention and Environmental Assistance
For more information call (919) 715-6500 or (800) 763-0136, or write to DPPEA, 1639 Mail Service Center, Raleigh, NC 27699-1639.

NCDENR

Special thanks to: Institute for Local Self-Reliance, Washington, D.C., for the use of "Recycling Means Business."

DPPEA-FY-04-14. 1,200 copies of this public document were printed on recycled paper at a cost of $4,200.00, or $3.50 per copy.

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Recycling Means Business!

Introduction



The insulation in your attic. A glass pickle jar in your cupboard. The pots your flowers came in. The cardboard box in your storage closet. The detergent bottle in your laundry room. The 1,000-piece puzzle you never completed. The red-dyed mulch you put under your trees. The soft drink bottle in your fridge. The litter in your kitty's box. Just about any piece of metal you touch. The newspaper you read this morning. The carpet under your feet. The tissue in the bathroom. The cereal boxes in the pantry. The wheels that roll your garbage cart. The composted topsoil in your garden.

What do all these things have in common? The journey of these products to your home started in your community's recycling program and North Carolina businesses helped make it happen. An amazing array of companies across the state help turn discarded materials into everyday things, all the while creating jobs for our citizens and investment in our economy. In fact, North Carolina's "recycling economy" is one of the fastest growing job engines in the state. The recycling economy in North Carolina is dynamic and a picture of diversity. It includes:

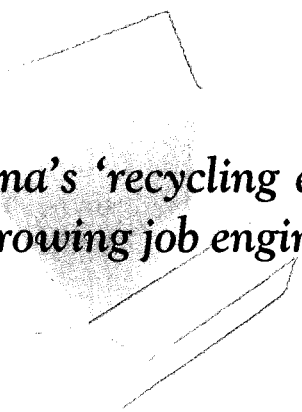
- Fortune 500 firms operating major manufacturing facilities in rural counties.
- A computer recycler bringing life and jobs back to an old textile mill.
- A plastics recycler using sophisticated, patented technologies to sort processed materials.
- A fast-growing compost company providing beneficial soil amendments to farmers in eastern North Carolina.
- A woman-owned collector and processor of commercial recyclables serving Triangle businesses.
- A small, family-owned paper processing business recently passed down to the second generation.
- A manufacturer of fine wood flooring who has integrated recycled materials into a new product line.

How can we help our fellow North Carolinians whose livelihood depends on recycling? The first answer is easy – recycle! These companies need material, and it does them no good if it's in a trash can or Dumpster. Empty bottles and cans, old computers, wooden pallets and discarded office memos buried

Recycling Means Business!

30 feet in a landfill rob our recycling employers of valuable feedstock. Every household, business, industry and government agency in North Carolina can help these companies grow and hire more people by making a commitment to recycle as much material as possible.

North Carolina can also help create and maintain a business climate that supports the success of recycling companies. Local communities and the state can help with policies, programs and incentives that drive materials out of the waste stream and into the hands of recyclers. Some recyclers struggle to compete against relatively low tipping fees to get materials. Access to capital can be improved. Maintaining a strong network of technical, economic development and business planning assistance can give companies a strong foundation for expansion and improvement. A need exists to raise public awareness of the recycling economy. Waste generators, decision-makers and the public should know about the economic development and waste diversion opportunities that recycling companies offer. Ultimately, what many recyclers need most is more supply, and it will take a concerted and broad-based effort to keep materials flowing their way.



"North Carolina's 'recycling economy' is one of the fastest growing job engines in the state."

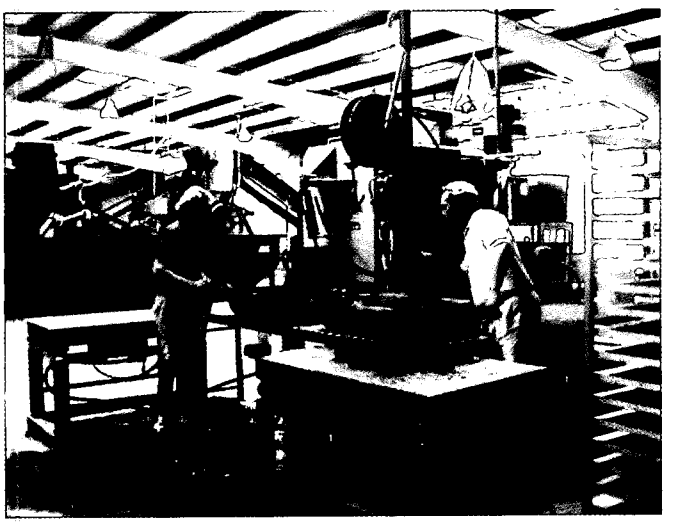
This document provides a snapshot of the many faces of North Carolina's recycling industry. The 42 companies featured here are just a few of the literally hundreds of recycling firms in the state. They demonstrate the idea that protecting the environment and creating jobs can be accomplished together. What's good for the planet can also be good for the economy, and North Carolina's recycling companies are poised to make North Carolina a national leader in making it happen.

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Recycling's Job Impact

The N.C. Division of Pollution Prevention and Environmental Assistance recently conducted a survey to track recycling's impact on jobs and the North Carolina economy. This survey follows up on a similar effort conducted in 1994 and documents the growth of the recycling industry over the past decade. (A copy of the full study can be found at: http://www.p2pays.org/ref/34/33911.pdf.) Some of the findings include:

- Recycling employs approximately 14,000 people across the state.
- In 1994, recycling employed 8,700 people, rising 60 percent in 10 years to reach its current level.
- Recycling jobs as a percentage of the state's total employment has increased 40 percent in 10 years, from 0.25 percent of the total labor force in 1994 to 0.35 percent in 2004.
- Fifty-four percent of the businesses surveyed forecast creating more recycling-related positions in the next two years.
- Recycling employs more people than the bio-tech and agricultural livestock industries in North Carolina.
- The number of companies listed in the state's recycling markets directory has increased from 306 in 1994 to 532 in 2004, a 74 percent increase.
- Recycling companies in North Carolina range from Fortune 500 manufacturers to single proprietary, family-owned businesses, handling hundreds of different types of materials and products. Some of these companies now occupy old textile factories and other industrial plants abandoned by some of the state's more traditional industries.



Elizabeth City Glass employees transform glass bottles into patio pavers and other valuable products.

Recycling Means Business!

Recycling Means Business!



Jackson Paper employee monitors master controls in its recycled paper-making operation.

The recycling industry can be expected to continue its growth in North Carolina, with expansion of existing firms, the advent of new companies and a rising level of employment in this sector. The chief obstacle to growth is access to materials that are currently being thrown away and sent to landfills. Some of the ways that North Carolina can foster the development of its recycling companies include:

- Enhancing the performance of local government recycling programs.
- Increasing the commitment of businesses, industries and the public to recycling.
- Addressing the relatively cheap cost and ease of disposal as a disincentive to recycling.
- Considering local or statewide disposal bans on materials that are needed by the state's recyclers.
- Providing funding to recycling collection efforts through mechanisms such as advanced recycling fees.

Every North Carolinian - at home, work or play - can participate in growing jobs through recycling. Recyclers are in towns and cities all around the state, they're hungry for more material, and if they get it, they can hire more people and increase their investment in our communities.

Recycling employs more than 14,000 North Carolinians and recycling jobs have increased about 60 percent in the last ten years.

Recovering the "Waste Stream"

North Carolina's waste disposal has been on an upward climb. Landfills serving the state received 6.8 million tons in 1991; by 2004 that number was 10.6 million tons, a rise of 56 percent. Some of this upsurge has been fueled by population growth, but the waste stream has also grown on a per capita basis, from 1.01 tons per capita in 1991 to 1.27 tons in 2004.

In using the term "waste stream," however, it is easy to forget that the vast majority of what is disposed is highly usable material. An office memo, a plastic bottle, a cardboard box, a wooden pallet, leftover food, a computer – these are all commodities desired by the growing North Carolina recycling industry and feedstock to supply the rising demand for secondary resources. These resources only become "waste" when we make the mistake of putting them in a garbage can or Dumpster.

"... when materials switch from waste to recycling, businesses grow, money is invested in communities and people find jobs."

What, then, are the major recoverable materials in the disposal stream? Below is a sampling of "wastes" that North Carolina recyclers can easily turn into commodities:

Paper: Newspaper, office paper, cardboard, magazines, chipboard – these are all paper "grades" in growing demand by foreign and domestic paper mills (including five mills here in N.C.). The estimated 1.8 million tons of paper discarded in North Carolina represent tremendous business opportunities for collectors, processors and end users of this material.

Aluminum Cans: Arguably one of the most valuable of all recyclables, and subject to a statewide disposal ban, as much as 25,000 tons of aluminum are still thrown away in North Carolina each year. Market value of the discarded material is approximately $25 million.

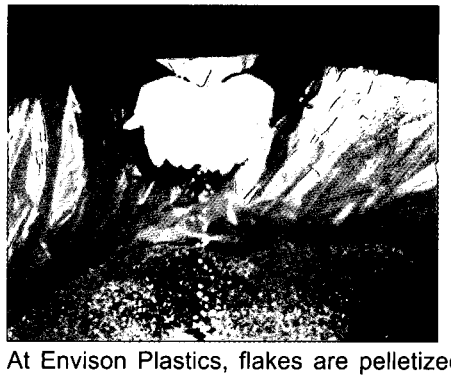
Wallboard: Gypsum discarded from building sites across the state has useful agricultural properties, and can be used as feedstock for compost and animal

Recycling Means Business!

bedding. Three hundred thousand tons of this material await diversion into value-added products in North Carolina.

Food Waste: Almost a million tons of food enters North Carolina landfills annually, but food rescue agencies and composters are starting to make a dent in this disposal. Some of the state's high-profile grocery chains and the North Carolina Farmers Market are among the early leaders in diverting food wastes, working with commercial composters in the Triangle region.

Plastic bottles: Few states are better poised to divert plastic bottles to beneficial use than North Carolina, with a number of nationally prominent processors and end users located in our state. The expanding appetite for recyclable resins by domestic and export markets makes it possible to divert all of the 87,000 tons of plastic bottles discarded in North Carolina each year.



At Envison Plastics, flakes are pelletized according to clients' specifications - like Downy® Blue or Gain® Green.

Wood and Pallets: Arguably the "lowest hanging fruit" of the disposed stream, waste wood and pallets are experiencing a steady, large-scale growth in demand from a wide range of businesses. Pallet repair companies, wood fuel users, composters and wood flooring manufacturers could divert more than 500,000 tons of this material annually.

Electronics: The rapidly expanding use of computers, televisions, cell phones and other gadgets will present a waste diversion challenge to North Carolina. Fortunately, the state already has electronics collection and processing companies ready to handle all the material they can get their hands on, including the 50,000 tons annually generated in North Carolina.

Glass: The use of recycled glass, or cullet, to make new bottles and jars saves glass manufacturers a large amount of energy and improves their profitability. Recovering more glass can help the plants in North Carolina stay competitive, and can feed other smaller businesses making value-added products from cullet.

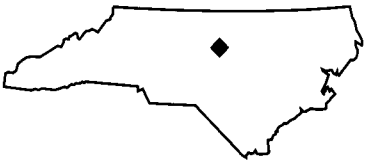
The waste stream is a potentially rich source of materials that can be put back to work for the North Carolina economy. The bottom line is that when materials switch from waste to recycling, businesses grow, money is invested in communities and people find jobs.

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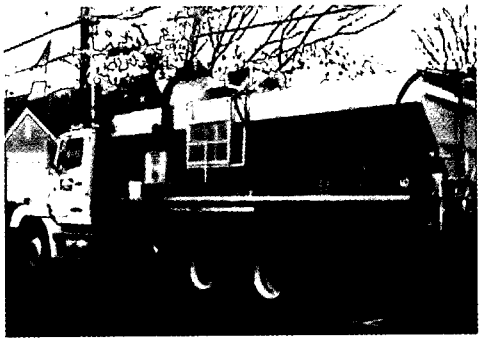
The Impact of Recycling on North Carolina's Economy

RECYCLING COMPANY PROFILES



Brooks Contractors

Judy and Dean Brooks own and operate one of North Carolina's largest state-permitted composting facilities. In 1992, Chatham County's Brooks Contractors began accepting organics on its 30-acre facility to process into a valuable compost product. Brooks started out with only two employees, a couple of customers and a few hundred tons of organics to process. Today, Brooks has a substantial customer base, more than 55,000 tons to process each year, a fleet of trucks, 12 full-time and a few part-time employees.



Brooks' unique truck design has helped it expand its food collection services.

In the late 1990s, Brooks began offering collection of food waste to grocery stores, restaurants, microbreweries and cafeterias in Orange County. Food collection expanded quickly from 700 tons the first year to more than 24,000 tons from Orange, Wake, Durham and surrounding counties. Brooks has made major contributions to the food collection and composting industry. The company designed a collection truck that provides several functions not found on a typical waste hauling truck. The truck weighs the container before and after dumping its contents into the truck. The truck is also equipped with a high-pressure water system that allows operators to clean out and sanitize each collection container after dumping. This valuable and unique feature has been critical to making the food collection service a success by nearly eliminating odor and fly complaints.

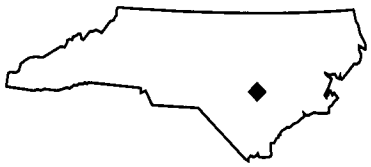
"Brooks has a substantial customer base, more than 55,000 tons to process each year, a fleet of trucks, 12 full-time and a few part-time employees."

In addition to its original compost, Brooks has expanded its product line to include more than eight different products, including topsoils, flower bed mix and other compost blends to meet varied landscaping and agricultural needs.

For more information about Brooks Contractors, contact Judy Brooks at (919) 837-5914, e-mail: brooksco@centernet.net.

Brooks Contractors
Goldston
Chatham County

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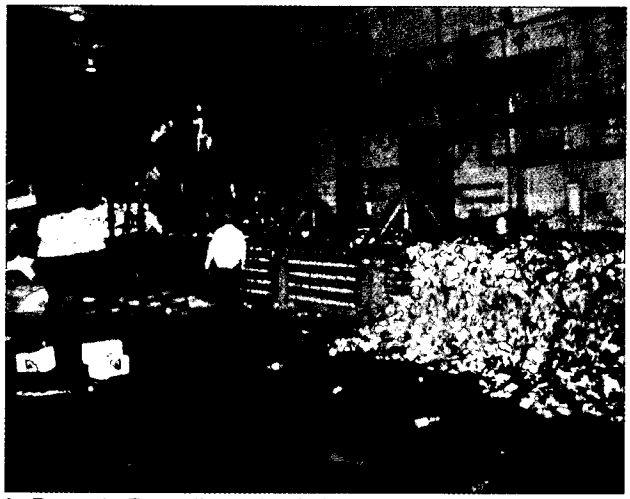


Bryant's Recycling Inc.

Bryant's Recycling Inc.
Clinton
Sampson County

Bryant's Recycling Inc. is a family-run recycling operation that has been collecting and processing fiber and containers for recycling since 1997. Bryant's Recycling is owned by Fulton Bryant, who along with his sons Daniel and Byron, is focused on the continued growth of the company.

Recyclable material is collected from various municipal and industrial customers in the Sandhills region. In addition to on-site collection services and materials processing, Bryant's provides 53-foot trailers for storage and collection.



At Bryant's Recycling, plastic bottles are compressed into bales and shipped to market.

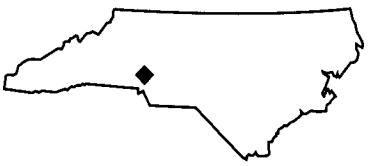
Bryant's Recycling provides collection and processing of cardboard, mixed paper, office paper, newspaper, plastic containers, aluminum and metal cans, and other industrial fiber products such as fiber cores. The company also has the ability to handle other types of material such as plastic film and window glass, as well as provide in-house document destruction.

Bryant's Recycling processes about 8,500 tons per year of material, and employs 17 people at its Clinton facility. With its location in Sampson County, Bryant's Recycling has the ability to provide recycling services and processing in the historically underserved southeast region of North Carolina.

Bryant wants to provide a local market for surrounding county governments and municipalities, which could be a great resource to these communities. Bryant's Recycling is also looking at Raleigh and Fayetteville area commercial customers as targets for growth.

For more information about Bryant's Recycling Inc., contact Daniel Bryant at (919) 590-2200, e-mail: abryantd@earthlink.net.

Recycling Means Business!



Caraustar

Beginning in 1938 as Carolina Paper Board Corp. with its first plant in Charlotte, Caraustar has become one of the nation's leaders in recycled content packaging.

"Caraustar ranks number one in recycled paperboard production in the U.S."

Caraustar ranks number one in recycled paperboard production in the United States, is the second largest producer of tubes, cores and composite containers and in the top 10 of folding carton production. Caraustar has grown over the past 65+ years to become a billion dollar company with 108 facilities worldwide employing more than 5,700 people.

Caraustar operates both a fiber recovery facility and a paperboard mill in Charlotte. Located in close proximity, these two operations employ 125 people. The recovery facility has a throughput of 55,000 tons of fiber per year. Ninety percent of the fiber consumed by the mill is supplied by the nearby recovery facility. Fiber grades include mixed paper, double lined kraft, corrugated cardboard and newspaper. The remaining 10 percent of consumed fiber is returns (boxboard cuttings) from paperboard customers.



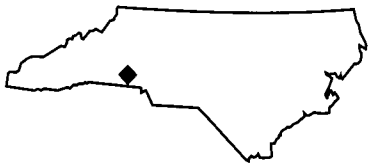
Used paper is inspected and loaded onto a conveyor to be baled and shipped to a paperboard mill.

The paperboard mill produces 52,000 to 55,000 tons of 100 percent recycled rigid boxboard and chipboard annually. In addition to the recovery and mill operations, Caraustar has converting, paper tube, container and box plants located across North Carolina.

For more information about Caraustar, contact Jason Garrison at (704) 376-7474 or Jason.garrison@caraustar.com. You can also visit its Web site at: http://www.caraustar.com.

Caraustar
Charlotte
Mecklenburg County

Recycling Means Business!



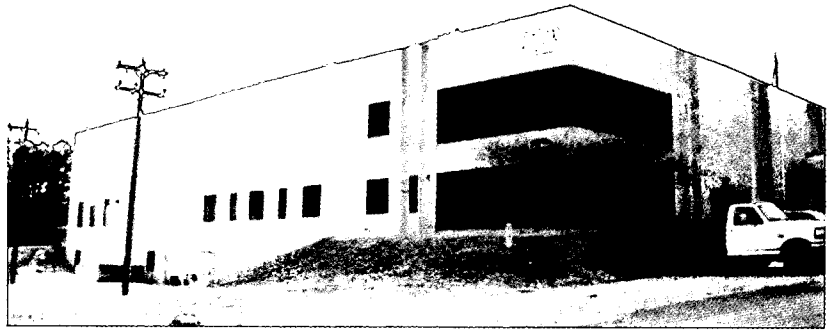
Carolina Materials LLC

Carolina Materials LLC
Belmont
Gaston County

Carolina Materials LLC, formerly known as Texas Encore Materials, relocated from Romulus, Mich., to Belmont in spring 2004. For more than 11 years, Carolina Materials researched and developed a process incorporating recycled tire pieces into new manufactured products. The N.C. facility manufactures extruded sheets made from recycled rubber and plastic resins. The finished sheets are used in automotive, industrial and consumer applications. In the automotive sector, the extruded sheets are used to make a reversible luggage liner in the Ford®Taurus™.

Carolina Materials currently employs 20 people and has used more than 40,000 pounds of recycled tire crumb in its initial start-up year. The company recently purchased two additional sheet extruders, which will increase production four-fold. Carolina Materials expects to employ a total of 100 workers with an average salary of $16 per hour within the next three years. "[The company's] announcement to locate in Gaston County not only provides the state with high quality jobs but demonstrates yet again that job creation and environmental protection can go hand in hand," said Gov. Mike Easley.

"[The company's] announcement to locate in Gaston County not only provides the state with high quality jobs but demonstrates yet again that job creation and environmental protection can go hand in hand."
- Gov. Mike Easley

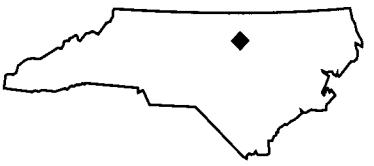


Carolina Materials transforms recycled tire pieces into products like reversible luggage liners.

For more information about Carolina Materials, contact Dr. Philip Friedman at (704) 825-1033, or visit the company's Web site at: http://www.carolinamaterials.net.

Recycling Means Business!

Clean Green Inc.





High-tech machinery purifies used antifreeze at Clean Green.

Clean Green Inc. is a unique and growing recycling business that processes between 5,000 and 7,000 gallons of antifreeze per week at its plant in eastern Durham. The used antifreeze is purified by a patented filtration system designed by the company's owner, Tim Wilkinson. A longtime Durham car repair shop owner and auto mechanics teacher, Wilkinson saw a need to improve the handling of the hazardous fluid and, in the true entrepreneurial spirit, learned the chemistry involved to create the process necessary to purify antifreeze.

Incorporated in 1997, Clean Green now employs 10 people. It operates five trucks for collecting waste and delivering recycled antifreeze. Subject to the same standards as the virgin product, the recycled antifreeze is available in all major colors and formulations. The company collects used antifreeze from many sources, including the automotive industry, municipalities, N.C. landfills and collection centers and other industries. However, a majority of the used antifreeze is collected from the companies purchasing the reprocessed product. This offers companies a closed-loop system of recycling for their antifreeze needs. Customers save dramatically by purchasing Clean Green's recycled antifreeze, which sells for less than half the price of virgin antifreeze.

Wilkinson has watched the company grow approximately 20 percent each year and is expanding operations to include recycling of used oil filters. Clean Green is now reprocessing more than 300 barrels (45-50 tons) each month of used oil filters. These filters are 100 percent recyclable and contain valuable steel and waste oil used for fuel.

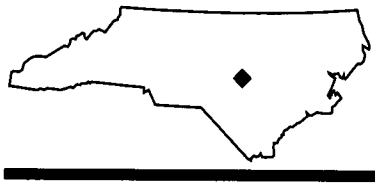


Owner Tim Wilkinson and son, Andrew.

For more information on Clean Green Inc., contact Tim Wilkinson at (919) 596-3500, or cleangreen@verizon.net.

Clean Green Inc.
Durham
Durham County

Recycling Means Business!



Cohen and Green Salvage Company Inc.

Cohen and Green Salvage Co. Inc.
Fayetteville
Cumberland County

Recycling Means Business!

Fayetteville is home to Cohen and Green Salvage Company Inc., a metals handler and processor. Established in 1946, this privately-owned company serves the eastern and central part of North Carolina as a market for ferrous and non-ferrous metals. Cohen and Green handles practically every type of metal commodity from aluminum to zinc, including automobiles, electronic/computer equipment, appliances, gold, silver and more. Cohen and Green processes, separates, grades and markets these commodities, utilizing 30 full-time workers.

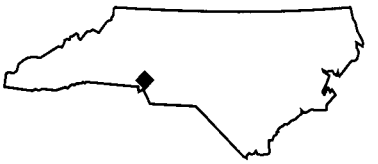
North Carolinians throw away more than $20 million in aluminum cans each year.

The company's president, Michael Green, says that although the metals recycling industry is currently very stable, challenges to the business include transportation costs and complying with an ever-growing list of regulations. "Cohen and Green Salvage and the metals recycling industry as a whole are working to recycle as much metal as possible while complying with environmental regulations," said Green.

Making products from recycled aluminum instead of virgin materials results in a 90 percent energy savings.

For more information about Cohen and Green Salvage Company Inc., call Michael Green at (910) 483-1371, or e-mail: Mgreen6592@aol.com.

CompuTel IG LLC



CompuTel IG LLC is a family-owned Charlotte-based recycling business started in 1995 by John Rhinehardt. The company collects, processes and markets materials in the emerging area of computer and electronics recycling. CompuTel prides itself on being one of only a handful of electronic recyclers that will accept a complete range of consumer electronics from a wide variety of sources. Those sources range from large generators such as state and local government agencies, international power companies and utilities, school districts and a national asset management company, to local residents who routinely drop-off material at CompuTel's Charlotte location.



Computer monitors are transported to a staging area and then dismantled for recycling.

In 2003, CompuTel recovered more than 600 tons of electronic equipment that would otherwise have required disposal. Thanks to the purchase of a 24-foot box-body truck, CompuTel anticipates increasing its recovery efforts to more than 750 tons of electronic scrap per year. The purchase of that vehicle was partially financed through grant funding from the N.C. Department of Environment and Natural Resources.

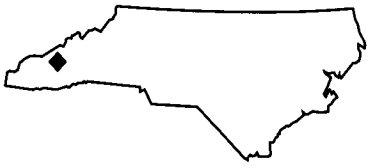
"In 2003, CompuTel recovered more than 600 tons of electronic equipment that would otherwise have required disposal."

John and his son Brett are optimistic about the company's future and project continued growth, based in part on being named as available vendors in the North Carolina Electronic Recycling Services State Term Contract. CompuTel currently employs seven people and, should its growth trend continue, may add three to five jobs over the next year.

For more information about CompuTel, contact Brett Rhinehardt at (704) 376-1116, e-mail: Brett@Computelig.com.

CompuTel IG LLC
Charlotte
Mecklenburg County

Recycling Means Business!



Curbside Management Inc.

Curbside Management Inc.
Asheville
Buncombe County

Recycling Means Business!

Curbside Management Inc. is a collector-processor of residential and commercial recyclables located in Asheville. A majority of material recovered by Curbside is collected through residential collection programs set up with many of the region's municipalities. Owner David Johnson has combined business savvy with ingenuity to stay competitive against the large waste haulers that compete for municipal contracts in the region.

Curbside recently expanded operations to include a semi-automated material recovery facility. When this facility opened in August 2003, it was able to handle the material collected by Curbside as well as provide an outlet for other recyclers to deliver material for processing. Curbside is currently processing about 6,000 tons per year of recyclable materials that include cardboard, newspaper, office paper, mixed paper, glass and plastic bottles, and metal cans. The collection and processing operations employ 38.

Last week North Carolina trashed enough newspapers to fill nearly three football fields three feet deep.

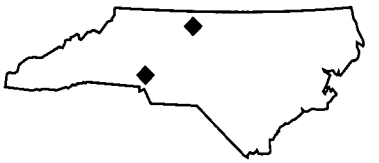
In addition to providing important processing capacity for this region of the state, the MRF has also allowed Curbside to expand its collection services. Curbside moved forward with plans to expand its commercial recycling operations as well as offer mixed paper recycling to the municipalities it serves. With equipment partially financed through grant funding from the N.C. Department of Environment and Natural Resources, it began rolling out expanded recycling collection services for commercial customers in the city of Asheville.



Curbside's Owner David Johnson.

For more information about Curbside Management Inc. contact David Johnson at (828) 252-2532, e-mail: djohnson@curbie.com. You can also visit the company's Web site at: http://www.curbie.com.

Custom Polymers Inc.



Custom Polymers Inc., a North Carolina-based company with production facilities in Charlotte and Houston, Texas, and sales offices in Durham, Chicago, Ill., and Toronto, Canada, has been in the plastics recycling business since 1996. Partners John Calhoun and Phil Howerton have built a multifaceted business that employs 15 people at its North Carolina locations and handles a vast array of recycled resins, including both commodity and engineering grade materials.

Custom Polymers Inc.
Charlotte
Mecklenburg County

Custom Polymers Inc.
(Blue Ridge Plastics)
Eden
Rockingham County

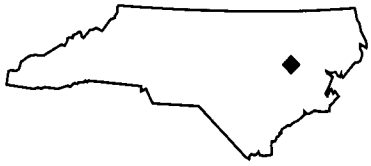
Custom Polymers' sales consist of 80 percent post-industrial materials and 20 percent post-consumer. It sells approximately nine million pounds of plastics per month in the form of scrap, regrind and pellets. The company specializes in the regrinding and reprocessing of industrial plastics, but has recently begun to expand its business by focusing on post-consumer bottles. As part of that growth, a new partnership was formed recently to acquire 50 percent of Blue Ridge Plastics in Eden. Custom Polymer's plant is a washing and grinding facility that processes approximately 1.6 million pounds of post-consumer bottle material per month into clean flake. The company is also very active on the international scene, with two sister companies located in Toluca, Mexico.

> **"Custom Polymer processes approximately 1.6 million pounds of post-consumer plastic bottles each month."**

The United States plastics industry includes 2,015 companies with more than 35,000 employees.

For more information about Custom Polymers, contact John Calhoun at (704) 332-6070 or john@custompolymers.com. You can also learn more about the company at its Web site: http://www.custompolymers.com.

Recycling Means Business!



Eastern Carolina Vocational Center Inc.

Eastern Carolina Vocational Center Inc.
Greenville
Pitt County

Eastern Carolina Vocational Center Inc. has operated a recycling business in Greenville for more than 25 years as a way to provide jobs for people with disabilities. In 1995, ECVC built a recyclables-processing center otherwise known as a materials recovery facility. ECVC employs 80 people in its recycling operation. Residential and commercial recyclables generated in Pitt and nearby counties are sorted at the MRF and prepared for market. Materials handled include plastic bottles, newsprint, glass containers, steel cans, aluminum cans, cardboard, office paper and mixed paper including paperboard boxes, magazines and phone books. With the exception of glass, all materials are baled and sold in the domestic and foreign markets. ECVC processes 30,200 tons of recyclables each year.

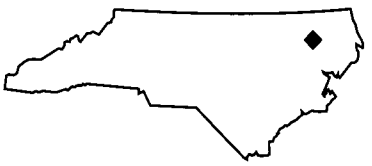


ECVC employees sort incoming recyclables.

ECVC provides much-needed recycling processing infrastructure to eastern North Carolina. In 2002, ECVC received an award from the National Recycling Coalition for "Outstanding Environmental and Community Leadership." With the help of a N.C. Department of Environment and Natural Resources' grant in 2004, ECVC will be installing equipment to enable processing of cleaner, higher-value recyclables. Revenue generated from the savings will be used to increase the recovery of mixed paper from the region.

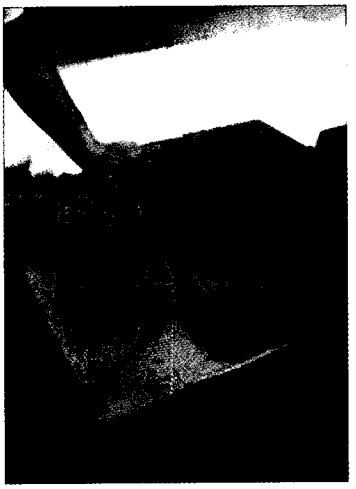
For more information about ECVC, contact Doug Bonds at (800) 758-4188, or e-mail dbonds@ecvcinc.com. You can also visit the company's Web site at: http://www.ecvcinc.com.

Recycling Means Business!



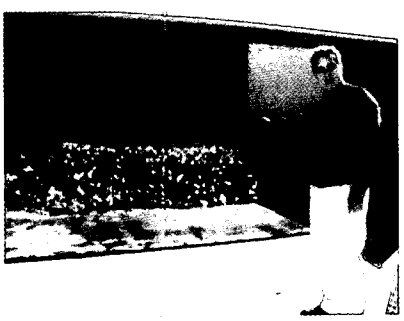
Elizabeth City Glass Inc.

Located in Pasquotank Industrial Park on the north side of Elizabeth City, Elizabeth City Glass Inc. is both a processor and end user of construction glass, Pyrex, ceramics and mixed post-consumer container glass.



ECG's dimpled patio pavers are made from more than 80 percent recycled glass.

After spending three years in the research and development phase, ECG began operation on Jan. 1, 2004, as a full-scale, operational pilot project. The brand-new facility includes a 16,000 square foot building with most operations under roof. Truck scales and an industrial-sized hopper provide the tools for handling feedstock coming into the facility. Material is offloaded directly into the hopper where the materials are transported to the processing equipment inside the facility. Inside the facility, the glass material is crushed, screened and washed. The finished material is used to produce a product line of utilitarian and decorative precast concrete products with 82 percent recycled glass content. Products at the facility include crosswalk tactile warning blocks for the physically challenged (American with Disabilities Act compliant), parking lot wheel stops and patio pavers.



Owner Shawn Lemmond shows the facility's incoming glass feedstock storage area.

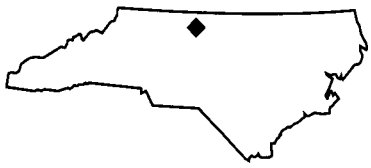
At current production levels, ECG employs four people and is recovering 384 tons per year of glass waste. ECG expects to grow as sales increase in 2005. With few outlets for recovered mixed glass in the northeastern part of the state as well as southeastern Virginia, ECG is providing a much-needed market for this material.

ECG was a recipient of a 2004 N.C. Department of Environment and Natural Resources' grant. As traditional markets for glass container recycling continue to decrease, ECG's research and development may open up other avenues for using glass waste in other types of precast concrete products.

For more information about ECG, contact Shawn Lemmond at (252) 333-1002 or e-mail at ECGCompany@aol.com. You can also visit its Web site at: http://www.glass-recycling.com.

Elizabeth City Glass Inc.
Elizabeth City
Pasquotank County

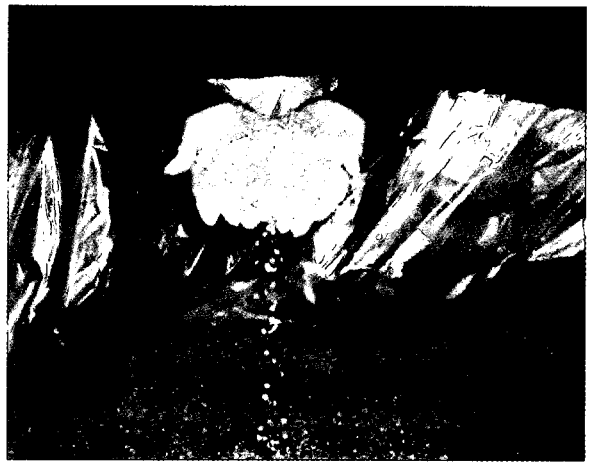
Recycling Means Business!



Envision Plastics

Envision Plastics
Reidsville
Rockingham County

Envision Plastics is the second largest high-density polyethylene plastic recycler in North America with plants in Reidsville and Chino, Calif. Envision employs 60 people and processes about four million pounds per month of post-consumer plastics at its North Carolina facility.



At Envison Plastics, flakes are pelletized according to clients' specifications - like Downy® Blue or Gain® Green.

Like other plastics processors, Envision receives baled plastics that are ground into flakes and are then washed and dried. Next, Envision uses state-of-the-art technology that color sorts the flakes into distinct colors specific to clients' specifications such as "Downy® Blue" or "Tide® Red." The flakes are then pelletized and sold to blowmolding companies throughout the United States, including several in North Carolina that manufacture new colored bottles. Although other recyclers hand-sort the plastic flake, Envision is the only company employing an automated color-sort technology.

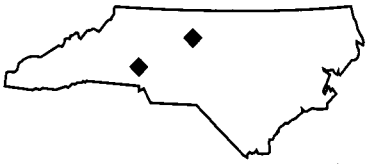
"Envision Plastics is the second largest high-density polyethylene plastic recycler in North America ..."

Envision customers can save money by reducing the amount of colorants they need to add in their manufacturing process. They are also able to use the copolymer HDPE resin found in detergent bottles, as opposed to the homopolymer found in unpigmented milk jugs, to make new detergent bottles. The copolymer resin has demonstrated better environmental stress crack resistance when customers perform "drop tests" on their finished product.

Recycling Means Business!

For more information about Envision Plastics, contact Todd Payne at (336) 342-4749 or e-mail todd@envisonplastics.com.

FCR and U.S. GreenFiber



FCR, a subsidiary of Casella Waste Systems, operates recovery facilities and reprocessors in the Southeastern and Midwestern United States. Headquartered in Charlotte, FCR operates recycling facilities there and in Greensboro. Both cities work with FCR as its processing partner for its local recycling programs. The company sorts, processes and markets commingled materials under long-term contracts with municipalities and other authorities.

Together the FCR facilities in North Carolina employ 63 full-time and 12 temporary workers, and process around 97,000 tons of recyclables each year. In addition, FCR's Charlotte facility hosts an education center designed to educate school groups and the public about how FCR's recycling process helps the environment.

Casella Waste Systems is also fifty percent owner of U.S. GreenFiber LLC. Established in 2000, GreenFiber is a producer of Cocoon®, a cellulose insulation with national manufacturing and distribution capability. With an 85 percent recycled content, Cocoon® insulation is used in attics and exterior walls to provide thermal comfort, added fire safety and noise reduction.



U.S. GreenFiber makes Cocoon insulation out of old newspapers.

Old newspapers collected in Charlotte enter FCR's material recovery facility, where they are separated from other recyclables and converted into packaged cellulose insulation at the GreenFiber plant operating within the FCR building. The integrated operation optimizes efficiency by eliminating transportation for the product feedstock. This insulation plant is one of 10 in the country and serves as a model of vertical integration for recyclers and other manufacturers. The 30 employees of Charlotte's GreenFiber manufacturing plant process more than 27,000 tons of newsprint and other papers into the cellulose insulation each year.

For more information about FCR, contact Bill Leonidas at (704) 379-0625, billleonidas@casella.com , or visit its Web site at http://www.casella.com/locations/fcr.

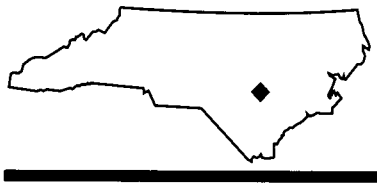
For more information about U.S. GreenFiber, contact John Harkavy at (704) 379-0654, john.harkavy@us-gf.com, or visit its Web site at http://www.greenstone.com.

FCR
Charlotte
Mecklenburg County

FCR
Greensboro
Guilford County

U.S. GreenFiber
Charlotte
Mecklenburg County

Recycling Means Business!



Filter Specialty

Filter Specialty
Autryville
Sampson County

Charles Jackson established Filter Specialty in Autryville in 1997 to recycle oil filters from automotive, marine and industrial sources. Oil filters have scrap value as metal, and also contain residual oil that can end up leaking and causing contamination problems. Although oil is officially banned from disposal in North Carolina landfills, a large amount is still disposed with oil filters.



Owner Charles Jackson unloads drums of used oil filters for reprocessing at the Autryville facility.

Filter Specialty has grown because of its strong service record and its proven ability to process and market the filters. Its customers include utility companies, school bus garages, government agencies, car dealerships, repair shops and many others. It also provides processing services to other filter collection companies in North Carolina.

North Carolina's more than six million registered motor vehicles generate more than 12 million used oil filters per year.

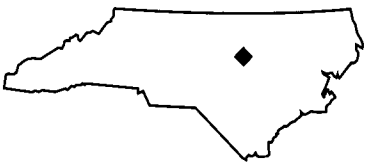
The company handles around 720 tons of filters per year, which it crushes with a machine that extracts residual oils and then creates dense metal briquettes. The metal is sent to steel mills and foundries. The 40,000 to 60,000 gallons of oil recovered annually from the filters and the company's oil recycling service is sent to refiners that manufacture boiler fuel.

All of Filter Specialty's processing is done indoors with the proper permitting and environmental controls. Charles Jackson employs two others in the company, and is in a strong position to grow his business. With the ability to market all the filters and oil it collects, Filter Specialty just needs more supply and more customers.

For more information, contact Filter Specialty at (910) 567-5474 or filterspecialty@intrstar.net. You can also visit the company's Web site at: http://www.filter-specialty.com.

Recycling Means Business!

Food Bank of Central & Eastern N.C.



Food Bank of Central & Eastern N.C.
Raleigh
Wake County

The Food Bank of Central & Eastern North Carolina was founded as the state's first food bank in 1980 as the Community Food Bank. Since then, the Food Bank has expanded services in an attempt to keep pace with a growing demand for emergency food, distributing more than 100 million pounds of food in the process. In 1984, the Food Bank gained affiliation with America's Second Harvest.

The Food Bank has outgrown its warehouse space three times since partnering with Second Harvest. With a primary facility in Raleigh, the Food Bank also has branch warehouses in Durham, Greenville, Southern Pines and Wilmington. In 1985, the organization distributed nearly 1 million pounds of food to a network of nearly 100 agencies. In 1996, distribution rose to 6.5 million pounds of food to a family of 480 private, emergency feeding programs and sister food banks (one million pounds of which was disaster relief in the wake of Hurricane Fran). Hurricane Floyd devastated eastern North Carolina in 1999, and with it came the Food Bank's largest distribution ever.

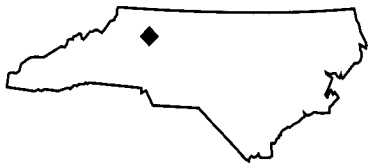


Nutritious, non-perishable foodstuffs that would have been sent to a landfill are given a second life through the Food Bank.

The Food Bank distributed 18.8 million pounds of food in fiscal year 1999-2000. Last fiscal year, the Food Bank distributed 26.4 million pounds of food, a 71 percent increase from just five years ago. Today, the Food Bank provides in excess of two million pounds of food every month to 865 nonprofit, community-based, emergency feeding programs (soup kitchens, food pantries, homeless shelters, group homes, day care and after-school centers, and elderly nutrition programs), serving more than 375,000 individuals at risk of hunger in 34 central and eastern North Carolina counties. In spring 2003 the Food Bank received a grant from the N.C. Department of Environment and Natural Resources to help purchase additional sorting equipment and a stacker that made it possible to double its egg distribution capabilities.

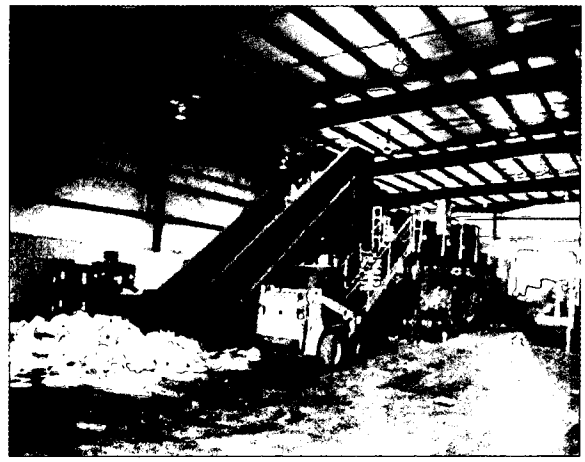
For more information about the Food Bank and its programs, please contact Peter Werbicki, acting executive director, at (919) 875-0707, or visit the Web site: http://www.foodbankcenc.org.

Recycling Means Business!



Foothills Sanitation & Recycling

Foothills Sanitation & Recycling
Wilkesboro
Wilkes County



Horizontal balers, like Foothill Sanitation's, are an integral part of many material recovery facilities across the country.

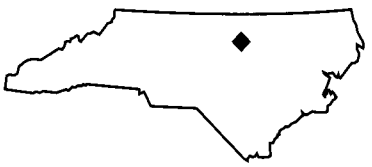
For the past 15 years, Jeff and Janet Miller have provided excellence in recycling service to the area in and around Wilkes County through their company, Foothills Sanitation & Recycling. The company that began as J&J Recycling has continued to grow over the years despite a near-devastating fire, and the many ups and downs associated with end-market pricing. For the past few years, Foothills Sanitation and Recycling has been in a planning and construction phase for a new sorting facility. The small-scale recovery facility takes in all types of recyclables, sorts the material and markets it to end users and recycling manufacturers. The company currently employs 26, but plans to add another 10 employees once the sorting facility is fully operational. Positive results from the new facility are already evident. Paper recycling production has increased from 12,100 tons to almost 17,000 tons annually with future increases anticipated.

"Paper recycling processing has increased from 12,100 tons to almost 17,000 tons annually with future increases anticipated".

Now that its new sorting facility is online, the company is experiencing a steady increase of tonnage and is looking forward to expanding the list of materials that it handles. Along with an increase of intake of non-ferrous metals, the company is also looking toward the possibility of expansion into the arena of electronics recycling. According to Jeff Miller, the biggest hurdle the company faces is educating the general public about the importance of recycling and how to recycle the right materials.

For more information about Foothills Sanitation & Recycling contact Jeff or Janet Miller at (336) 667-4432, or visit the Web site at: http://www.foothillssanitation.com.

Recycling Means Business!

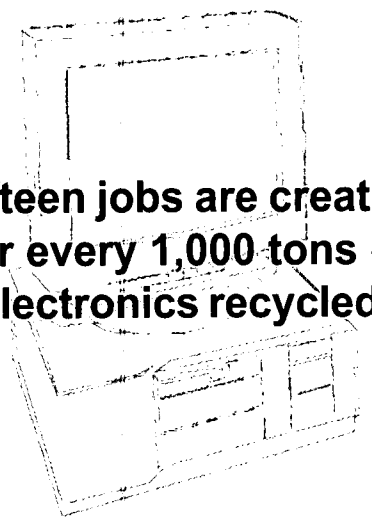


GEEP/ARC

GEEP/ARC
Durham
Durham County

Global Electric Electronic Processing Inc. and Asset Recovery Corporation are two e-waste recyclers located in the same Durham facility. These separate companies work in partnership to provide comprehensive electronics recycling and remarketing services to clients nationwide. Some of their larger clients include: Nortel Networks, Unisys Corporation, Silicon Graphics, ADC Telecommunications and Honeywell International.

GEEP/ARC also have the ability to handle material from community collection events. The companies can provide municipalities and local governments e-waste collection services including event management, transportation and processing.



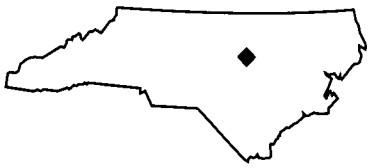
Fifteen jobs are created for every 1,000 tons of electronics recycled.

GEEP/ARC is a vertically-integrated processor of computer and electronic scrap. GEEP de-manufactures the material by carefully dismantling the equipment for reuse and salvage. In addition to standard de-manufacturing capabilities, GEEP's parent company, Cable Recycling Inc., is a final destination for sorted electronic components that can provide shredding, grinding and final sale of commodity-based material streams. This includes the assaying and separation required to extract copper, gold, silver and other metals from cables, circuit boards and metal-containing electronic components. The resulting commodity streams are then sold back into the marketplace.

At the Durham facility, GEEP/ARC employs 25 and recycles about 10,000 tons of electronics per year. This includes material sold at auction, repaired and resold through wholesale markets and Internet sales, and material that is de-manufactured.

For more information about GEEP/ARC, contact Tom Fellows at (919) 544-1443, or e-mail tomfellows@geepinc.com. You can also visit their Web sites at: http://www.cablerecyclinginc.com and http://www.assetrecoverycorp.com.

Recycling Means Business!



Habitat ReUse Center

Habitat ReUse Center
Raleigh
Wake County

If you want a bargain on building supplies in Raleigh, visit the Habitat ReUse Center on Alwin Court - just off of Hodges Street. The ReUse Center accepts donations of used or surplus building materials and furniture - everything from windows and doors to lumber, fixtures and cabinets - and sells them to the public at discounted prices to raise funds for Habitat's homebuilding activities.



Customers can find a wide variety of materials at the ReUse Center, including hardware and building supplies.

Habitat for Humanity of Wake County was one of the first in the state to start an affiliate ReUse store. After outgrowing an initial facility, it moved to a bigger warehouse in 2000. Now, with business booming and more materials available than ever before, the ReUse Center may soon expand again.

The Habitat facility diverts materials from disposal by receiving tax-deductible donations from builders, manufacturers, businesses with surplus inventory, retailers, universities and individuals. The center has also reinvigorated its deconstruction program, sending crews to homes slated for demolition to salvage doors, windows, flooring, cabinets and other reusable items.

The ReUse Center has become a popular spot for homeowners to find inexpensive, high-quality building supplies. In the past year alone, sales have grown from $576,292 to $777,855. The "profit" generated helped finance the building of five homes in 2004 by Habitat for Humanity of Wake County.



The Wake ReUse Center is arguably the "flagship" of a growing number of such facilities around North Carolina in Winston-Salem, High Point, Pittsboro, Boone, Burlington, Sanford, Wilmington and Charlotte. Together, these centers are capturing value from the waste stream, putting perfectly good materials and products back to work and raising money for the building mission of Habitat for Humanity.

For more information about the Wake Habitat ReUse Center, call (919) 833-6768, or visit http://www.habitatwake.org/ReuseCenterpage.

Recycling Means Business!

Hartsell Scrap Metal



Hartsell Scrap Metal has operated under the ownership of John Hartsell since 2001. Formerly known as "Hollifield Brothers Used Auto Parts and Scrap Metal," the original company opened its doors in the early 1990s, serving the western North Carolina area. Based in Spruce Pine, the company handles used auto scrap, aluminum and steel cans, copper, white goods, steel industrial machinery and other ferrous and non-ferrous scrap.

In addition to Hartsell, the company employs three people full-time and one part-time. Although recent fuel cost increases have had a negative impact on profits, the overall stability of the metals markets has helped to compensate to make Hartsell Scrap Metals very stable.

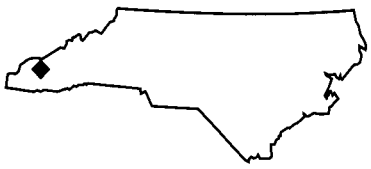
The national recycling rate for steel is 64 percent. Making new products from recycled steel vs. virgin materials results in 60 percent energy savings.

Hartsell is looking toward the possible expansion into the electronics scrap market in the future and is considering the purchase of a shredder in order to add additional on-site processing capability.

For more information on Hartsell Scrap Metal, call John Hartsell at (828) 765-5265.

Hartsell Scrap Metal
Spruce Pine
Mitchell County

Recycling Means Business!



Jackson Paper

Jackson Paper
Sylva
Jackson County



Jackson Paper employee monitors master controls in its recycled paper- making operation.

Jackson Paper is a major independent producer of 100 percent recycled content paper. The company recently developed an engineered recycled paper product designed as alternative poultry bedding. Located in the heart of the mountain town of Sylva, the recycled paper mill employs 132 workers that produce about 300 tons of paper per day from used corrugated cardboard containers. Through its use of more than 96,000 tons of cardboard each year, Jackson Paper serves as a major market for cardboard recycling centers in North Carolina and surrounding states.

Built in 1928, the facility is a main fixture on Sylva's Main Street. Current owner Timothy Campbell acquired the mill in 1995. Under Campbell's management, Jackson Paper has not only steadily increased production and profit, but has also proven itself as an environmental leader. To minimize waste and maximize product output, the mill utilizes a unique process that binds two trim rolls from the main paper machine into one larger roll of product. In addition, Jackson Paper is one of only a handful of mills in the United States with a closed-loop water system and treatment plant, allowing zero discharge of waste into the nearby stream or municipal sewer. Further reducing N.C.'s waste stream, Jackson Paper also purchases more than 60,000 tons per year of sawdust from area sawmills and furniture makers for steam combustion to produce the energy needed to operate the mill.



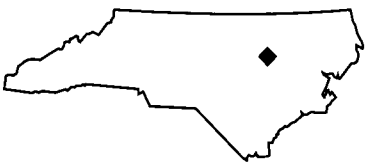
Jackson Paper produces almost 300 tons of paper per day from used corrugated coardboard containers.

With its diversified products, experienced management and environmental stewardship, Jackson Paper has a clear and important role to play in North Carolina's economy.

For more information, contact Don Arrington, at (828) 586-5534, e-mail: donarrington@jacksonpaper-nc.com, or visit the company's Web site at: http://www.jacksonpaper-nc.com.

Recycling Means Business!

K&K Recycling



K&K Recycling is a family-owned paper processing company in Wilson. The company was started by Kenneth Radford in 1990. When Radford passed away in 2004, his sons Kenneth and Kelly decided to keep the family business going.

K&K focuses on corrugated cardboard, paper tubes and high grade (office) paper, but can handle newsprint, magazines, residential mixed paper and other types of fiber. It receives materials through private haulers and collection contracts with business and industrial customers. K&K also receives some material from local government recycling programs and is interested in getting more. In addition, it processes film plastics (stretch-wrap) generated by local industries.

Almost 80 percent of United States papermills rely on recycled feedstock. In fact, it comprises 37 percent of their supply.

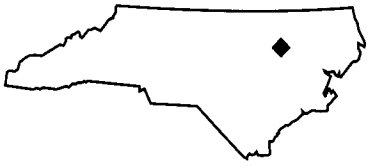
The heart of K&K is its large Mosely baler, which produces bales up to 1,350 pounds for shipment to paper mills. Most of its paper is shipped to manufacturers of corrugated cardboard and other types of paper, but K&K also exports some of its materials through some of its existing paper mill contracts.

K&K processes about 16,000 tons per year, but has the capacity to double that amount. Its markets are strong and it is looking for more customers and additional material. The company currently employs six people and is planning improvements to its facility, including new scales and possibly a commingled processing line.

For more information about K&K, call (252) 237-3010 or e-mail: kkrecycling@earthlink.net.

K&K Recycling
Wilson
Wilson County

Recycling Means Business!



Kamlar Corporation

Kamlar Corporation
Rocky Mount
Nash County

Since 1966, Rocky Mount's Kamlar Corporation has been producing high-quality mulch products using recycled wood waste. Kamlar uses wooden pallet and crate waste generated in eastern North Carolina as the main feedstock for the production of a variety of mulch products sold commercially throughout the East Coast, Midwest and Canada. Approximately 12,000 tons of wood waste is recycled each year into value-added landscaping products rather than being buried in a landfill. Kamlar employs 35-40 people during peak season and 22 people in the off-season.



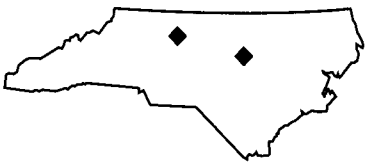
Owner Roger Seale in front of discarded pallets that will be ground into mulch.

Kamlar's mulch-making process involves grinding the large wooden pallets and crates into small pieces using a tub grinder. A magnetic separator removes all the nails and metal pieces to ensure a safe product. The small pieces of wood waste are sent through a mechanical screening system for size uniformity and consistency. A variety of the product line is colored red, black or brown using environmentally-friendly, non-toxic dyes. Kamlar's product line includes colorized mulch, shredded mulch, cypress mulch, pine bark and professional products such as nursery mix, soil conditioner and federally-certified playground mulch. Kamlar's products can be found in big box stores such as Home Depot® and Lowes® and other small to medium-sized garden stores.

Kamlar is a strong, growing North Carolina company. With the help of a N.C. Department of Environment and Natural Resources' grant in 2004, Kamlar purchased equipment that will enable it to double the amount of material it is currently producing.

For more information about Kamlar, contact Roger Seale at (252) 443-2576, e-mail Kamlar@earthlink.net. You can also visit the company's Web site at: http://www.kamlar.com/index.htm.

Recycling Means Business!

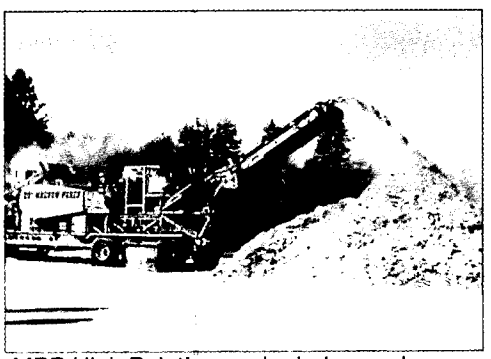


MRR Southern

With increasing generation of construction and demolition debris in North Carolina, one local company – MRR Southern – has positioned itself to capture the value of important recyclables from this portion of the state's waste stream. Partners Norbert Hector, Juan Carroll, D.H. Griffin Sr. and David Griffin Jr. pooled their vast experience in construction, wrecking and demolition to form a new recycling company. MRR Southern opened its first large-scale mixed construction and demolition debris processing facility in south Raleigh in 2000. In 2004, the company opened a second facility in High Point.



MRR Southern Raleigh employees hand-sort construction and demolition debris.



MRR High Point's wood grinder produces fuel for industrial boilers.

Both recycling facilities are multi-million dollar investments in areas targeted for economic development and job creation. The Raleigh facility employs 18 people, while the newer and growing High Point facility employs 15. Materials are recovered from mixed construction and demolition debris using both manual and mechanical separation. Clean wood debris, concrete, brick, cardboard, drywall and soils/fines are separated and sold for a variety of end uses including compost, boiler fuel, road base, poultry bedding, recycled metal, paper and alternative daily landfill cover.

The Raleigh facility processes 85,000 tons of mixed construction and demolition debris per year and recovers about 50 percent of incoming materials. The High Point facility processes almost 74,500 tons per year.

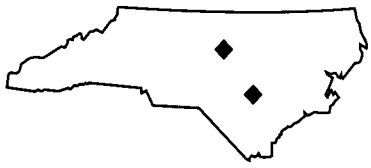
For more information about MRR Southern, contact Chris Roof at (919) 835-3655, e-mail ctroof@dhgc.com.

Editorial Note: Sale of both facilities is pending to WCA Waste Corp. in March 2005. At the time of the announced sale, WCA Waste Corp. indicated it planned to establish a collections company that will operate in conjunction with the material recovery facilities.

MRR Southern
Raleigh
Wake County

Material Reclamation Recovery Southern
High Point
Guilford County

Recycling Means Business!



McGill-Leprechaun Environmental

McGill-Leprechaun Environmental
Delway
Sampson County

McGill-Leprechaun Environmental
Merry Oaks
Chatham County

Recycling Means Business!

Under the leadership of M. Noel Lyons, McGill-Leprechaun operates two compost manufacturing plants in North Carolina and is one of the largest solid waste composting companies on the East Coast. The company was started in 1991 near Harrells to help manage the growing amount of animal waste generated by the poultry industry. Now, its facilities in Chatham and Sampson Counties process more than 200,000 tons of compost per year. Feedstocks come from a large variety of generators, including industrial plants, municipalities and agricultural operations. The materials handled by McGill include industrial residuals, municipal biosolids, water treatment plant residuals, sheetrock, clean construction wood waste, commercial wood waste (pallets, shipping crates, etc.), food processing waste, grease trap waste, agricultural residuals, animal waste and source-separated organic solid waste (shredded paper, food scraps, waxed cardboard, etc.).

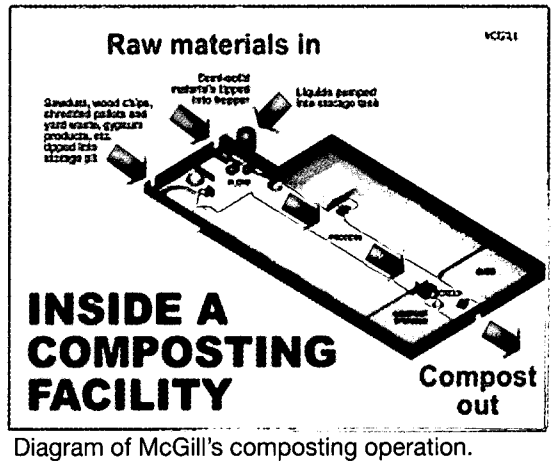
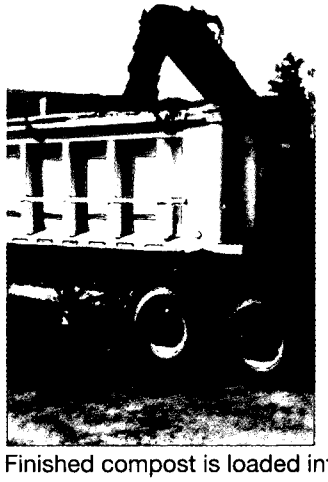


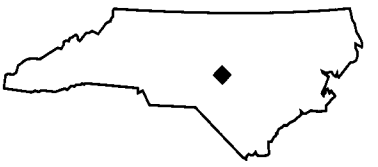
Diagram of McGill's composting operation.


Finished compost is loaded into truck for bulk sale delivery.

With more than 50 employees and $7 million in annual revenue, McGill-Leprechaun is poised to expand its operations to other parts of the state. It found large-scale markets for its finished compost, which is sold in bulk by the cubic yard to retail and wholesale customers throughout the Carolinas. McGill's products have been used effectively to eliminate the use of methyl bromide, an ozone-depleting chemical, in produce and crop production. The company's rapid growth and innovative technology earned McGill-Leprechaun the honor of runner-up for North Carolina Small Business of the Year in 2004.

For more information, contact Lynn Lucas at McGill (910) 532-2539, e-mail: llucas@mcgillcompost.com, or visit the company's Web site at http://www.mcgill-leprechaun.com.

Noble Oil Services Inc.



Noble Oil Services Inc. maintains an oil recovery and processing facility in Sanford. The company collects used oil and antifreeze from about 9,300 customers in North Carolina, South Carolina and Virginia. In 1997, Noble Oil recovered approximately six million gallons of used oil. Through the innovation of the president and CEO, James Noble, it now collects about 25 million gallons of used oil per year and produces various formulations of fuel oil that is sold to companies to supplement their energy needs. This product is used mostly in asphalt plants, paper mills and other industrial facilities. Noble Oil is currently working on the production of a premium fuel blend that can be used in more commercial applications. The company employs about 100 people and serves more than 60,000 collection locations each year.

Noble Oil also accepts used oil filters that are drained and crushed and usually yield about nine gallons of oil per 55-gallon drum of used filters. The collected filters are then transported by the truckload from Noble Oil to a facility that processes the oil filters, re-claims any additional oil and uses the resulting scrap metal to make manhole covers.

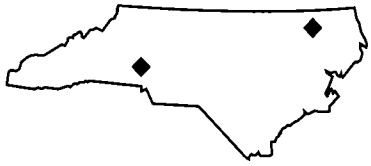
Just two gallons of used oil can generate enough electricity to run the average household for almost 24 hours.

Noble Oil is now expanding its services by offering an additional product – ASTM–certified recycled antifreeze. Nobel Oil is promoting product stewardship by collecting used antifreeze for free with the purchase of its recycled antifreeze.

For more information about Noble Oil Services Inc., contact Jim Noble at (919) 774-8180 or jnoble@nobleoil.com, or visit its Web site at: http://www.nobleoil.com.

Noble Oil Services Inc.
Sanford
Lee County

Recycling Means Business!

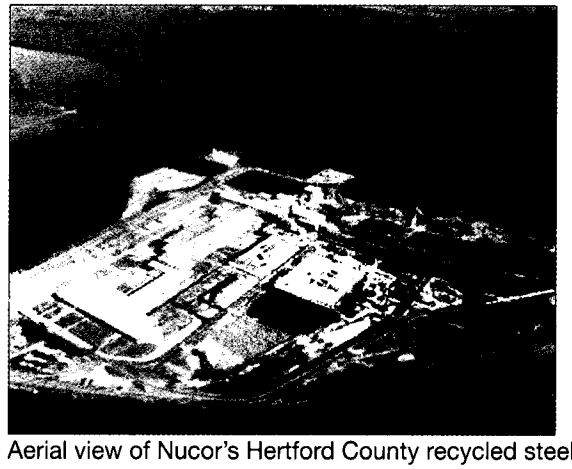


Nucor Corporation

Nucor Corporation
Charlotte
Mecklenburg County

Nucor Corporation
Cofield
Hertford County

Nucor Corporation is a crown jewel in North Carolina's recycling economy. Nucor is headquartered in Charlotte, and has one of its newest mills in Hertford County, where it produces steel plates for the manufacturing of ships, barges, rail cars and other industrial products.



Aerial view of Nucor's Hertford County recycled steel manufacturing plant.

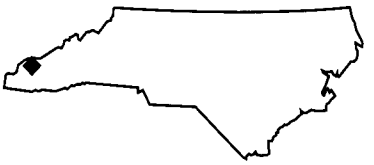
Nucor is both the largest steelmaker in the United States and the largest recycler in the nation, consuming more than 14 million tons of scrap each year to make everything from steel joists, steel deck, bars, beams, girders and fasteners. Nucor is renowned for its lean corporate structure and for its profitability. The company continues to grow – its $780 million net consolidated earnings for the first nine months of 2004 set a corporate record. The company averages more than $6.2 billion in sales annually.

Almost 69 million tons of steel scrap was recycled in the United States in 2003.
- Steel Recycling Institute

The company employs 9,900 people, including approximately 390 at its Hertford County mill. Most of its production is done at "minimills" using electric arc furnaces designed specifically to consume scrap. It is dependent on the recovery of steel to feed plants in 14 states.

To learn more about Nucor, call Steve Rowlan at (704) 367-8685, or visit its Web site at http://www.nucor.com.

Recycling Means Business!



Oaks Unlimited

Oaks Unlimited has more than 40 years' experience producing high quality hardwood lumber for both domestic and overseas markets. In 2004, Oaks Unlimited president, Joe Pryor, expanded operations to produce a hardwood flooring product made from recycled pallet deck boards.



Dismantled pallets are planed into deck boards.

Located in Waynesville, Oaks Unlimited has worked closely with Waste Reduction Partners in Asheville to develop the flooring production process. Additional equipment purchases and a required building expansion were partially financed through grant funding from the N.C. Department of Environment and Natural Resources.

The "start-up" component of this new venture for Oaks Unlimited has been successful. From June to December 2004, Oaks Unlimited created one full-time position, and requires three additional part-time employees to meet the initial production schedule. As it ramps up to meet demand, production could be doubled using existing equipment and adding more employees.



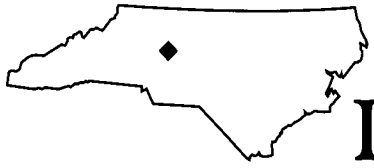
Owner Joe Pryor displays the recycled pallet boards to be used for the hardwood flooring finished product.
(Photo courtesy of *The Mountainer.*)

Oaks Unlimited has used its experience in the production, marketing and distribution of high-quality lumber to create a business that is designed to fill a niche in the hardwood flooring market. The final product is a three-eights inches thick, solid hardwood flooring that is pre-finished and ready for installation. The rustic flooring is marketed as a "green" product, and more than 250 tons of pallet deck boards are recycled annually in its production. This translates into 120,000 square feet per year of flooring. Increases in waste diversion rates are directly proportional to expanding market demand.

For more information about Oaks Unlimited, contact Joe Pryor at (828) 926-1621, e-mail: jpryor@oaksunlimited.com.

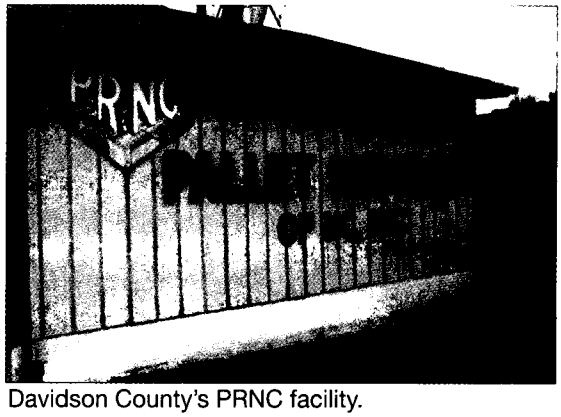
Oaks Unlimited
Waynesville
Haywood County

Recycling Means Business!



Pallet Resource of N.C. Inc.

Pallet Resource of N.C. Inc.
Lexington
Davidson County



Davidson County's PRNC facility.

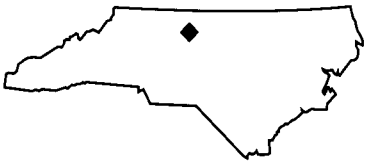
Nestled on a 22-acre site in the northern Davidson County countryside near Lexington, Pallet Resource of N.C. Inc. takes pride in being a full-service provider of environmentally-responsible products for any wooden material-handling need. PRNC currently employs 110 people - 35 of whom are directly associated with recycling - and recovers more than one million pallets per year, or 20,000 tons that would otherwise have required disposal. The company incorporates the environmental philosophy of "Reuse, Repair, Recycle and Renew" into all aspects of its operation.

Since 1985, under the leadership of Neal Grimes, PRNC services the needs of industry throughout central and western North Carolina with newly manufactured pallets, used pallets and reconditioned pallets, in addition to providing a pallet disposal and removal service. To PRNC, however, "disposal" means grinding pallets into a variety of useable wood fiber products. PRNC's two grinders, with the assistance of large magnets that remove nails and other metal fragments, produce uniformly sized, clean wood fiber that is transformed into products ranging from Designer Wood, the company's recycled wood fiber mulch, to Kid Cushion, a loose-fill organic playground surface.

For more information about PRNC, contact Neal Grimes at (336) 731-8338, e-mail: nealgrimes@prnc.com.

Recycling Means Business!

The recycled pallet industry in North Carolina employs more than 3,300 people and produces 36.5 million pallets annually.
-N.C. State University Pallet Recycling Study, May 2004.



Plastics Revolutions

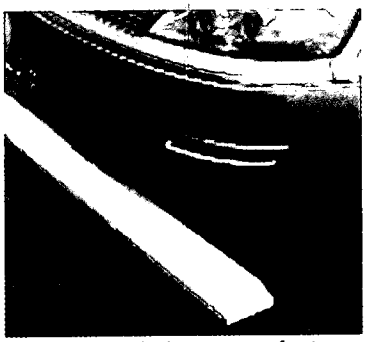
Reidsville is home to several plastics recycling companies, making the town the virtual "Plastics Recycling Capital of North Carolina." John Hagan is proud to be owner and president of Plastics Revolutions, one of the recycling companies operating successfully there. The company is a processor of post-industrial and post-consumer plastic scrap.



A Plastics Revolutions employee readies the finished product for shipping.

Plastics Revolutions employs 22 people, operates 24 hours a day and processes 2.5 million pounds of plastics each month. The company recycles a variety of discard plastic materials including bottles, pallets, bins, films, floor sweep regrind, pellets, parts, spurs and runners.

Plastics are processed into small flakes. The flakes are sent through a washing process that removes labels, glue, non-compatible plastics, dirt and metal. Cleaned flakes are dried and packaged for sale to manufacturers of plastic products, such as drainage pipe, nursery containers and plastic sheeting.



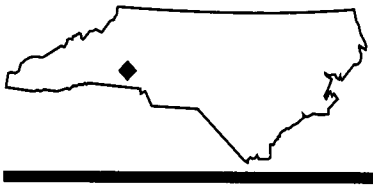
Plastic Revolutions manufacturers "Safety Stops" from recycled plastic resins.

Plastics Revolutions also manufactures "Safety Stops," a replacement for concrete parking stops. Safety Stops are made of recycled plastic and can be recycled at the end of their lifespan. Safety Stops are also cost-effective as their lightweight construction cuts shipping costs and single-person installation reduces labor expenses.

Contact John Hagan at (336) 349-2800 for further information about Plastics Revolutions. Also visit the Plastics Revolutions Web site at: http://www.plasticrevolutions.com.

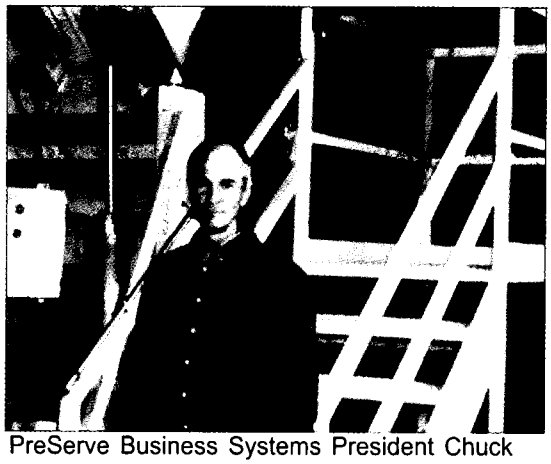
Plastics Revolutions
Reidsville
Rockingham County

Recycling Means Business!



PreServe Business Systems

PreServe Business Systems
Gastonia
Gaston County



PreServe Business Systems President Chuck Cooper.

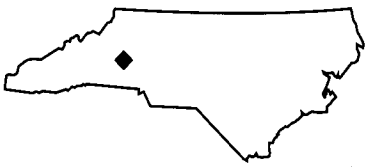
PreServe Business Systems diverts an assortment of plastic wastes from landfills by collecting them from a number of North Carolina businesses. It processes the collected materials and markets them to plastic molders and extruders for remanufacturing in North Carolina, the eastern half of the United States and internationally. PreServe's president, Chuck Cooper, has 14 years' experience managing waste plastics in all the commodity grades and most engineered resins. He has established two successful plastic waste processing operations with state-licensed sheltered workshop partners that provide vocational training and jobs to individuals with disabilities and other special needs.

Recently, PreServe completed a major equipment upgrade at its Gaston Skills Inc. operation, partially financed through grant funding from the N.C. Department of Environment and Natural Resources. The upgrade will enable the Gastonia facility to process oversized parts such as plastic barrels, pallets and purges from a wide variety of North Carolina businesses such as the Dart Container Corporation plant in Randleman. "PreServe takes both our HIPS and PET scrap purgings and regrind," said Stephen P. Ridgill, plant manager, Dart Container Corporation of N.C. "I look forward to many years of continuing our strong business relationship with the company."

PreServe's Gastonia facility is in its second year of operation and employs between five to 10 Gaston Skills clients, depending on the operations' processing needs. The operation will process approximately 800 tons of plastic scrap this year collected from regional businesses in a wide variety of industries including telecommunications, automotive parts, wire and cable, textiles and furniture.

For more information about PreServe, contact Chuck Cooper at (919) 732-9253, e-mail: preserve@sprynet.com.

Recycling Means Business!

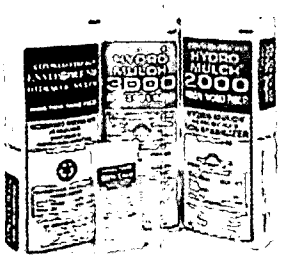


Profile Products

Profile Products
Conover
Catawba County

Profile Products is a name that has become synonymous with soil amendments and erosion control. This company's Conwed Fibers brand was a pioneer in the mulch industry in 1965 as it introduced its line of wood-based hydraulic mulches manufactured at its facility in Conover.

The Conover facility opened its doors in the mid-1960s under the name Conwed Fibers and was purchased in 2001 by Profile Products of Buffalo Grove, Ill. In addition to hydraulic mulches, Profile Products manufactures a number of other mulch and erosion control products such as Flexterra® Flexible Growth Medium™, Seed Aide® Mulching Granules, Futerra® Erosion Control Blanket and more. Currently, the company is testing new products for future expansion of its product line.



Profile Products' Hydro Mulch line is used for a variety of turf applications, promotes faster germination and minimizes sediment and water runoff.

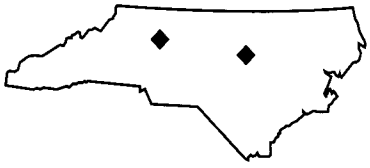
According to Profile's operations manager, Tim Andrews, the company uses about 70,000 tons of waste wood from local industries every year to manufacture hydraulic mulch, and as much as 10,000 tons of discarded paper at its Conover facility. All this is material that would have ended up in landfills, were it not for Profile Products.

Andrews notes that higher transportation costs due to fuel price increases are the "fly in the ointment" in Profile's optimistic business outlook. However, he is quick to point out that the company is thriving and anticipating opportunities for growth in the near future.

The company provides 80 jobs for workers in Catawba County, an area that has been hit particularly hard by furniture plant closings in recent years.

Those interested in finding out more about Profile Products should call Tim Andrews at (828) 327-4165, extension 822, or e-mail tandrews@profileproducts.com. You may logon to http://www.profileproducts.com to visit the Profile Products Web site.

Recycling Means Business!



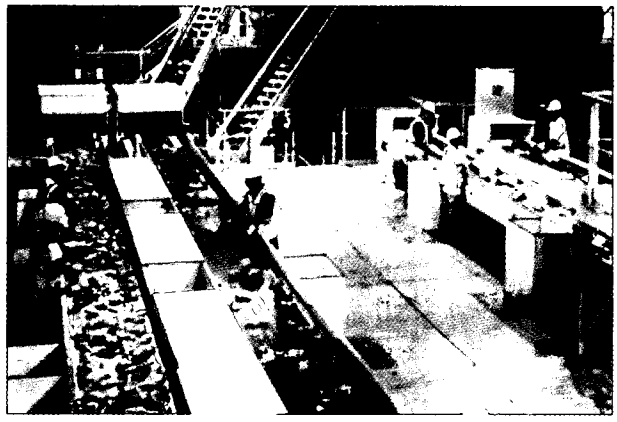
Recycle America Alliance

Recycle America Alliance
Raleigh
Wake County

Recycle America Alliance
Winston-Salem
Forsyth County

If you toss your aluminum can into a recycling bin, it may end up at a Recycle America Alliance plant. As the name suggests, the company operates a large network of recycling facilities across the United States. With facilities in Raleigh and Winston-Salem, Recycle America Alliance currently runs more than 80 recycling plants and provides marketing services for more than 140 locations in the United States and Canada.

Recycle America Alliance was formed as a subsidiary of Waste Management Inc. in January 2003. By combining assets and operations with other key domestic recycling processors and end users, Alliance carries a great deal of marketing clout.



Raleigh RAA employees perform a final manual sort after plastic bottles exit the company's highly automated resin sensors.

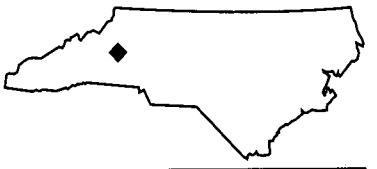
Recycle America Alliance uses single-stream processing technology to automate the separation of virtually all types of recyclable materials. State-of-the-art optical-sorting technologies are used in the Raleigh facility to quickly and affordably process commingled materials. Co-located in Raleigh is a facility that separates different colored glass. Likewise, the Raleigh operation employs advanced plastics-processing technologies that enable the company to accept separated or mixed plastics. The unique ability to offer this "no-sort" recycling option allows communities and business to recycle mixed plastic bottles more cost-effectively.

The Raleigh facility employs 145 workers and processes more than 160,000 tons of commingled recyclables each year. While less automated, the Winston-Salem facility has 20 employees that process approximately 36,000 tons of recyclables each year.

For more information about the Raleigh RAA location, contact Kerry Martin at (919) 829-1311 or kfmartin@recycleamerica.com. For more information about the Winston-Salem RAA location, contact Terry Feeney at (336) 631-9439 or tfeeney@wm.com. You can also visit the company's Web site at http://www.recycleamericaalliance.com.

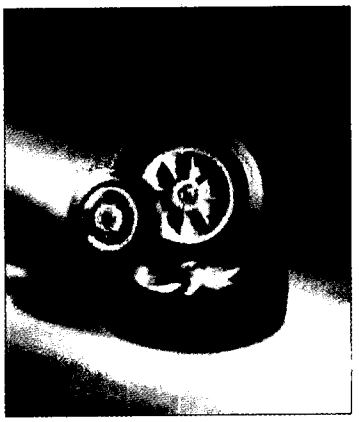
Recycling Means Business!

Roll-Tech LLC



Roll-Tech Inc.
Hickory
Catawba County

Roll-Tech LLC is a unique recycling company in Hickory that manufactures solid rubber tires and wheels using recycled crumb rubber from scrap automobile and truck tires. The company began as a division of Roll-Gom and later, Guitel, a French manufacturer of wheels and casters with solid rubber tires.



Hickory's Roll-Tech Inc. transforms scrap tires collected from across N.C. into rubber wheels and casters.

Roll-Tech was established in 1995 as the result of collaboration between state agencies such as the Recycling Business Assistance Center and the N.C. Department of Commerce, along with the city of Hickory and other local and regional agencies.

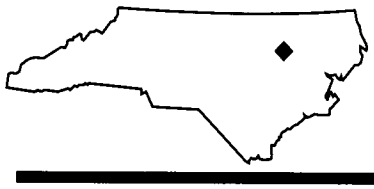
The company employs 23 people and manufactures a variety of rubber wheels and casters for uses such as safety wheels for garbage containers, central locked casters for larger garbage containers, wheels for high-pressure cleaners and handling equipment and other heavy-duty applications. Using recovered crumb rubber, the company produces an innovative solid cushion tire that is resilient, highly impact resistant and puncture proof.

According to owner Patrice Bertrand, Roll-Tech has processed the equivalent of more than 20,250 tons of scrap tires since beginning operations in 1995.

For more information about the company, contact Patrice Bertrand at (828) 431-4515 or rolltech@rolltech.net. Visit the Roll-Tech LLC Web site at: http://www.rolltech.net.

According to the N.C. Division of Waste Management, 9.6 million tires were managed by counties in 2003.

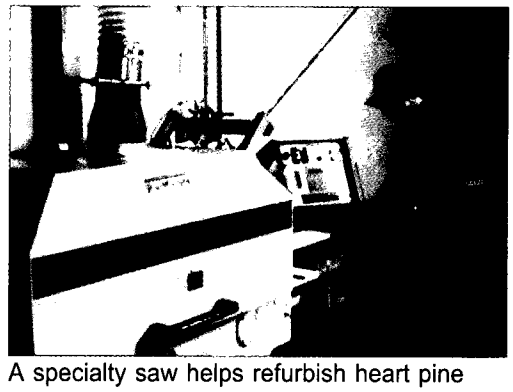
Recycling Means Business!



Scotland Neck Heart Pine Inc.

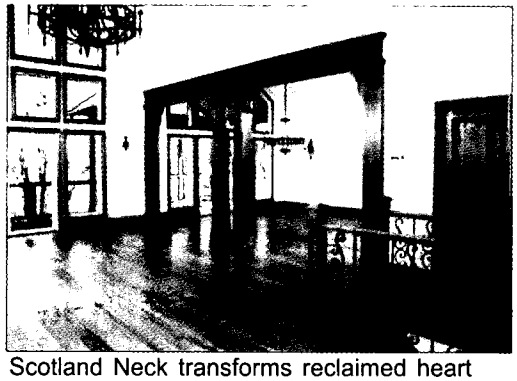
Scotland Neck Heart Pine Inc.
Tarboro
Edgecombe County

From a young age, Hodge Kitchin loved working with his hands, especially woodworking. The heartwood of the Southern Yellow Longleaf Pine that Kitchin observed through various woodworking projects captured his fascination and interest. Interest grew to a personal passion and in 2003, Hodge, along with other craftsmen, formed Scotland Neck Heart Pine Inc.



A specialty saw helps refurbish heart pine lumber collected from antique structures across North Carolina slated for demolition.

Located in Halifax County, Scotland Neck Heart Pine Inc. provides floorings, stair parts, moldings, doors, mantels and custom architectural millwork from reclaimed antique and old growth heart pine. These strong, long and straight timbers yielded excellent decay-resistant beams, which had been used as framing and decking for our young nation's factories and warehouses. In fact, these massive beams were used almost exclusively until the once-abundant supply was nearly exhausted near the end of the 1900s. Its reclaimed antique heart pine is recycled from these large old structures generally built prior to 1900. Scotland Neck also provides deconstruction and demolition of properties which allows them access and control of the old timbers to maintain quality handling.



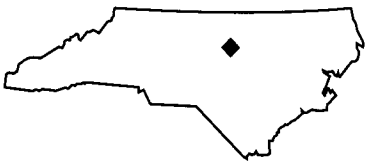
Scotland Neck transforms reclaimed heart pine into custom architectural products.

In the spring of 2004, the N.C. Department of Environment and Natural Resources awarded Scotland Neck a grant to purchase a specialty saw to be used to increase production of its reclaimed lumber. In 2004, Scotland Neck Heart Pine estimates that it has diverted 500 tons or nearly 220,000 cubic yards of waste from entering landfills.

For more information about Scotland Neck Heart Pine, contact Walton Burgyn, vice president, at (800) 826-8117, or visit the company's Web site: http://www.snheartpine.com.

Recycling Means Business!

Shimar Recycling Inc.



Since August 1997, Shimar Recycling Inc. has provided recycling services for offices and other commercial businesses in the Raleigh-Durham area. Meredith Marley, owner of Shimar Recycling, has worked to build the company into a small-business success.



Paper for processing is unloaded from the collection truck into gaylord boxes.

When the Durham-based collector-processor started up, it operated with two employees from the small corner of a parking lot leased from a paper stock dealer. With the help of a Small Business Association loan through Self-Help Credit Union, Shimar purchased a 22,500 square foot building in 2001. The new facility provides much more than shelter from the elements – it fulfills the long-held dream of expansion. Since purchasing the building, Shimar has more than tripled its capacity. Now it can look to expand collections, increase processing and make its overall operations more efficient.



Shimar's collection truck is used to serve businesses all over the Triangle.

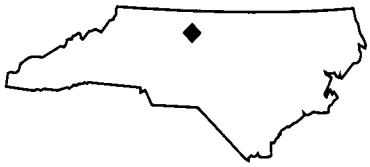
Shimar now employs seven people and has recently purchased larger capacity baling equipment, partially financed through grant funding from the N.C. Department of Environment and Natural Resources, making full use of its new facility. The company currently collects and processes 75 tons of fiber plus 20 tons of glass and plastic bottles, and metal cans per month.

Shimar's mission is to provide a professional and affordable recycling collection service for businesses and institutions in the Triangle, with an emphasis on customer satisfaction. To do so, the company will act as its clients' recycling coordinator to help them optimize their recycling systems and maximize the potential benefits of Shimar's services including cost savings and conservation of natural resources.

For more information about Shimar Recycling Inc. contact Meredith Marley at (919) 680-6262 or meredith@shimar.com. You can also visit the company's Web site at: http://www.shimar.com.

Shimar Recycling Inc.
Durham
Durham County

Recycling Means Business!



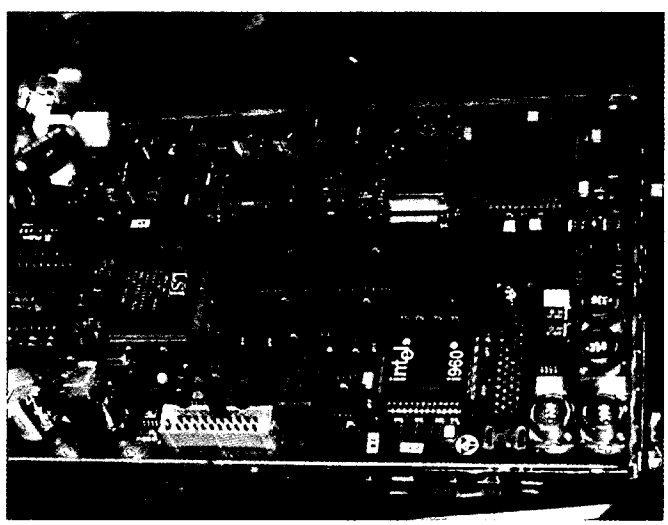
Synergy Recycling LLC

Synergy Recycling LLC
Mayodan
Rockingham County

Synergy Recycling LLC began operations in July 2000 in response to the growing need for proper disposal of electronic products and other materials. Joe Clayton manages operations and applies his experience in all phases of recyclable material processing to the company's continued growth.

Synergy Recycling is based in Mayodan, yet it handles customer needs throughout the eastern United States. Synergy Recycling specializes in providing single-source service in removal of excess and obsolete equipment including mainframe computers, PCs and work stations, monitors, keyboards, printers, circuit boards, telephone equipment, switches, circuit breakers, voltage regulators and other electrical equipment, connectors, cables and wiring.

In 2004, to increase diversion and to provide needed service in the business community, Synergy Recycling purchased a 26-foot box truck with a lift gate to assist with smaller scale "milk-run" type collections. This equipment was partially financed through grant funding from the N.C. Department of Environment and Natural Resources. Synergy Recycling currently employs six people, and handles a wide variety of material from commercial and municipal customers. It collects and processes more than 1,000 tons per year of electronics and other equipment – mostly through asset recovery contracts.

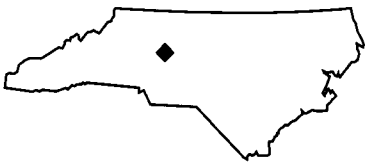


Interior computer parts are segregated from dismantled computers and recycled for high-value heavy metals.

For more information about Synergy Recycling, contact Joe Clayton at (336) 548-7014 or jclayton@synergyrecycling.com. You can also visit the company's Web site at: http://www.synergyrecycling.com.

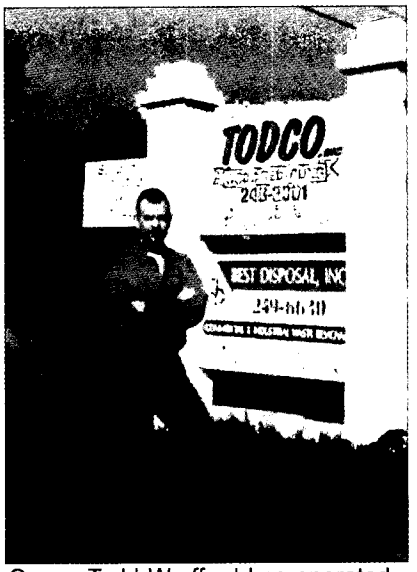
Recycling Means Business!

TODCO



In 1992, Davidson County established a policy discouraging the disposal of wood at its landfill. With a heavy furniture manufacturing base, the county saw the policy as a way to prolong the life of its landfill. But where was the wood to go? In stepped TODCO.

Owner Todd Warfford set up a wood-waste grinding yard less than a mile from the disposal facility's scale house. TODCO began receiving wood and yard waste materials to be ground into mulch and boiler fuel.



Owner Todd Warfford has operated TODCO since 1992.

Twelve years later, TODCO is processing 16,000 tons of material annually, with capacity to expand to around 20,000 tons. Its chief customers are manufacturers - furniture and other wood-based industries in the Davidson County area. A hauling company Warfford started alongside his wood grinding business brings in some of TODCO's material. TODCO also receives yard waste from municipalities, helping them comply with the state disposal ban on that material.

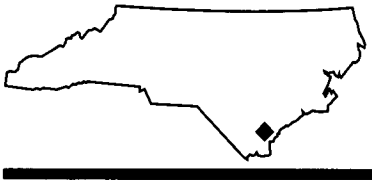
TODCO's products are mostly boiler fuel, which it sends to large industrial energy users, and different kinds of mulch, including some colorized products. It also supplies bulking agent to a local biosolids composting facility. TODCO is also expanding into the production of bark mulch and nursery mix.

The company employs nine people. Two of its biggest challenges are the costs for generators to bring heavy wood waste material over long distances to TODCO's facility and competition against cheap disposal options. But it continues to grow the mulch side of the business and to diversify its products, which will make it a strong, viable recycler for many years to come.

To learn more about TODCO, call Todd Warfford at (336) 248-2001.

TODCO
Lexington
Davidson County

Recycling Means Business!



Total Maintenance

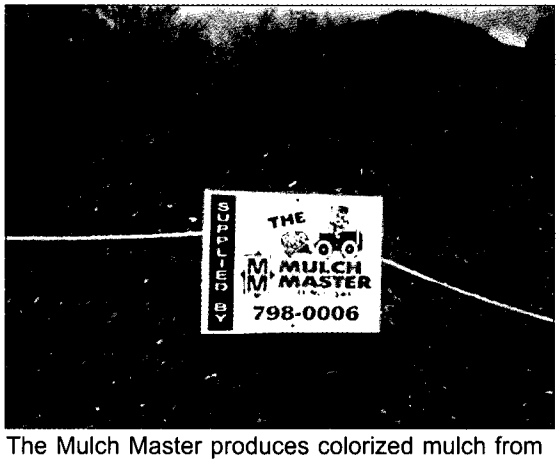
Total Maintenance
Wilmington
New Hanover County

In 2001, Joe Van Eron decided to do something about the large amount of wood being collected and sent to landfills as a result of his Wilmington-based construction site clean-up business, Total Maintenance. His first step was to purchase a tub grinder to market mulch and boiler fuel products. The purchase of that equipment was partially financed through grant funding from the N.C. Department of Environment and Natural Resources.



Owner Joe VanEron with the tubgrinder that chips wood debris into mulch and boiler fuel products.

Later, Van Eron purchased a colorizing machine that produces red, brown and black mulch. This led to the establishment of his second company, The Mulch Master of Wilmington. Currently, 15 employees work at Total Maintenance and The Mulch Master collecting, sorting, grinding and colorizing the recovered wood waste. During the first year of operation, approximately 2,250 tons of material was recovered. Today, that amount has increased to 5,000 tons and Van Eron anticipates continued growth in the future. In fact, Van Eron expects to begin recycling approximately 40 tons per week of gypsum drywall in the near future.

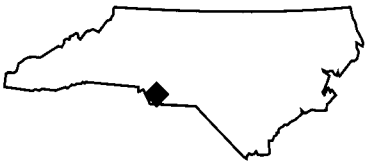


The Mulch Master produces colorized mulch from wood debris.

For more information about Total Maintenance and The Mulch Master of Wilmington, contact Joe Van Eron at (910) 395-2944, e-mail: JVAN10957@aol.com.

Recycling Means Business!

Union Gypsum



When Steve Davis began his Union Gypsum recycling business near Marshville in 1999, he sold ground gypsum in bulk at a discount to local farmers for use as a soil amendment. His product replaced the virgin agricultural gypsum farmers had been purchasing at a premium price. Today, he produces a high value-added product in 40-pound bags called "Funky Chicken." The new product is a magical mixture of poultry litter, recycled gypsum drywall and wood ash that is blended and dried prior to going through a long curing process. Davis also supplies ground recycled gypsum drywall to two large poultry producers as bedding for their poultry houses. The patented gypsum and poultry litter product, which is gathered from the poultry houses at the end of the season, is sold to area farmers for use as a nutrient-rich soil amendment completing the cycle.



Owner Steve Davis stands on a pile of ground recycled drywall.



Union Gypsum's premium organic compost, Funky Chicken, is sold in 40-pound bags.

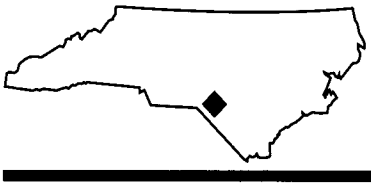
Union Gypsum's major source of recycled gypsum drywall feedstock is independent clean-up companies that remove gypsum drywall from new construction sites. Davis is in the process of cultivating a relationship with a potentially large source of gypsum drywall – the North Carolina manufactured housing industry. Currently, six people work at Union Gypsum, where they contribute to the recycling of about 5,000 tons a year of gypsum drywall and 50,000 tons a year of poultry litter.

For more information about Union Gypsum, contact Steve Davis at (704) 624-2077.

Approximately 350,000 tons of drywall waste is generated in North Carolina annually.

Union Gypsum
Marshville
Union County

Recycling Means Business!



Wagram Paper Stock

Wagram Paper Stock
Wagram
Scotland County

Established in 1979, Wagram Paper Stock is an independent collector and processor of recyclables located in Wagram, just north of Laurinburg. Located in a rural area of the state, Wagram Paper Stock's market focus is on the collection and baling of corrugated containers and other fiber material from various industrial and commercial customers in the region. It is a contract supplier of recovered fiber to Sonoco Products, an international paper and packaging company headquartered in nearby Hartsville, S.C.

President Tommie Currie has expanded the range of material the company collects from fiber grades only to aluminum and plastic containers recovered through curbside collection from local municipalities. This area of growth will provide Wagram Paper Stock the ability to support rural communities in the region that may lack the volume or have the infrastructure required to get their recyclables to an end market. Wagram Paper Stock has the ability to provide a consolidation point to assist small rural communities in this region with their recycling programs.

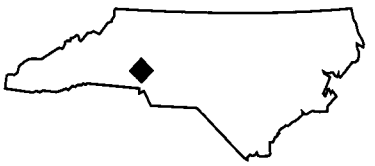
160 paper mills in the United States, including many located in the Southeast, exclusively use recovered fiber.

Material recovery facilities like Wagram Paper Stock can provide residential and commercial collection programs with an advantage in getting their material to market. Municipalities, as well as private haulers, can usually gain collection efficiencies and increase diversion in the regions where access to such facilities is available. The continued development of the infrastructure for primary processing represented by forward-thinking companies like Wagram Paper Stock can greatly improve the economic effect of recycling in the state.

Wagram Paper Stock is locally owned and operated, employs 17 people and collects 14,400 tons per year of recyclable materials.

For more information about Wagram Paperstock, contact Tommie Currie at (910) 369-2211.

Recycling Means Business!



Wallace Farms Soil Products

Huntersville's Wallace Farms Soil Products began operation in the early 1940s as one of the largest dairy farms in North Carolina. In 1990, the family-owned and operated business decided to diversify by leasing out its dairy facilities, and creating a soil processing and composting operation.



Wallace Farms has been making high-quality compost since 1990.

Because of increasing environmental concerns and regulations governing animal waste, the Wallace family set out to develop an environmentally friendly method of managing the dairy manure. Aerobic composting proved to be the logical solution, originating one of the few "real" composted cow manures available today. Wallace Farm Soil Products has since developed a high-quality line of soil and compost products, including blended topsoil, composted cow manure, compost-plus, potting soil and play sand.

With 22 employees, Wallace Farm Soil Products receives approximately 60,000 tons of organic waste a year and is one of the largest compost and packaging facilities in the state. The farm reaches out to other farms and industries to divert organic waste materials such as animal manures, food waste, wood waste and yard waste from landfills.

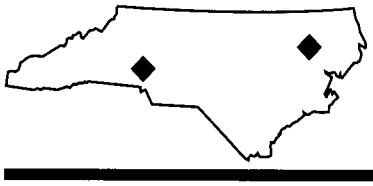


At Wallace Farms, rows of organic debris are turned by a windrow turner to produce high-quality compost.

For more information, contact Eric Wallace at (704) 875-2975, or visit the company's Web site at http://www.wallacefarmproducts.com.

Wallace Farms Soil Products
Huntersville
Mecklenburg County

Recycling Means Business!



Weyerhaeuser Company

Weyerhaeuser Company
Plymouth
Washington County

Weyerhaeuser Company
Charlotte
Mecklenburg County

Weyerhaeuser Company is an international forest products company with annual sales of $19.9 billion. Weyerhaeuser was founded in 1900 and currently employs about 55,000 people in 18 countries. Its diverse business includes nearly every aspect of the forest products industry, from growing and harvesting trees to producing pulp, paper, packaging and building products.

Weyerhaeuser

Here in North Carolina, Weyerhaeuser has established a range of facilities that includes nearly all aspects of its forest product operations. These facilities include pulp and paper mills in Plymouth and New Bern, lumber mills and managed forests in various parts of the state, and box plants and a fiber recovery and recycling facility in Charlotte.

"The Plymouth mill employs just under 2,000 people, and in addition to making the 100 percent recycled content linerboard, also produces 1,300 tons per day of fine printing and writing papers."

The Charlotte recovery facility employs 16 people and processes 84,000 tons per year of mostly fiber material. It also brokers an additional 18,000 tons of baled material that does not need processing. A majority of the cardboard that passes through this facility ends up as feedstock for the Plymouth containerboard plant.

The Plymouth facility uses 100 percent recycled fiber from old corrugated containers to produce 930 tons per day of linerboard (the outside portion of corrugated containers). The Plymouth mill employs just under 2,000 people, and in addition to making the 100 percent recycled content linerboard, also produces 1,300 tons per day of fine printing and writing papers.

For more information about Weyerhaeuser, contact Ginny Santorine at (804) 739-6736, e-mail: ginny.santorine@weyerhaeuser.com. You can also visit the company's Web site at: http://www.weyerhaeuser.com.

Recycling Means Business!

N.C. Recycling Business Assistance Providers

A number of organizations provide a wide variety of technical and business development assistance to North Carolina-based recycling businesses. Some provide assistance specifically to members of the recycling industry, while others provide general business development assistance to a wider range of clients. These organizations include:

Recycling-Specific Service Providers

N.C. Recycling Business Assistance Center

The N.C. Recycling Business Assistance Center is a partnership of the North Carolina Department of Environment and Natural Resources' Division of Pollution Prevention and Environmental Assistance and the North Carolina Department of Commerce. Its mission is to promote environmentally sound economic development through the reuse and remanufacture of recyclable materials. To achieve this objective, RBAC:

NORTH CAROLINA RECYCLING BUSINESS ASSISTANCE CENTER

- Provides technical assistance to recycling businesses with sourcing, processing and remanufacturing secondary materials and marketing their end products.
- Provides business development assistance by identifying funding sources, participates in the N.C. Recycling Business Loan Fund and funding demonstration projects.
- Develops policies that address the barriers to collecting, processing, remanufacturing and reusing secondary materials.
- Promotes to potential customers the need to purchase products with recycled content.
- Promotes the need to develop, transfer and apply technologies that will increase the use of recycled materials.
- Promotes partnerships among government and industry to stimulate and facilitate the recovery and reuse of secondary materials.
- Fosters the development of a supply infrastructure that is capable of providing industry with clean, readily usable and available raw materials.
- Promotes waste prevention and reuse within both the public and private sectors to reduce business costs and the consumption of virgin materials.

For more information about RBAC, contact Matt Ewadinger, RBAC manager, at (919) 715-6504, or matt.ewadinger@ncmail.net, or visit the RBAC Web site at http://www.p2pays.org/rbac.

Recycling Means Business!

Recycling Means Business!

Self-Help Credit Union

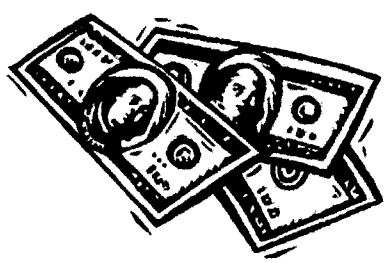
SELF HELP
CREATING OWNERSHIP AND ECONOMIC OPPORTUNITY

Self-Help, North Carolina's community development banking group, administers the N.C. Recycling Business Loan Fund. The loan fund nurtures fledgling businesses until they become bankable and graduate to full-service private sector financing.

Why is there a dedicated Recycling Business Loan Fund? Banks are sometime reluctant to fund start-ups or companies in untested sectors. While venture capital is designed to take on higher levels of risk, those firms often want only very large deals and those with some form of management participation. The Recycling Business Loan Fund is designed to fill the gap between bank loans and venture capital.

What types of loans are available? The loans are structured as market-rate debt, and can be used for working capital, inventory, equipment and real estate purchases. Initial interest-only periods may be available, where appropriate. The staff at Self-Help is well skilled at tapping existing Small Business Administration funding pools and guarantee programs to help with the approval of riskier loans. Self-Help often uses SBA 504 and 7(A) guarantees in its underwriting.

Self-Help has had significant experience lending to the recycling business community. In the past 12 years, Self-Help has lent more than $3 million to 20 recycling companies in North Carolina, including loans to companies that provide a wide variety of recycling services. Those services range from collection and processing to end-use products of diverse materials such as paper, scrap metal, construction and demolition debris, plastics and wood. Loan deals have ranged from $10,000 to more than $1 million (with an average loan size of $75,000) and have leveraged an additional $2 million.



For more information about the Recycling Business Loan Fund, contact Fred Broadwell, environmental finance coordinator at (919) 956-4490, or fred@self-help.org, or visit the Self-Help Web site at http://www.self-help.org.

Carolina Recycling Association

The Carolina Recycling Association is one of the largest state-based recycling associations in the United States, serving North and South Carolina since 1989. CRA represents more than 400 members (individuals, small businesses, multinational corporations, state government agencies and local governments) who are committed to reducing waste, promoting recycling and buying recycled.

Its mission is to conserve resources by advancing waste reduction and recycling throughout the Carolinas. CRA seeks to accomplish this mission in three ways:

- Networking: create ample opportunities for members to make valuable contacts with colleagues at events and through membership resources.
- Educating: sponsor workshops, training courses and tours, host the largest regional recycling conference in the country and produce informative publications.
- Advocating: support legislation that positively affects solid waste policies and advances states' waste reduction and recycling.

CRA is governed by a 13-member board of directors and has a staff of one part-time and two full-time employees. For more information about CRA contact Kerry Krumsiek, executive director, at (919) 545-9050, or kerryk@cra-recycle.org, or visit the CRA Web site at http://www.cra-recycle.org.

N.C. Department of Transportation's Recycled Products and Solid Waste Utilization Task Force

The N.C. Department of Transportation established the Recycled Products and Solid Waste Utilization Task Force in September 1992 to encourage the development of the state's recycling industry by promoting the successful development of markets for recycled goods. The mission of the task force is to provide leadership and expertise in the selection and recommended use of recycled materials to reduce waste and preserve natural resources. This mission is accomplished through research, demonstration projects, bid procedures and specifications that encourage contractors to develop and utilize recycled products.

Recycling Means Business!

Since its inception, the task force has been instrumental in including a wide variety of recycled materials in DOT projects. Those materials include scrap tires, fly ash, processed silica, plastics, land clearing and demolition debris, yard waste, poultry litter, municipal sludges, recycled glass, shingles, aluminum, recycled concrete and recycled asphalt.

For more information about the task force, contact DOT's Division of Highways at (919) 250-4128, or visit the Web site at http://www.doh.dot.state.nc.us/sitemap.html and click on "Recycling Information."



General Business Assistance Providers

N.C. Department of Commerce

The Department of Commerce, the state's leading agency for economic, community and workforce development, has been a cooperative partner since the inception of RBAC. A RBAC staff person has worked with the DOC office as a RBAC/DOC liaison since 1995.

The mission of the Department of Commerce is to improve the economic well-being and quality of life for all North Carolinians. The department's strategic plan focuses on three goals to further this mission:

- Keeping North Carolina competitive for high-value, technologically competitive industries and companies by actively recruiting and encouraging their expansion in the state.
- Increasing economic opportunities for North Carolina in a global economy by ensuring that North Carolina is recognized throughout the world as a highly attractive location for growing businesses, for the high quality of its products and for its appeal as a location for tourism, film and sports development.
- Improving economic opportunities for all North Carolinians through programs targeted to people and places not currently enjoying economic prosperity.

For more information about DOC and DOC/RBAC connection contact Matt Ewadinger at (919) 715-6504, or matt.ewadinger@ncmail.net. Visit the DOC Web site at http://www.commerce.state.nc.us.

Recycling Means Business!

N.C. Small Business & Technology Development Center

The Small Business & Technology Development Center's mission is to support the growth and development of North Carolina's economy by encouraging entrepreneurship, assisting in the creation and expansion of small businesses and facilitating technology development and transfer for small businesses. As part of the RBAC/SBTDC partnership, SBTDC offers scholarships to North Carolina-based recycling companies for two of its highly acclaimed small business training programs. Scholarships for SBTDC's "NxLeveL Entrepreneurial Training Program" and "SymmeTree Change Management Course" are held at various statewide locations throughout the year. Contact Dan Blankenship at (919) 715-7272 or (800) 258-0862, or dblankenship@sbtdc.org for more information. Visit SBTDC's Web site at http://www.sbtdc.org.

N.C. Department of Environment and Natural Resources' Customer Service Center

The Customer Service Center for the Department of Environment and Natural Resources is a single source of information for all of the Department's programs. Through its "1-STOP" permit assistance program, the CSC helps customers determine what environmental permits they need for a particular project as well as permit decision timelines. The CSC's "Small Business Ombudsman/Assistance Program" helps small businesses understand and comply with environmental requirements and resolve environmental problems. The 10-person staff is headquartered in Raleigh with express permitting and 1-STOP permit offices in Mooresville, Washington and Wilmington. For more information about CSC contact Edythe McKinney, director/small business ombudsman at (877) 623-6748, or edythe.mckinney@ncmail.net, or visit the CSC Web site at http://www.envhelp.org.

Waste Reduction Partners

Waste Reduction Partners, a team of highly-experienced volunteer engineers, architects and scientists, provides western N.C. businesses and industries with no-cost waste and energy reduction assessments and technical assistance. The WRP's mission is to work for a sustainable

Recycling Means Business!

economy, healthy environment, and a better quality of life by helping businesses, industries, institutions and government entities in the western part of the state reduce waste and utilize natural resources efficiently.

As part of its recycling business development efforts, WRP is leading a public/private partnership to demonstrate and commercialize a process to make wood flooring from waste pallets. The project goal is to produce 50,000 square feet of high-quality flooring in the first two years. In North Carolina more than 300,000 tons of pallet waste are sent to landfills annually.

WRP is administered by the Land-of-Sky Regional Council and works in special partnership with the North Carolina Division of Pollution Prevention and Environmental Assistance. Other partners include the Regional Water Authority of Asheville, Buncombe and Henderson, the Environmental Protection Agency and the USDA's Rural Utility Services. For more information about WRP, contact Terry Albrecht, program director, at (828) 251-6622, or wrp@landofsky.org, or visit the WRP Web site at http://www.landofsky.org/wrp.

SJF Ventures

SJF Ventures

SJF Ventures is a venture capital fund that finances and assists expansion stage companies in the clean technologies, business services and consumer products sectors. These companies achieve rapid growth and a competitive advantage through proprietary business models, quality management, high-performing entry-level workforces and environmental efficiencies. SJF Ventures provides equity financing from $500,000 to $5 million, solo or in syndicates, to companies with annual sales of $500,000 to $20 million. SJF Advisory Services, an allied nonprofit organization, provides entrepreneurial, workforce and sustainability assistance services to SJF prospect and portfolio companies.

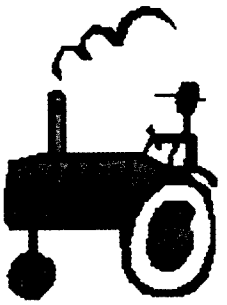
For more information about SJF Ventures, contact Rick Larson, managing director, at (919) 530-1177, or rlarson@sjfund.com, or visit the SJF Ventures Web site at http://www.sjfund.com.

N.C. Agricultural Finance Authority

The N.C. Agricultural Finance Authority provides financing to farmers and agribusinesses engaged in the processing and manufacturing of agricultural products, and agribusinesses that provide value-added processing or support

Recycling Means Business!

for other facets of agriculture such as composting and manure management. For more information about the N.C. Agricultural Finance Authority, contact Dr. Frank Bordeaux at (919) 790-3949, or frank.bordeaux@ncmail.net, or visit the National Council of State Agricultural Finance Programs Web site at http://www.stateagfinance.com/northcarolina.html.



N.C. Rural Economic Development Center and its Institute for Rural Entrepreneurship

The mission of the North Carolina Rural Economic Development Center is to develop, promote and implement sound economic strategies to improve the quality of life for rural North Carolinians. The center serves the state's 85 rural counties, with a special focus on individuals with low-to-moderate incomes and communities with limited resources. Created in 1987, the Rural Center operates a multi-faceted program that includes conducting research into rural issues; advocating for policy and program innovations; and building the productive capacity of rural leaders, entrepreneurs and community organizations. The Rural Center is a private, nonprofit organization, funded by both public and private sources and led by a 50-member board of directors.



The Institute for Rural Entrepreneurship was established in October 2003 to stimulate and support the development of micro, small and medium-size enterprises in North Carolina's 85 rural counties. The institute is housed within the Rural Center and draws from a range of resources to serve the needs of rural entrepreneurs, community and economic leaders, and state policy makers. The goals of the Institute for Rural Entrepreneurship have been developed by the Rural Center in collaboration with state business leaders and public officials. They are to:

- Support self-employment as an important source of jobs and income in rural North Carolina.
- Support development of entrepreneurial companies - new and existing - that can grow and generate jobs and wealth in rural communities.
- Support rural communities as they celebrate and build support systems for entrepreneurship.
- Support overall improvement in the health and vitality of the small business community in rural areas.

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For more information about the Rural Center's Institute for Rural Entrepreneurship, contact Leslie Scott, director at (919) 250-4314, or lscott@ncruralcenter.org, or visit its Web site at http://www.ncruralcenter.org/entrepreneurship.

North Carolina State Energy Office

The State Energy Office administers programs and provides services to consumers and homeowners, business and industry, state and local municipalities and nonprofit organizations in all North Carolina counties. Its main areas of focus are energy efficiency and renewable energy, alternative fuels and alternative fuel vehicles, energy emergencies and energy policy.

Under the aegis of the Energy Policy Council, and guided by the State Energy Plan, the State Energy Office has been administered by the N.C. Department of Administration since October 2000.

The State Energy Office coordinates several programs to help ensure that North Carolina businesses and industries are productive, energy efficient, technologically savvy and competitive. Energy savings can be achieved through design, operations and maintenance of commercial and industrial facilities as well as schools and government buildings.

The State Energy Office supports a number of alternative transportation programs, including alternative fuel vehicles, designed to reduce dependence upon fossil fuels and improve air quality. The Energy Office also supports several programs that utilize solar, wind and biomass resources.

For more information, contact the State Energy Office at (919) 733-2230 or (800) 662-7131, or energyinfo@ncmail.net, or visit its Web site at http://www.energync.net.

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Recycling Means Business!

Exhibit #3

Register Now!

March 30-31, 2005

One NC *Naturally*

2nd Statewide Conference

VALUE$ of Conservation

Raleigh Convention & Conference Center

details at

http://www.onencnaturally.com

Explore the connection between conservation and a healthy North Carolina economy.

We will consider policies, incentives and opportunities, as well as the significant economic benefits associated with conservation. Approximately 25 percent of the state's economy is derived from industries and business that directly rely on our natural resources. This conference is all about protecting some of NC's most critical economies - tourism, farm and forest lands, seafood, military bases - through conservation.

One North Carolina *Naturally*

VALUE$ of Conservation

2005 State Conference — Raleigh Conference & Convention Center

Wednesday, March 30, 2005

10:00 a.m. **Check in – Lenoir Street lobby**
Exhibit Hall opens

11:00 a.m. **Welcome / Opening Remarks**
Secretary Bill Ross, Department of Environment and Natural Resources

11:30 a.m. **The Economics of Conservation: Natural Systems as the Life Support System Supplying Man's Critical Needs**
Bill Schlesinger, Dean, Nicholas School of the Environment, Duke University

12:15 p.m. **Lunch**
Education: Preparing the Next Generation for the Economic and Environmental Challenges of Tomorrow
Betsy Bennett, Director, N.C. Museum of Natural Sciences
Howard Lee, Chairman, State Board of Education

1:30 p.m. **North Carolina's Working Lands – Today & Tomorrow**
Former Gov. James B. Hunt Jr.

2:00 p.m. **Break**

2:15 p.m. **Enhancing the Economic and Ecological Viability of Agricultural, Forest, Coastal, Natural Heritage and Wildlife Resources**
Agriculture Resources: Larry Wooten, N.C. Farm Bureau
Forest Resources: Stan Adams, DENR Division of Forest Resources
Coastal Resources: Jack Thigpen, N.C. Sea Grant
Natural Heritage Resources: Reid Wilson, Conservation Trust for N.C.
Wildlife Resources: Dick Hamilton, N.C. Wildlife Resources Commission

4:00 p.m. **How Intact Natural Systems Support Public Health and Tourism**
Secretary Carmen Hooker-Odom, Department of Health & Human Services
Secretary Jim Fain, Department of Commerce
Lynn Minges, Division of Tourism, Department of Commerce
Todd Morse, Chimney Rock Park, N.C.

5:15 p.m. **A Legislative Perspective on the Values Of Conservation**
Senate President Pro Tempore, Marc Basnight
House of Representatives Majority Leader, Joe Hackney

5:45 - 7:30 p.m. **Exhibit Symposium & Reception**

Thursday, March 31, 2005

7:45 a.m. **Continental Breakfast / Exhibits**

8:45 a.m. **Conservation and Development: Allies, Not Adversaries**
Kel Landis, Governor's Senior Advisor for Business/Economic Affairs

9:15 a.m. **Saving the Goodliest Land: Needs Assessment for Land Conservation in North Carolina**
Kate Dixon, Land for Tomorrow Coalition

9:45 a.m. **Public Decision-Making in North Carolina: Economic and Political Context**
Ferrel Guillory, Director, UNC-Chapel Hill's Program on Southern Politics, Media and Public Life

10:25 a.m. **CONCURRENT SESSIONS**
Select one:

Adding Value to the Farm through Agritourism Martha Glass Manager, Agritourism Office, N.C. Dept. of Agriculture & Consumer Services	**Development Strategies: Low Impact Development** Larry S. Coffman LNSB, LLLP – Stormwater Services	**Creating Economic Opportunity for Conservation on NC's Working Lands** Gerry Cohn, American Farmland Trust Dale Threatt-Taylor, Wake County SWCD

11:15 a.m.
Select one:

The Value of Conservation to NC's Tourism Industry Maryanne Friend Director, Marketing and Cultural Tourism; North Carolina Arts Council	**Development Strategies: Sustainable Development & Conservation Partners** Ed Mitchell President, River Dunes Corporation	**Creating Economic Opportunity for Conservation on NC's Working Lands** Gerry Cohn, American Farmland Trust Dale Threatt-Taylor, Wake County SWCD

12:00 p.m. **Lunch — Moveable Feast / Exhibit Symposium**

1:30 p.m. **New Ideas for the Rural Economy**

Central Park
Bill Medlin, Yadkin Pee-Dee Lakes Project

Lake James Project
Judy Francis, Burke County, Economic Development

Sustainable Sandhills:
Walter White, Co-Chair, Sustainable Sandhills Initiative

Roles for the Banking & Finance Community in Rural Development
Roger Dick, Uwharrie Capital

3:00 p.m. **Choices for the 22nd Century**
Dr. David Jones, Director, North Carolina Zoo, DENR

3:30 p.m. **Taking Action**
Bill Ross, Secretary, DENR

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

HOUSE BILL 236

Short Title:	Federal Jurisdiction.	(Public)
Sponsors:	Representatives Culpepper, Williams (Primary Sponsors); Alexander, Luebke, and Weiss.	
Referred to:	Environment and Natural Resources.	

February 15, 2005

A BILL TO BE ENTITLED

AN ACT TO LIMIT THE AUTOMATIC GRANT OF EXCLUSIVE JURISDICTION OVER PROPERTY ACQUIRED BY THE FEDERAL GOVERNMENT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 104-7 reads as rewritten:

"**§ 104-7. Acquisition of lands for public buildings; cession of jurisdiction; exemption from taxation.**

The consent of the State is hereby given, in accordance with the seventeenth clause, eighth section, of the first article of the Constitution of the United States, to the acquisition by the United States, by purchase, condemnation, or otherwise, of any land in the State required for the sites for customhouses, courthouses, post offices, ~~arsenals,~~ or armories; provided that the total land to be acquired for a particular project does not exceed 25 acres. ~~or other public buildings whatever, or for any other purposes of the government.~~

Exclusive jurisdiction in and over any land so acquired by the United States shall be and the same is hereby ceded to the United States for all purposes except the service upon such sites of all civil and criminal process of the courts of this State; but the jurisdiction so ceded shall continue no longer than the said United States shall own such lands. The jurisdiction ceded shall not vest until the United States shall have acquired title to said lands by purchase, condemnation, or otherwise.

So long as the said lands shall remain the property of the United States when acquired as aforesaid, and no longer, the same shall be and continue exempt and exonerated from all State, county, and municipal taxation, assessment, or other charges which may be levied or imposed under the authority of this State."

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

Exhibit #4

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

H **D**

HOUSE BILL 236
PROPOSED COMMITTEE SUBSTITUTE H236-PCS60239-RI-2

Short Title: Federal Jurisdiction Over Land. (Public)

Sponsors:

Referred to:

February 15, 2005

A BILL TO BE ENTITLED

AN ACT TO LIMIT THE AUTOMATIC GRANT OF EXCLUSIVE JURISDICTION OVER LANDS ACQUIRED BY THE FEDERAL GOVERNMENT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 104-7 reads as rewritten:

"**§ 104-7. Acquisition of lands by the United States for ~~public buildings;~~ customhouses, courthouses, post offices, forts, arsenals, or armories; cession of jurisdiction; exemption from taxation.**

"(a) The consent of the State is hereby given, in accordance with the seventeenth clause, eighth section, of the first article of the Constitution of the United States, to the acquisition by the United States, by purchase, condemnation, or otherwise, of any land in the ~~State required for the sites~~ State that either is:

(1) Required for customhouses, courthouses, post offices, forts, arsenals, or armories; provided that the total land to be acquired for a particular facility does not exceed 25 acres; or ~~other public buildings whatever, or for any other purposes of the government.~~

(2) To be added to Fort Bragg, Pope Air Force Base, Camp Lejeune, Seymour Johnson Air Force Base, Cherry Point Marine Corps Air Station, or the United States Coast Guard Air Station at Elizabeth City. Any of the land to be added to a military base named in this subdivision shall be contiguous to and within a 25-mile radius of the military base for which the property is acquired.

(b) Exclusive jurisdiction in and over any land ~~so~~ acquired by the United States ~~shall be and the same~~ with the consent of the State under subsection (a) of this section is hereby ceded to the United States for all purposes for which the United States requests cession of jurisdiction except that jurisdiction in and over these lands with respect to: (i) the service ~~upon such sites~~ of all civil and criminal process of the courts of this ~~State;~~ State, (ii) the concurrent power to enforce the criminal law, (iii) the power to enforce

State laws for the protection of public health and the environment and for the conservation of natural resources, and (iv) the entire legislative jurisdiction of the State with respect to marriage, divorce, annulment, adoption, commitment of the mentally incompetent, and descent and distribution of property is reserved to the State. ~~but the~~ Cession of jurisdiction ~~so ceded~~ shall continue ~~no longer than~~ only so long as the ~~said~~ United States ~~shall own such lands.~~ owns the land.

(c) The jurisdiction ceded shall not vest until the United States ~~shall have~~has acquired title to ~~said lands~~ the land by purchase, condemnation, or ~~otherwise.~~otherwise; accepted the cession of jurisdiction in writing; and filed a certified copy of the acceptance in the office of the registrar of deeds in the county or counties in which the land is located. The acceptance of jurisdiction shall be made by an authorized official of the United States and shall include a precise description of the land involved and a statement of the extent to which cession of jurisdiction is accepted.

(d) So long as ~~the said lands shall remain~~ land acquired with the consent of the State under subsection (a) of this section remains the property of the United ~~States when acquired as aforesaid, and no longer, the same shall be and continue~~ States, and no longer, the land shall be exempt and exonerated from all State, county, and municipal taxation, assessment, or other charges ~~which~~ that may be levied or imposed under the authority of this State.

(e) Persons residing on lands in the State for which any jurisdiction has been ceded under this section shall not be deprived of any civil or political rights, including the right of suffrage, by reason of the cession of jurisdiction to the United States."

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

Exhibit #5

HOUSE BILL 236:
Federal Jurisdiction Over Land

BILL ANALYSIS

Committee:	House Environment and Natural Resources	**Introduced by:**	Reps. Culpepper and Williams
Date:	March 22, 2005	**Summary by:**	George Givens, Senior Committee Counsel
Version:	H236-PCS60239-RI-2		Jennifer McGinnis, Committee Counsel

SUMMARY: ***The PCS would provide that the State automatically consents only to certain land acquisitions by the federal government. In addition, the PCS would provide that the State only cedes partial jurisdiction to the federal government over land acquired with the State's consent. The PCS would also provide that the federal government must indicate its acceptance of jurisdiction by filing a notice with the registrar of deeds in the applicable county or counties.***

BACKGROUND: Article I, Section 8, Clause 17 of the United States Constitution (Art. I, §8, cl. 17) provides that Congress shall have power "to exercise exclusive legislation . . . over all places purchased by the consent of the legislature of the State in which the same shall be, for the erection of forts, magazines, arsenals, dockyards and other needful buildings." Thus, if a state legislature consents to a federal purchase of land within the state, then the federal government obtains exclusive jurisdiction over the land acquired. States are not, however, limited to a choice between simply granting or withholding consent. A state may qualify its consent or cession by reservations consistent with the governmental purposes for which the property was acquired.

A state may cede exclusive, concurrent, or partial jurisdiction to the federal government over federally acquired lands. Where federal jurisdiction over a federal enclave is exclusive, the state retains no legislative or political authority over that property. It is accepted, however, that a reservation by a state of only the right to serve criminal and civil process in an area is not inconsistent with exclusive legislative jurisdiction. With concurrent jurisdiction, a state has reserved to itself the right to exercise, concurrently with the United States, all of the same authority. With partial jurisdiction, a state has reserved to itself the right to exercise, by itself or concurrently with the United States, other authority constituting more than merely the right to serve civil and criminal process. For example, the United States is considered to have partial legislative jurisdiction where the State has reserved the right to tax private property.

In the absence of a state's consent to federal acquisition or cession of jurisdiction, the federal government nevertheless has the power to acquire land within a state, but the position of the federal government in that situation is that of an ordinary landed proprietor. The Property Clause of the United States Constitution (Art. IV, §3, cl. 2), gives Congress the power to "make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States." Thus, even absent state legislative consent, the Congress can enact regulations that are designed to maintain safety and order on government property, although, absent state legislative consent, it must do so in the context of continuing concurrent state jurisdiction.

Under federal law, the federal government must accept cession of jurisdiction by the State in order to effect exclusive jurisdiction over lands by filing a notice of acceptance with the Governor of the State or in another manner prescribed by the laws of the State where the land is situated. Since no other manner

for acceptance has been provided by the State under existing law, notice of acceptance of jurisdiction by the Federal government must be filed with the Governor.

CURRENT LAW: Under existing State law, consent of the State is given to all acquisitions by the federal government, in accordance with Art. I, §8, cl. 17, to the acquisition by the United States, by purchase, condemnation, or otherwise, of any land in the State required for the sites for customhouses, courthouses, post offices, arsenals, other public buildings, or for any other purposes of government. The State cedes exclusive jurisdiction over any land acquired by the United States for these purposes, reserving only the right to serve civil and criminal process of the courts of the State. The jurisdiction ceded continues as long as the United States owns the lands. Lands acquired by the United States for these purposes are exempt from all State, county, and municipal taxation, assessment, or other charges that may be levied or imposed under the authority of this State.

BILL ANALYSIS: The PCS would provide that the State automatically consents to land acquisitions by the federal government of land required for customhouses, courthouses, post offices, forts, arsenals, or armories; provided that the total land to be acquired for a particular facility does not exceed 25 acres. In addition, the State would automatically consent to acquisitions for additions of land contiguous to and within a 25-mile radius of existing military bases as listed in the PCS. The PCS provides that the State would cede only partial jurisdiction over the land acquired by the federal government for these purposes, retaining to the State the following authority: service of civil and criminal process; the concurrent power to enforce the criminal law; the power to enforce State laws for the protection of public health and the environment and for the conservation of natural resources; and the entire legislative jurisdiction of the State with respect to marriage, divorce, annulment, adoption, commitment of the mentally incompetent, and descent and distribution of property. The PCS would require that the federal government file notice of acceptance of the jurisdiction ceded with the registrar of deeds in the applicable county or counties. The PCS also provides that persons residing on ceded lands shall not be deprived of any civil or political rights, including the right of suffrage, by reason of the cession of jurisdiction.

H236-SMRI-001

Exhibit #6

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. 236 DATE 3-22-05

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

COMMITTEE SUBSTITUTE H236-PCS60239-RI-2

(Rep.) Sen.) Mc Comas

1 moves to amend the bill on page 1, line 19

2 ( ) WHICH CHANGES THE TITLE

3 by inserting after the word "Station;"

4

5 the following:

6

7 "Military Ocean Terminal at

8

9 Sunny Point".

10

11

12

13

14

15

16

17

18

19

SIGNED _____

ADOPTED Adopted 22 March 2005 FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

= Pocosin Lakes National Wildlife Refuge

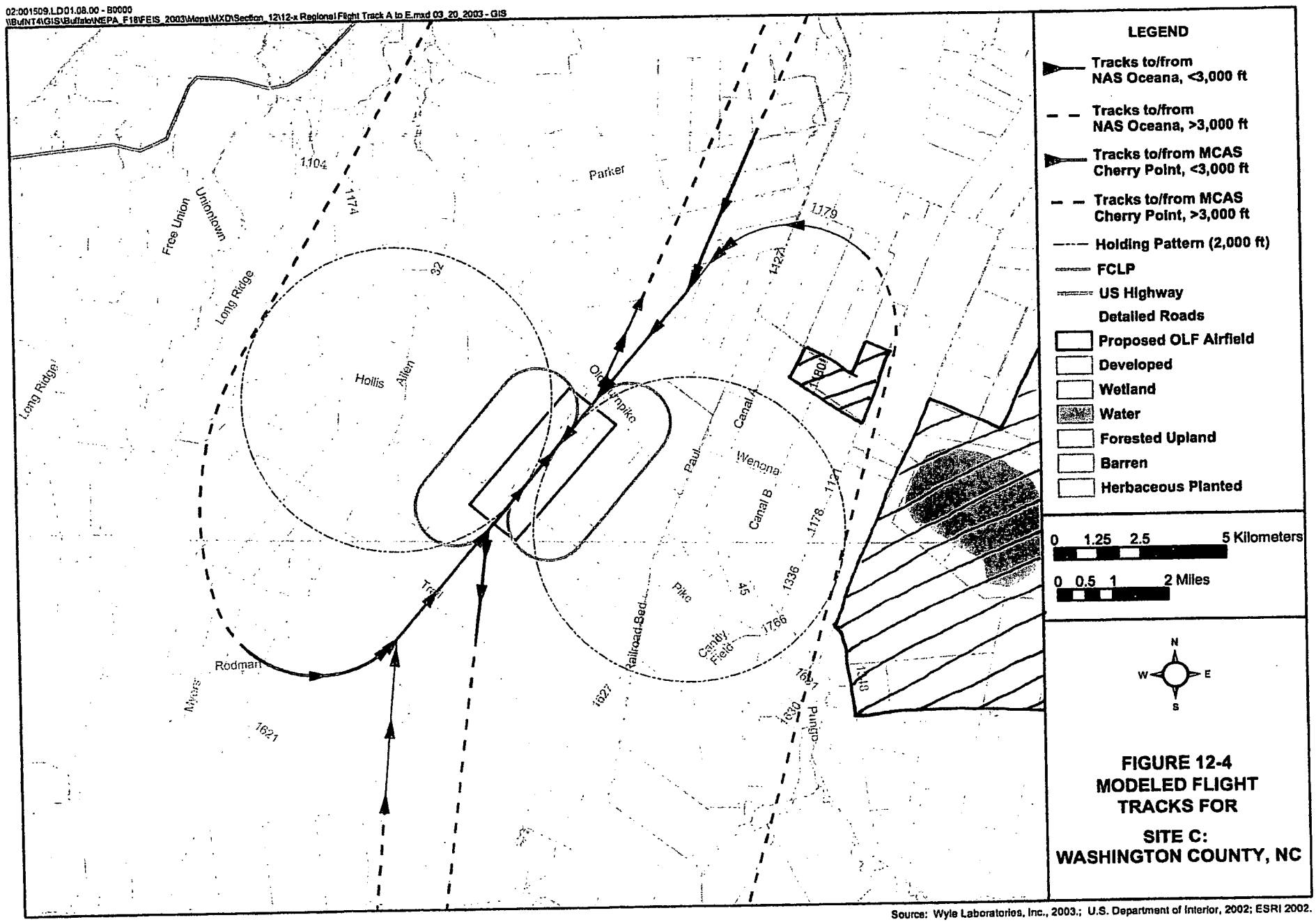


FIGURE 12-4
MODELED FLIGHT TRACKS FOR
SITE C:
WASHINGTON COUNTY, NC

Source: Wyle Laboratories, Inc., 2003.; U.S. Department of Interior, 2002; ESRI 2002.

Exhibit #7

Exhibit #8

DEPARTMENT OF THE NAVY

COMMANDER IN CHIEF

U.S. ATLANTIC FLEET

1562 MITSCHER AVENUE SUITE 250

NORFOLK, VA 23551-2487

30 OCTOBER 2000

Naval flight operations and associated jet noise continue to be topics of great interest for all citizens of Hampton Roads. An additional local issue is the potential selection of Oceana as the location for the Navy's new Super Hornet aircraft, which will replace the F- 14 and F/A- 18 C/D aircraft. The Navy and the Hampton Roads community have enjoyed a superb and mutually beneficial relationship for years and it is in our collective interests to ensure we continue working together to address these important concerns.

→ It is precisely because of community concerns over jet noise that we are carefully exploring the establishment of an additional outlying field to accommodate Super Hornet training - should these aircraft come to our community - and reduce aircraft operations at our airfields at Oceana and Fentress.

The Navy, in keeping with the law, is presently conducting comprehensive studies to prepare an environmental impact statement, which will help us determine the best location for our Super Hornet aircraft. Integral to this process is the review of potential locations to establish an additional outlying field. The reviews of potential outlying fields that are being undertaken in connection with the environmental impact statement will further that goal.

It is important to understand that we are not exploring the establishment of an additional outlying field to eliminate air operations from Oceana and Fentress, although it would have the effect *of reducing* those operations. Oceana and Fentress remain critically important to fleet safety and training and, along with an additional outlying field, would be used to ensure the combat readiness of our aircrews.

We need a solution for today's concerns as well as issues we as a community will face in the future - over the next 50-100 years - when additional high-performance aircraft will join the fleet. I view an additional outlying field as the best solution for the Navy's concerns and our fellow neighbors in Hampton Roads.

Public understanding is critical to our efforts and I ask for your continued support as we move forward to address these important issues. I am convinced that if we work together, we can all benefit and contribute to a strong Navy and a quality community.

Robert J. Natter

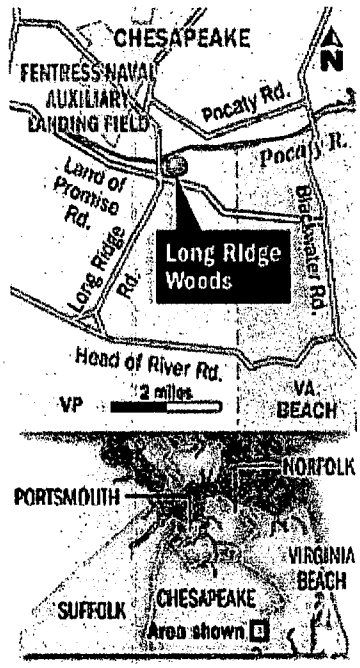
ROBERT J. NATTER

Exhibit #9

The Virginian-Pilot

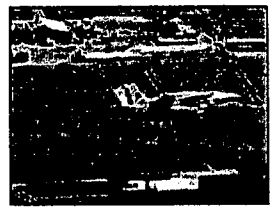
Plan would buffer Navy from suits over noise

By JON W. GLASS, The Virginian-Pilot
© March 15, 2005
Last updated: 2:18 AM



Special report: Oceana Under Pressure

A proposed housing development in Chesapeake could become the region's first in which future homeowners sign away their rights to sue over noisy Navy jets flying overhead.



An F/A-18 flies over Fentress Airfield. vp file

The owners of 53 acres in a jet-noise zone near Fentress Auxiliary Landing Field have agreed to give the federal government an "avigation easement" over the property.

It would give Navy fighter pilots a "perpetual and unconditional right" to fly over homes built there.

The intent is to stave off noise complaints and lawsuits that could threaten the future of Oceana Naval Air Station in Virginia Beach.

The federal government is defending itself against more than 2,000 lawsuits filed by property owners in Virginia Beach and Chesapeake.

Those property owners claim the arrival of noisy F/A-18 Hornet jets at Oceana in 1998 and 1999 has reduced the value of their homes.

Chesapeake leaders hailed the proposed air-rights agreement as the first success arising from a land-use study to protect local Navy facilities from incompatible development.

"It's really ground breaking," said Chesapeake Councilwoman Debbie Ritter, who heads a regional committee overseeing the study.

Virginia Beach leaders said avigation easements offer added protection for the Navy and potential home buyers.

As proposed, the easements would be sought only over undeveloped property, not over existing houses.

Navy officials support the easements because they serve as a "warning" to buyers that property is exposed to jet noise, said Ray Firenze, Oceana's community planning liaison officer.

But the Navy still opposes new homes in jet-noise zones, even with avigation easements, Firenze said.

"It's an olive branch, and we appreciate that, but if we had our choice, we'd rather not have residential property under a jet flight pattern," Firenze said.

The Navy, Virginia Beach, Chesapeake and Norfolk are cooperating on the land-use study. Virginia Beach launched it to identify how the city can grow without interfering with Oceana.

The study's completion has been delayed while Beach and Navy leaders try to reach an understanding. The Virginia Beach City Council will hold a workshop at 6 tonight to air the results of private talks between the two sides.

Avigation easements have emerged as one non controversial way to buffer the Navy. As proposed, developers would voluntarily offer the easement in hopes of getting developments approved. Home buyers would be required to sign a statement that discloses the easement.

Some communities trying to protect naval air stations from closure, such as Escambia County, Fla., require developers to sign over avigation easements. Hampton Roads cities would need General Assembly approval to make the easements mandatory.

The proposed Long Ridge Woods development in Chesapeake would consist of nine single-family homes. Two of the property's owners, both farmers, are familiar faces in local government circles: Rodney Foster, former chairman of the city Planning Commission, and Barry Knight, a member of the Virginia Beach Planning Commission.

They offered to sign over an avigation easement as part of the rezoning. The land, south of Fentress at Land of Promise and Long Ridge roads, is in the highest jet-noise zone and partially in an accident-potential zone. Jets would roar over homes at 800 feet practicing aircraft-carrier landings.

The owners could build all nine homes under the property's existing zoning. They seek to rezone a little less than 1 acre to make the smallest lots larger – and more valuable.

The Navy opposes the project, despite the easement offer.

"I hope the Navy takes a soft approach to it, because we're trying to do our part," Foster said. "It's an effort to work with the Navy."

Reach Jon W. Glass at 222-5119 or jon.glass@pilotonline.com.

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DECEMBER 2003 $2.50

Exhibit #10



Taking a Whiff

by Jim Dean

The holiday season is always rich in memories, but almost all of mine are connected to my nose. In the home where I grew up, the fresh smell of pine or fir was the foundation for the multi-layered aromas of baking fruitcake and roasting pecans, along with the more subtle scents of candle wax and oranges. One of the most compelling seasonal smells for me was the hot, metallic odor of an old American Flyer electric train we set up each Christmas. Another that unfailingly recalls past holidays—this will sound odd and may be unique to me—is the smell of Aqua Velva aftershave lotion. I suppose it was a regular gift to someone in my family, but it was always opened and immediately applied. Aqua Velva; instant Christmas.



ILLUSTRATION BY JACKIE PITTMAN

Of all our senses, it may be our sense of smell that is most directly hot-wired to nostalgia. Those of us who hunt and fish hold dear a vast horde of pleasurable aromas, any one of which can transport us to a happy place. Admittedly, some of these are obscure and undoubtedly reflect eccentric preferences. For example, I doubt there is a hunter alive who can't immediately identify and savor the bananalike aroma of Hoppes No. 9 powder solvent. Long years ago, I suggested that a special young lady of my acquaintance might wish to dab a few drops of Hoppes behind each ear. Had she done so, I believe our lives might have taken a different path. Someday, the perfume industry may recognize that powder solvent is a pheromone, but I suppose it would be an erotic attractant only for those seeking gun nuts as mates.

Hoppes is not the only heady intoxicant for hunters. You can add linseed oil (used to refinish gun stocks), WD-40 and a host of other unguents used to keep weapons clean and free of rust. A just-fired shotgun shell has that wonderful burned-powder aroma, but many hunters would say the most intoxicating smell is of dogs, wet or dry.

"... many hunters would say the most intoxicating smell is of dogs, wet or dry."

One would also not normally associate insect repellents with fond memories or elevated [illegible] of felicity, but that is precisely the feeling I get when I open my grandfather's old tackle box and stick my nose inside. There, I am greeted by the ancient waft of 6-12 repellent and lemony citronella blended subtly with Muriel Senator cigars, fly floatant, old varnish and decomposing Cuttyhunk linen fishing line. I think it must be like a great 1945 Bordeaux, the tannins moderating into recollected fruit that lingers on the nose and makes you glad you've lived long enough to enjoy it at its best. Grandpa's tackle box vintage takes me back to gentle summer afternoons on blackwater millponds under puffy clouds. You can't ask for more than that.

I get a very similar sensation whenever I go into an old boathouse and inhale its musty, faintly fishy dampness, where even the cobwebs and boat cushions seem to add detectable notes. It is much like the smell we associate with rain, not unlike wet dust rising off the pavement after a summer storm.

Even smells that evoke no nostalgia are often pleasant. And while they are not reserved for those of us who hunt and fish, it is certainly true that we are often outside with our nostrils vulnerable, or poking about in places that yield aromas not familiar to everyone (or appreciated, for that matter).

A personal favorite is the distinctly fishy smell of a bed of actively spawning bluegills or shellcrackers. Even some fishermen do not believe you can smell such a thing, but that may merely reflect a lack of experience. Spend enough time fishing for bluegills in the spring when they are spawning, and your nose will acquire a graduate degree in bream bed detection.

Even indoors, the sportsman can access pleasurable smells. While tying flies or making bass bugs, one is assailed by a mix of beeswax, mothballs, liquid cement and the gamy musk of patches of fur or hair combined with moldering emanations from stored rooster necks. Good stuff. Of course, it's not surprising I would like this particular blend, since I acquired a mild addiction to model airplane glue when I was a kid.

Still, of all the smells I associate with my sporting hobbies, one surely stands out. In 1964, I bought a canvas umbrella tent that I still use several times a year. Modern tents are made of synthetics, but nothing smells better than canvas, especially when you're under it. I like to think that in Heaven, where our noses will receive their just rewards for a lifetime of innocent sniffing, we can hope we will all be bivouacked in canvas tents.

Then, just to add the perfect accompaniment, someone will be outside every morning perking coffee and frying bacon and eggs.

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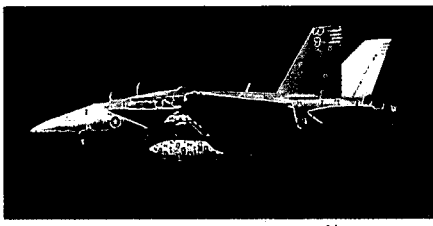
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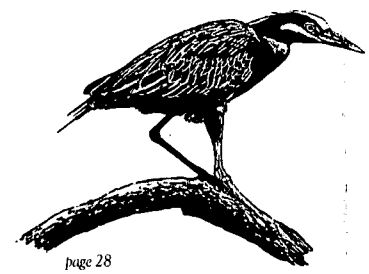


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Cover *Tundra swans are among the big bird species that would share air space with Navy jets at the planned outlying landing field near Pocosin Lakes National Wildlife Refuge. Photograph by F. Eugene Hester.*



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the Whereabouts of Waterfowl

If waterfowl populations are up, then where are North Carolina's birds?

written by Chris Powell
photographed by E. Eugene Hest



The perception of mediocre duck hunting in the Currituck and Pamlico sounds is fairly widespread among North Carolina waterfowlers. But what makes this year's shoots perplexing is the fact that breeding ducks—a leading indicator of waterfowl population health—number 36.2 million birds nationally. That's an increase of 16 percent above last year's population and 9 percent above the long-term average, according to the U.S. Fish and Wildlife Service. And, according to midwinter surveys conducted by the Fish and Wildlife Service and the N.C. Wildlife Resources Commission, the number of wintering waterfowl here during 2003 totaled a healthy 325,000. So where are the birds?

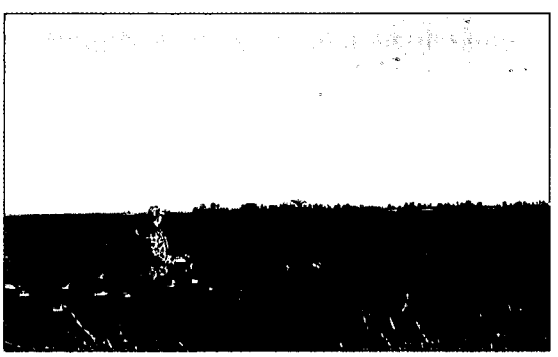
The answer is that waterfowl are still coming here; they just aren't frequenting their traditional watering holes. Or if they are, as in the case of diving ducks, they are sitting out in the middle of the sound in big rafts, rather than venturing toward shorelines dotted with blinds. Other ducks, such as puddlers, may be staying more inland in the rivers, creeks and flooded swamps. But believe it or not, numbers of ducks wintering on our coast are not way down. In fact, the 2003 survey was on par with averages dating back to 1955, the earliest recorded waterfowl numbers (see graph, page 5).

Sure, some species such as pintails and migratory Canada geese are in decline, but other species such as tundra swans and green-winged teal are quite strong. So, taken as a whole, waterfowl numbers have remained fairly constant. Then why are many duck hunters spending the season watching seagulls instead of working birds into their decoys? The answer can be summed up in one word: change, said Bob Noffsinger, a migratory bird specialist who has worked for the U.S. Fish and Wildlife Service for 28 years.

"I think some hunters have the idea that waterfowl numbers were up and that they've constantly gone down, but it's been more of an up-and-down thing," he said. "We don't know what the long-term trends are because data only goes back so far. There have been some changes in terms of where the ducks are and who has access."







The Northern shoveler, *often called a spoonbill, is one of many duck species that frequent our sounds. A duck hunter (right) picks up decoys after a morning spent in a coastal marsh.*

The 1970s saw a big spike for waterfowl in North Carolina, especially puddle ducks. In 1976, the number of wintering puddle and diving ducks surged p[illegible] the 650,000 mark. Some duck hunters old enou[illegible] to have experienced that period likely think of those phenomenal shoots as the standard by which modern hunts should be measured. But that doesn't take into consideration the huge ebbs and flows of waterfowl numbers over time. Otto Florschutz, who served on our coast from 1967 to 1993 as a waterfowl biologist for the Wildlife Commission, and later the Fish and Wildlife Service, says he has seen numerous changes that have either enticed or repelled waterfowl. One of the most dramatic was in Currituck Sound.

"Due to whatever reason, the vegetation changed from good submergent duck foods to Eurasian milfoil," Florschutz said. "That happened during my career, and the populations changed. Good submergent vegetation such as widgeon grass, sago pondweed, wild celery and redhead grass—it abounded in Currituck Sound. And then Eurasian milfoil came in during the 1960s, and populations changed, not necessarily for the worse. I can remember some midwinter counts when we had in excess of 100,000 geese up in Currituck. They just loved Eurasian milfoil."

Then migratory Canada geese (not to be confused with resident Canada geese, which are quite abundant) all but stopped visiting North Carolina. During the late 1960s, migrating geese numbers suffe[illegible] from high hunting pressure down the entire length of the Atlantic Flyway. But once hunting pressure was curtailed and population numbers recovered, many Canadas remained conspicuously absent from Lake Mattamuskeet in Hyde County. In its prime, the lake had been known as the goose capital of the East Coast. Florschutz attributes much of their decline to changing agricultural practices.

"There was a bad hurricane in the mid-'60s, and it destroyed a lot of corn," Florschutz said. "It left a lot of corn in the field at Mattamuskeet, and the farmers lost some money. So what they did was, they went to earlier varieties of corn. Usually they picked it as the birds were coming down in October, but what they started doing was picking in August and September, and they got dryers so they could pick it wetter. Picked in October, it's cold enough that [leftover kernels] wouldn't sprout. Pick it in September and get some warm rain on it and some warm weather, and it would sprout. And geese eat corn; they don't prefer sprouts. So that changed in North Carolina."

Paralleling that change, Florschutz said, were changes in farming practices along the Eastern Shore of Maryland and in southeastern Pennsylvania. Farmers had been planting primarily tomatoes, potat[illegible] celery and other vegetables that could be truck[illegible] fresh to nearby population centers. However, the proliferation of refrigerated trucks meant that fresh vegetables could be transported year-round from Florida.

This forced the farmers in Maryland and Pennsylvania to go to less labor-intensive crops of corn and [illegible]beans, which geese love. "These were big con[illegible]ions, and that started short-stopping the geese [around Maryland and Pennsylvania]," Florschutz said, "and they're close to population centers, so [hunters] really hammered the geese. They really went commercial on goose hunting up there."

In the 1970s, the reign of Eurasian milfoil ended (for reasons scientists aren't sure of), eliminating one of the last big incentives for geese and ducks to visit Currituck. Dennis Luszcz, migratory bird coordinator for the Wildlife Commission, said the decline of submerged aquatic vegetation throughout the entire sound system has forced the ducks that do come here to inhabit alternative spots. "Back in the 1970s in Currituck Sound, there was a huge bed of Eurasian milfoil. That is gone; but we still have submerged aquatics, but they're not as abundant. The whole sound used to be just one big mat of vegetation."

Pamlico Sound also has lost a tremendous amount of aquatic vegetation, Luszcz said. That loss could be due to any number of interrelated factors—loss of water-filtering oysters, pollution or dredging. Whatever the cause, the result is turbid water. When light can't penetrate murky water, aquatic vegetation won't grow well. "In Pamlico Sound, Swan Quarter Refuge, for instance, used to hold huge flocks of divers—[illegible]asbacks, scaups, ruddy ducks," Luszcz said. "It [illegible]s now that most of our diving ducks are in the Albemarle Sound and Neuse River and some other areas. Canvasbacks have declined in the state to a fraction of their former abundance."



N.C. MUSEUM OF NATURAL SCIENCES

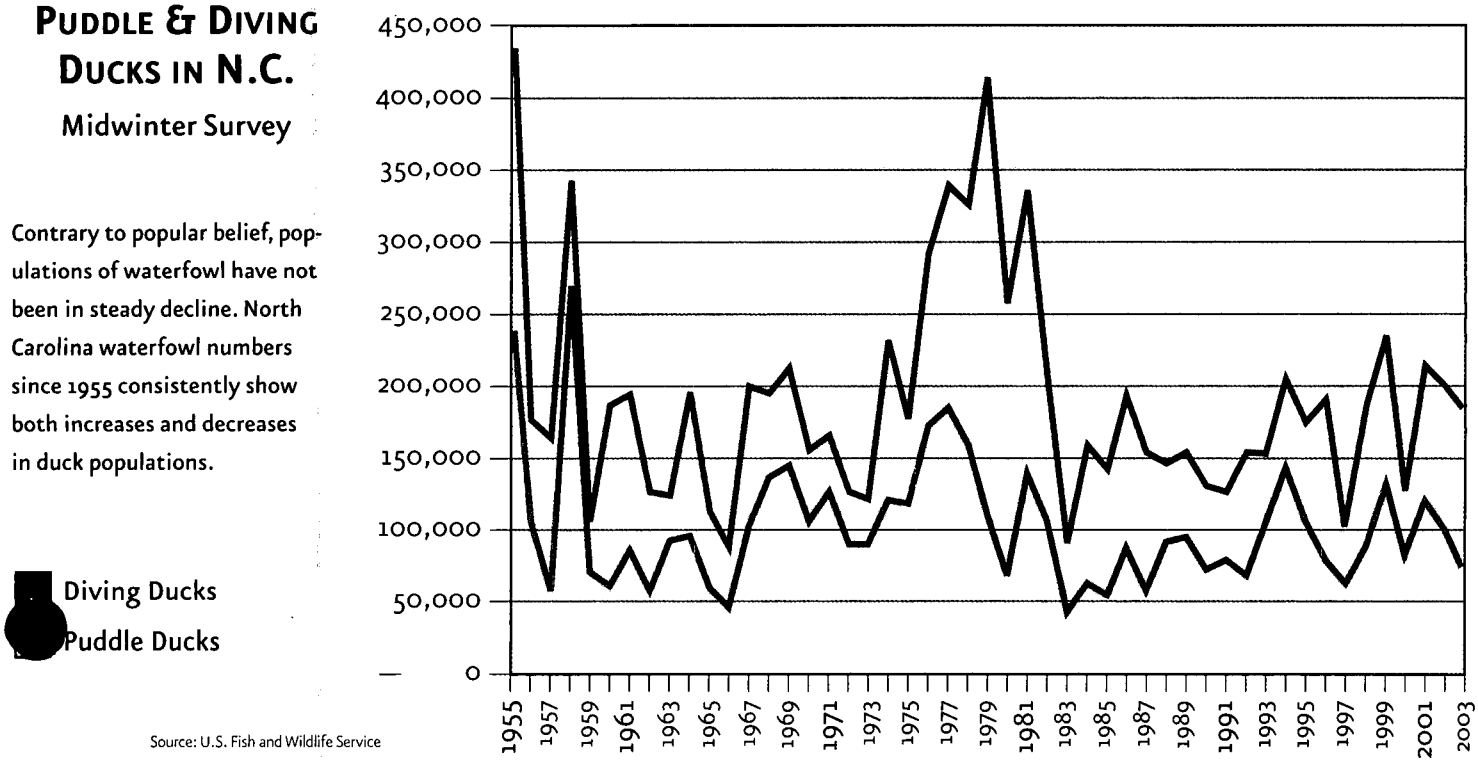
***Taken in 1901,** this photograph was used at expositions and trade fairs to impress out-of-state sportsmen with the abundance of wintering populations of waterfowl along our coast.*

Another factor that has pushed many ducks from their old hangouts has been the dramatic increase of people along our coast. The surge of vacation homes and pleasure boats has reduced the number of solitary areas where waterfowl can roost and feed. "The one thing that has happened really in the last 40 years that I really see that affects waterfowl has been the American public's infatuation with living on and being on the water," Florschutz said. "When I first came here, there were more commercial fishing boats than there were ski boats or motorboats or Jet Skis and such. And it is important to waterfowl to have kind of disturbance-free areas. You could go down any river, such as the Pamlico River, and there would be maybe a dozen houses on it. Now, it's solid houses all the way from Washington down to Belhaven." These intrusions on wildlife will likely be amplified if the U.S.

Puddle & Diving Ducks in N.C.

Midwinter Survey

Contrary to popular belief, populations of waterfowl have not been in steady decline. North Carolina waterfowl numbers since 1955 consistently show both increases and decreases in duck populations.



Source: U.S. Fish and Wildlife Service

Navy's outlying landing field is indeed built in Washington County (see "Uproar," page 14).

Land that is still agricultural along our sounds is increasingly being converted to privately managed waterfowl impoundments. These are basically cornfields that have been diked and flooded. No one knows how many there are on the coast, but Luszcz has observed quite an increase, especially in Hyde County. Before impoundments, puddle ducks—such as pintails, mallards and black ducks—traveled from one natural food source to another, crossing open water. This behavior gave hunters on public waters some opportunity at decoying ducks. Now, the vast majority of puddlers key in on flooded impoundments, with their ample food sources.

MELISSA McGAW



This is not to suggest that private impoundments have been bad for waterfowl populations. Most experts agree that impoundments have been quite beneficial, offering food and rest areas for ducks when the hunting season is closed. And though a few impoundments remain very successful at drawing waterfowl, most of these flooded fields don't produce exceedingly high harvests. One reason is that they have become victims of their own success. "There were a few hundred acres of private impoundments back in the 1980s," Luszcz said. "Now, easily you've got several thousands of acres, literally thousands, and everything is flooded, and a lot of it is corn. It used to be a few stretches in a field, not whole fields flooded. There is an abundance of habitat, and the birds don't have to spend a lot of time anywhere to eat." The little time waterfowl do spend at impoundments increasingly occurs at night, as waterfowl have adapted to daytime hunting.



Warmer winters also have had an effect on our birds. To make long migrations, waterfowl expend tremendous amounts of energy. So if not forced south by extreme weather conditions, ducks and geese are content to stay put, provided a food source is available. This could account for waterfowl short-stopping in the Chesapeake Bay area or migrating through North Carolina during late winter, when most seasons are over.

Habitat and behavioral changes aside, the big question remains: Are we killing too many ducks in North Carolina? Luszcz said he has heard several duck hunters voice concerns about what may be overly generous duck bags and seasons. "We share some of these concerns, particularly as to the effect these bag limits and seasons may be having on some species such as wood ducks," he said. "To date, however, we have not seen any evidence that any adverse effects are the results of these seasons and bag limits."

What may look like a population that is overharvested could very well be a population that is quite healthy but simply not frequenting our part of the world. One of the more challenging aspects of a waterfowl biologist's job is determining where the birds are at any given time. Ducks, geese and swans constantly react to changing circumstances. Waterfowl migrate to satisfy their needs for food and habitat in rapidly changing landscapes. Potholes in Canada and the prairies of the U.S. may be dry one year and wet the next. Thus, breeding success may be strong in a region one year and weak the following year. Food may be abundant in one part of the country or not.

SETTING THE TABLE

Local waterfowl managers have little control over the factors that affect how many ducks winter in North Carolina. However, managers can provide good wintering habitat for ducks, which will keep bringing them back.

Good wintering habitat translates into good food and low disturbance. The best long-term strategy to encourage more waterfowl to winter in North Carolina is to bring back submerged aquatic vegetation in our sounds. That will be a long and difficult process, but one well worth the effort. In the short term, we can optimize conditions in areas managed for ducks. Flooded grains are good for providing calories, but they don't provide all the birds' nutritional needs. Public and private impoundment managers should include native wetland plants in their management. Moist-soil management produces a variety of good native seed-producing plants that meet ducks' nutritional requirements. Moist-soil management takes know-how and work, but it is a key to providing optimal wintering habitat.

In addition, low disturbance is essential for ducks. Time spent on impoundments, whether hunting or looking, must be minimized throughout the wintering period. The most successful managers hunt no more than twice a week and limit the hours of those hunts to shorter periods in the mornings or evenings. A good mix of moist-soil plants and grain crops on managed impoundments, along with low disturbance, sets a table that ducks find hard to refuse.

For assistance, contact N.C. Partners, a partnership of the N.C. Wildlife Resources Commission, the Natural Resources Conservation Service, Ducks Unlimited and the U.S. Fish and Wildlife Service. This organization assists private landowners with developing, restoring and enhancing wetlands and waterfowl habitat. On the Web: manteowildlife.fws.gov/ncpartners.html.

—Bob Noffsinger, migratory bird specialist for the U.S. Fish and Wildlife Service





The weather could be warm or frigid. Hunting pressure may decrease in developing areas or increase in recently impounded locations. So biologists are constantly aiming regulations at highly mobile targets.

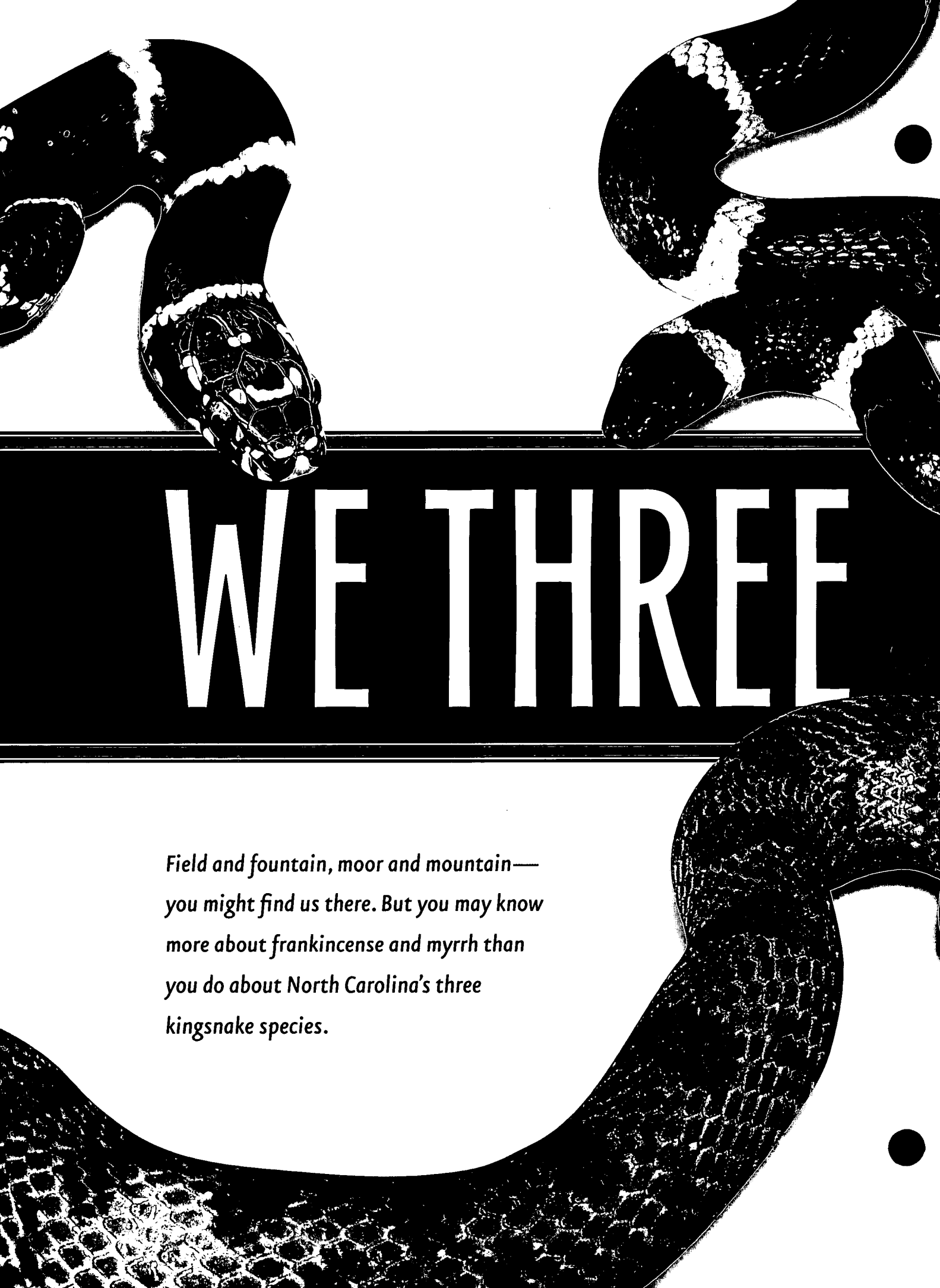
The problem is further compounded by the fact that our waterfowl come from different areas of the U.S. and Canada, with considerable mixing among the flocks. With this limited information, the U.S. Fish and Wildlife Service is forced to issue season limits for entire flyways, though the possibility exists that the harvest of birds from a particular breeding area could be too high, even though their population as a whole is quite strong.

To tackle this problem, biologists have begun tagging ducks with satellite transmitters that allow the birds to be tracked from their breeding grounds to their wintering locations. These tags are small backpack devices that are strapped onto the backs of waterfowl. Relatively new technology, the backpacks [illegible]st now allowing biologists to determine specific[illegible]where ducks are going and returning to. Michael Legare, a Wildlife Service biologist at Lake Mattamuskeet, said the Atlantic Flyway Council, which recommends seasons and bag limits to the U.S. Fish and Wildlife Service, is starting to think about managing by region instead of by flyway.

"Now, they [Atlantic Flyway Council representatives] are talking about dividing regulations up, not just for the Atlantic Flyway, but for the northern extent of the flyway and the southern extent of the flyway," Legare said. "Say here in North Carolina, if we are getting more of our birds from a western part [of the continent] than the birds that are going through Maryland or New Jersey or wherever they come from, and the western birds are having a bad breeding season, it's not really good for us in the South to be hitting them as hard."

Changes in waterfowl management, changes in habitat, changes in behavior: What does all this mean? The good news is that waterfowl have adapted to most of these situations rather than bypass us altogether. In our lifetimes, the skies will likely never darken with migrating flocks like they did during the early 20th century. Nonetheless, healthy populations of ducks, geese and swans continue to call North Carolina home. Duck hunters, like the waterfowl they pursue, need to adapt by better identifying ducks on the wing, taking drakes instead of hens and—most important—hunting where the ducks are. ⊠

***A flock of mallards** and teal launches into the winter sky. A Canada goose (facing page) is fitted with a backpack satellite transmitter that allows biologists to monitor its movements from nesting area to wintering ground.*



WE THREE

Field and fountain, moor and mountain—
you might find us there. But you may know
more about frankincense and myrrh than
you do about North Carolina's three
kingsnake species.

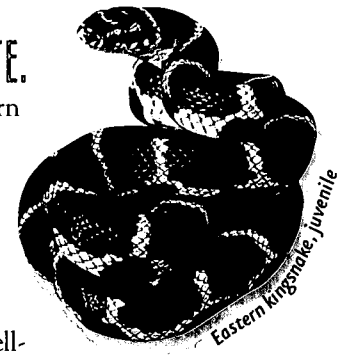


KINGS

written by Jeff Beane
photographed by Todd Pusser

Facing page, clockwise from top left: Eastern, scarlet and mole kingsnakes are the subject of numerous legends and myths.

YOU HUMANS DO LOVE TO ELABORATE.



Eastern kingsnake, juvenile

Take the story of the Three Wise Men. Three Eastern kings—Balthasar, Gaspar and Melchior—rode camels across the desert, following a super-bright star nearly to the Mediterranean Sea. Yet nowhere is it recorded that there were three of them, or what their names were, or that they were kings, or that they rode camels or how far they traveled. Where did the details of the story come from? Embellishment, you might call it—a trademark of your species.

There are three other kings you've told tales about—North Carolina's three kingsnake species. You've heard the old legend that animals communicate at Christmastide? Well, we'd like to take the occasion to set the record straight on a few things.

KINGSNAKES RULE! Your scientists place us in the large family Colubridae, which includes all of your state's—and most of the world's—nonvenomous snakes. Our genus name, *Lampropeltis,* honors our shiny scales (from *lampros,* meaning "radiant," and *pelta,* meaning "small shield"). Sounds suitably regal, doesn't it? But our common name, king, comes from your belief that we can vanquish venomous snakes. There's *some* truth in that. We eat other snakes, including venomous ones. But we're not their enemies, and we don't go out of our way to kill them. If we're hungry, any snake—venomous or not—is simply a meal (and one fit for a king, at that). We'll even eat our own species on occasion. If that sounds crazy, we must remind you that cannibalism is practiced by many species, including your own.

In fact, many snakes—racers, coachwhips, coral snakes and copperheads, to name a few—eat other snakes, but for some reason we kingsnakes get all the credit. If you're long and thin, don't handle utensils well and must swallow your food whole, it makes sense for your meals also to be long and thin. If you've wondered *how* we kill venomous snakes, well, we've been eating them for several thousand years. Along the way we developed considerable immunity to their venom (as did opossums and some other animals). They seldom try to bite us anyway. Typically, they hide their heads and try to bop us on the nose with a loop of their bodies, hoping we'll leave them alone. When we're ready to eat, though, we kill prey by constriction: We grab, wrap and squeeze with our strong coils until the prey suffocates. We eat lots of other things besides snakes, such as lizards, small mammals, birds, amphibians and turtle eggs.

Contrary to some of your stories, we're not always gentle and friendly. We may bite you if you handle or otherwise harass us. Our bite won't hurt any more than a briar scratch, but we hope that it startles you into leaving us be. Like many snakes, when frightened we may rapidly vibrate our tails and release a nasty-smelling musk from our cloacal glands. In fact, we're a lot like other snakes.

MEET NORTH CAROLINA'S THREE KINGS ▷

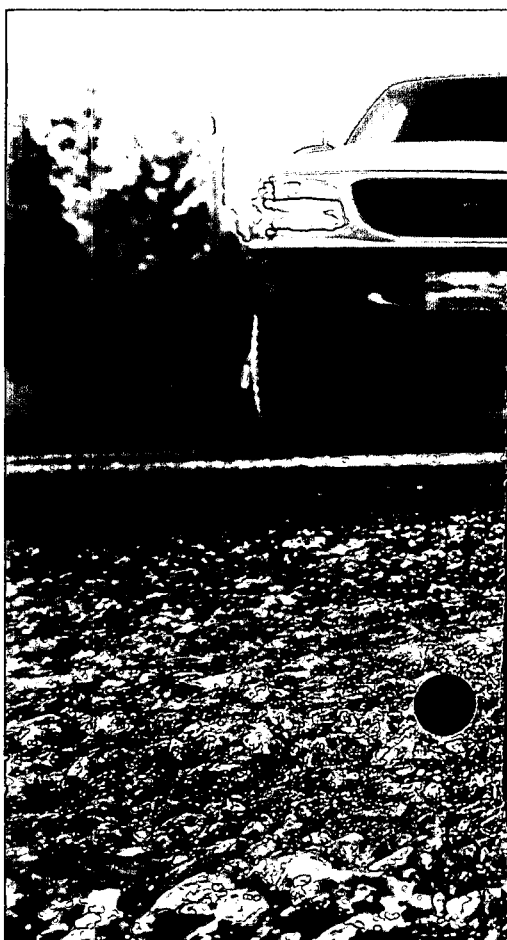


***Mole kingsnakes**, which can exhibit strong brown or reddish coloring, spend most of their time underground.*

MOLE KINGSNAKE

Lampropeltis calligaster

Though my species is the most common of kingsnakes in some parts of North Caroli it's probably the least familiar to you. That's partly because we spend much time underground, often in the tunnels of moles or other mammals. Despite the name, we rarely eat moles, except for the occasional young one; an adult mole is too large and powerful for any but the very largest of us. I do relish a baby pine vole, along with other small rodents and shrews, which I'm pretty good at catching underground. I also have a taste for lizards and small snakes. My kind average between 2 and 3 feet in length, but a big male of my species might grow to nearly 4 feet. When I was younger, I had a blotched pattern that made me look a bit like a corn snake, but it seems to be fading with age. Especially in the Piedmont, old males of my species may lose their pattern entirely, resulting in a plain, shiny brown snake with a yellowish belly; you sometimes call them brown kingsnakes. My species name, *calligaster,* means "beautiful stomach," presumably because one Richard Harlan, who named us in 1827, admired our pretty belly markings. In parts of the Coastal Plain, we're sometim erythristic (bright reddish)—an unfortuna phenomenon that has led to our exploitation by commercial pet collectors.



EASTERN KINGSNAKE

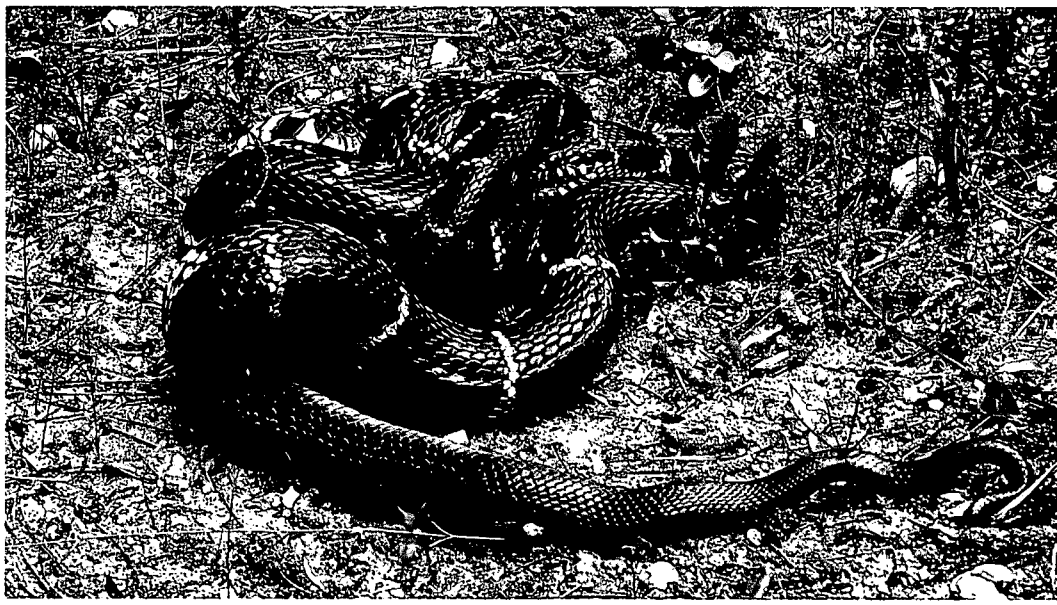
Lampropeltis getula

[redacted]en y'all say "kingsnake," we're the ones [redacted] usually mean. You might call us chain king, chain snake, thunder snake or swamp wamper. I'd sure like to know what a wamper is. The species name you gave us—*getula*—is even crazier. It refers to the Getulians, a Moroccan tribe. Near as I can figure, Linnaeus, the Swedish botanist who gave us that name in 1766, likened our chainlike markings to the pattern on some fabric woven by the Getulians. Makes a good story, anyway.

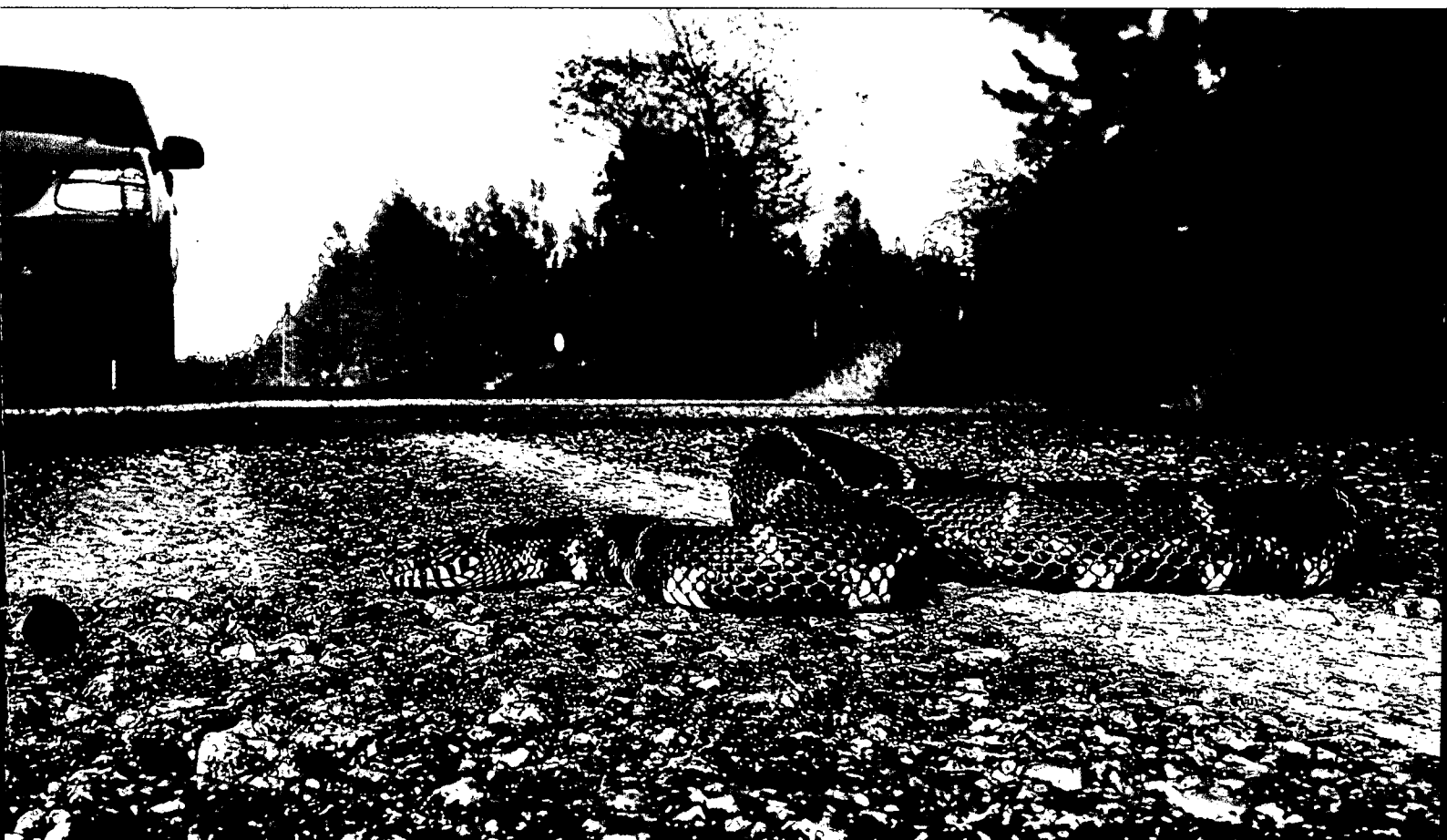
We're the largest of kingsnakes, occasionally exceeding 6 feet in length but averaging between 3 and 5 feet. We live in most parts of North Carolina except for the highest mountains, but are most common in the Coastal Plain and forested parts of the Piedmont.

In some places on the Outer Banks, we occur in a form that you call the Outer Banks kingsnake. Unfortunately, these attractive individuals have become especially prized by humans who illegally collect animals for the pet trade. The pet trade, along with the beach tourist traffic, [redacted] so reduced populations that you've seen [redacted] add our Outer Banks populations to your state list of species of "Special Concern." Our mainland populations are also declining, as your scientists have noticed.

Many among your species consider me a "good" snake because you think I kill or drive off "bad" venomous snakes. Thanks anyway, but the way I see it, a copperhead is not at fault because it happened to develop a powerful enzyme that helps it live. Nor am I "good" because I find copperheads edible. And you've heard that releasing kingsnakes in your yard will make your venomous snakes disappear? Just think about that one: If your yard is good habitat for us, we'll already be



***An Eastern kingsnake** constricts and consumes an Eastern hognose snake. Numbers of both species have been reduced by habitat loss, automobile traffic and the pet trade.*



...WHAT WE'RE LOOKING FOR IN THOSE BARNS IS MICE, NOT MILK. . . . YOUR COW WENT DRY FOR SOME OTHER REASON.

there, in precisely the numbers the habitat can support. If it's also good habitat for copperheads (or whatever), they will be there too, in just the numbers that it can support. Predators rarely eliminate their prey; predator and prey strike a balance. Moreover, like many animals, we're territorial, and if you relocate us, we'll probably go back home or die trying.

Incidentally, despite another of your tales, I am incapable of causing thunder. You tell *me* how that got started.

SCARLET KINGSNAKE/ EASTERN MILK SNAKE

Lampropeltis triangulum

Mine is a highly variable species—a species complex, actually, composed of about two dozen subspecies, ranging from Canada to Argentina. A fellow named Lacépède coined our species name, *triangulum*, based on the triangular marking on an Eastern milk snake's head. In North Carolina, we come in two basic forms, so different that you once considered us separate species. Your ideas about species can get pretty complicated.

You see, in the mountains and foothills we occur in a form that you call the Eastern milk snake *(L. t. triangulum)*, because someone got the notion that we sneak into barns and milk cows. I could give you several reasons why that couldn't happen. Imagine the difficulty we'd have reaching a cow's udders, let alone forcing milk from them. No cow would endure our tiny, needle-sharp teeth—plus, our stomachs are totally unsuitable for digesting milk. Facts can ruin a good story, but what we're looking for in those barns is mice, not milk. We also eat small snakes and lizards. Your cow went dry for some other reason.

Eastern milk snakes average about 2 to 3 feet in length. I myself have a blotched pattern, somewhat like that of a young rat snake or a drab corn snake, not much like the copperheads you sometimes confuse us with. Our young have a more colorful, vivid, often reddish pattern.

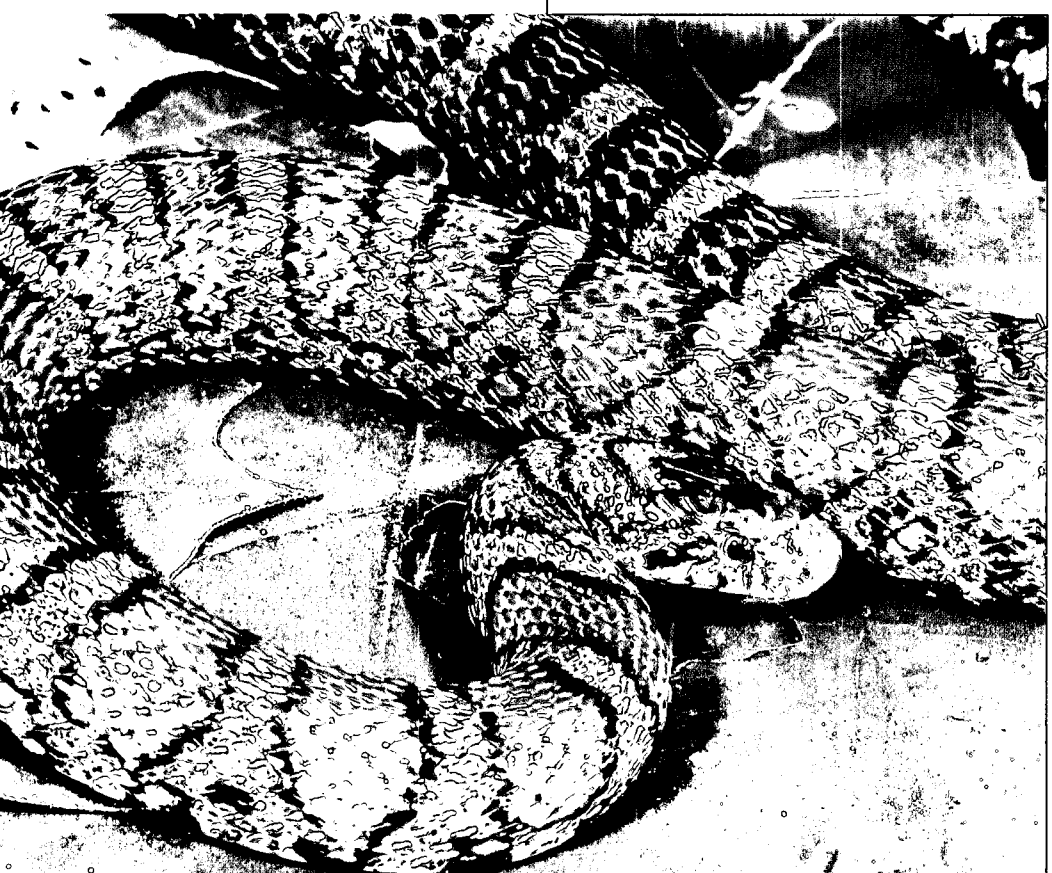
In forested areas of the Coastal Plain, and in some areas of the Piedmont where forests remain, we occur in a smaller form that you call the scarlet kingsnake *(L. t. elapsoides)*. Scarlet kings rarely reach 24 inches in length, but they compensate with color. They somewhat resemble one of your holiday candy canes. Some of you believe they mimic the venomous coral snake (*elapsoides* essentially means "like a coral snake"), but it's not quite that simple. Mimicry is a complex topic, and your species can oversimplify things (as in "kingsnakes cause thunder").

In the northeastern Coastal Plain, we occur in a form that's best described as intermediate: the larger size and pattern of the milk snake, with the colors and behavior of the scarlet king. You once regarded this form as a separate subspecies or even a full species. Now you generally consider it an intergrading population and call it "Coastal Plain milk snake." As you wish.

Scarlet kingsnakes are specialists, adapted for eating skinks, those little armored lizards that other animals send back to the chef. We'll also eat other lizards and tiny snakes such as earth snakes and crowned snakes. Occasionally, we might raid a nest of newborn mice. We're secretive and more nocturnal than the other kingsnakes, spending much time underground, inside logs or under loose bark on logs and stumps.

Though often considered rare, we're still fairly common in a few places, and not terribly difficult to find at the right time of year, if you don't mind destroying our microhabitat. We'd rather you didn't. We're mostly a bigwoods species, most common in longleaf pine forests. So when forests fall for agriculture or development, we are one of the first reptiles to disappear. And why, might you ask, would a small, secretive snake require large, forested tracts, especially when it survives on skinks, which live on most any urban lot? That's for us to know and you to find out. We kings have our secrets. ⊠

The Eastern milk snake (below) also occurs in a brighter, smaller form known as the scarlet kingsnake (right).



Conservation groups make noise about the location of a planned Navy airstrip.

A PROAR

WRITTEN BY GREG JENKINS
PHOTOGRAPHED BY F. EUGENE HESTER

Honking, quacking and chirping are the noises you expect to hear at Pocosin Lakes National Wildlife Refuge. Its 113,000 acres of scrubby swampland, pine forest, agricultural fields and natural lakes host hundreds of thousands of migratory waterfowl each winter. Ducks, snow geese, tundra swans and Canada geese converge on the lakes and forage in recently harvested farm fields. The flurry of activity during the winter roost can often resemble a giant-sized version of a child's snow globe: Shake it up, and the sky is filled with large, white birds taking flight. It's an amazing sight—a Discovery Channel program waiting to be filmed.

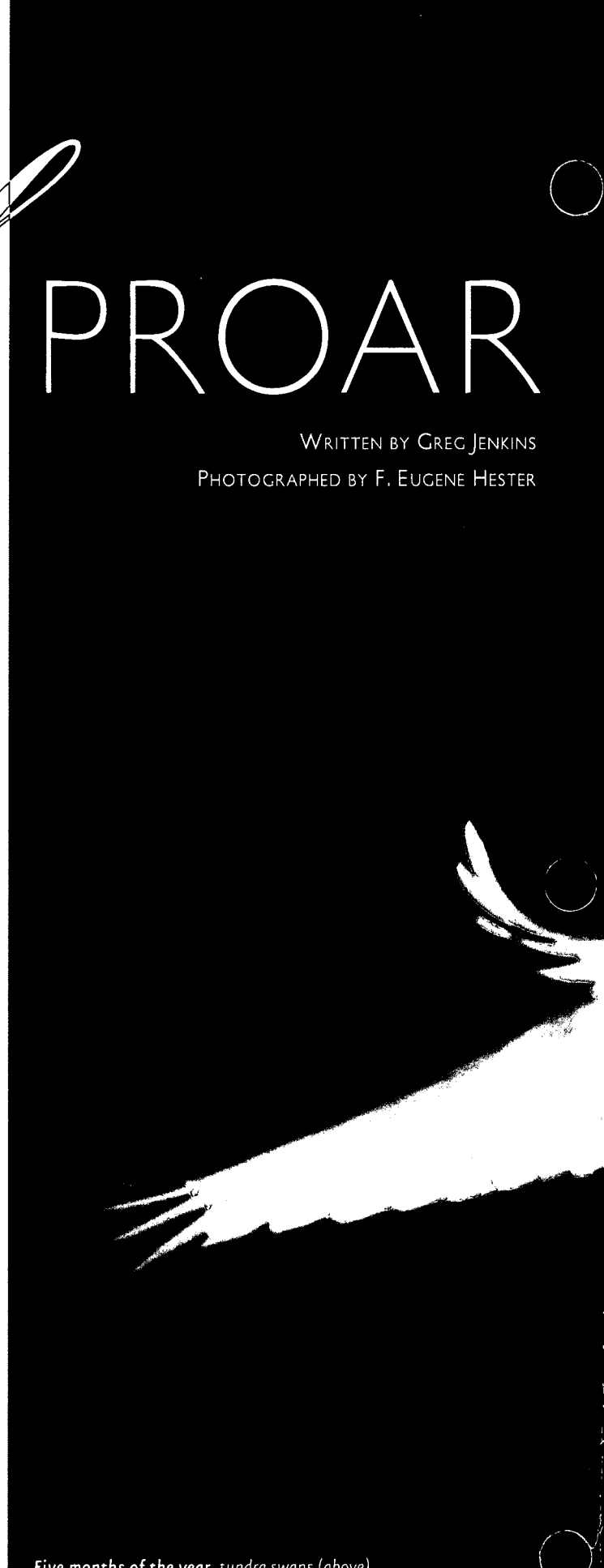
But if the U.S. Navy has its way, in a few years the dominant sound heard in the skies near Pocosin Lakes will be the roar of F/A-18 Super Hornet fighter jets. Despite the fervent protests of state and national conservation groups, state and local governments, the U.S. Fish and Wildlife Service and residents of the Albemarle region, the Navy announced its intention to build an outlying landing field (OLF) in southern Washington County near the Beaufort County line. The facility will allow Super Hornets based in Virginia Beach and Havelock to practice aircraft carrier landings on land.

Opponents argue that an OLF site near the wildlife refuge would threaten wintering waterfowl by eliminating habitat and foraging areas; depress the local economy through loss of tax and tourism revenues; and endanger Navy pilots practicing touch-and-go landings at the facility. The landing field's holding pattern would come within 2/10 of a mile of the refuge, where 20-pound birds could readily damage $60 million aircraft. The Navy is confident that it can mitigate the habitat loss, economic decline and pilot risk to acceptable levels, based on experiences at other air bases located near areas rich in wildlife.

There are few hard facts to support either side in the controversy; the fight centers on what-if scenarios. However, that has neither stopped the Navy from moving forward with steely resolve nor deterred organizations opposing the OLF from responding with equal zeal.

"We tried to find truly the best site from an operational and an environmental criteria standpoint, and we think we did," said Dan Cecchini, the Navy's project manager in charge of completing the environmental impact statement (EIS) for the siting of the Super Hornets on the East Coast. "We think the Washington County site has some advantages over the other sites, and that's why we listed it as our preferred."

"This landing field is the biggest conservation story in the history of the state," said Joe Albea, host of TV's "Carolina Outdoor Journal" and a leader in the fight to prevent the field from being built. "It's just not right, and we're not going to have it. We're going to stop it."



Five months of the year, *tundra swans (above) and snow geese (right) dominate the skies above the site chosen for a Navy practice field to be used by Super Hornet fighter jets.*



Why Washington County?

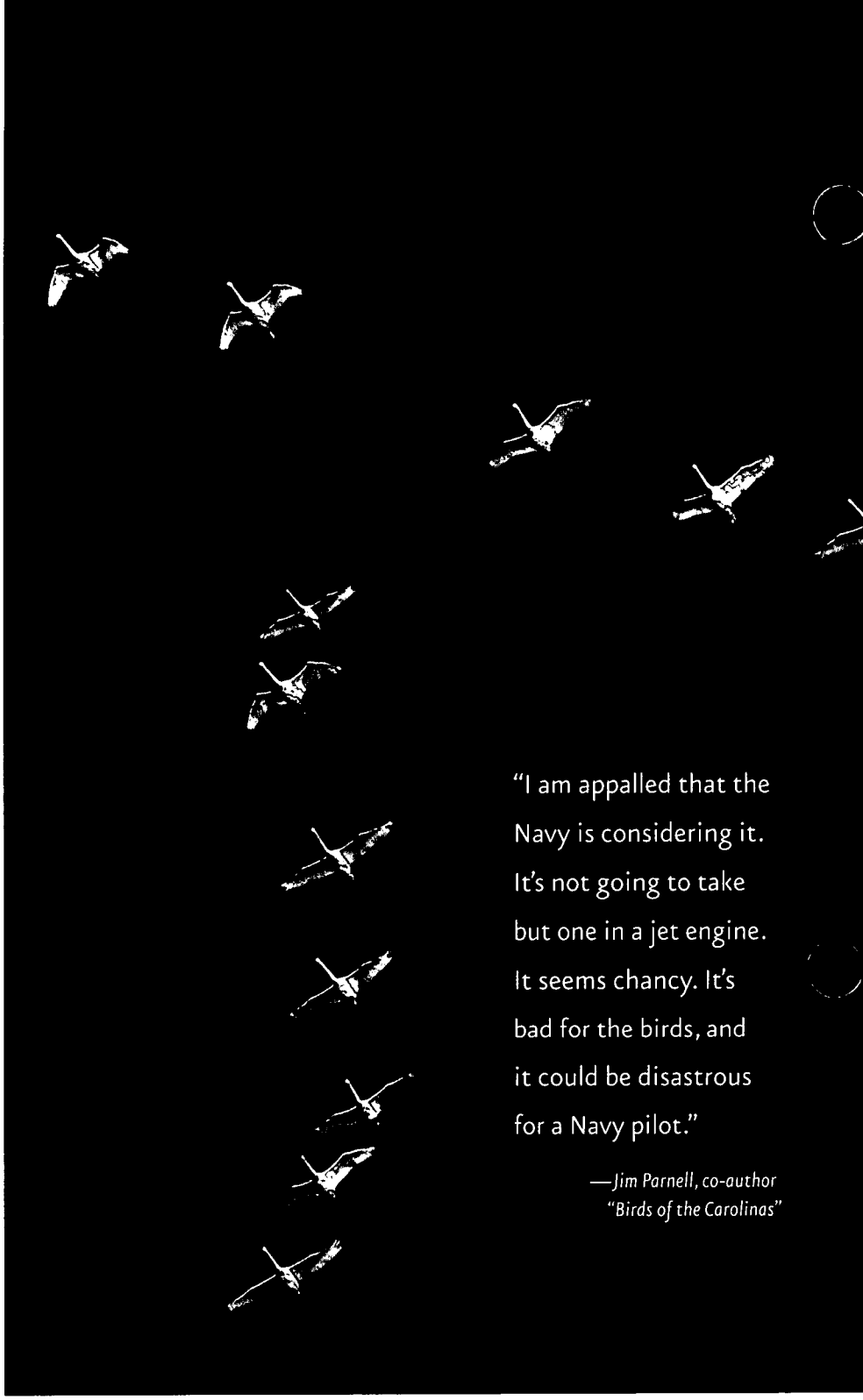
On Sept. 10 of this year, the Navy announced that it had selected a rural, coastal location that is almost perfect for its purposes. Geographically, it is halfway between Naval Air Station Oceana in the Tidewater area of Virginia and Marine Corps Air Station Cherry Point in Craven County. Ten squadrons of 12 Super Hornets apiece would be split between the two bases. To replicate a night landing on a carrier in the open ocean, the OLF must be in an area that is largely undeveloped. Washington County, population 13,700, meets that requirement. The Navy plans to purchase 30,000 acres and relocate 74 homes. The field itself requires less than 3,000 acres for the runway and surrounding buildings, but the noise buffer zone around the OLF is about 10 times as large. Even if it paid slightly more than market value and assisted with relocation expenses, the Navy would spend relatively little on land acquisition. And because the county's population density is low, few human neighbors would be bothered by the noise created by the OLF's operations.

"We looked at a bunch of different sites," Cecchini said. "We've evaluated the merits of all the different sites and tried to put our blinders on, not paying any attention to political or state boundaries or county boundaries."

In human terms, the OLF's impact on Washington County is easy to define. The Navy's acquisition of the land will take thousands of acres of prime farmland out of private ownership—farmers might be allowed to lease some fields inside the noise buffer—removing $200,000 in annual tax revenues from the books in Washington and Beaufort counties. The landing field would provide about 50 jobs, but because very few personnel would be based at the OLF, Navy fliers and their families won't move into the area to live and spend money. Many area residents have complained that locating the landing field there means the Albemarle region gets all the impact and none of the benefit.

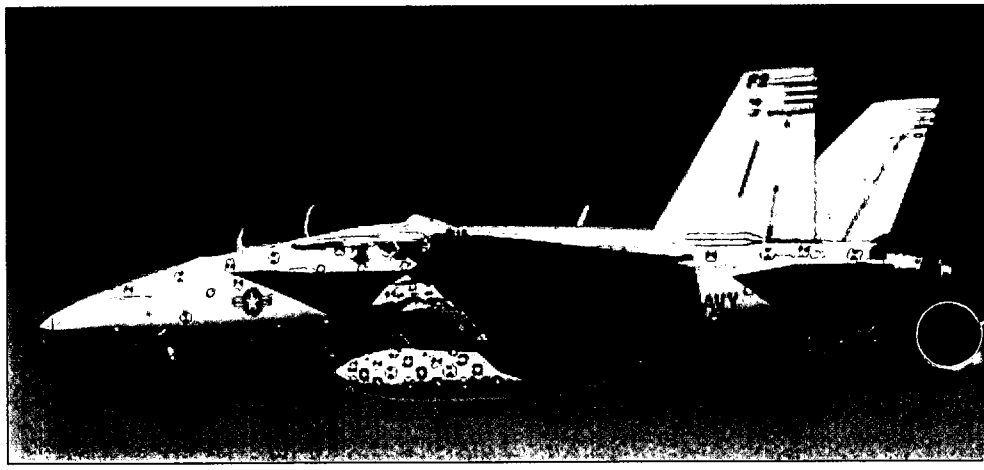
Bothering the Birds

The big question is not whether the Navy's avian neighbors 5 miles away at the refuge would be bothered, but how much. Pocosin Lakes is home to more than 100,000 wintering waterfowl each year, but the refuge's main management focus and claim to fame are its big, white birds. From October through March, as many as 90,000 tundra swans and snow



"I am appalled that the Navy is considering it. It's not going to take but one in a jet engine. It seems chancy. It's bad for the birds, and it could be disastrous for a Navy pilot."

—Jim Parnell, co-author "Birds of the Carolinas"



U.S. NAVY

geese roost on Pungo and New lakes within the refuge and on Phelps Lake immediately adjacent to the refuge. Tundra swans are docile and difficult to scare, but snow geese are flighty and easy to spook. Biologists with the N.C. Wildlife Resources Commission have reported that once a flock of snow geese scatters, it can take as long as an hour for them to settle down. With the irregular schedule of operations at the OLF—flights at night, days with no flights, days with hundreds of landings—it could be difficult for the birds to become habituated to the jet noise.

"We've seen them, time and time again, flare up in a big flock for no apparent reason, and then a plane comes over a few seconds later," said Howard Phillips, the refuge manager at Pocosin Lakes. "That plane disturbed them or got them going up into the air when it was far away. I've seen eagles blow them off in one big mass—they're all over the place—and I know the planes are going to do the same thing."

The Navy says it is used to dealing with large flocks of snow geese at installations such as Naval Air Station Whidbey Island in Washington state, which appears to be the base that is most similar to the Washington County OLF site. Navy experts are not worried about dealing with the skittish critters. The EIS suggests that because military flights pass over the refuge occasionally and the numbers of waterfowl there are still high, the birds become somewhat habituated to the noise. The report also states that average sound levels at Pocosin Lakes would be 49 decibels, which is quieter than conversational speech at 1 foot away. The Navy's formula averages all noise during a typical 24-hour period, taking into account the 99 percent of the time there is peace and quiet and factoring in the brief periods of jet noise. Still, the level of average quiet does not assuage the fears of those who monitor the behavior of the snow geese on a daily basis. "I will be amazed if snow geese habituate to jet noise," said Wendy Stanton, a U.S. Fish and Wildlife Service biologist at Pocosin Lakes. "They're so wary."

The OLF's effects on wildlife populations are difficult to predict, but only the Navy's scientists and wildlife managers claim there will be little or no harm. The Wildlife Commission, in a letter to the secretary of the Navy, insists that any habitat loss associated with building an OLF would indeed be deleterious. If tundra swans and snow geese are forced to fly further from the refuge to find food, they will use more energy to obtain their daily calories. That, in turn, could damage the birds' health and reproductive ability.

"Following the loss of prime foraging areas, waterfowl would 1) be forced into suboptimal habitat, 2) spend more time in preferred areas, but with more crowding, and 3) use more energy," stated the commission's letter. "These responses would potentially have negative consequences on populations."

A significant decline in the populations of geese and swans could mean a corresponding drop in ecotourism and hunting. Phillips is convinced that the number of visitors to Pocosin Lakes will fall if the birds don't show up like they have for centuries. Then there's the noise factor. A flyover in the OLF's holding pattern has been estimated at anywhere between 90 and 100 decibels, which would equate to a power tool or a subway train. Phillips thinks that hunters will not put up with more than a few instances of jet noise scaring away a big deer or bear. Likewise, bird-watchers probably will not take kindly to fighter planes causing them to miss a glimpse of an easily startled species.



***Wildlife managers fear** that the awesome spectacle of flocking birds over Pocosin Lakes refuge would be diminished if landing-field operations reduce bird populations.*

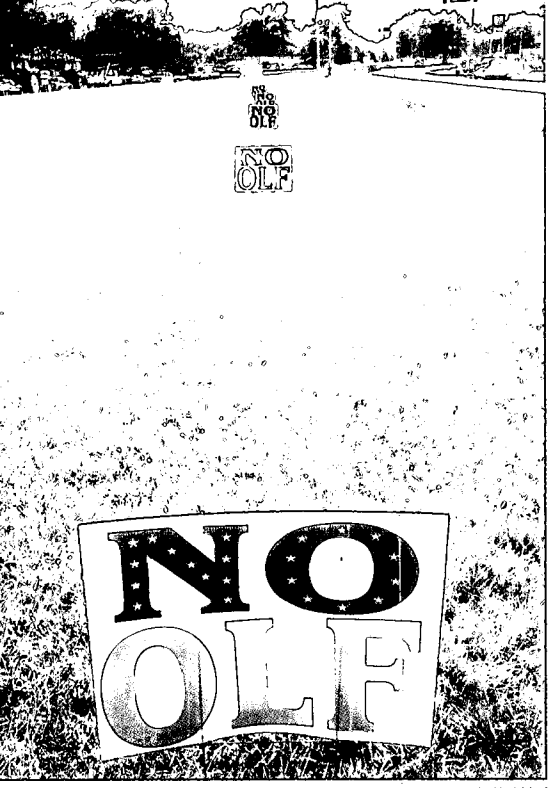
***Even one or two** tundra swans hitting a $60 million Super Hornet could cause serious damage and perhaps even a crash.*

The Navy Stands Alone

Wildlife organizations have uniformly condemned the Washington County OLF site. The U.S. Fish and Wildlife Service, which manages Pocosin Lakes, and the Wildlife Commission, which manages nearby Scuppernong, Lantern Acres and Van Swamp game lands, informed the Navy that its OLF plans conflict with the habitat restoration and expansion goals the two governmental agencies have worked toward for years. Private groups such as Ducks Unlimited, the Atlantic Flyway Council, the National Audubon Society, The Nature Conservancy and the N.C. Natural Resources Group have all expressed their desire that the Navy find an alternate site.

These groups differ with the findings of the Navy's environmental impact study. Ducks Unlimited claims that Super Hornet noise would be disruptive to large numbers of waterfowl. The Atlantic Flyway Council, an organization of the directors of state and provincial wildlife departments along East Coast migratory routes, wrote that the mix of birds and aircraft at the same altitudes was reason to disqualify the Washington County site. The Nature Conservancy says that the OLF site is "entirely unsuitable based on potential impacts to conservation areas." And the state chapter of Audubon is working with the Southern Environmental Law Center to craft a lawsuit barring the Navy from building there. "The only people saying it works are Navy employees," said Chris Canfield, executive director of Audubon North Carolina. "Their case would be stronger if they had corroboration from another agency."

The state's political leaders have entered the fray. U.S. Sen. John Edwards came out against the Washington County OLF site, asking for a congressional hearing into the matter, and U.S. Sen. Elizabeth Dole met with Albemarle region leaders and the acting secretary of the Navy, Hansford Johnson, in an attempt to negotiate better terms for the deal. Gov. Mike Easley also attempted to bargain, saying that the Navy's plan to base two squadrons of Super Hornets at Cherry Point is not enough to offset the economic loss in the coastal counties to the



GREG JENKINS

north. Easley wrote that he would prefer either to have no OLF at all or to host no fewer than five squadrons in return for allowing the OLF somewhere other than in Washington County.

What Next?

Phillips is afraid he will have to shift his staff's management efforts to other species if the populations of tundra swans and snow geese decline because of OLF operations. On the state level, the Wildlife Commission could shift its management and enforcement efforts to other areas of the coast if the predicted declines in wildlife populations and ecotourism occur.

It appears that the next phase of the OLF struggle will take place in a courtroom. The Audubon lawsuit will challenge the Navy's EIS by saying the study does not meet National Environmental Policy Act standards. Audubon North Carolina's Canfield, a former Air Force public affairs officer, said the severe risk of bird strikes should have been a deal-breaker when it came to selecting a site for the OLF. The geographic location might be perfect, he said, but with a huge population of big birds accustomed to flying long distances to feed, the site poses a danger for birds and pilots that is unacceptable. "It's like having a new design for an aircraft, except the tail falls off when you turn left," Canfield said. "Then you say, 'We're just going to change the way we fly so we don't have to turn left.' Ridiculous. It's got all the factors except one big one. I thought they would take the location off the table when they knew the facts. Wildlife people don't always agree, but we're in lockstep on this issue." ☒



"I think the refuge is going to be minimally impacted from operations at the OLF. I think there are going to be some outstanding opportunities to partner with U.S. Fish and Wildlife and other resource agencies to provide and expand the ecotourism opportunities in the area."

—Dan Cecchini, Navy F/A-18 EIS project manager

How to Avoid Hitting Your Neighbors

If the OLF is built, the Navy's greatest day-to-day challenge will be bird avoidance. The new Super Hornets are tough aircraft—one of them hit a flock of 17 pelicans recently and was able to land, be repaired and return to service—but all it takes is one bird strike at a certain angle to shatter an F/A-18's canopy or severely damage its engine. To lessen the possibility of bird strikes, the control tower will need hard data on the best and worst times to fly. To provide that information, the Navy would need to monitor the movement patterns of birds from the refuge and surrounding areas for a couple of migratory seasons while the OLF is being built.

Matt Klope, a wildlife biologist and director of the Navy's Bird/Animal Strike Hazard program, said that the OLF ground crew must consistently see the birds and warn the pilots to prevent accidents. To accomplish that, the Navy will put its faith in extraordinary radar technology that detects flocks of birds in flight for miles in every direction. Field radar operators might even be given direct radio access to pilots to immediately instruct them to change flight paths to avoid a bird strike. Of course, even the best radar and communication cannot prevent an occasional impact with a bird, especially because frequent night operations at the OLF mean pilots won't be able to see the birds. "All I can say is it could happen in Anywhere, USA," Klope said.

Find Out More About The OLF

www.efaircraft.ene.com □ www.albemarlecommunity.net □ www.safetycenter.navy.mil/aviation/operations/bash/default.htm



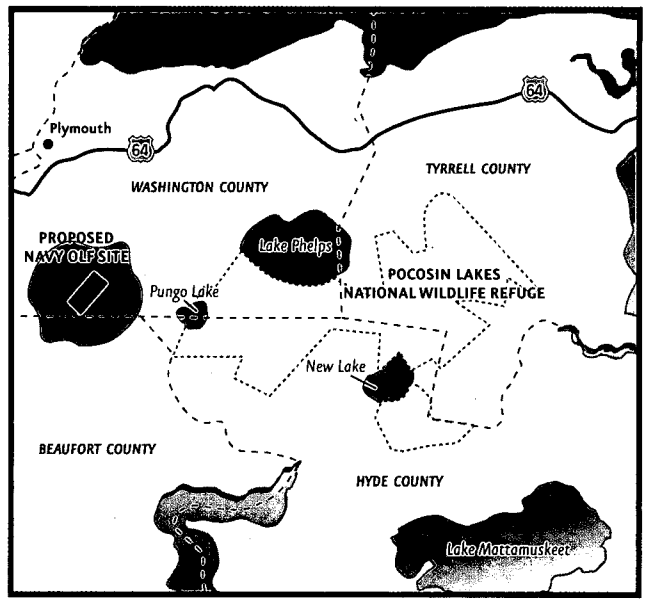
***Washington County** residents protest the [illegible]lying landing field, and migratory Canada [illegible]e might go somewhere else if the disturbance is too great.*

"The [Navy's] written decision suggests that the bird strike risk at the Washington County field site is similar to other sites in the area and that a standard Bird Aircraft Strike Hazard Plan can be developed to mitigate this concern. This conclusion is erroneous . . . the use of radar for real-time bird avoidance is still in development and not currently part of naval air operations anywhere in the world."

—Ron Merritt, former Air Force BASH chief and radar surveyor of Washington County OLF site

Bird-Heavy Refuges Near Military Air Bases

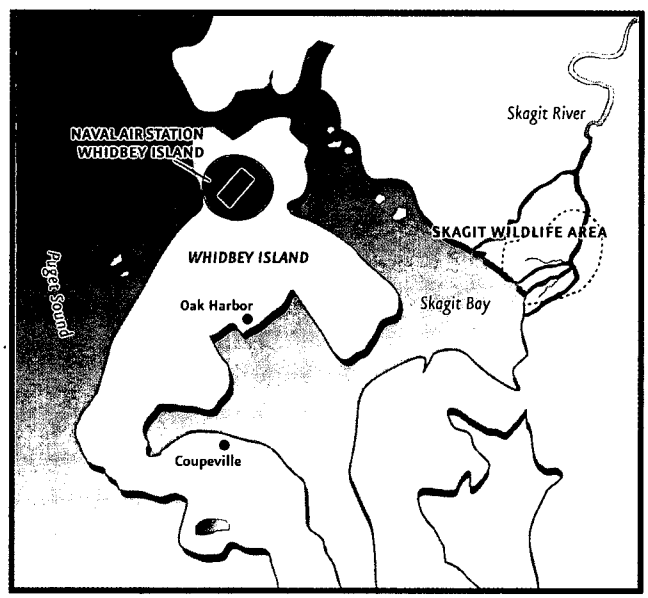
GRAPHICS BY MARSHA TILLETT



Site: Pocosin Lakes NWR, Washington, Tyrrell and Hyde counties, N.C., 5 miles from proposed Navy OLF

Birds/movements: 90,000 tundra swans and snow geese; fly as many as 20 miles one way each day to forage

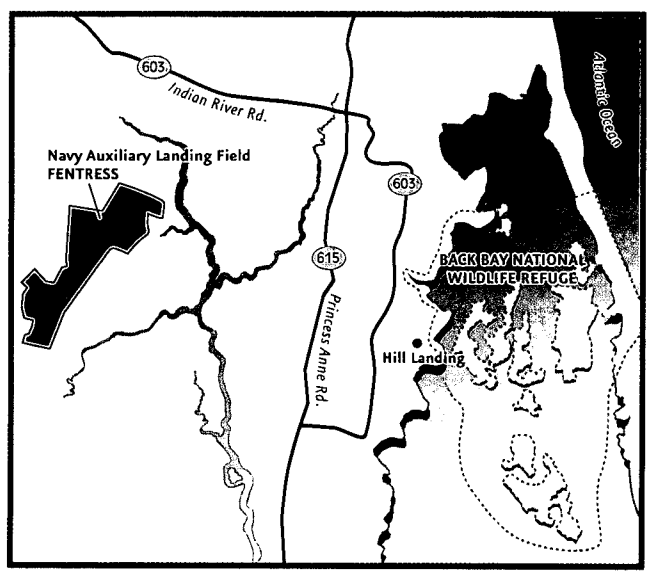
Aircraft/movements: F/A-18 Super Hornet jets; fly within 5 miles of refuge, holding pattern 2/10 of a mile from refuge at approx. 800 feet altitude



Site: Skagit Wildlife Area, Conway, Wash., 10 miles from NAS Whidbey Island

Birds/movements: 70,000 snow geese; feed mainly on refuge

Aircraft/movements: EA-6B Prowler jets, various prop planes and large jet troop transports; landing pattern and maneuvers over refuge at approx. 1,000 feet altitude



Site: Back Bay NWR, Virginia Beach, Va., 10 miles from NALF Fentress

Birds/movements: 10,000 snow geese; generally stay within 5 miles of refuge

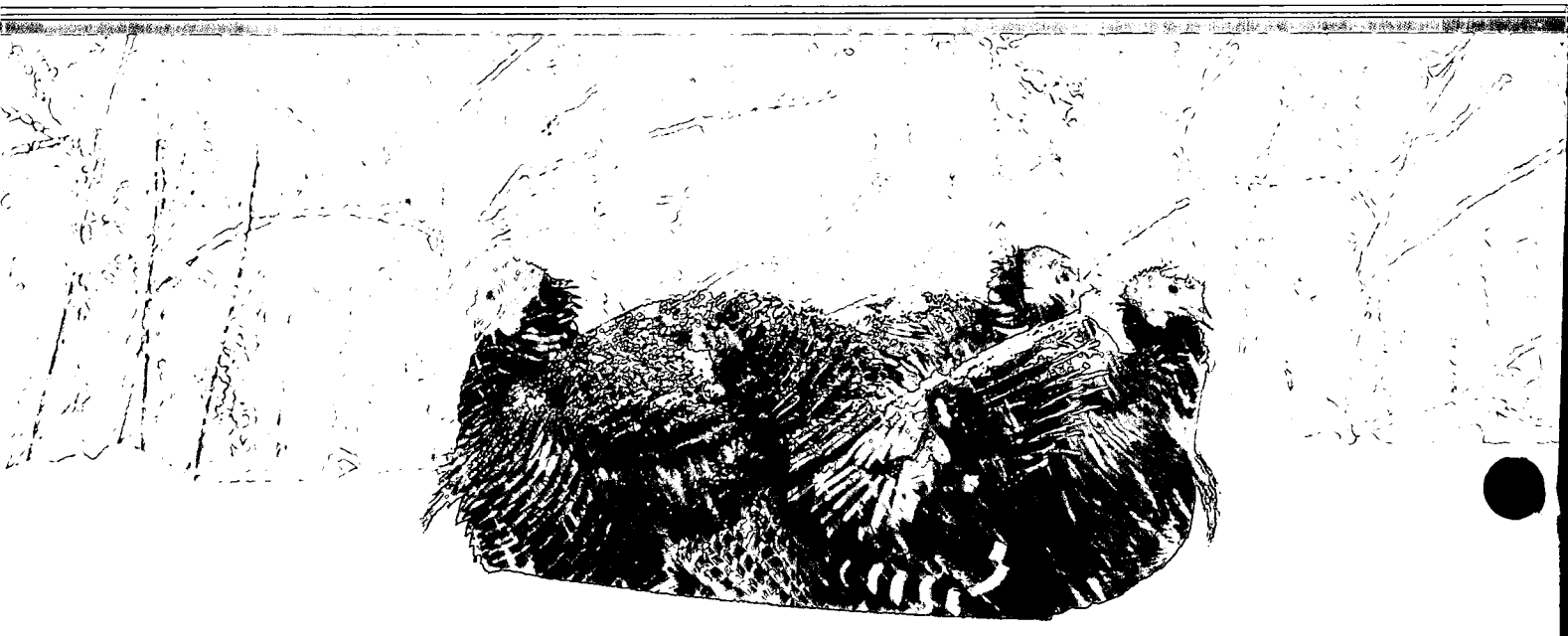
Aircraft/movements: F-14 Tomcats and F/A-18 Hornet jets from NAS Oceana (7 miles north) practice carrier landings at Fentress, flying within 3 miles of refuge

Sources: U.S. Navy, U.S. Fish and Wildlife Service, *National Geographic* magazine, Washington Department of Fish and Wildlife, The Nature Conservancy, Mapquest.com



Turkey Hunting
THE OLD-TIME WAY

January will mark the first time in decades that North Carolina has had a cold-weather turkey season. WRITTEN BY JIM CASADA



An old adage has it that you can't know where you are going if you don't know where you've been. When applied to turkey hunting, most Tar Heel turkey hunters don't know where they've been. But that's not their fault, because it has been decades since North Carolina hunters have enjoyed the opportunity to participate in the sport's roots. The reason is simple. Traditional turkey hunting took place in the late fall and winter months, and for many years the only turkey hunting season in North Carolina has occurred in the springtime.

Today, virtually everyone agrees that the decision to move from fall and winter hunting to a season held during the mating period was a part of the wild turkey's salvation. When fall/winter hunting was still the norm, the wild turkey was in desperate trouble not only in North Carolina but across the country. Turkeys were gone from many areas where America's big game had once existed in appreciable numbers. Where they survived, wild turkeys lived only in the most remote, protected regions.

It needs to be noted that it was not fall hunting alone that led to this sad state of affairs. A host of other factors, including market hunting, ridiculously high seasonal limits (in some states ranging as high as 25 birds annually), rampant baiting, poaching and poor to nonexistent management practices, also entered into the picture.

THE COMEBACK. Fortunately, things changed when biologists discovered that trap-and-transfer stocking combined with gobbler-only hunting in the spring mating season could reverse the wild turkey's serious dilemma. Today, its return represents one of the finest conservation sagas in the history of American wildlife management.

North Carolina has been an integral part of that story. A large number of turkey biologists, backed by the National Wild Turkey Federation, did their part, and the wild turkey began to trot down the comeback trail. Restoration is, for all practical purposes, an accomplished fact statewide (Wilson County is the only county without a spring season). It has been so successful that January 2004 will offer the first opportunity in decades for Tar Heel hunters to pursue turkeys at a time other than spring.

A TENTATIVE FOOTSTEP INTO THE PAST. In 2003, the N.C. Wildlife Resources Commission approved a winter either-sex season on private lands in Alleghany, Ashe, Caswell, Granville, Person, Rockingham, Stokes, Surry and Watauga counties. The dates will be Jan. 12–17, and hunters will be allowed to kill one bird. If they do so, they will be able to take only one gobbler (instead of two) the following spring. A draw hunt will offer limited opportunities to hunt on the Caswell Game Land. Use of dogs, a favored technique of old-time hunters, will be permitted. The regulations reflect some of the lessons learned in neighboring Virginia, where fall hunting has been available for decades. Specifically, the timing avoids deer season, when legal baiting for deer could potentially lead to illegal baiting for turkeys.

TIPS FOR TAKING TURKEYS IN THE WINTER. The time-tested strategy most commonly used in winter hunts involves locating a flock of turkeys (usually hens and their young of the year), scattering them and then calling them back to the area where they were separated. Young turkeys have a strong flocking instinct, and when separated they become quite vocal in trying to regroup with other birds.

The idea is to break up the flock as completely as possible, using secondary scatters if birds fly in the same direction. Then you build a blind at the site the flock just vacated. You want to be well hidden but have open areas for good shots. Depending on whether they have been pressured by previous scatters, flocks may begin to reassemble almost immediately or wait as long as an hour. In the case of bachelor groups of old gobblers, the wait can be appreciably longer.

Once the turkeys begin "talking," you need to get in the conversation immediately. Unlike in spring hunting, it is practically impossible to call too much to flocks of hens and their young in winter hunting. Use yelps, clucks and kee-kee-runs liberally. One tried-and-true approach is to mimic whatever you hear.



JIM CASADA

A FOCUS ON TURKEY FOODS

Wild turkeys have an incredibly diverse diet, but the hunter who can pinpoint primary sources of food during the winter season greatly increases the likelihood of close encounters of the desirable kind. Some scouting can be of considerable assistance, because extensive scratching and other types of recent signs indicate that turkeys are using a given area with regularity. If you find such signs, try to figure out what the birds are eating. Among the favored fall/winter foods are acorns, beechnuts, dogwood berries, sparkleberries and any kinds of insects the birds might be able to locate.

***A turkey track** in the snow (facing page) is a sure sign that a flock is nearby.*

JIM CASADA (TOP); MASLOWSKI PHOTOGRAPHY



MASLOWSKI PHOTOGRAPHY

WINTER LONGBEARDS

Most of the turkeys killed in fall and winter hunting are young of the year, but it is possible to harvest mature gobblers. They have little if any of the flocking instincts of young birds, although they do tend to travel in bachelor groups. Sparse calling, with an emphasis on coarse clucks and the occasional gobble, works best. Keep in mind that if you break up a bunch of gobblers, it is possible they will reassemble almost immediately and with minimal vocalization. Accordingly, rather than taking time to build a blind, set up at once and be on your toes. At most, cluck once or twice in a 15-minute period. If nothing happens, build a blind and be prepared to wait a long time, maybe hours, and even then the likelihood of success isn't high. Henry Edwards Davis, author of "The American Wild Turkey," put it best: "Any fool can kill a lovelorn old gobbler in the mating season, but the mark of a true turkey hunter is the ability to fairly call and cleanly kill one in the fall."

This standard approach to winter turkey hunting lends itself nicely to two or three hunters calling together. When turkeys are talking in all directions as they draw near, multiple callers sound as if several turkeys have already gotten back together. Also, winter is a wonderful time to introduce youngsters to the sport. They will hear far more of the turkey's vocabulary than is the case in spring hunting. They can be encouraged to get in on the calling without worrying about a false note or two ending the entire affair. And the likelihood of success is a good bit higher than in springtime.

Scattering birds may seem simple, but it definitely is not. It takes skill to get close enough to a flock to send it into frightened flight to all points of the compass, as opposed to having it run off or fly away as a group. For that matter, you have to locate a flock before you can even think about scattering it, so let's discuss the details of finding and flushing turkeys.

Locating turkeys can be done by trial and error or by the walk-and-call technique spring hunters call "trolling." However, a more dependable method requires doing your homework before the season opens. Look for favored roosting and feeding sites and daily travel routes. The ability to read signs—scratchings, droppings, dusting areas, tracks and indications of roosting spots—helps a great deal. And, a wet overnight snow can be a great ally. Venture out the next morning and look for tracks. You can learn a great deal about turkeys and what they do by following a flock for an hour or two. (Try not to disturb them in the preseason.)

There's no better time to achieve a really good flush, one that sends birds winging in every direction, than just before dawn or shortly after dusk. In the predawn scenario, walk through an area where you think turkeys have roosted and raise as much ruckus as possible. Yelling or slapping trees with a folded-up newspaper can help. Should you pull off a scatter, build a blind and wait for the birds to start calling. If you do not hear anything in half an hour, initiate the calling on your own. If you see birds fly up to roost at dusk, wait until the light has faded before trying to scatter them. Otherwise, all the turkeys will fly toward the last remaining bit of light in the west. Once you have scattered them from the roost, go ahead and build a blind, but make sure you can

find your way back to it well before daylight the next morning.

Another method of flushing requires g-team effort by two or more hunters. Should you spot turkeys in an open field or pasture, try to maneuver into positions on opposite sides of the area without being seen. Then on a prearranged signal, perhaps a shot into the air or a loud yell, charge the flock like a bunch of Civil War buffs reenacting the Battle of Bull Run.

For the lone hunter (and the sport is one that in many ways lends itself not only to solitude but to the solitary approach), stealth and plenty of scheming offer the greatest likelihood of good scatters once turkeys are on the ground. In the hilly or mountainous terrain where North Carolina winter hunting takes place, one effective approach is to follow a ridgeline while making sure to keep a few feet below its crest. Ease to the top from time to time and check for the sights and sounds of feeding turkeys. Provided the forest understory is reasonably dry, a flock will sound almost exactly like a human walking through the woods.

Should you spot turkeys, try to figure out their general direction of travel. You then decide whether to cut them off e pass, ambushlike, or position yourself close enough to scatter them effectively without being seen. One other possibility, and it has worked for me more than once, is to try calling the entire flock. More often than not they will simply answer and go on about their business, but on occasion the entire group decides to check out the lonesome bird they think they hear.

As in most any type of hunting, there's no substitute for firsthand experience, and it should be ongoing. Or, as the dean of American campers and longtime North Carolina resident Horace Kephart put it, "In the school of the outdoors there is no graduation day." Come January, those who try their hand at winter turkey hunting in the Old North State will find themselves enrolled in a new school on an equal footing, because most will have had no previous experience with this type of hunting. It differs markedly from the hunts in spring, but the excitement of the quest is just as intense. It's a marvelous chance avel back to experience a sporting d we almost lost. ⊠

Editor's Note: Any thoughts on this story? E-mail margaret.martin@ncwildlife.org.

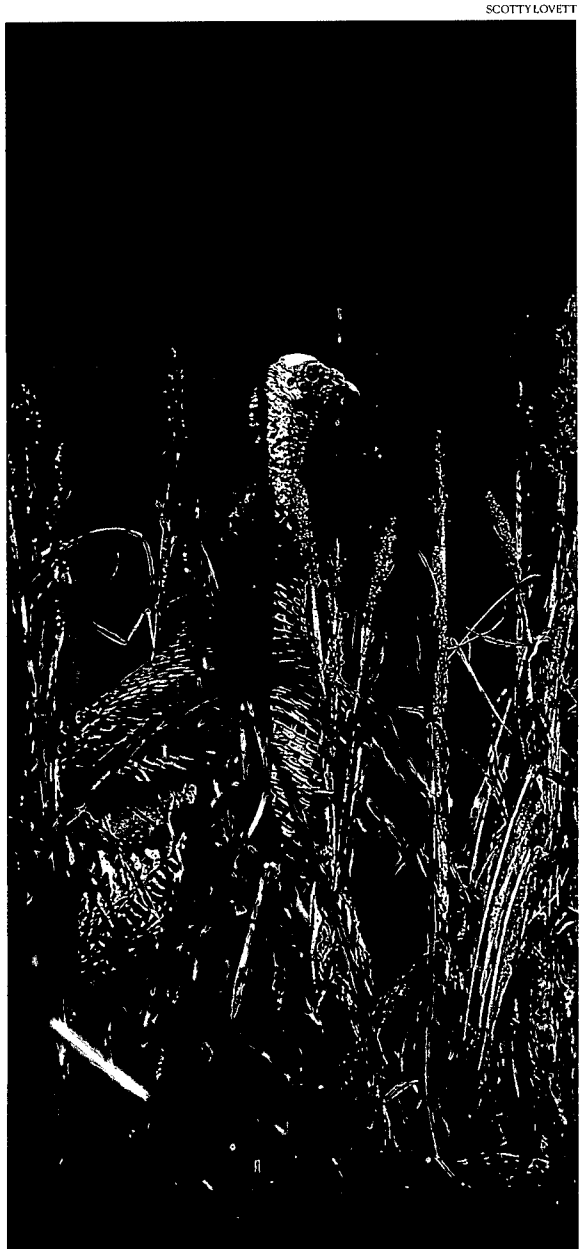


MATT LINDER

HUNTING WITH DOGS

Should you hunt with a capable turkey dog, a genuine treat lies in the offing. A canine companion trained to deal with turkeys will cover far more ground than humans possibly can. A dog can also trail turkeys once it hits a scent and get far better scatters when it finds the flock. Ideally, a turkey dog trails silently until it actually sees birds, and once this happens it barks even as they take wing in all directions. Hunters then go to the point where the barking occurred, build a blind and secure the dog.

SCOTTY LOVETT





MATT LINDER

After scattering a flock *of turkeys, concealed hunters should make liberal use of assembly calls such as yelps, clucks and kee-kee-runs to try to draw the turkeys back in.*

DRAMA IN THE Surf

PHOTOGRAPHED BY KELLY CULPEPPER



SURFCASTERS BATTLE THE ELEMENTS IN HOPES OF LANDING A PRIZE STRIPED BASS.



A COLD FRONT PUSHES DOWN THE COAST, AND IT'S HARD TO TELL WHERE THE ROLLING OCEAN and slate-gray sky meet. For surfcasters, these are ideal conditions for catching striped bass. The nastier the weather, the hungrier these fish become, and the schools barrel along the shore with a cloud of diving seagulls in tow. Red cheeks and numb fingers are all part of this annual outing. Those who consider this type of fishing relaxing have never put their backs into a heaver rod while absorbing the shock of a frigid breaker.

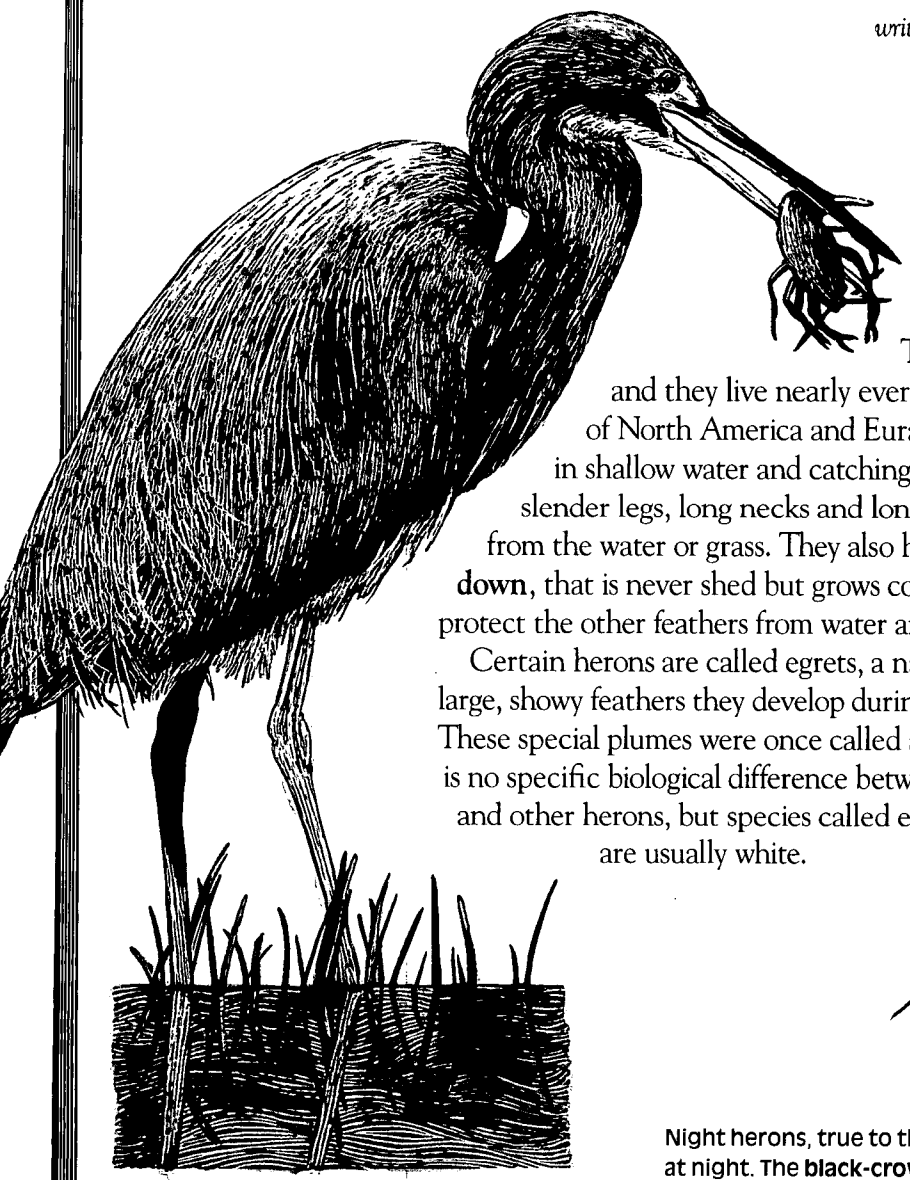
A TEMPORARY CAMP GROWS AT THE EDGE OF THE ATLANTIC
WHERE SALTY NOMADS CAST TO THE SURF.



They stalk our wetlands like sentinels, adding a grace and beauty all their own. Once, we almost lost them. Let's take a closer look at

Herons and Egrets

written by Jeff Beane / illustrated by Patricia Savage
nature activity by Anne M. Runyon

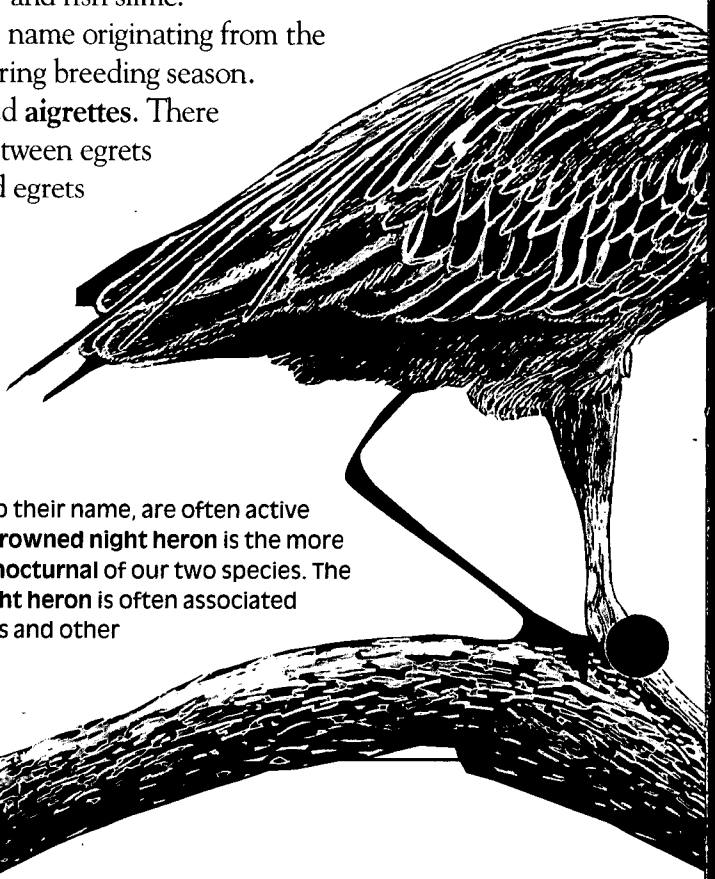


LONG, TALL WADERS

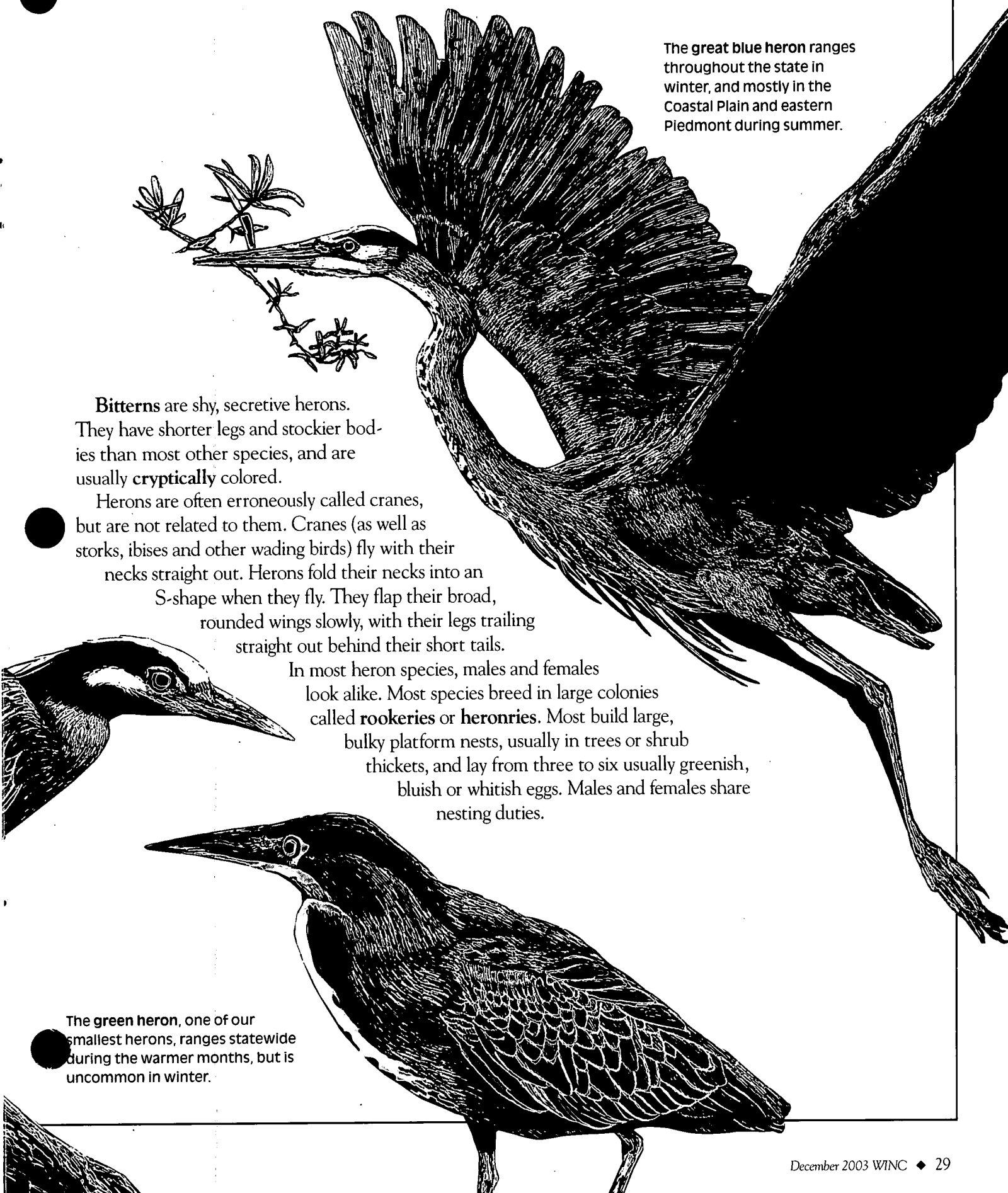
Herons belong to the order Ciconiiformes, which they share with storks, ibises and flamingos. They make up the family Ardeidae. There are more than 60 species worldwide, and they live nearly everywhere except for the northernmost regions of North America and Eurasia. Herons are predators, adapted for wading in shallow water and catching fish and other small animals. They have long, slender legs, long necks and long, sharp bills, which they use to snatch prey from the water or grass. They also have a special type of feather, called **powder down**, that is never shed but grows continually and frays into a powder used to protect the other feathers from water and fish slime.

Certain herons are called egrets, a name originating from the large, showy feathers they develop during breeding season. These special plumes were once called **aigrettes**. There is no specific biological difference between egrets and other herons, but species called egrets are usually white.

The **tricolored heron** is seldom seen inland. It was never hunted for its feathers, and is one of the Southeast's most common herons.



Night herons, true to their name, are often active at night. The **black-crowned night heron** is the more common and more **nocturnal** of our two species. The **yellow-crowned night heron** is often associated with cypress swamps and other freshwater habitats.



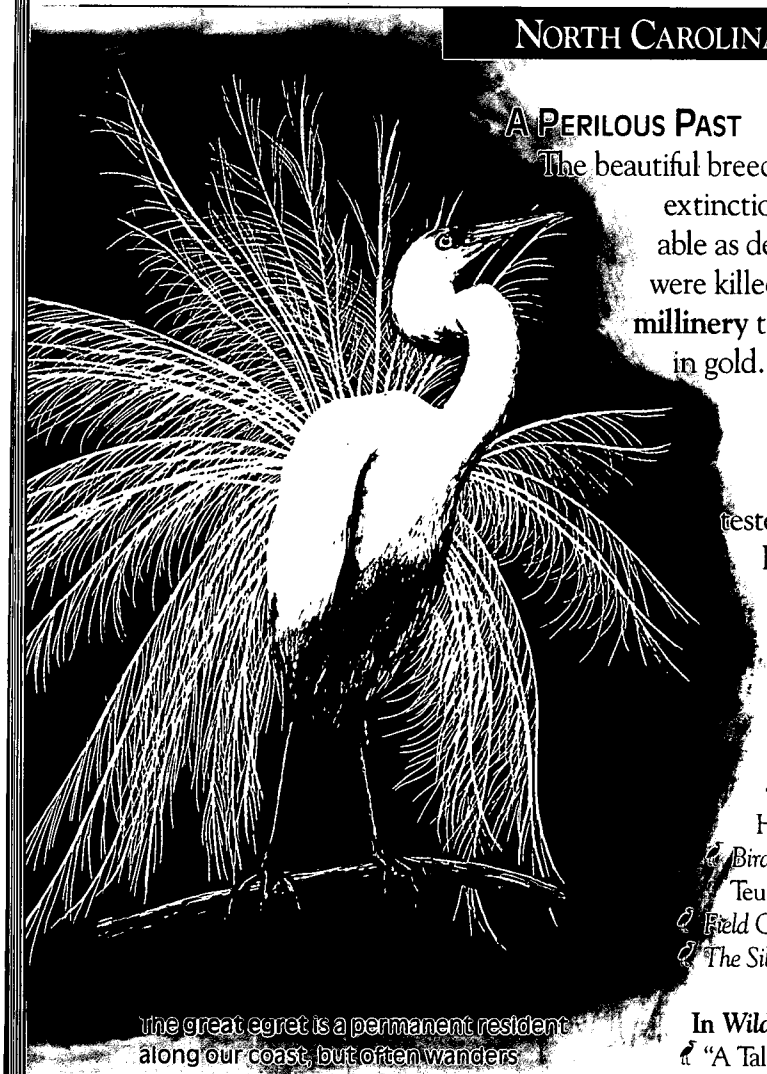
The **great blue heron** ranges throughout the state in winter, and mostly in the Coastal Plain and eastern Piedmont during summer.

Bitterns are shy, secretive herons. They have shorter legs and stockier bodies than most other species, and are usually **cryptically** colored.

Herons are often erroneously called cranes, but are not related to them. Cranes (as well as storks, ibises and other wading birds) fly with their necks straight out. Herons fold their necks into an S-shape when they fly. They flap their broad, rounded wings slowly, with their legs trailing straight out behind their short tails.

In most heron species, males and females look alike. Most species breed in large colonies called **rookeries** or **heronries**. Most build large, bulky platform nests, usually in trees or shrub thickets, and lay from three to six usually greenish, bluish or whitish eggs. Males and females share nesting duties.

The **green heron**, one of our smallest herons, ranges statewide during the warmer months, but is uncommon in winter.



The great egret is a permanent resident along our coast, but often wanders inland during late summer.

A Perilous Past

The beautiful breeding plumes of some herons and egrets nearly led to their extinction. In the late 1800s, plumes became extremely fashionable as decorations for women's hats. Many thousands of egrets were killed only for their plumes, which brought high prices in the **millinery** trade. In 1903, egret feathers were worth twice their weight in gold. Some breeding colonies were completely destroyed, and several species were approaching extinction. Hardest hit were the great egret and snowy egret. Fortunately, many people did not wish to see herons **extirpated** and protested the slaughter. The National Audubon Society and its British counterpart, the Royal Society for the Protection of Birds, formed as a result. Their efforts eventually resulted in protective legislation for all herons, and later, for all migratory birds.

Read and Find Out

- *Herons and Egrets of the World: A Photographic Journey* by James A Hancock, Academic Press, 1999.
- *Birds of the Carolinas* by Eloise F. Potter, James F. Parnell and Robert P. Teulings, University of North Carolina Press, 1986.
- *Field Guide to the Birds of North America*, National Geographic, 2002.
- *The Sibley Guide to Birds* by David Allen Sibley, Alfred A. Knopf, 2000.

In *Wildlife in North Carolina*:

- "A Tale of Two Continents" by David S. Lee, December 1999.

What Does It Mean?

powder down: specialized feathers, found in herons and some other birds, which are not molted but grow continuously, their tips disintegrating into a powder that helps waterproof and protect the other feathers

aigrette: a tuft of large, showy plumes, often made from the tail feathers of an egret

bitterns: any of several usually secretive, stout-bodied herons with shorter legs and necks and more camouflaged plumage than other herons

cryptically: in a hidden or camouflaged fashion

rookeries: places where animals gather in large colonies to nest or give birth; so named for rooks (crowlike European birds that breed in such colonies)

heronries: breeding colonies of herons and egrets

nocturnal: active at night

millinery: the business of making women's hats or headdresses

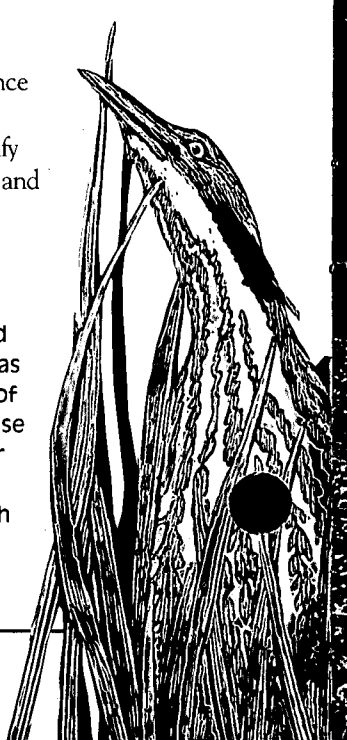
extirpated: wiped out; driven to extinction within a given area

It's WILD!

Project WILD activities for teachers and students that correlate to this topic include:

Adaptation Artistry teaches students to identify, describe and evaluate the advantages and importance of bird adaptations.

Rare Bird Eggs for Sale teaches students to identify reasons for and consequences of collecting wildlife and wildlife products.



Bitterns hide in tall marsh vegetation and are seldom seen. The **American bittern** has a remarkable booming voice unlike that of any other bird. Its unique call has given rise to such names as "stake driver," "thunder pumper" and "belcher squelcher." The **least bittern** is our smallest heron. Though not rare, it is so good at hiding that it is seldom encountered.

Get Outside

Go heron watching. See herons at our large coastal refuges such as Pea Island, Mattamuskeet, Alligator River, Pocosin Lakes and Swan Quarter national wildlife refuges; Cape Hatteras and Cape Lookout national seashores; Hammocks Beach, Fort Macon and Carolina Beach state parks; and Fort Fisher State Recreational Area. Virtually any body of water may be visited by herons, and even if you live in the mountains, you can see great blue herons during winter, green herons during breeding season, and visitors like great egrets during migration and late summer post-breeding dispersal. The National Audubon Society's Coastal Island Sanctuaries protect several heron breeding colonies, including Brunswick County's Battery Island, which supports the state's largest nesting colony of wading birds. Access is extremely limited to prevent disturbance, but you can watch herons flying to and from Battery Island from the waterfront at Southport.

Get WILD

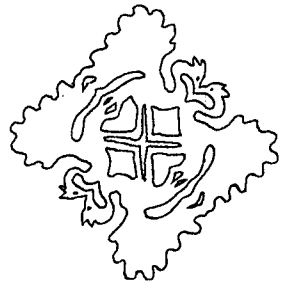
WILD workshops, offered by the N.C. Wildlife Resources Commission, provide teachers with opportunities for continuing education. For a current listing of WILD workshops, connect to the commission's Web site at **www.ncwildlife.org** and click the link for **education/workshops**.

Snowy Egret Snowflake



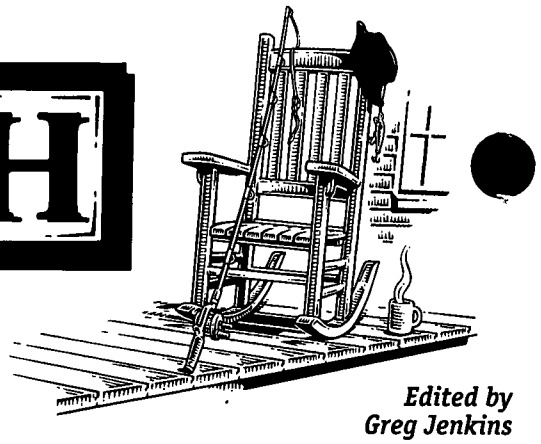
© WINC

1. Copy the art at 140% (B&W is fine).
2. Neatly cut out the square box along the black lines.
3. Fold the square in half.
4. Fold in half again, so that the egret is on top.
5. Carefully cut away the blue areas and unfold your Snowy Egret Snowflake.



BACK PORCH

News and Wildlife Notes



Edited by Greg Jenkins

Zoo to Help Rebuild Historic Bridge



JACK DERMID

***After 92 years of service,** the Pisgah Covered Bridge was destroyed by a flash flood in August.*

The N.C. Zoo will help rebuild the Pisgah Covered Bridge, a historic structure demolished in August by floodwaters of the Little River. The bridge, which stood 10 miles southwest of Asheboro, was restored by the N.C. Zoological Society in 1999 as part of a project that included building a park and creating a nature walk. Built in 1911, it was one of two remaining covered bridges in the state—the other is in Claremont. Duck hunters may recall that the structure was featured on the 1999 state duck stamp, providing a background for a pair of mallards in flight.

Initially, Randolph County officials announced that it would be too expensive to rebuild the bridge. A large number of calls from bridge-lovers convinced the zoo to jump on board to rebuild the structure. In the days following the flash flood that wiped out the bridge, zoo employees salvaged remnants of the 51-foot structure from the river. Their goal is to rebuild the bridge with one that resembles the original, adding modern support systems that will prevent it from washing away again. The river banks and nearby trails will also be stabilized to guard against flood damage.

The restoration plan will be created with help from the N.C. Department of Transportation, which officially manages the structure. The zoo is an agency of the N.C. Department of Environment and Natural Resources. The N.C. Zoological Society is the zoo's nonprofit support organization.

Youth Wins Lifetime Fishing License

Kelsey McKinney loves to fish. Now, the Green Mountain angler will be able to indulge that passion for the rest of her life without ever having to pay for a fishing license. Kelsey, 11, the daughter of Tami and Robert McKinney, edged out an estimated 1,500 other young anglers to win a lifetime comprehensive fishing license, the grand prize offered in a statewide drawing for attendees at the 17 fish-for-fun clinics held by the N.C. Wildlife Resources Commission in June.

Commission Chairman John Pechmann presented Kelsey with her lifetime fishing license as well as a certificate of recognition. The license, valued at $250, gives Kelsey lifetime fishing privileges in all public waters, including designated Public Mountain Trout Waters, where her favorite fish are found.

"I started fishing when I was 4, and the very first fish I ever caught was a trout," Kelsey said. "They're my favorite fish because they taste good and they're easy to catch."

Easy to catch for a young angler who recently placed in her first fishing competition, taking second in the Biggest Fish Contest held during the Kids' Fishing Day event at South Toe Creek, Carolina Hemlocks in Yancey County. "I felt something jerk my line, and it just took off," Kelsey said of her 2-pound, 22-inch lunker rainbow. "I reeled and reeled until I finally got it in."

Kelsey attributes her keen angling skills to her dad, who taught her and her 9-year-old brother, Aaron, how to fish and who takes them fishing on a regular basis. "I like to eat the fish that I catch," Kelsey said. "I have fun getting outside, playing with my brother and spending time with my family."

JODY DUGGINS



***Lifetime fishing license winner** Kelsey McKinney (center) with Wildlife Resources Commission Chairman John Pechmann and her mom, Tami McKinney.*

Kelsey is a sixth-grader at Cane River Middle School. Along with her, 99 other young anglers statewide netted prizes at the fishing clinics held in celebration of National Fishing and Boating Week. For more information on lifetime fishing and hunting licenses, see page 41.

Nature's Ways

The Flies of Winter

written by Clyde E. Sorenson
illustrated by David Williams



This time of year, many nature-watchers focus on winter birds visiting our feeders or maybe the waterfowl teeming in the eastern refuges. But even during winter, insects can be found. On mild days, mating winter crane flies swarm over marshes and lawns. On a cold day in a mountain trout stream, adult winter stoneflies engage in their courtship flights or congregate on sunny rocks.

The chief advantage active insects have in winter is the lack of predators. Virtually all the insects that might prey on them are dormant, and many of the birds that might eat them have migrated to warmer climes. Like other insects, winter flies are cold-blooded, but they have ways of coping with the weather. They may bask in the weak winter sun before flying, shiver their flight muscles to warm them or pick periods of calm, relatively mild air to become active. Some cold-weather insects even have a kind of antifreeze in their blood.

Nature Conservancy Protects Boone Fork Creek



KEN TAYLOR

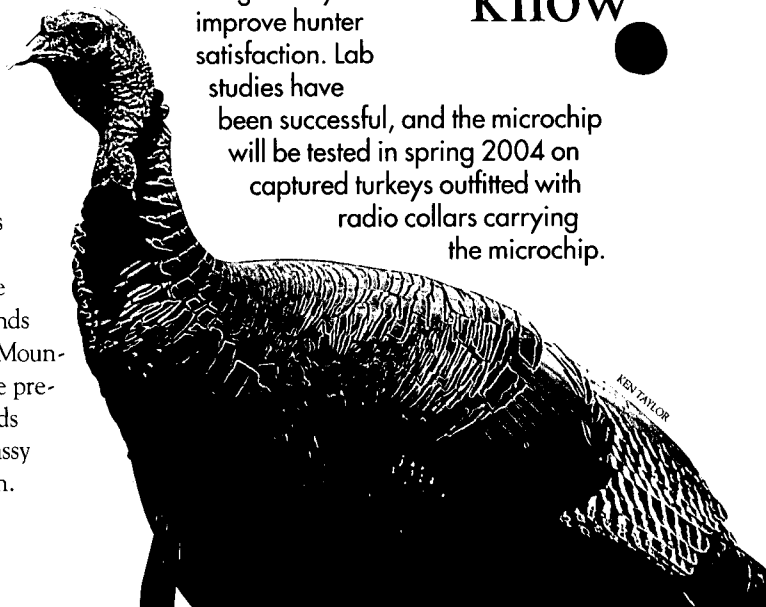
Grandfather Mountain, one of North Carolina's most renowned natural landmarks, received additional environmental protection recently when the North Carolina chapter of The Nature Conservancy purchased a conservation easement on Boone Fork Creek from Grandfather Mountain, Inc. The easement covers 925 acres and 12,408 linear feet of Boone Fork Creek from its headwaters to the Blue Ridge Parkway, protecting the creek's entire watershed. The purchase was made possible through a $3.3 million grant from North Carolina's Clean Water Management Trust Fund.

Fred Annand, associate director of The Nature Conservancy, said the group purchased the easement from Grandfather Mountain, Inc., owner Hugh Morton at a bargain price. Designated an International Biosphere Reserve, Grandfather Mountain is one of the most biologically significant sites in the southern Appalachians. Alan Weakley, curator of the N.C. Botanical Garden, describes it as the most important single site for rare plant species in eastern North America.

The Nature Conservancy has been working to protect Grandfather Mountain since 1991. The Boone Fork Creek Project expands the Conservancy's Grandfather Mountain Preserve to 3,590 acres. The preserve now protects the watersheds of Boone Fork Creek, Little Grassy Creek and Shanty Spring Branch.

did YOU know?

Biologists with the Virginia Department of Game and Inland Fisheries are testing a microchip that will record the date and time of a wild turkey's gobbles. Gobble data will be correlated with weather records to help determine when turkeys are most likely to gobble. Armed with that information, wildlife agencies should be able to fine-tune season dates to coincide with peak gobbling activity and improve hunter satisfaction. Lab studies have been successful, and the microchip will be tested in spring 2004 on captured turkeys outfitted with radio collars carrying the microchip.



KEN TAYLOR



Calendar of Events

THURSDAY–SATURDAY, DEC. 4–6

Have good cheer during Christmas With the Animals in Asheville. Contact Keith Mastin at (828) 298-5600, ext. 305, or kmastin@wildwnc.org, or visit www.wildwnc.org.

THURSDAY–SUNDAY, DEC. 4–7

Coastal traditions, crafts and activities take center stage at the Core Sound Waterfowl Weekend in Harkers Island. Call (252) 728-1500, e-mail museum@coresound.com or visit www.coresound.com.

SATURDAY–SUNDAY, DEC. 6–7

- Celebrate the return of thousands of tundra swans to Lake Mattamuskeet at the Swan Days Festival in Swan Quarter. Call 1-888-493-3826, visit www.hydecounty.org or e-mail hydecocc@direcway.com.
- Retriever demonstrations, an auction and the traditional loon-calling contest highlight the Core Sound Decoy Festival in Harkers Island. Call Raymond Earp at (252) 728-3070 or visit www.decoyguild.com.



CHIMNEY ROCK PARK

SATURDAY, DEC. 6 & 13

Watch Santa prepare for his big night by rappelling down the chimney at Chimney Rock State Park. Visit www.chimneyrockpark.com or call 1-800-277-9611, ext. 10.

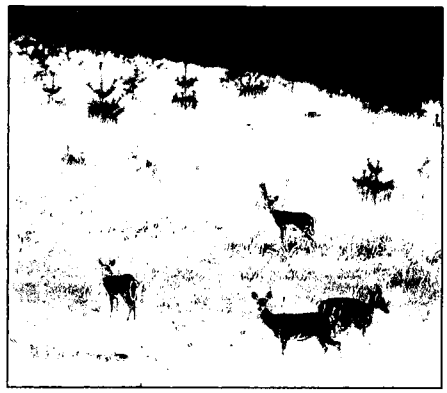
FRIDAY–WEDNESDAY, DEC. 12–17

Enjoy the First Flight Centennial Celebration, a festival celebrating the 100th anniversary of the Wright Brothers' historic flight. For information, contact the Outer Banks Visitors' Bureau at (252) 441-7430 or visit www.firstflightcentennial.org. For tickets, call 1-800-973-7327.

Readers should check with the contact listed before traveling to an event. Items for listing should be conservation-oriented and should be submitted at least four months in advance to greg.jenkins@ncwildlife.org, or call (919) 733-7123, Ext. 264.

How to Purchase Your Own Hunting Land

For deer hunters who have wondered how they can buy their own hunting property, there is strength in numbers. An innovative way to beat the high costs of land purchase, maintenance and taxes is to form a corporation and sell shares. The process is not easy, but this guide gives an idea of what is involved.



KEN TAYLOR

Form a pool of potential investors. Having a property already in mind will help, but is not critical at this stage. Invite people you like and those with similar management goals.

Inform investors when money is needed. Since large sums often are required for down payments, improvements and equipment, investors have to be ready to write the check. When it is time to close the deal, you will see who is truly committed.

Establish a set payment schedule. You can pay monthly if you like, but payments every six months allow shareholders time to save.

Locate a property. Once the property size and purchase price have been established, determine the cost per acre, and try to get it owner-financed. The interest rate and down payment are often lower with owner financing.

Have someone run a title search. You must contact the Secretary of State's office to check if your corporation's name has been reserved previously. Unless someone in your group has accounting experience, you will have to hire a CPA to handle your tax papers and corporation establishment requirements.

Hold a corporate meeting. Elect officers, establish bylaws and open a checking account. It is important to have well-documented procedures for making decisions related to the property. This will clearly define the voting rules and how many votes it takes to pass or defeat any proposed action.

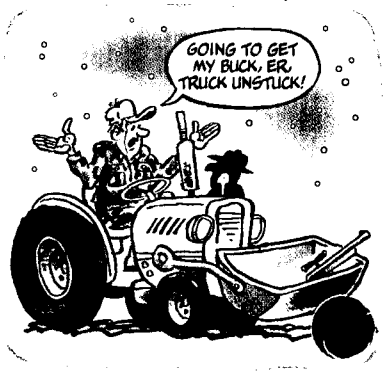
Once you own the property, you can make it into anything you (and a majority of shareholders) desire. You can plant beneficial trees or cut trees to clear areas for food plots. Projects you can do on your own land are limited only by resources and imagination.

This article was reprinted with permission from the Quality Deer Management Association, a nonprofit conservation organization. The association promotes proper herd and habitat management techniques. For more information on the group, call 1-800-209-DEER or visit www.qdma.com.



On Patrol

ILLUSTRATION BY JACKIE PITTMAN



While seeking a night deer-hunting setup, Sgt. Timothy Sasser and Master Officer Michael Owens saw a man riding down the road on a tractor. The officers thought it odd that the man was wearing hunting clothes and a blaze-orange hat. Suspecting that the man might use the bucket on the front of the tractor to retrieve a deer, the officers followed him down a path through the woods. Sasser discovered the man using the tractor to free a truck that was stuck in a field. In the back of the truck was a nice 10-point buck. Sasser inspected the man's hunting license and found he had not validated his report card. Owens inspected the license further and found it was expired by two months.



Sills prevent beach erosion and provide habitat for many different kinds of coastal creatures.

N.C. COASTAL FEDERATION

Living Shorelines Law Enacted

In August, Gov. Mike Easley signed the Living Shorelines Law, creating a mandate for a new way of protecting the North Carolina coast and encouraging biological diversity. The law authorized the N.C. Coastal Resources Commission to manage for Living Shorelines projects, which consist of stone sills fronting marshes on the waterfront.

"Sills provide an environmentally friendly alternative to seawalls for people living by the water," said Jim Stephenson, spokesman for the N.C. Coastal Federation. "They prevent erosion of waterfront properties and create an ecologically rich habitat for fish and wildlife."

Sills are structures created when stone is spread along the beach below the normal high-tide line. Just beyond the sills on the inland side, beneficial coastal marsh grasses are planted to help preserve or restore habitat for swamp-dependent species. Because they are partially or fully covered by tides each day, the sills become valuable habitat for fish and shellfish such as oysters and crabs. They also provide hiding, resting and feeding spots for shorebirds, mammals and other estuarine animals. The nooks and crannies of a stone sill become home to sea urchins, sea squirts, anemones, hydroids and numerous fish that hide and feed among the rocks and marsh grasses.

The new law strengthens existing rules by prohibiting hardened structures in ocean and inlet hazard areas. Seawalls cause the beach to scour and disappear in front of the wall. Seawalls also increase erosion on adjacent properties, and jetties and groins starve nearby beaches by halting the flow of sand.

The N.C. Coastal Federation has designed more than a dozen Living Shorelines projects along the coast, including projects at Duke Marine Lab, the N.C. Maritime Museum, the N.C. Aquarium at Pine Knoll Shores, Hammocks Beach State Park and Festival Park in Manteo. The federation can provide technical assistance to contractors and information to homeowners interested in learning more about sills. Contact the N.C. Coastal Federation at 1-800-232-6210.



American ginseng

MELISSA McGAW

Letters to the Editor

To the editor:

When I moved to Louisville, Ky., in 1985, I made sure that my *Wildlife In North Carolina* followed me. I look forward to flipping through your magazine to see what part of my childhood in eastern North Carolina you will take me to this month.

In September it was the article on Indiantown Creek ("Blackwater Paddling Adventures"). When I was a teenager, my father and I looked forward to spending the week of the Fourth of July in the area. We would fish Indiantown Creek on Saturday and Hall's Creek on Sunday.

The article on johnboat fishing ("Small Craft Advisory," July 2003) reminded me of the many afternoons we slid our boat in at Wards Bridge on Tranter's Creek. Even when I was a little tyke, he would take me there. The article on striped bass on Roanoke River in Weldon ("The Shocking Truth," February 2002) reminded me of our annual family Easter trip. In those days, you loaded your boat on a cable car and they lowered you and your boat into the swift water.

Until I reach retirement age and can move back, I just hope you continue to write articles that take me back home—if only for a few hours.

—H. Ray Franks, Catlettsburg, Ky.

To the editor:

The article "On the Trail of Plant Poachers" in the September issue raised a red flag to this reader. First, one wonders why it should be illegal to harvest plants such as ginseng from the federally controlled parks. It seems a lot of the restrictions placed on the public in using our parkland are the results of lobbying by some environmental group that usually has a political reason disguised as an environmental concern.

Banning the harvesting of plants entirely restricts the responsible members of the public from harvesting a small amount of the plant for personal use. A permit program with a limit on harvested amounts would at least distinguish the law abider from the poacher.

One wonders why our tax dollars are being spent on committing manpower using the latest high-tech methods and equipment on something that can be and should be open to the public to participate in with reasonable common sense control. Returning excavated roots back to their place of origin probably costs the taxpayer a lot more than $600 a pound.

—John Teare, Beaufort

Wildlife through the Year

Going Bald?

You know that spot in your yard that just won't grow grass no matter how hard you try? You can seed, water, fertilize and aerate it; the patch of ground still looks like a candidate for Rogaine.

Chances are good that your receding grass line is located near a group of trees that are blocking light and sucking up all available nutrients and moisture in the ground.

This year, instead of fighting that losing battle to grow grass, why not try a comb-over of sorts? Rake fallen leaves onto your bald patch, spreading them thickly and evenly around the trees and surrounding bare ground. Once a landscaped area is established, it would be good to follow up with a healthy load of mulch.

But wait, it's not finished. No natural landscaping would be complete without decorative features to attract wildlife. These can include bird baths, feeders and houses as well as butterfly bushes, azaleas and anything else you desire.

With just a little effort, your bald patch can be covered with a toupee guaranteed to please all sorts of critters—or your money back.

—*Chris Powell*

Catch Us at these *Numbers*

1-800-662-7137 to report violations of hunting and fishing laws

1-800-628-3773 (NC VESSEL) for boat registration and titling

1-800-675-0263 for hunting dates and shooting hours for migratory game birds

1-888-248-6834 (2HUNTFISH) to purchase most licenses with VISA or MasterCard using a touch-tone telephone

1-800-446-8663 (I GOT ONE) to report big game harvests

Connect to the Commission's online Web site at **www.ncwildlife.org**

Calls are answered in order, but some numbers may require a wait during busy seasons.

Report Big-Game Harvests Online

Big-game hunters have a new option for reporting their harvests this year—online reporting through the N.C. Wildlife Resources Commission's Web site. As always, hunters are required to report harvests of deer, bears, turkeys and wild boars to the commission. There are now four ways you can report your kill:

1. Call toll free at 1-800-I-GOT-ONE (1-800-446-8663).
2. Visit your local wildlife cooperator agent.
3. Stop by a commission check station. Check the *2003–2004 North Carolina Inland Fishing, Hunting and Trapping Regulations Digest* for dates and locations.
4. Register at www.ncwildlife.org by clicking the Online Services link.



BILL LEA

NOAA Creates Chart Update Web Site

Mariners have a new, easy way to access updated information for their nautical charts. The National Oceanic and Atmospheric Administration (NOAA) Ocean Service Office of Coast Survey has launched its new chart-update Web site at http://nauticalcharts.noaa.gov/mcd/updates/index.htm. The site provides access to information about regulatory changes, changes in aids to navigation and navigational hazards, bridge and cable clearances, water levels and harbor channel conditions.

Users have three options to access chart update data. The first option allows the user to enter the NOAA chart number and receive a list of updates from the most current to the oldest printing of the chart. The user can also enter a specific location such as a city, town or waterway or the name of a major United States port facility to receive a list of NOAA chart numbers pertaining to that area. The final option allows users to see all chart updates from previous chart editions.

CHART 11547

MOREHEAD CITY HARBOR CHANNEL DEPTHS

TABULATED FROM SURVEYS BY THE CORPS OF ENGINEERS - SURVEYS TO JUL 2003

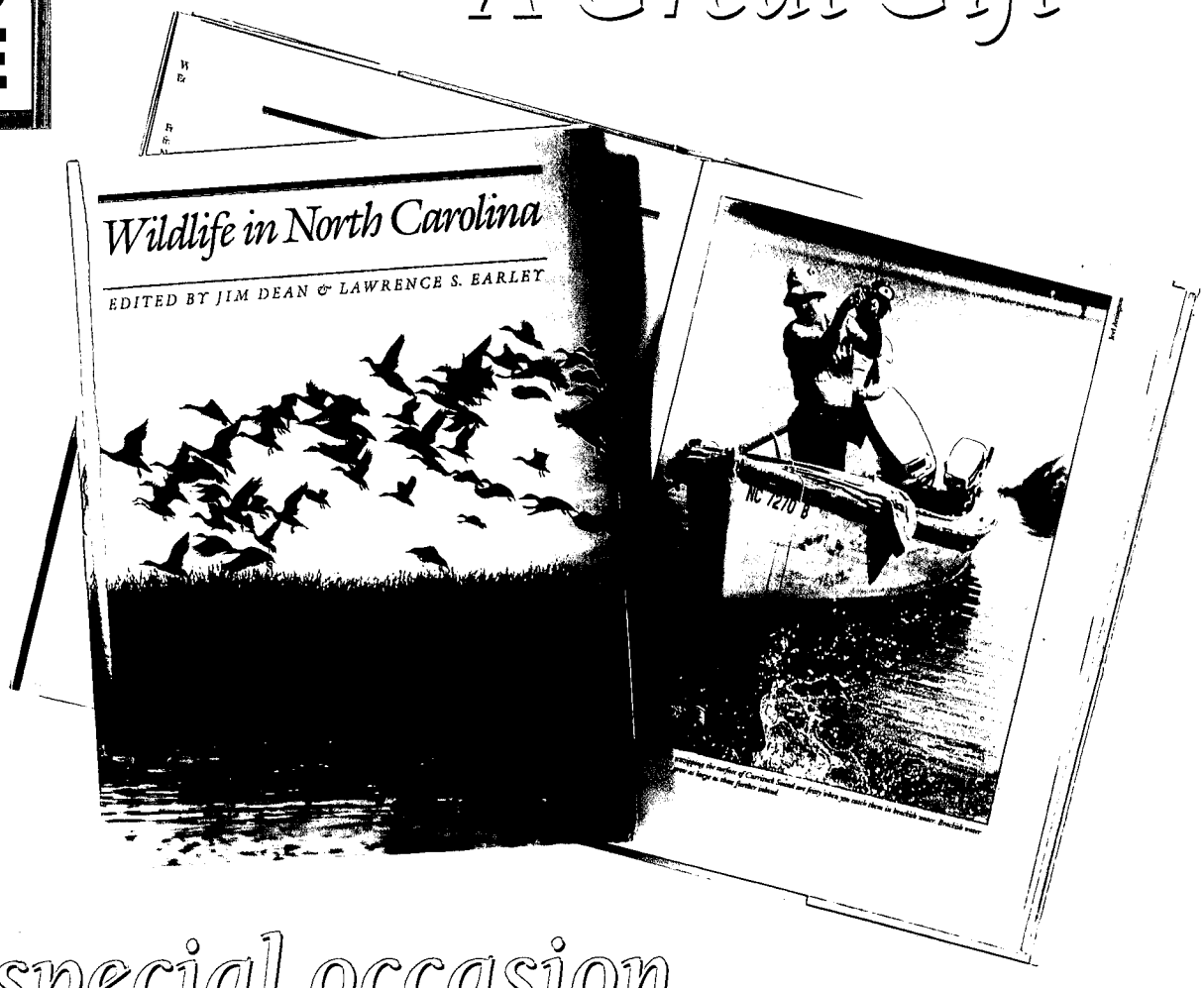
	CONTROLLING DEPTHS FROM SEAWARD IN FEET AT MEAN LOWER LOW WATER (MLLW)					PROJECT DIMENSIONS		
NAME OF CHANNEL	LEFT OUTSIDE QUARTER	LEFT INSIDE QUARTER	RIGHT INSIDE QUARTER	RIGHT OUTSIDE QUARTER	DATE OF SURVEY	WIDTH (FEET)	LENGTH (NAUT. MILES)	DEPTH MLLW (FEET)
BEAUFORT INLET CHANNEL FROM								
2000 FT NORTH OF LTD. BUOY "8"	41.1	44.7	41.5	32.1	7-03	450-800	2.26	47
CUTOFF CHANNEL	48.9	49.2	47.2	38.5	7-03	600	0.38	42
MOREHEAD CITY CHANNEL	33.4	42.5	42.2	37.9	6-03	400	1.10	40
TURNING BASIN								
EAST LEG	43.4	42.4	43.4	40.5	6-03	400-870	0.78	40
WEST LEG	33.7	36.0	37.2	39.9	6-03	800-3000	0.59	35

NOTE - CONSULT THE CORPS OF ENGINEERS FOR CHANGES SUBSEQUENT TO THE ABOVE INFORMATION

***Boaters may obtain** chart updates quickly through a new NOAA Web site.*

N.C. WILD STORE

A Great Gift



For a special occasion . . .

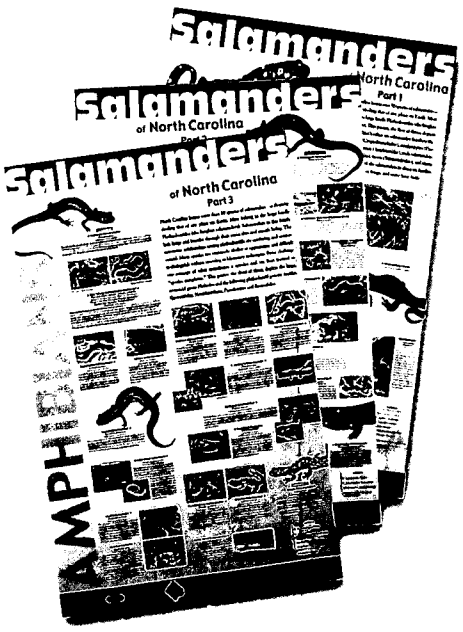
Celebrate North Carolina's wildlife heritage with this commemorative book published on the golden anniversary of *Wildlife in North Carolina* magazine. It showcases the best articles from the magazine's first 50 years—from recollections of waterfowl hunting on the Currituck Sound to an unforgettable ramble through the Uwharrie Mountains. It's now out of print, but we have a limited supply that we are offering at a price that's much lower than the original $24.95. This 1987 hardbound edition makes a great gift for an outdoor enthusiast.

Hardbound $7.50
ITEM CODE M3



Combine it with a lifetime license or magazine subscription.

Order these items and all N.C. WILD Store products online at www.ncwildlife.org.



◀ **AMPHIBIANS: SALAMANDERS OF NORTH CAROLINA POSTER SET**

Become an expert on some of the state's most unique creatures. These three posters include a color illustration and life cycle notes for each of the 54 species that occur in North Carolina. Each poster is 24" x 36".

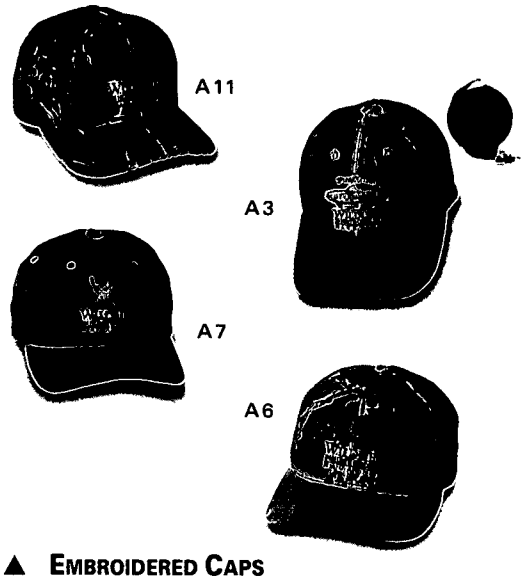
SET $15 ITEM CODE **P25**

Posters may be purchased separately.

PART 1. Thirteen species with lungs or gills.
$6 ITEM CODE **P19**

PART 2. Twenty lungless species: *Desmognathus* and *Eurycea*.
$6 ITEM CODE **P23**

PART 3. The remaining 21 lungless species.
$6 ITEM CODE **P24**



▲ **EMBROIDERED CAPS**

Exclusive designs and the *Wildlife in North Carolina* magazine logo are featured on four different cap styles.
$16.50 each

- Deer silhouette on 6-panel, solid-back cap. Advantage® Camouflage on cap and bill with plastic snap. ITEM CODE **A11**
- Brook trout on sage-colored, brushed cotton cap with an unstructured front, extended bill and nubuck suede closure. ITEM CODE **A3**
- Deer silhouette on blaze-orange cap with brown waxcloth bill. ITEM CODE **A7**
- Deer silhouette on Advantage® Camouflage cotton cap with tan suede bill. ITEM CODE **A6**

AMPHIBIANS: FROGS OF NORTH CAROLINA POSTER SET ▶

These two posters showcase North Carolina's frogs and toads. Vibrant photos and informative text make them a stand-out in the home or classroom. Each poster is 22" x 34".

SET $10 ITEM CODE **P20**

Posters may be purchased separately.

THE HYLID FROGS
$6 ITEM CODE **P11**

TRUE FROGS & TOADS
$6 ITEM CODE **P14**



▼ **BUTTERFLIES POSTER SET**

A brilliant selection of 17 rare and 19 common butterflies adorn these two posters. Range maps and informational text highlight the connections between the butterflies and their habitats. Each poster is 22" x 34".

SET $14 ITEM CODE **P17**



Free *Gardens for Butterflies* guide with the purchase of a poster set.

Posters may be purchased separately.

COMMON BUTTERFLIES
$8 ITEM CODE **P15**

RARE BUTTERFLIES
$8 ITEM CODE **P16**



Posters may be purchased separately.

LIVEBEARERS
$6 ITEM CODE **P5**

EGG-LAYERS
$6 ITEM CODE **P8**

▲ **SNAKES OF NORTH CAROLINA POSTER SET**

Want to know more about the snakes of North Carolina and learn how to identify them? These colorful posters can help. Produced in cooperation with the N.C. Herpetological Society, these posters include indicat for snakes that are venomous, endangered or of specia concern. Learn to appreciate the role snakes play in nature. Each poster is 24" x 36".

SET $10 ITEM CODE **P26**

T-shirts are limited editions. Adult sizes only.

Commemorating Our Sporting Heritage



left front design

△ **Largemouth Bass.** This white, all-cotton tee features our sporting heritage logo on the front and a Duane Raver scene on the back—a largemouth at historic Atkinson's Mill.

$14.50 ITEM CODES:
A12MED (medium) **A12LRG** (large)
A12XXL (extra extra large)
Extra large sizes are longer and wider.

left front design

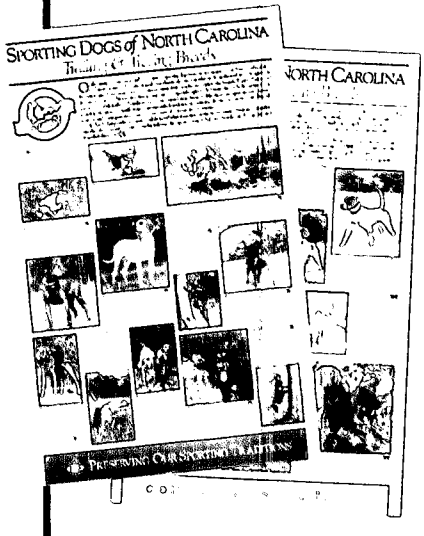
△ **Snow Geese.** Celebrate waterfowl conservation with this white, all-cotton tee. "Snows Over Hatteras" by Louis Frisino adorns the back, and our sporting heritage logo marks the front.

$14.50 ITEM CODES:
A14MED (medium) **A14XLG** (extra large)
A14LRG (large) **A14XXL** (extra extra large)

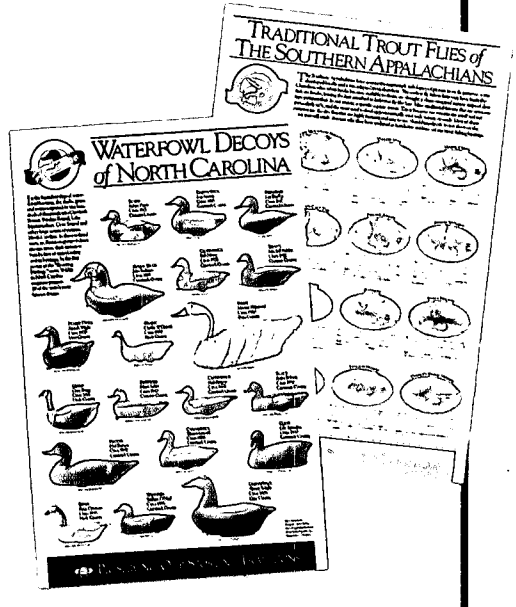
left front design

△ **Wild Turkey.** A timeless spring scene makes this all-cotton tee a trophy. Wilhelm Goebel's rendition of a wild tom struts across the back, and the front displays our sporting heritage logo.

$14.50 ITEM CODES:
A13MED (medium) **A13LRG** (large)
A13XXL (extra extra large)
Extra large sizes are longer and wider.



< **Sporting Dogs of North Carolina Poster Set**
These two posters present color portraits of 24 sporting breeds with descriptions of their habits and history. One poster depicts breeds that point or flush and retrieve birds. The second depicts those that trail and tree. Each poster is 22" x 34".
Set $16 ITEM CODE **P22**



Each poster may be purchased separately.

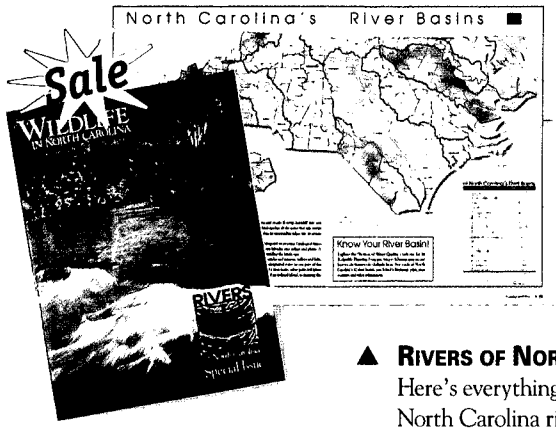
Pointing & Retrieving Breeds
$10 ITEM CODE **P18**

Trailing & Treeing Breeds
$10 ITEM CODE **P21**

Sporting Traditions Posters >
Each of these posters preserves a different sporting tradition. Enjoy color photographs of 19 classic decoys made during the heyday of waterfowl hunting or 16 treasured trout flies used in mountain streams. Each 22" x 34" poster is sold separately.

Waterfowl Decoys of North Carolina
$10 ITEM CODE **P12**

Traditional Trout Flies of the Southern Appalachians
$10 ITEM CODE **P13**

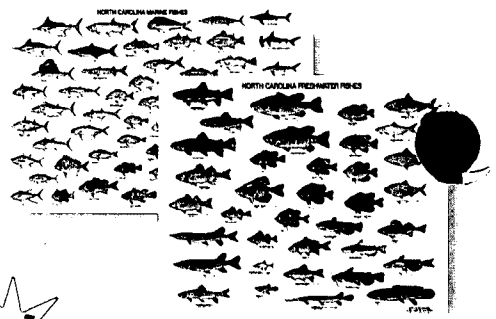


▲ Rivers of North Carolina

Here's everything you want to know about North Carolina rivers in a 128-page guide. This special issue of *Wildlife in North Carolina* (Nov. 1999) chronicles the natural history of 17 major river basins.

Half-price while supplies last.

$5 ITEM CODE **M11**



Fishes of North Carolina ▶

Reel 'em in! This two-poster set depicts colorful paintings by Duane Raver of 36 freshwater species (28" x 22 1/2") and 60 marine species (35" x 22 1/2").

$10 ITEM CODE **P9**



◀ Dogs that Point, Fish that Bite

Sample 50 of Jim Dean's best essays for *Wildlife in North Carolina* magazine.

Hardbound ~~$19.95~~ $14.95
ITEM CODE **M8**

Paperback ~~$10.95~~ $8.00
ITEM CODE **M12**

Set of both volumes
Hardbound $30.00
ITEM CODE **M14**



The Secret Lives of Fishermen ▶

More of Jim Dean's well-honed observations on hunting, fishing and the country life.

Hardbound ~~$24.95~~ $18.50
ITEM CODE **M13**

2003 N.C. Migratory Waterfowl Print and Stamp ▶

Buy North Carolina's 21st waterfowl print and stamp, and contribute to wetlands conservation. Wilhelm Goebel's "Traditions at Suggs Mill Pond" depicts the artist and his daughter hunting on a blackwater bay. Overall size: 12" x 14"; image size 6 1/2" x 9". Includes a free museum print of Ron Louque's "Canvasbacks at Whalehead."

No shipping-handling fee or discount applies.



Print and Stamp $145 ITEM CODE **DSP03**
Stamp Only $10 ITEM CODE **DSPS 03**

2003–2004 Federal Duck ▶ Print and Stamp

Greater snow geese take wing over the Chincoteague National Wildlife Refuge on the 70th edition of the federal duck stamp. Artist Ron Louque is making signed prints of the stamp available, and we have a limited number. Overall print size: 12" x 14"; image size: 6 1/2" x 9". Includes a free museum print of the artist's "Canvasbacks at Whalehead."

A $9.50 shipping and handling fee applies.
This item not subject to 15% discount.



Print $189 ITEM CODE **FDSP03**
Stamp $16 ITEM CODE **FDSS03**

2004 North Carolina Wildlife Calendar ▼



A Great Gift!

Place your order now. Complete and mail to CALENDAR, N.C. Wildlife Resources Commission, 1710 Mail Service Center, Raleigh, NC 27699-1710. To order by phone, call (919) 662-4377. Order online after September 1 at **www.ncwildlife.org**, or visit the sales office at 322 Chapanoke Road in Raleigh. (Allow 3 weeks for delivery.)

Complete the form below.

Name _____

Address _____

City/State/Zip _____

Calendar Costs: 1 to 9 $6 each; 10 to 25 $5.50 each; 26 to 199 $5 each

Please send _____ N.C. Wildlife Calendars at $_____ each. $_____

N.C. residents add 7% sales tax. $_____
(Wholesale orders are exempt from sales tax with a completed Certificate of Resale.)

Total $_____

ALL ORDERS MUST BE PREPAID BY CHECK, MONEY ORDER OR CREDIT CARD.

☐ Check or money order enclosed made payable to **NCWRC**. ($20 charge on returned checks—N.C.G.S. 25-3-512.)

☐ VISA MasterCard # _____ Exp. ____/____

Signature _____ Phone ( ) _____

WILD STORE ORDER FORM

Please enter all the information noted below. Your order will be delivered by U.S. mail or by United Parcel Service (UPS). If your mail is delivered to a post office box, please provide a street address for shipping.

Name _____ Daytime Phone (____)_____
first name MI last name area code

Mailing Address _____

Shipping Address _____

City _____ State _____ Zip _____

ITEM CODE	ITEM NAME/DESCRIPTION	SHIRT SIZE	QUANTITY	PRICE	$ TOTAL

Make checks payable to N.C. Wildlife Resources Commission. Mail your order to the N.C. WILD Store, 1710 Mail Service Center, Raleigh, NC 27699-1710.

All orders must be prepaid. We do not bill. Please do not send cash. **Allow four weeks for delivery.** A $20 service charge will be imposed for returned checks (N.C.G.S. 25-3-512). Products may be purchased over the counter at the N.C. WILD Store, 322 Chapanoke Road, Raleigh, N.C.

→ (Do not include magazine subscriptions.) . . . . . **SUBTOTAL**	$
→ (Subtract 15% for retail orders of $100 or more.) . . . . . **DISCOUNT**	$
→ (N.C. residents add 7% sales tax.) . . . . . **TAX**	$
→ (See shipping chart below.) . . . . . **SHIPPING & HANDLING**	$
→ (Add all items above.) . . . . . **TOTAL**	$

MasterCard VISA *For credit card orders, provide information below.*

CREDIT CARD NUMBER

EXP. DATE ( )
Daytime Phone Number

Credit Cardholder's Signature

SHIPPING CHARGES BASED ON ORDER SUBTOTAL. PAYMENTS RECEIVED WITHOUT SHIPPING AND HANDLING INCLUDED WILL BE RETURNED.
$15 and under, **ADD** $3.95
$15.01–$30, **ADD** $4.95
$30.01–$50, **ADD** $5.95
$50.01–$75, **ADD** $6.95
$75.01 and over, **ADD** $7.95

All proceeds from the sale of these products support the development and production of conservation education projects and programs.

To shop by phone, call 1-866-WILDSHOP (1-866-945-3746).

WILDLIFE ENDOWMENT FUND—THE BUY OF A LIFETIME

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■ Sportsman Infant (under 1 year old) (Application must be received before applicant has attained 1 year of age.) $200

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■ Sportsman Youth (ages 1 through 11) (Application must be received before applicant has attained 12 years of age.) $350

■ Personalized Sportsman Youth (ages 1 through 11) (Application must be received before applicant has attained 12 years of age.) $355

A copy of a certified birth certificate (or the mother's copy) must accompany applications for infant and youth sportsman's licenses. Hospital copies will not be accepted. Birth certificates cannot be returned.

Note: Pending satisfactory completion of the hunter safety course, persons who possess infant or youth licenses may exercise the privileges thereof when accompanied by an adult at least 21 years of age, who is properly licensed to hunt in North Carolina. "Accompanied" is defined as being able to take immediate control of the hunting device.

Adult (age 12 or older):

■ Comprehensive Fishing (N.C. residents only—includes basic fishing, trout & trout waters on game lands) $250

■ Comprehensive Hunting (N.C. residents only—includes basic hunting, big game, game lands, primitive weapons & N.C. waterfowl) $250

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■ Personalized Sportsman (N.C. residents only—includes same privileges as the Sportsman) $50

■ Nonresident Sportsman (age 12 or older—includes basic hunting & fishing, big game, game lands, primitive weapons, trout & N.C. waterfowl) . . . $1,000

A federal waterfowl stamp must be purchased separately for all N.C. licenses.

Note: On or after July 1, 1991, a person, regardless of age, may not procure a hunting license or hunt in North Carolina without producing a certificate of competency for completing the hunter safety course or a hunting license effective prior to July 1, 1991, or by signing the statement below that he or she had such a license.

☛ **Check appropriate block and attach required copy:** ■ Copy of Prior Year Hunting License ■ Copy of Hunter Safety Certificate of Competence ■ In lieu of copy, I am signing the statement below:

Statement: I certify that I was a licensed hunter prior to July 1, 1991. Signature _____ Date _____

☛ **Complete the following information if applying for a lifetime license (please print legibly):**

Name of Applicant _____ Daytime Phone _____

Mailing Address _____ City _____ State _____ Zip _____ County _____

Date of Birth _____ Driver's License # _____

License Donor's Name (if applicable) _____ Donor's Telephone # _____

Donor's Address _____ City _____ State _____ Zip _____

☛ **Complete the following information if ordering a Personalized Lifetime Sportsman License and you wish to add a personalized message:**

Indicate your selection of letters, numbers, dashes, periods, commas and/or blanks up to 6 spaces: ___ ___ ___ ___ ___ ___

Indicate your personal message including letters, numbers, dashes, periods, commas and/or blanks up to 21 spaces:

___ ___

Signature of Applicant or Donor _____ Date _____

Method of Payment: ■ Check ■ VISA ■ MasterCard Acct. # _____ Expires _____

Cardholder's Signature _____ Date _____

☛ Make checks payable to Wildlife Endowment Fund (a service charge of up to $20 will be charged on any returned check [N.C.G.S. 25-3-12]).

☛ Mail completed application and payment to NCWRC, License Section, 1707 Mail Service Center, Raleigh, NC 27699-1707

☛ Office location: 322 Chapanoke Road, Raleigh, N.C., Telephone: (919) 662-4370

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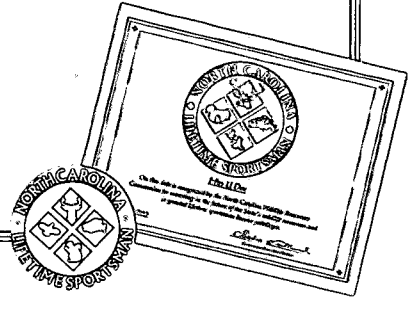
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Winter Visitor

Tundra swans fill winter skies above North Carolina's eastern waterways. Read about the state's waterfowl populations, page 2, and a Navy project near Pocosin Lakes National Wildlife Refuge, page 14.

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Exhibit # 11

2005 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report from standing committee is presented:
By Representatives **Harrell and Justice** (Chairs) for the Committee on **ENVIRONMENT AND NATURAL RESOURCES**.

☒ Committee Substitute for
H.B. 236 A BILL TO BE ENTITLED AN ACT TO LIMIT THE AUTOMATIC GRANT OF EXCLUSIVE JURISDICTION OVER LANDS ACQUIRED BY THE FEDERAL GOVERNMENT.

☐ With a favorable report.

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

☐ With a favorable report, as amended.

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

☒ With a favorable report as to the committee substitute bill (# HB236), ☒ which changes the title, unfavorable as to (the original bill).

☐ With a favorable report as to House committee substitute bill (# 236), ☐ which changes the title, unfavorable as to Senate committee substitute bill.

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

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

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

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

☐ Without prejudice.

☐ With an indefinite postponement report.

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

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

03/22/05

MINUTES
HOUSE COMMITTEE ON
ENVIRONMENT AND NATURAL RESOURCES

Tuesday, March 29, 2005

The House Committee on Environment and Natural Resources met on Tuesday, May 29, 2005, in Room 643 of the Legislative Office Building at 12:00 Noon. The following members were present: Representative James A. Harrell, III, Presiding Chair; Representative Carolyn Justice, Chair; Representative Lucy Allen, Vice Chair; Representative Pricey Harrison, Vice Chair; Representative Daniel McComas, Vice Chair; Representative Curtis Blackwood, Representative Russell Capps, Representative Becky Carney, Representative Arlie Culp, Representative Bill Daughtridge, Representative Pryor Gibson, Representative Mitch Gillespie, Representative Jim Gulley, Representative Joe Hackney, Representative Phil Haire, Representative Verla Insko, Representative Paul Luebke, Representative Grier Martin, Representative Bill McGee, Representative Bill Owens, Representative Jean Preston, Representative Bonner Stiller Representative Alice Underhill, Representative Jennifer Weiss, and Representative Larry Womble. George Givens, Senior Committee Counsel; Tim Dodge, Committee Staff and Jennifer McGinnis, Committee Counsel.

A Visitor Registration list 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 Committee Counsel George Givens and his staff were recognized. Visitors were welcomed.

Dr. Stanley R. Riggs, Distinguished Research Professor, Department of Geology, College of Arts and Sciences, East Carolina University, was recognized to present a discussion of cyclical variations in sea level and the implication of anticipated sea-level rise for North Carolina's coast. *SEA-LEVEL CHANGE AND COASTAL DYNAMICS* (Please see exhibit #2). Dr. Riggs said that scientist understand the "natural dynamic processes" of sea-level change. The public does not understand it. He stressed that it is the legislature's responsibility for long-term management of the coast. Dr. Riggs addressed questions by committee members during the presentation and discussion ensued.

Dr. Riggs continued his presentation with an emphasis on global warming. A report was distributed. *GLOBAL WARMING ACTION AND NORTH CAROLINA: A Smart Step for Our Citizens, A Smart Step for Our Economy* (Please see exhibit #3). Dr. Riggs explained global warming with a slide presentation. Dr. Riggs did not submit his slide presentation for public record citing it had not been published as yet and remained under construction. Oral comments were recorded. Representative Harrell thanked Dr. Riggs for sharing his knowledge with the committee.

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: **Tuesday, March 29, 2005**

TIME: **12 Noon**

LOCATION: **643 Legislative Office Building**

Discussion of cyclical variations in sea level and the implications of anticipated sea-level rise for North Carolina's coast.

Dr. Stanley R. Riggs, Distinguished Research Professor
Department of Geology, College of Arts and Sciences, East Carolina University

Respectfully,
Representatives Harrell and Justice
Chairs

I hereby certify this notice was filed by the committee assistant at the following offices at **10:00 A.M.** on **March 24, 2005.**

___Principal Clerk
___Reading Clerk - House Chamber

Beth LeGrande (Committee Assistant)

HOUSE COMMITTEE ON ENVIRONMENT AND NATURAL RESOURCES

AGENDA

12:00 Noon
Tuesday 29 March 2005
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. First Order of Business

   Discussion of cyclical variations in sea level and the implications of anticipated sea-level rise for North Carolina's coast.

   Dr. Stanley R. Riggs, Distinguished Research Professor
   Department of Geology, College of Arts and Sciences,
   East Carolina University

5. Adjourn

VISITOR REGISTRATION SHEET

NC HOUSE COMMITTEE ON ENVIRONMENT AND NATURAL RESOURCES
Name of Committee

March 29, 2005
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Bob Crumnie MD	Physician on call for the day
Tom Bean	Enviro Defense
Johanna Reese	DENR
Jim Blackburn	NC Association of County Commissioners
Paula Page	N-Texas Bureau
Pam Shadle	PCS Phosphate
John Cyrus	NCSG
Nancy Thompson	NCIC
Theresa K	CAA
Kathy Hawkins	Progress Energy
Dianne Reagle	Forestry

VISITOR REGISTRATION SHEET

NC HOUSE COMMITTEE ON
ENVIRONMENT AND NATURAL RESOURCES — March 29, 2005

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Colleen Kocharek	Holt York McDarris & Tligh
Andy Romanet	NCLM
Michael Nelson	Conservation Council of NC
Erin Kinney	NCCV
Patricia Loeb	NWACC
	JD, AL, PA

House Pages

Name Of Committee: Environmental Date: 03/29/05

1. Name: Amisha Bell
   County: Cumberland
   Sponsor: Marvin Lucas
2. Name: Benjamin LaRoque
   County: Carteret
   Sponsor: Stephen LaRoque
3. Name: _____
   County: _____
   Sponsor: _____
4. Name: _____
   County: _____
   Sponsor: _____
5. Name: _____
   County: _____
   Sponsor: _____

Sgt-At-Arms

1. Name: Tom Wilder
2. Name: Linda Fuller
3. Name: James Worth
4. Name: Jim Womack
5. Name: _____

SEA-LEVEL CHANGE AND COASTAL DYNAMICS*

Dr. Stanley R. Riggs
Distinguished Research Professor

Dept. of Geology
East Carolina University
Greenville, NC 27858
E-mail: riggss@mail.ecu.edu

- TO MAXIMIZE BOTH THE ECONOMIC UTILIZATION AND NATURAL RESOURCE PRESERVATION OF OUR DYNAMIC COASTAL SYSTEM,

WE MUST:

- UNDERSTAND THE NATURAL DYNAMICS THAT HAVE BUILT AND MAINTAIN A HEALTHY COASTAL SYSTEM AND ARE CRUCIAL TO THE ONGOING EVOLUTION OF THIS SYSTEM!

- LEARN HOW TO LIVE WITH THESE DYNAMIC PROCESSES!

"Economic growth and development" rarely acknowledges the importance of the regional land and water resources. The well being and quality of life for the citizens of eastern North Carolina, as well as any future utilization and economic development of the land and water resources is critically dependent upon both understanding the dynamics and preserving the quality of these resources.

Eastern North Carolina is blessed with a unique environmental setting and a vast wealth of natural resources that are world class. The coastal plain, lowland environments include a complex riverine drainage network, the second largest estuarine system in the US with over 4,000 miles of shoreline, 325-mile long set of barrier islands and ocean beaches, and a diverse and dynamic Atlantic continental margin that are unequaled in the world. These coastal environments have incredible potential for economic growth and development. In fact, the resulting land and water resources are the economic future of eastern North Carolina. However, these same environments are extremely dynamic and the natural resources have real limits that must be managed with environmental care in order to maximize their utilization. Development and utilization of these dynamic systems must be accomplished in concert with sound scientific understanding and strong environmental management of the resources--it is absolutely essential to marry the "growth and development" with "environmental science". The world is full of severe examples where one-

sided development has irreparably soiled the regional nest--this must not happen in eastern North Carolina.

QUATERNARY PERIOD OF GLACIATION

The long-term processes of climate and sea-level change produce the disequilibrium that results in the slow and systematic reshaping of the North Carolina coastal system by individual hurricanes and northeast storms. Rising sea level slowly and systematically floods up the stream valleys and adjacent land slopes. However, it is wave energy during storms that physically erode the shoreline and move it further landward in response to rising sea level. A falling sea level results in the abandonment of an old shoreline as the contact between water and land slowly migrates seaward.

The Quaternary period of geologic time, the last two million years of Earth history, was dominated by multiple episodes of glaciation and deglaciation resulting from extreme episodic fluctuations in global climate. The Quaternary is further subdivided into the Pleistocene epoch, better known as the ice age, and the Holocene epoch, the last 10,000 years of Earth history. The Holocene is the time of warm global climates associated with the ongoing interglacial episode and development of modern civilization.

Glaciation and Deglaciation

From about 10,000 to 20,000 years ago, the Earth was locked in the last of a long series of glacial episodes that characterized the last 1.8 million years of geologic history, referred to as the Quaternary period of geologic time (Williams et al., 1998). During the last glacial episode, massive glacial ice sheets, often greater than two-miles thick, covered the northern half of the North America, Greenland, northern Europe, northwestern Asia, mountainous portions of South America, and Antarctica (Anderson and Borns, 1994). In North America, the ice sheets extended southward to Cape Cod, Long Island, and the Ohio and Missouri Rivers, forcing the climate zones to systematically shift southward (Bradley, 1999). During this glacial episode, North Carolina was characterized by a sparse vegetative cover consisting of boreal forest species including spruce, fir, and jack pine (Lamb, 1977; Nilson, 1983). The climate was cold, semi-arid, and dominated by severe storm activity with drainage systems occupied by braided rivers and aeolian dune fields. Since the source of water to produce these land-based ice sheets was derived from the world's oceans, global sea level was lowered by over 400 feet worldwide. This drop in sea level placed the North Carolina ocean shoreline on the continental slope between 15 and 60 miles seaward of the present barrier islands extending the Coastal Plain completely across the present continental shelf.

During the Quaternary ice ages of the past two million years, massive ice sheets formed and moved southward across the northern portions of the North American, European, and Asian continents. In North America ice sheets came as far south as the Missouri and Ohio rivers, extended down the east coast to Cape Cod, MA and Long Island, NY and onto the continental shelf. Multiple development of these one to two mile-thick ice sheets that covered such vast land areas required tremendous volumes of water that could only come from the vast oceans. Consequently, periods of glaciation were accompanied by worldwide lowering of sea level.

Major periods of global warming resulted in periods of deglaciation when the ice sheets retreated and discharged the resulting meltwaters back into the world's oceans. These warm climate periods would result in worldwide sea level rising to levels that were often higher than present sea level. In fact, if all of the present glacial ice in Greenland and Antarctica were to melt, sea level would be approximately 200 feet higher than it is now. This would put the entire North Carolina Coastal Plain below the ocean with the shoreline occurring approximately along Interstate 95 between Roanoke Rapids and Fayetteville with the drowned-river estuaries extending up the river valleys to Raleigh and adjacent Piedmont regions. Such advances and retreats of the glacial ice and the global oceans have occurred previously during the Quaternary period. In fact, the surface sediments, soils, and topography of the North Carolina Coastal Plain are direct products of these major fluctuations in the Quaternary coastal system.

The Holocene Interglacial

During the past 18,000 year post-glacial history, the Earth has been witness to some of the most dramatic changes in our long history (Fairbridge 1961, 1987, 1992; Lamb 1977; Imbrie and Imbrie 1979; Nilsson 1983; Pielou 1991; Anderson and Borns 1994; Broecker 1994, 1995). These changes included: 1) massive global warming; 2) retreat of vast continental ice sheets; 3) over 400 foot rise in global sea level; 4) northward shift of climatic zones; and 5) extinction of large animal species. Evidence now suggests that these dramatic changes in the earth's climate and associated sea level were rapid with frequent and extreme oscillations (Lehman and Keigwin 1992; Mayewski et al. 1993) In addition, these fluctuations often dictated the path of human history (Lamb 1977, 1988; Grove 1988) as the world's population exploded from scattered nomadic tribes to over six billion people today. Since modern civilization is more dependent than ever upon environmental stability, it is imperative that society understands these major environmental shifts during the recent past.

The last Pleistocene glacial episode ended as the Earth's climate warmed, melting the ice sheets in both hemispheres. The glacial meltwaters flowed back into the world's oceans, causing sea level to rise. A classic Holocene sea-level rise curve suggests a unidirectional rise in sea level that started at extremely high rates (about 6.6 feet/100 yrs) for a millennia, then slowed to moderate rates (about 3.3 ft/100 yrs) until about 8,000 years ago. At this time the rate of sea-level rise slowed dramatically to the present rates that ranged from 1.6 to 0.5 ft/100 yrs. However, it has been demonstrated by many researchers, including the author, that there were numerous brief periods during this history when sea level actually stopped rising and even temporally dropped.

During the glacial maximum, the North Carolina coast would have been about 400 feet lower than present with the shoreline below the edge of the continental shelf or between 15 and 60 miles east of the present shoreline. Thus, during the past 17,000 years, the North Carolina coast retreated landward between 15 to 60 miles with shoreline recession rates that ranged from an average of 5 ft/yr at Cape Hatteras to an average of 19 ft/yr at Topsail Island. The shoreline recession rates for North Carolina through most of the 17,000 year post-glacial history are generally greater than current average rates of coastal retreat which range between 3 to 10 ft/yr (Benton et al., 1993).

The Modern Coastal System and Ongoing Sea-Level Rise

The modern history begins with the North Carolina shoreline 15 to 60 miles seaward of and over 400 feet lower than the present shoreline. The North Carolina Coastal Plain was significantly larger than presently, with the entire continental shelf characterized by vegetation, animals, and flowing rivers. Figure 6-2-2A is a contour map on top of the Pleistocene sediments in Pamlico Sound based upon several hundred miles of high resolution seismic profiles, 44 vibracores, and 28 radiocarbon age dates. This is an example of the extensive data base that exists for the entire northeastern North Carolina upon which the reconstruction of paleodrainage basins in Figure 6-2-2B is based. This reconstruction depicts the paleo-drainage that existed from at least 20,000 to 8,000 years ago in the area of the present Outer Banks and Albemarle-Pamlico estuarine system.

As the glaciers began to melt and recede in response to the warming climate at the end of the ice age, the meltwaters began to raise global sea level. This rising sea level caused the shoreline and coastal system to generally migrate upward and westward throughout much of the Holocene. The flooding process caused the coastal system to migrate across the continental shelf to its present location. The estuaries formed as the rising sea flooded up the topographically low river and stream valleys starting about 8,000 years ago.

The Albemarle-Pamlico estuarine system is a large system of drainage basins that have been partially drowned in their lower reaches by rising sea level. The drowned-river embayments have been flooded by the ongoing post-glacial rise in sea level. Sediment from sediment-laden rivers is trapped and accumulated through time in these coastal basins. The result is a thick sequence of shallow-water sediment deposits that record a cyclical evolutionary history with periods of coastal deposition alternating with episodes of erosion. Post-glacial changes in climate and sea level of the past 10,000 years are reflected in fluctuations in the type and amount of sediment, and patterns of sediment deposition and erosion within the estuaries. Thus, the resulting sediment record is like a 10,000 year tape-recorded history of changing environmental conditions of the North Carolina coastal system.

Riggs and associates (Riggs et al. 1992, 1995, 2000; Riggs 1996; Sager 1996; Sager and Riggs 1998; Rudolph, 1999) found that the estuaries contain a complex history of riverine incisement and marine backfilling. The infill history is characterized by cyclical episodes of sedimentation. Periods of rising sea level deposited a sediment sequence that graded upward from basal riverine sediments into estuarine, barrier island, and shallow marine deposition. The depositional periods were followed by brief periods of falling sea level that caused extensive channeling and erosion of previously deposited sediments. This results in multiple sediment units with complex age relationships to each other. The older units are overlain by a thin layer (from 0 to 3 ft) of organic-rich mud contaminated with heavy metals, organic toxicants, and other pollutants from post-colonial industrial and agricultural activities. This surficial mud represents the last 400 years of our history and is in part a product of anthropogenic activities.

THE FLOODING PROCESS CONTINUES

Present Rates of Sea-Level Rise

Two types of data demonstrate that sea level has continued to rise over the past 150 years. A map by Fisher (1967) displays historic shorelines that reflect a constant landward recession in the Buxton and Cape Hatteras area. Data from long-term tide gauge records (Hicks et al., 1983; Gornitz and Lebedeff, 1987; Douglas et al., 2001) demonstrate similar rates of sea-level rise for both Charleston, SC and Norfolk, VA. These data suggest that sea level is rising at about 1.01 ft/100 yrs in the Charleston area and about 1.06 ft/100 yrs in the Norfolk area. Limited data for the period from 1980 to 2000 at Duck, N.C. (W. Birkemeier, U.S. Army Corps of Engineers, Pers. Comm., 12/2000) suggest that sea level for the Albemarle Embayment region may be rising slightly faster, possibly up to about 1.5 ft/100 yrs. These data demonstrate that sea level is continuing to rise, resulting in the ongoing flooding of the low coastal land and ubiquitous recession of North Carolina's coastal shorelines.

Future Rates of Sea-Level Rise

The Intergovernmental Panel on Climate Change Report (IPCC, 2001) predicts increased rates of global sea level rise over the next century in direct response to known global climate warming. Increased rates of sea-level rise will adversely impact coastlines of North Carolina in the following ways.

1. Accelerated rates of coastal erosion and land loss,
2. Increased economic losses due to flooding and storm damage,
3. Increased loss of urban infrastructure,
4. Collapse of some barrier island segments, and
5. Increased loss of estuarine wetlands and other coastal habitats.

However, the scientific community has only a moderate understanding of the linkages and controls between global warming and changing magnitude and rate of sea-level response, resulting in limited levels of predictability from a societal point of view (Warrick et at., 1996; Nuttle et al., 1997; Fletcher et al., 2000a, 2000b).

As glacial ice in Antarctica and Greenland continues to melt and ocean water continues to thermally expand in response to global climate warming, the ongoing rise in sea level will continue to flood the North Carolina coastal lands. Sea level is rising in North Carolina today at a rate between 1.0 to 1.5 feet/100 yrs. Is this rate of flooding significant for the North Carolina coastal system? On your next trip through the outer coastal system, notice how low and flat the land is with extensive, water-filled drainage ditches occurring adjacent to the highways. The water in these ditches is generally at or close to sea level and the roads are built on fill dirt dug from these ditches.

The coastal system in the Northern Province of North Carolina is a complex of broad, shallow estuarine environments that extend up to 100 miles into the Coastal Plain. Due to the very low regional land slope, the ongoing rate of sea-level rise produces major shoreline recession (see Chapters 7 and 8). With flooding, the coastal system will maintain its general appearance and characteristics through time as it migrates upslope and landward by a gradual evolutionary succession. This evolution is dramatically demonstrated in the two false color, winter aerial photographs (1983 and 1998) of the

Pamlico Sound shoreline at Point Peter Road area, Alligator River Wildlife Refuge. In 15 years, the green-colored, low-brackish to fresh-water marsh along the shoreline has migrated upward and landward hundreds of feet along the southern boundary and up to thousands of feet in the vicinity of the canal. In this region, the marsh vegetation has displaced the red-colored scrub-shrub transition zone vegetation and pocosin swamp forest vegetation.

The Intergovernmental Panel on Climate Change (IPCC, 2001) has predicted increased rates of global sea-level rise by the year 2100 up to 2.89 feet (0.88 meters) above present sea level with an average rise of 1.61 feet (0.49 meters). This rise is in response to global warming and will result "primarily from thermal expansion and loss of mass from glaciers and ice caps" (IPCC, 2001). If predicted values near the average or above turn out to be correct, the North Carolina coast is in for serious consequences. The two new maps displayed in Figures 6-3-4A and 4B are predictions of shoreline change in coastal North Carolina. These maps are based upon 38 years of detailed research concerning the continental shelf, barrier island, estuarine, and riverine systems of the North Carolina coastal region by the author. The data base involves thousands of miles of subsurface seismic, ground-penetrating radar, and side-scan sonar data, over a thousand drill holes, over 300 age dates, and innumerable sedimentologic and stratigraphic studies concerning the geologic framework upon which our coastal system is perched.

Large segments of the Outer Banks are already collapsing as evidenced by the lack of space to maintain a viable coastal highway (N.C. Hwy 12) along specific segments. If the intense storm pattern of 1996 through 1999 continues, Figure 6-3-4A could be realized within a few decades. If sea level continues to rise at the present rate and storm frequency is maintained at present levels, the scenario depicted in Figure 6-3-4B could be realized in several centuries. However, if global warming is real and rates of glacial melting increase significantly, as projected by the Intergovernmental Panel on Climate Change (2001) and the U.S. Environmental Protection Agency (Titus and Narayanan, 1995; Warrick et al., 1996) the coast could have the Figure 6-3-4B map geometry by 2100 with major land losses in Currituck, Camden, Dare, Hyde, Tyrell, Pamlico, and Carteret counties. The change would not be so dramatic for the Southern Province due to the much steeper slope of the mainland.

This ongoing rise in sea level results in the continuing upward and landward migration of the shoreline. The specific process of shoreline migration is better known as **SHORELINE EROSION**. The fact that sea level is rising worldwide means that erosion is ubiquitous to all of North Carolina's thousands of miles of shoreline; the only differences are the rates of erosion which are dependent upon local tectonic changes in the land, the underlying geologic framework, specific shoreline variables, and varying storm conditions. Locally, a segment of the North Carolina shoreline may appear stable or actually accrete sediments; such a situation represents either an anomalous set of local conditions or is ephemeral in nature.

*Portions excerpted from "Drowning the North Carolina Coast: Sea-Level Rise and Estuarine Dynamics" by S.R. Riggs and D.V. Ames, 2003, N.C. Sea Grant Program UNC-SG-03-04, 152 p.

GLOBAL WARMING ACTION AND NORTH CAROLINA:

A Smart Step for Our Citizens, A Smart Step for Our Economy

The Challenge

Global warming refers to the rapid heating our planet has undergone since the start of the Industrial Revolution. This warming is largely due to an atmospheric blanket of heat-trapping pollution that we humans are making thicker as we burn fossil fuels to produce electricity and power our cars. The good news is that there are cost-effective options North Carolina can pursue to reduce its emissions of global warming pollution and thereby address this challenge. But the state's decision makers must act now to help prevent the many potential global warming impacts North Carolina otherwise faces:

EASTERN NORTH CAROLINA:

Sea-level rise: The U.N.'s Intergovernmental Panel on Climate Change estimates that sea levels are likely to rise 19 inches by 2100, and could rise by as much as 34 inches in the same timeframe if our emissions of global warming pollutants continue to go unchecked.[1] Either scenario constitutes more than double the rate of sea level rise experienced in the past century[2] and speaks to the need for careful coastal development policies. The Outer Banks and other coastal areas that serve as major engines for N.C.'s economy could be seriously impacted by global warming. In Dare County alone, more than $5.5 billion worth of property is at risk,[3] as well as nearly $600 million in annual tourism revenue and 10,000 tourism-related jobs.[4]

Severe Weather: In 2002 alone, North Carolina experienced more than $678 million in weather-related losses and government expenditures.[5] N.C.'s coastline will likely become even more susceptible to damage from severe weather as sea-level rise increases the vulnerability of low-lying areas to storm surges. Of additional concern are scientific studies indicating that hurricanes in a warmer world will be stronger and wetter than what we experience today.[6]

CENTRAL NORTH CAROLINA:

Agricultural Impacts: N.C.'s agriculture industry, including food crops, fibers, and forestry, contributes nearly $60 billion to the state's economy annually and employs over 20% of our state's workforce.[7] Global warming's greatest impact on agriculture will likely be a combination of decreased soil moisture and reduced water availability for irrigation. Warmer temperatures and milder winters without frost will also make agricultural pests an even greater concern here in the Southeast, allowing these species to produce more generations each year.[8]

Urban Impacts: Hotter temperatures will disproportionately impact urban areas like Raleigh and Charlotte due to a phenomenon known as the "heat island effect." Heat islands are created as cities replace natural land cover with heat-absorbing pavement and other infrastructure. These developed areas amplify extreme hot weather events, potentially contributing to heat stroke and even death, particularly in vulnerable groups like children and the elderly. And, as warmer temperatures prevail, so too might the spread of tropical diseases like West Nile Virus, Malaria, and Dengue Fever.

WESTERN NORTH CAROLINA:

Tourism and Recreational Impacts: N.C.'s seven ski areas currently generate $120 million each year for the state's economy, but warmer temperatures threaten that revenue. The Great Smoky Mountains, home to the nation's most visited national park, are known and loved for their great diversity of plant and animals species. But regional warming trends threaten the spruce-fir forests of the Southern Appalachians and the numerous unique species found there, including the northern flying squirrel.[9]

Forestry and Christmas Tree Impacts: In most predictions of future climate, we lose the optimal growing conditions for loblolly pine, a mainstay of our state's forestry industry. And, as the number two producer of Christmas trees in the country, N.C. has good reason to be concerned about the state's Frasier firs, which may no longer grow in the state if average temperatures increase by just 3°C.[10]

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[1] IPCC 2001, Climate Change 2001: The Scientific Basis, Contribution of Working Group I to the Third Assessment Report of the IPCC, http://www.grida.no/climate/ipcc_tar/wg1/

[2] U.S. Geographical Survey 2002, http://pubs.usgs.gov/of/2002/of02-233/intro.htm

[3] Dare County, North Carolina Financial and Statistical Summary, www.co.dare.nc.us/Finance/1999Annual/99StatSec.pdf

[4] North Carolina Commerce Tourism Statistics, http://www.nccommerce.com/tourism/econ/indcountystats.asp?c=Dare

[5] National Weather Service, Office of Climate, Water, and Weather Services, "State Summary Statistics 2003."

[6] Global Warming Is Expected to Raise Hurricane Intensity, *New York Times*, September 30, 2004, http://www.nytimes.com/2004/09/30/science/30hurricane.html?ex=1108530000&en=3e9dd03b78d7d0e7&ei=5070

[7] U.S. Department of Agriculture, "A Look at North Carolina Agriculture," www.agclassroom.org/nc

[8] The Union of Concerned Scientists and the Ecological Society of America, *Confronting Climate Change in the Gulf Coast, 2001, p. 51-54.*

[9] The Nature Conservancy, *The Endangered Spruce-Fir Ecosystem*, http://www.grandfather.com/conservation/sprucefir.htm

[10] Delcourt, Hazel R. *Quaternary Ecology: A Paleoecological Perspective*, 1991.

GLOBAL WARMING ACTION AND NORTH CAROLINA:

A Smart Step for Our Citizens, A Smart Step for Our Economy

The Opportunity

North Carolina has proven to be a state that takes advantage of economic opportunities. From capitalizing on textile and furniture opportunities in the last century to becoming a hub for banking and high tech industries today, North Carolina has shown economic foresight. Now North Carolina has the opportunity to take advantage of the world economy that is emerging around the need to cap global warming pollutants.

The implementation of the Kyoto Protocol and its associated cap on global warming pollution has formed an international market for global warming pollution reductions. The United States is not yet a part of this market because of the federal government's decision not to join the Kyoto agreement. But many U.S. states and businesses are already preparing to participate in the carbon market because they recognize the importance both of reducing global warming pollution and the potential revenue that these reductions can generate.

In order to address global warming and avoid the most severe impacts associated with this challenge, North Carolina and the world must stabilize atmospheric concentrations of global warming pollutants. Though but one state, North Carolina's global warming pollutant reductions will have significant global impact—when compared with the world's nations and other U.S. states, North Carolina ranks 38th for emissions of global warming pollution, ahead of Argentina, Venezuela, Singapore, Greece, Egypt, and many other countries.[11]

To do its part to address this challenge, North Carolina should set a voluntary emissions reduction goal that points the state towards stabilizing global concentrations of carbon dioxide, the most abundant global warming pollutant, while still furthering the state's economic development. Analysis and input from state decision-makers, businesses, and other climate stakeholders including tourism, agriculture, and forestry are needed to determine N.C.'s current emissions, what reductions are needed, and how to best achieve those reductions via a comprehensive state action plan.

The benefits of passing this state goal legislation are fivefold:

- **Addressing Potential Global Warming Impacts.** The economic toll of global warming on North Carolina be enormous. A state goal will draw attention to regional warming trends and associated effects and help business and government prepare for the future.
- **Economic Development.** As the state plans its economic development activities, a state carbon reduction goal can help promote expansion and recruitment of renewable energy technologies that are less pollution intensive and generate jobs right here in North Carolina—homegrown energy to replace the non-native coal and gas that currently produces the bulk of North Carolina's energy.
- **State leadership.** Meaningful action by the federal government on global warming is long overdue. The best way to encourage the federal government to assume its responsibility is through state leadership. By establishing a state goal, North Carolina will join the numerous states across the country that are already rising to the challenge of global warming.
- **Business Responsibility.** A state goal will provide the motivation and opportunity for companies to examine their options for cost-effectively reducing their emissions. Many companies in North Carolina already consider the need to reduce carbon dioxide in their long-term planning. A reduction goal will foster that progressive thinking across the broader business community.
- **Preparing for the Emerging Carbon Marketplace.** North Carolina business can potentially sell tens or even hundreds of millions of dollars worth of carbon equivalence credits into the carbon marketplace that national climate legislation will eventually generate. A state goal can help companies that could potentially be suppliers in the coming national carbon marketplace to be ready to take advantage of these economic opportunities as soon as they arise.

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[11] U.S. Environmental Protection Agency, July 2002, "International Emissions" yosemite.epa.gov/OAR/globalwarming.nsf/content/Emissions.html

GLOBAL WARMING AND NORTH CAROLINA: FREQUENTLY ASKED QUESTIONS

What is global warming?

Global warming refers to the rapid increase in average surface temperature our planet has undergone since the start of the Industrial Revolution. This warming is largely due to an atmospheric blanket of heat-trapping pollution that we humans are making thicker as we burn fossil fuels to produce electricity and power our cars.

How strong is the science behind global warming?

There is consensus among leading scientists that the Earth is warming because of increasing global warming pollution in the atmosphere. Furthermore, there is wide agreement that this pollution is largely due to human activities, such as the burning of fossil fuels. The scientific consensus on global warming is reflected in reports by the International Panel on Climate Change (IPCC), a consensus-oriented body created by the World Meteorological Organization and the United Nations Environmental Program to assess the latest findings on this subject. In addition to the IPCC, all major U.S. scientific bodies with expertise in climatology or other subjects related to global warming have in recent years released statements indicating that the issue is a real one. These include the National Academy of Sciences, the American Meteorological Society and the American Association for the Advancement of Science.

"Regarding global warming, I have not seen this level of consensus on a scientific issue since medical scientists first spoke out on the carcinogenic effects of smoking cigarettes."
Dr. William Schlesinger
Nicholas School of the Environment and Earth Sciences, Duke University

A recent study of over 900 global warming-related articles published between 1993 and 2003 in peer-reviewed scientific journals revealed that not one of these papers disagreed with the position that man-made global warming pollution is causing the earth to warm.

Source: Washington Post, "Undeniable Global Warming," December 26, 2004. www.washingtonpost.com/wp-dyn/articles/A26065-2004Dec25.html

Why should North Carolina be concerned about global warming?

Scientists predict that in the 21st century, the Earth could warm more quickly than at any other time in the history of civilization. Such a rise in global temperature would have significant adverse impacts for North Carolina. These include stronger hurricanes, rising seas that would drastically alter the state's coastline, agricultural and forestry shifts and impacts, and the spread of tropical diseases. Each of these impacts carries with it significant economic repercussions.

If we work to reduce global warming pollution now, will we still see the negative impacts?

While temperatures will continue to rise over the next 100 years as a result of our *past* global warming pollution, it is our *future* emissions that will determine the severity of the impacts we face. And the longer we wait to make emissions reductions, the more dramatic those reductions will need to be to avoid dangerous interference with our climate system.

Is this issue better debated and handled at the federal level? Can North Carolina action to reduce global warming really make a difference?

Obviously, North Carolina alone cannot stop the Earth from warming. But our state's emissions, and therefore any reductions we make, are significant in the global context. North Carolina ranks ahead of Argentina, Greece, Belgium and many other countries in global warming pollution.[1] Additionally, by taking action on global warming North Carolina will add its name to a growing list of states demonstrating leadership and helping catalyze climate action by the United States, the world's number one emitter of global warming pollution. Finally, by engaging now in the nationwide global warming dialogue, North Carolina will better position itself to ensure that the state's interests are represented in coming national climate legislation.

Will taking on global warming put NC at a competitive disadvantage?

No. The ratification of the Kyoto Protocol and the European Union's carbon market underscores the speed with which the world is quickly moving to a lower carbon economy. State-level climate action would actually put North Carolina at a competitive *advantage* to capitalize on coming economic opportunities associated with a lower carbon economy and the emerging market for global warming pollution reductions. Currently in North Carolina, many sectors have potential to supply carbon credits into a national or international carbon market. These include the swine industry, forestry, crop agriculture, renewable energy providers, manufacturers and utilities, and even universities. State-level climate action will help prepare these sectors to be winners in the emerging carbon marketplace.

What are other states doing to reduce global warming pollution?

Seventeen states have taken direct action to address global warming, and nearly every state has implemented policies (renewable energy mandates, green power pricing programs, etc.) that spur in-state economic development while also reducing global warming pollution.[2] North Carolina will certainly not be alone in demonstrating leadership on this challenge. In fact, if the state does not act soon it risks losing potential revenue to other, better prepared states.

Will climate action by North Carolina require economic sacrifice?

Accepting leadership responsibility for global warming does not mean that North Carolina must adopt inflexible, expensive policies. The state has a range of options available to cost-effectively address this challenge, many of which can help promote expansion and recruitment of renewable energy technologies that are less pollution intensive and generate jobs right here in North Carolina. An example is homegrown energy to replace the non-native coal and gas that currently produces the bulk of North Carolina's energy.

What is the first step North Carolina should take to reduce global warming pollution?

A voluntary state reduction goal and corresponding state global warming action plan constitute a logical and important first step in engaging NC global warming stakeholders and allowing them to lay out a commonsense approach to address our state's global warming pollution.

Where can I find more information?

You can contact Marjorie Mulhall, of Environmental Defense and the Southern Alliance for Clean Energy, at 919-881-2928 or marjorie@cleanenergy.org.

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[1] U.S. Environmental Protection Agency, July 2002, "International Emissions" yosemite.epa.gov/OAR/globalwarming.nsf/content/Emissions.html

[2] "Innovative Policy Solutions to Global Climate Change," *In Brief,* Number 8, Pew Center on Global Climate Change, 2004.

Minutes

House Committee on Environment and Natural Resources
April 7, 2005

The House Committee on Environment and Natural Resources met on April 7, 2005 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 and Harrison, Representatives Blackwood, Capps, Carney, Culp, Daughtridge, Gibson, Goodwin, Gulley, Hackney, Haire, Luebke, Martin, McGee, Owens, Preston, Stiller, Underhill, Weiss and Womble. 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.

Chairman Justice called the meeting to order and Representative Gibson presented **HB 1092, A Bill to Be Entitled An Act to Provide for the Implementation of the Coastal Recreational Fishing License, to Provide a System of Unified Licenses Under Which Individuals May Fish Throughout the State, And to Amend Certain Statutes Related To the Wildlife Resources Commission**. A PCS was adopted for discussion purposes. After further discussion from members of the committee, James Reibel, from the Oregon Inlet Guides Association, and Terry Pratt, from the Albemarle Fisherman's Association, spoke in opposition to the Bill. Mac Currin, from the Marine Fisheries Commission, spoke in favor of the Bill. Representative Underhill moved that the PCS receive a favorable report, unfavorable as to the original Bill. The motion carried, with a re-refer to the Committee on Finance.

The meeting adjourned at 1:15 p.m.

Respectfully Submitted,

Rep. Carolyn Justice
Presiding Chair

Vivian Sherrell
Committee Assistant

Agenda
Attendance
Proposed Committee Substitute
Bills Considered
Visitor Registration
Committee Reports

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, April 7, 2005**

TIME: **12:00**

LOCATION: **Room 643 Legislative Office Building**

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

HB1092
AMEND FISHING LICENSE REQUIREMENTS – Rep. Gibson, Rep. McComas

Respectfully,
Representatives Harrell, Justice
Chairs

I hereby certify this notice was filed by the committee assistant at the following offices at **10:40 a. m.** on April 5, 2005.

_x__Principal Clerk
_x__Reading Clerk - House Chamber

Vivian Sherrell (Committee Assistant)

HOUSE COMMITTEE ON ENVIRONMENT AND NATURAL RESOURCES

AGENDA

12:00 Noon
Thursday April 7, 2005
Room 643 Legislative Office Building

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

2. Introductory Remarks by Cochairs

3. Recognition of Pages

4. First Order of Business

HB 1092	**Amend Fishing License Requirements**	**Rep. Gibson, Rep. McComas**

5. Adjourn

VISITOR REGISTRATION SHEET

Environment and Natural Resources — April 7, 2005

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Rebecca Key	Rep. Gibson intern
Shulyn MacPherson	Rep. Gibson LA
Dan Whittle	Environmental Defense
James Reibel	Oregon Inlet Guides Assoc.
Terry Pratt	Albemarle Fish. Assoc.
Jerry Schill	NC Fisheries Assoc.
Robin Smith	DENR
Mary Thompson	MFC
R. Rogers	DENR
Dick Hamilton	Wildlife
Joan Troy	" "
Michael Nelson	Conservation Council
Jane Smith	DHHS/DSS

VISITOR REGISTRATION SHEET

Environment and Natural Resources — April 7, 2005

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Erin Kinsey	NC Conservation Network
MIKE WARD	CCA
MAC CURRIN	Mar. Fish. Comm
David Mendelsohn	NC State Grange
TOM BEAN	NC ENVIRO DEFENSE
Esthelina Lara	Electricities
Joanne Bonds	
	NCRA
Johanna Reese	DENR
John Mahler	Concord
Katherine Miller	MVA

HOUSE BILL 1092

Short Title:	Amend Fishing License Requirements.	(Public)
Sponsors:	Representatives Gibson, McComas (Primary Sponsors); LaRoque and Steen.	
Referred to:	Environment and Natural Resources.	

April 4, 2005

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FOR THE IMPLEMENTATION OF THE COASTAL RECREATIONAL FISHING LICENSE, TO PROVIDE A SYSTEM OF UNIFIED LICENSES UNDER WHICH INDIVIDUALS MAY FISH THROUGHOUT THE STATE, AND TO AMEND CERTAIN STATUTES RELATED TO THE WILDLIFE RESOURCES COMMISSION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 113-174 reads as rewritten:

"**§ 113-174. Definitions.**

As used in this Article:

~~(1)~~ ~~"Commission" means the Marine Fisheries Commission.~~

(1a) "CRFL" means Coastal Recreational Fishing License.

(2) "Division" means the Division of Marine Fisheries in the Department of Environment and Natural Resources.

(2a) "For Hire Boat" means a charter boat, head boat, dive boat, or other boat hired to allow individuals to engage in recreational fishing.

(3) "North Carolina resident" means an individual who is a resident within the meaning of G.S. 113-130(4).

(4) "Recreational fishing" means any activity preparatory to, during, or subsequent to the taking of any ~~fish,~~finfish or shellfish, the taking of which is subject to regulation by the Marine Fisheries Commission, by any ~~means:~~means if the purpose of the taking is to obtain finfish or shellfish that are not to be sold. "Recreational fishing" does not include the taking of finfish or shellfish:

a. ~~That does not constitute a~~ By a commercial fishing operation as defined in G.S. 113-168.

b. ~~Except as provided in~~For scientific purposes pursuant to G.S. 113-261.

c. Under a RCGL issued pursuant to G.S. 113-173.

~~(5) "SFL" means Saltwater Fishing License.~~"

SECTION 2. G.S. 113-174.1 reads as rewritten:

"**§ 113-174.1. ~~General~~ License required; general provisions governing licenses.**

(a) License Purchase Required to Engage in Recreational Fishing. – It is unlawful for any individual to engage in recreational fishing ~~in coastal~~ in:

(1) Coastal fishing waters that are not joint fishing waters without ~~having purchased~~ holding a current license ~~required by this Article.~~ issued under this Article or under Article 25A of this Chapter that authorizes the individual to engage in recreational fishing in coastal fishing waters.

(2) Joint fishing waters without holding a current license issued under this Article or under Articles 21 or 25A of this Chapter that authorizes the individual to engage in recreational fishing in joint fishing waters.

(a1) It is unlawful for any individual to engage in recreational fishing without complying with ~~the provisions of this Article and rules adopted by the Commission under this Article.~~applicable requirements of this Article and Articles 21 and 25A of this Chapter and with applicable rules adopted by the Marine Fisheries Commission and the Wildlife Resources Commission.

(a2) The fourth day of July of each year is declared a free fishing day to promote the sport of fishing, and no license issued under this Article or Article 25A of this Chapter is required to fish in any of the public waters of the State on that day. All other laws and rules pertaining to recreational fishing still apply.

(b) Sale of Fish Prohibited. – A license issued under this Article or Article 25A of this Chapter does not authorize an individual who takes or lands any species of fish under the authority of the Marine Fisheries Commission to sell, offer for sale, barter, or exchange the fish for anything of value. Except as provided in G.S. 113-168.4, it is unlawful for any individual who takes or lands any species of fish under the authority of the Marine Fisheries Commission by any means to sell, offer for sale, barter, or exchange these fish for anything of value.

(c) Assignment and Transfer Prohibited. – It is unlawful to buy, sell, lend, borrow, assign, or otherwise transfer a license issued under this Article or Article 25A of this Chapter or to attempt to buy, sell, lend, borrow, assign, or otherwise transfer a license issued under this ~~Article.~~Article or Article 25A of this Chapter.

~~(d) General Enforcement. – It is unlawful for any individual to engage in recreational fishing in coastal fishing waters in the State without providing the individual's name and residence address upon the request of an inspector or other law enforcement officer authorized to enforce federal or State laws, regulations, or rules relating to marine fisheries.~~

~~(e) Enforcement for Charterboats and Headboats. – An inspector or other law enforcement officer may only verify the licensure of an individual fishing from a charterboat or headboat after the charterboat or headboat has returned to shore and the individual has disembarked from the charterboat or headboat. Except as provided in G.S. 113-174.2(d), each individual on board a charterboat or headboat engaged in~~

~~recreational fishing, other than crew members who do not engage in recreational fishing, must have purchased a current SFL issued pursuant to G.S. 113-174.2. An owner, operator, or crew member of a charterboat or headboat is not responsible for the licensure of a customer fishing from a charterboat or headboat.~~

(f) ~~Cancellation.~~Cancellation of fraudulent license; penalties. – The ~~Division~~ Wildlife Resources Commission may cancel a license issued by the Commission under this Article or Article 25A of this Chapter if the license was issued on the basis of false information supplied by the license applicant. The Division may cancel a For Hire Blanket CRFL issued under G.S. 113-174.3 if the license was issued on the basis of false information supplied by the license applicant. A cancelled license is void from the date of issuance. It is a Class 1 misdemeanor for an individual to knowingly do any of the following:

(1) Engage in any activity regulated under this Article with an improper, false, or altered license.

(2) Make any false, fraudulent, or misleading statement in applying for a license issued under this Article or Article 25A of this Chapter.

(3) Counterfeit, alter, or falsify any application or license issued under this Article or Article 25A of this Chapter.

(g) Reporting Requirements. – A person licensed under this Article or Article 25A of this Chapter shall comply with the biological data sampling and survey programs of the Marine Fisheries Commission and the Division.

(h) Replacement Licenses. – Upon receipt of a proper application together with a fee of five dollars ($5.00), the Wildlife Resources Commission may issue a new license to replace one that has been lost or destroyed before its expiration. The application must be on a form of the Wildlife Resources Commission setting forth information in sufficient detail to allow ready identification of the lost or destroyed license and ascertainment of the applicant's continued entitlement to it."

SECTION 3. G.S. 113-174.2 reads as rewritten:

"**§ 113-174.2. ~~Saltwater~~ Coastal Recreational Fishing License.**

~~(a) License Required. – Except as otherwise provided in this Article, it is unlawful for any individual to engage in recreational fishing in coastal fishing waters by means of recreational gear without having purchased a current SFL issued under this section. It is unlawful for any individual fishing under a SFL to possess fish in excess of recreational possession limits.~~

(a1) Authorization to Fish in Coastal and Joint Fishing Waters. – A CRFL issued under this section authorizes the licensee to engage in recreational fishing in coastal fishing waters, including joint fishing waters. A CRFL issued under this section does not authorize the licensee to fish in inland fishing waters.

~~(b) Purchase; Renewal. – Any license issued under this section may be purchased or renewed at designated offices of the Division; from the Division by mail, electronic mail, the Internet, or telephone; or at locations designated by the North Carolina Saltwater Fishing Fund Board of Trustees.~~

(c) Types of ~~SFLs;~~CRFLs; Fees; Duration. – The ~~Division~~ Wildlife Resources Commission shall issue the following ~~SFLs:~~CRFLs:

(1) ~~One-year SFL.~~ Annual Resident CRFL. – $15.00. This license is valid for a period of one year from the date of issuance. This license shall be issued only to an individual who is a resident of the State.

(1a) Annual Nonresident CRFL. – $30.00. This license is valid for a period of one year from the date of issuance. This license shall be issued only to an individual who is not a resident of the State.

~~(2) Two-year SFL. – $30.00. This license is valid for a period of two years from the date of issuance.~~

~~(3) Three-year SFL. – $45.00. This license is valid for a period of three years from the date of issuance.~~

(4) ~~Seven-day SFL.~~Ten-Day Resident CRFL. – ~~$1.00~~$5.00. This license is valid for a period of ~~seven consecutive days.~~10 consecutive days, as indicated on the license. ~~An individual may purchase this license only once in any 12-month period.~~ This license shall be issued only to an individual who is a resident of the State.

(4a) Ten-Day Nonresident CRFL. – $10.00. This license is valid for a period of 10 consecutive days, as indicated on the license. This license shall be issued only to an individual who is not a resident of the State.

~~(5) Subsistence SFL. – An applicant for a license under this subdivision shall provide to the Division a certification from the Department of Health and Human Services that the individual falls below the federal poverty level. A license issued under this subdivision shall be issued without charge and is valid for a period of one year from the date of issuance.~~

(6) Lifetime ~~SFL.~~CRFLs. – ~~This license is~~Except as provided in sub-subdivision j. of this subdivision, CRFLs issued under this subdivision are valid for the lifetime of the licensee. ~~The fee for the Lifetime SFL, based on the age of the prospective licensee as of the date on which the application is filed with the Division, is:~~

~~a. Younger than six years of age $100.00~~

~~b. Six years of age to younger than 11 years of age $150.00~~

~~c. 11 years of age to younger than 18 years of age $200.00~~

~~d. 18 years of age or older $500.00~~

e. Infant Lifetime CRFL. – $100.00. This license shall be issued only to an individual younger than one year of age.

f. Youth Lifetime CRFL. – $150.00. This license shall be issued only to an individual who is one year of age or older but younger than 12 years of age.

g. Resident Adult Lifetime CRFL. – $250.00. This license shall be issued only to an individual who is 12 years of age or older but younger than 70 years of age and who is a resident of the State.

h. Nonresident Adult Lifetime CRFL. – $500.00. This license shall be issued only to an individual who is 12 years of age or older and who is not a resident of the State.

i. Resident Elderly Lifetime CRFL. – $10.00. This license shall be issued only to an individual who is 70 years of age or older and who is a resident of the State.

j. Resident Disabled Veteran CRFL. – $10.00. This license shall be issued only to an individual who is a resident of the State and who is a fifty percent (50%) or more disabled veteran as determined by the United States Department of Veterans Affairs. This license remains valid for the lifetime of the licensee so long as the licensee remains fifty percent (50%) or more disabled.

k. Resident Totally Disabled CRFL. – $10.00. This license shall be issued only to an individual who is a resident of the State and who is totally and permanently disabled as determined by the Social Security Administration.

(d) Exemptions. – An individual ~~may engage in recreational fishing by means of recreational gear without having purchased a SFL~~is exempt from the license requirements of G.S. 113-174.1(a) if the individual ~~is~~ either:

(1) Is under 16 years of age.~~18 years of age or younger and is currently enrolled in school and is making progress toward obtaining a high school diploma or its equivalent.~~

(2) Holds any of the following licenses that were purchased prior to January 1, 2005:

a. Infant Lifetime Sportsman License issued under G.S. 113-270.1D(b)(1).

b. Youth Lifetime Sportsman License issued under G.S. 113-270.1D(b)(2).

c. Adult Resident Lifetime Sportsman License issued under G.S. 113-270.1D(b)(3).

d. Nonresident Lifetime Sportsman License issued under G.S. 113-270.1D(b)(4).

e. Age 70 Resident Lifetime Sportsman License issued under G.S. 113-270.1D(b)(5).

f. Lifetime Resident Comprehensive Fishing License issued under G.S. 113-271(d)(3).

(3) Holds any of the following licenses that were purchased prior to March 1, 2006:

a. Lifetime Combination Hunting and Fishing License for Disabled Residents issued under G.S. 113-270.1C(b)(4).

b. Disabled Resident Sportsman License issued under G.S. 113-270.1D(b)(6).

(4) Holds any of the following licenses:

a. Lifetime Fishing License for the Legally Blind issued under G.S. 113-271(d)(7).

b. Adult Care Home Resident Fishing License issued under G.S. 113-271(d)(8)."

SECTION 4. Article 14B of Chapter 113 of the General Statutes is amended by adding a new section to read:

"**§ 113-174.3. For-Hire Blanket CRFL; enforcement.**

(a) License. – A person who operates a for-hire boat may purchase a For-Hire Blanket CRFL issued by the Division of Marine Fisheries. 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 on the for-hire boat to engage in recreational fishing in joint fishing waters or inland fishing waters. This license is valid for a period of one year from the date of issuance. The fee for a For-Hire Blanket CRFL is:

(1)	Vessel of 18 feet or less in length	$150.00.
(2)	Vessel of greater than 18 feet in length but 38 feet or less in length	$250.00.
(3)	Vessel of greater than 38 feet in length but 50 feet or less in length	$350.00.
(4)	Vessel of greater than 50 feet in length	$450.00.

(b) Enforcement. – An inspector or other law enforcement officer may only verify the licensure of a person who operates a for-hire boat after the boat has returned to shore. An inspector or other law enforcement officer may only verify the licensure of an individual engaged in recreational fishing from a for-hire boat after the boat has returned to shore and the individual has disembarked from the boat. Except as provided in this section and G.S. 113-174.2(d), each individual on board a for-hire boat engaged in recreational fishing, other than crew members who do not engage in recreational fishing, must hold a license issued under this Article or Article 25A of this Chapter. An owner, operator, or crew member of a for-hire boat is not responsible for the licensure of a customer fishing from the boat."

SECTION 5. G.S. 113-175 reads as rewritten:

"**§ 113-175. Definitions.**

As used in this Article:

~~(1) "Board of Trustees" means the Board of Trustees of the Fund.~~

(1a) "Endowment Fund" means the North Carolina Marine Resources Endowment Fund.

(1b) "Endowment investment income" means interest and other income earned from the investment of the principal of the Endowment Fund.

(1c) "Endowment license revenues" means the net proceeds from the sale of licenses issued under G.S. 113-174.2(c)(6) and a portion of the net proceeds from the sale of licenses issued under G.S. 113-351(c)(3) and (4). The apportionment of the net proceeds from the sale of licenses issued under G.S. 113-351(c)(3) and (4) shall be jointly determined by the Division of Marine Fisheries and the Wildlife Resources Commission. In the event that the Division of Marine Fisheries and the

Wildlife Resources Commission cannot agree on the apportionment, the Governor is authorized to determine the apportionment.

(2) ~~"Fund"~~"Marine Resources Fund" means the North Carolina ~~Saltwater Fishing~~Marine Resources Fund.

(3) ~~"Investment"~~"Marine resources investment income" means interest earned from the investment of ~~license revenues and the proceeds of any gifts, grants, or contributions deposited in~~ the principal of the Marine Resources Fund.

(4) ~~"License"~~"Marine resources license revenues" means the net proceeds from the sale of ~~Saltwater Fishing Licenses~~licenses issued under ~~G.S. 113-174.2.~~Article 14B of this Chapter and a portion of the net proceeds from the sale of licenses issued under Article 25A of this Chapter, excluding endowment license revenues. The apportionment of the net proceeds from the sale of licenses issued under Article 25A of this Chapter shall be jointly determined by the Division of Marine Fisheries and the Wildlife Resources Commission. In the event that the Division of Marine Fisheries and the Wildlife Resources Commission cannot agree on the apportionment, the Governor is authorized to determine the apportionment. ~~The term includes funds realized from the sale, lease, rental, or other grant of rights to real or personal property acquired or produced with license revenues and federal aid project reimbursements to the extent that license revenues originally funded the project for which the reimbursement is made.~~"

SECTION 6. G.S. 113-175.1 reads as rewritten:

"**§ 113-175.1. North Carolina ~~Saltwater Fishing Fund.~~Marine Resources Fund.**

(a) There is hereby established the North Carolina ~~Saltwater Fishing~~Marine Resources Fund as a nonreverting fund in the office of the State Treasurer. The purpose of the Marine Resources Fund is to enhance the ~~fishery~~ marine resources of the ~~State for commercial and recreational fishing.~~State. ~~License revenues and the proceeds of any gifts, grants, and contributions to the State that are specifically designated for inclusion in the Fund shall be deposited in the Fund.~~ The principal of the Marine Resources Fund shall consist of:

(1) Marine resources license revenues.

(2) Proceeds of any gifts, grants, and contributions to the State that are specifically designated for inclusion in the Marine Resources Fund.

(3) Funds realized from the sale, lease, rental, or other grant of rights to real or personal property acquired or produced from funds disbursed from the Marine Resources Fund.

(4) Federal aid project reimbursements to the extent that funds disbursed from the Marine Resources Fund originally funded the project for which the reimbursement is made.

(b) The State Treasurer shall hold the Marine Resources Fund separate and apart from all other moneys, funds, and accounts. The State Treasurer shall invest the assets

of the Marine Resources Fund in accordance with the provisions of G.S. 147-69.2 and G.S. 147-69.3."

SECTION 7. G.S. 113-175.2 is repealed.

SECTION 8. G.S. 113-175.3 is repealed.

SECTION 9. G.S. 113-175.4 is repealed.

SECTION 10. Article 14C of Chapter 113 of the General Statutes is amended by adding a new section to read:

"**§ 113-175.5. North Carolina Marine Resources Endowment Fund.**

(a) There is hereby established the North Carolina Marine Resources Endowment Fund as a nonreverting fund in the office of the State Treasurer. The purpose of the Endowment Fund is to provide the citizens and residents of the State with the opportunity to invest in the future of the marine resources of the State. The principal of the Endowment Fund shall consist of:

(1) Endowment license revenues.

(2) Proceeds of any gifts, grants, and contributions to the State that are specifically designated for inclusion in the Endowment Fund.

(3) Funds realized from the sale, lease, rental, or other grant of rights to real or personal property acquired or produced from endowment investment income.

(4) Federal aid project reimbursements to the extent that endowment investment income originally funded the project for which the reimbursement is made.

(5) Transfers to the Endowment Fund.

(6) Any endowment investment income, marine resources investment income, or marine resources license revenue that is credited to the Endowment Fund for the purpose of increasing the principal of the Endowment Fund.

(b) The State Treasurer shall hold the Endowment Fund separate and apart from all other moneys, funds, and accounts. The State Treasurer shall invest the assets of the Endowment Fund in accordance with the provisions of G.S. 147-69.2 and G.S. 147-69.3.

(c) The Endowment Fund is declared to constitute a special trust derived from a contractual relationship between the State and the members of the public whose investments contribute to the Endowment Fund. In recognition of this special trust, all of the following restrictions are placed on disbursement of funds held in the Endowment Fund:

(1) Any restrictions specified by the donors on the uses of income derived from gifts, grants, and voluntary contributions shall be respected but shall not be binding.

(2) No disbursements of the endowment investment income derived from the endowment license revenues generated by the sale of Infant Lifetime CRFLs under G.S. 113-174.2(c)(6)e., Youth Lifetime CRFLs under G.S. 113-174.2(c)(6)f., Infant Lifetime Unified Sportsman/Coastal Recreational Fishing Licenses under

G.S. 113-351(c)(3)a., or Youth Lifetime Unified Sportsman/Coastal Recreational Fishing Licenses under G.S. 113-351(c)(3)b. shall be made for any purpose until the respective licensees attain the age of 16 years. The State Treasurer shall periodically make an actuarial determination as to the amount of endowment .investment income within the Endowment Fund that remains encumbered by the restriction of this subdivision and the amount that is free of the restriction. The Executive Director of the Wildlife Resources Commission shall provide the State Treasurer with the information necessary to make this determination.

(3) No disbursement shall be made from the principal of the Endowment Fund except as otherwise provided by law."

SECTION 11. G.S. 113-270.1 reads as rewritten:

"**§ 113-270.1. License agents.**

(a) The Wildlife Resources Commission may by rule provide for the ~~annual~~ appointment of persons as license agents to sell licenses and permits ~~which it~~ that the Commission is authorized to issue by this Subchapter or by any other provisions of law. To facilitate the convenience of the public, the efficiency of administration, the need to keep statistics and records affecting the conservation of wildlife resources, boating, water safety, and other matters within the jurisdiction of the Wildlife Resources Commission, and the need to issue licenses and permits containing special restrictions, the Wildlife Resources Commission may issue licenses and permits in any particular category through:

(1) License agents.
(2) The Wildlife Resources Commission's headquarters.
(3) Employees of the Wildlife Resources Commission.
(4) Two or more such sources simultaneously.

(a1) When there are substantial reasons for differing treatment, the Wildlife Resources Commission may issue a type of license or permit by one method in one locality and by another method in another locality.

(b) License agents may deduct from the amount collected for each license or permit a fee of six percent (6%).

(b1) When licenses or permits are to be issued by license agents as provided by subsection (a) of this section, the Wildlife Resources Commission may adopt rules to provide for any of the following:

(1) Qualifications of the license agents.
(2) Duties of the license agents.
(3) Methods and procedures to ensure accountability and security for proceeds and unissued licenses and permits.
(4) Types and amounts of evidence that a license agent must submit to relieve the agent of responsibility for losses due to occurrences beyond the control of the agent.

(5) Any other reasonable requirement or condition that the Wildlife Resources Commission deems necessary to expedite and control the issuance of licenses and permits by license agents.

(b2) The Wildlife Resources Commission may adopt rules to authorize the Executive Director to take any of the following actions related to license agents:

(1) Select and appoint license agents in areas most convenient for the sale of licenses and permits.

(2) Limit the number of license agents in an area if necessary for efficiency of operation.

(3) Require prompt and accurate reporting and remittance of public funds or documents by license agents.

(4) Conduct periodic and special audits of accounts.

(5) Suspend or terminate the authorization of any license agent found to be noncompliant with rules adopted by the Wildlife Resources Commission or when State funds or property are reasonably believed to be in jeopardy.

(6) Require the immediate surrender of all equipment, forms, licenses, permits, records, State funds and property, issued by or belonging to the Wildlife Resources Commission, in the event of the termination of a license agent.

(b3) The Wildlife Resources Commission is exempt from the contested case provisions of Chapter 150B with respect to determinations of whether to authorize or terminate the authority of a person to sell licenses and permits as a license agent of the Wildlife Resources Commission.

(b4) If any check or bank account draft of any license agent for the issuance of licenses or permits shall be returned by the banking facility upon which the same is drawn for lack of funds, the license agent shall be liable to the Commission for a penalty of five percent (5%) of the amount of the check or bank account draft, but in no event shall the penalty be less than five dollars ($5.00) or more than two hundred dollars ($200.00). License agents shall be assessed a penalty of twenty-five percent (25%) of their issuing fee on all remittances to the Commission after the 15th day of the month immediately following the month of sale.

~~(c) The Wildlife Resources Commission may provide qualifications and standards concerning license agents and delegate to the Executive Director the task of appointment and supervision. Annual appointments run from May 1 to April 30 each year. The Wildlife Resources Commission may require license agents to post bonds, keep records and make reports concerning licenses and receipts, be subject to such audits and inspections as may be necessary, and pay a penalty of five percent (5%) on any worthless checks given the Wildlife Resources Commission. The minimum penalty for a worthless check, however, is five dollars ($5.00), and the maximum penalty is two hundred dollars ($200.00). The Wildlife Resources Commission shall require license agents to pay penalties of twenty-five percent (25%) of the agents' fees on any license fees remitted to the Commission after the fifteenth day of the month immediately following the month of sale.~~

(d) ~~The Wildlife Resources Commission may make rules in implementing the authority granted in subsection (c), but it need not set out in its rules details as to forms of license, records and accounting procedures, and other reasonable requirements that may be administratively promulgated by employees of the Wildlife Resources Commission in implementation of the purposes of this Article in order for such administrative requirements to be deemed validly required.~~ It is a Class 1 misdemeanor for a license ~~agent:~~agent to do any of the following:

(1) ~~To withhold~~Withhold or misappropriate funds from the sale of ~~licenses;~~licenses or permits.

(2) ~~To falsify~~Falsify records of licenses ~~sold;~~or permits sold.

(3) ~~Wilfully~~ Willfully and knowingly ~~to~~ assist or allow a person to obtain a license or permit for which ~~he is ineligible;~~the person is ineligible.

(4) ~~Wilfully to~~Willfully issue a backdated ~~license;~~license or permit.

(5) ~~Wilfully on records or licenses to~~Willfully include false information or omit material information ~~as to:~~on records, licenses, or permits regarding either:

a. A person's entitlement to a particular ~~license; or~~license or permit.

b. The applicability or term of a particular ~~license; or~~license or permit.

(6) ~~To refuse to return all consigned licenses, or to remit the net value of consigned licenses sold or unaccounted for, upon demand from an authorized employee of the Wildlife Resources Commission.~~Charge or accept any additional fee, remuneration, or other item of value in association with any activity set out in subdivisions (1) through (5) of this subsection.

~~(e) The Executive Director may temporarily suspend, revoke, or refuse to renew a person's appointment as a license agent if he fails in a timely manner to submit required reports, remit moneys due the Wildlife Resources Commission, or otherwise comply with the qualifications and standards set by the Wildlife Resources Commission or with reasonable administrative directives of the Executive Director. The temporary suspension is effective immediately upon communication of that fact to the license agent or his representative handling the licenses. The communication as to suspension must state the grounds for suspension and that the license agent may request a hearing within five working days if he contests the grounds for suspension. If not in writing, the communication must be followed by written notice of suspension containing the same information. By personal service of an impoundment order upon a license agent or his representative handling the licenses, an employee or agent of the Wildlife Resources Commission may enter the premises and impound all licenses, moneys, record books, reports, license forms, and other documents, ledgers, and materials pertinent or apparently pertinent to the license agency being suspended. The Executive Director must make the impounded property, or copies of it, available to the licensee during the period of temporary suspension.~~

~~(f) If a hearing is requested, it is before the Executive Director or his designee to be held at Raleigh or some other place convenient to the parties specified by the Executive Director. The temporary suspension remains in effect until the hearing, and after the hearing may be rescinded or continued in effect, as the facts warrant, in the discretion of the Executive Director. A temporary suspension may not last longer than 30 days, but additional suspensions may be imposed if at the end of the suspension period the license agent is still not in compliance with appropriate standards, qualifications, and administrative directives. A license agent may at any time after a hearing appeal his suspension to the Wildlife Resources Commission.~~

~~(g) Notice of revocation or nonrenewal of the appointment may be sent the license agent in lieu of or in addition to temporary suspension. The notice must state the grounds for termination of the appointment and the license agent's right to a hearing if he has not previously been afforded one. If the appointment is to be revoked, the notice must state the effective date and hour of revocation. If the appointment is not to be renewed, the notice must state that the appointment expires at midnight on April 30. If he has not been previously afforded a hearing, a license agent is entitled to a hearing within 14 days before the Executive Director or his designee to be held at Raleigh or some other place convenient to the parties specified by the Executive Director. After the hearing, the Executive Director, applying appropriate standards, must take the action with respect to the appointment as license agent that the facts warrant. If the Executive Director upholds the decision to terminate the appointment, a license agent may appeal his termination to the Wildlife Resources Commission. Pending the hearing and any appeal from it, the termination is held in abeyance, but no license sales may be made once the license agent's bond has expired.~~

~~(h) Upon termination of the appointment, the former agent must return to the Wildlife Resources Commission all record books, reports, license forms, moneys, and other property pertaining to the license agency, and must allow agents of the Wildlife Resources Commission to conduct necessary inspections and audits required in terminating the license agency. Each day's refusal after termination to return, upon demand, the record books, reports, license forms, moneys, and other property pertaining to the license agency is a separate offense. Each instance of refusal, after termination, to allow agents of the Wildlife Resources Commission to conduct necessary inspections and audits during regular business hours is a separate offense. A violation of this subsection is a Class 2 misdemeanor. Before termination, violations by license agents are punishable under G.S. 113-135, subsection (d) above, or other provision of this Subchapter, as appropriate.~~

~~(i) No person denied appointment or whose appointment was terminated under this section is eligible to apply again for an appointment as a license agent for two years. Upon application, the executive director may not grant the appointment as license agent unless the applicant produces clear evidence, convincing to the Executive Director, that he meets all standards and qualifications and will comply with all requirements of statutes, rules, and reasonable administrative directives pertaining to license agents.~~

~~(j) The Executive Director or his designee holding any hearing under this section must keep a written record of evidence considered and findings made. Upon appeal to the Wildlife Resources Commission, the commission chairman or other presiding officer must cause such a written record of evidence and findings to be made and kept. Hearings and appeals under this section are internal matters concerning license agents of the Wildlife Resources Commission and are not governed by the North Carolina Administrative Procedure Act.~~"

SECTION 12. G.S. 113-270.1C reads as rewritten:

"**§ 113-270.1C. Combination hunting and inland fishing licenses.**

(a) The combination hunting and inland fishing licenses set forth in subsection (b) of this section entitle the ~~holder~~ licensee to take, except on game lands, all wild birds and wild animals, other than big game and waterfowl, by all lawful methods and in all open seasons, and to fish with hook and line in all inland and joint fishing waters, except public mountain trout waters. A combination hunting and inland fishing license issued under this section does not entitle the licensee to engage in recreational fishing in coastal fishing waters that are not joint fishing waters.

(b) Combination hunting and inland fishing licenses issued by the Wildlife Resources Commission are:

(1) Resident Annual Combination Hunting and Inland Fishing License – $20.00. This license shall be issued only to an individual resident of the State.

(2), (3) Repealed by Session Laws 1997-326, s. 2.

~~(4) Lifetime Combination Hunting and Fishing License for Disabled Residents – $10.00. This license shall be issued only to (i) an individual resident of the State who is a fifty percent (50%) or more disabled veteran as determined by the United States Department of Veterans Affairs, remaining valid for the lifetime of the individual so long as the individual remains fifty percent (50%) or more disabled; or (ii) an individual resident of the State who is totally disabled, remaining valid for the lifetime of the individual so long as the individual remains totally disabled. For purposes of this section, "totally disabled" means physically incapable of being gainfully employed. The application form for this license, to be provided by the Wildlife Resources Commission, allows a person to apply only for the fishing privileges conveyed by the license. This license entitles the holder to fish in public mountain trout waters as provided in G.S. 113-272(a).~~

(5) Resident Disabled Veteran Lifetime Combination Hunting and Inland Fishing License – $10.00. This license shall be issued only to an individual who is a resident of the State and who is a fifty percent (50%) or more disabled veteran as determined by the United States Department of Veterans Affairs. This license remains valid for the lifetime of the licensee so long as the licensee remains fifty percent

(50%) or more disabled. This license entitles the licensee to fish in public mountain trout waters as provided in G.S. 113-272(a).

(6) Resident Totally Disabled Lifetime Combination Hunting and Inland Fishing License – $10.00. This license shall be issued only to an individual who is a resident of the State and who is totally and permanently disabled as determined by the Social Security Administration. This license remains valid for the lifetime of the licensee. This license entitles the licensee to fish in public mountain trout waters as provided in G.S. 113-272(a)."

SECTION 13. G.S. 113-270.1D reads as rewritten:

"**§ 113-270.1D. Sportsman licenses.**

(a) Annual Sportsman License – $40.00. This license shall be issued only to an individual resident of the State and entitles the ~~holder~~ licensee to take all wild animals and wild birds, including waterfowl, by all lawful methods in all open seasons, including the use of game lands, and to fish with hook and line for all fish in all inland and joint fishing waters, including public mountain trout waters. An annual sportsman license issued under this subsection does not entitle the licensee to engage in recreational fishing in coastal fishing waters that are not joint fishing waters.

(b) Lifetime Sportsman Licenses. ~~Lifetime~~ Except as provided in subdivision (7) of this subsection, lifetime sportsman licenses are valid for the lifetime of the ~~holders~~ licensees.~~and~~ Lifetime sportsman licenses entitle the ~~holders~~ licensees to take all wild animals and wild birds by all lawful methods in all open seasons, including the use of game lands, and to fish with hook and line for all fish in all inland and joint fishing waters, including public mountain trout waters. A lifetime sportsman license issued under this subsection does not entitle the licensee to engage in recreational fishing in coastal fishing waters that are not joint fishing waters. Lifetime sportsman licenses issued by the Wildlife Resources Commission are:

(1) Infant Lifetime Sportsman License – $200.00. This license shall be issued only to an individual under one year of age.

(2) Youth Lifetime Sportsman License – $350.00. This license shall be issued only to an individual under 12 years of age.

(3) Adult Resident Lifetime Sportsman License – $500.00. This license shall be issued only to an individual resident of the State.

(4) Nonresident Lifetime Sportsman License – $1,000. This license shall be issued only to an individual nonresident of the State.

(5) Age 70 Resident Lifetime Sportsman License – $10.00. This license shall be issued only to an individual resident of the State who is at least 70 years of age.

~~(6) Disabled Resident Sportsman License – $100.00. This license shall be issued only to (i) an individual resident of the State who is a fifty percent (50%) or more disabled veteran as determined by the United States Department of Veterans Affairs, remaining valid for the lifetime of the individual so long as the individual remains fifty percent (50%) or more disabled; or (ii) an individual resident of the State who is~~

~~totally disabled, remaining valid for the lifetime of the individual so long as the individual remains totally disabled. For purposes of this section, "totally disabled" means physically incapable of being gainfully employed.~~

(7) Resident Disabled Veteran Lifetime Sportsman License – $100.00. This license shall be issued only to an individual who is a resident of the State and who is a fifty percent (50%) or more disabled veteran as determined by the United States Department of Veterans Affairs. This license remains valid for the lifetime of the licensee so long as the licensee remains fifty percent (50%) or more disabled.

(8) Resident Totally Disabled Lifetime Sportsman License – $100.00. This license shall be issued only to an individual who is a resident of the State and who is totally and permanently disabled as determined by the Social Security Administration."

SECTION 14. G.S. 113-271 reads as rewritten:

"**§ 113-271. Hook-and-line licenses in inland and joint fishing waters.**

(a) An inland hook-and-line fishing license issued under this section entitles the licensee to fish with hook and line in inland fishing waters and joint fishing waters. An inland hook-and-line fishing license issued under this section does not entitle the licensee to engage in recreational fishing in coastal fishing waters that are not joint fishing waters. An inland hook-and-line fishing license issued under subdivision (1), (3), (6a), (6b), (6c), or (9) of subsection (d) of this section entitles the licensee ~~All the hook-and-line fishing licenses set forth in subdivisions (1), (3), (7), and (9) of subsection (d) of this section entitle the holder~~ to fish with hook and line in public mountain trout waters.

(b) Repealed by Session Laws 1993 (Reg. Sess., 1994), c. 684, s. 4.

(c) Repealed by Session Laws 1979, c. 830, s. 1.

(d) The hook-and-line fishing licenses issued by the Wildlife Resources Commission are as follows:

(1) Resident Annual Comprehensive Inland Fishing License – $20.00. This license shall be issued only to an individual resident of the State.

(2) Resident State Inland Fishing License – $15.00. This license shall be issued only to an individual resident of the State.

(3) Lifetime Resident Comprehensive Inland Fishing License – $250.00. This license shall be issued only to an individual resident of the State and is valid for the lifetime of the ~~holder.~~licensee.

(4) Resident County Inland Fishing License – $10.00. This license shall be issued only to an individual resident of the State and is valid only within the county of residence of the ~~license holder.~~licensee.

(5) Nonresident State Inland Fishing License – $30.00. This license shall be issued to an individual nonresident of the State.

(6) Short-Term Inland Fishing Licenses. Short-term inland fishing licenses are valid only for the date or consecutive dates indicated on the

licenses. Short-term inland fishing licenses issued by the Wildlife Resources Commission are:

a. Resident ~~one day~~10-day Inland Fishing License – $5.00. This license shall be issued only to a resident of the State.

b. Nonresident ~~one day~~10-day Inland Fishing License – $10.00. This license shall be issued only to a nonresident of the State.

~~c. Nonresident three day – $15.00. This license shall be issued only to a nonresident of the State.~~

(6a) Age 70 Resident Lifetime Inland Fishing License – $10.00. This license shall be issued only to an individual resident of the State who is at least 70 years of age.

(6b) Resident Disabled Veteran Lifetime Inland Fishing License – $10.00. This license shall be issued only to an individual who is a resident of the State and who is a fifty percent (50%) or more disabled veteran as determined by the United States Department of Veterans Affairs. This license remains valid for the lifetime of the licensee so long as the licensee remains fifty percent (50%) or more disabled.

(6c) Resident Totally Disabled Lifetime Inland Fishing License – $10.00. This license shall be issued only to an individual who is a resident of the State and who is totally and permanently disabled as determined by the Social Security Administration. This license remains valid for the lifetime of the licensee.

~~(7) Lifetime Fishing License for the Legally Blind – No charge. This license shall be issued only to an individual resident of the State who has been certified by the Department of Health and Human Services as a person whose vision with glasses is insufficient for use in ordinary occupations for which sight is essential. This license is valid for the life of the individual so long as he remains legally blind.~~

~~(8) Adult Care Home Resident Fishing License – No charge. This license shall be issued only to an individual resident of the State who resides in an adult care home as defined in G.S. 131D-2(a)(3) or G.S. 131E-101(4). This license is valid for the life of the individual so long as the individual remains a resident of an adult care home.~~

(9) Special Guest Inland Fishing License – $50.00. This license shall be issued only to the owner or lessee of private property bordering inland or joint fishing waters, including public mountain trout waters, and entitles ~~persons~~ individuals 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 license shall not be in force unless displayed on the premises of the property and only entitles fishing without additional license to ~~persons~~ individuals fishing from

the licensed property and then only when fishing within the private property lines. The guest fishing license is not transferable as to person or location."

SECTION 15. G.S. 113-272.3(c) reads as rewritten:

"(c) Lifetime licenses are issued from the Wildlife Resources Commission headquarters. Each application for an Infant Lifetime Sportsman or Youth Lifetime Sportsman License must be accompanied by a certified copy of the birth ~~certificate~~ certificate, adoption order containing the date of birth, or other proof of age satisfactory to the Commission, of the individual to be named as the ~~license holder.~~licensee."

SECTION 16. G.S. 113-275(c1) reads as rewritten:

"(c1) Upon receipt of a proper application together with a fee of ~~two~~ five dollars ~~($2.00),~~($5.00), the Wildlife Resources Commission may issue a new license or permit to replace one that has been lost or destroyed before its expiration. The application must be on a form of the Wildlife Resources Commission setting forth information in sufficient detail to allow ready identification of the lost or destroyed license or permit and ascertainment of the applicant's continued entitlement to it."

SECTION 17. G.S. 113-276(e) is repealed.

SECTION 18. G.S. 113-276(j) reads as rewritten:

"(j) A migrant farm worker who has in his possession a temporary certification of his status as such by the Rural Employment Service of the North Carolina Employment Security Commission on a form provided by the Wildlife Resources Commission is entitled to the privileges of a resident of the State and of the county indicated on such certification during the term thereof for the purposes ~~of:~~of

~~(1)~~ ~~Purchasing~~purchasing and using the resident fishing licenses provided by G.S. 113-271(d)(2), (4), and ~~(6)a.; and~~(6)a.

~~(2) Utilizing the natural-bait exemption in subsection (e) above.~~"

SECTION 19. G.S. 113-276(m) reads as rewritten:

"(m) ~~Notwithstanding any other provision of law, the~~ The fourth day of July of each year is declared a free fishing day to promote the sport of fishing and no hook-and-line fishing license is required to fish in any of the public waters of the State on ~~this~~ that day. All other laws and rules pertaining to hook-and-line fishing still apply."

SECTION 20. G.S. 113-276.1 reads as rewritten:

"**§ 113-276.1. Regulatory authority of Wildlife Resources Commission as to license requirements and exemptions.**

(a) In its discretion and in accordance with the best interests of the conservation of wildlife resources, the Wildlife Resources Commission may implement the provisions of this Article with rules that:

(1) [Reserved.]

(2) Regulate license requirements and exemptions applying to the taking of wildlife on particular waters forming or lying across a county boundary where there may be confusion as to the location of the boundary, hardship imposed as to the location of the boundary, or difficulty of administering or enforcing the law with respect to the actual boundary location.

(3) Require persons subject to license requirements, and persons exempt from license requirements, to carry, display, or produce identification that may be necessary to substantiate the person's entitlement to a particular license or to a particular exemption from license requirements.

(4) Require individuals aboard vessels or carrying weapons or other gear that may be used to take wildlife resources, and in an area at a time wildlife resources may be taken, to exhibit identification that includes the individual's name and current address. More than one piece of identification, including a vehicle driver license, may be required to be exhibited, if available.

(5) Implement a system of tagging and reporting fur-bearing animals and big game. Upon the implementation of a tagging system for any species of fur-bearing animal, the Wildlife Resources Commission may charge a reasonable fee to defray its costs, not to exceed two dollars twenty-five cents ($2.25) per tag, for each tag furnished. The price of the big game hunting license includes the cost of big game tags.

(b) Except as provided in this subsection, the Wildlife Resources Commission shall not disclose personal information provided by an applicant for a license issued under Article 14B, Article 21, or Article 25A of Chapter 113 of the General Statutes. The Wildlife Resources Commission shall disclose to the Division of Marine Fisheries and the Marine Fisheries Commission information on the holders of licenses issued under Article 14B and Article 25A of Chapter 113 of the General Statutes."

SECTION 21. G.S. 113-296(b) reads as rewritten:

"(b) In order to be eligible for participation in the Disabled Sportsman Program established by this section, ~~a person~~an individual must be able to certify through competent medical evidence one of the following disabilities:

(1) ~~Amputation of~~Missing fifty percent (50%) or more of one or more ~~limbs;~~limbs, whether by amputation or natural causes.

(2) Paralysis of one or more ~~limbs;~~limbs.

(3) Dysfunction of one or more limbs rendering the ~~person~~individual unable to perform the tasks of grasping and lifting with the hands and arms or unable to walk without mechanical assistance, other than a ~~cane;~~cane.

(4) Disease, injury, or defect confining the ~~person~~individual to a wheelchair, walker, or ~~crutches;~~crutches.

(5) Legal ~~deafness; or~~deafness.

(6) Legal blindness, for purposes of participation in disabled fishing only.

The disability must be permanent, and ~~a person~~an individual loses eligibility to participate in the Disabled Sportsman Program when the specified disability ceases to exist."

SECTION 22. Subchapter IV of Chapter 113 of the General Statutes is amended by adding a new Article to read:

"Article 25A.

"Unified Licenses.

"**§ 113-351. Unified hunting and fishing licenses.**

(a) Definitions. – The definitions set out in G.S. 113-174 apply to this Article.

(b) General Provisions Governing Licenses. – The general provisions governing licenses set out in G.S. 113-174.1 apply to licenses issued under this section.

(c) Types of Unified Hunting and Fishing Licenses; Fees; Duration. – The Wildlife Resources Commission shall issue the following Unified Hunting and Fishing Licenses:

(1) Annual Resident Unified Sportsman/Coastal Recreational Fishing License. – $55.00. This license is valid for a period of one year from the date of issuance. This license shall be issued only to an individual who is a resident of the State. This license authorizes the licensee to take all wild animals and wild birds, including waterfowl, by all lawful methods in all open seasons, including the use of game lands; 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.

(2) Annual Resident Unified Inland/Coastal Recreational Fishing License. – $35.00. This license is valid for a period of one year from the date of issuance. This license shall be issued only to an individual who is a resident of the State. This license 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.

(3) Lifetime Unified Sportsman/Coastal Recreational Fishing Licenses. – Except as provided in sub-subdivisions f., h., and i. 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 take all wild animals and wild birds, including waterfowl, by all lawful methods in all open seasons, including the use of game lands; 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. Infant Lifetime Unified Sportsman/Coastal Recreational Fishing License. – $275.00. This license shall be issued only to an individual who is younger than one year of age.

b. Youth Lifetime Unified Sportsman/Coastal Recreational Fishing License. – $450.00. This license shall be issued only to an individual who is one year of age or older but younger than 12 years of age.

c. Resident Adult Lifetime Unified Sportsman/Coastal Recreational Fishing License. – $675.00. This license shall be

issued only to an individual who is 12 years of age or older but younger than 70 years of age and who is a resident of the State.

d. Nonresident Adult Lifetime Unified Sportsman/Coastal Recreational Fishing License. – $1,350. This license shall be issued only to an individual who is 12 years of age or older and who is not a resident of the State.

e. Resident Elderly Lifetime Unified Sportsman/Coastal Recreational Fishing License. – $20.00. This license shall be issued only to an individual who is 70 years of age or older and who is a resident of the State.

f. Resident Disabled Veteran Lifetime Unified Sportsman/Coastal Recreational Fishing License. – $110.00. This license shall be issued only to an individual who is a resident of the State and who is a fifty percent (50%) or more disabled veteran as determined by the United States Department of Veterans Affairs. This license remains valid for the lifetime of the licensee so long as the licensee remains fifty percent (50%) or more disabled.

g. Resident Totally Disabled Lifetime Unified Sportsman/Coastal Recreational Fishing License. – $110.00. This license shall be issued only to an individual who is a resident of the State and who is totally and permanently disabled as determined by the Social Security Administration.

h. Resident Legally Blind Lifetime Unified Sportsman/Coastal Recreational Fishing License. – No charge. This license shall be issued only to an individual who is a resident of the State and who has been certified by the Department of Health and Human Services as an individual whose vision with glasses is insufficient for use in ordinary occupations for which sight is essential. This license remains valid for the lifetime of the licensee so long as the licensee remains legally blind.

i. Resident Adult Care Home Lifetime Unified Sportsman/Coastal Recreational Fishing License. – No charge. This license shall be issued only to an individual who is a resident of the State and who resides in an adult care home as defined in G.S. 131D-2(a)(1b) or G.S. 131E-101(1). This license remains valid for the lifetime of the licensee so long as the licensee remains a resident of an adult care home.

(4) Lifetime Unified Inland/Coastal Recreational Fishing License. – $450.00. This license is valid for the lifetime of the licensee and 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.

(d) Resident Subsistence Unified Inland/Coastal Recreational Fishing License. – $1.00. This license is valid for a period of one year from the date of issuance. This license shall be issued only to an individual who is a resident of the State. This license authorizes the licensee to fish with hook and line for all fish in all inland fishing waters and joint fishing waters, except for public mountain trout waters, and to engage in recreational fishing in coastal fishing waters. An applicant for a license issued under this subsection shall provide to a designated license agent a certification from the county department of social services that the applicant is currently enrolled and receives benefits from at least one of the eligible social service programs listed on an application developed by the Division of Marine Fisheries and the Wildlife Resources Commission."

SECTION 23. G.S. 143B-289.52(h) reads as rewritten:

"(h) Neither the Commission nor the ~~Department~~ Division may disclose personal information provided by an applicant for a license issued under Article ~~14A or~~ 14B of Chapter 113 of the General Statutes. Neither the Commission nor the Division may disclose information on license holders provided by the Wildlife Resources Commission pursuant to G.S. 113-276.1(b)."

SECTION 24. G.S. 150B-1(e) is amended by adding a new subdivision to read:

"(e) Exemptions From Contested Case Provisions. – The contested case provisions of this Chapter apply to all agencies and all proceedings not expressly exempted from the Chapter. The contested case provisions of this Chapter do not apply to the following:

...

(15) The Wildlife Resources Commission with respect to determinations of whether to authorize or terminate the authority of a person to sell licenses and permits as a license agent of the Wildlife Resources Commission."

SECTION 25. Sections 3, 4, 9, 10, 11, and 12 of S.L. 2004-187 are repealed.

SECTION 26. Section 15 of S.L. 2004-187 reads as rewritten:

"**SECTION 15.** ~~Sections 2, 3, and 4~~Section 2 of this act ~~become~~ becomes effective ~~January~~ March 1, 2006. All other sections of this act become effective when the act becomes law."

SECTION 27. Notwithstanding G.S. 143-250.1, the State Treasurer shall transfer the sum of three million dollars ($3,000,000) from the Wildlife Endowment Fund to the Marine Resources Endowment Fund. This transfer shall be made in five equal installments of six hundred thousand dollars ($600,000) on the first day of March in 2006, 2007, 2008, 2009, and 2010.

SECTION 28.(a) License revenues and investment income held in the Marine Resources Fund established pursuant to G.S. 113-175.1, as amended by Section 6 of this act, shall remain in that Fund until such time as the General Assembly determines how and by what entity any funds should be disbursed. Endowment license revenues and endowment investment income held in the Marine Resources Endowment Fund established by G.S. 113-175.5, as enacted by Section 10 of this act, shall remain in

that Fund until such time as the General Assembly determines how and by what entity any funds should be disbursed.

SECTION 28.(b) The Joint Legislative Commission on Seafood and Aquaculture and the Environmental Review Commission shall jointly study how and by what entity license revenues and investment income held in the Marine Resources Fund and endowment investment income held in the Marine Resources Endowment Fund should be disbursed. The Commissions shall report their findings and recommendations, including any legislative proposals, to the 2006 Regular Session of the 2005 General Assembly.

SECTION 29.(a) The Wildlife Resources Commission shall adopt rules to provide for the following:

(1) Qualifications of license agents.
(2) Duties of license agents.
(3) Methods and procedures to ensure accountability and security for proceeds and unissued licenses and permits.
(4) Types and amounts of evidence that a license agent must submit to relieve the agent of responsibility for losses due to occurrences beyond the control of the agent.
(5) Any other reasonable requirement or condition that the Wildlife Resources Commission deems necessary to expedite and control the issuance of licenses and permits by license agents.

SECTION 29.(b) The Wildlife Resources Commission shall adopt rules to authorize the Executive Director to take the following actions related to license agents:

(1) Select and appoint license agents in areas most convenient for the sale of licenses and permits.
(2) Limit the number of license agents in an area if necessary for efficiency of operation.
(3) Require prompt and accurate reporting and remittance of public funds or documents by license agents.
(4) Conduct periodic and special audits of accounts.
(5) Suspend or terminate the authorization of any license agent found to be noncompliant with rules adopted by the Wildlife Resources Commission or when State funds or property are reasonably believed to be in jeopardy.
(6) Require the immediate surrender of all equipment, forms, licenses, permits, records, State funds and property, issued by or belonging to the Wildlife Resources Commission, in the event of the termination of a license agent.

SECTION 30. If any section or provision of this act is declared unconstitutional or invalid by the courts, the unconstitutional or invalid section or provision does not affect the validity of this act as a whole or any part of this act other than the part declared to be unconstitutional or invalid.

SECTION 31. Sections 5, 6, 7, 8, 9, 10, 19, 20, 23, 25, 26, 28, 29, 30, and 31 of this act are effective when this act becomes law. Sections 15, 16, 21, and 24 of

this act become effective January 1, 2006. Sections 1, 2, 3, 4, 12, 13, 14, 17, 18, 22, and 27 of this act become effective March 1, 2006. Section 11 of this act becomes effective on the date that all rules adopted by the Wildlife Resources Commission pursuant to Section 28 of this act become effective, except that G.S. 113-270.1(b3) and (b4) become effective January 1, 2006. Section 28 of this act expires on the date that all rules adopted by the Wildlife Resources Commission pursuant to Section 28 of this act become effective.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H D

HOUSE BILL 1092
PROPOSED COMMITTEE SUBSTITUTE H1092-CSSBf-6 [v.3]

4/6/2005 2:43:01 PM

Short Title: Amend Fishing License Requirements. (Public)

Sponsors:

Referred to:

April 4, 2005

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FOR THE IMPLEMENTATION OF THE COASTAL RECREATIONAL FISHING LICENSE, TO PROVIDE A SYSTEM OF UNIFIED LICENSES UNDER WHICH INDIVIDUALS MAY FISH THROUGHOUT THE STATE, AND TO AMEND CERTAIN STATUTES RELATED TO THE WILDLIFE RESOURCES COMMISSION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 113-174 reads as rewritten:

"**§ 113-174. Definitions.**

As used in this Article:

~~(1)~~ ~~"Commission" means the Marine Fisheries Commission.~~

(1a) "CRFL" means Coastal Recreational Fishing License.

(2) "Division" means the Division of Marine Fisheries in the Department of Environment and Natural Resources.

(2a) "For Hire Boat" means a charter boat, head boat, dive boat, or other boat hired to allow individuals to engage in recreational fishing.

(3) "North Carolina resident" means an individual who is a resident within the meaning of G.S. 113-130(4).

(4) "Recreational fishing" means any activity preparatory to, during, or subsequent to the taking of any ~~fish,~~finfish or shellfish, the taking of which is subject to regulation by the Marine Fisheries Commission, by any ~~means:~~means if the purpose of the taking is to obtain finfish or shellfish that are not to be sold. "Recreational fishing" does not include the taking of finfish or shellfish:

a. ~~That does not constitute a~~ By a commercial fishing operation as defined in G.S. 113-168.

b. ~~Except as provided in~~For scientific purposes pursuant to G.S. 113-261.

c. Under a RCGL issued pursuant to G.S. 113-173.

~~(5) "SFL" means Saltwater Fishing License.~~"

SECTION 2. G.S. 113-174.1 reads as rewritten:

"**§ 113-174.1. ~~General~~ License required; general provisions governing licenses.**

(a) License Purchase Required to Engage in Recreational Fishing. – It is unlawful for any individual to engage in recreational fishing ~~in coastal~~ in:

(1) Coastal fishing waters that are not joint fishing waters without ~~having purchased~~ holding a current license ~~required by this Article.~~ issued under this Article or under Article 25A of this Chapter that authorizes the individual to engage in recreational fishing in coastal fishing waters.

(2) Joint fishing waters without holding a current license issued under this Article or under Articles 21 or 25A of this Chapter that authorizes the individual to engage in recreational fishing in joint fishing waters.

(a1) It is unlawful for any individual to engage in recreational fishing without complying with ~~the provisions of this Article and rules adopted by the Commission under this Article.~~applicable requirements of this Article and Articles 21 and 25A of this Chapter and with applicable rules adopted by the Marine Fisheries Commission and the Wildlife Resources Commission.

(a2) The fourth day of July of each year is declared a free fishing day to promote the sport of fishing, and no license issued under this Article or Article 25A of this Chapter is required to fish in any of the public waters of the State on that day. All other laws and rules pertaining to recreational fishing still apply.

(b) Sale of Fish Prohibited. – A license issued under this Article or Article 25A of this Chapter does not authorize an individual who takes or lands any species of fish under the authority of the Marine Fisheries Commission to sell, offer for sale, barter, or exchange the fish for anything of value. Except as provided in G.S. 113-168.4, it is unlawful for any individual who takes or lands any species of fish under the authority of the Marine Fisheries Commission by any means to sell, offer for sale, barter, or exchange these fish for anything of value.

(c) Assignment and Transfer Prohibited. – It is unlawful to buy, sell, lend, borrow, assign, or otherwise transfer a license issued under this Article or Article 25A of this Chapter or to attempt to buy, sell, lend, borrow, assign, or otherwise transfer a license issued under this ~~Article.~~Article or Article 25A of this Chapter.

~~(d) General Enforcement. – It is unlawful for any individual to engage in recreational fishing in coastal fishing waters in the State without providing the individual's name and residence address upon the request of an inspector or other law enforcement officer authorized to enforce federal or State laws, regulations, or rules relating to marine fisheries.~~

~~(e) Enforcement for Charterboats and Headboats. – An inspector or other law enforcement officer may only verify the licensure of an individual fishing from a charterboat or headboat after the charterboat or headboat has returned to shore and the individual has disembarked from the charterboat or headboat. Except as provided in G.S. 113-174.2(d), each individual on board a charterboat or headboat engaged in~~

~~recreational fishing, other than crew members who do not engage in recreational fishing, must have purchased a current SFL issued pursuant to G.S. 113-174.2. An owner, operator, or crew member of a charterboat or headboat is not responsible for the licensure of a customer fishing from a charterboat or headboat.~~

(f) ~~Cancellation.~~Cancellation of fraudulent license; penalties. – The ~~Division~~ Wildlife Resources Commission may cancel a license issued by the Commission under this Article or Article 25A of this Chapter if the license was issued on the basis of false information supplied by the license applicant. The Division may cancel a For Hire Blanket CRFL issued under G.S. 113-174.3 if the license was issued on the basis of false information supplied by the license applicant. A cancelled license is void from the date of issuance. It is a Class 1 misdemeanor for an individual to knowingly do any of the following:

(1) Engage in any activity regulated under this Article with an improper, false, or altered license.

(2) Make any false, fraudulent, or misleading statement in applying for a license issued under this Article or Article 25A of this Chapter.

(3) Counterfeit, alter, or falsify any application or license issued under this Article or Article 25A of this Chapter.

(g) Reporting Requirements. – A person licensed under this Article or Article 25A of this Chapter shall comply with the biological data sampling and survey programs of the Marine Fisheries Commission and the Division.

(h) Replacement Licenses. – Upon receipt of a proper application together with a fee of five dollars ($5.00), the Wildlife Resources Commission may issue a new license to replace one that has been lost or destroyed before its expiration. The application must be on a form of the Wildlife Resources Commission setting forth information in sufficient detail to allow ready identification of the lost or destroyed license and ascertainment of the applicant's continued entitlement to it."

SECTION 3. G.S. 113-174.2 reads as rewritten:

"**§ 113-174.2. ~~Saltwater~~ Coastal Recreational Fishing License.**

~~(a) License Required. – Except as otherwise provided in this Article, it is unlawful for any individual to engage in recreational fishing in coastal fishing waters by means of recreational gear without having purchased a current SFL issued under this section. It is unlawful for any individual fishing under a SFL to possess fish in excess of recreational possession limits.~~

(a1) Authorization to Fish in Coastal and Joint Fishing Waters. – A CRFL issued under this section authorizes the licensee to engage in recreational fishing in coastal fishing waters, including joint fishing waters. A CRFL issued under this section does not authorize the licensee to fish in inland fishing waters.

~~(b) Purchase; Renewal. – Any license issued under this section may be purchased or renewed at designated offices of the Division; from the Division by mail, electronic mail, the Internet, or telephone; or at locations designated by the North Carolina Saltwater Fishing Fund Board of Trustees.~~

(c) Types of ~~SFLs;~~CRFLs; Fees; Duration. – The ~~Division~~ Wildlife Resources Commission shall issue the following ~~SFLs:~~CRFLs:

(1) ~~One-year SFL.~~ Annual Resident CRFL. – $15.00. This license is valid for a period of one year from the date of issuance. This license shall be issued only to an individual who is a resident of the State.

(1a) Annual Nonresident CRFL. – $30.00. This license is valid for a period of one year from the date of issuance. This license shall be issued only to an individual who is not a resident of the State.

~~(2) Two-year SFL. – $30.00. This license is valid for a period of two years from the date of issuance.~~

~~(3) Three-year SFL. – $45.00. This license is valid for a period of three years from the date of issuance.~~

(4) ~~Seven-day SFL.~~Ten-Day Resident CRFL. – ~~$1.00.~~$5.00. This license is valid for a period of ~~seven consecutive days.~~10 consecutive days, as indicated on the license. ~~An individual may purchase this license only once in any 12-month period.~~ This license shall be issued only to an individual who is a resident of the State.

(4a) Ten-Day Nonresident CRFL. – $10.00. This license is valid for a period of 10 consecutive days, as indicated on the license. This license shall be issued only to an individual who is not a resident of the State.

~~(5) Subsistence SFL. – An applicant for a license under this subdivision shall provide to the Division a certification from the Department of Health and Human Services that the individual falls below the federal poverty level. A license issued under this subdivision shall be issued without charge and is valid for a period of one year from the date of issuance.~~

(6) Lifetime ~~SFL.~~CRFLs. – ~~This license is~~Except as provided in sub-subdivision j. of this subdivision, CRFLs issued under this subdivision are valid for the lifetime of the licensee. ~~The fee for the Lifetime SFL, based on the age of the prospective licensee as of the date on which the application is filed with the Division, is:~~

~~a. Younger than six years of age $100.00~~

~~b. Six years of age to younger than 11 years of age $150.00~~

~~c. 11 years of age to younger than 18 years of age $200.00~~

~~d. 18 years of age or older $500.00~~

e. Infant Lifetime CRFL. – $100.00. This license shall be issued only to an individual younger than one year of age.

f. Youth Lifetime CRFL. – $150.00. This license shall be issued only to an individual who is one year of age or older but younger than 12 years of age.

g. Resident Adult Lifetime CRFL. – $250.00. This license shall be issued only to an individual who is 12 years of age or older but younger than 70 years of age and who is a resident of the State.

h. Nonresident Adult Lifetime CRFL. – $500.00. This license shall be issued only to an individual who is 12 years of age or older and who is not a resident of the State.

i. Resident Elderly Lifetime CRFL. – $10.00. This license shall be issued only to an individual who is 70 years of age or older and who is a resident of the State.

j. Resident Disabled Veteran CRFL. – $10.00. This license shall be issued only to an individual who is a resident of the State and who is a fifty percent (50%) or more disabled veteran as determined by the United States Department of Veterans Affairs. This license remains valid for the lifetime of the licensee so long as the licensee remains fifty percent (50%) or more disabled.

k. Resident Totally Disabled CRFL. – $10.00. This license shall be issued only to an individual who is a resident of the State and who is totally and permanently disabled as determined by the Social Security Administration.

(d) Exemptions. – An individual ~~may engage in recreational fishing by means of recreational gear without having purchased a SFL~~is exempt from the license requirements of G.S. 113-174.1(a) if the individual ~~is~~ either:

(1) Is under 16 years of age.~~18 years of age or younger and is currently enrolled in school and is making progress toward obtaining a high school diploma or its equivalent.~~

(2) Holds any of the following licenses that were purchased prior to January 1, 2005:

a. Infant Lifetime Sportsman License issued under G.S. 113-270.1D(b)(1).

b. Youth Lifetime Sportsman License issued under G.S. 113-270.1D(b)(2).

c. Adult Resident Lifetime Sportsman License issued under G.S. 113-270.1D(b)(3).

d. Nonresident Lifetime Sportsman License issued under G.S. 113-270.1D(b)(4).

e. Age 70 Resident Lifetime Sportsman License issued under G.S. 113-270.1D(b)(5).

f. Lifetime Resident Comprehensive Fishing License issued under G.S. 113-271(d)(3).

g. Lifetime Combination Hunting and Fishing License for Disabled Residents issued under G.S. 113-270.1C(b)(4).

h. Disabled Resident Sportsman License issued under G.S. 113-270.1D(b)(6).

(3) Holds any of the following licenses:

a. Lifetime Fishing License for the Legally Blind issued under G.S. 113-271(d)(7).

b. Adult Care Home Resident Fishing License issued under G.S. 113-271(d)(8)."

SECTION 4. Article 14B of Chapter 113 of the General Statutes is amended by adding a new section to read:

"**§ 113-174.3. For-Hire Blanket CRFL; enforcement.**

(a) License. – A person who operates a for-hire boat may purchase a For-Hire Blanket CRFL issued by the Division of Marine Fisheries. 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 on the for-hire boat to engage in recreational fishing in joint fishing waters or inland fishing waters. This license is valid for a period of one year from the date of issuance. The fee for a For-Hire Blanket CRFL is:

(1)	Vessel of 18 feet or less in length	$150.00.
(2)	Vessel of greater than 18 feet in length but 38 feet or less in length	$250.00.
(3)	Vessel of greater than 38 feet in length but 50 feet or less in length	$350.00.
(4)	Vessel of greater than 50 feet in length	$450.00.

(b) Enforcement. – An inspector or other law enforcement officer may only verify the licensure of a person who operates a for-hire boat after the boat has returned to shore. An inspector or other law enforcement officer may only verify the licensure of an individual engaged in recreational fishing from a for-hire boat after the boat has returned to shore and the individual has disembarked from the boat. Except as provided in this section and G.S. 113-174.2(d), each individual on board a for-hire boat engaged in recreational fishing, other than crew members who do not engage in recreational fishing, must hold a license issued under this Article or Article 25A of this Chapter. An owner, operator, or crew member of a for-hire boat is not responsible for the licensure of a customer fishing from the boat."

SECTION 5. G.S. 113-175 reads as rewritten:

"**§ 113-175. Definitions.**

As used in this Article:

~~(1) "Board of Trustees" means the Board of Trustees of the Fund.~~

(1a) "Endowment Fund" means the North Carolina Marine Resources Endowment Fund.

(1b) "Endowment investment income" means interest and other income earned from the investment of the principal of the Endowment Fund.

(1c) "Endowment license revenues" means the net proceeds from the sale of licenses issued under G.S. 113-174.2(c)(6) and a portion of the net proceeds from the sale of licenses issued under G.S. 113-351(c)(3) and (4). The apportionment of the net proceeds from the sale of licenses issued under G.S. 113-351(c)(3) and (4) shall be jointly determined by the Division of Marine Fisheries and the Wildlife Resources Commission. In the event that the Division of Marine Fisheries and the Wildlife Resources Commission cannot agree on the apportionment, the Governor is authorized to determine the apportionment.

(2) ~~"Fund"~~"Marine Resources Fund" means the North Carolina ~~Saltwater Fishing~~Marine Resources Fund.

(3) ~~"Investment"~~"Marine resources investment income" means interest earned from the investment of ~~license revenues and the proceeds of any gifts, grants, or contributions deposited in~~ the principal of the Marine Resources Fund.

(4) ~~"License"~~"Marine resources license revenues" means the net proceeds from the sale of ~~Saltwater Fishing Licenses~~licenses issued under ~~G.S. 113-174.2.~~Article 14B of this Chapter and a portion of the net proceeds from the sale of licenses issued under Article 25A of this Chapter, excluding endowment license revenues. The apportionment of the net proceeds from the sale of licenses issued under Article 25A of this Chapter shall be jointly determined by the Division of Marine Fisheries and the Wildlife Resources Commission. In the event that the Division of Marine Fisheries and the Wildlife Resources Commission cannot agree on the apportionment, the Governor is authorized to determine the apportionment. ~~The term includes funds realized from the sale, lease, rental, or other grant of rights to real or personal property acquired or produced with license revenues and federal aid project reimbursements to the extent that license revenues originally funded the project for which the reimbursement is made.~~"

SECTION 6. G.S. 113-175.1 reads as rewritten:

"**§ 113-175.1. North Carolina ~~Saltwater Fishing Fund.~~Marine Resources Fund.**

(a) There is hereby established the North Carolina ~~Saltwater Fishing~~Marine Resources Fund as a nonreverting fund in the office of the State Treasurer. The purpose of the Marine Resources Fund is to enhance the ~~fishery~~ marine resources of the ~~State for commercial and recreational fishing.~~State. ~~License revenues and the proceeds of any gifts, grants, and contributions to the State that are specifically designated for inclusion in the Fund shall be deposited in the Fund.~~ The principal of the Marine Resources Fund shall consist of:

(1) Marine resources license revenues.

(2) Proceeds of any gifts, grants, and contributions to the State that are specifically designated for inclusion in the Marine Resources Fund.

(3) Funds realized from the sale, lease, rental, or other grant of rights to real or personal property acquired or produced from funds disbursed from the Marine Resources Fund.

(4) Federal aid project reimbursements to the extent that funds disbursed from the Marine Resources Fund originally funded the project for which the reimbursement is made.

(b) The State Treasurer shall hold the Marine Resources Fund separate and apart from all other moneys, funds, and accounts. The State Treasurer shall invest the assets of the Marine Resources Fund in accordance with the provisions of G.S. 147-69.2 and G.S. 147-69.3."

SECTION 7. G.S. 113-175.2 is repealed.

SECTION 8. G.S. 113-175.3 is repealed.

SECTION 9. G.S. 113-175.4 is repealed.

SECTION 10. Article 14C of Chapter 113 of the General Statutes is amended by adding a new section to read:

"**§ 113-175.5. North Carolina Marine Resources Endowment Fund.**

(a) There is hereby established the North Carolina Marine Resources Endowment Fund as a nonreverting fund in the office of the State Treasurer. The purpose of the Endowment Fund is to provide the citizens and residents of the State with the opportunity to invest in the future of the marine resources of the State. The principal of the Endowment Fund shall consist of:

(1) Endowment license revenues.

(2) Proceeds of any gifts, grants, and contributions to the State that are specifically designated for inclusion in the Endowment Fund.

(3) Funds realized from the sale, lease, rental, or other grant of rights to real or personal property acquired or produced from endowment investment income.

(4) Federal aid project reimbursements to the extent that endowment investment income originally funded the project for which the reimbursement is made.

(5) Transfers to the Endowment Fund.

(6) Any endowment investment income, marine resources investment income, or marine resources license revenue that is credited to the Endowment Fund for the purpose of increasing the principal of the Endowment Fund.

(b) The State Treasurer shall hold the Endowment Fund separate and apart from all other moneys, funds, and accounts. The State Treasurer shall invest the assets of the Endowment Fund in accordance with the provisions of G.S. 147-69.2 and G.S. 147-69.3.

(c) The Endowment Fund is declared to constitute a special trust derived from a contractual relationship between the State and the members of the public whose investments contribute to the Endowment Fund. In recognition of this special trust, all of the following restrictions are placed on disbursement of funds held in the Endowment Fund:

(1) Any restrictions specified by the donors on the uses of income derived from gifts, grants, and voluntary contributions shall be respected but shall not be binding.

(2) No disbursements of the endowment investment income derived from the endowment license revenues generated by the sale of Infant Lifetime CRFLs under G.S. 113-174.2(c)(6)e., Youth Lifetime CRFLs under G.S. 113-174.2(c)(6)f., Infant Lifetime Unified Sportsman/Coastal Recreational Fishing Licenses under G.S. 113-351(c)(3)a., or Youth Lifetime Unified Sportsman/Coastal Recreational Fishing Licenses under G.S. 113-351(c)(3)b. shall be made for any purpose until the respective licensees attain the age of 16

years. The State Treasurer shall periodically make an actuarial determination as to the amount of endowment investment income within the Endowment Fund that remains encumbered by the restriction of this subdivision and the amount that is free of the restriction. The Executive Director of the Wildlife Resources Commission shall provide the State Treasurer with the information necessary to make this determination.

(3) No disbursement shall be made from the principal of the Endowment Fund except as otherwise provided by law."

SECTION 11. G.S. 113-270.1 reads as rewritten:

"**§ 113-270.1. License agents.**

(a) The Wildlife Resources Commission may by rule provide for the ~~annual~~ appointment of persons as license agents to sell licenses and permits ~~which it~~ that the Commission is authorized to issue by this Subchapter or by any other provisions of law. To facilitate the convenience of the public, the efficiency of administration, the need to keep statistics and records affecting the conservation of wildlife resources, boating, water safety, and other matters within the jurisdiction of the Wildlife Resources Commission, and the need to issue licenses and permits containing special restrictions, the Wildlife Resources Commission may issue licenses and permits in any particular category through:

(1) License agents.

(2) The Wildlife Resources Commission's headquarters.

(3) Employees of the Wildlife Resources Commission.

(4) Two or more such sources simultaneously.

(a1) When there are substantial reasons for differing treatment, the Wildlife Resources Commission may issue a type of license or permit by one method in one locality and by another method in another locality.

(b) License agents may deduct from the amount collected for each license or permit a fee of six percent (6%).

(b1) When licenses or permits are to be issued by license agents as provided by subsection (a) of this section, the Wildlife Resources Commission may adopt rules to provide for any of the following:

(1) Qualifications of the license agents.

(2) Duties of the license agents.

(3) Methods and procedures to ensure accountability and security for proceeds and unissued licenses and permits.

(4) Types and amounts of evidence that a license agent must submit to relieve the agent of responsibility for losses due to occurrences beyond the control of the agent.

(5) Any other reasonable requirement or condition that the Wildlife Resources Commission deems necessary to expedite and control the issuance of licenses and permits by license agents.

(b2) The Wildlife Resources Commission may adopt rules to authorize the Executive Director to take any of the following actions related to license agents:

(1) Select and appoint license agents in areas most convenient for the sale of licenses and permits.
(2) Limit the number of license agents in an area if necessary for efficiency of operation.
(3) Require prompt and accurate reporting and remittance of public funds or documents by license agents.
(4) Conduct periodic and special audits of accounts.
(5) Suspend or terminate the authorization of any license agent found to be noncompliant with rules adopted by the Wildlife Resources Commission or when State funds or property are reasonably believed to be in jeopardy.
(6) Require the immediate surrender of all equipment, forms, licenses, permits, records, and State funds and property, issued by or belonging to the Wildlife Resources Commission, in the event of the termination of a license agent.

(b3) The Wildlife Resources Commission is exempt from the contested case provisions of Chapter 150B with respect to determinations of whether to authorize or terminate the authority of a person to sell licenses and permits as a license agent of the Wildlife Resources Commission.

(b4) If any check or bank account draft of any license agent for the issuance of licenses or permits shall be returned by the banking facility upon which the same is drawn for lack of funds, the license agent shall be liable to the Commission for a penalty of five percent (5%) of the amount of the check or bank account draft, but in no event shall the penalty be less than five dollars ($5.00) or more than two hundred dollars ($200.00). License agents shall be assessed a penalty of twenty-five percent (25%) of their issuing fee on all remittances to the Commission after the 15th day of the month immediately following the month of sale.

~~(c) The Wildlife Resources Commission may provide qualifications and standards concerning license agents and delegate to the Executive Director the task of appointment and supervision. Annual appointments run from May 1 to April 30 each year. The Wildlife Resources Commission may require license agents to post bonds, keep records and make reports concerning licenses and receipts, be subject to such audits and inspections as may be necessary, and pay a penalty of five percent (5%) on any worthless checks given the Wildlife Resources Commission. The minimum penalty for a worthless check, however, is five dollars ($5.00), and the maximum penalty is two hundred dollars ($200.00). The Wildlife Resources Commission shall require license agents to pay penalties of twenty-five percent (25%) of the agents' fees on any license fees remitted to the Commission after the fifteenth day of the month immediately following the month of sale.~~

~~(d) The Wildlife Resources Commission may make rules in implementing the authority granted in subsection (c), but it need not set out in its rules details as to forms of license, records and accounting procedures, and other reasonable requirements that may be administratively promulgated by employees of the Wildlife Resources Commission in implementation of the purposes of this Article in order for such~~

~~administrative requirements to be deemed validly required.~~ It is a Class 1 misdemeanor for a license ~~agent:~~agent to do any of the following:

(1) ~~To withhold~~Withhold or misappropriate funds from the sale of ~~licenses;~~licenses or permits.

(2) ~~To falsify~~Falsify records of licenses ~~sold;~~or permits sold.

(3) ~~Wilfully~~ Willfully and knowingly ~~to~~ assist or allow a person to obtain a license or permit for which ~~he is ineligible;~~the person is ineligible.

(4) ~~Wilfully to~~Willfully issue a backdated ~~license;~~license or permit.

(5) ~~Wilfully on records or licenses to~~Willfully include false information or omit material information ~~as to:~~on records, licenses, or permits regarding either:

a. A person's entitlement to a particular ~~license; or~~license or permit.

b. The applicability or term of a particular ~~license; or~~license or permit.

(6) ~~To refuse to return all consigned licenses, or to remit the net value of consigned licenses sold or unaccounted for, upon demand from an authorized employee of the Wildlife Resources Commission.~~Charge or accept any additional fee, remuneration, or other item of value in association with any activity set out in subdivisions (1) through (5) of this subsection.

~~(e) The Executive Director may temporarily suspend, revoke, or refuse to renew a person's appointment as a license agent if he fails in a timely manner to submit required reports, remit moneys due the Wildlife Resources Commission, or otherwise comply with the qualifications and standards set by the Wildlife Resources Commission or with reasonable administrative directives of the Executive Director. The temporary suspension is effective immediately upon communication of that fact to the license agent or his representative handling the licenses. The communication as to suspension must state the grounds for suspension and that the license agent may request a hearing within five working days if he contests the grounds for suspension. If not in writing, the communication must be followed by written notice of suspension containing the same information. By personal service of an impoundment order upon a license agent or his representative handling the licenses, an employee or agent of the Wildlife Resources Commission may enter the premises and impound all licenses, moneys, record books, reports, license forms, and other documents, ledgers, and materials pertinent or apparently pertinent to the license agency being suspended. The Executive Director must make the impounded property, or copies of it, available to the licensee during the period of temporary suspension.~~

~~(f) If a hearing is requested, it is before the Executive Director or his designee to be held at Raleigh or some other place convenient to the parties specified by the Executive Director. The temporary suspension remains in effect until the hearing, and after the hearing may be rescinded or continued in effect, as the facts warrant, in the discretion of the Executive Director. A temporary suspension may not last longer than 30 days, but additional suspensions may be imposed if at the end of the suspension~~

~~period the license agent is still not in compliance with appropriate standards, qualifications, and administrative directives. A license agent may at any time after a hearing appeal his suspension to the Wildlife Resources Commission.~~

~~(g) Notice of revocation or nonrenewal of the appointment may be sent the license agent in lieu of or in addition to temporary suspension. The notice must state the grounds for termination of the appointment and the license agent's right to a hearing if he has not previously been afforded one. If the appointment is to be revoked, the notice must state the effective date and hour of revocation. If the appointment is not to be renewed, the notice must state that the appointment expires at midnight on April 30. If he has not been previously afforded a hearing, a license agent is entitled to a hearing within 14 days before the Executive Director or his designee to be held at Raleigh or some other place convenient to the parties specified by the Executive Director. After the hearing, the Executive Director, applying appropriate standards, must take the action with respect to the appointment as license agent that the facts warrant. If the Executive Director upholds the decision to terminate the appointment, a license agent may appeal his termination to the Wildlife Resources Commission. Pending the hearing and any appeal from it, the termination is held in abeyance, but no license sales may be made once the license agent's bond has expired.~~

~~(h) Upon termination of the appointment, the former agent must return to the Wildlife Resources Commission all record books, reports, license forms, moneys, and other property pertaining to the license agency, and must allow agents of the Wildlife Resources Commission to conduct necessary inspections and audits required in terminating the license agency. Each day's refusal after termination to return, upon demand, the record books, reports, license forms, moneys, and other property pertaining to the license agency is a separate offense. Each instance of refusal, after termination, to allow agents of the Wildlife Resources Commission to conduct necessary inspections and audits during regular business hours is a separate offense. A violation of this subsection is a Class 2 misdemeanor. Before termination, violations by license agents are punishable under G.S. 113-135, subsection (d) above, or other provision of this Subchapter, as appropriate.~~

~~(i) No person denied appointment or whose appointment was terminated under this section is eligible to apply again for an appointment as a license agent for two years. Upon application, the executive director may not grant the appointment as license agent unless the applicant produces clear evidence, convincing to the Executive Director, that he meets all standards and qualifications and will comply with all requirements of statutes, rules, and reasonable administrative directives pertaining to license agents.~~

~~(j) The Executive Director or his designee holding any hearing under this section must keep a written record of evidence considered and findings made. Upon appeal to the Wildlife Resources Commission, the commission chairman or other presiding officer must cause such a written record of evidence and findings to be made and kept. Hearings and appeals under this section are internal matters concerning license agents of the Wildlife Resources Commission and are not governed by the North Carolina Administrative Procedure Act.~~"

SECTION 12. G.S. 113-270.1C reads as rewritten:

"**§ 113-270.1C. Combination hunting and inland fishing licenses.**

(a) The combination hunting and inland fishing licenses set forth in subsection (b) of this section entitle the ~~holder~~ licensee to take, except on game lands, all wild birds and wild animals, other than big game and waterfowl, by all lawful methods and in all open seasons, and to fish with hook and line in all inland and joint fishing waters, except public mountain trout waters. A combination hunting and inland fishing license issued under this section does not entitle the licensee to engage in recreational fishing in coastal fishing waters that are not joint fishing waters.

(b) Combination hunting and inland fishing licenses issued by the Wildlife Resources Commission are:

(1) Resident Annual Combination Hunting and Inland Fishing License – $20.00. This license shall be issued only to an individual resident of the State.

(2), (3) Repealed by Session Laws 1997-326, s. 2.

~~(4) Lifetime Combination Hunting and Fishing License for Disabled Residents – $10.00. This license shall be issued only to (i) an individual resident of the State who is a fifty percent (50%) or more disabled veteran as determined by the United States Department of Veterans Affairs, remaining valid for the lifetime of the individual so long as the individual remains fifty percent (50%) or more disabled; or (ii) an individual resident of the State who is totally disabled, remaining valid for the lifetime of the individual so long as the individual remains totally disabled. For purposes of this section, "totally disabled" means physically incapable of being gainfully employed. The application form for this license, to be provided by the Wildlife Resources Commission, allows a person to apply only for the fishing privileges conveyed by the license. This license entitles the holder to fish in public mountain trout waters as provided in G.S. 113-272(a).~~

(5) Resident Disabled Veteran Lifetime Combination Hunting and Inland Fishing License – $10.00. This license shall be issued only to an individual who is a resident of the State and who is a fifty percent (50%) or more disabled veteran as determined by the United States Department of Veterans Affairs. This license remains valid for the lifetime of the licensee so long as the licensee remains fifty percent (50%) or more disabled. This license entitles the licensee to fish in public mountain trout waters as provided in G.S. 113-272(a).

(6) Resident Totally Disabled Lifetime Combination Hunting and Inland Fishing License – $10.00. This license shall be issued only to an individual who is a resident of the State and who is totally and permanently disabled as determined by the Social Security Administration. This license remains valid for the lifetime of the

licensee. This license entitles the licensee to fish in public mountain trout waters as provided in G.S. 113-272(a)."

SECTION 13. G.S. 113-270.1D reads as rewritten:

"**§ 113-270.1D. Sportsman licenses.**

(a) Annual Sportsman License – $40.00. This license shall be issued only to an individual resident of the State and entitles the ~~holder~~ licensee to take all wild animals and wild birds, including waterfowl, by all lawful methods in all open seasons, including the use of game lands, and to fish with hook and line for all fish in all inland and joint fishing waters, including public mountain trout waters. An annual sportsman license issued under this subsection does not entitle the licensee to engage in recreational fishing in coastal fishing waters that are not joint fishing waters.

(b) Lifetime Sportsman Licenses. ~~Lifetime~~ Except as provided in subdivision (7) of this subsection, lifetime sportsman licenses are valid for the lifetime of the ~~holders~~ licensees.~~and~~ Lifetime sportsman licenses entitle the ~~holders~~ licensees to take all wild animals and wild birds by all lawful methods in all open seasons, including the use of game lands, and to fish with hook and line for all fish in all inland and joint fishing waters, including public mountain trout waters. A lifetime sportsman license issued under this subsection does not entitle the licensee to engage in recreational fishing in coastal fishing waters that are not joint fishing waters. Lifetime sportsman licenses issued by the Wildlife Resources Commission are:

(1) Infant Lifetime Sportsman License – $200.00. This license shall be issued only to an individual under one year of age.

(2) Youth Lifetime Sportsman License – $350.00. This license shall be issued only to an individual under 12 years of age.

(3) Adult Resident Lifetime Sportsman License – $500.00. This license shall be issued only to an individual resident of the State.

(4) Nonresident Lifetime Sportsman License – $1,000. This license shall be issued only to an individual nonresident of the State.

(5) Age 70 Resident Lifetime Sportsman License – $10.00. This license shall be issued only to an individual resident of the State who is at least 70 years of age.

~~(6) Disabled Resident Sportsman License – $100.00. This license shall be issued only to (i) an individual resident of the State who is a fifty percent (50%) or more disabled veteran as determined by the United States Department of Veterans Affairs, remaining valid for the lifetime of the individual so long as the individual remains fifty percent (50%) or more disabled; or (ii) an individual resident of the State who is totally disabled, remaining valid for the lifetime of the individual so long as the individual remains totally disabled. For purposes of this section, "totally disabled" means physically incapable of being gainfully employed.~~

(7) Resident Disabled Veteran Lifetime Sportsman License – $100.00. This license shall be issued only to an individual who is a resident of the State and who is a fifty percent (50%) or more disabled veteran as

determined by the United States Department of Veterans Affairs. This license remains valid for the lifetime of the licensee so long as the licensee remains fifty percent (50%) or more disabled.

(8) Resident Totally Disabled Lifetime Sportsman License – $100.00. This license shall be issued only to an individual who is a resident of the State and who is totally and permanently disabled as determined by the Social Security Administration."

SECTION 14. G.S. 113-271 reads as rewritten:

"**§ 113-271. Hook-and-line licenses in inland and joint fishing waters.**

(a) An inland hook-and-line fishing license issued under this section entitles the licensee to fish with hook and line in inland fishing waters and joint fishing waters. An inland hook-and-line fishing license issued under this section does not entitle the licensee to engage in recreational fishing in coastal fishing waters that are not joint fishing waters. An inland hook-and-line fishing license issued under subdivision (1), (3), (6a), (6b), (6c), or (9) of subsection (d) of this section entitles the licensee ~~All the hook-and-line fishing licenses set forth in subdivisions (1), (3), (7), and (9) of subsection (d) of this section entitle the holder~~ to fish with hook and line in public mountain trout waters.

(b) Repealed by Session Laws 1993 (Reg. Sess., 1994), c. 684, s. 4.

(c) Repealed by Session Laws 1979, c. 830, s. 1.

(d) The hook-and-line fishing licenses issued by the Wildlife Resources Commission are as follows:

(1) Resident Annual Comprehensive Inland Fishing License – $20.00. This license shall be issued only to an individual resident of the State.

(2) Resident State Inland Fishing License – $15.00. This license shall be issued only to an individual resident of the State.

(3) Lifetime Resident Comprehensive Inland Fishing License – $250.00. This license shall be issued only to an individual resident of the State and is valid for the lifetime of the ~~holder.~~licensee.

(4) Resident County Inland Fishing License – $10.00. This license shall be issued only to an individual resident of the State and is valid only within the county of residence of the ~~license holder.~~licensee.

(5) Nonresident State Inland Fishing License – $30.00. This license shall be issued to an individual nonresident of the State.

(6) Short-Term Inland Fishing Licenses. Short-term inland fishing licenses are valid only for the date or consecutive dates indicated on the licenses. Short-term inland fishing licenses issued by the Wildlife Resources Commission are:

a. Resident ~~one day~~10-day Inland Fishing License – $5.00. This license shall be issued only to a resident of the State.

b. Nonresident ~~one day~~10-day Inland Fishing License – $10.00. This license shall be issued only to a nonresident of the State.

~~c. Nonresident three day – $15.00. This license shall be issued only to a nonresident of the State.~~

(6a) Age 70 Resident Lifetime Inland Fishing License – $10.00. This license shall be issued only to an individual resident of the State who is at least 70 years of age.

(6b) Resident Disabled Veteran Lifetime Inland Fishing License – $10.00. This license shall be issued only to an individual who is a resident of the State and who is a fifty percent (50%) or more disabled veteran as determined by the United States Department of Veterans Affairs. This license remains valid for the lifetime of the licensee so long as the licensee remains fifty percent (50%) or more disabled.

(6c) Resident Totally Disabled Lifetime Inland Fishing License – $10.00. This license shall be issued only to an individual who is a resident of the State and who is totally and permanently disabled as determined by the Social Security Administration. This license remains valid for the lifetime of the licensee.

~~(7) Lifetime Fishing License for the Legally Blind – No charge. This license shall be issued only to an individual resident of the State who has been certified by the Department of Health and Human Services as a person whose vision with glasses is insufficient for use in ordinary occupations for which sight is essential. This license is valid for the life of the individual so long as he remains legally blind.~~

~~(8) Adult Care Home Resident Fishing License – No charge. This license shall be issued only to an individual resident of the State who resides in an adult care home as defined in G.S. 131D-2(a)(3) or G.S. 131E-101(4). This license is valid for the life of the individual so long as the individual remains a resident of an adult care home.~~

(9) Special Guest Inland Fishing License – $50.00. This license shall be issued only to the owner or lessee of private property bordering inland or joint fishing waters, including public mountain trout waters, and entitles ~~persons~~ individuals 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 license shall not be in force unless displayed on the premises of the property and only entitles fishing without additional license to ~~persons~~ individuals fishing from the licensed property and then only when fishing within the private property lines. The guest fishing license is not transferable as to person or location."

SECTION 15. G.S. 113-272.3(c) reads as rewritten:

"(c) Lifetime licenses are issued from the Wildlife Resources Commission headquarters. Each application for an Infant Lifetime Sportsman or Youth Lifetime Sportsman License must be accompanied by a certified copy of the birth ~~certificate~~

certificate, adoption order containing the date of birth, or other proof of age satisfactory to the Commission, of the individual to be named as the ~~license holder.~~licensee."

SECTION 16. G.S. 113-275(c1) reads as rewritten:

"(c1) Upon receipt of a proper application together with a fee of ~~two~~ five dollars ~~($2.00),~~($5.00), the Wildlife Resources Commission may issue a new license or permit to replace one that has been lost or destroyed before its expiration. The application must be on a form of the Wildlife Resources Commission setting forth information in sufficient detail to allow ready identification of the lost or destroyed license or permit and ascertainment of the applicant's continued entitlement to it."

SECTION 17. G.S. 113-276(e) is repealed.

SECTION 18. G.S. 113-276(j) reads as rewritten:

"(j) A migrant farm worker who has in his possession a temporary certification of his status as such by the Rural Employment Service of the North Carolina Employment Security Commission on a form provided by the Wildlife Resources Commission is entitled to the privileges of a resident of the State and of the county indicated on such certification during the term thereof for the purposes ~~of:~~of

~~(1)~~ ~~Purchasing~~purchasing and using the resident fishing licenses provided by G.S. 113-271(d)(2), (4), and ~~(6)a.; and~~(6)a.

~~(2) Utilizing the natural bait exemption in subsection (e) above.~~"

SECTION 19. G.S. 113-276(m) reads as rewritten:

"(m) ~~Notwithstanding any other provision of law, the~~ The fourth day of July of each year is declared a free fishing day to promote the sport of fishing and no hook-and-line fishing license is required to fish in any of the public waters of the State on ~~this~~ that day. All other laws and rules pertaining to hook-and-line fishing still apply."

SECTION 20. G.S. 113-276.1 reads as rewritten:

"**§ 113-276.1. Regulatory authority of Wildlife Resources Commission as to license requirements and exemptions.**

(a) In its discretion and in accordance with the best interests of the conservation of wildlife resources, the Wildlife Resources Commission may implement the provisions of this Article with rules that:

(1) [Reserved.]

(2) Regulate license requirements and exemptions applying to the taking of wildlife on particular waters forming or lying across a county boundary where there may be confusion as to the location of the boundary, hardship imposed as to the location of the boundary, or difficulty of administering or enforcing the law with respect to the actual boundary location.

(3) Require persons subject to license requirements, and persons exempt from license requirements, to carry, display, or produce identification that may be necessary to substantiate the person's entitlement to a particular license or to a particular exemption from license requirements.

(4) Require individuals aboard vessels or carrying weapons or other gear that may be used to take wildlife resources, and in an area at a time

wildlife resources may be taken, to exhibit identification that includes the individual's name and current address. More than one piece of identification, including a vehicle driver license, may be required to be exhibited, if available.

(5) Implement a system of tagging and reporting fur-bearing animals and big game. Upon the implementation of a tagging system for any species of fur-bearing animal, the Wildlife Resources Commission may charge a reasonable fee to defray its costs, not to exceed two dollars twenty-five cents ($2.25) per tag, for each tag furnished. The price of the big game hunting license includes the cost of big game tags.

(b) Except as provided in this subsection, the Wildlife Resources Commission shall not disclose personal information provided by an applicant for a license issued under Article 14B, Article 21, or Article 25A of Chapter 113 of the General Statutes. The Wildlife Resources Commission shall disclose to the Division of Marine Fisheries and the Marine Fisheries Commission information on the holders of licenses issued under Article 14B and Article 25A of Chapter 113 of the General Statutes."

SECTION 21. G.S. 113-296(b) reads as rewritten:

"(b) In order to be eligible for participation in the Disabled Sportsman Program established by this section, ~~a person~~an individual must be able to certify through competent medical evidence one of the following disabilities:

(1) ~~Amputation of~~Missing fifty percent (50%) or more of one or more ~~limbs;~~limbs, whether by amputation or natural causes.

(2) Paralysis of one or more ~~limbs;~~limbs.

(3) Dysfunction of one or more limbs rendering the ~~person~~ individual unable to perform the tasks of grasping and lifting with the hands and arms or unable to walk without mechanical assistance, other than a ~~cane;~~cane.

(4) Disease, injury, or defect confining the ~~person~~ individual to a wheelchair, walker, or ~~crutches;~~crutches.

(5) Legal ~~deafness; or~~deafness.

(6) Legal blindness, for purposes of participation in disabled fishing only.

The disability must be permanent, and ~~a person~~an individual loses eligibility to participate in the Disabled Sportsman Program when the specified disability ceases to exist."

SECTION 22. Subchapter IV of Chapter 113 of the General Statutes is amended by adding a new Article to read:

"Article 25A.

"Unified Licenses.

"**§ 113-351. Unified hunting and fishing licenses.**

(a) Definitions. – The definitions set out in G.S. 113-174 apply to this Article.

(b) General Provisions Governing Licenses. – The general provisions governing licenses set out in G.S. 113-174.1 apply to licenses issued under this section.

(c) Types of Unified Hunting and Fishing Licenses; Fees; Duration. – The Wildlife Resources Commission shall issue the following Unified Hunting and Fishing Licenses:

(1) Annual Resident Unified Sportsman/Coastal Recreational Fishing License. – $55.00. This license is valid for a period of one year from the date of issuance. This license shall be issued only to an individual who is a resident of the State. This license authorizes the licensee to take all wild animals and wild birds, including waterfowl, by all lawful methods in all open seasons, including the use of game lands; 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.

(2) Annual Resident Unified Inland/Coastal Recreational Fishing License. – $35.00. This license is valid for a period of one year from the date of issuance. This license shall be issued only to an individual who is a resident of the State. This license 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.

(3) Lifetime Unified Sportsman/Coastal Recreational Fishing Licenses. – Except as provided in sub-subdivisions f., h., and i. 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 take all wild animals and wild birds, including waterfowl, by all lawful methods in all open seasons, including the use of game lands; 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. Infant Lifetime Unified Sportsman/Coastal Recreational Fishing License. – $275.00. This license shall be issued only to an individual who is younger than one year of age.

b. Youth Lifetime Unified Sportsman/Coastal Recreational Fishing License. – $450.00. This license shall be issued only to an individual who is one year of age or older but younger than 12 years of age.

c. Resident Adult Lifetime Unified Sportsman/Coastal Recreational Fishing License. – $675.00. This license shall be issued only to an individual who is 12 years of age or older but younger than 70 years of age and who is a resident of the State.

d. Nonresident Adult Lifetime Unified Sportsman/Coastal Recreational Fishing License. – $1,350. This license shall be issued only to an individual who is 12 years of age or older and who is not a resident of the State.

e. Resident Elderly Lifetime Unified Sportsman/Coastal Recreational Fishing License. – $20.00. This license shall be issued only to an individual who is 70 years of age or older and who is a resident of the State.

f. Resident Disabled Veteran Lifetime Unified Sportsman/Coastal Recreational Fishing License. – $110.00. This license shall be issued only to an individual who is a resident of the State and who is a fifty percent (50%) or more disabled veteran as determined by the United States Department of Veterans Affairs. This license remains valid for the lifetime of the licensee so long as the licensee remains fifty percent (50%) or more disabled.

g. Resident Totally Disabled Lifetime Unified Sportsman/Coastal Recreational Fishing License. – $110.00. This license shall be issued only to an individual who is a resident of the State and who is totally and permanently disabled as determined by the Social Security Administration.

h. Resident Legally Blind Lifetime Unified Sportsman/Coastal Recreational Fishing License. – No charge. This license shall be issued only to an individual who is a resident of the State and who has been certified by the Department of Health and Human Services as an individual whose vision with glasses is insufficient for use in ordinary occupations for which sight is essential. This license remains valid for the lifetime of the licensee so long as the licensee remains legally blind.

i. Resident Adult Care Home Lifetime Unified Sportsman/Coastal Recreational Fishing License. – No charge. This license shall be issued only to an individual who is a resident of the State and who resides in an adult care home as defined in G.S. 131D-2(a)(1b) or G.S. 131E-101(1). This license remains valid for the lifetime of the licensee so long as the licensee remains a resident of an adult care home.

(4) Lifetime Unified Inland/Coastal Recreational Fishing License. – $450.00. This license is valid for the lifetime of the licensee and 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.

(d) Resident Subsistence Unified Inland/Coastal Recreational Fishing License. – $1.00. This license is valid for a period of one year from the date of issuance. This license shall be issued only to an individual who is a resident of the State. This license authorizes the licensee to fish with hook and line for all fish in all inland fishing waters and joint fishing waters, except for public mountain trout waters, and to engage in recreational fishing in coastal fishing waters. An applicant for a license issued under this

subsection shall provide to a designated license agent a certification from the county department of social services that the applicant is currently enrolled and receives benefits from at least one of the eligible social service programs listed on an application developed by the Division of Marine Fisheries and the Wildlife Resources Commission."

SECTION 23. G.S. 143B-289.52(h) reads as rewritten:

"(h) Neither the Commission nor the ~~Department~~ Division may disclose personal information provided by an applicant for a license issued under Article ~~14A or~~ 14B of Chapter 113 of the General Statutes. Neither the Commission nor the Division may disclose information on license holders provided by the Wildlife Resources Commission pursuant to G.S. 113-276.1(b)."

SECTION 24. G.S. 150B-1(e) is amended by adding a new subdivision to read:

"(e) Exemptions From Contested Case Provisions. – The contested case provisions of this Chapter apply to all agencies and all proceedings not expressly exempted from the Chapter. The contested case provisions of this Chapter do not apply to the following:

...

(15) The Wildlife Resources Commission with respect to determinations of whether to authorize or terminate the authority of a person to sell licenses and permits as a license agent of the Wildlife Resources Commission."

SECTION 25. Sections 3, 4, 9, 10, 11, and 12 of S.L. 2004-187 are repealed.

SECTION 26. Section 15 of S.L. 2004-187 reads as rewritten:

"**SECTION 15.** ~~Sections 2, 3, and 4~~Section 2 of this act ~~become~~ becomes effective ~~January~~ March 1, 2006. All other sections of this act become effective when the act becomes law."

SECTION 27. The General Assembly finds that individuals who purchased certain lifetime licenses issued by the Wildlife Resources Commission prior to January 1, 2005, had a reasonable expectation that these lifetime licenses would authorize these licensees to engage in recreational fishing throughout the State and that these licensees would not be required to purchase any additional license to engage in recreational fishing in coastal waters during the lifetime of the licensee. In recognition of this expectation, the General Assembly has provided in G.S. 113-174.2(d), as enacted by Section 3 of this act, that the holders of these lifetime licenses are exempt from the license requirement for engaging in recreational fishing in coastal fishing waters that was established in S.L. 2004-187. The General Assembly further finds that, because the holders of these lifetime licenses will be authorized to take marine resources from the coastal fishing waters of the State under the provisions of this act, it is appropriate that a portion of the revenues derived from the sale of these lifetime licenses should be transferred to the Marine Resources Endowment Fund so that the endowment investment income generated by the transferred license revenues will be used to manage, restore, develop, cultivate, conserve and enhance the marine resources of the State. The General Assembly specifically finds that this transfer of funds is consistent

with the overall spirit, intent, and purpose underlying the creation of the Wildlife Endowment Fund and the Marine Resources Endowment Fund. Therefore, in accordance with G.S. 143-250.1(d)(3), the State Treasurer shall transfer the sum of three million dollars ($3,000,000) from the Wildlife Endowment Fund to the Marine Resources Endowment Fund. This transfer shall be made in five equal installments of six hundred thousand dollars ($600,000) on the first day of March in 2006, 2007, 2008, 2009, and 2010.

SECTION 28.(a) The Wildlife Resources Commission may disburse up to one million dollars ($1,000,000) from the Wildlife Resources Fund to implement this act.

SECTION 28.(b) The State Treasurer shall transfer a sum equal to the sum of funds disbursed pursuant to subsection (a) of this section from the Marine Resources Fund to the Wildlife Resources Fund on July 1, 2010.

SECTION 29.(a) License revenues and investment income held in the Marine Resources Fund established pursuant to G.S. 113-175.1, as amended by Section 6 of this act, shall remain in that Fund until such time as the General Assembly determines how and by what entity any funds should be disbursed. Endowment license revenues and endowment investment income held in the Marine Resources Endowment Fund established by G.S. 113-175.5, as enacted by Section 10 of this act, shall remain in that Fund until such time as the General Assembly determines how and by what entity any funds should be disbursed.

SECTION 29.(b) The Joint Legislative Commission on Seafood and Aquaculture and the Environmental Review Commission shall jointly study how and by what entity license revenues and investment income held in the Marine Resources Fund and endowment investment income held in the Marine Resources Endowment Fund should be disbursed. The Commissions shall report their findings and recommendations, including any legislative proposals, to the 2006 Regular Session of the 2005 General Assembly.

SECTION 30.(a) The Wildlife Resources Commission shall adopt rules to provide for the following:

(1) Qualifications of license agents.
(2) Duties of license agents.
(3) Methods and procedures to ensure accountability and security for proceeds and unissued licenses and permits.
(4) Types and amounts of evidence that a license agent must submit to relieve the agent of responsibility for losses due to occurrences beyond the control of the agent.
(5) Any other reasonable requirement or condition that the Wildlife Resources Commission deems necessary to expedite and control the issuance of licenses and permits by license agents.

SECTION 30.(b) The Wildlife Resources Commission shall adopt rules to authorize the Executive Director to take the following actions related to license agents:

(1) Select and appoint license agents in areas most convenient for the sale of licenses and permits.

(2) Limit the number of license agents in an area if necessary for efficiency of operation.
(3) Require prompt and accurate reporting and remittance of public funds or documents by license agents.
(4) Conduct periodic and special audits of accounts.
(5) Suspend or terminate the authorization of any license agent found to be noncompliant with rules adopted by the Wildlife Resources Commission or when State funds or property are reasonably believed to be in jeopardy.
(6) Require the immediate surrender of all equipment, forms, licenses, permits, records, and State funds and property, issued by or belonging to the Wildlife Resources Commission, in the event of the termination of a license agent.

SECTION 31. The repeal by this act of the statutory authority of the Wildlife Resources Commission to issue a type of license shall not affect the authority of an individual to whom a license of that type is issued prior to the effective date of the repeal to engage in the activity that the repealed license type authorizes so long as the license is otherwise valid.

SECTION 32. If any section or provision of this act is declared unconstitutional or invalid by the courts, the unconstitutional or invalid section or provision does not affect the validity of this act as a whole or any part of this act other than the part declared to be unconstitutional or invalid.

SECTION 33. Sections 5, 6, 7, 8, 9, 10, 19, 20, 23, 25, 26, 28, 29, 30, 31, 32, and 33 of this act are effective when this act becomes law. Sections 15, 16, 21, and 24 of this act become effective January 1, 2006. Sections 1, 2, 3, 4, 12, 13, 14, 17, 18, 22, and 27 of this act become effective March 1, 2006. Section 11 of this act becomes effective on the date that all rules adopted by the Wildlife Resources Commission pursuant to Section 30 of this act become effective, except that G.S. 113-270.1(b3) and (b4) become effective January 1, 2006. Section 30 of this act expires on the date that all rules adopted by the Wildlife Resources Commission pursuant to Section 30 of this act become effective.

HOUSE BILL 1092:
Amend Fishing License Requirements.

BILL ANALYSIS

Committee:	House Environment and Natural Resources	**Introduced by:**	Representatives Gibson and McComas
Date:	April 7, 2005	**Summary by:**	Jeff Hudson Committee Counsel
Version:	First Edition		

SUMMARY: ***House Bill 1092 would amend various coastal and inland fishing license statutes and establish a unified fishing license that authorizes fishing in inland, joint, and coastal fishing waters.***

CURRENT LAW: Under current law, an individual is required to hold a license issued by the Wildlife Resources Commission (WRC) to fish with hook and line in all inland and joint waters. Under S.L. 2004-187, effective January 1, 2006, an individual will be required to hold a license issued by the Division of Marine Fisheries to engage in recreational fishing in coastal fishing waters by means of recreational gear.

BILL ANALYSIS: House Bill 1092 would make a number of changes to the inland and coastal fishing license statutes as follows:

Sections 1 – 4: Amend Coastal Recreational Fishing Licenses (CRFL).
(A CRFL authorizes recreational fishing in coastal and joint waters)
License Types

- Annual Resident CRFL – $15.00.
- Annual Nonresident CRFL – $30.00.
- 10-day Resident CRFL – $5.00.
- 10-day Nonresident CRFL – $10.00.
- Various Lifetime CRFL's – Fees vary.

Exemptions for individuals who:

- Are under 16 years of age.
- Hold a Lifetime Resident Comprehensive Fishing License or a Lifetime Sportsman License purchased prior to January 1, 2005. (also exempts certain individuals who hold Lifetime CRFL's for disabled veterans, totally disabled individuals, legally blind individuals, and adult care home residents).

Optional For Hire Blanket CRFL (annual license that authorizes all individuals aboard a for hire boat to fish without an individual CRFL) – Fees are based on vessel length and range from $150.00 to $450.00.

Sections 5 – 10, 25, and 28: Abolish Board of Trustees; Create Marine Resources Fund and Marine Resources Endowment Fund.

- Abolishes Board of Trustees of Saltwater Fishing Fund
- Converts Saltwater Fishing Fund into Marine Resources Fund to hold license revenues from non-lifetime licenses.
- Establishes Marine Resources Endowment Fund to hold license revenues from lifetime licenses.
- Provides that funds held in the Marine Resources Fund and the Marine Resources Endowment Fund will remain in those Funds until the General Assembly determines how and by what entity the funds should be disbursed.

- Directs the Joint Legislative Commission on Seafood and Aquaculture and the Environmental Review Commission to study how and by what entity funds held in the Marine Resources Fund and the Marine Resources Endowment Fund should be disbursed. The Commissions will report their recommendations to the 2006 Short Session.

Sections 11 – 21, 24, and 29: Amend Inland Fishing Licenses.
(An Inland Fishing License authorizes recreational fishing in inland and joint waters)

- Makes technical, conforming, and clarifying changes requested by WRC.
- Repeals home county/natural bait exemption from inland fishing license requirements.
- Prohibits WRC from disclosing personal information of license applicants and directs WRC to provide licensee information to the Division of Marine Fisheries and the Marine Fisheries Commission.

Section 22: Establish Unified Fishing Licenses.
(A Unified License authorizes fishing in coastal, joint, and inland waters).

- Annual Resident Unified Sportsman/Coastal Recreational Fishing License (hunting and fishing) – $55.00.
- Annual Resident Unified Inland/Coastal Recreational Fishing License (fishing only) – $35.00.
- Various Lifetime Unified Sportsman/Coastal Recreational Fishing Licenses (hunting and fishing). – Fees vary.
- Lifetime Unified Inland/Coastal Recreational Fishing License (fishing only) – $450.00.
- Resident Subsistence Unified Inland/Coastal Recreational Fishing License (fishing only) – $1.00.

Section 23: Authorizes the Division of Marine Fisheries to disclose information about commercial license applicants.

Section 27: Transfer of Funds. Transfers the sum of $3,000,000 from the Wildlife Endowment Fund to the Marine Resources Endowment fund over a period of 5 years.

Section 30: Severability Clause.

Sections 26 and 31: Effective Dates.
Licensing provisions become effective March 1, 2006.

The PCS for H1092, 1st Edition, makes the following substantive changes:

- Provides that certain additional WRC disabled lifetime licenses will be grandfathered for purposes of the coastal recreational fishing license requirement if the licenses were purchased prior to January 1, 2005.
- Provides explanatory information on the transfer of funds pursuant to Section 27.
- Provides that WRC may disburse up to $1,000,000 to implement this act, to be reimbursed from the Marine Resources Fund on July 1, 2010.
- Provides that the repeal of statutory authority for certain licenses doesn't invalidate licenses that have already been issued under that authority.

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 1092 A BILL TO BE ENTITLED AN ACT TO PROVIDE FOR THE IMPLEMENTATION OF THE COASTAL RECREATIONAL FISHING LICENSE, TO PROVIDE A SYSTEM OF UNIFIED LICENSES UNDER WHICH INDIVIDUALS MAY FISH THROUGHOUT THE STATE, AND TO AMEND CERTAIN STATUTES RELATED TO THE WILDLIFE RESOURCES COMMISSION.

☒ 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) 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, April 12, 2005

The House Committee on Environment and Natural Resources met on Tuesday, April 12, 2005, in Room 643 of the Legislative Office Building at 12:00 Noon. The following members were present: Representative James A. Harrell, III, Presiding Chair; Representative Carolyn Justice, Chair; Representative Lucy Allen, Vice Chair; Representative Pricey Harrison, Vice Chair; Representative Daniel McComas, Vice Chair; Representative Curtis Blackwood, Representative Becky Carney, Representative Arlie Culp, Representative Bill Daughtridge, Representative Melanie Goodwin, Representative Joe Hackney, Representative Verla Insko, Representative Steven LaRoque, Representative Paul Luebke, Representative Grier Martin, Representative Jean Preston, Representative Alice Underhill, and Representative Jennifer Weiss.
A Visitor Registration list 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 staff were recognized and thanked. Visitors were welcomed.

HOUSE BILL 908, A BILL TO BE ENTITLED AN ACT TO PROVIDE THAT ONE OF THE FIFTEEN MEMBERS OF THE YADKIN/PEE DEE RIVER BASIN ADVISORY COMMISSION MAY BE FROM A WATER OR SEWER MUNICIPAL UTILITY RATHER THAN AN AUTHORITY.

Representative Harrell asked for a motion to adopt the Proposed Committee Substitute, H908-PCS30185-RT-2, for discussion (Please see Exhibit #2). Representative Justice, Chair so moved, motion passed. The Bill Analysis is attached. (Please see Exhibit #3). Representative Goodwin, primary bill sponsor, was recognized to explain the bill and cited the title change of the Committee Substitute, **RIVER BASIN COMMISSIONS CLARIFYING AMENDS**. She also noted that except for a substantive change this would be considered a technical bill.

The Chair recognized Representative Lucy Allen to speak on the bill. She explained that Section 2 of the Committee Substitute deletes the requirement that legislative members on the commission be required to reside within the water shed; however all other commission members shall continue to be required to reside within the water shed. Discussion from members ensued.

Upon motion by Representative Weiss, the bill received a favorable report as to the Committee Substitute, H908-PCS30185-RT-2, which changes the title, and an unfavorable report as to the original bill. The motion passed. The 2005 Committee Report is attached (Please see Exhibit #4).

There being no further business, Representative Harrell adjourned the meeting at 12:30 P.M.

Respectfully submitted,

Representative James A. Harrell, III
Presiding Chair

Beth Wood LeGrande
Committee Assistant

Exhibit #I

VISITOR REGISTRATION SHEET

Enviro. + Natural Res. 4/12/05

Name of Committee Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE ASSISTANT

NAME	FIRM OR AGENCY
Erin Kinsey	NC Conservation Network
David Knight	TNC
Steve Will	Bureaucrat
Liz Outtsen	Envir Goddess
Bob Sloan	NC Forestry Assoc
Kim Hibbard	NCLM
[illegible]	Attorney Raleigh
Alan Briggs	NHTF
PGP	NCFB
Swisak	CAA
Nancy Thompson	MCIC
Preston Howard	MCIC
Angie Hamm	Maupin Taylor

House Pages

Name Of Committee: Enviro. & Natural Res. Date: 4/12/05

1. Name: Council Patterson
   County: Franklin
   Sponsor: Linda Coleman
2. Name: J.P. Duncan
   County: Caswell
   Sponsor: Rep. Bill Faison
3. Name:
   County:
   Sponsor:
4. Name:
   County:
   Sponsor:
5. Name:
   County:
   Sponsor:

Sgt-At-Arms

1. Name: Tom Wilder
2. Name: Linda Fuller
3. Name: James Worth
4. Name: Walter Spell
5. Name:

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

HOUSE BILL 908*

Short Title:	Yadkin/Pee Dee River Basin Comm.	(Public)
Sponsors:	Representatives Goodwin, Almond (Primary Sponsors); and Steen.	
Referred to:	Environment and Natural Resources.	

March 28, 2005

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT ONE OF THE FIFTEEN MEMBERS OF THE YADKIN/PEE DEE RIVER BASIN ADVISORY COMMISSION MAY BE FROM A WATER OR SEWER MUNICIPAL UTILITY RATHER THAN AN AUTHORITY.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 77-113(b) reads as rewritten:

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

...

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

..."

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

Exhibit II

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H D

HOUSE BILL 908*
PROPOSED COMMITTEE SUBSTITUTE H908-PCS30185-RT-2

Short Title: River Basin Commissions Clarifying Amends. (Public)

Sponsors:

Referred to:

March 28, 2005

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT ONE OF THE FIFTEEN MEMBERS OF THE YADKIN/PEE DEE RIVER BASIN ADVISORY COMMISSION MAY BE FROM A WATER OR SEWER MUNICIPAL UTILITY RATHER THAN AN AUTHORITY AND TO PROVIDE THAT MEMBERS OF THE GENERAL ASSEMBLY WHOSE DISTRICTS INCLUDE ANY PART OF THE NORTH CAROLINA PORTION OF THE ROANOKE RIVER BASIN MAY SERVE AS LEGISLATIVE MEMBERS OF THE ROANOKE RIVER BASIN BI-STATE COMMISSION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 77-113(b) reads as rewritten:

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

...

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

...."

SECTION 2. G.S. 77-92(a) reads as rewritten:

"(a) The Roanoke River Basin Bi-State Commission shall consist of 18 members with each state appointing nine members. The North Carolina delegation to the Commission shall consist of the six members of the General Assembly of North Carolina appointed to the North Carolina Roanoke River Basin Advisory Committee and three nonlegislative members of the North Carolina Roanoke River Basin Advisory Committee, established pursuant to G.S. 77-103, who represent different geographical areas of the North Carolina portion of the ~~Basin,~~ Basin and who reside within the Basin's watershed, to be appointed by the Governor of North Carolina. The Virginia delegation to the Commission shall be appointed as determined by the Commonwealth of Virginia."

SECTION 3. G.S. 77-92(b) reads as rewritten:

"(b) ~~All members appointed to the Commission from the State of North Carolina and the Commonwealth of Virginia shall reside within the Basin's watershed.~~ Members of the North Carolina House of Representatives, the North Carolina Senate, the Virginia House of Delegates, the Virginia Senate, and federal legislators, who have not been appointed to the Commission and whose districts include any portion of the Basin, may serve as nonvoting ex officio members of the Commission."

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

Exhibit III

HOUSE BILL 908:
River Basin Commissions Clarifying Amends.

BILL ANALYSIS

Committee:	House Environment and Natural Resources	**Introduced by:**	Representatives Goodwin and Almond
Date:	April 12, 2005		
Version:	Proposed Committee Substitute (H908-PCS30185-RT-2)	**Summary by:**	Tim Dodge, Legislative Analyst

SUMMARY: ***The proposed committee substitute (PCS) for House Bill 908 amends the membership requirements of the Yadkin/Pee Dee River Basin Advisory Commission to provide that one of the members may be from a water or sewer municipal utility rather than a water or sewer municipal authority and amends the membership requirements of the Roanoke River Basin Bi-State Commission to remove the requirement that legislative members appointed to the Commission reside within the Basin.***

BILL ANALYSIS:

Section 1 of the PCS amends the membership requirements of the Yadkin/Pee Dee River Basin Advisory Commission to provide that one of the members may be from a water or sewer municipal utility rather than a water or sewer municipal authority.

Sections 2 and 3 amend the membership requirements of the Roanoke River Basin Bi-State Commission to remove the requirement that legislative members appointed to the Commission reside within the Basin. A member's legislative district must still include a portion of the Basin to be appointed to the Roanoke River Basin Advisory Committee and to be eligible for appointment to the Bi-State Commission. The residency requirements for nonlegislative members remain unchanged.

BACKGROUND:

S.L. 2004-83 established the Catawba/Wateree River Basin Advisory Commission and the Yadkin/Pee Dee River Basin Advisory Commission. Each commission consists of 15 members from North Carolina and South Carolina. S.L. 2002-177 established the North Carolina Roanoke River Basin Bi-State Commission and the Roanoke River Basin Advisory Committee. The Commission consists of 18 members, with nine members representing North Carolina and nine members representing Virginia.

The commissions have no regulatory authority. The primary purpose of the commissions is to provide guidance and make recommendations to local, state, and federal legislative and administrative bodies on the use, stewardship, and enhancement of the water and other natural resources within their respective river basin.

EFFECTIVE DATE:

The PCS would become effective when it becomes law.

H908-SMSY-001

Exhibit IV

2005 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report from standing committee is presented:
By Representatives **Harrell and Justice** (Chairs) for the Committee on **ENVIRONMENT AND NATURAL RESOURCES.**

☐ Committee Substitute for
H.B. 908 A BILL TO BE ENTITLED AN ACT TO PROVIDE THAT ONE OF THE FIFTEEN MEMBERS OF THE YADKIN/PEE DEE RIVER BASIN ADVISORY COMMISSION MAY BE FROM A WATER OR SEWER MUNICIPAL UTILITY RATHER THAN AN AUTHORITY.

☐ With a favorable report.

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

☐ With a favorable report, as amended.

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

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

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

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

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

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

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

☐ Without prejudice.

☐ With an indefinite postponement report.

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

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

03/19/03

Minutes

House Committee on Environment and Natural Resources
April 19, 2005

The House Committee on Environment and Natural Resources met on April 19, 2005 in Room 623 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, Harrison, McComas, and Representatives Blackwood, Capps, Carney, Daughtridge, Gibson, Gillespie, Goodwin, Gulley, Hackney, Haire, Insko, Luebke, Martin, McGee, Mahan, Owens, Stiller, Underhill, Weiss, and Womble. 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.

Chairman Justice called the meeting to order and Representative Culpepper was asked to **explain HB 1136, A Bill To Be Entitled An Act to Reduce the Release of Mercury In the Environment By the Removal, Collection, And Recovery of Mercury Switches From Certain Motor Vehicles.** A PCS was adopted for discussion purposes. After some discussion, Chairman Justice recognized five speakers, all of whom spoke in opposition to the Bill. The speakers were as follows: Sam Taylor, of Honda North America; Bryan Rousa, Regional Director for General Motors; Jim Kylie, of the Alliance of Automobile Manufacturers; Henry Jones, also of the Alliance of Automobile Manufacturers; and Rick Young, of Young's Automotive Salvage. Representative Gulley moved that the PCS receive a favorable report, which changes the title, unfavorable as to the original Bill. The motion carried with a re-refer to the Committee on Finance.

Senator Dalton **explained SB 586, A Bill To Be Entitled An Act To Authorize The Addition Of New State Parks At Carvers Creek And In The Hickory Nut Gorge/Chimney Rock Area To The State Parks System.** After some discussion, Representative Weiss moved that the Bill receive a favorable report. The motion carried.

The meeting adjourned at 1:05 p.m.

Respectfully Submitted,

Rep. Carolyn Justice
Presiding Chair

Vivian Sherrell
Committee Assistant

Agenda
Attendance
Bills Considered
Visitor Registration
Proposed Committee Substitute
Committee Reports

CORRECTED NOTICE
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: **Tuesday April 19, 2005**

TIME: **12:00 Noon**

LOCATION: **Room 643 Legislative Office Building**

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

SB 586 TWO ADDITIONS TO STATE PARKS SYSTEM.
Senators Dalton and Rand

HB 1136 MERCURY SWITCH REMOVAL-2
Representatives Culpepper, Hackney, Hunter

Respectfully,
Representative Carolyn Justice, Presiding Chair
Representative Harrell, Co-chair

I hereby certify this notice was filed by the committee assistant at the following offices at **1:45p.m. on April 14, 2005**

_x__Principal Clerk
_x__Reading Clerk - House Chamber

Vivian Sherrell (Committee Assistant)

HOUSE COMMITTEE ON ENVIRONMENT AND NATURAL RESOURCES

AGENDA

12:00 Noon
Tuesday April 19, 2005
Room 643 Legislative Office Building

1. **Call to order:**
   Representative Carolyn H. Justice, Presiding
   Representative James B. Harrell

2. **Introductory Remarks by Cochairs**

3. **Recognition of Pages and Sergeant-at-Arms**

4. **First Order of Business**

   SB 586 – Two Additions to State Parks System
   Senators Dalton and Rand

   HB 1136 – Mercury Switch Removal-2
   Representatives Culpepper, Hackney, Hunter

5. **Adjourn**

VISITOR REGISTRATION SHEET

House Committee on Environment & Natural Resources **April 19, 2004**

Name of Committee Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE ASSISTANT

NAME	FIRM OR AGENCY AND ADDRESS
Gardner Payne	Edmisten & Webb
Jim Kiley	Alliance of Automobile Manufacturers. Wash, DC
Rufus Edmisten	Edmisten & Webb.
	GM
Charles Territo	Alliance
Wendy Kelly	TOYOTA
	NCRPA
LEWIS CLEVELAND	DENR PARKS
Sam Taylor	Honda NA
Jim Stephenson	NC Coastal Federation
DONNIE REDMOND	NC DIVISION of AIR QUALITY
Jessica Montanez	NC Division of Air Quality
Michael Nelson	CONSERVATION COUNCIL
Erin Wynia	NC Conservation Network.
Gary Hunt	DENR
Brock Nicholson	DAQ/DENR
JOHN SAWKOWSKI	Moore + Van Allen
Ricky Young	Young's Auto Center - Smw.
Robin Smith	DENR
Johanna Reese	DENR
PRESTON HOWARD	NCIC
Nancy Thompson	NCIC
	CAA
	ICAC
	NCPC
Jerry Hardesty	NCPC
Kim Hibbard	NCLM

VISITOR REGISTRATION SHEET

House Committee on Environment & Natural Resources **April 19, 2004**

Name of Committee Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE ASSISTANT

NAME	FIRM OR AGENCY AND ADDRESS
Tim Stobo IV	ICCLH
R. Paul Wiggins	NCHBA
Jamy Bewley	LBA
Michelle Bank	State Govt Radio
Michael Wagner	Fayetteville observer
Kathy Hamlin	PMG
Larry Hefner	Herring McBennett
David Knight	TNC
Sue Russell	CCSA

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S 1

SENATE BILL 586

Short Title:	Two Additions to State Parks System.	(Public)
Sponsors:	Senators Dalton and Rand.	
Referred to:	State and Local Government.	

March 16, 2005

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE ADDITION OF NEW STATE PARKS AT CARVERS CREEK AND IN THE HICKORY NUT GORGE/CHIMNEY ROCK AREA TO THE STATE PARKS SYSTEM.

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, Carvers Creek and surrounding lands in Cumberland County represents an excellent example of the natural features of the Sandhills Region of North Carolina, with rolling hills, ravines, and narrow stream bottoms; and

Whereas, the Carvers Creek site includes endangered red-cockaded woodpeckers, rare plants, high quality longleaf pine forests, wetlands, and other natural communities characteristic of the Sandhills; and

Whereas, the Carvers Creek site has been found to possess biological, scenic, and recreational resources of statewide significance; and

Whereas, the Hickory Nut Gorge/Chimney Rock area in and near western Rutherford County contains spectacular cliffs, rugged mountains, fissure caves, waterfalls, and unusually rich soils that support at least 36 rare plant species and 14 rare animals; and

Whereas, the Hickory Nut Gorge/Chimney Rock area is one of the major centers of biodiversity in North Carolina, and is also of great geological interest; and

Whereas, the Hickory Nut Gorge/Chimney Rock area has been found to possess biological, geological, scenic, and recreational resources of statewide significance; Now, therefore,

The General Assembly of North Carolina enacts:

SECTION 1. The General Assembly authorizes the Department of Environment and Natural Resources to add Carvers Creek State Park 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 a State Park unit located in the Hickory Nut Gorge/Chimney Rock 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.

SENATE BILL 586:
Two Addtions to State Parks System

BILL ANALYSIS

Committee:	House Environment and Natural Resources	**Introduced by:**	Sens. Dalton and Rand
		Summary by:	Jennifer McGinnis Committee Counsel
Date:	April 19, 2005		
Version:	First Edition		

SUMMARY: ***Senate Bill 586 would authorize the Department of Environment and Natural Resources to add Carvers Creek State Park to the State Parks System and to add a State Park unit located in the Hickory Nut Gorge/Chimney Rock 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. The following background information on the two proposed additions was provided by DENR's Division of Parks and Recreation.

Proposed Carvers Creek State Park

Carvers Creek and surrounding lands in Cumberland County represents an excellent example of the natural features of the Sandhills Region of North Carolina, with rolling hills, ravines, and narrow stream bottoms. The site includes endangered red-cockaded woodpeckers, rare plants, high quality longleaf pine forests, wetlands, and other natural communities characteristic of the Sandhills. The Carvers Creek site has been found to possess biological, scenic, and recreational resources of statewide significance.

Proposed State Park unit located in the Hickory Nut Gorge/Chimney Rock area

The Hickory Nut Gorge/Chimney Rock area in and near western Rutherford County contains spectacular cliffs, rugged mountains, fissure caves, waterfalls, and unusually rich soils that support at least 36 rare plant species and 14 rare animal species. It is one of the major centers of biodiversity in North Carolina, and is also of great geological interest. The Hickory Nut Gorge/Chimney Rock area has been found to possess biological, geological, scenic, and recreational resources of statewide significance.

BILL ANALYSIS: Senate Bill 586 would authorize DENR to add Carvers Creek State Park to the State Parks System and to add a State Park unit located in the Hickory Nut Gorge/Chimney Rock area to the State Parks System. The bill would be effective when it becomes law.

S586-SMRI-001

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.**

☐ Committee Substitute for
S.B. 586 A BILL TO BE ENTITLED AN ACT TO AUTHORIZE THE ADDITION OF NEW STATE PARKS AT CARVERS CREEK AND IN THE HICKORY NUT GORGE/CHIMNEY ROCK AREA TO THE STATE PARKS SYSTEM.

☒ With a favorable report.

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

☐ With a favorable report, as amended.

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

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

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

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

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

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

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

☐ Without prejudice.

☐ With an indefinite postponement report.

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

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

03/19/03

HOUSE BILL 1136

Short Title:	Mercury Switch Removal-2.	(Public)
Sponsors:	Representatives Culpepper, Hackney, Hunter (Primary Sponsors); Alexander, Carney, Faison, Insko, Luebke, Weiss, and Wright.	
Referred to:	Environment and Natural Resources.	

April 6, 2005

A BILL TO BE ENTITLED

AN ACT TO REDUCE THE RELEASE OF MERCURY IN THE ENVIRONMENT BY THE REMOVAL, COLLECTION, AND RECOVERY OF MERCURY SWITCHES FROM CERTAIN MOTOR VEHICLES.

The General Assembly of North Carolina enacts:

SECTION 1. Article 9 of Chapter 130A of the General Statutes is amended by adding a new Part to read:

"Part 6. Mercury Switch Removal Act of 2005.

"**§ 130A-310.50. Short title.**

This Part may be cited as the Mercury Switch Removal Act of 2005.

"**§ 130A-310.51. Definitions.**

As used in this Part:

(1) "Capture rate" means the annual removal, collection, and recovery of mercury switches as a percentage of the total number of mercury switches available for removal from end-of-life vehicles.

(2) "End-of-life vehicle" means a vehicle that is sold, given, or otherwise conveyed to a vehicle recycler or scrap metal recycling facility for the purpose of recycling.

(3) "Manufacturer" means a person, firm, association, partnership, corporation, governmental entity, organization, combination, or joint venture that is the last person in the production or assembly process of a new vehicle that utilizes mercury switches, or in the case of an imported vehicle, the importer or domestic distributor of the vehicle.

(4) "Mercury minimization plan" means a plan for removing, collecting, and recovering mercury switches from end-of-life vehicles that is prepared as provided in G.S. 130A-310.53.

(5) "Mercury switch" means each mercury-containing capsule, commonly known as a "bullet", that is part of a convenience light switch assembly

installed in a vehicle. An antilock braking system assembly may contain more than one mercury switch.

(6) "Scrap metal recycling facility" means a fixed location where machinery and equipment are used to process scrap metal into specific grades of scrap metal for sale and whose primary product is scrap iron, scrap steel, or nonferrous metallic scrap.

(7) "Vehicle" means any passenger automobile or passenger car, station wagon, truck, van, or sport utility vehicle with a gross vehicle weight rating of less than 12,000 pounds.

(8) "Vehicle recycler" means an individual or entity engaged in the business of acquiring, dismantling, or destroying six or more end-of-life vehicles in a calendar year for the primary purpose of resale of parts of the vehicle.

"**§ 130A-310.52. Purpose.**

The purpose of this Part is to reduce the quantity of mercury that is released into the environment by removing mercury switches from end-of-life vehicles and by creating a removal, collection, and recovery program for mercury switches that are removed from end-of-life vehicles in this State.

"**§ 130A-310.53. Mercury minimization plan.**

(a) Every manufacturer of vehicles sold within this State shall develop a mercury minimization plan prepared pursuant to this section and submit the plan to the Department for review and approval pursuant to G.S. 130A-310.54. Manufacturers of vehicles may develop and submit a plan either individually or as part of a group of manufacturers. A manufacturer shall not be required to develop or implement a mercury minimization plan if the manufacturer demonstrates to the satisfaction of the Department that there is no significant risk of a release of mercury from any vehicle manufactured by the manufacturer.

(b) The mercury minimization plan prepared and submitted pursuant to this section shall include at a minimum all of the following:

(1) The make, model, and year of any vehicle, including current and anticipated future production models, that are sold or offered for sale by the vehicle manufacturer and that may contain one or more mercury switches. For each make, model, and year the vehicle manufacturer shall provide a description and the location of each mercury switch in the vehicle and all safe and environmentally sound methods for removal of mercury switches from end-of-life vehicles. If the manufacturer does not know or is uncertain as to whether or not a switch contains mercury, the plan shall be based on a presumption that the switch does contain mercury.

(2) A system to mark end-of-life vehicles that are to be shredded or crushed to indicate the presence or absence of a mercury switch.

(3) Educational materials to assist a vehicle recycler or a scrap metal recycling facility in undertaking a safe and environmentally sound method for the removal of the mercury switches from end-of-life

vehicles. The materials shall include information on hazards related to mercury and on the proper handling of mercury.

(4) A proposed method for storage and disposal of the mercury switches, including packaging and shipping of mercury switches to permitted recycling, storage, or disposal facilities. To the extent adequate, affordable, and environmentally sound mercury switch disposal technology is unavailable, the plan shall provide for the temporary storage of mercury switches.

(5) A proposed procedure for the transfer of information among entities subject to the mercury minimization plan to enable vehicle manufacturers and the Department to comply with the reporting requirements set out in G.S. 130A-310.56.

(6) A proposal to implement and finance the plan in accordance with subsection (d) of this section.

(c) To the extent practicable, a mercury minimization plan shall utilize the currently available end-of-life vehicle recycling infrastructure. To the extent adequate, affordable, and environmentally sound end-of-life vehicle recycling infrastructure is unavailable, the plan shall provide for the development of this infrastructure.

(d) A mercury minimization plan shall provide a method to finance the removal, collection, and recovery of mercury switches installed in vehicles manufactured by the manufacturer and its predecessors and affiliates. In order to ensure that the costs of removal, collection, and recovery of mercury switches are not borne by automobile dealers, consumers, vehicle recyclers, scrap metal recycling facilities, the State or local governments, or other persons who become responsible for end-of-life vehicles, these costs shall be borne by the manufacturers of vehicles sold in the State. The plan shall provide for prompt reimbursement by manufacturers to vehicle recyclers, scrap metal recycling facilities, the Department, and others of any costs incurred for removal, collection, and recovery of mercury switches. Costs shall include, but are not limited to, the following:

(1) A minimum of five dollars ($5.00) for each mercury switch removed by a vehicle recycler pursuant to G.S. 130A-310.55(a) as partial compensation for the labor and other costs incurred by a vehicle recycler in the removal of the mercury switch.

(2) A minimum of five dollars ($5.00) for each mercury switch removed by a scrap metal recycling facility pursuant to G.S. 130A-310.55(b) as partial compensation for the labor and other costs incurred by a scrap metal recycling facility in the removal of the mercury switch.

(3) One dollar ($1.00) for each mercury switch removed by a vehicle recycler pursuant to G.S. 130A-310.55(a) or by a scrap metal recycling facility pursuant to G.S. 130A-310.55(b) as partial compensation to the Department for costs incurred in administering and enforcing the provisions of this Part.

(4) The cost of packaging necessary to store or transport mercury switches to recycling, storage, or disposal facilities.

(5) The cost of shipping mercury switches to recycling, storage, or disposal facilities.

(6) The cost of recycling, storage, or disposal of mercury switches.

(7) The preparation and distribution to vehicle recyclers and scrap metal recycling facilities of the educational materials required by subdivision (3) of subsection (b) of this section.

(8) Maintenance of all appropriate record-keeping systems.

(e) Manufacturers of vehicles sold within this State shall reimburse vehicle recyclers or scrap metal recycling facilities for each mercury switch removed, collected, and recovered as provided in this section. Manufacturers shall reimburse vehicle recyclers or scrap metal recycling facilities that maintain the records required by G.S. 130A-310.55 for each mercury switch as provided in this section without regard to the date on which the mercury switch is removed, collected, or recovered.

(f) Vehicle manufacturers shall indemnify, defend, and hold harmless vehicle recyclers and scrap metal recycling facilities for any liability arising from the release of mercury from the mercury switches.

"**§ 130A-310.54. Plan approval and implementation.**

(a) The Department shall review a mercury minimization plan within 120 days after receiving the plan. As a part of its review the Department shall consider comments received from vehicle recyclers, persons who operate scrap metal recycling facilities, and other interested parties. The Department may approve or disapprove the entire plan or may approve part of the plan and disapprove the remainder of the plan. If the Department approves the plan in its entirety, the manufacturer shall begin implementation of the plan within 30 days unless the Department approves a later implementation date. If the Department disapproves the plan in its entirety, the Department shall notify the manufacturer of the reasons for the disapproval. The manufacturer shall submit a revised mercury minimization plan within 30 days. If the Department approves a mercury minimization plan in part, the manufacturer shall implement the approved parts of the mercury minimization plan within 30 days unless the Department approves a later implementation date and shall submit a revision of those parts of the plan that are disapproved within 30 days. Any part of a mercury minimization plan that is not approved or disapproved within 120 days shall be deemed approved, and the manufacturer shall begin implementation within 30 days.

(b) A manufacturer must obtain approval of all required parts of a mercury minimization plan within 240 days of the date on which the manufacturer is required to submit a plan for review under this Part. If a manufacturer fails to obtain approval of all required parts of a mercury minimization plan within the 240 days, the Department shall prepare a plan, notify the manufacturer of the plan, and direct the manufacturer to begin implementation of the plan within 30 days.

(c) The Department may review an approved mercury minimization plan and recommend or require the manufacturer to modify the plan at any time upon finding that the approved mercury minimization plan as implemented no longer meets the requirements of this Part.

"**§ 130A-310.55. Removal of mercury switches from end-of-life vehicles.**

(a) A vehicle recycler that is subject to an approved mercury minimization plan and that conveys ownership of an end-of-life vehicle to a scrap metal recycling facility shall remove all mercury switches identified in the mercury minimization plan prior to delivery of the vehicle to the scrap metal recycling facility. If a mercury switch is inaccessible due to the condition of the vehicle, the fact that the mercury switch remains in the vehicle shall be noted on the vehicle recycler's invoice.

(b) A scrap metal recycling facility that is subject to an approved mercury minimization plan and that accepts an end-of-life vehicle that has not been intentionally flattened, crushed, baled, or shredded and that contains mercury switches shall remove the mercury switches before the end-of-life vehicle is flattened, crushed, baled, or shredded unless the mercury switch is inaccessible due to the condition of the vehicle.

(c) It shall be unlawful for any person to knowingly flatten, crush, bale, shred, or otherwise alter the condition of a vehicle from which accessible mercury switches have not been removed.

(d) A mercury switch is inaccessible if, due to the condition of the vehicle, the switch cannot be removed in accordance with the approved mercury minimization plan and removal of the switch would significantly increase the risk of a release of mercury to the environment.

(e) A vehicle recycler or scrap metal recycling facility that removes mercury switches pursuant to subsection (a) or (b) of this section shall maintain records of:

(1) The number of vehicles of each make that are processed for recycling.

(2) The number of mercury switches removed from each vehicle make, model, and year.

(3) The number of vehicles processed for recycling.

(f) Each vehicle recycler and scrap metal recycling facility that is required to maintain records under subsection (e) of this section shall retain the records for a minimum of three years and shall make the records available for inspection by the Department upon request.

(g) It shall be unlawful for a person who is required to remove mercury switches under this Part to willfully fail to do so. It shall be unlawful for a person who is required to make and maintain records under this Part to willfully fail to do so. It shall be unlawful to knowingly make a false report that a mercury switch has been removed from an end-of-life vehicle.

(h) Mercury switches that are removed from end-of-life vehicles shall be collected, stored, transported, and otherwise handled in accordance with the approved mercury minimization plan approved and the requirements of Part 2 of this Article.

(i) Mercury switches shall be removed from end-of-life vehicles so as to achieve a capture rate of at least ninety percent (90%).

"**§ 130A-310.56. Evaluation of vehicle design changes that affect mercury recyclability; reporting requirements.**

(a) Each vehicle manufacturer shall, either individually or as part of a group, prepare an annual report that describes in detail the status of vehicle design changes that are intended to facilitate recycling of vehicle components that contain mercury. At a minimum the report shall include all of the following:

(1) For each make and model, a list of all vehicle components that contain mercury for the previous three model years, the current model year, and the next upcoming model year.

(2) A description of all design changes that each manufacturer has implemented or will implement to reduce or eliminate vehicle components that contain mercury, the achieved or anticipated amount of each reduction, and when the design change will be implemented.

(3) A summary of all policies that each manufacturer has implemented or will implement to ensure that the manufacturers' vehicles are designed to be recycled in a safe, cost-effective, and environmentally sound manner.

(4) A summary of any recommendations, complaints, or reports that the manufacturer has received within the previous 12 months from vehicle recyclers, scrap metal recycling facilities, government entities, or other persons, as well as any other information available to the manufacturer, regarding vehicle design features that adversely affect the recyclability of vehicle components that contain mercury.

(b) Each vehicle manufacturer shall submit, either individually or as part of a group, the report required by subsection (a) of this section on or before 1 July of each year.

(c) The Department may evaluate the extent to which vehicle design promotes or impedes recycling of vehicle components that contain mercury. The Department may conduct hearings from time to time to receive public comment regarding vehicle design changes that affect recycling of vehicle components that contain mercury. The Department may develop recommendations as to changes in vehicle design that would further promote the recyclability of these components. The Department shall report its findings and recommendations, including any legislative proposals, to the Environmental Review Commission on or before 1 October of each year.

(d) Each vehicle manufacturer that is required to implement a mercury minimization plan shall prepare, either individually or as part of a group, an annual report on the implementation of the plan. The report shall be submitted to the Department within 90 days after the end of the anniversary of the date on which the manufacturer is required to begin implementation of the plan. The report shall include, at a minimum, all of the following:

(1) A detailed description and documentation of the capture rate achieved.

(2) In the event that a capture rate of at least ninety percent (90%) is not achieved, a description of additional or alternative actions that may be implemented to improve the mercury minimization plan and its implementation.

(3) The number of mercury switches collected, the number of end-of-life vehicles containing mercury switches, the number of end-of-life vehicles processed for recycling, and a description of how the mercury switches were managed.

(4) A statement that details the costs required to implement the mercury minimization plan.

"**§ 130A-310.57. Adoption of rules; administrative procedure; enforcement.**

(a) The Commission may adopt rules to implement this Part.

(b) Chapter 150B of the General Statutes governs implementation of this Part.

(c) This Part may be enforced as provided in Part 2 of Article 1 of this Chapter."

SECTION 2. G.S. 130A-310.53, as enacted by Section 1 of this act, becomes effective 1 January 2006. G.S. 130A-310.56 becomes effective 1 July 2007. All other provisions of Part 6 of Article 9 of Chapter 130A of the General Statutes, as enacted by Section 1 of this act and Section 2 of this act, become effective when this act becomes law. This act expires on 1 July 2026.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H D

HOUSE BILL 1136
PROPOSED COMMITTEE SUBSTITUTE H1136-CSRT-5 [v.3]

4/19/2005 10:51:56 AM

Short Title: Mercury Switch Removal-2. (Public)

Sponsors:

Referred to:

April 6, 2005

A BILL TO BE ENTITLED

AN ACT TO REDUCE THE RELEASE OF MERCURY IN THE ENVIRONMENT BY THE REMOVAL, COLLECTION, AND RECOVERY OF MERCURY SWITCHES FROM CERTAIN MOTOR VEHICLES.

The General Assembly of North Carolina enacts:

SECTION 1. Article 9 of Chapter 130A of the General Statutes is amended by adding a new Part to read:

"Part 6. Mercury Switch Removal Act of 2005.

"**§ 130A-310.50. Short title.**

This Part may be cited as the Mercury Switch Removal Act of 2005.

"**§ 130A-310.51. Definitions.**

As used in this Part:

(1) "Capture rate" means the annual removal, collection, and recovery of mercury switches as a percentage of the total number of mercury switches available for removal from end-of-life vehicles.

(2) "End-of-life vehicle" means a vehicle that is sold, given, or otherwise conveyed to a vehicle recycler or scrap metal recycling facility for the purpose of recycling.

(3) "Manufacturer" means a person, firm, association, partnership, corporation, governmental entity, organization, combination, or joint venture that is the last person in the production or assembly process of a new vehicle that utilizes mercury switches, or in the case of an imported vehicle, the importer or domestic distributor of the vehicle.

(4) "Mercury minimization plan" means a plan for removing, collecting, and recovering mercury switches from end-of-life vehicles that is prepared as provided in G.S. 130A-310.53.

(5) "Mercury switch" means each mercury-containing capsule, commonly known as a "bullet", that is part of a convenience light switch assembly installed in a vehicle.

(6) "Scrap metal recycling facility" means a fixed location where machinery and equipment are used to process scrap metal into specific grades of scrap metal for sale and whose primary product is scrap iron, scrap steel, or nonferrous metallic scrap.

(7) "Vehicle" means any passenger automobile or passenger car, station wagon, truck, van, or sport utility vehicle with a gross vehicle weight rating of less than 12,000 pounds.

(8) "Vehicle recycler" means an individual or entity engaged in the business of acquiring, dismantling, or destroying six or more end-of-life vehicles in a calendar year for the primary purpose of resale of parts of the vehicle.

"**§ 130A-310.52. Purpose.**

The purpose of this Part is to reduce the quantity of mercury that is released into the environment by removing mercury switches from end-of-life vehicles and by creating a removal, collection, and recovery program for mercury switches that are removed from end-of-life vehicles in this State.

"**§ 130A-310.53. Mercury minimization plan.**

(a) Every manufacturer of vehicles sold within this State shall develop a mercury minimization plan prepared pursuant to this section and submit the plan to the Department for review and approval pursuant to G.S. 130A-310.54. Manufacturers of vehicles may develop and submit a plan either individually or as part of a group of manufacturers. A manufacturer shall not be required to develop or implement a mercury minimization plan if the manufacturer demonstrates to the satisfaction of the Department that there is no significant risk of a release of mercury from any vehicle manufactured by the manufacturer.

(b) The mercury minimization plan prepared and submitted pursuant to this section shall include at a minimum all of the following:

(1) The make, model, and year of any vehicle, including current and anticipated future production models, that are sold or offered for sale by the vehicle manufacturer and that may contain one or more mercury switches. For each make, model, and year the vehicle manufacturer shall provide a description and the location of each mercury switch in the vehicle and all safe and environmentally sound methods for removal of mercury switches from end-of-life vehicles. If the manufacturer does not know or is uncertain as to whether or not a switch contains mercury, the plan shall be based on a presumption that the switch does contain mercury.

(2) A system to mark end-of-life vehicles that are to be shredded or crushed to indicate the presence or absence of a mercury switch.

(3) Educational materials to assist a vehicle recycler or a scrap metal recycling facility in undertaking a safe and environmentally sound

method for the removal of the mercury switches from end-of-life vehicles. The materials shall include information on hazards related to mercury and on the proper handling of mercury.

(4) A proposed method for storage and disposal of the mercury switches, including packaging and shipping of mercury switches to permitted recycling, storage, or disposal facilities. To the extent adequate, affordable, and environmentally sound mercury switch disposal technology is unavailable, the plan shall provide for the temporary storage of mercury switches.

(5) A proposed procedure for the transfer of information among entities subject to the mercury minimization plan to enable vehicle manufacturers and the Department to comply with the reporting requirements set out in G.S. 130A-310.56.

(6) A proposal to implement and finance the plan in accordance with subsection (d) of this section.

(c) To the extent practicable, a mercury minimization plan shall utilize the currently available end-of-life vehicle recycling infrastructure. To the extent adequate, affordable, and environmentally sound end-of-life vehicle recycling infrastructure is unavailable, the plan shall provide for the development of this infrastructure.

(d) A mercury minimization plan shall provide a method to finance the removal, collection, and recovery of mercury switches installed in vehicles manufactured by the manufacturer and its predecessors and affiliates. In order to ensure that the costs of removal, collection, and recovery of mercury switches are not borne by automobile dealers, consumers, vehicle recyclers, scrap metal recycling facilities, the State or local governments, or other persons who become responsible for end-of-life vehicles, these costs shall be borne by the manufacturers of vehicles sold in the State. The plan shall provide for prompt reimbursement by manufacturers to vehicle recyclers, scrap metal recycling facilities, the Department, and others of any costs incurred for removal, collection, and recovery of mercury switches. Costs shall include, but are not limited to, the following:

(1) A minimum of five dollars ($5.00) for each mercury switch removed by a vehicle recycler pursuant to G.S. 130A-310.55(a) as partial compensation for the labor and other costs incurred by a vehicle recycler in the removal of the mercury switch.

(2) A minimum of five dollars ($5.00) for each mercury switch removed by a scrap metal recycling facility pursuant to G.S. 130A-310.55(b) as partial compensation for the labor and other costs incurred by a scrap metal recycling facility in the removal of the mercury switch.

(3) One dollar ($1.00) for each mercury switch removed by a vehicle recycler pursuant to G.S. 130A-310.55(a) or by a scrap metal recycling facility pursuant to G.S. 130A-310.55(b) as partial compensation to the Department for costs incurred in administering and enforcing the provisions of this Part.

(4) The cost of packaging necessary to store or transport mercury switches to recycling, storage, or disposal facilities.

(5) The cost of shipping mercury switches to recycling, storage, or disposal facilities.

(6) The cost of recycling, storage, or disposal of mercury switches.

(7) The preparation and distribution to vehicle recyclers and scrap metal recycling facilities of the educational materials required by subdivision (3) of subsection (b) of this section.

(8) Maintenance of all appropriate record-keeping systems.

(e) Manufacturers of vehicles sold within this State shall reimburse vehicle recyclers or scrap metal recycling facilities for each mercury switch removed, collected, and recovered as provided in this section. Manufacturers shall reimburse vehicle recyclers or scrap metal recycling facilities that maintain the records required by G.S. 130A-310.55 for each mercury switch as provided in this section without regard to the date on which the mercury switch is removed, collected, or recovered.

"**§ 130A-310.54. Plan approval and implementation.**

(a) The Department shall review a mercury minimization plan within 120 days after receiving the plan. As a part of its review the Department shall consider comments received from vehicle recyclers, persons who operate scrap metal recycling facilities, and other interested parties. The Department may approve or disapprove the entire plan or may approve part of the plan and disapprove the remainder of the plan. If the Department approves the plan in its entirety, the manufacturer shall begin implementation of the plan within 30 days unless the Department approves a later implementation date. If the Department disapproves the plan in its entirety, the Department shall notify the manufacturer of the reasons for the disapproval. The manufacturer shall submit a revised mercury minimization plan within 30 days. If the Department approves a mercury minimization plan in part, the manufacturer shall implement the approved parts of the mercury minimization plan within 30 days unless the Department approves a later implementation date and shall submit a revision of those parts of the plan that are disapproved within 30 days. Any part of a mercury minimization plan that is not approved or disapproved within 120 days shall be deemed approved, and the manufacturer shall begin implementation within 30 days.

(b) A manufacturer must obtain approval of all required parts of a mercury minimization plan within 240 days of the date on which the manufacturer is required to submit a plan for review under this Part. If a manufacturer fails to obtain approval of all required parts of a mercury minimization plan within the 240 days, the Department shall prepare a plan, notify the manufacturer of the plan, and direct the manufacturer to begin implementation of the plan within 30 days.

(c) The Department may review an approved mercury minimization plan and recommend or require the manufacturer to modify the plan at any time upon finding that the approved mercury minimization plan as implemented no longer meets the requirements of this Part.

"**§ 130A-310.55. Removal of mercury switches from end-of-life vehicles.**

(a) A vehicle recycler that is subject to an approved mercury minimization plan and that conveys ownership of an end-of-life vehicle to a scrap metal recycling facility shall remove all mercury switches identified in the mercury minimization plan prior to delivery of the vehicle to the scrap metal recycling facility. If a mercury switch is inaccessible due to the condition of the vehicle, the fact that the mercury switch remains in the vehicle shall be noted on the vehicle recycler's invoice.

(b) A scrap metal recycling facility that is subject to an approved mercury minimization plan and that accepts an end-of-life vehicle that has not been flattened, crushed, baled, or shredded and that contains mercury switches shall remove the mercury switches before the end-of-life vehicle is flattened, crushed, baled, or shredded unless the mercury switch is inaccessible due to the condition of the vehicle.

(c) It shall be unlawful for any person to knowingly flatten, crush, bale, shred, or otherwise alter the condition of a vehicle from which accessible mercury switches have not been removed.

(d) A mercury switch is inaccessible if, due to the condition of the vehicle, the switch cannot be removed in accordance with the approved mercury minimization plan and removal of the switch would significantly increase the risk of a release of mercury to the environment.

(e) A vehicle recycler or scrap metal recycling facility that removes mercury switches pursuant to subsection (a) or (b) of this section shall maintain records of:

(1) The number of vehicles of each make that are processed for recycling.

(2) The number of mercury switches removed from each vehicle make, model, and year.

(3) The number of vehicles processed for recycling.

(f) Each vehicle recycler and scrap metal recycling facility that is required to maintain records under subsection (e) of this section shall retain the records for a minimum of three years and shall make the records available for inspection by the Department upon request.

(g) It shall be unlawful for a person who is required to remove mercury switches under this Part to willfully fail to do so. It shall be unlawful for a person who is required to make and maintain records under this Part to willfully fail to do so. It shall be unlawful to knowingly make a false report that a mercury switch has been removed from an end-of-life vehicle.

(h) Mercury switches that are removed from end-of-life vehicles shall be considered 'universal waste' as defined in 40 Code of Federal Regulations § 273.9 (1 July 2004 Edition). Mercury switches that are removed from end-of-life vehicles shall be collected, transported, treated, stored, disposed of, and otherwise handled in accordance with rules adopted by the Commission governing universal waste.

(i) Mercury switches shall be removed from end-of-life vehicles so as to achieve a capture rate of at least ninety percent (90%).

"**§ 130A-310.56. Evaluation of vehicle design changes that affect mercury recyclability; reporting requirements.**

(a) Each vehicle manufacturer shall, either individually or as part of a group, prepare an annual report that describes in detail the status of vehicle design changes that

are intended to facilitate recycling of vehicle components that contain mercury. At a minimum the report shall include all of the following:

(1) For each make and model, a list of all vehicle components that contain mercury for the previous three model years, the current model year, and the next upcoming model year.

(2) A description of all design changes that each manufacturer has implemented or will implement to reduce or eliminate vehicle components that contain mercury, the achieved or anticipated amount of each reduction, and when the design change will be implemented.

(3) A summary of all policies that each manufacturer has implemented or will implement to ensure that the manufacturers' vehicles are designed to be recycled in a safe, cost-effective, and environmentally sound manner.

(4) A summary of any recommendations, complaints, or reports that the manufacturer has received within the previous 12 months from vehicle recyclers, scrap metal recycling facilities, government entities, or other persons, as well as any other information available to the manufacturer, regarding vehicle design features that adversely affect the recyclability of vehicle components that contain mercury.

(b) Each vehicle manufacturer shall submit, either individually or as part of a group, the report required by subsection (a) of this section on or before 1 July of each year.

(c) The Department may evaluate the extent to which vehicle design promotes or impedes recycling of vehicle components that contain mercury. The Department may conduct hearings from time to time to receive public comment regarding vehicle design changes that affect recycling of vehicle components that contain mercury. The Department may develop recommendations as to changes in vehicle design that would further promote the recyclability of these components. The Department shall report its findings and recommendations, including any legislative proposals, to the Environmental Review Commission on or before 1 October of each year.

(d) Each vehicle manufacturer that is required to implement a mercury minimization plan shall prepare, either individually or as part of a group, an annual report on the implementation of the plan. The report shall be submitted to the Department within 90 days after the end of the anniversary of the date on which the manufacturer is required to begin implementation of the plan. The report shall include, at a minimum, all of the following:

(1) A detailed description and documentation of the capture rate achieved.

(2) In the event that a capture rate of at least ninety percent (90%) is not achieved, a description of additional or alternative actions that may be implemented to improve the mercury minimization plan and its implementation.

(3) The number of mercury switches collected, the number of end-of-life vehicles containing mercury switches, the number of end-of-life

vehicles processed for recycling, and a description of how the mercury switches were managed.

(4) A statement that details the costs required to implement the mercury minimization plan.

"**§ 130A-310.57. Adoption of rules; administrative procedure; enforcement.**

(a) The Commission may adopt rules to implement this Part.

(b) Chapter 150B of the General Statutes governs implementation of this Part.

(c) This Part may be enforced as provided in Part 2 of Article 1 of this Chapter."

SECTION 2. The Commission for Health Services shall amend 15A NCAC 13A .0119 to adopt rules governing the management of waste mercury-containing devices, as defined in the Notice of Proposed Rulemaking published on 12 June 2002 in the Federal Register, Volume 67, Number 113, Page 40507 through 40528, as universal waste.

SECTION 3. G.S. 130A-310.53, as enacted by Section 1 of this act, becomes effective 1 January 2006. G.S. 130A-310.56, as enacted by Section1 of this act, becomes effective 1 July 2007. All other provisions of Part 6 of Article 9 of Chapter 130A of the General Statutes, as enacted by Section 1 of this act and Sections 2 and 3 of this act, become effective when this act becomes law. This act expires on 1 July 2026.

HOUSE BILL 1136:
Mercury Switch Removal-2.

BILL ANALYSIS

Committee:	House Environment and Natural Resources	**Introduced by:**	Reps. Culpepper, Hackney, and Hunter
Date:	19 April 2005	**Summary by:**	Jennifer McGinnis, Committee Counsel, George Givens, Senior Committee Counsel
Version:	Proposed Committee Substitute H1136-CSRT-5		

SUMMARY: ***House bill 1136 would require manufacturers of vehicles sold in the State to develop, submit, and implement a mercury minimization plan (plan) that provides for the removal, collection, and recovery of mercury switches from end-of-life vehicles in order to reduce the quantity of mercury that is released into the environment. The bill would also require: (i) vehicle recyclers and scrap metal recycling facilities subject to an approved plan to remove all accessible mercury switches from end-of-life vehicles, and specifies procedures for inaccessible switches; (ii) maintenance of certain records by manufacturers, vehicle recyclers, and scrap metal recycling facilities; and (iii) that mercury switches be removed from end-of-life vehicles so as to achieve a capture rate of at least 90%. The bill would make it unlawful for anyone to: knowingly flatten, crush, bale, or shred a vehicle from which accessible mercury switches have not been removed; willfully fail to remove switches if required to do so; willfully fail to maintain records as required; knowingly make a false report that a switch has been removed from an end-of-life vehicle. The bill would create various reporting requirements.***

Under the bill "mercury switch" is defined as a mercury-containing capsule, commonly known as a "bullet", that is part of a convenience light switch assembly installed in a vehicle.

BILL ANALYSIS: The bill would require manufacturers of vehicles sold in the State to develop, submit, and implement a mercury minimization plan (plan) that provides for the removal, collection, and recovery of mercury switches from end-of-life vehicles in order to reduce the quantity of mercury released in to the environment. Manufacturers of vehicles would be allowed to develop and submit a plan either individually or as part of a group of manufacturers. A manufacturer that could demonstrate to the satisfaction of the Department of Environment and Natural Resources (DENR) that there is no significant risk of a release of mercury from any vehicle manufactured by the manufacturer would not be required to develop or implement a plan. The plan must include at a minimum all of the following:

- Information about: vehicles that are sold or offered for sale that may contain mercury switches; the switch's location in the vehicle; and safe and environmentally sound methods for removal of the switches.
- A system to mark end-of-life vehicles that are to be shredded or crushed to indicate the presence or absence of a switch.
- Educational materials to assist vehicle recyclers or scrap metal recycling facilities in undertaking safe and environmentally sound removal of the switches.
- Methods for storage and disposal of the switches.
- Methods to finance the removal, collection, and recovery of mercury switches installed in vehicles. The bill provides that these costs should be borne by manufacturers, and not by automobile dealers, consumers, vehicle recyclers, the State or local governments, or other persons who become responsible for end-of-life vehicles. The bill would establish certain minimum costs for removing, recycling, and storing mercury switches and requires manufacturers to promptly reimburse recyclers, scrap metal recycling facilities, DENR, and others for those services.

In addition, the bill would:

- Provide that a plan must use currently available end-of-life recycling infrastructure to the extent practicable, and to the extent the infrastructure is unavailable, the plan should provide for its development.
- Provide that a plan must be submitted to DENR for review, and would establish timelines for DENR's review of the plans. If a manufacturer failed to obtain approval of all required parts of the plan with 240 days of the submittal deadline, DENR would be directed to prepare a plan for the manufacturer to implement. In addition, DENR would be authorized to review an approved plan and recommend or require the manufacturer to modify the plan at any time upon finding that the approved plan as implemented no longer meets the requirements of this act.
- Require that a vehicle recycler subject to an approved plan must remove all mercury switches from end-of-life vehicles before they are delivered to a scrap metal recycling facility, and specifies procedures for inaccessible switches. Scrap metal recycling facilities subject to an approved plan that accept end-of-life vehicles that have not been flattened, crushed, baled, or shredded would be required to remove switches that are not inaccessible before the vehicles are flattened, crushed, baled, or shredded. Vehicle recyclers and scrap metal recycling facilities would be required to maintain records of the number of vehicles processed for recycling and the number of switches removed.
- Make it unlawful for anyone to: knowingly flatten, crush, bale, or shred a vehicle from which accessible mercury switches have not been removed; willfully fail to remove switches if required to do so; willfully fail to maintain records as required; or knowingly make a false report that a switch has been removed from an end-of-life vehicle.
- Provide that mercury switches that are removed from end-of-life vehicles shall be considered "universal waste" as defined in the Code of Federal Regulations. Provide that the switches must be collected, transported, treated, stored, disposed of, and otherwise handled in accordance with rules adopted by the Commission for Health Services (Commission) governing universal waste. Provide that the Commission must amend 15A NCAC 13A .0119, Standards for Universal Waste Management, in this regard.
- Provide that mercury switches are to be removed from end-of-life vehicles so as to achieve a capture rate of at least 90%.
- Require manufacturers to prepare an annual report that describes the status of vehicle design changes that are intended to facilitate recycling of components that contain mercury and submit an annual report on implementation of a plan to DENR.
- Provide that DENR may evaluate the extent to which vehicle design promotes or impedes recycling of vehicle components that contain mercury; may conduct public hearings and receive public comments from time to time on the matter; may develop recommendations as to design changes that would promote recyclability of components that contain mercury; and must report its findings and recommendations to the Environmental Review Commission annually.
- Authorize the Commission to adopt rules to implement the provisions of this act.
- Provide that the provisions of the bill may be enforced as provided in Part 2 of Article 1 of Chapter 130A of the General Statutes, which provides that a violation may result in the imposition of administrative penalties and subject a person to conviction of a misdemeanor. In addition, the Secretary of Environment and Natural Resources or a local health director may institute an action for injunctive relief in the superior court of the county where a violation occurs.

BACKGROUND: Automobiles have historically used switches containing mercury to turn on the hood, trunk, or door lights when they are opened, and to operate some anti-lock brake systems. While most manufacturers are committed to designing new cars without mercury in the switches, the problem remains for

the more than 215 million mercury switches contained in cars on the road today. Unless mercury switches are recovered before the automobiles get crushed and recycled, mercury can be released into the air, soil, and water during crushing, or from subsequent management in electric arc furnaces (EAFs).

Once the high value parts have been removed from retired automobiles, vehicle hulks are sent to shredder facilities where ferrous (steel) and nonferrous metals are recovered, or sent directly to EAFs. These EAFs use electrical energy to melt the scrap to make new steel products. During the dismantling and recycling processes, there is the potential for mercury contained in vehicles to be released to the environment. Based on mercury test data and industry responses to a survey conducted in 2004, the current estimate of mercury emitted from electric arc furnaces is ten tons per year.[1]

Over 15 million automobiles are recycled in the US every year. North Carolina-based Nucor Corporation alone recycles 5 million automobiles.[2]

Two states, Maine and Arkansas, have enacted similar legislation and several other states have legislation pending. The Maine act required among other things that certain manufacturers pay a $1.00 bounty for mercury switches removed from their automobiles and established consolidation facilities in that state for the collection of mercury switches. The Alliance of Automobile Manufacturers filed suit challenging that the Maine law violated the federal Constitution with respect to the Commerce Clause, the Equal Protection Clause, and the Due Process Clause of the Fourteenth Amendment. On 17 July 2003, the United States Magistrate Judge filed a Recommended Decision with the United States District Court for the District of Maine (Court) that the Court grant the Defendant's (Commissioner of the Maine Department of Environmental Protection) Motion for Summary Judgment. On 31 July 2003, the Plaintiff filed an Objection to the Recommended Decision. On 17 February 2004 the Court affirmed the decision of the Magistrate Judge and ordered that the Defendant's Motion for Summary Judgment be granted.

In 1993, Sweden banned mercury switches in new automobiles. All companies selling automobiles in Europe, including U.S. automobile manufacturers, discontinued the use of mercury switches at that time. Some companies, mainly in Japan, (for instance, Honda) have never used mercury switches. U.S. automobile manufacturers voluntarily discontinued the domestic use of mercury switches in new automobiles in 2003 after the enactment of the Maine Mercury Switch Removal Act of 2002.[3]

EFFECTIVE DATE: G.S. 130A-310.53, which requires development of mercury minimization plans, would become effective 1 January 2006. G.S. 130A-310.56, which contains various reporting requirements applicable to vehicle manufacturers and DENR, would become effective 1 July 2007. All other provisions of the act would become effective when the act becomes law. The act would sunset on 1 July 2026.

H1136-SMRI-001

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[1] Information provided by the United States Environmental Protection Agency (USEPA), see http://www.epa.gov/epaoswer/hazwaste/mercury/ntl-switch.htm. USEPA has issued a statement concerning mercury switch control that indicates the agency plans to propose a rule in 2005 that establishes standards for hazardous air pollutants emitted by EAFs, and plans to incorporate approaches to remove mercury switches into the proposed rule.

[2] Information provided by Moore & Van Allen, PLLC.

[3] Information provided by Moore & Van Allen, PLLC.

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**.

☒ Committee Substitute for
H.B. 1136 A BILL TO BE ENTITLED AN ACT REDUCE THE RELEASE OF MERCURY INTO THE ENVIRONMENT BY THE REMOVAL, COLLECTION, AND RECOVERY OF MERCURY SWITCHES FROM CERTAIN MOTOR VEHICLES.

☐ With a favorable report.

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

☐ With a favorable report, as amended.

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

☒ With a favorable report as to the committee substitute bill (# 1136), ☐ which changes the title, unfavorable as to (the original bill) (Committee Substitute Bill #), (and recommendation that the committee substitute bill #) be re-referred to the Committee on FINANCE.)

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

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

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

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

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

☐ Without prejudice.

☐ With an indefinite postponement report.

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

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

03/19/03

MINUTES
HOUSE COMMITTEE ON ENVIRONMENT AND NATURAL RESOURCES

Tuesday, April 26, 2005

The House Committee on Environment and Natural Resources met on Tuesday, April 26, 2005, in Room 643 of the Legislative Office Building at 12:00 Noon. The following members were present: Representative James A. Harrell, III, Presiding Chair; Representative Carolyn Justice, Chair; Representative Lucy Allen, Vice Chair; Representative Pricey Harrison, Vice Chair; Representative Daniel McComas, Vice Chair; Representative Curtis Blackwood, Representative Russell Capps, Representative Becky Carney, Representative Bill Daughtridge, Representative Pryor Gibson, Representative Mitch Gillespie, Representative Melanie Goodwin, Representative Jim Gulley, Representative Joe Hackney, Representative Phil Haire, Representative Verla Insko, Representative Steven LaRoque, Representative Paul Luebke, Representative Grier Martin, Representative Bill McGee, Representative Ed McMahan, Representative Bill Owens, Representative Jean Preston, Representative Bonner Stiller, Representative Alice Underhill, Representative Jennifer Weiss and Representative Larry Womble.
A Visitor Registration list 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 Committee Counsel George Givens and his staff were thanked and recognized. Visitors were welcomed.

HOUSE BILL 1189, A BILL TO BE ENTITLED AN ACT TO PROTECT FONTANA LAKE AND THE WATERS DRAINING TO FONTANA LAKE.

Upon motion from Representative Justice, Chair, the Proposed Committee Substitute H1189-PCS70400-RI-6, was adopted for consideration and moved forth for discussion (Please see Exhibit #2). The Bill Analysis is attached (Please see Exhibit #3). Representative Haire, primary sponsor, was recognized to explain the bill. The purpose for the legislation is to address the problem of houseboats dumping sewage directly into the water affecting the water quality in Fontana Lake. The bill classifies Forney Creek, Chambers Creek, Hazel Creek and Eagle Creek as outstanding resource waters thereby allowing the Environmental Management Commission to manage them. Representative Blackwood questioned development of federal land in relationship to the bill. Bill Holman, Executive Director Clean Water Management Trust Fund, explained that development on Federal land is allowed but requires high standards and work to protect the water to prevent problems. Representative Haire noted the bill had received no adverse comments. Representative Allen expressed strong support for the bill. Upon motion by Representative Stiller the bill received a favorable report as to the committee substitute H1189-PCS70400-RI-6, and an unfavorable report as to the original bill. The motion passed. Upon request by the chairs, it was suggested that the bill be re-considered.

HOUSE BILL 1079, A BILL TO BE ENTITLED AN ACT TO AUTHORIZE UNITS OF LOCAL GOVERNMENT TO AWARD CONTRACTS FOR THE MANAGEMENT OF SLUDGE ON THE BASIS OF FACTORS OTHER THAN COST ALONE AND TO ENTER INTO CONTRACTS THAT PROVIDE FOR THE DESIGN, CONSTRUCTION, AND OPERATION OF SLUDGE MANAGEMENT FACILITIES BY A SINGLE ENTITY.

Upon motion from Representative Justice, Chair, the Proposed Committee Substitute H1097-PCS70416-SY-13, was adopted for consideration and moved forth for discussion (Please see Exhibit #5). The Bill Analysis is attached (Please see Exhibit #6). Representative Gibson, primary sponsor, was recognized. He explained the bill to be a technical correction, in that it allows municipalities that have a sludge management process in place to use the design/build process. Representative Hackney questioned the jurisdiction of local government regarding sludge. Counsel Givens stated the definition of the unit of local government as defined for this purpose does not include water and sewage authorities therefore an amendment will be required to address this. Representative LaRoque moved to direct the staff to modify the current committee substitute so that water and sewer authorities are covered within the scope of the bill. The motion passed. Upon motion by Representative McGee, the Proposed Committee Substitute received a favorable report as amended, and an unfavorable report as to the original bill. The motion passed. The 2005 Committee Report is attached (Please see exhibit #7).

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: **April 26, 2005**

TIME: **12 Noon**

LOCATION: **643 Legislative Office Building**

The following bills will be considered:

H1097 Design/Build/Operate Contract Sludge Mgt.
Representative Gibson and L. Allen (Primary Sponsors)

H1189 Fontana Lake Protection.
Representative Haire (Primary Sponsor)

Respectfully,
Representatives Harrell and Justice
Chairs

I hereby certify this notice was filed by the committee assistant at the following offices at **1:00 P.M.** on **April 21, 2005.**

___Principal Clerk
___Reading Clerk - House Chamber

Beth LeGrande (Committee Assistant)

HOUSE COMMITTEE ON ENVIRONMENT AND NATURAL RESOURCES

AGENDA

12:00 Noon
Tuesday April 26, 2005
Room 643 Legislative Office Building

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

2. Introductory Remarks by Cochairs

3. Recognition of Pages

4. First Order of Business

   H1097 Design/Build/Operate Contract Sludge Mgt.
   Representative Gibson and L. Allen (Primary Sponsors)

   H1189 Fontana Lake Protection.
   Representative Haire

5. Adjourn

Exhibit I

VISITOR REGISTRATION SHEET

Name of Committee | Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE ASSISTANT

NAME	FIRM OR AGENCY
Julie Woodson	NCPC
[illegible]	NCAC
Larry Beverly	LBA
Kim Hibbard	NCLM
Lisa Martin	NC Home Builders
[illegible]	NCFB
Erin Kinsey	NC Conservation Network
[illegible]	CWMTF
Lee McKee	CWMTF
Steve Wall	DENR
Rick Techimi	NC Assoc. of Realtors
Coleen Sullins	NC DWQ
Jeff Manning	NC DWQ
DAVE Simpson	Carolinas AGC
Mark Paul	HMW
Molly Diggins	Sierra Club
Robin Smith	DENR
David Knight	TNC
Tom Beason	Environ Defense NCWF
Carolyn Lyon	Edwards Webb
Jodi Theut	CM

HOUSE BILL 1189

Short Title:	Fontana Lake Protection.	(Public)
Sponsors:	Representative Haire.	
Referred to:	Environment and Natural Resources.	

April 12, 2005

A BILL TO BE ENTITLED

AN ACT TO PROTECT FONTANA LAKE AND THE OUTSTANDING RESOURCE WATERS DRAINING TO FONTANA LAKE.

Whereas, Fontana Lake in Graham and Swain Counties provides drinking water and over $4,700,000 in annual recreational benefits to the citizens of North Carolina; and

Whereas, Graham and Swain Counties have adopted ordinances to require all houseboats on Fontana Lake to have permanent toilets and permanent wastewater holding tanks to protect public health and water quality; and

Whereas, Graham and Swain Counties, with financial assistance from the Clean Water Management Trust Fund, Appalachian Regional Commission, and Tennessee Valley Authority, are currently investing $738,200 to provide facilities to pump and treat wastewater from the houseboats on Fontana Lake; and

Whereas, Swain County and Bryson City are currently investing $253,550 to remove failing septic tanks on Bryson Branch, a tributary of the Tuckaseegee River, upstream from Fontana Lake; and

Whereas, Forney, Chambers, Hazel, and Eagle Creeks originate in the Great Smoky Mountains National Park and drain to Fontana Lake; and

Whereas, Hazel and Eagle Creeks are classified as drinking water supply waters; and

Whereas, Forney, Chambers, Hazel, and Eagle Creeks have excellent water quality, are classified as Wild Trout Waters, provide habitat for federally and State listed endangered species, and are in fact unique and special waters of exceptional State and National recreational and ecological significance which require special protection to maintain their existing uses; and

Whereas, Forney, Chambers, Hazel, and Eagle Creeks qualify to be classified as outstanding resource waters; and

Whereas, Forney, Chambers, Hazel, and Eagle Creeks are renowned for exceptional trout fishing in the Eastern United States and have attracted notable anglers

including author Horace Kephart, Governor Luther Hodges, United States Secretary of the Interior Stewart Udall, Wildlife Resources Commissioner T.N. Massie and others; Now, therefore,

The General Assembly of North Carolina enacts:

SECTION 1. The Environmental Management Commission shall classify Forney, Chambers, Hazel, and Eagle Creeks from their headwaters to Fontana Lake as outstanding resource waters by January 1, 2006.

SECTION 2. Notwithstanding G.S. 150B-21.1, the Environmental Management Commission shall adopt temporary rules to classify Forney, Chambers, Hazel, and Eagle Creeks from their headwaters to Fontana Lake as outstanding resource waters by October 1, 2005.

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

Exhibit II

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

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HOUSE BILL 1189
PROPOSED COMMITTEE SUBSTITUTE H1189-PCS70400-RI-6

Short Title: Fontana Lake Protection. (Public)

Sponsors:

Referred to:

April 12, 2005

A BILL TO BE ENTITLED

AN ACT TO PROTECT FONTANA LAKE AND THE WATERS DRAINING TO FONTANA LAKE.

Whereas, Fontana Lake in Graham and Swain Counties provides drinking water and over $4,700,000 in annual recreational benefits to the citizens of North Carolina; and

Whereas, Graham and Swain Counties have adopted ordinances to require all houseboats on Fontana Lake to have permanent toilets and permanent wastewater holding tanks to protect public health and water quality; and

Whereas, Graham and Swain Counties, with financial assistance from the Clean Water Management Trust Fund, Appalachian Regional Commission, and Tennessee Valley Authority, are currently investing $738,200 to provide facilities to pump and treat wastewater from the houseboats on Fontana Lake; and

Whereas, Swain County and Bryson City are currently investing $253,550 to remove failing septic tanks on Bryson Branch, a tributary of the Tuckaseegee River, upstream from Fontana Lake; and

Whereas, Fontana Lake has excellent water quality that must be maintained for the benefit of the citizens of Graham and Swain Counties and for the citizens of North Carolina; and

Whereas, Forney, Chambers, Hazel, and Eagle Creeks originate in the Great Smoky Mountains National Park and drain to Fontana Lake; and

Whereas, portions of Hazel and Eagle Creeks are classified as drinking water supply waters; and

Whereas, Forney, Chambers, Hazel, and Eagle Creeks are classified as Trout Waters, may provide habitat for federally and State listed endangered species, and are in fact unique and special waters of exceptional State and national recreational and ecological significance which require special protection to maintain their existing uses; and

Whereas, Forney, Chambers, Hazel, and Eagle Creeks are renowned for exceptional trout fishing in the Eastern United States and have attracted notable anglers including author Horace Kephart, Governor Luther Hodges, United States Secretary of the Interior Stewart Udall, Wildlife Resources Commissioner T.N. Massie, and others; and

Whereas, water quality data for Forney and Hazel Creeks document that the creeks have excellent water quality and qualify to be classified as outstanding resource waters; and

Whereas, collection of water quality data for Chambers and Eagle Creeks should be undertaken to determine whether the creeks have excellent water quality that would qualify the waters for classification as outstanding resource waters; and

Whereas, the development and implementation of an outstanding resource waters management strategy for the Forney, Chambers, Hazel, and Eagle Creek watersheds would benefit the water quality in Fontana Lake; Now, therefore,

The General Assembly of North Carolina enacts:

SECTION 1. The Environmental Management Commission shall adopt rules to classify Forney and Hazel Creeks from their headwaters to Fontana Lake as outstanding resource waters no later than January 1, 2006.

SECTION 2. Notwithstanding G.S. 150B-21.1(a), the Environmental Management Commission shall adopt temporary rules to classify Forney and Hazel Creeks from their headwaters to Fontana Lake as outstanding resource waters no later than October 1, 2005.

SECTION 3. The Department of Environment and Natural Resources shall study whether Chambers and Eagle Creeks should be classified as outstanding resource waters. If water quality indicates that Chambers and Eagle Creeks meet the standards for outstanding resource waters, the Environmental Management Commission shall initiate the reclassification of Chambers and Eagle Creeks as outstanding resource waters. The Department shall report to the Environmental Review Commission no later than April 1, 2006, on the results of its study and the initiation of any reclassification of Chambers and Eagle Creeks as outstanding resource waters.

SECTION 4. Notwithstanding G.S. 150B-21.1(a), the Environmental Management Commission shall adopt temporary rules to apply an outstanding resource waters management strategy sufficient to protect the water quality in Fontana Lake and the tributaries draining to Fontana Lake from the Forney, Chambers, Hazel, and Eagle Creek watersheds no later than October 1, 2005.

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

Exhibit III

HOUSE BILL 1189: Fontana Lake Protection

BILL ANALYSIS

Committee:	House Environment and Natural Resources	**Date:**	April 26, 2005
Introduced by:	Rep. Haire	**Summary by:**	Jennifer McGinnis
Version:	PCS for First Edition H1189-PCS70400-RI-6		Committee Counsel

SUMMARY: ***House Bill 1189 would require that the Environmental Management Commission (EMC) classify Forney and Hazel Creeks as outstanding resource waters (ORW) and adopt temporary rules in that regard. The bill would also direct the Department of Environment and Natural Resources (DENR) to study Chambers and Eagle Creeks for classification as ORW. If the results of the study indicate Chambers and Eagle Creeks have excellent water quality, the EMC would be required to initiate reclassification of the creeks to ORW. The EMC would be required to adopt temporary rules to apply an ORW management strategy sufficient to protect water quality in Fontana Lake and the tributaries draining to it from the Forney, Hazel, Chambers, and Eagle Creek watersheds. The bill would be effective when it becomes law.***

CURRENT LAW: Under current law, portions of Hazel and Eagle Creeks are classified as drinking water supply waters. Forney, Chambers, Hazel, and Eagle Creeks are all designated as Trout Waters.

BILL ANALYSIS: In order to protect Fontana Lake in Graham and Swain Counties, House Bill 1189 would require that the Environmental Management Commission (EMC) classify Forney and Hazel Creeks as ORW by January 1, 2006 and adopt temporary rules in that regard by October 1, 2005. The bill would also direct DENR to study Chambers and Eagle Creeks for classification as ORW. If the results of the study indicate Chambers and Eagle Creeks have excellent water quality, the EMC would be required to initiate reclassification of the creeks to ORW. DENR would be required to report the results of the study and any initiation of reclassification to the Environmental Review Commission by April 1, 2006. By October 1, 2005, the EMC would be required to adopt temporary rules to apply an ORW management strategy sufficient to protect water quality in Fontana Lake and the tributaries draining to it from the Forney, Hazel, Chambers, and Eagle Creek watersheds.

BACKGROUND: Under the federal Clean Water Act the State is required to protect all existing uses for the waters in North Carolina. Surface Water Classifications are designations applied to surface water bodies, such as streams, rivers, and lakes, which define the best uses to be protected within these waters (for example swimming, fishing, drinking water supply) and carry with them an associated set of water quality standards to protect those uses. All surface waters in North Carolina are assigned a primary classification by DENR's Division of Water Quality (DWQ). Supplemental classifications are sometimes added by DWQ to the primary classifications to provide additional protection to waters with special uses or values. Classifications and their associated protection rules may be designed to protect water quality, fish and wildlife, the free flowing nature of a stream or river, or other special characteristics. Each classification has associated standards that are used to determine if the designated uses are being protected.

The ORW supplemental classification is used to provide an increased level of protection for existing uses of unique and special waters in the State. To qualify for the ORW supplemental classification, waters must be rated excellent by DWQ and possess exceptional State or national ecological or recreational significance.

Under an ORW classification, no new or expanded wastewater discharges are allowed in the watershed. There are also associated development controls enforced by DWQ. Under the ORW management strategy, developments with a density greater than one dwelling unit per acre or with more than twelve percent (12%) built upon area are required to implement specific stormwater control measures in order to protect aquatic species diversity. Higher density developments could still be constructed, but they would require implementation of proper stormwater controls.

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

H1189e1-SMRI-CSRI

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

HOUSE BILL 1097*

Short Title:	Design/Build/Operate Contract Sludge Mgt.	(Public)
Sponsors:	Representatives Gibson and L. Allen (Primary Sponsors).	
Referred to:	Environment and Natural Resources.	

April 4, 2005

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE UNITS OF LOCAL GOVERNMENT TO AWARD CONTRACTS FOR THE MANAGEMENT OF SLUDGE ON THE BASIS OF FACTORS OTHER THAN COST ALONE AND TO ENTER INTO CONTRACTS THAT PROVIDE FOR THE DESIGN, CONSTRUCTION, AND OPERATION OF SLUDGE MANAGEMENT FACILITIES BY A SINGLE ENTITY.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 143-129.2 reads as rewritten:

"**§ 143-129.2. Construction, design, and operation of solid waste management ~~facilities.~~and sludge management facilities.**

(a) All terms relating to solid waste management and disposal as used in this section shall be defined as set forth in G.S. 130A-290.

(b) To acknowledge the highly complex and innovative nature of solid waste and sludge management ~~technology~~ technologies for processing mixed solid ~~waste,~~ waste and sludge generated by water and wastewater treatment facilities, the relatively limited availability of existing and proven proprietary technology involving solid waste and sludge management facilities, the desirability of a single point of responsibility for the development of facilities and the economic and technical utility of contracts for solid waste and sludge management which include in their scope combinations of design, construction, operation, management and maintenance responsibilities over prolonged periods of time and that in some instances it may be beneficial to a unit of local government to award a contract on the basis of factors other than cost alone, including but not limited to facility design, operational experience, system reliability, energy production efficiency, long-term operational costs, compatibility with source separation and other recycling systems, environmental impact and operational guarantees. Accordingly, and notwithstanding other provisions of this Article ~~8, or any other general, special~~ or any local law, a contract entered into between a unit of local government and any person pursuant to this section may be awarded in accordance with the following provisions for the award of a contract based upon an evaluation of

proposals submitted in response to a request for proposals prepared by or for a unit of local government.

(c) The unit of local government shall require in its request for proposals that each proposal to be submitted shall ~~include:~~include all of the following:

(1) Information relating to the experience of the proposer on the basis of which said proposer purports to be qualified to carry out all work required by a proposed contract; the ability of the proposer to secure adequate financing; and proposals for project staffing, implementation of work tasks, and the carrying out of all responsibilities required by a proposed ~~contract;~~contract.

(2) A proposal clearly identifying and specifying all elements of cost which would become charges to the unit of local government, in whatever form, in return for the fulfillment by the proposer of all tasks and responsibilities established by the request for the proposal for the full lifetime of a proposed contract, including, as appropriate, but not limited to, the cost of planning, design, construction, operation, management and/or maintenance of any facility; provided, that the unit of local government may prescribe the form and content of ~~such~~ the proposal and that, in any event, the proposer must submit sufficiently detailed information to permit a fair and equitable evaluation of ~~such proposal;~~the proposal.

(3) ~~Such~~ Any other information as the unit of local government may determine to have a material bearing on its ability to evaluate any proposal in accordance with this section.

(d) Proposals received in response to ~~such~~ a request for proposals may be evaluated on the basis of a technical analysis of facility design, operational experience of the technology to be utilized in the proposed facility, system reliability and availability, energy production balance and efficiency, environmental impact and protection, recovery of materials, required staffing level during operation, projection of anticipated revenues from the sale of energy and materials recovered by the facility, net cost to the unit of local government for operation and maintenance of the facility for the duration of time to be established in the request for proposals and upon ~~such~~ any other factors and information ~~as~~ that the unit of local government determined to have a material bearing on its ability to evaluate any proposal, which factors were set forth in said request for proposal.

(e) The unit of local government may make a contract award to any responsible proposer selected pursuant to this section based upon a determination that the selected proposal is more responsive to the request for proposals and may thereupon negotiate a contract with said proposer for the performance of the services set forth in the request for proposals and the response thereto, ~~such~~ the determination shall be deemed to be conclusive. Notwithstanding other provisions of this Article ~~8, or any other general,~~ or any local ~~or special~~ law, a contract may be negotiated and entered into between a unit of local government and any person selected as a responsible proposer hereunder which may provide for, but not be limited to, the following:

(1) A contract, lease, rental, license, permit or other authorization to design, construct, operate and maintain ~~such~~ a solid waste or sludge management ~~facility, upon such terms and conditions for such consideration and for such term or~~ facility upon such terms and conditions, for such consideration, and for such duration, not to exceed 40 years, as may be agreed upon by the unit of local government and ~~such person;~~the person.

(2) Payment by the unit of local government of a fee or other charge to ~~such~~ the person for acceptance, processing, recycling, management and disposal of solid ~~waste;~~waste or sludge.

(3) An obligation on the part of a unit of local government to deliver or cause to be delivered to a solid waste or sludge management facility guaranteed quantities of solid ~~wastes; and~~wastes or sludge.

(4) The sale, utilization or disposal of any form of energy, recovered material or residue resulting from the operation of any solid waste or sludge management facility.

(f) The construction work for any facility or structure ~~which~~ that is ancillary to ~~the~~ a solid waste or sludge management facility and ~~which~~ that does not involve storage and processing of solid waste or sludge or the separation, ~~extraction~~ extraction, and recovery of useful or marketable forms of energy and materials from solid waste at ~~the~~ a solid waste management ~~facility,~~ facility shall be procured through competitive bidding procedures described by G.S. 143-128 through 143-129.1. ~~Such ancillary~~ Ancillary facilities ~~shall~~ include but ~~shall~~ are not ~~necessarily be~~ limited to ~~the following:~~ roads, water and sewer lines to the facility limits, transfer stations, scale ~~house,~~ houses, administration ~~buildings~~ buildings, and residue and bypass disposal sites."

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

Exhibit IV

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

H **D**

HOUSE BILL 1097*
PROPOSED COMMITTEE SUBSTITUTE H1097-PCS70416-SY-13

Short Title: Design/Build/Operate Contract Sludge Mgt. (Public)

Sponsors:

Referred to:

April 4, 2005

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE UNITS OF LOCAL GOVERNMENT TO AWARD CONTRACTS FOR THE MANAGEMENT OF SLUDGE ON THE BASIS OF FACTORS OTHER THAN COST ALONE AND TO ENTER INTO CONTRACTS THAT PROVIDE FOR THE DESIGN, CONSTRUCTION, AND OPERATION OF SLUDGE MANAGEMENT FACILITIES BY A SINGLE ENTITY.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 143-129.2 reads as rewritten:

"**§ 143-129.2. Construction, design, and operation of solid waste management ~~facilities.~~and sludge management facilities.**

(a) All terms relating to solid waste management and disposal as used in this section shall be defined as set forth in G.S. ~~130A-290.~~130A-290, except that the term 'unit of local government' includes a sanitary district created under Part 2 of Article 2 of Chapter 130A of the General Statutes and an authority created under Article 1 of Chapter 162A of the General Statutes. As used in this section, the term 'sludge management facility' means a facility that processes sludge that has been generated by a municipal wastewater treatment plant for final end use or disposal but does not include any component of a wastewater treatment process or facility that generates sludge.

(b) To acknowledge the highly complex and innovative nature of solid waste and sludge management ~~technology~~ technologies for processing mixed solid ~~waste,~~ waste and sludge generated by water and wastewater treatment facilities, the relatively limited availability of existing and proven proprietary technology involving solid waste and sludge management facilities, the desirability of a single point of responsibility for the development of facilities and the economic and technical utility of contracts for solid waste and sludge management which include in their scope combinations of design, construction, operation, management and maintenance responsibilities over prolonged periods of time and that in some instances it may be beneficial to a unit of local government to award a contract on the basis of factors other than cost alone, including

but not limited to facility design, operational experience, system reliability, energy production efficiency, long-term operational costs, compatibility with source separation and other recycling systems, environmental impact and operational guarantees. Accordingly, and notwithstanding other provisions of this Article ~~8, or any other general, special~~ or any local law, a contract entered into between a unit of local government and any person pursuant to this section may be awarded in accordance with the following provisions for the award of a contract based upon an evaluation of proposals submitted in response to a request for proposals prepared by or for a unit of local government.

(c) The unit of local government shall require in its request for proposals that each proposal to be submitted shall ~~include:~~include all of the following:

(1) Information relating to the experience of the proposer on the basis of which said proposer purports to be qualified to carry out all work required by a proposed contract; the ability of the proposer to secure adequate financing; and proposals for project staffing, implementation of work tasks, and the carrying out of all responsibilities required by a proposed ~~contract;~~contract.

(2) A proposal clearly identifying and specifying all elements of cost which would become charges to the unit of local government, in whatever form, in return for the fulfillment by the proposer of all tasks and responsibilities established by the request for the proposal for the full lifetime of a proposed contract, including, as appropriate, but not limited to, the cost of planning, design, construction, operation, management and/or maintenance of any facility; provided, that the unit of local government may prescribe the form and content of ~~such~~ the proposal and that, in any event, the proposer must submit sufficiently detailed information to permit a fair and equitable evaluation of ~~such proposal;~~the proposal.

(3) ~~Such~~ Any other information as the unit of local government may determine to have a material bearing on its ability to evaluate any proposal in accordance with this section.

(d) Proposals received in response to ~~such~~ a request for proposals may be evaluated on the basis of a technical analysis of facility design, operational experience of the technology to be utilized in the proposed facility, system reliability and availability, energy production balance and efficiency, environmental impact and protection, recovery of materials, required staffing level during operation, projection of anticipated revenues from the sale of energy and materials recovered by the facility, net cost to the unit of local government for operation and maintenance of the facility for the duration of time to be established in the request for proposals and upon ~~such~~ any other factors and information ~~as~~ that the unit of local government determined to have a material bearing on its ability to evaluate any proposal, which factors were set forth in said request for proposal.

(e) The unit of local government may make a contract award to any responsible proposer selected pursuant to this section based upon a determination that the selected

proposal is more responsive to the request for proposals and may thereupon negotiate a contract with said proposer for the performance of the services set forth in the request for proposals and the response thereto, ~~such~~ the determination shall be deemed to be conclusive. Notwithstanding other provisions of this Article ~~8, or any other general,~~ or any local ~~or special~~ law, a contract may be negotiated and entered into between a unit of local government and any person selected as a responsible proposer hereunder which may provide for, but not be limited to, the following:

(1) A contract, lease, rental, license, permit or other authorization to design, construct, operate and maintain ~~such~~ a solid waste or sludge management ~~facility, upon such terms and conditions for such consideration and for such term or~~ facility upon such terms and conditions, for such consideration, and for such duration, not to exceed 40 years, as may be agreed upon by the unit of local government and ~~such person;~~the person.

(2) Payment by the unit of local government of a fee or other charge to ~~such~~ the person for acceptance, processing, recycling, management and disposal of solid ~~waste;~~waste or sludge.

(3) An obligation on the part of a unit of local government to deliver or cause to be delivered to a solid waste or sludge management facility guaranteed quantities of solid ~~wastes; and~~wastes or sludge.

(4) The sale, utilization or disposal of any form of energy, recovered material or residue resulting from the operation of any solid waste or sludge management facility.

(f) The construction work for any facility or structure ~~which~~ that is ancillary to ~~the~~ a solid waste or sludge management facility and ~~which~~ that does not involve storage and processing of solid waste or sludge or the separation, ~~extraction~~ extraction, and recovery of useful or marketable forms of energy and materials from solid waste at ~~the~~ a solid waste management ~~facility,~~ facility shall be procured through competitive bidding procedures described by G.S. 143-128 through 143-129.1. ~~Such ancillary~~ Ancillary facilities ~~shall~~ include but ~~shall~~ are not ~~necessarily be~~ limited to ~~the following:~~ roads, water and sewer lines to the facility limits, transfer stations, scale ~~house,~~ houses, administration ~~buildings~~ buildings, and residue and bypass disposal sites."

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

Exhibit V

HOUSE BILL 1097:
Design/Build/Operate Contract Sludge Mgt.

BILL ANALYSIS

Committee:	House Environment and Natural Resources	**Introduced by:**	Reps. Gibson and L. Allen
Date:	April 26, 2005	**Summary by:**	Tim Dodge, Legislative Analyst
Version:	Proposed Committee Substitute (H1097-PCS10279-RT-7)		

SUMMARY: ***The Proposed Committee Substitute (PCS) for House Bill 1097 authorizes local governments to enter into contracts that provide for the design, construction, and operation of sludge management facilities by a single entity and to award contracts for the management of sludge on the basis of factors other than cost alone.***

CURRENT LAW:

G.S. 143-129.2 authorizes local governments to enter into contracts for the *design, construction, and operation* (design/build/operate, or DBO) of solid waste management facilities. Ancillary facilities such as roads, water and sewer lines, transfer stations, and other facilities must still be procured through normal competitive bidding procedures.

BILL ANALYSIS:

The PCS extends the provisions of G.S. 143-129.2 to allow local governments to enter into DBO contracts for sludge management facilities. A sludge management facility is defined as a facility to process sludge that has been generated by a municipal wastewater treatment plant for final end use or disposal. It does not include facilities that are part of the wastewater treatment process that generates the sludge. The PCS also makes clarifying and conforming changes.

BACKGROUND:

In general, contracts entered into or awarded by the State, local governments, and or other public bodies require that the bids be prepared to allow for separate and independent bidding for each subdivision of work, including design stages (architectural and engineering), building stages (heating, ventilating, and air conditioning; plumbing; electrical; and general contracting), and in some cases the operation of the facility. The contracts are normally awarded to the lowest responsible, responsive bidder, taking into consideration quality, performance, and time specified in the bids for performance of the contract. The advantages of traditional contracting are that it seeks to identify the lowest cost provision of services for government projects, promote accountability, and bring legitimacy to governmental decisions. In certain contracting situations, the General Assembly has authorized exemptions from the competitive bidding requirements, including the following:[1]

a. Emergency situations.

[1] Bluestein, Frayda. *A Legal Guide to Purchasing and Contracting for North Carolina Local Governments.* School of Government, UNC Chapel Hill (2004).

b. Change order work.

c. Guaranteed energy savings contracts.

d. Construction management at risk.

e. Previously bid or "piggybacking" contracts.

f. Use of unit's own permanent work force (force account work).

g. Purchases of goods and services from nonprofit work centers for the blind and severely disabled.

The General Assembly has also authorized the limited issuance of design-build contracts for the Board of Transportation, certain local school construction projects, and other specific public construction projects (airports, convention centers, etc.).

Under the design, build, and operate (DBO) approach, a single contract is awarded for the design, construction, *and operation* of a capital improvement. Advantages to the DBO approach are that it seeks to create a single point of responsibility for design, construction, and operation; expedite project completion by facilitating the overlap of the design and construction phases of the project; and promote cost efficiencies through economies of scale, timesavings, and innovative design.

EFFECTIVE DATE:

The PCS would become effective when it becomes law.

H1097-SMSY-002

Exhibit JL

2005 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report from standing committee is presented:

By Representatives **Harrell and Justice** (Chairs) for the Committee on **Environment and Natural Resources**.

☐ Committee Substitute for

H.B. 1097 A BILL TO BE ENTITLED AN ACT AN ACT TO AUTHORIZE UNITS OF LOCAL GOVERNMENT TO AWARD CONTRACTS FOR THE MANAGEMENT OF SLUDGE ON THE BASIS OF FACTORS OTHER THAN COST ALONE AND TO ENTER INTO CONTRACTS THAT PROVIDE FOR THE DESIGN, CONSTRUCTION, AND OPERATION OF SLUDGE MANAGEMENT FACILITIES BY A SINGLE ENTITY.

☐ With a favorable report.

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

☐ With a favorable report, as amended.

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

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

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

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

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

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

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

☐ Without prejudice.

☐ With an indefinite postponement report.

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

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

03/19/03

Minutes

House Committee on Environment and Natural Resources
May 3, 2005

The House Committee on Environment and Natural Resources met on May 3, 2005 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, Harrison, and McComas; Representatives Blackwood, Carney, Culp, Daughtridge, Gibson, Gillespie, Gulley, Hackney, Haire, Insko, Laroque, Luebke, Martin, McGee, McMahan, Owens, Stiller, Underhill, Weiss and Womble. 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.

Chairman Justice called the meeting to order and Representative Owens was asked to explain **HB 698, A Bill to be Entitled An Act To Expand The Findings, The Purpose, And The Approved Practices Of The Current Forest Development Act.** After some discussion, Stan Adams, Director of Forestry Resources, spoke in favor of the bill. More discussion followed, and Tom Bean of North Carolina Environmental Defense spoke in opposition to the bill. Representative Womble moved that the staff be authorized to prepare a PCS to make technical corrections, and that the PCS receive a favorable report, unfavorable to the original bill. The motion carried.

Vice Chair Harrison explained **HB 1523, A Bill To Be Entitled An Act To Implement A Provision Of The Coastal Habitat Protection Plan By Providing For Greater Flexibility In The Use Of Funds From The Riparian Buffer Restoration Fund To Construct Alternative Measures To Reduce Nutrient Loading And By Providing That If A Land-Disturbing Activity Leaves An Exposed Slope, The Slope Shall Be Planted With Temporary Or Permanent Ground Cover Within Twenty-One Calendar Days.** A PCS was adopted for discussion purposes. After brief discussion, Representative Haire moved that the PCS receive a favorable report, unfavorable to the original bill. The motion carried.

HB 1172 on the agenda was not heard at this meeting.

The meeting adjourned at 1:00 p.m.

Respectfully Submitted,

Rep. Carolyn Justice
Presiding Chair

Vivian Sherrell
Committee Assistant

Agenda
Proposed Committee Substitutes
Attendance
Bills Considered
Visitor Registration
Committee Reports

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

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

DAY & DATE: **Tuesday, May 3, 2005**

TIME: **12:00 Noon**

LOCATION: **Room 643**

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

HB 698 Amend Forest Development Act.-AB
Representatives Owens, Culpepper

HB 1523 Implement Coastal Habitat Protection Plan.
Representatives McComas, Harrison, Gibson

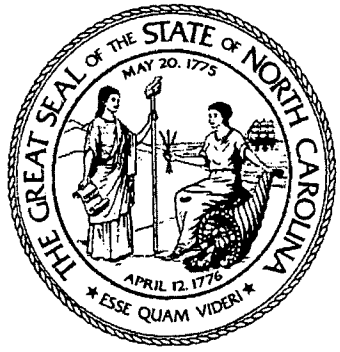
HB 1172 Clarify Regulation of Forestry.
Representatives Gibson, Brubaker, McComas, L. Allen

Respectfully,
Representatives Harrell, Justice
Chairs

I hereby certify this notice was filed by the committee assistant at the following offices at 11:00 a.m. on Thursday, April 28, **2005.**

_x__Principal Clerk
_x__Reading Clerk - House Chamber

Vivian Sherrell (Committee Assistant)



HOUSE COMMITTEE ON ENVIRONMENT AND NATURAL RESOURCES
MAY 3, 2005 12:00 NOON
ROOM 643

AGENDA

CALL TO ORDER: REPRESENTATIVE CAROLYN JUSTICE, PRESIDING
REPRESENTATIVE JAMES HARRELL

INTRODUCTORY REMARKS BY COCHAIRS

RECOGNITION OF PAGES AND SERGEANT-AT-ARMS

ORDER OF BUSINESS

HB 698 AMEND FOREST DEVELOPMENT ACT.-AB.
REPRESENTATIVES OWENS, CULPEPPER

HB 1523 IMPLEMENT COASTAL HABITAT PROTECTION PLAN.
REPRESENTATIVES MCCOMAS, HARRISON, GIBSON

HB 1172 CLARIFY REGULATION OF FORESTRY.
REPRESENTATIVES GIBSON, BRUBAKER, MCCOMAS, L. ALLEN

ADJOURNMENT

VISITOR REGISTRATION SHEET

ENVIRONMENT AND NATURAL RESOURCES — May 3, 2005

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Larry Such	NC Forest Service, Raleigh
Stan Adams	Forestry
Dianne Beasley	Forestry
Chris Valauri	N.C. Beer & Wine Assoc.
Chris Brown	NCFA
Taylor McLawhorn	Clean Water Management
Jim Simons	Div. Land Resources
T REEDER	DWQ
Steve Hall	DENR
Elizabeth Ouzts	NCPIRG
David Knight	TNC

VISITOR REGISTRATION SHEET

ENVIRONMENT AND NATURAL RESOURCES — May 3, 2005

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Molly Diggins	Sierra Club
R. Paul Wilms	NCHBA
Lisa Martin	NCHBA
Andy Romanet	NCLM.
Anita Watkins	NCLM
Kim Hibbard	NCLM
John Cyrus	NCSG
Nancy Thompson	LMCIC
Pam Cowen	BPMHL
Bob Sherman	NCFA
Gardner Payne	Edmisten & Webb

VISITOR REGISTRATION SHEET

ENVIRONMENT AND NATURAL RESOURCES — May 3, 2005

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Grady McCallie	N.C. Conservation Network
Michael Nelson	Conservation Council
Johanna Reese	DENR
Robin Smith	DENR
Kathy Rhodes	DHHS
Elizabeth Seis	Sierra Club
Michelle Hall	EPFP

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

HOUSE BILL 698*

Short Title:	Amend Forest Development Act.-AB	(Public)
Sponsors:	Representatives Owens, Culpepper (Primary Sponsors); and Williams.	
Referred to:	Environment and Natural Resources.	

March 17, 2005

A BILL TO BE ENTITLED

AN ACT TO EXPAND THE FINDINGS, THE PURPOSE, AND THE APPROVED PRACTICES OF THE CURRENT FOREST DEVELOPMENT ACT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 113A-177 reads as rewritten:

"**§ 113A-177. Statement of purpose.**

(a) The General Assembly finds that:

(1) It is in the public interest of the State of North Carolina to encourage the development of the State's forest resources and the protection and improvement of the forest environment.

(2) Unfavorable environmental impacts, ~~although currently of a local and sporadic nature,~~ particularly the rapid loss of forest land to urban development, are occurring as a result of ~~forest operations.~~ population growth. It is in the State's interest that corrective action be developed now to ~~prevent more serious problems~~ offset forest land losses in the future.

(3) Regeneration of potentially productive forest land is a high-priority problem requiring prompt attention and action. Private forest land will become more important to meet the needs of the State's population.

(4) Growing demands on forests and related land resources cannot be met by intensive management of public and industrial forest lands alone.

(b) The purpose of this Article is to direct the Secretary of Environment and Natural Resources to implement a forest development program to:

(1) Provide financial assistance to eligible landowners to increase the productivity of the privately owned forests of the State through the application of forest renewal ~~practices;~~practices and other practices that improve tree growth and overall forest health.

(2) Insure that forest operations in the State are conducted in a manner designed to protect the soil, air, and water resources, including but not

limited to streams, lakes and estuaries through actions of landowners on lands for which assistance is sought under provisions in this ~~Article;~~Article.

(3) Implement a program of voluntary landowner participation through the use of a forest development fund to meet the above goals.

(c) It is the intent of the General Assembly that in implementing the program under this Article, the Secretary will cause it to be coordinated with other related programs in such a manner as to encourage the utilization of private agencies, firms and individuals furnishing services and materials needed in the application of practices included in the forest development program."

SECTION 2. G.S. 113A-178(2) reads as rewritten:

"(2) 'Approved practices' mean those silvicultural practices approved by the Secretary for the purpose of commercially growing timber through the establishment of forest stands, ~~or~~ of insuring the proper regeneration of forest stands to commercial production levels following the harvest of mature ~~timber.~~ timber, or of insuring maximum growth potential of forest stands to commercial production levels. Such practices shall include those required to accomplish site preparation, natural and artificial forestation, noncommercial removal of residual stands for silvicultural purposes, ~~and~~ cultivation of established young growth of desirable ~~trees.~~ trees for silvicultural purposes, and improvement of immature timber stands for silvicultural purposes. In each case, approved practices will be determined by the needs of the individual forest stand. These practices shall include existing practices and such practices as are developed in the future to insure both maximum forest productivity and environmental protection."

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H D

HOUSE BILL 698*
PROPOSED COMMITTEE SUBSTITUTE H698-PCS70427-SY-14

Short Title: Amend Forest Development Act.-AB (Public)

Sponsors:

Referred to:

March 17, 2005

A BILL TO BE ENTITLED

AN ACT TO EXPAND THE FINDINGS, THE PURPOSE, AND THE APPROVED PRACTICES OF THE CURRENT FOREST DEVELOPMENT ACT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 113A-177 reads as rewritten:

"**§ 113A-177. Statement of purpose.**

(a) The General Assembly finds that:

(1) It is in the public interest of the State ~~of North Carolina~~ to encourage the development of the State's forest resources and the protection and improvement of the forest environment.

(2) Unfavorable environmental impacts, ~~although currently of a local and sporadic nature,~~ particularly the rapid loss of forest land to urban development, are occurring as a result of ~~forest operations.~~ population growth. It is in the State's interest that corrective action be developed now to ~~prevent more serious problems~~ offset forest land losses in the future.

(3) Regeneration of potentially productive forest land is a high-priority problem requiring prompt attention and action. Private forest land will become more important to meet the needs of the State's population.

(4) Growing demands on forests and related land resources cannot be met by intensive management of public and industrial forest lands alone.

(b) The purpose of this Article is to direct the Secretary ~~of Environment and Natural Resources~~ to implement a forest development program to:

(1) Provide financial assistance to eligible landowners to increase the productivity of the privately owned forests of the State through the application of forest renewal ~~practices;~~practices and other practices that improve tree growth and overall forest health.

(2) Insure that forest operations in the State are conducted in a manner designed to protect the soil, air, and water resources, including but not limited to streams, lakes and estuaries through actions of landowners on lands for which assistance is sought under provisions in this ~~Article;~~Article.

(3) Implement a program of voluntary landowner participation through the use of a forest development fund to meet the above goals.

(c) It is the intent of the General Assembly that in implementing the program under this Article, the Secretary will cause it to be coordinated with other related programs in such a manner as to encourage the utilization of private agencies, firms and individuals furnishing services and materials needed in the application of practices included in the forest development program."

SECTION 2. G.S. 113A-178(2) reads as rewritten:

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

HOUSE BILL 698:
Amend Forest Development Act.-AB

BILL ANALYSIS

Committee:	House Environment and Natural Resources	**Date:**	May 3, 2005
Introduced by:	Reps. Owens, Culpepper	**Summary by:**	Tim Dodge
Version:	First Edition		Legislative Analyst

SUMMARY: ***House Bill 698 amends the findings and purposes of the Forest Development Act and expands the list of approved practices that are eligible for cost-share funds from the Forest Development Fund to include practices to insure maximum growth potential of forest stands and the improvement of immature timber stands for silvicultural purposes.***

CURRENT LAW: The Forest Development Act (Act) and the Forest Development Fund (Fund) provide cost-sharing funds to eligible landowners in the State to help offset the costs of management practices designed to promote reforestation and improve the productivity of commercial forestlands. The Fund receives revenue from an assessment on primary forest products (sawtimber, veneer, pulpwood, etc.) produced in the State. To be eligible for cost-share assistance, a landowner must have a forest management plan that has been approved by the Division of Forest Resources of the Department of Environment and Natural Resources.

BILL ANALYSIS: House Bill 698 amends the statement of purpose for the Act by removing the provision that attributes unfavorable environmental impacts to forestry operations and replaces it with a statement that attributes unfavorable environmental impacts to population growth. The bill also amends the statement of purpose for the Act to declare that private forest land will become more important to meet the needs of the State's growing population, and that it is in the State's interest to take action now to offset forest land losses in the future.

The bill also amends the definition of approved practices for cost-share eligibility purposes to include the following approved practices:

- Insuring the maximum growth potential of forest stands to commercial production levels.
- Limiting the cultivation of established young growth of desirable trees to include only cultivation practices that are for silvicultural purposes.
- Improvement of immature timber stands for silvicultural purposes.

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

H0698e1-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.

☐ Committee Substitute for
HB 698 A BILL TO BE ENTITLED AN ACT TO EXPAND THE FINDINGS, THE PURPOSE, AND THE APPROVED PRACTICES OF THE CURRENT FOREST DEVELOPMENT ACT.

☒ 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) 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, May 10, 2005

The House Committee on Environment and Natural Resources met on Tuesday, May 10, 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; Representative Lucy Allen, Vice Chair; Representative Pricey Harrison, Vice Chair; Representative Daniel McComas, Vice Chair; Representative Curtis Blackwood, Representative Becky Carney, Representative Russell Capps, Representative Bill Daughtridge, Representative Pryor Gibson, Representative Mitch Gillespie, Representative Melanie Goodwin, Representative Jim Gulley, Representative Joe Hackney, Representative Phil Haire, Representative Verla Insko, Representative Stephen LaRoque, Representative Paul Luebke, Representative Grier Martin, Representative Bill McGee, Representative Ed McMahan, Representative Jean Preston, Representative Bonner Stiller, Representative Alice Underhill, Representative Jennifer Weiss, Representative Larry Womble and Representative Pete Cunningham, Ex-Officio Member.
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 Committee Counsel and staff were recognized and thanked. Visitors were welcomed.

HOUSE BILL 955 - A BILL TO BE ENTITLED AN ACT TO MAKE IT UNLAWFUL TO TAKE MENHADEN OR ATLANTIC THREAD HERRING WITH A PURSE SEINE NET WITHIN THREE NAUTICAL MILES OF THE SHORELINE OF BRUNSWICK AND NEW HANOVER COUNTIES FROM MAY 1 THROUGH OCTOBER 31 OF EACH YEAR.

By motion from Representative Justice, Chair, the Proposed Committee Substitute H955-CSSB-22[v.2] was adopted for consideration and moved forth for discussion. (Please see Exhibit #2). The Bill Analysis is attached (Please see Exhibit #3). Representative Stiller, primary sponsor, was recognized to explain the bill. The other primary sponsors and members of the audience in support of the bill were recognized and thanked. Representative Stiller emphasized this is a local bill affecting the local area of Brunswick and New Hanover Counties. He presented a power point presentation while explaining the bill (Please see Exhibit #4). Representative Stiller emphasized that he is not attacking the Menhaden Fishing Industry and further stated that they are hard workers obeying the law. He clarified that the purpose of this proposed legislation is to protect Brunswick and New Hanover Counties from local depletion. He also noted the contribution made by sport fishing in funding jobs in Brunswick and New Hanover Counties for the tourism industry. Maps were used to designate the position of the counties interested in this legislation.

Members of the audience were recognized to speak. Rube McMullan, owner of Ocean Isle Fishing Center at Ocean Isle, N.C., a business specializing in charter fishing, was recognized to speak in support of the bill. Jewell Wheatley, President of Beaufort Fisheries, was recognized to speak in opposition of the bill citing the menhaden fishing contribution to the agribusiness and aquaculture industries in North Carolina. He also emphasized the devastation to Beaufort Fisheries and Beaufort if they were forced to leave. Mr. Jewell responded to questions that the menhaden business is extremely regulated and seasonal being limited to 75 to 100 days a year. Jerry Schill, Executive Director of the NC Fisheries Association, was recognized to speak in opposition explaining that the Association is a trade group representing commercial fishing families and support the 1997 Fisheries Reform Act as the regulating body deciding this issue. He expressed further opposition on the premise that this was not a conservation issue but an allocation issue.

Members of the committee were recognized to speak on the bill. Representative Preston speaking in opposition of the bill expressed concern that people would loose their jobs if this ban goes into effect thus forcing them to go on unemployment. She explained that the 1997 Fisheries Reform Act, under the leadership of the Marine Fisheries Commission, was designed to stop the legislature from having to decide issues regarding the fishing industry. Representative Preston noted that in regard to the status of menhaden fishing along the east coast of the U.S., the Administrative Director of the National Marine

Fisheries Service reported that the most recent stock assessment report established that the Atlantic was not over fished nor is it occurring. She concluded by re-stating the Marine Fisheries Commission should be the body to consider this proposal; thereby going through the management process as set forth by law. Representative Harrison speaking in opposition of the bill noted it appeared to be a resource conflict between the recreational and commercial fishing industry. She expressed concerns that states banning menhaden fishing had done so because of social pressure not science. Representative Womble indicated his opposition to the bill based on needing evidence to see how this will affect the African American community. He also did not think the Environment Committee was the proper venue.

Representative Stiller responded that this bill is preventive maintenance and that only 2 out of 15 states had not banned menhaden fishing. He noted the menhaden season runs May 1 thru Oct 31, citing the adverse effects to seasonal sport fishing. Representative LaRoque, primary sponsor, spoke in support of the bill expressing concern over the devastation the menhaden boats have when fishing entire schools of fish.

Representative Wainwright expressed opposition because most of the employees on the menhaden boats are African American and will be unemployed if this bill becomes law. He further stated that resource concerns do not justify this bill because there is no evidence of waters being over-fished or threatened by depletion. He agreed that the Fisheries Management Act; not the Environment Committee and not the Legislature, should decide this issue.

Representative McComas, primary sponsor, speaking in support cited the menhaden ban in Dare County having gone through the Senate Environment Committee and emphasized that this is a local bill only affecting what is going on in those counties involved. He further emphasized this would be a long-term economic gain to the state and only a short-term loss if this bill were passed.

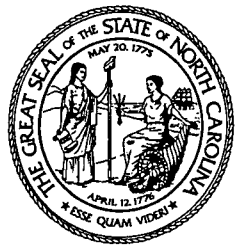
Representative McGee made the motion that the bill receive a favorable report as to the Committee Substitute H955-CSSB-22[v.2] and an unfavorable report as to the original bill. Representative Harrell asked committee members to signify their vote by a show of hands. The motion failed.

There being no further business, Representative Harrell adjourned the meeting at 3:00 P.M.

Respectfully submitted,

Representative James A. Harrell, III
Presiding Chair

Beth Wood LeGrande
Committee Assistant



HOUSE COMMITTEE ON ENVIRONMENT AND NATURAL RESOURCES

AGENDA

2:00 P.M.
Tuesday, May 10, 2005
Room 643 Legislative Office Building

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

2. **Introductory Remarks by Cochairs**

3. **Recognition of Pages and Sergeant-at-Arms**

4. **Consideration of Bills:**

   HB 955 – Brunswick/New Hanover Menhaden Restrictions.
   Representatives Stiller, Hill, McComas, LaRoque (Primary Sponsors)

5. **Adjourn**

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

HOUSE BILL 955

Short Title:	Brunswick/New Hanover Menhaden Restrictions. (Local)
Sponsors:	Representatives Stiller, Hill, McComas, LaRoque (Primary Sponsors); Folwell, Gulley, and McGee.
Referred to:	Environment and Natural Resources.

March 29, 2005

A BILL TO BE ENTITLED

AN ACT TO MAKE IT UNLAWFUL TO TAKE MENHADEN OR ATLANTIC THREAD HERRING WITH A PURSE SEINE NET WITHIN THREE NAUTICAL MILES OF THE SHORELINE OF BRUNSWICK AND NEW HANOVER COUNTIES FROM MAY 1 THROUGH OCTOBER 31 OF EACH YEAR.

The General Assembly of North Carolina enacts:

SECTION 1. It is unlawful to take menhaden or Atlantic thread herring by the use of a purse seine from May 1 through October 31 of each year within three nautical miles of the Atlantic Ocean shoreline in that area east of a line beginning at a point onshore at the border between North Carolina and South Carolina at 33° 51.0667'N – 78° 32.5833'W; running southeasterly three nautical miles to a point offshore at 33° 48.8342'N – 78° 29.8494'W; and south and west of a line beginning at a point onshore at the border between Pender County and New Hanover County at 34° 17.6479'N – 77° 42.8356'W; then running southeasterly three nautical miles to a point offshore at 34° 15.6547'N – 77° 40.0220'W.

SECTION 2. This act becomes effective May 1, 2005, and applies to offenses committed on or after that date.

House Pages

Environmental & Nat. Resources
Name Of Committee: _____ Date: 5/10/05

1. Name: Laura Ruterbories
   County: Wake
   Sponsor: Rick Eddins
2. Name: Annie Hoyle
   County: Durham
   Sponsor: Paul Miller
3. Name: _____
   County: _____
   Sponsor: _____
4. Name: _____
   County: _____
   Sponsor: _____
5. Name: _____
   County: _____
   Sponsor: _____

Sgt-At-Arms

1. Name: Willie Dixon
2. Name: Frank Prevo
3. Name: Fred Hunes
4. Name: Thomas Wilder
5. Name: James Womack
6. Charles Williams
7. Dusty Rhodes

2:10 Bonner

SHEET # 1 OF 1

HOUSE COMMITTEE ON ENVIRONMENT AND NATURAL RESOURCES

2:00 P.M.
Tuesday, May 10, 2005
Room 643 Legislative Office Building

SIGN UP SHEET TO SPEAK

HB 955 – Brunswick/New Hanover Menhaden Restrictions.

Representatives Stiller, Hill, McComas, LaRoque (Primary Sponsors)

Rube McMullan

Tom Aberle

Karen Sparr

BRANT MCMULLAN

ROBERT FERRIS

Dave Cooper –

Mac Campbell

VISITOR REGISTRATION SHEET

ENVIRONMENT + NAT RESOURCES — 5-10-05

Name of Committee — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
TY COBB	DIRECTOR EAST COAST GOT-EM-ON KING CLASSIC 26 ANN
STEVE STIENTJE	RETIRED FISHERMAN BRUNSWICK CO N.C.
RICH CARPENTER	N.C. MARINE FISHERIES
David Taylor	NCDMF
Mike Marshall	NC DMF
MIKE BUHL	NC DMF
Jimmy Johnson	Marine Fisheries Commision + NCDA&CS
Mac Campbell	Campbell Oil + Gas Co., Bladen
Wesley Campbell	Minuteman Food Marts, Bladen
McQueen Campbell	Carolantic Realty, Wake

VISITOR REGISTRATION SHEET

Environmental & Natural Resources 5-10-05

Name of Committee | Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Robert Ferris	Charlotte Offshore Sport Fishing Club
Terry McPherson	Charlotte Offshore sport Fishing Club
Jim Janicki	Raleigh, Brunswick Co.
Robbie Helm	Wilmington - Recreation Fisherman
Dave Cooper	Ocean Crest Pier Oak Island, NC
Brad Huddle	Big Rock Committee
Jay Dail	Charlotte
Dave Hawkins	Raleigh
Phillip Bird	Holden Beach
Edward Gruendska	Holden Beach Fishing Club
Rick Barnhardt	Holden Beach Fishing Club

VISITOR REGISTRATION SHEET

ENVIRONMENTAL + NAT RESOURCES — 5-10-05

Name of Committee — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Terry Pratt	Albemarle Fishermen's Assoc.
Jerry Schill	NC Fisheries Assoc.
Karen Carpenter	NCPC
Julie Woodson	NCPC
Jim Hawksley	NCPC
Steve Woodson	NC Farm Bureau
Kathy Hawkins	Progress Energy
Melissa Midgett	Senator Hagan's office
N. David Smith	Agriculture

VISITOR REGISTRATION SHEET

Environmental & Nat. Resources — 5/10/05

Name of Committee — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Rube McMullan	Ocean Isle Fishing Center 65 Causeway Dr. OIB, NC 28469
DARRELL GARRETT	4012 GARRETT DRIVE Durham, NC.
Mike ALTOMONTE	3157 WATERWAY DR, Supply NC 28462
Dan Whittle	2500 Blue Ridge Rd #330 Raleigh, NC 27607
Roger Gales	1598 Greenfield Dr. Supply NC 28462
Yorke Rhea	58 Oak Creek Ln Hendersonville NC 28739
Amy McMullan	65 Causeway Dr Ocean Isle Beach NC 28469
Brant McMullan	65 Causeway Dr O.I.B., NC 28469
Bob Earl	473 Taylors Chapel Rd Stanford NC. 27330
Barrett McMullan	65 Causeway Dr OIB, NC 28469
Katie Bowman	10 Nicklaus Ct. Shallotte NC, 28470

VISITOR REGISTRATION SHEET

Environmental & Nat. Resources — 5/10/05

Name of Committee — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Bryan Williams	6835 Longbranch Rd. Salisbury, NC 28147
Kyle Hughes	5035 Manley Smith Rd. Nakina, NC 28455
David M Hooks Jr	6401 Mazelle Trail Ocean Isle Beach NC 28469
Ryan Strickland	6275 Wrightsville Ave. Apt. 122 Wilmington NC 28403
Grady Gordon	4639 McClelland dr Wilmington NC 28405
Alan Penninger	1600 maple circle Ocean Isle Beach NC, 28469
Scott Allen	1818 Coxemoor Pl. Asheboro, NC 27205
Peggy Arnold	421 Graylyn Pl Fayetteville, N.C. 28314
Tom Arnold	421 Graylyn Pl Fayetteville NC 28314
Bert Gurganus	1615 Homestead Rd Chapel Hill 27516
Mitzi York	Brunswick Co Chamber of Commerce Po Box 1185 Shallotte NC 28459

VISITOR REGISTRATION SHEET

ENVIROMENT & NATURAL RES. 05-10-05

Name of Committee **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Jason Wheatley	Holden Beach Marina
David Blalock III	Holden Beach Fishing Charters
Chuck DeRenne	Carolina Shores (Retired)
Chuck Olson	Fishin' Fool Club - Calabash
Tom Aberle	Greater Wilmington KMT
[illegible]	[illegible]
BILL HALKOVITCH	U.S. POWER SQUADRON, OCEAN ISLE Beach
JOHN MCWHITE	PROFINDER CHARTS, LLC Ocean Isle
Tony Woodell	PROFINDER Charts Sanford NC
Jerry Petton	oddballs At The beach Ocean Isle Beach
Rickey Beck	Hook M Up Fishing Sunset Beach

VISITOR REGISTRATION SHEET

ENVIRONMENTAL + Nat. Resources — 5-10-05

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Steven Kjellberg	3704 Duxford Drive Raleigh, NC 27614
NILES HARREL	1513 KILARNEY DR CARY NC 27511
Amy JORDAN	115 WINDWARD CT CARY NC. 27513
Randy Lyon	Castalia, NC
Warren Mayer	Durham, N.C.
Tam Bean	NC Wild Defense
Steve Wall	DENR
Erin Kinney	NC Conservation Network
[illegible]	NCRA - NCWN
[illegible]	Bft. Fish. Inst, Bft, NC.
Rudus Edmisten	Edmisten + Webb

VISITOR REGISTRATION SHEET

Environment + Nat Resources — 5-10-05

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
James Smith	JD, NL, PA
Taylor McCawhorn	Clean Water Management

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

HOUSE BILL 955

Short Title:	Brunswick/New Hanover Menhaden Restrictions. (Local)
Sponsors:	Representatives Stiller, Hill, McComas, LaRoque (Primary Sponsors); Folwell, Gulley, and McGee.
Referred to:	Environment and Natural Resources.

March 29, 2005

A BILL TO BE ENTITLED

AN ACT TO MAKE IT UNLAWFUL TO TAKE MENHADEN OR ATLANTIC THREAD HERRING WITH A PURSE SEINE NET WITHIN THREE NAUTICAL MILES OF THE SHORELINE OF BRUNSWICK AND NEW HANOVER COUNTIES FROM MAY 1 THROUGH OCTOBER 31 OF EACH YEAR.

The General Assembly of North Carolina enacts:

SECTION 1. It is unlawful to take menhaden or Atlantic thread herring by the use of a purse seine from May 1 through October 31 of each year within three nautical miles of the Atlantic Ocean shoreline in that area east of a line beginning at a point onshore at the border between North Carolina and South Carolina at 33° 51.0667'N – 78° 32.5833'W; running southeasterly three nautical miles to a point offshore at 33° 48.8342'N – 78° 29.8494'W; and south and west of a line beginning at a point onshore at the border between Pender County and New Hanover County at 34° 17.6479'N – 77° 42.8356'W; then running southeasterly three nautical miles to a point offshore at 34° 15.6547'N – 77° 40.0220'W.

SECTION 2. This act becomes effective May 1, 2005, and applies to offenses committed on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H D

HOUSE BILL 955
PROPOSED COMMITTEE SUBSTITUTE H955-CSSB-22 [v.2]

5/6/2005 9:45:40 AM

Short Title: Brunswick/New Hanover Menhaden Restrictions. (Local)

Sponsors:

Referred to:

March 29, 2005

A BILL TO BE ENTITLED

AN ACT TO MAKE IT UNLAWFUL TO TAKE MENHADEN OR ATLANTIC THREAD HERRING WITH A PURSE SEINE NET WITHIN THREE NAUTICAL MILES OF THE SHORELINE OF BRUNSWICK AND NEW HANOVER COUNTIES FROM MAY 1 THROUGH OCTOBER 31 OF EACH YEAR.

The General Assembly of North Carolina enacts:

SECTION 1.(a) It is unlawful to take menhaden or Atlantic thread herring by the use of a purse seine from May 1 through October 31 of each year within three nautical miles of the Atlantic Ocean shoreline in that area east of a line beginning at a point onshore at the border between North Carolina and South Carolina at 33° 51.0667'N – 78° 32.5833'W; running southeasterly three nautical miles to a point offshore at 33° 48.8342'N – 78° 29.8494'W; and south and west of a line beginning at a point onshore at the border between Pender County and New Hanover County at 34° 17.6479'N – 77° 42.8356'W; then running southeasterly three nautical miles to a point offshore at 34° 15.6547'N – 77° 40.0220'W.

SECTION 1.(b) Violation of subsection (a) of this section is a Class A1 misdemeanor.

SECTION 2. This act is effective 30 days after it becomes law and applies to offenses committed on or after the date it becomes effective.

HOUSE BILL 955:
Brunswick/New Hanover Menhaden Restrictions

BILL ANALYSIS

Committee:	House Environment and Natural Resources	**Date:**	May 10, 2005
Introduced by:	Reps. Stiller, Hill, McComas, LaRoque	**Summary by:**	Jeff Hudson
Version:	PCS to First Edition H955-CSSB-22 [v.2]		Committee Counsel

SUMMARY: The Proposed Committee Substitute for House Bill 955 would make it unlawful to take menhaden or Atlantic thread herring with a purse seine net within 3 nautical miles of the shoreline of Brunswick and New Hanover Counties from May 1 through October 31.

CURRENT LAW: The Marine Fisheries Commission has adopted a number of rules that regulate the time and place of taking menhaden or Atlantic thread herring with a purse seine net. For example:

- 15A NCAC 3M .0401 makes it unlawful to take menhaden or Atlantic thread herring with a purse seine in internal waters and in the Atlantic Ocean within 1 mile of shore during certain time periods.
- 15A NCAC 3M .0403 makes it unlawful to take menhaden or Atlantic thread herring with a purse seine on weekends between Memorial Day and Labor Day.
- 15A NCAC 3R .0111 makes it unlawful to take menhaden or Atlantic thread herring with a purse seine from the Atlantic Ocean in certain areas near the Cape Fear River ship channel and near certain municipalities in Dare County during certain time periods.

Violation of any of these rules is a Class A1 misdemeanor.

BILL ANALYSIS: The Proposed Committee Substitute for House Bill 955 (PCS) would make it unlawful to take menhaden or Atlantic thread herring with a purse seine net within 3 nautical miles of the shoreline of Brunswick and New Hanover Counties from May 1 through October 31. Violation of this prohibition would be a Class A1 misdemeanor.

EFFECTIVE DATE: The PCS would become effective 30 days after it becomes law and apply to offenses committed on or after the date it becomes effective.

BACKGROUND: Purse seine nets are used to encircle and haul in schooling fish. The name of the net is based on the fact that the encircling net is drawn closed like a purse. This type of net is used to catch both menhaden and, to a much lesser extent, Atlantic thread herring off the coast of North Carolina. Atlantic thread herring is included in the regulation of menhaden because some menhaden fishers will target Atlantic thread herring when menhaden are not available.

(More information on menhaden from the Division of Marine Fisheries in the Department of Environment and Natural Resources is included on the reverse side of this bill analysis.)

MENHADEN

Average Commercial Landings and Value 1994 – 2003: 61,500,112 lbs., $4,423,094

2003 Commercial Landings and Value: 48,936,502 lbs., $3,943,814

Average Recreational Landings 1994 – 2003: Not applicable

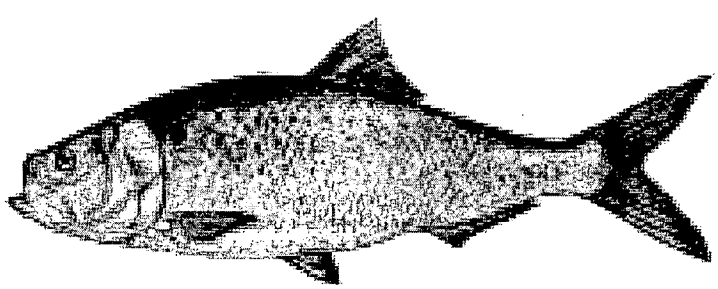
Average Recreational Commercial Gear License (RCGL) Landings 2002 – 2003: Not applicable

Size and Age at Maturity: 7-9 inch; 3 + years old

Historic/current maximum age: 10 years old/ 8 years old

Habits/Habitat: Menhaden are estuarine-dependent with a single stock along the Atlantic coast. They spawn during fall-winter in the ocean from the Virginia capes to south of Cape Lookout. Menhaden migrate north from unspecified south Atlantic wintering areas in the spring, with larger/older fish going farthest north. Menhaden are unique in their dependence as adults on phytoplankton for food that they strain from the water while swimming in schools near the surface. Recent research indicates that year-class strength is probably determined by environmental factors (currents, temperature, predation, others) acting on larvae as they approach and enter inlets and nursery areas.

Use of menhaden: About 85 - 90% of the annual Atlantic coast catch is processed into fishmeal for animal feed, and oil as an industrial base and for food additives. The rest is used for bait in the crab and lobster pot fisheries, as well as for sport fishing bait.



What is a Pogie?

- Pogies/Menhaden are small bait fish (approximately 6 inches) that traverse the east coast.
- Humans do not eat these fish, however, virtually every other swimming ocean fish such as King Mackerel, Spanish Mackerel, Flounder, Trout, Red Fish, Cobia, Tarpon, Sharks, etc. feed off of menhaden.

The Problem: Their History

- In the 1950's
  - 150 Vessels
  - 500 – 700 Thousand Metric Tons
  - 25 Processing Plants – East Coast

- Today
  - 12 Vessels
  - 2 Plants – East Coast

The Problem

- Texas Based Omega Proteins based in Reedville, VA along with Beaufort Fisheries, based in Beaufort, NC target this bait fish with a spotter aircraft that locates these large schools that are visible from the air.
- Once located, the fleet is dispatched to the pogie school and using large encircling seines, the entire school is "wrapped up".

The Problem: Local Depletion

- Once the bait fish have been harvested from our coastline and the commercial boats have gone, unfortunately, the predator fish must move to waters that are plentiful with their food source (pogies).
- North Carolina is one of a hand full of states where Menhaden fishing is not regulated.

The Problem: Chesapeake Bay

- Chesapeake Bay: An Undeclared Ecological Disaster as written by the Chesapeake Bay Ecological Foundation April 7, 2005.
- The ASMFC – Atlantic State Marine Fisheries Commission
  - Represents 15 States
  - Considering limiting the harvest of menhaden from the Chesapeake Bay.

Menhaden Regulations

- Florida – Closed since 94 net ban.
- Georgia – Technically Open, but won't sell license to purse seiners.
- SC – Closed since 1985 when net restriction bill was passed including purse seins.
- NC – OPEN – Home of Beaufort Industries.

  Regulated in Dare County – Tourist Communities
- VA – OPEN – Home of Omega Proteins.
- Maryland - CLOSED

Menhaden Regulations

- Delaware – Closed since 1984 (small part of Del Bay was open until 1992).
- New Jersey – Closed since 2002.
- New York – Long Island can open after July 4th with MANY regulations.
- Conn. – Closed due to reduction fishing, but do allow vessels 90 ft and under to obtain bait fish.
- RI - CLOSED

Menhaden Regulations

- The National Marine Fisheries Service reports that the population of the menhaden stock is not in a state of depletion off the east coast, however, this data is not calculated on a state by state basis.
- This report is derived from an analysis of the menhaden population from South Florida to Maine that includes states where menhaden are regulated which increases the overall numbers of the fishery.
  - The problem is with LOCAL depletion.

The Solution – HB 955

- HB 955 is an designed to regulate menhaden fishing from May 1 thru October 31, North Carolina's coastal tourist season. (not ban the practice totally).
- By regulating the commercial taking of menhaden, the chances of fish spills and depletion of stock are reduced thus preserving a vital link to insure a successful tourist industry in Brunswick and New Hanover Counties.

The Opposition

- The Omega Protein Industry is our largest opposition. If this bill passes, these fleets will not be allowed to fish off of Brunswick and New Hanover Counties during their busiest tourist season.
- The opposition's argument that these regulations would hurt their harvest of menhaden and reduce job opportunities for companies such as Omega Proteins and Beaufort Industries is simply not valid.

The Opposition

- According to Beaufort Fisheries, Brunswick and New Hanover counties are fished less than three days per year and "only as a last choice option" due to heavy opposition. -Mr. Wyndell Hunnings, Beaufort Fisheries

August 5, 2004 Fisherman's Post

Why Brunswick and New Hanover Counties?

- The true question is WHY NOT?
- These two counties MUST have sport fishing to attract tourist from all over the United States. The KING MACKEREL CAPITAL
- Brunswick and New Hanover are the two most southern counties in North Carolina. Both counties rely on the sport fishing industry to assist with the tourism and growth of the local economy.

Why Brunswick and New Hanover?

- Brunswick and New Hanover County receive ZERO economic benefit from the commercial taking of menhaden. However, sport fishing and tourism provide millions of dollars in local business and economic stimulation including thousands of jobs most of which are provided by small business owners.
  - Brunswick County at one time did receive economic benefits from the menhaden industry, however, those plants closed years ago.
  - There are only 2 processing plants remaining on the east coast of the US for this reduction industry.

What About DMF?

- The Division of Marine Fisheries oversees North Carolina Fisheries.
- Proper procedures have been followed.
  - Request of DMF
  - Second Step Local Legislation

Where do we go from here?

- This legislation will protect our menhaden supply, which will preserve our sport and commercial fishing industry and continue to stimulate the economy in the southern coastal regions of North Carolina.
- If regulations are not passed, the pogies and our sport and commercial fishing industries will be extinct off the southern coast of NC.

Final Thoughts

- 10 out of 12 Boats are from Virginia.
- This is a dying industry.
  - 150 Vessels down to 12.
  - 25 Processing Plants down to 2.

- Why should Brunswick and New Hanover Counties lose their resource for the benefit of a Virginia company and a Texas Corporation?

Final Thoughts

- This legislation is in the best interest of North Carolina and should be passed to preserve the interest of the entire state.
- Brunswick and New Hanover Counties tourism dollars help the overall economy of the state.

Minutes

House Committee on Environment and Natural Resources
May 17, 2005

The House Committee on Environment and Natural Resources met on May 17, 2005 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, Harrison, and McComas; Representatives Blackwood, Capps, Carney, Culp, Daughtridge, Gibson, Gulley, Hackney, Haire, Laroque, Luebke, Martin, McGee, McMahan, Owens, Stiller, Underhill, Weiss and Womble. 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.

Chairman Justice called the meeting to order and Representative Haire was asked to explain **HB 1189, A Bill To Be Entitled An Act To Protect Fontana Lake And The Outstanding Resource Waters Draining To Fontana Lake.** This Bill is being reconsidered from the April 26, 2005 meeting. A PCS was adopted for discussion purposes. Bill Holman, Executive Director of the Clean Water Management Trust Fund, was asked to speak in order to address questions regarding the Bill. After some discussion, Representative Hackney moved that the PCS receive a favorable report, which changes the title, unfavorable as to the original Bill. The motion carried.

Representative Hackney moved to adopt the PCS of **HB 1465, A Bill To Be Entitled An Act To Prohibit The Disposal Of Clean Wood Waste, Electronic Devices, Motor Vehicle Oil Filters, Plastic Bottles, And Wooden Pallets In Landfills.** The motion carried and Representative Hackney then explained the Bill. Scott Mouw, with the Division of Pollution Prevention and Environmental Assistance, answered questions regarding the Bill. Paul Crissman, with the Division of Waste Management, also assisted with answering questions. Noel Lyons, President of McGill-Leprechaun (a recycling company), spoke on the Bill and its potential effect on his business. After discussion from the members, Representative Harrison moved that the PCS receive a favorable report, which changes the title, unfavorable to the original Bill. The motion carried.

Representative Harrell moved to adopt the PCS, for the purpose of discussion, of **HB 1521, A Bill To Be Entitled An Act To Prohibit The Disposal Of Oyster Shells In Landfills And To Provide An Income Tax Credit For Donations Of Oyster Shells To The Department of Environment and Natural Resources For Placement In Oyster Sanctuaries To Restore Oyster Populations.** The motion carried and Representative McComas then explained the Bill. After some discussion, Michael Nelson, Director of Government Relations with the Conservation Council of N.C., and Jim Stephenson, with the N.C. Coastal Federation, spoke in favor of the Bill. After further discussion, Representative Carney moved that the PCS receive a favorable report, which changes the title, unfavorable to the original Bill, with a re-refer to the Committee on Finance. The motion carried.

The meeting adjourned at 1:30 p.m.

Respectfully Submitted,

Rep. Carolyn Justice
Presiding Chair

Vivian Sherrell
Committee Assistant

Agenda
Committee Reports
Bills Considered
Visitor's Registration

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: **Tuesday, May 17, 2005**

TIME: **12:00 Noon**

LOCATION: **Room 643 LOB**

The following bills will be considered (Bill # & Short Title & Bill Sponsor):
HB 1189 Fontana Lake Protection. Rep. Haire
HB 1465 Disposal in Landfills/Addl. Bans. Rep. Hackney
HB 1521 Ban Disposal of Oyster Shells in Landfills. Rep. McComas

Respectfully,
Representatives Harrell, Justice
Chairs

I hereby certify this notice was filed by the committee assistant at the following offices at **11:00** on **May 12, 2005.**

_x__Principal Clerk
_x__Reading Clerk - House Chamber

Vivian Sherrell (Committee Assistant)

VISITOR REGISTRATION SHEET

House Committee on Environment & Natural Resources — **May 17, 2005**

Name of Committee — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE ASSISTANT

NAME	FIRM OR AGENCY AND ADDRESS
Paul Thayer	DENR
Jeff Manning	DENR - DWQ
Lou Burger	CPIC
Nancy Gottori	Yadkin Pee Dee Lakes Project
Holly Howington	intern, Rep. Eddins
Ryland Pond	intern - Rep. Corney
John Cyrus	NCSG
BRUCE THOMPSON	PARKER POE
Alissa Dolan	NC Conservation Network
Erin Kinsey	NC Conservation Network
Taylor McCawley	Clean Water Mangmt
Mad Lynn M.	McGill-Leprechaun
LYNN LUCAS	McGILL-LEPRECHAUN
Kerry Krumsiek	Carolina Recycling Assoc
FRANK FRANCIOSI	CAROLINA'S COMPOSTING COUNCIL
Steve Wall	DENR
Ed TURLINGTON	BPMHL
Scott Mouw	NC DENR
Dan Mouw	NC DENR
Paul Meyer	NC Assoc. County Cmrs.
Eben Polk	Clean Water Mgmt. Trust Fund
Don Holman	CMMTF
Butch Gunnells	NC Soft Drink Assoc.
Lisa Kennedy	Rep. LaRoque
Steve Craig	intern, NCPIRG
Emily Handwalt	Intern, NCPIRG
Elizabeth Ouzts	NCPIRG

VISITOR REGISTRATION SHEET

House Committee on Environment & Natural Resources **May 17, 2005**

Name of Committee Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE ASSISTANT

NAME	FIRM OR AGENCY AND ADDRESS
[illegible]	NCHB
[illegible]	[illegible]
[illegible]	NC Conservation Network
[illegible]	NC - Conservation Network
[illegible]	N.C. Beer & Wine Wholesalers Assoc.
[illegible]	NCRA

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

HOUSE BILL 1189

Short Title:	Fontana Lake Protection.	(Public)
Sponsors:	Representative Haire.	
Referred to:	Environment and Natural Resources.	

April 12, 2005

A BILL TO BE ENTITLED

AN ACT TO PROTECT FONTANA LAKE AND THE OUTSTANDING RESOURCE WATERS DRAINING TO FONTANA LAKE.

Whereas, Fontana Lake in Graham and Swain Counties provides drinking water and over $4,700,000 in annual recreational benefits to the citizens of North Carolina; and

Whereas, Graham and Swain Counties have adopted ordinances to require all houseboats on Fontana Lake to have permanent toilets and permanent wastewater holding tanks to protect public health and water quality; and

Whereas, Graham and Swain Counties, with financial assistance from the Clean Water Management Trust Fund, Appalachian Regional Commission, and Tennessee Valley Authority, are currently investing $738,200 to provide facilities to pump and treat wastewater from the houseboats on Fontana Lake; and

Whereas, Swain County and Bryson City are currently investing $253,550 to remove failing septic tanks on Bryson Branch, a tributary of the Tuckaseegee River, upstream from Fontana Lake; and

Whereas, Forney, Chambers, Hazel, and Eagle Creeks originate in the Great Smoky Mountains National Park and drain to Fontana Lake; and

Whereas, Hazel and Eagle Creeks are classified as drinking water supply waters; and

Whereas, Forney, Chambers, Hazel, and Eagle Creeks have excellent water quality, are classified as Wild Trout Waters, provide habitat for federally and State listed endangered species, and are in fact unique and special waters of exceptional State and National recreational and ecological significance which require special protection to maintain their existing uses; and

Whereas, Forney, Chambers, Hazel, and Eagle Creeks qualify to be classified as outstanding resource waters; and

Whereas, Forney, Chambers, Hazel, and Eagle Creeks are renowned for exceptional trout fishing in the Eastern United States and have attracted notable anglers

including author Horace Kephart, Governor Luther Hodges, United States Secretary of the Interior Stewart Udall, Wildlife Resources Commissioner T.N. Massie and others; Now, therefore,

The General Assembly of North Carolina enacts:

SECTION 1. The Environmental Management Commission shall classify Forney, Chambers, Hazel, and Eagle Creeks from their headwaters to Fontana Lake as outstanding resource waters by January 1, 2006.

SECTION 2. Notwithstanding G.S. 150B-21.1, the Environmental Management Commission shall adopt temporary rules to classify Forney, Chambers, Hazel, and Eagle Creeks from their headwaters to Fontana Lake as outstanding resource waters by October 1, 2005.

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H D

HOUSE BILL 1189
PROPOSED COMMITTEE SUBSTITUTE H1189-PCS60467-RI-14

Short Title: Fontana Lake Protection. (Public)

Sponsors:

Referred to:

April 12, 2005

A BILL TO BE ENTITLED

AN ACT TO PROTECT FONTANA LAKE AND THE WATERS DRAINING TO THE NORTH SHORE OF FONTANA LAKE.

Whereas, Fontana Lake in Graham and Swain Counties provides drinking water and over $4,700,000 in annual recreational benefits to the citizens of North Carolina; and

Whereas, Graham and Swain Counties have adopted ordinances to require all houseboats on Fontana Lake to have permanent toilets and permanent wastewater holding tanks to protect public health and water quality; and

Whereas, Graham and Swain Counties, with financial assistance from the Clean Water Management Trust Fund, Appalachian Regional Commission, and Tennessee Valley Authority, are currently investing $738,200 to provide facilities to pump and treat wastewater from the houseboats on Fontana Lake; and

Whereas, Swain County and Bryson City are currently investing $253,550 to remove failing septic tanks on Bryson Branch, a tributary of the Tuckaseegee River, upstream from Fontana Lake; and

Whereas, Fontana Lake has excellent water quality that must be maintained for the benefit of the citizens of Graham and Swain Counties and for the citizens of North Carolina; and

Whereas, Forney Creek, Eagle Creek, and other creeks that drain to the north shore of Fontana Lake are classified as Trout Waters, may provide habitat for federally and State-listed endangered species, and are in fact unique and special waters of exceptional State and national recreational and ecological significance which require special protection to maintain their existing uses; and

Whereas, Forney Creek, Eagle Creek, and other creeks that drain to the north shore of Fontana Lake are renowned for exceptional trout fishing in the Eastern United States and have attracted notable anglers including author Horace Kephart, Governor

Luther Hodges, United States Secretary of the Interior Stewart Udall, Wildlife Resources Commissioner T. N. Massie, and others; and

Whereas, water quality data for Forney Creek documents that the creek has excellent water quality and qualifies to be classified as outstanding resource waters; and

Whereas, the development and implementation of an outstanding resource waters management strategy for the entire watersheds of all creeks that drain to the north shore of Fontana Lake between Eagle and Forney Creeks, including Eagle and Forney Creeks, would benefit the water quality in Fontana Lake; Now, therefore,

The General Assembly of North Carolina enacts:

SECTION 1. The Environmental Management Commission shall initiate a rule-making proceeding no later than 1 September 2005 to adopt rules to reclassify the entire watersheds of all creeks that drain to the north shore of Fontana Lake between Eagle and Forney Creeks, including Eagle and Forney Creeks, as outstanding resource waters pursuant to G.S. 143-214.1.

SECTION 2. Pending the outcome of the rule-making proceeding required by Section 1 of this act, the minimum management strategies set out in 15A NCAC 2B.0225(c) shall apply to the watersheds described in Section 1 of this act.

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

HOUSE BILL 1189:
Fontana Lake Protection

BILL ANALYSIS

Committee:	House Environment and Natural Resources	**Date:**	May 17, 2005
Introduced by:	Rep. Haire	**Summary by:**	Jennifer McGinnis
Version:	PCS to First Edition H1189-PCS60467-RI-14		Committee Counsel

SUMMARY: ***The Proposed Committee Substitute (PCS) to House Bill 1189 would require that the Environmental Management Commission (EMC) initiate rule-making to classify the entire watersheds of all creeks that drain to the north shore of Fontana Lake between Forney and Eagle Creeks, including Forney and Eagle Creeks as outstanding resource waters (ORW). The PCS also provides that pending the outcome of the rulemaking proceedings, the minimum management strategies set out in the rule governing ORW be applied in the watersheds. The bill would be effective when it becomes law.***

BILL ANALYSIS: In order to protect Fontana Lake in Graham and Swain Counties, the PCS to House Bill 1189 would require that the EMC initiate rule-making proceedings no later than 1 September 2005 to classify the entire watersheds of all creeks that drain to the north shore of Fontana Lake between Forney and Eagle Creeks, including Forney and Eagle Creeks, as ORW. The PCS also provides that pending the outcome of the rulemaking proceedings, the minimum management strategies set out in the rule governing ORW be applied in the watersheds. These minimum management strategies include a prohibition on new or expanded wastewater discharges in the watershed and development controls

BACKGROUND: Under the federal Clean Water Act the State is required to protect all existing uses for the waters in North Carolina. Surface Water Classifications are designations applied to surface water bodies, such as streams, rivers, and lakes, which define the best uses to be protected within these waters (for example swimming, fishing, drinking water supply) and carry with them an associated set of water quality standards to protect those uses. All surface waters in North Carolina are assigned a primary classification by the Division of Water Quality (DWQ) of the Department of Environment and Natural Resources. Supplemental classifications are sometimes added by DWQ to the primary classifications to provide additional protection to waters with special uses or values. Classifications and their associated protection rules may be designed to protect water quality, fish and wildlife, the free flowing nature of a stream or river, or other special characteristics. Each classification has associated standards that are used to determine if the designated uses are being protected.

The ORW supplemental classification is used to provide an increased level of protection for existing uses of unique and special waters in the State. To qualify for the ORW supplemental classification, waters must be rated excellent by DWQ and possess exceptional State or national ecological or recreational significance.

Under an ORW classification, no new or expanded wastewater discharges are allowed in the watershed. There are also associated development controls enforced by DWQ. Under the ORW management strategy, developments with a density greater than one dwelling unit per acre or with more than twelve percent (12%) built upon area are required to implement specific stormwater control measures in order to protect aquatic species diversity. Higher density developments could still be constructed, but they would require implementation of proper stormwater controls.

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

H1189e1-SMRI-CSRI

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

HOUSE BILL 1465

Short Title:	Disposal in Landfills/Addl. Bans.	(Public)
Sponsors:	Representatives Hackney; Harrison, Insko, Martin, Weiss, and Womble.	
Referred to:	Environment and Natural Resources.	

April 21, 2005

A BILL TO BE ENTITLED

AN ACT TO PROHIBIT THE DISPOSAL OF CLEAN WOOD WASTE, ELECTRONIC DEVICES, MOTOR VEHICLE OIL FILTERS, PLASTIC BOTTLES, AND WOODEN PALLETS IN LANDFILLS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 130A-290 reads as rewritten:

"**§ 130A-290. Definitions.**

(a) Unless a different meaning is required by the context, the following definitions shall apply throughout this Article:

...

(1d) 'Clean wood waste' means lumber, wood waste, or wood scraps from a manufacturing process, from the shipping of goods, or from the construction, remodeling, or repair of a residential or commercial structure or building that is free from adhesive glue, paint, stain, fire retardant, pesticide, sealant, and is not treated with a chemical preservative. Clean wood waste does not include any wooden material physically attached to a nonwood material.

...

(6a) 'Electronic device' means a computer central processing unit whether sold alone or with accessories; computer monitor; laptop computer; and television with a video display that has a viewable area greater than nine inches when measured diagonally.

...

~~(18)~~(17a) "Medical waste" means any solid waste which is generated in the diagnosis, treatment, or immunization of human beings or animals, in research pertaining thereto, or in the production or testing of biologicals, but does not include any hazardous waste identified or listed pursuant to this Article, radioactive waste, household waste as defined in 40 Code of Federal Regulations § 261.4(b)(1) in effect on 1

July 1989, or those substances excluded from the definition of "solid waste" in this section.

(18) 'Motor vehicle oil filter' means a filter that removes impurities from the oil used to lubricate an internal combustion engine in a motor vehicle.

...

(22a) 'Plastic bottle' means a plastic container that has a neck smaller than the body of the container, accepts a screw top, snap cap, or other closure and has a capacity of less than five gallons.

...

(44a) 'Wooden pallet' means a wooden object consisting of a flat or horizontal deck or platform supported by structural components that is used as a base for assembling, stacking, handling, and transporting goods."

SECTION 2. G.S. 130A-309.10(f) reads as rewritten:

"(f) No person shall knowingly dispose of the following solid wastes in landfills:

(1) Repealed by Session Laws 1991, c. 375, s. 1.

(2) Used oil.

(3) Yard trash, except in landfills approved for the disposal of yard trash under rules adopted by the Commission. Yard trash that is source separated from solid waste may be accepted at a solid waste disposal area where the area provides and maintains separate yard trash composting facilities.

(4) White goods.

(5) Antifreeze (ethylene glycol).

(6) Aluminum cans.

(7) Whole scrap tires, as provided in G.S. 130A-309.58(b). The prohibition ~~against landfilling~~ on disposal of whole tires in landfills applies to all whole pneumatic rubber coverings, but does not apply to whole solid rubber coverings.

(8) Lead-acid batteries, as provided in G.S. 130A-309.70.

(9) Electronic devices.

(10) Clean wood waste.

(11) Motor vehicle oil filters.

(12) Plastic bottles.

(13) Wooden pallets."

SECTION 3. G.S. 130A-309.10 is amended by adding a new subsection to read:

"(k) A county or city may petition the Department for a waiver from the prohibition on disposal of a material described in subdivisions (9), (10), (11), (12), and (13) of subsection (f) of this section in a landfill based on a showing that prohibiting the disposal of the material would constitute an economic hardship based on the absence of a market for the material."

SECTION 4. This act becomes effective October 1, 2009.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H D

HOUSE BILL 1465
PROPOSED COMMITTEE SUBSTITUTE H1465-PCS60466-RT-15

Short Title: Disposal in Landfills/Addl. Bans. (Public)

Sponsors:

Referred to:

April 21, 2005

A BILL TO BE ENTITLED

AN ACT TO PROHIBIT THE DISPOSAL OF MOTOR VEHICLE OIL FILTERS, RIGID PLASTIC CONTAINERS, AND WOODEN PALLETS IN LANDFILLS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 130A-290 reads as rewritten:

"**§ 130A-290. Definitions.**

(a) Unless a different meaning is required by the context, the following definitions shall apply throughout this Article:

...

~~(18)~~(17a) "Medical waste" means any solid waste which is generated in the diagnosis, treatment, or immunization of human beings or animals, in research pertaining thereto, or in the production or testing of biologicals, but does not include any hazardous waste identified or listed pursuant to this Article, radioactive waste, household waste as defined in 40 Code of Federal Regulations § 261.4(b)(1) in effect on 1 July 1989, or those substances excluded from the definition of "solid waste" in this section.

(18) 'Motor vehicle oil filter' means a filter that removes impurities from the oil used to lubricate an internal combustion engine in a motor vehicle.

...

(44a) 'Wooden pallet' means a wooden object consisting of a flat or horizontal deck or platform supported by structural components that is used as a base for assembling, stacking, handling, and transporting goods."

SECTION 2. G.S. 130A-309.10(f) reads as rewritten:

"(f) No person shall knowingly dispose of the following solid wastes in landfills:

(1) Repealed by Session Laws 1991, c. 375, s. 1.

(2) Used oil.
(3) Yard trash, except in landfills approved for the disposal of yard trash under rules adopted by the Commission. Yard trash that is source separated from solid waste may be accepted at a solid waste disposal area where the area provides and maintains separate yard trash composting facilities.
(4) White goods.
(5) Antifreeze (ethylene glycol).
(6) Aluminum cans.
(7) Whole scrap tires, as provided in G.S. 130A-309.58(b). The prohibition ~~against landfilling~~ on disposal of whole tires in landfills applies to all whole pneumatic rubber coverings, but does not apply to whole solid rubber coverings.
(8) Lead-acid batteries, as provided in G.S. 130A-309.70.
(9) Motor vehicle oil filters.
(10) Recyclable rigid plastic containers that are required to be labeled as provided in subsection (e) of this section, that have a neck smaller than the body of the container, and that accept a screw top, snap cap, or other closure. The prohibition on disposal of recyclable rigid plastic containers in landfills does not apply to rigid plastic containers that are intended for use in the sale or distribution of motor oil.
(11) Wooden pallets."

SECTION 3. G.S. 130A-309.10 is amended by adding a new subsection to read:

"(k) A county or city may petition the Department for a waiver from the prohibition on disposal of a material described in subdivisions (9), (10), and (11) of subsection (f) of this section in a landfill based on a showing that prohibiting the disposal of the material would constitute an economic hardship."

SECTION 4. This act becomes effective 1 October 2009.

HOUSE BILL 1465:
Disposal in Landfills/Addl. Bans

BILL ANALYSIS

Committee:	House Environment and Natural Resources	**Date:**	May 17, 2005
Introduced by:	Rep. Hackney	**Summary by:**	Tim Dodge
Version:	PCS to First Edition H1465-PCS60466-RT-15		Legislative Analyst

SUMMARY: ***The Proposed Committee Substitute (PCS) for House Bill 1465 would prohibit the disposal of motor vehicle oil filters, certain rigid plastic bottles, and wooden pallets in landfills. A city or county may petition the Department of Environment and Natural Resources (DENR) for a waiver from the prohibition if the prohibition would result in an economic hardship for the unit of local government. The PCS would become effective October 1, 2009.***

CHANGES MADE FROM THE FIRST EDITION: *In addition to the materials listed in the PCS, the first edition of the bill also proposed to ban the disposal of electronic devices, clean wood waste, and a broader range of plastic bottles in landfills.*

BILL ANALYSIS: The PCS would add motor vehicle oil filters, certain recyclable rigid plastic bottles, and wooden pallets to the list of solid wastes that cannot be disposed of in landfills. The prohibition would not include rigid plastic containers that are used in the sale or distribution of motor oil.

The PCS would also provide that a city or county may petition DENR for a waiver from the prohibition on the disposal of motor vehicle oil filters, plastic bottles, and wooden pallets in a landfill based on a showing the prohibition would constitute an economic hardship due to the absence of a market for the material.

CURRENT LAW: Current law prohibits a person from knowingly disposing of the following items in landfills:

- Used oil.
- Yard trash, except in landfills approved for the disposal of yard trash.
- White goods.
- Antifreeze.
- Aluminum cans.
- Whole scrap tires.
- Lead acid batteries.

The statute provides that the accidental or occasional disposal of small amounts of prohibited solid waste in a landfill is not to be construed as a violation.

A person who knowingly disposes of one of the listed items is subject to an administrative penalty not to exceed $5,000 per day in the case of a violation involving nonhazardous waste. A person who violates the provision would be guilty of a Class 1 misdemeanor, which is punishable by 1 to 45 days of community punishment, assuming no prior convictions.

EFFECTIVE DATE: The PCS would become effective October 1, 2009.

H1465e1-SMSY-001

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 1465 A BILL TO BE ENTITLED AN ACT TO PROHIBIT THE DISPOSAL OF CLEAN WOOD WASTE, ELECTRONIC DEVICES, MOTOR VEHICLE OIL FILTERS, PLASTIC BOTTLES, AND WOODEN PALLETS IN LANDFILLS.

☒ 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) 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 **1**

HOUSE BILL 1521

Short Title:	Ban Disposal of Oyster Shells in Landfills.	(Public)
Sponsors:	Representatives McComas; Harrison and Underhill.	
Referred to:	Environment and Natural Resources.	

April 21, 2005

A BILL TO BE ENTITLED

AN ACT TO PROHIBIT THE DISPOSAL OF OYSTER SHELLS IN LANDFILLS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 130A-309.10(f) reads as rewritten:

"(f) No person shall knowingly dispose of the following solid wastes in landfills:

(1) Repealed by Session Laws 1991, c. 375, s. 1.

(2) Used oil.

(3) Yard trash, except in landfills approved for the disposal of yard trash under rules adopted by the Commission. Yard trash that is source separated from solid waste may be accepted at a solid waste disposal area where the area provides and maintains separate yard trash composting facilities.

(4) White goods.

(5) Antifreeze (ethylene glycol).

(6) Aluminum cans.

(7) Whole scrap tires, as provided in G.S. 130A-309.58(b). ~~The prohibition against landfilling~~ The prohibition of the disposal of whole scrap tires in landfills applies to all whole pneumatic rubber coverings, but does not apply to whole solid rubber coverings.

(8) Lead-acid batteries, as provided in G.S. 130A-309.70.

(9) Oyster shells."

SECTION 2. This act becomes effective 1 December 2005.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H D

HOUSE BILL 1521
PROPOSED COMMITTEE SUBSTITUTE H1521-PCS30309-RTx-12

Short Title: Oyster Shells/Ban Landfilling/Tax Credit. (Public)

Sponsors:

Referred to:

April 21, 2005

A BILL TO BE ENTITLED

AN ACT TO PROHIBIT THE DISPOSAL OF OYSTER SHELLS IN LANDFILLS AND TO PROVIDE AN INCOME TAX CREDIT FOR DONATIONS OF OYSTER SHELLS TO THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES FOR PLACEMENT IN OYSTER SANCTUARIES TO RESTORE OYSTER POPULATIONS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 130A-309.10(f) reads as rewritten:

"(f) No person shall knowingly dispose of the following solid wastes in landfills:

(1) Repealed by Session Laws 1991, c. 375, s. 1.

(2) Used oil.

(3) Yard trash, except in landfills approved for the disposal of yard trash under rules adopted by the Commission. Yard trash that is source separated from solid waste may be accepted at a solid waste disposal area where the area provides and maintains separate yard trash composting facilities.

(4) White goods.

(5) Antifreeze (ethylene glycol).

(6) Aluminum cans.

(7) Whole scrap tires, as provided in G.S. 130A-309.58(b). ~~The prohibition against landfilling~~ The prohibition of the disposal of whole scrap tires in landfills applies to all whole pneumatic rubber coverings, but does not apply to whole solid rubber coverings.

(8) Lead-acid batteries, as provided in G.S. 130A-309.70.

(9) Oyster shells."

SECTION 2. Part 1 of Article 4 of Chapter 105 of the General Statutes is amended by adding a new section to read:

"**§ 105-130.47. Credit for recycling oyster shells.**

(a) Credit. – A taxpayer who donates oyster shells to the Division of Marine Fisheries of the Department of Environment and Natural Resources is eligible for a credit against the tax imposed by this Part. The amount of the credit is equal to the fair market value of the oyster shells donated.

(b) Limitation. – The credit allowed under this section may not exceed the amount of tax imposed by this Part for the taxable year reduced by the sum of all credits allowable, except tax payment made by or on behalf of the taxpayer. Any unused portion of the credit may be carried forward for the succeeding five years.

(c) No Double Benefit. – No deduction is allowed under G.S. 105-130.5(b)(5) for the oyster shells for which a credit is claimed under this section."

SECTION 3. Part 2 of Article 4 of Chapter 105 of the General Statutes is amended by adding a new section to read:

"**§ 105-151.29. Credit for recycling oyster shells.**

(a) Credit. – A taxpayer who donates oyster shells to the Division of Marine Fisheries of the Department of Environment and Natural Resources is eligible for a credit against the tax imposed by this Part. The amount of the credit is equal to the fair market value of the oyster shells donated.

(b) Limitation. – The credit allowed under this section may not exceed the amount of tax imposed by this Part for the taxable year reduced by the sum of all credits allowable, except tax payment made by or on behalf of the taxpayer. Any unused portion of the credit may be carried forward for the succeeding five years.

(c) No Double Benefit. – A taxpayer who claims a credit under this section must add back to taxable income any amount deducted under the Code for the donation of the oyster shells."

SECTION 4. G.S. 105-160.3(b) reads as rewritten:

"(b) The following credits are not allowed to an estate or trust:

...

(8) G.S. 105-151.29. Credit for recycling oyster shells."

SECTION 5. Section 1 of this act becomes effective 1 December 2005. Sections 2 through 5 of this act are effective when it becomes law. Sections 2 through 4 of this act apply to taxable years beginning on or after 1 January 2005 and expire for taxable years beginning on or after 1 January 2010.

HOUSE BILL 1521:
Ban Disposal of Oyster Shells in Landfills

BILL ANALYSIS

Committee:	House Environment and Natural Resources	**Date:**	May 17, 2005
Introduced by:	Rep. McComas	**Summary by:**	Jennifer McGinnis
Version:	PCS to First Edition H1521-PCS30309-RTx-12		Committee Counsel

SUMMARY: The Proposed Committee Substitute (PCS) for House Bill 1521 would prohibit the disposal of oyster shells in landfills, provide an income tax credit for donations of oyster shells to the Division of Marine Fisheries (DMF) of the Department of Environment and Natural Resources, and make other technical and clarifying changes.

CURRENT LAW: Current law prohibits a person from knowingly disposing of the following items in landfills:

- Used oil.
- Yard trash, except in landfills approved for the disposal of yard trash.
- White goods.
- Antifreeze.
- Aluminum cans.
- Whole scrap tires.
- Lead-acid batteries.

The statute provides that the accidental or occasional disposal of small amounts of prohibited solid waste in a landfill is not to be construed as a violation.

A person who knowingly disposes of one of the listed items is subject to an administrative penalty not to exceed $5,000 per day in the case of a violation involving nonhazardous waste. A person who violates the provision would be guilty of a Class 1 misdemeanor, which is punishable by 1 to 45 days of community punishment, assuming no prior convictions.

BILL ANALYSIS: The PCS would –

- Prohibit a person from knowingly disposing of oyster shells in a landfill;
- Provide a tax credit to an individual or corporate taxpayer who donates oyster shells to the DMF.

EFFECTIVE DATE: Section 1 of the bill, providing a ban on disposal of oyster shells in landfills, would become effective 1 December 2005. The remainder of the bill would be effective when it becomes law and would apply to taxable years beginning on or after 1 January 2005 and expire for taxable years beginning on or after 1 January 2010.

H1521e1-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

HB 1521 A BILL TO BE ENTITLED AN ACT TO PROHIBIT THE DISPOSAL OF OYSTER SHELLS IN LANDFILLS.

☒ 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) 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, May 26, 2005

The House Committee on Environment and Natural Resources met on Thursday, May 26, 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; Representative Lucy Allen, Vice Chair; Representative Pricey Harrison, Vice Chair; Representative Curtis Blackwood, Representative Becky Carney, Representative Arlie Culp, Representative Pryor Gibson, Representative Mitch Gillespie, Representative Melanie Goodwin, Representative Jim Gulley, Representative Joe Hackney, Representative Phil Haire, Representative Stephen LaRoque, Representative Paul Luebke, Representative Grier Martin, Representative Dan McComas, Representative Bill McGee, Representative Alice Underhill and Representative Larry 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 Committee Counsel George Givens and his staff were recognized and thanked. Visitors were welcomed.

HOUSE BILL 1336 - A BILL TO BE ENTITLED AN ACT TO PHASE OUT THE USE OF METHYL TERTIARY BUTYL ETHER (MTBE) IN GASOLINE AND ALL OTHER FUELS.

By motion from Representative Justice, Chair, the Proposed Committee Substitute H1336-PCS 10347-RT-17 was adopted for consideration and moved forth for discussion. (Please see exhibit #2). The Bill Analysis is attached. (Please see exhibit #3.) Representative Tolson, primary sponsor, was recognized to speak on the bill. He explained that phasing MTBE out of fuels in North Carolina addresses environmental problems occurring in the soil and groundwater from leaking storage tanks containing MTBE. He emphasized the intent of this is not to effect the supply of gasoline or drive up prices in NC, but to encourage the use of other additives and alternative fuel. He noted the compromise worked out by the parties involved is reflected in the Committee Substitute. He concluded by expressing the need for our state to take the initiative by leading neighboring states to adopt this. Bill Weatherspoon, Executive Director of the North Carolina Petroleum Council, was recognized to speak on industry concerns. He indicated support of the compromise and the fact that interstate commerce would not be interfered; however expressed concern that a distribution problem could occur in the state because of the requirement to have a different gasoline product from surrounding states. Representative LeRoque questioned the economic effect this would have on the price of gas. Mr. Weatherspoon responded that investments would have to be made which would raise the cost. Counsel Givens noted that the cost issue runs both ways given the cost involved in the removal of this additive from soil and groundwater. Representative Blackwood asked how this would increase the price of fuel delivery in N.C. Mr. Weatherspoon responded that it would be a high risk proposition which is the reason the surrounding states need to adopt it. Representative Luebke noted that 19 states ban MTBE and emphasized the importance of this from a public health perspective. Representative Tolson responded to Representative Gillespie that the 2008 date was in place to prompt dialogue between the states. Representative Harrell announced that Committee Substitute H1336-PCS 10347-RT-17 would be displaced. A new Proposed Committee Substitute will be prepared with language to address the regional concern will be taken up next Tuesday, May 31, 2005 to be voted on at that time.

HOUSE BILL 1096, A BILL TO BE ENTITLED AN ACT TO MAKE CLARIFYING, CONFORMING, AND TECHNICAL AMENDMENTS TO VARIOUS LAWS RELATED TO THE ENVIRONMENT, ENVIRONMENTAL HEALTH, AND NATURAL RESOURCES.

The Bill Analysis is attached. (Please see Exhibit #4.) Representative Gibson, primary sponsor, was recognized to speak on the bill; explaining its purpose to be for technical corrections. He thanked the Environment Committee Staff for their excellent work. Upon motion by Representative Blackwood the bill received a favorable report. The 2005 Committee Report is attached (Please see Exhibit #5).

HOUSE BILL 1095, A BILL TO BE ENTITLED AN ACT TO MODIFY ENVIRONMENTAL REPORTING REQUIREMENTS.
A Bill Analysis is attached. (Please see Exhibit #6.) Representative Gibson, primary sponsor, was recognized to speak on the bill. He explained it to be a technical bill to combine Environmental Reports. Upon motion by Representative LaRoque the bill received a favorable report. The 2005 Committee Report is attached (Please see Exhibit #7).

HOUSE BILL 1094, 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.
A Bill Analysis is attached (Please see Exhibit #8). Representative Gibson, primary sponsor, was recognized to speak on the bill. He noted its technical purpose is to change the name. Upon motion by Representative Carney the bill received a favorable report. The 2005 Committee Report is attached (Please see Exhibit #9).

HOUSE BILL 1093, 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 Bill Analysis is attached. (Please see Exhibit #10.) Representative Gibson, primary sponsor, was recognized and Counsel Givens explained that the purpose is not solely technical but also makes amends to environmental laws. Perry Pierce, Division Director for Environmental Health at DENR, was recognized to speak in support of the bill. Upon motion by Representative LaRoque, the bill received a favorable report. The 2005 Committee Report is attached (Please see Exhibit #11).

HOUSE BILL 1099, A BILL TO BE ENTITLED AN ACT TO PROMOTE ECONOMIC DEVELOPMENT BY FACILITATING THE REUSE OF CONTAMINATED REAL PROPERTY BY CLARIFYING THE CIRCUMSTANCES UNDER WHICH THE OWNERS OF REAL PROPERTY HAVE A DEFENSE AGAINST LIABILITY FOR THE CLEANUP OF ENVIRONMENTAL DAMAGE AND RESTORATION OF NATURAL RESOURCES AND BY MAKING THAT DEFENSE APPLICABLE TO STATE CLEANUP PROGRAMS.
Upon motion from Representative Justice, Chair, the Proposed Committee Substitute H1099-PCS60477-SB-34 was adopted for consideration and moved forth for discussion (Please see Exhibit #12). The Bill Analysis is attached (Please see Exhibit #13). Representative Gibson, primary sponsor, was recognized to speak on the bill noting that the Committee Substitute reflected the title change, **BROWNFIELDS PROPERTY REUSE ACT AMENDMENTS,** worked out during compromise. Counsel Givens explained the bill is intended to be a vehicle to a larger concept that addresses changes in the Brownfield Act and continues to be in the negotiation process. In response to Representative Haire's concern over limited liability language in the original bill, Representative Gibson and McComas spoke in support of the bill emphasizing that there is no reference to limitation of liability in the Committee Substitute. Counsel Givens explained that presently state law applies to anyone who ownership interest in the property acquires the liability; however a consequence is that it provides a disincentive for a purchaser to buy a contaminated piece of property and redevelop it, which is what Brownfields is about. Counsel Givens further noted that though contaminated property cannot be redeveloped, an uncontaminated piece of property that is developed runs the risk of becoming contaminated. The working group, including people from DENR, the banking and environmental communities and all interested parties, is attempting

to recommend legislation that addresses this larger issue. Representative Luebke referencing reduced time for public comment, asked if this had the support of the environmental community. Counsel Givens noted that this is an attempt to balance action with public comment and was agreed upon by DENR. Robin Smith, Assistant Secretary DENR, was recognized to speak in support. Elizabeth Ouzts, NCPIRG, responded that the environmental groups do not object to this and recognize that this legislation is a placeholder until a consensus can be reached on the larger issue. Upon motion by Representative LaRoque, the Committee Substitute H1099-PCS60477-SB-34 received a favorable report with a title change and unfavorable to original bill. Committee Report 2005 is attached (Please see Exhibit #14).

HOUSE BILL 1385, 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.

By motion from Representative Justice, Chair, the Proposed Committee Substitute H1385-PCS 70487-RT-20 was adopted for consideration and moved forth for discussion (Please see Exhibit #15). The Bill Analysis is attached (Please see Exhibit #16). Representative Gibson, primary sponsor, was recognized to speak on the bill explaining it as a non-controversial technical correction to a statutory regulation. Counsel Givens stated the bill addresses regulatory reform because of the inadequacy of current funding and is an effort to reduce the protection cost on the family home. Funding options were discussed. Upon motion by Representative LaRoque, the Committee Substitute H1385-PCS 70487-RT-20 received a favorable report and unfavorable to original bill. Committee Report 2005 is attached (Please see Exhibit #17).

Representative Harrell reminded committee members that **HOUSE BILL 1336** would be taken up again on Tuesday, May 31, 2005. There being no further business the meeting was adjourned at 3:00 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, May 26, 2005**

TIME: **12 Noon**

LOCATION: **643 Legislative Office Building**

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

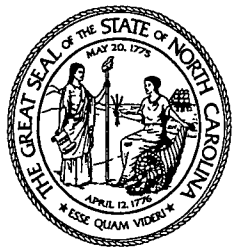
H1093 -Amend Environmental Laws-1.
Representatives Gibson, Harrell, Justice, McComas (Primary Sponsors)
H1094 -Rename WRP/Codify Ecosystem Enhancement Prgm.
Representatives Gibson, Harrell, Justice, McComas (Primary Sponsors)
H1095 -Environmental Reports Amendments.
Representatives Gibson, Harrell, Justice, McComas (Primary Sponsors)
H1096 -Environmental Technical Corrections.
Representatives Gibson, Harrell, Justice, McComas (Primary Sponsors)
H1099 -Defenses to Liability for Env. Cleanups.
Representative Gibson (Primary Sponsor)
H1336 -Phase Out the Use of MTBE's in Fuels.
Representatives Tolson, Insko (Primary Sponsor)
H1385 -Underground Storage Tank Amendments.
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 **11:30 A.M.** on **May 25, 2005.**

___Principal Clerk
___Reading Clerk - House Chamber

Beth LeGrande (Committee Assistant)



HOUSE COMMITTEE ON ENVIRONMENT AND NATURAL RESOURCES

AGENDA

12:00 Noon
Tuesday May 26, 2005
Room 643 Legislative Office Building

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

2. Introductory Remarks by Cochairs

3. Recognition of Pages

4. Bills for Consideration

H1093 -Amend Environmental Laws-1.
Representatives Gibson, Harrell, Justice, McComas (Primary Sponsors)
H1094 -Rename WRP/Codify Ecosystem Enhancement Prgm.
Representatives Gibson, Harrell, Justice, McComas (Primary Sponsors)
H1095 -Environmental Reports Amendments.
Representatives Gibson, Harrell, Justice, McComas (Primary Sponsors)
H1096 -Environmental Technical Corrections.
Representatives Gibson, Harrell, Justice, McComas (Primary Sponsors)
H1099 -Defenses to Liability for Env. Cleanups.
Representative Gibson (Primary Sponsor)
H1336 -Phase Out the Use of MTBE's in Fuels.
Representatives Tolson, Insko (Primary Sponsors)
H1385 -Underground Storage Tank Amendments.
Representative Gibson (Primary Sponsor)

5. Adjourn

Exhibit #1

VISITOR REGISTRATION SHEET

Env. Res. — May 26, 2005

Name of Committee — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Terry L. Pierce	DIV Env Health, DENR
Nancy Thompson	MCIC
Teresa K	CAB
Preston Howard	MCIC
Kathy Hawkins	Progress Energy
Kate Roetzer	Sierra Club
Ben Barnes	NC Conservation Network
Tisha Gerning	TNC
Eboni Bledsoe	NCPIRG
Emily Hanawalt	NCPIRG
Sharon Stroud	State Energy Office

(#1)

VISITOR REGISTRATION SHEET

Name of Committee _____ Date _____

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Taylor McLawhorn	Clean Water Management Trust
Dave Brady	A.E.P.
Erin Kinney	NC Conservation Network
Kim Hibbard	NCLM
Anita Watkins	NCLM
Cynthia Shindling	CCNC
Tom Beason	NC Environmental Defense
Molly Diggins	Sierra Club
Gardner Payne	Eldridge & Webb
N. David Smith	Agriculture
Bill Weatherspoon - Speaker	

(#1)

VISITOR REGISTRATION SHEET

Name of Committee _____ Date _____

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Doug Heron	NC Bar Assoc
David Barnes	Poyner + Spruill
Frank W. Folger	NCDOT
Elizabeth Ouzts	NCPIRG

Rm. 643
12:00

#1

House Pages

Name Of Committee: Env. Nat Res. Date: 5-26-05

1. Name: Ellen S. Carter
   County: Davie
   Sponsor: Rep Howard
2. Name: Christopher Shaw
   County: Cumberland
   Sponsor: McAllister
3. Name: _____
   County: _____
   Sponsor: _____
4. Name: _____
   County: _____
   Sponsor: _____
5. Name: _____
   County: _____
   Sponsor: _____

Sgt-At-Arms

1. Name: Martha Parrish
2. Name: Walter Spell
3. Name: Earl Coker
4. Name: Willie Dixon
5. Name: _____

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

HOUSE BILL 1336

Short Title:	Phase Out the Use of MTBE's in Fuels.	(Public)
Sponsors:	Representatives Tolson, Insko (Primary Sponsors); Fisher and Harrison.	
Referred to:	Environment and Natural Resources.	

April 21, 2005

A BILL TO BE ENTITLED

AN ACT TO PHASE OUT THE USE OF METHYL TERTIARY BUTYL ETHER (MTBE) IN GASOLINE AND ALL OTHER FUELS.

The General Assembly of North Carolina enacts:

SECTION 1. Part 1 of Article 21 of Chapter 143 of the General Statutes is amended by adding a new section to read:

"**§ 143-214.4A. Phase out of the use of MTBE in fuels.**

(a) The Secretary shall develop and implement a plan for the phaseout of the use of MTBE in a manner that will eliminate, no later than December 31, 2007, MTBE as an additive for gasoline, diesel, home heating oil, airplane gasoline, and all other fuels. The Secretary shall submit two reports to the Environmental Review Commission on how the elimination of MTBE will be achieved, with the first report being issued no later than January 1, 2007, and the second no later than July 1, 2007. Each report shall include a progress update on the status of State and regional efforts to eliminate MTBE in all fuels.

(b) As used in this section, 'MTBE' means the fuel additive methyl tertiary butyl ether.

(c) The Environmental Management Commission may adopt rules to implement this section."

SECTION 2. This act becomes effective October 1, 2005.

Exhibit # 2

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

H D

HOUSE BILL 1336
PROPOSED COMMITTEE SUBSTITUTE H1336-PCS10347-RT-17

Short Title: Prohibit Use of MTBE in Motor Fuels. (Public)

Sponsors:

Referred to:

April 21, 2005

A BILL TO BE ENTITLED

AN ACT TO PROHIBIT THE USE OF METHYL TERTIARY BUTYL ETHER (MTBE) IN MOTOR FUELS.

The General Assembly of North Carolina enacts:

SECTION 1. Article 3 of Chapter 119 of the General Statutes is amended by adding a new section to read:

"**§ 119-26.3. MTBE in motor fuels prohibited.**

(a) Definitions. – As used in this section:

(1) 'MTBE' means the fuel additive methyl tertiary butyl ether.

(2) 'Motor fuel' has the same meaning as in G.S. 105-449.60.

(b) Prohibition; De Minimis Exception. – No person shall knowingly add MTBE to any motor fuel manufactured, distributed, stored, sold, or offered for sale in this State. No person shall manufacture, distribute, store, sell, or offer for sale motor fuel that contains a concentration of MTBE of more than one-half of one percent (0.5%) by volume in this State. The presence of MTBE in a motor fuel caused solely by incidental commingling of the motor fuel with other motor fuel that contains MTBE during transfer or storage of the motor fuel does not constitute a violation of this section.

(c) Transportation Through State Not Prohibited. – This section shall not be construed to prohibit the transport of motor fuel containing MTBE through this State.

(d) Rules. – The Gasoline and Oil Inspection Board shall adopt rules to implement this section."

SECTION 2. This act becomes effective 1 January 2008.

Exhibit # 3

HOUSE BILL 1336: Prohibit Use of MTBE in Motor Fuels.

BILL ANALYSIS

Committee:	House Environment and Natural Resources	**Date:**	May 26, 2005
Introduced by:	Reps. Tolson, Insko	**Summary by:**	Tim Dodge
Version:	PCS to First Edition H1336-CSRT-17 [v.1]		Legislative Analyst

SUMMARY: The Proposed Committee Substitute (PCS) for House Bill 1336 would prohibit the use of the additive methyl tertiary butyl ether (MTBE) in motor fuels, effective January 1, 2008.

BILL ANALYSIS: The PCS would prohibit a person from knowingly adding MTBE to any motor fuel manufactured, distributed, stored, sold or offered for sale in the State. In addition, the PCS would prohibit the manufacture, distribution, storage, sale, or offer for sale of motor fuel that contains MTBE in a concentration of more than 0.5% by volume. The PCS provides that presence of MTBE caused solely by the incidental commingling of motor fuel with other motor fuel that contains MTBE is not considered a violation.

A person who violates this prohibition is subject to an administrative penalty not to exceed $5,000 and would be guilty of a Class 1 misdemeanor, which is punishable by 1 to 45 days of community punishment, assuming no prior convictions.

EFFECTIVE DATE: The prohibition would become effective January 1, 2008.

BACKGROUND: MTBE has been used as a gasoline additive since 1979 as an octane enhancer to replace organic lead. Since 1992, MTBE has also been used as a gasoline oxygenate additive in certain areas of the country to meet requirements of the federal Clean Air Act Amendments (CAAA) of 1990, which mandated the use of reformulated gasoline (RFG) in areas that exceeded certain national ambient air quality standards. The two most commonly used classes of oxygenates are ethers, such as MTBE, and ethanol. The U.S. Environmental Protection Agency (EPA) estimated in 2002 that MTBE was used as an additive in 87% of the gasoline sold in the U.S.[1]

An unintended consequence of using MTBE to address air quality issues has been impacts to groundwater. MTBE is highly soluble in water and when released into the soil as a result of a spill or leak, it tends to migrate more rapidly than other gasoline constituents and quickly spreads the contamination in groundwater. While the full extent of MTBE contamination in the State is unknown, the Underground Storage Tank (UST) Section of the Division of Waste Management of the Department of Environment and Natural Resources (DENR) estimates that MTBE contamination is present at 2,054 of the 9,079 active UST sites in the State, and that 245 water supply wells have been contaminated with MTBE at these sites.[2]

[1] Stephenson, J. *MTBE Contamination from Underground Storage Tanks.* U.S. General Accounting Office. May 22, 2002.
[2] Email correspondence from Robert Krebs, Corrective Action Branch Head, UST Section, DWM, DENR. May 24, 2005.

The health effects of MTBE have not been conclusively established, but EPA has determined it to be a potential human carcinogen. Because of the scientific uncertainties, however, EPA has not regulated MTBE. Twenty states, however, have partially or completely banned the use of MTBE (see attached fact sheet).

H1336e1-SMSY-CSRT

EPA United States Environmental Protection Agency

EPA420-B-04-009
June 2004

State Actions Banning MTBE (Statewide)

The following states have either a partial or complete ban on MTBE (methyl tertiary-butyl ether). This list is updated when new information becomes available. For more information on MTBE, please visit the U.S. Environmental Protection Agency's (EPA's) Web site at www.epa.gov/mtbe.

State (EPA Region)	Phaseout date (in chronological order)	Complete or partial ban?	Applies to other oxygenates?	Date of adoption
IA (7)	7/1/00	Partial: no more than trace amounts (0.5% by vol.) MTBE in motor vehicle fuel.	MTBE only	5/11/00 Replaced previous limit of 2% (vol.)
MN (5)	7/2/00 (partial) 7/2/05 (complete)	Partial/then complete: no more than 1/3 of 1% oxygenate as of 7/2/00; complete ban as of 7/2/05.	MTBE, ETBE[1], and TAME[2]	Early 2000
NE (7)	7/13/00	Partial: no more than 1% (vol.) MTBE in any petroleum product.	MTBE only	4/11/00
SD (8)	7/1/01	Partial: no more than trace amounts (less than 0.5% vol.) resulting from commingling during storage or transfer.	MTBE only	2/28/01 Replaced previous limit of 2% (vol.)
CO (8)	4/30/02	Complete ban by 4/30/02.	MTBE only	5/23/00
CA (9)	Originally12/31 /02; delayed to 12/31/03	Complete ban by 12/31/02, but latest Exec. Order requires CARB to implement by 7/31/02 a one-year delay in ban. On 7/25/02, CARB delayed the ban by 1 year.	MTBE only	10/9/99 (Orig. E.O. issued 3/25/99; latest E.O. issued 3/15/02)

[1] ETBE stands for Ethyl tertiary butyl ether

[2] TAME stands for Tertiary amyl methyl ether

State (EPA Region)	Phaseout date (in chronological order)	Complete or partial ban?	Applies to other oxygenates?	Date of adoption
MI (5)	6/1/03	Complete ban by 6/1/03; can be extended if determined by 6/1/02 that phaseout date is not achievable.	MTBE only	6/26/00
CT (1)	1/1/04	Complete ban by 1/1/04, planned in conjunction with NESCAUM regional fuels task force.	MTBE only	6/1/00 (Orig. phaseout date 10/1/03; extended to 1/1/04 on 6/18/03)
NY (2)	1/1/04	Complete ban as of 1/1/04.	MTBE only	5/24/00
WA (10)	1/1/04	Partial: may not be intentionally added to fuel, or knowingly mixed in gasoline above 0.6% (vol.)	MTBE only	5/10/01
KS (7)	7/1/04	Partial: may not sell or deliver any motor vehicle fuel containing more than 0.5% (vol.) MTBE	MTBE only	4/19/01
IL (5)	7/24/04	Partial: may not use, sell or manufacture MTBE as a fuel additive, but may sell motor fuel containing trace amounts of MTBE (0.5% or less by volume)	MTBE only	7/24/01 (original ban) revised 6/24/02 to allow trace amounts
IN (5)	7/24/04	Partial: no more than 0.5% (vol.) MTBE in gasoline	MTBE only	3/14/02
WI (5)	8/1/04	Partial: no more than 0.5% (vol.) MTBE in gasoline	MTBE only	8/11/03
OH (5)	7/1/05	Partial: no more than 0.5% (vol.) MTBE in motor vehicle fuels	MTBE only	5/29/02

State (EPA Region)	Phaseout date (in chronological order)	Complete or partial ban?	Applies to other oxygenates?	Date of adoption
MO (7)	7/31/05	Partial: no more than 0.5% (vol.) MTBE in gasoline sold or stored	MTBE only	7/11/02
KY (4)	1/1/06	Partial: no more than trace amounts of MTBE in fuel after this date	MTBE only	4/23/02
ME (1)	1/1/07	Partial: no more than 0.5% (vol.) MTBE in gasoline sold.	MTBE only	4/14/04
NH (1)	The latter of 1/1/07 or 6 months after Federal approval to opt out of RFG	Partial: no more than 0.5% (vol.) in gasoline sold or stored	MTBE,other gasoline ethers, or tertiary butyl alcohol (TBA)	5/27/04

NOTES:

(1) Oxygenated Fuels Association (OFA) has challenged **NY** and **CA** bans in court. Status of these lawsuits is as follows:

- NY: On May 18, 2001, the U.S. District Court for the Northern District of NY denied OFA's motion for summary judgment in the lawsuit challenging the NY ban. On November 21, 2003, the U.S. District Court for the Northern District of New York rejected OFA's request to strike New York's Ban.
- CA: On September 4, 2001, the U.S. District Court in Sacramento granted the State's motion to dismiss, ruling that the federal CAA does not prohibit the State's action to phaseout MTBE. In June 2003, the Ninth U.S. Circuit Court of Appeals upheld California's state MTBE ban.

(2) **AZ** adopted legislation on 4/28/00 calling for a complete phaseout of MTBE as soon as feasible but in no event later than 6 months after California's phaseout. This legislation expired on June 30, 2001, so it is no longer official state policy although the state informally still encourages phaseout of MTBE.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H 1

HOUSE BILL 1096*

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

April 4, 2005

A BILL TO BE ENTITLED

AN ACT TO MAKE CLARIFYING, CONFORMING, AND TECHNICAL AMENDMENTS TO VARIOUS LAWS RELATED TO THE ENVIRONMENT, ENVIRONMENTAL HEALTH, AND NATURAL RESOURCES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 90A-55 reads as rewritten:

"**§ 90A-55. State Board of Sanitarian Examiners; appointment and term of office.**

(a) Board Membership. – The Board shall consist of nine members: the Secretary of Environment and Natural Resources, or the Secretary's duly authorized representative, one public-spirited citizen, one environmental sanitation educator from an accredited college or university, one local health director, a representative of the Division of Environmental Health ~~Division~~ of the Department of Environment and Natural Resources, and four practicing sanitarians who qualify by education and experience for registration under this Article, three of whom will represent the Western, Piedmont, and Eastern Regions of the State as described more specifically in the rules adopted by the Board.

(b) Term of Office. – Each member of the State Board of Sanitarian Examiners shall be appointed by the Governor for a term of four years. ~~Members of the Board serving on October 1, 1982, shall serve until the expiration of the terms for which they were appointed.~~ As the term of each current member expires, the Governor shall appoint a successor in accordance with the provisions of this section. If a vacancy occurs on the Board for any other reason than the expiration of a member's term, the Governor shall appoint a successor for the remainder of the unexpired term. No person shall serve as a member of the Board for more than two consecutive four-year terms.

(c) The Environmental Health ~~Section,~~ Section of the North Carolina Public Health Association, Inc., shall submit a recommended list of Board member candidates to the Governor for his consideration in appointments.

(d) The Governor may remove an appointee member for misconduct in office, incompetency, neglect of duty, or other sufficient cause."

SECTION 2. G.S. 102-1.1 reads as rewritten:

"**§ 102-1.1. Name and description in relation to 1983 North American Datum.**

From and after the date and time the North Carolina Geodetic Survey Section in the Division of Land Resources ~~Division~~ of the Department of Environment and Natural Resources receives from the National Geodetic Survey, official notice of a complete, published definition of the North American Datum of 1983 including the State plane coordinate constants applicable to North Carolina, the official survey base for North Carolina shall be a system of plane coordinates to be known as the "North Carolina Coordinate System of 1983," said system being defined as a Lambert conformal projection of the "Geodetic Reference System (GRS 80 Ellipsoid)" having a central meridian of 79°- 00' west from Greenwich and standard parallels of latitude of 34° – 20' and 36° – 10' north of the equator, along which parallels the scale shall be exact. All coordinates of the system are expressed in metres, the x coordinate being measured easterly along the grid and the y coordinate being measured northerly along the grid. The U.S. Survey Foot, 1 meter = 39.37 inches or 3.2808333333 feet, shall be used as a conversion factor. The origin of the coordinates is hereby established on the meridian 79° – 00' west from Greenwich at the intersection of the parallels 33° – 45' north latitude, such origin being given the coordinates x = 609,601.22 metres, y = 0 metres. The precise position of said system shall be as marked on the ground by triangulation or traverse stations or monuments established in conformity with the standards adopted by the National Geodetic Survey for first- and second-order work, whose geodetic positions have been rigidly adjusted on the North American Datum of 1983, and whose plane coordinates have been computed on the system defined. Whenever plane coordinates are used in the description or identification of surface area or location within this State, the coordinates shall be identified as "NAD 83", indicating North American Datum of 1983, or as "NAD 27", indicating North American Datum of 1927."

SECTION 3. G.S. 105-277.7(a) reads as rewritten:

"(a) Creation and Membership. – The Use-Value Advisory Board is established under the supervision of the Agricultural Extension Service of North Carolina State University. The Director of the Agricultural Extension Service of North Carolina State University shall serve as the chair of the Board. The Board shall consist of the following additional members, to serve ex officio:

(1) A representative of the Department of Agriculture and Consumer Services, designated by the Commissioner of Agriculture.

(2) A representative of the Division of Forest Resources ~~Division~~ of the Department of Environment and Natural Resources, designated by the Director of that Division.

(3) A representative of the Agricultural Extension Service at North Carolina Agricultural and Technical State University, designated by the Director of the Extension Service.

(4) A representative of the North Carolina Farm ~~Bureau,~~Bureau Federation, Inc., designated by the President of the Bureau.

(5) A representative of the North Carolina Association of Assessing Officers, designated by the President of the Association.

(6) The Director of the Property Tax Division of the North Carolina Department of Revenue or the Director's designee.

(7) A representative of the North Carolina Association of County Commissioners, designated by the President of the Association.

(8) A representative of the North Carolina Forestry Association, designated by the President of the Association."

SECTION 4. G.S. 105-296(j) reads as rewritten:

"(j) The assessor must annually review at least one eighth of the parcels in the county classified for taxation at present-use value to verify that these parcels qualify for the classification. By this method, the assessor must review the eligibility of all parcels classified for taxation at present-use value in an eight-year period. The period of the review process is based on the average of the preceding three years' data. The assessor may request assistance from the Farm Service Agency, the Cooperative Extension Service, the Division of Forest Resources ~~Division~~ of the Department of Environment and Natural Resources, or other similar organizations.

The assessor may require the owner of classified property to submit any information, including sound management plans for forestland, needed by the assessor to verify that the property continues to qualify for present-use value taxation. The owner has 60 days from the date a written request for the information is made to submit the information to the assessor. If the assessor determines the owner failed to make the information requested available in the time required without good cause, the property loses its present-use value classification and the property's deferred taxes become due and payable as provided in G.S. 105-277.4(c). The assessor must reinstate the property's present-use value classification when the owner submits the requested information unless the information discloses that the property no longer qualifies for present-use value classification. When a property's present-use value classification is reinstated, it is reinstated retroactive to the date the classification was revoked and any deferred taxes that were paid as a result of the revocation must be refunded to the property owner.

In determining whether property is operating under a sound management program, the assessor must consider any weather conditions or other acts of nature that prevent the growing or harvesting of crops or the realization of income from cattle, swine, or poultry operations. The assessor must also allow the property owner to submit additional information before making this determination."

SECTION 5. G.S. 113-56.1 reads as rewritten:

"**§ 113-56.1. Overtime compensation for forest fire fighting.**

The Department shall, within funds appropriated to the Department, provide overtime compensation to the professional employees of the Division of Forest Resources ~~Division~~ involved in fighting forest fires."

SECTION 6. G.S. 113-60.32(1) reads as rewritten:

"(1) 'Fire fighter' means an employee of the Division of Forest Resources ~~Division~~ of the Department of Environment and Natural Resources who engages in fire suppression duties."

SECTION 7. G.S. 113-291.10(a)(4) reads as rewritten:

"(4) The Director of the Division of Soil and Water Conservation ~~Division~~ of the Department of Environment and Natural Resources, or a designee;".

SECTION 8. Section 14 of S.L. 2004-163 reads as rewritten:

"**SECTION 14.** Notwithstanding G.S. 164-10, the Revisor of Statutes shall not codify any of the provisions of this act. The Revisor of Statutes shall set out the text of Sections 1 through 13 of this act as a note to G.S. 143-214.7 and may make notes concerning this act to other sections of the General Statutes as the Revisor of Statutes deems appropriate. The Revisor of Statutes shall set out the text of the Stormwater Management Rule, as defined in Section ~~11~~ 12 of this act, and the text of Section 6 of the temporary rule adopted by the Environmental Management Commission on 10 October 2002 as notes to G.S. 143-214.7."

SECTION 9. This act is effective when it becomes law.

Exhibit #4

HOUSE BILL 1096:
Environmental Technical Corrections

BILL ANALYSIS

Committee:	House Environment and Natural Resources	**Date:**	May 25, 2005
Introduced by:	Reps. Gibson, Harrell, Justice, McComas	**Summary by:**	Tim Dodge
Version:	First Edition		Legislative Analyst

SUMMARY: ***House Bill 1096 makes various technical corrections to laws related to the environment, environmental health, and natural resources.***

BILL ANALYSIS:

Section 1 makes technical corrections to agency names and removes outdated text from the statutes related to the State Board of Sanitation Examiners.

Sections 2 through 7 of the bill make technical corrections to provide for the correct use of names of various divisions within the Department of Environment and Natural Resources. Section 3 also makes a technical correction to the name of the North Carolina Farm Bureau Federation, Inc.

Section 8 makes a technical correction to a section reference in S.L. 2004-163 (Implement Phase II Stormwater Requirements).

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

H1096e1-SMSY

Exhibit #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.

☐ Committee Substitute for

HB 1096 A BILL TO BE ENTITLED AN ACT TO MAKE CLARIFYING, CONFORMING, AND TECHNICAL AMENDMENTS TO VARIOUS LAWS RELATED TO THE ENVIRONMENT, ENVIRONMENTAL HEALTH, AND NATURAL RESOURCES.

☒ With a favorable report.

(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 1

HOUSE BILL 1095*

Short Title:	Environmental Reports Amendments.	(Public)
Sponsors:	Representatives Gibson, Harrell, Justice, and McComas (Primary Sponsors).	
Referred to:	Environment and Natural Resources.	

April 4, 2005

A BILL TO BE ENTITLED

AN ACT TO MODIFY ENVIRONMENTAL REPORTING REQUIREMENTS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 143-215.8C is repealed.

SECTION 2. G.S. 143-215.107C reads as rewritten:

"**§ 143-215.107C. State agency goals, plans, duties, and reports.**

...

(d) The Department of Administration, the Office of State Personnel, the Department of Transportation, and the Department of Environment and Natural Resources shall jointly develop and periodically update a plan to reduce vehicle miles traveled by State employees and vehicle emissions resulting from job-related travel, including commuting to and from work. The plan shall consider the use of carpooling, vanpooling, public transportation, incentives, and other appropriate strategies. The ~~Office of State Personnel~~Department of Transportation shall report on the development and implementation of the plan to the Joint Legislative Transportation Oversight Committee and the Environmental Review Commission on or before 1 October of each year beginning 1 October 2000.

(e) The Department of Transportation, the Department of Commerce, and the Department of Environment and Natural Resources shall jointly develop and periodically update a plan to reduce vehicle miles traveled by private sector employees and vehicle emissions resulting from job-related travel, including commuting to and from work. The plan shall consider the use of incentives for both private sector employees and employers, carpooling, vanpooling, public transportation, and other appropriate strategies. The Department of Transportation shall report on the development and implementation of the plan to the Joint Legislative Transportation Oversight Committee and the Environmental Review Commission on or before 1 October of each year beginning 1 October 2000.

(f) The Office of State Personnel shall implement a policy that promotes telework/telecommuting for State employees as recommended by the report of the State Auditor entitled "Establishing a Formal Telework/Telecommuting Program for State Employees" and dated October 1997. It shall be the goal of the State to reduce State employee vehicle miles traveled in commuting by twenty percent (20%) without reducing total work hours or productivity. ~~The Office of State Personnel shall report on progress in implementing this section to the Environmental Review Commission on or before 1 October of each year beginning 1 October 2000.~~"

SECTION 3. The primary investigator or researcher for the Neuse River Modeling and Monitoring Project shall provide a final report summarizing the findings and outcomes of the Project to the Environmental Review Commission no later than 1 November 2005.

SECTION 4. Section 1 of this act becomes effective 1 December 2005. Sections 2 through 4 of this act become effective when it becomes law.

Exhibit #6

HOUSE BILL 1095:
Environmental Reports Amendments

BILL ANALYSIS

Committee:	House Environment and Natural Resources	**Date:**	May 26, 2005
Introduced by:	Reps. Gibson, Harrell, Justice, McComas	**Summary by:**	Tim Dodge
Version:	First Edition		Legislative Analyst

SUMMARY: House Bill 1095 repeals two reporting requirements related to the environment and changes the responsibility for reporting on efforts to reduce vehicle miles traveled by State employees from the Office of State Personnel to the Department of Transportation.

BILL ANALYSIS:

Neuse River Modeling and Monitoring Project reports: Sections 1 and 3 of the bill direct the primary investigator or researcher for the Neuse River Modeling and Monitoring Project (MODMON) to provide a final report summarizing the findings and outcomes of the Project to the Environmental Review Commission no later than November 1, 2005. Following receipt of the report, the statutory reporting requirement is repealed December 1, 2005.

Transportation Demand Management Reports: Section 2 of the bill transfers the responsibility for reporting on efforts to reduce vehicle miles traveled by State Employees from the Office of State Personnel to the Department of Transportation (DOT). In addition, the bill deletes the reporting requirement by the Office of State Personnel to report on implementation of a policy to promote telework/telecommuting by State Employees. These activities have been included in Transportation Demand Management Program administered by DOT.

EFFECTIVE DATE: Section 1 of the bill becomes effective December 1, 2005. The remaining sections become effective when the bill becomes law.

H1095e1-SMSY

Exhibit #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 1095 A BILL TO BE ENTITLED AN ACT TO MODIFY ENVIRONMENTAL REPORTING REQUIREMENTS.

☒ 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

H **1**

HOUSE BILL 1094*

Short Title:	Rename WRP/Codify Ecosystem Enhancement Prgm.	(Public)
Sponsors:	Representatives Gibson, Harrell, Justice, and McComas (Primary Sponsors).	
Referred to:	Environment and Natural Resources.	

April 4, 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.

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.

Exhibit #8

BILL ANALYSIS

HOUSE BILL 1094: Rename WRP/Codify Ecosystem Enhancement Prgm

Committee:	House Environment and Natural Resources	**Date:**	May 26, 2005
Introduced by:	Reps. Gibson, Harrell, Justice, McComas	**Summary by:**	Tim Dodge
Version:	First Edition		Legislative Analyst

SUMMARY: ***House Bill 1094 changes the name of the Wetlands Restoration Program to the Ecosystem Enhancement Program and changes the name of the Wetlands Restoration Fund to the Ecosystem Restoration Fund.***

BILL ANALYSIS: The bill changes the name of the Wetlands Restoration Program (WRP) in the Department of Environment and Natural Resources (DENR) to the Ecosystem Enhancement Program (EEP) and changes the name of the Wetlands Restoration Fund to the Ecosystem Restoration Fund wherever they occur in the Statutes.

EFFECTIVE DATE: The bill is effective when it becomes law.

BACKGROUND: The General Assembly established WRP in 1997 to provide for a centralized and comprehensive program to offset impacts to waters and wetlands in the State due to activities authorized by federal Clean Water Act permits. In 2002, as a result of an organizational process improvement effort between DENR, the Department of Transportation (DOT), and the U.S. Army Corps of Engineers (Corps), the focus of WRP was broadened to reflect a larger focus on ecosystem functions and compensation for development impacts at the watershed level. This improvement effort recommended renaming WRP as EEP. DENR, DOT, and the Corps signed a memorandum of agreement to formalize these efforts on July 22, 2003.

H1094e1-SMSY

Exhibit #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

HB 1094 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.

(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 1093*

Short Title:	Amend Environmental Laws -1.	(Public)
Sponsors:	Representatives Gibson, Harrell, Justice, and McComas (Primary Sponsors).	
Referred to:	Environment and Natural Resources.	

April 4, 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.

Exhibit #10

HOUSE BILL 1093:
Amend Environmental Laws -1

BILL ANALYSIS

Committee:	House Environment and Natural Resources	**Date:**	May 26, 2005
Introduced by:	Reps. Gibson, Harrell, Justice, McComas	**Summary by:**	Tim Dodge
Version:	First Edition		Legislative Analyst

SUMMARY: House Bill 1093 makes the following changes:

- *Authorizes the Commission for Health Services to establish a risk-based schedule for inspection of restaurants and other food service establishments.*
- *Authorizes the North Carolina Zoological Park to use funds in the Special Zoo Fund for marketing purposes.*
- *Provides 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.*
- *Makes other technical corrections.*

BILL ANALYSIS:

Section 1 of the bill authorizes the Commission for Health Services to establish a schedule for inspections of food service establishments (establishments that prepare or serve food or drink for pay) based on the risks to the population served by the establishment and the type of food or drink served by the establishment. Current law requires the Secretary of Environment and Natural Resources to inspect a restaurant at least quarterly, with the exception of temporary food service establishments. (Section 6 of the bill directs the Commission for Health Services to adopt rules implementing this provision so that the rules become effective on or before January 1, 2007).

Section 2 expands the programs for which funds from the Special Zoo Fund (Fund) may be used to include marketing for the North Carolina Zoological Park. Current law provides that the Fund shall be used for maintenance, repairs, and renovations of exhibits and visitor service facilities, construction of visitor service facilities and support facilities, and for replacement of tram equipment.

Section 3 provides 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. Similar language exists for most standing legislative committees and commissions. Section 3 also makes technical corrections.

Sections 4 and 5 make technical corrections to the enabling legislation for the Joint Legislative Commission on Seafood and Aquaculture.

Section 6 of the bill directs the Commission for Health Services to adopt rules implementing the provisions of Section 1 of the bill so that the rules become effective on or before January 1, 2007.

EFFECTIVE DATE: Section 1 of the bill becomes effective January 1, 2007. The remaining provisions of the bill become effective when the bill becomes law.

H1093e1-SMSY

Exhibit #11

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 1093 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.

(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 1

HOUSE BILL 1099*

Short Title:	Defenses to Liability for Env. Cleanups.	(Public)
Sponsors:	Representative Gibson.	
Referred to:	Environment and Natural Resources.	

April 4, 2005

A BILL TO BE ENTITLED

AN ACT TO PROMOTE ECONOMIC DEVELOPMENT BY FACILITATING THE REUSE OF CONTAMINATED REAL PROPERTY BY CLARIFYING THE CIRCUMSTANCES UNDER WHICH THE OWNERS OF REAL PROPERTY HAVE A DEFENSE AGAINST LIABILITY FOR THE CLEANUP OF ENVIRONMENTAL DAMAGE AND RESTORATION OF NATURAL RESOURCES AND BY MAKING THAT DEFENSE APPLICABLE TO STATE CLEANUP PROGRAMS.

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. Defenses to liability for environmental cleanups for certain landowners.**

(a) Applicability. –

(1) Except as provided in subdivision (2) of this subsection, this section applies to liability for the cleanup of environmental damage and the restoration of natural resources under Article 9 of Chapter 130A of the General Statutes, Articles 21 and 21A of Chapter 143 of the General Statutes, and rules adopted pursuant to these Articles.

(2) This section does not apply to liability arising from causes of action or claims of any entity other than the State.

(b) Defenses to Liability. – A person who would otherwise be liable as a landowner for the cleanup of environmental damage and for the restoration of natural resources under any of the provisions of law to which this section applies is not liable if the person demonstrates that the person is either:

(1) An innocent landowner under subsection (c) of this section.

(2) A prospective purchaser under subsection (d) of this section.

(3) A prospective developer under the provisions of Part 5 of Article 9 of Chapter 130A of the General Statutes

(c) Innocent Landowner. – An innocent landowner is a bona fide purchaser of real property or a person whose interest or ownership in real property is solely based on or derived from a security interest in the property who establishes all of the following:

(1) Any release of a contaminant on the property either:
  a. Occurred before the owner acquired the property or
  b. Was caused solely by:
    1. An act of God.
    2. An act of war.
    3. An intentional act or omission of a third party who was not an employee or agent of the owner.
    4. An intentional act or omission of a third party who has not had and does not have a contractual relationship with the owner.
    5. Any combination of the foregoing causes.

(2) Before acquiring title to the property, the owner made all appropriate inquiries into the previous ownership and uses of the property in accordance with generally accepted and good commercial and customary standards and practices. The Secretary shall take into account any specialized knowledge or experience on the part of the owner, the relationship of the purchase price to the value of the property if the property were not contaminated, commonly known or reasonably ascertainable information about the property, and whether the contaminant is detectable by appropriate inspection. In the case of property that is used as a single-family residence at the time of its purchase by any person other than a governmental entity, a site inspection and title search that does not reveal information that would cause a reasonable person to make further investigation shall satisfy the requirements of this subdivision.

(3) The owner has provided all legally required notices with respect to the discovery of a discharge, release, deposit, or disposal of any hazardous substance or waste at the property.

(4) The owner has taken all appropriate and reasonable steps to:
  a. Stop any continuing discharge, release, deposit, or disposal.
  b. Prevent any threatened future discharge, release, deposit, or disposal.
  c. Conduct remedial measures approved by the Secretary that prevent or limit human, environmental, or natural resources exposure to any contaminant released at the property and to make the property safe for its intended use.

(5) The owner has provided and continues to provide full cooperation, assistance, and access to persons who are authorized to conduct any response, remedial action, or natural resources restoration at the property, including any cooperation and access necessary to install,

operate, maintain, or secure any completed or partial response, remedial action, or natural resources restoration at the property.

(6) The owner has complied and continues to comply with any land-use restrictions established or relied on in connection with the response, remedial action, or natural resources restoration at the property.

(7) The owner has not impeded and continues to not impede the effectiveness or integrity of any institutional control employed at the property in connection with a response, remedial action, or natural resources restoration.

(8) The owner has complied or has agreed to comply with any requirement to record any land-use restrictions that may be required by the Secretary.

(9) The owner has complied and continues to comply with any request for information or administrative subpoena issued by the Secretary.

(10) The owner is not liable, potentially liable, or affiliated with any other person who is liable or potentially liable for any cost associated with the response, remedial action, or natural resources restoration at the property through any of the following:

a. Any direct or indirect familial relationship.

b. Any contractual, corporate, or financial relations, other than a contractual, corporate, or financial relationship that is created by an instrument through which title to the property is conveyed, an instrument through which sale or purchase of the property is financed, or by a contract for the sale of goods or services.

c. A reorganization in bankruptcy of a business entity that is liable or potentially liable.

(d) Prospective Purchaser. – A prospective purchaser is a person who proposes to purchase real property on which the cleanup of environmental damage or restoration of natural resources may be required under any provision of law to which this section applies and who establishes all of the following to the satisfaction of the Secretary:

(1) The prospective purchaser has satisfied or will satisfy all of the requirements that an owner must satisfy under subsection (c) of this section.

(2) An owner or other responsible party has provided financial assurance for the full cost of the cleanup of environmental damage and restoration of natural resources to applicable State standards. Financial assurance mechanisms may include, with terms and conditions subject to the approval of the Secretary, letters of credit, insurance, surety bonds, and trust funds. An owner or other party responsible for cleanup of environmental damage and restoration of natural resources who has been determined to be eligible to have the cost of the cleanup and restoration paid under Part 2A of Article 21A of Chapter 143 of the General Statutes shall be required to provide financial assurance

for only the amounts for which the owner or other responsible party is responsible under that Part.

(3) No new structure that will interfere with soil remediation required under any provision of law to which this section applies will be erected on the property.

(e) A prospective purchaser of any real property may request a determination that the prospective purchaser has met all of the conditions set out in subsection (d) of this section by submitting a written request for the determination to the Secretary. A determination may be made subject to the purchaser meeting all the conditions in subsection (d) of this section on or after closing that cannot reasonably be met prior to closing. A request for a determination that a purchaser has met all the conditions set out in subsection (d) of this section must be accompanied by a fee of one thousand dollars ($1,000) to defray administrative costs of making the determination. The Secretary shall develop and implement procedures to provide expeditious review of requests for determinations so as to expedite real estate transactions involving contaminated properties.

(f) A prospective purchaser who is otherwise entitled to a defense to liability as provided in this section is not entitled to the defense if any of the following apply:

(1) The prospective purchaser knowingly or recklessly provides false information that forms a basis for the determination by the Secretary under subsection (e) of this section or that is offered to demonstrate compliance with the determination or fails to disclose relevant information about contaminants at the property.

(2) New information indicates the existence of previously unreported contaminants or an area of previously unreported contaminants on or associated with the property that has not been remediated to applicable State standards, unless the determination is amended to include any previously unreported contaminant or any additional area where any contaminant is present. If the determination sets maximum concentrations for contaminants and new information indicates the existence of previously unreported areas of these contaminants, further remediation shall be required only if the areas of previously unreported contaminants raise the risk to public health or the environment to a level less protective of public health and the environment than that required by the determination.

(3) The level of risk to public health or the environment from contaminants is unacceptable at or in the vicinity of the property due to changes in exposure conditions, including (i) a change in land use that increases the probability of exposure to contaminants or in the vicinity of the property or (ii) the failure of remediation to mitigate risks to the extent required to make the property fully protective of public health and the environment as planned in the determination.

(4) The Department obtains new information about a contaminant associated with the property or exposures at or around the property that

raises the risk to public health or the environment associated with the property beyond an acceptable range and in a manner or to a degree not anticipated in the determination. Any person whose use, including any change in use, of the property causes an unacceptable risk to public health or the environment may be required by the Department to undertake additional remediation measures under the provisions of this Part.

(5) A prospective purchaser causes or contributes to a release of a contaminant on the property.

(6) A prospective purchaser fails to meet any continuing obligation under subsection (d) of this section.

(g) The Secretary may adopt rules to implement this section."

SECTION 2. G.S. 130A-310.7 reads as rewritten:

"**§ 130A-310.7. ~~Action for reimbursement; liability~~ Liability of responsible parties; actions for reimbursement; liens; notification of completed remedial action.**

(a) ~~Notwithstanding any other provision or rule of law, and subject only to the defenses set forth in this subsection, any person who:~~

~~(1) Discharges or deposits; or~~

~~(2) Contracts or arranges for any discharge or deposit; or~~

~~(3) Accepts for discharge or deposit; or~~

~~(4) Transports or arranges for transport for the purpose of discharge or deposit~~

~~any hazardous substance, the result of which discharge or deposit is the existence of an inactive hazardous substance or waste disposal site, shall be considered a responsible party. Neither an innocent landowner who is a bona fide purchaser of the inactive hazardous substance or waste disposal site without knowledge or without a reasonable basis for knowing that hazardous substance or waste disposal had occurred nor a person whose interest or ownership in the inactive hazardous substance or waste disposal site is based on or derived from a security interest in the property shall be considered a responsible party.~~ Subject only to the defenses set forth in G.S. 143B-279.13, a person is a responsible party if the person either:

(1) Discharges, releases, deposits, or disposes of any hazardous substance.

(2) Contracts or arranges for the discharge, release, deposit, or disposal of any hazardous substance.

(3) Accepts any hazardous substance for discharge, release, deposit, or disposal.

(4) Transports or arranges for the transport of any hazardous substance for the purpose of discharge, release, deposit, or disposal of the hazardous substance.

(5) Owns or operates a site that contains any hazardous substance.

(6) Owned or operated a site at the time any hazardous substance was discharged, released, deposited, or disposed of at the site.

(a1) A responsible party shall be directly liable to the State for any or all of the reasonably necessary expenses of developing and implementing a remedial action program for ~~such site.~~ an inactive hazardous substance or waste disposal site. The Secretary shall bring an action for reimbursement of the Inactive Hazardous Sites Cleanup Fund in the name of the State in the superior court of Wake County, the superior court of the county in which the site is ~~located~~ located, or in federal court to recover such sum and the cost of bringing the action. ~~The State must show that a danger to the public health or the environment existed and that the State complied with the provisions of this Part.~~ The State shall have a lien on the property on which the site is located for the unrecovered costs to the State of developing and implementing the remedial action program. The amount of a lien for unrecovered costs shall not exceed the amount by which the remedial action program increases the fair market value of the property. A lien for unrecovered costs shall be superior to all other liens on the property.

~~(b) There shall be no liability under this section for a person who can establish by a preponderance of the evidence that the danger to the public health or the environment caused by the site was caused solely by:~~

~~(1) An act of God; or~~

~~(2) An act of war; or~~

~~(3) An intentional act or omission of a third party (but this defense shall not be available if the act or omission is that of an employee or agent of the defendant, or if the act or omission occurs in connection with a contractual relationship with the defendant); or~~

~~(4) Any combination of the above causes.~~

(c) The definitions set out in G.S. 130A-310.31(b) apply to this subsection. Any person may submit a written request to the Department for a determination that a site that is subject to this Part has been remediated to unrestricted use standards as provided in Part 5 of Article 9 of Chapter 130A of the General Statutes. A request for a determination that a site has been remediated to unrestricted use standards shall be accompanied by the fee required by G.S. 130A-310.39(a)(2). If the Department determines that the site has been remediated to unrestricted use standards, the Department shall issue a written notification that no further remediation will be required at the site. The notification shall state that no further remediation will be required at the site unless the Department later determines, based on new information or information not previously provided to the Department, that the site has not been remediated to unrestricted use standards or that the Department was provided with false or incomplete information. Under any of those circumstances, the Department may withdraw the notification and require responsible parties to remediate the site to unrestricted use standards."

SECTION 3. Subsections (b) and (c) of G.S. 130A-310.3 read as rewritten:

"(b) Where possible, the Secretary shall work cooperatively with any owner, operator, responsible party, or any appropriate agency of the State or federal government to develop and implement the inactive hazardous substance or waste disposal site remedial action program. ~~The Secretary shall not take action under this section to the extent that the Environmental Management Commission, the~~

~~Commissioner of Agriculture, or the Pesticide Board has assumed jurisdiction pursuant to Articles 21 or 21A of Chapter 143 of the General Statutes.~~ An owner, operator, or responsible party who satisfies the Secretary that the owner, operator, or responsible party has implemented an inactive hazardous substance or waste disposal site remedial action program pursuant to this Part shall not be required, pursuant to Article 21 or 21A of Chapter 143 of the General Statutes, to clean up environmental damage that results from the same release or to restore natural resources damaged by that release.

(c) Whenever the Secretary has issued ~~such a declaration,~~ a declaration under this section, and at any time during which the declaration is in effect, the Secretary may, in addition to any other powers he may have, order any responsible party:

(1) To develop an inactive hazardous substance or waste disposal site remedial action program for the site subject to approval by the Department, and

(2) To implement the program within reasonable time limits specified in the order.

(c1) Written notice of ~~such~~ an order under this section shall be provided to all persons subject to the order personally or by certified mail. If given by certified mail, notice shall be deemed to have been given on the date appearing in the return of the receipt. If giving of notice cannot be accomplished either personally or by certified mail, notice shall be given as provided in G.S. 1A-1, Rule 4(j)."

SECTION 4. The catchline of G.S. 143-215.3 reads as rewritten:

"**§ 143-215.3. General powers of Commission and Department; auxiliary ~~powers.~~powers; research functions; relation with the federal government; variances; remedial actions.**"

SECTION 5. G.S. 143-215.3 is amended by adding a new subsection to read:

"(g) A person who would otherwise be liable as a landowner for the remediation of groundwater to meet the standards and classifications established under this Part is not liable as provided in G.S. 143B-279.13."

SECTION 6. G.S. 143-215.84 reads as rewritten:

"**§ 143-215.84. Removal of prohibited discharges.**

(a) Person Discharging. – Any person having control over oil or other hazardous substances discharged in violation of this Article shall immediately undertake to collect and remove the discharge and to restore the area affected by the discharge as nearly as may be to the condition existing prior to the discharge. If it is not feasible to collect and remove the discharge, the person responsible shall take all practicable actions to contain, treat and disperse the discharge; but no chemicals or other dispersants or treatment materials which will be detrimental to the environment or natural resources shall be used for such purposes unless they shall have been previously approved by the Commission. The owner of an underground storage tank who is the owner of the tank only because he is the owner of the land on which the underground storage tank is located, who did not know or have reason to know that the underground storage tank was located on his property, and who did not become the owner of the land as the result

of a transfer or transfers to avoid liability for the underground storage tank shall not be deemed to be responsible for a release or discharge from the underground storage tank.

(a1) Relation to Other Programs. – The Commission shall not require collection or removal of a discharge or restoration of an affected area under subsection (a) of this section if the person having control over oil or other hazardous substances discharged in violation of this Article complies with rules governing the collection and removal of a discharge and the restoration of an affected area adopted by the Commission pursuant to G.S. 143 214.1 or G.S. 143 215.94V. This subsection shall not be construed to affect the rights of any person under this Article or any other provision of law.

(b) Removal by Department. – Notwithstanding the requirements of subsection (a) of this section, the Department is authorized and empowered to utilize any staff, equipment and materials under its control or supplied by other cooperating State or local agencies and to contract with any agent or contractor that it deems appropriate to take such actions as are necessary to collect, investigate, perform surveillance over, remove, contain, treat or disperse oil or other hazardous substances discharged onto the land or into the waters of the State and to perform any necessary restoration. The Secretary shall keep a record of all expenses incurred in carrying out any project or activity authorized under this section, including actual expenses incurred for services performed by the State's personnel and for use of the State's equipment and material. The authority granted by this subsection shall be limited to projects and activities that are designed to protect the public interest or public property, and shall be compatible with the National Contingency Plan established pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. section 1251 et seq.

(c), (d) Repealed by Session Laws 1989, c. 656, s. 2.

(e) Notification of Completed Removal of Prohibited Discharges. – The definitions set out in G.S. 130A-310.31(b) apply to this subsection. Any person may submit a written request to the Department for a determination that a discharge of oil or a hazardous substance in violation of this Article has been remediated to unrestricted use standards. A request for a determination that a discharge has been remediated to unrestricted use standards shall be accompanied by the fee required by G.S. 130A-310.39(a)(2). If the Department determines that the discharge has been remediated to unrestricted use standards, the Department shall issue a written notification that no further remediation of the discharge will be required. The notification shall state that no further remediation of the discharge will be required unless the Department later determines, based on new information or information not previously provided to the Department, that the discharge has not been remediated to unrestricted use standards or that the Department was provided with false or incomplete information. Under any of those circumstances, the Department may withdraw the notification and require responsible parties to remediate the discharge to unrestricted use standards.

(f) Land-use Restrictions. – In order to reduce or eliminate the danger to public health or the environment posed by a discharge or release of oil or a hazardous substance, an owner, operator, or other responsible party may impose restrictions on the current or future use of the real property comprising any part of the site if the

restrictions meet the requirements of this subsection. The restrictions must be agreed to by the owner of the real property, included in a remedial action plan for the site that has been approved by the Secretary, and implemented as a part of the remedial action program for the site. The Secretary may approve restrictions included in a remedial action plan in accordance with standards determined: (i) pursuant to rules for remediation of soil or groundwater contamination adopted by the Commission; (ii) with respect to the cleanup of a discharge or release from a petroleum underground storage tank, pursuant to rules adopted by the Commission pursuant to G.S. 143-215.94V; or (iii) as provided in G.S. 130A-310.3(d). Restrictions may apply to activities on, over, or under the land, including, but not limited to, use of groundwater, building, filling, grading, excavating, and mining. Any approved restriction shall be enforced by any owner, operator, or other party responsible for the oil or hazardous substance discharge site. Any land-use restriction may also be enforced by the Department through the remedies provided in this Article, Part 2 of Article 1 of Chapter 130A of the General Statutes, or by means of a civil action. The Department may enforce any land-use restriction without first having exhausted any available administrative remedies. A land-use restriction may also be enforced by any unit of local government having jurisdiction over any part of the site. A land-use restriction shall not be declared unenforceable due to lack of privity of estate or contract, due to lack of benefit to particular land, or due to lack of any property interest in particular land. Any person who owns or leases a property subject to a land-use restriction under this Part shall abide by the land-use restriction

"(g) Defense to Liability. – A person who would otherwise be liable as a landowner for the removal of a prohibited discharge of oil or other hazardous substance or for the restoration of an affected area is not liable as provided in G.S. 143B-279.13."

SECTION 7. G.S. 130A-310.31(b)(3) reads as rewritten:

"(3) "Brownfields property" or "brownfields site" means abandoned, idled, or underused property at which expansion or redevelopment is hindered by actual environmental contamination or the possibility of environmental contamination and that is or may be subject to remediation ~~under any~~under either:

a. Any State remedial ~~program other than Part 2A of Article 21A of Chapter 143 of the General Statutes or that is or may be subject to remediation under the~~ program.

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

SECTION 8. 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 9. 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 10. 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 11. 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 12. 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 13. G.S. 105-277.13(a) reads as rewritten:

"(a) Qualifying improvements on brownfields properties are designated a special class of property under Article V, Sec. 2(2) of the North Carolina Constitution and shall be appraised, assessed, and taxed in accordance with this section. ~~An~~ Except as provided in this subsection, an owner of land who is protected from liability for remediation under G.S. 130A-310.33(a) is entitled to the partial exclusion provided by this section for the first five taxable years beginning after completion of qualifying improvements made after the later of July 1, 2000, or the date of the brownfields agreement. A person who caused or contributed to contamination at the brownfields property and who holds any ownership in the brownfields property is not eligible for the partial exclusion under this section. After property has qualified for the exclusion provided by this section, the assessor for the county in which the property is located shall annually appraise the improvements made to the property during the period of time that the owner is entitled to the exclusion."

SECTION 14. This act becomes effective 1 January 2006.

Exhibit #12

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H D

HOUSE BILL 1099*
PROPOSED COMMITTEE SUBSTITUTE H1099-PCS60477-SB-34

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

Sponsors:

Referred to:

April 4, 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.

Exhibit #13

HOUSE BILL 1099:
Brownfields Property Reuse Act Amendments.

BILL ANALYSIS

Committee:	House Environment and Natural Resources	**Date:**	May 26, 2005
Introduced by:	Rep. Gibson	**Summary by:**	Jeff Hudson
Version:	PCS to First Edition H1099-PCS60477-SB-34		Committee Counsel

SUMMARY: The Proposed Committee Substitute for House Bill 1099 would amend provisions of the Brownfields Property Reuse Act of 1997.

BILL ANALYSIS:

The Proposed Committee Substitute for House Bill 1099 (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.
- Amend the definitions of "unrestricted use standards" and "prospective developer".
- Reduce the period for public comment on a proposed brownfields agreement from 60 days to 30 days.
- Reduce the time periods involved in holding a public meeting on a proposed brownfields agreement.

EFFECTIVE DATE:

The PCS would become effective January 1, 2006.

H1099e1-PCS60477-SB-34

Exhibit #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 1099 A BILL TO BE ENTITLED AN ACT TO PROMOTE ECONOMIC DEVELOPMENT BY FACILITATING THE REUSE OF CONTAMINATED REAL PROPERTY BY CLARIFYING THE CIRCUMSTANCES UNDER WHICH THE OWNERS OF REAL PROPERTY HAVE A DEFENSE AGAINST LIABILITY FOR THE CLEANUP OF ENVIRONMENTAL DAMAGE AND RESTORATION OF NATURAL RESOURCES AND BY MAKING THAT DEFENSE APPLICABLE TO STATE CLEANUP PROGRAMS.

☒ 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) 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

HOUSE BILL 1385

Short Title:	Underground Storage Tank Amendments.	(Public)
Sponsors:	Representatives Gibson; and Harrison.	
Referred to:	Environment and Natural Resources.	

April 21, 2005

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.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 143-215.94E reads as rewritten:

"**§ 143-215.94E. Rights and obligations of the owner or operator.**

(a) Upon a determination that a discharge or release of petroleum from an underground storage tank has occurred, the owner or operator of the underground storage tank shall notify the Department pursuant to G.S. 143-215.85. The owner or operator of the underground storage tank shall immediately undertake to collect and remove the discharge or release and to restore the area affected in accordance with the requirements of this Article.

(a1) If a spill or overfill associated with a petroleum underground storage tank results in a release of petroleum to the environment of 25 gallons or more or causes a sheen on nearby surface water, the owner or operator of the petroleum underground storage tank shall immediately clean up the spill or overfill, report the spill or overfill to the Department within 24 hours of the spill or overfill, and begin to restore the area affected in accordance with the requirements of this Article. The owner or operator of a petroleum underground storage tank shall immediately clean up a spill or overfill of less than 25 gallons of petroleum that does not cause a sheen on nearby surface water. If a spill or overfill of less than 25 gallons of petroleum cannot be cleaned up within 24 hours of the spill or overfill or causes a sheen on nearby surface water, the owner or operator of the petroleum underground storage tank shall immediately notify the Department.

(b) In the case of a discharge or release from a commercial underground storage tank where the owner or operator has been identified and has proceeded with cleanup, the owner or operator may elect to have the Commercial Fund pay or reimburse the owner or operator for any costs described in subsection (b) or (b1) of G.S. 143-215.94B that exceed the amounts for which the owner or operator is responsible under that subsection. The sum of payments by the owner or operator and the payments from the Commercial Fund shall not exceed one million dollars ($1,000,000) per discharge or release except as provided in G.S. 143-215.94B(b2).

(b1) In the case of a discharge or release from a commercial underground storage tank where the owner and operator cannot be identified or located, or where the owner and operator fail to proceed as required by subsection (a) of this section, if the current landowner of the land in which the commercial underground storage tank is located notifies the Department in accordance with G.S. 143-215.85 and undertakes to collect and remove the discharge or release and to restore the area affected in accordance with the requirements of this Article and applicable federal and State laws, regulations, and rules, the current landowner may elect to have the Commercial Fund pay or reimburse the current landowner for any costs described in subdivisions (1), (2), (2a), (3), and (4) of G.S. 143-215.94B(b) or G.S. 143-215.94B(b1) that exceed the amounts for which the owner or operator is responsible under that subsection. The current landowner is not eligible for payment or reimbursement until the current landowner has paid the costs described in subdivisions (1), (2), (2a), (3), and (4) of G.S. 143-215.94B(b) or G.S. 143-215.94B(b1) for which the owner or operator is responsible. Eligibility for reimbursement under this subsection may be transferred from a current landowner who has paid the costs described in subdivisions (1), (2), (2a), (3), and (4) of G.S. 143-215.94B(b) or G.S. 143-215.94B(b1) to a subsequent landowner. The sum of payments from the Commercial Fund and from all other sources shall not exceed one million dollars ($1,000,000) per discharge or release except as provided in G.S. 143-215.94B(b2). This subsection shall not be construed to require a current landowner to cleanup a discharge or release of petroleum from an underground storage tank for which the current landowner is not otherwise responsible. This subsection does not alter any right, duty, obligation, or liability of a current landowner, former landowner, subsequent landowner, owner, or operator under other provisions of law. This subsection shall not be construed to limit the authority of the Department to engage in a cleanup under this Article or any other provision of law. In the event that an owner or operator is subsequently identified or located, the Secretary shall seek reimbursement as provided in G.S. 143-215.94G(d). The current landowner shall submit documentation of all expenditures as required by G.S. 143-215.94G(b).

(c) In the case of a discharge or release from a noncommercial underground storage tank or a commercial underground storage tank eligible for the Noncommercial Fund in accordance with G.S. 143-215.94D(b), the owner or operator may elect to have the Noncommercial Fund pay or reimburse the owner or operator for the costs described in G.S. 143-215.94D(b1) up to a maximum of one million dollars ($1,000,000) per discharge or release.

(c1) In the case of a discharge or release from a noncommercial underground storage tank where the owner and operator cannot be identified or located, or where the owner and operator fail to proceed as required by subsection (a) of this section, if the current landowner of the land in which the noncommercial underground storage tank is located notifies the Department in accordance with G.S. 143-215.85 and undertakes to collect and remove the discharge or release and to restore the area affected in accordance with the requirements of this Article and applicable federal and State laws, regulations, and rules, the current landowner may elect to have the Noncommercial Fund pay or reimburse the current landowner for ninety percent (90%) of any costs described in subdivisions (1) and (2) of G.S. 143-215.94D(b1) that exceed five thousand dollars ($5,000). Eligibility for reimbursement under this subsection may be transferred to a subsequent landowner from a current landowner who has paid the costs for which the landowner is responsible under this subsection. The sum of payments from the Noncommercial Fund and from all other sources shall not exceed one million dollars ($1,000,000) per discharge or release. This subsection shall not be construed to require a current landowner to clean up a discharge or release of petroleum from an underground storage tank for which the current landowner is not otherwise responsible. This subsection does not alter any right, duty, obligation, or liability of a current landowner, former landowner, subsequent landowner, owner, or operator under other provisions of law. This subsection shall not be construed to limit the authority of the Department to engage in a cleanup under this Article or any other provision of law. The current landowner shall submit documentation of all expenditures as required by G.S. 143-215.94G(b).

(d) In any case where the costs described in G.S. 143-215.94B(b), 143-215.94B(b1), or 143-215.94D(b1) exceed one million dollars ($1,000,000), or one million five hundred thousand dollars ($1,500,000) if G.S. 143-215.94B(b2) applies, the provisions of Article 21A of this Chapter or any other applicable statute or common law principle regarding liability shall apply for the amount in excess of one million dollars ($1,000,000) or, if G.S. 143-215.94B(b2) applies, one million five hundred thousand dollars ($1,500,000). Nothing contained in this Part shall limit or modify any liability that any party may have pursuant to Article 21A of this Chapter, any other applicable statute, or at common law.

(e) When an owner, operator, or landowner pays the costs described in G.S. 143-215.94B(b), 143-215.94B(b1), or 143-215.94D(b1) resulting from a discharge or release of petroleum from an underground storage tank, the owner, operator, or landowner may seek reimbursement from the appropriate fund for any costs that the owner, operator, or landowner may elect to have either the Commercial Fund or the Noncommercial Fund pay in accordance with ~~subsections (b), (b1), (c), and (c1) of~~ this section.

(e1) The Department may contract for any services necessary to evaluate any claim for reimbursement or compensation from either the Commercial Fund or the Noncommercial Fund, may contract for any expert witness or consultant services necessary to defend any decision to pay or deny any claim for reimbursement, and may pay the cost of these services from the fund against which the claim is made; provided

that in any fiscal year the Department shall not expend from either fund more than one percent (1%) of the unobligated balance of the fund on 30 June of the previous fiscal year. The cost of contractual services to evaluate a claim or for expert witness or consultant services to defend a decision with respect to a claim shall be included as costs under G.S. 143-215.94B(b), 143-215.94B(b1), and 143-215.94D(b1).

(e2) An owner or operator whose claim for reimbursement is denied may appeal a decision of the Department as provided in Article 3 of Chapter 150B of the General Statutes. If the owner or operator is eligible for reimbursement under this section and the cleanup extends beyond a period of three months, the owner or operator may apply to the Department for interim reimbursements to which he is entitled under this section on a quarterly basis. If the Department fails to notify an owner or operator of its decision on a claim for reimbursement under this ~~subsection~~ section within 90 days after the date the claim is received by the Department, the owner or operator may elect to consider the claim to have been denied, and may appeal the denial as provided in Article 3 of Chapter 150B of the General Statutes.

~~(e1)~~(e3) The Department shall not pay any third party or reimburse any owner or operator who has paid any third party pursuant to any settlement agreement or consent judgment relating to a claim by or on behalf of a third party for compensation for bodily injury or property damage unless the Department has approved the settlement agreement or consent judgment prior to entry into the settlement agreement or consent judgment by the parties or entry of a consent judgment by the court. The approval or disapproval by the Department of a proposed settlement agreement or consent judgment shall be subject to challenge only in a contested case filed under Chapter 150B of the General Statutes. The Secretary shall make the final agency decision in a contested case proceeding under this subsection.

(e4) (1) The Department shall establish the degree of risk to human health and the environment posed by a discharge or release of petroleum from a commercial underground storage tank and shall determine a schedule for further assessment and cleanup that is based on the degree of risk to human health and the environment posed by the discharge or release and that gives priority to the assessment and cleanup of discharges and releases that pose the greatest risk. If any of the costs of assessment and cleanup of the discharge or release from a commercial underground storage tank are eligible to be paid from the Commercial Fund, the Department shall also consider the availability of funds in the Commercial Fund and the order in which the discharge or release was reported in determining the schedule.

(2) The Department shall establish the degree of risk to human health and the environment posed by a discharge or release of petroleum from a noncommercial underground storage tank and shall determine a schedule for further assessment and cleanup that is based on the degree of risk to human health and the environment posed by the discharge or release and that gives priority to the assessment and cleanup of discharges and releases that pose the greatest risk. If any of the costs of

assessment or cleanup of the discharge or release from a noncommercial underground storage tank are eligible to be paid from the Noncommercial Fund, the Department shall also consider the availability of funds in the Noncommercial Fund and the order in which the discharge or release was reported in determining the schedule.

(3) The Department may revise the schedules that apply to the assessment and cleanup of any discharge or release at any time based on its reassessment of any of the foregoing factors. The lack of availability of funds in the Commercial Fund or the Noncommercial Fund shall not relieve an owner or operator of responsibility to immediately undertake to collect and remove the discharge or release or to conduct any assessment or cleanup ordered by the Department or be a defense against any violations and penalties issued to the owner or operator for failure to conduct required assessment or cleanup. If the owner or operator takes initial steps to collect and remove the discharge or release as required by the Department and completes the initial assessment required to determine degree of risk, the owner or operator shall not be subject to any violation or penalty for any failure to proceed with further assessment or cleanup under G.S. 143-215.84 or G.S. 143-215.94E before the owner or operator is authorized to proceed with further assessment or cleanup as provided in subsection (e5) of this section.

~~(e2)~~(e5) (1) As used in this subsection:

a. 'Approval' means a determination by the Department that the cost of a task is eligible to be paid under G.S. 143-215.94B(b), 143-215.94B(b1), or 143-215.94D(b1).

b. 'Authorization' means a determination by the Department that a person may proceed with one or more tasks.

c. 'Preapproval' means a determination by the Department that the nature and scope of a task is reasonable and necessary to be performed under G.S. 143-215.94B(b), 143-215.94B(b1), or 143-215.94D(b1) in order to achieve the purposes of this Part.

~~(1)~~(2) The Department may require an owner, operator, or landowner to obtain ~~approval from the Department~~ preapproval and approval before proceeding with any task that will result in a cost that is eligible to be paid or reimbursed under G.S. 143-215.94B(b), 143-215.94B(b1), or 143-215.94D(b1). The Department shall specify those tasks for which preapproval and approval is required. The Department shall deny any request for payment or reimbursement of the cost of any task for which preapproval or approval is required if the owner, operator, or landowner failed to obtain preapproval or approval of the task. The Department shall pay or reimburse the cost of a task only if the cost is eligible to be paid under G.S. 143-215.94B(b), 143-215.94B(b1), or

143-215.94D(b1) and if the Department determines that the cost is reasonable and necessary.

(3) The Commission may adopt rules governing reimbursement of reasonable and necessary costs and, consistent with any rules adopted by the Commission, the Department shall develop, implement, and periodically revise a schedule of costs that the Department determines to be reasonable and necessary costs for specific tasks. Statements that specify tasks for which preapproval or approval is required and schedules of reasonable and necessary costs for specific tasks are statements within the meaning of G.S. 150B-2(8a)g. This subsection shall not be construed to invalidate any rule of the Commission related to preapproval or approval of tasks that will result in a cost that is eligible to be paid or reimbursed under G.S. 143-215.94B(b), 143-215.94B(b1), or 143-215.94D(b1), provided, however, that the Department may specify additional tasks for which preapproval or approval is required.

(4) In all cases, the Department shall require an owner, operator, or landowner to submit documentation sufficient to establish that a cost is eligible to be paid or reimbursed under this Part before the Department pays or reimburses the cost.

~~(2)~~(5) If a task is one for which preapproval or approval is required, the Department shall authorize the task only if the task is preapproved or approved as required. The Department shall authorize a task the cost of which is to be paid from the Commercial Fund only when the task is scheduled to be performed on the basis of a priority determination pursuant to subsection (e4) of this section.

(6) Except as provided in subdivisions ~~(3) and (4)~~(9) and (10) of this subsection, the Department shall not ~~preapprove~~ authorize any task the cost of which is to be paid or reimbursed from the Commercial Fund unless the Department determines, based on the scope of the work to be performed and the schedule of reasonable and necessary costs, that sufficient funds will be available in the Commercial Fund to pay a claim for payment or reimbursement of the cost of that task within 90 days after the Department determines that the owner, operator, or landowner has submitted a claim with documentation sufficient to establish that the owner, operator, or landowner is eligible to have the claim paid under this Part.

(7) Except as provided in subdivisions ~~(3) and (4)~~(9) and (10) of this subsection, the Department shall not ~~preapprove~~ authorize any task the cost of which is to be paid or reimbursed from the Noncommercial Fund unless the Department determines, based on the scope of the work to be performed and the schedule of reasonable and necessary costs, that sufficient funds will be available in the Noncommercial Fund to pay a claim for payment or reimbursement of the cost of that

task within 90 days after the Department determines that the owner, operator, or landowner has submitted a claim with documentation sufficient to establish that the owner, operator, or landowner is eligible to have the claim paid under this Part.

(8) This subsection shall not be construed to establish a cause of action against the Commission or the Department for any failure to pay or reimburse any cost within any specific period of time. This subsection shall not be construed to establish a defense to any action to enforce the requirements of either G.S. 143-215.84 or subsection (a) of this section. ~~This subsection shall not be construed to invalidate any rule of the Commission related to preapproval of tasks that will result in a cost that is eligible to be paid or reimbursed under G.S. 143-215.94B(b), 143-215.94B(b1), or 143-215.94D(b1), provided, however, that the Department may specify additional tasks for which preapproval is required as provided in this subsection.~~

~~(3)~~(9) The Department may ~~preapprove~~ authorize a task the cost of which is to be paid or reimbursed from the Commercial Fund or the Noncommercial Fund when sufficient funds will not be available to pay a claim for payment or reimbursement of the cost of that task within the 90-day period described in ~~subdivision (2)~~ subdivisions (6) and (7) of this subsection if the owner, operator, or landowner specifically requests that the task be ~~preapproved~~ authorized and agrees that the claim for payment or reimbursement of the cost will not be paid until after the Department has paid all claims for payment or reimbursement of costs for tasks that the Department has ~~preapproved~~ authorized pursuant to ~~subdivision (2) of~~ this subsection.

~~(4)~~(10) The Department may ~~preapprove~~ authorize a task the cost of which is to be paid or reimbursed from the Commercial Fund or the Noncommercial Fund when sufficient funds will not be available to pay a claim for payment or reimbursement of the cost of that task within the 90-day period described in ~~subdivision (2)~~ subdivisions (6) and (7) of this subsection if the discharge or release creates an emergency situation. An emergency situation exists when a discharge or release of petroleum results in an imminent threat to human health or the environment. A claim for payment or reimbursement of costs for tasks that are ~~preapproved~~ authorized under this subdivision shall be paid or reimbursed on the same basis as tasks that are ~~preapproved~~ authorized under ~~subdivision (2)~~ subdivisions (6) and (7) of this subsection.

(11) An owner, operator, or landowner is not eligible to have the cost of any task for which authorization is required paid or reimbursed from the Commercial Fund or the Noncommercial Fund until such time as the task is authorized. An owner, operator, or landowner may elect to undertake further assessment or cleanup before receiving

authorization. An owner, operator, or other person who undertakes further assessment or cleanup before receiving authorization may be reimbursed only after the Department has paid or reimbursed all other owners, operators, and landowners for the costs for all tasks that have been authorized and, to the extent that preapproval or approval of those tasks is required, only if the tasks are preapproved or approved.

(f) Repealed by Session Laws 2003-352, s. 6, effective July 27, 2003.

(f1) Any person seeking payment or reimbursement from either the Commercial Fund or the Noncommercial Fund shall certify to the Department that the costs to be paid or reimbursed by the Commercial Fund or the Noncommercial Fund are not eligible to be paid or reimbursed by or from any other source, including any contract of insurance. If any cost paid or reimbursed by the Commercial Fund or the Noncommercial Fund is eligible to be paid or reimbursed by or from another source, that cost shall not be paid from, or if paid shall be repaid to, the Commercial Fund or the Noncommercial Fund. As used in this Part, the phrase "any other source including any contract of insurance" does not include self-insurance.

(g) No owner or operator shall be reimbursed pursuant to this section, and the Department shall seek reimbursement of the appropriate fund or of the Department for any monies disbursed from the appropriate fund or expended by the Department if any of the following apply:

(1) The owner or operator has willfully violated any substantive law, rule, or regulation applicable to underground storage tanks and intended to prevent or mitigate discharges or releases or to facilitate the early detection of discharges or releases.

(2) The discharge or release is the result of the owner's or operator's willful or wanton misconduct.

(3) The owner or operator has failed to pay any annual tank operating fee due pursuant to G.S. 143-215.94C.

(h) Subdivision (1) of subsection (g) of this section shall not be construed to limit the right of an owner or operator to contest notices of violation or orders issued by the Department. Subdivision (1) of subsection (g) of this section shall not apply to a payment or reimbursement pursuant to this section if, at the time of the discharge or release, the owner or operator holds a valid operating permit as required by G.S. 143-215.94U.

~~(i) An owner or operator who notifies the Department of an intention to close or upgrade a commercial underground storage tank as provided in G.S. 143-215.94B(b)(2a) shall commence the closure or upgrade prior to 1 July 1994 and shall complete the closure or upgrade prior to 1 January 1995. An owner who notifies the Department of an intention to close or upgrade a commercial underground storage tank and who fails to commence and complete the closure as specified in this subsection is subject to a civil penalty as provided in G.S. 143-215.94W. The provisions of G.S. 143-215.94B(b)(2a) do not apply if an owner or operator who notifies the Department of an intention to close or upgrade a commercial underground storage tank~~

~~fails to commence or complete the closure or upgrade within the dates specified in this subsection.~~

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

SECTION 2. Notwithstanding Section 13 of S.L. 2003-352, Section 10 of S.L. 2003-352, as amended by subsection (e) of Section 30.10 of S.L. 2004-124 and as codified and amended by Section 1 of this act, shall continue in effect.

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

Exhibit # 15

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H D

HOUSE BILL 1385
PROPOSED COMMITTEE SUBSTITUTE H1385-PCS70487-RT-20

Short Title: Underground Storage Tank Amendments. (Public)

Sponsors:

Referred to:

April 21, 2005

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.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 143-215.94E reads as rewritten:

"**§ 143-215.94E. Rights and obligations of the owner or operator.**

(a) Upon a determination that a discharge or release of petroleum from an underground storage tank has occurred, the owner or operator of the underground storage tank shall notify the Department pursuant to G.S. 143-215.85. The owner or operator of the underground storage tank shall immediately undertake to collect and remove the discharge or release and to restore the area affected in accordance with the requirements of this Article.

(a1) If a spill or overfill associated with a petroleum underground storage tank results in a release of petroleum to the environment of 25 gallons or more or causes a sheen on nearby surface water, the owner or operator of the petroleum underground storage tank shall immediately clean up the spill or overfill, report the spill or overfill to the Department within 24 hours of the spill or overfill, and begin to restore the area affected in accordance with the requirements of this Article. The owner or operator of a petroleum underground storage tank shall immediately clean up a spill or overfill of less than 25 gallons of petroleum that does not cause a sheen on nearby surface water. If a spill or overfill of less than 25 gallons of petroleum cannot be cleaned up within 24 hours of the spill or overfill or causes a sheen on nearby surface water, the owner or operator of the petroleum underground storage tank shall immediately notify the Department.

(b) In the case of a discharge or release from a commercial underground storage tank where the owner or operator has been identified and has proceeded with cleanup, the owner or operator may elect to have the Commercial Fund pay or reimburse the owner or operator for any costs described in subsection (b) or (b1) of G.S. 143-215.94B that exceed the amounts for which the owner or operator is responsible under that subsection. The sum of payments by the owner or operator and the payments from the Commercial Fund shall not exceed one million dollars ($1,000,000) per discharge or release except as provided in G.S. 143-215.94B(b2).

(b1) In the case of a discharge or release from a commercial underground storage tank where the owner and operator cannot be identified or located, or where the owner and operator fail to proceed as required by subsection (a) of this section, if the current landowner of the land in which the commercial underground storage tank is located notifies the Department in accordance with G.S. 143-215.85 and undertakes to collect and remove the discharge or release and to restore the area affected in accordance with the requirements of this Article and applicable federal and State laws, regulations, and rules, the current landowner may elect to have the Commercial Fund pay or reimburse the current landowner for any costs described in subdivisions (1), (2), (2a), (3), and (4) of G.S. 143-215.94B(b) or G.S. 143-215.94B(b1) that exceed the amounts for which the owner or operator is responsible under that subsection. The current landowner is not eligible for payment or reimbursement until the current landowner has paid the costs described in subdivisions (1), (2), (2a), (3), and (4) of G.S. 143-215.94B(b) or G.S. 143-215.94B(b1) for which the owner or operator is responsible. Eligibility for reimbursement under this subsection may be transferred from a current landowner who has paid the costs described in subdivisions (1), (2), (2a), (3), and (4) of G.S. 143-215.94B(b) or G.S. 143-215.94B(b1) to a subsequent landowner. The sum of payments from the Commercial Fund and from all other sources shall not exceed one million dollars ($1,000,000) per discharge or release except as provided in G.S. 143-215.94B(b2). This subsection shall not be construed to require a current landowner to cleanup a discharge or release of petroleum from an underground storage tank for which the current landowner is not otherwise responsible. This subsection does not alter any right, duty, obligation, or liability of a current landowner, former landowner, subsequent landowner, owner, or operator under other provisions of law. This subsection shall not be construed to limit the authority of the Department to engage in a cleanup under this Article or any other provision of law. In the event that an owner or operator is subsequently identified or located, the Secretary shall seek reimbursement as provided in G.S. 143-215.94G(d). The current landowner shall submit documentation of all expenditures as required by G.S. 143-215.94G(b).

(c) In the case of a discharge or release from a noncommercial underground storage tank or a commercial underground storage tank eligible for the Noncommercial Fund in accordance with G.S. 143-215.94D(b), the owner or operator may elect to have the Noncommercial Fund pay or reimburse the owner or operator for the costs described in G.S. 143-215.94D(b1) up to a maximum of one million dollars ($1,000,000) per discharge or release.

(c1) In the case of a discharge or release from a noncommercial underground storage tank where the owner and operator cannot be identified or located, or where the owner and operator fail to proceed as required by subsection (a) of this section, if the current landowner of the land in which the noncommercial underground storage tank is located notifies the Department in accordance with G.S. 143-215.85 and undertakes to collect and remove the discharge or release and to restore the area affected in accordance with the requirements of this Article and applicable federal and State laws, regulations, and rules, the current landowner may elect to have the Noncommercial Fund pay or reimburse the current landowner for ninety percent (90%) of any costs described in subdivisions (1) and (2) of G.S. 143-215.94D(b1) that exceed five thousand dollars ($5,000). Eligibility for reimbursement under this subsection may be transferred to a subsequent landowner from a current landowner who has paid the costs for which the landowner is responsible under this subsection. The sum of payments from the Noncommercial Fund and from all other sources shall not exceed one million dollars ($1,000,000) per discharge or release. This subsection shall not be construed to require a current landowner to clean up a discharge or release of petroleum from an underground storage tank for which the current landowner is not otherwise responsible. This subsection does not alter any right, duty, obligation, or liability of a current landowner, former landowner, subsequent landowner, owner, or operator under other provisions of law. This subsection shall not be construed to limit the authority of the Department to engage in a cleanup under this Article or any other provision of law. The current landowner shall submit documentation of all expenditures as required by G.S. 143-215.94G(b).

(d) In any case where the costs described in G.S. 143-215.94B(b), 143-215.94B(b1), or 143-215.94D(b1) exceed one million dollars ($1,000,000), or one million five hundred thousand dollars ($1,500,000) if G.S. 143-215.94B(b2) applies, the provisions of Article 21A of this Chapter or any other applicable statute or common law principle regarding liability shall apply for the amount in excess of one million dollars ($1,000,000) or, if G.S. 143-215.94B(b2) applies, one million five hundred thousand dollars ($1,500,000). Nothing contained in this Part shall limit or modify any liability that any party may have pursuant to Article 21A of this Chapter, any other applicable statute, or at common law.

(e) When an owner, operator, or landowner pays the costs described in G.S. 143-215.94B(b), 143-215.94B(b1), or 143-215.94D(b1) resulting from a discharge or release of petroleum from an underground storage tank, the owner, operator, or landowner may seek reimbursement from the appropriate fund for any costs that the owner, operator, or landowner may elect to have either the Commercial Fund or the Noncommercial Fund pay in accordance with ~~subsections (b), (b1), (c), and (c1) of~~ this section.

(e1) The Department may contract for any services necessary to evaluate any claim for reimbursement or compensation from either the Commercial Fund or the Noncommercial Fund, may contract for any expert witness or consultant services necessary to defend any decision to pay or deny any claim for reimbursement, and may pay the cost of these services from the fund against which the claim is made; provided

that in any fiscal year the Department shall not expend from either fund more than one percent (1%) of the unobligated balance of the fund on 30 June of the previous fiscal year. The cost of contractual services to evaluate a claim or for expert witness or consultant services to defend a decision with respect to a claim shall be included as costs under G.S. 143-215.94B(b), 143-215.94B(b1), and 143-215.94D(b1).

(e2) An owner or operator whose claim for reimbursement is denied may appeal a decision of the Department as provided in Article 3 of Chapter 150B of the General Statutes. If the owner or operator is eligible for reimbursement under this section and the cleanup extends beyond a period of three months, the owner or operator may apply to the Department for interim reimbursements to which he is entitled under this section on a quarterly basis. If the Department fails to notify an owner or operator of its decision on a claim for reimbursement under this ~~subsection~~ section within 90 days after the date the claim is received by the Department, the owner or operator may elect to consider the claim to have been denied, and may appeal the denial as provided in Article 3 of Chapter 150B of the General Statutes.

~~(e1)~~(e3) The Department shall not pay any third party or reimburse any owner or operator who has paid any third party pursuant to any settlement agreement or consent judgment relating to a claim by or on behalf of a third party for compensation for bodily injury or property damage unless the Department has approved the settlement agreement or consent judgment prior to entry into the settlement agreement or consent judgment by the parties or entry of a consent judgment by the court. The approval or disapproval by the Department of a proposed settlement agreement or consent judgment shall be subject to challenge only in a contested case filed under Chapter 150B of the General Statutes. The Secretary shall make the final agency decision in a contested case proceeding under this subsection.

(e4) (1) If the owner or operator takes initial steps to collect and remove the discharge or release as required by the Department and completes the initial assessment required to determine degree of risk, the owner or operator shall not be subject to any violation or penalty for any failure to proceed with further assessment or cleanup under G.S. 143-215.84 or this section before the owner or operator is authorized to proceed with further assessment or cleanup as provided in subsection (e5) of this section. The lack of availability of funds in the Commercial Fund or the Noncommercial Fund shall not relieve an owner or operator of responsibility to immediately undertake to collect and remove the discharge or release or to conduct any assessment or cleanup ordered by the Department or be a defense against any violations and penalties issued to the owner or operator for failure to conduct required assessment or cleanup.

(2) The Department shall establish the degree of risk to human health and the environment posed by a discharge or release of petroleum from a commercial underground storage tank and shall determine a schedule for further assessment and cleanup that is based on the degree of risk to human health and the environment posed by the discharge or release

and that gives priority to the assessment and cleanup of discharges and releases that pose the greatest risk. If any of the costs of assessment and cleanup of the discharge or release from a commercial underground storage tank are eligible to be paid or reimbursed from the Commercial Fund, the Department shall also consider the availability of funds in the Commercial Fund and the order in which the discharge or release was reported in determining the schedule.

(3) The Department shall establish the degree of risk to human health and the environment posed by a discharge or release of petroleum from a noncommercial underground storage tank and shall determine a schedule for further assessment and cleanup that is based on the degree of risk to human health and the environment posed by the discharge or release and that gives priority to the assessment and cleanup of discharges and releases that pose the greatest risk. If any of the costs of assessment or cleanup of the discharge or release from a noncommercial underground storage tank are eligible to be paid or reimbursed from the Noncommercial Fund, the Department shall also consider the availability of funds in the Noncommercial Fund and the order in which the discharge or release was reported in determining the schedule.

(4) The Department may revise the schedules that apply to the assessment and cleanup of any discharge or release at any time based on its reassessment of any of the foregoing factors.

~~(e2)~~(e5) (1) As used in this subsection:

a. 'Authorization' means a determination by the Department that a person may proceed with one or more tasks associated with the assessment or cleanup of a discharge or release from a petroleum underground storage tank. To 'authorize' means to make such a determination.

b. 'Preapproval' means a determination by the Department that:

1. The nature and scope of a task is reasonable and necessary to be performed under G.S. 143-215.94B(b), 143-215.94B(b1), or 143-215.94D(b1) in order to achieve the purposes of this Part.

2. The amount or rate to be paid or reimbursed for a task does not exceed the amount or rate that is reasonable for that task.

~~(1)~~(2) The Department may require an owner, operator, or landowner to obtain ~~approval from the Department~~ preapproval before proceeding with any ~~task that will result in a cost that is eligible to be paid or reimbursed under G.S. 143-215.94B(b), 143-215.94B(b1), or 143-215.94D(b1).~~task. The Department shall specify those tasks for which preapproval is required. The Department shall deny any request for payment or reimbursement of the cost of any task for which

preapproval is required if the owner, operator, or landowner failed to obtain preapproval of the task. The Department shall pay or reimburse the cost of a task only if the cost is eligible to be paid under G.S. 143-215.94B(b), 143-215.94B(b1), or 143-215.94D(b1) and if the ~~Department determines that the cost is reasonable and necessary.~~task has been preapproved.

(3) The Commission may adopt rules governing payment or reimbursement of reasonable and necessary costs and, consistent with any rules adopted by the Commission, the Department shall develop, implement, and periodically revise a schedule of costs that the Department determines to be reasonable and necessary costs for specific tasks. Statements that specify tasks for which preapproval is required and schedules of reasonable and necessary costs for specific tasks are statements within the meaning of G.S. 150B-2(8a)g. This subsection shall not be construed to invalidate any rule of the Commission related to preapproval of tasks that will result in a cost that is eligible to be paid or reimbursed under G.S. 143-215.94B(b), 143-215.94B(b1), or 143-215.94D(b1), provided, however, that the Department may specify additional tasks for which preapproval is required.

(4) In all cases, the Department shall require an owner, operator, or landowner to submit documentation sufficient to establish that a ~~cost~~ claim is eligible to be paid or reimbursed under this Part before the Department pays or reimburses the ~~cost.~~claim.

(5) The Department shall authorize a task the cost of which is to be paid or reimbursed from the Commercial Fund or the Noncommercial Fund only when the task is scheduled to be performed on the basis of a priority determination pursuant to subsection (e4) of this section. The Department shall not pay or reimburse the cost of any task for which authorization is required under this subsection until the Department has preapproved and authorized the task.

~~(2)~~(6) Except as provided in subdivisions ~~(3) and (4)~~(8) and (9) of this subsection, the Department shall not ~~preapprove~~ authorize any task the cost of which is to be paid or reimbursed from the Commercial Fund or the Noncommercial Fund unless the Department determines, based on the scope of the work to be performed and the schedule of reasonable and necessary costs, that sufficient funds will be available in the Commercial Fund or the Noncommercial Fund, whichever applies, to pay ~~a claim for payment or reimbursement of~~ or reimburse the cost of that task within 90 days after the Department determines that the owner, operator, or landowner has submitted a claim with documentation sufficient to establish that the ~~owner, operator, or landowner~~ claim is eligible to ~~have the claim~~ be paid under this Part. ~~Except as provided in subdivisions (3) and (4) of this subsection, the~~

~~Department shall not preapprove any task the cost of which is to be paid or reimbursed from the Noncommercial Fund unless the Department determines, based on the scope of the work to be performed and the schedule of reasonable and necessary costs, that sufficient funds will be available in the Noncommercial Fund to pay a claim for payment or reimbursement of the cost of that task within 90 days after the Department determines that the owner, operator, or landowner has submitted a claim with documentation sufficient to establish that the owner, operator, or landowner is eligible to have the claim paid under this Part.~~

(7) This subsection shall not be construed to establish a cause of action against the Commission or the Department for any failure to pay or reimburse any cost within any specific period of time. This subsection shall not be construed to establish a defense to any action to enforce the requirements of either G.S. 143-215.84 or subsection (a) of this section. ~~This subsection shall not be construed to invalidate any rule of the Commission related to preapproval of tasks that will result in a cost that is eligible to be paid or reimbursed under G.S. 143-215.94B(b), 143-215.94B(b1), or 143-215.94D(b1), provided, however, that the Department may specify additional tasks for which preapproval is required as provided in this subsection.~~

~~(3)~~(8) The Department may preapprove and authorize a task the cost of which is to be paid or reimbursed from the Commercial Fund or the Noncommercial Fund ~~when sufficient funds will not be available to pay a claim for payment or reimbursement of the cost of that task within the 90-day period described in subdivision (2)~~ that has not been authorized pursuant to subdivisions (5) and (6) of this subsection if the owner, operator, or landowner specifically requests that the task be ~~preapproved~~ authorized and agrees that the claim for payment or reimbursement of the cost will not be paid until after the Department has paid all claims for payment or reimbursement of costs for tasks that the Department has ~~preapproved~~ authorized pursuant to ~~subdivision (2)~~subdivisions (5) and (6) of this subsection.

~~(4)~~(9) The Department may preapprove and authorize a task the cost of which is to be paid or reimbursed from the Commercial Fund or the Noncommercial Fund ~~when sufficient funds will not be available to pay a claim for payment or reimbursement of the cost of that task within the 90-day period described in subdivision (2)~~ that has not been authorized pursuant to subdivisions (5) and (6) of this subsection if the discharge or release creates an emergency situation. An emergency situation exists when a discharge or release of petroleum results in an imminent threat to human health or the environment. A claim for payment or reimbursement of costs for tasks that are ~~preapproved~~ authorized under this subdivision shall be paid or reimbursed on the

same basis as tasks that are ~~preapproved~~ authorized under ~~subdivision (2)~~ subdivisions (5) and (6) of this subsection.

(f) Repealed by Session Laws 2003-352, s. 6, effective July 27, 2003.

(f1) Any person seeking payment or reimbursement from either the Commercial Fund or the Noncommercial Fund shall certify to the Department that the costs to be paid or reimbursed by the Commercial Fund or the Noncommercial Fund are not eligible to be paid or reimbursed by or from any other source, including any contract of insurance. If any cost paid or reimbursed by the Commercial Fund or the Noncommercial Fund is eligible to be paid or reimbursed by or from another source, that cost shall not be paid from, or if paid shall be repaid to, the Commercial Fund or the Noncommercial Fund. As used in this Part, the phrase "any other source including any contract of insurance" does not include self-insurance.

(g) No owner or operator shall be reimbursed pursuant to this section, and the Department shall seek reimbursement of the appropriate fund or of the Department for any monies disbursed from the appropriate fund or expended by the Department if any of the following apply:

(1) The owner or operator has willfully violated any substantive law, rule, or regulation applicable to underground storage tanks and intended to prevent or mitigate discharges or releases or to facilitate the early detection of discharges or releases.

(2) The discharge or release is the result of the owner's or operator's willful or wanton misconduct.

(3) The owner or operator has failed to pay any annual tank operating fee due pursuant to G.S. 143-215.94C.

(h) Subdivision (1) of subsection (g) of this section shall not be construed to limit the right of an owner or operator to contest notices of violation or orders issued by the Department. Subdivision (1) of subsection (g) of this section shall not apply to a payment or reimbursement pursuant to this section if, at the time of the discharge or release, the owner or operator holds a valid operating permit as required by G.S. 143-215.94U.

~~(i) An owner or operator who notifies the Department of an intention to close or upgrade a commercial underground storage tank as provided in G.S. 143-215.94B(b)(2a) shall commence the closure or upgrade prior to 1 July 1994 and shall complete the closure or upgrade prior to 1 January 1995. An owner who notifies the Department of an intention to close or upgrade a commercial underground storage tank and who fails to commence and complete the closure as specified in this subsection is subject to a civil penalty as provided in G.S. 143-215.94W. The provisions of G.S. 143-215.94B(b)(2a) do not apply if an owner or operator who notifies the Department of an intention to close or upgrade a commercial underground storage tank fails to commence or complete the closure or upgrade within the dates specified in this subsection.~~

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

SECTION 2. Notwithstanding Section 13 of S.L. 2003-352, Section 10 of S.L. 2003-352, as amended by subsection (e) of Section 30.10 of S.L. 2004-124, and as codified and amended by Section 1 of this act, shall continue in effect.

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

Exhibit #16

HOUSE BILL 1385:
Underground Storage Tank Amendments

BILL ANALYSIS

Committee:	House Environment and Natural Resources	**Date:**	May 26, 2005
Introduced by:	Rep. Gibson	**Summary by:**	Tim Dodge
Version:	PCS to First Edition H1385-CSRT-20		Legislative Analyst

SUMMARY: ***The Proposed Committee Substitute (PCS) for House Bill 1385 amends the statutes related to the cleanup of leaking underground storage tank (UST) sites under the Commercial Leaking Petroleum Underground Storage Tank Cleanup Fund (Commercial Fund) and the Noncommercial Leaking Petroleum Underground Storage Tank Cleanup Fund (Noncommercial Fund) to make the following changes:***

- ***Codifies and repeals the sunset on the requirement that the Department of Environment and Natural Resources (DENR) prioritize or determine a schedule for cleanup based on the degree of risk to human health and the environment posed by each site.***
- ***Makes clarifying changes to the use of the terms "approve", "preapprove"(by eliminating its double meaning), and "authorize".***
- ***Makes other clarifying and conforming changes.***

BILL ANALYSIS:

The PCS codifies the provisions related to prioritization of cleanups at UST sites contained in S.L. 2004-124 (The 2004 Appropriations Act), removes the sunset on the prioritization requirements, and makes other technical and clarifying changes to the use of the terms "approve", "preapprove" (by eliminating its double meaning), and "authorize". The term "preapproval" is defined to mean a determination by DENR that: (1) the nature and scope of a task is reasonable and necessary under the requirements of the Commercial and Noncommercial Funds; and (2) that the amount or rate to be paid or reimbursed does not exceed the amount or rate that is reasonable for that task. "Authorization" means a determination by DENR that a person may proceed with one or more tasks associated with the assessment or cleanup of a discharge or release from a UST.

CURRENT LAW:

Prioritization. The General Assembly directed DENR in 2003 to establish the degree of risk to human health and the environment posed by *commercial* UST releases and to determine a schedule for further assessment and cleanup based on those factors. Once DENR has established a cleanup schedule, the costs of any assessment or cleanup activities are not eligible for reimbursement from the Commercial Fund until the actions are authorized by DENR pursuant to the schedule. An owner, operator, or other person may choose to undertake assessment or cleanup before receiving authorization from DENR, but the costs for the assessment or cleanup will be reimbursed only after DENR has paid or reimbursed the costs for all assessments and cleanups authorized by DENR. In 2004, The General Assembly extended the prioritization requirements to *noncommercial* sites. The prioritization requirements for commercial and noncommercial sites are scheduled to expire on October 1, 2005.

Preapproval. In 2004, the General Assembly authorized DENR to identify and develop a list of tasks that require preapproval (in this bill, "authorization") and directed DENR to not approve (in this bill, "authorize") any tasks that require preapproval for payment or reimbursement from the Commercial or Noncommercial Funds unless DENR determined that sufficient funds would be available to pay the claim for reimbursement within 90 days after approval of the claim, with two exceptions:

- First, at the request of the UST owner, operator, or landowner, DENR may preapprove ("authorize") tasks when sufficient funds are not available to pay the claim for reimbursement within 90 days if the owner, operator, or landowner agrees that the claim will not be paid until after DENR has paid all claims for reimbursement that were submitted through the normal preapproval (and "authorization") process.
- Second, DENR may preapprove ("authorize") tasks if the discharge or release creates an emergency situation. These tasks may be reimbursed on the same basis as those approved ("preapproved" and "authorized") through the normal preapproval (and "authorization") process.

EFFECTIVE DATE:

The PCS would become effective when it becomes law.

BACKGROUND:

In 1988, the General Assembly established the Commercial Fund and the Noncommercial Fund to provide reimbursement for costs incurred during the cleanup of soil and groundwater contamination resulting from a release of petroleum from a UST. The Commercial Fund receives revenue from three sources: a small portion of the motor fuel excise tax, an inspection tax on motor fuel and kerosene, and an operating fee for USTs. The Noncommercial Fund receives revenue from the motor fuel excise tax and the inspection tax on motor fuel and kerosene. While the Funds continue to provide reimbursement for some assessment and remediation activities, the costs have continued to exceed the revenues to the Funds.

H1385e1-SMSY-CSRT-20

Exhibit #17

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 1385 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 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) 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
May 31, 2005

The House Committee on Environment and Natural Resources met on May 31, 2005 in Room 623 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 and Harrison; Representatives Blackwood, Carney, Culp, Daughtridge, Goodwin, Gulley, Hackney, Insko, Martin, McGee, Mahan, Owens, Stiller, Underhill, Weiss, and Womble. Assisting with the meeting were George Givens, Committee Counsel; Jeffrey Hudson, Assistant Committee Counsel; Jennifer McGinnis, Assistant Committee Counsel; Tim Dodge, Committee Analyst; and Sergeant-at-Arms.

Chairman Justice called the meeting to order. The committee substitute to HB 1336, adopted last Thursday, was displaced. Chairman Harrell moved to adopt, for discussion purposes, the PCS version RT28. The motion carried. Representative Tolson explained **HB 1336, A Bill To Be Entitled An Act To Phase Out The Use Of Methyl Tertiary Butyl Ether (MTBE) In Gasoline And All Other Fuels.** After some discussion, Donny Redmond, of the Division of Air Quality, spoke on the Bill. Elizabeth Ouzts, Director of the N.C. Public Interest Research Group, spoke in favor of the Bill. More discussion followed, and Representative Daughtridge sent forth an Amendment. After Representative Daughtridge explained the Amendment, Representative McMahan sent forth a perfecting amendment. After discussion on the Amendments, a vote was taken and Representative McMahan's perfecting Amendment was approved by a vote of 15-3. Representative Daughtridge's Amendment, however, failed by a vote of 10-11. Representative Harrison moved to adopt the PCS RT28, which changes the title, unfavorable to the original Bill. The motion carried.

The meeting adjourned at 1:00 p.m.

Respectfully Submitted,

Rep. Carolyn Justice
Presiding Chair

Vivian Sherrell
Committee Assistant

Agenda
Amendment
Attendance
Bills Considered
Visitor Registration
Proposed Committee Substitute
Committee Reports

CORRECTED NOTICE
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: **Tuesday May 31, 2005**

TIME: **12:00 Noon**

LOCATION: **Room 643 Legislative Office Building**

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

HB 1336 An Act to Phase Out The Use Of Methyl Tertiary Butyl Ether (MTBE In Gasoline And All Other Fuels
Representative Tolson

Respectfully,
Representative Carolyn Justice, Presiding Chair
Representative Harrell, Co-chair

I hereby certify this notice was filed by the committee assistant at the following offices at **2:50p.m. on May 26, 2005**

_x__Principal Clerk
_x__Reading Clerk - House Chamber

Vivian Sherrell (Committee Assistant)

HOUSE COMMITTEE ON ENVIRONMENT AND NATURAL RESOURCES

AGENDA

12:00 Noon
Tuesday May 31, 2005
Room 643 Legislative Office Building

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

2. **Introductory Remarks by Cochairs**

3. **Recognition of Pages and Sergeant-at-Arms**

4. **Order of Business**

   HB1136 – Phase Out the Use of MTBE's in Fuels.

5. **Adjourn**

VISITOR REGISTRATION SHEET

House Committee on Environment & Natural Resources **May 31, 2005**

Name of Committee Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE ASSISTANT

NAME	FIRM OR AGENCY AND ADDRESS
Lucius Pullen	NC Mining Association
Gary Harris	NC Petroleum Marketers
Bill Weathington	NC-API
Doug Howey	NC PMA
Elizabeth Quets	NCPIRG
Johanna Reese	DENR
PGP	NCFB
JERRY KARLESKY	NCPC
John Cyrus	NCSG
Eben Polk	Clean Water Mgmt Trust Fund
Kate Retzer	Sierra Club
Sharon Strauch	State Energy Office
Ivan Urlaub	NCSEA
Ben Barnes	NC Conservation Network
Erin Kinney	NC Conservation Network
Cynthia Shurling	Conservation Council
Michael Nelson	Conservation Council
DAVE BRADY	AEP
Jennifer Bumgarner	Governor's Policy Office
DONNIE REDMOND	NC DAQ
Emily Hanawalt	NCPIRG
Eboni Bledsoe	NCPIRG
Lauren McLaughlin	TNC
M.B. Diggins	Sierra Club
Elizabeth Self	Sierra Club
Norman Miller	Sierra Club
Steve Lund	DENR

VISITOR REGISTRATION SHEET

House Committee on Environment & Natural Resources **May 31, 2005**

Name of Committee Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE ASSISTANT

NAME	FIRM OR AGENCY AND ADDRESS
Kathy Hawkins	Progress Energy
~~Duke Energy~~	
John McAlister	Duke Energy
Lora Pierce	Duke Energy
Theresa Kosky	CAA

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

HOUSE BILL 1336

Short Title:	Phase Out the Use of MTBE's in Fuels.	(Public)
Sponsors:	Representatives Tolson, Insko (Primary Sponsors); Fisher and Harrison.	
Referred to:	Environment and Natural Resources.	

April 21, 2005

A BILL TO BE ENTITLED

AN ACT TO PHASE OUT THE USE OF METHYL TERTIARY BUTYL ETHER (MTBE) IN GASOLINE AND ALL OTHER FUELS.

The General Assembly of North Carolina enacts:

SECTION 1. Part 1 of Article 21 of Chapter 143 of the General Statutes is amended by adding a new section to read:

"**§ 143-214.4A. Phase out of the use of MTBE in fuels.**

(a) The Secretary shall develop and implement a plan for the phaseout of the use of MTBE in a manner that will eliminate, no later than December 31, 2007, MTBE as an additive for gasoline, diesel, home heating oil, airplane gasoline, and all other fuels. The Secretary shall submit two reports to the Environmental Review Commission on how the elimination of MTBE will be achieved, with the first report being issued no later than January 1, 2007, and the second no later than July 1, 2007. Each report shall include a progress update on the status of State and regional efforts to eliminate MTBE in all fuels.

(b) As used in this section, 'MTBE' means the fuel additive methyl tertiary butyl ether.

(c) The Environmental Management Commission may adopt rules to implement this section."

SECTION 2. This act becomes effective October 1, 2005.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H D

HOUSE BILL 1336
PROPOSED COMMITTEE SUBSTITUTE H1336-PCS70494-RT-28

Short Title: Prohibit MTBE in Fuels/Regional Cooperation. (Public)

Sponsors:

Referred to:

April 21, 2005

A BILL TO BE ENTITLED

AN ACT TO PROHIBIT THE USE OF METHYL TERTIARY BUTYL ETHER (MTBE) IN MOTOR FUELS, TO DIRECT THE SECRETARY OF ENVIRONMENT AND NATURAL RESOURCES AND THE COMMISSIONER OF AGRICULTURE TO STUDY THE FEASIBILITY AND ADVANTAGES OF A COORDINATED APPROACH TO THE PHASEOUT OF MTBE IN THE SOUTHEAST REGION OF THE UNITED STATES, AND TO DIRECT THE SECRETARY AND THE COMMISSIONER TO WORK COOPERATIVELY WITH SOUTHEASTERN STATES TO DEVELOP AND IMPLEMENT A REGIONAL APPROACH.

The General Assembly of North Carolina enacts:

SECTION 1. Article 3 of Chapter 119 of the General Statutes is amended by adding a new section to read:

"**§ 119-26.3. MTBE in motor fuels prohibited.**

(a) Definitions. – As used in this section:

(1) 'MTBE' means the fuel additive methyl tertiary butyl ether.

(2) 'Motor fuel' has the same meaning as in G.S. 105-449.60.

(b) Prohibition; De Minimis Exception. – No person shall knowingly add MTBE to any motor fuel manufactured, distributed, stored, sold, or offered for sale in this State. No person shall manufacture, distribute, store, sell, or offer for sale motor fuel that contains a concentration of MTBE of more than one-half of one percent (0.5%) by volume in this State. The presence of MTBE in a motor fuel caused solely by incidental commingling of the motor fuel with other motor fuel that contains MTBE during transfer or storage of the motor fuel does not constitute a violation of this section.

(c) Transportation Through State Not Prohibited. – This section shall not be construed to prohibit the transport of motor fuel containing MTBE through this State.

(d) Rules. – The Gasoline and Oil Inspection Board shall adopt rules to implement this section."

SECTION 2. The Secretary of Environment and Natural Resources and the Commissioner of Agriculture shall jointly study the feasibility and advantages of a coordinated regional approach for the phaseout of methyl tertiary butyl ether (MTBE) as an additive to motor fuel in the southeast region of the United States. The study shall consider the potential impacts on fuel supply and availability and the potential benefits and costs associated with the use of MTBE. In the course of the study, the Secretary and the Commissioner shall consult with the following:

(1) Other southeastern states, including Alabama, Georgia, ~~Kentucky,~~ Mississippi, South Carolina, Tennessee, and Virginia.

(2) Refiners, suppliers, distributors, transporters, and retailers of motor fuel and liquid fuel pipeline operators.

(3) Consumer, environmental, and other public interest groups.

(4) The United States Environmental Protection Agency and other relevant governmental agencies.

SECTION 3. The Secretary of Environment and Natural Resources and the Commissioner of Agriculture shall work cooperatively with other southeastern states to develop and implement a coordinated approach to the phaseout of methyl tertiary butyl ether (MTBE) as an additive to motor fuel in the southeast region consistent with G.S. 119-26.3, as enacted by Section 1 of this act.

SECTION 4. The Secretary of Environment and Natural Resources and the Commissioner of Agriculture shall jointly report on the results of the study required by Section 2 of this act and on progress in developing a coordinated regional approach to the phaseout of methyl tertiary butyl ether (MTBE) as an additive to motor fuel pursuant to Section 3 of this act to the Environmental Review Commission. The Secretary and Commissioner shall submit an interim report on or before 1 March 2006 and a final report, including any findings and recommendations, on or before 1 March 2007.

SECTION 5. Section 1 of this act becomes effective 1 January 2008. Sections 2 through 5 of this act are effective when this act becomes law.

HOUSE BILL 1336:
Prohibit MTBE in Fuels/Regional Cooperation.

BILL ANALYSIS

Committee:	House Environment and Natural Resources	**Date:**	May 31, 2005
Introduced by:	Reps. Tolson, Insko	**Summary by:**	Tim Dodge
Version:	PCS to First Edition H1336-CSRT-22 [v.3]		Legislative Analyst

SUMMARY: ***The Proposed Committee Substitute (PCS) for House Bill 1336 would prohibit the use of the additive methyl tertiary butyl ether (MTBE) in motor fuels, effective January 1, 2008. The PCS also directs the Secretary of Environment and Natural Resources and the Commissioner of Agriculture to study the feasibility and advantages of a coordinated approach to the phaseout of MTBE in the southeast region of the United States and to work cooperatively with other southeastern states to develop and implement a regional approach to the phaseout of MTBE.***

BILL ANALYSIS:

Prohibit use of MTBE in North Carolina.

The PCS would prohibit a person from knowingly adding MTBE to any motor fuel manufactured, distributed, stored, sold or offered for sale in the State. In addition, the PCS would prohibit the manufacture, distribution, storage, sale, or offer for sale of motor fuel that contains MTBE in a concentration of more than 0.5% by volume. The PCS provides that presence of MTBE caused solely by the incidental commingling of motor fuel with other motor fuel that contains MTBE is not considered a violation. The prohibition would become effective January 1, 2008.

A person who violates this prohibition is subject to an administrative penalty not to exceed $5,000 and would be guilty of a Class 1 misdemeanor, which is punishable by 1 to 45 days of community punishment, assuming no prior convictions.

Regional phaseout of MTBE in southeastern states.

The PCS also directs the Secretary of Environment and Natural Resources and the Commissioner of Agriculture to:

- Study the feasibility and advantages of a coordinated approach to the phaseout of MTBE in the southeast region of the United States.
- Work cooperatively with other southeastern states to develop and implement a regional approach to the phase-out of MTBE.
- Report to the Environmental Review Commission on the study and progress in implementing a coordinated regional approach to the phaseout of MTBE. An interim report is due no later than March 1, 2006 and the final report, including any findings and recommendations, is due no later than March 1, 2007.

EFFECTIVE DATE: The prohibition would become effective January 1, 2008. The other provisions of the PCS would become effective when the PCS becomes law.

BACKGROUND: MTBE has been used as a gasoline additive since 1979 as an octane enhancer to replace organic lead. Since 1992, MTBE has also been used as a gasoline oxygenate additive in certain areas of the country to meet requirements of the federal Clean Air Act Amendments (CAAA) of 1990, which mandated the use of reformulated gasoline (RFG) in areas that exceeded certain national ambient air quality standards. The two most commonly used classes of oxygenates are ethers, such as MTBE, and ethanol. The U.S. Environmental Protection Agency (EPA) estimated in 2002 that MTBE was used as an additive in 87% of the gasoline sold in the U.S.[1]

An unintended consequence of using MTBE to address air quality issues has been impacts to groundwater. MTBE is highly soluble in water and when released into the soil as a result of a spill or leak, it tends to migrate more rapidly than other gasoline constituents and quickly spreads the contamination in groundwater. While the full extent of MTBE contamination in the State is unknown, the Underground Storage Tank (UST) Section of the Division of Waste Management of the Department of Environment and Natural Resources (DENR) estimates that MTBE contamination is present at 2,054 of the 9,079 active UST sites in the State, and that 245 water supply wells have been contaminated with MTBE at these sites.[2]

The health effects of MTBE have not been conclusively established, but EPA has determined it to be a potential human carcinogen. Because of the scientific uncertainties, however, EPA has not regulated MTBE. 21 states, however, have partially or completely banned the use of MTBE (see attached table).

H1336e2-SMSY-CSRT-22

[1] Stephenson, J. *MTBE Contamination from Underground Storage Tanks.* U.S. General Accounting Office. May 22, 2002.
[2] Email correspondence from Robert Krebs, Corrective Action Branch Head, UST Section, Division of Waste Management, DENR. May 24, 2005.

State Actions Banning MTBE (Statewide)

The following states have either a partial or complete ban on MTBE (methyl tertiary-butyl ether). For more information on MTBE, please visit the U.S. Environmental Protection Agency's (EPA's) Web site at www.epa.gov/mtbe. [1]

State (EPA Region)	Phaseout date (in chronological order)	Complete or partial ban?	Applies to other oxygenates?	Date of adoption
IA (7)	7/1/00	Partial: no more than trace amounts (0.5% by vol.) MTBE in motor vehicle fuel.	MTBE only	5/11/00 Replaced previous limit of 2% (vol.)
MN (5)	7/2/00 (partial) 7/2/05 (complete)	Partial/then complete: no more than 1/3 of 1% oxygenate as of 7/2/00; complete ban as of 7/2/05.	MTBE, ETBE[2], and TAME[3]	Early 2000
NE (7)	7/13/00	Partial: no more than 1% (vol.) MTBE in any petroleum product.	MTBE only	4/11/00
SD (8)	7/1/01	Partial: no more than trace amounts (less than 0.5% vol.) resulting from commingling during storage of transfer.	MTBE only	2/28/01 Replaced previous limit of 2% (vol.)
CO (8)	4/30/02	Complete ban by 4/30/02	MTBE only	5/23/00
CA (9)	Originally 12/31/02; delayed to 12/31/03	Complete ban by 12/31/02, but latest Exec. Order requires CARB to implement by 7/31/02 a one-year delay in ban. On 7/25/02, CARB delayed the ban by 1 year.	MTBE only	10/9/99 (Orig. E.O. issued 3/25/99; latest E.O. issued 3/15/02)
MI (5)	6/1/03	Complete ban by 6/1/03; can be extended if determined by 6/1/02 that phaseout date is not achievable.	MTBE only	6/26/00
CT (1)	1/1/04	Complete ban by 1/1/04, planned in conjunction with NESCAUM regional fuels task force.	MTBE only	6/1/00 (Orig. phaseout date10/1/03; extended to 1/1/04 on 6/18/03)

[1] Updated version of United States Environmental Protection Agency "State Actions Banning MTBE (Statewide)

EPA420-B-04-009 June 2004

[2] ETBE stands for Ethyl tertiary butyl ether

[3] TAME stands for Tertiary amyl methyl ether

State (EPA Region)	Phaseout date (in chronological order)	Complete or partial ban?	Applies to other oxygenates?	Date of adoption
NY (2)	1/1/04	Complete ban as of 1/1/04.	MTBE only	5/24/00
WA (10)	1/1/04	Partial: may not be intentionally added to fuel, or knowingly mixed in gasoline above 0.6% (vol.)	MTBE only	5/10/01
KS (7)	7/1/04	Partial: may not sell or deliver any motor vehicle fuel containing more than 0.5% (vol.) MTBE	MTBE only	4/19/01
IL (5)	7/24/04	Partial: may not use, sell or manufacture MTBE as a fuel additive, but may sell motor fuel containing trace amounts of MTBE (0.5% or less by volume)	MTBE only	7/24/01 (original ban) revised 6/24/02 to allow trace amounts
IN (5)	7/24/04	Partial: no more than 0.5% (vol.) MTBE in gasoline	MTBE only	3/14/02
WI (5)	8/1/04	Partial: no more than 0.5% (vol.) MTBE in gasoline	MTBE only	8/11/03
AZ (9)	1/1/05	Complete ban by 1/1/05[4]	MTBE only	5//2004
OH (5)	7/1/05	Partial: no more than 0.5% (vol.) MTBE in motor vehicle fuels	MTBE only	5/29/02
MO (7)	7/31/05	Partial: no more than 0.5% (vol.) MTBE in gasoline sold or stored	MTBE only	7/11/02
KY (4)	1/1/06	Partial: no more than trace amounts of MTBE in fuel after this date	MTBE only	4/23/02
ME (1)	1/1/07	Partial: no more than 0.5% (vol.) MTBE in gasoline sold.	MTBE only	4/14/04
NH (1)	The latter of 1/1/07 or 6 months after Federal approval to opt out of RFG	Partial: no more than 0.5% (vol.) in gasoline sold or stored	MTBE, other gasoline ethers, or tertiary butyl alcohol (TBA)	5/27/04
VT (1)	1/1/07	Complete ban by 1/1/07[5]	MTBE only	5/23/05

[4] Arizona Water Resource. AZ bans gas additive to protect water, May 2004, available from http://ag.arizona.edu/AZWATER/awr/mayjune04/news.html ; Internet; accessed 25 May 2005.

[5] Office of the Governor of Vermont. Subject: Governor Signs Bill Banning Fuel Additive that Pollutes Soil and Water, 23 May 2005, available from http://www.vermont.gov/tools/whatsnew2/index.php?topic=GovPressReleases&id=1313&v=Article; Internet; accessed 25 May 2005

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. 1336 DATE 5-31-05

S. B. No. _____ Amendment No. _____

COMMITTEE SUBSTITUTE ✓ H1336-PCS70494-RT-28 (to be filled in by Principal Clerk)

(Rep.) Sen.) Daughtridge

1 moves to amend the bill on page 2, lines 27 and 28

2 ( ) WHICH CHANGES THE TITLE

3 by rewriting those lines to read:

4 _____

" **SECTION 5.** Section 1 of this act becomes effective 1 January 2008 only if all of the states listed in subdivision (1) of Section 2 of this act enact or adopt prohibitions on the use of methyl tertiary butyl ether (MTBE) as an additive to motor fuel that are substantially similar to the prohibition set out in Section 1 of this act and that those prohibitions become effective on or before 1 January 2008, as jointly determined by the Secretary of Environment and Natural Resources and the Commissioner of Agriculture. The Secretary and the Commissioner shall make the determination no later than 30 December 2007 and shall notify the Revisor of Statutes and the Environmental Review Commission of the determination. Sections 2 through 5 of this act are effective when this act becomes law. ".

15 _____

16 _____

17 _____

18 _____

19 _____

SIGNED _____

ADOPTED _____ FAILED _____ TABLED _____

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. 1336 DATE 31 May 2005

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

COMMITTEE SUBSTITUTE H1136-PCS70494-RT-28

Rep.) ~~Howard~~ McMahan

) _____

~~Sen.~~)

A pertaining amendment

moves to amend the bill on page 2, line 8

( ) WHICH CHANGES THE TITLE

by deleting "Kentucky," and on

the second unnumbered line of

Amendment #1, delete "all" and

substitute "A majority".

SIGNED ~~Howard~~ McMahan

ADOPTED 31 May 2005 FAILED _____ TABLED _____

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

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 1336 A BILL TO BE ENTITLED AN ACT TO PHASE OUT THE USE OF METHYL TERTIARY BUTYL ETHER (MTBE) IN GASOLINE AND ALL OTHER FUELS.

☒ 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) 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

COMMITTEE CHAIRS
Representative James A. Harrell, III
Representative Carolyn H. Justice

2005 - 2006 SESSION
BOOK TWO

Committee Assistants
Beth LeGrande
Vivian Sherrell

ATTENDANCE

HOUSE ENVIRONMENT & NATURAL RESOURCES 2005-2006

DATES	06-14-'05	06-28-'05	07-05-'05	07-26-'05	08-09-'05	08-11-'05									
REP. JIM HARRELL, III, CHAIR	P	P	P		P	P									
REP. CAROLYN JUSTICE, CHAIR	P	P	P	P	P	P									
REP. LUCY ALLEN, VICE CHAIR	P	P	P	P	P	P									
REP. PRICEY HARRISON, VICE	P	P	P		P	P									
REP. DANIEL MCCOMAS, VICE		P	P	P		P									
REP. CURTIS BLACKWOOD	P	P	P	P	P	P									
REP. RUSSELL CAPPS		P	P	P		P									
REP. BECKY CARNEY	P	P		P	P	P									
REP. ARLIE CULP	P	P		P	P	P									
REP. BILL DAUGHTRIDGE	P	P	P	P	P	P									
REP. PRYOR GIBSON	P	P	P	P	P	P									
REP. MITCH GILLESPIE	P		P		P										
REP. MELANIE GOODWIN	P	P	P	P	P	P									
REP. JIM GULLEY	P	P	P	P	P	P									
REP. JOE HACKNEY		P	P		P	P									
REP. PHILLIP HAIRE		P	P	P	P	P									
REP. VERLA INSKO			P												
REP. STEPHEN LaROQUE	P	P	P		P										
REP. PAUL LUEBKE		P	P	P	P	P									
REP. GRIER MARTIN	P	P	P	P	P	P									
REP. BILL McGEE		P	P	P	P	P									
REP. ED McMAHAN		P	P		P										
REP. BILL OWENS						P									
REP. JEAN PRESTON					P										
REP. BONNER STILLER	P	P	P	P	P	P									
REP. ALICE UNDERHILL	P	P	P	P	E										
REP. JENNIFER WEISS		P	P	P	P	P									
REP. LARRY WOMBLE	P	P	P	P	P	P									

ATTENDANCE

HOUSE ENVIRONMENT & NATURAL RESOURCES 2005-06

EX-OFFICIOS

DATES															
REP. BILL CULPEPPER															
REP. PETE CUNNINGHAM															
REP. RICK EDDINS															
REP. JOE HACKNEY															

MINUTES
HOUSE COMMITTEE ON
ENVIRONMENT AND NATURAL RESOURCES

Tuesday, June 14, 2005

The House Committee on Environment and Natural Resources met on Tuesday, June 14, 2005, in Room 643 of the Legislative Office Building at 12:00 Noon. The following members were present: Representative James A. Harrell, III, Presiding Chair; Representative Carolyn Justice, Chair; Representative Lucy Allen, Vice Chair; Representative Pricey Harrison, Vice Chair; Representative Curtis Blackwood, Representative Becky Carney, Representative Arlie Culp, Representative Bill Daughtridge, Representative Pryor Gibson, Representative Mitch Gillespie, Representative Melanie Goodwin, Representative Jim Gulley, Representative Steven LaRoque, Representative Grier Martin, Representative Bonner Stiller, Representative Alice Underhill, and Representative Larry Womble.

A Visitor Registration list 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 Committee Counsel George Givens and his staff were recognized. Visitors were welcomed.

Representative Harrell announced the postponement **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.**

Kate Dixon, Director for Land for Tomorrow Coalition, was recognized to give a report on the results of the Land for Tomorrow Coalition's conservation needs assessments. (Please see Exhibit #2). Ms. Dixon explained that for the last 18 months the Coalition has been developing an assessment of need along with a vision on how to protect land and historic properties in North Carolina. An overview of the report was presented.

Representative Underhill asked why the Farmland Preservation Trust Fund was not listed. Ms. Dixon explained that the recommendation is that three trust funds be broadened. First the Farmland Preservation Trust Fund broadened to include "working", thereby becoming Working Lands Sustainable Community Trust Funds. Natural Heritage expanded to Natural and Cultural Heritage, which includes historic preservation. Lastly, the Clean Water Management Trust Fund is expanded to fund land-based initiatives to protect air quality. With no further questions Representative Harrell thanked Ms. Dixon for the presentation.

There being no further business, the meeting was adjourned at 12:30 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: **Tuesday, June 14, 2005**

TIME: **12 Noon**

LOCATION: **643 Legislative Office Building**

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

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

- **REPORT BY THE LAND FOR TOMORROW COALITION ON THE RESULTS OF ITS CONSERVATION NEEDS ASSESSMENT**
  KATHERINE M. DIXON, DIRECTOR
  LAND FOR TOMORROW COALITION

Respectfully,
Representatives Harrell and Justice
Chairs

I hereby certify this notice was filed by the committee assistant at the following offices at **1:30 P.M.** on **June 9, 2005.**

___Principal Clerk
___Reading Clerk - House Chamber

Beth LeGrande (Committee Assistant)

HOUSE COMMITTEE ON ENVIRONMENT AND NATURAL RESOURCES

AGENDA

12:00 Noon
Tuesday June 14, 2005
Room 643 Legislative Office Building

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

2. Introductory Remarks by Cochairs

3. Recognition of Pages

4. Bills for Consideration

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

   - **REPORT BY THE LAND FOR TOMORROW COALITION ON THE RESULTS OF ITS CONSERVATION NEEDS ASSESSMENT**
     KATHERINE M. DIXON, DIRECTOR
     LAND FOR TOMORROW COALITION

5. Adjourn

VISITOR REGISTRATION SHEET

Environment & Natural Res — 06/14/05

Name of Committee — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE ASSISTANT

NAME	FIRM OR AGENCY
Eben Polk	CWMTF
Lucius Pullen	NC Mining Association
R. Paul Wilms	N CHBA
Lisa Martin	"
Sandra Long	Martin Marietta Materials
Jerry Hardesty	NCPC / FB
David Meredith	NC State Grange
John Cyrus	NCSG
Tisha Johnson	Land 4 Tomorrow
Lauren McLaughlin	TNC
T Hammond	Intern
Johanna Reese	DENR
David Knight	TNC
Robin Smith	DENR
Cynthia Shurling	Conservation Council
Steve Wall	DENR
Michael Nelson	Conservation Council
Erin Kinsey	NC Conservation Network
Edgar Miller	CTNC
Kim Hargett	Rep. Gibson
Rebecca Ray	intern
[illegible]	NCSS

House Pages

Name Of Committee: ENRS Date: 06/14/05

1. Name: Jennifer Durham
   County: Pasquotank
   Sponsor: Rep. Owens
2. Name: Malia Zaytoun
   County: Craven
   Sponsor: Rep. Undernill
3. Name: Allison Farless
   County: Chowan
   Sponsor: Culpepper
4. Name: Kaitlin Bunch
   County: Chowan
   Sponsor: Culpepper
5. Name: Kallie Wease
   County: Lincoln
   Sponsor: Joe Kiser

Sgt-At-Arms

1. Name: Tom Wilder
2. Name: Martha Pannill
3. Name: Jay Callaway
4. Name: Jim Womack
5. Name:

Exhibit # 2



Land *for* Tomorrow

A *partnership* of organizations and North Carolinians working together to:

- Build awareness of need for land conservation and historic preservation in North Carolina
- Advocate for funding to meet the need

Saving the Goodliest Land

Why act now?

To Grow the Economy and Provide Jobs

- Some of North Carolina's most important industries depend on undeveloped land and historic places:
  - Agriculture
  - Tourism
  - Forest Products
  - Military Bases
  - Fishing
- Quality of life helps recruit industry and encourage entrepreneurship

Rural North Carolina

Between 2000 and 2003:

- More than 73,000 layoffs in rural counties

Rural NC needs help:

- Growing industries that make economic use of their special natural, rural and historic resources
- Maintaining quality of life amenities such as parks and vibrant downtowns

To Protect Our Water

Finding:

More than 2,600 miles of freshwater streams do not meet water quality standards

Recommendation:

Protect buffers along the banks of rivers and sounds

To Clean Our Air

Findings:

Federal government has declared:

- Ozone levels unsafe in 32 NC counties
- Small particulate matter unsafe in three counties

Recommendation:

Plant and protect trees to improve the state's air quality

To Fight Obesity

Findings:

- Obesity is second-leading cause of preventable death
- Medical costs for treating obesity total $2.1 billion annually

Recommendation:

Build more parks and trails to provide convenient opportunities for physical activity

To Protect Native Plants and Wildlife

Finding:

North Carolina is one of the world's ecological hot spots, but 18% of North Carolina's native species are in danger of extinction

Recommendation:

Protect and restore large blocks of unfragmented natural habitat

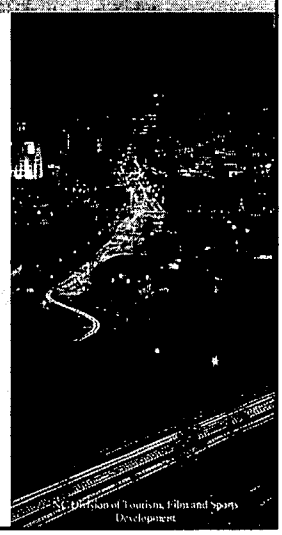
So We Can Enjoy North Carolina

- Outdoor Recreation
- Active Recreation
- Hunting and Fishing
- Enjoying Scenery
- Learning about History

Type of Property	Type of Industry					
	Agriculture	Forest Products	Tourism	Military Bases	Hunting, Fishing	High Tech Industry
Working Farms	X		X	X	X	X
Working Forests		X	X	X	X	
Rivers, Wetlands, Coastal Waters			X		X	X
Local Parks and Trails			X		X	X
Urban Forests					X	X
State Parks			X	X	X	X
Land Visible from Scenic Highways			X			X
Game Lands & Natural Areas		X	X	X	X	X
Historic Places			X			X

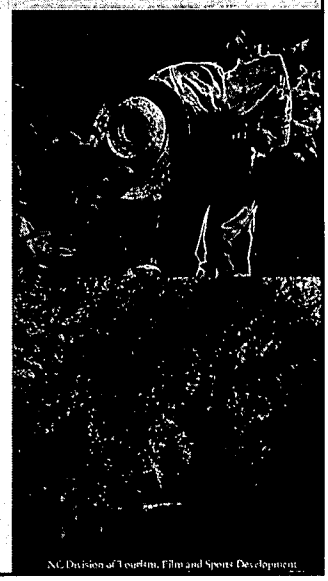
Our Population is Growing But Our Supply of Land is Not

- Losing one million acres per decade
- Traffic jams, air pollution, and the loss of beautiful and historic landscapes worry citizens greatly



Significant Land Ownership Changes

- Tobacco Farmers
- Power Companies
- Timber Companies



Fulfilling the Mandate

- In 2000, the NC General Assembly voted to protect one million acres by 2009
- In 1971, voters approved Article XIV, Section V of the NC Constitution:

  "to preserve as part of the common heritage of this state its forests, wetlands, estuaries, beaches, historical sites, openlands and places of beauty."

Past Examples of Land Conservation and Historic Preservation



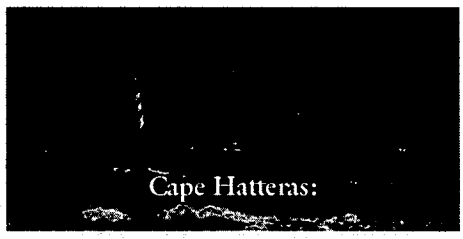
Blue Ridge Parkway:

Most Visited National Park in the Country



Umstead Park:

Central Park of the Triangle



Cape Hatteras:

Sixth Most Visited Site in the State

All photos courtesy of NC Division of Tourism, Film and Sports Development

Exciting Projects Happening Now

- Examples in report
  - Bryson City, Sutphin Mill, Roanoke River, Fort Bragg and Camp Lejeune, American Tobacco Trail, Blue Ridge Parkway, Glencoe Mill Village, Princeville
- Easements as well as fee ownership
  - Keeps land in private ownership and on tax rolls
- Organizations and governments in addition to federal government

Which Places Should We Protect?

Not just any land -- Places that Matter

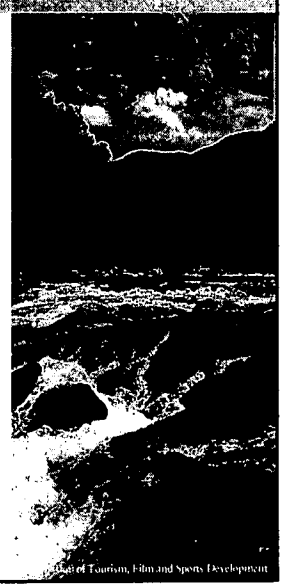
Nine Critical Types of Properties

Rivers, Wetlands, Floodplains and Coastal Waters

<u>Five-Year Goal</u>

Double rate of protection from 3,000 to 6,000 miles of stream buffers

(protecting an additional 17% of the state's streams)



Farmland



Five-Year Goal

Protect 50,000 acres of prime farmland in voluntary agricultural districts

Working Forests



Five-Year Goal

Protect 25,000 acres of forest land within Forest Legacy Areas

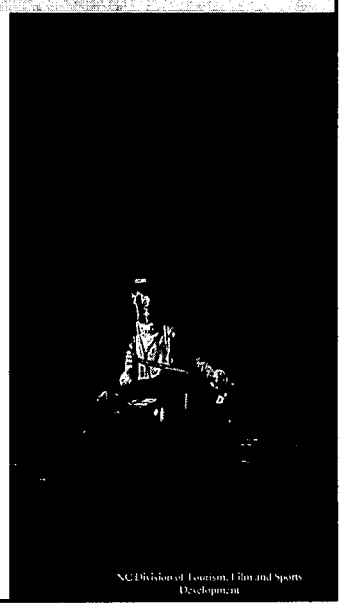
Urban Forests



Five-Year Goal

Increase urban forest in air quality non-attainment cities

State Parks and Trails



Five-Year Goal

60,000 acres

(1/3 of acres needed to create and expand parks identified in *New Parks for a New Century*)

Local Parks and Trails

Five-Year Goal

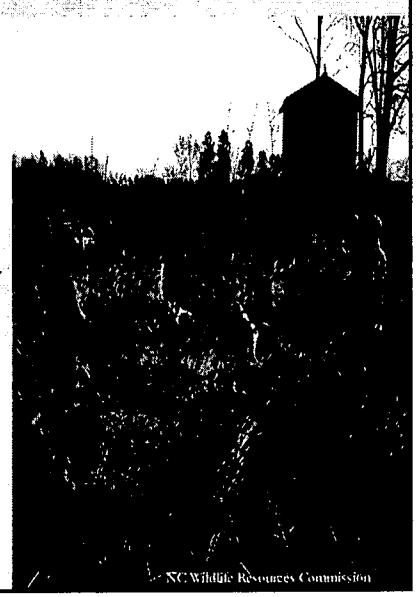
Protect land, build trails and develop park facilities needed in local communities



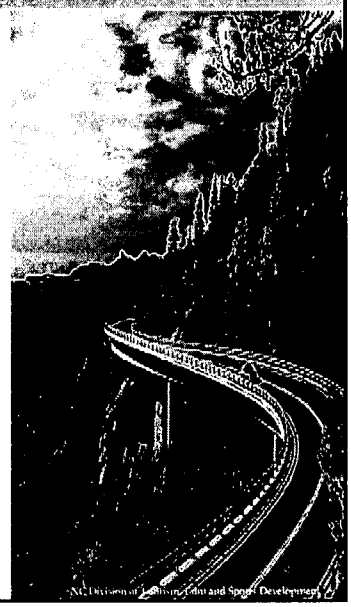
Game Lands and Other Natural Areas

Five-Year Goal

Protect 150,000 acres of important natural sites and hunting land



Views from Scenic Highways



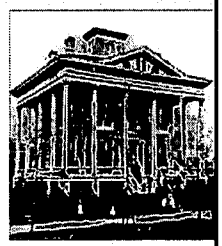
Five-Year Goal

Protect 50,000 acres along Blue Ridge Parkway

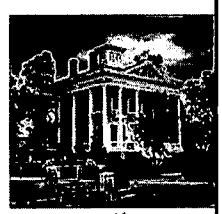
Historic Properties

Five-Year Goal

- 3,000 acres at State Historic Sites
- Repairs, renovation and improved accessibility to 350 historic landmarks open to public



Before



After

Bellamy Mansion
Wilmington

Preservation North Carolina

Five-Year Protection Goals

- 375,000 acres of land across North Carolina

plus

- Protect water in 6,000 miles of rivers and streams

plus

- Build trails and facilities for state and local parks

plus

- Restore 350 historic landmarks in public use

plus

- Invest in job creation and community development activities that conserve land and historic places

Five-Year Funding Gap

- Overall Five-Year Need: $3.9 billion
- Current State Five-Year Funding Level: $700 million ($138 million/year)
- Five-Year Funding Gap: $3.2 billion

How Can We Achieve This Goal?

- $200 million/year of additional state funding
  - Dedicated funding source
  - Voter-approved bonds
- Leverage funds from federal, local and private sources
  - Currently every State Trust Fund $1.00 becomes $2.20 through matching

Build on Current Foundation

- Invest more in successful programs
  - Conservation trust funds
  - One North Carolina *Naturally*
  - Jobs and community development program
- Create permanent funding source
- Maximize every dollar by leveraging matching funds

Program/ Trust Fund	Current Funding/year	Proposed Additional Funding/year	Total Funding/year
One NC Naturally	$0	$3 million	$3 million
Green Jobs Initiative	$6 million	$30 million	$36 million
NC Clean Water and Air Trust Fund	$62 million	$54.5 million	$116.5 million
NC Natural and Cultural Heritage Trust Fund	$15 million (plus $15 million for historic properties)	$62.5 million	$92.5 million
NC Parks and Recreation Trust Fund	$40 million	$20 million	$60 million
NC Working Lands and Sustainable Communities Trust Fund	$0	$30 million	$30 million
TOTAL STATE FUNDING / YEAR	$138 million/year	$200 million/year	$338 million/year

If We're Successful....

Our children and grandchildren will still think of North Carolina as the "goodliest land" with:

- Clean water and air
- Sustainable jobs and economic growth
- Farming and timbering
- Places of historic and ecological value
- Places to enjoy the beauty of North Carolina, to exercise, to hunt and fish

Land *for* Tomorrow is growing...

As of June 2005

- 24 Ambassadors including
  - Former Governors Holshouser, Martin and Hunt
  - Former Lt. Governor Bob Jordan
  - Many prominent business leaders including Todd Mansfield, Graham Denton, Barry Eveland
  - Local government leaders
- 62 Partner organizations

Land *for* Tomorrow
Funding Sources

Z. Smith Reynolds Foundation

Blumenthal Foundation

Cemala Foundation

Crosland, Inc.

Educational Foundation of America

Hillsdale Fund

Several individual donors

If North Carolina is to remain
the "goodliest" land,
we need to act now.

North Carolina's future
depends on land for tomorrow.

Minutes

House Committee on Environment and Natural Resources
June 28, 2005

The House Committee on Environment and Natural Resources met on June 28, 2005 in Room 623 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, Harrison, and McComas; and Representatives Blackwood, Capps, Carney, Culp, Daughtridge, Gibson, Goodwin, Gulley, Hackney, Haire, LaRoque, Luebke, Martin, McGee, Mahan, Stiller, Underhill, Weiss, and Womble. 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.

Chairman Justice called the meeting to order and Senator Clodfelter presented **SB 316, A Bill To Be Entitled An Act To Make Permanent A Temporary Act That Provided That Gasoline That Meets Federal Requirements Governing The Concentration Of Sulfur In Gasoline Shall Be Deemed To Comply With State Requirements Governing The Concentration Of Sulfur In Gasoline.** Steve Wall, Policy Analyst for DENR, answered questions regarding the Bill. After some discussion, Representative Blackwood moved that the Bill receive a favorable report. The motion carried.

Senator Albertson presented **SB 1134, An Act To Establish The Legislative Commission On Global Climate Change And To Direct The Commission To Study Issues Related To Global Warming And The Emerging Carbon Economy, To Determine Whether It Is Appropriate And Desirable For The State To Establish A Global Warming Pollutant Reduction Goal And, If The Commission Determines That The Establishment Of A Goal Is Appropriate And Desirable, To Develop A Recommended Goal.** Representative Harrell sent forth an Amendment. Staff read and explained the Amendment. Representative Harrell spoke on the Amendment. A vote was taken and the Amendment passed. After further discussion on the Bill, Dr. Rob Jackson, global change biologist and ecologist from Duke University, answered questions and spoke generally on global warming. More discussion followed, and Representative Underhill moved for a favorable report on the Bill as amended. The motion passed.

Senator Cowell presented **SB 981, An Act To Direct The Environmental Management Commission: (1) To Study Water Quality In Drinking Water Supply Reservoirs In The State, (2) To Adopt Nutrient Control Criteria For Drinking Water Supply Reservoirs, (3) To Develop And Implement A Nutrient Management Strategy For Certain Drinking Water Supply Reservoirs That Are Impaired Or That May Become Impaired Within Five Years, (4) Not To Make Any New Or Increased Nutrient Loading Allocation To Any Impaired Drinking Water Supply Reservoir Until Rules To Implement A Nutrient Management Strategy For That Reservoir Become Effective, And (5) To Report To The Environmental Review Commission On Progress In Developing And Implementing Nutrient Management Strategies For**

Drinking Water Supply Reservoirs With Impaired Water Quality. Amy Pickle, with the Southern Environmental Law Center, spoke in favor of the Bill. Jim Wrenn, of the South Granville County Water and Sewer Authority, also spoke in favor of the Bill. After discussion and questions by the members, Representative Weiss made a motion that the Bill receive a favorable report. The motion carried.

The meeting adjourned at 1:00 p.m.

Respectfully Submitted,

Rep. Carolyn Justice
Presiding Chair

Vivian Sherrell
Committee Assistant

Agenda
Amendment
Attendance
Bills Considered
Visitor Registration
Committee Reports

Vivian Sherrell (Rep. Justice)

From: Vivian Sherrell (Rep. Justice)
Sent: Thursday, June 23, 2005 10:22 AM
To: Sen. Janet Cowell; Sen. Daniel Clodfelter; Sen. Charlie Albertson
Subject: Environment and Natural Resources Committee Meeting June 28, 2005

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:	**Tuesday, June 28, 2005**
TIME:	**12:00 Noon**
LOCATION:	**Room 643, Legislative Office Bldg.**

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

SB981 - Drinking Water Supply Reservoir Protection.
Senator Cowell

SB1134 - Global Warming/Climate Change.
Senator Albertson

SB316 - Repeal Sunset on Gasoline Requirements.
Senator Clodfelter

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 June 23, 2005.**

x ___Principal Clerk
x ___Reading Clerk - House Chamber



HOUSE COMMITTEE ON ENVIRONMENT AND NATURAL RESOURCES
June 28, 2005 12:00 NOON
ROOM 643

AGENDA

CALL TO ORDER: REPRESENTATIVE CAROLYN JUSTICE, PRESIDING
REPRESENTATIVE JAMES HARRELL

INTRODUCTORY REMARKS BY CO-CHAIRS

RECOGNITION OF PAGES AND SERGEANT-AT-ARMS

ORDER OF BUSINESS

SB981 – Drinking Water Supply Reservoir Protection.
Senator Cowell

SB1134 – Global Warming/Climate Change.
Senator Albertson

SB316 – Repeal Sunset on Gasoline Requirements.
Senator Clodfelter

ADJOURNMENT

VISITOR REGISTRATION SHEET

House Committee on Environment & Natural Resources **June 28, 2005**

Name of Committee Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE ASSISTANT

NAME	FIRM OR AGENCY AND ADDRESS
Kathy Hawkins	Progress Energy
Amy Fullum	Hunton & Williams
Nancy Thompson	UNCIC
Ellis Hankins	NCLM
Bob Slocum	NCFA
Lisa Martin	NC Home Builders
Steve Woodson	NC Farm Bureau
[illegible]	NCPC
[illegible]	NCFB
Eben Cole	CWMTF
Lauren McLaughlin	TNC
Margaret Fields	TNC
Cynthia Shurling	Conservation Council
Ted Voorhees	City of Durham
Elizabeth Stoeber	City of Durham
Andrew Meehan	NC Elec Co-ops
TRICIA MOYLAN	Sierra Club, Capital Group
Kim Hibbard	NCLM
Jim Blackburn	Association of County Commissioners
Bill Weathersbee	NC-API
DONNIE REDMOND	DENR-DAQ
SHARON STRAUD	State Energy Office
Alex Ashton	UNC-SOG
Stephanie Coplin	NCDST
Kate Boetzer	Sierra Club
Christine Wunsche	NCPIRG
Marge Anders Limbert	NC Citizens for Clean Water

VISITOR REGISTRATION SHEET

House Committee on Environment & Natural Resources **June 28, 2005**

Name of Committee Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE ASSISTANT

NAME	FIRM OR AGENCY AND ADDRESS
Alissa Dolan	NC Conservation Network
Erin Kinsey	NC Conservation Network
Emily Hanawalt	NCPIRG
Eboni Bledsoe	NCPIRG
Lisa Cox	NC Sierra Club
Hartley Bream	NC Capital Group Sierra Club
Sharon Hazouri	NC Capital Group Sierra Club - Raleigh
JOHN WITTMAN	" " " " " "
Tom Crisp	" " " " " "
STEPHANIE BASS	consultant - Raleigh
Amy PICKLE	SOUTHERN ENVIRONMENTAL LAW CENTER
Meagan Honnold	Sierra Club - NC chapter
Beau Memory	NC Sierra Club
Elizabeth Self	NC Sierra Club
Molly Diggins	Sierra Club
Robin Smith	DENR
Jim Wrenn	Granville County; South Granville Water & Sewer Authority
Gretchen Leenir	NC. conserv. Network
Grady McCallie	NC. Conservation Network.
Dan McLawhorn	City of Raleigh
Coleen H. Sullins	NC DWQ
Johanna Reese	DENR
Lyle McLeod	CWMTF
Tom Bloom	NC Envir Defense
Wade Rawlins	The News & Observer

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S 1

SENATE BILL 316

Short Title:	Repeal Sunset on Gasoline Requirements.	(Public)
Sponsors:	Senators Clodfelter; Hoyle and Weinstein.	
Referred to:	Agriculture/Environment/Natural Resources.	

March 3, 2005

A BILL TO BE ENTITLED

AN ACT TO MAKE PERMANENT A TEMPORARY ACT THAT PROVIDED THAT GASOLINE THAT MEETS FEDERAL REQUIREMENTS GOVERNING THE CONCENTRATION OF SULFUR IN GASOLINE SHALL BE DEEMED TO COMPLY WITH STATE REQUIREMENTS GOVERNING THE CONCENTRATION OF SULFUR IN GASOLINE.

The General Assembly of North Carolina enacts:

SECTION 1. Section 3 of S.L. 2002-75 reads as rewritten:

"**SECTION 3.** This act is effective when it becomes law. ~~Section 2 of this act expires 1 January 2006.~~"

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

SENATE BILL 316:
Repeal Sunset on Gasoline Requirements

BILL ANALYSIS

Committee:	House Environment and Natural Resources	**Date:**	June 28, 2005
Introduced by:	Sen. Clodfelter	**Summary by:**	Tim Dodge
Version:	First Edition		Legislative Analyst

SUMMARY: Senate Bill 316 would repeal the sunset of S.L. 2002-75, which deems federal low-sulfur gasoline standards as compliant with State low-sulfur gasoline standards established in the Ambient Air Quality Improvement Act of 1999.

BACKGROUND:

The Ambient Air Quality Improvement Act of 1999 (S.L. 1999-328) prohibited the manufacture or sale of gasoline in this State with a concentration of sulfur greater than 30 parts per million (ppm), except that a person may manufacture or sell gasoline with a concentration of sulfur up to 80 ppm if the average concentration of sulfur in the gasoline manufactured or sold by the person in this State in a one-year period is not more than 30 ppm (the "30/80 Standard"). In 2000, the U.S. Environmental Protection Agency (EPA) adopted federal low-sulfur standards that differed from North Carolina's. S.L. 2002-75 provides that gasoline meeting low-sulfur standards established by the U.S. Environmental Protection Agency (EPA) is deemed to be compliant with State low-sulfur gasoline standards. Under the current EPA low-sulfur gasoline standards, the annual average sulfur concentration in gasoline manufactured or sold nationwide is capped at 90 ppm and the sulfur content in gasoline is capped at a maximum concentration of 300 ppm. Beginning January 1, 2006, the EPA standards for sulfur concentration in gasoline will be lowered so that the EPA standards and the State standards will become essentially equivalent. The EPA low-sulfur standards also contain the following elements:

- Geographic phase-in areas (Does not change implementation in North Carolina, however).
- Hardship provisions for small refiners.
- Use of sulfur allotments or credits to meet low-sulfur requirements during phase-in.

BILL ANALYSIS:

Section 1 repeals the sunset in S.L. 2002-75 to permanently deem that EPA low-sulfur gasoline standards are compliant with State low-sulfur standards. This allows manufacturers and sellers of gasoline to meet either the State or EPA low-sulfur gasoline standards during 2005 and to utilize the hardship and credit provisions provided in the federal standards.

Section 2 states that the bill would become effective when it becomes law.

Note: Section 211 of the federal Clean Air Act (42 U.S.C. § 7545) contains preemptive language that may prohibit implementation of State low-sulfur standards that differ from the federal standards.

S0316e1-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.

☐ Committee Substitute for

SB 316 A BILL TO BE ENTITLED AN ACT TO MAKE PERMANENT A TEMPORARY ACT THAT PROVIDED THAT GASOLINE THAT MEETS FEDERAL REQUIREMENTS GOVERNING THE CONCENTRATION OF SULFUR IN GASOLINE SHALL BE DEEMED TO COMPLY WITH STATE REQUIREMENTS GOVERNING THE CONCENTRATION OF SULFUR IN GASOLINE.

☒ 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 3

SENATE BILL 1134

Agriculture/Environment/Natural Resources Committee Substitute Adopted 4/28/05

Third Edition Engrossed 5/25/05

Short Title: Global Warming/Climate Change. (Public)

Sponsors:

Referred to:

March 24, 2005

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH THE LEGISLATIVE COMMISSION ON GLOBAL CLIMATE CHANGE AND TO DIRECT THE COMMISSION TO STUDY ISSUES RELATED TO GLOBAL WARMING AND THE EMERGING CARBON ECONOMY, TO DETERMINE WHETHER IT IS APPROPRIATE AND DESIRABLE FOR THE STATE TO ESTABLISH A GLOBAL WARMING POLLUTANT REDUCTION GOAL AND, IF THE COMMISSION DETERMINES THAT THE ESTABLISHMENT OF A GOAL IS APPROPRIATE AND DESIRABLE, TO DEVELOP A RECOMMENDED GOAL.

The General Assembly of North Carolina enacts:

SECTION 1. Commission Established; Membership. – The Legislative Commission on Global Climate Change is hereby established: The Commission shall consist of 30 members as follows:

(1) Five members of the Senate appointed by the President Pro Tempore of the Senate.

(2) Five members of the House of Representatives appointed by the Speaker of the House of Representatives.

(3) Three members of the public at large appointed by the President Pro Tempore of the Senate.

(4) Three members of the public at large appointed by the Speaker of the House of Representatives.

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

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

(7) The President of the North Carolina Citizens for Business and Industry or the President's designee.

(8) The President of the Manufacturers and Chemical Industry Council of North Carolina or the President's designee.

(9) The President of the North Carolina Farm Bureau Federation or the President's designee.
(10) The President of the North Carolina Forestry Association or the President's designee.
(11) The Southeast Regional Director of the North Carolina Environmental Defense or the Regional Director's designee.
(12) The Executive Director of the Southern Alliance for Clean Energy or the Executive Director's designee.
(13) The Executive Director of the North Carolina Coastal Federation or the Executive Director's designee.
(14) The Executive Director of the North Carolina Conservation Council or the Executive Director's designee.
(15) The Dean of the Nicholas School of the Environment and Earth Sciences, Duke University, or the Dean's designee.
(16) The Dean of the College of Agriculture and Life Sciences at North Carolina State University, or the Dean's designee.
(17) The Dean of the School of Agriculture and Environmental Sciences at North Carolina Agricultural and Technical State University or the Dean's designee.
(18) The Director of the Carolina Environmental Program at The University of North Carolina at Chapel Hill or the Director's Designee.

SECTION 2. Cochairs. – The Commission shall have two Cochairs, one designated by the President Pro Tempore of the Senate and one by the Speaker of the House of Representatives from among their respective appointees. The Commission shall meet upon the call of the Cochairs.

SECTION 3. Quorum. – A quorum of the Commission shall consist of 16 members.

SECTION 4. Vacancies. – Any vacancy on the Commission shall be filled as provided in Section 1 of this act or by the original appointing authority as appropriate.

SECTION 5. Purpose and Duties. – The Commission shall have the following purposes and duties:

(1) The Commission shall conduct an in-depth examination of issues related to global climate change. This examination shall include all of the following:
   a. A review of current scientific literature on the possible natural and anthropogenic causes of global climate change.
   b. A review of actions taken by the federal government and by other states to address global warming.
   c. An examination of the emissions of greenhouse gases from within the State and the extent to which reductions in the emissions of these gases in the State, region, nation, and worldwide could be expected to affect global climate change.

d. An evaluation of the economic opportunities for the State that may result from international, national, and State action to address global climate change and the emerging carbon market.

e. The potential impacts of global climate change on the citizens, natural resources, and economy of the State, including agriculture, travel and tourism, recreation, coastal real estate, insurance, and other economic sectors.

f. The costs of any action taken by the State to address global climate change on individuals, individual households, local governments, businesses, educational institutions, agricultural operations, the State government, and other institutions and economic sectors.

g. The benefits of any action taken by or within the State or other states and at the national or international levels to address global climate change on individuals, individual households, local governments, businesses, educational institutions, agricultural operations, the State government, and other institutions and economic sectors.

(2) If, in the course of its examination, the Commission determines that it would be appropriate and desirable for the State to establish a global warming pollutant reduction goal, the Commission may develop a recommended global warming pollutant reduction goal for the State.

(3) In conducting its examination of global climate change, the Commission shall consider and integrate the findings and recommendations of the study of issues related to the development and implementation of standards and plans to control emissions of carbon dioxide required by Section 13 of S.L. 2002-4.

(4) Based on its examination of global climate change, the Commission shall develop findings and recommendations, including any legislative proposals it determines to be appropriate, for consideration by the General Assembly.

SECTION 6. Additional Duties. – The Commission may work cooperatively with other state and national governments to organize a forum on global climate change, including its causes, impacts, challenges, and opportunities in the southeastern United States.

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. Before expending any funds for a consultant, the Commission shall report to the Joint Legislative Commission on Governmental Operations on the

consultant selected, the work products to be provided by the consultant, and the cost of the contract, including an itemization of the cost components.

SECTION 10. Report. – The Commission shall report its findings and recommendations to the General Assembly and the Environmental Review Commission on or before 1 November 2006, at which time the Commission shall terminate.

SECTION 11. 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 12. Effective Date. – This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S D

SENATE BILL 1134

Agriculture/Environment/Natural Resources Committee Substitute Adopted 4/28/05

Third Edition Engrossed 5/25/05

PROPOSED HOUSE COMMITTEE SUBSTITUTE S1134-PCS65346-SB-35

Short Title: Global Warming/Climate Change. (Public)

Sponsors:

Referred to:

March 24, 2005

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH THE LEGISLATIVE COMMISSION ON GLOBAL CLIMATE CHANGE AND TO DIRECT THE COMMISSION TO STUDY ISSUES RELATED TO GLOBAL WARMING AND THE EMERGING CARBON ECONOMY, TO DETERMINE WHETHER IT IS APPROPRIATE AND DESIRABLE FOR THE STATE TO ESTABLISH A GLOBAL WARMING POLLUTANT REDUCTION GOAL AND, IF THE COMMISSION DETERMINES THAT THE ESTABLISHMENT OF A GOAL IS APPROPRIATE AND DESIRABLE, TO DEVELOP A RECOMMENDED GOAL.

The General Assembly of North Carolina enacts:

SECTION 1. Commission Established; Membership. – The Legislative Commission on Global Climate Change is hereby established. The Commission shall consist of 32 members as follows:

(1) Six members of the Senate appointed by the President Pro Tempore of the Senate.

(2) Six members of the House of Representatives appointed by the Speaker of the House of Representatives.

(3) Three members of the public at large appointed by the President Pro Tempore of the Senate.

(4) Three members of the public at large appointed by the Speaker of the House of Representatives.

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

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

(7) The President of the North Carolina Citizens for Business and Industry or the President's designee.

(8) The President of the Manufacturers and Chemical Industry Council of North Carolina or the President's designee.
(9) The President of the North Carolina Farm Bureau Federation or the President's designee.
(10) The President of the North Carolina Forestry Association or the President's designee.
(11) The Southeast Regional Director of the North Carolina Environmental Defense or the Regional Director's designee.
(12) The Executive Director of the Southern Alliance for Clean Energy or the Executive Director's designee.
(13) The Executive Director of the North Carolina Coastal Federation or the Executive Director's designee.
(14) The Executive Director of the North Carolina Conservation Council or the Executive Director's designee.
(15) The Dean of the Nicholas School of the Environment and Earth Sciences, Duke University or the Dean's designee.
(16) The Dean of the College of Agriculture and Life Sciences at North Carolina State University or the Dean's designee.
(17) The Dean of the School of Agriculture and Environmental Sciences at North Carolina Agricultural and Technical State University or the Dean's designee.
(18) The Director of the Carolina Environmental Program at the University of North Carolina at Chapel Hill or the Director's Designee.

SECTION 2. Cochairs. – The Commission shall have two Cochairs, one senator designated by the President Pro Tempore of the Senate and one representative 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 3. Quorum. – A quorum of the Commission shall consist of 17 members.

SECTION 4. Vacancies. – Any vacancy on the Commission shall be filled as provided in Section 1 of this act or by the original appointing authority as appropriate.

SECTION 5. Purpose and Duties. – The Commission shall have the following purposes and duties:

(1) The Commission shall conduct an in-depth examination of issues related to global climate change. This examination shall include all of the following:
  a. A review of current scientific literature on the possible natural and anthropogenic causes of global climate change.
  b. A review of actions taken by the federal government and by other states to address global warming.
  c. An examination of the emissions of greenhouse gases from within the State and the extent to which reductions in the

emissions of these gases in the State, region, nation, and worldwide could be expected to affect global climate change.

d. An evaluation of the economic opportunities for the State that may result from international, national, and State action to address global climate change and the emerging carbon market.

e. The potential impacts of global climate change on the citizens, natural resources, and economy of the State, including agriculture, travel and tourism, recreation, coastal real estate, insurance, and other economic sectors.

f. The costs of any action taken by the State to address global climate change on individuals, individual households, local governments, businesses, educational institutions, agricultural operations, the State government, and other institutions and economic sectors.

g. The benefits of any action taken by or within the State or other states and at the national or international levels to address global climate change on individuals, individual households, local governments, businesses, educational institutions, agricultural operations, the State government, and other institutions and economic sectors.

(2) If, in the course of its examination, the Commission determines that it would be appropriate and desirable for the State to establish a global warming pollutant reduction goal, the Commission may develop a recommended global warming pollutant reduction goal for the State.

(3) In conducting its examination of global climate change, the Commission shall consider and integrate the findings and recommendations of the study of issues related to the development and implementation of standards and plans to control emissions of carbon dioxide required by Section 13 of S.L. 2002-4.

(4) Based on its examination of global climate change, the Commission shall develop findings and recommendations, including any legislative proposals it determines to be appropriate, for consideration by the General Assembly.

SECTION 6. Additional Duties. – The Commission may work cooperatively with other state and national governments to organize a forum on global climate change, including its causes, impacts, challenges, and opportunities in the southeastern United States.

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. Before expending any funds for a consultant, the Commission shall report to the Joint Legislative Commission on Governmental Operations on the consultant selected, the work products to be provided by the consultant, and the cost of the contract, including an itemization of the cost components.

SECTION 10. Report. – The Commission shall report its findings and recommendations to the General Assembly and the Environmental Review Commission on or before 1 November 2006, at which time the Commission shall terminate.

SECTION 11. 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 12. Effective Date. – This act is effective when it becomes law.

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. 3

H. B. No. _____ DATE 6-28-05

S. B. No. 1134 Amendment No. _____
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE _____

(Rep.) Sen.) Harrell

moves to amend the bill on page 1, line 13

( ) WHICH CHANGES THE TITLE

by deleting the number "30" and

substituting the number "32";

on page 1, lines 14 and 16

by deleting the ~~word~~ word "Five" and

substituting the word "six";

on page 2, line 23, by rewriting that line to

read "Senator designated by the President

Pro Tempore of the Senate and one Representative designated

by the Speaker of the "; and

SIGNED _____

ADOPTED 28 June 2005 FAILED _____ TABLED _____

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. 3

H. B. No. _____ DATE 6-28-05

S. B. No. 1134 Amendment No. _____
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE _____

(Rep.) Sen.) Harrell

moves to amend the bill on page 2, line 26

( ) WHICH CHANGES THE TITLE

by deleting the number "16" and substituting the number "17".

SIGNED _____

ADOPTED _____ FAILED _____ TABLED _____

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

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 1134 A BILL TO BE ENTITLED AN ACT TO ESTABLISH THE LEGISLATIVE COMMISSION ON GLOBAL CLIMATE CHANGE AND TO DIRECT THE COMMISSION TO STUDY ISSUES RELATED TO GLOBAL WARMING AND THE EMERGING CARBON ECONOMY, TO DETERMINE WHETHER IT IS APPROPRIATE AND DESIRABLE FOR THE STATE TO ESTABLISH A GLOBAL WARMING POLLUTANT REDUCTION GOAL AND, IF THE COMMISSION DETERMINES THAT THE ESTABLISHMENT OF A GOAL IS APPROPRIATE AND DESIRABLE, TO DEVELOP A RECOMMENDED GOAL.

☒ With a favorable report as to House committee substitute bill, 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 3

SENATE BILL 981

Agriculture/Environment/Natural Resources Committee Substitute Adopted 6/1/05
Third Edition Engrossed 6/1/05

Short Title: Drinking Water Supply Reservoir Protection. (Public)

Sponsors:

Referred to:

March 24, 2005

A BILL TO BE ENTITLED

AN ACT TO DIRECT THE ENVIRONMENTAL MANAGEMENT COMMISSION: (1) TO STUDY WATER QUALITY IN DRINKING WATER SUPPLY RESERVOIRS IN THE STATE, (2) TO ADOPT NUTRIENT CONTROL CRITERIA FOR DRINKING WATER SUPPLY RESERVOIRS, (3) TO DEVELOP AND IMPLEMENT A NUTRIENT MANAGEMENT STRATEGY FOR CERTAIN DRINKING WATER SUPPLY RESERVOIRS THAT ARE IMPAIRED OR THAT MAY BECOME IMPAIRED WITHIN FIVE YEARS, (4) NOT TO MAKE ANY NEW OR INCREASED NUTRIENT LOADING ALLOCATION TO ANY IMPAIRED DRINKING WATER SUPPLY RESERVOIR UNTIL RULES TO IMPLEMENT A NUTRIENT MANAGEMENT STRATEGY FOR THAT RESERVOIR BECOME EFFECTIVE, AND (5) TO REPORT TO THE ENVIRONMENTAL REVIEW COMMISSION ON PROGRESS IN DEVELOPING AND IMPLEMENTING NUTRIENT MANAGEMENT STRATEGIES FOR DRINKING WATER SUPPLY RESERVOIRS WITH IMPAIRED WATER QUALITY.

The General Assembly of North Carolina enacts:

SECTION 1. Legislative findings. – The General Assembly finds that:

(1) Drinking water supply reservoirs are an essential source of water needed to meet municipal, industrial, and agricultural needs.

(2) Drinking water supply reservoirs provide recreational opportunities and wildlife habitat and, if properly managed, improve water quality.

(3) Management and protection of the quality and quantity of water in drinking water supply reservoirs are essential to the economic vitality of North Carolina.

(4) Excessive nutrients are a major source of impairment of water quality in drinking water supply reservoirs.

(5) It would be beneficial for the State to study the condition of drinking water supply reservoirs and to develop nutrient control criteria to prevent drinking water supply reservoirs from becoming impaired.

(6) It would be beneficial for the State to develop calibrated nutrient response models and nutrient management strategies to ensure that drinking water supply reservoirs that are showing evidence of impairment are protected, as envisioned by Part 1 of Article 21 of Chapter 143 of the General Statutes and S.L. 1997-458, the Clean Water Responsibility and Environmentally Sound Policy Act.

SECTION 2.(a) Study of drinking water supply reservoirs. – The Environmental Management Commission shall study the water quality in the drinking water supply reservoirs in the State to determine whether the reservoirs meet current water quality standards. The Commission shall analyze existing data and report its findings and recommendations to the Environmental Review Commission by 1 May 2006.

SECTION 2.(b) Nutrient control criteria. – Based on the results of the study of drinking water supply reservoirs and an evaluation of current water quality standards, the Environmental Management Commission shall identify any nutrient control criteria necessary to prevent excess nutrient loading in each drinking water supply reservoir in order to protect public health and other designated uses by 1 January 2009. The Commission shall adopt final nutrient control criteria for each drinking water supply reservoir by 1 May 2010. If the Commission finds that the nutrient control criteria for any drinking water supply reservoir are not being achieved, the Commission shall develop and implement a plan for enhanced water quality monitoring in that drinking water supply reservoir within one year of the determination. The Commission shall report its progress in implementing this section, including its findings and recommendations, to the Environmental Review Commission as a part of each quarterly report it makes pursuant to G.S. 143B-282(b).

SECTION 3.(a) Applicability of section to certain reservoirs. – This section applies only to drinking water supply reservoirs that meet all of the following criteria as of 1 July 2005:

(1) The reservoir serves a population greater than 300,000 persons.

(2) The Environmental Management Commission has classified all or any part of the water in the reservoir as a nutrient sensitive water (NSW).

(3) Water quality monitoring data indicates that water quality in the reservoir violates the chlorophyll A standard.

(4) The Division of Water Quality of the Department of Environment and Natural Resources has not prepared or updated a calibrated nutrient response model for the reservoir since 1 July 2002.

SECTION 3.(b) Temporary limitation on increased nutrient loading. – If the Environmental Management Commission determines either that water quality in all or in any part of a drinking water supply reservoir to which this section applies does not meet current water quality standards or that it is likely that water quality will not meet water quality standards at any time prior to 1 July 2010, the Commission shall not make

any new or increased nutrient loading allocation to any person who is required to obtain a permit under G.S. 143-215 for an individual wastewater discharge directly or indirectly into that reservoir. This limitation on new or increased nutrient loading allocation shall not be construed to prohibit a person who holds a permit for a wastewater discharge into a drinking water supply reservoir from purchasing a nutrient loading allocation from another person who holds a permit for a wastewater discharge into the same drinking water supply reservoir. This subsection expires with respect to a drinking water supply reservoir when permanent rules adopted by the Commission to implement the nutrient management strategy for that reservoir become effective.

SECTION 3.(c) Nutrient management strategy. – The Environmental Management Commission shall develop a nutrient management strategy for drinking water supply reservoirs to which this section applies by 1 July 2008. The nutrient management strategy shall be based on a calibrated nutrient response model that meets the requirement of G.S. 143-215.1(c5). The nutrient management strategy shall include specific mandatory measures to achieve the reduction goals. The Commission shall consider the cost of the proposed measures in relation to the effectiveness of the measures. These measures could include, but are not limited to, buffers, erosion and sedimentation control requirements, post-construction stormwater management, agricultural nutrient reduction measures, the addition of nutrient removal treatment processes to point source permitted wastewater treatment plants, the removal of point source discharging wastewater treatments through regionalization and conversion to non-discharge treatment technologies, and any other measures that the Commission determines to be necessary to meet the nutrient reduction goals. To the extent that one or more other State programs already mandate any of these measures, the nutrient management strategy shall incorporate the mandated measures and any extension of those measures and any additional measures that may be necessary to achieve the nutrient reduction goals. In making a nutrient loading allocation to a permit holder, the Commission shall, to the extent allowed by federal and State law, give consideration to all voluntary efforts taken by the permit holder to protect water quality prior to the development of the nutrient management strategy.

SECTION 3.(d) Eligibility under the Clean Water Revolving Loan and Grant Act. – The definitions set out in G.S. 159G-3 apply to this subsection. The operator of a wastewater treatment works that is owned by an agency of the State may apply for a loan or grant under Chapter 159G of the General Statutes on the same basis as any other applicant if the operator is a local government unit and if the local government unit operates the wastewater treatment works pursuant to a contract with the State agency that contemplates that the local government unit will eventually acquire ownership of the wastewater treatment works.

SECTION 3.(e) Implementation; rulemaking. – The Environmental Management Commission shall adopt permanent rules to implement the nutrient management strategies required by this section by 1 July 2008. The rules shall require that reductions in nutrient loading from all sources begin no later than five years after the rules become effective.

SECTION 3.(f) Reports. – The Environmental Management Commission shall report its progress in implementing this section to the Environmental Review Commission as a part of each quarterly report it makes pursuant to G.S. 143B-282(b).

SECTION 4. Other drinking water supply reservoirs. – The Environmental Management Commission shall not make any new or increased nutrient loading allocation to any person who is required to obtain a permit under G.S. 143-215 for an individual wastewater discharge directly or indirectly into any drinking water supply reservoir for which the Division of Water Quality of the Department of Environment and Natural Resources has prepared or updated a calibrated nutrient response model since 1 July 2002 until permanent rules adopted by the Commission to implement the nutrient management strategy for that reservoir become effective. The Commission shall report its progress in developing and implementing nutrient management strategies for reservoirs to which this section applies to the Environmental Review Commission by 1 April 2006.

SECTION 5. Effective date. – This act is effective when it becomes law.

SENATE BILL 981:
Drinking Water Supply Reservoir Protection

BILL ANALYSIS

Committee:	House Environment and Natural Resources	**Date:**	June 28, 2005
Introduced by:	Sen. Cowell	**Summary by:**	Tim Dodge
Version:	Third Edition		Legislative Analyst

SUMMARY: Senate Bill 981 directs the Environmental Management Commission to:

- *Study water quality in drinking water supply reservoirs in the State;*
- *Adopt nutrient control criteria for drinking water supply reservoirs;*
- *Develop and implement nutrient management strategies for certain drinking water supply reservoirs that are considered impaired as of 1 July 2005;*
- *Prohibit any new or expanded nutrient loading allocation to an impaired drinking water supply reservoir until rules to implement a nutrient management strategy for that reservoir become effective; and*
- *Report to the Environmental Review Commission on progress in implementing and developing nutrient management strategies for impaired drinking water reservoirs.*

[As introduced, this bill was identical to H1134, as introduced by Reps. Weiss, Justice, Harrison, and Martin, which is currently in the House Committee on Environment and Natural Resources.]

BILL ANALYSIS:

Study Water Quality in Reservoirs. Section 2.(a) of the bill directs the Environmental Management Commission (EMC) to study water quality in drinking water supply reservoirs in the State to determine whether the reservoirs meet current water quality standards. The EMC shall report its findings to the Environmental Review Commission (ERC) by 1 May 2006.

Nutrient Control Criteria. Section 2.(b) directs the EMC to identify any nutrient control criteria necessary to prevent excess nutrient loading in drinking water reservoirs by 1 January 2009 and to adopt final nutrient control criteria by 1 May 2010. If the EMC finds that the nutrient control criteria are not being achieved, the EMC shall implement an enhanced water quality monitoring plan for the reservoir within one year of the determination.

Nutrient Management Strategy for Certain Impaired Reservoirs. Section 3 prohibits the EMC from making any new or increased nutrient loading allocation to certain impaired drinking water supply reservoirs if the EMC determines that the water quality in any part of the drinking water supply reservoir does not meet current water quality standards or is likely to not meet water quality standards at any time prior to 1 July 2010. Section 3 applies only to drinking water reservoirs that meet all of the following criteria as of 1 July 2005:

(1) The reservoir serves a population greater than 300,000 persons.

(2) The EMC has classified all or part of the water in the reservoir as a nutrient sensitive water (NSW).

(3) Water quality monitoring data indicates that the water quality in the reservoir violates the chlorophyll A standard (not to exceed 40 µg/l for lakes, reservoirs, and other waters subject to growths of macroscopic or microscopic vegetation not designated as trout waters).

(4) The Division of Water Quality of the Department of Environment and Natural Resources has not prepared or updated a calibrated nutrient response model for the reservoir since 1 July 2002.

The bill specifies that that the temporary restriction on increased nutrient loading in water supply reservoirs does not prohibit a currently permitted wastewater discharger from purchasing nutrient loading allocations from other dischargers with permits for the same reservoir.

The bill directs the EMC to develop a nutrient management strategy based on a calibrated nutrient response model that establishes mass load limits for nitrogen and phosphorous and establishes reduction goals for nutrients for the reservoirs to which Section 3 applies. The nutrient management strategy shall include specific mandatory measures to achieve the reduction goals, and may include measures such as buffers, erosion and sedimentation control requirements, stormwater management requirements, agricultural nutrient reduction measures, changes in wastewater treatment processes, and other nutrient reduction measures. The EMC shall consider the cost effectiveness of the proposed measures and shall recognize voluntary efforts to protect water quality taken prior to the development of the nutrient management strategy. The PCS authorizes the EMC to adopt temporary and permanent rules to implement the nutrient management strategies by 1 July 2008. The EMC shall include updates on the progress in implementing these provisions in its quarterly reports to the ERC.

Eligibility Under the Clean Water Revolving Loan and Grant Program. Section 3(d) of the bill provides that a wastewater plant owned by state agency but operated by a local government may apply for funding under the Clean Water Revolving Loan and Grant Program if the local government operator works pursuant to a contract with a State agency that contemplates that the local government will eventually acquire ownership of the wastewater plant.

Other Reservoirs. Section 4 of the bill prohibits the EMC from approving any new or increased nutrient loading allocation that discharges directly or indirectly into any drinking water supply reservoir and that has a calibrated nutrient response model that has been prepared or updated since 1 July 2002 until permanent rules to implement the nutrient management strategy for the reservoir become effective. The EMC shall report on its progress in developing and implementing these nutrient management strategies to the ERC by 1 April 2006.

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

S0981e3-SMSY

Lakes with chlorophyll a values of 40 ug/L or greater and that are classified as NSW

RIVER BASIN/LAKES	CLASSIFICATION
Chowan	
MERCHANTS MILLPOND	C NSW
Cape Fear	
REIDSVILLE LAKE	WS-III NSW CA
LAKE BRANDT	WS-III NSW CA
BURLINGTON RESERVOIR	WS-II HQW NSW CA
LAKE MACKINTOSH	WS-IV NSW CA
PITTSBORO LAKE	WS-IV NSW
JORDAN LAKE	WS-IV B NSW CA
CANE CREEK RESERVOIR	WS-II HQW NSW CA
GRAHAM-MEBANE RESERVOIR	WS-II HQW NSW CA
LAKE BURLINGTON	WS-II HQW NSW CA
UNIVERSITY LAKE	WS-II HQW NSW CA
Neuse	
LAKE MICHIE	WS-III NSW CA
LAKE ORANGE	WS-II HQW NSW CA
BEAVERDAM LAKE	WS-IV B NSW CA
FALLS OF THE NEUSE RESERVOIR	WS-IV B NSW CA
SYCAMORE LAKE	B NSW
WENDELL LAKE	C NSW
BUCKHORN RESERVOIR	WS-II HQW NSW CA
WIGGINS MILL RESERVOIR	WS-III NSW CA
LAKE CRABTREE	B NSW
Tar	
LAKE DEVIN	WS-II NSW CA
TAR RIVER RESERVOIR	WS-IV B NSW CA
PUNGO LAKE	C SW NSW

Highlighting indicates that the reservoir is a drinking water source serving a population >300k.
Source: Division of Water Quality, Department of Environment and Natural Resources, 1 June 2005

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 981 A BILL TO BE ENTITLED AN ACT TO DIRECT THE ENVIRONMENTAL MANAGEMENT COMMISSION: (1) TO STUDY WATER QUALITY IN DRINKING WATER SUPPLY RESERVOIRS IN THE STATE, (2) TO ADOPT NUTRIENT CONTROL CRITERIA FOR DRINKING WATER SUPPLY RESERVOIRS, (3) TO DEVELOP AND IMPLEMENT A NUTRIENT MANAGEMENT STRATEGY FOR CERTAIN DRINKING WATER SUPPLY RESERVOIRS THAT ARE IMPAIRED OR THAT MAY BECOME IMPAIRED WITHIN FIVE YEARS, (4) NOT TO MAKE ANY NEW OR INCREASED NUTRIENT LOADING ALLOCATION TO ANY IMPAIRED DRINKING WATER SUPPLY RESERVOIR UNTIL RULES TO IMPLEMENT A NUTRIENT MANAGEMENT STRATEGY FOR THAT RESERVOIR BECOME EFFECTIVE, AND (5) TO REPORT TO THE ENVIRONMENTAL REVIEW COMMISSION ON PROGRESS IN DEVELOPING AND IMPLEMENTING NUTRIENT MANAGEMENT STRATEGIES FOR DRINKING WATER SUPPLY RESERVOIRS WITH IMPAIRED WATER QUALITY.

☒ 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

Tuesday, July 5, 2005

The House Committee on Environment and Natural Resources met on Tuesday, July 5, 2005, in Room 643 of the Legislative Office Building at 12:00 Noon. The following members were present: Representative James A. Harrell, III, Presiding Chair; Representative Carolyn Justice, Chair; Representative Lucy Allen, Vice Chair; Representative Pricey Harrison, Vice Chair; Representative Daniel McComas, Vice Chair; Representative Curtis Blackwood, Representative Russell Capps, Representative Bill Daughtridge, Representative Pryor Gibson, Representative Mitch Gillespie, Representative Pryor Gibson, Representative Melanie Goodwin, Representative Jim Gulley, Representative Joe Hackney, Representative Phil Haire, Representative Verla Insko, Representative Stephen LaRoque, Representative Paul Luebke, Representative Grier Martin, Representative Bill McGee, Representative Ed McMahan, Representative Bonner Stiller, Representative Alice Underhill, Representative Jennifer Weiss and Representative Larry Womble. A Visitor Registration list 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 Committee Counsel and staff were thanked and recognized. Visitors were welcomed.

SENATE BILL 1126, A BILL TO BE ENTITLED AN ACT TO PROVIDE FOR THE IMPLEMENTATION OF THE COASTAL RECREATIONAL FISHING LICENSE, TO EXEMPT FROM COASTAL RECREATIONAL FISHING LICENSE REQUIREMENTS ONLY THOSE INDIVIDUALS WHO ARE UNDER SIXTEEN YEARS OF AGE OR WHO HOLD CERTAIN LICENSES ISSUED BY THE WILDLIFE RESOURCES COMMISSION THAT WERE PURCHASED PRIOR TO JANUARY 1, 2005, TO REPEAL THE NATURAL BAIT EXEMPTION FROM HOOK-AND-LINE FISHING LICENSE REQUIREMENTS, TO PROVIDE FOR A STATEWIDE SUBSISTENCE FISHING LICENSE, TO PROHIBIT THE WILDLIFE RESOURCES COMMISSION FROM DISCLOSING PERSONAL IDENTIFYING INFORMATION OF LICENSEES AND OTHERS UNDER CERTAIN CIRCUMSTANCES, TO AMEND VARIOUS STATUTES RELATED TO THE WILDLIFE RESOURCES COMMISSION, TO PROVIDE A SYSTEM OF UNIFIED LICENSES UNDER WHICH INDIVIDUALS MAY FISH THROUGHOUT THE STATE, TO RECONSTITUTE THE MARINE FISHERIES COMMISSION TO DISBURSE FISHING LICENSE REVENUES AND INVESTMENT INCOME TO MANAGE THE MARINE RESOURCES OF THE STATE, TO AUTHORIZE MARINE INSPECTORS TO ACCEPT DEPUTIZATION FROM THE NATIONAL MARINE FISHERIES SERVICE, AND TO PROVIDE MARINE INSPECTORS TO ACCEPT DEPUTIZATION FROM THE NATIONAL MARINE FISHERIES SERVICE, AND TO PROVIDE MARINE INSPECTORS WITH THE SAME ENFORCEMENT AUTHORITY AS WILDLIFE PROTECTORS.

Upon motion by Representative Justice, Chair, the Proposed Committee Substitute S1126-PCS35245-SBf-36 was adopted for consideration and moved forth for discussion (Please see Exhibit #2). The Bill Analysis is attached (Please see Exhibit #3). Representative Gibson was recognized to speak on the bill. He cited three concerns the bill addresses: $10 to buy a lifetime license for age 70 to 65; allowing the purchase of a lifetime license anytime up to January 1, 2007 by changing the Grandfather Date; and allowing fishing in freshwater with natural bait in your home county without requirement of a fishing license.

Representative Blackwood, citing Part V, Section 5.1, of the bill, expressed concern pertaining to authorizing enforcement of federal laws by marine inspectors and questioned if this would have the State of North Carolina siding with the federal government thereby leaving out the Fisheries Association. Sean McKeon, Executive Director, North Carolina Fisheries Association, was recognized to respond and stated that his organization is opposed to the bill. Representative Gibson responded that the purpose of the dual enforcement was to place the majority of state funds into protecting fishing resources, while cross-referencing with the federal government for funds to address the enforcement aspect. Preston Pate, Director of the North Carolina Division of the Marine Fisheries, explained that the National Marine Fishing Services, their federal counterpart, has a continuing budget item annually to fund cooperative funding programs with the various states. The program was set up to enhance the federal ability by supplementing programs with the

states from recurring monies. He emphasized that receiving monies through this grant for the enforcement program does not affect a state's ability to support its own fisheries and programs. In addition, he assured the Committee that when opportunities arise to challenge the National Fishing Agency, this is done so on the merits of the case not based funding sources.

Discussion from committee members ensued. Representative Gibson applauded NC Wildlife Resources and NC Marine Fisheries for their work on this bill.

Upon motion by Representative LaRoque, the bill received a favorable report as to the House Committee Substitute #2, S1126-PCS35245-SBf-36, which changes the title and an unfavorable report as to House Committee Substitute #1. The motion passed. The 2005 Committee Report is attached (Please see Exhibit #4).

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: **Tuesday, July 5, 2005**

TIME: **1:00 P. M.**

LOCATION: **643 Legislative Office Building**

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

S 1126. AMEND FISHING LICENSE REQUIREMENTS-2.
Primary Sponsor: Senator Albertson

Respectfully,
Representatives Harrell and Justice
Chairs

I hereby certify this notice was filed by the committee assistant at the following offices at **3:00 P.M.** on **Thursday, June 30, 2005.**

___Principal Clerk
___Reading Clerk - House Chamber

Beth LeGrande (Committee Assistant)

HOUSE COMMITTEE ON ENVIRONMENT AND NATURAL RESOURCES

AGENDA

1:00 P.M.
Tuesday July 5, 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

S 1126. AMEND FISHING LICENSE REQUIREMENTS-2.
Primary Sponsor: Senator Albertson

5. Adjourn

Exhibit I

VISITOR REGISTRATION SHEET

ENVIRONMENT & NATURAL RES. 7-5-05

Name of Committee Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Kathy Howard	Progress Energy
Bob Stamm	NC Forestry Assoc.
Lisa Mark	NC Home Builders
Nancy Thompson	NRCC
Chad Hinton	Civitas Institute
Suzanne Buckley	GA OFFICE
Dick Taylor	NCASA
SEAN McKeon	NCFA
Robin Smith	DENR
Preston Pate	NCDMF
Jimmy Johnson	Marine Fisheries Commission

VISITOR REGISTRATION SHEET

Environment + Natural Res. 7-5-05

Name of Committee **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Cynthia Shoreling	Conservation Council
Michael Nelson	Conservation Council
Eben Polk	CWMTF
Missa Dolan	NC Conservation Network
Erin Kimrey	NC Cons. Network
Will Morgan	Coastal Conservation Association
Mel Broughton	CCA
David Knight	TNC
Terry Hardesty	NCPC
Julie Woodson	NCPC
Gardner Payne	Edmisten & Webb
Tom Beason	NC Environ Defense, NCWF, NCSEA
Dan Whittle	ENV. Defense

VISITOR REGISTRATION SHEET

Environment & Natural Res. 7-5-05

Name of Committee | Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Steve Hall	DENR
[signature]	NCRA
[signature]	Capitol Group / NCCU
[signature]	Schering-Plough
[signature]	NCLHA
[signature]	NCHB

House Pages

Name Of Committee: _____ Da : 7-5-05

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: LESLI OAKLEY
3. Name: WALTER SPELL
4. Name: JAMES WORTH
5. Name: _____

Environment & Natural Resources

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S 5

SENATE BILL 1126

Agriculture/Environment/Natural Resources Committee Substitute Adopted 4/5/05
Finance Committee Substitute Adopted 4/6/05
Fourth Edition Engrossed 4/11/05
House Committee Substitute Favorable 6/28/05

Short Title: Implement CRFL/Amend Fisheries Laws. (Public)

Sponsors:

Referred to:

March 24, 2005

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FOR THE IMPLEMENTATION OF THE COASTAL RECREATIONAL FISHING LICENSE, TO EXEMPT FROM COASTAL RECREATIONAL FISHING LICENSE REQUIREMENTS ONLY THOSE INDIVIDUALS WHO ARE UNDER SIXTEEN YEARS OF AGE OR WHO HOLD CERTAIN LICENSES ISSUED BY THE WILDLIFE RESOURCES COMMISSION THAT WERE PURCHASED PRIOR TO JANUARY 1, 2005, TO REPEAL THE NATURAL BAIT EXEMPTION FROM HOOK-AND-LINE FISHING LICENSE REQUIREMENTS, TO PROVIDE FOR A STATEWIDE SUBSISTENCE FISHING LICENSE, TO PROHIBIT THE WILDLIFE RESOURCES COMMISSION FROM DISCLOSING PERSONAL IDENTIFYING INFORMATION OF LICENSEES AND OTHERS UNDER CERTAIN CIRCUMSTANCES, TO AMEND VARIOUS STATUTES RELATED TO THE WILDLIFE RESOURCES COMMISSION, TO PROVIDE A SYSTEM OF UNIFIED LICENSES UNDER WHICH INDIVIDUALS MAY FISH THROUGHOUT THE STATE, TO RECONSTITUTE THE MARINE FISHERIES COMMISSION, TO AUTHORIZE THE NEW MARINE FISHERIES COMMISSION TO DISBURSE FISHING LICENSE REVENUES AND INVESTMENT INCOME TO MANAGE THE MARINE RESOURCES OF THE STATE, TO AUTHORIZE MARINE INSPECTORS TO ACCEPT DEPUTIZATION FROM THE NATIONAL MARINE FISHERIES SERVICE, AND TO PROVIDE MARINE INSPECTORS WITH THE SAME ENFORCEMENT AUTHORITY AS WILDLIFE PROTECTORS.

The General Assembly of North Carolina enacts:

PART I. AMEND FISHING LICENSE REQUIREMENTS

SECTION 1.1. The title of Article 14B of Chapter 113 of the General Statutes reads as rewritten:

"Article 14B.

~~Saltwater~~ Coastal Recreational Fishing Licenses."

SECTION 1.2. G.S. 113-174 reads as rewritten:

"**§ 113-174. Definitions.**

As used in this Article:

~~(1) "Commission" means the Marine Fisheries Commission.~~

(1a) "CRFL" means Coastal Recreational Fishing License.

(2) "Division" means the Division of Marine Fisheries in the Department of Environment and Natural Resources.

(2a) "For Hire Boat" means a charter boat, head boat, dive boat, or other boat hired to allow individuals to engage in recreational fishing.

(3) "North Carolina resident" means an individual who is a resident within the meaning of G.S. 113-130(4).

(4) "Recreational fishing" means any activity preparatory to, during, or subsequent to the taking of any ~~fish,~~finfish or bivalve, the taking of which is subject to regulation by the Marine Fisheries Commission, by any ~~means:~~means if the purpose of the taking is to obtain finfish or bivalves that are not to be sold. "Recreational fishing" does not include the taking of finfish or bivalves:

a. ~~That does not constitute a~~ By a commercial fishing operation as defined in G.S. 113-168.

b. ~~Except as provided in~~For scientific purposes pursuant to G.S. 113-261.

c. Under a RCGL issued pursuant to G.S. 113-173.

~~(5) "SFL" means Saltwater Fishing License.~~"

SECTION 1.3. G.S. 113-174.1 reads as rewritten:

"**§ 113-174.1. ~~General~~ License required; general provisions governing licenses.**

(a) License ~~Purchase~~ Required to Engage in Recreational Fishing. – It is unlawful for any individual to engage in recreational fishing ~~in coastal~~ in:

(1) Coastal fishing waters that are not joint fishing waters without ~~having purchased~~ holding a current license ~~required by this Article.~~ issued under this Article or under Article 25A of this Chapter that authorizes the individual to engage in recreational fishing in coastal fishing waters.

(2) Joint fishing waters without holding a current license issued under this Article or under Article 21 or Article 25A of this Chapter that authorizes the individual to engage in recreational fishing in joint fishing waters.

(a1) Compliance with Applicable Laws. – It is unlawful for any individual to engage in recreational fishing without complying with ~~the provisions of this Article and rules adopted by the Commission under this Article.~~applicable requirements of this

Article and Articles 21 and 25A of this Chapter and with applicable rules adopted by the Marine Fisheries Commission and the Wildlife Resources Commission.

(a2) Fourth of July Free Fishing Day. – The fourth day of July of each year is declared a free fishing day to promote the sport of fishing, and no license issued under this Article or Article 25A of this Chapter is required to fish in any of the public waters of the State on that day. All other laws and rules pertaining to recreational fishing apply.

(b) Sale of Fish Prohibited. – A license issued under this Article or Article 25A of this Chapter does not authorize an individual who takes or lands any species of fish under the authority of the Marine Fisheries Commission to sell, offer for sale, barter, or exchange the fish for anything of value. Except as provided in G.S. 113-168.4, it is unlawful for any individual who takes or lands any species of fish under the authority of the Marine Fisheries Commission by any means to sell, offer for sale, barter, or exchange these fish for anything of value.

(c) Assignment and Transfer Prohibited. – It is unlawful to buy, sell, lend, borrow, assign, or otherwise transfer a license issued under this Article or Article 25A of this Chapter or to attempt to buy, sell, lend, borrow, assign, or otherwise transfer a license issued under this ~~Article.~~Article or Article 25A of this Chapter.

~~(d) General Enforcement. – It is unlawful for any individual to engage in recreational fishing in coastal fishing waters in the State without providing the individual's name and residence address upon the request of an inspector or other law enforcement officer authorized to enforce federal or State laws, regulations, or rules relating to marine fisheries.~~

~~(e) Enforcement for Charterboats and Headboats. – An inspector or other law enforcement officer may only verify the licensure of an individual fishing from a charterboat or headboat after the charterboat or headboat has returned to shore and the individual has disembarked from the charterboat or headboat. Except as provided in G.S. 113-174.2(d), each individual on board a charterboat or headboat engaged in recreational fishing, other than crew members who do not engage in recreational fishing, must have purchased a current SFL issued pursuant to G.S. 113-174.2. An owner, operator, or crew member of a charterboat or headboat is not responsible for the licensure of a customer fishing from a charterboat or headboat.~~

(f) ~~Cancellation.~~Cancellation of Fraudulent License; Penalties. – The ~~Division~~ Wildlife Resources Commission may cancel a license issued by the Commission under this Article or Article 25A of this Chapter if the license was issued on the basis of false information supplied by the license applicant. The Division may cancel a For Hire Blanket CRFL issued under G.S. 113-174.3 or an Ocean Fishing Pier Blanket CRFL issued under G.S. 113-174.4 if the license was issued on the basis of false information supplied by the license applicant. A cancelled license is void from the date of issuance. It is a Class 1 misdemeanor for an individual to knowingly do any of the following:

(1) Engage in any activity regulated under this Article with an improper, false, or altered license.

(2) Make any false, fraudulent, or misleading statement in applying for a license issued under this Article or Article 25A of this Chapter.

(3) Counterfeit, alter, or falsify any application or license issued under this Article or Article 25A of this Chapter.

(g) Reporting Requirements. – A person licensed under this Article or Article 25A of this Chapter shall comply with the biological data sampling and survey programs of the Marine Fisheries Commission and the Division.

(h) Replacement Licenses. – Upon receipt of a proper application together with a fee of five dollars ($5.00), the Wildlife Resources Commission or the Division may issue a new license to replace one issued by the respective agency that has been lost or destroyed before its expiration. The application must be on a form of the Wildlife Resources Commission or the Division setting forth information in sufficient detail to allow ready identification of the lost or destroyed license and ascertainment of the applicant's continued entitlement to it."

SECTION 1.4. G.S. 113-174.2 reads as rewritten:

"**§ 113-174.2. ~~Saltwater~~ Coastal Recreational Fishing License.**

~~(a) License Required. – Except as otherwise provided in this Article, it is unlawful for any individual to engage in recreational fishing in coastal fishing waters by means of recreational gear without having purchased a current SFL issued under this section. It is unlawful for any individual fishing under a SFL to possess fish in excess of recreational possession limits.~~

(a1) Authorization to Fish in Coastal and Joint Fishing Waters. – A CRFL issued under this section authorizes the licensee to engage in recreational fishing in coastal fishing waters, including joint fishing waters. A CRFL issued under this section does not authorize the licensee to fish in inland fishing waters.

~~(b) Purchase; Renewal. – Any license issued under this section may be purchased or renewed at designated offices of the Division; from the Division by mail, electronic mail, the Internet, or telephone; or at locations designated by the North Carolina Saltwater Fishing Fund Board of Trustees.~~

(c) Types of ~~SFLs;~~CRFLs; Fees; Duration. – The ~~Division~~ Wildlife Resources Commission shall issue the following ~~SFLs:~~CRFLs:

(1) ~~One-year SFL.~~ Annual Resident CRFL. – $15.00. This license is valid for a period of one year from the date of issuance. This license shall be issued only to an individual who is a resident of the State.

(1a) Annual Nonresident CRFL. – $30.00. This license is valid for a period of one year from the date of issuance. This license shall be issued only to an individual who is not a resident of the State.

~~(2) Two-year SFL. – $30.00. This license is valid for a period of two years from the date of issuance.~~

~~(3) Three-year SFL. – $45.00. This license is valid for a period of three years from the date of issuance.~~

(4) ~~Seven-day SFL.~~Ten-Day Resident CRFL. – ~~$1.00.~~$5.00. This license is valid for a period of ~~seven consecutive days.~~10 consecutive days, as indicated on the license. ~~An individual may purchase this license only once in any 12-month period.~~ This license shall be issued only to an individual who is a resident of the State.

(4a) Ten-Day Nonresident CRFL. – $10.00. This license is valid for a period of 10 consecutive days, as indicated on the license. This license shall be issued only to an individual who is not a resident of the State.

~~(5) Subsistence SFL. An applicant for a license under this subdivision shall provide to the Division a certification from the Department of Health and Human Services that the individual falls below the federal poverty level. A license issued under this subdivision shall be issued without charge and is valid for a period of one year from the date of issuance.~~

(6) Lifetime ~~SFL.~~CRFLs. – ~~This license is~~Except as provided in sub-subdivision j. of this subdivision, CRFLs issued under this subdivision are valid for the lifetime of the licensee. ~~The fee for the Lifetime SFL, based on the age of the prospective licensee as of the date on which the application is filed with the Division, is:~~

~~a. Younger than six years of age $100.00~~

~~b. Six years of age to younger than 11 years of age $150.00~~

~~c. 11 years of age to younger than 18 years of age $200.00~~

~~d. 18 years of age or older $500.00~~

e. Infant Lifetime CRFL. – $100.00. This license shall be issued only to an individual younger than one year of age.

f. Youth Lifetime CRFL. – $150.00. This license shall be issued only to an individual who is one year of age or older but younger than 12 years of age.

g. Resident Adult Lifetime CRFL. – $250.00. This license shall be issued only to an individual who is 12 years of age or older but younger than 70 years of age and who is a resident of the State.

h. Nonresident Adult Lifetime CRFL. – $500.00. This license shall be issued only to an individual who is 12 years of age or older and who is not a resident of the State.

i. Resident Elderly Lifetime CRFL. – $10.00. This license shall be issued only to an individual who is 70 years of age or older and who is a resident of the State.

j. Resident Disabled Veteran CRFL. – $10.00. This license shall be issued only to an individual who is a resident of the State and who is a fifty percent (50%) or more disabled veteran as determined by the United States Department of Veterans Affairs. This license remains valid for the lifetime of the licensee so long as the licensee remains fifty percent (50%) or more disabled.

k. Resident Totally Disabled CRFL. – $10.00. This license shall be issued only to an individual who is a resident of the State and who is totally and permanently disabled as determined by the Social Security Administration.

(d) Exemptions. – An individual ~~may engage in recreational fishing by means of recreational gear without having purchased a SFL~~is exempt from the license requirements of G.S. 113-174.1(a) if the individual ~~is~~ either:

(1) Is under 16 years of age.~~18 years of age or younger and is currently enrolled in school and is making progress toward obtaining a high school diploma or its equivalent.~~

(2) Holds any of the following licenses that were purchased prior to January 1, 2005:

a. Infant Lifetime Sportsman License issued under G.S. 113-270.1D(b)(1).

b. Youth Lifetime Sportsman License issued under G.S. 113-270.1D(b)(2).

c. Adult Resident Lifetime Sportsman License issued under G.S. 113-270.1D(b)(3).

d. Nonresident Lifetime Sportsman License issued under G.S. 113-270.1D(b)(4).

e. Age 70 Resident Lifetime Sportsman License issued under G.S. 113-270.1D(b)(5).

f. Lifetime Resident Comprehensive Fishing License issued under G.S. 113-271(d)(3).

g. Lifetime Combination Hunting and Fishing License for Disabled Residents issued under G.S. 113-270.1C(b)(4).

h. Disabled Resident Sportsman License issued under G.S. 113-270.1D(b)(6).

(3) Holds any of the following licenses:

a. Lifetime Fishing License for the Legally Blind issued under G.S. 113-271(d)(7).

b. Adult Care Home Resident Fishing License issued under G.S. 113-271(d)(8)."

SECTION 1.5. Article 14B of Chapter 113 of the General Statutes is amended by adding two new sections to read:

"**§ 113-174.3. For Hire Blanket CRFL.**

(a) License. – A person who operates a for hire boat may purchase a For Hire Blanket CRFL issued by the Division. 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 is valid for a period of one year from the date of issuance. The fee for a For Hire Blanket CRFL is:

(1) Three hundred dollars ($300.00) for a vessel captained by an individual who holds a certification from the United States Coast Guard to carry six or fewer passengers.

(2) Four hundred dollars ($400.00) for a vessel captained by an individual who holds a certification from the United States Coast Guard to carry greater than six passengers.

(b) Implementation. – Except as provided in this section and G.S. 113-174.2(d), each individual on board a for hire boat engaged in recreational fishing, other than crew members who do not engage in recreational fishing, must hold a license issued under this Article or Article 25A of this Chapter. An owner, operator, or crew member of a for hire boat is not responsible for the licensure of a customer fishing from the boat.

"**§ 113-174.4. Ocean Fishing Pier Blanket CRFL.**

Ocean Fishing Pier Blanket CRFL. – A person who owns or operates an ocean fishing pier and who charges a fee to allow a person to engage in recreational fishing from the pier may purchase an Ocean Fishing Pier Blanket CRFL issued by the Division. An Ocean Fishing Pier Blanket CRFL authorizes all individuals 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 while on the pier. This license is valid for a period of one year from the date of issuance. The fee for an Ocean Fishing Pier Blanket CRFL is four dollars ($4.00) per linear foot, to the nearest foot, that the pier extends into coastal fishing waters beyond the mean high waterline. The length of the pier shall be measured to include all extensions of the pier."

SECTION 1.6. G.S. 113-270.1C reads as rewritten:

"**§ 113-270.1C. Combination hunting and inland fishing licenses.**

(a) The combination hunting and inland fishing licenses set forth in subsection (b) of this section entitle the ~~holder~~ licensee to take, except on game lands, all wild birds and wild animals, other than big game and waterfowl, by all lawful methods and in all open seasons, and to fish with hook and line in all inland and joint fishing waters, except public mountain trout waters. A combination hunting and inland fishing license issued under this section does not entitle the licensee to engage in recreational fishing in coastal fishing waters that are not joint fishing waters.

(b) Combination hunting and inland fishing licenses issued by the Wildlife Resources Commission are:

(1) Resident Annual Combination Hunting and Inland Fishing License – $20.00. This license shall be issued only to an individual resident of the State.

(2), (3) Repealed by Session Laws 1997-326, s. 2.

~~(4) Lifetime Combination Hunting and Fishing License for Disabled Residents – $10.00. This license shall be issued only to (i) an individual resident of the State who is a fifty percent (50%) or more disabled veteran as determined by the United States Department of Veterans Affairs, remaining valid for the lifetime of the individual so long as the individual remains fifty percent (50%) or more disabled; or (ii) an individual resident of the State who is totally disabled, remaining valid for the lifetime of the individual so long as the individual remains totally disabled. For purposes of this section, "totally disabled" means physically incapable of being gainfully~~

~~employed. The application form for this license, to be provided by the Wildlife Resources Commission, allows a person to apply only for the fishing privileges conveyed by the license. This license entitles the holder to fish in public mountain trout waters as provided in G.S. 113-272(a).~~

(5) Resident Disabled Veteran Lifetime Combination Hunting and Inland Fishing License – $10.00. This license shall be issued only to an individual who is a resident of the State and who is a fifty percent (50%) or more disabled veteran as determined by the United States Department of Veterans Affairs. This license remains valid for the lifetime of the licensee so long as the licensee remains fifty percent (50%) or more disabled. This license entitles the licensee to fish in public mountain trout waters as provided in G.S. 113-272(a).

(6) Resident Totally Disabled Lifetime Combination Hunting and Inland Fishing License – $10.00. This license shall be issued only to an individual who is a resident of the State and who is totally and permanently disabled as determined by the Social Security Administration. This license remains valid for the lifetime of the licensee. This license entitles the licensee to fish in public mountain trout waters as provided in G.S. 113-272(a)."

SECTION 1.7. G.S. 113-270.1D reads as rewritten:

"**§ 113-270.1D. Sportsman licenses.**

(a) Annual Sportsman License – $40.00. This license shall be issued only to an individual resident of the State and entitles the ~~holder~~ licensee to take all wild animals and wild birds, including waterfowl, by all lawful methods in all open seasons, including the use of game lands, and to fish with hook and line for all fish in all inland and joint fishing waters, including public mountain trout waters. An annual sportsman license issued under this subsection does not entitle the licensee to engage in recreational fishing in coastal fishing waters that are not joint fishing waters.

(b) Lifetime Sportsman Licenses. ~~Lifetime~~ Except as provided in subdivision (7) of this subsection, lifetime sportsman licenses are valid for the lifetime of the ~~holders~~ licensees.~~and~~ Lifetime sportsman licenses entitle the ~~holders~~ licensees to take all wild animals and wild birds by all lawful methods in all open seasons, including the use of game lands, and to fish with hook and line for all fish in all inland and joint fishing waters, including public mountain trout waters. A lifetime sportsman license issued under this subsection does not entitle the licensee to engage in recreational fishing in coastal fishing waters that are not joint fishing waters. Lifetime sportsman licenses issued by the Wildlife Resources Commission are:

(1) Infant Lifetime Sportsman License – $200.00. This license shall be issued only to an individual under one year of age.

(2) Youth Lifetime Sportsman License – $350.00. This license shall be issued only to an individual under 12 years of age.

(3) Adult Resident Lifetime Sportsman License – $500.00. This license shall be issued only to an individual resident of the State.

(4) Nonresident Lifetime Sportsman License – $1,000. This license shall be issued only to an individual nonresident of the State.

(5) Age 70 Resident Lifetime Sportsman License – $10.00. This license shall be issued only to an individual resident of the State who is at least 70 years of age.

~~(6) Disabled Resident Sportsman License – $100.00. This license shall be issued only to (i) an individual resident of the State who is a fifty percent (50%) or more disabled veteran as determined by the United States Department of Veterans Affairs, remaining valid for the lifetime of the individual so long as the individual remains fifty percent (50%) or more disabled; or (ii) an individual resident of the State who is totally disabled, remaining valid for the lifetime of the individual so long as the individual remains totally disabled. For purposes of this section, "totally disabled" means physically incapable of being gainfully employed.~~

(7) Resident Disabled Veteran Lifetime Sportsman License – $100.00. This license shall be issued only to an individual who is a resident of the State and who is a fifty percent (50%) or more disabled veteran as determined by the United States Department of Veterans Affairs. This license remains valid for the lifetime of the licensee so long as the licensee remains fifty percent (50%) or more disabled.

(8) Resident Totally Disabled Lifetime Sportsman License – $100.00. This license shall be issued only to an individual who is a resident of the State and who is totally and permanently disabled as determined by the Social Security Administration."

SECTION 1.8. G.S. 113-271 reads as rewritten:

"**§ 113-271. Hook-and-line licenses in inland and joint fishing waters.**

(a) An inland hook-and-line fishing license issued under this section entitles the licensee to fish with hook and line in inland fishing waters and joint fishing waters. An inland hook-and-line fishing license issued under this section does not entitle the licensee to engage in recreational fishing in coastal fishing waters that are not joint fishing waters. An inland hook-and-line fishing license issued under subdivision (1), (3), (6a), (6b), (6c), or (9) of subsection (d) of this section entitles the licensee ~~All the hook-and-line fishing licenses set forth in subdivisions (1), (3), (7), and (9) of subsection (d) of this section entitle the holder~~ to fish with hook and line in public mountain trout waters.

(b) Repealed by Session Laws 1993 (Reg. Sess., 1994), c. 684, s. 4.

(c) Repealed by Session Laws 1979, c. 830, s. 1.

(d) The hook-and-line fishing licenses issued by the Wildlife Resources Commission are as follows:

(1) Resident Annual Comprehensive Inland Fishing License – $20.00. This license shall be issued only to an individual resident of the State.

(2) Resident State Inland Fishing License – $15.00. This license shall be issued only to an individual resident of the State.

(3) Lifetime Resident Comprehensive Inland Fishing License – $250.00. This license shall be issued only to an individual resident of the State and is valid for the lifetime of the ~~holder.~~licensee.

(4) Resident County Inland Fishing License – $10.00. This license shall be issued only to an individual resident of the State and is valid only within the county of residence of the ~~license holder.~~licensee.

(5) Nonresident State Inland Fishing License – $30.00. This license shall be issued to an individual nonresident of the State.

(6) Short-Term Inland Fishing Licenses. Short-term inland fishing licenses are valid only for the date or consecutive dates indicated on the licenses. Short-term inland fishing licenses issued by the Wildlife Resources Commission are:

a. Resident ~~one-day~~10-day Inland Fishing License – $5.00. This license shall be issued only to a resident of the State.

b. Nonresident ~~one-day~~10-day Inland Fishing License – $10.00. This license shall be issued only to a nonresident of the State.

~~c. Nonresident three-day – $15.00. This license shall be issued only to a nonresident of the State.~~

(6a) Age 70 Resident Lifetime Inland Fishing License – $10.00. This license shall be issued only to an individual resident of the State who is at least 70 years of age.

(6b) Resident Disabled Veteran Lifetime Inland Fishing License – $10.00. This license shall be issued only to an individual who is a resident of the State and who is a fifty percent (50%) or more disabled veteran as determined by the United States Department of Veterans Affairs. This license remains valid for the lifetime of the licensee so long as the licensee remains fifty percent (50%) or more disabled.

(6c) Resident Totally Disabled Lifetime Inland Fishing License – $10.00. This license shall be issued only to an individual who is a resident of the State and who is totally and permanently disabled as determined by the Social Security Administration. This license remains valid for the lifetime of the licensee.

~~(7) Lifetime Fishing License for the Legally Blind – No charge. This license shall be issued only to an individual resident of the State who has been certified by the Department of Health and Human Services as a person whose vision with glasses is insufficient for use in ordinary occupations for which sight is essential. This license is valid for the life of the individual so long as he remains legally blind.~~

~~(8) Adult Care Home Resident Fishing License – No charge. This license shall be issued only to an individual resident of the State who resides in an adult care home as defined in G.S. 131D-2(a)(3) or G.S. 131E-101(4). This license is valid for the life of the individual so long as the individual remains a resident of an adult care home.~~

(9) Special Guest Inland Fishing License – $50.00. This license shall be issued only to the owner or lessee of private property bordering inland or joint fishing waters, including public mountain trout waters, and entitles ~~persons~~ individuals 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 license shall not be in force unless displayed on the premises of the property and only entitles fishing without additional license to ~~persons~~ individuals fishing from the licensed property and then only when fishing within the private property lines. The guest fishing license is not transferable as to person or location."

SECTION 1.9. G.S. 113-272.3(c) reads as rewritten:

"(c) Lifetime licenses are issued from the Wildlife Resources Commission headquarters. Each application for an Infant Lifetime Sportsman or Youth Lifetime Sportsman License must be accompanied by a certified copy of the birth ~~certificate~~ certificate, adoption order containing the date of birth, or other proof of age satisfactory to the Commission, of the individual to be named as the ~~license holder.~~licensee."

SECTION 1.10. G.S. 113-275(c1) reads as rewritten:

"(c1) Upon receipt of a proper application together with a fee of ~~two~~ five dollars ~~($2.00),~~($5.00), the Wildlife Resources Commission may issue a new license or permit to replace one that has been lost or destroyed before its expiration. The application must be on a form of the Wildlife Resources Commission setting forth information in sufficient detail to allow ready identification of the lost or destroyed license or permit and ascertainment of the applicant's continued entitlement to it."

SECTION 1.11. G.S. 113-276(e) is repealed.

SECTION 1.12. G.S. 113-276(j) reads as rewritten:

"(j) A migrant farm worker who has in his possession a temporary certification of his status as such by the Rural Employment Service of the North Carolina Employment Security Commission on a form provided by the Wildlife Resources Commission is entitled to the privileges of a resident of the State and of the county indicated on such certification during the term thereof for the purposes ~~of:~~of

~~(1)~~ ~~Purchasing~~purchasing and using the resident fishing licenses provided by G.S. 113-271(d)(2), (4), and ~~(6)a.; and~~(6)a.

~~(2) Utilizing the natural-bait exemption in subsection (e) above.~~"

SECTION 1.13. G.S. 113-276(m) reads as rewritten:

"(m) ~~Notwithstanding any other provision of law, the~~ The fourth day of July of each year is declared a free fishing day to promote the sport of fishing and no hook-and-line fishing license is required to fish in any of the public waters of the State on ~~this~~ that day. All other laws and rules pertaining to hook-and-line fishing ~~still~~ apply."

SECTION 1.14. G.S. 113-276 is amended by adding a new subsection to read:

"(n) The Wildlife Resources Commission may adopt rules to exempt individuals who participate in organized fishing events held in inland 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."

SECTION 1.15. G.S. 113-296(b) reads as rewritten:

"(b) In order to be eligible for participation in the Disabled Sportsman Program established by this section, ~~a person~~an individual must be able to certify through competent medical evidence one of the following disabilities:

(1) ~~Amputation of~~Missing fifty percent (50%) or more of one or more ~~limbs;~~limbs, whether by amputation or natural causes.

(2) Paralysis of one or more ~~limbs;~~limbs.

(3) Dysfunction of one or more limbs rendering the ~~person~~ individual unable to perform the tasks of grasping and lifting with the hands and arms or unable to walk without mechanical assistance, other than a ~~cane;~~cane.

(4) Disease, injury, or defect confining the ~~person~~ individual to a wheelchair, walker, or ~~crutches;~~crutches.

(5) Legal ~~deafness; or~~deafness.

(6) Legal blindness, for purposes of participation in disabled fishing only.

The disability must be permanent, and ~~a person~~an individual loses eligibility to participate in the Disabled Sportsman Program when the specified disability ceases to exist."

SECTION 1.16. Subchapter IV of Chapter 113 of the General Statutes is amended by adding a new Article to read:

"Article 25A.

"Unified Licenses.

"**§ 113-351. Unified hunting and fishing licenses; subsistence license waiver.**

(a) Definitions. – The definitions set out in G.S. 113-174 apply to this Article.

(b) General Provisions Governing Licenses and Waivers. – The general provisions governing licenses set out in G.S. 113-174.1 apply to licenses and waivers issued under this section.

(c) Types of Unified Hunting and Fishing Licenses; Fees; Duration. – The Wildlife Resources Commission shall issue the following Unified Hunting and Fishing Licenses:

(1) Annual Resident Unified Sportsman/Coastal Recreational Fishing License. – $55.00. This license is valid for a period of one year from the date of issuance. This license shall be issued only to an individual who is a resident of the State. This license authorizes the licensee to take all wild animals and wild birds, including waterfowl, by all lawful methods in all open seasons, including the use of game lands; 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.

(2) Annual Resident Unified Inland/Coastal Recreational Fishing License. – $35.00. This license is valid for a period of one year from the date of issuance. This license shall be issued only to an individual who is a resident of the State. This license 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.

(3) Lifetime Unified Sportsman/Coastal Recreational Fishing Licenses. – Except as provided in sub-subdivision f. 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 take all wild animals and wild birds, including waterfowl, by all lawful methods in all open seasons, including the use of game lands; 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. Infant Lifetime Unified Sportsman/Coastal Recreational Fishing License. – $275.00. This license shall be issued only to an individual who is younger than one year of age.

b. Youth Lifetime Unified Sportsman/Coastal Recreational Fishing License. – $450.00. This license shall be issued only to an individual who is one year of age or older but younger than 12 years of age.

c. Resident Adult Lifetime Unified Sportsman/Coastal Recreational Fishing License. – $675.00. This license shall be issued only to an individual who is 12 years of age or older but younger than 70 years of age and who is a resident of the State.

d. Nonresident Adult Lifetime Unified Sportsman/Coastal Recreational Fishing License. – $1,350. This license shall be issued only to an individual who is 12 years of age or older and who is not a resident of the State.

e. Resident Elderly Lifetime Unified Sportsman/Coastal Recreational Fishing License. – $20.00. This license shall be issued only to an individual who is 70 years of age or older and who is a resident of the State.

f. Resident Disabled Veteran Lifetime Unified Sportsman/Coastal Recreational Fishing License. – $110.00. This license shall be issued only to an individual who is a resident of the State and who is a fifty percent (50%) or more disabled veteran as determined by the United States Department of Veterans Affairs. This license remains valid for the lifetime of the licensee so long as the licensee remains fifty percent (50%) or more disabled.

g. Resident Totally Disabled Lifetime Unified Sportsman/Coastal Recreational Fishing License. – $110.00. This license shall be issued only to an individual who is a resident of the State and who is totally and permanently disabled as determined by the Social Security Administration.

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

b. Resident Legally Blind Lifetime Unified Inland/Coastal Recreational Fishing License. – No charge. This license shall be issued only to an individual who is a resident of the State and who has been certified by the Department of Health and Human Services as an individual whose vision with glasses is insufficient for use in ordinary occupations for which sight is essential. This license remains valid for the lifetime of the licensee so long as the licensee remains legally blind.

c. Resident Adult Care Home Lifetime Unified Inland/Coastal Recreational Fishing License. – No charge. This license shall be issued only to an individual who is a resident of the State and who resides in an adult care home as defined in G.S. 131D-2(a)(1b) or G.S. 131E-101(1). This license remains valid for the lifetime of the licensee so long as the licensee remains a resident of an adult care home.

(d) Resident Subsistence Unified Inland/Coastal Recreational Fishing License. – $1.00. This license is valid for a period of one year from the date of issuance. This license shall be issued only to an individual who is a resident of the State. This license authorizes the licensee to fish with hook and line for all fish in all inland fishing waters and joint fishing waters, except for public mountain trout waters, and to engage in recreational fishing in coastal fishing waters. An applicant for a license issued under this subsection shall provide to a designated license agent a certification from the county department of social services that the applicant is currently enrolled and receives benefits from at least one of the eligible social service programs listed on an application developed by the Division of Marine Fisheries and the Wildlife Resources Commission."

SECTION 1.17. Article 24 of Chapter 143 of the General Statutes is amended by adding a new section to read:

"**§ 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."

SECTION 1.18. Sections 3, 4, 9, 10, 11, and 12 of S.L. 2004-187 are repealed.

SECTION 1.19. Section 15 of S.L. 2004-187 reads as rewritten:

"**SECTION 15.** ~~Sections 2, 3, and 4~~Section 2 of this act ~~become~~ becomes effective January 1, ~~2006.~~2007. All other sections of this act become effective when the act becomes law."

SECTION 1.20. The repeal by this act of the statutory authority of the Wildlife Resources Commission to issue a type of license shall not affect the authority of an individual to whom a license of that type is issued prior to the effective date of the repeal to engage in the activity that the repealed license type authorizes so long as the license is otherwise valid.

SECTION 1.21. G.S. 113-130(4) is amended by adding a new sub-subdivision to read:

"f. Students. – Nonresident students attending a university, college, or community college in the State."

PART II. MARINE RESOURCES FUND AND MARINE RESOURCES ENDOWMENT FUND

SECTION 2.1. The title of Article 14C of Chapter 113 of the General Statutes reads as rewritten:

"Article 14C.

~~North Carolina Saltwater Fishing~~Marine Resources Fund and Marine Resources Endowment Fund."

SECTION 2.2. G.S. 113-175 reads as rewritten:

"**§ 113-175. Definitions.**

As used in this Article:

~~(1) "Board of Trustees" means the Board of Trustees of the Fund.~~

(1a) "Endowment Fund" means the North Carolina Marine Resources Endowment Fund.

(1b) "Endowment investment income" means interest and other income earned from the investment of the principal of the Endowment Fund.

(1c) "Endowment license revenues" means the net proceeds from the sale of licenses issued under G.S. 113-174.2(c)(6) and a portion of the net proceeds from the sale of licenses issued under G.S. 113-351(c)(3) and (4). The apportionment of the net proceeds from the sale of licenses issued under G.S. 113-351(c)(3) and (4) shall be jointly determined by the Division of Marine Fisheries and the Wildlife Resources Commission. In the event that the Division of Marine Fisheries and the Wildlife Resources Commission cannot agree on the apportionment, the Governor is authorized to determine the apportionment.

(2) ~~"Fund"~~"Marine Resources Fund" means the North Carolina ~~Saltwater Fishing~~Marine Resources Fund.

(3) ~~"Investment"~~"Marine resources investment income" means interest earned from the investment of ~~license revenues and the proceeds of any gifts, grants, or contributions deposited in~~ the principal of the Marine Resources Fund.

(4) ~~"License"~~"Marine resources license revenues" means the net proceeds from the sale of ~~Saltwater Fishing Licenses~~licenses issued under ~~G.S. 113-174.2.~~Article 14B of this Chapter and a portion of the net proceeds from the sale of licenses issued under Article 25A of this Chapter, excluding endowment license revenues. The apportionment of the net proceeds from the sale of licenses issued under Article 25A of this Chapter shall be jointly determined by the Division of Marine Fisheries and the Wildlife Resources Commission. In the event that the Division of Marine Fisheries and the Wildlife Resources Commission cannot agree on the apportionment, the Governor is authorized to determine the apportionment. ~~The term includes funds realized from the sale, lease, rental, or other grant of rights to real or personal property acquired or produced with license revenues and federal aid project reimbursements to the extent that license revenues originally funded the project for which the reimbursement is made.~~"

SECTION 2.3. G.S. 113-175.1 reads as rewritten:

"**§ 113-175.1. North Carolina ~~Saltwater Fishing Fund.~~Marine Resources Fund.**

(a) There is hereby established the North Carolina ~~Saltwater Fishing~~Marine Resources Fund as a nonreverting special revenue fund in the office of the State Treasurer. The purpose of the Marine Resources Fund is to enhance the ~~fishery~~ marine resources of the ~~State for commercial and recreational fishing.~~State. ~~License revenues and the proceeds of any gifts, grants, and contributions to the State that are specifically designated for inclusion in the Fund shall be deposited in the Fund.~~ The principal of the Marine Resources Fund shall consist of:

(1) Marine resources license revenues.

(2) Proceeds of any gifts, grants, and contributions to the State that are specifically designated for inclusion in the Marine Resources Fund.

(3) Funds realized from the sale, lease, rental, or other grant of rights to real or personal property acquired or produced from funds disbursed from the Marine Resources Fund.

(4) Federal aid project reimbursements to the extent that funds disbursed from the Marine Resources Fund originally funded the project for which the reimbursement is made.

(b) The State Treasurer shall hold the Marine Resources Fund separate and apart from all other moneys, funds, and accounts. The State Treasurer shall invest the assets of the Marine Resources Fund in accordance with the provisions of G.S. 147-69.2 and ~~G.S. 147-69.3.~~ G.S. 147-69.3 and all marine resources investment income shall be deposited to the credit of the Marine Resources Fund. The State Treasurer shall disburse the principal of the Marine Resources Fund and marine resources investment income only upon the written direction of the Marine Fisheries Commission.

(c) The Marine Fisheries Commission may authorize the disbursement of the principal of the Marine Resources Fund and marine resources investment income only to manage, restore, develop, cultivate, conserve, and enhance the marine resources of the State. Expenditure of the assets of the Marine Resources Fund shall be made through the State budget accounts of the Division of Marine Fisheries in accordance with the provisions of the Executive Budget Act. The Marine Resources Fund is subject to the oversight of the State Auditor pursuant to Article 5A of Chapter 147 of the General Statutes.

SECTION 2.4. G.S. 113-175.2 is repealed.

SECTION 2.5. G.S. 113-175.3 is repealed.

SECTION 2.6. G.S. 113-175.4 is repealed.

SECTION 2.7. Article 14C of Chapter 113 of the General Statutes is amended by adding three new sections to read:

"**§ 113-175.5. North Carolina Marine Resources Endowment Fund.**

(a) There is hereby established the North Carolina Marine Resources Endowment Fund as a nonreverting special revenue fund in the office of the State Treasurer. The purpose of the Endowment Fund is to provide the citizens and residents of the State with the opportunity to invest in the future of the marine resources of the State. The principal of the Endowment Fund shall consist of:

(1) Endowment license revenues.

(2) Proceeds of any gifts, grants, or contributions to the State that are specifically designated for inclusion in the Endowment Fund.

(3) Proceeds of any gifts, grants, or contributions to the Marine Fisheries Commission or the Division of Marine Fisheries that are not specifically designated for another purpose.

(4) Funds realized from the sale, lease, rental, or other grant of rights to real or personal property acquired or produced from endowment investment income.

(5) Federal aid project reimbursements to the extent that endowment investment income originally funded the project for which the reimbursement is made.

(6) Transfers to the Endowment Fund.

(7) Any endowment investment income or marine resources license revenue that is credited to the Endowment Fund for the purpose of increasing the principal of the Endowment Fund.

(b) The State Treasurer shall hold the Endowment Fund separate and apart from all other moneys, funds, and accounts. The State Treasurer shall invest the assets of the Endowment Fund in accordance with the provisions of G.S. 147-69.2 and G.S. 147-69.3. The State Treasurer shall disburse the endowment investment income only upon the written direction of the Marine Fisheries Commission.

(c) Subject to the limitations set out in subsection (d) of this section, the Marine Fisheries Commission may authorize the disbursement of endowment investment income only to manage, protect, restore, develop, cultivate, conserve, and enhance the marine resources of the State.

(d) The Endowment Fund is declared to constitute a special trust derived from a contractual relationship between the State and the members of the public whose investments contribute to the Endowment Fund. In recognition of this special trust, all of the following limitations are placed on disbursement of funds held in the Endowment Fund:

(1) Any restrictions specified by the donors on the uses of income derived from gifts, grants, and voluntary contributions shall be respected but shall not be binding.

(2) No disbursements of the endowment investment income derived from the endowment license revenues generated by the sale of Infant Lifetime CRFLs under G.S. 113-174.2(c)(6)e., Youth Lifetime CRFLs under G.S. 113-174.2(c)(6)f., Infant Lifetime Unified Sportsman/Coastal Recreational Fishing Licenses under G.S. 113-351(c)(3)a., or Youth Lifetime Unified Sportsman/Coastal Recreational Fishing Licenses under G.S. 113-351(c)(3)b. shall be made for any purpose until the respective licensees attain the age of 16 years. The State Treasurer shall periodically make an actuarial determination as to the amount of endowment investment income within the Endowment Fund that remains encumbered by the restriction of this subdivision and the amount that is free of the restriction. The Executive Director of the Wildlife Resources Commission shall provide the State Treasurer with the information necessary to make this determination.

(3) No disbursement shall be made from the principal of the Endowment Fund except as otherwise provided by law.

(e) Expenditure of the endowment investment income shall be made through the State budget accounts of the Division of Marine Fisheries in accordance with the provisions of the Executive Budget Act. The Endowment Fund is subject to the

oversight of the State Auditor pursuant to Article 5A of Chapter 147 of the General Statutes.

"**§ 113-175.6. Marine Resources Committee.**

(a) The Marine Resources Committee shall consist of five members of the Marine Fisheries Commission appointed by the Chair of the Marine Fisheries Commission as follows:

(1) The Fisheries Director, shall be an ex officio voting member of the Marine Resources Committee and shall serve as the Chair of the Marine Resources Committee.

(2) One member of the Marine Fisheries appointed to the Commission pursuant to subdivision (1), (2), (3), or (10) of subsection (a) of G.S. 143B-289.69.

(3) One member of the Marine Fisheries appointed to the Commission pursuant to subdivision (4), (5), (6), or (12) of subsection (a) of G.S. 143B-289.69.

(4) One member of the Marine Fisheries appointed to the Commission pursuant to subdivision (7) or (8) of subsection (a) of G.S. 143B-289.69.

(5) One member of the Marine Fisheries appointed to the Commission pursuant to subdivision (9), (11), or (13) of subsection (a) of G.S. 143B-289.69.

(b) In making appointments to the Marine Resources Committee, the Chair of the Marine Fisheries Commission shall provide for fair geographic representation on the Committee.

(c) The Marine Resources Committee shall advise the Marine Fisheries Commission on the disbursement of funds from the Marine Resources Fund pursuant to G.S. 113-175.1 and on the disbursement of endowment investment income from the Endowment Fund pursuant to G.S. 113-175.5.

"**§ 113-175.7. Report.**

The Chair of the Marine Fisheries Commission shall submit to the Joint Legislative Commission on Seafood and Aquaculture by October 1 of each year a report on the Marine Resources Fund and the Endowment Fund that shall include the source and amounts of all moneys credited to each fund and the purpose and amount of all disbursements from each fund during the prior fiscal year."

SECTION 2.8. The first report required pursuant to G.S. 113-175.7, as enacted by Section 2.7 of this act, is due by October 1, 2006.

SECTION 2.9. The General Assembly finds that individuals who purchased certain lifetime licenses issued by the Wildlife Resources Commission prior to January 1, 2005, had a reasonable expectation that these lifetime licenses would authorize these licensees to engage in recreational fishing throughout the State and that these licensees would not be required to purchase any additional license to engage in recreational fishing in coastal waters during the lifetime of the licensee. In recognition of this expectation, the General Assembly has provided in G.S. 113-174.2(d), as enacted by Section 1.4 of this act, that the holders of these lifetime licenses are exempt from the

license requirement for engaging in recreational fishing in coastal fishing waters that was established in S.L. 2004-187. The General Assembly further finds that, because the holders of these lifetime licenses will be authorized to take marine resources from the coastal fishing waters of the State under the provisions of this act, it is appropriate that a portion of the revenues derived from the sale of these lifetime licenses should be transferred to the Marine Resources Endowment Fund so that the endowment investment income generated by the transferred license revenues will be used to manage, restore, develop, cultivate, conserve, and enhance the marine resources of the State. The General Assembly specifically finds that this transfer of funds is consistent with the overall spirit, intent, and purpose underlying the creation of the Wildlife Endowment Fund and the Marine Resources Endowment Fund. Therefore, in accordance with G.S. 143-250.1(d)(3), the State Treasurer shall transfer the sum of three million dollars ($3,000,000) from the Wildlife Endowment Fund to the Marine Resources Endowment Fund. This transfer shall be made in five equal installments of six hundred thousand dollars ($600,000) on the first day of March in 2006, 2007, 2008, 2009, and 2010.

SECTION 2.10.(a) The Wildlife Resources Commission may disburse up to one million dollars ($1,000,000) from the Wildlife Resources Fund to implement this act.

SECTION 2.10.(b) The State Treasurer shall transfer a sum equal to the sum of funds disbursed pursuant to subsection (a) of this section from the Marine Resources Fund to the Wildlife Resources Fund on July 1, 2010.

PART III. WILDLIFE RESOURCES COMMISSION LICENSE AGENTS

SECTION 3.1.(a) The Wildlife Resources Commission shall adopt rules to provide for the following:

(1) Qualifications of license agents.
(2) Duties of license agents.
(3) Methods and procedures to ensure accountability and security for proceeds and unissued licenses and permits.
(4) Types and amounts of evidence that a license agent must submit to relieve the agent of responsibility for losses due to occurrences beyond the control of the agent.
(5) Any other reasonable requirement or condition that the Wildlife Resources Commission deems necessary to expedite and control the issuance of licenses and permits by license agents.

SECTION 3.1.(b) The Wildlife Resources Commission shall adopt rules to authorize the Executive Director to take the following actions related to license agents:

(1) Select and appoint license agents in areas most convenient for the sale of licenses and permits.
(2) Limit the number of license agents in an area if necessary for efficiency of operation.

(3) Require prompt and accurate reporting and remittance of public funds or documents by license agents.
(4) Conduct periodic and special audits of accounts.
(5) Suspend or terminate the authorization of any license agent found to be noncompliant with rules adopted by the Wildlife Resources Commission or when State funds or property are reasonably believed to be in jeopardy.
(6) Require the immediate surrender of all equipment, forms, licenses, permits, records, and State funds and property, issued by or belonging to the Wildlife Resources Commission, in the event of the termination of a license agent.

SECTION 3.2. G.S. 113-270.1 reads as rewritten:

"**§ 113-270.1. License agents.**

(a) The Wildlife Resources Commission may by rule provide for the ~~annual~~ appointment of persons as license agents to sell licenses and permits ~~which it~~ that the Commission is authorized to issue by this Subchapter or by any other provisions of law. To facilitate the convenience of the public, the efficiency of administration, the need to keep statistics and records affecting the conservation of wildlife resources, boating, water safety, and other matters within the jurisdiction of the Wildlife Resources Commission, and the need to issue licenses and permits containing special restrictions, the Wildlife Resources Commission may issue licenses and permits in any particular category through:

(1) License agents.
(2) The Wildlife Resources Commission's headquarters.
(3) Employees of the Wildlife Resources Commission.
(4) Two or more such sources simultaneously.

(a1) When there are substantial reasons for differing treatment, the Wildlife Resources Commission may issue a type of license or permit by one method in one locality and by another method in another locality.

(b) License agents may deduct from the amount collected for each license or permit a fee of six percent (6%).

(b1) When licenses or permits are to be issued by license agents as provided by subsection (a) of this section, the Wildlife Resources Commission may adopt rules to provide for any of the following:

(1) Qualifications of the license agents.
(2) Duties of the license agents.
(3) Methods and procedures to ensure accountability and security for proceeds and unissued licenses and permits.
(4) Types and amounts of evidence that a license agent must submit to relieve the agent of responsibility for losses due to occurrences beyond the control of the agent.
(5) Any other reasonable requirement or condition that the Wildlife Resources Commission deems necessary to expedite and control the issuance of licenses and permits by license agents.

(b2) The Wildlife Resources Commission may adopt rules to authorize the Executive Director to take any of the following actions related to license agents:

(1) Select and appoint license agents in areas most convenient for the sale of licenses and permits.

(2) Limit the number of license agents in an area if necessary for efficiency of operation.

(3) Require prompt and accurate reporting and remittance of public funds or documents by license agents.

(4) Conduct periodic and special audits of accounts.

(5) Suspend or terminate the authorization of any license agent found to be noncompliant with rules adopted by the Wildlife Resources Commission or when State funds or property are reasonably believed to be in jeopardy.

(6) Require the immediate surrender of all equipment, forms, licenses, permits, records, and State funds and property, issued by or belonging to the Wildlife Resources Commission, in the event of the termination of a license agent.

(b3) The Wildlife Resources Commission is exempt from the contested case provisions of Chapter 150B of the General Statutes with respect to determinations of whether to authorize or terminate the authority of a person to sell licenses and permits as a license agent of the Wildlife Resources Commission.

(b4) If any check or bank account draft of any license agent for the issuance of licenses or permits shall be returned by the banking facility upon which the same is drawn for lack of funds, the license agent shall be liable to the Commission for a penalty of five percent (5%) of the amount of the check or bank account draft, but in no event shall the penalty be less than five dollars ($5.00) or more than two hundred dollars ($200.00). License agents shall be assessed a penalty of twenty-five percent (25%) of their issuing fee on all remittances to the Commission after the fifteenth day of the month immediately following the month of sale.

~~(c) The Wildlife Resources Commission may provide qualifications and standards concerning license agents and delegate to the Executive Director the task of appointment and supervision. Annual appointments run from May 1 to April 30 each year. The Wildlife Resources Commission may require license agents to post bonds, keep records and make reports concerning licenses and receipts, be subject to such audits and inspections as may be necessary, and pay a penalty of five percent (5%) on any worthless checks given the Wildlife Resources Commission. The minimum penalty for a worthless check, however, is five dollars ($5.00), and the maximum penalty is two hundred dollars ($200.00). The Wildlife Resources Commission shall require license agents to pay penalties of twenty five percent (25%) of the agents' fees on any license fees remitted to the Commission after the fifteenth day of the month immediately following the month of sale.~~

(d) ~~The Wildlife Resources Commission may make rules in implementing the authority granted in subsection (c), but it need not set out in its rules details as to forms of license, records and accounting procedures, and other reasonable requirements that~~

~~may be administratively promulgated by employees of the Wildlife Resources Commission in implementation of the purposes of this Article in order for such administrative requirements to be deemed validly required.~~ It is a Class 1 misdemeanor for a license ~~agent:~~agent to do any of the following:

(1) ~~To withhold~~Withhold or misappropriate funds from the sale of ~~licenses;~~licenses or permits.

(2) ~~To falsify~~Falsify records of licenses ~~sold;~~or permits sold.

(3) ~~Wilfully~~ Willfully and knowingly ~~to~~ assist or allow a person to obtain a license or permit for which ~~he is ineligible;~~the person is ineligible.

(4) ~~Wilfully to~~Willfully issue a backdated ~~license;~~license or permit.

(5) ~~Wilfully on records or licenses to~~Willfully include false information or omit material information ~~as to:~~on records, licenses, or permits regarding either:

a. A person's entitlement to a particular ~~license; or~~license or permit.

b. The applicability or term of a particular ~~license; or~~license or permit.

(6) ~~To refuse to return all consigned licenses, or to remit the net value of consigned licenses sold or unaccounted for, upon demand from an authorized employee of the Wildlife Resources Commission.~~Charge or accept any additional fee, remuneration, or other item of value in association with any activity set out in subdivisions (1) through (5) of this subsection.

~~(c) The Executive Director may temporarily suspend, revoke, or refuse to renew a person's appointment as a license agent if he fails in a timely manner to submit required reports, remit moneys due the Wildlife Resources Commission, or otherwise comply with the qualifications and standards set by the Wildlife Resources Commission or with reasonable administrative directives of the Executive Director. The temporary suspension is effective immediately upon communication of that fact to the license agent or his representative handling the licenses. The communication as to suspension must state the grounds for suspension and that the license agent may request a hearing within five working days if he contests the grounds for suspension. If not in writing, the communication must be followed by written notice of suspension containing the same information. By personal service of an impoundment order upon a license agent or his representative handling the licenses, an employee or agent of the Wildlife Resources Commission may enter the premises and impound all licenses, moneys, record books, reports, license forms, and other documents, ledgers, and materials pertinent or apparently pertinent to the license agency being suspended. The Executive Director must make the impounded property, or copies of it, available to the licensee during the period of temporary suspension.~~

~~(f) If a hearing is requested, it is before the Executive Director or his designee to be held at Raleigh or some other place convenient to the parties specified by the Executive Director. The temporary suspension remains in effect until the hearing, and after the hearing may be rescinded or continued in effect, as the facts warrant, in the~~

~~discretion of the Executive Director. A temporary suspension may not last longer than 30 days, but additional suspensions may be imposed if at the end of the suspension period the license agent is still not in compliance with appropriate standards, qualifications, and administrative directives. A license agent may at any time after a hearing appeal his suspension to the Wildlife Resources Commission.~~

~~(g) Notice of revocation or nonrenewal of the appointment may be sent the license agent in lieu of or in addition to temporary suspension. The notice must state the grounds for termination of the appointment and the license agent's right to a hearing if he has not previously been afforded one. If the appointment is to be revoked, the notice must state the effective date and hour of revocation. If the appointment is not to be renewed, the notice must state that the appointment expires at midnight on April 30. If he has not been previously afforded a hearing, a license agent is entitled to a hearing within 14 days before the Executive Director or his designee to be held at Raleigh or some other place convenient to the parties specified by the Executive Director. After the hearing, the Executive Director, applying appropriate standards, must take the action with respect to the appointment as license agent that the facts warrant. If the Executive Director upholds the decision to terminate the appointment, a license agent may appeal his termination to the Wildlife Resources Commission. Pending the hearing and any appeal from it, the termination is held in abeyance, but no license sales may be made once the license agent's bond has expired.~~

~~(h) Upon termination of the appointment, the former agent must return to the Wildlife Resources Commission all record books, reports, license forms, moneys, and other property pertaining to the license agency, and must allow agents of the Wildlife Resources Commission to conduct necessary inspections and audits required in terminating the license agency. Each day's refusal after termination to return, upon demand, the record books, reports, license forms, moneys, and other property pertaining to the license agency is a separate offense. Each instance of refusal, after termination, to allow agents of the Wildlife Resources Commission to conduct necessary inspections and audits during regular business hours is a separate offense. A violation of this subsection is a Class 2 misdemeanor. Before termination, violations by license agents are punishable under G.S. 113-135, subsection (d) above, or other provision of this Subchapter, as appropriate.~~

~~(i) No person denied appointment or whose appointment was terminated under this section is eligible to apply again for an appointment as a license agent for two years. Upon application, the executive director may not grant the appointment as license agent unless the applicant produces clear evidence, convincing to the Executive Director, that he meets all standards and qualifications and will comply with all requirements of statutes, rules, and reasonable administrative directives pertaining to license agents.~~

~~(j) The Executive Director or his designee holding any hearing under this section must keep a written record of evidence considered and findings made. Upon appeal to the Wildlife Resources Commission, the commission chairman or other presiding officer must cause such a written record of evidence and findings to be made and kept. Hearings and appeals under this section are internal matters concerning license agents of~~

~~the Wildlife Resources Commission and are not governed by the North Carolina Administrative Procedure Act.~~"

SECTION 3.3. G.S. 150B-1(e) is amended by adding a new subdivision to read:

"(e) Exemptions From Contested Case Provisions. – The contested case provisions of this Chapter apply to all agencies and all proceedings not expressly exempted from the Chapter. The contested case provisions of this Chapter do not apply to the following:

...

(15) The Wildlife Resources Commission with respect to determinations of whether to authorize or terminate the authority of a person to sell licenses and permits as a license agent of the Wildlife Resources Commission."

PART IV. ESTABLISH NEW MARINE FISHERIES COMMISSION

SECTION 4.1. Part 5D of Article 7 of Chapter 143B of the General Statutes is repealed.

SECTION 4.2. Article 7 of Chapter 143B of the General Statutes is amended by adding a new Part to read:

"Part 5E. Marine Fisheries Commission.

"**§ 143B-289.65. Definitions.**

(a) As used in this Part:

(1) "Commission" means the Marine Fisheries Commission.

(2) "Department" means the Department of Environment and Natural Resources.

(3) "Fisheries Director" means the Director of the Division of Marine Fisheries of the Department of Environment and Natural Resources.

(4) "Secretary" means the Secretary of Environment and Natural Resources.

(b) The definitions set out in G.S. 113-129 and G.S. 113-130 shall apply throughout this Part.

"**§ 143B-289.66. Marine Fisheries Commission – creation; purposes.**

(a) There is hereby created the Marine Fisheries Commission in the Department of Environment and Natural Resources.

(b) The functions, purposes, and duties of the Commission are to:

(1) Manage, restore, develop, cultivate, conserve, protect, and regulate the marine and estuarine resources within its jurisdiction, as described in G.S. 113-132.

(2) Implement the laws relating to coastal fisheries, coastal fishing, shellfish, crustaceans, and other marine and estuarine resources enacted by the General Assembly by the adoption of rules and policies, to provide a sound, constructive, comprehensive, continuing, and economical coastal fisheries program directed by citizens who are

knowledgeable in the protection, restoration, proper use, and management of marine and estuarine resources.

(3) Implement management measures regarding ocean and marine fisheries in the Atlantic Ocean consistent with the authority conferred on the State by the United States.

(4) Advise the State regarding ocean and marine fisheries within the jurisdiction of the Atlantic States Marine Fisheries Compact, the South Atlantic Fishery Management Council, the Mid-Atlantic Fishery Management Council, and other similar organizations established to manage or regulate fishing in the Atlantic Ocean.

"**§ 143B-289.67. Marine Fisheries Commission – powers and duties.**

(a) The Commission shall adopt rules to be followed in the management, protection, preservation, and enhancement of the marine and estuarine resources within its jurisdiction, as described in G.S. 113-132, including commercial and sports fisheries resources. The Commission shall have the power and duty:

(1) To authorize, license, regulate, prohibit, prescribe, or restrict all forms of marine and estuarine resources in coastal fishing waters with respect to:

a. Time, place, character, or dimensions of any methods or equipment that may be employed in taking fish.

b. Seasons for taking fish.

c. Size limits on and maximum quantities of fish that may be taken, possessed, bailed to another, transported, bought, sold, or given away.

(2) To provide fair regulation of commercial and recreational fishing groups in the interest of the public.

(3) To adopt rules and take all steps necessary to develop and improve mariculture, including the cultivation, harvesting, and marketing of shellfish and other marine resources in the State, involving the use of public grounds and private beds as provided in G.S. 113-201.

(4) To close areas of public bottoms under coastal fishing waters for such time as may be necessary in any program of propagation of shellfish as provided in G.S. 113-204.

(5) In the interest of conservation of the marine and estuarine resources of the State, to institute an action in the superior court to contest the claim of title or claimed right of fishery in any navigable waters of the State registered with the Department as provided in G.S. 113-206(d).

(6) To make reciprocal agreements with other jurisdictions respecting any of the matters governed in this Subchapter as provided by G.S. 113-223.

(7) To adopt relevant provisions of federal laws and regulations as State rules pursuant to G.S. 113-228.

(8) To delegate to the Fisheries Director the authority by proclamation to suspend or implement, in whole or in part, a particular rule of the

Commission that may be affected by variable conditions as provided in G.S. 113-221.1.

(9) To comment on and otherwise participate in the determination of permit applications received by State agencies that may have an effect on the marine and estuarine resources of the State.

(10) To adopt Fishery Management Plans as provided in G.S. 113-182.1, to establish a Priority List to determine the order in which Fishery Management Plans are developed, to establish a Schedule for the development and adoption of each Fishery Management Plan, and to establish guidance criteria as to the contents of Fishery Management Plans.

(11) To approve Coastal Habitat Protection Plans as provided in G.S. 143B-279.8.

(12) Except as may otherwise be provided, to make the final agency decision in all contested cases involving matters within the jurisdiction of the Commission.

(13) To adopt rules to define fishing gear as either recreational gear or commercial gear.

(14) To authorize the disbursement of the assets of the Marine Resources Fund established pursuant to G.S. 113-175.1 to manage, protect, restore, develop, cultivate, conserve, and enhance the marine resources of the State.

(15) To authorize the disbursement of the endowment investment income of the Marine Resources Endowment Fund established pursuant to G.S. 113-175.5 to manage, protect, restore, develop, cultivate, conserve, and enhance the marine resources of the State.

(b) The Commission shall have the power and duty to establish standards and adopt rules:

(1) To implement the provisions of Subchapter IV of Chapter 113 as provided in G.S. 113-134.

(2) To manage the disposition of confiscated property as set forth in G.S. 113-137.

(3) To govern all license requirements prescribed in Article 14A of Chapter 113 of the General Statutes.

(4) To regulate the importation and exportation of fish, and equipment that may be used in taking or processing fish, as necessary to enhance the conservation of marine and estuarine resources of the State as provided in G.S. 113-170.

(5) To regulate the possession, transportation, and disposition of seafood, as provided in G.S. 113-170.4.

(6) To regulate the disposition of the young of edible fish, as provided by G.S. 113-185.

(7) To manage the leasing of public grounds for mariculture, including oysters and clam production, as provided in G.S. 113-202.

(8) To govern the utilization of private fisheries, as provided in G.S. 113-205.

(9) To impose further restrictions upon the throwing of fish offal in any coastal fishing waters, as provided in G.S. 113-265.

(10) To regulate the location and utilization of artificial reefs in coastal waters.

(11) To regulate the placement of nets and other sports or commercial fishing apparatus in coastal fishing waters with regard to navigational or recreational safety as well as from a conservation standpoint.

(c) The Commission is authorized to authorize, license, prohibit, prescribe, or restrict:

(1) The opening and closing of coastal fishing waters, except as to inland game fish, whether entirely or only as to the taking of particular classes of fish, use of particular equipment, or as to other activities.

(2) The possession, cultivation, transportation, importation, exportation, sale, purchase, acquisition, and disposition of all marine and estuarine resources and all related equipment, implements, vessels, and conveyances as necessary to carry out its duties.

(d) The Commission may adopt rules required by the federal government for grants-in-aid for coastal resource purposes that may be made available to the State by the federal government. This section is to be liberally construed in order that the State and its citizens may benefit from federal grants-in-aid.

(e) The Commission may regulate participation in a fishery that is subject to a federal fishery management plan if that plan imposes a quota on the State for the harvest or landing of fish in the fishery. If the Commission regulates participation in a fishery under this subsection, the Division may issue a license to participate in the fishery to a person who:

(1) Held a valid license issued by the Division to harvest, land, or sell fish during at least two of the three license years immediately preceding the date adopted by the Commission to determine participation in the fishery; and

(2) Participated in the fishery during at least two of those license years by landing in the State at least the minimum number of pounds of fish adopted by the Commission to determine participation in the fishery.

(f) The Commission may adopt rules to implement or comply with a fishery management plan adopted by the Atlantic States Marine Fisheries Commission or adopted by the United States Secretary of Commerce pursuant to the Magnuson-Stevens Fishery Conservation and Management Act, 16 U.S.C. § 1801, et seq. Notwithstanding G.S. 150B-21.1(a), the Commission may adopt temporary rules under this subsection at any time within six months of the adoption or amendment of a fishery management plan or the notification of a change in management measures needed to remain in compliance with a fishery management plan.

(g) The Commission shall adopt rules as provided in this Chapter. All rules adopted by the Commission shall be enforced by the Department.

(h) As a quasi-judicial agency, the Commission, in accordance with Article IV, Section 3 of the Constitution of North Carolina, has those judicial powers reasonably necessary to accomplish the purposes for which it was created.

(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, driver 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.

"**§ 143B-289.68. Marine Fisheries Commission – quasi-judicial powers; procedures.**

(a) With respect to those matters within its jurisdiction, the Commission shall exercise quasi-judicial powers in accordance with the provisions of Chapter 150B of the General Statutes. This section and any rules adopted by the Commission shall govern the following proceedings:

(1) Exceptions to recommended decisions in contested cases shall be filed with the Secretary within 30 days of the receipt by the Secretary of the official record from the Office of Administrative Hearings, unless additional time is allowed by the Chair of the Commission.

(2) Oral arguments by the parties may be allowed by the Chair of the Commission upon request of the parties.

(3) Deliberations of the Commission shall be conducted in its public meeting unless the Commission determines that consultation with its counsel should be held in a closed session pursuant to G.S. 143-318.11.

(b) The final agency decision in contested cases that arise from civil penalty assessments shall be made by the Commission. In the evaluation of each violation, the Commission shall recognize that harm to the marine and estuarine resources within its jurisdiction, as described in G.S. 113-132, arising from the violation of a statute or rule enacted or adopted to protect those resources may be immediately observed through damaged resources or may be incremental or cumulative with no damage that can be immediately observed or documented. Penalties up to the maximum authorized may be based on any one or combination of the following factors:

(1) The degree and extent of harm to the marine and estuarine resources within the jurisdiction of the Commission, as described in

G.S. 113-132; to the public health; or to private property resulting from the violation.

(2) The frequency and gravity of the violation.

(3) The cost of rectifying the damage.

(4) Whether the violation was committed willfully or intentionally.

(5) The prior record of the violator in complying or failing to comply with programs over which the Commission has regulatory authority.

(6) The cost to the State of the enforcement procedures.

(c) The Chair shall appoint a Committee on Civil Penalty Remissions from the members of the Commission. No member of the Committee on Civil Penalty Remissions may hear or vote on any matter in which the member has an economic interest. The Committee on Civil Penalty Remissions shall make the final agency decision on remission requests. In determining whether a remission request will be approved, the Committee shall consider the recommendation of the Secretary and the following factors:

(1) Whether one or more of the civil penalty assessment factors in subsection (b) of this section were wrongly applied to the detriment of the petitioner.

(2) Whether the violator promptly abated continuing environmental damage resulting from the violation.

(3) Whether the violation was inadvertent.

(4) Whether the violator had been assessed civil penalties for any previous violations.

(5) Whether payment of the civil penalty will prevent payment for the remaining necessary remedial actions.

(d) The Committee on Civil Penalty Remissions may remit the entire amount of the penalty only when the violator has not been assessed civil penalties for previous violations and when payment of the civil penalty will prevent payment for the remaining necessary remedial actions.

(e) If any civil penalty has not been paid within 30 days after the final agency decision or court order has been served on the violator, the Secretary of Environment and Natural Resources shall request the Attorney General to institute a civil action in the superior court of any county in which the violator resides or has his or its principal place of business to recover the amount of the assessment.

(f) The Secretary may delegate his powers and duties under this section to the Fisheries Director.

"**§ 143B-289.69. Marine Fisheries Commission – members; appointment; term; oath; ethical standards; removal; compensation; staff.**

(a) Members, Selection. – The Commission shall consist of 14 members as follows:

(1) One person appointed by the Governor who is actively engaged in, or recently retired from, commercial fishing as demonstrated by currently or recently deriving at least fifty percent (50%) of annual earned income from taking and selling fishery resources in coastal fishing

waters of the State. The spouse of a commercial fisherman who meets the criteria of this subdivision may be appointed under this subdivision.

(2) One person appointed by the Governor who is actively engaged in, or recently retired from, commercial fishing as demonstrated by currently or recently deriving at least fifty percent (50%) of annual earned income from taking and selling fishery resources in coastal fishing waters of the State. The spouse of a commercial fisherman who meets the criteria of this subdivision may be appointed under this subdivision.

(3) One person appointed by the Governor who is actively engaged in, or recently retired from, commercial fishing as demonstrated by currently or recently deriving at least fifty percent (50%) of annual earned income from taking and selling fishery resources in coastal fishing waters of the State. The spouse of a commercial fisherman who meets the criteria of this subdivision may be appointed under this subdivision.

(4) One person appointed by the Governor who is actively engaged in recreational fishing in the coastal fishing waters of the State. An appointee under this subdivision may not derive more than ten percent (10%) of annual earned income from sports fishing activities.

(5) One person appointed by the Governor who is actively engaged in recreational fishing in the coastal fishing waters of the State. An appointee under this subdivision may not derive more than ten percent (10%) of annual earned income from sports fishing activities.

(6) One person appointed by the Governor who is actively engaged in recreational fishing in the coastal fishing waters of the State. An appointee under this subdivision may not derive more than ten percent (10%) of annual earned income from sports fishing activities.

(7) One person appointed by the Governor who is a fisheries scientist having special training and expertise in marine and estuarine fisheries biology, ecology, population dynamics, water quality, habitat protection, or similar knowledge. A person appointed under this subdivision may not receive more than ten percent (10%) of annual earned income from either the commercial or recreational fishing industries, including the processing and distribution of seafood.

(8) One person appointed by the Governor who is a fisheries scientist having special training and expertise in marine and estuarine fisheries biology, ecology, population dynamics, water quality, habitat protection, or similar knowledge. A person appointed under this subdivision may not receive more than ten percent (10%) of annual earned income from either the commercial or recreational fishing industries, including the processing and distribution of seafood.

(9) One person appointed by the Governor who has general knowledge of and experience related to subjects and persons regulated by the Commission.

(10) One person appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate who is actively engaged in, or recently retired from, commercial fishing as demonstrated by currently or recently deriving at least fifty percent (50%) of annual earned income from taking and selling fishery resources in coastal fishing waters of the State. The spouse of a commercial fisherman who meets the criteria of this subdivision may be appointed under this subdivision.

(11) One person appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate who has general knowledge of and experience related to subjects and persons regulated by the Commission.

(12) One person appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives who is actively engaged in recreational fishing in the coastal fishing waters of the State. An appointee under this subdivision may not derive more than ten percent (10%) of annual earned income from sports fishing activities.

(13) One person appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives who has general knowledge of and experience related to subjects and persons regulated by the Commission.

(14) The Fisheries Director shall serve as an ex officio, nonvoting member of the Commission.

(b) Residential Qualifications. – For purposes of providing regional representation on the Commission, the following four regions of the State are designated: (i) Northeast Coastal Region comprised of Bertie, Camden, Chowan, Currituck, Dare, Gates, Halifax, Hertford, Martin, Northampton, Pasquotank, Perquimans, Tyrrell, and Washington Counties; (ii) Central Coastal Region comprised of Beaufort, Carteret, Craven, Hyde, Jones, and Pamlico Counties; (iii) Southeast Coastal Region comprised of Bladen, Brunswick, Columbus, New Hanover, Onslow, and Pender Counties; and (iv) Inland Region comprised of the counties not included the three coastal regions. The Governor shall appoint at least two members from each of the four regions of the State. The members appointed pursuant to subdivisions (10) and (11) of subsection (a) of this section shall not be from the same region of the State. The members appointed pursuant to subdivisions (12) and (13) of subsection (a) of this section shall not be from the same region of the State.

(c) Additional Considerations. – In making appointments to the Commission, the appointing entities shall provide for appropriate representation of women and minorities on the Commission.

(d) Terms. – The term of office of appointed members of the Commission is three years. A member may be reappointed to any number of successive three-year terms. Upon the expiration of a three-year term, a member shall continue to serve until a successor is appointed and duly qualified as provided by G.S. 128-7. The term of members appointed under subdivisions (1), (4), (7), (8), and (9) of subsection (a) of this section shall expire on 30 June of years evenly divisible by three. The term of members appointed under subdivisions (2), (5), (11), and (13) of subsection (a) of this section shall expire on 30 June of years that precede by one year those years that are evenly divisible by three. The term of members appointed under subdivisions (3), (6), (10), and (12) of subsection (a) of this section shall expire on 30 June of years that follow by one year those years that are evenly divisible by three.

(e) Vacancies. – An appointment to fill a vacancy shall be for the unexpired balance of the term.

(f) Oath of Office. – Each member of the Commission, before assuming the duties of office, shall take an oath of office as provided in Chapter 11 of the General Statutes.

(g) Ethical Standards. –

(1) Disclosure statements. – Any person under consideration for appointment to the Commission shall provide both a financial disclosure statement and a potential bias disclosure statement to the Governor. A financial disclosure statement shall include statements of the nominee's financial interests in and related to State fishery resources use, licenses issued by the Division of Marine Fisheries held by the nominee or any business in which the nominee has a financial interest, and uses made by the nominee or by any business in which the nominee has a financial interest of the regulated resources. A potential bias disclosure statement shall include a statement of the nominee's membership or other affiliation with, including offices held in, societies, organizations, or advocacy groups pertaining to the management and use of the State's coastal fishery resources. Disclosure statements shall be treated as public records under Chapter 132 of the General Statutes and shall be updated on an annual basis.

(2) Voting/conflict of interest. – A member of the Commission shall not vote on any issue before the Commission that would have a "significant and predictable effect" on the member's financial interest. For purposes of this subdivision, "significant and predictable effect" means there is or may be a close causal link between the decision of the Commission and an expected disproportionate financial benefit to the member that is shared only by a minority of persons within the same industry sector or gear group. A member of the Commission shall also abstain from voting on any petition submitted by an advocacy group of which the member is an officer or sits as a member of the advocacy group's board of directors. A member of the Commission shall not use the member's official position as a member

of the Commission to secure any special privilege or exemption of substantial value for any person. No member of the Commission shall, by the member's conduct, create an appearance that any person could improperly influence the member in the performance of the member's official duties.

(3) Regular attendance. – It shall be the duty of each member of the Commission to regularly attend meetings of the Commission.

(h) Removal. – The Governor may remove, as provided in G.S. 143B-13, any member of the Commission for misfeasance, malfeasance, or nonfeasance.

(i) Office May Be Held Concurrently With Others. – The office of member of the Commission may be held concurrently with any other elected or appointed office, as authorized by Article VI, Section 9, of the Constitution of North Carolina.

(j) Compensation. – Members of the Commission who are State officers or employees shall receive no per diem compensation for serving on the Commission, but shall be reimbursed for their expenses in accordance with G.S. 138-6. Members of the Commission who are full-time salaried public officers or employees other than State officers or employees shall receive no per diem compensation for serving on the Commission, but shall be reimbursed for their expenses in accordance with G.S. 138-6 in the same manner as State officers or employees. All other Commission members shall receive per diem compensation and reimbursement in accordance with the compensation rate established in G.S. 93B-5.

(k) Staff. – All clerical and other services required by the Commission shall be supplied by the Fisheries Director and the Department.

(l) Legal Services. – The Attorney General shall: (i) act as attorney for the Commission; (ii) at the request of the Commission, initiate actions in the name of the Commission; and (iii) represent the Commission in any appeal or other review of any order of the Commission.

"**§ 143B-289.70. Marine Fisheries Commission – officers; organization; seal.**

(a) The Governor shall appoint a member of the Commission to serve as Chair. The Chair shall serve at the pleasure of the Governor. The Commission shall elect one of its members to serve as Vice-Chair. The Vice-Chair shall serve a one-year term beginning 1 July and ending 30 June of the following year. The Vice-Chair may serve any number of consecutive terms.

(b) The Chair shall guide and coordinate the activities of the Commission in fulfilling its duties as set out in this Article. The Chair shall report to and advise the Governor and the Secretary on the activities of the Commission, on marine and estuarine conservation matters, and on all marine fisheries matters.

(c) The Commission shall determine its organization and procedure in accordance with the provisions of this Article. The provisions of the most recent edition of Robert's Rules of Order shall govern any procedural matter for which no other provision has been made.

(d) The Commission may adopt a common seal and may alter it as necessary.

"**§ 143B-289.71. Marine Fisheries Commission – meetings; quorum.**

(a) The Commission shall meet at least once each calendar quarter and may hold additional meetings at any time and place within the State at the call of the Chair or upon the written request of at least four members. The Commission shall hold at least one meeting each calendar year in each region designated in G.S. 143B-289.69.

(b) (1) Eight members of the Commission shall constitute a quorum for the transaction of business.

(2) A quorum of the Commission may transact business only if one member, other than the Chair, appointed pursuant to subdivision (1), (2), (3), or (10) of G.S. 143B-289.69(a) and one member, other than the Chair, appointed pursuant to subdivision (4), (5), (6), or (12) of G.S. 143B-289.69(a) are present.

(c) If the Commission is unable to transact business because the requirements of subdivision (2) of subsection (b) of this section are not met, the Chair shall call another meeting of the Commission within 30 days and shall place on the agenda for that meeting every matter with respect to which the Commission was unable to transact business. Seven members of the Commission shall constitute a quorum for the transaction of business at a meeting called under this subsection. The requirements of subdivision (2) of subsection (b) of this section shall not apply to a meeting called under this subsection.

"**§ 143B-289.72. Marine Fisheries Commission – advisory committees established; members; selection; duties.**

(a) The Commission shall be assisted in the performance of its duties by four standing advisory committees and four regional advisory committees. Each standing and regional advisory committee shall consist of no more than 11 members. The Chair of the Commission shall designate one member of each advisory committee to serve as Chair of the committee. Members shall serve staggered three-year terms as determined by the Commission. The Commission shall establish other policies and procedures for standing and regional advisory committees that are consistent with those governing the Commission as set out in this Part.

(b) The Chair of the Commission shall appoint the following standing advisory committees:

(1) The Finfish Committee, which shall consider matters concerning finfish.

(2) The Crustacean Committee, which shall consider matters concerning shrimp and crabs.

(3) The Shellfish Committee, which shall consider matters concerning oysters, clams, scallops, and other molluscan shellfish.

(4) The Habitat and Water Quality Committee, which shall consider matters concerning habitat and water quality that may affect coastal fisheries resources.

(c) Each standing advisory committee shall be composed of commercial and recreational fishermen, scientists, and other persons who have expertise in the matters to be considered by the advisory committee to which they are appointed. In making appointments to advisory committees, the Chair of the Commission shall ensure that

both commercial and recreational fishing interests are fairly represented and shall consider for appointment persons who are recommended by groups representing commercial fishing interests, recreational fishing interests, environmental protection and conservation interests, and other groups interested in coastal fisheries management.

(d) Each standing advisory committee shall review all matters referred to the committee by the Commission and shall make findings and recommendations on these matters. A standing advisory committee may, on its own motion, make findings and recommendations as to any matter related to its subject area. The Commission, in the performance of its duties, shall consider all findings and recommendations submitted by standing advisory committees.

(e) The Chair of the Commission shall appoint a regional advisory committee for each of the four regions designated in G.S. 143B-289.69(b). In making appointments to regional advisory committees, the Chair of the Commission shall ensure that both commercial and recreational fishing interests are fairly represented.

"**§ 143B-289.73. Conservation Fund; Commission may accept gifts.**

(a) The Commission may accept gifts, donations, or contributions from any sources. These funds shall be held in a separate account and used solely for the purposes of marine and estuarine conservation and management. These funds shall be administered by the Commission and shall be used for marine and estuarine resources management, including education about the importance of conservation, in a manner consistent with marine and estuarine conservation management principles.

(b) The Commission is hereby authorized to issue and sell appropriate emblems by which to identify recipients thereof as contributors to a special marine and estuarine resources Conservation Fund that shall be made available to the Commission for conservation, protection, enhancement, preservation, and perpetuation of marine and estuarine species that may be endangered or threatened with extinction and for education about these issues. The special Conservation Fund is subject to oversight of the State Auditor pursuant to Article 5A of Chapter 147 of the General Statutes. Emblems of different sizes, shapes, types, or designs may be used to recognize contributions in different amounts, but no emblem shall be issued for a contribution amounting in value to less than five dollars ($5.00).

"**§ 143B-289.74. Article subject to Chapter 113.**

Nothing in this Part shall be construed to affect the jurisdictional division between the Marine Fisheries Commission and the Wildlife Resources Commission contained in Subchapter IV of Chapter 113 of the General Statutes or in any way to alter or abridge the powers and duties of the two agencies conferred in that Subchapter.

"**§ 143B-289.75. Jurisdictional questions.**

In the event of any question arising between the Wildlife Resources Commission and the Marine Fisheries Commission or between the Department of Environment and Natural Resources and the Marine Fisheries Commission as to any duty, responsibility, or authority imposed upon any of these bodies by law or with respect to conflict involving rules or administrative practices, the question or conflict shall be resolved by the Governor, whose decision shall be binding."

SECTION 4.3. G.S. 113-128(5a) reads as rewritten:

"(5a) Marine Fisheries Commission. – The Marine Fisheries Commission of the Department as established by Part ~~5D~~ 5E of Article 7 of Chapter 143B of the General Statutes."

SECTION 4.4. G.S. 113-136(b) reads as rewritten:

"(b) The jurisdiction of inspectors extends to all matters within the jurisdiction of the Department set out in this Subchapter, Part ~~5D~~ 5E of Article 7 of Chapter 143B of the General Statutes, Article 5 of Chapter 76 of the General Statutes, and Article 2 of Chapter 77 of the General Statutes, and to all other matters within the jurisdiction of the Department which it directs inspectors to enforce. In addition, inspectors have jurisdiction over all offenses involving property of or leased to or managed by the Department in connection with the conservation of marine and estuarine resources."

SECTION 4.5. G.S. 120-123(53) reads as rewritten:

"(53) The North Carolina Marine Fisheries Commission as established by ~~G.S. 143B-289.51.~~G.S. 143B-289.66."

SECTION 4.6. G.S. 113-182.1(a) reads as rewritten:

"(a) The Department shall prepare proposed Fishery Management Plans for adoption by the Marine Fisheries Commission for all commercially or recreationally significant species or fisheries that comprise State marine or estuarine resources. Proposed Fishery Management Plans shall be developed in accordance with the Priority List, Schedule, and guidance criteria established by the Marine Fisheries Commission under ~~G.S. 143B-289.52.~~G.S. 143B-289.67."

SECTION 4.7. G.S. 113-182.1(c1) reads as rewritten:

"(c1) The Department shall consult with the regional advisory committees established pursuant to ~~G.S. 143B-289.57(e)~~G.S. 143B-289.72(e) regarding the preparation of each Fishery Management Plan. Before submission of a plan for review by the Joint Legislative Commission on Seafood and ~~Aquaculture or the Environmental Review Commission,~~Aquaculture, the Department shall review any comment or recommendation regarding the plan that a regional advisory committee submits to the Department within the time limits established in the Schedule for the development and adoption of Fishery Management Plans ~~established by G.S. 143B-289.52.~~adopted pursuant to G.S. 143B-289.67. The Commission shall consult with the regional advisory committees regarding the development of any temporary management measure that the Commission determines to be necessary to ensure the viability of the species or fishery while the plan is being developed and regarding the development of any management measure to implement the plan. Before the Commission adopts a temporary management measure or a management measure to implement a plan, the Commission shall review any comment or recommendation regarding the management measure that a regional advisory committee submits to the Commission."

SECTION 4.8. G.S. 113-191(d) reads as rewritten:

"(d) In determining the amount of the penalty, the Secretary shall consider the factors set out in ~~G.S. 143B-289.53(b).~~G.S. 143B-289.68(b). The procedures set out in ~~G.S. 143B-289.53~~G.S. 143B-289.68 shall apply to civil penalty assessments that are presented to the Commission for final agency decision."

SECTION 4.9. G.S. 113-191(f) reads as rewritten:

"(f) Requests for remission of civil penalties shall be filed with the Secretary. Remission requests shall not be considered unless filed within 30 days of receipt of the notice of assessment. Remission requests must be accompanied by a waiver of the right to a contested case hearing pursuant to Chapter 150B of the General Statutes and a stipulation of the facts on which the assessment was based. Consistent with the limitations in ~~G.S. 143B-289.53(c),~~G.S. 143B-289.68(c), remission requests may be resolved by the Secretary and the violator. If the Secretary and the violator are unable to resolve the request, the Secretary shall deliver remission requests and his recommended action to the Committee on Civil Penalty Remissions of the Marine Fisheries Commission appointed pursuant to ~~G.S. 143B-289.53(c).~~G.S. 143B-289.68(c)."

SECTION 4.10. G.S. 113-200(e1) reads as rewritten:

"(e1) Grants Committee. – The Grants Committee shall consist of eleven members as follows:

(1) Three employees of the Sea Grant College Program, appointed by the Director of the Sea Grant College Program.

(2) Two employees of the Division of Marine Fisheries, appointed by the Fisheries Director.

(3) Two members of the Marine Fisheries Commission, appointed by the Chair of the Marine Fisheries Commission.

(4) One member of the Northeast Regional Advisory Committee established pursuant to ~~G.S. 143B-289.57(e),~~G.S. 143B-289.72(e), appointed by the Northeast Regional Advisory Committee.

(5) One member of the Central Regional Advisory Committee established pursuant to ~~G.S. 143B-289.57(e),~~G.S. 143B-289.72(e), appointed by the Central Regional Advisory Committee.

(6) One member of the Southeast Regional Advisory Committee established pursuant to ~~G.S. 143B-289.57(e),~~G.S. 143B-289.72(e), appointed by the Southeast Regional Advisory Committee.

(7) One member of the Inland Regional Advisory Committee established pursuant to ~~G.S. 143B-289.57(e),~~G.S. 143B-289.72(e), appointed by the Inland Regional Advisory Committee."

SECTION 4.11. The records, personnel, property, unexpended balances of appropriations, allocations, and other funds, including the functions of budgeting and purchasing, heretofore vested in the Marine Fisheries Commission created under Part 5D of Article 7 of Chapter 143B of the General Statutes, repealed by Section 4.1 of this act, are transferred to the Marine Fisheries Commission created under Part 5E of Article 7 of Chapter 143B of the General Statutes, as enacted by Section 4.2 of this act. All rules, decisions, and actions, heretofore adopted, made, or taken by the Marine Fisheries Commission created under Part 5 of Article 7 of Chapter 143B of the General Statutes, repealed by Section 1 of Chapter 641 of the 1987 Session Laws; all rules, decisions, and actions, heretofore adopted, made, or taken by the Marine Fisheries Commission created under Part 5A of Article 7 of Chapter 143B of the General Statutes, repealed by Section 6.3 of S.L. 1997-400; and all rules, decisions, and actions, heretofore adopted, made, or taken by the Marine Fisheries Commission created under Part 5D of Article 7 of

Chapter 143B of the General Statutes, repealed by Section 4.1 of this act, that have not been heretofore repealed or rescinded shall continue in effect until repealed or rescinded by the Marine Fisheries Commission created under Part 5E of Article 7 of Chapter 143B of the General Statutes, as enacted by Section 4.2 of this act.

SECTION 4.12. In order to establish a schedule of staggered terms of three years for the Marine Fisheries Commission, the terms of members of the Commission initially filling positions established by subdivisions (1), (4), (7), (8), and (9) of subsection (a) of G.S. 143B-289.69, as enacted by Section 4.2 of this act, shall begin on the date the member is appointed and duly qualified and shall expire on June 30, 2010; the terms of members of the Commission initially filling positions established by subdivisions (2), (5), (11), and (13) of subsection (a) of G.S. 143B-289.69, as enacted by Section 4.2 of this act, shall begin on the date the member is appointed and duly qualified and shall expire on June 30, 2009; the terms of members of the Commission initially filling positions established by subdivisions (3), (6), (10), and (12) of subsection (a) of G.S. 143B-289.69, as enacted by Section 4.2 of this act, shall begin on the date the member is appointed and duly qualified and shall expire on June 30, 2008.

PART V. ENFORCEMENT OF MARINE RESOURCES LAWS

SECTION 5.1.(a) G.S. 113-134.1 reads as rewritten:

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

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

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

SECTION 5.1.(b) If the Division of Marine Fisheries of the Department of Environment and Natural Resources enters into a Joint Enforcement Agreement with the National Marine Fisheries Service of the United States Department of Commerce, the Division shall, within six months of entering into the Agreement, report to the Joint Legislative Commission on Seafood and Aquaculture and the House of Representatives and Senate Appropriations Subcommittees on Natural and Economic Resources on the provisions of the Agreement. The Division of Marine Fisheries shall also report on the implementation of the Agreement to the Joint Legislative Commission on Seafood and Aquaculture and the House of Representatives and Senate Appropriations

Subcommittees on Natural and Economic Resources no later than November 1 of each year.

SECTION 5.2. G.S. 113-136(d1) reads as rewritten:

"(d1) In addition to law enforcement authority granted elsewhere, an inspector or ~~a~~ protector has the authority to enforce criminal laws under either of the following circumstances:

(1) When the inspector or protector has probable cause to believe that a person committed a criminal offense in ~~his~~ the presence of the inspector or protector and at the time of the violation the inspector or protector is engaged in the enforcement of laws otherwise within ~~his jurisdiction; or~~ the jurisdiction of the inspector or protector.

(2) When the inspector or protector is asked to provide temporary assistance by the head of a State or local law enforcement agency or ~~his~~ the designee of the head of a State or local law enforcement agency and the request is within the scope of the agency's subject matter jurisdiction. When acting pursuant to this subdivision an inspector or protector shall not be considered an officer, employee, or agent for the State or local law enforcement agency or designee asking for temporary assistance.

(d2) ~~While~~ When acting pursuant to ~~this subsection, a~~ subsection (d1) of this section, an inspector or protector shall have the same powers invested in law enforcement officers by statute or common law. ~~When acting pursuant to (2) of this subsection a protector shall not be considered an officer, employee, or agent for the state or local law enforcement agency or designee asking for temporary assistance.~~ Nothing in ~~this~~ subsection (d1) of this section shall be construed to expand the authority of inspectors or protectors to initiate or conduct an independent investigation into violations of criminal laws outside the scope of their subject matter or territorial jurisdiction."

PART VI. MISCELLANEOUS PROVISIONS; EFFECTIVE DATES

SECTION 6.1. The headings to the parts of this act are a convenience to the reader and are for reference only. The headings do not expand, limit, or define the text of this act.

SECTION 6.2. If any section or provision of this act is declared unconstitutional or invalid by the courts, the unconstitutional or invalid section or provision does not affect the validity of this act as a whole or any part of this act other than the part declared to be unconstitutional or invalid.

SECTION 6.3. Sections 1.13, 1.14, 1.17, 1.18, 1.19, 1.20, 5.1, 6.1, 6.2, and 6.3 of this act are effective when this act becomes law. Section 2.10 of this act becomes effective July 1, 2005. Sections 1.9, 1.10, 1.15, 1.21, 2.1, 2.2, 2.3, 2.4, 2.5, 2.6, 2.7, 2.8, 2.9, 4.1, 4.2, 4.3, 4.4, 4.5, 4.6, 4.7, 4.8, 4.9, 4.10, 4.11, 4.12, and 5.2 of this act become effective January 1, 2006. Section 3.3 of this act becomes effective January 1, 2006, and applies to determinations made on or after that date. Sections 1.1, 1.2, 1.3, 1.4, 1.5,

1.6, 1.7, 1.8, 1.11, 1.12, and 1.16 of this act become effective January 1, 2007. Section 3.1 of this act is effective when this act becomes law and expires on the date that all rules adopted by the Wildlife Resources Commission pursuant to Section 3.1 become effective. The Chair of the Wildlife Resources Commission shall notify the Revisor of Statutes when all rules adopted by the Wildlife Resources Commission pursuant to Section 3.1 of this act become effective. Section 3.2 of this act becomes effective on the date that all rules adopted by the Wildlife Resources Commission pursuant to Section 3.1 of this act become effective, except that G.S. 113-270.1(b3) and (b4) become effective January 1, 2006.

Exhibit II

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S **D**

SENATE BILL 1126

Agriculture/Environment/Natural Resources Committee Substitute Adopted 4/5/05
Finance Committee Substitute Adopted 4/6/05
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Short Title: Implement CRFL/Amend Fisheries Laws. (Public)

Sponsors:

Referred to:

March 24, 2005

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FOR THE IMPLEMENTATION OF THE COASTAL RECREATIONAL FISHING LICENSE, TO EXEMPT FROM COASTAL RECREATIONAL FISHING LICENSE REQUIREMENTS ONLY THOSE INDIVIDUALS WHO ARE UNDER SIXTEEN YEARS OF AGE OR WHO HOLD CERTAIN LICENSES ISSUED BY THE WILDLIFE RESOURCES COMMISSION THAT WERE PURCHASED PRIOR TO JANUARY 1, 2007, TO PROVIDE FOR A STATEWIDE SUBSISTENCE FISHING LICENSE, TO PROHIBIT THE WILDLIFE RESOURCES COMMISSION FROM DISCLOSING PERSONAL IDENTIFYING INFORMATION OF LICENSEES AND OTHERS UNDER CERTAIN CIRCUMSTANCES, TO AMEND VARIOUS STATUTES RELATED TO THE WILDLIFE RESOURCES COMMISSION, TO PROVIDE A SYSTEM OF UNIFIED LICENSES UNDER WHICH INDIVIDUALS MAY FISH THROUGHOUT THE STATE, TO RECONSTITUTE THE MARINE FISHERIES COMMISSION, TO AUTHORIZE THE NEW MARINE FISHERIES COMMISSION TO DISBURSE FISHING LICENSE REVENUES AND INVESTMENT INCOME TO MANAGE THE MARINE RESOURCES OF THE STATE, TO AUTHORIZE MARINE INSPECTORS TO ACCEPT DEPUTIZATION FROM THE NATIONAL MARINE FISHERIES SERVICE, AND TO PROVIDE MARINE INSPECTORS WITH THE SAME ENFORCEMENT AUTHORITY AS WILDLIFE PROTECTORS.

The General Assembly of North Carolina enacts:

PART I. AMEND FISHING LICENSE REQUIREMENTS

SECTION 1.1. The title of Article 14B of Chapter 113 of the General Statutes reads as rewritten:

"Article 14B.

~~Saltwater~~ Coastal Recreational Fishing Licenses."

SECTION 1.2. G.S. 113-174 reads as rewritten:

"**§ 113-174. Definitions.**

As used in this Article:

~~(1)~~ ~~"Commission" means the Marine Fisheries Commission.~~

(1a) "CRFL" means Coastal Recreational Fishing License.

(2) "Division" means the Division of Marine Fisheries in the Department of Environment and Natural Resources.

(2a) "For Hire Boat" means a charter boat, head boat, dive boat, or other boat hired to allow individuals to engage in recreational fishing.

(3) "North Carolina resident" means an individual who is a resident within the meaning of G.S. 113-130(4).

(4) "Recreational fishing" means any activity preparatory to, during, or subsequent to the taking of any ~~fish,~~finfish or bivalve, the taking of which is subject to regulation by the Marine Fisheries Commission, by any ~~means:~~means if the purpose of the taking is to obtain finfish or bivalves that are not to be sold. "Recreational fishing" does not include the taking of finfish or bivalves:

a. ~~That does not constitute a~~ By a commercial fishing operation as defined in G.S. 113-168.

b. ~~Except as provided in~~For scientific purposes pursuant to G.S. 113-261.

c. Under a RCGL issued pursuant to G.S. 113-173.

~~(5)~~ ~~"SFL" means Saltwater Fishing License.~~"

SECTION 1.3. G.S. 113-174.1 reads as rewritten:

"**§ 113-174.1. ~~General~~ License required; general provisions governing licenses.**

(a) License ~~Purchase~~ Required to Engage in Recreational Fishing. – It is unlawful for any individual to engage in recreational fishing ~~in coastal~~ in:

(1) Coastal fishing waters that are not joint fishing waters without ~~having purchased~~ holding a current license ~~required by this Article.~~ issued under this Article or under Article 25A of this Chapter that authorizes the individual to engage in recreational fishing in coastal fishing waters.

(2) Joint fishing waters without holding a current license issued under this Article or under Article 21 or Article 25A of this Chapter that authorizes the individual to engage in recreational fishing in joint fishing waters.

(a1) Compliance With Applicable Laws. – It is unlawful for any individual to engage in recreational fishing without complying with ~~the provisions of this Article and rules adopted by the Commission under this Article.~~applicable requirements of this

Article and Articles 21 and 25A of this Chapter and with applicable rules adopted by the Marine Fisheries Commission and the Wildlife Resources Commission.

(a2) Fourth of July Free Fishing Day. – The fourth day of July of each year is declared a free fishing day to promote the sport of fishing, and no license issued under this Article or Article 25A of this Chapter is required to fish in any of the public waters of the State on that day. All other laws and rules pertaining to recreational fishing apply.

(b) Sale of Fish Prohibited. – A license issued under this Article or Article 25A of this Chapter does not authorize an individual who takes or lands any species of fish under the authority of the Marine Fisheries Commission to sell, offer for sale, barter, or exchange the fish for anything of value. Except as provided in G.S. 113-168.4, it is unlawful for any individual who takes or lands any species of fish under the authority of the Marine Fisheries Commission by any means to sell, offer for sale, barter, or exchange these fish for anything of value.

(c) Assignment and Transfer Prohibited. – It is unlawful to buy, sell, lend, borrow, assign, or otherwise transfer a license issued under this Article or Article 25A of this Chapter or to attempt to buy, sell, lend, borrow, assign, or otherwise transfer a license issued under this ~~Article.~~Article or Article 25A of this Chapter.

~~(d) General Enforcement. It is unlawful for any individual to engage in recreational fishing in coastal fishing waters in the State without providing the individual's name and residence address upon the request of an inspector or other law enforcement officer authorized to enforce federal or State laws, regulations, or rules relating to marine fisheries.~~

~~(e) Enforcement for Charterboats and Headboats. An inspector or other law enforcement officer may only verify the licensure of an individual fishing from a charterboat or headboat after the charterboat or headboat has returned to shore and the individual has disembarked from the charterboat or headboat. Except as provided in G.S. 113-174.2(d), each individual on board a charterboat or headboat engaged in recreational fishing, other than crew members who do not engage in recreational fishing, must have purchased a current SFL issued pursuant to G.S. 113-174.2. An owner, operator, or crew member of a charterboat or headboat is not responsible for the licensure of a customer fishing from a charterboat or headboat.~~

(f) ~~Cancellation.~~Cancellation of Fraudulent License; Penalties. – The ~~Division~~ Wildlife Resources Commission may cancel a license issued by the Commission under this Article or Article 25A of this Chapter if the license was issued on the basis of false information supplied by the license applicant. The Division may cancel a For Hire Blanket CRFL issued under G.S. 113-174.3 or an Ocean Fishing Pier Blanket CRFL issued under G.S. 113-174.4 if the license was issued on the basis of false information supplied by the license applicant. A cancelled license is void from the date of issuance. It is a Class 1 misdemeanor for an individual to knowingly do any of the following:

(1) Engage in any activity regulated under this Article with an improper, false, or altered license.

(2) Make any false, fraudulent, or misleading statement in applying for a license issued under this Article or Article 25A of this Chapter.

(3) Counterfeit, alter, or falsify any application or license issued under this Article or Article 25A of this Chapter.

(g) Reporting Requirements. – A person licensed under this Article or Article 25A of this Chapter shall comply with the biological data sampling and survey programs of the Marine Fisheries Commission and the Division.

(h) Replacement Licenses. – Upon receipt of a proper application together with a fee of five dollars ($5.00), the Wildlife Resources Commission or the Division may issue a new license to replace one issued by the respective agency that has been lost or destroyed before its expiration. The application must be on a form of the Wildlife Resources Commission or the Division setting forth information in sufficient detail to allow ready identification of the lost or destroyed license and ascertainment of the applicant's continued entitlement to it."

SECTION 1.4. G.S. 113-174.2 reads as rewritten:

"**§ 113-174.2. ~~Saltwater~~ Coastal Recreational Fishing License.**

~~(a) License Required. – Except as otherwise provided in this Article, it is unlawful for any individual to engage in recreational fishing in coastal fishing waters by means of recreational gear without having purchased a current SFL issued under this section. It is unlawful for any individual fishing under a SFL to possess fish in excess of recreational possession limits.~~

(a1) Authorization to Fish in Coastal and Joint Fishing Waters. – A CRFL issued under this section authorizes the licensee to engage in recreational fishing in coastal fishing waters, including joint fishing waters. A CRFL issued under this section does not authorize the licensee to fish in inland fishing waters.

~~(b) Purchase; Renewal. – Any license issued under this section may be purchased or renewed at designated offices of the Division; from the Division by mail, electronic mail, the Internet, or telephone; or at locations designated by the North Carolina Saltwater Fishing Fund Board of Trustees.~~

(c) Types of ~~SFLs;~~CRFLs; Fees; Duration. – The ~~Division~~ Wildlife Resources Commission shall issue the following ~~SFLs:~~CRFLs:

(1) ~~One-year SFL.~~ Annual Resident CRFL. – $15.00. This license is valid for a period of one year from the date of issuance. This license shall be issued only to an individual who is a resident of the State.

(1a) Annual Nonresident CRFL. – $30.00. This license is valid for a period of one year from the date of issuance. This license shall be issued only to an individual who is not a resident of the State.

~~(2) Two-year SFL. – $30.00. This license is valid for a period of two years from the date of issuance.~~

~~(3) Three-year SFL. – $45.00. This license is valid for a period of three years from the date of issuance.~~

(4) ~~Seven-day SFL.~~Ten-Day Resident CRFL. – ~~$1.00.~~$5.00. This license is valid for a period of ~~seven consecutive days.~~10 consecutive days, as indicated on the license. ~~An individual may purchase this license only once in any 12-month period.~~ This license shall be issued only to an individual who is a resident of the State.

(4a) Ten-Day Nonresident CRFL. – $10.00. This license is valid for a period of 10 consecutive days, as indicated on the license. This license shall be issued only to an individual who is not a resident of the State.

~~(5) Subsistence SFL. – An applicant for a license under this subdivision shall provide to the Division a certification from the Department of Health and Human Services that the individual falls below the federal poverty level. A license issued under this subdivision shall be issued without charge and is valid for a period of one year from the date of issuance.~~

(6) Lifetime ~~SFL.~~CRFLs. – ~~This license is~~Except as provided in sub-subdivision j. of this subdivision, CRFLs issued under this subdivision are valid for the lifetime of the licensee. ~~The fee for the Lifetime SFL, based on the age of the prospective licensee as of the date on which the application is filed with the Division, is:~~

~~a. Younger than six years of age $100.00~~

~~b. Six years of age to younger than 11 years of age $150.00~~

~~c. 11 years of age to younger than 18 years of age $200.00~~

~~d. 18 years of age or older $500.00~~

e. Infant Lifetime CRFL. – $100.00. This license shall be issued only to an individual younger than one year of age.

f. Youth Lifetime CRFL. – $150.00. This license shall be issued only to an individual who is one year of age or older but younger than 12 years of age.

g. Resident Adult Lifetime CRFL. – $250.00. This license shall be issued only to an individual who is 12 years of age or older but younger than 65 years of age and who is a resident of the State.

h. Nonresident Adult Lifetime CRFL. – $500.00. This license shall be issued only to an individual who is 12 years of age or older and who is not a resident of the State.

i. Resident Elderly Lifetime CRFL. – $10.00. 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.

j. Resident Disabled Veteran CRFL. – $10.00. This license shall be issued only to an individual who is a resident of the State and who is a fifty percent (50%) or more disabled veteran as determined by the United States Department of Veterans Affairs. This license remains valid for the lifetime of the licensee so long as the licensee remains fifty percent (50%) or more disabled.

k. Resident Totally Disabled CRFL. – $10.00. This license shall be issued only to an individual who is a resident of the State and who is totally and permanently disabled as determined by the Social Security Administration.

(d) Exemptions. – An individual ~~may engage in recreational fishing by means of recreational gear without having purchased a SFL~~is exempt from the license requirements of G.S. 113-174.1(a) if the individual ~~is~~ either:

(1) Is under 16 years of age.~~18 years of age or younger and is currently enrolled in school and is making progress toward obtaining a high school diploma or its equivalent.~~

(2) Holds any of the following licenses that were purchased prior to January 1, 2007:

a. Infant Lifetime Sportsman License issued under G.S. 113-270.1D(b)(1).

b. Youth Lifetime Sportsman License issued under G.S. 113-270.1D(b)(2).

c. Adult Resident Lifetime Sportsman License issued under G.S. 113-270.1D(b)(3).

d. Nonresident Lifetime Sportsman License issued under G.S. 113-270.1D(b)(4).

e. Age 70 Resident Lifetime Sportsman License issued under G.S. 113-270.1D(b)(5).

f. Lifetime Resident Comprehensive Fishing License issued under G.S. 113-271(d)(3).

g. Lifetime Combination Hunting and Fishing License for Disabled Residents issued under G.S. 113-270.1C(b)(4).

h. Disabled Resident Sportsman License issued under G.S. 113-270.1D(b)(6).

(3) Holds any of the following licenses:

a. Lifetime Fishing License for the Legally Blind issued under G.S. 113-271(d)(7).

b. Adult Care Home Resident Fishing License issued under G.S. 113-271(d)(8)."

SECTION 1.5. Article 14B of Chapter 113 of the General Statutes is amended by adding two new sections to read:

"**§ 113-174.3. For Hire Blanket CRFL.**

(a) License. – A person who operates a for hire boat may purchase a For Hire Blanket CRFL issued by the Division. 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 is valid for a period of one year from the date of issuance. The fee for a For Hire Blanket CRFL is:

(1) Three hundred dollars ($300.00) for a vessel captained by an individual who holds a certification from the United States Coast Guard to carry six or fewer passengers.

(2) Four hundred dollars ($400.00) for a vessel captained by an individual who holds a certification from the United States Coast Guard to carry greater than six passengers.

(b) Implementation. – Except as provided in this section and G.S. 113-174.2(d), each individual on board a for hire boat engaged in recreational fishing, other than crew members who do not engage in recreational fishing, must hold a license issued under this Article or Article 25A of this Chapter. An owner, operator, or crew member of a for hire boat is not responsible for the licensure of a customer fishing from the boat.

"**§ 113-174.4. Ocean Fishing Pier Blanket CRFL.**

Ocean Fishing Pier Blanket CRFL. – A person who owns or operates an ocean fishing pier and who charges a fee to allow a person to engage in recreational fishing from the pier may purchase an Ocean Fishing Pier Blanket CRFL issued by the Division. An Ocean Fishing Pier Blanket CRFL authorizes all individuals 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 while on the pier. This license is valid for a period of one year from the date of issuance. The fee for an Ocean Fishing Pier Blanket CRFL is four dollars ($4.00) per linear foot, to the nearest foot, that the pier extends into coastal fishing waters beyond the mean high waterline. The length of the pier shall be measured to include all extensions of the pier."

SECTION 1.6. G.S. 113-270.1C reads as rewritten:

"**§ 113-270.1C. Combination hunting and inland fishing licenses.**

(a) The combination hunting and inland fishing licenses set forth in subsection (b) of this section entitle the ~~holder~~ licensee to take, except on game lands, all wild birds and wild animals, other than big game and waterfowl, by all lawful methods and in all open seasons, and to fish with hook and line in all inland and joint fishing waters, except public mountain trout waters. A combination hunting and inland fishing license issued under this section does not entitle the licensee to engage in recreational fishing in coastal fishing waters that are not joint fishing waters.

(b) Combination hunting and inland fishing licenses issued by the Wildlife Resources Commission are:

(1) Resident Annual Combination Hunting and Inland Fishing License – $20.00. This license shall be issued only to an individual resident of the State.

(2), (3) Repealed by Session Laws 1997-326, s. 2.

~~(4) Lifetime Combination Hunting and Fishing License for Disabled Residents – $10.00. This license shall be issued only to (i) an individual resident of the State who is a fifty percent (50%) or more disabled veteran as determined by the United States Department of Veterans Affairs, remaining valid for the lifetime of the individual so long as the individual remains fifty percent (50%) or more disabled; or (ii) an individual resident of the State who is totally disabled, remaining valid for the lifetime of the individual so long as the individual remains totally disabled. For purposes of this section, "totally disabled" means physically incapable of being gainfully~~

~~employed. The application form for this license, to be provided by the Wildlife Resources Commission, allows a person to apply only for the fishing privileges conveyed by the license. This license entitles the holder to fish in public mountain trout waters as provided in G.S. 113-272(a).~~

(5) Resident Disabled Veteran Lifetime Combination Hunting and Inland Fishing License – $10.00. This license shall be issued only to an individual who is a resident of the State and who is a fifty percent (50%) or more disabled veteran as determined by the United States Department of Veterans Affairs. This license remains valid for the lifetime of the licensee so long as the licensee remains fifty percent (50%) or more disabled. This license entitles the licensee to fish in public mountain trout waters as provided in G.S. 113-272(a).

(6) Resident Totally Disabled Lifetime Combination Hunting and Inland Fishing License – $10.00. This license shall be issued only to an individual who is a resident of the State and who is totally and permanently disabled as determined by the Social Security Administration. This license remains valid for the lifetime of the licensee. This license entitles the licensee to fish in public mountain trout waters as provided in G.S. 113-272(a)."

SECTION 1.7. G.S. 113-270.1D reads as rewritten:

"**§ 113-270.1D. Sportsman licenses.**

(a) Annual Sportsman License – $40.00. This license shall be issued only to an individual resident of the State and entitles the ~~holder~~ licensee to take all wild animals and wild birds, including waterfowl, by all lawful methods in all open seasons, including the use of game lands, and to fish with hook and line for all fish in all inland and joint fishing waters, including public mountain trout waters. An annual sportsman license issued under this subsection does not entitle the licensee to engage in recreational fishing in coastal fishing waters that are not joint fishing waters.

(b) Lifetime Sportsman Licenses. ~~Lifetime~~ Except as provided in subdivision (7) of this subsection, lifetime sportsman licenses are valid for the lifetime of the ~~holders~~ licensees.~~and~~ Lifetime sportsman licenses entitle the ~~holders~~ licensees to take all wild animals and wild birds by all lawful methods in all open seasons, including the use of game lands, and to fish with hook and line for all fish in all inland and joint fishing waters, including public mountain trout waters. A lifetime sportsman license issued under this subsection does not entitle the licensee to engage in recreational fishing in coastal fishing waters that are not joint fishing waters. Lifetime sportsman licenses issued by the Wildlife Resources Commission are:

(1) Infant Lifetime Sportsman License – $200.00. This license shall be issued only to an individual under one year of age.

(2) Youth Lifetime Sportsman License – $350.00. This license shall be issued only to an individual under 12 years of age.

(3) Adult Resident Lifetime Sportsman License – $500.00. This license shall be issued only to an individual resident of the State.

(4) Nonresident Lifetime Sportsman License – $1,000. This license shall be issued only to an individual nonresident of the State.

(5) Age ~~70~~ 65 Resident Lifetime Sportsman License – $10.00. This license shall be issued only to an individual resident of the State who is at least ~~70~~ 65 years of age.

~~(6) Disabled Resident Sportsman License – $100.00. This license shall be issued only to (i) an individual resident of the State who is a fifty percent (50%) or more disabled veteran as determined by the United States Department of Veterans Affairs, remaining valid for the lifetime of the individual so long as the individual remains fifty percent (50%) or more disabled; or (ii) an individual resident of the State who is totally disabled, remaining valid for the lifetime of the individual so long as the individual remains totally disabled. For purposes of this section, "totally disabled" means physically incapable of being gainfully employed.~~

(7) Resident Disabled Veteran Lifetime Sportsman License – $100.00. This license shall be issued only to an individual who is a resident of the State and who is a fifty percent (50%) or more disabled veteran as determined by the United States Department of Veterans Affairs. This license remains valid for the lifetime of the licensee so long as the licensee remains fifty percent (50%) or more disabled.

(8) Resident Totally Disabled Lifetime Sportsman License – $100.00. This license shall be issued only to an individual who is a resident of the State and who is totally and permanently disabled as determined by the Social Security Administration."

SECTION 1.8. G.S. 113-271 reads as rewritten:

"**§ 113-271. Hook-and-line licenses in inland and joint fishing waters.**

(a) An inland hook-and-line fishing license issued under this section entitles the licensee to fish with hook and line in inland fishing waters and joint fishing waters. An inland hook-and-line fishing license issued under this section does not entitle the licensee to engage in recreational fishing in coastal fishing waters that are not joint fishing waters. An inland hook-and-line fishing license issued under subdivision (1), (3), (6a), (6b), (6c), or (9) of subsection (d) of this section entitles the licensee ~~All the hook-and-line fishing licenses set forth in subdivisions (1), (3), (7), and (9) of subsection (d) of this section entitle the holder~~ to fish with hook and line in public mountain trout waters.

(b) Repealed by Session Laws 1993 (Reg. Sess., 1994), c. 684, s. 4.

(c) Repealed by Session Laws 1979, c. 830, s. 1.

(d) The hook-and-line fishing licenses issued by the Wildlife Resources Commission are as follows:

(1) Resident Annual Comprehensive Inland Fishing License – $20.00. This license shall be issued only to an individual resident of the State.

(2) Resident State Inland Fishing License – $15.00. This license shall be issued only to an individual resident of the State.

(3) Lifetime Resident Comprehensive Inland Fishing License – $250.00. This license shall be issued only to an individual resident of the State and is valid for the lifetime of the ~~holder.~~licensee.

(4) Resident County Inland Fishing License – $10.00. This license shall be issued only to an individual resident of the State and is valid only within the county of residence of the ~~license holder.~~licensee.

(5) Nonresident State Inland Fishing License – $30.00. This license shall be issued to an individual nonresident of the State.

(6) Short-Term Inland Fishing Licenses. Short-term inland fishing licenses are valid only for the date or consecutive dates indicated on the licenses. Short-term inland fishing licenses issued by the Wildlife Resources Commission are:

a. Resident ~~one-day~~10-day Inland Fishing License – $5.00. This license shall be issued only to a resident of the State.

b. Nonresident ~~one-day~~10-day Inland Fishing License – $10.00. This license shall be issued only to a nonresident of the State.

~~c. Nonresident three-day – $15.00. This license shall be issued only to a nonresident of the State.~~

(6a) Age 65 Resident Lifetime Inland Fishing License – $10.00. This license shall be issued only to an individual resident of the State who is at least 65 years of age.

(6b) Resident Disabled Veteran Lifetime Inland Fishing License – $10.00. This license shall be issued only to an individual who is a resident of the State and who is a fifty percent (50%) or more disabled veteran as determined by the United States Department of Veterans Affairs. This license remains valid for the lifetime of the licensee so long as the licensee remains fifty percent (50%) or more disabled.

(6c) Resident Totally Disabled Lifetime Inland Fishing License – $10.00. This license shall be issued only to an individual who is a resident of the State and who is totally and permanently disabled as determined by the Social Security Administration. This license remains valid for the lifetime of the licensee.

~~(7) Lifetime Fishing License for the Legally Blind – No charge. This license shall be issued only to an individual resident of the State who has been certified by the Department of Health and Human Services as a person whose vision with glasses is insufficient for use in ordinary occupations for which sight is essential. This license is valid for the life of the individual so long as he remains legally blind.~~

~~(8) Adult Care Home Resident Fishing License – No charge. This license shall be issued only to an individual resident of the State who resides in an adult care home as defined in G.S. 131D-2(a)(3) or G.S. 131E-101(4). This license is valid for the life of the individual so long as the individual remains a resident of an adult care home.~~

(9) Special Guest Inland Fishing License – $50.00. This license shall be issued only to the owner or lessee of private property bordering inland or joint fishing waters, including public mountain trout waters, and entitles ~~persons~~ individuals 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 license shall not be in force unless displayed on the premises of the property and only entitles fishing without additional license to ~~persons~~ individuals fishing from the licensed property and then only when fishing within the private property lines. The guest fishing license is not transferable as to person or location."

SECTION 1.9. G.S. 113-272.3(c) reads as rewritten:

"(c) Lifetime licenses are issued from the Wildlife Resources Commission headquarters. Each application for an Infant Lifetime Sportsman or Youth Lifetime Sportsman License must be accompanied by a certified copy of the birth ~~certificate~~ certificate, adoption order containing the date of birth, or other proof of age satisfactory to the Commission, of the individual to be named as the ~~license holder.~~licensee."

SECTION 1.10. G.S. 113-275(c1) reads as rewritten:

"(c1) Upon receipt of a proper application together with a fee of ~~two~~ five dollars ~~($2.00),~~($5.00), the Wildlife Resources Commission may issue a new license or permit to replace one that has been lost or destroyed before its expiration. The application must be on a form of the Wildlife Resources Commission setting forth information in sufficient detail to allow ready identification of the lost or destroyed license or permit and ascertainment of the applicant's continued entitlement to it."

SECTION 1.11. G.S. 113-276(m) reads as rewritten:

"(m) ~~Notwithstanding any other provision of law, the~~ The fourth day of July of each year is declared a free fishing day to promote the sport of fishing and no hook-and-line fishing license is required to fish in any of the public waters of the State on ~~this~~ that day. All other laws and rules pertaining to hook-and-line fishing ~~still~~ apply."

SECTION 1.12. G.S. 113-276 is amended by adding a new subsection to read:

"(n) The Wildlife Resources Commission may adopt rules to exempt individuals who participate in organized fishing events held in inland 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."

SECTION 1.13. G.S. 113-296(b) reads as rewritten:

"(b) In order to be eligible for participation in the Disabled Sportsman Program established by this section, ~~a person~~an individual must be able to certify through competent medical evidence one of the following disabilities:

(1) ~~Amputation of~~Missing fifty percent (50%) or more of one or more ~~limbs;~~limbs, whether by amputation or natural causes.
(2) Paralysis of one or more ~~limbs;~~limbs.
(3) Dysfunction of one or more limbs rendering the ~~person~~ individual unable to perform the tasks of grasping and lifting with the hands and arms or unable to walk without mechanical assistance, other than a ~~cane;~~cane.
(4) Disease, injury, or defect confining the ~~person~~ individual to a wheelchair, walker, or ~~crutches;~~crutches.
(5) Legal ~~deafness; or~~deafness.
(6) Legal blindness, for purposes of participation in disabled fishing only.

The disability must be permanent, and ~~a person~~an individual loses eligibility to participate in the Disabled Sportsman Program when the specified disability ceases to exist."

SECTION 1.14. Subchapter IV of Chapter 113 of the General Statutes is amended by adding a new Article to read:

"Article 25A.

"Unified Licenses.

"**§ 113-351. Unified hunting and fishing licenses; subsistence license waiver.**

(a) Definitions. – The definitions set out in G.S. 113-174 apply to this Article.

(b) General Provisions Governing Licenses and Waivers. – The general provisions governing licenses set out in G.S. 113-174.1 apply to licenses and waivers issued under this section.

(c) Types of Unified Hunting and Fishing Licenses; Fees; Duration. – The Wildlife Resources Commission shall issue the following Unified Hunting and Fishing Licenses:

(1) Annual Resident Unified Sportsman/Coastal Recreational Fishing License. – $55.00. This license is valid for a period of one year from the date of issuance. This license shall be issued only to an individual who is a resident of the State. This license authorizes the licensee to take all wild animals and wild birds, including waterfowl, by all lawful methods in all open seasons, including the use of game lands; 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.
(2) Annual Resident Unified Inland/Coastal Recreational Fishing License. – $35.00. This license is valid for a period of one year from the date of issuance. This license shall be issued only to an individual who is a resident of the State. This license 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.
(3) Lifetime Unified Sportsman/Coastal Recreational Fishing Licenses. – Except as provided in sub-subdivision f. 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 take all wild animals and wild birds, including waterfowl, by all lawful methods in all open seasons, including the use of game lands; 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. Infant Lifetime Unified Sportsman/Coastal Recreational Fishing License. – $275.00. This license shall be issued only to an individual who is younger than one year of age.

b. Youth Lifetime Unified Sportsman/Coastal Recreational Fishing License. – $450.00. This license shall be issued only to an individual who is one year of age or older but younger than 12 years of age.

c. Resident Adult Lifetime Unified Sportsman/Coastal Recreational Fishing License. – $675.00. This license shall be issued only to an individual who is 12 years of age or older but younger than 65 years of age and who is a resident of the State.

d. Nonresident Adult Lifetime Unified Sportsman/Coastal Recreational Fishing License. – $1,350. This license shall be issued only to an individual who is 12 years of age or older and who is not a resident of the State.

e. Resident Elderly Lifetime Unified Sportsman/Coastal Recreational Fishing License. – $20.00. 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.

f. Resident Disabled Veteran Lifetime Unified Sportsman/Coastal Recreational Fishing License. – $110.00. This license shall be issued only to an individual who is a resident of the State and who is a fifty percent (50%) or more disabled veteran as determined by the United States Department of Veterans Affairs. This license remains valid for the lifetime of the licensee so long as the licensee remains fifty percent (50%) or more disabled.

g. Resident Totally Disabled Lifetime Unified Sportsman/Coastal Recreational Fishing License. – $110.00. This license shall be issued only to an individual who is a resident of the State and who is totally and permanently disabled as determined by the Social Security Administration.

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

b. Resident Legally Blind Lifetime Unified Inland/Coastal Recreational Fishing License. – No charge. This license shall be issued only to an individual who is a resident of the State and who has been certified by the Department of Health and Human Services as an individual whose vision with glasses is insufficient for use in ordinary occupations for which sight is essential. This license remains valid for the lifetime of the licensee so long as the licensee remains legally blind.

c. Resident Adult Care Home Lifetime Unified Inland/Coastal Recreational Fishing License. – No charge. This license shall be issued only to an individual who is a resident of the State and who resides in an adult care home as defined in G.S. 131D-2(a)(1b) or G.S. 131E-101(1). This license remains valid for the lifetime of the licensee so long as the licensee remains a resident of an adult care home.

(d) Resident Subsistence Unified Inland/Coastal Recreational Fishing License. – $1.00. This license is valid for a period of one year from the date of issuance. This license shall be issued only to an individual who is a resident of the State. This license authorizes the licensee to fish with hook and line for all fish in all inland fishing waters and joint fishing waters, except for public mountain trout waters, and to engage in recreational fishing in coastal fishing waters. An applicant for a license issued under this subsection shall provide to a designated license agent a certification from the county department of social services that the applicant is currently enrolled and receives benefits from at least one of the eligible social service programs listed on an application developed by the Division of Marine Fisheries and the Wildlife Resources Commission."

SECTION 1.15. Article 24 of Chapter 143 of the General Statutes is amended by adding a new section to read:

"**§ 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."

SECTION 1.16. Sections 3, 4, 9, 10, 11, and 12 of S.L. 2004-187 are repealed.

SECTION 1.17. Section 15 of S.L. 2004-187 reads as rewritten:

"**SECTION 15.** ~~Sections 2, 3, and 4~~Section 2 of this act ~~become~~ becomes effective January 1, ~~2006.~~2007. All other sections of this act become effective when the act becomes law."

SECTION 1.18. The repeal by this act of the statutory authority of the Wildlife Resources Commission to issue a type of license shall not affect the authority of an individual to whom a license of that type is issued prior to the effective date of the repeal to engage in the activity that the repealed license type authorizes so long as the license is otherwise valid.

SECTION 1.19. G.S. 113-130(4) is amended by adding a new sub-subdivision to read:

"f. Students. – Nonresident students attending a university, college, or community college in the State."

PART II. MARINE RESOURCES FUND AND MARINE RESOURCES ENDOWMENT FUND

SECTION 2.1. The title of Article 14C of Chapter 113 of the General Statutes reads as rewritten:

"Article 14C.

~~North Carolina Saltwater Fishing~~Marine Resources Fund and Marine Resources Endowment Fund."

SECTION 2.2. G.S. 113-175 reads as rewritten:

"**§ 113-175. Definitions.**

As used in this Article:

~~(1) "Board of Trustees" means the Board of Trustees of the Fund.~~

(1a) "Endowment Fund" means the North Carolina Marine Resources Endowment Fund.

(1b) "Endowment investment income" means interest and other income earned from the investment of the principal of the Endowment Fund.

(1c) "Endowment license revenues" means the net proceeds from the sale of licenses issued under G.S. 113-174.2(c)(6) and a portion of the net proceeds from the sale of licenses issued under G.S. 113-351(c)(3) and (4). The apportionment of the net proceeds from the sale of licenses issued under G.S. 113-351(c)(3) and (4) shall be jointly determined by the Division of Marine Fisheries and the Wildlife Resources Commission. In the event that the Division of Marine Fisheries and the

Wildlife Resources Commission cannot agree on the apportionment, the Governor is authorized to determine the apportionment.

(2) ~~"Fund"~~"Marine Resources Fund" means the North Carolina ~~Saltwater Fishing~~Marine Resources Fund.

(3) ~~"Investment"~~"Marine resources investment income" means interest earned from the investment of ~~license revenues and the proceeds of any gifts, grants, or contributions deposited in~~ the principal of the Marine Resources Fund.

(4) ~~"License"~~"Marine resources license revenues" means the net proceeds from the sale of ~~Saltwater Fishing Licenses~~licenses issued under ~~G.S. 113-174.2.~~Article 14B of this Chapter and a portion of the net proceeds from the sale of licenses issued under Article 25A of this Chapter, excluding endowment license revenues. The apportionment of the net proceeds from the sale of licenses issued under Article 25A of this Chapter shall be jointly determined by the Division of Marine Fisheries and the Wildlife Resources Commission. In the event that the Division of Marine Fisheries and the Wildlife Resources Commission cannot agree on the apportionment, the Governor is authorized to determine the apportionment. ~~The term includes funds realized from the sale, lease, rental, or other grant of rights to real or personal property acquired or produced with license revenues and federal aid project reimbursements to the extent that license revenues originally funded the project for which the reimbursement is made.~~"

SECTION 2.3. G.S. 113-175.1 reads as rewritten:

"**§ 113-175.1. North Carolina ~~Saltwater Fishing Fund.~~Marine Resources Fund.**

(a) There is hereby established the North Carolina ~~Saltwater Fishing~~Marine Resources Fund as a nonreverting special revenue fund in the office of the State Treasurer. The purpose of the Marine Resources Fund is to enhance the ~~fishery~~ marine resources of the ~~State for commercial and recreational fishing.~~State. ~~License revenues and the proceeds of any gifts, grants, and contributions to the State that are specifically designated for inclusion in the Fund shall be deposited in the Fund.~~ The principal of the Marine Resources Fund shall consist of:

(1) Marine resources license revenues.

(2) Proceeds of any gifts, grants, and contributions to the State that are specifically designated for inclusion in the Marine Resources Fund.

(3) Funds realized from the sale, lease, rental, or other grant of rights to real or personal property acquired or produced from funds disbursed from the Marine Resources Fund.

(4) Federal aid project reimbursements to the extent that funds disbursed from the Marine Resources Fund originally funded the project for which the reimbursement is made.

(b) The State Treasurer shall hold the Marine Resources Fund separate and apart from all other moneys, funds, and accounts. The State Treasurer shall invest the assets of the Marine Resources Fund in accordance with the provisions of G.S. 147-69.2 and

~~G.S. 147-69.3.~~ G.S. 147-69.3 and all marine resources investment income shall be deposited to the credit of the Marine Resources Fund. The State Treasurer shall disburse the principal of the Marine Resources Fund and marine resources investment income only upon the written direction of the Marine Fisheries Commission.

(c) The Marine Fisheries Commission may authorize the disbursement of the principal of the Marine Resources Fund and marine resources investment income only to manage, protect, restore, develop, cultivate, conserve, and enhance the marine resources of the State. Expenditure of the assets of the Marine Resources Fund shall be made through the State budget accounts of the Division of Marine Fisheries in accordance with the provisions of the Executive Budget Act. The Marine Resources Fund is subject to the oversight of the State Auditor pursuant to Article 5A of Chapter 147 of the General Statutes.

SECTION 2.4. G.S. 113-175.2 is repealed.

SECTION 2.5. G.S. 113-175.3 is repealed.

SECTION 2.6. G.S. 113-175.4 is repealed.

SECTION 2.7. Article 14C of Chapter 113 of the General Statutes is amended by adding three new sections to read:

"**§ 113-175.5. North Carolina Marine Resources Endowment Fund.**

(a) There is hereby established the North Carolina Marine Resources Endowment Fund as a nonreverting special revenue fund in the office of the State Treasurer. The purpose of the Endowment Fund is to provide the citizens and residents of the State with the opportunity to invest in the future of the marine resources of the State. The principal of the Endowment Fund shall consist of:

(1) Endowment license revenues.

(2) Proceeds of any gifts, grants, or contributions to the State that are specifically designated for inclusion in the Endowment Fund.

(3) Proceeds of any gifts, grants, or contributions to the Marine Fisheries Commission or the Division of Marine Fisheries that are not specifically designated for another purpose.

(4) Funds realized from the sale, lease, rental, or other grant of rights to real or personal property acquired or produced from endowment investment income.

(5) Federal aid project reimbursements to the extent that endowment investment income originally funded the project for which the reimbursement is made.

(6) Transfers to the Endowment Fund.

(7) Any endowment investment income or marine resources license revenue that is credited to the Endowment Fund for the purpose of increasing the principal of the Endowment Fund.

(b) The State Treasurer shall hold the Endowment Fund separate and apart from all other moneys, funds, and accounts. The State Treasurer shall invest the assets of the Endowment Fund in accordance with the provisions of G.S. 147-69.2 and G.S. 147-69.3. The State Treasurer shall disburse the endowment investment income only upon the written direction of the Marine Fisheries Commission.

(c) Subject to the limitations set out in subsection (d) of this section, the Marine Fisheries Commission may authorize the disbursement of endowment investment income only to manage, protect, restore, develop, cultivate, conserve, and enhance the marine resources of the State.

(d) The Endowment Fund is declared to constitute a special trust derived from a contractual relationship between the State and the members of the public whose investments contribute to the Endowment Fund. In recognition of this special trust, all of the following limitations are placed on disbursement of funds held in the Endowment Fund:

(1) Any restrictions specified by the donors on the uses of income derived from gifts, grants, and voluntary contributions shall be respected but shall not be binding.

(2) No disbursements of the endowment investment income derived from the endowment license revenues generated by the sale of Infant Lifetime CRFLs under G.S. 113-174.2(c)(6)e., Youth Lifetime CRFLs under G.S. 113-174.2(c)(6)f., Infant Lifetime Unified Sportsman/Coastal Recreational Fishing Licenses under G.S. 113-351(c)(3)a., or Youth Lifetime Unified Sportsman/Coastal Recreational Fishing Licenses under G.S. 113-351(c)(3)b. shall be made for any purpose until the respective licensees attain the age of 16 years. The State Treasurer shall periodically make an actuarial determination as to the amount of endowment investment income within the Endowment Fund that remains encumbered by the restriction of this subdivision and the amount that is free of the restriction. The Executive Director of the Wildlife Resources Commission shall provide the State Treasurer with the information necessary to make this determination.

(3) No disbursement shall be made from the principal of the Endowment Fund except as otherwise provided by law.

(e) Expenditure of the endowment investment income shall be made through the State budget accounts of the Division of Marine Fisheries in accordance with the provisions of the Executive Budget Act. The Endowment Fund is subject to the oversight of the State Auditor pursuant to Article 5A of Chapter 147 of the General Statutes.

"**§ 113-175.6. Marine Resources Committee.**

(a) The Marine Resources Committee shall consist of five members of the Marine Fisheries Commission appointed by the Chair of the Marine Fisheries Commission as follows:

(1) The Fisheries Director shall be an ex officio voting member of the Marine Resources Committee and shall serve as the Chair of the Marine Resources Committee.

(2) One member of the Marine Fisheries appointed to the Commission pursuant to subdivision (1), (2), (3), or (10) of subsection (a) of G.S. 143B-289.69.

(3) One member of the Marine Fisheries appointed to the Commission pursuant to subdivision (4), (5), (6), or (12) of subsection (a) of G.S. 143B-289.69.

(4) One member of the Marine Fisheries appointed to the Commission pursuant to subdivision (7) or (8) of subsection (a) of G.S. 143B-289.69.

(5) One member of the Marine Fisheries appointed to the Commission pursuant to subdivision (9), (11), or (13) of subsection (a) of G.S. 143B-289.69.

(b) In making appointments to the Marine Resources Committee, the Chair of the Marine Fisheries Commission shall provide for fair geographic representation on the Committee.

(c) The Marine Resources Committee shall advise the Marine Fisheries Commission on the disbursement of funds from the Marine Resources Fund pursuant to G.S. 113-175.1 and on the disbursement of endowment investment income from the Endowment Fund pursuant to G.S. 113-175.5.

"**§ 113-175.7. Report.**

The Chair of the Marine Fisheries Commission shall submit to the Joint Legislative Commission on Seafood and Aquaculture by October 1 of each year a report on the Marine Resources Fund and the Endowment Fund that shall include the source and amounts of all moneys credited to each fund and the purpose and amount of all disbursements from each fund during the prior fiscal year."

SECTION 2.8. The first report required pursuant to G.S. 113-175.7, as enacted by Section 2.7 of this act, is due by October 1, 2006.

SECTION 2.9. G.S. 113-174.2(d), as enacted by Section 1.4 of this act, provides that the holders of certain lifetime licenses purchased prior to January 1, 2007, are exempt from the license requirement for engaging in recreational fishing in coastal fishing waters. The General Assembly finds that, because the holders of these lifetime licenses will be authorized to take marine resources from the coastal fishing waters of the State, it is appropriate that a portion of the revenues derived from the sale of these lifetime licenses should be transferred to the Marine Resources Endowment Fund so that the endowment investment income generated by the transferred license revenues will be used to manage, protect, restore, develop, cultivate, conserve, and enhance the marine resources of the State. The General Assembly specifically finds that this transfer of funds is consistent with the overall spirit, intent, and purpose underlying the creation of the Wildlife Endowment Fund and the Marine Resources Endowment Fund. Therefore, in accordance with G.S. 143-250.1(d)(3), the State Treasurer shall transfer the sum of three million eight hundred thousand dollars ($3,800,000) from the Wildlife Endowment Fund to the Marine Resources Endowment Fund. This transfer shall be made in five equal installments of seven hundred sixty thousand dollars ($760,000) on the first day of March in 2006, 2007, 2008, 2009, and 2010.

SECTION 2.10.(a) The Wildlife Resources Commission may disburse up to one million dollars ($1,000,000) from the Wildlife Resources Fund to implement this act.

SECTION 2.10.(b) The State Treasurer shall transfer a sum equal to the sum of funds disbursed pursuant to subsection (a) of this section from the Marine Resources Fund to the Wildlife Resources Fund on July 1, 2010.

PART III. WILDLIFE RESOURCES COMMISSION LICENSE AGENTS

SECTION 3.1.(a) The Wildlife Resources Commission shall adopt rules to provide for the following:

(1) Qualifications of license agents.
(2) Duties of license agents.
(3) Methods and procedures to ensure accountability and security for proceeds and unissued licenses and permits.
(4) Types and amounts of evidence that a license agent must submit to relieve the agent of responsibility for losses due to occurrences beyond the control of the agent.
(5) Any other reasonable requirement or condition that the Wildlife Resources Commission deems necessary to expedite and control the issuance of licenses and permits by license agents.

SECTION 3.1.(b) The Wildlife Resources Commission shall adopt rules to authorize the Executive Director to take the following actions related to license agents:

(1) Select and appoint license agents in areas most convenient for the sale of licenses and permits.
(2) Limit the number of license agents in an area if necessary for efficiency of operation.
(3) Require prompt and accurate reporting and remittance of public funds or documents by license agents.
(4) Conduct periodic and special audits of accounts.
(5) Suspend or terminate the authorization of any license agent found to be noncompliant with rules adopted by the Wildlife Resources Commission or when State funds or property are reasonably believed to be in jeopardy.
(6) Require the immediate surrender of all equipment, forms, licenses, permits, records, and State funds and property, issued by or belonging to the Wildlife Resources Commission, in the event of the termination of a license agent.

SECTION 3.2. G.S. 113-270.1 reads as rewritten:

"**§ 113-270.1. License agents.**

(a) The Wildlife Resources Commission may by rule provide for the ~~annual~~ appointment of persons as license agents to sell licenses and permits ~~which it~~ that the Commission is authorized to issue by this Subchapter or by any other provisions of law. To facilitate the convenience of the public, the efficiency of administration, the need to keep statistics and records affecting the conservation of wildlife resources, boating, water safety, and other matters within the jurisdiction of the Wildlife Resources Commission, and the need to issue licenses and permits containing special restrictions,

the Wildlife Resources Commission may issue licenses and permits in any particular category through:

(1) License agents.
(2) The Wildlife Resources Commission's headquarters.
(3) Employees of the Wildlife Resources Commission.
(4) Two or more such sources simultaneously.

(a1) When there are substantial reasons for differing treatment, the Wildlife Resources Commission may issue a type of license or permit by one method in one locality and by another method in another locality.

(b) License agents may deduct from the amount collected for each license or permit a fee of six percent (6%).

(b1) When licenses or permits are to be issued by license agents as provided by subsection (a) of this section, the Wildlife Resources Commission may adopt rules to provide for any of the following:

(1) Qualifications of the license agents.
(2) Duties of the license agents.
(3) Methods and procedures to ensure accountability and security for proceeds and unissued licenses and permits.
(4) Types and amounts of evidence that a license agent must submit to relieve the agent of responsibility for losses due to occurrences beyond the control of the agent.
(5) Any other reasonable requirement or condition that the Wildlife Resources Commission deems necessary to expedite and control the issuance of licenses and permits by license agents.

(b2) The Wildlife Resources Commission may adopt rules to authorize the Executive Director to take any of the following actions related to license agents:

(1) Select and appoint license agents in areas most convenient for the sale of licenses and permits.
(2) Limit the number of license agents in an area if necessary for efficiency of operation.
(3) Require prompt and accurate reporting and remittance of public funds or documents by license agents.
(4) Conduct periodic and special audits of accounts.
(5) Suspend or terminate the authorization of any license agent found to be noncompliant with rules adopted by the Wildlife Resources Commission or when State funds or property are reasonably believed to be in jeopardy.
(6) Require the immediate surrender of all equipment, forms, licenses, permits, records, and State funds and property, issued by or belonging to the Wildlife Resources Commission, in the event of the termination of a license agent.

(b3) The Wildlife Resources Commission is exempt from the contested case provisions of Chapter 150B of the General Statutes with respect to determinations of

whether to authorize or terminate the authority of a person to sell licenses and permits as a license agent of the Wildlife Resources Commission.

(b4) If any check or bank account draft of any license agent for the issuance of licenses or permits shall be returned by the banking facility upon which the same is drawn for lack of funds, the license agent shall be liable to the Commission for a penalty of five percent (5%) of the amount of the check or bank account draft, but in no event shall the penalty be less than five dollars ($5.00) or more than two hundred dollars ($200.00). License agents shall be assessed a penalty of twenty-five percent (25%) of their issuing fee on all remittances to the Commission after the fifteenth day of the month immediately following the month of sale.

~~(c) The Wildlife Resources Commission may provide qualifications and standards concerning license agents and delegate to the Executive Director the task of appointment and supervision. Annual appointments run from May 1 to April 30 each year. The Wildlife Resources Commission may require license agents to post bonds, keep records and make reports concerning licenses and receipts, be subject to such audits and inspections as may be necessary, and pay a penalty of five percent (5%) on any worthless checks given the Wildlife Resources Commission. The minimum penalty for a worthless check, however, is five dollars ($5.00), and the maximum penalty is two hundred dollars ($200.00). The Wildlife Resources Commission shall require license agents to pay penalties of twenty-five percent (25%) of the agents' fees on any license fees remitted to the Commission after the fifteenth day of the month immediately following the month of sale.~~

(d) ~~The Wildlife Resources Commission may make rules in implementing the authority granted in subsection (c), but it need not set out in its rules details as to forms of license, records and accounting procedures, and other reasonable requirements that may be administratively promulgated by employees of the Wildlife Resources Commission in implementation of the purposes of this Article in order for such administrative requirements to be deemed validly required.~~ It is a Class 1 misdemeanor for a license ~~agent:~~agent to do any of the following:

(1) ~~To withhold~~Withhold or misappropriate funds from the sale of ~~licenses;~~licenses or permits.

(2) ~~To falsify~~Falsify records of licenses ~~sold;~~or permits sold.

(3) ~~Wilfully~~ Willfully and knowingly ~~to~~ assist or allow a person to obtain a license or permit for which ~~he is ineligible;~~the person is ineligible.

(4) ~~Wilfully to~~Willfully issue a backdated ~~license;~~license or permit.

(5) ~~Wilfully on records or licenses to~~Willfully include false information or omit material information ~~as to:~~on records, licenses, or permits regarding either:

a. A person's entitlement to a particular ~~license; or~~license or permit.

b. The applicability or term of a particular ~~license; or~~license or permit.

(6) ~~To refuse to return all consigned licenses, or to remit the net value of consigned licenses sold or unaccounted for, upon demand from an~~

~~authorized employee of the Wildlife Resources Commission.~~Charge or accept any additional fee, remuneration, or other item of value in association with any activity set out in subdivisions (1) through (5) of this subsection.

~~(e) The Executive Director may temporarily suspend, revoke, or refuse to renew a person's appointment as a license agent if he fails in a timely manner to submit required reports, remit moneys due the Wildlife Resources Commission, or otherwise comply with the qualifications and standards set by the Wildlife Resources Commission or with reasonable administrative directives of the Executive Director. The temporary suspension is effective immediately upon communication of that fact to the license agent or his representative handling the licenses. The communication as to suspension must state the grounds for suspension and that the license agent may request a hearing within five working days if he contests the grounds for suspension. If not in writing, the communication must be followed by written notice of suspension containing the same information. By personal service of an impoundment order upon a license agent or his representative handling the licenses, an employee or agent of the Wildlife Resources Commission may enter the premises and impound all licenses, moneys, record books, reports, license forms, and other documents, ledgers, and materials pertinent or apparently pertinent to the license agency being suspended. The Executive Director must make the impounded property, or copies of it, available to the licensee during the period of temporary suspension.~~

~~(f) If a hearing is requested, it is before the Executive Director or his designee to be held at Raleigh or some other place convenient to the parties specified by the Executive Director. The temporary suspension remains in effect until the hearing, and after the hearing may be rescinded or continued in effect, as the facts warrant, in the discretion of the Executive Director. A temporary suspension may not last longer than 30 days, but additional suspensions may be imposed if at the end of the suspension period the license agent is still not in compliance with appropriate standards, qualifications, and administrative directives. A license agent may at any time after a hearing appeal his suspension to the Wildlife Resources Commission.~~

~~(g) Notice of revocation or nonrenewal of the appointment may be sent the license agent in lieu of or in addition to temporary suspension. The notice must state the grounds for termination of the appointment and the license agent's right to a hearing if he has not previously been afforded one. If the appointment is to be revoked, the notice must state the effective date and hour of revocation. If the appointment is not to be renewed, the notice must state that the appointment expires at midnight on April 30. If he has not been previously afforded a hearing, a license agent is entitled to a hearing within 14 days before the Executive Director or his designee to be held at Raleigh or some other place convenient to the parties specified by the Executive Director. After the hearing, the Executive Director, applying appropriate standards, must take the action with respect to the appointment as license agent that the facts warrant. If the Executive Director upholds the decision to terminate the appointment, a license agent may appeal his termination to the Wildlife Resources Commission. Pending the hearing and any~~

~~appeal from it, the termination is held in abeyance, but no license sales may be made once the license agent's bond has expired.~~

~~(h) Upon termination of the appointment, the former agent must return to the Wildlife Resources Commission all record books, reports, license forms, moneys, and other property pertaining to the license agency, and must allow agents of the Wildlife Resources Commission to conduct necessary inspections and audits required in terminating the license agency. Each day's refusal after termination to return, upon demand, the record books, reports, license forms, moneys, and other property pertaining to the license agency is a separate offense. Each instance of refusal, after termination, to allow agents of the Wildlife Resources Commission to conduct necessary inspections and audits during regular business hours is a separate offense. A violation of this subsection is a Class 2 misdemeanor. Before termination, violations by license agents are punishable under G.S. 113-135, subsection (d) above, or other provision of this Subchapter, as appropriate.~~

~~(i) No person denied appointment or whose appointment was terminated under this section is eligible to apply again for an appointment as a license agent for two years. Upon application, the executive director may not grant the appointment as license agent unless the applicant produces clear evidence, convincing to the Executive Director, that he meets all standards and qualifications and will comply with all requirements of statutes, rules, and reasonable administrative directives pertaining to license agents.~~

~~(j) The Executive Director or his designee holding any hearing under this section must keep a written record of evidence considered and findings made. Upon appeal to the Wildlife Resources Commission, the commission chairman or other presiding officer must cause such a written record of evidence and findings to be made and kept. Hearings and appeals under this section are internal matters concerning license agents of the Wildlife Resources Commission and are not governed by the North Carolina Administrative Procedure Act.~~"

SECTION 3.3. G.S. 150B-1(e) is amended by adding a new subdivision to read:

"(e) Exemptions From Contested Case Provisions. – The contested case provisions of this Chapter apply to all agencies and all proceedings not expressly exempted from the Chapter. The contested case provisions of this Chapter do not apply to the following:

...

(15) The Wildlife Resources Commission with respect to determinations of whether to authorize or terminate the authority of a person to sell licenses and permits as a license agent of the Wildlife Resources Commission."

PART IV. ESTABLISH NEW MARINE FISHERIES COMMISSION

SECTION 4.1. Part 5D of Article 7 of Chapter 143B of the General Statutes is repealed.

SECTION 4.2. Article 7 of Chapter 143B of the General Statutes is amended by adding a new Part to read:

"Part 5E. Marine Fisheries Commission.

"**§ 143B-289.65. Definitions.**

(a) As used in this Part:

(1) "Commission" means the Marine Fisheries Commission.

(2) "Department" means the Department of Environment and Natural Resources.

(3) "Fisheries Director" means the Director of the Division of Marine Fisheries of the Department of Environment and Natural Resources.

(4) "Secretary" means the Secretary of Environment and Natural Resources.

(b) The definitions set out in G.S. 113-129 and G.S. 113-130 shall apply throughout this Part.

"**§ 143B-289.66. Marine Fisheries Commission – creation; purposes.**

(a) There is hereby created the Marine Fisheries Commission in the Department of Environment and Natural Resources.

(b) The functions, purposes, and duties of the Commission are to:

(1) Manage, restore, develop, cultivate, conserve, protect, and regulate the marine and estuarine resources within its jurisdiction, as described in G.S. 113-132.

(2) Implement the laws relating to coastal fisheries, coastal fishing, shellfish, crustaceans, and other marine and estuarine resources enacted by the General Assembly by the adoption of rules and policies, to provide a sound, constructive, comprehensive, continuing, and economical coastal fisheries program directed by citizens who are knowledgeable in the protection, restoration, proper use, and management of marine and estuarine resources.

(3) Implement management measures regarding ocean and marine fisheries in the Atlantic Ocean consistent with the authority conferred on the State by the United States.

(4) Advise the State regarding ocean and marine fisheries within the jurisdiction of the Atlantic States Marine Fisheries Compact, the South Atlantic Fishery Management Council, the Mid-Atlantic Fishery Management Council, and other similar organizations established to manage or regulate fishing in the Atlantic Ocean.

"**§ 143B-289.67. Marine Fisheries Commission – powers and duties.**

(a) The Commission shall adopt rules to be followed in the management, protection, preservation, and enhancement of the marine and estuarine resources within its jurisdiction, as described in G.S. 113-132, including commercial and sports fisheries resources. The Commission shall have the power and duty:

(1) To authorize, license, regulate, prohibit, prescribe, or restrict all forms of marine and estuarine resources in coastal fishing waters with respect to:

a. Time, place, character, or dimensions of any methods or equipment that may be employed in taking fish.
b. Seasons for taking fish.
c. Size limits on and maximum quantities of fish that may be taken, possessed, bailed to another, transported, bought, sold, or given away.

(2) To provide fair regulation of commercial and recreational fishing groups in the interest of the public.

(3) To adopt rules and take all steps necessary to develop and improve mariculture, including the cultivation, harvesting, and marketing of shellfish and other marine resources in the State, involving the use of public grounds and private beds as provided in G.S. 113-201.

(4) To close areas of public bottoms under coastal fishing waters for such time as may be necessary in any program of propagation of shellfish as provided in G.S. 113-204.

(5) In the interest of conservation of the marine and estuarine resources of the State, to institute an action in the superior court to contest the claim of title or claimed right of fishery in any navigable waters of the State registered with the Department as provided in G.S. 113-206(d).

(6) To make reciprocal agreements with other jurisdictions respecting any of the matters governed in this Subchapter as provided by G.S. 113-223.

(7) To adopt relevant provisions of federal laws and regulations as State rules pursuant to G.S. 113-228.

(8) To delegate to the Fisheries Director the authority by proclamation to suspend or implement, in whole or in part, a particular rule of the Commission that may be affected by variable conditions as provided in G.S. 113-221.1.

(9) To comment on and otherwise participate in the determination of permit applications received by State agencies that may have an effect on the marine and estuarine resources of the State.

(10) To adopt Fishery Management Plans as provided in G.S. 113-182.1, to establish a Priority List to determine the order in which Fishery Management Plans are developed, to establish a Schedule for the development and adoption of each Fishery Management Plan, and to establish guidance criteria as to the contents of Fishery Management Plans.

(11) To approve Coastal Habitat Protection Plans as provided in G.S. 143B-279.8.

(12) Except as may otherwise be provided, to make the final agency decision in all contested cases involving matters within the jurisdiction of the Commission.

(13) To adopt rules to define fishing gear as either recreational gear or commercial gear.

(14) To authorize the disbursement of the assets of the Marine Resources Fund established pursuant to G.S. 113-175.1 to manage, protect, restore, develop, cultivate, conserve, and enhance the marine resources of the State.

(15) To authorize the disbursement of the endowment investment income of the Marine Resources Endowment Fund established pursuant to G.S. 113-175.5 to manage, protect, restore, develop, cultivate, conserve, and enhance the marine resources of the State.

(b) The Commission shall have the power and duty to establish standards and adopt rules:

(1) To implement the provisions of Subchapter IV of Chapter 113 as provided in G.S. 113-134.

(2) To manage the disposition of confiscated property as set forth in G.S. 113-137.

(3) To govern all license requirements prescribed in Article 14A of Chapter 113 of the General Statutes.

(4) To regulate the importation and exportation of fish, and equipment that may be used in taking or processing fish, as necessary to enhance the conservation of marine and estuarine resources of the State as provided in G.S. 113-170.

(5) To regulate the possession, transportation, and disposition of seafood, as provided in G.S. 113-170.4.

(6) To regulate the disposition of the young of edible fish, as provided by G.S. 113-185.

(7) To manage the leasing of public grounds for mariculture, including oysters and clam production, as provided in G.S. 113-202.

(8) To govern the utilization of private fisheries, as provided in G.S. 113-205.

(9) To impose further restrictions upon the throwing of fish offal in any coastal fishing waters, as provided in G.S. 113-265.

(10) To regulate the location and utilization of artificial reefs in coastal waters.

(11) To regulate the placement of nets and other sports or commercial fishing apparatus in coastal fishing waters with regard to navigational or recreational safety as well as from a conservation standpoint.

(c) The Commission is authorized to authorize, license, prohibit, prescribe, or restrict:

(1) The opening and closing of coastal fishing waters, except as to inland game fish, whether entirely or only as to the taking of particular classes of fish, use of particular equipment, or as to other activities.

(2) The possession, cultivation, transportation, importation, exportation, sale, purchase, acquisition, and disposition of all marine and estuarine resources and all related equipment, implements, vessels, and conveyances as necessary to carry out its duties.

(d) The Commission may adopt rules required by the federal government for grants-in-aid for coastal resource purposes that may be made available to the State by the federal government. This section is to be liberally construed in order that the State and its citizens may benefit from federal grants-in-aid.

(e) The Commission may regulate participation in a fishery that is subject to a federal fishery management plan if that plan imposes a quota on the State for the harvest or landing of fish in the fishery. If the Commission regulates participation in a fishery under this subsection, the Division may issue a license to participate in the fishery to a person who:

(1) Held a valid license issued by the Division to harvest, land, or sell fish during at least two of the three license years immediately preceding the date adopted by the Commission to determine participation in the fishery; and

(2) Participated in the fishery during at least two of those license years by landing in the State at least the minimum number of pounds of fish adopted by the Commission to determine participation in the fishery.

(f) The Commission may adopt rules to implement or comply with a fishery management plan adopted by the Atlantic States Marine Fisheries Commission or adopted by the United States Secretary of Commerce pursuant to the Magnuson-Stevens Fishery Conservation and Management Act, 16 U.S.C. § 1801, et seq. Notwithstanding G.S. 150B-21.1(a), the Commission may adopt temporary rules under this subsection at any time within six months of the adoption or amendment of a fishery management plan or the notification of a change in management measures needed to remain in compliance with a fishery management plan.

(g) The Commission shall adopt rules as provided in this Chapter. All rules adopted by the Commission shall be enforced by the Department.

(h) As a quasi-judicial agency, the Commission, in accordance with Article IV, Section 3 of the Constitution of North Carolina, has those judicial powers reasonably necessary to accomplish the purposes for which it was created.

(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, driver 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.

"§ 143B-289.68. Marine Fisheries Commission – quasi-judicial powers; procedures.

(a) With respect to those matters within its jurisdiction, the Commission shall exercise quasi-judicial powers in accordance with the provisions of Chapter 150B of the General Statutes. This section and any rules adopted by the Commission shall govern the following proceedings:

(1) Exceptions to recommended decisions in contested cases shall be filed with the Secretary within 30 days of the receipt by the Secretary of the official record from the Office of Administrative Hearings, unless additional time is allowed by the Chair of the Commission.

(2) Oral arguments by the parties may be allowed by the Chair of the Commission upon request of the parties.

(3) Deliberations of the Commission shall be conducted in its public meeting unless the Commission determines that consultation with its counsel should be held in a closed session pursuant to G.S. 143-318.11.

(b) The final agency decision in contested cases that arise from civil penalty assessments shall be made by the Commission. In the evaluation of each violation, the Commission shall recognize that harm to the marine and estuarine resources within its jurisdiction, as described in G.S. 113-132, arising from the violation of a statute or rule enacted or adopted to protect those resources may be immediately observed through damaged resources or may be incremental or cumulative with no damage that can be immediately observed or documented. Penalties up to the maximum authorized may be based on any one or combination of the following factors:

(1) The degree and extent of harm to the marine and estuarine resources within the jurisdiction of the Commission, as described in G.S. 113-132; to the public health; or to private property resulting from the violation.

(2) The frequency and gravity of the violation.

(3) The cost of rectifying the damage.

(4) Whether the violation was committed willfully or intentionally.

(5) The prior record of the violator in complying or failing to comply with programs over which the Commission has regulatory authority.

(6) The cost to the State of the enforcement procedures.

(c) The Chair shall appoint a Committee on Civil Penalty Remissions from the members of the Commission. No member of the Committee on Civil Penalty Remissions may hear or vote on any matter in which the member has an economic interest. The Committee on Civil Penalty Remissions shall make the final agency decision on remission requests. In determining whether a remission request will be approved, the Committee shall consider the recommendation of the Secretary and the following factors:

(1) Whether one or more of the civil penalty assessment factors in subsection (b) of this section were wrongly applied to the detriment of the petitioner.

(2) Whether the violator promptly abated continuing environmental damage resulting from the violation.
(3) Whether the violation was inadvertent.
(4) Whether the violator had been assessed civil penalties for any previous violations.
(5) Whether payment of the civil penalty will prevent payment for the remaining necessary remedial actions.

(d) The Committee on Civil Penalty Remissions may remit the entire amount of the penalty only when the violator has not been assessed civil penalties for previous violations and when payment of the civil penalty will prevent payment for the remaining necessary remedial actions.

(e) If any civil penalty has not been paid within 30 days after the final agency decision or court order has been served on the violator, the Secretary of Environment and Natural Resources shall request the Attorney General to institute a civil action in the superior court of any county in which the violator resides or has his or its principal place of business to recover the amount of the assessment.

(f) The Secretary may delegate his powers and duties under this section to the Fisheries Director.

"**§ 143B-289.69. Marine Fisheries Commission – members; appointment; term; oath; ethical standards; removal; compensation; staff.**

(a) Members, Selection. – The Commission shall consist of 14 members as follows:

(1) One person appointed by the Governor who is actively engaged in, or recently retired from, commercial fishing as demonstrated by currently or recently deriving at least fifty percent (50%) of annual earned income from taking or selling fishery resources from the coastal fishing waters of the State. The spouse of a commercial fisherman who meets the criteria of this subdivision may be appointed under this subdivision.
(2) One person appointed by the Governor who is actively engaged in, or recently retired from, commercial fishing as demonstrated by currently or recently deriving at least fifty percent (50%) of annual earned income from taking or selling fishery resources from the coastal fishing waters of the State. The spouse of a commercial fisherman who meets the criteria of this subdivision may be appointed under this subdivision.
(3) One person appointed by the Governor who is actively engaged in, or recently retired from, commercial fishing as demonstrated by currently or recently deriving at least fifty percent (50%) of annual earned income from taking or selling fishery resources from the coastal fishing waters of the State. The spouse of a commercial fisherman who meets the criteria of this subdivision may be appointed under this subdivision.

(4) One person appointed by the Governor who is actively engaged in recreational fishing in the coastal fishing waters of the State. An appointee under this subdivision may not derive more than ten percent (10%) of annual earned income from sports fishing activities.

(5) One person appointed by the Governor who is actively engaged in recreational fishing in the coastal fishing waters of the State. An appointee under this subdivision may not derive more than ten percent (10%) of annual earned income from sports fishing activities.

(6) One person appointed by the Governor who is actively engaged in recreational fishing in the coastal fishing waters of the State. An appointee under this subdivision may not derive more than ten percent (10%) of annual earned income from sports fishing activities.

(7) One person appointed by the Governor who is a fisheries scientist having special training and expertise in marine and estuarine fisheries biology, ecology, population dynamics, water quality, habitat protection, or similar knowledge. A person appointed under this subdivision may not receive more than ten percent (10%) of annual earned income from either the commercial or recreational fishing industries, including the processing and distribution of seafood.

(8) One person appointed by the Governor who is a fisheries scientist having special training and expertise in marine and estuarine fisheries biology, ecology, population dynamics, water quality, habitat protection, or similar knowledge. A person appointed under this subdivision may not receive more than ten percent (10%) of annual earned income from either the commercial or recreational fishing industries, including the processing and distribution of seafood.

(9) One person appointed by the Governor who has general knowledge of and experience related to subjects and persons regulated by the Commission.

(10) One person appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate who is actively engaged in, or recently retired from, commercial fishing as demonstrated by currently or recently deriving at least fifty percent (50%) of annual earned income from taking or selling fishery resources from the coastal fishing waters of the State. The spouse of a commercial fisherman who meets the criteria of this subdivision may be appointed under this subdivision.

(11) One person appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate who has general knowledge of and experience related to subjects and persons regulated by the Commission.

(12) One person appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives who is actively engaged in recreational fishing in the coastal fishing waters

of the State. An appointee under this subdivision may not derive more than ten percent (10%) of annual earned income from sports fishing activities.

(13) One person appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives who has general knowledge of and experience related to subjects and persons regulated by the Commission.

(14) The Fisheries Director shall serve as an ex officio, nonvoting member of the Commission.

(b) Residential Qualifications. – For purposes of providing regional representation on the Commission, the following four regions of the State are designated: (i) Northeast Coastal Region comprised of Bertie, Camden, Chowan, Currituck, Dare, Gates, Halifax, Hertford, Martin, Northampton, Pasquotank, Perquimans, Tyrrell, and Washington Counties; (ii) Central Coastal Region comprised of Beaufort, Carteret, Craven, Hyde, Jones, and Pamlico Counties; (iii) Southeast Coastal Region comprised of Bladen, Brunswick, Columbus, New Hanover, Onslow, and Pender Counties; and (iv) Inland Region comprised of the counties not included in the three coastal regions. The Governor shall appoint at least two members from each of the four regions of the State. The members appointed pursuant to subdivisions (10) and (11) of subsection (a) of this section shall not be from the same region of the State. The members appointed pursuant to subdivisions (12) and (13) of subsection (a) of this section shall not be from the same region of the State.

(c) Additional Considerations. – In making appointments to the Commission, the appointing entities shall provide for appropriate representation of women and minorities on the Commission.

(d) Terms. – The term of office of appointed members of the Commission is three years. A member may be reappointed to any number of successive three-year terms. Upon the expiration of a three-year term, a member shall continue to serve until a successor is appointed and duly qualified as provided by G.S. 128-7. The term of members appointed under subdivisions (1), (4), (7), (8), and (9) of subsection (a) of this section shall expire on 30 June of years evenly divisible by three. The term of members appointed under subdivisions (2), (5), (11), and (13) of subsection (a) of this section shall expire on 30 June of years that precede by one year those years that are evenly divisible by three. The term of members appointed under subdivisions (3), (6), (10), and (12) of subsection (a) of this section shall expire on 30 June of years that follow by one year those years that are evenly divisible by three.

(e) Vacancies. – An appointment to fill a vacancy shall be for the unexpired balance of the term.

(f) Oath of Office. – Each member of the Commission, before assuming the duties of office, shall take an oath of office as provided in Chapter 11 of the General Statutes.

(g) Ethical Standards. –

(1) Disclosure statements. – Any person under consideration for appointment to the Commission shall provide both a financial

disclosure statement and a potential bias disclosure statement to the Governor. A financial disclosure statement shall include statements of the nominee's financial interests in and related to State fishery resources use, licenses issued by the Division of Marine Fisheries held by the nominee or any business in which the nominee has a financial interest, and uses made by the nominee or by any business in which the nominee has a financial interest of the regulated resources. A potential bias disclosure statement shall include a statement of the nominee's membership or other affiliation with, including offices held in, societies, organizations, or advocacy groups pertaining to the management and use of the State's coastal fishery resources. Disclosure statements shall be treated as public records under Chapter 132 of the General Statutes and shall be updated on an annual basis.

(2) Voting/conflict of interest. – A member of the Commission shall not vote on any issue before the Commission that would have a "significant and predictable effect" on the member's financial interest. For purposes of this subdivision, "significant and predictable effect" means there is or may be a close causal link between the decision of the Commission and an expected disproportionate financial benefit to the member that is shared only by a minority of persons within the same industry sector or gear group. A member of the Commission shall also abstain from voting on any petition submitted by an advocacy group of which the member is an officer or sits as a member of the advocacy group's board of directors. A member of the Commission shall not use the member's official position as a member of the Commission to secure any special privilege or exemption of substantial value for any person. No member of the Commission shall, by the member's conduct, create an appearance that any person could improperly influence the member in the performance of the member's official duties.

(3) Regular attendance. – It shall be the duty of each member of the Commission to regularly attend meetings of the Commission.

(h) Removal. – The Governor may remove, as provided in G.S. 143B-13, any member of the Commission for misfeasance, malfeasance, or nonfeasance.

(i) Office May Be Held Concurrently With Others. – The office of member of the Commission may be held concurrently with any other elected or appointed office, as authorized by Article VI, Section 9, of the Constitution of North Carolina.

(j) Compensation. – Members of the Commission who are State officers or employees shall receive no per diem compensation for serving on the Commission but shall be reimbursed for their expenses in accordance with G.S. 138-6. Members of the Commission who are full-time salaried public officers or employees other than State officers or employees shall receive no per diem compensation for serving on the Commission but shall be reimbursed for their expenses in accordance with G.S. 138-6 in the same manner as State officers or employees. All other Commission members

shall receive per diem compensation and reimbursement in accordance with the compensation rate established in G.S. 93B-5.

(k) Staff. – All clerical and other services required by the Commission shall be supplied by the Fisheries Director and the Department.

(l) Legal Services. – The Attorney General shall: (i) act as attorney for the Commission; (ii) at the request of the Commission, initiate actions in the name of the Commission; and (iii) represent the Commission in any appeal or other review of any order of the Commission.

"**§ 143B-289.70. Marine Fisheries Commission – officers; organization; seal.**

(a) The Governor shall appoint a member of the Commission to serve as Chair. The Chair shall serve at the pleasure of the Governor. The Commission shall elect one of its members to serve as Vice-Chair. The Vice-Chair shall serve a one-year term beginning 1 July and ending 30 June of the following year. The Vice-Chair may serve any number of consecutive terms.

(b) The Chair shall guide and coordinate the activities of the Commission in fulfilling its duties as set out in this Article. The Chair shall report to and advise the Governor and the Secretary on the activities of the Commission, on marine and estuarine conservation matters, and on all marine fisheries matters.

(c) The Commission shall determine its organization and procedure in accordance with the provisions of this Article. The provisions of the most recent edition of Robert's Rules of Order shall govern any procedural matter for which no other provision has been made.

(d) The Commission may adopt a common seal and may alter it as necessary.

"**§ 143B-289.71. Marine Fisheries Commission – meetings; quorum.**

(a) The Commission shall meet at least once each calendar quarter and may hold additional meetings at any time and place within the State at the call of the Chair or upon the written request of at least four members. The Commission shall hold at least one meeting each calendar year in each region designated in G.S. 143B-289.69.

(b) (1) Eight members of the Commission shall constitute a quorum for the transaction of business.

(2) A quorum of the Commission may transact business only if one member, other than the Chair, appointed pursuant to subdivision (1), (2), (3), or (10) of G.S. 143B-289.69(a) and one member, other than the Chair, appointed pursuant to subdivision (4), (5), (6), or (12) of G.S. 143B-289.69(a) are present.

(c) If the Commission is unable to transact business because the requirements of subdivision (2) of subsection (b) of this section are not met, the Chair shall call another meeting of the Commission within 30 days and shall place on the agenda for that meeting every matter with respect to which the Commission was unable to transact business. Seven members of the Commission shall constitute a quorum for the transaction of business at a meeting called under this subsection. The requirements of subdivision (2) of subsection (b) of this section shall not apply to a meeting called under this subsection.

"**§ 143B-289.72. Marine Fisheries Commission – advisory committees established; members; selection; duties.**

(a) The Commission shall be assisted in the performance of its duties by four standing advisory committees and four regional advisory committees. Each standing and regional advisory committee shall consist of no more than 11 members. The Chair of the Commission shall designate one member of each advisory committee to serve as Chair of the committee. Members shall serve staggered three-year terms as determined by the Commission. The Commission shall establish other policies and procedures for standing and regional advisory committees that are consistent with those governing the Commission as set out in this Part.

(b) The Chair of the Commission shall appoint the following standing advisory committees:

(1) The Finfish Committee, which shall consider matters concerning finfish.

(2) The Crustacean Committee, which shall consider matters concerning shrimp and crabs.

(3) The Shellfish Committee, which shall consider matters concerning oysters, clams, scallops, and other molluscan shellfish.

(4) The Habitat and Water Quality Committee, which shall consider matters concerning habitat and water quality that may affect coastal fisheries resources.

(c) Each standing advisory committee shall be composed of commercial and recreational fishermen, scientists, and other persons who have expertise in the matters to be considered by the advisory committee to which they are appointed. In making appointments to advisory committees, the Chair of the Commission shall ensure that both commercial and recreational fishing interests are fairly represented and shall consider for appointment persons who are recommended by groups representing commercial fishing interests, recreational fishing interests, environmental protection and conservation interests, and other groups interested in coastal fisheries management.

(d) Each standing advisory committee shall review all matters referred to the committee by the Commission and shall make findings and recommendations on these matters. A standing advisory committee may, on its own motion, make findings and recommendations as to any matter related to its subject area. The Commission, in the performance of its duties, shall consider all findings and recommendations submitted by standing advisory committees.

(e) The Chair of the Commission shall appoint a regional advisory committee for each of the four regions designated in G.S. 143B-289.69(b). In making appointments to regional advisory committees, the Chair of the Commission shall ensure that both commercial and recreational fishing interests are fairly represented.

"**§ 143B-289.73. Conservation Fund; Commission may accept gifts.**

(a) The Commission may accept gifts, donations, or contributions from any sources. These funds shall be held in a separate account and used solely for the purposes of marine and estuarine conservation and management. These funds shall be administered by the Commission and shall be used for marine and estuarine resources

management, including education about the importance of conservation, in a manner consistent with marine and estuarine conservation management principles.

(b) The Commission is hereby authorized to issue and sell appropriate emblems by which to identify recipients thereof as contributors to a special marine and estuarine resources Conservation Fund that shall be made available to the Commission for conservation, protection, enhancement, preservation, and perpetuation of marine and estuarine species that may be endangered or threatened with extinction and for education about these issues. The special Conservation Fund is subject to oversight of the State Auditor pursuant to Article 5A of Chapter 147 of the General Statutes. Emblems of different sizes, shapes, types, or designs may be used to recognize contributions in different amounts, but no emblem shall be issued for a contribution amounting in value to less than five dollars ($5.00).

"**§ 143B-289.74. Article subject to Chapter 113.**

Nothing in this Part shall be construed to affect the jurisdictional division between the Marine Fisheries Commission and the Wildlife Resources Commission contained in Subchapter IV of Chapter 113 of the General Statutes or in any way to alter or abridge the powers and duties of the two agencies conferred in that Subchapter.

"**§ 143B-289.75. Jurisdictional questions.**

In the event of any question arising between the Wildlife Resources Commission and the Marine Fisheries Commission or between the Department of Environment and Natural Resources and the Marine Fisheries Commission as to any duty, responsibility, or authority imposed upon any of these bodies by law or with respect to conflict involving rules or administrative practices, the question or conflict shall be resolved by the Governor, whose decision shall be binding."

SECTION 4.3. G.S. 113-128(5a) reads as rewritten:

"(5a) Marine Fisheries Commission. – The Marine Fisheries Commission of the Department as established by Part ~~5D~~ 5E of Article 7 of Chapter 143B of the General Statutes."

SECTION 4.4. G.S. 113-136(b) reads as rewritten:

"(b) The jurisdiction of inspectors extends to all matters within the jurisdiction of the Department set out in this Subchapter, Part ~~5D~~ 5E of Article 7 of Chapter 143B of the General Statutes, Article 5 of Chapter 76 of the General Statutes, and Article 2 of Chapter 77 of the General Statutes, and to all other matters within the jurisdiction of the Department which it directs inspectors to enforce. In addition, inspectors have jurisdiction over all offenses involving property of or leased to or managed by the Department in connection with the conservation of marine and estuarine resources."

SECTION 4.5. G.S. 120-123(53) reads as rewritten:

"(53) The North Carolina Marine Fisheries Commission as established by ~~G.S. 143B-289.51.~~G.S. 143B-289.66."

SECTION 4.6. G.S. 113-182.1(a) reads as rewritten:

"(a) The Department shall prepare proposed Fishery Management Plans for adoption by the Marine Fisheries Commission for all commercially or recreationally significant species or fisheries that comprise State marine or estuarine resources. Proposed Fishery Management Plans shall be developed in accordance with the Priority

List, Schedule, and guidance criteria established by the Marine Fisheries Commission under ~~G.S. 143B-289.52.~~G.S. 143B-289.67."

SECTION 4.7. G.S. 113-182.1(c1) reads as rewritten:

"(c1) The Department shall consult with the regional advisory committees established pursuant to ~~G.S. 143B-289.57(e)~~G.S. 143B-289.72(e) regarding the preparation of each Fishery Management Plan. Before submission of a plan for review by the Joint Legislative Commission on Seafood and ~~Aquaculture or the Environmental Review Commission,~~Aquaculture, the Department shall review any comment or recommendation regarding the plan that a regional advisory committee submits to the Department within the time limits established in the Schedule for the development and adoption of Fishery Management Plans ~~established by G.S. 143B-289.52.~~adopted pursuant to G.S. 143B-289.67. The Commission shall consult with the regional advisory committees regarding the development of any temporary management measure that the Commission determines to be necessary to ensure the viability of the species or fishery while the plan is being developed and regarding the development of any management measure to implement the plan. Before the Commission adopts a temporary management measure or a management measure to implement a plan, the Commission shall review any comment or recommendation regarding the management measure that a regional advisory committee submits to the Commission."

SECTION 4.8. G.S. 113-191(d) reads as rewritten:

"(d) In determining the amount of the penalty, the Secretary shall consider the factors set out in ~~G.S. 143B-289.53(b).~~G.S. 143B-289.68(b). The procedures set out in ~~G.S. 143B-289.53~~G.S. 143B-289.68 shall apply to civil penalty assessments that are presented to the Commission for final agency decision."

SECTION 4.9. G.S. 113-191(f) reads as rewritten:

"(f) Requests for remission of civil penalties shall be filed with the Secretary. Remission requests shall not be considered unless filed within 30 days of receipt of the notice of assessment. Remission requests must be accompanied by a waiver of the right to a contested case hearing pursuant to Chapter 150B of the General Statutes and a stipulation of the facts on which the assessment was based. Consistent with the limitations in ~~G.S. 143B-289.53(c),~~G.S. 143B-289.68(c), remission requests may be resolved by the Secretary and the violator. If the Secretary and the violator are unable to resolve the request, the Secretary shall deliver remission requests and his recommended action to the Committee on Civil Penalty Remissions of the Marine Fisheries Commission appointed pursuant to ~~G.S. 143B-289.53(c).~~G.S. 143B-289.68(c)."

SECTION 4.10. G.S. 113-200(e1) reads as rewritten:

"(e1) Grants Committee. – The Grants Committee shall consist of eleven members as follows:

(1) Three employees of the Sea Grant College Program, appointed by the Director of the Sea Grant College Program.

(2) Two employees of the Division of Marine Fisheries, appointed by the Fisheries Director.

(3) Two members of the Marine Fisheries Commission, appointed by the Chair of the Marine Fisheries Commission.

(4) One member of the Northeast Regional Advisory Committee established pursuant to ~~G.S. 143B-289.57(e),~~G.S. 143B-289.72(e), appointed by the Northeast Regional Advisory Committee.

(5) One member of the Central Regional Advisory Committee established pursuant to ~~G.S. 143B-289.57(e),~~G.S. 143B-289.72(e), appointed by the Central Regional Advisory Committee.

(6) One member of the Southeast Regional Advisory Committee established pursuant to ~~G.S. 143B-289.57(e),~~G.S. 143B-289.72(e), appointed by the Southeast Regional Advisory Committee.

(7) One member of the Inland Regional Advisory Committee established pursuant to ~~G.S. 143B-289.57(e),~~G.S. 143B-289.72(e), appointed by the Inland Regional Advisory Committee."

SECTION 4.11. The records, personnel, property, unexpended balances of appropriations, allocations, and other funds, including the functions of budgeting and purchasing, heretofore vested in the Marine Fisheries Commission created under Part 5D of Article 7 of Chapter 143B of the General Statutes, repealed by Section 4.1 of this act, are transferred to the Marine Fisheries Commission created under Part 5E of Article 7 of Chapter 143B of the General Statutes, as enacted by Section 4.2 of this act. All rules, decisions, and actions, heretofore adopted, made, or taken by the Marine Fisheries Commission created under Part 5 of Article 7 of Chapter 143B of the General Statutes, repealed by Section 1 of Chapter 641 of the 1987 Session Laws; all rules, decisions, and actions, heretofore adopted, made, or taken by the Marine Fisheries Commission created under Part 5A of Article 7 of Chapter 143B of the General Statutes, repealed by Section 6.3 of S.L. 1997-400; and all rules, decisions, and actions, heretofore adopted, made, or taken by the Marine Fisheries Commission created under Part 5D of Article 7 of Chapter 143B of the General Statutes, repealed by Section 4.1 of this act, that have not been heretofore repealed or rescinded shall continue in effect until repealed or rescinded by the Marine Fisheries Commission created under Part 5E of Article 7 of Chapter 143B of the General Statutes, as enacted by Section 4.2 of this act.

SECTION 4.12. In order to establish a schedule of staggered terms of three years for the Marine Fisheries Commission, the terms of members of the Commission initially filling positions established by subdivisions (1), (4), (7), (8), and (9) of subsection (a) of G.S. 143B-289.69, as enacted by Section 4.2 of this act, shall begin on the date the member is appointed and duly qualified and shall expire on June 30, 2010; the terms of members of the Commission initially filling positions established by subdivisions (2), (5), (11), and (13) of subsection (a) of G.S. 143B-289.69, as enacted by Section 4.2 of this act, shall begin on the date the member is appointed and duly qualified and shall expire on June 30, 2009; the terms of members of the Commission initially filling positions established by subdivisions (3), (6), (10), and (12) of subsection (a) of G.S. 143B-289.69, as enacted by Section 4.2 of this act, shall begin on the date the member is appointed and duly qualified and shall expire on June 30, 2008.

PART V. ENFORCEMENT OF MARINE RESOURCES LAWS

SECTION 5.1.(a) G.S. 113-134.1 reads as rewritten:

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

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

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

SECTION 5.1.(b) If the Division of Marine Fisheries of the Department of Environment and Natural Resources enters into a Joint Enforcement Agreement with the National Marine Fisheries Service of the United States Department of Commerce, the Division shall, within six months of entering into the Agreement, report to the Joint Legislative Commission on Seafood and Aquaculture and the House of Representatives and Senate Appropriations Subcommittees on Natural and Economic Resources on the provisions of the Agreement. The Division of Marine Fisheries shall also report on the implementation of the Agreement to the Joint Legislative Commission on Seafood and Aquaculture and the House of Representatives and Senate Appropriations Subcommittees on Natural and Economic Resources no later than November 1 of each year.

SECTION 5.2. G.S. 113-136(d1) reads as rewritten:

"(d1) In addition to law enforcement authority granted elsewhere, an inspector or ~~a~~ protector has the authority to enforce criminal laws under either of the following circumstances:

(1) When the inspector or protector has probable cause to believe that a person committed a criminal offense in ~~his~~ the presence of the inspector or protector and at the time of the violation the inspector or protector is engaged in the enforcement of laws otherwise within ~~his jurisdiction; or~~the jurisdiction of the inspector or protector.

(2) When the inspector or protector is asked to provide temporary assistance by the head of a State or local law enforcement agency or ~~his~~ the designee of the head of a State or local law enforcement agency and the request is within the scope of the agency's subject matter jurisdiction. When acting pursuant to this subdivision, an inspector or protector shall not be considered an officer, employee, or agent for the State or local law enforcement agency or designee asking for temporary assistance.

(d2) ~~While~~ When acting pursuant to ~~this subsection, a~~ subsection (d1) of this section, an inspector or protector shall have the same powers invested in law enforcement officers by statute or common law. ~~When acting pursuant to (2) of this subsection a protector shall not be considered an officer, employee, or agent for the state or local law enforcement agency or designee asking for temporary assistance.~~ Nothing in ~~this~~ subsection (d1) of this section shall be construed to expand the authority of inspectors or protectors to initiate or conduct an independent investigation into violations of criminal laws outside the scope of their subject matter or territorial jurisdiction."

PART VI. MISCELLANEOUS PROVISIONS; EFFECTIVE DATES

SECTION 6.1. The headings to the parts of this act are a convenience to the reader and are for reference only. The headings do not expand, limit, or define the text of this act.

SECTION 6.2. If any section or provision of this act is declared unconstitutional or invalid by the courts, the unconstitutional or invalid section or provision does not affect the validity of this act as a whole or any part of this act other than the part declared to be unconstitutional or invalid.

SECTION 6.3. Sections 1.11, 1.12, 1.15, 1.16, 1.17, 1.18, 5.1, 6.1, 6.2, and 6.3 of this act are effective when this act becomes law. Section 2.10 of this act becomes effective July 1, 2005. Sections 1.9, 1.10, 1.13, 1.19, 2.1, 2.2, 2.3, 2.4, 2.5, 2.6, 2.7, 2.8, 2.9, 4.1, 4.2, 4.3, 4.4, 4.5, 4.6, 4.7, 4.8, 4.9, 4.10, 4.11, 4.12, and 5.2 of this act become effective January 1, 2006. Section 3.3 of this act becomes effective January 1, 2006, and applies to determinations made on or after that date. Sections 1.1, 1.2, 1.3, 1.4, 1.5, 1.6, 1.7, 1.8, and 1.14 of this act become effective January 1, 2007. Section 3.1 of this act is effective when this act becomes law and expires on the date that all rules adopted by the Wildlife Resources Commission pursuant to Section 3.1 become effective. The Chair of the Wildlife Resources Commission shall notify the Revisor of Statutes when all rules adopted by the Wildlife Resources Commission pursuant to Section 3.1 of this act become effective. Section 3.2 of this act becomes effective on the date that all rules adopted by the Wildlife Resources Commission pursuant to Section 3.1 of this act become effective, except that G.S. 113-270.1(b3) and (b4) become effective January 1, 2006.

Exhibit III

SENATE BILL 1126: Implement CRFL/Amend Fisheries Laws

BILL ANALYSIS

Committee:	House Environment and Natural Resources	**Date:**	July 5, 2005
Introduced by:	Sen. Albertson	**Summary by:**	Jeff Hudson
Version:	PCS to Fifth Edition S1126-PCS35245-SBf-36		Committee Counsel

SUMMARY: The Proposed Committee Substitute for S1126 would amend various coastal and inland fishing license statutes; establish a unified fishing license that authorizes fishing in inland, joint, and coastal fishing waters; establish a new Marine Fisheries Commission, and expand the enforcement authority of Marine Inspectors.

PART I. AMEND FISHING LICENSE REQUIREMENTS

CURRENT LAW: Under current law, an individual is required to hold a license issued by the Wildlife Resources Commission (WRC) to fish with hook and line in all inland and joint waters. Under S.L. 2004-187, effective January 1, 2006, an individual will be required to hold a license issued by the Division of Marine Fisheries to engage in recreational fishing in coastal fishing waters by means of recreational gear.

BILL ANALYSIS: The Proposed Committee Substitute for S1126 (PCS) would make a number of changes to the inland and coastal fishing license statutes as follows:

Sections 1.1 – 1.5: Amend Coastal Recreational Fishing Licenses (CRFL).
(A CRFL authorizes recreational fishing in coastal and joint waters)
License Types

- Annual Resident CRFL – $15.00.
- Annual Nonresident CRFL – $30.00.
- 10-day Resident CRFL – $5.00.
- 10-day Nonresident CRFL – $10.00.
- Various Lifetime CRFL's – Fees vary.

Exemptions for individuals who:

- Are under 16 years of age.
- Hold a Lifetime Resident Comprehensive Fishing License or a Lifetime Sportsman License purchased prior to January 1, 2007. (also exempts certain individuals who hold Lifetime CRFL's for disabled veterans, totally disabled individuals, legally blind individuals, and adult care home residents).

Optional For Hire Blanket CRFL (annual license that authorizes all individuals aboard a for hire boat to fish without an individual CRFL) – Fees are based on the number of passengers and range from $300.00 to $400.00.
Optional Ocean Fishing Pier Blanket CRFL (annual license that authorizes all individuals on the pier to fish without an individual CRFL) – The fee is $4.00 per linear foot.
Sections 1.6 – 1.15: Amend Inland Fishing Licenses.
(An Inland Fishing License authorizes recreational fishing in inland and joint waters)

- Makes technical, conforming, and clarifying changes requested by WRC.

- Authorizes the WRC to adopt rules to exempt individuals who are participating in an organized fishing event from recreational fishing license requirements.

Section 1.16: Establish Unified Fishing Licenses.
(A Unified License authorizes fishing in coastal, joint, and inland waters).

- Annual Resident Unified Sportsman/CRFL (hunting and fishing) – $55.00.
- Annual Resident Unified Inland/CRFL (fishing only) – $35.00.
- Various Lifetime Unified Sportsman/CRFL's (hunting and fishing). – Fees vary.
- Lifetime Unified Inland/CRFL (fishing only) – $450.00.
- Resident Subsistence Unified Inland/Coastal Recreational Fishing Voucher (fishing only) – $1.00.

Sections 1.17 – 1.21: Miscellaneous licensing provisions.

- Prohibits WRC from disclosing personal identifying information except under certain circumstances.
- Provides that the repeal of statutory authority for certain licenses doesn't invalidate licenses that have already been issued under that authority.
- Makes conforming changes to licensing laws.
- Provides that nonresident students who attend school full-time in the State will be treated as residents under the marine and wildlife resources statutes. This would allow these nonresident students to purchase hunting and fishing licenses at the resident rate.

PART II. MARINE RESOURCES FUND AND MARINE RESOURCES ENDOWMENT FUND

Sections 2.1 – 2.10: Abolish Board of Trustees; create Marine Resources Fund and Marine Resources Endowment Fund; funds disbursed by Marine Fisheries Commission.
The PCS would make the following changes to the way in which license revenues are held and disbursed:

- Abolishes Board of Trustees of Saltwater Fishing Fund
- Converts Saltwater Fishing Fund into Marine Resources Fund to hold license revenues from non-lifetime licenses.
- Establishes Marine Resources Endowment Fund to hold license revenues from lifetime licenses.
- Provides that the Marine Fisheries Commission (MFC) may disburse funds from the Marine Resources Fund and investment income from the Marine Resources Endowment Fund to manage, protect, restore, develop, cultivate, conserve, and enhance State marine resources.
- Authorizes the Chair of the MFC to designate 5 members of the MFC to advise the MFC on the disbursement of funds.
- Directs the Chair of the MFC to report to the Joint Legislative Commission on Seafood and Aquaculture on the Marine Resources Fund and the Marine Resources Endowment Fund.
- Transfers the sum of $3,800,000 from the Wildlife Endowment Fund to the Marine Resources Endowment fund over a period of 5 years.
- Provides that the WRC may disburse up to $1,000,000 to implement this act, to be reimbursed from the Marine Resources Fund on July 1, 2010.

PART III. WILDLIFE RESOURCES COMMISSION LICENSE AGENTS

Sections 3.1 – 3.3: Wildlife Resources Commission license agents.
The PCS would amend laws governing the designation and oversight of WRC license agents.

PART IV. ESTABLISH NEW MARINE FISHERIES COMMISSION

CURRENT LAW: Under current law, the MFC is composed of nine members appointed by the Governor. Three of the members of the MFC must be involved in the commercial fishing industry, three members must be involved in recreational fishing or the sports fishing industry, one member must be a fisheries scientist, and two members must have general knowledge related to marine resources. The MFC must have at least one member from each of the three coastal regions of the State.

BILL ANALYSIS: The PCS would replace the existing MFC with a new MFC as follows:

Sections 4.1 and 4.2: Repeal existing and establish new MFC.
The PCS would repeal the statutes that authorize the existing MFC and would establish a new MFC. The powers, and duties of the new MFC would be the same as those of the existing MFC except that the new MFC would be:

- Composed of 14 members: nine appointed by the Governor, two appointed upon recommendation of the President Pro Tempore of the Senate, two appointed upon recommendation of the Speaker of the House of Representatives, and the Fisheries Director, who would serve as an ex officio, nonvoting member.
- Responsible for disbursing funds from the Marine Resources Fund and the Marine Resources Endowment Fund to manage, protect, restore, develop, cultivate, conserve, and enhance State marine resources.
- Prohibited from disclosing personal identifying information related to recreational fishing, but could disclose such information related to commercial fishing.
- Authorized to adopt rules to exempt individuals who are participating in an organized fishing event from recreational fishing license requirements.

Sections 4.3 – 4.12: Conforming and transitional changes.

PART V. ENFORCEMENT OF MARINE RESOURCES LAWS

Sections 5.1. Authorize enforcement of federal laws by Marine Inspectors.
The PCS would specifically authorize Marine Inspectors to accept delegation of law enforcement powers from the National Marine Fisheries Service in the United States Department of Commerce (NMFS). The PCS would also provide that if the Division enters into a Joint Enforcement Agreement with NMFS, the Division will report to the Joint Legislative Commission on Seafood and Aquaculture and the House of Representatives and Senate Appropriations Subcommittees on Natural and Economic Resources on the substance and implementation of the Agreement.

Section 5.2: Expand enforcement authority of Marine Inspectors.
The PCS would authorize Marine Inspectors to enforce criminal laws and assist other State and local law enforcement agencies to the same extent the Wildlife Protectors can.

PART VI. MISCELLANEOUS PROVISIONS; EFFECTIVE DATES

Sections 6.1 – 6.3: Provide that the licensing provisions become effective January 1, 2007.

MAIN DIFFERENCES BETWEEN SENATE BILL 1126, 5TH EDITION AND PROPOSED COMMITTEE SUBSTITUTE (Implement CRFL/Amend Fisheries Laws.)

Prepared by Jeff Hudson, Staff Attorney, July 5, 2005

	Senate Bill 1126, 5th Edition	PCS S1126-PCS35245-SBf-36
Coastal Recreational Fishing License (CRFL) Requirement	Requires license for taking finfish in coastal fishing waters.	Requires license for taking finfish and bivalves in coastal fishing waters.
Elderly Licenses	Lifetime licenses for residents 70 and older for $10.00.	Lifetime licenses for residents 65 and older for $10.00.
Grandfather date for holders of lifetime licenses	Grandfathers in/exempts from CRFL requirements holders of lifetime licenses purchased prior to January 1, 2005. Transfers $3 million from the Wildlife Endowment Fund to the Marine Resources Endowment Fund to offset fund losses due to grandfather clause.	Grandfathers in/exempts from CRFL requirements holders of lifetime licenses purchased prior to January 1, 2007. Transfers $3.8 million from the Wildlife Endowment Fund to the Marine Resources Endowment Fund to offset fund losses due to grandfather clause.
For Hire Blanket CRFL Fees	Based on length of vessel.	Based on number of passengers.
For Hire Blanket CRFL Enforcement	Can only verify licensure after boat has reached shore and individuals have disembarked from boat.	No provision.
Subsistence License	Free.	$1.00 Fee.
Home County/Natural Bait Exemption	Repeals home county/natural bait exemption.	No provision (home county/natural bait exemption remains in effect).
Disbursement of Funds	Authorizes the Wildlife Resources Commission (WRC) to disburse funds from the Marine Resources Fund and Marine Resources Endowment Fund.	Authorizes the Marine Fisheries Commission (MFC) to disburse funds from the Marine Resources Fund and Marine Resources Endowment Fund.
Reconstitute Marine Fisheries Commission	No provision.	Repeals the statutes that established the existing MFC and establishes a new MFC.

	Senate Bill 1126, 5th Edition	PCS S1126-PCS35245-SBf-36
Federal Deputization of Marine Inspectors	No provision.	Authorizes Marine Inspectors to accept delegation of law enforcement powers from the United States National Marine Fisheries Service.
Expand Enforcement Powers of Marine Inspectors	No provision.	Authorizes Marine Inspectors to enforce criminal laws and assist other State and local law enforcement agencies to the same extent that Wildlife Protectors can.
Effective Date of License Requirement	March 1, 2006.	January 1, 2007.

Exhibit II

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 #1

SB 1126 A BILL TO BE ENTITLED AN ACT TO PROVIDE FOR THE IMPLEMENTATION OF THE COASTAL RECREATIONAL FISHING LICENSE, TO EXEMPT FROM COASTAL RECREATIONAL FISHING LICENSE REQUIREMENTS ONLY THOSE INDIVIDUALS WHO ARE UNDER SIXTEEN YEARS OF AGE OR WHO HOLD CERTAIN LICENSES ISSUED BY THE WILDLIFE RESOURCES COMMISSION THAT WERE PURCHASED PRIOR TO JANUARY 1, 2005, TO REPEAL THE NATURAL BAIT EXEMPTION FROM HOOK-AND-LINE FISHING LICENSE REQUIREMENTS, TO PROVIDE FOR A STATEWIDE SUBSISTENCE FISHING LICENSE, TO PROHIBIT THE WILDLIFE RESOURCES COMMISSION FROM DISCLOSING PERSONAL IDENTIFYING INFORMATION OF LICENSEES AND OTHERS UNDER CERTAIN CIRCUMSTANCES, TO AMEND VARIOUS STATUTES RELATED TO THE WILDLIFE RESOURCES COMMISSION, TO PROVIDE A SYSTEM OF UNIFIED LICENSES UNDER WHICH INDIVIDUALS MAY FISH THROUGHOUT THE STATE, TO RECONSTITUTE THE MARINE FISHERIES COMMISSION, TO AUTHORIZE THE NEW MARINE FISHERIES COMMISSION TO DISBURSE FISHING LICENSE REVENUES AND INVESTMENT INCOME TO MANAGE THE MARINE RESOURCES OF THE STATE, TO AUTHORIZE MARINE INSPECTORS TO ACCEPT DEPUTIZATION FROM THE NATIONAL MARINE FISHERIES SERVICE, AND TO PROVIDE MARINE INSPECTORS WITH THE SAME ENFORCEMENT AUTHORITY AS WILDLIFE PROTECTORS.

☒ With a favorable report as to House committee substitute bill #1, which changes the title, unfavorable as to House 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.

Minutes

House Committee on Environment and Natural Resources
July 26, 2005

The House Committee on Environment and Natural Resources met on July 26, 2005 in Room 643 of the Legislative Office Building at 12:00 noon. The following were present: Presiding Chair Carolyn Justice; Vice Chairs L. Allen and McComas; and Representatives Blackwood, Capps, Carney, Culp, Daughtridge, Gibson, Gillespie, Goodwin, Gulley, Haire, Luebke, Martin, McGee, Stiller, Underhill, Weiss, and Womble. 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.

Chairman Justice called the meeting to order. Representative Stiller moved to adopt the PCS, for discussion purposes, of **HB 688, A Bill To Be Entitled An Act To Provide For The Certification Of On-site Wastewater Contractors And Inspectors**. The motion carried, and Representative Culp presented the Bill. Tim Dodge explained the new PCS. Doug Lassiter, of the North Carolina Septic Tank Association, spoke in favor of the Bill and answered questions from the members. Andy Adams, from the DENR Division of Environmental Health, also answered questions concerning the Bill. Don Yousey, of the Brunswick County Health Department, spoke in favor of the Bill and answered questions. Representative McGee moved that PCS -2 receive a favorable report, unfavorable as to PCS -1. The motion carried.

Representative L. Allen moved to adopt the PCS, for discussion purposes, of **SB 1032, A Bill To Be Entitled An Act Directing The Department Of Environment And Natural Resources To Determine The Best Means Of Protecting The Public Against The Health And Safety Risks Posed By Inherently Dangerous Animals**. Senator Garwood presented the Bill. Lorraine Smith, Curator of Mammals for the N.C. Zoo, and Dick Hamilton, Director of the N.C. Wildlife Resources Commission, answered questions from the members. After discussion, Representative L. Allen moved that the House PCS receive a favorable report, unfavorable as to the Senate PCS, with a re-refer to the Committee on Rules, Calendar, and Operations of the House.

The meeting adjourned at 12:55 p.m.

Respectfully Submitted,

Rep. Carolyn Justice
Presiding Chair

Vivian Sherrell
Committee Assistant

Agenda
Proposed Committee Substitutes
Attendance
Bills Considered
Visitor Registration
Committee Reports

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: **Tuesday, July 26, 2005**

TIME: **12:00 Noon**

LOCATION: **Room 643, Legislative Office Building**

The following bills will be considered (Bill # & Short Title & Bill Sponsor):
HB 688 - Certify On-Site Wastewater Contractors.
Representative Gibson

SB1032 - Study Inherently Dangerous Animals.
Senator Garwood

Respectfully,
Representatives Harrell, Justice
Chairs

I hereby certify this notice was filed by the committee assistant at the following offices at **s2:55p.m.** on **July 21, 2005.**

___Principal Clerk
___Reading Clerk - House Chamber

Vivian Sherrell (Committee Assistant)

HOUSE COMMITTEE ON ENVIRONMENT AND NATURAL RESOURCES

AGENDA

12:00 Noon
Tuesday July 26, 2005
Room 643 Legislative Office Building

1. **Call to order:**
   Representative Carolyn Justice, Presiding
   Representative James Harrell

2. **Introductory Remarks by Cochairs**

3. **Recognition of Pages and Sergeant-at-Arms**

4. **Order of Business**

   HB688 – Certify On-Site Wastewater Contractors.
   Representative Gibson

   SB1032 – Study Inherently Dangerous Animals.
   Senator Garwood

5. **Adjourn**

VISITOR REGISTRATION SHEET

House Committee on Environment & Natural Resources **July 26, 2005**

Name of Committee Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE ASSISTANT

NAME	FIRM OR AGENCY AND ADDRESS
Eben Polk	CWMTF
Cynthia Shuerling	Conservation Council
Mike Nelson	" "
Erin Kinsey	NC Conservation Network
MaryAnn McBride	NCDA+CS
Abby Lo	NCDA&CS
David McLeod	NCDA+CS
Dan Yousey	Brunswick Co. Health Dept.
Terry L. Pierce	Div Env Hlth, DENR
Andy Adams	" "
Connie Pixley	" "
Anita Watkins	NCLM
Kim Hibbard	NCLM
David Hammond	Intern
Gardner Pate	Edmisten & Webb
Randall Hunt	Wake County
Lauren McLaughlin	TNC
DICK HAMILTON	WILDLIFE
Henry Jones	Attorney - Raleigh
Lisa Martin	NC Home Builders
Nancy Thompson	NCIC
Amy Fullbright	Hunton & Williams
Suzanne Buckley	GOV OFFICE
John Cyrus	NCSGrange
Lucius Pullen	NC Mining association
Rick Zechini	NC Assoc. of Realtors
Kathy Hawkins	Progress Energy
	NCRA

VISITOR REGISTRATION SHEET

House Committee on Environment & Natural Resources **July 26, 2005**

Name of Committee Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE ASSISTANT

NAME	FIRM OR AGENCY AND ADDRESS
Doug Howey	NCPMA
Robin Smith	NC DENR
Lorraine Smith	NC Zoo

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H 2

HOUSE BILL 688*

Committee Substitute Favorable 7/7/05

Short Title: Certify On-Site Wastewater Contractors. (Public)

Sponsors:

Referred to:

March 17, 2005

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FOR THE CERTIFICATION OF ON-SITE WASTEWATER CONTRACTORS AND INSPECTORS.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 90A of the General Statutes is amended by adding a new Article to read:

"Article 5.

"Certification of On-Site Wastewater Contractors and Inspectors.

"**§ 90A-70. Purpose.**

It is the purpose of this Article to protect the environment, public health, and safety by ensuring the integrity and competence of on-site wastewater contractors and inspectors; to require the examination of on-site wastewater contractors and inspectors and the certification of their competency to supervise, conduct, or inspect the construction, installation, repair, or inspection of on-site wastewater systems; to establish minimum standards for ethical conduct, responsibility, training, experience, and continuing education for on-site wastewater system contractors and inspectors; and to provide appropriate enforcement procedures for rules adopted by the North Carolina On-Site Wastewater Contractors and Inspectors Certification Board.

"**§ 90A-71. Definitions.**

The following definitions apply in this Article:

(1) 'Board' means the North Carolina On-Site Wastewater Contractors and Inspectors Certification Board.

(2) 'Department' means the Department of Environment and Natural Resources.

(3) 'Certified on-site wastewater system inspector' means a person who is certified under this Article to conduct an inspection of an existing on-site wastewater system at the time of resale.

(4) 'On-site wastewater system' means any wastewater system permitted under the provisions of Article 11 of Chapter 130A of the General

Statutes that does not discharge to a treatment facility or the surface waters.

(5) 'Contractor' means a person who constructs, installs, or repairs, or offers to construct, install, or repair an on-site wastewater system in the State.

(6) 'Person' means all persons, including individuals, firms, partnerships, associations, public or private institutions, municipalities, or political subdivisions, governmental agencies, or private or public corporations organized and existing under the laws of this State or any other state or country.

(7) 'Responsible charge' means the direct control and personal supervision of the installation, construction, repair, or inspection of an on-site wastewater system.

"**§ 90A-72. Certification required; applicability.**

(a) Certification Required. – No person shall construct, install, repair, or inspect, or offer to construct, install, repair, or inspect an on-site wastewater system in the State without first obtaining and holding the required level of certification for the specified system. A certified on-site wastewater system inspector shall be required for any professional performance inspection of an existing on-site wastewater system.

(b) Applicability. – This Article does not apply to the following:

(1) A person who constructs, installs, or repairs an on-site wastewater system described as a single septic tank with a gravity-fed distribution system when located on land owned by that person and that is intended solely for use by that person and members of that person's immediate family.

(2) A person licensed under Article 1 of Chapter 87 of the General Statutes who constructs or installs an on-site wastewater system ancillary to the building being constructed.

(3) A person who is certified by the Water Pollution Control System Operators Certification Commission and contracted to provide necessary operation and maintenance on the permitted on-site wastewater system.

(4) A person permitted under Article 21 of Chapter 143 of the General Statutes who is constructing a water pollution control facility necessary to comply with the terms and conditions of a National Pollutant Discharge Elimination System (NPDES) permit.

(5) A person licensed under Article 1 of Chapter 87 of the General Statutes as a licensed public utilities contractor who is installing or expanding a wastewater treatment facility, including a collection system, designed by a registered professional engineer.

(6) A plumbing contractor licensed under Article 2 of Chapter 87 of the General Statutes unless the plumbing contractor constructs, installs, repairs, or inspects, or offers to construct, install, repair, or inspect an on-site wastewater system in the State.

"§ 90A-73. Creation and membership of the Board.

(a) Creation and Appointments. – There is created the North Carolina On-Site Wastewater Contractors and Inspectors Certification Board. The Board shall consist of nine members appointed to three-year terms as follows:

(1) One member appointed by the Governor who, at the time of appointment, is engaged in the construction, installation, repair, or inspection of on-site wastewater systems, to a term that expires on 1 July of years that precede by one year those years that are evenly divisible by three.

(2) One member appointed by the Governor who, at the time of appointment, is a certified water treatment facility operator pursuant to Article 2 of Chapter 90A of the General Statutes, to a term that expires on 1 July of years evenly divisible by three.

(3) One member appointed by the Governor who is an employee of the Division of Environmental Health to a term that expires on 1 July of years that follow by one year those years that are evenly divisible by three.

(4) One member appointed by the General Assembly upon recommendation of the President Pro Tempore of the Senate who, at the time of appointment, is engaged in the construction, installation, repair, or inspection of on-site wastewater systems, to a term that expires on 1 July of years that follow by one year those years that are evenly divisible by three.

(5) One member appointed by the General Assembly upon recommendation of the President Pro Tempore of the Senate who, at the time of appointment, is engaged in the business of inspecting on-site wastewater systems, to a term that expires on 1 July of years that precede by one year those years that are evenly divisible by three.

(6) One member appointed by the General Assembly upon recommendation of the President Pro Tempore of the Senate upon the recommendation of the North Carolina Home Builders Association, to a term that expires on 1 July of years evenly divisible by three.

(7) One member appointed by the General Assembly upon recommendation of the Speaker of the House of Representatives who, at the time of appointment, is engaged in the construction, installation, repair, or inspection of on-site wastewater systems, to a term that expires on 1 July of years evenly divisible by three.

(8) One member appointed by the General Assembly upon recommendation of the Speaker of the House of Representatives who, at the time of appointment, is (i) employed as an environmental health specialist, and (ii) engaged primarily in the inspection and permitting of on-site wastewater systems, to a term that expires on 1 July of years that follow by one year those years that are evenly divisible by three.

(9) One member appointed by the General Assembly upon recommendation of the Speaker of the House of Representatives who, at the time of appointment, is (i) employed by North Carolina State University Cooperative Extension Service, and (ii) is knowledgeable in the area of on-site wastewater systems, to a term that expires on 1 July of years that precede by one year those years that are evenly divisible by three.

(b) Vacancies. – An appointment to fill a vacancy on the Commission created by the resignation, dismissal, disability, or death of a member shall be for the balance of the unexpired term. Vacancies in appointments made by the General Assembly shall be filled as provided in G.S. 120-122.

(c) Oath. – Each member of the Board, before entering upon the discharge of the duties of the Board, shall take and file with the Secretary of State an oath in writing to perform properly the duties as a member of the Board and to uphold the Constitution of North Carolina and the Constitution of the United States.

(d) Officers. – The Board shall elect a Chair from among its members. The Chair shall serve from the time of election until 30 June of the following year, or until a successor is elected.

(e) Compensation. – Board members who are State employees shall receive no per diem compensation for serving on the Board but shall be reimbursed for their expenses in accordance with G.S. 138-6. All other Board members shall receive per diem compensation and reimbursement in accordance with the compensation rate established in G.S. 93B-5.

(f) Quorum. – A majority of the members of the Board constitutes a quorum for the transaction of business.

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

(h) Staff. – The Board may employ staff to carry out the duties of the Board and the provisions of this Article. The Board shall determine the compensation, duties, and other terms and conditions of employment of the staff.

"**§ 90A-74. Powers and duties of the Board.**

The Board shall have the following general powers and duties:

(1) To adopt rules in the manner prescribed by Chapter 150B of the General Statutes to govern its actions and to implement the provisions of this Article.

(2) To determine the qualifications of persons who are certified pursuant to this Article.

(3) To establish grades of certifications based on design capacity, complexity, projected costs, and other features of approved on-site wastewater systems.

(4) To develop and administer examinations for each grade of certification. The Board may approve applications by recognized associations for certification of its members after a review of the

requirements of the association to ensure that they are equivalent to the requirements of the Board.

(5) To issue, renew, deny, restrict, suspend, or revoke licenses and to carry out any of the other actions authorized by this Article.

(6) To establish, publish, and enforce rules of professional conduct of persons who are certified pursuant to this Article.

(7) To maintain a record of all proceedings and make available to persons licensed under this Article, and to other concerned parties, an annual report of all Board action.

(8) To establish reasonable fees for application, certification, and renewal, and other services provided by the Board.

(9) To conduct investigations for the purpose of determining whether violations of this Article or grounds for disciplining persons certified under this Article exist.

(10) To adopt a common seal containing the name of the Board for use on all certificates and official reports issued by the Board.

(11) To conduct other services necessary to carry out the purposes of this Article.

"**§ 90A-75. Expenses and fees.**

(a) Expenses. – All salaries, compensation, and expenses incurred or allowed for the purposes of carrying out this Article shall be paid by the Board exclusively out of the funds received by the Board as authorized by this Article. No salary, expense, or other obligations of the Board may be charged against the General Fund of the State. Neither the Board nor any of its members or employees may incur any expense, debt, or financial obligation binding upon the State.

(b) Contributions. – The Board may accept grants, contributions, bequests, and gifts that shall be kept in the same account as the funds deposited in accordance with this Article and other provisions of the law.

(c) Fees. – All fees shall be established in rules adopted by the Board. The Board shall establish fees sufficient to pay the costs of administering this Article, but in no event shall the Board charge a fee at an annual rate in excess of the following:

(1)	Application for basic certification	$150.00
(2)	Application for each step grade	$50.00
(3)	Certification renewal	$100.00
(4)	Reinstatement of revoked or suspended certification	$500.00
(5)	Application for on-site wastewater system inspector	$200.00.

(d) Audit. – The Board is subject to the oversight of the State Auditor under Article 5A of Chapter 147 of the General Statutes.

"**§ 90A-76. On-Site Wastewater Certification Fund.**

Fund. – The On-Site Wastewater Certification Fund is created as a nonreverting account within the Department. All fees collected pursuant to this Article shall be

credited to the Fund. The Fund shall be used solely for the costs of administering this Article.

"**§ 90A-77. Certification requirements.**

(a) Certification. – The Board shall issue a certificate of the appropriate grade level to an applicant who satisfies all of the following conditions:

(1) Is at least 18 years of age.

(2) Files a properly completed application with the Board or submits a recognized application from an accepted association.

(3) Is of good moral character and submits affidavits of three persons not related to the applicant for whom the applicant provided on-site wastewater services.

(4) Completes the training program designed by the Board specific to the grade level for which the applicant is applying.

(5) Pays the applicable fees set by the Board for the particular application.

(b) Examination. – For grade levels greater than conventional systems for a conventional system as defined by G.S. 130A-343(a)(3), the applicant must pass a written or oral examination that tests the applicant's proficiency in the following areas:

(1) Principles of public and environmental health associated with on-site wastewater systems.

(2) Principles of construction and safety.

(3) Technical and practical knowledge of on-site wastewater systems typical to the specified grade level.

(4) Laws and rules related to the installation, construction, repair, or inspection of the specified on-site wastewater system.

(c) Location of Examinations. – The Board shall provide a minimum of three examinations each year; one each in the coastal plain, the Piedmont, and the mountain areas of the State.

(d) Approval of Certification Programs. – The Board may issue a certificate at the appropriate grade level to an applicant from a recognized association after review and approval of the continuing education program of the association.

(e) No Prior Experience. – Applicants with no prior experience in providing on-site wastewater services shall, upon a properly completed application, complete a basic on-site wastewater education program approved by the Board. Upon completion of the basic on-site wastewater education program, the applicant shall be eligible to participate in courses in an on-site wastewater systems training program designed by the Board specific to the grade level for which the applicant is applying.

(f) No Degree Required. – An applicant shall not be required to hold or obtain an educational diploma or degree to obtain a certificate. If the applicant meets all the conditions for certification except for passage of the Board examination, the applicant may take the examination on two more occasions without having to file for a new application, pay an additional application fee, or repeat the training program. If the applicant fails to pass the Board examination on three successive occasions, the applicant must reapply to the Board, pay the application fee, and repeat the training program.

(g) Certificate. – The certification shall show the full name of the certificate holder. The certificate shall provide a unique identification number and shall be signed by the Chair. Issuance of the certificate by the Board shall be prima facie evidence that the person named therein is entitled to all the rights and privileges of a certified on-site wastewater contractor or inspector, at the grade level specified on the certificate, while the certificate remains in effect.

(h) Replacement Certificate. – A new certificate to replace one lost, destroyed, or mutilated shall be issued subject to rules adopted by the Board and with the payment of a fee set by the Board. The fee for a duplicate or replacement certificate shall not exceed twenty-five dollars ($25.00).

"**§ 90A-78. Certification renewal.**

(a) Renewal. – All certifications shall expire at intervals determined by the Board unless they are renewed. In no event may the interval determined by the Board be less than one year. To renew a certification, a contractor or inspector must meet all of the following conditions:

(1) Submit an application for renewal on the form prescribed by the Board.

(2) Meet the continuing education requirements prescribed by the Board.

(3) Pay the certification renewal fee.

(b) Late Fee. – A contractor or inspector with an expired certificate may renew the certification within 90 days of its expiration upon payment of a late fee set by the Board. The late fee shall not exceed twenty-five dollars ($25.00). If a certification is not renewed within 90 days of its expiration, the certification shall not be renewed, and the holder must apply for a new certificate.

"**§ 90A-79. Continuing education.**

(a) Requirements. – The Board shall require continuing education as a condition of certification and renewal. The Board shall determine the number of hours, based on grade levels applied for, up to a maximum of 12 hours per year, and the subject material for the specified grade level. The Board shall maintain records of continuing education coursework successfully completed by each certificate holder.

(b) Approval of Continuing Education Programs. – The Board may approve a continuing education program or course if the Board finds that the program or course offers useful educational experience that will enhance the construction, installation, repair, or inspection of on-site wastewater systems. The Board may develop and offer continuing education programs.

"**§ 90A-80. Responsibility of the certificate holder.**

(a) Responsibilities. – The certificate holder shall be responsible for all crew actions and quality of workmanship. A certificate may be issued jointly to an individual doing business under the name of the individual, under a trade name, or under the name of a firm, partnership, association, or corporation. The certificate holder shall be the person of responsible charge and shall assume all duties and liabilities for the construction, installation, repair, or inspection of the system.

(b) Separation of Employment. – If the certificate holder is an employee of the firm, partnership, association, or corporation, employment must continue for the

certificate to remain in force. If separation of the employee occurs, the firm, partnership, association, or corporation must employ a certified contractor or inspector within 60 days for the certificate to remain in force.

"**§ 90A-81. Investigation of complaints.**

(a) Misconduct. – A person may refer to the Board charges of fraud, deceit, negligence, incompetence, or misconduct against any contractor or inspector licensed under this Article. The charges shall be in writing and sworn to by the complainant and submitted to the Board. These charges, unless dismissed without a hearing by the Board as unfounded or trivial, shall be heard and determined by the Board in accordance with the provisions of Chapter 150B of the General Statutes. An association that receives professional recognition of its own certification process by the Board shall be responsible for the conduct and competency of its members.

(b) Records. – The Board shall establish and maintain detailed records regarding complaints concerning each certified contractor or inspector. The records shall include those certified by recognized associations. The records shall also detail the levels of certification held by each contractor or inspector.

(c) Notification. – The Board shall notify local health departments of updates in certifications, complaints, suspensions, or reinstatements.

"**§ 90A-82. Remedies.**

(a) Denial, Suspension, and Revocation of Certification. – The Board may deny, suspend, or revoke a certificate under this Article for:

(1) A violation of this Article or a rule of the Board.

(2) The use of fraud or deceit in obtaining or renewing a certificate.

(3) Any act of gross negligence, incompetence, or misconduct in the construction, installation, repair, or inspection of an on-site wastewater system.

(b) Arbitration. – The Board may establish a voluntary arbitration procedure to resolve complaints concerning a certificate holder or any work performed by the certificate holder, or conflicts involving any certificate holder and the Division of Environmental Health or a local health department.

(c) Injunction. – The Board may ask the Attorney General to seek an injunction to restrain any person, firm, partnership, or corporation from violating the provisions of this Article or rules adopted by the Board. The Attorney General may bring an action for an injunction in the name of the State in the superior court of any county in which the violator resides or the violator's principal place of business is located. In any proceedings for an injunction, it shall not be necessary to allege or prove either that an adequate remedy at law does not exist, or that substantial or irreparable damage would result from the continued violation. Members of the Board shall not be personally or professionally liable for any act or omission pursuant to this subsection. The Board shall not be required to post a bond in connection with any action to obtain an injunction.

(d) Offenses. – A person who commits any one or more of the following offenses is guilty of a Class 2 misdemeanor:

(1) Engages in or offers to engage in the construction, installation, repair, or inspection of an on-site wastewater system without the appropriate certificate for the specific grade of on-site wastewater system.
(2) Gives false or forged evidence of any kind in obtaining a certificate.
(3) Falsely impersonates a certificate holder."

SECTION 2.(a) In order to provide for a system of staggered three-year terms for the members of the On-Site Wastewater Contractors and Inspectors Certification Board established by G.S. 90A-73(a), as enacted by Section 1 of this act, the following provisions shall apply:

(1) The term of the member initially appointed to serve in the position established by G.S. 90A-73(a)(1) shall be three years and shall expire on 1 July 2008.
(2) The term of the member initially appointed to serve in the position established by G.S. 90A-73(a)(2) shall be four years and shall expire on 1 July 2009.
(3) The term of the member initially appointed to serve in the position established by G.S. 90A-73(a)(3) shall be five years and shall expire on 1 July 2010.
(4) The term of the member initially appointed to serve in the position established by G.S. 90A-73(a)(4) shall be five years and shall expire on 1 July 2010.
(5) The term of the member initially appointed to serve in the position established by G.S. 90A-73(a)(5) shall be three years and shall expire on 1 July 2008.
(6) The term of the member initially appointed to serve in the position established by G.S. 90A-73(a)(6) shall be four years and shall expire on 1 July 2009.
(7) The term of the member initially appointed to serve in the position established by G.S. 90A-73(a)(7) shall be four years and shall expire on 1 July 2009.
(8) The term of the member initially appointed to serve in the position established by G.S. 90A-73(a)(8) shall be five years and shall expire on 1 July 2010.
(9) The term of the member initially appointed to serve in the position established by G.S. 90A-73(a)(9) shall be three years and shall expire on 1 July 2008.

SECTION 2.(b) In the event that the General Assembly fails to appoint one or more initial members to the On-Site Wastewater Contractors and Inspectors Certification Board while the General Assembly is in session during 2005, the failure to make an initial appointment shall be treated as though a vacancy had occurred, and the vacancy may be filled by appointment as provided in G.S. 120-122.

SECTION 3. This act constitutes a recent act of the General Assembly within the meaning of G.S. 150B-21.1. The On-Site Wastewater Contractors and Inspectors Certification Board may adopt temporary rules to implement the provisions

of this act until 1 July 2007. Notwithstanding G.S. 150B-21.1(d), a temporary rule adopted in accordance with this section shall remain in effect until a permanent rule adopted to replace the temporary rule becomes effective. Prior to the adoption of temporary rules under this section, the Board shall:

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

(2) Establish a mailing list pursuant to G.S. 150B-21.2(d) and notify persons on the mailing list of its intent to adopt a temporary rule.

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

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

SECTION 4. Section 1 of this act is effective when it becomes law except that G.S. 90A-72, 90A-79, and 90A-82, as enacted by Section 1 of this act, become effective July 1, 2007. Sections 2, 3, and 4 of this act are effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H D

HOUSE BILL 688*

Committee Substitute Favorable 7/7/05

PROPOSED COMMITTEE SUBSTITUTE H688-PCS30349-SYf-23

Short Title: Certify On-Site Wastewater Contractors. (Public)

Sponsors:

Referred to:

March 17, 2005

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FOR THE CERTIFICATION OF ON-SITE WASTEWATER CONTRACTORS AND INSPECTORS.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 90A of the General Statutes is amended by adding a new Article to read:

"Article 5.

"Certification of On-Site Wastewater Contractors and Inspectors.

"**§ 90A-70. Purpose.**

It is the purpose of this Article to protect the environment and public health, safety, and welfare by ensuring the integrity and competence of on-site wastewater contractors and inspectors; to require the examination of on-site wastewater contractors and inspectors and the certification of their competency to supervise or conduct the construction, installation, repair, or inspection of on-site wastewater systems; to establish minimum standards for ethical conduct, responsibility, training, experience, and continuing education for on-site wastewater system contractors and inspectors; and to provide appropriate enforcement procedures for rules adopted by the North Carolina On-Site Wastewater Contractors and Inspectors Certification Board.

"**§ 90A-71. Definitions.**

The following definitions apply in this Article:

(1) 'Board' means the North Carolina On-Site Wastewater Contractors and Inspectors Certification Board.

(2) 'Contractor' means a person who constructs, installs, or repairs, or offers to construct, install, or repair an on-site wastewater system in the State.

(3) 'Conventional wastewater system' has the same meaning as in G.S. 130A-343(a)(3).

(4) 'Department' means the Department of Environment and Natural Resources.

(5) 'Inspector' means a person who conducts an inspection of an on-site wastewater system at any time after the local health department has issued an operation permit pursuant to G.S. 130A-337.

(6) 'On-site wastewater system' means any wastewater system permitted under the provisions of Article 11 of Chapter 130A of the General Statutes that does not discharge to a treatment facility or the surface waters of the State.

(7) 'Person' means all persons, including individuals, firms, partnerships, associations, public or private institutions, municipalities, or political subdivisions, governmental agencies, or private or public corporations organized and existing under the laws of this State or any other state or country.

"**§ 90A-72. Certification required; applicability.**

(a) Certification Required. – No person shall construct, install, or repair or offer to construct, install, or repair an on-site wastewater system in the State without being certified as a contractor at the required level of certification for the specified system. No person shall conduct an inspection or offer to conduct an inspection of an on-site wastewater system without being certified as an inspector at the required level of certification for the specified system.

(b) Applicability. – This Article does not apply to the following:

(1) A person who is employed by, or performs labor and services for, a certified contractor or inspector in connection with the construction, installation, repair, or inspection of an on-site wastewater system performed under the direct and personal supervision of the certified contractor or inspector.

(2) A person who constructs, installs, or repairs an on-site wastewater system described as a single septic tank with a gravity-fed distribution system when located on land owned by that person and that is intended solely for use by that person and members of that person's immediate family.

(3) A person licensed under Article 1 of Chapter 87 of the General Statutes who constructs or installs an on-site wastewater system ancillary to the building being constructed.

(4) A person who is certified by the Water Pollution Control System Operators Certification Commission and contracted to provide necessary operation and maintenance on the permitted on-site wastewater system.

(5) A person permitted under Article 21 of Chapter 143 of the General Statutes who is constructing a water pollution control facility necessary to comply with the terms and conditions of a National Pollutant Discharge Elimination System (NPDES) permit.

(6) A person licensed under Article 1 of Chapter 87 of the General Statutes as a licensed public utilities contractor who is installing or expanding a wastewater treatment facility, including a collection system, designed by a registered professional engineer.

(7) A plumbing contractor licensed under Article 2 of Chapter 87 of the General Statutes, so long as the plumber is not performing plumbing work that includes the installation or repair of a septic tank or similar depository, or lines or appurtenances downstream from the point where the house or building sewer lines from the plumbing system meet the septic tank or similar depository.

"**§ 90A-73. Creation and membership of the Board.**

(a) Creation and Appointments. – There is created the North Carolina On-Site Wastewater Contractors and Inspectors Certification Board. The Board shall consist of nine members appointed to three-year terms as follows:

(1) One member appointed by the Governor who, at the time of appointment, is engaged in the construction, installation, repair, or inspection of on-site wastewater systems, to a term that expires on 1 July of years that precede by one year those years that are evenly divisible by three.

(2) One member appointed by the Governor who, at the time of appointment, is a certified water treatment facility operator pursuant to Article 2 of Chapter 90A of the General Statutes, to a term that expires on 1 July of years evenly divisible by three.

(3) One member appointed by the Governor who is an employee of the Division of Environmental Health of the Department to a term that expires on 1 July of years that follow by one year those years that are evenly divisible by three.

(4) One member appointed by the General Assembly upon recommendation of the President Pro Tempore of the Senate who, at the time of appointment, is engaged in the construction, installation, repair, or inspection of on-site wastewater systems, to a term that expires on 1 July of years that follow by one year those years that are evenly divisible by three.

(5) One member appointed by the General Assembly upon recommendation of the President Pro Tempore of the Senate who, at the time of appointment, is engaged in the business of inspecting on-site wastewater systems, to a term that expires on 1 July of years that precede by one year those years that are evenly divisible by three.

(6) One member appointed by the General Assembly upon recommendation of the President Pro Tempore of the Senate upon the recommendation of the North Carolina Home Builders Association, to a term that expires on 1 July of years evenly divisible by three.

(7) One member appointed by the General Assembly upon recommendation of the Speaker of the House of Representatives who,

at the time of appointment, is engaged in the construction, installation, repair, or inspection of on-site wastewater systems, to a term that expires on 1 July of years evenly divisible by three.

(8) One member appointed by the General Assembly upon recommendation of the Speaker of the House of Representatives who, at the time of appointment, is (i) employed as an environmental health specialist, and (ii) engaged primarily in the inspection and permitting of on-site wastewater systems, to a term that expires on 1 July of years that follow by one year those years that are evenly divisible by three.

(9) One member appointed by the General Assembly upon recommendation of the Speaker of the House of Representatives who, at the time of appointment, is (i) employed by the North Carolina Cooperative Extension Service, and (ii) is knowledgeable in the area of on-site wastewater systems, to a term that expires on 1 July of years that precede by one year those years that are evenly divisible by three.

(b) Vacancies. – An appointment to fill a vacancy on the Commission created by the resignation, dismissal, disability, or death of a member shall be for the balance of the unexpired term. Vacancies in appointments made by the General Assembly shall be filled as provided in G.S. 120-122.

(c) Oath. – Each member of the Board, before entering upon the discharge of the duties of the Board, shall take and file with the Secretary of State an oath in writing to perform properly the duties as a member of the Board and to uphold the Constitution of North Carolina and the Constitution of the United States.

(d) Dual Office Holding. – Service on the Board may be in addition to any other office a person is entitled to hold.

(e) Officers. – The Board shall elect a Chair from among its members. The Chair shall serve from the time of election until 30 June of the following year, or until a successor is elected.

(f) Compensation. – Board members who are State employees shall receive no per diem compensation for serving on the Board but shall be reimbursed for their expenses in accordance with G.S. 138-6. All other Board members shall receive per diem compensation and reimbursement in accordance with the compensation rate established in G.S. 93B-5.

(g) Quorum. – A majority of the members of the Board constitutes a quorum for the transaction of business.

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

(i) Staff. – The Board may employ staff to carry out the duties of the Board and the provisions of this Article. The Board shall determine the compensation, duties, and other terms and conditions of employment of the staff.

"**§ 90A-74. Powers and duties of the Board.**

The Board shall have the following general powers and duties:

(1) To adopt rules in the manner prescribed by Chapter 150B of the General Statutes to govern its actions and to implement the provisions of this Article.

(2) To determine the eligibility requirements for persons seeking certification pursuant to this Article.

(3) To establish grade levels of certifications based on design capacity, complexity, projected costs, and other features of approved on-site wastewater systems.

(4) To develop and administer examinations for each grade level of certification. The Board may approve applications by recognized associations for certification of its members after a review of the requirements of the association to ensure that they are equivalent to the requirements of the Board.

(5) To issue, renew, deny, restrict, suspend, or revoke certifications and to carry out any of the other actions authorized by this Article.

(6) To establish, publish, and enforce rules of professional conduct of persons who are certified pursuant to this Article.

(7) To maintain a record of all proceedings and make available to persons certified under this Article, and to other concerned parties, an annual report of all Board action.

(8) To establish reasonable fees for application, certification, and renewal, and other services provided by the Board.

(9) To conduct investigations to determine whether violations of this Article or grounds for disciplining persons certified under this Article exist.

(10) To adopt a common seal containing the name of the Board for use on all certificates and official reports issued by the Board.

(11) To conduct other services necessary to carry out the purposes of this Article.

"**§ 90A-75. Expenses and fees.**

(a) Expenses. – All salaries, compensation, and expenses incurred or allowed for the purposes of carrying out this Article shall be paid by the Board exclusively out of the funds received by the Board as authorized by this Article. No salary, expense, or other obligations of the Board may be charged against the General Fund of the State. Neither the Board nor any of its members or employees may incur any expense, debt, or financial obligation binding upon the State.

(b) Contributions. – The Board may accept grants, contributions, bequests, and gifts that shall be kept in the same account as the funds deposited in accordance with this Article and other provisions of the law.

(c) Fees. – All fees shall be established in rules adopted by the Board. The Board shall establish fees sufficient to pay the costs of administering this Article, but in no event shall the Board charge a fee at an annual rate in excess of the following:

(1)	Application for basic certification	$150.00
(2)	Application for each grade level	$50.00

(3)	Certification renewal	$100.00
(4)	Reinstatement of revoked or suspended certification	$500.00
(5)	Application for on-site wastewater system inspector	$200.00.

(d) Audit. – The Board is subject to the oversight of the State Auditor under Article 5A of Chapter 147 of the General Statutes.

"**§ 90A-76. On-Site Wastewater Certification Fund.**

The On-Site Wastewater Certification Fund is created as a nonreverting account within the Department. All fees collected pursuant to this Article shall be credited to the Fund. The Fund shall be used solely for the costs of administering this Article.

"**§ 90A-77. Certification requirements.**

(a) Certification. – The Board shall issue a certificate of the appropriate grade level to an applicant who satisfies all of the following conditions:

(1) Is at least 18 years of age.

(2) Submits a properly completed application to the Board.

(3) If the applicant has prior experience providing on-site wastewater system services, submits affidavits of three persons not related to the applicant for whom the applicant provided on-site wastewater services.

(4) If the applicant has no prior experience, completes the basic on-site wastewater education program approved by the Board.

(5) Completes any additional training program designed by the Board specific to the grade level for which the applicant is applying.

(6) Pays the applicable fees set by the Board for the particular application and grade level.

(7) For grade levels greater than conventional systems, pass a written or oral examination that tests the applicant's proficiency in all of the following areas:

a. Principles of public and environmental health associated with on-site wastewater systems.

b. Principles of construction and safety.

c. Technical and practical knowledge of on-site wastewater systems typical to the specified grade level.

d. Laws and rules related to the installation, construction, repair, or inspection of the specified on-site wastewater system.

(b) Location of Examinations. – The Board shall provide a minimum of three examinations each year; one each in the eastern, central, and western regions of the State.

(c) Approval of Certification Programs. – The Board may issue a certificate at the appropriate grade level to an applicant who has completed an approved training or continuing education program.

(d) No Degree Required. – An applicant shall not be required to hold or obtain an educational diploma or degree to obtain a certificate. An applicant that meets all the conditions for certification except for passage of the Board examination may take the

examination on three successive occasions without having to file for a new application, pay an additional application fee, or repeat any applicable training program. If the applicant fails to pass the Board examination on three successive occasions, the applicant must reapply to the Board, pay an additional application fee, and repeat the training program.

(e) Certificate. – The certification shall show the full name of the certificate holder. The certificate shall provide a unique identification number and shall be signed by the Chair. Issuance of the certificate by the Board shall be prima facie evidence that the person named therein is entitled to all the rights and privileges of a certified contractor or inspector, at the grade level specified on the certificate, while the certificate remains in effect.

(f) Replacement Certificate. – A new certificate to replace one lost, destroyed, or mutilated shall be issued subject to rules adopted by the Board and with the payment of a fee set by the Board. The fee for a duplicate or replacement certificate shall not exceed twenty-five dollars ($25.00).

"**§ 90A-78. Certification renewal.**

(a) Renewal. – All certifications shall expire at intervals determined by the Board unless they are renewed. In no event may the interval determined by the Board be less than one year. To renew a certification, a contractor or inspector must meet all of the following conditions:

(1) Submit an application for renewal on the form prescribed by the Board.

(2) Meet the continuing education requirements prescribed by the Board.

(3) Pay the certification renewal fee.

(b) Late Fee. – A contractor or inspector with an expired certificate may renew the certification within 90 days of its expiration upon payment of a late fee set by the Board. The late fee shall not exceed twenty-five dollars ($25.00). If a certification is not renewed within 90 days of its expiration, the certification shall not be renewed, and the holder must apply for a new certificate.

"**§ 90A-79. Continuing education.**

(a) Requirements. – The Board shall require continuing education as a condition of certification and renewal. The Board shall determine the number of hours, based on grade levels applied for, up to a maximum of 12 hours per year, and the subject material for the specified grade level. The Board shall maintain records of continuing education coursework successfully completed by each certified contractor or inspector.

(b) Approval of Continuing Education Programs. – The Board may approve a continuing education program or course if the Board finds that the program or course provides useful educational information or experience that will enhance the construction, installation, repair, or inspection of on-site wastewater systems. The Board may develop and offer continuing education programs.

"**§ 90A-80. Investigation of complaints.**

(a) Misconduct. – A person may refer to the Board charges of fraud, deceit, negligence, incompetence, or misconduct against any certified contractor or inspector. The charges shall be in writing and sworn to by the complainant and submitted to the

Board. These charges, unless dismissed without a hearing by the Board as unfounded or trivial, shall be heard and determined by the Board in accordance with the provisions of Chapter 150B of the General Statutes. An association that receives professional recognition of its own certification process by the Board shall be responsible for the conduct and competency of its members.

(b) Records. – The Board shall establish and maintain detailed records regarding complaints concerning each certified contractor or inspector. The records shall include those certified by recognized associations. The records shall also detail the levels of certification held by each contractor or inspector.

(c) Notification. – The Board shall provide local health departments with notification of changes in certifications, complaints, suspensions, or reinstatements under this Article.

"**§ 90A-81. Remedies.**

(a) Denial, Suspension, and Revocation of Certification. – The Board may deny, suspend, or revoke a certificate under this Article for:

(1) A violation of this Article or a rule of the Board.

(2) The use of fraud or deceit in obtaining or renewing a certificate.

(3) Any act of gross negligence, incompetence, or misconduct in the construction, installation, repair, or inspection of an on-site wastewater system.

(4) Failure to satisfactorily complete continuing education requirements prescribed by the Board.

(b) Arbitration. – The Board may establish a voluntary arbitration procedure to resolve complaints concerning a certified contractor or inspector or any work performed by a certified contractor or inspector, or conflicts involving any certified contractor or inspector and the Division of Environmental Health of the Department or a local health department.

(c) Injunction. – The Board may ask the Attorney General to seek an injunction to restrain any person, firm, partnership, or corporation from violating the provisions of this Article or rules adopted by the Board. The Attorney General may bring an action for an injunction in the name of the State in the superior court of any county in which the violator resides or the violator's principal place of business is located. In any proceedings for an injunction, it shall not be necessary to allege or prove either that an adequate remedy at law does not exist, or that substantial or irreparable damage would result from the continued violation. Members of the Board shall not be personally or professionally liable for any act or omission pursuant to this subsection. The Board shall not be required to post a bond in connection with any action to obtain an injunction.

(d) Offenses. – A person who commits any one or more of the following offenses is guilty of a Class 2 misdemeanor:

(1) Engages in or offers to engage in the construction, installation, repair, or inspection of an on-site wastewater system without the appropriate certificate for the grade level of on-site wastewater system.

(2) Gives false or forged evidence of any kind in obtaining a certificate.

(3) Falsely impersonates a certified contractor or inspector."

SECTION 2.(a) In order to provide for a system of staggered three-year terms for the members of the On-Site Wastewater Contractors and Inspectors Certification Board established by G.S. 90A-73(a), as enacted by Section 1 of this act, the following provisions shall apply:

(1) The term of the member initially appointed to serve in the position established by G.S. 90A-73(a)(1) shall be four years and shall expire on 1 July 2009.

(2) The term of the member initially appointed to serve in the position established by G.S. 90A-73(a)(2) shall be five years and shall expire on 1 July 2010.

(3) The term of the member initially appointed to serve in the position established by G.S. 90A-73(a)(3) shall be three years and shall expire on 1 July 2008.

(4) The term of the member initially appointed to serve in the position established by G.S. 90A-73(a)(4) shall be three years and shall expire on 1 July 2008.

(5) The term of the member initially appointed to serve in the position established by G.S. 90A-73(a)(5) shall be four years and shall expire on 1 July 2009.

(6) The term of the member initially appointed to serve in the position established by G.S. 90A-73(a)(6) shall be five years and shall expire on 1 July 2010.

(7) The term of the member initially appointed to serve in the position established by G.S. 90A-73(a)(7) shall be five years and shall expire on 1 July 2010.

(8) The term of the member initially appointed to serve in the position established by G.S. 90A-73(a)(8) shall be three years and shall expire on 1 July 2008.

(9) The term of the member initially appointed to serve in the position established by G.S. 90A-73(a)(9) shall be four years and shall expire on 1 July 2009.

SECTION 2.(b) In the event that the General Assembly fails to appoint one or more initial members to the On-Site Wastewater Contractors and Inspectors Certification Board during the 2005 Regular Session, the failure to make an initial appointment shall be treated as though a vacancy had occurred, and the vacancy may be filled by appointment as provided in G.S. 120-122.

SECTION 3. Section 1 of this act is effective when this act becomes law except that G.S. 90A-72, 90A-79, and 90A-81, as enacted by Section 1 of this act, become effective 1 July 2007. Sections 2 and 3 of this act are effective when this act becomes law.

HOUSE BILL 688:
Certify On-Site Wastewater Contractors

BILL ANALYSIS

Committee:	House Environment and Natural Resources	**Date:**	July 26, 2005
Introduced by:	Reps. Gibson, Culp	**Summary by:**	Tim Dodge
Version:	PCS to Second Edition H688-PCS30349-SYf-23		Legislative Analyst

SUMMARY: ***The Proposed Committee Substitute (PCS) for House Bill 688 would require the construction, installation, repair, or inspection of on-site wastewater systems in the State to be conducted by a certified on-site wastewater contractor or inspector, with some limited exceptions. The PCS creates a nine-member On-Site Wastewater Contractors and Inspectors Certification Board (Board) to implement the certification program, establishes certification and continuing education requirements for contractors and inspectors, and sets out the maximum fees the Board may charge. The certification and continuing education requirements would become effective 1 July 2007.***

CURRENT LAW: An on-site wastewater system is a wastewater system, such as a septic tank system, that is permitted under the provisions of Article 11 of Chapter 130A of the General Statutes and does not discharge to a treatment facility or other surface waters. The Department of Environment and Natural Resources is responsible for the review and approval of on-site wastewater system technologies, while local health departments play a central role in the issuance of improvement permits and operation permits for on-site wastewater systems. There are, however, no current certification requirements for persons who construct, install, repair, or inspect on-site wastewater systems in the State. In order to install or repair an on-site wastewater system, a person is generally only required to register with the local health department.

BACKGROUND: The Legislative Committee on New Licensing Boards studied this issue and published a report in May 2005 that recommended the licensure of on-site wastewater contractors and inspectors. Specifically, the Committee found that the unregulated practice of on-site wastewater contractors can harm the public health, safety, or welfare because the installation and repair of new on-site wastewater systems and the inspection of existing systems at the time of property transfer are not currently regulated in a way that provides the public with assurance of competent construction practices. The Committee found that the current requirement of registration with the local health department does not adequately protect the State's environmental health or the public health of the citizens of North Carolina.

BILL ANALYSIS: The PCS adds a new Article 5 to G.S. Chapter 90A to make the following changes:

Certification of on-site wastewater contractors and inspectors. Any person who constructs, installs, or repairs an on-site wastewater system must hold the required grade level of certification for the particular system. In addition, any inspection of an on-site wastewater system at any time after the local health department has issued an operation permit shall be performed by a certified inspector.

Exemptions from certification. The following persons are exempted from the certification requirement:

- An employee or contractor working under the direct and personal supervision of a certified contractor or inspector.
- A landowner who constructs, installs, or repairs an on-site wastewater system described as a single septic system so long as it is intended for use by that person and members of that person's immediate family.
- A licensed general contractor who constructs or installs an on-site wastewater system ancillary to the building being constructed.
- A person already certified by the Water Pollution Control System Operators Certification Commission who is contracted to provide necessary operation and maintenance on an on-site wastewater system.
- A person permitted under Chapter 143 of the General Statutes to construct a water pollution control facility necessary to comply with the terms and conditions of a National Pollutant Discharge Elimination System (NPDES) permit.
- A licensed public utilities contractor who is installing or expanding a wastewater treatment facility, including a collection system, designed by a registered professional engineer.
- A licensed plumbing contractor, so long as the plumber is not performing plumbing work that includes the installation or repair of a septic tank or similar depository, or lines or appurtenances downstream from the point where the house or building sewer lines from the plumbing system meet the septic tank or similar depository.

Initial Certification Requirements. To be certified , an applicant must meet the following conditions:

- Be at least 18 years old.
- Submit a properly completed application with the Board.
- If the applicant has prior experience providing on-site wastewater system services, submit three (3) affidavits of persons not related to the applicant for whom the applicant has provided on-site wastewater services.
- If the applicant has no prior experience, complete a basic on-site wastewater education program approved by the Board.
- Complete the training program designed by the Board specific to the grade level for which the applicant is applying. The Board shall establish grade levels based on design capacity, complexity, projected costs, and other features of the on-site wastewater system.
- For grade levels greater than conventional systems, passes a written or oral exam.
- Pay the applicable fee.

Fee amounts. Fees cannot exceed the following amounts.

Purpose of Fee	Fee Amount
Application for basic certification	$150.00
Application for each step grade	$50.00
Certification renewal	$100.00
Reinstatement of revoked or suspended certification	$500.00
Application for on-site wastewater system inspector certification	$200.00
Replacement of a certificate	$25.00
Late renewal	$25.00

No Degree Requirement. Applicants are not required to hold a degree to be certified.

North Carolina On-Site Wastewater Contractors and Inspectors Certification Board. The Board will consist of nine members, three appointed by the Governor, three by the General Assembly upon recommendation of the President Pro Tem of the Senate, and three by the General Assembly upon recommendation of the Speaker of the House. The Board has administrative and disciplinary powers, and may determine eligibility requirements, establish grades of certification, develop and administer exams, and establish fees, not to exceed statutory maximums.

EFFECTIVE DATE:

The certification requirements, continuing education requirements, and disciplinary powers of the Board would become effective 1 July 2007. The remaining provisions of the PCS would become effective when the PCS becomes law.

H0688e2-SMSY-CSSY-23

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 688 A BILL TO BE ENTITLED AN ACT TO PROVIDE FOR THE CERTIFICATION OF ON-SITE WASTEWATER CONTRACTORS AND INSPECTORS.

☒ With a favorable report as to the committee substitute bill –2, unfavorable as to 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 D

SENATE BILL 1032

Judiciary II Committee Substitute Adopted 5/18/05

PROPOSED HOUSE COMMITTEE SUBSTITUTE S1032-PCS65358-RT-44

Short Title: Study Inherently Dangerous Animals. (Public)

Sponsors:

Referred to:

March 24, 2005

A BILL TO BE ENTITLED

AN ACT DIRECTING THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES TO DETERMINE THE BEST MEANS OF PROTECTING THE PUBLIC AGAINST THE HEALTH AND SAFETY RISKS POSED BY INHERENTLY DANGEROUS ANIMALS.

The General Assembly of North Carolina enacts:

SECTION 1. The Department of Environment and Natural Resources, in consultation with the North Carolina Zoological Park and the Wildlife Resources Commission, shall study the need to protect the public against the health and safety risks posed by inherently dangerous animals and propose a means of best providing that protection to the public while protecting the welfare of inherently dangerous animals as well. In developing recommendations, the Department shall consult with the following entities or groups, or appropriate representatives of those entities or groups:

(1) The Department of Agriculture and Consumer Services.
(2) The Division of Public Health of the Department of Health and Human Services.
(3) The North Carolina State University College of Veterinary Medicine.
(4) The State Animal Response Team.
(5) Local law enforcement officials.
(6) Local animal control officials.
(7) Wild animal breeders.
(8) Exotic pet hobbyists.
(9) Commercial pet retailers.
(10) Small zoo owners.
(11) Humane organizations.
(12) Any other entities or groups whose interests may be affected by proposed regulations.

SECTION 2. The Department shall report its findings to the General Assembly no later than the convening of the 2006 Regular Session of the 2005 General Assembly. Any legislation recommended in the report may be considered during the 2006 Regular Session of the 2005 General Assembly.

SECTION 3. The report made by the Department of Environment and Natural Resources pursuant to this act shall include:

(1) A list of the types of animals that possess such inherently dangerous characteristics that they should not be owned or possessed by persons who do not have special expertise or training, and a determination as to whether these animals should be grouped into classes for differential treatment based upon the nature and extent of the threat they pose to the public. This list should also include information about the nature of the dangers posed by each type of animal.

(2) A suggested means for regulating ownership of certain animals, including a means of enforcing any proposed restrictions on the ownership or possession of those animals. This portion of the report may include an evaluation of regulations in place in other jurisdictions that have proven to be effective in protecting the public from inherently dangerous animals.

(3) A plan for addressing inherently dangerous animals that are indigenous species within the jurisdiction of the Wildlife Resources Commission under Article 22 of Chapter 113 of the General Statutes and a consideration as to whether any potential legislation should broadly address the keeping of any wildlife as pets, whether indigenous or not and whether inherently dangerous or not. This portion of the report should result from extensive consultation with the Wildlife Resources Commission.

(4) A recommendation as to whether persons owning or possessing animals covered by any proposed restrictions should be grandfathered in under a regulatory scheme and the appropriate means of grandfathering those persons in, including consideration of whether certain animals are so threatening to the public safety that the grandfathering of untrained owners or possessors should not be allowed under any circumstances.

(5) A recommended list, as comprehensive as possible, of persons and entities that should be exempted from the proposed restrictions on ownership or possession of the animals covered by any proposed restrictions, such as zoos, veterinary hospitals, wildlife sanctuaries, research institutions, and the like.

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

SENATE BILL 1032:
Study Inherently Dangerous Animals

BILL ANALYSIS

Committee:	House Environment and Natural Resources	**Date:**	July 26, 2005
Introduced by:	Sen. Garwood	**Summary by:**	Jennifer McGinnis
Version:	PCS to Second Edition S1032-PCS65358-RT-44		Committee Counsel

SUMMARY: ***The Proposed Committee Substitute (PCS) to the Second Edition of Senate Bill 1032 would direct the Department of Environment and Natural Resources (DENR) to study the need to protect the public against the risks to health and safety posed by inherently dangerous animals and propose a means of protecting both the public and the animals. DENR would be required to report its findings and recommendations to the 2006 Regular Session of the 2005 General Assembly.***

The act would be effective when the bill becomes law.

CURRENT LAW: North Carolina does not have a comprehensive regulatory program regulating the possession or control of dangerous animals. Cities and counties are specifically authorized to adopt ordinances regulating the possession of dangerous animals.[1] The Animal Welfare Act, Article 3, Chapter 19A of the General Statutes regulates kennels, dealers, and shelters, etc., however, the act applies only to dogs and cats. Article 2 of Chapter 19A prohibits the possession of black bears unless they are kept as part of a bona fide zoo operated by the federal, State, or local government agency, or as part of an educational institution, or without caging in conditions simulating natural habitat in accordance with plans approved by the Wildlife Resources Commission (Commission). The Commission regulates the possession of wildlife through captivity licenses and other permits[2], but they do not regulate the possession of exotics such as lions and tigers. Finally, the United State Department of Agriculture licenses private zoos, including caging and management requirements.

BILL ANALYSIS: The PCS would direct DENR, in consultation with the Commission and the North Carolina Zoological Park to study the need to protect the public against the health and safety risks posed by inherently dangerous animals and propose a means of protecting both the public and the animals. As part of the study, DENR would consult with the North Carolina Department of Agriculture, the Division of Public Health of the Department of Health and Human Services, the North Carolina State University College of Veterinary Medicine, the State Animal Response Team, local law enforcement and animal control officers, wild animal breeders, exotic pet hobbyists, commercial pet retailers, small zoo owners, humane organizations, and any other groups or entities that may be affected by the proposed regulations.

DENR would be required to report its findings and recommendations to the 2006 Regular Session of the 2005 General Assembly. The report must include the following:

- A list of the types of animals that possess such inherently dangerous characteristics, which should not be owned or possessed by persons without special expertise or training.
- A suggested means of regulating the ownership of certain animals, including a means of enforcing the regulations.
- A review of other jurisdictions' laws on this matter.

[1] G.S. 153A-131 and G.S, 160A-187, respectively.
[2] Article 21 of Chapter 113 of the General Statues.

- A recommendation regarding whether to grandfather current owners under any proposed regulatory scheme.
- A recommended list of any persons who should be exempted from the proposed restrictions.

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

Kory Goldsmith, counsel to Senate Judiciary Committee II, substantially contributed to this summary.

S1032e2-SMRI-CSRT-44

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 1032 A BILL TO BE ENTITLED AN ACT DIRECTING THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES TO DETERMINE THE BEST MEANS OF PROTECTING THE PUBLIC AGAINST THE HEALTH AND SAFETY RISKS POSED BY INHERENTLY DANGEROUS ANIMALS.

☒ With a favorable report as to House committee substitute bill, unfavorable as to Senate committee substitute bill and recommendation that the House committee substitute bill be re-referred to the Committee on Rules, Calendar, and Operations of the House.

(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, August 9, 2005

The House Committee on Environment and Natural Resources met on Tuesday, August 9, 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; Representative Lucy Allen, Vice Chair; Representative Pricey Harrison, Vice Chair; Representative Curtis Blackwood, Representative Becky Carney, Representative Arlie Culp, Representative Bill Daughtridge, Representative Pryor Gibson, Representative Mitch Gillespie, Representative Melanie Goodwin, Representative Jim Gulley, Representative Joe Hackney, Representative Phil Haire, Representative Stephen LaRoque, Representative Paul Luebke, Representative Grier Martin, Representative Bill McGee, Representative Ed McMahan, Representative Jean Preston, Representative Bonner Stiller, Representative Jennifer Weiss, Representative Larry Womble and Representative Pete Cunningham, Ex-Officio Member. 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.

SENATE BILL 681 - A BILL TO BE ENTITLED AN ACT TO CLARIFY THE ROLE OF COUNTIES AND CITIES IN REGULATING CERTAIN FORESTRY ACTIVITIES.

By motion from Representative Justice, Chair, the Proposed Committee Substitute S681-PCS75355-RT-52 was adopted for consideration and moved forth for discussion (Please see Exhibit #2). The Bill Analysis is attached. (Please see Exhibit #3). Upon motion from Representative Allen, Amendment S681-ASB-26[v.1] was sent forth to be included for discussion (Please see Exhibit #4). Senator Hoyle, primary sponsor, was recognized to speak on the bill and noted that the North Carolina Forestry Association and North Carolina Farm Bureau had requested this legislation. Senator Hoyle explained that expanding urban boundaries have presented the need for legislation that prohibits counties and cities from adopting or enforcing regulations on forestry harvesting as long as those forest lands are enrolled in the present use value tax program as timberland or under a forestry management plan. He also expressed support of the compromise made in the amendment regarding the regulation time period. Representative Allen, co-chair, was recognized to explain the amendment. She emphasized that the time period addressed was a responsible compromise and that the bill would prohibit folks from adopting ordinances that would not allow legitimate forestry activities by tree farmers.

Representative Harrell recognized people from the audience to speak on the bill. Dan Whittle, Environmental Defense, was recognized to speak in opposition of the bill because of concerns in regard to sprawl and the bill's "extreme breadth". He recommended extending the waiting period to 5 or 10 years. (Please see Exhibit #5). Bob Slocum, Executive Vice President of North Carolina Forestry Association, was recognized to speak in support of the bill. He pointed out that 17 1/2 million acres of land is private in North Carolina and that the bill clarifies the role of local governments and provides regulatory certainty; in addition to encouraging forestry land ownership and improved land management. He thanked the Association of County Commissioners and League of Municipalities for their help. Parker Lumpkin, landowner in Franklin County, was recognized from the audience to speak in support of the bill. He explained that landowners support this bill because it protects forestry by recognizing the length of time, approximately 35 years, needed to harvest.

Representative Haire stated the Environment Defense Fund raised a valid question given the bill's inconsistencies in the distinction between development and forestry. Counsel responded that the amendment clarifying the time period was an effort to address this.

Andy Romerey, Legal Counsel, to NC League of Municipalities, was recognized to speak in support of the bill; however noted that because of development they would have preferred the 5-year time period rather than the 3-year that had been worked out in the compromise. Paul Myer, NC Association of County Commissioners was recognized to speak in support; however voicing concern that without the five-year provision the building industry could rely on SB 951 to skirt local building standards regarding trees and buffers.

Representative Harrison was recognized to send forth an Amendment S681-ART-18 [v.1] to have the Environmental Review Commission further review the issue in an effort to address concerns of the environmental community (Please see Exhibit # 6). Senator Hoyle responded that no one from the environmental community had contacted him with concerns and asked that Representative Harrison's amendment not be passed. Representative Womble and Haire voiced support for the amendment. Representative Gibson was recognized to speak in opposition of the amendment but in support of the bill, explaining that ERC has looked at this issue for years. He emphasized the bill is an effort designed to begin to protect forestry against development; however, does not solve all the problems. He noted that six months of negotiations by county and city governments had gone into improving this bill. By vote of the committee Representative Harrison's amendment failed.

Members of the committee were recognized to speak on the bill. Representative Weiss expressed concern for her district in reference to SL2001-191 and asked if it would be preempted if this legislation passed. Representative Allen responded that Page 3, Section C, Line 24 #2 of the bill addresses that issue. Counsel Givens in response to several questions, regarding the interface between local regulation and other state regulatory programs, cited a recent court of appeals decision in a water quality case where there is a comprehensive state scheme local regulation is preempted.

Representative Culp made a motion that Amendment S681-ASB-26[v.1] be incorporated into a new Proposed Committee Substitute, S681-PCS85290-RT-55 (Please see Exhibit #7) and moved for a favorable report to the new Committee Substitute S681-PCS85290-RT-55 and unfavorable to Senate Committee Substitute -1. Motion passed. The 2005 Committee Report is attached (Please see Exhibit #8).

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

BILLS LISTED
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: **Tuesday, August 9, 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, WEISS.

SENATE BILL 681. NO LOCAL REGULATION OF FORESTRY/AGRICULTURE.
SPONSORS – SENATOR HOYLE.

Respectfully,
Representatives Harrell and Justice
Chairs

I hereby certify this notice was filed by the committee assistant at the following offices at **4:15 p.m.** on **August 8, 2005.**

___Principal Clerk
___Reading Clerk - House Chamber

Beth LeGrande (Committee Assistant)

HOUSE COMMITTEE ON ENVIRONMENT AND NATURAL RESOURCES

AGENDA

12:00 Noon
Tuesday August 9, 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.

SENATE BILL 681. NO LOCAL REGULATION OF FORESTRY/AGRICULTURE.
SPONSOR – SENATOR HOYLE.

5. Adjourn

Exhibit I

VISITOR REGISTRATION SHEET

ENVIRONMENT AND NATURAL RESOURCES 8-9-05

Name of Committee Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Kathy Hawkins	Progress Energy
Michelle C. Vaught	Weyerhaeuser
R Rogers	DENR
Dianne Beasley	DENR - Forestry
Larry W. Tombaugh	North Carolina Forestry Assoc.
Richard Ducker	School of Govt. - UNC Chapel Hill
Paul Meyer	NCACC
Eben Polk	CWMTF
Kim Hibbard	NCLM
Anita Watkins	NCLM
Lisa Martin	NC Home Builders
Rick Zechini	NCAE
Andy Romanet	NCLM.

VISITOR REGISTRATION SHEET

Environment & Natural Resources — 8-9-05

Name of Committee — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE ASSISTANT

NAME	FIRM OR AGENCY
Molly Diggins	Sierra Club
Tom Bean	NC Env. Defense, NCWF
George Everett	Duke Power
Richard Ellis	Raleigh Ellis & Graham
[illegible]	NCRA · NCWA
Frank Gray	Jordan Price Law
Stephanie Chapman	NCAR
Terrance Ferguson	UNC
Mimie Finke	Office of Rep Curtis Blackwood NC Gen Assembly
Art Smith	UCDL
John Hoomani	"

VISITOR REGISTRATION SHEET

ENVIRONMENT AND NATURAL RESOURCES — 8-9-05

Name of Committee — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Bob Slocum	NCEA
PARKER LUMPKIN	
Thurston Cobb	CAA
Cam Cass	BPWL
John Cyrus	NCS Grange
LUCIUS PULLEN	NC MINING ASSOC.
Chris Brown	NCFA
Lisa Pierce	Duke Energy
Bill Ross	DENR
Jim Simon	DENR
Chip Killian	Nelson Mullins - Brunswick County
Jim Wrenn	Hoffrid Hicks, CLP / Granville County
Mary Teague	NMRS

VISITOR REGISTRATION SHEET

ENVIRONMENT AND NATURAL RESOURCES — 8-9-05

Name of Committee — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Elizabeth Ouzts	NCPIRG
Johanna Reese	DENR
Steve Wall	DENR
Max Zygmont	DENR
Mary P Thompson	DENR
Will McNew	Environmental Defense
Grady McCallie	N.C. Conservation Network.
Fred Allen	NC Aggregates Assn.
Eric Koury	NC conservation Network
Mike Nelson	Conservation Council
Francis M Nevils Jr	DENR - DLR

House Pages

Rm. 643

ENVIRONMENT
Name Of Committee: NATURAL RESOURCES Date: 8-9-05

1. Name: Joyce Booth
   County: Beaufort
   Sponsor: A. Williams
2. Name: Natasha Gumber
   County: Wake
   Sponsor: Grier Martin
3. Name: Raeanne Wynne
   County: Pitt
   Sponsor: M. Malcolm
4. Name: Cori Starling
   County: Johnston
   Sponsor: James Langdon
5. Name: Abby Taylor
   County: Craven
   Sponsor: Alice Underhill

Sgt-At-Arms

1. Name: TOM WILDER
2. Name: WALTER SPELL
3. Name: EARL COKER
4. Name: FRANK PREVO
5. Name:

House Pages

Name Of Committee: ENVIRONMENT & NATURAL RESOURCES Date: 4-9-05

1. Name: Rebecca Simpson

   County: Wake

   Sponsor: Representative Bill Daughtridge

2. Name: _____

   County: _____

   Sponsor: _____

3. Name: _____

   County: _____

   Sponsor: _____

4. Name: _____

   County: _____

   Sponsor: _____

5. Name: _____

   County: _____

   Sponsor: _____

Sgt-At-Arms

1. Name: _____

2. Name: _____

3. Name: _____

4. Name: _____

5. Name: _____

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S 3

SENATE BILL 681*

Agriculture/Environment/Natural Resources Committee Substitute Adopted 5/12/05

Third Edition Engrossed 5/17/05

Short Title: Clarify Regulation of Forestry. (Public)

Sponsors:

Referred to:

March 21, 2005

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THE ROLE OF COUNTIES AND CITIES IN REGULATING CERTAIN FORESTRY ACTIVITIES.

The General Assembly of North Carolina enacts:

SECTION 1. Article 23 of Chapter 153A of the General Statutes is amended by adding a new section to read:

"**§ 153A-451. Restriction of certain forestry activities prohibited.**

(a) The following definitions apply to this section:

(1) Development. – Any activity, including timber harvesting, that is associated with the conversion of forestland to nonforest use.

(2) Forestland. – Land that is devoted to growing trees for the production of timber, wood, and other forest products.

(3) Forestry. – The professional practice embracing the science, business, and art of creating, conserving, and managing forests and forestland for the sustained use and enjoyment of their resources, materials, or other forest products.

(4) Forest management plan. – A document that defines a landowner's forest management objectives and describes specific measures to be taken to achieve those objectives. A forest management plan shall include silvicultural practices that both ensure optimal forest productivity and environmental protection of land by either commercially growing timber through the establishment of forest stands or by ensuring the proper regeneration of forest stands to commercial levels of production after the harvest of timber.

(5) Forestry activity. – Any activity associated with the growing, managing, harvesting, and related transportation, reforestation, or

protection of trees and timber, provided that such activities comply with existing State rules and regulations pertaining to forestry.

(b) A county shall not adopt or enforce any ordinance, rule, regulation, or resolution that regulates either:

(1) Forestry activity on forestland that is taxed on the basis of its present-use value as forestland under Article 12 of Chapter 105 of the General Statutes.

(2) Forestry activity that is conducted in accordance with a forest management plan.

(c) This section shall not be construed to limit, expand, or otherwise alter the authority of a county to:

(1) Regulate activity associated with development. A county may deny a building permit or refuse to approve a site or subdivision plan for a period of up to two years after the completion of a timber harvest if the harvest results in the removal of all or substantially all of the trees that would otherwise have been protected under county regulations governing development from the tract of land for which the permit or approval is sought.

(2) Regulate trees pursuant to any local act of the General Assembly.

(3) Adopt ordinances that are necessary to comply with any federal or State law, regulation, or rule.

(4) Exercise its planning or zoning authority under Article 18 of this Chapter."

SECTION 2. Article 19 of Chapter 160A of the General Statutes is amended by adding a new section to read:

"**§ 160A-458.5. Restriction of certain forestry activities prohibited.**

(a) The following definitions apply to this section:

(1) Development. – Any activity, including timber harvesting, that is associated with the conversion of forestland to nonforest use.

(2) Forestland. – Land that is devoted to growing trees for the production of timber, wood, and other forest products.

(3) Forestry. – The professional practice embracing the science, business, and art of creating, conserving, and managing forests and forestland for the sustained use and enjoyment of their resources, materials, or other forest products.

(4) Forest management plan. – A document that defines a landowner's forest management objectives and describes specific measures to be taken to achieve those objectives. A forest management plan shall include silvicultural practices that both ensure optimal forest productivity and environmental protection of land by either commercially growing timber through the establishment of forest stands or by ensuring the proper regeneration of forest stands to commercial levels of production after the harvest of timber.

(5) Forestry activity. – Any activity associated with the growing, managing, harvesting, and related transportation, reforestation, or protection of trees and timber, provided that such activities comply with existing State rules and regulations pertaining to forestry.

(b) A city shall not adopt or enforce any ordinance, rule, regulation, or resolution that regulates either:

(1) Forestry activity on forestland that is taxed on the basis of its present-use value as forestland under Article 12 of Chapter 105 of the General Statutes.

(2) Forestry activity that is conducted in accordance with a forest management plan that is prepared or approved by a forester registered in accordance with Chapter 89B of the General Statutes.

(c) This section shall not be construed to limit, expand, or otherwise alter the authority of a city to:

(1) Regulate activity associated with development. A city may deny a building permit or refuse to approve a site or subdivision plan for a period of up to two years after the completion of a timber harvest if the harvest results in the removal of all or substantially all of the trees that would otherwise have been protected under city regulations governing development from the tract of land for which the permit or approval is sought.

(2) Regulate trees pursuant to any local act of the General Assembly.

(3) Adopt ordinances that are necessary to comply with any federal or State law, regulation, or rule.

(4) Exercise its planning or zoning authority under this Article.

(5) Regulate and protect streets under Article 15 of this Chapter."

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

Exhibit II

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

S D

SENATE BILL 681*
Agriculture/Environment/Natural Resources Committee Substitute Adopted 5/12/05
Third Edition Engrossed 5/17/05
PROPOSED HOUSE COMMITTEE SUBSTITUTE S681-PCS75355-RT-52

Short Title: Clarify Regulation of Forestry. (Public)

Sponsors:

Referred to:

March 21, 2005

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THE ROLE OF COUNTIES AND CITIES IN REGULATING CERTAIN FORESTRY ACTIVITIES.

The General Assembly of North Carolina enacts:

SECTION 1. Article 23 of Chapter 153A of the General Statutes is amended by adding a new section to read:

"**§ 153A-451. Restriction of certain forestry activities prohibited.**

(a) The following definitions apply to this section:

(1) Development. – Any activity, including timber harvesting, that is associated with the conversion of forestland to nonforest use.

(2) Forestland. – Land that is devoted to growing trees for the production of timber, wood, and other forest products.

(3) Forestry. – The professional practice embracing the science, business, and art of creating, conserving, and managing forests and forestland for the sustained use and enjoyment of their resources, materials, or other forest products.

(4) Forest management plan. – A document that defines a landowner's forest management objectives and describes specific measures to be taken to achieve those objectives. A forest management plan shall include silvicultural practices that both ensure optimal forest productivity and environmental protection of land by either commercially growing timber through the establishment of forest stands or by ensuring the proper regeneration of forest stands to commercial levels of production after the harvest of timber.

(5) Forestry activity. – Any activity associated with the growing, managing, harvesting, and related transportation, reforestation, or protection of trees and timber, provided that such activities comply with existing State rules and regulations pertaining to forestry.

(b) A county shall not adopt or enforce any ordinance, rule, regulation, or resolution that regulates either:

(1) Forestry activity on forestland that is taxed on the basis of its present-use value as forestland under Article 12 of Chapter 105 of the General Statutes.

(2) Forestry activity that is conducted in accordance with a forest management plan.

(c) This section shall not be construed to limit, expand, or otherwise alter the authority of a county to:

(1) Regulate activity associated with development. A county may deny a building permit or refuse to approve a site or subdivision plan for a period of up to three years after the completion of a timber harvest if the harvest results in the removal of all or substantially all of the trees that would otherwise have been protected under county regulations governing development from the tract of land for which the permit or approval is sought.

(2) Regulate trees pursuant to any local act of the General Assembly.

(3) Adopt ordinances that are necessary to comply with any federal or State law, regulation, or rule.

(4) Exercise its planning or zoning authority under Article 18 of this Chapter."

SECTION 2. Article 19 of Chapter 160A of the General Statutes is amended by adding a new section to read:

"**§ 160A-458.5. Restriction of certain forestry activities prohibited.**

(a) The following definitions apply to this section:

(1) Development. – Any activity, including timber harvesting, that is associated with the conversion of forestland to nonforest use.

(2) Forestland. – Land that is devoted to growing trees for the production of timber, wood, and other forest products.

(3) Forestry. – The professional practice embracing the science, business, and art of creating, conserving, and managing forests and forestland for the sustained use and enjoyment of their resources, materials, or other forest products.

(4) Forest management plan. – A document that defines a landowner's forest management objectives and describes specific measures to be taken to achieve those objectives. A forest management plan shall include silvicultural practices that both ensure optimal forest productivity and environmental protection of land by either commercially growing timber through the establishment of forest

stands or by ensuring the proper regeneration of forest stands to commercial levels of production after the harvest of timber.

(5) Forestry activity. – Any activity associated with the growing, managing, harvesting, and related transportation, reforestation, or protection of trees and timber, provided that such activities comply with existing State rules and regulations pertaining to forestry.

(b) A city shall not adopt or enforce any ordinance, rule, regulation, or resolution that regulates either:

(1) Forestry activity on forestland that is taxed on the basis of its present-use value as forestland under Article 12 of Chapter 105 of the General Statutes.

(2) Forestry activity that is conducted in accordance with a forest management plan that is prepared or approved by a forester registered in accordance with Chapter 89B of the General Statutes.

(c) This section shall not be construed to limit, expand, or otherwise alter the authority of a city to:

(1) Regulate activity associated with development. A city may deny a building permit or refuse to approve a site or subdivision plan for a period of up to three years after the completion of a timber harvest if the harvest results in the removal of all or substantially all of the trees that would otherwise have been protected under city regulations governing development from the tract of land for which the permit or approval is sought.

(2) Regulate trees pursuant to any local act of the General Assembly.

(3) Adopt ordinances that are necessary to comply with any federal or State law, regulation, or rule.

(4) Exercise its planning or zoning authority under this Article.

(5) Regulate and protect streets under Article 15 of this Chapter."

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

Exhibit III

SENATE BILL 681: Clarify Regulation of Forestry

BILL ANALYSIS

Committee:	House Environment and Natural Resources	**Date:**	August 9, 2005
Introduced by:	Sen. Hoyle	**Summary by:**	Tim Dodge
Version:	PCS to Third Edition S681-PCS75355-RT-52		Legislative Analyst

SUMMARY: The Proposed Committee Substitute (PCS) for Senate Bill 681 would prohibit a city or county from regulating forestry activity on certain forestlands. The prohibition would not alter the authority of a city or county to: (i) regulate activity associated with development; (ii) regulate trees pursuant to authority granted by the General Assembly; (iii) adopt ordinances necessary to comply with any federal or State law, regulation, or rule; or (iv) exercise its planning or zoning authority.

***CHANGES FROM SECOND EDITION**: On the Senate Floor, the 2nd Edition of S681 was amended to shorten the "look-back period" (the period of time during which a city or county could deny a building permit or refuse to approve a site or subdivision plan following a timber harvest that removed all or substantially all of the trees that would otherwise have been protected under city or county regulations governing development of the tract of land) from five years to two years. The PCS changes this look-back period to three years.*

BILL ANALYSIS: The PCS would prohibit a city or county from adopting or enforcing any ordinance, rule, regulation, or resolution to regulate the following:

- Forestry activity on forestland that is taxed on the basis of its present-use value as forestland.
- Forestry activity that is conducted in accordance with a forest management plan. For cities, the forest management plan must be prepared or approved by a registered forester.

Forestry activity is defined as any activity associated with growing, managing, harvesting, and related transportation, reforestation or protection of trees and timber. The PCS would not affect the authority of a city or county to:

- Regulate development activity, which is defined as any activity associated with the conversion of forestland to nonforest use, including timber harvesting. Cities or counties may deny a building permit or refuse to approve a site or subdivision plan for up to three years after the completion of a timber harvest if the harvest removed all or substantially all of the trees that would otherwise have been protected under city or county regulations governing development of the tract of land.
- Adopt a tree ordinance if the city or county had previously received authority from the General Assembly.
- Adopt an ordinance to comply with federal or State law, regulation, or rule.
- Exercise its planning or zoning authority.
- Regulate and protect streets (for cities only).

CURRENT LAW: Under their general ordinance making power, cities and counties may define, regulate, prohibit, or abate acts, omissions, or conditions detrimental to the health, safety and welfare of its citizens and may define and abate nuisances. Agricultural and forestry operations are not considered a nuisance, however, if they have been in operation for more than one year and were not considered a nuisance at the time the operation began.

The General Assembly has authorized several municipalities and some counties to adopt ordinances to regulate the planting, maintenance, removal, replacement, grading, and preservation of trees on public and private property located within the local government's corporate limits and extraterritorial planning jurisdiction. Some of these provisions are listed below:

- S.L. 2003-73 (Holly Springs) provides for a look-back period of 3 years if trees are removed from the buffer (2 years if the buffer is replanted with material consistent with the town's requirements for buffers).
- S.L. 2003-128 (Rutherfordton, Wake County) and S.L. 2003-246 (Statesville, Rockingham, Smithfield) also allow a 3-year look-back period for tree removal from the buffer, or 2 years if appropriately replanted.
- S.L. 2001-191 (Durham, Cary, Garner, Morrisville, Knightdale, Fuquay-Varina, Spencer) provides that a local government may deny a building permit for 5 years if the trees in the buffer are removed, and makes no mention of a shorter look-back period if the buffer is replanted.

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

S0681e3-SMSY-CSRT-52

Exhibit IV

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 681*

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

S681-ASB-26 [v.1]

Date _____,2005

Comm. Sub. [YES]
Amends Title [NO]
S681-PCS75355-RT-52

Representative Allen

moves to amend the bill on page 2, lines 14 through 20,
by rewriting those lines to read:

"(1) Regulate activity associated with development. A county may deny a building permit or refuse to approve a site or subdivision plan for either a period of up to:

a. Three years after the completion of a timber harvest if the harvest results in the removal of all or substantially all of the trees that were protected under county regulations governing development from the tract of land for which the permit or approval is sought.

b. Five years after the completion of a timber harvest if the harvest results in the removal of all or substantially all of the trees that were protected under county regulations governing development from the tract of land for which the permit or approval is sought and the harvest was a wilful violation of the county regulations." and

on page 3, lines 17 through 23,
by rewriting those lines to read:

"(1) Regulate activity associated with development. A city may deny a building permit or refuse to approve a site or subdivision plan for either a period of up to:

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 681*

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

S681-ASB-26 [v.1]

a. Three years after the completion of a timber harvest if the harvest results in the removal of all or substantially all of the trees that were protected under city regulations governing development from the tract of land for which the permit or approval is sought.

b. Five years after the completion of a timber harvest if the harvest results in the removal of all or substantially all of the trees that were protected under city regulations governing development from the tract of land for which the permit or approval is sought and the harvest was a wilful violation of the city regulations.".

SIGNED Lucy T. Allen
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED 9 Aug 2005 FAILED _____ TABLED _____

Exhibit II

Talking Points
SB 681
August 9, 2005

- Thank you Mr. Chairman for the opportunity to speak.

- I am Dan Whittle and I represent Environmental Defense.

- Let me say at the outset that I appreciate the efforts of Representative Allen and others to listen to our concerns and to work to improve the bill. The current version is significantly better than the original one.

- But despite the best efforts of my group and others, we have not been given an opportunity to participate in negotiations over this bill. Rather than opposing the bill outright, we instead offered a number of suggestions for improving it. So far, our recommendations have fallen on deaf ears. For this reason, we ask you to vote against this bill or at least to direct the ERC to study the issue with full participation of stakeholders.

- Let me also say that some of the proponents of this bill have taken a divisive approach and have suggested that my groups opposes forestry. That could not be further from the truth.

- Environmental Defense is actively engaged in supporting policies promote working farms and forests and that enable farmers and forest landowners to stay on their land and to protect their investment in it. Our agenda does not include onerous regulations that make it difficult to earn a living off the land.

- As currently written, however, we cannot support SB 681. First of all the bill is extreme in its breadth. The bill would deprive local governments of any authority to control pollution and other adverse impacts from forest activities. The bill seems to even prohibit towns from ensuring that logging trucks do not jeopardize the safety of their citizens.

- Though today few towns and counties exercise their limited authority over forestry, it is bad public policy to tie their hands in the future, especially when state law already exempts forestry from most environmental laws.

- Though the bill requires a forest management plan, its environmental requirements are vague and unenforceable. The bill does not even require landowners to follow well-accepted best management practices (BMPs).

- **The most disturbing aspect of this bill is that it provides a giant loophole for developers who wish to circumvent ordinances that limit the number of trees that can be removed from a site during development.**

- **This issue is referred to as "clearing in anticipation of development approval." It happens when the developer wishes to avoid having to save certain stands of trees (or certain individual trees) that the developer may be expected to save when the site is later approved for development. In some cases trees will be selectively cut. In other instances an area will be fully cleared.**

- **The language of the current version of the bill provides only the slightest disincentive for the forestry owner to avoid harvesting in anticipation. Given the amount of time it takes to consummate a sale of property and for a**

developer to formulate plans for a development proposal, a two-year delay in obtaining development approvals is unlikely to affect a forestry owner's behavior (or a developer's behavior) much at all. A longer period might.

- Under the current version of the bill the delay is triggered only if "all or substantially all of the trees" are harvested. An owner of forest lands (or a developer) ought to be able to avoid the development approval delay rather easily, even if a sizable amount of the property is cleared.

- Even as written, the bill would be hard to implement and would likely result in confusion and conflict whenever a local government attempted to deny development approval.

- For these and other reasons, we urge you to reject this bill, or at a minimum send the bill for further study.

Exhibit VI

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 681*

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

S681-ART-18 [v.1]

Date _____,2005

Comm. Sub. [YES]
Amends Title [YES]
S681-PCS75355-RT-52

Representative HARRISON

moves to amend the bill on page 1, line 1, through page 3, line 29, by rewriting those lines to read:

"AN ACT TO STUDY THE ROLE OF COUNTIES AND CITIES IN THE REGULATION OF CERTAIN FORESTRY ACTIVITIES.

The General Assembly of North Carolina enacts:

SECTION 1. The Environmental Review Commission shall study issues related to the regulation of forestry by local governments. The study shall include, but not be limited to, the following: (i) an analysis of the statutory authority of local governments to regulate timber harvests and other forest management activities; (ii) an analysis of the statutory authority of the State to regulate timber harvests and other forest management activities; (iii) an examination of local government ordinances and rules relating to forestry and an analysis of their environmental benefits and economic impacts, if any; (iv) a survey of the use by forest landowners and loggers of best management practices; and (v) an analysis of options for preserving the proper role of local governments in regulating forestry activities while maintaining reasonable uniformity of regulations across the State, protecting the reasonable investment expectations of forest landowners, and balancing the protection of sustainable forests with beneficial economic development. The Environmental Review Commission shall report its findings and recommendations, including any legislative proposals, to the 2006 Regular Session of the 2005 General Assembly.

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

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 681*

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

S681-ART-18 [v.1]

by amending the Short Title of the bill to read: "Study Local Regulation of Forestry.".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

Committee Exhibit III

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S D

SENATE BILL 681*

Agriculture/Environment/Natural Resources Committee Substitute Adopted 5/12/05

Third Edition Engrossed 5/17/05

PROPOSED HOUSE COMMITTEE SUBSTITUTE S681-PCS85290-RT-55

Short Title: Clarify Regulation of Forestry. (Public)

Sponsors:

Referred to:

March 21, 2005

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THE ROLE OF COUNTIES AND CITIES IN REGULATING CERTAIN FORESTRY ACTIVITIES.

The General Assembly of North Carolina enacts:

SECTION 1. Article 23 of Chapter 153A of the General Statutes is amended by adding a new section to read:

"**§ 153A-451. Restriction of certain forestry activities prohibited.**

(a) The following definitions apply to this section:

(1) Development. – Any activity, including timber harvesting, that is associated with the conversion of forestland to nonforest use.

(2) Forestland. – Land that is devoted to growing trees for the production of timber, wood, and other forest products.

(3) Forestry. – The professional practice embracing the science, business, and art of creating, conserving, and managing forests and forestland for the sustained use and enjoyment of their resources, materials, or other forest products.

(4) Forest management plan. – A document that defines a landowner's forest management objectives and describes specific measures to be taken to achieve those objectives. A forest management plan shall include silvicultural practices that both ensure optimal forest productivity and environmental protection of land by either commercially growing timber through the establishment of forest stands or by ensuring the proper regeneration of forest stands to commercial levels of production after the harvest of timber.

(5) Forestry activity. – Any activity associated with the growing, managing, harvesting, and related transportation, reforestation, or protection of trees and timber, provided that such activities comply with existing State rules and regulations pertaining to forestry.

(b) A county shall not adopt or enforce any ordinance, rule, regulation, or resolution that regulates either:

(1) Forestry activity on forestland that is taxed on the basis of its present-use value as forestland under Article 12 of Chapter 105 of the General Statutes.

(2) Forestry activity that is conducted in accordance with a forest management plan.

(c) This section shall not be construed to limit, expand, or otherwise alter the authority of a county to:

(1) Regulate activity associated with development. A county may deny a building permit or refuse to approve a site or subdivision plan for either a period of up to:

a. Three years after the completion of a timber harvest if the harvest results in the removal of all or substantially all of the trees that were protected under county regulations governing development from the tract of land for which the permit or approval is sought.

b. Five years after the completion of a timber harvest if the harvest results in the removal of all or substantially all of the trees that were protected under county regulations governing development from the tract of land for which the permit or approval is sought and the harvest was a willful violation of the county regulations.

(2) Regulate trees pursuant to any local act of the General Assembly.

(3) Adopt ordinances that are necessary to comply with any federal or State law, regulation, or rule.

(4) Exercise its planning or zoning authority under Article 18 of this Chapter."

SECTION 2. Article 19 of Chapter 160A of the General Statutes is amended by adding a new section to read:

"**§ 160A-458.5. Restriction of certain forestry activities prohibited.**

(a) The following definitions apply to this section:

(1) Development. – Any activity, including timber harvesting, that is associated with the conversion of forestland to nonforest use.

(2) Forestland. – Land that is devoted to growing trees for the production of timber, wood, and other forest products.

(3) Forestry. – The professional practice embracing the science, business, and art of creating, conserving, and managing forests and forestland for the sustained use and enjoyment of their resources, materials, or other forest products.

(4) Forest management plan. – A document that defines a landowner's forest management objectives and describes specific measures to be taken to achieve those objectives. A forest management plan shall include silvicultural practices that both ensure optimal forest productivity and environmental protection of land by either commercially growing timber through the establishment of forest stands or by ensuring the proper regeneration of forest stands to commercial levels of production after the harvest of timber.

(5) Forestry activity. – Any activity associated with the growing, managing, harvesting, and related transportation, reforestation, or protection of trees and timber, provided that such activities comply with existing State rules and regulations pertaining to forestry.

(b) A city shall not adopt or enforce any ordinance, rule, regulation, or resolution that regulates either:

(1) Forestry activity on forestland that is taxed on the basis of its present-use value as forestland under Article 12 of Chapter 105 of the General Statutes.

(2) Forestry activity that is conducted in accordance with a forest management plan that is prepared or approved by a forester registered in accordance with Chapter 89B of the General Statutes.

(c) This section shall not be construed to limit, expand, or otherwise alter the authority of a city to:

(1) Regulate activity associated with development. A city may deny a building permit or refuse to approve a site or subdivision plan for either a period of up to:

a. Three years after the completion of a timber harvest if the harvest results in the removal of all or substantially all of the trees that were protected under city regulations governing development from the tract of land for which the permit or approval is sought.

b. Five years after the completion of a timber harvest if the harvest results in the removal of all or substantially all of the trees that were protected under city regulations governing development from the tract of land for which the permit or approval is sought and the harvest was a willful violation of the city regulations.

(2) Regulate trees pursuant to any local act of the General Assembly.

(3) Adopt ordinances that are necessary to comply with any federal or State law, regulation, or rule.

(4) Exercise its planning or zoning authority under this Article.

(5) Regulate and protect streets under Article 15 of this Chapter."

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

Exhibit VIII

2005 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report from standing committee is/are presented:

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

☒Committee Substitute for

SB 681 A BILL TO BE ENTITLED AN ACT TO CLARIFY THE ROLE OF COUNTIES AND CITIES IN REGULATING CERTAIN FORESTRY ACTIVITIES.

☒ 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.

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

H 1

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

H D

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



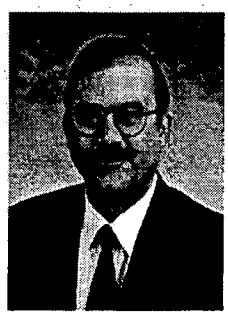
Rep. Carolyn H. Justice
Chair



Rep. Lucy T. Allen
Vice chair



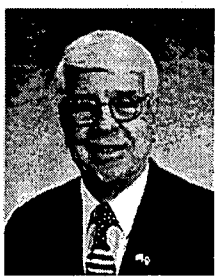
Rep. Pricey Harrison
Vice chair



Rep. Daniel F. McComas
Vice chair



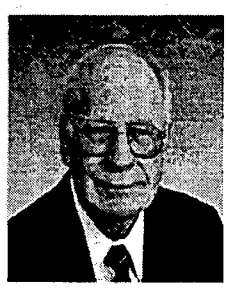
Rep. Curtis Blackwood



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



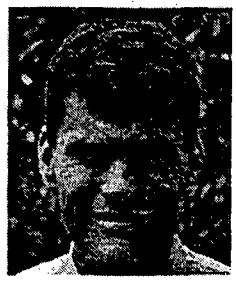
Rep. Verla Insko



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

7

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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

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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 Telfer	" "

#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.