2011-2012

SENATE AGRICULTURE/ ENVIRONMENT/ NATURAL RESOURCES

MINUTES

MEMBERSHIP LIST
SENATE AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES
2011-2012

Senator Don East Room 521, LOB 733-5743 Don.east@ncleg.net	Senator David Rouzer Room 523, LOB 733-5748 David.rouzer@ncleg.net LA: Judy Edwards
Senator Brent Jackson Room 525, LOB 733-5705 Brent.jackson@ncleg.net LA: Cindy Davis	Senator Austin Allran Room 625, LOB 733-5876 Austin.allran@ncleg.net LA: Carole Walker
Senator Bob Atwater Room 519, LOB 733-3036 Bob.atwater@ncleg.net LA: Carol Resar	Senator Stan Bingham Room 2117, LB 733-5665 Stan.bingham@ncleg.net LA: Judy Chriscoe
Senator Andrew Brock Room 623, LOB 715-0690 Andrew.brock@ncleg.net LA: Janet Black	Senator Harry Brown Room 300D, LOB 715-3034 Harry.brown@ncleg.net LA: Susanne Gunter
Senator Daniel Clodfelter Room 526, LOB 715-8331 Daniel.clodfelter@ncleg.net LA: Wanda Joyner	Senator Warren Daniel Room 411, LOB 715-7823 Warren.daniel@ncleg.net LA: Andy Perrigo
Senator Fletcher Hartsell Room 300B, LOB 733-7223 Fletcher.hartsell@ncleg.net LA: Gerry Johnson	Senator Clark Jenkins Room 621, LOB 715-3040 Clark.jenkins@ncleg.net LA: Megan McCarthy
Senator Ellie Kinnaird Room 628, LOB 733-5804 Ellie.kinnaird@ncleg.net LA: Kathie Young	Senator Jean Preston Room 629, LOB 733-5706 Jean.preston@ncleg.net LA: Suzanne Castleberry
Senator Bill Rabon Room 1028, LB 733-5963 Bill.rabon@ncleg.net LA: Melissa Dombolis	Senator Jerry Tillman Room 627, LOB 733-5870 Jerry.tillman@ncleg.net LA: Yvonne Hall

Senator Tommy Tucker Room 311, LOB 733-7659 Tommy.tucker@ncleg.net LA: Joey Stansberry	Senator Michael Walters Room 1118, LB 733-5651 Michael.walter@ncleg.net LA: Vickie Spears
Senator Stan White Room 1121, LB 733-6854 Stan.white@ncleg.net LA: Suzell Crosswhite	Cindy Davis Committee Clerk Room 525, LOB 733-5705 Cindy.davis@ncleg.net
Jeff Hudson Research 733-7825 Jeff.hudson@ncleg.net	Jennifer McGinnis Research 733-7825 Jennifer.mcginnis@ncleg.net
Jennifer Mundt Research 733-7825 Jennifer.mundt@ncleg.net	Mariah Matheson Research 733-7825 Mariah.matheson@ncleg.net

Senate Agriculture/Environment/Natural Resources

Minutes

February 8, 2011

The Senate Ag/Env/Nat. Resources committee met on Tuesday, February 8, 2011 in Room 544-LOB. There were 18 senators present.

Senator Don East called the meeting to order and introduced Pages and Sgt-At-Arms staff. He allowed each member to introduce themselves.

SB-22 APA /Rules: Increasing Costs Prohibition

Sen. David Rouzer explained the bill. Sen. Tillman moved to adopt the amendment for consideration. So moved. Sen. Rouzer explained the amendment. This is a clarifying amendment. Sen. Brown moved to approve the amendment and seconded by Sen. Tillman. Vote taken, so moved. Sen. Allran moved to pass this bill as amended to engross the amendment into a Proposed Committee Substitute. Motion seconded by Sen. Tucker. Sen. Atwater questioned rule making for the fire code which doesn't come through the General Assembly and will that process continue as usual. Sen. Rouzer explained that it would be covered under this bill. Mr. Jeff Hudson, staff counsel made an additional comment. Sen. Atwater questioned costs and is that covered by this bill. Sen. Rouzer said it will be covered under this bill and it could be up to interpretation but these would have to come back to the GA for consideration. Sen. Tillman spoke and he feels that costs wouldn't be the only factor, but the intent for this bill is to remove some of the regulations. Sen. Rouzer added that this will be a "time out" and not anything to that will repeal current legislation. No further discussion, vote taken and so moved.

Meeting Adjourned at 11:21 AM.

Sen. East, Co-chair

Cindy J. Davis, Committee Clerk

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES COMMITTEE REPORT
Senator Don East, Co-Chair
Senator David Rouzer, Co-Chair

Tuesday, February 08, 2011

Senator EAST,
submits the following with recommendations as to passage:

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

S.B. **22** APA Rules: Increasing Costs Prohibition.

Draft Number:	55044
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

TOTAL REPORTED: 1

Committee Clerk Comments:

Principal Clerk ____
Reading Clerk ____

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

The Senate Committee on **Agriculture/Environment/Natural Resources** will meet at the following time:

DAY	DATE	TIME	ROOM
Tuesday	February 8, 2011	11:00	544 LOB

The following will be considered:

BILL NO.	SHORT TITLE	SPONSOR
SB 22	APA Rules: Increasing Costs Prohibition.	Senator Rouzer Senator Brown

Senator Don East, Co-Chair
Senator David Rouzer, Co-Chair

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 22

AMENDMENT NO. _____
(to be filled in by
Principal Clerk)

S22-ASB-2 [v.1]

Comm. Sub. [NO]
Amends Title [NO]
First Edition

Date February 8,2011

Senator Rouzer

moves to amend the bill on page 1, line 11,
by rewriting that line to read:

"b. An act of the General Assembly or United States Congress that expressly requires the agency to adopt rules.".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED ✓ FAILED _____ TABLED _____

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

S D

SENATE BILL 22
PROPOSED COMMITTEE SUBSTITUTE S22-PCS55044-SB-2

Short Title: APA Rules: Increasing Costs Prohibition. (Public)

Sponsors:

Referred to:

February 2, 2011

A BILL TO BE ENTITLED

AN ACT TO LIMIT NEW AGENCY REGULATORY REQUIREMENTS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 150B-19 is amended by adding a new subdivision to read:

"An agency may not adopt a rule that does one or more of the following:

...

(7) Results in additional costs on persons subject to the rule unless adoption of the rule is required to respond to at least one of the following:

a. A serious and unforeseen threat to the public health, safety, or welfare.

b. An act of the General Assembly or United States Congress that expressly requires the agency to adopt rules.

c. A change in federal or State budgetary policy.

d. A federal regulation.

e. A court order."

SECTION 2. This act is effective when it becomes law and applies to rules adopted by an agency on or after that date.

SENATE BILL 22

Short Title:	APA Rules: Increasing Costs Prohibition.	(Public)
Sponsors:	Senators Brown, Rouzer; Apodaca, Blake, Brock, Brunstetter, Daniel, East, Goolsby, Gunn, Harrington, Hise, Hunt, Jackson, Meredith, Newton, Preston, Rabon, Rucho, Soucek, Tillman, and Tucker.	
Referred to:	Agriculture/Environment/Natural Resources.	

February 2, 2011

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c. A change in federal or State budgetary policy.

d. A federal regulation.

e. A court order."

SECTION 2. This act is effective when it becomes law and applies to rules adopted by an agency on or after that date.

SENATE BILL 22:
APA Rules: Increasing Costs Prohibition

2011-2012 General Assembly

Committee:	Senate Agriculture/Environment/Natural Resources	**Date:**	February 8, 2011
Introduced by:	Senators Brown and Rouzer	**Prepared by:**	Jeff Hudson
Analysis of:	First Edition		Committee Counsel

SUMMARY: ***Senate Bill 22 would amend the Administrative Procedure Act to prohibit an agency from adopting a rule under certain circumstances if the rule results in additional costs on persons subject to the rule.***

CURRENT LAW: Under G.S. 150B-19 of the Administrative Procedure Act (APA), an agency[1] is generally prohibited from adopting a rule[2] that does one or more of the following:

- Implements or interprets a law unless that law or another law specifically authorizes the agency to do so.
- Enlarges the scope of an occupation for which an occupational license is required.
- Imposes criminal liability or a civil penalty unless a law specifically authorizes the agency to do so.
- Repeats the content of a law, a rule, or a federal regulation.
- Establishes a fee or other charge for providing a service in fulfillment of a duty unless a law specifically authorizes the agency to do so.
- Allows the agency to waive or modify a requirement set in a rule unless a rule establishes specific guidelines the agency must follow in determining whether to waive or modify the requirement.

BILL ANALYSIS: Senate Bill 22 would amend G.S. 150B-19 to prohibit an agency from adopting a rule that results in additional costs on persons subject to the rule unless adoption of the rule is required to respond to at least one of the following:

- A serious and unforeseen threat to the public health, safety, or welfare.
- An act of the General Assembly or the United States Congress.
- A change in federal or State budgetary policy.
- A federal regulation.
- A court order.

EFFECTIVE DATE: Senate Bill 22 would become effective when it becomes law and would apply to rules adopted by an agency on or after that date.

S22-SMSB-1(e1) v1

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[1] G.S. 150B-2 defines "agency" as an agency or an officer in the executive branch of the government of this State and includes the Council of State, the Governor's Office, a board, a commission, a department, a division, a council, and any other unit of government in the executive branch. A local unit of government is not an agency.

[2] G.S. 150B-2 defines "rule" as any agency regulation, standard, or statement of general applicability that implements or interprets an enactment of the General Assembly or Congress or a regulation adopted by a federal agency or that describes the procedure or practice requirements of an agency. The term includes the establishment of a fee and the amendment or repeal of a prior rule.

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BUDDY HUGHES
Lexington, (336) 240-3097
hucon@ptmc.net

Ex ice President
RPENTER

February 8, 2011

DCR

The Honorable David Rouzer
The Honorable Harry Brown
North Carolina Senate
Legislative Office Building
Room 523
Raleigh, NC 27603

Dear Senators Rouzer and Brown,

On behalf of the business organizations listed below, we thank you for your sponsorship of SB 22 APA Rules: Increasing Costs Prohibition.

North Carolina Home Builders Association
NC Chamber
NC Retail Merchants Association
Manufacturers & Chemical Industry Council of NC
NC Association of Realtors
Duke Energy
Progress Energy
NC Forestry Association
NC Farm Bureau Federation
Carolinas Associated General Contractors
NC Manufactured & Modular Home Builders Association

Agency rules often impact the state's business climate by discouraging the creation and/or expansion of small businesses; by impeding the ability of NC businesses to compete with out of state companies; and by hindering economic competitiveness and job creation. SB 22 would prohibit agencies from adopting rules that result in an additional cost to the regulated community and NC citizens. SB 22 does not prohibit all rulemaking and necessarily allows agencies to implement rules in response to a true emergency.

Most importantly, SB 22 represents a much needed first step toward comprehensive regulatory reform. We look forward to working with you on additional measures that improve the regulatory environment of North Carolina.

Sincerely,

Lisa Martin

Lisa D. Martin
Director of Government Affairs

PAST PRESIDENTS

EUGENE A. GULLEDGE (1964)
C. PHIL ROBINSON, JR. (1966)
CARL W. JOHNSON (1967)
JOHN CROSLAND, JR. (1968)
*J.M. DAUGHTRIDGE (1969)
*HOMER BARRETT (1970)
*JAMES W. LESTER (1971)
CHARLES C. McLAURIN (1972)
J. VAUGHN CLUTTS (1973)
C.L. REAVIS (1974)
JOHN T. BELL (1975)
*WILLIAM T. BOYD (1976)
LaRUE HAMBRICK (1977)
J. RAY SPARROW (1978)
SHERRILL FAW (1979)
MARK E. TIPTON (1980)
M. DURWOOD STEPHENSON (1981)
J. WATTS ROBERSON (1982)
*NELSON CALLAHAN (1983)
PAUL D. TROLLINGER (1984)
RICK BATCHELOR (1985)
BURL LANCE (1986)
LARRY SUMMER (1987)
HERSCHEL REDDING (1988)
JAMES FORD (1989)
STEVE NASH (1990)
HARRIS B. GUPTON (1991)
RUSS DAVIS (1992)
CHUCK MILLER (1993)
CHARLES MULLEN (1994)
ROBERT INGRAHAM (1995)
DAVID PRESSLY, JR. (1996)
DONALD W. BETSWORTH (1997)
GEORGE HENSON (1998)
ROBERT YATKO (1999)
DANNY ADAMS (2000)
JONATHAN ELLIOT (2001)
DON CROOM (2002)
GREG ISENHOUR (2003)
RICK JUDSON (2004)
BUDDY HUGHES (2005)
DAVE STORMONT (2006)
PAUL MULLICAN (2007)
RAY RHODES (2008)
FRANK WIESNER (2009)
LYLE GARDNER (2010)

*Deceased

PAGES ATTENDING

COMMITTEE: Ag-En-Nat'l Res. **ROOM:** 544

DATE: 2-8 **TIME:** 11 AM

PLEASE PRINT LEGIBILY!!!!!!!!!!!!

Page Name	Hometown	Sponsoring Senator
1 Sara Pearce	New Bern	Preston
2		
3		
5		
6		
7		
8		
9		
10		

Do not add names below the grid.

Pages: Present this form to either the Committee Clerk at the meeting or to the Sgt-Arms.

VISITOR REGISTRATION SHEET

Ag/Env/Nat. Resources (2011-2012) — 2-8-2011
Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Bruce Thompson	Parker Poe
John Goodman	NC Chamber
Debbie Hamrick	NC Farm Bureau
Cady Thomas	NCAR
Tommy Stevens	NCPC
Doug Lassiter	NCSTA
Michael Hunter	NCDOR
Mac Boxley	NC Aggregates

VISITOR REGISTRATION SHEET

Ag/Env/Nat. Resources (2011-2012) — **Name of Committee**

2-8-2011 — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
George Everett	Duke Energy
[signature]	NCBA & other
Vernon Cox	NCDA&CS
John Merritt	MWC LLC
[signature]	DHHS
Tom Bean	NCEDF NCWF
John Shaw	Sierra Club – Capital Group
Peggie Potter	NCDS & NCPTA
[signature]	CWM

Senate Agriculture/Environment/Natural Resources

Minutes

March 1, 2011

The Senate Ag/Env/Nat. Resources committee met on Tuesday, March 1, 2011 in Room 544-LOB. There were 17 senators present.

Senator David Rouzer called the meeting to order and introduced Pages and Sgt-At-Arms staff.

SB-110-PERMIT TERMINAL GROINS

Sen. Harry Brown was recognized to explain the bill. Sen East moved for the adoption of the PCS for discussion. So moved. (Attached PCS and summary). Sen. Brown gave a history of the issue and explained the PCS . Sen. Atwater asked how many inlets qualify for groins? Mr. Jeffrey Hudson, staff counsel responded. Sen. Atwater followed-up and asked if the CRC (Coastal Resources Commission) study covered maintenance costs? Mr. Hudson responded again. Sen. Brown gave additional explanation and gave costs that have been spent. Sen. Atwater would like to know how the Dept. of DENR feels about this. Ms. Robin Smith, Asst. Deputy Secretary spoke on this. Sen. Jenkins spoke on the challenges of the coastal communities. He sponsored this legislation last year and knows the importance of this and he commended the PCS to the committee. Sen. Allran has received a lot of information and he's hearing that we don't need to spend tax dollars so he asked where the money will come from, and where will they be built? Sen. Brown responded that private dollars and local governments may want to get involved but there are no tax dollars spent to do this. This will be an open issue within communities so everyone will know where the funds come from. Sen. Allran asked for clarification that no state funds will be spent and is it logical that local areas would not be involved unless it is for an economic benefit. Sen. Brown said that is correct. Sen. Clodfelter questioned the financial section on Page 2 and his question was is there any financial security by posting a surety bond so that there are not problems down the road. Sen. Brown advised that this will be addressed by the House colleagues. Sen. Clodfelter asked Sen. Brown is he would consider adding that to his bill. Sen. Brown said he would. Sen. Clodfelter followed up and asked if there will be a veto power by the Dept of DENR of Dept. of Commerce. Ms. Smith, DENR responded again and said that each state responds through Federal permitted projects or federal development projects on coastal areas. Sen. Clodfelter asked for language clarification in connection with SB-22. Mr. Hudson explained the wording and said it could be something that the CRC may need to be consulted on the language. Sen. Bingham asked if Sen. Clodfelter will send forth an amendment pertaining to bonding. Sen. Brown said they could do that any way the members would like to in this meeting or let the House make the addition. Sen. Goolsby (bill co-sponsor) added comments and explanation in support of this bill. Ms. Smith made additional comments about the CRC and the groins that have been looked at in other states and also in NC. There is a need for something to be done. Sen. Goolsby spoke again and would like to see the cost study that Ms. Smith spoke about. Sen. Brown spoke on the permits. Sen. Rabon spoke in favor of this bill. He

explained how difficult Mother Nature can be and we need to protect our beaches. This will protect our economic interests and protect the people of this state that live along the coast lines. He asked members if they lived in a fire area what would they do to protect their homes. He believes most people would protect their properties. Sen. Tucker knows of where there is a terminal groin that is doing its job after 40 years and he knows the importance of this. Sen. Kinnaird asked how much we are willing to spend to defeat Mother Nature when we can't. If this bill passes and we get many groins there will be a huge impact and she urged careful consideration before we allow this to continue. She would be interested in knowing how much money has been spent on beach Renourishment with state, local and federal money in the past ten years. Mr. Hudson said they will try to get these figures. Ms. Smith said she believes it is close to $100 million dollars. The federal dollars are now declining and we can expect to see the state dollars increasing.

Mr. Spencer Rogers, NC Sea Grant, Wilmington, NC gave a power point presentation. (Attached copy). He explained a groin and jetty.

Sen. Kinnaird asked about the accumulative impact along the coast and the inlets? Mr. Rogers responded that both sides of an inlet are usually affected.

Public comments:

Ms. Robin Smith, DENR addressed members from the Dept. of DENR's concerns which includes some federal funding.

Mr. Dick Beerly, Carteret County addressed members and spoke on preserving the coastal regions. Some people say that groins don't work and there are opponents to this bill. Most of those people live at the beach. The CRC (Coastal Resources Commission) figures the costs of building these groins and it is in the millions of dollars. Please reject this legislation; it is not a good way to spend tax payer monies.

Ms. Sue Ryland, Sunset Beach property owner. They have a beautiful beach and the neighboring beach (Ocean Isle) has a serious problem and they will put in groins if this bill passes. This will cause problems for Sunset Beach. She urged members to defeat the bill and listen to the beach owners.

Ms. Renee Cahoon, Town of Commissioner- Nags Head. The local governments cannot take on the expenses but they have voted to agree to do this with specific provisions. They want to see tourism flourish. Some areas can add millions to their tax base if this is allowed and she urged for support.

Sen. Rabon moved for a favorable report for the PCS, unfavorable to the original bill. Vote taken and so moved.

Meeting Adjourned at 12:04 P.M.

Sen. David Rouzer, Co-chair

Cindy J. Davis, Committee Clerk

Senate Agriculture/Environment/Natural Resources Committee
Tuesday, March 1, 2011, 11:00
544 LOB

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

SB 110	Permit Terminal Groins.	Senator Brown Senator Goolsby Senator Rabon

Presentations

Other Business

Adjournment

Principal Clerk ____
Reading Clerk ____

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

The Senate Committee on **Agriculture/Environment/Natural Resources** will meet at the following time:

DAY	DATE	TIME	ROOM
Tuesday	March 1, 2011	11:00 am	544 LOB

The following will be considered:

BILL NO.	SHORT TITLE	SPONSOR
SB 110	Permit Terminal Groins.	Senator Brown Senator Goolsby Senator Rabon

Senator Don East, Co-Chair
Senator David Rouzer, Co-Chair

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES COMMITTEE REPORT
Senator Don East, Co-Chair
Senator David Rouzer, Co-Chair

Tuesday, March 01, 2011

Senator ROUZER,
submits the following with recommendations as to passage:

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

S.B. **110** Permit Terminal Groins.

Draft Number:	PCS35092
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

TOTAL REPORTED: 1

Committee Clerk Comments:

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

S D

SENATE BILL 110
PROPOSED COMMITTEE SUBSTITUTE S110-PCS35092-TA-1

Short Title: Permit Terminal Groins. (Public)

Sponsors:

Referred to:

February 24, 2011

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE PERMITTING AND CONSTRUCTION OF TERMINAL GROINS AT INLETS UNDER CERTAIN CONDITIONS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 113A-115.1 reads as rewritten:

"**§ 113A-115.1. Limitations on erosion control structures.**

(a) As used in this section:

(1) "Erosion control structure" means a breakwater, bulkhead, groin, jetty, revetment, seawall, or any similar structure.

(1a) "Estuarine shoreline" means all shorelines that are not ocean shorelines that border estuarine waters as defined in G.S. 113A-113(b)(2).

(2) "Ocean shoreline" means the Atlantic Ocean, the oceanfront beaches, and frontal dunes. The term "ocean shoreline" includes an ocean inlet and lands adjacent to an ocean inlet but does not include that portion of any inlet and lands adjacent to the inlet that exhibits characteristics of estuarine shorelines.

(3) "Terminal groin" means a structure that is constructed on the side of an inlet at the terminus of an island generally perpendicular to the shoreline to limit or control sediment passage into the inlet channel.

(b) No person shall construct a permanent erosion control structure in an ocean shoreline. The Commission shall not permit the construction of a temporary erosion control structure that consists of anything other than sandbags in an ocean shoreline. This section shall not apply to ~~(i) any~~any of the following:

(1) Any permanent erosion control structure that is approved pursuant to an exception set out in a rule adopted by the Commission prior to ~~1 July 2003 or (ii) any~~ July 1, 2003.

(2) Any permanent erosion control structure that was originally constructed prior to ~~1 July~~July 1, 1974 and that has since been in continuous use to protect an inlet that is maintained for navigation.

(3) Any terminal groin permitted pursuant to subsection (f) of this section.

(b1) This section shall not be construed to limit the authority of the Commission to adopt rules to designate or protect areas of environmental concern, to govern the use of sandbags, or to govern the use of erosion control structures in estuarine shorelines.

(c) The Commission may renew a permit for an erosion control structure issued pursuant to a variance granted by the Commission prior to ~~1 July~~July 1, 1995. The Commission

may authorize the replacement of a permanent erosion control structure that was permitted by the Commission pursuant to a variance granted by the Commission prior to ~~1 July~~July 1, 1995 if the Commission finds that: (i) the structure will not be enlarged beyond the dimensions set out in the original permit; (ii) there is no practical alternative to replacing the structure that will provide the same or similar benefits; and (iii) the replacement structure will comply with all applicable laws and with all rules, other than the rule or rules with respect to which the Commission granted the variance, that are in effect at the time the structure is replaced.

(d) Any rule that prohibits permanent erosion control structures shall not apply to terminal groins permitted pursuant to subsection (f) of this section.

(e) In addition to the permit application requirements of Part 4 of Article 7 of Chapter 113A of the General Statutes, an application for a permit for the construction of a terminal groin shall include all of the following:

(1) An assessment and finding that nonstructural approaches to erosion control, including relocation of threatened structures, are found to be impractical.

(2) An environmental impact statement that has been reviewed by an independent third party and satisfies the requirements of G.S. 113A-4.

(3) An engineering design bearing the seal of a registered professional engineer licensed to practice pursuant to Chapter 89C of the General Statutes that describes the construction and maintenance of the proposed terminal groin, as well as the accompanying beach fill project required to be undertaken pursuant to subsection (f) of this section. The engineering design shall identify those property owners and local governments on both sides of the inlet that may be affected by the construction of the proposed terminal groin.

(4) Proof of notification of those property owners and local governments on both sides of the inlet identified in the engineering design prepared pursuant to subdivision (3) of this subsection as potentially affected by the construction of the proposed terminal groin.

(5) An inlet management plan that includes estuarine and ocean shorelines immediately adjacent to, and under the influence of, the inlet that describes postconstruction activities that the permittee will undertake to monitor the effects of the terminal groin and related dredging and beach fill. The plan shall define thresholds for assessing negative impacts to coastal resources due to construction of the terminal groin and provide a plan for mitigating negative impacts, including modification or removal of the terminal groin if negative impacts cannot be mitigated. These mitigation efforts shall be the responsibility of the permittee.

(6) Identification of the financial resources or funding sources necessary to construct the terminal groin and the accompanying beach fill and to conduct subsequent shoreline monitoring.

(f) A terminal groin shall only be permitted pursuant to this section under all of the following conditions:

(1) The permit applicant has complied with the requirements of subsection (e) of this section.

(2) The permit applicant has notified those property owners and local governments on both sides of the inlet identified in the engineering design prepared pursuant to subsection (e) of this section as potentially affected by the construction of the proposed terminal groin.

(3) The construction of the terminal groin is accompanied by a concurrent beach fill project to prefill the groin.

(g) Only one terminal groin may be placed on each ocean shoreline immediately adjacent to an inlet for a maximum of two groins per inlet."

SECTION 2. The Department of Environment and Natural Resources shall amend the management program it adopted pursuant to the federal Coastal Zone Management Act, 16 U.S.C. § 1451, et seq., to ensure the management program is consistent with G.S. 113A-115.1, as amended by Section 1 of this act, and shall seek approval of the proposed amended management plan by the United States Secretary of Commerce or the Secretary's authorized designee no later than six months after the effective date of this act. The Department may adopt any rules necessary to implement this section.

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

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

S 1

SENATE BILL 110

Short Title:	Permit Terminal Groins.	(Public)
Sponsors:	Senators Brown, Goolsby, Rabon; Blake, Davis; Forrester, Jenkins, Preston, Rouzer, Tillman, Tucker, Walters, and White.	
Referred to:	Agriculture/Environment/Natural Resources.	

February 24, 2011

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE PERMITTING AND CONSTRUCTION OF TERMINAL GROINS AT INLETS UNDER CERTAIN CONDITIONS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 113A-115.1 reads as rewritten:

"**§ 113A-115.1. Limitations on erosion control structures.**

(a) As used in this section:

(1) "Erosion control structure" means a breakwater, bulkhead, groin, jetty, revetment, seawall, or any similar structure.

(1a) "Estuarine shoreline" means all shorelines that are not ocean shorelines that border estuarine waters as defined in G.S. 113A-113(b)(2).

(2) "Ocean shoreline" means the Atlantic Ocean, the oceanfront beaches, and frontal dunes. The term "ocean shoreline" includes an ocean inlet and lands adjacent to an ocean inlet but does not include that portion of any inlet and lands adjacent to the inlet that exhibits characteristics of estuarine shorelines.

(3) "Terminal groin" means a structure that is constructed on the side of an inlet at the terminus of an island generally perpendicular to the shoreline to limit or control sediment passage into the inlet channel.

(b) No person shall construct a permanent erosion control structure in an ocean shoreline. The Commission shall not permit the construction of a temporary erosion control structure that consists of anything other than sandbags in an ocean shoreline. This section shall not apply to ~~(i) any~~any of the following:

(1) Any permanent erosion control structure that is approved pursuant to an exception set out in a rule adopted by the Commission prior to ~~1 July 2003 or (ii) any~~ July 1, 2003.

(2) Any permanent erosion control structure that was originally constructed prior to ~~1 July~~July 1, 1974 and that has since been in continuous use to protect an inlet that is maintained for navigation.

(3) Any terminal groin permitted pursuant to subsection (f) of this section.

(b1) This section shall not be construed to limit the authority of the Commission to adopt rules to designate or protect areas of environmental concern, to govern the use of sandbags, or to govern the use of erosion control structures in estuarine shorelines.

(c) The Commission may renew a permit for an erosion control structure issued pursuant to a variance granted by the Commission prior to ~~1 July~~July 1, 1995. The Commission may authorize the replacement of a permanent erosion control structure that was permitted by the Commission pursuant to a variance granted by the Commission prior to ~~1 July~~July 1, 1995

if the Commission finds that: (i) the structure will not be enlarged beyond the dimensions set out in the original permit; (ii) there is no practical alternative to replacing the structure that will provide the same or similar benefits; and (iii) the replacement structure will comply with all applicable laws and with all rules, other than the rule or rules with respect to which the Commission granted the variance, that are in effect at the time the structure is replaced.

(d) Any existing rule that prohibits permanent erosion control structures shall not apply to terminal groins.

(e) In addition to the permit application requirements of Part 4 of Article 7 of Chapter 113A of the General Statutes, an application for a permit for the construction of a terminal groin shall include all of the following:

(1) An assessment and finding that nonstructural approaches to erosion control, including relocation of threatened structures, are found to be impractical.

(2) An environmental impact statement that has been reviewed by an independent third party and satisfies the requirements of G.S. 113A-4.

(3) An engineering design bearing the seal of a registered professional engineer licensed to practice pursuant to Chapter 89C of the General Statutes that describes the construction and maintenance of the proposed terminal groin, as well as the accompanying beach fill project required to be undertaken pursuant to subsection (f) of this section. The engineering design shall identify those property owners and local governments on both sides of the inlet that may be affected by the construction of the proposed terminal groin.

(4) Proof of notification of those property owners and local governments on both sides of the inlet identified in the engineering design prepared pursuant to subdivision (3) of this subsection as potentially affected by the construction of the proposed terminal groin.

(5) An inlet management plan that includes estuarine and ocean shorelines immediately adjacent to, and under the influence of, the inlet that describes postconstruction activities that the permittee will undertake to monitor the effects of the terminal groin and related dredging and beach fill. The plan shall define thresholds for assessing negative impacts to coastal resources due to construction of the terminal groin and provide a plan for mitigating negative impacts, including modification or removal of the terminal groin if negative impacts cannot be mitigated. These mitigation efforts shall be the responsibility of the permittee.

(6) Identification of the financial resources or funding sources necessary to construct the terminal groin and the accompanying beach fill and to conduct subsequent shoreline monitoring.

(f) A terminal groin shall only be permitted pursuant to this section under all of the following conditions:

(1) The permit applicant has complied with the requirements of subsection (e) of this section.

(2) The permit applicant has notified those property owners and local governments on both sides of the inlet identified in the engineering design prepared pursuant to subsection (e) of this section as potentially affected by the construction of the proposed terminal groin.

(3) The construction of the terminal groin is accompanied by a concurrent beach fill project to prefill the groin.

(g) Except as provided in this subsection, only one terminal groin may be placed on each ocean shoreline immediately adjacent to an inlet for a maximum total of two groins per inlet. One additional terminal groin may be placed on the ocean shoreline of an inlet when the ocean shoreline is immediately adjacent to a federally maintained navigation channel

associated with a State port, the negative shoreline impacts from the navigation channel can be identified and verified by an independent third party, and the additional terminal groin will be able to mitigate negative shoreline impacts associated with the location and maintenance of the navigation channel."

SECTION 2. The Department of Environment and Natural Resources shall amend the management program it adopted pursuant to the federal Coastal Zone Management Act, 16 U.S.C. § 1451, et seq., to ensure the management program is consistent with G.S. 113A-115.1, as amended by Section 1 of this act, and shall seek approval of the amended management plan by the United States Secretary of Commerce or the Secretary's authorized designee no later than six months after the effective date of this act.

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

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

S D

SENATE BILL 110
PROPOSED COMMITTEE SUBSTITUTE S110-CSTA-1 [v.2]

2/28/2011 9:19:51 AM

Short Title: Permit Terminal Groins. (Public)

Sponsors:

Referred to:

February 24, 2011

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE PERMITTING AND CONSTRUCTION OF TERMINAL GROINS AT INLETS UNDER CERTAIN CONDITIONS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 113A-115.1 reads as rewritten:

"**§ 113A-115.1. Limitations on erosion control structures.**

(a) As used in this section:

(1) "Erosion control structure" means a breakwater, bulkhead, groin, jetty, revetment, seawall, or any similar structure.

(1a) "Estuarine shoreline" means all shorelines that are not ocean shorelines that border estuarine waters as defined in G.S. 113A-113(b)(2).

(2) "Ocean shoreline" means the Atlantic Ocean, the oceanfront beaches, and frontal dunes. The term "ocean shoreline" includes an ocean inlet and lands adjacent to an ocean inlet but does not include that portion of any inlet and lands adjacent to the inlet that exhibits characteristics of estuarine shorelines.

(3) "Terminal groin" means a structure that is constructed on the side of an inlet at the terminus of an island generally perpendicular to the shoreline to limit or control sediment passage into the inlet channel.

(b) No person shall construct a permanent erosion control structure in an ocean shoreline. The Commission shall not permit the construction of a temporary erosion control structure that consists of anything other than sandbags in an ocean shoreline. This section shall not apply to ~~(i) any~~any of the following:

(1) Any permanent erosion control structure that is approved pursuant to an exception set out in a rule adopted by the Commission prior to ~~1 July 2003 or (ii) any~~ July 1, 2003.

(2) Any permanent erosion control structure that was originally constructed prior to ~~1 July~~July 1, 1974 and that has since been in continuous use to protect an inlet that is maintained for navigation.

(3) Any terminal groin permitted pursuant to subsection (f) of this section.

(b1) This section shall not be construed to limit the authority of the Commission to adopt rules to designate or protect areas of environmental concern, to govern the use of sandbags, or to govern the use of erosion control structures in estuarine shorelines.

(c) The Commission may renew a permit for an erosion control structure issued pursuant to a variance granted by the Commission prior to ~~1 July~~July 1, 1995. The Commission

may authorize the replacement of a permanent erosion control structure that was permitted by the Commission pursuant to a variance granted by the Commission prior to ~~1 July~~July 1, 1995 if the Commission finds that: (i) the structure will not be enlarged beyond the dimensions set out in the original permit; (ii) there is no practical alternative to replacing the structure that will provide the same or similar benefits; and (iii) the replacement structure will comply with all applicable laws and with all rules, other than the rule or rules with respect to which the Commission granted the variance, that are in effect at the time the structure is replaced.

(d) Any rule that prohibits permanent erosion control structures shall not apply to terminal groins permitted pursuant to subsection (f) of this section.

(e) In addition to the permit application requirements of Part 4 of Article 7 of Chapter 113A of the General Statutes, an application for a permit for the construction of a terminal groin shall include all of the following:

(1) An assessment and finding that nonstructural approaches to erosion control, including relocation of threatened structures, are found to be impractical.

(2) An environmental impact statement that has been reviewed by an independent third party and satisfies the requirements of G.S. 113A-4.

(3) An engineering design bearing the seal of a registered professional engineer licensed to practice pursuant to Chapter 89C of the General Statutes that describes the construction and maintenance of the proposed terminal groin, as well as the accompanying beach fill project required to be undertaken pursuant to subsection (f) of this section. The engineering design shall identify those property owners and local governments on both sides of the inlet that may be affected by the construction of the proposed terminal groin.

(4) Proof of notification of those property owners and local governments on both sides of the inlet identified in the engineering design prepared pursuant to subdivision (3) of this subsection as potentially affected by the construction of the proposed terminal groin.

(5) An inlet management plan that includes estuarine and ocean shorelines immediately adjacent to, and under the influence of, the inlet that describes postconstruction activities that the permittee will undertake to monitor the effects of the terminal groin and related dredging and beach fill. The plan shall define thresholds for assessing negative impacts to coastal resources due to construction of the terminal groin and provide a plan for mitigating negative impacts, including modification or removal of the terminal groin if negative impacts cannot be mitigated. These mitigation efforts shall be the responsibility of the permittee.

(6) Identification of the financial resources or funding sources necessary to construct the terminal groin and the accompanying beach fill and to conduct subsequent shoreline monitoring.

(f) A terminal groin shall only be permitted pursuant to this section under all of the following conditions:

(1) The permit applicant has complied with the requirements of subsection (e) of this section.

(2) The permit applicant has notified those property owners and local governments on both sides of the inlet identified in the engineering design prepared pursuant to subsection (e) of this section as potentially affected by the construction of the proposed terminal groin.

(3) The construction of the terminal groin is accompanied by a concurrent beach fill project to prefill the groin.

(g) Only one terminal groin may be placed on each ocean shoreline immediately adjacent to an inlet for a maximum of two groins per inlet."

SECTION 2. The Department of Environment and Natural Resources shall amend the management program it adopted pursuant to the federal Coastal Zone Management Act, 16 U.S.C. § 1451, et seq., to ensure the management program is consistent with G.S. 113A-115.1, as amended by Section 1 of this act, and shall seek approval of the proposed amended management plan by the United States Secretary of Commerce or the Secretary's authorized designee no later than six months after the effective date of this act. The Department may adopt any rules necessary to implement this section.

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

SENATE PCS 110:
Permit Terminal Groins.

2011-2012 General Assembly

Committee:	Senate Agriculture/Environment/Natural Resources	**Date:**	March 1, 2011
Introduced by:	Senators Brown, Goolsby, Rabon	**Prepared by:**	Jennifer Mundt Legislative Analyst
Analysis of:	PCS to First Edition S110-CSTA-1 [v.2]		

SUMMARY: ***The Proposed Committee Substitute (PCS) for Senate Bill 110 would authorize the permitting and construction of terminal groins on ocean shorelines immediately adjacent to inlets.***

CURRENT LAW:

Current law prohibits the construction of permanent erosion control structures on an ocean shoreline. "Erosion control structures" means a breakwater, bulkhead, groin, jetty, revetment, seawall, or any similar structure. "Ocean shoreline" means the Atlantic Ocean, the oceanfront beaches, and frontal dunes and includes ocean inlets and lands adjacent to ocean inlets but does not include that portion of any inlet and lands adjacent to the inlet that exhibit characteristics of estuarine shorelines. Sandbags, as permitted by the Coastal Resources Commission (Commission), may be used as temporary erosion control structures on an ocean shoreline.

Exceptions to the prohibition apply to any permanent erosion control structure approved by the Commission prior to July 1, 2003 or to any permanent erosion control structure that was originally constructed prior to July 1, 1974 that has been in continuous use to protect an inlet maintained for navigation. The Commission may renew a permit for an erosion control structure issued pursuant to a variance granted by the Commission prior to July 1, 1995. In addition, the Commission may authorize the replacement of a permanent erosion control structure that was permitted by the Commission pursuant to a variance granted by the Commission if certain conditions are met.

BILL ANALYSIS:

The PCS for Senate Bill 110 would authorize the permitting and construction of terminal groins[1] that meet certain permit and placement criteria.

Terminal Groin Permit Application: In addition to the permit application requirements required pursuant to the Coastal Area Management Act of 1974 (Article 7 of Chapter 113A of the General Statutes), an application for a permit to construct a terminal groin must include all of the following:

- An assessment and finding that nonstructural approaches to erosion control, including relocation of threatened structures, are impractical.
- An environmental impact statement, reviewed by an independent third party, that satisfies the requirements of the State Environmental Policy Act.
- An engineering design bearing the seal of a registered professional engineer that describes the construction and maintenance of the proposed terminal groin and accompanying beach fill project. The engineering design must identify property owners and local governments on both sides of the inlet that may be affected by construction of the proposed terminal groin.

[1] The bill defines "terminal groin" to mean a structure that is constructed on the side of an inlet at the terminus of an island generally perpendicular to the shoreline to limit or control sediment passage into the inlet channel.

- Proof of notification of those property owners and local governments identified in the engineering design as being potentially affected by the construction of the terminal groin.
- An inlet management plan that includes estuarine[2] and ocean shorelines immediately adjacent to, and under the influence of, the inlet that describes postconstruction activities that the permittee will undertake to monitor the effects of the terminal groin and related dredging and beach fill. The inlet management plan must define thresholds for assessing negative impacts resulting from construction of the terminal groin and include a plan for mitigating any negative impacts to coastal resources, including modification or removal of the terminal groin if negative impacts cannot be mitigated. Mitigation efforts will be the responsibility of the permittee.
- Identification of the financial or funding sources necessary to construct the terminal groin and accompanying beach fill and to conduct subsequent shoreline monitoring.

Terminal Groin Permit Issuance: The Commission may only permit the construction of a terminal groin for an applicant that: (i) meets all of the aforementioned criteria, (ii) has notified the potentially affected property owners and local governments on both sides of the inlet identified in the engineering design, and (iii) accompanies the construction of the terminal groin with a concurrent beach fill project to prefill the groin.

Rules: Any rules that prohibit permanent erosion control structures would not apply to terminal groins permitted under the conditions set out in this act.

Terminal Groin Placement Criteria: Only one terminal groin may be placed on each ocean shoreline immediately adjacent to an inlet for a maximum of two groins per inlet.

Federal Approval: The PCS for Senate Bill 110 would also direct the Department of Environment and Natural Resources to amend the State coastal management program to ensure consistency with the provisions of this act that would allow for the permitting of terminal groins and to seek the approval of the proposed amended management plan by the U.S. Secretary of Commerce, or the Secretary's designee no later than six months after the effective date of this act. The Department may adopt any rules as necessary to satisfy this requirement.

The PCS amends the 1st edition of Senate Bill 110 as follows:

- Removes language to authorize an additional terminal groin to be placed on the ocean shoreline of an inlet adjacent to a federally maintained navigation channel associated with a State port in subsection (g).
- Adds clarifying language to Section 2 regarding rulemaking required to implement the act.
- Makes clarifying and conforming changes.

EFFECTIVE DATE: Senate Bill 110 would be effective when it becomes law.

S110-SMTA-2(CSTA-1) v2

[2] The bill defines "estuarine shorelines" to mean all shorelines that are not ocean shorelines that border estuarine waters as defined by G.S. 113A-113(b)(2)" (Per G.S. 113A-113(b)(2), "estuarine waters" includes all the water of the Atlantic Ocean within the boundary of North Carolina and all the waters of the bays, sounds, rivers, and tributaries thereto seaward of the dividing line between coastal fishing waters and inland fishing waters, as set forth by the most recent official published agreement adopted by the Wildlife Resources Commission and the Department.)

TERMINAL GROINS

Spencer Rogers

North Carolina Sea Grant
UNC-Wilmington Center for Marine Science
NCSU Dept. of Civil Engineering

Sea Grant
North Carolina

WHY TERMINAL GROINS NOW?

Community investment in beachfill

Lessons Learned:

- **Maintenance required**
- **Not a universal cure**
- **Not cost-effective in high erosion areas like inlets**

Definitions

JETTY A structure used to stabilize a navigation channel. Usually found in pairs on each side of an inlet.

GROIN A structure perpendicular to the shoreline used for shoreline stabilization. Used as single or multiple structures

TERMINAL GROIN A groin located at the end of a sand transport system, typically an inlet. Usually a single structure.

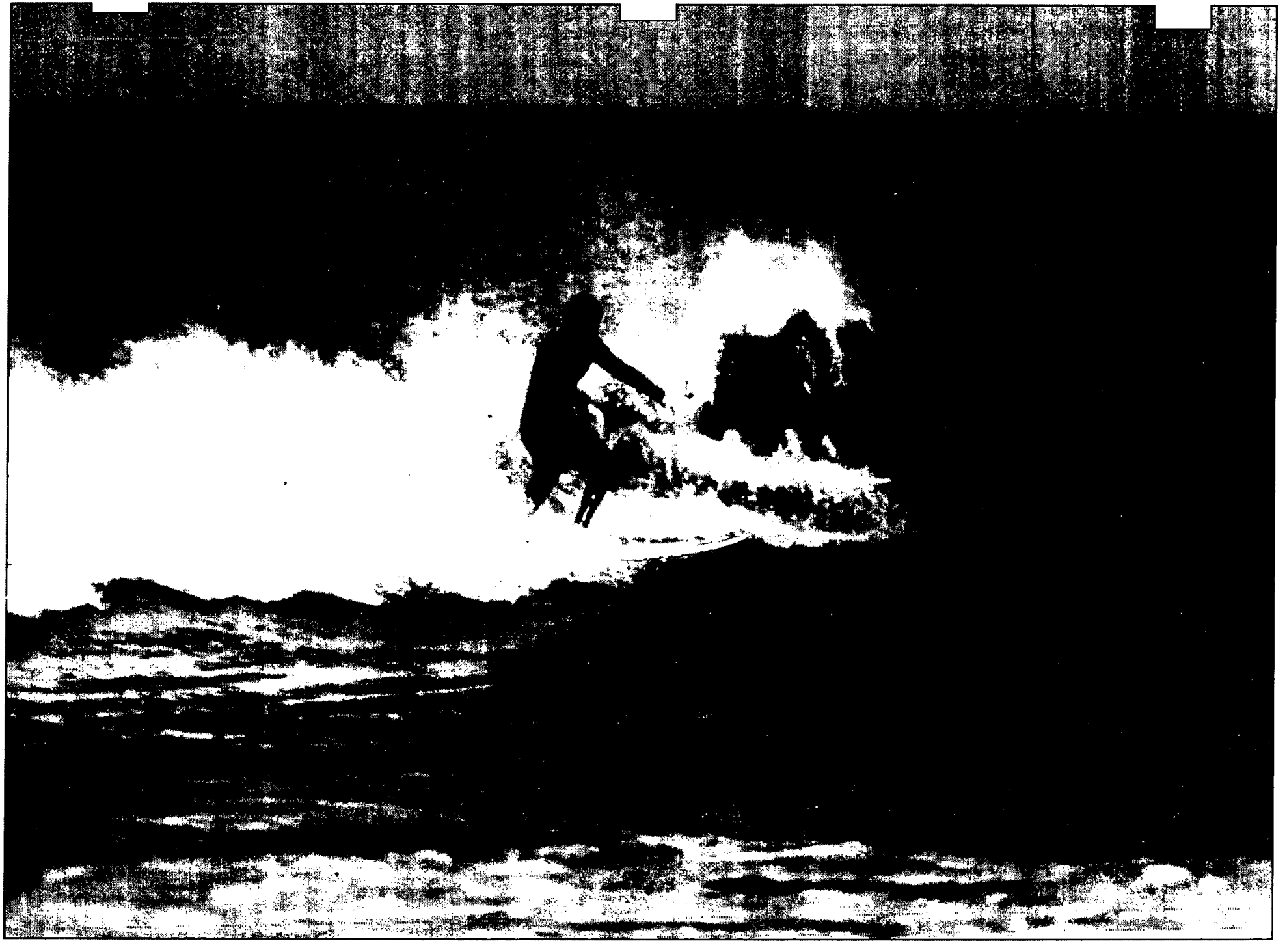
Size

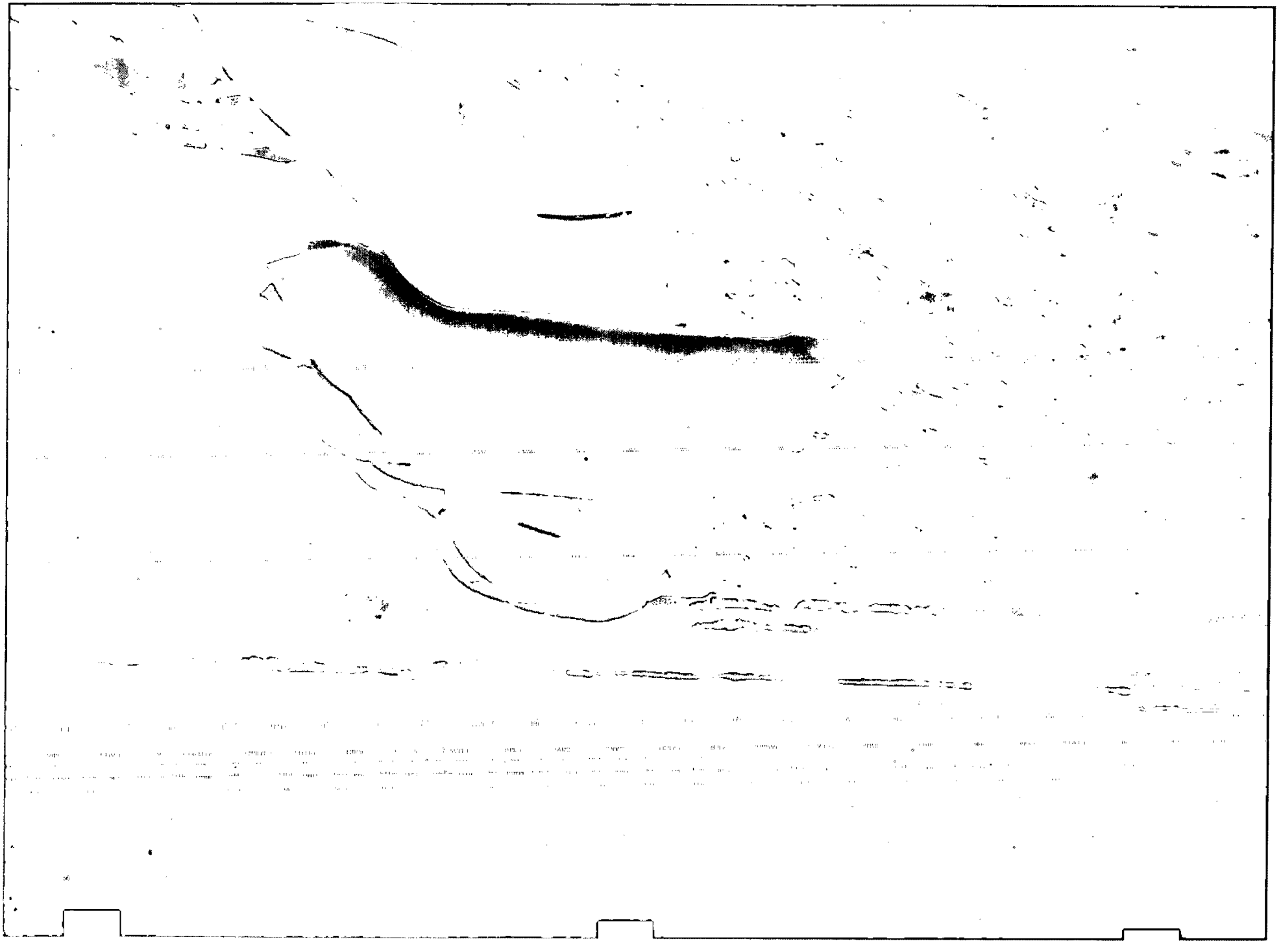
Large, in some cases over a mile in length.

Much smaller than a jetty, ~5 times smaller.

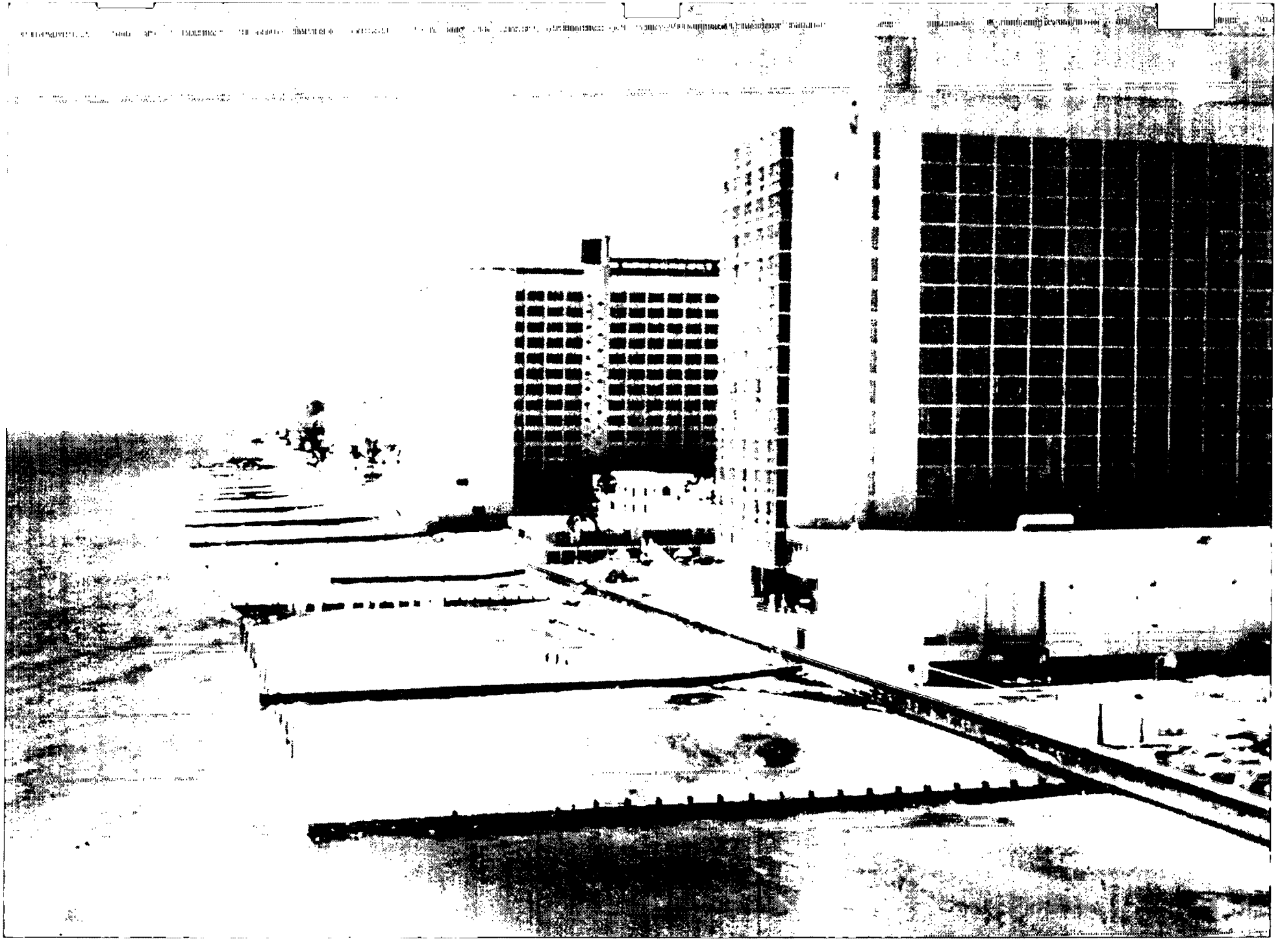
Structure sizes vary with the size of the inlet.

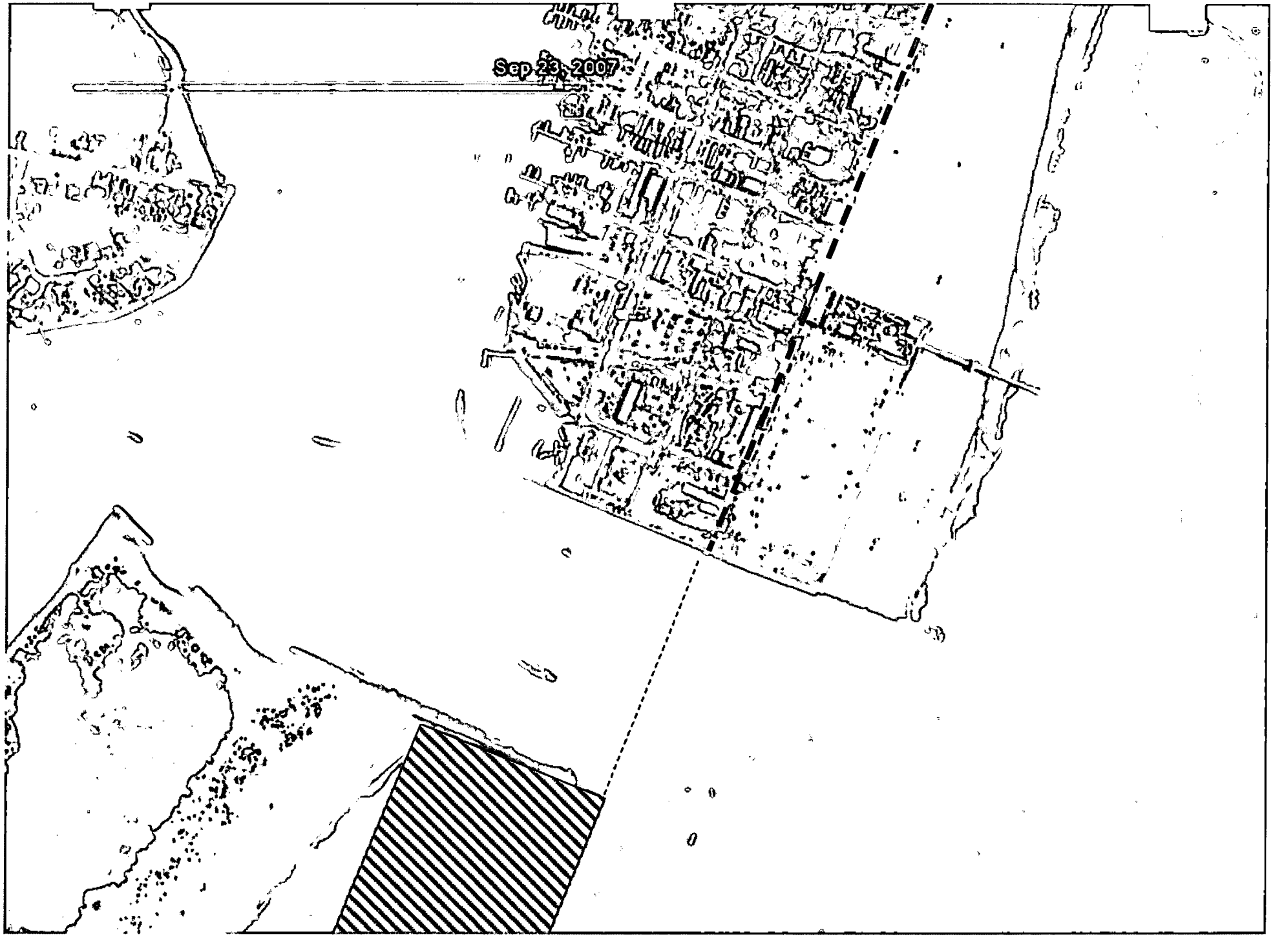




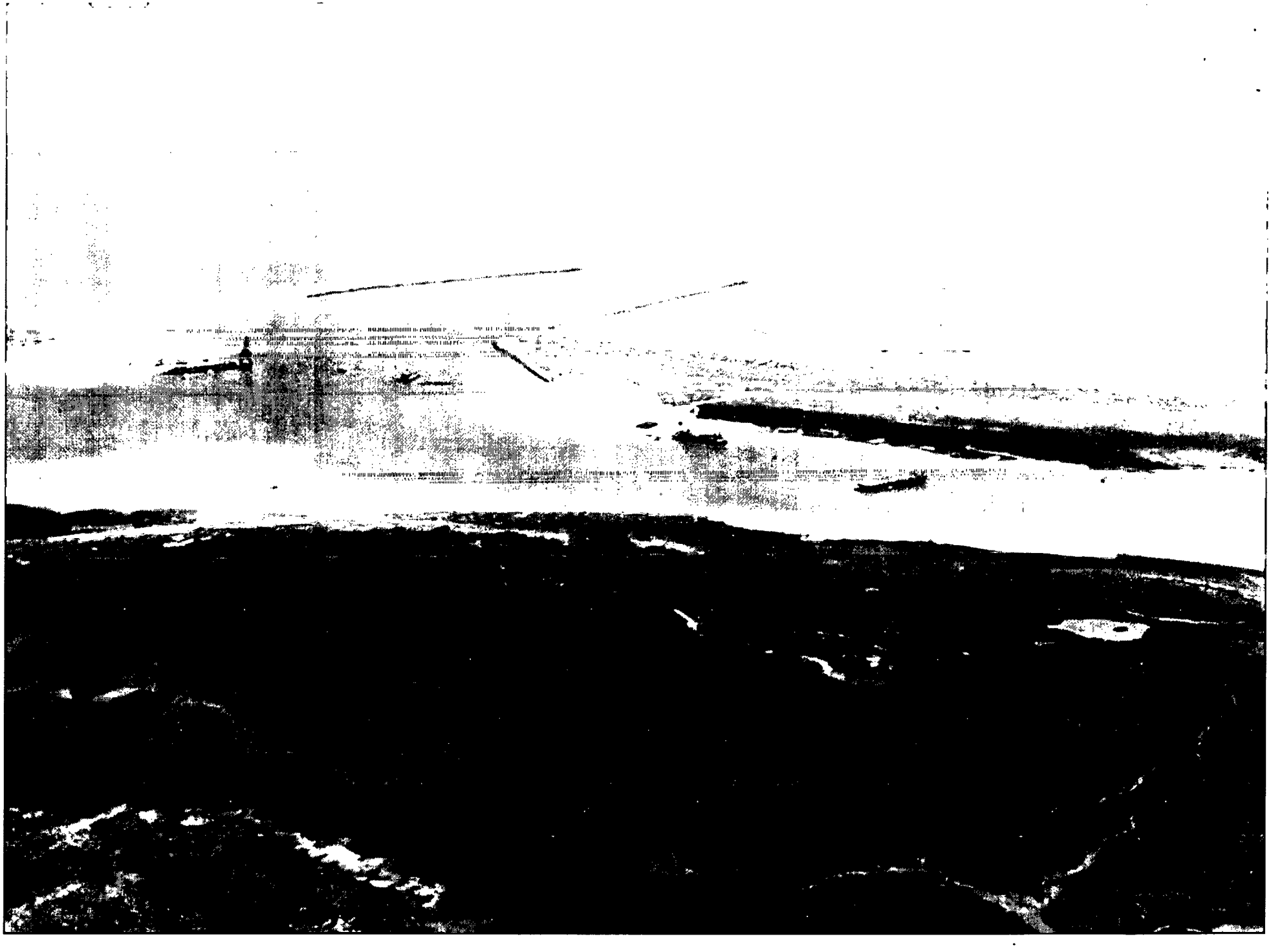


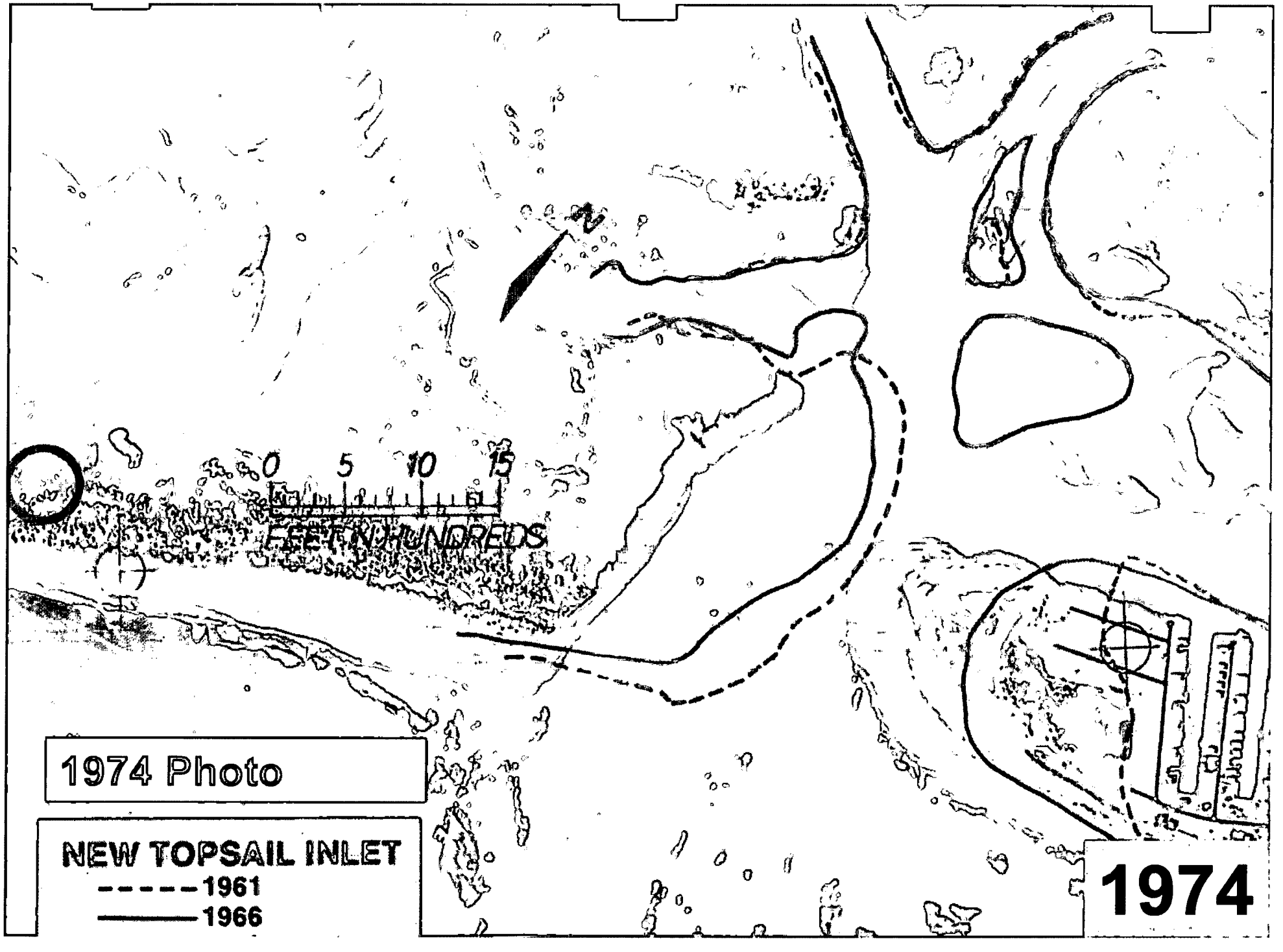




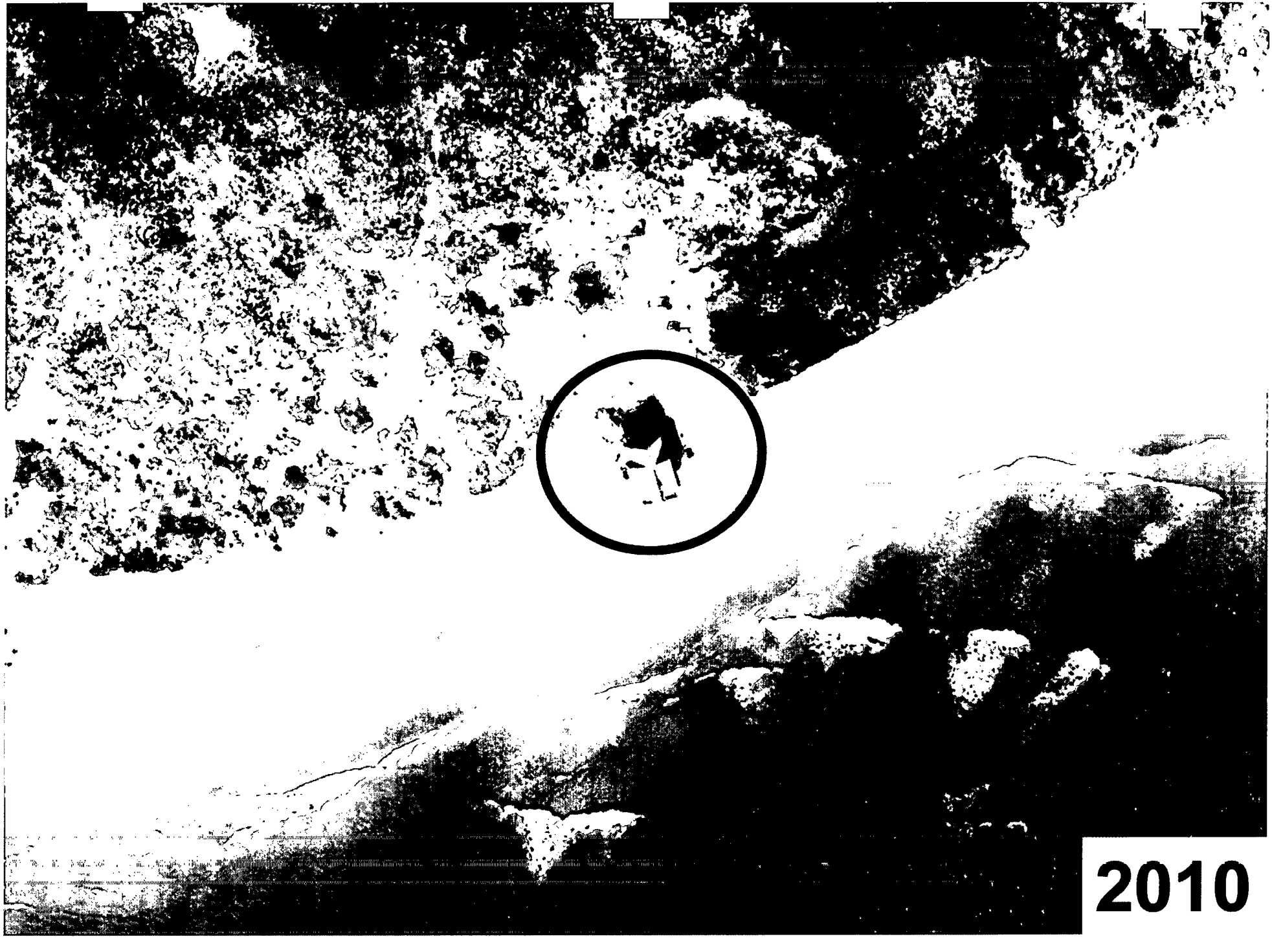

Sep 23, 2007





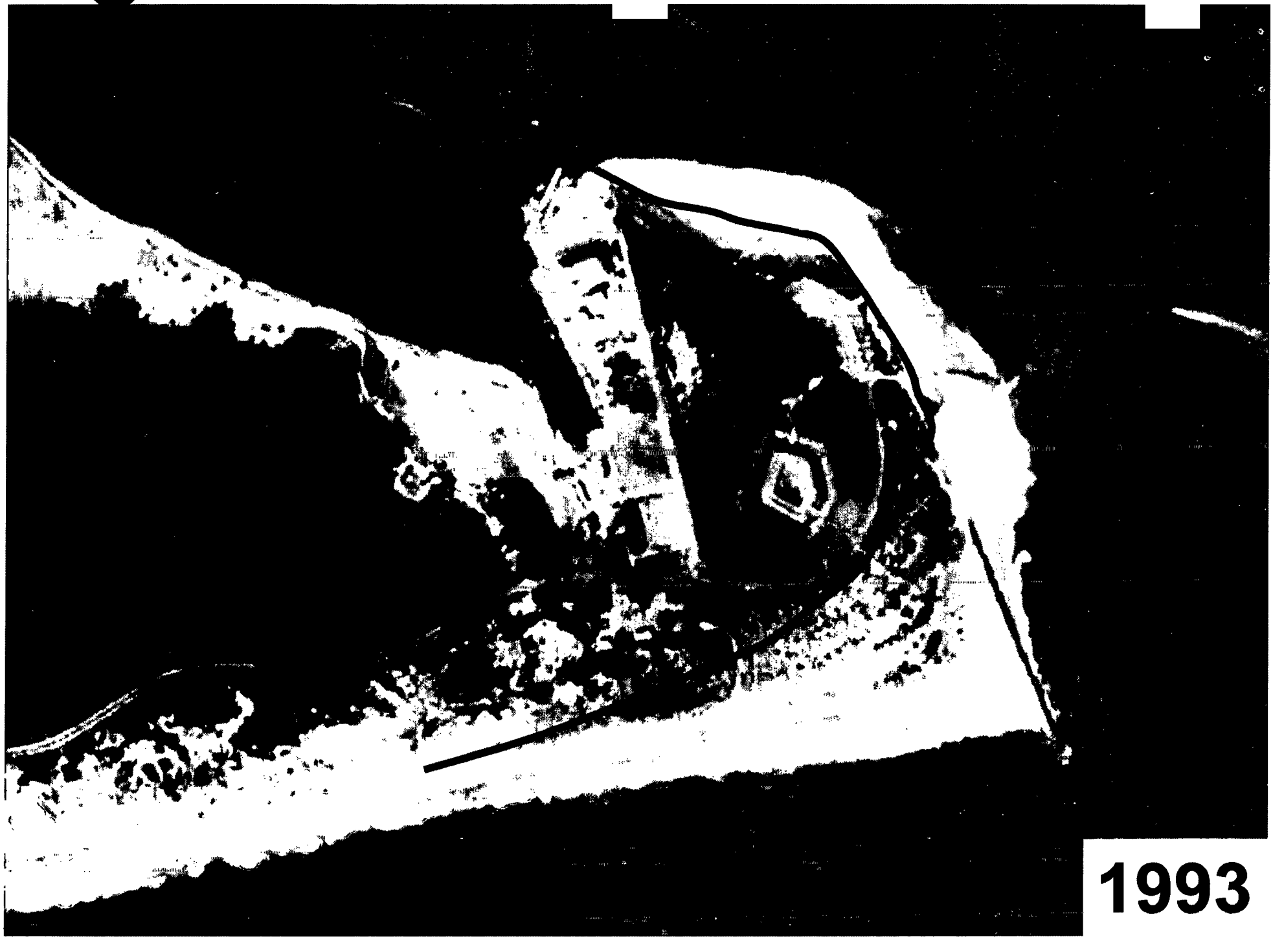

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FEET IN HUNDREDS
1974 Photo
NEW TOPSAIL INLET
1961
1966
1974


1996

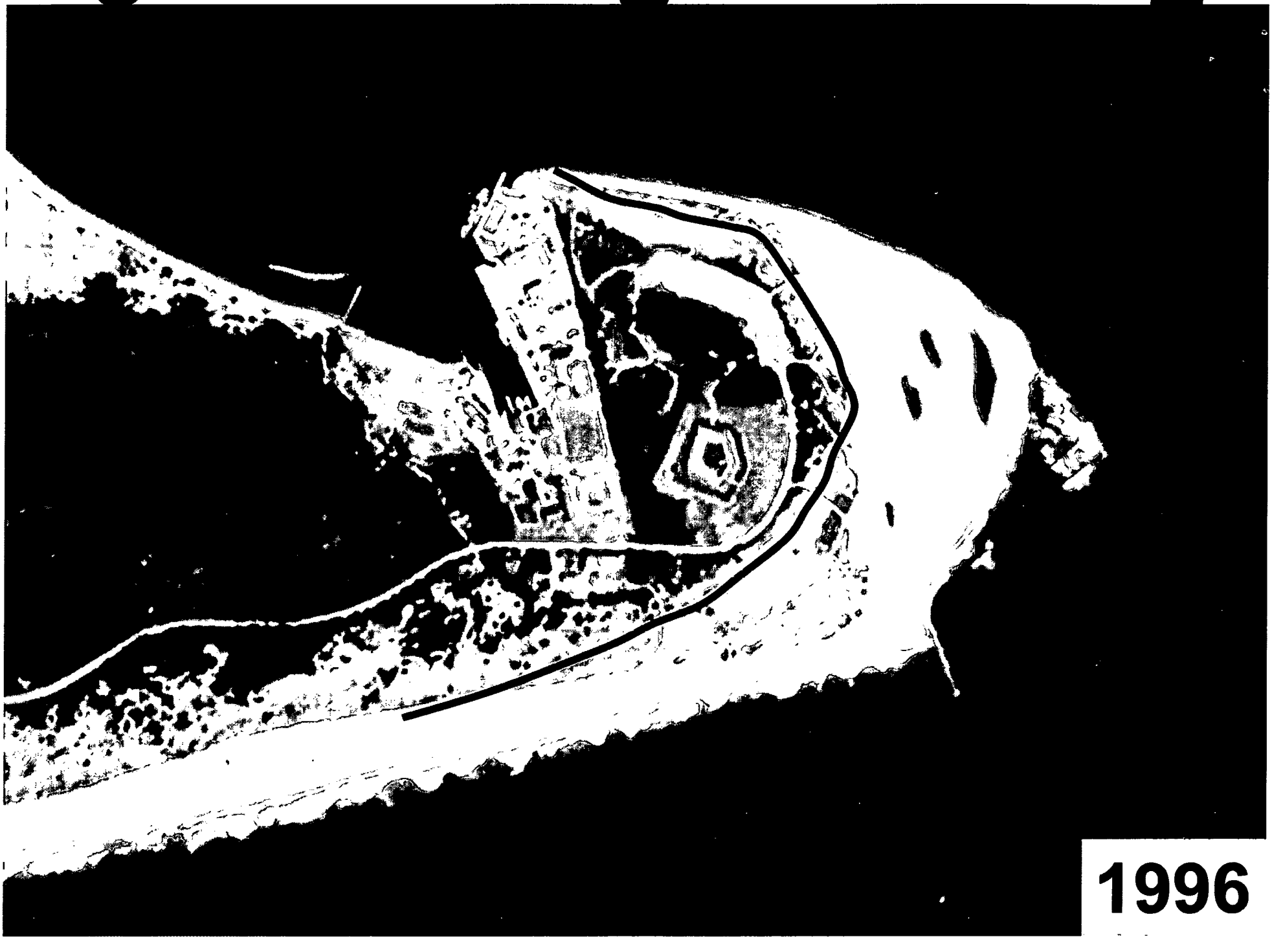

2010


2009

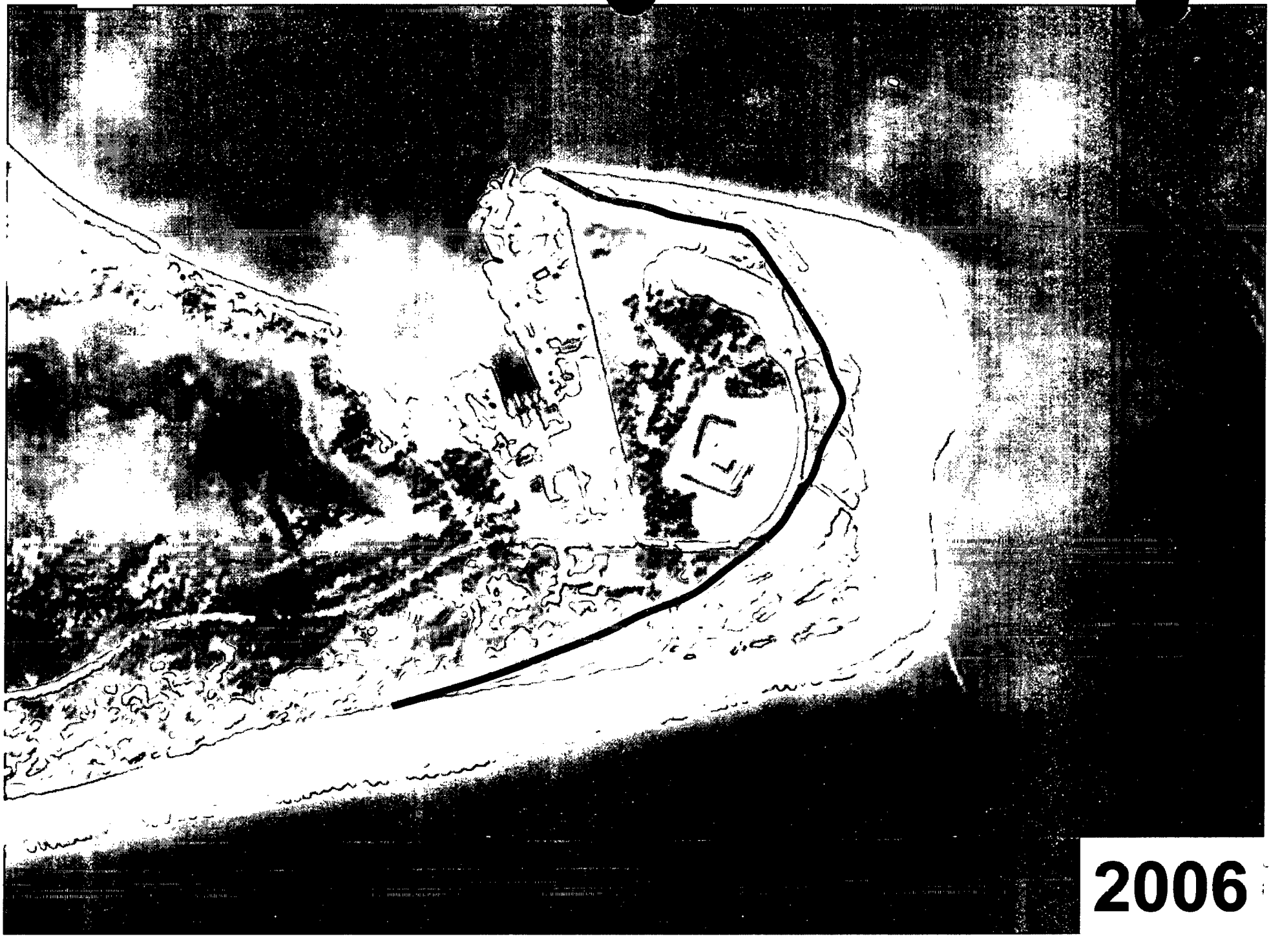

2002

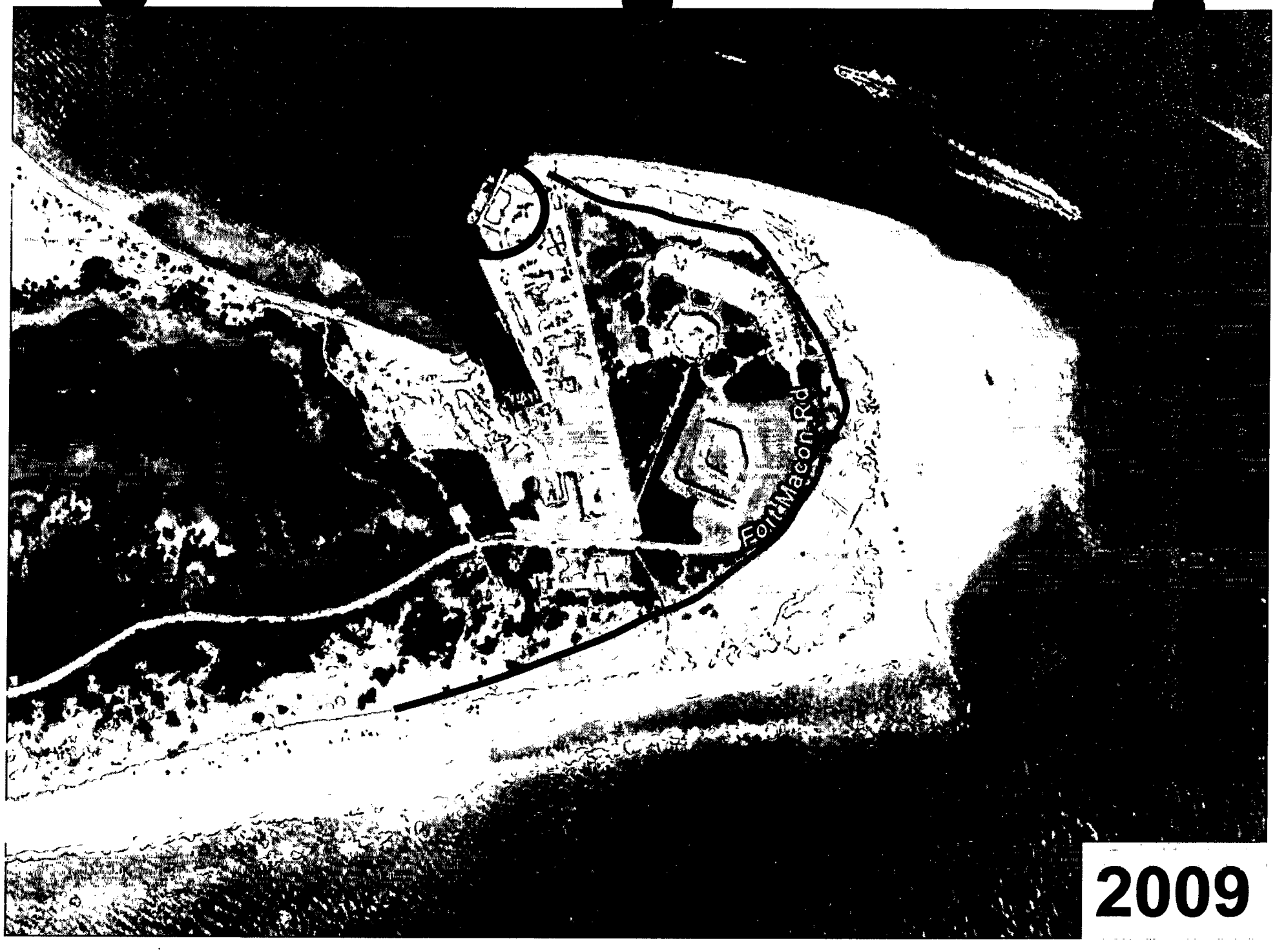


1993



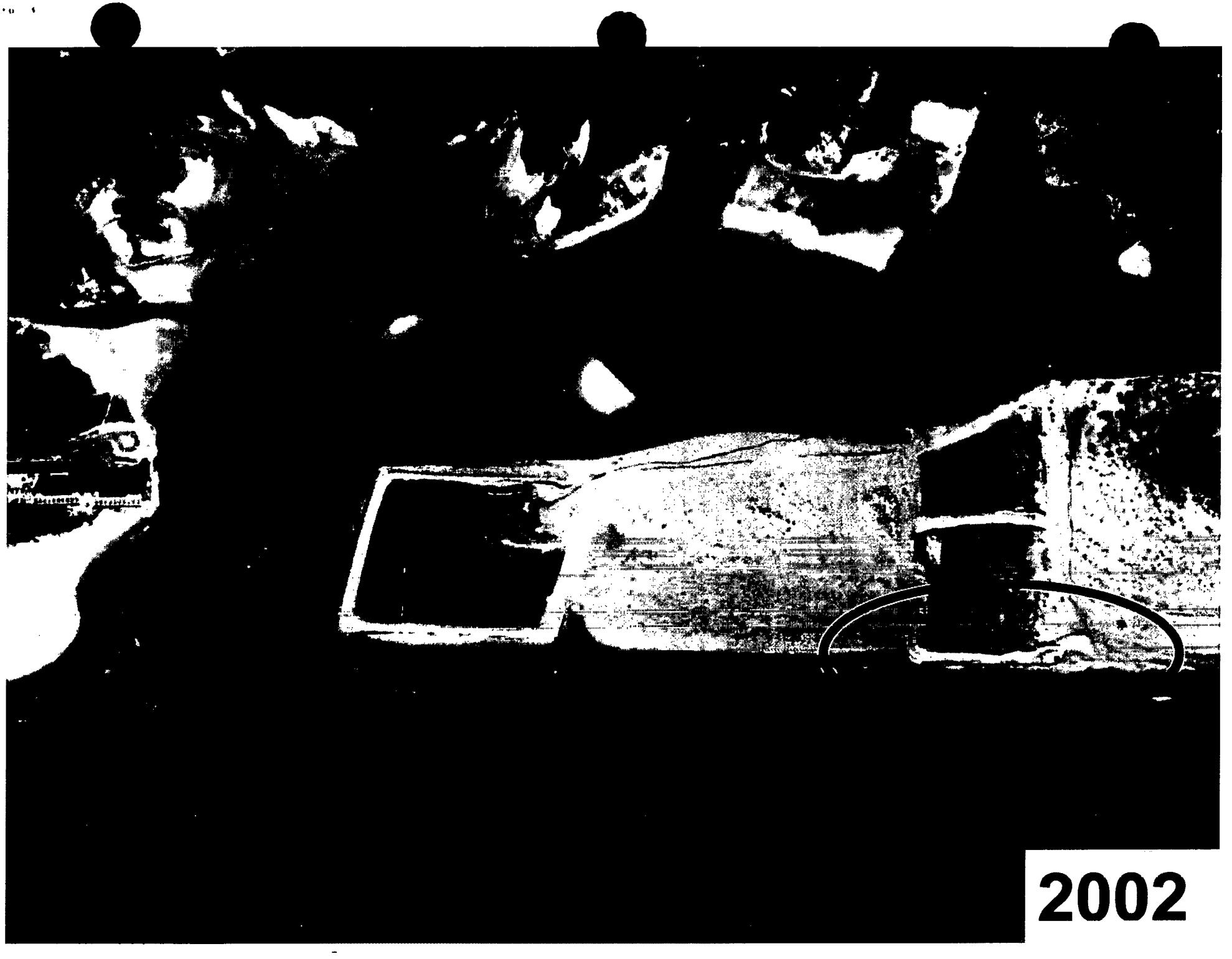
1996

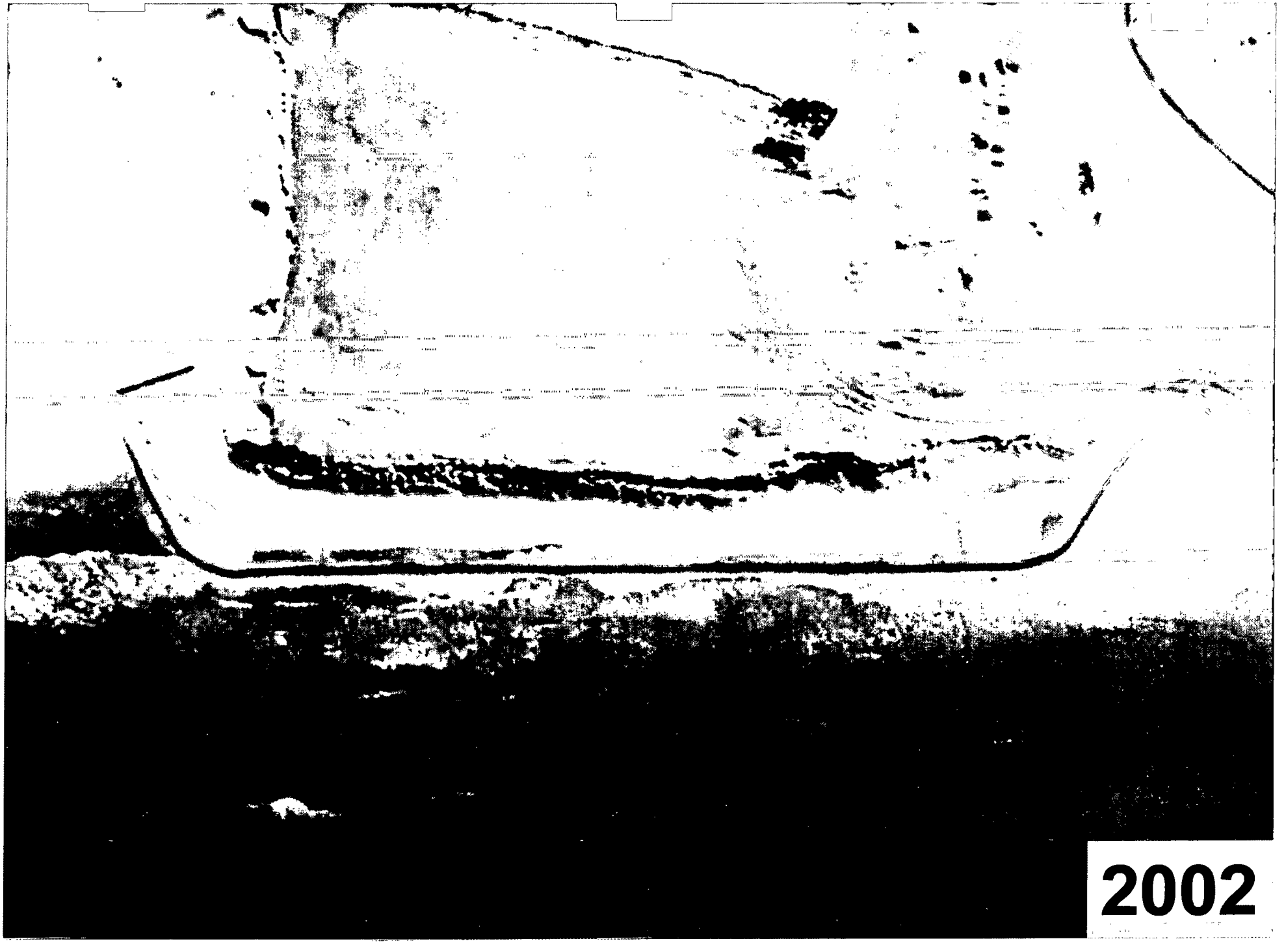

2006


Fort Macon Rd
2009

PERMIT CONDITIONS

Shoreline Monitoring Plan for removal


2002


2002

PERMIT CONDITIONS

Third-party coastal engineering review for permitting & monitoring

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

S D

SENATE BILL 110
PROPOSED COMMITTEE SUBSTITUTE S110-CSTA-1 [v.2]

2/28/2011 9:19:51 AM

Short Title: Permit Terminal Groins. (Public)

Sponsors:

Referred to:

February 24, 2011

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE PERMITTING AND CONSTRUCTION OF TERMINAL GROINS AT INLETS UNDER CERTAIN CONDITIONS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 113A-115.1 reads as rewritten:

"**§ 113A-115.1. Limitations on erosion control structures.**

(a) As used in this section:

(1) "Erosion control structure" means a breakwater, bulkhead, groin, jetty, revetment, seawall, or any similar structure.

(1a) "Estuarine shoreline" means all shorelines that are not ocean shorelines that border estuarine waters as defined in G.S. 113A-113(b)(2).

(2) "Ocean shoreline" means the Atlantic Ocean, the oceanfront beaches, and frontal dunes. The term "ocean shoreline" includes an ocean inlet and lands adjacent to an ocean inlet but does not include that portion of any inlet and lands adjacent to the inlet that exhibits characteristics of estuarine shorelines.

(3) "Terminal groin" means a structure that is constructed on the side of an inlet at the terminus of an island generally perpendicular to the shoreline to limit or control sediment passage into the inlet channel.

(b) No person shall construct a permanent erosion control structure in an ocean shoreline. The Commission shall not permit the construction of a temporary erosion control structure that consists of anything other than sandbags in an ocean shoreline. This section shall not apply to ~~(i) any~~any of the following:

(1) Any permanent erosion control structure that is approved pursuant to an exception set out in a rule adopted by the Commission prior to ~~1 July 2003 or (ii) any~~ July 1, 2003.

(2) Any permanent erosion control structure that was originally constructed prior to ~~1 July~~July 1, 1974 and that has since been in continuous use to protect an inlet that is maintained for navigation.

(3) Any terminal groin permitted pursuant to subsection (f) of this section.

(b1) This section shall not be construed to limit the authority of the Commission to adopt rules to designate or protect areas of environmental concern, to govern the use of sandbags, or to govern the use of erosion control structures in estuarine shorelines.

(c) The Commission may renew a permit for an erosion control structure issued pursuant to a variance granted by the Commission prior to ~~1 July~~July 1, 1995. The Commission

may authorize the replacement of a permanent erosion control structure that was permitted by the Commission pursuant to a variance granted by the Commission prior to ~~1 July~~July 1, 1995 if the Commission finds that: (i) the structure will not be enlarged beyond the dimensions set out in the original permit; (ii) there is no practical alternative to replacing the structure that will provide the same or similar benefits; and (iii) the replacement structure will comply with all applicable laws and with all rules, other than the rule or rules with respect to which the Commission granted the variance, that are in effect at the time the structure is replaced.

(d) Any rule that prohibits permanent erosion control structures shall not apply to terminal groins permitted pursuant to subsection (f) of this section.

(e) In addition to the permit application requirements of Part 4 of Article 7 of Chapter 113A of the General Statutes, an application for a permit for the construction of a terminal groin shall include all of the following:

(1) An assessment and finding that nonstructural approaches to erosion control, including relocation of threatened structures, are found to be impractical.

(2) An environmental impact statement that has been reviewed by an independent third party and satisfies the requirements of G.S. 113A-4.

(3) An engineering design bearing the seal of a registered professional engineer licensed to practice pursuant to Chapter 89C of the General Statutes that describes the construction and maintenance of the proposed terminal groin, as well as the accompanying beach fill project required to be undertaken pursuant to subsection (f) of this section. The engineering design shall identify those property owners and local governments on both sides of the inlet that may be affected by the construction of the proposed terminal groin.

(4) Proof of notification of those property owners and local governments on both sides of the inlet identified in the engineering design prepared pursuant to subdivision (3) of this subsection as potentially affected by the construction of the proposed terminal groin.

(5) An inlet management plan that includes estuarine and ocean shorelines immediately adjacent to, and under the influence of, the inlet that describes postconstruction activities that the permittee will undertake to monitor the effects of the terminal groin and related dredging and beach fill. The plan shall define thresholds for assessing negative impacts to coastal resources due to construction of the terminal groin and provide a plan for mitigating negative impacts, including modification or removal of the terminal groin if negative impacts cannot be mitigated. These mitigation efforts shall be the responsibility of the permittee.

(6) Identification of the financial resources or funding sources necessary to construct the terminal groin and the accompanying beach fill and to conduct subsequent shoreline monitoring.

(f) A terminal groin shall only be permitted pursuant to this section under all of the following conditions:

(1) The permit applicant has complied with the requirements of subsection (e) of this section.

(2) The permit applicant has notified those property owners and local governments on both sides of the inlet identified in the engineering design prepared pursuant to subsection (e) of this section as potentially affected by the construction of the proposed terminal groin.

(3) The construction of the terminal groin is accompanied by a concurrent beach fill project to prefill the groin.

(g) Only one terminal groin may be placed on each ocean shoreline immediately adjacent to an inlet for a maximum of two groins per inlet."

SECTION 2. The Department of Environment and Natural Resources shall amend the management program it adopted pursuant to the federal Coastal Zone Management Act, 16 U.S.C. § 1451, et seq., to ensure the management program is consistent with G.S. 113A-115.1, as amended by Section 1 of this act, and shall seek approval of the proposed amended management plan by the United States Secretary of Commerce or the Secretary's authorized designee no later than six months after the effective date of this act. The Department may adopt any rules necessary to implement this section.

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

VISITOR REGISTRATION SHEET

Ag/Env/Nat. Resources (2011-2012) — March 1, 2011
Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Beth Warren	AGO
Tommy Stevens	NCPC
John Shian	S.C. C.G.
Jon & Jolie Rufty	110 Kendleton Pl. Cary NC 27518
Angel Sams	CAA
Ann McNally	Sunset Beach, NC SBTA
Minnie Hunt	SBTA
Sam Pearsall	Env. Defense Fund
Tom Bean	EDF, NCWF
Becky French	Self
Loren Harrell	Self

VISITOR REGISTRATION SHEET

Ag/Env/Nat. Resources (2011-2012)
Name of Committee **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Debbie B Smith	Mayor Ocean Isle Beach
Michael S Young	459 E Third St Property owner Ocean Isle Beach NC
James T. Wilkerson (Tom)	1816 Beechleaf Ct. Wilmington, NC 28411 460 E 4th St OIB 28469
Frank Walker	437 E. 2nd St Ocean Isle Beach 28469
R. Alan Webb	Bald Head Island Ltd
D. J. Henry	Bald Head Island Ltd. LLC
David Hewett	Town Mngr, Holden Beach NC
Peter Rambe	American Rivers
Michael Kelcher	OIB Property Owner
Erica Kelcher	OIB Property owner
Elaine O'Connell	OIB Vacationer
Monica Binger	OIB Vacationer
Judy Parkerson	Figure Eight Assoc. LLC
Blanche Bacon	2200 White Oak Rd, Raleigh
Zack Bacon	" " " " "

C. D. BLYTHE	MAYOR PRO TEM OCEAN ISLE BEACH N.C.
Daisy Ivey	TOWN Administrator OCEAN ISLE Beach NC
Cecil Brantley	OCEAN ISLE Beach P.O.
Cliff Ogburn	Town Manager Nags Head
Bobby Dutton	Dare County Manager, Manteo NC
DAVID Kellam	Wilmington, N.C.
JAN HARRIS	SUNSET BEACH, N.C.
Margaret Harzell	Environment North Carolina
DAN CRAWFORD	NCLCV
Rob Lamm	NC Coastal Fed
Lee Weddle	Sunset Beach, NC
DICK BIERLY	NC Coastal Federation

VISITOR REGISTRATION SHEET

Ag/Env/Nat. Resources (2011-2012)
Name of Committee **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Julian Bowe	Topsail Beach
Ed Broadhurst	TOPSAIL BEACH
Bill Morrison	Topsail Beach
Connie Wilson	Topsail Shoreline Protection
M. Rendo Cahoon	Nags Head Commissioner / CRC member
Molly Diggins	Sierra Club
Emily Grimm	NWC
GORDON MYERS	NCWRC
CHRIS DILLON	NCWRC
Robin Smith	DENR
Kari Bargeuss	DENR
Spencer Rogers	NC Sea Grant
margo O'Mahoney	Figure 8 HOA
Vickie Savage	Ocean Isle / Figure 8 Vacationer

VISITOR REGISTRATION SHEET

Ag/Env/Nat. Resources (2011-2012)
Name of Committee **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
DAN TUMAN	MAYOR NORTH TOPSAIL BEACH
STEVE FOSTER	TOWN MANAGER – N. TOPSAIL BEACH
Chris Kallam	Nelson Mullins
John R. Fisher	Mayor Pro Tem, Bald Head Island
Gene Douglas	Village Council, Bald Head Island
Henry Lancaster	LCA
Tony Hicks	NCDA&CS
David McGowan	NC Realtors
Cady Thomas	"
Cameron Henley	Electricities of NC
Tim Holloman	Topsail Beach Mayor
GRIER FLEISCHHAUER	COMMISSIONER TOPSAIL BEACH
Chris Anderson	Homeowner
Bill Hacaziu	

Senate Agriculture/Environment/Natural Resources

Minutes

March 8, 2011

The Senate Ag/Env/Nat. Resources committee met on Tuesday, March 8, 2011 in Room 544-LOB. There were 16 senators present.

Senator Don East called the meeting to order and introduced Pages and Sgt-At-Arms staff.

SB-110-PERMIT TERMINAL GROINS

Sen. Hartsell moved to remove the PCS (S110-CSTA-1[v.2]), that was voted on and passed last weeks meeting to be disposed of so that the new PCS could be brought forth to discussion today. Vote taken and so moved. Sen. Clodfelter moved for adoption of the new PCS, (S110-CSSB-4 [v.5]) for discussion. Sen. Brown explained the new PCS . Sen. Bingham asked where in the PCS it discusses bonds. Staff advised on Page 2. Sen. Allran has concerns and he questioned I the use of tax money being used. Sen. Brown advised no tax dollars will be used and he explained the bonding issues. There are other ways to fund this besides bonds and the bill specifies this has to be in place before bonding is done. Sen. Allran followed up to question the fact that no one can come back in the future and ask for funds. Sen. Brown explained. Mr. Jeff Hudson, staff counsel explained Page 2, line 40-48. Mr. Hudson asked for someone from DENR to respond with additional remarks. Sen. Allran asked about beach Renourishment and implementation measures. Ms. Robin Smith, Asst. Depy Sec., DENR explained the monitoring and measures used for long term maintenance. Sen. Allran asked again if there will be a need in the future for the state to have to provide funds. Ms. Smith made additional remarks. Sen. Rabon supports this he moved for a favorable motion for the PCS, unfavorable to the original bill. Sen. Clodfelter commended the sponsor for his work. The vote was taken and so moved.

Meeting Adjourned at 11:18 A.M.

Sen. Don East, Co-chair

Cindy J. Davis, Committee Clerk

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES COMMITTEE REPORT
Senator Don East, Co-Chair
Senator David Rouzer, Co-Chair

Wednesday, March 09, 2011

Senator EAST,
submits the following with recommendations as to passage:

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

S.B. **110** Permit Terminal Groins.

Draft Number:	35112
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

TOTAL REPORTED: 1

Committee Clerk Comments:

Principal Clerk ____
Reading Clerk ____

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

The Senate Committee on **Agriculture/Environment/Natural Resources** will meet at the following time:

DAY	DATE	TIME	ROOM
Tuesday	March 8, 2011	11:00	544 LOB

The following will be considered:

BILL NO.	SHORT TITLE	SPONSOR
SB 110	Permit Terminal Groins.	Senator Brown Senator Goolsby Senator Rabon

Senator Don East, Co-Chair
Senator David Rouzer, Co-Chair

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

S D

SENATE BILL 110
PROPOSED COMMITTEE SUBSTITUTE S110-PCS35112-SB-4

Short Title: Permit Terminal Groins. (Public)

Sponsors:

Referred to:

February 24, 2011

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE PERMITTING AND CONSTRUCTION OF TERMINAL GROINS AT INLETS UNDER CERTAIN CONDITIONS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 113A-115.1 reads as rewritten:

"**§ 113A-115.1. Limitations on erosion control structures.**

(a) As used in this section:

(1) "Erosion control structure" means a breakwater, bulkhead, groin, jetty, revetment, seawall, or any similar structure.

(1a) "Estuarine shoreline" means all shorelines that are not ocean shorelines that border estuarine waters as defined in G.S. 113A-113(b)(2).

(2) "Ocean shoreline" means the Atlantic Ocean, the oceanfront beaches, and frontal dunes. The term "ocean shoreline" includes an ocean inlet and lands adjacent to an ocean inlet but does not include that portion of any inlet and lands adjacent to the inlet that exhibits characteristics of estuarine shorelines.

(3) "Terminal groin" means a structure that is constructed on the side of an inlet at the terminus of an island generally perpendicular to the shoreline to limit or control sediment passage into the inlet channel.

(b) No person shall construct a permanent erosion control structure in an ocean shoreline. The Commission shall not permit the construction of a temporary erosion control structure that consists of anything other than sandbags in an ocean shoreline. This section shall not apply to ~~(i) any~~any of the following:

(1) Any permanent erosion control structure that is approved pursuant to an exception set out in a rule adopted by the Commission prior to ~~1 July 2003 or (ii) any~~ July 1, 2003.

(2) Any permanent erosion control structure that was originally constructed prior to ~~1 July 1974~~July 1, 1974, and that has since been in continuous use to protect an inlet that is maintained for navigation.

(3) Any terminal groin permitted pursuant to this section.

(b1) This section shall not be construed to limit the authority of the Commission to adopt rules to designate or protect areas of environmental concern, to govern the use of sandbags, or to govern the use of erosion control structures in estuarine shorelines.

(c) The Commission may renew a permit for an erosion control structure issued pursuant to a variance granted by the Commission prior to ~~1 July~~July 1, 1995. The Commission

may authorize the replacement of a permanent erosion control structure that was permitted by the Commission pursuant to a variance granted by the Commission prior to ~~1 July 1995~~ July 1, 1995 if the Commission finds that: (i) the structure will not be enlarged beyond the dimensions set out in the original permit; (ii) there is no practical alternative to replacing the structure that will provide the same or similar benefits; and (iii) the replacement structure will comply with all applicable laws and with all rules, other than the rule or rules with respect to which the Commission granted the variance, that are in effect at the time the structure is replaced.

(d) Any rule that prohibits permanent erosion control structures shall not apply to terminal groins permitted pursuant to this section.

(e) In addition to the requirements of Part 4 of Article 7 of Chapter 113A of the General Statutes, an applicant for a permit for the construction of a terminal groin shall submit all of the following to the Commission:

(1) Information to demonstrate that structures or infrastructure are imminently threatened by erosion and nonstructural approaches to erosion control, including relocation of threatened structures, are impractical.

(2) An environmental impact statement that satisfies the requirements of G.S. 113A-4.

(3) A list of property owners and local governments that may be affected by the construction of the proposed terminal groin and its accompanying beach fill project and proof that the property owners and local governments have been notified of the application for construction of the terminal groin and its accompanying beach fill project.

(4) A plan for the construction and maintenance of the terminal groin and its accompanying beach fill project prepared by a professional engineer licensed to practice pursuant to Chapter 89C of the General Statutes and reviewed by an independent third-party professional engineer licensed to practice pursuant to Chapter 89C of the General Statutes.

(5) A plan for the management of the inlet and the estuarine and ocean shorelines immediately adjacent to and under the influence of the inlet. The inlet management plan shall do all of the following relative to the terminal groin and its accompanying beach fill project:

a. Describe the post-construction activities that the applicant will undertake to monitor the impacts on coastal resources.

b. Define the baseline for assessing any adverse impacts and the thresholds for when the adverse impacts must be mitigated.

c. Provide for mitigation measures to be implemented if adverse impacts reach the thresholds defined in the plan.

d. Provide for modification or removal of the terminal groin if the adverse impacts cannot be mitigated.

(6) Proof of financial assurance, in the form of a bond, insurance policy, escrow account, or other financial instrument, that is adequate to cover the cost of:

a. Long-term maintenance and monitoring of the terminal groin.

b. Implementation of mitigation measures as provided in the inlet management plan.

c. Modification or removal of the terminal groin as provided in the inlet management plan.

d. Restoration of public, private, or public trust property if the groin has an adverse impact on the environment or property.

(f) The Commission shall issue a permit for the construction of a terminal groin if the Commission finds no grounds for denying the permit under G.S. 113A-120 and the Commission finds all of the following:

(1) The applicant has complied with all of the requirements of subsection (e) of this section.

(2) The applicant has demonstrated that structures or infrastructure are imminently threatened by erosion and that nonstructural approaches to erosion control, including relocation of threatened structures, are impractical.

(3) The terminal groin will be accompanied by a concurrent beach fill project to prefill the groin.

(4) Construction and maintenance of the terminal groin will not result in significant adverse impacts to private property or to the public recreational beach. In making this finding, the Commission shall take into account mitigation measures, including the accompanying beach fill project, that will be incorporated into the project design and construction and the inlet management plan.

(5) The inlet management plan is adequate for purposes of monitoring the impacts of the proposed terminal groin and mitigating any adverse impacts identified as a result of the monitoring.

(6) Except to the extent expressly modified by this section, the project complies with State guidelines for coastal development adopted by the Commission pursuant to G.S. 113A-107.

(g) Only one terminal groin may be placed on each ocean shoreline immediately adjacent to an inlet for a maximum of two groins per inlet."

SECTION 2. The Department of Environment and Natural Resources shall amend the management program it adopted pursuant to the federal Coastal Zone Management Act, 16 U.S.C. § 1451, et seq., to ensure the management program is consistent with G.S. 113A-115.1, as amended by Section 1 of this act, and shall seek approval of the proposed amended management plan by the United States Secretary of Commerce or the Secretary's authorized designee no later than six months after the effective date of this act.

SECTION 3. The Department shall adopt any rules necessary to implement this act.

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

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

S D

SENATE BILL 110
PROPOSED COMMITTEE SUBSTITUTE S110-CSSB-4 [v.5]

3/5/2011 9:45:33 AM

Short Title: Permit Terminal Groins. (Public)

Sponsors:

Referred to:

February 24, 2011

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE PERMITTING AND CONSTRUCTION OF TERMINAL GROINS AT INLETS UNDER CERTAIN CONDITIONS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 113A-115.1 reads as rewritten:

"**§ 113A-115.1. Limitations on erosion control structures.**

(a) As used in this section:

(1) "Erosion control structure" means a breakwater, bulkhead, groin, jetty, revetment, seawall, or any similar structure.

(1a) "Estuarine shoreline" means all shorelines that are not ocean shorelines that border estuarine waters as defined in G.S. 113A-113(b)(2).

(2) "Ocean shoreline" means the Atlantic Ocean, the oceanfront beaches, and frontal dunes. The term "ocean shoreline" includes an ocean inlet and lands adjacent to an ocean inlet but does not include that portion of any inlet and lands adjacent to the inlet that exhibits characteristics of estuarine shorelines.

(3) "Terminal groin" means a structure that is constructed on the side of an inlet at the terminus of an island generally perpendicular to the shoreline to limit or control sediment passage into the inlet channel.

(b) No person shall construct a permanent erosion control structure in an ocean shoreline. The Commission shall not permit the construction of a temporary erosion control structure that consists of anything other than sandbags in an ocean shoreline. This section shall not apply to ~~(i) any~~any of the following:

(1) Any permanent erosion control structure that is approved pursuant to an exception set out in a rule adopted by the Commission prior to ~~1 July 2003 or (ii) any~~ July 1, 2003.

(2) Any permanent erosion control structure that was originally constructed prior to ~~1 July~~July 1, 1974 and that has since been in continuous use to protect an inlet that is maintained for navigation.

(3) Any terminal groin permitted pursuant to this section.

(b1) This section shall not be construed to limit the authority of the Commission to adopt rules to designate or protect areas of environmental concern, to govern the use of sandbags, or to govern the use of erosion control structures in estuarine shorelines.

(c) The Commission may renew a permit for an erosion control structure issued pursuant to a variance granted by the Commission prior to ~~1 July~~July 1, 1995. The Commission

may authorize the replacement of a permanent erosion control structure that was permitted by the Commission pursuant to a variance granted by the Commission prior to ~~1 July~~July 1, 1995 if the Commission finds that: (i) the structure will not be enlarged beyond the dimensions set out in the original permit; (ii) there is no practical alternative to replacing the structure that will provide the same or similar benefits; and (iii) the replacement structure will comply with all applicable laws and with all rules, other than the rule or rules with respect to which the Commission granted the variance, that are in effect at the time the structure is replaced.

(d) Any rule that prohibits permanent erosion control structures shall not apply to terminal groins permitted pursuant to this section.

(e) In addition to the requirements of Part 4 of Article 7 of Chapter 113A of the General Statutes, an applicant for a permit for the construction of a terminal groin shall submit all of the following to the Commission:

(1) Information to demonstrate that structures or infrastructure are imminently threatened by erosion and nonstructural approaches to erosion control, including relocation of threatened structures, are impractical.

(2) An environmental impact statement that satisfies the requirements of G.S. 113A-4.

(3) A list of property owners and local governments that may be affected by the construction of the proposed terminal groin and its accompanying beach fill project and proof that the property owners and local governments have been notified of the application for construction of the terminal groin and its accompanying beach fill project.

(4) A plan for the construction and maintenance of the terminal groin and its accompanying beach fill project prepared by a professional engineer licensed to practice pursuant to Chapter 89C of the General Statutes and reviewed by an independent third party professional engineer licensed to practice pursuant to Chapter 89C of the General Statutes.

(5) A plan for the management of the inlet and the estuarine and ocean shorelines immediately adjacent to and under the influence of the inlet. The inlet management plan shall do all of the following relative to the terminal groin and its accompanying beach fill project:

a. Describe the post-construction activities that the applicant will undertake to monitor the impacts on coastal resources.

b. Define the baseline for assessing any adverse impacts and the thresholds for when the adverse impacts must be mitigated.

c. Provide for mitigation measures to be implemented if adverse impacts reach the thresholds defined in the plan.

d. Provide for modification or removal of the terminal groin if the adverse impacts cannot be mitigated.

(6) Proof of financial assurance, in the form of a bond, insurance policy, escrow account, or other financial instrument, that is adequate to cover the cost of:

a. Long-term maintenance and monitoring of the terminal groin.

b. Implementation of mitigation measures as provided in the inlet management plan.

c. Modification or removal of the terminal groin as provided in the inlet management plan.

d. Restoration of public, private, or public trust property if the groin has an adverse impact on the environment or property.

(f) The Commission shall issue a permit for the construction of a terminal groin if the Commission finds no grounds for denying the permit under G.S. 113A-120 and the Commission finds all of the following:

(1) The applicant has complied with all of the requirements of subsection (e) of this section.

(2) The applicant has demonstrated that structures or infrastructure are imminently threatened by erosion and that nonstructural approaches to erosion control, including relocation of threatened structures, are impractical.

(3) The terminal groin will be accompanied by a concurrent beach fill project to prefill the groin.

(4) Construction and maintenance of the terminal groin will not result in significant adverse impacts to private property or to the public recreational beach. In making this finding, the Commission shall take into account mitigation measures, including the accompanying beach fill project, that will be incorporated into the project design and construction and the inlet management plan.

(5) The inlet management plan is adequate for purposes of monitoring the impacts of the proposed terminal groin and mitigating any adverse impacts identified as a result of the monitoring.

(6) Except to the extent expressly modified by this section, the project complies with State guidelines for coastal development adopted by the Commission pursuant to G.S. 113A-107.

(g) Only one terminal groin may be placed on each ocean shoreline immediately adjacent to an inlet for a maximum of two groins per inlet."

SECTION 2. The Department of Environment and Natural Resources shall amend the management program it adopted pursuant to the federal Coastal Zone Management Act, 16 U.S.C. § 1451, et seq., to ensure the management program is consistent with G.S. 113A-115.1, as amended by Section 1 of this act, and shall seek approval of the proposed amended management plan by the United States Secretary of Commerce or the Secretary's authorized designee no later than six months after the effective date of this act.

SECTION 3. The Department shall adopt any rules necessary to implement this Act.

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

SENATE PCS 110:
Permit Terminal Groins

2011-2012 General Assembly

Committee:	Senate Agriculture/Environment/Natural Resources	**Date:**	March 8, 2011
Introduced by:	Senators Brown, Goolsby, Rabon	**Prepared by:**	Jennifer Mundt Legislative Analyst
Analysis of:	PCS to First Edition S110-CSSB-4 [v.5]		

SUMMARY: Senate Bill 110 would authorize the permitting and construction of terminal groins on the ocean shorelines of inlets under certain circumstances.

CURRENT LAW: Current law prohibits the construction of permanent erosion control structures on an ocean shoreline. "Erosion control structures" means a breakwater, bulkhead, groin, jetty, revetment, seawall, or any similar structure. "Ocean shoreline" means the Atlantic Ocean, the oceanfront beaches, and frontal dunes and includes ocean inlets and lands adjacent to ocean inlets but does not include that portion of any inlet and lands adjacent to the inlet that exhibit characteristics of estuarine shorelines. Sandbags, as permitted by the Coastal Resources Commission (Commission), may be used as temporary erosion control structures on an ocean shoreline.

Exceptions to the prohibition apply to any permanent erosion control structure approved by the Commission prior to July 1, 2003 or to any permanent erosion control structure that was originally constructed prior to July 1, 1974 that has been in continuous use to protect an inlet maintained for navigation. The Commission may renew a permit for an erosion control structure issued pursuant to a variance granted by the Commission prior to July 1, 1995. In addition, the Commission may authorize the replacement of a permanent erosion control structure that was permitted by the Commission pursuant to a variance granted by the Commission if certain conditions are met.

BILL ANALYSIS: Senate Bill 110 would authorize the permitting of terminal groins[1] as follows:

Terminal Groin Permit Application: In addition to the permit application requirements of the Coastal Area Management Act of 1974 (Article 7 of Chapter 113A of the General Statutes), an applicant for a permit to construct a terminal groin must submit all of the following to the Commission:

- An assessment and finding that nonstructural approaches to erosion control, including relocation of threatened structures, are impractical.
- An environmental impact statement, reviewed by an independent third party, that satisfies the requirements of the State Environmental Policy Act.
- An engineering design bearing the seal of a registered professional engineer that describes the construction and maintenance of the proposed terminal groin and accompanying beach fill project. The engineering design must identify property owners and local governments on both sides of the inlet that may be affected by construction of the proposed terminal groin.
- Proof of notification of those property owners and local governments identified in the engineering design as being potentially affected by the construction of the terminal groin.

[1] The bill defines "terminal groin" to mean a structure that is constructed on the side of an inlet at the terminus of an island generally perpendicular to the shoreline to limit or control sediment passage into the inlet channel.

- An inlet management plan that includes estuarine[2] and ocean shorelines immediately adjacent to, and under the influence of, the inlet that describes postconstruction activities that the permittee will undertake to monitor the effects of the terminal groin and related dredging and beach fill. The inlet management plan must define thresholds for assessing negative impacts resulting from construction of the terminal groin and include a plan for mitigating any negative impacts to coastal resources, including modification or removal of the terminal groin if negative impacts cannot be mitigated. Mitigation efforts will be the responsibility of the permittee.
- Identification of the financial or funding sources necessary to construct the terminal groin and accompanying beach fill and to conduct subsequent shoreline monitoring.

Terminal Groin Permit Issuance: The Commission may only permit the construction of a terminal groin for an applicant that: (i) meets all of the aforementioned criteria, (ii) has notified the potentially affected property owners and local governments on both sides of the inlet identified in the engineering design, and (iii) accompanies the construction of the terminal groin with a concurrent beach fill project to prefill the groin.

Rules: Any rules that prohibit permanent erosion control structures would not apply to terminal groins permitted under the conditions set out in this act.

Terminal Groin Placement Criteria: Only one terminal groin may be placed on each ocean shoreline immediately adjacent to an inlet for a maximum of two groins per inlet.

Federal Approval: The Department of Environment and Natural Resources must amend the State coastal management program to ensure consistency with the provisions of this act that would allow for the permitting of terminal groins and to seek the approval of the proposed amended management plan by the U.S. Secretary of Commerce, or the Secretary's designee no later than six months after the effective date of this act. The Department may adopt any rules as necessary to satisfy this requirement.

The PCS (S110-CSSB-4 [v.5]) substantively differs from the First Edition as follows:

- Requires an applicant for a terminal groin to provide proof of financial assurance.
- Provides for the following additional findings that the Commission must make before issuing a permit: (i) the applicant has demonstrated that structures are imminently threatened by erosion and that nonstructural approaches to erosion control are impractical; (ii) construction and maintenance of the terminal groin will not result in significant adverse impacts to public or private property; (iii) the inlet management plan is adequate for monitoring impacts and mitigating any adverse impacts; and (iv) the project complies with State guidelines for coastal development.
- Removes language to authorize an additional terminal groin to be placed on the ocean shoreline of an inlet adjacent to a federally maintained navigation channel associated with a State port.
- Clarifies rulemaking authority.
- Makes other clarifying and conforming changes.

EFFECTIVE DATE: Senate Bill 110 would be effective when it becomes law.

S110-SMTA-3(CSSB-4) v2

[2] The bill defines "estuarine shorelines" to mean all shorelines that are not ocean shorelines that border estuarine waters as defined by G.S. 113A-113(b)(2)" (Per G.S. 113A-113(b)(2), "estuarine waters" includes all the water of the Atlantic Ocean within the boundary of North Carolina and all the waters of the bays, sounds, rivers, and tributaries thereto seaward of the dividing line between coastal fishing waters and inland fishing waters, as set forth by the most recent official published agreement adopted by the WRC and the Department.)

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

S 1

SENATE BILL 110

Short Title:	Permit Terminal Groins.	(Public)
Sponsors:	Senators Brown, Goolsby, Rabon; Blake, Davis; Forrester, Jenkins, Preston, Rouzer, Tillman, Tucker, Walters, and White.	
Referred to:	Agriculture/Environment/Natural Resources.	

February 24, 2011

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE PERMITTING AND CONSTRUCTION OF TERMINAL GROINS AT INLETS UNDER CERTAIN CONDITIONS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 113A-115.1 reads as rewritten:

"**§ 113A-115.1. Limitations on erosion control structures.**

(a) As used in this section:

(1) "Erosion control structure" means a breakwater, bulkhead, groin, jetty, revetment, seawall, or any similar structure.

(1a) "Estuarine shoreline" means all shorelines that are not ocean shorelines that border estuarine waters as defined in G.S. 113A-113(b)(2).

(2) "Ocean shoreline" means the Atlantic Ocean, the oceanfront beaches, and frontal dunes. The term "ocean shoreline" includes an ocean inlet and lands adjacent to an ocean inlet but does not include that portion of any inlet and lands adjacent to the inlet that exhibits characteristics of estuarine shorelines.

(3) "Terminal groin" means a structure that is constructed on the side of an inlet at the terminus of an island generally perpendicular to the shoreline to limit or control sediment passage into the inlet channel.

(b) No person shall construct a permanent erosion control structure in an ocean shoreline. The Commission shall not permit the construction of a temporary erosion control structure that consists of anything other than sandbags in an ocean shoreline. This section shall not apply to ~~(i) any~~any of the following:

(1) Any permanent erosion control structure that is approved pursuant to an exception set out in a rule adopted by the Commission prior to ~~1 July 2003 or (ii) any~~ July 1, 2003.

(2) Any permanent erosion control structure that was originally constructed prior to ~~1 July~~July 1, 1974 and that has since been in continuous use to protect an inlet that is maintained for navigation.

(3) Any terminal groin permitted pursuant to subsection (f) of this section.

(b1) This section shall not be construed to limit the authority of the Commission to adopt rules to designate or protect areas of environmental concern, to govern the use of sandbags, or to govern the use of erosion control structures in estuarine shorelines.

(c) The Commission may renew a permit for an erosion control structure issued pursuant to a variance granted by the Commission prior to ~~1 July~~July 1, 1995. The Commission may authorize the replacement of a permanent erosion control structure that was permitted by the Commission pursuant to a variance granted by the Commission prior to ~~1 July~~July 1, 1995

if the Commission finds that: (i) the structure will not be enlarged beyond the dimensions set out in the original permit; (ii) there is no practical alternative to replacing the structure that will provide the same or similar benefits; and (iii) the replacement structure will comply with all applicable laws and with all rules, other than the rule or rules with respect to which the Commission granted the variance, that are in effect at the time the structure is replaced.

(d) Any existing rule that prohibits permanent erosion control structures shall not apply to terminal groins.

(e) In addition to the permit application requirements of Part 4 of Article 7 of Chapter 113A of the General Statutes, an application for a permit for the construction of a terminal groin shall include all of the following:

(1) An assessment and finding that nonstructural approaches to erosion control, including relocation of threatened structures, are found to be impractical.

(2) An environmental impact statement that has been reviewed by an independent third party and satisfies the requirements of G.S. 113A-4.

(3) An engineering design bearing the seal of a registered professional engineer licensed to practice pursuant to Chapter 89C of the General Statutes that describes the construction and maintenance of the proposed terminal groin, as well as the accompanying beach fill project required to be undertaken pursuant to subsection (f) of this section. The engineering design shall identify those property owners and local governments on both sides of the inlet that may be affected by the construction of the proposed terminal groin.

(4) Proof of notification of those property owners and local governments on both sides of the inlet identified in the engineering design prepared pursuant to subdivision (3) of this subsection as potentially affected by the construction of the proposed terminal groin.

(5) An inlet management plan that includes estuarine and ocean shorelines immediately adjacent to, and under the influence of, the inlet that describes postconstruction activities that the permittee will undertake to monitor the effects of the terminal groin and related dredging and beach fill. The plan shall define thresholds for assessing negative impacts to coastal resources due to construction of the terminal groin and provide a plan for mitigating negative impacts, including modification or removal of the terminal groin if negative impacts cannot be mitigated. These mitigation efforts shall be the responsibility of the permittee.

(6) Identification of the financial resources or funding sources necessary to construct the terminal groin and the accompanying beach fill and to conduct subsequent shoreline monitoring.

(f) A terminal groin shall only be permitted pursuant to this section under all of the following conditions:

(1) The permit applicant has complied with the requirements of subsection (e) of this section.

(2) The permit applicant has notified those property owners and local governments on both sides of the inlet identified in the engineering design prepared pursuant to subsection (e) of this section as potentially affected by the construction of the proposed terminal groin.

(3) The construction of the terminal groin is accompanied by a concurrent beach fill project to prefill the groin.

(g) Except as provided in this subsection, only one terminal groin may be placed on each ocean shoreline immediately adjacent to an inlet for a maximum total of two groins per inlet. One additional terminal groin may be placed on the ocean shoreline of an inlet when the ocean shoreline is immediately adjacent to a federally maintained navigation channel

associated with a State port, the negative shoreline impacts from the navigation channel can be identified and verified by an independent third party, and the additional terminal groin will be able to mitigate negative shoreline impacts associated with the location and maintenance of the navigation channel."

SECTION 2. The Department of Environment and Natural Resources shall amend the management program it adopted pursuant to the federal Coastal Zone Management Act, 16 U.S.C. § 1451, et seq., to ensure the management program is consistent with G.S. 113A-115.1, as amended by Section 1 of this act, and shall seek approval of the amended management plan by the United States Secretary of Commerce or the Secretary's authorized designee no later than six months after the effective date of this act.

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

PCS adopted at 3-1-11 mtg. but was never reported out.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

S D

SENATE BILL 110
PROPOSED COMMITTEE SUBSTITUTE S110-CSTA-1 [v.2]

2/28/2011 9:19:51 AM

Short Title: Permit Terminal Groins. (Public)

Sponsors:

Referred to:

February 24, 2011

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE PERMITTING AND CONSTRUCTION OF TERMINAL GROINS AT INLETS UNDER CERTAIN CONDITIONS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 113A-115.1 reads as rewritten:

"**§ 113A-115.1. Limitations on erosion control structures.**

(a) As used in this section:

(1) "Erosion control structure" means a breakwater, bulkhead, groin, jetty, revetment, seawall, or any similar structure.

(1a) "Estuarine shoreline" means all shorelines that are not ocean shorelines that border estuarine waters as defined in G.S. 113A-113(b)(2).

(2) "Ocean shoreline" means the Atlantic Ocean, the oceanfront beaches, and frontal dunes. The term "ocean shoreline" includes an ocean inlet and lands adjacent to an ocean inlet but does not include that portion of any inlet and lands adjacent to the inlet that exhibits characteristics of estuarine shorelines.

(3) "Terminal groin" means a structure that is constructed on the side of an inlet at the terminus of an island generally perpendicular to the shoreline to limit or control sediment passage into the inlet channel.

(b) No person shall construct a permanent erosion control structure in an ocean shoreline. The Commission shall not permit the construction of a temporary erosion control structure that consists of anything other than sandbags in an ocean shoreline. This section shall not apply to ~~(i) any~~any of the following:

(1) Any permanent erosion control structure that is approved pursuant to an exception set out in a rule adopted by the Commission prior to ~~1 July 2003 or (ii) any~~ July 1, 2003.

(2) Any permanent erosion control structure that was originally constructed prior to ~~1 July~~July 1, 1974 and that has since been in continuous use to protect an inlet that is maintained for navigation.

(3) Any terminal groin permitted pursuant to subsection (f) of this section.

(b1) This section shall not be construed to limit the authority of the Commission to adopt rules to designate or protect areas of environmental concern, to govern the use of sandbags, or to govern the use of erosion control structures in estuarine shorelines.

(c) The Commission may renew a permit for an erosion control structure issued pursuant to a variance granted by the Commission prior to ~~1 July~~July 1, 1995. The Commission

may authorize the replacement of a permanent erosion control structure that was permitted by the Commission pursuant to a variance granted by the Commission prior to ~~1 July~~July 1, 1995 if the Commission finds that: (i) the structure will not be enlarged beyond the dimensions set out in the original permit; (ii) there is no practical alternative to replacing the structure that will provide the same or similar benefits; and (iii) the replacement structure will comply with all applicable laws and with all rules, other than the rule or rules with respect to which the Commission granted the variance, that are in effect at the time the structure is replaced.

(d) Any rule that prohibits permanent erosion control structures shall not apply to terminal groins permitted pursuant to subsection (f) of this section.

(e) In addition to the permit application requirements of Part 4 of Article 7 of Chapter 113A of the General Statutes, an application for a permit for the construction of a terminal groin shall include all of the following:

(1) An assessment and finding that nonstructural approaches to erosion control, including relocation of threatened structures, are found to be impractical.

(2) An environmental impact statement that has been reviewed by an independent third party and satisfies the requirements of G.S. 113A-4.

(3) An engineering design bearing the seal of a registered professional engineer licensed to practice pursuant to Chapter 89C of the General Statutes that describes the construction and maintenance of the proposed terminal groin, as well as the accompanying beach fill project required to be undertaken pursuant to subsection (f) of this section. The engineering design shall identify those property owners and local governments on both sides of the inlet that may be affected by the construction of the proposed terminal groin.

(4) Proof of notification of those property owners and local governments on both sides of the inlet identified in the engineering design prepared pursuant to subdivision (3) of this subsection as potentially affected by the construction of the proposed terminal groin.

(5) An inlet management plan that includes estuarine and ocean shorelines immediately adjacent to, and under the influence of, the inlet that describes postconstruction activities that the permittee will undertake to monitor the effects of the terminal groin and related dredging and beach fill. The plan shall define thresholds for assessing negative impacts to coastal resources due to construction of the terminal groin and provide a plan for mitigating negative impacts, including modification or removal of the terminal groin if negative impacts cannot be mitigated. These mitigation efforts shall be the responsibility of the permittee.

(6) Identification of the financial resources or funding sources necessary to construct the terminal groin and the accompanying beach fill and to conduct subsequent shoreline monitoring.

(f) A terminal groin shall only be permitted pursuant to this section under all of the following conditions:

(1) The permit applicant has complied with the requirements of subsection (e) of this section.

(2) The permit applicant has notified those property owners and local governments on both sides of the inlet identified in the engineering design prepared pursuant to subsection (e) of this section as potentially affected by the construction of the proposed terminal groin.

(3) The construction of the terminal groin is accompanied by a concurrent beach fill project to prefill the groin.

(g) Only one terminal groin may be placed on each ocean shoreline immediately adjacent to an inlet for a maximum of two groins per inlet."

SECTION 2. The Department of Environment and Natural Resources shall amend the management program it adopted pursuant to the federal Coastal Zone Management Act, 16 U.S.C. § 1451, et seq., to ensure the management program is consistent with G.S. 113A-115.1, as amended by Section 1 of this act, and shall seek approval of the proposed amended management plan by the United States Secretary of Commerce or the Secretary's authorized designee no later than six months after the effective date of this act. The Department may adopt any rules necessary to implement this section.

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

Cindy Davis (Sen. Jackson)

m:	Jeffrey Hudson (Research)
t:	Saturday, March 05, 2011 10:51 AM
To:	Sen. Don East; Sen. David Rouzer
Cc:	Sen. Harry Brown; Cindy Davis (Sen. Jackson); Jennifer McGinnis (Research); Jeff Warren (President Pro Tem's Office)
Subject:	Reconsideration of S110 (Permit Terminal Groins)

Senators East and Rouzer,

I understand that S110 (Permit Terminal Groins) will be returning to Senate Ag and Environment next Tuesday for consideration of a new PCS on the bill. Because the PCS the committee voted on last Tuesday was never reported in to the full Senate and is technically still in the committee, we will need to dispose of it before we take up the new PCS (otherwise, the committee minutes and Senate records will show that two different PCS's for the same bill received favorable reports from the committee and it could be unclear which one moved forward).

To do this, we will need to reconsider the vote by which the first PCS passed – much like the way you sometimes do it on the floor under Senate Rule 24. We will need to let the members know that the PCS wasn't reported in, is still in the committee, and that we will need to dispose of it so that we can take up the new PCS. We will then need a member who voted in favor of the PCS to move to reconsider the vote by which it was given a favorable report. Presumably, this will motion will pass. Once it does, we can set the first PCS aside and take up the new PCS.

If you have any questions or need me to do anything else on this, let me know.

Thanks,

Jeff

VISITOR REGISTRATION SHEET

Ag/Env/Nat. Resources (2011-2012) 3-8-11

Name of Committee **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Elbert Lowe	ATMC Charlotte N.C.
Jerry L. Shepherd	Wilkes TMC Wilkesboro N.C.
Eric S Cramer	WILKES TMC, WILKESBORO, NC
CLAYTON PORTER	WTMC, WKBO, NC
CHARLES BLEVINS	WILKES TMC, WILKESBORO, N.C
Amit Terepaugh	Wilkes Telephone Wilkesboro NC.
David McGowan	NC Realtors
Bryan Jenkins	NC Assoc. of Realtors
Ellie Edmunds	NC ASSOC OF REALTORS
Cody Thomas	"
Kari Barbuss	DENR
Judy Driggers	Sierra Club

VISITOR REGISTRATION SHEET

Ag/Env/Nat. Resources (2011-2012)
Name of Committee **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Henry Hutaff	N.C.B.A.
Tony Suddath	NCBEV
PC Reynman	Carolina State Strategies
Preston Howard	MCIC
Doug Lassiter	NCSTA
CS Hollis	TSS

VISITOR REGISTRATION SHEET

Ag/Env/Nat. Resources (2011-2012) — 3-8-11

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Tom Cores	TNC
Jay Leutze	SAMC
Chris Killian	NC Sea Grant
Bob Stevens	NCFA
Tommy Stevens	NCPC
Kim Starnes	Co-op Council of NC
Connie Starnes	Co-op Council of NC
Tommy Porter	Co-op Council of NC
Matthew Houck	Toxic Free NC
Andy Sayre	Village of Bald Head Island
Jenni Burke	NRCS

VISITOR REGISTRATION SHEET

Ag/Env/Nat. Resources (2011-2012)
Name of Committee **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Joe Lanier	Nelson Mullins
Emily Grimm	MWC
Bo Heath	MWC
Greg Thornton	Fibrowatt
Angel Sains	CAA
Jami Fitzgerald	MLG
Betsy Bailey	PENC
Beth Warren	AGO
Cameron Hardy	Electric Cities of NC
J Goodman	NC Chamber

VISITOR REGISTRATION SHEET

Ag/Env/Nat. Resources (2011-2012)
Name of Committee **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
PAIGE WORSHAM	LEGISLATIVE REPORTING SERVICE
Peter Raabe	American Rivers
Margaret Hartzell	Environment North Carolina
Eric Benjamin	WTC.
Steve Mathis	WTMC
CLAUDE SHEW JR.	WTMC
Tommy Chunk	
Heather Laws	Wilkes Telephone Membership Corp
John Runkle	NC Coastal Federation
Tom Bean	NCWF, EDF

Senate Agriculture/Environment/Natural Resources

Minutes

March 15, 2011

The Senate Ag/Env/Nat. Resources committee met on Tuesday, March 15, 2011 in Room 544-LOB. There were 12 senators present.

Senator David Rouzer called the meeting to order and introduced Pages and Sgt-At-Arms staff.

SB-308 State Regulation of Greenhouse Gas Emissions

Sen. Walters moved for adoption of the PCS for discussion. So moved. Sen. East explained the PCS. Sen. Brock moved for a favorable report for the PCS, unfavorable to the original bill. Vote taken and so moved.

Meeting Adjourned at 11:11 A.M.

Sen. David Rouzer, Co-chair

Cindy J. Davis, Committee Clerk

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES COMMITTEE REPORT
Senator Don East, Co-Chair
Senator David Rouzer, Co-Chair

Tuesday, March 15, 2011

Senator ROUZER,
submits the following with recommendations as to passage:

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

S.B. **308** State Regulation of Greenhouse Gas Emissions.

Draft Number:	PCS-85094
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

TOTAL REPORTED: 1

Committee Clerk Comments:

Cindy Davis (Sen. Jackson)

From: Cindy Davis (Sen. Jackson)
Sent: Friday, March 11, 2011 9:51 AM
To: @Senate/Agric./Env./Nat'l Res.; @SenateCommitteeNotice; Andy Perrigo (Sen. Daniel); Carol Resar (Sen. Atwater); Carole Walker (Sen. Allran); Gerry Johnson (Sen. Hartsell); Janet Black (Sen. Brock); Jeffrey Hudson (Research); Jennifer McGinnis (Research); Jennifer Mundt (Research); Judy Chriscoe (Sen. Bingham); Judy Edwards (Sen. Rouzer); Kathie Young (Sen. Kinnaird); Mariah Matheson (Research); Meghan McCarthy (Sen. Jenkins); Melissa Dombalis (Sen. Rabon); Sen. Andrew C. Brock; Sen. Austin Allran; Sen. Bill Rabon; Sen. Bob Atwater; Sen. Brent Jackson; Sen. Clark Jenkins; Sen. David Rouzer; Sen. Don East; Sen. Ellie Kinnaird; Sen. Fletcher Hartsell, Jr.; Sen. Harry Brown; Sen. Jean Preston; Sen. Jerry W. Tillman; Sen. Michael Walters; Sen. Stan Bingham; Sen. Stan White; Sen. Tommy Tucker; Sen. Warren Daniel; Steven Webb (Sen. East); Susanne Gunter (Sen. Brown); Suzanne Castleberry (Sen. Preston); Suzell Crosswhite (Pres Pro Tem's Office); Yvonne Hall (Sen. Tillman)
Subject: <NCGA> Senate Agriculture/Environment/Natural Resources Committee Meeting Notice for Tue, 03-15-2011 at 11:00

Principal Clerk _____
Reading Clerk _____

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

The Senate Committee on **Agriculture/Environment/Natural Resources** will meet at the following time:

DAY	DATE	TIME	ROOM
Tuesday	March 15, 2011	11:00	544 LOB

The following will be considered:

BILL NO.	SHORT TITLE	SPONSOR
SB 308	State Regulation of Greenhouse Gas Emissions.	Senator East Senator Tucker Senator Jackson

Senator Don East, Co-Chair
Senator David Rouzer, Co-Chair

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

S D

SENATE BILL 308
PROPOSED COMMITTEE SUBSTITUTE S308-PCS85094-SB-5

Short Title: State Regulation of Greenhouse Gas Emissions. (Public)

Sponsors:

Referred to:

March 10, 2011

A BILL TO BE ENTITLED

AN ACT TO PROHIBIT STATE AGENCIES FROM ADOPTING, IMPLEMENTING, OR ENFORCING A RULE THAT REGULATES GREENHOUSE GAS EMISSIONS OR LIMITS HUMAN ACTIVITY FOR THE PURPOSE OF REDUCING GREENHOUSE GAS EMISSIONS IF THE RULE IS NOT REQUIRED BY A FEDERAL LAW OR REGULATION OR IS MORE STRINGENT THAN A CORRESPONDING FEDERAL REGULATION OR LAW.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 143-215.107 reads as rewritten:

"**§ 143-215.107. Air quality standards and ~~classifications.~~classifications; limit on regulation of greenhouse gases.**

...

(h) Notwithstanding any other provision of law, no agency, as defined in G.S. 150B-2, may adopt, implement, or enforce a rule that regulates greenhouse gas emissions or that limits human activity for the purpose of reducing greenhouse gas emissions if the rule is not required by a federal regulation or law or is more stringent than a corresponding federal regulation or law. As used in this subsection, "greenhouse gas" means carbon dioxide, methane, nitrous oxide, and fluorinated gases, including chlorofluorocarbons, perfluorocarbons, and sulfur hexafluoride. As used in this subsection, "human activity" means energy generation by a public utility, as defined in G.S. 62-3, industrial processes, transportation, agricultural production, waste treatment and disposal, fossil fuel extraction activities, and any other residential, commercial, or other activities involving the burning of fossil fuels."

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

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

S D

SENATE BILL 308
PROPOSED COMMITTEE SUBSTITUTE S308-CSSB-5 [v.2]

3/14/2011 4:15:33 PM

Short Title: State Regulation of Greenhouse Gas Emissions. (Public)

Sponsors:

Referred to:

March 10, 2011

A BILL TO BE ENTITLED

AN ACT TO PROHIBIT STATE AGENCIES FROM ADOPTING, IMPLEMENTING, OR ENFORCING A RULE THAT REGULATES GREENHOUSE GAS EMISSIONS OR LIMITS HUMAN ACTIVITY FOR THE PURPOSE OF REDUCING GREENHOUSE GAS EMISSIONS IF THE RULE IS NOT REQUIRED BY A FEDERAL LAW OR REGULATION OR IS MORE STRINGENT THAN A CORRESPONDING FEDERAL REGULATION OR LAW.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 143-215.107 reads as rewritten:

"**§ 143-215.107. Air quality standards and ~~classifications.~~classifications; limit on regulation of greenhouse gases.**

...

(h) Notwithstanding any other provision of law, no agency, as defined in G.S. 150B-2, may adopt, implement, or enforce a rule that regulates greenhouse gas emissions or that limits human activity for the purpose of reducing greenhouse gas emissions if the rule is not required by a federal regulation or law or is more stringent than a corresponding federal regulation or law. As used in this subsection, "greenhouse gas" means carbon dioxide, methane, nitrous oxide, and fluorinated gases, including chlorofluorocarbons, perfluorocarbons, and sulfur hexafluoride. As used in this subsection, "human activity" means energy generation by a public utility, as defined in G.S. 62-3, industrial processes, transportation, agricultural production, waste treatment and disposal, fossil fuel extraction activities, and any other residential, commercial or other activities involving the burning of fossil fuels."

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

SENATE BILL 308:
State Regulation of Greenhouse Gas Emissions

2011-2012 General Assembly

Committee:	Senate Agriculture/Environment/Natural Resources	**Date:**	March 15, 2011
Introduced by:	Senators Jackson, East, Tucker	**Prepared by:**	Jeff Hudson Committee Counsel
Analysis of:	First Edition		

SUMMARY: ***Senate Bill 308 would prohibit State agencies from adopting, implementing, or enforcing a rule that regulates greenhouse gas emissions or that limits human activity for the purpose of reducing greenhouse gas emissions if the rule is more stringent than a corresponding federal regulation or law.***

CURRENT LAW AND BACKGROUND:

Under current law, there appears to be only one State rule directly related to the regulation of greenhouse gas emissions, 15A NCAC 02D .0544 (Prevention of Significant Deterioration Requirements for Greenhouse Gases) (State Rule). The State Rule is in response to greenhouse gas regulations promulgated by the United States Environmental Protection Agency (EPA) in 2010. The EPA greenhouse gas regulations govern the emissions of greenhouse gases from large stationary sources, such as power plants, refineries, cement plants, and other large industrial emitters of greenhouse gases. The State Rule limits the application of the EPA greenhouse gas regulations to these large emitters. Without the State Rule, the EPA greenhouse gas regulations could apply to much smaller and more numerous emitters of greenhouse gases.

The State Rule was adopted by the Environmental Management Commission on November 18, 2010, and was approved by the Rules Review Commission on December 16, 2010. The State Rule, however, received 18 letters of objection, which prohibited the Rule from becoming effective and subjected it to legislative review. On January 28, 2011, Governor Perdue issued Executive Order Number 81, which made the State Rule effective immediately. The State Rule is still subject to legislative disapproval, but to date, no bill to disapprove the Rule has been introduced.

Note, the State and federal government have regulated substances such as carbon dioxide, methane, nitrous oxide, and chlorofluorocarbons for a number of years for reasons independent of their greenhouse gases properties. For example, chlorofluorocarbons have been regulated at the State and federal level due to their ozone depleting properties. It is unclear if Senate Bill 308 would have any impact on existing State regulation of the individual substances listed as greenhouse gases in the bill.

BILL ANALYSIS:

Senate Bill 308 would prohibit State agencies from adopting, implementing, or enforcing a rule that regulates greenhouse gas emissions or that limits human activity for the purpose of reducing greenhouse gas emissions if the rule is more stringent than a corresponding federal regulation or law. The bill defines "greenhouse gas" as carbon dioxide, methane, nitrous oxide, and fluorinated gases, including chlorofluorocarbons, perfluorocarbons, and sulfur hexafluoride. The bill defines "human activity" as energy generation by a public utility, industrial processes, transportation, agricultural production, waste treatment and disposal, fossil fuel retrieval activities, and any other residential, commercial, or other activities involving the burning of fossil fuels.

EFFECTIVE DATE:

This act would become effective when it becomes law.

PROPOSED COMMITTEE SUBSTITUTE:

Proposed Committee Substitute (S308-CSSB-5 [v.2]) for Senate Bill 308 would also prohibit State agencies from adopting, implementing, or enforcing a rule that regulates greenhouse gas emissions or that limits human activity for the purpose of reducing greenhouse gas emissions if the rule is not required by a federal law or regulation. The Proposed Committee Substitute also makes technical changes.

SENATE BILL 308

Short Title:	State Regulation of Greenhouse Gas Emissions.	(Public)
Sponsors:	Senators Jackson, East, Tucker; Apodaca, Bingham, Blake, Brock, Clary, Daniel, Davis, Forrester, Goolsby, Hunt, Meredith, Newton, Pate, Preston, Rabon, Rouzer, and Stevens.	
Referred to:	Agriculture/Environment/Natural Resources.	

March 10, 2011

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT THE STATE'S REGULATION OF GREENHOUSE GAS EMISSIONS SHALL BE NO MORE STRINGENT THAN ANY FEDERAL REGULATION AND NO MORE STRINGENT THAN ANY FEDERAL LAW.

The General Assembly of North Carolina enacts:

SECTION 1. No State agency, regulatory board, or commission shall develop, adopt, implement, or enforce any new rule, and no State agency, regulatory board, or commission shall amend, implement, or enforce any existing rule that regulates greenhouse gas emissions or that limits human activity for the purpose of reducing greenhouse gas emissions when the rule is more stringent than any regulation promulgated by a federal agency or more stringent than any federal law.

SECTION 2. As used in this act, the following definitions apply:

(1) Greenhouse gas. – Carbon dioxide, methane, nitrous oxide, and fluorinated gases, including chlorofluorocarbons, perfluorocarbons, and sulfur hexafluoride.

(2) Human activity. – Energy generation by a public utility subject to Chapter 62 of the General Statutes, industrial processes, transportation, agricultural production, waste treatment and disposal, fossil fuel retrieval activities, and any other residential, commercial, or other activities involving the burning of fossil fuels.

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

VISITOR REGISTRATION SHEET

Ag/Env/Nat. Resources (2011-2012) — 3-15-11

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
John Monaghan	Piedmont Natural Gas - Raleigh
Betsy Bailey	PENC
Lin Ann Pengra	Carolina State Strategies
J Goodman	NC Chamber
Terry Pratt	Albemarle Fish Assoc 117 Holdens Lane Merry Hill, N.C.
Kathy Myers	9115 NC Hwy 45N Merry Hill 27957
Paul Sherman	NCFB
Doug Lassiter	NCSTA
Ken Bury	MLOC

VISITOR REGISTRATION SHEET

Ag/Env/Nat. Resources (2011-2012) — 3-15-11

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Allison Fowler	NC Grange
Robin Smith	DENR
Kari Barsness	DENR
Sharon Miller	CUCA

Senate Agriculture/Environment/Natural Resources

Minutes

March 22, 2011

The Senate Ag/Env/Nat. Resources committee met on Tuesday, March 22, 2011 in Room 544-LOB. There were 15 senators present.

Senator Don East called the meeting to order and introduced Pages and Sgt-At-Arms staff.

HB-29 RETRIEVAL OF BIG GAME

Sen. Clary explained the bill. Sen. Tucker moved for a favorable report. Sen. Bingham asked if this is a state-wide bill. Sen. Clary advised it is. Sen. Jenkins asked if there is a provision to notify property owners. Sen. Clary said there is not a provision but she would check with Rep. Moore to see if he will agree to this provision. If so, they will address that on the senate floor. Mr. Gordon Myers told members they have worked on this bill and it is not an agency bill. He told members of another bill that is forth-coming that may address this issue. Sen. Jenkins feels that from a safety stand-point this should be addressed. Mr. Myers said they will have no problem with adding this. Sen. Bingham questioned the effective date for the specific season (i.e. deer). Sen. Clary and Rep. Moore advised that seasonal dates are already addressed in other laws already on the books. Rep. Moore made additional comments in support of the bill. Sen. Walters feels this is good bill but he has concerns about shooting the game on one person's property, but retrieval on another person's property could be a problem. Rep. Moore said this will come under trespassing laws. Sen. Jenkins is concerned about after hours retrieval & the property owner needs to know why someone is on their land. The vote was taken and so moved for a favorable report.

Sen. Clary reminded members of the Sportsman Caucus Reception this evening and breakfast in the morning.

HB-62 PROHIBIT BOYLSTON CREEK RECLASSIFICATION

Rep. Guice explained the bill. Sen. Tillman reminded members that this committee passed the same bill last year sponsored by Sen. John Snow. He moved for a favorable report. Sen. Allran complimented Rep. Guice on his presentation. Sen. Atwater spoke on the bill and commended it.

Public speakers:

Mr. Ned Jones, NC Trout Unlimited and NC Wildlife Federation. Their job is to protect the trout and they oppose this bill due to the 25-ft buffer of the streams. They do appreciate and salute the work that has been done on keeping the stream clean, but they feel this doesn't protect the fish. Ms. Amelia Burnnett, Southern Environmental Law Center also spoke in opposition to this bill because of the trout

buffer of 25-ft. Ms. Robin Smith, Deputy Sec., DENR, the Department also has problems with this bill. Problems they see are due to the sedimentation and erosion issues, not the water quality.

No further discussion and the vote was taken. The vote was taken and passed with a favorable report.

SB-368 MODIFY PUBLIC SWIMMING POOL REQUIREMENTS

Sen. Rouzer explained the bill. Sen. Tucker sent forth an amendment that Sen. Rouzer read. Mr. Jeff Warren, Pro Temps staff made additional comments about fountains being classified as swimming pools and this bill will alleviate this potential problem. Sen. Allran asked how this will affect fountains on personal property. Mr. Warren responded. Sen. Bingham moved for passage of the amendment. Vote taken on the amendment and passed. Sen. Allran asked about country club facilities. Mr. Warren addressed that concerns. Sen. Allran has a country club in his district that has concerns. Mr. Jeff Hudson, Research staff counsel made additional clarifications on public or private properties. Sen. Allran likes the bill but he wants to be sure this covers everyone. Ms. Robin Smith, DENR, spoke on the definition of public swimming pools and this does cover those facilities. Sen. Bingham had a call from his Director of Health in his county and he does support this legislation. Sen. Jenkins moved for a favorable report to roll the amendment into a PCS. Vote taken and so moved.

Meeting Adjourned at 11:49 A.M.

Sen. Don East, Co-chair

Cindy J. Davis, Committee Clerk

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES COMMITTEE REPORT
Senator Don East, Co-Chair
Senator David Rouzer, Co-Chair

Tuesday, March 22, 2011

Senator EAST,
submits the following with recommendations as to passage:

FAVORABLE

H.B. **29** Retrieval of Big Game.
Sequential Referral: None
Recommended Referral: None

H.B. **62** Prohibit Boylston Creek Reclassification.
Sequential Referral: None
Recommended Referral: None

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

S.B. **368** Modify Public Swimming Pool Requirements.
Draft Number: PCS15096
Sequential Referral: None
Recommended Referral: None
Long Title Amended: No

TOTAL REPORTED: 3

Committee Clerk Comments:

Senate Agriculture/Environment/Natural Resources Committee
Tuesday, March 22, 2011, 11:00
544 LOB

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

HB-29	Retrieval of Big Game	Rep. Moore
HB-62	Prohibit Boylston Creek Reclassification	Rep. Guice
SB-368	Modify Public Swimming Pool Requirements	Sen. Tucker

Presentations

Other Business

Adjournment

Principal Clerk
Reading Clerk

Corrected: Removed SB-66
Added HB-29
Added SB-368

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

The Senate Committee on **Agriculture/Environment/Natural Resources** will meet at the following time:

DAY	DATE	TIME	ROOM
Tuesday	March 22, 2011	11:00	544 LOB

The following will be considered:

BILL NO.	SHORT TITLE	SPONSOR
HB 29	Retrieval of Big Game.	Representative Moore
HB 62	Prohibit Boylston Creek Reclassification.	Representative Guice
SB 368	Modify Public Swimming Pool Requirements.	Senator Rouzer Senator Tucker

Removed SB-66
Added HB-29
Added SB-368

Senator Don East, Co-Chair
Senator David Rouzer, Co-Chair

Senate Agriculture/Environment/Natural Resources Committee
Tuesday, March 22, 2011, 11:00
544 LOB

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

HB-62	Prohibit Boylston Creek Reclassification	Rep. Guice
SB-66	Retrieval of Deer	Sen. Clary

Presentations

Other Business

Adjournment

Principal Clerk ____
Reading Clerk ____

Corrected: Add SB-66

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

The Senate Committee on **Agriculture/Environment/Natural Resources** will meet at the following time:

DAY	DATE	TIME	ROOM
Tuesday	March 22, 2011	11:00	544 LOB

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BILL NO.	SHORT TITLE	SPONSOR
HB 62	Prohibit Boylston Creek Reclassification.	Representative Guice
SB 66	Retrieval of Deer.	Senator Clary

Add SB-66

Senator Don East, Co-Chair
Senator David Rouzer, Co-Chair

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

H 3

HOUSE BILL 29
Committee Substitute Favorable 2/22/11
Third Edition Engrossed 2/24/11

Short Title: Retrieval of Big Game. (Public)

Sponsors:

Referred to:

February 3, 2011

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE RETRIEVAL OF KILLED OR WOUNDED BIG GAME USING A SINGLE DOG ON A LEASH.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 113-291.1 is amended by adding a new subsection to read:

"(k) If a hunter kills or wounds a big game animal during the hunting hours authorized by subsection (a) of this section, the hunter may use a portable light source and a single dog on a leash to assist the hunter in retrieving the dead or wounded big game animal, and may dispatch a wounded big game animal using only a .22-caliber rimfire pistol, archery equipment, or a handgun otherwise legal for that hunting season. Pursuit and retrieval under this subsection may occur between the hours of one-half hour after sunset and 11:00 p.m. if necessary, but such pursuit and retrieval may not be accomplished using a motorized vehicle.

For purposes of this section, the term 'dispatch' means the quick and humane killing of a wounded animal to prevent further suffering through infection, starvation, or other distress in the wild."

SECTION 2. This act becomes effective October 1, 2011.

HOUSE BILL 29: Retrieval of Big Game

2011-2012 General Assembly

Committee:	Senate Agriculture/Environment/Natural Resources	**Date:**	March 22, 2011
Introduced by:	Rep. T. Moore	**Prepared by:**	Mariah Matheson Research Assistant
Analysis of:	Third Edition		

SUMMARY: House Bill 29 would allow a hunter who has killed or wounded a big game animal to be able to pursue, dispatch, and retrieve the animal outside of prescribed hunting hours and with the use of a portable light source and a single dog on a leash. A wounded big game animal may be dispatched with a .22 caliber rimfire pistol, archery equipment, or a handgun allowed for that hunting season. A motorized vehicle may not be used in pursuit or retrieval.

[As introduced, this bill was identical to S66, as introduced by Sen. Clary, which is currently in Senate Agriculture/Environment/Natural Resources.]

CURRENT LAW: G.S. 113-291.1 provides for the manner of taking wild animals and wild birds. Subsection (a) limits the time of day for hunting to the time period one-half hour before sunrise to one-half hour after sunset. This subsection also provides for the methods of taking animals, including rifles, shotguns, bow and arrow, falconry, and dogs. Pursuant to subsection (g), the use of a .22 caliber pistol is limited to small game such as rabbit and squirrel, however, the Wildlife Resources Commission (WRC) may prescribe by rule for the use and types of handguns for taking deer and other large game under subsection (g1). Under subsections (e) and (e1), the WRC may prohibit shining deer, which is the intentional sweeping of an area with lights for deer.

BILL ANALYSIS: House Bill 29 would amend G.S. 113-291.1 to create an exception to other provisions in the statute and allow a hunter who has killed or wounded a big game animal to retrieve and dispatch the animal after the hours allowed for hunting. "Big game" is defined in G.S. 113-129(1b) as "bear, wild boar, wild turkey, and white-tailed deer." Pursuit and retrieval may occur between the hours of one-half hour after sunset and 11:00 p.m. if necessary. The hunter may use a portable light source and a single dog on a leash to help locate the animal. Dispatch of the animal must be by .22 caliber rimfire pistol, archery equipment, or other handgun legal for that hunting season. Dispatch is defined as the quick and humane killing of the animal to prevent death by starvation, infection, or other distress. The hunter may not use a motorized vehicle in the pursuit or retrieval of the animal.

EFFECTIVE DATE: October 1, 2011

Barbara Riley and Janice Paul, counsels to House Agriculture, substantially contributed to this summary.

H29-SMTF-2(e3) v1

H

HOUSE BILL 62

Short Title:	Prohibit Boylston Creek Reclassification.	(Public)
Sponsors:	Representative Guice (Primary Sponsor). For a complete list of Sponsors, see Bill Information on the NCGA Web Site.	
Referred to:	Environment.	

February 10, 2011

A BILL TO BE ENTITLED

AN ACT TO PROHIBIT THE RULE TO CHANGE THE WATER QUALITY CLASSIFICATION OF BOYLSTON CREEK FROM BECOMING EFFECTIVE.

The General Assembly of North Carolina enacts:

SECTION 1. Notwithstanding G.S. 150B-21.3 and S.L. 2010-157, French Broad River Basin Rule 15A NCAC 02B .0304, as adopted by the Environmental Management Commission on March 12, 2009, and approved by the Rules Review Commission on April 16, 2009, shall not become effective.

SECTION 2. This act becomes effective July 1, 2011.

HOUSE BILL 62:
Prohibit Boylston Creek Reclassification

2011-2012 General Assembly

Committee:	Senate Agriculture/Environment/Natural Resources	**Date:**	March 22, 2011
Introduced by:	Representative Guice	**Prepared by:**	Jeff Hudson Committee Counsel
Analysis of:	First Edition		

SUMMARY: House Bill 62 would prohibit French Broad River Basin Rule 15A NCAC 02B .0304, which reclassifies Boylston Creek for purposes of protecting trout populations, from becoming effective.

[As introduced, this bill was identical to S64, as introduced by Senator Davis, which is currently in the Senate Committee on Agriculture, Environment, and Natural Resources.]

CURRENT LAW:

State Implementation of the Federal Clean Water Act

North Carolina, like most other states, has accepted delegation from the federal government for implementation of the federal Clean Water Act. Pursuant to this delegation, the State, through the Environmental Management Commission (EMC), must designate classifications for each water body in the State based on the uses or potential uses of the water body, such as public water supply; protection and propagation of fish, shellfish, and wildlife; recreation in and on the water; and agricultural, industrial, and other purposes, including navigation. The EMC must develop water quality standards to protect the uses for each classification and must re-examine these standards at least once every three years. The EMC may also be petitioned to change the classification of a water body or adjust the water quality standards for protection of the uses of a water body.

Description of Boylston Creek Area Subject to Reclassification

The watershed portion of Boylston Creek subject to reclassification by French Broad River Basin Rule 15A NCAC 02B .0304 (Boylston Creek Reclassification Rule) is an 8.3 square mile area that transects the border of Henderson and Transylvania Counties. (See attached map) The current land use in this area is forest and agriculture lands, with some pasture and grazing, rural residential development, and commercial and small businesses.[1]

Buffer Zone Requirements for Class C Waters and Other Non-Trout Waters

Under current water quality law, Boylston Creek is classified as a Class C water. Class C waters are protected for recreation, fishing, wildlife, fish, aquatic life, including propagation, survival, and maintenance of biological integrity, and agriculture. For Class C waters and all other non-trout waters, land-disturbing activities related to construction or land improvement are prohibited in proximity to the water unless a buffer zone is provided along the edge of the water that is sufficient in width to confine visible siltation within the 25% of the buffer zone nearest the land-disturbing activity. The width of this buffer zone is measured from the edge of the water to the nearest edge of the disturbed area, with the 25% of the zone nearer the land-disturbing activity containing natural or artificial means of confining visible siltation.

[1] Background information obtained from the October 9, 2008 Hearing Officer Report on the Proposed Reclassification of a Segment of Boylston Creek. This report can be found at: http://h2o.enr.state.nc.us/admin/emc/documents/AttachmentAto09-15FINALDRAFTROPBOYLSTONCR.pdf

Buffer Zone Requirements for Class C Trout Waters

The Boylston Creek Reclassification Rule would reclassify Boylston Creek from a Class C water to a Class C Trout water. Class C Trout waters are protected for the same uses as Class C water bodies with additional protections for natural trout propagation and the survival of stocked trout. For Class C Trout waters, there must be an undisturbed buffer zone 25 feet wide or of sufficient width to confine visible siltation within the 25% of the buffer zone nearest the land-disturbing activity, whichever is greater. The 25 foot minimum width for an undisturbed buffer zone adjacent to designated trout waters is measured horizontally from the top of the bank.

Exceptions to Buffer Zone Requirements

The buffer requirements do not apply to land-disturbing activity in connection with the construction of facilities to be located on, over, or under a lake or natural watercourse. Furthermore, the buffer requirements do not apply to the following:

- Activities undertaken on agricultural land for the production of plants and animals, including breeding and grazing of livestock; forages and sod crops, grains and feed crops, tobacco, cotton, and peanuts; dairy animals and dairy products; poultry and poultry products; livestock, including beef cattle, llamas, sheep, swine, horses, ponies, mules, and goats; bees and apiary products; and fur producing animals.
- Activities undertaken on forestland for the production and harvesting of timber and timber products and conducted in accordance with best management practices set out in Forest Practice Guidelines Related to Water Quality, as adopted by the Department of Environment and Natural Resources (Department).
- Activities for which a permit is required under the Mining Act of 1971.
- Activities essential to protect human life, for the duration of an emergency.

In addition to these exemptions, the Sedimentation Control Commission may approve plans that include land-disturbing activity along trout waters when the duration of the disturbance would be temporary and the extent of the disturbance would be minimal.

Legislative Action on the Boylston Creek Reclassification Rule

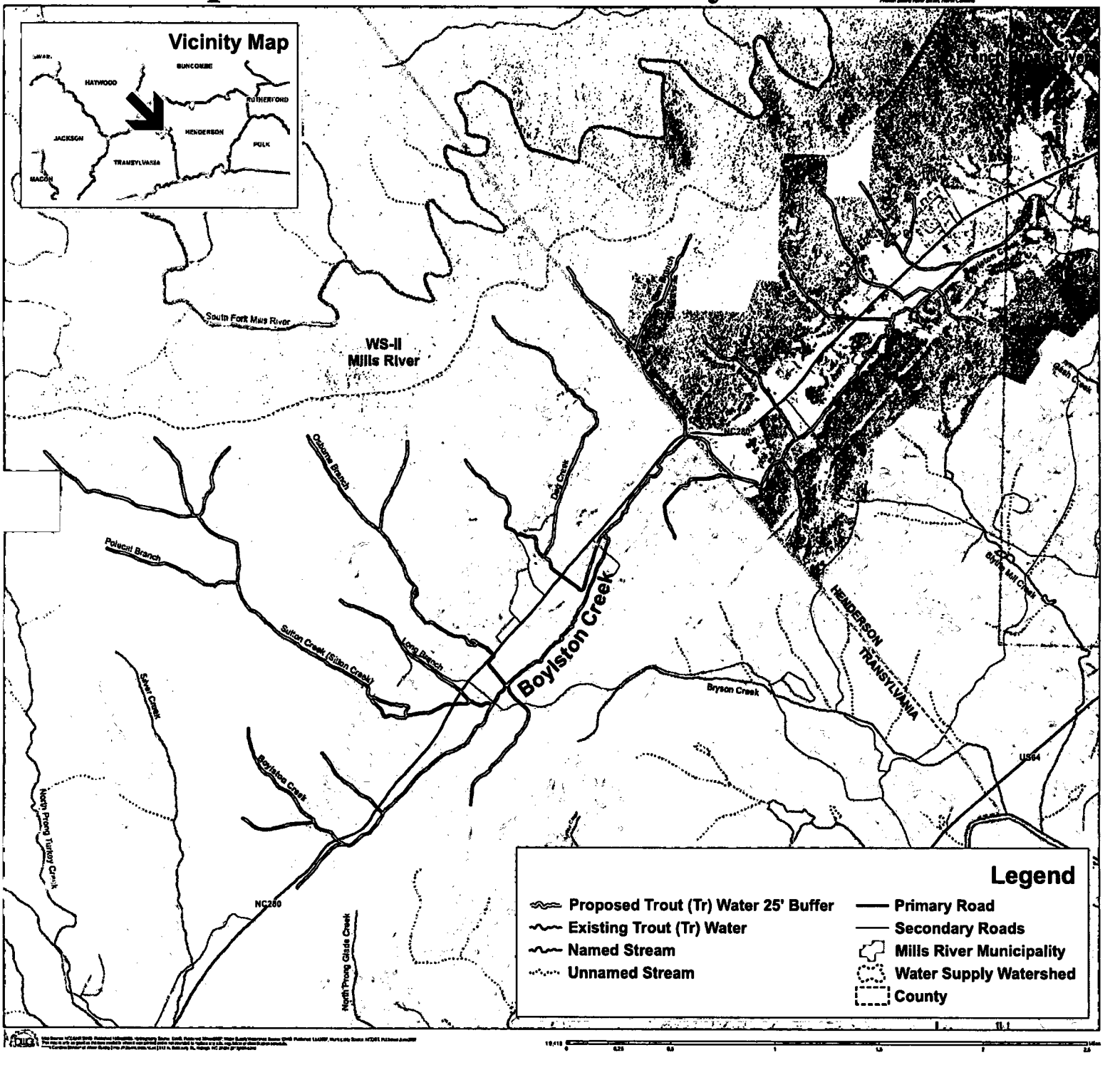
In response to the Boylston Creek Reclassification Rule, the General Assembly enacted S.L. 2010-157[2] during the 2010 Short Session. S.L. 2010-157 delayed the effective date of the Boylston Creek Reclassification Rule to July 1, 2011, required the Department to hold at least two public meetings on the Rule in the Boylston Creek area, and provided that nothing in the act restricts the ability of the General Assembly to take further action on the Rule or its effective date. The Department held the required public meetings and produced the Boylston Creek Reclassification Public Meeting Report.[3]

BILL ANALYSIS: House Bill 62 would prohibit French Broad River Basin Rule 15A NCAC 02B .0304 from becoming effective.

H62-SMSB-6(e1) v6

[2] This act can be found at: http://www.ncleg.net/Sessions/2009/Bills/Senate/PDF/S1259v4.pdf
[3] This report can be found at: http://www.ncleg.net/documentsites/committees/ERC/ERC%20Reports%20Received/2011/DENR/2011-Jan%20Boylston%20Creek%20Report.pdf

Proposed Trout Waters: Boylston Creek



GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

S D

SENATE BILL 368
PROPOSED COMMITTEE SUBSTITUTE S368-PCS15096-RI-5

Short Title: Modify Public Swimming Pool Requirements. (Public)

Sponsors:

Referred to:

March 21, 2011

A BILL TO BE ENTITLED

AN ACT TO MODIFY THE APPLICABILITY OF CERTAIN FENCING REQUIREMENTS FOR PUBLIC SWIMMING POOLS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 130A-281 reads as rewritten:

"**§ 130A-281. Operation permit required.**

(a) No public swimming pool may be opened for use unless the owner or operator has obtained an operation permit issued by the Department pursuant to rules adopted under G.S. 130A-282.

(b) The Department shall not deny an operation permit to an owner or operator of a public swimming pool that received an operation permit prior to April 1, 2010, solely due to the failure of the owner or operator to comply with the fencing requirements set forth in 15A NCAC 18A .2528(a)(1) through 15A NCAC 18A .2528(a)(6) and 15A NCAC 18A .2528(b)(1) through 15A NCAC 18A .2528(b)(2), except that the Department may deny an operation permit to an owner or operator that fails to comply with these provisions when (i) at least fifty percent (50%) of the fence has been damaged or destroyed or (ii) the owner or operator elects to replace the fence."

SECTION 2. G.S. 130A-282(b) reads as rewritten:

"(b) ~~Exception.~~Exceptions. –

(1) ~~Public swimming pools~~ The owner or operator of a public swimming pool constructed or remodeled prior to May 1, 1993, that ~~do~~ does not meet specific design and construction requirements of the rules for public swimming pools adopted by the Commission shall not be required to comply with design and construction requirements other than requirements related to the abatement of suction hazards. ~~Public swimming pools~~The owner or operator of a public swimming pool constructed or remodeled prior to May 1, 1993, shall comply with all other rules for public swimming pools adopted by the Commission.

(2) The owner or operator of a public swimming pool with a fence constructed prior to April 1, 2010, shall be required to comply with the specific fencing requirements set forth in 15A NCAC 18A .2528(a)(1) through 15A NCAC 18A .2528(a)(6) and 15A NCAC 18A .2528(b)(1) through 15A NCAC 18A .2528(b)(2) only when (i) at least fifty percent (50%) of the fence has been damaged or destroyed or (ii) the owner or operator elects to replace the

fence. The owner or operator of a public swimming pool that received an operation permit prior to April 1, 2010, shall comply with all other rules for public swimming pools adopted by the Commission.

(3) The owner or operator of a fountain is not required to provide dressing and sanitation facilities or fencing in connection with the fountain if the fountain (i) is located on public grounds or in a public park; (ii) is not associated with a swimming pool; (iii) incorporates devices using sprayed, jetted, or other water sources that come into contact with the users; and (iv) does not incorporate standing water as part of the user activity area. The owner or operator of this type of fountain shall comply with all other rules adopted by the Commission for public swimming pools classified as interactive play attractions."

SECTION 3. The Commission shall review the safety benefits of 15A NCAC 18A .2531(a)(7), which requires a wading pool to be separated from a swimming pool by a fence or other structure. As part of its review, the Commission shall specifically consider whether the safety benefits of requiring a fence or other structure between a wading pool and a swimming pool outweigh the safety benefits of allowing a parent with a child in each pool to quickly move between the wading pool and the swimming pool. The Commission shall report its findings and recommendations to the Joint Regulatory Reform Committee by March 1, 2012.

SECTION 4. From the effective date of this act through July 1, 2012, the Department shall not require owners and operators of public swimming pools to comply with 15A NCAC 18A .2531(a)(7).

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

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 368

AMENDMENT NO. _____
(to be filled in by
Principal Clerk)

S368-ARI-3 [v.1]

Comm. Sub. [NO]
Amends Title [NO]
First Edition

Date March 22, 2011

Senator _____

moves to amend the bill on page 2, lines 3 through 9,
by rewriting those lines to read:

"(3) The owner or operator of a fountain is not required to provide dressing and sanitation facilities or fencing in connection with the fountain if the fountain: (i) is located on public grounds or in a public park; (ii) is not associated with a swimming pool; (iii) incorporates devices using sprayed, jetted, or other water sources that come into contact with the users; and (iv) does not incorporate standing water as part of the user activity area. The owner or operator of this type of fountain shall comply with all other rules adopted by the Commission for public swimming pools classified as interactive play attractions.".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED ✓ FAILED _____ TABLED _____

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

S 1

SENATE BILL 368

Short Title:	Modify Public Swimming Pool Requirements.	(Public)
Sponsors:	Senators Tucker, Rouzer; Allran, Bingham, Brock, Daniel, Goolsby, Gunn, Hise, Pate, Soucek, and Tillman.	
Referred to:	Agriculture/Environment/Natural Resources.	

March 21, 2011

A BILL TO BE ENTITLED

AN ACT TO MODIFY THE APPLICABILITY OF CERTAIN FENCING REQUIREMENTS FOR PUBLIC SWIMMING POOLS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 130A-281 reads as rewritten:

"**§ 130A-281. Operation permit required.**

(a) No public swimming pool may be opened for use unless the owner or operator has obtained an operation permit issued by the Department pursuant to rules adopted under G.S. 130A-282.

(b) The Department shall not deny an operation permit to an owner or operator of a public swimming pool that received an operation permit prior to April 1, 2010, solely due to the failure of the owner or operator to comply with the fencing requirements set forth in 15A NCAC 18A .2528(a)(1) through 15A NCAC 18A .2528(a)(6) and 15A NCAC 18A .2528(b)(1) through 15A NCAC 18A .2528(b)(2), except that the Department may deny an operation permit to an owner or operator that fails to comply with these provisions when (i) at least fifty percent (50%) of the fence has been damaged or destroyed or (ii) the owner or operator elects to replace the fence."

SECTION 2. G.S. 130A-282(b) reads as rewritten:

"(b) ~~Exception.~~Exceptions. –

(1) ~~Public swimming pools~~ The owner or operator of a public swimming pool constructed or remodeled prior to May 1, 1993, that ~~do~~ does not meet specific design and construction requirements of the rules for public swimming pools adopted by the Commission shall not be required to comply with design and construction requirements other than requirements related to the abatement of suction hazards. ~~Public swimming pools~~The owner or operator of a public swimming pool constructed or remodeled prior to May 1, 1993, shall comply with all other rules for public swimming pools adopted by the Commission.

(2) The owner or operator of a public swimming pool with a fence constructed prior to April 1, 2010, shall be required to comply with the specific fencing requirements set forth in 15A NCAC 18A .2528(a)(1) through 15A NCAC 18A .2528(a)(6) and 15A NCAC 18A .2528(b)(1) through 15A NCAC 18A .2528(b)(2) only when (i) at least fifty percent (50%) of the fence has been damaged or destroyed or (ii) the owner or operator elects to replace the fence. The owner or operator of a public swimming pool that received an

operation permit prior to April 1, 2010, shall comply with all other rules for public swimming pools adopted by the Commission.

(3) The owner or operator of a fountain located on public grounds or in a public park that (i) is not associated with a swimming pool and (ii) incorporates devices using sprayed, jetted, or other water sources that come into contact with the users is not required to provide dressing and sanitation facilities. The owner or operator of this type of fountain shall comply with all other rules adopted by the Commission for public swimming pools classified as interactive play attractions."

SECTION 3. The Commission shall review the safety benefits of 15A NCAC 18A .2531(a)(7), which requires a wading pool to be separated from a swimming pool by a fence or other structure. As part of its review, the Commission shall specifically consider whether the safety benefits of requiring a fence or other structure between a wading pool and a swimming pool outweigh the safety benefits of allowing a parent with a child in each pool to quickly move between the wading pool and the swimming pool. The Commission shall report its findings and recommendations to the Joint Regulatory Reform Committee by March 1, 2012.

SECTION 4. From the effective date of this act through July 1, 2012, the Department shall not require owners and operators of public swimming pools to comply with 15A NCAC 18A .2531(a)(7).

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

SENATE BILL 368:
Modify Public Swimming Pool Requirements

2011-2012 General Assembly

Committee:	Senate Agriculture/Environment/Natural Resources	**Date:**	March 22, 2011
Introduced by:	Sens. Tucker, Rouzer	**Prepared by:**	Jennifer McGinnis Committee Counsel
Analysis of:	First Edition		

SUMMARY: ***Senate Bill 368 would modify the applicability of certain fencing requirements governing public swimming pools.***

CURRENT LAW: Rules adopted by the Commission for Public Health (Commission) set health and safety standards for public swimming pools. All public swimming pools must be enclosed by a fence or other structure and the rules set out specific standards for those enclosures (such as the size of chain link; spacing of cut-outs; and the size of the gap between the bottom of the fence and the ground). Fence standards were originally adopted in 1991.

BACKGROUND: In 2010, the Department of Environment and Natural Resources (Department) received inquiries concerning application of the fencing standards. In response, the Attorney General's office advised that public swimming pools should be in compliance with the fencing standards in order to receive an annual operation permit for the 2011 season (and beyond). Based on that advice, the Department's Division of Environmental Health notified public swimming pool operators that compliance with the fencing standards would be necessary in order to get a 2011 operation permit. A number of public swimming pools have fences that are still in good repair but do not meet all of the fence specifications.

In addition, the rules require a separate fence around a wading pool that is located within a larger public swimming pool complex. The purpose of the rule is to make it more difficult for very young children to wander from the wading pool to the swimming pool. A question has been raised about the benefit of the requirement, since it also has the effect of making it more difficult for a parent to supervise both a child in the wading pool and an older child in the swimming pool.

BILL ANALYSIS: The bill would prohibit the Department from denying an operation permit to an owner or operator of a public swimming pool that received an operation permit prior to April 1, 2010, if the denial is based solely on the owner or operator's failure to comply with certain fencing requirements (such as the size of chain link; spacing of cut-outs; and the size of the gap between the bottom of the fence and the ground). The Department may, however, deny an operation permit to an owner or operator that fails to comply with these provisions when (i) at least fifty 15 percent (50%) of the fence has been damaged or destroyed or (ii) the owner or operator elects to replace the fence. Unless these criteria were present an owner or operator would not be required to comply with these fencing requirements, but would still be required to comply with all other rules for public swimming pools adopted by the Commission.

The bill would also provide that an owner or operator of a fountain located on public grounds or in a public park that (i) is not associated with a swimming pool and (ii) incorporates devices using sprayed, jetted, or other water sources that come into contact with the users is not required to provide dressing and sanitation facilities. An owner or operator of this type of fountain would be required to comply with all other rules adopted by the Commission for public swimming pools classified as interactive play attractions.

Finally, the bill would direct the Commission to review the safety benefits of the rule that requires a wading pool to be separated from a swimming pool by a fence or other structure, and report its findings and recommendations to the Joint Regulatory Reform Committee by March 1, 2012. Specifically, the Commission must consider whether the safety benefits of requiring a fence or other structure between a wading pool and a swimming pool outweigh the safety benefits of allowing a parent with a child in each pool to quickly move between the wading pool and the swimming pool. The bill would also prohibit the Department from requiring owners and operators to comply with this rule until July 1, 2012.

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

S368-SMRI-8(e1) v1

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 368

AMENDMENT NO. _____
(to be filled in by
Principal Clerk)

S368-ARI-3 [v.1]

Comm. Sub. [NO]
Amends Title [NO]
First Edition

Date March 22, 2011

Senator _____

moves to amend the bill on page 2, lines 3 through 9, by rewriting those lines to read:

"(3) The owner or operator of a fountain is not required to provide dressing and sanitation facilities or fencing in connection with the fountain if the fountain: (i) is located on public grounds or in a public park; (ii) is not associated with a swimming pool; (iii) incorporates devices using sprayed, jetted, or other water sources that come into contact with the users; and (iv) does not incorporate standing water as part of the user activity area. The owner or operator of this type of fountain shall comply with all other rules adopted by the Commission for public swimming pools classified as interactive play attractions.":

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

VISITOR REGISTRATION SHEET

Ag/Env/Nat. Resources (2011-2012) 3-22-11

Name of Committee **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
	NCBA
Tom Bean	NCWF
Andrea Burnette	SELC
Robin Smith	DENR
Kim Alboum	HSUS
PAIGE WORSHAM	LEGISLATIVE REPORTING SERVICE
David Steele	NCCN
DAN CRAWFORD	NCLCV
Alan Clark	NCDWQ
Adriene Weaver	NCDWQ
Dan Conrad	N.C.C.N
Margaret Hostzell	Environment North Carolina

VISITOR REGISTRATION SHEET

Ag/Env/Nat. Resources (2011-2012) — 3-15-11

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Dan Crawford	NCLCV
Dan Conrad	NCCN
Matt Wolfe	Parker Poe
Sheila Holman	NCDENR - Division of Air Quality
Sushma Masemore	NCDENR - DAQ
Pam Shipman	PBH
Allen Hardison	CRSWMA
Jeff Hamlin	NCMA / WPTF
Keith Black	UNC-TV
Daniel Ambrose	NCLM
George Everett	Duke Energy
Elizabeth Ouzts	Environment North Carolina

VISITOR REGISTRATION SHEET

Ag/Env/Nat. Resources (2011-2012)
Name of Committee **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Lucy Johnson Langdon	NC Sweet Potato Commission
JOHN COOPER	COMPASS NC
TWAMSLEY	FIBROWATT
Kari Barbour	DENR
David Knight	DENR

VISITOR REGISTRATION SHEET

Ag/Env/Nat. Resources (2011-2012)
Name of Committee **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
TIM WILHELM	TROUT UNLIMITED 7626 BEDFORDSHIRE DR. CHARLOTTE NC 28226
Paul Sherman	NCFB
Paula Page	NCFB
JG GODARD	NC CHAMBER
Ray Starling	NCDACS
Ed Harrison	CHAPEL HILL TOWN COUNCIL
Lin-Ann Chapman	CSS
Greg Thornton	Fibrowatt
Heather Barrett	Williams Mullen
Don McConnaughhay	SPS

VISITOR REGISTRATION SHEET

Ag/Env/Nat. Resources (2011-2012) 3-22-11

Name of Committee **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Will Morgan	Sierra Club
Jessi Hayes	NC HBA
Lisa Martin	NCHBA
NABIL SALAMEH M.D.	WAKE FOREST UNIV BAPTIST DEPT of Anesthesiology
Maeen [illegible]	Smith Anderson
Butch Gunnells	NC Bev
Jerry Hadesky	NCPE/NCBCC
Tommy Stevens	NCLC
Tim Gestwicki	NCWF
Mike Thomas	NCWF
David McGowan	NC Realtors

VISITOR REGISTRATION SHEET

Ag/Env/Nat. Resources (2011-2012) — 3-22-11

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Jimmy Gentry	NC State Grange
Allison Fowler	NC Grange
[signature]	NCBA
Daniel Ambrose	NCLM

Senate Agriculture/Environment/Natural Resources

Minutes

March 29, 2011

The Senate Ag/Env/Nat. Resources committee met on Tuesday, March 29, 2011 in Room 544-LOB. There were 13 senators present.

Senator David Rouzer called the meeting to order and introduced Pages and Sgt-At-Arms staff.

HB- 162 EXEMPT SMALL AG PROCESSING FROM PERMIT REQ.

Sen. Jackson moved for adoption of the PCS for discussion. So moved. Rep. Langdon explained the PCS. Sen. Tillman supports all small farmers and he moved for a favorable report, unfavorable to the original bill. Public speakers: Catherine Span from Northern Durham spoke in favor of this legislation. She has a small farm (goat cheese dairy) and a lawyer and she told of a problem they had with the local health department when they started this farm. This will help others in this situation. Ms. Debbie Stiklever, Mebane, NC (Alamance County), they own a small grape farm that they started in 2001 and they created their winery in 2002. They had problems with waste-water issues when they began and with the help of NCSU and others they were able to get their permits. They spent a lot of money and many hours of labor to get this started. Thank you for your help and this bill.

The vote was taken for the PCS and so moved as stated.

Meeting Adjourned at 11:16 A.M.

Sen. David Rouzer, Co-chair

Cindy J. Davis, Committee Clerk

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES COMMITTEE REPORT
Senator Don East, Co-Chair
Senator David Rouzer, Co-Chair

Tuesday, March 29, 2011

Senator ROUZER,
submits the following with recommendations as to passage:

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

H.B. **162** Exempt Small Ag Processing from Permit Req.

Draft Number:	PCS30200
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

TOTAL REPORTED: 1

Committee Clerk Comments:

Principal Clerk ____
Reading Clerk ____

(2nd) **Corrected: REMOVE HB-45**

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

The Senate Committee on **Agriculture/Environment/Natural Resources** will meet at the following time:

DAY	DATE	TIME	ROOM
Tuesday	March 29, 2011	11:00	544 LOB

The following will be considered:

BILL NO.	SHORT TITLE	SPONSOR
HB 162	Exempt Small Ag Processing from Permit Req.	Representative McCormick Representative Dixon Representative Langdon, Jr. Representative Spear

REMOVE HB-45

Senator Don East, Co-Chair
Senator David Rouzer, Co-Chair

Principal Clerk ____
Reading Clerk ____

Corrected: Add HB-45

SENATE
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BILL NO.	SHORT TITLE	SPONSOR
HB 45	Accelerate Cleanup of Industrial Properties.	Representative Gibson, III Representative Gillespie Representative Cook
HB 162	Exempt Small Ag Processing from Permit Req.	Representative McCormick Representative Dixon Representative Langdon, Jr. Representative Spear

Add HB-45

Senator Don East, Co-Chair
Senator David Rouzer, Co-Chair

Principal Clerk ____
Reading Clerk ____

Corrected: Add HB-45

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Add HB-45

Senator Don East, Co-Chair
Senator David Rouzer, Co-Chair

Principal Clerk ____
Reading Clerk ____

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Senator Don East, Co-Chair
Senator David Rouzer, Co-Chair

Principal Clerk ____
Reading Clerk ____

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Senator Don East, Co-Chair
Senator David Rouzer, Co-Chair

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

H D

HOUSE BILL 162
PROPOSED SENATE COMMITTEE SUBSTITUTE H162-PCS30200-SB-9

Short Title: Exempt Small Ag Processing From Permit Req. (Public)

Sponsors:

Referred to:

February 23, 2011

A BILL TO BE ENTITLED

AN ACT TO EXEMPT CERTAIN ACTIVITIES RELATED TO SMALL-SCALE PROCESSING OF AGRICULTURAL PRODUCTS FROM WASTEWATER PERMIT REQUIREMENTS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 143-215.1 is amended by adding a new subsection to read:

"(a5) For purposes of this subsection, "agricultural products" means horticultural, viticultural, forestry, dairy, livestock, poultry, bee, and any farm products. Notwithstanding subsection (a) of this section, a permit shall not be required for a wastewater management system for the treatment and disposal of wastewater produced from activities related to the processing of agricultural products if all of the following conditions are met:

(1) The activities related to the processing of the agricultural products are carried out by the owner of the agricultural products.

(2) The activities related to the processing of the agricultural products produce no more than 1,000 gallons of wastewater per day.

(3) The wastewater is not generated by an animal waste management system as defined in G.S. 143-215.10B.

(4) The wastewater is disposed of by land application.

(5) No wastewater is discharged to surface waters.

(6) The disposal of the wastewater does not result in any violation of surface water or groundwater standards."

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

HOUSE BILL 162

Short Title:	Exempt Small Ag Processing from Permit Req.	(Public)
Sponsors:	Representatives Langdon, Dixon, McCormick, and Spear (Primary Sponsors). For a complete list of Sponsors, see Bill Information on the NCGA Web Site.	
Referred to:	Agriculture.	

February 23, 2011

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GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

H D

HOUSE BILL 162
PROPOSED SENATE COMMITTEE SUBSTITUTE H162-CSSB-9 [v.3]

3/28/2011 6:08:39 PM

Short Title: Exempt Small Ag Processing from Permit Req. (Public)

Sponsors:

Referred to:

February 23, 2011

A BILL TO BE ENTITLED

AN ACT TO EXEMPT CERTAIN ACTIVITIES RELATED TO SMALL-SCALE PROCESSING OF AGRICULTURAL PRODUCTS FROM WASTEWATER PERMIT REQUIREMENTS.

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

HOUSE BILL 162:
Exempt Small Ag Processing from Permit Req

2011-2012 General Assembly

Committee:	Senate Agriculture/Environment/Natural Resources	**Date:**	March 29, 2011
Introduced by:	Reps. Langdon, Dixon, McCormick, Spear	**Prepared by:**	Mariah Matheson Research Assistant
Analysis of:	PCS to First Edition H162-CSSB-9 [v.3]		

SUMMARY: ***House Bill 162 would exempt wastewater management systems for small scale agricultural processing activities from obtaining a permit if the processing activities produce 1,000 gallons of wastewater or less per day and meet certain other conditions.***

CHANGES MADE BY PCS: The PCS adds a definition for "agricultural products," which includes horticultural, viticultural, forestry, dairy, livestock, poultry, bee, and any farm products. The PCS also clarifies that wastewater generated from an animal waste management system would not be exempt from permitting requirements.

CURRENT LAW: G.S. 143-215.1(a)(2) requires a permit to construct or operate any sewer system, treatment works, or disposal system within the State. Persons operating small agricultural processing facilities currently must apply for an individual permit to dispose of wastewater from agricultural processing activities.

Rules adopted pursuant to G.S. 143-215.1 for permits for the land disposal of wastewater from agricultural processing facilities can be found at 15 NCAC 2T.0500 et seq. Those rules establish the application requirements for a permit, which include a soils report, engineering design documents, site plan, a hydrogeologic description, and receiver site agronomic management plan. Other requirements for the operation of a wastewater irrigation system include meeting design criteria such as minimum degree of treatment to protect surface and ground water and application of wastewater at agronomic rates.

BILL ANALYSIS: House Bill 162 would exempt wastewater management systems for the treatment and disposal of wastewater from agricultural processing activities from the permitting process if:

- The activities are carried out by the owner of the agricultural products.
- Involve no more than 1,000 gallons per day.
- Wastewater is not generated from an animal waste management system.
- Wastewater is disposed of by land application.
- No wastewater is discharged to surface waters.
- Disposal of the wastewater does not result in violation of surface or ground water standards.

EFFECTIVE DATE: This act would be effective when it becomes law.

Barbara Riley, Committee Counsel to House Agriculture, substantially contributed to this summary.

H162-SMTF-7(e1) v3

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

H D

HOUSE BILL 162
PROPOSED SENATE COMMITTEE SUBSTITUTE H162-CSSB-9 [v.3]

3/28/2011 6:08:39 PM

Short Title: Exempt Small Ag Processing from Permit Req. (Public)

Sponsors:

Referred to:

February 23, 2011

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(6) The disposal of the wastewater does not result in any violation of surface water or groundwater standards."

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

VISITOR REGISTRATION SHEET

Ag/Env/Nat. Resources
Name of Committee

March 29-2011
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Dan Conrad	NCCN
David Steele	NCCN
Penny Griffin	School of Gov.
Kari Barsness	DENR
Robin Smith	DENR
Coleen Sullins	DENR/DWQ
Keith Larick	"
Peter Raabe	American Rivers
Thomas C. Caves, Jr.	NC Dept. of Crime Control & Public Safety
Will Morgan	Sierra
Doug Howey	NCPCM

VISITOR REGISTRATION SHEET

Ag/Env/Nat. Resources
Name of Committee **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
	NCAEC
	"

VISITOR REGISTRATION SHEET

Ag/Env/Nat. Resources (2011-2012) — 3-29-11

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Tommy Stevens	NCPC
Julie Bracque Conan	Capstrat
Andrew Meehan	Capstrat
Bob Boerner	NCFA
Paula Page	NCFB
Paul Sherman	NCFB
Debbie Hamm	NCFB
Debbie Stikeleather	Iron Gate Winery Alamance Cty
Kathryn Spann	Prodigal Farm Durham Cty
Joy Hicks	NCDA
Vernon Cox	NCDACS
Daniel Ambrose	NCLM

VISITOR REGISTRATION SHEET

Ag/Env/Nat. Resources (2011-2012)
Name of Committee **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
[signature]	BCS

Charles
Stanton

PAGES ATTENDING

COMMITTEE: Agriculture **ROOM:** 544

DATE: 3-29 **TIME:** 11 AM

PLEASE PRINT LEGIBILY!!!!!!!!!!!!!

Page Name	Hometown	Sponsoring Senator
1 RC Brunstetter	Mocksville	Brunstetter
2 Helen Hubacher	Chapel Hill	Kinnaird
3		
4		
5		
6		
7		
8		
9		
10		

Do not add names below the grid.

Pages: Present this form to either the Committee Clerk at the meeting or to the Sgt-at-arms.

Senate Agriculture/Environment/Natural Resources

MINUTES

April 5, 2011

The Senate Ag/Env/Nat. Resources committee met on Tuesday, April 05, 2011 in Room 544-LOB. There were 16 senators present.

Sen. Don East called the meeting to order and introduced the Pages and Sgt-At-Arms staff.

HB- 45 Accelerate Cleanup of Industrial Properties –

Sen. Tucker moved for adoption of the PCS for discussion. So moved. Rep. Gillespie explained the bill and urged members to support this. Sen. Brock moved for a favorable report, unfavorable to the original bill. Sen. Kinnaird asked about targeted sites and keeping safe-guards in place to human health. Rep. Gillespie informed members of additional safe-guards that have been added to this bill. Sen. Kinnaird asked about spectrums of risk and Mr. Jeff Hudson, staff counsel responded and explained. Sen. Allran thanked Sen. Kinnaird for her comments/questions. Sen. Hartsell hopes this will help expedite the clean-up of hazardous chemicals at a certain plant (Alco Smelter Plant).

Public Speakers: Mrs. Alsip, Surry County, asked if this isn't a way to move contamination from one site to another. Mr. Jeff Hudson explained.

Sen. Clodfelter questioned Mr. Hudson's explanation. Mr. Hudson asked them to look at Page 2 and Page 3 for further details. Sen. Clodfelter made comments about Alco. Rep. Gillespie asked the Dept. of DENR to respond.

Mr. Dexter Matthews, Director of Waste Management, DENR addressed members and explained how the clean-up process will take place. Sen. Hartsell how can this be amended to apply specific sites. Rep. Gillespie said he would help with this but it has been about 10 years to get this this far. He would caution not to make any changes. Sen. Allran spoke again. Mr. Hudson said this is a voluntary program so that people will take this initiative for themselves.

No further discussion, vote taken and so moved as proposed.

HB-103 RQMTS. FOR MIN'L OIL SPILLS – 2

Rep. Hager explained the bill. Sen. Jackson moved for a favorable report. No further discussion, vote taken and so moved.

SB- 378 – ENERGY CROPS FOR BIOFULES FEEDSTOCKS

Sen. Brown moved for adoption of the PCS for discussion. So moved. Sen. Rouzer explained the PCS. Sen. Tillman moved for a favorable report as to PCS, unfavorable to the original bill. Sen. Kinnaird asked for definition of agronomics. Sen. Rouzer explained. Sen. Daniel questioned the 2011 date and the deadline date of 2014 and could this be changed. Sen. Rouzer advised that these are the reality dates in

order to help get this started. Sen. Bingham asked about the crops being moved. Sen. Rouzer explained. Sen. Kinnaird asked if this is what is done at NCSU and Dept. of AG and why is there a bill needed to do what they are supposed to be doing. Sen. Rouzer said this is a way to let the people know that NC is serious about biofuels and this will help ensure this will happen. No further discussion. Vote taken and so moved.

SB-229 – TRANSFER DENR SOIL & WATER TO DACS

Chairman East advised no votes would be taken on this today. It is for discussion only today. Sen. Rouzer explained the bill.

Ms. Patricia Harris, Director Soil & Water Conservation gave her power point presentation. (Attached)

Sen. East asked who reviewed this bill and decided not to take any action. Ms. Harris said the Soil/Water Conservation districts.

Sen. Tucker asked about the data- base. Ms. Harris explained their data server. Sen. Tucker asked if they feel like Dept. of Ag can't do the job. Ms. Harris responded. They value their partnership with the agencies they work with and the local districts. Sen. Rabon stated that the pilot program is working very well in the counties he represents. He recommended other counties be added to this pilot program. Sen. Kinnaird asked if staff moves along with the programs. Ms. Harris said they would move to the Dept. of Ag. Mr. Hudson added comments that both entities will be moved if this bill passes. Sen. Kinnaird asked if the leverage funds will disappear if this transfers. Ms. Harris said the funds could be reduced but they do not know how much of the funds will disappear. Sen. Kinnaird requested the amount of lost funds.

Commission Troxler addressed members. He will welcome Soil & Water if this bill passes. He has past work history with soil and water. These interchange with agriculture. His intention is to continue to have a strong soil and water department. Dept. of AG works hand-in-hand with Soil & Water Conservation.

Sen. East asked if there is foresight of any efficiencies by moving this. Commissioner said they could be housed with no costs. Sen. Tucker asked if there are funds that can be gained and how much can be saved in this transition. Commissioner Troxler said his plan is to retain all the funds possible. He has a good relationship with USDA and they will maximize this relationship.

Chairman East advised this will continue later.

The meeting adjourned at 11:56.

Sen. Don East, Co-Chair

Cindy J. Davis, Committee Clerk

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES COMMITTEE REPORT
Senator Don East, Co-Chair
Senator David Rouzer, Co-Chair

Wednesday, April 06, 2011

Senator EAST,
submits the following with recommendations as to passage:

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 2, BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL

H.B.(CS #2) **45** Accelerate Cleanup of Industrial Properties.

Draft Number:	PCS30250
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

TOTAL REPORTED: 1

Committee Clerk Comments:

Sen. Allran will explain on the floor

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES COMMITTEE REPORT
Senator Don East, Co-Chair
Senator David Rouzer, Co-Chair

CORRECTED REPORT

Tuesday, April 05, 2011

Senator EAST,
submits the following with recommendations as to passage:

FAVORABLE

H.B.(CS #1) **103** Rqmts. for Min'l Oil Spills - 2.
Sequential Referral: None
Recommended Referral: None

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

S.B. **378** Energy Crops for Biofuels Feedstocks.
Draft Number: PCS55207
Sequential Referral: None
Recommended Referral: None
Long Title Amended: Yes

TOTAL REPORTED: 2

Committee Clerk Comments:

HB-103 will be explained by Sen. Gunn.

Senate Agriculture/Environment/Natural Resources Committee
Tuesday, April 5, 2011, 11:00
544 LOB

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

HB 45	Accelerate Cleanup of Industrial Properties.	Representative Gibson, III Representative Gillespie
HB 103	Rqmts. for Min'l Oil Spills - 2.	Representative Cook Representative Hager Representative Gillespie
SB 229	Transfer DENR Soil & Water to DACS.	Senator Rouzer Senator East Senator Jackson
SB 378	Energy Crops for Biofuels Feedstocks.	Senator Rouzer Senator Goolsby Senator Jackson

Presentations

Other Business

Adjournment

Principal Clerk ____
Reading Clerk ____

SENATE
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AND
BILL SPONSOR NOTICE

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HB 103	Rqmts. for Min'l Oil Spills - 2.	Representative Hager Representative Gillespie
SB 211	Exempt Pallets for Ag Use From Sales Tax.	Senator Newton Senator Rabon
SB 213	Waccamaw River/Isolated River Basin.	Senator Rabon

Senator Don East, Co-Chair
Senator David Rouzer, Co-Chair

Principal Clerk ____
Reading Clerk ____

Corrected: REMOVE - SB-211

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SB 378	Energy Crops for Biofuels Feedstocks.	Senator Rouzer Senator Goolsby Senator Jackson

REMOVE - SB-211

Senator Don East, Co-Chair
Senator David Rouzer, Co-Chair

Principal Clerk ____
Reading Clerk ____

Corrected: ADD: SB-229

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Remove Per Jachan — SB 211	Exempt Pallets for Ag Use From Sales Tax.	Senator Newton Senator Rabon
Remove Per Rabon — SB 213	Waccamaw River/Isolated River Basin.	Senator Rabon
SB 229	Transfer DENR Soil & Water to DACS.	Senator Rouzer Senator East Senator Jackson

ADD: SB-229

Senator Don East, Co-Chair
Senator David Rouzer, Co-Chair

Add SB-378 per Jeff Warren + Sen. Rouzer

Principal Clerk
Reading Clerk

Corrected: ADD: SB-229

SENATE
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SB 229	Transfer DENR Soil & Water to DACS.	Senator Rouzer Senator East Senator Jackson

ADD: SB-229

Senator Don East, Co-Chair
Senator David Rouzer, Co-Chair

Principal Clerk ____
Reading Clerk ____

Corrected: Add: SB-378 & Remove SB-213

SENATE
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SB 378	Energy Crops for Biofuels Feedstocks.	Senator Rouzer Senator Goolsby Senator Jackson

Add: SB-378 & Remove SB-213

Senator Don East, Co-Chair
Senator David Rouzer, Co-Chair

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

H D

HOUSE BILL 45*
Committee Substitute Favorable 3/3/11
Committee Substitute #2 Favorable 3/10/11
PROPOSED SENATE COMMITTEE SUBSTITUTE H45-PCS30250-SB-10

Short Title: Accelerate Cleanup of Industrial Properties. (Public)

Sponsors:

Referred to:

February 8, 2011

A BILL TO BE ENTITLED

AN ACT TO ALLOW THE USE OF RISK-BASED REMEDIATION TO ACCELERATE THE CLEANUP OF CONTAMINATED INDUSTRIAL SITES FOR THE PURPOSE OF LIMITING HUMAN AND ENVIRONMENTAL EXPOSURE TO SAFE LEVELS, TO PROTECT CURRENT AND LIKELY FUTURE USES OF GROUNDWATER, AND TO ENSURE THE COST-EFFECTIVE APPLICATION OF LIMITED PUBLIC AND PRIVATE RESOURCES.

Whereas, the General Assembly finds that public health, safety, and welfare and the environment can be protected by implementing a remediation process that requires that contaminated industrial sites 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 there are contaminated industrial sites 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 industrial sites 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 sites, and other opportunity costs because of the uncertainties and concerns that result from the environmental contamination of these sites; and

Whereas, the General Assembly finds that it is in the public interest that contaminated industrial sites are cleaned up or managed in a manner that protects public health, safety, and 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 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 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 site 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 accelerated cleanup of contaminated industrial sites; and

Whereas, the General Assembly intends that the levels of remediation that are established for each contaminated site are to be applicable or relevant 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 sites; Now, therefore,

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 130A-310.62 through G.S. 130A-310.64 are reserved for future codification purposes.

SECTION 2. Article 9 of Chapter 130A of the General Statutes is amended by adding a new Part to read:

"Part 8. Risk-Based Environmental Remediation of Industrial Sites.

"**§ 130A-310.65. 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.

(2) "Commission" means the Environmental Management Commission created pursuant to G.S. 143B-282.

(3) "Contaminant" means any substance regulated under any program listed in G.S. 130A-310.67(a).

(4) "Contaminated industrial site" or "site" means any real property that meets all of the following criteria:

a. The property is contaminated and may be subject to remediation under any of the programs or requirements set out in G.S. 130A-310.67(a).
b. The property is or has been used primarily for manufacturing or other industrial activities for the production of a commercial product. This includes a property used primarily for the generation of electricity.
c. No contaminant associated with activities at the property is located off of the property at the time the remedial action plan is submitted.
d. No contaminant associated with activities at the property will migrate to any adjacent properties above unrestricted use standards for the contaminant.

(5) "Contamination" means a contaminant released into an environmental medium that has resulted in or has the potential to result in an increase in the concentration of the contaminant in the environmental medium in excess of unrestricted use standards.

(6) "Fund" means the Inactive Hazardous Sites Cleanup Fund established pursuant to G.S. 130A-310.11.

(7) "Institutional controls" means nonengineered measures used to prevent unsafe exposure to contamination, such as land-use restrictions.

(8) "Registered environmental consultant" means an environmental consulting or engineering firm approved to implement and oversee voluntary remedial actions pursuant to Part 3 of Article 9 of Chapter 130A of the General Statutes and rules adopted to implement the Part.

(9) "Remedial action plan" means a plan for eliminating or reducing contamination or exposure to contamination.

(10) "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.

(11) "Systemic toxicant" means any substance that may enter the body and have a harmful effect other than causing cancer.

(12) "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 Commission, the Commission for Public Health, or the Department.

"**§ 130A-310.66. Purpose.**

It is the purpose of this Part to authorize the Department to approve the remediation of contaminated industrial sites 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.

"**§ 130A-310.67. Applicability.**

(a) This Part applies to contaminated industrial sites subject to remediation pursuant to any of the following programs or requirements:

(1) The Inactive Hazardous Sites Response Act of 1987 under Part 3 of Article 9 of Chapter 130A of the General Statutes, including voluntary actions under G.S. 130A-310.9 of that act, and rules promulgated pursuant to those statutes.

(2) The hazardous waste management program administered by the State pursuant to the federal Resource Conservation and Recovery Act of 1976, Public Law 94-580, 90 Stat. 2795, 42 U.S.C. § 6901, et seq., as amended, and Article 9 of Chapter 130A of the General Statutes.

(3) The solid waste management program administered pursuant to 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, Public Law 96-510, 94 Stat. 2767, 42 U.S.C. § 9601, et seq., as amended, the Superfund Amendments and Reauthorization Act of 1986, Public Law 99-499, 100 Stat. 1613, as amended, and under Part 4 of Article 9 of Chapter 130A of the General Statutes.

(5) The groundwater protection corrective action requirements adopted by the 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.

(b) This Part shall not apply to contaminated industrial sites subject to remediation pursuant to any of the following programs or requirements:

(1) The Leaking Petroleum Underground Storage Tank Cleanup program under Part 2A of Article 21A of Chapter 143 of the General Statutes and rules promulgated pursuant to that statute.

(2) The Dry-Cleaning Solvent Cleanup program under Part 6 of Article 21A of Chapter 143 of the General Statutes and rules promulgated pursuant to that statute.

(3) The pre-1983 landfill assessment and remediation program established under G.S. 130A-310.6(c) through (g).

(c) This Part shall apply only to sites where a discharge, spill, or release of contamination has been reported to the Department prior to March 1, 2011.

"**§ 130A-310.68. Remediation standards.**

(a) When conducting remediation activities pursuant to this Part, a person who proposes to or is required to respond to the release of a contaminant at a contaminated industrial site shall comply with one of the following standards:

(1) The unrestricted use standards applicable to each affected medium.

(2) The background standard, if the background standard 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 standards shall be developed for each medium as provided in 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. Site-specific remediation standards shall be developed in accordance with all of the following:

(1) Remediation methods and technologies that result in emissions of air pollutants shall comply with applicable air quality standards adopted by the Commission.

(2) The site-specific remediation standard for surface waters shall be the water quality standards adopted by the 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 site 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) Permits for facilities located at sites covered by any of the programs or requirements set out in G.S. 130A-310.67(a) shall contain conditions to avoid exceedances of applicable groundwater standards adopted by the Commission pursuant to Article 21 of Chapter 143 of the General Statutes due to operation of the facility.

(5) 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.

(6) Soil shall be remediated to unrestricted use standards on residential property with the following exceptions:

a. For mixed-use developments where the ground level uses are nonresidential and where all potential exposure to contaminated 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 or impracticability of removal, 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.

(7) The potential for human inhalation of contaminants from the outdoor air and other site-specific indoor air exposure pathways shall be considered, if applicable.

(8) 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.

(9) 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) (July 1, 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.

(10) 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.

(11) The site-specific remediation standards for each medium shall be adequate to avoid foreseeable adverse effects to other media or the environment that are inconsistent with the risk-based approach under this Part.

"**§ 130A-310.69. Remedial investigation report; remedial action plans.**

(a) A person who proposes to conduct remediation pursuant to this Part shall submit a remedial investigation report to the Department prior to submitting a remedial action plan. The remedial investigation report shall include, but is not limited to, 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 narrative description of the methodology used in the investigation; a description of all on-site releases of contamination; a site map, drawn to scale, showing benchmarks, directional arrow, location of property boundaries, buildings, structures, all perennial and nonperennial surface water features, drainage ditches, dense vegetation, contaminant spill or disposal areas, underground utilities, storage vessels, and existing on-site wells; identification of adjacent property owners and adjacent land uses; description of local geologic and hydrologic conditions; an evaluation of the site and adjacent properties for the existence of environmentally sensitive areas; a description of groundwater monitoring well design and installation procedures; a map, drawn to scale, that shows all groundwater sample locations; a description of field and laboratory quality control and quality assurance procedures followed during the remedial investigation; a description of methods used to manage investigation-derived wastes; tabulation of analytical results for all sampling; copies of all laboratory reports; a description of procedures and the results of any special assessments; and any other information required by the Department or considered relevant by the investigator. The remedial investigation shall assess all contaminated areas of the site, including types and levels of contamination, and the risk that the contamination poses to public health, safety, and welfare and to the environment.

(b) 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 remedial action plan shall do all of the following:

(1) Identify actions required to remove, treat, or otherwise appropriately mitigate or isolate the source of contamination to ensure that the source will not cause unrestricted use standards to be exceeded in any medium.

(2) Address contamination that moves from one medium to another in order to prevent a violation of the remediation standards established under G.S. 130A-310.68. A more stringent remediation standard may be required for a particular medium to control impact on other media.

(3) Identify the current and anticipated future uses of property comprising the contaminated site and address any concerns raised in public comment on the proposed remedial action plan as to the proposed future uses of the property.

(4) Identify the current and anticipated future uses of groundwater in the contaminated site and address any concerns raised in public comment on the proposed remedial action plan as to the future uses of groundwater.

(5) Determine the appropriate method of remediation to achieve the site-specific remediation standards.

(6) 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.

(7) Specify any measures that may be necessary to prevent any discharge into surface waters during implementation of the remedial action plan that violates applicable surface water quality standards adopted by the Commission.

(8) Specify any measures that may be necessary to prevent any air emission during implementation of the remedial action plan that violates applicable air quality standards adopted by the Commission.

(9) Provide for attainment and maintenance of the remediation standards established under G.S. 130A-310.68.

(10) Provide for methods and procedures to verify that the quantity, concentration, range, or other measure of each contaminant remaining at the contaminated site at the conclusion of the contaminant-reduction phase of 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 for the imposition and recordation of land-use restrictions as provided in G.S. 143B-279.9, 143B-279.10, 130A-310.3(f), 130A-310.8, 130A-310.35, 143-215.84(f), and 143-215.85A 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.

(12) Provide for submission of an annual certification to the Department by the property owner that land use at the site is in compliance with land-use restrictions recorded pursuant to this Part and that the land-use restrictions are still properly recorded in the chain of title for the property.

(13) Provide a detailed description of the proposed remedial action to be taken; the results of any treatability studies and additional site characterization needed to support the proposed remedial action; plans for postremedial and confirmatory sampling; a project schedule; a schedule for progress reports to the Department; and any other information required by the Department or considered relevant by the person who submits the proposed remedial action plan.

(14) Provide a description of measures that will be employed to ensure that the safety and health of persons on properties in the vicinity of the site and persons visiting or doing business on the site will not be adversely affected by any remediation activity.

(15) Provide a reasonable estimate of the probable cost of the remedial action sufficient for the Department to determine an acceptable level of financial assurance.

(16) Provide proof of financial assurance as required by G.S. 130A-310.72.

(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 all of the following:

a. The magnitude of risks remaining after completion of the remediation.

b. The type, degree, frequency, and duration of any postremediation 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.

e. Time required to achieve remediation standards.

(2) Toxicity, mobility, and volume of contaminants, including the amount of contaminants that will be removed, contained, treated, or destroyed; the degree of expected reduction in toxicity, mobility, and 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.

(d) The development of a remedial action plan may require supplemental submissions and revisions based on Department review, remedial action pilot studies, and public comment from local government and citizens.

"**§ 130A-310.70. Notice of intent to remediate.**

In addition to the public participation requirements of the individual programs listed in G.S. 130A-310.67(a), the person who proposes to remediate a site under this Part shall send a notice of intent to remediate to all local governments having taxing or land-use jurisdiction over the site, and to all adjoining landowners. The notice shall include all of the information required in G.S. 130A-310.69(a) and include a statement of intent to clean up the site to site-specific remediation standards. The person shall submit to the Department a copy of the notice of intent provided to local governments and adjoining landowners, a certification that the notice of intent to remediate was so provided to those parties, and all information and comments that the person received in response to the notice. In addition, the person shall, when appropriate, describe how the remedial action plan was modified to address comments received in response to the notice.

"**§ 130A-310.71. Review and approval of proposed remedial action plans.**

(a) The Department shall review and approve a proposed remedial action plan consistent with the remediation standards set out in G.S. 130A-310.68 and the procedures set out in this section. In its review of a proposed remedial action plan, the Department shall do all of the following:

(1) Determine whether site-specific remediation standards are appropriate for a particular contaminated site. In making this determination, the Department shall consider proximity of the contamination to water supply wells or other receptors; current and probable 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.

(2) Determine whether the party conducting the remediation has adequately demonstrated through modeling or other scientific means acceptable to the Department that no contamination will migrate to adjacent property at levels above unrestricted use standards.

(3) Determine whether the proposed remedial action plan meets the requirements of G.S. 130A-310.69.

(4) Determine whether the proposed remedial action plan meets the requirements of any other applicable remediation program except those pertaining to remediation standards.

(5) Establish the acceptable level or range of levels of risk to public health, safety, and welfare and to the environment.

(6) Establish, for each contaminant, the maximum allowable quantity, concentration, range, or other measures of contamination that will remain at the contaminated site at the conclusion of the contaminant-reduction phase of the remediation.

(7) Consider the technical performance, effectiveness, and reliability of the proposed remedial action plan in attaining and maintaining compliance with applicable remediation standards.

(8) 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.

(9) 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.

(10) Approve the circumstances under which no further remediation is required.

(b) The person who proposes a remedial action plan has the burden of demonstrating with reasonable assurance that contamination from the site will not migrate to adjacent property above unrestricted use levels and that the remedial action plan is protective of public health, safety, and welfare and the environment by virtue of its compliance with this Part. The demonstration shall (i) take into account actions proposed in the remedial action plan that will prevent contamination from migrating off the site; and (ii) use scientifically valid site-specific data.

(c) 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 and adjoining landowners pursuant to G.S. 130A-310.70. 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. 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 120 days after a complete plan has been submitted, the person who submitted the plan may treat the plan as having been disapproved at the end of that time period.

"**§ 130A-310.72. Financial assurance requirement.**

The person conducting remediation of a contaminated industrial site pursuant to the provisions of this Part shall establish financial assurance that will ensure that sufficient funds are available to implement and maintain the actions or controls specified in the remedial action plan for the site. The person conducting remediation of a site may establish financial assurance through one of the following mechanisms, or any combination of the following mechanisms, in a form specified or approved by the Department: insurance products issued from entities having no corporate or ownership association with the person conducting the remediation; funded trusts; surety bonds; certificates of deposit; letters of credit; corporate financial tests; local government financial tests; corporate guarantees; local government guarantees; capital reserve

funds; or any other financial mechanism authorized for the demonstration of financial assurance under (i) 40 Code of Federal Regulations Part 264, Subpart H (July 1, 2010 Edition) and (ii) Section .1600 of Subchapter B of Chapter 13 of Title 15A of the North Carolina Administrative Code. Proof of financial assurance shall be provided in the remedial action plan and annually thereafter on the anniversary date of the approval of the plan.

"**§ 130A-310.73. Attainment of the remediation standards.**

(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 person conducting the remediation 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 person conducting the remediation shall submit a final report to the Department, with notice to all local governments with taxing and land-use jurisdiction over the site, that demonstrates that the remedial action plan has been fully implemented, that any land-use restrictions have been certified on an annual basis, and that the remediation standards have been attained. The final report shall be accompanied by a request that the Department issue a determination that no further remediation beyond that specified in the approved remedial action plan is required.

(b) The person conducting the remediation 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 person conducting the remediation has completed remediation to the approved remediation standard and met all the requirements of the approved remedial action plan, the Department shall issue a determination that no further remediation beyond that specified in the approved remedial action plan is required at the site. Once the Department has issued a no further action determination, the Department may require additional remedial action by the responsible party only upon finding any of the following:

(1) Monitoring, testing, or analysis of the site subsequent to the issuance of the no further action determination 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 site 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 no further action determination for the site are not adequately funded or are not adequately implemented.

(4) A contaminant or hazardous substance release is discovered at the site that was not the subject of the remedial investigation report or the remedial action plan.

(5) A material change in the facts known to the Department at the time the written no further action determination 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 no further action determination was based on fraud, misrepresentation, or intentional nondisclosure of information by the person conducting the remediation.

(7) Installation or use of wells would induce the flow of contaminated groundwater off the site.

(d) The Department shall issue a final decision on a request for a determination that remediation has been completed to approved standards and that no further remediation beyond that specified in the approved remedial action plan is required within 180 days after receipt of a complete final report. Failure of the Department to issue a final decision on a no further remediation determination within 180 days after receipt of a complete final report and request for a determination of no further remediation may be treated as a denial of the request for a no further remediation determination. 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.

"**§ 130A-310.74. Compliance with other laws.**

Where a site is covered by an agreement under the Brownfields Property Reuse Act of 1997, as codified as Part 5 of Article 9 of Chapter 130A of the General Statutes, any work performed by the prospective developer pursuant to that agreement is not required to comply with this Part, but any work not covered by such agreement and performed at the site by another person not a party to that agreement may be performed pursuant to this Part.

"**§ 130A-310.75. Use of registered environmental consultants.**

The Department may approve the use of a registered environmental consultant to provide oversight for the assessment and remediation of a site under this Part. If remediation under this Part is not undertaken voluntarily, the Department may not require the use of a registered environmental consultant to provide oversight for the assessment and remediation of a site under this Part.

"**§ 130A-310.76. Fees; permissible uses of fees.**

(a) A person who undertakes remediation of environmental contamination under site-specific remediation standards as provided in G.S. 130A-310.68 shall pay a fee to the Fund in an amount equal to four thousand five hundred dollars ($4,500) for each acre or portion of an acre of contamination, including any area that will become contaminated as a result of the release; however, no person shall be required to pay more than one hundred twenty-five thousand dollars ($125,000) to the Fund for any individual site, regardless of its size. This one-time fee shall be payable at the time the person undertaking remediation submits the remedial action plan to the Department.

(b) Funds collected pursuant to subsection (a) of this section may be used only for the following purposes:

(1) To pay for administrative and operating expenses necessary to implement this Part.

(2) To establish, administer, and maintain a system for the tracking of land-use restrictions recorded at sites that are remediated pursuant to this Part.

"**§ 130A-310.77. Construction of Part.**

This Part shall not be construed or implemented in any of the following ways:

(1) In any manner that would jeopardize federal authorization under any of the federal statutes, programs, or requirements set out in G.S. 130A-310.67(a) or would otherwise conflict with federal authority under those statutes, programs, and requirements. This Part is supplemental to the programs and requirements set out in G.S. 130A-310.67(a) that would otherwise govern the remediation of a contaminated industrial site. Where the definitions, provisions, or requirements of this Part conflict with the definitions, provisions, or requirements of an otherwise applicable remediation program, this Part shall control, unless expressly stated to the contrary.

(2) 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 necessary to address an imminent threat to public health, safety, or welfare or the environment.

(3) To alter the requirements of programs to prevent or mitigate the release or discharge of contaminants to the environment, including permitting requirements that regulate the handling of hazardous substances or wastes.

(4) To supersede or otherwise affect or prevent the enforcement of any land-use or development regulation or ordinance adopted by a municipality pursuant to Article 19 of Chapter 160A of the General Statutes or adopted by a county pursuant to Article 18 of Chapter 153A of the General Statutes. The use of a site and any land-use restrictions imposed as part of a remedial action plan shall comply with land-use and development controls adopted by a municipality pursuant to Article 19 of Chapter 160A of the General Statutes or adopted by a county pursuant to Article 18 of Chapter 153A of the General Statutes."

SECTION 3. G.S. 130A-310.78 through G.S. 130A-310.80 are reserved for future codification purposes.

SECTION 4. G.S. 130A-310.10(a) reads as rewritten:

"(a) The Secretary shall report on inactive hazardous sites to the Joint Legislative Commission on Governmental Operations, the Environmental Review Commission, and the Fiscal Research Division on or before 1 October of each year. The report shall include at ~~least:~~least the following:

(1) The Inactive Hazardous Waste Sites Priority ~~List;~~List.

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

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

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

(5) A list of sites and remedial action plans undergoing voluntary cleanup with Departmental ~~approval;~~approval.

(6) A list of sites and remedial action plans that may require State funding, a comprehensive budget if implementation of these possible remedial action plans is required, and the adequacy of the Inactive Hazardous Sites Cleanup Fund to fund the possible costs of said ~~plans;~~plans.

(7) A list of sites that pose an imminent ~~hazard;~~hazard.

(8) A comprehensive budget to develop and implement remedial action plans for sites that pose imminent hazards and that may require State funding, and the adequacy of the Inactive Hazardous Sites Cleanup ~~Fund; and~~Fund.

(8a) The amounts and sources of funds collected by year received under G.S. 130A-310.76, the amounts and sources of those funds paid into the Inactive Hazardous Sites Cleanup Fund established pursuant to G.S. 130A-310.11, the number of acres of contamination for which funds have been received pursuant to G.S. 130A-310.76, and a detailed annual accounting of how the funds collected pursuant to G.S. 130A-310.76 have been utilized by the Department to advance the purposes of Part 8 of Article 9 of Chapter 130A of the General Statutes.

(9) Any other information requested by the General Assembly or the Environmental Review Commission."

SECTION 5. The Secretary of Environment and Natural Resources shall make all reasonable efforts to obtain a written agreement from the United States Environmental Protection Agency that Part 8 of Article 9 of Chapter 130A of the General Statutes, as enacted by Section 2 of this act, is consistent with the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, Public Law 96-510, 94 Stat. 2767, 42 U.S.C. § 9601, et seq., as amended, and the Superfund Amendments and Reauthorization Act of 1986, Public Law 99-499, 100 Stat. 1613, as amended.

SECTION 6. G.S. 143-215.104M(f) reads as rewritten:

"**§ 143-215.104M. (Repealed effective January 1, 2012 – See notes) Notice of Dry-Cleaning Solvent Remediation; land-use restrictions in deeds.**

...

(f) Enforcement. – Any restriction on the current or future use of property subject to a Notice of Dry-Cleaning Solvent Remediation filed pursuant to this section shall be enforced by any owner of the property or by any other potentially responsible party. Any land-use restriction may also be enforced by the Commission through the remedies provided in this Part or by means of a civil action in the superior court. The Commission may enforce any land-use restriction without first having exhausted any available administrative remedies. Restrictions also may be enforced by any unit of local government having jurisdiction over any part of the property by means of a civil action without the unit of local government having first exhausted any available administrative remedy. A land-use restriction may also be enforced by any person eligible for liability protection under this Part who will lose liability protection if the land-use restriction is violated. A 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 privity 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. Failure to submit an annual certification that land-use restrictions are properly recorded and followed shall result in a notice from the Commission to the property owner. The notice shall inform the person of the actions that need to be taken in order for the person to come into compliance and specify a date by which the person must comply, which shall not be less than 30 calendar days from the date the notice is mailed. Any person who fails to comply within the time specified shall then be subject to enforcement procedures as provided in this Part."

SECTION 7. The Environmental Review Commission, with the assistance of the Department of Environment and Natural Resources, shall study the cost of assessing and remediating inactive hazardous substance or waste disposal sites for which there is no financially viable responsible party. The Commission shall also identify potential sources of funds to address the projected need for assessment and remediation. The Environmental Review Commission shall report its findings and recommendations, including any legislative proposals, to the 2012 General Assembly upon its convening.

SECTION 8. This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

H D

HOUSE BILL 45*
Committee Substitute Favorable 3/3/11
Committee Substitute #2 Favorable 3/10/11
PROPOSED SENATE COMMITTEE SUBSTITUTE H45-CSSB-10 [v.3]

4/4/2011 11:18:52 AM

Short Title: Accelerate Cleanup of Industrial Properties. (Public)

Sponsors:

Referred to:

February 8, 2011

A BILL TO BE ENTITLED

AN ACT TO ALLOW THE USE OF RISK-BASED REMEDIATION TO ACCELERATE THE CLEANUP OF CONTAMINATED INDUSTRIAL SITES FOR THE PURPOSE OF LIMITING HUMAN AND ENVIRONMENTAL EXPOSURE TO SAFE LEVELS, TO PROTECT CURRENT AND LIKELY FUTURE USES OF GROUNDWATER, AND TO ENSURE THE COST-EFFECTIVE APPLICATION OF LIMITED PUBLIC AND PRIVATE RESOURCES.

Whereas, the General Assembly finds that public health, safety, and welfare and the environment can be protected by implementing a remediation process that requires that contaminated industrial sites 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 there are contaminated industrial sites 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 industrial sites 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 sites, and other opportunity costs because of the uncertainties and concerns that result from the environmental contamination of these sites; and

Whereas, the General Assembly finds that it is in the public interest that contaminated industrial sites are cleaned up or managed in a manner that protects public health, safety, and 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 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 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 site 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 accelerated cleanup of contaminated industrial sites; and

Whereas, the General Assembly intends that the levels of remediation that are established for each contaminated site are to be applicable or relevant 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 sites; Now, therefore,

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 130A-310.62 through G.S. 130A-310.64 are reserved for future codification purposes.

SECTION 2. Article 9 of Chapter 130A of the General Statutes is amended by adding a new Part to read:

"Part 8. Risk-Based Environmental Remediation of Industrial Sites.

"**§ 130A-310.65. 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.

(2) "Commission" means the Environmental Management Commission created pursuant to G.S. 143B-282.

(3) "Contaminant" means any substance regulated under any program listed in G.S. 130A-310.67(a).

(4) "Contaminated industrial site" or "site" means any real property that meets all of the following criteria:

a. The property is contaminated and may be subject to remediation under any of the programs or requirements set out in G.S. 130A-310.67(a).
b. The property is or has been used primarily for manufacturing or other industrial activities for the production of a commercial product. This includes a property used primarily for the generation of electricity.
c. No contaminant associated with activities at the property is located off of the property at the time the remedial action plan is submitted.
d. No contaminant associated with activities at the property will migrate to any adjacent properties above unrestricted use standards for the contaminant.

(5) "Contamination" means a contaminant released into an environmental medium that has resulted in or has the potential to result in an increase in the concentration of the contaminant in the environmental medium in excess of unrestricted use standards.

(6) "Fund" means the Inactive Hazardous Sites Cleanup Fund established pursuant to G.S. 130A-310.11.

(7) "Institutional controls" means nonengineered measures used to prevent unsafe exposure to contamination, such as land-use restrictions.

(8) "Registered environmental consultant" means an environmental consulting or engineering firm approved to implement and oversee voluntary remedial actions pursuant to Part 3 of Article 9 of Chapter 130A of the General Statutes and rules adopted to implement the Part.

(9) "Remedial action plan" means a plan for eliminating or reducing contamination or exposure to contamination.

(10) "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.

(11) "Systemic toxicant" means any substance that may enter the body and have a harmful effect other than causing cancer.

(12) "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 Commission, the Commission for Public Health, or the Department.

"**§ 130A-310.66. Purpose.**

It is the purpose of this Part to authorize the Department to approve the remediation of contaminated industrial sites 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.

"**§ 130A-310.67. Applicability.**

(a) This Part applies to contaminated industrial sites subject to remediation pursuant to any of the following programs or requirements:

(1) The Inactive Hazardous Sites Response Act of 1987 under Part 3 of Article 9 of Chapter 130A of the General Statutes, including voluntary actions under G.S. 130A-310.9 of that act, and rules promulgated pursuant to those statutes.

(2) The hazardous waste management program administered by the State pursuant to the federal Resource Conservation and Recovery Act of 1976, Public Law 94-580, 90 Stat. 2795, 42 U.S.C. § 6901, et seq., as amended, and Article 9 of Chapter 130A of the General Statutes.

(3) The solid waste management program administered pursuant to 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, Public Law 96-510, 94 Stat. 2767, 42 U.S.C. § 9601, et seq., as amended, the Superfund Amendments and Reauthorization Act of 1986, Public Law 99-499, 100 Stat. 1613, as amended, and under Part 4 of Article 9 of Chapter 130A of the General Statutes.

(5) The groundwater protection corrective action requirements adopted by the 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.

(b) This Part shall not apply to contaminated industrial sites subject to remediation pursuant to any of the following programs or requirements:

(1) The Leaking Petroleum Underground Storage Tank Cleanup program under Part 2A of Article 21A of Chapter 143 of the General Statutes and rules promulgated pursuant to that statute.

(2) The Dry-Cleaning Solvent Cleanup program under Part 6 of Article 21A of Chapter 143 of the General Statutes and rules promulgated pursuant to that statute.

(3) The pre-1983 landfill assessment and remediation program established under G.S. 130A-310.6(c) through (g).

(c) This Part shall apply only to sites where a discharge, spill, or release of contamination has been reported to the Department prior to March 1, 2011.

"**§ 130A-310.68. Remediation standards.**

(a) When conducting remediation activities pursuant to this Part, a person who proposes to or is required to respond to the release of a contaminant at a contaminated industrial site shall comply with one of the following standards:

(1) The unrestricted use standards applicable to each affected medium.

(2) The background standard, if the background standard 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 standards shall be developed for each medium as provided in 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. Site-specific remediation standards shall be developed in accordance with all of the following:

(1) Remediation methods and technologies that result in emissions of air pollutants shall comply with applicable air quality standards adopted by the Commission.

(2) The site-specific remediation standard for surface waters shall be the water quality standards adopted by the 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 site 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) Permits for facilities located at sites covered by any of the programs or requirements set out in G.S. 130A-310.67(a) shall contain conditions to avoid exceedances of applicable groundwater standards adopted by the Commission pursuant to Article 21 of Chapter 143 of the General Statutes due to operation of the facility.

(5) 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.

(6) Soil shall be remediated to unrestricted use standards on residential property with the following exceptions:

a. For mixed-use developments where the ground level uses are nonresidential and where all potential exposure to contaminated 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 or impracticability of removal, 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.

(7) The potential for human inhalation of contaminants from the outdoor air and other site-specific indoor air exposure pathways shall be considered, if applicable.

(8) 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.

(9) 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) (July 1, 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.

(10) 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.

(11) The site-specific remediation standards for each medium shall be adequate to avoid foreseeable adverse effects to other media or the environment that are inconsistent with the risk-based approach under this Part.

"**§ 130A-310.69. Remedial investigation report; remedial action plans.**

(a) A person who proposes to conduct remediation pursuant to this Part shall submit a remedial investigation report to the Department prior to submitting a remedial action plan. The remedial investigation report shall include, but is not limited to, 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 narrative description of the methodology used in the investigation; a description of all on-site releases of contamination; a site map, drawn to scale, showing benchmarks, directional arrow, location of property boundaries, buildings, structures, all perennial and nonperennial surface water features, drainage ditches, dense vegetation, contaminant spill or disposal areas, underground utilities, storage vessels, and existing on-site wells; identification of adjacent property owners and adjacent land uses; description of local geologic and hydrologic conditions; an evaluation of the site and adjacent properties for the existence of environmentally sensitive areas; a description of groundwater monitoring well design and installation procedures; a map, drawn to scale, that shows all groundwater sample locations; a description of field and laboratory quality control and quality assurance procedures followed during the remedial investigation; a description of methods used to manage investigation-derived wastes; tabulation of analytical results for all sampling; copies of all laboratory reports; a description of procedures and the results of any special assessments; and any other information required by the Department or considered relevant by the investigator. The remedial investigation shall assess all contaminated areas of the site, including types and levels of contamination, and the risk that the contamination poses to public health, safety, and welfare and to the environment.

(b) 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 remedial action plan shall do all of the following:

(1) Identify actions required to remove, treat, or otherwise appropriately mitigate or isolate the source of contamination to ensure that the source will not cause unrestricted use standards to be exceeded in any medium.

(2) Address contamination that moves from one medium to another in order to prevent a violation of the remediation standards established under G.S. 130A-310.68. A more stringent remediation standard may be required for a particular medium to control impact on other media.

(3) Identify the current and anticipated future uses of property comprising the contaminated site and address any concerns raised in public comment on the proposed remedial action plan as to the proposed future uses of the property.

(4) Identify the current and anticipated future uses of groundwater in the contaminated site and address any concerns raised in public comment on the proposed remedial action plan as to the future uses of groundwater.

(5) Determine the appropriate method of remediation to achieve the site-specific remediation standards.

(6) 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.

(7) Specify any measures that may be necessary to prevent any discharge into surface waters during implementation of the remedial action plan that violates applicable surface water quality standards adopted by the Commission.

(8) Specify any measures that may be necessary to prevent any air emission during implementation of the remedial action plan that violates applicable air quality standards adopted by the Commission.

(9) Provide for attainment and maintenance of the remediation standards established under G.S. 130A-310.68.

(10) Provide for methods and procedures to verify that the quantity, concentration, range, or other measure of each contaminant remaining at the contaminated site at the conclusion of the contaminant-reduction phase of 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 for the imposition and recordation of land-use restrictions as provided in G.S. 143B-279.9, 143B-279.10, 130A-310.3(f), 130A-310.8, 130A-310.35, 143-215.84(f), and 143-215.85A 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.

(12) Provide for submission of an annual certification to the Department by the property owner that land use at the site is in compliance with land-use restrictions recorded pursuant to this Part and that the land-use restrictions are still properly recorded in the chain of title for the property.

(13) Provide a detailed description of the proposed remedial action to be taken; the results of any treatability studies and additional site characterization needed to support the proposed remedial action; plans for postremedial and confirmatory sampling; a project schedule; a schedule for progress reports to the Department; and any other information required by the Department or considered relevant by the person who submits the proposed remedial action plan.

(14) Provide a description of measures that will be employed to ensure that the safety and health of persons on properties in the vicinity of the site and persons visiting or doing business on the site will not be adversely affected by any remediation activity.

(15) Provide a reasonable estimate of the probable cost of the remedial action sufficient for the Department to determine an acceptable level of financial assurance.

(16) Provide proof of financial assurance as required by G.S. 130A-310.72.

(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 all of the following:

a. The magnitude of risks remaining after completion of the remediation.

b. The type, degree, frequency, and duration of any postremediation 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.

e. Time required to achieve remediation standards.

(2) Toxicity, mobility, and volume of contaminants, including the amount of contaminants that will be removed, contained, treated, or destroyed; the degree of expected reduction in toxicity, mobility, and 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.

(d) The development of a remedial action plan may require supplemental submissions and revisions based on Department review, remedial action pilot studies, and public comment from local government and citizens.

"**§ 130A-310.70. Notice of intent to remediate.**

In addition to the public participation requirements of the individual programs listed in G.S. 130A-310.67(a), the person who proposes to remediate a site under this Part shall send a notice of intent to remediate to all local governments having taxing or land-use jurisdiction over the site, and to all adjoining landowners. The notice shall include all of the information required in G.S. 130A-310.69(a) and include a statement of intent to clean up the site to site-specific remediation standards. The person shall submit to the Department a copy of the notice of intent provided to local governments and adjoining landowners, a certification that the notice of intent to remediate was so provided to those parties, and all information and comments that the person received in response to the notice. In addition, the person shall, when appropriate, describe how the remedial action plan was modified to address comments received in response to the notice.

"**§ 130A-310.71. Review and approval of proposed remedial action plans.**

(a) The Department shall review and approve a proposed remedial action plan consistent with the remediation standards set out in G.S. 130A-310.68 and the procedures set out in this section. In its review of a proposed remedial action plan, the Department shall do all of the following:

(1) Determine whether site-specific remediation standards are appropriate for a particular contaminated site. In making this determination, the Department shall consider proximity of the contamination to water supply wells or other receptors; current and probable 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.

(2) Determine whether the party conducting the remediation has adequately demonstrated through modeling or other scientific means acceptable to the Department that no contamination will migrate to adjacent property at levels above unrestricted use standards.

(3) Determine whether the proposed remedial action plan meets the requirements of G.S. 130A-310.69.

(4) Determine whether the proposed remedial action plan meets the requirements of any other applicable remediation program except those pertaining to remediation standards.

(5) Establish the acceptable level or range of levels of risk to public health, safety, and welfare and to the environment.

(6) Establish, for each contaminant, the maximum allowable quantity, concentration, range, or other measures of contamination that will remain at the contaminated site at the conclusion of the contaminant-reduction phase of the remediation.

(7) Consider the technical performance, effectiveness, and reliability of the proposed remedial action plan in attaining and maintaining compliance with applicable remediation standards.

(8) 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.

(9) 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.

(10) Approve the circumstances under which no further remediation is required.

(b) The person who proposes a remedial action plan has the burden of demonstrating with reasonable assurance that contamination from the site will not migrate to adjacent property above unrestricted use levels and that the remedial action plan is protective of public health, safety, and welfare and the environment by virtue of its compliance with this Part. The demonstration shall (i) take into account actions proposed in the remedial action plan that will prevent contamination from migrating off the site; and (ii) use scientifically valid site-specific data.

(c) 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 and adjoining landowners pursuant to G.S. 130A-310.70. 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. 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 120 days after a complete plan has been submitted, the person who submitted the plan may treat the plan as having been disapproved at the end of that time period.

"**§ 130A-310.72. Financial assurance requirement.**

The person conducting remediation of a contaminated industrial site pursuant to the provisions of this Part shall establish financial assurance that will ensure that sufficient funds are available to implement and maintain the actions or controls specified in the remedial action plan for the site. The person conducting remediation of a site may establish financial assurance through one of the following mechanisms, or any combination of the following mechanisms, in a form specified or approved by the Department: insurance products issued from entities having no corporate or ownership association with the person conducting the remediation; funded trusts; surety bonds; certificates of deposit; letters of credit; corporate financial tests; local government financial tests; corporate guarantees; local government guarantees; capital reserve

funds; or any other financial mechanism authorized for the demonstration of financial assurance under (i) 40 Code of Federal Regulations Part 264, Subpart H (July 1, 2010 Edition) and (ii) Section .1600 of Subchapter B of Chapter 13 of Title 15A of the North Carolina Administrative Code. Proof of financial assurance shall be provided in the remedial action plan and annually thereafter on the anniversary date of the approval of the plan.

"**§ 130A-310.73. 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 person conducting the remediation 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 person conducting the remediation shall submit a final report to the Department, with notice to all local governments with taxing and land-use jurisdiction over the site, that demonstrates that the remedial action plan has been fully implemented, that any land-use restrictions have been certified on an annual basis, and that the remediation standards have been attained. The final report shall be accompanied by a request that the Department issue a determination that no further remediation beyond that specified in the approved remedial action plan is required.

(b) The person conducting the remediation 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 person conducting the remediation has completed remediation to the approved remediation standard and met all the requirements of the approved remedial action plan, the Department shall issue a determination that no further remediation beyond that specified in the approved remedial action plan is required at the site. Once the Department has issued a no further action determination, the Department may require additional remedial action by the responsible party only upon finding any of the following:

(1) Monitoring, testing, or analysis of the site subsequent to the issuance of the no further action determination 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 site 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 no further action determination for the site are not adequately funded or are not adequately implemented.

(4) A contaminant or hazardous substance release is discovered at the site that was not the subject of the remedial investigation report or the remedial action plan.

(5) A material change in the facts known to the Department at the time the written no further action determination 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 no further action determination was based on fraud, misrepresentation, or intentional nondisclosure of information by the person conducting the remediation.

(7) Installation or use of wells would induce the flow of contaminated groundwater off the site.

(d) The Department shall issue a final decision on a request for a determination that remediation has been completed to approved standards and that no further remediation beyond that specified in the approved remedial action plan is required within 180 days after receipt of a complete final report. Failure of the Department to issue a final decision on a no further remediation determination within 180 days after receipt of a complete final report and request for a determination of no further remediation may be treated as a denial of the request for a no further remediation determination. 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.

"**§ 130A-310.74. Compliance with other laws.**

Where a site is covered by an agreement under the Brownfields Property Reuse Act of 1997, as codified as Part 5 of Article 9 Chapter 130A of the General Statutes, any work performed by the prospective developer pursuant to that agreement is not required to comply with this Part, but any work not covered by such agreement and performed at the site by another person not a party to that agreement may be performed pursuant to this Part.

"**§ 130A-310.75. Use of registered environmental consultants.**

The Department may approve the use of a registered environmental consultant to provide oversight for the assessment and remediation of a site under this Part. If remediation under this Part is not undertaken voluntarily, the Department may not require the use of a registered environmental consultant to provide oversight for the assessment and remediation of a site under this Part.

"**§ 130A-310.76. Fees; permissible uses of fees.**

(a) A person who undertakes remediation of environmental contamination under site-specific remediation standards as provided in G.S. 130A-310.68 shall pay a fee to the Fund in an amount equal to four thousand five hundred dollars ($4,500) for each acre or portion of an acre of contamination, including any area that will become contaminated as a result of the release; however, no person shall be required to pay more than one hundred twenty-five thousand dollars ($125,000) to the Fund for any individual site, regardless of its size. This one-time fee shall be payable at the time the person undertaking remediation submits the remedial action plan to the Department.

(b) Funds collected pursuant to subsection (a) of this section may be used only for the following purposes:

(1) To pay for administrative and operating expenses necessary to implement this Part.

(2) To establish, administer, and maintain a system for the tracking of land-use restrictions recorded at sites that are remediated pursuant to this Part.

"**§ 130A-310.77. Construction of Part.**

This Part shall not be construed or implemented in any of the following ways:

(1) In any manner that would jeopardize federal authorization under any of the federal statutes, programs, or requirements set out in G.S. 130A-310.67(a) or would otherwise conflict with federal authority under those statutes, programs, and requirements. This Part is supplemental to the programs and requirements set out in G.S. 130A-310.67(a) that would otherwise govern the remediation of a contaminated industrial site. Where the definitions, provisions, or requirements of this Part conflict with the definitions, provisions, or requirements of an otherwise applicable remediation program, this Part shall control, unless expressly stated to the contrary.

(2) 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 necessary to address an imminent threat to public health, safety, or welfare or the environment.

(3) To alter the requirements of programs to prevent or mitigate the release or discharge of contaminants to the environment, including permitting requirements that regulate the handling of hazardous substances or wastes.

(4) To supersede or otherwise affect or prevent the enforcement of any land-use or development regulation or ordinance adopted by a municipality pursuant to Article 19 of Chapter 160A of the General Statutes or adopted by a county pursuant to Article 18 of Chapter 153A of the General Statutes. The use of a site and any land-use restrictions imposed as part of a remedial action plan shall comply with land-use and development controls adopted by a municipality pursuant to Article 19 of Chapter 160A of the General Statutes or adopted by a county pursuant to Article 18 of Chapter 153A of the General Statutes."

SECTION 3. G.S. 130A-310.78 through G.S. 130A-310.80 are reserved for future codification purposes.

SECTION 4. G.S. 130A-310.10(a) reads as rewritten:

"(a) The Secretary shall report on inactive hazardous sites to the Joint Legislative Commission on Governmental Operations, the Environmental Review Commission, and the Fiscal Research Division on or before 1 October of each year. The report shall include at ~~least:~~least the following:

(1) The Inactive Hazardous Waste Sites Priority ~~List;~~List.

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

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

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

(5) A list of sites and remedial action plans undergoing voluntary cleanup with Departmental ~~approval;~~approval.

(6) A list of sites and remedial action plans that may require State funding, a comprehensive budget if implementation of these possible remedial action plans is required, and the adequacy of the Inactive Hazardous Sites Cleanup Fund to fund the possible costs of said ~~plans;~~plans.

(7) A list of sites that pose an imminent ~~hazard;~~hazard.

(8) A comprehensive budget to develop and implement remedial action plans for sites that pose imminent hazards and that may require State funding, and the adequacy of the Inactive Hazardous Sites Cleanup ~~Fund; and~~Fund.

(8a) The amounts and sources of funds collected by year received under G.S. 130A-310.76, the amounts and sources of those funds paid into the Inactive Hazardous Sites Cleanup Fund established pursuant to G.S. 130A-310.11, the number of acres of contamination for which funds have been received pursuant to G.S. 130A-310.76, and a detailed annual accounting of how the funds collected pursuant to G.S. 130A-310.76 have been utilized by the Department to advance the purposes of Part 8 of Article 9 of Chapter 130A of the General Statutes.

(9) Any other information requested by the General Assembly or the Environmental Review Commission."

SECTION 5. The Secretary of Environment and Natural Resources shall make all reasonable efforts to obtain a written agreement from the United States Environmental Protection Agency that Part 8 of Article 9 of Chapter 130A of the General Statutes, as enacted by Section 2 of this act, is consistent with the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, Public Law 96-510, 94 Stat. 2767, 42 U.S.C. § 9601, et seq., as amended, and the Superfund Amendments and Reauthorization Act of 1986, Public Law 99-499, 100 Stat. 1613, as amended.

SECTION 6. G.S. 143-215.104M reads as rewritten:

"**§ 143-215.104M. (Repealed effective January 1, 2012 – See notes) Notice of Dry-Cleaning Solvent Remediation; land-use restrictions in deeds.**

...

(f) Enforcement. – Any restriction on the current or future use of property subject to a Notice of Dry-Cleaning Solvent Remediation filed pursuant to this section shall be enforced by any owner of the property or by any other potentially responsible party. Any land-use restriction may also be enforced by the Commission through the remedies provided in this Part or by means of a civil action in the superior court. The Commission may enforce any land-use restriction without first having exhausted any available administrative remedies. Restrictions also may be enforced by any unit of local government having jurisdiction over any part of the property by means of a civil action without the unit of local government having first exhausted any available administrative remedy. A land-use restriction may also be enforced by any person eligible for liability protection under this Part who will lose liability protection if the land-use restriction is violated. A 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 privity 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. Failure to submit an annual certification that land-use restrictions are properly recorded and followed shall result in a notice from the Commission to the property owner. The notice shall inform the person of the actions that need to be taken in order for the person to come into compliance and specify a date by which the person must comply, which shall not be less than 30 calendar days from the date the notice is mailed. Any person who fails to comply within the time specified shall then be subject to enforcement procedures as provided in this Part.

(g) Relation to Brownfields Notice. – Unless the Commission decertifies a previously certified facility or a previously certified abandoned site, this section shall apply in lieu of the provisions of Article 9 of Chapter 130A of the General Statutes and Parts 1 and 2 of Article 21A of Chapter 143 of the General Statutes for properties remediated under this Part."

SECTION 7. The Environmental Review Commission, with the assistance of the Department of Environment and Natural Resources, shall study the cost of assessing and remediating inactive hazardous substance or waste disposal sites for which there is no financially-viable responsible party. The Commission shall also identify potential sources of funds to address the projected need for assessment and remediation. The Environmental Review Commission shall report its findings and recommendations including any legislative proposals to the 2012 General Assembly, upon its convening.

SECTION 8. This act is effective when it becomes law.

HOUSE BILL 45:
Accelerate Cleanup of Industrial Properties

2011-2012 General Assembly

Committee:	Senate Agriculture/Environment/Natural Resources	**Date:**	April 5, 2011
Introduced by:	Reps. Gillespie, Cook, Gibson	**Prepared by:**	Jeff Hudson Committee Counsel
Analysis of:	Proposed Committee Substitute for Third Edition (H45-CSSB-10 [v.3])		

SUMMARY: ***House Bill 45 would authorize risk-based cleanup of contaminated industrial sites using site-specific cleanup standards designed to protect public health, safety, and welfare and the environment based on the current and anticipated future use of a site.***

[As introduced, this bill was identical to S48, as introduced by Sen. Allran, which is currently in Senate Agriculture/Environment/Natural Resources.]

CURRENT LAW AND BACKGROUND:

North Carolina, in conjunction with the federal government, has implemented a number of programs to address remediation or cleanup of environmental contamination. Based on the source, location, and nature of the contaminants present, requirements for oversight and cleanup are established within an applicable program. Each program has its own standards, methods, and requirements. In some cases, a contaminated site may come under the authority of multiple programs.

Generally, cleanup of environmental contamination must be performed to meet unrestricted use standards, meaning contaminant concentrations present at a location are acceptable for all uses; are protective of public health, safety, and welfare and the environment; and comply with an applicable program's standards established by statute or rule adopted by the Environmental Management Commission, the Commission for Public Health, or the Department of Environment and Natural Resources (DENR). Some State programs for cleanup of environmental contamination, however, allow cleanup based on site-specific risk factors, which are generally not as stringent as the applicable unrestricted use standards. These programs include the Petroleum Underground Storage Tank Cleanup Program, the Dry-Cleaning Solvent Cleanup Program, and the State's Brownfields Property Reuse Act.

BILL ANALYSIS:

House Bill 45 would authorize risk-based cleanup of contaminated industrial sites using site-specific cleanup standards designed to protect public health, safety, and welfare and the environment based on the current and anticipated future use of a site.

Applicability:

Risk-based cleanup would be available for contaminated industrial sites that are governed by cleanup programs for hazardous and solid waste management, groundwater protection, and oil pollution control and where the release of contamination was reported to DENR prior to March 1, 2011. Risk-based cleanup would not be available for contaminated industrial sites that are governed by cleanup programs for leaking underground storage tanks, dry-cleaning facilities, and certain landfills.

Site-specific Remediation Standards:

Site-specific remediation or cleanup standards would be developed for contaminated industrial sites to eliminate or reduce to protective levels any substantial or probable future risk to human health and the environment based on the present or anticipated future use of the site. The standards would have to be

developed in accordance with a number of specific requirements for the protection of air quality, surface water and groundwater quality, and human health.

Remedial Investigation Report and Remedial Action Plan:

A person who proposes a risk-based cleanup must prepare and submit to DENR a remedial investigation report that provides detailed information on the site, contamination at the site, risks posed by the contamination, adjacent properties, and any other information required by DENR. The person would then prepare and submit to DENR a proposed remedial action plan that provides for how the site would be cleaned up in order to protect public health, safety, and welfare and the environment and proof of financial assurance that sufficient funds are available to carry out the cleanup.

Notice of Intent to Remediate:

A person who proposes a risk-based cleanup must send a notice of intent to conduct the risk-based cleanup to all local governments having jurisdiction over the site and to all adjoining landowners. The notice must include all of the information contained in the remedial investigation report. The person must also submit to DENR a certification that the notice of intent was properly distributed, information and comments received in response to the notice, and a description of how the remedial action plan was modified in response to the comments.

Review and Approval of Proposed Remedial Action Plans:

DENR must review each proposed remedial action plan and make a number of determinations prior to approving a plan, including whether the site-specific cleanup standards are appropriate for the site, that no unauthorized levels of contaminants will migrate from the site to adjacent properties, and that the plan is protective of public health, safety, and welfare and the environment. In its review and consideration of the proposed plan, DENR must consider information provided by the person who proposes the plan as well as information provided by the local governments and adjoining landowners.

Attainment of the Remediation Standard:

When DENR determines that an approved remedial action plan has been implemented and applicable cleanup standards have been attained, it will issue a determination that no further cleanup is required. Once a determination has been issued, DENR may only require additional cleanup under specific circumstances, such as a finding that subsequent monitoring indicates that cleanup standards were not achieved; an undocumented contaminant release is discovered; or one or more of the restrictions imposed on the site as part of the cleanup have been violated.

Fees:

The fee for participation in a risk-based cleanup is $4,500 for each acre or portion of an acre of contamination, with a cap of $125,000 regardless of the size of the site. The fees may be used by DENR only to pay for administrative and operating expenses necessary to implement the risk-based cleanup program and to establish and maintain a system for the tracking of land use restrictions recorded at sites that are remediated under the program.

Construction of the Act:

The Act may not be construed or implemented to jeopardize federal authorization under any of the federal statutes, programs, or requirements for the cleanup of contamination; limit the authority of DENR to require investigation, response, or cleanup of environmental contamination necessary to address an imminent threat to public health, safety, or welfare or the environment; or to affect or prevent the enforcement of any local government land-use or development regulation or ordinance.

Proposed Committee Substitute (H45-CSSB-10 [v.3]):

The Proposed Committee Substitute (H45-CSSB-10 [v.3]) (PCS) adds the following two provisions and makes technical and clarifying changes:

Dry-cleaning Site Compliance with Land-use Restrictions:

The PCS would provide that if a person responsible for a property subject to land-use restrictions under the Dry-Cleaning Solvent Cleanup Act fails to submit an annual certification that the land-use restrictions are properly recorded and followed, the Environmental Management Commission shall issue a notice of such failure to the person. The notice must inform the person of the actions needed to come into compliance and give the person at least 30 calendar days within which to come into compliance. If the person fails to come into compliance during this time, the person will then be subject to enforcement procedures.

Study of Costs Associated with Inactive Hazardous Substance or Waste Disposal Sites:

The PCS would direct the Environmental Review Commission, with the assistance of the Department of Environment and Natural Resources, to study the cost of assessing and remediating inactive hazardous substance or waste disposal sites for which there is no financially-viable responsible party. The Commission will report its findings and recommendations including any legislative proposals to the 2012 General Assembly, upon its convening.

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

HOUSE BILL 45*

Committee Substitute Favorable 3/3/11
Committee Substitute #2 Favorable 3/10/11

Short Title: Accelerate Cleanup of Industrial Properties. (Public)

Sponsors:

Referred to:

February 8, 2011

A BILL TO BE ENTITLED

AN ACT TO ALLOW THE USE OF RISK-BASED REMEDIATION TO ACCELERATE THE CLEANUP OF CONTAMINATED INDUSTRIAL SITES FOR THE PURPOSE OF LIMITING HUMAN AND ENVIRONMENTAL EXPOSURE TO SAFE LEVELS, TO PROTECT CURRENT AND LIKELY FUTURE USES OF GROUNDWATER, AND TO ENSURE THE COST-EFFECTIVE APPLICATION OF LIMITED PUBLIC AND PRIVATE RESOURCES.

Whereas, the General Assembly finds that public health, safety, and welfare and the environment can be protected by implementing a remediation process that requires that contaminated industrial sites 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 there are contaminated industrial sites 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 industrial sites 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 sites, and other opportunity costs because of the uncertainties and concerns that result from the environmental contamination of these sites; and

Whereas, the General Assembly finds that it is in the public interest that contaminated industrial sites are cleaned up or managed in a manner that protects public health, safety, and 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 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 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 site 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 accelerated cleanup of contaminated industrial sites; and

Whereas, the General Assembly intends that the levels of remediation that are established for each contaminated site are to be applicable or relevant 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 sites; Now, therefore,

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 130A-310.62 through G.S. 130A-310.64 are reserved for future codification purposes.

SECTION 2. Article 9 of Chapter 130A of the General Statutes is amended by adding a new Part to read:

"Part 8. Risk-Based Environmental Remediation of Industrial Sites.

"**§ 130A-310.65. 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.

(2) "Commission" means the Environmental Management Commission created pursuant to G.S. 143B-282.

(3) "Contaminant" means any substance regulated under any program listed in G.S. 130A-310.67(a).

(4) "Contaminated industrial site" or "site" means any real property that meets all of the following criteria:

a. The property is contaminated and may be subject to remediation under any of the programs or requirements set out in G.S. 130A-310.67(a).

b. The property is or has been used primarily for manufacturing or other industrial activities for the production of a commercial product. This includes a property used primarily for the generation of electricity.

This does not include a property used primarily for service industry activities.

c. No contaminant associated with activities at the property has migrated or will migrate to any adjacent properties above unrestricted use standards for the contaminant.

(5) "Contamination" means a contaminant released into an environmental medium that has resulted in or has the potential to result in an increase in the concentration of the contaminant in the environmental medium in excess of unrestricted use standards.

(6) "Fund" means the Inactive Hazardous Sites Cleanup Fund established pursuant to G.S. 130A-310.11.

(7) "Institutional controls" means nonengineered measures used to prevent unsafe exposure to contamination, such as land-use restrictions.

(8) "Registered environmental consultant" means an environmental consulting or engineering firm approved to implement and oversee voluntary remedial actions pursuant to Part 3 of Article 9 of Chapter 130A of the General Statutes and rules adopted to implement the Part.

(9) "Remedial action plan" means a plan for eliminating or reducing contamination or exposure to contamination.

(10) "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.

(11) "Systemic toxicant" means any substance that may enter the body and have a harmful effect other than causing cancer.

(12) "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 Commission, the Commission for Public Health, or the Department.

"**§ 130A-310.66. Purpose.**

It is the purpose of this Part to authorize the Department to approve the remediation of contaminated industrial sites 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.

"**§ 130A-310.67. Applicability.**

(a) This Part applies to contaminated industrial sites subject to remediation pursuant to any of the following programs or requirements:

(1) The Inactive Hazardous Sites Response Act of 1987 under Part 3 of Article 9 of Chapter 130A of the General Statutes, including voluntary actions under G.S. 130A-310.9 of that act, and rules promulgated pursuant to those statutes.

(2) The hazardous waste management program administered by the State pursuant to the federal Resource Conservation and Recovery Act of 1976, Public Law 94-580, 90 Stat. 2795, 42 U.S.C. § 6901, et seq., as amended, and Article 9 of Chapter 130A of the General Statutes.

(3) The solid waste management program administered pursuant to 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, Public Law 96-510, 94 Stat. 2767, 42 U.S.C. § 9601, et seq., as amended, the Superfund Amendments and Reauthorization Act of 1986, Public Law 99-499, 100 Stat. 1613, as amended, and under Part 4 of Article 9 of Chapter 130A of the General Statutes.

(5) The groundwater protection corrective action requirements adopted by the 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.

(b) This Part shall not apply to contaminated industrial sites subject to remediation pursuant to any of the following programs or requirements:

(1) The Leaking Petroleum Underground Storage Tank Cleanup program under Part 2A of Article 21A of Chapter 143 of the General Statutes and rules promulgated pursuant to that statute.

(2) The Dry-Cleaning Solvent Cleanup program under Part 6 of Article 21A of Chapter 143 of the General Statutes and rules promulgated pursuant to that statute.

(3) The pre-1983 landfill assessment and remediation program established under G.S. 130A-310.6(c) through (g).

(c) This Part shall apply only to sites where a discharge, spill, or release of contamination has been reported to the Department prior to March 1, 2011.

"**§ 130A-310.68. Remediation standards.**

(a) When conducting remediation activities pursuant to this Part, a person who proposes to or is required to respond to the release of a contaminant at a contaminated industrial site shall comply with one of the following standards:

(1) The unrestricted use standards applicable to each affected medium.

(2) The background standard, if the background standard 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 standards shall be developed for each medium as provided in 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. Site-specific remediation standards shall be developed in accordance with all of the following:

(1) Remediation methods and technologies that result in emissions of air pollutants shall comply with applicable air quality standards adopted by the Commission.

(2) The site-specific remediation standard for surface waters shall be the water quality standards adopted by the 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 site 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) Permits for facilities located at sites covered by any of the programs or requirements set out in G.S. 130A-310.67(a) shall contain conditions to avoid exceedances of applicable groundwater standards adopted by the Commission pursuant to Article 21 of Chapter 143 of the General Statutes due to operation of the facility.

(5) 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.

(6) Soil shall be remediated to unrestricted use standards on residential property with the following exceptions:

a. For mixed-use developments where the ground level uses are nonresidential and where all potential exposure to contaminated 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 or impracticability of removal, 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.

(7) The potential for human inhalation of contaminants from the outdoor air and other site-specific indoor air exposure pathways shall be considered, if applicable.

(8) 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.

(9) 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) (July 1, 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.

(10) 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.

(11) The site-specific remediation standards for each medium shall be adequate to avoid foreseeable adverse effects to other media or the environment that are inconsistent with the risk-based approach under this Part.

"**§ 130A-310.69. Remedial investigation report; remedial action plans.**

(a) A person who proposes to conduct remediation pursuant to this Part shall submit a remedial investigation report to the Department prior to submitting a remedial action plan. The remedial investigation report shall include, but is not limited to, 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 narrative description of the methodology used in the investigation; a description of all on-site releases of contamination; a site map, drawn to scale, showing benchmarks, directional arrow, location of property boundaries, buildings, structures, all perennial and nonperennial surface water features, drainage ditches, dense vegetation, contaminant spill or disposal areas, underground utilities, storage vessels, and existing on-site wells; identification of adjacent property owners and adjacent land uses; description of local geologic and hydrologic conditions; an evaluation of the site and adjacent properties for the existence of environmentally sensitive areas; a description of groundwater monitoring well design and installation procedures; a map, drawn to scale, that shows all groundwater sample locations; a description of field and laboratory quality control and quality assurance procedures followed during the remedial investigation; a description of methods used to manage investigation-derived wastes; tabulation of analytical results for all sampling; copies of all laboratory reports; a description of procedures and the results of any special assessments; and any other information required by the Department or considered relevant by the investigator. The remedial investigation shall assess all contaminated areas of the site, including types and levels of contamination, and the risk that the contamination poses to public health, safety, and welfare and to the environment.

(b) 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 remedial action plan shall do all of the following:

(1) Identify actions required to remove, treat, or otherwise appropriately mitigate or isolate the source of contamination to ensure that the source will not cause unrestricted use standards to be exceeded in any medium.

(2) Address contamination that moves from one medium to another in order to prevent a violation of the remediation standards established under G.S. 130A-310.68. A more stringent remediation standard may be required for a particular medium to control impact on other media.

(3) Identify the current and anticipated future uses of property comprising the contaminated site and address any concerns raised in public comment on the proposed remedial action plan as to the proposed future uses of the property.

(4) Identify the current and anticipated future uses of groundwater in the contaminated site and address any concerns raised in public comment on the proposed remedial action plan as to the future uses of groundwater.

(5) Determine the appropriate method of remediation to achieve the site-specific remediation standards.

(6) 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.

(7) Specify any measures that may be necessary to prevent any discharge into surface waters during implementation of the remedial action plan that violates applicable surface water quality standards adopted by the Commission.

(8) Specify any measures that may be necessary to prevent any air emission during implementation of the remedial action plan that violates applicable air quality standards adopted by the Commission.

(9) Provide for attainment and maintenance of the remediation standards established under G.S. 130A-310.68.

(10) Provide for methods and procedures to verify that the quantity, concentration, range, or other measure of each contaminant remaining at the contaminated site at the conclusion of the contaminant-reduction phase of

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 for the imposition and recordation of land-use restrictions as provided in G.S. 143B-279.9, 143B-279.10, 130A-310.3(f), 130A-310.8, 130A-310.35, 143-215.84(f), and 143-215.85A 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.

(12) Provide for submission of an annual certification to the Department by the property owner that land use at the site is in compliance with land-use restrictions recorded pursuant to this Part and that the land-use restrictions are still properly recorded in the chain of title for the property.

(13) Provide a detailed description of the proposed remedial action to be taken; the results of any treatability studies and additional site characterization needed to support the proposed remedial action; plans for postremedial and confirmatory sampling; a project schedule; a schedule for progress reports to the Department; and any other information required by the Department or considered relevant by the person who submits the proposed remedial action plan.

(14) Provide a description of measures that will be employed to ensure that the safety and health of persons on properties in the vicinity of the site and persons visiting or doing business on the site will not be adversely affected by any remediation activity.

(15) Provide a reasonable estimate of the probable cost of the remedial action sufficient for the Department to determine an acceptable level of financial assurance.

(16) Provide proof of financial assurance as required by G.S. 130A-310.72.

(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 all of the following:

a. The magnitude of risks remaining after completion of the remediation.

b. The type, degree, frequency, and duration of any postremediation 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.

e. Time required to achieve remediation standards.

(2) Toxicity, mobility, and volume of contaminants, including the amount of contaminants that will be removed, contained, treated, or destroyed; the degree of expected reduction in toxicity, mobility, and 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.

(d) The development of a remedial action plan may require supplemental submissions and revisions based on Department review, remedial action pilot studies, and public comment from local government and citizens.

"**§ 130A-310.70. Notice of intent to remediate.**

In addition to the public participation requirements of the individual programs listed in G.S. 130A-310.67(a), the person who proposes to remediate a site under this Part shall send a notice of intent to remediate to all local governments having taxing or land-use jurisdiction over the site, and to all adjoining landowners. The notice shall include all of the information required in G.S. 130A-310.69(a) and include a statement of intent to clean up the site to site-specific remediation standards. The person shall submit to the Department a copy of the notice of intent provided to local governments and adjoining landowners, a certification that the notice of intent to remediate was so provided to those parties, and all information and comments that the person received in response to the notice. In addition, the person shall, when appropriate, describe how the remediation plan was modified to address comments received in response to the notice.

"**§ 130A-310.71. Review and approval of proposed remedial action plans.**

(a) The Department shall review and approve a proposed remedial action plan consistent with the remediation standards set out in G.S. 130A-310.68 and the procedures set out in this section. In its review of a proposed remedial action plan, the Department shall do all of the following:

(1) Determine whether site-specific remediation standards are appropriate for a particular contaminated site. In making this determination, the Department shall consider proximity of the contamination to water supply wells or other receptors; current and probable 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.

(2) Determine whether the party conducting the remediation has adequately demonstrated through modeling or other scientific means acceptable to the Department that no contamination will migrate to adjacent property at levels above unrestricted use standards.

(3) Determine whether the proposed remedial action plan meets the requirements of G.S. 130A-310.69.

(4) Determine whether the proposed remedial action plan meets the requirements of any other applicable remediation program except those pertaining to remediation standards.

(5) Establish the acceptable level or range of levels of risk to public health, safety, and welfare and to the environment.

(6) Establish, for each contaminant, the maximum allowable quantity, concentration, range, or other measures of contamination that will remain at the contaminated site at the conclusion of the contaminant-reduction phase of the remediation.

(7) Consider the technical performance, effectiveness, and reliability of the proposed remedial action plan in attaining and maintaining compliance with applicable remediation standards.

(8) 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.

(9) 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.

(10) Approve the circumstances under which no further remediation is required.

(b) The person who proposes a remedial action plan has the burden of demonstrating that contamination from the site will not likely migrate in the reasonably foreseeable future to adjacent property and that the remedial action plan is protective of public health, safety, and welfare and the environment by virtue of its compliance with this Part.

(c) 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 and adjoining landowners pursuant to G.S. 130A-310.70. 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. 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 120 days after a complete plan has been submitted, the person who submitted the plan may treat the plan as having been disapproved at the end of that time period.

"**§ 130A-310.72. Financial assurance requirement.**

The person conducting remediation of a contaminated industrial site pursuant to the provisions of this Part shall establish financial assurance that will ensure that sufficient funds are available to implement and maintain the actions or controls specified in the remedial action plan for the site. The person conducting remediation of a site may establish financial assurance through one of the following mechanisms, or any combination of the following mechanisms, in a form specified or approved by the Department: insurance products issued from entities having no corporate or ownership association with the person conducting the remediation; funded trusts; surety bonds; certificates of deposit; letters of credit; corporate financial tests; local government financial tests; corporate guarantees; local government guarantees; capital reserve funds; or any other financial mechanism authorized for the demonstration of financial assurance under (i) 40 Code of Federal Regulations Part 264, Subpart H (July 1, 2010 Edition) and (ii) Section .1600 of Subchapter B of Chapter 13 of Title 15A of the North Carolina Administrative Code.

"**§ 130A-310.73. 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 person conducting the remediation 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 person conducting the remediation shall submit a final report to the Department, with notice to all local governments with taxing and land-use jurisdiction over the site, that demonstrates that the remedial action plan has been fully implemented, that any land-use restrictions have been certified on an annual basis, and that the remediation standards have been attained. The final report shall be accompanied by a request that the Department issue a determination that no further remediation beyond that specified in the approved remedial action plan is required.

(b) The person conducting the remediation 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 person conducting the remediation has completed remediation to the approved remediation standard and met all the requirements of the approved remedial action plan, the Department shall issue a determination that no further remediation beyond that specified in the approved remedial action plan is required at the site. Once the Department has issued a no further action determination, the Department may require additional remedial action by the responsible party only upon finding any of the following:

(1) Monitoring, testing, or analysis of the site subsequent to the issuance of the no further action determination 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 site 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 no further action determination for the site are not adequately funded or are not adequately implemented.

(4) A contaminant or hazardous substance release is discovered at the site that was not the subject of the remedial investigation report or the remedial action plan.

(5) A material change in the facts known to the Department at the time the written no further action determination 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 no further action determination was based on fraud, misrepresentation, or intentional nondisclosure of information by the person conducting the remediation.

(7) Installation or use of wells would induce the flow of contaminated groundwater off the site.

(d) The Department shall issue a final decision on a request for a determination that remediation has been completed to approved standards and that no further remediation beyond that specified in the approved remedial action plan is required within 180 days after receipt of a complete final report. Failure of the Department to issue a final decision on a no further remediation determination within 180 days after receipt of a complete final report and request for a determination of no further remediation may be treated as a denial of the request for a no further remediation determination. 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 determination that no further remediation is required beyond that specified in the approved remedial action plan for the site, any person who 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.

"**§ 130A-310.74. Compliance with other laws.**

Where a site is covered by an agreement under the Brownfields Property Reuse Act of 1997, as codified as Part 5 of Article 9 Chapter 130A of the General Statutes, any work performed by the prospective developer pursuant to that agreement is not required to comply with this Part, but any work not covered by such agreement and performed at the site by another person not a party to that agreement may be performed pursuant to this Part.

"**§ 130A-310.75. Use of registered environmental consultants.**

The Department may approve the use of a registered environmental consultant to provide oversight for the assessment and remediation of a site under this Part. If remediation under this Part is not undertaken voluntarily, the Department may not require the use of a registered environmental consultant to provide oversight for the assessment and remediation of a site under this Part.

"**§ 130A-310.76. Fees; permissible uses of fees.**

(a) A person who undertakes remediation of environmental contamination under site-specific remediation standards as provided in G.S. 130A-310.68 shall pay a fee to the Fund in an amount equal to four thousand five hundred dollars ($4,500) for each acre or portion of an acre of contamination, including any area that will become contaminated as a result of the release; however, no person shall be required to pay more than one hundred twenty-five thousand dollars ($125,000) to the Fund for any individual site, regardless of its size. This one-time fee shall be payable at the time the person undertaking remediation submits the remedial action plan to the Department.

(b) Funds collected pursuant to subsection (a) of this section may be used only for the following purposes:

(1) To pay for administrative and operating expenses necessary to implement this Part.

(2) To establish, administer, and maintain a system for the tracking of land-use restrictions recorded at sites that are remediated pursuant to this Part.

"**§ 130A-310.77. Construction of Part.**

This Part shall not be construed or implemented in any of the following ways:

(1) In any manner that would jeopardize federal authorization under any of the federal statutes, programs, or requirements set out in G.S. 130A-310.67(a) or would otherwise conflict with federal authority under those statutes, programs, and requirements. This Part is supplemental to the programs and requirements set out in G.S. 130A-310.67(a) that would otherwise govern the remediation of a contaminated industrial site. Where the definitions, provisions, or requirements of this Part conflict with the definitions, provisions, or requirements of an otherwise applicable remediation program, this Part shall control, unless expressly stated to the contrary.

(2) 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 necessary to address an imminent threat to public health, safety, or welfare or the environment.

(3) To alter the requirements of programs to prevent or mitigate the release or discharge of contaminants to the environment, including permitting requirements that regulate the handling of hazardous substances or wastes.

(4) To supersede or otherwise affect or prevent the enforcement of any land-use or development regulation or ordinance adopted by a municipality pursuant to Article 19 of Chapter 160A of the General Statutes or adopted by a county pursuant to Article 18 of Chapter 153A of the General Statutes. The use of a

site and any land-use restrictions imposed as part of a remedial action plan shall comply with land-use and development controls adopted by a municipality pursuant to Article 19 of Chapter 160A of the General Statutes or adopted by a county pursuant to Article 18 of Chapter 153A of the General Statutes."

SECTION 3. G.S. 130A-310.78 through G.S. 130A-310.80 are reserved for future codification purposes.

SECTION 4. G.S. 130A-310.10(a) reads as rewritten:

"(a) The Secretary shall report on inactive hazardous sites to the Joint Legislative Commission on Governmental Operations, the Environmental Review Commission, and the Fiscal Research Division on or before 1 October of each year. The report shall include at ~~least:~~least the following:

(1) The Inactive Hazardous Waste Sites Priority ~~List;~~List.

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

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

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

(5) A list of sites and remedial action plans undergoing voluntary cleanup with Departmental ~~approval;~~approval.

(6) A list of sites and remedial action plans that may require State funding, a comprehensive budget if implementation of these possible remedial action plans is required, and the adequacy of the Inactive Hazardous Sites Cleanup Fund to fund the possible costs of said ~~plans;~~plans.

(7) A list of sites that pose an imminent ~~hazard;~~hazard.

(8) A comprehensive budget to develop and implement remedial action plans for sites that pose imminent hazards and that may require State funding, and the adequacy of the Inactive Hazardous Sites Cleanup ~~Fund; and~~Fund.

(8a) The amounts and sources of funds collected by year received under G.S. 130A-310.76, the amounts and sources of those funds paid into the Inactive Hazardous Sites Cleanup Fund established pursuant to G.S. 130A-310.11, the number of acres of contamination for which funds have been received pursuant to G.S. 130A-310.76, and a detailed annual accounting of how the funds collected pursuant to G.S. 130A-310.76 have been utilized by the Department to advance the purposes of Part 8 of Article 9 of Chapter 130A of the General Statutes.

(9) Any other information requested by the General Assembly or the Environmental Review Commission."

SECTION 5. The Secretary of Environment and Natural Resources shall make all reasonable efforts to obtain a written agreement from the United States Environmental Protection Agency that Part 8 of Article 9 of Chapter 130A of the General Statutes, as enacted by Section 2 of this act, is consistent with the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, Public Law 96-510, 94 Stat. 2767, 42 U.S.C. § 9601, et seq., as amended, and the Superfund Amendments and Reauthorization Act of 1986, Public Law 99-499, 100 Stat. 1613, as amended.

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

HOUSE BILL 103
Committee Substitute Favorable 2/28/11

Short Title: Rqmts. for Min'l Oil Spills - 2. (Public)

Sponsors:

Referred to:

February 16, 2011

A BILL TO BE ENTITLED

AN ACT TO CLARIFY REQUIREMENTS APPLICABLE TO NOTICE, COLLECTION, AND REMOVAL OF MINERAL OIL DISCHARGES FROM ELECTRICAL EQUIPMENT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 143-215.85 reads as rewritten:

"**§ 143-215.85. Required notice.**

(a) Except as provided in G.S. 143-215.94E(a1) and ~~subsection~~ subsections (b) and (c) of this section, every person owning or having control over oil or other substances discharged in any circumstances other than pursuant to a rule adopted by the Commission, a regulation of the U. S. Environmental Protection Agency, or a permit required by G.S. 143-215.1 or the Federal Water Pollution Control Act, upon notice that such discharge has occurred, shall immediately notify the Department, or any of its agents or employees, of the nature, location and time of the discharge and of the measures which are being taken or are proposed to be taken to contain and remove the discharge. The agent or employee of the Department receiving the notification shall immediately notify the Secretary or such member or members of the permanent staff of the Department as the Secretary may designate. If the discharged substance of which the Department is notified is a pesticide regulated by the North Carolina Pesticide Board, the Department shall immediately inform the Chairman of the Pesticide Board. Removal operations under this Article of substances identified as pesticides defined in G.S. 143-460 shall be coordinated in accordance with the Pesticide Emergency Plan adopted by the North Carolina Pesticide Board; provided that, in instances where entry of such hazardous substances into waters of the State is imminent, the Department may take such actions as are necessary to physically contain or divert such substance so as to prevent entry into the surface waters.

. . .

(c) As used in this subsection, "mineral oil" means a light nontoxic liquid petroleum distillate used as a coolant and insulator in electrical equipment owned by a public utility. Any person who owns or has control over mineral oil discharged from electrical equipment owned by a public utility, as defined in G.S. 62-100, including, but not limited to, transformers, regulators, bushings, and capacitors, shall report the discharge to the applicable regional office of the Department within 24 hours of confirmation of a discharge when the discharge (i) exceeds 25 gallons, (ii) is directly to surface waters or causes a sheen on surface waters of the State, or (iii) is at a distance of 100 feet or less from any surface water and contains 50 parts per million or more of polychlorinated biphenyls. The notification shall include the time of discovery, address or location of the release, immediate actions taken, estimated amount of the release, and, if known, the concentration of polychlorinated biphenyls present in the discharge. This information may be submitted by telephone, hand delivery, electronic mail, or fax."

SECTION 2. G.S. 143-215.84 reads as rewritten:

"**§ 143-215.84. Removal of prohibited discharges.**

(a) Person Discharging. – ~~Any~~ Except as provided in subsection (a2) of this section, 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) 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.

(a2) Discharges of Mineral Oil From Electrical Equipment. – As used in this subsection, "mineral oil" means a light nontoxic liquid petroleum distillate used as a coolant and insulator in electrical equipment owned by a public utility. Any person having control over mineral oil discharged from electrical equipment owned by a public utility, as defined in G.S. 62-100, including, but not limited to, transformers, regulators, bushings, and capacitors, shall restore the area affected by the discharge as nearly as may be to the condition existing prior to the discharge. A person shall notify the applicable regional office of the Department by telephone, hand delivery, electronic mail, or fax when the restoration has been properly completed for a discharge that (i) exceeds 25 gallons, (ii) is directly to surface waters or causes a sheen on surface waters of the State, or (iii) is at a distance of 100 feet or less from any surface water and contains 50 parts per million or more of polychlorinated biphenyls. Where soil removal is necessary as part of a cleanup, all visible traces of the mineral oil shall be removed. For discharges of mineral oil which contain 50 parts per million or more of polychlorinated biphenyls, cleanup shall be performed in compliance with applicable provisions of the Toxic Substances Control Act, 15 U.S.C. § 2601, et seq., as amended. If it is not feasible to collect and remove the discharge of mineral oil from electrical equipment within 24 hours of confirmation of the release, the person responsible shall take all practicable actions to contain, treat, and disperse the discharge, except that no chemical 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.

(b) Removal by Department. – Notwithstanding the requirements of ~~subsection~~ subsections (a) and (a2) 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.

...."

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

HOUSE BILL 103:
Rqmts. for Min'l Oil Spills - 2

2011-2012 General Assembly

Committee:	Senate Agriculture/Environment/Natural Resources	**Date:**	April 5, 2011
Introduced by:	Reps. Hager, Gillespie	**Prepared by:**	Jennifer McGinnis Committee Counsel
Analysis of:	Second Edition		

SUMMARY: ***The Second Edition of House Bill 103 would establish requirements applicable to notice, collection, and removal of mineral oil discharges from electrical equipment owned by a public utility.***

CURRENT LAW: Unauthorized discharges of oil and other hazardous substances (not resulting from leaking underground storage tanks, which are governed by other law) are subject to certain requirements for notice and cleanup. Specifically, a responsible person must:

- Immediately notify the Department of Environment and Natural Resources (DENR) of the nature, location, and time of the discharge and the measures which are being taken or are proposed to be taken to contain and remove the discharge. In instances where entry of such hazardous substances into waters of the State is imminent, DENR may take such actions as are necessary to physically contain or divert such substance so as to prevent entry into the surface waters.
- For discharges of oil and hazardous substances, a person must immediately undertake to collect and remove the discharge and 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 must 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 may be used for such purposes unless they have been previously approved by the Environmental Management Commission (Commission).
- With regard to petroleum-only discharges, a person must immediately take measures to collect and remove the discharge, report the discharge to DENR within 24 hours of the discharge, and begin to restore the area affected by the discharge in accordance with the applicable requirements if the volume of the petroleum that is discharged is 25 gallons or more or if the petroleum causes a sheen on nearby surface water or if the petroleum is discharged at a distance of 100 feet or less from any surface water body. If the volume of petroleum that is discharged is less than 25 gallons, the petroleum does not cause a sheen on nearby surface water, and the petroleum is discharged at a distance of more than 100 feet from all surface water bodies, the person who owns or has control over the petroleum must immediately take measures to collect and remove the discharge. If a discharge of less than 25 gallons of petroleum cannot be cleaned up within 24 hours of the discharge or if the discharge causes a sheen on nearby surface water, the person who owns or has control over the petroleum must immediately notify DENR.

BILL ANALYSIS: The bill would treat discharges of mineral oil[1] from electrical equipment owned by a public utility differently from discharges of other types of oil and hazardous substances.

[1] Defined under the bill as "a light nontoxic liquid petroleum distillate typically used as a coolant and insulator in electrical equipment owned by a public utility".

With regard to notice of discharges of mineral oil of this type, a person must report the discharge to the applicable regional office of DENR within 24 hours of confirmation of a discharge when the discharge (i) exceeds 25 gallons, (ii) is directly to surface waters or causes a sheen on surface waters of the State, or (iii) is at a distance of 100 feet or less from any surface water and contains 50 parts per million or more of polychlorinated biphenyls (PCBs). The notification must include the time of discovery, address or location of the release, immediate actions taken, estimated amount of the release, and, if known, the concentration of PCBs present in the discharge.

With regard to cleanup of discharges of mineral oil of this type, a person having control over the discharge must:

- Restore the area affected by the discharge as nearly as may be to the condition existing prior to the discharge.
- Where soil removal is necessary as part of a cleanup, all visible traces of the mineral oil must be removed. For discharges of mineral oil which contain 50 parts per million or more of PCBs, cleanup must be performed in compliance with applicable provisions of the federal Toxic Substances Control Act. If it is not feasible to collect and remove the discharge of mineral oil within 24 hours of confirmation of the release, the person responsible must take all practicable actions to contain, treat, and disperse the discharge, except that no chemical or other dispersants or treatment materials which will be detrimental to the environment or natural resources may be used for such purposes unless they have been previously approved by the Commission.
- Notify DENR when the restoration has been properly completed for a discharge that (i) exceeds 25 gallons, (ii) is directly to surface waters or causes a sheen on surface waters of the State, or (iii) is at a distance of 100 feet or less from any surface water and contains 50 parts per million or more of PCBs.

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

H103-SMRI-10(e2) v2

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

S D

SENATE BILL 378
PROPOSED COMMITTEE SUBSTITUTE S378-PCS55207-SB-11

Short Title: Energy Crops for Biofuels Feedstocks. (Public)

Sponsors:

Referred to:

March 21, 2011

A BILL TO BE ENTITLED

AN ACT TO DIRECT THE INTERAGENCY GROUP TO ESTABLISH AGRONOMIC RATES FOR ENERGY CROPS FOR UTILIZATION BY BIOFUELS FACILITIES.

Whereas, in 2007, as directed by the General Assembly, the North Carolina's Strategic Plan for Biofuels Leadership established a goal that by 2017, ten percent (10%) of liquid fuels sold in North Carolina will come from biofuels grown and produced within the State; and

Whereas, the identification and development of reliable and cost-effective feedstocks to service biofuels facilities is imperative to the development of the biofuels industry in North Carolina; and

Whereas, North Carolina is one of the leading pork producing states in the nation, and the swine industry is a significant component of North Carolina's agricultural sector; and

Whereas, the lands utilized for swine waste application in North Carolina represent a potential opportunity for the planting and growing of energy crops; and

Whereas, appropriate levels of animal waste application and proper agronomic rates of crops must be established to ensure environmental compliance and to protect water quality; and

Whereas, in 1995, the General Assembly through the passage of Session Law 1995-626 (Senate Bill 1217) established an Interagency Group to provide uniform interpretations to technical specialists regarding the requirements of the animal waste management rules; Now, therefore,

The General Assembly of North Carolina enacts:

SECTION 1.(a) The Interagency Group established by Section 18(b) of Chapter 626 of the Session Laws of 1995 shall establish agronomic rates to ensure proper application levels of animal waste for the following energy crops: miscanthus, switchgrass, fiber sorghum, sweet sorghum, and giant reed. The Interagency Group shall establish interim agronomic rates no later than July 1, 2011, and final agronomic rates no later than December 1, 2014.

SECTION 1.(b) In developing the agronomic rates, the Interagency Group may consider nutrient data from research trials, peer-reviewed publications, current studies, and any other information it deems appropriate. The agronomic rates shall ensure that land application of swine waste at the proposed rate will not cause or contribute to a violation of groundwater standards. The Interagency Group may seek the assistance and expertise of any other entity and with other State agencies with respect to their areas of responsibility regarding agronomic rates.

All agencies of the State of North Carolina shall cooperate with the Interagency Group and, upon request, shall assist the Interagency Group in fulfilling its responsibilities.

SECTION 1.(c) The Interagency Group shall publish the interim agronomic rates and any accompanying guidance for the use of technical specialists no later than July 1, 2011. The Interagency Group shall publish the final agronomic rates and any accompanying guidance for the use of technical specialists no later than December 1, 2014.

SECTION 1.(d) No later than July 1, 2011, the Interagency Group shall submit a report on the development and publication of the interim agronomic rates to the Environmental Review Commission; the Commissioner of Agriculture; and the chairs of the Joint Regulatory Reform Committee, the House Agriculture Committee, the House Environment Committee, and the Senate Agriculture/Environment/Natural Resources Committee. No later than December 1, 2014, the Interagency Group shall submit a report on the development and publication of the final agronomic rates to the Environmental Review Commission; the Commissioner of Agriculture; and the chairs of the Joint Regulatory Reform Committee, the House Agriculture Committee, the House Environment Committee, and the Senate Agriculture/Environment/Natural Resources Committee.

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

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

S D

SENATE BILL 378
PROPOSED COMMITTEE SUBSTITUTE S378-CSSB-11 [v.4]

4/4/2011 3:41:30 PM

Short Title: Energy Crops for Biofuels Feedstocks. (Public)

Sponsors:

Referred to:

March 21, 2011

A BILL TO BE ENTITLED

AN ACT TO DIRECT THE INTERAGENCY GROUP TO ESTABLISH AGRONOMIC RATES FOR ENERGY CROPS FOR UTILIZATION BY BIOFUELS FACILITIES.

Whereas, in 2007, as directed by the General Assembly, the North Carolina's Strategic Plan for Biofuels Leadership established a goal that by 2017, ten percent (10%) of liquid fuels sold in North Carolina will come from biofuels grown and produced within the State;

Whereas, the identification and development of reliable and cost-effective feedstocks to service biofuels facilities is imperative to the development of the biofuels industry in North Carolina;

Whereas, North Carolina is one of the leading pork producing states in the nation and the swine industry is a significant component of North Carolina's agricultural sector;

Whereas, the lands utilized for swine waste application in North Carolina represent a potential opportunity for the planting and growing of energy crops;

Whereas, appropriate levels of animal waste application and proper agronomic rates of crops must be established to ensure environmental compliance and to protect water quality;

Whereas, In 1995 the General Assembly through the passage of Session Law 1995-626 (Senate Bill 1217) established an Interagency Group to provide uniform interpretations to technical specialists regarding the requirements of the animal waste management rules; Now, therefore,

The General Assembly of North Carolina enacts:

SECTION 1.(a) The Interagency Group established by Section 18(b) of Chapter 626 of the Session Laws of 1995 shall establish agronomic rates to ensure proper application levels of animal waste for the following energy crops: miscanthus, switchgrass, fiber sorghum, sweet sorghum, and giant reed. The Interagency Group shall establish interim agronomic rates no later than July 1, 2011, and final agronomic rates no later than December 1, 2014.

SECTION 1.(b) In developing the agronomic rates, the Interagency Group may consider nutrient data from research trials, peer-reviewed publications, current studies, and any other information it deems appropriate. The agronomic rates shall ensure that land application of swine waste at the proposed rate will not cause or contribute to a violation of groundwater standards. The Interagency Group may seek the assistance and expertise of any other entity and with other state agencies with respect to their areas of responsibility regarding agronomic rates. All agencies of the State of North Carolina shall cooperate with the Interagency Group and, upon request, shall assist the Interagency Group in fulfilling its responsibilities.



SECTION 1.(c) The Interagency Group shall publish the interim agronomic rates and any accompanying guidance for the use of technical specialists no later than July 1, 2011. The Interagency Group shall publish the final agronomic rates and any accompanying guidance for the use of technical specialists no later than December 1, 2014.

SECTION 1.(d) No later than July 1, 2011, the Interagency Group shall submit a report on the development and publication of the interim agronomic rates to the Environmental Review Commission; the Commissioner of Agriculture; and the chairs of the Joint Regulatory Reform Committee, the House Agriculture Committee, the House Environment Committee, and the Senate Agriculture/Environment/Natural Resources Committee. No later than December 1, 2014, the Interagency Group shall submit a report on the development and publication of the final agronomic rates to the Environmental Review Commission; the Commissioner of Agriculture; and the chairs of the Joint Regulatory Reform Committee, the House Agriculture Committee, the House Environment Committee, and the Senate Agriculture/Environment/Natural Resources Committee.

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

CHANGES MADE BY PCS: The PCS directs the Interagency Group, and not the Department of Environment and Natural Resources as was contemplated in the first edition of the bill, to establish specific rules to ensure proper application levels of animal waste for energy crops for utilization by biofuels facilities. The PCS also changes the dates on which the Interagency Group must establish, publish, and report interim and final guidance on agronomic rates for the use of technical specialist.

EFFECTIVE DATE: This act is effective when it becomes law.

SB378-SMTA-2(CSSB-11 rev) v2

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

S D

SENATE BILL 378
PROPOSED COMMITTEE SUBSTITUTE S378-CSSB-11 [v.4]

4/4/2011 3:41:30 PM

Short Title: Energy Crops for Biofuels Feedstocks. (Public)

Sponsors:

Referred to:

March 21, 2011

A BILL TO BE ENTITLED

AN ACT TO DIRECT THE INTERAGENCY GROUP TO ESTABLISH AGRONOMIC RATES FOR ENERGY CROPS FOR UTILIZATION BY BIOFUELS FACILITIES.

Whereas, in 2007, as directed by the General Assembly, the North Carolina's Strategic Plan for Biofuels Leadership established a goal that by 2017, ten percent (10%) of liquid fuels sold in North Carolina will come from biofuels grown and produced within the State;

Whereas, the identification and development of reliable and cost-effective feedstocks to service biofuels facilities is imperative to the development of the biofuels industry in North Carolina;

Whereas, North Carolina is one of the leading pork producing states in the nation and the swine industry is a significant component of North Carolina's agricultural sector;

Whereas, the lands utilized for swine waste application in North Carolina represent a potential opportunity for the planting and growing of energy crops;

Whereas, appropriate levels of animal waste application and proper agronomic rates of crops must be established to ensure environmental compliance and to protect water quality;

Whereas, In 1995 the General Assembly through the passage of Session Law 1995-626 (Senate Bill 1217) established an Interagency Group to provide uniform interpretations to technical specialists regarding the requirements of the animal waste management rules; Now, therefore,

The General Assembly of North Carolina enacts:

SECTION 1.(a) The Interagency Group established by Section 18(b) of Chapter 626 of the Session Laws of 1995 shall establish agronomic rates to ensure proper application levels of animal waste for the following energy crops: miscanthus, switchgrass, fiber sorghum, sweet sorghum, and giant reed. The Interagency Group shall establish interim agronomic rates no later than July 1, 2011, and final agronomic rates no later than December 1, 2014.

SECTION 1.(b) In developing the agronomic rates, the Interagency Group may consider nutrient data from research trials, peer-reviewed publications, current studies, and any other information it deems appropriate. The agronomic rates shall ensure that land application of swine waste at the proposed rate will not cause or contribute to a violation of groundwater standards. The Interagency Group may seek the assistance and expertise of any other entity and with other state agencies with respect to their areas of responsibility regarding agronomic rates. All agencies of the State of North Carolina shall cooperate with the Interagency Group and, upon request, shall assist the Interagency Group in fulfilling its responsibilities.



SECTION 1.(c) The Interagency Group shall publish the interim agronomic rates and any accompanying guidance for the use of technical specialists no later than July 1, 2011. The Interagency Group shall publish the final agronomic rates and any accompanying guidance for the use of technical specialists no later than December 1, 2014.

SECTION 1.(d) No later than July 1, 2011, the Interagency Group shall submit a report on the development and publication of the interim agronomic rates to the Environmental Review Commission; the Commissioner of Agriculture; and the chairs of the Joint Regulatory Reform Committee, the House Agriculture Committee, the House Environment Committee, and the Senate Agriculture/Environment/Natural Resources Committee. No later than December 1, 2014, the Interagency Group shall submit a report on the development and publication of the final agronomic rates to the Environmental Review Commission; the Commissioner of Agriculture; and the chairs of the Joint Regulatory Reform Committee, the House Agriculture Committee, the House Environment Committee, and the Senate Agriculture/Environment/Natural Resources Committee.

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

SENATE BILL 378:
Energy Crops for Biofuels Feedstocks

2011-2012 General Assembly

Committee:	Senate Agriculture/Environment/Natural Resources	**Date:**	April 5, 2011
Introduced by:	Sens. Goolsby, Rouzer, Jackson	**Prepared by:**	Jennifer Mundt Legislative Analyst
Analysis of:	PCS to First Edition S378-CSSB-11 [v.4]		

SUMMARY: ***The Proposed Committee Substitute for Senate Bill 378 (PCS) would require the Interagency Group to establish agronomic rates to ensure proper application levels of animal waste for energy crops for utilization by biofuels facilities.***

BACKGROUND AND CURRENT LAW: Section 18(b) of S.L. 1995-626 established an Interagency Group to address questions from technical specialists, provide uniform interpretations to technical specialists regarding the requirements of animal waste management rules (15A NCAC 02T .1300), and publish the Group's decisions on these questions on a regular and recurring basis. The Interagency Group consists of two representatives from the following State agencies: the Division of Soil and Water Conservation in the Department of Environment and Natural Resources (Department); the Division Water Quality in the Department; the Department of Agriculture and Consumer Services; and the Cooperative Extension Service. Two representatives from the U.S. Department of Agriculture are also encouraged to participate on the Interagency Group.

Pursuant to 15A NCAC 02T .1300 et. seq., in order for an animal waste management system to receive coverage under a State or federal permit, a technical specialist must approve an animal waste management plan. Animal waste management plans must provide that any waste is not applied at greater than agronomic rates.

BILL ANALYSIS: Senate Bill 378 would require the Interagency Group to establish agronomic rates to ensure proper application levels of animal waste for the following energy crops: miscanthus; switchgrass; fiber sorghum; sweet sorghum; and giant reed. The Interagency Group must establish and publish interim agronomic rates and any accompanying guidance no later than July 1, 2011 and final agronomic rates and guidance no later than December 1, 2014.

In developing the agronomic rates, the Interagency Group may consider nutrient data from research trials, peer-reviewed publications, current studies, and any other information deemed appropriate. The agronomic rates must ensure that land application of swine waste at the proposed rate will not cause or contribute to a violation of groundwater standards. The Interagency Group may seek the assistance and expertise of any other entity and with other state agencies. All State agencies must cooperate with the Interagency Group and, upon request, assist the Interagency Group in fulfilling its responsibilities.

The Interagency Group must submit a report on the development and publication of interim agronomic rates by July 1, 2011 and a report of the final agronomic rates by December 1, 2014 to the Environmental Review Commission, the Commissioner of Agriculture, and the chairs of the Joint Regulatory Reform Committee, the House Committees on Agriculture and Environment, and the Senate Agriculture/Environment/Natural Resources Committee.

CHANGES MADE BY PCS: The PCS directs the Interagency Group, and not the Department of Environment and Natural Resources as was contemplated in the first edition of the bill, to establish agronomic rates to ensure proper application levels of animal waste for energy crops for utilization by biofuels facilities. The PCS also changes the dates on which the Interagency Group must establish, publish, and report interim and final guidance on agronomic rates for the use of technical specialists.

EFFECTIVE DATE: This act is effective when it becomes law.

S378-SMTA-7(CSSB-11 vxx) v2

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

S 1

SENATE BILL 378

Short Title:	Energy Crops for Biofuels Feedstocks.	(Public)
Sponsors:	Senators Goolsby, Rouzer, Jackson; and Meredith.	
Referred to:	Agriculture/Environment/Natural Resources.	

March 21, 2011

A BILL TO BE ENTITLED

AN ACT TO REQUIRE THE NORTH CAROLINA DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES TO ESTABLISH AGRONOMIC RATES FOR ENERGY CROPS FOR UTILIZATION BY BIOFUELS FACILITIES.

Whereas, in 2007, as directed by the General Assembly, the North Carolina's Strategic Plan for Biofuels Leadership established a goal that by 2017, ten percent (10%) of liquid fuels sold in North Carolina will come from biofuels grown and produced within the State;

Whereas, the identification and development of reliable and cost-effective feedstocks to service biofuels facilities is imperative to the development of the biofuels industry in North Carolina;

Whereas, North Carolina is one of the leading pork producing states in the nation and the swine industry is a significant component of North Carolina's agricultural sector;

Whereas, the lands utilized for swine waste application in North Carolina represent a potential opportunity for the planting and growing of energy crops;

Whereas, appropriate levels of animal waste application and proper agronomic rates of crops must be established to ensure environmental compliance and to protect water quality;

Whereas, In 1995 the General Assembly through the passage of Session Law 1995-626 (Senate Bill 1217) established an Interagency Committee to provide uniform interpretations to technical specialists regarding the requirements of the animal waste management rules; Now, therefore,

The General Assembly of North Carolina enacts:

SECTION 1.(a) The Department of Environment and Natural Resources, in consultation with the Interagency Committee established by Section 18(b) of Chapter 626 of the Session Laws of 1995 shall establish agronomic rates to ensure proper application levels of animal waste for the following energy crops: miscanthus, switchgrass, fiber sorghum, sweet sorghum, and giant reed.

SECTION 1.(b) In developing the agronomic rates, the Department may consider nutrient data from research trials, peer-reviewed publications, current studies, and any other information deemed appropriate by the Interagency Committee. The agronomic rates shall ensure that land application of swine waste at the proposed rate will not cause or contribute to a violation of groundwater standards. The Department may seek the assistance and expertise of any other entity and with other state agencies with respect to their areas of responsibility regarding agronomic rates. All agencies of the State of North Carolina shall cooperate with the Department and, upon request, shall assist the Department in fulfilling its responsibilities.

SECTION 1.(c) The Department shall publish the agronomic rates for the energy crops and any accompanying guidance for the use of technical specialists no later than May 6, 2011.

SECTION 1.(d) No later than June 1, 2011, the Department shall submit a report of its actions under subsection (c) of this section to the Environmental Review Commission, Commissioner of the Department of Agriculture and Consumer Services and to the chairs of the Joint Regulatory Reform Committee, the House Agriculture Committee, the House Environment Committee, and the Senate Agriculture/Environment/Natural Resources Committee.

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

S 1

SENATE BILL 229

Short Title:	Transfer DENR Soil & Water to DACS.	(Public)
Sponsors:	Senators East, Rouzer, and Jackson.	
Referred to:	Agriculture/Environment/Natural Resources.	

March 8, 2011

A BILL TO BE ENTITLED

AN ACT TO TRANSFER THE DIVISION OF SOIL AND WATER CONSERVATION AND THE SOIL AND WATER CONSERVATION COMMISSION OF THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES TO THE DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES AND TO MAKE CONFORMING CHANGES.

The General Assembly of North Carolina enacts:

SECTION 1.(a) The Division of Soil and Water Conservation is transferred from the Department of Environment and Natural Resources to the Department of Agriculture and Consumer Services with all the elements of a Type I transfer, as defined by G.S. 143A-6.

SECTION 1.(b) All functions, powers, duties, and obligations previously vested in the State Soil and Water Conservation Commission are transferred to and vested in the Department of Agriculture and Consumer Services by a Type II transfer, as defined in G.S. 143A-6.

SECTION 2.(a) G.S. 143B-279.3(a) reads as rewritten:

"(a) All functions, powers, duties, and obligations previously vested in the following subunits of the following departments are transferred to and vested in the Department of Environment and Natural Resources by a Type I transfer, as defined in G.S. 143A-6:

...

~~(10) Soil and Water Conservation Division, Department of Natural Resources and Community Development.~~

...."

SECTION 2.(b) G.S. 143B-279.3(b) reads as rewritten:

"(b) All functions, powers, duties, and obligations previously vested in the following commissions, boards, councils, and committees of the following departments are transferred to and vested in the Department of Environment and Natural Resources by a Type II transfer, as defined in G.S. 143A-6:

...

~~(21) State Soil and Water Conservation Commission, Department of Natural Resources and Community Development.~~

...."

SECTION 3. Part 7 of Article 7 of Chapter 143B of the General Statutes is recodified as Article 71 of Chapter 106 of the General Statutes, and accordingly G.S. 143B-294 through G.S. 143B-297.1 are recodified as G.S. 106-840 through G.S. 106-844.

SECTION 4. G.S. 106-840, as recodified by Section 3 of this act, reads as rewritten:

"§ 106-840. Soil and Water Conservation Commission – creation; powers and duties; compliance inspections.

(a) There is hereby created the Soil and Water Conservation Commission of the Department of ~~Environment and Natural Resources~~Agriculture and Consumer Services with the power and duty to adopt rules to be followed in the development and implementation of a soil and water conservation program.

(1) The Soil and Water Conservation Commission has all of the following powers and duties:

a. To approve petitions for soil conservation districts.

b. To approve application for watershed plans.

c. Such other duties as specified in Chapter 139.

d. To conduct any inspections in accordance with subsection (b) of this section.

(2) The Commission shall adopt rules consistent with the provisions of this Chapter. All rules not inconsistent with the provisions of this Chapter heretofore adopted by the Soil and Water Conservation Committee shall remain in full force and effect unless and until repealed or superseded by action of the Soil and Water Conservation Commission. All rules adopted by the Commission shall be enforced by the Department of ~~Environment and Natural Resources.~~Agriculture and Consumer Services.

(b) An employee or agent of the Soil and Water Conservation Commission or the Department of ~~Environment and Natural Resources~~Agriculture and Consumer Services may enter property, with the consent of the owner or person having control over property, at reasonable times for the purposes of investigating compliance with Commission or Department programs when the investigation is reasonably necessary to carry out the duties of the Commission. If the Commission or Department is unable to obtain the consent of the owner of the property, the Commission or Department may obtain an administrative search warrant pursuant to G.S. 15-27.2.

(c) Any person who refuses entry or access to property by an employee or agent of the Commission or the Department or who willfully resists, delays, or obstructs an employee or agent of the Commission or the Department while the employee or agent is in the process of carrying out official duties after the employee or agent has obtained the consent of the owner or person having control of the property or, if consent is not obtained, after the employee or agent has obtained an administrative search warrant, shall be guilty of a Class 1 misdemeanor."

SECTION 5. G.S. 106-841(a), as recodified by Section 3 of this act, reads as rewritten:

"(a) The Soil and Water Conservation Commission of the Department of ~~Environment and Natural Resources~~Agriculture and Consumer Services shall be composed of seven members appointed by the Governor. The Commission shall be composed of the following members:

...."

SECTION 6. G.S. 139-3(4) reads as rewritten:

"(4) "Commission" or "Soil and Water Conservation Commission" means the Soil and Water Conservation Commission created by G.S. ~~143B-294.~~106-840."

SECTION 7. G.S. 139-4(d) reads as rewritten:

"(d) In addition to the duties and powers hereinafter conferred upon the Soil and Water Conservation Commission, it shall have the following duties and powers:

...

(9) To create, implement, and supervise the Agriculture Cost Share Program for Nonpoint Source Pollution Control created pursuant to ~~Part 9 of Article 21~~

~~of Chapter 143~~Article 72 of Chapter 106 of the General Statutes and the Community Conservation Assistance Program created pursuant to Part 11 of Article 21 of Chapter 143 of the General Statutes.

(10) To review and approve or disapprove the application of a district supervisor for a grant under the Agriculture Cost Share Program for Nonpoint Source Pollution Control or the Community Conservation Assistance Program as provided by G.S. 139-8(b).

(11) To develop and implement a program for the approval of water quality and animal waste management systems technical specialists.

(12) To develop and approve best management practices for the Agriculture Cost Share Program for Nonpoint Source Pollution Control and for use in the water quality protection programs of the Department of Environment and Natural Resources and to adopt rules that establish criteria governing approval of these best management practices."

SECTION 8. G.S. 139-4(e) reads as rewritten:

"(e) A member of the Commission may apply for and receive a grant under the Agriculture Cost Share Program for Nonpoint Source Pollution Control and the Community Conservation Assistance Program if:

(1) The member does not vote on the application or attempt to influence the outcome of any action on the application; and

(2) The application is approved by the ~~Secretary of Environment and Natural Resources.~~Commissioner of Agriculture."

SECTION 9. G.S. 139-5(d) reads as rewritten:

"(d) The Department of ~~Environment and Natural Resources~~Agriculture and Consumer Services shall pay all expenses for the issuance of such notices and the conduct of such hearings and referenda, and shall supervise the conduct of such hearings and referenda. It shall issue appropriate regulations governing the conduct of such hearings and referenda, and providing for the registration prior to the date of the referendum of all eligible voters, or prescribing some other appropriate procedure for the determination of those eligible as voters in such referendum. No informality in the conduct of such referendum or in any matters relating thereto shall invalidate said referendum or the result thereof if notice thereof shall have been given substantially as herein provided and said referendum shall have been fairly conducted."

SECTION 10. G.S. 139-5(e) reads as rewritten:

"(e) The Department of ~~Environment and Natural Resources~~Agriculture and Consumer Services shall publish the results of such referendum and shall thereafter consider and determine whether the operation of the district within the defined boundaries is administratively practicable and feasible. If the Commission shall determine that the operation of such district is not administratively practicable and feasible, it shall record such determination and deny the petition. If the Commission shall determine that the operation of such district is administratively practicable and feasible, it shall record such in the manner hereinafter provided. In making such determination the Commission shall give due regard and weight to the attitudes of the occupiers of lands lying within the defined boundaries, the number of land occupiers eligible to vote in such referendum who shall have voted, the proportion of the votes cast in such referendum in favor of the creation of the district to the total number of votes cast, the approximate wealth and income of the land occupiers of the proposed district, the probable expense of carrying on erosion control operations within such district, and such other economic and social factors as may be relevant to such determination, having due regard to the legislative determination set forth in G.S. 139-2: Provided, however, that the Commission shall not have authority to determine that the operations of the proposed district within the defined boundaries is administratively practicable and feasible unless at least a majority of the votes cast in the

referendum upon the proposition of creation of the district shall have been cast in favor of the creation of such district."

SECTION 11. G.S. 139-7 reads as rewritten:

"**§ 139-7. District board of supervisors – appointive members; organization of board; certain powers and duties.**

The governing body of a soil and water conservation district shall consist of the three elective supervisors from the county or counties in the district, together with the appointive members appointed by the Soil and Water Conservation Commission pursuant to this section, and shall be known as the district board of supervisors. When a district is composed of less than four counties, the board of supervisors of each county shall on or before October 31, 1978, and on or before October 31 as the terms of the appointive supervisors expire, recommend in writing two persons from the district to the Commission to be appointed to serve with the elective supervisors. If the names are not submitted to the Commission as required, the office shall be deemed vacant on the date the term is set to expire and the Commission shall appoint two persons of the district to the district board of supervisors to serve with the elected supervisors. The Commission shall make its appointments prior to or at the November meeting of the Commission. Appointive supervisors shall take office on the first Monday in December following their appointment. Such appointive supervisors shall serve for a term of four years, and thereafter, as their terms expire, their successors shall serve for a term of four years. The terms of office of all appointive supervisors who have heretofore been lawfully appointed for terms the final year of which presently extends beyond the first Monday in December are hereby terminated on the first Monday in December of the final year of appointment. Vacancies for any reason in the appointive supervisors shall be filled for the unexpired term by the appointment of a person by the Commission from the district in which the vacancy occurs. Vacancies for any reason in the elected supervisors shall be filled for the unexpired term by appointment by the Commission of a person from the county in the district in which the vacancy occurs.

In those districts composed of four or more counties, the Commission may, but is not required to, appoint two persons from the district without recommendation from the board of supervisors, to serve as district supervisors along with the elected members of the board of supervisors. Such appointments shall be made at the same time other appointments are made under this section, and the persons appointed shall serve for a term of four years.

The supervisors shall designate a chairman and may, from time to time, change such designation. A simple majority of the board shall constitute a quorum for the purpose of transacting the business of the board, and approval by a majority of those present shall be adequate for a determination of any matter before the board, provided at least a quorum is present. Supervisors of soil and water conservation districts shall be compensated for their services at the per diem rate and allowed travel, subsistence and other expenses, as provided for State boards, commissions and committees generally, under the provisions of G.S. 138-5; provided, that when per diem compensation and travel, subsistence, or other expense is claimed by any supervisor for services performed outside the district for which such supervisor ordinarily may be appointed or elected to serve, the same may not be paid unless prior written approval is obtained from the Department of ~~Environment and Natural Resources.~~Agriculture and Consumer Services.

The supervisors may employ a secretary, technical experts, whose qualifications shall be approved by the Department, and such other employees as they may require, and shall determine their qualifications, duties and compensation. The supervisors may call upon the Attorney General of the State for such legal services as they may require. The supervisors may delegate to their chairman, to one or more supervisors, or to one or more agents, or employees such powers and duties as they may deem proper. The supervisors shall furnish to the Soil and Water Conservation Commission, upon request, copies of such ordinances, rules, regulations,

orders, contracts, forms, and other documents as they shall adopt or employ, and such other information concerning their activities as it may require in the performance of its duties under this Chapter.

The supervisors shall provide for the execution of surety bonds for all employees and officers who shall be entrusted with funds or property; shall provide for the keeping of a full and accurate record of all proceedings and of all resolutions, regulations, and orders issued or adopted; and shall provide for an annual audit of the accounts of receipts and disbursements. In any given year, if the supervisors provide for an internal audit, and the supervisor serving as chairman certifies, under oath, that this internal audit is a true and accurate reflection of the accounts of receipts and disbursements, then the supervisors shall not be required, notwithstanding the provisions of G.S. 159-34, to provide for an audit of the accounts of receipts and disbursements by a certified public accountant or by an accountant certified by the Local Government Commission. Any supervisor may be removed by the Soil and Water Conservation Commission upon notice and hearing, for neglect of duty, incompetence or malfeasance in office, but for no other reason.

The supervisors may invite the legislative body of any municipality or county located near the territory comprised within the district to designate a representative to advise and consult with the supervisors of the district on all questions of program and policy which may affect the property, water supply, or other interests of such municipality or county.

All district supervisors whose terms of office expire prior to the first Monday in January, 1948, shall hold over and remain in office until supervisors are elected or appointed and qualify as provided in this Chapter, as amended. The terms of office of all district supervisors, who have heretofore been elected or appointed for terms extending beyond the first Monday in January, 1948, are hereby terminated on the first Monday in January, 1948."

SECTION 12. G.S. 139-8(a)(13) reads as rewritten:

"(13) To assist the Commission in the implementation and supervision of the Agriculture Cost Share Program for Nonpoint Source Pollution Control created pursuant to ~~G.S. 143-215.74~~G.S. 106-850 and to assist in the implementation and supervision of any other program intended to protect water quality administered by the Department of ~~Environment and Natural Resources~~Agriculture and Consumer Services by providing technical assistance, allocating available grant monies, and providing any other assistance that may ~~by~~ be required or authorized by any provision of federal or State law."

SECTION 13. G.S. 139-13 reads as rewritten:

"**§ 139-13. Discontinuance of districts.**

At any time after five years after the organization of a district under the provisions of this Chapter, any 25 occupiers of land lying within the boundaries of such districts may file a petition with the Soil and Water Conservation Commission praying that the operations of the district be terminated and the existence of the district discontinued. The Commission may conduct such public meetings and public hearings upon such petition as may be necessary to assist it in the consideration thereof. Within 60 days after such a petition has been received by the Commission it shall give due notice of the holding of a referendum, and shall supervise such referendum, and issue appropriate regulations governing the conduct thereof, the question to be submitted by ballots upon which the words "For terminating the existence of the _____ (name of the soil and water conservation district to be here inserted)" and "Against terminating the existence of the _____ (name of the soil and water conservation district to be here inserted)" shall appear with a square before each proposition and a direction to insert an X mark in the square before one or the other of said propositions as the voter may favor or oppose discontinuance of such district. All occupiers of lands lying within the boundaries of the district shall be eligible to vote in such referendum. Only such land occupiers shall be eligible to vote.

No informalities in the conduct of such referendum or in any matters relating thereto shall invalidate said referendum or the result thereof if notice thereof shall have been given substantially as herein provided and said referendum shall have been fairly conducted.

The Department of ~~Environment and Natural Resources~~Agriculture and Consumer Services shall publish the result of such referendum and shall thereafter consider and determine whether the continued operation of the district within the defined boundaries is administratively practicable and feasible. If the Commission shall determine that the continued operation of such district is administratively practicable and feasible, it shall record such determination and deny the petition. If the Commission shall determine that the continued operation of such district is not administratively practicable and feasible, it shall record such determination and shall certify such determination to the supervisors of the district. In making such determination the Commission shall give due regard and weight to the attitudes of the occupiers of lands lying within the district, the number of land occupiers eligible to vote in such referendum who shall have voted, the proportion of the votes cast in such referendum in favor of the discontinuance of the district to the total number of votes cast, the approximate wealth and income of the land occupiers of the district, the probable expense of carrying on erosion control operations within such district, and such other economic and social factors as may be relevant to such determination, having due regard to the legislative findings set forth in G.S. 139-2: Provided, however, that the Commission shall not have authority to determine that the continued operation of the district is administratively practicable and feasible unless at least a majority of the votes cast in the referendum shall have been cast in favor of the continuance of such district.

Upon receipt from the Soil and Water Conservation Commission of a certification that the Commission has determined that the continued operation of the district is not administratively practicable and feasible, pursuant to the provisions of this section, the supervisors shall forthwith proceed to terminate the affairs of the district. The supervisors shall dispose of all property belonging to the district at public auction and shall pay over the proceeds of such sale to be covered into the State treasury. The supervisors shall thereupon file an application, duly verified, with the Secretary of State for the discontinuance of such district, and shall transmit with such application the certificates of the Soil and Water Conservation Commission setting forth the determination of the Commission that the continued operation of such district is not administratively practicable and feasible. The application shall recite that the property of the district has been disposed of and the proceeds paid over as in this section provided, and shall set forth a full accounting of such properties and proceeds of the sale. The Secretary of State shall issue to the supervisors a certificate of dissolution and shall record such certificate in an appropriate book of record in his office.

Upon issuance of a certificate of dissolution under the provisions of this section, all ordinances and regulations theretofore adopted and in force within such districts shall be of no further force and effect. All contracts theretofore entered into, to which the district or supervisors are parties, shall remain in force and effect for the period provided in such contracts. The Soil and Water Conservation Commission shall be substituted for the district or supervisors as party to such contracts. The Commission shall be entitled to all benefits and subject to all liabilities under such contracts and shall have the same right and liability to perform, to require performance, to sue and be sued thereon, and to modify or terminate such contracts by mutual consent or otherwise as the supervisors of the district would have had. Such dissolution shall not affect the lien of any judgment entered under the provisions of G.S. 139-11, nor the pendency of any action instituted under the provisions of such section, and the Commission shall succeed to all the rights and obligations of the district or supervisors as to such liens and actions.

The Soil and Water Conservation Commission shall not entertain petitions for the discontinuance of any district nor conduct referenda upon such petitions, nor make

determinations pursuant to such petitions, in accordance with the provisions of this Chapter, more often than once in five years."

SECTION 14. G.S. 143-215.10A reads as rewritten:

"**§ 143-215.10A. Legislative findings and intent.**

The General Assembly finds that animal operations provide significant economic and other benefits to this State. The growth of animal operations in recent years has increased the importance of good animal waste management practices to protect water quality. It is critical that the State balance growth with prudent environmental safeguards. It is the intention of the State to promote a cooperative and coordinated approach to animal waste management among the agencies of the State with a primary emphasis on technical assistance to farmers. To this end, the General Assembly intends to establish a permitting program for animal waste management systems that will protect water quality and promote innovative systems and practices while minimizing the regulatory burden. Technical assistance, through operations reviews, will be provided by the Division of Soil and Water ~~Conservation.~~Conservation of the Department of Agriculture and Consumer Services. Permitting, inspection, and enforcement will be vested in the Division of Water Quality."

SECTION 15. G.S. 143-215.10C(e)(6) reads as rewritten:

"(6) Provisions regarding periodic testing of waste products used as nutrient sources as close to the time of application as practical and at least within 60 days of the date of application and periodic testing, at least annually, of soils at crop sites where the waste products are applied. Nitrogen shall be a rate-determining element. Phosphorus shall be evaluated according to the nutrient management standard approved by the Soil and Water Conservation Commission of the Department of Agriculture and Consumer Services and the Natural Resources Conservation Service of the United States Department of Agriculture for facilities that are required to be permitted under 40 Code of Federal Regulations § 122, as amended at 73 Federal Register 70418 (November 20, 2008). If the evaluation demonstrates the need to limit the application of phosphorus in order to comply with the nutrient management standard, then phosphorus shall be a rate-determining element. Zinc and copper levels in the soils shall be monitored, and alternative crop sites shall be used when these metals approach excess levels."

SECTION 16. G.S. 143-215.10D reads as rewritten:

"**§ 143-215.10D. Operations review.**

(a) The Division, in cooperation with the Division of Soil and Water ~~Conservation,~~Conservation of the Department of Agriculture and Consumer Services, shall develop a reporting procedure for use by technical specialists who conduct operations reviews of animal operations. The reporting procedure shall be consistent with the Division's inspection procedure of animal operations and with this Part. The report shall include any corrective action recommended by the technical specialist to assist the owner or operator of the animal operation in complying with all permit requirements. The report shall be submitted to the Division within 10 days following the operations review unless the technical specialist observes a violation described in G.S. 143-215.10E. If the technical specialist finds a violation described in G.S. 143-215.10E, the report shall be filed with the Division immediately.

(b) As part of its animal waste management plan, each animal operation shall have an operations review at least once a year. The operations review shall be conducted by a technical specialist employed by the Division of Soil and Water Conservation of the ~~Department,~~Department of Agriculture and Consumer Services, a local Soil and Water Conservation District, or the federal Natural Resources Conservation Services working under the direction of the Division of Soil and Water Conservation.

(c) Operations reviews shall not be performed by technical specialists with a financial interest in any animal operation."

SECTION 17. G.S. 143-215.10M(a) reads as rewritten:

"(a) The Department shall report to the Environmental Review Commission and the Fiscal Research Division on or before 1 October of each year as required by this section. Each report shall include:

...

(2) The number of operations reviews of animal waste management systems that the Division of Soil and Water Conservation of the Department of Agriculture and Consumer Services has conducted since the last report.

(3) The number of operations reviews of animal waste management systems conducted by agencies other than the Division of Soil and Water Conservation of the Department of Agriculture and Consumer Services that have been conducted since the last report.

(4) The number of reinspections associated with operations reviews conducted by the Division of Soil and Water Conservation of the Department of Agriculture and Consumer Services since the last report.

(5) The number of reinspections associated with operations reviews conducted by agencies other than the Division of Soil and Water Conservation of the Department of Agriculture and Consumer Services since the last report.

...."

SECTION 18. Part 9 of Article 21 of Chapter 143 of the General Statutes is recodified as Article 72 of Chapter 106 of the General Statutes, and accordingly G.S. 143-215.74, 143-215.74A, and 143-215.74B are recodified as G.S. 106-850, 106-851, and 106-852.

SECTION 19. G.S. 106-850(b)(9), as recodified under Section 18 of this act, reads as rewritten:

"(9) When the applicant is either (i) a limited-resource farmer, (ii) a beginning farmer, or (iii) a person farming land that is located in an enhanced voluntary agricultural district and is subject to a conservation agreement under G.S. 106-743.2 that remains in effect, State funding shall be limited to ninety percent (90%) of the average cost for each practice with the assisted farmer providing ten percent (10%) of the cost, which may include in-kind support of the practice, with a maximum of one hundred thousand dollars ($100,000) per year to each applicant. The following definitions apply in this subdivision:

a. Beginning farmer. – A farmer who has not operated a farm or who has operated a farm for not more than 10 years and who will materially and substantially participate in the operation of the farm.

a1. Enhanced voluntary agricultural district. – A district established by a county or a city by ordinance under Part 3 of Article 61 of ~~Chapter 106 of the General Statutes.~~this Chapter.

...."

SECTION 20. G.S. 106-850(c), as recodified under Section 18 of this act, reads as rewritten:

"(c) The program shall be reviewed, prior to implementation, by the Committee created by ~~G.S. 143-215.74B.~~G.S. 106-852. The Technical Review Committee shall meet quarterly to review the progress of this program."

SECTION 21. G.S. 106-850(e), as recodified under Section 18 of this act, reads as rewritten:

"(e) The Soil and Water Conservation Commission shall report on or before 31 January of each year to the ~~Environmental Review Commission~~Board of Agriculture and the Fiscal Research Division. This report shall include a list of projects that received State funding pursuant to the program, the results of the evaluations conducted pursuant to subdivision (7) of subsection (b) of this section, findings regarding the effectiveness of each of these projects to accomplish its primary purpose, and any recommendations to assure that State funding is used in the most cost-effective manner and accomplishes the greatest improvement in water quality."

SECTION 22. Part 11 of Article 21 of Chapter 143 of the General Statutes is recodified as Article 73 of Chapter 106 of the General Statutes, and accordingly G.S. 143-215.74M is recodified as G.S. 106-860.

SECTION 23. G.S. 106-860(a), as recodified under Section 22 of this act, reads as rewritten:

"(a) Program Established. – There is established the Community Conservation Assistance Program. The Program shall be implemented and supervised by the Soil and Water Conservation ~~Commission.~~Commission of the Department of Agriculture and Consumer Services."

SECTION 24. G.S. 106-860(d), as recodified under Section 22 of this act, reads as rewritten:

"(d) Advisory Committee. – The Program shall be reviewed, prior to implementation, by the Community Conservation Assistance Program Advisory Committee. The Advisory Committee shall meet quarterly to review the progress of the Program. The Advisory Committee shall consist of the following members:

(1) The Director of the Division of Soil and Water Conservation of the Department of Agriculture and Consumer Services or the Director's designee, who shall serve as the Chair of the Advisory Committee.
(2) The President of the North Carolina Association of Soil and Water Conservation Districts or the President's designee.
(3) The Director of the Cooperative Extension Service at North Carolina State University or the Director's designee.
(4) The Executive Director of the North Carolina Association of County Commissioners or the Executive Director's designee.
(5) The Executive Director of the North Carolina League of Municipalities or the Executive Director's designee.
(6) The State Conservationist of the Natural Resources Conservation Service of the United States Department of Agriculture or the State Conservationist's designee.
(7) The Executive Director of the Wildlife Resources Commission or the Executive Director's designee.
(8) The President of the North Carolina Conservation District Employees Association or the President's designee.
(9) The President of the North Carolina Association of Resource Conservation and Development Councils or the President's designee.
(10) The Director of the Division of Water Quality of the Department of Environment and Natural Resources or the Director's designee.
(11) The Director of the Division of Forest Resources of the Department of Environment and Natural Resources or the Director's designee.
(12) The Director of the Division of Land Resources of the Department of Environment and Natural Resources or the Director's designee.
(13) The Director of the Division of Coastal Management of the Department of Environment and Natural Resources or the Director's designee.

(14) The Director of the Division of Water Resources of the Department of Environment and Natural Resources or the Director's designee.

(15) The President of the Carolinas Land Improvement Contractors Association or the President's designee."

SECTION 25. G.S. 106-860(e), as recodified under Section 22 of this act, reads as rewritten:

"(e) Report. – The Soil and Water Conservation Commission shall report no later than 31 January of each year to the ~~Environmental Review Commission~~Board of Agriculture and the Fiscal Research Division. The report shall include a summary of projects that received State funding pursuant to the Program, the results of the evaluation conducted pursuant to subdivision (5) of subsection (b) of this section, findings regarding the effectiveness of each project to accomplish its primary purpose, and any recommendations to assure that State funding is used in the most cost-effective manner and accomplishes the greatest improvement in water quality."

SECTION 26. G.S. 113-291.10(a) reads as rewritten:

"(a) There is established the Beaver Damage Control Advisory Board. The Board shall consist of nine members, as follows:

...

(4) The Director of the Division of Soil and Water Conservation of the Department of ~~Environment and Natural Resources,~~Agriculture and Consumer Services or a designee;

...."

SECTION 27. G.S. 106-743.4(b) reads as rewritten:

"(b) A person who farms land that is subject to a conservation agreement under G.S. 106-743.2 that remains in effect is eligible under G.S. ~~143-215.74(b)~~106-850(b) to receive the higher percentage of cost-share funds for the benefit of that farmland under the Agriculture Cost Share Program established pursuant to ~~Part 9 of Article 21 of Chapter 143 of the General Statutes~~Article 72 of this Chapter for funds to benefit that farmland."

SECTION 28. The Revisor of Statutes shall make the conforming statutory changes necessary to reflect the transfers under Section 1 of this act. The Revisor of Statutes may correct any reference in the General Statutes to the statutes that are recodified by this act and any other conforming changes necessitated by this act.

SECTION 29. This act becomes effective July 1, 2011.

SENATE BILL 229:
Transfer DENR Soil & Water to DACS

2011-2012 General Assembly

Committee:	Senate Agriculture/Environment/Natural Resources	**Date:**	April 5, 2011
Introduced by:	Senators East, Rouzer, and Jackson	**Prepared by:**	Jeff Hudson Committee Counsel
Analysis of:	First Edition		

SUMMARY: Senate Bill 229 would transfer the Division of Soil and Water Conservation and the Soil and Water Conservation Commission from the Department of Environment and Natural Resources to the Department of Agriculture and Consumer Services.

CURRENT LAW:

Under current law, the Division of Soil and Water Conservation and the Soil and Water Conservation Commission are organizationally under the Department of Environment and Natural Resources.

The Division of Soil and Water Conservation[1]

The Division of Soil and Water Conservation provides programs, technical services, and educational outreach to promote voluntary natural resource management and conservation on the private lands of the State. Some of the programs provided by the Division include:

- *Agriculture Cost Share Program* and *Community Conservation Assistance Program:* Provide technical and financial assistance to agricultural producers and non-agricultural landowners for water quality best management practices.
- *Agricultural Drought Recovery Response Program*: Provides technical and financial assistance to agricultural producers for drought response practices.
- *Conservation Reserve Enhancement Program:* A voluntary program to help landowners restore riparian buffers and wetlands on eligible environmentally sensitive agricultural land and to protect enrolled lands through long-term conservation agreements and easements.
- *Soil Information Program*: Collects and classifies soils data required for publication of soil survey reports needed to make decisions regarding site suitability for a variety of land-use decisions.
- *Lagoon Conversion Program:* A voluntary program to assist swine operations in implementing innovative waste management systems.
- *Operations Reviews, including the Operations Review Pilot Program*: A statutorily required program for permitted animal operations in the State that provides animal waste management technical assistance and inspects for permit compliance.
- Assistance to *Local Soil and Water Conservation Districts* with programs, public information, and conservation education to increase adoption and awareness of effective measures to protect natural resources.

[1] Information on the Division of Soil and Water Conservation found at: http://portal.ncdenr.org/web/swc/about-the-division

The Soil and Water Conservation Commission[2]

The Soil and Water Conservation Commission is a policy and rulemaking board for State Soil and Water Conservation Programs. The Commission provides overall supervision of the State's 96 Local Soil and Water Conservation Districts, allocates technical and financial assistance in the form of cost share funds, provides administrative assistance for the soils resource inventory for the State, establishes agricultural rules and watershed project agreements, settles programmatic contract disputes, and appoints supervisors who provide local guidance and direction for conservation programs in the Local Districts.

The Commission is composed of seven members as follows:

- The President, First Vice-President and immediate past President of the North Carolina Association of Soil and Water Conservation Districts.
- Three supervisor members nominated by the Association from its own membership, representing the three major geographical regions of the state, and appointed by the Governor.
- One member appointed-at-large by the Governor.

The members of the Commission are appointed for terms of three years and until their successors are appointed and qualified.

BILL ANALYSIS: Senate Bill 229 would transfer the Division of Soil and Water Conservation and the Soil and Water Conservation Commission from the Department of Environment and Natural Resources to the Department of Agriculture and Consumer Services.

EFFECTIVE DATE: The act would become effective July 1, 2011.

Lanier McRee, Fiscal Analyst and staff to the House and Senate Appropriations Subcommittees for Natural and Economic Resources, substantially contributed to this summary.

S229-SMSB-7(e1) v5

[2] Information on the Soil and Water Conservation Commission found at: http://portal.ncdenr.org/web/swc/soilandwaterconservationcommission

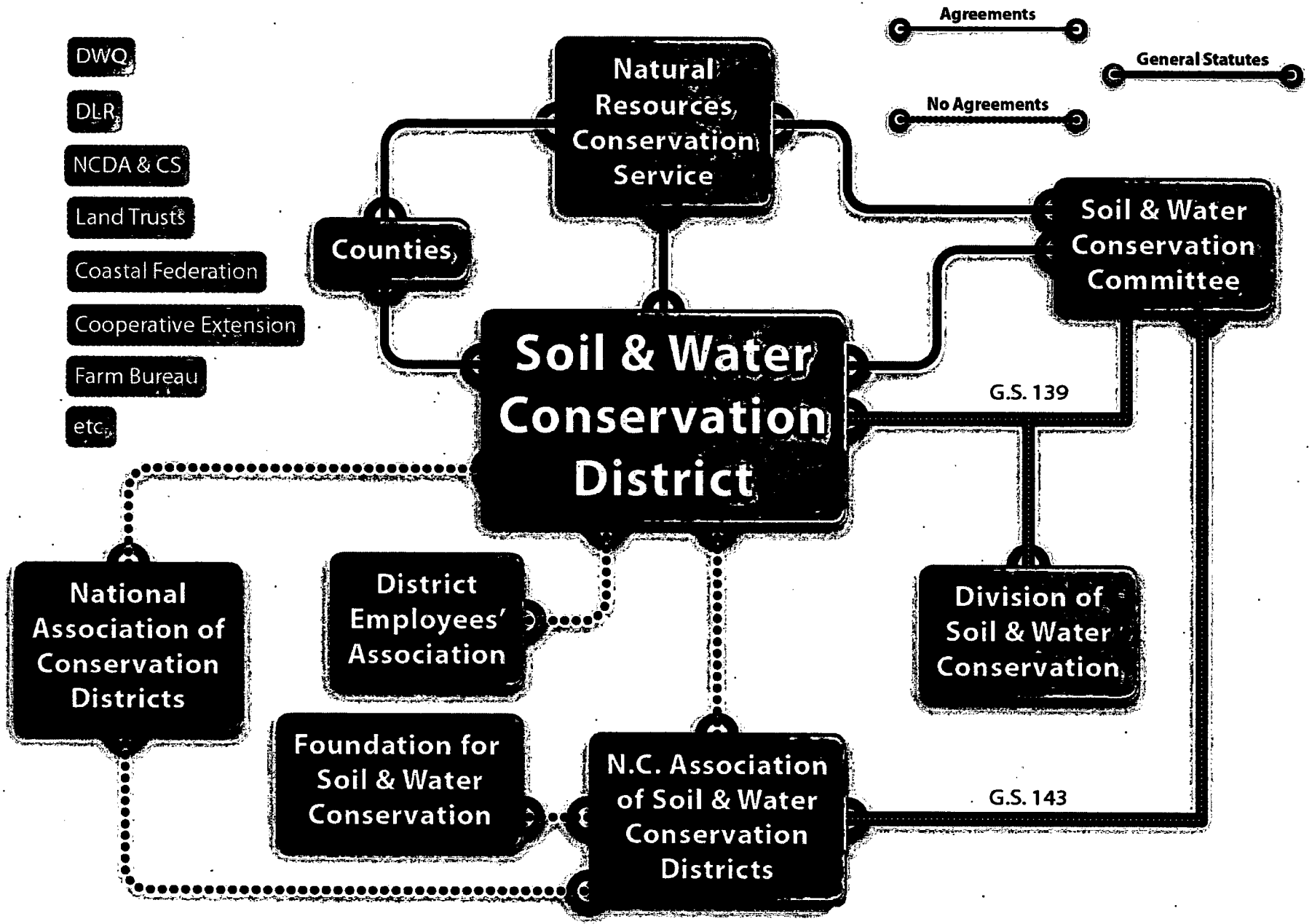
NORTH CAROLINA GENERAL ASSEMBLY

Senate Agriculture, Environment & Natural Resources Committee

Division of Soil & Water Conservation
Program Overview

NORTH CAROLINA
SOIL & WATER
CONSERVATION

Patricia K. Harris, Director
Soil & Water Conservation
April 2011


Agreements
General Statutes
No Agreements
DWQ
DLR
NCDA & CS
Land Trusts
Coastal Federation
Cooperative Extension
Farm Bureau
etc.
Natural Resources Conservation Service
Counties
Soil & Water Conservation Committee
Soil & Water Conservation District
G.S. 139
National Association of Conservation Districts
District Employees' Association
Division of Soil & Water Conservation
Foundation for Soil & Water Conservation
N.C. Association of Soil & Water Conservation Districts
G.S. 143

Soil & Water Conservation District

- NCGS Chapter 139 authorizes as independent units of government
- 96 districts cover all counties
- 492 officials (3 elected & 2 appointed)
- 270 local employees
- Non-regulatory; voluntary
- Identify local natural resource needs

1. *Delivery mechanism for division's technical & financial programs to citizens*
2. *Address a wide range of land use issues*
3. *Significant financial support from county government (e.g. stormwater; sedimentation & erosion control)*
4. *Buffer between DENR regulatory programs & landowners*
5. *Highest priority is for agency program to stay intact*

Soil & Water Conservation Commission

- NCGS Chapter 143B, Article 7, Part 7
- 7 members
- Non-regulatory; voluntary
- Oversight & policy
- Appoint district supervisors

1. Independent entity (DENR provides staff support)

2. Address a wide range of land use concerns

3. Oversight for division programs

4. Determine cost share allocations to districts

Division of Soil & Water Conservation

- NCGS 143B-279.3.(a)910)
- 58 positions (9 vacancies)
- Staff support to commission
- Non-regulatory; voluntary

1. *Lead state agency for Ag. nonpoint source pollution*
2. *Administer technical & financial assistance programs*
3. *Address wide range of land use issues*
4. *Established relationships with DENR's divisions*
5. *Established relationship with DACS*

1. Technical & Financial Assistance

FY11 - $9,000,606

- 119 local techs cost shared
- 34 division positions
- Technical Assistance

(engineers, soil scientists, land surveyors, legal staff, environmental specialists)

"To foster voluntary, incentive-driven management of soil, water & related natural resources for the benefit of the environment, economy & all citizens"

1. Technical & Financial Assistance

- **Agriculture Cost Share Program (ACSP)**
- **Community Conservation Assistance Program (CCAP)**
- **Conservation Reserve Enhancement Program (CREP)**
- **Watershed Programs**
- **PL566 Flood Prevention & Water Resource Development**

Considerations

1. Must maintain support for districts' non-ag programs & activity (e.g. flood prevention, CCAP)

2. Jeopardize federal funding for 2 positions

3. Inability to transfer program database (contracting, accounting, cumulative environmental effects)

2. Operations Review

FY11 - $653,071

- NCGS 143.215.10D
- 10 positions
- 2,043 permitted animal ops
- Division operations review & DWQ compliance inspection

1. ***Technical assistance to producers to better ensure compliance*** *(designated technical specialists; provide or secure outside resources from districts, state agencies, etc.)*
2. ***Works closely with DWQ*** *(enforcement referrals to DWQ per statutory requirements; DWQ maintains database for permits & inspection reports; coordinated efforts for emergency response)*
3. ***Pilot Program – Columbus, Jones, Brunswick & Pender*** *(DSWC conducts both routine compliance inspection & routine operation review)*

3. District Operations

- 8 Area Coordinators
- Support to local districts
- District matching funds
- Travel, subsistence, registration & per diem for district supervisors & commission

4. Administration

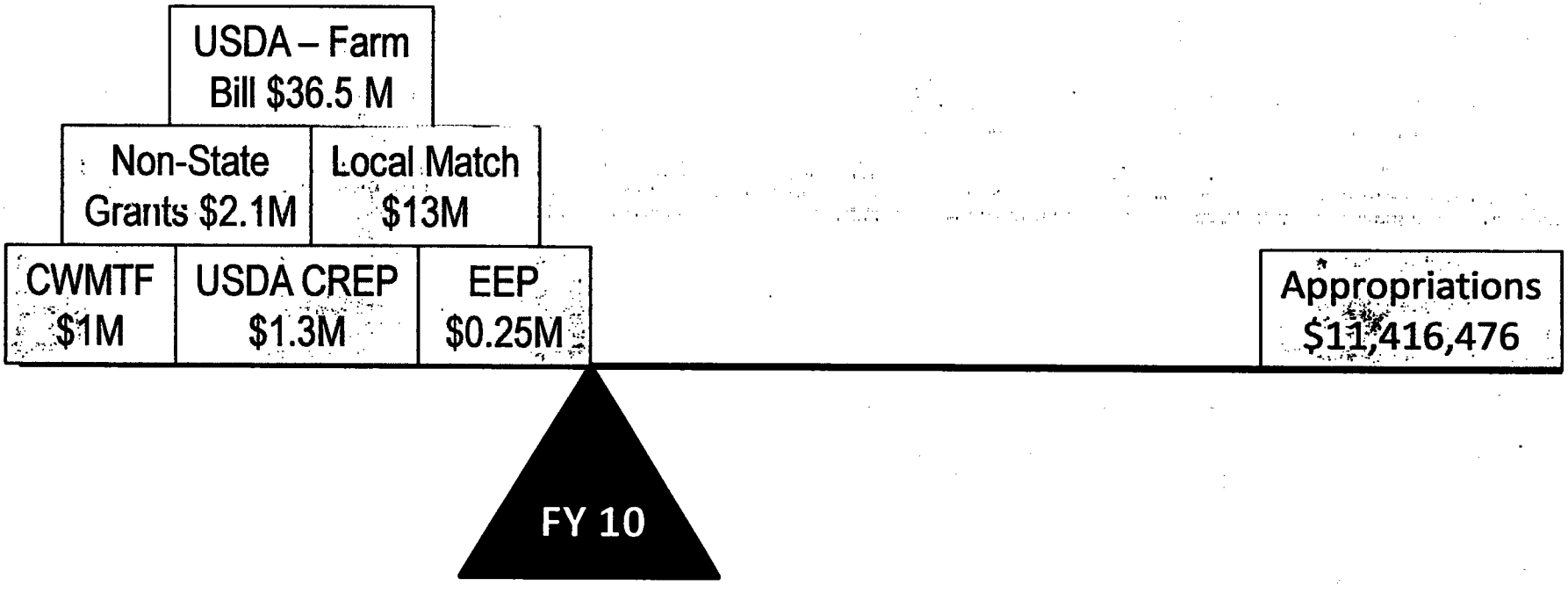
- Director & Deputy Director
- Budget/HR Officer
- 2 admin support
- Public Information Officer

Division's District Ops & Admin FY11 - $1,520,333

District Supervisors & Commission Travel, Subsistence, Registration & Per Diem FY11 - $290,090

District Operating "Matching" Funds FY11 - $400,000

LEVERAGING OF DIVISION FUNDS



$54.3 million leveraged in FY 2009-10

$1 state appropriations leverages $4.75 outside resources

Funds & services directed to landowners to install conservation best management practices

Questions

Patricia K. Harris, Division Director
Pat.Harris@ncdenr.gov
(919) 715-6097

www.soilandwater.nc.gov

VISITOR REGISTRATION SHEET

Ag/Env/Nat. Resources — **Name of Committee**

4-5-11 — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Robert McLaughlin	CFSA
LaBelle Olsen	Freedom Works - Tea Party
Bruce Flood	FreedomWorks & Tea Party
Shirley Flood	FreedomWorks & Tea Party
Mary Dianne Doub	FreedomWorks/Tea Party
Doug Dow	[illegible]
Steve Kalland	NCSC
Matt Wolfe	Parker Poe
Jimmy Carter	Solutions-IES
Kristen Laster	Fetzer Strategic
Dexter Mathews	DENR - Waste Management
Charlotte Jesneck	DENR - DWM
Robin Smith	DENR

COVER

Name	Firm or Agency and Adress
Bob Bowman	NCFA
Ann Clayton	Clayton Construction
Kathy Johnson	IDS/OSS
Susan Boddie	"
Trish Johnson	Delta Sigma Theta Sorority, Inc. Historian
Holly LAWSON	Delta Sigma Theta, INC. Salisbury
Pamela Hart Heneghill	Delta Sigma Theta, Inc - Charlotte PPheneghill@aol.com
Catherine J. Rivers	Delta Sigma Theta Sorority, Salisbury

VISITOR REGISTRATION SHEET

Ag/Env/Nat. Resources — 4-5-11

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Kerri Burke	NWC
Dan Crawford	NCLCV
Margaret Hostzell	Environment North Carolina
Dan Conrad	NCCV
Dick Fowler	NCASWCD
Natalie Woodard	NC DENR - Soil + Water Conservation
Keith Larick	NC DENR - DWQ
R Rogers	CWMTF
Kari Barsness	DENR
Pat Harris	DSWC
David Knight	DENR
Will Morgan	Sierra

VISITOR REGISTRATION SHEET

Ag/Env/Nat. Resources — 4-5-11

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
David Williams	DENR-Soil & Water Cons.
Penny Griffin	School of Gov.
Christine Dreaco	NCGA
Molly Diggins	Sierra Club
Doug Heeau	Williams Mullen
Rick Zechini	Progress Energy
Lisa Martin	NC Home Builders Assoc.
Jessi Hayes	
Patrick Burke	NC AGC
JGOODMAN	NC CHAMBER

VISITOR REGISTRATION SHEET

Ag/Env/Nat. Resources — 4-5-11

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Grover Nicholson	DENR - DWM - UST
Doug Howey	NCPCM
Woodson	NCFB
Pat Sherman	NCFB
Nancy Thompson	Weyerhaeuser
Mark Binker	
[signature]	NCPC/NCCM
Tommy Stevens	NCPC
DAVID BARNES	Progress Energy
PRESTON HOWARD	MCIC
Michelle C. Vaught	PCS Phosphate (Potash Corp)

VISITOR REGISTRATION SHEET

Ag/Env/Nat. Resources — 4-5-11

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Michael A Thompson	Dominion
Jonathon Schultis	Dominion
Allison Waller	Charlotte Chamber
Chip Kellian	Nelson Mullins
Allison Fowler	NC Grange
Ray Starling	NCDA+CS
Henry Jones	Jordan Price Raleigh
STEVE TROXLER	NCDA
Zane Hedgecock	NCDA
Jon Nicholas	NCDA&CS
CHRIS DILLON	NCWRC

Senate Agriculture/Environment/Natural Resources

MINUTES

April 12, 2011

The Senate Ag/Env/Nat. Resources committee met on Tuesday, April 12, 2011 in Room 544-LOB. There were 14 senators present.

Sen. David Rouzer called the meeting to order and introduced the Pages and Sgt-At-Arms staff.

SB-211 EXEMPT PALLETS FOR AG USE FROM SALES TAX –

Sen. Rabon explained the bill and urged support. Chairman Rouzer advised this has to be referred to the Finance Committee. Sen. Jackson moved for a favorable report. Sen. Allran asked for clarification if this is only for agricultural issue. Sen. Rabon said if other companies would like to be exempted he would entertain that idea but for now this applies to agricultural issues. Sen. Clodfelter remembers that a few years ago that another company tried this and Dept. of Revenue said it was a shipping container. Sen. Allran questioned a nursery that is in his district and would that be considered agricultural, and what about businesses like Home Depot or Lowes Home Improvement. Sen. Jackson responded and advised that if it is shipped on the pallet this bill applies because those stores does not sell the pallets. This will correct a discrepancy is the definition of "pallets" within the Dept. Revenue. Sen. Bingham asked if this affects the producer of the pallets. Sen. Rabon said it is for producers of agricultural products that use the pallets. Sen. Atwater asked if including "nurseryman" in the definition would be helpful. Sen. Jackson said nursery's are included in agriculture. No further discussion, vote taken and so moved for a favorable report, referred to Finance Committee.

SB-213 WACCAMAW RIVER/ISOLATED RIVER BASIN

Sen. Rabon requested we pull this from the agenda today.

SB- 229 TRANSFER DENR SOIL & WATER TO DACS

Sen. Chairman Rouzer advised no votes would be taken on this today. It is for discussion only. Mr. David Knight, Assistant Secretary, DENR addressed members. They are opposed to moving this. They feel moving divisions should be done in openness and it should be determined on functionality and costs. Soil and Water is in the same department of Water Quality and Conservation. Soil & Water works in all 100 counties, rural and urban. Costs of this move will include salaries, locations of buildings for offices, just to name a couple. There are no duplicate programs with Soil & Water. They would like for this to be a fair and open process. Governmental and non-governmental people should be considered. They do oppose this move.

Chairman Rouzer advised that the Chairs and staff are still studying this issue, it has been mentioned in the Appropriations NER Subcommittee meetings. Sen. Kinnaird asked if this could go to a study and do a

through analysis of benefits for this move. Chairman Rouzer said that was a possibility. Sen. Bingham asked for the highlights of this from the NER sub-committee pros for this move. Chairman Rouzer explained. Some feel this would be served well under the Dept. of Agriculture, and some have had bad experiences in dealing with DENR. Some people have always thought it was under the Dept. of Ag. There are pros and cons. He doesn't feel there will be a significant cost to move this but as he stated, this is still be studied. Sen. Tucker recalled that the Commissioner of AG was receptive to this move. It took DENR 6 years to put one program in place and he feels that should not have taken so long. He also inquired as to whether DENR would assist with the move if this passes. Chairman Rouzer said he feels that DENR will help with the move if this happens. Sen. Clodfelter asked what percentage of the users of the soil & water programs, agriculture vs business/industrial use. Chairman Rouzer asked someone from DENR to respond. Ms. Pat Harris, Director of Soil and Water said she didn't have the exact percentage but probably over 50% are ag users. Sen. Clodfelter asked for a breakdown of users, ag related and non-ag related. Ms. Harris said it could be broken down by contracts. Sen. Clodfelter requested this in writing. Chairman Rouzer asked the Dept. of DENR for this information. Sen. Rabon spoke on the pilot program of this that has been in his county and it was successful and he would like to see this expanded. It is about time for it to expire for his counties. Sen. Bingham asked about collection on soil data, is this the group that did the arsenic and fluoride tests some time ago. Chairman Rouzer said he thinks that was probably Division of Water Quality and Division of Waste Management. Ms. Robin Smith said they will get this information. Sen. East feels that more research would be helpful, just like Sen. Clodfelter, as to how much is agricultural use. He believes the Soil & Water Conservation folks are on the ballot for elections also. He's familiar with those people in his district, but he doesn't know how much they interact in the smaller communities. His personal feeling is that Soil & Water fits better with the Dept. of Agriculture. He told of a man in his district that had worked with Soil & Water issues in his business for 20 years before he knew it was a part of DENR and not Dept. of Agriculture.

The meeting adjourned at 11:33.

Sen. David Rouzer, Co-Chair

Cindy J. Davis, Committee Clerk

NORTH CAROLINA GENERAL ASSEMBLY

SENATE

AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES COMMITTEE REPORT

Senator Don East, Co-Chair

Senator David Rouzer, Co-Chair

CORRECTED REPORT

Wednesday, April 13, 2011

Senator ROUZER,

submits the following with recommendations as to passage:

FAVORABLE

S.B. **211** Exempt Pallets for Ag Use From Sales Tax.

Sequential Referral: Finance

Recommended Referral: None

TOTAL REPORTED: 1

Committee Clerk Comments:

Principal Clerk
Reading Clerk

Corrected: Remove SB-380
SB-229 is for discussion only

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

The Senate Committee on **Agriculture/Environment/Natural Resources** will meet at the following time:

DAY	DATE	TIME	ROOM
Tuesday	April 12, 2011	11:00	544 LOB

The following will be considered:

BILL NO.	SHORT TITLE	SPONSOR
SB 211	Exempt Pallets for Ag Use From Sales Tax.	Senator Newton Senator Rabon
SB 213	Waccamaw River/Isolated River Basin.	Senator Rabon
SB 229	Transfer DENR Soil & Water to DACS. (discussion only)	Senator Rouzer Senator East Senator Jackson

Remove SB-380
SB-229 is for discussion only

Senator Don East, Co-Chair
Senator David Rouzer, Co-Chair

Senate Agriculture/Environment/Natural Resources Committee
Tuesday, April 12, 2011, 11:00
544 LOB

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

SB 211	Exempt Pallets for Ag Use From Sales Tax.	Senator Newton Senator Rabon
SB 213	Waccamaw River/Isolated River Basin.	Senator Rabon
SB 229	Transfer DENR Soil & Water to DACS-DISCUSSION ONLY	Senator Rouzer Senator East Senator Jackson
SB 380	ETJ/Clarify Definition of Bona Fide Farm.	Senator Jackson

Presentations

Other Business

Adjournment

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

S 1

SENATE BILL 211

Short Title:	Exempt Pallets for Ag Use From Sales Tax.	(Public)
Sponsors:	Senators Rabon, Newton; Atwater, Bingham, Blake, Clary, Daniel, Davis, Forrester, Harrington, Hise, Jackson, Meredith, Pate, Preston, Rouzer, Tillman, Tucker, and Walters.	
Referred to:	Agriculture/Environment/Natural Resources.	

March 7, 2011

A BILL TO BE ENTITLED

AN ACT TO EXEMPT THE SALE OF CERTAIN ITEMS FROM SALES AND USE TAX WHEN USED FOR AGRICULTURAL PURPOSES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 105-164.13 reads as rewritten:

"The sale at retail and the use, storage, or consumption in this State of the following tangible personal property, digital property, and services are specifically exempted from the tax imposed by this Article:

Agricultural Group.

(1) Any of the following items sold to a farmer for use by the farmer in the planting, cultivating, harvesting, or curing of farm crops or in the production of dairy products, eggs, or animals. A "farmer" includes a dairy operator, a poultry farmer, an egg producer, a livestock farmer, a farmer of crops, and a farmer of an aquatic species, as defined in G.S. 106-758.

a. Commercial fertilizer, lime, land plaster, plastic mulch, plant bed covers, greenhouses and repair parts for greenhouses, potting soil, baler twine, and seeds.

...

(1a) Sales of the following to a farmer, as defined in subdivision (1) of this section:

a. A container or pallet used for a purpose set out in subdivision (1) of this section or in packaging and transporting the farmer's product for sale.

b. A grain, feed, or soybean storage facility, and parts and accessories attached to the facility.

...."

SECTION 2. This act becomes effective July 1, 2011, and applies to sales made on or after that date.

SENATE BILL 211:
Exempt Pallets for Ag Use From Sales Tax

2011-2012 General Assembly

Committee:	Senate Ref to Agriculture/Environment/Natural Resources. If fav, re-ref to Finance	**Date:**	April 12, 2011
Introduced by:	Sens. Rabon, Newton	**Prepared by:**	Mariah Matheson Research Assistant
Analysis of:	First Edition		

SUMMARY: ***Senate Bill 211 would exempt the sale of certain items from retail sales and use tax when used for agricultural purposes.***

CURRENT LAW: Under current law, a container used in packaging or transporting the farmer's product for sale is exempt from retail sales and use tax, as are commercial fertilizers, lime, plastic mulch, plant bed covers, potting soil, baler twine, and seeds.

BILL ANALYSIS: Senate Bill 211 would amend G.S. 105-164.13 to add an exemption for the sale of pallets, greenhouses, and repair parts for greenhouses, from the retail sales and use tax, when used "by the farmer in the planting, cultivating, harvesting, or curing of farm crops or in the production of dairy products, eggs, or animals." As defined in this statute, a farmer "includes a dairy operator, a poultry farmer, an egg producer, a livestock farmer, a farmer of crops, and a farmer of an aquatic species."

EFFECTIVE DATE: This act would be effective on July 1, 2011 and would apply to sales made on or after that date.

S211-SMTF-10(e1) v2

Cindy Davis (Sen. Jackson)

m: Jeffrey Hudson (Research)
it: Tuesday, April 12, 2011 11:55 AM
To: Sarah Clapp (Senate Principal Clerk)
Cc: Cindy Davis (Sen. Jackson)
Subject: S211 (Exempt Pallets for Ag Use From Sales Tax)

Sarah,

S211 was heard in Senate Agriculture, Environment, and Natural Resources this morning.

In bill status, it has a re-referral to Senate Finance (where it needs to go next). On the First Edition of the bill, there is no serial referral. We are reporting it out with a re-referral to Senate Finance. Just wanted to let you know so you could make sure it gets to Senate Finance rather than heads directly to the Floor.

By the way, this is the bill that is identical to S445, which went straight to Senate Finance.

Thanks and hope all is well,

Jeff

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

S 1

SENATE BILL 213

Short Title:	Waccamaw River/Isolated River Basin.	(Public)
Sponsors:	Senators Rabon; Bingham, Blake, Davis, Forrester, Hise, Jackson, Preston, Rouzer, Tillman, and Tucker.	
Referred to:	Agriculture/Environment/Natural Resources.	

March 7, 2011

A BILL TO BE ENTITLED

AN ACT TO DESIGNATE THE WACCAMAW RIVER BASIN AS AN ISOLATED RIVER BASIN FOR PURPOSES OF CERTIFICATION OF TRANSFERS OF SURFACE WATER FROM A RIVER BASIN TO AN ISOLATED RIVER BASIN.

The General Assembly of North Carolina enacts:

SECTION 1. Section 7 of S.L. 2007-518, as rewritten by Section 4 of S.L. 2010-155, reads as rewritten:

"**SECTION 7.(a)** Except as provided in subsections (b), (c) and (d) of this section, this act becomes effective when it becomes law and applies to any petition for a certificate for a transfer of surface water from one river basin to another river basin first made on or after that date.

"**SECTION 7.(b)** For a petition for a certificate for transfer of surface water from one river basin to another river basin to supplement ground water supplies in the fifteen counties designated as the Central Coastal Plain Capacity Use Area under 15A NCAC 2E .0501, this act becomes effective 1 January 2013. Prior to 1 January 2013, a petition for a certificate for transfer of surface water from one river basin to another river basin to supplement ground water supplies in the fifteen counties designated as the Central Coastal Plain Capacity Use Area shall be considered and acted upon by the Environmental Management Commission pursuant to the procedures and standards set out in G.S. 143-215.22I on 1 July 2007.

"**SECTION 7.(c)** For purposes of this subsection, "isolated river basin" means each of the following river basins set out in G.S. 143-215.22G(1):

g.	2-6	New River.
u.	9-3	Waccamaw River.
v.	9-4	Shallotte River.
aa.	12-1	Albemarle Sound.
hh.	17-1	White Oak River.

For a petition for a certificate for transfer of surface water from a river basin to an isolated river basin, this act becomes effective 1 July 2020. Prior to 1 July 2020, a petition for a certificate for transfer of surface water from a river basin to an isolated river basin shall be considered and acted upon by the Environmental Management Commission pursuant to the procedures and standards set out in G.S. 143-215.22I on 1 July 2007.

"**SECTION 7.(d)** Notwithstanding subsection (c) of this section, an applicant for a certificate for transfer of surface water from a river basin to an isolated river basin may request that the applicant be subject to the certification process that would apply if the transfer was not into an isolated river basin."

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

SENATE BILL 229

Short Title:	Transfer DENR Soil & Water to DACS.	(Public)
Sponsors:	Senators East, Rouzer, and Jackson.	
Referred to:	Agriculture/Environment/Natural Resources.	

March 8, 2011

A BILL TO BE ENTITLED

AN ACT TO TRANSFER THE DIVISION OF SOIL AND WATER CONSERVATION AND THE SOIL AND WATER CONSERVATION COMMISSION OF THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES TO THE DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES AND TO MAKE CONFORMING CHANGES.

The General Assembly of North Carolina enacts:

SECTION 1.(a) The Division of Soil and Water Conservation is transferred from the Department of Environment and Natural Resources to the Department of Agriculture and Consumer Services with all the elements of a Type I transfer, as defined by G.S. 143A-6.

SECTION 1.(b) All functions, powers, duties, and obligations previously vested in the State Soil and Water Conservation Commission are transferred to and vested in the Department of Agriculture and Consumer Services by a Type II transfer, as defined in G.S. 143A-6.

SECTION 2.(a) G.S. 143B-279.3(a) reads as rewritten:

"(a) All functions, powers, duties, and obligations previously vested in the following subunits of the following departments are transferred to and vested in the Department of Environment and Natural Resources by a Type I transfer, as defined in G.S. 143A-6:

...

~~(10) Soil and Water Conservation Division, Department of Natural Resources and Community Development.~~

...."

SECTION 2.(b) G.S. 143B-279.3(b) reads as rewritten:

"(b) All functions, powers, duties, and obligations previously vested in the following commissions, boards, councils, and committees of the following departments are transferred to and vested in the Department of Environment and Natural Resources by a Type II transfer, as defined in G.S. 143A-6:

...

~~(21) State Soil and Water Conservation Commission, Department of Natural Resources and Community Development.~~

...."

SECTION 3. Part 7 of Article 7 of Chapter 143B of the General Statutes is recodified as Article 71 of Chapter 106 of the General Statutes, and accordingly, G.S. 143B-294 through G.S. 143B-297.1 are recodified as G.S. 106-840 through G.S. 106-844.

SECTION 4. G.S. 106-840, as recodified by Section 3 of this act, reads as rewritten:

"**§ 106-840. Soil and Water Conservation Commission – creation; powers and duties; compliance inspections.**

(a) There is hereby created the Soil and Water Conservation Commission of the Department of ~~Environment and Natural Resources~~Agriculture and Consumer Services with the power and duty to adopt rules to be followed in the development and implementation of a soil and water conservation program.

(1) The Soil and Water Conservation Commission has all of the following powers and duties:

a. To approve petitions for soil conservation districts.

b. To approve application for watershed plans.

c. Such other duties as specified in Chapter 139.

d. To conduct any inspections in accordance with subsection (b) of this section.

(2) The Commission shall adopt rules consistent with the provisions of this Chapter. All rules not inconsistent with the provisions of this Chapter heretofore adopted by the Soil and Water Conservation Committee shall remain in full force and effect unless and until repealed or superseded by action of the Soil and Water Conservation Commission. All rules adopted by the Commission shall be enforced by the Department of ~~Environment and Natural Resources.~~Agriculture and Consumer Services.

(b) An employee or agent of the Soil and Water Conservation Commission or the Department of ~~Environment and Natural Resources~~Agriculture and Consumer Services may enter property, with the consent of the owner or person having control over property, at reasonable times for the purposes of investigating compliance with Commission or Department programs when the investigation is reasonably necessary to carry out the duties of the Commission. If the Commission or Department is unable to obtain the consent of the owner of the property, the Commission or Department may obtain an administrative search warrant pursuant to G.S. 15-27.2.

(c) Any person who refuses entry or access to property by an employee or agent of the Commission or the Department or who willfully resists, delays, or obstructs an employee or agent of the Commission or the Department while the employee or agent is in the process of carrying out official duties after the employee or agent has obtained the consent of the owner or person having control of the property or, if consent is not obtained, after the employee or agent has obtained an administrative search warrant, shall be guilty of a Class 1 misdemeanor."

SECTION 5. G.S. 106-841(a), as recodified by Section 3 of this act, reads as rewritten:

"(a) The Soil and Water Conservation Commission of the Department of ~~Environment and Natural Resources~~Agriculture and Consumer Services shall be composed of seven members appointed by the Governor. The Commission shall be composed of the following members:

...."

SECTION 6. G.S. 139-3(4) reads as rewritten:

"(4) "Commission" or "Soil and Water Conservation Commission" means the Soil and Water Conservation Commission created by G.S. ~~143B-294.~~106-840."

SECTION 7. G.S. 139-4(d) reads as rewritten:

"(d) In addition to the duties and powers hereinafter conferred upon the Soil and Water Conservation Commission, it shall have the following duties and powers:

...

(9) To create, implement, and supervise the Agriculture Cost Share Program for Nonpoint Source Pollution Control created pursuant to ~~Part 9 of Article 21~~

~~of Chapter 143~~Article 72 of Chapter 106 of the General Statutes and the Community Conservation Assistance Program created pursuant to Part 11 of Article 21 of Chapter 143 of the General Statutes.

(10) To review and approve or disapprove the application of a district supervisor for a grant under the Agriculture Cost Share Program for Nonpoint Source Pollution Control or the Community Conservation Assistance Program as provided by G.S. 139-8(b).

(11) To develop and implement a program for the approval of water quality and animal waste management systems technical specialists.

(12) To develop and approve best management practices for the Agriculture Cost Share Program for Nonpoint Source Pollution Control and for use in the water quality protection programs of the Department of Environment and Natural Resources and to adopt rules that establish criteria governing approval of these best management practices."

SECTION 8. G.S. 139-4(e) reads as rewritten:

"(e) A member of the Commission may apply for and receive a grant under the Agriculture Cost Share Program for Nonpoint Source Pollution Control and the Community Conservation Assistance Program if:

(1) The member does not vote on the application or attempt to influence the outcome of any action on the application; and

(2) The application is approved by the ~~Secretary of Environment and Natural Resources.~~Commissioner of Agriculture."

SECTION 9. G.S. 139-5(d) reads as rewritten:

"(d) The Department of ~~Environment and Natural Resources~~Agriculture and Consumer Services shall pay all expenses for the issuance of such notices and the conduct of such hearings and referenda, and shall supervise the conduct of such hearings and referenda. It shall issue appropriate regulations governing the conduct of such hearings and referenda, and providing for the registration prior to the date of the referendum of all eligible voters, or prescribing some other appropriate procedure for the determination of those eligible as voters in such referendum. No informality in the conduct of such referendum or in any matters relating thereto shall invalidate said referendum or the result thereof if notice thereof shall have been given substantially as herein provided and said referendum shall have been fairly conducted."

SECTION 10. G.S. 139-5(e) reads as rewritten:

"(e) The Department of ~~Environment and Natural Resources~~Agriculture and Consumer Services shall publish the results of such referendum and shall thereafter consider and determine whether the operation of the district within the defined boundaries is administratively practicable and feasible. If the Commission shall determine that the operation of such district is not administratively practicable and feasible, it shall record such determination and deny the petition. If the Commission shall determine that the operation of such district is administratively practicable and feasible, it shall record such in the manner hereinafter provided. In making such determination the Commission shall give due regard and weight to the attitudes of the occupiers of lands lying within the defined boundaries, the number of land occupiers eligible to vote in such referendum who shall have voted, the proportion of the votes cast in such referendum in favor of the creation of the district to the total number of votes cast, the approximate wealth and income of the land occupiers of the proposed district, the probable expense of carrying on erosion control operations within such district, and such other economic and social factors as may be relevant to such determination, having due regard to the legislative determination set forth in G.S. 139-2: Provided, however, that the Commission shall not have authority to determine that the operations of the proposed district within the defined boundaries is administratively practicable and feasible unless at least a majority of the votes cast in the

referendum upon the proposition of creation of the district shall have been cast in favor of the creation of such district."

SECTION 11. G.S. 139-7 reads as rewritten:

"**§ 139-7. District board of supervisors – appointive members; organization of board; certain powers and duties.**

The governing body of a soil and water conservation district shall consist of the three elective supervisors from the county or counties in the district, together with the appointive members appointed by the Soil and Water Conservation Commission pursuant to this section, and shall be known as the district board of supervisors. When a district is composed of less than four counties, the board of supervisors of each county shall on or before October 31, 1978, and on or before October 31 as the terms of the appointive supervisors expire, recommend in writing two persons from the district to the Commission to be appointed to serve with the elective supervisors. If the names are not submitted to the Commission as required, the office shall be deemed vacant on the date the term is set to expire and the Commission shall appoint two persons of the district to the district board of supervisors to serve with the elected supervisors. The Commission shall make its appointments prior to or at the November meeting of the Commission. Appointive supervisors shall take office on the first Monday in December following their appointment. Such appointive supervisors shall serve for a term of four years, and thereafter, as their terms expire, their successors shall serve for a term of four years. The terms of office of all appointive supervisors who have heretofore been lawfully appointed for terms the final year of which presently extends beyond the first Monday in December are hereby terminated on the first Monday in December of the final year of appointment. Vacancies for any reason in the appointive supervisors shall be filled for the unexpired term by the appointment of a person by the Commission from the district in which the vacancy occurs. Vacancies for any reason in the elected supervisors shall be filled for the unexpired term by appointment by the Commission of a person from the county in the district in which the vacancy occurs.

In those districts composed of four or more counties, the Commission may, but is not required to, appoint two persons from the district without recommendation from the board of supervisors, to serve as district supervisors along with the elected members of the board of supervisors. Such appointments shall be made at the same time other appointments are made under this section, and the persons appointed shall serve for a term of four years.

The supervisors shall designate a chairman and may, from time to time, change such designation. A simple majority of the board shall constitute a quorum for the purpose of transacting the business of the board, and approval by a majority of those present shall be adequate for a determination of any matter before the board, provided at least a quorum is present. Supervisors of soil and water conservation districts shall be compensated for their services at the per diem rate and allowed travel, subsistence and other expenses, as provided for State boards, commissions and committees generally, under the provisions of G.S. 138-5; provided, that when per diem compensation and travel, subsistence, or other expense is claimed by any supervisor for services performed outside the district for which such supervisor ordinarily may be appointed or elected to serve, the same may not be paid unless prior written approval is obtained from the Department of ~~Environment and Natural Resources.~~Agriculture and Consumer Services.

The supervisors may employ a secretary, technical experts, whose qualifications shall be approved by the Department, and such other employees as they may require, and shall determine their qualifications, duties and compensation. The supervisors may call upon the Attorney General of the State for such legal services as they may require. The supervisors may delegate to their chairman, to one or more supervisors, or to one or more agents, or employees such powers and duties as they may deem proper. The supervisors shall furnish to the Soil and Water Conservation Commission, upon request, copies of such ordinances, rules, regulations,

orders, contracts, forms, and other documents as they shall adopt or employ, and such other information concerning their activities as it may require in the performance of its duties under this Chapter.

The supervisors shall provide for the execution of surety bonds for all employees and officers who shall be entrusted with funds or property; shall provide for the keeping of a full and accurate record of all proceedings and of all resolutions, regulations, and orders issued or adopted; and shall provide for an annual audit of the accounts of receipts and disbursements. In any given year, if the supervisors provide for an internal audit, and the supervisor serving as chairman certifies, under oath, that this internal audit is a true and accurate reflection of the accounts of receipts and disbursements, then the supervisors shall not be required, notwithstanding the provisions of G.S. 159-34, to provide for an audit of the accounts of receipts and disbursements by a certified public accountant or by an accountant certified by the Local Government Commission. Any supervisor may be removed by the Soil and Water Conservation Commission upon notice and hearing, for neglect of duty, incompetence or malfeasance in office, but for no other reason.

The supervisors may invite the legislative body of any municipality or county located near the territory comprised within the district to designate a representative to advise and consult with the supervisors of the district on all questions of program and policy which may affect the property, water supply, or other interests of such municipality or county.

All district supervisors whose terms of office expire prior to the first Monday in January, 1948, shall hold over and remain in office until supervisors are elected or appointed and qualify as provided in this Chapter, as amended. The terms of office of all district supervisors, who have heretofore been elected or appointed for terms extending beyond the first Monday in January, 1948, are hereby terminated on the first Monday in January, 1948."

SECTION 12. G.S. 139-8(a)(13) reads as rewritten:

"(13) To assist the Commission in the implementation and supervision of the Agriculture Cost Share Program for Nonpoint Source Pollution Control created pursuant to ~~G.S. 143-215.74~~G.S. 106-850 and to assist in the implementation and supervision of any other program intended to protect water quality administered by the Department of ~~Environment and Natural Resources~~Agriculture and Consumer Services by providing technical assistance, allocating available grant monies, and providing any other assistance that may ~~by~~ be required or authorized by any provision of federal or State law."

SECTION 13. G.S. 139-13 reads as rewritten:

"**§ 139-13. Discontinuance of districts.**

At any time after five years after the organization of a district under the provisions of this Chapter, any 25 occupiers of land lying within the boundaries of such districts may file a petition with the Soil and Water Conservation Commission praying that the operations of the district be terminated and the existence of the district discontinued. The Commission may conduct such public meetings and public hearings upon such petition as may be necessary to assist it in the consideration thereof. Within 60 days after such a petition has been received by the Commission it shall give due notice of the holding of a referendum, and shall supervise such referendum, and issue appropriate regulations governing the conduct thereof, the question to be submitted by ballots upon which the words "For terminating the existence of the _____ (name of the soil and water conservation district to be here inserted)" and "Against terminating the existence of the _____ (name of the soil and water conservation district to be here inserted)" shall appear with a square before each proposition and a direction to insert an X mark in the square before one or the other of said propositions as the voter may favor or oppose discontinuance of such district. All occupiers of lands lying within the boundaries of the district shall be eligible to vote in such referendum. Only such land occupiers shall be eligible to vote.

No informalities in the conduct of such referendum or in any matters relating thereto shall invalidate said referendum or the result thereof if notice thereof shall have been given substantially as herein provided and said referendum shall have been fairly conducted.

The Department of ~~Environment and Natural Resources~~Agriculture and Consumer Services shall publish the result of such referendum and shall thereafter consider and determine whether the continued operation of the district within the defined boundaries is administratively practicable and feasible. If the Commission shall determine that the continued operation of such district is administratively practicable and feasible, it shall record such determination and deny the petition. If the Commission shall determine that the continued operation of such district is not administratively practicable and feasible, it shall record such determination and shall certify such determination to the supervisors of the district. In making such determination the Commission shall give due regard and weight to the attitudes of the occupiers of lands lying within the district, the number of land occupiers eligible to vote in such referendum who shall have voted, the proportion of the votes cast in such referendum in favor of the discontinuance of the district to the total number of votes cast, the approximate wealth and income of the land occupiers of the district, the probable expense of carrying on erosion control operations within such district, and such other economic and social factors as may be relevant to such determination, having due regard to the legislative findings set forth in G.S. 139-2: Provided, however, that the Commission shall not have authority to determine that the continued operation of the district is administratively practicable and feasible unless at least a majority of the votes cast in the referendum shall have been cast in favor of the continuance of such district.

Upon receipt from the Soil and Water Conservation Commission of a certification that the Commission has determined that the continued operation of the district is not administratively practicable and feasible, pursuant to the provisions of this section, the supervisors shall forthwith proceed to terminate the affairs of the district. The supervisors shall dispose of all property belonging to the district at public auction and shall pay over the proceeds of such sale to be covered into the State treasury. The supervisors shall thereupon file an application, duly verified, with the Secretary of State for the discontinuance of such district, and shall transmit with such application the certificates of the Soil and Water Conservation Commission setting forth the determination of the Commission that the continued operation of such district is not administratively practicable and feasible. The application shall recite that the property of the district has been disposed of and the proceeds paid over as in this section provided, and shall set forth a full accounting of such properties and proceeds of the sale. The Secretary of State shall issue to the supervisors a certificate of dissolution and shall record such certificate in an appropriate book of record in his office.

Upon issuance of a certificate of dissolution under the provisions of this section, all ordinances and regulations theretofore adopted and in force within such districts shall be of no further force and effect. All contracts theretofore entered into, to which the district or supervisors are parties, shall remain in force and effect for the period provided in such contracts. The Soil and Water Conservation Commission shall be substituted for the district or supervisors as party to such contracts. The Commission shall be entitled to all benefits and subject to all liabilities under such contracts and shall have the same right and liability to perform, to require performance, to sue and be sued thereon, and to modify or terminate such contracts by mutual consent or otherwise as the supervisors of the district would have had. Such dissolution shall not affect the lien of any judgment entered under the provisions of G.S. 139-11, nor the pendency of any action instituted under the provisions of such section, and the Commission shall succeed to all the rights and obligations of the district or supervisors as to such liens and actions.

The Soil and Water Conservation Commission shall not entertain petitions for the discontinuance of any district nor conduct referenda upon such petitions, nor make

determinations pursuant to such petitions, in accordance with the provisions of this Chapter, more often than once in five years."

SECTION 14. G.S. 143-215.10A reads as rewritten:

"**§ 143-215.10A. Legislative findings and intent.**

The General Assembly finds that animal operations provide significant economic and other benefits to this State. The growth of animal operations in recent years has increased the importance of good animal waste management practices to protect water quality. It is critical that the State balance growth with prudent environmental safeguards. It is the intention of the State to promote a cooperative and coordinated approach to animal waste management among the agencies of the State with a primary emphasis on technical assistance to farmers. To this end, the General Assembly intends to establish a permitting program for animal waste management systems that will protect water quality and promote innovative systems and practices while minimizing the regulatory burden. Technical assistance, through operations reviews, will be provided by the Division of Soil and Water ~~Conservation.~~Conservation of the Department of Agriculture and Consumer Services. Permitting, inspection, and enforcement will be vested in the Division of Water Quality."

SECTION 15. G.S. 143-215.10C(e)(6) reads as rewritten:

"(6) Provisions regarding periodic testing of waste products used as nutrient sources as close to the time of application as practical and at least within 60 days of the date of application and periodic testing, at least annually, of soils at crop sites where the waste products are applied. Nitrogen shall be a rate-determining element. Phosphorus shall be evaluated according to the nutrient management standard approved by the Soil and Water Conservation Commission of the Department of Agriculture and Consumer Services and the Natural Resources Conservation Service of the United States Department of Agriculture for facilities that are required to be permitted under 40 Code of Federal Regulations § 122, as amended at 73 Federal Register 70418 (November 20, 2008). If the evaluation demonstrates the need to limit the application of phosphorus in order to comply with the nutrient management standard, then phosphorus shall be a rate-determining element. Zinc and copper levels in the soils shall be monitored, and alternative crop sites shall be used when these metals approach excess levels."

SECTION 16. G.S. 143-215.10D reads as rewritten:

"**§ 143-215.10D. Operations review.**

(a) The Division, in cooperation with the Division of Soil and Water ~~Conservation,~~Conservation of the Department of Agriculture and Consumer Services, shall develop a reporting procedure for use by technical specialists who conduct operations reviews of animal operations. The reporting procedure shall be consistent with the Division's inspection procedure of animal operations and with this Part. The report shall include any corrective action recommended by the technical specialist to assist the owner or operator of the animal operation in complying with all permit requirements. The report shall be submitted to the Division within 10 days following the operations review unless the technical specialist observes a violation described in G.S. 143-215.10E. If the technical specialist finds a violation described in G.S. 143-215.10E, the report shall be filed with the Division immediately.

(b) As part of its animal waste management plan, each animal operation shall have an operations review at least once a year. The operations review shall be conducted by a technical specialist employed by the Division of Soil and Water Conservation of the ~~Department,~~Department of Agriculture and Consumer Services, a local Soil and Water Conservation District, or the federal Natural Resources Conservation Services working under the direction of the Division of Soil and Water Conservation.

(c) Operations reviews shall not be performed by technical specialists with a financial interest in any animal operation."

SECTION 17. G.S. 143-215.10M(a) reads as rewritten:

"(a) The Department shall report to the Environmental Review Commission and the Fiscal Research Division on or before 1 October of each year as required by this section. Each report shall include:

...

(2) The number of operations reviews of animal waste management systems that the Division of Soil and Water Conservation of the Department of Agriculture and Consumer Services has conducted since the last report.

(3) The number of operations reviews of animal waste management systems conducted by agencies other than the Division of Soil and Water Conservation of the Department of Agriculture and Consumer Services that have been conducted since the last report.

(4) The number of reinspections associated with operations reviews conducted by the Division of Soil and Water Conservation of the Department of Agriculture and Consumer Services since the last report.

(5) The number of reinspections associated with operations reviews conducted by agencies other than the Division of Soil and Water Conservation of the Department of Agriculture and Consumer Services since the last report.

...."

SECTION 18. Part 9 of Article 21 of Chapter 143 of the General Statutes is recodified as Article 72 of Chapter 106 of the General Statutes, and accordingly G.S. 143-215.74, 143-215.74A, and 143-215.74B are recodified as G.S. 106-850, 106-851, and 106-852.

SECTION 19. G.S. 106-850(b)(9), as recodified under Section 18 of this act, reads as rewritten:

"(9) When the applicant is either (i) a limited-resource farmer, (ii) a beginning farmer, or (iii) a person farming land that is located in an enhanced voluntary agricultural district and is subject to a conservation agreement under G.S. 106-743.2 that remains in effect, State funding shall be limited to ninety percent (90%) of the average cost for each practice with the assisted farmer providing ten percent (10%) of the cost, which may include in-kind support of the practice, with a maximum of one hundred thousand dollars ($100,000) per year to each applicant. The following definitions apply in this subdivision:

a. Beginning farmer. – A farmer who has not operated a farm or who has operated a farm for not more than 10 years and who will materially and substantially participate in the operation of the farm.

a1. Enhanced voluntary agricultural district. – A district established by a county or a city by ordinance under Part 3 of Article 61 of ~~Chapter 106 of the General Statutes.~~this Chapter.

...."

SECTION 20. G.S. 106-850(c), as recodified under Section 18 of this act, reads as rewritten:

"(c) The program shall be reviewed, prior to implementation, by the Committee created by ~~G.S. 143-215.74B.~~G.S. 106-852. The Technical Review Committee shall meet quarterly to review the progress of this program."

SECTION 21. G.S. 106-850(e), as recodified under Section 18 of this act, reads as rewritten:

"(e) The Soil and Water Conservation Commission shall report on or before 31 January of each year to the ~~Environmental Review Commission~~Board of Agriculture and the Fiscal Research Division. This report shall include a list of projects that received State funding pursuant to the program, the results of the evaluations conducted pursuant to subdivision (7) of subsection (b) of this section, findings regarding the effectiveness of each of these projects to accomplish its primary purpose, and any recommendations to assure that State funding is used in the most cost-effective manner and accomplishes the greatest improvement in water quality."

SECTION 22. Part 11 of Article 21 of Chapter 143 of the General Statutes is recodified as Article 73 of Chapter 106 of the General Statutes, and accordingly G.S. 143-215.74M is recodified as G.S. 106-860.

SECTION 23. G.S. 106-860(a), as recodified under Section 22 of this act, reads as rewritten:

"(a) Program Established. – There is established the Community Conservation Assistance Program. The Program shall be implemented and supervised by the Soil and Water Conservation ~~Commission.~~Commission of the Department of Agriculture and Consumer Services."

SECTION 24. G.S. 106-860(d), as recodified under Section 22 of this act, reads as rewritten:

"(d) Advisory Committee. – The Program shall be reviewed, prior to implementation, by the Community Conservation Assistance Program Advisory Committee. The Advisory Committee shall meet quarterly to review the progress of the Program. The Advisory Committee shall consist of the following members:

(1) The Director of the Division of Soil and Water Conservation of the Department of Agriculture and Consumer Services or the Director's designee, who shall serve as the Chair of the Advisory Committee.
(2) The President of the North Carolina Association of Soil and Water Conservation Districts or the President's designee.
(3) The Director of the Cooperative Extension Service at North Carolina State University or the Director's designee.
(4) The Executive Director of the North Carolina Association of County Commissioners or the Executive Director's designee.
(5) The Executive Director of the North Carolina League of Municipalities or the Executive Director's designee.
(6) The State Conservationist of the Natural Resources Conservation Service of the United States Department of Agriculture or the State Conservationist's designee.
(7) The Executive Director of the Wildlife Resources Commission or the Executive Director's designee.
(8) The President of the North Carolina Conservation District Employees Association or the President's designee.
(9) The President of the North Carolina Association of Resource Conservation and Development Councils or the President's designee.
(10) The Director of the Division of Water Quality of the Department of Environment and Natural Resources or the Director's designee.
(11) The Director of the Division of Forest Resources of the Department of Environment and Natural Resources or the Director's designee.
(12) The Director of the Division of Land Resources of the Department of Environment and Natural Resources or the Director's designee.
(13) The Director of the Division of Coastal Management of the Department of Environment and Natural Resources or the Director's designee.

(14) The Director of the Division of Water Resources of the Department of Environment and Natural Resources or the Director's designee.

(15) The President of the Carolinas Land Improvement Contractors Association or the President's designee."

SECTION 25. G.S. 106-860(e), as recodified under Section 22 of this act, reads as rewritten:

"(e) Report. – The Soil and Water Conservation Commission shall report no later than 31 January of each year to the ~~Environmental Review Commission~~Board of Agriculture and the Fiscal Research Division. The report shall include a summary of projects that received State funding pursuant to the Program, the results of the evaluation conducted pursuant to subdivision (5) of subsection (b) of this section, findings regarding the effectiveness of each project to accomplish its primary purpose, and any recommendations to assure that State funding is used in the most cost-effective manner and accomplishes the greatest improvement in water quality."

SECTION 26. G.S. 113-291.10(a) reads as rewritten:

"(a) There is established the Beaver Damage Control Advisory Board. The Board shall consist of nine members, as follows:

...

(4) The Director of the Division of Soil and Water Conservation of the Department of ~~Environment and Natural Resources,~~Agriculture and Consumer Services or a designee;

...."

SECTION 27. G.S. 106-743.4(b) reads as rewritten:

"(b) A person who farms land that is subject to a conservation agreement under G.S. 106-743.2 that remains in effect is eligible under G.S. ~~143-215.74(b)~~106-850(b) to receive the higher percentage of cost-share funds for the benefit of that farmland under the Agriculture Cost Share Program established pursuant to ~~Part 9 of Article 21 of Chapter 143 of the General Statutes~~Article 72 of this Chapter for funds to benefit that farmland."

SECTION 28. The Revisor of Statutes shall make the conforming statutory changes necessary to reflect the transfers under Section 1 of this act. The Revisor of Statutes may correct any reference in the General Statutes to the statutes that are recodified by this act and any other conforming changes necessitated by this act.

SECTION 29. This act becomes effective July 1, 2011.

SENATE BILL 229:
Transfer DENR Soil & Water to DACS

2011-2012 General Assembly

Committee:	Senate Agriculture/Environment/Natural Resources	**Date:**	April 12, 2011
Introduced by:	Senators East, Rouzer, and Jackson	**Prepared by:**	Jeff Hudson Committee Counsel
Analysis of:	First Edition		

SUMMARY: Senate Bill 229 would transfer the Division of Soil and Water Conservation and the Soil and Water Conservation Commission from the Department of Environment and Natural Resources to the Department of Agriculture and Consumer Services.

CURRENT LAW:

Under current law, the Division of Soil and Water Conservation and the Soil and Water Conservation Commission are organizationally under the Department of Environment and Natural Resources.

The Division of Soil and Water Conservation[1]

The Division of Soil and Water Conservation provides programs, technical services, and educational outreach to promote voluntary natural resource management and conservation on the private lands of the State. Some of the programs provided by the Division include:

- *Agriculture Cost Share Program* and *Community Conservation Assistance Program:* Provide technical and financial assistance to agricultural producers and non-agricultural landowners for water quality best management practices.
- *Agricultural Drought Recovery Response Program*: Provides technical and financial assistance to agricultural producers for drought response practices.
- *Conservation Reserve Enhancement Program:* A voluntary program to help landowners restore riparian buffers and wetlands on eligible environmentally sensitive agricultural land and to protect enrolled lands through long-term conservation agreements and easements.
- *Soil Information Program*: Collects and classifies soils data required for publication of soil survey reports needed to make decisions regarding site suitability for a variety of land-use decisions.
- *Lagoon Conversion Program:* A voluntary program to assist swine operations in implementing innovative waste management systems.
- *Operations Reviews, including the Operations Review Pilot Program*: A statutorily required program for permitted animal operations in the State that provides animal waste management technical assistance and inspects for permit compliance.
- Assistance to *Local Soil and Water Conservation Districts* with programs, public information, and conservation education to increase adoption and awareness of effective measures to protect natural resources.

[1] Information on the Division of Soil and Water Conservation found at: http://portal.ncdenr.org/web/swc/about-the-division

The Soil and Water Conservation Commission[2]

The Soil and Water Conservation Commission is a policy and rulemaking board for State Soil and Water Conservation Programs. The Commission provides overall supervision of the State's 96 Local Soil and Water Conservation Districts, allocates technical and financial assistance in the form of cost share funds, provides administrative assistance for the soils resource inventory for the State, establishes agricultural rules and watershed project agreements, settles programmatic contract disputes, and appoints supervisors who provide local guidance and direction for conservation programs in the Local Districts.

The Commission is composed of seven members as follows:

- The President, First Vice-President and immediate past President of the North Carolina Association of Soil and Water Conservation Districts.
- Three supervisor members nominated by the Association from its own membership, representing the three major geographical regions of the state, and appointed by the Governor.
- One member appointed-at-large by the Governor.

The members of the Commission are appointed for terms of three years and until their successors are appointed and qualified.

BILL ANALYSIS: Senate Bill 229 would transfer the Division of Soil and Water Conservation and the Soil and Water Conservation Commission from the Department of Environment and Natural Resources to the Department of Agriculture and Consumer Services.

EFFECTIVE DATE: The act would become effective July 1, 2011.

Lanier McRee, Fiscal Analyst and staff to the House and Senate Appropriations Subcommittees for Natural and Economic Resources, substantially contributed to this summary.

S229-SMSB-7(e1) v6

[2] Information on the Soil and Water Conservation Commission found at:
http://portal.ncdenr.org/web/swc/soilandwaterconservationcommission

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

S 1

SENATE BILL 380

Short Title:	ETJ/Clarify Definition of Bona Fide Farm.	(Public)
Sponsors:	Senators Jackson; Atwater, Brock, Brown, East, Goolsby, Harrington, Meredith, Pate, Rouzer, Soucek, Tucker, and Walters.	
Referred to:	Agriculture/Environment/Natural Resources.	

March 21, 2011

A BILL TO BE ENTITLED

AN ACT TO EXEMPT FARMS FROM THE EXTRATERRITORIAL JURISDICTION OF MUNICIPALITIES, TO CLARIFY THE DEFINITION OF "BONA FIDE FARM," AND TO PROHIBIT THE INVOLUNTARY ANNEXATION OF FARMS.

The General Assembly of North Carolina enacts:

SECTION 1.(a) G.S. 160A-360 is amended by adding a new subsection to read:

"(k) A 'bona fide farm' as defined in G.S. 153A-340 is exempt from a municipality's extraterritorial jurisdiction under this Article."

SECTION 1.(b) G.S. 153A-340(b)(2) reads as rewritten:

"(b) (2) Except as provided in G.S. 106-743.4 for farms that are subject to a conservation agreement under G.S. 106-743.2, bona fide farm purposes include the production and activities relating or incidental to the production of crops, fruits, vegetables, ornamental and flowering plants, dairy, livestock, poultry, and all other forms of ~~agricultural products~~ agriculture as defined in ~~G.S. 106-581.1 having a domestic or foreign market.~~ G.S. 106-581.1. For purposes of this subdivision, the production of a nonfarm product that the Department of Agriculture and Consumer Services recognizes as a 'Goodness Grows in North Carolina' ~~product~~ product, a 'Got To Be NC' product, or both, that is produced on a farm subject to a conservation agreement under G.S. 106-743.2 is a bona fide farm purpose."

SECTION 2. Article 4A of Chapter 160A of the General Statutes is amended by adding a new section to read:

"**§ 160A-58.29. No involuntary annexation of farms.**

No land being used for bona fide farm purposes, as defined in G.S. 153A-340 on the date of the resolution of intent to consider annexation, shall be annexed without the written consent of the owner or owners of the property."

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

VISITOR REGISTRATION SHEET

Ag/Env/Nat. Resources (2011-2012) — 4-12-11

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
W. Daniel Ambura	NCLM
Preston Howard	MCIC
J Goodman	NC Chamber
John Pollard	NCMA
Lisa Martin	NC Home Builders Assoc.
Bruce Thompson	Parker Poe
Rob Lamm	RLA
Brian O'Hara	NC Offshore Wind Coalition
Will Morgan	Sierra

VISITOR REGISTRATION SHEET

Ag/Env/Nat. Resources (2011-2012)
Name of Committee **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Becki Gray	John Locke Foundation
Peter Raabe	American Rivers
John Runkle	NC Save Energy
David Knight	DENR
Kari Barsness	DENR
Cathy Hardy	DENR
Mark Wilder	DENR
Anita Mancl	DENR
Margaret Hartzell	Environment North Carolina
Dan Conrad	NCCN
Tom Lors	TNC

VISITOR REGISTRATION SHEET

Ag/Env/Nat. Resources (2011-2012)
Name of Committee **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Andrew Meehan	CapStrat
Dick Fowler	NCASCWCD
David Williams	DENR-DSWC
Pat Harris	DENR - DSWC
PAIGE WORSHAM	LEGISLATIVE REPORTING SERVICE
TOM BEAN	EDF, NCWF
Dan Crawford	NCLCV
Edgar Miller	CTNC
Camera Hanley	Electricities of NC
Robin Smith	DENR
Jessi Hayes	NCHBA

VISITOR REGISTRATION SHEET

Ag/Env/Nat. Resources (2011-2012)
Name of Committee **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
	Brogden NC
Nick Brad Ind	DCR
Emily Grimm	MWC
John Cooper	Compass NC
Jay Stem	NCAA
Betsy Bailey	PENC
DAVIS BARNES	Poyner Spruill
Amy McConkey	NC Bev Assn
Mpow	Smith Anderson
	SELC
Mitch Lamm	SELC

VISITOR REGISTRATION SHEET

Ag/Env/Nat. Resources (2011-2012)
Name of Committee **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
LuAnn Hampson	Carolina State Strategies
Bob Bowman	NCFA
Doug Lassiter	NCSTA
[illegible]	Cuthrells
Jay Hitchcock	NCDA
David McLeod	NCDACS
Vernon Cox	NCDACS
Gordon Myers	NCWRC
Chris Dillon	NCWRC
Tommy Stevens	NCPC
Jean Harbesty	NCPC / NCCA

VISITOR REGISTRATION SHEET

Ag/Env/Nat. Resources (2011-2012) — 4-12-11

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Sage Peters	JPAssoc
Allison Fowler	NC Grange
R Rogers	CWMTF
Angie Maiee	NC Park
[illegible]	NC [illegible]

Senate Agriculture/Environment/Natural Resources

MINUTES

April 19, 2011

The Senate Ag/Env/Nat. Resources committee met on Tuesday, April 19, 2011 in Room 544-LOB. There were 13 senators present.

Sen. David Rouzer called the meeting to order and introduced the Pages and Sgt-At-Arms staff.

HB-432 SWINE IN TRANSPORT/REGULATE FERAL SWINE –

Rep. LaRoque explained the bill. Sen. Tillman sent forth an amendment. Mr. Jeff Hudson, staff counsel explained the amendment. This is a technical amendment that removed the bear/wild boar so they will not be treated as wild game. The first part of the amendment authorizes the Board of Agriculture to adopt fees from swine owners. This changes the "mays" to "shalls" authorize the rules. Sen. Bingham moved for a favorable report for the amendment. Mr. Ray Starling, Dept. of Agriculture addressed members and they prefer not to have to write rules and would like to know if they can add more language in connection with the fees. Mr. Hudson made additional comments about the rule making process. Mr. Starling said they would be willing to absorb the costs so they won't have to re-write the rules. Sen. Tillman said he didn't mind changing the amendment but he would recommend taking the costs while you can get. Mr. Starling said their proposal would be not to charge unless it exceeds $10,000.00. Sen. Kinnaird asked if we can pull the amendment and the bill and work this out. Rep. LaRoque said to move forward. Mr. Starling said they will accept it as amended. Vote taken and so moved to pass the amendment. Sen. Kinnaird asked why removing wild boar. Mr. Gordon Myers, NC Wildlife Commission addressed members and explained. Sen. Kinnaird questioned the transportation fees. Rep. LaRoque explained that imported feral swine are coming in with diseases. The Pork Producers are in support of this. Sen. Tucker asked what changes are being made with other open game. Mr. Gordon Myers said there is no change to game birds. This is for wild boar/hogs because they are most caught at night. Sen. Bingham moved for a favorable report to the amended bill. Sen. Hartsell asked if this will go to Finance. Mr. Hudson said it will. No further discussion, vote taken and so moved to roll the amendment into a PCS and refer to the Finance Committee. So moved.

Sen. Atwater asked for personal privilege. In Lee County a tobacco farmer lost several barns and crops and Commissioner Troxler is there helping today. Also had a horse barn lost and killed their stock.

The meeting adjourned at 11:23.

Sen. Don East, Co-Chair

Cindy J. Davis, Committee Clerk

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES COMMITTEE REPORT
Senator Don East, Co-Chair
Senator David Rouzer, Co-Chair

Wednesday, April 20, 2011

Senator EAST,
submits the following with recommendations as to passage:

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 1, BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL

H.B.(CS #1) **432** Swine in Transport/Regulate Feral Swine.

Draft Number:	PCS90095
Sequential Referral:	None
Recommended Referral:	Finance
Long Title Amended:	No

TOTAL REPORTED: 1

Committee Clerk Comments:

Sen. East will handle

Senate Agriculture/Environment/Natural Resources Committee
Tuesday, April 19, 2011, 11:00
544 LOB

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

HB 432	Swine in Transport/Regulate Feral Swine.	Representative Dixon Representative Bell Representative LaRoque Representative West

Presentations

Other Business

Adjournment

Principal Clerk ____
Reading Clerk ____

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

The Senate Committee on **Agriculture/Environment/Natural Resources** will meet at the following time:

DAY	DATE	TIME	ROOM
Tuesday	April 19, 2011	11:00	544 LOB

The following will be considered:

BILL NO.	SHORT TITLE	SPONSOR
HB 432	Swine in Transport/Regulate Feral Swine.	Representative Dixon Representative Bell Representative LaRoque Representative West

Senator Don East, Co-Chair
Senator David Rouzer, Co-Chair

Principal Clerk
Reading Clerk

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

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Senator Don East, Co-Chair
Senator David Rouzer, Co-Chair

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 432

AMENDMENT NO. _____
(to be filled in by Principal Clerk)

H432-ASB-22 [v.2]

Comm. Sub. [YES]
Amends Title [NO]
Second Edition

Date _____ ,2011

Senator _____

moves to amend the bill on page 1, lines 23 through 28,
by rewriting those lines to read:

"(d) The Board of Agriculture shall adopt rules to charge any swine owner a fee for the identification required under this section. The fee may not exceed the actual cost to the Department of Agriculture and Consumer Services for the identification approved by the State Veterinarian and any direct administrative costs associated with providing the identification to swine owners. The Board of Agriculture shall adopt any other rules necessary to implement this Article." and

on page 3, line 28,
by rewriting that line to read:

"Any person who is convicted of unlawfully taking bear ~~or wild boar~~ with".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

H D

HOUSE BILL 432
Committee Substitute Favorable 4/6/11
PROPOSED SENATE COMMITTEE SUBSTITUTE H432-PCS90095-SB-20

Short Title: Swine in Transport/Regulate Feral Swine. (Public)

Sponsors:

Referred to:

March 23, 2011

A BILL TO BE ENTITLED

AN ACT TO PROHIBIT THE TRANSPORTATION OF LIVE SWINE UNLESS THE SWINE HAS AN OFFICIAL FORM OF IDENTIFICATION APPROVED BY THE STATE VETERINARIAN FOR THIS PURPOSE, TO CLASSIFY ALL FREE-RANGING MAMMALS OF THE SPECIES SUS SCROFA AS FERAL SWINE, TO PROVIDE FOR THE TAKING OF FERAL SWINE AS A NONGAME ANIMAL, AND TO PROHIBIT THE REMOVAL OF LIVE FERAL SWINE FROM TRAPS.

The General Assembly of North Carolina enacts:

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

"Article 66A.

"Transportation of Swine.

"**§ 106-798. Identification required to transport swine.**

(a) No live swine shall be transported on a public road within the State unless the swine has an official form of identification approved by the State Veterinarian for this purpose.

(b) Any live swine that is transported on a public road within this State without identification as required by this section is presumed to be a feral swine and is also subject to regulation by the Wildlife Resources Commission under Chapter 113 of the General Statutes. Any person transporting a swine without identification is subject to a civil penalty under this Article.

(c) Swine that do not leave the premises of the swine owner are not subject to the identification requirement under this section.

(d) The Board of Agriculture shall adopt rules to charge any swine owner a fee for the identification required under this section. The fee may not exceed the actual cost to the Department of Agriculture and Consumer Services for the identification approved by the State Veterinarian and any direct administrative costs associated with providing the identification to swine owners. The Board of Agriculture shall adopt any other rules necessary to implement this Article.

"**§ 106-798A. Penalty for unlawful transport of swine without identification.**

Any person who fails to obtain identification as required under this Article shall be subject to a civil penalty of up to five thousand dollars ($5,000) for each violation. Each swine that has no identification is a separate violation.

"**§ 106-798B. Penalty for misuse of identification.**

Any person who misuses the identification required under this Article shall be subject to a civil penalty of one thousand dollars ($1,000) for each occurrence. A person misuses identification required under this Article by knowingly providing it to other than the owner of the swine or by engaging in other activity that is in violation of this Article."

SECTION 2. G.S. 113-129 reads as rewritten:

"**§ 113-129. Definitions relating to resources.**

The following definitions and their cognates apply in the description of the various marine and estuarine and wildlife resources:

...

(1b) Big Game. – Bear, ~~wild boar,~~ wild turkey, and white-tailed deer.

...

(5c) Feral Swine. – Free-ranging mammals of the species Sus scrofa.

...

(7c) Game Animals. – Bear, fox, rabbit, squirrel, ~~wild boar,~~ white-tailed deer, and, except when trapped in accordance with provisions relating to fur-bearing animals, bobcat, opossum, and raccoon.

...

(15) Wild Animals. – Game animals; fur-bearing animals; feral swine; and all other wild mammals except marine mammals found in coastal fishing waters. In addition, this definition includes members of the following groups which are on the federal list of endangered or threatened species: wild amphibians, wild reptiles except sea turtles inhabiting and depending upon coastal fishing waters, and wild invertebrates except invertebrates declared to be pests under the Structural Pest Control Act of North Carolina of 1955 or the North Carolina Pesticide Law of 1971. Nothing in this definition is intended to abrogate G.S. 113-132(c), confer jurisdiction upon the Wildlife Resources Commission as to any subject exclusively regulated by any other agency, or to authorize the Wildlife Resources Commission by its regulations to supersede valid provision of law or regulation administered by any other agency.

...

~~(15b) Wild Boar. – Free-ranging mammals of the species Sus scrofa that occur in counties identified in the rules of the Wildlife Resources Commission.~~

...."

SECTION 3. G.S. 113-270.3(b)(1a) reads as rewritten:

"(1a) Nonresident ~~Bear/Wild Boar~~Bear Hunting License – $125.00. This license is valid for use only by an individual within the State and must be procured before taking any bear ~~or wild boar~~ within the State. Notwithstanding any other provision of law, a nonresident individual may not take any bear ~~or wild boar~~ within the State without procuring this license; provided, that those persons who have a nonresident lifetime sportsman combination license purchased prior to May 24, 1994, shall not have to purchase this license."

SECTION 4. G.S. 113-291.1 reads as rewritten:

"**§ 113-291.1. Manner of taking wild animals and wild birds.**

...

(b) No wild animals or wild birds may be taken:

(1) From or with the use of any vehicle; vessel, other than one manually propelled; airplane; or other conveyance except that the use of vehicles and vessels is authorized:

a. As hunting stands, subject to the following limitations. No wild animal or wild bird may be taken from any vessel under sail, under power, or with the engine running or while still in motion from such propulsion. No wild animal or wild bird may be taken from any vehicle if it is in motion, the engine is running, or the passenger area of the vehicle is occupied. The prohibition of occupying the passenger area of a vehicle does not apply to a disabled individual whose mobility is restricted.

b. For transportation incidental to the taking.

(2) With the use or aid of any artificial light, net, trap, snare, electronic or recorded animal or bird call, or fire, except as may be otherwise provided by statute[;] provided, however, that ~~crows and coyotes may be taken with the aid of electronic calling devices.~~the Wildlife Resources Commission may adopt rules prescribing seasons and the manner of taking of wild animals and wild birds with the use of artificial light and electronic calls. No wild birds may be taken with the use or aid of salt, grain, fruit, or other bait. No black bear ~~or wild boar~~ may be taken with the use or aid of any salt, salt lick, grain, fruit, honey, sugar-based material, animal parts or products, or other bait, and no wild turkey may be taken from an area in which bait has been placed until the expiration of 10 days after the bait has been consumed or otherwise removed. The taking of wild animals and wild birds with poisons, drugs, explosives, and electricity is governed by G.S. 113-261, G.S. 113-262, and Article 22A of this Subchapter.

Upon finding that the placement of processed food products in areas frequented by black bears is detrimental to the health of individual black bears or is attracting and holding black bears in an area to the extent that the natural pattern of movement and distribution of black bears is disrupted and bears' vulnerability to mortality factors, including hunting, is increased to a level that causes concern for the population, the Wildlife Resources Commission may adopt rules to regulate, restrict, or prohibit the placement of those products and prescribe time limits during which hunting is prohibited in areas where those products have been placed.

Any person who is convicted of unlawfully taking bear ~~or wild boar~~ with the use or aid of any type of bait as provided by this subsection or by rules adopted pursuant to this subsection is punishable as provided by G.S. 113-294(c1).

...

(g) If a season is open permitting such method of taking for the species in question, a hunter may take rabbits, squirrels, opossum, raccoons, fur-bearing animals, and nongame animals and birds open to hunting with a ~~pistol of .22 caliber with a barrel not less than five and one-half inches in length.~~pistol. In addition, a hunter or trapper lawfully taking a wild animal or wild bird by another lawful method may use a knife, pistol, or other swift method of killing the animal or bird taken. The Wildlife Resources Commission may, however, restrict or prohibit the carrying of firearms during special seasons or in special areas reserved for the taking of wildlife with primitive weapons or other restricted methods.

...."

SECTION 5. G.S. 113-291.8(a) reads as rewritten:

"(a) Any person hunting game animals other than foxes, bobcats, raccoons, and opossum, or hunting upland game birds other than wild turkeys, or hunting feral swine, with the use of firearms, must wear a cap or hat on his head made of hunter orange material or an outer garment of hunter orange visible from all sides. Any person hunting deer during a deer firearms

season shall wear hunter orange. Hunter orange material is a material that is a daylight fluorescent orange color.

This section does not apply to a landholder, his spouse, or children, who are hunting on land held by the landholder. This subsection shall be enforced by warning ticket only until October 1, 1992, with respect to those hunting rabbit, squirrel, grouse, pheasant, and quail."

SECTION 6.(a) Article 22 of Chapter 113 of the General Statutes is amended by adding a new section to read:

"**§ 113-291.12. Unlawful to remove live feral swine from traps.**

It is unlawful to remove feral swine from a trap while the swine is still alive or to transport the live swine after that removal."

SECTION 6.(b) G.S. 113-294 is amended by adding a new subsection to read:

"(s) Any person who violates the provisions of G.S. 113-291.12 by unlawfully removing feral swine from a trap while the swine is still alive or by transporting such swine after that removal is guilty of a Class 2 misdemeanor. The acts of removal from a trap and of transporting the swine after removal shall constitute separate offenses."

SECTION 7. G.S. 106-798A and G.S. 106-798B, as enacted by Section 1 of this act, become effective October 1, 2012. The remainder of this act becomes effective October 1, 2011. This act applies to acts that occur on or after the effective date.

H 2

HOUSE BILL 432
Committee Substitute Favorable 4/6/11

Short Title: Swine in Transport/Regulate Feral Swine. (Public)

Sponsors:

Referred to:

March 23, 2011

A BILL TO BE ENTITLED

AN ACT TO PROHIBIT THE TRANSPORTATION OF LIVE SWINE UNLESS THE SWINE HAS AN OFFICIAL FORM OF IDENTIFICATION APPROVED BY THE STATE VETERINARIAN FOR THIS PURPOSE, TO CLASSIFY ALL FREE-RANGING MAMMALS OF THE SPECIES SUS SCROFA AS FERAL SWINE, TO PROVIDE FOR THE TAKING OF FERAL SWINE AS A NONGAME ANIMAL, AND TO PROHIBIT THE REMOVAL OF LIVE FERAL SWINE FROM TRAPS.

The General Assembly of North Carolina enacts:

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

"Article 66A.

"Transportation of Swine.

"**§ 106-798. Identification required to transport swine.**

(a) No live swine shall be transported on a public road within the State unless the swine has an official form of identification approved by the State Veterinarian for this purpose.

(b) Any live swine that is transported on a public road within this State without identification as required by this section is presumed to be a feral swine and is also subject to regulation by the Wildlife Resources Commission under Chapter 113 of the General Statutes. Any person transporting a swine without identification is subject to a civil penalty under this Article.

(c) Swine that do not leave the premises of the swine owner are not subject to the identification requirement under this section.

(d) The Board of Agriculture may adopt rules to charge any swine owner a fee for the identification required under this section. The fee may not exceed the actual cost to the Department of Agriculture and Consumer Services for the identification approved by the State Veterinarian and any direct administrative costs associated with providing the identification to swine owners. The Board of Agriculture may adopt any other rules needed to implement this Article.

"**§ 106-798A. Penalty for unlawful transport of swine without identification.**

Any person who fails to obtain identification as required under this Article shall be subject to a civil penalty of up to five thousand dollars ($5,000) for each violation. Each swine that has no identification is a separate violation.

"**§ 106-798B. Penalty for misuse of identification.**

Any person who misuses the identification required under this Article shall be subject to a civil penalty of one thousand dollars ($1,000) for each occurrence. A person misuses identification required under this Article by knowingly providing it to other than the owner of the swine or by engaging in other activity that is in violation of this Article."

SECTION 2. G.S. 113-129 reads as rewritten:

"**§ 113-129. Definitions relating to resources.**

The following definitions and their cognates apply in the description of the various marine and estuarine and wildlife resources:

...

(1b) Big Game. – Bear, ~~wild boar,~~ wild turkey, and white-tailed deer.

...

(5c) Feral Swine. – Free-ranging mammals of the species Sus scrofa.

...

(7c) Game Animals. – Bear, fox, rabbit, squirrel, ~~wild boar,~~ white-tailed deer, and, except when trapped in accordance with provisions relating to fur-bearing animals, bobcat, opossum, and raccoon.

...

(15) Wild Animals. – Game animals; fur-bearing animals; feral swine; and all other wild mammals except marine mammals found in coastal fishing waters. In addition, this definition includes members of the following groups which are on the federal list of endangered or threatened species: wild amphibians, wild reptiles except sea turtles inhabiting and depending upon coastal fishing waters, and wild invertebrates except invertebrates declared to be pests under the Structural Pest Control Act of North Carolina of 1955 or the North Carolina Pesticide Law of 1971. Nothing in this definition is intended to abrogate G.S. 113-132(c), confer jurisdiction upon the Wildlife Resources Commission as to any subject exclusively regulated by any other agency, or to authorize the Wildlife Resources Commission by its regulations to supersede valid provision of law or regulation administered by any other agency.

...

~~(15b) Wild Boar. – Free-ranging mammals of the species Sus scrofa that occur in counties identified in the rules of the Wildlife Resources Commission.~~

...."

SECTION 3. G.S. 113-270.3(b)(1a) reads as rewritten:

"(1a) Nonresident ~~Bear/Wild Boar~~Bear Hunting License – $125.00. This license is valid for use only by an individual within the State and must be procured before taking any bear ~~or wild boar~~ within the State. Notwithstanding any other provision of law, a nonresident individual may not take any bear ~~or wild boar~~ within the State without procuring this license; provided, that those persons who have a nonresident lifetime sportsman combination license purchased prior to May 24, 1994, shall not have to purchase this license."

SECTION 4. G.S. 113-291.1 reads as rewritten:

"**§ 113-291.1. Manner of taking wild animals and wild birds.**

...

(b) No wild animals or wild birds may be taken:

(1) From or with the use of any vehicle; vessel, other than one manually propelled; airplane; or other conveyance except that the use of vehicles and vessels is authorized:

a. As hunting stands, subject to the following limitations. No wild animal or wild bird may be taken from any vessel under sail, under power, or with the engine running or while still in motion from such propulsion. No wild animal or wild bird may be taken from any vehicle if it is in motion, the engine is running, or the passenger area

of the vehicle is occupied. The prohibition of occupying the passenger area of a vehicle does not apply to a disabled individual whose mobility is restricted.

b. For transportation incidental to the taking.

(2) With the use or aid of any artificial light, net, trap, snare, electronic or recorded animal or bird call, or fire, except as may be otherwise provided by statute[;] provided, however, that ~~crows and coyotes may be taken with the aid of electronic calling devices.~~the Wildlife Resources Commission may adopt rules prescribing seasons and the manner of taking of wild animals and wild birds with the use of artificial light and electronic calls. No wild birds may be taken with the use or aid of salt, grain, fruit, or other bait. No black bear ~~or wild boar~~ may be taken with the use or aid of any salt, salt lick, grain, fruit, honey, sugar-based material, animal parts or products, or other bait, and no wild turkey may be taken from an area in which bait has been placed until the expiration of 10 days after the bait has been consumed or otherwise removed. The taking of wild animals and wild birds with poisons, drugs, explosives, and electricity is governed by G.S. 113-261, G.S. 113-262, and Article 22A of this Subchapter.

Upon finding that the placement of processed food products in areas frequented by black bears is detrimental to the health of individual black bears or is attracting and holding black bears in an area to the extent that the natural pattern of movement and distribution of black bears is disrupted and bears' vulnerability to mortality factors, including hunting, is increased to a level that causes concern for the population, the Wildlife Resources Commission may adopt rules to regulate, restrict, or prohibit the placement of those products and prescribe time limits during which hunting is prohibited in areas where those products have been placed.

Any person who is convicted of unlawfully taking bear or wild boar with the use or aid of any type of bait as provided by this subsection or by rules adopted pursuant to this subsection is punishable as provided by G.S. 113-294(c1).

...

(g) If a season is open permitting such method of taking for the species in question, a hunter may take rabbits, squirrels, opossum, raccoons, fur-bearing animals, and nongame animals and birds open to hunting with a ~~pistol of .22 caliber with a barrel not less than five and one-half inches in length.~~pistol. In addition, a hunter or trapper lawfully taking a wild animal or wild bird by another lawful method may use a knife, pistol, or other swift method of killing the animal or bird taken. The Wildlife Resources Commission may, however, restrict or prohibit the carrying of firearms during special seasons or in special areas reserved for the taking of wildlife with primitive weapons or other restricted methods.

...."

SECTION 5. G.S. 113-291.8(a) reads as rewritten:

"(a) Any person hunting game animals other than foxes, bobcats, raccoons, and opossum, or hunting upland game birds other than wild turkeys, or hunting feral swine, with the use of firearms, must wear a cap or hat on his head made of hunter orange material or an outer garment of hunter orange visible from all sides. Any person hunting deer during a deer firearms season shall wear hunter orange. Hunter orange material is a material that is a daylight fluorescent orange color.

This section does not apply to a landholder, his spouse, or children, who are hunting on land held by the landholder. This subsection shall be enforced by warning ticket only until October 1, 1992, with respect to those hunting rabbit, squirrel, grouse, pheasant, and quail."

SECTION 6.(a) Article 22 of Chapter 113 of the General Statutes is amended by adding a new section to read:

"**§ 113-291.12. Unlawful to remove live feral swine from traps.**

It is unlawful to remove feral swine from a trap while the swine is still alive or to transport the live swine after that removal."

SECTION 6.(b) G.S. 113-294 is amended by adding a new subsection to read:

"(s) Any person who violates the provisions of G.S. 113-291.12 by unlawfully removing feral swine from a trap while the swine is still alive or by transporting such swine after that removal is guilty of a Class 2 misdemeanor. The acts of removal from a trap and of transporting the swine after removal shall constitute separate offenses."

SECTION 7. G.S. 106-798A and G.S. 106-798B, as enacted by Section 1 of this act, become effective October 1, 2012. The remainder of this act becomes effective October 1, 2011. This act applies to acts that occur on or after the effective date.

HOUSE BILL 432:
Swine in Transport/Regulate Feral Swine

2011-2012 General Assembly

Committee:	Senate Agriculture/Environment/Natural Resources	**Date:**	April 19, 2011
Introduced by:	Reps. LaRoque, Bell, Dixon, West	**Prepared by:**	Mariah Matheson
Analysis of:	Second Edition		Research Assistant

SUMMARY: ***House Bill 432 would place restrictions on the transportation of swine, create a statutory definition of feral swine, provide for the taking of feral swine as a nongame animal, and prohibit the removal of live feral swine from traps, as recommended by the Feral Swine Study Committee.***

CURRENT LAW: Pursuant to G.S. 113-129(1b), **wild boar**, along with bears, turkeys, and white-tailed deer, is a big game animal. Wild Boar is defined as a "free ranging mammals of the species Sus scrofa that occur in counties identified in the rules of the Wildlife Resources Commission." There is no definition of **feral swine** in the statutes.

BILL ANALYSIS: **Section 1** would add a new article entitled "Transportation of Swine" to Chapter 106 of the General Statutes. An approved form of identification would be required in order to transport swine off the premises of their owner and on a public road within the State; otherwise, the swine are presumed feral and subject to regulation by the Wildlife Resources Commission (WRC). The Board of Agriculture would be given the authority to adopt rules regarding the required identification and any associated costs. Failure to obtain the required identification could result in a civil penalty of up to $5,000 per swine. Further, anyone who knowingly provides swine identification to someone other than the owner or engages in any other prohibited activity could be subject to a $1,000 fine per occurrence.

Section 2 would add "Feral Swine" and its scientific name to the definitions section of G.S. 113-129, and would delete "Wild Boar" and its definition.

Section 3 would eliminate the requirement to have a wild boar hunting license.

Section 4 would amend G.S. 113-291.1 to provide that the WRC may adopt rules prescribing seasons and the manner of taking wild animals and wild birds with the use of artificial light and electronic calls. It also would delete wild boar from the prohibition against taking specified animals with certain kinds of bait. Finally, it would eliminate the .22 caliber limitation for the pistol a hunter can use during the open season for particular species.

Section 5 would provide that a person hunting feral swine with the use of firearms must wear a hunter orange cap, hat, or garment.

Sections 6.(a) and 6.(b) would create a new provisions making it a separate Class 2 misdemeanor either to remove live feral swine from traps or to transport the live swine after removal.

EFFECTIVE DATE: G.S. 106-798A and G.S. 106-798B, as enacted by Section 1, would become effective October 1, 2012. The remainder of the act would become effective October 1, 2011. The act would apply to acts or offenses that occur on or after the effective date.

BACKGROUND: Section 3(a) of S.L. 2009-89 directed "[t]he Department of Agriculture and Consumer Services, in consultation with the Wildlife Resources Commission, the United States Department of Agriculture's Animal and Plant Health Inspection Service, and a cross section of interested agricultural organizations, [to] study issues related to the importation of feral swine in North

Carolina, including associated risks and potential economic impact of that importation. In the course of its study, the Department may consider population estimates, disease risks, and efforts that could be undertaken to mitigate any risks posed by feral swine to the ecosystem or the agricultural industry of the state, including examination of enforcement issues and existing penalties for the illegal transportation of feral swine into and around the State. In conducting its study, the Department shall solicit input from the following, as well as any other persons or groups with expertise on the subject:

(1) Swine veterinarians working in the pork industry;

(2) Confinement operation-type swine farmers;

(3) Pasture-raised operation-type swine farmers; and

(4) Sportsmen."

The full text of S.L. 2009-89 (House Bill 1118) can be found online at:
http://www.ncleg.net/sessions/2009/bills/house/pdf/h1118v3.pdf

The full Feral Swine Study Committee report (May 2010) can be found in the Legislative Library (SF 397.83 .N8 F56 2010) or online at:
http://digital.ncdcr.gov/cdm4/document.php?CISOROOT=/p249901coll22&CISOPTR=176548&REC=2

Janice Paul, Committee Counsel to House Agriculture, substantially contributed to this summary.

H432-SMTF-13(e2) v2

VISITOR REGISTRATION SHEET

Ag/Env/Nat. Resources (2011-2012) — 4-19-11

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
	Ag Alliance of N-C
DAVID BARNES	PS
Burwood	NWS
	NCFB
Jenny Harkey	NCPC / NCCA
Jason Butler	NCPC / NCCA
Rhonda Campbell	Murphy-Brown
Don Butler	Murphy-Brown LLC
JANET ARCHER	NCPC / ARCHER FARMS
Tammy Stevens	NCPC
	Bldrs Ass of NC

VISITOR REGISTRATION SHEET

Ag/Env/Nat. Resources (2011-2012)
Name of Committee **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Dan Conrad	NCCN
Dale Caveny	NCWRC
Gordon Myers	NCWRC
CHRIS DILLON	NCWRC
Kay Emanuel	Legislative Reporting Services
Daniel Amburn	NCLM
PRESTON HOWARD	NCIC
Allison Fowler	NC Grange
Mark Brown	NC Utility Rights Committee
Will Morgan	Sierra
BRIAN O'HARA	NC OFFSHORE WIND COALITION

VISITOR REGISTRATION SHEET

Ag/Env/Nat. Resources (2011-2012)
Name of Committee **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Robin Smith	DENR
David Knight	DENR
Kari Barbness	DENR
Doug Lassiter	NCSTA
Jerry Graham	NCFC
James Lamb	NCPC
Julie Groce	NC Beef
Everett Johnson	NC Pork Council
Jim Cheesman	UNC
Kim Crouch	NCBA
Paul Kehut	NCBA.

VISITOR REGISTRATION SHEET

Ag/Env/Nat. Resources (2011-2012)
Name of Committee **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Rebecca Smitherman	NCBA

VISITOR REGISTRATION SHEET

Ag/Env/Nat. Resources (2011-2012)
Name of Committee **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Paul Sherman	NCFB
Scott Sauls	WRA
Cameron Hardy	Electricities
Jon Nance	NCDOT
Mary McLean Asbill	SELC
David Marshall	NCDA&CS
Joy Hicks	NCDACS
Ray Starling	NCDA&CS
[illegible]	RAMC Farms
Betsy Bailey	PENC
Tom BEAN	NCWF, EDF

Senate Agriculture/Environment/Natural Resources

MINUTES

April 20, 2011

The Senate Ag/Env/Nat. Resources committee met on Wednesday, April 20, 2011 in Room 544-LOB at 1:00 pm. There were 16 senators present.

Sen. David Rouzer called the meeting to order and introduced the Pages and Sgt-At-Arms staff.

HB-HB-268 IMPLEMENTATION OF RECLAIMED WATER RULES –

Rep. Gillespie explained the bill. Sen. East offered up an amendment and explained it. This amendment is to help the victims that had property damages due to the tornados this past weekend. This will allow those people the right to store and burn trash from the damages. It is a temporary measure that would allow suspension for air quality.

Commissioner Steve Troxler addressed members and told about his trip to some of the most ravaged counties to survey the damages. He also had a video of footage from a helicopter. This will help citizens get back on their feet instead of hindering them. Yes, there will be smoke from the fires, but any forest fire could have the same amount of smoke. We are fortunate that there were not more deaths. It was sad to see the devastation, but it was nice to hear the miracle stories also. Farmers/citizens are going to be responsible in the clean-up process. There are some programs in Dept. of Ag that will also assist farmers with state and federal assistance to help them recover. Farmers are planting the plants that were in greenhouses that lost their roofs in an effort to use those plants. Neighbors are helping neighbors. Radio ads have gone out urging people to go out and volunteer in clean-up efforts. These volunteers are going to help our famers. We need to get this done as quickly as possible so our farmers can get their crops in the ground and save their farms for this season.

Sen. East asked the Commissioner to explain how we will not allow forest fires by doing this burning. The Commissioner said our farmers are aware of the importance of burning and safety. This will be done in a most responsible way. Sen. Daniel asked if the expiration date of June 1, 2011 is adequate. Commissioner Troxler said he thinks that will be sufficient in order to get our crops in the ground. Sen. Bingham asked about insurance on farms and will there be opportunities for low interest loans and grants that will help. Commissioner Troxler said there will be programs available but he's not sure exactly what will be offered. This depends upon the type of farm and how old some buildings are and the cost to rebuild at today's cost. (example given was old chicken houses built in the 1970's). Sen. Walters said this is a wonderful opportunity to show people how rural communities can come together to help each other. He told about damages in his district and how people came together to work together. There is a lot of work to clean up a field and it's going to take a lot of man-hours. Sen. Bingham followed up and asked about qualifying for disaster funds and what is the dollar amount. Commissioner Troxler said there is a percentage limit (he thinks about 35%) and they will be in contact

with USDA to see what is available to help set up these farms again. NC knows how to handle disasters because of the hurricanes we've had in the past. This is a different situation because this is spring planting season. Usually a hurricane is in the fall of the year.

Secretary Freeman, Dept. of Commerce addressed members. He has also been out to see some of the damaged areas. He was there during Hurricanes Floyd, Fran and Hugo. It is important to help our residents and state government needs to be on the same page. He advised that the Governor has been working on an Executive Order to make sure that we can have a disposal of debris. He will be working with the Commissioner to workout what needs to be done. They do have some concerns for total exemption of air quality. He asked that the Governor, Commerce and Dept. of Agriculture be given time to work together to put something in place by this evening. Prison labor is also available to help with the clean-up efforts.

Sen. Tillman asked if they are asking us to not do this legislation. Sec. Freeman said he's asking for time to work on the Executive Order. Sen. East said he didn't see anything in the EO that would do anything different than this legislation can't act upon in a quick manner. He feels that we have a better solution for cleaning up these lands than what the EO will provide and he asked for the support of the Dept. of Commerence to work together to fix this problem. Sec. Freeman said we will have their support and asked for their support also. He makes to make sure people do this in a quick way to get their lives back to normal but not to do anything to affect our environment. He feels we can work through the issues this afternoon. Sen. Tucker feels the time is now and can't he and the Commissioner work together today and let the legislature move forward with this legislation today in an effort to make sure we have double security to help our citizens. Can't we have their blessings to move forward? Secretary Freeman said that functionality is important. What the legislature is doing makes sense, but he feels we should still move forward with the Executive Order. Moving forward could lead to contamination of water and other elements that could fires burning could lead to hazards for our emergency officials. They will work together under the EO and if they don't see it working well enough then the legislature could move forward. Sen. Brock spoke and feels we need to move quickly on this because it is handicapping our number one industry. He moved for a favorable report.

PUBLIC DISCUSSION:

Mike Sprayberry, Exec. Director for Emergency Management. They feel the Executive Order is the proper way to act on this. April is the highest fire month and we need to be very careful. Emergency Managers are working on funding from state and federal levels. Sen. Atwater told members how much we appreciate Emergency Management personnel. Sen. Brown feels we need action and it's time to move forward and be pro-active. Sen. East clarified a comment made by Sec. Freeman about debris that can be handled about storm related debris and this addressed the debris caused by the storm on April 16th.

Peter Daniel, Asst. President, Farm Bureau. President Wooten is traveling the state today and as of yesterday they have already had 1,700 claims and over 250 were total losses. Any relieve this body can offer is needed and appreciated.

Sen. Kinnaird asked if there are types of woods with chemicals that shouldn't be burned due to release of toxins in the air. Ms. Robin Smith, Asst. Deputy Secretary, DENR addressed membership and explained which woods or toxic materials are dangerous for air and water quality. Yes, there is a limitation of what can be burned and not. Sen. Tillman said we have an emergency and our farmers know how to do this. We can't start nit-picking and he moved

Rep. Mobley addressed members and advised that in Bertie County has sustained 12 deaths. There is nothing like walking through the devastated areas. It's difficult to watch the people. The Highway Patrol and Emergency Management has done an awesome job in helping so far. We do need something to help quickly assist our people. She would like to see us put aside partisan thoughts and let's work together to help the people in distress. There are environmental people all over and there are environmental people in the counties that can supervise and help make sure that no one over-steps their bounds. Sen. Ed Jones addressed members also. He said it is one thing to see this on TV but it's another to walk through these areas and see the damage. We need to do something to help these people, they could care less about the politics going on up here, we should be working to help these people. Sen. Jackson said he makes his living off the land. He asked that move forward and vote. Vote taken on the amendment and so moved.

Rep. Gillespie spoke again on the bill. He asked that we moved forward so the Senate can act today and move it to the House today. Sen. Tillman moved for favorable report and roll the amendment into a PCS. No further discussion, vote taken and so moved.

The meeting adjourned at 1:59.

Sen. David Rouzer, Co-Chair

Cindy J. Davis, Committee Clerk

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES COMMITTEE REPORT
Senator Don East, Co-Chair
Senator David Rouzer, Co-Chair

Wednesday, April 20, 2011

Senator EAST,
submits the following with recommendations as to passage:

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 1, BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL

H.B.(CS #1) **268** Implenmentation of Reclaimed Water Rules.

Draft Number:	PCS30300
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

TOTAL REPORTED: 1

Committee Clerk Comments:

Sen. East will handle

Principal Clerk ____
Reading Clerk ____

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

The Senate Committee on **Agriculture/Environment/Natural Resources** will meet at the following time:

DAY	DATE	TIME	ROOM
Wednesday	April 20, 2011	1:00	544 LOB

The following will be considered:

BILL NO.	SHORT TITLE	SPONSOR
HB 268	Implenmentation of Reclaimed Water Rules.	Representative Alexander Representative Avila Representative Gillespie

THERE WILL BE A PCS ON THIS BILL

Senator Don East, Co-Chair
Senator David Rouzer, Co-Chair

Senate Agriculture/Environment/Natural Resources Committee
Wednesday, April 20, 2011, 1:00
544 LOB

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

HB 268	Implenmentation of Reclaimed Water Rules.	Representative Alexander Representative Avila Representative Gillespie

Presentations

Other Business

Adjournment

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 268

AMENDMENT NO._____
(to be filled in by
Principal Clerk)

H268-ARI-7 [v.5]

Comm. Sub. [YES]
Amends Title [YES]
Third Edition

Date April 20, 2011

Senator East

moves to amend the bill on page 1, lines 1 through 12,
by rewriting those lines to read:

"A BILL TO BE ENTITLED

AN ACT TO (1) PROVIDE THAT USES OF RECLAIMED WATER THAT ARE DEEMED TO BE PERMITTED BY REGULATION, WITHOUT THE ISSUANCE OF AN INDIVIDUAL PERMIT OR COVERAGE UNDER A GENERAL PERMIT, INCLUDES IRRIGATION OF ORNAMENTAL CROPS BY FIELD NURSERIES AND ABOVEGROUND CONTAINER NURSERIES AND TO PROVIDE THAT CERTAIN SETBACK REQUIREMENTS AND DESIGN CRITERIA FOR WASTEWATER TREATMENT STORAGE FACILITIES DO NOT APPLY TO ARTIFICIAL LAKES OR PONDS THAT ARE USED FOR STORAGE AND IRRIGATION OF RECLAIMED WATER AS PART OF A CONJUNCTIVE USE RECLAIMED WATER SYSTEM AND (2) AUTHORIZE THE DISPOSAL, TEMPORARY STORAGE, AND BURNING OF STORM-RELATED DEBRIS DURING THE STATE OF EMERGENCY DECLARED ON APRIL 16, 2011 THROUGH JUNE 1, 2011.

The General Assembly of North Carolina enacts:

"PART I. IMPLEMENTATION OF RECLAIMED WATER RULES.

SECTION 1. Definitions. – The following definitions apply to this section and its" and

moves to amend the bill on page 2, line 42,
by rewriting that line to read:

"PART II. AUTHORIZE EXPEDITED CLEANUP OF STORM-RELATED DEBRIS.

SECTION 5.(a) The following definitions apply to this section and its implementation:

(1) The definitions set out in G.S. 130A-294.

(2) The definitions set out in 15A NCAC 02D .0101 (Air Pollution Control Requirements: Definitions and References).

(3) "Storm-related debris" means any construction or demolition debris, inert debris, land-clearing debris, or yard debris or trash generated in the State as a result of the tornados, flooding, and severe winds that occurred on April 16, 2011.

SECTION 5.(b) From the date that the state of emergency was declared by the Governor under Executive Order No. 87 through June 1, 2011, the disposal, temporary storage, and burning of storm-related debris is allowed, notwithstanding any permitting requirements for the handling or disposal of solid waste, or any prohibitions on open burning related to the protection of air quality provided under State law, including, but not limited to all of the following:

(1) G.S. 130A-294 (Solid Waste Management Program) and other provisions of Article 9 of Chapter 130A of the General Statutes as may prohibit the unpermitted disposal, temporary storage, or burning of storm-related debris.

(2) 15A NCAC 13B .0103 (Solid Waste Management: General Conditions) and 15A NCAC 13B .0201 (Permits for Solid Waste Management Facilities: Permit Required) and other provisions of the North Carolina Administrative Code as may prohibit the unpermitted disposal, temporary storage, or burning of storm-related debris.

(3) G.S. 143-215.3 (General Powers of Commission and Department; auxiliary powers) and other provisions of Article 21 of Chapter 143 of the General Statutes as may prohibit the unpermitted disposal, temporary storage, or burning of storm-related debris.

(4) 15A NCAC 02D .0305 (Air Pollution Control Requirements: Emission Reduction Plan: Alert Level) and other provisions of the North Carolina Administrative Code as may prohibit the unpermitted disposal, temporary storage, or burning of storm-related debris.

SECTION 5.(c) The provisions of subsection (b) of this section shall not be construed to: (i) allow the improper or unpermitted storage, disposal, or burning of hazardous waste; (ii) obviate the need for a permit to burn required under Article 4C of Chapter 113 for the protection of the public from the hazards of forest fires; (iii) allow any activity that would violate federal law; or (iv) allow any activity that causes an imminent threat to public health or safety.

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

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED ✓ FAILED _____ TABLED _____

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

H D

HOUSE BILL 268
Committee Substitute Favorable 3/31/11
Third Edition Engrossed 4/6/11
PROPOSED SENATE COMMITTEE SUBSTITUTE H268-PCS30300-RI-9

Short Title: Reclaimed Water Rules/Storm Debris Cleanup. (Public)

Sponsors:

Referred to:

March 10, 2011

A BILL TO BE ENTITLED

AN ACT TO (1) PROVIDE THAT USES OF RECLAIMED WATER THAT ARE DEEMED TO BE PERMITTED BY REGULATION, WITHOUT THE ISSUANCE OF AN INDIVIDUAL PERMIT OR COVERAGE UNDER A GENERAL PERMIT, INCLUDE IRRIGATION OF ORNAMENTAL CROPS BY FIELD NURSERIES AND ABOVEGROUND CONTAINER NURSERIES AND TO PROVIDE THAT CERTAIN SETBACK REQUIREMENTS AND DESIGN CRITERIA FOR WASTEWATER TREATMENT STORAGE FACILITIES DO NOT APPLY TO ARTIFICIAL LAKES OR PONDS THAT ARE USED FOR STORAGE AND IRRIGATION OF RECLAIMED WATER AS PART OF A CONJUNCTIVE USE RECLAIMED WATER SYSTEM AND (2) AUTHORIZE THE DISPOSAL, TEMPORARY STORAGE, AND BURNING OF STORM-RELATED DEBRIS DURING THE STATE OF EMERGENCY DECLARED ON APRIL 16, 2011, THROUGH JUNE 1, 2011.

The General Assembly of North Carolina enacts:

PART I. IMPLEMENTATION OF RECLAIMED WATER RULES.

SECTION 1. Definitions. – The following definitions apply to this section and its implementation:

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

(2) The definitions set out in 15A NCAC 02T .0103 (Waste Not Discharged to Surface Waters: Definitions).

(3) The definitions set out in 15A NCAC 02U .0103 (Reclaimed Water: Definitions).

(4) "Permitting by Regulation Rule 15A NCAC 02U .0113" means 15A NCAC 02U .0113 (Permitting by Regulation) as adopted by the Environmental Management Commission on November 18, 2010, and approved by the Rules Review Commission on December 16, 2010.

(5) "Reclaimed Water Utilization Rule 15A NCAC 02U .0501" means 15A NCAC 02U .0501 (Reclaimed Water Utilization) as adopted by the Environmental Management Commission on November 18, 2010, and approved by the Rules Review Commission on December 16, 2010.

SECTION 2.(a) Permitting by Regulation Rule 15A NCAC 02U .0113. – Until the effective date of the revised permanent rule that the Commission is required to adopt pursuant to Section 2(c) of this act, the Commission and the Department shall implement the Permitting by Regulation Rule 15A NCAC 02U .0113, as provided in Section 2(b) of this act.

SECTION 2.(b) Implementation. – Notwithstanding subsection (a) of Permitting by Regulation Rule 15A NCAC 02U .0113, irrigation of agricultural crops, including irrigation of ornamental crops by field nurseries and aboveground container nurseries, supplied with reclaimed water as part of a conjunctive use reclaimed water system meeting the requirements of 15A NCAC 02U .0401 and approved by the reclaimed water provider is deemed to be permitted pursuant to G.S. 143-215.1(b), and it is not necessary for the Division to issue individual permits or coverage under a general permit for construction or operation of this type of utilization system, provided the system does not result in any violations of surface water or groundwater standards and there is no unpermitted direct discharge to surface waters.

SECTION 2.(c) Additional Rule-Making Authority. – The Commission shall adopt a rule to replace Permitting by Regulation Rule 15A NCAC 02U .0113. Notwithstanding G.S. 150B-19(4), the rule adopted by the Commission pursuant to this section shall be substantively identical to the provisions of Section 2(b) of this act. 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 3.(a) Reclaimed Water Utilization Rule 15A NCAC 02U .0501. – Until the effective date of the revised permanent rule that the Commission is required to adopt pursuant to Section 3(c) of this act, the Commission and the Department shall implement the Reclaimed Water Utilization Rule 15A NCAC 02U .0501, as provided in Section 3(b) of this act.

SECTION 3.(b) Implementation. – Notwithstanding subsection (a) of Reclaimed Water Utilization Rule 15A NCAC 02U .0501, existing or proposed artificial lakes or ponds operated by customers of reclaimed water providers may be used for storage and irrigation of reclaimed water as part of a conjunctive use reclaimed water system as provided in this section. Setbacks specified in 15A NCAC 02U .0701(b) between reclaimed water storage ponds and property lines or wells under separate ownership may be waived by the adjoining property owner. A copy of the signed and notarized waiver shall be provided to the Department. Setbacks specified in 15A NCAC 02U .0701(b) between reclaimed water storage ponds and wells under the same ownership as the reclaimed water storage pond may be waived by the property owner. The criteria for liners specified in 15A NCAC 02U .0401(f) are not required, provided the effluent quality of the reclaimed water source is protective of the groundwater standard for nitrates established pursuant to Subchapter 2L of Title 15A of the North Carolina Administrative Code.

SECTION 3.(c) Additional Rule-Making Authority. – The Commission shall adopt a rule to replace Reclaimed Water Utilization Rule 15A NCAC 02U .0501. Notwithstanding G.S. 150B-19(4), the rule adopted by the Commission pursuant to this section shall be substantively identical to the provisions of Section 3(b) of this act. 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 4. If a National Pollutant Discharge Elimination System permit is required for storage or irrigation of reclaimed water as part of a conjunctive use reclaimed water system, the Division of Water Quality in the Department of Environment and Natural Resources shall issue general permits for such activities in order to encourage the use of reclaimed water and to minimize the regulatory burden on users of reclaimed water.

PART II. AUTHORIZE EXPEDITED CLEANUP OF STORM-RELATED DEBRIS.

SECTION 5.(a) The following definitions apply to this section and its implementation:

(1) The definitions set out in G.S. 130A-294.

(2) The definitions set out in 15A NCAC 02D .0101 (Air Pollution Control Requirements: Definitions and References).

(3) "Storm-related debris" means any construction or demolition debris, inert debris, land-clearing debris, or yard debris or trash generated in the State as a result of the tornados, flooding, and severe winds that occurred on April 16, 2011.

SECTION 5.(b) From the date that the state of emergency was declared by the Governor under Executive Order No. 87 through June 1, 2011, the disposal, temporary storage, and burning of storm-related debris is allowed, notwithstanding any permitting requirements for the handling or disposal of solid waste, or any prohibitions on open burning related to the protection of air quality provided under State law, including, but not limited, to all of the following:

(1) G.S. 130A-294 (Solid Waste Management Program) and other provisions of Article 9 of Chapter 130A of the General Statutes as may prohibit the unpermitted disposal, temporary storage, or burning of storm-related debris.

(2) 15A NCAC 13B .0103 (Solid Waste Management: General Conditions) and 15A NCAC 13B .0201 (Permits for Solid Waste Management Facilities: Permit Required) and other provisions of the North Carolina Administrative Code as may prohibit the unpermitted disposal, temporary storage, or burning of storm-related debris.

(3) G.S. 143-215.3 (General Powers of Commission and Department; auxiliary powers) and other provisions of Article 21 of Chapter 143 of the General Statutes as may prohibit the unpermitted disposal, temporary storage, or burning of storm-related debris.

(4) 15A NCAC 02D .0305 (Air Pollution Control Requirements: Emission Reduction Plan: Alert Level) and other provisions of the North Carolina Administrative Code as may prohibit the unpermitted disposal, temporary storage, or burning of storm-related debris.

SECTION 5.(c) The provisions of subsection (b) of this section shall not be construed to (i) allow the improper or unpermitted storage, disposal, or burning of hazardous waste; (ii) obviate the need for a permit to burn required under Article 4C of Chapter 113 of the General Statutes for the protection of the public from the hazards of forest fires; (iii) allow any activity that would violate federal law; or (iv) allow any activity that causes an imminent threat to public health or safety.

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

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 268

AMENDMENT NO._____
(to be filled in by
Principal Clerk)

H268-ARI-7 [v.5]

Comm. Sub. [YES]
Amends Title [YES]
Third Edition

Date April 20, 2011

Senator East

moves to amend the bill on page 1, lines 1 through 12,
by rewriting those lines to read:

"A BILL TO BE ENTITLED

AN ACT TO (1) PROVIDE THAT USES OF RECLAIMED WATER THAT ARE DEEMED TO BE PERMITTED BY REGULATION, WITHOUT THE ISSUANCE OF AN INDIVIDUAL PERMIT OR COVERAGE UNDER A GENERAL PERMIT, INCLUDES IRRIGATION OF ORNAMENTAL CROPS BY FIELD NURSERIES AND ABOVEGROUND CONTAINER NURSERIES AND TO PROVIDE THAT CERTAIN SETBACK REQUIREMENTS AND DESIGN CRITERIA FOR WASTEWATER TREATMENT STORAGE FACILITIES DO NOT APPLY TO ARTIFICIAL LAKES OR PONDS THAT ARE USED FOR STORAGE AND IRRIGATION OF RECLAIMED WATER AS PART OF A CONJUNCTIVE USE RECLAIMED WATER SYSTEM AND (2) AUTHORIZE THE DISPOSAL, TEMPORARY STORAGE, AND BURNING OF STORM-RELATED DEBRIS DURING THE STATE OF EMERGENCY DECLARED ON APRIL 16, 2011 THROUGH JUNE 1, 2011.

The General Assembly of North Carolina enacts:

"PART I. IMPLEMENTATION OF RECLAIMED WATER RULES.

SECTION 1. Definitions. – The following definitions apply to this section and its"
and

moves to amend the bill on page 2, line 42,
by rewriting that line to read:

"PART II. AUTHORIZE EXPEDITED CLEANUP OF STORM-RELATED DEBRIS.

SECTION 5.(a) The following definitions apply to this section and its implementation:

(1) The definitions set out in G.S. 130A-294.

(2) The definitions set out in 15A NCAC 02D .0101 (Air Pollution Control Requirements: Definitions and References).

(3) "Storm-related debris" means any construction or demolition debris, inert debris, land-clearing debris, or yard debris or trash generated in the State as a result of the tornados, flooding, and severe winds that occurred on April 16, 2011.

SECTION 5.(b) From the date that the state of emergency was declared by the Governor under Executive Order No. 87 through June 1, 2011, the disposal, temporary storage, and burning of storm-related debris is allowed, notwithstanding any permitting requirements for the handling or disposal of solid waste, or any prohibitions on open burning related to the protection of air quality provided under State law, including, but not limited to all of the following:

(1) G.S. 130A-294 (Solid Waste Management Program) and other provisions of Article 9 of Chapter 130A of the General Statutes as may prohibit the unpermitted disposal, temporary storage, or burning of storm-related debris.

(2) 15A NCAC 13B .0103 (Solid Waste Management: General Conditions) and 15A NCAC 13B .0201 (Permits for Solid Waste Management Facilities: Permit Required) and other provisions of the North Carolina Administrative Code as may prohibit the unpermitted disposal, temporary storage, or burning of storm-related debris.

(3) G.S. 143-215.3 (General Powers of Commission and Department; auxiliary powers) and other provisions of Article 21 of Chapter 143 of the General Statutes as may prohibit the unpermitted disposal, temporary storage, or burning of storm-related debris.

(4) 15A NCAC 02D .0305 (Air Pollution Control Requirements: Emission Reduction Plan: Alert Level) and other provisions of the North Carolina Administrative Code as may prohibit the unpermitted disposal, temporary storage, or burning of storm-related debris.

SECTION 5.(c) The provisions of subsection (b) of this section shall not be construed to: (i) allow the improper or unpermitted storage, disposal, or burning of hazardous waste; (ii) obviate the need for a permit to burn required under Article 4C of Chapter 113 for the protection of the public from the hazards of forest fires; (iii) allow any activity that would violate federal law; or (iv) allow any activity that causes an imminent threat to public health or safety.

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

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

H 3

HOUSE BILL 268
Committee Substitute Favorable 3/31/11
Third Edition Engrossed 4/6/11

Short Title: Implementation of Reclaimed Water Rules. (Public)

Sponsors:

Referred to:

March 10, 2011

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT USES OF RECLAIMED WATER THAT ARE DEEMED TO BE PERMITTED BY REGULATION, WITHOUT THE ISSUANCE OF AN INDIVIDUAL PERMIT OR COVERAGE UNDER A GENERAL PERMIT, INCLUDES IRRIGATION OF ORNAMENTAL CROPS BY FIELD NURSERIES AND ABOVEGROUND CONTAINER NURSERIES AND TO PROVIDE THAT CERTAIN SETBACK REQUIREMENTS AND DESIGN CRITERIA FOR WASTEWATER TREATMENT STORAGE FACILITIES DO NOT APPLY TO ARTIFICIAL LAKES OR PONDS THAT ARE USED FOR STORAGE AND IRRIGATION OF RECLAIMED WATER AS PART OF A CONJUNCTIVE USE RECLAIMED WATER SYSTEM.

The General Assembly of North Carolina enacts:

SECTION 1. Definitions. – The following definitions apply to this act and its implementation:

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

(2) The definitions set out in 15A NCAC 02T .0103 (Waste Not Discharged to Surface Waters: Definitions).

(3) The definitions set out in 15A NCAC 02U .0103 (Reclaimed Water: Definitions).

(4) "Permitting by Regulation Rule 15A NCAC 02U .0113" means 15A NCAC 02U .0113 (Permitting by Regulation) as adopted by the Environmental Management Commission on November 18, 2010, and approved by the Rules Review Commission on December 16, 2010.

(5) "Reclaimed Water Utilization Rule 15A NCAC 02U .0501" means 15A NCAC 02U .0501 (Reclaimed Water Utilization) as adopted by the Environmental Management Commission on November 18, 2010, and approved by the Rules Review Commission on December 16, 2010.

SECTION 2.(a) Permitting by Regulation Rule 15A NCAC 02U .0113. – Until the effective date of the revised permanent rule that the Commission is required to adopt pursuant to Section 2(c) of this act, the Commission and the Department shall implement the Permitting by Regulation Rule 15A NCAC 02U .0113, as provided in Section 2(b) of this act.

SECTION 2.(b) Implementation. – Notwithstanding subsection (a) of Permitting by Regulation Rule 15A NCAC 02U .0113, irrigation of agricultural crops, including irrigation of ornamental crops by field nurseries and aboveground container nurseries, supplied with reclaimed water as part of a conjunctive use reclaimed water system meeting the requirements of 15A NCAC 02U .0401 and approved by the reclaimed water provider is deemed to be

permitted pursuant to G.S. 143-215.1(b), and it is not necessary for the Division to issue individual permits or coverage under a general permit for construction or operation of this type of utilization system, provided the system does not result in any violations of surface water or groundwater standards and there is no unpermitted direct discharge to surface waters.

SECTION 2.(c) Additional Rule-Making Authority. – The Commission shall adopt a rule to replace Permitting by Regulation Rule 15A NCAC 02U .0113. Notwithstanding G.S. 150B-19(4), the rule adopted by the Commission pursuant to this section shall be substantively identical to the provisions of Section 2(b) of this act. 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 3.(a) Reclaimed Water Utilization Rule 15A NCAC 02U .0501. – Until the effective date of the revised permanent rule that the Commission is required to adopt pursuant to Section 3(c) of this act, the Commission and the Department shall implement the Reclaimed Water Utilization Rule 15A NCAC 02U .0501, as provided in Section 3(b) of this act.

SECTION 3.(b) Implementation. – Notwithstanding subsection (a) of Reclaimed Water Utilization Rule 15A NCAC 02U .0501, existing or proposed artificial lakes or ponds operated by customers of reclaimed water providers may be used for storage and irrigation of reclaimed water as part of a conjunctive use reclaimed water system as provided in this section. Setbacks specified in 15A NCAC 02U .0701(b) between reclaimed water storage ponds and property lines or wells under separate ownership may be waived by the adjoining property owner. A copy of the signed and notarized waiver shall be provided to the Department. Setbacks specified in 15A NCAC 02U .0701(b) between reclaimed water storage ponds and wells under the same ownership as the reclaimed water storage pond may be waived by the property owner. The criteria for liners specified in 15A NCAC 02U .0401(f) are not required, provided the effluent quality of the reclaimed water source is protective of the groundwater standard for nitrates established pursuant to Subchapter 2L of Title 15A of the North Carolina Administrative Code.

SECTION 3.(c) Additional Rule-Making Authority. – The Commission shall adopt a rule to replace Reclaimed Water Utilization Rule 15A NCAC 02U .0501. Notwithstanding G.S. 150B-19(4), the rule adopted by the Commission pursuant to this section shall be substantively identical to the provisions of Section 3(b) of this act. 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 4. If a National Pollutant Discharge Elimination System permit is required for storage or irrigation of reclaimed water as part of a conjunctive use reclaimed water system, the Division of Water Quality in the Department of Environment and Natural Resources shall issue general permits for such activities in order to encourage the use of reclaimed water and to minimize the regulatory burden on users of reclaimed water.

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

HOUSE BILL 268:
Implementation of Reclaimed Water Rules

2011-2012 General Assembly

Committee:	Senate Agriculture/Environment/Natural Resources	**Date:**	April 20, 2011
Introduced by:	Representatives Gillespie, K. Alexander, and Avila	**Prepared by:**	Jeff Hudson Committee Counsel
Analysis of:	Third Edition		

SUMMARY: ***House Bill 268 would provide for alternative implementation of the two rules that are subject to legislative disapproval within the suite of 32 rules on reclaimed water that were adopted by the Environmental Management Commission on November 18, 2010, and approved by the Rules Review Commission on December 10, 2010. Specifically, the bill would provide that (i) uses of reclaimed water that are deemed to be permitted by regulation includes irrigation of ornamental crops by field nurseries and above ground container nurseries, and (ii) certain setback requirements and design criteria would not apply to artificial lakes or ponds that are used for storage and irrigation of reclaimed water under certain circumstances.***

BACKGROUND: In 2008, the Drought/Water Management Recommendations Act (S.L. 2008-143[1]) was enacted by the General Assembly in response to the record drought conditions experienced by the State during 2007 and 2008. Section 10 of the Act codified a statute (G.S. 143-355.5) that established a new water reuse policy for the State. This statute provides that reuse of treated wastewater or reclaimed water[2] is critical to meeting the existing and future water supply needs of the State and that reclaimed water systems that are permitted and operated under law in an approved wastewater reuse program can provide water for many beneficial purposes in a way that is both environmentally acceptable and protective of public health. Furthermore, the statute requires the Environmental Management Commission (Commission) to encourage and promote safe and beneficial reuse of treated wastewater as an alternative to surface water discharge and directs the Commission to adopt rules to: (i) identify acceptable uses of reclaimed water, including toilet flushing, fire protection, decorative water features, and landscape irrigation; (ii) facilitate the permitting of reclaimed water systems; and (iii) establish standards for reclaimed water systems that are adequate to prevent the direct distribution of reclaimed water as potable water.

As directed by that statute, the Commission started a rulemaking process to address reclaimed water in 2008. The goals of the rulemaking were to provide for protection of public health and the environment and to balance increased flexibility in order to facilitate wider use of reclaimed water with appropriate regulatory requirements to ensure its safe use. In September 2008, the Commission approved Proposed Rules to proceed to public hearing. According to the Commission, the proposed adoption of Subchapter 02U of 15A North Carolina Administrative Code (NCAC) and proposed repeal of the reclaimed water rules in Section .0900 in Subchapter 02T of 15A NCAC would:

- Clarify existing reclaimed water rule language in order to remove unintended restrictions and facilitate the use of reclaimed water (Subchapter 02U).

[1] The Drought/Water Management Recommendations Act is available here: http://www.ncleg.net/enactedlegislation/sessionlaws/html/2007-2008/sl2008-143.html

[2] If adopted, 15A NCAC 02U .0103 would define ***reclaimed water*** to mean "treated wastewater effluent, meeting effluent standards established [by rule] ... and used for beneficial reuse" and ***beneficial reuse*** to mean "the utilization of reclaimed water in a beneficial manner and for the purpose of conservation of the State's water resources by reducing the use of other water resources (potable water, surface water, groundwater)."

- Provide two separate categories for reclaimed water based on the level of treatment and the intended use of the reclaimed water (Subchapter 02U).
- Categorize reclaimed water as a resource, rather than associate reclaimed water with a set of rules that address wastewater disposal (Subchapter 02T).

The fiscal and economic impact analysis[3] of the Proposed Rules was approved by the Office of State Budget and Management in November 2009. The Proposed Rules were published in the North Carolina Register on February 15, 2010 and in March 2010 three public hearings were held. The Commission adopted the rules on November 18, 2010 and the rules were approved by the Rules Review Commission (RRC) on December 16, 2010.

The RRC received a sufficient number of objection letters on two of the suite of 32 rules on reclaimed water to necessitate their review by the General Assembly during its 2011 Regular Session. Because the two rules subject to disapproval affect the implementation of the full suite of 32 rules, the Commission has elected to halt the effective date of the remaining 30 rules pending the outcome of the legislative disapproval process. Another disapproval bill has been introduced, House Bill 388, that prohibits the entire suite of 32 rules on reclaimed water from becoming effective. If no action is taken by the General Assembly on either disapproval bill, the rules will be become effective upon adjournment of the 2011 Regular Session.

CURRENT LAW: The Commission is authorized to regulate reclaimed water systems pursuant to G.S. 143-215.1 and has adopted rules – Reclaimed Water Systems (15A NCAC 02T .0900) – for systems that utilize tertiary treated wastewater effluent, used in a beneficial manner, and for the purpose of conserving the State's water resources by reducing the use of a water resource.

BILL ANALYSIS: House Bill 268 would provide for alternative implementation of the two rules that are subject to legislative disapproval as follows:

Section 2: Permitting by Regulation Rule (15A NCAC 02U .0113)

House Bill 268 would provide for alternative implementation of the Permitting by Regulation Rule. This rule provides that certain uses of reclaimed water are deemed to be permitted by regulation. Permitted by regulation means it is not necessary for the Division of Water Quality (Division) in the Department of Environment and Natural Resources (Department) to issue individual permits or coverage under a general permit for construction or operation of the reclaimed water system provided the system does not result in any violations of surface or groundwater standards, there is no unpermitted direct discharge to surface waters, and all criteria for the specific type of system are met.[4]

House Bill 268 would provide that permit by regulation for irrigation of agricultural crops that are supplied with reclaimed water meeting the requirements of these rules includes irrigation of ornamental crops by field nurseries and above ground container nurseries.

Section 3: Reclaimed Water Utilization Rule (15A NCAC 02U .0501)

House Bill 268 would provide for alternative implementation of the Reclaimed Water Utilization Rule. This rule provides that reclaimed water utilized in a manner that includes land application must meet

[3] OSBM Fiscal and Economic Impact Analysis of Proposed Rules is available at: www.osbm.state.nc.us/files/pdf_files/DENR11182009.pdf

[4] Permitting by regulation does not mean that a specific activity is allowed without being permitted, is means that a written permit is not issued for the activity predicated on the basis that all applicable rule requirements must still be met with regards to system design and operation.

several criteria, the majority of which apply to reclaimed water generators or providers (wastewater treatment systems).

House Bill 268 would provide that existing or proposed artificial lakes or ponds operated by customers of reclaimed water providers may be used for storage and irrigation of reclaimed water with limited requirements for setbacks and liners as follows:

Setbacks: Setbacks between reclaimed water storage ponds and property lines or wells that are under separate ownership may be waived by the adjoining property owner. A copy of the signed and notarized waiver must be provided to the Department. Setbacks between reclaimed water storage ponds and wells that are under the same ownership as the storage pond may be waived by the property owner.

Liners: Liners would not be required for reclaimed water storage ponds provided the effluent quality of the reclaimed water source is protective of the groundwater standard for nitrates established by rule.

Section 4 would provide that if a National Pollutant Discharge Elimination System (NPDES) permit is required for storage or irrigation of reclaimed water, the Division must issue general permits for such activities to encourage the use of reclaimed water and to minimize the regulatory burden on users of reclaimed water.

EFFECTIVE DATE: This act would become effective when it becomes law.

Jennifer Mundt, Legislative Analyst for Senate Agriculture, Environment, and Natural Resources, substantially contributed to this summary.

VISITOR REGISTRATION SHEET

Ag/Env/Nat. Resources (2011-2012)
Name of Committee **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Jon Risgaard	DENR
Alex Miller	RLG
Thomas C Caves, Jr.	NC Dept. of Crime Control & Public Safety
Mike Spayberry	NCEM
Marty Wilder	DENR
Robin Smith	DENR
Dexter Matthews	DENR
Bill Carlton	atty
Daniel Ambrose	NCWA
Butch Gunnells	NCBIA
MW Hodgson	BPS/CCPS

VISITOR REGISTRATION SHEET

Ag/Env/Nat. Resources (2011-2012)
Name of Committee **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Kari Barsness	DENR
Bryan Gurley	
LAWRENCE DAVENPORT	NCSU
Kevin Ilnicki	NCSU
Angie Harris	WRA
[illegible]	Ag Commissioner's Office
R Lamm	RLA
Cameron Graham	HUTF
Grant Pendergraft	NC Sheriffs' Association
Eddie Caldwell	NC Sheriffs' Assn.

VISITOR REGISTRATION SHEET

Ag/Env/Nat. Resources (2011-2012) 4/20/11

Name of Committee **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
W. Gordon Culpepper	CSS
[signature]	CSS
Paul Sherrer	NCFB
BRUCE THOMPSON	PARKER POE
[signature]	
[signature]	NCFB
[signature]	NCFB
[signature]	NC Wildlife Fed Comm
[signature]	GIC
Peter Daniel	NCFB
[signature]	PBV

VISITOR REGISTRATION SHEET

Ag/Env/Nat. Resources (2011-2012) — 4/20/11

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Rick Zechini	Progress Ptg
Doug Heron	WM
Jay Hicks	NCDA
Ray Starr	"
Henri McClees	McClees Consulting
Joe McClees	McClees Consulting
CS Hollis	EDS
Tommy Stevens	NCPC
Ken Bruce	MCC

Sgt At Arms

Charles Harper

Stan Johnson

Jon Fitchette

Steve Wilson

PAGES ATTENDING

COMMITTEE: Agriculture **ROOM:** 544

DATE: 4-20 **TIME:** 1 pm

PLEASE PRINT LEGIBILY!!!!!!!!!!!!!

	Page Name	Hometown	Sponsoring Senator
1	Kristen Johnson	Cary	Blue
2	Janie Leland	Tarboro	Jenkins
3	Lydia Simpson	Hope Mills	Meredith
4	Ben Rice	Raleigh	Stevens
5	David Fleming	Eden	P. Berger
6	Zach Dale	Cary	Bingham
7			
8			
9			
10			

Do not add names below the grid.

Senate Agriculture/Environment/Natural Resources

MINUTES

April 26, 2011

The Senate Ag/Env/Nat. Resources committee met on Tuesday, April 26, 2011 in Room 544-LOB at 11:00 pm. There were 14 senators present.

Sen. Don East called the meeting to order and introduced the Pages and Sgt-At-Arms staff.

SB-514 NUTRIENT MANAGEMENT PLAN ONLY FOR NSW

Sen. Brunstetter explained the bill. Sen. Bingham asked if there is a time-frame for this bill and will this protect the cities? Sen. Brunstetter responded. Mr. Steve Tedder, Environmental Consultant, addressed members with further explanation and advised this could be a 2 or 3 year process. Sen. Tucker moved for a favorable report. Sen. Atwater asked if there have been public hearings yet? Mr. Jeff Hudson, staff counsel advised this does not involve Falls Lake. No further discussion, vote taken and so moved.

SB-501 SWINE HOUSE RENOVATIONS/SITE LIMITS

Sen. Brock moved for the PCS for discussion. So moved. Sen. Rouzer explained. Sen. Jenkins moved for a favorable report for the PCS, unfavorable to the original bill. Sen. Tucker asked if old hog houses would be allowed to increase their number of hogs. Sen. Rouzer said they could enlarge the house for more room but not increase their production limit. Sen. Bingham asked about the building code changes. Sen. Rouzer explained. Sen. Atwater said he thinks only relates to hog houses, not lagoons. Sen. Rouzer agreed. Mr. Tom Beam, Environmental Defense, they oppose this because they believe it will allow for more hog farms to be rebuilt. They are interested in health of the public. No further discussion, vote taken and so moved.

SB-493 – CODIFY NC CENTURY FARMS PROGRAM IN DACS

Sen. Walters moved for the adoption of the PCS for discussion. Sen. Daniels explained the PCS. Sen. Tucker moved for adoption of the PCS, unfavorable to the original bill. No further discussion, vote taken and so moved.

CHAIRMAN EAST ANNOUNCED THAT THE NEXT BILLS WILL BE FOR DISCUSSION ONLY

SB – 374 LANDOWNER PROTECTION ACT

Sen. Walters moved for adoption of the PCS for discussion. So moved. Sen. Walters explained the PCS. Sen. Jenkins thinks this is a good bill and he wishes we were voting today.

Public Speakers:

Mr. Larry Wooten, President of NC Farm Bureau addressed members and advised that they are in full support of this bill. The road minority can cause problems for farmers. They have worked with the Wildlife Commission to develop this bill. They have clients that have told them they dread to see hunting season begin for of the landowner issues.

Mr. Parker Lumpkin, Past President of Forestry Assoc., addressed members and he thanked sponsors for this legislation. They support this bill. He is also a land owner and all land owners need to know who, and why, people are their properties. This will give you respect when you meet someone who is on your property that is armed with their hunting weapons. This is helpful for their forestry officers. Written permission is necessary to allow people on your land. He commended sponsors for increasing the fines.

Chairman East asked staff if there is language in the statues that would protect a landowner when someone is on their property. If there is no trespassing signs posted what does that mean. Mr. Jeff Hudson responded and explained the liabilities as landowners if land is not posted. It is good advice to have your land posted so people will know they do not have permission to be on posted land.

Mr. Gordon Myers, NC Wildlife Commission, stated their position. Hunting is a privilege in NC and they need to know respect for landowners. Unfortunately, sometimes this does not happen for some reasons as in change of ownership of land. They do support this bill and it will provide state-wide consistency.

Sen. Bingham supports this and he doesn't understand why we can't vote today. Sen. Rabon has an issue with this. He doesn't feel this will change confrontations that could occur on properties. Also, the road right-away's can be problem between county lines. It can cause problems for hunting clubs if there are state maintained roads that are hunted on in hunting season. He thinks this is asking too much of the wildlife services. Sen. Walters responded to his comments. He is in the forestry industry and there are others that use those roads besides hunters. He understands his concerns but assures members that others do use the roads. Sen. Tillman asked if you can get off the side and hunt and does this prohibit hunters. Sen. Walters said it does not.

SB-429 HUNTING PROTECTION ACT

Sen. Tillman moved for the adoption of the PCS for discussion. Vote taken and so moved. Sen. Jackson explained the PCS. He said this is to protect responsible dog hunters. He has received so many phone calls and emails against SB-374. He does own land and he feels it is the right of dog hunters that we offer them protection. He doesn't want to eliminate dog hunter's rights. He thinks the two bills

together will be a good bill (combine SB-374 and SB-429). Sen. Allran asked about Part A referring to arrests, how would permission be given. Sen. Jackson said the landowner will have to ask for this. Sen. Allran spoke again and asked how an officer knows if a person has permission if the landowner is not available. Sen. Jackson said in that case there would be arrest. Sen. Allran has concerns. Sen. Tucker said he is a hunter and he feels that hunters know when they are on the properties. He thinks that combining the two bills would be a good bill. Sometime deer hunters will run over fences and tear up property and that's where the problems come from. Sen. Walters thanked Sen. Jackson for previous conversations on this issue. He feels this still puts the burden on the landowner and getting written permission can be a problem for elderly property owners that won't go to the courthouse to enforce this.

Public Comments:

Dale Caveny, Col. Wildlife Commission, spoke on the two differences in the two bills.

Mr. Bobby Harris, Camden County, oppose the bills. They recognize there are problems and they have done what they can to address this with some of their hunters. Looking for their dogs can be a problem sometimes. Standing on the side of the road shooting towards a field is better than shooting from the middle of a road. They need the right to retrieve their dogs and not violate property rights. Where the game goes is where the dogs will go, and that's not the dogs fault. He agrees with landowner's rights and he urges everyone to leave the land in good condition just like it was before they were there. Anyone who doesn't want people on their land should have it posted.

Mr. Wayne White, Currituck County, he is opposed to SB-374. He would like to see them work together to get something in place. He is president of a 70-member hunting club. He doesn't feel like this should not be state-wide. He agrees with Mr. Harris' comments about standing on road side.

Mr. Jay Dixon, Pender County, NC Concerned Sportsman's Assoc. said this is against their rights to hunt like they have been in the past. Landowners should register their property. For insurance reasons people won't give you permission to hunt their properties.

Ms. Henri McClees, NC Sporting Dog Association, summarizes the concerns. They support Sen. Jackson's bill. They feel land should be registered. Some landowners do not oppose hunting but they do not want to register their land.

Mr. Harry Ennis, Harnett County, was in law enforcement for 40 years and he understands the issues here today. Landowners don't have to be present to enforce action. They oppose SB-374 and support Sen. Jackson's bill.

Mr. Jeffrey Williams, Pitt County landowner. He doesn't know why his family has to have a permit to hunt on his land. He likes Sen. Jackson's bill.

Mr. Will Cane, Bladen County, President of NC Fox Hunters Association, if land is registered this will help both sides. Most issues occur during deer hunting season.

Mr. Tony Mitchell, Wayne County, Eastern NC Fox Hunters Assoc. and they oppose SB-374 but like SB-429.

Chairman East advised a sub committee will be appointed to discuss these further. Sen. Allran asked for clarification on Sen. Clary's bill that has already passed. Mr. Hudson said he believes that is about retrieving game after hours that would normally be allowed to retrieve.

Members: Chairman Michael Walters, Chairman Jackson, Tucker, Allran and Daniels will serve on the sub-committee.

Other bills we didn't get to today will rescheduled for a later date (SB-484 & SB-380). SB-676 was removed from today's agenda by the sponsor.

The meeting adjourned at 12:03.

Sen. Don East, Co-Chair

Cindy J. Davis, Committee Clerk

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES COMMITTEE REPORT
Senator Don East, Co-Chair
Senator David Rouzer, Co-Chair

Tuesday, April 26, 2011

Senator EAST,
submits the following with recommendations as to passage:

FAVORABLE

S.B. **514** Nutrient Management Plan Only For NSW.
Sequential Referral: None
Recommended Referral: None

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

S.B. **493** Codify NC Century Farms Program in DACS.
Draft Number: PCS55285
Sequential Referral: None
Recommended Referral: None
Long Title Amended: No

S.B. **501** Swine House Renovations/Site Limits.
Draft Number: PCS55286
Sequential Referral: None
Recommended Referral: None
Long Title Amended: No

TOTAL REPORTED: 3

Committee Clerk Comments:

Senate Agriculture/Environment/Natural Resources Committee
Tuesday, April 26, 2011, 11:00
544 LOB

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

SB 374	Landowner Protection Act.	Senator Walters Senator Apodaca Senator Tucker
SB 380	ETJ/Clarify Definition of Bona Fide Farm.	Senator Jackson
SB 429	Hunting Protection Act.	Senator Jackson
SB 484	REPS Credits at Cleanfields Parks.	Senator Jackson
SB 493	Codify NC Century Farms Program in DACS.	Senator Jackson
SB 501	Swine House Renovations/Site Limits.	Senator Daniel Senator Rouzer Senator Jackson
SB 514	Nutrient Management Plan Only For NSW.	Senator Brunstetter
SB 676	Clarify Water & Well Rights/Private Property.	Senator Rouzer Senator East Senator Jackson

Presentations

Other Business

Adjournment

Principal Clerk ____
Reading Clerk ____

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

The Senate Committee on **Agriculture/Environment/Natural Resources** will meet at the following time:

DAY	DATE	TIME	ROOM
Tuesday	April 26, 2011	11:00	544 LOB

The following will be considered:

BILL NO.	SHORT TITLE	SPONSOR
SB 374	Landowner Protection Act.	Senator Walters Senator Apodaca Senator Tucker
SB 380	ETJ/Clarify Definition of Bona Fide Farm.	Senator Jackson
SB 429	Hunting Protection Act.	Senator Jackson
SB 484	REPS Credits at Cleanfields Parks.	Senator Jackson
SB 501	Swine House Renovations/Site Limits.	Senator Rouzer Senator Jackson
SB 514	Nutrient Management Plan Only For NSW.	Senator Brunstetter
SB 676	Clarify Water & Well Rights/Private Property.	Senator Rouzer Senator East Senator Jackson
SB 493	Codify NC Century Farms Program in DACS.	Senator Jackson Senator Daniel

Senator Don East, Co-Chair
Senator David Rouzer, Co-Chair

S 1

SENATE BILL 514*

Short Title:	Nutrient Management Plan Only For NSW.	(Public)
Sponsors:	Senator Brunstetter.	
Referred to:	Agriculture/Environment/Natural Resources.	

April 6, 2011

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT A NUTRIENT MANAGEMENT PLAN SHALL NOT BE DEVELOPED, ADOPTED, OR IMPLEMENTED FOR SURFACE WATERS OF THE STATE UNLESS THOSE WATERS HAVE FIRST BEEN CLASSIFIED AS NUTRIENT SENSITIVE WATERS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 143-215.1 is amended by adding a new subsection to read:

"(c7) Notwithstanding any other provision of law, a nutrient management plan shall not be developed, adopted, or implemented for surface waters of the State unless those waters have first been classified as nutrient sensitive waters (NSW) under rules adopted by the Commission."

SECTION 2. S.L. 2005-190 is amended by adding a new section to read:

"**SECTION 4A.** This act shall not be construed to authorize the development or implementation of a nutrient management plan for surface waters of the State unless those waters have first been classified as nutrient sensitive waters (NSW) under rules adopted by the Commission."

SECTION 3. This act is effective when it becomes law and applies to nutrient management plans that have not been approved by the Commission prior to that date.

SENATE BILL 514:
Nutrient Management Plan Only For NSW

2011-2012 General Assembly

Committee:	Senate Agriculture/Environment/Natural Resources	**Date:**	April 26, 2011
Introduced by:	Senator Brunstetter	**Prepared by:**	Jeff Hudson
Analysis of:	First Edition		Committee Counsel

SUMMARY: ***Senate Bill 514 would prohibit the development, adoption, or implementation of a nutrient management plan for surface waters that have not been classified as nutrient sensitive waters.***

BACKGROUND AND CURRENT LAW:

North Carolina, like most other states, has accepted delegation from the federal government for implementation of the federal Clean Water Act. Pursuant to this delegation, the State, through the Environmental Management Commission (EMC), must designate classifications for each water body in the State based on the uses or potential uses of the water body, such as public water supply; protection and propagation of fish, shellfish, and wildlife; recreation in and on the water; and agricultural, industrial, and other purposes, including navigation. The EMC may also make supplemental classifications based on special characteristics of a water body. One such classification is the nutrient sensitive waters or NSW classification. Nutrient sensitive waters are those waters that have a history of exceeding nutrient standards, which can lead to algal blooms and other harmful effects.

The following watersheds have active nutrient sensitive waters strategies designed to reduce excessive nutrient loading into surface waters: the Neuse River Basin, the Tar-Pamlico River Basin, and the Jordan Lake Watershed. A draft nutrient management strategy has been proposed for the Falls Lake Watershed and a nutrient management strategy is under consideration for the High Rock Lake Watershed.[1]

BILL ANALYSIS:

Senate Bill 514 would prohibit the development, adoption, or implementation of a nutrient management plan for surface waters that have not been classified as nutrient sensitive waters.

EFFECTIVE DATE:

This bill would become effective when it becomes law and apply to nutrient management plans that have not been approved by the Commission prior to that date.

[1] Background on nutrient management strategies found at: http://portal.ncdenr.org/web/swc/nsw

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

S D

SENATE BILL 501
PROPOSED COMMITTEE SUBSTITUTE S501-PCS55286-RI-14

Short Title: Swine House Renovations/Site Limits. (Public)

Sponsors:

Referred to:

April 5, 2011

A BILL TO BE ENTITLED

AN ACT TO FACILITATE IMPROVED OPERATIONS AND CONDITIONS AT CERTAIN PREEXISTING SWINE FARMS BY PROVIDING FOR THE CONSTRUCTION OR RENOVATION OF SWINE HOUSES AT THOSE FARMS.

Whereas, the General Assembly finds that the swine industry makes important contributions to the people and economy of North Carolina; and

Whereas, the General Assembly finds that facilitating the improvement and upgrading of swine farms within North Carolina through the construction and renovation of swine houses at certain preexisting swine farms can provide benefits to the well-being of the animals at the farms, while maintaining and enhancing the ability of those swine farms to remain competitive and to protect the environment; Now, therefore,

The General Assembly of North Carolina enacts:

SECTION 1. Article 67 of Chapter 106 of the General Statutes is amended by adding a new section to read:

"**§ 106-806. Construction or renovation of swine houses at preexisting swine farms.**

(a) As used in this section, the following definitions apply:

(1) 'New swine farm' means any swine farm the operations of which were sited on or after October 1, 1995. 'New swine farm' does not include any preexisting swine farm, even if a subsequent site evaluation is performed on or after October 1, 1995, at the preexisting swine farm.

(2) 'Preexisting swine farm' means any swine farm either the operations of which were begun prior to October 1, 1995, or the site evaluation of which was approved prior to October 1, 1995, by the Department of Environment and Natural Resources under Part 1A of Article 21 of Chapter 143 of the General Statutes.

(3) 'Renovation or construction,' 'renovated or constructed,' and any similar phrase mean any activity to renovate, construct, reconstruct, rebuild, modify, alter, change, restructure, upgrade, improve, enlarge, reduce, move, or otherwise perform construction work on a swine house that is a component of a swine farm.

(b) Notwithstanding any other provisions of this Article, a swine house that is a component of a preexisting swine farm can be constructed or renovated if the construction or renovation of that swine house satisfies all of the following requirements:

(1) The construction or renovation of the swine house does not result in an increase in the permitted capacity of the swine farm, as measured in the annual steady state live weight capacity of the swine farm.

(2) The construction or renovation of the swine house does not result in requiring an increase in the total permitted capacity of the animal waste management systems located at the swine farm.

(3) Except as provided in subsection (c) of this section, for any swine house that fails to meet any siting requirement for a swine house under G.S. 106-803, the construction or renovation of the swine house does not result in any portion of the constructed or renovated swine house being located any closer to the building or the property that is the object of the siting requirement that the swine house fails to meet.

(c) A swine house that is a component of a preexisting swine farm can be constructed or renovated such that it results in a portion of the constructed or renovated swine house being located closer to a residence, school, hospital, church, or a property boundary than is allowed under subdivision (3) of subsection (a) of this section if written permission is given by the owner of the property and recorded with the register of deeds.

(d) This section does not apply to the construction or renovation of a swine house that is a component of a new swine farm."

SECTION 2. This act is effective when it becomes law and applies to constructions or renovations that occur on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

S D

SENATE BILL 501
PROPOSED COMMITTEE SUBSTITUTE S501-CSRI-14 [v.4]

4/25/2011 3:41:11 PM

Short Title: Swine House Renovations/Site Limits. (Public)

Sponsors:

Referred to:

April 5, 2011

A BILL TO BE ENTITLED

AN ACT TO FACILITATE IMPROVED OPERATIONS AND CONDITIONS AT CERTAIN PREEXISTING SWINE FARMS BY PROVIDING FOR THE CONSTRUCTION OR RENOVATION OF SWINE HOUSES AT THOSE FARMS.

Whereas, the General Assembly finds that the swine industry makes important contributions to the people and economy of North Carolina; and

Whereas, the General Assembly finds that facilitating the improvement and upgrading of swine farms within North Carolina through the construction and renovation of swine houses at certain preexisting swine farms can provide benefits to the well-being of the animals at the farms, while maintaining and enhancing the ability of those swine farms to remain competitive and to protect the environment; Now, therefore,

The General Assembly of North Carolina enacts:

SECTION 1. Article 67 of Chapter 106 of the General Statutes is amended by adding a new section to read:

"**§ 106-806. Construction or renovation of swine houses at preexisting swine farms.**

(a) As used in this section, the following definitions apply:

(1) 'New swine farm' means any swine farm the operations of which were sited on or after October 1, 1995. 'New swine farm' does not include any preexisting swine farm, even if a subsequent site evaluation is performed on or after October 1, 1995, at the preexisting swine farm.

(2) 'Preexisting swine farm' means any swine farm either the operations of which were begun prior to October 1, 1995, or the site evaluation of which was approved prior to October 1, 1995, by the Department of Environment and Natural Resources under Part 1A of Article 21 of Chapter 143 of the General Statutes.

(3) 'Renovation or construction,' 'renovated or constructed,' and any similar phrase mean any activity to renovate, construct, reconstruct, rebuild, modify, alter, change, restructure, upgrade, improve, enlarge, reduce, move, or otherwise perform construction work on a swine house that is a component of a swine farm.

(b) Notwithstanding any other provisions of this Article, a swine house that is a component of a preexisting swine farm can be constructed or renovated if the construction or renovation of that swine house satisfies all of the following requirements:

(1) The construction or renovation of the swine house does not result in an increase in the permitted capacity of the swine farm, as measured in the annual steady state live weight capacity of the swine farm.

(2) The construction or renovation of the swine house does not result in requiring an increase in the total permitted capacity of the animal waste management systems located at the swine farm.

(3) Except as provided in subsection (c) of this section, for any swine house that fails to meet any siting requirement for a swine house under G.S. 106-803, the construction or renovation of the swine house does not result in any portion of the constructed or renovated swine house being located any closer to the building or the property that is the object of the siting requirement that the swine house fails to meet.

(c) A swine house that is a component of a preexisting swine farm can be constructed or renovated such that it results in a portion of the constructed or renovated swine house being located closer to a residence, school, hospital, church, or a property boundary than is allowed under subdivision (3) of subsection (a) of this section if written permission is given by the owner of the property and recorded with the register of deeds.

(d) This section does not apply to the construction or renovation of a swine house that is a component of a new swine farm."

SECTION 2. This act is effective when it becomes law and applies to constructions or renovations that occur on or after that date.

SENATE BILL 501:
Swine House Renovations/Site Limits

2011-2012 General Assembly

Committee:	Senate Agriculture/Environment/Natural Resources	**Date:**	April 26, 2011
Introduced by:	Sens. Rouzer, Jackson	**Prepared by:**	Jennifer McGinnis Committee Counsel
Analysis of:	PCS to First Edition S501-CSRI-14 [v.4]		

SUMMARY: ***The Proposed Committee Substitute (PCS) for Senate Bill 501 would provide that certain setback requirements of the Swine Farm Siting Act would not apply to the construction or renovation of a swine house that is a component of a preexisting swine farm under certain conditions.***

The PCS makes only technical changes to the First Edition of the bill.

[As introduced, this bill was identical to H529, as introduced by Reps. Dixon, Sager, Hill, Brisson, which is currently in House Agriculture.]

CURRENT LAW: The Swine Farm Siting Act was originally enacted in 1995 upon the General Assembly's finding that "... certain limitations on the siting of swine houses and lagoons for swine farms can assist in the development of pork production, which contributes to the economic development of the State, by lessening the interference with the use and enjoyment of adjoining property."

Among other things, the Act provides that a swine house (defined as a tract of land devoted to raising 250 or more swine) or a lagoon that is a component of a swine farm must be located:

- At least 1,500 feet from any occupied residence.
- At least 2,500 feet from any school; hospital; church; outdoor recreational facility; national park; State Park, State owned historic property; or child care center
- At least 500 feet from any: (i) property boundary; (ii) well supplying water to a public water system; (iii) other wells that supply water for human consumption, except for those wells located on the same parcel or tract of land on which the swine house or lagoons are located and supply water only for use on that parcel or tract of land or for use on adjacent parcels or tracts of land all of which are under common ownership or control.

A swine house or a lagoon that is a component of a swine farm may be located closer to a residence, school, hospital, church, or a property boundary as noted above if written permission is given by the owner of the property and recorded with the applicable Register of Deeds.

BILL ANALYSIS: The PCS would provide that certain setback requirements of the Swine Farm Siting Act would not apply to the construction or renovation of a swine house that is a component of a preexisting swine farm if the swine house met all of the following requirements:

- The construction or renovation of the swine house would not result in an increase in the permitted capacity, as measured in the annual steady state live weight capacity of the swine farm.

- The construction or renovation of the swine house would not result in requiring an increase in the total permitted capacity of the animal waste management systems located at the swine farm.
- The construction or renovation of the swine house would not result in any portion of the constructed or renovated swine house being located any closer to the residence, school, hospital, church, or property boundary that is the object of the siting requirement that the swine house fails to meet.

EFFECTIVE DATE: The PCS would be effective when it becomes law, and apply to constructions or renovations that occur on or after that date.

S501-SMRI-19(e1) v3

SENATE BILL 501

Short Title:	Swine House Renovations/Site Limits.	(Public)
Sponsors:	Senators Rouzer and Jackson.	
Referred to:	Agriculture/Environment/Natural Resources.	

April 5, 2011

A BILL TO BE ENTITLED

AN ACT TO FACILITATE IMPROVED OPERATIONS AND CONDITIONS AT CERTAIN PREEXISTING SWINE FARMS BY PROVIDING FOR THE CONSTRUCTION OR RENOVATION OF SWINE HOUSES AT THOSE FARMS.

Whereas, the General Assembly finds that the swine industry makes important contributions to the people and economy of North Carolina; and

Whereas, the General Assembly finds that facilitating the improvement and upgrading of swine farms within North Carolina through the construction and renovation of swine houses at certain preexisting swine farms can provide benefits to the well-being of the animals at the farms, while maintaining and enhancing the ability of those swine farms to remain competitive and to protect the environment; Now, therefore,

The General Assembly of North Carolina enacts:

SECTION 1. Article 67 of Chapter 106 of the General Statutes is amended by adding a new section to read:

"**§ 106-806. Construction or renovation of swine houses at preexisting swine farms.**

(a) Notwithstanding any other provisions of this Article, a swine house that is a component of a preexisting swine farm can be constructed or renovated so long as the construction or renovation of that swine house satisfies all of the following requirements:

(1) The construction or renovation of the swine house does not result in an increase in the permitted capacity of the swine farm, as measured in the annual steady state live weight capacity of the swine farm.

(2) The construction or renovation of the swine house does not result in requiring an increase in the total permitted capacity of the animal waste management systems located at the swine farm.

(3) For any swine house that fails to meet any siting requirement for a swine house under G.S. 106-803, the construction or renovation of the swine house does not, subject to subsection (b) of this section, result in any portion of the constructed or renovated swine house being located any closer to the building or the property that is the object of the siting requirement that the swine house fails to meet.

(b) A swine house that is a component of a preexisting swine farm can be constructed or renovated such that it results in a portion of the constructed or renovated swine house being located closer to a residence, school, hospital, church, or a property boundary than is allowed under subdivision (3) of subsection (a) of this section if written permission is given by the owner of the property and recorded with the register of deeds.

(c) As used in this section, the following definitions apply:

(1) 'New swine farm' means any swine farm the operations of which were sited on or after October 1, 1995. 'New swine farm' does not include any preexisting swine farm, even if a subsequent site evaluation is performed on or after October 1, 1995, at the preexisting swine farm.

(2) 'Preexisting swine farm' means any swine farm either the operations of which were begun prior to October 1, 1995, or the site evaluation of which was approved prior to October 1, 1995, by the Department of Environment and Natural Resources under Part 1A of Article 21 of Chapter 143 of the General Statutes.

(3) 'Renovation or construction,' 'renovated or constructed,' and any similar phrase mean any activity to renovate, construct, reconstruct, rebuild, modify, alter, change, restructure, upgrade, improve, enlarge, reduce, move, or otherwise perform construction work on a swine house that is a component of a swine farm.

(d) This section does not apply to the construction or renovation of a swine house that is a component of a new swine farm."

SECTION 2. This act is effective when it becomes law and applies to constructions or renovations that occur on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

S D

SENATE BILL 493
PROPOSED COMMITTEE SUBSTITUTE S493-PCS55285-RI-12

Short Title: Codify NC Century Farms Program in DACS. (Public)

Sponsors:

Referred to:

April 4, 2011

A BILL TO BE ENTITLED

AN ACT TO CODIFY THE NORTH CAROLINA CENTURY FARMS PROGRAM OF THE DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 106-22 is amended by adding a new subdivision to read:

"**§ 106-22. Joint duties of Commissioner and Board.**

The Commissioner of Agriculture, by and with the consent and advice of the Board of Agriculture shall:

...

(18) Administration of North Carolina Century Farms Program. – Administer the North Carolina Century Farms Program, which recognizes farms in the State that have been continuously owned by the same family for at least 100 years."

SECTION 2. This act becomes effective July 1, 2011.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

S D

SENATE BILL 493
PROPOSED COMMITTEE SUBSTITUTE S493-CSRI-12 [v.1]

4/24/2011 8:55:18 AM

Short Title: Codify NC Century Farms Program in DACS. (Public)

Sponsors:

Referred to:

April 4, 2011

A BILL TO BE ENTITLED

AN ACT TO CODIFY THE NORTH CAROLINA CENTURY FARMS PROGRAM OF THE DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 106-22 is amended by adding a new subdivision to read:

"**§ 106-22. Joint duties of Commissioner and Board.**

The Commissioner of Agriculture, by and with the consent and advice of the Board of Agriculture shall:

...

(18) Administration of North Carolina Century Farms Program. – Administer the North Carolina Century Farms program, which recognizes farms in the State that have been continuously owned by the same family for at least 100 years."

SECTION 2. This act becomes effective July 1, 2011.

SENATE BILL 493:
Codify NC Century Farms Program in DACS

2011-2012 General Assembly

Committee:	Senate Agriculture/Environment/Natural Resources	**Date:**	April 26, 2011
Introduced by:	Sens. Daniel, Jackson	**Prepared by:**	Jennifer L. McGinnis Committee Counsel
Analysis of:	PCS to First Edition S493-CSRI-12 [v.1]		

SUMMARY: ***The Proposed Committee Substitute (PCS) for Senate Bill 493 would add responsibility for administering the North Carolina Century Farms program, which recognizes farms in the State that have been continuously owned by the same family for at least 100 years, to the Commissioner of Agriculture's and Board of Agriculture's list of statutorily authorized duties.***

The PCS makes only technical changes to the First Edition of the bill.

BACKGROUND: To highlight the theme of the 1970 State Fair, "Salute to Agriculture," State Fair officials initiated a search for all families who had owned or operated a farm in North Carolina for 100 years or more. Thus began the tradition of periodically honoring Century Farm Families during the State Fair. Today, there are approximately 48,000 farms in North Carolina, and of those approximately 1,600 are honored as North Carolina Century Farms.[1]

BILL ANALYSIS: The PCS would add responsibility for administering the North Carolina Century Farms program, which recognizes farms in the State that have been continuously owned by the same family for at least 100 years, to the Commissioner of Agriculture's and Board of Agriculture's list of statutorily authorized duties.

EFFECTIVE DATE: The PCS would become effective July 1, 2011.

S493-SMRI-18(e1) v4

[1] http://www.ncagr.gov/paffairs/century/history.htm

S 1

SENATE BILL 493

Short Title:	Codify NC Century Farms Program in DACS.	(Public)
Sponsors:	Senators Daniel, Jackson; Atwater, Blake, Brunstetter, Davis, Forrester, Hunt, Newton, Rabon, Rouzer, Stevens, and Tucker.	
Referred to:	Agriculture/Environment/Natural Resources.	

April 4, 2011

A BILL TO BE ENTITLED

AN ACT TO CODIFY THE NORTH CAROLINA CENTURY FARMS PROGRAM OF THE DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 106-22 is amended by adding a new subdivision to read:

"**§ 106-22. Joint duties of Commissioner and Board.**

The Commissioner of Agriculture, by and with the consent and advice of the Board of Agriculture shall:

...

(18) Administer the North Carolina Century Farms program, which recognizes farms in the State that have been continuously owned by the same family for at least 100 years."

SECTION 2. This act becomes effective July 1, 2011.

SENATE BILL 374:
Landowner Protection Act

2011-2012 General Assembly

Committee:	Senate Agriculture/Environment/Natural Resources	**Date:**	April 26, 2011
Introduced by:	Sens. Apodaca, Walters, Tucker	**Prepared by:**	Mariah Matheson Research Assistant
Analysis of:	PCS to 1st edition (S374-CSLL-1 [v.3])		

SUMMARY: ***Senate Bill 374 would regulate hunting and fishing on private land and prohibit hunting from the right-of-way.***

[As introduced, this bill was identical to H762, as introduced by Reps. McComas, LaRoque, Collins, which is currently in House Agriculture.]

CHANGES MADE BY PCS: The PCS changes the phrase "take" to "hunt." "Take" and "hunt" have different definitions in the statutes (G.S. 113-130). In addition to making technical changes, the PCS makes it unlawful to take fish from private ponds on the land of another.

CURRENT LAW: Pursuant to G.S. 14-159.6, trespassing for purposes of hunting, upon posted property, without written consent, is a Class 2 misdemeanor.[1] A posted property is defined as "registered property that is posted in substantial compliance with G.S. 113-282(d)," which includes detailed registration and signage requirements. In order for property to be properly posted and legally binding, the property must be registered with the Wildlife Resources Commission (WRC); state that unting or fishing, or both, are prohibited without an entry permit; and set out the name and address and, feasible, the telephone number of the person to contact for an entry permit.

BILL ANALYSIS:

Section 1 would do the following:

- Prohibit hunting on the land of another on, across, or over the right-of-way of any State-maintained public road or highway, except as allowed on State game lands as prescribed by the rules established by the WRC.
- Makes it unlawful to possess a loaded firearm outside the passenger compartment of a vehicle while on the roadway or highway right-of-way while in the act of hunting or attempting to hunt wildlife, unless the person is the owner or lessee of the land abutting the right-of-way, or has written permission from the owner or lessee, and the permission slip is dated within the last 12 months.
- Makes it unlawful to hunt on the land of another or take fish from private ponds, without having the written permission of the land owner or lessee, dated within 12 months. Hunters or hunting club members would be required to carry the written permission on their person while on the property, and offer to display it to law enforcement officers upon request. Hunting club members would also need to carry a certification from their hunt club designating that they are a member. Violation of this section would be a Class 3 misdemeanor[2] and a second or subsequent

[1] Assuming no prior convictions, a Class 2 misdemeanor is subject to 1 to 30 days community punishment and fine of up to 1,000.

[2] Assuming no prior convictions, a Class 3 misdemeanor is subject to 1 to 10 days community punishment and fine of up to $200.

violation of this section within three years is a Class 2 misdemeanor punishable by a fine of at least $250 and the loss of hunting privileges for a period of 12 months from the date of the conviction.

- This section would be enforceable by law enforcement officers of the WRC, by sheriffs and deputy sheriffs, and by law enforcement officers with general subject matter jurisdiction.
- If this section conflicts with any provision of any local act, this section prevails. The fact that a local act in conflict with this section has not been specifically repealed does not indicate an intent for the local act to prevail.

Section 2 would repeal the applicable local acts.

EFFECTIVE DATE: This act would become effective October 1, 2011 and apply to offenses committed on or after that date.

S374-SMTF-15(e1) v1

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

S D

SENATE BILL 374
PROPOSED COMMITTEE SUBSTITUTE S374-CSLL-1 [v.3]

4/25/2011 9:26:50 AM

Short Title: Landowner Protection Act. (Public)

Sponsors:

Referred to:

March 21, 2011

A BILL TO BE ENTITLED

AN ACT TO PROTECT LANDOWNER RIGHTS AND INCREASE PUBLIC SAFETY BY REQUIRING WRITTEN PERMISSION TO HUNT ON THE LAND OF ANOTHER STATEWIDE AND BY PROHIBITING HUNTING FROM THE RIGHT-OF-WAY STATEWIDE.

The General Assembly of North Carolina enacts:

SECTION 1. Article 22 of Chapter 113 of the General Statutes is amended by adding a new section to read:

"**§ 113-291.12. Hunting from rights-of-way; hunting on the land of another.**

(a) It is unlawful to hunt or attempt to hunt by discharging a firearm, bow and arrow, or crossbow from, on, across, or over the right-of-way of any State-maintained public road or highway, except as allowed on State game lands as prescribed by rules established by the Wildlife Resources Commission. For purposes of this section, the term "to hunt" has the same meaning as in G.S. 113-130.

(b) It is unlawful to possess a loaded firearm outside the passenger compartment of a vehicle while on the roadway or highway right-of-way while in the act of hunting or attempting to hunt, unless the person is the owner or lessee of the land abutting the right-of-way or has on his or her person the written permission of the owner or lessee of the land abutting the right-of-way to hunt on the land, dated within the last 12 months. Nothing in this section prohibits a person from carrying a concealed weapon authorized by a concealed handgun permit issued in accordance with Article 54B of Chapter 14 of the General Statutes or considered valid under G.S. 14-415.24.

(c) It is unlawful to hunt or attempt to hunt on the land of another, or to take fish from private ponds, as defined in G.S. 113-129(13), on the land of another, without having on one's person the written permission, dated within the last 12 months, of the landowner or lessee or the landowner's or lessee's designee. The written permission shall be displayed upon request of any law enforcement officer of the Wildlife Resources Commission, sheriff or deputy sheriff, or other law enforcement officer with general subject matter jurisdiction. A person shall have written permission to hunt for purposes of this section if a landowner or lessee has granted permission to a hunting club to hunt on the person's land and the person is carrying both a current membership card demonstrating the person's membership in the hunting club and a copy of valid written permission granted to the hunting club that complies with the requirements of this section.

(d) Violation of this section is a Class 3 misdemeanor. Notwithstanding the provisions of G.S. 15A-1340.23, a second or subsequent violation of this section within three years is a Class 2 misdemeanor punishable by a fine of at least two hundred fifty dollars ($250.00) and the loss of hunting privileges for a period of 12 months from the date of the conviction.

(e) This section is enforceable by law enforcement officers of the Wildlife Resources Commission, by sheriffs and deputy sheriffs, and by law enforcement officers with general subject matter jurisdiction.

(f) To the extent that this section conflicts with any provision of any local act, this section prevails. The fact that a local act in conflict with this section has not been specifically repealed does not indicate an intent for the local act to prevail."

SECTION 2. The following local acts or portions of local acts are repealed as applicable to the following counties:

Alamance:	Session Laws 1971, Chapter 206;
	Session Laws 1989, Chapter 651, as amended by
	Session Laws 1991, Chapter 92.
Alexander:	Session Laws 1987, Chapter 298.
Alleghany:	Session Laws 1967, Chapter 477.
Anson:	Session Laws 1973, Chapter 1319, as amended by
	Session Laws 1975, Chapter 597;
	Session Laws 1987, Chapter 231, Sections 1 and 2.
Ashe:	Session Laws 1977, Chapter 13.
Bertie:	Session Laws 1963, Chapter 252;
	Session Laws 1973, Chapter 1333;
	S.L. 2001-367, Sections 1 and 4, as amended by
	S.L. 2007-313.
Bladen:	Session Laws 1975, Chapter 525.
Brunswick:	Session Laws 1985, Chapter 840.
Buncombe:	Session Laws 1967, Chapter 595.
Burke:	Session Laws 1987, Chapter 39.
Cabarrus:	Session Laws 1993, Chapter 100;
	Session Laws 1993, Chapter 632.
Caldwell:	Session Laws 1973, Chapter 150, as amended by
	Session Laws 1979, Chapter 220;
	Session Laws 1987, Chapter 39.
Camden:	Session Laws 1983, Chapter 274;
	Session Laws 1991, Chapter 796.
Carteret:	Session Laws 1953, Chapter 776.
Caswell:	Session Laws 1975, Chapter 215;
	Session Laws 1989, Chapter 651, as amended by
	Session Laws 1991, Chapter 92;
	S.L. 2007-264, Section 1;
	S.L. 2008-96.
Catawba:	Session Laws 1967, Chapter 350;
	Session Laws 1987, Chapter 298.
Chatham:	Session Laws 1975, Chapter 540, Section 1.
Chowan:	Session Laws 1975, Chapter 524;
	Session Laws 1985, Chapter 868.
Cleveland:	Session Laws 1979, Chapter 587;
	Session Laws 1989, Chapter 193;
	Session Laws 1985, Chapter 204, as amended by
	Session Laws 1991, Chapter 483.

Columbus:	S.L.1997-61.
Craven:	Session Laws 1957, Chapter 603, as amended by Session Laws 1963, Chapters 268 and 1163; Session Laws 1981, Chapter 709; Session Laws 1983, Chapter 305; Session Laws 1985, Chapter 882; Session Laws 1987, Chapter 248; Session Laws 1989, Chapter 463; Session Laws 1991, Chapter 145; Session Laws 1991, Chapter 850; Session Laws 1993, Chapter 115; Session Laws 1995, Chapter 628, Section 1; S.L. 2003-164; S.L. 2009-116.
Cumberland:	Session Laws 1977, Chapter 241.
Currituck:	Session Laws 1985, Chapter 27.
Davidson:	Session Laws 1991, Chapter 795.
Davie:	Session Laws 1989, Chapter 929.
Duplin:	Session Laws 1953, Chapter 776; Session Laws 1969, Chapter 195.
Durham:	Session Laws 1969, Chapter 195; Session Laws 1973, Chapter 1319, as amended by Session Laws 1975, Chapter 597; Session Laws 1973, Chapter 1333; Session Laws 1975, Chapter 539.
Edgecombe:	Session Laws 1961, Chapter 863; S.L. 2009-22.
Franklin:	Session Laws 1965, Chapter 928, Section 2; Session Laws 1991, Chapter 108.
Gaston:	S.L. 1997-66.
Gates:	Session Laws 1971, Chapter 389; Session Laws 1973, Chapter 1333; Session Laws 1975, Chapter 214, Section 3; Session Laws 1981, Chapter 863.
Granville:	Session Laws 1959, Chapter 459.
Greene:	Session Laws 1985, Chapter 471, as amended by Session Laws 1987, Chapter 132; S.L. 2006-12.
Guilford:	Session Laws 1967, Chapter 573; Session Laws 1977, Chapter 181.
Halifax:	Session Laws 1971, Chapter 404.
Harnett:	Session Laws 1983, Chapter 791; S.L. 1997-103.
Haywood:	Session Laws 1969, Chapter 259.
Henderson:	Session Laws 1983, Chapter 946.
Hertford:	Session Laws 1963, Chapter 252; Session Laws 1973, Chapter 1333; Session Laws 1975, Chapter 214, Section 3.
Hoke:	Session Laws 1983, Chapter 385; Session Laws 1985, Chapter 204, as amended by Session Laws 1991, Chapter 483, Section 1.

Hyde:	Session Laws 1957, Chapter 205;
	Session Laws 1971, Chapter 520;
	Session Laws 1985, Chapter 420, as amended by
	S.L. 2009-77.
Iredell:	Session Laws 1987, Chapter 298.
Johnston:	Session Laws 1975, Chapter 341;
	Session Laws 1965, Chapter 928, as amended by
	Session Laws 1975, Chapter 343;
	S.L. 2007-264, Section1.
Jones:	Session Laws 1991, Chapter 146.
Lee:	S.L. 1999-301, Sections 1 through 3.
Lenoir:	Session Laws 1975, Chapter 73;
	Session Laws 1983, Chapter 41.
Macon:	Session Laws 1993, Chapter 104;
	Session Laws 1995, Chapter 754, Sections 2 and 3.
Madison:	Session Laws 1993, Chapter 70.
Martin:	S.L. 2008-50.
McDowell:	S.L. 1997-453.
Mecklenburg:	Session Laws 1981, Chapter 524, Section 2.
Mitchell:	Session Laws 1991, Chapter 855.
Moore:	Session Laws 1971, Chapter 621;
	Session Laws 1977, Chapter 447, as amended by
	Session Laws 1979, Chapter 369;
	S.L. 1999-301, Sections 6.1(a) and (b).
Nash:	Session Laws 1985, Chapter 891, Section 2.
Northampton:	Session Laws 1965, Chapter 509, as amended by
	Session Laws 1967, Chapter 585;
	Session Laws 1973, Chapter 78, Section 2;
	Session Laws 1995, Chapter 628, Section 2;
	Session Laws 1995, Chapter 704;
	Session Laws 1995, Chapter 754, Section 1.
Onslow:	Session Laws 1991, Chapter 435, Section 1 through 3.
Orange:	Session Laws 1973, Chapter 1319, as amended by
	Session Laws 1975, Chapter 597;
	Session Laws 1975, Chapter 539;
	S.L. 2005-264;
	S.L. 2007-264, as amended by
	S.L. 2008-205.
Pamlico:	Session Laws 1991, Chapter 138.
Pasquotank:	Session Laws 1973, Chapter 1333;
	Session Laws 1993, Chapter 632.
Pender:	Session Laws 1969, Chapter 129, Sections 2 and 3.
Perquimans:	Session Laws 1983, Chapter 213;
	Session Laws 1985, Chapter 867, Section 1.
Person:	Session Laws 1973, Chapter 1319, as amended by
	Session Laws 1975, Chapter 597.
Pitt:	Session Laws 1977, Chapter 241;
	S.L. 2002-142, Section 1.
Polk:	Session Laws 1977, Chapter 241.
Randolph:	Session Laws 1985, Chapter 303.
Richmond:	Session Laws 1973, Chapter 1319;

	Session Laws 1975, Chapter 539.
Robeson:	Session Laws 1983, Chapter 385;
	S.L. 2004-52.
Rockingham:	Session Laws 1985, Chapter 25;
	Session Laws 1989, Chapter 651, as amended by
	Session Laws 1991, Chapter 92.
Rowan:	Session Laws 1975, Chapter 341, as amended by
	Session Laws 1977, Chapter 108.
Rutherford:	Session Laws 1987, Chapter 405;
	S.L. 1999-301, Sections 1 through 3.
Sampson:	Session Laws 1991, Chapter 141.
Scotland:	Session Laws 1977, Chapter 447;
	Session Laws 1985, Chapter 204, as amended by
	Session Laws 1991, Chapter 483.
Stanly:	Session 1969, Chapter 858.
Stokes:	Session Laws 1969, Chapter 195;
	Session Laws 1975, Chapter 542.
Surry:	Session Laws 1977, Chapter 181.
Transylvania:	S.L. 2003-119.
Tyrrell:	Session Laws 1985, Chapter 28;
	S.L. 2007-273, Sections 2 through 6.
Vance:	S.L. 2005-31, Sections 1 and 2.
Wake:	Session Laws 1973, Chapter 1382;
	Session Laws 1987, Chapter 811.
Warren:	Session Laws 1965, Chapter 928, Section 2.
Washington:	S.L. 1997-95, Sections 2 through 4.
Watauga:	Session Laws 1989, Chapter 812.
Wayne:	Session Laws 1975, Chapter 341, as amended by
	Session Laws 1977, Chapter 46;
	Session Laws 1975, Chapter 343, as amended by
	Session Laws 1977, Chapter 45;
	Session Laws 1985, Chapter 420, as amended by
	S.L. 2009-77.
Wilkes:	Session Laws 1973, Chapter 150, as amended by
	Session Laws 1979, Chapter 220, and by
	Session Laws 1991, Chapter 295.
Wilson:	Session Laws 1939, Chapter 271;
	Session Laws 1983, Chapter 423;
	S.L. 2005-264;
	S.L. 2007-264, as amended by
	S.L. 2008-205.
Yadkin:	Session Laws 1973, Chapter 150, as amended by
	Session Laws 1979, Chapter 220.

SECTION 3. This act becomes effective October 1, 2011, and applies to offenses committed on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

S D

SENATE BILL 374
PROPOSED COMMITTEE SUBSTITUTE S374-CSLL-1 [v.3]

4/25/2011 9:26:50 AM

Short Title: Landowner Protection Act. (Public)

Sponsors:

Referred to:

March 21, 2011

A BILL TO BE ENTITLED

AN ACT TO PROTECT LANDOWNER RIGHTS AND INCREASE PUBLIC SAFETY BY REQUIRING WRITTEN PERMISSION TO HUNT ON THE LAND OF ANOTHER STATEWIDE AND BY PROHIBITING HUNTING FROM THE RIGHT-OF-WAY STATEWIDE.

The General Assembly of North Carolina enacts:

SECTION 1. Article 22 of Chapter 113 of the General Statutes is amended by adding a new section to read:

"**§ 113-291.12. Hunting from rights-of-way; hunting on the land of another.**

(a) It is unlawful to hunt or attempt to hunt by discharging a firearm, bow and arrow, or crossbow from, on, across, or over the right-of-way of any State-maintained public road or highway, except as allowed on State game lands as prescribed by rules established by the Wildlife Resources Commission. For purposes of this section, the term "to hunt" has the same meaning as in G.S. 113-130.

(b) It is unlawful to possess a loaded firearm outside the passenger compartment of a vehicle while on the roadway or highway right-of-way while in the act of hunting or attempting to hunt, unless the person is the owner or lessee of the land abutting the right-of-way or has on his or her person the written permission of the owner or lessee of the land abutting the right-of-way to hunt on the land, dated within the last 12 months. Nothing in this section prohibits a person from carrying a concealed weapon authorized by a concealed handgun permit issued in accordance with Article 54B of Chapter 14 of the General Statutes or considered valid under G.S. 14-415.24.

(c) It is unlawful to hunt or attempt to hunt on the land of another, or to take fish from private ponds, as defined in G.S. 113-129(13), on the land of another, without having on one's person the written permission, dated within the last 12 months, of the landowner or lessee or the landowner's or lessee's designee. The written permission shall be displayed upon request of any law enforcement officer of the Wildlife Resources Commission, sheriff or deputy sheriff, or other law enforcement officer with general subject matter jurisdiction. A person shall have written permission to hunt for purposes of this section if a landowner or lessee has granted permission to a hunting club to hunt on the person's land and the person is carrying both a current membership card demonstrating the person's membership in the hunting club and a copy of valid written permission granted to the hunting club that complies with the requirements of this section.



(d) Violation of this section is a Class 3 misdemeanor. Notwithstanding the provisions of G.S. 15A-1340.23, a second or subsequent violation of this section within three years is a Class 2 misdemeanor punishable by a fine of at least two hundred fifty dollars ($250.00) and the loss of hunting privileges for a period of 12 months from the date of the conviction.

(e) This section is enforceable by law enforcement officers of the Wildlife Resources Commission, by sheriffs and deputy sheriffs, and by law enforcement officers with general subject matter jurisdiction.

(f) To the extent that this section conflicts with any provision of any local act, this section prevails. The fact that a local act in conflict with this section has not been specifically repealed does not indicate an intent for the local act to prevail."

SECTION 2. The following local acts or portions of local acts are repealed as applicable to the following counties:

Alamance:	Session Laws 1971, Chapter 206;
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	Session Laws 1991, Chapter 92.
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Anson:	Session Laws 1973, Chapter 1319, as amended by
	Session Laws 1975, Chapter 597;
	Session Laws 1987, Chapter 231, Sections 1 and 2.
Ashe:	Session Laws 1977, Chapter 13.
Bertie:	Session Laws 1963, Chapter 252;
	Session Laws 1973, Chapter 1333;
	S.L. 2001-367, Sections 1 and 4, as amended by
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Bladen:	Session Laws 1975, Chapter 525.
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Buncombe:	Session Laws 1967, Chapter 595.
Burke:	Session Laws 1987, Chapter 39.
Cabarrus:	Session Laws 1993, Chapter 100;
	Session Laws 1993, Chapter 632.
Caldwell:	Session Laws 1973, Chapter 150, as amended by
	Session Laws 1979, Chapter 220;
	Session Laws 1987, Chapter 39.
Camden:	Session Laws 1983, Chapter 274;
	Session Laws 1991, Chapter 796.
Carteret:	Session Laws 1953, Chapter 776.
Caswell:	Session Laws 1975, Chapter 215;
	Session Laws 1989, Chapter 651, as amended by
	Session Laws 1991, Chapter 92;
	S.L. 2007-264, Section 1;
	S.L. 2008-96.
Catawba:	Session Laws 1967, Chapter 350;
	Session Laws 1987, Chapter 298.
Chatham:	Session Laws 1975, Chapter 540, Section 1.
Chowan:	Session Laws 1975, Chapter 524;
	Session Laws 1985, Chapter 868.
Cleveland:	Session Laws 1979, Chapter 587;
	Session Laws 1989, Chapter 193;
	Session Laws 1985, Chapter 204, as amended by
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Gaston:	S.L. 1997-66.
Gates:	Session Laws 1971, Chapter 389; Session Laws 1973, Chapter 1333; Session Laws 1975, Chapter 214, Section 3; Session Laws 1981, Chapter 863.
Granville:	Session Laws 1959, Chapter 459.
Greene:	Session Laws 1985, Chapter 471, as amended by Session Laws 1987, Chapter 132; S.L. 2006-12.
Guilford:	Session Laws 1967, Chapter 573; Session Laws 1977, Chapter 181.
Halifax:	Session Laws 1971, Chapter 404.
Harnett:	Session Laws 1983, Chapter 791; S.L. 1997-103.
Haywood:	Session Laws 1969, Chapter 259.
Henderson:	Session Laws 1983, Chapter 946.
Hertford:	Session Laws 1963, Chapter 252; Session Laws 1973, Chapter 1333; Session Laws 1975, Chapter 214, Section 3.
Hoke:	Session Laws 1983, Chapter 385; Session Laws 1985, Chapter 204, as amended by Session Laws 1991, Chapter 483, Section 1.

Hyde:	Session Laws 1957, Chapter 205;
	Session Laws 1971, Chapter 520;
	Session Laws 1985, Chapter 420, as amended by
	S.L. 2009-77.
Iredell:	Session Laws 1987, Chapter 298.
Johnston:	Session Laws 1975, Chapter 341;
	Session Laws 1965, Chapter 928, as amended by
	Session Laws 1975, Chapter 343;
	S.L. 2007-264, Section1.
Jones:	Session Laws 1991, Chapter 146.
Lee:	S.L. 1999-301, Sections 1 through 3.
Lenoir:	Session Laws 1975, Chapter 73;
	Session Laws 1983, Chapter 41.
Macon:	Session Laws 1993, Chapter 104;
	Session Laws 1995, Chapter 754, Sections 2 and 3.
Madison:	Session Laws 1993, Chapter 70.
Martin:	S.L. 2008-50.
McDowell:	S.L. 1997-453.
Mecklenburg:	Session Laws 1981, Chapter 524, Section 2.
Mitchell:	Session Laws 1991, Chapter 855.
Moore:	Session Laws 1971, Chapter 621;
	Session Laws 1977, Chapter 447, as amended by
	Session Laws 1979, Chapter 369;
	S.L. 1999-301, Sections 6.1(a) and (b).
Nash:	Session Laws 1985, Chapter 891, Section 2.
Northampton:	Session Laws 1965, Chapter 509, as amended by
	Session Laws 1967, Chapter 585;
	Session Laws 1973, Chapter 78, Section 2;
	Session Laws 1995, Chapter 628, Section 2;
	Session Laws 1995, Chapter 704;
	Session Laws 1995, Chapter 754, Section 1.
Onslow:	Session Laws 1991, Chapter 435, Section 1 through 3.
Orange:	Session Laws 1973, Chapter 1319, as amended by
	Session Laws 1975, Chapter 597;
	Session Laws 1975, Chapter 539;
	S.L. 2005-264;
	S.L. 2007-264, as amended by
	S.L. 2008-205.
Pamlico:	Session Laws 1991, Chapter 138.
Pasquotank:	Session Laws 1973, Chapter 1333;
	Session Laws 1993, Chapter 632.
Pender:	Session Laws 1969, Chapter 129, Sections 2 and 3.
Perquimans:	Session Laws 1983, Chapter 213;
	Session Laws 1985, Chapter 867, Section 1.
Person:	Session Laws 1973, Chapter 1319, as amended by
	Session Laws 1975, Chapter 597.
Pitt:	Session Laws 1977, Chapter 241;
	S.L. 2002-142, Section 1.
Polk:	Session Laws 1977, Chapter 241.
Randolph:	Session Laws 1985, Chapter 303.
Richmond:	Session Laws 1973, Chapter 1319;

	Session Laws 1975, Chapter 539.
Robeson:	Session Laws 1983, Chapter 385;
	S.L. 2004-52.
Rockingham:	Session Laws 1985, Chapter 25;
	Session Laws 1989, Chapter 651, as amended by
	Session Laws 1991, Chapter 92.
Rowan:	Session Laws 1975, Chapter 341, as amended by
	Session Laws 1977, Chapter 108.
Rutherford:	Session Laws 1987, Chapter 405;
	S.L. 1999-301, Sections 1 through 3.
Sampson:	Session Laws 1991, Chapter 141.
Scotland:	Session Laws 1977, Chapter 447;
	Session Laws 1985, Chapter 204, as amended by
	Session Laws 1991, Chapter 483.
Stanly:	Session 1969, Chapter 858.
Stokes:	Session Laws 1969, Chapter 195;
	Session Laws 1975, Chapter 542.
Surry:	Session Laws 1977, Chapter 181.
Transylvania:	S.L. 2003-119.
Tyrrell:	Session Laws 1985, Chapter 28;
	S.L. 2007-273, Sections 2 through 6.
Vance:	S.L. 2005-31, Sections 1 and 2.
Wake:	Session Laws 1973, Chapter 1382;
	Session Laws 1987, Chapter 811.
Warren:	Session Laws 1965, Chapter 928, Section 2.
Washington:	S.L. 1997-95, Sections 2 through 4.
Watauga:	Session Laws 1989, Chapter 812.
Wayne:	Session Laws 1975, Chapter 341, as amended by
	Session Laws 1977, Chapter 46;
	Session Laws 1975, Chapter 343, as amended by
	Session Laws 1977, Chapter 45;
	Session Laws 1985, Chapter 420, as amended by
	S.L. 2009-77.
Wilkes:	Session Laws 1973, Chapter 150, as amended by
	Session Laws 1979, Chapter 220, and by
	Session Laws 1991, Chapter 295.
Wilson:	Session Laws 1939, Chapter 271;
	Session Laws 1983, Chapter 423;
	S.L. 2005-264;
	S.L. 2007-264, as amended by
	S.L. 2008-205.
Yadkin:	Session Laws 1973, Chapter 150, as amended by
	Session Laws 1979, Chapter 220.

SECTION 3. This act becomes effective October 1, 2011, and applies to offenses committed on or after that date.

SENATE BILL 429: Hunting Protection Act

2011-2012 General Assembly

Committee:	Senate Agriculture/Environment/Natural Resources	**Date:**	April 26, 2011
Introduced by:	Sen. Jackson	**Prepared by:**	Mariah Matheson
Analysis of:	PCS to First Edition S429-CSLL-8 [v.9]		Research Assistant

SUMMARY: Would regulate trespassing for purposes of hunting.

[As introduced, this bill was identical to H569, as introduced by Rep. Lewis, which is currently in House Agriculture, if favorable, Judiciary.]

CURRENT LAW: Pursuant to G.S. 14-159.6, trespassing for purposes of hunting, upon posted property, without written consent, is a Class 2 misdemeanor.[1] A posted property is defined as "registered property that is posted in substantial compliance with G.S. 113-282(d)," which includes detailed registration and signage requirements. In order for property to be properly posted and legally binding, the property must be registered with the Wildlife Resources Commission (WRC); state that hunting or fishing, or both, are prohibited without an entry permit; and set out the name and address and, if feasible, the telephone number of the person to contact for an entry permit.

BILL ANALYSIS: The PCS of Senate Bill 429 would do the following:

- **Sections 1 and 2** would limit the application of G.S. 14-159.6 to trespass upon posted land and would amend G.S. 14-159.6 as follows:
  - Specify that no arrests for trespass on posted land can be made without the consent of the owner or lessee of the land or the duly authorized agent of the owner or lessee. This would apply statewide. Currently this applies only to Halifax and Warren Counties.
  - A hunter must obtain written consent from the owner or lessee to enter adjacent posted land for the sole purpose of retrieving hunting dogs that have strayed on that land. The hunter is prohibited from carrying a firearm or bow and arrow or operate a motorized vehicle on the property. If a person is "convicted" of violating this provision by carrying a firearm or bow and arrow, or operating a motorized vehicle on the property, the hunter must forfeit the firearm, bow and arrow, or motorized vehicle upon order of the court.
  - Provides that the written consent be signed by the owner or lessee dated within the last 12 months and must be displayed to law enforcement officers upon request. Written consent would not limit the hunter's liability for crop damage that resulted from the hunter's activity on the land.
- **Section 3** would create a new statute governing "**trespass upon land that has not been posted for purposes of hunting,**" as follows:
  - Prohibits a person from "willfully" hunting or releasing hunting dogs on the land of another that has not been posted for purposes of hunting, without having the written consent of the owner or lessee. A violation of this provision would be a Class 2 misdemeanor. A first offense is punishable by imprisonment for up to 30 days and a fine of up to $250. A second or subsequent offense, or an offense involving the use of a motorized vehicle, is punishable by imprisonment

[1] Assuming no prior convictions, a Class 2 misdemeanor is subject to 1 to 30 days community punishment and fine of up to $1,000.

for up to 45 days and a fine of up to $500. However, no arrests shall be made without the consent of the owner or lessee.

- Requires that written consent be signed by the owner or lessee and dated within the last 12 months. Hunters or hunting club members would be required to display the written consent to law enforcement officers upon request. While on the property, hunting club members would be required to carry the written consent on their person, in addition to a certification from their hunt club designating their membership.

EFFECTIVE DATE: This act would become effective October 1, 2011, and apply to acts committed on or after that date.

S429-SMTF-16(e1) v1

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

S D

SENATE BILL 429
PROPOSED COMMITTEE SUBSTITUTE S429-CSLL-8 [v.9]

4/25/2011 5:01:18 PM

Short Title: Protect Responsible Hunters. (Public)

Sponsors:

Referred to:

March 28, 2011

A BILL TO BE ENTITLED

AN ACT TO REGULATE TRESPASSING TO HUNT IN ORDER TO PROTECT RESPONSIBLE HUNTERS.

The General Assembly of North Carolina enacts:

SECTION 1. The title of Article 22A of Chapter 14 of the General Statutes reads as rewritten:

"Article 22A.

Trespassing Upon ~~"Posted"~~ Property to Hunt, Fish, Trap, or Remove Pine Needles/Straw."

SECTION 2. G.S. 14-159.6 reads as rewritten:

"**§ 14-159.6. Trespass upon "posted" land for purposes of hunting, etc., without written consent a misdemeanor.**

(a) Any person who willfully goes on the land, waters, ponds, or a legally established waterfowl blind of another upon which notices, signs or posters prohibiting hunting, fishing or trapping have been placed in accordance with the provisions of G.S. 14-159.7, or upon which "posted" notices have been placed in accordance with the provisions of G.S. 14-159.7, to hunt, fish or trap without the written consent of the owner or his agent shall be guilty of a Class 2 misdemeanor. ~~Provided, further, that~~ However, no arrests under authority of this subsection shall be made without the consent of the ~~owner or owners of said land, or their duly authorized agents in the following counties: Halifax and Warren.~~ owner or lessee of the land or the duly authorized agent of the owner or lessee.

(a1) A hunter who is lawfully hunting on land adjacent to land posted in accordance with the provisions of G.S. 14-159.7 shall obtain written permission from the owner or lessee or the agent of the owner or lessee to enter that adjacent posted land for the sole purpose of retrieving hunting dogs that have strayed onto that land, so long as the hunter does not carry a firearm or bow and arrow onto the property or operate a motorized vehicle on the property. It is not a violation of subsection (a) of this section to enter that land for that limited purpose and under those conditions if the hunter has obtained such written permission to enter the posted land for that limited purpose.

The fact that a hunter has obtained written permission to enter land under this section does not relieve the hunter of liability for damage to crops or other property that results from the hunter's activity on the land.

(a2) Any person convicted of violating subsection (a) of this section by going on posted land carrying a firearm or bow and arrow, or operating a motorized vehicle, shall forfeit the firearm, bow and arrow, or motorized vehicle upon order of the court.

(b) Any person who willfully goes on the land of another upon which notices, signs, or posters prohibiting raking or removing pine needles or pine straw have been placed in accordance with the provisions of G.S. 14-159.7, or upon which "posted" notices have been placed in accordance with the provisions of G.S. 14-159.7, to rake or remove pine needles or pine straw without the written consent of the owner or his agent shall be guilty of a Class 1 misdemeanor.

(c) Written consent sufficient to satisfy the requirements of this section shall be signed by the owner or lessee, or the agent of the owner or lessee, and dated within the last 12 months. Such written consent shall be displayed upon request of any law enforcement officer of the Wildlife Resources Commission, a sheriff or deputy sheriff, or any law enforcement officer with general subject matter jurisdiction."

SECTION 3. Article 22A of Chapter 14 of the General Statutes is amended by adding a new section to read:

"**§ 14-159.6A. Trespass upon land that has not been posted for purposes of hunting.**

(a) Any person who willfully goes on the land of another to hunt, or willfully releases hunting dogs on the land of another, without having on his or her person the written consent of the owner or lessee or the agent of the owner or lessee, shall be guilty of a Class 2 misdemeanor, punishable for a first offense by imprisonment for up to 30 days and a fine of up to two hundred fifty dollars ($250.00), and punishable for a second or subsequent offense, or an offense involving the use of a motorized vehicle, by imprisonment for up to 45 days and a fine of up to five hundred dollars ($500.00). However, no arrests under authority of this subsection shall be made without the consent of the owner or lessee of the land or the duly authorized agent of the owner or lessee.

(b) Written consent sufficient to satisfy the requirements of this section shall be signed by the owner or lessee, or the agent of the owner or lessee, and dated within the last 12 months. Such written consent shall be displayed upon request of any law enforcement officer of the Wildlife Resources Commission, a sheriff or deputy sheriff, or any law enforcement officer with general subject matter jurisdiction. A person also has written consent sufficient to satisfy the requirements of this section if the landowner or lessee or the agent of the landowner or lessee has granted permission to a hunting club to hunt on the land and the person is carrying both a current membership card demonstrating the person's membership in the hunting club and an entry permit or other document confirming that permission has been granted to the hunting club to hunt the land.

The fact that a hunter has obtained written permission to enter land under this section does not relieve the hunter of liability for damage to crops or other property that results from the hunter's activity on the land."

SECTION 4. This act becomes effective October 1, 2011, and applies to acts committed on or after that date.

VISITOR REGISTRATION SHEET

Ag/Env/Nat. Resources (2011-2012) — 4-26-11

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Tripp Lumpkin	Private Land Owner
Keith McCollum	NCFA
Marshall Thompson	NCFA
Billy CIPRIANI	NCFA
Andrea Ashby	NCDA&CS
Doug Hovey	UCAlum
Jaime Teel	Smurfit-Stone Container / NCFA
Kim Auborn	HSUS
Forrest Gilliam	Governor's Office
Jeff Williams	Land Owners
Colleen A. Sullins	DENR

VISITOR REGISTRATION SHEET

Ag/Env/Nat. Resources (2011-2012) — 4-26-11

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Jeff Edwards	NCFA
R Rogers	CWMTF
Sam Pearsall	EDF
Mike Mason	NCTA
Jimmy Jackson	NCFA
David McLeod	NCDACS
Cyndi Karoly	NC DWQ
Peter Raabe	American Rivers
Kari Barsness	DENR
Dan Conrad	NCCV
Lisa Martin	NC Home Builders

VISITOR REGISTRATION SHEET

Ag/Env/Nat. Resources (2011-2012)
Name of Committee **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Tom Moran	Policy Group
Mike Abraczinskas	DENR - DAQ
Chris Anderson	
Kay Emanuel	Legislative Reporting Service
Robert Youngblood	GRNC
Jeff Rau	GRNC
ARTURO LUMPKIN	PRIVATE LAND OWNER
Will Cain	NC. State Fox Hunters Acc. (President)
Rod Vinson	NC STATE FOX HUNTERS / GASTON
Parker Lumpkin	NCFA Landowner / Louisburg NC
Mark Wiseman	LP Corporation / NCFA Member
Molly Diggins	Sierra Club

VISITOR REGISTRATION SHEET

Ag/Env/Nat. Resources (2011-2012)
Name of Committee **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Angela Carmon	City of Winston-Salem
Joe McClees	McClees Consulting
Carl Dyer	New Hanover Co. Fox Hunters
Jay Dixon	North Carolina Concerned Sportsmen Assn.
Harry Ellis	Bluff Creek Harriett Co.
Doug Mitchell	Eastern N.C. Foxhunters Assoc.
Bobby Harris	Albemarle Houndsmen
Keith Larick	NC DENR - DWQ
Wayne Twiford	Albemarle Houndsman
Wayne Twiford Jr.	Alb Houndsman
Henri McClees	NC Sporting Dog Assn.
Sushma Masemore	NC DENR-DAQ

VISITOR REGISTRATION SHEET

Ag/Env/Nat. Resources (2011-2012)
Name of Committee **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Jason Sheffield	DST
Marilyn Kille	SOCFLOC/D-DCH, Chapel Hill, NC
Dale Caveny	NCWRC
Jack Staley	NCWRC
Jimmy Gentry	NC GRANGE
Allison Fowler	NC Grange
Chris Dillon	NCWRC
Gordon Myers	NCWRC
Ray Starling	NCDA+CS
John Cooper	Compass NC
Julian Philpott	NCFB

VISITOR REGISTRATION SHEET

Ag/Env/Nat. Resources (2011-2012) — 4-26-11
Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Angel Sams	NSS
Theresa Kostrzewa	NSS
Daniel Amburn	NCLM
[illegible]	Electrolux
[illegible]	Biofuel Ctr of NC
[illegible]	N.C. Grange
BRUCE THOMPSON	PARKER POE
VAN MORRIS	US MICROGRID
Katharine Koss	RPTB
Matt Wolfe	Parker Poe
Cody Thomas	NCAR
Jim Conner	BSA

name	firm/agency+address
Paul Sue	NCFB
Henry Jones	NC Poultry Fed.
TERRY WALMSLEY	FIBROWATT
Amy Baum	ncaca
Paul Meyer	ncdm
Kathy Hawkins	Duke Energy
Preston Howard	MCIC
ZEB ALLEY	NMRS
J GUDMAN	NC CHAMBER
Bob Steelman	NCFA
Ted Tedder	Tedder Agri Consulting
Gary Hawis	NCPCM
Greg Thornton	Fibrowatt

VISITOR REGISTRATION SHEET

Ag/Env/Nat. Resources (2011-2012) — Name of Committee

4-26-11 — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Angie Maier	NCPC
Tommy Stevens	NCPC
PGP	NCFB
MP	"
Darcy Crockett	Alamo
Doug Duncan	NCAPL
Chip Gillam	Nelson Mullins
Steve Wyndham	NCWRC
Colleen Kachmarek	NCGWA
Chauncey Leggett	NCGWA
Jay Hicks	NCDA

NAME	COMPANY
Doug Heron	WM
[signature]	NCAFC
Kelli Kuhlo	NCLM

VISITOR REGISTRATION SHEET

Ag/Env/Nat. Resources (2011-2012)
Name of Committee **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Alan Braun	UNC-TV
Doug Lassiter	NCSTA
Rick Zechini	Progress Energy
George Everett	Duke Energy
[illegible]	NCBA
DAVID BARNES	PS

PAGES ATTENDING Chrm: Sen. East & Rouzer

COMMITTEE: Agriculture **ROOM:** 544

DATE: 4-26 **TIME:** 11 AM

PLEASE PRINT LEGIBILY!!!!!!!!!!!!!

	Page Name	Hometown	Sponsoring Senator
1	Mike Clemens	Byrson City	Davis
2	Spencer Goodson	Jacksonville	Brown
3	Erica Gurganus	Jacksonville	Brown
4	Tommy Scheetz	Southport	Rabon
5	Gabriel Azzato	Southport	Rabon
6	KAYSEY RAPER	SWANSBORO	PRESTON
7	Burrell Brown	Greensboro	Robinson
8			
9	Heather Green	Rutherfordton	Clary
10			

Gen Grid 4

Do not add names below the grid.

Senate Agriculture/Environment/Natural Resources

MINUTES

April 28, 2011

The Senate Ag/Env/Nat. Resources committee met on Thursday, April 28, 2011 in Room 544-LOB at 9:00 pm. There were 12 senators present.

Sen. David Rouzer called the meeting to order and introduced the Pages and Sgt-At-Arms staff.

SB-310 ETJ/CLARIFY DEFINITION OF BONA FIDE FARM

Sen. Rabon moved for adoption of the PCS for discussion. So moved. Sen. Jackson explained the PCS. Sen. Kinnaird said they have some small hog farms in her district and years ago there were some county regulations and she asked if the League of Municipalities agreed to this. Sen. Jackson said he thought things were ok and he asked permission for Mr. Paul Meyer, League of Municipalities to address members. Sen. Kinnaird asked if this refers to industrial swine farms. Sen. Jackson said the number of hogs doesn't matter, it's still a hog farm. Mr. Meyer spoke and The League feels that the needs of people who own bona fide farms are satisfied with this PCS. The counties have one element they would like to see one thing on regulations that applies to urban areas to match the county statute. Sen. Jackson still sees a hog farm as a hog farm. Sen. Tucker thinks that most urban swine farms were there long before some of these areas were developed by a municipality. He sees no reason to not allow this bill to move forward, but he does respect Sen. Kinnaird's remarks. Sen. Bingham moved for a favorable report, unfavorable to the original bill. Sen. Warren said if we need to do what we can to protect our farmers now. Sen. East asked Mr. Meyer about a measure from about 20 years ago in the General Assembly to extend the ETJ from 1 mile to 3 miles. Do all cities have a one-mile ETJ? Mr. Meyer advised counties have different ETJ's. Sen. East asked if there has to be legislative approval for this to happen? Mr. Meyer explained the ETJ law and they do not have to have this legislative approval each time. There is general law that can extend the ETJ. Sen. Walters spoke and he feels we can't stop farm operations because towns are growing. Sen. Kinnaird spoke on the differences from many years ago and today, it is because long ago (1990's) towns were buying up more parcels of land for development. Sen. Atwater spoke on volunteer agricultural districts. He feels this let's people know that there is a farm in the area before they plan to build . No further discussion, vote taken, so moved.

SB-484 REPS CREDITS AT CLEANFIELDS PARKS

Sen. Jackson explained the bill and advised it will be discussed and not voted on today, per his request.

Public Comment:

Mr. Henry Jones, NC Poultry Federation, the industry supports this bill. They appreciate the opportunity to say so.

Mr. Bruce Thompson, Parker-Poe, Re-Venture Park spokesperson, gave the procedural information on this from last year. This could cause more remedial discussions in Mecklenburg County. He explained the project. This will have an impact all over the state and they feel this could affect in a negative way.

Mr. Terry Womsly, Vice President FiberWatt, Environmental Affairs, spoke in favor of the bill. This has provisions for swine and poultry litter. He urged support from the committee.

Sen. Kinnaird asked if there was a consultant to explain more.

Mr. Van Morris, Industry Consultant working on Re-Venture project addressed members. He has worked on other projects in North Carolina. This does not help implement power production in NC. He feels the state will under-perform in 2013 because there aren't enough projects to go by. He feels the Re-Venture project is a really good project and tampering with the cleanfields will do harm to this project.

Sen. Kinnaird asked for clarification of Re-Venture. Mr. Morris explained this company as a waste energy facility that is coming to Mecklenburg County. This has been in negotiations for a few years. He explained how they will operate as an anchor project. Sen. Kinnaird asked what this has to do with poultry carve-outs. Mr. Morris explained bill 886 from last year and how that will facilitate this project. If we don't use the credits put forth last year in 886 we will not be in compliance by 2015 as this bill states. Sen. Jackson asked if this uses poultry carve-outs. Sen. Kinnaird asked why both hog and poultry couldn't have credits? Chairman Rouzer said "beauty is in the eye of the beholder." Sen. Bingham asked about the price of litter increasing – this is cheap fertilizer for farmers – he's puzzled as to what will happen if the price increases. Sen. Jackson said the issue is farther down the road; this gives us an avenue for the future. The soils will be so saturated with nutrients already there. This is an avenue for poultry litter to be moved from the houses so farms can continue to grow birds. Sen. Bingham asked if this will allow for a negative impact for the future. Sen. Jackson explained. Sen. Rabon reminded the committee that poultry farmers are still farmers. This is important and he would like to move forward with this. Sen. Walters said this brings competition and we need to take care of our litter and farmers and this is a good bill. Sen. Jackson reminded members this was for discussion only.

Mr. Bruce Thompson said Re-Venure didn't ask for this, and that project will die if this passes. This is a billion dollar venture. He doesn't believe there will be enough poultry litter to use in the future. He just wanted to make sure this is clear in that passing this bill will kill their project.

Mr. Greg Thornton, FiberWatt -representative, and he is from Sampson County. This protects agriculture and our farmers. This protects poultry growers in a way to help with their poultry waste. This helps the people in Duplin and Sampson Counties. NC Dept. Agriculture also supports this bill.

SB- 598 EIS TO CONSIDER ADVERSE IMPACTS ON FARMS

Chairman Rouzer removed this from today's agenda.

Chairman Rouzer allowed Ms. Kille her time to address members about SB-380 (the first bill we passed).

Ms. Marilyn Kille, Peppermint Spring farm. (Her speech is attached).

The meeting adjourned at 9:50.

Sen. David Rouzer, Co-Chair

Cindy J. Davis, Committee Clerk

Senate Agriculture/Environment/Natural Resources Committee
Thursday, April 28, 2011, 9:00
544 LOB

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

SB 380	ETJ/Clarify Definition of Bona Fide Farm.	Senator Jackson
SB 484	REPS Credits at Cleanfields Parks.	Senator Jackson
SB 598	EIS to Consider Adverse Impacts on Farms.	Senator Rouzer

Presentations

Other Business

Adjournment

Principal Clerk ____
Reading Clerk ____

Corrected: REMOVE SB-599

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

The Senate Committee on **Agriculture/Environment/Natural Resources** will meet at the following time:

DAY	DATE	TIME	ROOM
Thursday	April 28, 2011	9:00	544 LOB

The following will be considered:

BILL NO.	SHORT TITLE	SPONSOR
SB 380	ETJ/Clarify Definition of Bona Fide Farm.	Senator Jackson
SB 484	REPS Credits at Cleanfields Parks.	Senator Jackson
SB 598	EIS to Consider Adverse Impacts on Farms.	Senator Rouzer

REMOVE SB-599

Senator Don East, Co-Chair
Senator David Rouzer, Co-Chair

Senate Agriculture/Environment/Natural Resources Committee
Thursday, April 28, 2011, 9:00
544 LOB

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

SB 380	ETJ/Clarify Definition of Bona Fide Farm.	Senator Jackson
SB 484	REPS Credits at Cleanfields Parks.	Senator Jackson
SB 598	EIS to Consider Adverse Impacts on Farms.	Senator Rouzer

Presentations

Other Business

Adjournment

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES COMMITTEE REPORT
Senator Don East, Co-Chair
Senator David Rouzer, Co-Chair

Thursday, April 28, 2011

Senator ROUZER,
submits the following with recommendations as to passage:

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

S.B. **380** ETJ/Clarify Definition of Bona Fide Farm.

Draft Number:	PCS55290
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

TOTAL REPORTED: 1

Committee Clerk Comments:

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

S D

SENATE BILL 380
PROPOSED COMMITTEE SUBSTITUTE S380-PCS55290-SB-12

Short Title: ETJ/Definition of Bona Fide Farm Purposes. (Public)

Sponsors:

Referred to:

March 21, 2011

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THE DEFINITION OF "BONA FIDE FARM PURPOSES" AND TO EXEMPT PROPERTY USED FOR BONA FIDE FARM PURPOSES FROM MUNICIPAL ZONING AND BUILDING CODE ENFORCEMENT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 153A-340(b)(2) reads as rewritten:

"(b) (2) Except as provided in G.S. 106-743.4 for farms that are subject to a conservation agreement under G.S. 106-743.2, bona fide farm purposes include the production and activities relating or incidental to the production of crops, fruits, vegetables, ornamental and flowering plants, dairy, livestock, poultry, and all other forms of ~~agricultural products~~ agriculture as defined in ~~G.S. 106-581.1 having a domestic or foreign market.~~ G.S. 106-581.1. For purposes of this subdivision, the production of a nonfarm product that the Department of Agriculture and Consumer Services recognizes as a 'Goodness Grows in North Carolina' ~~product~~ product, a 'Got To Be NC' product, or both, that is produced on a farm subject to a conservation agreement under G.S. 106-743.2 is a bona fide farm purpose."

SECTION 2. G.S. 160A-360 is amended by adding a new subsection to read:

"(k) As used in this subsection, "bona fide farm purposes" is as described in G.S. 153A-340. As used in this subsection, "property" means a single tract of property or an identifiable portion of a single tract. Property that is located in a municipality's extraterritorial jurisdiction and that is used for bona fide farm purposes is exempt from compliance with the municipality's zoning authority and building code enforcement under this Article. Property that is located in a municipality's extraterritorial jurisdiction and that ceases to be used for bona fide farm purposes shall become subject to the exercise of all powers granted under this Article. This subsection shall not limit a municipality's authority to regulate the subdivision, development, or use of property for purposes that are not bona fide farm purposes. For purposes of this subsection, any of the following shall constitute sufficient evidence that property is being used for bona fide farm purposes:

(1) A farm sales tax exemption certificate issued by the Department of Revenue.

(2) A copy of the property tax listing showing that the property is eligible for participation in the present use value program pursuant to G.S. 105-277.3.

(3) A copy of the farm owner or operator's Schedule F from the owner or operator's most recent federal income tax return.

(4) A forest management plan.

(5) A Farm Identification Number issued by the United States Department of Agriculture Farm Service Agency."

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

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

S D

SENATE BILL 380
PROPOSED COMMITTEE SUBSTITUTE S380-CSSB-12 [v.5]

4/27/2011 4:52:57 PM

Short Title: ETJ/Definition of Bona Fide Farm Purposes. (Public)

Sponsors:

Referred to:

March 21, 2011

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THE DEFINITION OF "BONA FIDE FARM PURPOSES" AND TO EXEMPT PROPERTY USED FOR BONA FIDE FARM PURPOSES FROM MUNICIPAL ZONING AND BUILDING CODE ENFORCEMENT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 153A-340(b)(2) reads as rewritten:

"(b) (2) Except as provided in G.S. 106-743.4 for farms that are subject to a conservation agreement under G.S. 106-743.2, bona fide farm purposes include the production and activities relating or incidental to the production of crops, fruits, vegetables, ornamental and flowering plants, dairy, livestock, poultry, and all other forms of ~~agricultural products~~ agriculture as defined in ~~G.S. 106-581.1 having a domestic or foreign market.~~ G.S. 106-581.1. For purposes of this subdivision, the production of a nonfarm product that the Department of Agriculture and Consumer Services recognizes as a 'Goodness Grows in North Carolina' ~~product~~ product, a 'Got To Be NC' product, or both, that is produced on a farm subject to a conservation agreement under G.S. 106-743.2 is a bona fide farm purpose."

SECTION 2. G.S. 160A-360 is amended by adding a new subsection to read:

"(k) As used in this subsection, "bona fide farm purposes" is as described in G.S. 153A-340. As used in this subsection, property means a single tract of property or an identifiable portion of a single tract. Property that is located in a municipality's extraterritorial jurisdiction and that is used for bona fide farm purposes is exempt from compliance with the municipality's zoning authority and building code enforcement under this Article. Property that is located in a municipality's extraterritorial jurisdiction and that ceases to be used for bona fide farm purposes shall become subject to the exercise of all powers granted under this Article. This subsection shall not limit a municipality's authority to regulate the subdivision, development, or use of property for purposes that are not bona fide farm purposes. For purposes of this subsection, any of the following shall constitute sufficient evidence that property is being used for bona fide farm purposes:

(1) A farm sales tax exemption certificate issued by the Department of Revenue.

(2) A copy of the property tax listing showing that the property is eligible for participation in the present use value program pursuant to G.S. 105-277.3.

(3) A copy of the farm owner or operator's Schedule F from the owner or operator's most recent federal income tax return.

(4) A forest management plan.

(5) A Farm Identification Number issued by the United States Department of Agriculture Farm Service Agency."

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

SENATE BILL 380:
ETJ/Clarify Definition of Bona Fide Farm

2011-2012 General Assembly

Committee:	Senate Agriculture/Environment/Natural Resources	**Date:**	April 28, 2011
Introduced by:	Senator Jackson	**Prepared by:**	Jeff Hudson Committee Counsel
Analysis of:	Proposed Committee Substitute (PCS) to First Edition S380-CSSB-12 [v.5]		

SUMMARY: ***The Proposed Committee Substitute (PCS) for Senate Bill 380 would clarify the definition of "bona fide farm purposes" and provide that property that is located in a municipality's extraterritorial jurisdiction and that is used for bona fide farm purposes is exempt from compliance with the municipality's zoning authority and building code enforcement.***

BILL ANALYSIS:

Section 1 would clarify the definition of "bona fide farm purposes" by deleting the phrase "agricultural products" and substituting the term "agriculture" as it is defined in G.S. 106-581.1 (*statute below*); and by deleting the phrase "having a domestic or foreign market."

Section 2 would provide that property that is located in a municipality's extraterritorial jurisdiction and that is used for bona fide farm purposes is exempt from compliance with the municipality's zoning authority and building code enforcement. If such property ceased to be used for bona fide farm purposes, it would be subject to all municipal planning and development regulations. These provisions would apply to single tracts of property or identifiable portions of a single tract. Various types of tax documentation related to farms would constitute sufficient evidence that property was being used for bona fide farm purposes.

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

CROSS-REFERENCES:

§ 106-581.1. Agriculture defined.

For purposes of this Article, the terms "agriculture", "agricultural", and "farming" refer to all of the following:

(1) The cultivation of soil for production and harvesting of crops, including but not limited to fruits, vegetables, sod, flowers and ornamental plants.

(2) The planting and production of trees and timber.

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

(4) Aquaculture as defined in G.S. 106-758.

(5) The operation, management, conservation, improvement, and maintenance of a farm and the structures and buildings on the farm, including building and structure repair, replacement, expansion, and construction incident to the farming operation.

(6) When performed on the farm, "agriculture", "agricultural", and "farming" also include the marketing and selling of agricultural products, agritourism, the storage and use of materials for agricultural purposes, packing, treating, processing, sorting, storage, and other activities performed to add value to crops, livestock, and agricultural items produced on the farm, and similar activities incident to the operation of a farm.

Giles Perry, counsel to House Government, and Trina Griffin, counsel to House Finance, substantially contributed to this summary.

S380-SMSB-11(CSSB-12) v4

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

S 1

SENATE BILL 380

Short Title:	ETJ/Clarify Definition of Bona Fide Farm.	(Public)
Sponsors:	Senators Jackson; Atwater, Brock, Brown, East, Goolsby, Harrington, Meredith, Pate, Rouzer, Soucek, Tucker, and Walters.	
Referred to:	Agriculture/Environment/Natural Resources.	

March 21, 2011

A BILL TO BE ENTITLED

AN ACT TO EXEMPT FARMS FROM THE EXTRATERRITORIAL JURISDICTION OF MUNICIPALITIES, TO CLARIFY THE DEFINITION OF "BONA FIDE FARM," AND TO PROHIBIT THE INVOLUNTARY ANNEXATION OF FARMS.

The General Assembly of North Carolina enacts:

SECTION 1.(a) G.S. 160A-360 is amended by adding a new subsection to read:

"(k) A 'bona fide farm' as defined in G.S. 153A-340 is exempt from a municipality's extraterritorial jurisdiction under this Article."

SECTION 1.(b) G.S. 153A-340(b)(2) reads as rewritten:

"(b) (2) Except as provided in G.S. 106-743.4 for farms that are subject to a conservation agreement under G.S. 106-743.2, bona fide farm purposes include the production and activities relating or incidental to the production of crops, fruits, vegetables, ornamental and flowering plants, dairy, livestock, poultry, and all other forms of ~~agricultural products~~ agriculture as defined in ~~G.S. 106-581.1 having a domestic or foreign market.~~ G.S. 106-581.1. For purposes of this subdivision, the production of a nonfarm product that the Department of Agriculture and Consumer Services recognizes as a 'Goodness Grows in North Carolina' ~~product~~ product, a 'Got To Be NC' product, or both, that is produced on a farm subject to a conservation agreement under G.S. 106-743.2 is a bona fide farm purpose."

SECTION 2. Article 4A of Chapter 160A of the General Statutes is amended by adding a new section to read:

"**§ 160A-58.29. No involuntary annexation of farms.**

No land being used for bona fide farm purposes, as defined in G.S. 153A-340 on the date of the resolution of intent to consider annexation, shall be annexed without the written consent of the owner or owners of the property."

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

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

S 1

SENATE BILL 484*

Short Title:	REPS Credits at Cleanfields Parks.	(Public)
Sponsors:	Senators Jackson; Apodaca, Brock, Brown, East, Meredith, Newton, Pate, Rabon, Rouzer, Tillman, and Walters.	
Referred to:	Commerce.	

April 4, 2011

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT, WHEN THE NORTH CAROLINA UTILITY COMMISSION ASSIGNS TRIPLE CREDIT TO ANY ELECTRIC POWER OR RENEWABLE ENERGY CERTIFICATES GENERATED FROM RENEWABLE ENERGY RESOURCES AT A BIOMASS RENEWABLE ENERGY FACILITY LOCATED IN A CLEANFIELDS RENEWABLE ENERGY DEMONSTRATION PARK, THE ADDITIONAL CREDITS ARE ELIGIBLE TO MEET THE REQUIREMENTS FOR PUBLIC UTILITIES, ELECTRIC MEMBERSHIP CORPORATIONS, AND MUNICIPALITIES UNDER THE RENEWABLE ENERGY AND ENERGY EFFICIENCY PORTFOLIO STANDARDS (REPS) RATHER THAN REQUIRING THAT THESE ADDITIONAL CREDITS MUST FIRST BE USED TO MEET ALL THE REPS REQUIREMENTS THROUGH THE USE OF POULTRY WASTE RESOURCES.

The General Assembly of North Carolina enacts:

SECTION 1. Section 4 of S.L. 2010-195 reads as rewritten:

"**SECTION 4.** Renewable energy generation. – The definitions in G.S. 62-133.8 apply to this act. If the Utilities Commission determines that a biomass renewable energy facility located in the cleanfields renewable energy demonstration park is a new renewable energy facility, the Commission shall assign triple credit to any electric power or renewable energy certificates generated from renewable energy resources at the biomass renewable energy facility that are purchased by an electric power supplier for the purposes of compliance with ~~G.S. 62-133.8. The additional credits shall be eligible for use to meet the requirements of G.S. 62-133.8(f). The additional credits shall first be used to satisfy the requirements of G.S. 62-133.8(f). Only when the requirements of G.S. 62-133.8(f) are met, shall the additional credits be utilized to comply with~~ G.S. 62-133.8(b) and (c). The triple credit shall apply only to the first 20 megawatts of biomass renewable energy facility generation capacity located in all cleanfields renewable energy demonstration parks in the State."

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

SENATE BILL 484:
REPS Credits at Cleanfields Parks

2011-2012 General Assembly

Committee:	Senate Agriculture/Environment/Natural Resources	**Date:**	April 26, 2011
Introduced by:	Senator Jackson	**Prepared by:**	Jeff Hudson
Analysis of:	First Edition		Committee Counsel

SUMMARY: Senate Bill 484 would remove the requirement from the Cleanfields Act of 2010 that additional credits for electric power or RECs generated at a biomass renewable energy facility located in the cleanfields park first be applied to the poultry waste set-aside.

[As introduced, this bill was identical to H465, as introduced by Reps. Bell, Langdon, Brisson, McCormick, which is currently in House Agriculture.]

BACKGROUND AND CURRENT LAW:

S.L. 2009-397 (commonly referred to as Senate Bill 3) established the North Carolina renewable energy and energy efficiency portfolio standard (REPS) in order to promote the development of renewable energy and energy efficiency in the State. The REPS requires electric power suppliers to use an increasing percentage of renewable energy resources and employ energy efficiency programs (12.5% by 2020) to meet the needs of the State's retail electricity customers. An electric power supplier could meet the REPS requirement by doing any one or more of the following:

- Generate electric power at a new renewable energy facility.
- Use a renewable energy resource to generate electric power at a generating facility.
- Reduce energy consumption through the implementation of an energy efficiency measure.
- Purchase electric power from a new renewable energy facility.
- Purchase renewable energy certificates (RECs) derived from in-state or out-of-state new renewable energy facilities.

The REPS requirement includes set-asides for the generation of energy from solar energy, swine waste, and poultry waste resources.

S.L. 2010-195 (Cleanfields Act of 2010) authorized the State to establish a cleanfields renewable energy demonstration park (cleanfields park). Any electric power or RECs generated at a biomass renewable energy facility located in the cleanfields park that is purchased by an electric power supplier would be given triple credit. The triple credit would be applied as follows:

- Additional credits would first be applied to the poultry waste set-aside.
- Once the poultry waste-set aside has been fully satisfied, any remaining additional credits would be applied to the overall REPS requirements.

BILL ANALYSIS:

Senate Bill 484 would remove the requirement from the Cleanfields Act of 2010 that additional credits first be applied to satisfy the requirements of the poultry waste set-aside.

EFFECTIVE DATE: This act is effective when it becomes law.

S484-SMSB-18(e1) v1

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

S 1

SENATE BILL 598

Short Title:	EIS to Consider Adverse Impacts on Farms.	(Public)
Sponsors:	Senators Rouzer; Brock, Brown, East, Jackson, Meredith, and Tillman.	
Referred to:	Agriculture/Environment/Natural Resources.	

April 14, 2011

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT ENVIRONMENTAL IMPACT STATEMENTS UNDER THE ENVIRONMENTAL POLICY ACT INCLUDE ANY SIGNIFICANT ADVERSE IMPACTS AFFECTING FARMS, MEASURES PROPOSED TO AVOID, MINIMIZE, AND MITIGATE THE ADVERSE IMPACTS, AND ALTERNATIVES TO THE PROPOSED ACTION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 113A-4(2) reads as rewritten:

"(2) Every State agency shall include in every recommendation or report on any action involving expenditure of public moneys or use of public land for projects and programs significantly affecting the quality of the environment of this State, a detailed statement by the responsible official setting forth all of the following:

a. The environmental impact of the proposed ~~action;~~action.

b. Any significant adverse environmental effects which cannot be avoided should the proposal be ~~implemented;~~implemented.

c. Mitigation measures proposed to minimize the ~~impact;~~impact.

d. Alternatives to the proposed ~~action;~~action.

e. The relationship between the short-term uses of the environment involved in the proposed action and the maintenance and enhancement of long-term ~~productivity; and~~productivity.

f. Any irreversible and irretrievable environmental changes which would be involved in the proposed action should it be implemented.

g. Any significant adverse impacts affecting farms, including impacts that could result in the loss of farmland acreage or the loss of the use of the farmland acreage, impacts that could interfere with the landowner or farmer using the property for any bona fide farm purpose, and impacts that obstruct ingress and egress to farm equipment in the long term. As used in this sub-subdivision, 'bona fide farm purpose' has the same meaning as in G.S. 153A-340.

h. Measures proposed to avoid, minimize, and mitigate the adverse impacts to farms under sub-subdivision g. of this subdivision and alternatives to the proposed action."

SECTION 2. This act is effective when it becomes law and applies to any environmental impact statements subject to Article 1 of Chapter 113A of the General Statutes that are prepared on or after that date.

Hearing for SB380; Senate Committee for Agriculture/Environment/Natural Resources
April 26, 2011

Committee co-Chairman East and members of the Senate

My name is Marilyn Kille. I own Peppermint Spring Farm. It is served by the Jordan Lake watershed – which has been ordered to reduce its contamination level by 35%.

In 2008 twenty-one local, county and state business leaders and public officials nominated me the first-ever "Volunteer of the Year" for the neighboring town in whose ETJ my farm is located. I received nine times more letters of recommendation than the award recipient. More interestingly, on the night the recipient was announced, the town's mayor – who's also a realtor, developer and land-use attorney – instructed the town Board to sue me– for allegedly having violated its local building code ten years earlier.

Extensive evidence proves that I violated no local, county, state, or federal law when I completed a tiny 520sf caretaker apartment in a barn in 1997. But, by 2008, life for NC farmers had changed dramatically -- as a result of the state's drinking water contamination crisis. And, unknown to me and others at that time, my farm stood in the way of a solution to the town's burgeoning water pollution problem. That is, how was a "built-out" town to continue to develop – and thus to pollute this watershed – and also comply with federal and state environmental laws. My farm became its solution!

In April 2008 a newly appointed district court judge – who had no land-use experience – convicted me of having built that apartment without its having been known, permitted, inspected by town staff; or having received final approval and a Certificate of Occupancy. Most surprisingly, this judge refused to allow my attorney to introduce any evidence to the contrary – the town's 1997 permits, construction plans, invoices, utility company records, contractor affidavits, payment records, and 150+ construction photos – each and all of which evidenced that I knowingly had violated no laws, no building codes.

Consequently, my farm was ordered to become a major subdivision (think Wal-Mart!) – within 120 days – a process that routinely takes a minimum of two years. I faced losing my residential mortgage, my "farm use" tax classification, the loss of my right to farm, my family's home, farm income. And, under state law, having to pay $220,000 in "conversion taxes" and $55,000 in annual property taxes thereafter. Like others before me, I was given no choice.

Under Court Order to complete a two year process within four months, I worked night-and-day with contractors to whom I paid $35,000 to help me comply – and ceased to generate any income that year. Throughout, the town's leaders denigrated me publicly as a liar, a scofflaw, a thief. I was refused service by community businesses with which I'd had good relations for decades. I endured public hearings and endless public ridicule. By November 2008 all that remained was for me to file the required Conditional Use Permit (CUP) for my farm to officially become a major subdivision.

At that point local, county and state officials warned [quote], "*You are not the first to run into these obstacles.*" And, "*Don't allow them to steal your farm; you're been conned.*" Heeding these warnings, thereafter I failed to file the CUP – for which I was threatened with imprisonment and $80,000 in fines; and finally criminalized – when the town's leaders altered my farm's 1997 inspection file documents and made others disappear. To date, no judge has ever viewed the true original, unaltered evidence.

In the words of the town's planning administrator eight months later, I was sued because [quote], *"It would be prohibitively expensive for the town to leapfrog over your farm to bring water and sewer to those parcels slated for development."* She was referring to the historic farms that, in 2006, the town's leaders rezoned for commercial development – without their owners' knowledge or consent. A shopping center! A transportation depot! More ETJ subdivisions slated for "voluntary annexation" once built-out – another scam but a condition of permitting.

The point is! The evidence supports that real estate fraud has been endemic in North Carolina since the mid-1980s. And, since that time, NC's farmers – and especially those within the Piedmont region and within municipal ETJs – have lived in near-constant fear of the loss of their family farms and livelihoods. Largely under-educated; many having only completed the 3rd, 6th, or 8th grade, they haven't known how to defend themselves. And few

have possessed the financial wherewithal to do so. Consequently, innumerable owners lost their homes and farms to surreptitious tactics employed by clever developers and land-use attorneys.

In 2009 a farm owner claimed to me that seven years of extraordinary abuse by the town's lawyer-leaders contributed to the premature death of his father at age 63. The family's aging patriarch had sought to develop the family's 245 year old dairy farm but local leaders insisted upon his using their developer-of-choice. Thinking he could prevent similar abuse of others, thereafter, the son served two terms on the local planning board. In 2009 he claimed to me, *"In those four years the Town Board failed to adopt even one recommendation made by its Planning Board."*

As you may know, NC's ETJ law grants exclusive development jurisdiction for rural land to municipal governments – BUT – denies municipal voting rights to ETJ residents. Thus, towns have absolute control over a citizen's home, land values and use rights, livelihood, culture, a family's future. Rural owners have no such rights!

When and how did NC prevail in denying the rights of its citizens as mandated by our Nation's Constitution?

Defending my farm cost me over $220,000. I've lost another $325,000 in income. Based upon the experience of attorneys who prevailed for their clients, an appeal would have cost another $300-450,000. This alone would have bankrupted me. I chose, instead, to appeal directly to you.

For nearly four years I have been abused and have lived in constant fear. My farm has withstood constant vandalism; my fences and gates have frequently been opened or damaged, intentionally releasing my farm's animals onto the area's busy roadways. Some have been injured; others poisoned. Each day that I have spoken with members of the legislature I return home expecting more of the same. Or worse!

Law enforcement officials have warned that [quote], *"You're in the crosshairs of some very, very bad people who want your land and who don't intend to pay for it."* One senior detective, who helped the FBI and DEA send a developer to federal prison in the mid-1990s – as NC's biggest drug trafficker – in June 2010 warned me to *"Run as far away as fast as you can if you value your life."* This same developer is now positioned to commandeer the remaining farms within my sub-watershed. As of March 31, 2011 our farms lost an additional $24-$36 Million of their values, the result of yet another scam.

This legislature committed itself to pursuing annexation reform, an issue pursued by angry ETJ subdivision residents since the mid-1980s. But has anyone asked from where the large parcels that became their subdivisions came from? And how some developers came by them? I'm speaking of our farms!

Have you asked yourself why, since 2000, the FBI has labeled NC #1 in the Nation for fraud and #2 for embezzlement? I'm mortified by this. I don't believe that this is the legacy you wish to leave to your children!

The passage of SB380 is absolutely essential if what I have described today is to cease. But it does not go far enough. Why? Because SB380 is yesterday's news! Today's news is how the state's ETJ laws have enabled municipalities – and county governments – to shift the burden for urban drinking water contamination on to area farms. And, in so doing, to usurp farmers' "use rights", thereby positioning the majority for bankruptcy once urban development has exhausted watershed contaminant loading limits – likely by 2013. This includes the majority of farms within the Piedmont, whether within or outside ETJs.

This is why it is critical that SB622 be viewed as the essential complement to SB380 if remaining loopholes are to be closed.

I stand before you today having lost beyond imagination! Please do not allow to happen to others what has happened to me and my family. Please pass both SB380 and SB622. And continue henceforth to remain vigilant.

Thank you.

Marilyn M. Kille
PEPPERMINT SPRING FARM
Chapel Hill, NC 27516

VISITOR REGISTRATION SHEET

Senate AG/Env/Nat. Resources (2011-2012) — 4-28-11

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Tammy Stevens	NCPC
[signature]	CSS
[signature]	NCFA
W. Gardner Culpepper	DLC & Assoc.
Angie Maier	NCPC
Jimmy Gentry	NC Grange
[signature]	N.C. Grange
Ray Starling	NCDA+CS
Allison Fowler	NC Grange
VAN Morris	US MicroGrid
BRUCE THOMPSON	PARKER POE

VISITOR REGISTRATION SHEET

Senate AG/Env/Nat. Resources (2011-2012)
Name of Committee **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Bob Ford	NC Poultry Fed
Henry Jones	NC Poulty Federation
Vernon Cox	NCDA&CS
Henri McClees	McClees Consulting
David McLeod	NCDACS

VISITOR REGISTRATION SHEET

Senate AG/Env/Nat. Resources (2011-2012) — 4-28-11

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Robin Smith	DENR
Kari Barsness	DENR
Tom Beason	EDF
Dan Conrad	NCCN
Mike Abraczinskas	DENR
Sushma Masemore	DENR-DAQ
TERRY WALMSLEY	FIBROWATT
Daniel Amburn	NCLM
PRESTON HOWARD	MCIC
Doug Lassiter	NCSTA
Patrick Buffkin	MCAGC

VISITOR REGISTRATION SHEET

Senate AG/Env/Nat. Resources (2011-2012) 4-28-11

Name of Committee **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Rick Zechini	Progress Energy
MIKE WATERS	NCRPA
Joey Stansbury	Senator Tucker's office
Chris Anderson	
Emily Emmm	MWC
DAN CRAWFORD	NCLCV

Senate Agriculture/Environment/Natural Resources

MINUTES

May 3, 2011

The Senate Ag/Env/Nat. Resources committee met on Tuesday, May 3, 2011 in Room 544-LOB at 11:00 pm. There were 14 senators present.

Sen. Don East called the meeting to order and introduced the Pages and Sgt-At-Arms staff.

SB-229 TRANSFER DENER SOIL & WATER TO DACS

Sen. Bingham moved for adoption of the PCS for discussion. So moved. Sen. Rouzer made opening remarks about the bill.

PUBLIC COMMENTS:

Mr. James Ferguson, Supervisor of Soil & Water, Haywood County addressed members. He's served on the S&W Conservation board for years. He believes that now is the time to move this from DENR to DACS. The Executive Committee voted yesterday to make this move.

Mr. Craig Frazier, Randolph Soil & Water, President of NC S&W Conservation Association. He gave a background of soil and water districts. A copy of his letter to Secretary Dee Freeman, DENR, is attached that shows that this was adopted by the districts. They feel this will better align themselves with the work they do in the state.

Mr. Donald Heath, addressed members and explained the work they do with working with the Dept. of Agriculture and this would be ideal for their area.

Sen. Rabon agrees that the long-term of this is a good thing. If this were to pass today could the transition be done without interrupting service to the people in a short-time frame; and also, how much does it cost? He's worried about his pilot program. Sen. Rouzer advised him good notes have been taken. Sen. Tillman feels this should have been taken place a long time ago and he moved for a favorable report to the PCS, unfavorable to the original bill. Sen. Jenkins is not sure if he is for or against this and he wants to know how much the money costs will affect this move due to the budget situation. Sen. Rouzer said everyone will take their cuts, but the structure of this is better because the Commissioner of Ag is an elected official and this will be a natural thing for everyone involved. Sen. Kinnaird asked if physical offices and personnel are being moved? What is it going to take strategically to get this accomplished? Sen. Rouzer said there will be issues, but the transition will be made easily between DENR and Dept. of Ag as everyone has agreed to work together. No further discussion, vote was taken and so moved.

SB-388 TRANSFER FORESTRY & FORESTRY COUNCIL TO DACS

Sen. Tillman moved for the adoption of the PCS for discussion. So moved. Sen. Rouzer explained. Sen. Walters spoke in support of this move. Forestry is a part of agriculture and this would be a good marriage of the two. Sen. Brock also spoke in favor of the move. Mr. David Knight, Asst. Sec. - Natural Resources, DENR. The Dept. believes this should be done as a state-wide organizational study. Costs need to be analyzed and there should be a comprehensive process. This should be an open choice for the people who are using these services. Please consider these issues before any moves are made. Sen. East asked Mr. Knight if he knew that Sec. Freeman said he was willing to accept the move of Forestry in a meeting they had with Sen. Berger. Mr. Knight was not aware of those conversations. Mr. Bob Slocum, Exc. VP of NC Forestry Assoc. supports this move. They have discussed this for many years. This is a good stream-line move and now is the time. They believe that forestry does have more in common with Dept. of AG. Forestry is agriculture. 60% of this land is forestry and the other portion is agriculture and now is the time to bring these 2 together. Sen. Bingham supports this and he moves for a favorable report for the PCS, unfavorable to the original bill. Sen. Tillman said when he talks to people involved with forestry, they all feel this should fall under Agricultural departments. Sen. Kinnaird pointed out that years ago she sponsored a bill that dealt with forestry farms. When forests are replanted and fertilizer is put down, that becomes an environmental issue. It is also affected when roads are put through forestry farms. Sen. Walters invited Sen. Kinnaird to his forestry business. He spoke again on the forestry industry and their management practices and they are good stewards of the land. Sen. Jenkins asked for facts about the land that had the fertilizer that was spread on that land Sen. Kinnaird was referring to because he knew of no one that would put chemicals on their land. He's not sure what land would be treated by these means. Sen. Kinnaird spoke again about big forestry companies. She has been on tours to see how this process was done and she admits it years ago. Sen. Bingham asked about controlled burns and use of herbicides being done in the proper way and procedures used to do this. Sen. Tucker asked the sponsor asked about moving 2 divisions from under DENR and will there be substantial jobs lost doing this? Sen. Rouzer said it will be an impact but management of the programs will be done more effectively since DENR is more of a regulatory division. No further discussion, vote taken and so moved.

628 WQ PERMITTING/COMPLIANCE REV. & SUBMISSIONS

Sen. Hartsell made commented on this and asked that we remove this bill from the agenda today.

SB-676 CLARIFY WATER & WELL RIGHTS/PRIVATE PROPERTY

Sen. Daniel moved for adoption of the PCS for discussion. So moved. Sen. Rouzer explained the legislation. Ms. Jennifer McGinnis, Staff Counsel explained in detail. This applies to private land. Sen. Kinnaird spoke about droughts and water management. She asked if this removes options during drought. Sen. Rouzer responded. Sen. Bingham moved for a favorable report, unfavorable to the original bill. Mr. Daniel Amburn, League of Municipalities thanked Sen. Rouzer for this legislation. They

support this and appreciate his efforts though there is a section they would like to have changed. No further discussion, vote taken, so moved.

The meeting adjourned at 11:55.

Sen. Don East, Co-Chair

Cindy J. Davis, Committee Clerk

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES COMMITTEE REPORT
Senator Don East, Co-Chair
Senator David Rouzer, Co-Chair

Wednesday, May 04, 2011

Senator EAST,
submits the following with recommendations as to passage:

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

S.B. **388** Transfer Forestry & Forestry Council to DACS.

Draft Number:	PCS35238
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

TOTAL REPORTED: 1

Committee Clerk Comments:

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES COMMITTEE REPORT
Senator Don East, Co-Chair
Senator David Rouzer, Co-Chair

Tuesday, May 03, 2011

Senator EAST,
submits the following with recommendations as to passage:

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

S.B. **229** Transfer DENR Soil & Water to DACS.

Draft Number:	PCS55292
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

S.B. **676** Clarify Water & Well Rights/Private Property.

Draft Number:	PCS55293
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

TOTAL REPORTED: 2

Committee Clerk Comments:

#2

Senate Agriculture/Environment/Natural Resources Committee
Tuesday, May 3, 2011, 11:00
544 LOB

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

SB 229	Transfer DENR Soil & Water to DACS.	Senator Rouzer Senator East Senator Jackson
SB 388	Transfer Forestry & Forestry Council to DACS.	Senator Rouzer Senator East Senator Jackson
SB 628	WQ Permitting/Compliance Rev. & Submissions.	Senator Hartsell Senator Bingham
SB 676	Clarify Water & Well Rights/Private Property.	Senator Rouzer Senator East Senator Jackson

Presentations

Other Business

Adjournment

#1

Senate Agriculture/Environment/Natural Resources Committee
Tuesday, May 3, 2011, 11:00
544 LOB

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

SB 229	Transfer DENR Soil & Water to DACS.	Senator Rouzer Senator East Senator Jackson
SB 374	Landowner Protection Act.	Senator Walters Senator Apodaca Senator Tucker
SB 388	Transfer Forestry & Forestry Council to DACS.	Senator Rouzer Senator East Senator Jackson
SB 628	WQ Permitting/Compliance Rev. & Submissions.	Senator Hartsell Senator Bingham
SB 676	Clarify Water & Well Rights/Private Property.	Senator Rouzer Senator East Senator Jackson

Presentations

Other Business

Adjournment

Revision #2

Principal Clerk ____
Reading Clerk ____

Corrected: Remove SB-374

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

The Senate Committee on **Agriculture/Environment/Natural Resources** will meet at the following time:

DAY	DATE	TIME	ROOM
Tuesday	May 3, 2011	11:00	544 LOB

The following will be considered:

BILL NO.	SHORT TITLE	SPONSOR
SB 229	Transfer DENR Soil & Water to DACS.	Senator Rouzer Senator East Senator Jackson
SB 388	Transfer Forestry & Forestry Council to DACS.	Senator Rouzer Senator East Senator Jackson
SB 676	Clarify Water & Well Rights/Private Property.	Senator Rouzer Senator East Senator Jackson
SB 628	WQ Permitting/Compliance Rev. & Submissions.	Senator Hartsell Senator Bingham

Remove SB-374

Senator Don East, Co-Chair
Senator David Rouzer, Co-Chair

Revision #1

Principal Clerk ____
Reading Clerk ____

Corrected: Remove SB-238
Add Bills: SB-676, SB-628, SB-374

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

The Senate Committee on **Agriculture/Environment/Natural Resources** will meet at the following time:

DAY	DATE	TIME	ROOM
Tuesday	May 3, 2011	11:00	544 LOB

The following will be considered:

BILL NO.	SHORT TITLE	SPONSOR
SB 229	Transfer DENR Soil & Water to DACS.	Senator Rouzer Senator East Senator Jackson
SB 388	Transfer Forestry & Forestry Council to DACS.	Senator Rouzer Senator East Senator Jackson
SB 676	Clarify Water & Well Rights/Private Property.	Senator Rouzer Senator East Senator Jackson
SB 628	WQ Permitting/Compliance Rev. & Submissions.	Senator Hartsell Senator Bingham
SB 374	Landowner Protection Act.	Senator Walters Senator Apodaca Senator Tucker

Remove SB-238
Add Bills: SB-676, SB-628, SB-374

Senator Don East, Co-Chair
Senator David Rouzer, Co-Chair

Principal Clerk ____
Reading Clerk ____

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

The Senate Committee on **Agriculture/Environment/Natural Resources** will meet at the following time:

DAY	DATE	TIME	ROOM
Tuesday	May 3, 2011	11:00	544 LOB

The following will be considered:

BILL NO.	SHORT TITLE	SPONSOR
SB 229	Transfer DENR Soil & Water to DACS.	Senator Rouzer Senator East Senator Jackson
SB 238	Richmond/Deer Hunting With Dogs.	Senator Purcell
SB 388	Transfer Forestry & Forestry Council to DACS.	Senator Rouzer Senator East Senator Jackson

Senator Don East, Co-Chair
Senator David Rouzer, Co-Chair

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

S D

SENATE BILL 229
PROPOSED COMMITTEE SUBSTITUTE S229-PCS55292-RI-19

Short Title: Transfer DENR Soil & Water to DACS. (Public)

Sponsors:

Referred to:

March 8, 2011

A BILL TO BE ENTITLED

AN ACT TO TRANSFER THE DIVISION OF SOIL AND WATER CONSERVATION AND THE SOIL AND WATER CONSERVATION COMMISSION OF THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES TO THE DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES AND TO MAKE CONFORMING CHANGES.

The General Assembly of North Carolina enacts:

SECTION 1.(a) The Division of Soil and Water Conservation is transferred from the Department of Environment and Natural Resources to the Department of Agriculture and Consumer Services with all the elements of a Type I transfer, as defined by G.S. 143A-6.

SECTION 1.(b) All functions, powers, duties, and obligations previously vested in the State Soil and Water Conservation Commission are transferred to and vested in the Department of Agriculture and Consumer Services by a Type II transfer, as defined in G.S. 143A-6.

SECTION 2.(a) G.S. 143B-279.3(a) reads as rewritten:

"(a) All functions, powers, duties, and obligations previously vested in the following subunits of the following departments are transferred to and vested in the Department of Environment and Natural Resources by a Type I transfer, as defined in G.S. 143A-6:

...

~~(10) Soil and Water Conservation Division, Department of Natural Resources and Community Development.~~

...."

SECTION 2.(b) G.S. 143B-279.3(b) reads as rewritten:

"(b) All functions, powers, duties, and obligations previously vested in the following commissions, boards, councils, and committees of the following departments are transferred to and vested in the Department of Environment and Natural Resources by a Type II transfer, as defined in G.S. 143A-6:

...

~~(21) State Soil and Water Conservation Commission, Department of Natural Resources and Community Development.~~

...."

SECTION 3. Part 7 of Article 7 of Chapter 143B of the General Statutes is recodified as Article 71 of Chapter 106 of the General Statutes, and accordingly G.S. 143B-294 through G.S. 143B-297.1 are recodified as G.S. 106-840 through G.S. 106-844.

SECTION 4. G.S. 106-840, as recodified by Section 3 of this act, reads as rewritten:

"**§ 106-840. Soil and Water Conservation Commission – creation; powers and duties; compliance inspections.**

(a) There is hereby created the Soil and Water Conservation Commission of the Department of ~~Environment and Natural Resources~~Agriculture and Consumer Services with the power and duty to adopt rules to be followed in the development and implementation of a soil and water conservation program.

(1) The Soil and Water Conservation Commission has all of the following powers and duties:
   a. To approve petitions for soil conservation districts.
   b. To approve application for watershed plans.
   c. Such other duties as specified in Chapter 139.
   d. To conduct any inspections in accordance with subsection (b) of this section.

(2) The Commission shall adopt rules consistent with the provisions of this Chapter. All rules not inconsistent with the provisions of this Chapter heretofore adopted by the Soil and Water Conservation Committee shall remain in full force and effect unless and until repealed or superseded by action of the Soil and Water Conservation Commission. All rules adopted by the Commission shall be enforced by the Department of ~~Environment and Natural Resources.~~Agriculture and Consumer Services.

(b) An employee or agent of the Soil and Water Conservation Commission or the Department of ~~Environment and Natural Resources~~Agriculture and Consumer Services may enter property, with the consent of the owner or person having control over property, at reasonable times for the purposes of investigating compliance with Commission or Department programs when the investigation is reasonably necessary to carry out the duties of the Commission. If the Commission or Department is unable to obtain the consent of the owner of the property, the Commission or Department may obtain an administrative search warrant pursuant to G.S. 15-27.2.

(c) Any person who refuses entry or access to property by an employee or agent of the Commission or the Department or who willfully resists, delays, or obstructs an employee or agent of the Commission or the Department while the employee or agent is in the process of carrying out official duties after the employee or agent has obtained the consent of the owner or person having control of the property or, if consent is not obtained, after the employee or agent has obtained an administrative search warrant, shall be guilty of a Class 1 misdemeanor."

SECTION 5. G.S. 106-841, as recodified by Section 3 of this act, reads as rewritten:

"(a) The Soil and Water Conservation Commission of the Department of ~~Environment and Natural Resources~~Agriculture and Consumer Services shall be composed of seven members appointed by the Governor. The Commission shall be composed of the following members:

...

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

SECTION 6. G.S. 139-3(4) reads as rewritten:

"(4) "Commission" or "Soil and Water Conservation Commission" means the Soil and Water Conservation Commission created by G.S. ~~143B-294.~~106-840."

SECTION 7. G.S. 139-4(d) reads as rewritten:

"(d) In addition to the duties and powers hereinafter conferred upon the Soil and Water Conservation Commission, it shall have the following duties and powers:

...

(9) To create, implement, and supervise the Agriculture Cost Share Program for Nonpoint Source Pollution Control created pursuant to ~~Part 9 of Article 21 of Chapter 143~~Article 72 of Chapter 106 of the General Statutes and the Community Conservation Assistance Program created pursuant to Part 11 of Article 21 of Chapter 143 of the General Statutes.

(10) To review and approve or disapprove the application of a district supervisor for a grant under the Agriculture Cost Share Program for Nonpoint Source Pollution Control or the Community Conservation Assistance Program as provided by G.S. 139-8(b).

(11) To develop and implement a program for the approval of water quality and animal waste management systems technical specialists.

(12) To develop and approve best management practices for the Agriculture Cost Share Program for Nonpoint Source Pollution Control and for use in the water quality protection programs of the Department of Environment and Natural Resources and to adopt rules that establish criteria governing approval of these best management practices."

SECTION 8. G.S. 139-4(e) reads as rewritten:

"(e) A member of the Commission may apply for and receive a grant under the Agriculture Cost Share Program for Nonpoint Source Pollution Control and the Community Conservation Assistance Program if:

(1) The member does not vote on the application or attempt to influence the outcome of any action on the application; and

(2) The application is approved by the ~~Secretary of Environment and Natural Resources.~~Commissioner of Agriculture."

SECTION 9. G.S. 139-5(d) reads as rewritten:

"(d) The Department of ~~Environment and Natural Resources~~Agriculture and Consumer Services shall pay all expenses for the issuance of such notices and the conduct of such hearings and referenda, and shall supervise the conduct of such hearings and referenda. It shall issue appropriate regulations governing the conduct of such hearings and referenda, and providing for the registration prior to the date of the referendum of all eligible voters, or prescribing some other appropriate procedure for the determination of those eligible as voters in such referendum. No informality in the conduct of such referendum or in any matters relating thereto shall invalidate said referendum or the result thereof if notice thereof shall have been given substantially as herein provided and said referendum shall have been fairly conducted."

SECTION 10. G.S. 139-5(e) reads as rewritten:

"(e) The Department of ~~Environment and Natural Resources~~Agriculture and Consumer Services shall publish the results of such referendum and shall thereafter consider and determine whether the operation of the district within the defined boundaries is administratively practicable and feasible. If the Commission shall determine that the operation of such district is not administratively practicable and feasible, it shall record such determination and deny the petition. If the Commission shall determine that the operation of such district is administratively practicable and feasible, it shall record such in the manner hereinafter provided. In making such determination the Commission shall give due regard and weight to the attitudes of the occupiers of lands lying within the defined boundaries, the number of land occupiers eligible to vote in such referendum who shall have voted, the proportion of the votes cast in such referendum in favor of the creation of the district to the total number of votes cast, the approximate wealth and income of the land occupiers of the proposed district, the probable

expense of carrying on erosion control operations within such district, and such other economic and social factors as may be relevant to such determination, having due regard to the legislative determination set forth in G.S. 139-2: Provided, however, that the Commission shall not have authority to determine that the operations of the proposed district within the defined boundaries is administratively practicable and feasible unless at least a majority of the votes cast in the referendum upon the proposition of creation of the district shall have been cast in favor of the creation of such district."

SECTION 11. G.S. 139-7 reads as rewritten:

"**§ 139-7. District board of supervisors – appointive members; organization of board; certain powers and duties.**

The governing body of a soil and water conservation district shall consist of the three elective supervisors from the county or counties in the district, together with the appointive members appointed by the Soil and Water Conservation Commission pursuant to this section, and shall be known as the district board of supervisors. When a district is composed of less than four counties, the board of supervisors of each county shall on or before October 31, 1978, and on or before October 31 as the terms of the appointive supervisors expire, recommend in writing two persons from the district to the Commission to be appointed to serve with the elective supervisors. If the names are not submitted to the Commission as required, the office shall be deemed vacant on the date the term is set to expire and the Commission shall appoint two persons of the district to the district board of supervisors to serve with the elected supervisors. The Commission shall make its appointments prior to or at the November meeting of the Commission. Appointive supervisors shall take office on the first Monday in December following their appointment. Such appointive supervisors shall serve for a term of four years, and thereafter, as their terms expire, their successors shall serve for a term of four years. The terms of office of all appointive supervisors who have heretofore been lawfully appointed for terms the final year of which presently extends beyond the first Monday in December are hereby terminated on the first Monday in December of the final year of appointment. Vacancies for any reason in the appointive supervisors shall be filled for the unexpired term by the appointment of a person by the Commission from the district in which the vacancy occurs. Vacancies for any reason in the elected supervisors shall be filled for the unexpired term by appointment by the Commission of a person from the county in the district in which the vacancy occurs.

In those districts composed of four or more counties, the Commission may, but is not required to, appoint two persons from the district without recommendation from the board of supervisors, to serve as district supervisors along with the elected members of the board of supervisors. Such appointments shall be made at the same time other appointments are made under this section, and the persons appointed shall serve for a term of four years.

The supervisors shall designate a chairman and may, from time to time, change such designation. A simple majority of the board shall constitute a quorum for the purpose of transacting the business of the board, and approval by a majority of those present shall be adequate for a determination of any matter before the board, provided at least a quorum is present. Supervisors of soil and water conservation districts shall be compensated for their services at the per diem rate and allowed travel, subsistence and other expenses, as provided for State boards, commissions and committees generally, under the provisions of G.S. 138-5; provided, that when per diem compensation and travel, subsistence, or other expense is claimed by any supervisor for services performed outside the district for which such supervisor ordinarily may be appointed or elected to serve, the same may not be paid unless prior written approval is obtained from the Department of ~~Environment and Natural Resources.~~Agriculture and Consumer Services.

The supervisors may employ a secretary, technical experts, whose qualifications shall be approved by the Department, and such other employees as they may require, and shall

determine their qualifications, duties and compensation. The supervisors may call upon the Attorney General of the State for such legal services as they may require. The supervisors may delegate to their chairman, to one or more supervisors, or to one or more agents, or employees such powers and duties as they may deem proper. The supervisors shall furnish to the Soil and Water Conservation Commission, upon request, copies of such ordinances, rules, regulations, orders, contracts, forms, and other documents as they shall adopt or employ, and such other information concerning their activities as it may require in the performance of its duties under this Chapter.

The supervisors shall provide for the execution of surety bonds for all employees and officers who shall be entrusted with funds or property; shall provide for the keeping of a full and accurate record of all proceedings and of all resolutions, regulations, and orders issued or adopted; and shall provide for an annual audit of the accounts of receipts and disbursements. In any given year, if the supervisors provide for an internal audit, and the supervisor serving as chairman certifies, under oath, that this internal audit is a true and accurate reflection of the accounts of receipts and disbursements, then the supervisors shall not be required, notwithstanding the provisions of G.S. 159-34, to provide for an audit of the accounts of receipts and disbursements by a certified public accountant or by an accountant certified by the Local Government Commission. Any supervisor may be removed by the Soil and Water Conservation Commission upon notice and hearing, for neglect of duty, incompetence or malfeasance in office, but for no other reason.

The supervisors may invite the legislative body of any municipality or county located near the territory comprised within the district to designate a representative to advise and consult with the supervisors of the district on all questions of program and policy which may affect the property, water supply, or other interests of such municipality or county.

All district supervisors whose terms of office expire prior to the first Monday in January, 1948, shall hold over and remain in office until supervisors are elected or appointed and qualify as provided in this Chapter, as amended. The terms of office of all district supervisors, who have heretofore been elected or appointed for terms extending beyond the first Monday in January, 1948, are hereby terminated on the first Monday in January, 1948."

SECTION 12. G.S. 139-8(a)(13) reads as rewritten:

"(13) To assist the Commission in the implementation and supervision of the Agriculture Cost Share Program for Nonpoint Source Pollution Control created pursuant to ~~G.S. 143-215.74~~G.S. 106-850 and to assist in the implementation and supervision of any other program intended to protect water quality or quantity administered by the Department of ~~Environment and Natural Resources~~Agriculture and Consumer Services by providing technical assistance, allocating available grant monies, and providing any other assistance that may ~~by~~ be required or authorized by any provision of federal or State law."

SECTION 13. G.S. 139-13 reads as rewritten:

"**§ 139-13. Discontinuance of districts.**

At any time after five years after the organization of a district under the provisions of this Chapter, any 25 occupiers of land lying within the boundaries of such districts may file a petition with the Soil and Water Conservation Commission praying that the operations of the district be terminated and the existence of the district discontinued. The Commission may conduct such public meetings and public hearings upon such petition as may be necessary to assist it in the consideration thereof. Within 60 days after such a petition has been received by the Commission it shall give due notice of the holding of a referendum, and shall supervise such referendum, and issue appropriate regulations governing the conduct thereof, the question to be submitted by ballots upon which the words "For terminating the existence of the _____ (name of the soil and water conservation district to be here inserted)" and "Against terminating

the existence of the _____ (name of the soil and water conservation district to be here inserted)" shall appear with a square before each proposition and a direction to insert an X mark in the square before one or the other of said propositions as the voter may favor or oppose discontinuance of such district. All occupiers of lands lying within the boundaries of the district shall be eligible to vote in such referendum. Only such land occupiers shall be eligible to vote. No informalities in the conduct of such referendum or in any matters relating thereto shall invalidate said referendum or the result thereof if notice thereof shall have been given substantially as herein provided and said referendum shall have been fairly conducted.

The Department of ~~Environment and Natural Resources~~Agriculture and Consumer Services shall publish the result of such referendum and shall thereafter consider and determine whether the continued operation of the district within the defined boundaries is administratively practicable and feasible. If the Commission shall determine that the continued operation of such district is administratively practicable and feasible, it shall record such determination and deny the petition. If the Commission shall determine that the continued operation of such district is not administratively practicable and feasible, it shall record such determination and shall certify such determination to the supervisors of the district. In making such determination the Commission shall give due regard and weight to the attitudes of the occupiers of lands lying within the district, the number of land occupiers eligible to vote in such referendum who shall have voted, the proportion of the votes cast in such referendum in favor of the discontinuance of the district to the total number of votes cast, the approximate wealth and income of the land occupiers of the district, the probable expense of carrying on erosion control operations within such district, and such other economic and social factors as may be relevant to such determination, having due regard to the legislative findings set forth in G.S. 139-2: Provided, however, that the Commission shall not have authority to determine that the continued operation of the district is administratively practicable and feasible unless at least a majority of the votes cast in the referendum shall have been cast in favor of the continuance of such district.

Upon receipt from the Soil and Water Conservation Commission of a certification that the Commission has determined that the continued operation of the district is not administratively practicable and feasible, pursuant to the provisions of this section, the supervisors shall forthwith proceed to terminate the affairs of the district. The supervisors shall dispose of all property belonging to the district at public auction and shall pay over the proceeds of such sale to be covered into the State treasury. The supervisors shall thereupon file an application, duly verified, with the Secretary of State for the discontinuance of such district, and shall transmit with such application the certificates of the Soil and Water Conservation Commission setting forth the determination of the Commission that the continued operation of such district is not administratively practicable and feasible. The application shall recite that the property of the district has been disposed of and the proceeds paid over as in this section provided, and shall set forth a full accounting of such properties and proceeds of the sale. The Secretary of State shall issue to the supervisors a certificate of dissolution and shall record such certificate in an appropriate book of record in his office.

Upon issuance of a certificate of dissolution under the provisions of this section, all ordinances and regulations theretofore adopted and in force within such districts shall be of no further force and effect. All contracts theretofore entered into, to which the district or supervisors are parties, shall remain in force and effect for the period provided in such contracts. The Soil and Water Conservation Commission shall be substituted for the district or supervisors as party to such contracts. The Commission shall be entitled to all benefits and subject to all liabilities under such contracts and shall have the same right and liability to perform, to require performance, to sue and be sued thereon, and to modify or terminate such contracts by mutual consent or otherwise as the supervisors of the district would have had. Such dissolution shall not affect the lien of any judgment entered under the provisions of

G.S. 139-11, nor the pendency of any action instituted under the provisions of such section, and the Commission shall succeed to all the rights and obligations of the district or supervisors as to such liens and actions.

The Soil and Water Conservation Commission shall not entertain petitions for the discontinuance of any district nor conduct referenda upon such petitions, nor make determinations pursuant to such petitions, in accordance with the provisions of this Chapter, more often than once in five years."

SECTION 14. G.S. 143-215.10A reads as rewritten:

"**§ 143-215.10A. Legislative findings and intent.**

The General Assembly finds that animal operations provide significant economic and other benefits to this State. The growth of animal operations in recent years has increased the importance of good animal waste management practices to protect water quality. It is critical that the State balance growth with prudent environmental safeguards. It is the intention of the State to promote a cooperative and coordinated approach to animal waste management among the agencies of the State with a primary emphasis on technical assistance to farmers. To this end, the General Assembly intends to establish a permitting program for animal waste management systems that will protect water quality and promote innovative systems and practices while minimizing the regulatory burden. Technical assistance, through operations reviews, will be provided by the Division of Soil and Water ~~Conservation.~~Conservation of the Department of Agriculture and Consumer Services. Permitting, inspection, and enforcement will be vested in the Division of Water Quality."

SECTION 15. G.S. 143-215.10C(e)(6) reads as rewritten:

"(6) Provisions regarding periodic testing of waste products used as nutrient sources as close to the time of application as practical and at least within 60 days of the date of application and periodic testing, at least annually, of soils at crop sites where the waste products are applied. Nitrogen shall be a rate-determining element. Phosphorus shall be evaluated according to the nutrient management standard approved by the Soil and Water Conservation Commission of the Department of Agriculture and Consumer Services and the Natural Resources Conservation Service of the United States Department of Agriculture for facilities that are required to be permitted under 40 Code of Federal Regulations § 122, as amended at 73 Federal Register 70418 (November 20, 2008). If the evaluation demonstrates the need to limit the application of phosphorus in order to comply with the nutrient management standard, then phosphorus shall be a rate-determining element. Zinc and copper levels in the soils shall be monitored, and alternative crop sites shall be used when these metals approach excess levels."

SECTION 16. G.S. 143-215.10D reads as rewritten:

"**§ 143-215.10D. Operations review.**

(a) The Division, in cooperation with the Division of Soil and Water ~~Conservation,~~Conservation of the Department of Agriculture and Consumer Services, shall develop a reporting procedure for use by technical specialists who conduct operations reviews of animal operations. The reporting procedure shall be consistent with the Division's inspection procedure of animal operations and with this Part. The report shall include any corrective action recommended by the technical specialist to assist the owner or operator of the animal operation in complying with all permit requirements. The report shall be submitted to the Division within 10 days following the operations review unless the technical specialist observes a violation described in G.S. 143-215.10E. If the technical specialist finds a violation described in G.S. 143-215.10E, the report shall be filed with the Division immediately.

(b) As part of its animal waste management plan, each animal operation shall have an operations review at least once a year. The operations review shall be conducted by a technical

specialist employed by the Division of Soil and Water Conservation of the ~~Department,~~Department of Agriculture and Consumer Services, a local Soil and Water Conservation District, or the federal Natural Resources Conservation Services working under the direction of the Division of Soil and Water Conservation.

(c) Operations reviews shall not be performed by technical specialists with a financial interest in any animal operation."

SECTION 17. G.S. 143-215.10M(a) reads as rewritten:

"(a) The Department shall report to the Environmental Review Commission and the Fiscal Research Division on or before 1 October of each year as required by this section. Each report shall include:

...

(2) The number of operations reviews of animal waste management systems that the Division of Soil and Water Conservation of the Department of Agriculture and Consumer Services has conducted since the last report.

(3) The number of operations reviews of animal waste management systems conducted by agencies other than the Division of Soil and Water Conservation of the Department of Agriculture and Consumer Services that have been conducted since the last report.

(4) The number of reinspections associated with operations reviews conducted by the Division of Soil and Water Conservation of the Department of Agriculture and Consumer Services since the last report.

(5) The number of reinspections associated with operations reviews conducted by agencies other than the Division of Soil and Water Conservation of the Department of Agriculture and Consumer Services since the last report.

...."

SECTION 18. Part 9 of Article 21 of Chapter 143 of the General Statutes is recodified as Article 72 of Chapter 106 of the General Statutes, and accordingly G.S. 143-215.74, 143-215.74A, and 143-215.74B are recodified as G.S. 106-850, 106-851, and 106-852.

SECTION 19. G.S. 106-850(b)(9), as recodified under Section 18 of this act, reads as rewritten:

"(9) When the applicant is either (i) a limited-resource farmer, (ii) a beginning farmer, or (iii) a person farming land that is located in an enhanced voluntary agricultural district and is subject to a conservation agreement under G.S. 106-743.2 that remains in effect, State funding shall be limited to ninety percent (90%) of the average cost for each practice with the assisted farmer providing ten percent (10%) of the cost, which may include in-kind support of the practice, with a maximum of one hundred thousand dollars ($100,000) per year to each applicant. The following definitions apply in this subdivision:

a. Beginning farmer. – A farmer who has not operated a farm or who has operated a farm for not more than 10 years and who will materially and substantially participate in the operation of the farm.

a1. Enhanced voluntary agricultural district. – A district established by a county or a city by ordinance under Part 3 of Article 61 of ~~Chapter 106 of the General Statutes.~~this Chapter.

...."

SECTION 20. G.S. 106-850(c), as recodified under Section 18 of this act, reads as rewritten:

"(c) The program shall be reviewed, prior to implementation, by the Committee created by ~~G.S. 143-215.74B.~~G.S. 106-852. The Technical Review Committee shall meet quarterly to review the progress of this program."

SECTION 21. G.S. 106-850(e), as recodified under Section 18 of this act, reads as rewritten:

"(e) The Soil and Water Conservation Commission shall report on or before 31 January of each year to the Environmental Review ~~Commission~~Commission, the Department of Agriculture and Consumer Services, and the Fiscal Research Division. This report shall include a list of projects that received State funding pursuant to the program, the results of the evaluations conducted pursuant to subdivision (7) of subsection (b) of this section, findings regarding the effectiveness of each of these projects to accomplish its primary purpose, and any recommendations to assure that State funding is used in the most cost-effective manner and accomplishes the greatest improvement in water quality."

SECTION 22. Part 11 of Article 21 of Chapter 143 of the General Statutes is recodified as Article 73 of Chapter 106 of the General Statutes, and accordingly G.S. 143-215.74M is recodified as G.S. 106-860.

SECTION 23. G.S. 106-860(a), as recodified under Section 22 of this act, reads as rewritten:

"(a) Program Established. – There is established the Community Conservation Assistance Program. The Program shall be implemented and supervised by the Soil and Water Conservation ~~Commission.~~Commission of the Department of Agriculture and Consumer Services."

SECTION 24. G.S. 106-860(d), as recodified under Section 22 of this act, reads as rewritten:

"(d) Advisory Committee. – The Program shall be reviewed, prior to implementation, by the Community Conservation Assistance Program Advisory Committee. The Advisory Committee shall meet quarterly to review the progress of the Program. The Advisory Committee shall consist of the following members:

(1) The Director of the Division of Soil and Water Conservation of the Department of Agriculture and Consumer Services or the Director's designee, who shall serve as the Chair of the Advisory Committee.
(2) The President of the North Carolina Association of Soil and Water Conservation Districts or the President's designee.
(3) The Director of the Cooperative Extension Service at North Carolina State University or the Director's designee.
(4) The Executive Director of the North Carolina Association of County Commissioners or the Executive Director's designee.
(5) The Executive Director of the North Carolina League of Municipalities or the Executive Director's designee.
(6) The State Conservationist of the Natural Resources Conservation Service of the United States Department of Agriculture or the State Conservationist's designee.
(7) The Executive Director of the Wildlife Resources Commission or the Executive Director's designee.
(8) The President of the North Carolina Conservation District Employees Association or the President's designee.
(9) The President of the North Carolina Association of Resource Conservation and Development Councils or the President's designee.
(10) The Director of the Division of Water Quality of the Department of Environment and Natural Resources or the Director's designee.

(11) The Director of the Division of Forest Resources of the Department of Environment and Natural Resources or the Director's designee.
(12) The Director of the Division of Land Resources of the Department of Environment and Natural Resources or the Director's designee.
(13) The Director of the Division of Coastal Management of the Department of Environment and Natural Resources or the Director's designee.
(14) The Director of the Division of Water Resources of the Department of Environment and Natural Resources or the Director's designee.
(15) The President of the Carolinas Land Improvement Contractors Association or the President's designee."

SECTION 25. G.S. 106-860(e), as recodified under Section 22 of this act, reads as rewritten:

"(e) Report. – The Soil and Water Conservation Commission shall report no later than 31 January of each year to the Environmental Review ~~Commission~~Commission, the Department of Agriculture and Consumer Services, and the Fiscal Research Division. The report shall include a summary of projects that received State funding pursuant to the Program, the results of the evaluation conducted pursuant to subdivision (5) of subsection (b) of this section, findings regarding the effectiveness of each project to accomplish its primary purpose, and any recommendations to assure that State funding is used in the most cost-effective manner and accomplishes the greatest improvement in water quality."

SECTION 26. G.S. 113-291.10(a) reads as rewritten:

"(a) There is established the Beaver Damage Control Advisory Board. The Board shall consist of nine members, as follows:

...

(4) The Director of the Division of Soil and Water Conservation of the Department of ~~Environment and Natural Resources,~~Agriculture and Consumer Services, or a designee;

...."

SECTION 27. G.S. 106-743.4(b) reads as rewritten:

"(b) A person who farms land that is subject to a conservation agreement under G.S. 106-743.2 that remains in effect is eligible under G.S. ~~143-215.74(b)~~106-850(b) to receive the higher percentage of cost-share funds for the benefit of that farmland under the Agriculture Cost Share Program established pursuant to ~~Part 9 of Article 21 of Chapter 143 of the General Statutes~~Article 72 of this Chapter for funds to benefit that farmland."

SECTION 28. The Revisor of Statutes shall make the conforming statutory changes necessary to reflect the transfers under Section 1 of this act. The Revisor of Statutes may correct any reference in the General Statutes to the statutes that are recodified by this act and any other conforming changes necessitated by this act.

SECTION 29. This act becomes effective July 1, 2011.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

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SENATE BILL 229
PROPOSED COMMITTEE SUBSTITUTE S229-CSRI-19 [v.2]

5/2/2011 8:51:26 PM

Short Title: Transfer DENR Soil & Water to DACS. (Public)

Sponsors:

Referred to:

March 8, 2011

A BILL TO BE ENTITLED

AN ACT TO TRANSFER THE DIVISION OF SOIL AND WATER CONSERVATION AND THE SOIL AND WATER CONSERVATION COMMISSION OF THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES TO THE DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES AND TO MAKE CONFORMING CHANGES.

The General Assembly of North Carolina enacts:

SECTION 1.(a) The Division of Soil and Water Conservation is transferred from the Department of Environment and Natural Resources to the Department of Agriculture and Consumer Services with all the elements of a Type I transfer, as defined by G.S. 143A-6.

SECTION 1.(b) All functions, powers, duties, and obligations previously vested in the State Soil and Water Conservation Commission are transferred to and vested in the Department of Agriculture and Consumer Services by a Type II transfer, as defined in G.S. 143A-6.

SECTION 2.(a) G.S. 143B-279.3(a) reads as rewritten:

"(a) All functions, powers, duties, and obligations previously vested in the following subunits of the following departments are transferred to and vested in the Department of Environment and Natural Resources by a Type I transfer, as defined in G.S. 143A-6:

...

~~(10) Soil and Water Conservation Division, Department of Natural Resources and Community Development.~~

...."

SECTION 2.(b) G.S. 143B-279.3(b) reads as rewritten:

"(b) All functions, powers, duties, and obligations previously vested in the following commissions, boards, councils, and committees of the following departments are transferred to and vested in the Department of Environment and Natural Resources by a Type II transfer, as defined in G.S. 143A-6:

...

~~(21) State Soil and Water Conservation Commission, Department of Natural Resources and Community Development.~~

...."

SECTION 3. Part 7 of Article 7 of Chapter 143B of the General Statutes is recodified as Article 71 of Chapter 106 of the General Statutes, and accordingly G.S. 143B-294 through G.S. 143B-297.1 are recodified as G.S. 106-840 through G.S. 106-844.



SECTION 4. G.S. 106-840, as recodified by Section 3 of this act, reads as rewritten:

"**§ 106-840. Soil and Water Conservation Commission – creation; powers and duties; compliance inspections.**

(a) There is hereby created the Soil and Water Conservation Commission of the Department of ~~Environment and Natural Resources~~Agriculture and Consumer Services with the power and duty to adopt rules to be followed in the development and implementation of a soil and water conservation program.

(1) The Soil and Water Conservation Commission has all of the following powers and duties:

a. To approve petitions for soil conservation districts.

b. To approve application for watershed plans.

c. Such other duties as specified in Chapter 139.

d. To conduct any inspections in accordance with subsection (b) of this section.

(2) The Commission shall adopt rules consistent with the provisions of this Chapter. All rules not inconsistent with the provisions of this Chapter heretofore adopted by the Soil and Water Conservation Committee shall remain in full force and effect unless and until repealed or superseded by action of the Soil and Water Conservation Commission. All rules adopted by the Commission shall be enforced by the Department of ~~Environment and Natural Resources.~~Agriculture and Consumer Services.

(b) An employee or agent of the Soil and Water Conservation Commission or the Department of ~~Environment and Natural Resources~~Agriculture and Consumer Services may enter property, with the consent of the owner or person having control over property, at reasonable times for the purposes of investigating compliance with Commission or Department programs when the investigation is reasonably necessary to carry out the duties of the Commission. If the Commission or Department is unable to obtain the consent of the owner of the property, the Commission or Department may obtain an administrative search warrant pursuant to G.S. 15-27.2.

(c) Any person who refuses entry or access to property by an employee or agent of the Commission or the Department or who willfully resists, delays, or obstructs an employee or agent of the Commission or the Department while the employee or agent is in the process of carrying out official duties after the employee or agent has obtained the consent of the owner or person having control of the property or, if consent is not obtained, after the employee or agent has obtained an administrative search warrant, shall be guilty of a Class 1 misdemeanor."

SECTION 5. G.S. 106-841, as recodified by Section 3 of this act, reads as rewritten:

"(a) The Soil and Water Conservation Commission of the Department of ~~Environment and Natural Resources~~Agriculture and Consumer Services shall be composed of seven members appointed by the Governor. The Commission shall be composed of the following members:

....

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

SECTION 6. G.S. 139-3(4) reads as rewritten:

"(4) "Commission" or "Soil and Water Conservation Commission" means the Soil and Water Conservation Commission created by G.S. ~~143B-294.~~106-840."

SECTION 7. G.S. 139-4(d) reads as rewritten:

"(d) In addition to the duties and powers hereinafter conferred upon the Soil and Water Conservation Commission, it shall have the following duties and powers:

...

(9) To create, implement, and supervise the Agriculture Cost Share Program for Nonpoint Source Pollution Control created pursuant to ~~Part 9 of Article 21 of Chapter 143~~Article 72 of Chapter 106 of the General Statutes and the Community Conservation Assistance Program created pursuant to Part 11 of Article 21 of Chapter 143 of the General Statutes.

(10) To review and approve or disapprove the application of a district supervisor for a grant under the Agriculture Cost Share Program for Nonpoint Source Pollution Control or the Community Conservation Assistance Program as provided by G.S. 139-8(b).

(11) To develop and implement a program for the approval of water quality and animal waste management systems technical specialists.

(12) To develop and approve best management practices for the Agriculture Cost Share Program for Nonpoint Source Pollution Control and for use in the water quality protection programs of the Department of Environment and Natural Resources and to adopt rules that establish criteria governing approval of these best management practices."

SECTION 8. G.S. 139-4(e) reads as rewritten:

"(e) A member of the Commission may apply for and receive a grant under the Agriculture Cost Share Program for Nonpoint Source Pollution Control and the Community Conservation Assistance Program if:

(1) The member does not vote on the application or attempt to influence the outcome of any action on the application; and

(2) The application is approved by the ~~Secretary of Environment and Natural Resources.~~Commissioner of Agriculture."

SECTION 9. G.S. 139-5(d) reads as rewritten:

"(d) The Department of ~~Environment and Natural Resources~~Agriculture and Consumer Services shall pay all expenses for the issuance of such notices and the conduct of such hearings and referenda, and shall supervise the conduct of such hearings and referenda. It shall issue appropriate regulations governing the conduct of such hearings and referenda, and providing for the registration prior to the date of the referendum of all eligible voters, or prescribing some other appropriate procedure for the determination of those eligible as voters in such referendum. No informality in the conduct of such referendum or in any matters relating thereto shall invalidate said referendum or the result thereof if notice thereof shall have been given substantially as herein provided and said referendum shall have been fairly conducted."

SECTION 10. G.S. 139-5(e) reads as rewritten:

"(e) The Department of ~~Environment and Natural Resources~~Agriculture and Consumer Services shall publish the results of such referendum and shall thereafter consider and determine whether the operation of the district within the defined boundaries is administratively practicable and feasible. If the Commission shall determine that the operation of such district is not administratively practicable and feasible, it shall record such determination and deny the petition. If the Commission shall determine that the operation of such district is administratively practicable and feasible, it shall record such in the manner hereinafter provided. In making such determination the Commission shall give due regard and weight to the attitudes of the occupiers of lands lying within the defined boundaries, the number of land occupiers eligible to vote in such referendum who shall have voted, the proportion of the votes cast in such referendum in favor of the creation of the district to the total number of votes cast, the approximate wealth and income of the land occupiers of the proposed district, the probable

expense of carrying on erosion control operations within such district, and such other economic and social factors as may be relevant to such determination, having due regard to the legislative determination set forth in G.S. 139-2: Provided, however, that the Commission shall not have authority to determine that the operations of the proposed district within the defined boundaries is administratively practicable and feasible unless at least a majority of the votes cast in the referendum upon the proposition of creation of the district shall have been cast in favor of the creation of such district."

SECTION 11. G.S. 139-7 reads as rewritten:

"**§ 139-7. District board of supervisors – appointive members; organization of board; certain powers and duties.**

The governing body of a soil and water conservation district shall consist of the three elective supervisors from the county or counties in the district, together with the appointive members appointed by the Soil and Water Conservation Commission pursuant to this section, and shall be known as the district board of supervisors. When a district is composed of less than four counties, the board of supervisors of each county shall on or before October 31, 1978, and on or before October 31 as the terms of the appointive supervisors expire, recommend in writing two persons from the district to the Commission to be appointed to serve with the elective supervisors. If the names are not submitted to the Commission as required, the office shall be deemed vacant on the date the term is set to expire and the Commission shall appoint two persons of the district to the district board of supervisors to serve with the elected supervisors. The Commission shall make its appointments prior to or at the November meeting of the Commission. Appointive supervisors shall take office on the first Monday in December following their appointment. Such appointive supervisors shall serve for a term of four years, and thereafter, as their terms expire, their successors shall serve for a term of four years. The terms of office of all appointive supervisors who have heretofore been lawfully appointed for terms the final year of which presently extends beyond the first Monday in December are hereby terminated on the first Monday in December of the final year of appointment. Vacancies for any reason in the appointive supervisors shall be filled for the unexpired term by the appointment of a person by the Commission from the district in which the vacancy occurs. Vacancies for any reason in the elected supervisors shall be filled for the unexpired term by appointment by the Commission of a person from the county in the district in which the vacancy occurs.

In those districts composed of four or more counties, the Commission may, but is not required to, appoint two persons from the district without recommendation from the board of supervisors, to serve as district supervisors along with the elected members of the board of supervisors. Such appointments shall be made at the same time other appointments are made under this section, and the persons appointed shall serve for a term of four years.

The supervisors shall designate a chairman and may, from time to time, change such designation. A simple majority of the board shall constitute a quorum for the purpose of transacting the business of the board, and approval by a majority of those present shall be adequate for a determination of any matter before the board, provided at least a quorum is present. Supervisors of soil and water conservation districts shall be compensated for their services at the per diem rate and allowed travel, subsistence and other expenses, as provided for State boards, commissions and committees generally, under the provisions of G.S. 138-5; provided, that when per diem compensation and travel, subsistence, or other expense is claimed by any supervisor for services performed outside the district for which such supervisor ordinarily may be appointed or elected to serve, the same may not be paid unless prior written approval is obtained from the Department of ~~Environment and Natural Resources.~~Agriculture and Consumer Services.

The supervisors may employ a secretary, technical experts, whose qualifications shall be approved by the Department, and such other employees as they may require, and shall

determine their qualifications, duties and compensation. The supervisors may call upon the Attorney General of the State for such legal services as they may require. The supervisors may delegate to their chairman, to one or more supervisors, or to one or more agents, or employees such powers and duties as they may deem proper. The supervisors shall furnish to the Soil and Water Conservation Commission, upon request, copies of such ordinances, rules, regulations, orders, contracts, forms, and other documents as they shall adopt or employ, and such other information concerning their activities as it may require in the performance of its duties under this Chapter.

The supervisors shall provide for the execution of surety bonds for all employees and officers who shall be entrusted with funds or property; shall provide for the keeping of a full and accurate record of all proceedings and of all resolutions, regulations, and orders issued or adopted; and shall provide for an annual audit of the accounts of receipts and disbursements. In any given year, if the supervisors provide for an internal audit, and the supervisor serving as chairman certifies, under oath, that this internal audit is a true and accurate reflection of the accounts of receipts and disbursements, then the supervisors shall not be required, notwithstanding the provisions of G.S. 159-34, to provide for an audit of the accounts of receipts and disbursements by a certified public accountant or by an accountant certified by the Local Government Commission. Any supervisor may be removed by the Soil and Water Conservation Commission upon notice and hearing, for neglect of duty, incompetence or malfeasance in office, but for no other reason.

The supervisors may invite the legislative body of any municipality or county located near the territory comprised within the district to designate a representative to advise and consult with the supervisors of the district on all questions of program and policy which may affect the property, water supply, or other interests of such municipality or county.

All district supervisors whose terms of office expire prior to the first Monday in January, 1948, shall hold over and remain in office until supervisors are elected or appointed and qualify as provided in this Chapter, as amended. The terms of office of all district supervisors, who have heretofore been elected or appointed for terms extending beyond the first Monday in January, 1948, are hereby terminated on the first Monday in January, 1948."

SECTION 12. G.S. 139-8(a)(13) reads as rewritten:

"(13) To assist the Commission in the implementation and supervision of the Agriculture Cost Share Program for Nonpoint Source Pollution Control created pursuant to ~~G.S. 143-215.74~~G.S. 106-850 and to assist in the implementation and supervision of any other program intended to protect water quality or quantity administered by the Department of ~~Environment and Natural Resources~~Agriculture and Consumer Services by providing technical assistance, allocating available grant monies, and providing any other assistance that may ~~by~~ be required or authorized by any provision of federal or State law."

SECTION 13. G.S. 139-13 reads as rewritten:

"**§ 139-13. Discontinuance of districts.**

At any time after five years after the organization of a district under the provisions of this Chapter, any 25 occupiers of land lying within the boundaries of such districts may file a petition with the Soil and Water Conservation Commission praying that the operations of the district be terminated and the existence of the district discontinued. The Commission may conduct such public meetings and public hearings upon such petition as may be necessary to assist it in the consideration thereof. Within 60 days after such a petition has been received by the Commission it shall give due notice of the holding of a referendum, and shall supervise such referendum, and issue appropriate regulations governing the conduct thereof, the question to be submitted by ballots upon which the words "For terminating the existence of the _____ (name of the soil and water conservation district to be here inserted)" and "Against terminating

the existence of the _____ (name of the soil and water conservation district to be here inserted)" shall appear with a square before each proposition and a direction to insert an X mark in the square before one or the other of said propositions as the voter may favor or oppose discontinuance of such district. All occupiers of lands lying within the boundaries of the district shall be eligible to vote in such referendum. Only such land occupiers shall be eligible to vote. No informalities in the conduct of such referendum or in any matters relating thereto shall invalidate said referendum or the result thereof if notice thereof shall have been given substantially as herein provided and said referendum shall have been fairly conducted.

The Department of ~~Environment and Natural Resources~~Agriculture and Consumer Services shall publish the result of such referendum and shall thereafter consider and determine whether the continued operation of the district within the defined boundaries is administratively practicable and feasible. If the Commission shall determine that the continued operation of such district is administratively practicable and feasible, it shall record such determination and deny the petition. If the Commission shall determine that the continued operation of such district is not administratively practicable and feasible, it shall record such determination and shall certify such determination to the supervisors of the district. In making such determination the Commission shall give due regard and weight to the attitudes of the occupiers of lands lying within the district, the number of land occupiers eligible to vote in such referendum who shall have voted, the proportion of the votes cast in such referendum in favor of the discontinuance of the district to the total number of votes cast, the approximate wealth and income of the land occupiers of the district, the probable expense of carrying on erosion control operations within such district, and such other economic and social factors as may be relevant to such determination, having due regard to the legislative findings set forth in G.S. 139-2: Provided, however, that the Commission shall not have authority to determine that the continued operation of the district is administratively practicable and feasible unless at least a majority of the votes cast in the referendum shall have been cast in favor of the continuance of such district.

Upon receipt from the Soil and Water Conservation Commission of a certification that the Commission has determined that the continued operation of the district is not administratively practicable and feasible, pursuant to the provisions of this section, the supervisors shall forthwith proceed to terminate the affairs of the district. The supervisors shall dispose of all property belonging to the district at public auction and shall pay over the proceeds of such sale to be covered into the State treasury. The supervisors shall thereupon file an application, duly verified, with the Secretary of State for the discontinuance of such district, and shall transmit with such application the certificates of the Soil and Water Conservation Commission setting forth the determination of the Commission that the continued operation of such district is not administratively practicable and feasible. The application shall recite that the property of the district has been disposed of and the proceeds paid over as in this section provided, and shall set forth a full accounting of such properties and proceeds of the sale. The Secretary of State shall issue to the supervisors a certificate of dissolution and shall record such certificate in an appropriate book of record in his office.

Upon issuance of a certificate of dissolution under the provisions of this section, all ordinances and regulations theretofore adopted and in force within such districts shall be of no further force and effect. All contracts theretofore entered into, to which the district or supervisors are parties, shall remain in force and effect for the period provided in such contracts. The Soil and Water Conservation Commission shall be substituted for the district or supervisors as party to such contracts. The Commission shall be entitled to all benefits and subject to all liabilities under such contracts and shall have the same right and liability to perform, to require performance, to sue and be sued thereon, and to modify or terminate such contracts by mutual consent or otherwise as the supervisors of the district would have had. Such dissolution shall not affect the lien of any judgment entered under the provisions of

G.S. 139-11, nor the pendency of any action instituted under the provisions of such section, and the Commission shall succeed to all the rights and obligations of the district or supervisors as to such liens and actions.

The Soil and Water Conservation Commission shall not entertain petitions for the discontinuance of any district nor conduct referenda upon such petitions, nor make determinations pursuant to such petitions, in accordance with the provisions of this Chapter, more often than once in five years."

SECTION 14. G.S. 143-215.10A reads as rewritten:

"**§ 143-215.10A. Legislative findings and intent.**

The General Assembly finds that animal operations provide significant economic and other benefits to this State. The growth of animal operations in recent years has increased the importance of good animal waste management practices to protect water quality. It is critical that the State balance growth with prudent environmental safeguards. It is the intention of the State to promote a cooperative and coordinated approach to animal waste management among the agencies of the State with a primary emphasis on technical assistance to farmers. To this end, the General Assembly intends to establish a permitting program for animal waste management systems that will protect water quality and promote innovative systems and practices while minimizing the regulatory burden. Technical assistance, through operations reviews, will be provided by the Division of Soil and Water ~~Conservation.~~Conservation of the Department of Agriculture and Consumer Services. Permitting, inspection, and enforcement will be vested in the Division of Water Quality."

SECTION 15. G.S. 143-215.10C(e)(6) reads as rewritten:

"(6) Provisions regarding periodic testing of waste products used as nutrient sources as close to the time of application as practical and at least within 60 days of the date of application and periodic testing, at least annually, of soils at crop sites where the waste products are applied. Nitrogen shall be a rate-determining element. Phosphorus shall be evaluated according to the nutrient management standard approved by the Soil and Water Conservation Commission of the Department of Agriculture and Consumer Services and the Natural Resources Conservation Service of the United States Department of Agriculture for facilities that are required to be permitted under 40 Code of Federal Regulations § 122, as amended at 73 Federal Register 70418 (November 20, 2008). If the evaluation demonstrates the need to limit the application of phosphorus in order to comply with the nutrient management standard, then phosphorus shall be a rate-determining element. Zinc and copper levels in the soils shall be monitored, and alternative crop sites shall be used when these metals approach excess levels."

SECTION 16. G.S. 143-215.10D reads as rewritten:

"**§ 143-215.10D. Operations review.**

(a) The Division, in cooperation with the Division of Soil and Water ~~Conservation,~~Conservation of the Department of Agriculture and Consumer Services, shall develop a reporting procedure for use by technical specialists who conduct operations reviews of animal operations. The reporting procedure shall be consistent with the Division's inspection procedure of animal operations and with this Part. The report shall include any corrective action recommended by the technical specialist to assist the owner or operator of the animal operation in complying with all permit requirements. The report shall be submitted to the Division within 10 days following the operations review unless the technical specialist observes a violation described in G.S. 143-215.10E. If the technical specialist finds a violation described in G.S. 143-215.10E, the report shall be filed with the Division immediately.

(b) As part of its animal waste management plan, each animal operation shall have an operations review at least once a year. The operations review shall be conducted by a technical

specialist employed by the Division of Soil and Water Conservation of the ~~Department,~~Department of Agriculture and Consumer Services, a local Soil and Water Conservation District, or the federal Natural Resources Conservation Services working under the direction of the Division of Soil and Water Conservation.

(c) Operations reviews shall not be performed by technical specialists with a financial interest in any animal operation."

SECTION 17. G.S. 143-215.10M(a) reads as rewritten:

"(a) The Department shall report to the Environmental Review Commission and the Fiscal Research Division on or before 1 October of each year as required by this section. Each report shall include:

...

(2) The number of operations reviews of animal waste management systems that the Division of Soil and Water Conservation of the Department of Agriculture and Consumer Services has conducted since the last report.

(3) The number of operations reviews of animal waste management systems conducted by agencies other than the Division of Soil and Water Conservation of the Department of Agriculture and Consumer Services that have been conducted since the last report.

(4) The number of reinspections associated with operations reviews conducted by the Division of Soil and Water Conservation of the Department of Agriculture and Consumer Services since the last report.

(5) The number of reinspections associated with operations reviews conducted by agencies other than the Division of Soil and Water Conservation of the Department of Agriculture and Consumer Services since the last report.

...."

SECTION 18. Part 9 of Article 21 of Chapter 143 of the General Statutes is recodified as Article 72 of Chapter 106 of the General Statutes, and accordingly G.S. 143-215.74, 143-215.74A, and 143-215.74B are recodified as G.S. 106-850, 106-851, and 106-852.

SECTION 19. G.S. 106-850(b)(9), as recodified under Section 18 of this act, reads as rewritten:

"(9) When the applicant is either (i) a limited-resource farmer, (ii) a beginning farmer, or (iii) a person farming land that is located in an enhanced voluntary agricultural district and is subject to a conservation agreement under G.S. 106-743.2 that remains in effect, State funding shall be limited to ninety percent (90%) of the average cost for each practice with the assisted farmer providing ten percent (10%) of the cost, which may include in-kind support of the practice, with a maximum of one hundred thousand dollars ($100,000) per year to each applicant. The following definitions apply in this subdivision:

a. Beginning farmer. – A farmer who has not operated a farm or who has operated a farm for not more than 10 years and who will materially and substantially participate in the operation of the farm.

a1. Enhanced voluntary agricultural district. – A district established by a county or a city by ordinance under Part 3 of Article 61 of ~~Chapter 106 of the General Statutes.~~this Chapter.

...."

SECTION 20. G.S. 106-850(c), as recodified under Section 18 of this act, reads as rewritten:

"(c) The program shall be reviewed, prior to implementation, by the Committee created by ~~G.S. 143-215.74B.~~G.S. 106-852. The Technical Review Committee shall meet quarterly to review the progress of this program."

SECTION 21. G.S. 106-850(e), as recodified under Section 18 of this act, reads as rewritten:

"(e) The Soil and Water Conservation Commission shall report on or before 31 January of each year to the Environmental Review ~~Commission~~Commission, the Department of Agriculture and Consumer Services, and the Fiscal Research Division. This report shall include a list of projects that received State funding pursuant to the program, the results of the evaluations conducted pursuant to subdivision (7) of subsection (b) of this section, findings regarding the effectiveness of each of these projects to accomplish its primary purpose, and any recommendations to assure that State funding is used in the most cost-effective manner and accomplishes the greatest improvement in water quality."

SECTION 22. Part 11 of Article 21 of Chapter 143 of the General Statutes is recodified as Article 73 of Chapter 106 of the General Statutes, and accordingly G.S. 143-215.74M is recodified as G.S. 106-860.

SECTION 23. G.S. 106-860(a), as recodified under Section 22 of this act, reads as rewritten:

"(a) Program Established. – There is established the Community Conservation Assistance Program. The Program shall be implemented and supervised by the Soil and Water Conservation ~~Commission.~~Commission of the Department of Agriculture and Consumer Services."

SECTION 24. G.S. 106-860(d), as recodified under Section 22 of this act, reads as rewritten:

"(d) Advisory Committee. – The Program shall be reviewed, prior to implementation, by the Community Conservation Assistance Program Advisory Committee. The Advisory Committee shall meet quarterly to review the progress of the Program. The Advisory Committee shall consist of the following members:

(1) The Director of the Division of Soil and Water Conservation of the Department of Agriculture and Consumer Services or the Director's designee, who shall serve as the Chair of the Advisory Committee.
(2) The President of the North Carolina Association of Soil and Water Conservation Districts or the President's designee.
(3) The Director of the Cooperative Extension Service at North Carolina State University or the Director's designee.
(4) The Executive Director of the North Carolina Association of County Commissioners or the Executive Director's designee.
(5) The Executive Director of the North Carolina League of Municipalities or the Executive Director's designee.
(6) The State Conservationist of the Natural Resources Conservation Service of the United States Department of Agriculture or the State Conservationist's designee.
(7) The Executive Director of the Wildlife Resources Commission or the Executive Director's designee.
(8) The President of the North Carolina Conservation District Employees Association or the President's designee.
(9) The President of the North Carolina Association of Resource Conservation and Development Councils or the President's designee.
(10) The Director of the Division of Water Quality of the Department of Environment and Natural Resources or the Director's designee.

(11) The Director of the Division of Forest Resources of the Department of Environment and Natural Resources or the Director's designee.
(12) The Director of the Division of Land Resources of the Department of Environment and Natural Resources or the Director's designee.
(13) The Director of the Division of Coastal Management of the Department of Environment and Natural Resources or the Director's designee.
(14) The Director of the Division of Water Resources of the Department of Environment and Natural Resources or the Director's designee.
(15) The President of the Carolinas Land Improvement Contractors Association or the President's designee."

SECTION 25. G.S. 106-860(e), as recodified under Section 22 of this act, reads as rewritten:

"(e) Report. – The Soil and Water Conservation Commission shall report no later than 31 January of each year to the Environmental Review ~~Commission~~Commission, the Department of Agriculture and Consumer Services, and the Fiscal Research Division. The report shall include a summary of projects that received State funding pursuant to the Program, the results of the evaluation conducted pursuant to subdivision (5) of subsection (b) of this section, findings regarding the effectiveness of each project to accomplish its primary purpose, and any recommendations to assure that State funding is used in the most cost-effective manner and accomplishes the greatest improvement in water quality."

SECTION 26. G.S. 113-291.10(a) reads as rewritten:

"(a) There is established the Beaver Damage Control Advisory Board. The Board shall consist of nine members, as follows:

...

(4) The Director of the Division of Soil and Water Conservation of the Department of ~~Environment and Natural Resources,~~Agriculture and Consumer Services or a designee;

...."

SECTION 27. G.S. 106-743.4(b) reads as rewritten:

"(b) A person who farms land that is subject to a conservation agreement under G.S. 106-743.2 that remains in effect is eligible under G.S. ~~143-215.74(b)~~106-850(b) to receive the higher percentage of cost-share funds for the benefit of that farmland under the Agriculture Cost Share Program established pursuant to ~~Part 9 of Article 21 of Chapter 143 of the General Statutes~~Article 72 of this Chapter for funds to benefit that farmland."

SECTION 28. The Revisor of Statutes shall make the conforming statutory changes necessary to reflect the transfers under Section 1 of this act. The Revisor of Statutes may correct any reference in the General Statutes to the statutes that are recodified by this act and any other conforming changes necessitated by this act.

SECTION 29. This act becomes effective July 1, 2011.

SENATE BILL 229:
Transfer DENR Soil & Water to DACS

2011-2012 General Assembly

Committee:	Senate Agriculture/Environment/Natural Resources	**Date:**	May 3, 2011
Introduced by:	Senators East, Rouzer, and Jackson	**Prepared by:**	Jeff Hudson Committee Counsel
Analysis of:	First Edition		

SUMMARY: ***Senate Bill 229 would transfer the Division of Soil and Water Conservation and the Soil and Water Conservation Commission from the Department of Environment and Natural Resources to the Department of Agriculture and Consumer Services.***

CURRENT LAW:

Under current law, the Division of Soil and Water Conservation and the Soil and Water Conservation Commission are organizationally under the Department of Environment and Natural Resources.

The Division of Soil and Water Conservation[1]

The Division of Soil and Water Conservation provides programs, technical services, and educational outreach to promote voluntary natural resource management and conservation on the private lands of the State. Some of the programs provided by the Division include:

- *Agriculture Cost Share Program* and *Community Conservation Assistance Program:* Provide technical and financial assistance to agricultural producers and non-agricultural landowners for water quality best management practices.
- *Agricultural Drought Recovery Response Program*: Provides technical and financial assistance to agricultural producers for drought response practices.
- *Conservation Reserve Enhancement Program:* A voluntary program to help landowners restore riparian buffers and wetlands on eligible environmentally sensitive agricultural land and to protect enrolled lands through long-term conservation agreements and easements.
- *Soil Information Program*: Collects and classifies soils data required for publication of soil survey reports needed to make decisions regarding site suitability for a variety of land-use decisions.
- *Lagoon Conversion Program:* A voluntary program to assist swine operations in implementing innovative waste management systems.
- *Operations Reviews, including the Operations Review Pilot Program*: A statutorily required program for permitted animal operations in the State that provides animal waste management technical assistance and inspects for permit compliance.
- Assistance to *Local Soil and Water Conservation Districts* with programs, public information, and conservation education to increase adoption and awareness of effective measures to protect natural resources.

[1] Information on the Division of Soil and Water Conservation found at: http://portal.ncdenr.org/web/swc/about-the-division

The Soil and Water Conservation Commission[2]

The Soil and Water Conservation Commission is a policy and rulemaking board for State Soil and Water Conservation Programs. The Commission provides overall supervision of the State's 96 Local Soil and Water Conservation Districts, allocates technical and financial assistance in the form of cost share funds, provides administrative assistance for the soils resource inventory for the State, establishes agricultural rules and watershed project agreements, settles programmatic contract disputes, and appoints supervisors who provide local guidance and direction for conservation programs in the Local Districts.

The Commission is composed of seven members as follows:

- The President, First Vice-President and immediate past President of the North Carolina Association of Soil and Water Conservation Districts.
- Three supervisor members nominated by the Association from its own membership, representing the three major geographical regions of the state, and appointed by the Governor.
- One member appointed-at-large by the Governor.

The members of the Commission are appointed for terms of three years and until their successors are appointed and qualified.

BILL ANALYSIS: Senate Bill 229 would transfer the Division of Soil and Water Conservation and the Soil and Water Conservation Commission from the Department of Environment and Natural Resources to the Department of Agriculture and Consumer Services.

EFFECTIVE DATE: The act would become effective July 1, 2011.

Lanier McRee, Fiscal Analyst and staff to the House and Senate Appropriations Subcommittees for Natural and Economic Resources, substantially contributed to this summary.

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[2] Information on the Soil and Water Conservation Commission found at:
http://portal.ncdenr.org/web/swc/soilandwaterconservationcommission

SENATE BILL 229

Short Title:	Transfer DENR Soil & Water to DACS.	(Public)
Sponsors:	Senators East, Rouzer, and Jackson.	
Referred to:	Agriculture/Environment/Natural Resources.	

March 8, 2011

A BILL TO BE ENTITLED

AN ACT TO TRANSFER THE DIVISION OF SOIL AND WATER CONSERVATION AND THE SOIL AND WATER CONSERVATION COMMISSION OF THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES TO THE DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES AND TO MAKE CONFORMING CHANGES.

The General Assembly of North Carolina enacts:

SECTION 1.(a) The Division of Soil and Water Conservation is transferred from the Department of Environment and Natural Resources to the Department of Agriculture and Consumer Services with all the elements of a Type I transfer, as defined by G.S. 143A-6.

SECTION 1.(b) All functions, powers, duties, and obligations previously vested in the State Soil and Water Conservation Commission are transferred to and vested in the Department of Agriculture and Consumer Services by a Type II transfer, as defined in G.S. 143A-6.

SECTION 2.(a) G.S. 143B-279.3(a) reads as rewritten:

"(a) All functions, powers, duties, and obligations previously vested in the following subunits of the following departments are transferred to and vested in the Department of Environment and Natural Resources by a Type I transfer, as defined in G.S. 143A-6:

...

~~(10) Soil and Water Conservation Division, Department of Natural Resources and Community Development.~~

...."

SECTION 2.(b) G.S. 143B-279.3(b) reads as rewritten:

"(b) All functions, powers, duties, and obligations previously vested in the following commissions, boards, councils, and committees of the following departments are transferred to and vested in the Department of Environment and Natural Resources by a Type II transfer, as defined in G.S. 143A-6:

...

~~(21) State Soil and Water Conservation Commission, Department of Natural Resources and Community Development.~~

...."

SECTION 3. Part 7 of Article 7 of Chapter 143B of the General Statutes is recodified as Article 71 of Chapter 106 of the General Statutes, and accordingly G.S. 143B-294 through G.S. 143B-297.1 are recodified as G.S. 106-840 through G.S. 106-844.

SECTION 4. G.S. 106-840, as recodified by Section 3 of this act, reads as rewritten:

"**§ 106-840. Soil and Water Conservation Commission – creation; powers and duties; compliance inspections.**

(a) There is hereby created the Soil and Water Conservation Commission of the Department of ~~Environment and Natural Resources~~Agriculture and Consumer Services with the power and duty to adopt rules to be followed in the development and implementation of a soil and water conservation program.

(1) The Soil and Water Conservation Commission has all of the following powers and duties:

a. To approve petitions for soil conservation districts.

b. To approve application for watershed plans.

c. Such other duties as specified in Chapter 139.

d. To conduct any inspections in accordance with subsection (b) of this section.

(2) The Commission shall adopt rules consistent with the provisions of this Chapter. All rules not inconsistent with the provisions of this Chapter heretofore adopted by the Soil and Water Conservation Committee shall remain in full force and effect unless and until repealed or superseded by action of the Soil and Water Conservation Commission. All rules adopted by the Commission shall be enforced by the Department of ~~Environment and Natural Resources.~~Agriculture and Consumer Services.

(b) An employee or agent of the Soil and Water Conservation Commission or the Department of ~~Environment and Natural Resources~~Agriculture and Consumer Services may enter property, with the consent of the owner or person having control over property, at reasonable times for the purposes of investigating compliance with Commission or Department programs when the investigation is reasonably necessary to carry out the duties of the Commission. If the Commission or Department is unable to obtain the consent of the owner of the property, the Commission or Department may obtain an administrative search warrant pursuant to G.S. 15-27.2.

(c) Any person who refuses entry or access to property by an employee or agent of the Commission or the Department or who willfully resists, delays, or obstructs an employee or agent of the Commission or the Department while the employee or agent is in the process of carrying out official duties after the employee or agent has obtained the consent of the owner or person having control of the property or, if consent is not obtained, after the employee or agent has obtained an administrative search warrant, shall be guilty of a Class 1 misdemeanor."

SECTION 5. G.S. 106-841(a), as recodified by Section 3 of this act, reads as rewritten:

"(a) The Soil and Water Conservation Commission of the Department of ~~Environment and Natural Resources~~Agriculture and Consumer Services shall be composed of seven members appointed by the Governor. The Commission shall be composed of the following members:

...."

SECTION 6. G.S. 139-3(4) reads as rewritten:

"(4) "Commission" or "Soil and Water Conservation Commission" means the Soil and Water Conservation Commission created by G.S. ~~143B-294.~~106-840."

SECTION 7. G.S. 139-4(d) reads as rewritten:

"(d) In addition to the duties and powers hereinafter conferred upon the Soil and Water Conservation Commission, it shall have the following duties and powers:

...

(9) To create, implement, and supervise the Agriculture Cost Share Program for Nonpoint Source Pollution Control created pursuant to ~~Part 9 of Article 21~~

~~of Chapter 143~~Article 72 of Chapter 106 of the General Statutes and the Community Conservation Assistance Program created pursuant to Part 11 of Article 21 of Chapter 143 of the General Statutes.

(10) To review and approve or disapprove the application of a district supervisor for a grant under the Agriculture Cost Share Program for Nonpoint Source Pollution Control or the Community Conservation Assistance Program as provided by G.S. 139-8(b).

(11) To develop and implement a program for the approval of water quality and animal waste management systems technical specialists.

(12) To develop and approve best management practices for the Agriculture Cost Share Program for Nonpoint Source Pollution Control and for use in the water quality protection programs of the Department of Environment and Natural Resources and to adopt rules that establish criteria governing approval of these best management practices."

SECTION 8. G.S. 139-4(e) reads as rewritten:

"(e) A member of the Commission may apply for and receive a grant under the Agriculture Cost Share Program for Nonpoint Source Pollution Control and the Community Conservation Assistance Program if:

(1) The member does not vote on the application or attempt to influence the outcome of any action on the application; and

(2) The application is approved by the ~~Secretary of Environment and Natural Resources.~~Commissioner of Agriculture."

SECTION 9. G.S. 139-5(d) reads as rewritten:

"(d) The Department of ~~Environment and Natural Resources~~Agriculture and Consumer Services shall pay all expenses for the issuance of such notices and the conduct of such hearings and referenda, and shall supervise the conduct of such hearings and referenda. It shall issue appropriate regulations governing the conduct of such hearings and referenda, and providing for the registration prior to the date of the referendum of all eligible voters, or prescribing some other appropriate procedure for the determination of those eligible as voters in such referendum. No informality in the conduct of such referendum or in any matters relating thereto shall invalidate said referendum or the result thereof if notice thereof shall have been given substantially as herein provided and said referendum shall have been fairly conducted."

SECTION 10. G.S. 139-5(e) reads as rewritten:

"(e) The Department of ~~Environment and Natural Resources~~Agriculture and Consumer Services shall publish the results of such referendum and shall thereafter consider and determine whether the operation of the district within the defined boundaries is administratively practicable and feasible. If the Commission shall determine that the operation of such district is not administratively practicable and feasible, it shall record such determination and deny the petition. If the Commission shall determine that the operation of such district is administratively practicable and feasible, it shall record such in the manner hereinafter provided. In making such determination the Commission shall give due regard and weight to the attitudes of the occupiers of lands lying within the defined boundaries, the number of land occupiers eligible to vote in such referendum who shall have voted, the proportion of the votes cast in such referendum in favor of the creation of the district to the total number of votes cast, the approximate wealth and income of the land occupiers of the proposed district, the probable expense of carrying on erosion control operations within such district, and such other economic and social factors as may be relevant to such determination, having due regard to the legislative determination set forth in G.S. 139-2: Provided, however, that the Commission shall not have authority to determine that the operations of the proposed district within the defined boundaries is administratively practicable and feasible unless at least a majority of the votes cast in the

referendum upon the proposition of creation of the district shall have been cast in favor of the creation of such district."

SECTION 11. G.S. 139-7 reads as rewritten:

"**§ 139-7. District board of supervisors – appointive members; organization of board; certain powers and duties.**

The governing body of a soil and water conservation district shall consist of the three elective supervisors from the county or counties in the district, together with the appointive members appointed by the Soil and Water Conservation Commission pursuant to this section, and shall be known as the district board of supervisors. When a district is composed of less than four counties, the board of supervisors of each county shall on or before October 31, 1978, and on or before October 31 as the terms of the appointive supervisors expire, recommend in writing two persons from the district to the Commission to be appointed to serve with the elective supervisors. If the names are not submitted to the Commission as required, the office shall be deemed vacant on the date the term is set to expire and the Commission shall appoint two persons of the district to the district board of supervisors to serve with the elected supervisors. The Commission shall make its appointments prior to or at the November meeting of the Commission. Appointive supervisors shall take office on the first Monday in December following their appointment. Such appointive supervisors shall serve for a term of four years, and thereafter, as their terms expire, their successors shall serve for a term of four years. The terms of office of all appointive supervisors who have heretofore been lawfully appointed for terms the final year of which presently extends beyond the first Monday in December are hereby terminated on the first Monday in December of the final year of appointment. Vacancies for any reason in the appointive supervisors shall be filled for the unexpired term by the appointment of a person by the Commission from the district in which the vacancy occurs. Vacancies for any reason in the elected supervisors shall be filled for the unexpired term by appointment by the Commission of a person from the county in the district in which the vacancy occurs.

In those districts composed of four or more counties, the Commission may, but is not required to, appoint two persons from the district without recommendation from the board of supervisors, to serve as district supervisors along with the elected members of the board of supervisors. Such appointments shall be made at the same time other appointments are made under this section, and the persons appointed shall serve for a term of four years.

The supervisors shall designate a chairman and may, from time to time, change such designation. A simple majority of the board shall constitute a quorum for the purpose of transacting the business of the board, and approval by a majority of those present shall be adequate for a determination of any matter before the board, provided at least a quorum is present. Supervisors of soil and water conservation districts shall be compensated for their services at the per diem rate and allowed travel, subsistence and other expenses, as provided for State boards, commissions and committees generally, under the provisions of G.S. 138-5; provided, that when per diem compensation and travel, subsistence, or other expense is claimed by any supervisor for services performed outside the district for which such supervisor ordinarily may be appointed or elected to serve, the same may not be paid unless prior written approval is obtained from the Department of ~~Environment and Natural Resources.~~Agriculture and Consumer Services.

The supervisors may employ a secretary, technical experts, whose qualifications shall be approved by the Department, and such other employees as they may require, and shall determine their qualifications, duties and compensation. The supervisors may call upon the Attorney General of the State for such legal services as they may require. The supervisors may delegate to their chairman, to one or more supervisors, or to one or more agents, or employees such powers and duties as they may deem proper. The supervisors shall furnish to the Soil and Water Conservation Commission, upon request, copies of such ordinances, rules, regulations,

orders, contracts, forms, and other documents as they shall adopt or employ, and such other information concerning their activities as it may require in the performance of its duties under this Chapter.

The supervisors shall provide for the execution of surety bonds for all employees and officers who shall be entrusted with funds or property; shall provide for the keeping of a full and accurate record of all proceedings and of all resolutions, regulations, and orders issued or adopted; and shall provide for an annual audit of the accounts of receipts and disbursements. In any given year, if the supervisors provide for an internal audit, and the supervisor serving as chairman certifies, under oath, that this internal audit is a true and accurate reflection of the accounts of receipts and disbursements, then the supervisors shall not be required, notwithstanding the provisions of G.S. 159-34, to provide for an audit of the accounts of receipts and disbursements by a certified public accountant or by an accountant certified by the Local Government Commission. Any supervisor may be removed by the Soil and Water Conservation Commission upon notice and hearing, for neglect of duty, incompetence or malfeasance in office, but for no other reason.

The supervisors may invite the legislative body of any municipality or county located near the territory comprised within the district to designate a representative to advise and consult with the supervisors of the district on all questions of program and policy which may affect the property, water supply, or other interests of such municipality or county.

All district supervisors whose terms of office expire prior to the first Monday in January, 1948, shall hold over and remain in office until supervisors are elected or appointed and qualify as provided in this Chapter, as amended. The terms of office of all district supervisors, who have heretofore been elected or appointed for terms extending beyond the first Monday in January, 1948, are hereby terminated on the first Monday in January, 1948."

SECTION 12. G.S. 139-8(a)(13) reads as rewritten:

"(13) To assist the Commission in the implementation and supervision of the Agriculture Cost Share Program for Nonpoint Source Pollution Control created pursuant to ~~G.S. 143-215.74~~G.S. 106-850 and to assist in the implementation and supervision of any other program intended to protect water quality administered by the Department of ~~Environment and Natural Resources~~Agriculture and Consumer Services by providing technical assistance, allocating available grant monies, and providing any other assistance that may ~~by~~ be required or authorized by any provision of federal or State law."

SECTION 13. G.S. 139-13 reads as rewritten:

"**§ 139-13. Discontinuance of districts.**

At any time after five years after the organization of a district under the provisions of this Chapter, any 25 occupiers of land lying within the boundaries of such districts may file a petition with the Soil and Water Conservation Commission praying that the operations of the district be terminated and the existence of the district discontinued. The Commission may conduct such public meetings and public hearings upon such petition as may be necessary to assist it in the consideration thereof. Within 60 days after such a petition has been received by the Commission it shall give due notice of the holding of a referendum, and shall supervise such referendum, and issue appropriate regulations governing the conduct thereof, the question to be submitted by ballots upon which the words "For terminating the existence of the _____ (name of the soil and water conservation district to be here inserted)" and "Against terminating the existence of the _____ (name of the soil and water conservation district to be here inserted)" shall appear with a square before each proposition and a direction to insert an X mark in the square before one or the other of said propositions as the voter may favor or oppose discontinuance of such district. All occupiers of lands lying within the boundaries of the district shall be eligible to vote in such referendum. Only such land occupiers shall be eligible to vote.

No informalities in the conduct of such referendum or in any matters relating thereto shall invalidate said referendum or the result thereof if notice thereof shall have been given substantially as herein provided and said referendum shall have been fairly conducted.

The Department of ~~Environment and Natural Resources~~Agriculture and Consumer Services shall publish the result of such referendum and shall thereafter consider and determine whether the continued operation of the district within the defined boundaries is administratively practicable and feasible. If the Commission shall determine that the continued operation of such district is administratively practicable and feasible, it shall record such determination and deny the petition. If the Commission shall determine that the continued operation of such district is not administratively practicable and feasible, it shall record such determination and shall certify such determination to the supervisors of the district. In making such determination the Commission shall give due regard and weight to the attitudes of the occupiers of lands lying within the district, the number of land occupiers eligible to vote in such referendum who shall have voted, the proportion of the votes cast in such referendum in favor of the discontinuance of the district to the total number of votes cast, the approximate wealth and income of the land occupiers of the district, the probable expense of carrying on erosion control operations within such district, and such other economic and social factors as may be relevant to such determination, having due regard to the legislative findings set forth in G.S. 139-2: Provided, however, that the Commission shall not have authority to determine that the continued operation of the district is administratively practicable and feasible unless at least a majority of the votes cast in the referendum shall have been cast in favor of the continuance of such district.

Upon receipt from the Soil and Water Conservation Commission of a certification that the Commission has determined that the continued operation of the district is not administratively practicable and feasible, pursuant to the provisions of this section, the supervisors shall forthwith proceed to terminate the affairs of the district. The supervisors shall dispose of all property belonging to the district at public auction and shall pay over the proceeds of such sale to be covered into the State treasury. The supervisors shall thereupon file an application, duly verified, with the Secretary of State for the discontinuance of such district, and shall transmit with such application the certificates of the Soil and Water Conservation Commission setting forth the determination of the Commission that the continued operation of such district is not administratively practicable and feasible. The application shall recite that the property of the district has been disposed of and the proceeds paid over as in this section provided, and shall set forth a full accounting of such properties and proceeds of the sale. The Secretary of State shall issue to the supervisors a certificate of dissolution and shall record such certificate in an appropriate book of record in his office.

Upon issuance of a certificate of dissolution under the provisions of this section, all ordinances and regulations theretofore adopted and in force within such districts shall be of no further force and effect. All contracts theretofore entered into, to which the district or supervisors are parties, shall remain in force and effect for the period provided in such contracts. The Soil and Water Conservation Commission shall be substituted for the district or supervisors as party to such contracts. The Commission shall be entitled to all benefits and subject to all liabilities under such contracts and shall have the same right and liability to perform, to require performance, to sue and be sued thereon, and to modify or terminate such contracts by mutual consent or otherwise as the supervisors of the district would have had. Such dissolution shall not affect the lien of any judgment entered under the provisions of G.S. 139-11, nor the pendency of any action instituted under the provisions of such section, and the Commission shall succeed to all the rights and obligations of the district or supervisors as to such liens and actions.

The Soil and Water Conservation Commission shall not entertain petitions for the discontinuance of any district nor conduct referenda upon such petitions, nor make

determinations pursuant to such petitions, in accordance with the provisions of this Chapter, more often than once in five years."

SECTION 14. G.S. 143-215.10A reads as rewritten:

"**§ 143-215.10A. Legislative findings and intent.**

The General Assembly finds that animal operations provide significant economic and other benefits to this State. The growth of animal operations in recent years has increased the importance of good animal waste management practices to protect water quality. It is critical that the State balance growth with prudent environmental safeguards. It is the intention of the State to promote a cooperative and coordinated approach to animal waste management among the agencies of the State with a primary emphasis on technical assistance to farmers. To this end, the General Assembly intends to establish a permitting program for animal waste management systems that will protect water quality and promote innovative systems and practices while minimizing the regulatory burden. Technical assistance, through operations reviews, will be provided by the Division of Soil and Water ~~Conservation.~~Conservation of the Department of Agriculture and Consumer Services. Permitting, inspection, and enforcement will be vested in the Division of Water Quality."

SECTION 15. G.S. 143-215.10C(e)(6) reads as rewritten:

"(6) Provisions regarding periodic testing of waste products used as nutrient sources as close to the time of application as practical and at least within 60 days of the date of application and periodic testing, at least annually, of soils at crop sites where the waste products are applied. Nitrogen shall be a rate-determining element. Phosphorus shall be evaluated according to the nutrient management standard approved by the Soil and Water Conservation Commission of the Department of Agriculture and Consumer Services and the Natural Resources Conservation Service of the United States Department of Agriculture for facilities that are required to be permitted under 40 Code of Federal Regulations § 122, as amended at 73 Federal Register 70418 (November 20, 2008). If the evaluation demonstrates the need to limit the application of phosphorus in order to comply with the nutrient management standard, then phosphorus shall be a rate-determining element. Zinc and copper levels in the soils shall be monitored, and alternative crop sites shall be used when these metals approach excess levels."

SECTION 16. G.S. 143-215.10D reads as rewritten:

"**§ 143-215.10D. Operations review.**

(a) The Division, in cooperation with the Division of Soil and Water ~~Conservation,~~Conservation of the Department of Agriculture and Consumer Services, shall develop a reporting procedure for use by technical specialists who conduct operations reviews of animal operations. The reporting procedure shall be consistent with the Division's inspection procedure of animal operations and with this Part. The report shall include any corrective action recommended by the technical specialist to assist the owner or operator of the animal operation in complying with all permit requirements. The report shall be submitted to the Division within 10 days following the operations review unless the technical specialist observes a violation described in G.S. 143-215.10E. If the technical specialist finds a violation described in G.S. 143-215.10E, the report shall be filed with the Division immediately.

(b) As part of its animal waste management plan, each animal operation shall have an operations review at least once a year. The operations review shall be conducted by a technical specialist employed by the Division of Soil and Water Conservation of the ~~Department,~~Department of Agriculture and Consumer Services, a local Soil and Water Conservation District, or the federal Natural Resources Conservation Services working under the direction of the Division of Soil and Water Conservation.

(c) Operations reviews shall not be performed by technical specialists with a financial interest in any animal operation."

SECTION 17. G.S. 143-215.10M(a) reads as rewritten:

"(a) The Department shall report to the Environmental Review Commission and the Fiscal Research Division on or before 1 October of each year as required by this section. Each report shall include:

...

(2) The number of operations reviews of animal waste management systems that the Division of Soil and Water Conservation of the Department of Agriculture and Consumer Services has conducted since the last report.

(3) The number of operations reviews of animal waste management systems conducted by agencies other than the Division of Soil and Water Conservation of the Department of Agriculture and Consumer Services that have been conducted since the last report.

(4) The number of reinspections associated with operations reviews conducted by the Division of Soil and Water Conservation of the Department of Agriculture and Consumer Services since the last report.

(5) The number of reinspections associated with operations reviews conducted by agencies other than the Division of Soil and Water Conservation of the Department of Agriculture and Consumer Services since the last report.

...."

SECTION 18. Part 9 of Article 21 of Chapter 143 of the General Statutes is recodified as Article 72 of Chapter 106 of the General Statutes, and accordingly G.S. 143-215.74, 143-215.74A, and 143-215.74B are recodified as G.S. 106-850, 106-851, and 106-852.

SECTION 19. G.S. 106-850(b)(9), as recodified under Section 18 of this act, reads as rewritten:

"(9) When the applicant is either (i) a limited-resource farmer, (ii) a beginning farmer, or (iii) a person farming land that is located in an enhanced voluntary agricultural district and is subject to a conservation agreement under G.S. 106-743.2 that remains in effect, State funding shall be limited to ninety percent (90%) of the average cost for each practice with the assisted farmer providing ten percent (10%) of the cost, which may include in-kind support of the practice, with a maximum of one hundred thousand dollars ($100,000) per year to each applicant. The following definitions apply in this subdivision:

a. Beginning farmer. – A farmer who has not operated a farm or who has operated a farm for not more than 10 years and who will materially and substantially participate in the operation of the farm.

a1. Enhanced voluntary agricultural district. – A district established by a county or a city by ordinance under Part 3 of Article 61 of ~~Chapter 106 of the General Statutes.~~this Chapter.

...."

SECTION 20. G.S. 106-850(c), as recodified under Section 18 of this act, reads as rewritten:

"(c) The program shall be reviewed, prior to implementation, by the Committee created by ~~G.S. 143-215.74B.~~G.S. 106-852. The Technical Review Committee shall meet quarterly to review the progress of this program."

SECTION 21. G.S. 106-850(e), as recodified under Section 18 of this act, reads as rewritten:

"(e) The Soil and Water Conservation Commission shall report on or before 31 January of each year to the ~~Environmental Review Commission~~Board of Agriculture and the Fiscal Research Division. This report shall include a list of projects that received State funding pursuant to the program, the results of the evaluations conducted pursuant to subdivision (7) of subsection (b) of this section, findings regarding the effectiveness of each of these projects to accomplish its primary purpose, and any recommendations to assure that State funding is used in the most cost-effective manner and accomplishes the greatest improvement in water quality."

SECTION 22. Part 11 of Article 21 of Chapter 143 of the General Statutes is recodified as Article 73 of Chapter 106 of the General Statutes, and accordingly G.S. 143-215.74M is recodified as G.S. 106-860.

SECTION 23. G.S. 106-860(a), as recodified under Section 22 of this act, reads as rewritten:

"(a) Program Established. – There is established the Community Conservation Assistance Program. The Program shall be implemented and supervised by the Soil and Water Conservation ~~Commission.~~Commission of the Department of Agriculture and Consumer Services."

SECTION 24. G.S. 106-860(d), as recodified under Section 22 of this act, reads as rewritten:

"(d) Advisory Committee. – The Program shall be reviewed, prior to implementation, by the Community Conservation Assistance Program Advisory Committee. The Advisory Committee shall meet quarterly to review the progress of the Program. The Advisory Committee shall consist of the following members:

(1) The Director of the Division of Soil and Water Conservation of the Department of Agriculture and Consumer Services or the Director's designee, who shall serve as the Chair of the Advisory Committee.
(2) The President of the North Carolina Association of Soil and Water Conservation Districts or the President's designee.
(3) The Director of the Cooperative Extension Service at North Carolina State University or the Director's designee.
(4) The Executive Director of the North Carolina Association of County Commissioners or the Executive Director's designee.
(5) The Executive Director of the North Carolina League of Municipalities or the Executive Director's designee.
(6) The State Conservationist of the Natural Resources Conservation Service of the United States Department of Agriculture or the State Conservationist's designee.
(7) The Executive Director of the Wildlife Resources Commission or the Executive Director's designee.
(8) The President of the North Carolina Conservation District Employees Association or the President's designee.
(9) The President of the North Carolina Association of Resource Conservation and Development Councils or the President's designee.
(10) The Director of the Division of Water Quality of the Department of Environment and Natural Resources or the Director's designee.
(11) The Director of the Division of Forest Resources of the Department of Environment and Natural Resources or the Director's designee.
(12) The Director of the Division of Land Resources of the Department of Environment and Natural Resources or the Director's designee.
(13) The Director of the Division of Coastal Management of the Department of Environment and Natural Resources or the Director's designee.

(14) The Director of the Division of Water Resources of the Department of Environment and Natural Resources or the Director's designee.

(15) The President of the Carolinas Land Improvement Contractors Association or the President's designee."

SECTION 25. G.S. 106-860(e), as recodified under Section 22 of this act, reads as rewritten:

"(e) Report. – The Soil and Water Conservation Commission shall report no later than 31 January of each year to the ~~Environmental Review Commission~~Board of Agriculture and the Fiscal Research Division. The report shall include a summary of projects that received State funding pursuant to the Program, the results of the evaluation conducted pursuant to subdivision (5) of subsection (b) of this section, findings regarding the effectiveness of each project to accomplish its primary purpose, and any recommendations to assure that State funding is used in the most cost-effective manner and accomplishes the greatest improvement in water quality."

SECTION 26. G.S. 113-291.10(a) reads as rewritten:

"(a) There is established the Beaver Damage Control Advisory Board. The Board shall consist of nine members, as follows:

...

(4) The Director of the Division of Soil and Water Conservation of the Department of ~~Environment and Natural Resources,~~Agriculture and Consumer Services or a designee;

...."

SECTION 27. G.S. 106-743.4(b) reads as rewritten:

"(b) A person who farms land that is subject to a conservation agreement under G.S. 106-743.2 that remains in effect is eligible under G.S. ~~143-215.74(b)~~106-850(b) to receive the higher percentage of cost-share funds for the benefit of that farmland under the Agriculture Cost Share Program established pursuant to ~~Part 9 of Article 21 of Chapter 143 of the General Statutes~~Article 72 of this Chapter for funds to benefit that farmland."

SECTION 28. The Revisor of Statutes shall make the conforming statutory changes necessary to reflect the transfers under Section 1 of this act. The Revisor of Statutes may correct any reference in the General Statutes to the statutes that are recodified by this act and any other conforming changes necessitated by this act.

SECTION 29. This act becomes effective July 1, 2011.

NORTH CAROLINA
SOIL & WATER
CONSERVATION
Yours for Life

NORTH CAROLINA ■ ASSOCIATION OF ■ SOIL & WATER ■ CONSERVATION ■ DISTRICTS

Date: May 2, 2011

Secretary Dee Freeman
NC Department of Environment and Natural Resources
1601 Mail Service Center
Raleigh, NC 27699-1601

Dear Secretary Freeman:

The NC Association of Soil and Water Conservation Districts has had a long term relationship with the NC Department of Environment and Natural Resources and we have valued that relationship. However due to current circumstances such as the introduction of HB200 and an amendment to HB200 that greatly impacts the structure of the Soil and Water Division and the ability to work with Districts through the Divisions District Operations Staff we have no choice but to try to save the division and staff by supporting SB229.

Today the Executive Committee of the NC Association of Soil and Water Conservation Districts voted unanimously to support Senate Bill 229 which proposes to move the Division of Soil and Water Conservation and the NC Soil and Water Conservation Commission from NCDENR to the NC Department of Agriculture and Consumer Services. Tomorrow morning I plan to inform the Senate Agriculture, Environment, and Natural Resource Committee of this decision during their scheduled committee meeting.

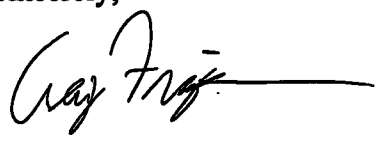
With the legislature's continuing effort to reorganize DENR, the Association's Executive Committee members believe that moving to the NCDACS will provide greater protection for the Division and its staff, the Commission, and their various conservation programs to remain intact, and will provide the best opportunity for more stable funding both in the short and long term. The result of this action will place local soil and water conservation districts in a better position to continue their work with private landowners to put conservation practices on the landscape of North Carolina through voluntary, incentive-based conservation programs and efforts.

Conservation districts and the Association have a strong history of working with and through DENR in protecting the state's valuable resources. We look forward to this relationship continuing into the future as we provide meaningful assistance to the landowners and citizens of North Carolina.

P.O. Box 27943 ■ RALEIGH ■ NORTH CAROLINA ■ 27611-7943 ■ (919) 715-6104

NCDENR has always been a primary partner of the Association and hopes that we can continue to partner in the future to serve the citizens of NC in protecting its natural resources.

Sincerely,



Craig Frazier
President

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

S D

SENATE BILL 388
PROPOSED COMMITTEE SUBSTITUTE S388-CSRIf-18 [v.1]

5/2/2011 5:34:50 PM

Short Title: Transfer Forestry & Forestry Council to DACS. (Public)

Sponsors:

Referred to:

March 22, 2011

A BILL TO BE ENTITLED

AN ACT TO TRANSFER THE DIVISION OF FOREST RESOURCES AND THE FORESTRY COUNCIL OF THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES TO THE DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES AND TO MAKE CONFORMING CHANGES.

The General Assembly of North Carolina enacts:

SECTION 1.(a) The Division of Forest Resources is transferred from the Department of Environment and Natural Resources to the Department of Agriculture and Consumer Services with all the elements of a Type I transfer as defined by G.S. 143A-6.

SECTION 1.(b) G.S. 143B-279.3(a) reads as rewritten:

"(a) All functions, powers, duties, and obligations previously vested in the following subunits of the following departments are transferred to and vested in the Department of Environment and Natural Resources by a Type I transfer, as defined in G.S. 143A-6:

...

~~(6) Forest Resources Division, Department of Natural Resources and Community Development.~~

...."

SECTION 1.(c) Article 7 of Chapter 143A of the General Statutes is amended by adding a new section to read:

"**§ 143A-65.1. Division of Forest Resources.**

The Department of Agriculture and Consumer Services shall have charge of the work of forest maintenance, forest fire prevention, reforestation, and the protection of lands and water supplies by the preservation of forests; it shall also have the care of State forests."

SECTION 1.(d) All functions, powers, duties, and obligations previously vested in the Forestry Council are transferred from the Department of Environment and Natural Resources to and vested in the Department of Agriculture and Consumer Services by a Type II transfer, as defined in G.S. 143A-6.

SECTION 1.(e) G.S. 143B-279.3(b) reads as rewritten:

"(b) All functions, powers, duties, and obligations previously vested in the following commissions, boards, councils, and committees of the following departments are transferred to and vested in the Department of Environment and Natural Resources by a Type II transfer, as defined in G.S. 143A-6:

...

~~(13) Forestry Council, Department of Natural Resources and Community Development.~~

...."

SECTION 1.(f) Part 12 of Article 7 of Chapter 143B of the General Statutes (G.S. 143B-308, 143B-309, and 143B-310) is recodified in Article 7 of Chapter 143A of the General Statutes as G.S. 143A-66.1, 143A-66.2, and 143A-66.3.

SECTION 1.(g) G.S. 143A-66.1, as recodified in subsection (f) of this section, reads as rewritten:

"**§ 143A-66.1. Forestry Council – creation; powers and duties.**

There is hereby created the Forestry Council of the Department of ~~Environment and Natural Resources.~~Agriculture and Consumer Services. The Forestry Council shall have the following functions and duties:

(1) To advise the ~~Secretary of Environment and Natural Resources~~Commissioner of Agriculture with respect to all matters concerning the protection, management, and preservation of State-owned, privately owned, and municipally owned forests in the State, including but not limited to:
   a. Profitable use of the State's forests consistent with the principles of sustained productivity.
   b. Best management practices, including those for protection of soil, water, wildlife, and wildlife habitat, to be used in managing the State's forests and their resources.
   c. Restoration of forest ecosystems and protection of rare and endangered species occurring in the State's private forests consistent with principles of private ownership of land.

(2) To maintain oversight of a continuous monitoring and planning process, to provide a long-range, comprehensive plan for the use, management, and sustainability of North Carolina's forest resources, and to report regularly on progress made toward meeting the objectives of the plan.

(3) To provide a forum for the identification, discussion, and development of recommendations for the resolution of conflicts in the management of North Carolina's forests.

(4) To undertake any other studies, make any reports, and advise the ~~Secretary of Environment and Natural Resources~~Commissioner of Agriculture on any matter as the ~~Secretary~~ Commissioner may direct."

SECTION 1.(h) G.S. 143A-66.2, as recodified in subsection (f) of this section, reads as rewritten:

"**§ 143A-66.2. Forestry Council – members; chairperson; selection; removal; compensation; quorum.**

(a) The Forestry Advisory Council of the Department of ~~Environment and Natural Resources~~Agriculture and Consumer Services shall consist of 18 members appointed as follows:

(1) Three persons who are registered foresters and who represent the primary forest products industry, one each from the Mountains, Piedmont and Coastal Plain.

(2) One person who represents the secondary wood-using industry.

(3) One person who represents the logging industry.

(4) Four persons who are nonindustrial woodland owners actively involved in forest management, one of whom has agricultural interests, and at least one each from the Mountains, Piedmont, and Coastal Plain.

(5) Three persons who are members of statewide environmental or wildlife conservation organizations.
(6) One consulting forester.
(7) Two persons who are forest scientists with knowledge of the functioning and management of forest ecosystems.
(8) One person who represents a banking institution that manages forestland.
(9) One person with expertise in urban forestry.
(10) One person with active experience in city and regional planning.

...

(h) All clerical and other services required by the Council, including the support required to carry out studies it is requested to make, shall be supplied by the ~~Secretary of Environment and Natural Resources.~~Commissioner of Agriculture."

SECTION 1.(i) G.S. 106-22 is amended by adding two new subdivisions to read:

"(18) Forests. – Have charge of forest maintenance, forest fire protection, reforestation, and the protection of the forests.

(19) State forests. – Have charge of all State forests and measures for forest fire prevention."

SECTION 1.(j) G.S. 113-8 reads as rewritten:

"**§ 113-8. Powers and duties of the Department.**

The Department shall make investigations of the natural resources of the State, and take such measures as it may deem best suited to promote the conservation and development of such resources.

It shall have ~~charge of the work of forest maintenance, forest fire prevention, reforestation, and~~ the protection of lands and water ~~supplies by the preservation of forests;~~supplies; it shall also have the care of State ~~forests and~~ parks, and other recreational areas now owned or to be acquired by the State, including the lakes referred to in G.S. 146-7.

It shall make such examination, survey and mapping of the geology, mineralogy and topography of the State, including their industrial and economic utilization, as it may consider necessary; make investigations of water supplies and water powers, prepare and maintain a general inventory of the water resources of the State, and take such measures as it may consider necessary to promote their development.

It shall have the duty of enforcing all laws relating to the conservation of marine and estuarine resources.

The Department may take such other measures as it may deem advisable to obtain and make public a more complete knowledge of the State and its resources, and it is authorized to cooperate with other departments and agencies of the State in obtaining and making public such information.

The Department may acquire such real and personal property as may be found desirable and necessary for the performance of the duties and functions of the Department and pay for same out of any funds appropriated for the Department or available unappropriated revenues of the Department, when such acquisition is approved by the Governor and Council of State. The title to any real estate acquired shall be in the name of the State of North Carolina for the use and benefit of the Department."

SECTION 1.(k) G.S. 113-22 is repealed.

SECTION 1.(l) G.S. 106-22 is amended by adding three new subdivisions to read:

"(18) Forests. – Have charge of forest maintenance, forest fire protection, reforestation, and the protection of the forests.

(19) State forests. – Have charge of all State forests and measures for forest fire prevention.

(20) Property for state forests. – Acquire real and personal property as desirable and necessary for the performance of the duties and functions of the

Department under subdivision (19) of this section and pay for the property out of any funds appropriated for the Department or available unappropriated revenues of the Department, when such acquisition is approved by the Governor and Council of State. The title to any real estate acquired under this subdivision shall be in the name of the State of North Carolina for the use and benefit of the Department."

SECTION 1.(m) The title of Subchapter II of Chapter 113 of the General Statutes reads as rewritten:

"**SUBCHAPTER II. STATE ~~FORESTS AND~~ PARKS.**"

SECTION 1.(n) Article 2 of Chapter 113 of the General Statutes reads as rewritten:

"Article 2.

"Acquisition and Control of State ~~Forests and~~ Parks.

"**§ 113-29. ~~Policy and plan to be inaugurated by Department of Environment and Natural Resources.~~Definitions.**

~~(a)~~ In this Article, unless the context requires otherwise, "Department" means the Department of Environment and Natural Resources; and "Secretary" means the Secretary of Environment and Natural Resources.

~~(b) The Department of Environment and Natural Resources shall inaugurate the following policy and plan looking to the cooperation with private and public forest owners in this State insofar as funds may be available through legislative appropriation, gifts of money or land, or such cooperation with landowners and public agencies as may be available:~~

~~(1) The extension of the forest fire prevention organization to all counties in the State needing such protection.~~

~~(2) To cooperate with federal and other public agencies in the restoration of forest growth on land unwisely cleared and subsequently neglected.~~

~~(3) To furnish trained and experienced experts in forest management, to inspect private forestlands and to advise with forest landowners with a view to the general observance of recognized and practical rules of growing, cutting and marketing timber. The services of such trained experts of the Department must naturally be restricted to those landowners who agree to carry out so far as possible the recommendations of said Department.~~

~~(4) To prepare and distribute printed and other material for the use of teachers and club leaders and to provide instruction to schools and clubs and other groups of citizens in order to train the younger generation in the principles of wise use of our forest resources.~~

~~(5) To acquire small areas of suitable land in the different regions of the State on which to establish small, model forests which shall be developed and used by the said Department as State demonstration forests for experiment and demonstration in forest management.~~

"**~~§ 113-29.1. Growing of timber on unused State lands authorized.~~**

~~The Department of Administration may allocate to the Department, for management as a State forest, any vacant and unappropriated lands, any marshlands or swamplands, and any other lands title to which is vested in the State or in any State agency or institution, where such lands are not being otherwise used and are not suitable for cultivation. Lands under the supervision of the Wildlife Resources Commission and designated and in use as wildlife management areas, refuges, or fishing access areas and lands used as research stations shall not be subject to the provisions of this section. The Department shall plant timber producing trees on all lands allocated to it for that purpose by the Department of Administration. The Secretary may contract with the appropriate prison authorities for the furnishing, upon such conditions as may be agreed upon from time to time between such prison authorities and the Secretary, of~~

~~prison labor for use in the planting, cutting, and removal of timber from State forests which are under the management of the Department.~~

~~"§ 113-30. Use of lands acquired by counties through tax foreclosures as demonstration forests.~~

~~The boards of county commissioners of the various counties of North Carolina are herewith authorized to turn over to the said Department title to such tax delinquent lands as may have been acquired by said counties under tax sale and as in the judgment of the Secretary may be suitable for the purposes named in G.S. 113-29, subdivision (5).~~

~~"§ 113-31. Procedure for acquisition of delinquent tax lands from counties.~~

~~In the carrying out of the provisions of G.S. 113-30, the several boards of county commissioners shall furnish forthwith on written request of the Department a complete list of all properties acquired by the county under tax sale and which have remained unredeemed for a period of two years or more. On receipt of this list the Secretary shall have the lands examined and if any one or more of these properties is in his judgment suitable for the purposes set forth in G.S. 113-30, request shall be made to the county commissioners for the acquisition of such land by the Department at a price not to exceed the actual amount of taxes due without penalties. On receipt of this request the county commissioners shall make permanent transfer of such tract or tracts of land to the Department through fee simple deed or other legal transfer, said deed to be approved by the Attorney General of North Carolina, and shall then receive payment from the Department as above outlined.~~

~~"§ 113-32. Purchase of lands for use as demonstration forests.~~

~~Where no suitable tax delinquent lands are available and in the judgment of the Department the establishment of a demonstration forest is advisable, the Department may purchase sufficient land for the establishment of such a demonstration forest at a fair and agreed upon price, the deed for such land to be subject to approval of the Attorney General, but nothing in G.S. 113-29 to 113-33 shall allow the Department to acquire land under the right of eminent domain.~~

~~"§ 113-33. Forest management appropriation.~~

~~Necessary funds for carrying out the provisions of G.S. 113-29 and 113-30 to 113-33 shall be set up in the regular budget as an item entitled "forest management.~~

"§ 113-34. Power to acquire lands as State ~~forests,~~ parks, and other recreational areas; donations or leases by United States; leases for recreational purposes.

(a) ~~The Governor may, upon recommendation of the Department, accept gifts of land to the State to be held, protected, and administered by the Department as State forests, and to be used so as to demonstrate the practical utility of timber culture and water conservation, and as refuges for game. The gifts of land must be absolute except in cases where the mineral interest on the land has previously been sold. The Department may purchase lands in the name of the State, suitable chiefly for the production of timber, as State forests, for experimental, demonstration, educational, park, and protection purposes, using for these purposes any special appropriations or funds available.~~ The Department may acquire by gift, purchase, or condemnation under the provisions of Chapter 40A of the General Statutes, areas of land in different sections of the State that may in the opinion of the Department be necessary for the purpose of establishing or developing ~~State forests,~~ State parks, and other areas and developments essential to the effective operation of the ~~State forestry and~~ State park activities under its charge. Condemnation proceedings shall be instituted and prosecuted in the name of the State, and any property so acquired shall be administered, developed, and used ~~for experiment and demonstration in forest management,~~ for public ~~recreation,~~recreation and for other purposes authorized or required by law. Before any action or proceeding under this section can be exercised, the approval of the Governor and Council of State shall be obtained and filed with the clerk of the superior court in the county or counties where the property is located. The Attorney General shall ensure that all deeds to the State for land acquired under

this section are properly executed before the gift is accepted or payment of the purchase money is made.

(b) The Department may accept as gifts to the State any ~~forest and~~ submarginal farmland acquired by the federal government that is suitable for the purpose of creating and maintaining ~~State forests,~~ game refuges, public shooting grounds, State parks, State lakes, and other recreational areas, or to enter into longtime leases with the federal government for the areas and administer them with funds secured from their administration in the best interest of longtime public use, supplemented by any appropriations made by the General Assembly. The Department may segregate revenue derived from State hunting and fishing licenses, use permits, and concessions and other proper revenue secured through the administration of State ~~forests,~~ game refuges, public shooting grounds, State parks, State lakes, and other recreational areas to be deposited in the State treasury to the credit of the Department to be used for the administration of these areas.

(c) The Department, with the approval of the Governor and Council of State, may enter into leases of lands and waters for State parks, State lakes, and recreational purposes.

(d), (e) Repealed by Session Laws 2003-284, s. 35.1(a), effective July 1, 2003.

(f) The authority granted to the Department under this section is in addition to any authority granted to the Department under any other provision of law.

"§ 113-34.1. Power to acquire conservation lands not included in the State Parks System.

The Department of Administration may acquire and allocate to the Department of Environment and Natural Resources for management by the Division of Parks and Recreation lands that the Department of Environment and Natural Resources finds are important for conservation purposes but which are not included in the State Parks System. Lands acquired pursuant to this section are not subject to Article 2C of Chapter 113 of the General Statutes and may be traded or transferred as necessary to protect, develop, and manage the Mountains to Sea State Park Trail, other State parks, or other conservation lands. This section does not expand the power granted to the Department of Environment and Natural Resources under G.S. 113-34(a) to acquire land by condemnation.

"§ 113-35. ~~State timber may be sold by Department; forest nurseries; control~~Control over State parks; operation of public service facilities; concessions to private concerns; authority to charge fees and adopt rules.

(a) ~~Timber and other products of State forests may be sold, cut, and removed under rules of the Department. The Department may establish and operate forest tree nurseries and forest tree seed orchards. Forest tree seedlings and seed from these nurseries and seed orchards may be sold to landowners of the State for purposes of forestation under rules adopted by the Department. When the Secretary determines that a surplus of seedlings or seed exists, this surplus may be sold, and the sale shall be in conformity with the following priority of sale: first, to agencies of the federal government for planting in the State of North Carolina; second, to commercial nurseries and nurserymen within this State; and third, without distinction, to federal agencies, to other states, and to recognized research organizations for planting either within or outside of this State.~~ The Department shall make reasonable rules governing the use by the public of ~~State forests,~~ State ~~parks, State lakes, game refuges, and public shooting grounds~~parks and State lakes under its charge. These rules shall be posted in conspicuous places on and adjacent to the properties of the State and at the courthouse of the county or counties in which the properties are located. A violation of these rules is punishable as a Class 3 misdemeanor.

(a1) The Department may adopt rules under which the Secretary may issue a special-use permit authorizing the use of pyrotechnics in State parks in connection with public exhibitions. The rules shall require that experts supervise the use of pyrotechnics and that written authorization for the use of pyrotechnics be obtained from the board of commissioners of the county in which the pyrotechnics are to be used, as provided in G.S. 14-410. The Secretary may

impose any conditions on a permit that the Secretary determines to be necessary to protect public health, safety, and welfare. These conditions shall include a requirement that the permittee execute an indemnification agreement with the Department and obtain general liability insurance covering personal injury and property damage that may result from the use of pyrotechnics with policy limits determined by the Secretary.

(b) The Department may construct, operate, and maintain within the ~~State forests,~~ State parks, State lakes, and other areas under its charge suitable public service facilities and conveniences, and may charge and collect reasonable fees for the use of these facilities and conveniences. The Department may also charge and collect reasonable fees for each of the following:

(1) The erection, maintenance, and use of docks, piers, and any other structures permitted in or on State lakes under rules adopted by the Department.

(2) ~~Hunting privileges on State forests and fishing~~Fishing privileges in ~~State forests, State parks,~~parks and State lakes, provided that these privileges shall be extended only to holders of State hunting and fishing licenses who comply with all State game and fish laws.

(3) Vehicle access for off-road driving at the beach at Fort Fisher State Recreation Area.

(4) The erection, maintenance, and use of a marina at Carolina Beach.

(b1) Members of the public who pay a fee under subsection (b) of this section for access to Fort Fisher State Recreation Area may have 24-hour access to Fort Fisher State Recreation Area from September 15 through March 15 of each year.

(c) The Department may make reasonable rules for the operation and use of boats or other craft on the surface of the waters under its charge. The Department may charge and collect reasonable fees for the use of boats and other watercraft that are purchased and maintained by the Department; however, the Department shall not charge a fee for the use or operation of any other boat or watercraft on these waters.

(d) The Department may grant to private individuals or companies concessions for operation of public service facilities for such periods and upon such conditions as the Department deems to be in the public interest. The Department may adopt reasonable rules for the regulation of the use by the public of the lands and waters under its charge and of the public service facilities and conveniences authorized under this section. A violation of these rules is punishable as a Class 3 misdemeanor.

(e) The authority granted to the Department under this section is in addition to any authority granted to the Department under any other provision of law.

~~"§ 113-36. Applications of proceeds from sale of products.~~

~~(a) Application of Proceeds Generally. Except as provided in this section, all money received from the sale of wood, timber, minerals, or other products from the State forests shall be paid into the State treasury and to the credit of the Department; and such money shall be expended in carrying out the purposes of this Article and of forestry in general, under the direction of the Secretary.~~

~~(b) Tree Cone and Seed Purchase Fund. A percentage of the money obtained from the sale of seedlings and remaining unobligated at the end of a fiscal year, shall be placed in a special, continuing and nonreverting Tree Cone and Seed Purchase Fund under the control and direction of the Secretary. The percentage of the sales placed in the fund shall not exceed ten percent (10%). At the beginning of each fiscal year, the Secretary shall select the percentage for the upcoming fiscal year depending upon the anticipated costs of tree cones and seeds which the department must purchase. Money in this fund shall not be allowed to accumulate in excess of the amount needed to purchase a four-year supply of tree cones and seed, and shall be used for no purpose other than the purchase of tree cones and seeds.~~

~~(c) Forest Seedling Nursery Program Fund. The Forest Seedling Nursery Program Fund is created within the Department of Environment and Natural Resources, Division of Forest Resources, as a special revenue fund. Except as provided in subsection (b) of this section, this Fund shall consist of receipts from the sale of seed and seedlings as authorized in G.S. 113-35 and any gifts, bequests, or grants for the benefit of this Fund. No General Fund appropriations shall be credited to this Fund. Any balance remaining in this Fund at the end of any fiscal year shall not revert. The Department may use this Fund only to develop, improve, repair, maintain, operate, or otherwise invest in the Forest Seedling Nursery Program.~~

~~(d) Bladen Lakes State Forest Fund. The Bladen Lakes State Forest Fund is created within the Department of Environment and Natural Resources, Division of Forest Resources, as a special revenue fund. This Fund shall consist of receipts from the sale of forest products from Bladen Lakes State Forest as authorized in G.S. 113-35 and any gifts, bequests, or grants for the benefit of this Fund. No General Fund appropriations shall be credited to this Fund. Any balance remaining in this Fund at the end of any fiscal year shall not revert. The Department may use this Fund only to develop, improve, repair, maintain, operate, or otherwise invest in the Bladen Lakes State Forest.~~

"§ 113-37. Legislative authority necessary for payment.

Nothing in this Article shall operate or be construed as authority for the payment of any money out of the State treasury for the purchase of lands or for other purposes unless by appropriation for said purpose by the General Assembly.

~~"§ 113-38. Distribution of funds from sale of forestlands.~~

~~All funds paid by the National Forest Commission, by authority of act of Congress, approved May 23, 1908 (35 Stat., 260), for the Counties of Avery, Buncombe, Burke, Craven, Haywood, Henderson, Hyde, Jackson, Macon, Montgomery, Swain, Transylvania, Watauga, and Yancey, shall be paid to the proper county officers, and said funds shall, when received, be placed in the account of the general county funds: Provided, however, that in Buncombe County said funds shall be entirely for the use and benefit of the school district or districts in which said national forestlands shall be located.~~

~~All funds which may hereafter come into the hands of the State Treasurer from like sources shall be likewise distributed.~~

"§ 113-39. License fees for hunting and fishing on government-owned property unaffected.

No wording in G.S. 113-307.1(a), or any other North Carolina statute or law, or special act, shall be construed to abrogate the vested rights of the State of North Carolina to collect fees for license for hunting and fishing on any government-owned land or in any government-owned stream in North Carolina including the license for county, State or nonresident hunters or fishermen; or upon any lands or in any streams hereafter acquired by the federal government within the boundaries of the State of North Carolina. The lands and streams within the boundaries of the Great Smoky Mountains National Park to be ~~excepted~~ exempt from this section.

"§ 113-40. Donations of property for ~~forestry or~~ park purposes; agreements with federal government or agencies for acquisition.

The Department is hereby authorized and empowered to accept gifts, donations or contributions of land suitable for ~~forestry or~~ park purposes and to enter into agreements with the federal government or other agencies for acquiring by lease, purchase or otherwise such lands as in the judgment of the Department are desirable for ~~State forests or~~ State parks.

"§ 113-41. Expenditure of funds for development, etc.; disposition of products from lands; rules.

When lands are acquired or leased under G.S. 113-40, the Department is hereby authorized to make expenditures from any funds not otherwise obligated, for the management, development and utilization of such areas; to sell or otherwise dispose of products from such

lands, and to make such rules as may be necessary to carry out the purposes of G.S. 113-40 to 113-44.

"§ 113-42. Disposition of revenues received from lands acquired.

All revenues derived from lands now owned or later acquired under the provisions of G.S. 113-40 to 113-44 shall be set aside for the use of the Department in acquisition, management, development and use of such lands until all obligations incurred have been paid in full. Thereafter, fifty percent (50%) of all net profits accruing from the administration of such lands shall be applicable for such purposes as the General Assembly may prescribe, and fifty percent (50%) shall be paid into the school fund to be used in the county or counties in which lands are located.

"§ 113-43. State not obligated for debts created hereunder.

Obligations for the acquisition of land incurred by the Department under the authority of G.S. 113-40 to 113-44 shall be paid solely and exclusively from revenues derived from such lands and shall not impose any liability upon the general credit and taxing power of the State.

"§ 113-44. Disposition of lands acquired.

The Department shall have full power and authority to sell, exchange or lease lands under its jurisdiction when in its judgment it is advantageous to the State to do so in the highest orderly development and management of ~~State forests and~~ State parks: Provided, however, said sale, lease or exchange shall not be contrary to the terms of any contract which it has entered into."

SECTION 1.(o) Chapter 106 of the General Statutes is amended by adding a new Article to read:

"Article 71.

"Acquisition and Control of State Forests.

"§ 106-840. Policy and plan to be inaugurated by Department of Agriculture and Consumer Services.

(a) In this Article, unless the context requires otherwise, "Department" means the Department of Agriculture and Consumer Services and "Commissioner" means Commissioner of Agriculture.

(b) The Department shall inaugurate the following policy and plan looking to the cooperation with private and public forest owners in this State insofar as funds may be available through legislative appropriation, gifts of money or land, or such cooperation with landowners and public agencies as may be available:

(1) The extension of the forest fire prevention organization to all counties in the State needing such protection.

(2) To cooperate with federal and other public agencies in the restoration of forest growth on land unwisely cleared and subsequently neglected.

(3) To furnish trained and experienced experts in forest management, to inspect private forestlands and to advise forest landowners with a view to the general observance of recognized and practical rules of growing, cutting, and marketing timber. The services of such trained experts of the Department must naturally be restricted to those landowners who agree to carry out so far as possible the recommendations of said Department.

(4) To prepare and distribute printed and other material for the use of teachers and club leaders and to provide instruction to schools and clubs and other groups of citizens in order to train the younger generation in the principles of wise use of our forest resources.

(5) To acquire small areas of suitable land in the different regions of the State on which to establish small, model forests which shall be developed and used by the said Department as State demonstration forests for experiment and demonstration in forest management.

"§ 106-841. Growing of timber on unused State lands authorized.

The Department of Administration may allocate to the Department, for management as a State forest, any vacant and unappropriated lands, any marshlands or swamplands, and any other lands title to which is vested in the State or in any State agency or institution, where such lands are not being otherwise used and are not suitable for cultivation. Lands under the supervision of the Wildlife Resources Commission and designated and in use as wildlife management areas, refuges, or fishing access areas and lands used as research stations shall not be subject to the provisions of this section. The Department shall plant timber-producing trees on all lands allocated to it for that purpose by the Department of Administration. The Commissioner may contract with the appropriate prison authorities for the furnishing, upon such conditions as may be agreed upon from time to time between such prison authorities and the Commissioner, of prison labor for use in the planting, cutting, and removal of timber from State forests which are under the management of the Department.

"§ 106-842. Use of lands acquired by counties through tax foreclosures as demonstration forests.

The boards of county commissioners of the various counties of North Carolina are herewith authorized to turn over to the said Department title to such tax-delinquent lands as may have been acquired by said counties under tax sale and as in the judgment of the Commissioner may be suitable for the purposes named in subdivision (5) of subsection (b) of G.S. 106-840.

"§ 106-843. Procedure for acquisition of delinquent tax lands from counties.

In the carrying out of the provisions of G.S. 106-842, the several boards of county commissioners shall furnish forthwith on written request of the Department a complete list of all properties acquired by the county under tax sale and which have remained unredeemed for a period of two years or more. On receipt of this list the Commissioner shall have the lands examined and if any one or more of these properties is in the Commissioner's judgment suitable for the purposes set forth in G.S. 106-842, request shall be made to the county commissioners for the acquisition of such land by the Department at a price not to exceed the actual amount of taxes due without penalties. On receipt of this request the county commissioners shall make permanent transfer of such tract or tracts of land to the Department through fee-simple deed or other legal transfer, said deed to be approved by the Attorney General of North Carolina, and shall then receive payment from the Department as above outlined.

"§ 106-844. Purchase of lands for use as demonstration forests.

Where no suitable tax-delinquent lands are available and, in the judgment of the Department, the establishment of a demonstration forest is advisable, the Department may purchase sufficient land for the establishment of such a demonstration forest at a fair and agreed-upon price, the deed for such land to be subject to approval of the Attorney General, but nothing in G.S. 106-840 to G.S. 106-845 shall allow the Department to acquire land under the right of eminent domain.

"§ 106-845. Forest management appropriation.

Necessary funds for carrying out the provisions of G.S. 106-840 and G.S. 106-842 to G.S. 106-845 shall be set up in the regular budget as an item entitled "forest management."

"§ 106-846. Power to acquire lands as State forests; donations or leases by United States; leases for recreational purposes.

(a) The Governor may, upon recommendation of the Department, accept gifts of land to the State to be held, protected, and administered by the Department as State forests, and to be used so as to demonstrate the practical utility of timber culture and water conservation, and as refuges for game. The gifts of land must be absolute except in cases where the mineral interest on the land has previously been sold. The Department may purchase lands in the name of the State, suitable chiefly for the production of timber, as State forests, for experimental, demonstration, educational, and protection purposes, using for these purposes any special appropriations or funds available. The Department may acquire by condemnation under the

provisions of Chapter 40A of the General Statutes, areas of land in different sections of the State that may in the opinion of the Department be necessary for the purpose of establishing or developing State forests and other areas and developments essential to the effective operation of the State forestry activities under its charge. Condemnation proceedings shall be instituted and prosecuted in the name of the State, and any property so acquired shall be administered, developed, and used for experiment and demonstration in forest management, for public recreation, and for other purposes authorized or required by law. Before any action or proceeding under this section can be exercised, the approval of the Governor and Council of State shall be obtained and filed with the clerk of the superior court in the county or counties where the property is located. The Attorney General shall ensure that all deeds to the State for land acquired under this section are properly executed before the gift is accepted or payment of the purchase money is made.

(b) The Department may accept as gifts to the State any forest and submarginal farmland acquired by the federal government that is suitable for the purpose of creating and maintaining State forests or enter into longtime leases with the federal government for the areas and administer them with funds secured from their administration in the best interest of longtime public use, supplemented by any appropriations made by the General Assembly. The Department may segregate revenue derived from State hunting and fishing licenses, use permits, and concessions, and other proper revenue secured through the administration of State forests, to be deposited in the State treasury to the credit of the Department to be used for the administration of these areas.

(c) The authority granted to the Department under this section is in addition to any authority granted to the Department under any other provision of law.

"**§ 106-847. State timber may be sold by Department; forest nurseries; operation of public service facilities; concessions to private concerns; authority to charge fees and adopt rules.**

(a) Timber and other products of State forests may be sold, cut, and removed under rules of the Department. The Department may establish and operate forest tree nurseries and forest tree seed orchards. Forest tree seedlings and seed from these nurseries and seed orchards may be sold to landowners of the State for purposes of forestation under rules adopted by the Department. When the Commissioner determines that a surplus of seedlings or seed exists, this surplus may be sold, and the sale shall be in conformity with the following priority of sale: first, to agencies of the federal government for planting in the State of North Carolina; second, to commercial nurseries and nurserymen within this State; and third, without distinction, to federal agencies, to other states, and to recognized research organizations for planting either within or outside of this State. The Department shall make reasonable rules governing the use by the public of State forests under its charge. These rules shall be posted in conspicuous places on and adjacent to the properties of the State and at the courthouse of the county or counties in which the properties are located. A violation of these rules is punishable as a Class 3 misdemeanor.

(b) The Department may construct, operate, and maintain within the State forests and other areas under its charge suitable public service facilities and conveniences, and may charge and collect reasonable fees for the use of these facilities and conveniences. The Department may also charge and collect reasonable fees for hunting privileges on State forests and fishing privileges in State forests, provided that these privileges shall be extended only to holders of State hunting and fishing licenses who comply with all State game and fish laws.

(c) The Department may grant to private individuals or companies concessions for operation of public service facilities for such periods and upon such conditions as the Department deems to be in the public interest. The Department may adopt reasonable rules for the regulation of the use by the public of the lands and waters under its charge and of the public

service facilities and conveniences authorized under this section. A violation of these rules is punishable as a Class 3 misdemeanor.

(d) The authority granted to the Department under this section is in addition to any authority granted to the Department under any other provision of law.

"**§ 106-848. Applications of proceeds from sale of products.**

(a) Application of Proceeds Generally. – Except as provided in this section, all money received from the sale of wood, timber, minerals, or other products from the State forests shall be paid into the State treasury and to the credit of the Department; and such money shall be expended in carrying out the purposes of this Article and of forestry in general, under the direction of the Commissioner.

(b) Tree Cone and Seed Purchase Fund. – A percentage of the money obtained from the sale of seedlings and remaining unobligated at the end of a fiscal year shall be placed in a special, continuing, and nonreverting Tree Cone and Seed Purchase Fund under the control and direction of the Commissioner. The percentage of the sales placed in the Fund shall not exceed ten percent (10%). At the beginning of each fiscal year, the Commissioner shall select the percentage for the upcoming fiscal year depending upon the anticipated costs of tree cones and seeds which the Department must purchase. Money in this Fund shall not be allowed to accumulate in excess of the amount needed to purchase a four-year supply of tree cones and seed and shall be used for no purpose other than the purchase of tree cones and seeds.

(c) Forest Seedling Nursery Program Fund. – The Forest Seedling Nursery Program Fund is created within the Department of Environment and Natural Resources, Division of Forest Resources, as a special revenue fund. Except as provided in subsection (b) of this section, this Fund shall consist of receipts from the sale of seed and seedlings as authorized in G.S. 106-847 and any gifts, bequests, or grants for the benefit of this Fund. No General Fund appropriations shall be credited to this Fund. Any balance remaining in this Fund at the end of any fiscal year shall not revert. The Department may use this Fund only to develop, improve, repair, maintain, operate, or otherwise invest in the Forest Seedling Nursery Program.

(d) Bladen Lakes State Forest Fund. – The Bladen Lakes State Forest Fund is created within the Department of Environment and Natural Resources, Division of Forest Resources, as a special revenue fund. This Fund shall consist of receipts from the sale of forest products from Bladen Lakes State Forest as authorized in G.S. 106-847 and any gifts, bequests, or grants for the benefit of this Fund. No General Fund appropriations shall be credited to this Fund. Any balance remaining in this Fund at the end of any fiscal year shall not revert. The Department may use this Fund only to develop, improve, repair, maintain, operate, or otherwise invest in the Bladen Lakes State Forest.

"**§ 106-849. Legislative authority necessary for payment.**

Nothing in this Article shall operate or be construed as authority for the payment of any money out of the State treasury for the purchase of lands or for other purposes unless by appropriation for said purpose by the General Assembly.

"**§ 106-850. Distribution of funds from sale of forestlands.**

All funds paid by the National Forest Commission, by authority of act of Congress, approved May 23, 1908, (35 Stat. 260), for the Counties of Avery, Buncombe, Burke, Craven, Haywood, Henderson, Hyde, Jackson, Macon, Montgomery, Swain, Transylvania, Watauga, and Yancey, shall be paid to the proper county officers, and said funds shall, when received, be placed in the account of the general county funds: Provided, however, that in Buncombe County said funds shall be entirely for the use and benefit of the school administrative unit in which said national forestlands shall be located.

All funds which may hereafter come into the hands of the State Treasurer from like sources shall be likewise distributed.

"**§ 106-851. License fees for hunting and fishing on government-owned property unaffected.**

No wording in G.S. 113-307.1(a), or any other North Carolina public, local, or special act, shall be construed to abrogate the vested rights of the State of North Carolina to collect fees for license for hunting and fishing on any government-owned land or in any government-owned stream in North Carolina including the license for county, State, or nonresident hunters or fishermen; or upon any lands or in any streams hereafter acquired by the federal government within the boundaries of the State of North Carolina. The lands and streams within the boundaries of the Great Smoky Mountains National Park are exempt from this section.

"**§ 106-852. Donations of property for forestry purposes; agreements with federal government or agencies for acquisition.**

The Department may accept gifts, donations, or contributions of land suitable for forestry purposes and to enter into agreements with the federal government or other agencies for acquiring by lease, purchase, or otherwise such lands as in the judgment of the Department are desirable for State forests.

"**§ 106-853. Expenditure of funds for development, etc.; disposition of products from lands; rules.**

When lands are acquired or leased under G.S. 106-852, the Department may make expenditures from any funds not otherwise obligated, for the management, development, and utilization of such areas; to sell or otherwise dispose of products from such lands, and to make such rules as may be necessary to carry out the purposes of G.S. 106-852 to G.S. 106-856.

"**§ 106-854. Disposition of revenues received from lands acquired.**

All revenues derived from lands now owned or later acquired under the provisions of G.S. 106-852 to G.S. 106-856 shall be set aside for the use of the Department in acquisition, management, development, and use of such lands until all obligations incurred have been paid in full. Thereafter, fifty percent (50%) of all net profits accruing from the administration of such lands shall be applicable for such purposes as the General Assembly may prescribe and fifty percent (50%) shall be paid into the school fund to be used in the county or counties in which lands are located.

"**§ 106-855. State not obligated for debts created hereunder.**

Obligations for the acquisition of land incurred by the Department under the authority of G.S. 106-852 to G.S. 106-856 shall be paid solely and exclusively from revenues derived from such lands and shall not impose any liability upon the general credit and taxing power of the State.

"**§ 106-856. Disposition of lands acquired.**

The Department shall have full power and authority to sell, exchange, or lease lands under its jurisdiction when in its judgment it is advantageous to the State to do so in the highest orderly development and management of State forests: Provided, however, said sale, lease, or exchange shall not be contrary to the terms of any contract which it has entered into."

SECTION 1.(p) Article 4 of Chapter 113 of the General Statutes (G.S. 113-51, 113-52, 113-53.1, 113-54, 113-55, 113-55.1, 113-55.2, 113-56, 113-56.1, 113-57, 113-58, 113-59, 113-60, 113-60.1, 113-60.2, and 113-60.3) is recodified as a new Article 72 of Chapter 106 of the General Statutes, G.S. 106-860 through G.S. 106-875.

SECTION 1.(q) Article 72 of Chapter 106 of the General Statutes, as recodified under subsection (p) of this section, reads as rewritten:

"Article 72.

"Protection and Development of Forests; Fire Control.

"**§ 106-860. Powers of Department of ~~Environment and Natural Resources.~~Agriculture and Consumer Services.**

(a) The Department of ~~Environment and Natural Resources~~Agriculture and Consumer Services may take such action as it may deem necessary to provide for the prevention and control of forest fires in any and all parts of this State, and it is hereby authorized to enter into

an agreement with the Secretary of Agriculture of the United States for the protection of the forested watersheds of streams in this State.

(b) In this Article, unless the context requires otherwise:

(1) "Commissioner" means the Commissioner of Agriculture.

~~(1)~~(2) "Department" means the Department of ~~Environment and Natural Resources.~~Agriculture and Consumer Services.

~~(2) "Secretary" means the Secretary of Environment and Natural Resources.~~

"§ 106-861. Forest rangers.

The ~~Secretary~~ Commissioner may appoint one county forest ranger and one or more deputy forest rangers in each county of the State in which, after careful investigation, the amount of forestland and the risks from forest fires shall, in his judgment, warrant the establishment of a forest fire organization.

"§ 106-862. Forest laws defined.

The forest laws consist of:

(1) G.S. 14-136 to G.S. 14-140;

(2) Articles ~~2, 4, 4A, 4C, and 6A~~71 through 79 of this Chapter;

(3) G.S. 77-13 and G.S. 77-14;

(4) Other statutes enacted for the protection of forests and woodlands from fire, insects, or disease and concerning obstruction of streams and ditches in forests and woodlands; and

(5) Regulations and ordinances adopted under the authority of the above statutes.

"§ 106-863. Duties of forest rangers; payment of expenses by State and counties.

Forest rangers shall have charge of measures for controlling forest fires, protection of forests from pests and diseases, and the development and improvement of the forests for maximum production of forest products; shall post along highways and in other conspicuous places copies of the forest fire laws and warnings against fires, which shall be supplied by the ~~Secretary;~~Commissioner; shall patrol and man lookout towers and other points during dry and dangerous seasons under the direction of the ~~Secretary;~~Commissioner; and shall perform such other acts and duties as shall be considered necessary by the ~~Secretary~~ Commissioner in the protection, development and improvement of the forested area of each of the counties within the State. No county may be held liable for any part of the expenses thus incurred unless specifically authorized by the board of county commissioners under prior written agreement with the ~~Secretary;~~Commissioner; appropriations for meeting the county's share of such expenses so authorized by the board of county commissioners shall be provided annually in the county budget. For each county in which financial participation by the county is authorized, the ~~Secretary~~ Commissioner shall keep or cause to be kept an itemized account of all expenses thus incurred and shall send such accounts periodically to the board of county commissioners of said county; upon approval by the board of the correctness of such accounts, the county commissioners shall issue or cause to be issued a warrant on the county treasury for the payment of the county's share of such expenditures, said payment to be made within one month after receipt of such statement from the ~~Secretary.~~Commissioner. Appropriations made by a county for the purposes set out in Articles ~~4, 4A, 4C and 6A~~72, 73, 75, and 79 of this Chapter in the cooperative forest protection, development and improvement work are not to replace State and federal funds which may be available to the ~~Secretary~~ Commissioner for the work in said county, but are to serve as a supplement thereto. Funds appropriated to the Department for a fiscal year for the purposes set out in Articles ~~4, 4A, 4C and 6A~~72, 73, 75, and 79 of this Chapter shall not be expended in a county unless that county shall contribute at least twenty-five percent (25%) of the total cost of the forestry program.

"§ 106-864. Powers of forest rangers to prevent and extinguish fires; authority to issue citations and warning tickets.

(a) Forest rangers shall prevent and extinguish forest fires and shall have control and direction of all persons and equipment while engaged in the extinguishing of forest fires. During a season of drought, the ~~Secretary~~ Commissioner or his designate may establish a fire patrol in any district, and in case of fire in or threatening any forest or woodland, the forest ranger shall attend forthwith and use all necessary means to confine and extinguish such fire. The forest ranger or deputy forest ranger may summon any resident between the ages of 18 and 45 years, inclusive, to assist in extinguishing fires and may require the use of crawler tractors and other property needed for such purposes; any person so summoned and who is physically able who refuses or neglects to assist or to allow the use of equipment and such other property required shall be guilty of a Class 3 misdemeanor and upon conviction shall only be subject to a fine of not less than fifty dollars ($50.00) nor more than one hundred dollars ($100.00). No action for trespass shall lie against any forest ranger, deputy forest ranger, or person summoned by him for crossing lands, backfiring, burning out or performing his duties as a forest ranger or deputy forest ranger.

(b) Forest rangers are authorized to issue and serve citations under the terms of G.S. 15A-302 and warning tickets under the terms of ~~G.S. 113-55.2~~G.S. 106-866 for offenses under the forest laws. This subsection may not be interpreted to confer the power of arrest on forest rangers, and does not make them criminal justice officers within the meaning of G.S. 17C-2.

"§ 106-865. Powers of forest law-enforcement officers.

The ~~Secretary~~ Commissioner is authorized to appoint as many forest law-enforcement officers as he deems necessary to carry out the forest law-enforcement responsibilities of the Department. Forest law-enforcement officers shall have all the powers and the duties of a forest ranger enumerated in ~~G.S. 113-54 and 113-55.~~G.S. 106-863 and G.S. 106-864. Forest law-enforcement officers shall, in addition to their other duties, have the powers of peace officers to enforce the forest laws. Any forest law-enforcement officer may arrest, without warrant, any person or persons committing any crime in his presence or whom such officer has probable cause for believing has committed a crime in his presence and bring such person or persons forthwith before a district court or other officer having jurisdiction. Forest law-enforcement officers shall also have authority to obtain and serve warrants including warrants for violation of any duly promulgated rule of the Department.

"§ 106-866. Warning tickets for violations of the forest laws.

(a) To encourage the cooperation of the public in achieving the objectives of the forest laws, the ~~Secretary~~ Commissioner may provide for the issuance of warning tickets instead of the initiation of criminal prosecution by forest rangers and forest law-enforcement officers. Issuance of the warning tickets shall be in accordance with criteria administratively promulgated by the ~~Secretary~~ Commissioner within the requirements of this section. These criteria are exempt from Article 2A of Chapter 150B of the General Statutes.

(b) No warning ticket may be issued unless all of the following conditions are met:

(1) The forest ranger or the forest law-enforcement officer must be convinced that the offense was not committed intentionally.

(2) The offense is not one, or a type of offense, for which the ~~Secretary~~ Commissioner has prohibited the issuance of warning tickets.

(3) At the time of the violation it was not reasonably foreseeable that the conduct of the offender could result in any significant destruction of forests or woodlands or constitute a hazard to the public.

(c) A warning ticket may not be issued if the offender has previously been charged with, or issued a warning ticket for, the same or a similar offense within the preceding three years. A list of persons who have been issued warning tickets under this section within the preceding three years shall be maintained and periodically updated by the ~~Secretary.~~Commissioner.

(d) This section does not entitle any person who has committed an offense to the right to be issued a warning ticket, and the issuance of a warning ticket does not prohibit the later initiation of criminal prosecution for the same offense for which the warning ticket was issued.

"§ 106-867. Compensation of forest rangers.

Forest rangers shall receive compensation from the Department at a reasonable rate to be fixed by said Department for the time actually engaged in the performance of their duties; and reasonable expenses for equipment, transportation, or food supplies incurred in the performance of their duties, according to an itemized statement to be rendered the ~~Secretary~~ Commissioner every month, and approved by him. Forest rangers shall render to the ~~Secretary~~ Commissioner a statement of the services rendered by the men employed by them or their deputy rangers, as provided in this Article, within one month of the date of service, which bill shall show in detail the amount and character of the service performed, the exact duration thereof, the name of each person employed, and any other information required by the ~~Secretary.~~Commissioner. If said bill be duly approved by the ~~Secretary,~~Commissioner, it shall be paid by direction of the Department out of any funds provided for that purpose.

"§ 106-868. 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 involved in fighting forest fires.

"§ 106-869. Woodland defined.

For the purposes of this Article, woodland is taken to include all forest areas, both timber and cutover land, and all second-growth stands on areas that have at one time been cultivated.

"§ 106-870. Misdemeanor to destroy posted forestry notice.

Any person who shall maliciously or willfully destroy, deface, remove, or disfigure any sign, poster, or warning notice, posted by order of the ~~Secretary,~~Commissioner, under the provisions of this Article, or any other act which may be passed for the purpose of protecting and developing the forests in this State, shall be guilty of a Class 3 misdemeanor.

"§ 106-871. Cooperation between counties and State in forest protection and development.

The board of county commissioners of any county is hereby authorized and empowered to cooperate with the Department in the protection, reforestation, and promotion of forest management of their own forests within their respective counties, and to appropriate and pay out of the funds under their control such amount as is provided in ~~G.S. 113-54.~~G.S. 106-863.

"§ 106-872. Instructions on forest preservation and development.

(a) It shall be the duty of all district, county, township rangers, and all deputy rangers provided for in this Chapter to distribute in all of the public schools and high schools of the county in which they are serving as such fire rangers all such tracts, books, periodicals and other literature that may, from time to time, be sent out to such rangers by the State and federal forestry agencies touching or dealing with forest preservation, development, and forest management.

(b) It shall be the duty of the various rangers herein mentioned under the direction of the ~~Secretary,~~Commissioner, and the duty of the teachers of the various schools, both public and high schools, to keep posted at some conspicuous place in the various classrooms of the school buildings such appropriate bulletins and posters as may be sent out from the forestry agencies herein named for that purpose and keep the same constantly before their pupils; and said teachers and rangers shall prepare lectures or talks to be made to the pupils of the various schools on the subject of forest fires, their origin and their destructive effect on the plant life and tree life of the forests of the State, the development and scientific management of the forests of the State, and shall be prepared to give practical instruction to their pupils from time to time and as often as they shall find it possible so to do.

"**§ 106-873. Authority of Governor to close forests and woodlands to hunting, fishing and trapping.**

During periods of protracted drought or when other hazardous fire conditions threaten forest and water resources and appear to require extraordinary precautions, the Governor of the State, upon the joint recommendation of the ~~Secretary~~ Commissioner and the Executive Director of the North Carolina Wildlife Resources Commission, may by official proclamation:

(1) Close any or all of the woodlands and inland waters of the State to hunting, fishing and trapping for the period of the emergency.

(2) Forbid for the period of the emergency the building of campfires and the burning of brush, grass or other debris within 500 feet of any woodland in any county, counties, or parts thereof.

(3) Close for the period of the emergency any or all of the woodlands of the State to such other persons and activities as he deems proper under the circumstances, except to the owners or tenants of such property and their agents and employees, or persons holding written permission from any owner or his recognized agent to enter thereon for any lawful purpose other than hunting, fishing or trapping.

"**§ 106-874. Publication of proclamation; annulment thereof.**

Such proclamation shall become effective 24 hours after certified time of issue, and shall be published in such newspapers and posted in such places and in such manner as the Governor may direct. It shall be annulled in the same manner by another proclamation by the Governor when he is satisfied, upon joint recommendation of the ~~Secretary~~ Commissioner and the Executive Director of the North Carolina Wildlife Resources Commission, that the period of the emergency has passed.

"**§ 106-875. Violation of proclamation a misdemeanor.**

Any person, firm or corporation who enters upon any woodlands or inland waters of the State for the purpose of hunting, fishing or trapping, or who builds a campfire or burns brush, grass or other debris within 500 feet of any woodland, after a proclamation has been issued by the Governor forbidding such activities, or who violates any other provisions of the Governor's proclamation with regard to permissible activities in closed woodlands shall be guilty of a Class 1 misdemeanor."

SECTION 1.(r) Article 4A of Chapter 113 of the General Statutes (G.S. 113-60.4, 113-60.5, 113-60.6, 113-60.7, 113-60.8, 113-60.9, 113-60.10) is recodified as a new Article 73 of Chapter 106 of the General Statutes, G.S. 106-880 through G.S. 106-886.

SECTION 1.(s) Article 73 of Chapter 106 of the General Statutes, as recodified under subsection (r) of this section, reads as rewritten:

"Article 73.

"Protection of Forest Against Insect Infestation and Disease.

"**§ 106-880. Purpose and intent.**

(a) The purpose of this Article is to place within the Department of ~~Environment and Natural Resources,~~Agriculture and Consumer Services the authority and responsibility for investigating insect infestations and disease infections which affect stands of forest trees, the devising of control measures for interested landowners and others, and taking measures to control, suppress, or eradicate outbreaks of forest insect pests and tree diseases.

(b) In this Article, unless the context requires otherwise, the expression "Department" means the Department of ~~Environment and Natural Resources; "Secretary"~~Agriculture and Consumer Services, and "Commissioner" means the ~~Secretary of Environment and Natural Resources.~~Commissioner of Agriculture.

"**§ 106-881. Authority of the Department.**

The authority and responsibility for carrying out the purpose, intent and provisions of this Article are hereby delegated to the Department. The administration of the provisions of this

Article shall be under the general supervision of the ~~Secretary.~~Commissioner. ~~The provisions of this Article shall not abrogate or change any power or authority as may be vested in the North Carolina Department of Agriculture and Consumer Services under existing statutes.~~

"§ 106-882. Definitions.

As used in this Article, unless the context clearly requires otherwise:

(1) "Control zone" means an area of potential or actual infestation or infection, boundaries of which are fixed and clearly described in a manner to definitely identify the zone.

(2) "Forestland" means land on which forest trees occur.

(3) "Forest trees" means only those trees which are a part and constitute a stand of potential immature or mature commercial timber trees, provided that the term "forest trees" shall be deemed to include shade trees of any species around houses, along highways, and within cities and towns, if the same constitute insect and disease menaces to nearby timber trees or timber stands.

(4) "Infection" means attack by any disease affecting forest trees which is declared by the ~~Secretary~~ Commissioner to be dangerously injurious thereto.

(5) "Infestation" means attack by means of any insect, which is by the ~~Secretary~~ Commissioner declared to be dangerously injurious to forest trees.

"§ 106-883. Action against insects and diseases.

Whenever the ~~Secretary,~~Commissioner, or his agent, determines that there exists an infestation of forest insect pests or an infection of forest tree diseases, injurious or potentially injurious to the timber or forest trees within the State of North Carolina, and that said infestation or infection is of such a character as to be a menace to the timber or forest growth of the State, the ~~Secretary~~ Commissioner shall declare the existence of a zone of infestation or infection and shall declare and fix boundaries so as to definitely describe and identify said zone of infestation or infection, and the ~~Secretary~~ Commissioner or his agent shall give notice in writing by mail or otherwise to each forest landowner within the designated control zone advising him of the nature of the infestation or infection, the recommended control measures, and offer him technical advice on methods of carrying out controls.

"§ 106-884. Authority of ~~Secretary~~ Commissioner and his agents to go upon private land within control zones.

The ~~Secretary~~ Commissioner or his agents shall have the power to go upon the land within any zone of infestation or infection and take measures to control, suppress or eradicate the insect, infestation or disease infection. If any person refuses to allow the ~~Secretary~~ Commissioner or his agents to go upon his land, or if any person refuses to adopt adequate means to control or eradicate the insect, infestation or disease infection, the ~~Secretary~~ Commissioner may apply to the superior court of the county in which the land is located for an injunction or other appropriate remedy to restrain the landowner from interfering with the ~~Secretary~~ Commissioner or his agents in entering the control zone and adopting measures to control, suppress or eradicate the insect infestation or disease infection, provided the cost of court or control thereof shall not be a liability against the forest landowner nor constitute a lien upon the real property of such infested area.

"§ 106-885. Cooperative agreements.

In order to more effectively carry out the purposes of this Article, the Department is ~~hereby~~ authorized to enter into cooperative agreement with the federal government and other public and private agencies, and with the owners of forestland.

"§ 106-886. Annulment of control zone.

Whenever the ~~Secretary~~ Commissioner determines that the forest insect or disease control work within a designated control zone is no longer necessary or feasible, then the ~~Secretary~~

Commissioner shall declare the zone of infestation or infection no longer pertinent to the purposes of this Article and such zone will then no longer be recognized."

SECTION 1.(t) Article 4B of Chapter 113 of the General Statutes (G.S. 113-60.11, 113-60.12, 113-60.13, 113-60.14, and 113-60.15) is recodified as a new Article 74 of Chapter 106 of the General Statutes, G.S. 106-890 through G.S. 106-894.

SECTION 1.(u) G.S. 106-893, as recodified in subsection (t) of this section, reads as rewritten:

"**§ 106-893. Compact Administrator; North Carolina members of advisory committee.**

The ~~Secretary of Environment and Natural Resources~~Commissioner of Agriculture is hereby designated as Compact Administrator for this State and shall consult with like officials of the other member states and shall implement cooperation between such states in forest fire prevention and control.

At some time before the adjournment of each regular session of the General Assembly, the Governor shall choose one person from the membership of the House of Representatives, and shall choose one person from the membership of the Senate, who shall serve on the advisory committee of the Southeastern Interstate Forest Fire Protection Compact as provided for in Article III of said Compact. At the time of the selection of the House and Senate members of such advisory committee, the Governor shall choose one alternate member from the House of Representatives and one from the Senate who shall serve on such advisory committee in case of the death, absence or disability of the regular members so chosen."

SECTION 1.(v) G.S. 106-894, as recodified in subsection (t) of this section, reads as rewritten:

"**§ 106-894. Agreements with noncompact states.**

The Department of ~~Environment and Natural Resources~~Agriculture and Consumer Services is hereby authorized to enter into written agreements with the State forest fire control agency of any other state or any province of Canada which is party to a regional forest fire protection compact. The provisions of any written agreement entered into pursuant to this Article shall be substantially in the form of the authority heretofore granted under the provisions of this Article, Southeastern Interstate Forest Fire Protection Compact."

SECTION 1.(w) Article 4C of Chapter 113 of the General Statutes (G.S. 113-60.21, 113-60.22, 113-60.23, 113-60.24, 113-60.25, 113-60.26, 113-60.27, 113-60.28, 113-60.29, 113-60.30, and 113-60.31) is recodified as a new Article 75 of Chapter 106 of the General Statutes, G.S. 106-900 through G.S. 106-910.

SECTION 1.(x) Article 75 of Chapter 106 of the General Statutes, as recodified by subsection (w) of this section, reads as rewritten:

"Article 75.

"Regulation of Open Fires.

"**§ 106-900. Purpose and findings.**

The purpose of this Article is to regulate certain open burning in order to protect the public from the hazards of forest fires and air pollution and to adapt such regulation to the needs and circumstances of the different areas of North Carolina. The General Assembly finds that open burning in proximity to woodlands must be regulated in all counties to protect against forest fires and air pollution. The General Assembly further finds that in certain counties a high percentage of the land area contains organic soils or forest types which may pose greater problems of forest fire and air pollution controls, and that in counties in which a great amount of land-clearing operations is taking place on these organic soils or these forest types, additional control of open burning is required. The counties subject to the need for additional control are classified as high hazard counties for purpose of this Article.

"**§ 106-901. Definitions.**

As used in this Article:

(1) "Department" means the Department of ~~Environment and Natural Resources.~~Agriculture and Consumer Services.
(2) "Forest ranger" means the county forest ranger or deputy forest ranger designated under ~~G.S. 113-52.~~G.S. 106-861.
(3) "Person" means any individual, firm, partnership, corporation, association, public or private institution, political subdivision, or government agency.
(4) "Woodland" means woodland as defined in ~~G.S. 113-57.~~G.S. 106-869.

"§ 106-902. High hazard counties; permits required; standards.

(a) The provisions of this section apply only to the counties of Beaufort, Bladen, Brunswick, Camden, Carteret, Chowan, Craven, Currituck, Dare, Duplin, Gates, Hyde, Jones, Onslow, Pamlico, Pasquotank, Perquimans, Tyrrell, and Washington which are classified as high hazard counties in accordance with ~~G.S. 113-60.21.~~G.S. 106-900.

(b) It is unlawful for any person to willfully start or cause to be started any fire in any woodland under the protection of the Department or within 500 feet of any such woodland without first having obtained a permit from the Department. Permits for starting fires may be obtained from forest rangers or other agents authorized by the county forest ranger to issue such permits in the county in which the fire is to be started. Such permits shall be issued by the ranger or other agent unless permits for the area in question have been prohibited or cancelled in accordance with ~~G.S. 113-60.25 or 113-60.27.~~G.S. 106-904 or G.S. 106-906.

(c) It is unlawful for any person to willfully burn any debris, stumps, brush or other flammable materials resulting from ground clearing activities and involving more than five contiguous acres, regardless of the proximity of the burning to woodland and on which such materials are placed in piles or windrows without first having obtained a special permit from the Department. Areas less than five acres in size will require a regular permit in accordance with ~~G.S. 113-60.23(b).~~G.S. 106-902(b).

(1) Prevailing winds at the time of ignition must be away from any city, town, development, major highway, or other populated area, the ambient air of which may be significantly affected by smoke, fly ash, or other air contaminates from the burning.
(2) The location of the burning must be at least 1,000 feet from any dwelling or structure located in a predominately residential area other than a dwelling or structure located on the property on which the burning is conducted unless permission is granted by the occupants.
(3) The amount of dirt or organic soil on or in the material to be burned must be minimized and the material arranged in a way suitable to facilitate rapid burning.
(4) Burning may not be initiated when it is determined by a forest ranger, based on information supplied by a competent authority that stagnant air conditions or inversions exist or that such conditions may occur during the duration of the burn.
(5) Heavy oils, asphaltic material, or items containing natural or synthetic rubber may not be used to ignite the material to be burned or to promote the burning of such material.
(6) Initial burning may be commenced only between the hours of 9:00 A.M. and 3:00 P.M. and no combustible material may be added to the fire between 3:00 P.M. on one day and 9:00 A.M. on the following day, except that when favorable meteorological conditions exist, any forest ranger authorized to issue the permit may authorize in writing a deviation from the restrictions.

"§ 106-903. Open burning in non-high hazard counties; permits required; standards.

(a) The provisions of this section apply only to the counties not designated as high hazard counties in ~~G.S. 113-60.23(a).~~G.S. 106-902(a).

(b) It shall be unlawful for any person to start or cause to be started any fire or ignite any material in any woodland under the protection of the Department or within 500 feet of any such woodland during the hours starting at midnight and ending at 4:00 P.M. without first obtaining a permit from the Department. Permits may be obtained from forest rangers or other agents authorized by the forest ranger to issue such permits in the county in which the fire is to be started. Such permits shall be issued by the ranger or other agent unless permits for the area in question have been prohibited or cancelled under ~~G.S. 113-60.25 or 113-60.27.~~ G.S. 106-904 or G.S. 106-906.

"§ 106-904. Open burning prohibited statewide.

During periods of hazardous forest fire conditions or during air pollution episodes declared pursuant to Article 21B of Chapter 143 of the General Statutes, the ~~secretary~~ Commissioner is authorized to prohibit all open burning regardless of whether a permit is required under ~~G.S. 113-60.23 or 113-60.24.~~G.S. 106-902 or G.S. 106-903. The ~~secretary~~ Commissioner shall issue a press release containing relevant details of the prohibition to news media serving the area affected.

"§ 106-905. Permit conditions.

Permits issued under this Article shall be issued in the name of the person undertaking the burning and shall specify the specific area in which the burning is to occur, the type and amount of material to be burned, the duration of the permit, and such other factors as are necessary to identify the burning which is allowed under the permit.

"§ 106-906. Permit suspension and cancellation.

Upon a determination that hazardous forest fire conditions exist the ~~secretary~~ Commissioner is authorized to cancel any permit issued under this Article and suspend the issuance of any new permits. Upon a determination by the Environmental Management Commission or its agent that open burning permitted under this Article is causing significant contravention of ambient air quality standards or that an air pollution episode exists pursuant to Article 21B of Chapter 143 of the General Statutes, the ~~secretary~~ Commissioner shall cancel any permits issued under authority of this Article and shall suspend the issuance of any new permits.

"§ 106-907. Control of existing fires.

(a) If a fire is set without a permit required by ~~G.S. 113-60.23, 113-60.24 or 113-60.25~~G.S. 106-902, 106-903, or 106-904, and is set in an area in which permits are prohibited or cancelled at the time the fire is set, the person responsible for setting the fire or causing the fire to be set shall immediately extinguish the fire or take such other action as directed by any forest ranger authorized to issue permits under ~~G.S. 113-60.23(e).~~G.S. 106-902(c). In the event that the person responsible does not immediately undertake efforts to extinguish the fire or take such other action as directed by the forest ranger, the Department may enter the property and take reasonable steps to extinguish or control the fire and the person responsible for setting the fire shall reimburse the Department for the expenses incurred by the Department. A showing that a fire is associated with land-clearing activities is prima facie evidence that the person undertaking the land clearing is responsible for setting the fire or causing the fire to be set.

(b) If a fire requiring a permit under ~~G.S. 113-60.23(e)~~G.S. 106-902(c) is set without a permit and a forest ranger authorized to issue such permits determines that a permit would not have been issued for the fire at the time it was set, the person responsible for setting the fire or causing the fire to be set shall immediately take such action as the forest ranger directs to extinguish or control the fire. In the event the person responsible does not immediately undertake efforts to extinguish the fire or take such other action as directed by the forest ranger, the Department may enter the property and take reasonable steps to extinguish or control the fire and the person responsible for setting the fire shall reimburse the Department for the expenses incurred by the Department. A showing that a fire is associated with land-clearing

activities is prima facie evidence that the person undertaking the land clearing is responsible for setting the fire or causing the fire to be set.

(c) If a fire is set in accordance with a permit but the burning is taking place contrary to the conditions of the permit, any forest ranger with authority to issue permits in the area in question may order the permittee in writing to undertake the steps necessary to comply with the conditions of his permit. If the permittee is not making a reasonable effort to comply with the order, the forest ranger may enter the property and take reasonable steps to extinguish or control the fire and the permittee shall reimburse the Department for the expenses incurred by the Department.

"§ 106-908. Penalties.

Any person violating the provisions of this Article or of any permit issued under the authority of this Article shall be guilty of a Class 3 misdemeanor. The penalties imposed by this section shall be separate and apart and not in lieu of any civil or criminal penalties which may be imposed by G.S. 143-215.114A or G.S. 143-215.114B. The penalties imposed are also in addition to any liability the violator incurs as a result of actions taken by the Department under ~~G.S. 113-60.28.~~G.S. 106-907.

"§ 106-909. Effect on other laws.

This Article shall not be construed as affecting or abridging the lawful authority of local governments to pass ordinances relating to open burning within their boundaries. Nothing in this Article shall relieve any person from compliance with the provisions of Article 21B of Chapter 143 of the General Statutes and regulations adopted thereunder. In the event that permits are required for open burning associated with land clearing under the authority of Article 21B of Chapter 143 of the General Statutes, the authority to issue such permits shall be delegated to forest rangers who are authorized to issue permits under ~~G.S. 113-60.23(c).~~G.S. 106-902(c).

"§ 106-910. Exempt fires; no permit fees.

(a) This Article shall not apply to any fires started, or caused to be started, within 100 feet of an occupied dwelling house if such fire shall be confined (i) within an enclosure from which burning material may not escape or (ii) within a protected area upon which a watch is being maintained and which is provided with adequate fire protection equipment.

(b) No charge shall be made for the granting of any permit required by this Article."

SECTION 1.(y) Article 4D of Chapter 113 of the General Statutes (G.S. 113-60.32 and G.S. 113-60.33) is recodified as a new Article 76 of Chapter 106 of the General Statutes, G.S. 106-911 and G.S. 106-912.

SECTION 1.(z) Article 76 of Chapter 106 of the General Statutes, as recodified by subsection (y) of this section, reads as rewritten:

"Article 76.

"Fire Fighters on Standby Duty.

"§ 106-911. Definitions.

As used in this Article:

(1) "Fire fighter" means an employee of the Division of Forest Resources of the Department of ~~Environment and Natural Resources~~Agriculture and Consumer Services who engages in fire suppression duties.

(2) "Fire suppression duties" means involvement in on-site fire suppression, participation in Project Fire Team while it is mobilized, Operations Room duty during on-going fires or when required by high readiness plans, mop-up activities to secure fire sites, scouting and detecting forest fires, performance of standby duty, and any other activity that directly contributes to the detection, response to, and control of fires.

"§ 106-912. Standby duty.

(a) Standby duty is time during which a fire fighter is required to remain within 25 miles of his duty station and be available to return to the duty station on call. The Department of Agriculture and Consumer Services shall provide each fire fighter on standby duty with an electronic paging device that makes the wearer accessible to his duty station.

(b) Notwithstanding subsection (a) of this section, for at least two out of 14 consecutive days that a fire fighter is on duty, the Department of ~~Environment and Natural Resources~~Agriculture and Consumer Services shall permit the fire fighter to be more than 25 miles from his duty station so long as the fire fighter gives the Department of ~~Environment and Natural Resources~~Agriculture and Consumer Services a telephone number where he can be reached; each month, the days the fire fighter is permitted to be more than 25 miles from his duty station shall include one full weekend. On the days the fire fighter is permitted to be more than 25 miles from his duty station, the Department of ~~Environment and Natural Resources~~ Agriculture and Consumer Services may call him only when there is a bona fide emergency."

SECTION 1.(aa) Article 4E of Chapter 113 of the General Statutes (G.S. 113-60.40, 113-60.41, 113-60.42, 113-60.43, 113-60.44, and 113-60.45) is recodified as a new Article 77 of Chapter 106 of the General Statutes, G.S. 106-920 through G.S. 106-925.

SECTION 1.(bb) Article 77 of Chapter 106 of the General Statutes, as recodified by subsection (aa) of this section, reads as rewritten:

"Article 77.

"North Carolina Prescribed Burning Act.

"§ 106-920. Legislative findings.

The General Assembly finds that prescribed burning of forestlands is a management tool that is beneficial to North Carolina's public safety, forest and wildlife resources, environment, and economy. The General Assembly finds that the following are benefits that result from prescribed burning of forestlands:

(1) Prescribed burning reduces the naturally occurring buildup of vegetative fuels on forestlands, thereby reducing the risk and severity of wildfires and lessening the loss of life and property.

(2) The State's ever-increasing population is resulting in urban development directly adjacent to fire-prone forestlands, referred to as a woodland-urban interface area. The use of prescribed burning in these woodland-urban interface areas substantially reduces the risk of wildfires that cause damage.

(3) Many of North Carolina's natural ecosystems require periodic fire for their survival. Prescribed burning is essential to the perpetuation, restoration, and management of many plant and animal communities. Prescribed burning benefits game, nongame, and endangered wildlife species by increasing the growth and yield of plants that provide forage and an area for escape and brooding and that satisfy other habitat needs.

(4) Forestlands are economic, biological, and aesthetic resources of statewide significance. In addition to reducing the frequency and severity of wildfires, prescribed burning of forestlands helps to prepare sites for replanting and natural seeding, to control insects and diseases, and to increase productivity.

(5) Prescribed burning enhances the resources on public use lands, such as State and national forests, wildlife refuges, nature preserves, and game lands. Prescribed burning enhances private lands that are managed for wildlife refuges, nature preserves, and game lands. Prescribed burning enhances private lands that are managed for wildlife, recreation, and other purposes.

As North Carolina's population grows, pressures resulting from liability issues and smoke complaints discourage or limit prescribed burning so that these numerous benefits to forestlands often are not attainable. By recognizing the benefits of prescribed burning and by

adopting requirements governing prescribed burning, the General Assembly helps to educate the public, avoid misunderstandings, and reduce complaints about this valuable management tool.

"§ 106-921. Definitions.

As used in this Article:

(1) "Certified prescribed burner" means an individual who has successfully completed a certification program approved by the Division of Forest Resources of the Department of ~~Environment and Natural Resources.~~Agriculture and Consumer Services.

(2) "Prescribed burning" means the planned and controlled application of fire to naturally occurring vegetative fuels under safe weather and safe environmental and other conditions, while following appropriate precautionary measures that will confine the fire to a predetermined area and accomplish the intended management objectives.

(3) "Prescription" means a written plan prepared by a certified prescribed burner for starting, controlling, and extinguishing a prescribed burning.

"106-922. Immunity from liability.

(a) Any prescribed burning conducted in compliance with ~~G.S. 113-60.43~~G.S. 106-923 is in the public interest and does not constitute a public or private nuisance.

(b) A landowner or the landowner's agent who conducts a prescribed burning in compliance with ~~G.S. 113-60.43~~G.S. 106-923 shall not be liable in any civil action for any damage or injury caused by or resulting from smoke.

(c) Notwithstanding subsections (a) and (b), this section does not apply when a nuisance or damage results from a negligently or improperly conducted prescribed burning.

"§ 106-923. Prescribed burning.

(a) Prior to conducting a prescribed burning, the landowner shall obtain a prescription for the prescribed burning prepared by a certified prescribed burner and filed with the Division of Forest Resources, Department of ~~Environment and Natural Resources.~~Agriculture and Consumer Services. A copy of the prescription shall be provided to the landowner. A copy of this prescription shall be in the possession of the responsible burner on site throughout the duration of the prescribed burning. The prescription shall include:

(1) The landowner's name and address.

(2) A description of the area to be burned.

(3) A map of the area to be burned.

(4) An estimate in tons of the fuel located on the area.

(5) The objectives of the prescribed burning.

(6) A list of the acceptable weather conditions and parameters for the prescribed burning sufficient to minimize the likelihood of smoke damage and fire escaping onto adjacent areas.

(7) The name of the certified prescribed burner responsible for conducting the prescribed burning.

(8) A summary of the methods that are adequate for the particular circumstances involved to be used to start, control, and extinguish the prescribed burning.

(9) Provision for reasonable notice of the prescribed burning to be provided to nearby homes and businesses to avoid effects on health and property.

(b) The prescribed burning shall be conducted by a certified prescribed burner in accordance with a prescription that satisfies subsection (a) of this section. The certified prescribed burner shall be present on the site and shall be in charge of the burning throughout the period of the burning. A landowner may conduct a prescribed burning without being a certified prescribed burner if the landowner is burning a tract of forestland of 50 acres or less

owned by that landowner and is following all conditions established in a prescription prepared by a certified prescribed burner.

(c) Prior to conducting a prescribed burning, the landowner or the landowner's agent shall obtain an open-burning permit under Article 4C of this Chapter from the Division of Forest Resources, Department of ~~Environment and Natural Resources.~~Agriculture and Consumer Services. This open-burning permit must remain in effect throughout the period of the prescribed burning. The prescribed burning shall be conducted in compliance with all the following:

(1) The terms and conditions of the open-burning permit under ~~Article 4C~~Article 75 of this Chapter.

(2) The State's air pollution control statutes under Article 21 and Article 21B of Chapter 143 of the General Statutes and any rules adopted pursuant to these statutes.

(3) Any applicable local ordinances relating to open burning.

(4) The voluntary smoke management guidelines adopted by the Division of Forest Resources, Department of ~~Environment and Natural Resources.~~Agriculture and Consumer Services.

(5) Any rules adopted by the Division of Forest Resources, Department of ~~Environment and Natural Resources,~~Agriculture and Consumer Services, to implement this Article.

"§ 106-924. Adoption of rules.

The Division of Forest Resources, Department of ~~Environment and Natural Resources,~~Agriculture and Consumer Services, may adopt rules that govern prescribed burning under this Article.

"§ 106-925. Exemption.

This Article does not apply when the ~~Secretary of Environment and Natural Resources~~Commissioner of Agriculture has cancelled burning permits pursuant to ~~G.S. 113-60.27~~G.S. 106-906 or prohibited all open burning pursuant to ~~G.S. 113-60.25.~~G.S. 106-904."

SECTION 1.(cc) Article 5 of Chapter 113 of the General Statutes (G.S. 113-61, 113-62, 113-63, 113-64, 113-65, 113-66, 113-67, 113-68, 113-69, 113-70, 113-71, 113-72, 113-73, 113-74, 113-75, 113-76, and 113-77) is recodified as a new Article 78 of Chapter 106 of the General Statutes, G.S. 106-930 through G.S. 106-946.

SECTION 1.(dd) Article 78 of Chapter 106 of the General Statutes, as recodified by subsection (cc) of this section, reads as rewritten:

"Article 78.

"Corporations for Protection and Development of Forests.

"§ 106-930. Private limited dividend corporations may be formed.

(a) In this Article, unless the context requires otherwise, "Department" means the Department of ~~Environment and Natural Resources; and "Secretary"~~Agriculture and Consumer Services, and "Commissioner" means the ~~Secretary of Environment and Natural Resources.~~Commissioner of Agriculture.

(b) Three or more persons, who associate themselves by an agreement in writing for the purpose, may become a private limited dividend corporation to finance and carry out projects for the protection and development of forests and for such other related purposes as the Secretary shall approve, subject to all the duties, restrictions and liabilities, and possessing all the rights, powers, and privileges, of corporations organized under the general corporation laws of the State of North Carolina, except where such provisions are in conflict with this Article.

"§ 106-931. Manner of organizing.

A corporation formed under this Article shall be organized and incorporated in the manner provided for organization of corporations under the general corporation laws of the State of

North Carolina, except where such provisions are in conflict with this Article. The certificate of organization of any such corporation shall contain a statement that it is organized under the provisions of this Article and that it consents to be and shall be at all times subject to the rules and supervision of the Secretary, and shall set forth as or among its purposes the protection and development of forests and the purchase, acquisition, sale, conveyance and other dealing in the same and the products therefrom, subject to the rules from time to time imposed by the Secretary.

"§ 106-932. Directors.

There shall not be less than three directors, one of whom shall always be a person designated by the Secretary, which one need not be a stockholder.

"§ 106-933. Duties of supervision by ~~Secretary of Environment and Natural Resources.~~Commissioner.

Corporations formed under this Article shall be regulated by the ~~Secretary~~ Commissioner in the manner provided in this Article. Traveling and other expenses incurred by him in the discharge of the duties imposed upon him by this Article shall be charged to, and paid by, the particular corporation or corporations on account of which such expenses are incurred. His general expenses incurred in the discharge of such duties which cannot be fairly charged to any particular corporation or corporations shall be charged to, and paid by, all the corporations then organized and existing under this Article pro rata according to their respective stock capitalizations. The ~~Secretary~~ Commissioner shall:

(1) Adopt rules to implement this Article and to protect and develop forests subject to its jurisdiction.

(2) Order all corporations organized under this Article to do such acts as may be necessary to comply with the provisions of law and the rules adopted by the ~~Secretary,~~Commissioner, or to refrain from doing any acts in violation thereof.

(3) Keep informed as to the general condition of all such corporations, their capitalization and the manner in which their property is permitted, operated or managed with respect to their compliance with all provisions of law and orders of the ~~Secretary.~~Commissioner.

(4) Require every such corporation to file with the ~~Secretary~~ Commissioner annual reports and, if the ~~Secretary~~ Commissioner shall consider it advisable, other periodic and special reports, setting forth such information as to its affairs as the ~~Secretary~~ Commissioner may require.

"§ 106-934. Powers of ~~Secretary.~~Commissioner.

The ~~Secretary~~ Commissioner may:

(1) Examine at any time all books, contracts, records, documents and papers of any such corporation.

(2) In his discretion prescribe uniform methods and forms of keeping accounts, records and books to be observed by such corporation, and prescribe by order accounts in which particular outlays and receipts are to be entered, charged or credited. The ~~Secretary~~ Commissioner shall not, however, have authority to require any revaluation of the real property or other fixed assets of such corporations, but he shall allow proper charges for the depletion of timber due to cutting or destruction.

(3) Enforce the provisions of this Article, a rule implementing this Article, or an order issued under this Article by filing a petition for a writ of mandamus or application for an injunction in the superior court of the county in which the respondent corporation has its principal place of business. The final judgment in any such proceeding shall either dismiss the proceeding or direct that a writ of mandamus or an injunction, or both, issue as prayed for

in the petition or in such modified or other form as the court may determine will afford appropriate relief.

"§ 106-935. Provision for appeal by corporations to Governor.

If any corporation organized under this Article is dissatisfied with or aggrieved at any rule or order imposed upon it by the ~~Secretary,~~Commissioner, or any valuation or appraisal of any of its property made by the ~~Secretary,~~Commissioner, or any failure of or refusal by the ~~Secretary~~ Commissioner to approve of or consent to any action which it can take only with such approval or consent, it may appeal to the Governor by filing with him a claim of appeal upon which the decision of the Governor shall be final. Such determination, if other than a dismissal of the appeal, shall be set forth by the Governor in a written mandate to the ~~Secretary,~~Commissioner, who shall abide thereby and take such actions as the same may direct.

"§ 106-936. Limitations as to dividends.

The shares of stock of corporations organized under this Article shall have a par value and, except as provided in ~~G.S. 113-69~~G.S. 106-938 in respect to distributions in kind upon dissolution, no dividend shall be paid thereon at a rate in excess of six per centum (6%) per annum on stock having a preference as to dividends, or eight per centum (8%) per annum on stock not having a preference as to dividends, except that any such dividends may be cumulative without interest.

"§ 106-937. Issuance of securities restricted.

No such corporation shall issue stock, bonds or other securities except for money, timberlands, or interests therein, located in the State of North Carolina or other property, actually received, or services rendered, for its use and its lawful purposes. Timberlands, or interests therein, and other property or services so accepted therefor, shall be upon a valuation approved by the ~~Secretary.~~Commissioner.

"§ 106-938. Limitation on bounties to stockholders.

Stockholders shall at no time receive or accept from any such corporation in repayment of their investment in its stock any sums in excess of the par value of the stock together with cumulative dividends at the rate set forth in ~~G.S. 113-67~~G.S. 106-936 except that nothing in this section contained shall be construed to prohibit the distribution of the assets of such corporation in kind to its stockholders upon dissolution thereof.

"§ 106-939. Earnings above dividend requirements payable to State.

Any earnings of such corporation in excess of the amounts necessary to pay dividends to stockholders at the rate set forth in ~~G.S. 113-67~~G.S. 106-936 shall be paid over to the State of North Carolina prior to the dissolution of such corporation. Net income or net losses (determined in such manner as the ~~Secretary~~ Commissioner shall consider properly to show such income or losses) from the sale of the capital assets of such corporation, whether such sale be upon dissolution or otherwise, shall be considered in determining the earnings of such corporation for the purposes of this section. In determining such earnings unrealized appreciation or depreciation of real estate or other fixed assets shall not be considered.

"§ 106-940. Dissolution of corporation.

Any such corporation may be dissolved at any time in the manner provided by and under the provisions of the general corporation laws of the State of North Carolina, except that the court shall dismiss any petition for dissolution of any such corporation filed within 20 years of the date of its organization unless the same is accompanied by a certificate of the ~~Secretary~~ Commissioner consenting to such dissolution.

"§ 106-941. Cutting and sale of timber.

Any such corporation may cut and sell the timber on its land or permit the cutting thereof, but all such cuttings shall be in accordance with the rules, restrictions and limitations imposed by the ~~Secretary,~~Commissioner, who shall impose such rules, restrictions and limitations with respect thereto as may reasonably conform to the accepted custom and usage of good forestry

and forest economy, taking into consideration the situation, nature and condition of the tract so cut or to be cut, and the financial needs of such corporation from time to time.

"§ 106-942. Corporation may not sell or convey without consent of ~~Secretary,~~Commissioner, or pay higher interest rate than 6%.

No such corporation ~~shall:~~shall do any of the following:

(1) Sell, assign or convey any real property owned by it or any right, title or interest therein, except upon notice to the ~~Secretary~~ Commissioner of the terms of such sale, transfer or assignment, and unless the ~~Secretary~~ Commissioner shall consent thereto, and if the ~~Secretary~~ Commissioner shall require it, unless the purchaser thereof shall agree that such real estate shall remain subject to the rules and supervision of the ~~Secretary~~ Commissioner for such period as the latter may ~~require;~~require.

(2) Pay interest returns on its mortgage indebtedness at a higher rate than six per centum (6%) per annum without the consent of the ~~Secretary;~~Commissioner.

(3) Mortgage any real property without first having obtained the consent of the ~~Secretary.~~Commissioner.

"§ 106-943. Power to borrow money limited.

Any such corporation formed under this Article may, subject to the approval of the ~~Secretary,~~Commissioner, borrow funds and secure their payment thereof by note or notes and mortgage or by the issue of bonds under a trust indenture. The notes or bonds so issued and secured and the mortgage or trust indenture relating thereto may contain such clauses and provisions as shall be approved by the ~~Secretary,~~Commissioner, including the right to enter into possession in case of default; but the operations of the mortgagee or receiver entering in such event or of the purchaser of the property upon foreclosure shall be subject to the rules of the ~~Secretary~~ Commissioner for such period as the mortgage or trust indenture may specify.

"§ 106-944. ~~Secretary~~ Commissioner to approve development of forests.

No project for the protection and development of forests proposed by any such corporation shall be undertaken without the approval of the ~~Secretary,~~Commissioner, and such approval shall not be given unless:

(1) The ~~Secretary~~ Commissioner shall have received a statement duly executed and acknowledged on behalf of the corporation proposing such project, in such adequate detail as the ~~Secretary~~ Commissioner shall require of the activities to be included in the project, such statement to set forth the proposals as to

a. Fire prevention and protection,
b. Protection against insects and tree diseases,
c. Protection against damage by livestock and game,
d. Means, methods and rate of, and restrictions upon, cutting and other utilization of the forests, and
e. Planting and spacing of trees.

(2) There shall be submitted to the ~~Secretary~~ Commissioner a financial plan satisfactory to him setting forth in detail the amount of money needed to carry out the entire project, and how such sums are to be allocated, with adequate assurances to the ~~Secretary~~ Commissioner as to where such funds are to be secured.

(3) The ~~Secretary~~ Commissioner shall be satisfied that the project gives reasonable assurance of the operation of the forests involved on a sustained-yield basis except insofar as the ~~Secretary~~ Commissioner shall consider the same impracticable.

(4) The corporation proposing such project shall agree that the project shall at all times be subject to the supervision and inspection of the

~~Secretary,~~Commissioner, and that it will at all times comply with such rules concerning the project as the ~~Secretary~~ Commissioner shall from time to time impose.

"§ 106-945. Application of corporate income.

The gross annual income of any such corporation, whether received from sales of timber, timber operations, stumpage permits or other sources, shall be applied as follows: first, to the payment of all fixed charges, and all operating and maintenance charges and expenses including taxes, assessments, insurance, amortization charges in amounts approved by the ~~Secretary~~ Commissioner to amortize mortgage or other indebtedness and reserves essential to operation; second, to surplus, and/or to the payment of dividends not exceeding the maximum fixed by this Article; third, the balance, if any, in reduction of debts.

"§ 106-946. Reorganization of corporations.

Reorganization of corporations organized under this Article shall be subject to the supervision of the ~~Secretary~~ Commissioner and no such reorganization shall be had without the authorization of the ~~Secretary.~~Commissioner."

SECTION 1.(ee) Article 6A of Chapter 113 of the General Statutes (G.S. 113-81.1, 113-81.2, and 113-81.3) is recodified as a new Article 79 of Chapter 106 of the General Statutes, G.S. 106-950 through G.S. 106-952.

SECTION 1.(ff) Article 79 of Chapter 106 of the General Statutes, as recodified by subsection (ee) of this section, reads as rewritten:

"Article 79.

"Forestry Services and Advice for Owners and Operators of Forestland.

"§ 106-950. Authority to render scientific forestry services.

(a) In this Article, unless the context requires otherwise:

(1) "Commissioner" means the Commissioner of Agriculture.

~~(1)~~(2) "Department" means the Department of ~~Environment and Natural Resources.~~Agriculture and Consumer Services.

~~(2) "Secretary" means the Secretary of Environment and Natural Resources.~~

(b) The Department is hereby authorized to designate, upon request, forest trees of forest landowners and forest operators for sale or removal, by blazing or otherwise, and to measure or estimate the volume of same under the terms and conditions hereinafter provided. The Department is also authorized to cooperate with landowners of the State and with counties, municipalities and State agencies by making available forestry services consisting of specialized equipment and operators, or by renting such equipment, and to perform such labor and services as may be necessary to carry out approved forestry practices, including site preparation, forest planting, prescribed burning, and other appropriate forestry practices. For such services or rentals, a reasonable fee representing the ~~Secretary's~~ Commissioner's estimate of not less than the costs of such services or rentals shall be charged, provided however, when the ~~Secretary~~ Commissioner deems it in the public interest, said services may be provided without charge, for the purpose of encouraging the use of approved scientific forestry practice on the private or other forestlands within the State, or for the purpose of providing practical demonstrations of said practices. Receipts from these activities and rentals shall be credited to the budget of the Department for the furtherance of these activities.

"§ 106-951. Services under direction of ~~Secretary;~~Commissioner; compensation; when services without charge.

(a) The administration of the provisions of this Article shall be under the direction of the ~~Secretary.~~Commissioner. The ~~Secretary,~~Commissioner, or his authorized agent, upon receipt of a request from a forest landowner or operator for technical forestry assistance or service, may designate forest trees for removal for lumber, veneer, poles, piling, pulpwood, cordwood, ties, or other forest products by blazing, spotting with paint or otherwise designating in an approved manner; he may measure or estimate the commercial volume contained in the

trees designated; he may furnish the landowner or operator with a statement of the volume of the trees so designated and estimated; he may assist in finding a suitable market for the products so designated, and he may offer general forestry advice concerning the management of the forest.

(b) For such designating, measuring or estimating services the ~~Secretary~~ Commissioner may make a charge, on behalf of the Department, in an amount not to exceed five percent (5%) of the sale price or fair market value of the stumpage so designated and measured or estimated. Upon receipt from the ~~Secretary~~ Commissioner of a statement of such charges, the landowner or operator or his agent shall make payment to the ~~Secretary~~ Commissioner within 30 days.

(c) In those cases where the ~~Secretary~~ Commissioner deems it desirable to so designate and measure or estimate trees without charge, such services shall be given for the purpose of encouraging the use of approved scientific forestry principles on the private or other forestlands within the State, and to establish practical demonstrations of said principles.

"§ 106-952. Deposit of receipts with State treasury.

All moneys paid to the ~~Secretary~~ Commissioner for services rendered under the provisions of this Article shall be deposited into the State treasury to the credit of the Department."

SECTION 1.(gg) Article 11 of Chapter 113A of the General Statutes (G.S. 113A-176, 113A-177, 113A-178, 113A-179, 113A-180, 113A-180.1, 113A-181, 113A-182, and 113A-183) is recodified as a new Article 80 of Chapter 106 of the General Statutes, G.S. 106-955 through G.S. 106-963.

SECTION 1.(hh) Article 80 of Chapter 106 of the General Statutes, as recodified by subsection (gg) of this section, reads as rewritten:

"Article 80.

"Forest Development Act.

"§ 106-955. Title.

This Article shall be known as the "Forest Development Act."

"§ 106-956. Statement of purpose.

(a) The General Assembly finds that:

(1) It is in the public interest of the State to encourage the development of the State's forest resources and the protection and improvement of the forest environment.

(2) Unfavorable environmental impacts, particularly the rapid loss of forest land to urban development, are occurring as a result of population growth. It is in the State's interest that corrective action be developed now to 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~~ Commissioner of Agriculture 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 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.

(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~~ Commissioner 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.

"§ 106-957. Definitions.

As used in this Article:

(1) "Approved forest management plan" means the forest management plan submitted by the eligible landowner and approved by the ~~Secretary.~~Commissioner. Such plan shall include forest management practices to insure both maximum forest productivity and environmental protection of the lands to be treated under the management plan.

(2) "Approved practices'" mean those silvicultural practices approved by the Secretary for the purpose of commercially growing timber through the establishment of forest stands, of insuring the proper regeneration of forest stands to commercial production levels following the harvest of mature 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, cultivation of established young growth of desirable trees for silvicultural purposes, and improvement of immature forest 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.

(2a) "Commissioner" means the Commissioner of Agriculture.

(3) "Department" means the Department of ~~Environment and Natural Resources.~~Agriculture and Consumer Services.

(3a) "Eligible land" means land owned by an eligible landowner.

(4) "Eligible landowner" means a private individual, group, association or corporation owning land suitable for forestry purposes. Where forest land is owned jointly by more than one individual, group, association or corporation, as tenants in common, tenants by the entirety, or otherwise, the joint owners shall be considered, for the purpose of this Article, as one eligible landowner and entitled to receive cost-sharing payments as provided herein only once during each fiscal year.

(5) Recodified as § 113A-178(3a).

(6) "Forest development assessment" means an assessment on primary forest products from timber severed in North Carolina for the funding of the provisions of this Article, as authorized by the General Assembly.

(7) "Forest development cost-sharing payment" means financial assistance to partially cover the costs of implementing approved practices in such amounts as the ~~Secretary~~ Commissioner shall determine, subject to the limitations of this Article.

(8) "Forest development fund" means the Forest Development Fund created by ~~G.S. 113A-183.~~G.S. 106-963.

(8a) "Maintain" means to retain the reforested area as forestland for a 10-year period and to comply with the provisions in the approved forest management plan.

~~(9) "Secretary" means the Secretary of Environment and Natural Resources.~~

"§ 106-958. Powers and duties.

(a) The ~~Secretary~~ Commissioner shall have the powers and duties to administer the provisions of this Article.

(b) The Department shall serve as the disbursing agency for funds to be expended from and deposited to the credit of the Forest Development Fund.

(c) Subject to the limitations set forth in ~~G.S. 113A-183(d),~~G.S. 106-963(d), the ~~Secretary~~ Commissioner is authorized to employ administrative, clerical and field personnel to support the program created by this Article and to compensate such employees from the Forest Development Fund for services rendered in direct support of the program.

(d) The ~~Secretary~~ Commissioner is authorized to purchase equipment for the implementation of this program from the Forest Development Fund subject to the limitations of ~~G.S. 113A-183(e).~~G.S. 106-963(e). All equipment purchased with these funds will be assigned to and used only for the forest development program, except for emergency use in forest fire suppression and other activities relating to the protection of life or property. The Forest Development Fund will be reimbursed from other program funds for equipment costs incurred during such emergency use.

"§ 106-959. Administration of cost sharing.

The ~~Secretary~~ Commissioner shall have authority to administer the cost sharing provisions of this Article, including but not limited to the following:

(1) Prescribe the manner and requirements of making application for cost sharing funds.

(2) Identify those approved forestry practices as defined in ~~G.S. 113A-178(2)~~G.S. 106-957(2) which shall be approved for cost sharing under the provisions of this Article.

(3) Review periodically the cost of forest development practices and establish allowable ranges for cost sharing purposes for approved practices under varying conditions throughout the State.

(4) Determine, prior to approving forest development cost sharing payments to any landowner, that all proposed practices are appropriate and are comparable in cost to the prevailing cost of those practices in the general area in which the land is located. Should the ~~Secretary~~ Commissioner determine that the submitted cost of any practice is excessive, he shall approve forest development cost sharing payments based upon an allowable cost established under ~~G.S. 113A-180(3).~~G.S. 106-959(3).

(5) Determine, prior to approving forest development cost sharing payments, that an approved forest management plan as defined in ~~G.S. 113A-178(1)~~G.S. 106-957(1) for the eligible land has been filed with the ~~Secretary~~ Commissioner and that the landowner has indicated in writing his intent to comply with the terms of such management plan.

(6) Determine, prior to approving forest development cost sharing payments, that the approved practices for which payment is requested have been completed in a satisfactory manner, conform to the approved forest management plan submitted under ~~G.S. 113A-180(5),~~G.S. 106-959(5), and otherwise meet the requirements of this Article.

(7) Disburse from the Forest Development Fund to eligible landowners cost sharing payments for satisfactory completion of practices provided for by this Article and the ~~Secretary~~ Commissioner shall, insofar as is practicable,

disburse the funds from the State's appropriation on a matching basis with the funds generated by the Primary Forest Product Assessment.

"**§ 106-960. Cost-share agreements.**

(a) In order to receive forest development cost-share payments, an eligible landowner shall enter into a written agreement with the Department describing the eligible land, setting forth the approved practices implemented for the area and covered by the approved forest management plan, and agreeing to maintain those practices for a 10-year period.

(b) In the absence of Vis major or Act of God or other factors beyond the landowner's control, a landowner who fails to maintain the practice or practices for a 10-year period in accordance with the agreement set forth in subsection (a) of this section shall repay to the Fund all cost-sharing funds received for that area.

(c) If the landowner voluntarily relinquishes control or title to the land on which the approved practices have been established, the landowner shall:

(1) Obtain a written statement, or a form approved by the Department, from the new owner or transferee in which the new owner or transferee agrees to maintain the approved practices for the remainder of the 10-year period; or

(2) Repay to the Fund all cost-sharing funds received for implementing the approved practices on the land.

If a written statement is obtained from the new owner or transferee, the original landowner will no longer be responsible for maintaining the approved practices or repaying the cost-sharing funds. The responsibility for maintaining those practices for the remainder of the 10 years shall devolve to the new owner or transferee.

"**§ 106-961. Limitation of payments.**

(a) An eligible landowner may receive forest development cost sharing payments for satisfactory completion of approved practices as determined by the ~~Secretary,~~Commissioner, except that the ~~Secretary~~ Commissioner shall approve no assistance in an amount exceeding the lesser of (i) a sum equal to sixty percent (60%) of the landowner's actual per acre cost incurred in implementing the approved practice or (ii) a sum equal to sixty percent (60%) of the prevailing per acre cost as determined by the ~~Secretary~~ Commissioner under ~~G.S. 113A-180(3)~~G.S. 106-959(3) for implementing that approved practice.

(b) The maximum amount of forest development cost sharing funds allowed to any landowner in one fiscal year will be the amount required to complete all approved practices on 100 acres of land at the prevailing cost sharing rate established under ~~G.S. 113A-181(a).~~G.S. 106-961(a).

(c) Eligible landowners may not use State cost sharing funds if funds from any federal cost sharing program are used on the same acreage for forestry practices during the same fiscal year.

"**§ 106-962. Participation by government political subdivisions.**

No governmental agency, federal, State or local, will be eligible for forest development payments under the provision of this Article.

"**§ 106-963. Forest Development Fund.**

(a) The Forest Development Fund is created in the Department ~~of Environment and Natural Resources~~ as a special fund. Revenue in the Fund does not revert at the end of a fiscal year, and interest and other investment income earned by the Fund accrues to it. The Fund is created to provide revenue to implement this Article. The Fund consists of the following revenue:

(1) Assessments on primary forest products collected under ~~Article 12 of Chapter 113A~~Article 81 of Chapter 106 of the General Statutes.

(2) General Fund appropriations.

(3) Gifts and grants made to the Fund.

(d) In any fiscal year, no more than five percent (5%) of the available funds generated by the Primary Forest Product Processor Assessment Act may be used for program support under the provisions of ~~G.S. 113A-179(e).~~G.S. 106-958(c).

(e) Funds used for the purchase of equipment under the provisions of ~~G.S. 113A-179(d)~~ G.S. 106-958(d) shall be limited to appropriations from the General Fund to the Forest Development Fund designated specifically for equipment purchase."

SECTION 1.(ii) Article 12 of Chapter 113A of the General Statutes (G.S. 113A-189, 113A-190, 113A-191, 113A-192, 113A-193, 113A-194, 113A-195, and 113A-196) is recodified as a new Article 81 of Chapter 106 of the General Statutes, G.S. 106-965 through G.S. 106-972.

SECTION 1.(jj) Article 81 of Chapter 106 of the General Statutes, as recodified by subsection (ii) of this section, reads as rewritten:

"Article 81.

"Primary Forest Product Assessment Act.

"§ 106-965. Short title.

This Article shall be known as the Primary Forest Product Assessment Act.

"§ 106-966. Statement of purpose.

(a) The purpose of this Article is to create an assessment on primary forest products processed from North Carolina timber to provide a source of funds to finance the forestry operations provided for in the Forest Development Act of 1977.

(b) All assessments levied under the provisions of this Article shall be used only for the purposes specified in ~~G.S. 113A-193(c)~~G.S. 106-969(c) and in the Forest Development ~~Act.~~Act, Article 11 of this Chapter.

"§ 106-967. Definitions.

The following words, terms and phrases hereinafter used for the purpose of this Article are defined as follows:

(1) "Primary forest product" shall include those products of the tree after it is severed from the stump and cut to its first roundwood product for further conversion. These products include but are not limited to whole trees for chipping, whole tree logs, sawlogs, pulpwood, veneer bolts, and posts, poles and piling.

(2) "Processor" shall mean the individual, group, association, or corporation that procures primary forest products at their initial point of concentration for conversion to secondary products or for shipment to others for such conversion.

(3) "Forest Development Fund" shall mean the special fund established by ~~the Forest Development Act of 1977.~~G.S. 106-963.

(4) For the purpose of this Article, the following are not considered "primary forest products":

a. Christmas trees and associated greens;

b. Material harvested from an individual's own land and used on said land for the construction of fences, buildings or other personal use developments;

c. Fuel wood harvested for personal use or use in individual homes.

"§ 106-968. Operation of assessment system.

(a) The General Assembly hereby levies an assessment on all primary forest products harvested from lands within the State of North Carolina.

(b) This assessment shall be at the rates as established in ~~G.S. 113A-194(b)~~G.S. 106-970(b) and the proceeds of such assessment shall be deposited in the Forest Development Fund.

"§ 106-969. Duties.

(a) The Secretary, Department of Revenue, shall:
(1) Develop the necessary administrative procedures to collect the assessment;
(2) Collect the assessment from the primary forest product processors;
(3) Deposit funds collected from the assessment in the Forest Development Fund;
(4) Audit the records of processors to determine compliance with the provisions of this Article.

(b) The ~~Secretary of Environment and Natural Resources~~Commissioner of Agriculture shall:
(1) Provide to the Secretary, Department of Revenue, lists of processors subject to the assessment;
(2) Advise the Secretary, Department of Revenue, of the appropriate methods to convert measurements of primary forest products by other systems to those authorized in this Article;
(3) Establish in November prior to those sessions in which the General Assembly considers the State budget, the estimated total assessment that will be collectible in the next budget period and so inform the General Assembly;
(4) Within 30 days of certification of the State budget, notify the Secretary, Department of Revenue, of the need to collect the assessment for those years covered by the approved budget.
(5) By January 15 of each odd-numbered year, report to the General Assembly on the number of acres reforested, type of owners assisted, geographic distribution of funds, the amount of funds encumbered and other matters. The report shall include the information by forestry district and statewide and shall be for the two fiscal years prior to the date of the report.

(c) The Secretary of Revenue shall be reimbursed for those actual expenditures incurred as a cost of collecting the assessment for the Forest Development Fund. This amount shall be transferred from the Forest Development Fund in equal increments at the end of each quarter of the fiscal year to the Department of Revenue. This amount shall not exceed five percent (5%) of the total assessments collected on primary forest products during the preceding fiscal year.

"§ 106-970. Assessment rates.

(a) The assessment rates shall be based on the following standards:
(1) For primary forest products customarily measured in board feet, the "International 1/4 Inch Log Rule" or equivalent will be used;
(2) For primary forest products customarily measured in cords, the standard cord of 128 cubic feet or equivalent will be used;
(3) For any other type of forest product separated from the soil, the ~~Secretary of Environment and Natural Resources~~Commissioner of Agriculture shall determine a fair unit assessment rate, based on the cubic foot volume of one thousand foot board measure, International 1/4 Inch Log Rule or one standard cord, 128 cubic feet.

(b) The assessment levied on primary forest products shall be at the following rates:
(1) Fifty cents (50¢) per thousand board feet for softwood sawtimber, veneer logs and bolts, and all other softwood products normally measured in board feet;
(2) Forty cents (40¢) per thousand board feet for hardwood and bald cypress sawtimber, veneer, and all other hardwood and bald cypress products normally measured in board feet;
(3) Twenty cents (20¢) per cord for softwood pulpwood and other softwood products normally measured in cords;

(4) Twelve cents (12¢) per cord for hardwood pulpwood and other hardwood and bald cypress products normally measured in cords;

(5) All material harvested within North Carolina for shipment outside the State for primary processing will be assessed at a percentage of the invoice value. This percentage will be established to yield rates equal to those if the material were processed within the State.

"§ 106-971. Collection of assessment.

(a) The assessment shall be levied against the processor of the primary forest product.

(b) The assessment shall be submitted on a quarterly basis of the State's fiscal year due and payable the last day of the month following the end of each quarter.

(c) The assessment shall be remitted to the Secretary, Department of Revenue, by check or money order, with such production reports as may be required by said Secretary.

(d) The processor shall maintain for a period of three fiscal years and make available to the Secretary, Department of Revenue, such production records necessary to verify proper reporting and payment of revenue due the Forest Development Fund.

(e) The production reports of the various processors shall be used only for assessment purposes. Production information will not be made a part of the public record on an individual processor basis.

(f) Any official or employee of the State who discloses information obtained from a production report, except as may be necessary for administration and collection of the assessment, or in the performance of official duties, or in administration or judicial proceedings related to the levy or collection of the assessment, shall be guilty of a Class 3 misdemeanor punishable only by a fine not to exceed fifty dollars ($50.00).

"§ 106-972. Enforcement of collection.

The Secretary of Revenue shall enforce collection of the primary forest product assessment in accordance with the remedies and procedures contained in Article 9 of Chapter 105 of the General Statutes."

SECTION 1.(kk) G.S. 1-339.17(c1) reads as rewritten:

"(c1) When the public sale is a sale of timber by sealed bid, the notice shall also be given in writing, not less than 21 days before the date on which bids are opened, to a reasonable number of prospective timber buyers, which in all cases shall include the timber buyers listed in the office of the Division of Forest Resources <u>of the Department of Agriculture and Consumer Services</u> for the county or counties in which the timber to be sold is located."

SECTION 1.(ll) G.S. 20-81.12(b35) reads as rewritten:

"(b35) First in Forestry. – The Division must receive 300 or more applications for the First in Forestry plate before the plate may be developed. The Division shall transfer quarterly one-half of the money in the Collegiate and Cultural Attraction Plate Account derived from the sale of the First in Forestry plates to the Division of Forest Resources <u>of the Department of Agriculture and Consumer Services</u> for a State forests and forestry education program and shall transfer quarterly one-half of the money in the Collegiate and Cultural Attraction Plate Account derived from the sale of the First in Forestry plates to the Forest Education and Conservation Foundation for their programs."

SECTION 1.(mm) G.S. 97-2(2) reads as rewritten:

"(2) Employee. – The term "employee" means every person engaged in an employment under any appointment or contract of hire or apprenticeship, express or implied, oral or written, including aliens, and also minors, whether lawfully or unlawfully employed, but excluding persons whose employment is both casual and not in the course of the trade, business, profession, or occupation of his employer, and as relating to those so employed by the State, the term "employee" shall include all officers and employees of the State, including such as are elected by the people, or by the

General Assembly, or appointed by the Governor to serve on a per diem, part-time or fee basis, either with or without the confirmation of the Senate; as relating to municipal corporations and political subdivisions of the State, the term "employee" shall include all officers and employees thereof, including such as are elected by the people. The term "employee" shall include members of the North Carolina National Guard while on State active duty under orders of the Governor and members of the North Carolina State Defense Militia while on State active duty under orders of the Governor. The term "employee" shall include deputy sheriffs and all persons acting in the capacity of deputy sheriffs, whether appointed by the sheriff or by the governing body of the county and whether serving on a fee basis or on a salary basis, or whether deputy sheriffs serving upon a full-time basis or a part-time basis, and including deputy sheriffs appointed to serve in an emergency, but as to those so appointed, only during the continuation of the emergency. The sheriff shall furnish to the board of county commissioners a complete list of all deputy sheriffs named or appointed by him immediately after their appointment and notify the board of commissioners of any changes made therein promptly after such changes are made. Any reference to an employee who has been injured shall, when the employee is dead, include also his legal representative, dependents, and other persons to whom compensation may be payable: Provided, further, that any employee, as herein defined, of a municipality, county, or of the State of North Carolina, while engaged in the discharge of his official duty outside the jurisdictional or territorial limits of the municipality, county, or the State of North Carolina and while acting pursuant to authorization or instruction from any superior officer, shall have the same rights under this Article as if such duty or activity were performed within the territorial boundary limits of his employer.

Every executive officer elected or appointed and empowered in accordance with the charter and bylaws of a corporation shall be considered as an employee of such corporation under this Article.

Any such executive officer of a corporation may, notwithstanding any other provision of this Article, be exempt from the coverage of the corporation's insurance contract by such corporation's specifically excluding such executive officer in such contract of insurance, and the exclusion to remove such executive officer from the coverage shall continue for the period such contract of insurance is in effect, and during such period such executive officers thus exempted from the coverage of the insurance contract shall not be employees of such corporation under this Article.

All county agricultural extension service employees who do not receive official federal appointments as employees of the United States Department of Agriculture and who are field faculty members with professional rank as designated in the memorandum of understanding between the North Carolina Agricultural Extension Service, North Carolina State University, A & T State University, and the boards of county commissioners shall be deemed to be employees of the State of North Carolina. All other county agricultural extension service employees paid from State or county funds shall be deemed to be employees of the county board of commissioners in the county in which the employee is employed for purposes of workers' compensation.

The term "employee" shall also include members of the Civil Air Patrol currently certified pursuant to G.S. 143B-491(a) when performing duties in the course and scope of a State-approved mission pursuant to Article 11 of Chapter 143B of the General Statutes.

"Employee" shall not include any person performing voluntary service as a ski patrolman who receives no compensation for such services other than meals or lodging or the use of ski tow or ski lift facilities or any combination thereof.

Any sole proprietor or partner of a business or any member of a limited liability company may elect to be included as an employee under the workers' compensation coverage of such business if he is actively engaged in the operation of the business and if the insurer is notified of his election to be so included. Any such sole proprietor or partner or member of a limited liability company shall, upon such election, be entitled to employee benefits and be subject to employee responsibilities prescribed in this Article.

"Employee" shall include an authorized pickup firefighter of the Division of Forest Resources of the Department of ~~Environment and Natural Resources~~Agriculture and Consumer Services when that individual is engaged in emergency fire suppression activities for the Division of Forest Resources. As used in this section, "authorized pickup firefighter" means an individual who has completed required fire suppression training as a wildland firefighter and who is available as needed by the Division of Forest Resources for emergency fire suppression activities, including immediate dispatch to wildfires and standby for initial attack on fires during periods of high fire danger.

It shall be a rebuttable presumption that the term "employee" shall not include any person performing services in the sale of newspapers or magazines to ultimate consumers under an arrangement whereby the newspapers or magazines are to be sold by that person at a fixed price and the person's compensation is based on the retention of the excess of the fixed price over the amount at which the newspapers or magazines are charged to the person."

SECTION 1.(nn) G.S. 105-259(b)(41) reads as rewritten:

"(41) To furnish the Division of Forest Resources of the Department of ~~Environment and Natural Resources~~Agriculture and Consumer Services pertinent contact and financial information concerning companies that are involved in the primary processing of timber products so that the Secretary of Environment and Natural Resources is able to comply with G.S. 113A-193 under the Primary Forest Product Assessment Act."

SECTION 1.(oo) G.S. 105-277.7(a)(2) reads as rewritten:

"(2) A representative of the Division of Forest Resources of the Department of ~~Environment and Natural Resources,~~Agriculture and Consumer Services, designated by the Director of that Division."

SECTION 1.(pp) 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 of the Department of ~~Environment and Natural Resources,~~Agriculture and Consumer Services, 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). If the property loses its present-use value classification for failure to provide the requested information, the assessor must reinstate the property's present-use value classification when the owner submits the requested information within 60 days after the disqualification 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. The owner may appeal the final decision of the assessor to the county board of equalization and review as provided in G.S. 105-277.4(b1).

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 1.(qq) G.S. 106-202.14(b)(3) reads as rewritten:

"(3) The Division of Forest Resources, Department of ~~Environment and Natural Resources;~~Agriculture and Consumer Services;".

SECTION 1.(rr) G.S. 113-291.10(a)(3) reads as rewritten:

"(3) The Director of the Division of Forest Resources of the Department of ~~Environment and Natural Resources,~~Agriculture and Consumer Services, or a designee;"

SECTION 1.(ss) G.S. 143-166.2(d) reads as rewritten:

"(d) The term "law-enforcement officer", "officer", or "fireman" shall mean a sheriff and all law-enforcement officers employed full-time, permanent part-time, or temporarily by a sheriff, the State of North Carolina or any county or municipality thereof, whether paid or unpaid; and all full-time custodial employees and probation and parole officers of the North Carolina Department of Correction; and all full time institutional and full-time, permanent part-time, and temporary detention employees of the Department of Juvenile Justice and Delinquency Prevention and full-time, permanent part-time, and temporary detention officers employed by any sheriff, county or municipality, whether paid or unpaid. The term "firemen" shall mean both "eligible firemen" as defined in G.S. 58-86-25 and all full-time, permanent part-time and temporary employees of the ~~North Carolina~~ Division of Forest Resources, Department of ~~Environment and Natural Resources,~~Agriculture and Consumer Services, during the time they are actively engaged in fire-fighting activities; and shall mean all full-time employees of the North Carolina Department of Insurance during the time they are actively engaged in fire-fighting activities, during the time they are training fire fighters or rescue squad workers, and during the time they are engaged in activities as members of the State Emergency Response Team, when the Team has been activated; and shall mean all otherwise eligible persons who, while actively engaged as firefighters or rescue squad workers, are acting in the capacity of a fire or rescue instructor outside their own department or squad. The term "rescue squad worker" shall mean a person who is dedicated to the purpose of alleviating human suffering and assisting anyone who is in difficulty or who is injured or becomes suddenly ill by providing the proper and efficient care or emergency medical services. In addition, this person

must belong to an organized rescue squad which is eligible for membership in the North Carolina Association of Rescue Squads, Inc., and the person must have attended a minimum of 36 hours of training and meetings in the last calendar year. Each rescue squad belonging to the North Carolina Association of Rescue Squads, Inc., must file a roster of those members meeting the above requirements with the State Treasurer on or about January 1 of each year, and this roster must be certified to by the secretary of said association. In addition, the term "rescue squad worker" shall mean a member of an ambulance service certified by the Department of Health and Human Services pursuant to Article 7 of Chapter 131E of the General Statutes. The Department of Health and Human Services shall furnish a list of ambulance service members to the State Treasurer on or about January 1 of each year. The term "Civil Air Patrol members" shall mean those senior members of the North Carolina Wing-Civil Air Patrol 18 years of age or older and currently certified pursuant to G.S. 143B-491(a). The term "fireman" shall also mean county fire marshals when engaged in the performance of their county duties. The term "rescue squad worker" shall also mean county emergency services coordinators when engaged in the performance of their county duties."

SECTION 1.(tt) G.S. 143-166.7 reads as rewritten:

"**§ 143-166.7. Applicability of Article.**

The provisions of this Article shall apply and be in full force and effect with respect to any law-enforcement officer, fireman, rescue squad worker or senior Civil Air Patrol member killed in the line of duty on or after May 13, 1975. The provisions of this Article shall apply with respect to full-time, permanent part-time and temporary employees of ~~North Carolina~~ Division of Forest Resources, Department of ~~Environment and Natural Resources,~~Agriculture and Consumer Services, killed in line of duty on or after July 1, 1975. The provisions of this Article shall apply to county fire marshals and emergency services coordinators killed in the line of duty on and after July 1, 1988."

SECTION 1.(uu) G.S. 143-214.25A(a) reads as rewritten:

"(a) The Division of Water Quality of the Department shall develop a program to train and certify individuals to determine the presence of surface waters that would require the application of rules adopted by the Commission for the protection of riparian buffers. The Division may train and certify employees of the Division as determined by the Director of the Division of Water Quality; employees of units of local government to whom responsibility for the implementation and enforcement of the riparian buffer protection rules is delegated pursuant to G.S. 143-214.23; and Registered Foresters under Chapter 89B of the General Statutes who are employees of the Division of Forest Resources of the Department of Agriculture and Consumer Services as determined by the Director of the Division of Forest Resources. The Director of the Division of Water Quality may review the determinations made by individuals who are certified pursuant to this section, may override a determination made by an individual certified under this section, and, if the Director of the Division of Water Quality determines that an individual is failing to make correct determinations, revoke the certification of that individual."

SECTION 1.(vv) G.S. 143-215.74M(d)(11) reads as rewritten:

"(11) The Director of the Division of Forest Resources of the Department of Agriculture and Consumer Services or the Director's designee."

SECTION 1.(ww) G.S. 166A-18 reads as rewritten:

"**§ 166A-18. Division of Forest Resources designated as emergency response agency.**

The Division of Forest Resources of the Department of ~~Environment and Natural Resources~~Agriculture and Consumer Services is designated an emergency response agency of the State of North Carolina for purposes of:

(1) Supporting the Division of Emergency Management of the Department of Crime Control and Public Safety in responding to all-risk incidents.

(2) Receipt of any applicable State or federal funding.

(3) Training of other State and local agencies in disaster and emergency management.

(4) Any other disaster and emergency response roles for which the Division has special training or qualifications."

SECTION 1.(xx) The Revisor of Statutes shall make the conforming statutory changes necessary to reflect the transfers under this section. The Revisor of Statutes may correct any reference in the General Statutes to the statutes that are recodified by this section and make any other conforming changes necessitated by this section.

SECTION 1.(yy) The transfers under this section become effective July 1, 2011, and funds transferred shall be net of any changes enacted by this section.

SECTION 1.(zz) Any references in this act to the Division of Forest Resources of the Department of Environment and Natural Resources shall be construed to refer to the Division of Forest Resources of the Department of Agriculture and Consumer Services. Any references in this act to the Forestry Council of the Department of Environment and Natural Resources shall be construed to refer to the Forestry Council of the Department of Agriculture and Consumer Services.

SECTION 2. This act becomes effective July 1, 2011.

SENATE BILL 388:
Transfer Forestry & Forestry Council to DACS

2011-2012 General Assembly

Committee:	Senate Agriculture/Environment/Natural Resources	**Date:**	May 3, 2011
Introduced by:	Sens. East, Rouzer, Jackson	**Prepared by:**	Mariah Matheson
Analysis of:	First Edition		Research Assistant

SUMMARY: ***Senate Bill 388 would transfer the Division of Forest Resources and the Forestry Advisory Council from the Department of Environment and Natural Resources to the Department of Agriculture and Consumer Services.***

CURRENT LAW: Under current law, the Division of Forest Resources and the Forestry Advisory Council are organizationally under the Department of Environment and Natural Resources.

BILL ANALYSIS: Senate Bill 388 would transfer the Division of Forest Resources and the Forest Advisory Council from the Department of Environment and Natural Resources to the Department of Agriculture and Consumer Services.

The Division Forestry Resources[1]

The Division of Forest Resources (DFR) protects, manages, and develops the forest resources of the State. DFR pograms include reforestation services, forest fire prevention and suppression, and insect and disease control. DFR is also involved in the operation of tree seedling nurseries; long range forestry planning and technical development; water quality controls; urban forestry assistance and training; and support to volunteer fire departments and forestry education.

Some of the programs provided by DFR include:

- Nursery & Tree Improvement Program
- Fire Control & Prevention – Fire control, wildfire prevention, open burn permits, and fire and debris burning.
- Forest Health – Forest insects, diseases, invasives, and southern pine beetle prevention.
- Water Quality – Best management practices, education and restoration, timber harvesting, soil stabilization, and erosion control.
- Urban & Community Forestry – Arbor Day, urban storm cleanup, urban forestry grant program, tree inventories, and tree selection.

DFR is organized as follows:

- Director's Office -- Deputy Director and Assistant Director (Raleigh);
- Four Sections -- Administrative Services, Forest Protection, Safety, Planning and Analysis, and Forest Management/Development (Raleigh);
- Three Regional Offices -- Coastal (Kinston), Piedmont (Jordan Lake) and Mountain (Asheville);

[1] Information on the Division of Forest Resources found at: http://www.dfr.state.nc.us/

- 13 Districts headquartered at Asheville, Lenoir, Rockingham, New Bern, Rocky Mount, Fayetteville, Elizabeth City, Whiteville, Sylva, Lexington, Hillsborough, Mount Holly and Fairfield; and
- County Forest Ranger or Forester and staff (if any) in each county.

Forestry Advisory Council[2]

The Forestry Advisor Council advises the Secretary of Environment and Natural Resources with respect to all matters concerning the protection, management, and preservation of State-owned, privately owned, and municipally owned forests in the State. The Forestry Advisory Council also maintains oversight of monitoring and planning processes, provides long-range, comprehensive plans for the use, management, and sustainability of North Carolina's forest resources, and reports regularly on progress made toward meeting the objectives of the plans.

The Commission is composed of 18 members as follows:

- Three persons who are registered foresters and who represent the primary forest products industry, one each from the Mountains, Piedmont and Coastal Plain.
- One person who represents the secondary wood-using industry.
- One person who represents the logging industry.
- Four persons who are nonindustrial woodland owners actively involved in forest management, one of whom has agricultural interests, and at least one each from the Mountains, Piedmont, and Coastal Plain.
- Three persons who are members of statewide environmental or wildlife conservation organizations.
- One consulting forester.
- Two persons who are forest scientists with knowledge of the functioning and management of forest ecosystems.
- One person who represents a banking institution that manages forestland.
- One person with expertise in urban forestry.
- One person with active experience in city and regional planning.

The members of the Commission are appointed in staggered four year terms and until their successors are appointed and qualified.

EFFECTIVE DATE: The act would become effective July 1, 2011.

S388-SMTF-19(e1) v3

[2] Information on the Forestry Advisory Council found at: http://www.dfr.state.nc.us/fac.htm

SENATE BILL 388

Short Title:	Transfer Forestry & Forestry Council to DACS.	(Public)
Sponsors:	Senators East, Rouzer, Jackson; Allran, Bingham, Blake, Brock, Brown, Daniel, Forrester, Hartsell, Hise, Hunt, Pate, Preston, Rucho, Soucek, Tillman, Tucker, and Walters.	
Referred to:	Agriculture/Environment/Natural Resources.	

March 22, 2011

A BILL TO BE ENTITLED

AN ACT TO TRANSFER THE DIVISION OF FOREST RESOURCES AND THE FORESTRY COUNCIL OF THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES TO THE DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES AND TO MAKE CONFORMING CHANGES.

The General Assembly of North Carolina enacts:

SECTION 1.(a) The Division of Forest Resources is transferred from the Department of Environment and Natural Resources to the Department of Agriculture and Consumer Services with all the elements of a Type I transfer as defined by G.S. 143A-6.

SECTION 1.(b) G.S. 143B-279.3(a) reads as rewritten:

"(a) All functions, powers, duties, and obligations previously vested in the following subunits of the following departments are transferred to and vested in the Department of Environment and Natural Resources by a Type I transfer, as defined in G.S. 143A-6:

...

~~(6) Forest Resources Division, Department of Natural Resources and Community Development.~~

...."

SECTION 1.(c) Article 7 of Chapter 143A of the General Statutes is amended by adding a new section to read:

"**§ 143A-65.1. Division of Forest Resources; transfer.**

(a) The Division of Forest Resources is transferred from the Department of Environment and Natural Resources to the Department of Agriculture and Consumer Services with all the elements of a Type I transfer as defined by G.S. 143A-6.

(b) The Department of Agriculture shall have charge of the work of forest maintenance, forest fire prevention, reforestation, and the protection of lands and water supplies by the preservation of forests; it shall also have the care of State forests and parks, and other recreational areas now owned or to be acquired by the State, including the lakes referred to in G.S. 146-7."

SECTION 2.(a) All functions, powers, duties, and obligations previously vested in the Forestry Council are transferred from the Department of Environment and Natural Resources to and vested in the Department of Agriculture and Consumer Services by a Type II transfer, as defined in G.S. 143A-6.

SECTION 2.(b) G.S. 143B-279.3(b) reads as rewritten:

"(b) All functions, powers, duties, and obligations previously vested in the following commissions, boards, councils, and committees of the following departments are transferred to

and vested in the Department of Environment and Natural Resources by a Type II transfer, as defined in G.S. 143A-6:

...

~~(13) Forestry Council, Department of Natural Resources and Community Development.~~

...."

SECTION 2.(c) Part 12 of Article 7 of Chapter 143B of the General Statutes (G.S. 143B-308, 143B-309, and 143B-310) is recodified in Article 7 of Chapter 143A of the General Statutes as G.S. 143A-66.1, 143A-66.2, and 143A-66.3.

SECTION 2.(d) G.S. 143A-66.1, as recodified in Section 2(c) of this act, reads as rewritten:

"**§ 143A-66.1. Forestry Council – creation; powers and duties.**

There is hereby created the Forestry Council of the Department of ~~Environment and Natural Resources.~~Agriculture and Consumer Services. The Forestry Council shall have the following functions and duties:

(1) To advise the ~~Secretary of Environment and Natural Resources~~Commissioner of Agriculture with respect to all matters concerning the protection, management, and preservation of State-owned, privately owned, and municipally owned forests in the State, including but not limited to:

a. Profitable use of the State's forests consistent with the principles of sustained productivity.

b. Best management practices, including those for protection of soil, water, wildlife, and wildlife habitat, to be used in managing the State's forests and their resources.

c. Restoration of forest ecosystems and protection of rare and endangered species occurring in the State's private forests consistent with principles of private ownership of land.

(2) To maintain oversight of a continuous monitoring and planning process, to provide a long-range, comprehensive plan for the use, management, and sustainability of North Carolina's forest resources, and to report regularly on progress made toward meeting the objectives of the plan.

(3) To provide a forum for the identification, discussion, and development of recommendations for the resolution of conflicts in the management of North Carolina's forests.

(4) To undertake any other studies, make any reports, and advise the ~~Secretary of Environment and Natural Resources~~Commissioner of Agriculture on any matter as the ~~Secretary~~ Commissioner may direct."

SECTION 2.(e) G.S. 143A-66.2, as recodified in Section 2(c) of this act, reads as rewritten:

"**§ 143A-66.2. Forestry Council – members; chairperson; selection; removal; compensation; quorum.**

(a) The Forestry Advisory Council of the Department of ~~Environment and Natural Resources~~Agriculture and Consumer Services shall consist of 18 members appointed as follows:

(1) Three persons who are registered foresters and who represent the primary forest products industry, one each from the Mountains, Piedmont and Coastal Plain.

(2) One person who represents the secondary wood-using industry.

(3) One person who represents the logging industry.

(4) Four persons who are nonindustrial woodland owners actively involved in forest management, one of whom has agricultural interests, and at least one each from the Mountains, Piedmont, and Coastal Plain.
(5) Three persons who are members of statewide environmental or wildlife conservation organizations.
(6) One consulting forester.
(7) Two persons who are forest scientists with knowledge of the functioning and management of forest ecosystems.
(8) One person who represents a banking institution that manages forestland.
(9) One person with expertise in urban forestry.
(10) One person with active experience in city and regional planning.

...

(h) All clerical and other services required by the Council, including the support required to carry out studies it is requested to make, shall be supplied by the ~~Secretary of Environment and Natural Resources.~~Commissioner of Agriculture."

SECTION 3. G.S. 106-22 is amended by adding two new subdivisions to read:

"(18) Forests. – Have charge of forest maintenance, forest fire protection, reforestation, and the protection of the forests.

(19) State Forests. – Have charge of all State forests and measures for forest fire prevention."

SECTION 4. The Revisor of Statutes shall make the conforming statutory changes necessary to reflect the transfers under Section 1 of this act. The Revisor of Statutes may correct any reference in the General Statutes to the statutes that are recodified by this act and make any other conforming changes necessitated by this act.

SECTION 5. This act becomes effective July 1, 2011.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

S D

SENATE BILL 388
PROPOSED COMMITTEE SUBSTITUTE S388-PCS35238-RIf-18

Short Title: Transfer Forestry & Forestry Council to DACS. (Public)

Sponsors:

Referred to:

March 22, 2011

A BILL TO BE ENTITLED

AN ACT TO TRANSFER THE DIVISION OF FOREST RESOURCES AND THE FORESTRY COUNCIL OF THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES TO THE DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES AND TO MAKE CONFORMING CHANGES.

The General Assembly of North Carolina enacts:

SECTION 1.(a) The Division of Forest Resources is transferred from the Department of Environment and Natural Resources to the Department of Agriculture and Consumer Services with all the elements of a Type I transfer as defined by G.S. 143A-6.

SECTION 1.(b) G.S. 143B-279.3(a) reads as rewritten:

"(a) All functions, powers, duties, and obligations previously vested in the following subunits of the following departments are transferred to and vested in the Department of Environment and Natural Resources by a Type I transfer, as defined in G.S. 143A-6:

...

~~(6) Forest Resources Division, Department of Natural Resources and Community Development.~~

...."

SECTION 1.(c) Article 7 of Chapter 143A of the General Statutes is amended by adding a new section to read:

"**§ 143A-65.1. Division of Forest Resources.**

The Department of Agriculture and Consumer Services shall have charge of the work of forest maintenance, forest fire prevention, reforestation, and the protection of lands and water supplies by the preservation of forests; it shall also have the care of State forests."

SECTION 1.(d) All functions, powers, duties, and obligations previously vested in the Forestry Council are transferred from the Department of Environment and Natural Resources to and vested in the Department of Agriculture and Consumer Services by a Type II transfer, as defined in G.S. 143A-6.

SECTION 1.(e) G.S. 143B-279.3(b) reads as rewritten:

"(b) All functions, powers, duties, and obligations previously vested in the following commissions, boards, councils, and committees of the following departments are transferred to and vested in the Department of Environment and Natural Resources by a Type II transfer, as defined in G.S. 143A-6:

...

~~(13) Forestry Council, Department of Natural Resources and Community Development.~~

...."

SECTION 1.(f) Part 12 of Article 7 of Chapter 143B of the General Statutes (G.S. 143B-308, 143B-309, and 143B-310) is recodified in Article 7 of Chapter 143A of the General Statutes as G.S. 143A-66.1, 143A-66.2, and 143A-66.3.

SECTION 1.(g) G.S. 143A-66.1, as recodified in subsection (f) of this section, reads as rewritten:

"**§ 143A-66.1. Forestry Council – creation; powers and duties.**

There is hereby created the Forestry Council of the Department of ~~Environment and Natural Resources.~~Agriculture and Consumer Services. The Forestry Council shall have the following functions and duties:

(1) To advise the ~~Secretary of Environment and Natural Resources~~Commissioner of Agriculture with respect to all matters concerning the protection, management, and preservation of State-owned, privately owned, and municipally owned forests in the State, including but not limited to:
   a. Profitable use of the State's forests consistent with the principles of sustained productivity.
   b. Best management practices, including those for protection of soil, water, wildlife, and wildlife habitat, to be used in managing the State's forests and their resources.
   c. Restoration of forest ecosystems and protection of rare and endangered species occurring in the State's private forests consistent with principles of private ownership of land.

(2) To maintain oversight of a continuous monitoring and planning process, to provide a long-range, comprehensive plan for the use, management, and sustainability of North Carolina's forest resources, and to report regularly on progress made toward meeting the objectives of the plan.

(3) To provide a forum for the identification, discussion, and development of recommendations for the resolution of conflicts in the management of North Carolina's forests.

(4) To undertake any other studies, make any reports, and advise the ~~Secretary of Environment and Natural Resources~~Commissioner of Agriculture on any matter as the ~~Secretary~~ Commissioner may direct."

SECTION 1.(h) G.S. 143A-66.2, as recodified in subsection (f) of this section, reads as rewritten:

"**§ 143A-66.2. Forestry Council – members; chairperson; selection; removal; compensation; quorum.**

(a) The Forestry Advisory Council of the Department of ~~Environment and Natural Resources~~Agriculture and Consumer Services shall consist of 18 members appointed as follows:

(1) Three persons who are registered foresters and who represent the primary forest products industry, one each from the Mountains, Piedmont and Coastal Plain.

(2) One person who represents the secondary wood-using industry.

(3) One person who represents the logging industry.

(4) Four persons who are nonindustrial woodland owners actively involved in forest management, one of whom has agricultural interests, and at least one each from the Mountains, Piedmont, and Coastal Plain.

(5) Three persons who are members of statewide environmental or wildlife conservation organizations.
(6) One consulting forester.
(7) Two persons who are forest scientists with knowledge of the functioning and management of forest ecosystems.
(8) One person who represents a banking institution that manages forestland.
(9) One person with expertise in urban forestry.
(10) One person with active experience in city and regional planning.

...

(h) All clerical and other services required by the Council, including the support required to carry out studies it is requested to make, shall be supplied by the ~~Secretary of Environment and Natural Resources.~~Commissioner of Agriculture."

SECTION 1.(i) G.S. 106-22 is amended by adding two new subdivisions to read:

"(18) Forests. – Have charge of forest maintenance, forest fire protection, reforestation, and the protection of the forests.

(19) State forests. – Have charge of all State forests and measures for forest fire prevention."

SECTION 1.(j) G.S. 113-8 reads as rewritten:

"**§ 113-8. Powers and duties of the Department.**

The Department shall make investigations of the natural resources of the State, and take such measures as it may deem best suited to promote the conservation and development of such resources.

It shall have ~~charge of the work of forest maintenance, forest fire prevention, reforestation, and~~ the protection of lands and water ~~supplies by the preservation of forests;~~supplies; it shall also have the care of State ~~forests and~~ parks, and other recreational areas now owned or to be acquired by the State, including the lakes referred to in G.S. 146-7.

It shall make such examination, survey and mapping of the geology, mineralogy and topography of the State, including their industrial and economic utilization, as it may consider necessary; make investigations of water supplies and water powers, prepare and maintain a general inventory of the water resources of the State, and take such measures as it may consider necessary to promote their development.

It shall have the duty of enforcing all laws relating to the conservation of marine and estuarine resources.

The Department may take such other measures as it may deem advisable to obtain and make public a more complete knowledge of the State and its resources, and it is authorized to cooperate with other departments and agencies of the State in obtaining and making public such information.

The Department may acquire such real and personal property as may be found desirable and necessary for the performance of the duties and functions of the Department and pay for same out of any funds appropriated for the Department or available unappropriated revenues of the Department, when such acquisition is approved by the Governor and Council of State. The title to any real estate acquired shall be in the name of the State of North Carolina for the use and benefit of the Department."

SECTION 1.(k) G.S. 113-22 is repealed.

SECTION 1.(l) G.S. 106-22 is amended by adding three new subdivisions to read:

"(18) Forests. – Have charge of forest maintenance, forest fire protection, reforestation, and the protection of the forests.

(19) State forests. – Have charge of all State forests and measures for forest fire prevention.

(20) Property for state forests. – Acquire real and personal property as desirable and necessary for the performance of the duties and functions of the

Department under subdivision (19) of this section and pay for the property out of any funds appropriated for the Department or available unappropriated revenues of the Department, when such acquisition is approved by the Governor and Council of State. The title to any real estate acquired under this subdivision shall be in the name of the State of North Carolina for the use and benefit of the Department."

SECTION 1.(m) The title of Subchapter II of Chapter 113 of the General Statutes reads as rewritten:

"**SUBCHAPTER II. STATE ~~FORESTS AND~~ PARKS.**"

SECTION 1.(n) Article 2 of Chapter 113 of the General Statutes reads as rewritten:

"Article 2.

"Acquisition and Control of State ~~Forests and~~ Parks.

"**§ 113-29. ~~Policy and plan to be inaugurated by Department of Environment and Natural Resources.~~Definitions.**

~~(a)~~ In this Article, unless the context requires otherwise, "Department" means the Department of Environment and Natural Resources; and "Secretary" means the Secretary of Environment and Natural Resources.

~~(b) The Department of Environment and Natural Resources shall inaugurate the following policy and plan looking to the cooperation with private and public forest owners in this State insofar as funds may be available through legislative appropriation, gifts of money or land, or such cooperation with landowners and public agencies as may be available:~~

~~(1) The extension of the forest fire prevention organization to all counties in the State needing such protection.~~

~~(2) To cooperate with federal and other public agencies in the restoration of forest growth on land unwisely cleared and subsequently neglected.~~

~~(3) To furnish trained and experienced experts in forest management, to inspect private forestlands and to advise with forest landowners with a view to the general observance of recognized and practical rules of growing, cutting and marketing timber. The services of such trained experts of the Department must naturally be restricted to those landowners who agree to carry out so far as possible the recommendations of said Department.~~

~~(4) To prepare and distribute printed and other material for the use of teachers and club leaders and to provide instruction to schools and clubs and other groups of citizens in order to train the younger generation in the principles of wise use of our forest resources.~~

~~(5) To acquire small areas of suitable land in the different regions of the State on which to establish small, model forests which shall be developed and used by the said Department as State demonstration forests for experiment and demonstration in forest management.~~

"**~~§ 113-29.1. Growing of timber on unused State lands authorized.~~**

~~The Department of Administration may allocate to the Department, for management as a State forest, any vacant and unappropriated lands, any marshlands or swamplands, and any other lands title to which is vested in the State or in any State agency or institution, where such lands are not being otherwise used and are not suitable for cultivation. Lands under the supervision of the Wildlife Resources Commission and designated and in use as wildlife management areas, refuges, or fishing access areas and lands used as research stations shall not be subject to the provisions of this section. The Department shall plant timber producing trees on all lands allocated to it for that purpose by the Department of Administration. The Secretary may contract with the appropriate prison authorities for the furnishing, upon such conditions as may be agreed upon from time to time between such prison authorities and the Secretary, of~~

~~prison labor for use in the planting, cutting, and removal of timber from State forests which are under the management of the Department.~~

"~~**§ 113-30. Use of lands acquired by counties through tax foreclosures as demonstration forests.**~~

~~The boards of county commissioners of the various counties of North Carolina are herewith authorized to turn over to the said Department title to such tax delinquent lands as may have been acquired by said counties under tax sale and as in the judgment of the Secretary may be suitable for the purposes named in G.S. 113-29, subdivision (5).~~

"~~**§ 113-31. Procedure for acquisition of delinquent tax lands from counties.**~~

~~In the carrying out of the provisions of G.S. 113-30, the several boards of county commissioners shall furnish forthwith on written request of the Department a complete list of all properties acquired by the county under tax sale and which have remained unredeemed for a period of two years or more. On receipt of this list the Secretary shall have the lands examined and if any one or more of these properties is in his judgment suitable for the purposes set forth in G.S. 113-30, request shall be made to the county commissioners for the acquisition of such land by the Department at a price not to exceed the actual amount of taxes due without penalties. On receipt of this request the county commissioners shall make permanent transfer of such tract or tracts of land to the Department through fee simple deed or other legal transfer, said deed to be approved by the Attorney General of North Carolina, and shall then receive payment from the Department as above outlined.~~

"~~**§ 113-32. Purchase of lands for use as demonstration forests.**~~

~~Where no suitable tax-delinquent lands are available and in the judgment of the Department the establishment of a demonstration forest is advisable, the Department may purchase sufficient land for the establishment of such a demonstration forest at a fair and agreed upon price, the deed for such land to be subject to approval of the Attorney General, but nothing in G.S. 113-29 to 113-33 shall allow the Department to acquire land under the right of eminent domain.~~

"~~**§ 113-33. Forest management appropriation.**~~

~~Necessary funds for carrying out the provisions of G.S. 113-29 and 113-30 to 113-33 shall be set up in the regular budget as an item entitled "forest management.~~

"**§ 113-34. Power to acquire lands as State ~~forests,~~ parks, and other recreational areas; donations or leases by United States; leases for recreational purposes.**

(a) ~~The Governor may, upon recommendation of the Department, accept gifts of land to the State to be held, protected, and administered by the Department as State forests, and to be used so as to demonstrate the practical utility of timber culture and water conservation, and as refuges for game. The gifts of land must be absolute except in cases where the mineral interest on the land has previously been sold. The Department may purchase lands in the name of the State, suitable chiefly for the production of timber, as State forests, for experimental, demonstration, educational, park, and protection purposes, using for these purposes any special appropriations or funds available.~~ The Department may acquire by gift, purchase, or condemnation under the provisions of Chapter 40A of the General Statutes, areas of land in different sections of the State that may in the opinion of the Department be necessary for the purpose of establishing or developing ~~State forests,~~ State parks, and other areas and developments essential to the effective operation of the ~~State forestry and~~ State park activities under its charge. Condemnation proceedings shall be instituted and prosecuted in the name of the State, and any property so acquired shall be administered, developed, and used ~~for experiment and demonstration in forest management,~~ for public ~~recreation,~~recreation and for other purposes authorized or required by law. Before any action or proceeding under this section can be exercised, the approval of the Governor and Council of State shall be obtained and filed with the clerk of the superior court in the county or counties where the property is located. The Attorney General shall ensure that all deeds to the State for land acquired under

this section are properly executed before the gift is accepted or payment of the purchase money is made.

(b) The Department may accept as gifts to the State any ~~forest and~~ submarginal farmland acquired by the federal government that is suitable for the purpose of creating and maintaining ~~State forests,~~ game refuges, public shooting grounds, State parks, State lakes, and other recreational areas, or to enter into longtime leases with the federal government for the areas and administer them with funds secured from their administration in the best interest of longtime public use, supplemented by any appropriations made by the General Assembly. The Department may segregate revenue derived from State hunting and fishing licenses, use permits, and concessions and other proper revenue secured through the administration of State ~~forests,~~ game refuges, public shooting grounds, State parks, State lakes, and other recreational areas to be deposited in the State treasury to the credit of the Department to be used for the administration of these areas.

(c) The Department, with the approval of the Governor and Council of State, may enter into leases of lands and waters for State parks, State lakes, and recreational purposes.

(d), (e) Repealed by Session Laws 2003-284, s. 35.1(a), effective July 1, 2003.

(f) The authority granted to the Department under this section is in addition to any authority granted to the Department under any other provision of law.

"§ 113-34.1. Power to acquire conservation lands not included in the State Parks System.

The Department of Administration may acquire and allocate to the Department of Environment and Natural Resources for management by the Division of Parks and Recreation lands that the Department of Environment and Natural Resources finds are important for conservation purposes but which are not included in the State Parks System. Lands acquired pursuant to this section are not subject to Article 2C of Chapter 113 of the General Statutes and may be traded or transferred as necessary to protect, develop, and manage the Mountains to Sea State Park Trail, other State parks, or other conservation lands. This section does not expand the power granted to the Department of Environment and Natural Resources under G.S. 113-34(a) to acquire land by condemnation.

"§ 113-35. ~~State timber may be sold by Department; forest nurseries; control~~Control over State parks; operation of public service facilities; concessions to private concerns; authority to charge fees and adopt rules.

(a) ~~Timber and other products of State forests may be sold, cut, and removed under rules of the Department. The Department may establish and operate forest tree nurseries and forest tree seed orchards. Forest tree seedlings and seed from these nurseries and seed orchards may be sold to landowners of the State for purposes of forestation under rules adopted by the Department. When the Secretary determines that a surplus of seedlings or seed exists, this surplus may be sold, and the sale shall be in conformity with the following priority of sale: first, to agencies of the federal government for planting in the State of North Carolina; second, to commercial nurseries and nurserymen within this State; and third, without distinction, to federal agencies, to other states, and to recognized research organizations for planting either within or outside of this State.~~ The Department shall make reasonable rules governing the use by the public of ~~State forests,~~ State ~~parks, State lakes, game refuges, and public shooting grounds~~parks and State lakes under its charge. These rules shall be posted in conspicuous places on and adjacent to the properties of the State and at the courthouse of the county or counties in which the properties are located. A violation of these rules is punishable as a Class 3 misdemeanor.

(a1) The Department may adopt rules under which the Secretary may issue a special-use permit authorizing the use of pyrotechnics in State parks in connection with public exhibitions. The rules shall require that experts supervise the use of pyrotechnics and that written authorization for the use of pyrotechnics be obtained from the board of commissioners of the county in which the pyrotechnics are to be used, as provided in G.S. 14-410. The Secretary may

impose any conditions on a permit that the Secretary determines to be necessary to protect public health, safety, and welfare. These conditions shall include a requirement that the permittee execute an indemnification agreement with the Department and obtain general liability insurance covering personal injury and property damage that may result from the use of pyrotechnics with policy limits determined by the Secretary.

(b) The Department may construct, operate, and maintain within the ~~State forests,~~ State parks, State lakes, and other areas under its charge suitable public service facilities and conveniences, and may charge and collect reasonable fees for the use of these facilities and conveniences. The Department may also charge and collect reasonable fees for each of the following:

(1) The erection, maintenance, and use of docks, piers, and any other structures permitted in or on State lakes under rules adopted by the Department.

(2) ~~Hunting privileges on State forests and fishing~~Fishing privileges in ~~State forests,~~ State ~~parks,~~parks and State lakes, provided that these privileges shall be extended only to holders of State hunting and fishing licenses who comply with all State game and fish laws.

(3) Vehicle access for off-road driving at the beach at Fort Fisher State Recreation Area.

(4) The erection, maintenance, and use of a marina at Carolina Beach.

(b1) Members of the public who pay a fee under subsection (b) of this section for access to Fort Fisher State Recreation Area may have 24-hour access to Fort Fisher State Recreation Area from September 15 through March 15 of each year.

(c) The Department may make reasonable rules for the operation and use of boats or other craft on the surface of the waters under its charge. The Department may charge and collect reasonable fees for the use of boats and other watercraft that are purchased and maintained by the Department; however, the Department shall not charge a fee for the use or operation of any other boat or watercraft on these waters.

(d) The Department may grant to private individuals or companies concessions for operation of public service facilities for such periods and upon such conditions as the Department deems to be in the public interest. The Department may adopt reasonable rules for the regulation of the use by the public of the lands and waters under its charge and of the public service facilities and conveniences authorized under this section. A violation of these rules is punishable as a Class 3 misdemeanor.

(e) The authority granted to the Department under this section is in addition to any authority granted to the Department under any other provision of law.

~~"§ 113-36. Applications of proceeds from sale of products.~~

~~(a) Application of Proceeds Generally. Except as provided in this section, all money received from the sale of wood, timber, minerals, or other products from the State forests shall be paid into the State treasury and to the credit of the Department; and such money shall be expended in carrying out the purposes of this Article and of forestry in general, under the direction of the Secretary.~~

~~(b) Tree Cone and Seed Purchase Fund. A percentage of the money obtained from the sale of seedlings and remaining unobligated at the end of a fiscal year, shall be placed in a special, continuing and nonreverting Tree Cone and Seed Purchase Fund under the control and direction of the Secretary. The percentage of the sales placed in the fund shall not exceed ten percent (10%). At the beginning of each fiscal year, the Secretary shall select the percentage for the upcoming fiscal year depending upon the anticipated costs of tree cones and seeds which the department must purchase. Money in this fund shall not be allowed to accumulate in excess of the amount needed to purchase a four-year supply of tree cones and seed, and shall be used for no purpose other than the purchase of tree cones and seeds.~~

~~(c) Forest Seedling Nursery Program Fund. The Forest Seedling Nursery Program Fund is created within the Department of Environment and Natural Resources, Division of Forest Resources, as a special revenue fund. Except as provided in subsection (b) of this section, this Fund shall consist of receipts from the sale of seed and seedlings as authorized in G.S. 113-35 and any gifts, bequests, or grants for the benefit of this Fund. No General Fund appropriations shall be credited to this Fund. Any balance remaining in this Fund at the end of any fiscal year shall not revert. The Department may use this Fund only to develop, improve, repair, maintain, operate, or otherwise invest in the Forest Seedling Nursery Program.~~

~~(d) Bladen Lakes State Forest Fund. The Bladen Lakes State Forest Fund is created within the Department of Environment and Natural Resources, Division of Forest Resources, as a special revenue fund. This Fund shall consist of receipts from the sale of forest products from Bladen Lakes State Forest as authorized in G.S. 113-35 and any gifts, bequests, or grants for the benefit of this Fund. No General Fund appropriations shall be credited to this Fund. Any balance remaining in this Fund at the end of any fiscal year shall not revert. The Department may use this Fund only to develop, improve, repair, maintain, operate, or otherwise invest in the Bladen Lakes State Forest.~~

"§ 113-37. Legislative authority necessary for payment.

Nothing in this Article shall operate or be construed as authority for the payment of any money out of the State treasury for the purchase of lands or for other purposes unless by appropriation for said purpose by the General Assembly.

"~~§ 113-38. Distribution of funds from sale of forestlands.~~

~~All funds paid by the National Forest Commission, by authority of act of Congress, approved May 23, 1908 (35 Stat., 260), for the Counties of Avery, Buncombe, Burke, Craven, Haywood, Henderson, Hyde, Jackson, Macon, Montgomery, Swain, Transylvania, Watauga, and Yancey, shall be paid to the proper county officers, and said funds shall, when received, be placed in the account of the general county funds: Provided, however, that in Buncombe County said funds shall be entirely for the use and benefit of the school district or districts in which said national forestlands shall be located.~~

~~All funds which may hereafter come into the hands of the State Treasurer from like sources shall be likewise distributed.~~

"§ 113-39. License fees for hunting and fishing on government-owned property unaffected.

No wording in G.S. 113-307.1(a), or any other North Carolina statute or law, or special act, shall be construed to abrogate the vested rights of the State of North Carolina to collect fees for license for hunting and fishing on any government-owned land or in any government-owned stream in North Carolina including the license for county, State or nonresident hunters or fishermen; or upon any lands or in any streams hereafter acquired by the federal government within the boundaries of the State of North Carolina. The lands and streams within the boundaries of the Great Smoky Mountains National Park to be ~~excepted~~ exempt from this section.

"§ 113-40. Donations of property for ~~forestry or~~ park purposes; agreements with federal government or agencies for acquisition.

The Department is hereby authorized and empowered to accept gifts, donations or contributions of land suitable for ~~forestry or~~ park purposes and to enter into agreements with the federal government or other agencies for acquiring by lease, purchase or otherwise such lands as in the judgment of the Department are desirable for ~~State forests or~~ State parks.

"§ 113-41. Expenditure of funds for development, etc.; disposition of products from lands; rules.

When lands are acquired or leased under G.S. 113-40, the Department is hereby authorized to make expenditures from any funds not otherwise obligated, for the management, development and utilization of such areas; to sell or otherwise dispose of products from such

lands, and to make such rules as may be necessary to carry out the purposes of G.S. 113-40 to 113-44.

"**§ 113-42. Disposition of revenues received from lands acquired.**

All revenues derived from lands now owned or later acquired under the provisions of G.S. 113-40 to 113-44 shall be set aside for the use of the Department in acquisition, management, development and use of such lands until all obligations incurred have been paid in full. Thereafter, fifty percent (50%) of all net profits accruing from the administration of such lands shall be applicable for such purposes as the General Assembly may prescribe, and fifty percent (50%) shall be paid into the school fund to be used in the county or counties in which lands are located.

"**§ 113-43. State not obligated for debts created hereunder.**

Obligations for the acquisition of land incurred by the Department under the authority of G.S. 113-40 to 113-44 shall be paid solely and exclusively from revenues derived from such lands and shall not impose any liability upon the general credit and taxing power of the State.

"**§ 113-44. Disposition of lands acquired.**

The Department shall have full power and authority to sell, exchange or lease lands under its jurisdiction when in its judgment it is advantageous to the State to do so in the highest orderly development and management of ~~State forests and~~ State parks: Provided, however, said sale, lease or exchange shall not be contrary to the terms of any contract which it has entered into."

SECTION 1.(o) Chapter 106 of the General Statutes is amended by adding a new Article to read:

"Article 71.

"Acquisition and Control of State Forests.

"**§ 106-840. Policy and plan to be inaugurated by Department of Agriculture and Consumer Services.**

(a) In this Article, unless the context requires otherwise, "Department" means the Department of Agriculture and Consumer Services and "Commissioner" means Commissioner of Agriculture.

(b) The Department shall inaugurate the following policy and plan looking to the cooperation with private and public forest owners in this State insofar as funds may be available through legislative appropriation, gifts of money or land, or such cooperation with landowners and public agencies as may be available:

(1) The extension of the forest fire prevention organization to all counties in the State needing such protection.

(2) To cooperate with federal and other public agencies in the restoration of forest growth on land unwisely cleared and subsequently neglected.

(3) To furnish trained and experienced experts in forest management, to inspect private forestlands and to advise forest landowners with a view to the general observance of recognized and practical rules of growing, cutting, and marketing timber. The services of such trained experts of the Department must naturally be restricted to those landowners who agree to carry out so far as possible the recommendations of said Department.

(4) To prepare and distribute printed and other material for the use of teachers and club leaders and to provide instruction to schools and clubs and other groups of citizens in order to train the younger generation in the principles of wise use of our forest resources.

(5) To acquire small areas of suitable land in the different regions of the State on which to establish small, model forests which shall be developed and used by the said Department as State demonstration forests for experiment and demonstration in forest management.

"**§ 106-841. Growing of timber on unused State lands authorized.**

The Department of Administration may allocate to the Department, for management as a State forest, any vacant and unappropriated lands, any marshlands or swamplands, and any other lands title to which is vested in the State or in any State agency or institution, where such lands are not being otherwise used and are not suitable for cultivation. Lands under the supervision of the Wildlife Resources Commission and designated and in use as wildlife management areas, refuges, or fishing access areas and lands used as research stations shall not be subject to the provisions of this section. The Department shall plant timber-producing trees on all lands allocated to it for that purpose by the Department of Administration. The Commissioner may contract with the appropriate prison authorities for the furnishing, upon such conditions as may be agreed upon from time to time between such prison authorities and the Commissioner, of prison labor for use in the planting, cutting, and removal of timber from State forests which are under the management of the Department.

"**§ 106-842. Use of lands acquired by counties through tax foreclosures as demonstration forests.**

The boards of county commissioners of the various counties of North Carolina are herewith authorized to turn over to the said Department title to such tax-delinquent lands as may have been acquired by said counties under tax sale and as in the judgment of the Commissioner may be suitable for the purposes named in subdivision (5) of subsection (b) of G.S. 106-840.

"**§ 106-843. Procedure for acquisition of delinquent tax lands from counties.**

In the carrying out of the provisions of G.S. 106-842, the several boards of county commissioners shall furnish forthwith on written request of the Department a complete list of all properties acquired by the county under tax sale and which have remained unredeemed for a period of two years or more. On receipt of this list, the Commissioner shall have the lands examined and if any one or more of these properties is in the Commissioner's judgment suitable for the purposes set forth in G.S. 106-842, request shall be made to the county commissioners for the acquisition of such land by the Department at a price not to exceed the actual amount of taxes due without penalties. On receipt of this request the county commissioners shall make permanent transfer of such tract or tracts of land to the Department through fee-simple deed or other legal transfer, said deed to be approved by the Attorney General of North Carolina, and shall then receive payment from the Department as above outlined.

"**§ 106-844. Purchase of lands for use as demonstration forests.**

Where no suitable tax-delinquent lands are available and, in the judgment of the Department, the establishment of a demonstration forest is advisable, the Department may purchase sufficient land for the establishment of such a demonstration forest at a fair and agreed-upon price, the deed for such land to be subject to approval of the Attorney General, but nothing in G.S. 106-840 to G.S. 106-845 shall allow the Department to acquire land under the right of eminent domain.

"**§ 106-845. Forest management appropriation.**

Necessary funds for carrying out the provisions of G.S. 106-840 and G.S. 106-842 to G.S. 106-845 shall be set up in the regular budget as an item entitled "forest management."

"**§ 106-846. Power to acquire lands as State forests; donations or leases by United States; leases for recreational purposes.**

(a) The Governor may, upon recommendation of the Department, accept gifts of land to the State to be held, protected, and administered by the Department as State forests, and to be used so as to demonstrate the practical utility of timber culture and water conservation, and as refuges for game. The gifts of land must be absolute except in cases where the mineral interest on the land has previously been sold. The Department may purchase lands in the name of the State, suitable chiefly for the production of timber, as State forests, for experimental, demonstration, educational, and protection purposes, using for these purposes any special appropriations or funds available. The Department may acquire by condemnation under the

provisions of Chapter 40A of the General Statutes, areas of land in different sections of the State that may in the opinion of the Department be necessary for the purpose of establishing or developing State forests and other areas and developments essential to the effective operation of the State forestry activities under its charge. Condemnation proceedings shall be instituted and prosecuted in the name of the State, and any property so acquired shall be administered, developed, and used for experiment and demonstration in forest management, for public recreation, and for other purposes authorized or required by law. Before any action or proceeding under this section can be exercised, the approval of the Governor and Council of State shall be obtained and filed with the clerk of the superior court in the county or counties where the property is located. The Attorney General shall ensure that all deeds to the State for land acquired under this section are properly executed before the gift is accepted or payment of the purchase money is made.

(b) The Department may accept as gifts to the State any forest and submarginal farmland acquired by the federal government that is suitable for the purpose of creating and maintaining State forests or enter into longtime leases with the federal government for the areas and administer them with funds secured from their administration in the best interest of longtime public use, supplemented by any appropriations made by the General Assembly. The Department may segregate revenue derived from State hunting and fishing licenses, use permits, and concessions, and other proper revenue secured through the administration of State forests, to be deposited in the State treasury to the credit of the Department to be used for the administration of these areas.

(c) The authority granted to the Department under this section is in addition to any authority granted to the Department under any other provision of law.

"**§ 106-847. State timber may be sold by Department; forest nurseries; operation of public service facilities; concessions to private concerns; authority to charge fees and adopt rules.**

(a) Timber and other products of State forests may be sold, cut, and removed under rules of the Department. The Department may establish and operate forest tree nurseries and forest tree seed orchards. Forest tree seedlings and seed from these nurseries and seed orchards may be sold to landowners of the State for purposes of forestation under rules adopted by the Department. When the Commissioner determines that a surplus of seedlings or seed exists, this surplus may be sold, and the sale shall be in conformity with the following priority of sale: first, to agencies of the federal government for planting in the State of North Carolina; second, to commercial nurseries and nurserymen within this State; and third, without distinction, to federal agencies, to other states, and to recognized research organizations for planting either within or outside of this State. The Department shall make reasonable rules governing the use by the public of State forests under its charge. These rules shall be posted in conspicuous places on and adjacent to the properties of the State and at the courthouse of the county or counties in which the properties are located. A violation of these rules is punishable as a Class 3 misdemeanor.

(b) The Department may construct, operate, and maintain within the State forests and other areas under its charge suitable public service facilities and conveniences, and may charge and collect reasonable fees for the use of these facilities and conveniences. The Department may also charge and collect reasonable fees for hunting privileges on State forests and fishing privileges in State forests, provided that these privileges shall be extended only to holders of State hunting and fishing licenses who comply with all State game and fish laws.

(c) The Department may grant to private individuals or companies concessions for operation of public service facilities for such periods and upon such conditions as the Department deems to be in the public interest. The Department may adopt reasonable rules for the regulation of the use by the public of the lands and waters under its charge and of the public

service facilities and conveniences authorized under this section. A violation of these rules is punishable as a Class 3 misdemeanor.

(d) The authority granted to the Department under this section is in addition to any authority granted to the Department under any other provision of law.

"**§ 106-848. Applications of proceeds from sale of products.**

(a) Application of Proceeds Generally. – Except as provided in this section, all money received from the sale of wood, timber, minerals, or other products from the State forests shall be paid into the State treasury and to the credit of the Department; and such money shall be expended in carrying out the purposes of this Article and of forestry in general, under the direction of the Commissioner.

(b) Tree Cone and Seed Purchase Fund. – A percentage of the money obtained from the sale of seedlings and remaining unobligated at the end of a fiscal year shall be placed in a special, continuing, and nonreverting Tree Cone and Seed Purchase Fund under the control and direction of the Commissioner. The percentage of the sales placed in the Fund shall not exceed ten percent (10%). At the beginning of each fiscal year, the Commissioner shall select the percentage for the upcoming fiscal year depending upon the anticipated costs of tree cones and seeds which the Department must purchase. Money in this Fund shall not be allowed to accumulate in excess of the amount needed to purchase a four-year supply of tree cones and seed and shall be used for no purpose other than the purchase of tree cones and seeds.

(c) Forest Seedling Nursery Program Fund. – The Forest Seedling Nursery Program Fund is created within the Department of Environment and Natural Resources, Division of Forest Resources, as a special revenue fund. Except as provided in subsection (b) of this section, this Fund shall consist of receipts from the sale of seed and seedlings as authorized in G.S. 106-847 and any gifts, bequests, or grants for the benefit of this Fund. No General Fund appropriations shall be credited to this Fund. Any balance remaining in this Fund at the end of any fiscal year shall not revert. The Department may use this Fund only to develop, improve, repair, maintain, operate, or otherwise invest in the Forest Seedling Nursery Program.

(d) Bladen Lakes State Forest Fund. – The Bladen Lakes State Forest Fund is created within the Department of Environment and Natural Resources, Division of Forest Resources, as a special revenue fund. This Fund shall consist of receipts from the sale of forest products from Bladen Lakes State Forest as authorized in G.S. 106-847 and any gifts, bequests, or grants for the benefit of this Fund. No General Fund appropriations shall be credited to this Fund. Any balance remaining in this Fund at the end of any fiscal year shall not revert. The Department may use this Fund only to develop, improve, repair, maintain, operate, or otherwise invest in the Bladen Lakes State Forest.

"**§ 106-849. Legislative authority necessary for payment.**

Nothing in this Article shall operate or be construed as authority for the payment of any money out of the State treasury for the purchase of lands or for other purposes unless by appropriation for said purpose by the General Assembly.

"**§ 106-850. Distribution of funds from sale of forestlands.**

All funds paid by the National Forest Commission, by authority of act of Congress, approved May 23, 1908, (35 Stat. 260), for the Counties of Avery, Buncombe, Burke, Craven, Haywood, Henderson, Hyde, Jackson, Macon, Montgomery, Swain, Transylvania, Watauga, and Yancey, shall be paid to the proper county officers, and said funds shall, when received, be placed in the account of the general county funds: Provided, however, that in Buncombe County said funds shall be entirely for the use and benefit of the school administrative unit in which said national forestlands shall be located.

All funds which may hereafter come into the hands of the State Treasurer from like sources shall be likewise distributed.

"**§ 106-851. License fees for hunting and fishing on government-owned property unaffected.**

No wording in G.S. 113-307.1(a), or any other North Carolina public, local, or special act, shall be construed to abrogate the vested rights of the State of North Carolina to collect fees for license for hunting and fishing on any government-owned land or in any government-owned stream in North Carolina including the license for county, State, or nonresident hunters or fishermen; or upon any lands or in any streams hereafter acquired by the federal government within the boundaries of the State of North Carolina. The lands and streams within the boundaries of the Great Smoky Mountains National Park are exempt from this section.

"**§ 106-852. Donations of property for forestry purposes; agreements with federal government or agencies for acquisition.**

The Department is authorized to accept gifts, donations, or contributions of land suitable for forestry purposes and to enter into agreements with the federal government or other agencies for acquiring by lease, purchase, or otherwise such lands as in the judgment of the Department are desirable for State forests.

"**§ 106-853. Expenditure of funds for development, etc.; disposition of products from lands; rules.**

When lands are acquired or leased under G.S. 106-852, the Department may make expenditures from any funds not otherwise obligated, for the management, development, and utilization of such areas; to sell or otherwise dispose of products from such lands, and to make such rules as may be necessary to carry out the purposes of G.S. 106-852 to G.S. 106-856.

"**§ 106-854. Disposition of revenues received from lands acquired.**

All revenues derived from lands now owned or later acquired under the provisions of G.S. 106-852 to G.S. 106-856 shall be set aside for the use of the Department in acquisition, management, development, and use of such lands until all obligations incurred have been paid in full. Thereafter, fifty percent (50%) of all net profits accruing from the administration of such lands shall be applicable for such purposes as the General Assembly may prescribe and fifty percent (50%) shall be paid into the school fund to be used in the county or counties in which lands are located.

"**§ 106-855. State not obligated for debts created hereunder.**

Obligations for the acquisition of land incurred by the Department under the authority of G.S. 106-852 to G.S. 106-856 shall be paid solely and exclusively from revenues derived from such lands and shall not impose any liability upon the general credit and taxing power of the State.

"**§ 106-856. Disposition of lands acquired.**

The Department shall have full power and authority to sell, exchange, or lease lands under its jurisdiction when in its judgment it is advantageous to the State to do so in the highest orderly development and management of State forests: Provided, however, said sale, lease, or exchange shall not be contrary to the terms of any contract which it has entered into."

SECTION 1.(p) Article 4 of Chapter 113 of the General Statutes (G.S. 113-51, 113-52, 113-53.1, 113-54, 113-55, 113-55.1, 113-55.2, 113-56, 113-56.1, 113-57, 113-58, 113-59, 113-60, 113-60.1, 113-60.2, and 113-60.3) is recodified as a new Article 72 of Chapter 106 of the General Statutes, G.S. 106-860 through G.S. 106-875.

SECTION 1.(q) Article 72 of Chapter 106 of the General Statutes, as recodified under subsection (p) of this section, reads as rewritten:

"Article 72.

"Protection and Development of Forests; Fire Control.

"**§ 106-860. Powers of Department of ~~Environment and Natural Resources.~~Agriculture and Consumer Services.**

(a) The Department of ~~Environment and Natural Resources~~Agriculture and Consumer Services may take such action as it may deem necessary to provide for the prevention and control of forest fires in any and all parts of this State, and it is hereby authorized to enter into

an agreement with the Secretary of Agriculture of the United States for the protection of the forested watersheds of streams in this State.

(b) In this Article, unless the context requires otherwise:

(1) "Commissioner" means the Commissioner of Agriculture.

~~(1)~~(2) "Department" means the Department of ~~Environment and Natural Resources.~~Agriculture and Consumer Services.

~~(2) "Secretary" means the Secretary of Environment and Natural Resources.~~

"§ 106-861. Forest rangers.

The ~~Secretary~~ Commissioner may appoint one county forest ranger and one or more deputy forest rangers in each county of the State in which, after careful investigation, the amount of forestland and the risks from forest fires shall, in his judgment, warrant the establishment of a forest fire organization.

"§ 106-862. Forest laws defined.

The forest laws consist of:

(1) G.S. 14-136 to G.S. 14-140;

(2) Articles ~~2, 4, 4A, 4C, and 6A~~71 through 79 of this Chapter;

(3) G.S. 77-13 and G.S. 77-14;

(4) Other statutes enacted for the protection of forests and woodlands from fire, insects, or disease and concerning obstruction of streams and ditches in forests and woodlands; and

(5) Regulations and ordinances adopted under the authority of the above statutes.

"§ 106-863. Duties of forest rangers; payment of expenses by State and counties.

Forest rangers shall have charge of measures for controlling forest fires, protection of forests from pests and diseases, and the development and improvement of the forests for maximum production of forest products; shall post along highways and in other conspicuous places copies of the forest fire laws and warnings against fires, which shall be supplied by the ~~Secretary;~~Commissioner; shall patrol and man lookout towers and other points during dry and dangerous seasons under the direction of the ~~Secretary;~~Commissioner; and shall perform such other acts and duties as shall be considered necessary by the ~~Secretary~~ Commissioner in the protection, development and improvement of the forested area of each of the counties within the State. No county may be held liable for any part of the expenses thus incurred unless specifically authorized by the board of county commissioners under prior written agreement with the ~~Secretary;~~Commissioner; appropriations for meeting the county's share of such expenses so authorized by the board of county commissioners shall be provided annually in the county budget. For each county in which financial participation by the county is authorized, the ~~Secretary~~ Commissioner shall keep or cause to be kept an itemized account of all expenses thus incurred and shall send such accounts periodically to the board of county commissioners of said county; upon approval by the board of the correctness of such accounts, the county commissioners shall issue or cause to be issued a warrant on the county treasury for the payment of the county's share of such expenditures, said payment to be made within one month after receipt of such statement from the ~~Secretary.~~Commissioner. Appropriations made by a county for the purposes set out in Articles ~~4, 4A, 4C and 6A~~72, 73, 75, and 79 of this Chapter in the cooperative forest protection, development and improvement work are not to replace State and federal funds which may be available to the ~~Secretary~~ Commissioner for the work in said county, but are to serve as a supplement thereto. Funds appropriated to the Department for a fiscal year for the purposes set out in Articles ~~4, 4A, 4C and 6A~~72, 73, 75, and 79 of this Chapter shall not be expended in a county unless that county shall contribute at least twenty-five percent (25%) of the total cost of the forestry program.

"§ 106-864. Powers of forest rangers to prevent and extinguish fires; authority to issue citations and warning tickets.

(a) Forest rangers shall prevent and extinguish forest fires and shall have control and direction of all persons and equipment while engaged in the extinguishing of forest fires. During a season of drought, the ~~Secretary~~ Commissioner or his designate may establish a fire patrol in any district, and in case of fire in or threatening any forest or woodland, the forest ranger shall attend forthwith and use all necessary means to confine and extinguish such fire. The forest ranger or deputy forest ranger may summon any resident between the ages of 18 and 45 years, inclusive, to assist in extinguishing fires and may require the use of crawler tractors and other property needed for such purposes; any person so summoned and who is physically able who refuses or neglects to assist or to allow the use of equipment and such other property required shall be guilty of a Class 3 misdemeanor and upon conviction shall only be subject to a fine of not less than fifty dollars ($50.00) nor more than one hundred dollars ($100.00). No action for trespass shall lie against any forest ranger, deputy forest ranger, or person summoned by him for crossing lands, backfiring, burning out or performing his duties as a forest ranger or deputy forest ranger.

(b) Forest rangers are authorized to issue and serve citations under the terms of G.S. 15A-302 and warning tickets under the terms of ~~G.S. 113-55.2~~G.S. 106-866 for offenses under the forest laws. This subsection may not be interpreted to confer the power of arrest on forest rangers, and does not make them criminal justice officers within the meaning of G.S. 17C-2.

"§ 106-865. Powers of forest law-enforcement officers.

The ~~Secretary~~ Commissioner is authorized to appoint as many forest law-enforcement officers as he deems necessary to carry out the forest law-enforcement responsibilities of the Department. Forest law-enforcement officers shall have all the powers and the duties of a forest ranger enumerated in ~~G.S. 113-54 and 113-55.~~G.S. 106-863 and G.S. 106-864. Forest law-enforcement officers shall, in addition to their other duties, have the powers of peace officers to enforce the forest laws. Any forest law-enforcement officer may arrest, without warrant, any person or persons committing any crime in his presence or whom such officer has probable cause for believing has committed a crime in his presence and bring such person or persons forthwith before a district court or other officer having jurisdiction. Forest law-enforcement officers shall also have authority to obtain and serve warrants including warrants for violation of any duly promulgated rule of the Department.

"§ 106-866. Warning tickets for violations of the forest laws.

(a) To encourage the cooperation of the public in achieving the objectives of the forest laws, the ~~Secretary~~ Commissioner may provide for the issuance of warning tickets instead of the initiation of criminal prosecution by forest rangers and forest law-enforcement officers. Issuance of the warning tickets shall be in accordance with criteria administratively promulgated by the ~~Secretary~~ Commissioner within the requirements of this section. These criteria are exempt from Article 2A of Chapter 150B of the General Statutes.

(b) No warning ticket may be issued unless all of the following conditions are met:

(1) The forest ranger or the forest law-enforcement officer must be convinced that the offense was not committed intentionally.

(2) The offense is not one, or a type of offense, for which the ~~Secretary~~ Commissioner has prohibited the issuance of warning tickets.

(3) At the time of the violation it was not reasonably foreseeable that the conduct of the offender could result in any significant destruction of forests or woodlands or constitute a hazard to the public.

(c) A warning ticket may not be issued if the offender has previously been charged with, or issued a warning ticket for, the same or a similar offense within the preceding three years. A list of persons who have been issued warning tickets under this section within the preceding three years shall be maintained and periodically updated by the ~~Secretary.~~Commissioner.

(d) This section does not entitle any person who has committed an offense to the right to be issued a warning ticket, and the issuance of a warning ticket does not prohibit the later initiation of criminal prosecution for the same offense for which the warning ticket was issued.

"§ 106-867. Compensation of forest rangers.

Forest rangers shall receive compensation from the Department at a reasonable rate to be fixed by said Department for the time actually engaged in the performance of their duties; and reasonable expenses for equipment, transportation, or food supplies incurred in the performance of their duties, according to an itemized statement to be rendered the ~~Secretary~~ Commissioner every month, and approved by him. Forest rangers shall render to the ~~Secretary~~ Commissioner a statement of the services rendered by the men employed by them or their deputy rangers, as provided in this Article, within one month of the date of service, which bill shall show in detail the amount and character of the service performed, the exact duration thereof, the name of each person employed, and any other information required by the ~~Secretary.~~Commissioner. If said bill be duly approved by the ~~Secretary,~~Commissioner, it shall be paid by direction of the Department out of any funds provided for that purpose.

"§ 106-868. 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 involved in fighting forest fires.

"§ 106-869. Woodland defined.

For the purposes of this Article, woodland is taken to include all forest areas, both timber and cutover land, and all second-growth stands on areas that have at one time been cultivated.

"§ 106-870. Misdemeanor to destroy posted forestry notice.

Any person who shall maliciously or willfully destroy, deface, remove, or disfigure any sign, poster, or warning notice, posted by order of the ~~Secretary,~~Commissioner, under the provisions of this Article, or any other act which may be passed for the purpose of protecting and developing the forests in this State, shall be guilty of a Class 3 misdemeanor.

"§ 106-871. Cooperation between counties and State in forest protection and development.

The board of county commissioners of any county is hereby authorized and empowered to cooperate with the Department in the protection, reforestation, and promotion of forest management of their own forests within their respective counties, and to appropriate and pay out of the funds under their control such amount as is provided in ~~G.S. 113-54.~~G.S. 106-863.

"§ 106-872. Instructions on forest preservation and development.

(a) It shall be the duty of all district, county, township rangers, and all deputy rangers provided for in this Chapter to distribute in all of the public schools and high schools of the county in which they are serving as such fire rangers all such tracts, books, periodicals and other literature that may, from time to time, be sent out to such rangers by the State and federal forestry agencies touching or dealing with forest preservation, development, and forest management.

(b) It shall be the duty of the various rangers herein mentioned under the direction of the ~~Secretary,~~Commissioner, and the duty of the teachers of the various schools, both public and high schools, to keep posted at some conspicuous place in the various classrooms of the school buildings such appropriate bulletins and posters as may be sent out from the forestry agencies herein named for that purpose and keep the same constantly before their pupils; and said teachers and rangers shall prepare lectures or talks to be made to the pupils of the various schools on the subject of forest fires, their origin and their destructive effect on the plant life and tree life of the forests of the State, the development and scientific management of the forests of the State, and shall be prepared to give practical instruction to their pupils from time to time and as often as they shall find it possible so to do.

"**§ 106-873. Authority of Governor to close forests and woodlands to hunting, fishing and trapping.**

During periods of protracted drought or when other hazardous fire conditions threaten forest and water resources and appear to require extraordinary precautions, the Governor of the State, upon the joint recommendation of the ~~Secretary~~ Commissioner and the Executive Director of the North Carolina Wildlife Resources Commission, may by official proclamation:

(1) Close any or all of the woodlands and inland waters of the State to hunting, fishing and trapping for the period of the emergency.

(2) Forbid for the period of the emergency the building of campfires and the burning of brush, grass or other debris within 500 feet of any woodland in any county, counties, or parts thereof.

(3) Close for the period of the emergency any or all of the woodlands of the State to such other persons and activities as he deems proper under the circumstances, except to the owners or tenants of such property and their agents and employees, or persons holding written permission from any owner or his recognized agent to enter thereon for any lawful purpose other than hunting, fishing or trapping.

"**§ 106-874. Publication of proclamation; annulment thereof.**

Such proclamation shall become effective 24 hours after certified time of issue, and shall be published in such newspapers and posted in such places and in such manner as the Governor may direct. It shall be annulled in the same manner by another proclamation by the Governor when he is satisfied, upon joint recommendation of the ~~Secretary~~ Commissioner and the Executive Director of the North Carolina Wildlife Resources Commission, that the period of the emergency has passed.

"**§ 106-875. Violation of proclamation a misdemeanor.**

Any person, firm or corporation who enters upon any woodlands or inland waters of the State for the purpose of hunting, fishing or trapping, or who builds a campfire or burns brush, grass or other debris within 500 feet of any woodland, after a proclamation has been issued by the Governor forbidding such activities, or who violates any other provisions of the Governor's proclamation with regard to permissible activities in closed woodlands shall be guilty of a Class 1 misdemeanor."

SECTION 1.(r) Article 4A of Chapter 113 of the General Statutes (G.S. 113-60.4, 113-60.5, 113-60.6, 113-60.7, 113-60.8, 113-60.9, 113-60.10) is recodified as a new Article 73 of Chapter 106 of the General Statutes, G.S. 106-880 through G.S. 106-886.

SECTION 1.(s) Article 73 of Chapter 106 of the General Statutes, as recodified under subsection (r) of this section, reads as rewritten:

"Article 73.

"Protection of Forest Against Insect Infestation and Disease.

"**§ 106-880. Purpose and intent.**

(a) The purpose of this Article is to place within the Department of ~~Environment and Natural Resources,~~Agriculture and Consumer Services the authority and responsibility for investigating insect infestations and disease infections which affect stands of forest trees, the devising of control measures for interested landowners and others, and taking measures to control, suppress, or eradicate outbreaks of forest insect pests and tree diseases.

(b) In this Article, unless the context requires otherwise, the expression "Department" means the Department of ~~Environment and Natural Resources; "Secretary"~~Agriculture and Consumer Services, and "Commissioner" means the ~~Secretary of Environment and Natural Resources.~~Commissioner of Agriculture.

"**§ 106-881. Authority of the Department.**

The authority and responsibility for carrying out the purpose, intent and provisions of this Article are hereby delegated to the Department. The administration of the provisions of this

Article shall be under the general supervision of the ~~Secretary.~~Commissioner. ~~The provisions of this Article shall not abrogate or change any power or authority as may be vested in the North Carolina Department of Agriculture and Consumer Services under existing statutes.~~

"§ 106-882. Definitions.

As used in this Article, unless the context clearly requires otherwise:

(1) "Control zone" means an area of potential or actual infestation or infection, boundaries of which are fixed and clearly described in a manner to definitely identify the zone.

(2) "Forestland" means land on which forest trees occur.

(3) "Forest trees" means only those trees which are a part and constitute a stand of potential immature or mature commercial timber trees, provided that the term "forest trees" shall be deemed to include shade trees of any species around houses, along highways, and within cities and towns, if the same constitute insect and disease menaces to nearby timber trees or timber stands.

(4) "Infection" means attack by any disease affecting forest trees which is declared by the ~~Secretary~~ Commissioner to be dangerously injurious thereto.

(5) "Infestation" means attack by means of any insect, which is by the ~~Secretary~~ Commissioner declared to be dangerously injurious to forest trees.

"§ 106-883. Action against insects and diseases.

Whenever the ~~Secretary,~~Commissioner, or his agent, determines that there exists an infestation of forest insect pests or an infection of forest tree diseases, injurious or potentially injurious to the timber or forest trees within the State of North Carolina, and that said infestation or infection is of such a character as to be a menace to the timber or forest growth of the State, the ~~Secretary~~ Commissioner shall declare the existence of a zone of infestation or infection and shall declare and fix boundaries so as to definitely describe and identify said zone of infestation or infection, and the ~~Secretary~~ Commissioner or his agent shall give notice in writing by mail or otherwise to each forest landowner within the designated control zone advising him of the nature of the infestation or infection, the recommended control measures, and offer him technical advice on methods of carrying out controls.

"§ 106-884. Authority of ~~Secretary~~ Commissioner and his agents to go upon private land within control zones.

The ~~Secretary~~ Commissioner or his agents shall have the power to go upon the land within any zone of infestation or infection and take measures to control, suppress or eradicate the insect, infestation or disease infection. If any person refuses to allow the ~~Secretary~~ Commissioner or his agents to go upon his land, or if any person refuses to adopt adequate means to control or eradicate the insect, infestation or disease infection, the ~~Secretary~~ Commissioner may apply to the superior court of the county in which the land is located for an injunction or other appropriate remedy to restrain the landowner from interfering with the ~~Secretary~~ Commissioner or his agents in entering the control zone and adopting measures to control, suppress or eradicate the insect infestation or disease infection, provided the cost of court or control thereof shall not be a liability against the forest landowner nor constitute a lien upon the real property of such infested area.

"§ 106-885. Cooperative agreements.

In order to more effectively carry out the purposes of this Article, the Department is ~~hereby~~ authorized to enter into cooperative agreement with the federal government and other public and private agencies, and with the owners of forestland.

"§ 106-886. Annulment of control zone.

Whenever the ~~Secretary~~ Commissioner determines that the forest insect or disease control work within a designated control zone is no longer necessary or feasible, then the ~~Secretary~~

Commissioner shall declare the zone of infestation or infection no longer pertinent to the purposes of this Article and such zone will then no longer be recognized."

SECTION 1.(t) Article 4B of Chapter 113 of the General Statutes (G.S. 113-60.11, 113-60.12, 113-60.13, 113-60.14, and 113-60.15) is recodified as a new Article 74 of Chapter 106 of the General Statutes, G.S. 106-890 through G.S. 106-894.

SECTION 1.(u) G.S. 106-893, as recodified in subsection (t) of this section, reads as rewritten:

"**§ 106-893. Compact Administrator; North Carolina members of advisory committee.**

The ~~Secretary of Environment and Natural Resources~~Commissioner of Agriculture is hereby designated as Compact Administrator for this State and shall consult with like officials of the other member states and shall implement cooperation between such states in forest fire prevention and control.

At some time before the adjournment of each regular session of the General Assembly, the Governor shall choose one person from the membership of the House of Representatives, and shall choose one person from the membership of the Senate, who shall serve on the advisory committee of the Southeastern Interstate Forest Fire Protection Compact as provided for in Article III of said Compact. At the time of the selection of the House and Senate members of such advisory committee, the Governor shall choose one alternate member from the House of Representatives and one from the Senate who shall serve on such advisory committee in case of the death, absence or disability of the regular members so chosen."

SECTION 1.(v) G.S. 106-894, as recodified in subsection (t) of this section, reads as rewritten:

"**§ 106-894. Agreements with noncompact states.**

The Department of ~~Environment and Natural Resources~~Agriculture and Consumer Services is hereby authorized to enter into written agreements with the State forest fire control agency of any other state or any province of Canada which is party to a regional forest fire protection compact. The provisions of any written agreement entered into pursuant to this Article shall be substantially in the form of the authority heretofore granted under the provisions of this Article, Southeastern Interstate Forest Fire Protection Compact."

SECTION 1.(w) Article 4C of Chapter 113 of the General Statutes (G.S. 113-60.21, 113-60.22, 113-60.23, 113-60.24, 113-60.25, 113-60.26, 113-60.27, 113-60.28, 113-60.29, 113-60.30, and 113-60.31) is recodified as a new Article 75 of Chapter 106 of the General Statutes, G.S. 106-900 through G.S. 106-910.

SECTION 1.(x) Article 75 of Chapter 106 of the General Statutes, as recodified by subsection (w) of this section, reads as rewritten:

"Article 75.

"Regulation of Open Fires.

"**§ 106-900. Purpose and findings.**

The purpose of this Article is to regulate certain open burning in order to protect the public from the hazards of forest fires and air pollution and to adapt such regulation to the needs and circumstances of the different areas of North Carolina. The General Assembly finds that open burning in proximity to woodlands must be regulated in all counties to protect against forest fires and air pollution. The General Assembly further finds that in certain counties a high percentage of the land area contains organic soils or forest types which may pose greater problems of forest fire and air pollution controls, and that in counties in which a great amount of land-clearing operations is taking place on these organic soils or these forest types, additional control of open burning is required. The counties subject to the need for additional control are classified as high hazard counties for purpose of this Article.

"**§ 106-901. Definitions.**

As used in this Article:

(1) "Department" means the Department of ~~Environment and Natural Resources.~~Agriculture and Consumer Services.

(2) "Forest ranger" means the county forest ranger or deputy forest ranger designated under ~~G.S. 113-52.~~G.S. 106-861.

(3) "Person" means any individual, firm, partnership, corporation, association, public or private institution, political subdivision, or government agency.

(4) "Woodland" means woodland as defined in ~~G.S. 113-57.~~G.S. 106-869.

"§ 106-902. High hazard counties; permits required; standards.

(a) The provisions of this section apply only to the counties of Beaufort, Bladen, Brunswick, Camden, Carteret, Chowan, Craven, Currituck, Dare, Duplin, Gates, Hyde, Jones, Onslow, Pamlico, Pasquotank, Perquimans, Tyrrell, and Washington which are classified as high hazard counties in accordance with ~~G.S. 113-60.21.~~G.S. 106-900.

(b) It is unlawful for any person to willfully start or cause to be started any fire in any woodland under the protection of the Department or within 500 feet of any such woodland without first having obtained a permit from the Department. Permits for starting fires may be obtained from forest rangers or other agents authorized by the county forest ranger to issue such permits in the county in which the fire is to be started. Such permits shall be issued by the ranger or other agent unless permits for the area in question have been prohibited or cancelled in accordance with ~~G.S. 113-60.25 or 113-60.27.~~G.S. 106-904 or G.S. 106-906.

(c) It is unlawful for any person to willfully burn any debris, stumps, brush or other flammable materials resulting from ground clearing activities and involving more than five contiguous acres, regardless of the proximity of the burning to woodland and on which such materials are placed in piles or windrows without first having obtained a special permit from the Department. Areas less than five acres in size will require a regular permit in accordance with ~~G.S. 113-60.23(b).~~G.S. 106-902(b).

(1) Prevailing winds at the time of ignition must be away from any city, town, development, major highway, or other populated area, the ambient air of which may be significantly affected by smoke, fly ash, or other air contaminates from the burning.

(2) The location of the burning must be at least 1,000 feet from any dwelling or structure located in a predominately residential area other than a dwelling or structure located on the property on which the burning is conducted unless permission is granted by the occupants.

(3) The amount of dirt or organic soil on or in the material to be burned must be minimized and the material arranged in a way suitable to facilitate rapid burning.

(4) Burning may not be initiated when it is determined by a forest ranger, based on information supplied by a competent authority that stagnant air conditions or inversions exist or that such conditions may occur during the duration of the burn.

(5) Heavy oils, asphaltic material, or items containing natural or synthetic rubber may not be used to ignite the material to be burned or to promote the burning of such material.

(6) Initial burning may be commenced only between the hours of 9:00 A.M. and 3:00 P.M. and no combustible material may be added to the fire between 3:00 P.M. on one day and 9:00 A.M. on the following day, except that when favorable meteorological conditions exist, any forest ranger authorized to issue the permit may authorize in writing a deviation from the restrictions.

"§ 106-903. Open burning in non-high hazard counties; permits required; standards.

(a) The provisions of this section apply only to the counties not designated as high hazard counties in ~~G.S. 113-60.23(a).~~G.S. 106-902(a).

(b) It shall be unlawful for any person to start or cause to be started any fire or ignite any material in any woodland under the protection of the Department or within 500 feet of any such woodland during the hours starting at midnight and ending at 4:00 P.M. without first obtaining a permit from the Department. Permits may be obtained from forest rangers or other agents authorized by the forest ranger to issue such permits in the county in which the fire is to be started. Such permits shall be issued by the ranger or other agent unless permits for the area in question have been prohibited or cancelled under ~~G.S. 113-60.25 or 113-60.27.~~ G.S. 106-904 or G.S. 106-906.

"§ 106-904. Open burning prohibited statewide.

During periods of hazardous forest fire conditions or during air pollution episodes declared pursuant to Article 21B of Chapter 143 of the General Statutes, the ~~secretary~~ Commissioner is authorized to prohibit all open burning regardless of whether a permit is required under ~~G.S. 113-60.23 or 113-60.24.~~G.S. 106-902 or G.S. 106-903. The ~~secretary~~ Commissioner shall issue a press release containing relevant details of the prohibition to news media serving the area affected.

"§ 106-905. Permit conditions.

Permits issued under this Article shall be issued in the name of the person undertaking the burning and shall specify the specific area in which the burning is to occur, the type and amount of material to be burned, the duration of the permit, and such other factors as are necessary to identify the burning which is allowed under the permit.

"§ 106-906. Permit suspension and cancellation.

Upon a determination that hazardous forest fire conditions exist the ~~secretary~~ Commissioner is authorized to cancel any permit issued under this Article and suspend the issuance of any new permits. Upon a determination by the Environmental Management Commission or its agent that open burning permitted under this Article is causing significant contravention of ambient air quality standards or that an air pollution episode exists pursuant to Article 21B of Chapter 143 of the General Statutes, the ~~secretary~~ Commissioner shall cancel any permits issued under authority of this Article and shall suspend the issuance of any new permits.

"§ 106-907. Control of existing fires.

(a) If a fire is set without a permit required by ~~G.S. 113-60.23, 113-60.24 or 113-60.25~~G.S. 106-902, 106-903, or 106-904, and is set in an area in which permits are prohibited or cancelled at the time the fire is set, the person responsible for setting the fire or causing the fire to be set shall immediately extinguish the fire or take such other action as directed by any forest ranger authorized to issue permits under ~~G.S. 113-60.23(c).~~G.S. 106-902(c). In the event that the person responsible does not immediately undertake efforts to extinguish the fire or take such other action as directed by the forest ranger, the Department may enter the property and take reasonable steps to extinguish or control the fire and the person responsible for setting the fire shall reimburse the Department for the expenses incurred by the Department. A showing that a fire is associated with land-clearing activities is prima facie evidence that the person undertaking the land clearing is responsible for setting the fire or causing the fire to be set.

(b) If a fire requiring a permit under ~~G.S. 113-60.23(c)~~G.S. 106-902(c) is set without a permit and a forest ranger authorized to issue such permits determines that a permit would not have been issued for the fire at the time it was set, the person responsible for setting the fire or causing the fire to be set shall immediately take such action as the forest ranger directs to extinguish or control the fire. In the event the person responsible does not immediately undertake efforts to extinguish the fire or take such other action as directed by the forest ranger, the Department may enter the property and take reasonable steps to extinguish or control the fire and the person responsible for setting the fire shall reimburse the Department for the expenses incurred by the Department. A showing that a fire is associated with land-clearing

activities is prima facie evidence that the person undertaking the land clearing is responsible for setting the fire or causing the fire to be set.

(c) If a fire is set in accordance with a permit but the burning is taking place contrary to the conditions of the permit, any forest ranger with authority to issue permits in the area in question may order the permittee in writing to undertake the steps necessary to comply with the conditions of his permit. If the permittee is not making a reasonable effort to comply with the order, the forest ranger may enter the property and take reasonable steps to extinguish or control the fire and the permittee shall reimburse the Department for the expenses incurred by the Department.

"**§ 106-908. Penalties.**

Any person violating the provisions of this Article or of any permit issued under the authority of this Article shall be guilty of a Class 3 misdemeanor. The penalties imposed by this section shall be separate and apart and not in lieu of any civil or criminal penalties which may be imposed by G.S. 143-215.114A or G.S. 143-215.114B. The penalties imposed are also in addition to any liability the violator incurs as a result of actions taken by the Department under ~~G.S. 113-60.28.~~G.S. 106-907.

"**§ 106-909. Effect on other laws.**

This Article shall not be construed as affecting or abridging the lawful authority of local governments to pass ordinances relating to open burning within their boundaries. Nothing in this Article shall relieve any person from compliance with the provisions of Article 21B of Chapter 143 of the General Statutes and regulations adopted thereunder. In the event that permits are required for open burning associated with land clearing under the authority of Article 21B of Chapter 143 of the General Statutes, the authority to issue such permits shall be delegated to forest rangers who are authorized to issue permits under ~~G.S. 113-60.23(c).~~G.S. 106-902(c).

"**§ 106-910. Exempt fires; no permit fees.**

(a) This Article shall not apply to any fires started, or caused to be started, within 100 feet of an occupied dwelling house if such fire shall be confined (i) within an enclosure from which burning material may not escape or (ii) within a protected area upon which a watch is being maintained and which is provided with adequate fire protection equipment.

(b) No charge shall be made for the granting of any permit required by this Article."

SECTION 1.(y) Article 4D of Chapter 113 of the General Statutes (G.S. 113-60.32 and G.S. 113-60.33) is recodified as a new Article 76 of Chapter 106 of the General Statutes, G.S. 106-911 and G.S. 106-912.

SECTION 1.(z) Article 76 of Chapter 106 of the General Statutes, as recodified by subsection (y) of this section, reads as rewritten:

"Article 76.

"Fire Fighters on Standby Duty.

"**§ 106-911. Definitions.**

As used in this Article:

(1) "Fire fighter" means an employee of the Division of Forest Resources of the Department of ~~Environment and Natural Resources~~Agriculture and Consumer Services who engages in fire suppression duties.

(2) "Fire suppression duties" means involvement in on-site fire suppression, participation in Project Fire Team while it is mobilized, Operations Room duty during on-going fires or when required by high readiness plans, mop-up activities to secure fire sites, scouting and detecting forest fires, performance of standby duty, and any other activity that directly contributes to the detection, response to, and control of fires.

"**§ 106-912. Standby duty.**

(a) Standby duty is time during which a fire fighter is required to remain within 25 miles of his duty station and be available to return to the duty station on call. The Department of Agriculture and Consumer Services shall provide each fire fighter on standby duty with an electronic paging device that makes the wearer accessible to his duty station.

(b) Notwithstanding subsection (a) of this section, for at least two out of 14 consecutive days that a fire fighter is on duty, the Department of ~~Environment and Natural Resources~~Agriculture and Consumer Services shall permit the fire fighter to be more than 25 miles from his duty station so long as the fire fighter gives the Department of ~~Environment and Natural Resources~~Agriculture and Consumer Services a telephone number where he can be reached; each month, the days the fire fighter is permitted to be more than 25 miles from his duty station shall include one full weekend. On the days the fire fighter is permitted to be more than 25 miles from his duty station, the Department of ~~Environment and Natural Resources~~ Agriculture and Consumer Services may call him only when there is a bona fide emergency."

SECTION 1.(aa) Article 4E of Chapter 113 of the General Statutes (G.S. 113-60.40, 113-60.41, 113-60.42, 113-60.43, 113-60.44, and 113-60.45) is recodified as a new Article 77 of Chapter 106 of the General Statutes, G.S. 106-920 through G.S. 106-925.

SECTION 1.(bb) Article 77 of Chapter 106 of the General Statutes, as recodified by subsection (aa) of this section, reads as rewritten:

"Article 77.

"North Carolina Prescribed Burning Act.

"§ 106-920. Legislative findings.

The General Assembly finds that prescribed burning of forestlands is a management tool that is beneficial to North Carolina's public safety, forest and wildlife resources, environment, and economy. The General Assembly finds that the following are benefits that result from prescribed burning of forestlands:

(1) Prescribed burning reduces the naturally occurring buildup of vegetative fuels on forestlands, thereby reducing the risk and severity of wildfires and lessening the loss of life and property.

(2) The State's ever-increasing population is resulting in urban development directly adjacent to fire-prone forestlands, referred to as a woodland-urban interface area. The use of prescribed burning in these woodland-urban interface areas substantially reduces the risk of wildfires that cause damage.

(3) Many of North Carolina's natural ecosystems require periodic fire for their survival. Prescribed burning is essential to the perpetuation, restoration, and management of many plant and animal communities. Prescribed burning benefits game, nongame, and endangered wildlife species by increasing the growth and yield of plants that provide forage and an area for escape and brooding and that satisfy other habitat needs.

(4) Forestlands are economic, biological, and aesthetic resources of statewide significance. In addition to reducing the frequency and severity of wildfires, prescribed burning of forestlands helps to prepare sites for replanting and natural seeding, to control insects and diseases, and to increase productivity.

(5) Prescribed burning enhances the resources on public use lands, such as State and national forests, wildlife refuges, nature preserves, and game lands. Prescribed burning enhances private lands that are managed for wildlife refuges, nature preserves, and game lands. Prescribed burning enhances private lands that are managed for wildlife, recreation, and other purposes.

As North Carolina's population grows, pressures resulting from liability issues and smoke complaints discourage or limit prescribed burning so that these numerous benefits to forestlands often are not attainable. By recognizing the benefits of prescribed burning and by

adopting requirements governing prescribed burning, the General Assembly helps to educate the public, avoid misunderstandings, and reduce complaints about this valuable management tool.

"**§ 106-921. Definitions.**

As used in this Article:

(1) "Certified prescribed burner" means an individual who has successfully completed a certification program approved by the Division of Forest Resources of the Department of ~~Environment and Natural Resources.~~Agriculture and Consumer Services.

(2) "Prescribed burning" means the planned and controlled application of fire to naturally occurring vegetative fuels under safe weather and safe environmental and other conditions, while following appropriate precautionary measures that will confine the fire to a predetermined area and accomplish the intended management objectives.

(3) "Prescription" means a written plan prepared by a certified prescribed burner for starting, controlling, and extinguishing a prescribed burning.

"**§ 106-922. Immunity from liability.**

(a) Any prescribed burning conducted in compliance with ~~G.S. 113-60.43~~G.S. 106-923 is in the public interest and does not constitute a public or private nuisance.

(b) A landowner or the landowner's agent who conducts a prescribed burning in compliance with ~~G.S. 113-60.43~~G.S. 106-923 shall not be liable in any civil action for any damage or injury caused by or resulting from smoke.

(c) Notwithstanding subsections (a) and (b), this section does not apply when a nuisance or damage results from a negligently or improperly conducted prescribed burning.

"**§ 106-923. Prescribed burning.**

(a) Prior to conducting a prescribed burning, the landowner shall obtain a prescription for the prescribed burning prepared by a certified prescribed burner and filed with the Division of Forest Resources, Department of ~~Environment and Natural Resources.~~Agriculture and Consumer Services. A copy of the prescription shall be provided to the landowner. A copy of this prescription shall be in the possession of the responsible burner on site throughout the duration of the prescribed burning. The prescription shall include:

(1) The landowner's name and address.

(2) A description of the area to be burned.

(3) A map of the area to be burned.

(4) An estimate in tons of the fuel located on the area.

(5) The objectives of the prescribed burning.

(6) A list of the acceptable weather conditions and parameters for the prescribed burning sufficient to minimize the likelihood of smoke damage and fire escaping onto adjacent areas.

(7) The name of the certified prescribed burner responsible for conducting the prescribed burning.

(8) A summary of the methods that are adequate for the particular circumstances involved to be used to start, control, and extinguish the prescribed burning.

(9) Provision for reasonable notice of the prescribed burning to be provided to nearby homes and businesses to avoid effects on health and property.

(b) The prescribed burning shall be conducted by a certified prescribed burner in accordance with a prescription that satisfies subsection (a) of this section. The certified prescribed burner shall be present on the site and shall be in charge of the burning throughout the period of the burning. A landowner may conduct a prescribed burning without being a certified prescribed burner if the landowner is burning a tract of forestland of 50 acres or less

owned by that landowner and is following all conditions established in a prescription prepared by a certified prescribed burner.

(c) Prior to conducting a prescribed burning, the landowner or the landowner's agent shall obtain an open-burning permit under Article 4C of this Chapter from the Division of Forest Resources, Department of ~~Environment and Natural Resources.~~Agriculture and Consumer Services. This open-burning permit must remain in effect throughout the period of the prescribed burning. The prescribed burning shall be conducted in compliance with all the following:

(1) The terms and conditions of the open-burning permit under ~~Article 4C~~Article 75 of this Chapter.

(2) The State's air pollution control statutes under Article 21 and Article 21B of Chapter 143 of the General Statutes and any rules adopted pursuant to these statutes.

(3) Any applicable local ordinances relating to open burning.

(4) The voluntary smoke management guidelines adopted by the Division of Forest Resources, Department of ~~Environment and Natural Resources.~~Agriculture and Consumer Services.

(5) Any rules adopted by the Division of Forest Resources, Department of ~~Environment and Natural Resources,~~Agriculture and Consumer Services, to implement this Article.

"§ 106-924. Adoption of rules.

The Division of Forest Resources, Department of ~~Environment and Natural Resources,~~Agriculture and Consumer Services, may adopt rules that govern prescribed burning under this Article.

"§ 106-925. Exemption.

This Article does not apply when the ~~Secretary of Environment and Natural Resources~~Commissioner of Agriculture has cancelled burning permits pursuant to ~~G.S. 113-60.27~~G.S. 106-906 or prohibited all open burning pursuant to ~~G.S. 113-60.25.~~G.S. 106-904."

SECTION 1.(cc) Article 5 of Chapter 113 of the General Statutes (G.S. 113-61, 113-62, 113-63, 113-64, 113-65, 113-66, 113-67, 113-68, 113-69, 113-70, 113-71, 113-72, 113-73, 113-74, 113-75, 113-76, and 113-77) is recodified as a new Article 78 of Chapter 106 of the General Statutes, G.S. 106-930 through G.S. 106-946.

SECTION 1.(dd) Article 78 of Chapter 106 of the General Statutes, as recodified by subsection (cc) of this section, reads as rewritten:

"Article 78.

"Corporations for Protection and Development of Forests.

"§ 106-930. Private limited dividend corporations may be formed.

(a) In this Article, unless the context requires otherwise, "Department" means the Department of ~~Environment and Natural Resources; and "Secretary"~~Agriculture and Consumer Services, and "Commissioner" means the ~~Secretary of Environment and Natural Resources.~~Commissioner of Agriculture.

(b) Three or more persons, who associate themselves by an agreement in writing for the purpose, may become a private limited dividend corporation to finance and carry out projects for the protection and development of forests and for such other related purposes as the ~~Secretary~~ Commissioner shall approve, subject to all the duties, restrictions and liabilities, and possessing all the rights, powers, and privileges, of corporations organized under the general corporation laws of the State of North Carolina, except where such provisions are in conflict with this Article.

"§ 106-931. Manner of organizing.

A corporation formed under this Article shall be organized and incorporated in the manner provided for organization of corporations under the general corporation laws of the State of North Carolina, except where such provisions are in conflict with this Article. The certificate of organization of any such corporation shall contain a statement that it is organized under the provisions of this Article and that it consents to be and shall be at all times subject to the rules and supervision of the ~~Secretary,~~Commissioner, and shall set forth as or among its purposes the protection and development of forests and the purchase, acquisition, sale, conveyance and other dealing in the same and the products therefrom, subject to the rules from time to time imposed by the ~~Secretary.~~Commissioner.

"§ 106-932. Directors.

There shall not be less than three directors, one of whom shall always be a person designated by the ~~Secretary,~~ Commissioner, which one need not be a stockholder.

"§ 106-933. Duties of supervision by ~~Secretary of Environment and Natural Resources.~~Commissioner.

Corporations formed under this Article shall be regulated by the ~~Secretary~~ Commissioner in the manner provided in this Article. Traveling and other expenses incurred by him in the discharge of the duties imposed upon him by this Article shall be charged to, and paid by, the particular corporation or corporations on account of which such expenses are incurred. His general expenses incurred in the discharge of such duties which cannot be fairly charged to any particular corporation or corporations shall be charged to, and paid by, all the corporations then organized and existing under this Article pro rata according to their respective stock capitalizations. The ~~Secretary~~ Commissioner shall:

(1) Adopt rules to implement this Article and to protect and develop forests subject to its jurisdiction.

(2) Order all corporations organized under this Article to do such acts as may be necessary to comply with the provisions of law and the rules adopted by the ~~Secretary,~~Commissioner, or to refrain from doing any acts in violation thereof.

(3) Keep informed as to the general condition of all such corporations, their capitalization and the manner in which their property is permitted, operated or managed with respect to their compliance with all provisions of law and orders of the ~~Secretary.~~Commissioner.

(4) Require every such corporation to file with the ~~Secretary~~ Commissioner annual reports and, if the ~~Secretary~~ Commissioner shall consider it advisable, other periodic and special reports, setting forth such information as to its affairs as the ~~Secretary~~ Commissioner may require.

"§ 106-934. Powers of ~~Secretary.~~Commissioner.

The ~~Secretary~~ Commissioner may:

(1) Examine at any time all books, contracts, records, documents and papers of any such corporation.

(2) In his discretion prescribe uniform methods and forms of keeping accounts, records and books to be observed by such corporation, and prescribe by order accounts in which particular outlays and receipts are to be entered, charged or credited. The ~~Secretary~~ Commissioner shall not, however, have authority to require any revaluation of the real property or other fixed assets of such corporations, but he shall allow proper charges for the depletion of timber due to cutting or destruction.

(3) Enforce the provisions of this Article, a rule implementing this Article, or an order issued under this Article by filing a petition for a writ of mandamus or application for an injunction in the superior court of the county in which the respondent corporation has its principal place of business. The final

judgment in any such proceeding shall either dismiss the proceeding or direct that a writ of mandamus or an injunction, or both, issue as prayed for in the petition or in such modified or other form as the court may determine will afford appropriate relief.

"§ 106-935. Provision for appeal by corporations to Governor.

If any corporation organized under this Article is dissatisfied with or aggrieved at any rule or order imposed upon it by the ~~Secretary,~~Commissioner, or any valuation or appraisal of any of its property made by the ~~Secretary,~~Commissioner, or any failure of or refusal by the ~~Secretary~~ Commissioner to approve of or consent to any action which it can take only with such approval or consent, it may appeal to the Governor by filing with him a claim of appeal upon which the decision of the Governor shall be final. Such determination, if other than a dismissal of the appeal, shall be set forth by the Governor in a written mandate to the ~~Secretary,~~Commissioner, who shall abide thereby and take such actions as the same may direct.

"§ 106-936. Limitations as to dividends.

The shares of stock of corporations organized under this Article shall have a par value and, except as provided in ~~G.S. 113-69~~G.S. 106-938 in respect to distributions in kind upon dissolution, no dividend shall be paid thereon at a rate in excess of six per centum (6%) per annum on stock having a preference as to dividends, or eight per centum (8%) per annum on stock not having a preference as to dividends, except that any such dividends may be cumulative without interest.

"§ 106-937. Issuance of securities restricted.

No such corporation shall issue stock, bonds or other securities except for money, timberlands, or interests therein, located in the State of North Carolina or other property, actually received, or services rendered, for its use and its lawful purposes. Timberlands, or interests therein, and other property or services so accepted therefor, shall be upon a valuation approved by the ~~Secretary.~~Commissioner.

"§ 106-938. Limitation on bounties to stockholders.

Stockholders shall at no time receive or accept from any such corporation in repayment of their investment in its stock any sums in excess of the par value of the stock together with cumulative dividends at the rate set forth in ~~G.S. 113-67~~G.S. 106-936 except that nothing in this section contained shall be construed to prohibit the distribution of the assets of such corporation in kind to its stockholders upon dissolution thereof.

"§ 106-939. Earnings above dividend requirements payable to State.

Any earnings of such corporation in excess of the amounts necessary to pay dividends to stockholders at the rate set forth in ~~G.S. 113-67~~G.S. 106-936 shall be paid over to the State of North Carolina prior to the dissolution of such corporation. Net income or net losses (determined in such manner as the ~~Secretary~~ Commissioner shall consider properly to show such income or losses) from the sale of the capital assets of such corporation, whether such sale be upon dissolution or otherwise, shall be considered in determining the earnings of such corporation for the purposes of this section. In determining such earnings unrealized appreciation or depreciation of real estate or other fixed assets shall not be considered.

"§ 106-940. Dissolution of corporation.

Any such corporation may be dissolved at any time in the manner provided by and under the provisions of the general corporation laws of the State of North Carolina, except that the court shall dismiss any petition for dissolution of any such corporation filed within 20 years of the date of its organization unless the same is accompanied by a certificate of the ~~Secretary~~ Commissioner consenting to such dissolution.

"§ 106-941. Cutting and sale of timber.

Any such corporation may cut and sell the timber on its land or permit the cutting thereof, but all such cuttings shall be in accordance with the rules, restrictions and limitations imposed by the ~~Secretary,~~Commissioner, who shall impose such rules, restrictions and limitations with

respect thereto as may reasonably conform to the accepted custom and usage of good forestry and forest economy, taking into consideration the situation, nature and condition of the tract so cut or to be cut, and the financial needs of such corporation from time to time.

"§ 106-942. Corporation may not sell or convey without consent of ~~Secretary,~~Commissioner, or pay higher interest rate than 6%.

No such corporation ~~shall:~~shall do any of the following:

(1) Sell, assign or convey any real property owned by it or any right, title or interest therein, except upon notice to the ~~Secretary~~ Commissioner of the terms of such sale, transfer or assignment, and unless the ~~Secretary~~ Commissioner shall consent thereto, and if the ~~Secretary~~ Commissioner shall require it, unless the purchaser thereof shall agree that such real estate shall remain subject to the rules and supervision of the ~~Secretary~~ Commissioner for such period as the latter may ~~require;~~require.

(2) Pay interest returns on its mortgage indebtedness at a higher rate than six per centum (6%) per annum without the consent of the ~~Secretary;~~Commissioner.

(3) Mortgage any real property without first having obtained the consent of the ~~Secretary.~~Commissioner.

"§ 106-943. Power to borrow money limited.

Any such corporation formed under this Article may, subject to the approval of the ~~Secretary,~~Commissioner, borrow funds and secure their payment thereof by note or notes and mortgage or by the issue of bonds under a trust indenture. The notes or bonds so issued and secured and the mortgage or trust indenture relating thereto may contain such clauses and provisions as shall be approved by the ~~Secretary,~~Commissioner, including the right to enter into possession in case of default; but the operations of the mortgagee or receiver entering in such event or of the purchaser of the property upon foreclosure shall be subject to the rules of the ~~Secretary~~ Commissioner for such period as the mortgage or trust indenture may specify.

"§ 106-944. ~~Secretary~~ Commissioner to approve development of forests.

No project for the protection and development of forests proposed by any such corporation shall be undertaken without the approval of the ~~Secretary,~~Commissioner, and such approval shall not be given unless:

(1) The ~~Secretary~~ Commissioner shall have received a statement duly executed and acknowledged on behalf of the corporation proposing such project, in such adequate detail as the ~~Secretary~~ Commissioner shall require of the activities to be included in the project, such statement to set forth the proposals as to

a. Fire prevention and protection,
b. Protection against insects and tree diseases,
c. Protection against damage by livestock and game,
d. Means, methods and rate of, and restrictions upon, cutting and other utilization of the forests, and
e. Planting and spacing of trees.

(2) There shall be submitted to the ~~Secretary~~ Commissioner a financial plan satisfactory to him setting forth in detail the amount of money needed to carry out the entire project, and how such sums are to be allocated, with adequate assurances to the ~~Secretary~~ Commissioner as to where such funds are to be secured.

(3) The ~~Secretary~~ Commissioner shall be satisfied that the project gives reasonable assurance of the operation of the forests involved on a sustained-yield basis except insofar as the ~~Secretary~~ Commissioner shall consider the same impracticable.

(4) The corporation proposing such project shall agree that the project shall at all times be subject to the supervision and inspection of the ~~Secretary,~~Commissioner, and that it will at all times comply with such rules concerning the project as the ~~Secretary~~ Commissioner shall from time to time impose.

"**§ 106-945. Application of corporate income.**

The gross annual income of any such corporation, whether received from sales of timber, timber operations, stumpage permits or other sources, shall be applied as follows: first, to the payment of all fixed charges, and all operating and maintenance charges and expenses including taxes, assessments, insurance, amortization charges in amounts approved by the ~~Secretary~~ Commissioner to amortize mortgage or other indebtedness and reserves essential to operation; second, to surplus, and/or to the payment of dividends not exceeding the maximum fixed by this Article; third, the balance, if any, in reduction of debts.

"**§ 106-946. Reorganization of corporations.**

Reorganization of corporations organized under this Article shall be subject to the supervision of the ~~Secretary~~ Commissioner and no such reorganization shall be had without the authorization of the ~~Secretary.~~Commissioner."

SECTION 1.(ee) Article 6A of Chapter 113 of the General Statutes (G.S. 113-81.1, 113-81.2, and 113-81.3) is recodified as a new Article 79 of Chapter 106 of the General Statutes, G.S. 106-950 through G.S. 106-952.

SECTION 1.(ff) Article 79 of Chapter 106 of the General Statutes, as recodified by subsection (ee) of this section, reads as rewritten:

"Article 79.

"Forestry Services and Advice for Owners and Operators of Forestland.

"**§ 106-950. Authority to render scientific forestry services.**

(a) In this Article, unless the context requires otherwise:

(1) "Commissioner" means the Commissioner of Agriculture.

~~(1)~~(2) "Department" means the Department of ~~Environment and Natural Resources.~~Agriculture and Consumer Services.

~~(2) "Secretary" means the Secretary of Environment and Natural Resources.~~

(b) The Department is hereby authorized to designate, upon request, forest trees of forest landowners and forest operators for sale or removal, by blazing or otherwise, and to measure or estimate the volume of same under the terms and conditions hereinafter provided. The Department is also authorized to cooperate with landowners of the State and with counties, municipalities and State agencies by making available forestry services consisting of specialized equipment and operators, or by renting such equipment, and to perform such labor and services as may be necessary to carry out approved forestry practices, including site preparation, forest planting, prescribed burning, and other appropriate forestry practices. For such services or rentals, a reasonable fee representing the ~~Secretary's~~ Commissioner's estimate of not less than the costs of such services or rentals shall be charged, provided however, when the ~~Secretary~~ Commissioner deems it in the public interest, said services may be provided without charge, for the purpose of encouraging the use of approved scientific forestry practice on the private or other forestlands within the State, or for the purpose of providing practical demonstrations of said practices. Receipts from these activities and rentals shall be credited to the budget of the Department for the furtherance of these activities.

"**§ 106-951. Services under direction of ~~Secretary;~~Commissioner; compensation; when services without charge.**

(a) The administration of the provisions of this Article shall be under the direction of the ~~Secretary.~~Commissioner. The ~~Secretary,~~Commissioner, or his authorized agent, upon receipt of a request from a forest landowner or operator for technical forestry assistance or service, may designate forest trees for removal for lumber, veneer, poles, piling, pulpwood,

cordwood, ties, or other forest products by blazing, spotting with paint or otherwise designating in an approved manner; he may measure or estimate the commercial volume contained in the trees designated; he may furnish the landowner or operator with a statement of the volume of the trees so designated and estimated; he may assist in finding a suitable market for the products so designated, and he may offer general forestry advice concerning the management of the forest.

(b) For such designating, measuring or estimating services the ~~Secretary~~ Commissioner may make a charge, on behalf of the Department, in an amount not to exceed five percent (5%) of the sale price or fair market value of the stumpage so designated and measured or estimated. Upon receipt from the ~~Secretary~~ Commissioner of a statement of such charges, the landowner or operator or his agent shall make payment to the ~~Secretary~~ Commissioner within 30 days.

(c) In those cases where the ~~Secretary~~ Commissioner deems it desirable to so designate and measure or estimate trees without charge, such services shall be given for the purpose of encouraging the use of approved scientific forestry principles on the private or other forestlands within the State, and to establish practical demonstrations of said principles.

"**§ 106-952. Deposit of receipts with State treasury.**

All moneys paid to the ~~Secretary~~ Commissioner for services rendered under the provisions of this Article shall be deposited into the State treasury to the credit of the Department."

SECTION 1.(gg) Article 11 of Chapter 113A of the General Statutes (G.S. 113A-176, 113A-177, 113A-178, 113A-179, 113A-180, 113A-180.1, 113A-181, 113A-182, and 113A-183) is recodified as a new Article 80 of Chapter 106 of the General Statutes, G.S. 106-955 through G.S. 106-963.

SECTION 1.(hh) Article 80 of Chapter 106 of the General Statutes, as recodified by subsection (gg) of this section, reads as rewritten:

"Article 80.

"Forest Development Act.

"**§ 106-955. Title.**

This Article shall be known as the "Forest Development Act."

"**§ 106-956. Statement of purpose.**

(a) The General Assembly finds that:

(1) It is in the public interest of the State to encourage the development of the State's forest resources and the protection and improvement of the forest environment.

(2) Unfavorable environmental impacts, particularly the rapid loss of forest land to urban development, are occurring as a result of population growth. It is in the State's interest that corrective action be developed now to 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~~ Commissioner of Agriculture 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 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.

(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~~ Commissioner 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.

"§ 106-957. Definitions.

As used in this Article:

(1) "Approved forest management plan" means the forest management plan submitted by the eligible landowner and approved by the ~~Secretary.~~Commissioner. Such plan shall include forest management practices to insure both maximum forest productivity and environmental protection of the lands to be treated under the management plan.

(2) "Approved practices'" mean those silvicultural practices approved by the Secretary for the purpose of commercially growing timber through the establishment of forest stands, of insuring the proper regeneration of forest stands to commercial production levels following the harvest of mature 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, cultivation of established young growth of desirable trees for silvicultural purposes, and improvement of immature forest 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.

(2a) "Commissioner" means the Commissioner of Agriculture.

(3) "Department" means the Department of ~~Environment and Natural Resources.~~Agriculture and Consumer Services.

(3a) "Eligible land" means land owned by an eligible landowner.

(4) "Eligible landowner" means a private individual, group, association or corporation owning land suitable for forestry purposes. Where forest land is owned jointly by more than one individual, group, association or corporation, as tenants in common, tenants by the entirety, or otherwise, the joint owners shall be considered, for the purpose of this Article, as one eligible landowner and entitled to receive cost-sharing payments as provided herein only once during each fiscal year.

(5) Recodified as § 113A-178(3a).

(6) "Forest development assessment" means an assessment on primary forest products from timber severed in North Carolina for the funding of the provisions of this Article, as authorized by the General Assembly.

(7) "Forest development cost-sharing payment" means financial assistance to partially cover the costs of implementing approved practices in such amounts as the ~~Secretary~~ Commissioner shall determine, subject to the limitations of this Article.

(8) "Forest development fund" means the Forest Development Fund created by ~~G.S. 113A-183.~~G.S. 106-963.

(8a) "Maintain" means to retain the reforested area as forestland for a 10-year period and to comply with the provisions in the approved forest management plan.

~~(9) "Secretary" means the Secretary of Environment and Natural Resources.~~

"§ 106-958. Powers and duties.

(a) The ~~Secretary~~ Commissioner shall have the powers and duties to administer the provisions of this Article.

(b) The Department shall serve as the disbursing agency for funds to be expended from and deposited to the credit of the Forest Development Fund.

(c) Subject to the limitations set forth in ~~G.S. 113A-183(d),~~G.S. 106-963(d), the ~~Secretary~~ Commissioner is authorized to employ administrative, clerical and field personnel to support the program created by this Article and to compensate such employees from the Forest Development Fund for services rendered in direct support of the program.

(d) The ~~Secretary~~ Commissioner is authorized to purchase equipment for the implementation of this program from the Forest Development Fund subject to the limitations of ~~G.S. 113A-183(e).~~G.S. 106-963(e). All equipment purchased with these funds will be assigned to and used only for the forest development program, except for emergency use in forest fire suppression and other activities relating to the protection of life or property. The Forest Development Fund will be reimbursed from other program funds for equipment costs incurred during such emergency use.

"§ 106-959. Administration of cost sharing.

The ~~Secretary~~ Commissioner shall have authority to administer the cost sharing provisions of this Article, including but not limited to the following:

(1) Prescribe the manner and requirements of making application for cost sharing funds.

(2) Identify those approved forestry practices as defined in ~~G.S. 113A-178(2)~~G.S. 106-957(2) which shall be approved for cost sharing under the provisions of this Article.

(3) Review periodically the cost of forest development practices and establish allowable ranges for cost sharing purposes for approved practices under varying conditions throughout the State.

(4) Determine, prior to approving forest development cost sharing payments to any landowner, that all proposed practices are appropriate and are comparable in cost to the prevailing cost of those practices in the general area in which the land is located. Should the ~~Secretary~~ Commissioner determine that the submitted cost of any practice is excessive, he shall approve forest development cost sharing payments based upon an allowable cost established under ~~G.S. 113A-180(3).~~G.S. 106-959(3).

(5) Determine, prior to approving forest development cost sharing payments, that an approved forest management plan as defined in ~~G.S. 113A-178(1)~~G.S. 106-957(1) for the eligible land has been filed with the ~~Secretary~~ Commissioner and that the landowner has indicated in writing his intent to comply with the terms of such management plan.

(6) Determine, prior to approving forest development cost sharing payments, that the approved practices for which payment is requested have been completed in a satisfactory manner, conform to the approved forest management plan submitted under ~~G.S. 113A-180(5),~~G.S. 106-959(5), and otherwise meet the requirements of this Article.

(7) Disburse from the Forest Development Fund to eligible landowners cost sharing payments for satisfactory completion of practices provided for by this Article and the ~~Secretary~~ Commissioner shall, insofar as is practicable,

disburse the funds from the State's appropriation on a matching basis with the funds generated by the Primary Forest Product Assessment.

"**§ 106-960. Cost-share agreements.**

(a) In order to receive forest development cost-share payments, an eligible landowner shall enter into a written agreement with the Department describing the eligible land, setting forth the approved practices implemented for the area and covered by the approved forest management plan, and agreeing to maintain those practices for a 10-year period.

(b) In the absence of Vis major or Act of God or other factors beyond the landowner's control, a landowner who fails to maintain the practice or practices for a 10-year period in accordance with the agreement set forth in subsection (a) of this section shall repay to the Fund all cost-sharing funds received for that area.

(c) If the landowner voluntarily relinquishes control or title to the land on which the approved practices have been established, the landowner shall:

(1) Obtain a written statement, or a form approved by the Department, from the new owner or transferee in which the new owner or transferee agrees to maintain the approved practices for the remainder of the 10-year period; or

(2) Repay to the Fund all cost-sharing funds received for implementing the approved practices on the land.

If a written statement is obtained from the new owner or transferee, the original landowner will no longer be responsible for maintaining the approved practices or repaying the cost-sharing funds. The responsibility for maintaining those practices for the remainder of the 10 years shall devolve to the new owner or transferee.

"**§ 106-961. Limitation of payments.**

(a) An eligible landowner may receive forest development cost sharing payments for satisfactory completion of approved practices as determined by the ~~Secretary,~~Commissioner, except that the ~~Secretary~~ Commissioner shall approve no assistance in an amount exceeding the lesser of (i) a sum equal to sixty percent (60%) of the landowner's actual per acre cost incurred in implementing the approved practice or (ii) a sum equal to sixty percent (60%) of the prevailing per acre cost as determined by the ~~Secretary~~ Commissioner under ~~G.S. 113A-180(3)~~G.S. 106-959(3) for implementing that approved practice.

(b) The maximum amount of forest development cost sharing funds allowed to any landowner in one fiscal year will be the amount required to complete all approved practices on 100 acres of land at the prevailing cost sharing rate established under ~~G.S. 113A-181(a).~~G.S. 106-961(a).

(c) Eligible landowners may not use State cost sharing funds if funds from any federal cost sharing program are used on the same acreage for forestry practices during the same fiscal year.

"**§ 106-962. Participation by government political subdivisions.**

No governmental agency, federal, State or local, will be eligible for forest development payments under the provision of this Article.

"**§ 106-963. Forest Development Fund.**

(a) The Forest Development Fund is created in the Department ~~of Environment and Natural Resources~~ as a special fund. Revenue in the Fund does not revert at the end of a fiscal year, and interest and other investment income earned by the Fund accrues to it. The Fund is created to provide revenue to implement this Article. The Fund consists of the following revenue:

(1) Assessments on primary forest products collected under ~~Article 12 of Chapter 113A~~Article 81 of Chapter 106 of the General Statutes.

(2) General Fund appropriations.

(3) Gifts and grants made to the Fund.

(d) In any fiscal year, no more than five percent (5%) of the available funds generated by the Primary Forest Product Processor Assessment Act may be used for program support under the provisions of ~~G.S. 113A-179(c).~~G.S. 106-958(c).

(e) Funds used for the purchase of equipment under the provisions of ~~G.S. 113A-179(d)~~ G.S. 106-958(d) shall be limited to appropriations from the General Fund to the Forest Development Fund designated specifically for equipment purchase."

SECTION 1.(ii) Article 12 of Chapter 113A of the General Statutes (G.S. 113A-189, 113A-190, 113A-191, 113A-192, 113A-193, 113A-194, 113A-195, and 113A-196) is recodified as a new Article 81 of Chapter 106 of the General Statutes, G.S. 106-965 through G.S. 106-972.

SECTION 1.(jj) Article 81 of Chapter 106 of the General Statutes, as recodified by subsection (ii) of this section, reads as rewritten:

"Article 81.

"Primary Forest Product Assessment Act.

"§ 106-965. Short title.

This Article shall be known as the.Primary Forest Product Assessment Act.

"§ 106-966. Statement of purpose.

(a) The purpose of this Article is to create an assessment on primary forest products processed from North Carolina timber to provide a source of funds to finance the forestry operations provided for in the Forest Development Act of 1977.

(b) All assessments levied under the provisions of this Article shall be used only for the purposes specified in ~~G.S. 113A-193(e)~~G.S. 106-969(c) and in the Forest Development ~~Act.~~Act, Article 11 of this Chapter.

"§ 106-967. Definitions.

The following words, terms and phrases hereinafter used for the purpose of this Article are defined as follows:

(1) "Primary forest product" shall include those products of the tree after it is severed from the stump and cut to its first roundwood product for further conversion. These products include but are not limited to whole trees for chipping, whole tree logs, sawlogs, pulpwood, veneer bolts, and posts, poles and piling.

(2) "Processor" shall mean the individual, group, association, or corporation that procures primary forest products at their initial point of concentration for conversion to secondary products or for shipment to others for such conversion.

(3) "Forest Development Fund" shall mean the special fund established by ~~the Forest Development Act of 1977.~~G.S. 106-963.

(4) For the purpose of this Article, the following are not considered "primary forest products":

a. Christmas trees and associated greens;

b. Material harvested from an individual's own land and used on said land for the construction of fences, buildings or other personal use developments;

c. Fuel wood harvested for personal use or use in individual homes.

"§ 106-968. Operation of assessment system.

(a) The General Assembly hereby levies an assessment on all primary forest products harvested from lands within the State of North Carolina.

(b) This assessment shall be at the rates as established in ~~G.S. 113A-194(b)~~G.S. 106-970(b) and the proceeds of such assessment shall be deposited in the Forest Development Fund.

"§ 106-969. Duties.

(a) The Secretary, Department of Revenue, shall:
(1) Develop the necessary administrative procedures to collect the assessment;
(2) Collect the assessment from the primary forest product processors;
(3) Deposit funds collected from the assessment in the Forest Development Fund;
(4) Audit the records of processors to determine compliance with the provisions of this Article.

(b) The ~~Secretary of Environment and Natural Resources~~Commissioner of Agriculture shall:
(1) Provide to the Secretary, Department of Revenue, lists of processors subject to the assessment;
(2) Advise the Secretary, Department of Revenue, of the appropriate methods to convert measurements of primary forest products by other systems to those authorized in this Article;
(3) Establish in November prior to those sessions in which the General Assembly considers the State budget, the estimated total assessment that will be collectible in the next budget period and so inform the General Assembly;
(4) Within 30 days of certification of the State budget, notify the Secretary, Department of Revenue, of the need to collect the assessment for those years covered by the approved budget.
(5) By January 15 of each odd-numbered year, report to the General Assembly on the number of acres reforested, type of owners assisted, geographic distribution of funds, the amount of funds encumbered and other matters. The report shall include the information by forestry district and statewide and shall be for the two fiscal years prior to the date of the report.

(c) The Secretary of Revenue shall be reimbursed for those actual expenditures incurred as a cost of collecting the assessment for the Forest Development Fund. This amount shall be transferred from the Forest Development Fund in equal increments at the end of each quarter of the fiscal year to the Department of Revenue. This amount shall not exceed five percent (5%) of the total assessments collected on primary forest products during the preceding fiscal year.

"**§ 106-970. Assessment rates.**

(a) The assessment rates shall be based on the following standards:
(1) For primary forest products customarily measured in board feet, the "International 1/4 Inch Log Rule" or equivalent will be used;
(2) For primary forest products customarily measured in cords, the standard cord of 128 cubic feet or equivalent will be used;
(3) For any other type of forest product separated from the soil, the ~~Secretary of Environment and Natural Resources~~Commissioner of Agriculture shall determine a fair unit assessment rate, based on the cubic foot volume of one thousand foot board measure, International 1/4 Inch Log Rule or one standard cord, 128 cubic feet.

(b) The assessment levied on primary forest products shall be at the following rates:
(1) Fifty cents (50¢) per thousand board feet for softwood sawtimber, veneer logs and bolts, and all other softwood products normally measured in board feet;
(2) Forty cents (40¢) per thousand board feet for hardwood and bald cypress sawtimber, veneer, and all other hardwood and bald cypress products normally measured in board feet;
(3) Twenty cents (20¢) per cord for softwood pulpwood and other softwood products normally measured in cords;

(4) Twelve cents (12¢) per cord for hardwood pulpwood and other hardwood and bald cypress products normally measured in cords;

(5) All material harvested within North Carolina for shipment outside the State for primary processing will be assessed at a percentage of the invoice value. This percentage will be established to yield rates equal to those if the material were processed within the State.

"**§ 106-971. Collection of assessment.**

(a) The assessment shall be levied against the processor of the primary forest product.

(b) The assessment shall be submitted on a quarterly basis of the State's fiscal year due and payable the last day of the month following the end of each quarter.

(c) The assessment shall be remitted to the Secretary, Department of Revenue, by check or money order, with such production reports as may be required by said Secretary.

(d) The processor shall maintain for a period of three fiscal years and make available to the Secretary, Department of Revenue, such production records necessary to verify proper reporting and payment of revenue due the Forest Development Fund.

(e) The production reports of the various processors shall be used only for assessment purposes. Production information will not be made a part of the public record on an individual processor basis.

(f) Any official or employee of the State who discloses information obtained from a production report, except as may be necessary for administration and collection of the assessment, or in the performance of official duties, or in administration or judicial proceedings related to the levy or collection of the assessment, shall be guilty of a Class 3 misdemeanor punishable only by a fine not to exceed fifty dollars ($50.00).

"**§ 106-972. Enforcement of collection.**

The Secretary of Revenue shall enforce collection of the primary forest product assessment in accordance with the remedies and procedures contained in Article 9 of Chapter 105 of the General Statutes."

SECTION 1.(kk) G.S. 1-339.17(c1) reads as rewritten:

"(c1) When the public sale is a sale of timber by sealed bid, the notice shall also be given in writing, not less than 21 days before the date on which bids are opened, to a reasonable number of prospective timber buyers, which in all cases shall include the timber buyers listed in the office of the Division of Forest Resources <u>of the Department of Agriculture and Consumer Services</u> for the county or counties in which the timber to be sold is located."

SECTION 1.(ll) G.S. 20-81.12(b35) reads as rewritten:

"(b35) First in Forestry. – The Division must receive 300 or more applications for the First in Forestry plate before the plate may be developed. The Division shall transfer quarterly one-half of the money in the Collegiate and Cultural Attraction Plate Account derived from the sale of the First in Forestry plates to the Division of Forest Resources <u>of the Department of Agriculture and Consumer Services</u> for a State forests and forestry education program and shall transfer quarterly one-half of the money in the Collegiate and Cultural Attraction Plate Account derived from the sale of the First in Forestry plates to the Forest Education and Conservation Foundation for their programs."

SECTION 1.(mm) G.S. 97-2(2) reads as rewritten:

"(2) Employee. – The term "employee" means every person engaged in an employment under any appointment or contract of hire or apprenticeship, express or implied, oral or written, including aliens, and also minors, whether lawfully or unlawfully employed, but excluding persons whose employment is both casual and not in the course of the trade, business, profession, or occupation of his employer, and as relating to those so employed by the State, the term "employee" shall include all officers and employees of the State, including such as are elected by the people, or by the

General Assembly, or appointed by the Governor to serve on a per diem, part-time or fee basis, either with or without the confirmation of the Senate; as relating to municipal corporations and political subdivisions of the State, the term "employee" shall include all officers and employees thereof, including such as are elected by the people. The term "employee" shall include members of the North Carolina National Guard while on State active duty under orders of the Governor and members of the North Carolina State Defense Militia while on State active duty under orders of the Governor. The term "employee" shall include deputy sheriffs and all persons acting in the capacity of deputy sheriffs, whether appointed by the sheriff or by the governing body of the county and whether serving on a fee basis or on a salary basis, or whether deputy sheriffs serving upon a full-time basis or a part-time basis, and including deputy sheriffs appointed to serve in an emergency, but as to those so appointed, only during the continuation of the emergency. The sheriff shall furnish to the board of county commissioners a complete list of all deputy sheriffs named or appointed by him immediately after their appointment and notify the board of commissioners of any changes made therein promptly after such changes are made. Any reference to an employee who has been injured shall, when the employee is dead, include also his legal representative, dependents, and other persons to whom compensation may be payable: Provided, further, that any employee, as herein defined, of a municipality, county, or of the State of North Carolina, while engaged in the discharge of his official duty outside the jurisdictional or territorial limits of the municipality, county, or the State of North Carolina and while acting pursuant to authorization or instruction from any superior officer, shall have the same rights under this Article as if such duty or activity were performed within the territorial boundary limits of his employer.

Every executive officer elected or appointed and empowered in accordance with the charter and bylaws of a corporation shall be considered as an employee of such corporation under this Article.

Any such executive officer of a corporation may, notwithstanding any other provision of this Article, be exempt from the coverage of the corporation's insurance contract by such corporation's specifically excluding such executive officer in such contract of insurance, and the exclusion to remove such executive officer from the coverage shall continue for the period such contract of insurance is in effect, and during such period such executive officers thus exempted from the coverage of the insurance contract shall not be employees of such corporation under this Article.

All county agricultural extension service employees who do not receive official federal appointments as employees of the United States Department of Agriculture and who are field faculty members with professional rank as designated in the memorandum of understanding between the North Carolina Agricultural Extension Service, North Carolina State University, A & T State University, and the boards of county commissioners shall be deemed to be employees of the State of North Carolina. All other county agricultural extension service employees paid from State or county funds shall be deemed to be employees of the county board of commissioners in the county in which the employee is employed for purposes of workers' compensation.

The term "employee" shall also include members of the Civil Air Patrol currently certified pursuant to G.S. 143B-491(a) when performing duties in the course and scope of a State-approved mission pursuant to Article 11 of Chapter 143B of the General Statutes.

"Employee" shall not include any person performing voluntary service as a ski patrolman who receives no compensation for such services other than meals or lodging or the use of ski tow or ski lift facilities or any combination thereof.

Any sole proprietor or partner of a business or any member of a limited liability company may elect to be included as an employee under the workers' compensation coverage of such business if he is actively engaged in the operation of the business and if the insurer is notified of his election to be so included. Any such sole proprietor or partner or member of a limited liability company shall, upon such election, be entitled to employee benefits and be subject to employee responsibilities prescribed in this Article.

"Employee" shall include an authorized pickup firefighter of the Division of Forest Resources of the Department of ~~Environment and Natural Resources~~Agriculture and Consumer Services when that individual is engaged in emergency fire suppression activities for the Division of Forest Resources. As used in this section, "authorized pickup firefighter" means an individual who has completed required fire suppression training as a wildland firefighter and who is available as needed by the Division of Forest Resources for emergency fire suppression activities, including immediate dispatch to wildfires and standby for initial attack on fires during periods of high fire danger.

It shall be a rebuttable presumption that the term "employee" shall not include any person performing services in the sale of newspapers or magazines to ultimate consumers under an arrangement whereby the newspapers or magazines are to be sold by that person at a fixed price and the person's compensation is based on the retention of the excess of the fixed price over the amount at which the newspapers or magazines are charged to the person."

SECTION 1.(nn) G.S. 105-259(b)(41) reads as rewritten:

"(41) To furnish the Division of Forest Resources of the Department of ~~Environment and Natural Resources~~Agriculture and Consumer Services pertinent contact and financial information concerning companies that are involved in the primary processing of timber products so that the Secretary of Environment and Natural Resources is able to comply with G.S. 113A-193 under the Primary Forest Product Assessment Act."

SECTION 1.(oo) G.S. 105-277.7(a)(2) reads as rewritten:

"(2) A representative of the Division of Forest Resources of the Department of ~~Environment and Natural Resources,~~Agriculture and Consumer Services, designated by the Director of that Division."

SECTION 1.(pp) 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 of the Department of ~~Environment and Natural Resources,~~Agriculture and Consumer Services, 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). If the property loses its present-use value classification for failure to provide the requested information, the assessor must reinstate the property's present-use value classification when the owner submits the requested information within 60 days after the disqualification 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. The owner may appeal the final decision of the assessor to the county board of equalization and review as provided in G.S. 105-277.4(b1).

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 1.(qq) G.S. 106-202.14(b)(3) reads as rewritten:

"(3) The Division of Forest Resources, Department of ~~Environment and Natural Resources;~~Agriculture and Consumer Services;".

SECTION 1.(rr) G.S. 113-291.10(a)(3) reads as rewritten:

"(3) The Director of the Division of Forest Resources of the Department of ~~Environment and Natural Resources,~~Agriculture and Consumer Services, or a designee;".

SECTION 1.(ss) G.S. 143-166.2(d) reads as rewritten:

"(d) The term "law-enforcement officer", "officer", or "fireman" shall mean a sheriff and all law-enforcement officers employed full-time, permanent part-time, or temporarily by a sheriff, the State of North Carolina or any county or municipality thereof, whether paid or unpaid; and all full-time custodial employees and probation and parole officers of the North Carolina Department of Correction; and all full time institutional and full-time, permanent part-time, and temporary detention employees of the Department of Juvenile Justice and Delinquency Prevention and full-time, permanent part-time, and temporary detention officers employed by any sheriff, county or municipality, whether paid or unpaid. The term "firemen" shall mean both "eligible firemen" as defined in G.S. 58-86-25 and all full-time, permanent part-time and temporary employees of the ~~North Carolina~~ Division of Forest Resources, Department of ~~Environment and Natural Resources,~~Agriculture and Consumer Services, during the time they are actively engaged in fire-fighting activities; and shall mean all full-time employees of the North Carolina Department of Insurance during the time they are actively engaged in fire-fighting activities, during the time they are training fire fighters or rescue squad workers, and during the time they are engaged in activities as members of the State Emergency Response Team, when the Team has been activated; and shall mean all otherwise eligible persons who, while actively engaged as firefighters or rescue squad workers, are acting in the capacity of a fire or rescue instructor outside their own department or squad. The term "rescue squad worker" shall mean a person who is dedicated to the purpose of alleviating human suffering and assisting anyone who is in difficulty or who is injured or becomes suddenly ill by providing the proper and efficient care or emergency medical services. In addition, this person

must belong to an organized rescue squad which is eligible for membership in the North Carolina Association of Rescue Squads, Inc., and the person must have attended a minimum of 36 hours of training and meetings in the last calendar year. Each rescue squad belonging to the North Carolina Association of Rescue Squads, Inc., must file a roster of those members meeting the above requirements with the State Treasurer on or about January 1 of each year, and this roster must be certified to by the secretary of said association. In addition, the term "rescue squad worker" shall mean a member of an ambulance service certified by the Department of Health and Human Services pursuant to Article 7 of Chapter 131E of the General Statutes. The Department of Health and Human Services shall furnish a list of ambulance service members to the State Treasurer on or about January 1 of each year. The term "Civil Air Patrol members" shall mean those senior members of the North Carolina Wing-Civil Air Patrol 18 years of age or older and currently certified pursuant to G.S. 143B-491(a). The term "fireman" shall also mean county fire marshals when engaged in the performance of their county duties. The term "rescue squad worker" shall also mean county emergency services coordinators when engaged in the performance of their county duties."

SECTION 1.(tt) G.S. 143-166.7 reads as rewritten:

"**§ 143-166.7. Applicability of Article.**

The provisions of this Article shall apply and be in full force and effect with respect to any law-enforcement officer, fireman, rescue squad worker or senior Civil Air Patrol member killed in the line of duty on or after May 13, 1975. The provisions of this Article shall apply with respect to full-time, permanent part-time and temporary employees of ~~North Carolina~~ Division of Forest Resources, Department of ~~Environment and Natural Resources,~~Agriculture and Consumer Services, killed in line of duty on or after July 1, 1975. The provisions of this Article shall apply to county fire marshals and emergency services coordinators killed in the line of duty on and after July 1, 1988."

SECTION 1.(uu) G.S. 143-214.25A(a) reads as rewritten:

"(a) The Division of Water Quality of the Department shall develop a program to train and certify individuals to determine the presence of surface waters that would require the application of rules adopted by the Commission for the protection of riparian buffers. The Division may train and certify employees of the Division as determined by the Director of the Division of Water Quality; employees of units of local government to whom responsibility for the implementation and enforcement of the riparian buffer protection rules is delegated pursuant to G.S. 143-214.23; and Registered Foresters under Chapter 89B of the General Statutes who are employees of the Division of Forest Resources of the Department of Agriculture and Consumer Services as determined by the Director of the Division of Forest Resources. The Director of the Division of Water Quality may review the determinations made by individuals who are certified pursuant to this section, may override a determination made by an individual certified under this section, and, if the Director of the Division of Water Quality determines that an individual is failing to make correct determinations, revoke the certification of that individual."

SECTION 1.(vv) G.S. 143-215.74M(d)(11) reads as rewritten:

"(11) The Director of the Division of Forest Resources of the Department of Agriculture and Consumer Services or the Director's designee."

SECTION 1.(ww) G.S. 166A-18 reads as rewritten:

"**§ 166A-18. Division of Forest Resources designated as emergency response agency.**

The Division of Forest Resources of the Department of ~~Environment and Natural Resources~~Agriculture and Consumer Services is designated an emergency response agency of the State of North Carolina for purposes of:

(1) Supporting the Division of Emergency Management of the Department of Crime Control and Public Safety in responding to all-risk incidents.

(2) Receipt of any applicable State or federal funding.

(3) Training of other State and local agencies in disaster and emergency management.

(4) Any other disaster and emergency response roles for which the Division has special training or qualifications."

SECTION 1.(xx) The Revisor of Statutes shall make the conforming statutory changes necessary to reflect the transfers under this section. The Revisor of Statutes may correct any reference in the General Statutes to the statutes that are recodified by this section and make any other conforming changes necessitated by this section.

SECTION 1.(yy) The transfers under this section become effective July 1, 2011, and funds transferred shall be net of any changes enacted by this section.

SECTION 1.(zz) Any references in this act to the Division of Forest Resources of the Department of Environment and Natural Resources shall be construed to refer to the Division of Forest Resources of the Department of Agriculture and Consumer Services. Any references in this act to the Forestry Council of the Department of Environment and Natural Resources shall be construed to refer to the Forestry Council of the Department of Agriculture and Consumer Services.

SECTION 2. This act becomes effective July 1, 2011.

SENATE BILL 628

Short Title:	WQ Permitting/Compliance Rev. & Submissions.	(Public)
Sponsors:	Senators Hartsell and Bingham.	
Referred to:	Agriculture/Environment/Natural Resources.	

April 19, 2011

A BILL TO BE ENTITLED

AN ACT TO PROVIDE (1) THAT THE ENVIRONMENTAL MANAGEMENT COMMISSION SHALL DENY A WATER QUALITY PERMIT OR CERTIFICATION WHEN THE APPLICANT KNOWINGLY FALSIFIES INFORMATION OR FAILS TO DISCLOSE RELEVANT INFORMATION IN THE APPLICATION OR SUPPORTING INFORMATION AND (2) THAT THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES SHALL CONDUCT AN ENVIRONMENTAL COMPLIANCE REVIEW OF AN APPLICANT FOR A WATER QUALITY PERMIT OR CERTIFICATION PRIOR TO ISSUANCE OF A PERMIT OR CERTIFICATION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 143-215.6B(i) reads as rewritten:

"(i) Any person ~~who~~ who (i) intentionally withholds or omits information that is material to a permitting or certification determination; (ii) knowingly makes any false statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained under this Article or a rule implementing this Article; ~~or who~~ (iii) knowingly makes a false statement of a material fact in a rulemaking proceeding or contested case under this Article; or ~~who~~(iv) falsifies, tampers with, or knowingly renders inaccurate any recording or monitoring device or method required to be operated or maintained under this Article or rules of the Commission implementing this Article shall be guilty of a Class 2 misdemeanor which may include a fine not to exceed ten thousand dollars ($10,000). If information that is material to a permitting or certification determination is intentionally withheld, or if a false statement, representation, or certification is knowingly made in an application to the Commission for a permit or certification or in any data, plan, or other document submitted in support of an application for a permit or certification, then in addition to all other penalties imposed by this Article, the Commission shall deny the permit or certification."

SECTION 2. G.S. 143-215.1 is amended by adding a new subsection to read:

"(i) The Department shall:

(1) Conduct an environmental compliance review of each applicant for a water quality permit or certification under this Article. The environmental compliance review shall evaluate the environmental compliance history of the applicant for a period of five years prior to the date of the application and may cover a longer period at the discretion of the Department. The environmental compliance review of an applicant may include consideration of the environmental compliance history of the parents, subsidiaries, or other affiliates of an applicant or parent that is a business entity, including any business entity or joint venturer with a direct or indirect interest in the

applicant, and other facilities owned or operated by any of them. The Department shall determine the scope of the review of the environmental compliance history of the applicant, parents, subsidiaries, or other affiliates of the applicant or parent, including any business entity or joint venturer with a direct or indirect interest in the applicant, and of other facilities owned or operated by any of them. An applicant for a permit or certification shall provide environmental compliance history information for each facility, business entity, joint venture, or other undertaking in which any of the persons listed in this subsection is or has been an owner, operator, officer, director, manager, member, or partner, or in which any of the persons listed in this subsection has had a direct or indirect interest, as requested by the Department.

(2) Determine the extent to which the applicant, or a parent, subsidiary, or other affiliate of the applicant or parent, or a joint venturer with a direct or indirect interest in the applicant has substantially complied with the requirements applicable to any activity in which any of these entities previously engaged, including compliance with applicable effluent standards and limitations and waste management treatment practices, and has substantially complied with federal and State laws, regulations, and rules for the protection of the environment. The Department may deny an application for a water quality permit or certification if the applicant (i) has a history of significant or repeated violations of statutes, rules, orders, or permit terms or conditions for the protection of the environment or for the conservation of natural resources as evidenced by civil penalty assessments, administrative or judicial compliance orders, or criminal penalties or (ii) has intentionally withheld or omitted information that is material to a permitting or certification determination, or has knowingly made a false statement, representation, or certification in an application to the Commission for a permit or certification or in any data, plan, or other document submitted in support of an application for a permit or certification."

SECTION 3. G.S. 143-215.6B(b) reads as rewritten:

"(b) Commission's Power as to Permits. –

...

(4) The Commission shall have the power:

a. To grant a permit with such conditions attached as the Commission believes necessary to achieve the purposes of this Article.

b. To require that an applicant satisfy the Department that the applicant, or any parent, subsidiary, or other affiliate of the applicant or parent:

1. Is financially qualified to carry out the activity for which the permit is required under subsection (a) of this section; and

~~2. Has substantially complied with the effluent standards and limitations and waste management treatment practices applicable to any activity in which the applicant has previously engaged, and has been in substantial compliance with other federal and state laws, regulations, and rules for the protection of the environment.~~

3. As used in this subdivision, the words "affiliate," "parent," and "subsidiary" have the same meaning as in 17 Code of Federal Regulations § 240.12b-2 (April 1, 1990, Edition). For a privately owned treatment works that serves 15 or more service connections or that regularly serves 25 or more

individuals, financial qualification may be demonstrated through the use of a letter of credit, insurance, surety, trust agreement, financial test, bond, or a guarantee by corporate parents or third parties who can pass the financial test. No permit shall be issued under this section for a privately owned treatment works that serves 15 or more service connections or that regularly serves 25 or more individuals, until financial qualification is established and the issuance of the permit shall be contingent on the continuance of the financial qualification for the duration of the activity for which the permit was issued.

...."

SECTION 4. This act is effective when it becomes law and applies to applications for permits or certifications submitted on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

S D

SENATE BILL 676
PROPOSED COMMITTEE SUBSTITUTE S676-PCS55293-RI-16

Short Title: Clarify Water & Well Rights/Private Property. (Public)

Sponsors:

Referred to:

April 20, 2011

A BILL TO BE ENTITLED

AN ACT TO CLARIFY LANDOWNERS' RIGHTS OVER WATER ON THEIR PROPERTY AND THE CONSTRUCTION OF WELLS ON THEIR PROPERTY.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 87-97(a) reads as rewritten:

"(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. No person shall unduly delay or refuse to permit a well that can be constructed or repaired and operated in compliance with the requirements set out in this Article and rules adopted pursuant to this Article."

SECTION 2. G.S. 87-97(e) reads as rewritten:

"(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. Notwithstanding any other provision of law, no permit for a well that is in compliance with this Article and the rules adopted pursuant to this Article shall be denied on the basis of a local government policy that discourages or prohibits the drilling of new wells."

SECTION 3. G.S. 143-355.2(a)(4) is repealed.

SECTION 4. G.S. 143-355.2(h) reads as rewritten:

"(h) Water conservation measures imposed by a unit of local government that provides public water service or by a large community water system may be more stringent than the minimum water conservation measures required under this section. This subsection shall not be construed to authorize a unit of local government, public water supply system, or private water supply system to regulate water use from a well located outside of its jurisdiction, a well not connected to its water system, or any other private well. Nothing in this subsection shall be deemed to void or alter cross-jurisdictional agreements."

SECTION 5. G.S. 143-355.3(b) reads as rewritten:

"(b) Water Shortage Emergency Powers and Duties. – Whenever, pursuant to this Article, the Governor declares the existence of a water shortage emergency within a particular

area of the State, the Secretary shall have the powers and duties set out in subdivisions (1), (2), and (3) of this subsection. These powers may only be exercised within the designated water shortage emergency area, after the Secretary has consulted with the affected water systems and determined that the water shortage emergency cannot be effectively managed in the absence of exercising these powers, and only for the period of the water shortage emergency. Under these circumstances, the Secretary has the power and duty to:

(1) Require any water system that has water supply in excess of that required to meet the essential water uses of its customers to provide water to a water system experiencing a water shortage emergency. The Secretary shall give preference to diversion of water from a water system within the same river basin as the water system that is experiencing a water shortage emergency. A diversion of water that requires a certificate under G.S. 143-215.22L shall meet the requirements of that section. The amount required to be supplied shall be limited to the amount necessary to supply essential water uses within the receiving system. The required diversion of waters shall cease upon the termination of the water shortage emergency.

(2) Adopt rules governing the conservation and use of water within the water shortage emergency area as shall be necessary to maintain essential water use within the water shortage emergency area. Before such rules and regulations shall become effective, they shall be published in two consecutive issues of a daily newspaper generally circulated in the emergency area. This subdivision shall not be construed to authorize a unit of local government, public water supply system, or private water supply system to regulate water use from a well located outside of its jurisdiction, a well not connected to its water system, or any other private well.

(3) Adopt rules governing conservation and use of water within the service area of the water system from which water is being diverted as shall be necessary to maintain essential water uses in the system while supplying water to the water shortage emergency area. This subdivision shall not be construed to authorize a unit of local government, public water supply system, or private water supply system to regulate water use from a well located outside of its jurisdiction, a well not connected to its water system, or any other private well."

SECTION 6. G.S. 87-88(k) reads as rewritten:

"(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. For purposes of this subsection only, "water supply well" includes wells constructed by an individual on land which is owned or leased by the individual, appurtenant to a single-family dwelling, and intended for domestic use (including nonpotable household purposes, farm livestock, or gardens)."

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

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

S D

SENATE BILL 676
PROPOSED COMMITTEE SUBSTITUTE S676-CSRI-16 [v.2]

4/29/2011 5:06:16 PM

Short Title: Clarify Water & Well Rights/Private Property. (Public)

Sponsors:

Referred to:

April 20, 2011

A BILL TO BE ENTITLED

AN ACT TO CLARIFY LANDOWNERS' RIGHTS OVER WATER ON THEIR PROPERTY AND THE CONSTRUCTION OF WELLS ON THEIR PROPERTY.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 87-97(a) reads as rewritten:

"(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. No person shall unduly delay or refuse to permit a well that can be constructed or repaired and operated in compliance with the requirements set out in this Article and rules adopted pursuant to this Article."

SECTION 2. G.S. 87-97(e) reads as rewritten:

"(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. Notwithstanding any other provision of law, no permit for a well that is in compliance with this Article and the rules adopted pursuant to this Article shall be denied on the basis of a local government policy that discourages or prohibits the drilling of new wells."

SECTION 3. G.S. 143-355.2(a)(4) is repealed.

SECTION 4. G.S. 143-355.2(h) reads as rewritten:

"(h) Water conservation measures imposed by a unit of local government that provides public water service or by a large community water system may be more stringent than the minimum water conservation measures required under this section. This subsection shall not be construed to authorize a unit of local government, public water supply system, or private water supply system to regulate water use from a well located outside of its jurisdiction, a well not connected to its water system, or any other private well. Nothing in this subsection shall be deemed to void or alter cross-jurisdictional agreements."

SECTION 5. G.S. 143-355.3(b) reads as rewritten:

"(b) Water Shortage Emergency Powers and Duties. – Whenever, pursuant to this Article, the Governor declares the existence of a water shortage emergency within a particular

area of the State, the Secretary shall have the powers and duties set out in subdivisions (1), (2), and (3) of this subsection. These powers may only be exercised within the designated water shortage emergency area, after the Secretary has consulted with the affected water systems and determined that the water shortage emergency cannot be effectively managed in the absence of exercising these powers, and only for the period of the water shortage emergency. Under these circumstances, the Secretary has the power and duty to:

(1) Require any water system that has water supply in excess of that required to meet the essential water uses of its customers to provide water to a water system experiencing a water shortage emergency. The Secretary shall give preference to diversion of water from a water system within the same river basin as the water system that is experiencing a water shortage emergency. A diversion of water that requires a certificate under G.S. 143-215.22L shall meet the requirements of that section. The amount required to be supplied shall be limited to the amount necessary to supply essential water uses within the receiving system. The required diversion of waters shall cease upon the termination of the water shortage emergency.

(2) Adopt rules governing the conservation and use of water within the water shortage emergency area as shall be necessary to maintain essential water use within the water shortage emergency area. Before such rules and regulations shall become effective, they shall be published in two consecutive issues of a daily newspaper generally circulated in the emergency area. This subdivision shall not be construed to authorize a unit of local government, public water supply system, or private water supply system to regulate water use from a well located outside of its jurisdiction, a well not connected to its water system, or any other private well.

(3) Adopt rules governing conservation and use of water within the service area of the water system from which water is being diverted as shall be necessary to maintain essential water uses in the system while supplying water to the water shortage emergency area. This subdivision shall not be construed to authorize a unit of local government, public water supply system, or private water supply system to regulate water use from a well located outside of its jurisdiction, a well not connected to its water system, or any other private well."

SECTION 6. G.S. 87-88(k) reads as rewritten:

"(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. For purposes of this subsection only, "water supply well" includes wells constructed by an individual on land which is owned or leased by the individual, appurtenant to a single-family dwelling, and intended for domestic use (including non-potable household purposes, farm livestock, or gardens)."

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

SENATE BILL 676:
Clarify Water & Well Rights/Private Property

2011-2012 General Assembly

Committee:	Senate Agriculture/Environment/Natural Resources	**Date:**	May 3, 2011
Introduced by:	Sens. Rouzer, Jackson, East	**Prepared by:**	Jennifer McGinnis Committee Counsel
Analysis of:	PCS to First Edition S676-CSRI-16 [v.2]		

SUMMARY: ***The Proposed Committee Substitute (PCS) for Senate Bill 676 would amend the authority of a local government to regulate private wells and require connections to water and sewer collection lines.***

CURRENT LAW:

General Provisions for Oversight of Wells

Chapter 87 of the General Statutes governs well construction in the State. The Act requires that each county, through its local health department, implement and enforce a private drinking water well permitting, inspection, repair, and testing program within its jurisdiction. 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 the Well Construction Act and associated rules. The Act specifically provides that any law, rule, or local ordinance which establishes standards that offers greater protection to groundwater resources or public health, safety, or welfare will prevail within a jurisdiction to which it applies over the provisions of the Act and rules adopted pursuant to the Act. The Act also provides that 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 specified requirements under the Act for abandonment during its use for other purposes.

Water Conservation Legislation

In 2008, the General Assembly enacted legislation to improve drought preparedness and response in the State. This legislation required each unit of local government that provides public water service and each large community water system to develop and implement water conservation measures to respond to drought or other water shortage conditions as set out in a water shortage response plan. In order for a plan to be approvable by the Department of Environment and Natural Resources (DENR) the plan had to meet certain criteria, one of which is that the plan did not contain any provision that meters or regulates private drinking water wells.

BILL ANALYSIS:

Sections 1 and 2 would amend the statute contained in the Well Construction Act that governs permitting, inspection, and testing of private wells to: (i) provide that no person shall unduly delay or refuse to permit a well that is constructed, repaired, and operated in compliance with the requirements of the Well Construction Act and the associated rules; and, (ii) prohibit denial of a permit on the basis of a local government policy discouraging or prohibiting the drilling of new wells.

Sections 3 and 4 would amend the statute governing water conservation measures for drought by: (i) deleting a provision that specified that water shortage response plans developed by local governments

could not contain provisions regulating the use of private drinking water wells; and (ii) adding language to a provision that states that water conservation measures imposed by a local government may be more stringent than the minimum water conservation under State law, to specify that the provision is not to be construed to authorize the local government or other water system supplier to regulate water use from a well located outside of its jurisdiction, a well not connected to its water system, or any other private well.

Section 5 amends the law governing the powers and duties of the Secretary of Environment and Natural Resources in response to a water shortage emergency declared by the Governor, to specify that the power to adopt rules to address water shortage emergencies shall not to be construed to authorize the local government or other water system supplier to regulate water use from a well located outside of its jurisdiction, a well not connected to its water system, or any other private well.

Section 6 would amend the statute which provides that 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 specified requirements under the Well Construction Act for abandonment during its use for other purposes. Under the Well Construction Act, the term "water supply well" specifically excludes wells constructed by an individual on land which is owned or leased by the individual, appurtenant to a single-family dwelling, and intended for domestic use (including household purposes, farm livestock, or gardens). The PCS would modify the provision which allows water supply wells that are removed from service as a potable water supply to be used for other purposes, to include such private wells.

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

S676-SMRI-20(e1) v8

S 1

SENATE BILL 676

Short Title:	Clarify Water & Well Rights/Private Property.	(Public)
Sponsors:	Senators Rouzer, Jackson, and East.	
Referred to:	Agriculture/Environment/Natural Resources.	

April 20, 2011

A BILL TO BE ENTITLED

AN ACT TO CLARIFY LANDOWNERS' RIGHTS OVER WATER ON THEIR PROPERTY AND THE CONSTRUCTION OF WELLS ON THEIR PROPERTY.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 87-97(a) reads as rewritten:

"(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. No person shall unduly delay or refuse to permit a well that can be constructed or repaired and operated in compliance with the requirements set out in this Article and rules adopted pursuant to this Article."

SECTION 2. G.S. 87-97(e) reads as rewritten:

"(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. Notwithstanding any other provision of law, no permit for a well that is in compliance with this Article and the rules adopted pursuant to this Article shall be denied on the basis of a local government policy that discourages or prohibits the drilling of new wells."

SECTION 3. G.S. 143-355.2(a)(4) is repealed.

SECTION 4. G.S. 143-355.2(h) reads as rewritten:

"(h) Water conservation measures imposed by a unit of local government that provides public water service or by a large community water system may be more stringent than the minimum water conservation measures required under this section. This subsection shall not be construed to authorize a unit of local government, public water supply system, or private water supply system to regulate water use from a well located outside of its jurisdiction, a well not connected to its water system, or any other private well. Nothing in this subsection shall be deemed to void or alter cross-jurisdictional agreements."

SECTION 5. G.S. 143-355.3(b) reads as rewritten:

"(b) Water Shortage Emergency Powers and Duties. – Whenever, pursuant to this Article, the Governor declares the existence of a water shortage emergency within a particular area of the State, the Secretary shall have the powers and duties set out in subdivisions (1), (2), and (3) of this subsection. These powers may only be exercised within the designated water shortage emergency area, after the Secretary has consulted with the affected water systems and

determined that the water shortage emergency cannot be effectively managed in the absence of exercising these powers, and only for the period of the water shortage emergency. Under these circumstances, the Secretary has the power and duty to:

(1) Require any water system that has water supply in excess of that required to meet the essential water uses of its customers to provide water to a water system experiencing a water shortage emergency. The Secretary shall give preference to diversion of water from a water system within the same river basin as the water system that is experiencing a water shortage emergency. A diversion of water that requires a certificate under G.S. 143-215.22L shall meet the requirements of that section. The amount required to be supplied shall be limited to the amount necessary to supply essential water uses within the receiving system. The required diversion of waters shall cease upon the termination of the water shortage emergency.

(2) Adopt rules governing the conservation and use of water within the water shortage emergency area as shall be necessary to maintain essential water use within the water shortage emergency area. Before such rules and regulations shall become effective, they shall be published in two consecutive issues of a daily newspaper generally circulated in the emergency area. This subdivision shall not be construed to authorize a unit of local government, public water supply system, or private water supply system to regulate water use from a well located outside of its jurisdiction, a well not connected to its water system, or any other private well.

(3) Adopt rules governing conservation and use of water within the service area of the water system from which water is being diverted as shall be necessary to maintain essential water uses in the system while supplying water to the water shortage emergency area. This subdivision shall not be construed to authorize a unit of local government, public water supply system, or private water supply system to regulate water use from a well located outside of its jurisdiction, a well not connected to its water system, or any other private well."

SECTION 6. G.S. 153A-284 reads as rewritten:

"**§ 153A-284. Power to require connections.**

(a) A county ~~may~~ shall not require the owner of developed property on which there are situated one or more residential dwelling units or commercial establishments located so as to be served by a water line ~~or sewer collection line~~ owned, leased as lessee, or operated by the county or on behalf of the county to connect the owner's premises with the water ~~or sewer line and~~ line. A county may require the owner of developed property on which there are situated one or more residential dwelling units or commercial establishments located so as to be served by a sewer collection line owned, leased as lessee, or operated by the county or on behalf of the county to connect the owner's premises to a sewer collection line if there is proof provided by the county that the property's septic system is a threat to public health. If an owner decides to connect with the water or sewer collection line, the county may fix charges for these connections. 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 county has installed water or sewer lines or a combination thereof directly available to the property, the county may require payment of a periodic availability charge, not to exceed the minimum periodic service charge for properties that are connected.

(b) When a county has installed a water line to serve developed property and the owner has connected to the water line, the owner of the property may continue to use his or her private well for nonpotable purposes. The county shall not require the owner of the well to abandon, cap, or otherwise compromise the integrity of the well."

SECTION 7. G.S. 160A-317 reads as rewritten:

"**§ 160A-317. Power to require connections to water or sewer service and the use of solid waste collection services.**

(a) Connections. – A city ~~may~~ shall not require an owner of developed property on which there are situated one or more residential dwelling units or commercial establishments located within the city limits and within a reasonable distance of any water line ~~or sewer collection line~~ owned, leased as lessee, or operated by the city or on behalf of the city to connect the owner's premises with the water ~~or sewer line or both, and~~ line. A city may require an owner of developed property on which there are situated one or more residential dwelling units or commercial establishments located within the city limits and within a reasonable distance of any sewer collection line owned, leased as lessee, or operated by the city or on behalf of the city to connect the owner's premises to a sewer collection line if there is proof provided by the city that the property's septic system is a threat to public health. If the owner connects to the water or sewer collection line, then the city may fix charges for the connections. In lieu of requiring connection under this subsection and in order to avoid hardship, the city may require payment of a periodic availability charge, not to exceed the minimum periodic service charge for properties that are connected.

(a1) When a city has installed a water line to serve developed property and the owner has connected to the water line, the owner of the property may continue to use his or her private well for nonpotable purposes. The city shall not require the owner of the well to abandon, cap, or otherwise compromise the integrity of the well.

(b) Solid Waste. – A city may require an owner of improved property to do any of the following:

(1) Place solid waste in specified places or receptacles for the convenience of city collection and disposal.

(2) Separate materials before the solid waste is collected.

(3) Participate in a recycling program by requiring separation of designated materials by the owner or occupant of the property prior to disposal. An owner of recovered materials as defined by G.S. 130A-290(a)(24) retains ownership of the recovered materials until the owner conveys, sells, donates, or otherwise transfers the recovered materials to a person, firm, company, corporation, or unit of local government. A city may not require an owner to convey, sell, donate, or otherwise transfer recovered materials to the city or its designee. If an owner places recovered materials in receptacles or delivers recovered materials to specific locations, receptacles, and facilities that are owned or operated by the city or its designee, then ownership of these materials is transferred to the city or its designee.

(4) Participate in any solid waste collection service provided by the city or by a person who has a contract with the city if the owner or occupant of the property has not otherwise contracted for the collection of solid waste from the property.

(c) A city may impose a fee for the solid waste collection service provided under subdivision (4) of subsection (b) of this section. The fee may not exceed the costs of collection."

SECTION 8. This act is effective when it becomes law.

VISITOR REGISTRATION SHEET

Senate AG/Env/Nat. Resources (2011-2012) — 5-3-11

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Colleen Kochanek	NCSWA
Gary Harris	NCPCM
Doug Howey	NCPCM
Greg Thornton	FBrownett
Bo Heath	McGuireWoods
Robin Smith	DENR
Kevin Leonard	NCACC
Paul Sherman	NCFB
Doug Lassiter	
Steve Metcalf	Park Council
[illegible]	NCPC/NCCA

VISITOR REGISTRATION SHEET

Senate AG/Env/Nat. Resources (2011-2012) — 5/3

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Daniel Raimi	DENR
Ben Matthews	NCDPI
David Knight	DENR
Chris Page	NCWRC
Jenni McClees	McClees Consulting
Joe McClees	McClees Consulting
Earl Rountree	self
DICK HAMILTON	NCWF
KATE FETZER	FSP
DOUG PARIS	SALISBURY
Chamberlain	NCGWA

VISITOR REGISTRATION SHEET

Senate AG/Env/Nat. Resources (2011-2012)
Name of Committee **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Jimmy Century	NC GRANGE
Allison Fowler	NC Grange
Kristen Vaster	FSP
Mike Taylor	Parker Poe
Amy Brooks	NCACC
Jeff Ray	GRNC
Stan Sands	

VISITOR REGISTRATION SHEET

Senate AG/Env/Nat. Resources (2011-2012)
Name of Committee **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Henry Huteff	N.C.B.A.
Daniel Ambrose	NCLM
Doug Heron	um
Angie Hamm	WM
Grayson Myers	NCWRC

VISITOR REGISTRATION SHEET

Senate AG/Env/Nat. Resources (2011-2012)
Name of Committee **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Vernon Cox	NCDA&CS
Dick Fowler	NCASWCD
Donald Heath	NCASWCD
Adam M Ferguson	NCASWCD
Kristen M. Frazier	
Craig Frazier	Pres. NCASWCD
Tommy Stevens	NCPC
Bob Sowers	NCFA
Nancy Thompson	Weyerhaeuser
DAVID BARNES	Pogner Spruill
W. Gardner Cuthrell	

East

PAGES ATTENDING

COMMITTEE: Agriculture **ROOM:** 544 LOB

DATE: 5-3 **TIME:** 11 AM

PLEASE PRINT LEGIBILY!!!!!!!!!!!!!

Page Name	Hometown	Sponsoring Senator
1 CourtneyCollier	Deep Run	Jackson
2 April Smith	Goldsboro	Tillman
Morgan Brinson	Charlotte	Dannelly
4		
5		
6		
7		
8		
9		
10		

Do not add names below the grid.

Pages: Present this form to either the Committee Clerk at the meeting or to the Sgt-at-Arms.

Senate Agriculture/Environment/Natural Resources

MINUTES

May 10, 2011

The Senate Ag/Env/Nat. Resources committee met on Tuesday, May 10, 2011 in Room 544-LOB at 11:00 pm. There were 15 senators present.

Sen. David Rouzer called the meeting to order and introduced the Pages and Sgt-At-Arms staff.

SB-484 REPS CREDITS @ CLEANFIELDS PARKS

Sen. Jackson advised there is an amendment to this bill and he explained the amendment. Mr. Hudson made an additional explanation on cleanfields. Sen. Jackson supports the amendment. Sen. Tucker moved for adoption of the amendment. So moved. Sen. Bingham moved for a favorable report, to roll the amendment into a PCS. Sen. Allran told members he has a local bill that is similar to Re-Venture and he wants to know how this will affect his district. Sen. Rouzer said if they don't use poultry litter is should be ok. Sen. Atwater thanked everyone for working out an agreement. Sen. Hartsell asked if this would affect human waste (AKA/cake) and he wants to make sure this won't impact the small facility in his district. Sen. Jackson said he doesn't think this will impact other projects. Mr. Hudson will check on this. Sen. Rouzer said it will be reviewed by the Utilities Commission before it will be discussed on the senate floor. Sen. Kinnaird also thanked Sen. Jackson for working out a compromise for the Charlotte company Re-Venture. No further discussion, vote taken and so moved.

SB-613 HUNTING & FISHING/ACTIVE DUTY

Sen. Daniel moved for adoption of the PCS for discussion. So moved. Mr. Jeff Hudson, Chief Staff Counsel explained the PCS. Sen. Jenkins moved for a favorable report, unfavorable to the original bill. Sen. Allran asked how this is currently handled. Mr. Hudson explained. Sen. Pate, bill sponsor also commented on the PCS. No further discussion, vote taken and so moved.

SB-374 LANDOWNER PROTECTION ACT

Sen. Allran moved for adoption of the PCS for discussion. So moved. Sen. Walters explained the PCS. Sen. Tillman feels this has been worked out by all parties and he wants to know if Sen. Jenkins and others that have land are happy. It appears everyone is happy. Sen. Tillman moved for a favorable report, unfavorable to the original bill. Sen. Kinnaird asked if this will prevent dogs being let loose to run on private properties. Sen. Walters said this will not affect that. He advised there is not a statute to allow dogs to run loose. Sen. Jackson made additional comments. He told members that Wildlife is in support and the dog hunters association is supportive. No further discussion, vote taken and and so moved.

The meeting adjourned at 11:25.

Sen. David Rouzer, Co-Chair

Cindy J. Davis, Committee Clerk

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES COMMITTEE REPORT
Senator Don East, Co-Chair
Senator David Rouzer, Co-Chair

CORRECTED REPORT

Tuesday, May 10, 2011

Senator ROUZER,
submits the following with recommendations as to passage:

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

S.B.	**374**	Landowner Protection Act.	
		Draft Number:	PCS35244
		Sequential Referral:	None
		Recommended Referral:	None
		Long Title Amended:	Yes
S.B.	**484**	REPS Credits at Cleanfields Parks.	
		Draft Number:	PCS15156
		Sequential Referral:	None
		Recommended Referral:	None
		Long Title Amended:	Yes
S.B.	**613**	Hunting & Fishing/Active Duty Military.	
		Draft Number:	PCS55299
		Sequential Referral:	None
		Recommended Referral:	None
		Long Title Amended:	Yes

TOTAL REPORTED: 3

Committee Clerk Comments:

Title change on all 3 bills.

Senate Agriculture/Environment/Natural Resources Committee
Tuesday, May 10, 2011, 11:00
544 LOB

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

SB-484 REPS Credits at Cleanfields Parks	Sen. Jackson
SB-613 Hunting & Fishing/Active Duty	Sen. Clary
	Sen. Brown
	Sen. Pate
SB-374 Landowner Protection Act	Sen. Walters
	Sen. Apodaca
	Sen. Tucker

Presentations

Other Business

Adjournment

Principal Clerk ____
Reading Clerk ____

Corrected: THE DATE IS MAY 10TH

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

The Senate Committee on **Agriculture/Environment/Natural Resources** will meet at the following time:

DAY	DATE	TIME	ROOM
Tuesday	May 10, 2011	11:00	544 LOB

The following will be considered:

BILL NO.	SHORT TITLE	SPONSOR
SB 484	REPS Credits at Cleanfields Parks.	Senator Jackson
SB 613	Hunting & Fishing/Active Duty Military.	Senator Clary Senator Brown Senator Pate
SB 374	Landowner Protection Act.	Senator Walters Senator Apodaca Senator Tucker

THE DATE IS MAY 10TH

Senator Don East, Co-Chair
Senator David Rouzer, Co-Chair

Principal Clerk ____
Reading Clerk ____

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

The Senate Committee on **Agriculture/Environment/Natural Resources** will meet at the following time:

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SB 613	Hunting & Fishing/Active Duty Military.	Senator Clary Senator Brown Senator Pate

Senator Don East, Co-Chair
Senator David Rouzer, Co-Chair

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

S D

SENATE BILL 613
PROPOSED COMMITTEE SUBSTITUTE S613-PCS55299-SB-29

Short Title: Hunting & Fishing/Active Duty Military. (Public)

Sponsors:

Referred to:

April 19, 2011

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT MEMBERS OF THE ARMED FORCES WHO ARE SERVING ON ACTIVE MILITARY DUTY IN THE ARMED FORCES OF THE UNITED STATES OUTSIDE THE STATE OF NORTH CAROLINA SHALL BE CONSIDERED RESIDENTS FOR PURPOSES OF OBTAINING CERTAIN HUNTING, FISHING, TRAPPING, AND SPECIAL ACTIVITY LICENSES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 113-130 reads as rewritten:

"**§ 113-130. Definitions relating to activities of public.**

The following definitions and their cognates apply to activities of the public in regard to marine and estuarine and wildlife resources:

...

(4) Resident. – In the case of:

...

e. Military Personnel and Their Dependents. – A member of the armed forces of the United States stationed at a military facility in North Carolina, his spouse, and any dependent under 18 years of age residing with him are deemed residents of the State, of the county in which they live, and also, if different, of any county in which the military facility is located. A member of the Armed Forces of the United States on active duty outside the State of North Carolina shall be deemed an individual resident of the State for purposes of all of the following licenses:

1. Coastal Recreational Fishing Licenses issued pursuant to G.S. 113-174.2(c)(1) and (c)(4).
2. Combination Hunting and Inland Fishing Licenses issued pursuant to G.S. 113-270.1C(b)(1).
3. Sportsman Licenses issued pursuant to G.S. 113-270.1D(a).
4. Hunting Licenses issued pursuant to G.S. 113-270.2(c)(1) and (c)(5).
5. Special Activity Licenses issued pursuant to G.S. 113-270.3(b)(1).
6. Trapping Licenses issued pursuant to G.S. 113-270.5(b)(1).

7. Hook-and-Line Licenses issued pursuant to G.S. 113-271(d)(1), (d)(2), and (d)(6)a.
8. Unified Hunting and Fishing Licenses issued pursuant to G.S. 113-351(c)(1) and (c)(2).

...."

SECTION 2. This act becomes effective July 1, 2011.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

S D

SENATE BILL 613
PROPOSED COMMITTEE SUBSTITUTE S613-CSSB-29 [v.1]

5/9/2011 4:05:40 PM

Short Title: Hunting & Fishing/Active Duty Military. (Public)

Sponsors:

Referred to:

April 19, 2011

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT MEMBERS OF THE ARMED FORCES WHO ARE SERVING ON ACTIVE MILITARY DUTY IN THE ARMED FORCES OF THE UNITED STATES OUTSIDE THE STATE OF NORTH CAROLINA SHALL BE CONSIDERED RESIDENTS FOR PURPOSES OF OBTAINING CERTAIN HUNTING, FISHING, TRAPPING, AND SPECIAL ACTIVITY LICENSES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 113-130 reads as rewritten:

"**§ 113-130. Definitions relating to activities of public.**

The following definitions and their cognates apply to activities of the public in regard to marine and estuarine and wildlife resources:

...

(4) Resident. – In the case of:

...

e. Military Personnel and Their Dependents. – A member of the armed forces of the United States stationed at a military facility in North Carolina, his spouse, and any dependent under 18 years of age residing with him are deemed residents of the State, of the county in which they live, and also, if different, of any county in which the military facility is located. A member of the armed forces of the United States on active duty outside the State of North Carolina shall be deemed an individual resident of the State for purposes of all of the following licenses:

1. Coastal Recreational Fishing Licenses issued pursuant to G.S. 113-174.2(c)(1) and (c)(4).
2. Combination Hunting and Inland Fishing Licenses issued pursuant to G.S. 113-270.1C(b)(1).
3. Sportsman Licenses issued pursuant to G.S. 113-270.1D(a).
4. Hunting Licenses issued pursuant to G.S. 113-270.2(c)(1) and (c)(5).
5. Special Activity Licenses issued pursuant to G.S. 113-270.3(b)(1).
6. Trapping Licenses issued pursuant to G.S. 113-270.5(b)(1).

7. Hook-and-Line Licenses issued pursuant to G.S. 113-271(d)(1), (d)(2), and (d)(6)a.
8. Unified Hunting and Fishing License issued pursuant to G.S. 113-351(c)(1) and (c)(2).

...."

SECTION 2. This act becomes effective July 1, 2011.

SENATE BILL 613

Short Title:	Hunting & Fishing/Active Duty Military.	(Public)
Sponsors:	Senators Brown, Clary, Pate; Allran, Apodaca, Brock, East, Forrester, Gunn, Harrington, Hunt, Jackson, Newton, Rabon, Soucek, Tillman, and Tucker.	
Referred to:	Agriculture/Environment/Natural Resources.	

April 19, 2011

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT MEMBERS OF THE ARMED FORCES WHO ARE SERVING ON ACTIVE MILITARY DUTY IN THE ARMED FORCES OF THE UNITED STATES OUTSIDE THE STATE OF NORTH CAROLINA SHALL BE CONSIDERED RESIDENTS FOR PURPOSES OF OBTAINING HUNTING, FISHING, TRAPPING, AND SPECIAL ACTIVITY LICENSES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 113-130 reads as rewritten:

"**§ 113-130. Definitions relating to activities of public.**

The following definitions and their cognates apply to activities of the public in regard to marine and estuarine and wildlife resources:

...

(4) Resident. – In the case of:

...

e. Military Personnel and Their Dependents. – A member of the armed forces of the United States stationed at a military facility in North Carolina, his spouse, and any dependent under 18 years of age residing with him are deemed residents of the State, of the county in which they live, and also, if different, of any county in which the military facility is located. A member of the armed forces of the United States on active duty outside the State of North Carolina shall be deemed an individual resident of the State for purposes of the hunting, fishing, trapping, and special activity license requirements of Article 21 of Chapter 113 of the General Statutes and the Coastal Recreational Fishing License requirements of G.S. 113-174.2.

...."

SECTION 2. This act becomes effective July 1, 2011.

SENATE BILL 613:
Hunting & Fishing/Active Duty Military

2011-2012 General Assembly

Committee:	Senate Agriculture/Environment/Natural Resources	**Date:**	May 10, 2011
Introduced by:	Sens. Brown, Clary, Pate	**Prepared by:**	Jeff Hudson Committee Counsel
Analysis of:	First Edition		

SUMMARY: ***Senate Bill 613 would treat a member of the armed forces on active duty outside of the State as a resident for purposes of obtaining certain hunting, fishing, trapping and special activity licenses.***

CURRENT LAW:

Under current law, a member of the armed forces stationed at a military facility in the State and the member's spouse and dependents under 18 years of age who reside with the member are treated as residents of the State for purposes of obtaining various hunting, fishing, trapping and special activity licenses. Fees for these licenses are typically lower for residents.

BILL ANALYSIS:

Senate Bill 613 would treat a member of the armed forces on active duty outside of the State as a resident for purposes of obtaining certain hunting, fishing, trapping and special activity licenses.

EFFECTIVE DATE: This act would become effective July 1, 2011.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

S D

SENATE BILL 484*
PROPOSED COMMITTEE SUBSTITUTE S484-PCS15156-RI-20

Short Title: REPS Credits at Cleanfields Parks. (Public)

Sponsors:

Referred to:

April 4, 2011

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT THE ADDITIONAL CREDITS ASSIGNED TO THE FIRST TEN MEGAWATTS OF BIOMASS RENEWABLE ENERGY FACILITY GENERATION CAPACITY PURSUANT TO S.L. 2010-195 (CLEANFIELDS ACT OF 2010) ARE ELIGIBLE TO SATISFY THE POULTRY WASTE SET-ASIDE.

The General Assembly of North Carolina enacts:

SECTION 1. Section 4 of S.L. 2010-195 reads as rewritten:

"**SECTION 4.** Renewable energy generation. – The definitions in G.S. 62-133.8 apply to this act. If the Utilities Commission determines that a biomass renewable energy facility located in the cleanfields renewable energy demonstration park is a new renewable energy facility, the Commission shall assign triple credit to any electric power or renewable energy certificates generated from renewable energy resources at the biomass renewable energy facility that are purchased by an electric power supplier for the purposes of compliance with G.S. 62-133.8. The additional credits assigned to the first 10 megawatts of biomass renewable energy facility generation capacity shall be eligible for use to meet the requirements of G.S. 62-133.8(f). The additional credits assigned to the first 10 megawatts of biomass renewable energy facility generation capacity shall first be used to satisfy the requirements of G.S. 62-133.8(f). Only when the requirements of G.S. 62-133.8(f) are met, shall the additional credits assigned to the first 10 megawatts of biomass renewable energy facility generation capacity be utilized to comply with G.S. 62-133.8(b) and (c). The triple credit shall apply only to the first 20 megawatts of biomass renewable energy facility generation capacity located in all cleanfields renewable energy demonstration parks in the State."

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

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

S 1

SENATE BILL 484*

Short Title:	REPS Credits at Cleanfields Parks.	(Public)
Sponsors:	Senators Jackson; Apodaca, Brock, Brown, East, Meredith, Newton, Pate, Rabon, Rouzer, Tillman, and Walters.	
Referred to:	Commerce.	

April 4, 2011

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT, WHEN THE NORTH CAROLINA UTILITY COMMISSION ASSIGNS TRIPLE CREDIT TO ANY ELECTRIC POWER OR RENEWABLE ENERGY CERTIFICATES GENERATED FROM RENEWABLE ENERGY RESOURCES AT A BIOMASS RENEWABLE ENERGY FACILITY LOCATED IN A CLEANFIELDS RENEWABLE ENERGY DEMONSTRATION PARK, THE ADDITIONAL CREDITS ARE ELIGIBLE TO MEET THE REQUIREMENTS FOR PUBLIC UTILITIES, ELECTRIC MEMBERSHIP CORPORATIONS, AND MUNICIPALITIES UNDER THE RENEWABLE ENERGY AND ENERGY EFFICIENCY PORTFOLIO STANDARDS (REPS) RATHER THAN REQUIRING THAT THESE ADDITIONAL CREDITS MUST FIRST BE USED TO MEET ALL THE REPS REQUIREMENTS THROUGH THE USE OF POULTRY WASTE RESOURCES.

The General Assembly of North Carolina enacts:

SECTION 1. Section 4 of S.L. 2010-195 reads as rewritten:

"**SECTION 4.** Renewable energy generation. – The definitions in G.S. 62-133.8 apply to this act. If the Utilities Commission determines that a biomass renewable energy facility located in the cleanfields renewable energy demonstration park is a new renewable energy facility, the Commission shall assign triple credit to any electric power or renewable energy certificates generated from renewable energy resources at the biomass renewable energy facility that are purchased by an electric power supplier for the purposes of compliance with ~~G.S. 62-133.8. The additional credits shall be eligible for use to meet the requirements of G.S. 62-133.8(f). The additional credits shall first be used to satisfy the requirements of G.S. 62-133.8(f). Only when the requirements of G.S. 62-133.8(f) are met, shall the additional credits be utilized to comply with~~ G.S. 62-133.8(b) and (c). The triple credit shall apply only to the first 20 megawatts of biomass renewable energy facility generation capacity located in all cleanfields renewable energy demonstration parks in the State."

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

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 484*

AMENDMENT NO._____
(to be filled in by
Principal Clerk)

S484-ASB-31 [v.2]

Comm. Sub. [NO]
Amends Title [YES]
First Edition

Date 5.10 ,2011

Senator Jackson

moves to amend the bill on page 1, lines 1 through 26, by deleting those lines and substituting,

"A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT THE ADDITIONAL CREDITS ASSIGNED TO THE FIRST 10 MEGAWATTS OF BIOMASS RENEWABLE ENERGY FACILITY GENERATION CAPACITY PURSUANT TO S.L. 2010-195 (CLEANFIELDS ACT OF 2010) ARE ELIGIBLE TO SATISFY THE POULTRY WASTE SET-ASIDE.

The General Assembly of North Carolina enacts:

SECTION 1. Section 4 of S.L. 2010-195 reads as rewritten:

"**SECTION 4.** Renewable energy generation. – The definitions in G.S. 62-133.8 apply to this act. If the Utilities Commission determines that a biomass renewable energy facility located in the cleanfields renewable energy demonstration park is a new renewable energy facility, the Commission shall assign triple credit to any electric power or renewable energy certificates generated from renewable energy resources at the biomass renewable energy facility that are purchased by an electric power supplier for the purposes of compliance with G.S. 62-133.8. The additional credits assigned to the first 10 megawatts of biomass renewable energy facility generation capacity shall be eligible for use to meet the requirements of G.S. 62-133.8(f). The additional credits assigned to the first 10 megawatts of biomass renewable energy facility generation capacity shall first be used to satisfy the requirements of G.S. 62-133.8(f). Only when the requirements of G.S. 62-133.8(f) are met, shall the additional credits assigned to the first 10 megawatts of biomass renewable energy facility generation capacity be utilized to comply with G.S. 62-133.8(b) and (c). The triple credit shall apply only to the first 20 megawatts of biomass renewable energy facility generation capacity located in all cleanfields renewable energy demonstration parks in the State."".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

SENATE BILL 484:
REPS Credits at Cleanfields Parks

2011-2012 General Assembly

Committee:	Senate Agriculture/Environment/Natural Resources	**Date:**	April 26, 2011
Introduced by:	Senator Jackson	**Prepared by:**	Jeff Hudson Committee Counsel
Analysis of:	First Edition		

SUMMARY: ***Senate Bill 484 would remove the requirement from the Cleanfields Act of 2010 that additional credits for electric power or RECs generated at a biomass renewable energy facility located in the cleanfields park first be applied to the poultry waste set-aside.***

[As introduced, this bill was identical to H465, as introduced by Reps. Bell, Langdon, Brisson, McCormick, which is currently in House Agriculture.]

BACKGROUND AND CURRENT LAW:

S.L. 2009-397 (commonly referred to as Senate Bill 3) established the North Carolina renewable energy and energy efficiency portfolio standard (REPS) in order to promote the development of renewable energy and energy efficiency in the State. The REPS requires electric power suppliers to use an increasing percentage of renewable energy resources and employ energy efficiency programs (12.5% by 2020) to meet the needs of the State's retail electricity customers. An electric power supplier could meet the REPS requirement by doing any one or more of the following:

- Generate electric power at a new renewable energy facility.
- Use a renewable energy resource to generate electric power at a generating facility.
- Reduce energy consumption through the implementation of an energy efficiency measure.
- Purchase electric power from a new renewable energy facility.
- Purchase renewable energy certificates (RECs) derived from in-state or out-of-state new renewable energy facilities.

The REPS requirement includes set-asides for the generation of energy from solar energy, swine waste, and poultry waste resources.

S.L. 2010-195 (Cleanfields Act of 2010) authorized the State to establish a cleanfields renewable energy demonstration park (cleanfields park). Any electric power or RECs generated at a biomass renewable energy facility located in the cleanfields park that is purchased by an electric power supplier would be given triple credit. The triple credit would be applied as follows:

- Additional credits would first be applied to the poultry waste set-aside.
- Once the poultry waste-set aside has been fully satisfied, any remaining additional credits would be applied to the overall REPS requirements.

BILL ANALYSIS:

Senate Bill 484 would remove the requirement from the Cleanfields Act of 2010 that additional credits first be applied to satisfy the requirements of the poultry waste set-aside.

EFFECTIVE DATE: This act is effective when it becomes law.

S484-SMSB-18(e1) v1

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

S D

SENATE BILL 374
PROPOSED COMMITTEE SUBSTITUTE S374-PCS35244-SB-28

Short Title: Landowner Protection Act. (Public)

Sponsors:

Referred to:

March 21, 2011

A BILL TO BE ENTITLED

AN ACT TO PROTECT LANDOWNER RIGHTS AND INCREASE PUBLIC SAFETY BY (1) PROHIBITING HUNTING FROM THE RIGHT-OF-WAY STATEWIDE, (2) REQUIRING WRITTEN PERMISSION TO HUNT ON THE LAND OF ANOTHER STATEWIDE, AND (3) PROVIDING AN ADDITIONAL METHOD TO POST LAND TO PROHIBIT HUNTING.

The General Assembly of North Carolina enacts:

SECTION 1.(a) Article 22 of Chapter 113 of the General Statutes is amended by adding a new section to read:

"**§ 113-291.12. Hunting from rights-of-way; hunting on the land of another.**

(a) It is unlawful to hunt or attempt to hunt by discharging a firearm, bow and arrow, or crossbow from, on, across, or over the right-of-way of any State-maintained public road or highway, except as allowed on State game lands as prescribed by rules established by the Wildlife Resources Commission. For purposes of this section, the term "to hunt" has the same meaning as in G.S. 113-130.

(b) It is unlawful to possess a loaded firearm outside the passenger compartment of a vehicle while on the roadway or highway right-of-way while in the act of hunting or attempting to hunt, unless the person is the owner or lessee of the land abutting the right-of-way or has on his or her person the written permission of the owner or lessee of the land abutting the right-of-way to hunt on the land, dated within the last 12 months. Nothing in this section prohibits a person from carrying a concealed weapon authorized by a concealed handgun permit issued in accordance with Article 54B of Chapter 14 of the General Statutes or considered valid under G.S. 14-415.24.

(c) It is unlawful to hunt or attempt to hunt on the land of another, or to take fish from private ponds, as defined in G.S. 113-129(13), on the land of another, without having on one's person the written permission, dated within the last 12 months, of the landowner or lessee or the landowner's or lessee's designee. The written permission shall be displayed upon request of any law enforcement officer of the Wildlife Resources Commission, sheriff or deputy sheriff, or other law enforcement officer with general subject matter jurisdiction. A person shall have written permission to hunt for purposes of this section if a landowner or lessee has granted permission to a hunting club to hunt on the person's land and the person is carrying both a current membership card demonstrating the person's membership in the hunting club and a copy of valid written permission granted to the hunting club that complies with the requirements of this section. It is not a violation of this subsection to enter upon the land of

another without having written permission to hunt as required by this subsection for the sole purpose of retrieving hunting dogs that have strayed onto that land, provided that the land is neither posted in accordance with the provisions of G.S. 14-159.7 or enclosed by a fence and provided that the hunter does not carry a firearm, bow and arrow, or crossbow onto the land or operate a motor vehicle on the land.

(d) Violation of this section is a Class 3 misdemeanor. Notwithstanding the provisions of G.S. 15A-1340.23, a second or subsequent violation of this section within three years is a Class 2 misdemeanor punishable by a fine of at least two hundred fifty dollars ($250.00) and the loss of hunting privileges for a period of 12 months from the date of the conviction.

(e) This section is enforceable by law enforcement officers of the Wildlife Resources Commission, by sheriffs and deputy sheriffs, and by law enforcement officers with general subject matter jurisdiction.

(f) To the extent that this section conflicts with any provision of any local act, this section prevails. The fact that a local act in conflict with this section has not been specifically repealed does not indicate an intent for the local act to prevail."

SECTION 1.(b) The following local acts or portions of local acts are repealed as applicable to the following counties:

Alamance:	Session Laws 1971, Chapter 206;
	Session Laws 1989, Chapter 651, as amended by
	Session Laws 1991, Chapter 92.
Alexander:	Session Laws 1987, Chapter 298.
Alleghany:	Session Laws 1967, Chapter 477.
Anson:	Session Laws 1973, Chapter 1319, as amended by
	Session Laws 1975, Chapter 597;
	Session Laws 1987, Chapter 231, Sections 1 and 2.
Ashe:	Session Laws 1977, Chapter 13.
Bertie:	Session Laws 1963, Chapter 252;
	Session Laws 1973, Chapter 1333;
	S.L. 2001-367, Sections 1 and 4, as amended by
	S.L. 2007-313.
Bladen:	Session Laws 1975, Chapter 525.
Brunswick:	Session Laws 1985, Chapter 840.
Buncombe:	Session Laws 1967, Chapter 595.
Burke:	Session Laws 1987, Chapter 39.
Cabarrus:	Session Laws 1993, Chapter 100;
	Session Laws 1993, Chapter 632.
Caldwell:	Session Laws 1973, Chapter 150, as amended by
	Session Laws 1979, Chapter 220;
	Session Laws 1987, Chapter 39.
Camden:	Session Laws 1983, Chapter 274;
	Session Laws 1991, Chapter 796.
Carteret:	Session Laws 1953, Chapter 776.
Caswell:	Session Laws 1975, Chapter 215;
	Session Laws 1989, Chapter 651, as amended by
	Session Laws 1991, Chapter 92;
	S.L. 2007-264, Section 1;
	S.L. 2008-96.
Catawba:	Session Laws 1967, Chapter 350;
	Session Laws 1987, Chapter 298.
Chatham:	Session Laws 1975, Chapter 540, Section 1.
Chowan:	Session Laws 1975, Chapter 524;

	Session Laws 1985, Chapter 868.
Cleveland:	Session Laws 1979, Chapter 587;
	Session Laws 1989, Chapter 193;
	Session Laws 1985, Chapter 204, as amended by
	Session Laws 1991, Chapter 483.
Columbus:	S.L. 1997-61.
Craven:	Session Laws 1957, Chapter 603, as amended by
	Session Laws 1963, Chapters 268 and 1163;
	Session Laws 1981, Chapter 709;
	Session Laws 1983, Chapter 305;
	Session Laws 1985, Chapter 882;
	Session Laws 1987, Chapter 248;
	Session Laws 1989, Chapter 463;
	Session Laws 1991, Chapter 145;
	Session Laws 1991, Chapter 850;
	Session Laws 1993, Chapter 115;
	Session Laws 1995, Chapter 628, Section 1;
	S.L. 2003-164;
	S.L. 2009-116.
Cumberland:	Session Laws 1977, Chapter 241.
Currituck:	Session Laws 1985, Chapter 27.
Davidson:	Session Laws 1991, Chapter 795.
Davie:	Session Laws 1989, Chapter 929.
Duplin:	Session Laws 1953, Chapter 776;
	Session Laws 1969, Chapter 195.
Durham:	Session Laws 1969, Chapter 195;
	Session Laws 1973, Chapter 1319, as amended by
	Session Laws 1975, Chapter 597;
	Session Laws 1973, Chapter 1333;
	Session Laws 1975, Chapter 539.
Edgecombe:	Session Laws 1961, Chapter 863;
	S.L. 2009-22.
Franklin:	Session Laws 1965, Chapter 928, Section 2;
	Session Laws 1991, Chapter 108.
Gaston:	S.L. 1997-66.
Gates:	Session Laws 1971, Chapter 389;
	Session Laws 1973, Chapter 1333;
	Session Laws 1975, Chapter 214, Section 3;
	Session Laws 1981, Chapter 863.
Granville:	Session Laws 1959, Chapter 459.
Greene:	Session Laws 1985, Chapter 471, as amended by
	Session Laws 1987, Chapter 132;
	S.L. 2006-12.
Guilford:	Session Laws 1967, Chapter 573;
	Session Laws 1977, Chapter 181.
Halifax:	Session Laws 1971, Chapter 404.
Harnett:	Session Laws 1983, Chapter 791;
	S.L. 1997-103.
Haywood:	Session Laws 1969, Chapter 259.
Henderson:	Session Laws 1983, Chapter 946.
Hertford:	Session Laws 1963, Chapter 252;

	Session Laws 1973, Chapter 1333;
	Session Laws 1975, Chapter 214, Section 3.
Hoke:	Session Laws 1983, Chapter 385;
	Session Laws 1985, Chapter 204, as amended by
	Session Laws 1991, Chapter 483, Section 1.
Hyde:	Session Laws 1957, Chapter 205;
	Session Laws 1971, Chapter 520;
	Session Laws 1985, Chapter 420, as amended by
	S.L. 2009-77.
Iredell:	Session Laws 1987, Chapter 298.
Johnston:	Session Laws 1975, Chapter 341;
	Session Laws 1965, Chapter 928, as amended by
	Session Laws 1975, Chapter 343;
	S.L. 2007-264, Section 1.
Jones:	Session Laws 1991, Chapter 146.
Lee:	S.L. 1999-301, Sections 1 through 3.
Lenoir:	Session Laws 1975, Chapter 73;
	Session Laws 1983, Chapter 41.
Macon:	Session Laws 1993, Chapter 104;
	Session Laws 1995, Chapter 754, Sections 2 and 3.
Madison:	Session Laws 1993, Chapter 70.
Martin:	S.L. 2008-50.
McDowell:	S.L. 1997-453.
Mecklenburg:	Session Laws 1981, Chapter 524, Section 2.
Mitchell:	Session Laws 1991, Chapter 855.
Moore:	Session Laws 1971, Chapter 621;
	Session Laws 1977, Chapter 447, as amended by
	Session Laws 1979, Chapter 369;
	S.L. 1999-301, Sections 6.1(a) and (b).
Nash:	Session Laws 1985, Chapter 891, Section 2.
Northampton:	Session Laws 1965, Chapter 509, as amended by
	Session Laws 1967, Chapter 585;
	Session Laws 1973, Chapter 78, Section 2;
	Session Laws 1995, Chapter 628, Section 2;
	Session Laws 1995, Chapter 704;
	Session Laws 1995, Chapter 754, Section 1.
Onslow:	Session Laws 1991, Chapter 435, Sections 1 through 3.
Orange:	Session Laws 1973, Chapter 1319, as amended by
	Session Laws 1975, Chapter 597;
	Session Laws 1975, Chapter 539;
	S.L. 2005-264;
	S.L. 2007-264, as amended by
	S.L. 2008-205.
Pamlico:	Session Laws 1991, Chapter 138.
Pasquotank:	Session Laws 1973, Chapter 1333;
	Session Laws 1993, Chapter 632.
Pender:	Session Laws 1969, Chapter 129, Sections 2 and 3.
Perquimans:	Session Laws 1983, Chapter 213;
	Session Laws 1985, Chapter 867, Section 1.
Person:	Session Laws 1973, Chapter 1319, as amended by
	Session Laws 1975, Chapter 597.

Pitt:	Session Laws 1977, Chapter 241; S.L. 2002-142, Section 1.
Polk:	Session Laws 1977, Chapter 241.
Randolph:	Session Laws 1985, Chapter 303.
Richmond:	Session Laws 1973, Chapter 1319; Session Laws 1975, Chapter 539.
Robeson:	Session Laws 1983, Chapter 385; S.L. 2004-52.
Rockingham:	Session Laws 1985, Chapter 25; Session Laws 1989, Chapter 651, as amended by Session Laws 1991, Chapter 92.
Rowan:	Session Laws 1975, Chapter 341, as amended by Session Laws 1977, Chapter 108.
Rutherford:	Session Laws 1987, Chapter 405; S.L. 1999-301, Sections 1 through 3.
Sampson:	Session Laws 1991, Chapter 141.
Scotland:	Session Laws 1977, Chapter 447; Session Laws 1985, Chapter 204, as amended by Session Laws 1991, Chapter 483.
Stanly:	Session Laws 1969, Chapter 858.
Stokes:	Session Laws 1969, Chapter 195; Session Laws 1975, Chapter 542.
Surry:	Session Laws 1977, Chapter 181.
Transylvania:	S.L. 2003-119.
Tyrrell:	Session Laws 1985, Chapter 28; S.L. 2007-273, Sections 2 through 6.
Vance:	S.L. 2005-31, Sections 1 and 2.
Wake:	Session Laws 1973, Chapter 1382; Session Laws 1987, Chapter 811.
Warren:	Session Laws 1965, Chapter 928, Section 2.
Washington:	S.L. 1997-95, Sections 2 through 4.
Watauga:	Session Laws 1989, Chapter 812.
Wayne:	Session Laws 1975, Chapter 341, as amended by Session Laws 1977, Chapter 46; Session Laws 1975, Chapter 343, as amended by Session Laws 1977, Chapter 45; Session Laws 1985, Chapter 420, as amended by S.L. 2009-77.
Wilkes:	Session Laws 1973, Chapter 150, as amended by Session Laws 1979, Chapter 220, and by Session Laws 1991, Chapter 295.
Wilson:	Session Laws 1939, Chapter 271; Session Laws 1983, Chapter 423; S.L. 2005-264; S.L. 2007-264, as amended by S.L. 2008-205.
Yadkin:	Session Laws 1973, Chapter 150, as amended by Session Laws 1979, Chapter 220.

SECTION 2. G.S. 14-159.6 reads as rewritten:

"**§ 14-159.6. Trespass for purposes of hunting, etc., without written consent a misdemeanor.**

(a) Any person who willfully goes on the land, waters, ponds, or a legally established waterfowl blind of another ~~upon which notices, signs or posters prohibiting hunting, fishing or trapping have been placed in accordance with the provisions of G.S. 14-159.7, or upon which "posted" notices have been placed~~ that has been posted in accordance with the provisions of G.S. 14-159.7, to hunt, fish or trap without the written consent of the owner or his agent shall be guilty of a Class 2 misdemeanor. Provided, further, that no arrests under authority of this subsection shall be made without the consent of the owner or owners of said land, or their duly authorized agents in the following counties: Halifax and Warren.

(b) Any person who willfully goes on the land of another ~~upon which notices, signs, or posters prohibiting raking or removing pine needles or pine straw have been placed in accordance with the provisions of G.S. 14-159.7, or upon which "posted" notices have been placed~~ that has been posted in accordance with the provisions of ~~G.S. 14-159.7,~~ G.S. 14-159.7(1) to rake or remove pine needles or pine straw without the written consent of the owner or his agent shall be guilty of a Class 1 misdemeanor."

SECTION 3. G.S. 14-159.7 reads as rewritten:

§ 14-159.7. Regulations as to posting of property.

For purposes of posting property under G.S. 14-159.7, the owner or lessee of the property may use either of the following methods:

(1) The owner or lessee of the property may place notices, signs, or posters on the property. The notices, signs or posters ~~described in G.S. 14-159.6~~ shall measure not less than 120 square inches and shall be conspicuously posted on private lands not more than 200 yards apart close to and along the boundaries. At least one such notice, sign, or poster shall be posted on each side of such land, and one at each corner thereof, provided that said corner can be reasonably ascertained. For the purpose of prohibiting fishing, or the taking of fish by any means, in any stream, lake, or pond, it shall only be necessary that the signs, notices, or posters be posted along the stream or shoreline of a pond or lake at intervals of not more than 200 yards apart.

(2) The owner or lessee of the property may place identifying purple paint marks on trees or posts around the area to be posted. Each paint mark shall be a vertical line of at least eight inches in length and the bottom of the mark shall be no less than three feet nor more than five feet from the base of the tree or post. The paint marks shall be placed no more than 200 yards apart and shall be readily visible to any person approaching the property. For the purpose of prohibiting fishing, or the taking of fish by any means, in any stream, lake, or pond, it shall only be necessary that the paint marks be placed along the stream or shoreline of a pond or lake at intervals of not more than 200 yards apart."

SECTION 4. G.S. 14-159.10 reads as rewritten:

"**§ 14-159.10. Enforcement of ~~Article by peace officers; wildlife protectors authorized to execute process.~~Article.**

This Article may be enforced by ~~deputy sheriffs~~ sheriffs or deputy sheriffs, law enforcement officers of the Wildlife Resources Commission, and other peace officers with general subject matter jurisdiction. ~~Law enforcement officers of the North Carolina Wildlife Resources Commission may execute process issued by the court for violations of this Article.~~"

SECTION 5. This act becomes effective October 1, 2011, and applies to offenses committed on or after that date.

SENATE BILL 374

Short Title:	Landowner Protection Act.	(Public)
Sponsors:	Senators Apodaca, Walters, Tucker; and Hise.	
Referred to:	Agriculture/Environment/Natural Resources.	

March 21, 2011

A BILL TO BE ENTITLED

AN ACT TO PROTECT LANDOWNER RIGHTS AND INCREASE PUBLIC SAFETY BY REQUIRING WRITTEN PERMISSION TO HUNT ON THE LAND OF ANOTHER STATEWIDE AND BY PROHIBITING HUNTING FROM THE RIGHT-OF-WAY STATEWIDE.

The General Assembly of North Carolina enacts:

SECTION 1. Article 22 of Chapter 113 of the General Statutes is amended by adding a new section to read:

"**§ 113-291.12. Hunting from rights-of-way; hunting on the land of another.**

(a) It is unlawful to take wildlife, or to attempt to take wildlife, by discharging a firearm, bow and arrow, or crossbow from, on, across, or over the right-of-way of any State-maintained public road or highway, except as allowed on State game lands as prescribed by rules established by the Wildlife Resources Commission. For purposes of this section, the term "to take" has the same meaning as in G.S. 113-130.

(b) It is unlawful to possess a loaded firearm outside the passenger compartment of a vehicle while on the roadway or highway right-of-way while in the act of taking or attempting to take wildlife, unless the person is the owner or lessee of the land abutting the right-of-way or has on his or her person the written permission of the owner or lessee of the land abutting the right-of-way to hunt on the land, dated within the last 12 months. Nothing in this section prohibits a person from carrying a concealed weapon authorized by a concealed handgun permit issued in accordance with Article 54B of Chapter 14 of the General Statutes or considered valid under G.S. 14-415.24.

(c) It is unlawful to take wildlife or attempt to take wildlife on the land of another without having on one's person the written permission, dated within the last 12 months, of the landowner or lessee or the landowner's or lessee's designee. The written permission shall be displayed upon request of any law enforcement officer of the Wildlife Resources Commission, sheriff or deputy sheriff, or other law enforcement officer with general subject matter jurisdiction. A person shall have written permission to hunt for purposes of this section if a landowner or lessee has granted permission to a hunting club to hunt on the person's land and the person is carrying both a current membership card demonstrating the person's membership in the hunting club and a copy of valid written permission granted to the hunting club that complies with the requirements of this section.

(d) Violation of this section is a Class 3 misdemeanor. Notwithstanding the provisions of G.S. 15A-1340.23, a second or subsequent violation of this section within three years is a Class 2 misdemeanor punishable by a fine of at least two hundred fifty dollars ($250.00) and the loss of hunting privileges for a period of 12 months from the date of the conviction.

(e) This section is enforceable by law enforcement officers of the Wildlife Resources Commission, by sheriffs and deputy sheriffs, and by law enforcement officers with general subject matter jurisdiction.

(f) To the extent that this section conflicts with any provision of any local act, this section prevails. The fact that a local act in conflict with this section has not been specifically repealed does not indicate an intent for the local act to prevail."

SECTION 2. The following local acts or portions of local acts are repealed as applicable to the following counties:

Alamance:	Session Laws 1971, Chapter 206;
	Session Laws 1989, Chapter 651, as amended by
	Session Laws 1991, Chapter 92.
Alexander:	Session Laws 1987, Chapter 298.
Alleghany:	Session Laws 1967, Chapter 477.
Anson:	Session Laws 1973, Chapter 1319, as amended by
	Session Laws 1975, Chapter 597;
	Session Laws 1987, Chapter 231, Sections 1 and 2.
Ashe:	Session Laws 1977, Chapter 13.
Bertie:	Session Laws 1963, Chapter 252;
	Session Laws 1973, Chapter 1333;
	S.L. 2001-367, Sections 1 and 4, as amended by
	S.L. 2007-313.
Bladen:	Session Laws 1975, Chapter 525.
Brunswick:	Session Laws 1985, Chapter 840.
Buncombe:	Session Laws 1967, Chapter 595.
Burke:	Session Laws 1987, Chapter 39.
Cabarrus:	Session Laws 1993, Chapter 100;
	Session Laws 1993, Chapter 632.
Caldwell:	Session Laws 1973, Chapter 150, as amended by
	Session Laws 1979, Chapter 220;
	Session Laws 1987, Chapter 39.
Camden:	Session Laws 1983, Chapter 274;
	Session Laws 1991, Chapter 796.
Carteret:	Session Laws 1953, Chapter 776.
Caswell:	Session Laws 1975, Chapter 215;
	Session Laws 1989, Chapter 651, as amended by
	Session Laws 1991, Chapter 92;
	S.L. 2008-96.
Catawba:	Session Laws 1967, Chapter 350;
	Session Laws 1987, Chapter 298.
Chatham:	Session Laws 1975, Chapter 540, Section 1.
Chowan:	Session Laws 1975, Chapter 524;
	Session Laws 1985, Chapter 868.
Cleveland:	Session Laws 1979, Chapter 587;
	Session Laws 1989, Chapter 193;
	Session Laws 1985, Chapter 204, as amended by
	Session Laws 1991, Chapter 483.
Columbus:	S.L.1997-61.
Craven:	Session Laws 1957, Chapter 603, as amended by
	Session Laws 1963, Chapters 268 and 1163;
	Session Laws 1981, Chapter 709;
	Session Laws 1983, Chapter 305;

	Session Laws 1985, Chapter 882;
	Session Laws 1987, Chapter 248;
	Session Laws 1989, Chapter 463;
	Session Laws 1991, Chapter 145;
	Session Laws 1991, Chapter 850;
	Session Laws 1993, Chapter 115;
	Session Laws 1995, Chapter 628, Section 1;
	S.L. 2003-164;
	S.L. 2009-116.
Cumberland:	Session Laws 1977, Chapter 241.
Currituck:	Session Laws 1985, Chapter 27.
Davidson:	Session Laws 1991, Chapter 795.
Davie:	Session Laws 1989, Chapter 929.
Duplin:	Session Laws 1953, Chapter 776;
	Session Laws 1969, Chapter 195.
Durham:	Session Laws 1969, Chapter 195;
	Session Laws 1973, Chapter 1319, as amended by
	Session Laws 1975, Chapter 597;
	Session Laws 1973, Chapter 1333;
	Session Laws 1975, Chapter 539.
Edgecombe:	Session Laws 1961, Chapter 863;
	S.L. 2009-22.
Franklin:	Session Laws 1965, Chapter 928, Section 2;
	Session Laws 1991, Chapter 108.
Gaston:	S.L. 1997-66.
Gates:	Session Laws 1971, Chapter 389;
	Session Laws 1973, Chapter 1333;
	Session Laws 1975, Chapter 214, Section 3;
	Session Laws 1981, Chapter 863.
Granville:	Session Laws 1959, Chapter 459.
Greene:	Session Laws 1985, Chapter 471, as amended by
	Session Laws 1987, Chapter 132;
	S.L. 2006-12.
Guilford:	Session Laws 1967, Chapter 573;
	Session Laws 1977, Chapter 181.
Halifax:	Session Laws 1971, Chapter 404.
Harnett:	Session Laws 1983, Chapter 791;
	S.L. 1997-103.
Haywood:	Session Laws 1969, Chapter 259.
Henderson:	Session Laws 1983, Chapter 946.
Hertford:	Session Laws 1963, Chapter 252;
	Session Laws 1973, Chapter 1333;
	Session Laws 1975, Chapter 214, Section 3.
Hoke:	Session Laws 1983, Chapter 385;
	Session Laws 1985, Chapter 204.
Hyde:	Session Laws 1957, Chapter 205;
	Session Laws 1971, Chapter 520;
	Session Laws 1985, Chapter 420, as amended by
	S.L. 2009-77.
Iredell:	Session Laws 1987, Chapter 298.
Johnston:	Session Laws 1975, Chapter 341;

	Session Laws 1965, Chapter 928, as amended by
	Session Laws 1975, Chapter 343.
Jones:	Session Laws 1991, Chapter 146.
Lee:	S.L. 1999-301, Sections 1 through 3.
Lenoir:	Session Laws 1975, Chapter 73;
	Session Laws 1983, Chapter 41.
Macon:	Session Laws 1993, Chapter 104;
	Session Laws 1995, Chapter 754, Sections 2 and 3.
Madison:	Session Laws 1993, Chapter 70.
Martin:	S.L. 2008-50.
McDowell:	S.L. 1997-453.
Mecklenburg:	Session Laws 1981, Chapter 524, Section 2.
Mitchell:	Session Laws 1991, Chapter 855.
Moore:	Session Laws 1971, Chapter 621;
	Session Laws 1977, Chapter 447, as amended by
	Session Laws 1979, Chapter 369;
	S.L. 1999-301, Sections 6.1(a) and (b).
Nash:	Session Laws 1985, Chapter 891, Section 2.
Northampton:	Session Laws 1965, Chapter 509, as amended by
	Session Laws 1967, Chapter 585;
	Session Laws 1973, Chapter 78, Section 2;
	Session Laws 1995, Chapter 628, Section 2;
	Session Laws 1995, Chapter 704;
	Session Laws 1995, Chapter 754, Section 1.
Onslow:	Session Laws 1991, Chapter 435, Section 1 through 3.
Orange:	Session Laws 1973, Chapter 1319, as amended by
	Session Laws 1975, Chapter 597;
	Session Laws 1975, Chapter 539;
	S.L. 2005-264;
	S.L. 2007-264, as amended by
	S.L. 2008-205.
Pamlico:	Session Laws 1991, Chapter 138.
Pasquotank:	Session Laws 1973, Chapter 1333;
	Session Laws 1993, Chapter 632.
Pender:	Session Laws 1969, Chapter 129, Sections 2 and 3.
Perquimans:	Session Laws 1983, Chapter 213;
	Session Laws 1985, Chapter 867, Section 1.
Person:	Session Laws 1973, Chapter 1319, as amended by
	Session Laws 1975, Chapter 597.
Pitt:	Session Laws 1977, Chapter 241;
	S.L. 2002-142, Section 1.
Polk:	Session Laws 1977, Chapter 241.
Randolph:	Session Laws 1985, Chapter 303.
Richmond:	Session Laws 1973, Chapter 1319;
	Session Laws 1975, Chapter 539.
Robeson:	Session Laws 1983, Chapter 385;
	S.L. 2004-52.
Rockingham:	Session Laws 1985, Chapter 25;
	Session Laws 1989, Chapter 651, as amended by
	Session Laws 1991, Chapter 92.
Rowan:	Session Laws 1975, Chapter 341, as amended by

	Session Laws 1977, Chapter 108.
Rutherford:	Session Laws 1987, Chapter 405;
	S.L. 1999-301, Sections 1 through 3.
Sampson:	Session Laws 1991, Chapter 141.
Scotland:	Session Laws 1977, Chapter 447;
	Session Laws 1985, Chapter 204, as amended by
	Session Laws 1991, Chapter 483.
Stanly:	Session 1969, Chapter 858.
Stokes:	Session Laws 1969, Chapter 195;
	Session Laws 1975, Chapter 542.
Surry:	Session Laws 1977, Chapter 181.
Transylvania:	S.L. 2003-119.
Tyrrell:	Session Laws 1985, Chapter 28;
	S.L. 2007-273, Sections 2 through 6.
Vance:	S.L. 2005-31, Sections 1 and 2.
Wake:	Session Laws 1973, Chapter 1382;
	Session Laws 1987, Chapter 811.
Warren:	Session Laws 1965, Chapter 928, Section 2.
Washington:	S.L. 1997-95, Sections 2 through 4.
Watauga:	Session Laws 1989, Chapter 812.
Wayne:	Session Laws 1975, Chapter 341, as amended by
	Session Laws 1977, Chapter 46;
	Session Laws 1975, Chapter 343, as amended by
	Session Laws 1977, Chapter 45;
	Session Laws 1985, Chapter 420, as amended by
	S.L. 2009-77.
Wilkes:	Session Laws 1973, Chapter 150, as amended by
	Session Laws 1979, Chapter 220, and by
	Session Laws 1991, Chapter 295.
Wilson:	Session Laws 1939, Chapter 271;
	Session Laws 1983, Chapter 423;
	S.L. 2005-264;
	S.L. 2007-264, as amended by
	S.L. 2008-205.
Yadkin:	Session Laws 1973, Chapter 150, as amended by
	Session Laws 1979, Chapter 220.

SECTION 3. This act becomes effective October 1, 2011, and applies to offenses committed on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

S D

SENATE BILL 374
PROPOSED COMMITTEE SUBSTITUTE S374-CSSB-28 [v.9]

5/10/2011 9:29:14 AM

Short Title: Landowner Protection Act. (Public)

Sponsors:

Referred to:

March 21, 2011

A BILL TO BE ENTITLED

AN ACT TO PROTECT LANDOWNER RIGHTS AND INCREASE PUBLIC SAFETY BY (1) PROHIBITING HUNTING FROM THE RIGHT-OF-WAY STATEWIDE, (2) REQUIRING WRITTEN PERMISSION TO HUNT ON THE LAND OF ANOTHER STATEWIDE, AND (3) PROVIDING AN ADDITIONAL METHOD TO POST LAND TO PROHIBIT HUNTING.

The General Assembly of North Carolina enacts:

SECTION 1.(a) Article 22 of Chapter 113 of the General Statutes is amended by adding a new section to read:

"**§ 113-291.12. Hunting from rights-of-way; hunting on the land of another.**

(a) It is unlawful to hunt or attempt to hunt by discharging a firearm, bow and arrow, or crossbow from, on, across, or over the right-of-way of any State-maintained public road or highway, except as allowed on State game lands as prescribed by rules established by the Wildlife Resources Commission. For purposes of this section, the term "to hunt" has the same meaning as in G.S. 113-130.

(b) It is unlawful to possess a loaded firearm outside the passenger compartment of a vehicle while on the roadway or highway right-of-way while in the act of hunting or attempting to hunt, unless the person is the owner or lessee of the land abutting the right-of-way or has on his or her person the written permission of the owner or lessee of the land abutting the right-of-way to hunt on the land, dated within the last 12 months. Nothing in this section prohibits a person from carrying a concealed weapon authorized by a concealed handgun permit issued in accordance with Article 54B of Chapter 14 of the General Statutes or considered valid under G.S. 14-415.24.

(c) It is unlawful to hunt or attempt to hunt on the land of another, or to take fish from private ponds, as defined in G.S. 113-129(13), on the land of another, without having on one's person the written permission, dated within the last 12 months, of the landowner or lessee or the landowner's or lessee's designee. The written permission shall be displayed upon request of any law enforcement officer of the Wildlife Resources Commission, sheriff or deputy sheriff, or other law enforcement officer with general subject matter jurisdiction. A person shall have written permission to hunt for purposes of this section if a landowner or lessee has granted permission to a hunting club to hunt on the person's land and the person is carrying both a current membership card demonstrating the person's membership in the hunting club and a copy of valid written permission granted to the hunting club that complies with the requirements of this section. It is not a violation of this subsection to enter upon the land of

another without having written permission to hunt as required by this subsection for the sole purpose of retrieving hunting dogs that have strayed onto that land, provided that the land is neither posted in accordance with the provisions of G.S. 14-159.7 or enclosed by a fence and provided that the hunter does not carry a firearm, bow and arrow, or crossbow onto the land or operate a motor vehicle on the land.

(d) Violation of this section is a Class 3 misdemeanor. Notwithstanding the provisions of G.S. 15A-1340.23, a second or subsequent violation of this section within three years is a Class 2 misdemeanor punishable by a fine of at least two hundred fifty dollars ($250.00) and the loss of hunting privileges for a period of 12 months from the date of the conviction.

(e) This section is enforceable by law enforcement officers of the Wildlife Resources Commission, by sheriffs and deputy sheriffs, and by law enforcement officers with general subject matter jurisdiction.

(f) To the extent that this section conflicts with any provision of any local act, this section prevails. The fact that a local act in conflict with this section has not been specifically repealed does not indicate an intent for the local act to prevail."

SECTION 1.(b) The following local acts or portions of local acts are repealed as applicable to the following counties:

Alamance:	Session Laws 1971, Chapter 206;
	Session Laws 1989, Chapter 651, as amended by
	Session Laws 1991, Chapter 92.
Alexander:	Session Laws 1987, Chapter 298.
Alleghany:	Session Laws 1967, Chapter 477.
Anson:	Session Laws 1973, Chapter 1319, as amended by
	Session Laws 1975, Chapter 597;
	Session Laws 1987, Chapter 231, Sections 1 and 2.
Ashe:	Session Laws 1977, Chapter 13.
Bertie:	Session Laws 1963, Chapter 252;
	Session Laws 1973, Chapter 1333;
	S.L. 2001-367, Sections 1 and 4, as amended by
	S.L. 2007-313.
Bladen:	Session Laws 1975, Chapter 525.
Brunswick:	Session Laws 1985, Chapter 840.
Buncombe:	Session Laws 1967, Chapter 595.
Burke:	Session Laws 1987, Chapter 39.
Cabarrus:	Session Laws 1993, Chapter 100;
	Session Laws 1993, Chapter 632.
Caldwell:	Session Laws 1973, Chapter 150, as amended by
	Session Laws 1979, Chapter 220;
	Session Laws 1987, Chapter 39.
Camden:	Session Laws 1983, Chapter 274;
	Session Laws 1991, Chapter 796.
Carteret:	Session Laws 1953, Chapter 776.
Caswell:	Session Laws 1975, Chapter 215;
	Session Laws 1989, Chapter 651, as amended by
	Session Laws 1991, Chapter 92;
	S.L. 2007-264, Section 1;
	S.L. 2008-96.
Catawba:	Session Laws 1967, Chapter 350;
	Session Laws 1987, Chapter 298.
Chatham:	Session Laws 1975, Chapter 540, Section 1.
Chowan:	Session Laws 1975, Chapter 524;

	Session Laws 1985, Chapter 868.
Cleveland:	Session Laws 1979, Chapter 587;
	Session Laws 1989, Chapter 193;
	Session Laws 1985, Chapter 204, as amended by
	Session Laws 1991, Chapter 483.
Columbus:	S.L.1997-61.
Craven:	Session Laws 1957, Chapter 603, as amended by
	Session Laws 1963, Chapters 268 and 1163;
	Session Laws 1981, Chapter 709;
	Session Laws 1983, Chapter 305;
	Session Laws 1985, Chapter 882;
	Session Laws 1987, Chapter 248;
	Session Laws 1989, Chapter 463;
	Session Laws 1991, Chapter 145;
	Session Laws 1991, Chapter 850;
	Session Laws 1993, Chapter 115;
	Session Laws 1995, Chapter 628, Section 1;
	S.L. 2003-164;
	S.L. 2009-116.
Cumberland:	Session Laws 1977, Chapter 241.
Currituck:	Session Laws 1985, Chapter 27.
Davidson:	Session Laws 1991, Chapter 795.
Davie:	Session Laws 1989, Chapter 929.
Duplin:	Session Laws 1953, Chapter 776;
	Session Laws 1969, Chapter 195.
Durham:	Session Laws 1969, Chapter 195;
	Session Laws 1973, Chapter 1319, as amended by
	Session Laws 1975, Chapter 597;
	Session Laws 1973, Chapter 1333;
	Session Laws 1975, Chapter 539.
Edgecombe:	Session Laws 1961, Chapter 863;
	S.L. 2009-22.
Franklin:	Session Laws 1965, Chapter 928, Section 2;
	Session Laws 1991, Chapter 108.
Gaston:	S.L. 1997-66.
Gates:	Session Laws 1971, Chapter 389;
	Session Laws 1973, Chapter 1333;
	Session Laws 1975, Chapter 214, Section 3;
	Session Laws 1981, Chapter 863.
Granville:	Session Laws 1959, Chapter 459.
Greene:	Session Laws 1985, Chapter 471, as amended by
	Session Laws 1987, Chapter 132;
	S.L. 2006-12.
Guilford:	Session Laws 1967, Chapter 573;
	Session Laws 1977, Chapter 181.
Halifax:	Session Laws 1971, Chapter 404.
Harnett:	Session Laws 1983, Chapter 791;
	S.L. 1997-103.
Haywood:	Session Laws 1969, Chapter 259.
Henderson:	Session Laws 1983, Chapter 946.
Hertford:	Session Laws 1963, Chapter 252;

	Session Laws 1973, Chapter 1333;
	Session Laws 1975, Chapter 214, Section 3.
Hoke:	Session Laws 1983, Chapter 385;
	Session Laws 1985, Chapter 204, as amended by
	Session Laws 1991, Chapter 483, Section 1.
Hyde:	Session Laws 1957, Chapter 205;
	Session Laws 1971, Chapter 520;
	Session Laws 1985, Chapter 420, as amended by
	S.L. 2009-77.
Iredell:	Session Laws 1987, Chapter 298.
Johnston:	Session Laws 1975, Chapter 341;
	Session Laws 1965, Chapter 928, as amended by
	Session Laws 1975, Chapter 343;
	S.L. 2007-264, Section1.
Jones:	Session Laws 1991, Chapter 146.
Lee:	S.L. 1999-301, Sections 1 through 3.
Lenoir:	Session Laws 1975, Chapter 73;
	Session Laws 1983, Chapter 41.
Macon:	Session Laws 1993, Chapter 104;
	Session Laws 1995, Chapter 754, Sections 2 and 3.
Madison:	Session Laws 1993, Chapter 70.
Martin:	S.L. 2008-50.
McDowell:	S.L. 1997-453.
Mecklenburg:	Session Laws 1981, Chapter 524, Section 2.
Mitchell:	Session Laws 1991, Chapter 855.
Moore:	Session Laws 1971, Chapter 621;
	Session Laws 1977, Chapter 447, as amended by
	Session Laws 1979, Chapter 369;
	S.L. 1999-301, Sections 6.1(a) and (b).
Nash:	Session Laws 1985, Chapter 891, Section 2.
Northampton:	Session Laws 1965, Chapter 509, as amended by
	Session Laws 1967, Chapter 585;
	Session Laws 1973, Chapter 78, Section 2;
	Session Laws 1995, Chapter 628, Section 2;
	Session Laws 1995, Chapter 704;
	Session Laws 1995, Chapter 754, Section 1.
Onslow:	Session Laws 1991, Chapter 435, Section 1 through 3.
Orange:	Session Laws 1973, Chapter 1319, as amended by
	Session Laws 1975, Chapter 597;
	Session Laws 1975, Chapter 539;
	S.L. 2005-264;
	S.L. 2007-264, as amended by
	S.L. 2008-205.
Pamlico:	Session Laws 1991, Chapter 138.
Pasquotank:	Session Laws 1973, Chapter 1333;
	Session Laws 1993, Chapter 632.
Pender:	Session Laws 1969, Chapter 129, Sections 2 and 3.
Perquimans:	Session Laws 1983, Chapter 213;
	Session Laws 1985, Chapter 867, Section 1.
Person:	Session Laws 1973, Chapter 1319, as amended by
	Session Laws 1975, Chapter 597.

Pitt:	Session Laws 1977, Chapter 241; S.L. 2002-142, Section 1.
Polk:	Session Laws 1977, Chapter 241.
Randolph:	Session Laws 1985, Chapter 303.
Richmond:	Session Laws 1973, Chapter 1319; Session Laws 1975, Chapter 539.
Robeson:	Session Laws 1983, Chapter 385; S.L. 2004-52.
Rockingham:	Session Laws 1985, Chapter 25; Session Laws 1989, Chapter 651, as amended by Session Laws 1991, Chapter 92.
Rowan:	Session Laws 1975, Chapter 341, as amended by Session Laws 1977, Chapter 108.
Rutherford:	Session Laws 1987, Chapter 405; S.L. 1999-301, Sections 1 through 3.
Sampson:	Session Laws 1991, Chapter 141.
Scotland:	Session Laws 1977, Chapter 447; Session Laws 1985, Chapter 204, as amended by Session Laws 1991, Chapter 483.
Stanly:	Session 1969, Chapter 858.
Stokes:	Session Laws 1969, Chapter 195; Session Laws 1975, Chapter 542.
Surry:	Session Laws 1977, Chapter 181.
Transylvania:	S.L. 2003-119.
Tyrrell:	Session Laws 1985, Chapter 28; S.L. 2007-273, Sections 2 through 6.
Vance:	S.L. 2005-31, Sections 1 and 2.
Wake:	Session Laws 1973, Chapter 1382; Session Laws 1987, Chapter 811.
Warren:	Session Laws 1965, Chapter 928, Section 2.
Washington:	S.L. 1997-95, Sections 2 through 4.
Watauga:	Session Laws 1989, Chapter 812.
Wayne:	Session Laws 1975, Chapter 341, as amended by Session Laws 1977, Chapter 46; Session Laws 1975, Chapter 343, as amended by Session Laws 1977, Chapter 45; Session Laws 1985, Chapter 420, as amended by S.L. 2009-77.
Wilkes:	Session Laws 1973, Chapter 150, as amended by Session Laws 1979, Chapter 220, and by Session Laws 1991, Chapter 295.
Wilson:	Session Laws 1939, Chapter 271; Session Laws 1983, Chapter 423; S.L. 2005-264; S.L. 2007-264, as amended by S.L. 2008-205.
Yadkin:	Session Laws 1973, Chapter 150, as amended by Session Laws 1979, Chapter 220.

SECTION 2. G.S. 14-159.6 reads as rewritten:

"**§ 14-159.6. Trespass for purposes of hunting, etc., without written consent a misdemeanor.**

(a) Any person who willfully goes on the land, waters, ponds, or a legally established waterfowl blind of another ~~upon which notices, signs or posters prohibiting hunting, fishing or trapping have been placed in accordance with the provisions of G.S. 14-159.7, or upon which "posted" notices have been placed~~ that has been posted in accordance with the provisions of G.S. 14-159.7, to hunt, fish or trap without the written consent of the owner or his agent shall be guilty of a Class 2 misdemeanor. Provided, further, that no arrests under authority of this subsection shall be made without the consent of the owner or owners of said land, or their duly authorized agents in the following counties: Halifax and Warren.

(b) Any person who willfully goes on the land of another ~~upon which notices, signs, or posters prohibiting raking or removing pine needles or pine straw have been placed in accordance with the provisions of G.S. 14-159.7, or upon which "posted" notices have been placed~~ that has been posted in accordance with the provisions of ~~G.S. 14-159.7,~~ G.S. 14-159.7(1), to rake or remove pine needles or pine straw without the written consent of the owner or his agent shall be guilty of a Class 1 misdemeanor."

SECTION 3. G.S. 14-159.7 reads as rewritten:

§ 14-159.7. Regulations as to posting of property.

For purposes of posting property under G.S. 14-159.7, the owner or lessee of the property may use either of the following methods:

(1) The owner or lessee of the property may place notices, signs, or posters on the property. The notices, signs or posters ~~described in G.S. 14-159.6~~ shall measure not less than 120 square inches and shall be conspicuously posted on private lands not more than 200 yards apart close to and along the boundaries. At least one such notice, sign, or poster shall be posted on each side of such land, and one at each corner thereof, provided that said corner can be reasonably ascertained. For the purpose of prohibiting fishing, or the taking of fish by any means, in any stream, lake, or pond, it shall only be necessary that the signs, notices, or posters be posted along the stream or shoreline of a pond or lake at intervals of not more than 200 yards apart.

(2) The owner or lessee of the property may place identifying purple paint marks on trees or posts around the area to be posted. Each paint mark shall be a vertical line of at least eight inches in length and the bottom of the mark shall be no less than three feet nor more than five feet from the base of the tree or post. The paint marks shall be placed no more than 200 yards apart and shall be readily visible to any person approaching the property. For the purpose of prohibiting fishing, or the taking of fish by any means, in any stream, lake, or pond, it shall only be necessary that the paint marks be placed along the stream or shoreline of a pond or lake at intervals of not more than 200 yards apart."

SECTION 4. G.S. 14-159.10 reads as rewritten:

"**§ 14-159.10. Enforcement of ~~Article by peace officers; wildlife protectors authorized to execute process.~~Article.**

This Article may be enforced by ~~deputy sheriffs~~ sheriffs or deputy sheriffs, law enforcement officers of the Wildlife Resources Commission, and other peace officers with general subject matter jurisdiction. ~~Law enforcement officers of the North Carolina Wildlife Resources Commission may execute process issued by the court for violations of this Article.~~"

SECTION 5. This act becomes effective October 1, 2011, and applies to offenses committed on or after that date.

SENATE BILL 374:
Landowner Protection Act

2011-2012 General Assembly

Committee:	Senate Agriculture/Environment/Natural Resources	**Date:**	May 10, 2011
Introduced by:	Sens. Apodaca, Walters, Tucker	**Prepared by:**	Mariah Matheson
Analysis of:	PCS S374-CSSB-28 [v.9] to the First Edition		Research Assistant

SUMMARY: Senate Bill 374 would regulate hunting and fishing on private land, prohibit hunting from the right-of-way, and provide an additional method to post land to prohibit hunting.

[As introduced, this bill was identical to H762, as introduced by Reps. McComas, LaRoque, Collins, which is currently in House Agriculture.]

CHANGES MADE BY PCS: The PCS changes the phrase "take" to "hunt." "Take" and "hunt" have different definitions in the statutes (G.S. 113-130). Allows for the retrieval of hunting dogs that have strayed upon adjacent land, provided that the land is neither posted nor enclosed by a fence. During the retrieval of hunting dogs, the hunter must not carry a firearm, bow and arrow, or crossbow onto the land or operate a motor vehicle on the land. In addition to technical, clarifying, and conforming changes, the PCS makes it unlawful to take fish from private ponds on the land of another and establishes an additional method for posting property against hunting by using purple paint marks.

CURRENT LAW: Pursuant to G.S. 14-159.6, trespassing for purposes of hunting, upon posted property, without written consent, is a Class 2 misdemeanor.[1] A posted property is defined as "registered property that is posted in substantial compliance with G.S. 113-282(d)," which includes detailed registration and signage requirements. In order for property to be properly posted and legally binding, the property must be registered with the Wildlife Resources Commission (WRC); state that hunting or fishing, or both, are prohibited without an entry permit; and set out the name and address and, if feasible, the telephone number of the person to contact for an entry permit.

BILL ANALYSIS:

Section 1 would do the following:

- Prohibit hunting on the land of another on, across, or over the right-of-way of any State-maintained public road or highway, except as allowed on State game lands as prescribed by the rules established by the WRC.
- Makes it unlawful to possess a loaded firearm outside the passenger compartment of a vehicle while on the roadway or highway right-of-way while in the act of hunting or attempting to hunt wildlife, unless the person is the owner or lessee of the land abutting the right-of-way, or has written permission from the owner or lessee, and the permission slip is dated within the last 12 months.
- Makes it unlawful to hunt on the land of another or take fish from private ponds, without having the written permission of the land owner or lessee, dated within 12 months. Hunters or hunting club members would be required to carry the written permission on their person while on the property, and offer to display it to law enforcement officers upon request. Hunting club members would also need to carry a certification from their hunt club designating that they are a

[1] Assuming no prior convictions, a Class 2 misdemeanor is subject to 1 to 30 days community punishment and fine of up to $1,000.

member. Violation of this provision would be a Class 3 misdemeanor[2] and a second or subsequent violation of this provision within three years is a Class 2 misdemeanor punishable by a fine of at least $250 and the loss of hunting privileges for a period of 12 months from the date of the conviction.

- A hunter may retrieve hunting dogs that have strayed upon the land, provided that the land is neither posted nor enclosed by a fence. The hunter must not carry a firearm, bow and arrow, or crossbow onto the land or operate a motor vehicle on the land.
- This provision would be enforceable by law enforcement officers of the WRC, by sheriffs and deputy sheriffs, and by law enforcement officers with general subject matter jurisdiction. If this provision conflicts with any provision of any local act, this provision prevails. The fact that a local act in conflict with this provision has not been specifically repealed does not indicate an intent for the local act to prevail.
- Repeal the applicable local acts.

Section 2 and 4 make clarifying and conforming changes.

Section 3 establishes an additional method for posting property against hunting by using purple paint marks.

EFFECTIVE DATE: This act would become effective October 1, 2011 and apply to offenses committed on or after that date.

S374-SMTF-22(e1) v3

[2] Assuming no prior convictions, a Class 3 misdemeanor is subject to 1 to 10 days community punishment and fine of up to $200.

VISITOR REGISTRATION SHEET

Senate AG/Env/Nat. Resources (2011-2012) — 5-10-11

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Carmen Hooker	Elected Official
JULIAN PHILPOTT	NCFB
LARRY WOOTEN	NCFB
Bob Shannon	NCFA
Peter Daniel	NC Farm Bureau
Mitch Peele	"
JOHN COOPER	COMPASS NC
Jack Stalay	NCWRC
Dale Caveny	NCWRC
Will Cain	Hunters NCSFHA
Harry Cain	Hunter NCSFHA

VISITOR REGISTRATION SHEET

Senate AG/Env/Nat. Resources (2011-2012) — 5/10/11

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
[illegible]	NCFB
Jay Dixon	N.C. Concerned Sportsmen Ass
Rod Vinson	ENFHA
CARL DIXON	N.C.S.A. ENFHA
Harry Ennis	ENCFHA
Chris Anderson	
GORDON MYERS	NCWRC
Chris Rel	NCA
David McLeod	NCDACS
[illegible]	NCCA
[illegible]	NCCA / NCPC

VISITOR REGISTRATION SHEET

Senate AG/Env/Nat. Resources (2011-2012)
Name of Committee **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Wendy Sellers - BoSellers	Farmer Cabarrus Co.
Steve Blackwelder	Farmer - Cabarrus Co.
Mike Hamm	NCTA
Henry Isaac	Attorney - Raleigh
Greg Thomas	Fibrowatt
Emily Grimm	NWC
Angie Maier	NCPC
Paul Sherman	NCFB
David Barnes	PS
Jim Hobbs	HANC

VISITOR REGISTRATION SHEET

Senate AG/Env/Nat. Resources (2011-2012)
Name of Committee **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Patsy Yancey	CLPP
Allyson Fowler	NC Grange
Henri McClees	McClees Consulting
Joe McClees	McClees Consulting
Christa Wagner Vinson	Commerce
Will Quick	PPAB
Matt Wolfe	Parks Rec
Katherine Ross	PPAB
Anita Gentry	NC Grange
Jimmy Gentry	NC GRANGE
Mike Tavent	UNCG
DICK HAMILTON	NCWF
R Rogers	CWMTF

Tommy Stevens	NCPC
Jay Rowe	NCAEC
S Walker	NCMC
[illegible]	NCBA
[illegible]	NCBA
Kelli [illegible]	NCLM
Preston Howard	MCIC
Kathy Hawkins	Duke
Geo Everett	Duke
Patrick Buffkin	NCAEC
Rick Zechini	Project Energy

VISITOR REGISTRATION SHEET

Senate AG/Env/Nat. Resources (2011-2012)
Name of Committee **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Kelly McElwee	NC Cons. Network
Dan Conrad	NCCN
Adam Pridemore	School of Gov't
BRUCE THOMPSON	PARKER POE
Tom McKITTRICK	FORSITE DEVP INC.
Matthew Betts	The Insider
Tom BEAN	EDF, NCSEA
Sushma Masemore	NC DENR/DAQ
Daniel Raimi	DENR
Robin Smith	DENR
Will Morgan	Sierra
TOM GORS	TNC

Senate Agriculture/Environment/Natural Resources

MINUTES

May 17, 2011

The Senate Ag/Env/Nat. Resources committee met on Tuesday, May 17, 2011 in Room 544-LOB at 11:10 pm. There were 17 senators present.

Sen. Don East called the meeting to order and introduced the Pages and Sgt-At-Arms staff.

SB-504 Water Infrastructure Authority/Water Grants (Discussion Only)

Sen. Hartsell discussed SB 504. This bill is for discussion only. Sen. Hartsell commented and reviewed the bill. Sen. Hartsell explained the intension of the bill. Mr. Larry Yates (PED) spoke on the legislation and the report that PED issued. Mr. Yates commented on the funding and application processes. Mr. Richard Rogers of the Clean Water Management Trust Fund spoke on good intentions of the bill; however noted that local entities would be better to manage their resources and needs. CWMTF does not support this legislation. Mr. Billy Ray Hall of the NC Rural Center spoke on his dislike of the bill. He thinks the bill would discount the close relationship that the Rural Center has built with local towns across the state. Mr. Hall pointed out the financing issues that arise from this legislation. Sen. Kinnaird questioned the appropriations of bill. Sen. Hartsell commented that the appropriations can be set up anyway that they would like. Sen. Clodfelter commented on past actions of this similar bill. Mr. Rogers said that the agency has been working together to get their "act together." Sen. Clodfelter wants to know where to go to look for information. Sen. Atwater wants to work out some of the pieces of this legislation before moving forward. Sen. Atwater would like a joint study committee. Atwater later asked if no grants would be a part of this bill. Sen. Hartsell said that grants were not a part of this legislation at this time. He added that the he thinks the state as a long term water issue. Sen. Bingham questions the type 1 transfer on page two of the report. Sen. Hartsell spoke of the consolidation of the transfer. Sen. Kinnaird spoke on the CWMTF mission and why they started the program.

SB-279 Clarify Renewable Energy Resource Definition

Sen. Jenkins spoke on the clarifying language in this bill. The bill simply strikes the word "waste." He spoke on the support of the change. Sen. Tillman moved for a favorable report. Will McDowell from the Environmental Defense Fund, spoke on the dislike of this bill and the effects of this legislation. Sen. Walters commented on the intentions of this bill, he continued to explain the management practices. Bob Slocum of the NC Forestry Association commented that they support the bill and that it would be good for industry. Sen. Clodfelter said the bill is a clarifying bill and no more than that. No further discussion, vote taken and so moved.

SB 231- Interconnection of Public Water Systems (Discussion Only)

Sen. Hartsell (Discussion Only) explained the intentions of this legislation, he continued to explain the background information that lead to the need for this legislation. Sen. East questioned if the state should require counties to interconnect their water infrastructure. Sen. Hartsell said that it would get communities to work together to match supply and demand. Sen. East asked if there should be state aid or if this should be a local issue. Sen. Clodfelter read a piece from the General Statues book, explaining the current problems with the system. Sen. Rabon wants to know what a created "wetland" is? Ms. Robin Smith from DENR, explained that it is a wetland created by humans. Sen. Rabon also continued to question the process of discharging waste water and if this bill will help? Sen. Hartsell said that this bill will not address that issue. Sen. Allran wants to question Sen. Clodfelter on promoting inter-water basin transfer? Sen. Clodfelter said that it would not, NO.

The meeting adjourned at 12:00.

Sen. Don East, Co-Chair

Cindy J. Davis, Committee Clerk

Steven B. Webb, Committee Assistant

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES COMMITTEE REPORT
Senator Don East, Co-Chair
Senator David Rouzer, Co-Chair

Tuesday, May 17, 2011

Senator EAST,
submits the following with recommendations as to passage:

FAVORABLE

S.B. **279** Clarify Renewable Energy Resource Definition.
Sequential Referral: None
Recommended Referral: None

TOTAL REPORTED: 1

Committee Clerk Comments:

Senate Agriculture/Environment/Natural Resources Committee
Tuesday, May 17, 2011, 11:00
544 LOB

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

SB 279	Clarify Renewable Energy Resource Definition.	Senator Jenkins
SB 504	Water Infrastructure Authority/Water Grants.	Senator Hartsell

Presentations

Other Business

Adjournment

Principal Clerk ____
Reading Clerk ____

Corrected: ADD SB-231

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

The Senate Committee on **Agriculture/Environment/Natural Resources** will meet at the following time:

DAY	DATE	TIME	ROOM
Tuesday	May 17, 2011	11:00	544 LOB

The following will be considered:

BILL NO.	SHORT TITLE	SPONSOR
SB 279	Clarify Renewable Energy Resource Definition.	Senator Jenkins
SB 504	Water Infrastructure Authority/Water Grants.	Senator Hartsell
SB 231	Interconnection of Public Water Systems.	Senator Hartsell

ADD SB-231

Senator Don East, Co-Chair
Senator David Rouzer, Co-Chair

Principal Clerk ____
Reading Clerk ____

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

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Senator Don East, Co-Chair
Senator David Rouzer, Co-Chair

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

S D

SENATE BILL 231
PROPOSED COMMITTEE SUBSTITUTE S231-CSRI-21 [v.2]

5/16/2011 4:42:55 PM

Short Title: Interconnection of Public Water Systems. (Public)

Sponsors:

Referred to:

March 8, 2011

A BILL TO BE ENTITLED

AN ACT REQUIRING THE INTERCONNECTION OF PUBLIC WATER SYSTEMS OR WASTEWATER SYSTEMS TO REGIONAL SYSTEMS WHEN NECESSARY TO PROMOTE PUBLIC HEALTH, PROTECT THE ENVIRONMENT, AND ENSURE COMPLIANCE WITH APPLICABLE RULES AND TO REQUIRE THAT AN ANALYSIS OF REASONABLE ALTERNATIVES BE DONE BEFORE CONSTRUCTING OR ALTERING A PUBLIC WATER SYSTEM.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 130A-317(c) reads as rewritten:

"(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 all of the following conditions are met:

(1) The plans for construction or alteration have been prepared by an engineer licensed by this State.

(2) The Department has determined that the system, as constructed or altered, will be capable of compliance with the drinking water rules.

(3) The Department has determined that the system is capable of interconnection at an appropriate time with an expanding municipal, ~~county~~ county, or regional ~~system.~~ system; the Department may require interconnection with a municipal, county, or regional system within a county, or between or among counties if approved by the board of commissioners of each county, if necessary to promote the public health, protect the environment, or ensure compliance with drinking water rules.

(3a) The Department has determined that an analysis has been performed, including a financial analysis, of the reasonable alternatives to the proposed construction or alteration of the public water system, and that the analysis indicates that the proposed construction or alteration is appropriate.

(4) The Department has determined that adequate arrangements have been made for the continued operation, service and maintenance of the public water system.

(5) The Department has approved the plans and specifications."

SECTION 2. G.S. 130A-317(d)(6) reads as rewritten:

"(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 meets all of the following conditions:

...

(6) Provides that the system is capable of interconnection at an appropriate time with an expanding municipal, county, or regional ~~system.~~ system; and requires interconnection of the system with a municipal, county, or regional system when the Department determines interconnection is necessary to promote the public health, protect the environment, or ensure compliance with drinking water rules.

...."

SECTION 3. G.S. 143-215.1(b)(4) reads as rewritten:

"(4) The Commission shall have the power:

a. To grant a permit with such conditions attached as the Commission believes necessary to achieve the purposes of this Article.

b. To require that an applicant satisfy the Department that the applicant, or any parent, subsidiary, or other affiliate of the applicant or parent:

1. Is financially qualified to carry out the activity for which the permit is required under subsection (a) of this section; and

2. Has substantially complied with the effluent standards and limitations and waste management treatment practices applicable to any activity in which the applicant has previously engaged, and has been in substantial compliance with other federal and state laws, regulations, and rules for the protection of the environment.

3. As used in this subdivision, the words "affiliate," "parent," and "subsidiary" have the same meaning as in 17 Code of Federal Regulations § 240.12b-2 (April 1, 1990, Edition).

4. For a privately owned treatment works that serves 15 or more service connections or that regularly serves 25 or more individuals, financial qualification may be demonstrated through the use of a letter of credit, insurance, surety, trust agreement, financial test, bond, or a guarantee by corporate parents or third parties who can pass the financial test. No permit shall be issued under this section for a privately owned treatment works that serves 15 or more service connections or that regularly serves 25 or more individuals, until financial qualification is established and the issuance of the permit shall be contingent on the continuance of the financial qualification for the duration of the activity for which the permit was issued.

c. To modify or revoke any permit upon not less than 60 days' written notice to any person affected.
d. To designate certain classes of minor activities for which a general permit may be issued, after considering:
1. The environmental impact of the activities;
2. How often the activities are carried out;
3. The need for individual permit oversight; and
4. The need for public review and comment on individual permits.
e. To designate certain classes of minor activities for which:
1. Performance conditions may be established by rule; and
2. Individual or general permits are not required.
f. To require connection to a municipal, county, or regional wastewater system if necessary to promote public health, protect the environment, or ensure compliance with water quality rules."

SECTION 4. G.S. 143-215.1(f) reads as rewritten:

"(f) Local Permit Programs for Sewer 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.
(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.
(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.
(4) Provides for the adequate enforcement of the program requirements by appropriate administrative and judicial process.
(5) Provides for the adequate administrative organization, engineering staff, financial and other resources necessary to effectively carry out its plan review program.
(6) Provides that the system is capable of interconnection at an appropriate time with an expanding municipal, county, or regional ~~system.~~ system; and requires interconnection of the system with a municipal, county, or regional system when the Commission determines interconnection is necessary to

promote the public health, protect the environment, or ensure compliance with water quality rules.

(6a) Provides that an analysis, including a financial analysis, of the reasonable alternatives to any proposed construction or alteration of a public sewer system must be done and that the analysis must demonstrate that the proposed construction or alteration is appropriate.

(7) Provides for the adequate arrangement for the continued operation, service, and maintenance of the sewer 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."

SECTION 5. G.S. 143-215.1(b) is amended by adding two new subdivisions to read:

"(6) No permit for a new or expanded municipal waste treatment system or nonmunicipal waste treatment system (human waste only) shall be issued, unless the applicant satisfies all of the following criteria:

a. Has adopted a plan to implement a program to reduce demand and manage existing capacity by reducing or eliminating stormwater and groundwater infiltration and intrusion into collection lines.

b. Has performed and submits an analysis, including a financial analysis, of reasonable alternatives to the proposed new or expanded waste treatment system, including the consideration of discharging to created wetlands and the beneficial reuse of treated wastewater for nondrinking water purposes.

c. Can demonstrate that the proposed new or expanded waste treatment facility will be planned, designed, and constructed to facilitate or accommodate eventual interconnection with adjoining systems or regional waste treatment systems.

(7) In deciding whether to grant a permit application under subdivision (6) of this subsection, the Commission may consider whether the applicant is making adequate progress in the implementation of sub-subdivision a. of subdivision (6) of this subsection and may consider whether the applicant could feasibly choose an alternative under sub-subdivision b. of subdivision (6) of this subsection that will provide better protection for water quality."

SECTION 6. The Commission for Public Health shall adopt rules to implement G.S. 130A-317, as amended by Sections 1 and 2 of this act, by October 1, 2011. The Environmental Management Commission shall adopt rules to implement G.S. 143-215.1, as amended by Sections 3, 4, and 5 of this act, by October 1, 2011.

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

SENATE BILL 231:
Interconnection of Public Water Systems

2011-2012 General Assembly

Committee:	Senate Agriculture/Environment/Natural Resources	**Date:**	May 17, 2011
Introduced by:	Sen. Hartsell	**Prepared by:**	Jennifer McGinnis Committee Counsel
Analysis of:	First Edition		

SUMMARY: ***Senate Bill 231 would require the interconnection of public water systems or wastewater systems to regional systems when necessary to promote public health, protect the environment, and to ensure compliance with applicable rules. The bill would also require systems to analyze all reasonable alternatives before constructing or altering a public water or sewer system.***

CURRENT LAW: The Department of Environment and Natural Resources (Department), before issuing a permit for construction or expansion of a local water system or before certifying a local approval program, is required to determine whether the local *water system*[i] is capable of interconnection at an appropriate time with expanding municipal, county, or regional systems. The Environmental Management Commission (EMC) is required to do the same for *sewer systems.* [ii] No authority, however, is provided to the Department or the EMC to require interconnection.

BILL ANALYSIS:

Section 1 of the bill would authorize the Department to require public water systems to interconnect with municipal, county, or regional systems if necessary to:

a) Promote the public health;

b) Protect the environment; or to

c) Ensure compliance with *drinking water* rules.

Before approving any construction of or alteration to a local system, the Department would also be required to determine if the local system has performed an analysis, including a financial analysis, of all reasonable alternatives. The Department could approve the construction or alteration if, among other things, the analysis indicates that the proposed construction or alteration is appropriate.

Section 2 of the bill would amend the statutes governing the Department's ability to certify a local program that seeks to administer its own approval program for water systems to provide that the program must require interconnection of a water system with municipal, county, or regional systems when the Department determines interconnection is necessary in order to promote the public health, protection the environment, or ensure compliance with drinking water rules.

Section 3 would authorize the EMC to require local wastewater systems to connect with municipal, county, or regional wastewater systems if necessary to:

a) Promote the public health;

b) Protect the environment; or to

c) Ensure compliance with *water quality* rules.

Before approving an extension or alteration to a local system, the EMC would also be required to determine if the local system has performed an analysis, including a financial analysis, of all reasonable alternatives. The EMC could approve the construction or alteration if, among other things, the analysis indicates that the proposed construction or alteration is appropriate.

Section 4 would require that before the EMC issues a permit to construct a new or expanded municipal wastewater treatment system for human waste, the applicant must show that:

a) A plan has been adopted by the system to reduce or eliminate stormwater or groundwater infiltration or intrusion into collection lines;

b) An analysis has been conducted, including a financial analysis, of all alternatives to the proposed expansion, including consideration of the use of created wetlands and treated wastewater for non-drinking water purposes; and

c) The applicant can demonstrate that the proposed construction or expansion will be designed to accommodate future interconnection with adjoining or regional waste treatment systems.

Section 5 would amend the statutes governing the EMC's ability to certify a local program that seeks to administer its own approval program for sewer systems to provide that the program shall require interconnection with municipal, county, or regional systems when the EMC determines interconnection is necessary in order to promote the public health, protection the environment, or ensure compliance with water quality rules.

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

S231-SMRI-28(e1) v4

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[i] G.S. 130A-317(c)(3).
[ii] G.S. 143-215.1(f).

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

S 1

SENATE BILL 231

Short Title:	Interconnection of Public Water Systems.	(Public)
Sponsors:	Senators Hartsell; and Atwater.	
Referred to:	Agriculture/Environment/Natural Resources.	

March 8, 2011

A BILL TO BE ENTITLED

AN ACT REQUIRING THE INTERCONNECTION OF PUBLIC WATER SYSTEMS OR WASTEWATER SYSTEMS TO REGIONAL SYSTEMS WHEN NECESSARY TO PROMOTE PUBLIC HEALTH, PROTECT THE ENVIRONMENT, AND ENSURE COMPLIANCE WITH DRINKING WATER RULES AND TO REQUIRE THAT AN ANALYSIS OF REASONABLE ALTERNATIVES BE DONE BEFORE CONSTRUCTING OR ALTERING A PUBLIC WATER SYSTEM.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 130A-317(c) reads as rewritten:

"(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 all of the following conditions are met:

(1) The plans for construction or alteration have been prepared by an engineer licensed by this State.

(2) The Department has determined that the system, as constructed or altered, will be capable of compliance with the drinking water rules.

(3) The Department has determined that the system is capable of interconnection at an appropriate time with an expanding municipal, ~~county~~ county, or regional ~~system.~~ system; the Department may require interconnection with a municipal, county, or regional system within a county, or between or among counties if approved by the board of commissioners of each county, if necessary to promote the public health, protect the environment, or ensure compliance with drinking water rules.

(3a) The Department has determined that an analysis performed, including a financial analysis, of the reasonable alternatives to the proposed construction or alteration of the public water system, and that the analysis indicates that the proposed construction or alteration is appropriate.

(4) The Department has determined that adequate arrangements have been made for the continued operation, service and maintenance of the public water system.

(5) The Department has approved the plans and specifications."

SECTION 2. G.S. 130A-317(d)(6) reads as rewritten:

"(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 meets all of the following conditions:

...

(6) Provides that the system is capable of interconnection at an appropriate time with an expanding municipal, county, or regional ~~system.~~ system and requires interconnection with a municipal, county, or regional system when the Department determines interconnection is necessary to promote the public health, protect the environment, or ensure compliance with drinking water rules.

...."

SECTION 3. G.S. 143-215.1(b)(4) reads as rewritten:

"(4) The Commission shall have the power:

a. To grant a permit with such conditions attached as the Commission believes necessary to achieve the purposes of this Article.

b. To require that an applicant satisfy the Department that the applicant, or any parent, subsidiary, or other affiliate of the applicant or parent:

1. Is financially qualified to carry out the activity for which the permit is required under subsection (a) of this section; and

2. Has substantially complied with the effluent standards and limitations and waste management treatment practices applicable to any activity in which the applicant has previously engaged, and has been in substantial compliance with other federal and state laws, regulations, and rules for the protection of the environment.

3. As used in this subdivision, the words "affiliate," "parent," and "subsidiary" have the same meaning as in 17 Code of Federal Regulations § 240.12b-2 (April 1, 1990, Edition).

4. For a privately owned treatment works that serves 15 or more service connections or that regularly serves 25 or more individuals, financial qualification may be demonstrated through the use of a letter of credit, insurance, surety, trust agreement, financial test, bond, or a guarantee by corporate parents or third parties who can pass the financial test. No permit shall be issued under this section for a privately owned treatment works that serves 15 or more service connections or that regularly serves 25 or more individuals, until financial qualification is established and the issuance of the permit shall be contingent on the continuance of the financial qualification for the duration of the activity for which the permit was issued.

c. To modify or revoke any permit upon not less than 60 days' written notice to any person affected.

d. To designate certain classes of minor activities for which a general permit may be issued, after considering:
1. The environmental impact of the activities;
2. How often the activities are carried out;
3. The need for individual permit oversight; and
4. The need for public review and comment on individual permits.

e. To designate certain classes of minor activities for which:
1. Performance conditions may be established by rule; and
2. Individual or general permits are not required.

f. To require connection to a municipal, county, or regional wastewater system if necessary to promote public health, protect the environment, or ensure compliance with water quality rules."

SECTION 4. G.S. 143-215.1(b) is amended by adding two new subdivisions to read:

"(6) No permit for a new or expanded municipal waste treatment system or nonmunicipal waste treatment system (human waste only) shall be issued, unless the applicant satisfies all of the following criteria:

a. Has adopted a plan to implement a program to reduce demand and manage existing capacity by reducing or eliminating stormwater and groundwater infiltration and intrusion into collection lines.

b. Has performed and submits an analysis, including a financial analysis, of reasonable alternatives to the proposed new or expanded waste treatment system, including the consideration of discharging to created wetlands and the beneficial reuse of treated wastewater for nondrinking water purposes.

c. Can demonstrate that the proposed new or expanded waste treatment facility will be planned, designed, and constructed to facilitate or accommodate eventual interconnection with adjoining systems or regional waste treatment systems.

(7) In deciding whether to grant a permit application under subdivision (6) of this subsection, the Commission may consider whether the applicant is making adequate progress in the implementation of sub-subdivision a. of subdivision (6) of this subsection and may consider whether the applicant could feasibly choose an alternative under sub-subdivision b. of subdivision (6) of this subsection that will provide better protection for water quality."

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

"(f) Local Permit Programs for Sewer 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.

(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.

(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.

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

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

(6) Provides that the system is capable of interconnection at an appropriate time with an expanding municipal, county, or regional ~~system.~~ system and requires interconnection with a municipal, county, or regional system when the Department determines interconnection is necessary to promote the public health, protect the environment, or ensure compliance with water quality rules.

(6a) Provides that an analysis, including a financial analysis, of the reasonable alternatives to any proposed construction or alteration of a public sewer system must be done and that the analysis must demonstrate that the proposed construction or alteration is appropriate.

(7) Provides for the adequate arrangement for the continued operation, service, and maintenance of the sewer 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."

SECTION 6. The Commission for Health Services shall adopt rules to implement G.S. 130A-317, as amended by Sections 1 and 2 of this act, by October 1, 2011. The Environmental Management Commission shall adopt rules to implement G.S. 143-215.1, as amended by Sections 3, 4, and 5 of this act, by October 1, 2011. Notwithstanding G.S. 150B-21.1(a)(2), this act shall not be construed to authorize the adoption of temporary rules.

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

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

S 1

SENATE BILL 279

Short Title:	Clarify Renewable Energy Resource Definition.	(Public)
Sponsors:	Senator Jenkins.	
Referred to:	Agriculture/Environment/Natural Resources.	

March 10, 2011

A BILL TO BE ENTITLED

AN ACT TO AMEND THE DEFINITION OF "RENEWABLE ENERGY RESOURCE" THAT PERTAINS TO THE RENEWABLE ENERGY AND ENERGY EFFICIENCY PORTFOLIO STANDARD (REPS) TO CLARIFY THAT WOOD IS A RENEWABLE ENERGY RESOURCE AND THAT WOOD NEED NOT BE A WASTE PRODUCT TO QUALIFY AS A RENEWABLE ENERGY RESOURCE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 62-133.8(a) reads as rewritten:

"(a) Definitions. – As used in this section:

(1) "Combined heat and power system" means a system that uses waste heat to produce electricity or useful, measurable thermal or mechanical energy at a retail electric customer's facility.

...

(8) "Renewable energy resource" means a solar electric, solar thermal, wind, hydropower, geothermal, or ocean current or wave energy resource; a biomass resource, including agricultural waste, animal waste, ~~wood waste,~~wood, spent pulping liquors, combustible residues, combustible liquids, combustible gases, energy crops, or landfill methane; waste heat derived from a renewable energy resource and used to produce electricity or useful, measurable thermal energy at a retail electric customer's facility; or hydrogen derived from a renewable energy resource. "Renewable energy resource" does not include peat, a fossil fuel, or nuclear energy resource."

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

SENATE BILL 279:
Clarify Renewable Energy Resource Definition

2011-2012 General Assembly

Committee:	Senate Agriculture/Environment/Natural Resources	**Date:**	May 17, 2011
Introduced by:	Senator Jenkins	**Prepared by:**	Jeff Hudson Committee Counsel
Analysis of:	First Edition		

SUMMARY: ***Senate Bill 279 would provide that the definition of "renewable energy resource" under the State's Renewable Energy and Energy Efficiency Portfolio Standard (REPS) includes wood and not just wood waste.***

BACKGROUND AND CURRENT LAW:

S.L. 2009-397 (commonly referred to as Senate Bill 3) established the North Carolina Renewable Energy and Energy Efficiency Portfolio Standard (REPS) in order to promote the development of renewable energy and energy efficiency in the State. The REPS requires electric power suppliers to use an increasing percentage of renewable energy resources and employ energy efficiency programs (12.5% by 2020) to meet the needs of the State's retail electricity customers.

One way in which an electric power supplier may meet the REPS requirement is by using a renewable energy resource to generate electric power. Senate Bill 3 defined a "renewable energy resource" to include biomass resources, including agricultural waste, animal waste, wood waste, spent pulping liquors, combustible residues, combustible liquids, combustible gases, energy crops, or landfill methane.

After Senate Bill 3 became law, a question arose as to whether "biomass" under the definition of "renewable energy resource" included wood in addition to wood waste. The question came before the North Carolina Utilities Commission (Commission) and the Commission determined that "biomass" under the definition of "renewable energy resource" does include wood in addition to wood waste. The Commission's decision on this issue is currently on appeal to the North Carolina Court of Appeals.

BILL ANALYSIS:

Senate Bill 279 would provide that the definition of "renewable energy resource" under the State's Renewable Energy and Energy Efficiency Portfolio Standard (REPS) includes wood and not just wood waste. This would, in effect, codify the Commission's determination.

EFFECTIVE DATE: This act would become effective when it becomes law.

SENATE BILL 504

Short Title:	Water Infrastructure Authority/Water Grants.	(Public)
Sponsors:	Senator Hartsell.	
Referred to:	Agriculture/Environment/Natural Resources.	

April 5, 2011

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH THE NORTH CAROLINA WATER AND WASTEWATER INFRASTRUCTURE AUTHORITY TO ADMINISTER THE STATE'S FUNDING FOR WATER AND WASTEWATER INFRASTRUCTURE PROJECTS, TO TRANSFER THE CONSTRUCTION GRANTS AND LOANS SECTION OF THE DIVISION OF WATER QUALITY AND THE FINANCIAL SERVICES UNIT IN THE PUBLIC WATER SUPPLY SECTION OF THE DIVISION OF ENVIRONMENTAL HEALTH FROM THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES TO THE AUTHORITY, TO PROVIDE THAT THE CLEAN WATER MANAGEMENT TRUST FUND SHALL NOT FUND WASTEWATER PROJECTS, TO TRANSFER ANNUALLY THE SUM OF TWENTY-FIVE MILLION DOLLARS FROM THE CLEAN WATER MANAGEMENT TRUST FUND TO THE WATER INFRASTRUCTURE FUND TO PROVIDE GRANT AND LOAN FUNDS FOR WATER AND WASTEWATER INFRASTRUCTURE PROJECTS, TO DIRECT THE AUTHORITY AND THE NORTH CAROLINA RURAL ECONOMIC DEVELOPMENT CENTER TO DEVELOP A TRANSITION PLAN TO MOVE THE WATER AND WASTEWATER PROGRAMS FROM THE NORTH CAROLINA RURAL ECONOMIC DEVELOPMENT CENTER TO THE AUTHORITY, AND TO MAKE CONFORMING STATUTORY CHANGES.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 159G of the General Statutes is amended by adding a new Article to read:

"Article 5.

"North Carolina Water and Wastewater Infrastructure Authority.

"**§ 159G-70. Definitions.**

The following definitions apply in this Article:

(1) Authority. – The North Carolina Water and Wastewater Infrastructure Authority established by G.S. 159G-71.

(2) Commission. – State Water Infrastructure Commission.

(3) Strategic plan. – The statewide strategic plan for the State's water and wastewater infrastructure developed by the State Water Infrastructure Commission.

"**§ 159G-71. North Carolina Water and Wastewater Infrastructure Authority.**

(a) Established. – The North Carolina Water and Wastewater Infrastructure Authority is established as an independent authority. The Authority is located in the Department of Environment and Natural Resources for administrative purposes.

(b) Membership. – The Authority shall consist of 12 members to be appointed as follows:

(1) Four members appointed by the Governor.
(2) Four members appointed by the President Pro Tempore of the Senate.
(3) Four members appointed by the Speaker of the House of Representatives.

(c) Initial Appointments; Term Limits. – To provide for a staggered membership, two of the members initially appointed pursuant to subdivisions (b)(1), (b)(2), and (b)(3) of this section shall serve two-year terms ending on June 30, 2014. When appointing the initial members, the Governor, President Pro Tempore of the Senate, and Speaker of the House of Representatives shall designate which initial members shall serve two-year terms and which shall serve four-year terms.

(d) Terms. – Except as provided for the initial members under subsection (c) of this section, members shall serve four-year terms beginning July 1, 2012. No member shall serve more than two full consecutive four-year terms or a total of 10 years. Members may continue to serve beyond their terms until their successors are duly appointed, but any holdover shall not affect the expiration date of the succeeding term. A member may be removed from the Authority for cause by the official that appointed the member.

(e) Qualifications. – The office of Authority member is declared to be an office that may be held concurrently with any other executive or appointive office, under the authority of Section 9 of Article VI of the North Carolina Constitution. Persons shall be appointed to the Authority based on their knowledge and expertise of funding and construction of water and wastewater infrastructure.

(f) Chair. – The Governor shall appoint the initial chair of the Authority. The chair appointed by the Governor shall call the first meeting, at which the members shall elect a chair. The chair shall serve a term of one year. The Authority shall elect a chair annually.

(g) Meetings. – The Authority shall meet at least four times a year and may meet as often as needed.

(h) Quorum. – A majority of the membership of the Authority constitutes a quorum for the transaction of business.

(i) Vacancies. – A vacancy in the Authority or as chair of the Authority resulting from the resignation of a member or otherwise is filled in the same manner in which the original appointment was made. The term of an appointment to fill a vacancy is for the balance of the unexpired term.

(j) Compensation. – Each member of the Authority shall receive per diem and necessary travel and subsistence expenses in accordance with the provisions of G.S. 138-5. Per diem, subsistence, and travel expenses of the Authority members shall be paid from funds made available to the Authority through grants, appropriations, or any other sources.

(k) Meeting Facilities. – The Secretary of Environment and Natural Resources shall provide meeting facilities for the Authority and its staff as requested by the chair.

"**§ 159G-72. Authority: purpose; duties.**

(a) Purpose. – The purpose of the Authority is to administer the State's funding for water and wastewater infrastructure projects.

(b) Duties. – The Authority shall have the following duties:

(1) To award grants and loans for water and wastewater systems and to system operators using a single application and project award process while maintaining distinct funding priorities (i.e. public health, pollution control, economic development).

(2) To implement and maintain the strategic plan for the State's water and wastewater infrastructure developed by the Commission after that plan is approved by the General Assembly.

(3) To develop and track performance measures to indicate how the Authority is meeting the goals established by the strategic plan.

(4) To maintain the baseline inventory of water and wastewater infrastructure in North Carolina developed by the Commission.

(5) To develop and maintain an integrated database designed to provide ad hoc reporting capabilities based on performance measures identified by the strategic plan.

(6) To conduct a detailed needs assessment to determine water and wastewater infrastructure funding needs using the information provided by the Commission.

"**§ 159G-73. Authority: reporting requirement.**

The chair of the Authority shall report each year by January 1 to the Joint Legislative Commission on Governmental Operations, the Environmental Review Commission, the Subcommittees on Natural and Economic Resources of the House of Representatives and Senate Appropriations Committees, and the Fiscal Research Division of the General Assembly regarding the implementation of its duties under G.S. 159G-72. The report shall include an update on the initial implementation of the strategic plan and, after implementation, upon the progress maintaining the strategic plan. The report shall also include a list of the projects awarded grants or loans, a description of the project, the amount of the grant or loan awarded for the project, the total cost of the project, and shall incorporate any additional information outlined in G.S. 159G-26(b) that is available and appropriate for inclusion in the report.

"**§ 159G-74. Authority: Executive Director and staff.**

The Authority, as soon as practicable after its organization, shall select and appoint a competent person in accordance with this section as Executive Director of the Authority. The Executive Director shall be charged with the supervision of all activities under the jurisdiction of the Authority and shall serve as the chief administrative officer of the Authority. Subject to the approval of the Authority and the Director of the Budget, the Executive Director may employ such clerical and other assistants as may be deemed necessary.

The person selected as Executive Director shall have had training and experience in funding and construction of water and wastewater infrastructure. The salary of the Executive Director shall be fixed by the Authority, and the Executive Director shall be allowed travel and subsistence expenses in accordance with G.S. 138-6. The Executive Director's salary and expenses shall be paid from funds made available to the Authority through grants, appropriations, or any other sources. The term of office of the Executive Director shall be at the pleasure of the Authority.

"**§ 159G-75. Cooperation among State agencies and other entities funding State strategic water plan.**

Any State agency or other entity that receives State or federal funds for the purpose of funding State water or wastewater infrastructure shall cooperate with the Authority in using and disbursing those funds pursuant to the strategic plan. The Department of Commerce shall notify the Authority of grants and loan guarantees that it awards pursuant to G.S. 143B-431(d) for water and wastewater infrastructure under the Community Development Block Grant program and of funds provided for water and wastewater infrastructure projects from the Industrial Development Fund established in G.S. 143B-437.01. The Department of Commerce shall provide information regarding those grants, loan guarantees, and projects as requested by the Authority and shall cooperate with the Authority to provide that those funds are used and disbursed pursuant to the strategic plan."

SECTION 2. G.S. 113A-252 reads as rewritten:

"**§ 113A-252. Definitions.**

The following definitions apply in this Article:

(1) Council. – The advisory council for the Clean Water Management Trust Fund.

(2) Economically distressed local government unit. – An economically distressed county, as defined in G.S. 143B-437.01, or a local government unit located in that county.
(3) Fund. – The Clean Water Management Trust Fund created pursuant to this Article.
(4) Land. – Real property and any interest in, easement in, or restriction on real property.
(4a) Local government unit. – Defined in G.S. 159G-20.
(4b) Stormwater quality project. – Defined in G.S. 159G-20.
(5) Trustees. – The trustees of the Clean Water Management Trust Fund.
~~(6) Wastewater collection system. – Defined in G.S. 159G-20.~~
~~(7) Wastewater treatment works. – Defined in G.S. 159G-20.~~"

SECTION 3. G.S. 113A-253(c) reads as rewritten:

"(c) Fund Purposes. – Moneys from the Fund are appropriated annually to finance projects to clean up or prevent surface water pollution in accordance with this Article. Revenue in the Fund may be used for any of the following purposes:

(1) To acquire land for riparian buffers for the purposes of providing environmental protection for surface waters and urban drinking water supplies and establishing a network of riparian greenways for environmental, educational, and recreational uses and to retire debt incurred for this purpose under Article 9 of Chapter 142 of the General Statutes.
(2) To acquire conservation easements or other interests in real property for the purpose of protecting and conserving surface waters and urban drinking water supplies and to retire debt incurred for this purpose under Article 9 of Chapter 142 of the General Statutes.
(3) To coordinate with other public programs involved with lands adjoining water bodies to gain the most public benefit while protecting and improving water quality and to retire debt incurred for this purpose under Article 9 of Chapter 142 of the General Statutes.
(4) To restore previously degraded lands to reestablish their ability to protect water quality and to retire debt incurred for this purpose under Article 9 of Chapter 142 of the General Statutes.
~~(5) To repair failing wastewater collection systems and wastewater treatment works if the repair is a reasonable remedy for resolving an existing waste treatment problem and the repair is not for the purpose of expanding the system to accommodate future anticipated growth of a community.~~
~~(6) To repair and eliminate failing septic tank systems, to eliminate illegal drainage connections, and to expand a wastewater collection system or wastewater treatment works if the expansion eliminates failing septic tank systems or illegal drainage connections.~~
(7) To finance stormwater quality projects.
(8) To facilitate planning that targets reductions in surface water pollution.
(8a) To finance innovative efforts, including pilot projects, to improve stormwater management, to reduce pollutants entering the State's waterways, to improve water quality, and to research alternative solutions to the State's water quality problems.
(9) To fund operating expenses of the Board of Trustees and its staff."

SECTION 4. G.S. 113A-253.1(a) reads as rewritten:

"(a) The General Assembly finds that, due to the critical need in this State to clean up pollution in the State's surface waters and to protect and conserve those waters that are not yet polluted, it is imperative that the State provide a minimum of one hundred million dollars

($100,000,000) each calendar year to the Clean Water Management Trust Fund; therefore, there is annually appropriated from the General Fund to the Clean Water Management Trust Fund the sum of one hundred million dollars ($100,000,000). Of the funds appropriated by this section, the sum of twenty-five million dollars ($25,000,000) shall annually be transferred to the Water Infrastructure Fund established in G.S. 159G-22 to be used in accordance with Chapter 159G of the General Statutes."

SECTION 5. 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. ~~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. 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 planning grant or a technical assistance grant for a regional wastewater collection system or a regional wastewater treatment works is not subject to the high unit cost threshold. 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 6. The Construction Grants and Loans Section of the Division of Water Quality and the Financial Services Unit in the Public Water Supply Section of the Division of Environmental Health are transferred from the Department of Environment and Natural Resources to the North Carolina Water and Wastewater Infrastructure Authority established in G.S. 159G-71. This transfer shall have all of the elements of a Type I transfer, as defined in G.S. 143A-6.

SECTION 7. The North Carolina Water and Wastewater Infrastructure Authority and the North Carolina Rural Economic Development Center shall cooperatively develop a transition plan to transfer the Clean Water Partners Program and the water and wastewater portion of the Economic Infrastructure Program that is currently operated by the North Carolina Rural Economic Development Center and the unencumbered funds for those programs to the North Carolina Water and Wastewater Infrastructure Authority. The plan shall provide for the transition to be complete by July 1, 2012, and shall also provide for the continued monitoring and funding of projects that have been awarded grants from the North Carolina Rural Economic Development Center before July 1, 2012.

SECTION 8. G.S. 159G-20 reads as rewritten:

"**§ 159G-20. Definitions.**

The following definitions apply in this Chapter:

(1) Asset management plan. – The strategic and systematic application of management practices applied to the infrastructure assets of a local government unit in order to minimize the total costs of acquiring, operating, maintaining, improving, and replacing the assets while at the same time maximizing the efficiency, reliability, and value of the assets.

(1a) Authority. – North Carolina Water and Wastewater Infrastructure Authority established under G.S. 159G-71.

~~(1a)~~(1b) Construction costs. – The costs of planning, designing, and constructing a project for which a loan or grant is available under this Chapter. The term includes the following:

a. Excess or reserve capacity costs attributable to no more than 20-year projected domestic growth plus ten percent (10%) unspecified industrial growth.

b. Legal, fiscal, administrative, and contingency costs.

c. The fee imposed under G.S. 159G-24 to obtain a loan or grant for a project.

d. A fee payable to the Department for a permit to implement a project for which a loan or grant is obtained.

e. The cost to acquire real property or an interest in real property.

(2) CWSRF. – The Clean Water State Revolving Fund established in G.S. 159G-22 as an account in the Water Infrastructure Fund.

(3) Department. – The Department of Environment and Natural Resources.

~~(4) Division of Environmental Health. – The Division of Environmental Health of the Department of Environment and Natural Resources.~~

~~(5) Division of Water Quality. – The Division of Water Quality of the Department of Environment and Natural Resources.~~

(6) Drinking Water Reserve. – The Drinking Water Reserve established in G.S. 159G-22 as an account in the Water Infrastructure Fund.

(7) DWSRF. – The Drinking Water State Revolving Fund established in G.S. 159G-22 as an account in the Water Infrastructure Fund.

(8) Grant. – A sum of money given to an applicant without any obligation on the part of the applicant to repay the sum.

(9) High-unit-cost project. – A project that results in an estimated average household user fee for water and sewer service in the area served by the project in excess of the high-unit-cost threshold. The average household user fee is calculated for a continuous 12-month period.

(10) High-unit-cost threshold. – Either of the following amounts determined on the basis of data from the most recent federal decennial census and updated

by the U.S. Department of Housing and Urban Development's annual estimated income adjustment factors:

a. One and one-half percent (1.5%) of the median household income in an area that receives both water and sewer service.

b. Three-fourths of one percent (¾%) of the median household income in an area that receives only water service or only sewer service.

(11) Loan. – A sum of money loaned to an applicant with an obligation on the part of the applicant to repay the sum.

(12) Local Government Commission. – The Local Government Commission of the Department of the State Treasurer, established in G.S. 159-3.

(13) Local government unit. – Any of the following:

a. A city as defined in G.S. 160A-1.

b. A county.

c. A consolidated city-county as defined in G.S. 160B-2.

d. A county water and sewer district created pursuant to Article 6 of Chapter 162A of the General Statutes.

e. A metropolitan sewerage district or a metropolitan water district created pursuant to Article 4 of Chapter 162A of the General Statutes.

f. A water and sewer authority created under Article 1 of Chapter 162A of the General Statutes.

g. A sanitary district created pursuant to Part 2 of Article 2 of Chapter 130A of the General Statutes.

h. A joint agency created pursuant to Part 1 of Article 20 of Chapter 160A of the General Statutes.

i. A joint agency that was created by agreement between two cities and towns to operate an airport pursuant to G.S. 63-56 and that provided drinking water and wastewater services off the airport premises before 1 January 1995.

(14) Nonprofit water corporation. – A nonprofit corporation that is incorporated under Chapter 55A of the General Statutes solely for the purpose of providing drinking water or wastewater services and is an eligible applicant for a federal loan or grant from the Rural Utility Services Division, U.S. Department of Agriculture.

(15) Public water system. – Defined in G.S. 130A-313.

(16) Reserved.

(17) Reserved.

~~(18) Secretary. – The Secretary of Environment and Natural Resources.~~

(19) State. – The State of North Carolina.

(20) Stormwater quality project. – A project whose primary purpose is to prevent or remove pollution from stormwater rather than collect, store, or convey stormwater for drainage or flood control purposes.

(21) Targeted interest rate project. – Either of the following types of projects:

a. A high-unit-cost project that is awarded a loan.

b. A project that is awarded a loan from the CWSRF or the DWSRF and is in a category for which federal law encourages a special focus.

(22) Treasurer. – The Treasurer of the State elected pursuant to Article III, Section 7, of the Constitution.

(23) Wastewater collection system. – A unified system of pipes, conduits, pumping stations, force mains, and appurtenances for collecting and

transmitting water-carried human wastes and other wastewater from residences, industrial establishments, or any other buildings.

(24) Wastewater Reserve. – The Wastewater Reserve established in G.S. 159G-22 as an account in the Water Infrastructure Fund.

(25) Wastewater system. – A wastewater collection system, wastewater treatment works, stormwater quality project, or nonpoint source pollution project.

(26) Wastewater treatment works. – The various facilities and devices used in the treatment of sewage, industrial waste, or other wastes of a liquid nature, including the necessary interceptor sewers, outfall sewers, nutrient removal equipment, pumping equipment, power and other equipment, and their appurtenances.

(27) Water Infrastructure Fund. – The fund established in G.S. 159G-22."

SECTION 9. G.S. 159G-21 reads as rewritten:

"**§ 159G-21. Revenue for water projects.**

This Chapter governs the use of the following revenue:

(1) Revenue appropriated to the Department for the Authority to use to match federal funds received for loans and grants for wastewater and drinking water projects and revenue received by the ~~Department~~ Authority from the repayment of loans made with the use of the federal funds.

(2) Revenue appropriated to the Department for the Authority to use to provide a source of State funds to make loans and grants for wastewater and drinking water projects and revenue received by the ~~Department~~ Authority from the repayment of loans made with the use of these funds."

SECTION 10. G.S. 159G-22 reads as rewritten:

"**§ 159G-22. Water Infrastructure Fund.**

(a) Fund Established. – The Water Infrastructure Fund is established as a special revenue fund. The Fund is comprised of the accounts set out in this section. The Fund provides revenue through its accounts for loans and grants as provided in this Chapter to meet the water infrastructure needs of the State. The Treasurer is responsible for distributing and investing all revenue received by the Fund. Interest and other investment income earned by the Fund accrues to it and must be allocated to the account to which the income is attributable. Accounts to which federal funds are credited must be kept separate from accounts that do not receive federal funds. A payment of the principal of or interest on a loan made from an account of the Fund must be credited to the account from which the loan was made.

(b) CWSRF. – The Clean Water State Revolving Fund is established as an account within the Water Infrastructure Fund. The account receives federal funds for wastewater projects and the State funds required to match the federal funds. The account is established under and must be managed in accordance with Title VI of the Federal Water Quality Act of 1987, Pub. L. 100-4, to achieve the purposes of that act and the Federal Water Pollution Control Act of 1972, 33 U.S.C. §§ 1251 through 1387. The account must comply with these federal acts and the federal regulations adopted to implement the acts. Revenue credited to the account is available in perpetuity and must be used only to provide construction loans and other assistance allowed under federal law. Grants are available from this account only to the extent allowed under federal law.

(c) DWSRF. – The Drinking Water State Revolving Fund is established as an account within the Water Infrastructure Fund. The account receives federal funds for public water systems and the State funds required to match the federal funds. The account is established under and must be managed in accordance with section 130 of Title 1 of the federal Safe Drinking Water Act of 1996 as amended, 42 U.S.C. § 300J-12, to achieve the purposes of that act. The account must comply with that act and the federal regulations adopted to implement the act. Revenue credited to the account is available in perpetuity and must be used only to

provide construction loans and other assistance allowed under federal law. Grants are available from this account only to the extent allowed under federal law.

(d) Wastewater Reserve. – The Wastewater Reserve is established as an account within the Water Infrastructure Fund. The account is established to receive State funds that are to be used for loans and grants for wastewater systems. Revenue credited to the Reserve is neither received from the federal government nor provided as a match for federal funds.

(e) Wastewater Accounts. – The ~~Department~~ Authority is directed to establish accounts within the Wastewater Reserve to administer loans and grants for wastewater collection systems, wastewater treatment works, stormwater quality projects, and nonpoint source pollution projects. The wastewater accounts must include an account for each type of loan or grant set out in G.S. 159G-33.

(f) Drinking Water Reserve. – The Drinking Water Reserve is established as an account within the Water Infrastructure Fund. The account is established to receive State funds that are to be used for loans and grants for public water systems. Revenue credited to the Reserve is neither received from the federal government nor provided as a match for federal funds.

(g) Drinking Water Accounts. – The ~~Department~~ Authority is directed to establish accounts within the Drinking Water Reserve to administer loans and grants for public water systems. The drinking water accounts must include an account for each type of loan or grant set out in G.S. 159G-34."

SECTION 11. G.S. 159G-23 reads as rewritten:

"**§ 159G-23. Common criteria for loan or grant from Wastewater Reserve or Drinking Water Reserve.**

The criteria in this section apply to a loan or grant from the Wastewater Reserve or the Drinking Water Reserve. ~~The Division of Water Quality and the Division of Environmental Health must each~~ The Authority shall establish a system of assigning points to applications based on the following criteria:

(1) Public necessity. – An applicant must explain how the project promotes public health and protects the environment. A project that improves a system that is not in compliance with permit requirements or is under orders from the Department, enables a moratorium to be lifted, or replaces failing septic tanks with a wastewater collection system has priority.

(2) Effect on impaired waters. – A project that improves designated impaired waters of the State has priority.

(3) Efficiency. – A project that achieves efficiencies in meeting the State's water infrastructure needs or reduces vulnerability to drought consistent with Part 2A of Article 21 and Article 38 of Chapter 143 of the General Statutes by one of the following methods has priority:

a. The combination of two or more wastewater or public water systems into a regional wastewater or public water system by merger, consolidation, or another means.

b. Conservation or reuse of water, including bulk water reuse facilities and waterlines to supply reuse water for irrigation and other approved uses.

c. Construction of an interconnection between water systems intended for use in drought or other water shortage emergency.

d. Repair or replacement of leaking waterlines to improve water conservation and efficiency or to prevent contamination.

e. Replacement of meters and installation of new metering systems.

(4) Comprehensive land-use plan. – A project that is located in a city or county that has adopted or has taken significant steps to adopt a comprehensive land-use plan under Article 18 of Chapter 153A of the General Statutes or

Article 19 of Chapter 160A of the General Statutes has priority over a project located in a city or county that has not adopted a plan or has not taken steps to do so. The existence of a plan has more priority than steps taken to adopt a plan, such as adoption of a zoning ordinance. A plan that exceeds the minimum State standards for protection of water resources has more priority than one that does not. A project is considered to be located in a city or county if it is located in whole or in part in that unit. A land-use plan is not considered a comprehensive land-use plan unless it has provisions that protect existing water uses and ensure compliance with water quality standards and classifications in all waters of the State affected by the plan.

(5) Flood hazard ordinance. – A project that is located in a city or county that has adopted a flood hazard prevention ordinance under G.S. 143-215.54A has priority over a project located in a city or county that has not adopted an ordinance. A plan that exceeds the minimum standards under G.S. 143-215.54A for a flood hazard prevention ordinance has more priority than one that does not. A project is considered to be located in a city or county if it is located in whole or in part in that unit. If no part of the service area of a project is located within the 100-year floodplain, the project has the same priority under this subdivision as if it were located in a city or county that has adopted a flood hazard prevention ordinance. The most recent maps prepared pursuant to the National Flood Insurance Program or approved by the Department determine whether an area is within the 100-year floodplain.

(6) Sound management. – A project submitted by a local government unit that has demonstrated a willingness and ability to meet its responsibilities through sound fiscal policies and efficient operation and management has priority.

(6a) Asset management plan. – A project submitted by a local government unit with more than 1,000 service connections that has developed and is implementing an asset management plan has priority over a project submitted by a local government unit with more than 1,000 service connections that has not developed or is not implementing an asset management plan.

(7) Capital improvement plan. – A project that implements the applicant's capital improvement plan for the wastewater system or public water system it manages has priority over a project that does not implement a capital improvement plan. To receive priority, a capital improvement plan must set out the applicant's expected water infrastructure needs for at least 10 years.

(8) Coastal habitat protection. – A project that implements a recommendation of a Coastal Habitat Protection Plan adopted by the Environmental Management Commission, the Coastal Resources Commission, and the Marine Fisheries Commission pursuant to G.S. 143B-279.8 has priority over other projects that affect counties subject to that Plan.

(9) High-unit-cost threshold. – A high-unit-cost project has priority over projects that are not high-unit-cost projects. The priority given to a high-unit-cost project shall be set using a sliding scale based on the amount by which the applicant exceeds the high-unit-cost threshold.

(10) Regionalization. – A project to provide for the planning of regional public water and wastewater systems, to provide for the orderly coordination of local actions relating to public water and wastewater systems, or to help realize economies of scale in regional public water and wastewater systems

through consolidation, management, merger, or interconnection of public water and wastewater systems has priority. If an applicant demonstrates that it is not feasible for the project to include regionalization, the funding agency shall assign the project the same priority as a project that includes regionalization.

(11) State water supply plan. – A project that addresses a potential conflict between local plans or implements a measure in which local water supply plans could be better coordinated, as identified in the State water supply plan pursuant to G.S. 143-355(m), has priority.

(12) Water conservation measures for drought. – A project that includes adoption of water conservation measures by a local government unit that are more stringent than the minimum water conservation measures required pursuant to G.S. 143-355.2 has priority."

SECTION 12. G.S. 159G-24(b) reads as rewritten:

"(b) Departmental Receipt. – The fee on a loan from the Wastewater Reserve or the Drinking Water Reserve is a departmental receipt and must be applied to the ~~Department's~~Authority's and the Local Government Commission's costs in administering loans from these Reserves. The ~~Department~~ Authority and the Local Government Commission must determine how to allocate the fee receipts between their agencies. The fee on a grant from the Wastewater Reserve or the Drinking Water Reserve is a departmental receipt of the ~~Department~~ Authority and must be applied to the ~~Department's~~Authority's costs in administering grants from these Reserves."

SECTION 13. G.S. 159G-25 reads as rewritten:

"**§ 159G-25. Expenditure for emergency corrective action at a wastewater treatment works.**

(a) The ~~Department~~ Authority may use revenue in any account of the Wastewater Reserve to provide funds for emergency corrective action at a wastewater treatment works under the circumstances set out in this section. The amount expended in a fiscal year for corrective action under this section may not exceed two hundred thousand dollars ($200,000). An expenditure for emergency corrective action is authorized only under the following circumstances:

(1) A person holding a wastewater discharge or nondischarge permit issued under Article 21 of Chapter 143 of the General Statutes is violating the terms of the permit.

(2) The wastewater treatment works operated under the permit has a design flow capacity of no more than 100,000 gallons a day.

(3) The ~~Department~~ Authority has given the permit holder written notice of the violation.

(4) The permit holder refuses to take the action required to comply with the permit.

(5) The inaction by the permit holder poses a threat to public health.

(6) The ~~Department~~ Authority has informed the permit holder in writing that the ~~Department~~ Authority plans to take emergency corrective action and then bring a civil action against the permit holder to recover the cost of the emergency corrective action.

(b) The ~~Department~~ Authority may bring a civil action against the holder of the permit for the wastewater treatment works to recover the amount expended from the Wastewater Reserve for the emergency corrective action. The amount recovered in a civil action must be credited to the account in the Wastewater Reserve from which the funds were expended."

SECTION 14. G.S. 159G-26(a) reads as rewritten:

"(a) Requirement. – The ~~Department~~ Authority must publish a report each year on the accounts in the Water Infrastructure Fund that are administered by the ~~Division of Water Quality or the Division of Environmental Health.~~ Authority. The report must be published by 1 November of each year and cover the preceding fiscal year. The ~~Department~~ Authority must make the report available to the public and must give a copy of the report to the Environmental Review Commission and the Fiscal Research Division of the General Assembly."

SECTION 15. G.S. 159G-30 reads as rewritten:

"**§ 159G-30. ~~Department's~~ Authority's responsibility.**

The ~~Department,~~ Authority administers loans and grants made from the CWSRF, the DWSRF, the Wastewater Reserve, and the Drinking Water Reserve. ~~The Division of Water Quality administers loans and grants from the CWSRF and the Wastewater Reserve. The Division of Environmental Health administers loans and grants from the DWSRF and the Drinking Water Reserve.~~"

SECTION 16. G.S. 159G-32 reads as rewritten:

"**§ 159G-32. Projects eligible for loan or grant.**

(a) CWSRF and DWSRF. – Federal law determines whether a project is eligible for a loan or grant from the CWSRF and the DWSRF. A project must meet the eligibility requirements set under federal law.

(b) Wastewater Reserve. – The ~~Department~~ Authority is authorized to make loans and grants from the Wastewater Reserve for the following types of projects:

(1) Wastewater collection system.
(2) Wastewater treatment works.
(3) Stormwater quality project.
(4) Nonpoint source pollution project.

(c) Drinking Water Reserve. – The ~~Department~~ Authority is authorized to make loans and grants from the Drinking Water Reserve for public water system projects."

SECTION 17. G.S. 159G-33 reads as rewritten:

"**§ 159G-33. Loans and grants available from Wastewater Reserve.**

(a) Types. – The ~~Department~~ Authority is authorized to make the types of loans and grants listed in this subsection from the Wastewater Reserve. Each type of loan or grant must be administered through a separate account within the Wastewater Reserve.

(1) General. – A loan or grant is available for a project authorized in G.S. 159G-32(b).
(2) High-unit-cost grant. – A high-unit-cost grant is available for the portion of the construction costs of a wastewater collection system project or a wastewater treatment works project that results in an estimated average household user fee for water and sewer service in the area served by the project that exceeds the high-unit-cost threshold.
(3) Technical assistance grant. – A technical assistance grant is available to determine the best way to correct the deficiencies in a wastewater collection system or wastewater treatment works that either is not in compliance with its permit limits or, as identified in the most recent inspection report by the ~~Department~~ Authority under G.S. 143-215.3, is experiencing operational problems and is at risk of violating its permit limits.
(4) Emergency loan. – An emergency loan is available in the event the Secretary certifies that a serious public health hazard related to the inadequacy of an existing wastewater collection system or wastewater treatment works is present or imminent in a community.

(b) Interaccount Transfer. – The ~~Secretary~~ chair of the Authority may use revenue in any account in the Wastewater Reserve to provide funds for an emergency loan."

SECTION 18. G.S. 159G-34 reads as rewritten:

"**§ 159G-34. Loans and grants available from Drinking Water Reserve.**

(a) Types. – The ~~Department~~ Authority is authorized to make the types of loans and grants listed in this section from the Drinking Water Reserve. Each type of loan or grant must be administered through a separate account within the Drinking Water Reserve.

(1) General. – A loan or grant is available for a project for a public water system.

(2) High-unit-cost grant. – A grant is available for the portion of the construction costs of a public water system project that results in an estimated average household user fee for water and sewer service in the area served by the project that exceeds the high-unit-cost threshold.

(3) Technical assistance grant. – A technical assistance grant is available to determine the best way to correct the deficiencies in a public water system that does not comply with State law or the rules adopted to implement that law.

(4) Emergency loan. – An emergency loan is available to an applicant in the event the Secretary certifies that either a serious public health hazard or a drought emergency related to the water supply system is present or imminent in a community.

(b) Interaccount Transfer. – The ~~Secretary~~ chair of the Authority may use revenue in any account in the Drinking Water Reserve to provide funds for an emergency loan."

SECTION 19. G.S. 159G-35 reads as rewritten:

"**§ 159G-35. Criteria for loans and grants.**

(a) CWSRF and DWSRF. – Federal law determines the criteria for awarding a loan or grant from the CWSRF or the DWSRF. An award of a loan or grant from one of these accounts must meet the criteria set under federal law. The ~~Department~~ Authority is directed to establish through negotiation with the United States Environmental Protection Agency the criteria for evaluating applications for loans and grants from the CWSRF and the DWSRF and the priority assigned to the criteria. The ~~Department~~ Authority must incorporate the negotiated criteria and priorities in the Capitalization Grant Operating Agreement between the ~~Department~~ Authority and the United States Environmental Protection Agency. The criteria and priorities incorporated in the Agreement apply to a loan or grant from the CWSRF or the DWSRF. The common criteria in G.S. 159G-23 do not apply to a loan or grant from the CWSRF or the DWSRF.

(b) Reserves. – The common criteria in G.S. 159G-23 apply to a loan or grant from the Wastewater Reserve or the Drinking Water Reserve. The ~~Department~~ Authority may establish by rule other criteria that apply to a loan or grant from the Wastewater Reserve or the Drinking Water Reserve."

SECTION 20. G.S. 159G-37 reads as rewritten:

"**§ 159G-37. Application to CWSRF, Wastewater Reserve, DWSRF, and Drinking Water Reserve.**

An application for a loan or grant from the CWSRF or the Wastewater Reserve must be filed with the ~~Division of Water Quality of the Department.~~ Authority. An application for a loan or grant from the DWSRF or the Drinking Water Reserve must be filed with the ~~Division of Environmental Health of the Department.~~ Authority. An application must be submitted on a form prescribed by the ~~Division~~ Authority and must contain the information required by the ~~Division.~~ Authority. An applicant must submit to the ~~Division~~ Authority any additional information requested by the ~~Division~~ Authority to enable the ~~Division~~ Authority to make a determination on the application. An application that does not contain information required on the application or requested by the ~~Division~~ Authority is incomplete and is not eligible for consideration. An applicant may submit an application in as many categories as it is eligible for consideration under this Article."

SECTION 21. G.S. 159G-38 reads as rewritten:

"**§ 159G-38. Environmental assessment and public hearing.**

(a) Required Information. – An application submitted under this Article for a loan or grant for a project must state whether the project requires an environmental assessment. If the application indicates that an environmental assessment is not required, it must identify the exclusion in the North Carolina Environmental Policy Act, Article 1 of Chapter 113A of the General Statutes, that applies to the project. If the application does not identify an exclusion in the North Carolina Environmental Policy Act, it must include an environmental assessment of the project's probable impacts on the environment.

(b) ~~Division~~ Authority Review. – If, after reviewing an application, the ~~Division of Water Quality or the Division of Environmental Health,~~ Authority, as appropriate, determines that a project requires an environmental assessment, the assessment must be submitted before the ~~Division~~ Authority continues its review of the application. If, after reviewing an environmental assessment, the ~~Division~~ Authority concludes that an environmental impact statement is required, the ~~Division~~ Authority may not continue its review of the application until a final environmental impact statement has been completed and approved as provided in the North Carolina Environmental Policy Act.

(c) Hearing. – The ~~Division of Water Quality or the Division of Environmental Health, as appropriate,~~ Authority may hold a public hearing on an application for a loan or grant under this Article if it determines that holding a hearing will serve the public interest. An individual who is a resident of any county in which a proposed project is located may submit a written request for a public hearing. The request must set forth each objection to the proposed project or other reason for requesting a hearing and must include the name and address of the individual making the request. The ~~Division~~ Authority may consider all written objections to the proposed project, any statement submitted with the hearing request, and any significant adverse effects the proposed project may have on the environment. The ~~Division's~~Authority's decision on whether to hold a hearing is conclusive. The ~~Division~~ Authority must keep all written requests for a hearing on an application as part of the records pertaining to the application."

SECTION 22. G.S. 159G-39 reads as rewritten:

"**§ 159G-39. Review of applications and award of loan or grant.**

(a) Point Assignment. – The ~~Division of Water Quality or the Division of Environmental Health, as appropriate,~~ Authority must review all applications filed for a loan or grant under this Article for an application period. The ~~Division~~ Authority must rank each application in accordance with the points assigned to the evaluation criteria. The ~~Division~~ Authority must make a written determination of an application's rank and attach the determination to the application. The ~~Division's~~Authority's determination of rank is conclusive.

(b) Initial Consideration. – The ~~Division~~ Authority may consider an application for an emergency loan from the Wastewater Reserve or the Drinking Water Reserve at any time. The ~~Division~~ Authority must consider all other loan applications and all grant applications filed during an application period at the same time in order to rank the applications.

(c) Reconsideration. – When an application's rank is too low to receive an award of a loan or grant for an application period, the ~~Division~~ Authority must include the application with those considered for the next application period. If the application's rank is again too low to receive an award, the application is not eligible for consideration in a subsequent application period. An applicant whose application does not receive an award after review in two application periods may file a new application.

(d) Notification of Decision. – When the ~~Division~~ Authority determines that an application's rank makes it eligible for an award of a loan or grant, the ~~Division~~ Authority must send the applicant a letter of intent to award the loan or grant. The notice must set out any conditions the applicant must meet to receive an award of a loan or grant. When the applicant

satisfies the conditions set out in the letter of intent, the ~~Division~~ Authority must send the applicant an offer to award a loan or grant. The applicant must give the ~~Division~~ Authority written notice of whether it accepts or rejects the offer. A loan or grant is considered awarded when an offer to award the loan or grant is issued."

SECTION 23. G.S. 159G-40 reads as rewritten:

"**§ 159G-40. Terms of loan and execution of loan documents.**

(a) Approval by Local Government Commission. – The ~~Department~~ Authority may not award a loan under this Article unless the Local Government Commission approves the award of the loan and the terms of the loan. The terms of a loan awarded from the CWSRF and the DWSRF must be consistent with federal law. In reviewing a proposed loan to a local government unit, the Local Government Commission must consider the loan as if it were a bond proposal and review the proposed loan in accordance with the factors set out in G.S. 159-52 for review of a proposed bond issue. The Local Government Commission must review a proposed loan to a nonprofit water corporation in accordance with the factors set out in G.S. 159-153.

(b) Interest Rate and Maturity. – The interest rate payable on and the maximum maturity of a loan are subject to the following limitations:

(1) Interest rate. – The interest rate for a loan may not exceed the lesser of four percent (4%) or one half the prevailing national market rate for tax-exempt general obligation debt of similar maturities derived from a published indicator. When recommended by the ~~Department,~~ Authority, the Local Government Commission may set an interest rate for a loan for a targeted interest rate project at a rate that is lower than the standard rate to achieve the purpose of the target.

(2) Maturity. – The maximum maturity for a loan for a project that is not a high-unit-cost project may not exceed 20 years or the project's expected life, whichever is shorter. The maximum maturity for a loan for a high-unit-cost project is 30 years or the project's expected life, whichever is shorter.

(c) Security for Loan. – A local government unit may pledge any of the following, alone or in combination, as security for an obligation to repay the principal of and interest on a loan awarded under this Article:

(1) User fee revenues derived from operation of the wastewater system or public water system that benefits from the project for which the loan is awarded.

(2) A mortgage, deed of trust, security interest, or similar lien on part or all of the real and personal property comprising the wastewater system or public water system that benefits from the project for which the loan is awarded.

(3) Its full faith and credit if it meets the requirements of Article 4 of Chapter 159 of the General Statutes.

(4) Nontax revenue not included in subdivision (1) of this subsection.

(d) Debt Instrument. – A local government unit and a nonprofit water corporation may execute a debt instrument payable to the State to evidence an obligation to repay the principal of and interest on a loan awarded under this Article. The Treasurer, with the assistance of the Local Government Commission, must develop debt instruments for use by local government units and nonprofit water corporations under this section. The Local Government Commission must develop procedures for loan recipients to deliver debt instruments to the State without public bidding."

SECTION 24. G.S. 159G-41 reads as rewritten:

"**§ 159G-41. Withdrawal of loan or grant.**

A letter of intent to offer an award for a loan or grant for a project is withdrawn if the applicant fails to enter into a construction contract for the project within two years after the date of the letter, unless the ~~Department~~ Authority finds that the applicant has good cause for the

failure. An award for a loan or grant for a project is withdrawn if the applicant fails to enter into a construction contract for the project within one year after the date of the award, unless the ~~Department~~ Authority finds that the applicant has good cause for the failure. If the ~~Department~~ Authority finds good cause for an applicant's failure, the ~~Department~~ Authority must set a date by which the applicant must take action or forfeit the loan or grant."

SECTION 25. G.S. 159G-42 reads as rewritten:

"**§ 159G-42. Disbursement of loan or grant.**

The ~~Department~~ Authority must disburse the proceeds of a loan or grant to a recipient in a series of payments based on the progress of the project for which the loan or grant was awarded. To obtain a payment, a loan or grant recipient must submit a request for payment to the ~~Department~~ Authority and document the expenditures for which the payment is requested."

SECTION 26. G.S. 159G-43 reads as rewritten:

"**§ 159G-43. Inspection of project.**

(a) Authority. – The ~~Department~~ Authority may inspect a project for which it awards a loan or grant under this Article to determine the progress made on the project and whether the construction of the project is consistent with the project described in the loan or grant application. The inspection may be performed by personnel of the ~~Department~~ Authority or by a professional engineer licensed under Chapter 89C of the General Statutes.

(b) Disqualification. – An individual may not perform an inspection of a project under this section if the individual meets any of the following criteria:

(1) Is an officer or employee of the local government unit or nonprofit water corporation that received the loan or grant award for the project.

(2) Is an owner, officer, employee, or agent of a contractor or subcontractor engaged in the construction of the project for which the loan or grant was made."

SECTION 27. G.S. 159G-44 reads as rewritten:

"**§ 159G-44. Rules.**

The ~~Department~~ Authority may adopt rules to implement this Chapter. Chapter 150B of the General Statutes, the Administrative Procedure Act, governs the adoption of rules by the ~~Department.~~ Authority. A rule adopted to administer a loan or grant from the CWSRF or the DWSRF must be consistent with federal law. The ~~Department~~ Authority must give a copy of the rules adopted to implement this Article without charge to a person who requests a copy."

SECTION 28. Article 4 of Chapter 159G of the General Statutes is repealed.

SECTION 29. This act becomes effective July 1, 2012.

SENATE BILL 504:
Water Infrastructure Authority/Water Grants

2011-2012 General Assembly

Committee:	Senate Ref to Agriculture/Environment/Natural Resources. If fav, re-ref to Finance	**Date:**	May 17, 2011
Introduced by:	Sen. Hartsell	**Prepared by:**	Jennifer McGinnis Committee Counsel
Analysis of:	First Edition		

SUMMARY: ***Senate Bill 504 would: (1) establish the North Carolina Water and Wastewater Infrastructure Authority to administer the State's funding for water and wastewater infrastructure projects; and (2) transfer responsibilities from entities that have previously funded water and wastewater infrastructure projects to the North Carolina Water and Wastewater Infrastructure Authority.***

CURRENT LAW: Funding for water and wastewater infrastructure in North Carolina is provided by six State funding entities[1]; each of which operates independently with its own mission, goals, and objectives. In addition to these entities, the General Assembly created the State Water Infrastructure Commission in 2005 to identify the State's water infrastructure needs, develop a plan to meet those needs, and monitor the implementation of the plan.

BACKGROUND: The General Assembly's Joint Legislative Program Evaluation Oversight Committee directed the Program Evaluation Division (PED) to evaluate water and wastewater infrastructure funding to determine the effectiveness of the current allocation system and to identify funding alternatives for infrastructure improvements. Senate Bill 504 is a result of recommendations approved by the Oversight Committee on January 27, 2009 after consideration of a report issued by PED entitled "North Carolina's Water and Wastewater Infrastructure Funding Lacks Strategic Focus and Coordination" (Report No. 2008-12-07)[2]. Particularly, Recommendation 2, Option B, of the report stated:

> **"Recommendation 2.** The North Carolina General Assembly should require better oversight of water and wastewater funding by either authorizing the State Water Infrastructure Commission to coordinate and oversee the funding system or establishing a single water and wastewater funding authority.
>
> - **Option B.** Establish a single independent authority with primary responsibility for receiving applications for water and wastewater infrastructure projects and awarding funding for these projects."

BILL ANALYSIS: Senate bill 504 would establish the North Carolina Water and Wastewater Infrastructure Authority (Authority) to: (1) administer the State's funding for water and wastewater

[1] The Department of Environment and Natural Resources, including the Division of Water Quality, Construction Grants and Loans Section, and the Division of Environmental Health, Public Water Supply Section, Financial Services Unit; the Department of Commerce, including the Division of Community Assistance and the Commerce Finance Center; the Rural Center; and the Clean Water Management Trust Fund.

[2] http://www.ncleg.net/PED/Reports/documents/WWI/WWI_Report.pdf

infrastructure projects; (2) transfer the construction grants and loans section of the Division of Water Quality and the Financial Services Unit in the Public Water Supply Section of the Division of Environmental Health from the Department of Environment and Natural Resources to the Authority; (3) provide that the Clean Water Management Trust Fund (CWMTF) shall not fund wastewater projects; (4) transfer annually the sum of twenty-five million dollars from the CWMTF to the water infrastructure fund to provide grant and loan funds for water and wastewater infrastructure projects; and, (5) direct the Authority and the North Carolina Rural Economic Development Center (Rural Center) to develop a transition plan to move the water and wastewater programs from the Rural Center to the Authority.

A detailed description of the bill's provisions, prepared by PED staff for a similar bill introduced in the 2009 Regular Session (Senate Bill 792), is attached to this document.[3]

EFFECTIVE DATE: The bill would become effective July 1, 2012

S504-SMRI-27(e1) v3

[3] ***Larry L. Yates, Principal Program Evaluator with the General Assembly's Program Evaluation Division, substantially contributed to this summary.***

PROGRAM EVALUATION DIVISION
NORTH CAROLINA GENERAL ASSEMBLY

Bill Draft Number: 2009-LH-165C [v.10]
Subject: This bill will implement the recommendations approved by the Joint Legislative Program Evaluation Oversight Committee on January 27, 2009 from "North Carolina's Water and Wastewater Infrastructure Funding Lacks Strategic Focus and Coordination" (Report No. 2008-12-07).
Date: March 23, 2009
Program Evaluation Division Staff: Larry Yates at 301-1863, larry.yates@ncleg.net
Bill Drafting Division Staff: Emily Johnson at 733-6660, emily.johnson@ncleg.net

Summary: This bill establishes the North Carolina Water and Wastewater Infrastructure Authority to administer the state's funding for water and wastewater infrastructure projects and transfers responsibilities from entities that have previously funded water and wastewater infrastructure projects to the North Carolina Water and Wastewater Infrastructure Authority. This bill is based on the following recommendations in the Final Report to the Joint Legislative Program Evaluation Oversight Committee titled "North Carolina's Water and Wastewater Infrastructure Funding Lacks Strategic Focus and Coordination" (Report No. 2008-12-07):

- **Recommendation 2.** The North Carolina General Assembly should require better oversight of water and wastewater funding by either authorizing the State Water Infrastructure Commission to coordinate and oversee the funding system or establishing a single water and wastewater funding authority.
    - **Option B.** Establish a single independent authority with primary responsibility for receiving applications for water and wastewater infrastructure projects and awarding funding for these projects.

Bill Section	Purpose of Section	Corresponds to Report
Section 1 adds Article 5 to Chapter 159G	§159G-70. Provides definitions for the section §159G-71. Establishes the North Carolina Water and Wastewater Infrastructure Authority as an independent authority located in the Department of Environment and Natural Resources and describes the Authority's membership and meeting requirements §159G-72. States the purpose of the Authority is to administer the state's funding for water and wastewater infrastructure projects; gives the Authority the following duties: 1) awarding grants and loans to system operators using a single application and project award process while maintaining distinct funding priorities 2) implementing and maintaining the strategic plan for the state's water and wastewater infrastructure developed by the State Water Infrastructure Commission 3) developing and tracking performance measures to indicate how the Authority is meeting the goals established by the strategic plan	Recommendation 2, Option B, Independent authority (p.28-29)

Section 1 adds Article 5 to Chapter 159G (continued)	4) maintaining the baseline inventory of water and wastewater infrastructure in North Carolina 5) developing and maintaining an integrated database designed to provide ad hoc reporting capabilities based on performance measures identified by the strategic plan 6) conducting a detailed needs assessment to determine water and wastewater infrastructure funding needs §159G-73. Requires the Authority to report by January 1 of each year to the Joint Legislative Commission on Governmental Operations, the Environmental Review Commission, the Subcommittees on Natural and Economic Resources of the House of Representatives and Senate Appropriations Committees, and the Fiscal Research Division regarding the implementation of its duties §159G-74. Charges the Authority's Executive Director with supervision of all activities under the jurisdiction of the Authority and serving as chief administrative officer of the Authority; authorizes the Executive Director to employ clerical and other assistants as may be deemed necessary §159G-75. Requires any state agency or other entity that receives state or federal funds for the purpose of funding state water or wastewater infrastructure to cooperate with the Authority in using and disbursing those funds pursuant to the strategic plan; requires the Department of Commerce to provide to the Authority with information regarding funds awarded for water and wastewater infrastructure	Recommendation 2, Option B, Independent authority (p.28-29)
Section 2 rewrites §113A-252	Eliminates references to definitions of the wastewater collection system and the wastewater treatment works	Recommendation 2, Option B, Independent authority (p.28-29)
Section 3 rewrites §113A-253(c)	Eliminates the following as purposes of the Clean Water Management Trust Fund because the Authority will have this responsibility: • repairing failing wastewater collection systems and wastewater treatment works • repairing and eliminating failing septic tank systems, eliminating illegal drainage connections, and expanding wastewater collection system or wastewater treatment works	Recommendation 2, Option B, Independent authority (p.28-29)
Section 4 rewrites §113A-253.1(a)	Transfers $25,000,000 of the $100,000,000 appropriated to the Clean Water Management Trust Fund annually to the Water Infrastructure Fund	Recommendation 2, Option B, Independent authority (p.28-29)
Section 5 rewrites §113A-254	Eliminates the requirement that the Clean Water Management Trust Fund uses the common criteria for wastewater collection system and wastewater treatment works projects; eliminates limits on wastewater collection system and wastewater treatment works projects	Recommendation 2, Option B, Independent authority (p.28-29)
Section 6 authorizes a Type I transfer	Transfers the Construction Loans and Grants Section of the Division of Water Quality and the Financial Services Unit in the Public Water Supply Section of the Division of Environmental Health from the Department of Environment and Natural Resources to the Authority	Recommendation 2, Option B, Independent authority (p.28-29)

Section 7 enacts Session Law	Requires the Authority and the North Carolina Rural Economic Development Center to develop a transition plan to transfer the Clean Water Partners Program and the water and wastewater portion of the Economic Infrastructure Program that is currently operated by the North Carolina Rural Economic Development Center and the unencumbered funds for those programs to the Authority; requires the transition be complete by July 1, 2010; requires the plan provide for continued monitoring and funding of projects that have been awarded grants from the North Carolina Rural Economic Development Center before July 1, 2010	Recommendation 2, Option B, Independent authority (p.28-29)
Section 8 thru 27 are conforming changes	§§159G-20 - 44. Modifies statutes regarding water and wastewater infrastructure funding to give the Authority the necessary authority to carry out responsibilities already existing in statute	Recommendation 2, Option B, Independent authority (p.28-29)
Section 28 repeals Article 4 from Chapter 159G	Eliminates the State Water Infrastructure Commission	Recommendation 2, Option B, Independent authority (p.28-29)
Section 29	Makes the act effective July 1, 2010	

VISITOR REGISTRATION SHEET

Ag/Env/Nat. Resources (2011-2012) — May 17, 2011
Name of Committee — **Date**

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Emily Grimm	NWC
Larry Bundy	GIC
Ashley Perkinson	Perkinson Law
Butch Gunnells	NC Bar A
Will McDew	LEDF
Gudrun Thompson	SELC
Ms Nicole Abell	SELC
Nancy Thompson	weyerhaeuser
Chris Saunders	NCDA+CS
Ray Starling	"
Dianna Downey	Public Staff - NCUC

VISITOR REGISTRATION SHEET

Ag/Env/Nat. Resources (2011-2012)
Name of Committee **Date**

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Dan Conrad	NCCN
Kelly McElwee	NCCN
Peter Kuo	CTNC
Edgar Miller	CTNC
Margaret Hartzell	Environment North Carolina
Whitney Knapp	Environment North Carolina
Andrew Myers	Env. North Carolina
Gina Angiocillo	LCV
DAN CRAWFORD	NCLCV
Tommy Roberson	TWC

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Name of Committee **Date**

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[illegible]	[illegible]
W. Jarrad Pitt	DLC & Assoc.
Casey Vermeulen	Raleigh City Attorney
Dan McLawhorn	City of Raleigh
[illegible]	CSS
John Cooper	Cooper NC
Doug Heron	WM
Angie Harris	WM
Mitch Peele	NCFB
Paul Sherman	NCFB
Paula Page	NCFB
[illegible]	NCFB

NCEL

Kelli Ishmael — NCLM

Kathy Hawkins — Duke

John Alley — BEGINNINGS

Jim Dohrer — BSA

Rick Zechini — Progress Energy

Amy McConkey — NC Beverage Assn.

Lori Reiley — Ragsdale Liggett

BRUCE THOMPSON — PARKER POE

Jason Deans — ICS, Inc

DAVID BARNES — DS

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Beatrice Williams	CLCA
Cody Thomas	NCAFR
Kristin Miller	
Jessi Hays	NCHBA
Liza Martin	
Tom Cors	TNC
Jay Leutze	SAHC
Ed Turlington	atty
Will Finley	atty
David Knight	DENR

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Ag/Env/Nat. Resources (2011-2012) — May 17, 2011
Name of Committee — **Date**

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JG Goodman	NC CHAMBER
George Everett	Duke Energy
Doug Lassiter	NCSTA
Preston Howard	MCIC
Jerry Hardesty	NCPC / NCCR
Rob Hamme	RHA
Molly Diggins	Sierra Club
David McGowan	NC Realtors
Tommy Stevens	NCIC
Chris Anderson	

VISITOR REGISTRATION SHEET

Ag/Env/Nat. Resources (2011-2012)
Name of Committee **Date**

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Tom Fransen	DWR, NCDENR
DANIEL BLANKELL	DWQ NCDENR
Dave Fenton	City of Charlotte
TOM BEAN	EDF
Allison Fowler	NC Grange
Steve Saucier	NC Grassroots
Tom Dodge	Public Staff, NCUC
Bill Holman	NC Sierra Club
Peter Daniel	NC Farm Bureau
Lisa Riegel	NWF

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Ag/Env/Nat. Resources (2011-2012)
Name of Committee **Date**

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MIKE WATERS	NCRPA
Robin Smith	DENR
Kari Barsness	DENR
Daniel Rain	DENR
Sushma Masemore	DENR / DAQ
Adam Pridemore	School of Gov't
Billy Willet	DCPC
Chip Killian	Nelson Mullins
BRIAN O'HARA	NC OFFSHORE WIND COALITION
Will Morgan	Sierra

Senate Agriculture/Environment/Natural Resources

MINUTES

May 31, 2011

The Senate Ag/Env/Nat. Resources committee met on Tuesday, May 31, 2011 in Room 544-LOB at 4:00 pm. There were 14 senators present.

Sen. David Rouzer called the meeting to order and introduced the Pages and Sgt-At-Arms staff.

SB-710 –SWINE & POULTRY WASTE RECS

Sen. Rucho explained the bill. Sen. Jackson asked if this uses swine and poultry litter. Sen. Rucho said it does. Sen. Kinnaird asked if heat can be used on-site or on the grid. Sen. Rucho said it will be used for both. Sen. East told about a company that wanted to come to his county but it didn't work out. What does this bill do allow companies to do. Sen. Rucho said it allows the use of steam for electricity to be sold back to utility companies like Duke or Progress Energy. Sen. Tucker moved for a favorable report. Vote taken and so moved.

SB-561 SEDIMENTATION CIVIL PENALTY CAP & REMISSIONS

Sen. Daniel explained the bill. This was a circumstance that happened in his district and he wanted to help citizens in North Carolina facing penalties. Sen. Bingham moved for a favorable report. Sen. Kinnaird asked if people who own land in these circumstances are they aware that they need to go get a permit. Sen. Daniel said this couple moved from SC and was not aware of permits. Sen. Brock asked who appoints members of the Commission. Sen. Daniel said the Commission exists, but they don't have the powers. Ms. Robin Smith thinks the Commission members are all Governor Appointees. They support the civil penalty, but they do have concerns about capping the civil penalties. They do support the remissions portion. Sen. East asked how many members are on the Commission, length of terms, etc. Ms. Smith thinks there are 7-9. Ms. Jennifer McGinnis said there are 11 appointees and they are all Governor's appointees. Sen. Tillman has concerns with this. He asked who would be harmed by the run-off and what was the run-off? Ms. Smith addressed sedimentation and how it harms down-stream areas with aquatic life. Sen. Tillman wanted to know who was harmed by the constituent's problem that Sen. Daniel worked with. Sen. Tillman stated this as another example of being over-regulated. Sen. East spoke again about run-off. Sen. Kinnaird asked if we can hear from Water Quality to find out if there were damages in this case. Ms. Coleen Sullins, Director-Division of Water Quality, DENR, told of the impact that happened with Sen. Daniel's case. There was a down-stream sediment problem; this impacts bugs that fish feed upon. Sen. Kinnaird asked for the names of the streams. Ms. Sullins will supply that information to Sen. Kinnaird because she don't know right off. No further discussion, vote taken and so moved. This has a sequential referral to Finance.

SB -562- STANDARDS FOR SOME NURSERY STOCK PURCHASES

Sen. Daniel sent forth a technical amendment and moved for adoption. So moved for discussion. Sen. Daniel explained the bill. Mr. John Allen, Iredell County addressed members. His family are former tobacco and grain farmers. They have about 50 acres of trees in their nursery. He urged support from members. This is a start to correct the problems they have had. Sen. Hartsell asked about tree ordinances and where do people get the authority to trim these trees. Mr. Jeff Hudson, Chief Staff Council responded. Sen. Hartsell doesn't understand where the authority comes from. Sen. Kinnaird spoke about the tree ordinance in Chapel Hill and perhaps this is where the problems come from (local governments). Sen. Hartsell still doesn't know where or who has authority. Sen. Tucker spoke about a situation he had in his district and he thinks the city takes this on to make this less restrictive. Inspectors can drive you crazy. Sen. Bingham moved for a favorable report, unfavorable to the original bill. No further discussion, vote taken and so moved.

SB-499 CLARIFY AG DEVELOPMENT/PRESERVATION IN DACS

Sen. Rabon explained the bill. Sen. Jackson moved for a favorable report. Vote taken and so moved.

SB-571 REPEAL SUBSISTENCE LICENSE WAIVER

Sen. Davis explained the bill. Sen. Kinnaird questioned the fact that those people really do fish. Sen. Tucker sent forth an amendment and explained. Sen. Davis approved of the amendment. Sen. Allran asked if this will become effective when ratified. Sen. Davis spoke again on the amendment. Vote taken and so moved on the amendment. Sen. Bingham moved for a favorable report, unfavorable to the original bill. No further discussion, vote taken and so moved.

SB-563 STORMWATER BEST MGMT. RESPONSIBILITY/ASSCS

This bill was not addressed at this meeting.

The meeting adjourned at 4:42 pm.

Sen. David Rouzer, Co-Chair

Cindy J. Davis, Committee Clerk

Senate Agriculture/Environment/Natural Resources Committee
Tuesday, May 31, 2011, 4:00
544 LOB

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

SB 499	Clarify Ag Development/Preservation in DACS.	Senator Rouzer Senator Rabon
SB 561	Sedimentation Civil Penalty Cap & Remissions.	Senator Brock Senator Rouzer Senator Daniel
SB 562	Standards for Some Nursery Stock Purchases.	Senator Daniel
SB 563	Stormwater Best Mgmt. Responsibility/Asscs.	Senator Clodfelter
SB 571	Repeal Subsistence License Waiver.	Senator Davis
SB 710	Swine and Poultry Waste RECs.	Senator Rucho

Presentations

Other Business

Adjournment

Cindy Davis (Sen. Jackson)

[redacted]m: Cindy Davis (Sen. Jackson)
[redacted]nt: Friday, May 27, 2011 4:34 PM
[redacted]: @SenateCommitteeNotice; @Senate/Agric./Env./Nat'l Res.
Subject: <NCGA> Senate Agriculture/Environment/Natural Resources Committee Meeting Notice for Tue, 05-31-2011 at 4:00

Principal Clerk _____
Reading Clerk _____

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

The Senate Committee on **Agriculture/Environment/Natural Resources** will meet at the following time:

DAY	DATE	TIME	ROOM
Tuesday	May 31, 2011	4:00	544 LOB

The following will be considered:

BILL NO.	SHORT TITLE	SPONSOR
√SB 710	Swine and Poultry Waste RECs.	Senator Rucho
SB 563	Stormwater Best Mgmt. Responsibility/Asscs.	Senator Clodfelter
√SB 561	Sedimentation Civil Penalty Cap & Remissions.	Senator Brock Senator Rouzer Senator Daniel
SB 499	Clarify Ag Development/Preservation in DACS.	Senator Rouzer Senator Rabon
SB 571	Repeal Subsistence License Waiver.	Senator Davis
√SB 562	Standards for Some Nursery Stock Purchases.	Senator Daniel

Senator Don East, Co-Chair
Senator David Rouzer, Co-Chair

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES COMMITTEE REPORT
Senator Don East, Co-Chair
Senator David Rouzer, Co-Chair

Wednesday, June 01, 2011

Senator ROUZER,
submits the following with recommendations as to passage:

FAVORABLE

S.B. **499** Clarify Ag Development/Preservation in DACS.
Sequential Referral: None
Recommended Referral: None

S.B. **561** Sedimentation Civil Penalty Cap & Remissions.
Sequential Referral: Finance
Recommended Referral: None

S.B. **710** Swine and Poultry Waste RECs.
Sequential Referral: None
Recommended Referral: None

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

S.B. **562** Standards for Some Nursery Stock Purchases.
Draft Number: PCS15163
Sequential Referral: None
Recommended Referral: None
Long Title Amended: No

TOTAL REPORTED: 4

Committee Clerk Comments:

SENATE BILL 710

Short Title:	Swine and Poultry Waste RECs.	(Public)
Sponsors:	Senators Rucho; and Hise.	
Referred to:	Agriculture/Environment/Natural Resources.	

April 20, 2011

A BILL TO BE ENTITLED

AN ACT TO ALLOW RENEWABLE ENERGY CERTIFICATES (RECS) DERIVED FROM THE THERMAL ENERGY OUTPUT OF COMBINED HEAT AND POWER FACILITIES THAT USE SWINE WASTE OR POULTRY WASTE AS A FUEL TO MEET THE REQUIREMENTS OF THE SWINE WASTE SET-ASIDE AND THE POULTRY WASTE SET-ASIDE.

The General Assembly of North Carolina enacts:

SECTION 1. Legislative Findings. – The General Assembly makes the following findings regarding the need to allow renewable energy certificates (RECs) derived from the thermal energy output of combined heat and power facilities that use swine waste or poultry waste as a fuel to meet the requirements of the swine waste set-aside under G.S. 62-133.8(e) (Compliance With REPS Requirements Through the Use of Swine Waste Resources) and the poultry waste set-aside under G.S. 62-133.8(f) (Compliance With REPS Requirements Through the Use of Poultry Waste Resources):

(1) The electric power suppliers have experienced considerable difficulty in procuring sufficient electricity derived from the use of swine waste and poultry waste at a reasonable cost to meet the especially restrictive language of the swine waste set-aside and the poultry waste set-aside.

(2) The public interest of the State will be served by providing a cost-effective option for the electric power suppliers to use in order to comply with the swine waste set-aside and the poultry waste set-aside.

(3) The State and the public will benefit directly from reduced process steam costs to North Carolina businesses, which will help North Carolina businesses remain competitive and viable.

(4) The State and the public will benefit directly from diversifying the State's viable generation resource options, which utilize indigenous North Carolina resources to foster development of renewable projects in the State and encourage investment in new renewable projects.

(5) The health and safety of the citizens of the State will be served through improving air quality and water quality through the controlled destruction of methane, the capture of organic residuals, and addressing the very important environmental concern involving the current disposal practice of land application of swine waste and poultry waste, which poses an ever increasing threat of pollution and contamination of the waters of the State.

SECTION 2. G.S. 62-133.8 reads as rewritten:

"**§ 62-133.8. Renewable Energy and Energy Efficiency Portfolio Standard (REPS).**

...

(e) Compliance With REPS Requirement Through Use of Swine Waste Resources. – For calendar year 2018 and for each calendar year thereafter, at least two-tenths of one percent (0.2%) of the total electric power in kilowatt hours sold to retail electric customers in the State or an equivalent amount of energy shall be supplied, or contracted for supply in each year, by swine waste. The electric power suppliers, in the aggregate, shall comply with the requirements of this subsection according to the following schedule:

Calendar Year	Requirement for Swine Waste Resources
2012	0.07%
2015	0.14%
2018	0.20%

(f) Compliance With REPS Requirement Through Use of Poultry Waste Resources. – For calendar year 2014 and for each calendar year thereafter, at least 900,000 megawatt hours of the total electric power sold to retail electric customers in the State or an equivalent amount of energy shall be supplied, or contracted for supply in each year, by poultry waste combined with wood shavings, straw, rice hulls, or other bedding material. The electric power suppliers, in the aggregate, shall comply with the requirements of this subsection according to the following schedule:

Calendar Year	Requirement for Poultry Waste Resources
2012	170,000 megawatt hours
2013	700,000 megawatt hours
2014	900,000 megawatt hours

...."

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

SENATE BILL 710:
Swine and Poultry Waste RECs

2011-2012 General Assembly

Committee:	Senate Agriculture/Environment/Natural Resources	**Date:**	May 31, 2011
Introduced by:	Sen. Rucho	**Prepared by:**	Jeff Hudson Committee Counsel
Analysis of:	First Edition		

SUMMARY: ***Senate Bill 710 would allow thermal energy generated by combined heat and power facilities that use swine waste or poultry waste as fuel to count towards the respective requirements of the swine waste set-aside and the poultry waste set-aside.***

BACKGROUND AND CURRENT LAW:

S.L. 2009-397 (commonly referred to as Senate Bill 3) established the North Carolina renewable energy and energy efficiency portfolio standard (REPS) in order to promote the development of renewable energy and energy efficiency in the State. The REPS requires electric power suppliers to use an increasing percentage of renewable energy resources and employ energy efficiency programs (12.5% by 2020) to meet the needs of the State's retail electricity customers. An electric power supplier could meet the REPS requirement by doing any one or more of the following:

- Generate electric power at a new renewable energy facility.
- Use a renewable energy resource to generate electric power at a generating facility.
- Reduce energy consumption through the implementation of an energy efficiency measure.
- Purchase electric power from a new renewable energy facility.
- Purchase renewable energy certificates (RECs) derived from in-state or out-of-state new renewable energy facilities.

The REPS requirement includes specific requirements or set-asides for the generation of energy from swine waste and poultry waste.

BILL ANALYSIS:

Senate Bill 710 would allow thermal energy generated by combined heat and power facilities that use swine waste or poultry waste as fuel to count towards the respective requirements of the swine waste set-aside and the poultry waste set-aside.

EFFECTIVE DATE: This act is effective when it becomes law.

S 1

SENATE BILL 561

Short Title:	Sedimentation Civil Penalty Cap & Remissions.	(Public)
Sponsors:	Senators Daniel, Brock, Rouzer; and Hise.	
Referred to:	Agriculture/Environment/Natural Resources.	

April 12, 2011

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH A MAXIMUM CUMULATIVE TOTAL CIVIL PENALTY PER LAND-DISTURBING PROJECT FOR A FIRST-TIME VIOLATION UNDER THE SEDIMENTATION POLLUTION CONTROL ACT OF 1973, TO AUTHORIZE THE REMISSION OF CIVIL PENALTIES UNDER THIS ACT, TO REQUIRE THAT A PERSON ASSESSED A CIVIL PENALTY IS NOTIFIED OF THE OPTION TO REQUEST A REMISSION OF THE CIVIL PENALTY AND, FOR FIRST-TIME VIOLATORS, NOTIFIED THAT FIRST-TIME VIOLATORS CANNOT BE ASSESSED MORE THAN A MAXIMUM CIVIL PENALTY WHEN ANY CONTINUING ENVIRONMENTAL DAMAGE IS ABATED WITHIN ONE HUNDRED EIGHTY DAYS, AND TO REQUIRE THAT FIRST-TIME VIOLATORS BE OFFERED ASSISTANCE IN DEVELOPING CORRECTIVE MEASURES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 113A-54 is amended by adding a new subsection to read:

"(g) The Commission is authorized to make the final decision on a request for the remission of a civil penalty under G.S. 113A-65.2."

SECTION 2. G.S. 113A-64(a) reads as rewritten:

"(a) Civil Penalties. –

(1) Any person who violates any of the provisions of this Article or any ordinance, rule, or order adopted or issued pursuant to this Article by the Commission or by a local government, or who initiates or continues a land-disturbing activity for which an erosion and sedimentation control plan is required except in accordance with the terms, conditions, and provisions of an approved plan, is subject to a civil penalty. The maximum civil penalty for a violation is five thousand dollars ($5,000). A civil penalty may be assessed from the date of the violation. Each day of a continuing violation shall constitute a separate violation. When the person has not been assessed any civil penalty under this subsection for any previous violation and that person abated continuing environmental damage resulting from the violation within 180 days from the date of the notice of violation, the maximum cumulative total civil penalty assessed under this subsection for all violations associated with the land-disturbing activity for which the erosion and sedimentation control plan is required is twenty-five thousand dollars ($25,000).

(2) The Secretary or a local government that administers an erosion and sedimentation control program approved under G.S. 113A-60 shall determine the amount of the civil penalty and shall notify the person who is

assessed the civil penalty of the amount of the ~~penalty and~~penalty, the reason for assessing the ~~penalty.~~penalty, the option available to that person to request a remission of the civil penalty under G.S. 113A-65.2, the date of the deadline for that person to make the request regarding this particular penalty, and, when that person has not been assessed any civil penalty under this section for any previous violation, the date of the deadline for that person to abate continuing environmental damage resulting from the violation in order to be subject to the maximum cumulative total civil penalty under subdivision (1) of this subsection. The notice of assessment shall be served by any means authorized under G.S. 1A-1, Rule 4, and shall direct the violator to either pay the assessment or contest the assessment within 30 days by filing a petition for a contested case under Article 3 of Chapter 150B of the General Statutes. If a violator does not pay a civil penalty assessed by the Secretary within 30 days after it is due, the Department shall request the Attorney General to institute a civil action to recover the amount of the assessment. If a violator does not pay a civil penalty assessed by a local government within 30 days after it is due, the local government may institute a civil action to recover the amount of the assessment. The civil action may be brought in the superior court of any county where the violation occurred or the violator's residence or principal place of business is located. A civil action must be filed within three years of the date the assessment was due. An assessment that is not contested is due when the violator is served with a notice of assessment. An assessment that is contested is due at the conclusion of the administrative and judicial review of the assessment.

...."

SECTION 3. Article 4 of Chapter 113A of the General Statutes is amended by adding a new section to read:

"**§ 113A-65.2. Remission of civil penalties.**

(a) A request for remission of a civil penalty imposed under G.S. 113A-64 may be filed with the Commission within 60 days of receipt of the notice of assessment. A remission request 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.

(b) The following factors shall be considered in determining whether a civil penalty remission request will be approved:

(1) Whether one or more of the civil penalty assessment factors in G.S. 113A-64(a)(3) were wrongly applied to the detriment of the petitioner.

(2) Whether the petitioner promptly abated continuing environmental damage resulting from the violation.

(3) Whether the violation was inadvertent or a result of an accident.

(4) Whether the petitioner had been assessed civil penalties for any previous violations.

(5) Whether payment of the civil penalty will prevent payment for necessary remedial actions or would otherwise create a significant financial hardship.

(6) The assessed property tax valuation of the petitioner's property upon which the violation occurred, excluding the value of any structures located on the property.

(c) The petitioner has the burden of coming forward with information concerning the financial impact of a civil penalty on the petitioner and the burden of showing the petitioner's financial hardship.

(d) The Commission may remit the entire amount of the penalty only when the petitioner has not been assessed civil penalties for previous violations and payment of the civil penalty will prevent payment for necessary remedial actions.

(e) The Commission may not impose a penalty under this section that is in excess of the civil penalty imposed by the Department."

SECTION 4. G.S. 113A-61.1(c) reads as rewritten:

"(c) If the Secretary, a local government that administers an erosion and sedimentation control program approved under G.S. 113A-60, or other approving authority determines that the person engaged in the land-disturbing activity has failed to comply with this Article, the Secretary, local government, or other approving authority shall immediately serve a notice of violation upon that person. The notice may be served by any means authorized under G.S. 1A-1, Rule 4. A notice of violation shall specify a date by which the person must comply with this Article and inform the person of the actions that need to be taken to comply with this Article. Any person who fails to comply within the time specified is subject to additional civil and criminal penalties for a continuing violation as provided in G.S. 113A-64. If the person engaged in the land-disturbing activity has not received a previous notice of violation under this section, the Department, local government, or other approving authority shall deliver the notice of violation in person and shall offer assistance in developing corrective measures. Assistance may be provided by referral to a technical assistance program in the Department, referral to a cooperative extension program, or by the provision of written materials such as Department guidance documents. If the Department, local government, or other approving authority is unable to deliver the notice of violation in person within 15 days following discovery of the violation, the notice of violation may be served in the manner prescribed for service of process by G.S. 1A-1, Rule 4, and shall include information on how to obtain assistance in developing corrective measures."

SECTION 5. This act is effective when it becomes law and applies to civil penalties paid on or after that date.

SENATE BILL 561:
Sedimentation Civil Penalty Cap & Remissions

2011-2012 General Assembly

Committee:	Senate Ref to Agriculture/Environment/Natural Resources. If fav, re-ref to Finance	**Date:**	May 31, 2011
Introduced by:	Sens. Daniel, Brock, Rouzer	**Prepared by:**	Jennifer McGinnis
Analysis of:	First Edition		Committee Counsel

SUMMARY: ***Senate Bill 561 would: (i) establish a maximum cumulative total civil penalty of $25,000 per land-disturbing project under the Sedimentation Pollution Control Act of 1973 (Act), which would apply if a person has never been assessed a penalty under the Act before and the person abates the continuing environmental damage resulting from the violation within 180 days; (ii) authorize the remission of civil penalties under the Act; (iii) require that the Sedimentation Pollution Control Commission (Commission) notify a person assessed a civil penalty of the option to request a remission of a civil penalty, and notify persons who have not been assessed a civil penalty for any previous violation of the Act of the date on which the environmental damage resulting from a violation must be abated in order for the maximum cumulative total civil penalty to apply; and (iv) require that first-time violators be offered assistance in developing corrective measures.***

CURRENT LAW: The General Assembly enacted the Sedimentation Pollution Control Act of 1973 to stablish a program to allow development while minimizing the detrimental effects from pollution by sedimentation. The Act requires a person conducting a land-disturbing activity involving the uncovering of more than one acre to have an erosion and sedimentation control plan (plan) approved by the Commission, which has delegated this authority to the Division of Land Resources in the Department of Environment and Natural Resources, prior to initiating the activity. In addition, the Act requires the use 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 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. The Act is enforceable by means of civil penalties, criminal penalties, stop-work orders, injunctive relief, and civil relief. The maximum civil penalty for a violation is $5,000, and the Act provides that each day of a continuing violation constitutes a separate violation.

BILL ANALYSIS: The bill would --

- Establish a maximum cumulative total civil penalty of $25,000 for all violations associated with a land-disturbing activity for which an erosion and sedimentation control plan is required under the Act, which would apply if: (i) a person has never been assessed a penalty under the Act before, and (ii) the person abates the continuing environmental damage resulting from the violation within 180 days from a notice of violation.
- Authorize the remission of civil penalties under the Act. The bill provides that a request for civil penalty remission must be filed with the Commission within 60 days of receipt of a notice of assessment and be accompanied by a waiver of the right to a contested case and a stipulation of

the facts on which the assessment was based. In addition, the bill sets forth a list of factors the Commission must consider in order to approve a remission, including whether: (i) one or more of the civil penalty assessment factors were wrongly applied to the detriment of the petitioner; (ii) the petitioner promptly abated continuing environmental damage resulting from the violation; (iii) the violation was inadvertent or a result of an accident; the petitioner had been assessed civil penalties for any previous violations; and (iv) payment of the civil penalty will prevent payment for necessary remedial actions or would otherwise create a significant financial hardship. The provision states that the petitioner has the burden of coming forward with information concerning the financial impact of a civil penalty on the petitioner and the burden of showing the petitioner's financial hardship. The Commission is authorized to remit the entire amount of the penalty only when the petitioner has not been assessed civil penalties for previous violations and payment of the civil penalty will prevent payment for necessary remedial actions.

- Require that the Commission notify a person assessed a civil penalty of the option to request a remission of the civil penalty and notify persons who have not been assessed a civil penalty for any previous violation of the date of the deadline on which the environmental damage resulting from the violation must be abated in order for the maximum cumulative total civil penalty to apply.
- Require that the Department, local government, or other approving authority deliver a notice of violation in person to first-time violators under the Act, and offer those persons assistance in developing corrective measures.

EFFECTIVE DATE: The bill would be effective when it becomes law and apply to civil penalties paid on or after that date.

S561-SMRI-34(e1) v2

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

S D

SENATE BILL 562
PROPOSED COMMITTEE SUBSTITUTE S562-PCS15163-TF-10

Short Title: Standards for Some Nursery Stock Purchases. (Public)

Sponsors:

Referred to:

April 12, 2011

A BILL TO BE ENTITLED

AN ACT TO PROHIBIT EVERY COMMUNITY APPEARANCE COMMISSION, CITY, AND COUNTY FROM REQUIRING THAT NURSERY STOCK THAT IS PURCHASED WITHIN THE JURISDICTION OF THE COMMISSION, CITY, OR COUNTY RESPECTIVELY MEET ANY STANDARD FOR NURSERY STOCK THAT IS STRICTER THAN THE AMERICAN STANDARD FOR NURSERY STOCK ADOPTED BY THE AMERICAN NURSERY AND LANDSCAPE ASSOCIATION, UNLESS THE STRICTER STANDARD IS NECESSARY TO PROTECT PUBLIC HEALTH OR SAFETY.

The General Assembly of North Carolina enacts:

SECTION 1. Part 7 of Article 19 of Chapter 160A of the General Statutes is amended by adding a new section to read:

"**§ 160A-455.1. Restriction concerning standards in excess of national standards applicable to nursery stock.**

No commission may make any plans or carry out any program under this Part to enhance the visual quality or aesthetic appearance of the municipality or county within its jurisdiction that will require that any nursery stock that is purchased to be planted within its jurisdiction satisfy any standard that exceeds the American Standard for Nursery Stock adopted by the American Nursery and Landscape Association, unless the stricter standard is necessary to protect public health or safety."

SECTION 2. Article 21 of Chapter 160A of the General Statutes is amended by adding a new section to read:

"**§ 160A-499.4. Standards for nursery stock.**

No city may require that any nursery stock that is purchased to be planted within its jurisdiction satisfy any standard for nursery stock that exceeds the American Standard for Nursery Stock adopted by the American Nursery and Landscape Association, unless the stricter standard is necessary to protect public health or safety."

SECTION 3. Article 23 of Chapter 153A of the General Statutes is amended by adding a new section to read:

"**§ 153A-457. Standards for nursery stock.**

No county may require that any nursery stock that is purchased to be planted within its jurisdiction satisfy any standard for nursery stock that exceeds the American Standard for

Nursery Stock adopted by the American Nursery and Landscape Association, unless the stricter standard is necessary to protect public health or safety."

SECTION 4. This act is effective when it becomes law and applies to any contracts for the purchase of nursery stock that are entered into on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

S 1

SENATE BILL 562

Short Title:	Standards for Some Nursery Stock Purchases.	(Public)
Sponsors:	Senators Daniel; Brock and Hise.	
Referred to:	Agriculture/Environment/Natural Resources.	

April 12, 2011

A BILL TO BE ENTITLED

AN ACT TO PROHIBIT EVERY COMMUNITY APPEARANCE COMMISSION, CITY, AND COUNTY FROM REQUIRING THAT NURSERY STOCK THAT IS PURCHASED WITHIN THE JURISDICTION OF THE COMMISSION, CITY, OR COUNTY RESPECTIVELY MEET ANY STANDARD FOR NURSERY STOCK THAT IS STRICTER THAN THE AMERICAN STANDARD FOR NURSERY STOCK ADOPTED BY THE AMERICAN NURSERY AND LANDSCAPE ASSOCIATION, UNLESS THE STRICTER STANDARD IS NECESSARY TO PROTECT PUBLIC HEALTH OR SAFETY.

The General Assembly of North Carolina enacts:

SECTION 1. Part 7 of Article 19 of Chapter 160A of the General Statutes is amended by adding a new section to read:

"**§ 160A-455.1. Restriction concerning standards in excess of national standards applicable to nursery stock.**

No commission may make any plans or carry out any program under this Part to enhance the visual quality or aesthetic appearance of the municipality or county within its jurisdiction that will require that any nursery stock that is purchased to be planted within its jurisdiction satisfy any standard that exceeds the American Standard for Nursery Stock adopted by the American Nursery and Landscape Association, unless the stricter standard is necessary to protect public health or safety."

SECTION 2. Article 21 of Chapter 160A of the General Statutes is amended by adding a new section to read:

"**§ 160A-499.3. Standards for nursery stock.**

No city may require that any nursery stock that is purchased to be planted within its jurisdiction satisfy any standard for nursery stock that exceeds the American Standard for Nursery Stock adopted by the American Nursery and Landscape Association, unless the stricter standard is necessary to protect public health or safety."

SECTION 3. Article 23 of Chapter 153A of the General Statutes is amended by adding a new section to read:

"**§ 153A-456. Standards for nursery stock.**

No county may require that any nursery stock that is purchased to be planted within its jurisdiction satisfy any standard for nursery stock that exceeds the American Standard for Nursery Stock adopted by the American Nursery and Landscape Association, unless the stricter standard is necessary to protect public health or safety."

SECTION 4. This act is effective when it becomes law and applies to any contracts for the purchase of nursery stock that are entered into on or after that date.

SENATE BILL 562:
Standards for Some Nursery Stock Purchases

2011-2012 General Assembly

Committee:	Senate Agriculture/Environment/Natural Resources	**Date:**	May 31, 2011
Introduced by:	Sen. Daniel	**Prepared by:**	Mariah Matheson
Analysis of:	First Edition		Research Assistant

SUMMARY: Senate Bill 562 would prohibit cities, counties, and commissions, such as a community appearance commission, from requiring that nursery stock purchased within the jurisdiction meet nursery stock standards stricter than the American Standard for Nursery Stock, adopted by the American Nursery and Landscape Association, unless the stricter standard is necessary to protect public health and safety.

CURRENT LAW: Each municipality and county in the State may create an appearance commission for the city or county. The commission must make careful study of the visual problems and needs of the municipality or county and make any plans and carry out any programs that will enhance and improve the visual quality and aesthetic characteristics of the municipality or county.

BILL ANALYSIS: Senate Bill 562 would prohibit cities, counties, and commissions from requiring that any nursery stock purchased within its jurisdiction exceed the American Standard for Nursery Stock, unless the stricter standard is necessary to protect public health or safety.

EFFECTIVE DATE: This act would be effective when it becomes law and apply to any contracts for the purchase of nursery stock that are entered into on or after that date.

BACKGROUND: The American Standard for Nursery Stocks[1] is a standardized system of sizing and describing plants, which provides buyers and sellers with common terminology in order to facilitate transactions involving nursery stock. It does not provide buyers with any assurance of the health or quality of the nursery stock being specified or sold. The standard includes specifications on the following:

- Plant measurements (caliper, height, branching height, size)
- Relationship among caliper, height, branch number
- Root ball, container, or box size
- Bare root spread
- Ball depth
- Fabric in-ground bag

S562-SMTF-32(e1) v4

[1] http://agri.nv.gov/Brochures/ANLAStandard2004.pdf

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 562

AMENDMENT NO. _____
(to be filled in by
Principal Clerk)

S562-ATF-3 [v.1]

Comm. Sub. [NO]
Amends Title [NO]
First Edition

Date _____,2011

Senator Daniel

moves to amend the bill on page on page 1, line 23, by rewriting that line to read:

"**§ 160A-499.4. Standards for nursery stock.**".

and on page on page 1, line 30, by rewriting that line to read:

"**§ 153A-457. Standards for nursery stock.**".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

S 1

SENATE BILL 499

Short Title:	Clarify Ag Development/Preservation in DACS.	(Public)
Sponsors:	Senators Rabon, Rouzer; Blake, Brock, Brown, Brunstetter, Clary, Daniel, Davis, Forrester, Gunn, Hise, Hunt, Jackson, Newton, Pate, Preston, Soucek, Stevens, Tucker, and Walters.	
Referred to:	Agriculture/Environment/Natural Resources.	

April 4, 2011

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THAT IT IS THE DUTY OF THE DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES TO ADMINISTER AND SUPERVISE THE AGRICULTURAL DEVELOPMENT AND FARMLAND PRESERVATION ENABLING ACT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 106-735 is amended by adding a new subsection to read:

"(c) This Article shall be administered and supervised by the Department of Agriculture and Consumer Services."

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

SENATE BILL 499:
Clarify Ag Development/Preservation in DACS

2011-2012 General Assembly

Committee:	Senate Agriculture/Environment/Natural Resources	**Date:**	May 28, 2011
Introduced by:	Sens. Rabon, Rouzer	**Prepared by:**	Mariah Matheson
Analysis of:	First Edition		Research Assistant

SUMMARY: ***Senate Bill 499 would clarify that it is the duty of the Department of Agriculture and Consumer Services to administer and supervise the Agricultural Development and Farmland Preservation Enabling Act.***

CURRENT LAW AND BACKGROUND: The Agricultural Development and Farmland Preservation Enabling Act authorizes counties and cities to undertake a series of programs to encourage the preservation of qualifying farmland and to foster the growth, development, and sustainability of family farms. A county or a city may by ordinance establish a farmland preservation program.

The Agricultural Development and Farmland Preservation Trust Fund Advisory Committee is already administratively located within the Department of Agriculture and Consumer Services (Department) and advises the Commissioner of Agriculture on the prioritization and allocation of funds; the development of criteria for awarding funds; program planning; and other areas where monies from the Trust Fund can be used to promote the growth and development of family farms in North Carolina.

BILL ANALYSIS: Senate Bill 499 would clarify that the Department must administer and supervise the Agricultural Development and Farmland Preservation Enabling Act, which includes the Agricultural Development and Farmland Preservation Trust Fund, voluntary agricultural districts, and agricultural conservation easements.

EFFECTIVE DATE: This act would be effective when it becomes law.

S499-SMTF-31(e1) v1

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

S D

SENATE BILL 571
PROPOSED COMMITTEE SUBSTITUTE S571-PCS15164-SB-38

Short Title: Repeal Subsistence License Waiver. (Public)

Sponsors:

Referred to:

April 14, 2011

A BILL TO BE ENTITLED

AN ACT TO REPEAL THE RESIDENT SUBSISTENCE UNIFIED INLAND/COASTAL RECREATIONAL FISHING LICENSE WAIVER.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 113-351(d) is repealed.

SECTION 2. This act is effective when it becomes law. A Resident Subsistence Unified Inland/Coastal Recreational Fishing License Waiver issued prior to the date this act becomes law shall remain valid and effective for a period of one year from the date of its issuance.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

S 1

SENATE BILL 571

Short Title:	Repeal Subsistence License Waiver.	(Public)
Sponsors:	Senators Davis; and Rabon.	
Referred to:	Agriculture/Environment/Natural Resources.	

April 14, 2011

A BILL TO BE ENTITLED

AN ACT TO REPEAL THE RESIDENT SUBSISTENCE UNIFIED INLAND/COASTAL RECREATIONAL FISHING LICENSE WAIVER.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 113-351(d) is repealed.

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

SENATE BILL 571:
Repeal Subsistence License Waiver

2011-2012 General Assembly

Committee:	Senate Agriculture/Environment/Natural Resources	**Date:**	May 31, 2011
Introduced by:	Senator Davis	**Prepared by:**	Jeff Hudson Committee Counsel
Analysis of:	First Edition		

SUMMARY: ***Senate Bill 571 would repeal the Resident Subsistence Unified Inland/Coastal Recreational Fishing License Waiver that may be issued to recipients of certain forms of public assistance.***

CURRENT LAW:

Under current law, each county department of social services is directed to issue a Resident Subsistence Unified Inland/Coastal Recreational Fishing License Waiver to an individual who receives benefits from Medicaid, Food and Nutrition Services, or Work First Family Assistance through the county department of social services and who requests a waiver. The waiver is free of charge, is valid for a period of one year from the date of issuance, and may only be issued to an individual who is a resident of the State. The waiver authorizes the waiver holder 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.

BILL ANALYSIS: Senate Bill 571 would repeal the subsistence license waiver.

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

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 571

AMENDMENT NO._____
(to be filled in by
Principal Clerk)

S571-ASB-42 [v.1]

Comm. Sub. [NO]
Amends Title [NO]
First Edition

Date May 31 ,2011

Senator Tucker

moves to amend the bill on page 1, line 6,
by rewriting that line to read:

"**SECTION 2.** This act is effective when it becomes law. A Resident Subsistence Unified Inland/Coastal Recreational Fishing License Waiver issued prior to the date this act becomes law shall remain valid and effective for a period of one year from the date of its issuance.".

SIGNED Tommy Tucker
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

PAGES ATTENDING

COMMITTEE: Agriculture... ROOM: 544

DATE: 5-31 TIME: 4 pm

PLEASE PRINT LEGIBILY!!!!!!!!!!!!

Page Name	Hometown	Sponsoring Senator
1 Noah Parrish	Greensboro	Vaughan
2 Leah Cashwell	Garland	Jackson
3 Joseph Curry	Angier	Blake
4 Hoby Newsom	Raleigh	P. Berger
5 Holland Robinson	Greensboro	G. Robinson
6		
7		
8		
9		
10		

Do not add names below the grid.

VISITOR REGISTRATION SHEET

Senate AG/Env/Nat. Resources (2011-2012) — 5-31-11

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Coleen H Sullins	NCDENR/DWQ
Bradley Bennett	" "
James Simon	" DLR
Francis M Newton Jr	NCDENR / DLR
John Allen	Shiloh Nursery / Statesville NC
ANTHONY PONCIETTE	NCLA
Joe + Henri McCl	McClees Consultants
Robin Smith	DENR
Kari Barsness	DENR
Daniel Raimi	DENR
Margaret Hartzell	Environment North Carolina
Dan Conrad	NCCN

VISITOR REGISTRATION SHEET

Senate AG/Env/Nat. Resources (2011-2012) — 5-31-11

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Chris Dillon	NCWRC
Bob Stamm	NCFA
Ed Regan	NCRGEA
Daniel Auburn	NCLM
Elise Bouchard	intern Sen. Bingham
Beatrice Williams	CUCA
Robert Gilmore	Dept of Ag
Jay Hoch	NCDA+CS
Ray Starling	"
Dewitt Hardee	" "
Ashley Love	Biotech Ctr of NC

VISITOR REGISTRATION SHEET

Senate AG/Env/Nat. Resources (2011-2012)
Name of Committee **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Dianna Downey	PSNCUC
Doug Lassiter	NCSTA
BRUCE THOMPSON	PARKER POE
Heather Barrett	Williams Mullen
Elizabeth Robinson	NCEMA

Senate Agriculture/Environment/Natural Resources

MINUTES

June 2, 2011

The Senate Ag/Env/Nat. Resources committee met on Thursday, June 02, 2011 in Room 421-LOB at 9:00 pm. There were 18 senators present.

Sen. David Rouzer called the meeting to order and introduced the Pages and Sgt-At-Arms staff. Sen. Rouzer chaired so Sen. East could explain his bill.

SB-181 NO LUST CLEANUP UNDER CERTAIN CIRCUMSTANCES

Sen. Brock moved for adoption of the PCS for discussion. So moved. Sen. East explained the PCS. Ms. Jennifer McGinnis, Research Staff Council gave a detailed explanation of the PCS. Sen. Tillman thanked Sen. East for bringing this forth, and he asked if most people are happy with this. Sen. East said that most folks are happy. Mr. Daniel Aulman, NC League of Municipalities supports this legislation. Sen. East sent forth an amendment and explained. Sen. Kinnaird asked why the amendment was necessary. Ms. McGinnis explained. Sen. Kinnaird wanted to know why remove this language. Ms. McGinnis advised this is required by federal law. Vote taken and so moved. Sen. Brown told about some land he purchased that had underground lifts (it was a former car dealership property). He had the lifts removed and it cost $60,000. Does this cover situations like that? Sen. East said it did not. Mr. Doug Howey, NC Petroleum & Convenient Markters, made additional comments about why professional engineers are necessary to do that type of work. Sen. Bingham questioned Sec.1 and "shall" adopt rules. Sen. Rouzer explained the "rules" legislation that was introduced earlier in the session that explains "shall" and "may". Sen. Tucker spoke of a constituent that owns a convenient store and over a period of years found he had a leak, is there is a sunset on penalties that covers years of problems that were unknown. Ms. McGinnis said this bill does not address that issue. Sen. East made additional comments. Sen. Tillman told about a rule-making legislation/bill that was a few years old and are they still in effect? There are exceptions to some rules and he wants to know what those are. Sen. Rouzer said there is no rule that can move forward unless it met the 5 criteria. Mr. Jeff Hudson, Chief Staff Council told members what the 5 criteria items are. Sen. East made additional comments in favor of the bill. Sen. Walters asked about rural areas that have changed property owners and is there any provision that can protect a buyer from purchasing land. Ms. McGinnis responded that when a discharge is submitted, it is recorded so buyers would know about it. Sen. Clodfelter said this has been a financial nightmare for the state with cleanups. He would like to make sure that this is no additional costs to the state. He would like to see the state get out of the insurance business of these tanks. Sen. East said he would like to have that too and he urged passage of this bill. He will continue to work with anyone that can figure out how to continue to make this work. Mr. Dexter Matthews, Waste Management Director, DENR, told members this is a difficult program and they thought it would have been done away with many years ago, but it has not happened yet. The tax-payers could take on the

responsibilities if there is not some type of oversight. Programs need to be in place with risk-based programs. There are some sections of this bill that they do agree with, but feel there could be some federal requirement issues. They would like to work with the sponsor on the areas of their concerns. Sen. East asked what constitutes closure of a tank. Mr. Grover Nicholson, Head of UST Division explained the process of closing a tank. Tanks have to be emptied and soil samples taken and filed with his division of DENR. Sen. East asked about a 3-compartment tank and one section has a leak will the department deny reimbursement because of the closed segment. Mr. Nicholson said that will be a case-specific issue and he made additional comments.

PUBLIC SPEAKERS

Mr. Steve Williams, Wico-Hess, Winston Salem-They have the second largest number of tanks in NC. He urged support of this bill. There are many federal regulations and a lot of paperwork. NC has higher fuel taxes and there are other states that are easier and cheaper to operate in. Upgrades of tanks requires upgrades of pipes, there is not always a need to upgrade the pipes but it is a requirement in NC. Well locations are a huge issue. Please extend this deadline to 2020.

Scott Aman, New Dixie Oil Corp, Roanoke Rapids-It is much easier to do business in VA than NC. They would like to upgrade underground tanks but replacement of piping is not needed. They have to tear up the entire site in order to do this. This bill will be helpful.

Howell Clark, Sampson-Bladen Oil, Elizabethtown- This bill will address and help rural and south-eastern NC, perhaps on farms. They have been doing this for many years, even before the standards were put into place in the 1990's. It cost him $100,000 to cleanup two areas several years ago because of current laws. This bill will help many companies.

Keith Ballentine, Daughtridge Energy, Rocky Mt. – He spoke in favor of this bill. Piping is a major issue with the current rules. This new law would help save several thousand dollars in cleanup processes when/if the time comes.

Joe Harrell, President Harrell Oil Co. – They too have business in VA and NC. He has a lot of experience with both states. Costs and attitude are significant. VA is much cheaper to work with than NC. He told of how VA did things for years in working with people. It's a good bill.

Terry Kennedy, Licensed Geologist, Charlotte – They work with many people doing this type of business. They know the rules and they feel this will be less assessment charges for citizens.

Doug Howey, NC Petroleum & Convenience Marketers-They thanked staff and Sen. East for this bill. This is a good bill and it will be beneficial to the people of NC.

Sen. Tillman said VA is taking work away from NC and this is what we need. He moved for a favorable report, unfavorable to the original bill. Sen. Clodfelter emphasized again the potential costs to our state and he doesn't want to see us get deeper with these charges. Sen. East said he will work with Sen. Clodfelter and others to address that issue. Sen. Hartsell said it might have to go to Finance. Sen. East is fine with that. Sen. Kinnaird asked for comment from Sierra Club. Mr. Molly Dickens, Director Sierra

Club feels that NC has more UST than any other. We have many problems with our leaking tanks underground. They agree with Sen. Clodfelter with the expenses but are concerned with hazards. Sen. East made final comments. Sen. Bingham would like to be involved with working Sen. Brown on his concerns. Is fiberglass required for pipe replacement in other states. Sen. Atwater asked for a fiscal report. Sen. East said we will request this. The motion was change to move that the PCS as amended be rolled into a new PCS and re-referred to Finance Committee. The vote was taken and so moved.

The meeting adjourned at 9:59 am.

Sen. David Rouzer, Co-Chair

Cindy J. Davis, Committee Clerk

Principal Clerk ____
Reading Clerk ____

Corrected: Room & Time Announced

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

The Senate Committee on **Agriculture/Environment/Natural Resources** will meet at the following time:

DAY	DATE	TIME	ROOM
Thursday	June 2, 2011	9:00	421

The following will be considered:

BILL NO.	SHORT TITLE	SPONSOR
SB 181	No LUST Cleanup Under Certain Circumstances.	Senator East

Room & Time Announced

Senator Don East, Co-Chair
Senator David Rouzer, Co-Chair

Cindy Davis (Sen. Jackson)

From: Cindy Davis (Sen. Jackson)
t: Thursday, May 26, 2011 4:22 PM
@Senate/Agric./Env./Nat'l Res.; @SenateCommitteeNotice
Subject: <NCGA> Senate Agriculture/Environment/Natural Resources Committee Meeting Notice for Thu, 06-02-2011 at

Principal Clerk _____
Reading Clerk _____

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

The Senate Committee on **Agriculture/Environment/Natural Resources** will meet at the following time:

DAY	DATE	TIME	ROOM
Thursday	June 2, 2011	TBA	TBA

The following will be considered:

BILL NO.	SHORT TITLE	SPONSOR
SB 181	No LUST Cleanup Under Certain Circumstances.	Senator East

Senator Don East, Co-Chair
Senator David Rouzer, Co-Chair

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES COMMITTEE REPORT
Senator Don East, Co-Chair
Senator David Rouzer, Co-Chair

Monday, June 06, 2011

Senator ROUZER,
submits the following with recommendations as to passage:

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

S.B. **181** No LUST Cleanup Under Certain Circumstances.

Draft Number:	PCS-95094
Sequential Referral:	None
Recommended Referral:	Finance
Long Title Amended:	Yes

TOTAL REPORTED: 1

Committee Clerk Comments:

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES COMMITTEE REPORT
Senator Don East, Co-Chair
Senator David Rouzer, Co-Chair

Tuesday, June 07, 2011

Senator EAST,
submits the following with recommendations as to passage:

FAVORABLE

S.B. **781** Regulatory Reform Act of 2011.

Sequential Referral:	Commerce
Recommended Referral:	None

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

S.B. **571** Repeal Subsistence License Waiver.

Draft Number:	PCS15164
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

TOTAL REPORTED: 2

Committee Clerk Comments:

Senate Agriculture/Environment/Natural Resources Committee
Thursday, June 2, 2011, 9:00
421 LOB

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

SB 181	No LUST Cleanup Under Certain Circumstances.	Senator East

Presentations

Other Business

Adjournment

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 181

AMENDMENT NO._____
(to be filled in by
Principal Clerk)

S181-ARI-17 [v.2]

Comm. Sub. [YES]
Amends Title [NO]
PCS to First Edition S181-CSRIf-4 [v.24]

Date June 2, 2011

Senator East

moves to amend the bill on page 6, lines 10 through 22,
by deleting those lines.

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED ✓ FAILED _____ TABLED _____

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

S D

SENATE BILL 181
PROPOSED COMMITTEE SUBSTITUTE S181-PCS95094-RIf-4

Short Title: Underground Storage Tank Prgrm. Amends. (Public)

Sponsors:

Referred to:

March 3, 2011

A BILL TO BE ENTITLED

AN ACT TO MAKE VARIOUS CHANGES TO THE LAWS GOVERNING THE STATE'S UNDERGROUND STORAGE TANK PROGRAM AND PETROLEUM DISCHARGES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 143-215.3(a) reads as rewritten:

"(a) Additional Powers. – In addition to the specific powers prescribed elsewhere in this Article, and for the purpose of carrying out its duties, the Commission shall have the power:

...

(15) To adopt rules for the prevention of pollution from underground tanks containing petroleum, petroleum products, or hazardous substances. Rules adopted under this section may not incorporate standards and restrictions which exceed ~~and~~ or are more comprehensive than comparable federal regulations.

(16) To adopt rules limiting the manufacture, storage, sale, distribution or use of cleaning agents containing phosphorus pursuant to G.S. 143-214.4(e), and to adopt rules limiting the manufacture, storage, sale, distribution or use of cleaning agents containing nitrilotriacetic acid.

(17) To adopt rules to implement Part 2A of Article 21A of Chapter 143.

(18) To adopt rules pertaining to the discharge or release of petroleum, from any source, which provide for risk-based assessment and cleanup."

SECTION 2. G.S. 143-215.94B(b) reads as rewritten:

"(b) The Commercial Fund shall be used for the payment of the following costs up to an aggregate maximum of one million dollars ($1,000,000) per occurrence resulting from a discharge or release of a petroleum product from a commercial underground storage tank:

...

(8) The costs of a site investigation required by the Department for the purpose of determining whether a release from a tank system has occurred, whether or not the investigation confirms that a release has occurred."

SECTION 3. G.S. 143-215.94B(b1) reads as rewritten:

"(b1) In the event that two or more discharges or releases at any one facility, the first of which was discovered or reported on or after 30 June 1988, result in more than one plume of soil, surface water, or groundwater contamination, the Commercial Fund shall be used for the payment of the costs of the cleanup of environmental damage as required by G.S. 143-215.94E(a) in excess of the multiple discharge amount up to the applicable aggregate

maximum specified in subsections (b) and (b2) of this section. The multiple discharge amount shall be calculated as follows:

(1) Each discharge or release shall be considered separately as if it were the only discharge or release, and the cost for which the owner or operator is responsible under subdivisions (1), (2), (2a), or (3) of subsection (b) of this section, whichever are applicable, shall be determined for each discharge or release. For each discharge or release for which subdivision (4) of subsection (b) of this section is applicable, the cost for which the owner or operator is responsible, for the purpose of this subsection, shall be seventy-five thousand dollars ($75,000). For purposes of this subsection, two or more discharges or releases that result in a single plume of soil, surface water, or groundwater contamination shall be considered as a single discharge or release.

(2) The multiple discharge amount shall be the lesser of:

a. The sum of all the costs determined as set out in subdivision (1) of this subsection; or

b. The product of the highest of the costs determined as set out in subdivision (1) of this subsection multiplied by one and one-half (1½).

(3) If in the process of investigating a discharge or release from an underground storage tank system an owner or operator discovers a separate discharge or release for which the owner or operator is not responsible, the responsible party cannot be identified, and the releases are commingled, the owner or operator may elect to clean up both releases, in which case the amount the owner or operator is responsible for shall be the lesser of the applicable costs under subdivision (1), (2), (2a), (3), or (4) of subsection (b) of this section, whichever are applicable."

SECTION 4.(a) G.S. 143-215.94B is amended by adding a new subsection to read:

"(b5) In the event a discharge or release of petroleum from an underground storage tank results in contamination in soil or groundwater that becomes commingled with contamination that is the result of a discharge or release of petroleum from another source, the Commercial Fund may be used to reimburse an owner, operator, or landowner that is otherwise eligible for reimbursement and proceeds with cleanup pursuant to this Part for any costs in accordance with subsection (b1) of this section."

SECTION 4.(b) G.S. 143-215.94B(d) reads as rewritten:

"(d) The Commercial Fund shall not be used for:

(1) Costs incurred as a result of a discharge or release from an aboveground tank, aboveground pipe or fitting not connected to an underground storage tank, or ~~vehicle.~~vehicle, unless the discharge or release becomes commingled with contamination from an underground storage tank.

...."

SECTION 4.(c) G.S. 143-215.94D(d) reads as rewritten:

"(d) The Noncommercial Fund shall not be used for:

(1) Costs incurred as a result of a discharge or release from an aboveground tank, aboveground pipe or fitting not connected to an underground storage tank, or ~~vehicle.~~ vehicle, unless the discharge or release becomes commingled with contamination from an underground storage tank.

...."

SECTION 5. G.S. 143-215.94B is amended by adding a new subsection to read:

"(i) During each fiscal year, the Department shall use up to one million dollars ($1,000,000) of the funds in the Commercial Fund to fund necessary assessment and cleanup to be conducted by the Department of discharges or releases for which a responsible party has been identified but for which the responsible party can demonstrate that undertaking the costs of assessment and cleanup will impose a severe financial hardship. The Commission shall adopt rules to define severe financial hardship; establish criteria for assistance due to severe financial hardship pursuant to this section; and establish a process for evaluation and determinations of eligibility with respect to applications for assistance due to severe financial hardship. The rules shall provide that the determinations of eligibility shall be made by the Petroleum Underground Storage Tank Funds Council established under G.S. 143-215.94O."

SECTION 6. G.S. 143-215.94C reads as rewritten:

"**§ 143-215.94C. Commercial leaking petroleum underground storage tank cleanup fees.**

(a) For purposes of this subsection, each compartment of a commercial underground storage tank that is designed to independently contain a petroleum product is a separate petroleum commercial underground storage tank. The owner or operator of a commercial petroleum underground storage tank shall pay to the Secretary for deposit into the Commercial Fund an annual operating fee of four-hundred twenty dollars ($420.00) for each petroleum commercial underground storage tank.

(a1) Payment of a fee shall not be required for a compartment of a commercial underground storage tank that has not contained a petroleum product at any point during the applicable calendar year. The owner or operator of a commercial petroleum underground storage tank that does not pay an annual operating fee for a compartment pursuant to this subsection shall complete and submit an attestation under penalty of perjury that the compartment for which a fee is not paid did not contain a petroleum product at any point during the applicable calendar year. A compartment for which an annual operating fee is not paid is ineligible for reimbursement of any costs associated with a discharge or release from the compartment from the Commercial Leaking Petroleum Underground Storage Tank Fund.

(b) The annual operating fee shall be determined on a calendar year basis. For petroleum commercial underground storage tanks in use on 1 January and remaining in use on or after 1 December of that year, the annual operating fee due for that year shall be as specified in subsection (a) of this section. For a petroleum commercial underground storage tank that is first placed in service in any year, the annual operating fee due for that year shall be determined by multiplying one-twelfth (1/12) of the amount specified in subsection (a) of this section by the number of months remaining in the calendar year. For a petroleum commercial underground storage tank that is permanently removed from service in any year, the annual operating fee due for that year shall be determined by multiplying one-twelfth (1/12) of the amount specified in subsection (a) of this section by the number of months in the calendar year preceding the permanent removal from use. In calculating the pro rata annual operating fee for a tank that is first placed in use or permanently removed during a calendar year under the preceding two sentences, a partial month shall count as a month, except that where a tank is permanently removed and replaced by another tank, the total of the annual operating fee for the tank that is removed and the replacement tank shall not exceed the annual operating fee for the replacement tank. The annual operating fee shall be due and payable in equal installments on a quarterly basis on the first day of the month of each quarter in accordance with a staggered schedule established by the ~~Department. The~~ Department ~~shall implement a staggered schedule to the end~~in order that the total amount of fees to be collected by the Department is approximately the same each quarter. A person who owns or operates more than one petroleum commercial underground storage tank may request that the fee for all tanks be due at the same time. The fee for all commercial underground storage tanks located at the same facility shall be due at the same time. A person who owns or operates 12 or more commercial petroleum storage tanks may request that the total of all fees be paid in four equal payments to be due on

the first day of each calendar quarter, provided that the fee for all commercial underground storage tanks located at the same facility shall be due at the same time.

...."

SECTION 7. G.S. 143-215.94T reads as rewritten:

"**§ 143-215.94T. Adoption and implementation of regulatory program.**

...

(c) Rules adopted pursuant to subdivision (13) of subsection (a) of this section shall require secondary containment for all components of underground storage tank systems, including, but not limited to, tanks, piping, fittings, pump heads, and dispensers. Secondary containment requirements shall include standards for double wall tanks, piping, and fittings and for sump containment for pump heads and dispensers. The rules shall provide for monitoring of double wall interstices and sump containments. The rules shall apply to any underground storage tank system that is installed on or after the date on which the rules become effective and to the replacement of any component of an underground storage tank system on or after that date. This section shall not be construed to limit the right of an owner or operator to repair any existing component of an underground storage tank system. If an existing underground storage tank is replaced, the secondary containment and interstitial monitoring requirements shall apply only to the replaced underground tank. Likewise, if existing piping is replaced, the secondary containment and interstitial monitoring requirements shall apply only to the replaced piping.

(d) The Department shall allow non-tank unprotected metallic components that are visible or can be accessed for visual inspection, including flex connectors and other metal fittings and connectors at the ends of piping runs, to have corrosion protection added as an alternative to replacement of these components if the component does not have visible corrosion and passes a tightness test."

SECTION 8.(a) Notwithstanding 15A NCAC 02N .0304(a)(5) (Implementation Schedule for Performance Standards for New UST Systems and Upgrading Requirements for Existing UST Systems Located in Areas Defined in Rule .0301(d)), all UST systems installed after January 1, 1991, shall not be required to provide secondary containment until January 1, 2020.

SECTION 8.(b) Notwithstanding 15A NCAC 02N .0304(a)(5) (Implementation Schedule for Performance Standards for New UST Systems and Upgrading Requirements for Existing UST Systems Located in Areas Defined in Rule .0301(d)), the Commission shall establish a process for the grant of variances from the setbacks required for UST systems from certain public water supply wells, particularly those that serve only a single facility which are not community water systems, if the Commission finds facts to demonstrate that such variance will not endanger human health and welfare or groundwater.

SECTION 8.(c) No later than January 1, 2012, the Environmental Management Commission shall adopt rules consistent with the provisions of Section 8(a) and Section 8(b) of this act. Notwithstanding G.S. 150B-19(4), the rules adopted by the Commission pursuant to this section shall be substantively identical to the provisions of Section 8(a) and Section 8(b) of this act.

SECTION 9. G.S. 143-215.94V reads as rewritten:

"**§ 143-215.94V. Standards for petroleum underground storage tank cleanup.**

(a) Legislative findings and intent.

(1) The General Assembly finds that:

a. The goals of the underground storage tank program are to protect human health and the environment. Maintaining the solvency of the Commercial Fund and the Noncommercial Fund is essential to these goals.

b. The sites at which discharges or releases from underground storage tanks occur vary greatly in terms of complexity, soil types, hydrogeology, other physical and chemical characteristics, current and potential future uses of groundwater, and the degree of risk that each site may pose to human health and the environment.

c. Risk-based corrective action is a process that recognizes this diversity and utilizes an approach where assessment and remediation activities are specifically tailored to the conditions and risks of a specific site.

d. Risk-based corrective action gives the State flexibility in requiring different levels of cleanup based on scientific analysis of different site characteristics, and allowing no action or no further action at sites that pose little risk to human health or the environment.

e. A risk-based approach to the cleanup of environmental damage can adequately protect human health and the environment while preventing excessive or unproductive cleanup efforts, thereby assuring that limited resources are directed toward those sites that pose the greatest risk to human health and the environment.

(2) The General Assembly intends:

a. To direct the Commission to adopt rules that will provide for risk-based assessment and cleanup of discharges and releases ~~from petroleum underground storage tanks.~~of petroleum. These rules are intended to combine groundwater standards that protect current and potential future uses of groundwater with risk-based analysis to determine the appropriate cleanup levels and actions.

b. That these rules apply to all discharges or releases that are reported on or after the date the rules become effective in order to ascertain whether cleanup is necessary, and if so, the appropriate level of cleanup.

c. That these rules may be applied to any discharge or release that has been reported at the time the rules become effective at the discretion of the Commission.

d. That these rules and decisions of the Commission and the Department in implementing these rules facilitate the completion of more cleanups in a shorter period of time.

e. That neither the Commercial Fund nor the Noncommercial Fund be used to clean up sites where the Commission has determined that a discharge or release poses a degree of risk to human health or the environment that is no greater than the acceptable level of risk established by the Commission.

f. Repealed by Session Laws 1998-161, s. 11(c), effective retroactively to January 1, 1998.

g. That the Commercial Fund and the Noncommercial Fund be used to perform the most cost-effective cleanup that addresses imminent threats to human health and the environment.

(b) The Commission shall adopt rules to establish a risk-based approach for the assessment, prioritization, and cleanup of discharges and releases ~~from petroleum underground storage tanks.~~ of petroleum. The rules shall address, at a minimum, the circumstances where site-specific information should be considered, criteria for determining acceptable cleanup levels, and the acceptable level or range of levels of risk to human health and the environment. Rules that use the distance between a source area of a confirmed discharge or release to a water

supply well or a private drinking water well, as those terms are defined under G.S. 87-85, shall include a determination whether a nearby well is likely to be affected by the discharge or release as a factor in determining levels of risk.

(c) The Commission may require an owner or operator or a landowner eligible for payment or reimbursement under subsections (b), (b1), (c), and (c1) of G.S. 143-215.94E to provide information necessary to determine the degree of risk to human health and the environment that is posed by a discharge or release from a petroleum underground storage and to identify the most cost-effective cleanup that addresses imminent threats to human health and the environment.

(d) If the Commission concludes that a discharge or release poses a degree of risk to human health or the environment that is no greater than the acceptable level of risk established by the Commission, the Commission shall notify an owner, operator, or landowner who provides the information required by subsection (c) of this section that no cleanup, further cleanup, or further action will be required unless the Commission later determines that the discharge or release poses an unacceptable level of risk or a potentially unacceptable level of risk to human health or the environment. If the Commission concludes that a discharge or release poses a degree of risk to human health or the environment that requires further cleanup, the Commission shall notify the owner, operator, or landowner who provides the information required by subsection (c) of this section of the cleanup method approved by the Commission as the most cost-effective cleanup method for the site. This section shall not be construed to prohibit an owner, operator, or landowner from selecting a cleanup method other than the cost-effective cleanup method approved by the Commission so long as the Commission determines that the alternative cleanup method will address imminent threats to human health and the environment.

(e) If the Commission concludes under subsection (d) of this section that no cleanup, no further cleanup, or no further action will be required, the Department shall not pay or reimburse any costs otherwise payable or reimbursable under this Article from either the Commercial or Noncommercial Fund, other than reasonable and necessary to conduct the risk assessment required by this section, unless:

(1) Cleanup is ordered or damages are awarded in a finally adjudicated judgment in an action against the owner or landowner.

(2) Cleanup is required or damages are agreed to in a consent judgment approved by the Department prior to its entry by the court.

(3) Cleanup is required or damages are agreed to in a settlement agreement approved by the Department prior to its execution by the parties.

(4) The payment or reimbursement is for costs that were incurred prior to or as a result of notification of a determination by the Commission that no cleanup, no further cleanup, or no action is required.

(5) The payment or reimbursement is for costs that were incurred as a result of a later determination by the Commission that the discharge or release poses a threat or potential threat to human health or the environment as provided in subsection (d) of this section.

(e1) If the Commission concludes under subsection (d) of this section that further cleanup is required and notifies the owner, operator, or landowner of the cleanup method approved by the Commission as the most cost-effective cleanup method for the site, the Department shall not pay or reimburse any costs otherwise payable or reimbursable under this Article from either the Commercial Fund or Noncommercial Fund, other than those costs that are reasonable and necessary to conduct the risk assessment and to implement the cost-effective cleanup method approved by the Commission. If the owner, operator, or landowner selects a cleanup method other than the one identified by the Commission as the most cost-effective

cleanup, the Department shall not pay or reimburse for costs in excess of the cost of implementing the approved cost-effective cleanup.

(f) This section shall not be construed to limit the authority of the Commission to require investigation, initial response, and abatement of a discharge or release pending a determination by the Commission under subsection (d) of this section as to whether cleanup, further cleanup, or further action will be required.

(g) Subsections (c) through (e1) of this section apply only to assessments and cleanups in progress or begun on or after 2 January 1998.

(h) If a discharge or release of petroleum from an underground storage tank results in contamination in soil or groundwater that becomes commingled with contamination that is the result of a discharge or release of petroleum from a source of contamination other than an underground storage tank, the cleanup of petroleum may proceed under rules adopted pursuant to this section. ~~The Department shall not pay or reimburse any costs associated with the assessment or remediation of that portion of contamination that results from a release or discharge of petroleum from a source other than an underground storage tank from either the Commercial Fund or the Noncommercial Fund.~~"

SECTION 10.(a) Notwithstanding subsection (a) of 15A NCAC 02N .0903 (Underground Storage Tanks: Tanks), from the effective date of this act the Department of Environment and Natural Resources shall not prohibit the use of tanks that are constructed of steel and cathodically protected as provided in 40 Code of Federal Regulations § 280.20(a)(2) (July 1, 2010 Edition) in order to meet the external corrosion protection standards of that rule.

SECTION 10.(b) No later than January 1, 2012, the Environmental Management Commission shall adopt rules consistent with the provisions of Section 10(a) of this act. Notwithstanding G.S. 150B-19(4), the rules adopted by the Commission pursuant to this section shall be substantively identical to the provisions of Section 10(a) of this act.

SECTION 11. This act is effective when it becomes law and applies to assessments that are initiated on or after that date, except that (i) Section 3 applies to discharges or releases discovered or reported on or after January 1, 2009, and (ii) G.S. 143-215.94V(c1), as enacted by Section 9 of this act, applies to discharges or releases reported on or before January 2, 1998.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

S D

SENATE BILL 181
PROPOSED COMMITTEE SUBSTITUTE S181-CSRIf-4 [v.24]

6/1/2011 5:51:16 PM

Short Title: Underground Storage Tank Prgrm. Amends. (Public)

Sponsors:

Referred to:

March 3, 2011

A BILL TO BE ENTITLED

AN ACT TO MAKE VARIOUS CHANGES TO THE LAWS GOVERNING THE STATE'S UNDERGROUND STORAGE TANK PROGRAM AND PETROLEUM DISCHARGES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 143-215.3(a) reads as rewritten:

"(a) Additional Powers. – In addition to the specific powers prescribed elsewhere in this Article, and for the purpose of carrying out its duties, the Commission shall have the power:

...

(15) To adopt rules for the prevention of pollution from underground tanks containing petroleum, petroleum products, or hazardous substances. Rules adopted under this section may not incorporate standards and restrictions which exceed ~~and~~ or are more comprehensive than comparable federal regulations.

(16) To adopt rules limiting the manufacture, storage, sale, distribution or use of cleaning agents containing phosphorus pursuant to G.S. 143-214.4(e), and to adopt rules limiting the manufacture, storage, sale, distribution or use of cleaning agents containing nitrilotriacetic acid.

(17) To adopt rules to implement Part 2A of Article 21A of Chapter 143.

(18) To adopt rules pertaining to the discharge or release of petroleum, from any source, which provide for risk-based assessment and cleanup."

SECTION 2. G.S. 143-215.94B(b) reads as rewritten:

"(b) The Commercial Fund shall be used for the payment of the following costs up to an aggregate maximum of one million dollars ($1,000,000) per occurrence resulting from a discharge or release of a petroleum product from a commercial underground storage tank:

...

(8) The costs of a site investigation required by the Department for the purpose of determining whether a release from a tank system has occurred, whether or not the investigation confirms that a release has occurred."

SECTION 3. G.S. 143-215.94B(b1) reads as rewritten:

"(b1) In the event that two or more discharges or releases at any one facility, the first of which was discovered or reported on or after 30 June 1988, result in more than one plume of soil, surface water, or groundwater contamination, the Commercial Fund shall be used for the payment of the costs of the cleanup of environmental damage as required by G.S. 143-215.94E(a) in excess of the multiple discharge amount up to the applicable aggregate

maximum specified in subsections (b) and (b2) of this section. The multiple discharge amount shall be calculated as follows:

(1) Each discharge or release shall be considered separately as if it were the only discharge or release, and the cost for which the owner or operator is responsible under subdivisions (1), (2), (2a), or (3) of subsection (b) of this section, whichever are applicable, shall be determined for each discharge or release. For each discharge or release for which subdivision (4) of subsection (b) of this section is applicable, the cost for which the owner or operator is responsible, for the purpose of this subsection, shall be seventy-five thousand dollars ($75,000). For purposes of this subsection, two or more discharges or releases that result in a single plume of soil, surface water, or groundwater contamination shall be considered as a single discharge or release.

(2) The multiple discharge amount shall be the lesser of:

a. The sum of all the costs determined as set out in subdivision (1) of this subsection; or

b. The product of the highest of the costs determined as set out in subdivision (1) of this subsection multiplied by one and one-half (1½).

(3) If in the process of investigating a discharge or release from an underground storage tank system an owner or operator discovers a separate discharge or release for which the owner or operator is not responsible, the responsible party cannot be identified, and the releases are commingled, the owner or operator may elect to cleanup both releases in which case the amount the owner or operator is responsible for shall be the lesser of the applicable costs under subdivisions (1), (2), (2a), (3), or (4) of subsection (b) of this section, whichever are applicable."

SECTION 4.(a) G.S. 143-215.94B is amended by adding a new subsection to read:

"(b5) In the event a discharge or release of petroleum from an underground storage tank results in contamination in soil or groundwater that becomes commingled with contamination that is the result of a discharge or release of petroleum from another source, the Commercial Fund may be used to reimburse an owner, operator, or landowner that is otherwise eligible for reimbursement and proceeds with cleanup pursuant to this Part for any costs in accordance with subsection (b1) of this section."

SECTION 4.(b) G.S. 143-215.94B(d) reads as rewritten:

"(d) The Commercial Fund shall not be used for:

(1) Costs incurred as a result of a discharge or release from an aboveground tank, aboveground pipe or fitting not connected to an underground storage tank, or ~~vehicle.~~vehicle, unless the discharge or release becomes commingled with contamination from an underground storage tank.

..."

SECTION 4.(c) G.S. 143-215.94D(d) reads as rewritten:

"(d) The Noncommercial Fund shall not be used for:

(1) Costs incurred as a result of a discharge or release from an aboveground tank, aboveground pipe or fitting not connected to an underground storage tank, or ~~vehicle.~~ vehicle, unless the discharge or release becomes commingled with contamination from an underground storage tank.

..."

SECTION 5. G.S. 143-215.94B is amended by adding a new subsection to read:

"(i) During each fiscal year, the Department shall use up to one million dollars ($1,000,000) of the funds in the Commercial Fund to fund necessary assessment and cleanup to be conducted by the Department of discharges or releases for which a responsible party has been identified but for which the responsible party can demonstrate that undertaking the costs of assessment and cleanup will impose a severe financial hardship. The Commission shall adopt rules to: define severe financial hardship; establish criteria for assistance due to severe financial hardship pursuant to this section; and a process for evaluation and determinations of eligibility with respect to applications for assistance due to severe financial hardship. The rules shall provide that the determinations of eligibility shall be made by the Petroleum Underground Storage Tank Funds Council established under G.S. 143-215.94O."

SECTION 6. G.S. 143-215.94C reads as rewritten:

"§ 143-215.94C. Commercial leaking petroleum underground storage tank cleanup fees.

(a) For purposes of this subsection, each compartment of a commercial underground storage tank that is designed to independently contain a petroleum product is a separate petroleum commercial underground storage tank. The owner or operator of a commercial petroleum underground storage tank shall pay to the Secretary for deposit into the Commercial Fund an annual operating fee of four-hundred twenty dollars ($420.00) for each petroleum commercial underground storage tank.

(a1) Payment of a fee shall not be required for a compartment of a commercial underground storage tank that has not contained a petroleum product at any point during the applicable calendar year. The owner or operator of a commercial petroleum underground storage tank that does not pay an annual operating fee for a compartment pursuant to this subsection shall complete and submit an attestation under penalty of perjury that the compartment for which a fee is not paid did not contain a petroleum product at any point during the applicable calendar year. A compartment for which an annual operating fee is not paid is ineligible for reimbursement of any costs associated with a discharge or release from the compartment from the Commercial Leaking Petroleum Underground Storage Tank Fund.

(b) The annual operating fee shall be determined on a calendar year basis. For petroleum commercial underground storage tanks in use on 1 January and remaining in use on or after 1 December of that year, the annual operating fee due for that year shall be as specified in subsection (a) of this section. For a petroleum commercial underground storage tank that is first placed in service in any year, the annual operating fee due for that year shall be determined by multiplying one-twelfth (1/12) of the amount specified in subsection (a) of this section by the number of months remaining in the calendar year. For a petroleum commercial underground storage tank that is permanently removed from service in any year, the annual operating fee due for that year shall be determined by multiplying one-twelfth (1/12) of the amount specified in subsection (a) of this section by the number of months in the calendar year preceding the permanent removal from use. In calculating the pro rata annual operating fee for a tank that is first placed in use or permanently removed during a calendar year under the preceding two sentences, a partial month shall count as a month, except that where a tank is permanently removed and replaced by another tank, the total of the annual operating fee for the tank that is removed and the replacement tank shall not exceed the annual operating fee for the replacement tank. The annual operating fee shall be due and payable in equal installments on a quarterly basis on the first day of the month of each quarter in accordance with a staggered schedule established by the ~~Department. The~~ Department ~~shall implement a staggered schedule to the end~~in order that the total amount of fees to be collected by the Department is approximately the same each quarter. A person who owns or operates more than one petroleum commercial underground storage tank may request that the fee for all tanks be due at the same time. The fee for all commercial underground storage tanks located at the same facility shall be due at the same time. A person who owns or operates 12 or more commercial petroleum storage tanks may request that the total of all fees be paid in four equal payments to be due on

the first day of each calendar quarter, provided that the fee for all commercial underground storage tanks located at the same facility shall be due at the same time.

..."

SECTION 7. G.S. 143-215.94T reads as rewritten:

"**§ 143-215.94T. Adoption and implementation of regulatory program.**

...

(c) Rules adopted pursuant to subdivision (13) of subsection (a) of this section shall require secondary containment for all components of underground storage tank systems, including, but not limited to, tanks, piping, fittings, pump heads, and dispensers. Secondary containment requirements shall include standards for double wall tanks, piping, and fittings and for sump containment for pump heads and dispensers. The rules shall provide for monitoring of double wall interstices and sump containments. The rules shall apply to any underground storage tank system that is installed on or after the date on which the rules become effective and to the replacement of any component of an underground storage tank system on or after that date. This section shall not be construed to limit the right of an owner or operator to repair any existing component of an underground storage tank system. If an existing underground storage tank is replaced, the secondary containment and interstitial monitoring requirements shall apply only to the replaced underground tank. Likewise, if existing piping is replaced, the secondary containment and interstitial monitoring requirements shall apply only to the replaced piping.

(d) The Department shall allow non-tank unprotected metallic components that are visible or can be accessed for visual inspection, including flex connectors and other metal fittings and connectors at the ends of piping runs, to have corrosion protection added as an alternative to replacement of these components if the component does not have visible corrosion and passes a tightness test."

SECTION 8.(a) Notwithstanding 15A NCAC 02N .0304(a)(5) (Implementation Schedule for Performance Standards for New UST Systems and Upgrading Requirements for Existing UST Systems Located in Areas Defined in Rule .0301(d)) all UST systems installed after January 1, 1991 shall not be required to provide secondary containment until January 1, 2020.

SECTION 8.(b) Notwithstanding 15A NCAC 02N .0304(a)(5) (Implementation Schedule for Performance Standards for New UST Systems and Upgrading Requirements for Existing UST Systems Located in Areas Defined in Rule .0301(d)), the Commission shall establish a process for the grant of variances from the setbacks required for UST systems from certain public water supply wells, particularly those that serve only a single facility which are not community water systems, if the Commission finds facts to demonstrate that such variance will not endanger human health and welfare or groundwater.

SECTION 8.(c) No later than January 1, 2012, the Environmental Management Commission shall adopt rules consistent with the provisions of Section 8.(a) and Section 8.(b) of this act. Notwithstanding G.S. 150B-19(4), the rules adopted by the Commission pursuant to this section shall be substantively identical to the provisions of Section 8.(a) and Section 8.(b) of this act.

SECTION 9. G.S. 143-215.94V reads as rewritten:

"**§ 143-215.94V. Standards for petroleum underground storage tank cleanup.**

(a) Legislative findings and intent.

(1) The General Assembly finds that:

a. The goals of the underground storage tank program are to protect human health and the environment. Maintaining the solvency of the Commercial Fund and the Noncommercial Fund is essential to these goals.

b. The sites at which discharges or releases from underground storage tanks occur vary greatly in terms of complexity, soil types, hydrogeology, other physical and chemical characteristics, current and potential future uses of groundwater, and the degree of risk that each site may pose to human health and the environment.

c. Risk-based corrective action is a process that recognizes this diversity and utilizes an approach where assessment and remediation activities are specifically tailored to the conditions and risks of a specific site.

d. Risk-based corrective action gives the State flexibility in requiring different levels of cleanup based on scientific analysis of different site characteristics, and allowing no action or no further action at sites that pose little risk to human health or the environment.

e. A risk-based approach to the cleanup of environmental damage can adequately protect human health and the environment while preventing excessive or unproductive cleanup efforts, thereby assuring that limited resources are directed toward those sites that pose the greatest risk to human health and the environment.

(2) The General Assembly intends:

a. To direct the Commission to adopt rules that will provide for risk-based assessment and cleanup of discharges and releases ~~from petroleum underground storage tanks.~~ of petroleum. These rules are intended to combine groundwater standards that protect current and potential future uses of groundwater with risk-based analysis to determine the appropriate cleanup levels and actions.

b. That these rules apply to all discharges or releases that are reported on or after the date the rules become effective in order to ascertain whether cleanup is necessary, and if so, the appropriate level of cleanup.

c. That these rules may be applied to any discharge or release that has been reported at the time the rules become effective at the discretion of the Commission.

d. That these rules and decisions of the Commission and the Department in implementing these rules facilitate the completion of more cleanups in a shorter period of time.

e. That neither the Commercial Fund nor the Noncommercial Fund be used to clean up sites where the Commission has determined that a discharge or release poses a degree of risk to human health or the environment that is no greater than the acceptable level of risk established by the Commission.

f. Repealed by Session Laws 1998-161, s. 11(c), effective retroactively to January 1, 1998.

g. That the Commercial Fund and the Noncommercial Fund be used to perform the most cost-effective cleanup that addresses imminent threats to human health and the environment.

(b) The Commission shall adopt rules to establish a risk-based approach for the assessment, prioritization, and cleanup of discharges and releases ~~from petroleum underground storage tanks.~~ of petroleum. The rules shall address, at a minimum, the circumstances where site-specific information should be considered, criteria for determining acceptable cleanup levels, and the acceptable level or range of levels of risk to human health and the environment. Rules that use the distance between a source area of a confirmed discharge or release to a water

supply well or a private drinking water well, as those terms are defined under G.S. 87-85, shall include a determination whether a nearby well is likely to be affected by the discharge or release as a factor in determining levels of risk.

(c) The Commission may require an owner or operator or a landowner eligible for payment or reimbursement under subsections (b), (b1), (c), and (c1) of G.S. 143-215.94E to provide information necessary to determine the degree of risk to human health and the environment that is posed by a discharge or release from a petroleum underground storage and to identify the most cost-effective cleanup that addresses imminent threats to human health and the environment.

(c1) If the Commission fails to require an owner, operator, or landowner to provide the information described in subsection (c) of this section within three years of the date the discharge or release is reported, the Commission shall notify the owner, operator, or landowner that no cleanup, further cleanup, or further action will be required unless the Commission later determines that the discharge or release poses an unacceptable level of risk or a potentially unacceptable level of risk to human health or the environment. If the Commission notifies the owner, operator, or landowner that no cleanup, further cleanup, or further action will be required pursuant to this subsection, the requirements for recordation of residual petroleum under G.S. 143B-279.11 shall be applicable. The provisions of this subsection shall only apply to discharges or releases at which initial abatement activities, recovery of any free product resulting from the discharge or release, and investigation or assessment have occurred in compliance with the provisions of this Article, the rules adopted thereunder, and requirements under federal law.

(d) If the Commission concludes that a discharge or release poses a degree of risk to human health or the environment that is no greater than the acceptable level of risk established by the Commission, the Commission shall notify an owner, operator, or landowner who provides the information required by subsection (c) of this section that no cleanup, further cleanup, or further action will be required unless the Commission later determines that the discharge or release poses an unacceptable level of risk or a potentially unacceptable level of risk to human health or the environment. If the Commission concludes that a discharge or release poses a degree of risk to human health or the environment that requires further cleanup, the Commission shall notify the owner, operator, or landowner who provides the information required by subsection (c) of this section of the cleanup method approved by the Commission as the most cost-effective cleanup method for the site. This section shall not be construed to prohibit an owner, operator, or landowner from selecting a cleanup method other than the cost-effective cleanup method approved by the Commission so long as the Commission determines that the alternative cleanup method will address imminent threats to human health and the environment.

(e) If the Commission concludes under subsection (d) of this section that no cleanup, no further cleanup, or no further action will be required, the Department shall not pay or reimburse any costs otherwise payable or reimbursable under this Article from either the Commercial or Noncommercial Fund, other than reasonable and necessary to conduct the risk assessment required by this section, unless:

(1) Cleanup is ordered or damages are awarded in a finally adjudicated judgment in an action against the owner or landowner.

(2) Cleanup is required or damages are agreed to in a consent judgment approved by the Department prior to its entry by the court.

(3) Cleanup is required or damages are agreed to in a settlement agreement approved by the Department prior to its execution by the parties.

(4) The payment or reimbursement is for costs that were incurred prior to or as a result of notification of a determination by the Commission that no cleanup, no further cleanup, or no action is required.

(5) The payment or reimbursement is for costs that were incurred as a result of a later determination by the Commission that the discharge or release poses a threat or potential threat to human health or the environment as provided in subsection (d) of this section.

(e1) If the Commission concludes under subsection (d) of this section that further cleanup is required and notifies the owner, operator, or landowner of the cleanup method approved by the Commission as the most cost-effective cleanup method for the site, the Department shall not pay or reimburse any costs otherwise payable or reimbursable under this Article from either the Commercial Fund or Noncommercial Fund, other than those costs that are reasonable and necessary to conduct the risk assessment and to implement the cost-effective cleanup method approved by the Commission. If the owner, operator, or landowner selects a cleanup method other than the one identified by the Commission as the most cost-effective cleanup, the Department shall not pay or reimburse for costs in excess of the cost of implementing the approved cost-effective cleanup.

(f) This section shall not be construed to limit the authority of the Commission to require investigation, initial response, and abatement of a discharge or release pending a determination by the Commission under subsection (d) of this section as to whether cleanup, further cleanup, or further action will be required.

(g) Subsections (c) through (e1) of this section apply only to assessments and cleanups in progress or begun on or after 2 January 1998.

(h) If a discharge or release of petroleum from an underground storage tank results in contamination in soil or groundwater that becomes commingled with contamination that is the result of a discharge or release of petroleum from a source of contamination other than an underground storage tank, the cleanup of petroleum may proceed under rules adopted pursuant to this section. ~~The Department shall not pay or reimburse any costs associated with the assessment or remediation of that portion of contamination that results from a release or discharge of petroleum from a source other than an underground storage tank from either the Commercial Fund or the Noncommercial Fund.~~"

SECTION 10.(a) Notwithstanding subsection (a) of 15A NCAC 02N .0903 (Underground Storage Tanks: Tanks), from the effective date of this act the Department of Environment and Natural Resources shall not prohibit the use of tanks that are constructed of steel and cathodically protected as provided in 40 Code of Federal Regulations § 280.20(a)(2) (July 1, 2010 Edition) in order to meet the external corrosion protection standards of that rule.

SECTION 10.(b) No later than January 1, 2012, the Environmental Management Commission shall adopt rules consistent with the provisions of Section 10.(a) of this act. Notwithstanding G.S. 150B-19(4), the rules adopted by the Commission pursuant to this section shall be substantively identical to the provisions of Section 10.(a) of this act.

SECTION 10. This act is effective when it becomes law and applies to assessments that are initiated on or after that date, except that: (i) Section 3 applies to discharges or releases discovered or reported on or after January 1, 2009; and (ii) G.S. 143-215.94V(c1) as enacted by Section 9 of this act applies to discharges or releases reported on or before January 2, 1998.

SENATE BILL 181:
Underground Storage Tank Prgrm. Amends.

2011-2012 General Assembly

Committee:	Senate Agriculture/Environment/Natural Resources	**Date:**	June 2, 2011
Introduced by:	Sen. East	**Prepared by:**	Jennifer McGinnis Committee Counsel
Analysis of:	PCS to First Edition S181-CSRIf-4 [v. 24]		

SUMMARY: The Proposed Committee Substitute (PCS) for Senate Bill 181 would amend various laws governing petroleum discharges and underground storage tanks.

BILL ANALYSIS:

Section 1 – Power of EMC with regard to tanks.

The PCS would amend powers granted to the Environmental Management Commission (EMC) with respect to underground storage tanks (USTs) as follows:

- **State rules relative to federal law:** currently the statutes explicitly provide that the rules may incorporate standards and restrictions which exceed and are more comprehensive than federal regulations.

  The PCS would prohibit the EMC from adopting standards or restrictions that exceed or are more comprehensive than comparable federal regulations.

- **Use of risk-based assessment:** Current rules allow use of risk-based assessment and cleanup only for discharges **resulting from underground storage tanks**.

  The PCS would direct the EMC to adopt rules that provide for risk-based assessment and cleanup for discharges of petroleum **resulting from any source.**

Section 2 – Reimbursement for costs of investigation.

Currently, site investigation costs are reportedly not reimbursed for investigations that do not confirm a discharge.

The PCS would clarify that costs associated with a site investigation that is required by the Department of Environment and Natural Resources (Department) for the purpose of determining whether a discharge from a tank system has occurred are reimbursable, whether or not the investigation confirms that a discharge has occurred.

Section 3 – Reimbursement of costs for multiple discharges at same facility.

Currently, if two or more discharges are discovered at one facility, whether or not both are caused by the current owner or operator, if the current owner or operator elects to cleanup both discharges the owner or operator must pay a deductible for each discharge, the amount of which is determined based on the nature of the discharge, and, depending on the nature of the discharge, a portion of the reasonable and necessary costs of the cleanup.

The PCS would amend the statute governing the reimbursement of costs from the Commercial Leaking Petroleum Underground Storage Tank Cleanup Fund ("Commercial Fund") for cleanup of multiple discharges at the same facility. The PCS would provide that if an owner or operator discovers a separate discharge ***for which the owner or operator is not responsible***, the responsible party for the other discharge cannot be identified, and the discharges are commingled, the owner or operator may elect to cleanup both discharges in which case the amount the owner or operator is responsible for would be the lesser of those deductibles applicable to the discharges.

Section 4 – Reimbursement for cleanup of petroleum discharges from sources other than USTs if commingled with UST discharges.
Currently, the Department is prohibited from using the Commercial Fund or the Noncommercial Leaking Petroleum Underground Storage Tank Cleanup Fund ("Noncommercial Fund") to pay or reimburse any costs associated with the assessment or remediation of that portion of contamination which results from a discharge of petroleum from a source other than an UST.

The PCS would make changes to the General Statutes to provide that both the Commercial Fund and the Noncommercial Fund will be used for the payment of the costs of cleanup of contamination in soil or groundwater that results from comingling of a discharge of petroleum from a UST and a discharge of petroleum from another source (from an aboveground tank, for example).

Section 5 – Establish process to assist in cases of severe financial hardship.
The PCS would add a provision requiring the Department to use up to $1,000,000 of the funds in the Commercial Fund to fund necessary assessment and cleanup to be conducted by the Department of discharges for which a responsible party has been identified but for which the responsible party can demonstrate that undertaking the costs of assessment and cleanup will impose a severe financial hardship. The provision directs the EMC to adopt rules in this regard, which, among other things, would provide that determinations of eligibility for such assistance would be made by the Petroleum Underground Storage Tank Funds Council.

Section 6 – Annual operating fees.
Currently the applicable statute provides that each compartment of a commercial UST that is designed to independently contain a petroleum product is a separate UST, and that an annual operating fee of $420.00 is due for each compartment which must be paid once yearly.

The PCS would provide (1) that annual operating fees are due only for commercial tanks that have contained a petroleum product at any point during the year to which the fee is applicable, but not for individual compartments of a UST that have not contained a petroleum product during the applicable year; and, (2) that payment of annual operating fees applicable to USTs would be payable on a quarterly basis in equal installments.

Section 7 – Certain requirements for USTs.

- **Secondary Containment** -- Currently, State rules on secondary containment do not allow an owner to repair a section of piping (the entire piping run must be replaced and brought into compliance with the rule requiring secondary containment, 15A NCAC 2N .0903 (c) and .0904 (f)).

  The PCS would amend the statute that mandates adoption of rules to require secondary containment for all components of USTs, to clarify that the provision is not to be construed to limit the right of an owner or operator to repair any existing component of a UST. Under the provision, if an existing

UST is replaced, the secondary containment and interstitial monitoring requirements would only apply to the replaced tank. Likewise, if existing piping is replaced, the secondary containment and interstitial monitoring requirements would only apply to the replaced piping. The provision is reflective of current federal law on the matter.

- **Corrosion protection for metallic components** – Federal regulations 40 CFR 280.20 and 280.21 require all metallic components of UST systems to be protected from corrosion. 15A NCAC 02N adopts the federal regulations by reference. Corrosion protection can be added to unprotected metal tanks if the integrity of the tank walls is sufficient to prevent the tanks from leaking and to allow the addition of corrosion protection. For other metallic components (such as piping, metal elbows, valves, and flex connectors) there is no cost-effective test to measure the amount of corrosion damage and know whether a discharge is imminent. According to the Department, if it finds an unprotected metallic component during a compliance inspection, the remedy has been to replace the component and add corrosion protection. Since November 1, 2007, State law has required secondary containment for new and replacement components of UST system which can add significant costs.

  The PCS would require the Department to allow non-tank unprotected metallic components that are visible or can be accessed for visual inspection, including flex connectors and other metal fittings and connectors at the ends of piping runs, to have corrosion protection added as an alternative to replacement of these components if the component does not have visible corrosion and passes a tightness test.

Section 8 – Well setback requirements for USTs.

In 1991, the State adopted rules requiring a 500-foot separation between petroleum UST systems and public water supply wells and certain critical surface waters. The separation distance can be reduced if the UST system has secondary containment. These setbacks applied immediately to UST systems installed after 1991 and were phased in for existing UST systems. Under current rules, the final deadline for tanks to meet the well setback requirements or provide secondary containment for the system is January 1, 2016. This final deadline applies to a small category of tanks installed after the 1991 rules went into effect, but which did not comply with the rules at the time they were installed. In the meantime, those tank owners have been required to check twice a year for petroleum discharges. Of the nearly 9000 UST facilities in North Carolina, most have met the requirement according to the Department. For a few of those remaining, upgrading to meet the setback requirement may force the UST owner to either stop operating the UST system or close the well.

The PCS would: (1) extend the final deadline of a rule requiring certain USTs to meet well setback requirements or provide secondary containment for the system from January 1, 2016 to January 1, 2020; and (2) require the EMC to establish a variance process applicable to the setbacks required for UST systems from certain public water supply wells, particularly those that serve only a single facility which are not community water systems, if the EMC finds facts to demonstrate that such variance will not endanger human health and welfare or groundwater.

Section 9 – Standards for cleanup.

Risk-based assessment and cleanup allowed for discharges of petroleum from any source (conforming change, see similar provision in Sec. 1).

- **Use of proximity to wells in determining risk of discharges:** 15A NCAC 02L .0406 provides the criteria by which the Department classifies a site as high, intermediate, or low risk. Under the rule, a site must be classified as high risk if, among other things: (i) a water supply well, including one used for non-drinking purposes, has been contaminated by the discharge; (ii) a water supply well used for drinking water is located within 1000 feet of the source area of a confirmed discharge; or, (iii) a water supply well not used for drinking water is located within 250 feet of the source area of a confirmed discharge.

  The PCS would provide that the rule that uses the distance between a source area of a confirmed discharge to a water supply well or a private drinking water well to determine the risk of a discharge must include a determination whether a nearby well is likely to be affected by the discharge as a factor in determining the level of risk.

- **Time limitation for information to be requested:** Currently, the statutes authorize the EMC to require an owner or operator eligible for reimbursement of claims for cleanup of a UST to provide information necessary to determine the degree of risk to human health and the environment that is posed by a discharge from the UST and to identify the most cost-effective cleanup that addresses imminent threats to human health and the environment. The statutes currently impose no time limitation on the EMC's ability to require information on sites from a responsible party.

  The PCS would amend this provision to provide that if the EMC fails to require a responsible party to provide such information within three years of the date the discharge is reported, the EMC must notify the party that no cleanup, further cleanup, or further action will be required unless the EMC later determines that the discharge poses an unacceptable level of risk or a potentially unacceptable level of risk to human health or the environment. Recordation of a notice of a residual petroleum would be required in such cases. The new provision would only apply to discharges at which initial abatement activities, recovery of any free product resulting from the discharge, and investigation or assessment have occurred in compliance with the provisions of this Article, the rules adopted thereunder, and requirements under federal law.

- **Reimbursement for cleanup of petroleum discharges from sources other than USTs if commingled with UST discharges** (conforming change, see similar provision in Sec. 4).

Section 10 – Allow cathodically protected steel tanks:

15A NCAC 02N .0903(a) currently prohibits the use of cathodically protected steel tanks to meet the external corrosion protection standards of that rule. Such tanks are, however, acceptable under federal law (40 Code of Federal Regulations § 280.20(a)(2) (July 1, 2010 Edition)).

The PCS would provide that, from the effective date of the PCS, the Department must not prohibit the use of such tanks, and require the EMC to adopt rules accordingly by January 1, 2012.

Section 11 – Effective date:

The PCS would be effective when it becomes law and apply to assessments that are initiated on or after that date, except that: (i) Section 3 would apply to discharges discovered or reported on or after January 1, 2009; and (ii) G.S. 143-215.94V(c1) as enacted by Section 9 of the PCS would apply to discharges reported on or before January 2, 1998.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

S 1

SENATE BILL 181

Short Title:	No LUST Cleanup Under Certain Circumstances.	(Public)
Sponsors:	Senator East.	
Referred to:	Agriculture/Environment/Natural Resources.	

March 3, 2011

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT NO CLEANUP WILL BE REQUIRED FOR ANY DISCHARGE OR RELEASE FROM A PETROLEUM UNDERGROUND STORAGE TANK WHEN A PUBLIC WATER SYSTEM IS AVAILABLE TO THOSE AFFECTED BY THE DISCHARGE OR RELEASE AND NO SURFACE WATERS ARE LOCATED WITHIN ONE THOUSAND FEET OF THE DISCHARGE OR RELEASE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 143-215.94V(b) reads as rewritten:

"(b) The Commission shall adopt rules to establish a risk-based approach for the assessment, prioritization, and cleanup of discharges and releases from petroleum underground storage tanks. The rules shall address, at a minimum, the circumstances where site-specific information should be considered, criteria for determining acceptable cleanup levels, and the acceptable level or range of levels of risk to human health and the environment. No cleanup shall be required when a public water system is available to those affected by the discharge or release and no surface waters are located within 1,000 feet of the discharge or release. As used in this subsection, the following definitions apply:

(1) Affected by the discharge or release. – Reside at an occupied dwelling that is located 1,500 feet or less from the discharge or release or are employed at, attend, or visit any of the following facilities when the facility is located 2,500 feet or less from the discharge or release: business; school; hospital; church; outdoor recreational facility; national park; State park, as defined in G.S. 113-44.9; historic property acquired by the State pursuant to G.S. 121-9 or listed in the North Carolina Register of Historic Places pursuant to G.S. 121-4.1; or child care center, as defined in G.S. 110-86, that is licensed under Article 7 of Chapter 110 of the General Statutes.

(2) Public water system. – Defined in G.S. 130A-313."

SECTION 2. This act is effective when it becomes law and applies to assessments that are begun on or after that date.

Speakers on S1181 - Senate Ag & Env. 9AM 6-20-11

Steve Williams - Wilcotess, Winston-Salem
Scott Amen - New Dixie Oil Co., Roanoke Rapids,
Howell Clark - Sampson - Bladen Oil Co. - Clinton
Keith Ballentine - Daughtridge Energy - Rocky Mount
Joe Harrell - Harrell Oil Co., Mt. Airy
Terry Kennedy - Geological Resources - Charlotte
Doug Howey - NC Petroleum & Convenience Marketers,
Raleigh

VISITOR REGISTRATION SHEET

Senate AG/Env/Nat. Resources (2011-2012) — June 2nd, 2011

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Glenn Dunn	Poyner Spruill LLP
Jay Hall	NCDA&CS
Ray Stanley	"
Steve Woodson	NLFB
Mitch Peele	NCFB
Brent Troxell	NCACC
W. Gardner Culpepper	DLC + Assoc
Keith Ballentine	Fuel DOC Stores
Gary Harris	NC Petroleum & Conv. Marketers
Joe Harrell	Harrell Oil Co
Howell Clark	Sampson Bladen Oil Co.
Daniel Amburn	NCLM
Patrick Buffkin	NCACC

VISITOR REGISTRATION SHEET

Senate AG/Env/Nat. Resources (2011-2012)
Name of Committee **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Steve Williams	Wicco Hess
Scott Aman	New Dixie Oil Corp.
Terry Kennedy	Geological Resources Inc.
Tom A Berry	Berico Fuels Inc
Charles Marshall	Brooks, Pierce
Doug Howey	NCPCM
Mitch Peele	NCFB
Cathy Thomas	NCAR
Colleen Kochanek	NC Ground Water Assn.
Dave Hunter	Sierra Club
Will Morgan	Sierra Club

VISITOR REGISTRATION SHEET

Senate AG/Env/Nat. Resources (2011-2012)
Name of Committee **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Ashley [illegible]	BIOfuels Energy NC
Doug Herron	Williams Mullen

VISITOR REGISTRATION SHEET

Senate AG/Env/Nat. Resources (2011-2012)
Name of Committee **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Doug Lassiter	NCSTA
Dan Crawford	NCLCV
Alex Ward	Research
Wayne Geyer	Steel Tank Institute
Franklin Freeman	MWC
Evelyn Hawthorne	EHGR
Crystal Collins	NCTA
Alexandru Bacanu	UNC SEAC
Jackelyn Ngo	UNC SEAC

VISITOR REGISTRATION SHEET

Senate AG/Env/Nat. Resources (2011-2012)
Name of Committee **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Jimmy Coster	Solutions-IES
	Pne
Tom Bean	EDF
Daniel Raimi	DENR
Ruth Strauss	DENR
Grover Nichols	DENR
Dexter Matthews	DENR
Robin Smith	DENR
Dan Conrad	NCCN
Molly Diggins	Sierra Club
Preston Howard	MCIC

Senate Agriculture/Environment/Natural Resources

MINUTES

June 7, 2011

The Senate Ag/Env/Nat. Resources committee met on Tuesday, June 07, 2011 in Room 544-LOB at 11:00 pm. There were 16 senators present.

Sen. Don East called the meeting to order and introduced the Pages and Sgt-At-Arms staff.

SB-309 CONSERVATION EASEMENTS STEWARDSHIP FUNDS

Sen. Jackson explained the bill. Sen. Walters moved for a favorable report. No further discussion, vote taken and so moved.

SB-491 SEDIMENTATION POLLUTION CONTROL ACT EXEMPTION

Sen. Rouzer explained the bill. Sen. Tillman moved for a favorable report. Ms. Robin Smith, Asst. Director, DENR wants to make sure this will not increase the burden on the people to have additional permits. They do not object, but will continue to see if there are no issues of burdens. No further discussion. Vote taken and so moved.

SB-492 PROTECT LANDOWNER WATER RIGHTS

Sen. Walters moved for adoption of the PCS for discussion. So moved. Sen. Rouzer explained the PCS. He knows the Dept. of Agriculture supports this and the League of Municipalities oppose it. Commissioner Troxler addressed members and spoke in support of this legislation. Sen. Rouzer made additional comments on the dam safety act provision. This puts us in line with the regulations with South Carolina and Virginia. Mr. Daniel Amburn, League of Municipalities explained why they have concerns and oppose this bill. This could affect municipality water supplies. Sen. Clodfelter asked about Sections 1,2, and 3 and agricultural uses not being consistent in these two sections. Doesn't some of this repeal some current laws? Mr. Jeff Hudson, Chief Staff Counsel explained that it could. Sen. Clodfelter expressed concerns about a riparian buffer issue. Sen. Rouzer made additional comments and he is willing to continue working on this to make changes as it is not a perfect bill but a good starting point. Sen. Clodfelter spoke again. Sen. Kinnarid is very concerned about over-turning something that has been in place for so many years. We shouldn't interfere with waters downstream. This is in place for a good reason to help folks downstream. Will we be telling companies they have to be cut back? Sen. Hartsell has concerns to Section B-1 and the riparian buffers. Mr. Mitch Peele NC Farm Bureau, spoke on this also about how to use future water useages and how to maintain the ability to use our water as landowners. They asked for support on this bill. Sen. Atwater asked about dam safety procedures and liabilities of the safety. Mr. Jeff Hudson said inspections are a part of this in connection with safety. Sen. Atwater asked if certified ponds are exempted. Sen. Rouzer said that is correct.

Chairman East recommended we appoint a sub-committee to work on this with those who have concerns. Sen. Rouzer, Hartsell, Atwater, and Kinnaird to meet this afternoon before our 6:00 pm meeting to work on their issues.

SB-603 PESTICIDE REGISTRATION PAPER REDUCTION

Sen. Tillman moved for adoption of the technical PCS for discussion. So moved. Sen. Rouzer explained the PCS. He knows of no controversary. Sen. Kinnaird questioned the paper reduction. Mr. Jim Burnett, Pesticides Division, DENR addressed members and he advised that there is no need to require such reports. Sen. Walters and Jackson moved for a favorable report, unfavorable to the original bill. Vote taken and so moved.

SB-231 INTERCONNECTION OF PUBLIC WATER SYSTEMS

Sen. Hartsell moved for adoption of the PCS for discussion. So moved. Sen. Hartsell explained the PCS. Sen. Bingham moved for a favorable report, unfavorable to the original bill. Sen. Tucker asked if this takes care of package systems. Sen. Hartsell responded. Sen. Kinnaird seconded the motion, this is a good bill. Sen. Brock had a concern about connecting systems crossing existing lines of interconnections and the cost to the taxpayers. Sen. Hartsell responded and this will limit the additional expenditures. No further discussion, vote taken and so moved as motion stated.

SB-599 RENDERING ACT AMENDMENTS

Sen. Jackson moved for adoption of the PCS for discussion. So moved. Sen. Brock explained the PCS. Sen. Tucker asked if this relates to a Virginia company that collect used food cooking oils. Sen. Brock said there may be a few companies upset but this is also a competitive issue. No further discussion, vote taken for a favorable report for the PCS, unfavorable to the original bill. So moved.

SB-628 WQ PERMITTING/COMPLIANCE REV. & SUBMISSIONS

Sen. Hartsell moved for adoption of the PCS for discussion. So moved. Sen. Hartsell explained. Sen. Bingham moved for a favorable report, unfavorable to the original bill. Sen. Brock asked about penalties for those who provide false information. Sen. Hartsell responded. No further discussion, vote taken and so moved.

HB-750 STORMWATER SYS. OWNERS ASSCS/SD RULES

Sen. Rabon moved for adoption of the PCS for discussion. So moved. Sen. Clodfelter explained for Rep. McComas. Sen. Rouzer moved for a favorable report, unfavorable to the original bill. No further discussion, vote taken and so moved.

Time expired and Chairman East announced we will meet at 6:00 pm this evening to complete our agenda.

The meeting adjourned at 11:55.

Sen. Don East , Co-Chair

Cindy J. Davis, Committee Clerk

Principal Clerk
Reading Clerk

Corrected: Remove SB-232 & SB-564 Add HB-750

Note: Bills not heard at 11:00 a.m. will be moved to 6:00 p.m. AG/EN/NR

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

The Senate Committee on **Agriculture/Environment/Natural Resources** will meet at the following time:

DAY	DATE	TIME	ROOM
Tuesday	June 7, 2011	11:00 a.m.	544 LOB

The following will be considered:

BILL NO.	SHORT TITLE	SPONSOR
SB 231	Interconnection of Public Water Systems.	Senator Hartsell
SB 309	Conservation Easements Stewardship Funds.	Senator Jackson
SB 425	Ecosystem Enhancement Program Changes.	Senator Hunt
SB 491	Sedimentation Pollution Control Act Exemption.	Senator Rouzer
SB 492	Protect Landowner Water Rights.	Senator Rouzer Senator East Senator Jackson
SB 599	Rendering Act Amendments.	Senator Brock Senator Rouzer Senator Bingham
SB 628	WQ Permitting/Compliance Rev. & Submissions.	Senator Hartsell Senator Bingham
SB 603	Pesticide Registration Paper Reduction.	Senator East

HB 750	Stormwater Sys. Owners Asscs./SD Rules.	Representative McComas

Remove SB-232 & SB-564 Add HB-750

Note: Bills not heard at 11:00 a.m. will be moved to 6:00 p.m. AG/EN/NR

Senator Don East, Co-Chair
Senator David Rouzer, Co-Chair

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES COMMITTEE REPORT
Senator Don East, Co-Chair
Senator David Rouzer, Co-Chair

Wednesday, June 08, 2011

Senator EAST,
submits the following with recommendations as to passage:

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

S.B. **231** Interconnection of Public Water Systems.

Draft Number:	PCS75168
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

S.B. **425** Ecosystem Enhancement Program Changes.

Draft Number:	PCS15177
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

S.B. **492** Protect Landowner Water Rights.

Draft Number:	PCS95103
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

TOTAL REPORTED: 3

Committee Clerk Comments:

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES COMMITTEE REPORT
Senator Don East, Co-Chair
Senator David Rouzer, Co-Chair

Tuesday, June 07, 2011

Senator EAST,
submits the following with recommendations as to passage:

FAVORABLE

S.B. **309** Conservation Easements Stewardship Funds.
Sequential Referral: None
Recommended Referral: None

S.B. **491** Sedimentation Pollution Control Act Exemption.
Sequential Referral: None
Recommended Referral: None

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

S.B. **599** Rendering Act Amendments.
Draft Number: PCS35259
Sequential Referral: None
Recommended Referral: None
Long Title Amended: Yes

S.B. **603** Pesticide Registration Paper Reduction.
Draft Number: PCS75165
Sequential Referral: None
Recommended Referral: None
Long Title Amended: Yes

S.B. **628** WQ Permitting/Compliance Rev. & Submissions.
Draft Number: PCS55308
Sequential Referral: None
Recommended Referral: None
Long Title Amended: Yes

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 1, BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL

H.B.(CS #1) **750** Stormwater Sys. Owners Asscs./SD Rules.
Draft Number: PCS90122

Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

TOTAL REPORTED: 6

Committee Clerk Comments:

Sen. Clodfelter will handle HB-750

Senate Agriculture/Environment/Natural Resources Committee
Tuesday, June 7, 2011, 11:00 am & 6:00 pm
544 LOB

AGENDA
(Revised)

Welcome and Opening Remarks

Introduction of Pages

Bills

SB 231	Interconnection of Public Water Systems.	Senator Hartsell
SB 309	Conservation Easements Stewardship Funds.	Senator Jackson
SB 425	Ecosystem Enhancement Program Changes.	Senator Hunt
SB 491	Sedimentation Pollution Control Act Exemption.	Senator Rouzer
SB 492	Protect Landowner Water Rights.	Senator Rouzer
SB 599	Rendering Act Amendments.	Senator East Senator Jackson Senator Brock Senator Rouzer Senator Bingham
SB 603	Pesticide Registration Paper Reduction.	Senator East
SB 628	WQ Permitting/Compliance Rev. & Submissions.	Senator Hartsell
HB 750	Stormwater Sys. Owners Asscs./SD Rules.	Senator Bingham Representative McComas

Presentations

Other Business

Adjournment

Senate Agriculture/Environment/Natural Resources Committee
Tuesday, June 7, 2011, 11:00 am & 6:00 pm
544 LOB

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

SB 231	Interconnection of Public Water Systems.	Senator Hartsell
SB 232	Delineate Coastal Wetlands Riparian Buffers.	Senator Rouzer
SB 309	Conservation Easements Stewardship Funds.	Senator Jackson
SB 425	Ecosystem Enhancement Program Changes.	Senator Hunt
SB 491	Sedimentation Pollution Control Act Exemption.	Senator Rouzer
SB 492	Protect Landowner Water Rights.	Senator Rouzer Senator East Senator Jackson
SB 564	Study Water & Sewer Service Providers.	Senator Clodfelter
SB 599	Rendering Act Amendments.	Senator Brock Senator Rouzer Senator Bingham
SB 603	Pesticide Registration Paper Reduction.	Senator East
SB 628	WQ Permitting/Compliance Rev. & Submissions.	Senator Hartsell Senator Bingham

Presentations

Other Business

Adjournment

SENATE BILL 309:
Conservation Easements Stewardship Funds

2011-2012 General Assembly

Committee:	Senate Agriculture/Environment/Natural Resources	**Date:**	June 7, 2011
Introduced by:	Sen. Jackson	**Prepared by:**	Mariah Matheson
Analysis of:	First Edition		Research Assistant

SUMMARY: Senate Bill 309 would allow soil and water conservation districts to establish special revenue funds for the maintenance of conservation easements.

CURRENT LAW AND BACKGROUND: A conservation easement is a voluntary legal agreement that limits the uses of the property to those consistent with the landowner's and the easement holder's conservation objectives. The conservation easement allows landowners to protect features of their property that they wish to preserve, receive tax deductions, and maintain private ownership of the land. The landowner retains the property's ownership and use, while giving up certain rights in part or in full, such as the right to subdivide and develop the land.

Soil and water conservation districts are responsible for stewardship of natural resources in the State, including; water, soil, trees, etc. Conservation easements provide a way that soil and water conservation districts help private landowners conserve important soil and water resources on their property. Once a conservation easement has been established, maintenance of the easement is needed.

BILL ANALYSIS: Senate Bill 309 would allow soil and water conservation districts to establish a special revenue fund for the maintenance of conservation easements. The governing body of a soil and water conservation district must adopt a resolution or ordinance that includes certain provisions, such as:

- Specific purposes of maintaining conservation easements.
- Time period during which the monies are accumulated and approximate amounts.
- The monetary sources for each purpose specified.

Soil and water conservation districts can only withdraw from the fund for the purposes of maintenance of conservation easements. The district may amend the resolution or ordinance to include maintenance purposes not previously included. The district cannot make a withdrawal that would result in inadequate funds at the time the resolution or ordinance is adopted. Funding sources can include grant money, donations, direct appropriations from the State or any of its agencies, or any other unrestricted funds appropriated to a soil and water conservation district from any source. If a soil and water conservation district's budget ordinance is adopted by another governing body, then the governing body must approve the appropriation of money from the fund.

EFFECTIVE DATE: This act would become effective July 1, 2011.

S309-SMTF-35(e1) v2

SENATE BILL 309

Short Title:	Conservation Easements Stewardship Funds.	(Public)
Sponsors:	Senators Jackson; Apodaca, Bingham, Blake, Brunstetter, Daniel, Davis, Forrester, Hunt, Meredith, Newton, Pate, Preston, Rabon, Rouzer, Stevens, and Tucker.	
Referred to:	Appropriations/Base Budget.	

March 10, 2011

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE GOVERNING BOARD OF ANY SOIL AND WATER CONSERVATION DISTRICT TO ESTABLISH A SPECIAL RESERVE FUND TO BE USED FOR MAINTAINING CONSERVATION EASEMENTS.

Whereas, North Carolina is and always has been a leader in soil and water conservation, with the nation's first soil and water conservation district established in Brown Creek, Anson County, under the leadership of Dr. Hugh Hammond Bennett, the "father of soil conservation" in the United States; and

Whereas, soil and water conservation districts continue into the 21st century to provide a critical voluntary, nonregulatory means to enhance conservation values of private lands, including much of the State's agricultural and timber lands; and

Whereas, conservation easements provide an increasingly important way that soil and water conservation districts, along with other units of State and local government and private land trusts, help private landowners conserve important soil and water resources on their property; and

Whereas, to be effective in the long run, conservation easements require long-term or perpetual monitoring to assure that the intent of the easement donors and sellers is honored; and

Whereas, soil and water conservation districts receive funds from diverse sources for long-term easement stewardship, including private contributions and donations, portions of transaction fees, donations from private charitable foundations, and contributions from and appropriation of public funds; and

Whereas, the current local budgeting and finance laws do not adequately provide a means to ensure that these funds are dedicated to long-term or perpetual stewardship of conservation easements; Now, therefore,

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 139-3 is amended by adding a new subdivision to read:

"(4a) 'Conservation easement' has the same meaning as provided in G.S. 40A-80."

SECTION 2. Article 1 of Chapter 139 of the General Statutes is amended by adding the following new section to read:

"**§ 139-7.1. Special revenue funds for the maintenance of conservation easements.**

(a) Establishing Fund. – The governing body of a soil and water conservation district may establish and maintain a special revenue fund for the purpose of maintaining conservation easements, including maintenance activities such as travel to and observation of easement property, remote monitoring of easement property, and education and ongoing communication

with landowners about their easement responsibilities. To establish a special revenue fund under this section, the governing body of a soil and water conservation district shall adopt a resolution or ordinance that includes all of the following provisions:

(1) The specific purposes of maintaining conservation easements for which the special revenue fund is created.

(2) The approximate periods of time during which the moneys are to be accumulated for each purpose specified under subdivision (1) of this subsection.

(3) The approximate amounts to be accumulated for each purpose specified under subdivision (1) of this subsection.

(4) The sources from which moneys will be derived for each purpose specified under subdivision (1) of this subsection.

(b) Changes Authorized. – The resolution or ordinance that establishes a special revenue fund under subsection (a) of this section may be amended from time to time in the same manner in which it was adopted. Such amendments may authorize the use of moneys in the special revenue fund for conservation easement maintenance purposes that are not previously provided for by resolution or ordinance.

(c) Funding. – Any special revenue fund established under this section shall consist of funds received by appropriation from any other fund consistent with the limitations under G.S. 159-13(b); grant moneys; donations; direct appropriations from the State or any of its agencies or political subdivisions; or any other unrestricted funds appropriated to a soil and water conservation district from any source. When the conservation easement maintenance fund receives moneys or investment securities, the use of which is restricted by law, the identity of such moneys or investment securities shall be maintained by appropriate accounting entries.

(d) Investment of Fund. – All or any part of the cash balances of a special revenue fund established under this section may be deposited at interest or invested as provided by G.S. 159-30.

(e) Fund Withdrawals When District Adopts Its Own Budget Ordinance. – Withdrawals from a special revenue fund established under this section may be authorized by resolution or ordinance of the governing body of the soil and water conservation district. No withdrawal may be authorized unless it is for a purpose that is specified in the resolution or ordinance under subsection (a) of this section or in a resolution or ordinance under subsection (b) of this section. The resolution or ordinance to authorize a withdrawal under this subsection shall authorize an appropriation from the special revenue fund to one of the funds maintained pursuant to G.S. 159-13(a); however, no withdrawal may be authorized that would result in an appropriation for conservation easement maintenance purposes for which an adequate balance of eligible moneys or investment securities is not available in the special revenue fund at the time the resolution or ordinance under this subsection is adopted.

(f) Fund Withdrawals When Other Body Adopts District's Budget Ordinance. – If a soil and water conservation district's budget ordinance is subject to adoption by another governing body, then the governing body that is responsible for adopting the soil and water district's budget ordinance must approve the appropriation of moneys from the special revenue fund established under this section to one of the funds maintained pursuant to G.S. 159-13(a), subject to the other limitations provided in subsection (e) of this section."

SECTION 3. This act becomes effective July 1, 2011.

SENATE BILL 491:
Sedimentation Pollution Control Act Exemption

2011-2012 General Assembly

Committee:	Senate Agriculture/Environment/Natural Resources	**Date:**	June 7, 2011
Introduced by:	Sen. Rouzer	**Prepared by:**	Mariah Matheson Research Assistant
Analysis of:	First Edition		

SUMMARY: ***Senate Bill 491 would add an additional agricultural use exemption to the Sedimentation Pollution Control Act.***

CURRENT LAW: The General Assembly enacted the Sedimentation Pollution Control Act of 1973 to establish a program to allow development while minimizing the detrimental effects from pollution by sedimentation. The Act requires a person conducting a land-disturbing activity involving the uncovering of more than one acre to have an erosion and sedimentation control plan (plan) approved by the Commission, which has delegated this authority to the Division of Land Resources in the Department of Environment and Natural Resources, prior to initiating the activity. In addition, the Act requires the use 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 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. The Act is enforceable by means of civil penalties, criminal penalties, stop-work orders, injunctive relief, and civil relief.

Certain agricultural land-disturbing activities are exempt, including breeding and grazing of livestock; the production of plants and animals useful to man; the harvesting of timber; mining activities; and activities essential for public health and safety.

BILL ANALYSIS: Senate Bill 491 would exempt activities undertaken on agricultural land or forestland, in cooperation with the Natural Resources Conservation Service of the USDA or under the authority of the Soil and Water Conservation Commission, to restore or enhance wetlands and improve water quality, water resources, and wildlife habitat from the Sedimentation Pollution Control Act.

EFFECTIVE DATE: This act would be effective when it becomes law.

S491-SMTF-36(e1) v2

Jennifer McGinnis, Committee Counsel to the Senate Committee on Agriculture / Environment / Natural Resources, substantially contributed to this summary.

SENATE BILL 491

Short Title:	Sedimentation Pollution Control Act Exemption.	(Public)
Sponsors:	Senators Rouzer; East and Jackson.	
Referred to:	Agriculture/Environment/Natural Resources.	

April 4, 2011

A BILL TO BE ENTITLED

AN ACT TO SPECIFY THAT THE AGRICULTURAL USE EXEMPTION FROM SEDIMENTATION POLLUTION CONTROL ACT PERMITTING REQUIREMENTS CONTINUES TO APPLY WHEN THE LAND IS TRANSFERRED INTO A WETLANDS RESTORATION PROGRAM OR OTHER WATER QUALITY, WATER RESOURCES, OR WILDLIFE HABITAT ENHANCEMENT PROGRAM.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 113A-52.01 reads as rewritten:

"**§ 113A-52.01. Applicability of this Article.**

This Article shall not apply to the following land-disturbing activities:

(1) Activities, including the breeding and grazing of livestock, undertaken on agricultural land for the production of plants and animals useful to man, including, but not limited to:
  a. Forages and sod crops, grains and feed crops, tobacco, cotton, and peanuts.
  b. Dairy animals and dairy products.
  c. Poultry and poultry products.
  d. Livestock, including beef cattle, llamas, sheep, swine, horses, ponies, mules, and goats.
  e. Bees and apiary products.
  f. Fur producing animals.

(2) Activities undertaken on forestland for the production and harvesting of timber and timber products and conducted in accordance with best management practices set out in Forest Practice Guidelines Related to Water Quality, as adopted by the Department.

(3) Activities for which a permit is required under the Mining Act of 1971, Article 7 of Chapter 74 of the General Statutes.

(3a) Activities undertaken on agricultural land or forestland in cooperation with the Natural Resources Conservation Service of the United States Department of Agriculture or under the authority of the North Carolina Soil and Water Conservation Commission involving the installation of conservation practices for any of the following purposes:
  a. To restore or enhance wetlands.
  b. To protect or improve water quality, water resources, or wildlife habitat.

(4) For the duration of an emergency, activities essential to protect human life."

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

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

S D

SENATE BILL 603
PROPOSED COMMITTEE SUBSTITUTE S603-PCS75165-RI-28

Short Title: Pesticide Registration Paper Reduction. (Public)

Sponsors:

Referred to:

April 19, 2011

A BILL TO BE ENTITLED

AN ACT TO ELIMINATE THE REQUIREMENT TO SUBMIT A MATERIAL SAFETY DATA SHEET TO THE NORTH CAROLINA PESTICIDE BOARD IN CONNECTION WITH REGISTRATION OF A PESTICIDE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 143-442(a) reads as rewritten:

"(a) Every pesticide prior to being distributed, sold, or offered for sale within this State or delivered for transportation or transported in intrastate commerce or between points within this State through any point outside this State shall be registered in the office of the Board, and such registration shall be renewed annually before January 1 for the ensuing calendar year. Beginning in 1988, the Board may by rule adopt a system of staggered three-year registrations. The applicant for registration shall file with the Board a statement ~~including:~~that includes all of the following:

(1) The name and address of the applicant and the name and address of the person whose name will appear on the label, if other than the ~~applicant;~~applicant.

(2) The name of the ~~pesticide;~~pesticide.

(3) A complete copy of the labeling accompanying the pesticide and a statement of all claims to be made for it including directions for ~~use;~~use.

(4) If requested by the Board, a full description of the tests made and the results thereof upon which the claims are ~~based;~~based.

(5) In the case of renewal of registration, a statement with respect to information which is different from that furnished when the pesticide was last ~~registered;~~registered.

~~(6) A Material Safety Data Sheet for the pesticide; and~~

(7) Any other information needed by the Board to determine the amount of annual assessment payable by the applicant."

SECTION 2. This act is effective when it becomes law and applies to applications for registration or renewals of registration filed on or after that date.

SENATE BILL 603:
Pesticide Registration Paper Reduction

2011-2012 General Assembly

Committee:	Senate Agriculture/Environment/Natural Resources	**Date:**	June 7, 2011
Introduced by:	Sen. East	**Prepared by:**	Jennifer McGinnis Committee Counsel
Analysis of:	PCS to First Edition S603-PCS75165-RI-28		

SUMMARY: The Proposed Committee Substitute (PCS) for S603 would eliminate the requirement to submit a Material Safety Data Sheet (MSDS) to the North Carolina Pesticide Board in connection with registration of a pesticide.

CURRENT LAW: Currently every pesticide must be registered with the State's Pesticide Board (Board) prior to being distributed, sold, or offered for sale within the State or delivered for transportation or transported in intrastate commerce or between points within the State. The registration must be renewed annually. The applicant for registration must file a statement with the Board that includes all of the following:

(1) The name and address of the applicant and the name and address of the person whose name will appear on the label.
(2) The name of the pesticide.
(3) A complete copy of the labeling accompanying the pesticide and a statement of all claims to be made for it including directions for use.
(4) If requested by the Board, a full description of the tests made and the results thereof upon which the claims are based.
(5) In the case of renewal of registration, a statement with respect to information which is different from that furnished when the pesticide was last registered.
(6) A Material Safety Data Sheet for the pesticide.
(7) Any other information needed by the Board to determine the amount of annual assessment payable by the applicant.

Under G.S. 143-460, "Material Safety Data Sheet" or "MSDS" means a chemical information sheet that would satisfy the requirements of the Hazardous Chemicals Right-to- Know Act (Article 18, Chapter 95, of the General Statutes).

BILL ANALYSIS: The PCS would eliminate the requirement to submit a Material Safety Data Sheet to the Board in connection with registration of a pesticide.

EFFECTIVE DATE: The PCS would be effective when it becomes law, and apply to applications for registration or renewals of registration filed on or after that date.

S603-SMRI-35(e1) v3

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

S D

SENATE BILL 603
PROPOSED COMMITTEE SUBSTITUTE S603-PCS75165-RI-28

Short Title: Pesticide Registration Paper Reduction. (Public)

Sponsors:

Referred to:

April 19, 2011

A BILL TO BE ENTITLED

AN ACT TO ELIMINATE THE REQUIREMENT TO SUBMIT A MATERIAL SAFETY DATA SHEET TO THE NORTH CAROLINA PESTICIDE BOARD IN CONNECTION WITH REGISTRATION OF A PESTICIDE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 143-442(a) reads as rewritten:

"(a) Every pesticide prior to being distributed, sold, or offered for sale within this State or delivered for transportation or transported in intrastate commerce or between points within this State through any point outside this State shall be registered in the office of the Board, and such registration shall be renewed annually before January 1 for the ensuing calendar year. Beginning in 1988, the Board may by rule adopt a system of staggered three-year registrations. The applicant for registration shall file with the Board a statement ~~including:~~that includes all of the following:

(1) The name and address of the applicant and the name and address of the person whose name will appear on the label, if other than the ~~applicant;~~applicant.

(2) The name of the ~~pesticide;~~pesticide.

(3) A complete copy of the labeling accompanying the pesticide and a statement of all claims to be made for it including directions for ~~use;~~use.

(4) If requested by the Board, a full description of the tests made and the results thereof upon which the claims are ~~based;~~based.

(5) In the case of renewal of registration, a statement with respect to information which is different from that furnished when the pesticide was last ~~registered;~~registered.

~~(6) A Material Safety Data Sheet for the pesticide; and~~

(7) Any other information needed by the Board to determine the amount of annual assessment payable by the applicant."

SECTION 2. This act is effective when it becomes law and applies to applications for registration or renewals of registration filed on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

S 1

SENATE BILL 603

Short Title:	Pesticide Registration Paper Reduction.	(Public)
Sponsors:	Senators East; Brock, Jackson, and Rouzer.	
Referred to:	Agriculture/Environment/Natural Resources.	

April 19, 2011

A BILL TO BE ENTITLED

AN ACT TO NO LONGER REQUIRE, FOR ANY PERSON REQUIRED TO REGISTER A PESTICIDE IN THE OFFICE OF THE NORTH CAROLINA PESTICIDE BOARD, THE SUBMISSION OF THE MATERIAL SAFETY DATA SHEET TO BE FILED WITH THE PESTICIDE BOARD.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 143-442(a) reads as rewritten:

"(a) Every pesticide prior to being distributed, sold, or offered for sale within this State or delivered for transportation or transported in intrastate commerce or between points within this State through any point outside this State shall be registered in the office of the Board, and such registration shall be renewed annually before January 1 for the ensuing calendar year. Beginning in 1988, the Board may by rule adopt a system of staggered three-year registrations. The applicant for registration shall file with the Board a statement including:

(1) The name and address of the applicant and the name and address of the person whose name will appear on the label, if other than the applicant;

(2) The name of the pesticide;

(3) A complete copy of the labeling accompanying the pesticide and a statement of all claims to be made for it including directions for use;

(4) If requested by the Board, a full description of the tests made and the results thereof upon which the claims are based;

(5) In the case of renewal of registration, a statement with respect to information which is different from that furnished when the pesticide was last registered; and

~~(6) A Material Safety Data Sheet for the pesticide; and~~

(7) Any other information needed by the Board to determine the amount of annual assessment payable by the applicant."

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

SENATE BILL 231:
Interconnection of Public Water Systems

2011-2012 General Assembly

Committee:	Senate Agriculture/Environment/Natural Resources	**Date:**	June 7, 2011
Introduced by:	Senator Hartsell	**Prepared by:**	Jeff Hudson Committee Counsel
Analysis of:	PCS to First Edition S231-PCS75168-RI-29		

SUMMARY: ***The Proposed Committee Substitute (PCS) for Senate Bill 231 would require the interconnection of public water systems or wastewater systems to regional systems located within the same sub-basin when necessary to promote public health, protect the environment, and to ensure compliance with applicable rules. The PCS would also require systems to analyze all reasonable alternatives before constructing or altering a public water or sewer system.***

CURRENT LAW: The Department of Environment and Natural Resources (Department), before issuing a permit for construction or expansion of a local water system or before certifying a local approval program, is required to determine whether the local *water system*[i] is capable of interconnection at an appropriate time with expanding municipal, county, or regional systems. The Environmental Management Commission (EMC) is required to do the same for *sewer systems.* [ii] No authority, however, is provided to the Department or the EMC to require interconnection.

BILL ANALYSIS:

Section 1 would: (1) authorize the Department to require public water systems to interconnect with municipal, county, or regional systems located in the same sub-basin if necessary to promote the public health, protect the environment, or to ensure compliance with drinking water rules; and (2) provide that before approving any proposed project for the construction of or alteration to a public water system, the Department must determine if an analysis, including a financial analysis, has been performed of all reasonable alternatives and that the analysis indicates that the proposed construction or alteration is appropriate.

Section 2 would provide that in order to receive the Department's approval, a local program that seeks to administer its own approval program for construction or alteration of the distribution system of a proposed or existing public water system would need to: (1) require interconnection of a water system with municipal, county, or regional systems within the same sub-basin when the Department determines interconnection is necessary to promote the public health, protection the environment, or ensure compliance with drinking water rules; and (2) require an analysis, including a financial analysis, of the reasonable alternatives to any proposed project for construction of or alteration to a public water system, which indicates that the proposed construction or alteration project is appropriate.

Section 3 would authorize the EMC to require interconnection with municipal, county, or regional wastewater systems located in the same sub-basin if necessary to promote the public health, protect the environment, or to ensure compliance with water quality rules.

Section 4 would provide that in order to receive the EMC's approval, a local program that seeks to administer its own permitting program for construction, operation, alteration, extension, or change of proposed or existing sewer systems would need to: (1) require interconnection of a sewer system with

municipal, county, or regional systems within the same sub-basin when the EMC determines interconnection is necessary in order to promote the public health, protection the environment, or ensure compliance with water quality rules; and (2) require an analysis, including a financial analysis, of the reasonable alternatives to any proposed project for construction of or alteration to a public sewer system, which indicates that the proposed construction or alteration project is appropriate.

Section 5 would provide that before the EMC issues a permit to construct a new or expanded municipal or non-municipal wastewater treatment system for human waste, the applicant must show all of the following:

- A plan has been adopted by the system to reduce or eliminate stormwater or groundwater infiltration or intrusion into collection lines.
- An analysis has been conducted, including a financial analysis, of all alternatives to the proposed expansion, including consideration of the use of created wetlands and treated wastewater for non-drinking water purposes.
- The applicant can demonstrate that the proposed construction or expansion will be designed to accommodate future interconnection with adjoining or regional waste treatment systems.

Section 6 would require the Commission for Public Health and the Environmental Management Commission, as applicable, to adopt rules to implement the provisions of the PCS by October 1, 2011.

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

S231-SMSB-37(CSSB-42) v5

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[i] G.S. 130A-317(c)(3).
[ii] G.S. 143-215.1(f).

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

S D

SENATE BILL 231
PROPOSED COMMITTEE SUBSTITUTE S231-PCS75168-RI-29

Short Title: Interconnection of Public Water Systems. (Public)

Sponsors:

Referred to:

March 8, 2011

A BILL TO BE ENTITLED

AN ACT REQUIRING THE INTERCONNECTION OF PUBLIC WATER SYSTEMS OR WASTEWATER SYSTEMS TO REGIONAL SYSTEMS LOCATED IN THE SAME SUBBASIN WHEN NECESSARY TO PROMOTE PUBLIC HEALTH, PROTECT THE ENVIRONMENT, AND ENSURE COMPLIANCE WITH APPLICABLE RULES AND TO REQUIRE THAT AN ANALYSIS OF REASONABLE ALTERNATIVES BE DONE BEFORE CONSTRUCTING OR ALTERING A PUBLIC WATER SYSTEM OR WASTEWATER SYSTEM.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 130A-317(c) reads as rewritten:

"(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 all of the following conditions are met:

(1) The plans for construction or alteration have been prepared by an engineer licensed by this State.

(2) The Department has determined that the system, as constructed or altered, will be capable of compliance with the drinking water rules.

(3) The Department has determined that the system is capable of interconnection at an appropriate time with an expanding municipal, ~~county~~ county, or regional ~~system.~~ system; the Department may require interconnection with a municipal, county, or regional system within a county, or between or among counties if approved by the board of commissioners of each county, if necessary to promote the public health, protect the environment, or ensure compliance with drinking water rules and the systems are all located within the same subbasin as set out in G.S. 143-215.22G.

(3a) The Department has determined that an analysis has been performed, including a financial analysis, of the reasonable alternatives to the proposed construction or alteration of the public water system, and that the analysis indicates that the proposed construction or alteration is appropriate.

(4) The Department has determined that adequate arrangements have been made for the continued operation, service and maintenance of the public water system.

(5) The Department has approved the plans and specifications."

SECTION 2. G.S. 130A-317(d) reads as rewritten:

"(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 meets all of the following conditions:

...

(6) Provides that the system is capable of interconnection at an appropriate time with an expanding municipal, county, or regional ~~system.~~ system; and requires interconnection of the system with a municipal, county, or regional system when the Department determines interconnection is necessary to promote the public health, protect the environment, or ensure compliance with drinking water rules and the systems are all located within the same subbasin as set out in G.S. 143-215.22G.

(6a) Provides that in order for a proposed project to construct or alter a public water system to be approved, an analysis, including a financial analysis, of the reasonable alternatives to the proposed construction or alteration has been performed and that the analysis indicates that the proposed construction or alteration is appropriate.

...."

SECTION 3. G.S. 143-215.1(b)(4) reads as rewritten:

"(4) The Commission shall have the power:

a. To grant a permit with such conditions attached as the Commission believes necessary to achieve the purposes of this Article.

b. To require that an applicant satisfy the Department that the applicant, or any parent, subsidiary, or other affiliate of the applicant or parent:

1. Is financially qualified to carry out the activity for which the permit is required under subsection (a) of this section; and

2. Has substantially complied with the effluent standards and limitations and waste management treatment practices applicable to any activity in which the applicant has previously engaged, and has been in substantial compliance with other federal and state laws, regulations, and rules for the protection of the environment.

3. As used in this subdivision, the words "affiliate," "parent," and "subsidiary" have the same meaning as in 17 Code of Federal Regulations § 240.12b-2 (April 1, 1990, Edition).

4. For a privately owned treatment works that serves 15 or more service connections or that regularly serves 25 or more individuals, financial qualification may be demonstrated through the use of a letter of credit, insurance, surety, trust

agreement, financial test, bond, or a guarantee by corporate parents or third parties who can pass the financial test. No permit shall be issued under this section for a privately owned treatment works that serves 15 or more service connections or that regularly serves 25 or more individuals, until financial qualification is established and the issuance of the permit shall be contingent on the continuance of the financial qualification for the duration of the activity for which the permit was issued.

c. To modify or revoke any permit upon not less than 60 days' written notice to any person affected.

d. To designate certain classes of minor activities for which a general permit may be issued, after considering:

1. The environmental impact of the activities;
2. How often the activities are carried out;
3. The need for individual permit oversight; and
4. The need for public review and comment on individual permits.

e. To designate certain classes of minor activities for which:

1. Performance conditions may be established by rule; and
2. Individual or general permits are not required.

f. To require connection to a municipal, county, or regional wastewater system if necessary to promote public health, protect the environment, or ensure compliance with water quality rules and the systems are all located within the same subbasin as set out in G.S. 143-215.22G."

SECTION 4. G.S. 143-215.1(f) reads as rewritten:

"(f) Local Permit Programs for Sewer 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.

(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.

(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.

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

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

(6) Provides that the system is capable of interconnection at an appropriate time with an expanding municipal, county, or regional ~~system.~~ system; and requires interconnection of the system with a municipal, county, or regional system when the Commission determines interconnection is necessary to promote the public health, protect the environment, or ensure compliance with water quality rules and the systems are all located within the same subbasin as set out in G.S. 143-215.22G.

(6a) Provides that in order for a proposed project to construct or alter a public sewer system to be approved, an analysis, including a financial analysis, of the reasonable alternatives to the proposed construction or alteration has been performed and that the analysis indicates that the proposed construction or alteration is appropriate.

(7) Provides for the adequate arrangement for the continued operation, service, and maintenance of the sewer 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."

SECTION 5. G.S. 143-215.1(b) is amended by adding two new subdivisions to read:

"(6) No permit for a new or expanded municipal waste treatment system or nonmunicipal waste treatment system (human waste only) shall be issued, unless the applicant satisfies all of the following criteria:

a. Has adopted a plan to implement a program to reduce demand and manage existing capacity by reducing or eliminating stormwater and groundwater infiltration and intrusion into collection lines.

b. Has performed and submits an analysis, including a financial analysis, of reasonable alternatives to the proposed new or expanded waste treatment system, including the consideration of discharging to created wetlands and the beneficial reuse of treated wastewater for nondrinking water purposes, and that the analysis indicates that the proposed new or expanded system is appropriate.

c. Can demonstrate that the proposed new or expanded waste treatment facility will be planned, designed, and constructed to facilitate or accommodate eventual interconnection with adjoining systems or regional waste treatment systems located within the same subbasin as set out in G.S. 143-215.22G.

(7) In deciding whether to grant a permit application under subdivision (6) of this subsection, the Commission may consider whether the applicant is making adequate progress in the implementation of sub-subdivision a. of subdivision (6) of this subsection and may consider whether the applicant could feasibly choose an alternative under sub-subdivision b. of subdivision (6) of this subsection that will provide better protection for water quality."

SECTION 6. The Commission for Public Health shall adopt rules to implement G.S. 130A-317, as amended by Sections 1 and 2 of this act, by October 1, 2011. The

Environmental Management Commission shall adopt rules to implement G.S. 143-215.1, as amended by Sections 3, 4, and 5 of this act, by October 1, 2011.

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

SENATE BILL 231

Short Title:	Interconnection of Public Water Systems.	(Public)
Sponsors:	Senators Hartsell; and Atwater.	
Referred to:	Agriculture/Environment/Natural Resources.	

March 8, 2011

A BILL TO BE ENTITLED

AN ACT REQUIRING THE INTERCONNECTION OF PUBLIC WATER SYSTEMS OR WASTEWATER SYSTEMS TO REGIONAL SYSTEMS WHEN NECESSARY TO PROMOTE PUBLIC HEALTH, PROTECT THE ENVIRONMENT, AND ENSURE COMPLIANCE WITH DRINKING WATER RULES AND TO REQUIRE THAT AN ANALYSIS OF REASONABLE ALTERNATIVES BE DONE BEFORE CONSTRUCTING OR ALTERING A PUBLIC WATER SYSTEM.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 130A-317(c) reads as rewritten:

"(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 all of the following conditions are met:

(1) The plans for construction or alteration have been prepared by an engineer licensed by this State.

(2) The Department has determined that the system, as constructed or altered, will be capable of compliance with the drinking water rules.

(3) The Department has determined that the system is capable of interconnection at an appropriate time with an expanding municipal, ~~county~~ county, or regional ~~system.~~ system; the Department may require interconnection with a municipal, county, or regional system within a county, or between or among counties if approved by the board of commissioners of each county, if necessary to promote the public health, protect the environment, or ensure compliance with drinking water rules.

(3a) The Department has determined that an analysis performed, including a financial analysis, of the reasonable alternatives to the proposed construction or alteration of the public water system, and that the analysis indicates that the proposed construction or alteration is appropriate.

(4) The Department has determined that adequate arrangements have been made for the continued operation, service and maintenance of the public water system.

(5) The Department has approved the plans and specifications."

SECTION 2. G.S. 130A-317(d)(6) reads as rewritten:

"(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 meets all of the following conditions:

...

(6) Provides that the system is capable of interconnection at an appropriate time with an expanding municipal, county, or regional ~~system.~~ system and requires interconnection with a municipal, county, or regional system when the Department determines interconnection is necessary to promote the public health, protect the environment, or ensure compliance with drinking water rules.

...."

SECTION 3. G.S. 143-215.1(b)(4) reads as rewritten:

"(4) The Commission shall have the power:

a. To grant a permit with such conditions attached as the Commission believes necessary to achieve the purposes of this Article.

b. To require that an applicant satisfy the Department that the applicant, or any parent, subsidiary, or other affiliate of the applicant or parent:

1. Is financially qualified to carry out the activity for which the permit is required under subsection (a) of this section; and

2. Has substantially complied with the effluent standards and limitations and waste management treatment practices applicable to any activity in which the applicant has previously engaged, and has been in substantial compliance with other federal and state laws, regulations, and rules for the protection of the environment.

3. As used in this subdivision, the words "affiliate," "parent," and "subsidiary" have the same meaning as in 17 Code of Federal Regulations § 240.12b-2 (April 1, 1990, Edition).

4. For a privately owned treatment works that serves 15 or more service connections or that regularly serves 25 or more individuals, financial qualification may be demonstrated through the use of a letter of credit, insurance, surety, trust agreement, financial test, bond, or a guarantee by corporate parents or third parties who can pass the financial test. No permit shall be issued under this section for a privately owned treatment works that serves 15 or more service connections or that regularly serves 25 or more individuals, until financial qualification is established and the issuance of the permit shall be contingent on the continuance of the financial qualification for the duration of the activity for which the permit was issued.

c. To modify or revoke any permit upon not less than 60 days' written notice to any person affected.

d. To designate certain classes of minor activities for which a general permit may be issued, after considering:
1. The environmental impact of the activities;
2. How often the activities are carried out;
3. The need for individual permit oversight; and
4. The need for public review and comment on individual permits.

e. To designate certain classes of minor activities for which:
1. Performance conditions may be established by rule; and
2. Individual or general permits are not required.

f. To require connection to a municipal, county, or regional wastewater system if necessary to promote public health, protect the environment, or ensure compliance with water quality rules."

SECTION 4. G.S. 143-215.1(b) is amended by adding two new subdivisions to read:

"(6) No permit for a new or expanded municipal waste treatment system or nonmunicipal waste treatment system (human waste only) shall be issued, unless the applicant satisfies all of the following criteria:

a. Has adopted a plan to implement a program to reduce demand and manage existing capacity by reducing or eliminating stormwater and groundwater infiltration and intrusion into collection lines.

b. Has performed and submits an analysis, including a financial analysis, of reasonable alternatives to the proposed new or expanded waste treatment system, including the consideration of discharging to created wetlands and the beneficial reuse of treated wastewater for nondrinking water purposes.

c. Can demonstrate that the proposed new or expanded waste treatment facility will be planned, designed, and constructed to facilitate or accommodate eventual interconnection with adjoining systems or regional waste treatment systems.

(7) In deciding whether to grant a permit application under subdivision (6) of this subsection, the Commission may consider whether the applicant is making adequate progress in the implementation of sub-subdivision a. of subdivision (6) of this subsection and may consider whether the applicant could feasibly choose an alternative under sub-subdivision b. of subdivision (6) of this subsection that will provide better protection for water quality."

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

"(f) Local Permit Programs for Sewer 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.

(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.

(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.

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

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

(6) Provides that the system is capable of interconnection at an appropriate time with an expanding municipal, county, or regional ~~system.~~ system and requires interconnection with a municipal, county, or regional system when the Department determines interconnection is necessary to promote the public health, protect the environment, or ensure compliance with water quality rules.

(6a) Provides that an analysis, including a financial analysis, of the reasonable alternatives to any proposed construction or alteration of a public sewer system must be done and that the analysis must demonstrate that the proposed construction or alteration is appropriate.

(7) Provides for the adequate arrangement for the continued operation, service, and maintenance of the sewer 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."

SECTION 6. The Commission for Health Services shall adopt rules to implement G.S. 130A-317, as amended by Sections 1 and 2 of this act, by October 1, 2011. The Environmental Management Commission shall adopt rules to implement G.S. 143-215.1, as amended by Sections 3, 4, and 5 of this act, by October 1, 2011. Notwithstanding G.S. 150B-21.1(a)(2), this act shall not be construed to authorize the adoption of temporary rules.

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

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

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SENATE BILL 231
PROPOSED COMMITTEE SUBSTITUTE S231-PCS75168-RI-29

Short Title: Interconnection of Public Water Systems. (Public)

Sponsors:

Referred to:

March 8, 2011

A BILL TO BE ENTITLED

AN ACT REQUIRING THE INTERCONNECTION OF PUBLIC WATER SYSTEMS OR WASTEWATER SYSTEMS TO REGIONAL SYSTEMS LOCATED IN THE SAME SUBBASIN WHEN NECESSARY TO PROMOTE PUBLIC HEALTH, PROTECT THE ENVIRONMENT, AND ENSURE COMPLIANCE WITH APPLICABLE RULES AND TO REQUIRE THAT AN ANALYSIS OF REASONABLE ALTERNATIVES BE DONE BEFORE CONSTRUCTING OR ALTERING A PUBLIC WATER SYSTEM OR WASTEWATER SYSTEM.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 130A-317(c) reads as rewritten:

"(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 all of the following conditions are met:

(1) The plans for construction or alteration have been prepared by an engineer licensed by this State.

(2) The Department has determined that the system, as constructed or altered, will be capable of compliance with the drinking water rules.

(3) The Department has determined that the system is capable of interconnection at an appropriate time with an expanding municipal, ~~county~~ county, or regional ~~system.~~ system; the Department may require interconnection with a municipal, county, or regional system within a county, or between or among counties if approved by the board of commissioners of each county, if necessary to promote the public health, protect the environment, or ensure compliance with drinking water rules and the systems are all located within the same subbasin as set out in G.S. 143-215.22G.

(3a) The Department has determined that an analysis has been performed, including a financial analysis, of the reasonable alternatives to the proposed construction or alteration of the public water system, and that the analysis indicates that the proposed construction or alteration is appropriate.

(4) The Department has determined that adequate arrangements have been made for the continued operation, service and maintenance of the public water system.

(5) The Department has approved the plans and specifications."

SECTION 2. G.S. 130A-317(d) reads as rewritten:

"(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 meets all of the following conditions:

...

(6) Provides that the system is capable of interconnection at an appropriate time with an expanding municipal, county, or regional ~~system.~~ system; and requires interconnection of the system with a municipal, county, or regional system when the Department determines interconnection is necessary to promote the public health, protect the environment, or ensure compliance with drinking water rules and the systems are all located within the same subbasin as set out in G.S. 143-215.22G.

(6a) Provides that in order for a proposed project to construct or alter a public water system to be approved, an analysis, including a financial analysis, of the reasonable alternatives to the proposed construction or alteration has been performed and that the analysis indicates that the proposed construction or alteration is appropriate.

...."

SECTION 3. G.S. 143-215.1(b)(4) reads as rewritten:

"(4) The Commission shall have the power:

a. To grant a permit with such conditions attached as the Commission believes necessary to achieve the purposes of this Article.

b. To require that an applicant satisfy the Department that the applicant, or any parent, subsidiary, or other affiliate of the applicant or parent:

1. Is financially qualified to carry out the activity for which the permit is required under subsection (a) of this section; and

2. Has substantially complied with the effluent standards and limitations and waste management treatment practices applicable to any activity in which the applicant has previously engaged, and has been in substantial compliance with other federal and state laws, regulations, and rules for the protection of the environment.

3. As used in this subdivision, the words "affiliate," "parent," and "subsidiary" have the same meaning as in 17 Code of Federal Regulations § 240.12b-2 (April 1, 1990, Edition).

4. For a privately owned treatment works that serves 15 or more service connections or that regularly serves 25 or more individuals, financial qualification may be demonstrated through the use of a letter of credit, insurance, surety, trust

agreement, financial test, bond, or a guarantee by corporate parents or third parties who can pass the financial test. No permit shall be issued under this section for a privately owned treatment works that serves 15 or more service connections or that regularly serves 25 or more individuals, until financial qualification is established and the issuance of the permit shall be contingent on the continuance of the financial qualification for the duration of the activity for which the permit was issued.

c. To modify or revoke any permit upon not less than 60 days' written notice to any person affected.

d. To designate certain classes of minor activities for which a general permit may be issued, after considering:

1. The environmental impact of the activities;
2. How often the activities are carried out;
3. The need for individual permit oversight; and
4. The need for public review and comment on individual permits.

e. To designate certain classes of minor activities for which:

1. Performance conditions may be established by rule; and
2. Individual or general permits are not required.

f. To require connection to a municipal, county, or regional wastewater system if necessary to promote public health, protect the environment, or ensure compliance with water quality rules and the systems are all located within the same subbasin as set out in G.S. 143-215.22G."

SECTION 4. G.S. 143-215.1(f) reads as rewritten:

"(f) Local Permit Programs for Sewer 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.

(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.

(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.

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

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

(6) Provides that the system is capable of interconnection at an appropriate time with an expanding municipal, county, or regional ~~system.~~ system; and requires interconnection of the system with a municipal, county, or regional system when the Commission determines interconnection is necessary to promote the public health, protect the environment, or ensure compliance with water quality rules and the systems are all located within the same subbasin as set out in G.S. 143-215.22G.

(6a) Provides that in order for a proposed project to construct or alter a public sewer system to be approved, an analysis, including a financial analysis, of the reasonable alternatives to the proposed construction or alteration has been performed and that the analysis indicates that the proposed construction or alteration is appropriate.

(7) Provides for the adequate arrangement for the continued operation, service, and maintenance of the sewer 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."

SECTION 5. G.S. 143-215.1(b) is amended by adding two new subdivisions to read:

"(6) No permit for a new or expanded municipal waste treatment system or nonmunicipal waste treatment system (human waste only) shall be issued, unless the applicant satisfies all of the following criteria:

a. Has adopted a plan to implement a program to reduce demand and manage existing capacity by reducing or eliminating stormwater and groundwater infiltration and intrusion into collection lines.

b. Has performed and submits an analysis, including a financial analysis, of reasonable alternatives to the proposed new or expanded waste treatment system, including the consideration of discharging to created wetlands and the beneficial reuse of treated wastewater for nondrinking water purposes, and that the analysis indicates that the proposed new or expanded system is appropriate.

c. Can demonstrate that the proposed new or expanded waste treatment facility will be planned, designed, and constructed to facilitate or accommodate eventual interconnection with adjoining systems or regional waste treatment systems located within the same subbasin as set out in G.S. 143-215.22G.

(7) In deciding whether to grant a permit application under subdivision (6) of this subsection, the Commission may consider whether the applicant is making adequate progress in the implementation of sub-subdivision a. of subdivision (6) of this subsection and may consider whether the applicant could feasibly choose an alternative under sub-subdivision b. of subdivision (6) of this subsection that will provide better protection for water quality."

SECTION 6. The Commission for Public Health shall adopt rules to implement G.S. 130A-317, as amended by Sections 1 and 2 of this act, by October 1, 2011. The

Environmental Management Commission shall adopt rules to implement G.S. 143-215.1, as amended by Sections 3, 4, and 5 of this act, by October 1, 2011.

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

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

S D

SENATE BILL 599*
PROPOSED COMMITTEE SUBSTITUTE S599-PCS35259-RIf-32

Short Title: Rendering Act Amendments. (Public)

Sponsors:

Referred to:

April 14, 2011

A BILL TO BE ENTITLED

AN ACT TO AMEND THE LAWS GOVERNING RENDERING PLANTS AND OPERATIONS AND TO BRING THE COLLECTION OF WASTE KITCHEN GREASE WITHIN THE PURVIEW OF THE ACT.

The General Assembly of North Carolina enacts:

SECTION 1. Article 14A of Chapter 106 of the General Statutes reads as rewritten:

"Article 14A.

"Licensing and Regulation of Rendering ~~Plants and~~ Plants, Rendering ~~Operations.~~Operations, and Waste Kitchen Grease Collection.

"§ 106-168.1. Definitions.

For the purposes of this Article, unless the context or subject matter otherwise clearly ~~requires,~~ requires:

(1) "Collector" means any person, as defined in this section, who collects raw material or waste kitchen grease for the purpose of selling the same to any renderer or other person for further processing. "Collector" does not include restaurants or other food establishments that generate kitchen grease.

(1a) "Farmer" means any person actively engaged in agriculture as defined in G.S. 106-581.1. "Farmer" does not include a person who cultivates a garden solely for personal use.

...

(6) "Waste kitchen grease" means animal fats or vegetable oils that have been used, and will not be reused, for cooking in a food establishment. "Waste kitchen grease" does not include grease septage as defined in G.S. 130A-290.

"§ 106-168.2. License required.

No person shall engage in rendering operations or act as a collector of waste kitchen grease unless such person shall hold a valid license to do so issued as hereinafter provided.

"§ 106-168.3. Exemptions.

Nothing in this Article shall apply to the premises or the rendering operations on the premises of any establishment operating under a numbered permit from the North Carolina Department of Agriculture and Consumer Services as provided by the North Carolina Meat Inspection Act, or under United States government ~~inspection.~~inspection; provided, however,

no person shall be exempt from the requirements of this Article when acting as a collector of waste kitchen grease.

"§ 106-168.4. Application for rendering license.

Application for license shall be made to the Commissioner of Agriculture, hereinafter called the "Commissioner," on forms provided by ~~him.~~the Commissioner. The application shall set forth the name and residence of the applicant, ~~his~~ the applicant's present or proposed place of business, the particular method which ~~he~~ the applicant intends to employ or employs in the processing of raw material, and such other information as the Commissioner may ~~require, except that the Commissioner shall not require the submission of blueprints, plans, or specifications of the existing plant or equipment of any person owning and operating a rendering plant in North Carolina on January 1, 1953.~~ require. The applicant shall pay a fee of ~~fifty dollars ($50.00)~~ one hundred dollars ($100.00) with each ~~application, which said fee shall be the only charge made in connection with licensure.~~application and a renewal fee of one hundred dollars ($100.00) annually after meeting the renewal requirements of this Article.

"§ 106-168.5. Duties of Commissioner upon receipt of ~~application;~~ the application for a rendering license; inspection committee.

Upon receipt of the ~~application,~~ application for a rendering license, the Commissioner shall promptly cause the rendering plant and equipment, or the plans, specifications, and selected site, of the applicant to be inspected by an inspection committee hereinafter called the "committee," which shall be composed of three members: One member who shall be designated by the Commissioner of Agriculture and who shall be an employee of the Department of Agriculture and Consumer Services, one member who shall be designated by the Secretary of Health and Human Services and who shall be an employee of the Department of Health and Human Services, and one member who shall be designated by the ~~director~~ board of directors of the North Carolina ~~Division of the Southeastern~~ Renderers Association, and who shall be a person having practical knowledge of rendering operations. Each member may be designated and relieved from time to time at the discretion of the designating authority. No State employee designated as a member of the committee shall receive any additional compensation therefor and no compensation shall be paid by the State to any other member.

"§ 106-168.6. Inspection by committee; certificate of specific findings.

...

"§ 106-168.7. Issuance of rendering license.

Upon receipt of the certificate of compliance from the committee, the Commissioner shall issue a rendering license to the applicant to conduct rendering operations as specified in the application. A license shall be valid ~~until revoked for cause as hereinafter provided.~~for one year and shall be renewed upon submission of a certification under oath of compliance with the requirements of this Article for licensure and payment of the annual renewal fee.

"§ 106-168.8. Minimum standards for conducting rendering operations.

The following minimum standards shall be required for all rendering operations subject to the provisions of this Article:

...

(8) Proof of general liability insurance of one million dollars ($1,000,000) shall be made in a manner satisfactory to the Commissioner.

"§ 106-168.9. Transportation by licensee.

Any person holding a rendering license under the provisions of this Article, or acting as a collector as herein defined, may haul and transport raw ~~material,~~ material or waste kitchen grease, except such material or waste kitchen grease as may be specifically prohibited by law or by the rules and regulations promulgated by the Commissioner, when such transporting and hauling is done in accordance with the provisions of this Article.

"§ 106-168.10. Disposal of diseased animals.

Any person holding a rendering license under the provisions of this Article is authorized to kill diseased, sick, old or crippled animals on the premises of the owner upon his request; provided that no animal known to have tuberculosis, Bang's disease, anthrax, or any other disease for which quarantine may be imposed, shall be removed from any premises placed under quarantine without permission of the State Veterinarian, or his authorized agent. The licensee shall keep and make available to the Commissioner, upon request, such records as the Commissioner may require with respect to the collection and disposal of dead animals.

"§ 106-168.11. Authority of agents of rendering licensee.

Authority granted to any person holding a valid rendering license under the provisions of this Article shall extend also to the agents and employees of such person while acting within the scope of their authority. All such agents and employees shall comply with the provisions of this Article and rules and regulations not inconsistent therewith, and shall display evidence of such employment or agency upon proper request at any time while so acting.

"§ 106-168.12. Commissioner authorized to adopt rules and regulations.

...

"§ 106-168.13. Effect of failure to comply.

...

"§ 106-168.14. Collectors of raw material subject to certain provisions.

Any ~~collector,~~ collector of raw material, as defined in ~~this Article,~~ G.S. 106-168.1, shall be subject to the provisions of subdivision (5) and subdivision (6) of G.S. ~~106-168.8~~106-168.8 and the provisions of G.S. 106-168.9, and any rules and regulations adopted by the Commissioner pursuant thereto.

"§ 106-168.14A. Collectors of waste kitchen grease subject to certain provisions.

(a) Any collector of waste kitchen grease shall submit an application for licensure to the Commissioner not less than 30 days before conducting any such collection or transportation. Licensure shall be for one year. The application shall be submitted in accordance with a procedure established by the Commissioner for this purpose. The application shall include all of the following:

(1) The applicant's name and address.

(2) A description of the operations to be performed by the applicant.

(3) The make, model, license number, and vehicle identification number of any vehicle to be used for the transportation of waste kitchen grease.

(4) A nonrefundable application fee of one hundred dollars ($100.00).

(b) The Commissioner shall issue each licensee a unique license number and a certificate. The license shall be renewable annually January 1, when accompanied by a one hundred dollar ($100.00) licensing renewal fee and certification of compliance with the provisions of this Article.

(c) Every licensee shall record, maintain for two years, and make available for inspection by the Department all of the following information:

(1) The name and address of each location or person from which the registrant obtained the waste kitchen grease for transportation.

(2) The quantity of material received from each location or person.

(3) The date on which the waste kitchen grease was obtained from each location or person.

(4) The waste kitchen grease operation or other processor to whom the waste kitchen grease was delivered.

(d) No person required to be licensed under this Article shall collect or transport waste kitchen grease without all of the following:

(1) Having in his or her possession a copy of the license required by this Article or other proof that the person is in compliance with the licensure requirement of this Article.

(2) Conspicuously displaying the licensee's name and the license number in letters not less than three inches high on any vehicle used for the transportation of waste kitchen grease.

(e) It shall be a violation of this Article for a collector to do any of the following:

(1) Sell or offer for sale to any person unlicensed under this Article any waste kitchen grease, knowing such unlicensed person would transport such waste kitchen grease in violation of this Article.

(2) Steal, misappropriate, contaminate, or damage any waste kitchen grease container or grease therein.

(3) Take or possess waste kitchen grease from a collector that is not licensed under this section unless otherwise allowed under this Article, or knowingly take possession of waste kitchen grease that has been stolen.

(4) Place a label on a waste kitchen grease container owned by another person in order to assert ownership over the container.

(f) This section does not apply to a farmer who collects waste kitchen grease for a use that is related to his or her farm.

"**§ 106-168.14B. Presumption of ownership.**

A container in which waste kitchen grease is deposited that bears a name on the container shall be presumed to be owned by that person named on the container.

"**§ 106-168.15. Violation a misdemeanor.**

Any person conducting rendering operations or collecting raw material or waste kitchen grease in violation of the provisions of this Article shall be guilty of a Class 1 misdemeanor.

"**§ 106-168.16. Civil penalties.**

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

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

SECTION 2. Article 16 of Chapter 14 of the General Statutes is amended by adding a new section to read:

"**§ 14-79.2. Larceny of waste kitchen grease.**

If any person shall take and carry away, or shall aid in taking or carrying away, any waste kitchen grease container or the waste kitchen grease contained therein, which container bears a notice that unauthorized removal is prohibited without written consent of the owner of the container, that person shall be guilty of:

(1) A Class 1 misdemeanor if the value of the waste kitchen grease container, or the container and the waste kitchen grease contained therein, is one thousand dollars ($1,000) or less.

(2) A Class H felony if the value of the waste kitchen grease container, or the container and the waste kitchen grease contained therein, is more than one thousand dollars ($1,000)."

SECTION 3. This act becomes effective January 1, 2012, and applies to offenses committed on or after that date.

SENATE BILL 599:
Rendering Act Amendments

2011-2012 General Assembly

Committee:	Senate Agriculture/Environment/Natural Resources	**Date:**	June 7, 2011
Introduced by:	Sens. Bingham, Brock, Rouzer	**Prepared by:**	Mariah Matheson Research Assistant
Analysis of:	PCS to the 1st Edition S599-PCS35259-RIf-32		

SUMMARY: The Proposed Committee Substitute (PCS) for Senate Bill 599 would add a licensing requirement for collectors of waste kitchen grease to the statutes governing the licensing and regulation of rendering plants. The PCS would also increase the application fee for a rendering license from $50 to $100 and add a requirement for an annual renewal fee of $100. Proof of general liability insurance in the amount of $1 million would be required for all rendering operations.

[As introduced, this bill was identical to H512, as introduced by Rep. Torbett, which is currently in House Finance.]

CHANGES MADE BY THE PCS: The PCS removes (1) the provision for storing and processing waste kitchen grease and (2) the application fee exemption for a waste kitchen grease operations license if a collector already held a rendering operations license. The PCS adds (1) a provision that the theft of waste kitchen grease valued less than $1,000 would be subject to a Class 1 misdemeanor and above $1,000 would be subject to a Class H felony and (2) a requirement to place a label on a waste kitchen grease container owned by another person in order to assert ownership of the container.

CURRENT LAW: The collection of waste kitchen grease currently is not regulated. Persons engaged in rendering operations are required to obtain a rendering license for $50. The license is valid until revoked for cause.

BILL ANALYSIS: The PCS would amend the laws governing the licensing and regulation of rendering plants to include the collection of waste kitchen grease. The PCS would add a definition of "waste kitchen grease" to mean animal fats or vegetable oils that have been used and will not be reused for cooking in a food establishment. It does not include grease septage.

Section 1 would do the following:

- Require persons engaged in collecting waste kitchen grease to obtain an annual license for $100, similar to a rendering operations license. Collectors of waste kitchen grease would be required to apply for a license not less than 30 days before beginning collection or transportation of the waste. Applications are to include (1) name and address, (2) description of operations, (3) make, model, license number and vehicle id number of vehicles used to transport waste kitchen grease, and (4) $100 application fee.
- Require waste kitchen grease licensees to have a copy of their license in their possession at all times or other proof of compliance when collecting or transporting waste, waste kitchen grease. The licensee's name and license number must be conspicuously displayed (3" or greater letters) on any vehicle used to transport waste kitchen grease.
- Require waste kitchen grease licensees to keep records for two years and these records must be made open to the Department for inspection. Records must contain (1) name and address of each location or person from whom waste kitchen grease was obtained, (2) quantity of material from

each location, (3) date on which material was obtained, and (4) the waste kitchen grease operation or other processor to whom the waste was delivered.

- Make it unlawful for collectors to (1) sell or offer to sell waste kitchen grease to a person not licensed to transport the waste, (2) steal, contaminate, or damage any waste kitchen grease container or grease, (3) take grease from an unlicensed collector or knowingly take possession of grease that has been stolen, or (4) place a label on a waste kitchen grease container owned by another in order to assert ownership of the container.
- Increase the application fee for a rendering license from $50 to $100 and add an annual renewal fee of $100.
- Add a requirement for proof of general liability insurance in the amount of $1 million dollars for a rendering operation.
- Clarify that a person holding a rendering license or acting as a collector may haul and transport raw materials or waste kitchen grease.
- Clarify that a person holding a rendering license (and not a collector of waste kitchen grease) may kill diseased, old, or crippled animals on the premises of the owner if asked.

Any person collecting waste kitchen grease in violation of these provisions would be subject to a Class 1 misdemeanor[1] and up to a $5,000 civil penalty assessed by the Commissioner of Agriculture. (Under current law, violations of rendering operations are already subject to a Class 1 misdemeanor and up to $5,000 in civil penalties assessed by the Commissioner.)

These provisions do not apply to a farmer who collects waste kitchen grease for use related to his or her farm. There is a presumption that a waste kitchen grease container belongs to the person whose name is on the container.

Section 2 would make it a Class H felony[2] to take or aid in the taking of a waste kitchen grease container or the waste kitchen grease contained therein, if the container bears a notice that unauthorized removal is prohibited without the written consent of the owner, and the value of the container or the container with the grease, is more than $1,000. If the value is $1,000 or less, then the offense is a Class 1 misdemeanor.

EFFECTIVE DATE: The act would become effective January 1, 2012 and apply to offenses occurring on or after that date.

Barbara Riley, committee counsel to House Agriculture, substantially contributed to this summary.

S599-SMTF-38(e2) v1

[1] Assuming no prior convictions, a Class 1 misdemeanor would be subject to 1 to 45 days community punishment.
[2] Assuming no prior points, a Class H felony would be subject to 3 to 8 months of community punishment, intermediate punishment, or active punishment.

SENATE BILL 599*

Short Title:	Rendering Act Amendments.	(Public)
Sponsors:	Senators Bingham, Brock, Rouzer; Clary, Jackson, and Stevens.	
Referred to:	Agriculture/Environment/Natural Resources.	

April 14, 2011

A BILL TO BE ENTITLED

AN ACT TO AMEND THE LAWS GOVERNING RENDERING PLANTS AND OPERATIONS AND TO BRING THE COLLECTION AND PROCESSING OF WASTE KITCHEN GREASE WITHIN THE PURVIEW OF THE ACT.

The General Assembly of North Carolina enacts:

SECTION 1. Article 14A of Chapter 106 of the General Statutes reads as rewritten:

"Article 14A.

"Licensing and Regulation of

Rendering ~~Plants and~~ Plants, Rendering ~~Operations.~~Operations, and

Waste Kitchen Grease Collection and Processing.

"**§ 106-168.1. Definitions.**

For the purposes of this Article, unless the context or subject matter otherwise clearly ~~requires,~~ requires:

(1) "Collector" means any person, as defined in this section, who collects raw material or waste kitchen grease for the purpose of selling the same to any renderer or other person for further processing. "Collector" does not include restaurants or other food establishments that generate kitchen grease.

(1a) "Farmer" means any person actively engaged in agriculture as defined in G.S. 106-581.1. "Farmer" does not include a person who cultivates a garden solely for personal use.

...

(6) "Waste kitchen grease" means animal fats or vegetable oils that have been used, and will not be reused, for cooking in a food establishment. "Waste kitchen grease" does not include grease septage as defined in G.S. 130A-290.

(7) "Waste kitchen grease operation" means the buildings and equipment in which waste kitchen grease is stored and processed and the premises upon which such buildings and equipment are located. "Waste kitchen grease operations" does not include restaurants or other food establishments that generate waste kitchen grease.

"**§ 106-168.2. License required.**

No person shall engage in rendering ~~operations~~ operations, storing or processing waste kitchen grease at any waste kitchen grease operation, or acting as a collector of waste kitchen grease, unless such person shall hold a valid license to do so issued as hereinafter provided.

"**§ 106-168.3. Exemptions.**

Nothing in this Article shall apply to the premises or the rendering operations on the premises of any establishment operating under a numbered permit from the North Carolina Department of Agriculture and Consumer Services as provided by the North Carolina Meat Inspection Act, or under United States government ~~inspection.~~inspection; provided, however, no person shall be exempt from the requirements of this Article when acting as a collector or when storing or processing waste kitchen grease at a waste kitchen grease operation.

"§ 106-168.4. Application for rendering license.

Application for license shall be made to the Commissioner of Agriculture, hereinafter called the "Commissioner," on forms provided by him. The application shall set forth the name and residence of the applicant, his present or proposed place of business, the particular method which he intends to employ or employs in the processing of raw material, and such other information as the Commissioner may ~~require, except that the Commissioner shall not require the submission of blueprints, plans, or specifications of the existing plant or equipment of any person owning and operating a rendering plant in North Carolina on January 1, 1953.~~ require. The applicant shall pay a fee of ~~fifty dollars ($50.00)~~ one hundred dollars ($100.00) with each ~~application, which said fee shall be the only charge made in connection with licensure.~~application and a renewal fee of one hundred dollars ($100.00) annually after meeting the renewal requirements of this Article.

"§ 106-168.5. Duties of Commissioner upon receipt of ~~application;~~ the application for a rendering license; inspection committee.

Upon receipt of the ~~application,~~ application for a rendering license, the Commissioner shall promptly cause the rendering plant and equipment, or the plans, specifications, and selected site, of the applicant to be inspected by an inspection committee hereinafter called the "committee," which shall be composed of three members: One member who shall be designated by the Commissioner of Agriculture and who shall be an employee of the Department of Agriculture and Consumer Services, one member who shall be designated by the Secretary of Health and Human Services and who shall be an employee of the Department of Health and Human Services, and one member who shall be designated by the ~~director~~ board of directors of the North Carolina ~~Division of the Southeastern~~ Renderers Association, and who shall be a person having practical knowledge of rendering operations. Each member may be designated and relieved from time to time at the discretion of the designating authority. No State employee designated as a member of the committee shall receive any additional compensation therefor and no compensation shall be paid by the State to any other member.

"§ 106-168.6. Inspection by committee; certificate of specific findings.

...

"§ 106-168.7. Issuance of rendering license.

Upon receipt of the certificate of compliance from the committee, the Commissioner shall issue a rendering license to the applicant to conduct rendering operations as specified in the application. A license shall be valid ~~until revoked for cause as hereinafter provided.~~for one year and shall be renewed upon submission of a certification under oath of compliance with the requirements under this Article for licensure and payment of the annual renewal fee.

"§ 106-168.8. Minimum standards for conducting rendering operations.

The following minimum standards shall be required for all rendering operations subject to the provisions of this Article:

...

(8) Proof of general liability insurance of one million dollars ($1,000,000) shall be made in a manner satisfactory to the Commissioner.

"§ 106-168.9. Transportation by licensee.

Any person holding a rendering license under the provisions of this Article, or acting as a collector of raw materials as herein defined, may haul and transport raw material, except such material as may be specifically prohibited by law or by the rules and regulations promulgated

by the Commissioner, when such transporting and hauling is done in accordance with the provisions of this Article.

"§ 106-168.10. Disposal of diseased animals.

Any person holding a rendering license under the provisions of this Article is authorized to kill diseased, sick, old or crippled animals on the premises of the owner upon his request; provided that no animal known to have tuberculosis, Bang's disease, anthrax, or any other disease for which quarantine may be imposed, shall be removed from any premises placed under quarantine without permission of the State Veterinarian, or his authorized agent. The licensee shall keep and make available to the Commissioner, upon request, such records as the Commissioner may require with respect to the collection and disposal of dead animals.

"§ 106-168.11. Authority of agents of rendering licensee.

Authority granted to any person holding a valid rendering license under the provisions of this Article shall extend also to the agents and employees of such person while acting within the scope of their authority. All such agents and employees shall comply with the provisions of this Article and rules and regulations not inconsistent therewith, and shall display evidence of such employment or agency upon proper request at any time while so acting.

"§ 106-168.12. Commissioner authorized to adopt rules and regulations.

...

"§ 106-168.13. Effect of failure to comply.

...

"§ 106-168.14. Collectors of raw material subject to certain provisions.

Any ~~collector,~~ collector of raw material, as defined in ~~this Article,~~G.S. 106-168.1, shall be subject to the provisions of subdivision (5) and subdivision (6) of G.S. 106- 168.8 and the provisions of G.S. 106-168.9, and any rules and regulations adopted by the Commissioner pursuant thereto.

"§ 106-168.14A. Collectors of waste kitchen grease subject to certain provisions.

(a) Any collector of waste kitchen grease shall submit an application for licensure to the Commissioner not less than 30 days before conducting any such collection or transportation. Licensure shall be for one year. The application shall be submitted in accordance with a procedure established by the Commissioner for this purpose. The application shall include all of the following:

(1) The applicant's name and address.

(2) A description of the operations to be performed by the applicant.

(3) The make, model, license number, and vehicle identification number of any vehicle to be used for the transportation of waste kitchen grease.

(4) A nonrefundable application fee of one hundred dollars ($100.00).

(b) The Commissioner shall issue each licensee a unique license number and a certificate. The license shall be renewable annually January 1, when accompanied by a one hundred dollar ($100.00) licensing renewal fee and certification of compliance with the provisions of this Article.

(c) Every licensee shall record, maintain for two years, and make available for inspection by the Department all of the following information:

(1) The name and address of each location or person from which the registrant obtained the waste kitchen grease for transportation.

(2) The quantity of material received from each location or person.

(3) The date on which the waste kitchen grease was obtained from each location or person.

(4) The waste kitchen grease operation or other processor to whom the waste kitchen grease was delivered.

(d) No person required to be licensed under this Article shall collect or transport waste kitchen grease without all of the following:

(1) Having in his or her possession a copy of the license required by this Article or other proof that the person is in compliance with the licensure requirement of this Article.

(2) Conspicuously displaying the licensee's name and the license number in letters not less than three inches high on any vehicle used for the transportation of waste kitchen grease.

(e) It shall be a violation of this Article for a collector to do any of the following:

(1) Sell or offer for sale to any person unlicensed under this Article any waste kitchen grease, knowing such unlicensed person would transport or process such waste kitchen grease in violation of this Article.

(2) Steal, misappropriate, contaminate, or damage any waste kitchen grease container or grease therein.

(3) Take or possess waste kitchen grease from a collector that is not licensed under this section unless otherwise allowed under this Article, or knowingly take possession of waste kitchen grease that has been stolen.

(f) A collector who holds a waste kitchen grease operations license pursuant to G.S. 106-168.2 is exempt from the application fee requirement of subdivision (4) of subsection (a) of this section.

(g) This section does not apply to a farmer who collects waste kitchen grease for a use that is related to his or her farm.

"**§ 106-168.14B. Presumption of ownership.**

A container in which waste kitchen grease is deposited that bears a name on the container is presumed to be owned by that person named on the container unless another person in writing states that he or she is the owner of the container.

"**§ 106-168.15. Violation a misdemeanor.**

Any person conducting rendering operations or collecting raw material in violation of the provisions of this Article shall be guilty of a Class 1 misdemeanor.

"**§ 106-168.16. Civil penalties.**

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

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

SECTION 2. Article 16 of Chapter 14 of the General Statutes is amended by adding a new section to read:

"**§ 14-79.2. Larceny of waste kitchen grease.**

If any person shall take and carry away, or shall aid in taking or carrying away, any waste kitchen grease within a container bearing the name of the owner of the container and bearing a notice that unauthorized removal is prohibited without written consent from the owner of the container, that person shall be guilty of a Class H felony."

SECTION 3. This act becomes effective January 1, 2012.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

S D

SENATE BILL 599*
PROPOSED COMMITTEE SUBSTITUTE S599-PCS35259-RIf-32

Short Title: Rendering Act Amendments. (Public)

Sponsors:

Referred to:

April 14, 2011

A BILL TO BE ENTITLED

AN ACT TO AMEND THE LAWS GOVERNING RENDERING PLANTS AND OPERATIONS AND TO BRING THE COLLECTION OF WASTE KITCHEN GREASE WITHIN THE PURVIEW OF THE ACT.

The General Assembly of North Carolina enacts:

SECTION 1. Article 14A of Chapter 106 of the General Statutes reads as rewritten:

"Article 14A.

"Licensing and Regulation of Rendering ~~Plants and~~ Plants, Rendering ~~Operations.~~Operations, and Waste Kitchen Grease Collection.

"**§ 106-168.1. Definitions.**

For the purposes of this Article, unless the context or subject matter otherwise clearly ~~requires,~~ requires:

(1) "Collector" means any person, as defined in this section, who collects raw material or waste kitchen grease for the purpose of selling the same to any renderer or other person for further processing. "Collector" does not include restaurants or other food establishments that generate kitchen grease.

(1a) "Farmer" means any person actively engaged in agriculture as defined in G.S. 106-581.1. "Farmer" does not include a person who cultivates a garden solely for personal use.

...

(6) "Waste kitchen grease" means animal fats or vegetable oils that have been used, and will not be reused, for cooking in a food establishment. "Waste kitchen grease" does not include grease septage as defined in G.S. 130A-290.

"**§ 106-168.2. License required.**

No person shall engage in rendering operations or act as a collector of waste kitchen grease unless such person shall hold a valid license to do so issued as hereinafter provided.

"**§ 106-168.3. Exemptions.**

Nothing in this Article shall apply to the premises or the rendering operations on the premises of any establishment operating under a numbered permit from the North Carolina Department of Agriculture and Consumer Services as provided by the North Carolina Meat Inspection Act, or under United States government ~~inspection.~~inspection; provided, however,

no person shall be exempt from the requirements of this Article when acting as a collector.of waste kitchen grease.

"§ 106-168.4. Application for rendering license.

Application for license shall be made to the Commissioner of Agriculture, hereinafter called the "Commissioner," on forms provided by ~~him.~~the Commissioner. The application shall set forth the name and residence of the applicant, ~~his~~ the applicant's present or proposed place of business, the particular method which ~~he~~ the applicant intends to employ or employs in the processing of raw material, and such other information as the Commissioner may ~~require, except that the Commissioner shall not require the submission of blueprints, plans, or specifications of the existing plant or equipment of any person owning and operating a rendering plant in North Carolina on January 1, 1953.~~require. The applicant shall pay a fee of ~~fifty dollars ($50.00)~~ one hundred dollars ($100.00) with each ~~application, which said fee shall be the only charge made in connection with licensure.~~application and a renewal fee of one hundred dollars ($100.00) annually after meeting the renewal requirements of this Article.

"§ 106-168.5. Duties of Commissioner upon receipt of ~~application;~~ the application for a rendering license; inspection committee.

Upon receipt of the ~~application,~~ application for a rendering license, the Commissioner shall promptly cause the rendering plant and equipment, or the plans, specifications, and selected site, of the applicant to be inspected by an inspection committee hereinafter called the "committee," which shall be composed of three members: One member who shall be designated by the Commissioner of Agriculture and who shall be an employee of the Department of Agriculture and Consumer Services, one member who shall be designated by the Secretary of Health and Human Services and who shall be an employee of the Department of Health and Human Services, and one member who shall be designated by the ~~director~~ board of directors of the North Carolina ~~Division of the Southeastern~~ Renderers Association, and who shall be a person having practical knowledge of rendering operations. Each member may be designated and relieved from time to time at the discretion of the designating authority. No State employee designated as a member of the committee shall receive any additional compensation therefor and no compensation shall be paid by the State to any other member.

"§ 106-168.6. Inspection by committee; certificate of specific findings.

...

"§ 106-168.7. Issuance of rendering license.

Upon receipt of the certificate of compliance from the committee, the Commissioner shall issue a rendering license to the applicant to conduct rendering operations as specified in the application. A license shall be valid ~~until revoked for cause as hereinafter provided.~~for one year and shall be renewed upon submission of a certification under oath of compliance with the requirements of this Article for licensure and payment of the annual renewal fee.

"§ 106-168.8. Minimum standards for conducting rendering operations.

The following minimum standards shall be required for all rendering operations subject to the provisions of this Article:

...

(8) Proof of general liability insurance of one million dollars ($1,000,000) shall be made in a manner satisfactory to the Commissioner.

"§ 106-168.9. Transportation by licensee.

Any person holding a rendering license under the provisions of this Article, or acting as a collector as herein defined, may haul and transport raw ~~material,~~ material or waste kitchen grease, except such material or waste kitchen grease as may be specifically prohibited by law or by the rules and regulations promulgated by the Commissioner, when such transporting and hauling is done in accordance with the provisions of this Article.

"§ 106-168.10. Disposal of diseased animals.

Any person holding a rendering license under the provisions of this Article is authorized to kill diseased, sick, old or crippled animals on the premises of the owner upon his request; provided that no animal known to have tuberculosis, Bang's disease, anthrax, or any other disease for which quarantine may be imposed, shall be removed from any premises placed under quarantine without permission of the State Veterinarian, or his authorized agent. The licensee shall keep and make available to the Commissioner, upon request, such records as the Commissioner may require with respect to the collection and disposal of dead animals.

"§ 106-168.11. Authority of agents of rendering licensee.

Authority granted to any person holding a valid rendering license under the provisions of this Article shall extend also to the agents and employees of such person while acting within the scope of their authority. All such agents and employees shall comply with the provisions of this Article and rules and regulations not inconsistent therewith, and shall display evidence of such employment or agency upon proper request at any time while so acting.

"§ 106-168.12. Commissioner authorized to adopt rules and regulations.

...

"§ 106-168.13. Effect of failure to comply.

...

"§ 106-168.14. Collectors of raw material subject to certain provisions.

Any ~~collector,~~ collector of raw material, as defined in ~~this Article,~~G.S. 106-168.1, shall be subject to the provisions of subdivision (5) and subdivision (6) of G.S. ~~106-168.8~~106-168.8 and the provisions of G.S. 106-168.9, and any rules and regulations adopted by the Commissioner pursuant thereto.

"§ 106-168.14A. Collectors of waste kitchen grease subject to certain provisions.

(a) Any collector of waste kitchen grease shall submit an application for licensure to the Commissioner not less than 30 days before conducting any such collection or transportation. Licensure shall be for one year. The application shall be submitted in accordance with a procedure established by the Commissioner for this purpose. The application shall include all of the following:

(1) The applicant's name and address.

(2) A description of the operations to be performed by the applicant.

(3) The make, model, license number, and vehicle identification number of any vehicle to be used for the transportation of waste kitchen grease.

(4) A nonrefundable application fee of one hundred dollars ($100.00).

(b) The Commissioner shall issue each licensee a unique license number and a certificate. The license shall be renewable annually January 1, when accompanied by a one hundred dollar ($100.00) licensing renewal fee and certification of compliance with the provisions of this Article.

(c) Every licensee shall record, maintain for two years, and make available for inspection by the Department all of the following information:

(1) The name and address of each location or person from which the registrant obtained the waste kitchen grease for transportation.

(2) The quantity of material received from each location or person.

(3) The date on which the waste kitchen grease was obtained from each location or person.

(4) The waste kitchen grease operation or other processor to whom the waste kitchen grease was delivered.

(d) No person required to be licensed under this Article shall collect or transport waste kitchen grease without all of the following:

(1) Having in his or her possession a copy of the license required by this Article or other proof that the person is in compliance with the licensure requirement of this Article.

(2) Conspicuously displaying the licensee's name and the license number in letters not less than three inches high on any vehicle used for the transportation of waste kitchen grease.

(e) It shall be a violation of this Article for a collector to do any of the following:

(1) Sell or offer for sale to any person unlicensed under this Article any waste kitchen grease, knowing such unlicensed person would transport such waste kitchen grease in violation of this Article.

(2) Steal, misappropriate, contaminate, or damage any waste kitchen grease container or grease therein.

(3) Take or possess waste kitchen grease from a collector that is not licensed under this section unless otherwise allowed under this Article, or knowingly take possession of waste kitchen grease that has been stolen.

(4) Place a label on a waste kitchen grease container owned by another person in order to assert ownership over the container.

(f) This section does not apply to a farmer who collects waste kitchen grease for a use that is related to his or her farm.

"**§ 106-168.14B. Presumption of ownership.**

A container in which waste kitchen grease is deposited that bears a name on the container shall be presumed to be owned by that person named on the container.

"**§ 106-168.15. Violation a misdemeanor.**

Any person conducting rendering operations or collecting raw material or waste kitchen grease in violation of the provisions of this Article shall be guilty of a Class 1 misdemeanor.

"**§ 106-168.16. Civil penalties.**

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

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

SECTION 2. Article 16 of Chapter 14 of the General Statutes is amended by adding a new section to read:

"**§ 14-79.2. Larceny of waste kitchen grease.**

If any person shall take and carry away, or shall aid in taking or carrying away, any waste kitchen grease container or the waste kitchen grease contained therein, which container bears a notice that unauthorized removal is prohibited without written consent of the owner of the container, that person shall be guilty of:

(1) A Class 1 misdemeanor if the value of the waste kitchen grease container, or the container and the waste kitchen grease contained therein, is one thousand dollars ($1,000) or less.

(2) A Class H felony if the value of the waste kitchen grease container, or the container and the waste kitchen grease contained therein, is more than one thousand dollars ($1,000)."

SECTION 3. This act becomes effective January 1, 2012, and applies to offenses committed on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

S D

SENATE BILL 628
PROPOSED COMMITTEE SUBSTITUTE S628-PCS55308-RI-17

Short Title: WQ Permitting/Withheld Information. (Public)

Sponsors:

Referred to:

April 19, 2011

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH A CRIMINAL PENALTY FOR THE INTENTIONAL WITHHOLDING OF INFORMATION MATERIAL TO A DETERMINATION CONCERNING A WATER QUALITY PERMIT OR CERTIFICATION, AND TO AUTHORIZE THE ENVIRONMENTAL MANAGEMENT COMMISSION TO DENY A WATER QUALITY PERMIT OR CERTIFICATION IF AN APPLICANT INTENTIONALLY WITHHOLDS INFORMATION OR KNOWINGLY PROVIDES FALSE INFORMATION THAT IS MATERIAL TO A DETERMINATION CONCERNING A WATER QUALITY PERMIT OR CERTIFICATION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 143-215.6B(i) reads as rewritten:

"(i) Any person ~~who~~who (i) intentionally withholds or omits information that is material to a permitting or certification determination made pursuant to this Article or a rule implementing this Article; (ii) knowingly makes any false statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained under this Article or a rule implementing this Article; ~~or who~~(iii) knowingly makes a false statement of a material fact in a rulemaking proceeding or contested case under this Article; or ~~who~~(iv) falsifies, tampers with, or knowingly renders inaccurate any recording or monitoring device or method required to be operated or maintained under this Article or rules of the Commission implementing this Article shall be guilty of a Class 2 misdemeanor which may include a fine not to exceed ten thousand dollars ($10,000). If information that is material to a permitting or certification determination is intentionally withheld, or if a false statement, representation, or certification is knowingly made in an application to the Commission for a permit or certification or in any data, plan, or other document submitted in support of an application for a permit or certification, then in addition to all other penalties imposed by this Article, the Commission shall deny the permit or certification. For purposes of this subsection, information is material to a permitting or certification determination if the information relates to the ability of the Commission or the ability of the Department, as applicable, to (i) evaluate the impacts to natural resources caused by the activity for which the permit or certification is sought; (ii) implement applicable statutes or rules governing the evaluation of the permit or certification application; or (iii) evaluate appropriate conditions that may be required in the permit or certification to reduce, mitigate, or eliminate impacts to natural resources affected by the activity for which the permit or certification is sought."

SECTION 2. This act is effective when it becomes law and applies to applications for permits or certifications submitted on or after that date.

SENATE BILL 628:
WQ Permitting/Compliance Rev. & Submissions

2011-2012 General Assembly

Committee:	Senate Agriculture/Environment/Natural Resources	**Date:**	June 7, 2011
Introduced by:	Sens. Hartsell, Bingham	**Prepared by:**	Jennifer McGinnis Committee Counsel
Analysis of:	PCS to First Edition S628-PCS55308-RI-17		

SUMMARY: ***The Proposed Committee Substitute (PCS) for Senate Bill 628 would: (1) establish a criminal penalty for the intentional withholding of information material to a determination concerning a water quality permit or certification, and (2) require the Environmental Management Commission to deny a water quality permit or Certification if an applicant intentionally withholds information or knowingly provides false information that is material to a determination concerning a water quality permit or certification.***

CURRENT LAW: Under existing law governing activities involving water resources[1], a person is guilty of a Class 2 misdemeanor[2], which may include a fine up to $10,000, if the person: (i) knowingly makes any false statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained under the applicable statutes or implementing rules; (ii) knowingly makes a false statement of a material fact in a rulemaking proceeding or contested case under applicable statutes; or (iii) falsifies, tampers with, or knowingly renders inaccurate any recording or monitoring device or method required to be operated or maintained under the applicable statutes or implementing rules.

BILL ANALYSIS: The PCS would –

- Make it a Class 2 misdemeanor, which may include a fine up to $10,000, if a person intentionally withholds or omits information that is material to a determination concerning a water quality permit or certification.
- Require the EMC to deny an application for a water quality permit or certification if the applicant has intentionally withheld information that is material to a permitting or certification determination, or has knowingly made a false statement, representation, or certification in an application to the EMC for a permit or certification or in any data, plan, or other document submitted in support of an application for a permit or certification.

EFFECTIVE DATE: This PCS would be effective when it becomes law and apply to applications for permits or certifications submitted on or after that date.

S628-SMRI-23(e1) v4

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[1] G.S. 143-215.6B(i)

[2] Assuming no prior convictions, a Class 2 misdemeanor is punishable by 1-30 days community punishment and/or a fine up to $1,000.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

S 1

SENATE BILL 628

Short Title:	WQ Permitting/Compliance Rev. & Submissions.	(Public)
Sponsors:	Senators Hartsell and Bingham.	
Referred to:	Agriculture/Environment/Natural Resources.	

April 19, 2011

A BILL TO BE ENTITLED

AN ACT TO PROVIDE (1) THAT THE ENVIRONMENTAL MANAGEMENT COMMISSION SHALL DENY A WATER QUALITY PERMIT OR CERTIFICATION WHEN THE APPLICANT KNOWINGLY FALSIFIES INFORMATION OR FAILS TO DISCLOSE RELEVANT INFORMATION IN THE APPLICATION OR SUPPORTING INFORMATION AND (2) THAT THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES SHALL CONDUCT AN ENVIRONMENTAL COMPLIANCE REVIEW OF AN APPLICANT FOR A WATER QUALITY PERMIT OR CERTIFICATION PRIOR TO ISSUANCE OF A PERMIT OR CERTIFICATION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 143-215.6B(i) reads as rewritten:

"(i) Any person ~~who~~ who (i) intentionally withholds or omits information that is material to a permitting or certification determination; (ii) knowingly makes any false statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained under this Article or a rule implementing this Article; ~~or who~~ (iii) knowingly makes a false statement of a material fact in a rulemaking proceeding or contested case under this Article; or ~~who~~(iv) falsifies, tampers with, or knowingly renders inaccurate any recording or monitoring device or method required to be operated or maintained under this Article or rules of the Commission implementing this Article shall be guilty of a Class 2 misdemeanor which may include a fine not to exceed ten thousand dollars ($10,000). If information that is material to a permitting or certification determination is intentionally withheld, or if a false statement, representation, or certification is knowingly made in an application to the Commission for a permit or certification or in any data, plan, or other document submitted in support of an application for a permit or certification, then in addition to all other penalties imposed by this Article, the Commission shall deny the permit or certification."

SECTION 2. G.S. 143-215.1 is amended by adding a new subsection to read:

"(i) The Department shall:

(1) Conduct an environmental compliance review of each applicant for a water quality permit or certification under this Article. The environmental compliance review shall evaluate the environmental compliance history of the applicant for a period of five years prior to the date of the application and may cover a longer period at the discretion of the Department. The environmental compliance review of an applicant may include consideration of the environmental compliance history of the parents, subsidiaries, or other affiliates of an applicant or parent that is a business entity, including any business entity or joint venturer with a direct or indirect interest in the

applicant, and other facilities owned or operated by any of them. The Department shall determine the scope of the review of the environmental compliance history of the applicant, parents, subsidiaries, or other affiliates of the applicant or parent, including any business entity or joint venturer with a direct or indirect interest in the applicant, and of other facilities owned or operated by any of them. An applicant for a permit or certification shall provide environmental compliance history information for each facility, business entity, joint venture, or other undertaking in which any of the persons listed in this subsection is or has been an owner, operator, officer, director, manager, member, or partner, or in which any of the persons listed in this subsection has had a direct or indirect interest, as requested by the Department.

(2) Determine the extent to which the applicant, or a parent, subsidiary, or other affiliate of the applicant or parent, or a joint venturer with a direct or indirect interest in the applicant has substantially complied with the requirements applicable to any activity in which any of these entities previously engaged, including compliance with applicable effluent standards and limitations and waste management treatment practices, and has substantially complied with federal and State laws, regulations, and rules for the protection of the environment. The Department may deny an application for a water quality permit or certification if the applicant (i) has a history of significant or repeated violations of statutes, rules, orders, or permit terms or conditions for the protection of the environment or for the conservation of natural resources as evidenced by civil penalty assessments, administrative or judicial compliance orders, or criminal penalties or (ii) has intentionally withheld or omitted information that is material to a permitting or certification determination, or has knowingly made a false statement, representation, or certification in an application to the Commission for a permit or certification or in any data, plan, or other document submitted in support of an application for a permit or certification."

SECTION 3. G.S. 143-215.6B(b) reads as rewritten:

"(b) Commission's Power as to Permits. –

...

(4) The Commission shall have the power:

a. To grant a permit with such conditions attached as the Commission believes necessary to achieve the purposes of this Article.

b. To require that an applicant satisfy the Department that the applicant, or any parent, subsidiary, or other affiliate of the applicant or parent:

1. Is financially qualified to carry out the activity for which the permit is required under subsection (a) of this section; and

~~2. Has substantially complied with the effluent standards and limitations and waste management treatment practices applicable to any activity in which the applicant has previously engaged, and has been in substantial compliance with other federal and state laws, regulations, and rules for the protection of the environment.~~

3. As used in this subdivision, the words "affiliate," "parent," and "subsidiary" have the same meaning as in 17 Code of Federal Regulations § 240.12b-2 (April 1, 1990, Edition). For a privately owned treatment works that serves 15 or more service connections or that regularly serves 25 or more

individuals, financial qualification may be demonstrated through the use of a letter of credit, insurance, surety, trust agreement, financial test, bond, or a guarantee by corporate parents or third parties who can pass the financial test. No permit shall be issued under this section for a privately owned treatment works that serves 15 or more service connections or that regularly serves 25 or more individuals, until financial qualification is established and the issuance of the permit shall be contingent on the continuance of the financial qualification for the duration of the activity for which the permit was issued.

...."

SECTION 4. This act is effective when it becomes law and applies to applications for permits or certifications submitted on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

S D

SENATE BILL 628
PROPOSED COMMITTEE SUBSTITUTE S628-PCS55308-RI-17

Short Title: WQ Permitting/Withheld Information. (Public)

Sponsors:

Referred to:

April 19, 2011

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH A CRIMINAL PENALTY FOR THE INTENTIONAL WITHHOLDING OF INFORMATION MATERIAL TO A DETERMINATION CONCERNING A WATER QUALITY PERMIT OR CERTIFICATION, AND TO AUTHORIZE THE ENVIRONMENTAL MANAGEMENT COMMISSION TO DENY A WATER QUALITY PERMIT OR CERTIFICATION IF AN APPLICANT INTENTIONALLY WITHHOLDS INFORMATION OR KNOWINGLY PROVIDES FALSE INFORMATION THAT IS MATERIAL TO A DETERMINATION CONCERNING A WATER QUALITY PERMIT OR CERTIFICATION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 143-215.6B(i) reads as rewritten:

"(i) Any person ~~who~~ who (i) intentionally withholds or omits information that is material to a permitting or certification determination made pursuant to this Article or a rule implementing this Article; (ii) knowingly makes any false statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained under this Article or a rule implementing this Article; ~~or who~~ (iii) knowingly makes a false statement of a material fact in a rulemaking proceeding or contested case under this Article; or ~~who~~(iv) falsifies, tampers with, or knowingly renders inaccurate any recording or monitoring device or method required to be operated or maintained under this Article or rules of the Commission implementing this Article shall be guilty of a Class 2 misdemeanor which may include a fine not to exceed ten thousand dollars ($10,000). If information that is material to a permitting or certification determination is intentionally withheld, or if a false statement, representation, or certification is knowingly made in an application to the Commission for a permit or certification or in any data, plan, or other document submitted in support of an application for a permit or certification, then in addition to all other penalties imposed by this Article, the Commission shall deny the permit or certification. For purposes of this subsection, information is material to a permitting or certification determination if the information relates to the ability of the Commission or the ability of the Department, as applicable, to (i) evaluate the impacts to natural resources caused by the activity for which the permit or certification is sought; (ii) implement applicable statutes or rules governing the evaluation of the permit or certification application; or (iii) evaluate appropriate conditions that may be required in the permit or certification to reduce, mitigate, or eliminate impacts to natural resources affected by the activity for which the permit or certification is sought."

SECTION 2. This act is effective when it becomes law and applies to applications for permits or certifications submitted on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

H D

HOUSE BILL 750
Committee Substitute Favorable 5/12/11
PROPOSED SENATE COMMITTEE SUBSTITUTE H750-PCS90122-RI-23

Short Title: Asscs.-Stormwater Resp./SD & Sept'g. Rules. (Public)

Sponsors:

Referred to:

April 7, 2011

A BILL TO BE ENTITLED

AN ACT TO (1) REQUIRE THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES TO TRANSFER A PERMIT FOR A STORMWATER MANAGEMENT SYSTEM FROM A DECLARANT OF A CONDOMINIUM OR PLANNED COMMUNITY TO AN OWNERS ASSOCIATION UPON REQUEST OF THE PERMITTEE AND SUBMISSION OF DOCUMENTATION THAT DECLARANT CONTROL HAS TERMINATED, (2) PROVIDE THAT THE RULES OF A SANITARY DISTRICT MAY NOT BE MORE RESTRICTIVE THAN OR CONFLICT WITH THE REQUIREMENTS OR ORDINANCES OF A COUNTY WITH JURISDICTION OVER THE AREA; AND (3) PROHIBIT ANY PERSON FROM CONTRACTING OR SUBCONTRACTING TO RENT OR LEASE TO ANOTHER A PORTABLE TOILET OR MANAGE OR DISPOSE OF WASTE FROM A PORTABLE TOILET UNLESS THAT PERSON IS PERMITTED TO OPERATE A SEPTAGE MANAGEMENT FIRM.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 143-214.7 is amended by adding a new subsection to read:

"(c2) The Department shall transfer a permit issued under this section for a stormwater management system from the declarant of a condominium or a planned community to the unit owners association, owners association, or other management entity identified in the condominium or planned community's declaration upon request of a permittee if the Department finds that (i) common areas related to the operation and maintenance of the stormwater management system have been conveyed to the unit owners association or owners association in accordance with the declaration; (ii) the declarant has conveyed at least fifty percent (50%) of the units or lots to owners other than a declarant; and (iii) the stormwater management system is in substantial compliance with the stormwater permit issued to the permittee by the Department. In support of a request made pursuant to this subsection, a permittee shall submit documentation to the Department sufficient to demonstrate that ownership of the common area related to the operation and maintenance of the stormwater management system has been conveyed from the declarant to the association and that the declarant has conveyed at least fifty percent (50%) of the units or lots to owners other than a declarant. For purposes of this subsection, declarant of a condominium shall have the same meaning as provided in Chapter 47C of the General Statutes, and declarant of a planned community shall have the same meaning as provided in Chapter 47F of the General Statutes."

SECTION 2. 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:

...

(7) To adopt rules necessary for the proper functioning of the district. However, these rules shall not conflict with rules adopted by the Commission for Public Health, Environmental Management Commission, or the local board of health having jurisdiction over the area. Further, such rules shall be no more restrictive than or conflict with requirements or ordinances of any county having jurisdiction over the area, and, if a conflict should arise, the requirements or ordinances of the county having jurisdiction over the area shall control.

...."

SECTION 3.(a) In addition to the other portable sanitation permitting provisions of 15A NCAC 13B .0832(b), from the effective date of this act the Department of Environment and Natural Resources shall prohibit any person from contracting or subcontracting to rent or lease to another a portable toilet or manage or dispose of waste from a portable toilet, regardless of ownership of the portable toilet, unless that person is permitted to operate a septage management firm.

SECTION 3.(b) No later than January 1, 2014, the Commission for Public Health shall adopt rules consistent with the provisions of Section 3(a) of this act. Notwithstanding G.S. 150B-19(4), the rules adopted by the Commission pursuant to this section shall be substantively identical to the provisions of Section 3(a) of this act.

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

HOUSE BILL 750:
Stormwater Sys. Owners Asscs./SD Rules

2011-2012 General Assembly

Committee:	Senate Agriculture/Environment/Natural Resources	**Date:**	June 7, 2011
Introduced by:	Rep. McComas	**Prepared by:**	Jennifer McGinnis Committee Counsel
Analysis of:	PCS to Second Edition H750-PCS90122-RI-23		

SUMMARY: ***The Proposed Committee Substitute (PCS) for House Bill 750 would: (i) require the Department of Environment and Natural Resources (Department) to transfer a permit for a stormwater management system from a declarant of a condominium or planned community to an owners' association upon request of the permittee and submission of documentation that declarant control has terminated; (ii) provide that the rules of a sanitary district may not be more restrictive than or conflict with the requirements or ordinances of a county with jurisdiction over the area; and (iii) prohibit any person from contracting or subcontracting to rent or lease to another a portable toilet or manage or dispose of waste from a portable toilet unless that person is permitted to operate a septage management firm..***

CURRENT LAW AND BACKGROUND:

Stormwater Management Systems – Transfer of Responsibility: Stormwater management systems for control of run-off are required for developments greater than one acre pursuant to statute and rule[1]. Such systems must be permitted by the Department and maintained in compliance with permit requirements. Typically, developers of residential subdivisions (or "declarants" as they are characterized in the Condominium Act and the Planned Community Act[2]) install the required systems and obtain the necessary permits, and then turn these facilities over to the governing owners' association once the development is substantially completed. Occasionally a governing owners' association will refuse to accept transfer of a permit for a stormwater management system. The Department currently is without authority to transfer permits in such situations.

Sanitary Districts Authority to Adopt Rules: Sanitary districts are authorized under the General Statutes to acquire, construct, maintain and operate sewage collection, treatment and disposal systems of all types, including septic tank systems or other on-site collection or disposal facilities or systems, water supply systems; water purification or treatment plants and other utilities, within and outside the corporate limits of the district, as may be necessary for the preservation of the public health and sanitary welfare outside the corporate limits of the district. Under current law sanitary districts are authorized to adopt rules necessary for the proper functioning of the district. The statutes specifically provide, however, that these rules may not conflict with rules adopted by the Commission for Public Health, Environmental Management Commission, or the local board of health having jurisdiction over the area.

Rules Applicable to Portable Sanitation (Septage): 15A NCAC 13B .0832(b) establishes permitting requirements applicable to portable sanitation, including a provision that prohibits any person from

[1] G.S. 143-214.7; 15A NCAC 2H .1000.
[2] Chapters 47C and 47F of the General Statutes, respectively.

renting or leasing portable toilet(s) or managing or disposing of waste from portable toilet(s), regardless of ownership of the toilet(s), unless that person is permitted to operate a septage[3] management firm.

BILL ANALYSIS: The PCS would –

- Require the Department to transfer a permit for a stormwater management system from a declarant of a condominium or planned community to an owners' association upon request of the permittee if the Department finds that: (i) common areas related to the operation and maintenance of the stormwater management system have been conveyed to the owners association in accordance with the declaration; (ii) the declarant has conveyed at least 50% of the units or lots to owners other than a declarant; and, (iii) the stormwater management system is in substantial compliance with the stormwater permit issued to the permittee by the Department. A permittee must submit sufficient documentation to the Department in this regard.
- Provide that the rules of a sanitary district may not be more restrictive than or conflict with the requirements or ordinances of a county with jurisdiction over the area.
- Direct: (i) the Department to prohibit any person from contracting or subcontracting to rent or lease to another a portable toilet or manage or dispose of waste from a portable toilet, regardless of ownership of the portable toilet, unless that person is permitted to operate a septage management firm (in addition to the other portable sanitation permitting provisions of 15A NCAC 13B .0832(b)); and (ii) the Commission for Public Health to adopt rules consistent with this provision by January 1, 2014.

EFFECTIVE DATE: This PCS would be effective when it became law.

H750-SMRI-37(CSRI-23) v2

[3] "Septage" means solid waste that is a fluid mixture of untreated and partially treated sewage solids, liquids, and sludge of human or domestic origin which is removed from a wastewater system (G.S. 130A-290(a)(32)).

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

H 2

HOUSE BILL 750
Committee Substitute Favorable 5/12/11

Short Title: Stormwater Sys. Owners Asscs./SD Rules. (Public)

Sponsors:

Referred to:

April 7, 2011

A BILL TO BE ENTITLED

AN ACT TO (1) REQUIRE THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES TO TRANSFER A PERMIT FOR A STORMWATER MANAGEMENT SYSTEM FROM A DECLARANT OF A CONDOMINIUM OR PLANNED COMMUNITY TO AN OWNERS' ASSOCIATION UPON REQUEST OF THE PERMITTEE AND SUBMISSION OF DOCUMENTATION THAT DECLARANT CONTROL HAS TERMINATED AND (2) PROVIDE THAT THE RULES OF A SANITARY DISTRICT MAY NOT BE MORE RESTRICTIVE THAN OR CONFLICT WITH THE REQUIREMENTS OR ORDINANCES OF A COUNTY WITH JURISDICTION OVER THE AREA.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 143-214.7 is amended by adding a new subsection to read:

"(c2) The Department shall transfer a permit issued under this section for a stormwater management system from the declarant of a condominium or a planned community to the unit owners association, owners association, or other management entity identified in the condominium or planned community's declaration upon request of a permittee if the Department finds that (i) common areas related to the operation and maintenance of the stormwater management system have been conveyed to the unit owners association or owners association in accordance with the declaration; (ii) the declarant has conveyed at least fifty percent (50%) of the units or lots to owners other than a declarant; and (iii) the stormwater management system is in substantial compliance with the stormwater permit issued to the permittee by the Department. In support of a request made pursuant to this subsection, a permittee shall submit documentation to the Department sufficient to demonstrate that ownership of the common area related to the operation and maintenance of the stormwater management system has been conveyed from the declarant to the association and that the declarant has conveyed at least fifty percent (50%) of the units or lots to owners other than a declarant. For purposes of this subsection, declarant of a condominium shall have the same meaning as provided in Chapter 47C of the General Statutes, and declarant of a planned community shall have the same meaning as provided in Chapter 47F of the General Statutes."

SECTION 2. 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:

...

(7) To adopt rules necessary for the proper functioning of the district. However, these rules shall not conflict with rules adopted by the Commission for Public Health, Environmental Management Commission, or the local board of health having jurisdiction over the area. Further, such rules shall be no more restrictive than or conflict with requirements or ordinances of any county having jurisdiction over the area, and, if a conflict should arise, the requirements or ordinances of the county having jurisdiction over the area shall control.

...."

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

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

H D

HOUSE BILL 750
Committee Substitute Favorable 5/12/11
PROPOSED SENATE COMMITTEE SUBSTITUTE H750-PCS90122-RI-23

Short Title: Asscs.-Stormwater Resp./SD & Sept'g. Rules. (Public)

Sponsors:

Referred to:

April 7, 2011

A BILL TO BE ENTITLED

AN ACT TO (1) REQUIRE THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES TO TRANSFER A PERMIT FOR A STORMWATER MANAGEMENT SYSTEM FROM A DECLARANT OF A CONDOMINIUM OR PLANNED COMMUNITY TO AN OWNERS ASSOCIATION UPON REQUEST OF THE PERMITTEE AND SUBMISSION OF DOCUMENTATION THAT DECLARANT CONTROL HAS TERMINATED, (2) PROVIDE THAT THE RULES OF A SANITARY DISTRICT MAY NOT BE MORE RESTRICTIVE THAN OR CONFLICT WITH THE REQUIREMENTS OR ORDINANCES OF A COUNTY WITH JURISDICTION OVER THE AREA; AND (3) PROHIBIT ANY PERSON FROM CONTRACTING OR SUBCONTRACTING TO RENT OR LEASE TO ANOTHER A PORTABLE TOILET OR MANAGE OR DISPOSE OF WASTE FROM A PORTABLE TOILET UNLESS THAT PERSON IS PERMITTED TO OPERATE A SEPTAGE MANAGEMENT FIRM.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 143-214.7 is amended by adding a new subsection to read:

"(c2) The Department shall transfer a permit issued under this section for a stormwater management system from the declarant of a condominium or a planned community to the unit owners association, owners association, or other management entity identified in the condominium or planned community's declaration upon request of a permittee if the Department finds that (i) common areas related to the operation and maintenance of the stormwater management system have been conveyed to the unit owners association or owners association in accordance with the declaration; (ii) the declarant has conveyed at least fifty percent (50%) of the units or lots to owners other than a declarant; and (iii) the stormwater management system is in substantial compliance with the stormwater permit issued to the permittee by the Department. In support of a request made pursuant to this subsection, a permittee shall submit documentation to the Department sufficient to demonstrate that ownership of the common area related to the operation and maintenance of the stormwater management system has been conveyed from the declarant to the association and that the declarant has conveyed at least fifty percent (50%) of the units or lots to owners other than a declarant. For purposes of this subsection, declarant of a condominium shall have the same meaning as provided in Chapter 47C of the General Statutes, and declarant of a planned community shall have the same meaning as provided in Chapter 47F of the General Statutes."

SECTION 2. G.S. 130A-55 reads as rewritten:

"**§ 130A-55. Corporate powers.**

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...

(7) To adopt rules necessary for the proper functioning of the district. However, these rules shall not conflict with rules adopted by the Commission for Public Health, Environmental Management Commission, or the local board of health having jurisdiction over the area. Further, such rules shall be no more restrictive than or conflict with requirements or ordinances of any county having jurisdiction over the area, and, if a conflict should arise, the requirements or ordinances of the county having jurisdiction over the area shall control.

...."

SECTION 3.(a) In addition to the other portable sanitation permitting provisions of 15A NCAC 13B .0832(b), from the effective date of this act the Department of Environment and Natural Resources shall prohibit any person from contracting or subcontracting to rent or lease to another a portable toilet or manage or dispose of waste from a portable toilet, regardless of ownership of the portable toilet, unless that person is permitted to operate a septage management firm.

SECTION 3.(b) No later than January 1, 2014, the Commission for Public Health shall adopt rules consistent with the provisions of Section 3(a) of this act. Notwithstanding G.S. 150B-19(4), the rules adopted by the Commission pursuant to this section shall be substantively identical to the provisions of Section 3(a) of this act.

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

Cindy Davis (Sen. Jackson)

To: Jeff Warren (President Pro Tem's Office)
Subject: RE: S232 and 623

I'll send a corrected notice and re-do my folders for tomorrow. Thanks! cjd

---

From: Jeff Warren (President Pro Tem's Office)
Sent: Monday, June 06, 2011 03:28 PM
To: david@rouzercompany.com; Cindy Davis (Sen. Jackson)
Subject: S232 and 623

As per my discussion with Rouzer earlier today, please remove S232 and S623 from tomorrow's AgEnv agenda. Thanks.

--
Jeffrey D. Warren, PhD
Senior Policy Advisor
Environment, Energy, Regulatory Affairs
Office of the President Pro Tempore
North Carolina Senate
Legislative Building room 1408B
(919) 301-2008

Remove S64

6-7-11

add HB 750

Per Rouzer 4:50 pm

VISITOR REGISTRATION SHEET

Senate AG/Env/Nat. Resources (2011-2012) — June 7, 2011 (AM)

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Chris D. Fitch	NCWRC
I want a CD —	
Tommy Stevens	NCPC
W. Lamont Parker III	DLC & Assoc
Bryan Binson	NCCA
Terry Hanby	NCCA / NCPC
Robert Gilmore	Campbell Law School
Erika Jones	UNC School of Law
Dr Daniel Hinson	UNC School of Law
Josh Stiles	UNC Law
Jimmy Gentry	NC Grange

VISITOR REGISTRATION SHEET

Senate AG/Env/Nat. Resources (2011-2012) — June 7, 2011 (AM)

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Allison Fowler	NC Grange
David McLeod	NCDA&CS
Elizabeth Turgeon	UNC School of Law
Lisa Valdez	UNC School of Law
Annie Dowling	NCLEG
[signature]	Biofuels Ctr of NC
Kathryn Westcott	ACCE/NC
Betsy Bailey	PENC
Joy Hicks	NCDA&CS
Commissioner Troxler	NCDA&CS
Zane Hedgecock	NCDA&CS

VISITOR REGISTRATION SHEET

Senate AG/Env/Nat. Resources (2011-2012) — June 7, 2011 AM

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Jim Burnette	NCDA &CS - Structural Pest Control and Pesticides
[signature]	[illegible]

VISITOR REGISTRATION SHEET

Senate AG/Env/Nat. Resources (2011-2012) — June 7, 2011 (AM)

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Tom Cors	TNC
R Rogers	CWMTF
Peter Kus	CTNC
Robin Smith	DENR
Coleen H. Sullins	DENR
Tom Bean	EDF
Dan Crawford	NCLCV
Dick Fowler	NCASWCD
David Williams	NC DENR - DSWC
Molly Bishop	The Nature Conservancy
Pat Harris	NC DENR - DSWC

VISITOR REGISTRATION SHEET

Senate AG/Env/Nat. Resources (2011-2012) — June 7, 2011 (Am)
Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
T REEDER	NC DWR
Mike Abraczinskas	NC DENR - DAQ
John Rieger	NCAER
Karen Higgins	NC DENR - DWQ
Kelly McElree	NCCN
Elise Bouchard	Sen. Bingham
Kiley Dancy	The Nature Conservancy
Andrew Blackburn	Civitas Institute
Jim Simon	DENR - Land Resources
STEVE MCEVOY	DENR - LAND QUALITY SEC
FRANCIS M. NEVILS JR	NC DENR

VISITOR REGISTRATION SHEET

Senate AG/Env/Nat. Resources (2011-2012)
Name of Committee **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
John Merritt	MWCCCC
John Hutton	NCERA
Adam VMcIntyre	NCERA
Tara Dixy Allden	NCERA
Tom Fransen	DWR, NCDENR
Penny Griffin	School of Gov
David Knight	DENR
Michael Ellison	DENR- EEP
TAD BOGGS	DENR - EEP
Jim Stanfill	DENR-EEP
[illegible]	NCRPA

VISITOR REGISTRATION SHEET

Senate AG/Env/Nat. Resources (2011-2012)
Name of Committee **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Joe McClees	McClees Consulting
Meg Miller	KLG
Matthew Eisley	Smith Anderson
Kristin Szafranski	JLF

Senate Agriculture/Environment/Natural Resources

MINUTES

June 7, 2011

6:00 PM

The Senate Ag/Env/Nat. Resources committee met on Tuesday, June 07, 2011 in Room 544-LOB at 8:45 pm. There were 11 senators present.

Sen. Don East called the meeting to order and introduced the Pages and Sgt-At-Arms staff.

Discussion continued from the 11:00 AM meeting.

SB-425 ECOSYSTEM ENHANCEMENT PROGRAM CHANGES

Sen. Jackson moved adoption of the PCS for discussion. So moved. Sen. Hunt explained the bill. Sen. Rouzer sent forth an amendment. Mr. Jeff Cherry, staff explained. Vote taken on amendment and so moved.

Public comment:

Mr. Daniel Amburn, NC League of Municipalities spoke on the PCS.

Mr. George Howard, addressed members.

Sen. Clodfelter commended Sen. Hunt for this bill. He moved for a favorable report, unfavorable to the original bill.

Mr. David Knight said they will continue to work with the sponsor of the bill. DENR appreciates working with the EEP. They do have some issues, but does not oppose the bill.

City of Charlotte representative said they will continue work with the EPA and the Core of Engineers to work with advocates on this too.

No further discussion, vote taken and so moved.

SB-492 PROTECT LANDOWNER WATER RIGHTS

Sen. Jackson moved for adoption of the PCS for discussion. Sen. Rouzer explained the new PCS. (A different one from the morning meeting). Sen. Hartsell moved for a favorable report, unfavorable to the original bill. No further discussion, vote taken and so moved.

Chairman East announced that without objection, SB-781 will be brought before the committee at this time. There were no objections.

SB-781 – REGULATORY REFORM ACT OF 2011

Sen. Rouzer explained the legislation. This is a product of all field hearings held by the Jt. Regulatory Reform Committee. They had good attendance at these hearings and they also received some pros and cons correspondence to reforming regulations. Sen. Kinnaird asked about the Reg. Reform hearings. Sen. Rouzer responded to her comments and told about some of the discussions from the public hearings and comments from our citizens. Sen. Kinnaird spoke again and expressed her thoughts about having grass-roots emails from organizations. Sen. Rouzer responded and assured her that no letters were not discounted. Sen. Kinnaird spoke again about having clean water. Sen. Rouzer addressed her comments and agreed that everyone enjoyed clean drinking water. Sen. East asked Sen. Kinnaird where her information came from that was pro or con comments. Sen. Kinnaird responded. Sen. Brown spoke and told about some of the farmers that have relocated to TN because of regulation problems in NC. Some farmers also went to SC due to NC problems. Sen. Brown said this was important to listen to our people to help them. Most of the problems are not the regulations; it's the process of permits. Sen. Tucker added comments. He attended one of the public hearings and he heard business owners and farmers expressing their concerns about NC regulations. He asked if this will make DENR a kinder, gentler agency. Sen. Rouzer said it is a start. Sen. Bingham moved for a favorable report.

Public Comments:

Mr. Dan Conrad, NC Conservation Network highlighted some of their concerns. Some of this language will be in three different places with different wording. This makes it difficult to implement in regards to public policy. They feel this is shifting some default judging within agencies. He urged more time to work on this more.

Ms. Mary McClene Asbill, SELC, addressed members. She spoke on all of the different things that will be affected by this legislation. They feel this disregards public desire for taking care of our environment. This is a complicated and important bill, please don't rush this through.

Ms. Lisa Martin, Director of Gov. Affairs, NC Home Builders Assoc. spoke in favor of the bill. They don't agree on every aspect, but they do agree on some of it.

Sen. Brown moved for a favorable report. No further discussion, vote taken and so moved. This will be re-referred to Commerce Committee.

The meeting adjourned at 9:16 pm.

Sen. Don East, Co-Chair

Cindy J. Davis, Committee Clerk

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES COMMITTEE REPORT
Senator Don East, Co-Chair
Senator David Rouzer, Co-Chair

Wednesday, June 08, 2011

Senator EAST,
submits the following with recommendations as to passage:

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

S.B. **231** Interconnection of Public Water Systems.

Draft Number:	PCS75168
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

S.B. **425** Ecosystem Enhancement Program Changes.

Draft Number:	PCS15177
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

S.B. **492** Protect Landowner Water Rights.

Draft Number:	PCS95103
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

TOTAL REPORTED: 3

Committee Clerk Comments:

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES COMMITTEE REPORT
Senator Don East, Co-Chair
Senator David Rouzer, Co-Chair

Tuesday, June 07, 2011

Senator EAST,
submits the following with recommendations as to passage:

FAVORABLE

S.B. **781** Regulatory Reform Act of 2011.
Sequential Referral: Commerce
Recommended Referral: None

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

S.B. **571** Repeal Subsistence License Waiver.
Draft Number: PCS15164
Sequential Referral: None
Recommended Referral: None
Long Title Amended: No

TOTAL REPORTED: 2

Committee Clerk Comments:

Senate Agriculture/Environment/Natural Resources Committee
Tuesday, June 7, 2011, 11:00 am & 6:00 pm
544 LOB

AGENDA
(Revised)

Welcome and Opening Remarks

Introduction of Pages

Bills

	SB 231	Interconnection of Public Water Systems.	Senator Hartsell
	SB 309	Conservation Easements Stewardship Funds.	Senator Jackson
PM	SB 425	Ecosystem Enhancement Program Changes.	Senator Hunt
	SB 491	Sedimentation Pollution Control Act Exemption.	Senator Rouzer
PM	SB 492	Protect Landowner Water Rights.	Senator Rouzer Senator East Senator Jackson
	SB 599	Rendering Act Amendments.	Senator Brock Senator Rouzer Senator Bingham
	SB 603	Pesticide Registration Paper Reduction.	Senator East
	SB 628	WQ Permitting/Compliance Rev. & Submissions.	Senator Hartsell Senator Bingham
	HB 750	Stormwater Sys. Owners Asscs./SD Rules.	Representative McComas

Presentations

Other Business

Adjournment

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

S D

SENATE BILL 425
PROPOSED COMMITTEE SUBSTITUTE S425-PCS15177-RI-33

Short Title: Ecosystem Enhancement Program Changes. (Public)

Sponsors:

Referred to:

March 28, 2011

A BILL TO BE ENTITLED

AN ACT TO DIRECT THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES TO REORGANIZE THE ECOSYSTEM ENHANCEMENT PROGRAM TO IMPROVE OPERATIONAL EFFICIENCY.

The General Assembly of North Carolina enacts:

SECTION 1.1. G.S. 143-214.11 reads as rewritten:

"**§ 143-214.11. Ecosystem Enhancement Program: compensatory mitigation.**

(a) Definitions. – The following definitions apply to this section:

(1) ~~"Compensatory mitigation" means the~~ Compensatory mitigation. – The restoration, creation, enhancement, or preservation of jurisdictional waters required as a condition of a permit issued by the Department or by the United States Army Corps of Engineers.

(1a) Compensatory mitigation bank. – A private compensatory mitigation bank or an existing local compensatory mitigation bank.

(1b) Existing local compensatory mitigation bank. – A mitigation bank operated by a unit of local government that is a party to a mitigation banking instrument executed on or before July 1, 2011.

(2) ~~"Government entity" means the~~Government entity. – The State and its agencies and subdivisions, or the federal ~~government, and units of local government.~~government. "Government entity" does not include a unit of local government unless the unit of local government was a party to a mitigation banking instrument executed on or before July 1, 2011.

(3) ~~"Hydrologic area" means an~~ Hydrologic area. – An eight-digit Cataloging Unit designated by the United States Geological Survey.

(4) ~~"Jurisdictional waters" means wetlands,~~Jurisdictional waters. – Wetlands, streams, or other waters of the State or of the United States.

(4a) Mitigation banking instrument. – The legal document for the establishment, operation, and use of a mitigation bank.

(4b) Private compensatory mitigation bank. – A site created by a private compensatory mitigation provider and approved for mitigation credit by State and federal regulatory authorities through execution of a mitigation banking instrument. No site owned by a government entity or unit of local government shall be considered a "private compensatory mitigation bank."

(5) ~~"Unit of local government" means a~~ Unit of local government. – A "local government," "public authority," or "special district" as defined in G.S. 159-7.

...

(h) Sale of Mitigation Credits by Existing Local Compensatory Mitigation Bank. – An existing local compensatory mitigation bank shall comply with the requirements of Article 12 of Chapter 160A of the General Statutes applicable to the disposal of property whenever it transfers any mitigation credits to another person."

SECTION 1.2. The North Carolina Ecosystem Enhancement Program (NCEEP) shall exercise its authority to provide for compensatory mitigation under the authority granted by G.S. 143-214.11 by using the following mitigation procurement programs, in order of preference:

(1) Full Delivery/Bank Credit Purchase Program. – The NCEEP shall first seek to meet compensatory mitigation procurement requirements through its Full Delivery program or by the purchase of credits from a private compensatory mitigation bank, as defined by G.S. 143-214.11.

(2) Design/Build Program. – Any compensatory mitigation procurement requirements not fulfillable under subdivision (1) of this section shall be procured under a program in which NCEEP contracts with one private entity to lead or implement the design, construction, and post-construction monitoring of compensatory mitigation at sites obtained by the NCEEP.

(3) Design-Bid-Build Program. – Any compensatory mitigation procurement requirements not fulfillable under either subdivision (1) or (2) of this section may be procured under NCEEP's Design-Bid-Build program. NCEEP may utilize this program only when procurement under subdivision (1) or (2) of this section is not feasible. Any mitigation site design work currently being performed through contracts awarded under the Design-Bid-Build program shall be allowed to continue as scheduled. Contracts for construction of projects with a design already approved by NCEEP shall be awarded by NCEEP by issuing a Request for Proposal (RFP). Only contractors who have prequalified under procedures established by NCEEP shall be eligible to bid on NCEEP construction projects. Construction contracts issued under this subdivision shall be exempt from the requirements of Article 8B of Chapter 143 of the General Statutes.

SECTION 1.3. The regulatory requirements for the establishment, operation, and monitoring of a compensatory mitigation bank or full delivery project shall vest at the time of the execution of the Mitigation Banking Instrument or the award of a Full Delivery Contract.

SECTION 2. This act is effective when it becomes law and applies to all projects and contracts awarded on or after that date.

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 425

AMENDMENT NO. _____
(to be filled in by Principal Clerk)

S425-AMH-74 [v.2]

Comm. Sub. [YES]
Amends Title [NO]
S425-PCS35258-MH-11

Date _____,2011

Senator Rouzer

moves to amend the PCS on page 1, line 6 by deleting section 1.1 and replacing that section with the following:

"**SECTION 1.1.** G.S. 143-214.11 reads as rewritten:

'**§ 143-214.11. Ecosystem Enhancement Program: compensatory mitigation.**

(a) Definitions. – The following definitions apply to this section:

(1) ~~"Compensatory mitigation" means the~~ Compensatory mitigation. – The restoration, creation, enhancement, or preservation of jurisdictional waters required as a condition of a permit issued by the Department or by the United States Army Corps of Engineers.

(1a) Compensatory mitigation bank. – A private compensatory mitigation bank or an existing local compensatory mitigation bank.

(1b) Existing local compensatory mitigation bank. – A mitigation bank operated by a unit of local government that is a party to a mitigation banking instrument executed on or before July 1, 2011.

(2) ~~"Government entity" means the~~Government entity. – The State and its agencies and subdivisions, or the federal ~~government, and units of local government.~~government. "Government entity" does not include a unit of local government unless the unit of local government was a party to a mitigation banking instrument executed on or before July 1, 2011.

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(4) ~~"Jurisdictional waters" means wetlands,~~Jurisdictional waters. – Wetlands, streams, or other waters of the State or of the United States.

(4a) Mitigation banking instrument. – The legal document for the establishment, operation, and use of a mitigation bank.

(4b) Private compensatory mitigation bank. – A site created by a private compensatory mitigation provider and approved for mitigation credit by State and federal regulatory authorities through execution of a mitigation banking instrument. No site owned by a government entity or unit of local government shall be considered a "private compensatory mitigation bank."

(5) ~~"Unit of local government" means a~~ Unit of local government. – A "local government," "public authority," or "special district" as defined in G.S. 159-7.

...

(h) Sale of Mitigation Credits by Existing Local Compensatory Mitigation Bank. – An existing local compensatory mitigation bank shall comply with the requirements of Article 12 of Chapter 160A of the General Statutes applicable to the disposal of property whenever it transfers any mitigation credits to another person."'

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

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SENATE BILL 425
PROPOSED COMMITTEE SUBSTITUTE S425-PCS35258-MH-11

Short Title: Ecosystem Enhancement Program Changes. (Public)

Sponsors:

Referred to:

March 28, 2011

A BILL TO BE ENTITLED

AN ACT TO DIRECT THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES TO REORGANIZE THE ECOSYSTEM ENHANCEMENT PROGRAM TO IMPROVE OPERATIONAL EFFICIENCY.

The General Assembly of North Carolina enacts:

SECTION 1.1. G.S. 143-214.11 reads as rewritten:

"**§ 143-214.11. Ecosystem Enhancement Program: compensatory mitigation.**

(a) Definitions. – The following definitions apply to this section:

(1) ~~"Compensatory mitigation" means the~~ Compensatory mitigation. – The restoration, creation, enhancement, or preservation of jurisdictional waters required as a condition of a permit issued by the Department or by the United States Army Corps of Engineers.

(1a) Compensatory mitigation bank. – A private compensatory mitigation bank or an existing local compensatory mitigation bank.

(1b) Existing local compensatory mitigation bank. – A mitigation bank operated by a unit of local government that is a party to a mitigation banking instrument executed on or before July 1, 2011.

(2) ~~"Government entity" means the~~Government entity. – The State and its agencies and subdivisions, or the federal ~~government, and units of local government.~~government. "Government entity" does not include a unit of local government.

(3) ~~"Hydrologic area" means an~~ Hydrologic area. – An eight-digit Cataloging Unit designated by the United States Geological Survey.

(4) ~~"Jurisdictional waters" means wetlands,~~Jurisdictional waters. – Wetlands, streams, or other waters of the State or of the United States.

(4a) Mitigation banking instrument. – The legal document for the establishment, operation, and use of a mitigation bank.

(4b) Private compensatory mitigation bank. – A site created by a private compensatory mitigation provider and approved for mitigation credit by State and federal regulatory authorities through execution of a mitigation banking instrument. No site owned by a government entity or unit of local government shall be considered a "private compensatory mitigation bank."

(5) ~~"Unit of local government" means a~~ Unit of local government. – A "local government," "public authority," or "special district" as defined in G.S. 159-7.

...

(h) Sale of Mitigation Credits by Existing Local Compensatory Mitigation Bank. – An existing local compensatory mitigation bank shall comply with the requirements of Article 12 of Chapter 160A of the General Statutes applicable to the disposal of surplus property whenever it transfers any mitigation credits to another person."

SECTION 1.2. The North Carolina Ecosystem Enhancement Program (NCEEP) shall exercise its authority to provide for compensatory mitigation under the authority granted by G.S. 143-214.11 by using the following mitigation procurement programs, in order of preference:

(1) Full Delivery/Bank Credit Purchase Program. – The NCEEP shall first seek to meet compensatory mitigation procurement requirements through its Full Delivery program or by the purchase of credits from a private mitigation bank, as defined by G.S. 143-214.11.

(2) Design/Build Program. – Any compensatory mitigation procurement requirements not fulfillable under subdivision (1) of this section shall be procured under a program in which NCEEP contracts with one private entity to lead or implement the design, construction, and post-construction monitoring of compensatory mitigation at sites obtained by the NCEEP.

(3) Design-Bid-Build Program. – Any compensatory mitigation procurement requirements not fulfillable under either subdivision (1) or (2) of this section may be procured under NCEEP's Design-Bid-Build program. NCEEP may utilize this program only when procurement under subdivision (1) or (2) of this section is not feasible. Any mitigation site design work currently being performed through contracts awarded under the Design-Bid-Build program shall be allowed to continue as scheduled. Contracts for construction of projects with a design already approved by NCEEP shall be awarded by NCEEP by issuing a Request for Proposal (RFP). Only contractors who have prequalified under procedures established by NCEEP shall be eligible to bid on NCEEP construction projects. Construction contracts issued under this subdivision shall be exempt from the requirements of Article 8B of Chapter 143 of the General Statutes.

SECTION 1.3. The regulatory requirements for the establishment, operation, and monitoring of a compensatory mitigation bank or full delivery project shall vest at the time of the execution of the Mitigation Banking Instrument or the award of a Full Delivery Contract.

SECTION 2. This act is effective when it becomes law and applies to all projects and contracts awarded on or after that date.

SENATE BILL 425:
Ecosystem Enhancement Program Changes

2011-2012 General Assembly

Committee:	Senate Agriculture/Environment/Natural Resources	**Date:**	June 7, 2011
Introduced by:	Senator Hunt	**Prepared by:**	Jeff Hudson
Analysis of:	First Edition		Committee Counsel

SUMMARY: Senate Bill 425 would: (i) apply the preference for private mitigation and nutrient offset to local governments, (ii) establish a new process by which compensatory wetlands mitigation contracts would be awarded, (iii) provide for the study and reorganization of the Ecosystem Enhancement Program, and (iv) make private mitigation businesses eligible for grants from the Clean Water Management Trust Fund.

BACKGROUND AND CURRENT LAW:

Federal and State law require developers, which can include the State, the federal government, and local governments, as well as private developers, to avoid, minimize, or mitigate damage to wetlands, damage to riparian buffers, and excess nutrient loading. One of the measures available to developers is the payment of fees into public or private programs that offset the actions of the developers with projects that restore, create, enhance, or preserve natural resources similar to those that were lost. A developer may generally do this in one of two ways.

- The developer may buy credits from a compensatory mitigation or nutrient offset bank that has already restored, created, enhanced, or preserved natural resources. There are a number of such approved banks operating in North Carolina.
- The developer may pay compensatory mitigation or nutrient offset fees to public entities or private nonprofit conservation organizations. Under this type of arrangement, the fees are typically accumulated to establish consolidated mitigation or nutrient offset projects. This is the system employed by the Ecosystem Enhancement Program in the Department of Environment and Natural Resources (DENR), which operates programs for wetlands mitigation, riparian buffer protection, and nutrient offsets.

During the 2008 Regular Session, the General Assembly enacted legislation to provide that, under certain circumstances, certain applicants for compensatory wetlands mitigation must seek the compensatory wetlands mitigation from a private wetlands mitigation bank before seeking wetlands mitigation from the Ecosystem Enhancement Program. During the 2009 Regular Session, the General Assembly enacted legislation to extend this preference for private mitigation to the areas of riparian buffer protection and nutrient offsets.

Under current law, the preference for private mitigation and nutrient offset does not apply to the State, the federal government, or local governments.

BILL ANALYSIS:

Section 1.1 would amend the definition of governmental entity so that the preference for private mitigation and nutrient offset would now apply to local governments.

Section 1.2 would establish a new process by which DENR would issue and review proposals and award contracts for compensatory wetlands mitigation. The language establishing the new process provides that it may be beneficial to the State to award contracts for compensatory wetlands mitigation on the

basis of factors other than cost alone, including, but not limited to, design and operational experience, demonstrated past success in implementation of projects, avoidance of harmful environmental impact, and operational guarantees.

Section 1.3 would direct the Program Evaluation Division to review the efficiency of the Ecosystem Enhancement Program in meeting the State's mitigation needs.

Section 1.4 would direct DENR to consolidate the positions of program director and deputy director of the Ecosystem Enhancement Program into one executive director position. All decision-making authority for the Program would be vested in the executive director.

Section 1.5 would direct DENR to hold a mitigation provider harmless in the event of any shortfall of units of mitigation if the shortfall is due to changes in State or federal regulatory policy that occur after the mitigation contract is executed.

Section 2.1 would add corporations and other privately owned businesses with expertise in the conservation, preservation, and restoration of the State's environmental and natural resources to the list of applicants eligible for grants from the Clean Water Management Trust Fund (CWMTF). Under current law, only State agencies, local governments, and certain nonprofits are eligible for such grants.

Section 2.2 would provide that the criteria for CWMTF grants include consideration of the restoration of water resources with significant ecological value.

Section 2.3 would require the Trustees of the CWMTF to, as nearly as possible, award equal dollar amounts of grants to land preservation and land restoration. Under current law, the CWMTF provides funding for land preservation for the purposes of protecting water quality.

EFFECTIVE DATE: This act would be effective when it becomes law and would apply to all projects and contracts awarded on or after that date.

SENATE BILL 425

Short Title:	Ecosystem Enhancement Program Changes.	(Public)
Sponsors:	Senators Hunt; Allran, Apodaca, Bingham, Blake, Brock, Brown, Brunstetter, Daniel, East, Forrester, Goolsby, Gunn, Hartsell, Hise, Jackson, Pate, Preston, Rouzer, Rucho, Tillman, and Tucker.	
Referred to:	Agriculture/Environment/Natural Resources.	

March 28, 2011

A BILL TO BE ENTITLED

AN ACT TO DIRECT THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES TO REORGANIZE THE ECOSYSTEM ENHANCEMENT PROGRAM TO IMPROVE OPERATIONAL EFFICIENCY, AND TO MAKE CLARIFYING CHANGES TO THE STATUTES GOVERNING COMPENSATORY MITIGATION AND THE CLEAN WATER MANAGEMENT TRUST FUND.

The General Assembly of North Carolina enacts:

Part I. Ecosystem Enhancement Program Changes.

SECTION 1.1. G.S. 143-214.11 reads as rewritten:

"**§ 143-214.11. Ecosystem Enhancement Program: compensatory mitigation.**

(a) Definitions. – The following definitions apply to this section:

(1) ~~"Compensatory mitigation" means the~~ Compensatory mitigation. – The restoration, creation, enhancement, or preservation of jurisdictional waters required as a condition of a permit issued by the Department or by the United States Army Corps of Engineers.

(2) ~~"Government entity" means the~~Government entity. – The State and its agencies and subdivisions, or the federal ~~government, and units of local government.~~government. "Government entity" does not include a unit of local government.

(3) ~~"Hydrologic area" means an~~ Hydrologic area. – An eight-digit Cataloging Unit designated by the United States Geological Survey.

(4) ~~"Jurisdictional waters" means wetlands,~~Jurisdictional waters. – Wetlands, streams, or other waters of the State or of the United States.

(4a) Mitigation banking instrument. – A contract between the Ecosystem Enhancement Program or another State or federal agency with jurisdiction over wetlands mitigation and a private compensatory mitigation bank, stipulating the type and amount of compensatory mitigation credit available from one or more sites.

(4b) Private compensatory mitigation bank. – A commercial entity incorporated for the purpose of building private compensatory mitigation bank sites. No government entity or unit of local government shall be considered a "private compensatory mitigation bank."

(4c) Private compensatory mitigation bank site. – A site created by a private compensatory mitigation bank and approved for mitigation credit by State

and federal regulatory authorities through execution of a mitigation banking instrument.

(5) ~~"Unit of local government" means a~~ Unit of local government. – A "local government," "public authority," or "special district" as defined in G.S. 159-7.

(b) Department to Coordinate Compensatory Mitigation. – All compensatory mitigation required by permits or authorizations issued by the Department or by the United States Army Corps of Engineers shall be coordinated by the Department consistent with the basinwide restoration plans and rules developed by the Environmental Management Commission. All compensatory mitigation, whether performed by the Department or by permit applicants, shall be consistent with the basinwide restoration plans. All compensatory mitigation shall be consistent with rules adopted by the Commission for wetland and stream mitigation and for protection and maintenance of riparian buffers. The Department shall bid and award contracts for compensatory mitigation contracts in accordance with G.S. 143-129.2A.

(c) Compensatory Mitigation Emphasis on Replacing Ecological Function Within Same River Basin. – The emphasis of compensatory 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 Ecosystem Enhancement Program.

(d) Compensatory Mitigation Options Available to Government Entities. – A government entity may satisfy compensatory 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 Department or of the United States Army Corps of Engineers, as applicable:

(1) Payment of a fee established by the Commission into the Ecosystem Restoration Fund established in G.S. 143-214.12.

(2) Donation of land to the Ecosystem Enhancement Program or to other public or private nonprofit conservation organizations as approved by the Department.

(3) Participation in a compensatory mitigation bank that has been approved by the United States Army Corps of Engineers, provided that the Department or the United States Army Corps of Engineers, as applicable, approves the use of such bank for the required compensatory mitigation.

(4) Preparing and implementing a compensatory mitigation plan.

(d1) Compensatory Mitigation Options Available to Applicants Other than Government Entities. – An applicant other than a government entity may satisfy compensatory mitigation requirements by the following actions, if those actions meet or exceed the requirements of the United States Army Corps of Engineers:

(1) Participation in a compensatory mitigation bank that has been approved by the United States Army Corps of Engineers, provided that the Department or the United States Army Corps of Engineers, as applicable, approves the use of such bank for the required compensatory mitigation. This option is only available in a hydrologic area where there is at least one compensatory mitigation bank that has been approved by the United States Army Corps of Engineers.

(2) Payment of a fee established by the Commission into the Ecosystem Restoration Fund established in G.S. 143-214.12. – This option is only available to an applicant who demonstrates that the option under subdivision (1) of this subsection is not available.

(3) Donation of land to the Ecosystem Enhancement Program or to other public or private nonprofit conservation organizations as approved by the Department.

(4) Preparing and implementing a compensatory mitigation plan.

(d2) The Department shall purchase mitigation credits from private compensatory mitigation banks upon a finding that it is in the best interests of the State to do so.

...."

SECTION 1.2. Article 8 of Chapter 143 of the General Statutes is amended by adding a new section to read:

"**§ 143-129.2A. Design and construction of compensatory wetlands mitigation projects.**

(a) All terms relating to compensatory mitigation as used in this section shall be defined as set forth in G.S. 143-214.11.

(b) To acknowledge the highly complex and innovative nature of compensatory mitigation and the economic and technical utility of contracts for compensatory mitigation, which include in their scope particular techniques and expertise and combinations of design, construction, operation, management, and maintenance responsibilities over prolonged periods of time, it may be beneficial to the State to award a contract for compensatory wetlands mitigation on the basis of factors other than cost alone, including, but not limited to, design and operational experience, demonstrated past success in implementation of projects, avoidance of harmful environmental impact, and operational guarantees. Accordingly, and notwithstanding other provisions of this Article or any local law, a contract entered into between the Department of Environment and Natural Resources and any person pursuant to this section may be awarded in accordance with the following provisions for the evaluation of proposals submitted in response to a request for proposals and the award of a contract for compensatory mitigation design and construction.

(c) The Department of Natural Resources shall require in its request for proposals for compensatory wetlands mitigation projects that each proposal to be submitted shall 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.

(2) Any other information as the Department 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 a request for proposals may be evaluated on the basis of a technical analysis of mitigation design, operational experience of the elements utilized in the proposed mitigation, and any other factors and information that the Department determines to have a material bearing on its ability to evaluate any proposal, provided, however, that those additional factors were set forth in the request for proposal.

(e) The Department 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 negotiate a contract with the proposer for the performance of the design and construction services set forth in the request for proposals. The Department's determination shall be deemed to be conclusive even if the contract is not awarded to the proposer submitting the lowest price bid."

SECTION 1.3. The Program Evaluation Division of the North Carolina General Assembly shall perform a review of the efficiency of the Ecosystem Enhancement Program in meeting the State's mitigation needs. The review shall include an evaluation of the following:

(1) Whether it is in the best interest of the State to maintain the Ecosystem Enhancement Program as a State agency.

(2) Whether private mitigation banks could replace the Ecosystem Enhancement Program and meet the State's future mitigation needs.

SECTION 1.4. The Department of Environment and Natural Resources shall consolidate the positions of program director and deputy director of the Ecosystem Enhancement Program into one executive director position. All decision-making authority for the Program shall be vested with the executive director.

SECTION 1.5. The Department shall hold the mitigation provider harmless in the event of any shortfall of units of mitigation procured under a mitigation contract between the Program and the provider, provided that the shortfall is due to changes in State or federal regulatory policy that occur after the Program and provider have executed the mitigation contract.

Part II. Clean Water Management Trust Fund Changes.

SECTION 2.1. 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.

(4) A corporation or other privately owned business with expertise in the conservation, preservation, and restoration of the State's environmental and natural resources.

...."

SECTION 2.2. G.S. 113A-256 reads as rewritten:

"**§ 113A-256. Clean Water Management Trust Fund Board of Trustees: powers and duties.**

(a) Allocate Grant Funds. – The Trustees shall allocate moneys from the Fund as grants. A grant may be awarded only for a project or activity that satisfies the criteria and furthers the purposes of this Article.

(b) Develop Grant Criteria. – The Trustees shall develop criteria for awarding grants under this Article. The criteria developed shall include consideration of the following:

(1) The significant enhancement and conservation of water quality in the State.

(2) The objectives of the basinwide management plans for the State's river basins and watersheds.

(3) The promotion of regional integrated ecological networks insofar as they affect water quality.

(4) The specific areas targeted as being environmentally sensitive.

(5) The geographic distribution of funds as appropriate.

(6) The preservation or restoration of water resources with significant ~~recreational~~ ecological, recreational, or economic value and uses.

(7) The development of a network of riparian buffer-greenways bordering and connecting the State's waterways that will serve environmental, educational, and recreational uses.

(c) Develop Additional Guidelines. – The Trustees may develop guidelines in addition to the grant criteria consistent with and as necessary to implement this Article.

(d) Acquisition of Land. – The Trustees may acquire land by purchase, negotiation, gift, or devise. Any acquisition of land by the Trustees must be reviewed and approved by the Council of State and the deed for the land subject to approval of the Attorney General before the acquisition can become effective. In determining whether to acquire land as permitted by this Article, the Trustees shall consider whether the acquisition furthers the purposes of this

Article and may also consider recommendations from the Council. Nothing in this section shall allow the Trustees to acquire land under the right of eminent domain.

(e) Exchange of Land. – The Trustees may exchange any land they acquire in carrying out the powers conferred on the Trustees by this Article.

(f) Land Management. – The Trustees may designate managers or managing agencies of the lands acquired under this Article.

(g) Tax Credit Certification. – The Trustees shall develop guidelines to determine whether land donated for a tax credit under G.S. 105-130.34 or G.S. 105-151.12 are suitable for one of the purposes under this Article and may be certified for a tax credit.

(h) Rule-making Authority. – The Trustees may adopt rules to implement this Article. Chapter 150B of the General Statutes applies to the adoption of rules by the Trustees.

(i) Repealed by Session Laws 1999-237, s. 15.11, effective July 1, 1999.

(j) Debt. – Of the funds credited annually to the Fund, the Trustees may authorize expenditure of a portion to reimburse the General Fund for debt service on special indebtedness to be issued or incurred under Article 9 of Chapter 142 of the General Statutes for the purposes provided in G.S. 113A-253(c)(1) through (4). In order to authorize expenditure of funds for debt service reimbursement, the Trustees must identify to the State Treasurer and the Department of Administration the specific capital projects for which they would like special indebtedness to be issued or incurred and the annual amount they intend to make available, and request the State Treasurer to issue or incur the indebtedness. After special indebtedness has been issued or incurred for a capital project requested by the Trustees, the Trustees must direct the State Treasurer to credit to the General Fund each year the actual aggregate principal and interest payments to be made in that year on the special indebtedness, as identified by the State Treasurer.

(k) Balance in Grant Awards. – In awarding grants under this Article, the Trustees shall, as nearly as possible, award equal dollar amounts in each grant cycle for land preservation and land restoration. For purposes of this subsection, "land preservation" means the acquisition of real property or the imposition of a conservation easement on real property, and "restoration of land" means the design and construction of mitigative measures intended to restore the capacity of the land to preserve, protect, or improve water quality."

Part III. Enacting Provisions.

SECTION 3. This act is effective when it becomes law and applies to all projects and contracts awarded on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

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SENATE BILL 492
PROPOSED COMMITTEE SUBSTITUTE S492-PCS95103-SB-47

Short Title: Protect Landowners' Water Rights. (Public)

Sponsors:

Referred to:

April 4, 2011

A BILL TO BE ENTITLED

AN ACT TO ENHANCE THE PROTECTION OF LANDOWNERS' WATER RIGHTS AND TO EXEMPT AGRICULTURAL PONDS FROM THE DAM SAFETY ACT.

The General Assembly of North Carolina enacts:

SECTION 1. Article 38 of Chapter 143 of the General Statutes is amended by adding a new section to read:

"**§ 143-350.1. Declaration of policy.**

The following principles constitute the water resources policy of the State. In rendering administrative and judicial determinations regarding water use, the State and any political subdivision of the State shall be governed by these principles.

(1) Water resources protected. – Access to and the ability to use water resources is critical in preserving North Carolina's rich heritage as a societal, economic, environmental, educational, and cultural leader. Protection of these resources is a priority of the State.

(2) Protection of water will include voluntary initiatives. – The State will utilize a combination of regulatory and voluntary programs to ensure the protection of water resources and the preservation of landowners' water rights. Recognizing certain authority of the State to regulate water use in Articles 21 and 38 of Chapter 143 of the General Statutes, the intent of the State is to limit the exercise of such authority in favor of working with landowners and water users to encourage voluntary solutions to reduce water use.

(3) Encourage conservation and efficiency. – The State will examine, promote, and implement programs that provide incentives for water users to conserve water and increase water use efficiency.

(4) Encourage increased storage capacity. – The State will examine and seek to eliminate regulatory impediments to increased development of water resources and storage structures, including wells, ponds, reservoirs, and other impoundments.

(5) Encourage reuse. – The State will encourage the adoption of programs that facilitate the increased use of reclaimed water and recycled water and will subject any statutes or rules that could possibly interfere with the increased use of reclaimed water and recycled water to a heightened standard of necessity and urgency.

(6) Recognize roles of landowners. – The State will promote practices, projects, and programs that encourage landowners to conserve and protect water resources.

(7) Preservation of landowners' water rights. – In carrying out its duty to protect water resources, the State shall first identify incentives, voluntary programs, and other nonregulatory initiatives prior to exercising its regulatory authority under Articles 21 and 38 of Chapter 143 of the General Statutes."

SECTION 2. G.S. 143-215.22 reads as rewritten:

"**§ 143-215.22. Law of riparian rights not changed.**

(a) Nothing contained in this Part shall change or modify existing common or statutory law with respect to the relative rights of riparian owners concerning the use of surface water in this State.

(b) Landowners' Water Rights Protected. – Except for the authority granted to the Governor, the Department, or the Commission under Articles 21 and 38 of Chapter 143 of the General Statutes, the Commission under Part 4 of Article 7 of Chapter 143B of the General Statutes, and the Commission for Public Health under Article 10 of Chapter 130A of the General Statutes, neither the State nor any political subdivision of the State shall adopt rules or ordinances to limit a landowner from withdrawing and using water as otherwise allowed under the common or statutory law of the State from any of the following:

(1) An impoundment constructed by or owned by the landowner.

(2) Wells constructed on the landowner's property.

(3) Other source of water on the landowner's property, including, but not limited to, captured stormwater, springs, and artesian wells.

(c) Nothing in this section shall be construed to limit the enforcement of State or local laws designed to limit the use or installation of wells for withdrawals in areas with groundwater contamination or to limit the enforcement of State water quality standards."

SECTION 3. G.S. 143-355.3 is amended by adding a new subsection to read:

"(f) Nothing in this section shall limit a landowner from withdrawing water for use in agricultural activities, when such water is withdrawn from any of the following:

(1) An impoundment constructed by or owned by the landowner.

(2) Wells constructed on the landowner's property.

(3) Other natural source of water on the landowner's property, including, but not limited to, captured stormwater, springs, and artesian wells.

As used in this section, "agricultural activities" shall be defined as any activities described by G.S. 106-581.1."

SECTION 4. G.S. 143-215.25A(a) reads as rewritten:

"(a) Except as otherwise provided in this Part, this Part does not apply to any dam:

(1) Constructed by the United States Army Corps of Engineers, the Tennessee Valley Authority, or another agency of the United States government, when the agency designed or approved plans for the dam and supervised its construction.

(2) Constructed with financial assistance from the United States Soil Conservation Service, when that agency designed or approved plans for the dam and supervised its construction.

(3) Licensed by the Federal Energy Regulatory Commission, or for which a license application is pending with the Federal Energy Regulatory Commission.

(4) For use in connection with electric generating facilities regulated by the Nuclear Regulatory Commission.

(5) Under a single private ownership that provides protection only to land or other property under the same ownership and that does not pose a threat to human life or property below the dam.

(6) That is less than ~~15~~ 25 feet in height or that has an impoundment capacity of less than ~~10~~ 50 acre-feet, unless the Department determines that failure of the dam could result in loss of human life or significant damage to property below the dam.

(7) Constructed for the purpose of providing water for agricultural use, when a person who is licensed as a professional engineer under Chapter 89C of the General Statutes designed or approved plans for the dam and supervised its construction."

SECTION 5. This act is effective when it becomes law. The exemption modified in subdivision (6) of G.S. 143-215.25A(a) and the exemption established in subdivision (7) of G.S. 143-215.25A(a), as amended by Section 4 of this act, shall apply retroactively to any dam that is subject to any enforcement action that has not been resolved as of June 1, 2011.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

S D

SENATE BILL 492
PROPOSED COMMITTEE SUBSTITUTE S492-CSSB-47 [v.4]

Short Title: Protect Landowners' Water Rights. (Public)

Sponsors:

Referred to:

April 4, 2011

A BILL TO BE ENTITLED

AN ACT TO ENHANCE THE PROTECTION OF LANDOWNERS' WATER RIGHTS AND TO EXEMPT AGRICULTURAL PONDS FROM THE DAM SAFETY ACT.

The General Assembly of North Carolina enacts:

SECTION 1. Article 38 of Chapter 143 of the General Statutes is amended by adding a new section to read:

"**§ 143-350.1. Declaration of policy.**

The following principles constitute the water resources policy of the State. In rendering administrative and judicial determinations regarding water use, the State and any political subdivision of the State shall be governed by these principles.

(1) Water resources protected. – Access to and the ability to use water resources is critical in preserving North Carolina's rich heritage as a societal, economic, environmental, educational, and cultural leader. Protection of these resources is a priority of the State.

(2) Protection of water will include voluntary initiatives. – The State will utilize a combination of regulatory and voluntary programs to ensure the protection of water resources and the preservation of landowners' water rights. Recognizing certain authority of the State to regulate water use in Articles 21 and 38 of Chapter 143 of the General Statutes, the intent of the State is to limit the exercise of such authority in favor of working with landowners and water users to encourage voluntary solutions to reduce water use.

(3) Encourage conservation and efficiency. – The State will examine, promote, and implement programs that provide incentives for water users to conserve water and increase water use efficiency.

(4) Encourage increased storage capacity. – The State will examine and seek to eliminate regulatory impediments to increased development of water resources and storage structures, including wells, ponds, reservoirs, and other impoundments.

(5) Encourage reuse. – The State will encourage the adoption of programs that facilitate the increased use of reclaimed water and recycled water and will subject any statutes or rules that could possibly interfere with the increased use of reclaimed water and recycled water to a heightened standard of necessity and urgency.



(6) Recognize roles of landowners. – The State will promote practices, projects, and programs that encourage landowners to conserve and protect water resources.

(7) Preservation of landowners' water rights. – In carrying out its duty to protect water resources, the State shall first identify incentives, voluntary programs, and other nonregulatory initiatives prior to exercising its regulatory authority under Articles 21 and 38 of Chapter 143 of the General Statutes."

SECTION 2. G.S. 143-215.22 reads as rewritten:

"**§ 143-215.22. Law of riparian rights not changed.**

(a) Nothing contained in this Part shall change or modify existing common or statutory law with respect to the relative rights of riparian owners concerning the use of surface water in this State.

(b) Landowners' Water Rights Protected. – Except for the authority granted to the Governor, the Department, or the Commission under Articles 21 and 38 of Chapter 143 of the General Statutes, the Commission under Part 4 of Article 7 of Chapter 143B of the General Statutes, and the Commission for Public Health under Article 10 of Chapter 130A of the General Statutes, neither the State nor any political subdivision of the State shall adopt rules or ordinances to limit a landowner from withdrawing and using water as otherwise allowed under the common or statutory law of the State from any of the following:

(1) An impoundment constructed by or owned by the landowner.

(2) Wells constructed on the landowner's property.

(3) Other source of water on the landowner's property, including, but not limited to, captured stormwater, springs, and artesian wells.

(c) Nothing in this section shall be construed to limit the enforcement of State or local laws designed to limit the use or installation of wells for withdrawals in areas with groundwater contamination or to limit the enforcement of State water quality standards."

SECTION 3. G.S. 143-355.3 is amended by adding a new subsection to read:

"(f) Nothing in this section shall limit a landowner from withdrawing water for use in agricultural activities, when such water is withdrawn from any of the following:

(1) An impoundment constructed by or owned by the landowner.

(2) Wells constructed on the landowner's property.

(3) Other natural source of water on the landowner's property, including, but not limited to, captured stormwater, springs, and artesian wells.

As used in this section, "agricultural activities" shall be defined as any activities described by G.S. 106-581.1."

SECTION 4. G.S. 143-215.25A(a) reads as rewritten:

"(a) Except as otherwise provided in this Part, this Part does not apply to any dam:

(1) Constructed by the United States Army Corps of Engineers, the Tennessee Valley Authority, or another agency of the United States government, when the agency designed or approved plans for the dam and supervised its construction.

(2) Constructed with financial assistance from the United States Soil Conservation Service, when that agency designed or approved plans for the dam and supervised its construction.

(3) Licensed by the Federal Energy Regulatory Commission, or for which a license application is pending with the Federal Energy Regulatory Commission.

(4) For use in connection with electric generating facilities regulated by the Nuclear Regulatory Commission.

(5) Under a single private ownership that provides protection only to land or other property under the same ownership and that does not pose a threat to human life or property below the dam.

(6) That is less than ~~15~~ 25 feet in height or that has an impoundment capacity of less than ~~10~~ 50 acre-feet, unless the Department determines that failure of the dam could result in loss of human life or significant damage to property below the dam.

(7) Constructed for the purpose of providing water for agricultural use, when a person who is licensed as a professional engineer under Chapter 89C of the General Statutes designed or approved plans for the dam and supervised its construction."

SECTION 5. This act is effective when it becomes law. The exemption modified in subdivision (6) of G.S. 143-215.25A(a) and the exemption established in subdivision (7) of G.S. 143-215.25A(a), as amended by Section 4 of this act, shall apply retroactively to any dam that is subject to any enforcement action that has not been resolved as of June 1, 2011.

SENATE BILL 492:
Protect Landowner Water Rights

2011-2012 General Assembly

Committee:	Senate Agriculture/Environment/Natural Resources	**Date:**	June 7, 2011
Introduced by:	Senators Rouzer, Jackson, East	**Prepared by:**	Jeff Hudson Committee Counsel
Analysis of:	PCS to First Edition S492-PCS35257-SB-44		

SUMMARY: The Proposed Committee Substitute for Senate Bill 492 (PCS) would amend State water resources policy, limit the regulation of water withdrawals by landowners, and expand exemptions from the Dam Safety Act.

[As introduced, this bill was identical to H621, as introduced by Reps. Gillespie, Langdon, Brisson, Hill, which is currently in House Environment.]

BILL ANALYSIS:

Section 1 would provide that the following principles constitute the water resources policy of the State and that they will govern administrative and judicial decisions regarding water use:

- Water resources protected: Access to and the ability to use water resources is critical in preserving North Carolina's rich heritage as a societal, economic, environmental, educational, and cultural leader. Protection of these resources is a priority of the State.

  Protection of water will include voluntary initiatives: The State will utilize a combination of regulatory and voluntary programs to ensure the protection of water resources and the preservation of landowner water rights. Recognizing certain authority of the State to regulate water use in Article 21 (water quality protection) and Article 38 (water resources and drought management) of Chapter 143 of the General Statutes, the intent of the State is to limit the exercise of such authority in favor of working with landowners and water users to encourage voluntary solutions to reducing water use.

- Encourage conservation and efficiency: The State will examine, promote, and implement programs that provide incentives for water users to conserve water and increase water use efficiency.

- Encourage increased storage capacity: The State will examine and seek to eliminate regulatory impediments to increased development of water resources and storage structures, including wells, ponds, reservoirs, and other impoundments.

- Encourage reuse: The State will encourage the adoption of programs that facilitate the increased use of reclaimed water and recycled water and will subject any statutes or rules that could interfere with the increased use of reclaimed water and recycled water to a heightened scrutiny.

- Recognize roles of landowners: The State will promote practices, projects, and programs that encourage landowners to conserve and protect water resources.

- Preservation of landowner water rights: In carrying out its duty to protect water resources, the State shall first identify incentives, voluntary programs, and other nonregulatory initiatives prior to exercising its regulatory authority under Article 21 (water quality protection) and Article 38 (water resources and drought management) of Chapter 143 of the General Statutes.

Section 2 would amend the statute that provides that nothing in the capacity use area statutes shall change or modify common or statutory law with respect to riparian rights to provide that, except for the

authority granted under the statutes for water quality protection and the management of water resources and droughts, neither the State nor its political subdivisions may limit a landowner from withdrawing and using water from any of the following sources:

- A natural body of water abutting or located on the landowner's property.
- An impoundment constructed by or owned by the landowner.
- Wells constructed on the landowner's property.
- Other sources of water on the landowner's property, including, but not limited to, captured stormwater, springs, and artesian wells.

Section 3 would amend the statute governing the declaration and management of water shortage emergencies to provide that nothing in this statute may limit a landowner from withdrawing water for use in agricultural activities[1], when such water is withdrawn from any of the following sources:

- A natural body of water abutting or located on the landowner's property.
- An impoundment constructed by or owned by the landowner.
- Wells constructed on the landowner's property.
- Other natural source of water on the landowner's property, including, but not limited to, captured stormwater, springs, and artesian wells.

Section 3 would further provide that any limitation on the withdrawal of water for agricultural activities from a body of water that also serves as a water source for a public water system that is experiencing a water shortage emergency shall allow continued withdrawal for agricultural irrigation and maintenance of farm animals and crops to the maximum extent consistent with public health and safety.

Section 4 would exempt from the Dam Safety Act a dam constructed for the purpose of providing water for agricultural use when a licensed professional engineer designed or approved plans for the dam and supervised its construction. Section 4 would also expand the exemption for small dams by increasing the height threshold from 15 feet to 25 feet and increasing the impoundment capacity threshold from less than 10 acre-feet to less than 50 acre-feet.

EFFECTIVE DATE: This act would be effective when it becomes law. The dam safety exemption provisions would apply retroactively to any dam that is the subject of an enforcement action that has not been resolved as of June 1, 2011.

S492-SMSB-40(CSSB-44) v4

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[1] As used in this provision, "agricultural activities" refers to all of the following:

- The cultivation of soil for production and harvesting of crops, including but not limited to fruits, vegetables, sod, flowers and ornamental plants.
- The planting and production of trees and timber.
- Dairying and the raising, management, care, and training of livestock, including horses, bees, poultry, and other animals for individual and public use, consumption, and marketing.
- Aquaculture as defined in G.S. 106 758.
- The operation, management, conservation, improvement, and maintenance of a farm and the structures and buildings on the farm, including building and structure repair, replacement, expansion, and construction incident to the farming operation.
- When performed on the farm, "agriculture", "agricultural", and "farming" also include the marketing and selling of agricultural products, agritourism, the storage and use of materials for agricultural purposes, packing, treating, processing, sorting, storage, and other activities performed to add value to crops, livestock, and agricultural items produced on the farm, and similar activities incident to the operation of a farm.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

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SENATE BILL 492
PROPOSED COMMITTEE SUBSTITUTE S492-CSSB-47 [v.4]

Short Title: Protect Landowners' Water Rights. (Public)

Sponsors:

Referred to:

April 4, 2011

A BILL TO BE ENTITLED

AN ACT TO ENHANCE THE PROTECTION OF LANDOWNERS' WATER RIGHTS AND TO EXEMPT AGRICULTURAL PONDS FROM THE DAM SAFETY ACT.

The General Assembly of North Carolina enacts:

SECTION 1. Article 38 of Chapter 143 of the General Statutes is amended by adding a new section to read:

"**§ 143-350.1. Declaration of policy.**

The following principles constitute the water resources policy of the State. In rendering administrative and judicial determinations regarding water use, the State and any political subdivision of the State shall be governed by these principles.

(1) Water resources protected. – Access to and the ability to use water resources is critical in preserving North Carolina's rich heritage as a societal, economic, environmental, educational, and cultural leader. Protection of these resources is a priority of the State.

(2) Protection of water will include voluntary initiatives. – The State will utilize a combination of regulatory and voluntary programs to ensure the protection of water resources and the preservation of landowners' water rights. Recognizing certain authority of the State to regulate water use in Articles 21 and 38 of Chapter 143 of the General Statutes, the intent of the State is to limit the exercise of such authority in favor of working with landowners and water users to encourage voluntary solutions to reduce water use.

(3) Encourage conservation and efficiency. – The State will examine, promote, and implement programs that provide incentives for water users to conserve water and increase water use efficiency.

(4) Encourage increased storage capacity. – The State will examine and seek to eliminate regulatory impediments to increased development of water resources and storage structures, including wells, ponds, reservoirs, and other impoundments.

(5) Encourage reuse. – The State will encourage the adoption of programs that facilitate the increased use of reclaimed water and recycled water and will subject any statutes or rules that could possibly interfere with the increased use of reclaimed water and recycled water to a heightened standard of necessity and urgency.

(6) Recognize roles of landowners. – The State will promote practices, projects, and programs that encourage landowners to conserve and protect water resources.

(7) Preservation of landowners' water rights. – In carrying out its duty to protect water resources, the State shall first identify incentives, voluntary programs, and other nonregulatory initiatives prior to exercising its regulatory authority under Articles 21 and 38 of Chapter 143 of the General Statutes."

SECTION 2. G.S. 143-215.22 reads as rewritten:

"**§ 143-215.22. Law of riparian rights not changed.**

(a) Nothing contained in this Part shall change or modify existing common or statutory law with respect to the relative rights of riparian owners concerning the use of surface water in this State.

(b) Landowners' Water Rights Protected. – Except for the authority granted to the Governor, the Department, or the Commission under Articles 21 and 38 of Chapter 143 of the General Statutes, the Commission under Part 4 of Article 7 of Chapter 143B of the General Statutes, and the Commission for Public Health under Article 10 of Chapter 130A of the General Statutes, neither the State nor any political subdivision of the State shall adopt rules or ordinances to limit a landowner from withdrawing and using water as otherwise allowed under the common or statutory law of the State from any of the following:

(1) An impoundment constructed by or owned by the landowner.

(2) Wells constructed on the landowner's property.

(3) Other source of water on the landowner's property, including, but not limited to, captured stormwater, springs, and artesian wells.

(c) Nothing in this section shall be construed to limit the enforcement of State or local laws designed to limit the use or installation of wells for withdrawals in areas with groundwater contamination or to limit the enforcement of State water quality standards."

SECTION 3. G.S. 143-355.3 is amended by adding a new subsection to read:

"(f) Nothing in this section shall limit a landowner from withdrawing water for use in agricultural activities, when such water is withdrawn from any of the following:

(1) An impoundment constructed by or owned by the landowner.

(2) Wells constructed on the landowner's property.

(3) Other natural source of water on the landowner's property, including, but not limited to, captured stormwater, springs, and artesian wells.

As used in this section, "agricultural activities" shall be defined as any activities described by G.S. 106-581.1."

SECTION 4. G.S. 143-215.25A(a) reads as rewritten:

"(a) Except as otherwise provided in this Part, this Part does not apply to any dam:

(1) Constructed by the United States Army Corps of Engineers, the Tennessee Valley Authority, or another agency of the United States government, when the agency designed or approved plans for the dam and supervised its construction.

(2) Constructed with financial assistance from the United States Soil Conservation Service, when that agency designed or approved plans for the dam and supervised its construction.

(3) Licensed by the Federal Energy Regulatory Commission, or for which a license application is pending with the Federal Energy Regulatory Commission.

(4) For use in connection with electric generating facilities regulated by the Nuclear Regulatory Commission.

(5) Under a single private ownership that provides protection only to land or other property under the same ownership and that does not pose a threat to human life or property below the dam.

(6) That is less than ~~15~~ 25 feet in height or that has an impoundment capacity of less than ~~10~~ 50 acre-feet, unless the Department determines that failure of the dam could result in loss of human life or significant damage to property below the dam.

(7) Constructed for the purpose of providing water for agricultural use, when a person who is licensed as a professional engineer under Chapter 89C of the General Statutes designed or approved plans for the dam and supervised its construction."

SECTION 5. This act is effective when it becomes law. The exemption modified in subdivision (6) of G.S. 143-215.25A(a) and the exemption established in subdivision (7) of G.S. 143-215.25A(a), as amended by Section 4 of this act, shall apply retroactively to any dam that is subject to any enforcement action that has not been resolved as of June 1, 2011.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

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SENATE BILL 492
PROPOSED COMMITTEE SUBSTITUTE S492-PCS35257-SB-44

Short Title: Protect Landowners' Water Rights. (Public)

Sponsors:

Referred to:

April 4, 2011

A BILL TO BE ENTITLED

AN ACT TO ENHANCE THE PROTECTION OF LANDOWNERS' WATER RIGHTS AND TO EXEMPT AGRICULTURAL PONDS FROM THE DAM SAFETY ACT.

The General Assembly of North Carolina enacts:

SECTION 1. Article 38 of Chapter 143 of the General Statutes is amended by adding a new section to read:

"**§ 143-350.1. Declaration of policy.**

The following principles constitute the water resources policy of the State. In rendering administrative and judicial determinations regarding water use, the State and any political subdivision of the State shall be governed by these principles.

(1) Water resources protected. – Access to and the ability to use water resources is critical in preserving North Carolina's rich heritage as a societal, economic, environmental, educational, and cultural leader. Protection of these resources is a priority of the State.

(2) Protection of water will include voluntary initiatives. – The State will utilize a combination of regulatory and voluntary programs to ensure the protection of water resources and the preservation of landowners' water rights. Recognizing certain authority of the State to regulate water use in Articles 21 and 38 of Chapter 143 of the General Statutes, the intent of the State is to limit the exercise of such authority in favor of working with landowners and water users to encourage voluntary solutions to reduce water use.

(3) Encourage conservation and efficiency. – The State will examine, promote, and implement programs that provide incentives for water users to conserve water and increase water use efficiency.

(4) Encourage increased storage capacity. – The State will examine and seek to eliminate regulatory impediments to increased development of water resources and storage structures, including wells, ponds, reservoirs, and other impoundments.

(5) Encourage reuse. – The State will encourage the adoption of programs that facilitate the increased use of reclaimed water and recycled water and will subject any statutes or rules that could possibly interfere with the increased use of reclaimed water and recycled water to a heightened standard of necessity and urgency.

(6) Recognize roles of landowners. – The State will promote practices, projects, and programs that encourage landowners to conserve and protect water resources.

(7) Preservation of landowners' water rights. – In carrying out its duty to protect water resources, the State shall first identify incentives, voluntary programs, and other nonregulatory initiatives prior to exercising its regulatory authority under Articles 21 and 38 of Chapter 143 of the General Statutes."

SECTION 2. G.S. 143-215.22 reads as rewritten:

"**§ 143-215.22. Law of riparian rights not changed.**

(a) Nothing contained in this Part shall change or modify existing common or statutory law with respect to the relative rights of riparian owners concerning the use of surface water in this State.

(b) Landowners' Water Rights Protected. – Except for authority granted to the Governor, Department, or Commission in Articles 21 and 38 of Chapter 143 of the General Statutes, neither the State nor any political subdivision of the State shall limit a landowner from withdrawing and using water from any of the following:

(1) A natural body of water abutting or located on the landowner's property.

(2) An impoundment constructed by or owned by the landowner.

(3) Wells constructed on the landowner's property.

(4) Other source of water on the landowner's property, including, but not limited to, captured stormwater, springs, and artesian wells.

(c) Nothing in this section shall be construed to limit the enforcement of State or local laws designed to limit the use or installation of wells for withdrawals in areas with groundwater contamination or to limit the enforcement of State water quality standards."

SECTION 3. G.S. 143-355.3 is amended by adding two new subsections to read:

"(f) Except as provided in subsection (g) of this section, nothing in this section shall limit a landowner from withdrawing water for use in agricultural activities, when such water is withdrawn from any of the following:

(1) A natural body of water abutting or located on the landowner's property.

(2) An impoundment constructed by or owned by the landowner.

(3) Wells constructed on the landowner's property.

(4) Other natural source of water on the landowner's property, including, but not limited to, captured stormwater, springs, and artesian wells.

As used in this section, "agricultural activities" shall be defined as any activities described by G.S. 106-581.1.

(g) Any limitation on the withdrawal of water for agricultural activities from a body of water that also serves as a water source for a public water system that is experiencing a water shortage emergency shall allow continued withdrawal for agricultural irrigation and maintenance of farm animals and crops to the maximum extent consistent with public health and safety."

SECTION 4. G.S. 143-215.25A(a) reads as rewritten:

"(a) Except as otherwise provided in this Part, this Part does not apply to any dam:

(1) Constructed by the United States Army Corps of Engineers, the Tennessee Valley Authority, or another agency of the United States government, when the agency designed or approved plans for the dam and supervised its construction.

(2) Constructed with financial assistance from the United States Soil Conservation Service, when that agency designed or approved plans for the dam and supervised its construction.

(3) Licensed by the Federal Energy Regulatory Commission, or for which a license application is pending with the Federal Energy Regulatory Commission.

(4) For use in connection with electric generating facilities regulated by the Nuclear Regulatory Commission.

(5) Under a single private ownership that provides protection only to land or other property under the same ownership and that does not pose a threat to human life or property below the dam.

(6) That is less than ~~15~~ 25 feet in height or that has an impoundment capacity of less than ~~10~~ 50 acre-feet, unless the Department determines that failure of the dam could result in loss of human life or significant damage to property below the dam.

(7) Constructed for the purpose of providing water for agricultural use, when a person who is licensed as a professional engineer under Chapter 89C of the General Statutes designed or approved plans for the dam and supervised its construction."

SECTION 5. This act is effective when it becomes law. The exemption modified in subdivision (6) of G.S. 143-215.25A(a) and the exemption established in subdivision (7) of G.S. 143-215.25A(a), as amended by Section 4 of this act, shall apply retroactively to any dam that is subject to any enforcement action that has not been resolved as of June 1, 2011.

SENATE BILL 492

Short Title:	Protect Landowner Water Rights.	(Public)
Sponsors:	Senators Rouzer, Jackson, East; Brock, Daniel, and Hise.	
Referred to:	Agriculture/Environment/Natural Resources.	

April 4, 2011

A BILL TO BE ENTITLED

AN ACT TO ENHANCE THE PROTECTION OF LANDOWNERS' WATER RIGHTS, AND TO EXEMPT AGRICULTURAL PONDS FROM THE DAM SAFETY ACT.

The General Assembly of North Carolina enacts:

SECTION 1. Article 38 of Chapter 143 of the General Statutes is amended by adding a new section to read:

"**§ 143-350.1. Declaration of policy.**

The following principles constitute the water resources policy of the State. In rendering administrative and judicial determinations regarding water use, the State and any political subdivision of the State shall be governed by these principles.

(1) Water resources protected. – Access to and the ability to use water resources is critical in preserving North Carolina's rich heritage as a societal, economic, environmental, educational, and cultural leader. Protection of these resources is a priority of the State.

(2) Protection of water will include voluntary initiatives. – The State will utilize a combination of regulatory and voluntary programs to ensure the protection of water resources and the preservation of landowner water rights. Recognizing certain authority of the State to regulate water use in Articles 21 and 38 of Chapter 143 of the General Statutes, the intent of the State is to limit the exercise of such authority in favor of working with landowners and water users to encourage voluntary solutions to reducing water use.

(3) Encourage conservation and efficiency. – The State will examine, promote, and implement programs that provide incentives for water users to conserve water and increase water use efficiency.

(4) Encourage increased storage capacity. – The State will examine and seek to eliminate regulatory impediments to increased development of water resources and storage structures, including wells, ponds, reservoirs, and other impoundments.

(5) Encourage reuse. – The State will encourage the adoption of programs that facilitate the increased use of reclaimed water and recycled water and, subject to a heightened standard of necessity and urgency, any statutes or rules that interfere with the increased use of reclaimed and recycled water.

(6) Recognize roles of landowners. – The State will promote practices, projects, and programs that encourage landowners to conserve and protect water resources.

(7) Preservation of landowner water rights. – In carrying out its duty to protect water resources, the State shall first identify incentives, voluntary programs,

and other nonregulatory initiatives prior to exercising its authority under Articles 21 and 38 of Chapter 143 of the General Statutes."

SECTION 2. G.S. 143-215.22 reads as rewritten:

"**§ 143-215.22. Law of riparian rights not changed.**

(a) Nothing contained in this Part shall change or modify existing common or statutory law with respect to the relative rights of riparian owners concerning the use of surface water in this State.

(b) Landowner Water Rights Protected. – Except for authority granted to the Governor, Department, or Commission in Articles 21 and 38 of Chapter 143 of the General Statutes, neither the State nor any political subdivision of the State shall limit a landowner from withdrawing and using water from any of the following:

(1) A natural body of water abutting or located on the landowner's property.

(2) An impoundment constructed by or owned by the landowner.

(3) Wells constructed on the landowner's property.

(4) Other source of water on the landowner's property, including, but not limited to, captured stormwater, springs, and artesian wells."

SECTION 3. G.S. 143-355.3(f) reads as rewritten:

"(f) Nothing in this section shall limit a landowner from withdrawing water for use in agricultural activities, when such water is withdrawn from any of the following:

(1) A natural body of water abutting or located on the landowner's property.

(2) An impoundment constructed by or owned by the landowner.

(3) Wells constructed on the landowner's property.

(4) Other natural source of water on the landowner's property, including, but not limited to, captured stormwater, springs, and artesian wells.

As used in this section, "agricultural activities" shall be defined as any activity described by G.S. 106-581.1."

SECTION 4. G.S. 143-215.25A(a) is amended by adding a new subdivision to read:

"(7) Constructed for the purpose of providing water for agricultural use, when a person who is licensed as a professional engineer under Chapter 89C of the General Statutes designed or approved plans for the dam and supervised its construction."

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

SENATE BILL 781:
Regulatory Reform Act of 2011

2011-2012 General Assembly

Committee:	Senate Agriculture/Environment/Natural Resources	**Date:**	June 7, 2011
Introduced by:	Sens. Rouzer, Brown	**Prepared by:**	Karen Cochrane-Brown
Analysis of:	First Edition		Committee Counsel

SUMMARY: ***Senate Bill 781 is a recommendation of the Joint Legislative Regulatory Reform Committee. The bill makes numerous changes to the Administrative Procedure Act (APA) relating to the rulemaking process, the contested case process, and judicial review of agency decisions. The bill also makes a number other changes to the laws relating to certain environmental policies.***

Part I: Rulemaking.

Section 1. This section amends the law related to the scope an effect of rules to add a requirement that an agency shall not seek to enforce a policy, guideline, or other nonbinding interpretive statement that has not been adopted as a rule in accordance with the APA.

Section 2.

This section adds 3 new sections to Article 2A of Chapter 150B.

The first new section, G.S. 150B-19.1, is a set of regulatory principles that agencies must follow when developing and adopting proposed rules. The principles include:

- An agency may only adopt rules that are clearly authorized by federal or State law and that are necessary to serve the public interest.
- An agency shall seek to reduce the burden upon those who must comply with the rule.
- Rules must be written in a clear and unambiguous manner and must be reasonably necessary to implement or interpret federal or State law.
- An agency must consider the cumulative effect of rules and shall not adopt a rule that is unnecessary or redundant.
- Rules should be based on sound scientific, technical, economic or other relevant information.
- Rules must be designed to achieve the regulatory objective in a cost-effective and timely manner.

Each year, agencies must conduct a review of existing rules and repeal any rules which it finds to be unnecessary, unduly burdensome, or inconsistent with the principles.

Agencies must post information about a proposed rule on its website when it submits the rule for publication in the NC Register.

Agencies must determine whether there is overlap in its policies and programs with another agency and coordinate their rulemaking activity.

Agencies must review details of fiscal note with the rulemaking body.

Agencies must consider at least 2 alternatives to the proposed rule if the rule has a substantial economic impact.

Agencies must prepare federal certification if the rule is required by federal law and post the certification on the website.

The second new section, G.S. 150B-19.2, codifies the Rules Modification and Improvement Program from the Governor's Executive Order 70. This requires OSBM to coordinate and oversee an annual review of existing rules. The program directs OSBM to create a web portal dedicated to receiving public comments on rules and tracking agency progress on reforming rules.

The third new section, G.S. 150B-19.3, prohibits certain enumerated agencies authorized to implement and enforce environmental laws from adopting rules for the protection of the environment or natural resources that impose standards and limitations that are more restrictive than those imposed by an analogous federal law or rule, unless the rule responds to an emergency, a specific law, a change in budgetary policy, or a court order.

Section 3. Repeals a provision relating to federal certification that was moved to a new section.

Section 4. Clarifies a provision relating to temporary rulemaking.

Section 5. Makes conforming changes to the procedure for adopting a permanent rule and clarifies that fiscal notes are subject to public comment. The section also requires that agencies review any fiscal notes and the public comments related to them before adoption of a proposed rule.

Section 6. Amends the fiscal note section to (1) require OSBM to enforce the regulatory principles; (2) make failure to prepare a substantial economic impact fiscal note a basis to disapprove a rule; (3) define the steps in preparing a substantial economic impact fiscal note; and (4) add a requirement that the fiscal note identify the 2 alternative to the rule that were considered by the agency. This section also reduces the threshold for a substantial economic impact from $3,000,000 to $500,000.

Sections 7, 8 and 9. Remove obsolete references to reports to the Joint Legislative Administrative Procedure Oversight Committee.

Section 10. Deletes unused and obsolete references.

Section 11. Removes obsolete reference to a "loose leaf" format previously used for the Administrative Code.

Section 12. Clarifies that agencies which are exempt from rulemaking under the APA must submit rules inclusion in the Code.

Section 13. Deletes an unused and obsolete provision relating to a manual for notice of rulemaking proceeding and notice of text.

Section 14. Conforms reference to review by OSBM of rules that affect local government expenditures.

Part II: Contested Cases.

Sections 15 through 27 amend Articles 3 and 4 of the APA to eliminate the requirement that an ALJ's decision be returned to the agency for a final decision. The bill makes the ALJ's decision the final administrative decision in the contested case. The bill also amends the law to provide that certificate of need cases and local government personnel cases will be handled in the same manner as all other cases decided under Article 3.

Inasmuch as the bill eliminates the possibility of an agency reversal of an ALJ decision, the standard for judicial review is also modified. The bill provides that in reviewing a final decision the court will determine whether the decision is supported by substantial evidence in view of the entire record. If the

court finds that the decision is not supported by substantial evidence, it may reverse the decision and remand the case to the ALJ in Article 3 cases, or to the agency in Article 3A cases.

Sections 28 through 55 of the bill contain conforming amendments to various provisions in the General Statutes that refer to final agency decisions.

Part III: Miscellaneous Issues.

Section 56. Amends the provision of the APA which directs an agency to issue a declaratory ruling upon the request of an aggrieved person. The amendment authorizes the agency to issue a declaratory ruling to resolve a conflict or inconsistency within the agency. The section also provides that failure to issue the ruling within 60 days constitutes a determination in favor of the aggrieved person.

Section 57. Directs every state agency with rulemaking power to compile a list of all of the agency's rules that fit the following criteria:

- Rules that are mandated by federal law or regulation.
- If not mandated by federal law or regulation, rules that have a federal regulation that is analogous.
- If there is an analogous law or regulation, whether the rule is more stringent than the federal law or regulation.

The list must be delivered to the Joint Regulatory Reform Committee by October 1, 2011.

Section 58. Directs the Joint Regulatory Reform Committee to study the requirements for administrative hearings conducted under Article 3A of the APA. The agencies subject to Article 3A are occupational licensing agencies, the State Banking Commission and the Commissioner of Banks, the Credit Union Division, the Department of Insurance, the State Chief Information Officer in certain cases, the State Building Code Council, and the State Board of Elections in cases involving regulation of campaign contributions and expenditures. The Committee must report to the 2012 Session of the 2011 General Assembly.

Section 59. Provides that major developments subject to permitting under the Coastal Area Management Act are exempt from the Environmental Policy Act.

Section 60. Provides that certain environmental regulatory permits issued on or after July 1, 2011 shall be valid for up to 10 years. Currently, most permits expire after five years or less.

Section 61. Directs the Secretary of the Department of Environment and Natural Resources to develop uniform policy for notification of deficiencies and violations with differing notifications based on the level of potential harm. The Secretary is directed to report to the Legislative Environmental Review Commission by October 1, 2011, and to implement the plan by February 1, 2012.

Section 62. Severability clause.

EFFECTIVE DATE: Sections 2 through 15 of the act become effective October 1, 2011, and apply to rules adopted on or after that date. Sections 15 through 55 become effective January 1, 2012, and apply to contested cases commenced on or after that date. Unless otherwise provided, the remainder of the act becomes effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

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SENATE BILL 781*

Short Title:	Regulatory Reform Act of 2011.	(Public)
Sponsors:	Senators Rouzer, Brown; and East.	
Referred to:	Commerce.	

June 6, 2011

A BILL TO BE ENTITLED

AN ACT TO INCREASE REGULATORY EFFICIENCY IN ORDER TO BALANCE JOB CREATION AND ENVIRONMENTAL PROTECTION.

The General Assembly of North Carolina enacts:

PART I. RULE MAKING

SECTION 1. G.S. 150B-18 reads as rewritten:

"**§ 150B-18. Scope and effect.**

This Article applies to an agency's exercise of its authority to adopt a rule. A rule is not valid unless it is adopted in substantial compliance with this Article. An agency shall not seek to implement or enforce against any person a policy, guideline, or other nonbinding interpretive statement that has not been adopted as a rule in accordance with this Article."

SECTION 2. Article 2A of Chapter 150B is amended by adding three new sections to read:

"**§ 150B-19.1. Requirements for agencies in the rule-making process.**

(a) In developing and drafting rules for adoption in accordance with this Article, agencies shall adhere to the following principles:

(1) An agency may adopt only rules that are expressly authorized by federal or State law and that are necessary to serve the public interest.

(2) An agency shall seek to reduce the burden upon those persons or entities who must comply with the rule.

(3) Rules shall be written in a clear and unambiguous manner and must be reasonably necessary to implement or interpret federal or State law.

(4) An agency shall consider the cumulative effect of all rules adopted by the agency related to the specific purpose for which the rule is proposed. The agency shall not adopt a rule that is unnecessary or redundant.

(5) When appropriate, rules shall be based on sound, reasonably available scientific, technical, economic, and other relevant information. Agencies shall include a reference to this information in the notice of text required by G.S. 150B-21.2(c).

(6) Rules shall be designed to achieve the regulatory objective in a cost-effective and timely manner.

(b) Each agency subject to this Article shall conduct an annual review of its rules to identify existing rules that are unnecessary, unduly burdensome, or inconsistent with the principles set forth in subsection (a) of this section. The agency shall repeal any rule identified by this review.

(c) Each agency subject to this Article shall post on its Web site when the agency submits the notice of text for publication in accordance with G.S. 150B-21.2 all of the following:

(1) The text of a proposed rule.
(2) An explanation of the proposed rule and the reason for the proposed rule.
(3) The federal certification required by subsection (g) of this section.
(4) Instructions on how and where to submit oral or written comments on the proposed rule.
(5) Any fiscal note that has been prepared for the proposed rule.

The agency shall maintain the information in a searchable database and shall periodically update this online information to reflect changes in the proposed rule or the fiscal note prior to adoption.

(d) Each agency shall determine whether its policies and programs overlap with the policies and programs of another agency. In the event two or more agencies' policies and programs overlap, the agencies shall coordinate the rules adopted by each agency to avoid unnecessary, unduly burdensome, or inconsistent rules.

(e) Each agency shall quantify the costs and benefits to all parties of a proposed rule to the greatest extent possible. Prior to submission of a proposed rule for publication in accordance with G.S. 150B-21.2, the agency shall review the details of any fiscal note prepared in connection with the proposed rule with the rule-making body, and the rule-making body must approve the fiscal note before submission.

(f) If the agency determines that a proposed rule will have a substantial economic impact as defined in G.S. 150B-21.4(b1), the agency shall consider at least two alternatives to the proposed rule. The alternatives may have been identified by the agency or by members of the public.

(g) Whenever an agency proposes a rule that is purported to implement a federal law, or required by or necessary for compliance with federal law, or on which the receipt of federal funds is conditioned, the agency shall:

(1) Prepare a certification identifying the federal law requiring adoption of the proposed rule. The certification shall contain a statement setting forth the reasons why the proposed rule is required by federal law. If all or part of the proposed rule is not required by federal law or exceeds the requirements of federal law, then the certification shall state the reasons for that opinion.
(2) Post the certification on the agency Web site in accordance with subsection (c) of this section.
(3) Maintain a copy of the federal law and provide to the Office of State Budget and Management the citation to the federal law requiring or pertaining to the proposed rule.

"**§ 150B-19.2. Review of existing rules.**

(a) The Rules Modification and Improvement Program. – The Rules Modification and Improvement Program is established to conduct an annual review of existing rules. The Office of State Budget and Management (OSBM) shall coordinate and oversee the Rules Modification and Improvement Program. The OSBM shall invite comments from the public on whether any existing rules, implementation processes, or associated requirements are unnecessary, unduly burdensome, or inconsistent with the principles set forth in G.S. 150B-19.1. Comments must identify a specific rule or regulatory program and may include recommendations regarding modifying, expanding, or repealing existing rules or changing the rule review and publication process. The OSBM shall direct each agency to conduct an internal review of its rules as required by G.S. 150B-19.1(b) and to forward a report of its review to the OSBM. The OSBM shall assemble and evaluate the public comments and forward any comments it deems to have merit to the appropriate agency for further review. Agencies shall review the public comments

and prepare a report on whether any of the recommendations contained in the comments have potential merit and justify further action. Agencies shall submit a report of their findings to the OSBM by January 31 of each year. The OSBM shall make final determinations on which recommendations have potential merit and justify further action. The OSBM shall publish an annual report by April 30 of each year summarizing all public comments and resulting actions taken or planned.

(b) The OSBM shall establish a single Web portal dedicated to receiving public comments and tracking agency progress on reforming rules.

"**§ 150B-19.3. Limitation on certain environmental rules.**

(a) An agency authorized to implement and enforce State and federal environmental laws may not adopt a rule for the protection of the environment or natural resources that imposes a more restrictive standard, limitation, or requirement than those imposed by federal law or rule, if a federal law or rule pertaining to the same subject matter has been adopted, unless adoption of the rule is required by one of the following:

(1) A serious and unforeseen threat to the public health, safety, or welfare.

(2) An act of the General Assembly or United States Congress that expressly requires the agency to adopt rules.

(3) A change in federal or State budgetary policy.

(4) A federal regulation required by an act of the United States Congress to be adopted or administered by the State.

(5) A court order.

(b) For purposes of this section, "an agency authorized to implement and enforce State and federal environmental laws" means any of the following:

(1) The Department of Environment and Natural Resources created pursuant to G.S. 143B-279.1.

(2) The Environmental Management Commission created pursuant to G.S. 143B-282.

(3) The Coastal Resources Commission established pursuant to G.S. 113A-104.

(4) The Marine Fisheries Commission created pursuant to G.S. 143B-289.51.

(5) The Wildlife Resources Commission created pursuant to G.S. 143-240.

(6) The Commission for Public Health created pursuant to G.S. 130A-29.

(7) The Sedimentation Control Commission created pursuant to G.S. 143B-298.

(8) The Mining Commission created pursuant to G.S. 143B-290."

SECTION 3. G.S. 150B-21(f) is repealed.

SECTION 4. G.S. 150B-21.1(a3) reads as rewritten:

"(a3) Unless otherwise provided by law, ~~at least 30 business days prior to adopting a temporary rule,~~ the agency shall:

(1) ~~Submit~~ At least 30 business days prior to adopting a temporary rule, submit the rule and a notice of public hearing to the Codifier of Rules, and the Codifier of Rules shall publish the proposed temporary rule and the notice of public hearing on the Internet to be posted within five business days.

(2) ~~Notify~~ At least 30 business days prior to adopting a temporary rule, notify persons on the mailing list maintained pursuant to G.S. 150B-21.2(d) and any other interested parties of its intent to adopt a temporary rule and of the public hearing.

(3) Accept written comments on the proposed temporary rule for at least 15 business days prior to adoption of the temporary rule.

(4) Hold at least one public hearing on the proposed temporary rule no less than five days after the rule and notice have been published."

SECTION 5. G.S. 150B-21.2 reads as rewritten:

"**§ 150B-21.2. Procedure for adopting a permanent rule.**

(a) Steps. – Before an agency adopts a permanent rule, the agency must comply with the requirements of G.S. 150B-19.1, and it must take the following actions:

(1) Publish a notice of text in the North Carolina Register.

(2) When required by G.S. 150B-21.4, prepare or obtain a fiscal note for the proposed rule.

(3) Repealed by Session Laws 2003-229, s. 4, effective July 1, 2003.

(4) When required by subsection (e) of this section, hold a public hearing on the proposed rule after publication of the proposed text of the rule.

(5) Accept oral or written comments on the proposed rule as required by subsection (f) of this section.

(b) Repealed by Session Laws 2003-229, s. 4, effective July 1, 2003.

(c) Notice of Text. – A notice of the proposed text of a rule must include all of the following:

(1) The text of the proposed rule.

(2) A short explanation of the reason for the proposed ~~rule.~~ rule and a link to the agency's Web site containing the information required by G.S. 150B-19.1(c).

(3) A citation to the law that gives the agency the authority to adopt the rule.

(4) The proposed effective date of the rule.

(5) The date, time, and place of any public hearing scheduled on the rule.

(6) Instructions on how a person may demand a public hearing on a proposed rule if the notice does not schedule a public hearing on the proposed rule and subsection (e) of this section requires the agency to hold a public hearing on the proposed rule when requested to do so.

(7) The period of time during which and the person to whom written comments may be submitted on the proposed rule.

(8) If a fiscal note has been prepared for the rule, a statement that a copy of the fiscal note can be obtained from the agency.

(9) The procedure by which a person can object to a proposed rule and the requirements for subjecting a proposed rule to the legislative review process.

(d) Mailing List. – An agency must maintain a mailing list of persons who have requested notice of rule making. When an agency publishes in the North Carolina Register a notice of text of a proposed rule, it must mail a copy of the notice or text to each person on the mailing list who has requested notice on the subject matter described in the notice or the rule affected. An agency may charge an annual fee to each person on the agency's mailing list to cover copying and mailing costs.

(e) Hearing. – An agency must hold a public hearing on a rule it proposes to adopt if the agency publishes the text of the proposed rule in the North Carolina Register and the agency receives a written request for a public hearing on the proposed rule within 15 days after the notice of text is published. The agency must accept comments at the public hearing on both the proposed rule and any fiscal note that has been prepared in connection with the proposed rule.

An agency may hold a public hearing on a proposed rule and fiscal note in other circumstances. When an agency is required to hold a public hearing on a proposed rule or decides to hold a public hearing on a proposed rule when it is not required to do so, the agency must publish in the North Carolina Register a notice of the date, time, and place of the public hearing. The hearing date of a public hearing held after the agency publishes notice of the hearing in the North Carolina Register must be at least 15 days after the date the notice is published. If notice of a public hearing has been published in the North Carolina Register and that public hearing has been cancelled, the agency shall publish notice in the North Carolina Register at least 15 days prior to the date of any rescheduled hearing.

(f) Comments. – An agency must accept comments on the text of a proposed rule that is published in the North Carolina Register and any fiscal note that has been prepared in

connection with the proposed rule for at least 60 days after the text is published or until the date of any public hearing held on the proposed rule, whichever is longer. An agency must consider fully all written and oral comments received.

(g) Adoption. – An agency shall not adopt a rule until the time for commenting on the proposed text of the rule has elapsed and shall not adopt a rule if more than 12 months have elapsed since the end of the time for commenting on the proposed text of the rule. Prior to adoption, an agency shall review any fiscal note that has been prepared for the proposed rule and consider any public comments received in connection with the proposed rule or the fiscal note. An agency shall not adopt a rule that differs substantially from the text of a proposed rule published in the North Carolina Register unless the agency publishes the text of the proposed different rule in the North Carolina Register and accepts comments on the proposed different rule for the time set in subsection (f) of this section.

An adopted rule differs substantially from a proposed rule if it does one or more of the following:

(1) Affects the interests of persons who, based on the proposed text of the rule published in the North Carolina Register, could not reasonably have determined that the rule would affect their interests.

(2) Addresses a subject matter or an issue that is not addressed in the proposed text of the rule.

(3) Produces an effect that could not reasonably have been expected based on the proposed text of the rule.

When an agency adopts a rule, it shall not take subsequent action on the rule without following the procedures in this Part. An agency must submit an adopted rule to the Rules Review Commission within 30 days of the agency's adoption of the rule.

(h) Explanation. – An agency must issue a concise written statement explaining why the agency adopted a rule if, within 15 days after the agency adopts the rule, a person asks the agency to do so. The explanation must state the principal reasons for and against adopting the rule and must discuss why the agency rejected any arguments made or considerations urged against the adoption of the rule. The agency must issue the explanation within 15 days after receipt of the request for an explanation.

(i) Record. – An agency must keep a record of a rule-making proceeding. The record must include all written comments received, a transcript or recording of any public hearing held on the rule, any fiscal note that has been prepared for the rule, and any written explanation made by the agency for adopting the rule."

SECTION 6. G.S. 150B-21.4 reads as rewritten:

"**§ 150B-21.4. Fiscal notes on rules.**

(a) State Funds. – Before an agency publishes in the North Carolina Register the proposed text of a permanent rule change that would require the expenditure or distribution of funds subject to the State Budget Act, Chapter 143C of the General Statutes it must submit the text of the proposed rule ~~change~~ change, an analysis of the proposed rule change, and a fiscal note on the proposed rule change to the ~~Director of the Budget~~ Office of State Budget and Management and obtain certification from the ~~Director~~ Office that the funds that would be required by the proposed rule change are available. The Office must also determine and certify that the agency adhered to the principles set forth in G.S. 150B-19.1. The fiscal note must state the amount of funds that would be expended or distributed as a result of the proposed rule change and explain how the amount was computed. The ~~Director of the Budget~~ Office of State Budget and Management must certify a proposed rule change if funds are available to cover the expenditure or distribution required by the proposed rule change.

(a1) DOT Analyses. – In addition to the requirements of subsection (a) of this section, any agency that adopts a rule affecting environmental permitting of Department of Transportation projects shall conduct an analysis to determine if the rule will result in an

increased cost to the Department of Transportation. The analysis shall be conducted and submitted to the Board of Transportation before the agency publishes the proposed text of the rule change in the North Carolina Register. The agency shall consider any recommendations offered by the Board of Transportation prior to adopting the rule. Once a rule subject to this subsection is adopted, the Board of Transportation may submit any objection to the rule it may have to the Rules Review Commission. If the Rules Review Commission receives an objection to a rule from the Board of Transportation no later than 5:00 P.M. of the day following the day the Commission approves the rule, then the rule shall only become effective as provided in G.S. 150B-21.3(b1).

(b) Local Funds. – Before an agency publishes in the North Carolina Register the proposed text of a permanent rule change that would affect the expenditures or revenues of a unit of local government, it must submit the text of the proposed rule change and a fiscal note on the proposed rule change to the Office of ~~the Governor~~ State Budget and Management as provided by G.S. 150B-21.26, the Fiscal Research Division of the General Assembly, ~~the Office of State Budget and Management,~~ the North Carolina Association of County Commissioners, and the North Carolina League of Municipalities. The fiscal note must state the amount by which the proposed rule change would increase or decrease expenditures or revenues of a unit of local government and must explain how the amount was computed.

(b1) Substantial Economic Impact. – Before an agency publishes in the North Carolina Register the proposed text of a permanent rule change that would have a substantial economic impact and that is not identical to a federal regulation that the agency is required to adopt, the agency ~~must obtain a fiscal note for the proposed rule change from the Office of State Budget and Management or~~ shall prepare a fiscal note for the proposed rule change and have the note approved by ~~that Office.~~ the Office of State Budget and Management. The agency may request the Office of State Budget and Management to prepare the fiscal note only after, working with the Office, it has exhausted all resources, internal and external, to otherwise prepare the required fiscal note. If an agency requests the Office of State Budget and Management to prepare a fiscal note for a proposed rule change, that Office must prepare the note within 90 days after receiving a written request for the note. If the Office of State Budget and Management fails to prepare a fiscal note within this time period, the agency proposing the rule change ~~may~~ shall prepare a fiscal note. A fiscal note prepared in this circumstance does not require approval of the Office of State Budget and Management.

If an agency prepares the required fiscal note, the agency must submit the note to the Office of State Budget and Management for review. The Office of State Budget and Management ~~must~~ shall review the fiscal note within 14 days after it is submitted and either approve the note or inform the agency in writing of the reasons why it does not approve the fiscal note. After addressing these reasons, the agency may submit the revised fiscal note to that Office for its review. If an agency is not sure whether a proposed rule change would have a substantial economic impact, the agency ~~may~~ shall ask the Office of State Budget and Management to determine whether the proposed rule change has a substantial economic impact. Failure to prepare or obtain approval of the fiscal note as required by this subsection shall be a basis for objection to the rule under G.S. 150B-21.9(a)(4).

As used in this subsection, the term "substantial economic impact" means an aggregate financial impact on all persons affected of at least ~~three million dollars ($3,000,000)~~ five hundred thousand dollars ($500,000) in a 12-month period. In analyzing substantial economic impact, an agency shall do the following:

(1) Determine and identify the appropriate time frame of the analysis.

(2) Assess the baseline conditions against which the proposed rule is to be measured.

(3) Describe the persons who would be subject to the proposed rule and the type of expenditures these persons would be required to make.

(4) Estimate any additional costs that would be created by implementation of the proposed rule by measuring the incremental difference between the baseline and the future condition expected after implementation of the rule. The analysis should include direct costs as well as opportunity costs. Cost estimates must be monetized to the greatest extent possible. Where costs are not monetized, they must be listed and described.

(5) For costs that occur in the future, the agency shall determine the net present value of the costs by using a discount factor of seven percent (7%).

(b2) Content. – A fiscal note required by subsection (b1) of this section must contain the following:

(1) A description of the persons who would be affected by the proposed rule change.

(2) A description of the types of expenditures that persons affected by the proposed rule change would have to make to comply with the rule and an estimate of these expenditures.

(3) A description of the purpose and benefits of the proposed rule change.

(4) An explanation of how the estimate of expenditures was computed.

(5) A description of at least two alternatives to the proposed rule that were considered by the agency and the reason the alternatives were rejected. The alternatives may have been identified by the agency or by members of the public.

(c) Errors. – An erroneous fiscal note prepared in good faith does not affect the validity of a rule."

SECTION 7. G.S. 150B-21.11 reads as rewritten:

"**§ 150B-21.11. Procedure when Commission approves permanent rule.**

When the Commission approves a permanent rule, it must notify the agency that adopted the rule of the Commission's approval, and deliver the approved rule to the Codifier of ~~Rules, and include the text of the approved rule and a summary of the rule in its next report to the Joint Legislative Administrative Procedure Oversight Committee.~~ Rules.

If the approved rule will increase or decrease expenditures or revenues of a unit of local government, the Commission must also notify the Governor of the Commission's approval of the rule and deliver a copy of the approved rule to the Governor by the end of the month in which the Commission approved the rule."

SECTION 8. G.S. 150B-21.12(d) reads as rewritten:

"(d) Return of Rule. – A rule to which the Commission has objected remains under review by the Commission until the agency that adopted the rule decides not to satisfy the Commission's objection and makes a written request to the Commission to return the rule to the agency. When the Commission returns a rule to which it has objected, it must notify the Codifier of Rules of its ~~action and must send a copy of the record of the Commission's review of the rule to the Joint Legislative Administrative Procedure Oversight Committee in its next report to that Committee.~~ action. If the rule that is returned would have increased or decreased expenditures or revenues of a unit of local government, the Commission must also notify the Governor of its action and must send a copy of the record of the Commission's review of the rule to the Governor. The record of review consists of the rule, the Commission's letter of objection to the rule, the agency's written response to the Commission's letter, and any other relevant documents before the Commission when it decided to object to the rule."

SECTION 9. G.S. 150B-21.16 is repealed.

SECTION 10. G.S. 150B-21.17(a) reads as rewritten:

"(a) Content. – The Codifier of Rules must publish the North Carolina Register. The North Carolina Register must be published at least two times a month and must contain the following:

(1) Temporary rules entered in the North Carolina Administrative Code.
(1a) The text of proposed rules and the text of permanent rules approved by the Commission.
(1b) Emergency rules entered into the North Carolina Administrative Code.
~~(2) Notices of receipt of a petition for municipal incorporation, as required by G.S. 120-165.~~
(3) Executive orders of the Governor.
(4) Final decision letters from the United States Attorney General concerning changes in laws that affect voting in a jurisdiction subject to section 5 of the Voting Rights Act of 1965, as required by G.S. 120-30.9H.
~~(5) Orders of the Tax Review Board issued under G.S. 105-241.2.~~
(6) Other information the Codifier determines to be helpful to the public."

SECTION 11. G.S. 150B-21.18 reads as rewritten:

"**§ 150B-21.18. North Carolina Administrative Code.**

The Codifier of Rules must compile all rules into a Code known as the North Carolina Administrative Code. The format and indexing of the Code must conform as nearly as practical to the format and indexing of the North Carolina General Statutes. The Codifier must publish printed copies of the Code and may publish the Code in other forms. ~~The Codifier must keep the Code current by publishing the Code in a loose-leaf format and periodically providing new pages to be substituted for outdated pages, by publishing the Code in volumes and periodically publishing cumulative supplements, or by another means.~~ The Codifier may authorize and license the private indexing, marketing, sales, reproduction, and distribution of the Code. The Codifier must keep superseded rules."

SECTION 12. G.S. 150B-21.21(b) reads as rewritten:

"(b) Exempt Agencies. – ~~Notwithstanding G.S. 150B-1, the North Carolina Utilities Commission must submit to the Codifier of Rules those rules of the Utilities Commission that are published from time to time in the publication titled "North Carolina Utilities Laws and Regulations." The Utilities Commission must submit a rule required to be included in the Code within 30 days after it is adopted.~~

Notwithstanding ~~G.S. 150B-1,~~ any other provision of law, an agency ~~other than the Utilities Commission~~ that is exempted from this Article by ~~that statute~~ G.S. 150B-1 or any other statute must submit a temporary or permanent rule adopted by it to the Codifier of Rules for inclusion in the North Carolina Administrative Code. These exempt agencies must submit a rule to the Codifier of Rules within 30 days after adopting the rule."

SECTION 13. G.S. 150B-21.23 is repealed.

SECTION 14. G.S. 150B-21.26 reads as rewritten:

"Part 5. Rules Affecting Local Governments.

"**§ 150B-21.26. ~~Governor~~ Office of State Budget and Management to conduct preliminary review of certain administrative rules.**

(a) Preliminary Review. – At least ~~30~~ 60 days before an agency publishes in the North Carolina Register the proposed text of a permanent rule change that would affect the expenditures or revenues of a unit of local government, the agency must submit all of the following to the ~~Governor~~ Office of State Budget and Management for preliminary review:
(1) The text of the proposed rule change.
(2) A short explanation of the reason for the proposed change.
(3) A fiscal note stating the amount by which the proposed rule change would increase or decrease expenditures or revenues of a unit of local government and explaining how the amount was computed.

(b) Scope. – The ~~Governor's~~ preliminary review of a proposed permanent rule change that would affect the expenditures or revenues of a unit of local government shall include consideration of the following:

(1) The agency's explanation of the reason for the proposed change.
(2) Any unanticipated effects of the proposed change on local government budgets.
(3) The potential costs of the proposed change weighed against the potential risks to the public of not taking the proposed change."

PART II. CONTESTED CASES

SECTION 15. G.S. 150B-2(5) reads as rewritten:

"(5) "Party" means any person or agency named or admitted as a party or properly seeking as of right to be admitted as a party and includes the agency as appropriate. ~~This subdivision does not permit an agency that makes a final decision, or an officer or employee of the agency, to petition for initial judicial review of that decision.~~"

SECTION 16. G.S. 150B-23(a) reads as rewritten:

"(a) A contested case shall be commenced by paying a fee in an amount established in G.S. 150B-23.2 and by filing a petition with the Office of Administrative Hearings and, except as provided in Article 3A of this Chapter, shall be conducted by that Office. The party who files the petition shall serve a copy of the petition on all other parties and, if the dispute concerns a license, the person who holds the license. A party who files a petition shall file a certificate of service together with the petition. A petition shall be signed by a party or a representative of the party and, if filed by a party other than an agency, shall state facts tending to establish that the agency named as the respondent has deprived the petitioner of property, has ordered the petitioner to pay a fine or civil penalty, or has otherwise substantially prejudiced the petitioner's rights and that the agency:

(1) Exceeded its authority or jurisdiction;
(2) Acted erroneously;
(3) Failed to use proper procedure;
(4) Acted arbitrarily or capriciously; or
(5) Failed to act as required by law or rule.

The parties in a contested case shall be given an opportunity for a hearing without undue delay. Any person aggrieved may commence a contested case hereunder.

A local government employee, applicant for employment, or former employee to whom Chapter 126 of the General Statutes applies may commence a contested case under this Article in the same manner as any other petitioner. The case shall be conducted in the same manner as other contested cases under this ~~Article, except that the State Personnel Commission shall enter final decisions only in cases in which it is found that the employee, applicant, or former employee has been subjected to discrimination prohibited by Article 6 of Chapter 126 of the General Statutes or in any case where a binding decision is required by applicable federal standards. In these cases, the State Personnel Commission's decision shall be binding on the local appointing authority. In all other cases, the final decision shall be made by the applicable appointing authority.~~Article."

SECTION 17. G.S. 150B-33(b) reads as rewritten:

"(b) An administrative law judge may:

...

~~(12) Except as provided in G.S. 150B-36(d), accept a remanded case from an agency only when a claim for relief has been raised in the petition, and the decision of the administrative law judge makes no findings of fact or conclusions of law regarding the claim for relief, and the agency requests that the administrative law judge make findings of fact and conclusions of law as to the specific claim for relief. The administrative law judge may refuse to accept a remand if there is a sufficient record to allow the agency to make a final decision.~~"

SECTION 18. G.S. 150B-34 reads as rewritten:

"**§ 150B-34. ~~Decision of administrative law judge.~~Final decision or order.**

(a) ~~Except as provided in G.S. 150B-36(c), and subsection (c) of this section, in~~ In each contested case the administrative law judge shall make a final decision or order that contains findings of fact and conclusions of ~~law and return the decision to the agency for a final decision in accordance with G.S. 150B-36.~~law. The administrative law judge shall decide the case based upon the preponderance of the evidence, giving due regard to the demonstrated knowledge and expertise of the agency with respect to facts and inferences within the specialized knowledge of the agency. ~~All references in this Chapter to the administrative law judge's decision shall include orders entered pursuant to G.S. 150B-36(c).~~

(b) Repealed by Session Laws 1991, c. 35, s. 6.

~~(c) Notwithstanding subsection (a) of this section, in cases arising under Article 9 of Chapter 131E of the General Statutes, the administrative law judge shall make a recommended decision or order that contains findings of fact and conclusions of law. A final decision shall be made by the agency in writing after review of the official record as defined in G.S. 150B-37(a) and shall include findings of fact and conclusions of law. The final agency decision shall recite and address all of the facts set forth in the recommended decision. For each finding of fact in the recommended decision not adopted by the agency, the agency shall state the specific reason, based on the evidence, for not adopting the findings of fact and the agency's findings shall be supported by substantial evidence admissible under G.S. 150B-29(a), 150B-30, or 150B-31. The provisions of G.S. 150B-36(b), (b1), (b2), (b3), and (d), and G.S. 150B-51 do not apply to cases decided under this subsection.~~

(d) Except for the exemptions contained in ~~G.S. 150B-1(c) and (e), and subsection (c) of this section,~~G.S. 150B-1, the provisions of this section regarding the decision of the administrative law judge shall apply only to agencies subject to Article 3 of this Chapter, notwithstanding any other provisions to the contrary relating to recommended decisions by administrative law judges.

(e) An administrative law judge may grant judgment on the pleadings, pursuant to a motion made in accordance with G.S. 1A-1, Rule 12(c), or summary judgment, pursuant to a motion made in accordance with G.S. 1A-1, Rule 56, that disposes of all issues in the contested case. Notwithstanding subsection (a) of this section, a decision granting a motion for judgment on the pleadings or summary judgment need not include findings of fact or conclusions of law, except as determined by the administrative law judge to be required or allowed by G.S. 1A-1, Rule 12(c), or Rule 56."

SECTION 19. G.S. 150B-35 reads as rewritten:

"**§ 150B-35. No ex parte communication; exceptions.**

Unless required for disposition of an ex parte matter authorized by law, ~~neither the~~ the administrative law judge assigned to a contested case ~~nor a member or employee of the agency making a final decision in the case~~ may not communicate, directly or indirectly, in connection with any issue of fact, or question of law, with any person or party or his representative, except on notice and opportunity for all parties to participate."

SECTION 20. G.S. 150B-36 is repealed.

SECTION 21. G.S. 150B-37 reads as rewritten:

"**§ 150B-37. Official record.**

(a) In a contested case, the Office of Administrative Hearings shall prepare an official record of the case that includes:

(1) Notices, pleadings, motions, and intermediate rulings;

(2) Questions and offers of proof, objections, and rulings thereon;

(3) Evidence presented;

(4) Matters officially noticed, except matters so obvious that a statement of them would serve no useful purpose; and

(5) Repealed by Session Laws 1987, c. 878, s. 25.

(6) The administrative law judge's ~~decision,~~ final decision or order.

(b) Proceedings at which oral evidence is presented shall be recorded, but need not be transcribed unless requested by a party. Each party shall bear the cost of the transcript or part thereof or copy of said transcript or part thereof which said party requests, and said transcript or part thereof shall be added to the official record as an exhibit.

(c) The Office of Administrative Hearings shall forward a copy of the ~~official record to the agency making the final decision and shall forward a copy of the~~ administrative law judge's final decision to each party."

SECTION 22. G.S. 150B-43 reads as rewritten:

"**§ 150B-43. Right to judicial review.**

Any ~~person~~ party who is aggrieved by the final decision in a contested case, and who has exhausted all administrative remedies made available to ~~him~~ the party by statute or agency rule, is entitled to judicial review of the decision under this Article, unless adequate procedure for judicial review is provided by another statute, in which case the review shall be under such other statute. Nothing in this Chapter shall prevent any ~~person~~ party from invoking any judicial remedy available to ~~him~~ the party under the law to test the validity of any administrative action not made reviewable under this Article."

SECTION 23. G.S. 150B-44 reads as rewritten:

"**§ 150B-44. Right to judicial intervention when decision unreasonably delayed.**

Unreasonable delay on the part of any agency or administrative law judge in taking any required action shall be justification for any person whose rights, duties, or privileges are adversely affected by such delay to seek a court order compelling action by the agency or administrative law judge. ~~An agency that is subject to Article 3 of this Chapter and is not a board or commission has 60 days from the day it receives the official record in a contested case from the Office of Administrative Hearings to make a final decision in the case. This time limit may be extended by the parties or, for good cause shown, by the agency for an additional period of up to 60 days. An agency that is subject to Article 3 of this Chapter and is a board or commission has 60 days from the day it receives the official record in a contested case from the Office of Administrative Hearings or 60 days after its next regularly scheduled meeting, whichever is longer, to make a final decision in the case. This time limit may be extended by the parties or, for good cause shown, by the agency for an additional period of up to 60 days. If an agency subject to Article 3 of this Chapter has not made a final decision within these time limits, the agency is considered to have adopted the administrative law judge's decision as the agency's final decision.~~ Failure of an administrative law judge subject to Article 3 of this Chapter or failure of an agency subject to Article 3A of this Chapter to make a final decision within 120 days of the close of the contested case hearing is justification for a person whose rights, duties, or privileges are adversely affected by the delay to seek a court order compelling action by the agency ~~or, if the case was heard by an administrative law judge,~~ or by the administrative law judge. The Board of Trustees of the North Carolina State Health Plan for Teachers and State Employees is a "board" for purposes of this section."

SECTION 24. G.S. 150B-47 reads as rewritten:

"**§ 150B-47. Records filed with clerk of superior court; contents of records; costs.**

Within 30 days after receipt of the copy of the petition for review, or within such additional time as the court may allow, the ~~agency that made the final decision in the contested case~~ Office of Administrative Hearings shall transmit to the reviewing court the original or a certified copy of the official record in the contested case under ~~review together with: (i) any exceptions, proposed findings of fact, or written arguments submitted to the agency in accordance with G.S. 150B-36(a); and (ii) the agency's final decision or order.~~ review. With the permission of the court, the record may be shortened by stipulation of all parties to the review proceedings. Any party unreasonably refusing to stipulate to limit the record may be taxed by

the court for such additional costs as may be occasioned by the refusal. The court may require or permit subsequent corrections or additions to the record when deemed desirable."

SECTION 25. G.S. 150B-49 reads as rewritten:

"**§ 150B-49. New evidence.**

~~An aggrieved person~~ A party who files a petition in the superior court may apply to the court to present additional evidence. If the court is satisfied that the evidence is material to the issues, is not merely cumulative, and could not reasonably have been presented at the administrative hearing, the court may remand the case so that additional evidence can be taken. If an administrative law judge did not make a final decision in the case, the court shall remand the case to the agency that conducted the administrative ~~hearing.~~hearing under Article 3A of this Chapter. After hearing the evidence, the agency may affirm or modify its previous findings of fact and final decision. If an administrative law judge made a final decision in the case, the court shall remand the case to the administrative law judge. After hearing the evidence, the administrative law judge may affirm or modify his previous findings of fact and final decision. ~~The administrative law judge shall forward a copy of his decision to the agency that made the final decision, which in turn may affirm or modify its previous findings of fact and final decision.~~ The additional evidence and any affirmation or modification of a final decision ~~of the administrative law judge or final decision~~ shall be made part of the official record."

SECTION 26. G.S. 150B-50 reads as rewritten:

"**§ 150B-50. Review by superior court without jury.**

The review by a superior court of ~~agency~~ administrative decisions under this Chapter shall be conducted by the court without a jury."

SECTION 27. G.S. 150B-51 reads as rewritten:

"**§ 150B-51. Scope and standard of review.**

~~(a) In reviewing a final decision in a contested case in which an administrative law judge made a recommended decision and the State Personnel Commission made an advisory decision in accordance with G.S. 126-37(b1), the court shall make two initial determinations. First, the court shall determine whether the applicable appointing authority heard new evidence after receiving the recommended decision. If the court determines that the applicable appointing authority heard new evidence, the court shall reverse the decision or remand the case to the applicable appointing authority to enter a decision in accordance with the evidence in the official record. Second, if the applicable appointing authority did not adopt the recommended decision, the court shall determine whether the applicable appointing authority's decision states the specific reasons why the applicable appointing authority did not adopt the recommended decision. If the court determines that the applicable appointing authority did not state specific reasons why it did not adopt a recommended decision, the court shall reverse the decision or remand the case to the applicable appointing authority to enter the specific reasons.~~

~~(a1) In reviewing a final decision in a contested case in which an administrative law judge made a decision, in accordance with G.S. 150B-34(a), and the agency adopted the administrative law judge's decision, the court shall determine whether the agency heard new evidence after receiving the decision. If the court determines that the agency heard new evidence, the court shall reverse the decision or remand the case to the agency to enter a decision in accordance with the evidence in the official record. The court shall also determine whether the agency specifically rejected findings of fact contained in the administrative law judge's decision in the manner provided by G.S. 150B-36(b1) and made findings of fact in accordance with G.S. 150B-36(b2). If the court determines that the agency failed to follow the procedure set forth in G.S. 150B-36, the court may take appropriate action under subsection (b) of this section.~~

(b) ~~Except as provided in subsection (c) of this section, in reviewing a final decision, the~~The court reviewing a final decision may affirm the decision ~~of the agency~~ or remand the case ~~to the agency or to the administrative law judge~~ for further proceedings. It may also

reverse or modify the ~~agency's decision, or adopt the administrative law judge's~~ decision if the substantial rights of the petitioners may have been prejudiced because the ~~agency's~~ findings, inferences, conclusions, or decisions are:

(1) In violation of constitutional provisions;
(2) In excess of the statutory authority or jurisdiction of the agency;
(3) Made upon unlawful procedure;
(4) Affected by other error of law;
(5) Unsupported by substantial evidence admissible under G.S. 150B-29(a), 150B-30, or 150B-31 in view of the entire record as submitted; or
(6) Arbitrary, capricious, or an abuse of discretion.

(c) In reviewing a final decision in a contested ~~case in which an administrative law judge made a decision, in accordance with G.S. 150B-34(a), and the agency does not adopt the administrative law judge's decision, the court shall review the official record, de novo, and shall make findings of fact and conclusions of law. In reviewing the case, the court shall not give deference to any prior decision made in the case and shall not be bound by the findings of fact or the conclusions of law contained in the agency's final decision. The court shall determine whether the petitioner is entitled to the relief sought in the petition, based upon its review of the official record. The court reviewing a final decision under this subsection may adopt the administrative law judge's decision; may adopt, reverse, or modify the agency's decision; may remand the case to the agency for further explanations under G.S. 150B-36(b1), 150B-36(b2), or 150B-36(b3), or reverse or modify the final decision for the agency's failure to provide the explanations; and may take any other action allowed by law.~~case, the court shall determine whether the decision is supported by substantial evidence admissible under G.S. 150B-29, 150B-30, or 150B-31 in view of the entire record. If the court determines that the decision is not supported by substantial evidence in the record, the court may reverse the decision or remand the case to the administrative law judge if the case was heard under Article 3 of this Chapter, or to the agency if the case was heard under Article 3A of this Chapter, for entry of a decision in accordance with the evidence in the official record.

(d) In reviewing a final ~~agency~~ decision allowing judgment on the pleadings or summary judgment, ~~or in reviewing an agency decision that does not adopt an administrative law judge's decision allowing judgment on the pleadings or summary judgment pursuant to G.S. 150B-36(d),~~ the court may enter any order allowed by G.S. 1A-1, Rule 12(c) or Rule 56. If the order of the court does not fully adjudicate the case, the court shall remand the case to the administrative law judge for such further proceedings as are just."

SECTION 28. G.S. 7A-759(e) reads as rewritten:

"(e) ~~Notwithstanding G.S. 150B-34 and G.S. 150B-36, an~~ An order entered by an administrative law judge after a contested case hearing on the merits of a deferred charge is a final agency decision and is binding on the parties. The administrative law judge may order whatever remedial action is appropriate to give full relief consistent with the requirements of federal statutes or regulations or State statutes or rules."

SECTION 29. G.S. 74-58(b) reads as rewritten:

"(b) The effective date of any suspension or revocation shall be 30 days following the date of the decision. The filing of a petition for a contested case under G.S. 74-61 shall stay the effective date until ~~the Commission makes~~ issuance of a final decision. If the Department finds at the time of its initial decision that any delay in correcting a violation would result in imminent peril to life or danger to property or to the environment, it shall promptly initiate a proceeding for injunctive relief under G.S. 74-64 hereof and Rule 65 of the Rules of Civil Procedure. The pendency of any appeal from a suspension or revocation of a permit shall have no effect upon an action for injunctive relief."

SECTION 30. G.S. 74-61 reads as rewritten:

"**§ 74-61. Administrative and judicial review of decisions.**

An applicant, permittee, or affected person may contest a decision of the Department to deny, suspend, modify, or revoke a permit or a reclamation plan, to refuse to release part or all of a bond or other security, or to assess a civil penalty by filing a petition for a contested case under G.S. 150B-23 within 30 days after the Department makes the decision. ~~The Commission shall make the final decision in a contested case under this section.~~ Article 4 of Chapter 150B of the General Statutes governs judicial review of a decision of the Commission."

SECTION 31. G.S. 74-85 reads as rewritten:

"**§ 74-85. Administrative and judicial review of decisions.**

Any affected person may contest a decision of the Department to approve, deny, suspend, or revoke a permit, to require additional abandonment work, to refuse to release part or all of a bond or other security, or to assess a civil penalty by filing a petition for a contested case under G.S. 150B-23 within 30 days after the Department makes the decision. ~~The Commission shall make the final decision in a contested case under this section.~~ Article 4 of Chapter 150B of the General Statutes governs judicial review of a decision of the Commission."

SECTION 32. G.S. 108A-70.9A(f) reads as rewritten:

"(f) Final Decision. – After a hearing before an administrative law judge, the judge shall return the decision ~~and record~~ to the Department in accordance with ~~G.S. 108A-70.9B.~~ G.S. 150B-37. The Department shall ~~make a final decision in the case within 20 days of receipt of the decision and record from the administrative law judge and promptly~~ notify the recipient of the final decision and of the right to judicial review of the decision pursuant to Article 4 of Chapter 150B of the General Statutes."

SECTION 33. G.S. 108A-70.9B(g) reads as rewritten:

"(g) Decision. – The administrative law judge assigned to a contested Medicaid case shall hear and decide the case without unnecessary delay. ~~OAH shall send a copy of the audiotape or diskette of the hearing to the agency within five days of completion of the hearing.~~ The judge shall prepare a written decision and send it to the ~~parties.~~ parties in accordance with G.S. 150B-37. ~~The decision shall be sent together with the record to the agency within 20 days of the conclusion of the hearing.~~"

SECTION 34. G.S. 113-171(e) reads as rewritten:

"(e) A licensee served with a notice of suspension or revocation may obtain an administrative review of the suspension or revocation by filing a petition for a contested case under G.S. 150B-23 within 20 days after receiving the notice. The only issue in the hearing shall be whether the licensee was convicted of a criminal offense for which a license must be suspended or revoked. A license remains suspended or revoked pending the final ~~decision by the Secretary.~~ decision."

SECTION 35. G.S. 113-202 reads as rewritten:

"**§ 113-202. New and renewal leases for shellfish cultivation; termination of leases issued prior to January 1, 1966.**

...

(g) After consideration of the public comment received and any additional investigations the Secretary orders to evaluate the comments, the Secretary shall notify the applicant in person or by certified or registered mail of the decision on the lease application. The Secretary shall also notify persons who submitted comments at the public hearing and requested notice of the lease decision. An applicant who is dissatisfied with the Secretary's decision or another person aggrieved by the decision may commence a contested case by filing a petition under G.S. 150B-23 within 20 days after receiving notice of the Secretary's decision. In the event the Secretary's decision is a modification to which the applicant agrees, the lease applicant must furnish an amended map or diagram before the lease can be issued by the Secretary. ~~The Secretary shall make the final agency decision in a contested case.~~

...

(m) In the event the leaseholder takes steps within 30 days to remedy the situation upon which the notice of intention to terminate was based and the Secretary is satisfied that continuation of the lease is in the best interests of the shellfish culture of the State, the Secretary may discontinue termination procedures. Where there is no discontinuance of termination procedures, the leaseholder may initiate a contested case by filing a petition under G.S. 150B-23 within 30 days of receipt of notice of intention to terminate. ~~The Secretary shall make the final agency decision of all lease terminations.~~ Where the leaseholder does not initiate a contested case, or the ~~Secretary's~~ final decision upholds termination, the Secretary must send a final letter of termination to the leaseholder. The final letter of termination may not be mailed sooner than 30 days after receipt by the leaseholder of the Secretary's notice of intention to terminate, or of the ~~Secretary's~~ final agency decision, as appropriate. The lease is terminated effective at midnight on the day the final notice of termination is served on the leaseholder. The final notice of termination may not be issued pending hearing of a contested case initiated by the leaseholder.

Service of any notice required in this subsection may be accomplished by certified mail, return receipt requested; personal service by any law-enforcement officer; or upon the failure of these two methods, publication. Service by publication shall be accomplished by publishing such notices in a newspaper of general circulation within the county where the lease is located for at least once a week for three successive weeks. The format for notice by publication shall be approved by the Attorney General.

...."

SECTION 36. G.S. 113-229(f) reads as rewritten:

"(f) A permit applicant who is dissatisfied with a decision on his application may file a petition for a contested case hearing under G.S. 150B-23 within 20 days after the decision is made. Any other person who is dissatisfied with a decision to deny or grant a permit may file a petition for a contested case hearing only if the Coastal Resources Commission determines, in accordance with G.S. 113A-121.1(c), that a hearing is appropriate. A permit is suspended from the time a person seeks administrative review of the decision concerning the permit until the Commission determines that the person seeking the review cannot commence a contested case or the ~~Commission makes~~ issuance of a final decision in a contested case, as appropriate, and no action may be taken during that time that would be unlawful in the absence of the permit."

SECTION 37. G.S. 113A-121.1(b) reads as rewritten:

"(b) A person other than a permit applicant or the Secretary who is dissatisfied with a decision to deny or grant a minor or major development permit may file a petition for a contested case hearing only if the Commission determines that a hearing is appropriate. A request for a determination of the appropriateness of a contested case hearing shall be made in writing and received by the Commission within 20 days after the disputed permit decision is made. A determination of the appropriateness of a contested case shall be made within 15 days after a request for a determination is received and shall be based on whether the person seeking to commence a contested case:

(1) Has alleged that the decision is contrary to a statute or rule;

(2) Is directly affected by the decision; and

(3) Has alleged facts or made legal arguments that demonstrate that the request for the hearing is not frivolous.

If the Commission determines a contested case is appropriate, the petition for a contested case shall be filed within 20 days after the Commission makes its determination. A determination that a person may not commence a contested case is a final agency decision and is subject to judicial review under Article 4 of Chapter 150B of the General Statutes. If, on judicial review, the court determines that the Commission erred in determining that a contested case would not be appropriate, the court shall remand the matter for a contested case hearing under G.S. 150B-23 and final ~~Commission~~ decision on the permit pursuant to G.S. 113A-122.

Decisions in such cases shall be rendered pursuant to those rules, regulations, and other applicable laws in effect at the time of the commencement of the contested case."

SECTION 38. G.S. 113A-126(d) reads as rewritten:

"(d) (1) A civil penalty of not more than one thousand dollars ($1,000) for a minor development violation and ten thousand dollars ($10,000) for a major development violation may be assessed by the Commission against any person who:

...

(3) 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 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.

...."

SECTION 39. G.S. 122C-24.1(h) reads as rewritten:

"(h) The Secretary may bring a civil action in the superior court of the county wherein the violation occurred to recover the amount of the administrative penalty whenever a facility:

(1) Which has not requested an administrative hearing fails to pay the penalty within 60 days after being notified of the penalty, or

(2) Which has requested an administrative hearing fails to pay the penalty within 60 days after receipt of a written copy of the decision as provided in ~~G.S. 150B-36.~~ G.S. 150B-37."

SECTION 40. G.S. 122C-151.4(f) reads as rewritten:

"(f) Chapter 150B Appeal. – A person who is dissatisfied with a decision of the Panel may commence a contested case under Article 3 of Chapter 150B of the General Statutes. Notwithstanding G.S. 150B-2(1a), an area authority or county program is considered an agency for purposes of the limited appeal authorized by this section. If the need to first appeal to the State MH/DD/SA Appeals Panel is waived by the Secretary, a contractor may appeal directly to the Office of Administrative Hearings after having exhausted the appeals process at the appropriate area authority or county program. ~~The Secretary shall make a final decision in the contested case.~~"

SECTION 41. G.S. 126-4.1 is repealed.

SECTION 42. G.S. 126-14.4(e) reads as rewritten:

"(e) Within 90 days after the filing of a contested case petition, the administrative law judge shall issue a ~~recommended~~ final decision to the State Personnel Commission which shall include findings of fact and conclusions of law and, if the administrative law judge has found a violation of G.S. 126-14.2, an appropriate ~~recommended remedy.~~ remedy, which may include:

(1) Directing the State agency, department, or institution to declare the position vacant and to hire from among the most qualified State employees or applicants for initial State employment who had applied for the position, or

(2) Requiring that the vacancy be posted pursuant to this Chapter."

SECTION 43. G.S. 126-14.4(f) is repealed.

SECTION 44. G.S. 126-37 reads as rewritten:

"**§ 126-37. ~~Personnel Commission to review~~ Administrative Law Judge's ~~recommended decision and make~~ final decision.**

(a) Appeals involving a disciplinary action, alleged discrimination or harassment, and any other contested case arising under this Chapter shall be conducted in the Office of

Administrative Hearings as provided in Article 3 of Chapter 150B; provided that no grievance may be appealed unless the employee has complied with G.S. 126-34. ~~The State Personnel Commission shall make a final decision in these cases as provided in G.S. 150B-36, except as provided in subsection (b1) of this section.~~ The ~~State Personnel Commission~~ administrative law judge is hereby authorized to reinstate any employee to the position from which the employee has been removed, to order the employment, promotion, transfer, or salary adjustment of any individual to whom it has been wrongfully denied or to direct other suitable action to correct the abuse which may include the requirement of payment for any loss of salary which has resulted from the improperly discriminatory action of the appointing authority.

(b) Repealed by 1993 (Reg. Sess., 1994), c. 572, s. 1.

~~(b1) In appeals involving local government employees subject to this Chapter pursuant to G.S. 126-5(a)(2), except in appeals in which discrimination prohibited by Article 6 of this Chapter is found or in any case where a binding decision is required by applicable federal standards, the decision of the State Personnel Commission shall be advisory to the local appointing authority. The State Personnel Commission shall comply with all requirements of G.S. 150B-44 in making an advisory decision. The local appointing authority shall, within 90 days of receipt of the advisory decision of the State Personnel Commission, issue a written, final decision either accepting, rejecting, or modifying the decision of the State Personnel Commission. If the local appointing authority rejects or modifies the advisory decision, the local appointing authority must state the specific reasons why it did not adopt the advisory decision. A copy of the final decision shall be served on each party personally or by certified mail, and on each party's attorney of record.~~

(b2) The final decision is subject to judicial review pursuant to Article 4 of Chapter 150B of the General Statutes. Appeals in which it is found that discrimination prohibited by Article 6 of this Chapter has occurred or in any case where a binding decision is required by applicable federal standards shall be heard as all other ~~appeals, except that the decision of the State Personnel Commission shall be final.~~ appeals.

(c) If the local appointing authority is other than a board of county commissioners, the local appointing authority must give the county notice of the appeal taken pursuant to subsection (a) of this section. Notice must be given to the county manager or the chairman of the board of county commissioners by certified mail within 15 days of the receipt of the notice of appeal. The county may intervene in the appeal within 30 days of receipt of the notice. If the action is appealed to superior court the county may intervene in the superior court proceeding even if it has not intervened in the administrative proceeding. The decision of the superior court shall be binding on the county even if the county does not intervene."

SECTION 45. G.S. 131D-34(e) reads as rewritten:

"(e) Any facility wishing to contest a penalty shall be entitled to an administrative hearing as provided in the Administrative Procedure Act, Chapter 150B of the General Statutes. A petition for a contested case shall be filed within 30 days after the Department mails a notice of penalty to a licensee. At least the following specific issues shall be addressed at the administrative hearing:

(1) The reasonableness of the amount of any civil penalty assessed, and

(2) The degree to which each factor has been evaluated pursuant to subsection (c) of this section to be considered in determining the amount of an initial penalty.

If a civil penalty is found to be unreasonable or if the evaluation of each factor is found to be incomplete, the ~~hearing officer may recommend~~ administrative law judge may order that the penalty be adjusted accordingly."

SECTION 46. G.S. 131E-188(a) reads as rewritten:

"(a) After a decision of the Department to issue, deny or withdraw a certificate of need or exemption or to issue a certificate of need pursuant to a settlement agreement with an

applicant to the extent permitted by law, any affected person, as defined in subsection (c) of this section, shall be entitled to a contested case hearing under Article 3 of Chapter 150B of the General Statutes. A petition for a contested case shall be filed within 30 days after the Department makes its decision. When a petition is filed, the Department shall send notification of the petition to the proponent of each application that was reviewed with the application for a certificate of need that is the subject of the petition. Any affected person shall be entitled to intervene in a contested case.

A contested case shall be conducted in accordance with the following timetable:

(1) An administrative law judge or a hearing officer, as appropriate, shall be assigned within 15 days after a petition is filed.

(2) The parties shall complete discovery within 90 days after the assignment of the administrative law judge or hearing officer.

(3) The hearing at which sworn testimony is taken and evidence is presented shall be held within 45 days after the end of the discovery period.

(4) The administrative law judge or hearing officer shall make ~~his recommended~~ a final decision within 75 days after the hearing.

~~(5) The Department shall make its final decision within 30 days of receiving the official record of the case from the Office of Administrative Hearings.~~

The administrative law judge or hearing officer assigned to a case may extend the deadlines in subdivisions (2) through (4) so long as the administrative law judge or hearing officer makes ~~his recommended~~ a final decision in the case within 270 days after the petition is filed. ~~The Department may extend the deadline in subdivision (5) for up to 30 days by giving all parties written notice of the extension.~~"

SECTION 47. G.S. 131F-5(b) reads as rewritten:

"(b) Departmental Review. – The Department shall examine each application filed by a charitable organization or sponsor and shall determine whether the licensing requirements are satisfied. If the Department determines that the requirements are not satisfied, the Department shall notify the charitable organization or sponsor within 10 days after its receipt of the application. If the Department does not notify the charitable organization or sponsor within 10 days, the application is deemed to be approved and the license shall be granted. Within seven days after receipt of a notification that the requirements are not satisfied, the charitable organization or sponsor may file a petition for a contested case. The State has the burden of proof in the contested case. The contested case hearing must be held within seven days after the petition is filed. A ~~recommended~~ final decision must be made within ~~three~~ five days of the hearing. ~~A final decision must be made within two days after the recommended decision.~~ The contested case hearing proceedings shall be conducted in accordance with Chapter 150B of the General Statutes except that the time limits and provisions set forth in this section shall prevail to the extent of any conflict. The applicant shall be permitted to continue to operate or continue operations pending judicial review of the Department's denial of the application. The Department shall make rules regarding the custody and control of any funds collected during the review period and disposal of such funds in the event the denial of the application is affirmed on appeal."

SECTION 48. G.S. 131F-15(e) reads as rewritten:

"(e) Departmental Review. – The Department shall examine each application or renewal filed by a fund-raising consultant and determine whether the requirements are satisfied. If the Department determines that the requirements are not satisfied, the Department shall notify the fund-raising consultant within 10 days after its receipt of the application or renewal. If the Department does not respond within 10 days, the license is deemed approved. Within seven days after receipt of a notification that the license requirements are not satisfied, the applicant may file a petition for a contested case. The State has the burden of proof in the contested case. The contested case hearing must be held within seven days after the petition is filed. A

~~recommended~~ final decision must be made within ~~three~~ five days of the hearing. ~~A final decision must be made within two days after the recommended decision.~~ The contested case hearing proceedings shall be conducted in accordance with Chapter 150B of the General Statutes, except that the time limits and provisions set forth in this section shall prevail to the extent of any conflict. The applicant shall be permitted to continue to operate or continue operations pending judicial review of the Department's denial of the application. The Department shall make rules regarding the custody and control of any funds collected during the review period and disposal of such funds in the event the denial of the application is affirmed on appeal."

SECTION 49. G.S. 135-44.7(c) is repealed.

SECTION 50. G.S. 143-215.22L(o) reads as rewritten:

"(o) Administrative and Judicial Review. – Administrative and judicial review of a final decision ~~by the Commission~~ on a petition for a certificate under this section shall be governed by Chapter 150B of the General Statutes."

SECTION 51. G.S. 143-215.94E(e3) reads as rewritten:

"(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.~~"

SECTION 52. G.S. 143-215.94U(e) reads as rewritten:

"(e) The Department may revoke an operating permit only if the owner or operator fails to continuously meet the requirements set out in subsection (a) of this section. If the Department revokes an operating permit, the owner or operator of the facility for which the operating permit was issued shall immediately surrender the operating permit certificate to the Department, unless the revocation is stayed pursuant to G.S. 150B-33. An owner or operator may challenge a decision by the Department to deny or revoke an operating permit by filing a contested case under Article 3 of Chapter 150B of the General Statutes. ~~The Secretary shall make the final agency decision regarding the revocation of a permit under this section.~~"

SECTION 53. G.S. 143-215.104P(d) reads as rewritten:

"(d) The Secretary shall notify any person assessed a civil penalty for the assessment and the specific reasons therefor by registered or certified mail or by any means authorized by G.S. 1A-1, Rule 4. Contested case petitions shall be filed pursuant to G.S. 150B-23 within 30 days of receipt of the notice of assessment. ~~The Secretary shall make the final decision regarding assessment of a civil penalty under this section.~~"

SECTION 54. G.S. 143-215.104S reads as rewritten:

"**§ 143-215.104S. (Repealed effective January 1, 2012 – See editor's notes) Appeals.**

Any person who is aggrieved by a decision of the Commission under G.S. 143-215.104F through G.S. 143-215.104O may commence a contested case by filing a petition under G.S. 150B-23 within 60 days after the Commission's decision. If no contested case is initiated within the allotted time period, the Commission's decision shall be final and not subject to review. ~~The Commission shall make the final agency decision in contested cases initiated pursuant to this section.~~ Notwithstanding the provisions of G.S. 6-19.1, no party seeking to compel remediation of dry-cleaning solvent contamination in excess of that required by a dry-cleaning solvent remediation agreement approved by the Commission shall be eligible to recover attorneys' fees. ~~The Commission shall not delegate its authority to make a final agency decision pursuant to this section.~~"

SECTION 55. G.S. 153A-223 reads as rewritten:

"**§ 153A-223. Enforcement of minimum standards.**

If an inspection conducted pursuant to G.S. 153A-222 discloses that the jailers and supervisory and administrative personnel of a local confinement facility do not meet the entry level employment standards established pursuant to Chapter 17C or Chapter 17E or that a local confinement facility does not meet the minimum standards published pursuant to G.S. 153A-221 and, in addition, if the Secretary determines that conditions in the facility jeopardize the safe custody, safety, health, or welfare of persons confined in the facility, the Secretary may order corrective action or close the facility, as provided in this section:

(1) The Secretary shall give notice of his determination to the governing body and each other local official responsible for the facility. The Secretary shall also send a copy of this notice, along with a copy of the inspector's report, to the senior resident superior court judge of the superior court district or set of districts as defined in G.S. 7A-41.1 in which the facility is located. Upon receipt of the Secretary's notice, the governing body shall call a public hearing to consider the report. The hearing shall be held within 20 days after the day the Secretary's notice is received. The inspector shall appear at this hearing to advise and consult with the governing body concerning any corrective action necessary to bring the facility into conformity with the standards.

(2) The governing body shall, within 30 days after the day the Secretary's notice is received, request a contested case hearing, initiate appropriate corrective action or close the facility. The corrective action must be completed within a reasonable time.

(3) A contested case hearing, if requested, shall be conducted pursuant to G.S. 150B, Article 3. The issues shall be: (i) whether the facility meets the minimum standards; (ii) whether the conditions in the facility jeopardize the safe custody, safety, health, or welfare of persons confined therein; and (iii) the appropriate corrective action to be taken and a reasonable time to complete that action.

(4) If the governing body does not, within 30 days after the day the Secretary's notice is received, or within 30 days after service of the final ~~agency~~ decision if a contested case hearing is held, either initiate corrective action or close the facility, or does not complete the action within a reasonable time, the Secretary may order that the facility be closed.

(5) The governing body may appeal an order of the Secretary or a final decision to the senior resident superior court judge. The governing body shall initiate the appeal by giving by registered mail to the judge and to the Secretary notice of its intention to appeal. The notice must be given within 15 days after the day the Secretary's order or the final decision is received. If notice is not given within the 15-day period, the right to appeal is terminated.

(6) The senior resident superior court judge shall hear the appeal. He shall cause notice of the date, time, and place of the hearing to be given to each interested party, including the Secretary, the governing body, and each other local official involved. The ~~Secretary,~~ Office of Administrative Hearings, if a contested case hearing has been held, shall file the official record, as defined in G.S. 150B-37, with the senior resident superior court judge and shall serve a copy on each person who has been given notice of the hearing. The judge shall conduct the hearing without a jury. He shall consider the official record, if any, and may accept evidence from the Secretary, the governing body, and each other local official which he finds appropriate.

The issue before the court shall be whether the facility continues to jeopardize the safe custody, safety, health, or welfare of persons confined therein. The court may affirm, modify, or reverse the Secretary's order."

PART III. MISCELLANEOUS ISSUES

SECTION 56. G.S. 150B-4 reads as rewritten:

"**§ 150B-4. Declaratory rulings.**

(a) On request of a person aggrieved, an agency shall issue a declaratory ruling as to the validity of a rule or as to the applicability to a given state of facts of a statute administered by the agency or of a rule or order of the ~~agency, except when the agency for good cause finds issuance of a ruling undesirable.~~ agency. Upon request, an agency shall also issue a declaratory ruling to resolve a conflict or inconsistency within the agency regarding an interpretation of the law or a rule adopted by the agency. The agency shall prescribe in its rules the procedure for requesting a declaratory ruling and the circumstances in which rulings shall or shall not be issued. A declaratory ruling is binding on the agency and the person requesting it unless it is altered or set aside by the court. An agency may not retroactively change a declaratory ruling, but nothing in this section prevents an agency from prospectively changing a declaratory ruling. A declaratory ruling is a final agency decision and is subject to judicial review in ~~the same manner as an order in a contested case.~~ accordance with Article 4 of this Chapter. Failure of the agency to issue a declaratory ruling on the merits within 60 days of the request for such ruling shall constitute a ~~denial of the request as well as a denial of the merits of the request and shall be subject to judicial review.~~ determination in favor of the person aggrieved.

(b) Repealed by Session Laws 1997-34, s. 1."

SECTION 57. Every State agency, board, commission, or other body with rule-making powers shall deliver to the Joint Select Regulatory Reform Committee of the General Assembly no later than October 1, 2011, a list of all permanent rules adopted by the body that includes for each rule the following information:

(1) Whether the rule is mandated by a federal law or regulation.

(2) If the rule is not mandated by a federal law or regulation, whether there is a federal regulation that is analogous to the rule. For purposes of this subdivision, "analogous" means the federal regulation regulates the same conduct or activity as the State regulation.

(3) If there is a federal statute or regulation analogous to the rule, whether the rule is more stringent than the federal law or regulation.

SECTION 58. The Joint Regulatory Reform Committee shall study the procedural and substantive requirements of administrative hearings conducted under Article 3A of Chapter 150B of the General Statutes. The Committee shall examine the various procedures used by the entities that conduct administrative hearings under Article 3A to identify areas of consistency and inconsistency with the purpose of designing procedures that are applicable to all Article 3A hearings and that ensure that the hearings provide a meaningful opportunity to be heard and for dispute resolution. The Joint Regulatory Reform Committee shall report its findings and recommendations to the 2012 Regular Session of the 2011 General Assembly.

SECTION 59.(a) G.S. 113A-12 reads as rewritten:

"**§ 113A-12. Environmental document not required in certain cases.**

No environmental document shall be required in connection with:

(1) The construction, maintenance, or removal of an electric power line, water line, sewage line, stormwater drainage line, telephone line, telegraph line, cable television line, data transmission line, or natural gas line within or across the right-of-way of any street or highway.

(2) An action approved under a general permit issued under G.S. 113A-118.1, 143-215.1(b)(3), or 143-215.108(c)(8).

(3) A lease or easement granted by a State agency for:

a. The use of an existing building or facility.
b. Placement of a wastewater line on or under submerged lands pursuant to a permit granted under G.S. 143-215.1.
c. A shellfish cultivation lease granted under G.S. 113-202.

(4) The construction of a driveway connection to a public roadway.

(5) A project for which public monies are expended if the expenditure is solely for the payment of incentives pursuant to an agreement that makes the incentive payments contingent on prior completion of the project or activity, or completion on a specified timetable, and a specified level of job creation or new capital investment.

(6) A major development as defined in G.S. 113A-118(c) that receives a permit issued under Article 7 of Chapter 113A of the General Statutes."

SECTION 59.(b) This section is effective when it becomes law and applies to any major development for which a permit application is received by the Department of Environment and Natural Resources on or after that date.

SECTION 60.(a) G.S. 143-215.108(d1) reads as rewritten:

"(d1) No Title V permit issued pursuant to this section shall be issued or renewed for a term exceeding five years. All other permits issued pursuant to this section shall be issued for a term of 10 years."

SECTION 60.(b) G.S. 143-215.1(c) reads as rewritten:

"(c) Applications for Permits and Renewals for Facilities Discharging to the Surface Waters. –

(1) All applications for permits and for renewal of existing permits for outlets and point sources and for treatment works and disposal systems discharging to the surface waters of the State shall be in writing, and the Commission may prescribe the form of such applications. All applications shall be filed with the Commission at least 180 days in advance of the date on which it is desired to commence the discharge of wastes or the date on which an existing permit expires, as the case may be. The Commission shall act on a permit application as quickly as possible. The Commission may conduct any inquiry or investigation it considers necessary before acting on an application and may require an applicant to submit plans, specifications, and other information the Commission considers necessary to evaluate the application.

(2) a. The Department shall refer each application for permit, or renewal of an existing permit, for outlets and point sources and treatment works and disposal systems discharging to the surface waters of the State to its staff for written evaluation and proposed determination with regard to issuance or denial of the permit. If the Commission concurs in the proposed determination, it shall give notice of intent to issue or deny the permit, along with any other data that the Commission may determine appropriate, to be given to the appropriate State, interstate and federal agencies, to interested persons, and to the public.

a1. The Commission shall prescribe the form and content of the notice. Public notice shall be given at least 45 days prior to any proposed final action granting or denying the permit. Public notice shall be given by publication of the notice one time in a newspaper having general circulation within the county.

b. Repealed by Session Laws 1987, c. 734.

(3) If any person desires a public hearing on any application for permit or renewal of an existing permit provided for in this subsection, he shall so

request in writing to the Commission within 30 days following date of the notice of intent. The Commission shall consider all such requests for hearing, and if the Commission determines that there is a significant public interest in holding such hearing, at least 30 days' notice of such hearing shall be given to all persons to whom notice of intent was sent and to any other person requesting notice. At least 30 days prior to the date of hearing, the Commission shall also cause a copy of the notice thereof to be published at least one time in a newspaper having general circulation in such county. In any county in which there is more than one newspaper having general circulation in that county, the Commission shall cause a copy of such notice to be published in as many newspapers having general circulation in the county as the Commission in its discretion determines may be necessary to assure that such notice is generally available throughout the county. The Commission shall prescribe the form and content of the notices.

The Commission shall prescribe the procedures to be followed in hearings. If the hearing is not conducted by the Commission, detailed minutes of the hearing shall be kept and shall be submitted, along with any other written comments, exhibits or documents presented at the hearing, to the Commission for its consideration prior to final action granting or denying the permit.

(4) Not later than 60 days following notice of intent or, if a public hearing is held, within 90 days following consideration of the matters and things presented at such hearing, the Commission shall grant or deny any application for issuance of a new permit or for renewal of an existing permit. All permits or renewals issued by the Commission and all decisions denying application for permit or renewal shall be in writing.

~~(5) No permit issued pursuant to this subsection (c) shall be issued or renewed for a term exceeding five years.~~

(6) The Commission shall not act upon an application for a new nonmunicipal domestic wastewater discharge facility until it has received a written statement from each city and county government having jurisdiction over any part of the lands on which the proposed facility and its appurtenances are to be located which states whether the city or county has in effect a zoning or subdivision ordinance and, if such an ordinance is in effect, whether the proposed facility is consistent with the ordinance. The Commission shall not approve a permit application for any facility which a city or county has determined to be inconsistent with its zoning or subdivision ordinance unless it determines that the approval of such application has statewide significance and is in the best interest of the State. An applicant for a permit shall request that each city and county government having jurisdiction issue the statement required by this subdivision by mailing by certified mail, return receipt requested, a written request for such statement and a copy of the draft permit application to the clerk of the city or county. If a local government fails to mail the statement required by this subdivision, as evidenced by a postmark, within 15 days after receiving and signing for the certified mail, the Commission may proceed to consider the permit application notwithstanding this subdivision."

SECTION 60.(c) G.S. 143-215.1 is amended by adding a new subsection to read:

"(d2) No permit issued pursuant to subsection (c) of this section shall be issued or renewed for a term exceeding five years. All other permits issued pursuant to this section for which an expiration date is specified shall be issued for a term of 10 years."

SECTION 60.(d) The Department of Environment and Natural Resources shall review the types of permits issued by the Department and the rule-making agencies under the Department and recommend whether the duration of any of the types of permits should be extended beyond their duration under current law or rule. The Department shall report its findings and recommendations to the Environmental Review Commission no later than February 1, 2012.

SECTION 60.(e) This section is effective when this act becomes law and applies to permits that are issued on or after July 1, 2011.

SECTION 61. The Secretary of Environment and Natural Resources shall develop a uniform policy for notification of deficiencies and violations for all of the regulatory programs within the Department of Environment and Natural Resources. In developing the notification policy, the Secretary shall establish different types of notification based on the potential or actual level of harm to public health, the environment, and the natural resources of the State. The Secretary shall also review the notification policies of the United States Environmental Protection Agency and the environmental regulatory programs of other states. The Secretary shall report on the development of the notification policy to the Environmental Review Commission and the Joint Select Regulatory Reform Committee no later than October 1, 2011. The Secretary shall implement the uniform notification policy no later than February 1, 2012.

SECTION 62. If any provision of this act is held invalid by a court of competent jurisdiction, the invalidity does not affect other provisions of the act that can be given effect without the invalid provision.

SECTION 63. Sections 2 through 14 of this act become effective October 1, 2011, and apply to rules adopted on or after that date. Sections 15 through 55 of this act become effective January 1, 2012, and apply to contested cases commenced on or after that date. Unless otherwise provided elsewhere in this act, this remainder of this act is effective when it becomes law.

VISITOR REGISTRATION SHEET

Senate AG/Env/Nat. Resources (2011-2012) June 7, 2011 PM

Name of Committee **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Jake Cashion	NC Chamber
David McKowan	NC Realtors
Mike Abrazinskas	NC DENR - DAO
David Lanyon	DENR
Michael Ellison	DENR - EEP
David Williams	DENR - DSWC
Ryke Longest	Duke ELPC
George A. Howard	Restoration Systems
Tara Diaz Allden	Restoration Systems
Mary Maclean Asbill	SELC
Will Morgan	Sierra Club
Dan Conrad	NCCN

VISITOR REGISTRATION SHEET

Senate AG/Env/Nat. Resources (2011-2012) — June 7, 2011 PM
Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Steve McEvoy	NC DENR
Jim Simon	NCDENR
Adam V McIntyre	NCERA
Henry Jones	Attorney Raleigh
Paul Sherman	NCFB
Paula Page	NCFB
Mitch Peele	NCFB
Ray Starling	NCDA+CS

VISITOR REGISTRATION SHEET

Senate AG/Env/Nat. Resources (2011-2012) — May 1- 2011
Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Pat Harris	DENR - Soil & Water
Robin Smith	DENR
Daniel Ambourn	NCLM
George Everett	Duke Energy
Kathy Hawkins	Duke Energy
[illegible]	MWC
Lisa Martin	NC HBA
Rick Techini	Progress Energy
JGoodmon	NC Chamber
P Edwards	NCIG
Mitch Peele	NCFB

Senate Agriculture/Environment/Natural Resources

MINUTES

June 9, 2011

The Senate Ag/Env/Nat. Resources committee met on Thursday, June 09, 2011 in the senate chamber at 12:18 pm. There were 18 senators present.

Sen. Don East called the meeting to order.

HB-594 FUNCTIONALLY EQUIVALENT WASTEWATER SYSTEMS

Sen. Brown moved for adoption of the PCS for discussion. Mr. Jeff Hudson, Chief Staff Counsel explained the PCS. Rep. Hilton made additional comments. This will help a company in his district and urged support. There are no problems with DENR and he knows of no opposition. Sen. Kinnaird asked for clarification on Line 17, Page2. Mr. Hudson explained. Mr. Harry Bussey, Jr., Unifour, Hickory NC explained further. Sen. Atwater asked who is requiring these conditions. Mr. Bobby Barnes, PE, Unifour Company in Hickory, NC responded and explained. Sen. Allran moved for a favorable report, unfavorable to the original bill. Vote taken and so moved.

SB 665-ASU WIND DEMOSTRATION PROJECT

Sen. East asked this be removed until further notice.

The meeting adjourned at 12:29.

Sen. Don East , Co-Chair

Cindy J. Davis, Committee Clerk

Principal Clerk
Reading Clerk

Corrected: 5th Notice - Adding SB-665 back to agenda

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

The Senate Committee on **Agriculture/Environment/Natural Resources** will meet at the following time:

DAY	DATE	TIME	ROOM
Thursday	June 9, 2011	9:00 am	421 LOB

The following will be considered:

BILL NO.	SHORT TITLE	SPONSOR
HB 209	Amend SW Financial Assurance Rqmts.	Representative Ingle Representative Gillespie
HB 242	Nat'l Gas/Bonds/Fees/Studies	Representative Stone Representative Gillespie
HB 594	Functionally Equivalent Wastewater Systems.	Representative Hilton Representative Gillespie
HB 755	Study Fox Laws.	Representative
HB 492	Stormwater/Isolated Popl. Growth in County.	Representative Howard
HB 713	Public Contracts/Multiple Award.	Representative Lewis Representative Stam Representative Murry
SB 665	ASU Wind Demonstration Project.	Senator Hise

5th Notice - Adding SB-665 back to agenda

Senator Don East, Co-Chair
Senator David Rouzer, Co-Chair

Cindy Davis (Sen. Jackson)

To: 2011 Ag/Env/Nat. Resources; Rep. Paul Stam; Rep. Mitch Gillespie; Rep. Dan Ingle; Rep. Mark Hilton; Rep. Michael Stone; Rep. Pat McElraft; Rep. Julia Howard; Sen. Ralph Hise Carol Wilson (Rep. Hilton); Shelly Carver (Sen. Hise); Ernie Parker (Rep. Julia Howard); Kathy Voss (Rep. Stone); Cindy Hobbs (Rep. Gillespie); Deborah Holder (Rep. Ingle)

Subject: <NCGA> Senate Agriculture/Environment/Natural Resources Committee Meeting Notice for Thu, 06-09-2011 at 9:00 am - CORRECTED

Principal Clerk ____
Reading Clerk ____

Corrected: 4th Notice - Remove SB-665

SENATE
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AND
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HB 755	Study Fox Laws.	Representative
HB 492	Stormwater/Isolated Popl. Growth in County.	Representative Howard
HB 713	Public Contracts/Multiple Award.	Representative Lewis Representative Stam Representative Murry

4th Notice - Remove SB-665

Senator Don East, Co-Chair
Senator David Rouzer, Co-Chair

Cindy Davis (Sen. Jackson)

To: 2011 Ag/Env/Nat. Resources; Rep. Mitch Gillespie; Rep. Dan Ingle; Rep. Mark Hilton; Rep. Michael Stone; Rep. Pat McElraft; Rep. Julia Howard; Sen. Ralph Hise

: Cindy Hobbs (Rep. Gillespie); Deborah Holder (Rep. Ingle); Carol Wilson (Rep. Hilton); Nancy Fox (Rep. McElraft); Shelly Carver (Sen. Hise); Ernie Parker (Rep. Julia Howard); Kathy Voss (Rep. Stone)

Subject: <NCGA> Senate Agriculture/Environment/Natural Resources Committee Meeting Notice for Thu, 06-09-2011 at 9:00 am - CORRECTED

Principal Clerk ____
Reading Clerk ____

Corrected: 3RD Notice - Remove HB-119

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

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SB 665	ASU Wind Demonstration Project.	Senator Hise
HB 492	Stormwater/Isolated Popl. Growth in County.	Representative Howard
HB 713	Public Contracts/Multiple Award.	Representative Lewis

Representative Stam
Representative Murry

3RD Notice - Remove HB-119

Senator Don East, Co-Chair
Senator David Rouzer, Co-Chair

Cindy Davis (Sen. Jackson)

To: 2011 Ag/Env/Nat. Resources; Rep. Dan Ingle; Rep. Mark Hilton; Rep. Mitch Gillespie; Rep. Pat McElraft; Rep. Michael Stone

: Deborah Holder (Rep. Ingle); Carol Wilson (Rep. Hilton); Cindy Hobbs (Rep. Gillespie); Nancy Fox (Rep. McElraft); Kathy Voss (Rep. Stone)

Subject: <NCGA> Senate Agriculture/Environment/Natural Resources Committee Meeting Notice for Thu, 06-09-2011 at 9:00 am

Principal Clerk ____
Reading Clerk ____

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

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HB 209	Amend SW Financial Assurance Rqmts.	Representative Ingle Representative Gillespie
HB 242	Nat'l Gas/Bonds/Fees/Studies	Representative Stone Representative Gillespie
HB 594	Functionally Equivalent Wastewater Systems.	Representative Hilton Representative Gillespie
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Senator Don East, Co-Chair
Senator David Rouzer, Co-Chair

Principal Clerk ____
Reading Clerk ____

SENATE
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Senator Don East, Co-Chair
Senator David Rouzer, Co-Chair

Principal Clerk
Reading Clerk

Corrected: 4th Notice - Remove SB-665

SENATE
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HB 713	Public Contracts/Multiple Award.	Representative Lewis Representative Stam Representative Murry

4th Notice - Remove SB-665

Senator Don East, Co-Chair
Senator David Rouzer, Co-Chair

Principal Clerk
Reading Clerk

Corrected: Add HB-492 & HB-713

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

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HB 594	Functionally Equivalent Wastewater Systems.	Representative Hilton Representative Gillespie
HB 755	Study Fox Laws.	Representative
SB 665	ASU Wind Demonstration Project.	Senator Hise
HB 492	Stormwater/Isolated Popl. Growth in County.	Representative Howard
HB 713	Public Contracts/Multiple Award.	Representative Lewis Representative Stam Representative Murry

Add HB-492 & HB-713.

Senator Don East, Co-Chair
Senator David Rouzer, Co-Chair

Senate Agriculture/Environment/Natural Resources Committee
Thursday, June 9, 2011, 9:00 am
421 LOB

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

HB 209	Amend SW Financial Assurance Rqmts.	Representative Ingle Representative Gillespie
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Presentations

Other Business

Adjournment

Senate Agriculture/Environment/Natural Resources Committee
Thursday, June 9, 2011, 9:00 am
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AGENDA

Welcome and Opening Remarks

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Presentations

Other Business

Adjournment

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES COMMITTEE REPORT
Senator Don East, Co-Chair
Senator David Rouzer, Co-Chair

Thursday, June 09, 2011

Senator EAST,
submits the following with recommendations as to passage:

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 1, BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL

H.B.(CS #1) **594** Functionally Equivalent Wastewater Systems.

Draft Number:	PCS11242
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

TOTAL REPORTED: 1

Committee Clerk Comments:

Sen. Allran will present this on senate floor for discussion

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

H D

HOUSE BILL 594
Committee Substitute Favorable 5/12/11
PROPOSED SENATE COMMITTEE SUBSTITUTE H594-PCS11242-SB-48

Short Title: Functionally Equivalent Wastewater Systems. (Public)

Sponsors:

Referred to:

April 5, 2011

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE COMMISSION FOR PUBLIC HEALTH TO APPROVE AS AN INNOVATIVE WASTEWATER SYSTEM ANY WASTEWATER TRENCH SYSTEM THAT IS DETERMINED BY THE COMMISSION TO BE FUNCTIONALLY EQUIVALENT TO AN ACCEPTED WASTEWATER TRENCH SYSTEM.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 130A-343 is amended by adding a new subsection to read:

"(g1) Approval of Functionally Equivalent Trench Systems as Innovative Systems. – A manufacturer of a wastewater trench system may petition the Commission to have the wastewater trench system approved as an innovative wastewater system as provided in this subsection.

(1) The Commission shall approve a wastewater trench system as an innovative wastewater system if it finds that there is clear, convincing, and cogent evidence that the wastewater trench system is functionally equivalent to a wastewater trench system that is approved as an accepted wastewater system. A wastewater trench system shall be considered functionally equivalent to an accepted wastewater trench system if the performance characteristics of the wastewater trench system satisfy all of the following requirements:

a. The physical properties and chemical durability of the materials from which the wastewater trench system is constructed are equal to or superior to the physical properties and chemical durability of the materials from which the accepted wastewater trench system is constructed.

b. The permeable sidewall area and bottom infiltrative area of the wastewater trench system are equal to or greater than the permeable sidewall area and bottom infiltrative area of the accepted wastewater trench system at a field-installed size.

c. The wastewater trench system utilizes a similar method and manner of function for the conveyance and application of effluent as the accepted wastewater trench system.

d. The structural integrity of the wastewater trench system is equal to or superior to the structural integrity of the accepted wastewater trench system.

e. The wastewater trench system shall provide a field installed system storage volume equal to or greater than the field installed system storage volume of the accepted wastewater trench system.

(2) As part of its petition, the manufacturer shall provide to the Commission all of the following information:

a. Specifications of the wastewater trench system.

b. Data necessary to demonstrate that the wastewater trench system is functionally equivalent to a wastewater trench system that is approved as an accepted wastewater system.

c. A certified statement from an independent, third-party professional engineer or testing laboratory that, based on verified documentation, the wastewater trench system is functionally equivalent to an accepted wastewater system.

(3) Approval of a wastewater trench system as an innovative wastewater system shall not be conditioned on the manufacturer of the wastewater trench system having operational systems installed in the State.

(4) The Commission shall authorize the use of a wastewater trench system as an innovative wastewater system in the same applications as the accepted wastewater trench system.

(5) The Commission shall not include conditions and limitations in the approval of a wastewater trench system as an innovative wastewater system that are not included in the approval of the accepted wastewater trench system."

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

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

H D

HOUSE BILL 594
Committee Substitute Favorable 5/12/11
PROPOSED SENATE COMMITTEE SUBSTITUTE H594-CSSB-48 [v.1]

6/8/2011 9:36:07 AM

Short Title: Functionally Equivalent Wastewater Systems. (Public)

Sponsors:

Referred to:

April 5, 2011

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE COMMISSION FOR PUBLIC HEALTH TO APPROVE AS AN INNOVATIVE WASTEWATER SYSTEM ANY WASTEWATER TRENCH SYSTEM THAT IS DETERMINED BY THE COMMISSION TO BE FUNCTIONALLY EQUIVALENT TO AN ACCEPTED WASTEWATER TRENCH SYSTEM.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 130A-343 is amended by adding a new subsection to read:

"(g1) Approval of Functionally Equivalent Trench Systems as Innovative Systems. – A manufacturer of a wastewater trench system may petition the Commission to have the wastewater trench system approved as an innovative wastewater system as provided in this subsection.

(1) The Commission shall approve a wastewater trench system as an innovative wastewater system if it finds that there is clear, convincing, and cogent evidence that the wastewater trench system is functionally equivalent to a wastewater trench system that is approved as an accepted wastewater system. A wastewater trench system shall be considered functionally equivalent to an accepted wastewater trench system if the performance characteristics of the wastewater trench system satisfy all of the following requirements:

a. The physical properties and chemical durability of the materials from which the wastewater trench system is constructed are equal to or superior to the physical properties and chemical durability of the materials from which the accepted wastewater trench system is constructed.

b. The permeable sidewall area and bottom infiltrative area of the wastewater trench system are equal to or greater than the permeable sidewall area and bottom infiltrative area of the accepted wastewater trench system at a field-installed size.

c. The wastewater trench system utilizes a similar method and manner of function for the conveyance and application of effluent as the accepted wastewater trench system.

d. The structural integrity of the wastewater trench system is equal to or superior to the structural integrity of the accepted wastewater trench system.

e. The wastewater trench system shall provide a field installed system storage volume equal to or greater than the field installed system storage volume of the accepted wastewater trench system.

(2) As part of its petition, the manufacturer shall provide to the Commission all of the following information:

a. Specifications of the wastewater trench system.

b. Data necessary to demonstrate that the wastewater trench system is functionally equivalent to a wastewater trench system that is approved as an accepted wastewater system.

c. A certified statement from an independent, third-party professional engineer or testing laboratory that, based on verified documentation, the wastewater trench system is functionally equivalent to an accepted wastewater system.

(3) Approval of a wastewater trench system as an innovative wastewater system shall not be conditioned on the manufacturer of the wastewater trench system having operational systems installed in the State.

(4) The Commission shall authorize the use of a wastewater trench system as an innovative wastewater system in the same applications as the accepted wastewater trench system.

(5) The Commission shall not include conditions and limitations in the approval of a wastewater trench system as an innovative wastewater system that are not included in the approval of the accepted wastewater trench system."

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

H 2

HOUSE BILL 594
Committee Substitute Favorable 5/12/11

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April 5, 2011

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(1) The Commission shall approve a wastewater trench system as an innovative wastewater system if it finds that there is clear, convincing, and cogent evidence that the wastewater trench system is functionally equivalent to a wastewater trench system that is approved as an accepted wastewater system. A wastewater trench system shall be considered functionally equivalent to an accepted wastewater trench system if the performance characteristics of the wastewater trench system satisfy all of the following requirements:

a. The physical properties and chemical durability of the materials from which the wastewater trench system is constructed are equal to or superior to the physical properties and chemical durability of the materials from which the accepted wastewater trench system is constructed.

b. The permeable sidewall area and bottom infiltrative area of the wastewater trench system are equal to or greater than the permeable sidewall area and bottom infiltrative area of the accepted wastewater trench system at a field-installed size.

c. The wastewater trench system utilizes a similar method and manner of function for the conveyance and application of effluent as the accepted wastewater trench system.

d. The structural integrity of the wastewater trench system is equal to or superior to the structural integrity of the accepted wastewater trench system.

e. If the wastewater trench system contains synthetic aggregate, the aggregate density and field-installed system storage volume are equal

to or greater than the aggregate density and field-installed system storage volume of the accepted wastewater trench system.

f. The wastewater trench system holds all national certifications held by the accepted wastewater trench system.

(2) As part of its petition, the manufacturer shall provide to the Commission all of the following information:

a. Specifications of the wastewater trench system.

b. Data necessary to demonstrate that the wastewater trench system is functionally equivalent to a wastewater trench system that is approved as an accepted wastewater system.

c. A certified statement from an independent, third-party professional engineer or testing laboratory that, based on verified documentation, the wastewater trench system is functionally equivalent to an accepted wastewater system.

(3) Approval of a wastewater trench system as an innovative wastewater system shall not be conditioned on the manufacturer of the wastewater trench system having operational systems installed in the State.

(4) The Commission shall authorize the use of a wastewater trench system as an innovative wastewater system in the same applications as the accepted wastewater trench system.

(5) The Commission shall not include conditions and limitations in the approval of a wastewater trench system as an innovative wastewater system that are not included in the approval of the accepted wastewater trench system."

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

H

HOUSE BILL 209

Short Title:	Amend SW Financial Assurance Rqmts.	(Public)
Sponsors:	Representatives Ingle and Gillespie (Primary Sponsors). For a complete list of Sponsors, see Bill Information on the NCGA Web Site.	
Referred to:	Environment.	

March 3, 2011

A BILL TO BE ENTITLED

AN ACT TO AMEND CERTAIN FINANCIAL ASSURANCE REQUIREMENTS APPLICABLE TO OWNERS AND OPERATORS OF SANITARY LANDFILLS TO (1) DECREASE THE MINIMUM AMOUNT OF FINANCIAL ASSURANCE THAT MUST BE ESTABLISHED TO COVER COSTS FOR POTENTIAL ASSESSMENT AND CORRECTIVE ACTION AT A FACILITY; AND (2) AUTHORIZE THE USE OF A TRUST FUND PAY-IN PERIOD AS AN ALLOWABLE MECHANISM TO ESTABLISH THE FINANCIAL ASSURANCE NECESSARY FOR POTENTIAL ASSESSMENT AND CORRECTIVE ACTION AT A FACILITY.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 130A-295.2 reads as rewritten:

"**§ 130A-295.2. Financial responsibility requirements for applicants and permit holders for solid waste management facilities.**

...

(h) To meet the financial assurance requirements of this section, the owner or operator of a sanitary landfill shall establish financial assurance sufficient to cover a minimum of ~~three~~ two million dollars ~~($3,000,000)~~ ($2,000,000) in costs for potential assessment and corrective action at the facility. The Department may require financial assurance in a higher amount and may increase the amount of financial assurance required of a permit holder at any time based upon the types of waste disposed in the landfill, the projected amount of waste to be disposed in the landfill, the location of the landfill, potential receptors of releases from the landfill, and inflation. The financial assurance requirements of this subsection are in addition to the other financial responsibility requirements set out in this section.

(i) The Commission may adopt rules under which a unit of local government and a solid waste management authority created pursuant to Article 22 of Chapter 153A of the General Statutes may meet the financial responsibility requirements of this section by either a local government financial test or a capital reserve fund requirement.

(j) In addition to the other methods by which financial assurance may be established as set forth in subsection (f) of this section, the Department may allow the owner or operator of a sanitary landfill permitted on or before August 1, 2009, to meet the financial assurance requirement set forth in subsection (h) of this section by establishing a trust fund which conforms to the following minimum requirements:

(1) The trustee shall be an entity which has the authority to act as a trustee and whose trust operations are regulated and examined by a State or federal agency.

(2) A copy of the trust agreement shall be placed in the facility's operating record.

(3) Payments into the trust fund shall be made annually by the owner or operator over a period not to exceed five years. This period is referred to as the pay-in period.

(4) Payments into the fund shall be made in equal annual installments in amounts calculated by dividing the current cost estimate for potential assessment and corrective action at the facility, which shall not be less than two million dollars ($2,000,000) in accordance with subsection (h) of this section, by the number of years in the pay-in period.

(5) The trust fund may be terminated by the owner or operator only if the owner or operator establishes financial assurance by another method or combination of methods allowed under subsection (f) of this section.

(6) The trust agreement shall be accompanied by a formal certification of acknowledgement."

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

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

H 4

HOUSE BILL 242
Committee Substitute Favorable 4/19/11
Committee Substitute #2 Favorable 5/26/11
Fourth Edition Engrossed 5/31/11

Short Title: Nat. Gas/Bonds/Fees/Studies. (Public)

Sponsors:

Referred to:

March 8, 2011

A BILL TO BE ENTITLED

AN ACT TO (1) INCREASE THE AMOUNT OF THE BOND REQUIRED UPON REGISTRATION IN ORDER TO DRILL FOR OIL OR NATURAL GAS IN THE STATE; (2) INCREASE THE AMOUNT OF FEES APPLICABLE TO DRILLING AND ABANDONING OIL OR GAS WELLS; (3) DIRECT THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES TO STUDY THE ISSUE OF OIL AND GAS EXPLORATION IN THE STATE, AND SPECIFICALLY THE USE OF DIRECTIONAL AND HORIZONTAL DRILLING AND HYDRAULIC FRACTURING FOR THAT PURPOSE; (4) DIRECT THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES TO CONDUCT AT LEAST TWO PUBLIC HEARINGS ON THE ISSUE IN THE AREA IN WHICH EXPLORATION FOR NATURAL GAS BY MEANS OF DIRECTIONAL AND HORIZONTAL DRILLING AND HYDRAULIC FRACTURING MAY OCCUR; AND (5) APPROPRIATE THE SUM OF ONE HUNDRED THOUSAND DOLLARS TO THE DEPARTMENT FOR THE CONDUCT OF THE STUDY AND THE HEARINGS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 113-378 reads as rewritten:

"**§ 113-378. Persons drilling for oil or gas to register and furnish bond.**

Any person, firm or corporation before making any drilling exploration in this State for oil or natural gas shall register with the Department of Environment and Natural ~~Resources or such other State agency as may hereafter be established to control the conservation of oil or gas in this State.~~Resources. To provide for such registration, the drilling operator must furnish the name and address of such person, firm or corporation, and the location of the proposed drilling operations, and file with the ~~aforesaid~~ Department a bond in ~~the~~ an amount totaling the sum of~~f~~ (i) five thousand dollars ($5,000) plus (ii) one dollar ($1.00) per linear foot proposed to be drilled for the well. ~~($5,000) running to the State of North Carolina, conditioned that any~~ Any well opened by the drilling operator ~~upon abandonment~~ shall be plugged upon abandonment in accordance with the rules of ~~said~~ the Department."

SECTION 2. G.S. 113-395 reads as rewritten:

"**§ 113-395. Notice and payment of fee to Department before drilling or abandoning well; plugging abandoned well.**

Before any well, in search of oil or gas, shall be drilled, the person desiring to drill the same shall notify the Department upon such form as it may prescribe and shall pay a fee of ~~fifty~~ three

thousand dollars ~~($50.00)~~($3,000) for each well. The drilling of any well is hereby prohibited until such notice is given and such fee has been paid and permit granted.

Each abandoned well and each dry hole ~~promptly~~ shall be plugged promptly in the manner and within the time required by rules ~~to be~~ prescribed by the Department, and the owner of such well shall give notice, upon such form as the Department may prescribe, of the abandonment of each dry hole and of the owner's intention to abandon, and shall pay a fee of ~~fifteen~~ four hundred fifty dollars ~~($15.00)~~($450.00). No well shall be abandoned until such notice has been given and such fee has been paid."

SECTION 3. The Department of Environment and Natural Resources shall study the issue of oil and gas exploration in the State and the use of directional and horizontal drilling and hydraulic fracturing for that purpose. The Department shall report its findings and recommendations, including specific legislative proposals, to the Environmental Review Commission no later than May 1, 2012. At a minimum, the study shall include information on the following:

(1) Oil and gas reserves present in the Triassic Basins and in any other areas of the State.

(2) Methods of exploration and extraction of oil and gas, including directional and horizontal drilling and hydraulic fracturing.

(3) Potential impacts on infrastructure, including roads, pipelines, and water and wastewater services. In analyzing potential impacts, the Department shall specifically examine the expected water usage from hydraulic fracturing, water resources in the area in which drilling may occur, as well as existing water users in the area that may be impacted by increased consumption of water for use in hydraulic fracturing.

(4) Potential environmental impacts, including constituents or contaminants that may be present in the fluid used in the hydraulic fracturing process; the potential for the contamination of nearby wells and groundwater, as well as the options for disposal and reuse of the wastewater produced; stormwater management; the potential for emission of toxic air pollutants; impacts on wildlife; management and reclamation of drilling sites, including orphaned sites; management of naturally occurring radioactive materials (NORM) generated by the drilling and production of natural gas; and the potential for seismic activity in the area in which drilling may occur. In examining this issue, the Department shall formulate regulatory requirements advisable to address potential environmental impacts and in doing so shall gather information on regulatory programs in other states where oil and gas exploration or extraction is occurring, particularly with regard to the use of hydraulic fracturing for that purpose.

(5) Potential economic impacts, including possible sources of revenue that could accrue to the benefit of the State in the event that drilling for oil or natural gas were to take place in the State. In examining this issue, the Department shall gather information on (i) the number of jobs that may be expected as a result from drilling activities in the State and (ii) what severance taxes, fees, royalties, bonds, or assessments may be appropriate in connection with the activity. For any sources of revenue that may be anticipated, the Department shall evaluate use of the revenue for the following purposes: funds necessary to implement an oil and gas regulatory program; funds dedicated to the conservation and preservation of land and water resources; funds dedicated to remediation of environmental contamination such as the Inactive Hazardous Sites Cleanup Fund; and funds dedicated to improving water and wastewater infrastructure across the State.

(6) Potential social impacts, including impacts of drilling operations on nearby communities and quality of life within those communities, recreational activities, and commercial and residential development.

(7) Potential oversight and administrative issues associated with an oil and gas regulatory program, including statutory authority necessary for implementation of such a program; funding requirements necessary to implement a stable and effective program; criteria for permit issuance or denial; frequency and scope of inspections; compliance and enforcement procedures; coordination of agency involvement to ensure efficient permitting and clear delineation of compliance responsibilities; opportunities for public participation; and data management.

(8) Consumer protection and legal issues relevant to oil and gas exploration in the State, including matters of contract law, mineral leases, and landowner rights.

(9) Any other pertinent issues that the Department deems relevant to oil and gas exploration in the State and the use of hydraulic fracturing for that purpose.

SECTION 4. By February 1, 2012, the Department of Environment and Natural Resources shall hold at least two public hearings at separate locations within the Triassic Basin on the issue of drilling for natural gas by means of directional and horizontal drilling and hydraulic fracturing. The public hearings shall be conducted in order to promote awareness of the issue generally and inform and consult with the public and user groups on potential environmental impacts, potential regulatory controls, potential economic impacts, and consumer protection issues, including landowner rights and mineral leases. In developing the consumer protection portion of the public hearings, the Department shall consult with the Consumer Protection Division of the North Carolina Department of Justice and the Rural Advancement Foundation International (RAFI).

SECTION 5. There is appropriated from the General Fund to the Department of Environment and Natural Resources the sum of one hundred thousand dollars ($100,000) for the 2011-2012 fiscal year to complete the study and conduct the public hearings required by this act.

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

H 1

HOUSE BILL 492

Short Title:	Stormwater/Isolated Popl. Growth in County.	(Public)
Sponsors:	Representative Howard (Primary Sponsor). For a complete list of Sponsors, see Bill Information on the NCGA Web Site.	
Referred to:	Government.	

March 29, 2011

A BILL TO BE ENTITLED

AN ACT TO (1) PROVIDE THAT DEVELOPMENT IN THE UNINCORPORATED AREAS OF A COUNTY IS NOT SUBJECT TO THE STANDARDS REGARDING POSTCONSTRUCTION PRACTICES UNDER SECTION 9 OF S.L. 2006-246 OR ANY ADMINISTRATIVE RULES ADOPTED TO REPLACE THAT SECTION WHEN THE DEVELOPMENT IS LOCATED IN A COUNTY THAT CONTAINS AN URBANIZED AREA AND HAD AN ACTUAL POPULATION GROWTH RATE THAT EXCEEDED THE STATE POPULATION GROWTH RATE FOR THE PERIOD 1995 THROUGH 2004 WHEN THAT POPULATION GROWTH OCCURRED IN AN AREA WITHIN THE COUNTY THAT CONSISTS OF LESS THAN FIVE PERCENT OF THE TOTAL LAND AREA OF THE COUNTY AND (2) RESCIND THE CURRENT DESIGNATION OF ANY SUCH COUNTY.

The General Assembly of North Carolina enacts:

SECTION 1. Subdivision (5) of subsection (a) of Section 4 of S.L. 2006-246 reads as rewritten:

"(5) ~~A~~ Subject to subsection (a1) of this section, 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."

SECTION 2. Section 4 of S.L. 2006-246 is amended by adding a new subsection to read:

"(a1) 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 is not a county under subdivision (5) of subsection (a) of this section and is not a county that is subject under this section to the requirements for development in the unincorporated areas of the county when that actual population growth rate occurred in an area within the county that consists of less than five percent (5%) of the total land area of the county."

SECTION 3. Any rule adopted to replace rules that were disapproved under S.L. 2006-246 or any rule adopted to implement S.L. 2006-246 from and after the effective date of S.L. 2006-246 shall be consistent with the provisions of this act.

SECTION 4. All designations of counties under subdivision (5) of subsection (a) of Section 4 of S.L. 2006-246 that occurred after August 16, 2006, that would not have occurred under Section 4 of S.L. 2006-246 as amended by this act are rescinded. The provisions of this section do not preclude any future designations of counties as Phase 2

counties by the Environmental Management Commission under subdivision (5) of subsection (a) of Section 4 of S.L. 2006-246 as amended by this act.

SECTION 5. This act is effective when it becomes law and applies to any development that occurs on or after that date.

HOUSE BILL 594
Committee Substitute Favorable 5/12/11

Short Title: Functionally Equivalent Wastewater Systems. (Public)

Sponsors:

Referred to:

April 5, 2011

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a. The physical properties and chemical durability of the materials from which the wastewater trench system is constructed are equal to or superior to the physical properties and chemical durability of the materials from which the accepted wastewater trench system is constructed.

b. The permeable sidewall area and bottom infiltrative area of the wastewater trench system are equal to or greater than the permeable sidewall area and bottom infiltrative area of the accepted wastewater trench system at a field-installed size.

c. The wastewater trench system utilizes a similar method and manner of function for the conveyance and application of effluent as the accepted wastewater trench system.

d. The structural integrity of the wastewater trench system is equal to or superior to the structural integrity of the accepted wastewater trench system.

e. If the wastewater trench system contains synthetic aggregate, the aggregate density and field-installed system storage volume are equal

to or greater than the aggregate density and field-installed system storage volume of the accepted wastewater trench system.

f. The wastewater trench system holds all national certifications held by the accepted wastewater trench system.

(2) As part of its petition, the manufacturer shall provide to the Commission all of the following information:

a. Specifications of the wastewater trench system.

b. Data necessary to demonstrate that the wastewater trench system is functionally equivalent to a wastewater trench system that is approved as an accepted wastewater system.

c. A certified statement from an independent, third-party professional engineer or testing laboratory that, based on verified documentation, the wastewater trench system is functionally equivalent to an accepted wastewater system.

(3) Approval of a wastewater trench system as an innovative wastewater system shall not be conditioned on the manufacturer of the wastewater trench system having operational systems installed in the State.

(4) The Commission shall authorize the use of a wastewater trench system as an innovative wastewater system in the same applications as the accepted wastewater trench system.

(5) The Commission shall not include conditions and limitations in the approval of a wastewater trench system as an innovative wastewater system that are not included in the approval of the accepted wastewater trench system."

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

HOUSE BILL 713
Committee Substitute Favorable 6/1/11
Third Edition Engrossed 6/2/11

Short Title: Public Contracts/Multiple Award. (Public)

Sponsors:

Referred to:

April 7, 2011

A BILL TO BE ENTITLED

AN ACT AUTHORIZING THE DEPARTMENT OF ADMINISTRATION TO USE MULTIPLE AWARD SCHEDULE CONTRACTS FOR THE PURCHASE OF ALL GROUND MAINTENANCE, CONSTRUCTION, AND FORESTRY EQUIPMENT.

The General Assembly of North Carolina enacts:

SECTION 1. Article 3 of Chapter 143 of the General Statutes is amended by adding a new section to read as follows:

"**§ 143-64.1. Multiple award schedule contracts.**

(a) Definitions. – The following definitions apply in this section:

(1) Construction equipment. – Excavators, wheel excavators, track loaders, compact track loaders, wheel loaders, skid steer loaders, backhoe loaders, crawler dozers, crawler loaders, wheel dozers, motor graders, utility cranes, compactors, and appropriate attachments, or equivalent products and attachments.

(2) Forestry equipment. – Feller bunchers, knuckleboom loaders, forestry swing machines, harvesters, and appropriate attachments, or equivalent products and attachments.

(3) Ground maintenance equipment. – Hand-held equipment, walk-behind products, lawn tractors, lawn and garden tractors, commercial walk-behind mowers, zero turn radius mowers, front mowers, compact utility tractors, utility tractors, utility vehicles, golf and turf equipment, agricultural tractors and implements, and appropriate attachments, or equivalent products and attachments.

(4) Multiple award schedule contract. – A contract that allows multiple vendors to be awarded a State contract for goods or services by providing their total catalogues for lines of equipment and attachments to eligible purchasers, including State agencies, departments, institutions, public school districts, political subdivisions, community colleges, and constituent institutions of The University of North Carolina.

(b) Intent. – The intent of multiple award schedule contracts is to evaluate vendors based upon a variety of factors, including discounts, total lifecycle costs, service, warranty, distribution channel, and past vendor performance. Multiple award schedule contracts allow multiple vendors to compete and be awarded a contract based upon the value of their products or services and results in competitive pricing, transparency, administrative savings, expedited procurement, and flexibility for State purchasers.



(c) Multiple Award Schedule Contracts Required. – The acquisition of ground maintenance equipment, construction equipment, and forestry equipment shall be conducted using multiple award schedule contracts, except as provided in this section. Not later than August 31, 2011, the Department of Administration shall issue requests for proposals for multiple award schedule contracts for all ground maintenance equipment product categories, construction equipment product categories, and forestry equipment product categories. Contracts awarded under this subsection shall be for a term of not less than three years with annual product and pricing update periods.

(d) Limitation. – Any contract awarded under subsection (c) of this section shall be in addition to any existing term contracts for ground maintenance equipment, construction equipment, and forestry equipment. Nothing in this section shall limit the ability of the Department of Administration to issue additional term contracts for the specific purchase of equipment otherwise available through a multiple award schedule contract."

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

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

H 3

HOUSE BILL 755
Corrected Copy 4/11/11
Committee Substitute Favorable 5/31/11

Short Title: Study Fox Laws. (Public)

Sponsors:

Referred to:

April 7, 2011

A BILL TO BE ENTITLED

AN ACT TO DIRECT THE WILDLIFE RESOURCES COMMISSION TO STUDY FOX AND COYOTE POPULATIONS AND REPORT ITS RECOMMENDATIONS ON MANAGEMENT METHODS AND CONTROLS TO THE 2012 GENERAL ASSEMBLY.

The General Assembly of North Carolina enacts:

SECTION 1. The Wildlife Resources Commission shall undertake a study of fox and coyote populations in the State and recommend management methods and controls designed to ensure statewide conservation of fox populations while managing adverse effects of coyote populations. In conducting the study, the Wildlife Resources Commission shall solicit input from interested stakeholders, including hunters, trappers, controlled hunting preserve operators, public health authorities, local governments, the North Carolina Department of Agriculture and Consumer Services, and private landowners. The Wildlife Resources Commission shall complete its study by April 1, 2012, and submit a report, including any proposed legislation, to the Speaker of the House of Representatives and the President Pro Tempore of the Senate, the Chairs of the House Committee on Agriculture, and the Chairs of the Senate Committee on Agriculture, Environment, and Natural Resources. The Wildlife Resources Commission shall conduct the study within existing funds.

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

Senate Agriculture/Environment/Natural Resources

MINUTES

June 13, 2011

The Senate Ag/Env/Nat. Resources committee met on Monday; June 13, 2011 in Room 544-LOB at 2:00 pm. There were 14 senators present.

Sen. Don East called the meeting to

HB-492 STORMWATER/ISOLATED POPL. GROWTH IN COUNTY

Rep. Howard explained the PCS. Sen. Tillman moved for a favorable report. Vote taken and so moved.

HB-609 PROMOTE WATER SUPPLY DEVELOPMENT

Sen. Brock moved for adoption of the PCS for discussion. So moved. Rep. McGrady explained. Sen. East asked if this will cost taxpayers. Rep. McGrady said it did not. Sen. Jackson questioned Part 2 and Rep. McGrady explained. Sen. Tucker asked about Sec. B, line 14 on Page 5. Mr. Jeff Hudson, Chief Staff Counsel explained this is existing legislation and this bill puts a limit on expenses. Sen. Hartsell spoke and told about some cases in court that have relative situations within the Court of Appeals. Sen. Brock spoke on building more reservoirs. Sen. Brown moved for a favorable report, unfavorable to the original bill. Vote taken and so moved.

HB- 713- PUBLIC CONTRACTS/MULTIPLE AWARD

Sen. Tillman moved for adoption of the PCS for discussion. So moved. Sen. Rouzer explained. Sen. Brown moved for a favorable report, unfavorable for the original bill. Ms. Christie Agner, DOA, feels there will be a little cost with this and they will work with everyone as informed by the State Auditor. Sen. Tucker asked if there is a fiscal note. Sen. Rouzer knew of none. No further discussion, vote taken and so moved.

HB-209 AMEND SW FINANCIAL ASSURANCE RQMTS

Sen. Jackson moved for adoption of the PCS for discussion. So moved. Sen. Rouzer sent forth an amendment. Ms. Jennifer McGinnis explained the amendment. Sen. Tucker asked about reducing the claim and who will take up the differences? Rep. Gillespie responded. Sen. Jackson moved to adopt the amendment. Motion carried and so moved for the amendment. Sen. Brown moved for a favorable report, unfavorable to the original bill (roll the amendment into a new PCS). Vote taken and so moved. This bill has a sequential referral to Finance.

HB – 242 NAT'L GAS/BONDS/FEE/STUDIES

Sen. Walters moved for adoption of the PCS for discussion. So moved. Rep. Gillespie explained the PCS. This addresses some fees that have not been changed since 1945. Sen. Tucker asked where the money comes from to study this. Rep. Gillespie said it is in the budget. Sen. Atwater asked about the study and Rep. Gillespie responded. Sen. Tillman asked how much natural gas is hopeful of being found. Rep. Gillespie said he was told there may be enough for the next 40 years. Sen. Tillman moved for a favorable report, unfavorable to the original bill. Sen. Tucker asked if above ground pipes will be run. The sponsor responded. Sen. Tucker asked about the depth of drilling and Rep. Gillespie explained the process. Sen. Brock thinks this is a wonderful idea and he asked if there are still areas in the state that have the need for a natural gas line for something in the future. Rep. Gillespie said he hopes so also. Sen. Atwater asked if there will be some base-line checks before drilling begins. Rep. Gillespie didn't know but Ms. McGinnis explained that part of the study is to look at the regulatory process and this would be addressed during that study. Sen. Atwater appreciates the work on this. He also asked if there is a considered judgment on this. The sponsor responded. Sen. Hartsell asked if there will be royalties and are there any other situations that have royalties. Rep. Gillespie and Ms. McGinnis said they knew of none additional. Ms. Elizabeth Otts, Environment NC, spoke on this and they don't feel "fracking" should be allowed in NC. They appreciate the sponsor working with them but want assurance this won't harm the environment. Sen. Tillman said there are dangers in anything we do and we need to get off the dependence on foreign oil. The vote was taken and so moved. (This bill has a sequential referral to Finance.)

HB-388 RECLAIMED WATER CROSS-CONNECTION CONTROL

Rep. Gillespie explained the bill. Sen. Tucker moved for a favorable report. Vote taken and so moved.

HB-755 STUDY FOX LAWS

Mr. Jeff Hudson explained the bill. Sen. Tucker agrees with this and moved for a favorable report. Vote taken and so moved.

The meeting adjourned at 2:53.

Sen. Don East , Co-Chair

Cindy J. Davis, Committee Clerk

Senate Agriculture/Environment/Natural Resources Committee
Monday, June 13, 2011, 2:00 to 3:30
544 LOB

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

HB 209	Amend SW Financial Assurance Rqmts.	Representative Ingle Representative Gillespie
HB 242	Nat'l Gas/Bonds/Fees/Studies	Representative Stone Representative Gillespie
HB 388	Reclaimed Water Cross-Connection Control.	Representative
HB 492	Stormwater/Isolated Popl. Growth in County.	Representative Howard
HB 609	Promote Water Supply Development.	Representative Carney Representative McGrady Representative Stam Representative Gillespie
HB 713	Public Contracts/Multiple Award.	Representative Lewis Representative Stam Representative Murry
HB 755	Study Fox Laws.	Representative

Presentations

Other Business

Adjournment

Cindy Davis (Sen. Jackson)

To: 2011 Ag/Env/Nat. Resources; Rep. Dan Ingle; Rep. Mitch Gillespie; Rep. Michael Stone; Rep. Paul Stam; Rep. Pat McElraft; Rep. Julia Howard; Rep. David Lewis; Rep. William Wainwright; Rep. Becky Carney; Rep. Chuck McGrady; Rep. Marian McLawhorn; Rep. Stephen LaRoque; Rep. Bill Brawley; Rep. Tom Murry

Subject: Revised Senate Agriculture/Environment/Natural Resources Committee Meeting Notice for Mon, 06-13-2011 at 2:00 to 3:30 - CORRECTED

Principal Clerk _____
Reading Clerk _____

Corrected: Corrected - Remove HB-119 & HB-643

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

The Senate Committee on **Agriculture/Environment/Natural Resources** will meet at the following time:

DAY	DATE	TIME	ROOM
Monday	June 13, 2011	2:00 to 3:30	544 LOB

The following will be considered:

BILL NO.	SHORT TITLE	SPONSOR
HB 209	Amend SW Financial Assurance Rqmts.	Representative Ingle Representative Gillespie
HB 242	Nat'l Gas/Bonds/Fees/Studies	Representative Stone Representative Gillespie
HB 388	Reclaimed Water Cross-Connection Control.	Representative
HB 492	Stormwater/Isolated Popl. Growth in County.	Representative Howard
HB 609	Promote Water Supply Development.	Representative Carney Representative McGrady Representative Stam

HB 713	Public Contracts/Multiple Award.	Representative Gillespie Representative Lewis Representative Stam Representative Murry
HB 755	Study Fox Laws.	Representative

Corrected - Remove HB-119 & HB-643

Senator Don East, Co-Chair
Senator David Rouzer, Co-Chair

Senate Agriculture/Environment/Natural Resources Committee
Monday, June 13, 2011, 2:00 to 4:00
544 LOB

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

HB 119	Amend Environmental Laws 2011.	Representative McElraft Representative Gillespie
HB 209	Amend SW Financial Assurance Rqmts.	Representative Ingle Representative Gillespie
HB 242	Nat'l Gas/Bonds/Fees/Studies	Representative Stone Representative Gillespie
HB 388	Reclaimed Water Cross-Connection Control.	Representative
HB 492	Stormwater/Isolated Popl. Growth in County.	Representative Howard
HB 609	Promote Water Supply Development.	Representative Carney Representative McGrady Representative Stam Representative Gillespie
HB 643	Exempt CCPCUA from IBT Requirements.	Representative McLawhorn Representative LaRoque Representative Brawley, Jr. Representative Wainwright
HB 713	Public Contracts/Multiple Award.	Representative Lewis Representative Stam
HB 755	Study Fox Laws.	Representative Murry Representative

Presentations

Other Business

Adjournment

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES COMMITTEE REPORT
Senator Don East, Co-Chair
Senator David Rouzer, Co-Chair

Monday, June 13, 2011

Senator EAST,
submits the following with recommendations as to passage:

FAVORABLE

H.B. **388** Reclaimed Water Cross-Connection Control.
Sequential Referral: None
Recommended Referral: None

H.B. **492** Stormwater/Isolated Popl. Growth in County.
Sequential Referral: None
Recommended Referral: None

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

H.B. **209** Amend SW Financial Assurance Rqmts.
Draft Number: PCS50397
Sequential Referral: Finance
Recommended Referral: None
Long Title Amended: Yes

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 2, BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL

H.B.(CS #2) **242** Nat'l Gas/Bonds/Fees/Studies
Draft Number: PCS80264
Sequential Referral: Finance
Recommended Referral: None
Long Title Amended: Yes

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 1, BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL

H.B.(CS #1) **609** Promote Water Supply Development.
Draft Number: PCS50396
Sequential Referral: None

Recommended Referral: None
Long Title Amended: No

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 2, BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL

H.B.(CS #2) **713** Public Contracts/Multiple Award.

Draft Number: PCS70245
Sequential Referral: None
Recommended Referral: None
Long Title Amended: Yes

TOTAL REPORTED: 6

Committee Clerk Comments:

HB-209 -Sen. Gunn
HB-242 - Sen. Blake
HB-388 - Sen. Rucho
HB-492 - Sen. Rouzer
HB- 609- Sen. Clodfelter
HB-713 - Sen. Rouzer

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES COMMITTEE REPORT
Senator Don East, Co-Chair
Senator David Rouzer, Co-Chair

Thursday, June 16, 2011

Senator ROUZER,
submits the following with recommendations as to passage:

FAVORABLE

H.B. **755** Study Fox Laws.
Sequential Referral: None
Recommended Referral: None

TOTAL REPORTED: 1

Committee Clerk Comments:

Sen. Rouzer will explain

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES COMMITTEE REPORT
Senator Don East, Co-Chair
Senator David Rouzer, Co-Chair

CORRECTED COPY

Monday, June 13, 2011

Senator EAST,
submits the following with recommendations as to passage:

FAVORABLE

H.B. **388** Reclaimed Water Cross-Connection Control.
Sequential Referral: None
Recommended Referral: None

H.B. **492** Stormwater/Isolated Popl. Growth in County.
Sequential Referral: None
Recommended Referral: None

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

H.B. **209** Amend SW Financial Assurance Rqmts.
Draft Number: PCS50397
Sequential Referral: Finance
Recommended Referral: None
Long Title Amended: Yes

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 2, BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL

H.B.(CS #2) **242** Nat'l Gas/Bonds/Fees/Studies
Draft Number: PCS80264
Sequential Referral: Finance
Recommended Referral: None
Long Title Amended: Yes

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 1, BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL

H.B.(CS #1) **609** Promote Water Supply Development.
Draft Number: PCS50396

Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 1, BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL

H.B.(CS #1) **713** Public Contracts/Multiple Award.

Draft Number:	PCS70245
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

TOTAL REPORTED: 6

Committee Clerk Comments:

HB-209 -Sen. Gunn
HB-242 - Sen. Blake
HB-388 - Sen. Rucho
HB-492 - Sen. Rouzer
HB- 609- Sen. Clodfelter
HB-713 - Sen. Rouzer

HOUSE BILL 492:
Stormwater/Isolated Popl. Growth in County

2011-2012 General Assembly

Committee:	Senate Agriculture/Environment/Natural Resources	**Date:**	June 8, 2011
Introduced by:	Rep. Howard	**Prepared by:**	Barbara Riley Committee Counsel
Analysis of:	First Edition		

SUMMARY: ***House Bill 492 provides an exemption for counties that have experienced rapid population growth in a small area of the county triggering compliance with stormwater management requirements.***

CURRENT LAW: Session Law 2006-246 provided for the implementation of the federal Phase II stormwater management requirements. Section 4 of S.L. 2006-246 requires compliance with post construction requirements for development that cumulatively disturbs one acre or more of land in an unincorporated area of a county if the development is located in specifically delineated areas. Section 4(a)(5) would require compliance with the post construction stormwater management requirements in a county that contains an urbanized area under the 1990 or 2000 census and that has an actual population growth rate that exceeded the State population growth rate for the period from 1994 through 2004.

BILL ANALYSIS: House Bill 492 provides that a county that contains an urbanized area and that has an actual population growth rate that exceeded the State population growth rate as provided in Section 4(a)(5) of S.L. 2006-246 is not subject to the stormwater management requirements for development in the unincorporated areas of the county when the population growth occurred in an area of the county containing less than 5% of the county's land area. Any rules adopted to implement S.L. 2006-246 are to be consistent with the provision of this act and any designations of counties under Section 4(a)(5) that would not have occurred under Section 4(a)(5) as amended by this act are rescinded. Future designation of counties as Phase 2 counties by the Environmental Management Commission under Section 4(a)(5) are not precluded.

EFFECTIVE DATE: The act is effective when it becomes law and applies to any development that occurs on or after that date.

BACKGROUND: Davie County has experienced rapid population growth in a small area of the county (Bermuda Run) which skewed the growth rate for the county such that it became subject to the stormwater management rules.

H492-SMRF-95(e1) v1

HOUSE BILL 492

Short Title:	Stormwater/Isolated Popl. Growth in County.	(Public)
Sponsors:	Representative Howard (Primary Sponsor). For a complete list of Sponsors, see Bill Information on the NCGA Web Site.	
Referred to:	Government.	

March 29, 2011

A BILL TO BE ENTITLED

AN ACT TO (1) PROVIDE THAT DEVELOPMENT IN THE UNINCORPORATED AREAS OF A COUNTY IS NOT SUBJECT TO THE STANDARDS REGARDING POSTCONSTRUCTION PRACTICES UNDER SECTION 9 OF S.L. 2006-246 OR ANY ADMINISTRATIVE RULES ADOPTED TO REPLACE THAT SECTION WHEN THE DEVELOPMENT IS LOCATED IN A COUNTY THAT CONTAINS AN URBANIZED AREA AND HAD AN ACTUAL POPULATION GROWTH RATE THAT EXCEEDED THE STATE POPULATION GROWTH RATE FOR THE PERIOD 1995 THROUGH 2004 WHEN THAT POPULATION GROWTH OCCURRED IN AN AREA WITHIN THE COUNTY THAT CONSISTS OF LESS THAN FIVE PERCENT OF THE TOTAL LAND AREA OF THE COUNTY AND (2) RESCIND THE CURRENT DESIGNATION OF ANY SUCH COUNTY.

The General Assembly of North Carolina enacts:

SECTION 1. Subdivision (5) of subsection (a) of Section 4 of S.L. 2006-246 reads as rewritten:

"(5) ~~A~~ Subject to subsection (a1) of this section, 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."

SECTION 2. Section 4 of S.L. 2006-246 is amended by adding a new subsection to read:

"(a1) 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 is not a county under subdivision (5) of subsection (a) of this section and is not a county that is subject under this section to the requirements for development in the unincorporated areas of the county when that actual population growth rate occurred in an area within the county that consists of less than five percent (5%) of the total land area of the county."

SECTION 3. Any rule adopted to replace rules that were disapproved under S.L. 2006-246 or any rule adopted to implement S.L. 2006-246 from and after the effective date of S.L. 2006-246 shall be consistent with the provisions of this act.

SECTION 4. All designations of counties under subdivision (5) of subsection (a) of Section 4 of S.L. 2006-246 that occurred after August 16, 2006, that would not have occurred under Section 4 of S.L. 2006-246 as amended by this act are rescinded. The provisions of this section do not preclude any future designations of counties as Phase 2

counties by the Environmental Management Commission under subdivision (5) of subsection (a) of Section 4 of S.L. 2006-246 as amended by this act.

SECTION 5. This act is effective when it becomes law and applies to any development that occurs on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

H D

HOUSE BILL 609
Committee Substitute Favorable 5/31/11
PROPOSED SENATE COMMITTEE SUBSTITUTE H609-PCS50396-SB-51

Short Title: Promote Water Supply Development/Efficiency. (Public)

Sponsors:

Referred to:

April 5, 2011

A BILL TO BE ENTITLED

AN ACT TO PROMOTE THE DEVELOPMENT OF WATER SUPPLY RESERVOIRS AND OTHER WATER SUPPLY RESOURCES, TO PROVIDE THAT FUNDS FROM THE CLEAN WATER MANAGEMENT TRUST FUND MAY BE USED TO PRESERVE LANDS FOR THE DEVELOPMENT OF WATER SUPPLY RESERVOIRS, AND TO IMPROVE THE EFFICIENCY OF USE OF NORTH CAROLINA'S WATER RESOURCES.

Whereas, S.L. 2007-518 directed the Environmental Review Commission to study the allocation of surface water resources and their availability and maintenance in the State; and

Whereas, pursuant to this directive, the Environmental Review Commission commissioned a study and report on water allocation issues and policy options; and

Whereas, the resulting water allocation report included a recommendation that the State create an expedited regulatory process for the construction of new water supply reservoirs; and

Whereas, the resulting water allocation report found that certain areas of the State, including the Piedmont, are expected to experience significant population growth over the next 30 years and do not have adequate water supplies to support the expected growth; Now, therefore,

The General Assembly of North Carolina enacts:

PART I. PROMOTE THE DEVELOPMENT OF WATER SUPPLY RESERVOIRS AND OTHER WATER SUPPLY RESOURCES

SECTION 1.1. G.S. 143-355(b) is amended by adding two new subdivisions to read:

"(b) Functions to Be Performed. – The Department shall:

...

(16) Cooperate with units of local government in the identification of water supply needs and appropriate water supply sources and water storage projects to meet those needs. By agreement with a unit of local government, the Department may do any of the following:

a. Assist in the assessment of alternatives for meeting water supply needs; the conduct of engineering studies, hydraulic computations,

and hydrographic surveys; and the development of a plan of study for purposes of obtaining necessary permits.

b. For budget and planning purposes, develop estimates of the costs of the proposed new water supply project.

c. Apply for State and federal permits for the development of regional water supplies.

(17) Be the principal State agency to cooperate with other State agencies, the United States Army Corps of Engineers, and all other federal agencies or instrumentalities in the planning and development of water supply sources and water storage projects for the State."

SECTION 1.2. Article 38 of Chapter 143 of the General Statutes is amended by adding two new sections to read:

"**§ 143-355.7. Water supply development; State-local cooperation.**

(a) At the request of one or more units of local government, the Department may assist the local government in identifying the preferred water supply alternative that alone or in combination with other water sources will provide for the long-term water supply needs documented in the local water supply plan and meet all of the following criteria:

(1) Are economically and practically feasible.

(2) Make maximum, practical beneficial use of reclaimed wastewater and stormwater.

(3) Comply with water quality classifications and standards.

(4) Avoid or mitigate impacts to threatened or endangered species to the extent such species are protected by State or federal law.

(5) Maintain downstream flows necessary to protect downstream users.

(6) Do not have significant adverse impacts on other water withdrawals or wastewater discharges.

(7) Avoid or mitigate water quality impacts consistent with the requirements of rules adopted by the Environmental Management Commission to implement 33 U.S.C. § 1341.

(b) During the alternatives analysis, the Department shall request relevant information regarding the potential alternatives, including the establishment or expansion of the water supply reservoir or other water supply resources, from other State agencies with jurisdiction over any natural resources that will be impacted under the alternatives identified by the Department. Unless the local government agrees to an extension of time, the Department shall determine the preferred alternative within two years of the execution of a contract with the requesting local government for the costs of the analysis. The determination of the preferred alternative shall be binding on all State agencies unless the Department determines from its further evaluation during its review of any State or federal permit applications for the project that another preferred alternative should be selected in light of additional information brought forward during the permit reviews.

(c) If the Department provides an analysis of practicable alternatives for meeting a water supply need under this section, the analysis shall be accepted by the Department and the Department of Administration for purposes of satisfying the requirements of the North Carolina Environmental Policy Act and any State permit or authorization that requires identification and assessment of alternatives, including, but not limited to, a request for an interbasin transfer pursuant to G.S. 143-215.22L.

(d) The Department may provide technical assistance to a unit of local government in obtaining federal permits for the preferred water supply alternative identified pursuant to subsection (a) of this section. For purposes of providing technical assistance and conducting studies in support of a proposed water supply project under this section, the Department may enter into an agreement with one or more units of local government to conduct studies or

modeling. The agreement shall specify the allocation of costs for any studies or modeling prepared by the Department in support of the project.

(e) When the Department has identified the most practicable alternative, a regional water supply system may request that the Department become a co-applicant for all required federal approvals for the alternative identified by the Department. The Department may become a co-applicant when all of the following conditions are met:

(1) The regional water supply system has acquired or will acquire the property necessary for construction of the water supply reservoir or other water supply resource.

(2) The local water supply plan shows that the regional water supply system has implemented appropriate conservation measures similar in effect to the measures in comparably sized North Carolina regional water supply systems.

(3) The regional water supply system has developed and is implementing measures to replace existing leaking infrastructure that is similar in effect to the measures being implemented by comparably sized North Carolina regional water systems.

(4) The regional water supply system has entered into a contractual agreement to pay the expenses incurred by the Department as a co-applicant for the project approval.

(f) Nothing in this section shall be construed to limit the authority of the Department to require environmental permits or to apply and enforce environmental standards pursuant to State law.

"**§ 143-355.8. Regional water supply planning organizations.**

(a) One or more water systems may establish a water supply planning organization to plan for and coordinate water resource supply and demand on a regional basis. A water supply planning organization may include representatives of local government water systems, water authorities, nongovernmental water systems, and registered water withdrawers.

(b) A regional water supply planning organization may do any of the following:

(1) Identify sources of raw water supply for regional systems.

(2) Identify areas suitable for the development of new regional water sources.

(3) Identify opportunities for purchase and sale of water between water systems to meet regional water supply needs.

(4) Prepare joint water supply plans.

(5) Enter into agreements with the Department for technical assistance in identifying practical alternatives to meet regional water supply needs pursuant to G.S. 143-355.7 or to provide studies in support of a proposed regional water supply project.

(6) Support cooperative arrangements between water systems for purchase and sale of water by providing technical assistance and voluntary mediation of disputes concerning water supply.

(c) Nothing in this section shall be construed to alter the requirements for obtaining a certificate for an interbasin transfer."

PART II. PROVIDE THAT FUNDS FROM THE CLEAN WATER MANAGEMENT TRUST FUND MAY BE USED TO PRESERVE LANDS FOR THE DEVELOPMENT OF WATER SUPPLY RESERVOIRS

SECTION 2.1. G.S. 113A-251 reads as rewritten:

"**§ 113A-251. Purpose.**

The General Assembly recognizes that a critical need exists in this State to clean up pollution in the State's surface waters and to ~~protect~~ protect, preserve, and conserve those waters that are not yet polluted. The task of cleaning up polluted waters and protecting and enhancing the State's water resources is multifaceted and requires different approaches,

including innovative pilot projects, that take into account the problems, the type of pollution, the geographical area, and the recognition that the hydrological and ecological values of each resource sought to be upgraded, conserved, and protected are unique.

It is the intent of the General Assembly that moneys from the Fund created under this Article shall be used to help finance projects that specifically address water pollution problems and focus on upgrading surface waters, eliminating pollution, and ~~protecting~~ protecting, preserving, and conserving unpolluted surface waters, including enhancement or development of ~~urban~~ drinking water supplies. It is the further intent of the General Assembly that moneys from the Fund also be used to build a network of riparian buffers and greenways for environmental, educational, and recreational benefits. It is lastly the intent of the General Assembly that moneys from the Fund also be used to preserve lands that could be used for water supply reservoirs. While the purpose of this Article is to focus on the cleanup and prevention of pollution of the State's surface ~~waters~~ waters, ~~and~~ the establishment of a network of riparian buffers and greenways, and the preservation of property for establishing clean water supplies, the General Assembly believes that the results of these efforts will also be beneficial to wildlife and marine fisheries habitats."

SECTION 2.2. G.S. 113A-253 reads as rewritten:

"**§ 113A-253. Clean Water Management Trust Fund.**

(a) Fund Established. – The Clean Water Management Trust Fund is established as a special revenue fund. The Fund receives revenue from the following sources and may receive revenue from other sources:

(1) Annual appropriations under ~~G.S. 143-15.3B.~~G.S. 113A-253.1.

(2) Scenic River special registration plates under G.S. 20-81.12.

(b) Fund Earnings, Assets, and Balances. – The State Treasurer shall hold the Fund separate and apart from all other moneys, funds, and accounts. Investment earnings credited to the assets of the Fund shall become part of the Fund. Any balance remaining in the Fund at the end of any fiscal year shall be carried forward in the Fund for the next succeeding fiscal year. Payments from the Fund shall be made on the warrant of the Chair of the Board of Trustees.

(c) Fund Purposes. – Moneys from the Fund are appropriated annually to finance projects to clean up or prevent surface water pollution and for land preservation in accordance with this Article. Revenue in the Fund may be used for any of the following purposes:

(1) To acquire land for riparian buffers for the purposes of providing environmental protection for surface waters and urban drinking water supplies and establishing a network of riparian greenways for environmental, educational, and recreational uses and to retire debt incurred for this purpose under Article 9 of Chapter 142 of the General Statutes.

(2) To acquire conservation easements or other interests in real property for the purpose of protecting and conserving surface waters and enhancing ~~urban~~ drinking water ~~supplies~~ supplies, including the development of water supply reservoirs, and to retire debt incurred for this purpose under Article 9 of Chapter 142 of the General Statutes.

(3) To coordinate with other public programs involved with lands adjoining water bodies to gain the most public benefit while protecting and improving water quality and to retire debt incurred for this purpose under Article 9 of Chapter 142 of the General Statutes.

(4) To restore previously degraded lands to reestablish their ability to protect water quality and to retire debt incurred for this purpose under Article 9 of Chapter 142 of the General Statutes.

(5) To repair failing wastewater collection systems and wastewater treatment works if the repair is a reasonable remedy for resolving an existing waste

treatment problem and the repair is not for the purpose of expanding the system to accommodate future anticipated growth of a community.

(6) To repair and eliminate failing septic tank systems, to eliminate illegal drainage connections, and to expand a wastewater collection system or wastewater treatment works if the expansion eliminates failing septic tank systems or illegal drainage connections.

(7) To finance stormwater quality projects.

(8) To facilitate planning that targets reductions in surface water pollution.

(8a) To finance innovative efforts, including pilot projects, to improve stormwater management, to reduce pollutants entering the State's waterways, to improve water quality, and to research alternative solutions to the State's water quality problems.

(9) To fund operating expenses of the Board of Trustees and its staff.

(d) Limit on Operating and Administrative Expenses. – No more than two percent (2%) of the annual balance of the Fund on 1 July or a total sum of one million two hundred fifty thousand dollars ($1,250,000), whichever is greater, may be used each fiscal year for administrative and operating expenses of the Board of Trustees and its staff."

SECTION 2.3. G.S. 113A-253.1 reads as rewritten:

"§ 113A-253.1. The Clean Water Management Trust Fund; appropriation.

(a) The General Assembly finds that, due to the critical need in this State to clean up pollution in the State's surface ~~waters and~~waters, to protect and conserve those waters that are not yet polluted, and to preserve lands that may be used for water supply reservoirs, it is imperative that the State provide a minimum of one hundred million dollars ($100,000,000) each calendar year to the Clean Water Management Trust Fund; therefore, there is annually appropriated from the General Fund to the Clean Water Management Trust Fund the sum of one hundred million dollars ($100,000,000).

(b) The funds in the Clean Water Management Trust Fund shall be used only in accordance with this Article."

SECTION 2.4. G.S. 113A-256 reads as rewritten:

"§ 113A-256. Clean Water Management Trust Fund Board of Trustees: powers and duties.

(a) Allocate Grant Funds. – The Trustees shall allocate moneys from the Fund as grants. A grant may be awarded only for a project or activity that satisfies the criteria and furthers the purposes of this Article.

(b) Develop Grant Criteria. – The Trustees shall develop criteria for awarding grants under this Article. The criteria developed shall include consideration of the following:

(1) The significant enhancement and conservation of water quality in the State.

(2) The objectives of the basinwide management plans for the State's river basins and watersheds.

(3) The promotion of regional integrated ecological networks insofar as they affect water quality.

(4) The specific areas targeted as being environmentally sensitive.

(5) The geographic distribution of funds as appropriate.

(6) The preservation of water resources with significant recreational or economic value and uses.

(7) The development of a network of riparian buffer-greenways bordering and connecting the State's waterways that will serve environmental, educational, and recreational uses.

(8) Water supply availability and the public's need for resources adequate to meet demand for essential water uses. Criteria developed pursuant to this

subdivision may include consideration of the likelihood of a proposed water supply project ultimately being permitted and built.

(c) Develop Additional Guidelines. – The Trustees may develop guidelines in addition to the grant criteria consistent with and as necessary to implement this Article.

(d) Acquisition of Land. – The Trustees may acquire land by purchase, negotiation, gift, or devise. Any acquisition of land by the Trustees must be reviewed and approved by the Council of State and the deed for the land subject to approval of the Attorney General before the acquisition can become effective. In determining whether to acquire land as permitted by this Article, the Trustees shall consider whether the acquisition furthers the purposes of this Article and may also consider recommendations from the Council. Nothing in this section shall allow the Trustees to acquire land under the right of eminent domain.

(e) Exchange of Land. – The Trustees may exchange any land they acquire in carrying out the powers conferred on the Trustees by this Article.

(f) Land Management. – The Trustees may designate managers or managing agencies of the lands acquired under this Article.

(g) Tax Credit Certification. – The Trustees shall develop guidelines to determine whether land donated for a tax credit under G.S. 105-130.34 or G.S. 105-151.12 are suitable for one of the purposes under this Article and may be certified for a tax credit.

(h) Rule-making Authority. – The Trustees may adopt rules to implement this Article. Chapter 150B of the General Statutes applies to the adoption of rules by the Trustees.

(i) Repealed by Session Laws 1999-237, s. 15.11, effective July 1, 1999.

(j) Debt. – Of the funds credited annually to the Fund, the Trustees may authorize expenditure of a portion to reimburse the General Fund for debt service on special indebtedness to be issued or incurred under Article 9 of Chapter 142 of the General Statutes for the purposes provided in G.S. 113A-253(c)(1) through (4). In order to authorize expenditure of funds for debt service reimbursement, the Trustees must identify to the State Treasurer and the Department of Administration the specific capital projects for which they would like special indebtedness to be issued or incurred and the annual amount they intend to make available, and request the State Treasurer to issue or incur the indebtedness. After special indebtedness has been issued or incurred for a capital project requested by the Trustees, the Trustees must direct the State Treasurer to credit to the General Fund each year the actual aggregate principal and interest payments to be made in that year on the special indebtedness, as identified by the State Treasurer."

PART III. IMPROVE THE EFFICIENCY OF USE OF NORTH CAROLINA'S WATER RESOURCES

SECTION 3.1. G.S. 143-355(l) reads as rewritten:

"(l) Local Water Supply Plans. – Each unit of local government that provides public water service or that plans to provide public water service and each large community water system shall, either individually or together with other units of local government and large community water systems, prepare a local water supply plan and submit it to the Department for approval. The Department shall provide technical assistance with the preparation of plans to units of local government and large community water systems upon request and to the extent that the Department has resources available to provide assistance. At a minimum, each unit of local government and large community water system shall include in local water supply plans all information that is readily available to it. Plans shall include present and projected population, industrial development, and water use within the service area; present and future water supplies; an estimate of the technical assistance that may be needed at the local level to address projected water needs; current and future water conservation and water reuse ~~programs;~~ programs, including a plan for the reduction of long-term per capita demand for potable water; a description of how the local government or large community water system will respond to drought and other water shortage emergencies and continue to meet essential public water

supply needs during the emergency; and any other related information as the Department may require in the preparation of a State water supply plan. A unit of local government or large community water system shall submit a revised plan that specifies how the water system intends to address foreseeable future water needs when eighty percent (80%) of the water system's available water supply based on calendar year average daily demand has been allocated to current or prospective water users or the seasonal demand exceeds ninety percent (90%). Local plans shall be revised to reflect changes in relevant data and projections at least once each five years unless the Department requests more frequent revisions. The revised plan shall include the current and anticipated reliance by the local government unit or large community water system on surface water transfers as defined by G.S. 143-215.22G. Local plans and revised plans shall be submitted to the Department once they have been approved by each unit of local government and large community water system that participated in the preparation of the plan."

SECTION 3.2. G.S. 143-355.4(b) reads as rewritten:

"(b) To be eligible for State water infrastructure funds from the Drinking Water State Revolving Fund or the Drinking Water Reserve or any other grant or loan of funds allocated by the General Assembly whether the allocation of funds is to a State agency or to a nonprofit organization for the purpose of extending waterlines or expanding water treatment capacity, a local government or large community water system must demonstrate that the system:

...

(7) Has implemented a consumer education program that emphasizes the importance of water ~~conservation.~~conservation and that includes information on measures that residential customers may implement to reduce water consumption."

SECTION 3.3. G.S. 159-52(a) reads as rewritten:

"(a) In determining whether a proposed bond issue shall be approved, the Commission may consider:

...

(13) If the proposed bond issue is for a water system as described in G.S. 159-48(b)(21), whether a unit has prepared a local water supply plan in compliance with G.S. 143-355."

SECTION 3.4. The Department of Environment and Natural Resources shall provide statewide outreach and technical assistance as needed regarding water efficiency, which shall include the development of best management practices for community water efficiency and conservation. These best management practices shall address at least all of the following practices:

(1) Integrating water efficiency and conservation into water supply plans.

(2) Conducting regular water audits to identify revenue and nonrevenue water and water losses.

(3) Adopting water loss abatement programs.

(4) Metering and submetering of existing multiunit residential, commercial, and industrial complexes.

(5) Retrofitting fixtures, equipment, and irrigation systems to make them more water efficient.

(6) Landscaping in a manner that conserves water use and is regionally appropriate.

(7) Employing water reuse practices that include harvesting rainwater and using grey water.

(8) Pricing water to achieve comprehensive conservation and adopting full-cost accounting in line with the recommendation approved by the State Water Infrastructure Commission in November 2010.

SECTION 3.5. Nothing in Sections 3.1 through 3.4 of this act shall be construed to authorize the adoption of rules to implement those sections. Nothing in Sections 3.1 through 3.4 of this act shall be construed or implemented in a way so as to negatively impact economic development.

SECTION 4. Sections 3.1 through 3.5 of this act become effective October 1, 2011. All other sections of this act are effective when this act becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

H D

HOUSE BILL 609
Committee Substitute Favorable 5/31/11
PROPOSED SENATE COMMITTEE SUBSTITUTE H609-PCS50396-SB-51

Short Title: Promote Water Supply Development/Efficiency. (Public)

Sponsors:

Referred to:

April 5, 2011

A BILL TO BE ENTITLED

AN ACT TO PROMOTE THE DEVELOPMENT OF WATER SUPPLY RESERVOIRS AND OTHER WATER SUPPLY RESOURCES, TO PROVIDE THAT FUNDS FROM THE CLEAN WATER MANAGEMENT TRUST FUND MAY BE USED TO PRESERVE LANDS FOR THE DEVELOPMENT OF WATER SUPPLY RESERVOIRS, AND TO IMPROVE THE EFFICIENCY OF USE OF NORTH CAROLINA'S WATER RESOURCES.

Whereas, S.L. 2007-518 directed the Environmental Review Commission to study the allocation of surface water resources and their availability and maintenance in the State; and

Whereas, pursuant to this directive, the Environmental Review Commission commissioned a study and report on water allocation issues and policy options; and

Whereas, the resulting water allocation report included a recommendation that the State create an expedited regulatory process for the construction of new water supply reservoirs; and

Whereas, the resulting water allocation report found that certain areas of the State, including the Piedmont, are expected to experience significant population growth over the next 30 years and do not have adequate water supplies to support the expected growth; Now, therefore,

The General Assembly of North Carolina enacts:

PART I. PROMOTE THE DEVELOPMENT OF WATER SUPPLY RESERVOIRS AND OTHER WATER SUPPLY RESOURCES

SECTION 1.1. G.S. 143-355(b) is amended by adding two new subdivisions to read:

"(b) Functions to Be Performed. – The Department shall:

...

(16) Cooperate with units of local government in the identification of water supply needs and appropriate water supply sources and water storage projects to meet those needs. By agreement with a unit of local government, the Department may do any of the following:

a. Assist in the assessment of alternatives for meeting water supply needs; the conduct of engineering studies, hydraulic computations,

and hydrographic surveys; and the development of a plan of study for purposes of obtaining necessary permits.

b. For budget and planning purposes, develop estimates of the costs of the proposed new water supply project.

c. Apply for State and federal permits for the development of regional water supplies.

(17) Be the principal State agency to cooperate with other State agencies, the United States Army Corps of Engineers, and all other federal agencies or instrumentalities in the planning and development of water supply sources and water storage projects for the State."

SECTION 1.2. Article 38 of Chapter 143 of the General Statutes is amended by adding two new sections to read:

"**§ 143-355.7. Water supply development; State-local cooperation.**

(a) At the request of one or more units of local government, the Department may assist the local government in identifying the preferred water supply alternative that alone or in combination with other water sources will provide for the long-term water supply needs documented in the local water supply plan and meet all of the following criteria:

(1) Are economically and practically feasible.

(2) Make maximum, practical beneficial use of reclaimed wastewater and stormwater.

(3) Comply with water quality classifications and standards.

(4) Avoid or mitigate impacts to threatened or endangered species to the extent such species are protected by State or federal law.

(5) Maintain downstream flows necessary to protect downstream users.

(6) Do not have significant adverse impacts on other water withdrawals or wastewater discharges.

(7) Avoid or mitigate water quality impacts consistent with the requirements of rules adopted by the Environmental Management Commission to implement 33 U.S.C. § 1341.

(b) During the alternatives analysis, the Department shall request relevant information regarding the potential alternatives, including the establishment or expansion of the water supply reservoir or other water supply resources, from other State agencies with jurisdiction over any natural resources that will be impacted under the alternatives identified by the Department. Unless the local government agrees to an extension of time, the Department shall determine the preferred alternative within two years of the execution of a contract with the requesting local government for the costs of the analysis. The determination of the preferred alternative shall be binding on all State agencies unless the Department determines from its further evaluation during its review of any State or federal permit applications for the project that another preferred alternative should be selected in light of additional information brought forward during the permit reviews.

(c) If the Department provides an analysis of practicable alternatives for meeting a water supply need under this section, the analysis shall be accepted by the Department and the Department of Administration for purposes of satisfying the requirements of the North Carolina Environmental Policy Act and any State permit or authorization that requires identification and assessment of alternatives, including, but not limited to, a request for an interbasin transfer pursuant to G.S. 143-215.22L.

(d) The Department may provide technical assistance to a unit of local government in obtaining federal permits for the preferred water supply alternative identified pursuant to subsection (a) of this section. For purposes of providing technical assistance and conducting studies in support of a proposed water supply project under this section, the Department may enter into an agreement with one or more units of local government to conduct studies or

modeling. The agreement shall specify the allocation of costs for any studies or modeling prepared by the Department in support of the project.

(e) When the Department has identified the most practicable alternative, a regional water supply system may request that the Department become a co-applicant for all required federal approvals for the alternative identified by the Department. The Department may become a co-applicant when all of the following conditions are met:

(1) The regional water supply system has acquired or will acquire the property necessary for construction of the water supply reservoir or other water supply resource.

(2) The local water supply plan shows that the regional water supply system has implemented appropriate conservation measures similar in effect to the measures in comparably sized North Carolina regional water supply systems.

(3) The regional water supply system has developed and is implementing measures to replace existing leaking infrastructure that is similar in effect to the measures being implemented by comparably sized North Carolina regional water systems.

(4) The regional water supply system has entered into a contractual agreement to pay the expenses incurred by the Department as a co-applicant for the project approval.

(f) Nothing in this section shall be construed to limit the authority of the Department to require environmental permits or to apply and enforce environmental standards pursuant to State law.

"**§ 143-355.8. Regional water supply planning organizations.**

(a) One or more water systems may establish a water supply planning organization to plan for and coordinate water resource supply and demand on a regional basis. A water supply planning organization may include representatives of local government water systems, water authorities, nongovernmental water systems, and registered water withdrawers.

(b) A regional water supply planning organization may do any of the following:

(1) Identify sources of raw water supply for regional systems.

(2) Identify areas suitable for the development of new regional water sources.

(3) Identify opportunities for purchase and sale of water between water systems to meet regional water supply needs.

(4) Prepare joint water supply plans.

(5) Enter into agreements with the Department for technical assistance in identifying practical alternatives to meet regional water supply needs pursuant to G.S. 143-355.7 or to provide studies in support of a proposed regional water supply project.

(6) Support cooperative arrangements between water systems for purchase and sale of water by providing technical assistance and voluntary mediation of disputes concerning water supply.

(c) Nothing in this section shall be construed to alter the requirements for obtaining a certificate for an interbasin transfer."

PART II. PROVIDE THAT FUNDS FROM THE CLEAN WATER MANAGEMENT TRUST FUND MAY BE USED TO PRESERVE LANDS FOR THE DEVELOPMENT OF WATER SUPPLY RESERVOIRS

SECTION 2.1. G.S. 113A-251 reads as rewritten:

"**§ 113A-251. Purpose.**

The General Assembly recognizes that a critical need exists in this State to clean up pollution in the State's surface waters and to ~~protect~~ protect, preserve, and conserve those waters that are not yet polluted. The task of cleaning up polluted waters and protecting and enhancing the State's water resources is multifaceted and requires different approaches,

including innovative pilot projects, that take into account the problems, the type of pollution, the geographical area, and the recognition that the hydrological and ecological values of each resource sought to be upgraded, conserved, and protected are unique.

It is the intent of the General Assembly that moneys from the Fund created under this Article shall be used to help finance projects that specifically address water pollution problems and focus on upgrading surface waters, eliminating pollution, and ~~protecting~~ protecting, preserving, and conserving unpolluted surface waters, including enhancement or development of ~~urban~~ drinking water supplies. It is the further intent of the General Assembly that moneys from the Fund also be used to build a network of riparian buffers and greenways for environmental, educational, and recreational benefits. It is lastly the intent of the General Assembly that moneys from the Fund also be used to preserve lands that could be used for water supply reservoirs. While the purpose of this Article is to focus on the cleanup and prevention of pollution of the State's surface ~~waters~~ waters, ~~and~~ the establishment of a network of riparian buffers and greenways, and the preservation of property for establishing clean water supplies, the General Assembly believes that the results of these efforts will also be beneficial to wildlife and marine fisheries habitats."

SECTION 2.2. G.S. 113A-253 reads as rewritten:

"**§ 113A-253. Clean Water Management Trust Fund.**

(a) Fund Established. – The Clean Water Management Trust Fund is established as a special revenue fund. The Fund receives revenue from the following sources and may receive revenue from other sources:

(1) Annual appropriations under ~~G.S. 143-15.3B.~~G.S. 113A-253.1.

(2) Scenic River special registration plates under G.S. 20-81.12.

(b) Fund Earnings, Assets, and Balances. – The State Treasurer shall hold the Fund separate and apart from all other moneys, funds, and accounts. Investment earnings credited to the assets of the Fund shall become part of the Fund. Any balance remaining in the Fund at the end of any fiscal year shall be carried forward in the Fund for the next succeeding fiscal year. Payments from the Fund shall be made on the warrant of the Chair of the Board of Trustees.

(c) Fund Purposes. – Moneys from the Fund are appropriated annually to finance projects to clean up or prevent surface water pollution and for land preservation in accordance with this Article. Revenue in the Fund may be used for any of the following purposes:

(1) To acquire land for riparian buffers for the purposes of providing environmental protection for surface waters and urban drinking water supplies and establishing a network of riparian greenways for environmental, educational, and recreational uses and to retire debt incurred for this purpose under Article 9 of Chapter 142 of the General Statutes.

(2) To acquire conservation easements or other interests in real property for the purpose of protecting and conserving surface waters and enhancing ~~urban~~ drinking water ~~supplies~~ supplies, including the development of water supply reservoirs, and to retire debt incurred for this purpose under Article 9 of Chapter 142 of the General Statutes.

(3) To coordinate with other public programs involved with lands adjoining water bodies to gain the most public benefit while protecting and improving water quality and to retire debt incurred for this purpose under Article 9 of Chapter 142 of the General Statutes.

(4) To restore previously degraded lands to reestablish their ability to protect water quality and to retire debt incurred for this purpose under Article 9 of Chapter 142 of the General Statutes.

(5) To repair failing wastewater collection systems and wastewater treatment works if the repair is a reasonable remedy for resolving an existing waste

treatment problem and the repair is not for the purpose of expanding the system to accommodate future anticipated growth of a community.

(6) To repair and eliminate failing septic tank systems, to eliminate illegal drainage connections, and to expand a wastewater collection system or wastewater treatment works if the expansion eliminates failing septic tank systems or illegal drainage connections.

(7) To finance stormwater quality projects.

(8) To facilitate planning that targets reductions in surface water pollution.

(8a) To finance innovative efforts, including pilot projects, to improve stormwater management, to reduce pollutants entering the State's waterways, to improve water quality, and to research alternative solutions to the State's water quality problems.

(9) To fund operating expenses of the Board of Trustees and its staff.

(d) Limit on Operating and Administrative Expenses. – No more than two percent (2%) of the annual balance of the Fund on 1 July or a total sum of one million two hundred fifty thousand dollars ($1,250,000), whichever is greater, may be used each fiscal year for administrative and operating expenses of the Board of Trustees and its staff."

SECTION 2.3. G.S. 113A-253.1 reads as rewritten:

"**§ 113A-253.1. The Clean Water Management Trust Fund; appropriation.**

(a) The General Assembly finds that, due to the critical need in this State to clean up pollution in the State's surface ~~waters and~~waters, to protect and conserve those waters that are not yet polluted, and to preserve lands that may be used for water supply reservoirs, it is imperative that the State provide a minimum of one hundred million dollars ($100,000,000) each calendar year to the Clean Water Management Trust Fund; therefore, there is annually appropriated from the General Fund to the Clean Water Management Trust Fund the sum of one hundred million dollars ($100,000,000).

(b) The funds in the Clean Water Management Trust Fund shall be used only in accordance with this Article."

SECTION 2.4. G.S. 113A-256 reads as rewritten:

"**§ 113A-256. Clean Water Management Trust Fund Board of Trustees: powers and duties.**

(a) Allocate Grant Funds. – The Trustees shall allocate moneys from the Fund as grants. A grant may be awarded only for a project or activity that satisfies the criteria and furthers the purposes of this Article.

(b) Develop Grant Criteria. – The Trustees shall develop criteria for awarding grants under this Article. The criteria developed shall include consideration of the following:

(1) The significant enhancement and conservation of water quality in the State.

(2) The objectives of the basinwide management plans for the State's river basins and watersheds.

(3) The promotion of regional integrated ecological networks insofar as they affect water quality.

(4) The specific areas targeted as being environmentally sensitive.

(5) The geographic distribution of funds as appropriate.

(6) The preservation of water resources with significant recreational or economic value and uses.

(7) The development of a network of riparian buffer-greenways bordering and connecting the State's waterways that will serve environmental, educational, and recreational uses.

(8) Water supply availability and the public's need for resources adequate to meet demand for essential water uses. Criteria developed pursuant to this

subdivision may include consideration of the likelihood of a proposed water supply project ultimately being permitted and built.

(c) Develop Additional Guidelines. – The Trustees may develop guidelines in addition to the grant criteria consistent with and as necessary to implement this Article.

(d) Acquisition of Land. – The Trustees may acquire land by purchase, negotiation, gift, or devise. Any acquisition of land by the Trustees must be reviewed and approved by the Council of State and the deed for the land subject to approval of the Attorney General before the acquisition can become effective. In determining whether to acquire land as permitted by this Article, the Trustees shall consider whether the acquisition furthers the purposes of this Article and may also consider recommendations from the Council. Nothing in this section shall allow the Trustees to acquire land under the right of eminent domain.

(e) Exchange of Land. – The Trustees may exchange any land they acquire in carrying out the powers conferred on the Trustees by this Article.

(f) Land Management. – The Trustees may designate managers or managing agencies of the lands acquired under this Article.

(g) Tax Credit Certification. – The Trustees shall develop guidelines to determine whether land donated for a tax credit under G.S. 105-130.34 or G.S. 105-151.12 are suitable for one of the purposes under this Article and may be certified for a tax credit.

(h) Rule-making Authority. – The Trustees may adopt rules to implement this Article. Chapter 150B of the General Statutes applies to the adoption of rules by the Trustees.

(i) Repealed by Session Laws 1999-237, s. 15.11, effective July 1, 1999.

(j) Debt. – Of the funds credited annually to the Fund, the Trustees may authorize expenditure of a portion to reimburse the General Fund for debt service on special indebtedness to be issued or incurred under Article 9 of Chapter 142 of the General Statutes for the purposes provided in G.S. 113A-253(c)(1) through (4). In order to authorize expenditure of funds for debt service reimbursement, the Trustees must identify to the State Treasurer and the Department of Administration the specific capital projects for which they would like special indebtedness to be issued or incurred and the annual amount they intend to make available, and request the State Treasurer to issue or incur the indebtedness. After special indebtedness has been issued or incurred for a capital project requested by the Trustees, the Trustees must direct the State Treasurer to credit to the General Fund each year the actual aggregate principal and interest payments to be made in that year on the special indebtedness, as identified by the State Treasurer."

PART III. IMPROVE THE EFFICIENCY OF USE OF NORTH CAROLINA'S WATER RESOURCES

SECTION 3.1. G.S. 143-355(l) reads as rewritten:

"(l) Local Water Supply Plans. – Each unit of local government that provides public water service or that plans to provide public water service and each large community water system shall, either individually or together with other units of local government and large community water systems, prepare a local water supply plan and submit it to the Department for approval. The Department shall provide technical assistance with the preparation of plans to units of local government and large community water systems upon request and to the extent that the Department has resources available to provide assistance. At a minimum, each unit of local government and large community water system shall include in local water supply plans all information that is readily available to it. Plans shall include present and projected population, industrial development, and water use within the service area; present and future water supplies; an estimate of the technical assistance that may be needed at the local level to address projected water needs; current and future water conservation and water reuse ~~programs;~~ programs, including a plan for the reduction of long-term per capita demand for potable water; a description of how the local government or large community water system will respond to drought and other water shortage emergencies and continue to meet essential public water

supply needs during the emergency; and any other related information as the Department may require in the preparation of a State water supply plan. A unit of local government or large community water system shall submit a revised plan that specifies how the water system intends to address foreseeable future water needs when eighty percent (80%) of the water system's available water supply based on calendar year average daily demand has been allocated to current or prospective water users or the seasonal demand exceeds ninety percent (90%). Local plans shall be revised to reflect changes in relevant data and projections at least once each five years unless the Department requests more frequent revisions. The revised plan shall include the current and anticipated reliance by the local government unit or large community water system on surface water transfers as defined by G.S. 143-215.22G. Local plans and revised plans shall be submitted to the Department once they have been approved by each unit of local government and large community water system that participated in the preparation of the plan."

SECTION 3.2. G.S. 143-355.4(b) reads as rewritten:

"(b) To be eligible for State water infrastructure funds from the Drinking Water State Revolving Fund or the Drinking Water Reserve or any other grant or loan of funds allocated by the General Assembly whether the allocation of funds is to a State agency or to a nonprofit organization for the purpose of extending waterlines or expanding water treatment capacity, a local government or large community water system must demonstrate that the system:

...

(7) Has implemented a consumer education program that emphasizes the importance of water ~~conservation.~~conservation and that includes information on measures that residential customers may implement to reduce water consumption."

SECTION 3.3. G.S. 159-52(a) reads as rewritten:

"(a) In determining whether a proposed bond issue shall be approved, the Commission may consider:

...

(13) If the proposed bond issue is for a water system as described in G.S. 159-48(b)(21), whether a unit has prepared a local water supply plan in compliance with G.S. 143-355."

SECTION 3.4. The Department of Environment and Natural Resources shall provide statewide outreach and technical assistance as needed regarding water efficiency, which shall include the development of best management practices for community water efficiency and conservation. These best management practices shall address at least all of the following practices:

(1) Integrating water efficiency and conservation into water supply plans.

(2) Conducting regular water audits to identify revenue and nonrevenue water and water losses.

(3) Adopting water loss abatement programs.

(4) Metering and submetering of existing multiunit residential, commercial, and industrial complexes.

(5) Retrofitting fixtures, equipment, and irrigation systems to make them more water efficient.

(6) Landscaping in a manner that conserves water use and is regionally appropriate.

(7) Employing water reuse practices that include harvesting rainwater and using grey water.

(8) Pricing water to achieve comprehensive conservation and adopting full-cost accounting in line with the recommendation approved by the State Water Infrastructure Commission in November 2010.

SECTION 3.5. Nothing in Sections 3.1 through 3.4 of this act shall be construed to authorize the adoption of rules to implement those sections. Nothing in Sections 3.1 through 3.4 of this act shall be construed or implemented in a way so as to negatively impact economic development.

SECTION 4. Sections 3.1 through 3.5 of this act become effective October 1, 2011. All other sections of this act are effective when this act becomes law.

HOUSE BILL 609:
Promote Water Supply Development

2011-2012 General Assembly

Committee:	Senate Agriculture/Environment/Natural Resources	**Date:**	June 13, 2011
Introduced by:	Reps. McGrady, Stam, Gillespie, Carney	**Prepared by:**	Jeff Hudson Committee Counsel
Analysis of:	PCS to the 2nd Edition (H609-PCS50396-SB-51)		

SUMMARY: ***The Proposed Committee Substitute (PCS) for House Bill 609 would (1) direct the Department of Environment and Natural Resources to work with local governments in the development and permitting of water supply resources and authorize water systems to establish regional water supply planning organizations; (2) provide that funds from the Clean Water Management Trust Fund may be used to preserve lands for the development of water supply reservoirs; and (3) improve the efficiency of use of North Carolina's water resources.***

CHANGES MADE BY THE PCS: The PCS combines House Bill 586 (Enhance Water Supply Funding) and House Bill 787 (NC Water Efficiency Act) with House Bill 609.

BILL ANALYSIS:

PART 1 – Promote the development of water supply reservoirs and other water supply resources

Section 1.1 of the PCS would direct the Department of Environment and Natural Resources (DENR) to cooperate with units of local government in the identification of water supply needs and appropriate water supply sources and water storage projects to meet those needs. By agreement with a unit of local government, DENR could:

- Assist in (i) the assessment of alternatives for meeting water supply needs; (ii) the conduct of engineering studies, hydraulic computations, and hydrographic surveys; and (iii) the development of a plan of study for purposes of obtaining necessary permits.
- Develop estimates of the costs of the proposed new water supply project.
- Apply for State and federal permits for the development of regional water supplies.

Section 1.1 would also direct DENR to be the principal State agency to cooperate with other State agencies, the United States Army Corps of Engineers, and all other federal agencies in the planning and development of water supply sources and water storage projects for the State.

Section 1.2 would establish a process by which DENR could assist local governments in the development and permitting of water supply resources. At the request of a local government, DENR may assist the local government in identifying the preferred water supply alternative that will provide for the long term water supply needs of the local government. The determination of the preferred alternative will be binding on all State agencies unless DENR determines from further evaluation that another preferred alternative should be selected in light of additional information. DENR may also provide technical assistance to a unit of local government in obtaining federal permits for the preferred water supply alternative and a regional water supply system may request that DENR become a co-applicant for all required federal approvals for the alternative.

ection 1.2 would also authorize water systems to establish regional water supply planning organizations to plan for and coordinate water resource supply and demand. A regional water supply planning organization is authorized to prepare joint water supply plans, enter into agreements with

DENR for technical assistance, and support cooperative arrangements between water systems for the purchase and sale of water.

PART 2 – Clean Water Management Trust Fund used to preserve lands for the development of water supply reservoirs

The PCS would expand the purposes that the Clean Water Management Trust Fund's revenues may be used for to include acquisition of interests in property in order to protect, conserve, enhance, or develop drinking water supplies, including the development of water supply reservoirs.

PART 3 – Improve the efficiency of use of North Carolina's Water Resources

Section 3.1

Under current law, each local government that provides public water service and each large community water system[1] must prepare a local water supply plan and submit it to DENR for approval. A local water supply plan must include present and projected population, industrial development, and water use within the service area; present and future water supplies; an estimate of the technical assistance that may be needed at the local level to address projected water needs; current and future water conservation and water reuse programs; a description of how the local government or large community water system will respond to drought and other water shortage emergencies and continue to meet essential public water supply needs during the emergency; and any other related information that DENR may require.

Section 3.1 would require that a local water supply plan also include a plan for the reduction of long-term per capita demand for potable water.

Section 3.2

Under current law, to be eligible for State water infrastructure funds to extend waterlines or expand water treatment capacity, a local government or large community water system must demonstrate that the system:

- Has established a water rate structure that is adequate to pay the cost of maintaining, repairing, and operating the system.
- Has implemented a leak detection and repair program.
- Has an approved water supply plan.
- Meters all water use to the extent practicable.
- Does not use a rate structure that gives residential water customers a lower per-unit water rate as water use increases.
- Has evaluated the extent to which the future water needs of the water system can be met by reclaimed water.
- Has implemented a consumer education program that emphasizes the importance of water conservation.

Section 3.2 would provide that a local government or large community water system must also demonstrate that its required consumer education program include information on measures for the reduction of water consumption in order to be eligible for State water infrastructure funds to extend waterlines or expand water treatment capacity.

[1] A large community water system is a community water system that regularly serves 1,000 or more service connections or 3,000 or more individuals. (G.S. 143-350)

Section 3.3

Under current law, a city or county may issue bonds in order to provide for many different types of facilities, including facilities for the supply, storage, treatment, and distribution of water. The issuance of such bonds requires the approval of the Local Government Commission (LGC). In determining whether to approve the issuance of bonds, the LGC must consider a number of factors related to the necessity of the facility and the ability of the local government to pay off the bonds.

For bonds for water facilities, Section 3.3 would add to the factors that the LGC must consider, whether the local government has prepared a local water supply plan.

Section 3.4 would direct DENR to provide outreach and assistance regarding water efficiency, including the development of best management practices for community water efficiency and conservation.

EFFECTIVE DATE: Sections 3.1 through 3.5 of this act would become effective October 1, 2011. All other sections would become effective when it becomes law.

H609-SMSB-47(e2) v4

HOUSE BILL 609
Committee Substitute Favorable 5/31/11

Short Title: Promote Water Supply Development. (Public)

Sponsors:

Referred to:

April 5, 2011

A BILL TO BE ENTITLED

AN ACT TO PROMOTE THE DEVELOPMENT OF WATER SUPPLY RESERVOIRS AND OTHER WATER SUPPLY RESOURCES.

Whereas, S.L. 2007-518 directed the Environmental Review Commission to study the allocation of surface water resources and their availability and maintenance in the State; and

Whereas, pursuant to this directive, the Environmental Review Commission commissioned a study and report on water allocation issues and policy options; and

Whereas, the resulting water allocation report included a recommendation that the State create an expedited regulatory process for the construction of new water supply reservoirs; and

Whereas, the resulting water allocation report found that certain areas of the State, including the piedmont, are expected to experience significant population growth over the next 30 years and do not have adequate water supplies to support the expected growth; Now, therefore,

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 143-355(b) is amended by adding two new subdivisions to read:

"(b) Functions to Be Performed. – The Department shall:

...

(16) Cooperate with units of local government in the identification of water supply needs and appropriate water supply sources and water storage projects to meet those needs. By agreement with a unit of local government, the Department may do any of the following:

a. Assist in the assessment of alternatives for meeting water supply needs; the conduct of engineering studies, hydraulic computations, and hydrographic surveys; and the development of a plan of study for purposes of obtaining necessary permits.

b. For budget and planning purposes, develop estimates of the costs of the proposed new water supply project.

c. Apply for State and federal permits for the development of regional water supplies.

(17) Be the principal State agency to cooperate with other State agencies, the United States Army Corps of Engineers, and all other federal agencies or instrumentalities in the planning and development of water supply sources and water storage projects for the State."

SECTION 2. Article 38 of Chapter 143 of the General Statutes is amended by adding two new sections to read:

"§ 143-355.7. Water supply development; State-local cooperation.

(a) At the request of one or more units of local government, the Department may assist the local government in identifying the preferred water supply alternative that alone or in combination with other water sources will provide for the long-term water supply needs documented in the local water supply plan and meet all of the following criteria:

(1) Are economically and practically feasible.

(2) Make maximum, practical beneficial use of reclaimed wastewater and stormwater.

(3) Comply with water quality classifications and standards.

(4) Avoid or mitigate impacts to threatened or endangered species to the extent such species are protected by State or federal law.

(5) Maintain downstream flows necessary to protect downstream users.

(6) Do not have significant adverse impacts on other water withdrawals or wastewater discharges.

(7) Avoid or mitigate water quality impacts consistent with the requirements of rules adopted by the Environmental Management Commission to implement 33 U.S.C. § 1341.

(b) During the alternatives analysis, the Department shall request relevant information regarding the potential alternatives, including the establishment or expansion of the water supply reservoir or other water supply resources, from other State agencies with jurisdiction over any natural resources that will be impacted under the alternatives identified by the Department. Unless the local government agrees to an extension of time, the Department shall determine the preferred alternative within two years of the execution of a contract with the requesting local government for the costs of the analysis. The determination of the preferred alternative shall be binding on all State agencies unless the Department determines from its further evaluation during its review of any State or federal permit applications for the project that another preferred alternative should be selected in light of additional information brought forward during the permit reviews.

(c) If the Department provides an analysis of practicable alternatives for meeting a water supply need under this section, the analysis shall be accepted by the Department and the Department of Administration for purposes of satisfying the requirements of the North Carolina Environmental Policy Act and any State permit or authorization that requires identification and assessment of alternatives, including, but not limited to, a request for an interbasin transfer pursuant to G.S. 143-215.22L.

(d) The Department may provide technical assistance to a unit of local government in obtaining federal permits for the preferred water supply alternative identified pursuant to subsection (a) of this section. For purposes of providing technical assistance and conducting studies in support of a proposed water supply project under this section, the Department may enter into an agreement with one or more units of local government to conduct studies or modeling. The agreement shall specify the allocation of costs for any studies or modeling prepared by the Department in support of the project.

(e) When the Department has identified the most practicable alternative, a regional water supply system may request that the Department become a co-applicant for all required federal approvals for the alternative identified by the Department. The Department may become a co-applicant when all of the following conditions are met:

(1) The regional water supply system has acquired or will acquire the property necessary for construction of the water supply reservoir or other water supply resource.

(2) The local water supply plan shows that the regional water supply system has implemented appropriate conservation measures similar in effect to the measures in comparably sized North Carolina regional water supply systems.

(3) The regional water supply system has developed and is implementing measures to replace existing leaking infrastructure that is similar in effect to the measures being implemented by comparably sized North Carolina regional water systems.

(4) The regional water supply system has entered into a contractual agreement to pay the expenses incurred by the Department as a co-applicant for the project approval.

(f) Nothing in this section shall be construed to limit the authority of the Department to require environmental permits or to apply and enforce environmental standards pursuant to State law.

"**§ 143-355.8. Regional water supply planning organizations.**

(a) One or more water systems may establish a water supply planning organization to plan for and coordinate water resource supply and demand on a regional basis. A water supply planning organization may include representatives of local government water systems, water authorities, nongovernmental water systems, and registered water withdrawers.

(b) A regional water supply planning organization may do any of the following:

(1) Identify sources of raw water supply for regional systems.

(2) Identify areas suitable for the development of new regional water sources.

(3) Identify opportunities for purchase and sale of water between water systems to meet regional water supply needs.

(4) Prepare joint water supply plans.

(5) Enter into agreements with the Department for technical assistance in identifying practical alternatives to meet regional water supply needs pursuant to G.S. 143-355.7 or to provide studies in support of a proposed regional water supply project.

(6) Support cooperative arrangements between water systems for purchase and sale of water by providing technical assistance and voluntary mediation of disputes concerning water supply.

(c) Nothing in this section shall be construed to alter the requirements for obtaining a certificate for an interbasin transfer."

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

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

H D

HOUSE BILL 713
Committee Substitute Favorable 6/1/11
Third Edition Engrossed 6/2/11
PROPOSED SENATE COMMITTEE SUBSTITUTE H713-PCS70245-SB-50

Short Title: Public Contracts/Multiple Award. (Public)

Sponsors:

Referred to:

April 7, 2011

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE DEPARTMENT OF ADMINISTRATION TO USE MULTIPLE AWARD SCHEDULE CONTRACTS FOR THE PURCHASE OF ALL GROUND MAINTENANCE, CONSTRUCTION, COMMUNICATIONS, AND FORESTRY EQUIPMENT.

The General Assembly of North Carolina enacts:

SECTION 1. Article 3 of Chapter 143 of the General Statutes is amended by adding a new section to read as follows:

"**§ 143-52.3. Multiple award schedule contracts.**

(a) Definitions. – The following definitions apply in this section:

(1) Communications equipment. – Mobile communications systems, desktop communications systems, base and repeater communications systems, gateway devices, audio switch units, radio routers, microwave radios, microwave antennae, Ethernet switches, wireless access points, or equivalent products and attachments.

(2) Construction equipment. – Excavators, wheel excavators, track loaders, compact track loaders, wheel loaders, skid steer loaders, backhoe loaders, crawler dozers, crawler loaders, wheel dozers, motor graders, utility cranes, compactors, and appropriate attachments, or equivalent products and attachments.

(3) Forestry equipment. – Feller bunchers, knuckleboom loaders, forestry swing machines, harvesters, and appropriate attachments, or equivalent products and attachments.

(4) Ground maintenance equipment. – Hand-held equipment, walk-behind products, lawn tractors, lawn and garden tractors, commercial walk-behind mowers, zero turn radius mowers, front mowers, compact utility tractors, utility tractors, utility vehicles, golf and turf equipment, agricultural tractors and implements, and appropriate attachments, or equivalent products and attachments.

(5) Multiple award schedule contract. – A contract that allows multiple vendors to be awarded a State contract for goods or services by providing their total

catalogues for lines of equipment and attachments to eligible purchasers, including State agencies, departments, institutions, public school districts, political subdivisions, community colleges, and constituent institutions of The University of North Carolina.

(b) Intent. – The intent of multiple award schedule contracts is to evaluate vendors based upon a variety of factors, including discounts, total lifecycle costs, service, warranty, distribution channel, and past vendor performance. Multiple award schedule contracts allow multiple vendors to compete and be awarded a contract based upon the value of their products or services and result in competitive pricing, transparency, administrative savings, expedited procurement, and flexibility for State purchasers.

(c) Multiple Award Schedule Contracts Required. – The acquisition of ground maintenance equipment, construction equipment, communications equipment, and forestry equipment shall be conducted using multiple award schedule contracts, except as provided in this section. Not later than August 31, 2011, the Department of Administration shall issue requests for proposals for multiple award schedule contracts for all ground maintenance equipment product categories, construction equipment product categories, communications equipment product categories, and forestry equipment product categories. Contracts awarded under this subsection shall be for a term of not less than three years with annual product and pricing update periods.

(d) Limitation. – Any contract awarded under subsection (c) of this section shall be in addition to any existing term contracts for ground maintenance equipment, construction equipment, communications equipment, and forestry equipment. Nothing in this section shall limit the ability of the Department of Administration to issue additional term contracts for the specific purchase of equipment otherwise available through a multiple award schedule contract."

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

HOUSE BILL 713:
Public Contracts/Multiple Award

2011-2012 General Assembly

Committee:	Senate Agriculture/Environment/Natural Resources	**Date:**	June 13, 2011
Introduced by:	Representatives Stam, Lewis, Murry	**Prepared by:**	Jeff Hudson Committee Counsel
Analysis of:	PCS to Third Edition H713-PCS70245-SB-50		

SUMMARY: ***The Proposed Committee Substitute for House Bill 713 would require the Department of Administration to use multiple award scheduling contracts for the purchase of all ground maintenance, construction, communications, and forestry equipment.***

[As introduced, this bill was identical to S767, as introduced by Sens. Brock, Rouzer, which is currently in Senate Commerce.]

BILL ANALYSIS: The Proposed Committee Substitute for House Bill 713 (PCS) would require the use of multiple award schedule contracts for the acquisition of ground maintenance equipment, construction equipment, communications equipment, and forestry equipment. It would require the Department of Administration to issue requests for proposals for multiple award schedule contracts for ground maintenance equipment, construction equipment, communications equipment, and forestry equipment not later than August 31, 2011. Contracts awarded under the act must be for a term not less than 3 years with annual product and pricing update periods.

Any contracts awarded under the act are in addition to any existing term contracts for ground maintenance equipment, construction equipment, communications equipment, and forestry equipment. Nothing in the act limits the Department of Administration from issuing additional term contracts for the purchase of equipment otherwise available through a multiple award schedule contact.

A **multiple award schedule award contract** is a contract that allows multiple vendors to be awarded a State contract for goods or services by providing their total catalogues for lines of equipment and attachments to eligible purchasers, including State agencies, departments, institutions, public school districts, political subdivisions, community colleges, and constituent institutions of The University of North Carolina. The intent of multiple award schedule contracts is to evaluate vendors based on a variety of factors, including discounts, total lifecycle costs, and past vendor performance.

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

Brad Krehely, Committee Counsel to the Committee on House Commerce and Job Development, substantially contributed to this summary.

CS#1

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

H 3

HOUSE BILL 713
Committee Substitute Favorable 6/1/11
Third Edition Engrossed 6/2/11

Short Title: Public Contracts/Multiple Award. (Public)

Sponsors:

Referred to:

April 7, 2011

A BILL TO BE ENTITLED

AN ACT AUTHORIZING THE DEPARTMENT OF ADMINISTRATION TO USE MULTIPLE AWARD SCHEDULE CONTRACTS FOR THE PURCHASE OF ALL GROUND MAINTENANCE, CONSTRUCTION, AND FORESTRY EQUIPMENT.

The General Assembly of North Carolina enacts:

SECTION 1. Article 3 of Chapter 143 of the General Statutes is amended by adding a new section to read as follows:

"**§ 143-64.1. Multiple award schedule contracts.**

(a) Definitions. – The following definitions apply in this section:

(1) Construction equipment. – Excavators, wheel excavators, track loaders, compact track loaders, wheel loaders, skid steer loaders, backhoe loaders, crawler dozers, crawler loaders, wheel dozers, motor graders, utility cranes, compactors, and appropriate attachments, or equivalent products and attachments.

(2) Forestry equipment. – Feller bunchers, knuckleboom loaders, forestry swing machines, harvesters, and appropriate attachments, or equivalent products and attachments.

(3) Ground maintenance equipment. – Hand-held equipment, walk-behind products, lawn tractors, lawn and garden tractors, commercial walk-behind mowers, zero turn radius mowers, front mowers, compact utility tractors, utility tractors, utility vehicles, golf and turf equipment, agricultural tractors and implements, and appropriate attachments, or equivalent products and attachments.

(4) Multiple award schedule contract. – A contract that allows multiple vendors to be awarded a State contract for goods or services by providing their total catalogues for lines of equipment and attachments to eligible purchasers, including State agencies, departments, institutions, public school districts, political subdivisions, community colleges, and constituent institutions of The University of North Carolina.

(b) Intent. – The intent of multiple award schedule contracts is to evaluate vendors based upon a variety of factors, including discounts, total lifecycle costs, service, warranty, distribution channel, and past vendor performance. Multiple award schedule contracts allow multiple vendors to compete and be awarded a contract based upon the value of their products or services and results in competitive pricing, transparency, administrative savings, expedited procurement, and flexibility for State purchasers.

(c) Multiple Award Schedule Contracts Required. – The acquisition of ground maintenance equipment, construction equipment, and forestry equipment shall be conducted using multiple award schedule contracts, except as provided in this section. Not later than August 31, 2011, the Department of Administration shall issue requests for proposals for multiple award schedule contracts for all ground maintenance equipment product categories, construction equipment product categories, and forestry equipment product categories. Contracts awarded under this subsection shall be for a term of not less than three years with annual product and pricing update periods.

(d) Limitation. – Any contract awarded under subsection (c) of this section shall be in addition to any existing term contracts for ground maintenance equipment, construction equipment, and forestry equipment. Nothing in this section shall limit the ability of the Department of Administration to issue additional term contracts for the specific purchase of equipment otherwise available through a multiple award schedule contract."

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

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

H D

HOUSE BILL 209
PROPOSED SENATE COMMITTEE SUBSTITUTE H209-PCS50397-RI-36

Short Title: Amend SW Financial Assurance Rqmts. (Public)

Sponsors:

Referred to:

March 3, 2011

A BILL TO BE ENTITLED

AN ACT TO AMEND CERTAIN FINANCIAL ASSURANCE REQUIREMENTS APPLICABLE TO OWNERS AND OPERATORS OF SOLID WASTE MANAGEMENT FACILITIES TO (1) AUTHORIZE THE USE OF A CORPORATE FINANCIAL TEST AS AN ALLOWABLE MECHANISM TO ESTABLISH THE FINANCIAL ASSURANCE NECESSARY FOR CLOSURE, POST-CLOSURE MAINTENANCE AND MONITORING, AND ANY CORRECTIVE ACTION THAT MAY BE REQUIRED AT THE FACILITY; (2) DECREASE THE MINIMUM AMOUNT OF FINANCIAL ASSURANCE THAT MUST BE ESTABLISHED TO COVER COSTS FOR POTENTIAL ASSESSMENT AND CORRECTIVE ACTION AT A FACILITY; AND (3) AUTHORIZE THE USE OF A TRUST FUND PAY-IN PERIOD AS AN ALLOWABLE MECHANISM TO ESTABLISH THE FINANCIAL ASSURANCE NECESSARY FOR POTENTIAL ASSESSMENT AND CORRECTIVE ACTION AT A FACILITY.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 130A-295.2 reads as rewritten:

"**§ 130A-295.2. Financial responsibility requirements for applicants and permit holders for solid waste management facilities.**

...

(f) The applicant and permit holder for a solid waste management facility shall establish financial assurance by a method or combination of methods that will ensure that sufficient funds for closure, post-closure maintenance and monitoring, and any corrective action that the Department may require will be available during the active life of the facility, at closure, and for any post-closure period of time that the Department may require even if the applicant or permit holder becomes insolvent or ceases to reside, be incorporated, do business, or maintain assets in the State. Rules adopted by the Commission ~~may~~ shall allow a business entity that is an applicant for a permit or a permit holder to establish financial assurance through insurance, irrevocable letters of credit, trusts, surety bonds, corporate financial tests, or any other financial ~~device,~~ device as allowed pursuant to 40 Code of Federal Regulations § 258.74 (July 1, 2010 Edition), or any combination of the foregoing shown to provide protection equivalent to the financial protection that would be provided by insurance if insurance were the only mechanism used. Assets used to meet the financial assurance requirements of this section shall be in a form that will allow the Department to readily access funds for the purposes set out in this section. Assets used to meet financial assurance requirements of this section shall not be

accessible to the permit holder except as approved by the Department. Where a corporate financial test is used that is substantially similar to that allowed under 40 Code of Federal Regulations § 258.74 (July 1, 2010 Edition), the assets shall be presumed both to be readily accessible by the Department and not otherwise accessible to the permit holder.

...

(h) To meet the financial assurance requirements of this section, the owner or operator of a sanitary landfill shall establish financial assurance sufficient to cover a minimum of ~~three~~ two million dollars ~~($3,000,000)~~ ($2,000,000) in costs for potential assessment and corrective action at the facility. The Department may require financial assurance in a higher amount and may increase the amount of financial assurance required of a permit holder at any time based upon the types of waste disposed in the landfill, the projected amount of waste to be disposed in the landfill, the location of the landfill, potential receptors of releases from the landfill, and inflation. The financial assurance requirements of this subsection are in addition to the other financial responsibility requirements set out in this section.

(i) The Commission may adopt rules under which a unit of local government and a solid waste management authority created pursuant to Article 22 of Chapter 153A of the General Statutes may meet the financial responsibility requirements of this section by either a local government financial test or a capital reserve fund requirement.

(j) In addition to the other methods by which financial assurance may be established as set forth in subsection (f) of this section, the Department may allow the owner or operator of a sanitary landfill permitted on or before August 1, 2009, to meet the financial assurance requirement set forth in subsection (h) of this section by establishing a trust fund which conforms to the following minimum requirements:

(1) The trustee shall be an entity which has the authority to act as a trustee and whose trust operations are regulated and examined by a State or federal agency.

(2) A copy of the trust agreement shall be placed in the facility's operating record.

(3) Payments into the trust fund shall be made annually by the owner or operator over a period not to exceed five years. This period is referred to as the pay-in period.

(4) Payments into the fund shall be made in equal annual installments in amounts calculated by dividing the current cost estimate for potential assessment and corrective action at the facility, which shall not be less than two million dollars ($2,000,000) in accordance with subsection (h) of this section, by the number of years in the pay-in period.

(5) The trust fund may be terminated by the owner or operator only if the owner or operator establishes financial assurance by another method or combination of methods allowed under subsection (f) of this section.

(6) The trust agreement shall be accompanied by a formal certification of acknowledgement."

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

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 209

AMENDMENT NO._____
(to be filled in by
Principal Clerk)

H209-ARI-28 [v.1]

Comm. Sub. [YES]
Amends Title [YES]
PCS to First Edition
H209-PCS11240-RI-34

Date June 13 ,2011

Senator Rouzer

moves to amend the bill on page 1, lines 1 through 25,
by rewriting those lines to read:

"A BILL TO BE ENTITLED

AN ACT TO AMEND CERTAIN FINANCIAL ASSURANCE REQUIREMENTS APPLICABLE TO OWNERS AND OPERATORS OF SOLID WASTE MANAGEMENT FACILITIES TO: (1) AUTHORIZE THE USE OF A CORPORATE FINANCIAL TEST AS AN ALLOWABLE MECHANISM TO ESTABLISH THE FINANCIAL ASSURANCE NECESSARY FOR CLOSURE, POST-CLOSURE MAINTENANCE AND MONITORING, AND ANY CORRECTIVE ACTION THAT MAY BE REQUIRED AT THE FACILITY; (2) DECREASE THE MINIMUM AMOUNT OF FINANCIAL ASSURANCE THAT MUST BE ESTABLISHED TO COVER COSTS FOR POTENTIAL ASSESSMENT AND CORRECTIVE ACTION AT A FACILITY; AND (3) AUTHORIZE THE USE OF A TRUST FUND PAY-IN PERIOD AS AN ALLOWABLE MECHANISM TO ESTABLISH THE FINANCIAL ASSURANCE NECESSARY FOR POTENTIAL ASSESSMENT AND CORRECTIVE ACTION AT A FACILITY.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 130A-295.2 reads as rewritten:

"**§ 130A-295.2. Financial responsibility requirements for applicants and permit holders for solid waste management facilities.**

...

(f) The applicant and permit holder for a solid waste management facility shall establish financial assurance by a method or combination of methods that will ensure that sufficient funds for closure, post-closure maintenance and monitoring, and any corrective action that the Department may require will be available during the active life of the facility, at closure, and for any post-closure period of time that the Department may require even if the applicant or permit holder becomes insolvent or ceases to reside, be incorporated, do business, or maintain assets in the State. Rules adopted by the Commission ~~may~~ shall allow a business entity that is an applicant for a permit or a permit holder to establish financial assurance through insurance, irrevocable letters of credit, trusts, surety bonds, corporate financial tests, or any other financial ~~device,~~ device as allowed pursuant to 40 Code of Federal Regulations § 258.74 (July 1, 2010 Edition), or any combination of the foregoing shown to provide protection

equivalent to the financial protection that would be provided by insurance if insurance were the only mechanism used. Assets used to meet the financial assurance requirements of this section shall be in a form that will allow the Department to readily access funds for the purposes set out in this section. Assets used to meet financial assurance requirements of this section shall not be accessible to the permit holder except as approved by the Department. Where a corporate financial test is used that is substantially similar to that allowed under 40 Code of Federal Regulations § 258.74 (July 1, 2010 Edition), the assets shall be presumed both to be readily accessible by the Department and not otherwise accessible to the permit holder.

...

(h) To meet the financial assurance requirements of this section, the owner or operator of a sanitary landfill shall establish financial assurance sufficient to cover a minimum of ~~three~~ two million dollars ~~($3,000,000)~~ ($2,000,000) in costs for potential assessment and corrective action at the facility. The Department may require financial assurance in a higher amount and may increase the amount of financial assurance required of a permit holder at any time based upon the types of waste disposed in the landfill, the projected amount of waste to be disposed in the landfill, the location of the landfill, potential receptors of releases from the landfill, and inflation. The financial assurance requirements of this subsection are in addition to the other financial responsibility requirements set out in this section.

(i) The Commission may adopt rules under which a unit of local government and a solid waste management authority created pursuant to Article 22 of Chapter 153A of the General Statutes may meet the financial responsibility requirements of this section by either a local government financial test or a capital reserve fund requirement.

(j) In addition to the other methods by which financial assurance may be established as set forth in subsection (f) of this section, the Department may allow the owner or operator of a sanitary landfill permitted on or before August 1, 2009, to meet the financial assurance requirement set forth in subsection (h) of this section by establishing a trust fund which conforms to the following minimum requirements:

(1) The trustee shall be an entity which has the authority to act as a trustee and whose trust operations are regulated and examined by a State or federal agency;

(2) A copy of the trust agreement shall be placed in the facility's operating record.

(3) Payments into the trust fund shall be made annually by the owner or operator over a period not to exceed five years. This period is referred to as the pay-in period.

(4) Payments into the fund shall be made in equal annual installments in amounts calculated by dividing the current cost estimate for potential assessment and corrective action at the facility, which shall not be less than two million dollars ($2,000,000) in accordance with subsection (h) of this section, by the number of years in the pay-in period.

(5) The trust fund may be terminated by the owner or operator only if the owner or operator establishes financial assurance by another method or combination of methods allowed under subsection (f) of this section.

(6) The trust agreement shall be accompanied by a formal certification of acknowledgement."

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

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED ✓ FAILED _____ TABLED _____

HOUSE BILL 209:
Amend SW Financial Assurance Rqmts

2011-2012 General Assembly

Committee:	Senate Ref to Agriculture/Environment/Natural Resources. If fav, re-ref to Finance	**Date:**	June 9, 2011
Introduced by:	Reps. Ingle, Gillespie	**Prepared by:**	Jennifer McGinnis Committee Counsel
Analysis of:	PCS to First Edition H209-CSRI-34		

SUMMARY: The Proposed Committee Substitute (PCS) for House Bill 209 would amend certain financial assurance requirements applicable to owners and operators of sanitary landfills to eliminate the $3,000,000 minimum amount of financial assurance that must be established to cover costs for potential assessment and corrective action at a facility.

CURRENT LAW: In 2007 the General Assembly enacted legislation[1] that substantially amended the laws governing solid waste management facilities, including financial assurance requirements applicable to applicants and permit holders of these facilities. One of the provisions enacted in this regard requires that the owner or operator of a sanitary landfill establish financial assurance sufficient to cover a minimum of $3,000,000 in costs for potential assessment and corrective action at the facility, and gives the Department discretion to require financial assurance in a higher amount or increase the amount at any time based upon the types of waste disposed in the landfill, the projected amount of waste to be disposed in the landfill, the location of the landfill, potential receptors of releases from the landfill, and inflation.

BILL ANALYSIS: The bill would eliminate the $3,000,000 minimum amount of financial assurance that must be established to cover costs for potential assessment and corrective action at a facility.

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

H209-SMRI-42(CSRI-34) v1

[1] S.L. 2007-550

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

H D

HOUSE BILL 209
PROPOSED SENATE COMMITTEE SUBSTITUTE H209-PCS11240-RI-34

Short Title: Amend SW Financial Assurance Rqmts. (Public)

Sponsors:

Referred to:

March 3, 2011

A BILL TO BE ENTITLED

AN ACT TO AMEND CERTAIN FINANCIAL ASSURANCE REQUIREMENTS APPLICABLE TO OWNERS AND OPERATORS OF SANITARY LANDFILLS TO ELIMINATE THE THREE-MILLION-DOLLAR MINIMUM AMOUNT OF FINANCIAL ASSURANCE THAT MUST BE ESTABLISHED TO COVER COSTS FOR POTENTIAL ASSESSMENT AND CORRECTIVE ACTION AT A FACILITY.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 130A-295.2 reads as rewritten:

"**§ 130A-295.2. Financial responsibility requirements for applicants and permit holders for solid waste management facilities.**

...

~~(h) To meet the financial assurance requirements of this section, the owner or operator of a sanitary landfill shall establish financial assurance sufficient to cover a minimum of three million dollars ($3,000,000) in costs for potential assessment and corrective action at the facility. The Department may require financial assurance in a higher amount and may increase the amount of financial assurance required of a permit holder at any time based upon the types of waste disposed in the landfill, the projected amount of waste to be disposed in the landfill, the location of the landfill, potential receptors of releases from the landfill, and inflation. The financial assurance requirements of this subsection are in addition to the other financial responsibility requirements set out in this section.~~

(i) The Commission may adopt rules under which a unit of local government and a solid waste management authority created pursuant to Article 22 of Chapter 153A of the General Statutes may meet the financial responsibility requirements of this section by either a local government financial test or a capital reserve fund requirement."

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

H

HOUSE BILL 209

Short Title:	Amend SW Financial Assurance Rqmts.	(Public)
Sponsors:	Representatives Ingle and Gillespie (Primary Sponsors). For a complete list of Sponsors, see Bill Information on the NCGA Web Site.	
Referred to:	Environment.	

March 3, 2011

A BILL TO BE ENTITLED

AN ACT TO AMEND CERTAIN FINANCIAL ASSURANCE REQUIREMENTS APPLICABLE TO OWNERS AND OPERATORS OF SANITARY LANDFILLS TO (1) DECREASE THE MINIMUM AMOUNT OF FINANCIAL ASSURANCE THAT MUST BE ESTABLISHED TO COVER COSTS FOR POTENTIAL ASSESSMENT AND CORRECTIVE ACTION AT A FACILITY; AND (2) AUTHORIZE THE USE OF A TRUST FUND PAY-IN PERIOD AS AN ALLOWABLE MECHANISM TO ESTABLISH THE FINANCIAL ASSURANCE NECESSARY FOR POTENTIAL ASSESSMENT AND CORRECTIVE ACTION AT A FACILITY.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 130A-295.2 reads as rewritten:

"**§ 130A-295.2. Financial responsibility requirements for applicants and permit holders for solid waste management facilities.**

...

(h) To meet the financial assurance requirements of this section, the owner or operator of a sanitary landfill shall establish financial assurance sufficient to cover a minimum of ~~three~~ two million dollars ~~($3,000,000)~~ ($2,000,000) in costs for potential assessment and corrective action at the facility. The Department may require financial assurance in a higher amount and may increase the amount of financial assurance required of a permit holder at any time based upon the types of waste disposed in the landfill, the projected amount of waste to be disposed in the landfill, the location of the landfill, potential receptors of releases from the landfill, and inflation. The financial assurance requirements of this subsection are in addition to the other financial responsibility requirements set out in this section.

(i) The Commission may adopt rules under which a unit of local government and a solid waste management authority created pursuant to Article 22 of Chapter 153A of the General Statutes may meet the financial responsibility requirements of this section by either a local government financial test or a capital reserve fund requirement.

(j) In addition to the other methods by which financial assurance may be established as set forth in subsection (f) of this section, the Department may allow the owner or operator of a sanitary landfill permitted on or before August 1, 2009, to meet the financial assurance requirement set forth in subsection (h) of this section by establishing a trust fund which conforms to the following minimum requirements:

(1) The trustee shall be an entity which has the authority to act as a trustee and whose trust operations are regulated and examined by a State or federal agency.

(2) A copy of the trust agreement shall be placed in the facility's operating record.

(3) Payments into the trust fund shall be made annually by the owner or operator over a period not to exceed five years. This period is referred to as the pay-in period.

(4) Payments into the fund shall be made in equal annual installments in amounts calculated by dividing the current cost estimate for potential assessment and corrective action at the facility, which shall not be less than two million dollars ($2,000,000) in accordance with subsection (h) of this section, by the number of years in the pay-in period.

(5) The trust fund may be terminated by the owner or operator only if the owner or operator establishes financial assurance by another method or combination of methods allowed under subsection (f) of this section.

(6) The trust agreement shall be accompanied by a formal certification of acknowledgement."

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

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

H D

HOUSE BILL 242
Committee Substitute Favorable 4/19/11
Committee Substitute #2 Favorable 5/26/11
Fourth Edition Engrossed 5/31/11
PROPOSED SENATE COMMITTEE SUBSTITUTE H242-PCS80264-RIf-30

Short Title: Nat. Gas/Bond/Fee/Landowner Protect'n/Study. (Public)

Sponsors:

Referred to:

March 8, 2011

A BILL TO BE ENTITLED

AN ACT TO (1) INCREASE THE AMOUNT OF THE BOND REQUIRED UPON REGISTRATION IN ORDER TO DRILL FOR OIL OR NATURAL GAS IN THE STATE; (2) INCREASE THE AMOUNT OF FEES APPLICABLE TO DRILLING AND ABANDONING OIL OR GAS WELLS; (3) ESTABLISH PROVISIONS FOR THE PROTECTION OF LANDOWNERS RELATIVE TO LEASES FOR OIL AND GAS EXPLORATION; (4) DIRECT THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES TO STUDY THE ISSUE OF OIL AND GAS EXPLORATION IN THE STATE, AND SPECIFICALLY THE USE OF DIRECTIONAL AND HORIZONTAL DRILLING AND HYDRAULIC FRACTURING FOR THAT PURPOSE; (5) DIRECT THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES TO CONDUCT AT LEAST TWO PUBLIC HEARINGS ON THE ISSUE IN THE AREA IN WHICH EXPLORATION FOR NATURAL GAS BY MEANS OF DIRECTIONAL AND HORIZONTAL DRILLING AND HYDRAULIC FRACTURING MAY OCCUR; AND (6) APPROPRIATE THE SUM OF ONE HUNDRED THOUSAND DOLLARS TO THE DEPARTMENT FOR THE CONDUCT OF THE STUDY AND THE HEARINGS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 113-378 reads as rewritten:

"**§ 113-378. Persons drilling for oil or gas to register and furnish bond.**

Any person, firm or corporation before making any drilling exploration in this State for oil or natural gas shall register with the Department of Environment and Natural ~~Resources or such other State agency as may hereafter be established to control the conservation of oil or gas in this State.~~Resources. To provide for such registration, the drilling operator must furnish the name and address of such person, firm or corporation, and the location of the proposed drilling operations, and file with the ~~aforesaid~~ Department a bond in ~~the~~ an amount totaling the sum of~~f~~ (i) five thousand dollars ($5,000) plus (ii) one dollar ($1.00) per linear foot proposed to be drilled for the well. ~~($5,000) running to the State of North Carolina, conditioned that any~~ Any well opened by the drilling operator ~~upon abandonment~~ shall be plugged upon abandonment in accordance with the rules of ~~said~~ the Department."

SECTION 2. G.S. 113-395 reads as rewritten:

"**§ 113-395. Notice and payment of fee to Department before drilling or abandoning well; plugging abandoned well.**

Before any well, in search of oil or gas, shall be drilled, the person desiring to drill the same shall notify the Department upon such form as it may prescribe and shall pay a fee of ~~fifty~~ three thousand dollars ~~($50.00)~~($3,000) for each well. The drilling of any well is hereby prohibited until such notice is given and such fee has been paid and permit granted.

Each abandoned well and each dry hole ~~promptly~~ shall be plugged promptly in the manner and within the time required by rules ~~to be~~ prescribed by the Department, and the owner of such well shall give notice, upon such form as the Department may prescribe, of the abandonment of each dry hole and of the owner's intention to abandon, and shall pay a fee of ~~fifteen~~ four hundred fifty dollars ~~($15.00)~~($450.00). No well shall be abandoned until such notice has been given and such fee has been paid."

SECTION 3.(a) G.S. 113-389 reads as rewritten:

"**§ 113-389. Definitions.**

Unless the context otherwise requires, the words defined in this section shall have the following meaning when found in this law:

...

(7a) "Oil and gas developer or operator" or "developer or operator" shall mean a person who acquires a lease for the purpose of conducting exploration for or extracting oil or gas.

(7b) "Oil and gas operations" or "activities" shall mean the exploration for or drilling of an oil and gas well that requires entry upon surface estate and the production operations directly related to the exploration or drilling.

...

(15) "Surface owner" means the person who holds record title to or has a purchaser's interest in the surface of real property.

...."

SECTION 3.(b) Article 27 of Chapter 113 of the General Statutes is amended by adding a new Part to read:

"Part 3. Landowner Protection.

"**§ 113-420. Notice and entry to property.**

(a) If an oil and gas developer or operator is not the surface owner of the property on which oil and gas operations are to occur, before entering the property for oil and gas operations that do not disturb the surface, including inspections, staking, surveys, measurements, and general evaluation of proposed routes and sites for oil and gas drilling operations, the developer or operator shall give written notice to the surface owner at least seven days before the desired date of entry to the property. Notice shall be given by certified mail, return receipt requested. The requirements of this subsection may not be waived by agreement of the parties. The notice, at a minimum, shall include all of the following:

(1) The identity of person(s) requesting entry upon the property.

(2) The purpose for entry on the property.

(3) The dates, times, and location on which entry to the property will occur, including the estimated number of entries.

(b) If an oil and gas developer or operator is not the surface owner of the property on which oil and gas operations are to occur, before entering the property for oil and gas operations that disturb the surface, the developer or operator shall give written notice to the surface owner at least 14 days before the desired date of entry to the property. Notice shall be given by certified mail, return receipt requested. The notice, at a minimum, shall include all of the following:

(1) A description of the exploration or development plan, including, but not limited to (i) the proposed locations of any roads, drill pads, pipeline routes,

and other alterations to the surface estate and (ii) the proposed date on or after which the proposed alterations will begin.

(2) An offer of the oil and gas developer or operator to consult with the surface owner to review and discuss the location of the proposed alterations.

(3) The name, address, telephone number, and title of a contact person employed by or representing the oil or gas developer or operator who the surface owner may contact following the receipt of notice concerning the location of the proposed alterations.

(c) If the oil and gas developer or operator fails to give notice as provided in this section, the surface owner may seek appropriate relief in the superior court for the county in which the oil or gas well is located and may receive actual damages.

"**§ 113-421. Compensation for damages.**

(a) The oil and gas developer or operator shall be obligated to pay the surface owner compensation for all of the following:

(1) Any damage to a water supply in use prior to the commencement of the activities of the developer or operator which is due to those activities.

(2) The cost of repair of personal property of the surface owner, which personal property is damaged due to activities of the developer or operator, up to the value of replacement by personal property of like age, wear, and quality.

(b) When compensation is required, the surface owner shall have the option of accepting a one-time payment or annual payments for a period of time not less than 10 years.

(c) The surface owner has the right to seek damages pursuant to this section in the superior court for the county in which the oil or gas well is located. The superior court for the county in which the oil or gas well is located has jurisdiction over all proceedings brought pursuant to this section. If the surface owner or the surface owner's assignee is the prevailing party in an action to recover unpaid royalties, the court shall award any court costs and reasonable attorneys' fees to the surface owner or the surface owner's assignee.

(d) Conditions precedent, notice provisions, or arbitration clauses included in lease documents that have the effect of limiting access to the superior court in the county in which the oil or gas well is located are void and unenforceable.

"**§ 113-422. Indemnification.**

An oil or gas developer or operator shall indemnify a surface owner for damage to property that is adjacent to property on which drilling occurs, as well as adjacent infrastructure, and wells.

"**§ 113-423. Maximum lease terms.**

Any lease of oil or gas rights or any other conveyance of any kind separating rights to oil or gas from the freehold estate of surface property shall expire at the end of 10 years from the date the lease is executed, unless, at the end of the 10-year period, oil or gas is being produced for commercial purposes from the land to which the lease applies. If, at any time after the 10-year period, commercial production of oil or gas is terminated for a period of six months or more, all rights to the oil or gas shall revert to the surface owner of the property to which the lease pertains. No assignment or agreement to waive the provisions of this subsection shall be valid or enforceable. As used in this subsection, the term "production" includes the actual production of oil or gas by a lessee, or when activities are being conducted by the lessee for injection, withdrawal, storage, or disposal of water, gas, or other fluids, or when rentals or royalties are being paid by the lessee.

"**§ 113-424. Applicability; effect.**

This Part applies to leases or contracts, and amendments to leases or contracts, entered into on or after June 15, 2011."

SECTION 4. The Department of Environment and Natural Resources, the Department of Commerce as specifically directed by subdivision (5) of this section, and the

Consumer Protection Division of the Department of Justice as specifically directed by subdivision (8) of this section shall study the issue of oil and gas exploration in the State and the use of directional and horizontal drilling and hydraulic fracturing for that purpose. The Department of Environment and Natural Resources, in conjunction with the Department of Commerce and the Consumer Protection Division of the Department of Justice, shall report their findings and recommendations, including specific legislative proposals, to the Environmental Review Commission no later than May 1, 2012. At a minimum, the study shall include information on the following:

(1) Oil and gas resources present in the Triassic Basins and in any other areas of the State.

(2) Methods of exploration and extraction of oil and gas, including directional and horizontal drilling and hydraulic fracturing.

(3) Potential impacts on infrastructure, including roads, pipelines, and water and wastewater services. In analyzing potential impacts, the Department shall specifically examine the expected water usage from hydraulic fracturing, water resources in the area in which drilling may occur, as well as existing water users in the area that may be impacted by increased consumption of water for use in hydraulic fracturing.

(4) Potential environmental impacts, including constituents or contaminants that may be present in the fluid used in the hydraulic fracturing process; the potential for the contamination of nearby wells and groundwater, as well as the options for disposal and reuse of the wastewater produced; stormwater management; the potential for emission of toxic air pollutants; impacts on wildlife; management and reclamation of drilling sites, including orphaned sites; management of naturally occurring radioactive materials (NORM) generated by the drilling and production of natural gas; and the potential for seismic activity in the area in which drilling may occur. In examining this issue, the Department shall formulate regulatory requirements advisable to address potential environmental impacts and in doing so shall gather information on regulatory programs in other states where oil and gas exploration or extraction is occurring, particularly with regard to the use of hydraulic fracturing for that purpose.

(5) Potential economic impacts, including possible sources of revenue that could accrue to the benefit of the State in the event that drilling for oil or natural gas were to take place in the State. In examining this issue, the Department of Commerce, in consultation with the Department of Environment and Natural Resources, shall gather information on (i) the number of jobs that may be expected as a result from drilling activities in the State and (ii) what severance taxes, fees, royalties, bonds, or assessments may be appropriate in connection with the activity. For any sources of revenue that may be anticipated, the Department of Commerce, in consultation with the Department of Environment and Natural Resources, shall evaluate use of the revenue for the following purposes: funds necessary to implement an oil and gas regulatory program; funds dedicated to the conservation and preservation of land and water resources; funds dedicated to remediation of environmental contamination such as the Inactive Hazardous Sites Cleanup Fund; and funds dedicated to improving water and wastewater infrastructure across the State.

(6) Potential social impacts, including impacts of drilling operations on nearby communities and quality of life within those communities, recreational activities, and commercial and residential development.

(7) Potential oversight and administrative issues associated with an oil and gas regulatory program, including statutory authority necessary for implementation of such a program; funding requirements necessary to implement a stable and effective program; criteria for permit issuance or denial; frequency and scope of inspections; compliance and enforcement procedures; coordination of agency involvement to ensure efficient permitting and clear delineation of compliance responsibilities; opportunities for public participation; and data management.

(8) Consumer protection and legal issues relevant to oil and gas exploration in the State, including matters of contract and property law, mineral leases, and landowner rights. In examining these issues, the Consumer Protection Division of the Department of Justice, in consultation with the Department of Environment and Natural Resources, shall specifically examine appropriate provisions on recommended disclosures to landowners, compensation for damages, payment of royalties, and remedies for breach, and any other matters the Division deems relevant. The Division shall also study such issues in consultation with the Rural Advancement Foundation International (RAFI).

(9) Any other pertinent issues that the Department deems relevant to oil and gas exploration in the State and the use of hydraulic fracturing for that purpose.

SECTION 5. By February 1, 2012, the Department of Environment and Natural Resources shall hold at least two public hearings at separate locations within the Triassic Basin on the issue of drilling for natural gas by means of directional and horizontal drilling and hydraulic fracturing. The public hearings shall be conducted in order to promote awareness of the issue generally and inform and consult with the public and user groups on potential environmental impacts, potential regulatory controls, potential economic impacts, and consumer protection issues, including landowner rights and mineral leases. In developing the consumer protection portion of the public hearings, the Department shall consult with the Consumer Protection Division of the North Carolina Department of Justice and the Rural Advancement Foundation International (RAFI).

SECTION 6. There is appropriated from the General Fund to the Department of Environment and Natural Resources the sum of one hundred thousand dollars ($100,000) for the 2011-2012 fiscal year to complete the study and conduct the public hearings required by this act.

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

CS#2

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

H 4

HOUSE BILL 242
Committee Substitute Favorable 4/19/11
Committee Substitute #2 Favorable 5/26/11
Fourth Edition Engrossed 5/31/11

Short Title: Nat. Gas/Bonds/Fees/Studies. (Public)

Sponsors:

Referred to:

March 8, 2011

A BILL TO BE ENTITLED

AN ACT TO (1) INCREASE THE AMOUNT OF THE BOND REQUIRED UPON REGISTRATION IN ORDER TO DRILL FOR OIL OR NATURAL GAS IN THE STATE; (2) INCREASE THE AMOUNT OF FEES APPLICABLE TO DRILLING AND ABANDONING OIL OR GAS WELLS; (3) DIRECT THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES TO STUDY THE ISSUE OF OIL AND GAS EXPLORATION IN THE STATE, AND SPECIFICALLY THE USE OF DIRECTIONAL AND HORIZONTAL DRILLING AND HYDRAULIC FRACTURING FOR THAT PURPOSE; (4) DIRECT THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES TO CONDUCT AT LEAST TWO PUBLIC HEARINGS ON THE ISSUE IN THE AREA IN WHICH EXPLORATION FOR NATURAL GAS BY MEANS OF DIRECTIONAL AND HORIZONTAL DRILLING AND HYDRAULIC FRACTURING MAY OCCUR; AND (5) APPROPRIATE THE SUM OF ONE HUNDRED THOUSAND DOLLARS TO THE DEPARTMENT FOR THE CONDUCT OF THE STUDY AND THE HEARINGS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 113-378 reads as rewritten:

"**§ 113-378. Persons drilling for oil or gas to register and furnish bond.**

Any person, firm or corporation before making any drilling exploration in this State for oil or natural gas shall register with the Department of Environment and Natural ~~Resources or such other State agency as may hereafter be established to control the conservation of oil or gas in this State.~~Resources. To provide for such registration, the drilling operator must furnish the name and address of such person, firm or corporation, and the location of the proposed drilling operations, and file with the ~~aforesaid~~ Department a bond in ~~the~~ an amount totaling the sum of~~of~~ (i) five thousand dollars ($5,000) plus (ii) one dollar ($1.00) per linear foot proposed to be drilled for the well. ~~($5,000) running to the State of North Carolina, conditioned that any~~ Any well opened by the drilling operator ~~upon abandonment~~ shall be plugged upon abandonment in accordance with the rules of ~~said~~ the Department."

SECTION 2. G.S. 113-395 reads as rewritten:

"**§ 113-395. Notice and payment of fee to Department before drilling or abandoning well; plugging abandoned well.**

Before any well, in search of oil or gas, shall be drilled, the person desiring to drill the same shall notify the Department upon such form as it may prescribe and shall pay a fee of ~~fifty~~ three

thousand dollars ~~($50.00)~~($3,000) for each well. The drilling of any well is hereby prohibited until such notice is given and such fee has been paid and permit granted.

Each abandoned well and each dry hole ~~promptly~~ shall be plugged promptly in the manner and within the time required by rules ~~to be~~ prescribed by the Department, and the owner of such well shall give notice, upon such form as the Department may prescribe, of the abandonment of each dry hole and of the owner's intention to abandon, and shall pay a fee of ~~fifteen~~ four hundred fifty dollars ~~($15.00)~~($450.00). No well shall be abandoned until such notice has been given and such fee has been paid."

SECTION 3. The Department of Environment and Natural Resources shall study the issue of oil and gas exploration in the State and the use of directional and horizontal drilling and hydraulic fracturing for that purpose. The Department shall report its findings and recommendations, including specific legislative proposals, to the Environmental Review Commission no later than May 1, 2012. At a minimum, the study shall include information on the following:

(1) Oil and gas reserves present in the Triassic Basins and in any other areas of the State.

(2) Methods of exploration and extraction of oil and gas, including directional and horizontal drilling and hydraulic fracturing.

(3) Potential impacts on infrastructure, including roads, pipelines, and water and wastewater services. In analyzing potential impacts, the Department shall specifically examine the expected water usage from hydraulic fracturing, water resources in the area in which drilling may occur, as well as existing water users in the area that may be impacted by increased consumption of water for use in hydraulic fracturing.

(4) Potential environmental impacts, including constituents or contaminants that may be present in the fluid used in the hydraulic fracturing process; the potential for the contamination of nearby wells and groundwater, as well as the options for disposal and reuse of the wastewater produced; stormwater management; the potential for emission of toxic air pollutants; impacts on wildlife; management and reclamation of drilling sites, including orphaned sites; management of naturally occurring radioactive materials (NORM) generated by the drilling and production of natural gas; and the potential for seismic activity in the area in which drilling may occur. In examining this issue, the Department shall formulate regulatory requirements advisable to address potential environmental impacts and in doing so shall gather information on regulatory programs in other states where oil and gas exploration or extraction is occurring, particularly with regard to the use of hydraulic fracturing for that purpose.

(5) Potential economic impacts, including possible sources of revenue that could accrue to the benefit of the State in the event that drilling for oil or natural gas were to take place in the State. In examining this issue, the Department shall gather information on (i) the number of jobs that may be expected as a result from drilling activities in the State and (ii) what severance taxes, fees, royalties, bonds, or assessments may be appropriate in connection with the activity. For any sources of revenue that may be anticipated, the Department shall evaluate use of the revenue for the following purposes: funds necessary to implement an oil and gas regulatory program; funds dedicated to the conservation and preservation of land and water resources; funds dedicated to remediation of environmental contamination such as the Inactive Hazardous Sites Cleanup Fund; and funds dedicated to improving water and wastewater infrastructure across the State.

(6) Potential social impacts, including impacts of drilling operations on nearby communities and quality of life within those communities, recreational activities, and commercial and residential development.

(7) Potential oversight and administrative issues associated with an oil and gas regulatory program, including statutory authority necessary for implementation of such a program; funding requirements necessary to implement a stable and effective program; criteria for permit issuance or denial; frequency and scope of inspections; compliance and enforcement procedures; coordination of agency involvement to ensure efficient permitting and clear delineation of compliance responsibilities; opportunities for public participation; and data management.

(8) Consumer protection and legal issues relevant to oil and gas exploration in the State, including matters of contract law, mineral leases, and landowner rights.

(9) Any other pertinent issues that the Department deems relevant to oil and gas exploration in the State and the use of hydraulic fracturing for that purpose.

SECTION 4. By February 1, 2012, the Department of Environment and Natural Resources shall hold at least two public hearings at separate locations within the Triassic Basin on the issue of drilling for natural gas by means of directional and horizontal drilling and hydraulic fracturing. The public hearings shall be conducted in order to promote awareness of the issue generally and inform and consult with the public and user groups on potential environmental impacts, potential regulatory controls, potential economic impacts, and consumer protection issues, including landowner rights and mineral leases. In developing the consumer protection portion of the public hearings, the Department shall consult with the Consumer Protection Division of the North Carolina Department of Justice and the Rural Advancement Foundation International (RAFI).

SECTION 5. There is appropriated from the General Fund to the Department of Environment and Natural Resources the sum of one hundred thousand dollars ($100,000) for the 2011-2012 fiscal year to complete the study and conduct the public hearings required by this act.

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

HOUSE BILL 242:
Nat. Gas/Bond/Fee/Landowner Protect'n./Study.

2011-2012 General Assembly

Committee:	Senate Ref to Agriculture/Environment/Natural Resources. If fav, re-ref to Finance	**Date:**	June 9, 2011
Introduced by:	Reps. Stone, Gillespie	**Prepared by:**	Jennifer McGinnis Committee Counsel
Analysis of:	PCS to Fourth Edition H242-CSRIf-30 [v.6]		

SUMMARY: ***The Proposed Committee Substitute (PCS) for House Bill 242 would: (1) increase the amount of the bond required upon registration in order to drill for oil or natural gas in the State; (2) increase the amount of fees applicable to drilling and abandoning oil or gas wells; (3) direct the Department of Environment and Natural Resources (DENR) and other entities to study the issue of oil and gas exploration in the State; (4) direct DENR to conduct at least two public hearings on the issue in the area in which drilling for natural gas by means of directional and horizontal drilling and hydraulic fracturing may occur; (5) establish certain protections for owners of land on which drilling or exploration for oil or gas may occur, and (6) appropriate $100,000 to DENR in order to conduct the study and the public hearings.***

The PCS makes changes to the 4th Edition of the bill as follows: (1) directs the Department of Commerce to study issues related to potential economic impacts if drilling for oil or natural gas were to take place in the State, including possible sources of revenue that could accrue to the benefit of the State; (2) Directs the Consumer Protection Division of the Department of Justice to study consumer protection and legal issues associated with drilling for oil or natural gas; and (3) adds provisions related to landowner protection and leases for the drilling of oil or gas.

BACKGROUND: Several years ago the North Carolina Geological Survey recognized thick sections of organic shale located in the State (Triassic Strata of the Deep River Basin – Lee and Chatham, Counties) as a potential gas resource. Modern exploration and gas production technology, such as horizontal drilling and hydraulic-fracturing, has enabled the extraction of shale gas in similar formations in other states. The use of hydraulic fracturing involves drilling a well and injecting drilling fluids under pressure to fracture the shale rock and release the gas. Drilling fluids are mostly made up of water, but also include other chemicals; the exact makeup of the drilling fluids varies from company to company.

CURRENT LAW: Article 27 of Chapter 113 of the General Statutes governs drilling and exploration for oil and gas in the State. This Article, which was originally enacted in 1945, among other things, requires posting of a bond and payment of a permit fee prior to drilling.

The General Statutes currently prohibit horizontal drilling[1] and injection of any wastes to the subsurface or groundwaters of the State by means of wells[2]. State rules also specifically prohibit use or operation of a storage related injection well and injection of fluids for oil and gas production. These restrictions have been in place for a number of years and were not developed with hydraulic fracturing in mind.

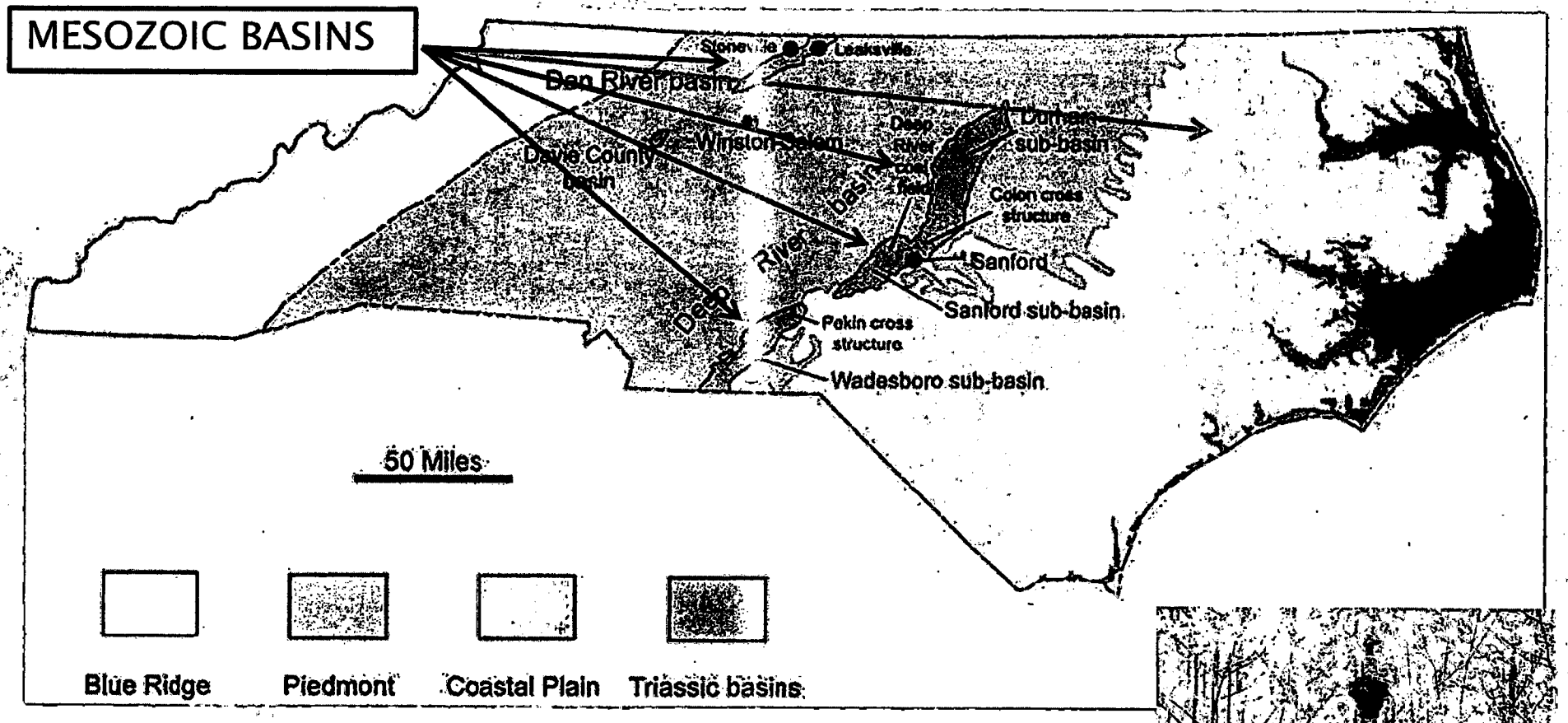
[1] G.S. 113-393
[2] G.S. 143-214.2(b)

BILL ANALYSIS: The PCS would –

- Increase the amount of the bond required upon registration in order to drill for oil or natural gas in the State from a flat amount of $5,000 to $5,000 **plus** $1.00 per linear foot proposed to be drilled for the well.
- Increase the amount of fees applicable to drilling (from $50 to $3,000) and abandoning (from $15 to $450) oil or gas wells.
- Direct DENR to study a number of issues pertaining to oil and gas exploration in the State, and specifically the use of directional and horizontal drilling and hydraulic fracturing for that purpose. At a minimum, the issues would include: oil and gas reserves present in the State; methods of exploration for oil and gas, including directional and horizontal drilling and hydraulic fracturing; and potential environmental and social impacts, as well as impacts on infrastructure, which may arise from drilling by means of hydraulic fracturing. The Consumer Protection Division of the Department of Justice would be tasked with studying relevant consumer protection and legal issues. The Department of Commerce would be directed to study potential economic impacts that may arise from drilling by means of hydraulic fracturing. These entities would be required to report their findings and recommendations, including specific legislative proposals, to the Environmental Review Commission no later than May 1, 2012.
- Direct DENR to conduct at least two public hearings by February 1, 2012, on the issue in the area in which drilling for natural gas by means of directional and horizontal drilling and hydraulic fracturing may occur in order to promote awareness of the issue generally and inform and consult with the public and user groups on: potential environmental impacts, potential regulatory controls, potential economic impacts, and consumer protection issues, including landowner rights and mineral leases.
- Appropriate $100,000 to DENR in order to conduct the study and the public hearings.
- Creates a new Part in the Article governing drilling and exploration for oil and gas that would establish certain protections for owners of land on which drilling or exploration for oil or gas may occur (surface owners), including: notice requirements for entry to such property; required compensation that an oil and gas developer must pay a surface owner for damages resulting from drilling activities on the property; indemnification of the surface owner for damages caused by drilling activities to adjacent properties; and establishment of maximum lease terms. These provisions would apply to leases or contracts, and amendments to leases or contracts, entered into on or after June 15, 2011.

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

H242-SMRI-39(CSRIf-30) v4



NORTH CAROLINA'S SHALE GAS POTENTIAL: WHO KNEW?

North Carolina Geological Survey

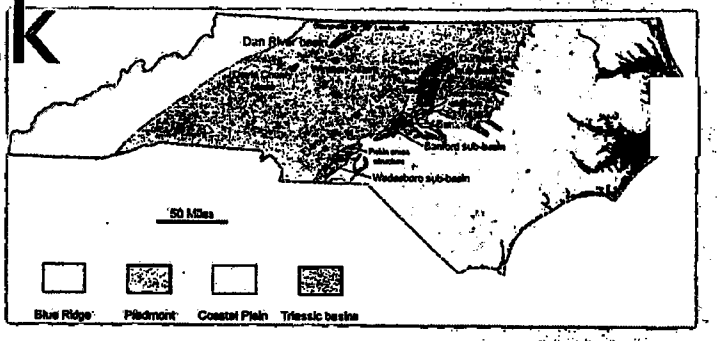


Role of N.C. Geological Survey

- The 1823 organic act which created the North Carolina Geological Survey (NCGS) tasked us to examine, describe and map the geology, geologic hazards, and mineral resources of North Carolina and publish these findings in NCGS reports and maps.
- Provide unbiased, impartial and relevant technical information to all parties.
- The NCGS is the custodian of rock cores, cuttings, geophysical logs, etc.

Basin and Source Rock Overview



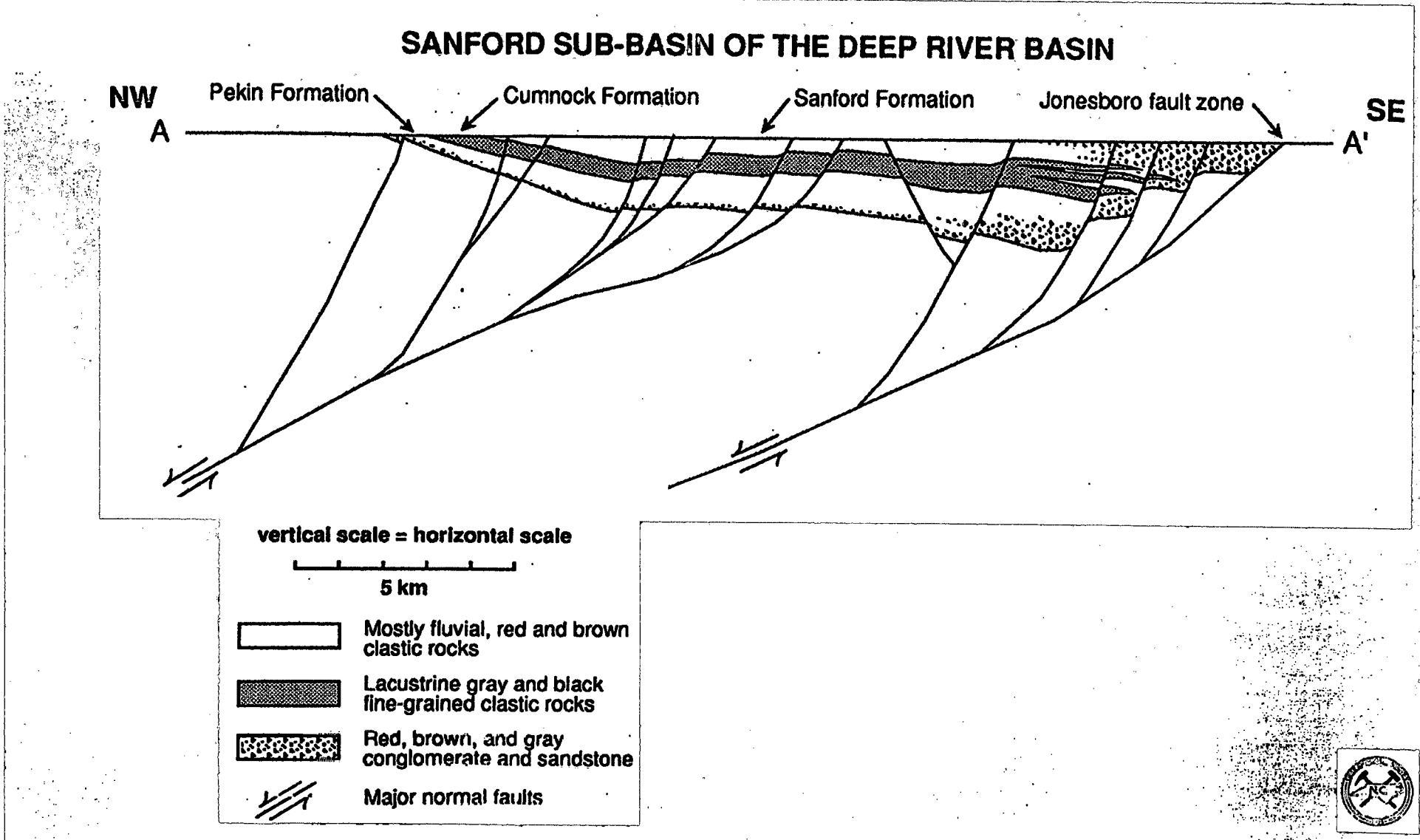


Map showing the distribution of Mesozoic basins in North Carolina (from Reid and Milici, 2008).

- Deep River Basin – 150-mile-long northeast trending half-graben (rift basin) with a steeply dipping eastern border fault.
- ~7,000 feet of Triassic strata.
- Lake deposits similar to African rift valley lakes.
- ~59,000+ acre prospective area.
- Total petroleum system containing:
  - Source rock
  - Seal
  - Traps / reservoir
- Relatively untested exploration area.



Generalized cross section



From Olsen and others, 19

Time line – Deep River Basin

- 1775 – Revolutionary War era, coal exploration for iron and munitions.
- 1861 – 1873 – Civil war and post war coal production.
- 1920's – 1940's – Underground coal mining, exploration; 1925 coal mine explosion (killed 53 workers).
- 1980's – 1990's – Petroleum drilling (preceded seismic – vertical holes).
- 2008 – Organic geochemical data published (*Reid and Milici – USGS OFR 2008-1108*). NCGS recognizes thick section of organic shale as a potential gas resource.
- 2009 NCGS publishes 'Natural Gas and Oil in North Carolina' Information Circular 36.
- 2009 NCGS Open-File Report 2009-01 (Shale Gas Potential...).
- 2009 – 2010 Presentations made to interested industry, governmental and environmental groups.
- 2010 North Carolina Geological Survey / U.S. Geological Survey Resource assessment (currently in progress).

Why now? – 1

Compilation of data

- Years of scholarship locating and compiling data.
- Conversion of paper data to digital formats
- Organic geochemistry data collected and interpreted for first time.
- Interpreted seismic lines which were shot AFTER initial wells drilled.
- Natural gas focus was shallow coal bed methane, not shale gas.

Why now?

New emphasis

- Exploration industry la[illegible] basins in North Carolina
- USGS emphasis on Mesozoic [illegible] systems.
- The thick organic-rich s[illegible] previously not consider[illegible]
- Similarity to other areas [illegible] shale resources

[illegible]

Current technology

- Current technology allows "shale gas – natural gas" to be recovered from shale formations with a high degree of organic content.
- Modern exploration and gas production technology, such as horizontal drilling and hydraulic-fracturing, has enabled the extraction of shale gas in similar formations in other states.
- Unconventional energy resource.

USGS/NCGS Resource Assessment

- *Current focus:* Rigorous, science-based assessment of technically recoverable natural gas.
- *Methodology*: Numerical, conservative approach to be computed by the U.S. Geological Survey.
- *Completion date*: Spring, 2011.
- *Publication date*: sometime in 2011.

Open Issues

- 1945 Oil and Gas Conservation Act
  - Article 27, G.S. 113-378 through 113-415
- Horizontal drilling: Not currently allowed
  - Based on the Oil and Gas Conservation Act
- Hydraulic-fracturing: Not currently allowed
  - 15A NCAC 02C. 0213

Permitting / Bond / Royalties

- Permit fees: Currently $50/well.
- Bonding: Currently $5,000/well.
- State royalties: $0.005/mcf (1,000 ft^3).

From: Oil and Gas Conservation Act of 1945

Environmental Issues

- Water resources for drilling and hydraulic-fracturing.
- Impacts on groundwater (quantity and quality).
- Solid and hazardous waste from drilling.
- Waste water from drilling and hydraulic-fracturing.
- Erosion and sedimentation control from construction of well pads, access roads and pipelines.

Contact information

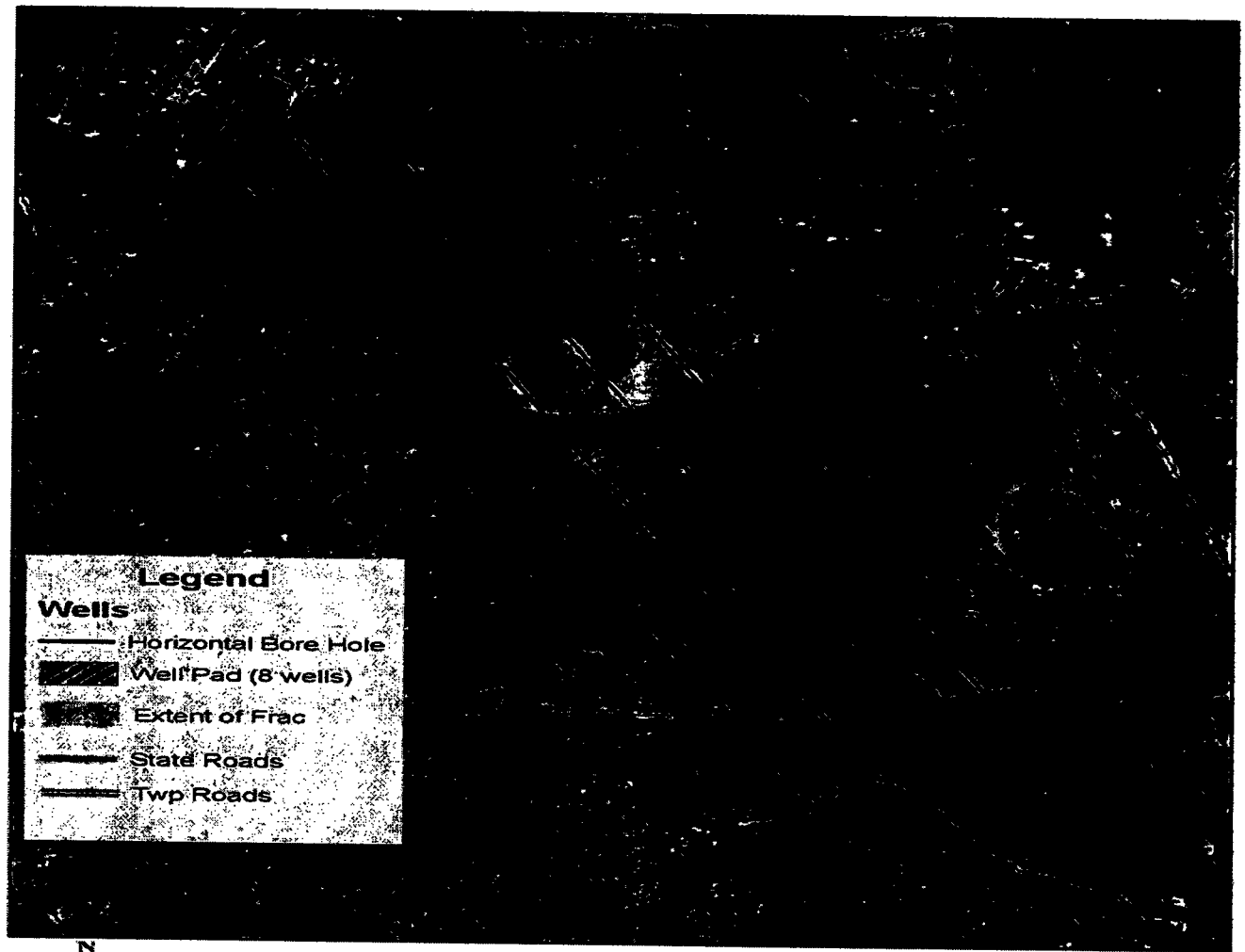
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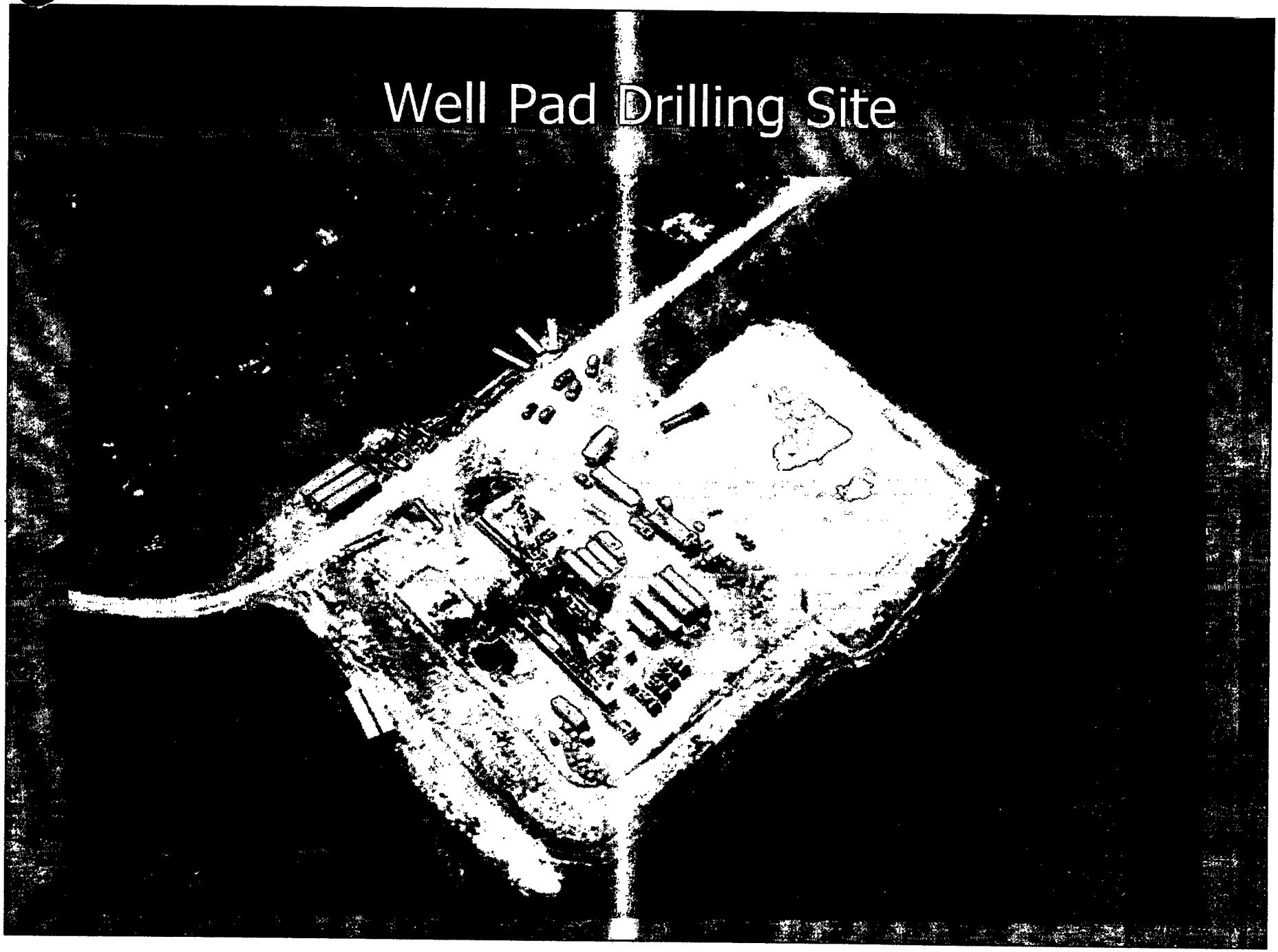
Mr. James D. Simons, PG, PE
Director and State Geologist
Division of Land Resources
Telephone: 919.733.3833
Email: jim.simons@ncdenr.gov

Generic Single Pad Drilling Unit

8 Wells, 5,000 ft. horizontals, 640 acres



Woodland


Well Pad Drilling Site

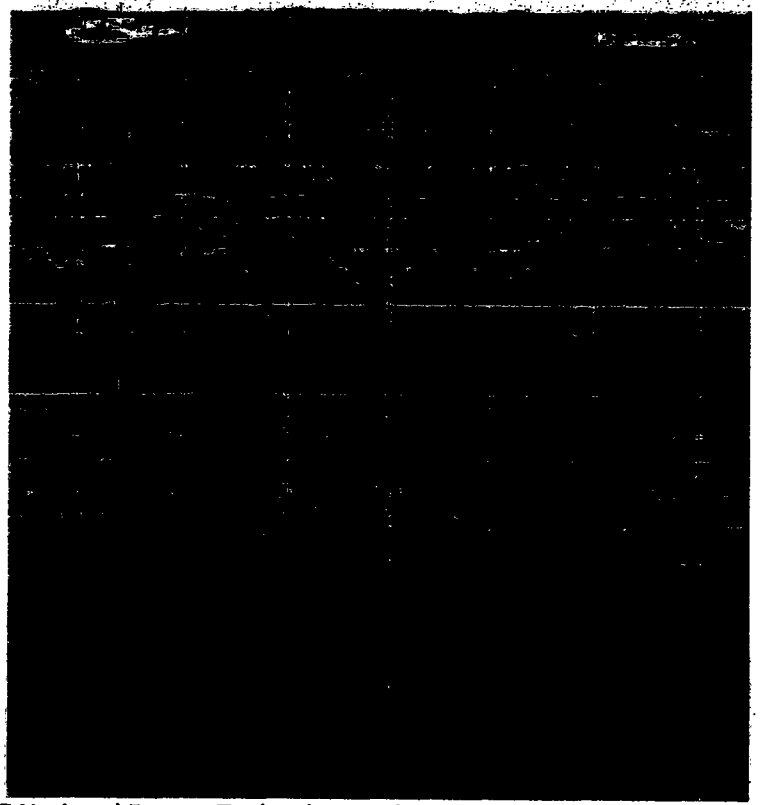
Nicholas Institute for Environmental Policy Solutions
Duke University

Well Types:

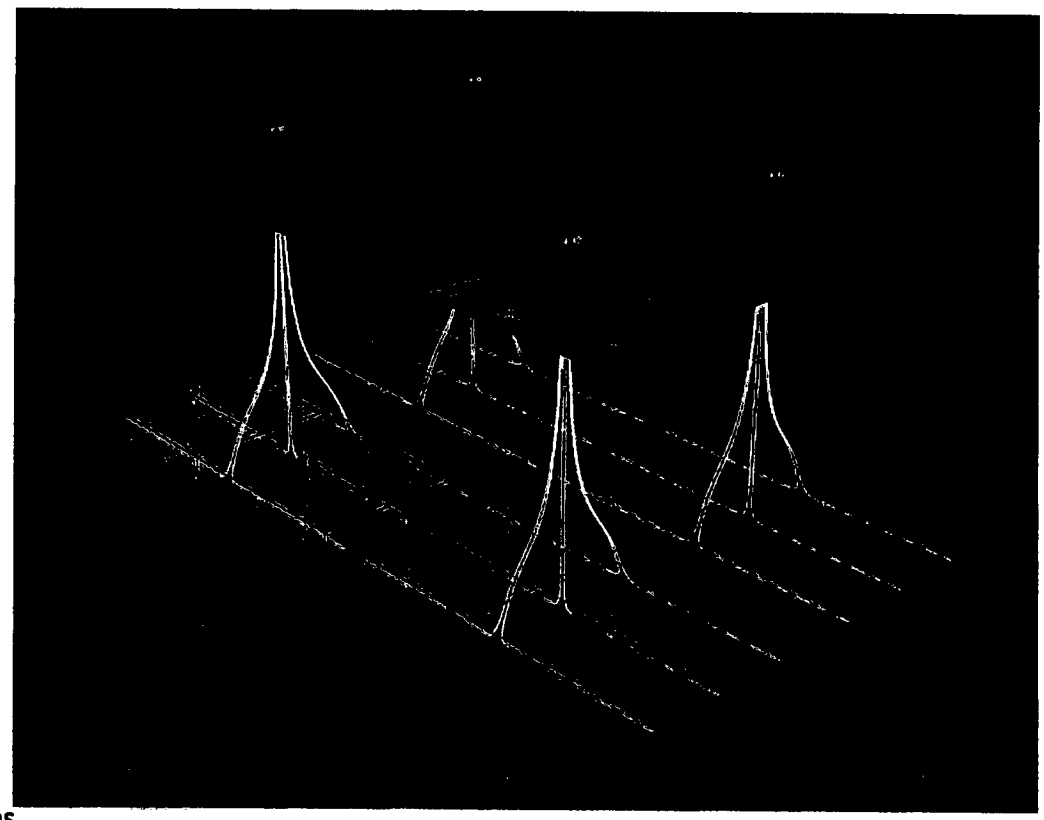
Horizontal Well	Vertical Well
Spacing: 640 Acres	Spacing: 40 Acres
Disturb: 3-5 Acres	Disturb: 2-3 Acres

Multiple Horizontal Well Pad

Spacing: 640 Acres
Disturbance: 4-6 acres



DOE National Energy Technology Laboratory. 2009. "Modern Shale Gas Development in the United States: A Primer"



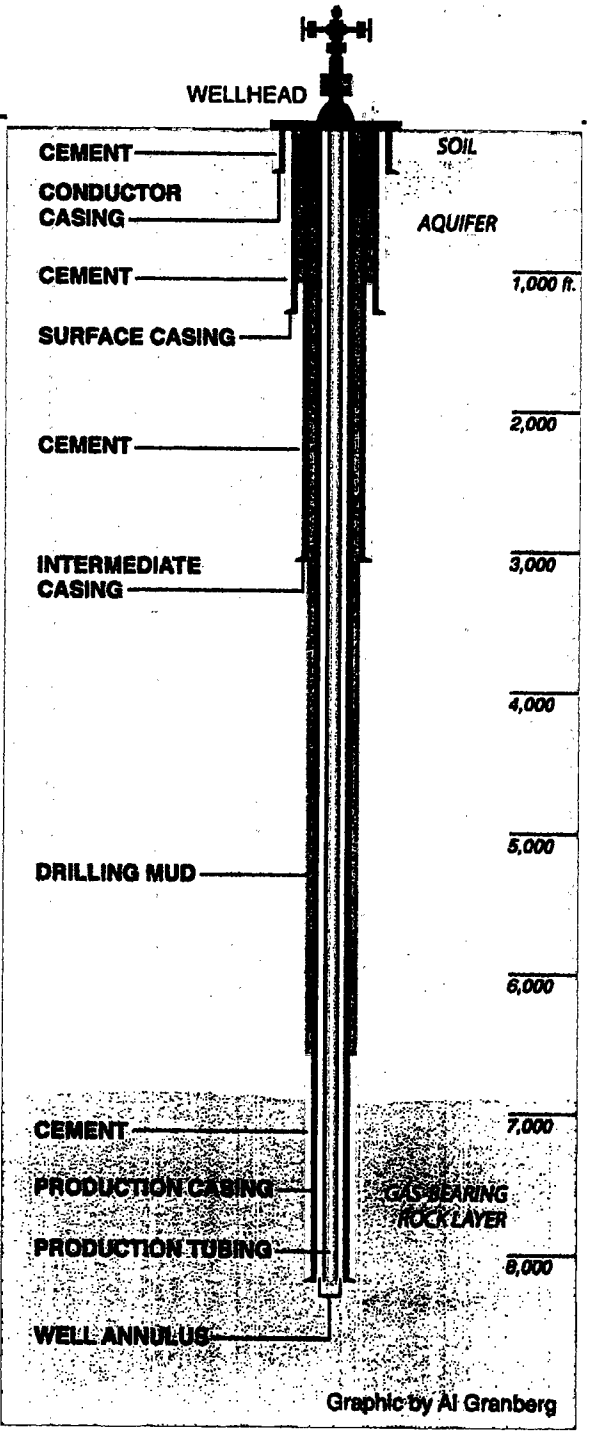
StatOilHydro, 2011. "Multiple Well Pad Illustration"

Drilling

Drilling Time:

21-24 Days
(Chesapeake Energy)

- Drilling, either vertical or horizontal
  - Construct casing for groundwater protection
  - Store drill cuttings



Granberg, A. 2009. "Anatomy of a Gas Well"

Vertical vs. Horizontal Drilling

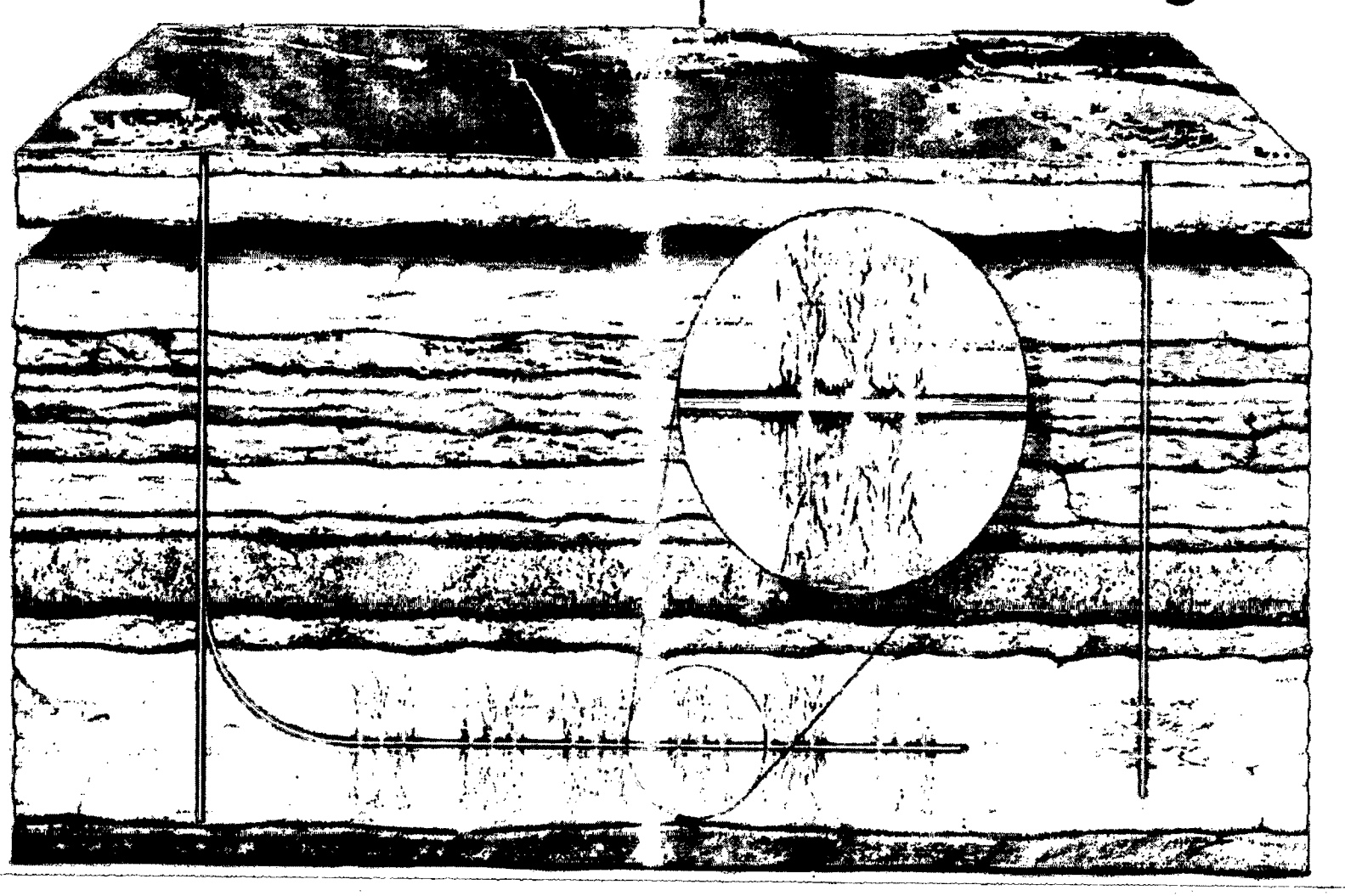


Illustration retrieved from Independent Oil and Gas Association of Pennsylvania's *Drilling & Developing the Marcellus Shale*

HOUSE BILL 388:
Reclaimed Water Cross-Connection Control

2011-2012 General Assembly

Committee:	Senate Agriculture/Environment/Natural Resources	**Date:**	June 13, 2011
Introduced by:	Committee on Rules, Calendar, and Operations of the House	**Prepared by:**	Jeff Hudson Committee Counsel
Analysis of:	Second Edition		

SUMMARY: ***House Bill 388 would allow the use of direct cross-connections between reclaimed water and potable water systems when such direct cross-connections have been previously approved by the Department of Environment and Natural Resources.***

BACKGROUND AND CURRENT LAW:

In 2008, the Drought/Water Management Recommendations Act (S.L. 2008-143[1]) was enacted by the General Assembly in response to the drought experienced by the State during 2007 and 2008. The Act established a new water reuse policy for the State and specifically provided that reuse of treated wastewater or reclaimed water[2] is critical to meeting the existing and future water supply needs of the State. The Act directed the Environmental Management Commission (Commission) to encourage and promote safe and beneficial reuse of treated wastewater as an alternative to surface water discharge and directed the Commission to adopt rules to identify acceptable uses of reclaimed water; facilitate the permitting of reclaimed water systems; and establish standards for reclaimed water systems that are adequate to prevent the direct distribution of reclaimed water as potable water.

As directed, the Commission initiated a rulemaking process on reclaimed water in 2008. The Commission adopted a suite of 32 reclaimed water rules on November 18, 2010. The rules were approved by the Rules Review Commission (RRC) on December 16, 2010. The RRC received a sufficient number of letters of objection on two of the reclaimed water rules, which subjected the two rules to review by the General Assembly during the 2011 Regular Session. One of the two rules subject to legislative review, 15A NCAC 02U .0403 (Design Criteria for Distribution Lines), prohibits direct cross-connections between the reclaimed water and potable water systems

BILL ANALYSIS:

House Bill 388 would allow the use of direct cross-connections between reclaimed water and potable water systems when such direct cross-connections have been previously approved by the Department of Environment and Natural Resources.

EFFECTIVE DATE: This act would be effective when it becomes law.

Jennifer Mundt, Legislative Analyst to the House Environment Committee, substantially contributed to this summary.

H388-SMSB-46(e2) v1

[1] The Drought/Water Management Recommendations Act is available here: http://www.ncleg.net/enactedlegislation/sessionlaws/html/2007-2008/sl2008-143.html

[2] If adopted, 15A NCAC 02U .0103 would define ***reclaimed water*** to mean "treated wastewater effluent, meeting effluent standards established [by rule] ... and used for beneficial reuse" and ***beneficial reuse*** to mean "the utilization of reclaimed water in a beneficial manner and for the purpose of conservation of the State's water resources by reducing the use of other water resources (potable water, surface water, groundwater)."

HOUSE BILL 388
Committee Substitute Favorable 5/9/11

Short Title: Reclaimed Water Cross-Connection Control. (Public)

Sponsors:

Referred to:

March 16, 2011

A BILL TO BE ENTITLED

AN ACT TO ALLOW THE USE OF DIRECT CROSS-CONNECTIONS BETWEEN RECLAIMED WATER AND POTABLE WATER SYSTEMS WHEN SUCH DIRECT CROSS-CONNECTIONS HAVE BEEN PREVIOUSLY APPROVED BY THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES.

The General Assembly of North Carolina enacts:

SECTION 1. Definitions. – The following definitions apply to this act and its implementation:

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

(2) The definitions set out in 15A NCAC 02T .0103 (Waste Not Discharged to Surface Waters: Definitions).

(3) The definitions set out in 15A NCAC 02U .0103 (Reclaimed Water: Definitions).

(4) "Design Criteria for Distribution Lines Rule 15A NCAC 02U .0403" means 15A NCAC 02U .0403 (Design Criteria for Distribution Lines) as adopted by the Environmental Management Commission on November 18, 2010, and approved by the Rules Review Commission on December 16, 2010.

SECTION 2.(a) Design Criteria for Distribution Lines Rule 15A NCAC 02U .0403. – Until the effective date of the revised permanent rule that the Commission is required to adopt pursuant to Section 2(c) of this act, the Commission and the Department shall implement the Design Criteria for Distribution Lines Rule 15A NCAC 02U .0403, as provided in Section 2(b) of this act.

SECTION 2.(b) Implementation. – Notwithstanding subsection (f) of Design Criteria for Distribution Lines Rule 15A NCAC 02U .0403, there shall be no direct cross-connections between the reclaimed water and potable water systems, unless such connection has been approved by the Department pursuant to 15A NCAC 18C .0406 (Distribution Systems) prior to the effective date of this act.

SECTION 2.(c) Additional Rule-Making Authority. – The Commission shall adopt a rule to replace Design Criteria for Distribution Lines Rule 15A NCAC 02U .0403. Notwithstanding G.S. 150B-19(4), the rule adopted by the Commission pursuant to this section shall be substantively identical to the provisions of Section 2(b) of this act. 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 3. This act is effective when it becomes law.

HOUSE BILL 755: Study Fox Laws

2011-2012 General Assembly

Committee:	Senate Agriculture/Environment/Natural Resources	**Date:**	June 9, 2011
Introduced by:	Committee on Agriculture	**Prepared by:**	Mariah Matheson
Analysis of:	Third Edition		Research Assistant

SUMMARY: House Bill 755 would direct the Wildlife Resources Commission to study fox and coyote populations and report its recommendations on management methods and controls to the General Assembly.

CURRENT LAW: Under current law the taking of foxes is regulated by statute. These local laws apply to specific counties or parts of counties. Coyotes can be trapped only during times and with methods described by local laws in counties with established fox trapping seasons.[1] However, coyotes may be taken with firearms anytime. There is no closed season or bag limit for coyotes.[2]

BILL ANALYSIS: House Bill 755 would direct the Wildlife Resources Commission to study fox and coyote populations in the State and recommend management methods and controls designed to ensure Statewide conservation of fox populations, while managing adverse effects of coyote populations. The Wildlife Resources Commission must solicit input from interested stakeholders, including hunters, trappers, controlled hunting preserve operators, public health authorities, local governments, the Department of Agriculture and Consumer Services, and private landowners.

The Wildlife Resources Commission must submit a report, including any proposed legislation, to the General Assembly by April 1, 2012. The Wildlife Resources Commission must conduct the study with only existing funds.

EFFECTIVE DATE: This act would be effective when it becomes law.

BACKGROUND: More information on fox trapping seasons for different counties can be found at:

http://www.ncwildlife.org/Regs/documents/fox_seasons_dates.pdf

More information on hunting seasons in North Carolina can be found at:

http://www.ncwildlife.org/Regs/2010_11/2010-11_Hunting.pdf

H755-SMTF-39(e3) v1

[1] 15A NCAC 10B .0303
[2] 15A NCAC 10B .0219

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

H 3

HOUSE BILL 755
Corrected Copy 4/11/11
Committee Substitute Favorable 5/31/11

Short Title: Study Fox Laws. (Public)

Sponsors:

Referred to:

April 7, 2011

A BILL TO BE ENTITLED

AN ACT TO DIRECT THE WILDLIFE RESOURCES COMMISSION TO STUDY FOX AND COYOTE POPULATIONS AND REPORT ITS RECOMMENDATIONS ON MANAGEMENT METHODS AND CONTROLS TO THE 2012 GENERAL ASSEMBLY.

The General Assembly of North Carolina enacts:

SECTION 1. The Wildlife Resources Commission shall undertake a study of fox and coyote populations in the State and recommend management methods and controls designed to ensure statewide conservation of fox populations while managing adverse effects of coyote populations. In conducting the study, the Wildlife Resources Commission shall solicit input from interested stakeholders, including hunters, trappers, controlled hunting preserve operators, public health authorities, local governments, the North Carolina Department of Agriculture and Consumer Services, and private landowners. The Wildlife Resources Commission shall complete its study by April 1, 2012, and submit a report, including any proposed legislation, to the Speaker of the House of Representatives and the President Pro Tempore of the Senate, the Chairs of the House Committee on Agriculture, and the Chairs of the Senate Committee on Agriculture, Environment, and Natural Resources. The Wildlife Resources Commission shall conduct the study within existing funds.

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

HOUSE BILL 119
Committee Substitute Favorable 6/2/11

Short Title: Amend Environmental Laws 2011. (Public)

Sponsors:

Referred to:

February 17, 2011

A BILL TO BE ENTITLED

AN ACT TO AMEND CERTAIN ENVIRONMENTAL AND NATURAL RESOURCES LAWS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 130A-309.10 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 on 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) Beverage containers that are required to be recycled under G.S. 18B-1006.1.~~

(10) Motor vehicle oil filters.

(11) 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 or pesticides.

(12) Wooden pallets, except that wooden pallets may be disposed of in a landfill that is permitted to only accept construction and demolition debris.

(13) Oyster shells.

(14) **(Effective July 1, 2011)** Discarded computer equipment, as defined in G.S. 130A-309.131.

(15) **(Effective July 1, 2011)** Discarded televisions, as defined in G.S. 130A-309.131.

(f1) No person shall knowingly dispose of the following solid wastes by incineration in an incinerator for which a permit is required under this Article:

(1) Antifreeze (ethylene glycol) used solely in motor vehicles.
(2) Aluminum cans.
(3) Repealed by Session Laws 1995 (Regular Session, 1996), c. 594, s. 17.
(4) White goods.
(5) Lead-acid batteries, as provided in G.S. 130A-309.70.
~~(6) Beverage containers that are required to be recycled under G.S. 18B-1006.1.~~
(7) **(Effective July 1, 2011)** Discarded computer equipment, as defined in G.S. 130A-309.131.
(8) **(Effective July 1, 2011)** Discarded televisions, as defined in G.S. 130A-309.131.

(f2) ~~Subsection~~ Subsections (f1) and (f3) of this section shall not apply to solid waste incinerated in an incinerator solely owned and operated by the generator of the solid waste. Subsection (f1) of this section shall not apply to antifreeze (ethylene glycol) that cannot be recycled or reclaimed to make it usable as antifreeze in a motor vehicle.

(f3) Holders of on-premises malt beverage permits, on-premises unfortified wine permits, on-premises fortified wine permits, and mixed beverages permits shall not knowingly dispose of beverage containers that are required to be recycled under G.S. 18B-1006.1 in landfills or by incineration in an incinerator for which a permit is required under this Article.

(g) Repealed by Session Laws 1995 (Regular Session, 1996), c. 594, s. 17.

(h) The accidental or occasional disposal of small amounts of prohibited solid waste by landfill shall not be construed as a violation of ~~subsection~~ subsection (f) or (f3) of this section.

(i) The accidental or occasional disposal of small amounts of prohibited solid waste by incineration shall not be construed as a violation of ~~subsection~~ subsection (f1) or (f3) of this section if the Department has approved a plan for the incinerator as provided in subsection (j) of this section or if the incinerator is exempt from subsection (j) of this section.

(j) The Department may issue a permit pursuant to this Article for an incinerator that is subject to subsection (f1) of this section only if the applicant for the permit has a plan approved by the Department pursuant to this subsection. The applicant shall file the plan at the time of the application for the permit. The Department shall approve a plan only if it complies with the requirements of this subsection. The plan shall provide for the implementation of a program to prevent the incineration of the solid waste listed in ~~subsection~~ subsections (f1) and (f3) of this section. The program shall include the random visual inspection prior to incineration of at least ten percent (10%) of the solid waste to be incinerated. The program shall also provide for the retention of the records of the random visual inspections and the training of personnel to recognize the solid waste listed in ~~subsection~~ subsections (f1) and (f3) of this section. If a random visual inspection discovers solid waste that may not be incinerated pursuant to ~~subsection~~ subsections (f1) and (f3) of this section, the program shall provide that the operator of the incinerator shall dispose of the solid waste in accordance with applicable federal and State laws, regulations, and rules. This subsection does not apply to an incinerator that disposes only of medical waste.

(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) and (12) of subsection (f) of this section and subsection (f3) of this section in a landfill based on a showing that prohibiting the disposal of the material would constitute an economic hardship.

(l) Oyster shells that are delivered to a landfill shall be stored at the landfill for at least 90 days or until they are removed for recycling. If oyster shells that are stored at a landfill are not removed for recycling within 90 days of delivery to the landfill, then, notwithstanding subdivision (13) of subsection (f) of this section, the oyster shells may be disposed of in the landfill.

(m) **(Effective July 1, 2011)** No person shall knowingly dispose of fluorescent lights and thermostats that contain mercury in a sanitary landfill for the disposal of construction and demolition debris waste that is unlined or in any other landfill that is unlined."

SECTION 2. G.S. 143-214.7 reads as rewritten:

"**§ 143-214.7. Stormwater runoff rules and programs.**

(a) Policy, Purpose and Intent. – The Commission shall undertake a continuing planning process to develop and adopt a statewide plan with regard to establishing and enforcing stormwater rules for the purpose of protecting the surface waters of the State. It is the purpose and intent of this section that, in developing stormwater runoff rules and programs, the Commission may utilize stormwater rules established by the Commission to protect classified shellfish waters, water supply watersheds, and outstanding resource waters; and to control stormwater runoff disposal in coastal counties and other nonpoint sources. Further, it is the intent of this section that the Commission phase in the stormwater rules on a priority basis for all sources of pollution to the water. The plan shall be applied evenhandedly throughout the State to address the State's water quality needs. The Commission shall continually monitor water quality in the State and shall revise stormwater runoff rules as necessary to protect water quality. As necessary, the stormwater rules shall be modified to comply with federal regulations.

(b) The Commission shall implement stormwater runoff rules and programs for point and nonpoint sources on a phased-in statewide basis. The Commission shall consider standards and best management practices for the protection of the State's water resources in the following order of priority:

(1) Classified shellfish waters.
(2) Water supply watersheds.
(3) Outstanding resource waters.
(4) High quality waters.
(5) All other waters of the State to the extent that the Commission finds control of stormwater is needed to meet the purposes of this Article.

(b1) The Commission and the Department shall, to the maximum extent practicable, incorporate stormwater capture and reuse standards and best management practices into the implementation of this section.

(c) The Commission shall develop model stormwater management programs that may be implemented by State agencies and units of local government. Model stormwater management programs shall be developed to protect existing water uses and assure compliance with water quality standards and classifications. A State agency or unit of local government may submit to the Commission for its approval a stormwater control program for implementation within its jurisdiction. To this end, State agencies may adopt rules, and units of local government are authorized to adopt ordinances and regulations necessary to establish and enforce stormwater control programs. Units of local government are authorized to create or designate agencies or subdivisions to administer and enforce the programs. Two or more units of local government are authorized to establish a joint program and to enter into any agreements that are necessary for the proper administration and enforcement of the program.

(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.

(d) The Commission shall review each stormwater management program submitted by a State agency or unit of local government and shall notify the State agency or unit of local government that submitted the program that the program has been approved, approved with modifications, or disapproved. The Commission shall approve a program only if it finds that the standards of the program equal or exceed those of the model program adopted by the Commission pursuant to this section.

(d1) A retail merchant shall not use more than 400 square feet of impervious surface area within the portion of the merchant's premises that is designed to be used for vehicular parking for the display and sale of nursery stock, as that term is defined by the Board of Agriculture pursuant to G.S. 106-423. This subsection shall not apply to a retail merchant that either:

(1) Collects and treats stormwater on-site using a treatment system that is designed to remove at least eighty-five percent (85%) of total suspended solids. For purposes of this subdivision, a treatment system includes, but is not limited to, a filtration system or a detention system.

(2) Collects and stores stormwater for reuse on-site for irrigation or other purposes.

(3) Collects and discharges stormwater to a local or regional stormwater collection and treatment system.

(d2) Repealed by Session Laws 2008-198, s. 8(a), effective August 8, 2008.

(e) The Commission shall annually report to the Environmental Review Commission on the implementation of this section, including the status of any stormwater control programs administered by State agencies and units of local government, on or before 1 October of each year."

SECTION 3.(a) G.S. 143-135.36 is amended by adding a new subdivision to read:

"**§ 143-135.36. Definitions.**

As used in this section, the following definitions apply unless the context requires otherwise:

(1) "ASHRAE" means the American Society of Heating, Refrigerating and Air-Conditioning Engineers, Inc.

(2) "Commission" means to document and to verify throughout the construction process whether the performance of a building, a component of a building, a system of a building, or a component of a building system meets specified objectives, criteria, and agency project requirements.

(3) "Department" means the Department of Administration.

(4) "Institutions of higher education" means the constituent institutions of The University of North Carolina, the regional institutions as defined in G.S. 115D-2, and the community colleges as defined in G.S. 115D-2.

(5) "Major facility construction project" means a project to construct a building larger than 20,000 gross square feet of occupied or conditioned space, as defined in the North Carolina State Building Code adopted under Article 9 of Chapter 143 of the General Statutes. "Major facility construction project" does not include a project to construct a transmitter building or a pumping station.

(6) "Major facility renovation project" means a project to renovate a building when the cost of the project is greater than fifty percent (50%) of the insurance value of the building prior to the renovation and the renovated portion of the building is larger than 20,000 gross square feet of occupied or conditioned space, as defined in the North Carolina State Building Code. "Major facility renovation project" does not include a project to renovate a transmitter building or a pumping station. "Major facility renovation project" does not include a project to renovate a building having historic, architectural, or cultural significance under Part 4 of Article 2 of Chapter 143B of the General Statutes.

(7) "Public agency" means every State office, officer, board, department, and commission and institutions of higher education.

(8) "Weather-based irrigation controller" means an irrigation control device that utilizes local weather and landscape conditions to tailor irrigation system schedules to irrigation needs specific to site conditions."

SECTION 3.(b) G.S. 143-135.37 reads as rewritten:

"**§ 143-135.37. Energy and water use standards for public major facility construction and renovation projects; verification and reporting of energy and water use.**

(a) Program Established. – The Sustainable Energy-Efficient Buildings Program is established within the Department to be administered by the Department. This program applies to any major facility construction or renovation project of a public agency that is funded in whole or in part from an appropriation in the State capital budget or through a financing contract as defined in G.S. 142-82.

(b) Energy-Efficiency Standard. – For every major facility construction project of a public agency, the building shall be designed and constructed so that the calculated energy consumption is at least thirty percent (30%) less than the energy consumption for the same building as calculated using the energy-efficiency standard in ASHRAE 90.1-2004. For every major facility renovation project of a public agency, the renovated building shall be designed and constructed so that the calculated energy consumption is at least twenty percent (20%) less than the energy consumption for the same renovated building as calculated using the energy-efficiency standard in ASHRAE 90.1-2004. For the purposes of this subsection, any exception or special standard for a specific type of building found in ASHRAE 90.1-2004 is included in the ASHRAE 90.1-2004 standard.

(c) Indoor Potable Water Use Standard. – For every major facility construction or renovation project of a public agency, the water system shall be designed and constructed so that the calculated indoor potable water use is at least twenty percent (20%) less than the indoor potable water use for the same building as calculated using the fixture performance requirements related to plumbing under the 2006 North Carolina State Building Code.

(c1) Outdoor Potable Water Use Standard. – For every major facility construction project of a public agency, the water system shall be designed and constructed so that the calculated sum of the outdoor potable water use and the harvested stormwater use is at least fifty percent (50%) less than the sum of the outdoor potable water use and the harvested stormwater use for the same building as calculated using the performance requirements related to plumbing under the 2006 North Carolina State Building Code. Weather-based irrigation controllers shall be used for irrigation systems for major facility construction projects. For every major facility renovation project of a public agency, the Department shall ~~determine~~ engage an irrigation contractor licensed under Chapter 89G of the General Statutes to perform an audit of any irrigation system. The Department shall determine, on a project-by-project ~~basis~~ basis, what reduced level of outdoor potable use or harvested stormwater use, if any, is a feasible requirement for the ~~project,~~project. ~~but the~~The Department shall not require a greater reduction than is required under this subsection for a major facility construction project. To reduce the

potable outdoor water as required under this subsection, weather-based irrigation controllers, landscape materials that are water use ~~efficient~~ efficient, and irrigation strategies that include reuse and recycling of the water may be used."

SECTION 4.(a) G.S. 143-350 reads as rewritten:

"**§ 143-350. Definitions.**

As used in this Article:

...

(3a) "Gray water" means water that is discharged as waste from bathtubs, showers, wash basins, and clothes washers. "Gray water" does not include water that is discharged from toilets or kitchen sinks.

(3b) "Gray water system" means a water reuse system that is contained within a single family residence or multiunit residential or commercial building that filters gray water or captured rain water and reuses it for nonpotable purposes such as toilet flushing and irrigation.

...."

SECTION 4.(b) G.S. 143-355.5 reads as rewritten:

"**§ 143-355.5. Water reuse; policy; rule making.**

(a) Water Reuse Policy. – It is the public policy of the State that the reuse of treated wastewater or reclaimed water and the use of gray water or captured rain water is critical to meeting the existing and future water supply needs of the State. The General Assembly finds that reclaimed water systems permitted and operated under G.S. 143-215.1(d2) in an approved wastewater reuse program can provide water for many beneficial purposes in a way that is both environmentally acceptable and protective of public health. This finding includes and applies to conjunctive facilities that require the relocation of a discharge from one receiving stream to another under all of the following conditions:

(1) The relocation is necessary to create an approved comprehensive wastewater reuse program.

(2) The reuse program provides significant reuse benefits.

(3) The relocated discharge will comply with all applicable water quality standards; will not result in degradation of water quality in the receiving waters; will not contribute to water quality impairment in the receiving watershed; and will result in net benefits to water quality, such as the elimination of a wastewater discharge in a nutrient sensitive river basin.

(b) Water Reuse Rule Making. – The Commission shall encourage and promote safe and beneficial reuse of treated wastewater as an alternative to surface water discharge. The Commission shall adopt rules to:

(1) Identify acceptable uses of reclaimed water, including toilet flushing, fire protection, decorative water features, and landscape irrigation.

(2) Facilitate the permitting of reclaimed water systems.

(3) Establish standards for reclaimed water systems that are adequate to prevent the direct distribution of reclaimed water as potable water.

(c) Gray Water Rule Making. – The Commission shall encourage and promote the safe and beneficial use of gray water. The Commission shall adopt rules to:

(1) Identify acceptable uses of gray water, including toilet flushing, fire protection, decorative water features, and landscape irrigation.

(2) Facilitate the permitting of gray water systems.

(3) Establish standards, in coordination with the Commission for Public Health, for gray water systems that protect public health, safety, welfare, and the environment and reduce the use of potable water within individual structures.

(d) The Department shall develop policies and procedures to promote the adoption and installation of gray water systems."

SECTION 4.(c) G.S. 130A-335(b) reads as rewritten:

"(b) All wastewater systems shall be regulated by the Department under rules adopted by the Commission except for the following wastewater systems that shall be regulated by the Department under rules adopted by the Environmental Management Commission:

(1) Wastewater collection, treatment, and disposal systems designed to discharge effluent to the land surface or surface waters.

(2) Wastewater systems designed for groundwater remediation, groundwater injection, or landfill leachate collection and disposal.

(3) Wastewater systems designed for the complete recycle or reuse of industrial process wastewater.

(4) Gray water systems as defined in G.S. 143-350."

SECTION 4.(d) Article 8 of Chapter 160A of the General Statutes is amended by adding a new section to read:

"**§ 160A-202. Limitations on regulating cisterns and rain barrels.**

No city ordinance may prohibit or have the effect of prohibiting the installation and maintenance of cisterns and rain barrel collection systems used to collet water for irrigation purposes. A city may regulate the installation and maintenance of those cisterns and rain barrel collection systems for the purpose of protecting the public health and safety and for the purpose of preventing them from becoming a public nuisance."

SECTION 5. Section 5 of S.L. 2007-438, as amended by Section 3(b) of S.L. 2009-484 and Section 19 of S.L. 2010-180, reads as rewritten:

"**SECTION 5.** This act becomes effective 1 September 2007 and applies to all nutrient offset payments, including those set out in 15A NCAC 2B .0240, as adopted by the Environmental Management Commission on 12 January 2006. The fee schedule set out in Section 1 of this act expires ~~1 September 2011.~~ when amendments to 15A NCAC 02B .0240 and .0274 become effective."

SECTION 6.(a) Notwithstanding G.S. 150B-19, as amended by S.L. 2011-13, the Commission for Public Health may adopt rules to incorporate all or part of the United States Food and Drug Administration Food Code 2009.

SECTION 6.(b) G.S. 130A-248 is amended by adding a new subsection to read:

"(a5) The Department of Health and Human Services may grant a variance from rules adopted pursuant to this section if the Department determines that the issuance of the variance will not result in a health hazard or nuisance condition."

SECTION 7. G.S. 113A-54.1 reads as rewritten:

"**§ 113A-54.1. Approval of erosion control plans.**

(a) A draft erosion and sedimentation control plan must contain the applicant's address and, if the applicant is not a resident of North Carolina, designate a North Carolina agent for the purpose of receiving notice from the Commission or the Secretary of compliance or noncompliance with the plan, this Article, or any rules adopted pursuant to this Article. ~~If~~ Except as provided in subsection (a1) of this section, if the applicant is not the owner of the land to be disturbed, the draft erosion and sedimentation control plan must include the owner's written consent for the applicant to submit a draft erosion and sedimentation control plan and to conduct the anticipated land-disturbing activity. The Commission shall approve, approve with modifications, or disapprove a draft erosion and sedimentation control plan for those land-disturbing activities for which prior plan approval is required within 30 days of receipt. The Commission shall condition approval of a draft erosion and sedimentation control plan upon the applicant's compliance with federal and State water quality laws, regulations, and rules. Failure to approve, approve with modifications, or disapprove a completed draft erosion and sedimentation control plan within 30 days of receipt shall be deemed approval of the plan.

If the Commission disapproves a draft erosion and sedimentation control plan or a revised erosion and sedimentation control plan, it must state in writing the specific reasons that the plan was disapproved. Failure to approve, approve with modifications, or disapprove a revised erosion and sedimentation control plan within 15 days of receipt shall be deemed approval of the plan. The Commission may establish an expiration date for erosion and sedimentation control plans approved under this Article.

(a1) If the applicant is not the owner of the land to be disturbed and the anticipated land-disturbing activity involves the construction of utility lines for the provision of water, sewer, gas, telecommunications, or electrical service, the draft erosion and sedimentation control plan may be submitted without the written consent of the owner of the land, so long as the owner of the land has been provided prior notice of the project.

...."

SECTION 8. This act is effective when it becomes law. Section 3(b) of this act applies to every major facility construction project, as defined in G.S. 143-135.36, and every major facility renovation project, as defined in G.S. 143-135.36, of a public agency, as defined in G.S. 143-135.36, that has not entered the schematic design phase prior to the effective date of this act.

HOUSE BILL 643
Committee Substitute Favorable 5/9/11

Short Title: Exempt CCPCUA from IBT Requirements. (Public)

Sponsors:

Referred to:

April 6, 2011

A BILL TO BE ENTITLED

AN ACT TO EXEMPT CERTAIN TRANSFERS OF WATER IN THE CENTRAL COASTAL PLAIN CAPACITY USE AREA FROM INTERBASIN TRANSFER CERTIFICATION REQUIREMENTS.

The General Assembly of North Carolina enacts:

SECTION 1. Notwithstanding G.S. 143-215.22L, a certificate issued pursuant to G.S. 143-215.22L is not required for a transfer of water from one river basin to another river basin to supplement groundwater supplies in the 15 counties designated as the Central Coastal Plain Capacity Use Area under 15A NCAC 2E .0501.

SECTION 2. Section 7 of S.L. 2007-518, as amended by Section 4 of S.L. 2010-155, reads as rewritten:

"**SECTION 7.(a)** Except as provided in subsections ~~(b),~~ (c) and (d) of this section, this act becomes effective when it becomes law and applies to any petition for a certificate for a transfer of surface water from one river basin to another river basin first made on or after that date.

~~"SECTION 7.(b) For a petition for a certificate for transfer of surface water from one river basin to another river basin to supplement ground water supplies in the fifteen counties designated as the Central Coastal Plain Capacity Use Area under 15A NCAC 2E .0501, this act becomes effective 1 January 2013. Prior to 1 January 2013, a petition for a certificate for transfer of surface water from one river basin to another river basin to supplement ground water supplies in the fifteen counties designated as the Central Coastal Plain Capacity Use Area shall be considered and acted upon by the Environmental Management Commission pursuant to the procedures and standards set out in G.S. 143-215.22I on 1 July 2007.~~

"**SECTION 7.(c)** For purposes of this subsection, "isolated river basin" means each of the following river basins set out in G.S. 143-215.22G(1):

g.	2-6	New River.
v.	9-4	Shallotte River.
aa.	12-1	Albemarle Sound.
hh.	17-1	White Oak River.

For a petition for a certificate for transfer of surface water from a river basin to an isolated river basin, this act becomes effective 1 July 2020. Prior to 1 July 2020, a petition for a certificate for transfer of surface water from a river basin to an isolated river basin shall be considered and acted upon by the Environmental Management Commission pursuant to the procedures and standards set out in G.S. 143-215.22I on 1 July 2007.

"**SECTION 7.(d)** Notwithstanding subsection (c) of this section, an applicant for a certificate for transfer of surface water from a river basin to an isolated river basin may request

that the applicant be subject to the certification process that would apply if the transfer was not into an isolated river basin."

SECTION 3. The Environmental Review Commission shall review the water supply laws of the State, including the interbasin transfer laws and the laws governing the establishment and implementation of capacity use areas. The Commission shall specifically consider whether the policies underlying the interbasin transfer and capacity use area laws are consistent. The Commission may make recommendations as to how the State might better coordinate its policies on interbasin transfers, capacity use areas, and other water supply laws. The Commission shall report its findings and recommendations, if any, to the 2012 Regular Session of the 2011 General Assembly.

SECTION 4.(a) This act is effective when it becomes law and applies to any transfer of water from one river basin to another river basin to supplement groundwater supplies in the 15 counties designated as the Central Coastal Plain Capacity Use Area under 15A NCAC 2E .0501 initiated on or after August 31, 2007.

SECTION 4.(b) Section 1 of this act shall expire if the cumulative volume of water transfers from one river basin to another river basin to supplement groundwater supplies in the 15 counties designated as the Central Coastal Plain Capacity Use Area under 15A NCAC 2E .0501 initiated on or after August 31, 2007, by any person that does not hold a certificate for an interbasin transfer on or before the effective date of this act, exceeds 8,000,000 gallons per day.

SECTION 4.(c) Any transfer of water from one river basin to another river basin to supplement groundwater supplies in the 15 counties designated as the Central Coastal Plain Capacity Use Area under 15A NCAC 2E .0501 initiated while Section 1 of this act is effective shall not require certification pursuant to G.S. 143-215.22L upon expiration of Section 1 of this act.

VISITOR REGISTRATION SHEET

Senate AG/Env/Nat. Resources (2011-2012) — June 13. 2011

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Tom Bean	EDF
Robin Smith	DENR
Kari Barsness	
Colee Sullens	
David Rainey	
Jim Simons	
Dexter Matthews	
T Reeder	
Bradley Rentz	
Jon Risgaard	
Evan Kane	

VISITOR REGISTRATION SHEET

Senate AG/Env/Nat. Resources (2011-2012)
Name of Committee **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Peter Raabe	American Rivers
Margaret Hartzell	Environment North Carolina
Mary Maile Ashill	SELC
Tom Cors	TNC
Jay Levine	SAHC
Sheila Holman	NCDENR / DEQ
Will Morgan	Sierra Club
Tom Fransen	NCDENR/DWR
Rob Lumm	DLA
Jake Cashion	NC Chamber
Chris Ager	DOA

VISITOR REGISTRATION SHEET

Senate AG/Env/Nat. Resources (2011-2012)
Name of Committee **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Allen Hardison	CRS WMA
	Burgess Group NC
Wendy Kelly	Poling Group
DAVID BARNES	PS
Mr. Jason Cuthrell	DLC & Assoc
Jeff Kelly	Campbell Law School
Robert Gilmore	" " "
Andrew Blackburn	Civitas Institute
William Bejan	Civitas Institute
Doug Howley	NCPCM

VISITOR REGISTRATION SHEET

13

Senate AG/Env/Nat. Resources (2011-2012) — June 9, 2011
Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Drew Isenhour	Republic Services
Chris Anderson	
Bob Slocum	NCFB
Joy Hicks	NCDACS
Ray Stacy	"
John Monaghan	Piedmont Natural Gas
Brant Troxell	NCACC
Dan Conrad	NCCN
Jim Johnson	BSA
Vernon Cox	NCDACS
Phil CARTER	WASTE INDUSTRIES

VISITOR REGISTRATION SHEET

Senate AG/Env/Nat. Resources (2011-2012)
Name of Committee **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
David Knight	DENR
Mike Waters	NCRPA
John Merritt	MWC LLC
Bruce Thompson	Parker Poe
Chris Diffee	NCWRC
Tommy Stevens	NCPC
Daniel Ames	NCLM
Dena Fenton	C. of Charlotte

Senate Agriculture/Environment/Natural Resources

MINUTES

June 14, 2011

The Senate Ag/Env/Nat. Resources committee met on Tuesday, June 14, 2011 in Room 544-LOB at 11:00 pm. There were 13 senators present.

Sen. David Rouzer called the meeting to order and introduced the Pages and Sgt-At-Arms staff.

HB-119 AMEND ENVIRONMENTAL LAWS 2011

Sen. Walters moved for adoption of the PCS for discussion. So moved. Sen. East sent forth an amendment. Mr. Jeff Hudson, Chief Staff Counsel explained the PCS. Rep. Gillespie asked for support of the bill and the 2 amendments forthcoming. Sen. East explained his amendment for Sec. 11. No discussion on the amendment and Sen. Jackson moved for adoption. Vote taken and amendment passed. Sen. East sent forth another amendment. Ms. McGinnis, staff counsel explained the amendment. This amendment is for Sec.22. Sen. Tillman moved for adoption of the amendment, vote taken and so moved. Sen. Atwater sent forth an amendment. Mr. Hudson explained this deletes Sec. 14 that applies to Jordan Lake rules. Sen. Atwater spoke on his amendment. Rep. Gillespie asked to oppose this amendment. Sen. Kinnaird agreed with Sen. Atwater and feels stake-holders should have been contacted before this was done. Sen. Atwater told members this is a very serious matter for the people who worked on this a few years ago. Sen. Kinnaird asked if the sponsor objected to removing this section and talking to the stake-holders. Rep. Gillespie did not want to do this because it will delay the bill. Vote taken on the amendment and it failed. Sen. Rabon asked what DENR had to say on this. Ms. Robin Smith, Asst. Sec., DENR addressed members. Sen. Atwater spoke about again. Sen. Rabon moved for a favorable report, unfavorable to the original bill. (and roll the amendments into a new PCS). Vote taken on the bill and so moved.

HB-329 BLDG.CODES/EXPAND EQUINE EXEMPTION

Sen. Tillman moved for adoption of the PCS for discussion. So moved. Rep. Horn explained the bill. Sen. Tillman moved for a favorable report, unfavorable to the original bill. Vote taken and so moved.

HB-406 VOLUNTARY AGRICULTURE DISTRICTS

Rep. Jordan explained the bill. Sen. Rabon moved for a favorable report. Sen. East questioned the present use value. Rep. Jordan responded. Vote taken and so moved.

HB-482 NORWOOD WATER LINES

Sen. Jackson moved for adoption of the PCS for discussion. So moved. Rep. Burr explained the bill. Sen. Tillman moved for a favorable report, unfavorable to the original report. Vote taken and so moved.

HB-643 EXEMPT CCPCUA FROM IBT REQUIREMENTS

Rep. LaRoque explained the bill. Sen. Jackson moved for a favorable report. No further discussion. Vote taken and so moved.

The meeting adjourned at 11:35.

Sen. David Rouzer , Co-Chair

Cindy J. Davis, Committee Clerk

Principal Clerk ____
Reading Clerk ____

Corrected: ADD HB-482

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

The Senate Committee on **Agriculture/Environment/Natural Resources** will meet at the following time:

DAY	DATE	TIME	ROOM
Tuesday	June 14, 2011	11:00	544 LOB

The following will be considered:

BILL NO.	SHORT TITLE	SPONSOR
HB 406	Voluntary Agriculture Districts.	Representative Mobley Representative Hill Representative Jordan Representative Randleman
HB 329	Bldg. Codes/Expand Equine Exemption.	Representative Horn Representative Dixon Representative Faircloth, Jr. Representative Burr
HB 119	Amend Environmental Laws 2011.	Representative McElraft Representative Gillespie
HB 643	Exempt CCPCUA from IBT Requirements.	Representative McLawhorn Representative LaRoque Representative Brawley, Jr. Representative Wainwright
HB 482	Norwood Water Lines.	Representative Burr

ADD HB-482

Senator Don East, Co-Chair
Senator David Rouzer, Co-Chair

Principal Clerk ____
Reading Clerk ____

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

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HB 643	Exempt CCPCUA from IBT Requirements.	Representative McLawhorn Representative LaRoque Representative Brawley, Jr. Representative Wainwright

Senator Don East, Co-Chair
Senator David Rouzer, Co-Chair

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES COMMITTEE REPORT
Senator Don East, Co-Chair
Senator David Rouzer, Co-Chair

CORRECTED REPORT

Wednesday, June 15, 2011

Senator ROUZER,
submits the following with recommendations as to passage:

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 1, BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL

H.B.(CS #1) **119** Amend Environmental Laws 2011.

Draft Number:	PCS90127
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

TOTAL REPORTED: 1

Committee Clerk Comments:

Sen. Rouzer will explain

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES COMMITTEE REPORT
Senator Don East, Co-Chair
Senator David Rouzer, Co-Chair

Tuesday, June 14, 2011

Senator ROUZER,
submits the following with recommendations as to passage:

FAVORABLE

H.B. **406** Voluntary Agriculture Districts.
Sequential Referral: None
Recommended Referral: None

H.B. **643** Exempt CCPCUA from IBT Requirements.
Sequential Referral: None
Recommended Referral: None

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 1, BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL

H.B.(CS #1) **329** Bldg. Codes/Expand Equine Exemption.
Draft Number: PCS30394
Sequential Referral: None
Recommended Referral: None
Long Title Amended: No

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 1, BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL

H.B.(CS #1) **482** Norwood Water Lines.
Draft Number: PCS30393
Sequential Referral: None
Recommended Referral: None
Long Title Amended: Yes

TOTAL REPORTED: 4

Committee Clerk Comments:
HB-329-Sen. Tucker

HB-406 Sen. Jackson
HB-482 Sen. Tillman
HB-643 Sen. Jackson

Senate Agriculture/Environment/Natural Resources Committee
Tuesday, June 14, 2011, 11:00
544 LOB

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

~~HB 119~~	Amend Environmental Laws 2011.	Representative McElraft Representative Gillespie
~~HB 329~~	Bldg. Codes/Expand Equine Exemption.	Representative Horn Representative Dixon Representative Faircloth, Jr.
~~HB 406~~	Voluntary Agriculture Districts.	Representative Burr Representative Mobley Representative Hill Representative Jordan Representative Randleman
~~HB 482~~	Norwood Water Lines.	Representative Burr
~~HB 643~~	Exempt CCPCUA from IBT Requirements.	Representative McLawhorn Representative LaRoque Representative Brawley, Jr. Representative Wainwright

Presentations

Other Business

Adjournment

HOUSE BILL 643:
Exempt CCPCUA from IBT Requirements

2011-2012 General Assembly

Committee:	Senate Agriculture/Environment/Natural Resources	**Date:**	June 13, 2011
Introduced by:	Reps. LaRoque, McLawhorn, Wainwright, Brawley	**Prepared by:**	Jeff Hudson Committee Counsel
Analysis of:	Second Edition		

SUMMARY: ***House Bill 643 would exempt from interbasin transfer certification requirements transfers of water from one river basin to another river basin to supplement groundwater supplies in the 15 counties designated as the Central Coastal Plain Capacity Use Area.***

BACKGROUND AND CURRENT LAW:

Groundwater levels collected since the early 1970s have shown evidence of pressure head declines and the formation of a large cone of depression in the Black Creek and Upper Cape Fear aquifers of the central coastal plain of North Carolina. This data, along with the increasing potential of salt water encroachment near pumping centers, evidence of aquifer dewatering, and reports of extreme loss of well yield by public water system operators led the Division of Water Resources (DWR) of the Department of Environment and Natural Resources (DENR) to notify the Environmental Management Commission (EMC) of the water supply dangers.

In response, the EMC conducted a lengthy rulemaking process that culminated in the adoption of the Central Coastal Plain Capacity Use Area (CCPCUA)[1] Rules in May of 2001. (See attached map produced by DWR) The Rules became effective August 1, 2002. The intent of the Rules is to protect the long term productivity of aquifers within the CCPCUA while allowing the use of groundwater for beneficial uses at rates that do not exceed the recharge rate of the aquifers. Under the Rules, DWR regulates and limits the amount of groundwater withdrawals in the CCPCUA. Due to the limits on groundwater withdrawals, some entities that supply water within the CCPCUA must find alternate sources of water supply.[2] One such alternative is the interbasin transfer of surface water.

In 2007, the General Assembly enacted a more stringent process for the certification of interbasin transfers (IBTs). Because the new process provides, among other new requirements, that a full environmental impact statement must be prepared for all IBTs between major river basins, the certification process for IBTs between major river basins became considerably longer and more expensive. Recognizing the potential increase in costs and delays, the 2007 legislation included an exception for IBTs to supplement ground water supplies in the CCPCUA. The exception allows interbasin transfer applications to be processed according to statutes in place prior to the 2007 legislation. The exception was originally scheduled to sunset January 1, 2011, but in 2010, the General Assembly extended the sunset on the exception to January 1, 2013.

BILL ANALYSIS:

House Bill 643 would exempt transfers of water from one river basin to another river basin to supplement groundwater supplies in the CCPCUA from all IBT certification requirements. The

[1] The CCPCUA encompasses Beaufort, Carteret, Craven, Duplin, Edgecombe, Greene, Jones, Lenoir, Martin, Onslow, Pamlico, Pitt, Washington, Wayne, and Wilson Counties.

[2] Background information found at:
http://www.ncwater.org/Permits_and_Registration/Capacity_Use/Central_Coastal_Plain/ccpcua_fact_sheet_2005.pdf

exemption from all IBT certification requirements would expire if the cumulative volume of such transfers exceeds 8,000,000 gallons per day.

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

H643-SMSB-48(e2) v1

HOUSE BILL 643
Committee Substitute Favorable 5/9/11

Short Title: Exempt CCPCUA from IBT Requirements. (Public)

Sponsors:

Referred to:

April 6, 2011

A BILL TO BE ENTITLED

AN ACT TO EXEMPT CERTAIN TRANSFERS OF WATER IN THE CENTRAL COASTAL PLAIN CAPACITY USE AREA FROM INTERBASIN TRANSFER CERTIFICATION REQUIREMENTS.

The General Assembly of North Carolina enacts:

SECTION 1. Notwithstanding G.S. 143-215.22L, a certificate issued pursuant to G.S. 143-215.22L is not required for a transfer of water from one river basin to another river basin to supplement groundwater supplies in the 15 counties designated as the Central Coastal Plain Capacity Use Area under 15A NCAC 2E .0501.

SECTION 2. Section 7 of S.L. 2007-518, as amended by Section 4 of S.L. 2010-155, reads as rewritten:

"**SECTION 7.(a)** Except as provided in subsections ~~(b),~~ (c) and (d) of this section, this act becomes effective when it becomes law and applies to any petition for a certificate for a transfer of surface water from one river basin to another river basin first made on or after that date.

~~"SECTION 7.(b) For a petition for a certificate for transfer of surface water from one river basin to another river basin to supplement ground water supplies in the fifteen counties designated as the Central Coastal Plain Capacity Use Area under 15A NCAC 2E .0501, this act becomes effective 1 January 2013. Prior to 1 January 2013, a petition for a certificate for transfer of surface water from one river basin to another river basin to supplement ground water supplies in the fifteen counties designated as the Central Coastal Plain Capacity Use Area shall be considered and acted upon by the Environmental Management Commission pursuant to the procedures and standards set out in G.S. 143-215.22I on 1 July 2007.~~

"**SECTION 7.(c)** For purposes of this subsection, "isolated river basin" means each of the following river basins set out in G.S. 143-215.22G(1):

g.	2-6	New River.
v.	9-4	Shallotte River.
aa.	12-1	Albemarle Sound.
hh.	17-1	White Oak River.

For a petition for a certificate for transfer of surface water from a river basin to an isolated river basin, this act becomes effective 1 July 2020. Prior to 1 July 2020, a petition for a certificate for transfer of surface water from a river basin to an isolated river basin shall be considered and acted upon by the Environmental Management Commission pursuant to the procedures and standards set out in G.S. 143-215.22I on 1 July 2007.

"**SECTION 7.(d)** Notwithstanding subsection (c) of this section, an applicant for a certificate for transfer of surface water from a river basin to an isolated river basin may request

that the applicant be subject to the certification process that would apply if the transfer was not into an isolated river basin."

SECTION 3. The Environmental Review Commission shall review the water supply laws of the State, including the interbasin transfer laws and the laws governing the establishment and implementation of capacity use areas. The Commission shall specifically consider whether the policies underlying the interbasin transfer and capacity use area laws are consistent. The Commission may make recommendations as to how the State might better coordinate its policies on interbasin transfers, capacity use areas, and other water supply laws. The Commission shall report its findings and recommendations, if any, to the 2012 Regular Session of the 2011 General Assembly.

SECTION 4.(a) This act is effective when it becomes law and applies to any transfer of water from one river basin to another river basin to supplement groundwater supplies in the 15 counties designated as the Central Coastal Plain Capacity Use Area under 15A NCAC 2E .0501 initiated on or after August 31, 2007.

SECTION 4.(b) Section 1 of this act shall expire if the cumulative volume of water transfers from one river basin to another river basin to supplement groundwater supplies in the 15 counties designated as the Central Coastal Plain Capacity Use Area under 15A NCAC 2E .0501 initiated on or after August 31, 2007, by any person that does not hold a certificate for an interbasin transfer on or before the effective date of this act, exceeds 8,000,000 gallons per day.

SECTION 4.(c) Any transfer of water from one river basin to another river basin to supplement groundwater supplies in the 15 counties designated as the Central Coastal Plain Capacity Use Area under 15A NCAC 2E .0501 initiated while Section 1 of this act is effective shall not require certification pursuant to G.S. 143-215.22L upon expiration of Section 1 of this act.

HOUSE BILL 406

Short Title:	Voluntary Agriculture Districts.	(Public)
Sponsors:	Representatives Jordan, Hill, Randleman, and Mobley (Primary Sponsors). For a complete list of Sponsors, see Bill Information on the NCGA Web Site.	
Referred to:	Finance.	

March 21, 2011

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT LAND THAT IS ENGAGED IN AGRICULTURE MAY QUALIFY FOR ENROLLMENT IN A VOLUNTARY AGRICULTURAL DISTRICT EVEN THOUGH IT DOES NOT QUALIFY FOR TAXATION AT ITS PRESENT-USE VALUE, AND TO PROVIDE THAT RESIDENTIAL LOTS CREATED ON LAND THAT IS THE SUBJECT OF A CONSERVATION AGREEMENT MUST MEET MUNICIPAL ZONING AND SUBDIVISION REGULATIONS, AND TO PROVIDE THAT REVOCABLE VOLUNTARY AGRICULTURAL DISTRICT CONSERVATION AGREEMENTS ARE NOT REQUIRED TO BE RECORDED.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 106-737 reads as rewritten:

"**§ 106-737. Qualifying farmland.**

In order for farmland to qualify for inclusion in a voluntary agricultural district or an enhanced voluntary agricultural district under Part 1 or Part 2 of this Article, it must be real property that:

(1) Is ~~participating in the farm present-use value taxation program established by G.S. 105-277.2 through 105-277.7 or is otherwise determined by the county to meet all the qualifications of this program set forth in G.S. 105-277.3;~~ engaged in agriculture as that word is defined in G.S. 106-581.1.

(2) Repealed by Session Laws 2005-390, s. 11 effective September 13, 2005.

(3) Is managed in accordance with the Soil Conservation Service defined erosion control practices that are addressed to highly erodable land; and

(4) Is the subject of a conservation agreement, as defined in G.S. 121-35, between the county and the owner of such land that prohibits nonfarm use or development of such land for a period of at least 10 years, except for the creation of not more than three lots that meet applicable county and municipal zoning and subdivision regulations."

SECTION 2. G.S. 121-41reads as rewritten:

"**§ 121-41. Public recording of agreements.**

(a) ~~Conservation~~ Except as provided in subsection (c) of this section, conservation agreements shall be recorded in the office of the Register of Deeds of the county or counties in which the subject land or improvement is located, in the same manner as deeds are now recorded.

(b) Releases or terminations of such agreements shall be recorded in the same waiver. Releases or terminations, or the recording entry, shall appropriately identify by date, parties, and book and pages of recording, the agreement which is the subject of the release or termination.

(c) A conservation agreement entered into for the purpose of enrolling real property in a voluntary agricultural district pursuant to G.S. 106-737(4) is not required to be recorded unless such conservation agreement is irrevocable as provided pursuant to G.S. 106-743.2."

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

HOUSE BILL 406:
Voluntary Agriculture Districts

2011-2012 General Assembly

Committee:	Senate Agriculture/Environment/Natural Resources	**Date:**	June 14, 2011
Introduced by:	Reps. Jordan, Hill, Randleman, Mobley	**Prepared by:**	Mariah Matheson
Analysis of:	First Edition		Research Assistant

SUMMARY: ***House Bill 406 would provide that land that is used for agricultural purposes may qualify for enrollment in a voluntary agricultural district even if it does not qualify for taxation at its present-use value; that residential lots created on land that is the subject of a conservation agreement must meet municipal zoning and subdivision regulations; and that revocable voluntary agricultural district conservation agreements need not be recorded.***

CURRENT LAW: The purpose for voluntary agricultural districts is to increase identity and pride in the agricultural community and its way of life. The benefits of establishing voluntary agricultural districts include, increased protection from nuisance suits; waiver of water and sewer assessments; required public hearings for proposed condemnation; eligibility for farmland preservation funding; and an official role in county or city government through the Agricultural Advisory Board.

Counties and cities are authorized by statute to adopt ordinances to establish farmland preservation programs throughout the State. To be eligible for the voluntary agricultural district program, a farm must meet specified statutory requirements and other eligibility criteria of the city or county. Current law requires a farm to participate in the present-use-value taxation program, or otherwise meet all the criteria of the program.

BILL ANALYSIS:

Section 1 would eliminate the requirement that a farm participate in the farm present use value taxation program, and instead require only that the real property must be "engaged in agriculture," such as:

- The production and harvesting of crops, including sod, flowers and ornamental plants
- Trees and timber
- Livestock, including bees
- Aquaculture
- Operation, management, conservation, improvement, and maintenance of a farm and the structures and buildings on the farm
- Agricultural and farming, including the marketing and selling of agricultural products, agritourism, packing, treating, processing, sorting, storage, and other activities, etc.

It would also clarify that eligible farmland would have to meet both county *and municipal* zoning and subdivision regulations.

Section 2 would provide that conservation agreements are no longer required to be recorded in the same manner as deeds unless the agreement is made for the purpose of enrolling in a voluntary agricultural district and is irrevocable for a period of at least ten years.

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

H406-SMTF-43(e1) v3

Jan Paul, counsel to House Agriculture, substantially contributed to this summary.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

H D

HOUSE BILL 119
Committee Substitute Favorable 6/2/11
PROPOSED SENATE COMMITTEE SUBSTITUTE H119-PCS90127-SB-45

Short Title: Amend Environmental Laws 2011. (Public)

Sponsors:

Referred to:

February 17, 2011

A BILL TO BE ENTITLED

AN ACT TO AMEND CERTAIN ENVIRONMENTAL AND NATURAL RESOURCES LAWS TO (1) EXEMPT CERTAIN NEW RENEWABLE ENERGY FACILITIES FROM BEST AVAILABLE CONTROL TECHNOLOGY (BACT) REQUIREMENTS; (2) REDUCE CERTAIN OPEN BURNING SETBACK REQUIREMENTS AND PROVIDE THAT MINIMAL, UNINTENTIONAL NONCOMPLIANCE WITH AN OPEN BURNING SETBACK IS NOT A VIOLATION; (3) PROVIDE THAT DRAFT EROSION AND SEDIMENTATION CONTROL PLANS FOR THE CONSTRUCTION OF CERTAIN UTILITY LINES MAY BE SUBMITTED WITHOUT A LANDOWNER'S WRITTEN CONSENT; (4) CLARIFY THE PROHIBITION ON DISPOSAL IN LANDFILLS OR BY INCINERATION OF BEVERAGE CONTAINERS THAT ARE REQUIRED TO BE RECYCLED BY CERTAIN ABC PERMITTEES; (5) CLARIFY THE USE OF STATE FUNDS IN THE CONTEXT OF THE REMOVAL OF MERCURY-CONTAINING PRODUCTS FROM PUBLIC BUILDINGS; (6) DIRECT THE ENVIRONMENTAL MANAGEMENT COMMISSION TO DEVELOP MODEL STORMWATER CAPTURE AND REUSE PRACTICES; (7) PROHIBIT THE DIVISION OF WATER QUALITY OF THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES FROM REQUIRING A WATER QUALITY PERMIT FOR A TYPE I SOLID WASTE COMPOST FACILITY; (8) AMEND THE WATER-USE STANDARD FOR PUBLIC MAJOR FACILITY CONSTRUCTION AND RENOVATION PROJECTS TO REQUIRE THE INSTALLATION OF WEATHER-BASED IRRIGATION CONTROLLERS; (9) PROVIDE THAT NO PERMIT IS REQUIRED FOR THE CONSTRUCTION OR ALTERATION OF A SEWER SYSTEM OR TREATMENT WORKS THAT ALREADY HAS A DISCHARGE PERMIT; (10) EXEMPT SMALL DAMS AND AGRICULTURAL POND DAMS FROM THE DAM SAFETY ACT; (11) MAKE VARIOUS CHANGES TO THE LAWS GOVERNING THE STATE'S UNDERGROUND STORAGE TANK PROGRAM AND PETROLEUM DISCHARGES; (12) PROMOTE THE USE OF GRAY WATER; (13) CLARIFY THAT NUTRIENT OFFSET PAYMENTS SHALL REFLECT ACTUAL COSTS AS ADOPTED BY THE ENVIRONMENTAL MANAGEMENT COMMISSION; (14) DELAY IMPLEMENTATION OF CERTAIN JORDAN LAKE RULE REQUIREMENTS; (15) AUTHORIZE THE COMMISSION FOR PUBLIC HEALTH TO

ADOPT RULES TO INCORPORATE THE FEDERAL FOOD CODE; (16) ESTABLISH A VARIANCE PROCESS FOR CERTAIN WATER SUPPLY WELL SETBACK REQUIREMENTS; (17) GRANDFATHER CERTAIN DEVELOPMENT UNDER THE NEUSE AND TAR-PAM RIVER BASIN BUFFER REQUIREMENTS; (18) PROVIDE THAT A GINSENG EXPORT CERTIFICATE MAY BE OBTAINED FREE OF CHARGE; (19) PROVIDE FOR AN EARLY SUNSET OF THE METHANE CAPTURE PILOT PROGRAM; (20) DIRECT THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES TO STUDY STORMWATER MANAGEMENT REQUIREMENTS FOR AIRPORTS IN THE STATE; AND (21) DIRECT CERTAIN TRANSFERS OF FUNDS FOR NONPOINT SOURCE POLLUTION CONTROL PROGRAMS; AND (22) CONFORM THE STATUTORY DEFINITION OF "SOLID WASTE" TO FEDERAL LAW.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 62-133.8(g) reads as rewritten:

"(g) Control of Emissions. – As used in this subsection, Best Available Control Technology (BACT) means an emissions limitation based on the maximum degree a reduction in the emission of air pollutants that is achievable for a facility, taking into account energy, environmental, and economic impacts and other costs. A biomass combustion process at any new renewable energy facility that delivers electric power to an electric power supplier shall meet BACT. The Environmental Management Commission shall determine on a case-by-case basis the BACT for a facility that would not otherwise be required to comply with BACT pursuant to the Prevention of Significant Deterioration (PSD) emissions program. The Environmental Management Commission may adopt rules to implement this subsection. In adopting rules, the Environmental Management Commission shall take into account cumulative and secondary impacts associated with the concentration of biomass facilities in close proximity to one another. In adopting rules the Environmental Management Commission shall provide for the manner in which a facility that would not otherwise be required to comply with BACT pursuant to the PSD emissions programs shall meet the BACT requirement. This subsection shall not apply to a facility that qualifies as a new renewable energy facility under sub-subdivision b. of subdivision (5) of subsection (a) of this section."

SECTION 2.(a) Definitions. – The definitions set out in G.S. 143-212, G.S. 143-213, and 15A NCAC 02D .1902 (Definitions) apply to this section and its implementation.

SECTION 2.(b) 15A NCAC 02D .1903 (Open Burning Without An Air Quality Permit). – Until the effective date of the revised permanent rule that the Commission is required to adopt pursuant to Section 2(d) of this act, the Commission, the Department, and any other political subdivision of the State that implements 15A NCAC 02D .1903 (Open Burning Without An Air Quality Permit) shall implement the rule, as provided in Section 2(c) of this act.

SECTION 2.(c) Implementation. – Notwithstanding sub-subdivision (B) subdivision (2) of subsection (b) of 15A NCAC 02D .1903 (Open Burning Without An Air Quality Permit), open burning for land clearing or right-of-way maintenance is permissible without an air quality permit if the location of the burning is at least 500 feet from any dwelling, group of dwellings, or commercial or institutional establishment, or other occupied structure not located on the property on which the burning is conducted. The regional office supervisor may grant exceptions to the setback requirements if either of the following conditions is met:

(1) A signed, written statement waiving objections to the open burning associated with the land clearing operation is obtained and submitted to, and the exception granted by, the regional office supervisor before the burning begins from a resident or an owner of each dwelling, commercial or

institutional establishment, or other occupied structure within 500 feet of the open burning site. In the case of a lease or rental agreement, the lessee or renter shall be the person from whom permission shall be gained prior to any burning.

(2) An air curtain burner that complies with 15A NCAC 02D .1904 (Air Curtain Burners), as provided in this section, is utilized at the open burning site.

Factors that the regional supervisor shall consider in deciding to grant the exception include all the persons who need to sign the statement waiving the objection have signed it, the location of the burn, and the type, amount, and nature of the combustible substances. The regional supervisor shall not grant a waiver if a college, school, licensed day care, hospital, licensed rest home, or other similar institution is less than 500 feet from the proposed burn site when such institution is occupied.

SECTION 2.(d) Additional Rule-Making Authority. – The Commission shall adopt a rule to amend 15A NCAC 02D .1903 (Open Burning Without An Air Quality Permit). Notwithstanding G.S. 150B-19(4), the rule adopted by the Commission pursuant to this section shall be substantively identical to the provisions of Section 2(c) of this act. Rules adopted pursuant to this section are not subject to the publication of notice of text or public hearing requirements of G.S. 150B-21.2. 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 2.(e) 15A NCAC 02D .1904 (Air Curtain Burners). – Until the effective date of the revised permanent rule that the Commission is required to adopt pursuant to Section 2(g) of this act, the Commission, the Department, and any other political subdivision of the State that implements 15A NCAC 02D .1904 (Air Curtain Burners) shall implement the rule, as provided in Section 2(f) of this act.

SECTION 2.(f) Implementation. – Notwithstanding subdivision (12) of subsection (b) of 15A NCAC 02D .1904 (Air Curtain Burners), the location of the air curtain burning shall be at least 300 feet from any dwelling, group of dwellings, or commercial or institutional establishment, or other occupied structure not located on the property on which the burning is conducted. The regional office supervisor may grant exceptions to the setback requirements if a signed, written statement waiving objections to the air curtain burning is obtained from a resident or an owner of each dwelling, commercial or institutional establishment, or other occupied structure within 300 feet of the burning site. In case of a lease or rental agreement, the lessee or renter, and the property owner shall sign the statement waiving objections to the burning. The statement shall be submitted to and approved by the regional office supervisor before initiation of the burn. Factors that the regional supervisor shall consider in deciding to grant the exception include all the persons who need to sign the statement waiving the objection have signed it; the location of the burn; and the type, amount, and nature of the combustible substances.

SECTION 2.(g) Additional Rule-Making Authority. – The Commission shall adopt a rule to amend 15A NCAC 02D .1904 (Air Curtain Burners). Notwithstanding G.S. 150B-19(4), the rule adopted by the Commission pursuant to this section shall be substantively identical to the provisions of Section 2(f) of this act. Rules adopted pursuant to this section are not subject to the publication of notice of text or public hearing requirements of G.S. 150B-21.2. 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 2.(h) G.S. 113-60.29 reads as rewritten:

"**§ 113-60.29. Penalties.**

Any person violating the provisions of this Article or of any permit issued under the authority of this Article shall be guilty of a Class 3 misdemeanor. It is not a violation of this Article or any permit issued under the authority of this Article if a person unintentionally fails to comply with a setback requirement so long as the difference between the required setback and the actual setback is no more than five percent (5%) of the required setback. The penalties imposed by this section shall be separate and apart and not in lieu of any civil or criminal penalties which may be imposed by G.S. 143-215.114A or G.S. 143-215.114B. The penalties imposed are also in addition to any liability the violator incurs as a result of actions taken by the Department under G.S. 113-60.28."

SECTION 3. G.S. 113A-54.1 reads as rewritten:

"**§ 113A-54.1. Approval of erosion control plans.**

(a) A draft erosion and sedimentation control plan must contain the applicant's address and, if the applicant is not a resident of North Carolina, designate a North Carolina agent for the purpose of receiving notice from the Commission or the Secretary of compliance or noncompliance with the plan, this Article, or any rules adopted pursuant to this Article. ~~If~~ Except as provided in subsection (a1) of this section, if the applicant is not the owner of the land to be disturbed, the draft erosion and sedimentation control plan must include the owner's written consent for the applicant to submit a draft erosion and sedimentation control plan and to conduct the anticipated land-disturbing activity. The Commission shall approve, approve with modifications, or disapprove a draft erosion and sedimentation control plan for those land-disturbing activities for which prior plan approval is required within 30 days of receipt. The Commission shall condition approval of a draft erosion and sedimentation control plan upon the applicant's compliance with federal and State water quality laws, regulations, and rules. Failure to approve, approve with modifications, or disapprove a completed draft erosion and sedimentation control plan within 30 days of receipt shall be deemed approval of the plan. If the Commission disapproves a draft erosion and sedimentation control plan or a revised erosion and sedimentation control plan, it must state in writing the specific reasons that the plan was disapproved. Failure to approve, approve with modifications, or disapprove a revised erosion and sedimentation control plan within 15 days of receipt shall be deemed approval of the plan. The Commission may establish an expiration date for erosion and sedimentation control plans approved under this Article.

(a1) If the applicant is not the owner of the land to be disturbed and the anticipated land-disturbing activity involves the construction of utility lines for the provision of water, sewer, gas, telecommunications, or electrical service, the draft erosion and sedimentation control plan may be submitted without the written consent of the owner of the land, so long as the owner of the land has been provided prior notice of the project.

...."

SECTION 4. G.S. 130A-309.10 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 on 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) Beverage containers that are required to be recycled under G.S. 18B-1006.1.~~
(10) Motor vehicle oil filters.
(11) 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 or pesticides.
(12) Wooden pallets, except that wooden pallets may be disposed of in a landfill that is permitted to only accept construction and demolition debris.
(13) Oyster shells.
(14) **(Effective July 1, 2011)** Discarded computer equipment, as defined in G.S. 130A-309.131.
(15) **(Effective July 1, 2011)** Discarded televisions, as defined in G.S. 130A-309.131.

(f1) No person shall knowingly dispose of the following solid wastes by incineration in an incinerator for which a permit is required under this Article:
(1) Antifreeze (ethylene glycol) used solely in motor vehicles.
(2) Aluminum cans.
(3) Repealed by Session Laws 1995 (Regular Session, 1996), c. 594, s. 17.
(4) White goods.
(5) Lead-acid batteries, as provided in G.S. 130A-309.70.
~~(6) Beverage containers that are required to be recycled under G.S. 18B-1006.1.~~
(7) **(Effective July 1, 2011)** Discarded computer equipment, as defined in G.S. 130A-309.131.
(8) **(Effective July 1, 2011)** Discarded televisions, as defined in G.S. 130A-309.131.

(f2) ~~Subsection~~ Subsections (f1) and (f3) of this section shall not apply to solid waste incinerated in an incinerator solely owned and operated by the generator of the solid waste. Subsection (f1) of this section shall not apply to antifreeze (ethylene glycol) that cannot be recycled or reclaimed to make it usable as antifreeze in a motor vehicle.

(f3) Holders of on-premises malt beverage permits, on-premises unfortified wine permits, on-premises fortified wine permits, and mixed beverages permits shall not knowingly dispose of beverage containers that are required to be recycled under G.S. 18B-1006.1 in landfills or by incineration in an incinerator for which a permit is required under this Article.

(g) Repealed by Session Laws 1995 (Regular Session, 1996), c. 594, s. 17.

(h) The accidental or occasional disposal of small amounts of prohibited solid waste by landfill shall not be construed as a violation of ~~subsection~~ subsection (f) or (f3) of this section.

(i) The accidental or occasional disposal of small amounts of prohibited solid waste by incineration shall not be construed as a violation of ~~subsection~~ subsection (f1) or (f3) of this section if the Department has approved a plan for the incinerator as provided in subsection (j) of this section or if the incinerator is exempt from subsection (j) of this section.

(j) The Department may issue a permit pursuant to this Article for an incinerator that is subject to subsection (f1) of this section only if the applicant for the permit has a plan approved by the Department pursuant to this subsection. The applicant shall file the plan at the time of the application for the permit. The Department shall approve a plan only if it complies with the requirements of this subsection. The plan shall provide for the implementation of a program to

prevent the incineration of the solid waste listed in ~~subsection~~ subsections (f1) and (f3) of this section. The program shall include the random visual inspection prior to incineration of at least ten percent (10%) of the solid waste to be incinerated. The program shall also provide for the retention of the records of the random visual inspections and the training of personnel to recognize the solid waste listed in ~~subsection~~ subsections (f1) and (f3) of this section. If a random visual inspection discovers solid waste that may not be incinerated pursuant to ~~subsection~~ subsections (f1) and (f3) of this section, the program shall provide that the operator of the incinerator shall dispose of the solid waste in accordance with applicable federal and State laws, regulations, and rules. This subsection does not apply to an incinerator that disposes only of medical waste.

(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) and (12) of subsection (f) of this section and subsection (f3) of this section in a landfill based on a showing that prohibiting the disposal of the material would constitute an economic hardship.

(l) Oyster shells that are delivered to a landfill shall be stored at the landfill for at least 90 days or until they are removed for recycling. If oyster shells that are stored at a landfill are not removed for recycling within 90 days of delivery to the landfill, then, notwithstanding subdivision (13) of subsection (f) of this section, the oyster shells may be disposed of in the landfill.

(m) **(Effective July 1, 2011)** No person shall knowingly dispose of fluorescent lights and thermostats that contain mercury in a sanitary landfill for the disposal of construction and demolition debris waste that is unlined or in any other landfill that is unlined."

SECTION 5. G.S. 130A-310.60 reads as rewritten:

"**§ 130A-310.60. (Effective July 1, 2011) Recycling required by public agencies.**

(a) Each State agency, including the General Assembly, the General Court of Justice, universities, community colleges, public schools, and political subdivisions using State funds for the construction or operation of public buildings shall establish a program in cooperation with the Department of Environment and Natural Resources and the Department of Administration for the collection and recycling of all spent fluorescent lights and thermostats that contain mercury generated in public buildings owned by each respective entity. The program shall include procedures for convenient collection, safe storage, and proper recycling of spent fluorescent lights and thermostats that contain mercury and contractual or other arrangements with buyers of the recyclable materials.

(b) Each State agency, including the General Assembly, the General Court of Justice, universities, community colleges, the Department of Public Instruction on behalf of the public schools, and political subdivisions shall submit a report on or before December 1, 2011, that documents the entity's compliance with the requirements of subsection (a) of this section to the Department of Environment and Natural Resources and the Department of Administration. The Departments shall compile the information submitted and jointly shall submit a report to the Environmental Review Commission on or before January 15, 2012, concerning the activities required by subsection (a) of this section. The information provided shall also be included in the report required by G.S. 130A-309.06(c).

(c) For purposes of this section, a political subdivision is using State funds when it receives grant funding from the State for the construction or operation of a public building."

SECTION 6. G.S. 143-214.7 reads as rewritten:

"**§ 143-214.7. Stormwater runoff rules and programs.**

(a) Policy, Purpose and Intent. – The Commission shall undertake a continuing planning process to develop and adopt a statewide plan with regard to establishing and enforcing stormwater rules for the purpose of protecting the surface waters of the State. It is the purpose and intent of this section that, in developing stormwater runoff rules and programs, the Commission may utilize stormwater rules established by the Commission to protect classified

shellfish waters, water supply watersheds, and outstanding resource waters; and to control stormwater runoff disposal in coastal counties and other nonpoint sources. Further, it is the intent of this section that the Commission phase in the stormwater rules on a priority basis for all sources of pollution to the water. The plan shall be applied evenhandedly throughout the State to address the State's water quality needs. The Commission shall continually monitor water quality in the State and shall revise stormwater runoff rules as necessary to protect water quality. As necessary, the stormwater rules shall be modified to comply with federal regulations.

(b) The Commission shall implement stormwater runoff rules and programs for point and nonpoint sources on a phased-in statewide basis. The Commission shall consider standards and best management practices for the protection of the State's water resources in the following order of priority:

(1) Classified shellfish waters.
(2) Water supply watersheds.
(3) Outstanding resource waters.
(4) High quality waters.
(5) All other waters of the State to the extent that the Commission finds control of stormwater is needed to meet the purposes of this Article.

(b1) The Commission shall develop model practices for incorporation of stormwater capture and reuse into stormwater management programs and shall make information on those model practices available to State agencies and local governments.

(c) The Commission shall develop model stormwater management programs that may be implemented by State agencies and units of local government. Model stormwater management programs shall be developed to protect existing water uses and assure compliance with water quality standards and classifications. A State agency or unit of local government may submit to the Commission for its approval a stormwater control program for implementation within its jurisdiction. To this end, State agencies may adopt rules, and units of local government are authorized to adopt ordinances and regulations necessary to establish and enforce stormwater control programs. Units of local government are authorized to create or designate agencies or subdivisions to administer and enforce the programs. Two or more units of local government are authorized to establish a joint program and to enter into any agreements that are necessary for the proper administration and enforcement of the program.

(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.

(d) The Commission shall review each stormwater management program submitted by a State agency or unit of local government and shall notify the State agency or unit of local government that submitted the program that the program has been approved, approved with

modifications, or disapproved. The Commission shall approve a program only if it finds that the standards of the program equal or exceed those of the model program adopted by the Commission pursuant to this section.

(d1) A retail merchant shall not use more than 400 square feet of impervious surface area within the portion of the merchant's premises that is designed to be used for vehicular parking for the display and sale of nursery stock, as that term is defined by the Board of Agriculture pursuant to G.S. 106-423. This subsection shall not apply to a retail merchant that either:

(1) Collects and treats stormwater on-site using a treatment system that is designed to remove at least eighty-five percent (85%) of total suspended solids. For purposes of this subdivision, a treatment system includes, but is not limited to, a filtration system or a detention system.

(2) Collects and stores stormwater for reuse on-site for irrigation or other purposes.

(3) Collects and discharges stormwater to a local or regional stormwater collection and treatment system.

(d2) Repealed by Session Laws 2008-198, s. 8(a), effective August 8, 2008.

(e) The Commission shall annually report to the Environmental Review Commission on the implementation of this section, including the status of any stormwater control programs administered by State agencies and units of local government, on or before 1 October of each year."

SECTION 7. G.S. 143-214.7A(b) reads as rewritten:

"(b) The Division of Water Quality shall clarify that stormwater is water that does not contact anything considered a feedstock, intermediate product, or final product of composting operations. The Division of Water Quality shall clarify that wastewater is leachate and water that contacts feedstocks, intermediate products, or final product, of composting operations. The clarifications shall incorporate available scientifically valid information obtained from sampling and analyses of North Carolina composting facilities and from valid representative data from other states. In addition, the Division of Water Quality shall establish threshold quantities of feedstocks, intermediate products, and final products above which water quality permitting will be required. The Division of Water Quality shall not require water quality permitting for any Type I solid waste compost facility, unless required to do so by federal law."

SECTION 8.(a) G.S. 143-135.36 is amended by adding a new subdivision to read:

"**§ 143-135.36. Definitions.**

As used in this section, the following definitions apply unless the context requires otherwise:

(1) "ASHRAE" means the American Society of Heating, Refrigerating and Air-Conditioning Engineers, Inc.

(2) "Commission" means to document and to verify throughout the construction process whether the performance of a building, a component of a building, a system of a building, or a component of a building system meets specified objectives, criteria, and agency project requirements.

(3) "Department" means the Department of Administration.

(4) "Institutions of higher education" means the constituent institutions of The University of North Carolina, the regional institutions as defined in G.S. 115D-2, and the community colleges as defined in G.S. 115D-2.

(5) "Major facility construction project" means a project to construct a building larger than 20,000 gross square feet of occupied or conditioned space, as defined in the North Carolina State Building Code adopted under Article 9 of Chapter 143 of the General Statutes. "Major facility construction project" does not include a project to construct a transmitter building or a pumping station.

(6) "Major facility renovation project" means a project to renovate a building when the cost of the project is greater than fifty percent (50%) of the insurance value of the building prior to the renovation and the renovated portion of the building is larger than 20,000 gross square feet of occupied or conditioned space, as defined in the North Carolina State Building Code. "Major facility renovation project" does not include a project to renovate a transmitter building or a pumping station. "Major facility renovation project" does not include a project to renovate a building having historic, architectural, or cultural significance under Part 4 of Article 2 of Chapter 143B of the General Statutes.

(7) "Public agency" means every State office, officer, board, department, and commission and institutions of higher education.

(8) "Weather-based irrigation controller" means an irrigation control device that utilizes local weather and landscape conditions to tailor irrigation system schedules to irrigation needs specific to site conditions."

SECTION 8.(b) G.S. 143-135.37 reads as rewritten:

"**§ 143-135.37. Energy and water use standards for public major facility construction and renovation projects; verification and reporting of energy and water use.**

(a) Program Established. – The Sustainable Energy-Efficient Buildings Program is established within the Department to be administered by the Department. This program applies to any major facility construction or renovation project of a public agency that is funded in whole or in part from an appropriation in the State capital budget or through a financing contract as defined in G.S. 142-82.

(b) Energy-Efficiency Standard. – For every major facility construction project of a public agency, the building shall be designed and constructed so that the calculated energy consumption is at least thirty percent (30%) less than the energy consumption for the same building as calculated using the energy-efficiency standard in ASHRAE 90.1-2004. For every major facility renovation project of a public agency, the renovated building shall be designed and constructed so that the calculated energy consumption is at least twenty percent (20%) less than the energy consumption for the same renovated building as calculated using the energy-efficiency standard in ASHRAE 90.1-2004. For the purposes of this subsection, any exception or special standard for a specific type of building found in ASHRAE 90.1-2004 is included in the ASHRAE 90.1-2004 standard.

(c) Indoor Potable Water Use Standard. – For every major facility construction or renovation project of a public agency, the water system shall be designed and constructed so that the calculated indoor potable water use is at least twenty percent (20%) less than the indoor potable water use for the same building as calculated using the fixture performance requirements related to plumbing under the 2006 North Carolina State Building Code.

(c1) Outdoor Potable Water Use Standard. – For every major facility construction project of a public agency, the water system shall be designed and constructed so that the calculated sum of the outdoor potable water use and the harvested stormwater use is at least fifty percent (50%) less than the sum of the outdoor potable water use and the harvested stormwater use for the same building as calculated using the performance requirements related to plumbing under the 2006 North Carolina State Building Code. Weather-based irrigation controllers shall be used for irrigation systems for major facility construction projects. For every major facility renovation project of a public agency, the Department shall determine on a project-by-project basis what reduced level of outdoor potable use or harvested stormwater use, if any, is a feasible requirement for the ~~project,~~project. ~~but the~~The Department shall not require a greater reduction than is required under this subsection for a major facility construction project. To reduce the potable outdoor water as required under this subsection, weather-based irrigation

controllers, landscape materials that are water use ~~efficient~~ efficient, and irrigation strategies that include reuse and recycling of the water may be used."

SECTION 9. G.S. 143-215.1 reads as rewritten:

"**§ 143-215.1. Control of sources of water pollution; permits required.**

(a) Activities for Which Permits Required. – ~~No~~ Except as provided in subsection (a5) of this section, no person shall do any of the following things or carry out any of the following activities unless that person has received a permit from the Commission and has complied with all conditions set forth in the permit:

(1) Make any outlets into the waters of the State.

(2) Construct or operate any sewer system, treatment works, or disposal system within the State.

(3) Alter, extend, or change the construction or method of operation of any sewer system, treatment works, or disposal system within the State.

(4) Increase the quantity of waste discharged through any outlet or processed in any treatment works or disposal system to any extent that would result in any violation of the effluent standards or limitations established for any point source or that would adversely affect the condition of the receiving waters to the extent of violating any applicable standard.

(5) Change the nature of the waste discharged through any disposal system in any way that would exceed the effluent standards or limitations established for any point source or that would adversely affect the condition of the receiving waters in relation to any applicable standards.

(6) Cause or permit any waste, directly or indirectly, to be discharged to or in any manner intermixed with the waters of the State in violation of the water quality standards applicable to the assigned classifications or in violation of any effluent standards or limitations established for any point source, unless allowed as a condition of any permit, special order or other appropriate instrument issued or entered into by the Commission under the provisions of this Article.

(7) Cause or permit any wastes for which pretreatment is required by pretreatment standards to be discharged, directly or indirectly, from a pretreatment facility to any disposal system or to alter, extend or change the construction or method of operation or increase the quantity or change the nature of the waste discharged from or processed in that facility.

(8) Enter into a contract for the construction and installation of any outlet, sewer system, treatment works, pretreatment facility or disposal system or for the alteration or extension of any such facility.

(9) Dispose of sludge resulting from the operation of a treatment works, including the removal of in-place sewage sludge from one location and its deposit at another location, consistent with the requirement of the Resource Conservation and Recovery Act and regulations promulgated pursuant thereto.

(10) Cause or permit any pollutant to enter into a defined managed area of the State's waters for the maintenance or production of harvestable freshwater, estuarine, or marine plants or animals.

(11) Cause or permit discharges regulated under G.S. 143-214.7 that result in water pollution.

(12) Construct or operate an animal waste management system, as defined in G.S. 143-215.10B, without obtaining a permit under either this Part or Part 1A of this Article.

(a1) In the event that both effluent standards or limitations and classifications and water quality standards are applicable to any point source or sources and to the waters to which they discharge, the more stringent among the standards established by the Commission shall be applicable and controlling.

(a2) No permit shall be granted for the disposal of waste in waters classified as sources of public water supply where the head of the agency that administers the public water supply program pursuant to Article 10 of Chapter 130A of the General Statutes, after review of the plans and specifications for the proposed disposal facility, determines and advises the Commission that any outlet for the disposal of waste is, or would be, sufficiently close to the intake works or proposed intake works of a public water supply as to have an adverse effect on the public health.

(a3) If the Commission denies an application for a permit, the Commission shall state in writing the reason for the denial and shall also state the Commission's estimate of the changes in the applicant's proposed activities or plans that would be required in order that the applicant may obtain a permit.

(a4) The Department shall regulate wastewater systems under rules adopted by the Commission for Public Health pursuant to Article 11 of Chapter 130A of the General Statutes except as otherwise provided in this subsection. No permit shall be required under this section for a wastewater system regulated under Article 11 of Chapter 130A of the General Statutes. The following wastewater systems shall be regulated by the Department under rules adopted by the Commission:

(1) Wastewater systems designed to discharge effluent to the land surface or surface waters.

(2) Wastewater systems designed for groundwater remediation, groundwater injection, or landfill leachate collection and disposal.

(3) Wastewater systems designed for the complete recycle or reuse of industrial process wastewater.

(a5) No permit shall be required to enter into a contract for the construction, installation, alteration, or extension of any sewer system, treatment works, or disposal system or to construct, install, alter, extend, or change the operation of any sewer system, treatment works, or disposal system within the State when the system's or work's principal function is to conduct, treat, equalize, neutralize, stabilize, recycle, or dispose of industrial waste or sewage from an industrial facility and the discharge of the industrial waste or sewage is authorized under a permit issued for the discharge of the industrial waste or sewage into the waters of the State.

...."

SECTION 10.(a) G.S. 143-215.25A(a) reads as rewritten:

"(a) Except as otherwise provided in this Part, this Part does not apply to any dam:

(1) Constructed by the United States Army Corps of Engineers, the Tennessee Valley Authority, or another agency of the United States government, when the agency designed or approved plans for the dam and supervised its construction.

(2) Constructed with financial assistance from the United States Soil Conservation Service, when that agency designed or approved plans for the dam and supervised its construction.

(3) Licensed by the Federal Energy Regulatory Commission, or for which a license application is pending with the Federal Energy Regulatory Commission.

(4) For use in connection with electric generating facilities regulated by the Nuclear Regulatory Commission.

(5) Under a single private ownership that provides protection only to land or other property under the same ownership and that does not pose a threat to human life or property below the dam.

(6) That is less than ~~15~~ 25 feet in height or that has an impoundment capacity of less than ~~10~~ 50 acre-feet, unless the Department determines that failure of the dam could result in loss of human life or significant damage to property below the dam.

(7) Constructed for the purpose of providing water for agricultural use, when a person who is licensed as a professional engineer under Chapter 89C of the General Statutes designed or approved plans for the dam and supervised its construction."

SECTION 10.(b) The exemption modified in subdivision (6) of G.S. 143-215.25A(a) and the exemption established in subdivision (7) of G.S. 143-215.25A(a), as amended by Section 10(a) of this act, shall apply retroactively to any dam that is subject to any enforcement action that has not been resolved as of June 1, 2011.

SECTION 11.1. G.S. 143-215.94B(b) reads as rewritten:

"(b) The Commercial Fund shall be used for the payment of the following costs up to an aggregate maximum of one million dollars ($1,000,000) per occurrence resulting from a discharge or release of a petroleum product from a commercial underground storage tank:

...

(8) The costs of a site investigation required by the Department for the purpose of determining whether a release from a tank system has occurred, whether or not the investigation confirms that a release has occurred. This subdivision shall not be construed to allow reimbursement for costs of investigations that are part of routine leak detection procedures required by statute or rule."

SECTION 11.2. G.S. 143-215.94B(b1) reads as rewritten:

"(b1) In the event that two or more discharges or releases at any one facility, the first of which was discovered or reported on or after 30 June 1988, result in more than one plume of soil, surface water, or groundwater contamination, the Commercial Fund shall be used for the payment of the costs of the cleanup of environmental damage as required by G.S. 143-215.94E(a) in excess of the multiple discharge amount up to the applicable aggregate maximum specified in subsections (b) and (b2) of this section. The multiple discharge amount shall be calculated as follows:

(1) Each discharge or release shall be considered separately as if it were the only discharge or release, and the cost for which the owner or operator is responsible under subdivisions (1), (2), (2a), or (3) of subsection (b) of this section, whichever are applicable, shall be determined for each discharge or release. For each discharge or release for which subdivision (4) of subsection (b) of this section is applicable, the cost for which the owner or operator is responsible, for the purpose of this subsection, shall be seventy-five thousand dollars ($75,000). For purposes of this subsection, two or more discharges or releases that result in a single plume of soil, surface water, or groundwater contamination shall be considered as a single discharge or release.

(2) The multiple discharge amount shall be the lesser of:

a. The sum of all the costs determined as set out in subdivision (1) of this subsection; or

b. The product of the highest of the costs determined as set out in subdivision (1) of this subsection multiplied by one and one-half (1½).

(3) If an owner or operator elects to cleanup a separate discharge or release for which the owner or operator is not responsible, the responsible party for the other discharge cannot be identified, and the discharges are commingled, the owner or operator shall only be responsible for those costs applicable to the discharge for which the owner or operator is actually the responsible party."

SECTION 11.3.(a) G.S. 143-215.94B is amended by adding a new subsection to read:

"(i) During each fiscal year, the Department shall use up to one million dollars ($1,000,000) of the funds in the Commercial Fund to fund necessary assessment and cleanup to be conducted by the Department of discharges or releases for which a responsible party has been identified but for which the responsible party can demonstrate that undertaking the costs of assessment and cleanup will impose a severe financial hardship. The Commission shall adopt rules to define severe financial hardship; establish criteria for assistance due to severe financial hardship pursuant to this section; and establish a process for evaluation and determinations of eligibility with respect to applications for assistance due to severe financial hardship. The rules shall provide that the determinations of eligibility shall be made by the Petroleum Underground Storage Tank Funds Council established under G.S. 143-215.94O."

SECTION 11.3.(b) G.S. 143-215.94C reads as rewritten:

"§ 143-215.94C. Commercial leaking petroleum underground storage tank cleanup fees.

...

(b) The annual operating fee shall be determined on a calendar year basis. For petroleum commercial underground storage tanks in use on 1 January and remaining in use on or after 1 December of that year, the annual operating fee due for that year shall be as specified in subsection (a) of this section. For a petroleum commercial underground storage tank that is first placed in service in any year, the annual operating fee due for that year shall be determined by multiplying one-twelfth (1/12) of the amount specified in subsection (a) of this section by the number of months remaining in the calendar year. For a petroleum commercial underground storage tank that is permanently removed from service in any year, the annual operating fee due for that year shall be determined by multiplying one-twelfth (1/12) of the amount specified in subsection (a) of this section by the number of months in the calendar year preceding the permanent removal from use. In calculating the pro rata annual operating fee for a tank that is first placed in use or permanently removed during a calendar year under the preceding two sentences, a partial month shall count as a month, except that where a tank is permanently removed and replaced by another tank, the total of the annual operating fee for the tank that is removed and the replacement tank shall not exceed the annual operating fee for the replacement tank. ~~The~~ Except as provided in this subsection, the annual operating fee shall be due and payable on the first day of the month in accordance with a staggered schedule established by the Department. The Department shall implement a staggered schedule to the end that the total amount of fees to be collected by the Department is approximately the same each quarter. A person who owns or operates more than one petroleum commercial underground storage tank may request that the fee for all tanks be due at the same time. ~~The fee for all commercial underground storage tanks located at the same facility shall be due at the same time.~~ A person ~~who owns or operates 12 or more commercial petroleum storage tanks~~ may request that the total of all fees be paid in four equal payments to be due on the first day of each calendar quarter.~~quarter, provided that the fee for all commercial underground storage tanks located at the same facility shall be due at the same time.~~

...."

SECTION 11.4. G.S. 143-215.94T reads as rewritten:

"§ 143-215.94T. Adoption and implementation of regulatory program.

...

(c) Rules adopted pursuant to subdivision (13) of subsection (a) of this section shall require secondary containment for all components of underground storage tank systems, including, but not limited to, tanks, piping, fittings, pump heads, and dispensers. Secondary containment requirements shall include standards for double wall tanks, piping, and fittings and for sump containment for pump heads and dispensers. The rules shall provide for monitoring of double wall interstices and sump containments. The rules shall apply to any underground storage tank system that is installed on or after the date on which the rules become effective and to the replacement of any component of an underground storage tank system on or after that date. This section shall not be construed to limit the right of an owner or operator to repair any existing component of an underground storage tank system. If an existing underground storage tank is replaced, the secondary containment and interstitial monitoring requirements shall apply only to the replaced underground tank. Likewise, if existing piping is replaced, the secondary containment and interstitial monitoring requirements shall apply only to the replaced piping.

(d) The Department shall allow non-tank metallic components that are unprotected from corrosion, including flex connectors and other metal fittings and connectors at the ends of piping runs, to have corrosion protection added as an alternative to replacement of these components if the component does not have visible corrosion and passes a tightness test."

SECTION 11.5. G.S. 143-215.94V(b) reads as rewritten:

"(b) The Commission shall adopt rules to establish a risk-based approach for the assessment, prioritization, and cleanup of discharges and releases from petroleum underground storage tanks. The rules shall address, at a minimum, the circumstances where site-specific information should be considered, criteria for determining acceptable cleanup levels, and the acceptable level or range of levels of risk to human health and the environment. Rules that use the distance between a source area of a confirmed discharge or release to a water supply well or a private drinking water well, as those terms are defined under G.S. 87-85, shall include a determination whether a nearby well is likely to be affected by the discharge or release as a factor in determining levels of risk."

SECTION 11.6.(a) Notwithstanding 15A NCAC 02N .0304(a)(5) (Implementation Schedule for Performance Standards for New UST Systems and Upgrading Requirements for Existing UST Systems Located in Areas Defined in Rule .0301(d)), all UST systems installed after January 1, 1991, shall not be required to provide secondary containment until January 1, 2020.

SECTION 11.6.(b) Notwithstanding 15A NCAC 02N .0304(a)(5) (Implementation Schedule for Performance Standards for New UST Systems and Upgrading Requirements for Existing UST Systems Located in Areas Defined in Rule .0301(d)), the Commission shall establish a process for the grant of variances from the setbacks required for UST systems from certain public water supply wells, particularly those that serve only a single facility which are not community water systems, if the Commission finds facts to demonstrate that such variance will not endanger human health and welfare or groundwater.

SECTION 11.6.(c) No later than January 1, 2014, the Environmental Management Commission shall adopt rules consistent with the provisions of Section 11.6(a) and Section 11.6(b) of this act. Notwithstanding G.S. 150B-19(4), the rules adopted by the Commission pursuant to this section shall be substantively identical to the provisions of Section 11.6(a) and Section 11.6(b) of this act.

SECTION 11.7.(a) Notwithstanding subsection (a) of 15A NCAC 02N .0903 (Underground Storage Tanks: Tanks), from the effective date of this act the Department of Environment and Natural Resources shall not prohibit the use of tanks that are constructed of steel and cathodically protected as provided in 40 Code of Federal Regulations § 280.20(a)(2) (July 1, 2010 Edition) in order to meet the external corrosion protection standards of that rule.

SECTION 11.7.(b) No later than January 1, 2014, the Environmental Management Commission shall adopt rules consistent with the provisions of Section 11.7(a) of this act. Notwithstanding G.S. 150B-19(4), the rules adopted by the Commission pursuant to this section shall be substantively identical to the provisions of Section 11.7(a) of this act.

SECTION 11.8. Sections 11.1 through 11.8 are effective when they become law and apply to discharges or releases reported on or after that date, except that Section 11.2 applies to discharges or releases reported on or after January 1, 2009.

SECTION 12.(a) G.S. 143-350 reads as rewritten:

"**§ 143-350. Definitions.**

As used in this Article:

...

(3a) "Gray water" means water that is discharged as waste from bathtubs, showers, wash basins, and clothes washers. "Gray water" does not include water that is discharged from toilets or kitchen sinks.

(3b) "Gray water system" means a water reuse system that is contained within a single family residence or multiunit residential or commercial building that filters gray water or captured rain water and reuses it for nonpotable purposes such as toilet flushing and irrigation.

...."

SECTION 12.(b) G.S. 143-355.5 reads as rewritten:

"**§ 143-355.5. Water reuse; policy; rule making.**

(a) Water Reuse Policy. – It is the public policy of the State that the reuse of treated wastewater or reclaimed water and the use of gray water or captured rain water is critical to meeting the existing and future water supply needs of the State. The General Assembly finds that reclaimed water systems permitted and operated under G.S. 143-215.1(d2) in an approved wastewater reuse program can provide water for many beneficial purposes in a way that is both environmentally acceptable and protective of public health. This finding includes and applies to conjunctive facilities that require the relocation of a discharge from one receiving stream to another under all of the following conditions:

(1) The relocation is necessary to create an approved comprehensive wastewater reuse program.

(2) The reuse program provides significant reuse benefits.

(3) The relocated discharge will comply with all applicable water quality standards; will not result in degradation of water quality in the receiving waters; will not contribute to water quality impairment in the receiving watershed; and will result in net benefits to water quality, such as the elimination of a wastewater discharge in a nutrient sensitive river basin.

(b) Water Reuse Rule Making. – The Commission shall encourage and promote safe and beneficial reuse of treated wastewater as an alternative to surface water discharge. The Commission shall adopt rules to:

(1) Identify acceptable uses of reclaimed water, including toilet flushing, fire protection, decorative water features, and landscape irrigation.

(2) Facilitate the permitting of reclaimed water systems.

(3) Establish standards for reclaimed water systems that are adequate to prevent the direct distribution of reclaimed water as potable water.

(c) Gray Water Rule Making. – The Commission shall encourage and promote the safe and beneficial use of gray water. The Commission shall adopt rules to:

(1) Identify acceptable uses of gray water, including toilet flushing, fire protection, decorative water features, and landscape irrigation.

(2) Facilitate the permitting of gray water systems.

(3) Establish standards, in coordination with the Commission for Public Health, for gray water systems that protect public health and safety and the environment and reduce the use of potable water within individual structures.

(d) The Department shall develop policies and procedures to promote the voluntary adoption and installation of gray water systems."

SECTION 12.(c) G.S. 130A-335(b) reads as rewritten:

"(b) All wastewater systems shall be regulated by the Department under rules adopted by the Commission except for the following wastewater systems that shall be regulated by the Department under rules adopted by the Environmental Management Commission:

(1) Wastewater collection, treatment, and disposal systems designed to discharge effluent to the land surface or surface waters.

(2) Wastewater systems designed for groundwater remediation, groundwater injection, or landfill leachate collection and disposal.

(3) Wastewater systems designed for the complete recycle or reuse of industrial process wastewater.

(4) Gray water systems as defined in G.S. 143-350."

SECTION 12.(d) Article 6 of Chapter 153A of the General Statutes is amended by adding a new section to read:

"**§ 153A-145. Limitations on regulating cisterns and rain barrels.**

No county ordinance may prohibit or have the effect of prohibiting the installation and maintenance of cisterns and rain barrel collection systems used to collect water for irrigation purposes. A county may regulate the installation and maintenance of those cisterns and rain barrel collection systems for the purpose of protecting the public health and safety and for the purpose of preventing them from becoming a public nuisance."

SECTION 12.(e) Article 8 of Chapter 160A of the General Statutes is amended by adding a new section to read:

"**§ 160A-202. Limitations on regulating cisterns and rain barrels.**

No city ordinance may prohibit or have the effect of prohibiting the installation and maintenance of cisterns and rain barrel collection systems used to collect water for irrigation purposes. A city may regulate the installation and maintenance of those cisterns and rain barrel collection systems for the purpose of protecting the public health and safety and for the purpose of preventing them from becoming a public nuisance."

SECTION 13. Section 5 of S.L. 2007-438, as amended by Section 3(b) of S.L. 2009-484 and Section 19 of S.L. 2010-180, reads as rewritten:

"**SECTION 5.** This act becomes effective 1 September 2007 and applies to all nutrient offset payments, including those set out in 15A NCAC 2B .0240, as adopted by the Environmental Management Commission on 12 January 2006. The fee schedule set out in Section 1 of this act expires ~~1 September 2011.~~ when amendments to 15A NCAC 02B .0240 and .0274 become effective."

SECTION 14.(a) Section 2(b) of S.L. 2009-216 reads as rewritten:

"**SECTION 2.(b)** Implementation. – Notwithstanding sub-subdivision (c) of subdivision (6) of Wastewater Discharge Rule 15A NCAC 02B .0270, each existing discharger with a permitted flow greater than or equal to 0.1 million gallons per day (MGD) shall limit its total nitrogen discharge to its active individual discharge allocation as defined or modified pursuant to Wastewater Discharge Rule 15A NCAC 02B .0270 no later than calendar year ~~2016.~~2020."

SECTION 14.(b) Section 3(d) of S.L. 2009-216 reads as rewritten:

"**SECTION 3.(d)** Control of Nutrient Loading From Existing Development. – The Department shall require implementation of reasonable nutrient load reduction measures for existing development in each subwatershed of the Jordan Reservoir, as provided in this act. The Department shall determine whether nutrient load reduction measures for existing development

are necessary in each subwatershed of Jordan Reservoir and require implementation of reasonable nutrient reduction measures in accordance with an adaptive management program as follows:

...

(2) Stage 2 Adaptive Management Program to Control Nutrient Loading From Existing Development.

a. If the March 1, 2014 monitoring report or any subsequent monitoring report for the Upper New Hope Creek Arm of Jordan Reservoir required under Section 3(c) of this act shows that nutrient-related water quality standards are not being achieved, a municipality or county located in whole or in part in the subwatershed of that arm of Jordan Reservoir shall develop and implement a Stage 2 adaptive management program to control nutrient loading from existing development within the subwatershed, as provided in this act. If the March 1, ~~2017~~ 2020 monitoring report or any subsequent monitoring report for the Haw River Arm or the Lower New Hope Creek Arm of Jordan Reservoir required under Section 3(c) of this act shows that nutrient-related water quality standards are not being achieved, a municipality or county located in whole or in part in the subwatershed of that arm of Jordan Reservoir shall develop and implement a Stage 2 adaptive management program to control nutrient loading from existing development within the subwatershed, as provided in this act. The Department shall defer development and implementation of Stage 2 adaptive management programs to control nutrient loading from existing development required in a subwatershed by this subdivision if it determines that additional reductions in nutrient loading from existing development in that subwatershed will not be necessary to achieve nutrient-related water quality standards. In making this determination, the Department shall consider the anticipated effect of measures implemented or scheduled to be implemented to reduce nutrient loading from sources in the subwatershed other than existing development. If any subsequent monitoring report for an arm of Jordan Reservoir required under Section 3(c) of this act shows that nutrient-related water quality standards have not been achieved, the Department shall notify the municipalities and counties located in whole or in part in the subwatershed of that arm of Jordan Reservoir and the municipalities and counties shall develop and implement a Stage 2 adaptive management program as provided in this subdivision.

...."

SECTION 15.(a) Notwithstanding G.S. 150B-19, as amended by S.L. 2011-13, the Commission for Public Health may adopt rules to incorporate all or part of the United States Food and Drug Administration Food Code 2009 and to require that employees of establishments regulated under subsections (a) and (a2) of G.S. 130A-248 be certified in food protection in accordance with the United States Food and Drug Administration Food Code 2009.

SECTION 15.(b) G.S. 130A-248 is amended by adding a new subsection to read:

"(a5) The Department of Health and Human Services may grant a variance from rules adopted pursuant to this section in accordance with the United States Food and Drug Administration Food Code 2009 if the Department determines that the issuance of the variance will not result in a health hazard or nuisance condition."

SECTION 16.1. Variance from Setbacks for Public Water Supply Wells. –

(a) The Department of Environment and Natural Resources may grant a variance from the minimum horizontal separation distances for public water supply wells set out in 15A NCAC 18C .0203(2)(d) and 15A NCAC 18C .0203(2)(e) upon finding that:

(1) The well supplies water to a noncommunity water system as defined in G.S. 130A-313(10)(b) or supplies water to a business or institution, such as a school, that has become a noncommunity water system through an increase in the number of people served by the well.

(2) It is impracticable, taking into consideration feasibility and cost, for the public water system to comply with the minimum horizontal separation distance set out in the applicable sub-subpart of 15A NCAC 18C .0203(2).

(3) There is no reasonable alternative source of drinking water available to the public water supply system.

(4) The granting of the variance will not result in an unreasonable risk to public health.

(b) A variance from the minimum horizontal separation distances set out in 15A NCAC 18C .0203(2)(d) and 15A NCAC 18C .0203(2)(e) shall require that the noncommunity public water supply well meet the following requirements:

(1) The well shall comply with the minimum horizontal separation distances set out in 15A NCAC 18C .0203(2)(d) and 15A NCAC 18C .0203(2)(e) to the maximum extent practicable.

(2) The well shall meet a minimum horizontal separation distance of 25 feet from a building, mobile home, or other permanent structure that is not used primarily to house animals.

(3) The well shall meet a minimum horizontal separation distance of 100 feet from any animal house or feedlot and from cultivated areas to which chemicals are applied.

(4) The well shall meet a minimum horizontal separation distance of 50 feet from surface water.

(5) The well shall comply with all other requirements for public well water supplies set out in 15A NCAC 18C .0203.

SECTION 16.2. Rule Making. – The Commission for Public Health shall adopt rules that are substantively identical to the provisions of Section 16.1. 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 16.3. Effective Date. – Section 16.1 of this act expires when permanent rules to replace Section 16.1 have become effective as provided by Section 16.2 of this act.

SECTION 17. Part 1 of Article 21 of Chapter 143 of the General Statutes is amended by adding a new section to read:

"**§ 143-214.18. Exemption to riparian buffer requirements for certain private properties in the Neuse River and Tar-Pamlico River Basins.**

(a) Absent a requirement of federal law or an imminent threat to public health or safety, the temporary rules adopted July 22, 1997, January 22, 1998, April 22, 1998, and June 22, 1999, and the permanent rule adopted and effective August 1, 2000, as 15A NCAC 02B .0233, regarding the protection and maintenance of existing riparian buffers in the Neuse River and Tar-Pamlico River Basins shall not apply to any tract of land that meets all of the following criteria:

(1) The property is private property.

(2) Prior to August 1, 2000, the property was private property and was platted and recorded in the register of deeds in the county where the property is located.

(3) With the exception of 15A NCAC 02B .0233, the use of the property complies with the rules and other laws regulating and applicable to that property prior to August 1, 2000.

(b) If a property described in subsection (a) of this section is converted to a use that does not comply with subdivisions (1) and (3) of subsection (a) of this section, then 15A NCAC 02B .0233 shall apply."

SECTION 18.(a) Definitions. – The definitions set out in G.S. 106-202.12 and 02 NCAC 48F .0305 (Collection and Sale of Ginseng Rule) apply to this section and its implementation.

SECTION 18.(b) Collection and Sale of Ginseng Rule 02 NCAC 48F .0305. – Until the effective date of the revised permanent rule that the Board is required to adopt pursuant to Section 18(d) of this act, the Board and the Department shall implement Collection and Sale of Ginseng Rule 02 NCAC 48F .0305, as provided in Section 18(c) of this act.

SECTION 18.(c) Implementation. – Notwithstanding subdivision (6) of subsection (d) of Collection and Sale of Ginseng Rule 02 NCAC 48F .0305, there shall be no charge for an export certification.

SECTION 18.(d) Additional Rule-Making Authority. – The Board shall adopt a rule to replace Collection and Sale of Ginseng Rule 02 NCAC 48F .0305. Notwithstanding G.S. 150B-19(4), the rule adopted by the Board pursuant to this section shall be substantively identical to the provisions of Section 18(c) of this act. Rules adopted pursuant to this section are not subject to the publication of notice of text or public hearing requirements of G.S. 150B-21.2. 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 19. Section 6 of S.L. 2007-523 reads as rewritten:

"**SECTION 6.** Effective Dates. – Section 3 of this act becomes effective 1 July 2007. All other sections of this act become effective 1 September 2007. Section 4 of this act expires 1 September ~~2017.~~2011."

SECTION 20. The Department of Environment and Natural Resources shall study the stormwater management requirements for airports in the State. The Department shall specifically consider whether the requirements might be amended or implemented in a different way to achieve the same level of water quality protection while reducing the cost and other regulatory burdens associated with compliance with the requirements. In conducting this study, the Department shall consult with representatives of the airports in the State. The Department shall report its findings and recommendations to the Environmental Review Commission no later than February 1, 2012.

SECTION 21. In order to ensure the ongoing delivery of services by the nonpoint source pollution control programs of the Division of Forest Resources and the Division of Soil and Water Conservation, the Division of Water Quality in the Department of Environment and Natural Resources shall transfer Clean Water Act (CWA) Section 319 Nonpoint Source Management Program grant funds to the Division of Forest Resources and Division of Soil and Water Conservation in an amount that is no less than the average annual amount of funding received by each of those two Divisions over the two most recent fiscal bienniums. In the event that the level of Section 319 grants funds received by the Department of Environment and Natural Resources by the United States Environmental Protection Agency is increased or decreased in any funding cycle, the level of funding received by the Division of Forest Resources and the Division of Soil and Water Conservation shall be adjusted proportionally.

SECTION 22. G.S. 130A-290(a)(35) reads as rewritten:

"(35) "Solid waste" has the same meaning as in 40 Code of Federal Regulations § 261.2 (July 1, 2010 Edition).

~~means any hazardous or nonhazardous garbage, refuse or sludge from a waste treatment plant, water supply treatment plant or air pollution control facility, domestic sewage and sludges generated by the treatment thereof in sanitary sewage collection, treatment and disposal systems, and other material that is either discarded or is being accumulated, stored or treated prior to being discarded, or has served its original intended use and is generally discarded, including solid, liquid, semisolid or contained gaseous material resulting from industrial, institutional, commercial and agricultural operations, and from community activities. The term does not include:~~

~~a. Fecal waste from fowls and animals other than humans.~~

~~b. Solid or dissolved material in:~~

~~1. Domestic sewage and sludges generated by treatment thereof in sanitary sewage collection, treatment and disposal systems which are designed to discharge effluents to the surface waters.~~

~~2. Irrigation return flows.~~

~~3. Wastewater discharges and the sludges incidental to and generated by treatment which are point sources subject to permits granted under Section 402 of the Water Pollution Control Act, as amended (P.L. 92-500), and permits granted under G.S. 143-215.1 by the Environmental Management Commission. However, any sludges that meet the criteria for hazardous waste under RCRA shall also be a solid waste for the purposes of this Article.~~

~~c. Oils and other liquid hydrocarbons controlled under Article 21A of Chapter 143 of the General Statutes. However, any oils or other liquid hydrocarbons that meet the criteria for hazardous waste under RCRA shall also be a solid waste for the purposes of this Article.~~

~~d. Any source, special nuclear or byproduct material as defined by the Atomic Energy Act of 1954, as amended (42 U.S.C. § 2011).~~

~~e. Mining refuse covered by the North Carolina Mining Act, G.S. 74-46 through 74-68 and regulated by the North Carolina Mining Commission (as defined under G.S. 143B-290). However, any specific mining waste that meets the criteria for hazardous waste under RCRA shall also be a solid waste for the purposes of this Article.~~

~~f. Recovered material.~~"

SECTION 23. Except as otherwise provided, this act is effective when it becomes law. Section 8(b) of this act applies to every major facility construction project, as defined in G.S. 143-135.36, and every major facility renovation project, as defined in G.S. 143-135.36, of a public agency, as defined in G.S. 143-135.36, that has not entered the schematic design phase prior to the effective date of this act.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

H D

HOUSE BILL 119
Committee Substitute Favorable 6/2/11
PROPOSED SENATE COMMITTEE SUBSTITUTE H119-CSSB-45 [v.27]

6/13/2011 9:57:09 PM

Short Title: Amend Environmental Laws 2011. (Public)

Sponsors:

Referred to:

February 17, 2011

A BILL TO BE ENTITLED

AN ACT TO AMEND CERTAIN ENVIRONMENTAL AND NATURAL RESOURCES LAWS TO (1) EXEMPT CERTAIN NEW RENEWABLE ENERGY FACILITIES FROM BEST AVAILABLE CONTROL TECHNOLOGY (BACT) REQUIREMENTS; (2) REDUCE CERTAIN OPEN BURNING SETBACK REQUIREMENTS AND PROVIDE THAT MINIMAL, UNINTENTIONAL NON-COMPLIANCE WITH AN OPEN BURNING SETBACK IS NOT A VIOLATION; (3) PROVIDE THAT DRAFT EROSION AND SEDIMENTATION CONTROL PLANS FOR THE CONSTRUCTION OF CERTAIN UTILITY LINES MAY BE SUBMITTED WITHOUT A LANDOWNER'S WRITTEN CONSENT; (4) CLARIFY THE PROHIBITION ON DISPOSAL IN LANDFILLS OR BY INCINERATION OF BEVERAGE CONTAINERS THAT ARE REQUIRED TO BE RECYCLED BY CERTAIN ABC PERMITTEES; (5) CLARIFY THE USE OF STATE FUNDS IN THE CONTEXT OF THE REMOVAL OF MERCURY CONTAINING PRODUCTS FROM PUBLIC BUILDINGS; (6) DIRECT THE ENVIRONMENTAL MANAGEMENT COMMISSION TO DEVELOP MODEL STORMWATER CAPTURE AND REUSE PRACTICES; (7) PROHIBIT THE DIVISION OF WATER QUALITY OF THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES FROM REQUIRING A WATER QUALITY PERMIT FOR A TYPE I SOLID WASTE COMPOST FACILITY; (8) AMEND THE WATER USE STANDARD FOR PUBLIC MAJOR FACILITY CONSTRUCTION AND RENOVATION PROJECTS TO REQUIRE THE INSTALLATION OF WEATHER-BASED IRRIGATION CONTROLLERS; (9) PROVIDE THAT NO PERMIT IS REQUIRED FOR THE CONSTRUCTION OR ALTERATION OF A SEWER SYSTEM OR TREATMENT WORKS THAT ALREADY HAS A DISCHARGE PERMIT; (10) EXEMPT SMALL DAMS AND AGRICULTURAL POND DAMS FROM THE DAM SAFETY ACT; (11) MAKE VARIOUS CHANGES TO THE LAWS GOVERNING THE STATE'S UNDERGROUND STORAGE TANK PROGRAM AND PETROLEUM DISCHARGES; (12) PROMOTE THE USE OF GRAY WATER; (13) CLARIFY THAT NUTRIENT OFFSET PAYMENTS SHALL REFLECT ACTUAL COSTS AS ADOPTED BY THE ENVIRONMENTAL MANAGEMENT COMMISSION; (14) DELAY IMPLEMENTATION OF CERTAIN JORDAN LAKE RULE REQUIREMENTS; (15) AUTHORIZE THE COMMISSION FOR PUBLIC HEALTH TO

ADOPT RULES TO INCORPORATE THE FEDERAL FOOD CODE; (16) ESTABLISH A VARIANCE PROCESS FOR CERTAIN WATER SUPPLY WELL SETBACK REQUIREMENTS; (17) GRANDFATHER CERTAIN DEVELOPMENT UNDER THE NEUSE AND TAR-PAM RIVER BASIN BUFFER REQUIREMENTS; (18) PROVIDE THAT A GINSENG EXPORT CERTIFICATE MAY BE OBTAINED FREE OF CHARGE; (19) PROVIDE FOR AN EARLY SUNSET OF THE METHANE CAPTURE PILOT PROGRAM; (20) DIRECT THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES TO STUDY STORMWATER MANAGEMENT REQUIREMENTS FOR AIRPORTS IN THE STATE; AND (21) DIRECT CERTAIN TRANSFERS OF FUNDS FOR NONPOINT SOURCE POLLUTION CONTROL PROGRAMS; AND (22) CONFORM THE STATUTORY DEFINITION OF "SOLID WASTE" TO FEDERAL LAW.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 62-133.8(g) reads as rewritten:

"(g) Control of Emissions. – As used in this subsection, Best Available Control Technology (BACT) means an emissions limitation based on the maximum degree a reduction in the emission of air pollutants that is achievable for a facility, taking into account energy, environmental, and economic impacts and other costs. A biomass combustion process at any new renewable energy facility that delivers electric power to an electric power supplier shall meet BACT. The Environmental Management Commission shall determine on a case-by-case basis the BACT for a facility that would not otherwise be required to comply with BACT pursuant to the Prevention of Significant Deterioration (PSD) emissions program. The Environmental Management Commission may adopt rules to implement this subsection. In adopting rules, the Environmental Management Commission shall take into account cumulative and secondary impacts associated with the concentration of biomass facilities in close proximity to one another. In adopting rules the Environmental Management Commission shall provide for the manner in which a facility that would not otherwise be required to comply with BACT pursuant to the PSD emissions programs shall meet the BACT requirement. This subsection shall not apply to a facility that qualifies as a new renewable energy facility under sub-subdivision b. of subdivision (5) of subsection (a) G.S. 62-133.8."

SECTION 2.(a) Definitions. – The definitions set out in G.S. 143-212, G.S. 143-213, and 15A NCAC 02D .1902 (Definitions) apply to this section and its implementation.

SECTION 2.(b) 15A NCAC 02D .1903 (Open Burning Without An Air Quality Permit). – Until the effective date of the revised permanent rule that the Commission is required to adopt pursuant to Section 2.(d) of this act, the Commission, the Department, and any other political subdivision of the State that implements 15A NCAC 02D .1903 (Open Burning Without An Air Quality Permit) shall implement the rule, as provided in Section 2.(c) of this act.

SECTION 2.(c) Implementation. – Notwithstanding sub-subdivision (B) subdivision (2) of subsection (b) of 15A NCAC 02D .1903 (Open Burning Without An Air Quality Permit), open burning for land clearing or right-of-way maintenance is permissible without an air quality permit if the location of the burning is at least 500 feet from any dwelling, group of dwellings, or commercial or institutional establishment, or other occupied structure not located on the property on which the burning is conducted. The regional office supervisor may grant exceptions to the setback requirements if either of the following conditions is met:

(1) A signed, written statement waiving objections to the open burning associated with the land clearing operation is obtained and submitted to, and the exception granted by, the regional office supervisor before the burning

begins from a resident or an owner of each dwelling, commercial or institutional establishment, or other occupied structure within 500 feet of the open burning site. In the case of a lease or rental agreement, the lessee or renter shall be the person from whom permission shall be gained prior to any burning.

(2) An air curtain burner that complies with 15A NCAC 02D .1904 (Air Curtain Burners), as provided in this section, is utilized at the open burning site.

Factors that the regional supervisor shall consider in deciding to grant the exception include all the persons who need to sign the statement waiving the objection have signed it, the location of the burn, and the type, amount, and nature of the combustible substances. The regional supervisor shall not grant a waiver if a college, school, licensed day care, hospital, licensed rest home, or other similar institution is less than 500 feet from the proposed burn site when such institution is occupied.

SECTION 2.(d) Additional Rule-Making Authority. – The Commission shall adopt a rule to amend 15A NCAC 02D .1903 (Open Burning Without An Air Quality Permit). Notwithstanding G.S. 150B-19(4), the rule adopted by the Commission pursuant to this section shall be substantively identical to the provisions of Section 2.(c) of this act. Rules adopted pursuant to this section are not subject to the publication of notice of text or public hearing requirements of G.S. 150B-21.2. 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 2.(e) 15A NCAC 02D .1904 (Air Curtain Burners). – Until the effective date of the revised permanent rule that the Commission is required to adopt pursuant to Section 2.(g) of this act, the Commission, the Department, and any other political subdivision of the State that implements 15A NCAC 02D .1904 (Air Curtain Burners) shall implement the rule, as provided in Section 2.(f) of this act.

SECTION 2.(f) Implementation. – Notwithstanding subdivision (12) of subsection (b) of 15A NCAC 02D .1904 (Air Curtain Burners), the location of the air curtain burning shall be at least 300 feet from any dwelling, group of dwellings, or commercial or institutional establishment, or other occupied structure not located on the property on which the burning is conducted. The regional office supervisor may grant exceptions to the setback requirements if a signed, written statement waiving objections to the air curtain burning is obtained from a resident or an owner of each dwelling, commercial or institutional establishment, or other occupied structure within 300 feet of the burning site. In case of a lease or rental agreement, the lessee or renter, and the property owner shall sign the statement waiving objections to the burning. The statement shall be submitted to and approved by the regional office supervisor before initiation of the burn. Factors that the regional supervisor shall consider in deciding to grant the exception include all the persons who need to sign the statement waiving the objection have signed it; the location of the burn; and the type, amount, and nature of the combustible substances.

SECTION 2.(g) Additional Rule-Making Authority. – The Commission shall adopt a rule to amend 15A NCAC 02D .1904 (Air Curtain Burners). Notwithstanding G.S. 150B-19(4), the rule adopted by the Commission pursuant to this section shall be substantively identical to the provisions of Section 2.(f) of this act. Rules adopted pursuant to this section are not subject to the publication of notice of text or public hearing requirements of G.S. 150B-21.2. 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 2.(h) G.S. 113-60.29 reads as rewritten:

"**§ 113-60.29. Penalties.**

Any person violating the provisions of this Article or of any permit issued under the authority of this Article shall be guilty of a Class 3 misdemeanor. It is not a violation of this Article or any permit issued under the authority of this Article if a person unintentionally fails to comply with a setback requirement so long as the difference between the required setback and the actual setback is no more than five percent of the required setback. The penalties imposed by this section shall be separate and apart and not in lieu of any civil or criminal penalties which may be imposed by G.S. 143-215.114A or G.S. 143-215.114B. The penalties imposed are also in addition to any liability the violator incurs as a result of actions taken by the Department under G.S. 113-60.28."

SECTION 3. G.S. 113A-54.1 reads as rewritten:

"**§ 113A-54.1. Approval of erosion control plans.**

(a) A draft erosion and sedimentation control plan must contain the applicant's address and, if the applicant is not a resident of North Carolina, designate a North Carolina agent for the purpose of receiving notice from the Commission or the Secretary of compliance or noncompliance with the plan, this Article, or any rules adopted pursuant to this Article. ~~If~~ Except as provided in subsection (a1) of this section, if the applicant is not the owner of the land to be disturbed, the draft erosion and sedimentation control plan must include the owner's written consent for the applicant to submit a draft erosion and sedimentation control plan and to conduct the anticipated land-disturbing activity. The Commission shall approve, approve with modifications, or disapprove a draft erosion and sedimentation control plan for those land-disturbing activities for which prior plan approval is required within 30 days of receipt. The Commission shall condition approval of a draft erosion and sedimentation control plan upon the applicant's compliance with federal and State water quality laws, regulations, and rules. Failure to approve, approve with modifications, or disapprove a completed draft erosion and sedimentation control plan within 30 days of receipt shall be deemed approval of the plan. If the Commission disapproves a draft erosion and sedimentation control plan or a revised erosion and sedimentation control plan, it must state in writing the specific reasons that the plan was disapproved. Failure to approve, approve with modifications, or disapprove a revised erosion and sedimentation control plan within 15 days of receipt shall be deemed approval of the plan. The Commission may establish an expiration date for erosion and sedimentation control plans approved under this Article.

(a1) If the applicant is not the owner of the land to be disturbed and the anticipated land-disturbing activity involves the construction of utility lines for the provision of water, sewer, gas, telecommunications, or electrical service, the draft erosion and sedimentation control plan may be submitted without the written consent of the owner of the land, so long as the owner of the land has been provided prior notice of the project.

...."

SECTION 4. G.S. 130A-309.10 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 on 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) Beverage containers that are required to be recycled under G.S. 18B-1006.1.~~
(10) Motor vehicle oil filters.
(11) 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 or pesticides.
(12) Wooden pallets, except that wooden pallets may be disposed of in a landfill that is permitted to only accept construction and demolition debris.
(13) Oyster shells.
(14) **(Effective July 1, 2011)** Discarded computer equipment, as defined in G.S. 130A-309.131.
(15) **(Effective July 1, 2011)** Discarded televisions, as defined in G.S. 130A-309.131.

(f1) No person shall knowingly dispose of the following solid wastes by incineration in an incinerator for which a permit is required under this Article:
(1) Antifreeze (ethylene glycol) used solely in motor vehicles.
(2) Aluminum cans.
(3) Repealed by Session Laws 1995 (Regular Session, 1996), c. 594, s. 17.
(4) White goods.
(5) Lead-acid batteries, as provided in G.S. 130A-309.70.
~~(6) Beverage containers that are required to be recycled under G.S. 18B-1006.1.~~
(7) **(Effective July 1, 2011)** Discarded computer equipment, as defined in G.S. 130A-309.131.
(8) **(Effective July 1, 2011)** Discarded televisions, as defined in G.S. 130A-309.131.

(f2) ~~Subsection~~ Subsections (f1) and (f3) of this section shall not apply to solid waste incinerated in an incinerator solely owned and operated by the generator of the solid waste. Subsection (f1) of this section shall not apply to antifreeze (ethylene glycol) that cannot be recycled or reclaimed to make it usable as antifreeze in a motor vehicle.

(f3) Holders of on-premises malt beverage permits, on-premises unfortified wine permits, on-premises fortified wine permits, and mixed beverages permits shall not knowingly dispose of beverage containers that are required to be recycled under G.S. 18B-1006.1 in landfills or by incineration in an incinerator for which a permit is required under this Article.

(g) Repealed by Session Laws 1995 (Regular Session, 1996), c. 594, s. 17.

(h) The accidental or occasional disposal of small amounts of prohibited solid waste by landfill shall not be construed as a violation of ~~subsection~~ subsection (f) or (f3) of this section.

(i) The accidental or occasional disposal of small amounts of prohibited solid waste by incineration shall not be construed as a violation of ~~subsection~~ subsection (f1) or (f3) of this section if the Department has approved a plan for the incinerator as provided in subsection (j) of this section or if the incinerator is exempt from subsection (j) of this section.

(j) The Department may issue a permit pursuant to this Article for an incinerator that is subject to subsection (f1) of this section only if the applicant for the permit has a plan approved by the Department pursuant to this subsection. The applicant shall file the plan at the time of

the application for the permit. The Department shall approve a plan only if it complies with the requirements of this subsection. The plan shall provide for the implementation of a program to prevent the incineration of the solid waste listed in ~~subsection~~ subsections (f1) and (f3) of this section. The program shall include the random visual inspection prior to incineration of at least ten percent (10%) of the solid waste to be incinerated. The program shall also provide for the retention of the records of the random visual inspections and the training of personnel to recognize the solid waste listed in ~~subsection~~ subsections (f1) and (f3) of this section. If a random visual inspection discovers solid waste that may not be incinerated pursuant to ~~subsection~~ subsections (f1) and (f3) of this section, the program shall provide that the operator of the incinerator shall dispose of the solid waste in accordance with applicable federal and State laws, regulations, and rules. This subsection does not apply to an incinerator that disposes only of medical waste.

(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) and (12) of subsection (f) of this section and subsection (f3) of this section in a landfill based on a showing that prohibiting the disposal of the material would constitute an economic hardship.

(l) Oyster shells that are delivered to a landfill shall be stored at the landfill for at least 90 days or until they are removed for recycling. If oyster shells that are stored at a landfill are not removed for recycling within 90 days of delivery to the landfill, then, notwithstanding subdivision (13) of subsection (f) of this section, the oyster shells may be disposed of in the landfill.

(m) **(Effective July 1, 2011)** No person shall knowingly dispose of fluorescent lights and thermostats that contain mercury in a sanitary landfill for the disposal of construction and demolition debris waste that is unlined or in any other landfill that is unlined."

SECTION 5. G.S. 130A-310.60 reads as rewritten:

"**§ 130A-310.60. (Effective July 1, 2011) Recycling required by public agencies.**

(a) Each State agency, including the General Assembly, the General Court of Justice, universities, community colleges, public schools, and political subdivisions using State funds for the construction or operation of public buildings shall establish a program in cooperation with the Department of Environment and Natural Resources and the Department of Administration for the collection and recycling of all spent fluorescent lights and thermostats that contain mercury generated in public buildings owned by each respective entity. The program shall include procedures for convenient collection, safe storage, and proper recycling of spent fluorescent lights and thermostats that contain mercury and contractual or other arrangements with buyers of the recyclable materials.

(b) Each State agency, including the General Assembly, the General Court of Justice, universities, community colleges, the Department of Public Instruction on behalf of the public schools, and political subdivisions shall submit a report on or before December 1, 2011, that documents the entity's compliance with the requirements of subsection (a) of this section to the Department of Environment and Natural Resources and the Department of Administration. The Departments shall compile the information submitted and jointly shall submit a report to the Environmental Review Commission on or before January 15, 2012, concerning the activities required by subsection (a) of this section. The information provided shall also be included in the report required by G.S. 130A-309.06(c).

(c) For purposes of this section, a political subdivision is using State funds when it receives grant funding from the State for the construction or operation of a public building."

SECTION 6. G.S. 143-214.7 reads as rewritten:

"**§ 143-214.7. Stormwater runoff rules and programs.**

(a) Policy, Purpose and Intent. – The Commission shall undertake a continuing planning process to develop and adopt a statewide plan with regard to establishing and

enforcing stormwater rules for the purpose of protecting the surface waters of the State. It is the purpose and intent of this section that, in developing stormwater runoff rules and programs, the Commission may utilize stormwater rules established by the Commission to protect classified shellfish waters, water supply watersheds, and outstanding resource waters; and to control stormwater runoff disposal in coastal counties and other nonpoint sources. Further, it is the intent of this section that the Commission phase in the stormwater rules on a priority basis for all sources of pollution to the water. The plan shall be applied evenhandedly throughout the State to address the State's water quality needs. The Commission shall continually monitor water quality in the State and shall revise stormwater runoff rules as necessary to protect water quality. As necessary, the stormwater rules shall be modified to comply with federal regulations.

(b) The Commission shall implement stormwater runoff rules and programs for point and nonpoint sources on a phased-in statewide basis. The Commission shall consider standards and best management practices for the protection of the State's water resources in the following order of priority:

(1) Classified shellfish waters.
(2) Water supply watersheds.
(3) Outstanding resource waters.
(4) High quality waters.
(5) All other waters of the State to the extent that the Commission finds control of stormwater is needed to meet the purposes of this Article.

(b1) The Commission shall develop model practices for incorporation of stormwater capture and reuse into stormwater management programs and shall make information on those model practices available to State agencies and local governments.

(c) The Commission shall develop model stormwater management programs that may be implemented by State agencies and units of local government. Model stormwater management programs shall be developed to protect existing water uses and assure compliance with water quality standards and classifications. A State agency or unit of local government may submit to the Commission for its approval a stormwater control program for implementation within its jurisdiction. To this end, State agencies may adopt rules, and units of local government are authorized to adopt ordinances and regulations necessary to establish and enforce stormwater control programs. Units of local government are authorized to create or designate agencies or subdivisions to administer and enforce the programs. Two or more units of local government are authorized to establish a joint program and to enter into any agreements that are necessary for the proper administration and enforcement of the program.

(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.

(d) The Commission shall review each stormwater management program submitted by a State agency or unit of local government and shall notify the State agency or unit of local government that submitted the program that the program has been approved, approved with modifications, or disapproved. The Commission shall approve a program only if it finds that the standards of the program equal or exceed those of the model program adopted by the Commission pursuant to this section.

(d1) A retail merchant shall not use more than 400 square feet of impervious surface area within the portion of the merchant's premises that is designed to be used for vehicular parking for the display and sale of nursery stock, as that term is defined by the Board of Agriculture pursuant to G.S. 106-423. This subsection shall not apply to a retail merchant that either:

(1) Collects and treats stormwater on-site using a treatment system that is designed to remove at least eighty-five percent (85%) of total suspended solids. For purposes of this subdivision, a treatment system includes, but is not limited to, a filtration system or a detention system.

(2) Collects and stores stormwater for reuse on-site for irrigation or other purposes.

(3) Collects and discharges stormwater to a local or regional stormwater collection and treatment system.

(d2) Repealed by Session Laws 2008-198, s. 8(a), effective August 8, 2008.

(e) The Commission shall annually report to the Environmental Review Commission on the implementation of this section, including the status of any stormwater control programs administered by State agencies and units of local government, on or before 1 October of each year."

SECTION 7. G.S. 143-214.7A(b) reads as rewritten:

"(b) The Division of Water Quality shall clarify that stormwater is water that does not contact anything considered a feedstock, intermediate product, or final product of composting operations. The Division of Water Quality shall clarify that wastewater is leachate and water that contacts feedstocks, intermediate products, or final product, of composting operations. The clarifications shall incorporate available scientifically valid information obtained from sampling and analyses of North Carolina composting facilities and from valid representative data from other states. In addition, the Division of Water Quality shall establish threshold quantities of feedstocks, intermediate products, and final products above which water quality permitting will be required. The Division of Water Quality shall not require water quality permitting for any Type I solid waste compost facility, unless required to do so by federal law."

SECTION 8.(a) G.S. 143-135.36 is amended by adding a new subdivision to read:

"**§ 143-135.36. Definitions.**

As used in this section, the following definitions apply unless the context requires otherwise:

(1) "ASHRAE" means the American Society of Heating, Refrigerating and Air-Conditioning Engineers, Inc.

(2) "Commission" means to document and to verify throughout the construction process whether the performance of a building, a component of a building, a system of a building, or a component of a building system meets specified objectives, criteria, and agency project requirements.

(3) "Department" means the Department of Administration.

(4) "Institutions of higher education" means the constituent institutions of The University of North Carolina, the regional institutions as defined in G.S. 115D-2, and the community colleges as defined in G.S. 115D-2.

(5) "Major facility construction project" means a project to construct a building larger than 20,000 gross square feet of occupied or conditioned space, as defined in the North Carolina State Building Code adopted under Article 9 of Chapter 143 of the General Statutes. "Major facility construction project" does not include a project to construct a transmitter building or a pumping station.

(6) "Major facility renovation project" means a project to renovate a building when the cost of the project is greater than fifty percent (50%) of the insurance value of the building prior to the renovation and the renovated portion of the building is larger than 20,000 gross square feet of occupied or conditioned space, as defined in the North Carolina State Building Code. "Major facility renovation project" does not include a project to renovate a transmitter building or a pumping station. "Major facility renovation project" does not include a project to renovate a building having historic, architectural, or cultural significance under Part 4 of Article 2 of Chapter 143B of the General Statutes.

(7) "Public agency" means every State office, officer, board, department, and commission and institutions of higher education.

(8) "Weather-based irrigation controller" means an irrigation control device that utilizes local weather and landscape conditions to tailor irrigation system schedules to irrigation needs specific to site conditions."

SECTION 8.(b) G.S. 143-135.37 reads as rewritten:

"**§ 143-135.37. Energy and water use standards for public major facility construction and renovation projects; verification and reporting of energy and water use.**

(a) Program Established. – The Sustainable Energy-Efficient Buildings Program is established within the Department to be administered by the Department. This program applies to any major facility construction or renovation project of a public agency that is funded in whole or in part from an appropriation in the State capital budget or through a financing contract as defined in G.S. 142-82.

(b) Energy-Efficiency Standard. – For every major facility construction project of a public agency, the building shall be designed and constructed so that the calculated energy consumption is at least thirty percent (30%) less than the energy consumption for the same building as calculated using the energy-efficiency standard in ASHRAE 90.1-2004. For every major facility renovation project of a public agency, the renovated building shall be designed and constructed so that the calculated energy consumption is at least twenty percent (20%) less than the energy consumption for the same renovated building as calculated using the energy-efficiency standard in ASHRAE 90.1-2004. For the purposes of this subsection, any exception or special standard for a specific type of building found in ASHRAE 90.1-2004 is included in the ASHRAE 90.1-2004 standard.

(c) Indoor Potable Water Use Standard. – For every major facility construction or renovation project of a public agency, the water system shall be designed and constructed so that the calculated indoor potable water use is at least twenty percent (20%) less than the indoor potable water use for the same building as calculated using the fixture performance requirements related to plumbing under the 2006 North Carolina State Building Code.

(c1) Outdoor Potable Water Use Standard. – For every major facility construction project of a public agency, the water system shall be designed and constructed so that the calculated sum of the outdoor potable water use and the harvested stormwater use is at least fifty percent (50%) less than the sum of the outdoor potable water use and the harvested stormwater use for the same building as calculated using the performance requirements related to plumbing under the 2006 North Carolina State Building Code. Weather-based irrigation controllers shall be

used for irrigation systems for major facility construction projects. For every major facility renovation project of a public agency, the Department shall determine on a project-by-project basis what reduced level of outdoor potable use or harvested stormwater use, if any, is a feasible requirement for the ~~project,~~project. ~~but the~~The Department shall not require a greater reduction than is required under this subsection for a major facility construction project. To reduce the potable outdoor water as required under this subsection, weather-based irrigation controllers, landscape materials that are water use ~~efficient~~ efficient, and irrigation strategies that include reuse and recycling of the water may be used."

SECTION 9. G.S. 143-215.1 reads as rewritten

§ 143-215.1. Control of sources of water pollution; permits required.

(a) Activities for Which Permits Required. – ~~No~~ Except as provided in subsection (a5) of this section, no person shall do any of the following things or carry out any of the following activities unless that person has received a permit from the Commission and has complied with all conditions set forth in the permit:

(1) Make any outlets into the waters of the State.

(2) Construct or operate any sewer system, treatment works, or disposal system within the State.

(3) Alter, extend, or change the construction or method of operation of any sewer system, treatment works, or disposal system within the State.

(4) Increase the quantity of waste discharged through any outlet or processed in any treatment works or disposal system to any extent that would result in any violation of the effluent standards or limitations established for any point source or that would adversely affect the condition of the receiving waters to the extent of violating any applicable standard.

(5) Change the nature of the waste discharged through any disposal system in any way that would exceed the effluent standards or limitations established for any point source or that would adversely affect the condition of the receiving waters in relation to any applicable standards.

(6) Cause or permit any waste, directly or indirectly, to be discharged to or in any manner intermixed with the waters of the State in violation of the water quality standards applicable to the assigned classifications or in violation of any effluent standards or limitations established for any point source, unless allowed as a condition of any permit, special order or other appropriate instrument issued or entered into by the Commission under the provisions of this Article.

(7) Cause or permit any wastes for which pretreatment is required by pretreatment standards to be discharged, directly or indirectly, from a pretreatment facility to any disposal system or to alter, extend or change the construction or method of operation or increase the quantity or change the nature of the waste discharged from or processed in that facility.

(8) Enter into a contract for the construction and installation of any outlet, sewer system, treatment works, pretreatment facility or disposal system or for the alteration or extension of any such facility.

(9) Dispose of sludge resulting from the operation of a treatment works, including the removal of in-place sewage sludge from one location and its deposit at another location, consistent with the requirement of the Resource Conservation and Recovery Act and regulations promulgated pursuant thereto.

(10) Cause or permit any pollutant to enter into a defined managed area of the State's waters for the maintenance or production of harvestable freshwater, estuarine, or marine plants or animals.

(11) Cause or permit discharges regulated under G.S. 143-214.7 that result in water pollution.

(12) Construct or operate an animal waste management system, as defined in G.S. 143-215.10B, without obtaining a permit under either this Part or Part 1A of this Article.

(a1) In the event that both effluent standards or limitations and classifications and water quality standards are applicable to any point source or sources and to the waters to which they discharge, the more stringent among the standards established by the Commission shall be applicable and controlling.

(a2) No permit shall be granted for the disposal of waste in waters classified as sources of public water supply where the head of the agency that administers the public water supply program pursuant to Article 10 of Chapter 130A of the General Statutes, after review of the plans and specifications for the proposed disposal facility, determines and advises the Commission that any outlet for the disposal of waste is, or would be, sufficiently close to the intake works or proposed intake works of a public water supply as to have an adverse effect on the public health.

(a3) If the Commission denies an application for a permit, the Commission shall state in writing the reason for the denial and shall also state the Commission's estimate of the changes in the applicant's proposed activities or plans that would be required in order that the applicant may obtain a permit.

(a4) The Department shall regulate wastewater systems under rules adopted by the Commission for Public Health pursuant to Article 11 of Chapter 130A of the General Statutes except as otherwise provided in this subsection. No permit shall be required under this section for a wastewater system regulated under Article 11 of Chapter 130A of the General Statutes. The following wastewater systems shall be regulated by the Department under rules adopted by the Commission:

(1) Wastewater systems designed to discharge effluent to the land surface or surface waters.

(2) Wastewater systems designed for groundwater remediation, groundwater injection, or landfill leachate collection and disposal.

(3) Wastewater systems designed for the complete recycle or reuse of industrial process wastewater.

(a5) No permit shall be required to enter into a contract for the construction, installation, alteration, or extension of any sewer system, treatment works, or disposal system or to construct, install, alter, extend, or change the operation of any sewer system, treatment works, or disposal system within the State when the system's or work's principle function is to conduct, treat, equalize, neutralize, stabilize, recycle, or dispose of industrial waste or sewage from an industrial facility and the discharge of the industrial waste or sewage is authorized under a permit issued for the discharge of the industrial waste or sewage into the waters of the State.

...."

SECTION 10.(a) G.S. 143-215.25A(a) reads as rewritten:

"(a) Except as otherwise provided in this Part, this Part does not apply to any dam:

(1) Constructed by the United States Army Corps of Engineers, the Tennessee Valley Authority, or another agency of the United States government, when the agency designed or approved plans for the dam and supervised its construction.

(2) Constructed with financial assistance from the United States Soil Conservation Service, when that agency designed or approved plans for the dam and supervised its construction.

(3) Licensed by the Federal Energy Regulatory Commission, or for which a license application is pending with the Federal Energy Regulatory Commission.

(4) For use in connection with electric generating facilities regulated by the Nuclear Regulatory Commission.

(5) Under a single private ownership that provides protection only to land or other property under the same ownership and that does not pose a threat to human life or property below the dam.

(6) That is less than ~~15~~ 25 feet in height or that has an impoundment capacity of less than ~~10~~ 50 acre-feet, unless the Department determines that failure of the dam could result in loss of human life or significant damage to property below the dam.

(7) Constructed for the purpose of providing water for agricultural use, when a person who is licensed as a professional engineer under Chapter 89C of the General Statutes designed or approved plans for the dam and supervised its construction."

SECTION 10.(b) The exemption modified in subdivision (6) of G.S. 143-215.25A(a) and the exemption established in subdivision (7) of G.S. 143-215.25A(a), as amended by Section 10.(a) of this act, shall apply retroactively to any dam that is subject to any enforcement action that has not been resolved as of June 1, 2011.

SECTION 11.1. G.S. 143-215.94B(b) reads as rewritten:

"(b) The Commercial Fund shall be used for the payment of the following costs up to an aggregate maximum of one million dollars ($1,000,000) per occurrence resulting from a discharge or release of a petroleum product from a commercial underground storage tank:

...

(8) The costs of a site investigation required by the Department for the purpose of determining whether a release from a tank system has occurred, whether or not the investigation confirms that a release has occurred. This subdivision shall not be construed to allow reimbursement for costs of investigations that are part of routine leak detection procedures required by statute or rule."

SECTION 11.2. G.S. 143-215.94B(b1) reads as rewritten:

"(b1) In the event that two or more discharges or releases at any one facility, the first of which was discovered or reported on or after 30 June 1988, result in more than one plume of soil, surface water, or groundwater contamination, the Commercial Fund shall be used for the payment of the costs of the cleanup of environmental damage as required by G.S. 143-215.94E(a) in excess of the multiple discharge amount up to the applicable aggregate maximum specified in subsections (b) and (b2) of this section. The multiple discharge amount shall be calculated as follows:

(1) Each discharge or release shall be considered separately as if it were the only discharge or release, and the cost for which the owner or operator is responsible under subdivisions (1), (2), (2a), or (3) of subsection (b) of this section, whichever are applicable, shall be determined for each discharge or release. For each discharge or release for which subdivision (4) of subsection (b) of this section is applicable, the cost for which the owner or operator is responsible, for the purpose of this subsection, shall be seventy-five thousand dollars ($75,000). For purposes of this subsection, two or more

discharges or releases that result in a single plume of soil, surface water, or groundwater contamination shall be considered as a single discharge or release.

(2) The multiple discharge amount shall be the lesser of:

a. The sum of all the costs determined as set out in subdivision (1) of this subsection; or

b. The product of the highest of the costs determined as set out in subdivision (1) of this subsection multiplied by one and one-half (1½).

(3) If an owner or operator elects to cleanup a separate discharge or release for which the owner or operator is not responsible, the responsible party for the other discharge cannot be identified, and the discharges are commingled, the owner or operator shall only be responsible for those costs applicable to the discharge for which the owner or operator is actually the responsible party."

SECTION 11.3. G.S. 143-215.94B is amended by adding a new subsection to read:

"(i) During each fiscal year, the Department shall use up to one million dollars ($1,000,000) of the funds in the Commercial Fund to fund necessary assessment and cleanup to be conducted by the Department of discharges or releases for which a responsible party has been identified but for which the responsible party can demonstrate that undertaking the costs of assessment and cleanup will impose a severe financial hardship. The Commission shall adopt rules to define severe financial hardship; establish criteria for assistance due to severe financial hardship pursuant to this section; and establish a process for evaluation and determinations of eligibility with respect to applications for assistance due to severe financial hardship. The rules shall provide that the determinations of eligibility shall be made by the Petroleum Underground Storage Tank Funds Council established under G.S. 143-215.94O."

SECTION 11.4. G.S. 143-215.94T reads as rewritten:

"**§ 143-215.94T. Adoption and implementation of regulatory program.**

...

(c) Rules adopted pursuant to subdivision (13) of subsection (a) of this section shall require secondary containment for all components of underground storage tank systems, including, but not limited to, tanks, piping, fittings, pump heads, and dispensers. Secondary containment requirements shall include standards for double wall tanks, piping, and fittings and for sump containment for pump heads and dispensers. The rules shall provide for monitoring of double wall interstices and sump containments. The rules shall apply to any underground storage tank system that is installed on or after the date on which the rules become effective and to the replacement of any component of an underground storage tank system on or after that date. This section shall not be construed to limit the right of an owner or operator to repair any existing component of an underground storage tank system. If an existing underground storage tank is replaced, the secondary containment and interstitial monitoring requirements shall apply only to the replaced underground tank. Likewise, if existing piping is replaced, the secondary containment and interstitial monitoring requirements shall apply only to the replaced piping.

(d) The Department shall allow non-tank metallic components that are unprotected from corrosion, including flex connectors and other metal fittings and connectors at the ends of piping runs, to have corrosion protection added as an alternative to replacement of these components if the component does not have visible corrosion and passes a tightness test."

SECTION 11.5. G.S. 143-215.94V(b) reads as rewritten:

(b) The Commission shall adopt rules to establish a risk-based approach for the assessment, prioritization, and cleanup of discharges and releases from petroleum underground storage tanks. The rules shall address, at a minimum, the circumstances where site-specific

information should be considered, criteria for determining acceptable cleanup levels, and the acceptable level or range of levels of risk to human health and the environment. Rules that use the distance between a source area of a confirmed discharge or release to a water supply well or a private drinking water well, as those terms are defined under G.S. 87-85, shall include a determination whether a nearby well is likely to be affected by the discharge or release as a factor in determining levels of risk.

SECTION 11.6.(a) Notwithstanding 15A NCAC 02N .0304(a)(5) (Implementation Schedule for Performance Standards for New UST Systems and Upgrading Requirements for Existing UST Systems Located in Areas Defined in Rule .0301(d)), all UST systems installed after January 1, 1991, shall not be required to provide secondary containment until January 1, 2020.

SECTION 11.6.(b) Notwithstanding 15A NCAC 02N .0304(a)(5) (Implementation Schedule for Performance Standards for New UST Systems and Upgrading Requirements for Existing UST Systems Located in Areas Defined in Rule .0301(d)), the Commission shall establish a process for the grant of variances from the setbacks required for UST systems from certain public water supply wells, particularly those that serve only a single facility which are not community water systems, if the Commission finds facts to demonstrate that such variance will not endanger human health and welfare or groundwater.

SECTION 11.6.(c) No later than January 1, 2014, the Environmental Management Commission shall adopt rules consistent with the provisions of Section 11.6.(a) and Section 11.6.(b) of this act. Notwithstanding G.S. 150B-19(4), the rules adopted by the Commission pursuant to this section shall be substantively identical to the provisions of Section 11.6.(a) and Section 11.6.(b) of this act.

SECTION 11.7.(a) Notwithstanding subsection (a) of 15A NCAC 02N .0903 (Underground Storage Tanks: Tanks), from the effective date of this act the Department of Environment and Natural Resources shall not prohibit the use of tanks that are constructed of steel and cathodically protected as provided in 40 Code of Federal Regulations § 280.20(a)(2) (July 1, 2010 Edition) in order to meet the external corrosion protection standards of that rule.

SECTION 11.7.(b) No later than January 1, 2014, the Environmental Management Commission shall adopt rules consistent with the provisions of Section 11.7.(a) of this act. Notwithstanding G.S. 150B-19(4), the rules adopted by the Commission pursuant to this section shall be substantively identical to the provisions of Section 11.7.(a) of this act.

SECTION 11.8. Sections 11.1 through 11.8 are effective when they become law and apply to discharges or releases reported on or after that date, except that Section 11.2 applies to discharges or releases reported on or after January 1, 2009.

SECTION 12.(a) G.S. 143-350 reads as rewritten:

"**§ 143-350. Definitions.**

As used in this Article:

...

(3a) "Gray water" means water that is discharged as waste from bathtubs, showers, wash basins, and clothes washers. "Gray water" does not include water that is discharged from toilets or kitchen sinks.

(3b) "Gray water system" means a water reuse system that is contained within a single family residence or multiunit residential or commercial building that filters gray water or captured rain water and reuses it for nonpotable purposes such as toilet flushing and irrigation.

...."

SECTION 12.(b) G.S. 143-355.5 reads as rewritten:

"**§ 143-355.5. Water reuse; policy; rule making.**

(a) Water Reuse Policy. – It is the public policy of the State that the reuse of treated wastewater or reclaimed water and the use of gray water or captured rain water is critical to meeting the existing and future water supply needs of the State. The General Assembly finds that reclaimed water systems permitted and operated under G.S. 143-215.1(d2) in an approved wastewater reuse program can provide water for many beneficial purposes in a way that is both environmentally acceptable and protective of public health. This finding includes and applies to conjunctive facilities that require the relocation of a discharge from one receiving stream to another under all of the following conditions:

(1) The relocation is necessary to create an approved comprehensive wastewater reuse program.

(2) The reuse program provides significant reuse benefits.

(3) The relocated discharge will comply with all applicable water quality standards; will not result in degradation of water quality in the receiving waters; will not contribute to water quality impairment in the receiving watershed; and will result in net benefits to water quality, such as the elimination of a wastewater discharge in a nutrient sensitive river basin.

(b) Water Reuse Rule Making. – The Commission shall encourage and promote safe and beneficial reuse of treated wastewater as an alternative to surface water discharge. The Commission shall adopt rules to:

(1) Identify acceptable uses of reclaimed water, including toilet flushing, fire protection, decorative water features, and landscape irrigation.

(2) Facilitate the permitting of reclaimed water systems.

(3) Establish standards for reclaimed water systems that are adequate to prevent the direct distribution of reclaimed water as potable water.

(c) Gray Water Rule Making. – The Commission shall encourage and promote the safe and beneficial use of gray water. The Commission shall adopt rules to:

(1) Identify acceptable uses of gray water, including toilet flushing, fire protection, decorative water features, and landscape irrigation.

(2) Facilitate the permitting of gray water systems.

(3) Establish standards, in coordination with the Commission for Public Health, for gray water systems that protect public health and safety and the environment and reduce the use of potable water within individual structures.

(d) The Department shall develop policies and procedures to promote the voluntary adoption and installation of gray water systems."

SECTION 12.(c) G.S. 130A-335(b) reads as rewritten:

"(b) All wastewater systems shall be regulated by the Department under rules adopted by the Commission except for the following wastewater systems that shall be regulated by the Department under rules adopted by the Environmental Management Commission:

(1) Wastewater collection, treatment, and disposal systems designed to discharge effluent to the land surface or surface waters.

(2) Wastewater systems designed for groundwater remediation, groundwater injection, or landfill leachate collection and disposal.

(3) Wastewater systems designed for the complete recycle or reuse of industrial process wastewater.

(4) Gray water systems as defined in G.S. 143-350."

SECTION 12.(d) Article 6 of Chapter 153A of the General Statutes is amended by adding a new section to read:

"**§ 153A-145. Limitations on regulating cisterns and rain barrels.**

No county ordinance may prohibit or have the effect of prohibiting the installation and maintenance of cisterns and rain barrel collection systems used to collect water for irrigation purposes. A county may regulate the installation and maintenance of those cisterns and rain barrel collection systems for the purpose of protecting the public health and safety and for the purpose of preventing them from becoming a public nuisance."

SECTION 12.(e) Article 8 of Chapter 160A of the General Statutes is amended by adding a new section to read:

"**§ 160A-202. Limitations on regulating cisterns and rain barrels.**

No city ordinance may prohibit or have the effect of prohibiting the installation and maintenance of cisterns and rain barrel collection systems used to collect water for irrigation purposes. A city may regulate the installation and maintenance of those cisterns and rain barrel collection systems for the purpose of protecting the public health and safety and for the purpose of preventing them from becoming a public nuisance."

SECTION 13. Section 5 of S.L. 2007-438, as amended by Section 3(b) of S.L. 2009-484 and Section 19 of S.L. 2010-180, reads as rewritten:

"**SECTION 5.** This act becomes effective 1 September 2007 and applies to all nutrient offset payments, including those set out in 15A NCAC 2B .0240, as adopted by the Environmental Management Commission on 12 January 2006. The fee schedule set out in Section 1 of this act expires ~~1 September 2011.~~ when amendments to 15A NCAC 02B .0240 and .0274 become effective."

SECTION 14.(a) Section 2(b) of S.L. 2009-216 reads as rewritten:

"**SECTION 2.(b)** Implementation. – Notwithstanding sub-subdivision (c) of subdivision (6) of Wastewater Discharge Rule 15A NCAC 02B .0270, each existing discharger with a permitted flow greater than or equal to 0.1 million gallons per day (MGD) shall limit its total nitrogen discharge to its active individual discharge allocation as defined or modified pursuant to Wastewater Discharge Rule 15A NCAC 02B .0270 no later than calendar year ~~2016.~~2020."

SECTION 14.(b) Section 3(d) of S.L. 2009-216 reads as rewritten:

"**SECTION 3.(d)** Control of Nutrient Loading From Existing Development. – The Department shall require implementation of reasonable nutrient load reduction measures for existing development in each subwatershed of the Jordan Reservoir, as provided in this act. The Department shall determine whether nutrient load reduction measures for existing development are necessary in each subwatershed of Jordan Reservoir and require implementation of reasonable nutrient reduction measures in accordance with an adaptive management program as follows:

...

(2) Stage 2 Adaptive Management Program to Control Nutrient Loading From Existing Development.

a. If the March 1, 2014 monitoring report or any subsequent monitoring report for the Upper New Hope Creek Arm of Jordan Reservoir required under Section 3(c) of this act shows that nutrient-related water quality standards are not being achieved, a municipality or county located in whole or in part in the subwatershed of that arm of Jordan Reservoir shall develop and implement a Stage 2 adaptive management program to control nutrient loading from existing development within the subwatershed, as provided in this act. If the March 1, ~~2017~~ 2020 monitoring report or any subsequent monitoring report for the Haw River Arm or the Lower New Hope Creek Arm of Jordan Reservoir required under Section 3(c) of this act shows that nutrient-related water quality standards are not being achieved, a municipality or county located in whole or in part in the

subwatershed of that arm of Jordan Reservoir shall develop and implement a Stage 2 adaptive management program to control nutrient loading from existing development within the subwatershed, as provided in this act. The Department shall defer development and implementation of Stage 2 adaptive management programs to control nutrient loading from existing development required in a subwatershed by this subdivision if it determines that additional reductions in nutrient loading from existing development in that subwatershed will not be necessary to achieve nutrient-related water quality standards. In making this determination, the Department shall consider the anticipated effect of measures implemented or scheduled to be implemented to reduce nutrient loading from sources in the subwatershed other than existing development. If any subsequent monitoring report for an arm of Jordan Reservoir required under Section 3(c) of this act shows that nutrient-related water quality standards have not been achieved, the Department shall notify the municipalities and counties located in whole or in part in the subwatershed of that arm of Jordan Reservoir and the municipalities and counties shall develop and implement a Stage 2 adaptive management program as provided in this subdivision.

...."

SECTION 15.(a) Notwithstanding G.S. 150B-19, as amended by S.L. 2011-13, the Commission for Public Health may adopt rules to incorporate all or part of the United States Food and Drug Administration Food Code 2009 and to require that employees of establishments regulated under subsections (a) and (a2) of G.S. 130A-248 be certified in food protection in accordance with the United States Food and Drug Administration Food Code 2009.

SECTION 15.(b) G.S. 130A-248 is amended by adding a new subsection to read:

"(a5) The Department of Health and Human Services may grant a variance from rules adopted pursuant to this section in accordance with the United States Food and Drug Administration Food Code 2009 if the Department determines that the issuance of the variance will not result in a health hazard or nuisance condition."

SECTION 16.(a) Variance from Setbacks for Public Water Supply Wells. –

(a) The Department of Environment and Natural Resources may grant a variance from the minimum horizontal separation distances for public water supply wells set out in 15A NCAC 18C .0203(2)(d) and 15A NCAC 18C .0203(2)(e) upon finding that:

(1) The well supplies water to a noncommunity water system as defined in G.S. 130A-313(10)(b) or supplies water to a business or institution, such as a school, that has become a noncommunity water system through an increase in the number of people served by the well.

(2) It is impracticable, taking into consideration feasibility and cost, for the public water system to comply with the minimum horizontal separation distance set out in the applicable sub-subpart of 15A NCAC 18C .0203(2).

(3) There is no reasonable alternative source of drinking water available to the public water supply system.

(4) The granting of the variance will not result in an unreasonable risk to public health.

(b) A variance from the minimum horizontal separation distances set out in 15A NCAC 18C .0203(2)(d) and 15A NCAC 18C .0203(2)(e) shall require that the noncommunity public water supply well meet the following requirements:

(1) The well shall comply with the minimum horizontal separation distances set out in 15A NCAC 18C .0203(2)(d) and 15A NCAC 18C.0203(2)(e) to the maximum extent practicable.
(2) The well shall meet a minimum horizontal separation distance of 25 feet from a building, mobile home, or other permanent structure that is not used primarily to house animals.
(3) The well shall meet a minimum horizontal separation distance of 100 feet from any animal house or feedlot and from cultivated areas to which chemicals are applied.
(4) The well shall meet a minimum horizontal separation distance of 50 feet from surface water.
(5) The well shall comply with all other requirements for public well water supplies set out in 15A NCAC 18C .0203.

SECTION 16.(b) Rule Making. – The Commission for Public Health shall adopt rules that are substantively identical to the provisions of Section 16.(a). 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.(c) Effective Date. – Section 16.(a) of this act expires when permanent rules to replace Section 16.(a) have become effective as provided by Section 16.(b) of this act.

SECTION 17. Part 1 of Article 21 of Chapter 143 of the General Statutes is amended by adding a new section to read:

"**§ 143-214.18. Exemption to riparian buffer requirements for certain private properties in the Neuse River and Tar-Pamlico River Basins.**

(a) Absent a requirement of federal law or an imminent threat to public health or safety, the temporary rules adopted July 22, 1997, January 22, 1998, April 22, 1998, and June 22, 1999, and the permanent rule adopted and effective August 1, 2000, as 15A NCAC 02B .0233, regarding the protection and maintenance of existing riparian buffers in the Neuse River and Tar-Pamlico River Basins shall not apply to any tract of land that meets all of the following criteria:

(1) The property is private property.
(2) Prior to August 1, 2000, the property was private property and was platted and recorded in the register of deeds in the county where the property is located.
(3) With the exception of 15A NCAC 02B .0233, the use of the property complies with the rules and other laws regulating and applicable to that property prior to August 1, 2000.

(b) If a property described in subsection (a) of this section is converted to a use that does not comply with subdivisions (1) and (3) of subsection (a) of this section, then 15A NCAC 02B .0233 shall apply."

SECTION 18.(a) Definitions. – The definitions set out in G.S. 106-202.12 and 02 NCAC 48F .0305 (Collection and Sale of Ginseng Rule) apply to this section and its implementation.

SECTION 18.(b) Collection and Sale of Ginseng Rule 02 NCAC 48F .0305. – Until the effective date of the revised permanent rule that the Board is required to adopt pursuant to Section 18.(d) of this act, the Board and the Department shall implement Collection and Sale of Ginseng Rule 02 NCAC 48F .0305, as provided in Section 18.(c) of this act.

SECTION 18.(c) Implementation. – Notwithstanding subdivision (6) of subsection (d) of Collection and Sale of Ginseng Rule 02 NCAC 48F .0305, there shall be no charge for an export certification.

SECTION 18.(d) Additional Rule-Making Authority. – The Board shall adopt a rule to replace Collection and Sale of Ginseng Rule 02 NCAC 48F .0305. Notwithstanding G.S. 150B-19(4), the rule adopted by the Board pursuant to this section shall be substantively identical to the provisions of Section 18.(c) of this act. Rules adopted pursuant to this section are not subject to the publication of notice of text or public hearing requirements of G.S. 150B-21.2. 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 19. Section 6 of S.L. 2007-523 reads as rewritten:

"**SECTION 6.** Effective Dates. – Section 3 of this act becomes effective 1 July 2007. All other sections of this act become effective 1 September 2007. Section 4 of this act expires 1 September ~~2017.~~2011."

SECTION 20. The Department of Environment and Natural resources shall study the stormwater management requirements for airports in the State. The Department shall specifically consider whether the requirements might be amended or implemented in a different way to achieve the same level of water quality protection while reducing the cost and other regulatory burdens associated with compliance with the requirements. In conducting this study, the Department shall consult with representatives of the airports in the State. The Department shall report its findings and recommendations to the Environmental Review Commission no later than February 1, 2012.

SECTION 21. In order to ensure the ongoing delivery of services by the nonpoint source pollution control programs of the Division of Forest Resources and the Division of Soil and Water Conservation, the Division of Water Quality in the Department of Environment and Natural Resources shall transfer Clean Water Act (CWA) Section 319 Nonpoint Source Management Program grant funds to the Division of Forest Resources and Division of Soil and Water Conservation in an amount that is no less than the average annual amount of funding received by each of those two Divisions over the two most-recent fiscal bienniums. In the event that the level of Section 319 grants funds received by the Department of Environment and Natural Resources by the United States Environmental Protection Agency is increased or decreased in subsequent funding cycles, the level of funding received by the Division of Forest Resources and the Division of Soil and Water Conservation shall be adjusted proportionally.

SECTION 22. G.S. 130A-290(a)(35) reads as rewritten:

"(35) "Solid waste" has the same meaning as in 40 Code of Federal Regulations § 261.2 (July 1, 2010 Edition).

~~means any hazardous or nonhazardous garbage, refuse or sludge from a waste treatment plant, water supply treatment plant or air pollution control facility, domestic sewage and sludges generated by the treatment thereof in sanitary sewage collection, treatment and disposal systems, and other material that is either discarded or is being accumulated, stored or treated prior to being discarded, or has served its original intended use and is generally discarded, including solid, liquid, semisolid or contained gaseous material resulting from industrial, institutional, commercial and agricultural operations, and from community activities. The term does not include:~~

~~a. Fecal waste from fowls and animals other than humans.~~

~~b. Solid or dissolved material in:~~

~~1. Domestic sewage and sludges generated by treatment thereof in sanitary sewage collection, treatment and disposal systems which are designed to discharge effluents to the surface waters.~~

~~2. Irrigation return flows.~~

~~3. Wastewater discharges and the sludges incidental to and generated by treatment which are point sources subject to permits granted under Section 402 of the Water Pollution Control Act, as amended (P.L. 92-500), and permits granted under G.S. 143-215.1 by the Environmental Management Commission. However, any sludges that meet the criteria for hazardous waste under RCRA shall also be a solid waste for the purposes of this Article.~~

~~c. Oils and other liquid hydrocarbons controlled under Article 21A of Chapter 143 of the General Statutes. However, any oils or other liquid hydrocarbons that meet the criteria for hazardous waste under RCRA shall also be a solid waste for the purposes of this Article.~~

~~d. Any source, special nuclear or byproduct material as defined by the Atomic Energy Act of 1954, as amended (42 U.S.C. § 2011).~~

~~e. Mining refuse covered by the North Carolina Mining Act, G.S. 74-46 through 74-68 and regulated by the North Carolina Mining Commission (as defined under G.S. 143B-290). However, any specific mining waste that meets the criteria for hazardous waste under RCRA shall also be a solid waste for the purposes of this Article.~~

~~f. Recovered material.~~"

SECTION 23. Except as otherwise provided, this act is effective when it becomes law. Section 8.(b) of this act applies to every major facility construction project, as defined in G.S. 143-135.36, and every major facility renovation project, as defined in G.S. 143-135.36, of a public agency, as defined in G.S. 143-135.36, that has not entered the schematic design phase prior to the effective date of this act.

HOUSE BILL 119
Committee Substitute Favorable 6/2/11

Short Title: Amend Environmental Laws 2011. (Public)

Sponsors:

Referred to:

February 17, 2011

A BILL TO BE ENTITLED

AN ACT TO AMEND CERTAIN ENVIRONMENTAL AND NATURAL RESOURCES LAWS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 130A-309.10 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 on 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) Beverage containers that are required to be recycled under G.S. 18B-1006.1.~~

(10) Motor vehicle oil filters.

(11) 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 or pesticides.

(12) Wooden pallets, except that wooden pallets may be disposed of in a landfill that is permitted to only accept construction and demolition debris.

(13) Oyster shells.

(14) **(Effective July 1, 2011)** Discarded computer equipment, as defined in G.S. 130A-309.131.

(15) **(Effective July 1, 2011)** Discarded televisions, as defined in G.S. 130A-309.131.

(f1) No person shall knowingly dispose of the following solid wastes by incineration in an incinerator for which a permit is required under this Article:

(1) Antifreeze (ethylene glycol) used solely in motor vehicles.
(2) Aluminum cans.
(3) Repealed by Session Laws 1995 (Regular Session, 1996), c. 594, s. 17.
(4) White goods.
(5) Lead-acid batteries, as provided in G.S. 130A-309.70.
~~(6) Beverage containers that are required to be recycled under G.S. 18B-1006.1.~~
(7) **(Effective July 1, 2011)** Discarded computer equipment, as defined in G.S. 130A-309.131.
(8) **(Effective July 1, 2011)** Discarded televisions, as defined in G.S. 130A-309.131.

(f2) ~~Subsection~~ Subsections (f1) and (f3) of this section shall not apply to solid waste incinerated in an incinerator solely owned and operated by the generator of the solid waste. Subsection (f1) of this section shall not apply to antifreeze (ethylene glycol) that cannot be recycled or reclaimed to make it usable as antifreeze in a motor vehicle.

(f3) Holders of on-premises malt beverage permits, on-premises unfortified wine permits, on-premises fortified wine permits, and mixed beverages permits shall not knowingly dispose of beverage containers that are required to be recycled under G.S. 18B-1006.1 in landfills or by incineration in an incinerator for which a permit is required under this Article.

(g) Repealed by Session Laws 1995 (Regular Session, 1996), c. 594, s. 17.

(h) The accidental or occasional disposal of small amounts of prohibited solid waste by landfill shall not be construed as a violation of ~~subsection~~ subsection (f) or (f3) of this section.

(i) The accidental or occasional disposal of small amounts of prohibited solid waste by incineration shall not be construed as a violation of ~~subsection~~ subsection (f1) or (f3) of this section if the Department has approved a plan for the incinerator as provided in subsection (j) of this section or if the incinerator is exempt from subsection (j) of this section.

(j) The Department may issue a permit pursuant to this Article for an incinerator that is subject to subsection (f1) of this section only if the applicant for the permit has a plan approved by the Department pursuant to this subsection. The applicant shall file the plan at the time of the application for the permit. The Department shall approve a plan only if it complies with the requirements of this subsection. The plan shall provide for the implementation of a program to prevent the incineration of the solid waste listed in ~~subsection~~ subsections (f1) and (f3) of this section. The program shall include the random visual inspection prior to incineration of at least ten percent (10%) of the solid waste to be incinerated. The program shall also provide for the retention of the records of the random visual inspections and the training of personnel to recognize the solid waste listed in ~~subsection~~ subsections (f1) and (f3) of this section. If a random visual inspection discovers solid waste that may not be incinerated pursuant to ~~subsection~~ subsections (f1) and (f3) of this section, the program shall provide that the operator of the incinerator shall dispose of the solid waste in accordance with applicable federal and State laws, regulations, and rules. This subsection does not apply to an incinerator that disposes only of medical waste.

(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) and (12) of subsection (f) of this section and subsection (f3) of this section in a landfill based on a showing that prohibiting the disposal of the material would constitute an economic hardship.

(l) Oyster shells that are delivered to a landfill shall be stored at the landfill for at least 90 days or until they are removed for recycling. If oyster shells that are stored at a landfill are not removed for recycling within 90 days of delivery to the landfill, then, notwithstanding subdivision (13) of subsection (f) of this section, the oyster shells may be disposed of in the landfill.

(m) **(Effective July 1, 2011)** No person shall knowingly dispose of fluorescent lights and thermostats that contain mercury in a sanitary landfill for the disposal of construction and demolition debris waste that is unlined or in any other landfill that is unlined."

SECTION 2. G.S. 143-214.7 reads as rewritten:

"**§ 143-214.7. Stormwater runoff rules and programs.**

(a) Policy, Purpose and Intent. – The Commission shall undertake a continuing planning process to develop and adopt a statewide plan with regard to establishing and enforcing stormwater rules for the purpose of protecting the surface waters of the State. It is the purpose and intent of this section that, in developing stormwater runoff rules and programs, the Commission may utilize stormwater rules established by the Commission to protect classified shellfish waters, water supply watersheds, and outstanding resource waters; and to control stormwater runoff disposal in coastal counties and other nonpoint sources. Further, it is the intent of this section that the Commission phase in the stormwater rules on a priority basis for all sources of pollution to the water. The plan shall be applied evenhandedly throughout the State to address the State's water quality needs. The Commission shall continually monitor water quality in the State and shall revise stormwater runoff rules as necessary to protect water quality. As necessary, the stormwater rules shall be modified to comply with federal regulations.

(b) The Commission shall implement stormwater runoff rules and programs for point and nonpoint sources on a phased-in statewide basis. The Commission shall consider standards and best management practices for the protection of the State's water resources in the following order of priority:

(1) Classified shellfish waters.
(2) Water supply watersheds.
(3) Outstanding resource waters.
(4) High quality waters.
(5) All other waters of the State to the extent that the Commission finds control of stormwater is needed to meet the purposes of this Article.

(b1) The Commission and the Department shall, to the maximum extent practicable, incorporate stormwater capture and reuse standards and best management practices into the implementation of this section.

(c) The Commission shall develop model stormwater management programs that may be implemented by State agencies and units of local government. Model stormwater management programs shall be developed to protect existing water uses and assure compliance with water quality standards and classifications. A State agency or unit of local government may submit to the Commission for its approval a stormwater control program for implementation within its jurisdiction. To this end, State agencies may adopt rules, and units of local government are authorized to adopt ordinances and regulations necessary to establish and enforce stormwater control programs. Units of local government are authorized to create or designate agencies or subdivisions to administer and enforce the programs. Two or more units of local government are authorized to establish a joint program and to enter into any agreements that are necessary for the proper administration and enforcement of the program.

(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.

(d) The Commission shall review each stormwater management program submitted by a State agency or unit of local government and shall notify the State agency or unit of local government that submitted the program that the program has been approved, approved with modifications, or disapproved. The Commission shall approve a program only if it finds that the standards of the program equal or exceed those of the model program adopted by the Commission pursuant to this section.

(d1) A retail merchant shall not use more than 400 square feet of impervious surface area within the portion of the merchant's premises that is designed to be used for vehicular parking for the display and sale of nursery stock, as that term is defined by the Board of Agriculture pursuant to G.S. 106-423. This subsection shall not apply to a retail merchant that either:

(1) Collects and treats stormwater on-site using a treatment system that is designed to remove at least eighty-five percent (85%) of total suspended solids. For purposes of this subdivision, a treatment system includes, but is not limited to, a filtration system or a detention system.

(2) Collects and stores stormwater for reuse on-site for irrigation or other purposes.

(3) Collects and discharges stormwater to a local or regional stormwater collection and treatment system.

(d2) Repealed by Session Laws 2008-198, s. 8(a), effective August 8, 2008.

(e) The Commission shall annually report to the Environmental Review Commission on the implementation of this section, including the status of any stormwater control programs administered by State agencies and units of local government, on or before 1 October of each year."

SECTION 3.(a) G.S. 143-135.36 is amended by adding a new subdivision to read:

"**§ 143-135.36. Definitions.**

As used in this section, the following definitions apply unless the context requires otherwise:

(1) "ASHRAE" means the American Society of Heating, Refrigerating and Air-Conditioning Engineers, Inc.

(2) "Commission" means to document and to verify throughout the construction process whether the performance of a building, a component of a building, a system of a building, or a component of a building system meets specified objectives, criteria, and agency project requirements.

(3) "Department" means the Department of Administration.

(4) "Institutions of higher education" means the constituent institutions of The University of North Carolina, the regional institutions as defined in G.S. 115D-2, and the community colleges as defined in G.S. 115D-2.

(5) "Major facility construction project" means a project to construct a building larger than 20,000 gross square feet of occupied or conditioned space, as defined in the North Carolina State Building Code adopted under Article 9 of Chapter 143 of the General Statutes. "Major facility construction project" does not include a project to construct a transmitter building or a pumping station.

(6) "Major facility renovation project" means a project to renovate a building when the cost of the project is greater than fifty percent (50%) of the insurance value of the building prior to the renovation and the renovated portion of the building is larger than 20,000 gross square feet of occupied or conditioned space, as defined in the North Carolina State Building Code. "Major facility renovation project" does not include a project to renovate a transmitter building or a pumping station. "Major facility renovation project" does not include a project to renovate a building having historic, architectural, or cultural significance under Part 4 of Article 2 of Chapter 143B of the General Statutes.

(7) "Public agency" means every State office, officer, board, department, and commission and institutions of higher education.

(8) "Weather-based irrigation controller" means an irrigation control device that utilizes local weather and landscape conditions to tailor irrigation system schedules to irrigation needs specific to site conditions."

SECTION 3.(b) G.S. 143-135.37 reads as rewritten:

"**§ 143-135.37. Energy and water use standards for public major facility construction and renovation projects; verification and reporting of energy and water use.**

(a) Program Established. – The Sustainable Energy-Efficient Buildings Program is established within the Department to be administered by the Department. This program applies to any major facility construction or renovation project of a public agency that is funded in whole or in part from an appropriation in the State capital budget or through a financing contract as defined in G.S. 142-82.

(b) Energy-Efficiency Standard. – For every major facility construction project of a public agency, the building shall be designed and constructed so that the calculated energy consumption is at least thirty percent (30%) less than the energy consumption for the same building as calculated using the energy-efficiency standard in ASHRAE 90.1-2004. For every major facility renovation project of a public agency, the renovated building shall be designed and constructed so that the calculated energy consumption is at least twenty percent (20%) less than the energy consumption for the same renovated building as calculated using the energy-efficiency standard in ASHRAE 90.1-2004. For the purposes of this subsection, any exception or special standard for a specific type of building found in ASHRAE 90.1-2004 is included in the ASHRAE 90.1-2004 standard.

(c) Indoor Potable Water Use Standard. – For every major facility construction or renovation project of a public agency, the water system shall be designed and constructed so that the calculated indoor potable water use is at least twenty percent (20%) less than the indoor potable water use for the same building as calculated using the fixture performance requirements related to plumbing under the 2006 North Carolina State Building Code.

(c1) Outdoor Potable Water Use Standard. – For every major facility construction project of a public agency, the water system shall be designed and constructed so that the calculated sum of the outdoor potable water use and the harvested stormwater use is at least fifty percent (50%) less than the sum of the outdoor potable water use and the harvested stormwater use for the same building as calculated using the performance requirements related to plumbing under the 2006 North Carolina State Building Code. Weather-based irrigation controllers shall be used for irrigation systems for major facility construction projects. For every major facility renovation project of a public agency, the Department shall ~~determine~~ engage an irrigation contractor licensed under Chapter 89G of the General Statutes to perform an audit of any irrigation system. The Department shall determine, on a project-by-project ~~basis~~ basis, what reduced level of outdoor potable use or harvested stormwater use, if any, is a feasible requirement for the ~~project,~~project. ~~but the~~The Department shall not require a greater reduction than is required under this subsection for a major facility construction project. To reduce the

potable outdoor water as required under this subsection, weather-based irrigation controllers, landscape materials that are water use ~~efficient~~ efficient, and irrigation strategies that include reuse and recycling of the water may be used."

SECTION 4.(a) G.S. 143-350 reads as rewritten:

"**§ 143-350. Definitions.**

As used in this Article:

...

(3a) "Gray water" means water that is discharged as waste from bathtubs, showers, wash basins, and clothes washers. "Gray water" does not include water that is discharged from toilets or kitchen sinks.

(3b) "Gray water system" means a water reuse system that is contained within a single family residence or multiunit residential or commercial building that filters gray water or captured rain water and reuses it for nonpotable purposes such as toilet flushing and irrigation.

...."

SECTION 4.(b) G.S. 143-355.5 reads as rewritten:

"**§ 143-355.5. Water reuse; policy; rule making.**

(a) Water Reuse Policy. – It is the public policy of the State that the reuse of treated wastewater or reclaimed water and the use of gray water or captured rain water is critical to meeting the existing and future water supply needs of the State. The General Assembly finds that reclaimed water systems permitted and operated under G.S. 143-215.1(d2) in an approved wastewater reuse program can provide water for many beneficial purposes in a way that is both environmentally acceptable and protective of public health. This finding includes and applies to conjunctive facilities that require the relocation of a discharge from one receiving stream to another under all of the following conditions:

(1) The relocation is necessary to create an approved comprehensive wastewater reuse program.

(2) The reuse program provides significant reuse benefits.

(3) The relocated discharge will comply with all applicable water quality standards; will not result in degradation of water quality in the receiving waters; will not contribute to water quality impairment in the receiving watershed; and will result in net benefits to water quality, such as the elimination of a wastewater discharge in a nutrient sensitive river basin.

(b) Water Reuse Rule Making. – The Commission shall encourage and promote safe and beneficial reuse of treated wastewater as an alternative to surface water discharge. The Commission shall adopt rules to:

(1) Identify acceptable uses of reclaimed water, including toilet flushing, fire protection, decorative water features, and landscape irrigation.

(2) Facilitate the permitting of reclaimed water systems.

(3) Establish standards for reclaimed water systems that are adequate to prevent the direct distribution of reclaimed water as potable water.

(c) Gray Water Rule Making. – The Commission shall encourage and promote the safe and beneficial use of gray water. The Commission shall adopt rules to:

(1) Identify acceptable uses of gray water, including toilet flushing, fire protection, decorative water features, and landscape irrigation.

(2) Facilitate the permitting of gray water systems.

(3) Establish standards, in coordination with the Commission for Public Health, for gray water systems that protect public health, safety, welfare, and the environment and reduce the use of potable water within individual structures.

(d) The Department shall develop policies and procedures to promote the adoption and installation of gray water systems."

SECTION 4.(c) G.S. 130A-335(b) reads as rewritten:

"(b) All wastewater systems shall be regulated by the Department under rules adopted by the Commission except for the following wastewater systems that shall be regulated by the Department under rules adopted by the Environmental Management Commission:

(1) Wastewater collection, treatment, and disposal systems designed to discharge effluent to the land surface or surface waters.

(2) Wastewater systems designed for groundwater remediation, groundwater injection, or landfill leachate collection and disposal.

(3) Wastewater systems designed for the complete recycle or reuse of industrial process wastewater.

(4) Gray water systems as defined in G.S. 143-350."

SECTION 4.(d) Article 8 of Chapter 160A of the General Statutes is amended by adding a new section to read:

"**§ 160A-202. Limitations on regulating cisterns and rain barrels.**

No city ordinance may prohibit or have the effect of prohibiting the installation and maintenance of cisterns and rain barrel collection systems used to collet water for irrigation purposes. A city may regulate the installation and maintenance of those cisterns and rain barrel collection systems for the purpose of protecting the public health and safety and for the purpose of preventing them from becoming a public nuisance."

SECTION 5. Section 5 of S.L. 2007-438, as amended by Section 3(b) of S.L. 2009-484 and Section 19 of S.L. 2010-180, reads as rewritten:

"**SECTION 5.** This act becomes effective 1 September 2007 and applies to all nutrient offset payments, including those set out in 15A NCAC 2B .0240, as adopted by the Environmental Management Commission on 12 January 2006. The fee schedule set out in Section 1 of this act expires ~~1 September 2011.~~ when amendments to 15A NCAC 02B .0240 and .0274 become effective."

SECTION 6.(a) Notwithstanding G.S. 150B-19, as amended by S.L. 2011-13, the Commission for Public Health may adopt rules to incorporate all or part of the United States Food and Drug Administration Food Code 2009.

SECTION 6.(b) G.S. 130A-248 is amended by adding a new subsection to read:

"(a5) The Department of Health and Human Services may grant a variance from rules adopted pursuant to this section if the Department determines that the issuance of the variance will not result in a health hazard or nuisance condition."

SECTION 7. G.S. 113A-54.1 reads as rewritten:

"**§ 113A-54.1. Approval of erosion control plans.**

(a) A draft erosion and sedimentation control plan must contain the applicant's address and, if the applicant is not a resident of North Carolina, designate a North Carolina agent for the purpose of receiving notice from the Commission or the Secretary of compliance or noncompliance with the plan, this Article, or any rules adopted pursuant to this Article. ~~If~~ Except as provided in subsection (a1) of this section, if the applicant is not the owner of the land to be disturbed, the draft erosion and sedimentation control plan must include the owner's written consent for the applicant to submit a draft erosion and sedimentation control plan and to conduct the anticipated land-disturbing activity. The Commission shall approve, approve with modifications, or disapprove a draft erosion and sedimentation control plan for those land-disturbing activities for which prior plan approval is required within 30 days of receipt. The Commission shall condition approval of a draft erosion and sedimentation control plan upon the applicant's compliance with federal and State water quality laws, regulations, and rules. Failure to approve, approve with modifications, or disapprove a completed draft erosion and sedimentation control plan within 30 days of receipt shall be deemed approval of the plan.

If the Commission disapproves a draft erosion and sedimentation control plan or a revised erosion and sedimentation control plan, it must state in writing the specific reasons that the plan was disapproved. Failure to approve, approve with modifications, or disapprove a revised erosion and sedimentation control plan within 15 days of receipt shall be deemed approval of the plan. The Commission may establish an expiration date for erosion and sedimentation control plans approved under this Article.

(a1) If the applicant is not the owner of the land to be disturbed and the anticipated land-disturbing activity involves the construction of utility lines for the provision of water, sewer, gas, telecommunications, or electrical service, the draft erosion and sedimentation control plan may be submitted without the written consent of the owner of the land, so long as the owner of the land has been provided prior notice of the project.

...."

SECTION 8. This act is effective when it becomes law. Section 3(b) of this act applies to every major facility construction project, as defined in G.S. 143-135.36, and every major facility renovation project, as defined in G.S. 143-135.36, of a public agency, as defined in G.S. 143-135.36, that has not entered the schematic design phase prior to the effective date of this act.

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 119

AMENDMENT NO._____
(to be filled in by
Principal Clerk)

H119-ARIf-34 [v.1]

Comm. Sub. [YES]
Amends Title [NO]
Second Edition

Date _____,2011

Senator East

moves to amend the bill on page 13, line 15,
by rewriting that line to read:

"**SECTION 11.3.(a)** G.S. 143-215.94B is amended by adding a new subsection to read:"

And on page 13, lines 25 and 26,
by inserting between those lines:

"**SECTION 11.3.(b)** G.S. 143-215.94C reads as rewritten:

"**§ 143-215.94C. Commercial leaking petroleum underground storage tank cleanup fees.**

....

(b) The annual operating fee shall be determined on a calendar year basis. For petroleum commercial underground storage tanks in use on 1 January and remaining in use on or after 1 December of that year, the annual operating fee due for that year shall be as specified in subsection (a) of this section. For a petroleum commercial underground storage tank that is first placed in service in any year, the annual operating fee due for that year shall be determined by multiplying one-twelfth (1/12) of the amount specified in subsection (a) of this section by the number of months remaining in the calendar year. For a petroleum commercial underground storage tank that is permanently removed from service in any year, the annual operating fee due for that year shall be determined by multiplying one-twelfth (1/12) of the amount specified in subsection (a) of this section by the number of months in the calendar year preceding the permanent removal from use. In calculating the pro rata annual operating fee for a tank that is first placed in use or permanently removed during a calendar year under the preceding two sentences, a partial month shall count as a month, except that where a tank is permanently removed and replaced by another tank, the total of the annual operating fee for the tank that is removed and the replacement tank shall not exceed the annual operating fee for the replacement tank. ~~The~~ Except as provided in this subsection, the annual operating fee shall be due and payable on the first day of the month in accordance with a staggered schedule established by the Department. The Department shall implement a staggered schedule to the end that the total amount of fees to be collected by the Department is approximately the same each quarter. A person who owns or operates more than one petroleum commercial underground storage tank may request that the fee for all tanks be due at the same time. ~~The fee~~

~~for all commercial underground storage tanks located at the same facility shall be due at the same time.~~ A person ~~who owns or operates 12 or more commercial petroleum storage tanks~~ may request that the total of all fees be paid in four equal payments to be due on the first day of each calendar quarter.~~quarter, provided that the fee for all commercial underground storage tanks located at the same facility shall be due at the same time.~~

...."."

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. _____ DATE 6/14/11

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

COMMITTEE SUBSTITUTE H119-CSSB-45 [v. 27]

Rep.)
Sen.) ~~Lowder~~ East

1 moves to amend the bill on page 19, line 34

2 ( ) WHICH CHANGES THE TITLE

3 by deleting the word "subsequent" and

4 substituting the word "any".

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SIGNED _____

ADOPTED ✓ FAILED _____ TABLED _____

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 119

AMENDMENT NO._____
(to be filled in by
Principal Clerk)

H119-ARIf-34 [v.1]

Comm. Sub. [YES]
Amends Title [NO]
~~Second Edition~~ H119-CSSB-45 [v.2]

Date 6/14 ,2011

Senator East

moves to amend the bill on page 13, line 15,
by rewriting that line to read:

"**SECTION 11.3.(a)** G.S. 143-215.94B is amended by adding a new subsection to read:"

And on page 13, lines 25 and 26,
by inserting between those lines:

"**SECTION 11.3.(b)** G.S. 143-215.94C reads as rewritten:
"**§ 143-215.94C. Commercial leaking petroleum underground storage tank cleanup fees.**
...
(b) The annual operating fee shall be determined on a calendar year basis. For petroleum commercial underground storage tanks in use on 1 January and remaining in use on or after 1 December of that year, the annual operating fee due for that year shall be as specified in subsection (a) of this section. For a petroleum commercial underground storage tank that is first placed in service in any year, the annual operating fee due for that year shall be determined by multiplying one-twelfth (1/12) of the amount specified in subsection (a) of this section by the number of months remaining in the calendar year. For a petroleum commercial underground storage tank that is permanently removed from service in any year, the annual operating fee due for that year shall be determined by multiplying one-twelfth (1/12) of the amount specified in subsection (a) of this section by the number of months in the calendar year preceding the permanent removal from use. In calculating the pro rata annual operating fee for a tank that is first placed in use or permanently removed during a calendar year under the preceding two sentences, a partial month shall count as a month, except that where a tank is permanently removed and replaced by another tank, the total of the annual operating fee for the tank that is removed and the replacement tank shall not exceed the annual operating fee for the replacement tank. ~~The~~ Except as provided in this subsection, the annual operating fee shall be due and payable on the first day of the month in accordance with a staggered schedule established by the Department. The Department shall implement a staggered schedule to the end that the total amount of fees to be collected by the Department is approximately the same each quarter. A person who owns or operates more than one petroleum commercial underground storage tank may request that the fee for all tanks be due at the same time. ~~The fee~~

~~for all commercial underground storage tanks located at the same facility shall be due at the same time.~~ A person ~~who owns or operates 12 or more commercial petroleum storage tanks~~ may request that the total of all fees be paid in four equal payments to be due on the first day of each calendar quarter.~~quarter, provided that the fee for all commercial underground storage tanks located at the same facility shall be due at the same time.~~

...."."

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. 119 DATE 6-14-11

S. B. No. _____ Amendment No. 3

COMMITTEE SUBSTITUTE ✓ H119-CSSB-45 [v.2] (to be filled in by Principal Clerk)

Rep.)
Sen.) Atwater

1 moves to amend the bill on page 16, line 21
2 ( ) WHICH CHANGES THE TITLE through p. 17, line 21
3 by deleting these lines and
4
5 amending the title and subsequent
6 section numbers accordingly.
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SIGNED _____

ADOPTED _____ FAILED ✓ TABLED _____

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

H D

HOUSE BILL 329
Committee Substitute Favorable 3/24/11
Third Edition Engrossed 4/6/11
PROPOSED SENATE COMMITTEE SUBSTITUTE H329-PCS30394-SB-21

Short Title: Bldg. Codes/Expand Equine Exemption. (Public)

Sponsors:

Referred to:

March 14, 2011

A BILL TO BE ENTITLED

AN ACT TO EXPAND THE EXEMPTION FROM BUILDING RULES FOR FARM BUILDINGS TO INCLUDE FARM BUILDINGS USED FOR SPECTATOR EVENTS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 143-138(b4) reads as rewritten:

"(b4) Building rules do not apply to (i) farm buildings that are located outside the building-rules jurisdiction of any municipality, or (ii) farm buildings that are located inside the building-rules jurisdiction of any municipality if the farm buildings are greenhouses. For the purposes of this subsection:

(1) A "farm building" shall include any structure used or associated with equine activities, including, but not limited to, the care, management, boarding, or training of horses and the instruction and training of riders. Structures that are associated with equine activities include, but are not limited to, free standing or attached sheds, barns, or other structures that are utilized to store any equipment, tools, commodities, or other items that are maintained or used in conjunction with equine activities. The specific types of equine activities, structures, and uses set forth in this subdivision are for illustrative purposes, and should not be construed to limit, in any manner, the types of activities, structures, or uses that may be considered under this subsection as exempted from building rules. ~~A farm building that might otherwise qualify for exemption from building rules shall not be exempt if it is used for a spectator event and more than 10 members of the public are present at the farm building for the event.~~

(2) A "greenhouse" is a structure that has a glass or plastic roof, has one or more glass or plastic walls, has an area over ninety-five percent (95%) of which is used to grow or cultivate plants, is built in accordance with the National Greenhouse Manufacturers Association Structural Design manual, and is not used for retail sales. Additional provisions addressing distinct life safety hazards shall be approved by the local building-rules jurisdiction."

SECTION 2. This act is effective when it becomes law and applies to all farm buildings, including farm buildings where construction either began or was completed prior to the effective date of this act.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

H D

HOUSE BILL 329
Committee Substitute Favorable 3/24/11
Third Edition Engrossed 4/6/11
PROPOSED SENATE COMMITTEE SUBSTITUTE H329-CSSB-21 [v.1]

4/19/2011 2:06:55 PM

Short Title: Bldg. Codes/Expand Equine Exemption. (Public)

Sponsors:

Referred to:

March 14, 2011

A BILL TO BE ENTITLED

AN ACT TO EXPAND THE EXEMPTION FROM BUILDING RULES FOR FARM BUILDINGS TO INCLUDE FARM BUILDINGS USED FOR SPECTATOR EVENTS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 143-138(b4) reads as rewritten:

"(b4) Building rules do not apply to (i) farm buildings that are located outside the building-rules jurisdiction of any municipality, or (ii) farm buildings that are located inside the building-rules jurisdiction of any municipality if the farm buildings are greenhouses. For the purposes of this subsection:

(1) A "farm building" shall include any structure used or associated with equine activities, including, but not limited to, the care, management, boarding, or training of horses and the instruction and training of riders. Structures that are associated with equine activities include, but are not limited to, free standing or attached sheds, barns, or other structures that are utilized to store any equipment, tools, commodities, or other items that are maintained or used in conjunction with equine activities. The specific types of equine activities, structures, and uses set forth in this subdivision are for illustrative purposes, and should not be construed to limit, in any manner, the types of activities, structures, or uses that may be considered under this subsection as exempted from building rules. ~~A farm building that might otherwise qualify for exemption from building rules shall not be exempt if it is used for a spectator event and more than 10 members of the public are present at the farm building for the event.~~

(2) A "greenhouse" is a structure that has a glass or plastic roof, has one or more glass or plastic walls, has an area over ninety-five percent (95%) of which is used to grow or cultivate plants, is built in accordance with the National Greenhouse Manufacturers Association Structural Design manual, and is not used for retail sales. Additional provisions addressing distinct life safety hazards shall be approved by the local building-rules jurisdiction."

SECTION 2. This act is effective when it becomes law and applies to all farm buildings, including farm buildings where construction either began or was completed prior to the effective date of this act.

HOUSE BILL 329:
Bldg. Codes/Expand Equine Exemption

2011-2012 General Assembly

Committee:	Senate Agriculture/Environment/Natural Resources	**Date:**	June 14, 2011
Introduced by:	Reps. Horn, Dixon, Faircloth, Burr	**Prepared by:**	Mariah Matheson
Analysis of:	PCS to the 3rd Edition (H329-CSSB-21 [v.1]		Research Assistant

SUMMARY: The Proposed Committee Substitute for House Bill 329 would expand the building code rules exemption for farm buildings used for spectator events.

CURRENT LAW: A farm building includes structures used or associated with equine activities for purposes of complying with the State Building Code's building rules. The building code rules do not apply to farm buildings located *outside* the building-rules jurisdiction of any municipality or greenhouses *inside* the building-rules jurisdiction of a municipality. However, a farm building loses its exempt status if it is used for spectator events at which more than 10 members of the public are present.

BILL ANALYSIS: The Proposed Committee Substitute for House Bill 329 would repeal the spectator event provision so that farm buildings used for spectator events would be exempt from the building code rules.

EFFECTIVE DATE: The act would be effective when it becomes law, and apply to all farm buildings, including farm buildings on which construction either began or was completed prior to the effective date of the act.

Jan Paul, committee counsel to House Agriculture, substantially contributed to this summary.

HOUSE BILL 329
Committee Substitute Favorable 3/24/11
Third Edition Engrossed 4/6/11

Short Title: Bldg. Codes/Expand Equine Exemption. (Public)

Sponsors:

Referred to:

March 14, 2011

A BILL TO BE ENTITLED

AN ACT TO EXPAND THE EXEMPTION FROM BUILDING RULES FOR FARM BUILDINGS TO INCLUDE FARM BUILDINGS USED FOR SPECTATOR EVENTS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 143-138(b4) reads as rewritten:

"(b4) Farm Exemption. – Building rules do not apply to (i) farm buildings that are located outside the building-rules jurisdiction of any municipality, or (ii) farm buildings that are located inside the building-rules jurisdiction of any municipality if the farm buildings are greenhouses. For the purposes of this subsection:

(1) A "farm building" shall include any structure used or associated with equine activities, including, but not limited to, the care, management, boarding, or training of horses and the instruction and training of riders. Structures that are associated with equine activities include, but are not limited to, free standing or attached sheds, barns, or other structures that are utilized to store any equipment, tools, commodities, or other items that are maintained or used in conjunction with equine activities. The specific types of equine activities, structures, and uses set forth in this subdivision are for illustrative purposes, and should not be construed to limit, in any manner, the types of activities, structures, or uses that may be considered under this subsection as exempted from building rules. A farm building that might otherwise qualify for exemption from building rules shall not be exempt if it is used for a spectator event and ~~more than 10 members~~50 or more members of the public are present at the farm building for the ~~event.~~event, unless the spectator event meets all of the following requirements:

A permit is issued by the fire marshal of the county in which the building is located to the owner or lessee of the property in accordance with G.S. 153A-357. Approval shall be granted after the fire marshal has verified the temporary nature of the event, the outstanding unsafe conditions have been mitigated and a fire watch has been established. For purposes of this section, 'temporary' shall be defined as an event is held not more than four times per calendar year in the building and the period of continuous use does not exceed 24 hours.

(2) A "greenhouse" is a structure that has a glass or plastic roof, has one or more glass or plastic walls, has an area over ninety-five percent (95%) of which is used to grow or cultivate plants, is built in accordance with the National

Greenhouse Manufacturers Association Structural Design manual, and is not used for retail sales. Additional provisions addressing distinct life safety hazards shall be approved by the local building-rules jurisdiction."

SECTION 2. This act is effective when it becomes law and applies to all farm buildings, including farm buildings where construction either began or was completed prior to the effective date of this act.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

H D

HOUSE BILL 482
Committee Substitute Favorable 4/14/11
PROPOSED SENATE COMMITTEE SUBSTITUTE H482-PCS30393-LH-7

Short Title: Water Supply Lines/Water Violation Waivers. (Public)

Sponsors:

Referred to:

March 29, 2011

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE ADDITIONAL CONNECTIONS TO WATER SUPPLY LINES FUNDED BY THE CLEAN WATER AND NATURAL GAS CRITICAL NEEDS BOND ACT OF 1998 AND TO DIRECT THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES TO WAIVE THE PENALTY ASSESSED AGAINST CERTAIN POOR COUNTIES FOR CERTAIN WATER QUALITY VIOLATIONS.

The General Assembly of North Carolina enacts:

SECTION 1. Notwithstanding Section 5.1(b) of Session Law 1998-132, the Secretary of Environment and Natural Resources shall grant a waiver to allow additional connections to a bond-funded waterline within an area designated as WS-I or the critical area of any area that has been designated as WS-II, WS-III, or WS-IV by the Environmental Management Commission pursuant to G.S. 143-214.5, provided the design capacity and size of the existing bond-funded waterline can accommodate the additional connections, and the purpose of the additional connection is for either of the following reasons:

(1) To address an existing threat to public health or water quality.

(2) To provide water to a habitable structure located on a lot zoned for a single-family residence. There is no requirement that the habitable structure existed on the lot at the time of the construction of the bond-funded waterline.

SECTION 2.(a) Notwithstanding any other provision of law, the Department of Environment and Natural Resources shall remit any penalty assessed between June 1, 2010, and July 1, 2011, against a poor county for any violations of the conditions of an NPDES permit issued to the county, any violation of G.S. 143-215.1(a)(6) by the unauthorized discharge of sludge into the waters of the State, and any violations of stream standards and wetland standards under G.S. 143-215.1 and 15A NCAC 2B .0211(2) resulting from an unauthorized discharge of sludge if the county satisfies all of the following conditions:

(1) The county promptly abated continuing environmental damage resulting from the violation and it has been determined by the Department of Environment and Natural Resources that the sludge removal resulting from the violation is satisfactory and complete.

(2) The county has not been assessed civil penalties for any previous violations.



(3) The county's water treatment plant was operated by a private contractor for the majority of the plant's operating life and received no notice of any violations during that time.

(4) The county agrees to pay to the Department of Environment and Natural Resources the investigative costs regarding the violations.

(5) The county agrees that, if the penalty is remitted pursuant to this act, the county will use funds in an amount equal to the lowest amount of the proposed assessment for the violations to implement the remaining remedial actions identified as necessary by the Department of Environment and Natural Resources.

SECTION 2.(b) For purposes of this section, a poor county is a county (i) with an unemployment rate on the date of the assessment of the penalty that is at least two and one-half percent (2.5%) higher than the State average and (ii) in which, according to the 2008 US Census, at least eighteen percent (18%) of the county residents are below the poverty level.

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

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

H D

HOUSE BILL 482
Committee Substitute Favorable 4/14/11
PROPOSED SENATE COMMITTEE SUBSTITUTE H482-CSLH-7 [v.5]

6/14/2011 8:55:15 AM

Short Title: Water Supply Lines/Water Violation Waivers. (Public)

Sponsors:

Referred to:

March 29, 2011

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE ADDITIONAL CONNECTIONS TO WATER SUPPLY LINES FUNDED BY THE CLEAN WATER AND NATURAL GAS CRITICAL NEEDS BOND ACT OF 1998 AND TO DIRECT THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES TO WAIVE THE PENALTY ASSESSED AGAINST CERTAIN POOR COUNTIES FOR CERTAIN WATER QUALITY VIOLATIONS.

The General Assembly of North Carolina enacts:

SECTION 1. Notwithstanding Section 5.1(b) of Session Law 1998-132, the Secretary of Environment and Natural Resources shall grant a waiver to allow additional connections to a bond-funded water line within an area designated as WS-I or the critical area of any area that has been designated as WS-II, WS-III, or WS-IV by the Environmental Management Commission pursuant to G.S. 143-214.5, provided the design capacity and size of the existing bond-funded line can accommodate the additional connections and the purpose of the additional connection is for either of the following reasons:

(1) To address an existing threat to public health or water quality.

(2) To provide water to a habitable structure located on a lot zoned for a single family residence. There is no requirement that the habitable structure existed on the lot at the time of the construction of the bond-funded water line.

SECTION 2.(a) Notwithstanding any other provision of law, the Department of Environment and Natural Resources shall remit any penalty assessed between June 1, 2010 and July 1, 2011, against a poor county for any violations of the conditions of an NPDES permit issued to the county, any violation of G.S. 143-215.1(a)(6) by the unauthorized discharge of sludge into the waters of the State, and any violations of stream standards and wetland standards under G.S. 143-215.1 and 15A NCAC 2B.0211(2) resulting from an unauthorized discharge of sludge, if the county satisfies all of the following conditions:

(1) The county promptly abated continuing environmental damage resulting from the violation and it has been determined by the Department of Environment and Natural Resources that the sludge removal resulting from the violation is satisfactory and complete.

(2) The county has not been assessed civil penalties for any previous violations.

(3) The county's water treatment plant was operated by a private contractor for the majority of the plant's operating life and received no notice of any violations during that time.

(4) The county agrees to pay to the Department of Environment and Natural Resources the investigative costs regarding the violations.

(5) The county agrees that if the penalty is remitted pursuant to this act, the county will use funds in an amount equal to the lowest amount of the proposed assessment for the violations to implement the remaining remedial actions identified as necessary by the Department of Environment and Natural Resources.

SECTION 2.(b) For purposes of this section, a poor county is a county: (i) with an unemployment rate on the date of the assessment of the penalty that is at least 2.5% higher than the State average, and (ii) in which, according to the 2008 US Census, at least 18% of the county residents are below the poverty level.

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

HOUSE BILL 482:
Norwood Water Lines

2011-2012 General Assembly

Committee:	Senate Agriculture/Environment/Natural Resources	**Date:**	June 14, 2011
Introduced by:	Rep. Burr	**Prepared by:**	Jeff Hudson and Jennifer McGinnis, Committee Counsel
Analysis of:	PCS H482-CSLH-7 [v.5]		

SUMMARY: ***The Proposed Committee Substitute (PCS) for House Bill 482 would: (i) authorize additional connections to water supply lines funded by the Clean Water and Natural Gas Critical Needs Bond Act of 1998; and (ii) direct the Department of Environment and Natural Resources to waive the penalty assessed against certain poor counties for certain water quality violations.***

[As introduced, this bill was identical to S472, as introduced by Sen. Purcell, which is currently in House Government.]

BILL ANALYSIS:

Section 1.

Current Law: The Clean Water and Natural Gas Critical Needs Bond Act of 1998 provided for the issuance of general obligation bonds of the State and for the allocation of the proceeds from the sale of those bonds. Section 5.1(b) of the act prohibited the use of the proceeds to construct new water or sewer lines in areas designated WS-I or the critical areas of WS- II, III, or IV. The Secretary of Environment and Natural Resources (Secretary) may grant a waiver to allow such construction and to provide water and sewer connections if the Secretary finds that the construction is necessary to protect public health or water quality. Waivers must require that the lines be designed to address only the health/water quality concerns and not allow for additional connections.

The PCS would provide that the Secretary shall grant a waiver to allow additional connections to the water line funded with the Clean Water and Natural Gas Critical Needs bonds in areas designated WS-I or the critical areas of WS-II, III, or IV if the design capacity and size of the existing line can accommodate the additional connections and the purpose is either to address an existing threat to public health or water quality, or to provide water to a habitable structure on a lot zoned for single family homes, if the lot was platted at the time of the construction of the water line. The structure to be served need not have existed at the time of construction of the bond funded line.

Section 2.

The PCS would require the Department of Environment and Natural Resources (DENR) to remit any penalty assessed between June 1, 2010 and July 1, 2011, against a poor county for any violations of the conditions of a National Pollutant Discharge Elimination System (NPDES) permit issued to the county, any unauthorized discharge of sludge into the waters of the State, and any violations of stream standards and wetland standards resulting from an unauthorized discharge of sludge, if the county satisfies all of the following conditions:

- The county promptly abated continuing environmental damage resulting from the violation and it has been determined by DENR that the sludge removal resulting from the violation is satisfactory and complete.
- The county has not been assessed civil penalties for any previous violations.
- The county's water treatment plant was operated by a private contractor for the majority of the plant's operating life and received no notice of any violations during that time.
- The county agrees to pay to DENR the investigative costs regarding the violations.
- The county agrees that if the penalty is remitted pursuant to this act, the county will use funds in an amount equal to the lowest amount of the proposed assessment for the violations to implement the remaining remedial actions identified as necessary by DENR.

For purposes of the provision, a poor county is a county: (i) with an unemployment rate on the date of the assessment of the penalty that is at least 2.5% higher than the State average, and (ii) in which, according to the 2008 US Census, at least 18% of the county residents are below the poverty level.

EFFECTIVE DATE: This PCS would be effective when it became law.

Barbara Riley, counsel to House Government, substantially contributed to this summary.

H 2

HOUSE BILL 482
Committee Substitute Favorable 4/14/11

Short Title: Norwood Water Lines. (Public)

Sponsors:

Referred to:

March 29, 2011

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE ADDITIONAL CONNECTIONS TO WATER SUPPLY LINES FUNDED BY THE CLEAN WATER AND NATURAL GAS CRITICAL NEEDS BOND ACT OF 1998.

The General Assembly of North Carolina enacts:

SECTION 1. Notwithstanding Section 5.1(b) of Session Law 1998-132, the Secretary of Environment and Natural Resources shall grant a waiver to allow additional connections to a bond-funded water line within an area designated as WS-I or the critical area of any area that has been designated as WS-II, WS-III, or WS-IV by the Environmental Management Commission pursuant to G.S. 143-214.5, provided the design capacity and size of the existing bond-funded line can accommodate the additional connections and the purpose of the additional connection is for either of the following reasons:

(1) To address an existing threat to public health or water quality.

(2) To provide water to a habitable structure located on a lot zoned for a single family residence. There is no requirement that the habitable structure existed on the lot at the time of the construction of the bond-funded water line.

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

VISITOR REGISTRATION SHEET

Senate AG/Env/Nat. Resources (2011-2012) — June 14, 2011
Name of Committee — **Date**

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Karen Higgins	NC DENR - DWQ
Tom Fransen	NC DENR - DWR
Sheila Holman	NCDENR - DAQ
Jon Risgaard	NCDENR - DWQ
David Knight	DENR
PAIGE WORSHAM	LEGISLATIVE REPORTING SERVICE
Jesse Hayes	NC ABA
Heather Barrett	Williams Mullen
Emily Grimm	MWC
Jimmy Broughton	Womble Carlyle

name	firm or Agency
Laura Devine	WCSR
Steve Seddon	Seddon Sara Consulting

VISITOR REGISTRATION SHEET

Senate AG/Env/Nat. Resources (2011-2012)
Name of Committee **Date**

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dim dohnen	BSA
Pat Hamm	DENR/DSWC
Peter Raabe	American Rivers
Dan Crawford	NCLCV
Tami Bean	NCWF, EDF
Mary Maddox	SELC
Robin Smith	DENR
John Shaw	CAP. GRP. SIERRA CLUB
Dexter Matthews	Division of Waste Management DENR
Willo Mixson	Sierra Club

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Senate AG/Env/Nat. Resources (2011-2012)
Name of Committee **Date**

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Mike Abraczinskas	DENR
David Rains	DENR
David Bowey	Womble
Andy Zinsmeister	Womble
Scott Gallisdorfer	Womble
Matt Triplett	Womble
Janie Hauser	Womble
James Simon	NCDENR- OLR
STEVE McEVOY	NCDENR-LQS
Bradley Bennett	NCDENR. DWQ

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Senate AG/Env/Nat. Resources (2011-2012)
Name of Committee **Date**

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Steve Woodson	NCFIS
Brent Tuckell	NCACC
DAVID BARNES	PS
Glenn Dunn	PS
Frank Sheffield	Ward+Smith/Neuse WASA
BRENAN BUCKLEY	CDM / Neuse WASA
BARRY SUTTON	NRWASA
HAROLD HERRING	NRWASA
Bob Stevens	NCFA
Allison Fowler	NC Grange
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James Norment	Ward and Smith PA

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Senate AG/Env/Nat. Resources (2011-2012)
Name of Committee **Date**

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Becki Gray	FRF
Christie Barlett	CBPD
Doug Hong	NCPCUA
Mike Taylor	Michael W. Taylor, Atty at Law, PLLC
Colby Long	Biofuels Coalition NC
Joey Hicks	NCDA
Ray Starling	NCOA+CS
Whitney Christenson	Jordan Price
Betsy Bailey	PENC
Berry Jenkins	CAGC

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Senate AG/Env/Nat. Resources (2011-2012)
Name of Committee **Date**

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Scott Mouw	NC DENR
Grover Nicholson	NCDENR
Ruth Strauss	DENR
Michael Scott	NC DENR
Coley Hughes	NCLEG
Annie Dowley	NCLEG
Rose Williams	NCDOT
Peter Kus	CTNC
[signature]	SA
Kristi Huff	NCHCFA

Abby Abby

Abby Abby

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2011-2012

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Senator Bob Atwater Room 519, LOB 733-3036 Bob.atwater@ncleg.net LA: Carol Resar	Senator Stan Bingham Room 2117, LB 733-5665 Stan.bingham@ncleg.net LA: Judy Chriscoe
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Senator Fletcher Hartsell Room 300B, LOB 733-7223 Fletcher.hartsell@ncleg.net LA: Gerry Johnson	Senator Clark Jenkins Room 621, LOB 715-3040 Clark.jenkins@ncleg.net LA: Megan McCarthy
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Jennifer Mundt Research 733-7825 Jennifer.mundt@ncleg.net	Mariah Matheson Research 733-7825 Mariah.matheson@ncleg.net

Senator Wes Westmoreland – Effective 2012 – short session

ATTENDANCE

Committee: Ag/Env/Nat. Resources 2011-2012

9:00
12:00

NAMES \ DATES	5-31-11	6-2-11	6-7-11 AM	6-7-11 PM	~~6-9-11~~	6-9-11	6-13-11	6-14-11	6-7-12	6-7-12						
Sen. Don East, Co-Chair	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓						
Sen. David Rouzer, Co-Chair	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓						
Sen. Brent Jackson, Vice Chair	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓						
Sen. Austin Allran	✓					✓		✓		✓						
Sen. Bob Atwater		✓	✓	✓		✓	✓	✓	✓							
Sen. Stan Bingham	✓	✓	✓	✓		✓			✓							
Sen. Andrew Brock	✓	✓	✓	✓		✓	✓	✓	✓	✓						
Sen. Harry Brown	✓	✓		✓		✓	✓		✓	✓						
Sen. Dan Clodfelter		✓	✓	✓	✓	✓	✓		✓							
Sen. Warren Daniel	✓	✓	✓			✓	✓		✓	✓						
Sen. Fletcher Hartsell	✓	✓	✓			✓	✓		✓							
Sen. Clark Jenkins		✓				✓		✓	✓	✓						
Sen. Ellie Kinnaird	✓	✓	✓			✓		✓	✓							
Sen. Jean Preston	✓	✓	✓	✓		✓	✓	✓								
Sen. Bill Rabon	✓	✓	✓	✓		✓	✓	✓	✓	✓						
Sen. Jerry Tillman	✓	✓	✓				✓	✓								
Sen. Tommy Tucker	✓	✓	✓	✓		✓	✓	✓	✓	✓						
Sen. Michael Walters		✓	✓		✓	✓		✓	✓	✓						
Sen. Stan White		✓	✓		✓	✓	✓		✓							
Sen. Westmoreland - 2012									✓	✓						
Cindy Davis, Comm. Clerk	✓	✓	✓	✓	✓	✓	✓	✓								
Jeff Hudson	✓	✓	✓	✓	✓	✓	✓	✓								
Jennifer McGinnis	✓	✓	✓	✓	✓	✓	✓	✓								
Jennifer Mundt				✓	✓	✓	✓									
Mariah Matheson	✓	✓	✓	✓	✓	✓	✓	✓								

Senate Agriculture/Environment/Natural Resources

MINUTES

June 7, 2012

9:00 AM & 12:00 Noon

The Senate Ag/Env/Nat. Resources committee met on Thursday, June 7, 2012 in Room 643-LOB at 9:00 pm. There were 17 senators present.

Sen. Don East called the meeting to order and introduced the Pages and Sgt-At-Arms staff.

HB-952 – STATE AIR TOXICS PROGRAM REFORMS -

Rep. Gillespie explained the bill. Mr. Jeffrey Hudson, Staff Counsel added explanation. Sen. Clodfelter asked for an example for a source that might not be covered by the program. Rep. Gillespie responded. Mr. Mike Abraczingkas, NC Dept. of Env. & Nat. Resources, Division of Air Quality, addressed members. Sen. Jenkins had additional questions about the regulation of air. Mr. Abraczingkas responded about the federal requirements that are set forth. Sen. Brown & Sen. Rabon had questions that Rep. Gillespie answered. Mr. Hudson gave more explanation on facilities that are covered under the state and federal programs.

Sen. Bingham moved for a favorable report.

Sen. Kinnaird asked if there is a companion bill and Mr. Hudson advised that SB858 was the same at introduction. Sen. Kinnaird then spoke on air quality and the impacts if we change to only federal requirements. Rep. Gillespie was familiar with what she was talking about. Sen. Atwater asked staff about federal citations on air toxics and Mr. Hudson responded. Rep. Gillespie spoke again on the bill.

No further discussion, vote taken and so moved.

SB-813 – DCR AND DENR/STUDY STATE ATTRACTIONS SAVINGS

Sen. Hartsell explained the bill and sent forth an amendment. Mr. Hudson explained that the amendment changes the date. Sen. Bingham moved adoption of the amendment. Vote taken on the amendment and so moved. Sen. Hartsell spoke on the bill again and urged support. Sen. Jenkins moved to roll the amendment into a PCS for a favorable report, unfavorable to the original bill. No further discussion, vote taken and so moved.

SB-905 CURRITUCK CAMA SETBACK REQTS/GRANDFATHER

Sen. White explained the bill. Sen. Walters moved for a favorable report. No further discussion. Vote taken and so moved.

SB-868 – WILDLIFE LICENSE/ELIMINATE PENATLY

Sen. Rouzer explained the bill. Sen. Clodfelter moved for a favorable report. Mr. Jeff Hudson read the amendment that was requested by the Wildlife Commission that changes the effective date. Sen. Clodfelter moved adoption of the amendment. The vote was taken and so moved. No further discussion. Sen. Clodfelter corrected his motion to roll the amendment into a new PCS for a favorable report, unfavorable as to the original bill. The vote was taken and so moved.

SB-807 – PROHIBIT CERTAIN HARVEST OF MENHADEN

SB-821 – STUDY COASTAL FISHING & BOATING LICENSE FEES

SB-829 – STUDY REORGANIZATION OF FISH & WILDLIFE MGMT

Sen. East advised there is a PCS that rolls all three of these bills into one and he moved for adoption of the PCS. The vote was taken and so moved. Sen. Brown explained the PCS by sections. He told members this may have to be revisited in the future but it is a good start from discussions from the interim meetings of the Marine Fisheries Study Commission. Sen. Jenkins sent forth an amendment and explained. This affects the dredging issue that adds another appointment for the Dept. of Transportation to the Board. Sen. Brown supports the amendment. The vote was taken on the amendment and so moved.

Public Comment:

Mr. Al Dudley, Menhaden Boat Capt. from Beaufort said he is begging for his lively-hood. Menhaden is his way of life, as well as the life of several others. Please consider the people who make their living catching fish. Please look for a compromise and change the current fishing season to help them for six weeks during the winter months.

Sen. Clodfelter would like to know if someone can add some additional comments about this for more clarification. Mr. Louis Daniel, Exec. Director, Division of Marine Fisheries, addressed the issue. He is not sure that the issues raised during the study commission discussions could be done by changing the season. This can affect the by-catch numbers. Sen. Kinnaird asked if there is a scientific study and Mr. Daniel said there have been many studies done. Sen. Jenkins asked about the specific time-frame mentioned by Mr. Dudley and if there would be a gain if this could be postponed until October or a later date and would this be the time to look into this issue. Mr. Daniel said they are looking into this already. He advised he has been given authority by a Proclamation to address this and at the current time Menhaden is closed by way of Proclamation. Sen. Jenkins asked if this specific issue will be reviewed. Mr. Daniel told members he will do whatever the wishes of this body are and it can be done if they ask him to do so. Sen. Clodfelter said if we pass this bill today that will hinder the possibility of looking into the changes of the season. Sen. Rabon spoke about the problem he sees with changing the season.

Mr. Sean McKeon, NC Fisheries Assoc. addressed members and expressed concerns about this bill. He also questioned the language of Section 2.(a) (page 2) regarding abolishing the current Marine Fisheries Commission to the Wildlife Resources Commission because he thought it was decided a study would be done.

Sen. Rabon responded to Mr. McKeon's comments. Sen. East asked staff to clarify the "study" on Page 2 and Mr. Hudson explained. Sen. Kinnaird moved for a favorable report. Sen. Atwater spoke on the bill but he feels for the captain's situation and believes this should be taken into consideration. Sen. Brown spoke again. The chairman advised the amendment will be rolled into a new PCS for a favorable report, unfavorable as to the original bill. The vote was taken and so moved.

The meeting adjourned at 10:00.

THE MEETING RECONVENED AT NOON IN ROOM 643

The Senate Ag/Env/Nat. Resources committee met on Thursday, June 7, 2012 in Room 643-LOB at 9:00 pm. There were 17 senators present.

Sen. Don East called the meeting to order and introduced the Pages and Sgt-At-Arms staff.

Sen. East called the meeting to order to conclude our agenda.

HB-819 – CAMA SETBACK REQ'TS/GRANDFATHER CLAUSE

Sen Rouzer sent forth a Proposed Committee Substitute. Sen. Brown moved for adoption of the PCS. The vote was taken and so moved. Sen. Rouzer explained the PCS. Sen. Jenkins commended the sponsor and moved for a favorable report of the PCS, unfavorable to the original bill. Sen. Brown spoke in favor of the PCS.

The Chairman called on Mr. Rob Lamme who introduced Dr. Robert Jackson, Professor of Duke University and he addressed members. He spoke on reasons to hold off on the PCS for now. He requests a one-month hold on this in an effort to gather additional data. Sen. Rouzer responded to Dr. Jackson's comments. Dr. Jackson doesn't understand why they want to push this on through until more studies have been done and additional data can be looked at.

No further discussion, the vote taken and so moved.

Meeting adjourned at 12:25 pm.

Sen. Don East , Co-Chair

Cindy J. Davis, Committee Clerk

Senate Agriculture/Environment/Natural Resources Committee
Thursday, June 7, 2012, 9:00 AM
643 LOB

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

HB 819	CAMA setback req'ts./grandfather clause.	Representative McElraft
HB 952	State Air Toxics Program Reforms.	Representative Gillespie Representative Samuelson
SB 807	Prohibit Certain Harvest of Menhaden.	Senator Brown Senator Goolsby Senator Rabon
SB 821	Study Coastal Fishing & Boating License Fees.	Senator Brown Senator Goolsby Senator Rabon
SB 829	Study Reorganization of Fish & Wildlife Mgmt.	Senator Brown Senator Goolsby Senator Rabon
SB 813	DCR and DENR/Study State Attractions Savings.	Senator Hartsell
SB 868	Wildlife Licenses/Eliminate Penalty.	Senator Newton Senator Brown
SB 905	Currituck CAMA Setback Req'ts./Grandfather.	Senator White

Presentations

Other Business

Adjournment

Cindy Davis (Sen. Jackson)

From:	Cindy Davis (Sen. Jackson)
Sent:	Thursday, June 07, 2012 10:17 AM
To:	@SenateCommitteeNotice; @Senate Principal Clerk's Office; @Senate/Agric./Env./Nat'l Res.; Beverly Adams (Legislative Services Office); Jeff Warren (President Pro Tem's Office); Jeffrey Hudson (Research); Jennifer McGinnis (Research); Jennifer Mundt (Research); Mariah Matheson (Research); Peter Ledford (Research); Phil King (Senate Sgt. at Arms); Sarah Clapp (Senate Principal Clerk)
Cc:	Sarah Neunzig (Sen. Rouzer); Judy Edwards (Sen. Rouzer)
Subject:	<NCGA> Senate Agriculture/Environment/Natural Resources Committee Meeting Notice for Thu, 06-07-2012 at 12:00 - CORRECTED

Principal Clerk _____
Reading Clerk _____

Corrected: COMPLETE MORNING AGENDA

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

The Senate Committee on **Agriculture/Environment/Natural Resources** will meet at the following time:

DAY	DATE	TIME	ROOM
Thursday	June 7, 2012	12:00	643 LOB

The following will be considered:

BILL NO.	SHORT TITLE	SPONSOR
SB 807	Prohibit Certain Harvest of Menhaden.	Senator Brown Senator Goolsby Senator Rabon
SB 821	Study Coastal Fishing & Boating License Fees.	Senator Brown Senator Goolsby Senator Rabon
SB 829	Study Reorganization of Fish & Wildlife Mgmt.	Senator Brown Senator Goolsby

		Senator Rabon
HB 819	CAMA setback req'ts./grandfather clause.	Representative McElraft
HB 952	State Air Toxics Program Reforms.	Representative Gillespie Representative Samuelson
SB 813	DCR and DENR/Study State Attractions Savings.	Senator Hartsell
SB 868	Wildlife Licenses/Eliminate Penalty.	Senator Newton Senator Brown
SB 905	Currituck CAMA Setback Req'ts./Grandfather.	Senator White

COMPLETE MORNING AGENDA

Senator Don East, Co-Chair
Senator Brent Jackson, Co-Chair
Senator David Rouzer, Co-Chair

Principal Clerk
Reading Clerk

Corrected: Updated Agenda for Thursday - Added SB-868 & SB-905

SENATE
NOTICE OF COMMITTEE MEETING
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SB 868	Wildlife Licenses/Eliminate Penalty.	Senator Newton Senator Brown
SB 905	Currituck CAMA Setback Req'ts./Grandfather.	Senator White

Updated Agenda for Thursday - Added SB-868 & SB-905

Senator Don East, Co-Chair
Senator Brent Jackson, Co-Chair
Senator David Rouzer, Co-Chair

Principal Clerk ____
Reading Clerk ____

Corrected: Updated Agenda for Thursday – Add SB-813

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

The Senate Committee on **Agriculture/Environment/Natural Resources** will meet at the following time:

DAY	DATE	TIME	ROOM
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The following will be considered:

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HB 952	State Air Toxics Program Reforms.	Representative Gillespie Representative Samuelson
SB 813	DCR and DENR/Study State Attractions Savings.	Senator Hartsell

Updated Agenda for Thursday

Senator Don East, Co-Chair
Senator Brent Jackson, Co-Chair

Senator David Rouzer, Co-Chair

Principal Clerk
Reading Clerk

Corrected: Updated Agenda for Thursday

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

The Senate Committee on **Agriculture/Environment/Natural Resources** will meet at the following time:

DAY	DATE	TIME	ROOM
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The following will be considered:

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HB 819	CAMA setback req'ts./grandfather clause.	Representative McElraft
HB 952	State Air Toxics Program Reforms.	Representative Gillespie Representative Samuelson

Updated Agenda for Thursday

Senator Don East, Co-Chair
Senator Brent Jackson, Co-Chair
Senator David Rouzer, Co-Chair

Senate Agriculture/Environment/Natural Resources Committee
Thursday, June 7, 2012, 9:00 AM
643 LOB

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Presentations

Other Business

Adjournment

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES COMMITTEE REPORT
Senator Don East, Co-Chair
Senator Brent Jackson, Co-Chair
Senator David Rouzer, Co-Chair

Thursday, June 07, 2012

Senator EAST,
submits the following with recommendations as to passage:

FAVORABLE

S.B. **905** Currituck CAMA Setback Req'ts./Grandfather.
Sequential Referral: None
Recommended Referral: None

H.B.(CS #1) **952** State Air Toxics Program Reforms.
Sequential Referral: None
Recommended Referral: None

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

S.B. **813** DCR and DENR/Study State Attractions Savings.
Draft Number: PCS35376-RI-45
Sequential Referral: None
Recommended Referral: None
Long Title Amended: No

S.B. **821** Study Coastal Fishing & Boating License Fees.
Draft Number: PCS35378-SB-59
Sequential Referral: Finance
Recommended Referral: None
Long Title Amended: Yes

S.B. **868** Wildlife Licenses/Eliminate Penalty.
Draft Number: PCS35377-RI-46
Sequential Referral: None
Recommended Referral: None
Long Title Amended: No

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 1, BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL

H.B.(CS #1) **819** CAMA setback req'ts./grandfather clause.

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES COMMITTEE REPORT
Senator Don East, Co-Chair
Senator Brent Jackson, Co-Chair
Senator David Rouzer, Co-Chair

Thursday, June 07, 2012

Senator EAST,
submits the following with recommendations as to passage:

FAVORABLE

S.B. **905** Currituck CAMA Setback Req'ts./Grandfather.
Sequential Referral: None
Recommended Referral: None

H.B.(CS #1) **952** State Air Toxics Program Reforms.
Sequential Referral: None
Recommended Referral: None

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

S.B. **813** DCR and DENR/Study State Attractions Savings.
Draft Number: PCS35376
Sequential Referral: None
Recommended Referral: None
Long Title Amended: No

S.B. **821** Study Coastal Fishing & Boating License Fees.
Draft Number: PCS35378
Sequential Referral: Finance
Recommended Referral: None
Long Title Amended: Yes

S.B. **868** Wildlife Licenses/Eliminate Penalty.
Draft Number: PCS35377
Sequential Referral: None
Recommended Referral: None
Long Title Amended: No

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 1, BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL

H.B.(CS #1) **819** CAMA setback req'ts./grandfather clause.

Draft Number:	PCS70305
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

TOTAL REPORTED: 6

Committee Clerk Comments:

Senator East will handle H952.
Senator Rouzer will handle H819

HOUSE BILL 952
Committee Substitute Favorable 5/24/12

Short Title: State Air Toxics Program Reforms. (Public)

Sponsors:

Referred to:

May 17, 2012

A BILL TO BE ENTITLED

AN ACT TO EXEMPT FROM STATE AIR TOXICS EMISSIONS CONTROLS THOSE SOURCES OF EMISSIONS THAT ARE SUBJECT TO CERTAIN FEDERAL EMISSIONS REQUIREMENTS, TO DIRECT THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES TO REQUIRE PERMIT CONDITIONS THAT ELIMINATE UNACCEPTABLE RISKS TO HUMAN HEALTH, TO DIRECT THE DIVISION OF AIR QUALITY TO REVIEW THE STATE AIR TOXICS PROGRAM, AND TO REQUIRE REPORTS ON THE IMPLEMENTATION OF THIS ACT, AS RECOMMENDED BY THE ENVIRONMENTAL REVIEW COMMISSION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 143-215.107(a) reads as rewritten:

"(a) Duty to Adopt Plans, Standards, etc. – The Commission is hereby directed and empowered, as rapidly as possible within the limits of funds and facilities available to it, and subject to the procedural requirements of this Article and Article 21:

...

(5) To develop and adopt emission control standards as in the judgment of the Commission may be necessary to prohibit, abate, or control air pollution commensurate with established air quality standards. ~~This subdivision does not apply to that portion of the National Emission Standards for Hazardous Air Pollutants for asbestos that governs demolition and renovation as set out in 40 C.F.R. § 61.141, 61.145, 61.150, and 61.154 (1 July 1993 edition).~~ The Department shall implement rules adopted pursuant to this subsection as follows:

a. Except as provided in sub-subdivision b. of this subdivision, rules adopted pursuant to this subdivision that control emissions of toxic air pollutants shall not apply to an air emission source that is any of the following:

1. Subject to an applicable requirement under 40 C.F.R. Part 61, as amended.
2. An affected source under 40 C.F.R. Part 63, as amended.
3. Subject to a case-by-case maximum achievable control technology (MACT) permit requirement issued by the Department pursuant to 42 U.S.C. § 7412(j), as amended.

b. Upon receipt of a permit application for a new source or facility, or for the modification of an existing source or facility, that would

result in an increase in the emission of toxic air pollutants, the Department shall review the application to determine if the emission of toxic air pollutants from the source or facility would present an unacceptable risk to human health. Upon making a written finding that a source or facility presents or would present an unacceptable risk to human health, the Department shall require the owner or operator of the source or facility to submit a permit application for any or all emissions of toxic air pollutants from the facility that eliminates the unacceptable risk to human health. The written finding may be based on modeling, epidemiological studies, actual monitoring data, or other information that indicates an unacceptable health risk. When the Department requires the owner or operator of a source or facility to submit a permit application pursuant to this sub-subdivision, the Department shall report to the Chairs of the Environmental Review Commission on the circumstances surrounding the permit requirement, including a copy of the written finding.

...."

SECTION 2. The Environmental Management Commission shall amend its rules adopted pursuant to G.S. 143-215.107(a) so that they are consistent with the provisions of Section 1 of this act.

SECTION 3. The Division of Air Quality of the Department of Environment and Natural Resources shall review toxic air pollutant rules adopted pursuant to G.S. 143-215.107(a) and the implementation of those rules to determine whether changes could be made to the rules or their implementation to reduce unnecessary regulatory burden and increase the efficient use of Division resources while maintaining protection of public health. The Division shall conduct this review in consultation with interested parties. The Division shall report the results of its review, including recommendations, if any, to the Environmental Review Commission no later than December 1, 2012.

SECTION 4. The Division of Air Quality in the Department of Environment and Natural Resources shall report on the implementation of this act to the Environmental Review Commission no later than December 1 for the years 2012, 2013, and 2014. The report shall include an analysis of air toxic emissions changes and a summary of results of the Division's analysis of air quality impacts.

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

HOUSE BILL 952:
State Air Toxics Program Reforms

2011-2012 General Assembly

Committee:	Senate Agriculture/Environment/Natural Resources	**Date:**	June 6, 2012
Introduced by:	Reps. Gillespie, Samuelson	**Prepared by:**	Jeff Hudson Committee Counsel
Analysis of:	Second Edition		

SUMMARY: ***House Bill 952 would provide that State Air Toxics Program rules that control emissions of toxic air pollutants will not apply to any air emission source that is subject to federal emissions standards for toxic air pollutants.***

[As introduced, this bill was identical to S858, as introduced by Sens. East, Jackson, which is currently in Senate Agriculture/Environment/Natural Resources.]

BACKGROUND AND CURRENT LAW:

The State Air Toxics Program (Program) is a regulatory program administered by the Division of Air Quality (Division) in the Department of Environment and Natural Resources (Department). The Program is designed to control emissions of toxic air pollutants in order to protect human health. The statute upon which the Program is based, G.S. 143-215.107, was enacted in 1973. Pursuant to this statute, the Environmental Management Commission (Commission) developed and adopted air quality standards and developed and adopted emission control standards necessary to prohibit or control air pollution in compliance with the air quality standards.

BILL ANALYSIS: House Bill 952 would provide that Program rules that control emissions of toxic air pollutants will not apply to an air emission source that is any of the following:

- Subject to the requirements of 40 C.F.R. Part 61 or an affected source under 40 C.F.R. Part 63. These regulations established by the United States Environmental Protection Agency (USEPA) regulate emissions of toxic air pollutants from the sources of such emissions.
- Subject to a case-by-case maximum achievable control technology (MACT) permit requirement issued by the Department pursuant to 42 U.S.C. § 7412(j). This section of the federal Clean Air Act provides that if the USEPA fails to establish toxic air pollutant regulations for a particular category of sources subject to the federal program, a state must establish controls for sources within the category on a case-by-case basis.

House Bill 952 would also:

- Direct the Department to review applications for permits for a source or facility to determine if emissions from the source or facility would present an unacceptable risk to human health. If a source or facility is found to present an unacceptable risk to human health, the Department must require the owner or operator of the source or facility to submit a permit application that eliminates the unacceptable risk to human health. This provision would apply to any source or facility that emits toxic air pollutants, including those that would otherwise be exempt from the Program.

- Direct the Commission to amend the Program rules so that they are consistent with the provisions of this act.
- Direct the Division to review the Program rules and their implementation to determine if changes could be made to reduce unnecessary regulatory burden and increase the efficient use of Division resources while maintaining protection of public health. The Division would report the results of its review, including recommendations, if any, to the Environmental Review Commission no later than December 1, 2012.
- Direct the Division to report on the implementation of this act to the Environmental Review Commission no later than December 1 for the years 2012, 2013, and 2014.

EFFECTIVE DATE: This act would become effective when it becomes law.

Research Division *O. Walker Reagan, Director* *(919) 733-2578*

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

S D

SENATE BILL 813*
PROPOSED COMMITTEE SUBSTITUTE S813-PCS35376-RI-45

Short Title: DCR and DENR/Study State Attractions Savings. (Public)

Sponsors:

Referred to:

May 21, 2012

A BILL TO BE ENTITLED

AN ACT TO REQUIRE THE DEPARTMENT OF CULTURAL RESOURCES AND THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES TO STUDY VARIOUS REVENUE ENHANCEMENTS AND POTENTIAL SAVINGS AT STATE HISTORIC SITES AND MUSEUMS, THE STATE ZOO, STATE PARKS, AND STATE AQUARIUMS, AS RECOMMENDED BY THE JOINT LEGISLATIVE PROGRAM EVALUATION OVERSIGHT COMMITTEE.

The General Assembly of North Carolina enacts:

SECTION 1. The Department of Cultural Resources shall implement the following recommendations:

(1) Study site proximity and span of control to identify historic sites that could adopt a coordinated management structure and report no later than December 15, 2012, to the Senate Appropriations Committee on General Government and Information Technology and the House Appropriations Committee on General Government.

(2) Study reduced schedules for historic sites and report no later than December 15, 2012, to the Senate Appropriations Committee on General Government and Information Technology and the House Appropriations Committee on General Government.

(3) Study the feasibility of implementing more reliable mechanisms for counting visitors and report no later than December 15, 2012, to the Senate Appropriations Committee on General Government and Information Technology and the House Appropriations Committee on General Government.

(4) Determine the appropriate operating schedule for the Richard Caswell Memorial after the CSS Neuse moves to its new location.

(5) Study potential savings from introducing and expanding admission fees; eliminating discounts or raising fees; adopting corporate sponsorship for some sites; and transferring operations to nonprofit support groups, municipalities, or other appropriate entities and report no later than December 15, 2012, to the Senate Appropriations Committee on General Government and Information Technology and the House Appropriations Committee on General Government. The report should specifically address potential savings at the following historic sites:

a. Alamance Battleground.
b. Aycock Birthplace.
c. Bennett Place.
d. Bentonville Battlefield.
e. Charlotte Hawkins Brown Memorial.
f. Duke Homestead.
g. Historic Edenton.
h. Historic Stagville.
i. Museum of the Albemarle.
j. Thomas Wolfe Memorial.
k. Town Creek Indian Mound.

SECTION 2. The Department of Environment and Natural Resources shall implement the following recommendations:

(1) Study site proximity and span of control to identify parks that could adopt a coordinated management structure and report no later than December 15, 2012, to the House Appropriations Subcommittee on Natural and Economic Resources and the Senate Appropriations Committee on Natural and Economic Resources.

(2) Study daily visitation data to determine potential changes from daily or seasonal closure of specific parks and report no later than December 15, 2012, to the House Appropriations Subcommittee on Natural and Economic Resources and the Senate Appropriations Committee on Natural and Economic Resources.

(3) Validate no less frequently than every five years the number of visitors per car used in the calculation of visitor counts at State parks. The first report on this analysis shall be presented to the House Appropriations Subcommittee on Natural and Economic Resources and the Senate Appropriations Committee on Natural and Economic Resources no later than October 1, 2013.

(4) Provide an analysis of anticipated State costs and savings from partnering with nonprofits for operations at the zoo and aquariums and recommendations for partnering based on the analysis no later than December 15, 2012, to the House Appropriations Subcommittee on Natural and Economic Resources and the Senate Appropriations Committee on Natural and Economic Resources.

(5) Study and report no later than December 15, 2012, to the House Appropriations Subcommittee on Natural and Economic Resources and the Senate Appropriations Committee on Natural and Economic Resources regarding potential savings from each of the following changes:
a. Introducing or expanding admissions fees, eliminating discounts, or raising fees.
b. Adopting corporate sponsorship for some sites.
c. Transferring operations to nonprofit support groups, municipalities, or other appropriate entities.

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

SENATE BILL 813*

Short Title:	DCR and DENR/Study State Attractions Savings.	(Public)
Sponsors:	Senator Hartsell.	
Referred to:	Agriculture/Environment/Natural Resources.	

May 21, 2012

A BILL TO BE ENTITLED

AN ACT TO REQUIRE THE DEPARTMENT OF CULTURAL RESOURCES AND THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES TO STUDY VARIOUS REVENUE ENHANCEMENTS AND POTENTIAL SAVINGS AT STATE HISTORIC SITES AND MUSEUMS, THE STATE ZOO, STATE PARKS, AND STATE AQUARIUMS, AS RECOMMENDED BY THE JOINT LEGISLATIVE PROGRAM EVALUATION OVERSIGHT COMMITTEE.

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(2) Study reduced schedules for historic sites and report no later than December 15, 2012, to the Senate Appropriations Committee on General Government and Information Technology and the House Appropriations Committee on General Government.

(3) Study the feasibility of implementing more reliable mechanisms for counting visitors and report no later than December 15, 2012, to the Senate Appropriations Committee on General Government and Information Technology and the House Appropriations Committee on General Government.

(4) Determine the appropriate operating schedule for the Richard Caswell Memorial after the CSS Neuse moves to its new location.

(5) Study potential savings from introducing and expanding admission fees; eliminating discounts or raising fees; adopting corporate sponsorship for some sites; and transferring operations to nonprofit support groups, municipalities, or other appropriate entities and report no later than December 15, 2012, to the Senate Appropriations Committee on General Government and Information Technology and the House Appropriations Committee on General Government. The report should specifically address potential savings at the following historic sites:

a. Alamance Battleground.

b. Aycock Birthplace.

c. Bennett Place.
d. Bentonville Battlefield.
e. Charlotte Hawkins Brown Memorial.
f. Duke Homestead.
g. Historic Edenton.
h. Historic Stagville.
i. Museum of the Albemarle.
j. Thomas Wolfe Memorial.
k. Town Creek Indian Mound.

SECTION 2. The Department of Environment and Natural Resources shall implement the following recommendations:

(1) Study site proximity and span of control to identify parks that could adopt a coordinated management structure and report no later than December 15, 2012, to the House Appropriations Subcommittee on Natural and Economic Resources and the Senate Appropriations Committee on Natural and Economic Resources.

(2) Study daily visitation data to determine potential changes from daily or seasonal closure of specific parks and report no later than December 15, 2012, to the House Appropriations Subcommittee on Natural and Economic Resources and the Senate Appropriations Committee on Natural and Economic Resources.

(3) Validate no less frequently than every five years the number of visitors per car used in the calculation of visitor counts at State parks. The first report on this analysis shall be presented to the House Appropriations Subcommittee on Natural and Economic Resources and the Senate Appropriations Committee on Natural and Economic Resources no later than April 1, 2013.

(4) Provide an analysis of anticipated State costs and savings from partnering with nonprofits for operations at the zoo and aquariums and recommendations for partnering based on the analysis no later than December 15, 2012, to the House Appropriations Subcommittee on Natural and Economic Resources and the Senate Appropriations Committee on Natural and Economic Resources.

(5) Study and report no later than December 15, 2012, to the House Appropriations Subcommittee on Natural and Economic Resources and the Senate Appropriations Committee on Natural and Economic Resources regarding potential savings from each of the following changes:
a. Introducing or expanding admissions fees, eliminating discounts, or raising fees.
b. Adopting corporate sponsorship for some sites.
c. Transferring operations to nonprofit support groups, municipalities, or other appropriate entities.

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

SENATE BILL 813:
DCR and DENR/Study State Attractions Savings

2011-2012 General Assembly

Committee:	Senate Agriculture/Environment/Natural Resources	**Date:**	June 7, 2012
Introduced by:	Sen. Hartsell	**Prepared by:**	Mariah Matheson
Analysis of:	First Edition		Research Assistant

SUMMARY: ***Senate Bill 813 would require the Department of Cultural Resources and the Department of Environment and Natural Resources to study various revenue enhancements and potential savings at State historic sites and museums, the State zoo, State parks, and State aquariums, as recommended by the Joint Legislative Program Evaluation Oversight Committee.***

[As introduced, this bill was identical to H944, as introduced by Rep. Howard, which is currently in House Government.]

BACKGROUND: Senate Bill 813 would implement the recommendations found in the Program Evaluation Division's Report Number 2012-01, "Operational Changes for State Attractions Could Yield $2 Million Annually and Reduce Reliance on the State," dated February 14, 2012, and the recommendations of the State Attractions Subcommittee dated March 21, 2012.

BILL ANALYSIS:

Section 1 would require the Department of Cultural Resources (DCR) to do the following:

- Identify historic sites that could adopt a coordinated management structure.
- Study reduced schedules for historic sites.
- Study the feasibility of implementing more reliable mechanisms for counting visitors.
- Determine the appropriate operating schedule for the Richard Caswell Memorial after the CSS Neuse moves to its new location.
- Study potential savings through various cost-saving measures. Reporting requirements would be specific to certain historic sites.[1]
- Report on the provisions of Section 1 to the Senate Appropriations Subommittee on General Government and Information Technology and the House Appropriations Subcommittee on General Government no later than December 15, 2012.

Section 2 would require the Department of Environment and Natural Resources (DENR) to do the following:

- Identify parks that could adopt a coordinated management structure.
- Study daily visitation data to determine potential changes from daily or seasonal closure of specific parks.
- Provide an analysis of anticipated State costs and savings from partnering with nonprofits for operations at the zoo and aquariums.

[1] Alamance Battleground, Aycock Birthplace, Bennett Place, Bentonville Battlefield, Charlotte Hawkins Brown Memorial, Duke Homestead, Historic Edenton, Historic Stagville, Museum of the Albemarle, Thomas Wolfe Memorial, and Town Creek Indian Mound.

- Study and report potential savings from various cost-saving measures.
- Report on the provisions above to the Senate Appropriations Committee on Natural and Economic Resources and the House Appropriations Subcommittee on Natural and Economic Resources no later than December 15, 2012,
- Validate no less frequently than every five years the number of visitors per car used in the calculation of visitor counts at State parks. DENR would be required to report their findings on this provision to the Senate Appropriations Subcommittee on Natural and Economic Resources and the House Appropriations Subcommittee on Natural and Economic Resources no later than April 1, 2013.

EFFECTIVE DATE: This act would become effective when it becomes law.

S813-SMTF-47(e1) v4

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 813*

AMENDMENT NO._____
(to be filled in by
Principal Clerk)

S813-ASB-74 [v.1]

Comm. Sub. [NO]
Amends Title [NO]
First Edition

Date _____,2012

Senator Hartsell

moves to amend the bill on page 2, lines 26
by deleting the word "April" and replacing it with the word "October".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED ✓ FAILED _____ TABLED _____

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

S

1

SENATE BILL 905

Short Title:	Currituck CAMA Setback Req'ts./Grandfather.	(Local)
Sponsors:	Senator White (Primary Sponsor).	
Referred to:	Agriculture/Environment/Natural Resources.	

May 30, 2012

A BILL TO BE ENTITLED

AN ACT TO PROTECT THE PROPERTY RIGHTS OF HOMEOWNERS BY REQUIRING THAT DEVELOPMENT PERMITS ISSUED TO REPAIR OR RECONSTRUCT SINGLE-FAMILY AND DUPLEX RESIDENTIAL DWELLINGS IN CURRITUCK COUNTY GREATER THAN FIVE THOUSAND SQUARE FEET AND CONSTRUCTED PRIOR TO AUGUST 11, 2009, SHALL INCLUDE A MINIMUM SETBACK OF SIXTY FEET OR THIRTY TIMES THE SHORELINE EROSION RATE, WHICHEVER IS GREATER.

The General Assembly of North Carolina enacts:

SECTION 1. Notwithstanding Article 7 of Chapter 113A of the General Statutes and rules adopted pursuant to that Article, the Coastal Resources Commission shall not deny a development permit for the repair or replacement of a single-family or duplex residential dwelling with a total floor area greater than 5,000 square feet based on failure to meet the oceanfront setback required under 15A NCAC 07H .0306(a)(2) if the structure meets all of the following criteria:

(1) The structure was originally constructed prior to August 11, 2009.

(2) The structure as repaired or replaced does not exceed the original footprint.

(3) The structure as repaired or replaced meets the minimum setback required under 15A NCAC 07H .0306(a)(2)(A).

(4) The property on which the structure is built is subject to covenants and restrictions that include specifications which help minimize the impact of man-made structures in sensitive areas.

(5) The owners of the property on which the structure is built are members of a property owners association that has expended at least one million five hundred thousand dollars ($1,500,000) for purposes of dune restoration.

(6) The property on which the structure is built is subject to covenants and restrictions that require the property owners association to maintain a dune restoration fund of at least one million five hundred thousand dollars ($1,500,000).

(7) The owners of the property on which the structure is built are members of a property owners association that has engaged a professional coastal engineer for consulting purposes and contracted with a local provider for dune management services.

SECTION 2. This act applies to Currituck County only.

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

SENATE BILL 905:
Currituck CAMA Setback Req'ts./Grandfather

2011-2012 General Assembly

Committee:	Senate Agriculture/Environment/Natural Resources	**Date:**	June 7, 2012
Introduced by:	Sen. White	**Prepared by:**	Peter Ledford
Analysis of:	First Edition		Committee Counsel

SUMMARY: Senate Bill 905 would prohibit the Coastal Resources Commission (CRC) from denying a development permit for repair or replacement of a single family or duplex residential dwelling with a total floor area greater than 5,000 square feet, based on failure to meet the oceanfront setback required under 15A NCAC 07H .0306(a)(2), if the structure meets certain criteria. This act would only apply to Currituck County

BACKGROUND & CURRENT LAW: Under Article 7 of Chapter 113A of the General Statutes, no person may undertake any development in any area of environmental concern without obtaining a development permit from the CRC. Further, if the cost of repairing a damaged home in such areas will be greater than half the physical value of the home itself, then the activity is considered as having to rebuild, and a permit must be obtained prior to initiation of construction, and all current regulations, including setback requirements, must be met. If the cost of repairing damage is less than 50% of a home's value, then repairs may be made in place.

State rules establish a required minimum setback for structures from the oceanfront. The ocean hazard setback for development is measured in a landward direction from the vegetation line (the first place on the oceanfront where plants such as sea oats hold sand in place), the static vegetation line, or the measurement line, whichever is applicable. The setback distance is determined by both the size of development and the shoreline erosion rate. Generally, no development, including any portion of a building or structure, shall extend oceanward of the ocean hazard setback distance. A setback determination is made at the time development is proposed. If the setback cannot be met, then the structure cannot be rebuilt on the lot at that time (although a lot might become buildable in the future).

Current setback requirements are set forth as follows:

"15A NCAC 07H .0306 GENERAL USE STANDARDS FOR OCEAN HAZARD AREAS

(a) In order to protect life and property, all development not otherwise specifically exempted or allowed by law or elsewhere in the CRC's Rules shall be located according to whichever of the following is applicable:

...

(2) With the exception of those types of development defined in 15A NCAC 07H .0309, no development, including any portion of a building or structure, shall extend oceanward of the ocean hazard setback distance. This includes roof overhangs and elevated structural components that are cantilevered, knee braced, or otherwise extended beyond the support of pilings or footings. The ocean hazard setback is established based on the following criteria:

...

(B) A building or other structure greater than or equal to 5,000 square feet but less than 10,000 square feet requires a minimum setback of 120 feet or 60 times the shoreline erosion rate, whichever is greater;

..."

BILL ANALYSIS: Senate Bill 905 would prohibit the CRC from denying a development permit for the repair or replacement of a single-family or duplex residential dwelling in Currituck County with a total floor area greater than 5,000 square feet if the structure meets the following criteria:

1. The structure was originally constructed prior to August 11, 2009;
2. The structure as repaired or replaced does not exceed the original footprint;
3. The structure as repaired or replaced meets a minimum setback of 60 feet or 30 times the shoreline erosion rate, whichever is greater;
4. The property is subject to covenants and restrictions that include specifications, which help minimize the impact of man-made structures in sensitive areas;
5. The owners of the property are members of a property owners association that has expended at least $1.5 million for purposes of dune restoration;
6. The property is subject to covenants and restrictions that require the property owners association to maintain a dune restoration fund of at least $1.5 million; and
7. The owners of the property are members of a property owners association that has engaged a professional coastal engineer and contracted for dune management services.

EFFECTIVE DATE: This act would become effective when it becomes law.

S905-SMTP-1(e1) v2

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

S D

SENATE BILL 868
PROPOSED COMMITTEE SUBSTITUTE S868-PCS35377-RI-46

Short Title: Wildlife Licenses/Eliminate Penalty. (Public)

Sponsors:

Referred to:

May 23, 2012

A BILL TO BE ENTITLED

AN ACT ADJUSTING THE DATES OF VALIDITY FOR LICENSES ISSUED BY THE WILDLIFE RESOURCES COMMISSION TO ELIMINATE THE PENALTY FOR EARLY RENEWAL.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 113-270.1B reads as rewritten:

"**§ 113-270.1B. License required to hunt, fish, or trap.**

(a) Except as otherwise specifically provided by law, no person may hunt, fish, trap, or participate in any other activity regulated by the Wildlife Resources Commission for which a license is provided by law without having first procured a current and valid license authorizing the activity.

(b) Except as indicated otherwise, all licenses are annual licenses valid ~~from the date of issue~~ for a period of 12 ~~months.~~months from the effective date printed on the face of the license.

(c) As used in this section, the term "effective date" means the later of:

(1) The date of purchase of a new license.

(2) The first day after the expiration of a currently valid license of the same type held by the licensee."

SECTION 2. This act becomes effective July 1, 2013.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

S 1

SENATE BILL 868

Short Title:	Wildlife Licenses/Eliminate Penalty.	(Public)
Sponsors:	Senators Newton, Brown; Bingham, Brock, Carney, Daniel, Davis, Goolsby, Hunt, Jackson, Meredith, Preston, Rucho, Stevens, Tillman, Tucker, and Westmoreland.	
Referred to:	Agriculture/Environment/Natural Resources.	

May 23, 2012

A BILL TO BE ENTITLED

AN ACT ADJUSTING THE DATES OF VALIDITY FOR LICENSES ISSUED BY THE WILDLIFE RESOURCES COMMISSION TO ELIMINATE THE PENALTY FOR EARLY RENEWAL.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 113-270.1B reads as rewritten:

"**§ 113-270.1B. License required to hunt, fish, or trap.**

(a) Except as otherwise specifically provided by law, no person may hunt, fish, trap, or participate in any other activity regulated by the Wildlife Resources Commission for which a license is provided by law without having first procured a current and valid license authorizing the activity.

(b) Except as indicated otherwise, all licenses are annual licenses valid ~~from the date of issue~~ for a period of 12 ~~months.~~months from the effective date printed on the face of the license.

(c) As used in this section, the term "effective date" means the later of:

(1) The date of purchase of a new license.

(2) The first day after the expiration of a currently valid license of the same type held by the licensee."

SECTION 2. This act becomes effective July 1, 2012.

SENATE BILL 868:
Wildlife Licenses/Eliminate Penalty

2011-2012 General Assembly

Committee:	Senate Agriculture/Environment/Natural Resources	**Date:**	June 7, 2012
Introduced by:	Sens. Newton, Brown	**Prepared by:**	Mariah Matheson
Analysis of:	First Edition		Research Assistant

SUMMARY: ***Senate Bill 868 would adjust the dates of validity for licenses issued by the Wildlife Resources Commission to eliminate the penalty for early renewal.***

BILL ANALYSIS: Senate Bill 868 would specify that licenses required to hunt, fish, or trap be valid beginning on the date of purchase of a new license or the first day after the expiration of a currently valid license of the same type held by the licensee.

Senate Bill 868 would also specify that all annual licenses are valid for a period of 12 months from the effective date printed on the face of the license.

EFFECTIVE DATE: This act would become effective July 1, 2012.

BACKGROUND: Currently licenses are renewed on the calendar date, which may differ from the anniversary date. This penalizes licensees who choose early renewal.

S868-SMTF-48(e1) v2

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 868

AMENDMENT NO._____
(to be filled in by
Principal Clerk)

S868-ASB-76 [v.1]

Comm. Sub. [NO]
Amends Title [NO]
First Edition

Date _____,2012

Senator Clodfelter

moves to amend the bill on page 1, line 19,
by deleting "2012." and replacing it with "2013.".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED ✓ FAILED _____ TABLED _____

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

S D

SENATE BILL 821
PROPOSED COMMITTEE SUBSTITUTE S821-CSSB-59 [v.3]

6/6/2012 11:01:03 AM

Short Title: Study and Amend Fisheries Laws. (Public)

Sponsors:

Referred to:

May 21, 2012

A BILL TO BE ENTITLED

AN ACT TO (1) DIRECT THE DIRECTOR OF THE DIVISION OF MARINE FISHERIES OF THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES AND THE EXECUTIVE DIRECTOR OF THE WILDLIFE RESOURCES COMMISSION TO JOINTLY STUDY FEES ASSOCIATED WITH THE ISSUANCE OF COASTAL FISHING LICENSES AND THE NUMBERING AND TITLING OF VESSELS; (2) DIRECT THE EXECUTIVE DIRECTOR OF THE WILDLIFE RESOURCES COMMISSION, THE DIRECTOR OF THE DIVISION OF MARINE FISHERIES OF THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES, AND THE COMMISSIONER OF AGRICULTURE TO JOINTLY STUDY THE REORGANIZATION OF FISH AND WILDLIFE MANAGEMENT IN THE STATE; (3) MAKE IT UNLAWFUL TO TAKE MENHADEN OR ATLANTIC THREAD HERRING WITH A PURSE SEINE NET DEPLOYED BY A MOTHER SHIP AND ONE OR MORE RUNNER BOATS IN COASTAL FISHING WATERS; (4) AMEND THE MARINE FISHERIES COMMISSION ADVISORY COMMITTEES; AND (5) PROVIDE THAT A SUPERMAJORITY OF THE MARINE FISHERIES COMMISSION IS REQUIRED TO OVERRIDE A RECOMMENDATION OF THE DIVISION OF MARINE FISHERIES REGARDING OVERFISHING OR REBUILDING OF FISH STOCKS.

The General Assembly of North Carolina enacts:

SECTION 1.(a) It is the intent of the General Assembly to provide funding for the dredging and maintenance of the State's coastal inlets from fees charged to those who make use of the inlets.

SECTION 1.(b) In order to identify possible sources of funds for the purposes set out in Section 1.(a) of this act, the Director of the Division of Marine Fisheries of the Department of Environment and Natural Resources and the Executive Director of the Wildlife Resources Commission shall jointly study the fees associated with the issuance of coastal fishing licenses pursuant to Chapter 113 of the General Statutes and the numbering and titling of vessels pursuant to Chapter 75A of the General Statutes.

(1) For coastal fishing licenses, the Director and Executive Director shall specifically:
   (a) Identify all types of fishing licenses issued for the purpose of taking fish in coastal fishing waters, both recreational and commercial.
   (b) Identify the fees associated with these licenses.

(c) Identify the analogous licenses issued and fees charged by states with fisheries profiles similar to those of North Carolina, including at least South Carolina and Virginia.
(d) Recommend several levels of increases in the license fees and calculate the amount of revenue that would be generated by the different levels of increase.
(e) Identify any limitations under State or federal law on the use of license fees for purposes not related to the management of marine fisheries.

(2) For the numbering and titling of vessels, the Executive Director shall specifically:
(a) Identify all requirements for the numbering and titling of vessels.
(b) Determine if there is a method for differentiating between vessels that are used predominantly in coastal fishing waters versus those that are used predominantly in inland fishing waters.
(c) Identify the fees associated with the numbering and titling of vessels.
(d) Identify the analogous vessel numbering and titling requirements and fees charged by states with coastal boating profiles similar to those of North Carolina, including at least South Carolina and Virginia.
(e) Recommend several levels of increases in the fees associated with the numbering and titling of vessels and calculate the amount of revenue that would be generated by the different levels of increase.
(f) Identify any limitations under State or federal law on the use of fees associated with the numbering and titling of vessels.

(3) The Director and the Executive Director shall examine all other sources of funding, including the gas tax.

SECTION 1.(c) The Director of the Division of Marine Fisheries of the Department of Environment and Natural Resources and the Executive Director of the Wildlife Resources Commission shall jointly submit a report on the study required by Section 1.(b) of this act to the Legislative Research Commission Committee on Marine Fisheries no later than September 1, 2012.

SECTION 2.(a) It is the intent of the General Assembly to gather information on abolishing the current Marine Fisheries Commission, transferring its powers and duties to the Wildlife Resources Commission, and merging all powers, duties, functions, and personnel of the Division of Marine Fisheries of the Department of Environment and Natural Resources and the Wildlife Resources Commission into a new Fish and Wildlife Resources Commission effective July 1, 2013. Prior to October 1, 2012, the Commissioner of Agriculture is authorized to review and identify positions or duties regarding fisheries resource management currently carried out by the Marine Fisheries Commission or the Division of Marine Fisheries of the Department of Environment and Natural Resources that are within the scope of the overall mission of the Department of Agriculture and Consumer Services.

SECTION 2.(b) The Executive Director of the Wildlife Resources Commission, the Director of the Division of Marine Fisheries of the Department of Environment and Natural Resources, and, where appropriate, the Commissioner of Agriculture shall, in consultation with various user groups, examine ways to:

(1) Provide for the efficient and effective transfer of all statutory authority, powers, duties, and functions, including, but not limited to, rulemaking, licensing, and the rendering of findings, orders, and adjudications.

(2) Provide for the efficient and effective transfer and consolidation of all records, personnel, property, and unexpended balances of appropriations, allocations, or other funds. This component of the study shall specifically:

(a) Provide a detailed description of the proposed organization of the reorganized agencies.
(b) Identify any areas of overlap between programs or personnel.
(c) Provide for the consolidation of law enforcement functions.
(d) Identify a target reduction of five percent (5%) in personnel and budgetary spending to be achieved by the reorganization.

(3) Provide for the uninterrupted and unimpaired continuation of all:
(a) Services provided by the agencies.
(b) Rules adopted or implemented by the agencies.
(c) Contracts or other obligations entered into by either agency.
(d) Proceedings to which either agency is a party.

(4) Identify all statutory, rule, and policy changes that would be necessary to reorganize fish and wildlife management in the State.

(5) Identify and address any other issues necessary to implement Section 2.(a) of this act.

SECTION 2.(c) The Executive Director of the Wildlife Resources Commission, the Director of the Division of Marine Fisheries of the Department of Environment and Natural Resources, and, if appropriate, the Commissioner of Agriculture shall jointly report on the study conducted pursuant to Section 2.(b) of this act to the Legislative Research Commission Committee on Marine Fisheries no later than October 1, 2012.

SECTION 3.(a) G.S. 113-187 reads as rewritten:

"**§ 113-187. Penalties for violations of Subchapter and rules.**

(a) Any person who participates in a commercial fishing operation conducted in violation of any provision of this Subchapter and its implementing rules or in an operation in connection with which any vessel is used in violation of any provision of this Subchapter and its implementing rules is guilty of a Class A1 misdemeanor.

(b) Any owner of a vessel who knowingly permits it to be used in violation of any provision of this Subchapter and its implementing rules is guilty of a Class A1 misdemeanor.

(c) Any person in charge of a commercial fishing operation conducted in violation of any provision of this Subchapter and its implementing rules or in charge of any vessel used in violation of any provision of this Subchapter and its implementing rules is guilty of a Class A1 misdemeanor.

(d) Any person in charge of a commercial fishing operation conducted in violation of the following provisions of this Subchapter or the following rules of the Marine Fisheries Commission; and any person in charge of any vessel used in violation of the following provisions of the Subchapter or the following rules, shall be guilty of a Class A1 misdemeanor. The violations of the statute or the rules for which the penalty is mandatory are:

(1) Taking or attempting to take, possess, sell, or offer for sale any oysters, mussels, or clams taken from areas closed by statute, rule, or proclamation because of suspected pollution.

(2) Taking or attempting to take or have in possession aboard a vessel, shrimp taken by the use of a trawl net, in areas not opened to shrimping, pulled by a vessel not showing lights required by G.S. 75A-6 after sunset and before sunrise.

(3) Using a trawl net in any coastal fishing waters closed by proclamation or rule to trawl nets.

(4) Violating the provisions of a special permit or gear license issued by the Department.

(5) Using or attempting to use any trawl net, long haul seine, swipe net, mechanical methods for oyster or clam harvest or dredge in designated primary nursery areas.

(e) Any person who takes menhaden or Atlantic thread herring by the use of a purse seine net deployed by a mother ship and one or more runner boats in coastal fishing waters is guilty of a Class A1 misdemeanor."

SECTION 3.(b) S.L. 2007-320 is repealed.

SECTION 4.(a) G.S. 143B-289.57 reads as rewritten:

"**§ 143B-289.57. Marine Fisheries Commission Advisory Committees established; members; selection; duties.**

...

(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.~~

(3a) The Shellfish/Crustacean Advisory Committee, which shall consider matters concerning oysters, clams, scallops, other molluscan shellfish, shrimp, and crabs.

(4) The Habitat and Water Quality Committee, which shall consider matters concerning habitat and water quality that may affect coastal fisheries resources.

...

(e) The Chair of the Commission shall appoint a ~~regional advisory committee for each of the three coastal regions designated in G.S. 143B-289.54(b) and shall appoint a regional advisory committee for that part of the State that is not included in the three coastal regions.~~ Northern Advisory Committee, encompassing areas from the Virginia line south through Hyde and Pamlico Counties and any counties to the west, and a Southern Advisory Committee, encompassing areas from Carteret County south to the South Carolina line and any counties to the west. In making appointments to regional advisory committees, the Chair of the Commission shall ensure that both commercial and recreational fishing interests are fairly represented."

SECTION 4.(b) G.S. 113-200 reads as rewritten:

"**§ 113-200. Fishery Resource Grant Program.**

...

(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~~Two members of the ~~Northeast~~ Northern Regional Advisory Committee established pursuant to G.S. 143B-289.57(e), appointed by the ~~Northeast~~ Northern Regional Advisory Committee.

~~(5) One member of the Central Regional Advisory Committee established pursuant to G.S. 143B-289.57(e), appointed by the Central Regional Advisory Committee.~~

(6) ~~One member~~Two members of the ~~Southeast~~ Southern Regional Advisory Committee established pursuant to G.S. 143B-289.57(e), appointed by the ~~Southeast~~ Southern Regional Advisory Committee.

~~(7) One member of the Inland Regional Advisory Committee established pursuant to G.S. 143B-289.57(e), appointed by the Inland Regional Advisory Committee.~~

..."

SECTION 4.(c) The terms of the members currently serving on the Crustacean, Shellfish, and the four regional advisory committees (Northeast, Southeast, Central, and Inland) shall expire on June 30, 2012. Effective July 1, 2012, the Chair of the Marine Fisheries Advisory Commission shall appoint no more than 11 members to the Northern Advisory Committee and the Southern Advisory Committee, established pursuant to subsection (e) of G.S. 143B-289.57, as amended by this section.

SECTION 5. G.S. 143B-289.52 reads as rewritten:

"**§ 143B-289.52. Marine Fisheries Commission – powers and duties.**

...

(e1) A supermajority of the Commission shall be six members. A supermajority shall be necessary to override recommendations from the Division of Marine Fisheries regarding measures needed to end overfishing or to rebuild overfished stocks."

SECTION 6. Sections 4.(a) and 4.(b) of this act become effective July 1, 2012. Sections 3.(a) and 3.(b) of this act become effective December 1, 2012, and Section 3.(a) applies to offenses committed on or after that date. The remaining sections of this act are effective when the act becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

S 1

SENATE BILL 807

Short Title:	Prohibit Certain Harvest of Menhaden.	(Public)
Sponsors:	Senators Brown, Goolsby, and Rabon.	
Referred to:	Agriculture/Environment/Natural Resources.	

May 21, 2012

A BILL TO BE ENTITLED

AN ACT TO MAKE IT UNLAWFUL TO TAKE MENHADEN OR ATLANTIC THREAD HERRING WITH A PURSE SEINE NET DEPLOYED BY A MOTHER SHIP AND ONE OR MORE RUNNER BOATS IN COASTAL FISHING WATERS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 113-187 reads as rewritten:

"**§ 113-187. Penalties for violations of Subchapter and rules.**

(a) Any person who participates in a commercial fishing operation conducted in violation of any provision of this Subchapter and its implementing rules or in an operation in connection with which any vessel is used in violation of any provision of this Subchapter and its implementing rules is guilty of a Class A1 misdemeanor.

(b) Any owner of a vessel who knowingly permits it to be used in violation of any provision of this Subchapter and its implementing rules is guilty of a Class A1 misdemeanor.

(c) Any person in charge of a commercial fishing operation conducted in violation of any provision of this Subchapter and its implementing rules or in charge of any vessel used in violation of any provision of this Subchapter and its implementing rules is guilty of a Class A1 misdemeanor.

(d) Any person in charge of a commercial fishing operation conducted in violation of the following provisions of this Subchapter or the following rules of the Marine Fisheries Commission; and any person in charge of any vessel used in violation of the following provisions of the Subchapter or the following rules, shall be guilty of a Class A1 misdemeanor. The violations of the statute or the rules for which the penalty is mandatory are:

(1) Taking or attempting to take, possess, sell, or offer for sale any oysters, mussels, or clams taken from areas closed by statute, rule, or proclamation because of suspected pollution.

(2) Taking or attempting to take or have in possession aboard a vessel, shrimp taken by the use of a trawl net, in areas not opened to shrimping, pulled by a vessel not showing lights required by G.S. 75A-6 after sunset and before sunrise.

(3) Using a trawl net in any coastal fishing waters closed by proclamation or rule to trawl nets.

(4) Violating the provisions of a special permit or gear license issued by the Department.

(5) Using or attempting to use any trawl net, long haul seine, swipe net, mechanical methods for oyster or clam harvest or dredge in designated primary nursery areas.

(e) Any person who takes menhaden or Atlantic thread herring by the use of a purse seine net deployed by a mother ship and one or more runner boats in coastal fishing waters is guilty of a Class A1 misdemeanor."

SECTION 2. S.L. 2007-320 is repealed.

SECTION 3. This act becomes effective December 1, 2012, and applies to offenses committed on or after that date.

SENATE BILL 821

Short Title:	Study Coastal Fishing & Boating License Fees.	(Public)
Sponsors:	Senators Brown, Goolsby, and Rabon.	
Referred to:	Agriculture/Environment/Natural Resources.	

May 21, 2012

A BILL TO BE ENTITLED

AN ACT TO DIRECT THE DIRECTOR OF THE DIVISION OF MARINE FISHERIES OF THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES AND THE EXECUTIVE DIRECTOR OF THE WILDLIFE RESOURCES COMMISSION TO JOINTLY STUDY FEES ASSOCIATED WITH THE ISSUANCE OF COASTAL FISHING LICENSES AND THE NUMBERING AND TITLING OF VESSELS.

The General Assembly of North Carolina enacts:

SECTION 1. It is the intent of the General Assembly to provide funding for the dredging and maintenance of the State's coastal inlets from fees charged to those who make use of the inlets.

SECTION 2. In order to identify possible sources of funds for the purposes set out in Section 1 of this act, the Director of the Division of Marine Fisheries of the Department of Environment and Natural Resources and the Executive Director of the Wildlife Resources Commission shall jointly study the fees associated with the issuance of coastal fishing licenses pursuant to Chapter 113 of the General Statutes and the numbering and titling of vessels pursuant to Chapter 75A of the General Statutes.

(1) For coastal fishing licenses, the Director and Executive Director shall specifically:
   (a) Identify all types of fishing licenses issued for the purpose of taking fish in coastal fishing waters, both recreational and commercial.
   (b) Identify the fees associated with these licenses.
   (c) Identify the analogous licenses issued and fees charged by states with fisheries profiles similar to those of North Carolina, including at least South Carolina and Virginia.
   (d) Recommend several levels of increases in the license fees and calculate the amount of revenue that would be generated by the different levels of increase.
   (e) Identify any limitations under State or federal law on the use of license fees for purposes not related to the management of marine fisheries.

(2) For the numbering and titling of vessels, the Executive Director shall specifically:
   (a) Identify all requirements for the numbering and titling of vessels.
   (b) Determine if there is a method for differentiating between vessels that are used predominantly in coastal fishing waters versus those that are used predominantly in inland fishing waters.

(c) Identify the fees associated with the numbering and titling of vessels.
(d) Identify the analogous vessel numbering and titling requirements and fees charged by states with coastal boating profiles similar to those of North Carolina, including at least South Carolina and Virginia.
(e) Recommend several levels of increases in the fees associated with the numbering and titling of vessels and calculate the amount of revenue that would be generated by the different levels of increase.
(f) Identify any limitations under State or federal law on the use of fees associated with the numbering and titling of vessels.

(3) The Director and the Executive Director shall examine all other sources of funding, including the gas tax.

SECTION 3. The Director of the Division of Marine Fisheries of the Department of Environment and Natural Resources and the Executive Director of the Wildlife Resources Commission shall jointly submit a report on the study required by Section 2 of this act to the Legislative Research Commission Committee on Marine Fisheries no later than September 1, 2012.

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

SENATE BILL 829

Short Title:	Study Reorganization of Fish & Wildlife Mgmt.	(Public)
Sponsors:	Senators Brown, Goolsby, and Rabon.	
Referred to:	Agriculture/Environment/Natural Resources.	

May 21, 2012

A BILL TO BE ENTITLED

AN ACT TO DIRECT THE EXECUTIVE DIRECTOR OF THE WILDLIFE RESOURCES COMMISSION, THE DIRECTOR OF THE DIVISION OF MARINE FISHERIES OF THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES, AND THE COMMISSIONER OF AGRICULTURE TO JOINTLY STUDY THE REORGANIZATION OF FISH AND WILDLIFE MANAGEMENT IN THE STATE.

The General Assembly of North Carolina enacts:

SECTION 1. It is the intent of the General Assembly to gather information on abolishing the current Marine Fisheries Commission, transferring its powers and duties to the Wildlife Resources Commission, and merging all powers, duties, functions, and personnel of the Division of Marine Fisheries of the Department of Environment and Natural Resources and the Wildlife Resources Commission into a new Fish and Wildlife Resources Commission effective July 1, 2013. Prior to October 1, 2012, the Commissioner of Agriculture is authorized to review and identify positions or duties regarding fisheries resource management currently carried out by the Marine Fisheries Commission or the Division of Marine Fisheries of the Department of Environment and Natural Resources that are within the scope of the overall mission of the Department of Agriculture and Consumer Services.

SECTION 2. The Executive Director of the Wildlife Resources Commission, the Director of the Division of Marine Fisheries of the Department of Environment and Natural Resources, and, where appropriate, the Commissioner of Agriculture shall, in consultation with various user groups, examine ways to:

(1) Provide for the efficient and effective transfer of all statutory authority, powers, duties, and functions, including, but not limited to, rule making, licensing, and the rendering of findings, orders, and adjudications.

(2) Provide for the efficient and effective transfer and consolidation of all records, personnel, property, and unexpended balances of appropriations, allocations, or other funds. This component of the study shall specifically:
   (a) Provide a detailed description of the proposed organization of the reorganized agencies.
   (b) Identify any areas of overlap between programs or personnel.
   (c) Provide for the consolidation of law enforcement functions.
   (d) Identify a target reduction of five percent (5%) in personnel and budgetary spending to be achieved by the reorganization.

(3) Provide for the uninterrupted and unimpaired continuation of all:
   (a) Services provided by the agencies.
   (b) Rules adopted or implemented by the agencies.

(c) Contracts or other obligations entered into by either agency.
(d) Proceedings to which either agency is a party.

(4) Identify all statutory, rule, and policy changes that would be necessary to reorganize fish and wildlife management in the State.

(5) Identify and address any other issues necessary to implement Section 1 of this act.

SECTION 3. The Executive Director of the Wildlife Resources Commission, the Director of the Division of Marine Fisheries of the Department of Environment and Natural Resources, and, if appropriate, the Commissioner of Agriculture shall jointly report on the study conducted pursuant to Section 2 of this act to the Legislative Research Commission Committee on Marine Fisheries no later than October 1, 2012.

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

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. _____ DATE _____

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

COMMITTEE SUBSTITUTE S821-CSSB-59[v.3]

Rep.) Jenkins
Sen.)

moves to amend the bill ~~on page~~ in Secs 1(b), 1(c), 2(b), 2(c) and the Long Title line _____

( ) WHICH CHANGES THE TITLE

by adding the "Deputy Secretary for Transit of the Department of Transportation" where appropriate.

SIGNED _____

ADOPTED ✓ FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

H D

HOUSE BILL 819
Committee Substitute Favorable 4/21/11
PROPOSED SENATE COMMITTEE SUBSTITUTE H819-CSLH-38 [v.24]

6/5/2012 10:53:50 AM

Short Title: Coastal Management Policies. (Public)

Sponsors:

Referred to:

April 7, 2011

A BILL TO BE ENTITLED

AN ACT TO STUDY AND MODIFY CERTAIN COASTAL MANAGEMENT POLICIES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 113A-103(2) reads as rewritten:

"(2) "Coastal area" means the counties that (in whole or in part) are adjacent to, adjoining, intersected by or bounded by the Atlantic Ocean (extending offshore to the limits of State jurisdiction, as may be identified by rule of the Commission for purposes of this Article, but in no event less than three geographical miles offshore) or any coastal sound. The Governor, in accordance with the standards set forth in this subdivision and in subdivision (3) of this section, shall designate the counties that constitute the "coastal area," as defined by this section, and his designation shall be final and conclusive. On or before May 1, 1974, the Governor shall file copies of a list of said coastal-area counties with the chairmen of the boards of commissioners of each county in the coastal area, with the mayors of each incorporated city within the coastal area (as so defined) having a population of 2,000 or more and of each incorporated city having a population of less than 2,000 whose corporate boundaries are contiguous with the Atlantic Ocean, and with the Secretary of State. By way of illustration, the counties designated as coastal-area counties under this subdivision as of July 1, 2012 are: Beaufort, Bertie, Brunswick, Camden, Carteret, Chowan, Craven, Currituck, Dare, Gates, Hertford, Hyde, New Hanover, Onslow, Pamlico, Pasquotank, Pender, Perquimans, Tyrrell, and Washington. The ~~said~~ coastal-area counties and cities shall ~~thereafter~~ transmit nominations to the Governor of members of the Coastal Resources Commission as provided in G.S. 113A-104(d)."

SECTION 2. Article 7 of Chapter 113A of the General Statutes is amended by adding the following new sections:

"**§ 113A-107.1. Sea-level policy restrictions; calculation of rate of sea-level rise.**

(a) No rule, ordinance, policy, or planning guideline that defines sea level or a rate of sea-level rise within a coastal-area county shall be adopted except as provided by this section.

(b) The General Assembly does not intend to mandate the development of sea-level rise policy or rates of sea-level rise. The Coastal Resources Commission, in conjunction with the Division of Coastal Management, shall have the authority to define sea-level rise and develop rates of sea-level rise for the State.

(c) The Coastal Resources Commission shall be the only State agency authorized to define rates of sea-level rise for regulatory purposes and, if developed, shall do so in conjunction with the Division of Coastal Management. The Commission and the Division of Coastal Management may collaborate with other State agencies, boards, commissions, other public entities, or institutions when defining sea-level rise or developing rates of sea-level rise. These rates shall be determined using statistically significant, peer-reviewed historical data generated using generally accepted scientific and statistical techniques. Historic rates of sea-level rise may be extrapolated to estimate future rates of rise but shall not include scenarios of accelerated rates of sea-level rise unless such rates are from statistically significant, peer-reviewed data and are consistent with historic trends. Rates of sea-level rise shall not be one rate for the entire coast but, rather, the Commission shall consider separately oceanfront and estuarine shorelines. For oceanfront shorelines, the Commission shall use no fewer than the four regions defined in the April 2011 report entitled "North Carolina Beach and Inlet Management Plan" published by the Department of Environment and Natural Resources. The oceanfront regions are: Region 1 (Brunswick County), Region 2 (New Hanover, Pender, and Onslow Counties and a portion of Carteret County), Region 3 (a portion of Carteret County and Hyde County), and Region 4 (Dare and Currituck Counties). For estuarine shorelines, the Commission shall consider no fewer than two separate regions defined as those north of Cape Lookout and those south of Cape Lookout. In regions that may lack statistically significant, peer-reviewed historical data, rates from adjacent regions may be considered and modified using generally accepted scientific and statistical techniques to account for relevant historical geologic and hydrologic processes.

(d) Any State agency, board, commission, or institution that develops a policy addressing sea-level rise that includes a definition or rate of sea-level rise for the coastal-area counties shall use only the definitions and rates of sea-level rise developed by the Division of Coastal Management as approved by the Coastal Resources Commission.

(e) The provisions in this act shall not prohibit other State agencies, boards, commissions, other public entities or institutions, including academic institutions within The University of North Carolina or any county, municipality, or other local public body from engaging in studies and dissemination of studies of sea-level research for non-regulatory purposes. Collaboration between academic institutions including those within The University of North Carolina, the Division of Coastal Management, the Coastal Resources Commission, and other State agencies, boards, commissions, or other public entities or counties, municipalities, or other local public bodies regarding generally accepted, peer-reviewed scientific and statistically significant sea-level research is encouraged.

(f) All policies, rules, regulations or any other product of the Commission or the Division of Coastal Management related to sea-level rise shall be subject to the requirements set forth in Chapter 150B of the General Statutes."

SECTION 3. The Coastal Resources Commission shall study the feasibility of creating an exception to the Commission's rule changes regarding oceanfront setback determinations [15A NCAC 07H.0306(a)(2)] that became effective on August 11, 2009, that may allow certain structures to continue to be regulated under the oceanfront setback determination rules that were in effect prior to August 11, 2009. The exception may apply to single family buildings built prior to August 11, 2009, that are larger than 5000 square feet and to multi-family buildings built prior to August 11, 2009, that are less than four units and larger than 5,000 square feet. In its study the Commission may consider the following limitations and

evaluate whether it is appropriate to include any of those limitations as part of the criteria that may be used to determine whether a specific structure may qualify for the exception: replacement of a building or structure destroyed beyond 50% of its value by factors other than coastal erosion, storm surge, and hurricane- and nor'easter-related winds; replacement of a building or structure in areas landward of a static line exception; replacement of a building or structure as far landward on the lot as feasible; replacement of a building or structure with a total floor area and footprint not greater than the pre-existing building or structure; and replacement of a building or structure that is no further oceanward than the landward most adjacent building or structure.

The Commission shall use the most recent erosion rates calculated by the Division of Coastal Management and presented to the Commission in 2011 rather than the 1998 rates referenced in the rule [15A NCAC 07H.0304(1)(a)] when assessing setback scenarios and the feasibility of any exception to the current setback rules.

The Commission shall report its findings, including any proposed actions the Commission deems appropriate, to the Secretary of the Department of Environment and Natural Resources, the Governor, the President Pro Tempore of the North Carolina Senate, and the Speaker of the North Carolina House of Representatives on or before December 31, 2012.

During this study, the Commission shall not delay the movement or progression of the updated 2011 erosion rates through the rulemaking process.

SECTION 4. The Coastal Resources Commission shall study the feasibility of creating a new Area of Environmental Concern for the lands and waters adjacent to the mouth of the Cape Fear River. In studying this region, which shall at least encompass the public trust waters in the mouth of the Cape Fear River and its associated shoals and ebb tidal deltas, the Town of Caswell Beach, and the Village of Bald Head Island, the Commission shall consider the unique coastal morphologies and hydrographic conditions not found elsewhere along the coast and how these areas are impacted by the US Army Corps of Engineers activities related to the Port of Wilmington and its federally authorized channels. If the Commission deems action is necessary to preserve, protect, and balance the economic and natural resources of this region, the Commission shall work to eliminate overlapping Areas of Environmental Concern in these areas and, instead, incorporate appropriate development standards into one single Area of Environmental Concern unique to this location.

The Commission shall report its findings, including any proposed actions the Commission deems appropriate, to the Secretary of the Department of Environment and Natural Resources, the Governor, the President Pro Tempore of the North Carolina Senate, and the Speaker of the North Carolina House of Representatives on or before December 31, 2013.

SECTION 5. The Coastal Resources Commission shall study the feasibility of eliminating the Inlet Hazard Area of Environmental Concern and incorporating appropriate development standards adjacent to the State's developed inlets into the Ocean Erodible Area of Environmental Concern. If the Commission deems action is necessary to preserve, protect, and balance the economic and natural resources adjacent to inlets, the Commission shall consider the elimination of the inlet hazard boxes; the development of shoreline management strategies that take into account short- and long-term inlet shoreline oscillation and variation, including erosion rates and setback factors; the development of standards that account for the lateral movement of inlets and their impact on adjacent development and habitat; and consideration of how new and existing development standards, as well as existing and proposed development, are impacted by historical and ongoing beach and inlet management techniques including dredging, beach fill, and engineered structures such as groins and jetties, impact both the inlet and adjacent shorelines.

The Commission shall report its findings, including any proposed actions the Commission deems appropriate, to the Secretary of the Department of Environment and

Natural Resources, the Governor, the President Pro Tempore of the North Carolina Senate, and the Speaker of the North Carolina House of Representatives on or before January 31, 2015.

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

HOUSE BILL 819:
CAMA Setback Req'ts./Grandfather Clause

2011-2012 General Assembly

Committee:	Senate Agriculture/Environment/Natural Resources	**Date:**	June 7, 2012
Introduced by:	Rep. McElraft	**Prepared by:**	Jeff Hudson Committee Counsel
Analysis of:	PCS to Second Edition H819-CSLH-38 [v.24]		

SUMMARY: ***The Proposed Committee Substitute for House Bill 819 would set out the coastal area counties in the General Statutes, establish a State policy for defining rates of sea-level rise, and direct the Coastal Resources Commission to study whether to alter a number of its coastal development rules.***

BILL ANALYSIS:

Section 1 would specifically set out in the General Statutes the counties that have been designated as constituting the coastal area. Under current law, the "coastal area" is generally defined in the General Statutes as the counties that in whole or in part are adjacent to, adjoining, intersected by or bounded by the Atlantic Ocean or any coastal sound. The following counties have been designated as constituting the coastal area: Beaufort, Bertie, Brunswick, Camden, Carteret, Chowan, Craven, Currituck, Dare, Gates, Hertford, Hyde, New Hanover, Onslow, Pamlico, Pasquotank, Pender, Perquimans, Tyrrell, and Washington Counties.

Section 2 would establish a State policy for defining rates of sea-level rise as follows:

- No rule, ordinance, policy, or planning guideline that defines sea level or a rate of sea level rise within a coastal area county may be adopted except as set out below.
- The Coastal Resources Commission (CRC) is the only State agency that may define rates of sea-level rise for regulatory purposes. State agencies and institutions may only use definitions or rates of sea-level rise developed by the Division of Coastal Management (DCM) of the Department of Environment and Natural Resources and approved by the CRC.
- If the CRC chooses to define rates of sea-level rise, it must do so in conjunction with DCM as follows:
  - The rates must be determined using statistically significant, peer-reviewed historical data generated using generally accepted scientific and statistical techniques.
  - Historic rates of sea-level rise may be extrapolated to estimate future rates of rise but may not include scenarios of accelerated rates of sea-level rise unless such rates are from statistically significant, peer-reviewed data and are consistent with historic trends.
  - The rates must be established for several different designated regions.
- Study of sea-level research for non-regulatory purposes by State agencies, local governments, and other institutions is not prohibited and collaboration between State agencies, local governments, and ~~other~~ institutions regarding generally accepted, peer-reviewed scientific and statistically significant sea-level research is encouraged.
- All actions of the CRC and DCM related to sea-level rise are subject to Chapter 150B of the General Statutes (The Administrative Procedure Act).

Section 3 would direct the CRC to study whether to allow certain buildings to be subject to the oceanfront setback rules that existed prior to August 11, 2009 instead of the current oceanfront setback rules. The CRC would report its findings and any proposed actions to various State officials on or before December 31, 2012.

Section 4 would direct the CRC to study whether to establish a new Area of Environmental Concern for the lands and waters adjacent to the mouth of the Cape Fear River. The CRC would report its findings and any proposed actions to various State officials on or before December 31, 2013.

Section 5 would direct the CRC to study whether to amends its rules related to development of areas near inlets. The CRC would report its findings and any proposed actions to various State officials on or before January 31, 2015.

EFFECTIVE DATE: This act would become effective when it becomes law.

Rob Lamme handout
approved to distribution
by Sen. Rouzer

A number of parties have asked members of the Coastal Resources Commission Science Panel to review the language in **HOUSE BILL 819 PROPOSED SENATE COMMITTEE SUBSTITUTE H819-CSLH-38** which is scheduled to be read in the Senate Agriculture and Natural resources Committee on June 7, 2012. Time will not allow full consultation with the entire Science Panel on this matter. For the opinions of the scientists and engineers who serve on this panel, we urge you to refer to the reports that we prepared at the request of the Coastal Resources Commission. Both reports contain the best peer-reviewed science available; and, both reports were consensus reports prepared without bias or political agenda.

We, the undersigned members of the Science Panel find the following:

The Bill declares "The General Assembly does not intend to mandate the development of sea-level rise policy or rates of sea-level rise." Then, the Bill does exactly that. It narrowly defines the parameters within which a sea level rise rate may be established for "rule, ordinance, planning, or policy guideline." We would like to be very clear on one point. We fully respect the right of the legislature to establish a sea level rise policy for the State of North Carolina. In fact, we fully respect the right of the legislature to decide that this is not the right time for the State of North Carolina to regulate the potential for future sea level rise.

What we find problematic in the PCS for HB-819 is the following:

1) The bill contains very specific "scientific-sounding" language that would narrowly define the way sea level rise rates would be projected into the future. The source of this methodology is unclear, but it does not come from the State's own expert panels. The methodology has not been vetted or peer-reviewed in any transparent fashion. In our opinion, it is not scientifically valid, nor useful for understanding the changes that may challenge the economic vitality of the coastal region in the future.

2) Every major scientific organization in the United States (e.g. The National Academies, The Geological Society of America, The American Geophysical Union, and others) have issued statements that the rate of sea level rise during the next 100 years is going to be higher than that of the last 100 years. This PCS directly contradicts that overwhelming, peer-reviewed scientific consensus, and ties the hands of localities that would like to plan pro-actively for these changes.

In closing, we are friends and sons of North Carolina. Our goals have always been to preserve the coastal economy and environment, and to assist in the wise management of those resources. We fear the proposed methodology in this Bill runs counter to those goals shared by all North Carolinians.

Respectfully

Robert S. Young, PhD, Stanley R. Riggs, PhD, David Mallinson, PhD, Steve Benton

The above comments are personal and do not reflect the opinions real or implied of any entity other than the authors' themselves.

VISITOR REGISTRATION SHEET

Ag/Env/Nat. Resources (2011-2012) — June 7, 2012 @ 9:00 Am
Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Jessica Marlies	DENR
Rob Jackson	Duke University
Louis Daniel	NC DMF
Diana Rees	NC DENR
Rob Lamm	RLA
Mike Abraczinskas	NC DENR - DAQ
TRACY DAVIS	NCDENR - DLR
Erin Wynia	NCLM
Susan Gillon	DOA
Cassidy Nolan	NC Conservation Network
Dustin Matthews	NCDENR Waste Management

VISITOR REGISTRATION SHEET

Ag/Env/Nat. Resources (2011-2012) — June 7, 2012
Name of Committee — **Date**

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Mike Forte	City of Boiling Spring Lakes
Steve Pacley	Kure Beach
Veronica Butcher Shivington	Governors Office
Beth Warren	Attorney Gen. Office
Dan Conrad	NCCN
Tom Beason	EDF, NCSEA, NCWF
Julie Robinson	NC Sustainable Energy Assoc
Chris Kachadoorian	Environment NC
Jenn Ross	Environment NC
Margaret Hartzell	Environment North Carolina
PAIGE WORSHAM	LEGISLATIVE REPORTING SERVICE

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Johnny Tillett	MWC
Capt. Al Dudley	Brega Pipeline
Katie Fewbery	MWC

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David McNawan	NCAR
Cady Thomas	"
Chad Rhoades	NDACS
Gill Fraser	NCDACS
Michele Walker	NCDENR
David Elmore	Moore & Van Allen
Bo Hatch	McGuire Woods

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CHRIS DILLON	NCWRC
GORDON MYERS	NCWRC
Dale Caveny	NCWRC
Todd Kennedy	NCWRC
Penn Broyhill	WCSR
R Rogers	CWMTF
L. Ledford	Parks
Elizabeth Biser	Brooks Pierce
Sarah Wolfe	MWC
Glenn Dunn	Poyner Spruill
Hayes Jernigan	SELC

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Ag/Env/Nat. Resources (2011-2012) — June 7, 2012
Name of Committee — **Date**

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Stephen Ammons	CCA North Carolina
Gabriell Vives	NC DENR
Susanna Hailey	K&L Gates
[signature]	"
[signature]	NCADA
[signature]	NCFB
John Shaw	CAP Grp. Sierra Club
Allen Hardison	CRSWMA
[signature]	Dominion NC Power
[signature]	NC PCW
David Barnes	[signature]

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Ag/Env/Nat. Resources (2011-2012) — June 7, 2012
Name of Committee — **Date**

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Jack Swanner	NCFA
Bob Sloan	NCFA
Preston Howard	MCIC
Allison Wallen	Nelson Mullins
Deb Alley	Nelson Mullins
L C Hayman	CSS
Doug Lassiter	NCSTA
Bruce Thompson	Parker Poe
Jim Hardin	Grady-White Boats
Elise Quick	Troutman Sanders
Joy Hicks	NCDA&CS

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Ag/Env/Nat. Resources (2011-2012) — June 7, 2012 @ Noon
Name of Committee — **Date**

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Diana Kees	NCDENR
Trina Ozer	NCDENR
David McGowan	NCAR
Gerrell Blevins	Duke Energy
Kay Barkley	DENR
Karen Burns	NMC
Jon Camp	WVD

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Ag/Env/Nat. Resources (2011-2012) — June 7, 2012 @ Noon
Name of Committee — **Date**

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John Merritt	MWC LLC
Carter Mead	WhichWayNC
Mary Maile Askill	SELC
David Cole	SELC
Erin Wynia	NCLM
Tom Cors	TNC
Joey Stansbury	Sen. Tucker's office
Peter Rumpf	American Rivers
Mary Susan Sherman	American Rivers

VISITOR REGISTRATION SHEET

Ag/Env/Nat. Resources (2011-2012) — June 7, 2012 @ Noon
Name of Committee — **Date**

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Robin Smith	DENR
Jennifer Ross	Environment North Carolina
Margaret Hostetler	Environment North Carolina
Cassidy Nolan	NCCN
Dan Conrad	NCCN
Rob Jackson	Duke University
[illegible]	RLN
[illegible]	MWC
Capt. AL Dudley	Omega
Sean McCoy	NCFA
Reid Howard	MCIC