2013-2014

SENATE AGRICULTURE/ ENVIRONMENT/ NATURAL RESOURCES

MINUTES

MEMBERSHIP

SENATE AGRICULTURE / ENVIRONMENT / NATURAL RESOURCES COMMITTEE

2013–2014 Biennium

Senator Andrew Brock, Co-Chair
Room 521, LOB (919) 715-0690
Judy Edwards

Senator Brent Jackson, Co-Chair
Room 523, LOB (919) 733-5705
Phillip Christofferson

Senator Bill Cook, Vice-Chair
Room 525, LOB (919) 715-8293
Amanda Shreve

Senator Austin Allran
Room 625, LOB (919) 733-5876
Carole Walker

Senator Chad Barefoot
Room 623, LOB (919)715-8331
Blake Perry

Senator Stan Bingham
Room 2117, LB (919)733-5665
Maria Kinnaird, Judy Chriscoe

Senator Angela Bryant
Room 520 LOB (919) 733-5878
Karon Hardy

Senator Dan Clodfelter
Room 620, LOB (919) 715-8331
Ted Harrison

Senator Joel Ford
Room 1119, LB (919) 733-5955
Jackie Ray

Senator Fletcher Hartsell
Room 300-C, LOB (919) 733-7223
Gerry Johnson

Senator Ellie Kinnaird
Room 628, LOB (919) 733-5804
Kathie Young

Senator Gene McLaurin
Room 1118, LB (919) 733-5953
Katie Stanley

Senator Ronald Rabin
Room 526, LOB (919)733-5748
Hannah Salem

Senator Bill Rabon
Room 2108-B, LB (919) 733-5963
Paula Covington Fields

Senator Shirley Randleman
Room 308, LOB (919) 733-5743
Jeb Kelly

Senator Tommy Tucker
Room 311, LOB (919) 733-7659
Joey Stansbury

Senator Trudy Wade
Room 2106, LB (919)733-5856
Kathy Hartsell

Senator Michael Walters
Room 517-B LOB (919) 733-5651
Vicki Spears

NORTH CAROLINA GENERAL ASSEMBLY
Senate Agriculture/Environment/Natural Resources Committee
2013 – 2014 SESSION



Andrew Brock
Co-Chair



Brent Jackson
Co-Chair



Bill Cook
Vice chair



Austin Allran



Chad Barefoot



Stan Bingham



Angela Bryant



Daniel Clodfelter



Joel Ford



Fletcher Hartsell



Ellie Kinnaird



Gene McLaurin



Ron Rabin



Bill Rabon



Shirley Randleman



Tommy Tucker



Trudy Wade



Michael Walters

Senate Committee on Agriculture/Environment/Natural Resources
February 12, 2013
Room 1027

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Presentations

Olivia Watson - **Winner of the N.C. FFA Prepared Public Speaking Contest. Olivia is from South Columbus High School FFA Chapter**

Steve Troxler - **Commissioner of Agriculture**

John Skvarla - **Secretary of Department of Environment and Natural Resources**

Other Business

Adjournment

Senate Committee on Agriculture/Environment/Natural Resources
Tuesday, February 12, 2013 at 11:00 AM
Room 1027

MINUTES

The Senate Committee on Agriculture/Environment/Natural Resources met at 11:00 on February 12, 2013 in Room 1027. Seventeen members were present.

Senator Andrew Brock presided.

Senator Brock opened the meeting welcoming everyone to the meeting and the introduction of members and staff.

Presentations:

Senator Brock introduced Olivia Watson, winner of the NC FFA Prepared Public Speaking Contest and a member of the Columbus HS FFA Chapter. Olivia delivered a speech on "Protecting the Thin Green Line" (Agriculture and Farming).

Senator Brock introduced Steve Troxler, Commissioner of Agriculture, who presented an overview on the educational process of the Department of Agriculture and the jobs they do in the department. Commissioner Troxler stated that Agriculture and Agri-business remained the No. 1 industry in North Carolina with the military being 2nd and Tourism being 3rd. Commissioner Troxler introduced his staff to the committee. At the end of Commissioner Troxler's speech, he opened the floor up for questions at which time the following members had questions

Senator Ellie Kinnaird thanked Commissioner for the success of her 15th Annual Ag. Summit.

Senator Austin Allran asked if "Agribusiness was tied to land" and Commissioner Troxler answered that Agribusiness could include processing and that agribusiness and agriculture are interchangeable but normally when you say agriculture, you are talking about the agriculture operations and the farms we have. Agribusiness can include support operations such as transportation and shipping of the products. There are agribusiness operations in every city we have in North Carolina.

Sen. Tommy Tucker's question was regarding fighting forest fires. He asked "Does the State of North Carolina still own the large airplane that has the ability to carry several gallons of water, does it fly now and do we have a pilot to fly the plane if we do incur a fire". Commissioner Troxler answered that when we got into the fire season we had a couple of years ago, we did not have the tanker. At that time, Forestry was not in the department.. They (Forestry) were instructed to sell that tanker along with two other small aircraft for a projected price of a $1,500,000. When these aircrafts were put on the market, they actually brought $400,000 or $500,000 dollars and that extra $1,000,000 had to be made up out of the operational funds of Forestry. When the airplane tanker sold, it

was bought by the company that is on the Weather Channel. They remodeled the aircraft and Commissioner Troxler said the last he heard, the plane was for sale at a price of $3,000,000.

Senator Angela Bryant asked Commissioner Troxler about the research stations and if "AT&T" was involved with these since he had mentioned N.C. State owning 6 of the stations. Commissioner Troxler answered that AT&T were their partners in agricultural research. There is a separation of operation between AT&T and N.C. State University, in that Department of Agriculture owns 12 research stations and NC State owns 6.

Sen. Brock introduced John Skvarla, Secretary of DENR for a presentation. Sec. Skvarla introduced his staff to the committee. Sec. Skvarla said DENR is an agency of approximately 4,000 people with a budget of about $250 million operations and another $750 million comprised of monies aggregated and associated with various trust funds that are used for various purposes like "Cleanwater Management Trust Fund", for a total of $1 billion dollar budget. DENR is an agency that has probably been one of the lightning rods of state government for years. The reason being is that DENR is kind of bifurcated under the heading of Natural Resources. On one end they have the zoos, parks, museums, aquariums, and on the other hand they have the regulatory stuff and DENR is like environmental agencies, many times considered the obstacle to growth. Sec. Skvarla stated that he personally was very cognizant that respect is earned and trust is earned and it is his job and DENR's job to assure NC that they get it. DENR's mission is to protect and enhance the environment.

Sec. Skvarla opened the floor to questions. Being no questions, Senator Brock adjourned the meeting.

The meeting adjourned at
11:50 AM

Senator Andrew Brock
Presiding

Judy Edwards, Committee Clerk

VISITOR REGISTRATION SHEET

Senate/Agriculture/Environment/Natural Resources
(Committee Name)

2/12/13
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Kerry Hawkins	Duke
Betsy Vetter	American Heart Assn
Ray O'Connell	March of Dimes
Will Morgan	TNC
R Rogers	NC Cl mn Tf
Brooks Rainey Pearson	SELC
[illegible]	SOS
Horace Johnson	NCFFA
Barry Stadler	J.C. HE
Olivia Watson	NCFFA, SCHS
Molly Piggs	Diana Clark
Will Grantham	McGuireWoods
Mike Giuseppe	DENR
TRACY DAMS	DENR - DEMLR
Angie Mayes	NC Pork
Mary P Thompson	NC DENR
TJ Boyce	Nexsen Pruet

09-21-201

VISITOR REGISTRATION SHEET

Name of Committee | Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Chris Anderson	
Durwood Loughridge	NS
Lisa Martin	NC Home Builders
Jimmy Broughton	Womble Carlyle
Elizabeth Biser	Brooks Pierce
Jay Stem	NCAA
Nelson Money	Jordan Price
Henry Jones	Jordan Price
CHRIS DILLON	Nucor
Butch Gunnells	NC Bar Ass.
Preston Howard	MCC

VISITOR REGISTRATION SHEET

Name of Committee | Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Allison Fowler	NC Grange
Patrick Liner	Senator Randleman's office
Kay Emanuel	WNC School of Nursing
Richard G. Reich	NCDA&CS
Scott Barnette	NCDA&CS
David McLeod	NCDA&CS
Joy Hicks	NCDA&CS
Zane Hedgecock	NCDA&CS
N. David Smith	NCDA&CS
Jimmy Keaton	NC GRANGE
STEVE TROXLER	NCDA&CS
Dave Hunn	Smith Anderson

VISITOR REGISTRATION SHEET

Senate/Agriculture/Environment/Natural Resources
(Committee Name)

2/12/13
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Rick Taylor	Kilpatrick Law Firm
TYLER NEWMAN	WILMINGTON
David McGowan	NCAR
LAURA DEVIVO	WCSR
Bob Cotham	UFT
Marcelle L Watson	South Columbus High
Joshua Bledsoe	NCSU / NC FFA
Brandon Long	South Columbus
[illegible]	South columbus FFA
Shane [illegible]	Williams Mullen
[illegible]	NCRMA
Bill Holman	The Conservation Fund
Todd Cooper	Compass NC
Alan Briggs	NC Food Banks
Christy Agner	DOJustice
Nadia L. Luhr	NCCN
BRUCE THOMPSON	PARKER POE

09-21-201

VISITOR REGISTRATION SHEET

Name of Committee | Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Chris Wilson	Wilson Group, LLC
Towers Minglewood	NC General Assembly
Stephen Kuba	compassNC
CS Hollis	TSS
Tom Bean	EDF, NCWF
[illegible]	South Columbus FFA (Olivia's Dad)
Gary Robertson	AP
Doug Lassiter	NCSTA
Johanna Reese	NCACC
[illegible]	BCS
[illegible]	NCPCW

VISITOR REGISTRATION SHEET

Name of Committee **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Henry Hobbs	N.C.B.A.

VISITOR REGISTRATION SHEET

Name of Committee **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Candace Howze	Student, UNC-CH
Steven Wells	NCWRA
P & P	NCFB
Townes Maxwell	Public Sector Group
Doug Miskiw	PSG
Peter Raabe	American Rivers
John Skvarla	Sec. DENR
Brad Ives	DENR
Neal Robbins	DENR
Aaron Fleming	Lee Co Schools Career Tech
J Goodman	NC Chamber
A Edmundson	NCDMC

VISITOR REGISTRATION SHEET

Name of Committee _____ Date _____

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Gary Harris	NC Petroleum & Conv. Stores
Mike Forte	City of Boiling Spring Lakes
[illegible]	NCS
Heather Jeffrey	"
George Smith	Nixon Pruet
[illegible]	NCP
Andy Chase	KMA

Senate Committee on Agriculture/Environment/Natural Resources
Tuesday, February 19, 2013 at 11:00 AM
Room 544 of the Legislative Office Building

MINUTES

The Senate Committee on Agriculture/Environment/Natural Resources met at 11:00 AM on February 19, 2013 in Room 544 of the Legislative Office Building. Twelve (12) members were present.

Senator Brent Jackson presided.

Senator Jackson recognized the pages and sgt.of arms.

Presentations:

Senator Jackson introduced Brad Ives, Assistant Secretary for Natural Resources (DENR) for a presentation on Natural Resources. Natural Resources is made of up 6 divisions which are Parks and Recreation, Museum of Natural Sciences, Zoo, Aquariums, Marine Fisheries and Conservation Planning. Mr. Ives gave a brief overview of each division and at the conclusion of his presentation, he opened the floor up for questions.

Senator Austin Allran asked if he heard in the presentation on the zoo that the NC Zoo was the largest zoo in the world. Mr. Ives stated that the NC Zoo was the largest zoo in the world by land area, with over 2,000 acres.

Senator Tommy Tucker asked Mr. Ives how many deputy secretaries were in the Department when he started his position at DENR and how many were there now? Mr. Ives answered that there was one deputy secretary in the old structure and two assistant secretaries. There is no longer a deputy secretary and they have an assistant secretary. The overall headcount is the same. Sen. Tucker followed up asking if there was a reduction in pay for these folks"? Mr. Ives did not know the answer to the question. He said he would get back to Sen. Tucker with the answer. Sen. Tucker followed up with another question – there was discussion last year about the combination of wildlife and marine fisheries in a study. Can you share with me what you know about that? Mr. Ives said that their position was they would like some time to study it and understand what the overall impact is. He knew it would have some overall budget impact to wildlife on the actual overhead budget and not just the marine fisheries budget. Overall they are not in a position yet to have an official decision as to whether it would be a favorable or unfavorable thing. Sen. Tucker commented that when he heard the word "study" around here, it means delay and it has been studied to death over the last year and a half. Sen. Tucker requested that if his folks would take a look at that and come up with an official position on this, it would be helpful.

Senator Austin Allran asked about the budget for the NC Zoo, being one half appropriations and half receipts. He asked if we were moving in the direction more

toward being self-funded or not. Mr. Ives stated that it would be very tough for the zoo to operate on its own. He also stated that they were in talks with the Friend Society of the Zoo about long range planning to see if a public private partnership would be effective, but it is important that the legislature understand that even if we do have a public private partnership that the likelihood of the zoo being 100% self-financed is low.

Senator Ron Rabin asked about the marine fisheries and wildlife combining. He asked if putting those kind of strategies off until you get more grounded, wouldn't that be part of your budget considerations instead of waiting until after you do the budget to revisit this. Mr. Ives said that it was very difficult to try and think strategically on one hand and engage in the thoughtful type of decision making that should occur while they are under the budget pressure.

Senator Jackson introduced Mitch Gillespie, Assistant Secretary of Environment (DENR), Sec. Gillespie presented an overview of Environment. Environment is made up of seven (7) divisions which are Ecosystem Enhancement; Water Quality; Water Resources; Air Quality; Waste Management; Energy, Mineral and Land Resources; and Coastal Management.
At the conclusion of the presentation, Sec. Gillespie opened the floor up for questions.

Sen. Stan Bingham asked about PCB's in the Yadkin River Basin. Sen. Bingham wanted to know what the status of that cleanup is as of now. Sec. Gillespie stated that he had not had the opportunity to evaluate the PCB's but promised that he would get back to Sen. Bingham on that.

Senator Trudy Wade asked how many sites qualified for the super funds? How do we prioritize those and do they every get cleaned up or what happens? Sec. Gillespie answered that to the best of his knowledge in order to move over into a super fund site, depends on the cost of the cleanup and the extent of it and then that is the EPA (Federal) so then it is out of North Carolina's hands.

Senator Jackson brought before the committee members the idea of going paperless in the committee. He requested that the members think about this and it would be discussed at next week's meeting.

The meeting adjourned at 12:00 PM.

Senator Brent Jackson, Presiding Chair

Judy Edwards, Committee Clerk

Senate Committee on Agriculture/Environment/Natural Resources
February 19, 2013, 11:00 AM
Room 544

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Presentations

Briefing from the Department of Environment & Natural Resources

Other Business

Adjournment

Department of Environment and Natural Resources

Brad Ives – Assistant Secretary for Natural Resources

brad.ives@ncdenr.gov 919-707-8620

Mitch Gillespie – Assistant Secretary for Environment

mitch.gillespie@ncdenr.gov 919-707-8619

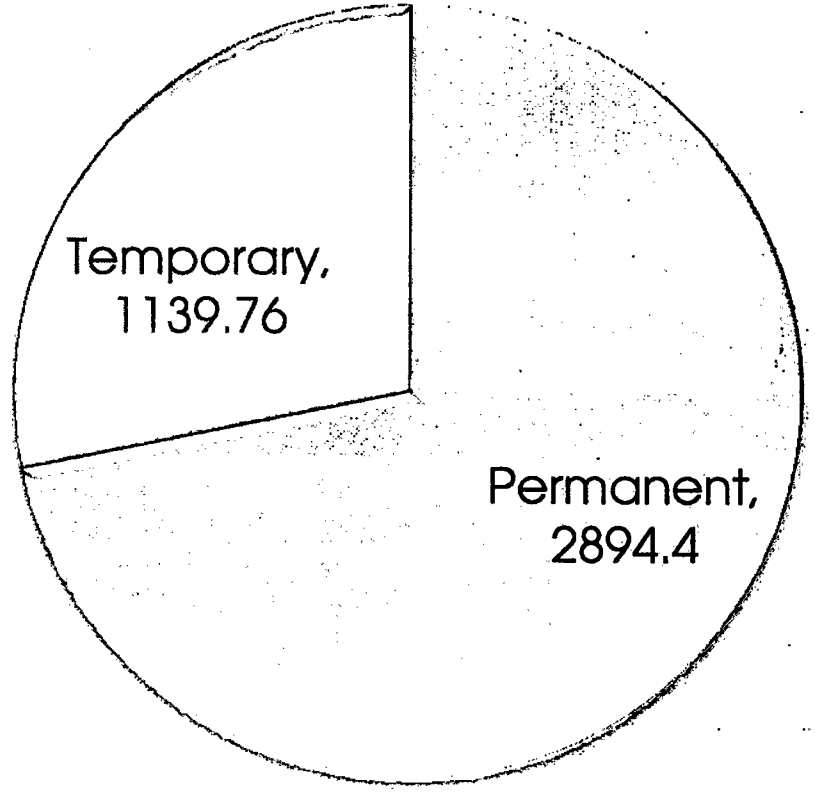
Overview

1. Natural Resources

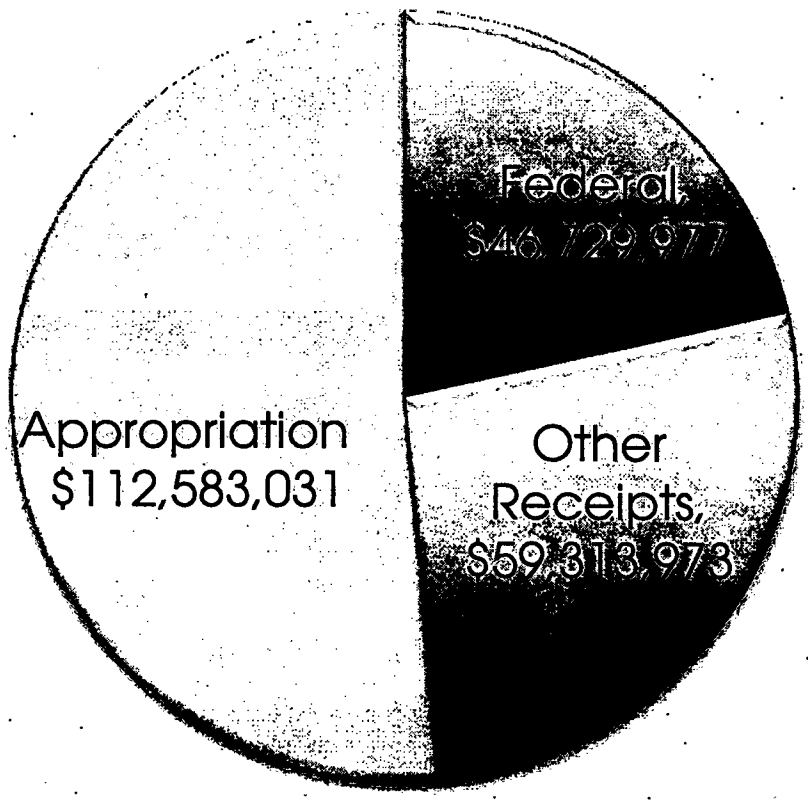
2. Environmental Protection

3. Military

DENR Employees



DENR Budget


Federal
$46,129,977
Appropriation
$112,583,031
Other
Receipts
$59,313,973

Natural Resources

- Parks and Recreation
- Museum of Natural Sciences
- Zoo
- Aquariums
- Marine Fisheries
- Conservation Planning

Parks and Recreation

- Record visitation in 2012 and 2011 (14.2 million visits)
- Total annual economic impact is more than $400 million
- For every $1 invested by the state, between $1.80 and $25.10 generated for local economies

Parks and Recreation

- Not resort based – low cost, low impact and local
- Partnerships with public, conservation groups, local communities and others
- 464 Fulltime employees
- $74,261,235 Budget ($23,751,101 Appropriated, $2,527,301 Federal Receipts & $47,982,833 Other Receipts)

Museum of Natural Sciences

- The purpose is to enhance the public's understanding and appreciation of the natural environment
- Museum emphasizes the natural diversity of North Carolina
- 151 Fulltime employees
- $12,529,826 Budget ($11,943,505 Appropriated & $586,321 Other receipts)
- Friends Society adds significant funding

Zoo

- The state Zoological Park is designed to portray and reflect the natural environment of the species on display
- Located in Asheboro, North Carolina
- Annual attendant is approximately 700,000 visitors from all 100 counties in NC and all 50 States

Zoo

- 1,600 individual specimens and more than 225 species on display
- 262 Fulltime employees
- $19,890,970 Budget ($10,566,801 Appropriated & $9,324,169 Other Receipts)
- Friends Society adds significant funding

Aquariums

- Three aquariums, located near Manteo, Atlantic Beach and Wilmington,
- Educational ocean fishing pier
- 136 Fulltime employees
- $19,304,205 budget ($9,619,828 Appropriated, $68,840 Federal Receipts & $9,615,537 Other Receipts)
- Friends Society adds significant funding

Marine Fisheries

- Dedicated to ensuring sustainable marine and estuarine fisheries and habitats for the benefit and health of the people of North Carolina.
- 269 Fulltime employees
- $34,133,672 Budget ($14,454,285 Appropriated, $4,632,752 Federal Receipts & $15,046,635 Other Receipts)

Conservation Planning

- Provides scientific and policy information and incentives to guide and support conservation actions of conservation agencies, organizations and citizens.
- 26 Fulltime employees
- $15,275,662 Budget ($95,331 Appropriated, $1,296,693 Federal Receipts & $13,883,638 Other Receipts)

Environment

- Ecosystem Enhancement
- Water Quality
- Water Resources
- Air Quality
- Waste Management
- Energy, Mineral and Land Resources
- Coastal Management

Ecosystem Enhancement

- Mission is to restore, enhance, preserve, and protect our natural resources while supporting responsible economic development.
- 52 Fulltime employees
- $72,106,697 Budget

Water Quality

- Implements state and federal laws protecting water quality.
- By delegation from the U.S. Environmental Protection Agency, DWQ issues federal Clean Water Act permits for discharge of pollutants to surface waters.
- Monitors permit compliance
- Provides technical assistance to permitted facilities

Water Quality

- Performs water quality sampling
- Develops strategies for addressing impaired water quality.
- 417 Fulltime employees
- $207,248,111 Budget

Water Resources

- Water Efficiency BMP Manual & Training
- Hydrologic Modeling of River Basins
- Assistance to Local Gov't Water Systems
- Water Storage Alternatives
- Shale Gas Potential Water Demand
- Drought Response/Preparedness
- Inter-basin Transfers
- Drinking Water Protection
- Maintenance Dredging

Water Resources

- 152 Fulltime Employees
- $74,205,541 Budget

Air Quality

- Implements the Federal Clean Air Act permitting program in the state
- Carries out state air quality statutes and rules.
- 259 Fulltime employees
- $27,342,241 Budget

Waste Management

- Solid Waste
- Underground Storage Tanks
- Hazardous Waste
- Superfund
- Brownfields
- 86 Fulltime employees
- $85,260,269 Budget

Energy, Mineral and Land

- Promotes the wise use and protection of North Carolina's land and geologic resources.
- Regulates and provides technical assistance related to mining, dam safety, and sedimentation control
- N.C. Geological Survey performs scientific investigations, provides technical assistance, and maps the state's geological resources
- 86 Fulltime employees
- $8,694,343 Budget

Energy, Mineral and Land

- Under 2012 legislation, the division provides staff to the new North Carolina Mining and Energy Commission (MEC)
- MEC is charged with developing a modern regulatory program for the management of oil and gas exploration and development activities in North Carolina, including the use of horizontal drilling and hydraulic fracturing

Coastal Management

- Manages public trust resources and implements the Coastal Area Management Act (CAMA) in the 20 coastal counties.
- Issues coastal development permits required under CAMA
- Assists coastal counties with land use planning
- Manages the state's Coastal Reserves (which include sites designated as National Estuarine Research Reserves

Coastal Management

- Administers the state beach and coastal waterfront access program.
- 55 Fulltime employees
- $6,184,161 Budget

Military Impact

- 2nd largest economic sector in the state
- $27 Billion in revenue each year
- NC home to 3rd largest concentration of personnel in the country
- 8% of NC employment related to military (416,000 jobs)
- Expected to increase in 2013 by $2.9 Billion and 49,000 new jobs

Military Impact

- Support military readiness by providing compatible land use for training and to prevent encroachment

Committee Sergeants at Arms

NAME OF COMMITTEE Senate Agriculture & Env/Nat/Res

DATE: 2/19/13 **Room:** 544

House Sgt-At Arms:

1. **Name:** _____
2. **Name:** _____
3. **Name:** _____
4. **Name:** _____
5. **Name:** _____

Senate Sgt-At Arms:

1. **Name:** Ernie Sherell
2. **Name:** Charles Marsalis
3. **Name:** Anderson Meadows
4. **Name:** _____
5. **Name:** _____

PAGES ATTENDING

COMMITTEE: Agriculture ROOM: 544 LOB

DATE: 2-19 TIME: 11 AM

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

	Page Name	Hometown	Sponsoring Senator
1	John Rabon	Holly Springs	Rabon
2	Libby Dotson	Clayton	Jackson
3	Katie Brown	Fayetteville	Meredith
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.

VISITOR REGISTRATION SHEET

Senate/Agriculture/Environment/Natural Resources
(Committee Name)

2/19/2013
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Peter Raabe	American Rivers
Amy Simes	DENR
Will Grantham	McGuireWoods
Steve Jernigan	Duke Alliance of N.C.
Paul Eglenn	Tuform
Jimmy Broughton	Womble
Stephen Kouba	compassnc
Mike Fish	Ron Rabin
Jack Cozort	NSS
Heather Barrett	W&S
K Rogers	NCCLCV
Chris Valauri	Valauri Group LLC
Gordon Myers	NCWRC
Angela Harris	Ward & Smith
Will Morgan	TNC

09-21-201

VISITOR REGISTRATION SHEET

Senate/Agriculture/Environment/Natural Resources
(Committee Name)

2/19/2013
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Elise McDowell	Troutman Sanders
Dan McLawhorn	Raleigh
Chris Dillon	NCWRC
Allison Fowler	NC Grange
Angel Sams	NSS
Tommy Stevens	NCPC
Susanna Davis	Williams Mullen
Doug Hoyt	NCPCM
Alice Badger	CSS
Matt Viohl	CW Consulting
Jeff Moore	Office of Governor
John Runkle	Consumers Against Rate Hikes
Beatrice Williams	CUCA
Weldon Jones	Jordan Price
Jay Hall	NCDA&CS
[illegible]	NCFB
Jake Parker	NCFB

09-21-201

Senate Committee on Agriculture/Environment/Natural Resources
Tuesday, February 26, 2013 at 11:00 AM
Room 544 of the Legislative Office Building

MINUTES

The Senate Committee on Agriculture/Environment/Natural Resources met at 11:00 AM on February 26, 2013 in Room 544 of the Legislative Office Building. Ten (10) members were present.

Senator Brent Jackson presided.

Senator Jackson introduced the pages and the Sgt. of Arms.

Senator Jackson introduced David Smith, Chief Deputy Commissioner of Agriculture who gave a detailed briefing on the Department of Agriculture and Consumer Services.

Mr. Smith said there were 253,725 in North Carolina in 1910 and in 2007, there were 52,913.

8% of North Carolina farms generate over $500,000 in farm sales annually.
North Carolina is a very diverse agricultural state. North Carolina is the 4th most diverse agricultural state behind California, Texas and Florida.

North Carolina's cash receipts – Livestock, Dairy & Poultry make up the bulk at 65.7%, Crops at 34.3%. North Carolina ranks first in tobacco and sweet potatoes, second in hogs, turkeys, Christmas trees, and trout sold, third in cucumbers and tomatoes, fourth in broilers, peanuts, and strawberries and fifth in upland cotton, peanuts, greenhouse/nursery cash receipts, and catfish sold.
The principal role of the Dept. of Agriculture is to preserve and promote the state's number one industry, agriculture and agribusiness. Economic impact is $72 billion.

At the conclusion of Mr. Smith's presentation, he opened the floor for questions.

Senator Kinnaird asked:

1. Can you expand on the Farm ID Program and the relationship to the people that keep 10 or 15 chickens?
   Mr. Smith's answer: One of the things that the Department is concerned about is the value of the commercial poultry industry and many of these backyard flocks are unregulated. They are essentially a breeding ground for many of the diseases that can get into the commercial flocks that affect our exports.
2. Sen. Kinnaird followed up with "How does my friend that has 10 chickens in Moncure, Chatham Co. or now we are going to allow chickens in a lot of the cities, how do they get to the commercial place?"
   Mr. Smith answered- If they are not located close together, perhaps there is not that much danger, but when they are located nearby, there is tremendous danger.

3. Sen. Kinnaird followed up with – I have visited facilities with 10,000 chickens and they are very closely contained and so I don't see, but will take your answer on this.
4. Senator Kinnaird asked - What ever happened to foot and mouth disease?
   Mr. Smith answered – That is a disease that is still prevalent in Europe and measures have been taken in this country to prevent the introduction through inspections and as long as Europe and the Middle Eastern countries, even in South America can maintain where we know where those pockets of diseases are, we are okay. It is whenever you have this large outbreak like we did in England several years ago.
5. Sen. Kinnaird followed up with – About 1/3 of DENR was lifted from DENR to Dept. of Agriculture. Did the staff go?
   Mr. Smith answered "yes".

Senator Walters asked:

As we change our farming techniques and go to more global positions satellite as we see the industry changing, what kind of demands does that put on soil analysis volume that you have to deal with today?
Mr. Smith answered that it is being driven by global positioned satellites as farmers go across the field, they can drop specific amounts of fertilizer or lime in various places in the field. It is not a uniform amount. It's put down where it needs to go at the rate that it needs to go. They go through a grid system. There are a lot more samples now in any one field vs. just taking a handful and having a humongous soil sample. How it is very specific.

Senator Bingham asked:

On a couple of the first slides, you gave percentages of strawberries and various crops that are relative to the gross of farm products, etc., but forestry was not on that?
Mr. Smith answered with – probably when that slide was developed, the Forest Service was not part of the Department of Agriculture. He said they would add it.

Senator Ford asked

Is this presentation available electronically?"
Senator Jackson stated that the presentation would be posted electronically after the meeting adjourned. A copy of the presentation is attached to these minutes.

Senator Jackson introduced Gordon Myers, Executive Director of Wildlife Resource Commission.

Mr. Myers did a broad overview of the Wildlife Commission. The agency mission is "to conserve North Carolina's wildlife resources and their habitats and provide programs and opportunities that allow hunters, anglers, boaters and other outdoor enthusiasts to enjoy wildlife-associated recreation." By statute, the commission is a 19 member board and is a regulatory body that sets rules for hunting, fishing, trapping and boating.

North Carolina Wildlife Resources Commission is organized into six divisions, Law Enforcement, Wildlife Management, Inland Fisheries, Engineering and Lands

Management.Conservation Education and Administrative Services. Current workforce number is 649 employees with an operation budget of $67.9 million for current fiscal year.
With time running very short, Mr. Myers had to go through his presentation very quickly. Sen. Jackson apologized for having to cut Mr. Myers off.

Senator Jackson recognized Sen. Bingham for a question.

With the toxic levels in the fish in the Yadkin River Basin where they were uneatable, and the difficulty in getting those placards put up, is that something that the Wildlife Division has a part in or is that someone else.
Mr. Myers answered that their role is pretty limited in that. That is through the Division of Water Equality. They do facilitate the outreach using their infrastructure or access infrastructure as well as publications.

Senator Bingham followed drunk drivers and boats. What conviction rates are in place if someone refuses to blow a breathalyzer? Mr. Myers responded that they have a very good conviction rate. Their officers deploy other techniques.

Senator Ford asked – Where could he get additional information concerning the agency, budget, employees? He is looking a little bit more information as it relates to valuing contributions for which agency does for the state.
Mr. Myers answered that he would like to meet with Senator Ford and take him the information that he is asking for.

Senator Kinnaird asked "Are you going to issue a license to that opossum?
Mr. Myers answered "We'll see if the governor signs the bill".

Senator Rabin asked if their law enforcement people were armed?
Mr. Myers answered "yes".

Senator Rabin in a follow-up question – Is the numbers you gave on the economics, does that include people coming from outside the state to use the fishery? How much and please send me the numbers.

In other business, Senator Jackson asked for a vote as to whether the committee would go paperless.

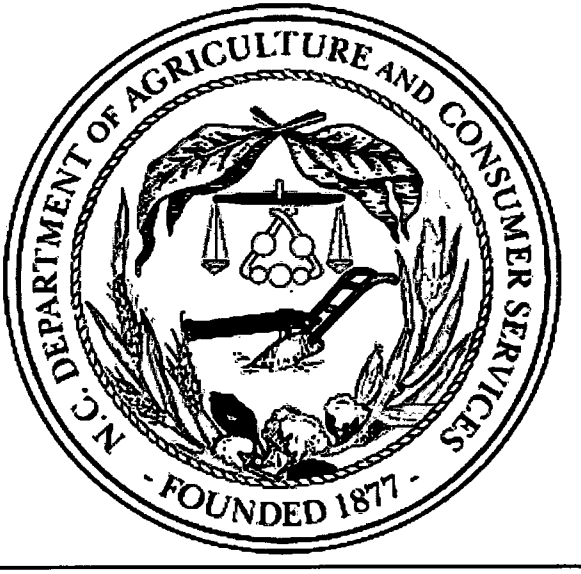
Sen. Ford made a motion that we go paperless with a second from Sen. Cook. The committee voted to go paperless.

Senator Jackson adjourned the meeting at 12:00.
The meeting adjourned at 12:00 PM.

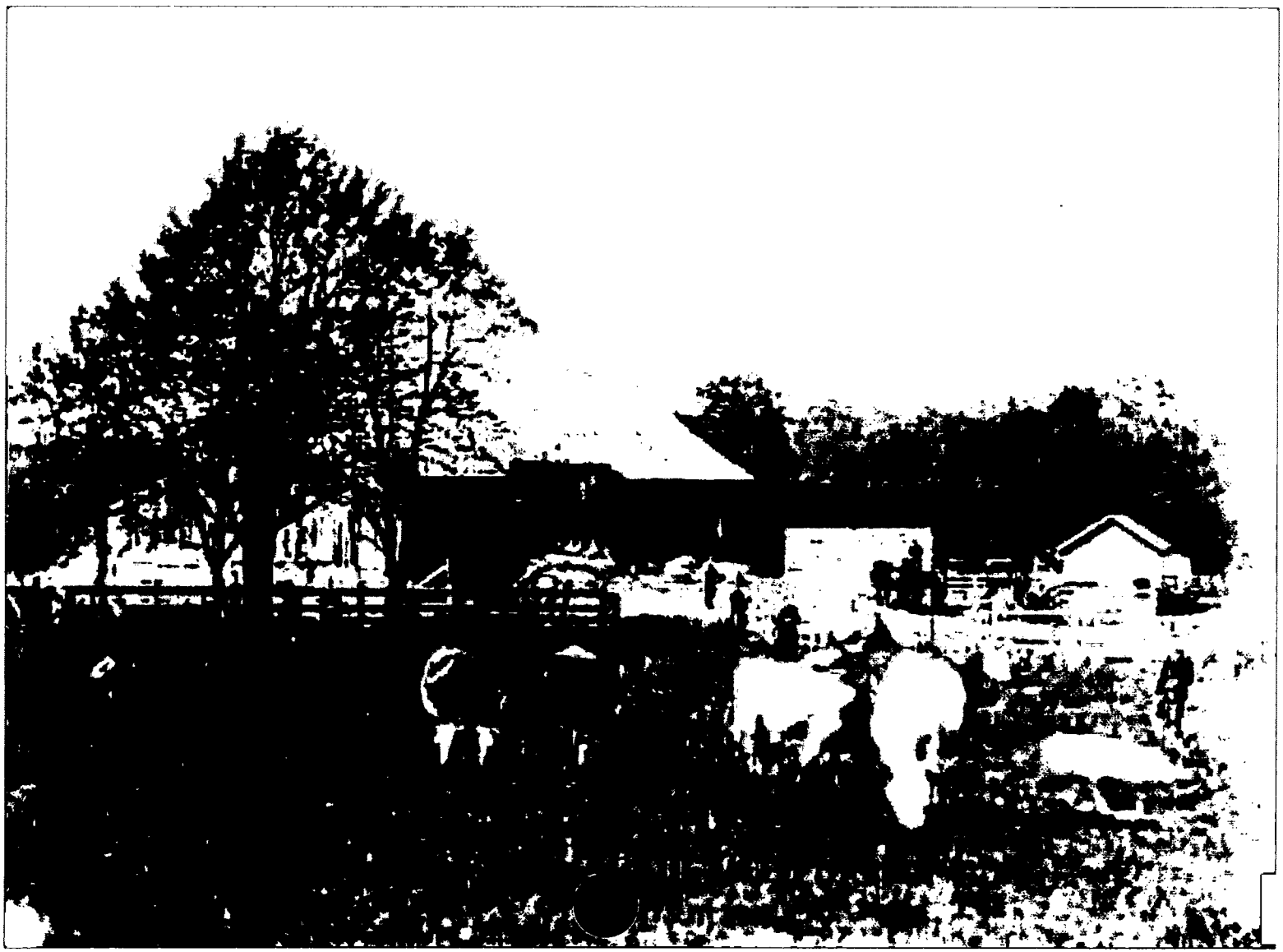
Senator Brent Jackson, Presiding Chair

Judy Edwards, Committee Clerk

North Carolina Department of Agriculture & Consumer Services



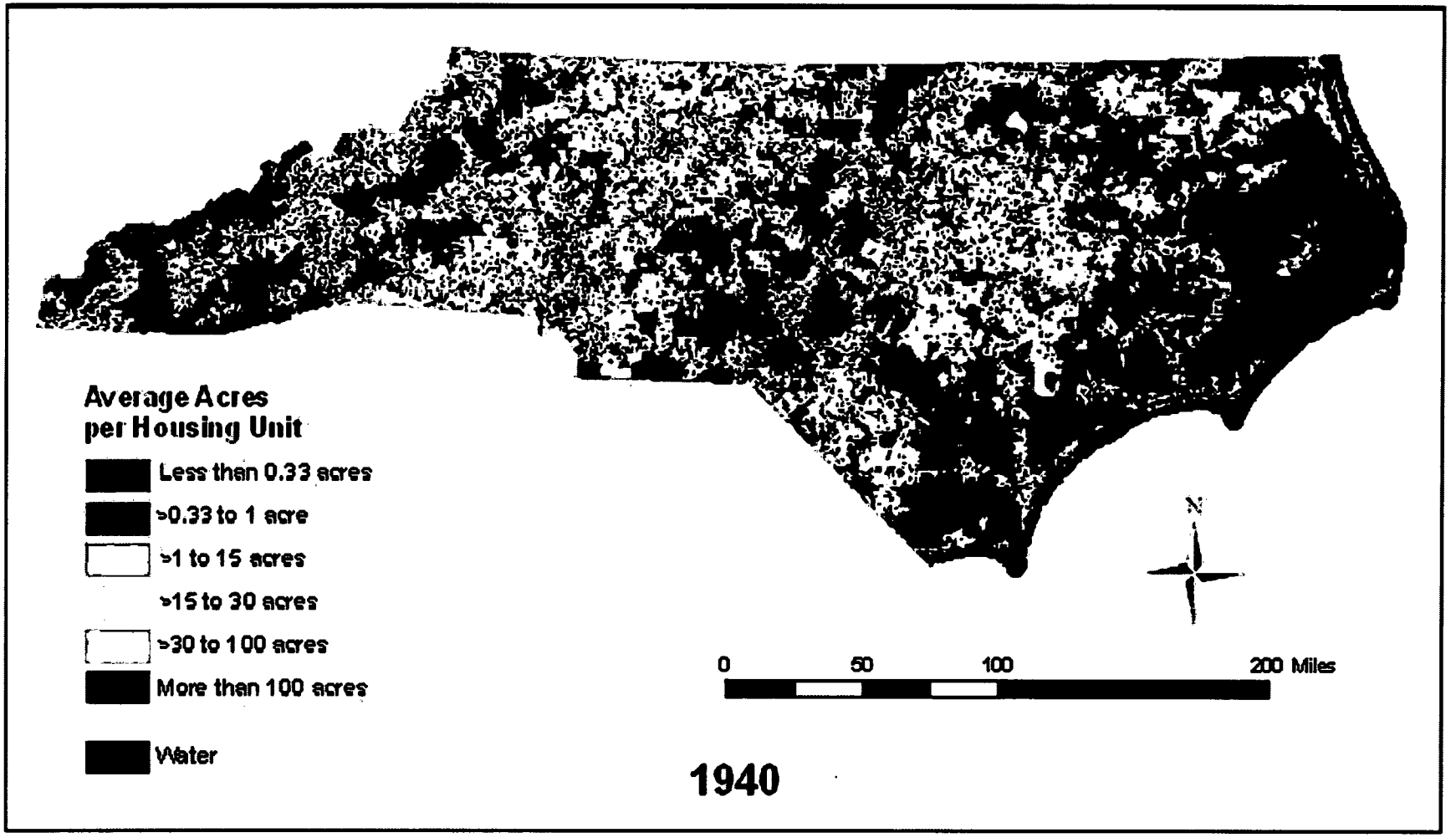
North Carolina Agriculture: 100 Years Ago and Today



Comparison

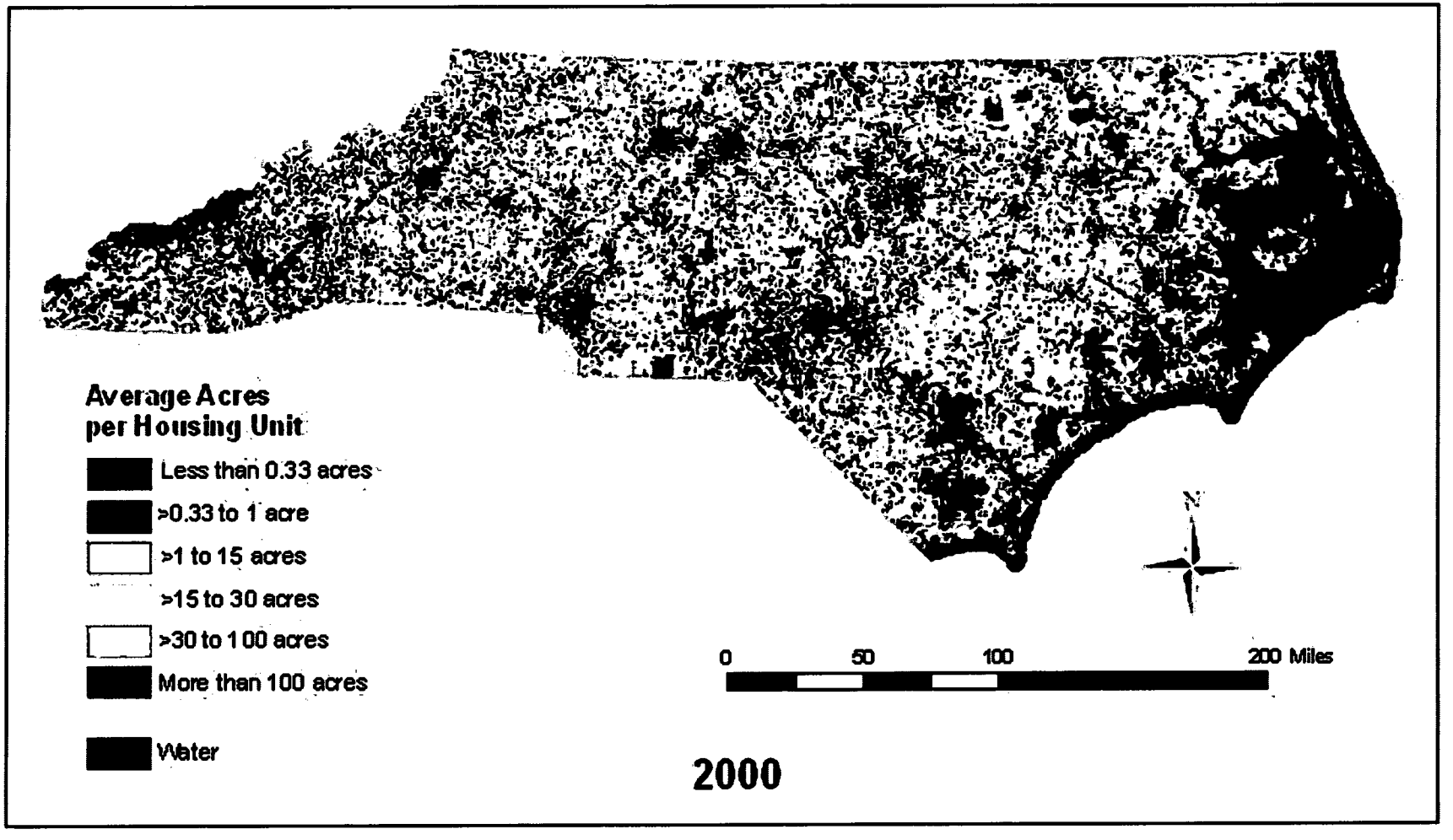
	1910	2007 Census of Ag	
▪ Farms	253,725	52,913	(number)
▪ Acres	22,439,129	8,474,671	
▪ Value/Acre	$ 15.29	$ 4,096	
▪ Cattle	700,861	820,182	(number on farms)
▪ Dairy cows	308,914	47,589	(number on farms)
▪ Mules	174,711	8,546	(number on farms)
▪ Hogs	1,227,625	10,134,004	(number on farms)
▪ Corn	2,459,457	965,426	(acres harvested)
▪ Cotton	1,274,404	526,060	(acres harvested)
▪ Tobacco	95,980	170,083	(acres harvested)

Housing Density, North Carolina, 1940



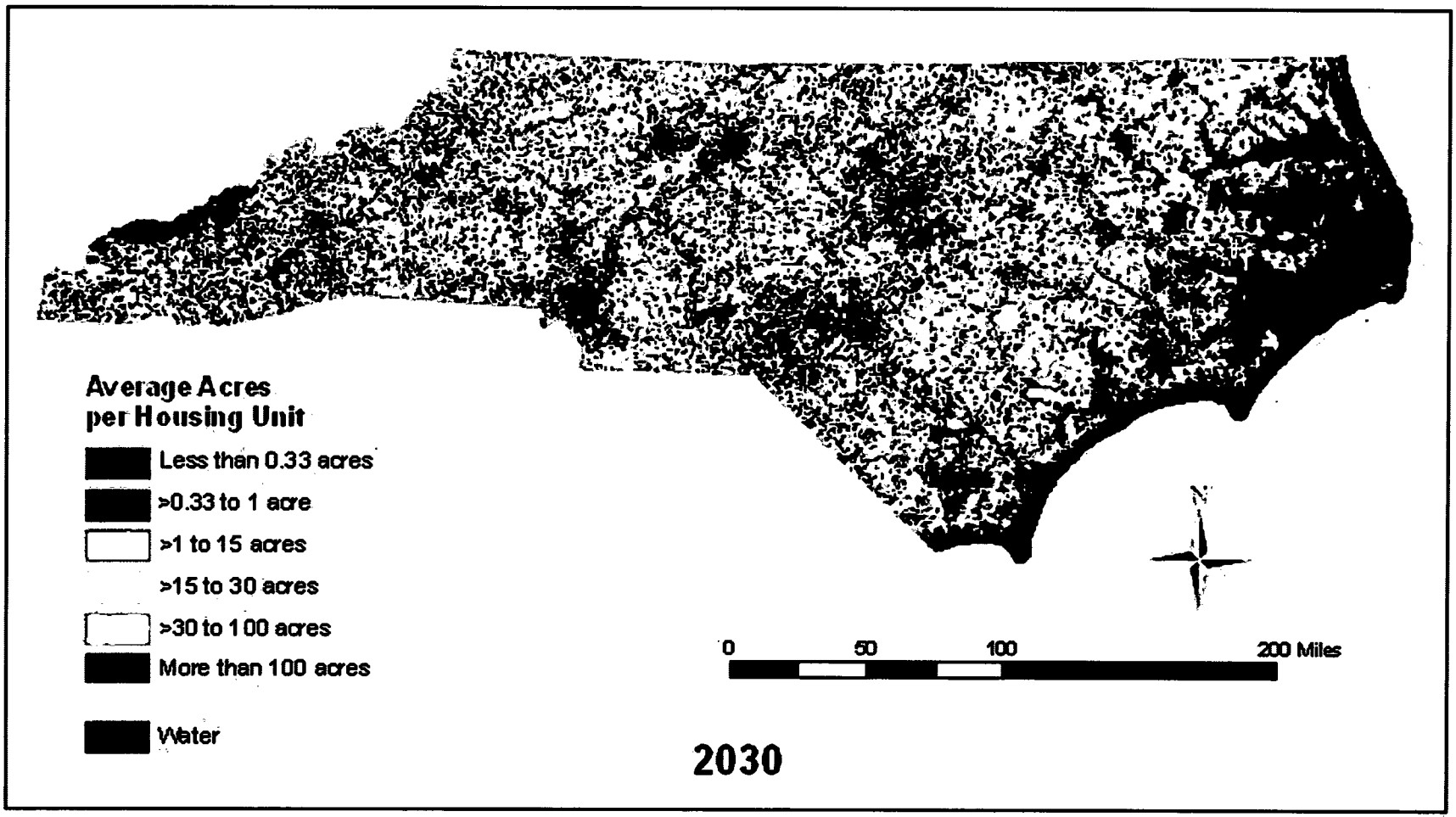
Source: Conservation Trust of NC

Housing Density, North Carolina, 2000



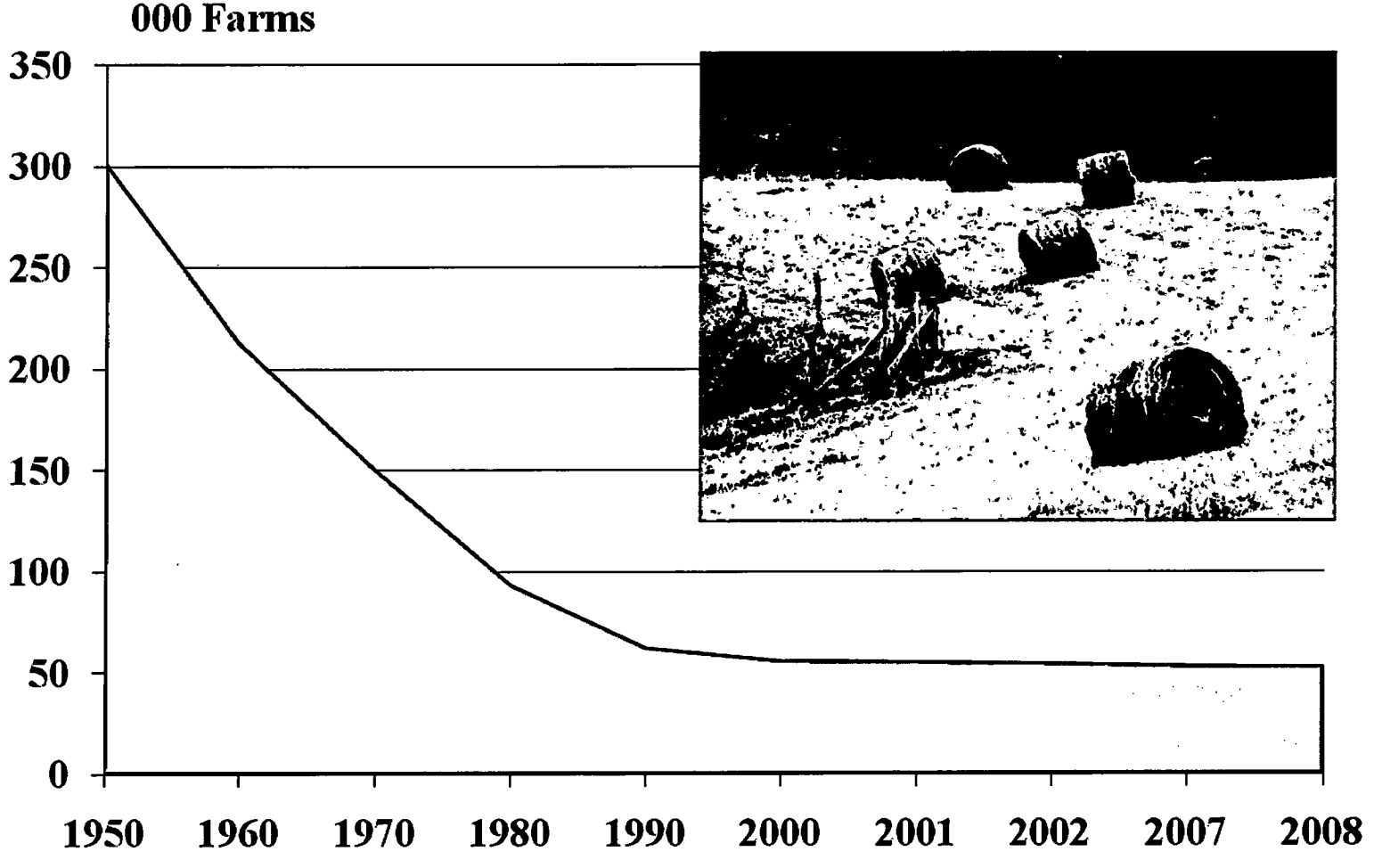
Source: Conservation Trust of NC

Housing Density, North Carolina, 2030 estimated

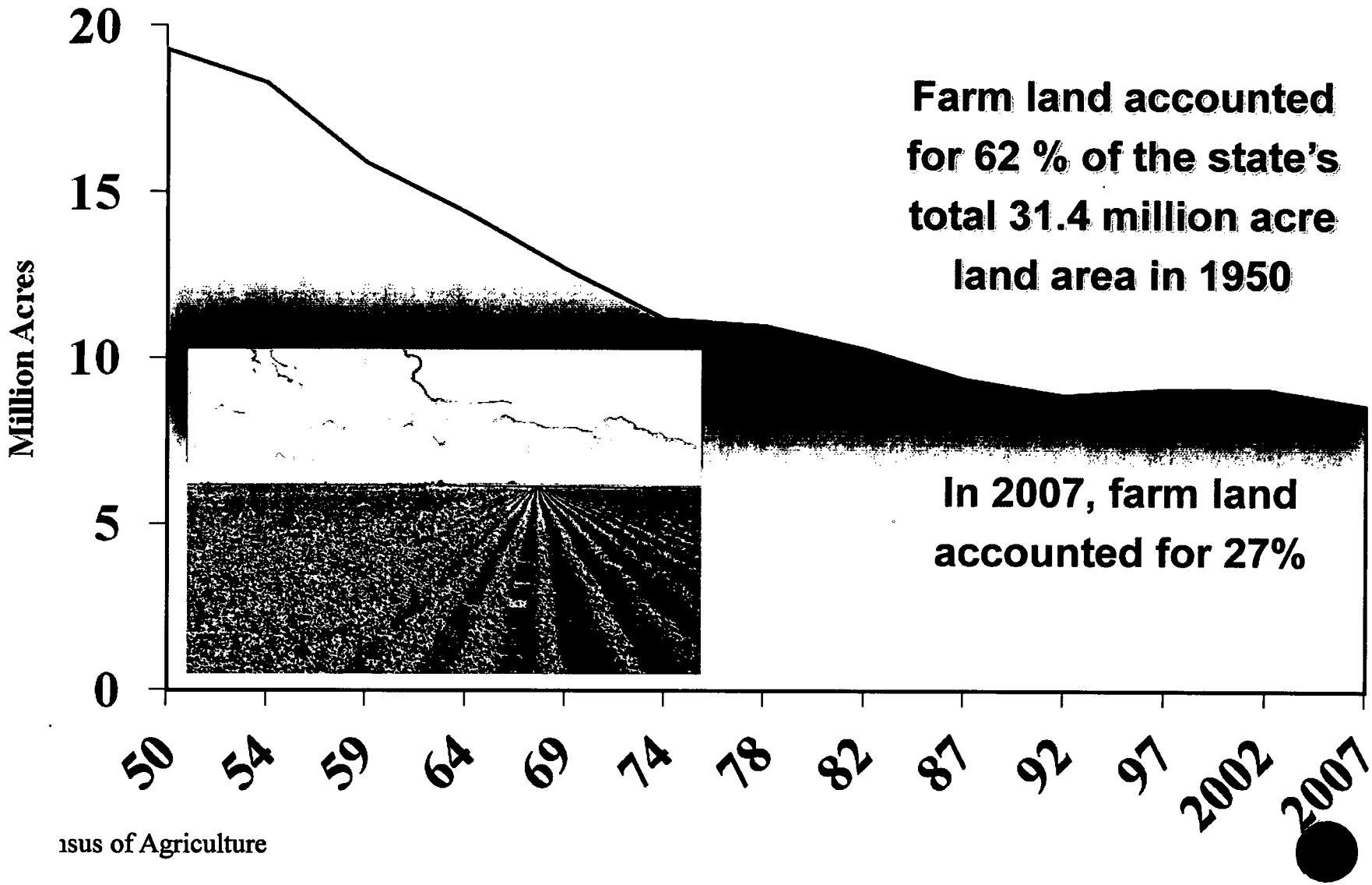


Source: Conservation Trust of NC

NC Farm Numbers



North Carolina Land in Farms



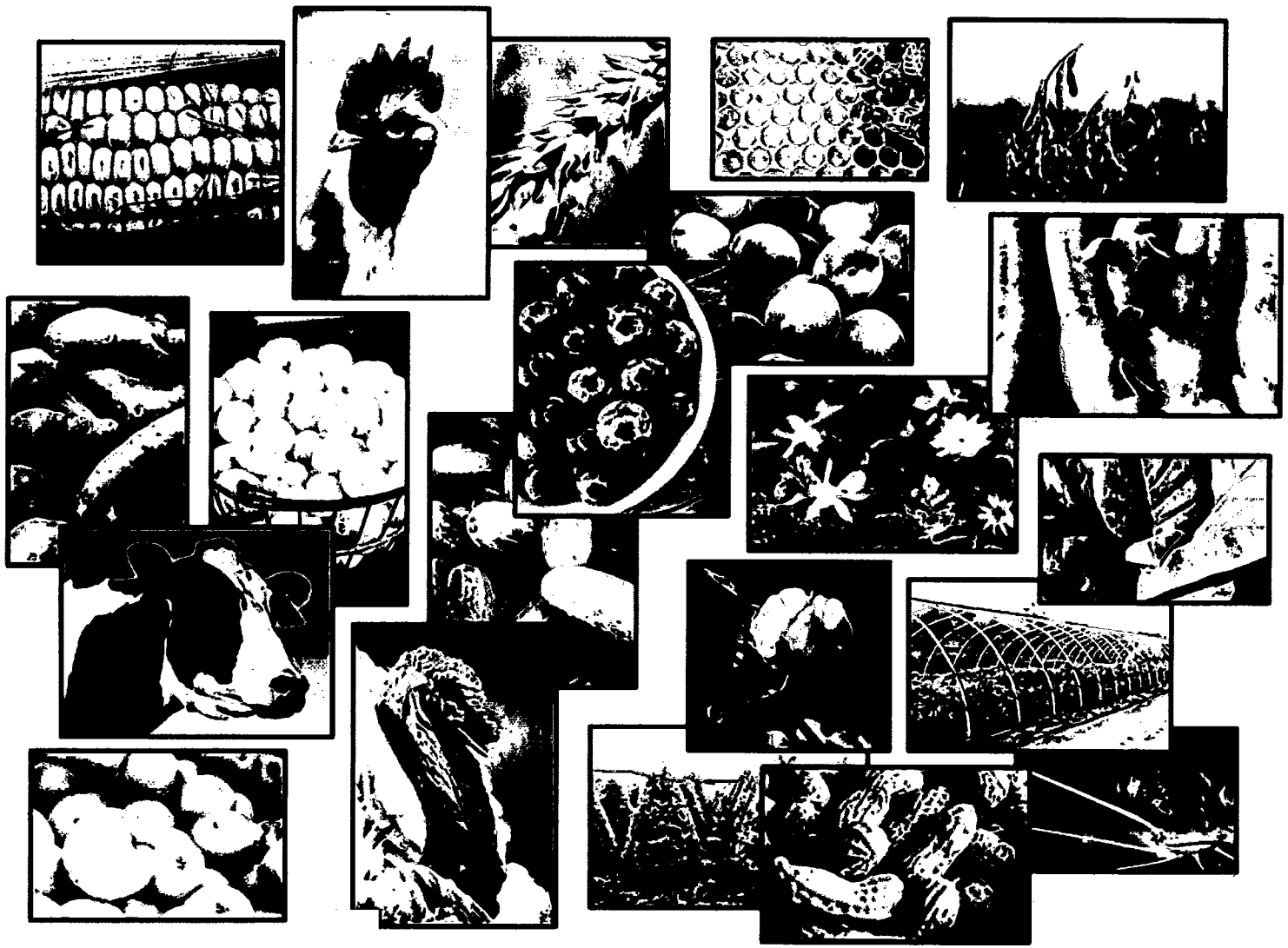
Source: ...sus of Agriculture

How much do you know?

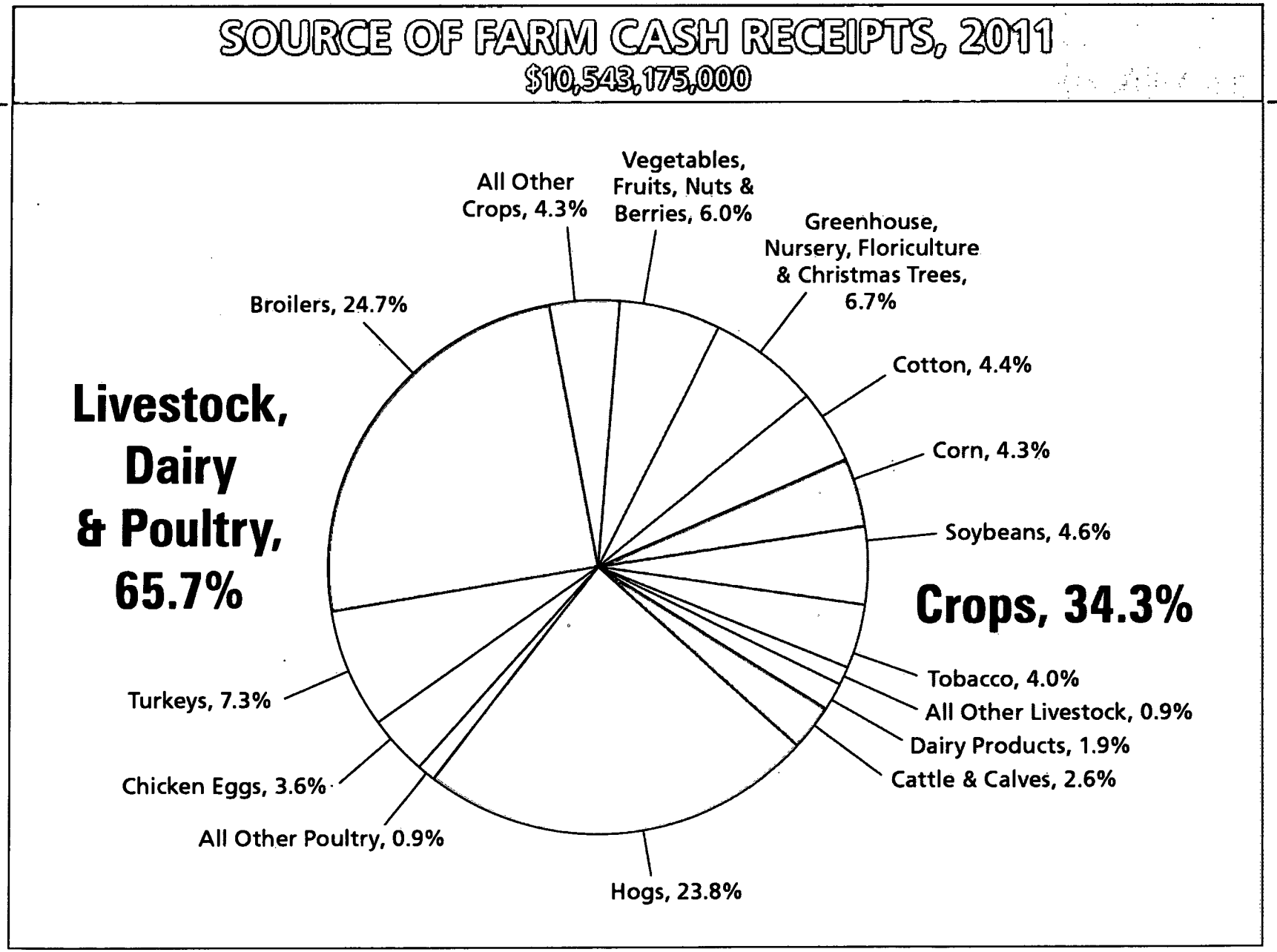
- What percentage of NC farms generate over $500,000 in farm sales annually?
  - A. 24%
  - B. 35%
  - C. 8%
  - D. 16%
- Answer: C

The Importance of NC Agriculture

- North Carolina is diverse
- N.C. is the fourth most diverse state agriculturally in the United States

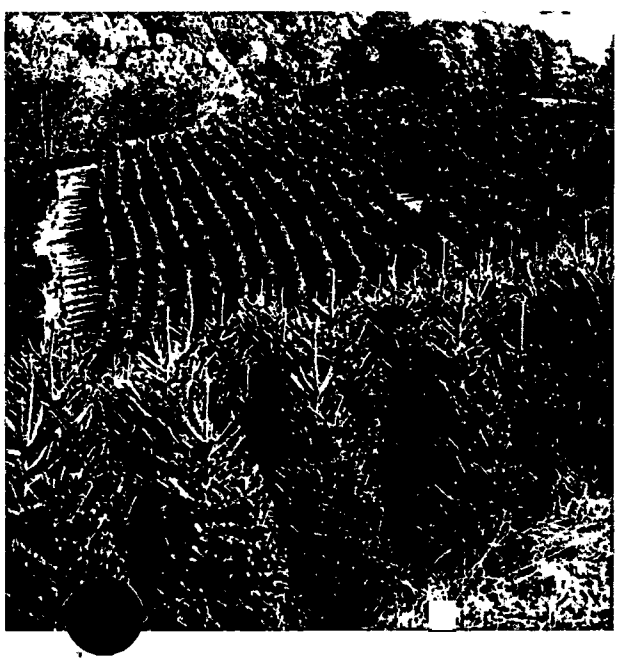


N.C. Farm Cash Receipts, 2011: $10.5 billion



N.C.'s Rank in U.S. Agriculture

- **First**
  - Tobacco
  - Sweet Potatoes
- **Second**
  - Hogs
  - Turkeys
  - Christmas Trees
  - Trout Sold
- **Third**
  - Cucumbers
  - Tomatoes
- **Fourth**
  - Broilers
  - Peanuts
  - Strawberries
- **Fifth**
  - Upland Cotton
  - Peanuts
  - Greenhouse/Nursery Cash Receipts
  - Catfish Sold







The Department

- Principal role is to preserve and promote the state's **number one** industry, agriculture and agribusiness. Economic impact is **$72 billion**.
- Is "under the control of the Commissioner of Agriculture" (N.C. General Statutes 106-2)
- With the consent and advice of "The Board of Agriculture" (NCGS 106-2)

The Board of Agriculture

- "The Commissioner of Agriculture and the members of the Board of Agriculture must be practical farmers engaged in their profession" (NCGS 106-2)
- Must meet at least twice a year "in the City of Raleigh" (NCGS 106-4)
- Members are appointed by the Governor.



Wide Range of Services

- Keep in mind we are the Department of Agriculture *and Consumer Services*.
- Our services touch **every** resident of this state.
- We do a lot for farmers, but also for other citizens (and passers through).





Organization

- Commissioner
- 1 Chief Deputy & 4 Assistant Commissioners who oversee 20 divisions, each with specific responsibilities.
- The department is organized into agricultural services, consumer protection, administration, N.C. Forest Service, and policy and legal affairs.
- Department is a melting pot of veterinarians, chemists, agronomists, entomologists, accountants, lawyers, agricultural marketers, IT professionals and other specialists.

Key Initiatives

- Food Safety
- Farmland preservation (preserve working farms)
- Policy presence for NC agriculture
- Promoting NC agricultural products & NC agribusiness
- Educating the non-farming public





NCDA&CS Divisions

- Agricultural Statistics
- Agronomic Services
- Budget & Finance
- Emergency Programs
- Environmental Programs
- Food Distribution
- Food and Drug Protection
- Human Resources Office
- Marketing
- Meat and Poultry Inspection
- N.C. Forest Service
- N.C. State Fair
- Plant Industry
- Property and Construction
- Public Affairs
- Research Stations
- Soil and Water Conservation
- Standards
- Structural Pest Control & Pesticides
- Veterinary

Agricultural Statistics

- Cooperative Agreement with USDA
- Collect statistical data from on-farm and telephone surveys
- Information collected is strictly confidential and is published in aggregate forms (state and county level) for use by farmers, economists, the general public, and other government agencies.

Agronomic Services

- Nutrient advice to farmers – maximize yield while minimizing inputs (Agronomists)
- Also soil, nematode, plant tissue, waste, solution and soilless media samples



Agronomic Services Division by the Numbers (2011-12)

Services	
389,903 soil analyses	62,332 advisory reports
36,028 nematode assays	10,728 plant tissue analyses
15,819 waste analyses	2,642 solution analyses
981 soilless media analyses	530 environmental consultations

Education	
24 lab lectures/ tours	15 news releases
9,440 producer consultations with regional agronomists	

Research	
7 technical publications	9 field demonstration projects

Emergency Programs

- Work with agricultural industry to reduce the risks of:
  - Animal disease outbreak
  - Intentional or unintentional attacks on food supply or agriculture infrastructure
- Develop resource response plans in the event of an attack or outbreak



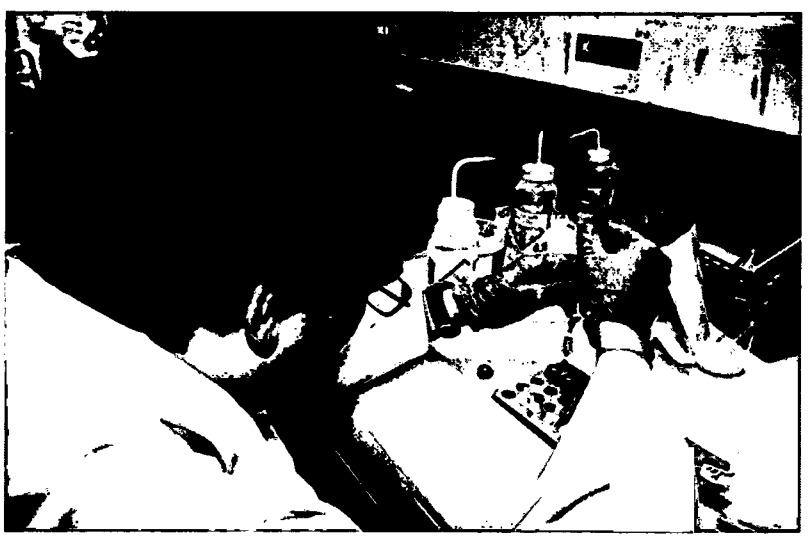
Food Distribution

- Delivers USDA food products to schools
- Runs our own "Farm to School" program
- Promote NC agriculture on trucks



Food & Drug Protection

- Food safety issues
- Test prepackaged, ready to eat foods
- Test produce for chemical residues
- Monitor retail food establishments for food safety related concerns

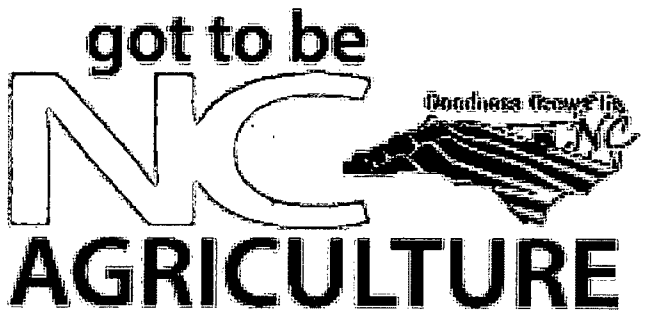


Marketing

- Develops markets for new and value-added products
- Promotes NC commodities
- Technical assistance for business planning
- International Marketing
- Reports farm market prices

Marketing (continued)

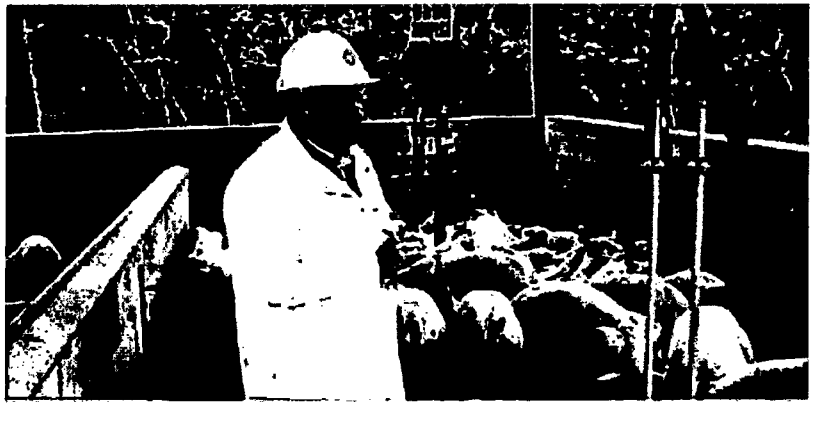
- Farmers Markets: Raleigh, Greensboro, Asheville, Charlotte
- Got to Be NC and Goodness Grows
- Mountain State Fair
- Got to Be NC Festival





Meat and Poultry Inspection

- Work in meat and poultry processing plants to ensure the safety and wholesomeness of the finished product
- In 2011:
  - 68 State Inspected Establishments, 95 Federally Inspected Establishments, 19 Custom Exempt Establishments:
    - 260,500,000 pounds of red meat
    - 82,200,000 pounds of poultry.
  - Slaughter inspection was performed on more than:
    - 162,980 cattle
    - 1,216 calves
    - 472,880 swine
    - 8,601 sheep
    - 11,115 goats
    - 155 ostrich
    - 84 bison





North Carolina Forest Service



Our Mission

To protect, manage and promote forest resources for the citizens of North Carolina.

North Carolina Forest Service

Did you know:



- North Carolina's forests cover 18.6 million acres, or 60 percent of the state's land area.

- In 2008, the wood products industry had about 2,562 companies employing 82,780 people, a payroll of $3.1 billion, and shipping products valued at $18.3 billion.

- The forestry sector contributes more than $6 billion to the state's gross product, and provides more than $28 billion in economic benefit.

North Carolina Forest Service

Every year, North Carolina has an average of 4,200 forest fires that burn 23,000 acres.





Forest Protection

North Carolina Forest Service

The division's forest management activities provide a wide range of assistance to the public, including forest establishment assistance, intermediate stand management practices and proper harvesting methods.







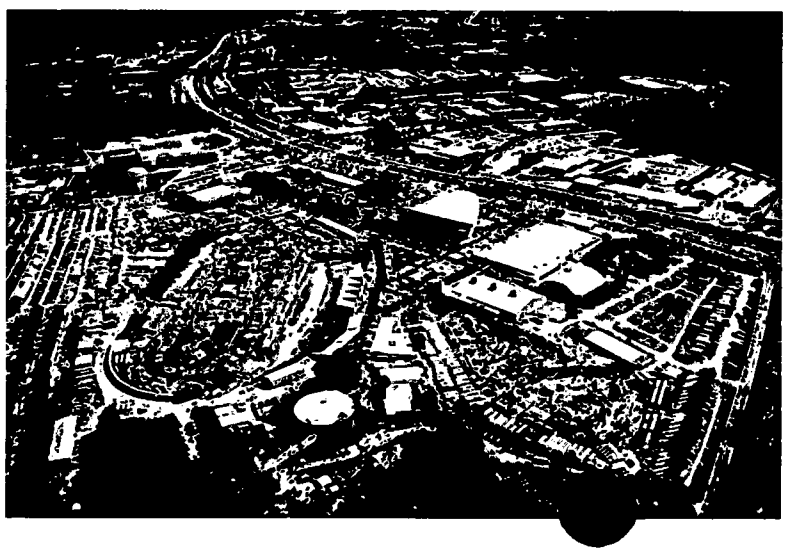
Forest Managemen



North Carolina State Fair

- The final attendance for the 2012 fair was more than **965,000** people!
- Our mission is to showcase and promote the state's agriculture, agribusiness, arts, crafts and culture through the annual agricultural fair.





Plant Industry Division

- Runs programs to prevent the introduction of harmful pests and noxious weeds
- Protect endangered or threatened plant species or beneficial organisms
- Check seeds and fertilizer to ensure viability and nutrient guarantees

Property and Construction

- Capital Improvements - Advance Planning, Owning Agency Representation, Project Management, Project Design
- Real Property – Acquisitions and Disposition of Real Property
- Engineering Design/Consultation for Agribusiness
- Department's liaison with State Construction Office and State Property Office
- State Energy Mandates
- State Fire Insurance Fund – Manages departments coverage and claims
- Office for Historically Underutilized Business participation reporting

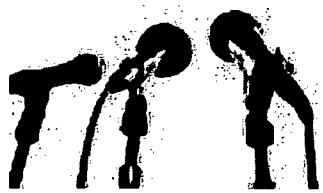


Property and Construction (continued)

- The Property and Construction Division provides support to all of the Department's divisions in the areas of property and construction therefore assisting their programs to better serve the agricultural industry and consumers in the State of North Carolina.
- The department has **1,371 buildings** and 78**,000 acres** of property in **206 locations** in **all 100 counties** statewide.

Public Affairs

- Press Conferences
- Media Advisories
- Constituent Calls
- Speechwriters
- State Fair and other Event Publicity
- Media Training
- Publishes the *Agricultural Review*



Research Stations

- Operate 18 Research Stations across NC in partnership with N.C. State University and N.C. A&T State University
- Drive changes and improvements in agricultural production

Soil & Water Conservation

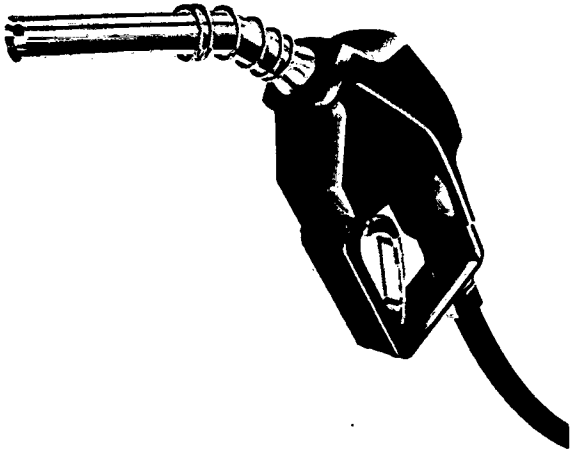
- Partners with the state's 96 Soil & Water Conservation Districts, the USDA Natural Resources Conservation Service, local governments and others to deliver voluntary, incentive-based programs and services to landowners to improve water quality and natural resource management on private working lands
- Administers a range of assistance programs including the Agriculture Cost Share Program, the Ag Water Resources Assistance Program (AgWRAP), the Conservation Reserve Enhancement Program (CREP) and the Community Conservation Assistance Program (CCAP).

North Carolina Division of
SOIL & WATER
CONSERVATION

Standards Division

- Check accuracy of price scanner systems and commercial scales in retail establishments and business production
- Checks accuracy of gas pumps and other motor fuel devices for distribution and for octane level
- Check accuracy of grain moisture meters across the state
- Inspects LP-gas and anhydrous ammonia installations for compliance
- Issue penalties to those not in compliance





Structural Pest & Pesticide Division

- Regulates the pest control industry; polices the termite police
- Licenses commercial and non-commercial pest control operators and pesticide applicators



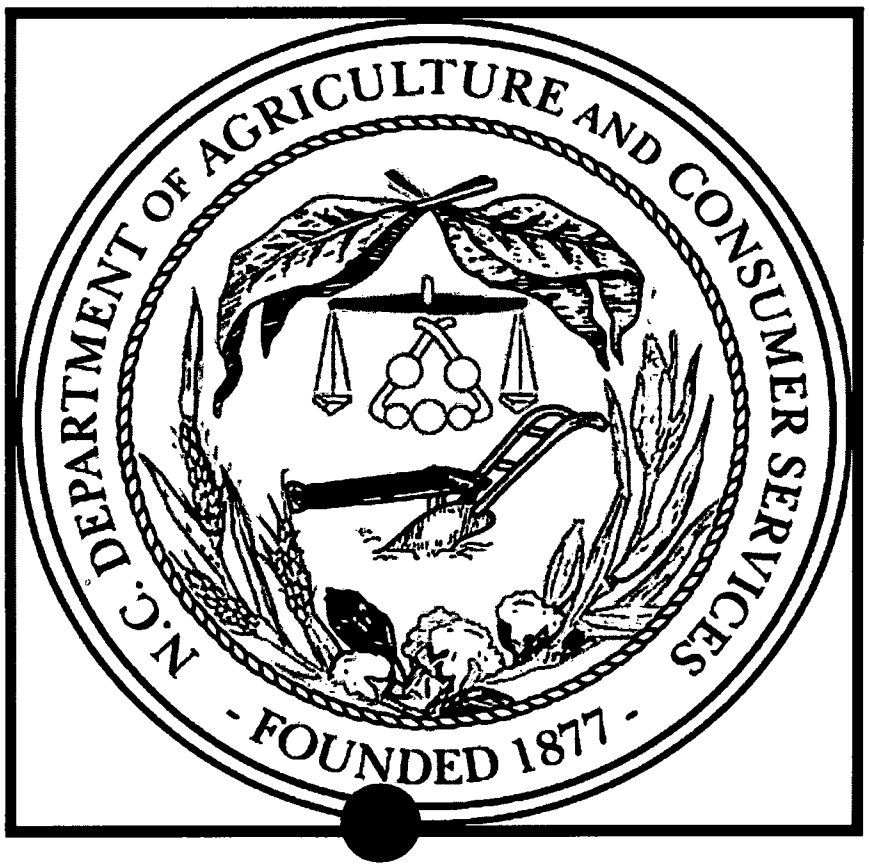
Veterinary Division

- Focused on disease diagnosis and prevention to ensure healthy livestock population
- Conducts routine testing and surveillance
- Responds to animal disease outbreaks to limit spread and scope of problem
- Manages NCFarmID program



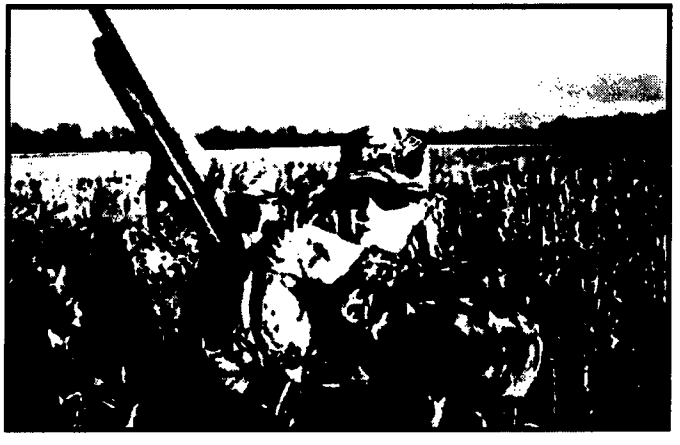
Contact Us!

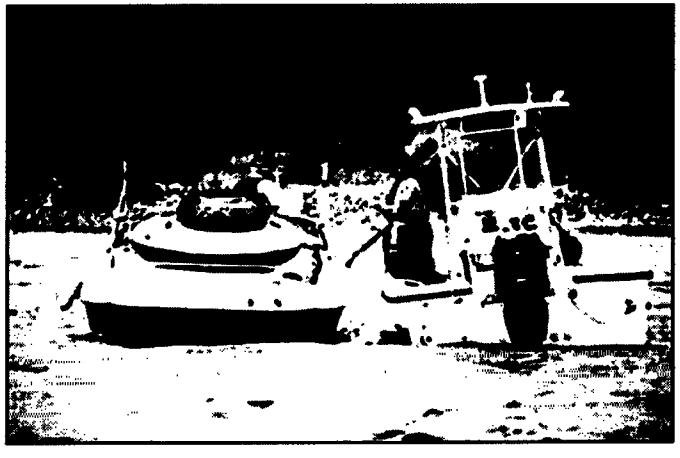
Visit our website at http://www.ncagr.gov/ to find our contact information



North Carolina Wildlife Resources Commission

"Aligning Work with Vision"









Gordon Myers
Executive Director
North Carolina Wildlife Resources Commission

North Carolina Wildlife Resources Commission

- **Agency Overview**
- **Receipts and Expenditures**
- **Areas of Agency Focus**
- **Organizational Review Efforts**
- **Economic Impacts**









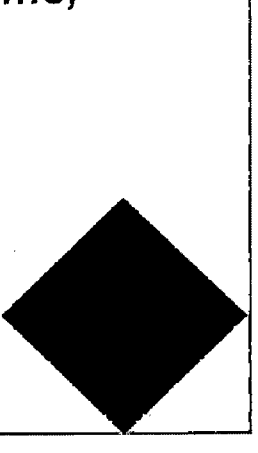
North Carolina Wildlife Resources Commission

Agency Purpose:
Why we exist...

"To develop and administer programs directed to the conservation of fish and wildlife resources and their habitats."

derived from enabling legislation in 1947 (G.S. 143-239):

"to manage, restore, develop, cultivate, conserve, protect, and regulate the game, game and freshwater fishes, and other wildlife resources of the State..."

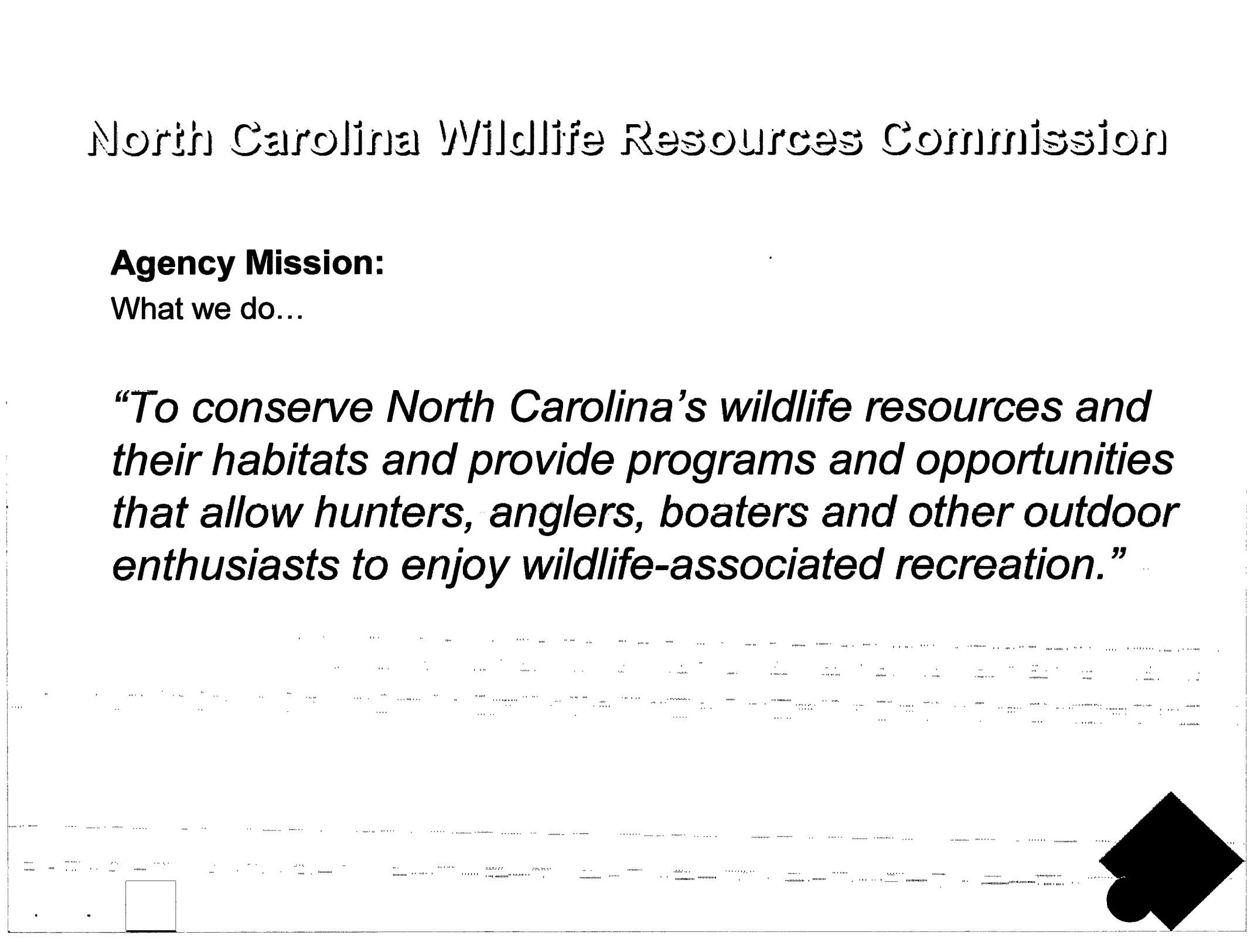


North Carolina Wildlife Resources Commission

Agency Mission:

What we do…

"To conserve North Carolina's wildlife resources and their habitats and provide programs and opportunities that allow hunters, anglers, boaters and other outdoor enthusiasts to enjoy wildlife-associated recreation."

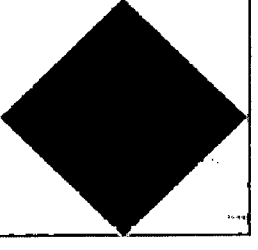


North Carolina Wildlife Resources Commission
Agency Board

NC General Statutes Chapter 143-Article 24

§ 143-240. Creation of Wildlife Resources Commission; districts; qualifications of members.

- 19 members
- Must be ***experienced hunter, fisherman, farmer, or biologist***, who shall be ***generally informed*** on wildlife conservation and restoration problems
- Governor appoints 9 district commissioners to serve 6-year terms
  - Staggered appointments
    - WRC Districts 1, 4, 7
    - WRC Districts 2, 5, 8
    - WRC Districts 3, 6, 9
- Governor appoints 2 at-large commissioners to serve 4-year terms
- NC General Assembly appoints 8 commissioners to serve 2-year terms
  - 4 upon the recommendation of the President Pro Tempore of the Senate
  - 4 upon the recommendation of the Speaker of the House

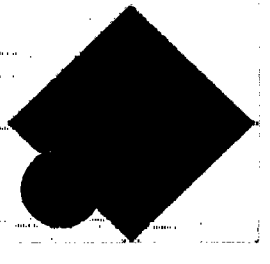


North Carolina Wildlife Resources Commission

Agency Board

Key Role: Rulemaking

- Important responsibility of the Commission
  - Process governed by the Administrative Procedure Act, G.S. 150B, Article 2A
  - Commission governance serves as a means to deliberate and balance decision making
- Success requires
  - Public accountability
  - Collaborative partnership between stakeholders, professional staff, executive director, governor and legislature
  - **Function as trustees of the State's Wildlife Resources**
- Process to achieve success
  - Annual rulemaking cycle
  - Work accomplished through committee system
  - "Generalist" board approach
- Operating Environment
  - Changing constituencies
  - Changing public values
  - Increased stress on wildlife resources (effects of population growth, etc.)
  - Limitations on financial resources
  - Complexity of synthesizing public versus biological needs

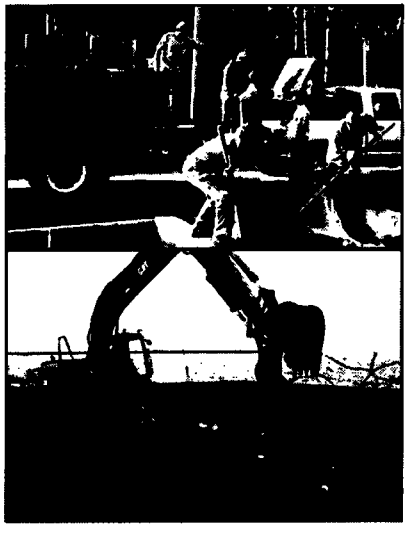


North Carolina Wildlife Resources Commission

Six Agency Divisions

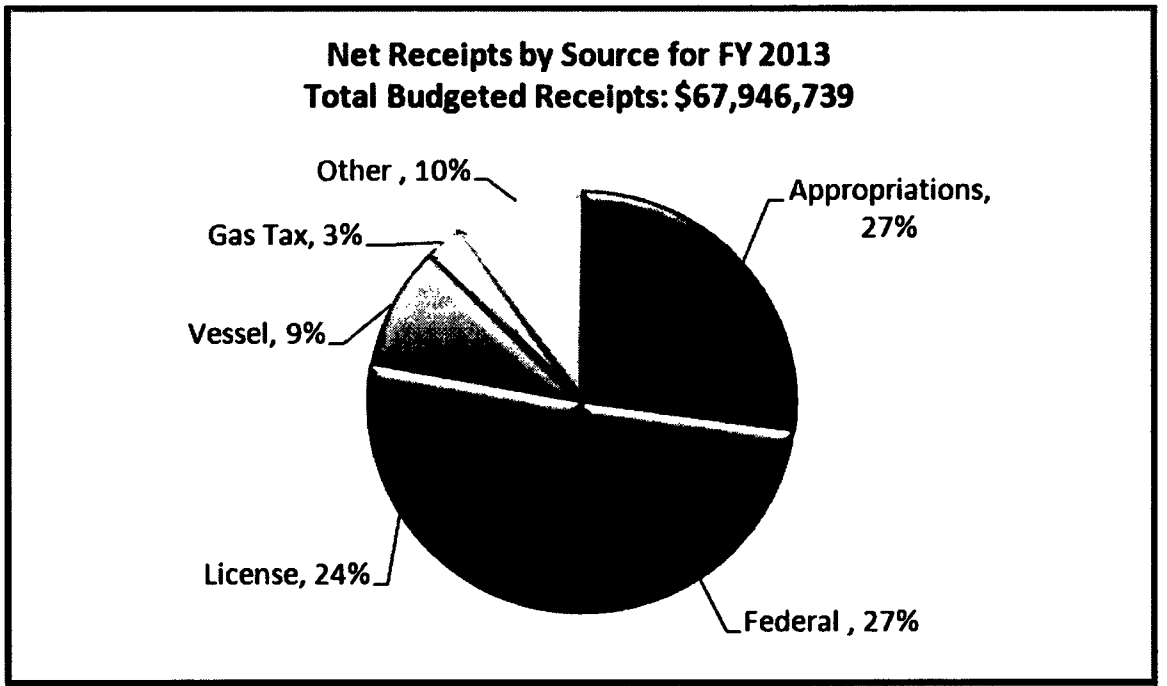
- Law Enforcement
- Wildlife Management
- Inland Fisheries
- Engineering and Lands Management
- Conservation Education
- Administrative Services

- 649 FTE
- $67.9 M budget 2013





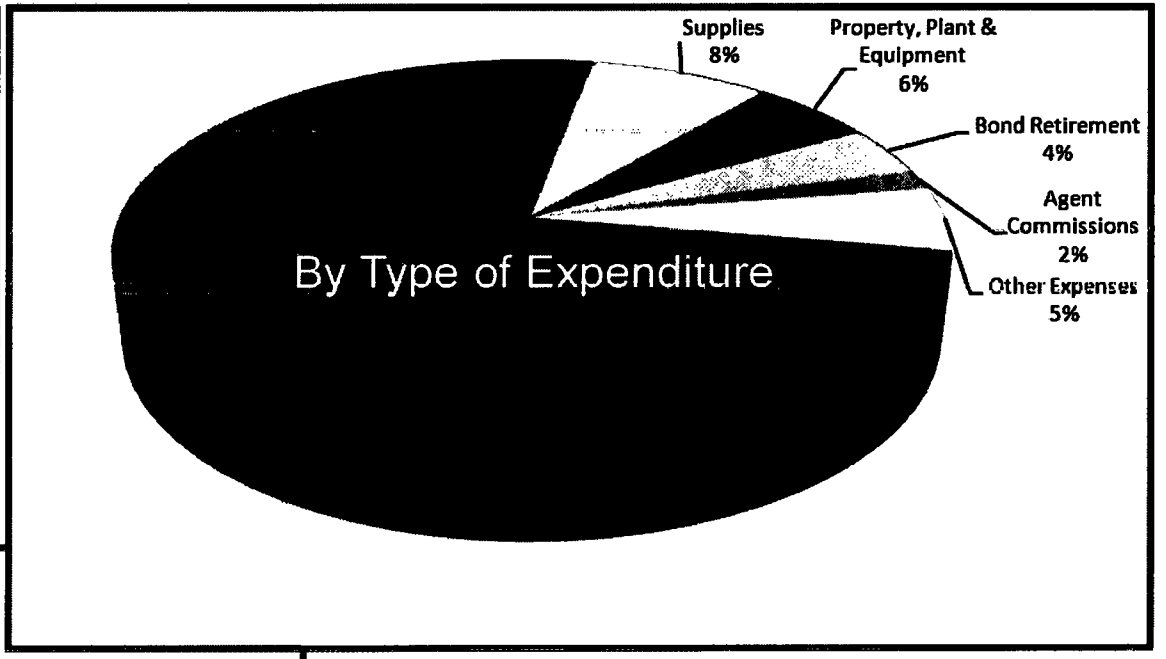
Funding: Anticipated FY 2012-2013 Receipts

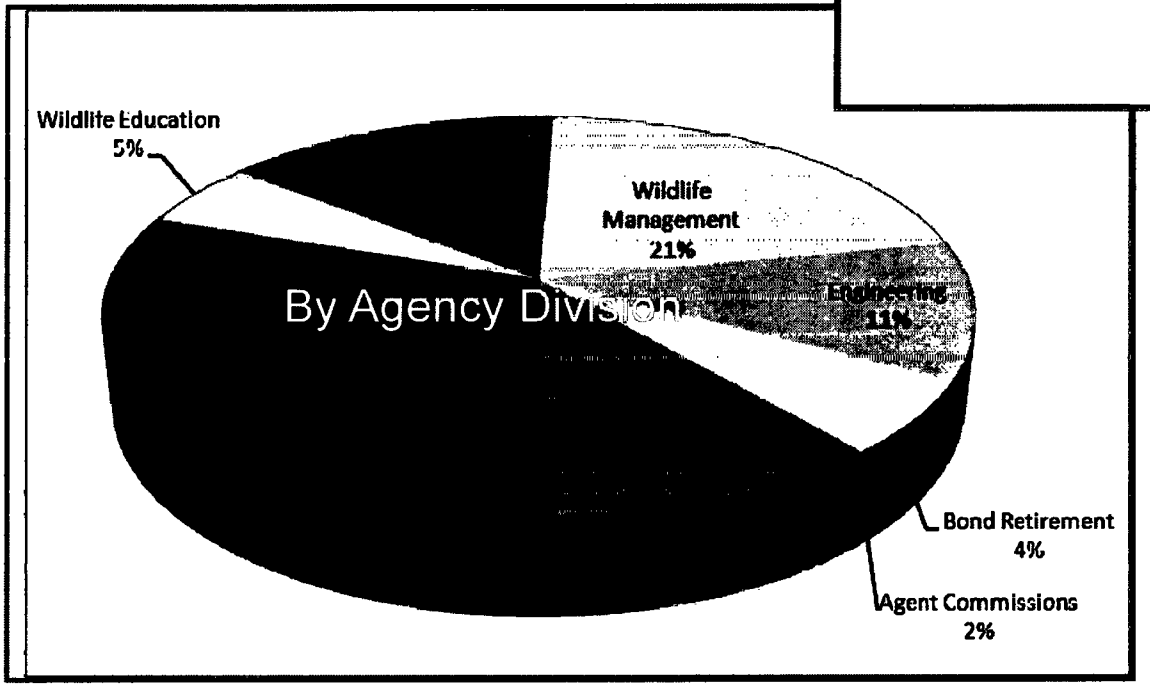


Source		Amount	Percent
Appropriations	$	18,476,588	27%
Federal	$	18,448,542	27%
License	$	16,004,429	24%
Vessel	$	6,300,000	9%
Gas Tax	$	2,000,389	3%
Other	$	6,716,791	10%
TOTAL	$	67,946,739	100%

Funding: FY 2011-2012 Expenditures

Summary By Account		
Personal Services		$ 39,351,657.00
Purchased Services		10,777,863.00
Supplies		5,528,032.00
Property, Plant & Equipment		3,713,296.00
Bond Retirement		2,773,748.00
Agent Commissions		1,122,027.00
Other Expenses		3,484,343.00
		$ 66,750,966.00





Actual Expenses	
Summary By Purpose	
Admin Services	$ 7,062,448.00
Enforcement	20,619,834.00
Wildlife Education	3,583,458.00
Inland Fisheries	9,934,098.00
Wildlife Management	14,242,237.00
Engineering	7,413,116.00
Bond Retirement	2,773,748.00
Agent Commissions	1,122,027.00
	$ 66,750,966.00

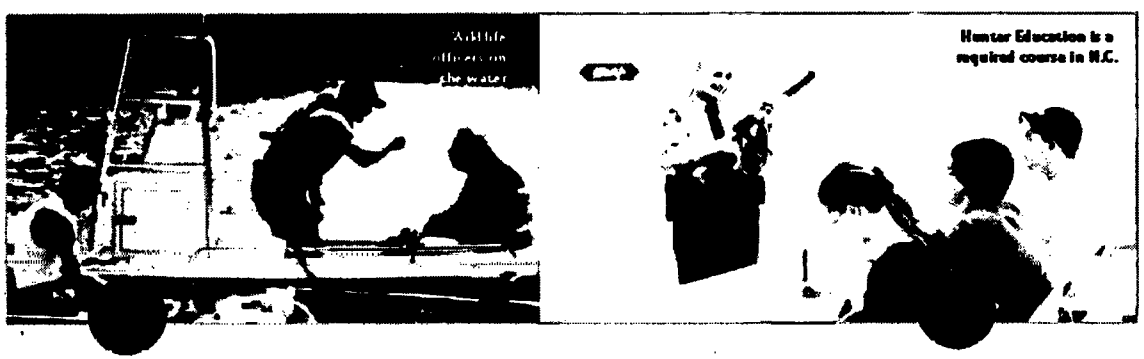
CONSERVATION AND PUBLIC SAFETY ARE ENHANCED THROUGH

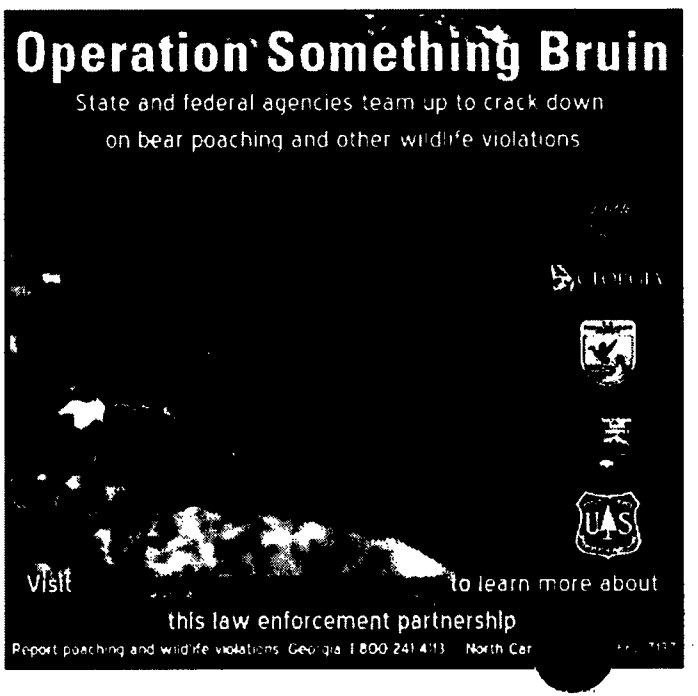
WILDLIFE LAW ENFORCEMENT



NCWRC **Law Enforcement activities** address:

- Public Safety
- Enforcement of rules and regulations established by the WRC and General Assembly
- Conservation of state public trust resources by gaining compliance with wildlife, fisheries and boating laws
- Wildlife Enforcement Officers annually conduct
  - more than 300 free Pre-launch Boating Safety Checks
  - 100+ free Boating Safety Courses
  - 1100 free (required) Hunter Education Courses
  - 236,000 checks for safety and compliance.

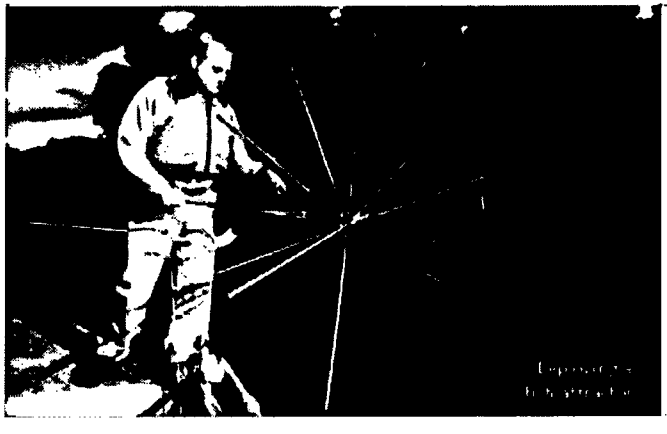




CONSERVATION PAYS OFF BIG IN

HUNTING & FISHING

- North Carolina is ranked No. 10 in the nation for number of non-resident hunters
- Bassmaster magazine ranks four of our lakes among the top bass fishing spots in the nation.
- The American Sportsfishing Association ranks North Carolina No. 4 in visiting non-resident angler destinations
- Field & Stream magazine ranks our whitetail deer hunting some of the best in the country.
- We must continuously pursue ways to manage fish and wildlife populations for the conservation of the species and for the continued enjoyment of particpants of wildlife-associated recreation



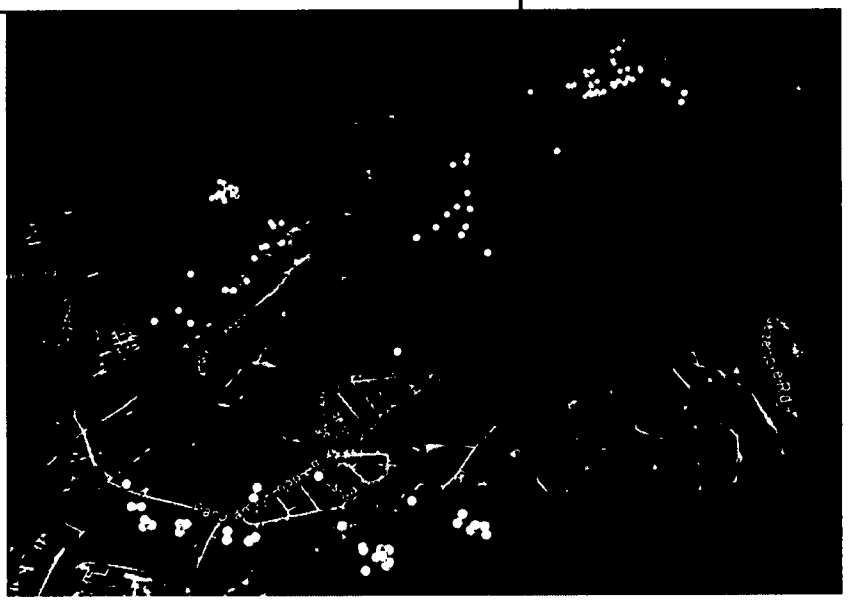


CONSERVATION PAYS OFF THROUGH

WILDLIFE SCIENCE & HABITAT

Examples of **Wildlife Science and Management** activities:

- Monitoring health and status of wildlife populations
- Developing and administering scientific research
- Addressing human-wildlife interactions
- Developing public fishing and hunting opportunities
- Working with stakeholders on hunting and fishing regulations
- Addressing wildlife disease issues such as chronic wasting disease in white-tailed deer and white-nose syndrome in bats
- Stocking public waters with warmwater and coldwater game fish species.



Many wildlife species serve as harbingers of water quality or air quality issues.

What benefits wildlife benefits us all.



ISERVATION IS ASSURED BY

LANDS MANAGEMENT & CONSERVATION

Examples of **Lands Management and Conservation** activities:

Management of game lands

- 2 Million acres of NCWRC owned and managed land
- HIGH Ecosystem value in flood protection, and positive effects on air and water quality, and erosion control.
- Includes: working forests, early successional habitat, wetlands, streams, and other important habitats
- Statewide public access to enjoy wildlife-associated outdoor recreation

Landowner assistance:

- Wildlife Conservation Lands Program- reduced property tax assessment
- Wide-range of consulting with private landowners to help them apply wildlife management strategies on their properties and to implement practices that improve habitat on their properties



CONSERVATION PAYS OFF IN

BOATING ACTIVITIES

NCWRC **boating services** involve:

- A work area of 35,790 square miles of water in all 100 counties.
- Registering 135,000 vessels annually with over 350,000 registered boats on N.C. waters.
- Providing safety instruction to operators and enforcing boating laws.
- Partnering with nearly 150 local municipalities to build and maintain more than 210 free public boating access areas and 76 public fishing areas.
- Maintaining more than 1,400 buoys and navigational aids.
- Providing services and assistance to state and federal agencies such as N.C. State Parks and U.S. Corps of Engineers, and many local units of government.
- 15+ new or renovated boating access areas annually





Added Value:

- Brings in small businesses like bait stores, food and fuel providers and specialty shops.
- 4th in Nation in # of recreational boats, trailers and accessories sold.
- Total N.C. small boat manufacturers = 204
- Total employees, boat manufacturing industry = 8,301

CONSERVATION INTO THE FUTURE WITH

EDUCATION & AWARENESS

Education and Awareness Activities include:

- Education and outreach efforts designed to facilitate conservation of the state's wildlife and wild places
- Public Information and Communication activities including website and social media content
- In-house Production of *Wildlife in North Carolina* magazine and other special publications
- teaching more than 20,000 students and teachers and 22,000 general public participants every year at four education centers
- More than 16,000 participants at Fish for Fun events held across the state



MANY FIRSTS IN CUSTOMER SERVICE

ADMINISTRATIVE SERVICES

Administrative Services Activities include:

- 1 Million+ hunting/fishing licenses sold
- 400,000 North Carolina Regulations Digests distributed (2012)
- $23 Million+ in license and vessel transactions each year
- 400,000 coastal fishing licenses sold for N.C. Division of Marine Fisheries
- 960 wildlife service agent locations across the state
- 200,000 telephone /mail customer service contacts, annually
- One of first agencies in the nation to offer 100% real-time Internet-based license sales
- One of the first agencies to offer online licensing, vessel registration, big game reporting
- One of the first states to allow purchase of licenses from a mobile device
- Customers can also access GIS maps for game lands, hunting, fishing, and boating access areas
- 2 Million+ web site visits to agency Internet and Intranet per year

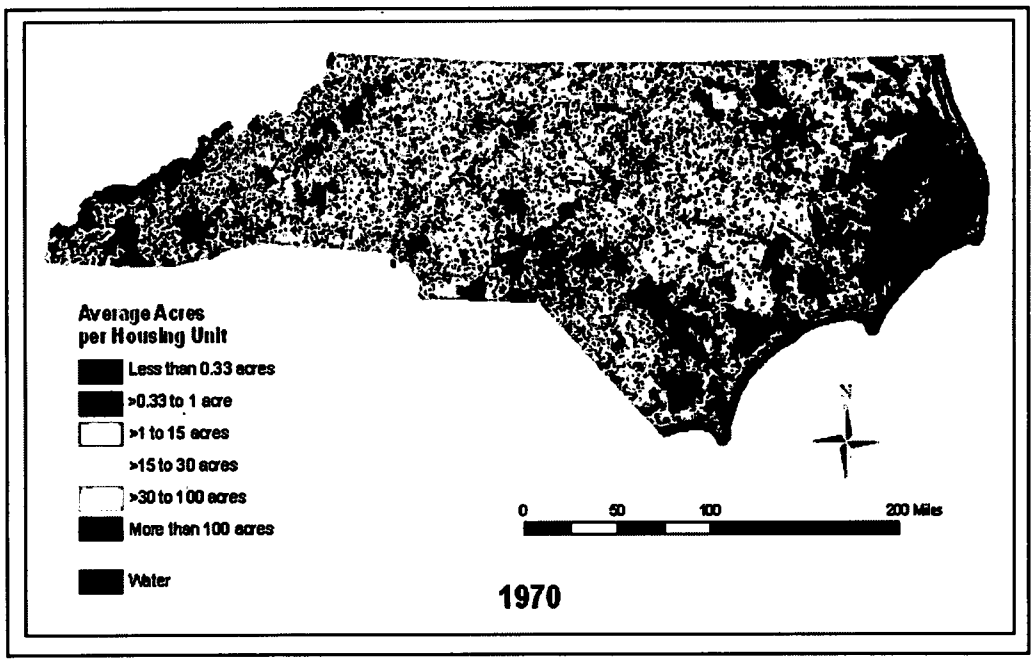
North Carolina Wildlife Resources Commission Organizational Review

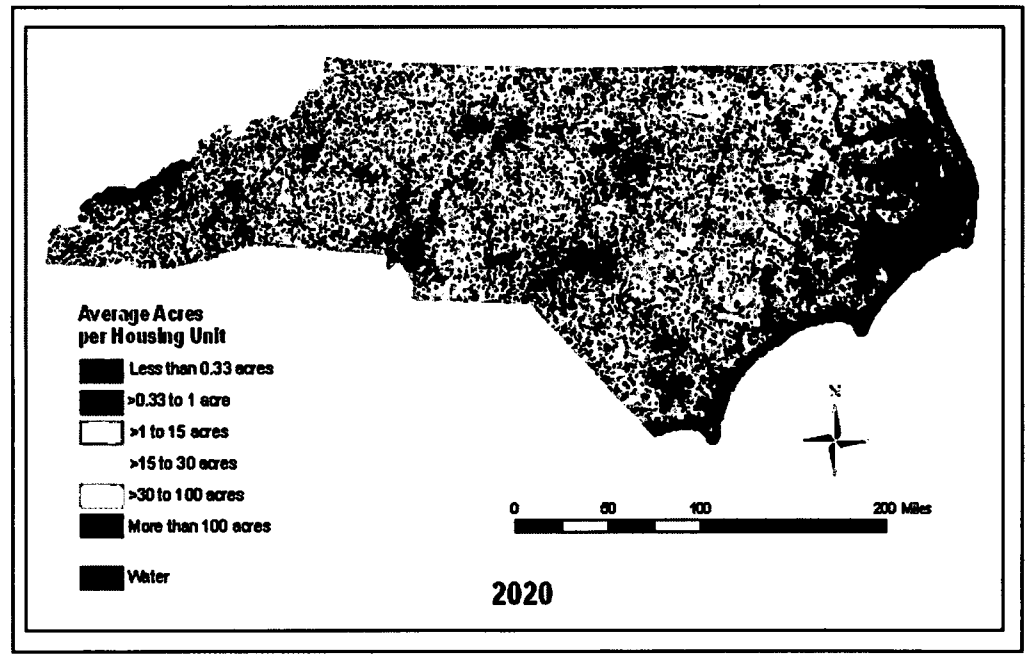
- December 2009
- Key Considerations
  - Habitat
  - Demographics





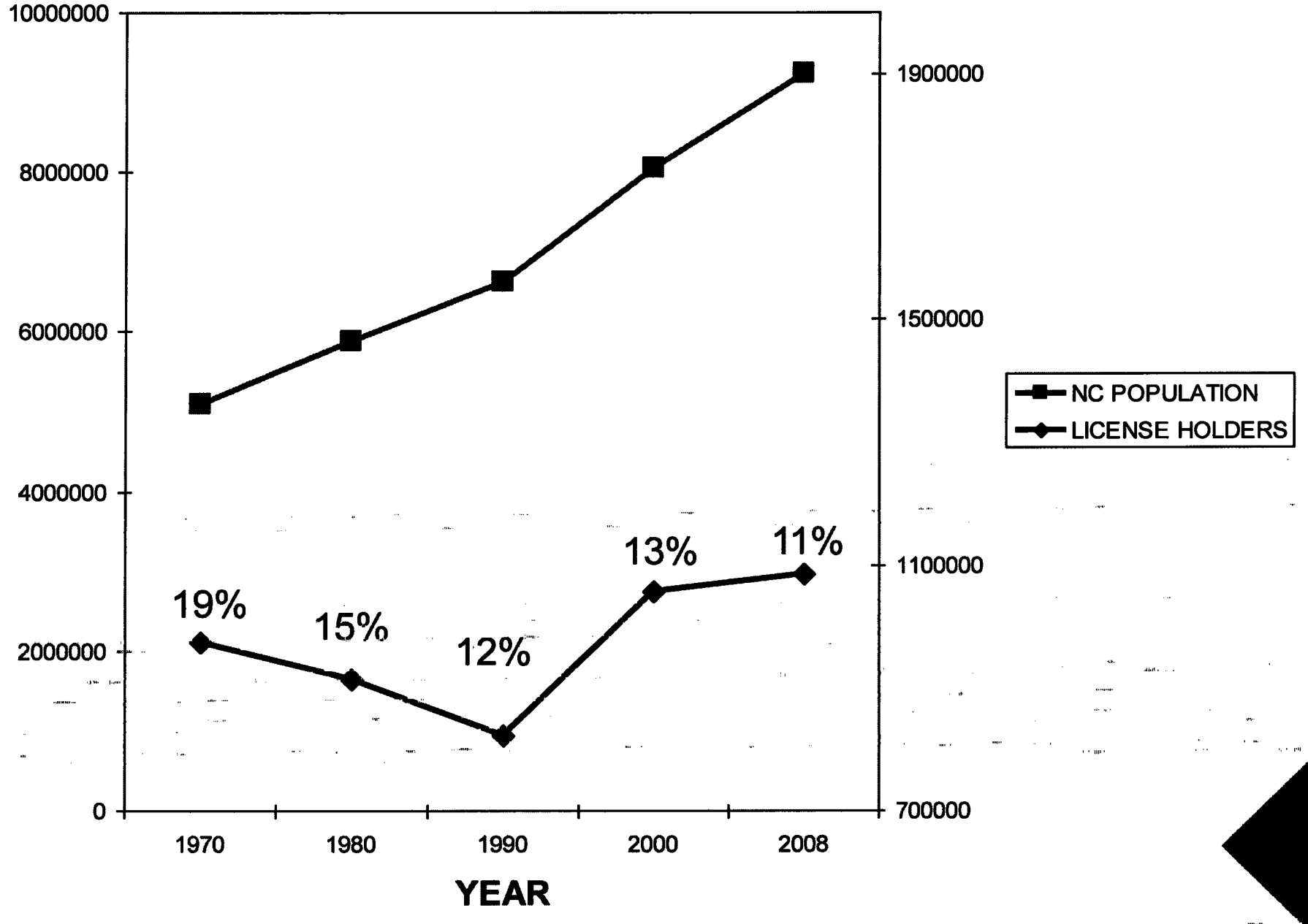
North Carolina Wildlife Resources Commission
Strategic Plan





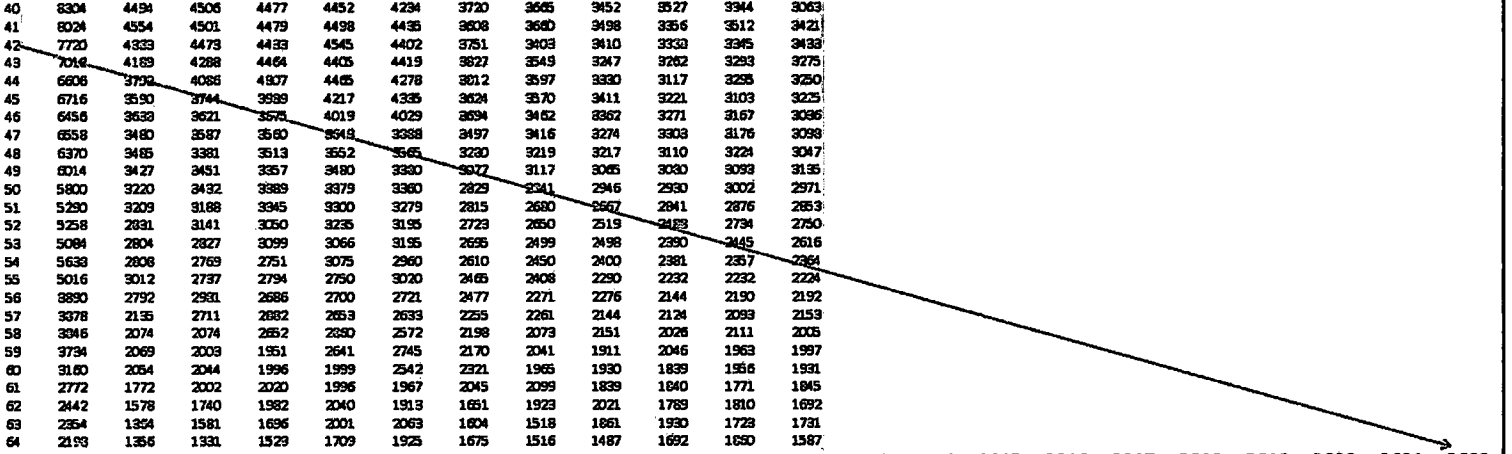
Sources:
Radeloff, V. C., R. B. Hammer, and S. I. Stewart. 2005. Sprawl and forest fragmentation in the U.S. Midwest from 1940 to 2000. Conservation Biology 19: 793-805.
Ann Ingerson, Research Associate, The Wilderness Society,ann_ingerson@tws.org or (802) 586-9625.
Volker Radeloff, U. Wisconsin-Madison, Forest Ecology and Management, 1630 Linden Drive, Madison, WI 53706, radeloff@wisc.edu, 608-263-4349.

North Carolina Wildlife Resources Commission
Strategic Plan

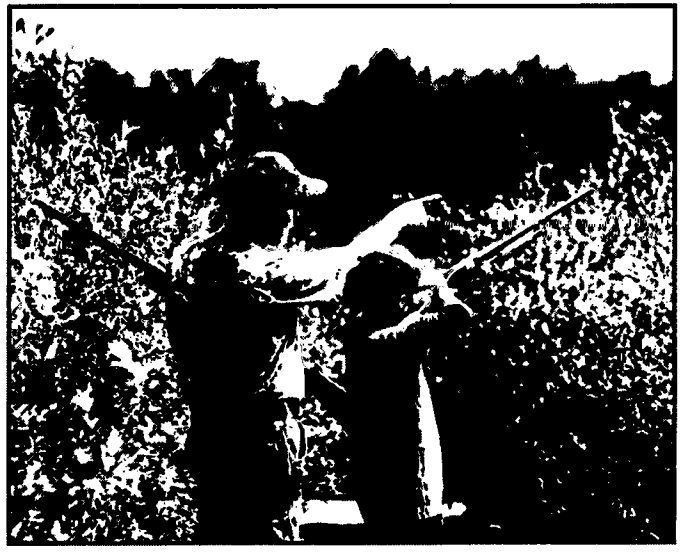


SPORTSMAN ONLY

AGE	# License Holders											
9	4	2	5	2	4	6	2	0	3	1	1	1
10	6	3	5	8	6	6	4	3	4	2	2	0
11	10	4	7	10	4	6	4	3	2	7	1	1
12	28	14	13	10	16	21	7	6	5	7	9	6
13	62	42	36	42	30	33	23	20	20	13	7	17
14	134	79	104	82	104	76	42	50	44	28	22	25
15	244	149	168	135	134	114	116	93	78	39	64	63
16	2890	1475	1596	1776	1764	1736	1491	1351	1282	1318	1253	1182
17	3734	2091	1997	2210	2458	2325	2113	1986	1786	1714	1729	1714
18	3796	2051	2052	2096	2289	2388	2171	2072	1973	1768	1787	1802
19	4056	2017	2016	2138	2163	2149	2194	2116	1962	1906	1828	1784
20	4022	2139	2138	2137	2269	2123	2029	2160	2000	1981	1992	1930
21	4378	2196	2214	2189	2254	2310	1989	2034	2006	1999	2026	1943
22	4830	2415	2289	2356	2377	2382	2095	2051	1956	2045	2056	2070
23	5084	2627	2532	2443	2475	2408	2175	2080	1889	1963	2142	2105
24	5844	2778	2670	2653	2583	2529	2128	2154	2069	2002	2029	2170
25	5796	3151	2820	2759	2788	2591	2232	2138	2150	2112	2098	2056
26	5758	3151	3141	2839	2890	2795	2300	2184	2107	2016	2133	2101
27	6366	3225	3159	3158	2981	2808	2499	2291	2098	2064	2134	2131
28	7150	3628	3228	3173	3260	2944	2567	2408	2218	2092	2074	2155
29	7552	3810	3591	3214	3222	3266	2597	2456	2385	2168	2095	2132
30	8260	4054	3763	3624	3195	3215	2816	2523	2348	2380	2209	2158
31	8854	4459	4008	3816	3690	3222	2814	2782	2428	2283	2295	2228
32	8196	4696	4454	4053	3906	3618	2788	2733	2667	2337	2303	2299
33	8376	4394	4628	4413	4038	3851	3178	2714	2616	2640	2446	2274
34	8182	4405	4405	4611	4424	3973	3295	3091	2654	2553	2599	2457
35	7990	4361	4490	4420	4680	4362	3474	3240	2925	2565	2555	2537
36	8352	4403	4451	4402	4451	4566	3791	3301	3099	2858	2597	2552
37	8478	4518	4368	4389	4461	4420	3931	3661	3198	3000	2921	2552
38	8266	4595	4517	4297	4453	4416	3739	3765	3568	3125	3015	2868
39	8403	4545	4531	4409	4285	4382	3931	3801	3613	3443	3156	2937
40	8304	4494	4506	4477	4452	4234	3720	3665	3452	3527	3344	3063
41	8024	4554	4501	4479	4498	4436	3808	3680	3498	3356	3512	3421
42	7720	4333	4473	4433	4545	4402	3751	3403	3410	3330	3345	3433
43	7016	4189	4288	4464	4405	4419	3827	3549	3247	3262	3293	3275
44	6606	3799	4086	4307	4465	4278	3812	3597	3330	3117	3255	3250
45	6716	3590	3744	3989	4217	4335	3624	3570	3411	3221	3103	3225
46	6456	3638	3621	3575	4019	4029	3694	3462	3362	3271	3167	3096
47	6558	3480	3587	3560	3549	3388	3497	3416	3274	3303	3176	3098
48	6370	3485	3381	3513	3552	3565	3230	3219	3217	3110	3224	3047
49	6014	3427	3451	3357	3480	3330	3077	3117	3065	3030	3093	3135
50	5800	3220	3432	3389	3379	3360	2829	2941	2946	2930	3002	2971
51	5290	3209	3188	3345	3300	3279	2815	2680	2667	2841	2876	2853
52	5258	2831	3141	3050	3235	3195	2723	2650	2519	2483	2734	2750
53	5084	2804	2827	3099	3066	3195	2695	2499	2498	2390	2445	2616
54	5638	2808	2769	2751	3075	2960	2610	2450	2400	2381	2357	2364
55	5016	3012	2737	2794	2750	3020	2465	2408	2290	2232	2232	2224
56	3890	2792	2981	2686	2700	2721	2477	2271	2276	2144	2190	2192
57	3378	2135	2711	2682	2653	2693	2255	2261	2144	2124	2093	2153
58	3946	2074	2074	2652	2680	2572	2198	2073	2151	2026	2111	2005
59	3734	2069	2009	1951	2641	2745	2170	2041	1911	2046	1963	1997
60	3160	2054	2044	1996	1999	2542	2321	1965	1930	1839	1956	1931
61	2772	1772	2002	2020	1996	1967	2045	2099	1839	1840	1771	1845
62	2442	1578	1740	1582	2040	1913	1651	1923	2021	1789	1810	1692
63	2354	1354	1581	1696	2001	2063	1604	1518	1861	1930	1728	1731
64	2193	1356	1331	1529	1709	1925	1675	1516	1487	1692	1650	1587
65	2054	1220	1290	1298	1477	1587	715	645	607	624	810	758
66	2023	1161	1138	1297	1233	1411	114	87	78	70	97	112
67	1639	1032	1093	1119	1238	1192	102	91	91	25	46	45
68	1470	903	1010	1059	1066	1194	80	97	9	19	28	82
69	1473	760	840	960	963	995	88	16	12	9	18	17
70	490	315	332	359	358	337	46	24	9	7	14	12
71	140	79	78	94	98	96	18	6	14	4	10	12
72	58	45	43	45	17	20	6	6	5	4	12	10
73	48	19	31	22	9	6	0	1	4	1	13	5
74	34	13	17	20	2	3	1	2	4	2	3	15
75	18	14	6	11	9	2	1	3	1	4	3	1
76	18	15	10	2	2	4	1	0	1	1	5	3
77	10	11	6	10	3	3	2	0	3	2	1	4
78	12	6	8	7	0	2	1	3	1	0	2	1
79	18	3	6	4	1	1	2	0	1	1	1	0
80	4	6	3	5	0	0	0	0	0	0	1	0
	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012



North Carolina Wildlife Resources Commission Strategic Plan



Themes

- Sustaining wildlife on the landscape
- Ensuring the relevancy of wildlife to a broader segment of the state's population



"You **don't build it for yourself** you know what people want and **you build it for them**" – Walt Disney

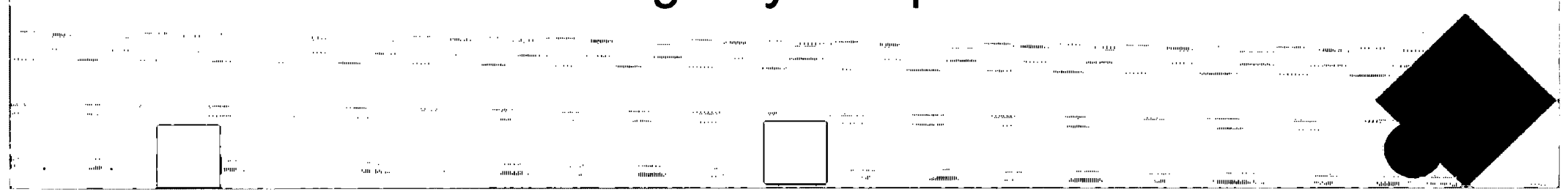
North Carolina Wildlife Resources Commission
Organizational Review

What is the Agency Organizational Review?

Agency Resources ⟷ Strategic Plan outcomes

"Enhance effectiveness by optimizing the relationship between agency resources and outcomes"

-Strategic Plan Alignment
-Core Functions
-Whole-Agency Perspective



North Carolina Wildlife Resources Commission Organizational Review

Why?

- Natural extension of strategic planning
- Adaptive management
- Focus agency resources in the "right" ways
- Accountability
- Evaluate resource allocation



North Carolina Wildlife Resources Commission
Organizational Review

How?

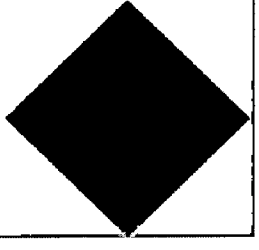


- Organizational Review Team
  Division Chiefs, Executive, Budget, Personnel
- Guidance
  - Identify duplication and redundancy of program areas and activities
  - Reduce structural and operational silos
  - Facilitate communications and information flow
  - Streamline management and bureaucracy
  - Enhance internal/external collaboration

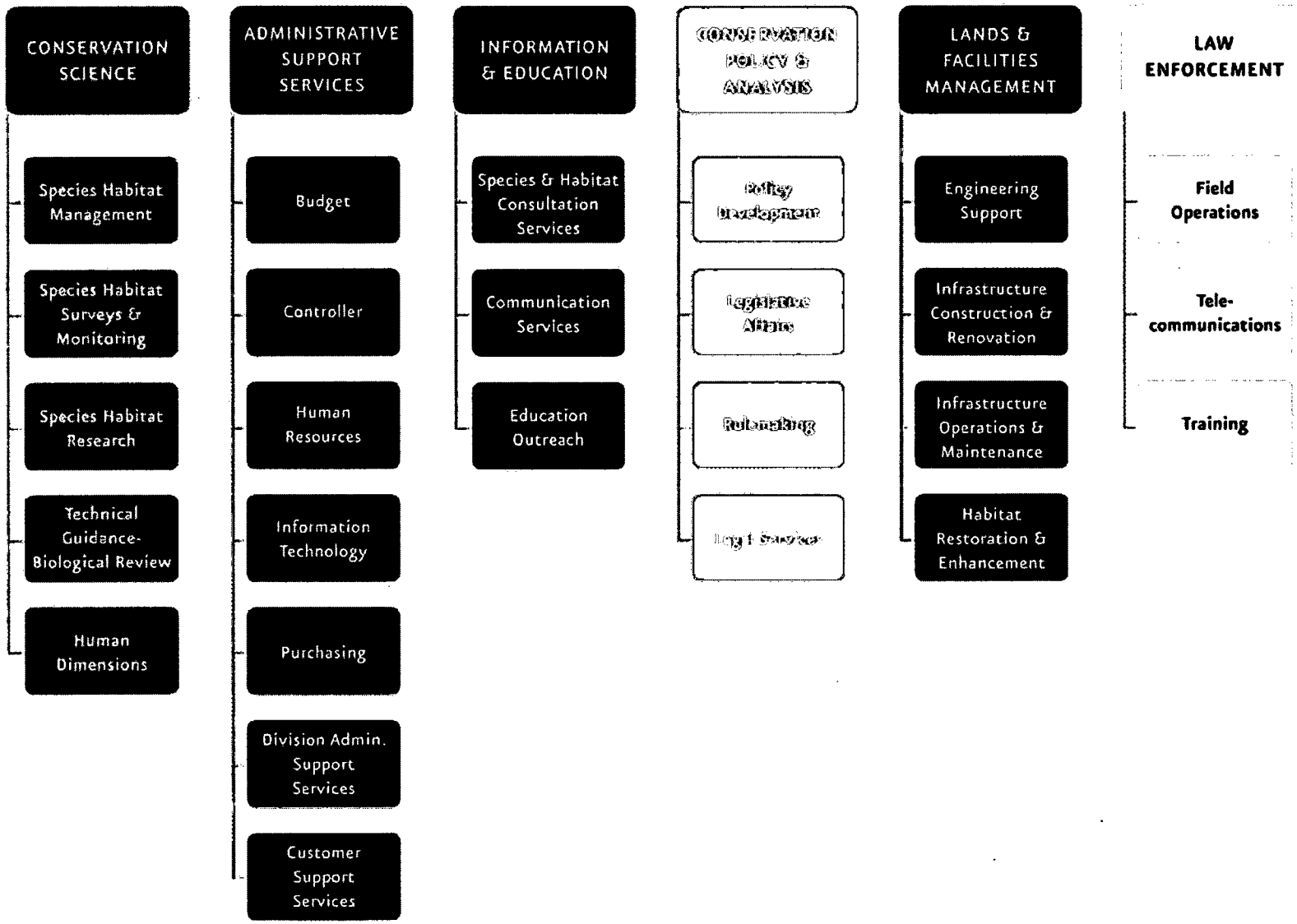
North Carolina Wildlife Resources Commission
Organizational Review

How?

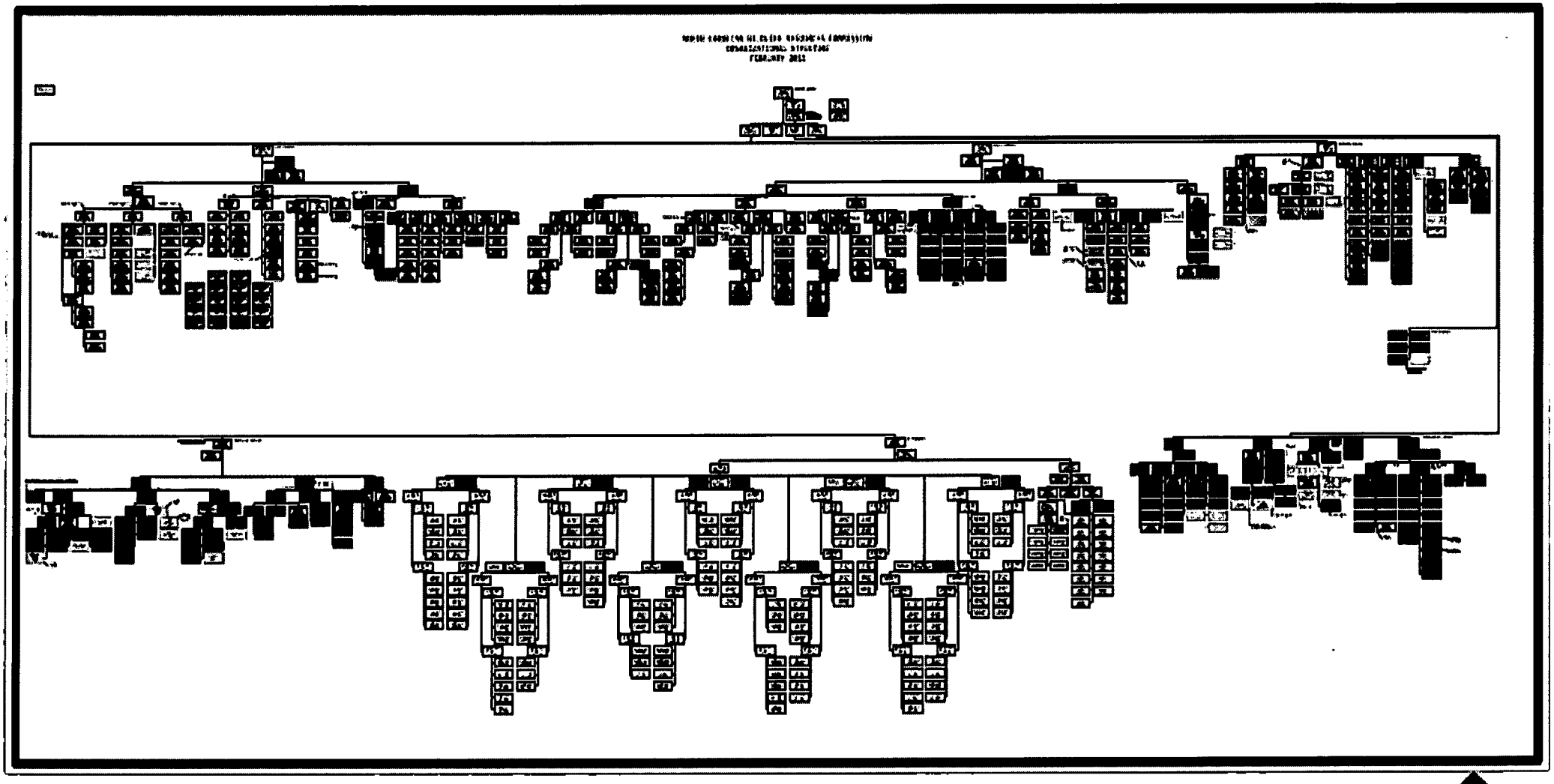
1. Identify major program areas and specific activities
2. Examine areas of common function, overlap, or duplication
3. Determine what's missing, or needed capacity
4. Categorize a comprehensive list of major functions, programs, and activities



Core functions and activities of the Wildlife Resources Commission.



North Carolina Wildlife Resources Commission
Organizational Review



Land & Facilities	Conservation Science	Information & Education
Conservation Policy	Law Enforcement	Administrative Support

Aligning Work With Vision

Strategic Organizational Alignment

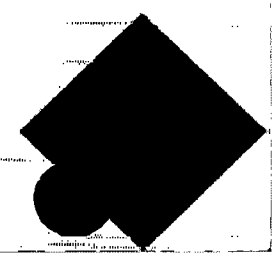
Focus: Law Enforcement

- June 2011: new district organization
- Reduce number of lieutenants in each district from two to one
- August 2012: structure implemented in six of the nine districts
- Division also reduced the number of airplane pilots and aircraft from four to three
- Restructuring addresses goals by examining efficiencies, eliminating redundancies, and enhancing effectiveness within boundaries of fiscal and staff resources.

Results:

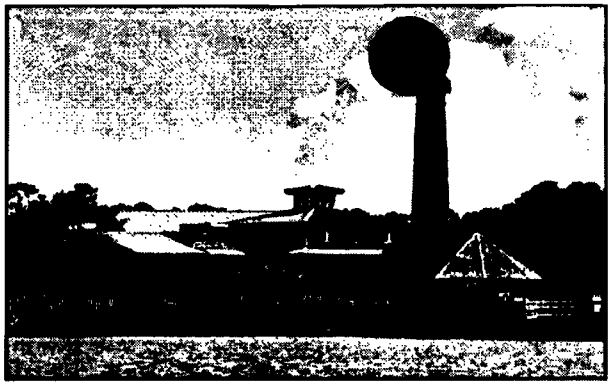
- **Four new Wildlife Enforcement Officer positions allocated to the field in areas of the state with the greatest need for additional personnel**
- **Created a special investigations unit focused on the commercialization of wildlife (trafficking) and other time sensitive investigations**

This is a total of seven positions that were essentially administrative in nature reallocated to accomplish on-the-ground law enforcement work



Aligning Work With Vision

Strategic Organizational Alignment

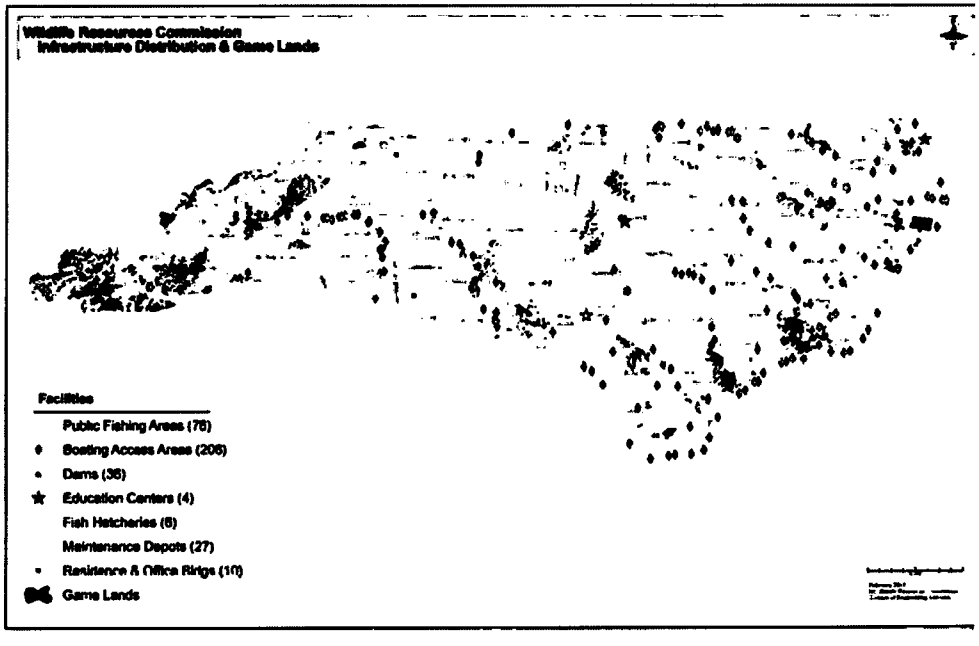


Focus: Lands and Facilities Management

- Includes all of the agency's managed lands, access areas, infrastructure maintenance, and fish and wildlife habitat management on public lands.

Agency Infrastructure:

- 2 Million acres of public game lands
- 49 lakes and ponds, including 31 dams
- 73 waterfowl impoundments
- 39 camping areas on game lands
- 130 parking areas on game lands
- 1,878 miles of road maintained
- 6 Fish Hatcheries (7 Million fish stocked annually)
- 58 public fishing areas
- 211 public boating access areas
- 1,400 navigational aids
- 4 education centers
- 137 buildings that range from storage buildings and field stations to a 73,000 sq. ft. agency headquarters building



Aligning Work With Vision

Strategic Organizational Alignment

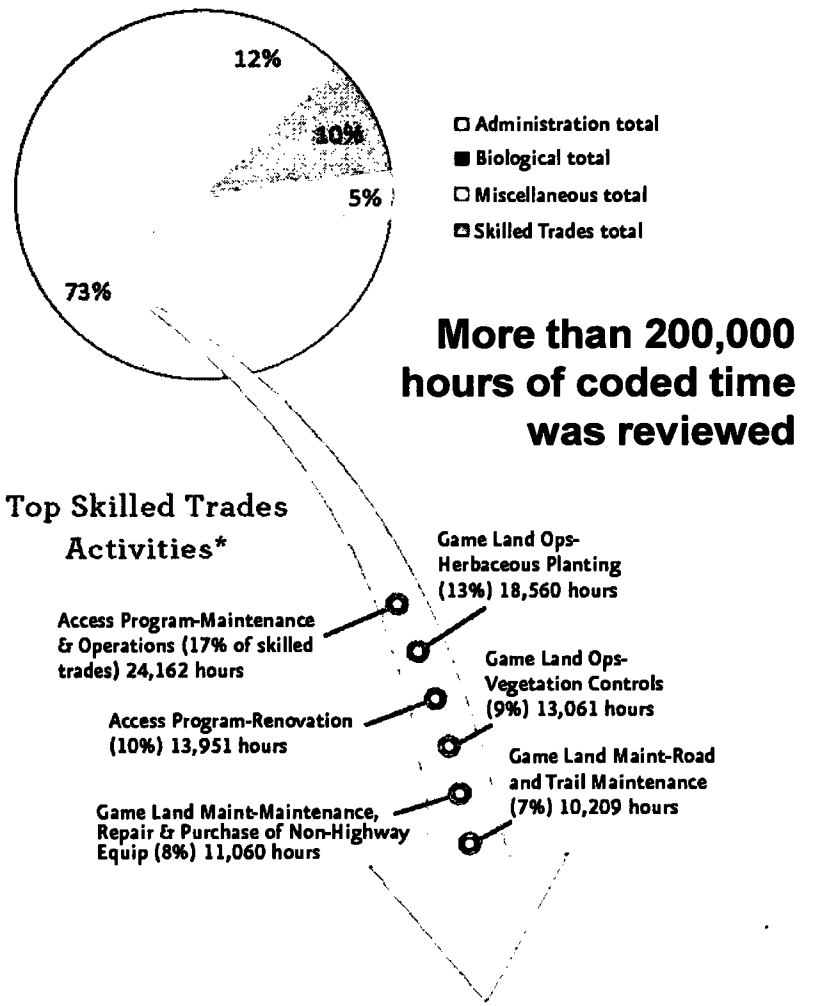
Focus: Lands and Facilities Management

- Most activities performed by agency technicians
- Technicians were organized in the divisions of Wildlife Management, Inland Fisheries, and Engineering Services.
- Each division maintained separate pathways of supervisory oversight and geographic boundaries for the activities of its technician workforce

Results of Organizational Review:

- **Consolidation of work areas and supervisory structure**
- **Reduced layers of management**
- **20 supervisory positions reallocated to accomplish on-the-ground work**
- **Improved allocation of staff resources to priority activities**
- **Pooling of staff resources**
- **Enhanced sharing of facilities and equipment**

Figure 3. Technician Staff Time Summarized by Type of Activity





NORTH CAROLINA
WILDLIFE RESOURCES
COMMISSION

CONSERVATION PAYS OFF!

Wildlife Yields Substantial Economic Impacts to North Carolina



$3.3 BILLION POSITIVE IMPACT TO N.C. ECONOMY

- $2.4 Billion – Fishing and hunting
- 335,000 Hunters
- 1,525,000 Anglers
- $930 Million – Wildlife watching
- 2.4 Million Wildlife watchers

Source: USFWS National Survey of Fishing, Hunting, and Wildlife-Associated Recreation 2011

NORTH CAROLINA WILDLIFE RESOURCES COMMISSION

VISION

The North Carolina Wildlife Resources Commission is providing safe, comprehensive, effective and efficient fisheries, wildlife and boating programs that conserve the diversity and abundance of the state's wildlife resources...

—N.C. Wildlife Resources Commission Strategic Plan 2009

VISITOR REGISTRATION SHEET

AGRICULTURE

(Committee Name)

2-26-2013

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Heather Barrett	Ward & Smith
N. David Smith	NC Dept. of Agriculture
Joy Hicks	NCDACS
Angel Sams	CR
[illegible]	[illegible]
Weldon Jones	Gordon, Price
Amy McConkey	NC BEV.
Nancy Thompson	Weyerhaeuser
[illegible]	NCFB/NCCA
Will Grantham	McGuireWoods
TJ Bugbee	Nexsen Pruet
Elise McDowell	Troutman Sanders
Andy Chase	KMA
Martha McDowell	Carolinas HealthCare

09-21-201

VISITOR REGISTRATION SHEET

AGRICULTURE

(Committee Name)

2-26-2013

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Tom BEAN	EDF, NCWF,
Meg Mule Abbott	SELC
Suzanne Davis	Williams Mullen
Caden Thomas	NCAR
Trina Ozer	DENR
Tiernan Gray	Avon Seafood
Britton Shackleford	Manchester, NC
Erin Wynia	NCLM
Gordon Myers	NCWRC
MALLORY MARTIN	NC WRC
Tommy CLARK	NC WRC
CHRIS DILLON	NC WRC
S Henri McClees	McClees Consulting
Jp McClees	McClees Consulting
Brooks Reincy Reason	SELC
Will Morgan	TNC
Cassie Gavin	Sierra Club
Bob Schaefer	NCFA

09-21-201

VISITOR REGISTRATION SHEET

AGRICULTURE

(Committee Name)

2-26-2013

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
[illegible]	NCACC
Mia Bailey	Electricities
Angie Harris	Wakefield & Smith
Edgar Miller	CTVC

09-21-201

Senate Committee on Agriculture/Environment/Natural Resources
March 5, 2013, 11:00 AM
Room 544

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills:

BILL NO.	SHORT TITLE	SPONSOR
SB 24	Construction/Demolition Landfill	Sen. Harry Brown
SB 58	Increase Funding for Dredging	Sen. Harry Brown
SB 113	DENR Support for Regional Water Supply System	Senator Brent Jackson

Other Business

Adjournment

Senate Committee on Agriculture/Environment/Natural Resources
Tuesday, March 5, 2013 at 11:00 AM
Room 544 of the Legislative Office Building

MINUTES

The Senate Committee on Agriculture/Environment/Natural Resources met at 11:00 AM on March 5, 2013 in Room 544 of the Legislative Office Building. Sixteen (16) members were present.

Senator Andrew Brock presided. He opened the meeting by introducing the Sgt. Of Arms and Pages. Pages this week are Chandler Evans from Goldsboro sponsored by Sen. Pate, Felica Stokes from Matthews sponsored by Sen. Tucker and Audra Daniel from Morganton sponsored by Sen. Daniel and Lydia Kennard from Morganton sponsored by Sen. Daniel.

After Sen. Brock introduced the pages the following bills were discussed:

SB 24 Construction/Demolition Landfill Siting – Sen. Harry Brown

Senator Brock called for a motion for a PCS which was offered by Sen. Rabon. Sen. Brown explained the bill. Sen. Rabon made a motion of unfavorable to the original bill and favorable to the PCS. The motion was seconded by Sen. Cook. Committee voted to accept the motion.

SB 58 Increase Funding for Dredging - Sen. Harry Brown

Senator Bryant moves for a PCS. Committee voted for the PCS. Sen. Brown explained the bill. After much discussion from committee members, Senator Tucker made the motion of Unfavorable to the Original Bill and Favorable to the PCS. The committee voted to accept the PCS. There was a Sequential Referral to Finance.

SB 113 DENR Support for Regional Water Supply System – Sen. Brent Jackson

Sen. Jackson explained the bill. Sen. Cook made a motion of Favorable to the Original Bill. The motion was carried by the committee.

There was no further business.

The meeting adjourned at 11:25 AM

Senator Andrew Brock
Presiding

Judy Edwards, Committee Clerk

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES COMMITTEE REPORT
Senator Brock, Co-Chair
Senator Jackson, Co-Chair

Tuesday, March 05, 2013

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

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

SB **24** Construction Demolition Landfill Siting.

Draft Number:	S24-PCS35106-RI-3
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

TOTAL REPORTED: 1

Senator Harry Brown will handle SB 24



NORTH CAROLINA GENERAL ASSEMBLY
SENATE

AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES COMMITTEE REPORT
Senator Brock, Co-Chair
Senator Jackson, Co-Chair

CORRECTED REPORT

Tuesday, March 05, 2013

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

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

SB **58** Increase Funding for Dredging.

Draft Number:	S58-PCS75116-SBf-1
Sequential Referral:	Finance
Recommended Referral:	None
Long Title Amended:	No

TOTAL REPORTED: 1

Senator Harry Brown will handle SB 58



NORTH CAROLINA GENERAL ASSEMBLY
SENATE

AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES COMMITTEE REPORT
Senator Brock, Co-Chair
Senator Jackson, Co-Chair

Tuesday, March 05, 2013

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

FAVORABLE

SB **113** DENR Support for Regional Water Supply System.

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

TOTAL REPORTED: 1

Senator W. Jackson will handle SB 113



GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

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SENATE BILL 24
PROPOSED COMMITTEE SUBSTITUTE S24-PCS35106-RI-3

Short Title: Construction/Demolition Landfill Siting. (Public)

Sponsors:

Referred to:

February 4, 2013

A BILL TO BE ENTITLED

AN ACT TO AMEND THE GAMELAND BUFFER REQUIREMENT APPLICABLE TO SANITARY LANDFILLS FOR THE DISPOSAL OF CONSTRUCTION AND DEMOLITION DEBRIS WASTE UNDER CERTAIN CONDITIONS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 130A-295.6 reads as rewritten:

"**§ 130A-295.6. Additional requirements for sanitary landfills.**

...

(d) The Department shall not issue a permit to construct any disposal unit of a sanitary landfill if, at the earlier of (i) the acquisition by the applicant or permit holder of the land or of an option to purchase the land on which the waste disposal unit will be located, (ii) the application by the applicant or permit holder for a franchise agreement, or (iii) at the time of the application for a permit, any portion of the proposed waste disposal unit would be located within:

(1) Five miles of the outermost boundary of a National Wildlife Refuge.

(2) One mile of the outermost boundary of a State gameland owned, leased, or managed by the Wildlife Resources Commission pursuant to ~~G.S. 113-306.~~G.S. 113-306, except as provided in subdivision (2a) of this subsection.

(2a) Five hundred feet of the outermost boundary of a State gameland owned, leased, or managed by the Wildlife Resources Commission pursuant to G.S. 113-306, when all of the following conditions apply:

a. The waste disposal unit will only be permitted to accept construction and demolition debris waste.

b. The disposal unit is located within the primary corporate limits of a municipality located in a county with a population of less than 15,000.

c. All portions of the gameland within one mile of the disposal unit are separated from the disposal unit by a primary highway designated by the Federal Highway Administration as a U.S. Highway.

(3) Two miles of the outermost boundary of a component of the State Parks System.

...."

SECTION 2. This act is effective when it becomes law and applies to any application for a permit for a sanitary landfill for the disposal of construction and demolition debris waste pending on that date or submitted on or after that date.

SENATE BILL 24

Short Title:	Construction/Demolition Landfill Siting.	(Public)
Sponsors:	Senators Brown (Primary Sponsor); and Jackson.	
Referred to:	Agriculture/Environment/Natural Resources.	

February 4, 2013

A BILL TO BE ENTITLED

AN ACT TO AMEND THE GAMELAND BUFFER REQUIREMENT APPLICABLE TO CERTAIN NEW SANITARY LANDFILLS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 130A-295.6 reads as rewritten:

"**§ 130A-295.6. Additional requirements for sanitary landfills.**

...

(d) The Department shall not issue a permit to construct any disposal unit of a sanitary landfill if, at the earlier of (i) the acquisition by the applicant or permit holder of the land or of an option to purchase the land on which the waste disposal unit will be located, (ii) the application by the applicant or permit holder for a franchise agreement, or (iii) at the time of the application for a permit, any portion of the proposed waste disposal unit would be located within:

(1) Five miles of the outermost boundary of a National Wildlife Refuge.

(2) One mile of the outermost boundary of a State gameland owned, leased, or managed by the Wildlife Resources Commission pursuant to ~~G.S. 113-306.~~G.S. 113-306, unless subdivision (2a) of this subsection applies to the proposed waste disposal unit.

(2a) ~~One mile~~ 500 feet of the outermost boundary of a State gameland owned, leased, or managed by the Wildlife Resources Commission pursuant to G.S. 113-306, when all of the following conditions apply:

a. The disposal unit will only be permitted to accept construction and demolition waste.

b. The disposal unit is located within the primary corporate limits of a municipality located in a county with a population less than 15,000.

c. All portions of the gameland within one mile of the disposal unit are separated from the disposal unit by a primary highway designated by the Federal Highway Administration as a U.S. Highway.

(3) Two miles of the outermost boundary of a component of the State Parks System.

...."

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

SENATE BILL 24:
Construction/Demolition Landfill Siting

2013-2014 General Assembly

Committee:	Senate Agriculture/Environment/Natural Resources	**Date:**	March 5, 2013
Introduced by:	Sen. Brown	**Prepared by:**	Jennifer McGinnis Committee Counsel
Analysis of:	PCS to First Edition S24-CSRI-3 [v.3]		

SUMMARY: ***The Proposed Committee Substitute (PCS) for Senate Bill 24 would decrease the buffer requirement from State gamelands for landfills for the disposal of construction and demolition debris from 1 mile to 500 feet when both of the following apply: (i) the disposal unit would be located within the primary corporate limits of a municipality located in a county with a population less than 15,000; and (ii) all portions of the gameland within one mile of the proposed disposal unit are separated from the disposal unit by a primary highway designated by the Federal Highway Administration as a U.S. Highway. The PCS also makes technical, clarifying, and conforming changes to the First Edition of the bill.***

CURRENT LAW and BACKGROUND: The Solid Waste Act of 2007 (S.L. 2007-550, S1492) enacted a host of new requirements applicable to sanitary landfills. Under the Act, the Department of Environment and Natural Resources is prohibited from issuing permits to construct disposal units of sanitary landfills if any portion of a proposed disposal unit would be located within:

(1) Five miles of the outermost boundary of a National Wildlife Refuge.
(2) One mile of the outermost boundary of a State gameland owned, leased, or managed by the Wildlife Resources Commission.
(3) Two miles of the outermost boundary of a component of the State Parks System.

Sanitary landfills include landfills for the disposal of construction and demolition debris. Landfills for the disposal of construction and demolition debris are only permitted to accept solid waste resulting solely from construction, remodeling, repair, or demolition operations on pavement, buildings, or other structures, but not inert debris, land-clearing debris, or yard debris.

BILL ANALYSIS: The PCS would decrease the gameland buffer requirement applicable to sanitary landfills for the disposal of construction and demolition debris from 1 mile to 500 feet if: (i) the disposal unit would be located within the primary corporate limits of a municipality located in a county with a population less than 15,000; and (ii) all portions of the gameland within one mile of the proposed disposal unit are separated from the disposal unit by a primary highway designated by the Federal Highway Administration as a U.S. Highway.

EFFECTIVE DATE: This PCS would be effective when it became law and apply to any application for a permit for a sanitary landfill for the disposal of construction and demolition debris waste pending on that date, or submitted on or after that date.

O. Walker Reagan
Director

S24-SMRI-8 CSRI-3 -V2

Research Division
(919) 733-2578

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

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SENATE BILL 58
PROPOSED COMMITTEE SUBSTITUTE S58-PCS75116-SBf-1

Short Title: Increase Funding for Dredging. (Public)

Sponsors:

Referred to:

February 6, 2013

A BILL TO BE ENTITLED

AN ACT TO PROVIDE ADDITIONAL FUNDING FOR DREDGING OF THE STATE'S SHALLOW DRAFT INLETS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 75A-3 reads as rewritten:

"**§ 75A-3. Wildlife Resources Commission to administer Chapter; Vessel Committee; funds for administration.**

(a) The Commission shall enforce and administer the provisions of this Chapter.

(b) The chair of the Commission shall designate from among the members of the Commission three members who shall serve as the Vessel Committee of the Commission, and who shall, in their activities with the Commission, place special emphasis on the administration and enforcement of this Chapter.

(c) The Boating Account is established within the Wildlife Resources Fund created under G.S. 143-250. Interest and other investment income earned by the Account accrues to the Account. All moneys collected pursuant to the numbering and titling provisions of this Chapter shall be credited to this Account. Motor fuel excise tax revenue is credited to the Account under G.S. 105-449.126. The Commission shall use revenue in the Account, subject to the Executive Budget Act and the Personnel Act, for the administration and enforcement of this Chapter; for activities relating to boating and water safety including education and waterway marking and improvement; and for boating access area acquisition, development, and maintenance. The Commission shall use at least three dollars ($3.00) of each one-year certificate of number fee and at least nine dollars ($9.00) of each three-year certificate of number fee collected under the numbering provisions of G.S. 75A-5 for boating access area acquisition, development, and maintenance. The Commission shall transfer on a quarterly basis at least fifty percent (50%) of each one-year certificate of number fee and at least fifty percent (50%) of each three-year certificate of number fee collected under the numbering provisions of G.S. 75A-5 to the Shallow Draft Inlet Dredging Fund established by G.S. 143-215.73F."

SECTION 2. G.S. 75A-5 reads as rewritten:

"**§ 75A-5. Application for certificate of ~~number and fees;~~number; fees; reciprocity; change of ownership; conformity with federal regulations; records; award of certificates; renewal of certificates; transfer of partial interest; destroyed or junked vessels; abandonment; change of address; duplicate certificates; display.**

(a) Application for Certificate of ~~Number and Fees.~~Number. – The owner of each vessel requiring numbering by this State shall file an application for a certificate of number with the Commission. The Commission shall furnish application forms and shall prescribe the

information contained in the application form. The application shall be signed by the owner of the vessel or the owner's agent and shall be accompanied by a ~~fee. The fee is fifteen dollars ($15.00) for a one-year period or forty dollars ($40.00) for a three-year period.~~fee, as set out in subsection (a1) of this section. The fee does not apply to vessels owned and operated by nonprofit rescue squads if they are operated exclusively for rescue purposes, including rescue training. The owner shall have the option of selecting a one-year numbering period or a three-year numbering period. Upon receipt of the application in approved form, the Commission shall enter the application in its records and issue the owner a certificate of number stating the identification number awarded to the vessel and the name and address of the owner, and a validation decal indicating the expiration date of the certificate of number. The owner shall paint on or attach to each side of the bow of the vessel the identification number in such manner as may be prescribed by rules of the Commission in order that it may be clearly visible. The identification number shall be maintained in legible condition. The validation decal shall be displayed on the starboard bow of the vessel immediately following the number. The certificate of number shall be pocket size and shall be available for inspection on the vessel for which the certificate is issued at all times the vessel is in operation. Any person charged with failing to so carry a certificate of number shall not be convicted if the person produces in court a certificate of number previously issued to the owner that was valid at the time of the alleged violation.

(a1) Fees. – The fees for certificates of number are as set out in this subsection:

(1) The fee for a certificate of number for a one-year period is:

a. Fifteen dollars ($15.00) for a vessel that is less than 14 feet in length.

b. Twenty-five dollars ($25.00) for a vessel that is 14 feet or more in length but less than 20 feet in length.

c. Fifty dollars ($50.00) for a vessel that is 20 feet or more in length but less than 26 feet in length.

d. One hundred dollars ($100.00) for a vessel that is 26 feet or more in length but less than 40 feet in length.

e. One hundred fifty dollars ($150.00) for a vessel that is more than 40 feet in length.

(2) The fee for a certificate of number for a three-year period is:

a. Forty-five dollars ($45.00) for a vessel that is less than 14 feet in length.

b. Seventy-five dollars ($75.00) for a vessel that is 14 feet or more in length but less than 20 feet in length.

c. One hundred fifty dollars ($150.00) for a vessel that is 20 feet or more in length but less than 26 feet in length.

d. Three hundred dollars ($300.00) for a vessel that is 26 feet or more in length but less than 40 feet in length.

e. Four hundred fifty dollars ($450.00) for a vessel that is more than 40 feet in length.

(b) Reciprocity. – The owner of any vessel already covered by a number in full force and effect pursuant to federal law or a federally approved numbering system of another state shall record the identification number prior to operating the vessel on the waters of this State in excess of the 90-day reciprocity period provided for in G.S. 75A-7(a)(1). The recordation shall be made pursuant to subsection (a) of this section, except that no additional or substitute identification number shall be issued.

(c) Change of Ownership. – Should the ownership of a vessel change, a new application form with a fee in the amount set in subsection ~~(a)~~(a1) of this section shall be filed with the Commission and a new certificate bearing the same identification number shall be awarded to the new owner in the same manner as an original certificate of number. Possession of the

certificate shall in cases involving prosecution for violation of any provision of this Chapter be prima facie evidence that the person whose name appears on the certificate is the owner of the vessel referred to on the certificate.

(d) Conformity With Federal Regulations. – In the event that an agency of the federal government shall have in force an over-all system of identification numbering for vessels within the United States, the numbering system employed pursuant to this Chapter by the Commission shall be in conformity therewith.

(e) Repealed by Session Laws 2006-185, s. 1.

(f) Records. – All records of the Commission made or kept pursuant to this section shall be public records.

(g) Award of Certificates. – Each certificate of number awarded pursuant to this Chapter, unless sooner terminated or discontinued in accordance with the provisions of this Chapter, shall continue in full force and effect to and including the last day of the month during which the certificate was awarded after the lapse of one year in the case of a one-year certificate or three years in the case of a three-year certificate. No person shall willfully remove a validation decal from any vessel during the continuance of its validity or alter, counterfeit, or otherwise tamper with a validation decal attached to any vessel for the purpose of changing or obscuring the indicated date of expiration of the certificate of number of the vessel.

(h) Renewal of Certificates. – An owner of a vessel awarded a certificate of number pursuant to this Chapter shall renew the certificate on or before the first day of the month after which the certificate expires; otherwise, the certificate shall lapse and be void until such time as it may thereafter be renewed. Application for renewal shall be submitted on a form approved by the Commission and shall be accompanied by a fee in the amount set in subsection ~~(a)~~(a1) of this section. No fee is required for a period of one year for renewal of certificates of number that have been previously issued to commercial fishing vessels as defined in G.S. 75A-5.1, upon compliance with all of the requirements of that section.

(i) Transfer of Partial Interest. – The owner shall furnish the Commission notice of the transfer of any part of the owner's interest other than the creation of a security interest in a vessel numbered in this State pursuant to subsections (a) and (b) of this section within 15 days of the transfer. A transfer of partial interest in a vessel shall not affect the owner's right to operate the vessel, nor shall a transfer of partial interest in a vessel terminate the certificate of number.

(i1) Destroyed or Junked Vessels. – The owner of any destroyed or junked vessel shall furnish the Commission notice of the destruction or junking of that vessel within 15 days of its occurrence. Destruction or junking terminates the certificate of number and renders the hull identification number invalid for that vessel.

(i2) Abandonment. – A person may acquire ownership of an abandoned vessel by providing proof to the Commission that the lawful owner has actually abandoned the vessel. The Commission shall adopt rules by which a person seeking to acquire ownership may demonstrate that the vessel is actually abandoned. At a minimum, the rules shall provide for a reasonable attempt to locate the lawful owner and, if the owner is located, notice by the claimant of an intention to claim ownership of the vessel.

(j) Change of Address. – Whenever any person, after applying for or obtaining the certificate of number of a vessel, moves from the address shown in the application or upon the certificate of number, that person shall notify the Commission of the change of address within 30 days of moving in a form acceptable to the Commission.

(j1) Duplicate Certificates. – The Commission shall issue a duplicate certificate of number for a vessel upon application by the person entitled to hold the certificate, if the Commission is satisfied that the original certificate of number has been lost, stolen, mutilated, or destroyed, or has become illegible. The Commission shall charge a fee of five dollars ($5.00) for issuance of each duplicate certificate.

(k) Display. – No number other than the identification number set forth in the certificate of number or granted reciprocity pursuant to this Chapter shall be painted, attached, or otherwise displayed on either side of the bow of a vessel, except the validation decal required by subsection (a) of this section.

(l) Repealed by Session Laws 2006-185, s. 1."

SECTION 3. G.S. 75A-7 reads as rewritten:

"**§ 75A-7. Exemption from numbering requirements.**

(a) A vessel shall not be required to be numbered under this Chapter if it is:

(1) A vessel that is required to be awarded an identification number pursuant to federal law or a federally approved numbering system of another state, and for which an identification number has been so awarded: Provided, that any such vessel shall not have been within this State for a period in excess of 90 consecutive days.

(2) A vessel from a country other than the United States temporarily using the waters of this State.

(3) A vessel whose owner is the United States, a state or a subdivision thereof.

(4) A ship's lifeboat.

~~(5) A vessel that has a valid marine document issued by the federal Bureau of Customs or any federal agency successor thereto.~~

(6) A sailboat of not more than 14 feet on the load water line (LWL).

(7) A vessel with no means of propulsion other than drifting or manual paddling, poling, or rowing.

(b) The Commission is hereby empowered to permit the voluntary numbering of vessels owned by the United States, a state or a subdivision thereof.

(c) Those vessels owned by the United States, a state or a subdivision thereof and those owned by nonprofit rescue squads may be assigned a certificate of number bearing no expiration date but which shall be stamped with the word "permanent" and shall not be renewable so long as the vessel remains the property of the governmental entity or nonprofit rescue squad. If the ownership of any such vessel is transferred from one governmental entity to another or to a nonprofit rescue squad or if a vessel owned by a nonprofit rescue squad is transferred to another nonprofit rescue squad or governmental entity, the Commission shall issue a new permanent certificate of number, displaying the same identification number, without charge to the successor entity. When any such vessel is sold to a private owner or is otherwise transferred to private ownership, the applicable certificate of number shall be deemed to have expired immediately prior to the transfer. Prior to further use on the waters of this State, the new owner shall obtain a certificate of number pursuant to the provisions of this Chapter. The provisions of this subsection applicable to a vessel owned by a nonprofit rescue squad apply only to a vessel operated exclusively for rescue purposes, including rescue training."

SECTION 4. G.S. 75A-34 reads as rewritten:

"**§ 75A-34. Who may apply for certificate of title; authority of employees of Commission.**

(a) Any owner of a motorized vessel or sailboat 14 feet or longer or any personal watercraft, as defined in G.S. 75A-13.3(a), that is applying for a certificate of number for the first time in this State pursuant to G.S. 75A-5(a), and any new owner of a motorized vessel or sailboat 14 feet or longer or any personal watercraft to whom ownership is being transferred under G.S. 75A-5(c) shall apply to the Commission for a certificate of title for that vessel. Any other vessel may be titled in this State at the owner's option. A vessel may not be titled in this State if it is titled in another state, unless the current title is surrendered along with the application for a certificate of title in this State. The Commission shall issue a certificate of title upon reasonable evidence of ownership, which may be established by affidavit, bill of sale, manufacturer's statement of origin, certificate of title in this State, certificate of number or title from another state, or other document satisfactory to the Commission. Only one certificate of

title may be issued for any vessel in this State. A vessel may not be titled in this State if it is documented with the United States Coast ~~Guard.~~Guard, unless the documentation has expired or been deleted by the United States Coast Guard. The Commission shall issue a certificate of title upon receipt of a completed application, along with the appropriate fee and reasonable evidence of ownership. The Commission shall require a manufacturer's statement of origin for all new vessels being issued a certificate of number and a certificate of title for the first time. The Commission may request a pencil tracing of the hull identification number (serial number) for vessels being transferred, in order to positively identify the vessel before issuance of a certificate of title for that vessel.

(b) Employees of the Commission are vested with the power to administer oaths and to take acknowledgements and affidavits incidental to the administration and enforcement of this section. They shall receive no compensation for these services."

SECTION 5. G.S. 75A-38 reads as rewritten:

"**§ 75A-38. Commission's records; fees.**

(a) The Commission shall maintain a record of any title it issues.

(b) The Commission shall charge a fee of ~~twenty dollars ($20.00)~~thirty dollars ($30.00) to issue a new or transfer certificate of title. The Commission shall transfer on a quarterly basis at least ten dollars ($10.00) of each new or transfer certificate of title to the Shallow Draft Inlet Dredging Fund established by G.S. 143-215.73F. The Commission shall charge a fee of ten dollars ($10.00) for each duplicate title it issues and for the recording of a supplemental lien."

SECTION 6. Article 21 of Chapter 143 of the General Statutes is amended by adding a new Part to read:

"Part 8B. Shallow Draft Inlet Dredging Fund.

"**§ 143-215.73F. Shallow Draft Inlet Dredging Fund.**

The Shallow Draft Inlet Dredging Fund is established as a special revenue fund. The Fund consists of fees credited to it under G.S. 75A-3 and G.S. 75A-38. Revenue in the Fund may only be used to provide the State's share of the costs associated with any dredging project designed to keep a shallow draft inlet located in State waters navigable and safe. Any project funded by revenue from the Fund must be cost-shared with non-State dollars on a one-to-one basis. For purposes of this section, "shallow draft inlet" means a waterway connection, with a maximum depth of 14 feet, between the Atlantic Ocean and a bay or the Atlantic Intracoastal Waterway, or a river entrance to the Atlantic through which tidal and other currents flow."

SECTION 7. Nothing in this act shall affect the validity, term, or cost of any certificate of number or certificate of title issued prior to July 1, 2013.

SECTION 8. This act becomes effective July 1, 2013.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

S 1

SENATE BILL 58

Short Title:	Increase Funding for Dredging.	(Public)
Sponsors:	Senators Brown (Primary Sponsor); Cook and Sanderson.	
Referred to:	Agriculture/Environment/Natural Resources.	

February 6, 2013

A BILL TO BE ENTITLED

AN ACT TO PROVIDE ADDITIONAL FUNDING FOR DREDGING OF THE STATE'S SHALLOW DRAFT INLETS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 75A-3 reads as rewritten:

"**§ 75A-3. Wildlife Resources Commission to administer Chapter; Vessel Committee; funds for administration.**

(a) The Commission shall enforce and administer the provisions of this Chapter.

(b) The chair of the Commission shall designate from among the members of the Commission three members who shall serve as the Vessel Committee of the Commission, and who shall, in their activities with the Commission, place special emphasis on the administration and enforcement of this Chapter.

(c) The Boating Account is established within the Wildlife Resources Fund created under G.S. 143-250. Interest and other investment income earned by the Account accrues to the Account. All moneys collected pursuant to the numbering and titling provisions of this Chapter shall be credited to this Account. Motor fuel excise tax revenue is credited to the Account under G.S. 105-449.126. The Commission shall use revenue in the Account, subject to the Executive Budget Act and the Personnel Act, for the administration and enforcement of this Chapter; for activities relating to boating and water safety including education and waterway marking and improvement; and for boating access area acquisition, development, and maintenance. The Commission shall use at least three dollars ($3.00) of each one-year certificate of number fee and at least nine dollars ($9.00) of each three-year certificate of number fee collected under the numbering provisions of G.S. 75A-5 for boating access area acquisition, development, and maintenance. The Commission shall transfer on a quarterly basis at least fifty percent (50%) of each one-year certificate of number fee and at least fifty percent (50%) of each three-year certificate of number fee collected under the numbering provisions of G.S. 75A-5 to the Shallow Draft Inlet Dredging Fund established by G.S. 143-215.73F."

SECTION 2. G.S. 75A-5 reads as rewritten:

"**§ 75A-5. Application for certificate of ~~number and fees;~~number; fees; reciprocity; change of ownership; conformity with federal regulations; records; award of certificates; renewal of certificates; transfer of partial interest; destroyed or junked vessels; abandonment; change of address; duplicate certificates; display.**

(a) Application for Certificate of ~~Number and Fees.~~Number. – The owner of each vessel requiring numbering by this State shall file an application for a certificate of number with the Commission. The Commission shall furnish application forms and shall prescribe the

information contained in the application form. The application shall be signed by the owner of the vessel or the owner's agent and shall be accompanied by a ~~fee. The fee is fifteen dollars ($15.00) for a one-year period or forty dollars ($40.00) for a three-year period.~~fee as set out in subsection (a1) of this section. The fee does not apply to vessels owned and operated by nonprofit rescue squads if they are operated exclusively for rescue purposes, including rescue training. The owner shall have the option of selecting a one-year numbering period or a three-year numbering period. Upon receipt of the application in approved form, the Commission shall enter the application in its records and issue the owner a certificate of number stating the identification number awarded to the vessel and the name and address of the owner, and a validation decal indicating the expiration date of the certificate of number. The owner shall paint on or attach to each side of the bow of the vessel the identification number in such manner as may be prescribed by rules of the Commission in order that it may be clearly visible. The identification number shall be maintained in legible condition. The validation decal shall be displayed on the starboard bow of the vessel immediately following the number. The certificate of number shall be pocket size and shall be available for inspection on the vessel for which the certificate is issued at all times the vessel is in operation. Any person charged with failing to so carry a certificate of number shall not be convicted if the person produces in court a certificate of number previously issued to the owner that was valid at the time of the alleged violation.

(a1) Fees. – The fees for certificates of number are as set out in this subsection.

(1) The fee for a certificate of number for a one-year period is:

a. Fifteen dollars ($15.00) for a vessel that is less than 14 feet in length.

b. Twenty-five dollars ($25.00) for a vessel that is 14 feet or more in length but less than 20 feet in length.

c. Fifty dollars ($50.00) for a vessel that is 20 feet or more in length but less than 26 feet in length.

d. One hundred dollars ($100.00) for a vessel that is 26 feet or more in length but less than 40 feet in length.

e. One hundred fifty dollars ($150.00) for a vessel that is more than 40 feet in length.

(2) The fee for a certificate of number for a three-year period is:

a. Forty-five dollars ($45.00) for a vessel that is less than 14 feet in length.

b. Seventy-five dollars ($75.00) for a vessel that is 14 feet or more in length but less than 20 feet in length.

c. One hundred fifty dollars ($150.00) for a vessel that is 20 feet or more in length but less than 26 feet in length.

d. Three hundred dollars ($300.00) for a vessel that is 26 feet or more in length but less than 40 feet in length.

e. Four hundred fifty dollars ($450.00) for a vessel that is more than 40 feet in length.

(b) Reciprocity. – The owner of any vessel already covered by a number in full force and effect pursuant to federal law or a federally approved numbering system of another state shall record the identification number prior to operating the vessel on the waters of this State in excess of the 90-day reciprocity period provided for in G.S. 75A-7(a)(1). The recordation shall be made pursuant to subsection (a) of this section, except that no additional or substitute identification number shall be issued.

(c) Change of Ownership. – Should the ownership of a vessel change, a new application form with a fee in the amount set in subsection ~~(a)~~(a1) of this section shall be filed with the Commission and a new certificate bearing the same identification number shall be awarded to the new owner in the same manner as an original certificate of number. Possession of the

certificate shall in cases involving prosecution for violation of any provision of this Chapter be prima facie evidence that the person whose name appears on the certificate is the owner of the vessel referred to on the certificate.

(d) Conformity With Federal Regulations. – In the event that an agency of the federal government shall have in force an over-all system of identification numbering for vessels within the United States, the numbering system employed pursuant to this Chapter by the Commission shall be in conformity therewith.

(e) Repealed by Session Laws 2006-185, s. 1.

(f) Records. – All records of the Commission made or kept pursuant to this section shall be public records.

(g) Award of Certificates. – Each certificate of number awarded pursuant to this Chapter, unless sooner terminated or discontinued in accordance with the provisions of this Chapter, shall continue in full force and effect to and including the last day of the month during which the certificate was awarded after the lapse of one year in the case of a one-year certificate or three years in the case of a three-year certificate. No person shall willfully remove a validation decal from any vessel during the continuance of its validity or alter, counterfeit, or otherwise tamper with a validation decal attached to any vessel for the purpose of changing or obscuring the indicated date of expiration of the certificate of number of the vessel.

(h) Renewal of Certificates. – An owner of a vessel awarded a certificate of number pursuant to this Chapter shall renew the certificate on or before the first day of the month after which the certificate expires; otherwise, the certificate shall lapse and be void until such time as it may thereafter be renewed. Application for renewal shall be submitted on a form approved by the Commission and shall be accompanied by a fee in the amount set in subsection ~~(a)~~(a1) of this section. No fee is required for a period of one year for renewal of certificates of number that have been previously issued to commercial fishing vessels as defined in G.S. 75A-5.1, upon compliance with all of the requirements of that section.

(i) Transfer of Partial Interest. – The owner shall furnish the Commission notice of the transfer of any part of the owner's interest other than the creation of a security interest in a vessel numbered in this State pursuant to subsections (a) and (b) of this section within 15 days of the transfer. A transfer of partial interest in a vessel shall not affect the owner's right to operate the vessel, nor shall a transfer of partial interest in a vessel terminate the certificate of number.

(i1) Destroyed or Junked Vessels. – The owner of any destroyed or junked vessel shall furnish the Commission notice of the destruction or junking of that vessel within 15 days of its occurrence. Destruction or junking terminates the certificate of number and renders the hull identification number invalid for that vessel.

(i2) Abandonment. – A person may acquire ownership of an abandoned vessel by providing proof to the Commission that the lawful owner has actually abandoned the vessel. The Commission shall adopt rules by which a person seeking to acquire ownership may demonstrate that the vessel is actually abandoned. At a minimum, the rules shall provide for a reasonable attempt to locate the lawful owner and, if the owner is located, notice by the claimant of an intention to claim ownership of the vessel.

(j) Change of Address. – Whenever any person, after applying for or obtaining the certificate of number of a vessel, moves from the address shown in the application or upon the certificate of number, that person shall notify the Commission of the change of address within 30 days of moving in a form acceptable to the Commission.

(j1) Duplicate Certificates. – The Commission shall issue a duplicate certificate of number for a vessel upon application by the person entitled to hold the certificate, if the Commission is satisfied that the original certificate of number has been lost, stolen, mutilated, or destroyed, or has become illegible. The Commission shall charge a fee of five dollars ($5.00) for issuance of each duplicate certificate.

(k) Display. – No number other than the identification number set forth in the certificate of number or granted reciprocity pursuant to this Chapter shall be painted, attached, or otherwise displayed on either side of the bow of a vessel, except the validation decal required by subsection (a) of this section.

(l) Repealed by Session Laws 2006-185, s. 1."

SECTION 3. G.S. 75A-7 reads as rewritten:

"**§ 75A-7. Exemption from numbering requirements.**

(a) A vessel shall not be required to be numbered under this Chapter if it is:

(1) A vessel that is required to be awarded an identification number pursuant to federal law or a federally approved numbering system of another state, and for which an identification number has been so awarded: Provided, that any such vessel shall not have been within this State for a period in excess of 90 consecutive days.

(2) A vessel from a country other than the United States temporarily using the waters of this State.

(3) A vessel whose owner is the United States, a state or a subdivision thereof.

(4) A ship's lifeboat.

~~(5) A vessel that has a valid marine document issued by the federal Bureau of Customs or any federal agency successor thereto.~~

(6) A sailboat of not more than 14 feet on the load water line (LWL).

(7) A vessel with no means of propulsion other than drifting or manual paddling, poling, or rowing.

(b) The Commission is hereby empowered to permit the voluntary numbering of vessels owned by the United States, a state or a subdivision thereof.

(c) Those vessels owned by the United States, a state or a subdivision thereof and those owned by nonprofit rescue squads may be assigned a certificate of number bearing no expiration date but which shall be stamped with the word "permanent" and shall not be renewable so long as the vessel remains the property of the governmental entity or nonprofit rescue squad. If the ownership of any such vessel is transferred from one governmental entity to another or to a nonprofit rescue squad or if a vessel owned by a nonprofit rescue squad is transferred to another nonprofit rescue squad or governmental entity, the Commission shall issue a new permanent certificate of number, displaying the same identification number, without charge to the successor entity. When any such vessel is sold to a private owner or is otherwise transferred to private ownership, the applicable certificate of number shall be deemed to have expired immediately prior to the transfer. Prior to further use on the waters of this State, the new owner shall obtain a certificate of number pursuant to the provisions of this Chapter. The provisions of this subsection applicable to a vessel owned by a nonprofit rescue squad apply only to a vessel operated exclusively for rescue purposes, including rescue training."

SECTION 4. G.S. 75A-34 reads as rewritten:

"**§ 75A-34. Who may apply for certificate of title; authority of employees of Commission.**

(a) Any owner of a motorized vessel or sailboat 14 feet or longer or any personal watercraft, as defined in G.S. 75A-13.3(a), that is applying for a certificate of number for the first time in this State pursuant to G.S. 75A-5(a), and any new owner of a motorized vessel or sailboat 14 feet or longer or any personal watercraft to whom ownership is being transferred under G.S. 75A-5(c) shall apply to the Commission for a certificate of title for that vessel. Any other vessel may be titled in this State at the owner's option. A vessel may not be titled in this State if it is titled in another state, unless the current title is surrendered along with the application for a certificate of title in this State. The Commission shall issue a certificate of title upon reasonable evidence of ownership, which may be established by affidavit, bill of sale, manufacturer's statement of origin, certificate of title in this State, certificate of number or title from another state, or other document satisfactory to the Commission. Only one certificate of

title may be issued for any vessel in this State. A vessel may not be titled in this State if it is documented with the United States Coast ~~Guard.~~Guard, unless the documentation has expired or been deleted by the United States Coast Guard. The Commission shall issue a certificate of title upon receipt of a completed application, along with the appropriate fee and reasonable evidence of ownership. The Commission shall require a manufacturer's statement of origin for all new vessels being issued a certificate of number and a certificate of title for the first time. The Commission may request a pencil tracing of the hull identification number (serial number) for vessels being transferred, in order to positively identify the vessel before issuance of a certificate of title for that vessel.

(b) Employees of the Commission are vested with the power to administer oaths and to take acknowledgements and affidavits incidental to the administration and enforcement of this section. They shall receive no compensation for these services."

SECTION 5. G.S. 75A-38 reads as rewritten:

"**§ 75A-38. Commission's records; fees.**

(a) The Commission shall maintain a record of any title it issues.

(b) The Commission shall charge a fee of ~~twenty dollars ($20.00)~~thirty dollars ($30.00) to issue a new or transfer certificate of title. The Commission shall transfer on a quarterly basis at least ten dollars ($10.00) of each new or transfer certificate of title to the Shallow Draft Inlet Dredging Fund established by G.S. 143-215.73F. The Commission shall charge a fee of ten dollars ($10.00) for each duplicate title it issues and for the recording of a supplemental lien."

SECTION 6. Article 21 of Chapter 143 of the General Statutes is amended by adding a new Part to read:

"Part 8B. Shallow Draft Inlet Dredging Fund.

"**§ 143-215.73F. Shallow Draft Inlet Dredging Fund.**

The Shallow Draft Inlet Dredging Fund is established as a special revenue fund. The Fund consists of fees credited to it under G.S. 75A-3 and G.S. 75A-38. Revenue in the Fund may only be used to provide the State's share of the costs associated with any dredging project designed to keep a shallow draft inlet located in State waters navigable and safe. Any project funded by revenue from the Fund must be cost-shared with non-State dollars on a one-to-one basis."

SECTION 7. Nothing in this act shall affect the validity, term, or cost of any certificate of number or certificate of title issued prior to July 1, 2013.

SECTION 8. This act becomes effective July 1, 2013.

SENATE BILL 58:
Increase Funding for Dredging

2013-2014 General Assembly

Committee:	Senate Ref to Agriculture/Environment/Natural Resources. If fav, re-ref to Finance	**Date:**	March 5, 2013
Introduced by:	Sen. Brown	**Prepared by:**	Jeff Hudson
Analysis of:	First Edition		Committee Counsel

SUMMARY: ***Senate Bill 58 would increase vessel numbering and titling fees to provide additional funding for the dredging of the State's shallow draft inlets.***

CURRENT LAW:

Under G.S. 75A-4, every watercraft or vessel used on the waters of the State must obtain and display identification numbers provided by the Wildlife Resources Commission (WRC). There are several types of vessels that are exempt from this requirement, including sailboats of 14 feet in length or less; vessels with no means of propulsion other than drifting or manual paddling, poling, or rowing; and vessels that are covered by documentation issued by the federal government. The fees for vessel numbering are $15.00 for a one-year period and $40.00 for a three-year period.

Under G.S. 75A-34, the owner of a motorized vessel or sailboat 14 feet or longer or any personal watercraft that is applying for a certificate of number for the first time, or any new owner of such vessel to whom ownership is being transferred, must obtain a certificate of title for the vessel from the WRC. The fee for vessel titling is $20.00.

G.S. 75A-3 establishes the Boating Account within the Wildlife Resources Fund. All funds collected for the numbering and titling of vessels are credited to the Account, as is a portion of the motor fuel excise tax. Funds in the Account are used by the WRC to administer and enforce the boating laws of the State; for activities relating to boating and water safety, including education and waterway marking and improvement; and for boating access area acquisition, development, and maintenance. The WRC must use at least $3.00 of each one-year certificate of number fee and at least $9.00 of each three-year certificate of number fee for boating access area acquisition, development, and maintenance.

BILL ANALYSIS:

Senate Bill 58 would change vessel numbering and titling fees and requirements as follows:

Vessel Numbering Fee for a One-Year Period

Current Law	Senate Bill 58
$15.00	• $15.00 for a vessel that is less than 14 feet in length. • $25.00 for a vessel that is 14 feet or more in length but less than 20 feet in length. • $50.00 for a vessel that is 20 feet or more in length but less than 26 feet in length. • $100.00 for a vessel that is 26 feet or more in length but less than 40 feet in length. • $150.00 for a vessel that is more than 40 feet in length.

Senate Bill 58 would also direct the WRC to transfer at least 50% of each one-year certificate of number fee to the Shallow Draft Inlet Dredging Fund.

Vessel Numbering Fee for a Three-Year Period

Current Law	Senate Bill 58
$40.00	• $45.00 for a vessel that is less than 14 feet in length. • $75.00 for a vessel that is 14 feet or more in length but less than 20 feet in length. • $150.00 for a vessel that is 20 feet or more in length but less than 26 feet in length. • $300.00 for a vessel that is 26 feet or more in length but less than 40 feet in length. • $450.00 for a vessel that is more than 40 feet in length.

Senate Bill 58 would also direct the WRC to transfer at least 50% of each three-year certificate of number fee to the Shallow Draft Inlet Dredging Fund.

Exemption from Numbering Requirements

Senate Bill 58 would repeal the exemption from numbering requirements for vessels that are covered by documentation issued by the federal government.

Vessel Titling

Senate Bill 58 would increase the vessel titling fee from $20.00 to $30.00. It would also direct the WRC to transfer at least $10.00 of each new or transfer certificate of title to the Shallow Draft Inlet Dredging Fund.

Shallow Draft Inlet Dredging Fund

Senate Bill 58 would establish the Shallow Draft Inlet Dredging Fund, which would consist of fees credited to it from the numbering and titling of vessels. Revenue from the Fund may only be used to provide the State's share of the costs associated with any dredging project designed to keep a shallow draft inlet located in State waters navigable and safe. Any project funded by revenue from the Fund must be cost shared with non-State dollars on a one to one basis.

EFFECTIVE DATE: This act would become effective July 1, 2013.

SENATE BILL 113*

Short Title:	DENR Support for Regional Water Supply System.	(Public)
Sponsors:	Senator Jackson (Primary Sponsor).	
Referred to:	Agriculture/Environment/Natural Resources.	

February 21, 2013

A BILL TO BE ENTITLED

AN ACT TO REQUIRE THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES TO SUPPORT THE APPLICATION OF A REGIONAL WATER SUPPLY SYSTEM FOR ALL REQUIRED FEDERAL APPROVALS, AS RECOMMENDED BY THE ENVIRONMENTAL REVIEW COMMISSION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 143-355.7 reads as rewritten:

"**§ 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 potential 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.

(b1) 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. The Department

shall provide its full support and favorable endorsement of any State or federal permit applications for the preferred alternative 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 under this section.

(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 practicable 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."

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

SENATE BILL 113: DENR Support for Regional Water Supply System

2013-2014 General Assembly

Committee:	Senate Agriculture/Environment/Natural Resources	**Date:**	March 5, 2013
Introduced by:	Sen. Jackson	**Prepared by:**	Jennifer Mundt Legislative Analyst
Analysis of:	First Edition		

SUMMARY: ***Senate Bill 113 would require the Department of Environment and Natural Resources to support the application of a regional water supply system for all required federal approvals.***

[As introduced, this bill was identical to H89, as introduced by Reps. McGrady, Samuelson, McElraft, which is currently in House Environment.]

CURRENT LAW: G.S. 143-355.7 provides a process by which the Department of Environment and Natural Resources (DENR) may assist a local government 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. 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 preferred alternative.

BILL ANALYSIS: Rather than provide that DENR may become a co-applicant with a local government for all federal approvals for the preferred water supply alternative, Senate Bill 113 would instead require DENR to provide its full support and favorable endorsement of any State or federal permit applications for the local government's preferred water supply alternative when the following conditions are met:

- 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.
- 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.
- 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.
- The regional water supply system has entered into a contractual agreement to pay the expenses incurred by DENR to provide assistance in the development and permitting of water supply resources.

EFFECTIVE DATE: Senate Bill 113 would become effective when it becomes law.

Jeff Hudson, counsel to Senate Agriculture, Environment, and Natural Resources Committee contributed to this summary.

O. Walker Reagan
Director

S113-SMTA-1 E1 -V2

Research Division
(919) 733-2578

VISITOR REGISTRATION SHEET

Senate Agriculture/Environment/Natural Resources

March 5, 2013

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Senate Agriculture/Environment/Natural Resources

March 5, 2013

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March 5, 2013

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Senate Agriculture/Environment/Natural Resources

March 5, 2013

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Carr McLamb	DENR
Tom Fransen	DENR, DWR

09-21-201

Senate Committee on Agriculture/Environment/Natural Resources
Tuesday, March 12, 2013, 11:00 AM
544 Legislative Office Building

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

BILL NO.	SHORT TITLE	SPONSOR
		Senator Jackson
SB 38	Various Emergency Management Changes.	
SB 171	Limit Regulation of Greenhouse Gas Emissions.	Senator Jackson Senator Brock Senator J. Davis
HB 33	Cleveland/Polk/Rutherford Trapping Repeal.	Representative Whitmire Representative Hager Representative T. Moore Representative Hastings

This bill was pulled from Agenda during Committee Mtg.

Other Business

Adjournment

Senate Committee on Agriculture/Environment/Natural Resources
Tuesday, March 12, 2013 at 11:00 AM
Room 544 of the Legislative Office Building

MINUTES

The Senate Committee on Agriculture/Environment/Natural Resources met at 11:00 AM on March 12, 2013 in Room 544 of the Legislative Office Building. Ten (10) members were present.

Senator Andrew C. Brock, Chair, presided.

Senator Brock called the meeting to order by welcoming the pages – Milizhia Mills from Winston Salem, sponsored by Sen. Parmon and Kianna Brower from Rural Hall, also sponsored by Sen. Parmon. Sgt. of Arms for today's meeting were Charles Harper, Leslie Wright and Ernie Sherrill.

Bills

HB 33 Cleveland/Polk/Rutherford Trapping Repeal - Rep. Whitmire

Rep. Whitmire explained the bill to the committee. With no questions on the bill, Sen. Walters moved for a favorable report, seconded by Sen. Cook. Members voted the bill favorable.

SB171 Limit Regulation of Greenhouse Gas Emissions - Sen. Jackson
Senator Brock informed the committee that this bill was being pulled from the agenda.

SB 38 Various Emergency Management Changes (PCS) - Sen. Jackson
Senator Jackson explained the bill to the committee. Senator Cook made a motion for an unfavorable report for the original and favorable to the PCS. Sen. Randleman seconded the motion. The committee voted the PCS favorable.

Senator Brock adjourned the meeting at 11:15AM.

Senator Andrew C. Brock, Chair
Presiding

Judy Edwards, Committee Clerk

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES COMMITTEE REPORT
Senator Brock, Co-Chair
Senator Jackson, Co-Chair

Tuesday, March 12, 2013

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

FAVORABLE

HB **33** **(CS#1)** Cleveland/Polk/Rutherford Trapping Repeal.

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

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

SB **38** Various Emergency Management Changes.

Draft Number:	S38-PCS15108-TA-1
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

TOTAL REPORTED: 2

Senator Andrew Brock will handle HB 33
Senator W. Jackson will handle SB 38



Unfavorable

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

S 1

SENATE BILL 38*

Short Title:	Various Emergency Management Changes.	(Public)
Sponsors:	Senators Jackson (Primary Sponsor); Brock and Walters.	
Referred to:	Agriculture/Environment/Natural Resources.	

February 4, 2013

A BILL TO BE ENTITLED

AN ACT TO MAKE VARIOUS CHANGES TO THE EMERGENCY MANAGEMENT LAWS OF THIS STATE, AS RECOMMENDED BY THE JOINT LEGISLATIVE EMERGENCY MANAGEMENT OVERSIGHT COMMITTEE.

The General Assembly of North Carolina enacts:

SECTION 1.(a) G.S. 20-125(b) reads as rewritten:

"(b) Every vehicle owned ~~and~~ or operated by a police department or by the Department of Public Safety including the State Highway Patrol or by the Wildlife Resources Commission or the Division of Marine Fisheries, or by the Division of Parks and Recreation of the Department of Environment and Natural Resources, or by the North Carolina Forest Service of the Department of Agriculture and Consumer Services, and used exclusively for law ~~enforcement~~ enforcement, fire-fighting, or other emergency response purposes, or by the Division of Emergency Management, or by a fire department, either municipal or rural, or by a fire patrol, whether such fire department or patrol be a paid organization or a voluntary association, vehicles used by an organ procurement organization or agency for the recovery and transportation of human tissues and organs for transplantation, and every ambulance or emergency medical service emergency support vehicle used for answering emergency calls, shall be equipped with special lights, bells, sirens, horns or exhaust whistles of a type approved by the Commissioner of Motor Vehicles.

The operators of all such vehicles so equipped are hereby authorized to use such equipment at all times while engaged in the performance of their duties and services, both within their respective corporate limits and beyond.

In addition to the use of special equipment authorized and required by this subsection, the chief and assistant chiefs of any police department or of any fire department, whether the same be municipal or rural, paid or voluntary, county fire marshals, assistant fire marshals, transplant coordinators, and emergency management coordinators, are hereby authorized to use such special equipment on privately owned vehicles operated by them while actually engaged in the performance of their official or semiofficial duties or services either within or beyond their respective corporate limits.

And vehicles driven by law enforcement officers of the North Carolina Division of Motor Vehicles shall be equipped with a bell, siren, or exhaust whistle of a type approved by the Commissioner, and all vehicles owned and operated by the State Bureau of Investigation for the use of its agents and officers in the performance of their official duties may be equipped with special lights, bells, sirens, horns or exhaust whistles of a type approved by the Commissioner of Motor Vehicles.

Every vehicle used or operated for law enforcement purposes by the sheriff or any salaried deputy sheriff or salaried rural policeman of any county, whether owned by the county or not, may be, but is not required to be, equipped with special lights, bells, sirens, horns or exhaust whistles of a type approved by the Commissioner of Motor Vehicles. Such special equipment shall not be operated or activated by any person except by a law enforcement officer while actively engaged in performing law enforcement duties.

In addition to the use of special equipment authorized and required by this subsection, the chief and assistant chiefs of each emergency rescue squad which is recognized or sponsored by any municipality or civil preparedness agency, are hereby authorized to use such special equipment on privately owned vehicles operated by them while actually engaged in their official or semiofficial duties or services either within or beyond the corporate limits of the municipality which recognizes or sponsors such organization."

SECTION 1.(b) G.S. 20-130.1 reads as rewritten:

"**§ 20-130.1. Use of red or blue lights on vehicles prohibited; exceptions.**

(a) It is unlawful for any person to install or activate or operate a red light in or on any vehicle in this State. As used in this subsection, unless the context requires otherwise, "red light" means an operable red light not sealed in the manufacturer's original package which: (i) is designed for use by an emergency vehicle or is similar in appearance to a red light designed for use by an emergency vehicle; and (ii) can be operated by use of the vehicle's battery, vehicle's electrical system, or a dry cell battery. As used in this subsection, the term "red light" shall also mean any forward facing red light installed on a vehicle after initial manufacture of the vehicle.

(b) The provisions of subsection (a) of this section do not apply to the following:

(1) A police ~~car;~~vehicle.

(2) A highway patrol ~~car;~~vehicle.

(3) A vehicle owned by the Wildlife Resources Commission and operated exclusively for law-enforcement ~~purposes;~~purposes.

(4) An ~~ambulance;~~ambulance.

(5) A vehicle used by an organ procurement organization or agency for the recovery and transportation of blood, human tissues, or organs for ~~transplantation;~~transplantation.

(6) A fire-fighting ~~vehicle;~~vehicle.

(7) A school ~~bus;~~bus.

(8) A vehicle operated by any member of a municipal or rural fire department in the performance of his duties, regardless of whether members of that fire department are paid or ~~voluntary;~~voluntary.

(9) A vehicle of a voluntary lifesaving organization (including the private vehicles of the members of such an organization) that has been officially approved by the local police authorities and which is manned or operated by members of that organization while answering an official ~~call;~~call.

(10) A vehicle operated by medical doctors or anesthetists in ~~emergencies;~~emergencies.

(11) A motor vehicle used in law enforcement by the sheriff, or any salaried rural policeman in any county, regardless of whether or not the county owns the ~~vehicle;~~vehicle.

(11a) A vehicle operated by the State Fire Marshal or his representatives in the performance of their duties, whether or not the State owns the ~~vehicle;~~vehicle.

(12) A vehicle operated by any county fire marshal, assistant fire marshal, or emergency management coordinator in the performance of his duties, regardless of whether or not the county owns the ~~vehicle;~~vehicle.

(13) A light required by the Federal Highway ~~Administration;~~Administration.
(14) A vehicle operated by a transplant coordinator who is an employee of an organ procurement organization or agency when the transplant coordinator is responding to a call to recover or transport human tissues or organs for ~~transplantation;~~transplantation.
(15) A vehicle operated by an emergency medical service as an emergency support ~~vehicle;~~vehicle.
(16) A State emergency management ~~vehicle; and~~vehicle.
(17) An Incident Management Assistance Patrol vehicle operated by the Department of Transportation, when using rear-facing red lights while stopped for the purpose of providing assistance or incident management.
(18) A vehicle operated by the Division of Marine Fisheries or the Division of Parks and Recreation of the Department of Environment and Natural Resources that is used for law enforcement, fire-fighting, or other emergency response purpose.
(19) A vehicle operated by the North Carolina Forest Service of the Department of Agriculture and Consumer Services that is used for law enforcement, fire-fighting, or other emergency response purpose.

...."

SECTION 1.(c) G.S. 20-145 reads as rewritten:

"**§ 20-145. When speed limit not applicable.**

The speed limitations set forth in this Article shall not apply to vehicles when operated with due regard for safety under the direction of the police in the chase or apprehension of violators of the law or of persons charged with or suspected of any such violation, nor to fire department or fire patrol vehicles when traveling in response to a fire alarm, nor to public or private ambulances and rescue squad emergency service vehicles when traveling in emergencies, nor to vehicles operated by county fire marshals and civil preparedness coordinators when traveling in the performances of their ~~duties.~~duties, nor to any of the following when either operated by a law enforcement officer in the chase or apprehension of violators of the law or of persons charged with, or suspected of, any such violation, when traveling in response to a fire alarm, or for other emergency response purposes: (i) a vehicle operated by the Division of Marine Fisheries or the Division of Parks and Recreation of the Department of Environment and Natural Resources; or (ii) a vehicle operated by the North Carolina Forest Service of the Department of Agriculture and Consumer Services. This exemption shall not, however, protect the driver of any such vehicle from the consequence of a reckless disregard of the safety of others."

SECTION 1.(d) G.S. 20-156(b) reads as rewritten:

"(b) The driver of a vehicle upon the highway shall yield the right-of-way to police and fire department vehicles and public and private ambulances, vehicles used by an organ procurement organization or agency for the recovery or transportation of human tissues and organs for transplantation or a vehicle operated by a transplant coordinator who is an employee of an organ procurement organization or agency when the transplant coordinator is responding to a call to recover or transport human tissues or organs for transplantation, and to rescue squad emergency service vehicles and vehicles operated by county fire marshals and civil preparedness ~~coordinators~~ coordinators, and to a vehicle operated by the Division of Marine Fisheries or the Division of Parks and Recreation of the Department of Environment and Natural Resources when used for law enforcement, fire-fighting, or other emergency response purpose, and to a vehicle operated by the North Carolina Forest Service of the Department of Agriculture and Consumer Services when used for a law enforcement, fire-fighting, or other emergency response purpose, when the operators of said vehicles are giving a warning signal by appropriate light and by bell, siren or exhaust whistle audible under normal conditions from

a distance not less than 1,000 feet. When appropriate warning signals are being given, as provided in this subsection, an emergency vehicle may proceed through an intersection or other place when the emergency vehicle is facing a stop sign, a yield sign, or a traffic light which is emitting a flashing strobe signal or a beam of steady or flashing red light. This provision shall not operate to relieve the driver of a police or fire department vehicle, or a vehicle owned or operated by the Department of Environment and Natural Resources, or the Department of Agriculture and Consumer Services, or public or private ambulance or vehicles used by an organ procurement organization or agency for the recovery or transportation of human tissues and organs for transplantation or a vehicle operated by a transplant coordinator who is an employee of an organ procurement organization or agency when the transplant coordinator is responding to a call to recover or transport human tissues or organs for transplantation, or rescue squad emergency service vehicle or county fire marshals or civil preparedness coordinators from the duty to drive with due regard for the safety of all persons using the highway, nor shall it protect the driver of any such vehicle or county fire marshal or civil preparedness coordinator from the consequence of any arbitrary exercise of such right-of-way."

SECTION 1.(e) G.S. 20-157(a) reads as rewritten:

"(a) Upon the approach of any law enforcement or fire department vehicle or public or private ambulance or rescue squad emergency service vehicle, or a vehicle operated by the Division of Marine Fisheries, or the Division of Parks and Recreation of the Department of Environment and Natural Resources, or the North Carolina Forest Service of the Department of Agriculture and Consumer Services when traveling in response to a fire alarm or other emergency response purpose giving warning signal by appropriate light and by audible bell, siren or exhaust whistle, audible under normal conditions from a distance not less than 1000 feet, the driver of every other vehicle shall immediately drive the same to a position as near as possible and parallel to the right-hand edge or curb, clear of any intersection of streets or highways, and shall stop and remain in such position unless otherwise directed by a law enforcement or traffic officer until the law enforcement or fire department vehicle, or the vehicle operated by the Division of Marine Fisheries, or the Division of Parks and Recreation of the Department of Environment and Natural Resources, or the North Carolina Forest Service of the Department of Agriculture and Consumer Services, or the public or private ambulance or rescue squad emergency service vehicle shall have passed. Provided, however, this subsection shall not apply to vehicles traveling in the opposite direction of the vehicles herein enumerated when traveling on a four-lane limited access highway with a median divider dividing the highway for vehicles traveling in opposite directions, and provided further that the violation of this subsection shall be negligence per se. Violation of this subsection is a Class 2 misdemeanor."

SECTION 2. The Department of Public Safety shall study methods of allowing prisoners to contribute to cleanup and mitigation efforts in connection with states of emergency declared in this State. No later than October 1, 2013, the Department shall report its findings and recommendations to the Joint Legislative Emergency Management Oversight Committee and to the Joint Legislative Oversight Committee on Justice and Public Safety. The report shall include at least the following:

(1) A list of the type and number of prisoners incarcerated by the Department of Public Safety that might be available to respond to emergencies in this State.

(2) Options for methods of deploying prisoners to respond to, and assist with, cleanup and mitigation efforts in connection with states of emergency based on the type and location of an emergency.

(3) A statement of the resources that would be required to implement these options and an estimate of the cost of each option.

(4) Identification of any legal, practical, or financial obstacles that would need to be addressed before prisoners could be deployed in this manner.

SECTION 3. Section 1 of this act becomes effective October 1, 2013. The remainder of this act is effective when it becomes law.

Favorable

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

S D

SENATE BILL 38*
PROPOSED COMMITTEE SUBSTITUTE S38-PCS15108-TA-1

Short Title: Various Emergency Management Changes. (Public)

Sponsors:

Referred to:

February 4, 2013

A BILL TO BE ENTITLED

AN ACT TO MAKE VARIOUS CHANGES TO THE EMERGENCY MANAGEMENT LAWS OF THIS STATE, AS RECOMMENDED BY THE JOINT LEGISLATIVE EMERGENCY MANAGEMENT OVERSIGHT COMMITTEE.

The General Assembly of North Carolina enacts:

SECTION 1.(a) G.S. 20-125(b) reads as rewritten:

"(b) Every vehicle owned ~~and~~ or operated by a police department or by the Department of Public Safety including the State Highway Patrol or by the Wildlife Resources Commission or the Division of Marine Fisheries, or by the Division of Parks and Recreation of the Department of Environment and Natural Resources, or by the North Carolina Forest Service of the Department of Agriculture and Consumer Services, and used exclusively for law ~~enforcement~~ enforcement, firefighting, or other emergency response purposes, or by the Division of Emergency Management, or by a fire department, either municipal or rural, or by a fire patrol, whether such fire department or patrol be a paid organization or a voluntary association, vehicles used by an organ procurement organization or agency for the recovery and transportation of human tissues and organs for transplantation, and every ambulance or emergency medical service emergency support vehicle used for answering emergency calls, shall be equipped with special lights, bells, sirens, horns or exhaust whistles of a type approved by the Commissioner of Motor Vehicles.

The operators of all such vehicles so equipped are hereby authorized to use such equipment at all times while engaged in the performance of their duties and services, both within their respective corporate limits and beyond.

In addition to the use of special equipment authorized and required by this subsection, the chief and assistant chiefs of any police department or of any fire department, whether the same be municipal or rural, paid or voluntary, county fire marshals, assistant fire marshals, transplant coordinators, and emergency management coordinators, are hereby authorized to use such special equipment on privately owned vehicles operated by them while actually engaged in the performance of their official or semiofficial duties or services either within or beyond their respective corporate limits.

And vehicles driven by law enforcement officers of the North Carolina Division of Motor Vehicles shall be equipped with a bell, siren, or exhaust whistle of a type approved by the Commissioner, and all vehicles owned and operated by the State Bureau of Investigation for the use of its agents and officers in the performance of their official duties may be equipped with special lights, bells, sirens, horns or exhaust whistles of a type approved by the Commissioner of Motor Vehicles.

Every vehicle used or operated for law enforcement purposes by the sheriff or any salaried deputy sheriff or salaried rural policeman of any county, whether owned by the county or not, may be, but is not required to be, equipped with special lights, bells, sirens, horns or exhaust whistles of a type approved by the Commissioner of Motor Vehicles. Such special equipment shall not be operated or activated by any person except by a law enforcement officer while actively engaged in performing law enforcement duties.

In addition to the use of special equipment authorized and required by this subsection, the chief and assistant chiefs of each emergency rescue squad which is recognized or sponsored by any municipality or civil preparedness agency, are hereby authorized to use such special equipment on privately owned vehicles operated by them while actually engaged in their official or semiofficial duties or services either within or beyond the corporate limits of the municipality which recognizes or sponsors such organization."

SECTION 1.(b) G.S. 20-130.1 reads as rewritten:

"**§ 20-130.1. Use of red or blue lights on vehicles prohibited; exceptions.**

(a) It is unlawful for any person to install or activate or operate a red light in or on any vehicle in this State. As used in this subsection, unless the context requires otherwise, "red light" means an operable red light not sealed in the manufacturer's original package which: (i) is designed for use by an emergency vehicle or is similar in appearance to a red light designed for use by an emergency vehicle; and (ii) can be operated by use of the vehicle's battery, vehicle's electrical system, or a dry cell battery. As used in this subsection, the term "red light" shall also mean any forward facing red light installed on a vehicle after initial manufacture of the vehicle.

(b) The provisions of subsection (a) of this section do not apply to the following:

(1) A police ~~car;~~vehicle.

(2) A highway patrol ~~car;~~vehicle.

(3) A vehicle owned by the Wildlife Resources Commission and operated exclusively for ~~law enforcement purposes;~~law enforcement, firefighting, or other emergency response purposes.

(4) An ~~ambulance;~~ambulance.

(5) A vehicle used by an organ procurement organization or agency for the recovery and transportation of blood, human tissues, or organs for ~~transplantation;~~transplantation.

(6) A fire-fighting ~~vehicle;~~vehicle.

(7) A school ~~bus;~~bus.

(8) A vehicle operated by any member of a municipal or rural fire department in the performance of his duties, regardless of whether members of that fire department are paid or ~~voluntary;~~voluntary.

(9) A vehicle of a voluntary lifesaving organization (including the private vehicles of the members of such an organization) that has been officially approved by the local police authorities and which is manned or operated by members of that organization while answering an official ~~call;~~call.

(10) A vehicle operated by medical doctors or anesthetists in ~~emergencies;~~emergencies.

(11) A motor vehicle used in law enforcement by the sheriff, or any salaried rural policeman in any county, regardless of whether or not the county owns the ~~vehicle;~~vehicle.

(11a) A vehicle operated by the State Fire Marshal or his representatives in the performance of their duties, whether or not the State owns the ~~vehicle;~~vehicle.

(12) A vehicle operated by any county fire marshal, assistant fire marshal, or emergency management coordinator in the performance of his duties, regardless of whether or not the county owns the ~~vehicle;~~vehicle.
(13) A light required by the Federal Highway ~~Administration;~~Administration.
(14) A vehicle operated by a transplant coordinator who is an employee of an organ procurement organization or agency when the transplant coordinator is responding to a call to recover or transport human tissues or organs for ~~transplantation;~~transplantation.
(15) A vehicle operated by an emergency medical service as an emergency support ~~vehicle;~~vehicle.
(16) A State emergency management ~~vehicle; and~~vehicle.
(17) An Incident Management Assistance Patrol vehicle operated by the Department of Transportation, when using rear-facing red lights while stopped for the purpose of providing assistance or incident management.
(18) A vehicle operated by the Division of Marine Fisheries or the Division of Parks and Recreation of the Department of Environment and Natural Resources that is used for law enforcement, firefighting, or other emergency response purposes.
(19) A vehicle operated by the North Carolina Forest Service of the Department of Agriculture and Consumer Services that is used for law enforcement, firefighting, or other emergency response purposes.
(20) A vehicle operated by official members or Teams of REACT International, Inc., that is used to provide additional manpower authorized by law enforcement, firefighting, or other emergency response entities.

...."

SECTION 1.(c) G.S. 20-145 reads as rewritten:

"**§ 20-145. When speed limit not applicable.**

The speed limitations set forth in this Article shall not apply to vehicles when operated with due regard for safety under the direction of the police in the chase or apprehension of violators of the law or of persons charged with or suspected of any such violation, nor to fire department or fire patrol vehicles when traveling in response to a fire alarm, nor to public or private ambulances and rescue squad emergency service vehicles when traveling in emergencies, nor to vehicles operated by county fire marshals and civil preparedness coordinators when traveling in the performances of their ~~duties.~~duties, nor to any of the following when either operated by a law enforcement officer in the chase or apprehension of violators of the law or of persons charged with or suspected of any such violation, when traveling in response to a fire alarm, or for other emergency response purposes (i) a vehicle operated by the Division of Marine Fisheries or the Division of Parks and Recreation of the Department of Environment and Natural Resources or (ii) a vehicle operated by the North Carolina Forest Service of the Department of Agriculture and Consumer Services. This exemption shall not, however, protect the driver of any such vehicle from the consequence of a reckless disregard of the safety of others."

SECTION 1.(d) G.S. 20-156(b) reads as rewritten:

"(b) The driver of a vehicle upon the highway shall yield the right-of-way to police and fire department vehicles and public and private ambulances, vehicles used by an organ procurement organization or agency for the recovery or transportation of human tissues and organs for transplantation or a vehicle operated by a transplant coordinator who is an employee of an organ procurement organization or agency when the transplant coordinator is responding to a call to recover or transport human tissues or organs for transplantation, and to rescue squad emergency service vehicles and vehicles operated by county fire marshals and civil preparedness ~~coordinators~~ coordinators, and to a vehicle operated by the Division of Marine

Fisheries or the Division of Parks and Recreation of the Department of Environment and Natural Resources when used for law enforcement, firefighting, or other emergency response purposes, and to a vehicle operated by the North Carolina Forest Service of the Department of Agriculture and Consumer Services when used for a law enforcement, firefighting, or other emergency response purpose, when the operators of said vehicles are giving a warning signal by appropriate light and by bell, siren or exhaust whistle audible under normal conditions from a distance not less than 1,000 feet. When appropriate warning signals are being given, as provided in this subsection, an emergency vehicle may proceed through an intersection or other place when the emergency vehicle is facing a stop sign, a yield sign, or a traffic light which is emitting a flashing strobe signal or a beam of steady or flashing red light. This provision shall not operate to relieve the driver of a police or fire department vehicle, or a vehicle owned or operated by the Department of Environment and Natural Resources, or the Department of Agriculture and Consumer Services, or public or private ambulance or vehicles used by an organ procurement organization or agency for the recovery or transportation of human tissues and organs for transplantation or a vehicle operated by a transplant coordinator who is an employee of an organ procurement organization or agency when the transplant coordinator is responding to a call to recover or transport human tissues or organs for transplantation, or rescue squad emergency service vehicle or county fire marshals or civil preparedness coordinators from the duty to drive with due regard for the safety of all persons using the highway, nor shall it protect the driver of any such vehicle or county fire marshal or civil preparedness coordinator from the consequence of any arbitrary exercise of such right-of-way."

SECTION 1.(e) G.S. 20-157(a) reads as rewritten:

"(a) Upon the approach of any law enforcement or fire department vehicle or public or private ambulance or rescue squad emergency service vehicle, or a vehicle operated by the Division of Marine Fisheries, or the Division of Parks and Recreation of the Department of Environment and Natural Resources, or the North Carolina Forest Service of the Department of Agriculture and Consumer Services when traveling in response to a fire alarm or other emergency response purpose giving warning signal by appropriate light and by audible bell, siren or exhaust whistle, audible under normal conditions from a distance not less than 1000 feet, the driver of every other vehicle shall immediately drive the same to a position as near as possible and parallel to the right-hand edge or curb, clear of any intersection of streets or highways, and shall stop and remain in such position unless otherwise directed by a law enforcement or traffic officer until the law enforcement or fire department vehicle, or the vehicle operated by the Division of Marine Fisheries, or the Division of Parks and Recreation of the Department of Environment and Natural Resources, or the North Carolina Forest Service of the Department of Agriculture and Consumer Services, or the public or private ambulance or rescue squad emergency service vehicle shall have passed. Provided, however, this subsection shall not apply to vehicles traveling in the opposite direction of the vehicles herein enumerated when traveling on a four-lane limited access highway with a median divider dividing the highway for vehicles traveling in opposite directions, and provided further that the violation of this subsection shall be negligence per se. Violation of this subsection is a Class 2 misdemeanor."

SECTION 2. The Department of Public Safety shall study methods of allowing prisoners to contribute to cleanup and mitigation efforts in connection with states of emergency declared in this State. No later than October 1, 2013, the Department shall report its findings and recommendations to the Joint Legislative Emergency Management Oversight Committee and to the Joint Legislative Oversight Committee on Justice and Public Safety. The report shall include at least the following:

(1) A list of the type and number of prisoners incarcerated by the Department of Public Safety that might be available to respond to emergencies in this State.

(2) Options for methods of deploying prisoners to respond to and assist with cleanup and mitigation efforts in connection with states of emergency based on the type and location of an emergency.

(3) A statement of the resources that would be required to implement these options and an estimate of the cost of each option.

(4) Identification of any legal, practical, or financial obstacles that would need to be addressed before prisoners could be deployed in this manner.

SECTION 3. Section 1 of this act becomes effective October 1, 2013. The remainder of this act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

S D

SENATE BILL 38*
PROPOSED COMMITTEE SUBSTITUTE S38-CSTA-1 [v.2]
3/11/2013 11:55:12 AM

Short Title: Various Emergency Management Changes. (Public)

Sponsors:

Referred to:

February 4, 2013

A BILL TO BE ENTITLED

AN ACT TO MAKE VARIOUS CHANGES TO THE EMERGENCY MANAGEMENT LAWS OF THIS STATE, AS RECOMMENDED BY THE JOINT LEGISLATIVE EMERGENCY MANAGEMENT OVERSIGHT COMMITTEE.

The General Assembly of North Carolina enacts:

SECTION 1.(a) G.S. 20-125(b) reads as rewritten:

"(b) Every vehicle owned ~~and~~ or operated by a police department or by the Department of Public Safety including the State Highway Patrol or by the Wildlife Resources Commission or the Division of Marine Fisheries, or by the Division of Parks and Recreation of the Department of Environment and Natural Resources, or by the North Carolina Forest Service of the Department of Agriculture and Consumer Services, and used exclusively for law ~~enforcement~~ enforcement, fire-fighting, or other emergency response purposes, or by the Division of Emergency Management, or by a fire department, either municipal or rural, or by a fire patrol, whether such fire department or patrol be a paid organization or a voluntary association, vehicles used by an organ procurement organization or agency for the recovery and transportation of human tissues and organs for transplantation, and every ambulance or emergency medical service emergency support vehicle used for answering emergency calls, shall be equipped with special lights, bells, sirens, horns or exhaust whistles of a type approved by the Commissioner of Motor Vehicles.

The operators of all such vehicles so equipped are hereby authorized to use such equipment at all times while engaged in the performance of their duties and services, both within their respective corporate limits and beyond.

In addition to the use of special equipment authorized and required by this subsection, the chief and assistant chiefs of any police department or of any fire department, whether the same be municipal or rural, paid or voluntary, county fire marshals, assistant fire marshals, transplant coordinators, and emergency management coordinators, are hereby authorized to use such special equipment on privately owned vehicles operated by them while actually engaged in the performance of their official or semiofficial duties or services either within or beyond their respective corporate limits.

And vehicles driven by law enforcement officers of the North Carolina Division of Motor Vehicles shall be equipped with a bell, siren, or exhaust whistle of a type approved by the Commissioner, and all vehicles owned and operated by the State Bureau of Investigation for the use of its agents and officers in the performance of their official duties may be equipped with special lights, bells, sirens, horns or exhaust whistles of a type approved by the Commissioner of Motor Vehicles.

Every vehicle used or operated for law enforcement purposes by the sheriff or any salaried deputy sheriff or salaried rural policeman of any county, whether owned by the county or not, may be, but is not required to be, equipped with special lights, bells, sirens, horns or exhaust whistles of a type approved by the Commissioner of Motor Vehicles. Such special equipment shall not be operated or activated by any person except by a law enforcement officer while actively engaged in performing law enforcement duties.

In addition to the use of special equipment authorized and required by this subsection, the chief and assistant chiefs of each emergency rescue squad which is recognized or sponsored by any municipality or civil preparedness agency, are hereby authorized to use such special equipment on privately owned vehicles operated by them while actually engaged in their official or semiofficial duties or services either within or beyond the corporate limits of the municipality which recognizes or sponsors such organization."

SECTION 1.(b) G.S. 20-130.1 reads as rewritten:

"**§ 20-130.1. Use of red or blue lights on vehicles prohibited; exceptions.**

(a) It is unlawful for any person to install or activate or operate a red light in or on any vehicle in this State. As used in this subsection, unless the context requires otherwise, "red light" means an operable red light not sealed in the manufacturer's original package which: (i) is designed for use by an emergency vehicle or is similar in appearance to a red light designed for use by an emergency vehicle; and (ii) can be operated by use of the vehicle's battery, vehicle's electrical system, or a dry cell battery. As used in this subsection, the term "red light" shall also mean any forward facing red light installed on a vehicle after initial manufacture of the vehicle.

(b) The provisions of subsection (a) of this section do not apply to the following:

(1) A police ~~car;~~vehicle.

(2) A highway patrol ~~car;~~vehicle.

(3) A vehicle owned by the Wildlife Resources Commission and operated exclusively for ~~law enforcement purposes;~~law enforcement, fire-fighting, or other emergency response purposes.

(4) An ~~ambulance;~~ambulance.

(5) A vehicle used by an organ procurement organization or agency for the recovery and transportation of blood, human tissues, or organs for ~~transplantation;~~transplantation.

(6) A fire-fighting ~~vehicle;~~vehicle.

(7) A school ~~bus;~~bus.

(8) A vehicle operated by any member of a municipal or rural fire department in the performance of his duties, regardless of whether members of that fire department are paid or ~~voluntary;~~voluntary.

(9) A vehicle of a voluntary lifesaving organization (including the private vehicles of the members of such an organization) that has been officially approved by the local police authorities and which is manned or operated by members of that organization while answering an official ~~call;~~call.

(10) A vehicle operated by medical doctors or anesthetists in ~~emergencies;~~emergencies.

(11) A motor vehicle used in law enforcement by the sheriff, or any salaried rural policeman in any county, regardless of whether or not the county owns the ~~vehicle;~~vehicle.

(11a) A vehicle operated by the State Fire Marshal or his representatives in the performance of their duties, whether or not the State owns the ~~vehicle;~~vehicle.

(12) A vehicle operated by any county fire marshal, assistant fire marshal, or emergency management coordinator in the performance of his duties, regardless of whether or not the county owns the ~~vehicle;~~vehicle.
(13) A light required by the Federal Highway ~~Administration;~~Administration.
(14) A vehicle operated by a transplant coordinator who is an employee of an organ procurement organization or agency when the transplant coordinator is responding to a call to recover or transport human tissues or organs for ~~transplantation;~~transplantation.
(15) A vehicle operated by an emergency medical service as an emergency support ~~vehicle;~~vehicle.
(16) A State emergency management ~~vehicle; and~~vehicle.
(17) An Incident Management Assistance Patrol vehicle operated by the Department of Transportation, when using rear-facing red lights while stopped for the purpose of providing assistance or incident management.
(18) A vehicle operated by the Division of Marine Fisheries or the Division of Parks and Recreation of the Department of Environment and Natural Resources that is used for law enforcement, fire-fighting, or other emergency response purpose.
(19) A vehicle operated by the North Carolina Forest Service of the Department of Agriculture and Consumer Services that is used for law enforcement, fire-fighting, or other emergency response purpose.
(20) A vehicle operated by official members or Teams of REACT International, Inc. that is used to provide additional manpower authorized by law enforcement, fire-fighting, or other emergency response entity.

...."

SECTION 1.(c) G.S. 20-145 reads as rewritten:

"**§ 20-145. When speed limit not applicable.**

The speed limitations set forth in this Article shall not apply to vehicles when operated with due regard for safety under the direction of the police in the chase or apprehension of violators of the law or of persons charged with or suspected of any such violation, nor to fire department or fire patrol vehicles when traveling in response to a fire alarm, nor to public or private ambulances and rescue squad emergency service vehicles when traveling in emergencies, nor to vehicles operated by county fire marshals and civil preparedness coordinators when traveling in the performances of their ~~duties.~~duties, nor to any of the following when either operated by a law enforcement officer in the chase or apprehension of violators of the law or of persons charged with, or suspected of, any such violation, when traveling in response to a fire alarm, or for other emergency response purposes: (i) a vehicle operated by the Division of Marine Fisheries or the Division of Parks and Recreation of the Department of Environment and Natural Resources; or (ii) a vehicle operated by the North Carolina Forest Service of the Department of Agriculture and Consumer Services. This exemption shall not, however, protect the driver of any such vehicle from the consequence of a reckless disregard of the safety of others."

SECTION 1.(d) G.S. 20-156(b) reads as rewritten:

"(b) The driver of a vehicle upon the highway shall yield the right-of-way to police and fire department vehicles and public and private ambulances, vehicles used by an organ procurement organization or agency for the recovery or transportation of human tissues and organs for transplantation or a vehicle operated by a transplant coordinator who is an employee of an organ procurement organization or agency when the transplant coordinator is responding to a call to recover or transport human tissues or organs for transplantation, and to rescue squad emergency service vehicles and vehicles operated by county fire marshals and civil preparedness ~~coordinators~~ coordinators, and to a vehicle operated by the Division of Marine

Fisheries or the Division of Parks and Recreation of the Department of Environment and Natural Resources when used for law enforcement, fire-fighting, or other emergency response purpose, and to a vehicle operated by the North Carolina Forest Service of the Department of Agriculture and Consumer Services when used for a law enforcement, fire-fighting, or other emergency response purpose, when the operators of said vehicles are giving a warning signal by appropriate light and by bell, siren or exhaust whistle audible under normal conditions from a distance not less than 1,000 feet. When appropriate warning signals are being given, as provided in this subsection, an emergency vehicle may proceed through an intersection or other place when the emergency vehicle is facing a stop sign, a yield sign, or a traffic light which is emitting a flashing strobe signal or a beam of steady or flashing red light. This provision shall not operate to relieve the driver of a police or fire department vehicle, or a vehicle owned or operated by the Department of Environment and Natural Resources, or the Department of Agriculture and Consumer Services, or public or private ambulance or vehicles used by an organ procurement organization or agency for the recovery or transportation of human tissues and organs for transplantation or a vehicle operated by a transplant coordinator who is an employee of an organ procurement organization or agency when the transplant coordinator is responding to a call to recover or transport human tissues or organs for transplantation, or rescue squad emergency service vehicle or county fire marshals or civil preparedness coordinators from the duty to drive with due regard for the safety of all persons using the highway, nor shall it protect the driver of any such vehicle or county fire marshal or civil preparedness coordinator from the consequence of any arbitrary exercise of such right-of-way."

SECTION 1.(e) G.S. 20-157(a) reads as rewritten:

"(a) Upon the approach of any law enforcement or fire department vehicle or public or private ambulance or rescue squad emergency service vehicle, or a vehicle operated by the Division of Marine Fisheries, or the Division of Parks and Recreation of the Department of Environment and Natural Resources, or the North Carolina Forest Service of the Department of Agriculture and Consumer Services when traveling in response to a fire alarm or other emergency response purpose giving warning signal by appropriate light and by audible bell, siren or exhaust whistle, audible under normal conditions from a distance not less than 1000 feet, the driver of every other vehicle shall immediately drive the same to a position as near as possible and parallel to the right-hand edge or curb, clear of any intersection of streets or highways, and shall stop and remain in such position unless otherwise directed by a law enforcement or traffic officer until the law enforcement or fire department vehicle, or the vehicle operated by the Division of Marine Fisheries, or the Division of Parks and Recreation of the Department of Environment and Natural Resources, or the North Carolina Forest Service of the Department of Agriculture and Consumer Services, or the public or private ambulance or rescue squad emergency service vehicle shall have passed. Provided, however, this subsection shall not apply to vehicles traveling in the opposite direction of the vehicles herein enumerated when traveling on a four-lane limited access highway with a median divider dividing the highway for vehicles traveling in opposite directions, and provided further that the violation of this subsection shall be negligence per se. Violation of this subsection is a Class 2 misdemeanor."

SECTION 2. The Department of Public Safety shall study methods of allowing prisoners to contribute to cleanup and mitigation efforts in connection with states of emergency declared in this State. No later than October 1, 2013, the Department shall report its findings and recommendations to the Joint Legislative Emergency Management Oversight Committee and to the Joint Legislative Oversight Committee on Justice and Public Safety. The report shall include at least the following:

(1) A list of the type and number of prisoners incarcerated by the Department of Public Safety that might be available to respond to emergencies in this State.

(2) Options for methods of deploying prisoners to respond to, and assist with, cleanup and mitigation efforts in connection with states of emergency based on the type and location of an emergency.

(3) A statement of the resources that would be required to implement these options and an estimate of the cost of each option.

(4) Identification of any legal, practical, or financial obstacles that would need to be addressed before prisoners could be deployed in this manner.

SECTION 3. Section 1 of this act becomes effective October 1, 2013. The remainder of this act is effective when it becomes law.

SENATE BILL 38:
Various Emergency Management Changes

2013-2014 General Assembly

Committee:	Senate Agriculture/Environment/Natural Resources	**Date:**	March 12, 2013
Introduced by:	Sen. Jackson	**Prepared by:**	Jennifer Mundt
Analysis of:	PCS to First Edition S38-CSTA-1 [v.2]		Legislative Analyst

SUMMARY: ***Senate Bill 38 makes various changes to the emergency management laws, as recommended by the Joint Legislative Emergency Management Oversight Committee.***

[As introduced, this bill was identical to H15, as introduced by Reps. Faircloth, Saine, Boles, which is currently in Senate Agriculture/Environment/Natural Resources.]

BILL ANALYSIS:

Section 1 of Senate Bill 38 makes changes to various statutes in order to facilitate the use of vehicles exclusively for law enforcement, fire-fighting, or other emergency response purposes by the Divisions of Marine Fisheries and Parks and Recreation of the Department of Environment and Natural Resources, and the North Carolina Forest Service of the Department of Agriculture and Consumer Services.

Section 1.(a) authorizes the installation of lights and sirens on those vehicles.

Section 1.(b) authorizes the use of the red or blue lights by those vehicles. ***The PCS for Senate Bill 38*** would authorize the use of red or blue lights by vehicles operated by official members or Teams of REACT International, Inc. that are used to provide additional manpower authorized by law enforcement, fire-fighting, or other emergency response entity.

Section 1.(c) authorizes those vehicles to exceed the speed limit when being operated by a law enforcement officer to apprehend a violator of the law, when traveling in response to a fire alarm, or for other emergency response purposes.

Section 1.(d) requires motorists to yield the right of way to those vehicles when they are operating lights and sirens.

Section 1.(e) requires motorists to move to the side of the road and stop for those vehicles when they are operating lights and sirens.

Section 2 of Senate Bill 38 directs the Department of Public Safety to study methods of allowing prisoners to contribute to cleanup and mitigation efforts in connection with states of emergency declared in this State. The Department is required to report to the Joint Legislative Emergency Management Oversight Committee and the Joint Legislative Oversight Committee on Justice and Public Safety no later than October 1, 2013.

EFFECTIVE DATE: Section 1 of this act would become effective October 1, 2013. The remainder of this act would be effective when it becomes law.

Susan Sitze, counsel to House Judiciary Subcommittee A, substantially contributed to this summary.

O. Walker Reagan
Director

S38-SMTA-2 CSTA-1 V2 -V1

Research Division
(919) 733-2578

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

Favorable

H 2

HOUSE BILL 33*
Committee Substitute Favorable 2/25/13

Short Title: Cleveland/Polk/Rutherford Trapping Repeal. (Local)

Sponsors:

Referred to:

February 4, 2013

A BILL TO BE ENTITLED

AN ACT TO REPEAL THE LAW PROHIBITING THE SETTING OF STEEL TRAPS ON CERTAIN RENTED OR LEASED LAND IN CLEVELAND, POLK, AND RUTHERFORD COUNTIES.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 397 of the 1975 Session Laws is repealed.

SECTION 2. Chapter 765 of the 1977 Session Laws reads as rewritten:

"**Sec. 5.** This act shall apply to Alleghany, Avery, ~~Cleveland,~~ Forsyth, Mitchell, Moore, Nash, Stokes and Yadkin Counties only."

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

HOUSE BILL 33:
Cleveland/Polk/Rutherford Trapping Repeal

2013-2014 General Assembly

Committee:	Senate Agriculture/Environment/Natural Resources	**Date:**	March 12, 2013
Introduced by:	Reps. Whitmire, Hager, T. Moore, Hastings	**Prepared by:**	Chris Saunders Committee Counsel
Analysis of:	Second Edition		

SUMMARY: House Bill 33 would repeal the prohibition on trapping animals in Cleveland, Polk, and Rutherford counties.

[As introduced, this bill was identical to S80, as introduced by Sens. Hise, Daniel, which is currently in Rules and Operations of the Senate.]

CURRENT LAW: Chapter 397 of the 1975 Session Laws prohibits any person from setting or possessing steel traps or taking any animals therefrom except on the person's own land or lands leased solely for agricultural purposes in Cleveland, Polk, and Rutherford Counties.

Chapter 765 of the 1977 Session Laws prohibits any person from setting or using certain steel-jaw, leg-gripping, or connibear traps in nine counties, including Cleveland County, except on the person's own land or on another's land when the person has the landowner's written permission.

G.S. 113-291.6 regulates the trapping of wild animals. The statute prohibits trapping on the land of another without having written permission from the landowner and prevents an animal from being taken by trapping with any steel-jaw, leg hold, or connibear trap unless certain conditions are met. It is unlawful to set or otherwise use a trap so that animals or birds when caught will be suspended, and no hook of any type may be used to take wild animals or wild birds by trapping. A person who violates G.S. 113-291.6 is guilty of a Class 2 misdemeanor.

BILL ANALYSIS: House Bill 33 would repeal the prohibitions on using steel traps for Cleveland, Polk, and Rutherford counties and make conforming changes. Like all counties, Cleveland, Polk, and Rutherford counties would be subject to the statewide trapping provisions in G.S. 113-291.6.

EFFECTIVE DATE: This act is effective when it becomes law.

Kelly Quick, counsel to House Government, substantially contributed to this summary.

O. Walker Reagan
Director

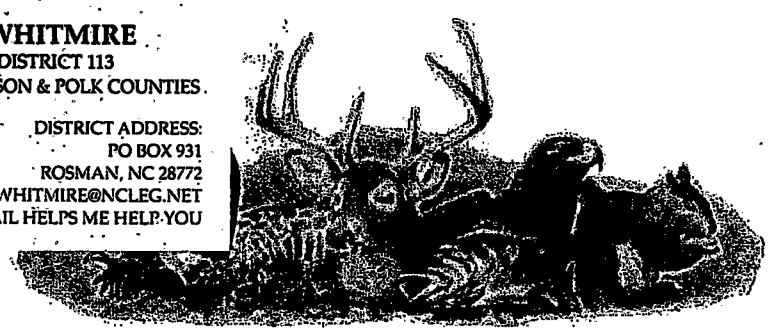
H33-SMTQ-14 E2 -V4

Research Division
(919) 733-2578

REPRESENTATIVE CHRIS WHITMIRE
N.C. HOUSE OF REPRESENTATIVES - DISTRICT 113
TRANSYLVANIA, SOUTHERN HENDERSON & POLK COUNTIES

537 LEGISLATIVE OFFICE BUILDING
300 N. SALISBURY STREET
RALEIGH, NC 27603-5925
(919) 715-4466
(919) 754-3288 FAX

DISTRICT ADDRESS:
PO BOX 931
ROSMAN, NC 28772
CHRIS.WHITMIRE@NCLEG.NET
YOUR EMAIL HELPS ME HELP YOU



North Carolina Wildlife Resources Commission

Gordon Myers, Executive Director

February 20, 2013

The Honorable Chris Whitmire
NC House of Representatives
Legislative Office Building, Room 537
Raleigh, NC 27603

Representative Whitmire:

On behalf of the Wildlife Resources Commission, thank you for allowing me to comment on House Bill 33 "Cleveland/Polk/Rutherford Trapping Repeal"

Trapping is an integral component of wildlife conservation programs that controls abundant wildlife, removes nuisance animals, aids in restoring native species, and protects habitat, while reducing human-wildlife conflicts and disease. Trapping also helps reduce and resolve damage to agricultural crops and personal property, while removing problem wildlife that may also be a threat to human and pet health. All of the data collected through these practices assists our staff by providing reliable data on the furbearer populations of our state.

Modern trapping gear is highly regulated and its use is strictly enforced by the N.C. Wildlife Resources Commission. Regulations define allowable gear and trap size restrictions for land and water applications. All foothold traps are required to be smooth edged and without teeth. Also, all land set traps must be checked daily. North Carolina trapping regulations incorporate best management practices (BMP) developed in collaboration with the Association of Fish and Wildlife Agencies, an organization that represents North America's fish and wildlife agencies to advance sound, science-based management and conservation of fish and wildlife and their habitats in the public interest. BMP evaluations are based on animal welfare, trapping efficiency, selectivity, practicality and safety. The American Association of Wildlife Veterinarians supports the use of foot-hold traps for research, population management, disease surveillance and control and for recreational use by trappers under these strict guidelines.

At this time, Session Law 1975-397 prevents landowners in Polk and Rutherford Counties from using a versatile and proven management tool to resolve conflicts and protect property. That tool is available to property owners in our other 98 counties.

Sincerely,

Gordon Myers
Executive Director

Mailing Address: 1717 Mail Service Center • Raleigh, NC 27699-1717
Telephone: (919) 707-0030 • **Fax:** (919) 707-0045

S

SENATE BILL 171

Short Title:	Limit Regulation of Greenhouse Gas Emissions.	(Public)
Sponsors:	Senators Jackson, Brock, and J. Davis (Primary Sponsors).	
Referred to:	Agriculture/Environment/Natural Resources.	

March 5, 2013

A BILL TO BE ENTITLED

AN ACT TO PROHIBIT STATE AGENCIES AND LOCAL GOVERNMENTS FROM ADOPTING, IMPLEMENTING, OR ENFORCING A RULE OR ORDINANCE THAT REGULATES GREENHOUSE GAS EMISSIONS OR LIMITS HUMAN ACTIVITY FOR THE PURPOSE OF REDUCING GREENHOUSE GAS EMISSIONS IF THE RULE OR ORDINANCE IS NOT REQUIRED BY A FEDERAL REGULATION OR LAW 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. Notwithstanding any other provision of law, no unit of local government may adopt, implement, or enforce a rule or ordinance that regulates greenhouse gas emissions or that limits human activity for the purpose of reducing greenhouse gas emissions if the rule or ordinance 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.

VISITOR REGISTRATION SHEET

Senate/Agriculture/Environment/Natural Resources
(Committee Name)

3/12/2013
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Rob Hayden	Kaplan Law Firm
Doug Lassiter	NCSTA
Tracy Hartsell	NCPE/NCCA
TJ Bugbee	Nexsen Pruet
Andy Chase	KMA
Tommy Senter	Moore and Van Allen
Will Morgan	TNC
Dan Conrad	NCUC
Beatrice Williams	CUCA
Matt Vichl	CW Consult
Dan Oakley	NCRMA
Erin Wynia	NCLM
Ryan Combs	DPS
Doug Hallrook	DOS
Garret Burr	DOS
Will Hartsfield	Indy Week

VISITOR REGISTRATION SHEET

Senate/Agriculture/Environment/Natural Resources
(Committee Name)

3/12/2013
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Peter Rabe	American Rivers
Tom Beam	EDF, NCWF
Harry Johnson	Capital Group Sierra Club
Greg Pate	NCDA&CS Forest Service
Joy Hicks	NCDA&CS
Craig Clarke	NCDA&CS Forest Service
Kay Emanuel	School of Government
Amy Simes	NCDENR
Brooks Rainey Pearson	SELC
MayMalle Abill	SELC
John Shute	PCS
Susanna Davis	Williams Mullen
Carr McLamb	DENR
Sheila Holman	NCDENR
Mark Giuseppe	NCDENR

09-21-201

Senate Committee on Agriculture/Environment/Natural Resources
Tuesday, March 19, 2013, 11:00 AM
544 Legislative Office Building

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

BILL NO.	SHORT TITLE	SPONSOR
SB 205	Eliminate Unnecessary Testing/Animal Waste.	Senator Walters

Presentations

Other Business

Adjournment

Senate Committee on Agriculture/Environment/Natural Resources
Tuesday, March 19, 2013 at 11:00 AM
Room 544 of the Legislative Office Building

MINUTES

The Senate Committee on Agriculture/Environment/Natural Resources met at 11:00 AM on March 19, 2013 in Room 544 of the Legislative Office Building. Twelve (12) members were present.

Senator Brent Jackson presided over the meeting.

Senator Jackson introduced our Sgt. of Arms – Charles Harper, Leslie Wright, and Ernie Sherrill. The Pages were Addison Starnes from Morganton, sponsored by Sen. Daniels and Anisa Zack from Fuquay Varina, sponsored by Sen. Rucho.

Senator Jackson introduced Sen. Michael Walters to present the one bill to be discussed:

SB 205 Eliminate Unnecessary Testing/Animal Waste

Sen. Walters said that this was a very simple bill, basically striking out the word, annually to once every three years. There were follow-up questions from Sen. Angela Bryant, Sen. Kinnaird, and Sen. Allran, regarding the safety of this change. Sen. Jackson introduced Joy Hicks from Department of Agriculture to address and explain this issue. Senator Wade presented a follow question after Joy Hicks presentation which was answered satisfactorily by Sen. Walters. Sen. Jackson did tell the committee that the staff informed him that DENR had been told about this bill many times and had been requested to be at the meeting. Apparently, since no one from DENR was in attendance, they have no issue with this bill. Sen. Kinnaird had a follow up question, which Sen. Walters answered. Sen. Cook made a motion for a favorable report for the bill and the committee voted for the motion.

The meeting adjourned at 11:16 AM.

Senator Brent Jackson, Presiding

Judy Edwards, Committee Clerk

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES COMMITTEE REPORT
Senator Brock, Co-Chair
Senator Jackson, Co-Chair

Tuesday, March 19, 2013

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

FAVORABLE

SB **205** Eliminate Unnecessary Testing/Animal Waste.

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

TOTAL REPORTED: 1

Senator Michael Walters will handle SB 205



GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

S 1

SENATE BILL 205

Short Title:	Eliminate Unnecessary Testing/Animal Waste. (Public)
Sponsors:	Senators Walters (Primary Sponsor); Clark, Daniel, J. Davis, Jackson, McLaurin, and Newton.
Referred to:	Agriculture/Environment/Natural Resources.

March 7, 2013

A BILL TO BE ENTITLED

AN ACT TO ELIMINATE UNNECESSARY SOIL TESTING REQUIREMENTS IN ANIMAL WASTE MANAGEMENT PLANS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 143-215.10C(e) reads as rewritten:

"(e) An animal waste management plan for an animal operation shall include all of the following components:

...

(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, once~~ every three years, 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 2. This act becomes effective July 1, 2013, and applies to any animal waste management plan submitted to or approved by the Department after that date.

SENATE BILL 205:
Eliminate Unnecessary Testing/Animal Waste

2013-2014 General Assembly

Committee:	Senate Agriculture/Environment/Natural Resources	**Date:**	March 19, 2013
Introduced by:	Senator Walters	**Prepared by:**	Jeff Hudson Committee Counsel
Analysis of:	First Edition		

SUMMARY: ***Senate Bill 205 would reduce the periodic soil testing requirements at animal operations from at least annually to at least once every three years.***

CURRENT LAW:

Under current law, no person may construct or operate an animal waste management system for an animal operation without a permit and accompanying animal waste management plan. Each animal waste management plan must include a number of elements, including provisions for the periodic testing, at least annually, of soils at crop sites where the waste products are applied. This testing evaluates the levels of nutrients, such as nitrogen and phosphorous, and metals such as zinc and copper, that are applied to the crop sites. If any of the nutrients or metals is applied at rates beyond which the plants can accommodate them, they can run off into nearby waterways or build up in the soil and cause problems.

BILL ANALYSIS:

Senate Bill 205 would reduce the periodic soil testing requirements at animal operations from at least annually to at least once every three years.

EFFECTIVE DATE:

Senate Bill 205 would become effective when it becomes law and would apply to animal waste management plans submitted to or approved by the Department of Environment and Natural Resources after the effective date.

O. Walker Reagan
Director



Research Division
(919) 733-2578

VISITOR REGISTRATION SHEET

Senate/Agriculture/Environment/Natural Resources
(Committee Name)

3/19/2013
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
R Rogers	CWMTF
Bruce Thompson	Parker Poe
Joe McClees	JM McClees Consulting
Henri McClees	" " "
Tom Bean	EDF, NCWF
Peter Raabe	American Rivers
Amy Simes	DENR
Colleen Kochanek	NCGWA
Rev. Mark Creech	CAL
Kirk Ross	Carolina Mercury

VISITOR REGISTRATION SHEET

Senate/Agriculture/Environment/Natural Resources
(Committee Name)

3/19/2013
Date

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NAME	FIRM OR AGENCY AND ADDRESS
Candace Howes	UNC Chapel Hill
Emily Hackling	UNC Chapel Hill
Angie Mercer	NCPC
Terry Harkestey	NCPC/NCCA
Tommy Stevens	NCPC
Steve Metcalf	NCPC
Henry Jones	NC Poverty Fed.
Erin Wynia	NCLM
JAKE PARKER	NCFB
Stephen Rowe	compassNC
Jon SINK	CMS
Tim Moore	CMS
Pat Harris	NCDA
JOHN COOPER	Compass NC
PRESTON HOWARD	NCMA
Doug Lassiter	NCSTA
Crystal Collins	NC Trucking Assoc

09-21-201

VISITOR REGISTRATION SHEET

Senate/Agriculture/Environment/Natural Resources
(Committee Name)

3/19/2013
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS

Senate Committee on Agriculture/Environment/Natural Resources
Tuesday, April 2, 2013, 11:00 AM
544 Legislative Office Building

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

BILL NO.	SHORT TITLE	SPONSOR
SB 384	Present-Use Value Modifications.	Senator Tucker Senator Walters
SB 386	Amend Grain Dealer Licensing Laws.-AB	Senator Barefoot Senator Rabin Senator Walters
SB 387	Forest Service Tech./Clarify'g Changes-AB	Senator Barefoot Senator Cook Senator Walters
SB 388	Bedding Law/Right of Entry.-AB	Senator Rabin Senator Cook Senator Walters

Adjournment

Senate Committee on Agriculture/Environment/Natural Resources
Tuesday, April 2, 2013 at 11:00 AM
Room 544 of the Legislative Office Building

MINUTES

The Senate Committee on Agriculture/Environment/Natural Resources met at 11:00 AM on April 2, 2013 in Room 544 of the Legislative Office Building. Eleven (11) members were present.

Senator Brent Jackson, presided.

Senator Jackson introduced the pages – Elizabeth Fisher from Charlotte sponsored by Sen. Rucho, HaleyAshley from Burlington sponsored by Sen. Gunn, Caroline Kerns from Burlington sponsored by Sen. Gunn, Leigh Willis from Burlington sponsored by Sen. Gunn and Ciaira Metz from Mooresville sponsored by Sen. Brock.

Sgt. of Arms for today's meeting Ronald Span, Ernie Sherrill and Charles Harper.

Senator Jackson introduced a special guest for today's meeting - Steve Troxler, Commissioner of Agriculture.

The following bills were discussed:

SB 384 Present-Use Value Modifications Senator Walters
Sen. Walters explained the bill. There was a follow up question from Sen. Kinnaird. She asked who required the Forest Management Plans? Sen. Walters answed they were required by the county so you can participate in the present use value. Senator Cook made a motion for a Favorable report on the bill and the motion was carried. The bill was referred to Finance.

SB386 Amend Grain Dealer Licensing Laws.-AB Senator Barefoot
This bill had a PCS – Senator Trucker made a motion that the PCS be accepted and Sen. Wade seconded. The motion carried. Sen. Barefoot explained the bill. There were no follow-up questions. Sen. Cook made a motion for a Favorable Report for the PCS. The motion carried.

SB387 Forest Service Tech./Clarify'g Changes – AB Senator Barefoot
There was a motion made by Sen. Bingham that the committee accepts the PCS on this bill. Sen. Wade seconded the motion. The motion carried. Sen. Barefoot explained the bill. Sen. Bingham made a motion for a Favorable Report for the PCS. The motion carried.

SB388 Bedding Law/Right of Entry.-AB Senator Rabin
Sen. Rabin explained the bill. Sen. Cook made a motion for a Favorable Report on the bill. The motion carried. The bill was referred to Judiciary II

The meeting adjourned at 11:15 AM.

Senator Brent Jackson
Presiding

Judy Edwards, Committee Clerk

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES COMMITTEE REPORT
Senator Brock, Co-Chair
Senator Jackson, Co-Chair

Tuesday, April 02, 2013

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

FAVORABLE

SB **384** Present-Use Value Modifications.
Draft Number: None
Sequential Referral: Finance
Recommended Referral: None
Long Title Amended: No

SB **388** Bedding Law/Right of Entry.-AB
Draft Number: None
Sequential Referral: Judiciary II
Recommended Referral: None
Long Title Amended: No

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

SB **386** Amend Grain Dealer Licensing Laws.-AB
Draft Number: S386-PCS75273-TQ-7
Sequential Referral: None
Recommended Referral: None
Long Title Amended: Yes

SB **387** Forest Service Tech./Clarifying Changes.-AB
Draft Number: S387-PCS85200-TF-1
Sequential Referral: None
Recommended Referral: None
Long Title Amended: No

TOTAL REPORTED: 4

Senator Michael Walters will handle SB 384
Senator Ronald Rabin will handle SB 388
Senator John Barefoot will handle SB 386
Senator John Barefoot will handle SB 387



GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

S 1

SENATE BILL 384

Short Title:	Present-Use Value Modifications.	(Public)
Sponsors:	Senators Tucker and Walters (Primary Sponsors).	
Referred to:	Agriculture/Environment/Natural Resources.	

March 21, 2013

A BILL TO BE ENTITLED

AN ACT TO AMEND CERTAIN PROVISIONS REGARDING THE PRESENT-USE VALUE PROPERTY TAX DEFERRAL.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 105-277.3(g) reads as rewritten:

"(g) Sound Management Program for Forestland. – If the owner of forestland demonstrates that the forestland complies with a written sound forest management plan for the production and sale of forest products, then the forestland is operated under a sound management program. The failure of the owner to cut timber within five years of the cutting schedule provided for in the forest management plan shall not disqualify the forestland from classification under this section if that failure is due to (i) depressed commercial markets for timber or (ii) weather-related conditions that negatively affect the health of the timber."

SECTION 2. G.S. 105-277.4(a) reads as rewritten:

"(a) Application. – Property coming within one of the classes defined in G.S. 105-277.3 is eligible for taxation on the basis of the value of the property in its present use if a timely and proper application is filed with the assessor of the county in which the property is located. The application must clearly show that the property comes within one of the classes and must also contain any other relevant information required by the assessor to properly appraise the property at its present-use value. An application shall not be denied due to the name of the applicant, including in the name the usage of the term "investment" or similar terms, if the applicant meets the substantive ownership requirements provided in G.S. 105-277.3. An initial application must be filed during the regular listing period of the year for which the benefit of this classification is first claimed, or within 30 days of the date shown on a notice of a change in valuation made pursuant to G.S. 105-286 or G.S. 105-287. A new application is not required to be submitted unless the property is transferred or becomes ineligible for use-value appraisal because of a change in use or acreage. An application required due to transfer of the land may be submitted at any time during the calendar year but must be submitted within 60 days of the date of the property's transfer."

SECTION 3. This act is effective for taxes imposed for taxable years beginning on or after July 1, 2013.

Favorable

SENATE BILL 384:
Present-Use Value Modifications

2013-2014 General Assembly

Committee:	Senate Ref to Agriculture/Environment/Natural Resources. If fav, re-ref to Finance	**Date:**	April 2, 2013
Introduced by:	Sens. Tucker, Walters	**Prepared by:**	Chris Saunders Committee Counsel
Analysis of:	First Edition		

SUMMARY: ***Senate Bill 384 would provide that if an owner of forestland under present use value taxation does not cut the timber within five years of the cutting schedule in the required forest management plan, the land is not disqualified from classification under the statute if the failure to cut timber is due to depressed commercial markets for timber or weather-related conditions that negatively affect the timber's health. Additionally, the bill would provide that an application for present-use value taxation must not be denied because of the name of the applicant.***

CURRENT LAW: G.S. 105-277.3(g) currently provides that forestland is operated under a sound management program if the forestland complies with a written sound forest management plan for the production and sale of forest products. G.S. 105-277.2(2) defines forestland as "land that is a part of a forest unit that is actively engaged in the commercial growing of trees under a sound management program."

BILL ANALYSIS: Section 1 of the bill would amend G.S. 105-277.3(g) to provide that the failure of an owner to cut timber within five years of the cutting schedule provided for in the forest management plan does not disqualify the land from present-use value classification if the failure is because of depressed commercial markets for timber or weather related conditions that negatively affect the timber's health.

Section 2 of the bill would amend G.S. 105-277.4 to provide that an application for present use value taxation on property shall not be denied due to the name of the applicant, including the usage of the term "investment" or similar terms in the name, if the applicant meets the substantive ownership requirements of G.S. 105-277.3.

EFFECTIVE DATE: This act is effective for taxes imposed for taxable years beginning on or after July 1, 2013.

O. Walker Reagan
Director

S384-SMTQ-20 E1 -V6

Research Division
(919) 733-2578

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

S 1

SENATE BILL 388*

Short Title:	Bedding Law/Right of Entry.-AB	(Public)
Sponsors:	Senators Rabin, Cook, Walters (Primary Sponsors); Brock and Jackson.	
Referred to:	Agriculture/Environment/Natural Resources.	

March 21, 2013

A BILL TO BE ENTITLED

AN ACT TO PROVIDE A RIGHT OF ENTRY FOR THE COMMISSIONER OF AGRICULTURE TO ENFORCE THE LAWS RELATED TO BEDDING.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 106-65.105 is amended by adding a new subsection to read:

"**§ 106-65.105. Enforcement by the Department of Agriculture and Consumer Services.**

...

(e) The Commissioner of Agriculture shall have the right of entry upon the premises of any place where entry is necessary to enforce the provisions of this Article or the rules adopted by the Board of Agriculture. If consent for entry is not obtained, an administrative search and inspection warrant shall be obtained pursuant to G.S. 15-27.2."

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

SENATE BILL 388:
Bedding Law/Right of Entry.-AB

2013-2014 General Assembly

Committee:	Senate Ref to Agriculture/Environment/Natural Resources. If fav, re-ref to Judiciary II	**Date:**	April 2, 2013
Introduced by:	Sens. Rabin, Cook, Walters	**Prepared by:**	Jennifer McGinnis Committee Counsel
Analysis of:	First Edition		

SUMMARY: ***Senate Bill 388 gives the Commissioner of Agriculture (Commissioner) the right of entry upon the premises of any place where entry is necessary to enforce the provisions of the bedding laws under the statutes. The bill provides that if consent for entry is not obtained, an administrative search and inspection warrant may be obtained for the purposes of entry. The authority concerning right of entry existed when the bedding law was administered by the Department of Health and Human Services (DHHS), but was inadvertently omitted when the responsibility for oversight and administration of the program was transferred from DHHS to the Department of Agriculture and Consumer Services (DACS) in 2011.***

CURRENT LAW: Article 4H of Chapter 106 of the General Statutes (bedding law) governs the sale and manufacture of bedding, and includes provisions that:

- Requires sanitization of renovated or secondhand bedding prior to sale.
- Requires that bedding manufactured in the State, or material used in manufactured bedding to be sold in the State, must be made from new materials and free of toxic materials.
- Generally prohibits storage of any unsanitized previously used materials in the same room with bedding or materials that are new or have been sanitized.
- Requires tagging of all bedding sold in the State, which tags must include specific information detailed by the statutes.
- Prohibits removal, defacement, or alteration of required tags.
- Requires persons manufacturing or sanitizing bedding in the State to register with, obtain a license from, and pay a fee to DACS.

Note that the provisions of the Article do not apply to bedding sold by an owner and previous user from the owner's home directly to a purchaser for the purchaser's own personal use unless the bedding has been exposed to an infectious or communicable disease.

DACS is charged with administration and enforcement of the bedding laws. With regard to enforcement, the Commissioner of Agriculture is currently authorized to prohibit the sale of any bedding that is not made, sanitized, or tagged as required by the bedding laws. The Commissioner is also authorized to inspect bedding and examine records to ascertain compliance with the bedding laws. In addition, the Commissioner is authorized to seize and hold for evidence any records, bedding, or material which in the opinion of the Commissioner is made, possessed, or offered for sale in violation of the bedding laws.

BACKGROUND: Prior to 2011, the bedding law was administered by DHHS, and DHHS had a right of entry under statute to enforce the bedding laws. In 2011, administration and enforcement authority over the program was transferred to DACS, but the authority giving a right of entry was inadvertently omitted.

BILL ANALYSIS: The bill gives the Commissioner the right of entry upon the premises of any place where entry is necessary to enforce the provisions of the bedding laws under the statutes. The bill provides that if consent for entry is not obtained, an administrative search and inspection warrant may be obtained for the purposes of entry.

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

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

S D

SENATE BILL 386*
PROPOSED COMMITTEE SUBSTITUTE S386-PCS75273-TQ-7

Short Title: Amend Grain Dealer Licensing Laws.-AB (Public)

Sponsors:

Referred to:

March 21, 2013

A BILL TO BE ENTITLED

AN ACT TO AMEND THE GRAIN DEALER LICENSING ACT TO INCREASE THE BONDING AMOUNT THAT MUST ACCOMPANY LICENSE APPLICATIONS AND TO SPECIFY ADDITIONAL GROUNDS FOR LICENSE REFUSAL OR REVOCATION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 106-604 reads as rewritten:

"**§ 106-604. License fee; bond required; exemption.**

All applications shall be accompanied by an initial or renewal license fee of fifty dollars ($50.00) plus thirty dollars ($30.00) per certificate or decal for each separate buying station or truck and a good and sufficient bond in the amount of ~~ten thousand dollars ($10,000)~~ one hundred thousand dollars ($100,000) to satisfy the initial license application. A fee of five dollars ($5.00) shall be charged for each duplicate license, certificate or decal. "Cash buyers" upon written request to the Commissioner showing proof satisfactory to the Commissioner that the person is a "cash buyer" under this Article shall be exempted from the bonding requirements ~~hereunder.~~of this section. The exemption shall be granted within 20 days of the receipt of the exemption request or unless the Commissioner requests the dealer to provide additional necessary information or unless the request is denied."

SECTION 2. G.S. 106-610 reads as rewritten:

"**§ 106-610. Grounds for refusal, suspension or revocation of license.**

The Commissioner may refuse to grant or renew any license, may suspend or may revoke any license upon a showing by substantial and competent evidence ~~that:~~of any of the following:

(1) The dealer has suffered a final money judgment to be entered against him and such judgment remains ~~unsatisfied; or~~unsatisfied.

(2) The dealer has failed to promptly and properly account and pay for ~~grain; or~~grain.

(3) The dealer has failed to keep and maintain business records of his grain transactions as required ~~herein; or~~by this Article.

(4) The dealer has engaged in fraudulent or deceptive practices in the transaction of his business as a ~~dealer; or~~dealer.

(5) The dealer has failed to collect from a producer and remit to the Commissioner of Agriculture such assessments as have been approved by the producers and are required to be collected under the provisions of Article 50 of Chapter 106 of the General ~~Statutes; or~~Statutes.

(6) The dealer or applicant has been convicted, pled guilty or nolo contendere within three years in any state or federal court of a crime involving moral ~~turpitude;~~turpitude.

(7) The dealer has failed either to file the required bond or to keep such bond in force.

(8) The applicant has acted or held himself or herself out as a grain dealer without first having obtained a license under the provisions of this Article.

(9) The dealer has hired a person who has been convicted of a crime involving fraud, deceit, or misrepresentation in any capacity involving the buying or selling of grain, or the handling of payments for grain.

(10) The dealer or applicant has violated any provision of this Article or rules adopted pursuant to this Article."

SECTION 3. This act becomes effective October 1, 2013.

Favorable for PCS

SENATE BILL 386:
Amend Grain Dealer Licensing Laws.-AB

2013-2014 General Assembly

Committee:	Senate Agriculture/Environment/Natural Resources	**Date:**	April 2, 2013
Introduced by:	Sens. Barefoot, Rabin, Walters	**Prepared by:**	Chris Saunders Committee Counsel
Analysis of:	PCS to First Edition S386-CSTQ-7 [v.8]		

SUMMARY: ***The proposed committee substitute (PCS) to Senate Bill 386 would increase the bonding requirement accompanying an application for a grain dealer license from $10,000 to $100,000 and adds additional grounds for the refusal, suspension, or revocation of a grain dealer license.***

[As introduced, this bill was identical to H383, as introduced by Reps. J. Bell, Langdon, Dixon, which is currently in House Agriculture, if favorable, Judiciary Subcommittee A.]

CURRENT LAW: Pursuant to G.S. 106-604 (License fee; bond required; exemption), the bonding amount that must accompany a grain dealer license application is currently $10,000.

There are several reasons for which the Commissioner of Agriculture may suspend, revoke, or deny an application for a license under G.S. 106-610 (Grounds for refusal, suspension or revocation of license):

1) The dealer has suffered a final money judgment to be entered against him which remains unsatisfied;
2) The dealer has failed to promptly and properly account and pay for grain;
3) The dealer has failed to keep and maintain business records of his grain transactions;
4) The dealer has engaged in fraudulent or deceptive practices in the transaction of his business as a dealer;
5) The dealer has failed to collect from a producer and remit to the Commissioner of Agriculture the assessments required to be collected under Article 50 of Chapter 106 of the General Statutes;
6) The dealer or applicant has been convicted, pled guilty or nolo contendere within three years in any state or federal court of a crime involving moral turpitude; or
7) The dealer has failed to file the required bond or to keep such bond in force.

BACKGROUND: There is not a designated licensing board for grain dealers. Pursuant to G.S. 106-603, the Commissioner of Agriculture issues grain dealer licenses.

BILL ANALYSIS: Section 1 of the PCS for Senate Bill 386 would amend G.S. 106-604 by increasing the bonding amount accompanying a grain dealer license application from $10,000 to $100,000.

Section 2 of the PCS would amend G.S. 106-610 by adding three additional grounds for revoking or suspending a grain dealer license: (1) the applicant has acted or held himself or herself out as a grain dealer without first having obtained a license; (2) the dealer has hired a person who has been convicted of a crime involving fraud, deceit, or misrepresentation in any capacity involving the buying or selling of grain, or the handling of payments for grain; or (3) the dealer or applicant has violated any provision of Article 53 (Grain Dealers) of Chapter 106 of the General Statutes, or rules adopted under the Article.

EFFECTIVE DATE: This act becomes effective October 1, 2013.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

S D

SENATE BILL 387*
PROPOSED COMMITTEE SUBSTITUTE S387-PCS85200-TF-1

Short Title: Forest Service Tech./Clarify'g Changes-AB (Public)

Sponsors:

Referred to:

March 21, 2013

A BILL TO BE ENTITLED

AN ACT TO MAKE TECHNICAL AND CONFORMING CHANGES PERTAINING TO THE RENAMING OF THE NORTH CAROLINA FOREST SERVICE AND TO MAKE OTHER CHANGES IN THE FOREST SERVICE STATUTES.

The General Assembly of North Carolina enacts:

SECTION 1. 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~~ North Carolina Forest Service of the Department of Agriculture and Consumer Services for the county or counties in which the timber to be sold is located."

SECTION 2. 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~~North Carolina Forest Service of the Department of Agriculture and Consumer Services 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 3. G.S. 77-13 reads as rewritten:

"**§ 77-13. Obstructing streams a misdemeanor.**

If any person, firm, or corporation shall fell any tree, or put any obstruction, except for the purposes of utilizing water as a motive power, in any branch, creek, stream, or other natural passage for water, whereby the natural flow of water through such passage is lessened or retarded, or whereby the navigation of such stream may be impeded, delayed, or prevented, the person, firm, or corporation so offending shall be guilty of a Class 2 misdemeanor. In addition to any fine or imprisonment imposed, the court may, in its discretion, order the person, firm, or corporation so offending to remove the obstruction and restore the affected waterway to an undisturbed condition, or allow authorized employees of the enforcing agency to enter upon the property and accomplish the removal of the obstruction and the restoration of the waterway to an undisturbed condition, in which case the costs of the removal and restoration shall be paid to the enforcing agency by the offending party. Nothing in this section shall prevent the erection of fish dams or hedges across any stream which do not extend across more than two thirds of its width at the point of obstruction. If the fish dams or hedges extend more than two thirds of the

width of any stream, the said penalties shall attach. This section may be enforced by marine fisheries inspectors and wildlife protectors. Within the bounds of any county or municipality, this section may also be enforced by any law enforcement officer having territorial jurisdiction, or by the county engineer. This section may also be enforced by specially commissioned forest law-enforcement officers of the Department of ~~Environment and Natural Resources~~Agriculture and Consumer Services for offenses occurring in woodlands. For purposes of this section, the term "woodlands" means all forested areas, including swamp and timber lands, cutover lands, and second-growth stands in previously cultivated sites."

SECTION 4. G.S. 77-14 reads as rewritten:

"**§ 77-14. Obstructions in streams and drainage ditches.**

If any person, firm or corporation shall fell any tree or put any slabs, stumpage, sawdust, shavings, lime, refuse or any other substances in any creek, stream, river or natural or artificial drainage ravine or ditch, or in any other outlet which serves to remove water from any land whatsoever whereby the drainage of said land is impeded, delayed or prevented, the person, firm or corporation so offending shall be guilty of a Class 2 misdemeanor: Provided, however, nothing herein shall prevent the construction of any dam or weir not otherwise prohibited by any valid local or State statute or regulation. In addition to any fine or imprisonment imposed, the court may, in its discretion, order the person, firm, or corporation so offending to remove the obstruction and restore the affected waterway to an undisturbed condition, or allow authorized employees of the enforcing agency to enter upon the property and accomplish the removal of the obstruction and the restoration of the waterway to an undisturbed condition, in which case the costs of the removal and restoration shall be paid to the enforcing agency by the offending party. This section may be enforced by marine fisheries inspectors and wildlife protectors. Within the boundaries of any county or municipality this section may also be enforced by any law enforcement officer having territorial jurisdiction, or by the county engineer. This section may also be enforced by specially commissioned forest law-enforcement officers of the Department of ~~Environment and Natural Resources~~Agriculture and Consumer Services for offenses occurring in woodlands. For purposes of this section, the term "woodlands" means all forested areas, including swamp and timber lands, cutover lands and second-growth stands on previously cultivated sites."

SECTION 5. G.S. 97-2 reads as rewritten:

"**§ 97-2. Definitions.**

When used in this Article, unless the context otherwise requires:

...

(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~~ the employee's 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 the employee's ~~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~~ their 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) [G.S. 143B-1031(a)] when performing duties in the course and scope of a State-approved mission pursuant to Article 11 of Chapter 143B [Subpart C of Part 5 of Article 13 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~~North Carolina Forest Service of the Department of Agriculture and Consumer Services when that individual is engaged in emergency fire suppression activities for the ~~Division of Forest Resources.~~North Carolina Forest Service. 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~~ North Carolina Forest Service 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.

(3) Employer. – The term "employer" means the State and all political subdivisions thereof, all public and quasi-public corporations therein, every person carrying on any employment, and the legal representative of a deceased person or the receiver or trustee of any person. The board of commissioners of each county of the State, for the purposes of this law, shall be considered as "employer" of all deputy sheriffs serving within such county, or persons serving or performing the duties of a deputy sheriff, whether such persons are appointed by the sheriff or by the board of commissioners and whether serving on a fee basis or salary basis. Each county is authorized to insure its compensation liability for deputy sheriffs to the same extent it is authorized to insure other compensation liability for employees thereof. For purposes of this Chapter, when an authorized pickup firefighter of the ~~Division of Forest Resources~~ North Carolina Forest Service of the Department of Agriculture and Consumer Services is engaged in emergency fire suppression activities for the ~~Division of Forest Resources,~~North Carolina Forest Service, that individual's employer is the ~~Division of Forest Resources.~~North Carolina Forest Service.

...

(5) Average Weekly Wages. – "Average weekly wages" shall mean the earnings of the injured employee in the employment in which ~~he~~ the employee was working at the time of the injury during the period of 52 weeks immediately preceding the date of the injury, including the subsistence allowance paid to veteran trainees by the United States government, provided the amount of said allowance shall be reported monthly by said trainee to the trainee's ~~his~~ employer, divided by 52; but if the injured employee lost more than seven consecutive calendar days at one or more times during such period, although

not in the same week, then the earnings for the remainder of such 52 weeks shall be divided by the number of weeks remaining after the time so lost has been deducted. Where the employment prior to the injury extended over a period of fewer than 52 weeks, the method of dividing the earnings during that period by the number of weeks and parts thereof during which the employee earned wages shall be followed; provided, results fair and just to both parties will be thereby obtained. Where, by reason of a shortness of time during which the employee has been in the employment of his employer or the casual nature or terms of his employment, it is impractical to compute the average weekly wages as above defined, regard shall be had to the average weekly amount which during the 52 weeks previous to the injury was being earned by a person of the same grade and character employed in the same class of employment in the same locality or community.

But where for exceptional reasons the foregoing would be unfair, either to the employer or employee, such other method of computing average weekly wages may be resorted to as will most nearly approximate the amount which the injured employee would be earning were it not for the injury.

Wherever allowances of any character made to an employee in lieu of wages are specified part of the wage contract, they shall be deemed a part of his earnings.

Where a minor employee, under the age of 18 years, sustains a permanent disability or dies leaving dependents surviving, the compensation payable for permanent disability or death shall be calculated, first, upon the average weekly wage paid to adult employees employed by the same employer at the time of the accident in a similar or like class of work which the injured minor employee would probably have been promoted to if not injured, or, second, upon a wage sufficient to yield the maximum weekly compensation benefit. Compensation for temporary total disability or for the death of a minor without dependents shall be computed upon the average weekly wage at the time of the accident, unless the total disability extends more than 52 weeks, and then the compensation may be increased in proportion to ~~his~~ the employee's expected earnings.

In case of disabling injury or death to a volunteer fireman; member of an organized rescue squad; an authorized pickup firefighter, as defined in subdivision (2) of this section, when that individual is engaged in emergency fire suppression activities for the ~~Division of Forest Resources;~~North Carolina Forest Service; a duly appointed and sworn member of an auxiliary police department organized pursuant to G.S. 160A-282; or senior members of the State Civil Air Patrol functioning under Article 11 of Chapter 143B [Subpart C of Part 5 of Article 13 of Chapter 143B] of the General Statutes, under compensable circumstances, compensation payable shall be calculated upon the average weekly wage the volunteer fireman, member of an organized rescue squad, authorized pickup firefighter of the ~~Division of Forest Resources,~~North Carolina Forest Service; when that individual is engaged in emergency fire suppression activities for the ~~Division of Forest Resources,~~North Carolina Forest Service, member of an auxiliary police department, or senior member of the State Civil Air Patrol was earning in the employment wherein he principally earned his livelihood as of the date of injury. Provided, however, that the minimum compensation payable to a volunteer fireman, member of an organized rescue squad, an authorized

pickup firefighter of the ~~Division of Forest Resources~~North Carolina Forest Service of the Department of Agriculture and Consumer Services, when that individual is engaged in emergency fire suppression activities for the ~~Division of Forest Resources,~~North Carolina Forest Service, a sworn member of an auxiliary police department organized pursuant to G.S. 160A-282, or senior members of the State Civil Air Patrol shall be sixty-six and two-thirds percent (66 2/3%) of the maximum weekly benefit established in G.S. 97-29.

...."

SECTION 6. G.S. 105-259(b)(41) reads as rewritten:

"(41) To furnish the ~~Division of Forest Resources~~North Carolina Forest Service of the Department of Agriculture and Consumer Services pertinent contact and financial information concerning companies that are involved in the primary processing of timber products so that the Commissioner of Agriculture is able to comply with G.S. 106-1029 under the Primary Forest Product Assessment Act."

SECTION 7. G.S. 105-277.7(a)(2) reads as rewritten:

"(2) A representative of the ~~Division of Forest Resources~~North Carolina Forest Service of the Department of Agriculture and Consumer Services, designated by the Director of that Division."

SECTION 8. 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~~North Carolina Forest Service of the Department of 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 9. G.S. 106-202.14(b)(3) reads as rewritten:

"(3) The ~~Division of Forest Resources,~~North Carolina Forest Service of the Department of Agriculture and Consumer Services;"

SECTION 10. G.S. 106-860(d)(11) reads as rewritten:

"(11) The ~~Director~~ Assistant Commissioner of the ~~Division of Forest Resources~~North Carolina Forest Service of the Department of Agriculture and Consumer Services or the ~~Director's~~ Assistant Commissioner's designee."

SECTION 11. G.S. 106-878 reads as rewritten:

"§ 106-878. Applications of proceeds from sale of products.

...

(c) Forest Seedling Nursery Program Fund. – The Forest Seedling Nursery Program Fund is created within the Department of Agriculture and Consumer Services, ~~Division of Forest Resources,~~North Carolina Forest Service, 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. 106-877 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 Agriculture and Consumer Services, ~~Division of Forest Resources,~~North Carolina Forest Service, 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. 106-877 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."

SECTION 12. G.S. 106-887(a) reads as rewritten:

"(a) DuPont State Forest is designated as a State Recreational Forest. The Department shall manage DuPont State Recreational Forest: (i) primarily for natural resource preservation, scenic enjoyment and recreational purposes, including horseback riding, hiking, bicycling, hunting, and fishing; (ii) so as to provide an exemplary model of scientifically sound, ecologically based natural resource management for the social and economic benefit of the forest's diverse community of users; and (iii) consistent with the grant agreement between the Natural Heritage Trust Fund and the ~~Division of Forest Resources,~~North Carolina Forest Service, which grant designates a portion of the forest as a North Carolina Nature Preserve. In addition, the Department may use the forest for the demonstration of different forest management and resource protection techniques for local landowners, natural resource professionals, students, and other forest visitors."

SECTION 13. G.S. 106-903 reads as rewritten:

"§ 106-903. 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~~North Carolina Forest Service involved in fighting forest fires."

SECTION 14. Article 79 of Chapter 106 of the General Statutes reads as rewritten:

"Article 79.

"~~Fire Fighters on Standby Duty.~~Firefighters on On-Call Status.

"§ 106-955. Definitions.

As used in this Article:

(1) ~~"Fire fighter"~~"Firefighter" means an employee of the ~~Division of Forest Resources~~North Carolina Forest Service of the Department of Agriculture

and Consumer Services who engages in fire suppression ~~duties.~~duties, or engages in emergency response duties pursuant to G.S. 166A-19.77.

(2) "Fire suppression duties" means involvement in on-site fire suppression, participation in ~~Project Fire~~Incident Management 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."

"**§ 106-956. ~~Standby duty.~~On-call.**

(a) ~~Standby duty~~On-call is time during which a ~~fire fighter~~firefighter is required to ~~remain within 25 miles of his duty station and~~ be available to return to the duty station ~~on call.~~or respond to an emergency within 30 minutes. The Department of Agriculture and Consumer Services shall provide each ~~fire fighter~~firefighter ~~on standby duty~~in on-call status with an electronic ~~paging~~ communication device that makes the wearer accessible to ~~his~~ the firefighter's duty station.

(b) Notwithstanding subsection (a) of this section, ~~for at least two out of~~after 14 consecutive days that a ~~fire fighter~~firefighter is on duty, the Department of Agriculture and Consumer Services shall permit the ~~fire fighter~~firefighter to be ~~more than 25 miles from his duty station~~off duty for two days so long as the ~~fire fighter~~firefighter gives the Department of Agriculture and Consumer Services a ~~telephone number~~means of contact where ~~he~~ the ~~fire fighter~~firefighter can be ~~reached;~~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~~firefighter is permitted to be ~~more than 25 miles from his duty station,~~off duty, the Department of Agriculture and Consumer Services may ~~call him~~contact the firefighter only when there is a bona fide emergency.".

SECTION 15. G.S. 106-966(1) reads as rewritten:

"(1) "Certified prescribed burner" means an individual who has successfully completed a certification program approved by the ~~Division of Forest Resources~~North Carolina Forest Service of the Department of Agriculture and Consumer Services."

SECTION 16. G.S. 106-968 reads as rewritten:

"**§ 106-968. 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,~~North Carolina Forest Service of the Department of 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.

...

(c) Prior to conducting a prescribed burning, the landowner or the landowner's agent shall obtain an open-burning permit under Article 78 of this Chapter from the ~~Division of Forest Resources,~~North Carolina Forest Service of the Department of 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 78 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,~~North Carolina Forest Service of the Department of Agriculture and Consumer Services.

(5) Any rules adopted by the ~~Division of Forest Resources,~~North Carolina Forest Service of the Department of Agriculture and Consumer Services, to implement this Article."

SECTION 17. G.S. 106-969 reads as rewritten:

"**§ 106-969. Adoption of rules.**

The ~~Division of Forest Resources,~~North Carolina Forest Service of the Department of Agriculture and Consumer Services, may adopt rules that govern prescribed burning under this Article."

SECTION 18. G.S. 113-291.10(a)(3) reads as rewritten:

"(3) The ~~Director~~ Assistant Commissioner of the ~~Division of Forest Resources~~North Carolina Forest Service of the Department of Agriculture and Consumer Services, or a designee;"

SECTION 19. G.S. 143-116.8 reads as rewritten:

"**§ 143-116.8. Motor vehicle laws applicable to State parks and forests road system.**

(a) Except as otherwise provided in this section, all the provisions of Chapter 20 of the General Statutes relating to the use of highways and public vehicular areas of the State and the operation of vehicles thereon are made applicable to the State parks and forests road system. For the purposes of this section, the term "State parks and forests road system" shall mean the streets, alleys, roads, public vehicular areas and driveways of the State parks, State forests, State recreation areas, State lakes, and all other lands administered by the Department of Environment and Natural ~~Resources.~~Resources or the Department of Agriculture and Consumer Services. This term shall not be construed, however, to include streets that are a part of the State highway system. Any person violating any of the provisions of Chapter 20 of the General Statutes hereby made applicable in the State parks and forests road system shall, upon conviction, be punished in accordance with ~~Chapter 20.~~Chapter 20 of the General Statutes. Nothing herein contained shall be construed as in any way interfering with the ownership and control of the State parks ~~and forests~~ road system by the Department of Environment and Natural ~~Resources.~~Resources and the forests road system by the Department of Agriculture and Consumer Services.

(b) (1) It shall be unlawful for a person to operate a vehicle in the State parks ~~and forests~~ road system at a speed in excess of twenty-five miles per hour (25 mph). When the Secretary of Environment and Natural Resources determines that this speed is greater than reasonable and safe under the

conditions found to exist in the State parks ~~and forests~~ road system, the Secretary may establish a lower reasonable and safe speed limit. No speed limit established by the Secretary pursuant to this provision shall be effective until posted in the part of the system ~~sought to be affected.~~ where the limit is intended to apply.

(1a) It shall be unlawful for a person to operate a vehicle in the State forests road system at a speed in excess of 25 miles per hour. When the Commissioner of Agriculture determines that this speed is greater than reasonable and safe under the conditions found to exist in the State forests road system, the Commissioner may establish a lower reasonable and safe speed limit. No speed limit established by the Commissioner pursuant to this provision shall be effective until posted in the part of the system where the limit is intended to apply.

...

(4) The Secretary may designate any part of the State parks road system and the Commissioner may designate any part of the State forests road system for one-way traffic and shall erect appropriate signs giving notice thereof. It shall be a violation of G.S. 20-165.1 for any person to willfully drive or operate any vehicle on any part of the State parks and forests road system so designated except in the direction indicated.

(5) The Secretary shall have power, equal to the power of local authorities under G.S. 20-158 and G.S. 20-158.1, to place vehicle control signs and signals and yield-right-of-way signs in the State parks ~~and forests~~ road system; the Secretary also shall have power to post such other signs and markers and mark the roads in accordance with Chapter 20 of the General Statutes as the Secretary may determine appropriate for highway safety and traffic control. The failure of any vehicle driver to obey any vehicle control sign or signal, or any yield-right-of-way sign placed under the authority of this section in the State parks ~~and forests~~ road system shall be an infraction and shall be punished as provided in G.S. 20-176.

(5a) The Commissioner shall have power, equal to the power of local authorities under G.S. 20-158 and G.S. 20-158.1, to place vehicle control signs and signals and yield right-of-way signs in the State forests road system. The Commissioner also shall have power to post such other signs and markers and mark the roads in accordance with Chapter 20 of the General Statutes as the Commissioner may determine appropriate for highway safety and traffic control. The failure of any vehicle driver to obey any vehicle control sign or signal or any yield right-of-way sign placed under the authority of this section in the State forests road system shall be an infraction and shall be punished as provided in G.S. 20-176.

(c) The Secretary of Environment and Natural Resources may, by rule, regulate parking and establish parking areas, and provide for the removal of illegally parked motor vehicles on the State parks ~~and forests road system.~~ road system, and the Commissioner of Agriculture may, by rule, regulate and establish parking areas and provide for the removal of illegally parked motor vehicles on the State forests road system. Any rule of the Secretary or the Commissioner shall be consistent with the provisions of G.S. 20-161, 20-161.1, and 20-162. Any removal of illegally parked motor vehicles shall be in compliance with Article 7A of ~~Chapter 20.~~ Chapter 20 of the General Statutes.

(d) A violation of the rules issued by the Secretary of Environment and Natural Resources or the Commissioner of Agriculture under subsection (c) of this section is an infraction pursuant to G.S. 20-162.1, and shall be punished as therein provided. These rules

may be enforced by the Commissioner of Motor Vehicles, the Highway Patrol, forest law enforcement officers, or other law enforcement officers of the State, counties, cities or other municipalities having authority under Chapter 20 of the General Statutes to enforce laws or rules on travel or use or operation of vehicles or the use or protection of the highways of the State.

(e) The provisions of Chapter 20 of the General Statutes are applicable at all times to the State parks and forests road system, including closing hours, regardless of the fact that during closing hours the State parks and forests road system is not open to the public as a matter of right."

SECTION 20. 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 Division of Adult Correction of the Department of Public Safety; and all full time institutional and full-time, permanent part-time, and temporary detention employees of the Division of Juvenile Justice of the Department of Public Safety 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 ~~Division of Forest Resources,~~North Carolina Forest Service of the Department of Agriculture and Consumer Services, during the time they are actively engaged in ~~fire fighting~~firefighting activities; or engaged in emergency response activities pursuant to ~~G.S. 155A-19.77;~~G.S. 166A-19.77; and shall mean all full-time employees of the North Carolina Department of Insurance during the time they are actively engaged in ~~fire fighting~~firefighting activities, during the time they are training ~~fire fighters~~firefighters 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-1031. 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 21. 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 [the] ~~Division of Forest Resources,~~North Carolina Forest Service of the Department of Agriculture and Consumer Services, killed in [the] 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 22. 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~~North Carolina Forest Service of the Department of Agriculture and Consumer Services as determined by the Assistant Commissioner ~~Director~~ of the ~~Division of Forest Resources.~~North Carolina Forest Service. 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 23. G.S. 143A-65.1 reads as rewritten:

"**§ 143A-65.1. ~~Division of Forest Resources.~~North Carolina Forest Service.**

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 and State recreational forests."

SECTION 24. G.S. 166A-19.77 reads as rewritten:

"**§ 166A-19.77. ~~Division of Forest Resources~~North Carolina Forest Service designated as emergency response agency.**

The ~~Division of Forest Resources~~North Carolina Forest Service of the Department of Agriculture and Consumer Services is designated an emergency response agency of the State of North Carolina for purposes of the following:

(1) Supporting the ~~Division~~ North Carolina Forest Service in responding to all-risk incidents.
(2) Receipt of any applicable State or federal funding.
(3) Training of other State and local agencies in emergency management.
(4) Any other emergency response roles for which the ~~Division~~ North Carolina Forest Service has special training or qualifications."

SECTION 25. This act becomes effective July 1, 2013.

SENATE BILL 387:
Forest Service Tech./Clarify'g Changes-AB

2013-2014 General Assembly

Committee:	Senate Agriculture/Environment/Natural Resources	**Date:**	April 2, 2013
Introduced by:	Sens. Barefoot, Cook, Walters	**Prepared by:**	Mariah Matheson Research Assistant
Analysis of:	PCS to 1st Edition S387-CSTF-1 [v.2]		

SUMMARY: The Proposed Committee Substitute (PCS) to House Bill 366 would make technical and conforming changes to reflect the renaming of the "Division of Forest Resources" to the "North Carolina Forest Service." In addition, the PCS would modify the statute governing "standby duty" for firefighters. The PCS makes technical and clarifying corrections to the First Edition of the bill.

[As introduced, this bill was identical to H366, as introduced by Reps. Langdon, Dixon, Brisson, Martin, which is currently in House Agriculture.]

BACKGROUND: In 2011, the Division of Forest Resources was transferred from the Department of Environment and Natural Resources to the Department of Agriculture and Consumer Services (DACS), and subsequently the name of the Division was changed to the "North Carolina Forest Service."

BILL ANALYSIS: The PCS would make technical and conforming changes to reflect the renaming of the "Division of Forest Resources" to the "North Carolina Forest Service."

In addition, the PCS modifies the statute governing "standby duty" for firefighters with the North Carolina Forest Service. The term "standby duty" would be changed to "on-call" status. Currently a North Carolina Forest Service firefighter cannot be more than 25 miles away from their duty station for two out of 14 consecutive days, which may include a weekend. The PCS would replace the standby-duty requirement with a provision requiring on-call status. On-call status would be defined as time during which a firefighter is required to be available to return to the firefighter's duty station or respond to an emergency within 30 minutes. DACS would be required to provide each firefighter with an on-call electronic communication device that makes the wearer accessible to the firefighter's duty station. The PCS would also allow a firefighter to be off duty for two days after being on duty for 14 consecutive days, and during the off-duty period: (i) the firefighter must give DACS a means of contact where the firefighter can be reached; and (ii) DACS may contact the fire fighter only when there is a bona fide emergency.

EFFECTIVE DATE: The PCS would become effective July 1, 2013.

O. Walker Reagan
Director

S387-SMTF-1 E1 -V5

Research Division
(919) 733-2578

VISITOR REGISTRATION SHEET

Senate/Agriculture/Environment/Natural Resources
(Committee Name)

4/2/2013
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Brooks Rainey Pearson	SELC
Nadia Luhr	NCCN
Cassie Lamm	Sierra Club
Lisa Martin	NC HBA
Steven Webb	" "
JACK SWAIM	NCFA
BOB Schaefer	NCFA
Rebecca Ponton	NCACC
David Baker	NCDOR
Pat Crawford	NCLCV
Kay Emanuel	School of Government

09-21-201

VISITOR REGISTRATION SHEET

Senate/Agriculture/Environment/Natural Resources
(Committee Name)

4/2/2013
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Joy Hicks	NCDA
David McLeod	NCDACS
JAKE PARKER	NCFB
Nelkam Warwick	N Warwick + Associates
Angie Maier	NCPC
Paula Page	NCFB
Tommy Stevens	NCPC
Tracy Hardesty	NEPE / NCCA
Heather Barnett	Ward & Smith
Stephen Kobbe	Compass NC
Gerald Allen	NCGBA
Bill Sidbury	NCGBA

Senate Committee on Agriculture/Environment/Natural Resources
Tuesday, April 9, 2013, 11:00 AM
544 Legislative Office Building

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

BILL NO.	SHORT TITLE	SPONSOR
SB 163	Protect Landowners' Water Rights.	Senator Jackson Senator Cook Senator Rabin
SB 201	Allow Hunting With Silencers.	Senator Randleman
SB 234	Hunter Education/Apprentice Permit.	Senator Newton
SB 455	Increased Penalty/Seed Law Violations.-AB	Senator Cook Senator Rabin Senator Barefoot
SB 376	Landowners/Lessees May Trap Coyotes. **(For Discussion Only)**	Senator Bingham

Presentations

Other Business

Adjournment

Senate Committee on Agriculture/Environment/Natural Resources
Tuesday, April 9, 2013 at 11:00 AM
Room 544 of the Legislative Office Building

MINUTES

The Senate Committee on Agriculture/Environment/Natural Resources met at 11:00 AM on April 9, 2013 in Room 544 of the Legislative Office Building. Twelve (12) members were present.

Sen. Andrew Brock, presided.

Sen. Brock introduced the pages for the day which are Samantha Sparks from Southport sponsored by Sen. Rabon, Eli Brightbill from Sanford sponsored by Sen. Rabon and Sofia Stoddard from Rolesville sponsored by Sen. Barefoot.

The following bills were discussed:

SB 234 – Hunter Education/Apprentice Permit – Sen. Newton - There was a PCS on this bill. Senator Tucker made a motion to accept the PCS and the motion carried. Sen. Newton explained the bill. Senator Bingham made a motion for a favorable report for the PCS and unfavorable to the original. The motion carried.

SB 163 – Protect Landowners' Water Rights – Sen. Jackson – There was a PCS and Sen. Bingham made a motion to accept the PCS and the motion carried. Sen. Jackson explained the bill. Sen. Cook moved for a favorable report for the PCS and unfavorable to the original. The motion carried.

SB 201 – Allow Hunting With Silencers – Sen. Randleman – There was a PCS on this bill and Sen. Randleman moved for the PCS. The motion carried. Sen. Randleman explained the bill. There were follow up questions from Sen. Jackson, Sen. Walters and Sen. Bingham. Gordon Meyers from the Wildlife Commission spoke on behalf of the bill. Sen. Cook made a motion for a favorable report for the PCS and unfavorable to the original bill. The motion carried and the bill was referred to the J1 Committee.

SB 455 – Increased Penalty/Seed Law Violations. – AB – Sen. Cook - There was a PCS on this bill. Sen. Cook made a motion to accept the PCS. The motion carried. Sen. Cook explained the bill. Sen. Tucker made a motion for a favorable report for the PCS and unfavorable to the original bill. The motion carried. This bill had a sequential referral to J11.

SB 376 – Landowners/Lessees May Trap Coyotes – Sen. Bingham – <u>This bill was for discussion only</u>. Sen. Bingham explained the bill with help from Gordon Myers from the Wildlife Commission. Harry Ennis, President of Eastern N.C. Fox Hunters Association spoke with concern about the bill. Jay Dickson from Pender Co. Coon Association also

spoke against the bill. Sen. Bingham stated that he and the Wildlife Commission would do more work on the bill and try to come up with a solution to the concerns of the bill.

The meeting adjourned at 11:40 AM.

Sen. Andrew Brock
Presiding

Judy Edwards, Committee Clerk

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES COMMITTEE REPORT
Senator Brock, Co-Chair
Senator Jackson, Co-Chair

Tuesday, April 09, 2013

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

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

SB **163** Protect Landowners Water Rights.
- Draft Number: S163-PCS95076-SB-7
- Sequential Referral: None
- Recommended Referral: None
- Long Title Amended: No

SB **201** Allow Hunting With Silencers.
- Draft Number: S201-PCS15235-LL-3
- Sequential Referral: None
- Recommended Referral: Judiciary I
- Long Title Amended: Yes

SB **234** Hunter Education/Apprentice Permit.
- Draft Number: S234-PCS85206-TQ-11
- Sequential Referral: None
- Recommended Referral: None
- Long Title Amended: No

SB **455** Increased Penalty/Seed Law Violations.-AB
- Draft Number: S455-PCS85205-RI-10
- Sequential Referral: Judiciary II
- Recommended Referral: None
- Long Title Amended: No

TOTAL REPORTED: 4

Senator W. Jackson will handle SB 163
Senator Shirley Randleman will handle SB 201
Senator E.S. Newton will handle SB 234
Senator Bill Cook will handle SB 455



GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

S D

SENATE BILL 163
PROPOSED COMMITTEE SUBSTITUTE S163-PCS95076-SB-7

Short Title: Protect Landowners' Water Rights. (Public)

Sponsors:

Referred to:

March 5, 2013

A BILL TO BE ENTITLED

AN ACT TO ENHANCE THE PROTECTION OF LANDOWNERS' WATER RIGHTS.

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) 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) Surface water sources located wholly on the landowner's property, including, but not limited to, impoundments constructed by or owned by the landowner and captured stormwater.

(2) Groundwater sources, including, but not limited to, wells constructed on the landowner's property, 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, as described in G.S. 106-581.1, when the water is withdrawn from any of the following:

(1) Surface water sources located wholly on the landowner's property, including, but not limited to, impoundments constructed by or owned by the landowner and captured stormwater.

(2) Groundwater sources, including, but not limited to, wells constructed on the landowner's property, springs, and artesian wells."

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

SENATE BILL 163:
Protect Landowners' Water Rights

2013-2014 General Assembly

Committee:	Senate Agriculture/Environment/Natural Resources	**Date:**	April 9, 2013
Introduced by:	Senators Jackson, Cook, Rabin	**Prepared by:**	Jeff Hudson Committee Counsel
Analysis of:	Proposed Committee Substitute for First Edition (PCS S163-CSSB-7 [v.2])		

SUMMARY: The Proposed Committee Substitute (PCS) for Senate Bill 163 would amend State water resources policy and limit the regulation of water withdrawals by landowners.

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 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 provide that except for the statutory authority to regulate water quality, water supply and drought management, and drinking water, neither the State nor local governments could adopt rules or ordinances to limit a landowner from withdrawing and using water as allowed under common or

statutory law from surface water sources located wholly on the landowner's property and from groundwater sources.

Section 3 would provide that nothing in the statute governing water shortage emergencies could limit a landowner from withdrawing water for use in agricultural activities[i] when the water is withdrawn from surface water sources located wholly on the landowner's property and from groundwater sources.

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

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[i] 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 2013

S 1

SENATE BILL 163

Short Title:	Protect Landowners' Water Rights.	(Public)
Sponsors:	Senators Jackson, Cook, Rabin (Primary Sponsors); Brock, Daniel, J. Davis, and Walters.	
Referred to:	Agriculture/Environment/Natural Resources.	

March 5, 2013

A BILL TO BE ENTITLED

AN ACT TO ENHANCE THE PROTECTION OF LANDOWNERS' WATER RIGHTS.

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) 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 sources 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, as described in G.S. 106-581.1, when the 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 sources of water on the landowner's property, including, but not limited to, captured stormwater, springs, and artesian wells."

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

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

S D

SENATE BILL 201
PROPOSED COMMITTEE SUBSTITUTE S201-PCS15235-LL-3

Short Title: Allow Hunting With Suppressors. (Public)

Sponsors:

Referred to:

March 6, 2013

A BILL TO BE ENTITLED

AN ACT TO ALLOW HUNTING WITH A SUPPRESSOR OR OTHER DEVICE DESIGNED TO MUFFLE OR MINIMIZE THE REPORT OF A FIREARM.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 113-291.1(c) reads as rewritten:

"(c) It is a Class 1 misdemeanor for any person taking wildlife to have in his possession any:

~~(1) Firearm equipped with a silencer or any device designed to silence, muffle, or minimize the report of the firearm. The firearm is considered equipped with the silencer or device whether it is attached to the firearm or separate but reasonably accessible for attachment during the taking of the wildlife.~~

(2) Weapon of mass death and destruction as defined in ~~G.S. 14-288.8.~~G.S. 14-288.8, other than a suppressor or other device designed to muffle or minimize the report of a firearm that is lawfully possessed by a person in compliance with 26 U.S.C. Chapter 53 §§ 5801-5871.

The Wildlife Resources Commission may prohibit individuals training dogs or taking particular species from carrying axes, saws, tree-climbing equipment, and other implements that may facilitate the unlawful taking of wildlife, except tree-climbing equipment may be carried and used by persons lawfully taking raccoons and opossums during open season."

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

SENATE BILL 201:
Allow Hunting With Suppressors.

2013-2014 General Assembly

Committee:	Senate Agriculture/Environment/Natural Resources	**Date:**	April 9, 2013
Introduced by:	Sen. Randleman	**Prepared by:**	Chris Saunders Committee Counsel
Analysis of:	PCS to First Edition S201-CSLL-3 [v.1]		

SUMMARY: ***The proposed committee substitute (PCS) to Senate Bill 201 would amend G.S. 113-291.1(c) to allow hunting with a firearm equipped with a silencer or other device designed to silence, muffle, or minimize the report of the firearm.***

CURRENT LAW: Under G.S. 113-291.1(c), it is a Class 1 misdemeanor to hunt wildlife while in possession of a firearm equipped with a silencer or other device designed to silence, muffle, or minimized the report of the firearm. The firearm is considered equipped with the silencer even if it is not attached but is reasonably accessible for attachment during the taking of the wildlife.

A sound suppressor or silencer is defined as a weapon of mass death and destruction under State law, G.S. 14-288.8(c)(3), and unlawful possession of a silencer is a Class F felony. The statute, however, provides a number of exceptions under which a person may lawfully possess a silencer or other such weapons. G.S. 14-288.8(b)(5) provides an exception for those persons that possess or own such weapons in compliance with 26 U.S.C. Chapter 53 §§ 5801-5871.

BILL ANALYSIS: The PCS would amend G.S. 113-291.1(c)(1) to eliminate the Class 1 misdemeanor penalty for hunting with a silencer or device designed to silence, muffle, or minimize the report of a firearm.

The PCS would also amend G.S. 113-291.1(c)(2) to clarify that there is no Class 1 misdemeanor penalty for hunting with a silencer, suppressor or other sound-muffling device authorized in accordance with federal law. G.S. 113-291.1(c)(2) as amended by the PCS would still prohibit hunting with silencers or devices owned not in compliance with federal law, or with any other weapon of mass death and destruction.

EFFECTIVE DATE: This act is effective when it becomes law.

BACKGROUND: The State law provision allowing the possession of a silencer was established by S.L. 2011-268. Compliance with the federal law for individuals includes filing ATF Form 4 and ATF Form 5330.20, paying a transfer tax, and submitting to a criminal history check.

O. Walker Reagan
Director

CHECKED OUT

Research Division
(919) 733-2578

S 1

SENATE BILL 201

Short Title:	Allow Hunting With Silencers.	(Public)
Sponsors:	Senators Randleman (Primary Sponsor); Brock and Newton.	
Referred to:	Agriculture/Environment/Natural Resources.	

March 6, 2013

A BILL TO BE ENTITLED

AN ACT TO ALLOW HUNTING WITH A SILENCER OR OTHER DEVICE DESIGNED TO MUFFLE OR MINIMIZE THE REPORT OF A FIREARM.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 113-291.1(c) reads as rewritten:

"(c) It is a Class 1 misdemeanor for any person taking wildlife to have in his possession any:

~~(1) Firearm equipped with a silencer or any device designed to silence, muffle, or minimize the report of the firearm. The firearm is considered equipped with the silencer or device whether it is attached to the firearm or separate but reasonably accessible for attachment during the taking of the wildlife.~~

(2) Weapon of mass death and destruction as defined in G.S. 14-288.8.

The Wildlife Resources Commission may prohibit individuals training dogs or taking particular species from carrying axes, saws, tree-climbing equipment, and other implements that may facilitate the unlawful taking of wildlife, except tree-climbing equipment may be carried and used by persons lawfully taking raccoons and opossums during open season."

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

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

S D

SENATE BILL 234
PROPOSED COMMITTEE SUBSTITUTE S234-PCS85206-TQ-11

Short Title: Hunter Education/Apprentice Permit. (Public)

Sponsors:

Referred to:

March 11, 2013

A BILL TO BE ENTITLED

AN ACT TO AMEND AND CLARIFY THE HUNTER EDUCATION REQUIREMENTS AND TO ESTABLISH A HUNTING HERITAGE APPRENTICE PERMIT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 113-270.1A reads as rewritten:

"**§ 113-270.1A. Hunter safety course required.**

(a) Except as provided in subsections (a1) and (d) of this section, on or after ~~July 1, 1991,~~July 1, 2013, a person, regardless of age, may not procure a hunting license in this State without producing a hunter education certificate of competency or one of the following issued by the Wildlife Resources Commission:

(1) A North Carolina hunting heritage apprentice permit.

(2) ~~a~~A hunting license issued prior to ~~July 1, 1991, or signing a statement on a form provided by the Wildlife Resources Commission that he had such a license.~~July 1, 2013.

(a1) A person who qualifies for a ~~totally disabled resident combination hunting fishing license under G.S. 113-270.1C(b)(4)~~ disabled license under G.S. 113-270.1C(b)(5) or (6), G.S. 113-270.1D(b)(7) or (8), or G.S. 113-351(c)(3)f. or g. need not comply with the requirements of subsection (a) of this section in order to receive that license, so long as the person does not make use of the license unless:

(1) The disabled hunter is accompanied by an adult of at least 18 years of age who is licensed to hunt; and

(2) The licensed adult maintains a proximity to the disabled hunter which enables the adult to monitor the activities ~~of, and communicate with, the disabled hunter at all times.~~ of the disabled hunter by remaining within sight and hearing distance at all times without the use of electronic devices.

(b) The Wildlife Resources Commission shall institute and coordinate a statewide course of instruction in hunter ethics, wildlife laws and regulations, and competency and safety in the handling of firearms, and in so doing, may cooperate with any political subdivision, or with any reputable ~~organization having as one of its objectives the promotion of competency and safety in the handling of firearms, including local rod and gun clubs.~~ organization. The course of instruction shall be conducted as follows:

(1) The Wildlife Resources Commission shall designate those persons or agencies authorized to give the course of instruction, and this designation shall be valid until revoked by the Commission. Those designated persons shall submit to the Wildlife Resources Commission validated listings

naming all persons who have successfully completed the course of instruction.

(2) The Wildlife Resources Commission may conduct the course in hunter ~~safety,~~ education, using Commission personnel or ~~other persons at times and in areas where other competent agencies are unable or unwilling to meet the demand for instruction.~~ Commission-approved persons.

(3) The Wildlife Resources Commission shall issue a certificate of competency and safety to each person who successfully completes the course of instruction, and the certificate shall be valid until revoked by the Commission.

(4) Any similar certificate issued outside the State by a governmental agency, shall be accepted as complying with the requirements of subsection (a) above, if the privileges are reciprocal for North Carolina residents.

(5) The Wildlife Resources Commission shall adopt rules and regulations to provide for the course of instruction and the issuance of the certificates consistent with the purpose of this section.

(c) On or after ~~July 1, 1991,~~ July 1, 2013, any person who obtains a hunting license by presenting a fictitious certificate of competency or who attempts to obtain a certificate of competency or hunting license through fraud shall have his hunting privileges revoked by the Wildlife Resources Commission for a period not to exceed one year.

(d) Notwithstanding the provisions of subsection (a) of this section, the lifetime licenses provided for in G.S. 113-270.1D(b)(1), (2), ~~and (3)~~ (3), (4), and (5), and ~~G.S. 113-270.2(c)(2)~~ 113-270.2(c)(2), and 113-351(c)(3) may be purchased by or in the name of persons who have not obtained a hunter ~~safety~~ education certificate of competency, subject to the requirements of this subsection. Pending satisfactory completion of the hunter ~~safety~~ education course, persons who possess one of the lifetime licenses specified in this subsection may exercise the privileges of the lifetime license only when accompanied by an adult of at least 18 years of age who is licensed to hunt in this State. For the purpose of this section, "accompanied" means that the licensed adult maintains a proximity that enables the adult to monitor the activities ~~of, and communicate with, the young hunter at all times.~~ of the hunter by remaining within sight and hearing distance at all times without use of electronic devices."

SECTION 2. G.S. 113-270.2A reads as rewritten:

"**§ 113-270.2A. Voluntary contribution to ~~hunters safety~~ hunter education program.**

(a) A person applying for a hunting license may make a voluntary contribution ~~of fifty cents (50¢)~~ to the Wildlife Resources Commission for the purpose of funding a hunter ~~safety~~ education program.

(b) The Wildlife Resources Commission shall devise administrative procedure for the collection of all contributions donated pursuant to the provisions of this act and shall collect and use the contributions to fund and provide for a hunter ~~safety~~ education program."

SECTION 3. G.S. 113-274(c) reads as rewritten:

"(c) The Wildlife Resources Commission may issue the following permits:

...

(3c) Hunting Heritage Apprentice Permit. – Authorizes a person who does not meet the hunter education course requirements under G.S. 113-270.1A(a) to purchase a hunting license and hunt if accompanied by an adult at least 18 years of age who is licensed to hunt in this State or if accompanied by an adult landholder or spouse exempted from the hunting license requirement as defined by G.S. 113-276(c), provided the licensee is hunting on the landholder's land. For purposes of this section, "accompanied" means that the licensed adult maintains a proximity that enables the adult to monitor the activities of the apprentice by remaining within sight and hearing distance at

all times without use of electronic devices. This permit is valid only for the term of the hunting license purchased under the authority of the permit. Any person who hunts with a permit issued under this subdivision without complying with all the requirements of this subdivision is guilty of hunting without having first procured a current and valid license, in violation of G.S. 113-270.1B.

...."

SECTION 4. G.S. 113-276 reads as rewritten:

"**§ 113-276. Exemptions and exceptions to license and permit requirements.**

...

(d) Except as otherwise provided in this Subchapter, individuals under 16 years of age are exempt from the hunting and trapping license requirements of G.S. 113-270.1B(a) and G.S. 113-270.3(a), except the falconry license described in G.S. 113-270.3(b)(4). Individuals under 16 may hunt under this exemption, provided that the ~~young~~ hunter is accompanied by an adult of at least 18 years of age who is licensed to hunt in this State. For purposes of this section, "accompanied" means that the licensed adult maintains a proximity that enables the adult to monitor the activities ~~of, and communicate with, the young hunter at all times.~~ of the hunter by remaining within sight and hearing distance at all times without use of electronic devices. Upon successfully obtaining the hunter ~~safety~~ education certificate of competency required by G.S. 113-270.1A(a), a ~~young~~ hunter may hunt under the license exemption until age 16 without adult accompaniment. Individuals under 16 years of age are exempt from the fishing license requirements of G.S. 113-270.1B(a), 113-272, and 113-271.

...

(l2) A resident of this State who is a member of the Armed Forces of the United States serving outside the State, or who is serving on full-time active military duty outside the State in a reserve component of the Armed Forces of the United States as defined in 10 U.S.C. 10101, is exempt from the hunting and fishing license requirements of G.S. 113-270.1B, G.S. 113-270.3(b)(1), G.S. 113-270.3(b)(3), G.S. 113-270.3(b)(5), G.S. 113-271, G.S. 113-272, G.S. 113-272.2(c)(1), and the Coastal Recreational Fishing License requirements of G.S. 113-174.2 while that person is on leave in this State for 30 days or less. In order to qualify for the exemption provided under this subsection, the person shall have on his or her person at all times during the hunting or fishing activity the person's military identification card and a copy of the official document issued by the person's service unit confirming that the person is on authorized leave from a duty station outside this State.

A person exempted from licensing requirements under this subsection is responsible for complying with any reporting requirements prescribed by rule of the Wildlife Resources Commission, complying with the hunter ~~safety~~ education requirements of G.S. 113-270.1A, purchasing any federal migratory waterfowl stamps as a result of waterfowl hunting activity, and complying with any other requirements that the holder of a North Carolina license is subject to.

...

(n) The Wildlife Resources Commission may adopt rules to exempt individuals from the hunting and fishing license requirements of G.S. 113-270.1B, 113-270.3(b)(1), 113-270.3(b)(3), 113-270.3(b)(5), 113-271, 113-272, and 113-272.2(c)(1) who participate in organized hunting and fishing events for the specified time and place of the event when the purpose of the event is consistent with the conservation objectives of the Commission. A person exempted from licensing requirements under this subsection is responsible for complying with any reporting requirements prescribed by rule of the Wildlife Resources Commission, purchasing any federal migratory waterfowl stamps as a result of waterfowl hunting activity, and complying with any other requirements that the holder of a North Carolina license is subject to. Those exempted persons shall comply with the hunter ~~safety~~ education

requirements of G.S. 113-270.1A or shall be accompanied by a properly licensed adult of at least 18 years of age who maintains a proximity ~~to the license exempt individual which~~ that enables the adult to monitor the activities ~~of, and communicate with, the individual at all times.~~of the hunter by remaining within sight and hearing distance at all times without use of electronic devices."

SECTION 5. This act becomes effective July 1, 2013.

SENATE BILL 234:
Hunter Education/Apprentice Permit

2013-2014 General Assembly

Committee:	Senate Agriculture/Environment/Natural Resources	**Date:**	April 9, 2013
Introduced by:	Sen. Newton	**Prepared by:**	Chris Saunders Committee Counsel
Analysis of:	PCS to First Edition S234-CSTQ-11 [v.1]		

SUMMARY: ***The proposed committee substitute (PCS) for Senate Bill 234 would authorize the Wildlife Resources Commission to issue a Hunting Heritage Apprentice Permit, which authorizes a person who has not obtained a hunter education certificate of competency to purchase a hunting license and hunt if accompanied by (1) a licensed adult of at least 18 years of age or (2) an adult landholder or spouse exempt from the hunting license requirement, if hunting on the landholder's land. The PCS also makes several technical changes.***

[As introduced, this bill was identical to H296, as introduced by Reps. J. Bell, Moffitt, Martin, Wray, which is currently in House Environment.]

CURRENT LAW: Currently, a person of any age may not procure a hunting license in this State without producing a certificate of competency or a hunting license issued prior to July 1, 1991. The Wildlife Resources Commission (Commission) institutes and coordinates a statewide course of instruction in hunter ethics, wildlife laws and regulations, and firearm safety, and may cooperate with any reputable organization that promotes competency and safety in the handling of firearms. There are exceptions for a disabled hunter accompanied by a licensed adult and a person who possesses a lifetime license, has completed a hunter safety course, and is accompanied by a licensed adult.

A person applying for a hunting license may make a voluntary contribution of fifty cents to the Wildlife Resources Commission for funding a hunter safety education program.

BILL ANALYSIS: The PCS for Senate Bill 234 would amend G.S. 113-274(c) by allowing the Commission to issue a Hunting Heritage Apprentice Permit authorizing a person who does not meet the hunter education course requirements to purchase a hunting license and hunt if accompanied by a licensed adult of at least 18 years of age. The applicant may also be accompanied by an adult landholder or spouse exempted from the hunting license requirement by statute, provided the licensee is hunting on the landholder's land. The permit is valid only for the term of the hunting license purchased under the authority of the permit. Hunting with a permit issued pursuant to this section but not complying with other applicable requirements would violate G.S. 113-270.1B (License required to hunt, fish or trap.).

The PCS would also amend G.S. 113-270.1A to provide that a person may not obtain a hunting license without producing a hunter education certificate of competency, a North Carolina Hunting Heritage Apprentice Permit, or a hunting license issued prior to July 1, 2013. A person qualifying for a disabled license would be exempt from the requirements of G.S. 113-270.1A(a) if the disabled hunter is accompanied by a licensed adult of at least 18 years of age.

The PCS would also allow hunting license applicants to make voluntary contributions in any amount for the Commission's hunter education course, rather than the statutory fifty cent voluntary contribution. Additionally, the PCS would expand the group of organizations with which the Commission may cooperate in coordinating a statewide course of hunting instruction.

The PCS would make several technical and conforming changes throughout the bill to replace references to "hunter safety" with "hunter education" and to clarify that a person is accompanied by a licensed hunter if the licensed hunter remains within sight and hearing distance of the person at all times, without the use of electronic devices.

EFFECTIVE DATE: This act becomes effective July 1, 2013.

SENATE BILL 234

Short Title:	Hunter Education/Apprentice Permit.	(Public)
Sponsors:	Senators Newton (Primary Sponsor); Clark, D. Davis, Rabin, and Tucker.	
Referred to:	Agriculture/Environment/Natural Resources.	

March 11, 2013

A BILL TO BE ENTITLED

AN ACT TO AMEND AND CLARIFY THE HUNTER EDUCATION REQUIREMENTS AND TO ESTABLISH A HUNTING HERITAGE APPRENTICE PERMIT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 113-270.1A reads as rewritten:

"**§ 113-270.1A. Hunter safety course required.**

(a) Except as provided in subsections (a1) and (d) of this section, on or after ~~July 1, 1991,~~July 1, 2013, a person, regardless of age, may not procure a hunting license in this State without producing a hunter education certificate of competency or one of the following issued by the Wildlife Resources Commission:

(1) A North Carolina hunting heritage apprentice permit.

(2) ~~a~~A hunting license issued prior to ~~July 1, 1991, or signing a statement on a form provided by the Wildlife Resources Commission that he had such a license.~~July 1, 2013.

(a1) A person who qualifies for a ~~totally disabled resident combination hunting fishing license under G.S. 113-270.1C(b)(4)~~ disabled license under G.S. 113-270.1C(b)(5) or (6), G.S. 113-270.1D(b)(7) or (8), or G.S. 113-351(c)(3)(f) or (g) need not comply with the requirements of subsection (a) of this section in order to receive that license, so long as the person does not make use of the license unless:

(1) The disabled hunter is accompanied by an adult of at least 18 years of age who is licensed to hunt; and

(2) The licensed adult maintains a proximity to the disabled hunter which enables the adult to monitor the activities ~~of, and communicate with, the disabled hunter at all times.~~ of the disabled hunter by remaining within sight and hearing distance at all times without the use of electronic devices.

(b) The Wildlife Resources Commission shall institute and coordinate a statewide course of instruction in hunter ethics, wildlife laws and regulations, and competency and safety in the handling of firearms, and in so doing, may cooperate with any political subdivision, or with any reputable ~~organization having as one of its objectives the promotion of competency and safety in the handling of firearms, including local rod and gun clubs.~~ organization. The course of instruction shall be conducted as follows:

(1) The Wildlife Resources Commission shall designate those persons or agencies authorized to give the course of instruction, and this designation shall be valid until revoked by the Commission. Those designated persons shall submit to the Wildlife Resources Commission validated listings

naming all persons who have successfully completed the course of instruction.

(2) The Wildlife Resources Commission may conduct the course in hunter ~~safety,~~ education, using Commission personnel or ~~other persons at times and in areas where other competent agencies are unable or unwilling to meet the demand for instruction.~~ Commission-approved persons.

(3) The Wildlife Resources Commission shall issue a certificate of competency and safety to each person who successfully completes the course of instruction, and the certificate shall be valid until revoked by the Commission.

(4) Any similar certificate issued outside the State by a governmental agency, shall be accepted as complying with the requirements of subsection (a) above, if the privileges are reciprocal for North Carolina residents.

(5) The Wildlife Resources Commission shall adopt rules and regulations to provide for the course of instruction and the issuance of the certificates consistent with the purpose of this section.

(c) On or after ~~July 1, 1991,~~ July 1, 2013, any person who obtains a hunting license by presenting a fictitious certificate of competency or who attempts to obtain a certificate of competency or hunting license through fraud shall have his hunting privileges revoked by the Wildlife Resources Commission for a period not to exceed one year.

(d) Notwithstanding the provisions of subsection (a) of this section, the lifetime licenses provided for in G.S. 113-270.1D(b)(1), (2), ~~and (3)~~ (3), (4), and (5) and G.S. 113-270.2(c)(2) and G.S. 113-351(3) may be purchased by or in the name of persons who have not obtained a hunter ~~safety~~ education certificate of competency, subject to the requirements of this subsection. Pending satisfactory completion of the hunter ~~safety~~ education course, persons who possess one of the lifetime licenses specified in this subsection may exercise the privileges of the lifetime license only when accompanied by an adult of at least 18 years of age who is licensed to hunt in this State. For the purpose of this section, "accompanied" means that the licensed adult maintains a proximity that enables the adult to monitor the activities ~~of, and communicate with, the young hunter at all times.~~ of the hunter by remaining within sight and hearing distance at all times without use of electronic devices."

SECTION 2. G.S. 113-270.2A reads as rewritten:

"**§ 113-270.2A. Voluntary contribution to ~~hunters safety~~ hunter education program.**

(a) A person applying for a hunting license may make a voluntary contribution ~~of fifty cents (50¢)~~ to the Wildlife Resources Commission for the purpose of funding a hunter safety education program.

(b) The Wildlife Resources Commission shall devise administrative procedure for the collection of all contributions donated pursuant to the provisions of this act and shall collect and use the contributions to fund and provide for a hunter ~~safety~~ education program."

SECTION 3. G.S. 113-274(c) reads as rewritten:

"(c) The Wildlife Resources Commission may issue the following permits:

...

(3c) Hunting Heritage Apprentice Permit. – Authorizes a person who does not meet the hunter education course requirements under G.S. 113-270.1A(a) to purchase a hunting license and hunt if accompanied by an adult at least 18 years of age who is licensed to hunt in this State or if accompanied by an adult landholder or spouse exempted from the hunting license requirement as defined by G.S. 113-276(c), provided the licensee is hunting on the landholder's land. For purposes of this section, "accompanied" means that the licensed adult maintains a proximity that enables the adult to monitor the activities of the apprentice by remaining within sight and hearing distance at

all times without use of electronic devices. This permit is valid only for the term of the hunting license purchased under the authority of the permit. Any person who hunts with a permit issued under this subdivision without complying with all the requirements of this subdivision is guilty of hunting without having first procured a current and valid license, in violation of G.S. 113-270.1B."

SECTION 4. G.S. 113-276 reads as rewritten:

"**§ 113-276. Exemptions and exceptions to license and permit requirements.**

...

(d) Except as otherwise provided in this Subchapter, individuals under 16 years of age are exempt from the hunting and trapping license requirements of G.S. 113-270.1B(a) and G.S. 113-270.3(a), except the falconry license described in G.S. 113-270.3(b)(4). Individuals under 16 may hunt under this exemption, provided that the ~~young~~ hunter is accompanied by an adult of at least 18 years of age who is licensed to hunt in this State. For purposes of this section, "accompanied" means that the licensed adult maintains a proximity that enables the adult to monitor the activities ~~of, and communicate with, the young hunter at all times.~~ of the hunter by remaining within sight and hearing distance at all times without use of electronic devices. Upon successfully obtaining the hunter ~~safety~~ education certificate of competency required by G.S. 113-270.1A(a), a ~~young~~ hunter may hunt under the license exemption until age 16 without adult accompaniment. Individuals under 16 years of age are exempt from the fishing license requirements of G.S. 113-270.1B(a), 113-272, and 113-271.

...

(l2) A resident of this State who is a member of the Armed Forces of the United States serving outside the State, or who is serving on full-time active military duty outside the State in a reserve component of the Armed Forces of the United States as defined in 10 U.S.C. 10101, is exempt from the hunting and fishing license requirements of G.S. 113-270.1B, G.S. 113-270.3(b)(1), G.S. 113-270.3(b)(3), G.S. 113-270.3(b)(5), G.S. 113-271, G.S. 113-272, G.S. 113-272.2(c)(1), and the Coastal Recreational Fishing License requirements of G.S. 113-174.2 while that person is on leave in this State for 30 days or less. In order to qualify for the exemption provided under this subsection, the person shall have on his or her person at all times during the hunting or fishing activity the person's military identification card and a copy of the official document issued by the person's service unit confirming that the person is on authorized leave from a duty station outside this State.

A person exempted from licensing requirements under this subsection is responsible for complying with any reporting requirements prescribed by rule of the Wildlife Resources Commission, complying with the hunter ~~safety~~ education requirements of G.S. 113-270.1A, purchasing any federal migratory waterfowl stamps as a result of waterfowl hunting activity, and complying with any other requirements that the holder of a North Carolina license is subject to.

...

(n) The Wildlife Resources Commission may adopt rules to exempt individuals from the hunting and fishing license requirements of G.S. 113-270.1B, 113-270.3(b)(1), 113-270.3(b)(3), 113-270.3(b)(5), 113-271, 113-272, and 113-272.2(c)(1) who participate in organized hunting and fishing events for the specified time and place of the event when the purpose of the event is consistent with the conservation objectives of the Commission. A person exempted from licensing requirements under this subsection is responsible for complying with any reporting requirements prescribed by rule of the Wildlife Resources Commission, purchasing any federal migratory waterfowl stamps as a result of waterfowl hunting activity, and complying with any other requirements that the holder of a North Carolina license is subject to. Those exempted persons shall comply with the hunter ~~safety~~ education requirements of G.S. 113-270.1A or shall be accompanied by a properly licensed adult of at

least 18 years of age who maintains a proximity ~~to the license exempt individual which~~ that enables the adult to monitor the activities ~~of, and communicate with, the individual at all times.~~of the hunter by remaining within sight and hearing distance at all times without use of electronic devices."

SECTION 5. This act becomes effective July 1, 2013.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

S D

SENATE BILL 455*
PROPOSED COMMITTEE SUBSTITUTE S455-PCS85205-RI-10

Short Title: Increased Penalty/Seed Law Violations.-AB (Public)

Sponsors:

Referred to:

March 27, 2013

A BILL TO BE ENTITLED

AN ACT TO INCREASE PENALTIES FOR VIOLATION OF THE SEED LAW.

The General Assembly of North Carolina enacts:

SECTION 1.(a) G.S. 106-277.19 reads as rewritten:

"**§ 106-277.19. ~~Revocation~~ Revocation, suspension, or refusal of license for cause; hearing; appeal.**

In accordance with Chapter 150B of the General Statutes, the Commissioner is authorized to suspend any seed license issued for a period not to exceed three years, revoke any seed license issued, or to refuse to issue a seed license to any person ~~as hereinafter provided,~~ upon satisfactory proof that said person has repeatedly violated any of the provisions of this Article or any of the rules ~~and regulations made and promulgated~~adopted thereunder.~~thereunder; provided that no license shall be revoked or refused until the person shall have first been given an opportunity to appear at a hearing before the Commissioner. Any person who is refused a license, or whose license is revoked by any order of the Commissioner, may appeal within 30 days from said order to the Superior Court of Wake County or the superior court of the county of his residence.~~"

SECTION 1.(b) G.S. 106-277.24 reads as rewritten:

"**§ 106-277.24. Penalty for violations.**

Any person, firm or corporation violating any provision of this Article or any rule or regulation adopted pursuant thereto shall be guilty of a Class 3 misdemeanor and upon conviction thereof shall ~~only~~ pay a fine of not more than ~~five hundred dollars ($500.00).~~ten thousand dollars ($10,000). In determining the amount of the fine, the court shall consider the retail value of the seed sold in violation of the law, and in cases involving the unlawful sale of seed protected under the federal Plant Variety Protection Act, the court shall order the payment of restitution to any injured party for any losses incurred as a result of the unlawful sale."

SECTION 2. This act becomes effective December 1, 2013, and applies to violations committed on or after that date.

SENATE BILL 455:
Increased Penalty/Seed Law Violations.-AB

2013-2014 General Assembly

Committee:	Senate Ref to Agriculture/Environment/Natural Resources. If fav, re-ref to Judiciary II	**Date:**	April 9, 2013
Introduced by:	Sens. Cook, Rabin, Barefoot	**Prepared by:**	Jennifer McGinnis Committee Counsel
Analysis of:	PCS to First Edition S455-CSRI-10 [v.2]		

SUMMARY: ***The Proposed Committee Substitute (PCS) for Senate Bill 455 would increase the penalty for violations of the State's seed law from $500 to $10,000. In addition, in cases involving the unlawful sale of seed protected under the federal Plant Variety Protection Act, the bill requires a court to order restitution to any injured party for losses incurred as a result of the unlawful sale. The bill also authorizes the Commissioner of Agriculture (Commissioner) to suspend a violator's seed license for a period of three years.***

The PCS corrects existing law and the First Edition of the bill with regard to the appeals process for suspension, revocation, or denial of a license to specify that these actions must proceed in conformance with the provisions of Chapter 150B of the General Statutes (the Administrative Procedure Act).

[As introduced, this bill was identical to H369, as introduced by Reps. Waddell, Brody, Langdon, Dixon, which is currently in House Agriculture, if favorable, Judiciary Subcommittee B.]

CURRENT LAW:

Article 31 of Chapter 106 is the North Carolina Seed Law. The law governs the transportation, distribution, testing, labeling, and tagging of agricultural and vegetable seeds. The Commissioner of Agriculture is authorized to register, after field testing for performance and trueness to variety, any variety, blend, or hybrid seed and to prohibit the sale of inferior or misrepresented seed. All seed dealers are required to register with the Department of Agriculture and Consumer Services and obtain a license for which they pay a fee. Actions prohibited under the statutes include the transportation, distribution, or sale of seed unless a license has been obtained, a germination test has been completed within a nine-month period immediately prior to sale; and the seed is properly labeled. Sale of seed containing noxious weed seed is also prohibited. Violation of the Seed Law is currently a Class 3 misdemeanor and punishable by a fine of not more than $500. In addition, the Commissioner currently has authority to revoke a seed license for repeated violations of the Seed Law, and appeals for revocations (or denials of issuance) are authorized before the Superior Court of Wake County or the superior court of the county of the violator's residence.

BACKGROUND:

The current amount of the fine that may be imposed for violations of the Seed Law ($500.00) was originally enacted in 1941, and has not changed since that time.

BILL ANALYSIS:

The PCS would increase the penalty for violations of the State's seed law from $500 to $10,000. In addition, in cases involving the unlawful sale of seed protected under the federal Plant Variety Protection Act, the PCS would require a court to order restitution to any injured party for losses incurred as a result of the unlawful sale. The PCS would also authorize the Commissioner to suspend a violator's seed license for a period of three years (in addition to the Commissioner's current authority to revoke or deny a license for repeated violations of the seed law).

EFFECTIVE DATE:

The PCS would become effective December 1, 2013, and apply to offenses committed on or after that date.

SENATE BILL 455*

Short Title:	Increased Penalty/Seed Law Violations.-AB	(Public)
Sponsors:	Senators Cook, Rabin, Barefoot (Primary Sponsors); and Jackson.	
Referred to:	Agriculture/Environment/Natural Resources.	

March 27, 2013

A BILL TO BE ENTITLED

AN ACT TO INCREASE PENALTIES FOR VIOLATION OF THE SEED LAW.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 106-277.24 reads as rewritten:

"**§ 106-277.24. Penalty for violations.**

Any person, firm or corporation violating any provision of this Article or any rule or regulation adopted pursuant thereto shall be guilty of a Class 3 misdemeanor and upon conviction thereof shall only pay a fine of not more than ~~five hundred dollars ($500.00).~~ten thousand dollars ($10,000). In determining the amount of the fine, the court shall consider the retail value of the seed sold in violation of the law, and in cases involving the unlawful sale of seed protected under the federal Plant Variety Protection Act, the court shall order the payment of restitution to any injured party for any losses incurred as a result of the unlawful sale. The court may also order the Commissioner to suspend the violator's seed license as set forth in G.S. 106-277.19 for up to three years, except that the right of appeal to superior court provided by G.S. 106-277.19 shall not be available. However, violators shall have the ordinary right of appeal from judgments of the district and superior courts as provided by law."

SECTION 2. This act becomes effective December 1, 2013, and applies to violations committed on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

Discussion only

S 1

SENATE BILL 376

Short Title:	Landowners/Lessees May Trap Coyotes.	(Public)
Sponsors:	Senators Bingham (Primary Sponsor); Brock and Newton.	
Referred to:	Agriculture/Environment/Natural Resources.	

March 21, 2013

A BILL TO BE ENTITLED

AN ACT TO ALLOW LANDOWNERS AND LESSEES TO TRAP COYOTES ON THEIR LAND AT ANY TIME.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 113-291.2 is amended by adding a new subsection to read:

"(g) Subject to all the trapping requirements set forth in G.S. 113-291.6, a person may trap coyotes and authorize the trapping of coyotes on lands owned by or under lease to that person, in order to control populations of coyotes at any time during the year."

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

SENATE BILL 376:
Landowners/Lessees May Trap Coyotes

2013-2014 General Assembly

Committee:	Senate Agriculture/Environment/Natural Resources	**Date:**	April 9, 2013
Introduced by:	Sen. Bingham	**Prepared by:**	Chris Saunders Committee Counsel
Analysis of:	First Edition		

SUMMARY: Senate Bill 376 would allow a landowner or lessee to trap coyotes year-round on lands owned or leased by that person, pursuant to the trapping requirements of G.S. 113-291.6.

CURRENT LAW: Coyote trapping is regulated by the North Carolina Wildlife Resources Commission. Currently, coyote trapping is allowed during the regular fur season, which runs from December 1 to February 28 in and east of Hertford, Bertie, Martin, Pitt, Greene, Lenoir, Duplin, Pender and New Hanover counties, and from November 1 to February 28 west of those counties. Coyote trapping is also allowed during fox-trapping season in those counties where fox-trapping is allowed by statute.

G.S. 113-291.6 limits the types of traps that may be used in the State. Pursuant to G.S. 113-291.6(h), a person who has been issued a depredation permit for coyotes may use a Collarum™ snare-type trap for the duration of the permit term, provided that the person attends the trap daily and releases any nontarget animal that is caught.

There is no closed season or bag limit for hunting coyotes.

BILL ANALYSIS: Senate Bill 376 would amend G.S. 113-291.2 to allow a person who owns or leases land to trap coyotes and authorizes the trapping of coyotes on that person's land at any time during the year, subject to the trapping regulations of G.S. 113-291.6.

EFFECTIVE DATE: This act is effective when it becomes law.

VISITOR REGISTRATION SHEET

Senate/Agriculture/Environment/Natural Resources
(Committee Name)

4/9/2013
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Phil Farmer	NC Seedsmens Assn
Sarah Wolfe	MWC LLC
Stephen Kouba	Compass
Morgan Beam	Gov. Office
Durwood	NS
Mark Black	NCBAA
Preston Howard	NCMA
Sammy Williams	Dunn Chamber
Russell Galvan	Dunn Chamber
TRENT CARPENTER	DUNN CHAMBER
James Schmidlin	Dunn Chamber
Brad Heath	Dunn Chamber
Meredith Bradham	Dunn Chamber
Nana Thompson	Weyerhaeuser
Angie Maier	NCPC
Summer Lanier	Prestige
Chris Anderson	

VISITOR REGISTRATION SHEET

Senate/Agriculture/Environment/Natural Resources
(Committee Name)

4/9/2013
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Doug Lassiter	NCSTA
Towers Mingledorff	NCGA
Erin Wynia	NCLM
David McLeod	NCDA&CS
Joy Hicks	NCDA&CS
Benton Albritton	ABC of the Carolinas
Alex Badger	CSS
PBP	NCFB
Mitch Reece	NCFB
Herb Vandenberg	NCFB
JAKE PARKER	NCFB
Tommy Stevens	NCPC
Jenny Hartsell	NCPC/NCCA
Rick Teaching	Williams Mullen
Chuck Neely	"
Vernon Cox	NCDAFC
Jim Foster	NC Seedsmen Ass.

VISITOR REGISTRATION SHEET

Senate/Agriculture/Environment/Natural Resources
(Committee Name)

4/9/2013
Date

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Mike Mahoney	NCSFA
Dennis Allen	NCRPA
DAN CRAWFORD	NCLCV
Cassie Gavin	Sierra Club
Brooks Rainey Pearson	SELC
Pat O'Connor	LLPP
K Rogers	CWMTF
Colleen Kachmarek	NCGWA
John DelGiorno	Beaubeard Assoc.
Heather Barnett	Ward & Smith
David McGowan	NCPR
George Everett	Duke Energy
Edgar Miller	CTAC
Steven Neas	NCHSAA
Laura Wilson	Disciple Bible outreach Ministry
Rachel Tanner	"

VISITOR REGISTRATION SHEET

Senate/Agriculture/Environment/Natural Resources
(Committee Name)

4/9/2013
Date

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NAME	FIRM OR AGENCY AND ADDRESS
Lisa Martin	NC Home Builders
Hemi McClees	McClees Consulting
Candace Howze	UNC-CH student
Joe McClees	McClees Consulting
Mitch Gillespie	NCDENR
Carr MR Lamb	DENR
Craig Byrd	Thomasville, NC
CHRIS DILLON	NCWR
MALLORY MARTIN	" "
GORDON MYERS	" "
Tom Fransen	DWR, NCDENR
Tony Mitchell	FNEFA
Rod Vinson	Jones Hunters Associate
Jay Dixon	Pender Co. Conn hunters Association
Carl Dixon	Eastern Fox Hunters Association
Harry Lewis	ENCFHA
Edwin Ingram	BAYER

VISITOR REGISTRATION SHEET

Senate/Agriculture/Environment/Natural Resources
(Committee Name)

4/9/2013
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Ken Melton	K.M.A.
M.C.	Self

Senate Committee on Agriculture/Environment/Natural Resources
Tuesday, April 16, 2013, 11:00 AM
544 Legislative Office Building

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

BILL NO.	SHORT TITLE	SPONSOR
SB 391	401 Certification Clarification.	Senator Daniel Senator Brock
SB 341	Amend Interbasin Transfer Law. (For Discussion Only)	Senator Rabon
SB 639	Bd. of Agriculture Modifications.	Senator Jackson

Adjournment

Senate Committee on Agriculture/Environment/Natural Resources
Tuesday, April 16 at 11:00 AM
Room 544

MINUTES

The Senate Committee on Agriculture/Environment/Natural Resources met at 11:00 AM on April 16, 2013 in Room 544. Fourteen (14) members were present.

Sen. Andrew Brock presided.

Sen. Brock introduced the pages – Colton Estes from Matthews sponsored by Sen. Tart, Sawyer Strand from Faison sponsored by Sen. Jackson and Andrew Pelletier from Creswell sponsored by Sen. Jenkins. Sen. Brock introduced the Sgt. of Arms – Ronald Span, Charles Harper, and Ernie Sherrill.

The following bills were discussed:

SB 639 Bd. Of Agriculture Modifications – Sen. Jackson
Senator Jackson explained the bill. There were no follow-up questions and Sen. Cook made a motion for a Favorable Report. The motion carried.

SB 341 Amend Interbasin Transfer Law – Sen. Rabon (Discussion Only)
Senator Rabon explained the bill. Secretary Mitch Gillespie spoke on the bill. There were follow-up questions from Sen. Allran, Sen. Clodfelter, Sen. Hartsell, Sen. Bryant and Sen. Kinnaird. Mary Asbill from SELC spoke on the bill. After much discussion, Sen. Rabon informed the committee there would be a PCS forthcoming on this bill.

SB 391 401 Certification Clarification – Sen. Daniel
This bill was pulled from the agenda due to lack of time. It will be heard at the April 23rd meeting.

The meeting adjourned at 11:50 AM

Sen. Andrew Brock, Presiding

Judy Edwards, Committee Clerk

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES COMMITTEE REPORT
Senator Brock, Co-Chair
Senator Jackson, Co-Chair

Tuesday, April 16, 2013

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

FAVORABLE

SB **639** Bd. of Agriculture Modifications.

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

TOTAL REPORTED: 1

Senator W. Jackson will handle SB 639



GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

Favorable

S 1

SENATE BILL 639

Short Title:	Bd. of Agriculture Modifications.	(Public)
Sponsors:	Senators Jackson (Primary Sponsor); Barefoot, Brock, Jenkins, McLaurin, Rabin, and Walters.	
Referred to:	Agriculture/Environment/Natural Resources.	

April 4, 2013

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THE AUTHORITY OF THE BOARD OF AGRICULTURE OVER PLANTS.

The General Assembly of North Carolina enacts:

SECTION 1. Article 36 of Chapter 106 of the General Statutes is amended by adding a new section to read:

"**§ 106-421.1. Authority of Board of Agriculture to regulate plants.**

The Board of Agriculture shall have the sole authority to prohibit the planting, cultivation, harvesting, disposal, handling, or movement of plants as defined in G.S. 106-202.12. This section shall not prevent the designation of plants as noxious aquatic weeds pursuant to Article 15 of Chapter 113A of the General Statutes, nor shall it prevent the adoption or enforcement of city or county ordinances regulating the appearance of property or the handling and collection of solid waste."

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

SENATE BILL 639:
Bd. of Agriculture Modifications

2013-2014 General Assembly

Committee:	Senate Agriculture/Environment/Natural Resources	**Date:**	April 16, 2013
Introduced by:	Senator Jackson	**Prepared by:**	Jeff Hudson Committee Counsel
Analysis of:	First Edition		

SUMMARY: ***Senate Bill 639 would provide that the Board of Agriculture has the sole authority to prohibit the planting, cultivation, harvesting, disposal, handling, or movement of plants, except as it pertains to designation of noxious aquatic weeds, regulation of the appearance of property, and the handling and collection of solid waste.***

CURRENT LAW:

Plant Pests: The Board of Agriculture has the authority to adopt reasonable regulations to eradicate, repress, and prevent the spread of plant pests in North Carolina. Those regulations can include inspections, quarantine of areas, and governance of transporting items liable to harbor plant pests. A plant pest is defined as any insect, mite, nematode, other invertebrate animal, disease, noxious weed, plant or animal parasite in any stage of development that is injurious to plants and plant products. No person may knowingly and willfully keep any plant or plant product infested or infected by any dangerous plant pest, except under regulations prescribed by the Board of Agriculture.

Local Ordinances: Counties and municipalities have the ability to adopt local ordinances as specifically authorized by State statute or local act. Examples include land use planning, management of solid waste, and abatement of public health nuisances. Additionally, local governments have authority to adopt local ordinances affecting the health, safety, and welfare, and peace and dignity of their citizens.

BILL ANALYSIS:

Senate Bill 639 would provide that the Board of Agriculture has the sole authority to prohibit the planting, cultivation, harvesting, disposal, handling, or movement of plants, except as it pertains to designation of noxious aquatic weeds, regulation of the appearance of property, and the handling and collection of solid waste.

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

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

S

SENATE BILL 341

Discussion Only

1

Short Title:	Amend Interbasin Transfer Law.	(Public)
Sponsors:	Senators Rabon (Primary Sponsor); and Barringer.	
Referred to:	Agriculture/Environment/Natural Resources.	

March 19, 2013

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH AN EXPEDITED PROCESS FOR THE MODIFICATION OF INTERBASIN TRANSFER CERTIFICATES AND FOR THE ISSUANCE OF INTERBASIN TRANSFER CERTIFICATES IN THE CENTRAL COASTAL PLAIN CAPACITY USE AREA AND THE COASTAL AREA COUNTIES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 143-215.22G reads as rewritten:

"**§ 143-215.22G. Definitions.**

In addition to the definitions set forth in G.S. 143-212 and G.S. 143-213, the following definitions apply to this Part.

(1) "River basin" means any of the following river basins designated on the map entitled "Major River Basins and Sub-basins in North Carolina" and filed in the Office of the Secretary of State on 16 April 1991. The term "river basin" includes any portion of the river basin that extends into another state. Any area outside North Carolina that is not included in one of the river basins listed in this subdivision comprises a separate river basin.

a.	1-1	Broad River.
b.	2-1	Haw River.
c.	2-2	Deep River.
d.	2-3	Cape Fear River.
e.	2-4	South River.
f.	2-5	Northeast Cape Fear River.
g.	2-6	New River.
h.	3-1	Catawba River.
i.	3-2	South Fork Catawba River.
j.	4-1	Chowan River.
k.	4-2	Meherrin River.
l.	5-1	Nolichucky River.
m.	5-2	French Broad River.
n.	5-3	Pigeon River.
o.	6-1	Hiwassee River.
p.	7-1	Little Tennessee River.
q.	7-2	Tuskasegee (Tuckasegee) River.
r.	8-1	Savannah River.
s.	9-1	Lumber River.
t.	9-2	Big Shoe Heel Creek.

u.	9-3	Waccamaw River.
v.	9-4	Shallotte River.
w.	10-1	Neuse River.
x.	10-2	Contentnea Creek.
y.	10-3	Trent River.
z.	11-1	New River.
aa.	12-1	Albemarle Sound.
bb.	13-1	Ocoee River.
cc.	14-1	Roanoke River.
dd.	15-1	Tar River.
ee.	15-2	Fishing Creek.
ff.	15-3	Pamlico River and Sound.
gg.	16-1	Watauga River.
hh.	17-1	White Oak River.
ii.	18-1	Yadkin (Yadkin-Pee Dee) River.
jj.	18-2	South Yadkin River.
kk.	18-3	Uwharrie River.
ll.	18-4	Rocky River.

(2) "Surface water" means any of the waters of the State located on the land surface that are not derived by pumping from groundwater.

(3) "Transfer" means the withdrawal, diversion, or pumping of surface water from one river basin and discharge of all or any part of the water in a river basin different from the origin. However, notwithstanding the basin definitions in G.S. 143-215.22G(1), the following are not transfers under this Part:

a. The discharge of water upstream from the point where it is withdrawn.

b. The discharge of water downstream from the point where it is withdrawn.

(4) "Public water system" means any unit of local government or large community water system subject to the requirements of G.S. 143-355(l).

(5) "Mainstem" means that portion of a river having the same name as a river basin defined in subdivision (1) of this section. "Mainstem" does not include named or unnamed tributaries."

SECTION 2. G.S. 143-215.22L reads as rewritten:

"**§ 143-215.22L. Regulation of surface water transfers.**

(a) Certificate Required. – No person, without first obtaining a certificate from the Commission, may:

(1) Initiate a transfer of 2,000,000 gallons of water or more per ~~day~~ day, calculated as a daily average of a calendar month and not to exceed 5,000,000 gallons per day in any one day, from one river basin to another.

~~(2) Increase the amount of an existing transfer of water from one river basin to another by twenty-five percent (25%) or more above the average daily amount transferred during the year ending 1 July 1993 if the total transfer including the increase is 2,000,000 gallons or more per day.~~

(3) Increase an existing transfer of water from one river basin to another above the amount approved by the Commission in a certificate issued under G.S. 162A-7 prior to 1 July 1993.

(b) Exception. – Notwithstanding the provisions of subsection (a) of this section, a certificate shall not be required to transfer water from one river basin to another up to the full

capacity of a facility to transfer water from one basin to another if the facility was in existence or under construction on 1 July 1993.

(c) Notice of Intent to File a Petition. – An applicant shall prepare a notice of intent to file a petition that includes a nontechnical description of the applicant's request and an identification of the proposed water source. Within 90 days after the applicant files a notice of intent to file a petition, the applicant shall hold at least one public meeting in the source river basin upstream from the proposed point of withdrawal, at least one public meeting in the source river basin downstream from the proposed point of withdrawal, and at least one public meeting in the receiving river basin to provide information to interested parties and the public regarding the nature and extent of the proposed transfer and to receive comment on the scope of the environmental documents. Written notice of the public meetings shall be provided at least 30 days before the public meetings. At the time the applicant gives notice of the public meetings, the applicant shall request comment on the alternatives and issues that should be addressed in the environmental documents required by this section. The applicant shall accept written comment on the scope of the environmental documents for a minimum of 30 days following the last public meeting. Notice of the public meetings and opportunity to comment on the scope of the environmental documents shall be provided as follows:

(1) By publishing notice in the North Carolina Register.

(2) By publishing notice in a newspaper of general circulation in:

a. Each county in this State located in whole or in part of the area of the source river basin upstream from the proposed point of withdrawal.

b. Each city or county located in a state located in whole or in part of the surface drainage basin area of the source river basin that also falls within, in whole or in part, the area denoted by one of the following eight-digit cataloging units as organized by the United States Geological Survey:

03050105 (Broad River: NC and SC);
03050106 (Broad River: SC);
03050107 (Broad River: SC);
03050108 (Broad River: SC);
05050001 (New River: NC and VA);
05050002 (New River: VA and WV);
03050101 (Catawba River: NC and SC);
03050103 (Catawba River: NC and SC);
03050104 (Catawba River: SC);
03010203 (Chowan River: NC and VA);
03010204 (Chowan River: NC and VA);
06010105 (French Broad River: NC and TN);
06010106 (French Broad River: NC and TN);
06010107 (French Broad River: TN);
06010108 (French Broad River: NC and TN);
06020001 (Hiwassee River: AL, GA, TN);
06020002 (Hiwassee River: GA, NC, TN);
06010201 (Little Tennessee River: TN);
06010202 (Little Tennessee River: TN, GA, and NC);
06010204 (Little Tennessee River: NC and TN);
03060101 (Savannah River: NC and SC);
03060102 (Savannah River: GA, NC, and SC);
03060103 (Savannah River: GA and SC);
03060104 (Savannah River: GA);
03060105 (Savannah River: GA);

03040203 (Lumber River: NC and SC);
03040204 (Lumber River: NC and SC);
03040206 (Lumber River: NC and SC);
03040207 (Lumber River: NC and SC);
03010205 (Albemarle Sound: NC and VA);
06020003 (Ocoee River: GA, NC, and TN);
03010101 (Roanoke River: VA);
03010102 (Roanoke River: NC and VA);
03010103 (Roanoke River: NC and VA);
03010104 (Roanoke River: NC and VA);
03010105 (Roanoke River: VA);
03010106 (Roanoke River: NC and VA);
06010102 (Watauga River: TN and VA);
06010103 (Watauga River: NC and TN);
03040101 (Yadkin River: VA and NC);
03040104 (Yadkin River: NC and SC);
03040105 (Yadkin River: NC and SC);
03040201 (Yadkin River: NC and SC);
03040202 (Yadkin River: NC and SC).

c. Each county in this State located in whole or in part of the area of the source river basin downstream from the proposed point of withdrawal.

d. Any area in the State in a river basin for which the source river basin has been identified as a future source of water in a local water supply plan prepared pursuant to G.S. 143-355(l).

e. Each county in the State located in whole or in part of the receiving river basin.

(3) By giving notice by first-class mail or electronic mail to each of the following:

a. The board of commissioners of each county in this State or the governing body of any county or city that is politically independent of a county in any state that is located entirely or partially within the source river basin of the proposed transfer and that also falls within, in whole or in part, the area denoted by one of the eight-digit cataloging units listed in sub-subdivision b. of subdivision (2) of this subsection.

b. The board of commissioners of each county in this State or the governing body of any county or city that is politically independent of a county in any state that is located entirely or partially within the receiving river basin of the proposed transfer and that also falls within, in whole or in part, the area denoted by one of the eight-digit cataloging units listed in sub-subdivision b. of subdivision (2) of this subsection.

c. The governing body of any public water ~~supply~~ system that withdraws water upstream or downstream from the withdrawal point of the proposed transfer.

d. If any portion of the source or receiving river basins is located in another state, all state water management or use agencies, environmental protection agencies, and the office of the governor in that state upstream or downstream from the withdrawal point of the proposed transfer.

e. All persons who have registered a water withdrawal or transfer from the proposed source river basin under this Part or under similar law in an another state.

f. All persons who hold a certificate for a transfer of water from the proposed source river basin under this Part or under similar law in an another state.

g. All persons who hold a National Pollutant Discharge Elimination System (NPDES) wastewater discharge permit for a discharge of 100,000 gallons per day or more upstream or downstream from the proposed point of withdrawal.

h. To any other person who submits to the applicant a written request to receive all notices relating to the petition.

(d) Environmental Documents. – The definitions set out in G.S. 113A-9 apply to this section. The Department shall conduct a study of the environmental impacts of any proposed transfer of water for which a certificate is required under this section. The study shall meet all of the requirements set forth in G.S. 113A-4 and rules adopted pursuant to G.S. 113A-4. An environmental assessment shall be prepared for any petition for a certificate under this section. The determination of whether an environmental impact statement shall also be required shall be made in accordance with the provisions of Article 1 of Chapter 113A of the General Statutes; except that an environmental impact statement shall be prepared for every proposed transfer of water from one major river basin to another for which a certificate is required under this section. The applicant who petitions the Commission for a certificate under this section shall pay the cost of special studies necessary to comply with Article 1 of Chapter 113A of the General Statutes. An environmental impact statement prepared pursuant to this subsection shall include all of the following:

(1) A comprehensive analysis of the impacts that would occur in the source river basin and the receiving river basin if the petition for a certificate is granted.

(2) An evaluation of alternatives to the proposed interbasin transfer, including water supply sources that do not require an interbasin transfer and use of water conservation measures.

(3) A description of measures to mitigate any adverse impacts that may arise from the proposed interbasin transfer.

(e) Public Hearing on the Draft Environmental Document. – The Commission shall hold a public hearing on the draft environmental document for a proposed interbasin transfer after giving at least 30 days' written notice of the hearing in the Environmental Bulletin and as provided in subdivisions (2) and (3) of subsection (c) of this section. The notice shall indicate where a copy of the environmental document can be reviewed and the procedure to be followed by anyone wishing to submit written comments and questions on the environmental document. The Commission shall prepare a record of all comments and written responses to questions posed in writing. The record shall include complete copies of scientific or technical comments related to the potential impact of the interbasin transfer. The Commission shall accept written comment on the draft environmental document for a minimum of 30 days following the last public hearing. The applicant who petitions the Commission for a certificate under this section shall pay the costs associated with the notice and public hearing on the draft environmental document.

(f) Determination of Adequacy of Environmental Document. – The Commission shall not act on any petition for an interbasin transfer until the Commission has determined that the environmental document is complete and adequate. A decision on the adequacy of the environmental document is subject to review in a contested case on the decision of the Commission to issue or deny a certificate under this section.

(g) Petition. – An applicant for a certificate shall petition the Commission for the certificate. The petition shall be in writing and shall include all of the following:

(1) A general description of the facilities to be used to transfer the water, ~~including the location and capacity of water intakes, pumps, pipelines, and other facilities.~~including current and projected areas to be served by the transfer, current and projected capacities of intakes, and other relevant facilities.

(2) A description of all the proposed consumptive and nonconsumptive uses of the water to be transferred.

(3) A description of the water quality of the source river and receiving river, including information on aquatic habitat for rare, threatened, and endangered species; in-stream flow data for segments of the source and receiving rivers that may be affected by the transfer; and any waters that are impaired pursuant to section 303(d) of the federal Clean Water Act (33 U.S.C. § 1313(d)).

(4) A description of the water conservation measures used by the applicant at the time of the petition and any additional water conservation measures that the applicant will implement if the certificate is granted.

(5) A description of all sources of water within the receiving river basin, including surface water impoundments, groundwater wells, reinjection storage, and purchase of water from another source within the river basin, that is a practicable alternative to the proposed transfer that would meet the applicant's water supply needs. The description of water sources shall include sources available at the time of the petition for a certificate and any planned or potential water sources.

(6) A description of water transfers and withdrawals registered under G.S. 143-215.22H or included in a local water supply plan prepared pursuant to G.S. 143-355(l) from the source river basin, including transfers and withdrawals at the time of the petition for a certificate and any planned or reasonably foreseeable transfers or withdrawals by a public water system with service area located within the source river basin.

(7) A demonstration that the proposed transfer, if added to all other transfers and withdrawals required to be registered under G.S. 143-215.22H or included in any local water supply plan prepared by a public water system with service area located within the source basin pursuant to G.S. 143-355(l) from the source river basin at the time of the petition for a certificate, would not reduce the amount of water available for use in the source river basin to a degree that would impair existing uses, pursuant to the antidegradation policy set out in 40 Code of Federal Regulation § 131.12 (Antidegradation Policy) (1 July 2006 Edition) and the statewide antidegradation policy adopted pursuant thereto, or existing and planned consumptive and nonconsumptive uses of the water in the source river basin. If the proposed transfer would impact a reservoir within the source river basin, the demonstration must include a finding that the transfer would not result in a water level in the reservoir that is inadequate to support existing uses of the reservoir, including recreational uses.

(8) The applicant's future water supply needs and the present and reasonably foreseeable future water supply needs for public water systems with service area located within the source river basin. The analysis of future water supply needs shall include agricultural, recreational, and industrial uses, and electric power generation. Local water supply plans prepared pursuant to

G.S. 143-355(l) for water systems with service area located within the source river basin shall be used to evaluate the projected future water needs in the source river basin that will be met by public water systems.

(9) The applicant's water supply plan prepared pursuant to G.S. 143-355(l). If the applicant's water supply plan is more than two years old at the time of the petition, then the applicant shall include with the petition an updated water supply plan.

(10) Any other information deemed necessary by the Commission for review of the proposed water transfer.

(h) Settlement Discussions. – Upon the request of the applicant, any interested party, or the Department, or upon its own motion, the Commission may appoint a mediation officer. The mediation officer may be a member of the Commission, an employee of the Department, or a neutral third party but shall not be a hearing officer under subsections (e) or (j) of this section. The mediation officer shall make a reasonable effort to initiate settlement discussions between the applicant and all other interested parties. Evidence of statements made and conduct that occurs in a settlement discussion conducted under this subsection, whether attributable to a party, a mediation officer, or other person shall not be subject to discovery and shall be inadmissible in any subsequent proceeding on the petition for a certificate. The Commission may adopt rules to govern the conduct of the mediation process.

(i) Draft Determination. – Within 90 days after the Commission determines that the environmental document prepared in accordance with subsection (d) of this section is adequate or the applicant submits its petition for a certificate, whichever occurs later, the Commission shall issue a draft determination on whether to grant the certificate. The draft determination shall be based on the criteria set out in this section and shall include the conditions and limitations, findings of fact, and conclusions of law that would be required in a final determination. Notice of the draft determination shall be given as provided in subsection (c) of this section.

(j) Public Hearing on the Draft Determination. – Within 60 days of the issuance of the draft determination as provided in subsection (i) of this section, the Commission shall hold public hearings on the draft determination. At least one hearing shall be held in the affected area of the source river basin, and at least one hearing shall be held in the affected area of the receiving river basin. In determining whether more than one public hearing should be held within either the source or receiving river basins, the Commission shall consider the differing or conflicting interests that may exist within the river basins, including the interests of both upstream and downstream parties potentially affected by the proposed transfer. The public hearings shall be conducted by one or more hearing officers appointed by the Chair of the Commission. The hearing officers may be members of the Commission or employees of the Department. The Commission shall give at least 30 days' written notice of the public hearing as provided in subsection (c) of this section. The Commission shall accept written comment on the draft determination for a minimum of 30 days following the last public hearing. The Commission shall prepare a record of all comments and written responses to questions posed in writing. The record shall include complete copies of scientific or technical comments related to the potential impact of the interbasin transfer. The applicant who petitions the Commission for a certificate under this section shall pay the costs associated with the notice and public hearing on the draft determination.

(k) Final Determination: Factors to be Considered. – In determining whether a certificate may be issued for the transfer, the Commission shall specifically consider each of the following items and state in writing its findings of fact and conclusions of law with regard to each item:

(1) The necessity and reasonableness of the amount of surface water proposed to be transferred and its proposed uses.

(2) The present and reasonably foreseeable future detrimental effects on the source river basin, including present and future effects on public, industrial, economic, recreational, and agricultural water supply needs, wastewater assimilation, water quality, fish and wildlife habitat, electric power generation, navigation, and recreation. Local water supply plans for public water systems with service area located within the source river basin prepared pursuant to G.S. 143-355(l) shall be used to evaluate the projected future water needs in the source river basin that will be met by public water systems. Information on projected future water needs for public water systems with service area located within the source river basin that is more recent than the local water supply plans may be used if the Commission finds the information to be reliable. The determination shall include a specific finding as to measures that are necessary or advisable to mitigate or avoid detrimental impacts on the source river basin.

(3) The cumulative effect on the source major river basin of any water transfer or consumptive water use that, at the time the Commission considers the petition for a certificate is occurring, is authorized under this section, or is projected in any local water supply plan for public water systems with service area located within the source river basin that has been submitted to the Department in accordance with G.S. 143-355(l).

(4) The present and reasonably foreseeable future beneficial and detrimental effects on the receiving river basin, including present and future effects on public, industrial, economic, recreational, and agricultural water supply needs, wastewater assimilation, water quality, fish and wildlife habitat, electric power generation, navigation, and recreation. Local water supply plans prepared pursuant to G.S. 143-355(l) that affect the receiving river basin shall be used to evaluate the projected future water needs in the receiving river basin that will be met by public water systems. Information on projected future water needs that is more recent than the local water supply plans may be used if the Commission finds the information to be reliable. The determination shall include a specific finding as to measures that are necessary or advisable to mitigate or avoid detrimental impacts on the receiving river basin.

(5) The availability of reasonable alternatives to the proposed transfer, including the potential capacity of alternative sources of water, the potential of each alternative to reduce the amount of or avoid the proposed transfer, probable costs, and environmental impacts. In considering alternatives, the Commission is not limited to consideration of alternatives that have been proposed, studied, or considered by the applicant. The determination shall include a specific finding as to why the applicant's need for water cannot be satisfied by alternatives within the receiving basin, including unused capacity under a transfer for which a certificate is in effect or that is otherwise authorized by law at the time the applicant submits the petition. The determination shall consider the extent to which access to potential sources of surface water or groundwater within the receiving river basin is no longer available due to depletion, contamination, or the declaration of a capacity use area under Part 2 of Article 21 of Chapter 143 of the General Statutes. The determination shall consider the feasibility of the applicant's purchase of water from other water suppliers within the receiving basin and of the transfer of water from another sub-basin within the receiving major river basin. Except in circumstances of technical or economic infeasibility or

adverse environmental impact, the Commission's determination as to reasonable alternatives shall give preference to alternatives that would involve a transfer from one sub-basin to another within the major receiving river basin over alternatives that would involve a transfer from one major river basin to another major river basin.

(6) If applicable to the proposed project, the applicant's present and proposed use of impoundment storage capacity to store water during high-flow periods for use during low-flow periods and the applicant's right of withdrawal under G.S. 143-215.44 through G.S. 143-215.50.

(7) If the water to be withdrawn or transferred is stored in a multipurpose reservoir constructed by the United States Army Corps of Engineers, the purposes and water storage allocations established for the reservoir at the time the reservoir was authorized by the Congress of the United States.

(8) Whether the service area of the applicant is located in both the source river basin and the receiving river basin.

(9) Any other facts and circumstances that are reasonably necessary to carry out the purposes of this Part.

(l) Final Determination: Information to be Considered. – In determining whether a certificate may be issued for the transfer, the Commission shall consider all of the following sources of information:

(1) The petition.

(2) The environmental document prepared pursuant to subsection (d) of this section.

(3) All oral and written comment and all accompanying materials or evidence submitted pursuant to subsections (e) and (j) of this section.

(4) Information developed by or available to the Department on the water quality of the source river basin and the receiving river basin, including waters that are identified as impaired pursuant to section 303(d) of the federal Clean Water Act (33 U.S.C. § 1313(d)), that are subject to a total maximum daily load (TMDL) limit under subsections (d) and (e) of section 303 of the federal Clean Water Act, or that would have their assimilative capacity impaired if the certificate is issued.

(5) Any other information that the Commission determines to be relevant and useful.

(m) Final Determination: Burden and Standard of Proof; Specific Findings. – The Commission shall grant a certificate for a water transfer if the Commission finds that the applicant has established by a preponderance of the evidence all of the following:

(1) The benefits of the proposed transfer outweigh the detriments of the proposed transfer. In making this determination, the Commission shall be guided by the approved environmental document and the policy set out in subsection (t) of this section.

(2) The detriments have been or will be mitigated to the maximum degree practicable.

(3) The amount of the transfer does not exceed the amount of the projected shortfall under the applicant's water supply plan after first taking into account all other sources of water that are available to the applicant.

(4) There are no reasonable alternatives to the proposed transfer.

(n) Final Determination: Certificate Conditions and Limitations. – The Commission may grant the certificate in whole or in part, or deny the certificate. The Commission may impose any conditions or limitations on a certificate that the Commission finds necessary to achieve the purposes of this Part including a limit on the period for which the certificate is

valid. The conditions and limitations shall include any mitigation measures proposed by the applicant to minimize any detrimental effects within the source and receiving river basins. In addition, the certificate shall require all of the following conditions and limitations:

(1) A water conservation plan that specifies the water conservation measures that will be implemented by the applicant in the receiving river basin to ensure the efficient use of the transferred water. Except in circumstances of technical or economic infeasibility or adverse environmental impact, the water conservation plan shall provide for the mandatory implementation of water conservation measures by the applicant that equal or exceed the most stringent water conservation plan implemented by a ~~community water system, as defined in G.S. 143-355(l),~~ public water system that withdraws water from the source river basin.

(2) A drought management plan that specifies how the transfer shall be managed to protect the source river basin during drought conditions or other emergencies that occur within the source river basin. Except in circumstances of technical or economic infeasibility or adverse environmental impact, this drought management plan shall include mandatory reductions in the permitted amount of the transfer based on the severity and duration of a drought occurring within the source river basin and shall provide for the mandatory implementation of a drought management plan by the applicant that equals or exceeds the most stringent water conservation plan implemented by a ~~community water system, as defined in G.S. 143-355(l),~~public water system that withdraws water from the source river basin.

(3) The maximum amount of water that may be ~~transferred on a daily basis,~~transferred, calculated as a daily average of a calendar month, and methods or devices required to be installed and operated that measure the amount of water that is transferred.

(4) A provision that the Commission may amend a certificate to reduce the maximum amount of water authorized to be transferred whenever it appears that an alternative source of water is available to the certificate holder from within the receiving river basin, including, but not limited to, the purchase of water from another water supplier within the receiving basin or to the transfer of water from another sub-basin within the receiving major river basin.

(5) A provision that the Commission shall amend the certificate to reduce the maximum amount of water authorized to be transferred if the Commission finds that the applicant's current projected water needs are significantly less than the applicant's projected water needs at the time the certificate was granted.

(6) A requirement that the certificate holder report the quantity of water transferred during each calendar quarter. The report required by this subdivision shall be submitted to the Commission no later than 30 days after the end of the quarter.

(7) Except as provided in this subdivision, a provision that the applicant will not resell the water that would be transferred pursuant to the certificate to another public water ~~supply~~ system. This limitation shall not apply in the case of a proposed resale or transfer among public water ~~supply~~ systems within the receiving river basin as part of an interlocal agreement or other regional water supply arrangement, provided that each participant in the interlocal agreement or regional water supply arrangement is a co-applicant

for the certificate and will be subject to all the terms, conditions, and limitations made applicable to any lead or primary applicant.

(o) Administrative and Judicial Review. – Administrative and judicial review of a final decision on a petition for a certificate under this section shall be governed by Chapter 150B of the General Statutes.

(p) Certain Preexisting Transfers. – In cases where an applicant requests approval to increase a transfer that existed on 1 July 1993, the Commission may approve or disapprove only the amount of the increase. If the Commission approves the increase, the certificate shall be issued for the amount of the preexisting transfer plus any increase approved by the Commission. A certificate for a transfer approved by the Commission under G.S. 162A-7 shall remain in effect as approved by the Commission and shall have the same effect as a certificate issued under this Part. A certificate for the increase of a preexisting transfer shall contain all of the conditions and limitations required by subsection (m) of this section.

(q) Emergency Transfers. – In the case of water supply problems caused by drought, a pollution incident, temporary failure of a water plant, or any other temporary condition in which the public health, safety, or welfare requires a transfer of water, the Secretary of Environment and Natural Resources may grant approval for a temporary transfer. Prior to approving a temporary transfer, the Secretary shall consult with those parties listed in subdivision (3) of subsection (c) of this section that are likely to be affected by the proposed transfer. However, the Secretary shall not be required to satisfy the public notice requirements of this section or make written findings of fact and conclusions of law in approving a temporary transfer under this subsection. If the Secretary approves a temporary transfer under this subsection, the Secretary shall specify conditions to protect other water users. A temporary transfer shall not exceed six months in duration, but the approval may be renewed for a period of six months by the Secretary based on demonstrated need as set forth in this subsection.

(r) Relationship to Federal Law. – The substantive restrictions, conditions, and limitations upon surface water transfers authorized in this section may be imposed pursuant to any federal law that permits the State to certify, restrict, or condition any new or continuing transfers or related activities licensed, relicensed, or otherwise authorized by the federal government. This section shall govern the transfer of water from one river basin to another unless preempted by federal law.

(s) Planning Requirements. – When any transfer for which a certificate was issued under this section equals or exceeds eighty percent (80%) of the maximum amount authorized in the certificate, the applicant shall submit to the Department a detailed plan that specifies how the applicant intends to address future foreseeable water needs. If the applicant is required to have a local water supply plan, then this plan shall be an amendment to the local water supply plan required by G.S.143-355(l). When the transfer equals or exceeds ninety percent (90%) of the maximum amount authorized in the certificate, the applicant shall begin implementation of the plan submitted to the Department.

(t) Statement of Policy. – It is the public policy of the State to maintain, protect, and enhance water quality within North Carolina. It is the public policy of this State that the reasonably foreseeable future water needs of a public water system with its service area located primarily in the receiving river basin are subordinate to the reasonably foreseeable future water needs of a public water system with its service area located primarily in the source river basin. Further, it is the public policy of the State that the cumulative impact of transfers from a source river basin shall not result in a violation of the antidegradation policy set out in 40 Code of Federal Regulations § 131.12 (1 July 2006 Edition) and the statewide antidegradation policy adopted pursuant thereto.

~~(u) Renewal of Certificate. – A petition to extend or renew a certificate shall be treated as a new petition.~~

(v) Modification of Certificate. – A certificate may be modified as provided in this subsection.

(1) The Commission or the Department may make any of the following modifications to a certificate after providing electronic notice to persons who have identified themselves in writing as interested parties:

a. Correction of typographical errors.

b. Clarification of existing conditions or language.

c. Updates to a conservation plan, drought management plan, or compliance and monitoring plan.

d. Modifications requested by the certificate holder to reflect altered requirements due to the amendment of this section.

(2) The Commission may make modifications that it deems to be minor after providing electronic notice to persons who have identified themselves in writing as interested parties.

(3) A person who holds a certificate for an interbasin transfer of water may request that the Commission modify the certificate. The request shall be considered and a determination made according to the following procedures:

a. The certificate must have been issued pursuant to G.S. 162A-7, 143-215.22I, or 143-215.22L and the certificate holder must be in substantial compliance with the certificate.

b. The certificate holder shall file a notice of intent to file a request for modification that includes a nontechnical description of the certificate holder's request and identification of the proposed water source.

c. The certificate holder shall prepare an environmental document pursuant to subsection (d) of this section, except that an environmental impact statement shall not be required for the modification of a certificate unless it would otherwise be required by Article 1 of Chapter 113A of the General Statutes.

d. Upon determining that the documentation submitted by the certificate holder is adequate to satisfy the requirements of this subsection, the Department shall publish a notice of the request for modification in the North Carolina Register and shall hold a public hearing at a location convenient to both the source and receiving river basins. The Department shall provide written notice of the request for the modification and the public hearing in the Environmental Bulletin, a newspaper of general circulation in the source river basin, a newspaper of general circulation in the receiving river basin, and as provided in subdivision (3) of subsection (c) of this section. The certificate holder who petitions the Commission for a modification under this subdivision shall pay the costs associated with the notice and public hearing.

e. The Department shall accept comments on the requested modification for a minimum of 30 days following the public hearing.

f. The Commission or the Department may require the certificate holder to provide any additional information or documentation it deems reasonably necessary in order to make a final determination.

g. The Commission shall make a final determination whether to grant the requested modification based on the factors set out in subsection (k) of this section, information provided by the certificate holder, and any other information the Commission deems relevant. The

Commission shall state in writing its findings of fact and conclusions of law with regard to each factor.

h. The Commission shall grant the requested modification if it finds that the certificate holder has established by a preponderance of the evidence that the requested modification satisfies the requirements of subsection (m) of this section. The Commission may grant the requested modification in whole or in part, or deny the request, and may impose such limitations and conditions on the modified certificate as it deems necessary and relevant to the modification.

i. The Commission shall not grant a request for modification if the modification would result in the transfer of water to an additional major river basin.

(w) Requirements for Coastal Counties. – A petition for a certificate to transfer surface water to supplement ground water supplies in the 15 counties designated as the Central Capacity Use Area under 15A NCAC 2E .0501, or to transfer surface water withdrawn from the mainstem of a river to provide service to one of the coastal area counties designated pursuant to G.S. 113A-103, shall be considered and a determination made according to the following procedures:

(1) The applicant shall file a notice of intent that includes a nontechnical description of the applicant's request and identification of the proposed water source.

(2) The applicant shall prepare an environmental document pursuant to subsection (d) of this section, except that an environmental impact statement shall not be required unless it would otherwise be required by Article 1 of Chapter 113A of the General Statutes.

(3) Upon determining that the documentation submitted by the applicant is adequate to satisfy the requirements of this subsection, the Department shall publish a notice of the petition in the North Carolina Register and shall hold a public hearing at a location convenient to both the source and receiving river basins. The Department shall provide written notice of the petition and the public hearing in the Environmental Bulletin, a newspaper of general circulation in the source river basin, a newspaper of general circulation in the receiving river basin, and as provided in subdivision (3) of subsection (c) of this section. The applicant who petitions the Commission for a certificate under this subdivision shall pay the costs associated with the notice and public hearing.

(4) The Department shall accept comments on the petition for a minimum of 30 days following the public hearing.

(5) The Commission or the Department may require the applicant to provide any additional information or documentation it deems reasonably necessary in order to make a final determination.

(6) The Commission shall make a final determination whether to grant the certificate based on the factors set out in subsection (k) of this section, information provided by the applicant, and any other information the Commission deems relevant. The Commission shall state in writing its findings of fact and conclusions of law with regard to each factor.

(7) The Commission shall grant the certificate if it finds that the applicant has established by a preponderance of the evidence that the petition satisfies the requirements of subsection (m) of this section. The Commission may grant the certificate in whole or in part, or deny the request, and may impose such

limitations and conditions on the certificate as it deems necessary and relevant."

SECTION 3.(a) Section 1 of S.L. 2011-298 reads as rewritten:

"**SECTION 1.** Notwithstanding G.S. 143-215.22I and 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 3.(b) Section 4 of S.L. 2011-298 reads as rewritten:

"**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.~~exceeds 20,300,000 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."

SECTION 3.(c) Section 7 of S.L. 2007-518, as amended by Section 4 of S.L. 2010-155 and Section 2 of S.L. 2011-298, reads as rewritten:

"~~**SECTION 7.(a)** Except as provided in subsections (b), (c) and (d) of this section, this~~ **SECTION 7.** 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.(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 4. This act is effective when it becomes law.

SENATE BILL 341: Amend Interbasin Transfer Law

Discussion Only

2013-2014 General Assembly

Committee:	Senate Agriculture/Environment/Natural Resources	**Date:**	April 16, 2013
Introduced by:	Senator Rabon	**Prepared by:**	Jeff Hudson Committee Counsel
Analysis of:	First Edition		

SUMMARY: Senate Bill 341 would provide an expedited process for modifying existing interbasin transfer certificates and for obtaining new interbasin transfer certificates in coastal counties.

BACKGROUND AND CURRENT LAW:

In 2007, the General Assembly repealed the then existing process for obtaining an interbasin transfer certificate and established a new process for applying for a certificate and for determining whether a certificate should be issued. The new process established much more extensive notice and comment requirements and provided that a full environmental impact statement must be developed for any interbasin transfers from one major river basin to another. These additional requirements increase the time it takes to complete an interbasin transfer certificate process and makes the process considerably more expensive for applicants. Since 2007, the General Assembly has enacted several pieces of legislation for the Central Coastal Plain Capacity Use Area and for other coastal areas to provide some relief from these additional requirements.

BILL ANALYSIS:

Senate Bill 341 would provide an expedited process for modifying existing interbasin transfer certificates and for obtaining new interbasin transfer certificates in coastal counties, as follows:

- Modifies the threshold for when an interbasin transfer certificate must be obtained. Under current law, the threshold is a transfer of 2,000,000 gallons of water or more per day from one river basin to another. Senate Bill 341 would change the threshold to a transfer of 2,000,000 gallons of water or more per day, calculated as a daily average of a calendar month and not exceed 5,000,000 gallons per day in any one day, from one river basin to another.
- Provides an expedited process for modifying existing interbasin transfer certificates by reducing notice requirements and providing that a full environmental impact statement is not necessarily required.
- Provides an expedited process for obtaining new interbasin transfer certificates in coastal counties by reducing notice requirements and providing that a full environmental impact statement is not necessarily required.
- Makes clarifying, conforming, and technical changes to interbasin transfer laws.

EFFECTIVE DATE: This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

Pulled

S 1

SENATE BILL 391

Short Title:	401 Certification Clarification.	(Public)
Sponsors:	Senators Daniel, Brock (Primary Sponsors); and Newton.	
Referred to:	Agriculture/Environment/Natural Resources.	

March 21, 2013

A BILL TO BE ENTITLED

AN ACT TO DECLARE THAT THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES HAS WAIVED ITS RIGHT TO ISSUE A 401 CERTIFICATION AFTER PASSAGE OF A CERTAIN TIME AND TO FORBID THE DEPARTMENT FROM REQUIRING OR ISSUING A CERTIFICATION IN THAT CASE.

The General Assembly of North Carolina enacts:

SECTION 1. The General Assembly finds that, as set forth in federal law, the failure of the Department of Environment and Natural Resources to act on a request for certification under section 401(a)(1) of the Clean Water Act, 33 U.S.C. § 1341 within a reasonable time not to exceed one year constitutes a waiver of the certification requirement.

SECTION 2. Article 21 of Chapter 143 of the General Statutes is amended by adding a new section to read:

"**§ 143-214.15. Waiver of Water Quality Certification.**

The Department shall not require or issue any water quality certification under the provisions of section 401 of the Clean Water Act, 33 U.S.C. § 1341, if it fails or refuses to act on a request for certification within one year after receipt of such request. In such cases, the certification requirement shall be deemed waived."

SECTION 3. This act becomes effective July 1, 2013.

VISITOR REGISTRATION SHEET

Senate/Agriculture/Environment/Natural Resources
(Committee Name)

4/16/2013
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Neal Robbins	NC DENR
Mitch Gillespie	NCDENR
Tom Fransen	DWR, NCDENR
Tom BEAN	EDF, NCWF
Peter Raabe	American Rivers
Brooks Rainey Pearson	SELC
Meg Wade-Ashill	SELC
Karen Higgins	NCDENR
Cyndi Karoly	NCDENR
[illegible]	NCAC/NCCA
Jimmy Gentry	NC State Grange
Heather Barrett	Ward & Smith
Carr McLamb	DENR
Cassie Gavin	Sierra Club
Stephen Kauber	Compass
Jack Cozort	NSS

VISITOR REGISTRATION SHEET

Senate/Agriculture/Environment/Natural Resources
(Committee Name)

4/16/2013
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
PBP	NCP
Jay Stem	NCAA
Paul Hoglevin	IJ

VISITOR REGISTRATION SHEET

Senate/Agriculture/Environment/Natural Resources
(Committee Name)

4/16/2013
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Joy Hicks	NCDA&CS
David McLeod	NCDA CS
Kim Alboum	HSUS
[illegible]	NCFB YF&R
Pam Edwards	NC Farm Bureau
JD Solomon	CH2M HILL
Glenn Dunn	Poyner Spruill LLP
Bill Kreutzberger	CH2M HILL
George Everett	Duke Energy
Milo Lewis	NCFB
Justin Whitley	NCCES
[illegible]	NCFB
Justin Edwards	NCFB Young Farmers & Ranchers
John Harrell	NCFB
Mitch Peele	"
Tony Stevens	NCPC
CHRIS DILLON	[illegible]

SENATE PAGES ATTENDING

COMMITTEE: Agriculture ROOM: 544

DATE: 4-23 TIME: 11:00 AM

PLEASE PRINT LEGIBILY!!!!!!!!!!!!!....*or else!*

Page Name	Hometown	Sponsoring Senator
1. Trevor Edwards	Goldsboro	Parmon.
2. Aja White	Chapel Hill	Stein
3. Caleb Sanders	Morganton	Daniel
4. Ron Davenport	Clayton	Jackson
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 Committee on Agriculture/Environment/Natural Resources
Tuesday, April 23, 2013, 11:00 AM
544 Legislative Office Building

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Presentations

HARRISON
Venessa ~~Williams~~, President of AT&T North Carolina

Bills

BILL NO.	SHORT TITLE	SPONSOR
SB 25	Hunting & Fishing/Active Duty Military.	Senator Brown
SB 509	NC Agriculture and Forestry Act.	Senator Jackson Senator Barefoot Senator Brock
SB 391	401 Certification Clarification.	Senator Daniel Senator Brock

Other Business

Adjournment

Senate Committee on Agriculture/Environment/Natural Resources
Tuesday, April 23, 2013 at 11:00 AM
Room 544 of the Legislative Office Building

MINUTES

The Senate Committee on Agriculture/Environment/Natural Resources met at 11:00 AM on April 23, 2013 in Room 544 of the Legislative Office Building. Ten (10) members were present.

Senator Brent Jackson, presided.

Senator Jackson introduced the pages – Trevor Edwards from Goldsboro sponsored by Sen.Parmon, Agia White from Chapel Hill sponsored by Sen. Stein, Caleb Sanders from Morganton sponsored by Sen. Daniel and Ron Davenport from Clayton, sponsored by Sen. Jackson. The Sgt. of Arms for today - Charles Harper, Ronald Spann and Ken Kirby.

There was a change in the agenda which allowed Sen. Brown to go first due to another meeting he had to attend. Senator Brown explained the following bill:

SB 25 Hunting & Fishing/Active Duty Military

Sen. Brown explained the bill with no follow up discussion on the bill. Sen. Bingham made a motion for a Favorable Report on the bill and the motion. carried. The bill had a Sequential Referral to Finance.

Senator Jackson introduced Venessa Harrison, newly appointed President of AT&T North Carolina. Ms. Harrison made a presentation on AT&T and changes that are yet to come and how they will benefit North Carolina, especially the families who live in rural parts of our state. Wireless services are becoming more and more important today than ever before. In North Carolina, wireless prescriptions outnumber traditional phone lines (land lines) 2 to 1. Thirty Five percent of American households are wireless only and over the past 6 years since the smart phone first hit the market, there has been a 30,000% increase in mobile traffic. AT&T is committed to meeting the needs of their customers in this new mobile society.

At the conclusion of Ms. Harrison's presentation, Sen. Jackson turned the meeting over to Sen. Brock who introduced Sen. Jackson to explain the following bill:

SB 509 NC Agriculture and Forestry Act.

Sen. Jackson made a motion to adopt the PCS on the bill. The motion carried. Sen. Jackson explained the bill with no follow-up questions from the committee or the audience. Sen. Cook made a motion for a Favorable Report to the PCS and the motion carried. The bill was referred to J1 Committee.

Sen. Brock turned the chair over to Sen. Jackson.

SB391 401 Certification Clarifications (This bill was pulled from the agenda)

The meeting adjourned at 11:30 AM.

Senator Brent Jackson
Presiding

Judy Edwards, Committee Clerk

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES COMMITTEE REPORT
Senator Brock, Co-Chair
Senator Jackson, Co-Chair

Tuesday, April 23, 2013

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

FAVORABLE

SB **25** Hunting & Fishing Active Duty Military.

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

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

SB **509** NC Agriculture and Forestry Act.

Draft Number:	S509-PCS35328-TQ-18
Sequential Referral:	Judiciary I
Recommended Referral:	None
Long Title Amended:	Yes

TOTAL REPORTED: 2

Senator Harry Brown will handle SB 25
Senator W. Jackson will handle SB 509



Favorable

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

S 1

SENATE BILL 25

Short Title:	Hunting & Fishing/Active Duty Military.	(Public)
Sponsors:	Senators Brown (Primary Sponsor); Apodaca, Barefoot, Brock, Clark, Cook, Daniel, D. Davis, Goolsby, Jackson, Jenkins, McLaurin, Rabon, Randleman, Sanderson, Tucker, and Walters.	
Referred to:	Agriculture/Environment/Natural Resources.	

February 4, 2013

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, the member's spouse, and any dependent under 18 years of age residing with the member 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 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, 2013.

SENATE BILL 25:
Hunting & Fishing/Active Duty Military

2013-2014 General Assembly

Committee:	Senate Ref to Agriculture/Environment/Natural Resources. If fav, re-ref to Finance	**Date:**	April 23, 2013
Introduced by:	Sen. Brown	**Prepared by:**	Chris Saunders Committee Counsel
Analysis of:	First Edition		

SUMMARY: ***The bill amends G.S. 113-130(4)e. to define active duty members of the U.S. Armed Forces outside the State of North Carolina as individual residents of the State for the purposes of obtaining certain hunting, fishing, trapping, sportsman, and special activity licenses.***

CURRENT LAW: Currently, G.S. 113-130(4)e. defines members of the U.S. Armed Forces stationed at a military facility in North Carolina, their spouses, and minor dependents as residents of the State.

BILL ANALYSIS: Senate Bill 25 amends G.S. 113-130(4)e. to provide that any active duty member of the U.S. Armed Forces outside the State of North Carolina is a resident of the State for the purposes of obtaining any of the following licenses:

- Annual Resident Coastal Recreational Fishing Licenses (G.S. 113-174.2(c)(1));
- Ten-Day Resident Coastal Recreational Fishing Licenses (G.S. 113-174.2(c)(4));
- Resident Annual Combination Hunting and Inland Fishing Licenses (G.S. 113-270.1C(b)(1));
- Annual Sportsman Licenses (G.S. 113-270.1D(a));
- Resident State Hunting Licenses (G.S. 113-270.2(c)(1));
- Resident Annual Comprehensive Hunting Licenses (G.S. 113-270.2(c)(5));
- Resident Big Game Hunting Licenses (G.S. 113-270.3(b)(1));
- Resident State Trapping Licenses (G.S. 113-270.5(b)(1));
- Resident Annual Comprehensive Inland Fishing Licenses (G.S. 113-271(d)(1));
- Resident State Inland Fishing Licenses (G.S. 113-271(d)(2));
- Resident 10-Day Inland Fishing Licenses (G.S. 113-271(d)(6)a);
- Annual Resident Unified Sportsman/Coastal Recreational Fishing Licenses (G.S. 113-351(c)(1)); and
- Annual Resident Unified Inland/Coastal Recreational Fishing Licenses (G.S. 113-351(c)(2)).

EFFECTIVE DATE: Senate Bill 25 would be come effective July 1, 2013.

O. Walker Reagan
Director

S25-SMTQ-9 E1 -V3

Research Division
(919) 733-2578

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

Favorable

S D

SENATE BILL 509
PROPOSED COMMITTEE SUBSTITUTE S509-PCS35328-TQ-18

Short Title: NC Agriculture and Forestry Act. (Public)

Sponsors:

Referred to:

March 28, 2013

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT AGRICULTURAL AND FORESTRY OPERATIONS ARE NOT NUISANCES UNDER CERTAIN CIRCUMSTANCES AND TO PROVIDE FOR THE AWARD OF COSTS AND ATTORNEYS' FEES TO A PREVAILING DEFENDANT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 106-701 reads as rewritten:

"**§ 106-701. When agricultural and forestry operation, etc., not constituted nuisance by changed conditions in locality.**

(a) No agricultural or forestry operation or any of its appurtenances shall be or become a nuisance, private or public, ~~by any changed conditions in or about the locality thereof after the same has been in operation for more than one year, when such operation was not a nuisance at the time the operation began; provided, that the provisions of this subsection shall not apply whenever a nuisance results from the negligent or improper operation of any such agricultural or forestry operation or its appurtenances.~~when all of the following conditions are met:

(1) There has been a changed condition in or about the locality of the operation.

(2) The operation has been in operation for more than one year.

(3) The operation was not a nuisance at the time the operation began.

(4) There have been no fundamental changes to the operation.

(a1) For the purposes of subsection (a) of this section, a fundamental change to the operation does not include any of the following:

(1) A change in ownership or size.

(2) Nonpermanent cessation or interruption of farming.

(3) Participation in any government-sponsored agricultural program.

(4) Employment of new technology.

(5) A change in the type of agricultural or forestry product produced.

(a2) The provisions of subsection (a) of this section shall not apply whenever a nuisance results from the negligent or improper operation of any agricultural or forestry operation or its appurtenances.

(b) For the purposes of this Article, "agricultural operation" includes, without limitation, any facility for the production for commercial purposes of crops, livestock, poultry, livestock products, or poultry products.

(b1) For the purposes of this Article, "forestry operation" shall mean those activities involved in the growing, managing, and harvesting of ~~trees, but not sawmill operations.~~trees.

(c) The provisions of subsection (a) shall not affect or defeat the right of any person, firm, or corporation to recover damages for any injuries or damages sustained by him on

account of any pollution of, or change in condition of, the waters of any stream or on the account of any overflow of lands of any such person, firm, or corporation.

(d) Any and all ordinances of any unit of local government now in effect or hereafter adopted that would make the operation of any such agricultural or forestry operation or its appurtenances a nuisance or providing for abatement thereof as a nuisance in the circumstance set forth in this section are and shall be null and void; provided, however, that the provisions of this subsection shall not apply whenever a nuisance results from the negligent or improper operation of any such agricultural or forestry operation or any of its appurtenances. Provided further, that the provisions shall not apply whenever a nuisance results from an agricultural or forestry operation located within the corporate limits of any city at the time of enactment hereof.

(e) This section shall not be construed to invalidate any contracts heretofore made but insofar as contracts are concerned, it is only applicable to contracts and agreements to be made in the future.

(f) In any civil action in which an agricultural or forestry operation is alleged to be a nuisance, a prevailing defendant shall recover the aggregate amount of costs and expenses determined by the court to have been reasonably incurred in the defense of the nuisance action, including a reasonable amount for attorneys' fees."

SECTION 2. This act becomes effective July 1, 2013, and applies to causes of action arising on or after that date.

SENATE BILL 509:
NC Agriculture and Forestry Act

2013-2014 General Assembly

Committee:	Senate Ref to Agriculture/Environment/Natural Resources. If fav, re-ref to Judiciary I	**Date:**	April 23, 2013
Introduced by:	Sens. Jackson, Barefoot, Brock	**Prepared by:**	Chris Saunders Committee Counsel
Analysis of:	PCS to First Edition S509-CSTQ-18 [v.5]		

SUMMARY: ***The proposed committee substitute (PCS) for Senate Bill 509 would amend the conditions under which an agricultural or forestry operation may be liable in a public or private nuisance suit, and provide that a plaintiff in a nuisance suit against an agricultural or forestry operation must pay the defendant's attorney fees if unsuccessful in the suit.***

[As introduced, this bill was identical to H614, as introduced by Reps. Ramsey, Presnell, Waddell, which is currently in House Agriculture, if favorable, Judiciary Subcommittee A.]

CURRENT LAW: Nuisance law in North Carolina is governed by the common law. Private nuisance is defined as any unreasonable invasion of a person's interest in the private use and enjoyment of his or her land by any type of liability-forming conduct. Determining whether an interference is unreasonable is largely fact-specific and determined by the circumstances in each case. In order for the plaintiff to prevail, the interference with plaintiff's use and enjoyment must be "substantial." The plaintiff must show an effect on the health, comfort, or property of those who live nearby that results in substantial annoyance, material physical discomfort, or injury to the plaintiff's health or property.[1] A slight inconvenience or petty annoyance is not enough to support a claim. Additionally, the question in a nuisance case is whether reasonable persons generally, examining the situation as a whole and taking into account the interests of the plaintiff, defendant, and the community, would consider the interference unreasonable.

Current G.S. 106-701(a) modifies the common law for agricultural and forestry operations in certain circumstances by providing that no agricultural or forestry operation that has been in operation for over a year can become a nuisance based on changed conditions in the surrounding area, except when operated negligently or improperly. The N.C. Court of Appeals has held that G.S. 106-701(a) does not apply to situations in which the landowner fundamentally changes the agricultural use of the land.[2]

BILL ANALYSIS: The PCS would amend G.S. 106-701 to provide that an agricultural or forestry operation does not become a nuisance if there has not been a fundamental change in the operation. Changes to the operation that would not be fundamental changes are: (1) a change in ownership or size, (2) nonpermanent cessation or interruption of farming, (3) participation in any government-sponsored agricultural program, (4) employment of new technology, and (5) a change in the type of agricultural or forestry product produced. The PCS would make a clarifying change by setting out the circumstances under which an operation would not be a nuisance.

---

[1] *Pake v. Morris*, 230 N.C. 424, 53 S.E.2d 300 (1949).

[2] *Durham v. Britt*, 17 N.C.App. 260, 451 S.E.2d 1 (1994) (holding that a change in land use from a turkey farm to a hog production facility was a fundamental change in the use of the land and could be a basis for a nuisance action).

The PCS would further provide that "forestry operation" includes sawmill operations.

The PCS would also provide that a prevailing defendant in a civil action in which an agricultural or forestry operation is alleged to be a nuisance will recover the aggregate amount of costs and expenses reasonably incurred in the defense of the action, including attorneys' fees.

EFFECTIVE DATE: The act would become effective July 1, 2013, and would apply to causes of action arising on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

Unfavorable

S 1

SENATE BILL 509

Short Title:	NC Agriculture and Forestry Act.	(Public)
Sponsors:	Senators Jackson, Barefoot, Brock (Primary Sponsors); Cook and Meredith.	
Referred to:	Agriculture/Environment/Natural Resources.	

March 28, 2013

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FOR A REBUTTABLE PRESUMPTION THAT CERTAIN AGRICULTURAL AND FORESTRY OPERATIONS ARE NOT NUISANCES AND TO PROVIDE FOR THE AWARD OF COSTS AND ATTORNEYS' FEES TO A PREVAILING DEFENDANT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 106-701 reads as rewritten:

"**§ 106-701. When agricultural and forestry operation, etc., not constituted nuisance by changed conditions in locality.**

(a) No agricultural or forestry operation or any of its appurtenances shall be or become a nuisance, private or public, by any changed conditions in or about the locality thereof after the same has been in operation for more than one year, when such operation was not a nuisance at the time the operation began; provided, that the provisions of this subsection shall not apply whenever a nuisance results from the negligent or improper operation of any such agricultural or forestry operation or its appurtenances.

(a1) Employment of methods or practices that are commonly or reasonably associated with agricultural or forestry production or are in compliance with any state or federally issued permit shall create a rebuttable presumption that an agricultural or forestry operation is not a nuisance. For purposes of this subsection, "methods or practices that are commonly or reasonably associated with agricultural or forestry production" shall include any of the following:

(1) Change in ownership or size.
(2) Nonpermanent cessation or interruption of farming.
(3) Participation in any government-sponsored agricultural program.
(4) Employment of new technology.
(5) Change in the type of agricultural product produced.

(b) For the purposes of this Article, "agricultural operation" includes, without limitation, any facility for the production for commercial purposes of crops, livestock, poultry, livestock products, or poultry products.

(b1) For the purposes of this Article, "forestry operation" shall mean those activities involved in the growing, managing, and harvesting of ~~trees, but not sawmill operations.~~trees.

(c) The provisions of subsection (a) shall not affect or defeat the right of any person, firm, or corporation to recover damages for any injuries or damages sustained by him on account of any pollution of, or change in condition of, the waters of any stream or on the account of any overflow of lands of any such person, firm, or corporation.

(d) Any and all ordinances of any unit of local government now in effect or hereafter adopted that would make the operation of any such agricultural or forestry operation or its appurtenances a nuisance or providing for abatement thereof as a nuisance in the circumstance set forth in this section are and shall be null and void; provided, however, that the provisions of this subsection shall not apply whenever a nuisance results from the negligent or improper operation of any such agricultural or forestry operation or any of its appurtenances. Provided further, that the provisions shall not apply whenever a nuisance results from an agricultural or forestry operation located within the corporate limits of any city at the time of enactment hereof.

(e) This section shall not be construed to invalidate any contracts heretofore made but insofar as contracts are concerned, it is only applicable to contracts and agreements to be made in the future.

(f) In any civil action in which an agricultural or forestry operation is alleged to be a nuisance, a prevailing defendant shall recover the aggregate amount of costs and expenses determined by the court to have been reasonably incurred in the defense of the nuisance action, including a reasonable amount for attorneys' fees."

SECTION 2. This act becomes effective July 1, 2013, and applies to causes of action arising on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

S

SENATE BILL 391

Pulled from Agenda

1

Short Title:	401 Certification Clarification.	(Public)
Sponsors:	Senators Daniel, Brock (Primary Sponsors); and Newton.	
Referred to:	Agriculture/Environment/Natural Resources.	

March 21, 2013

A BILL TO BE ENTITLED

AN ACT TO DECLARE THAT THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES HAS WAIVED ITS RIGHT TO ISSUE A 401 CERTIFICATION AFTER PASSAGE OF A CERTAIN TIME AND TO FORBID THE DEPARTMENT FROM REQUIRING OR ISSUING A CERTIFICATION IN THAT CASE.

The General Assembly of North Carolina enacts:

SECTION 1. The General Assembly finds that, as set forth in federal law, the failure of the Department of Environment and Natural Resources to act on a request for certification under section 401(a)(1) of the Clean Water Act, 33 U.S.C. § 1341 within a reasonable time not to exceed one year constitutes a waiver of the certification requirement.

SECTION 2. Article 21 of Chapter 143 of the General Statutes is amended by adding a new section to read:

"**§ 143-214.15. Waiver of Water Quality Certification.**

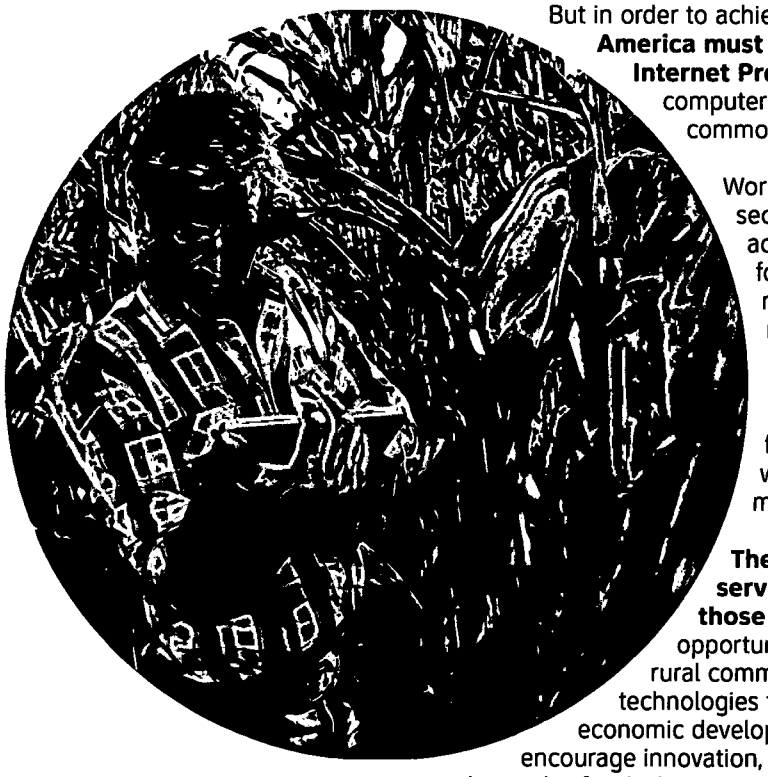
The Department shall not require or issue any water quality certification under the provisions of section 401 of the Clean Water Act, 33 U.S.C. § 1341, if it fails or refuses to act on a request for certification within one year after receipt of such request. In such cases, the certification requirement shall be deemed waived."

SECTION 3. This act becomes effective July 1, 2013.

Expanding Access to Internet Technologies Benefits Rural America

The Internet has fundamentally changed society and the way we live and work – creating jobs, driving innovation, connecting us to friends, providing news and information and fueling advancements in areas such as health care and education. ***Thanks to amazing breakthroughs in wireless technology, the benefits of connectivity travel with us almost everywhere we go.***

And, there's more to come: better, faster, and more reliable service and the development of even more apps and services.



But in order to achieve this and ensure that everyone can benefit, **America must continue to transition to 21st century Internet Protocol (IP) networks** that link cellphones, computers, tablets, TVs, laptops and other devices with a common language they all understand.

Working together, government and the private sector can ensure a smooth transition and expand access to the latest networks and technologies for all. An important element of this transition is modernizing regulations to keep up with and reflect the current marketplace and meet the needs of today's consumers. FCC Chairman Julius Genachowski recently took steps in this direction, announcing the creation of a task force to take "a hard look at many rules that were written for a different technological and market landscape."[1]

The transition to IP and broadband enabled services benefits all consumers, but especially those living in rural America, by generating new opportunities for currently unserved or underserved rural communities by expanding access to networks and technologies that will enhance education, healthcare and economic development opportunities. Modernizing regulation to encourage innovation, facilitate investment, and best meet the demands of today's consumers is an important part of this transition.

IP Strengthens Communities and Makes Access to Distance Learning Technology Easier and Faster:

- By expanding IP infrastructure, we will facilitate an increase in distance learning availability and investment, which will lead to smarter and stronger communities across the nation.
  - Fifty-nine percent of rural communities' school districts have students enrolled in distance education courses.[2]
  - The number of K-12 students enrolled in distance education has increased 472 percent in the last decade.[3]
  - Seventy-four percent of districts using distance learning say they plan to increase the number of distance courses offered in the next three years.[2]
- IP technology encourages and allows people to stay, learn and work in their communities by expanding their opportunities.
  - Fifty percent of districts reported that a postsecondary institution already delivered distance education courses in which students in their district were enrolled.[4]

IP Connects Rural Americans to More Physicians:

Rural America has fewer than half the number of primary care physicians per 100,000 residents than urban areas do.[5]

- IP enabled telemedicine helps reduce rural America's physician disparity and allows 7.5 million rural seniors to receive care at home.[6]
- Eighty percent of patients being treated for neurologic diseases are currently monitored outside of a hospital.[7]
- Remote monitoring via telemedicine will save rural Americans money on travel. The average rural American travels 60 miles for specialty care compared to only six percent of urban patients who do so.[8]

IP Leads to Higher Production for Farmers and Enriches the Ability of Small Farms to Effectively Compete with Large Farms:

- Eighty-four percent of U.S. farms with sales and government payments of $250,000 or more have access to a computer; 82 percent of these farms have Internet access and 72 percent are using the Internet for farm business.[9]
- Access to advanced next generation high-speed broadband networks allows small farms to use Geographical Information Systems (GIS) to more accurately harvest and save on spoilage – more food gets to market and more money lands in their pocket.[10]

1 http://www.fcc.gov/document/fcc-chairman-announces-technology-transitions-policy-task-force
2 National Center for Education Statistics: Distance Education Courses for Public Elementary and Secondary School Students, 2010
3 Institute of Education Sciences: Percentage of Public School Districts with Students Enrolled in Technology-Based Distance Education Courses, 2002; National Center for Education Statistics: Distance Education Courses for Public Elementary and Secondary School Students, 2010
4 Teachers' Use of Educational Technology in US Public Schools, May 2010
5 UnitedHealth, Center for Health Reform & Modernization, "Modernizing Rural Health Care: Coverage, quality and innovation." July 2011
6 Jones, C.A., Kandel, W., and Parker, T. "Population Dynamics Are Changing the Profile of Rural Areas." Amber Waves. Washington: U.S. Department of Agriculture, Economic Research Service, April 2007. Web. 22 Dec. 2011.
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8 UnitedHealth, Center for Health Reform & Modernization, "Modernizing Rural Health Care: Coverage, quality and innovation." July 2011
9 US Department of Agriculture: Farm Computer Usage and Ownership, August 2011
10 American Sentinel, March 2012

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AT&T: *Connecting Customers to What Matters*

At AT&T we're constantly improving our network. Thanks to continued investment, we're proud to offer customers the nation's largest 4G network. With ultra-fast speeds and enhanced coverage, AT&T's network connects people like never before.

Reliability: AT&T's 4G network delivers consistent, dependable service.

- AT&T is the only carrier that uses both LTE and HSPA+ technology to bolster our network coverage.
  - Because of this combination, AT&T customers have access to a widespread, ultra-fast and consistent experience, even when outside of an LTE area. With other carriers, when you travel outside their LTE coverage area with your smartphone you're on a much slower 3G network.[1]
- AT&T is constantly performing capacity upgrades that help reduce dropped calls and improve service quality.
  - In 2012, we deployed **81,000 new antennas** and **added 766,000 additional square miles** of 4G coverage.
- AT&T's 4G LTE network is designed to efficiently use spectrum, the airwaves that transfer wireless signals, which results in a better network experience.
  - AT&T 4G LTE network currently connects **more than 170 million** people in **182 markets** and is expected to cover **300 million** people by year-end 2014.

mprovement: Network upgrades and maintenance are vital to sustaining customer demand for new services and call quality.

Each year, we strive to improve our customers' experience by continuing to invest in new technologies.

- Nationwide, AT&T has invested **nearly $98 billion** over the past five years to improve and expand our wireless and wireline networks, more than any other public company in the U.S.
- In North Carolina alone, AT&T invested **more than $1.5 billion** in wireless and wireline networks from 2010 through 2012.
  - In 2012, AT&T made **more than 1,475 wireless network upgrades** to improve the network throughout the state. These upgrades have provided many customers access to the fast speeds of the 4G LTE network.
- AT&T is committed to improving its Net Promoter Score and is constantly looking for ways to improve the network based on feedback from AT&T customers.
  - AT&T is in constant contact with consumers to identify locations where cell coverage needs to be enhanced. Our Mark the Spot app enables users to identify coverage gaps.

Performance: Our investment is paying off in better service.

- 4G LTE delivers mobile Internet speeds **up to 10 times** faster than 3G networks.
- AT&T 4G LTE Network delivered faster download speeds than any of AT&T's competitors.[2]
- According to RootMetrics Performance Review, AT&T has the fastest pure LTE download speed of any carrier.[3]

AT&T: Dedicated to providing customers with a first class wireless experience.

Limited 4G LTE in select markets. 4G speeds delivered by LTE or HSPA+ with enhanced overhaul where available. Deployment is ongoing.
PC World, April 2012, "3G and 4G Wireless Speed Showdown: Which Networks Are Fastest?"
The RootMetrics LTE March 11, 2013, Performance Review is based on more than 725,000 4G and 4G LTE data samples gathered from the top 77 U.S. markets during the second half of 2012.

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AT&T

AT&T is investing in our North Carolina communications networks, our people and local communities—all of which contribute to the state's economy and quality of life.



The "It Can Wait" Movement

240,000 AT&T employees are being encouraged to help spread the word.

On an average day, AT&T retail and call center employees speak to customers **more than 500,000** times.

80 organizations representing tens of millions are joining us in support of "It Can Wait."

15 states have committed to enacting "To Texting While Driving" proclamations.

13 states agreed to feature messaging on their LED highway signage.

The in-car simulator will stop at **more than 200** events by the end of the year.

Employment

AT&T employed 6,877 people working in North Carolina as of year end 2012 and our payroll represented more than $489 million in 2011. As of June 2012, we operate 47 company-owned retail locations in the state.

Building for Tomorrow

Across the country, we're investing billions to build the advanced networks that will create jobs and fuel economic growth.From 2010 through 2012, AT&T invested more than $1.5 billion in its North Carolina wireless and wireline networks. We also offer our advanced Internet Protocol TV service, AT&T U-verse® TV,[1] in North Carolina.

Local Support

In 2010, AT&T operations in North Carolina generated more than $265 million in local and state taxes. These taxes, paid by AT&T or remitted on behalf of our employees and customers, help support vital programs.

Spending Where We Live

AT&T spent more than $445 million on goods and services purchased from suppliers based in North Carolina in 2011. This spending supports jobs and economic activity in the state.

Environmental Impact

We are committed to operating in a way that increases our efficiency and minimizes our impact on the environment. For example, as of July 2012, we operated 146 alternative-fuel vehicles in North Carolina. And in 2011, we invested $641,725 in 69 energy-efficiency projects in the state, resulting in an expected 7,349,486 kilowatt hours of annualized energy savings.

People Power

Each year, 300,000 of our employees and retirees work to enhance their communities by taking part as AT&T Pioneers and volunteering millions of hours. In 2011, AT&T employees and retirees in North Carolina donated more than 44,000 hours of personal time to community outreach activities—worth more than $965,000.

Philanthropy

AT&T invests significant resources to advance education, strengthen communities and improve lives. Through philanthropic initiatives and collaboration, AT&T and the AT&T Foundation support projects that create opportunities, make connections and address community needs where we - and our customers - live and work.

From 2008 through 2011, AT&T and its employees contributed more than $10.3 million through corporate, employee and AT&T Foundation giving programs in North Carolina.

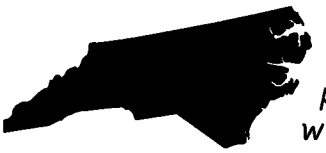
Historically, supporting education has been a major focus for AT&T, and education today continues to be our key philanthropy focus. We are driven to help students succeed—in school, in the workforce and in life. In 2008, we launched AT&T Aspire, specifically focused on confronting the high school dropout crisis to help ensure that students graduate prepared for the future challenges of continuing education and the workforce. In 2012, AT&T renewed its commitment to Aspire with a $250 million investment planned over five years. In North Carolina, $1,290,487 has been invested through the Aspire program. We also provided Job Shadow opportunities for 1,101 students in North Carolina, teaming them up with employees to help them learn the educational background and skills they need to succeed on the job.

Connect. Communicate. Contribute.

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AT&T's Project Velocity IP

an Investment in the Future of North Carolina



AT&T has invested more than $1.5 billion in North Carolina between 2010-2012, and recently announced plans to invest $14 billion under Project VIP to expand our wireless and wireline broadband networks across the country. This investment will support future IP data growth, new services and local businesses.

Expected Benefits of this Planned Investment:

- AT&T high-speed 4G LTE wireless network to cover 300 million Americans by year-end 2014. In AT&T's 22-state wireline territory, which includes its North Carolina wireline territory, AT&T expects its 4G LTE network to cover 99 percent of its customer locations.
- Expands and enhances AT&T's wireline IP network to cover about 57 million customer locations, which means that approximately 75 percent of all customer locations in its wireline service area will have either U-Verse or U-Verse IPDSLAM by year end 2015. This expansion includes:
  - Approximately 8.5 million additional AT&T U-Verse (TV, Internet, VoIP) customer locations by year end 2015.
  - Offering U-Verse IPDSLAM (high-speed Internet access and VoIP) to 24 million customer locations by year-end 2013.
  - Upgrading U-Verse to speeds of up to 75Mbps, and for U-verse IPDSLAM to speeds of up to 45Mbps, with a path to deliver even higher speeds in the future.
  - Deploying fiber to an additional one million business customer locations by 2015 – approximately 50 percent of the multi-tenant business buildings in AT&T's 22-state wireline footprint.
- Small cell technology, macro cells and additional distributed antenna systems to be deployed to increase the density of the wireless network, which is expected to further improve network quality and increase spectrum efficiency.

Investment Like this Encourages Research, Innovation and Economic Growth in North Carolina:

- Investments in broadband and wireless technologies are having a dramatic effect on job and economic growth in our nation. A $10 billion investment in broadband could produce nearly 500,000 new jobs,[1] and for every dollar invested in wireless, GDP can be increased $7-$10.[2]

Investment in Advanced IP Infrastructure Also Helps Facilitate New Services:

- AT&T Wireless Home Phone provides home phone calling service using your existing home phone handset using the AT&T wireless network instead of a landline connection.
- AT&T Digital Life is an all-IP wireless based home security and automation service set to launch in 2013, that will let consumers manage their home from virtually any smartphone, tablet or PC.
- ISIS Mobile Wallet will allow users to pay for goods on their mobile devices. Market trials are underway.
- Connected Car is AT&T's plan to expand wireless connections in cars from vehicle diagnostics and real time traffic updates to consumer-facing applications that tie into retail wireless subscriber data plans.

North Carolina leaders have long worked to ensure that policies and laws benefit consumers by keeping pace with technological advances and competitive changes.

Continued Strong Commitment to Deploying and Expanding 21st Century Communications Technology Through Sound Policy Will Promote Sustainable Economic Growth in North Carolina.

1 Joelle Tessler, "Broadband Funding In Stimulus Plan Sparks Debate," The Information Technology & Innovation Foundation, 2/6/09

2 Larry Summers, Speaking at the New America Foundation, Technology Opportunities, Job Creation, and Economic Growth, 2010

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VISITOR REGISTRATION SHEET

Senate/Agriculture/Environment/Natural Resources
(Committee Name)

4/23/2013
Date

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John Cooper	Compass NC
TJ Bugbee	NP
Erin Wynia	NCLM
[illegible]	Ag Alliance for N.C.
Joy Hicks	NCDA
David McLeod	NCDA&CS
Shelia Reid	School of Govt (CLRS)
JAKE PARKER	NCFB
Steve Mastrianni	The Policy Group
Reb Leamon	RLA
Kim Albourn	HBUS

09-21-201

VISITOR REGISTRATION SHEET

Senate/Agriculture/Environment/Natural Resources
(Committee Name)

4/23/2013
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Angie Harris	Ward & Smith
Neal Robbins	NC DENR

09-21-201

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Senate/Agriculture/Environment/Natural Resources
(Committee Name)

4/23/2013
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Angela Sons	OR
Angel Maier	NCPC
Stephen Kouba	compass
CHRIS DILLON	
T REEDER	NC DWR
	Misc
Nadia Luhr	NCCN
Mary Maclean Asbill	SELC
Brooks Rainey Pearson	SELC
	Sierra Club
Dan Conrad	NCUC
	NCACC
	NCCAFA
Ashley Bass	NCCPSA

Senate Committee on Agriculture/Environment/Natural Resources
Tuesday, April 30, 2013 11:00 AM
Room 544

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills:

	BILL NO.	SHORT TITLE	SPONSOR
3	SB 380	Adjust Landfill Permit Fee Timing	Sen. Jackson
4	SB507	Eliminate Outdated Env. Reports	Sen. Jackson Sen. Brock Sen. Cook
1.	HB 706	Preserve Landfill Space	Rep. Wells Rep. Starnes Rep. Catlin Rep. Moffitt
2.	SB 341	Amend Interbasin Transfer Law	Sen. Rabon
5.	SB 412	Water Infrastructure Authority/Water Grants. **(FOR DISCUSSION ONLY)**	Sen. Hartsell

Adjournment

Senate Committee on Agriculture/Environment/Natural Resources
Tuesday, April 30, 2013 at 11:00 AM
Room 544 of the Legislative Office Building

MINUTES

The Senate Committee on Agriculture/Environment/Natural Resources met at 11:00 AM on April 30, 2013 in Room 544 of the Legislative Office Building. Fourteen (14) members were present.

Senator Andrew Brock, presided.

Senator Brock introduced the pages – Christine Long from Raleigh sponsored by Sen. Berger, Mary McCall Leland from Tarboro sponsored by Sen. Jenkins, and Andrew Carari from Garner sponsored by Sen. Barefoot.

The Sgt. of Arms for today's meeting were Charles Harper, Donna Blake and Ronald Spann.

The following bills were heard in committee:

HB 706 – Preserve Landfill Space - Rep. Wells

Sen. Brock introduced Rep. Wells who explained the bill – There were follow up questions from Sen. Cook and Sen. Ford. Secretary Gillespie from DENR was available to answer the follow up questions from Sen. Cook and Sen. Ford. Sen. Kinnaird had follow up questions which Rep. Wells answered. Sen. Walters spoke in favor of the bill. Sen. Rabin had follow up question which Sec. Gillespie answered. Sen. Wade had follow-up question which Rep. Wells answered. Sen. Clodfelter also made comments on the bill in regards to the follow up question from Sen.. Wade. Sen Clodfelter made a motion for a Favorable Report on the bill and the motion carried.

SB 341 - Amend Interbasin Transfer Law – Sen. Rabon

Sen. Brock introduced Sen. Rabon. Sen. Jackson made a motion to accept the PCS on the bill and the motion carried. Sen. Rabon explained the bill. There were follow up questions from Sen. Hartsell which Jeff Hudson from Research answered. Jeff Hudson said there would be a technical change to the bill. Sen. Wade made a motion for a Favorable Report for the PCS and the motion carried.

SB 380 - Adjust Landfill Permit Fee Timing - Sen. Jackson

Sen. Jackson was introduced to explain the bill. Sen. Jackson moved to accept the PCS on the bill. The motion carried. Sen. Jackson explained the bill to the committee. There were no follow up questions. Sen. Wade made a motion for a Favorable Report for the PCS and the motion carried.

SB 507 - Eliminate Outdated Environment Reports Sen. Jackson

Sen. Brock introduced Sen. Jackson to explain the bill. Sen Jackson moved to accept the PCS on the bill. The motion carried. Sen. Jackson explained the bill with a follow up question from Sen. Kinnaird. Jeff Hudson from Research answered Sen. Kinnaird's question. Sen Wade moved for a Favorable Report on the PCS.

SB 412 - Water Infrastructure Authority/Water Grants – Sen. Hartsell (Discussion Only)

Sen. Brock introduced Sen. Hartsell to discuss the bill. There was no action on this bill.

The meeting adjourned at 11:55 AM.

Sen. Andrew Brock
Presiding

Judy Edwards, Committee Clerk

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES COMMITTEE REPORT
Senator Brock, Co-Chair
Senator Jackson, Co-Chair

Tuesday, April 30, 2013

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

FAVORABLE

HB **706** **(CS#1)** Preserve Landfill Space.

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

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

SB **341** Amend Interbasin Transfer Law.

Draft Number:	S341-PCS85211-SB-16
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

SB **380** Adjust Landfill Permit Fee Timing.

Draft Number:	S380-PCS35335-RIf-14
Sequential Referral:	Finance
Recommended Referral:	None
Long Title Amended:	No

SB **507** Eliminate Outdated Env. Reports.

Draft Number:	S507-PCS75294-TF-2
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

TOTAL REPORTED: 4

Senator Austin Allran will handle HB 706
Senator William Rabon will handle SB 341
Senator W. Jackson will handle SB 380
Senator W. Jackson will handle SB 507



Favorable

HOUSE BILL 706
Committee Substitute Favorable 4/18/13

Short Title: Preserve Landfill Space. (Public)

Sponsors:

Referred to:

April 11, 2013

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT THE DISPOSAL OF ON-SITE DEMOLITION DEBRIS FROM THE DECOMMISSIONING OF MANUFACTURING BUILDINGS, INCLUDING ELECTRIC GENERATING STATIONS, IS EXEMPT FROM THE LANDFILL PERMITTING REQUIREMENTS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 130A-294(a) reads as rewritten:

"(a) The Department is authorized and directed to engage in research, conduct investigations and surveys, make inspections and establish a statewide solid waste management program. In establishing a program, the Department shall have authority to:

(1) Develop a comprehensive program for implementation of safe and sanitary practices for management of solid waste;

(2) Advise, consult, cooperate and contract with other State agencies, units of local government, the federal government, industries and individuals in the formulation and carrying out of a solid waste management program;

(3) Develop and adopt rules to establish standards for qualification as a "recycling, reduction or resource recovering facility" or as "recycling, reduction or resource recovering equipment" for the purpose of special tax classifications or treatment, and to certify as qualifying those applicants which meet the established standards. The standards shall be developed to qualify only those facilities and equipment exclusively used in the actual waste recycling, reduction or resource recovering process and shall exclude any incidental or supportive facilities and equipment;

(4) a. Develop a permit system governing the establishment and operation of solid waste management facilities. A landfill with a disposal area of 1/2 acre or less for the on-site disposal of land clearing and inert debris is exempt from the permit requirement of this section and shall be governed by G.S. 130A-301.1. Demolition debris from the decommissioning of manufacturing buildings, including electric generating stations, that is disposed of on the same site as the decommissioned buildings, is exempt from the permit requirement of this section and rules adopted pursuant to this section and shall be governed by G.S. 130A-301.3. The Department shall not approve an application for a new permit, the renewal of a permit, or a substantial amendment to a permit for a sanitary landfill, excluding demolition landfills as defined in the rules of the Commission, except as

provided in subdivisions (3) and (4) of subsection (b1) of this section. No permit shall be granted for a solid waste management facility having discharges that are point sources until the Department has referred the complete plans and specifications to the Environmental Management Commission and has received advice in writing that the plans and specifications are approved in accordance with the provisions of G.S. 143-215.1. If the applicant is a unit of local government, and has not submitted a solid waste management plan that has been approved by the Department pursuant to G.S. 130A-309.09A(b), the Department may deny a permit for a sanitary landfill or a facility that disposes of solid waste by incineration, unless the Commission has not adopted rules pursuant to G.S. 130A-309.29 for local solid waste management plans. In any case where the Department denies a permit for a solid waste management facility, it shall state in writing the reason for denial and shall also state its estimate of the changes in the applicant's proposed activities or plans that will be required for the applicant to obtain a permit.

...."

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

"**§ 130A-301.3. Disposal of demolition debris generated from the decommissioning of manufacturing buildings, including electric generating stations, on-site.**

(a) A person may dispose of demolition debris from the decommissioning of manufacturing buildings, including electric generating stations, on the same site as the decommissioned buildings if the demolition debris meets all of the following requirements:

(1) It is composed only of inert debris such as brick or other masonry materials, dirt, sand, gravel, rock, and concrete if the material, when characterized using the toxicity characteristic leaching procedure developed by the United States Environmental Protection Agency, is not a hazardous waste. The debris may contain small amounts of wood, paint, sealants, and metal associated with the inert debris.

(2) It does not extend beyond the footprint of the decommissioned buildings and shall be at least 50 feet from the property boundary or enclosed by the walls of the building that are left in place below grade. Walls left in place below grade are not subject to the requirements of subdivision (4) of this subsection.

(3) It is placed at least 500 feet from the nearest drinking water well.

(4) It is placed to assure at least two feet of clean soil between any coated inert debris and the seasonal high groundwater table. Uncoated inert debris may be used as fill anywhere within the footprint of the decommissioned building or as beneficial fill on the site.

(5) It complies with all other applicable federal, State, and local laws, regulations, rules, and ordinances.

(b) After the decommissioning is completed or terminated, the owner or operator shall compact the demolition debris and cover it with at least two feet of compacted earth finer than a sandy texture soil. The cover of the demolition debris shall be graded so as to minimize water infiltration, promote proper drainage, and control erosion. Erosion of the cover shall be controlled by establishing suitable vegetative cover. All site stabilization should be completed within 90 days of the completed demolition.

(c) Within 30 days of completing the final site stabilization or at least 30 days before the land, or any interest in the land, on which the demolition debris is located is transferred, whichever is earlier, the owner or owners of record of the land on which the demolition debris is located shall file each of the following with the register of deeds of the county in which the demolition debris is located:

(1) A survey plat of the property that meets the requirements of G.S. 47-30. The plat shall accurately show the location of the demolition debris in a manner that will allow the demolition debris disposal site to be accurately delineated and shall reference this section.

(2) A notice that disposal of demolition debris has been located on the land. The notice shall include a description of the land that would be sufficient as a description in an instrument of conveyance. The notice shall list the owners of record of the land at the time the notice is filed and shall reference the book and page number where the deed or other instrument by which the owners of record acquired title is located. The notice shall reference the book and page number where the survey plat required by subdivision (1) of this subsection is recorded. The notice shall reference this section, shall describe with particularity the type and size of the building or other structure that was demolished, and shall state the dates on which the demolition began and ended. The notice shall be executed by the owner or owners of record as provided in Chapter 47 of the General Statutes. The register of deeds shall record the notice and index it in the grantor index under the names of all owners of record of the land.

(d) A certified copy of both the plat and notice required by subsection (c) of this section shall also be filed with the Department. The plat and the notice shall indicate on the face of the document the book and page number where recorded.

(e) When the land, or any portion of the land, on which the demolition debris is located is sold, leased, conveyed, or transferred, the deed or other instrument of transfer shall contain a statement that the property has been used for the disposal of demolition debris. The statement shall include a reference to this section and to the book and page number where the notice required by subdivision (2) of subsection (c) of this section is recorded."

SECTION 3. G.S. 47-29 is amended by adding a new subsection to read:

"**§ 47-29.1. Recordation of environmental notices.**

...

(a4) The disposal of on-site demolition debris from the decommissioning of manufacturing buildings, including electric generating stations, shall be recorded as provided in G.S. 130A-301.3.

...."

SECTION 4. This act becomes effective July 1, 2013.

HOUSE BILL 706:
Preserve Landfill Space

2013-2014 General Assembly

Committee:	Senate Agriculture/Environment/Natural Resources	**Date:**	April 30, 2013
Introduced by:	Reps. Wells, Starnes, Catlin, Moffitt	**Prepared by:**	Jennifer Mundt Committee Analyst
Analysis of:	Second Edition		

SUMMARY: ***House Bill 706 would provide that the disposal of on-site demolition debris from the decommissioning of manufacturing buildings, including electric generating stations, is exempt from the landfill permitting requirements.***

CURRENT LAW: G.S. 130A-294(a)(4)a. directs the Department of Environment and Natural (Department) resources to develop a permit system for solid waste management facilities Current law further provides that a landfill with a disposal area of ½ acre or less for the on-site disposal of land clearing and inert debris is exempt from the Department's landfill permitting requirements and is subject to different requirements.

BILL ANALYSIS: Rather than require demolition debris from the decommissioning of manufacturing buildings, including electric generating stations, to be landfilled, House Bill 706 would authorize the disposal of demolition debris from the these buildings on the same site as the decommissioned buildings provided the demolition debris meets all of the following requirements:

- It is composed of inert debris and is not characterized as a hazardous waste by the United State Environmental Protection Agency.
- It does not extend beyond the footprint of the decommissioned buildings and is located at least 50 feet from the property boundary or enclosed by walls of the building that are left in place below grade.
- It is placed at least 500 feet from the nearest drinking water well.
- It is placed to provide for at least two feet of clean soil between any coated inert debris and the seasonal high groundwater table.
- It complies with all other applicable federal, State, and local laws, regulations, rules, and ordinances.

After decommissioning, the owner or operator of the site must compact the demolition debris, cover the debris with at least two feet of compacted earth, grade the debris to minimize water infiltration, promote proper drainage, and provide erosion control. A suitable vegetative cover must be established and site stabilization must be achieved within 90 days of the completed demolition.

Within 30 days of completing site stabilization or at least 30 days before the land on which the demolition debris is located is transferred (whichever is earlier) the owner of record must file each of the following with the register of deeds of the county in which the demolition debris is located:

- A survey plat of the property that shows the location of the demolition debris.

- A notice that disposal of demolition debris has been located on the land.

A certified copy of both the plat and notice must also be filed with the Department.

Any subsequent sale, lease, conveyance, or transfer of the deed to the land on which the demolition debris is located must contain a statement that the property has been used for the disposal of demolition debris.

EFFECTIVE DATE: House Bill 706 becomes effective July 1, 2013.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

S D

SENATE BILL 341
PROPOSED COMMITTEE SUBSTITUTE S341-PCS85211-SB-16

Short Title: Amend Interbasin Transfer Law. (Public)

Sponsors:

Referred to:

March 19, 2013

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH AN EXPEDITED PROCESS FOR THE MODIFICATION OF INTERBASIN TRANSFER CERTIFICATES AND FOR THE ISSUANCE OF INTERBASIN TRANSFER CERTIFICATES IN THE CENTRAL COASTAL PLAIN CAPACITY USE AREA AND THE COASTAL AREA COUNTIES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 143-215.22G reads as rewritten:

"**§ 143-215.22G. Definitions.**

In addition to the definitions set forth in G.S. 143-212 and G.S. 143-213, the following definitions apply to this Part.

(1) "River basin" means any of the following river basins designated on the map entitled "Major River Basins and Sub-basins in North Carolina" and filed in the Office of the Secretary of State on 16 April 1991. The term "river basin" includes any portion of the river basin that extends into another state. Any area outside North Carolina that is not included in one of the river basins listed in this subdivision comprises a separate river basin.

a.	1-1	Broad River.
b.	2-1	Haw River.
c.	2-2	Deep River.
d.	2-3	Cape Fear River.
e.	2-4	South River.
f.	2-5	Northeast Cape Fear River.
g.	2-6	New River.
h.	3-1	Catawba River.
i.	3-2	South Fork Catawba River.
j.	4-1	Chowan River.
k.	4-2	Meherrin River.
l.	5-1	Nolichucky River.
m.	5-2	French Broad River.
n.	5-3	Pigeon River.
o.	6-1	Hiwassee River.
p.	7-1	Little Tennessee River.
q.	7-2	Tuskasegee (Tuckasegee) River.
r.	8-1	Savannah River.
s.	9-1	Lumber River.
t.	9-2	Big Shoe Heel Creek.

u.	9-3	Waccamaw River.
v.	9-4	Shallotte River.
w.	10-1	Neuse River.
x.	10-2	Contentnea Creek.
y.	10-3	Trent River.
z.	11-1	New River.
aa.	12-1	Albemarle Sound.
bb.	13-1	Ocoee River.
cc.	14-1	Roanoke River.
dd.	15-1	Tar River.
ee.	15-2	Fishing Creek.
ff.	15-3	Pamlico River and Sound.
gg.	16-1	Watauga River.
hh.	17-1	White Oak River.
ii.	18-1	Yadkin (Yadkin-Pee Dee) River.
jj.	18-2	South Yadkin River.
kk.	18-3	Uwharrie River.
ll.	18-4	Rocky River.

(2) "Surface water" means any of the waters of the State located on the land surface that are not derived by pumping from groundwater.

(3) "Transfer" means the withdrawal, diversion, or pumping of surface water from one river basin and discharge of all or any part of the water in a river basin different from the origin. However, notwithstanding the basin definitions in G.S. 143-215.22G(1), the following are not transfers under this Part:

a. The discharge of water upstream from the point where it is withdrawn.

b. The discharge of water downstream from the point where it is withdrawn.

(4) "Public water system" means any unit of local government or large community water system subject to the requirements of G.S. 143-355(l).

(5) "Mainstem" means that portion of a river having the same name as a river basin defined in subdivision (1) of this section. "Mainstem" does not include named or unnamed tributaries."

SECTION 2. G.S. 143-215.22L reads as rewritten:

"**§ 143-215.22L. Regulation of surface water transfers.**

(a) Certificate Required. – No person, without first obtaining a certificate from the Commission, may:

(1) Initiate a transfer of 2,000,000 gallons of water or more per ~~day~~ day, calculated as a daily average of a calendar month and not to exceed 5.000.000 gallons per day in any one day, from one river basin to another.

(2) Increase the amount of an existing transfer of water from one river basin to another by twenty-five percent (25%) or more above the average daily amount transferred during the year ending 1 July 1993 if the total transfer including the increase is 2,000,000 gallons or more per day.

(3) Increase an existing transfer of water from one river basin to another above the amount approved by the Commission in a certificate issued under G.S. 162A-7 prior to 1 July 1993.

(b) Exception. – Notwithstanding the provisions of subsection (a) of this section, a certificate shall not be required to transfer water from one river basin to another up to the full

capacity of a facility to transfer water from one basin to another if the facility was in existence or under construction on 1 July 1993.

(c) Notice of Intent to File a Petition. – An applicant shall prepare a notice of intent to file a petition that includes a nontechnical description of the applicant's request and an identification of the proposed water source. Within 90 days after the applicant files a notice of intent to file a petition, the applicant shall hold at least one public meeting in the source river basin upstream from the proposed point of withdrawal, at least one public meeting in the source river basin downstream from the proposed point of withdrawal, and at least one public meeting in the receiving river basin to provide information to interested parties and the public regarding the nature and extent of the proposed transfer and to receive comment on the scope of the environmental documents. Written notice of the public meetings shall be provided at least 30 days before the public meetings. At the time the applicant gives notice of the public meetings, the applicant shall request comment on the alternatives and issues that should be addressed in the environmental documents required by this section. The applicant shall accept written comment on the scope of the environmental documents for a minimum of 30 days following the last public meeting. Notice of the public meetings and opportunity to comment on the scope of the environmental documents shall be provided as follows:

(1) By publishing notice in the North Carolina Register.

(2) By publishing notice in a newspaper of general circulation in:

a. Each county in this State located in whole or in part of the area of the source river basin upstream from the proposed point of withdrawal.

b. Each city or county located in a state located in whole or in part of the surface drainage basin area of the source river basin that also falls within, in whole or in part, the area denoted by one of the following eight-digit cataloging units as organized by the United States Geological Survey:

03050105 (Broad River: NC and SC);
03050106 (Broad River: SC);
03050107 (Broad River: SC);
03050108 (Broad River: SC);
05050001 (New River: NC and VA);
05050002 (New River: VA and WV);
03050101 (Catawba River: NC and SC);
03050103 (Catawba River: NC and SC);
03050104 (Catawba River: SC);
03010203 (Chowan River: NC and VA);
03010204 (Chowan River: NC and VA);
06010105 (French Broad River: NC and TN);
06010106 (French Broad River: NC and TN);
06010107 (French Broad River: TN);
06010108 (French Broad River: NC and TN);
06020001 (Hiwassee River: AL, GA, TN);
06020002 (Hiwassee River: GA, NC, TN);
06010201 (Little Tennessee River: TN);
06010202 (Little Tennessee River: TN, GA, and NC);
06010204 (Little Tennessee River: NC and TN);
03060101 (Savannah River: NC and SC);
03060102 (Savannah River: GA, NC, and SC);
03060103 (Savannah River: GA and SC);
03060104 (Savannah River: GA);
03060105 (Savannah River: GA);

03040203 (Lumber River: NC and SC);
03040204 (Lumber River: NC and SC);
03040206 (Lumber River: NC and SC);
03040207 (Lumber River: NC and SC);
03010205 (Albemarle Sound: NC and VA);
06020003 (Ocoee River: GA, NC, and TN);
03010101 (Roanoke River: VA);
03010102 (Roanoke River: NC and VA);
03010103 (Roanoke River: NC and VA);
03010104 (Roanoke River: NC and VA);
03010105 (Roanoke River: VA);
03010106 (Roanoke River: NC and VA);
06010102 (Watauga River: TN and VA);
06010103 (Watauga River: NC and TN);
03040101 (Yadkin River: VA and NC);
03040104 (Yadkin River: NC and SC);
03040105 (Yadkin River: NC and SC);
03040201 (Yadkin River: NC and SC);
03040202 (Yadkin River: NC and SC).

c. Each county in this State located in whole or in part of the area of the source river basin downstream from the proposed point of withdrawal.

d. Any area in the State in a river basin for which the source river basin has been identified as a future source of water in a local water supply plan prepared pursuant to G.S. 143-355(l).

e. Each county in the State located in whole or in part of the receiving river basin.

(3) By giving notice by first-class mail or electronic mail to each of the following:

a. The board of commissioners of each county in this State or the governing body of any county or city that is politically independent of a county in any state that is located entirely or partially within the source river basin of the proposed transfer and that also falls within, in whole or in part, the area denoted by one of the eight-digit cataloging units listed in sub-subdivision b. of subdivision (2) of this subsection.

b. The board of commissioners of each county in this State or the governing body of any county or city that is politically independent of a county in any state that is located entirely or partially within the receiving river basin of the proposed transfer and that also falls within, in whole or in part, the area denoted by one of the eight-digit cataloging units listed in sub-subdivision b. of subdivision (2) of this subsection.

c. The governing body of any public water ~~supply~~ system that withdraws water upstream or downstream from the withdrawal point of the proposed transfer.

d. If any portion of the source or receiving river basins is located in another state, all state water management or use agencies, environmental protection agencies, and the office of the governor in that state upstream or downstream from the withdrawal point of the proposed transfer.

e. All persons who have registered a water withdrawal or transfer from the proposed source river basin under this Part or under similar law in an another state.

f. All persons who hold a certificate for a transfer of water from the proposed source river basin under this Part or under similar law in an another state.

g. All persons who hold a National Pollutant Discharge Elimination System (NPDES) wastewater discharge permit for a discharge of 100,000 gallons per day or more upstream or downstream from the proposed point of withdrawal.

h. To any other person who submits to the applicant a written request to receive all notices relating to the petition.

(d) Environmental Documents. – The definitions set out in G.S. 113A-9 apply to this section. The Department shall conduct a study of the environmental impacts of any proposed transfer of water for which a certificate is required under this section. The study shall meet all of the requirements set forth in G.S. 113A-4 and rules adopted pursuant to G.S. 113A-4. An environmental assessment shall be prepared for any petition for a certificate under this section. The determination of whether an environmental impact statement shall also be required shall be made in accordance with the provisions of Article 1 of Chapter 113A of the General Statutes; except that an environmental impact statement shall be prepared for every proposed transfer of water from one major river basin to another for which a certificate is required under this section. The applicant who petitions the Commission for a certificate under this section shall pay the cost of special studies necessary to comply with Article 1 of Chapter 113A of the General Statutes. An environmental impact statement prepared pursuant to this subsection shall include all of the following:

(1) A comprehensive analysis of the impacts that would occur in the source river basin and the receiving river basin if the petition for a certificate is granted.

(2) An evaluation of alternatives to the proposed interbasin transfer, including water supply sources that do not require an interbasin transfer and use of water conservation measures.

(3) A description of measures to mitigate any adverse impacts that may arise from the proposed interbasin transfer.

(e) Public Hearing on the Draft Environmental Document. – The Commission shall hold a public hearing on the draft environmental document for a proposed interbasin transfer after giving at least 30 days' written notice of the hearing in the Environmental Bulletin and as provided in subdivisions (2) and (3) of subsection (c) of this section. The notice shall indicate where a copy of the environmental document can be reviewed and the procedure to be followed by anyone wishing to submit written comments and questions on the environmental document. The Commission shall prepare a record of all comments and written responses to questions posed in writing. The record shall include complete copies of scientific or technical comments related to the potential impact of the interbasin transfer. The Commission shall accept written comment on the draft environmental document for a minimum of 30 days following the last public hearing. The applicant who petitions the Commission for a certificate under this section shall pay the costs associated with the notice and public hearing on the draft environmental document.

(f) Determination of Adequacy of Environmental Document. – The Commission shall not act on any petition for an interbasin transfer until the Commission has determined that the environmental document is complete and adequate. A decision on the adequacy of the environmental document is subject to review in a contested case on the decision of the Commission to issue or deny a certificate under this section.

(g) Petition. – An applicant for a certificate shall petition the Commission for the certificate. The petition shall be in writing and shall include all of the following:

(1) A general description of the facilities to be used to transfer the water, ~~including the location and capacity of water intakes, pumps, pipelines, and other facilities.~~including current and projected areas to be served by the transfer, current and projected capacities of intakes, and other relevant facilities.

(2) A description of all the proposed consumptive and nonconsumptive uses of the water to be transferred.

(3) A description of the water quality of the source river and receiving river, including information on aquatic habitat for rare, threatened, and endangered species; in-stream flow data for segments of the source and receiving rivers that may be affected by the transfer; and any waters that are impaired pursuant to section 303(d) of the federal Clean Water Act (33 U.S.C. § 1313(d)).

(4) A description of the water conservation measures used by the applicant at the time of the petition and any additional water conservation measures that the applicant will implement if the certificate is granted.

(5) A description of all sources of water within the receiving river basin, including surface water impoundments, groundwater wells, reinjection storage, and purchase of water from another source within the river basin, that is a practicable alternative to the proposed transfer that would meet the applicant's water supply needs. The description of water sources shall include sources available at the time of the petition for a certificate and any planned or potential water sources.

(6) A description of water transfers and withdrawals registered under G.S. 143-215.22H or included in a local water supply plan prepared pursuant to G.S. 143-355(l) from the source river basin, including transfers and withdrawals at the time of the petition for a certificate and any planned or reasonably foreseeable transfers or withdrawals by a public water system with service area located within the source river basin.

(7) A demonstration that the proposed transfer, if added to all other transfers and withdrawals required to be registered under G.S. 143-215.22H or included in any local water supply plan prepared by a public water system with service area located within the source basin pursuant to G.S. 143-355(l) from the source river basin at the time of the petition for a certificate, would not reduce the amount of water available for use in the source river basin to a degree that would impair existing uses, pursuant to the antidegradation policy set out in 40 Code of Federal Regulation § 131.12 (Antidegradation Policy) (1 July 2006 Edition) and the statewide antidegradation policy adopted pursuant thereto, or existing and planned consumptive and nonconsumptive uses of the water in the source river basin. If the proposed transfer would impact a reservoir within the source river basin, the demonstration must include a finding that the transfer would not result in a water level in the reservoir that is inadequate to support existing uses of the reservoir, including recreational uses.

(8) The applicant's future water supply needs and the present and reasonably foreseeable future water supply needs for public water systems with service area located within the source river basin. The analysis of future water supply needs shall include agricultural, recreational, and industrial uses, and electric power generation. Local water supply plans prepared pursuant to

G.S. 143-355(l) for water systems with service area located within the source river basin shall be used to evaluate the projected future water needs in the source river basin that will be met by public water systems.

(9) The applicant's water supply plan prepared pursuant to G.S. 143-355(l). If the applicant's water supply plan is more than two years old at the time of the petition, then the applicant shall include with the petition an updated water supply plan.

(10) Any other information deemed necessary by the Commission for review of the proposed water transfer.

(h) Settlement Discussions. – Upon the request of the applicant, any interested party, or the Department, or upon its own motion, the Commission may appoint a mediation officer. The mediation officer may be a member of the Commission, an employee of the Department, or a neutral third party but shall not be a hearing officer under subsections (e) or (j) of this section. The mediation officer shall make a reasonable effort to initiate settlement discussions between the applicant and all other interested parties. Evidence of statements made and conduct that occurs in a settlement discussion conducted under this subsection, whether attributable to a party, a mediation officer, or other person shall not be subject to discovery and shall be inadmissible in any subsequent proceeding on the petition for a certificate. The Commission may adopt rules to govern the conduct of the mediation process.

(i) Draft Determination. – Within 90 days after the Commission determines that the environmental document prepared in accordance with subsection (d) of this section is adequate or the applicant submits its petition for a certificate, whichever occurs later, the Commission shall issue a draft determination on whether to grant the certificate. The draft determination shall be based on the criteria set out in this section and shall include the conditions and limitations, findings of fact, and conclusions of law that would be required in a final determination. Notice of the draft determination shall be given as provided in subsection (c) of this section.

(j) Public Hearing on the Draft Determination. – Within 60 days of the issuance of the draft determination as provided in subsection (i) of this section, the Commission shall hold public hearings on the draft determination. At least one hearing shall be held in the affected area of the source river basin, and at least one hearing shall be held in the affected area of the receiving river basin. In determining whether more than one public hearing should be held within either the source or receiving river basins, the Commission shall consider the differing or conflicting interests that may exist within the river basins, including the interests of both upstream and downstream parties potentially affected by the proposed transfer. The public hearings shall be conducted by one or more hearing officers appointed by the Chair of the Commission. The hearing officers may be members of the Commission or employees of the Department. The Commission shall give at least 30 days' written notice of the public hearing as provided in subsection (c) of this section. The Commission shall accept written comment on the draft determination for a minimum of 30 days following the last public hearing. The Commission shall prepare a record of all comments and written responses to questions posed in writing. The record shall include complete copies of scientific or technical comments related to the potential impact of the interbasin transfer. The applicant who petitions the Commission for a certificate under this section shall pay the costs associated with the notice and public hearing on the draft determination.

(k) Final Determination: Factors to be Considered. – In determining whether a certificate may be issued for the transfer, the Commission shall specifically consider each of the following items and state in writing its findings of fact and conclusions of law with regard to each item:

(1) The necessity and reasonableness of the amount of surface water proposed to be transferred and its proposed uses.

(2) The present and reasonably foreseeable future detrimental effects on the source river basin, including present and future effects on public, industrial, economic, recreational, and agricultural water supply needs, wastewater assimilation, water quality, fish and wildlife habitat, electric power generation, navigation, and recreation. Local water supply plans for public water systems with service area located within the source river basin prepared pursuant to G.S. 143-355(l) shall be used to evaluate the projected future water needs in the source river basin that will be met by public water systems. Information on projected future water needs for public water systems with service area located within the source river basin that is more recent than the local water supply plans may be used if the Commission finds the information to be reliable. The determination shall include a specific finding as to measures that are necessary or advisable to mitigate or avoid detrimental impacts on the source river basin.

(3) The cumulative effect on the source major river basin of any water transfer or consumptive water use that, at the time the Commission considers the petition for a certificate is occurring, is authorized under this section, or is projected in any local water supply plan for public water systems with service area located within the source river basin that has been submitted to the Department in accordance with G.S. 143-355(l).

(4) The present and reasonably foreseeable future beneficial and detrimental effects on the receiving river basin, including present and future effects on public, industrial, economic, recreational, and agricultural water supply needs, wastewater assimilation, water quality, fish and wildlife habitat, electric power generation, navigation, and recreation. Local water supply plans prepared pursuant to G.S. 143-355(l) that affect the receiving river basin shall be used to evaluate the projected future water needs in the receiving river basin that will be met by public water systems. Information on projected future water needs that is more recent than the local water supply plans may be used if the Commission finds the information to be reliable. The determination shall include a specific finding as to measures that are necessary or advisable to mitigate or avoid detrimental impacts on the receiving river basin.

(5) The availability of reasonable alternatives to the proposed transfer, including the potential capacity of alternative sources of water, the potential of each alternative to reduce the amount of or avoid the proposed transfer, probable costs, and environmental impacts. In considering alternatives, the Commission is not limited to consideration of alternatives that have been proposed, studied, or considered by the applicant. The determination shall include a specific finding as to why the applicant's need for water cannot be satisfied by alternatives within the receiving basin, including unused capacity under a transfer for which a certificate is in effect or that is otherwise authorized by law at the time the applicant submits the petition. The determination shall consider the extent to which access to potential sources of surface water or groundwater within the receiving river basin is no longer available due to depletion, contamination, or the declaration of a capacity use area under Part 2 of Article 21 of Chapter 143 of the General Statutes. The determination shall consider the feasibility of the applicant's purchase of water from other water suppliers within the receiving basin and of the transfer of water from another sub-basin within the receiving major river basin. Except in circumstances of technical or economic infeasibility or

adverse environmental impact, the Commission's determination as to reasonable alternatives shall give preference to alternatives that would involve a transfer from one sub-basin to another within the major receiving river basin over alternatives that would involve a transfer from one major river basin to another major river basin.

(6) If applicable to the proposed project, the applicant's present and proposed use of impoundment storage capacity to store water during high-flow periods for use during low-flow periods and the applicant's right of withdrawal under G.S. 143-215.44 through G.S. 143-215.50.

(7) If the water to be withdrawn or transferred is stored in a multipurpose reservoir constructed by the United States Army Corps of Engineers, the purposes and water storage allocations established for the reservoir at the time the reservoir was authorized by the Congress of the United States.

(8) Whether the service area of the applicant is located in both the source river basin and the receiving river basin.

(9) Any other facts and circumstances that are reasonably necessary to carry out the purposes of this Part.

(l) Final Determination: Information to be Considered. – In determining whether a certificate may be issued for the transfer, the Commission shall consider all of the following sources of information:

(1) The petition.

(2) The environmental document prepared pursuant to subsection (d) of this section.

(3) All oral and written comment and all accompanying materials or evidence submitted pursuant to subsections (e) and (j) of this section.

(4) Information developed by or available to the Department on the water quality of the source river basin and the receiving river basin, including waters that are identified as impaired pursuant to section 303(d) of the federal Clean Water Act (33 U.S.C. § 1313(d)), that are subject to a total maximum daily load (TMDL) limit under subsections (d) and (e) of section 303 of the federal Clean Water Act, or that would have their assimilative capacity impaired if the certificate is issued.

(5) Any other information that the Commission determines to be relevant and useful.

(m) Final Determination: Burden and Standard of Proof; Specific Findings. – The Commission shall grant a certificate for a water transfer if the Commission finds that the applicant has established by a preponderance of the evidence all of the following:

(1) The benefits of the proposed transfer outweigh the detriments of the proposed transfer. In making this determination, the Commission shall be guided by the approved environmental document and the policy set out in subsection (t) of this section.

(2) The detriments have been or will be mitigated to the maximum degree practicable.

(3) The amount of the transfer does not exceed the amount of the projected shortfall under the applicant's water supply plan after first taking into account all other sources of water that are available to the applicant.

(4) There are no reasonable alternatives to the proposed transfer.

(n) Final Determination: Certificate Conditions and Limitations. – The Commission may grant the certificate in whole or in part, or deny the certificate. The Commission may impose any conditions or limitations on a certificate that the Commission finds necessary to achieve the purposes of this Part including a limit on the period for which the certificate is

valid. The conditions and limitations shall include any mitigation measures proposed by the applicant to minimize any detrimental effects within the source and receiving river basins. In addition, the certificate shall require all of the following conditions and limitations:

(1) A water conservation plan that specifies the water conservation measures that will be implemented by the applicant in the receiving river basin to ensure the efficient use of the transferred water. Except in circumstances of technical or economic infeasibility or adverse environmental impact, the water conservation plan shall provide for the mandatory implementation of water conservation measures by the applicant that equal or exceed the most stringent water conservation plan implemented by a ~~community water system, as defined in G.S. 143-355(l),~~ public water system that withdraws water from the source river basin.

(2) A drought management plan that specifies how the transfer shall be managed to protect the source river basin during drought conditions or other emergencies that occur within the source river basin. Except in circumstances of technical or economic infeasibility or adverse environmental impact, this drought management plan shall include mandatory reductions in the permitted amount of the transfer based on the severity and duration of a drought occurring within the source river basin and shall provide for the mandatory implementation of a drought management plan by the applicant that equals or exceeds the most stringent water conservation plan implemented by a ~~community water system, as defined in G.S. 143-355(l),~~public water system that withdraws water from the source river basin.

(3) The maximum amount of water that may be ~~transferred on a daily basis,~~transferred, calculated as a daily average of a calendar month, and methods or devices required to be installed and operated that measure the amount of water that is transferred.

(4) A provision that the Commission may amend a certificate to reduce the maximum amount of water authorized to be transferred whenever it appears that an alternative source of water is available to the certificate holder from within the receiving river basin, including, but not limited to, the purchase of water from another water supplier within the receiving basin or to the transfer of water from another sub-basin within the receiving major river basin.

(5) A provision that the Commission shall amend the certificate to reduce the maximum amount of water authorized to be transferred if the Commission finds that the applicant's current projected water needs are significantly less than the applicant's projected water needs at the time the certificate was granted.

(6) A requirement that the certificate holder report the quantity of water transferred during each calendar quarter. The report required by this subdivision shall be submitted to the Commission no later than 30 days after the end of the quarter.

(7) Except as provided in this subdivision, a provision that the applicant will not resell the water that would be transferred pursuant to the certificate to another public water ~~supply~~ system. This limitation shall not apply in the case of a proposed resale or transfer among public water ~~supply~~ systems within the receiving river basin as part of an interlocal agreement or other regional water supply arrangement, provided that each participant in the interlocal agreement or regional water supply arrangement is a co-applicant

for the certificate and will be subject to all the terms, conditions, and limitations made applicable to any lead or primary applicant.

(o) Administrative and Judicial Review. – Administrative and judicial review of a final decision on a petition for a certificate under this section shall be governed by Chapter 150B of the General Statutes.

(p) Certain Preexisting Transfers. – In cases where an applicant requests approval to increase a transfer that existed on 1 July 1993, the Commission may approve or disapprove only the amount of the increase. If the Commission approves the increase, the certificate shall be issued for the amount of the preexisting transfer plus any increase approved by the Commission. A certificate for a transfer approved by the Commission under G.S. 162A-7 shall remain in effect as approved by the Commission and shall have the same effect as a certificate issued under this Part. A certificate for the increase of a preexisting transfer shall contain all of the conditions and limitations required by subsection (m) of this section.

(q) Emergency Transfers. – In the case of water supply problems caused by drought, a pollution incident, temporary failure of a water plant, or any other temporary condition in which the public health, safety, or welfare requires a transfer of water, the Secretary of Environment and Natural Resources may grant approval for a temporary transfer. Prior to approving a temporary transfer, the Secretary shall consult with those parties listed in subdivision (3) of subsection (c) of this section that are likely to be affected by the proposed transfer. However, the Secretary shall not be required to satisfy the public notice requirements of this section or make written findings of fact and conclusions of law in approving a temporary transfer under this subsection. If the Secretary approves a temporary transfer under this subsection, the Secretary shall specify conditions to protect other water users. A temporary transfer shall not exceed six months in duration, but the approval may be renewed for a period of six months by the Secretary based on demonstrated need as set forth in this subsection.

(r) Relationship to Federal Law. – The substantive restrictions, conditions, and limitations upon surface water transfers authorized in this section may be imposed pursuant to any federal law that permits the State to certify, restrict, or condition any new or continuing transfers or related activities licensed, relicensed, or otherwise authorized by the federal government. This section shall govern the transfer of water from one river basin to another unless preempted by federal law.

(s) Planning Requirements. – When any transfer for which a certificate was issued under this section equals or exceeds eighty percent (80%) of the maximum amount authorized in the certificate, the applicant shall submit to the Department a detailed plan that specifies how the applicant intends to address future foreseeable water needs. If the applicant is required to have a local water supply plan, then this plan shall be an amendment to the local water supply plan required by G.S.143-355(l). When the transfer equals or exceeds ninety percent (90%) of the maximum amount authorized in the certificate, the applicant shall begin implementation of the plan submitted to the Department.

(t) Statement of Policy. – It is the public policy of the State to maintain, protect, and enhance water quality within North Carolina. It is the public policy of this State that the reasonably foreseeable future water needs of a public water system with its service area located primarily in the receiving river basin are subordinate to the reasonably foreseeable future water needs of a public water system with its service area located primarily in the source river basin. Further, it is the public policy of the State that the cumulative impact of transfers from a source river basin shall not result in a violation of the antidegradation policy set out in 40 Code of Federal Regulations § 131.12 (1 July 2006 Edition) and the statewide antidegradation policy adopted pursuant thereto.

~~(u) Renewal of Certificate. – A petition to extend or renew a certificate shall be treated as a new petition.~~

(v) Modification of Certificate. – A certificate may be modified as provided in this subsection.

(1) The Commission or the Department may make any of the following modifications to a certificate after providing electronic notice to persons who have identified themselves in writing as interested parties:

a. Correction of typographical errors.

b. Clarification of existing conditions or language.

c. Updates, requested by the certificate holder, to a conservation plan, drought management plan, or compliance and monitoring plan.

d. Modifications requested by the certificate holder to reflect altered requirements due to the amendment of this section.

(2) A person who holds a certificate for an interbasin transfer of water may request that the Commission modify the certificate. The request shall be considered and a determination made according to the following procedures:

a. The certificate must have been issued pursuant to G.S. 162A-7, 143-215.22I, or 143-215.22L and the certificate holder must be in substantial compliance with the certificate.

b. The certificate holder shall file a notice of intent to file a request for modification that includes a nontechnical description of the certificate holder's request and identification of the proposed water source.

c. The certificate holder shall prepare an environmental document pursuant to subsection (d) of this section, except that an environmental impact statement shall not be required for the modification of a certificate unless it would otherwise be required by Article 1 of Chapter 113A of the General Statutes.

d. Upon determining that the documentation submitted by the certificate holder is adequate to satisfy the requirements of this subsection, the Department shall publish a notice of the request for modification in the North Carolina Register and shall hold a public hearing at a location convenient to both the source and receiving river basins. The Department shall provide written notice of the request for the modification and the public hearing in the Environmental Bulletin, a newspaper of general circulation in the source river basin, a newspaper of general circulation in the receiving river basin, and as provided in subdivision (3) of subsection (c) of this section. The certificate holder who petitions the Commission for a modification under this subdivision shall pay the costs associated with the notice and public hearing.

e. The Department shall accept comments on the requested modification for a minimum of 30 days following the public hearing.

f. The Commission or the Department may require the certificate holder to provide any additional information or documentation it deems reasonably necessary in order to make a final determination.

g. The Commission shall make a final determination whether to grant the requested modification based on the factors set out in subsection (k) of this section, information provided by the certificate holder, and any other information the Commission deems relevant. The Commission shall state in writing its findings of fact and conclusions of law with regard to each factor.

h. The Commission shall grant the requested modification if it finds that the certificate holder has established by a preponderance of the evidence that the requested modification satisfies the requirements of subsection (m) of this section. The Commission may grant the requested modification in whole or in part, or deny the request, and may impose such limitations and conditions on the modified certificate as it deems necessary and relevant to the modification.

i. The Commission shall not grant a request for modification if the modification would result in the transfer of water to an additional major river basin.

j. The Commission shall not grant a request for modification if the modification would be inconsistent with the December 3, 2010 Settlement Agreement entered into between the State of North Carolina, the State of South Carolina, Duke Energy Carolinas, and the Catawba River Water Supply Project.

(w) Requirements for Coastal Counties. – A petition for a certificate to transfer surface water to supplement ground water supplies in the 15 counties designated as the Central Capacity Use Area under 15A NCAC 2E .0501, or to transfer surface water withdrawn from the mainstem of a river to provide service to one of the coastal area counties designated pursuant to G.S. 113A-103, shall be considered and a determination made according to the following procedures:

(1) The applicant shall file a notice of intent that includes a nontechnical description of the applicant's request and identification of the proposed water source.

(2) The applicant shall prepare an environmental document pursuant to subsection (d) of this section, except that an environmental impact statement shall not be required unless it would otherwise be required by Article 1 of Chapter 113A of the General Statutes.

(3) Upon determining that the documentation submitted by the applicant is adequate to satisfy the requirements of this subsection, the Department shall publish a notice of the petition in the North Carolina Register and shall hold a public hearing at a location convenient to both the source and receiving river basins. The Department shall provide written notice of the petition and the public hearing in the Environmental Bulletin, a newspaper of general circulation in the source river basin, a newspaper of general circulation in the receiving river basin, and as provided in subdivision (3) of subsection (c) of this section. The applicant who petitions the Commission for a certificate under this subdivision shall pay the costs associated with the notice and public hearing.

(4) The Department shall accept comments on the petition for a minimum of 30 days following the public hearing.

(5) The Commission or the Department may require the applicant to provide any additional information or documentation it deems reasonably necessary in order to make a final determination.

(6) The Commission shall make a final determination whether to grant the certificate based on the factors set out in subsection (k) of this section, information provided by the applicant, and any other information the Commission deems relevant. The Commission shall state in writing its findings of fact and conclusions of law with regard to each factor.

(7) The Commission shall grant the certificate if it finds that the applicant has established by a preponderance of the evidence that the petition satisfies the

requirements of subsection (m) of this section. The Commission may grant the certificate in whole or in part, or deny the request, and may impose such limitations and conditions on the certificate as it deems necessary and relevant."

SECTION 3.(a) Section 1 of S.L. 2011-298 reads as rewritten:

"**SECTION 1.** Notwithstanding G.S. 143-215.22I and 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 3.(b) Section 4 of S.L. 2011-298 reads as rewritten:

"**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~~ transfers, by public water supply systems sharing a single intake, 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."

SECTION 3.(c) Section 7 of S.L. 2007-518, as amended by Section 4 of S.L. 2010-155 and Section 2 of S.L. 2011-298, reads as rewritten:

"~~**SECTION 7.(a)** Except as provided in subsections (b), (c) and (d) of this section, this~~ **SECTION 7.** 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.(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 4. This act is effective when it becomes law.

SENATE BILL 341:
Amend Interbasin Transfer Law

2013-2014 General Assembly

Committee:	Senate Agriculture/Environment/Natural Resources	**Date:**	April 30, 2013
Introduced by:	Senator Rabon	**Prepared by:**	Jeff Hudson Committee Counsel
Analysis of:	PCS to First Edition S341-CSSB-16 [v.1]		

SUMMARY: ***The Proposed Committee Substitute for Senate Bill 341 would provide an expedited process for modifying existing interbasin transfer certificates and for obtaining new interbasin transfer certificates in coastal counties.***

BACKGROUND AND CURRENT LAW: In 2007, the General Assembly repealed the then existing process for obtaining an interbasin transfer certificate and established a new process for applying for a certificate and for determining whether a certificate should be issued. The new process established much more extensive notice and comment requirements and provided that a full environmental impact statement must be developed for any interbasin transfers from one major river basin to another. These additional requirements increase the time it takes to complete an interbasin transfer certificate process and makes the process considerably more expensive for applicants. Since 2007, the General Assembly has enacted several pieces of legislation for the Central Coastal Plain Capacity Use Area and for other coastal areas to provide some relief from these additional requirements.

BILL ANALYSIS: The Proposed Committee Substitute (PCS) for Senate Bill 341 would provide an expedited process for modifying existing interbasin transfer certificates and for obtaining new interbasin transfer certificates in coastal counties, as follows:

- Modifies the threshold for when an interbasin transfer certificate must be obtained. Under current law, the threshold is a transfer of 2,000,000 gallons of water or more per day from one river basin to another. The PCS would change the threshold to a transfer of 2,000,000 gallons of water or more per day, calculated as a daily average of a calendar month and not exceed 5,000,000 gallons per day in any one day, from one river basin to another.
- Provides an expedited process for modifying existing interbasin transfer certificates by reducing notice requirements and providing that a full environmental impact statement is not necessarily required. The PCS would specifically prohibit the Environmental Management Commission from granting a request for a modification that would be inconsistent with the North Carolina/South Carolina settlement agreement for the Catawba River Basin.
- Provides an expedited process for obtaining new interbasin transfer certificates in coastal counties by reducing notice requirements and providing that a full environmental impact statement is not necessarily required.
- Makes clarifying, conforming, and technical changes to interbasin transfer laws.

EFFECTIVE DATE: This act is effective when it becomes law.

O. Walker Reagan
Director

S341-SMSB-29 CSSB-16 -V2

Research Division
(919) 733-2578

SENATE BILL 341

Short Title:	Amend Interbasin Transfer Law.	(Public)
Sponsors:	Senators Rabon (Primary Sponsor); and Barringer.	
Referred to:	Agriculture/Environment/Natural Resources.	

March 19, 2013

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH AN EXPEDITED PROCESS FOR THE MODIFICATION OF INTERBASIN TRANSFER CERTIFICATES AND FOR THE ISSUANCE OF INTERBASIN TRANSFER CERTIFICATES IN THE CENTRAL COASTAL PLAIN CAPACITY USE AREA AND THE COASTAL AREA COUNTIES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 143-215.22G reads as rewritten:

"**§ 143-215.22G. Definitions.**

In addition to the definitions set forth in G.S. 143-212 and G.S. 143-213, the following definitions apply to this Part.

(1) "River basin" means any of the following river basins designated on the map entitled "Major River Basins and Sub-basins in North Carolina" and filed in the Office of the Secretary of State on 16 April 1991. The term "river basin" includes any portion of the river basin that extends into another state. Any area outside North Carolina that is not included in one of the river basins listed in this subdivision comprises a separate river basin.

a.	1-1	Broad River.
b.	2-1	Haw River.
c.	2-2	Deep River.
d.	2-3	Cape Fear River.
e.	2-4	South River.
f.	2-5	Northeast Cape Fear River.
g.	2-6	New River.
h.	3-1	Catawba River.
i.	3-2	South Fork Catawba River.
j.	4-1	Chowan River.
k.	4-2	Meherrin River.
l.	5-1	Nolichucky River.
m.	5-2	French Broad River.
n.	5-3	Pigeon River.
o.	6-1	Hiwassee River.
p.	7-1	Little Tennessee River.
q.	7-2	Tuskasegee (Tuckasegee) River.
r.	8-1	Savannah River.
s.	9-1	Lumber River.
t.	9-2	Big Shoe Heel Creek.

u.	9-3	Waccamaw River.
v.	9-4	Shallotte River.
w.	10-1	Neuse River.
x.	10-2	Contentnea Creek.
y.	10-3	Trent River.
z.	11-1	New River.
aa.	12-1	Albemarle Sound.
bb.	13-1	Ocoee River.
cc.	14-1	Roanoke River.
dd.	15-1	Tar River.
ee.	15-2	Fishing Creek.
ff.	15-3	Pamlico River and Sound.
gg.	16-1	Watauga River.
hh.	17-1	White Oak River.
ii.	18-1	Yadkin (Yadkin-Pee Dee) River.
jj.	18-2	South Yadkin River.
kk.	18-3	Uwharrie River.
ll.	18-4	Rocky River.

(2) "Surface water" means any of the waters of the State located on the land surface that are not derived by pumping from groundwater.

(3) "Transfer" means the withdrawal, diversion, or pumping of surface water from one river basin and discharge of all or any part of the water in a river basin different from the origin. However, notwithstanding the basin definitions in G.S. 143-215.22G(1), the following are not transfers under this Part:

a. The discharge of water upstream from the point where it is withdrawn.

b. The discharge of water downstream from the point where it is withdrawn.

(4) "Public water system" means any unit of local government or large community water system subject to the requirements of G.S. 143-355(l).

(5) "Mainstem" means that portion of a river having the same name as a river basin defined in subdivision (1) of this section. "Mainstem" does not include named or unnamed tributaries."

SECTION 2. G.S. 143-215.22L reads as rewritten:

"**§ 143-215.22L. Regulation of surface water transfers.**

(a) Certificate Required. – No person, without first obtaining a certificate from the Commission, may:

(1) Initiate a transfer of 2,000,000 gallons of water or more per ~~day~~ day, calculated as a daily average of a calendar month and not to exceed 5,000,000 gallons per day in any one day, from one river basin to another.

~~(2) Increase the amount of an existing transfer of water from one river basin to another by twenty-five percent (25%) or more above the average daily amount transferred during the year ending 1 July 1993 if the total transfer including the increase is 2,000,000 gallons or more per day.~~

(3) Increase an existing transfer of water from one river basin to another above the amount approved by the Commission in a certificate issued under G.S. 162A-7 prior to 1 July 1993.

(b) Exception. – Notwithstanding the provisions of subsection (a) of this section, a certificate shall not be required to transfer water from one river basin to another up to the full

capacity of a facility to transfer water from one basin to another if the facility was in existence or under construction on 1 July 1993.

(c) Notice of Intent to File a Petition. – An applicant shall prepare a notice of intent to file a petition that includes a nontechnical description of the applicant's request and an identification of the proposed water source. Within 90 days after the applicant files a notice of intent to file a petition, the applicant shall hold at least one public meeting in the source river basin upstream from the proposed point of withdrawal, at least one public meeting in the source river basin downstream from the proposed point of withdrawal, and at least one public meeting in the receiving river basin to provide information to interested parties and the public regarding the nature and extent of the proposed transfer and to receive comment on the scope of the environmental documents. Written notice of the public meetings shall be provided at least 30 days before the public meetings. At the time the applicant gives notice of the public meetings, the applicant shall request comment on the alternatives and issues that should be addressed in the environmental documents required by this section. The applicant shall accept written comment on the scope of the environmental documents for a minimum of 30 days following the last public meeting. Notice of the public meetings and opportunity to comment on the scope of the environmental documents shall be provided as follows:

(1) By publishing notice in the North Carolina Register.

(2) By publishing notice in a newspaper of general circulation in:

a. Each county in this State located in whole or in part of the area of the source river basin upstream from the proposed point of withdrawal.

b. Each city or county located in a state located in whole or in part of the surface drainage basin area of the source river basin that also falls within, in whole or in part, the area denoted by one of the following eight-digit cataloging units as organized by the United States Geological Survey:

03050105 (Broad River: NC and SC);
03050106 (Broad River: SC);
03050107 (Broad River: SC);
03050108 (Broad River: SC);
05050001 (New River: NC and VA);
05050002 (New River: VA and WV);
03050101 (Catawba River: NC and SC);
03050103 (Catawba River: NC and SC);
03050104 (Catawba River: SC);
03010203 (Chowan River: NC and VA);
03010204 (Chowan River: NC and VA);
06010105 (French Broad River: NC and TN);
06010106 (French Broad River: NC and TN);
06010107 (French Broad River: TN);
06010108 (French Broad River: NC and TN);
06020001 (Hiwassee River: AL, GA, TN);
06020002 (Hiwassee River: GA, NC, TN);
06010201 (Little Tennessee River: TN);
06010202 (Little Tennessee River: TN, GA, and NC);
06010204 (Little Tennessee River: NC and TN);
03060101 (Savannah River: NC and SC);
03060102 (Savannah River: GA, NC, and SC);
03060103 (Savannah River: GA and SC);
03060104 (Savannah River: GA);
03060105 (Savannah River: GA);

03040203 (Lumber River: NC and SC);
03040204 (Lumber River: NC and SC);
03040206 (Lumber River: NC and SC);
03040207 (Lumber River: NC and SC);
03010205 (Albemarle Sound: NC and VA);
06020003 (Ocoee River: GA, NC, and TN);
03010101 (Roanoke River: VA);
03010102 (Roanoke River: NC and VA);
03010103 (Roanoke River: NC and VA);
03010104 (Roanoke River: NC and VA);
03010105 (Roanoke River: VA);
03010106 (Roanoke River: NC and VA);
06010102 (Watauga River: TN and VA);
06010103 (Watauga River: NC and TN);
03040101 (Yadkin River: VA and NC);
03040104 (Yadkin River: NC and SC);
03040105 (Yadkin River: NC and SC);
03040201 (Yadkin River: NC and SC);
03040202 (Yadkin River: NC and SC).

c. Each county in this State located in whole or in part of the area of the source river basin downstream from the proposed point of withdrawal.

d. Any area in the State in a river basin for which the source river basin has been identified as a future source of water in a local water supply plan prepared pursuant to G.S. 143-355(l).

e. Each county in the State located in whole or in part of the receiving river basin.

(3) By giving notice by first-class mail or electronic mail to each of the following:

a. The board of commissioners of each county in this State or the governing body of any county or city that is politically independent of a county in any state that is located entirely or partially within the source river basin of the proposed transfer and that also falls within, in whole or in part, the area denoted by one of the eight-digit cataloging units listed in sub-subdivision b. of subdivision (2) of this subsection.

b. The board of commissioners of each county in this State or the governing body of any county or city that is politically independent of a county in any state that is located entirely or partially within the receiving river basin of the proposed transfer and that also falls within, in whole or in part, the area denoted by one of the eight-digit cataloging units listed in sub-subdivision b. of subdivision (2) of this subsection.

c. The governing body of any public water ~~supply~~ system that withdraws water upstream or downstream from the withdrawal point of the proposed transfer.

d. If any portion of the source or receiving river basins is located in another state, all state water management or use agencies, environmental protection agencies, and the office of the governor in that state upstream or downstream from the withdrawal point of the proposed transfer.

e. All persons who have registered a water withdrawal or transfer from the proposed source river basin under this Part or under similar law in an another state.

f. All persons who hold a certificate for a transfer of water from the proposed source river basin under this Part or under similar law in an another state.

g. All persons who hold a National Pollutant Discharge Elimination System (NPDES) wastewater discharge permit for a discharge of 100,000 gallons per day or more upstream or downstream from the proposed point of withdrawal.

h. To any other person who submits to the applicant a written request to receive all notices relating to the petition.

(d) Environmental Documents. – The definitions set out in G.S. 113A-9 apply to this section. The Department shall conduct a study of the environmental impacts of any proposed transfer of water for which a certificate is required under this section. The study shall meet all of the requirements set forth in G.S. 113A-4 and rules adopted pursuant to G.S. 113A-4. An environmental assessment shall be prepared for any petition for a certificate under this section. The determination of whether an environmental impact statement shall also be required shall be made in accordance with the provisions of Article 1 of Chapter 113A of the General Statutes; except that an environmental impact statement shall be prepared for every proposed transfer of water from one major river basin to another for which a certificate is required under this section. The applicant who petitions the Commission for a certificate under this section shall pay the cost of special studies necessary to comply with Article 1 of Chapter 113A of the General Statutes. An environmental impact statement prepared pursuant to this subsection shall include all of the following:

(1) A comprehensive analysis of the impacts that would occur in the source river basin and the receiving river basin if the petition for a certificate is granted.

(2) An evaluation of alternatives to the proposed interbasin transfer, including water supply sources that do not require an interbasin transfer and use of water conservation measures.

(3) A description of measures to mitigate any adverse impacts that may arise from the proposed interbasin transfer.

(e) Public Hearing on the Draft Environmental Document. – The Commission shall hold a public hearing on the draft environmental document for a proposed interbasin transfer after giving at least 30 days' written notice of the hearing in the Environmental Bulletin and as provided in subdivisions (2) and (3) of subsection (c) of this section. The notice shall indicate where a copy of the environmental document can be reviewed and the procedure to be followed by anyone wishing to submit written comments and questions on the environmental document. The Commission shall prepare a record of all comments and written responses to questions posed in writing. The record shall include complete copies of scientific or technical comments related to the potential impact of the interbasin transfer. The Commission shall accept written comment on the draft environmental document for a minimum of 30 days following the last public hearing. The applicant who petitions the Commission for a certificate under this section shall pay the costs associated with the notice and public hearing on the draft environmental document.

(f) Determination of Adequacy of Environmental Document. – The Commission shall not act on any petition for an interbasin transfer until the Commission has determined that the environmental document is complete and adequate. A decision on the adequacy of the environmental document is subject to review in a contested case on the decision of the Commission to issue or deny a certificate under this section.

(g) Petition. – An applicant for a certificate shall petition the Commission for the certificate. The petition shall be in writing and shall include all of the following:

(1) A general description of the facilities to be used to transfer the water, ~~including the location and capacity of water intakes, pumps, pipelines, and other facilities.~~including current and projected areas to be served by the transfer, current and projected capacities of intakes, and other relevant facilities.

(2) A description of all the proposed consumptive and nonconsumptive uses of the water to be transferred.

(3) A description of the water quality of the source river and receiving river, including information on aquatic habitat for rare, threatened, and endangered species; in-stream flow data for segments of the source and receiving rivers that may be affected by the transfer; and any waters that are impaired pursuant to section 303(d) of the federal Clean Water Act (33 U.S.C. § 1313(d)).

(4) A description of the water conservation measures used by the applicant at the time of the petition and any additional water conservation measures that the applicant will implement if the certificate is granted.

(5) A description of all sources of water within the receiving river basin, including surface water impoundments, groundwater wells, reinjection storage, and purchase of water from another source within the river basin, that is a practicable alternative to the proposed transfer that would meet the applicant's water supply needs. The description of water sources shall include sources available at the time of the petition for a certificate and any planned or potential water sources.

(6) A description of water transfers and withdrawals registered under G.S. 143-215.22H or included in a local water supply plan prepared pursuant to G.S. 143-355(l) from the source river basin, including transfers and withdrawals at the time of the petition for a certificate and any planned or reasonably foreseeable transfers or withdrawals by a public water system with service area located within the source river basin.

(7). A demonstration that the proposed transfer, if added to all other transfers and withdrawals required to be registered under G.S. 143-215.22H or included in any local water supply plan prepared by a public water system with service area located within the source basin pursuant to G.S. 143-355(l) from the source river basin at the time of the petition for a certificate, would not reduce the amount of water available for use in the source river basin to a degree that would impair existing uses, pursuant to the antidegradation policy set out in 40 Code of Federal Regulation § 131.12 (Antidegradation Policy) (1 July 2006 Edition) and the statewide antidegradation policy adopted pursuant thereto, or existing and planned consumptive and nonconsumptive uses of the water in the source river basin. If the proposed transfer would impact a reservoir within the source river basin, the demonstration must include a finding that the transfer would not result in a water level in the reservoir that is inadequate to support existing uses of the reservoir, including recreational uses.

(8) The applicant's future water supply needs and the present and reasonably foreseeable future water supply needs for public water systems with service area located within the source river basin. The analysis of future water supply needs shall include agricultural, recreational, and industrial uses, and electric power generation. Local water supply plans prepared pursuant to

G.S. 143-355(l) for water systems with service area located within the source river basin shall be used to evaluate the projected future water needs in the source river basin that will be met by public water systems.

(9) The applicant's water supply plan prepared pursuant to G.S. 143-355(l). If the applicant's water supply plan is more than two years old at the time of the petition, then the applicant shall include with the petition an updated water supply plan.

(10) Any other information deemed necessary by the Commission for review of the proposed water transfer.

(h) Settlement Discussions. – Upon the request of the applicant, any interested party, or the Department, or upon its own motion, the Commission may appoint a mediation officer. The mediation officer may be a member of the Commission, an employee of the Department, or a neutral third party but shall not be a hearing officer under subsections (e) or (j) of this section. The mediation officer shall make a reasonable effort to initiate settlement discussions between the applicant and all other interested parties. Evidence of statements made and conduct that occurs in a settlement discussion conducted under this subsection, whether attributable to a party, a mediation officer, or other person shall not be subject to discovery and shall be inadmissible in any subsequent proceeding on the petition for a certificate. The Commission may adopt rules to govern the conduct of the mediation process.

(i) Draft Determination. – Within 90 days after the Commission determines that the environmental document prepared in accordance with subsection (d) of this section is adequate or the applicant submits its petition for a certificate, whichever occurs later, the Commission shall issue a draft determination on whether to grant the certificate. The draft determination shall be based on the criteria set out in this section and shall include the conditions and limitations, findings of fact, and conclusions of law that would be required in a final determination. Notice of the draft determination shall be given as provided in subsection (c) of this section.

(j) Public Hearing on the Draft Determination. – Within 60 days of the issuance of the draft determination as provided in subsection (i) of this section, the Commission shall hold public hearings on the draft determination. At least one hearing shall be held in the affected area of the source river basin, and at least one hearing shall be held in the affected area of the receiving river basin. In determining whether more than one public hearing should be held within either the source or receiving river basins, the Commission shall consider the differing or conflicting interests that may exist within the river basins, including the interests of both upstream and downstream parties potentially affected by the proposed transfer. The public hearings shall be conducted by one or more hearing officers appointed by the Chair of the Commission. The hearing officers may be members of the Commission or employees of the Department. The Commission shall give at least 30 days' written notice of the public hearing as provided in subsection (c) of this section. The Commission shall accept written comment on the draft determination for a minimum of 30 days following the last public hearing. The Commission shall prepare a record of all comments and written responses to questions posed in writing. The record shall include complete copies of scientific or technical comments related to the potential impact of the interbasin transfer. The applicant who petitions the Commission for a certificate under this section shall pay the costs associated with the notice and public hearing on the draft determination.

(k) Final Determination: Factors to be Considered. – In determining whether a certificate may be issued for the transfer, the Commission shall specifically consider each of the following items and state in writing its findings of fact and conclusions of law with regard to each item:

(1) The necessity and reasonableness of the amount of surface water proposed to be transferred and its proposed uses.

(2) The present and reasonably foreseeable future detrimental effects on the source river basin, including present and future effects on public, industrial, economic, recreational, and agricultural water supply needs, wastewater assimilation, water quality, fish and wildlife habitat, electric power generation, navigation, and recreation. Local water supply plans for public water systems with service area located within the source river basin prepared pursuant to G.S. 143-355(l) shall be used to evaluate the projected future water needs in the source river basin that will be met by public water systems. Information on projected future water needs for public water systems with service area located within the source river basin that is more recent than the local water supply plans may be used if the Commission finds the information to be reliable. The determination shall include a specific finding as to measures that are necessary or advisable to mitigate or avoid detrimental impacts on the source river basin.

(3) The cumulative effect on the source major river basin of any water transfer or consumptive water use that, at the time the Commission considers the petition for a certificate is occurring, is authorized under this section, or is projected in any local water supply plan for public water systems with service area located within the source river basin that has been submitted to the Department in accordance with G.S. 143-355(l).

(4) The present and reasonably foreseeable future beneficial and detrimental effects on the receiving river basin, including present and future effects on public, industrial, economic, recreational, and agricultural water supply needs, wastewater assimilation, water quality, fish and wildlife habitat, electric power generation, navigation, and recreation. Local water supply plans prepared pursuant to G.S. 143-355(l) that affect the receiving river basin shall be used to evaluate the projected future water needs in the receiving river basin that will be met by public water systems. Information on projected future water needs that is more recent than the local water supply plans may be used if the Commission finds the information to be reliable. The determination shall include a specific finding as to measures that are necessary or advisable to mitigate or avoid detrimental impacts on the receiving river basin.

(5) The availability of reasonable alternatives to the proposed transfer, including the potential capacity of alternative sources of water, the potential of each alternative to reduce the amount of or avoid the proposed transfer, probable costs, and environmental impacts. In considering alternatives, the Commission is not limited to consideration of alternatives that have been proposed, studied, or considered by the applicant. The determination shall include a specific finding as to why the applicant's need for water cannot be satisfied by alternatives within the receiving basin, including unused capacity under a transfer for which a certificate is in effect or that is otherwise authorized by law at the time the applicant submits the petition. The determination shall consider the extent to which access to potential sources of surface water or groundwater within the receiving river basin is no longer available due to depletion, contamination, or the declaration of a capacity use area under Part 2 of Article 21 of Chapter 143 of the General Statutes. The determination shall consider the feasibility of the applicant's purchase of water from other water suppliers within the receiving basin and of the transfer of water from another sub-basin within the receiving major river basin. Except in circumstances of technical or economic infeasibility or

adverse environmental impact, the Commission's determination as to reasonable alternatives shall give preference to alternatives that would involve a transfer from one sub-basin to another within the major receiving river basin over alternatives that would involve a transfer from one major river basin to another major river basin.

(6) If applicable to the proposed project, the applicant's present and proposed use of impoundment storage capacity to store water during high-flow periods for use during low-flow periods and the applicant's right of withdrawal under G.S. 143-215.44 through G.S. 143-215.50.

(7) If the water to be withdrawn or transferred is stored in a multipurpose reservoir constructed by the United States Army Corps of Engineers, the purposes and water storage allocations established for the reservoir at the time the reservoir was authorized by the Congress of the United States.

(8) Whether the service area of the applicant is located in both the source river basin and the receiving river basin.

(9) Any other facts and circumstances that are reasonably necessary to carry out the purposes of this Part.

(l) Final Determination: Information to be Considered. – In determining whether a certificate may be issued for the transfer, the Commission shall consider all of the following sources of information:

(1) The petition.

(2) The environmental document prepared pursuant to subsection (d) of this section.

(3) All oral and written comment and all accompanying materials or evidence submitted pursuant to subsections (e) and (j) of this section.

(4) Information developed by or available to the Department on the water quality of the source river basin and the receiving river basin, including waters that are identified as impaired pursuant to section 303(d) of the federal Clean Water Act (33 U.S.C. § 1313(d)), that are subject to a total maximum daily load (TMDL) limit under subsections (d) and (e) of section 303 of the federal Clean Water Act, or that would have their assimilative capacity impaired if the certificate is issued.

(5) Any other information that the Commission determines to be relevant and useful.

(m) Final Determination: Burden and Standard of Proof; Specific Findings. – The Commission shall grant a certificate for a water transfer if the Commission finds that the applicant has established by a preponderance of the evidence all of the following:

(1) The benefits of the proposed transfer outweigh the detriments of the proposed transfer. In making this determination, the Commission shall be guided by the approved environmental document and the policy set out in subsection (t) of this section.

(2) The detriments have been or will be mitigated to the maximum degree practicable.

(3) The amount of the transfer does not exceed the amount of the projected shortfall under the applicant's water supply plan after first taking into account all other sources of water that are available to the applicant.

(4) There are no reasonable alternatives to the proposed transfer.

(n) Final Determination: Certificate Conditions and Limitations. – The Commission may grant the certificate in whole or in part, or deny the certificate. The Commission may impose any conditions or limitations on a certificate that the Commission finds necessary to achieve the purposes of this Part including a limit on the period for which the certificate is

valid. The conditions and limitations shall include any mitigation measures proposed by the applicant to minimize any detrimental effects within the source and receiving river basins. In addition, the certificate shall require all of the following conditions and limitations:

(1) A water conservation plan that specifies the water conservation measures that will be implemented by the applicant in the receiving river basin to ensure the efficient use of the transferred water. Except in circumstances of technical or economic infeasibility or adverse environmental impact, the water conservation plan shall provide for the mandatory implementation of water conservation measures by the applicant that equal or exceed the most stringent water conservation plan implemented by a ~~community water system, as defined in G.S. 143-355(l),~~ public water system that withdraws water from the source river basin.

(2) A drought management plan that specifies how the transfer shall be managed to protect the source river basin during drought conditions or other emergencies that occur within the source river basin. Except in circumstances of technical or economic infeasibility or adverse environmental impact, this drought management plan shall include mandatory reductions in the permitted amount of the transfer based on the severity and duration of a drought occurring within the source river basin and shall provide for the mandatory implementation of a drought management plan by the applicant that equals or exceeds the most stringent water conservation plan implemented by a ~~community water system, as defined in G.S. 143-355(l),~~public water system that withdraws water from the source river basin.

(3) The maximum amount of water that may be ~~transferred on a daily basis,~~transferred, calculated as a daily average of a calendar month, and methods or devices required to be installed and operated that measure the amount of water that is transferred.

(4) A provision that the Commission may amend a certificate to reduce the maximum amount of water authorized to be transferred whenever it appears that an alternative source of water is available to the certificate holder from within the receiving river basin, including, but not limited to, the purchase of water from another water supplier within the receiving basin or to the transfer of water from another sub-basin within the receiving major river basin.

(5) A provision that the Commission shall amend the certificate to reduce the maximum amount of water authorized to be transferred if the Commission finds that the applicant's current projected water needs are significantly less than the applicant's projected water needs at the time the certificate was granted.

(6) A requirement that the certificate holder report the quantity of water transferred during each calendar quarter. The report required by this subdivision shall be submitted to the Commission no later than 30 days after the end of the quarter.

(7) Except as provided in this subdivision, a provision that the applicant will not resell the water that would be transferred pursuant to the certificate to another public water ~~supply~~ system. This limitation shall not apply in the case of a proposed resale or transfer among public water ~~supply~~ systems within the receiving river basin as part of an interlocal agreement or other regional water supply arrangement, provided that each participant in the interlocal agreement or regional water supply arrangement is a co-applicant

for the certificate and will be subject to all the terms, conditions, and limitations made applicable to any lead or primary applicant.

(o) Administrative and Judicial Review. – Administrative and judicial review of a final decision on a petition for a certificate under this section shall be governed by Chapter 150B of the General Statutes.

(p) Certain Preexisting Transfers. – In cases where an applicant requests approval to increase a transfer that existed on 1 July 1993, the Commission may approve or disapprove only the amount of the increase. If the Commission approves the increase, the certificate shall be issued for the amount of the preexisting transfer plus any increase approved by the Commission. A certificate for a transfer approved by the Commission under G.S. 162A-7 shall remain in effect as approved by the Commission and shall have the same effect as a certificate issued under this Part. A certificate for the increase of a preexisting transfer shall contain all of the conditions and limitations required by subsection (m) of this section.

(q) Emergency Transfers. – In the case of water supply problems caused by drought, a pollution incident, temporary failure of a water plant, or any other temporary condition in which the public health, safety, or welfare requires a transfer of water, the Secretary of Environment and Natural Resources may grant approval for a temporary transfer. Prior to approving a temporary transfer, the Secretary shall consult with those parties listed in subdivision (3) of subsection (c) of this section that are likely to be affected by the proposed transfer. However, the Secretary shall not be required to satisfy the public notice requirements of this section or make written findings of fact and conclusions of law in approving a temporary transfer under this subsection. If the Secretary approves a temporary transfer under this subsection, the Secretary shall specify conditions to protect other water users. A temporary transfer shall not exceed six months in duration, but the approval may be renewed for a period of six months by the Secretary based on demonstrated need as set forth in this subsection.

(r) Relationship to Federal Law. – The substantive restrictions, conditions, and limitations upon surface water transfers authorized in this section may be imposed pursuant to any federal law that permits the State to certify, restrict, or condition any new or continuing transfers or related activities licensed, relicensed, or otherwise authorized by the federal government. This section shall govern the transfer of water from one river basin to another unless preempted by federal law.

(s) Planning Requirements. – When any transfer for which a certificate was issued under this section equals or exceeds eighty percent (80%) of the maximum amount authorized in the certificate, the applicant shall submit to the Department a detailed plan that specifies how the applicant intends to address future foreseeable water needs. If the applicant is required to have a local water supply plan, then this plan shall be an amendment to the local water supply plan required by G.S.143-355(l). When the transfer equals or exceeds ninety percent (90%) of the maximum amount authorized in the certificate, the applicant shall begin implementation of the plan submitted to the Department.

(t) Statement of Policy. – It is the public policy of the State to maintain, protect, and enhance water quality within North Carolina. It is the public policy of this State that the reasonably foreseeable future water needs of a public water system with its service area located primarily in the receiving river basin are subordinate to the reasonably foreseeable future water needs of a public water system with its service area located primarily in the source river basin. Further, it is the public policy of the State that the cumulative impact of transfers from a source river basin shall not result in a violation of the antidegradation policy set out in 40 Code of Federal Regulations § 131.12 (1 July 2006 Edition) and the statewide antidegradation policy adopted pursuant thereto.

~~(u) Renewal of Certificate. – A petition to extend or renew a certificate shall be treated as a new petition.~~

(v) Modification of Certificate. – A certificate may be modified as provided in this subsection.

(1) The Commission or the Department may make any of the following modifications to a certificate after providing electronic notice to persons who have identified themselves in writing as interested parties:

a. Correction of typographical errors.

b. Clarification of existing conditions or language.

c. Updates to a conservation plan, drought management plan, or compliance and monitoring plan.

d. Modifications requested by the certificate holder to reflect altered requirements due to the amendment of this section.

(2) The Commission may make modifications that it deems to be minor after providing electronic notice to persons who have identified themselves in writing as interested parties.

(3) A person who holds a certificate for an interbasin transfer of water may request that the Commission modify the certificate. The request shall be considered and a determination made according to the following procedures:

a. The certificate must have been issued pursuant to G.S. 162A-7, 143-215.22I, or 143-215.22L and the certificate holder must be in substantial compliance with the certificate.

b. The certificate holder shall file a notice of intent to file a request for modification that includes a nontechnical description of the certificate holder's request and identification of the proposed water source.

c. The certificate holder shall prepare an environmental document pursuant to subsection (d) of this section, except that an environmental impact statement shall not be required for the modification of a certificate unless it would otherwise be required by Article 1 of Chapter 113A of the General Statutes.

d. Upon determining that the documentation submitted by the certificate holder is adequate to satisfy the requirements of this subsection, the Department shall publish a notice of the request for modification in the North Carolina Register and shall hold a public hearing at a location convenient to both the source and receiving river basins. The Department shall provide written notice of the request for the modification and the public hearing in the Environmental Bulletin, a newspaper of general circulation in the source river basin, a newspaper of general circulation in the receiving river basin, and as provided in subdivision (3) of subsection (c) of this section. The certificate holder who petitions the Commission for a modification under this subdivision shall pay the costs associated with the notice and public hearing.

e. The Department shall accept comments on the requested modification for a minimum of 30 days following the public hearing.

f. The Commission or the Department may require the certificate holder to provide any additional information or documentation it deems reasonably necessary in order to make a final determination.

g. The Commission shall make a final determination whether to grant the requested modification based on the factors set out in subsection (k) of this section, information provided by the certificate holder, and any other information the Commission deems relevant. The

Commission shall state in writing its findings of fact and conclusions of law with regard to each factor.

h. The Commission shall grant the requested modification if it finds that the certificate holder has established by a preponderance of the evidence that the requested modification satisfies the requirements of subsection (m) of this section. The Commission may grant the requested modification in whole or in part, or deny the request, and may impose such limitations and conditions on the modified certificate as it deems necessary and relevant to the modification.

i. The Commission shall not grant a request for modification if the modification would result in the transfer of water to an additional major river basin.

(w) Requirements for Coastal Counties. – A petition for a certificate to transfer surface water to supplement ground water supplies in the 15 counties designated as the Central Capacity Use Area under 15A NCAC 2E .0501, or to transfer surface water withdrawn from the mainstem of a river to provide service to one of the coastal area counties designated pursuant to G.S. 113A-103, shall be considered and a determination made according to the following procedures:

(1) The applicant shall file a notice of intent that includes a nontechnical description of the applicant's request and identification of the proposed water source.

(2) The applicant shall prepare an environmental document pursuant to subsection (d) of this section, except that an environmental impact statement shall not be required unless it would otherwise be required by Article 1 of Chapter 113A of the General Statutes.

(3) Upon determining that the documentation submitted by the applicant is adequate to satisfy the requirements of this subsection, the Department shall publish a notice of the petition in the North Carolina Register and shall hold a public hearing at a location convenient to both the source and receiving river basins. The Department shall provide written notice of the petition and the public hearing in the Environmental Bulletin, a newspaper of general circulation in the source river basin, a newspaper of general circulation in the receiving river basin, and as provided in subdivision (3) of subsection (c) of this section. The applicant who petitions the Commission for a certificate under this subdivision shall pay the costs associated with the notice and public hearing.

(4) The Department shall accept comments on the petition for a minimum of 30 days following the public hearing.

(5) The Commission or the Department may require the applicant to provide any additional information or documentation it deems reasonably necessary in order to make a final determination.

(6) The Commission shall make a final determination whether to grant the certificate based on the factors set out in subsection (k) of this section, information provided by the applicant, and any other information the Commission deems relevant. The Commission shall state in writing its findings of fact and conclusions of law with regard to each factor.

(7) The Commission shall grant the certificate if it finds that the applicant has established by a preponderance of the evidence that the petition satisfies the requirements of subsection (m) of this section. The Commission may grant the certificate in whole or in part, or deny the request, and may impose such

limitations and conditions on the certificate as it deems necessary and relevant."

SECTION 3.(a) Section 1 of S.L. 2011-298 reads as rewritten:

"**SECTION 1.** Notwithstanding G.S. 143-215.22I and 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 3.(b) Section 4 of S.L. 2011-298 reads as rewritten:

"**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.~~exceeds 20,300,000 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."

SECTION 3.(c) Section 7 of S.L. 2007-518, as amended by Section 4 of S.L. 2010-155 and Section 2 of S.L. 2011-298, reads as rewritten:

"~~**SECTION 7.(a)** Except as provided in subsections (b), (c) and (d) of this section, this~~ **SECTION 7.** 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.(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 4. This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

S D

SENATE BILL 380*
PROPOSED COMMITTEE SUBSTITUTE S380-PCS35335-RIf-14

Short Title: Adjust Landfill Permit Fee Timing. (Public)

Sponsors:

Referred to:

March 21, 2013

A BILL TO BE ENTITLED

AN ACT TO MAKE ADJUSTMENTS TO THE FEE SCHEDULE FOR PERMITS FOR SANITARY LANDFILLS AND TRANSFER STATIONS TO REFLECT EXTENSION OF THE DURATION OF THESE PERMITS AS DIRECTED BY S.L. 2012-187, AS RECOMMENDED BY THE ENVIRONMENTAL REVIEW COMMISSION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 130A-294 is amended by adding a new subsection to read:

"(a2) Permits for sanitary landfills and transfer stations shall be issued for (i) a design and operation phase of five years or (ii) a design and operation phase of 10 years. A permit issued for a design and operation phase of 10 years shall be subject to a limited review within five years of the issuance date."

SECTION 2. G.S. 130A-295.8 reads as rewritten:

"**§ 130A-295.8. Fees applicable to permits for solid waste management facilities.**

(a) The Solid Waste Management Account is established as a nonreverting account within the Department. All fees collected under this section shall be credited to the Account and shall be used to support the solid waste management program established pursuant to G.S. 130A-294.

(b) As used in this section:

(1) "New permit" means any of the following:

a. An application for a permit for a solid waste management facility that has not been previously permitted by the Department. The term includes one site suitability review, the initial permit to construct, and one permit to operate the constructed portion of a phase included in the permit to construct.

b. An application that proposes to expand the boundary of a permitted waste management facility for the purpose of expanding the permitted activity.

c. An application that includes a proposed expansion to the boundary of a waste disposal unit within a permitted solid waste management facility.

d. An application for a substantial amendment to a solid waste permit, as defined in G.S. 130A-294.

(2) "Permit amendment" means any of the following:

a. An application for a permit to construct and one permit to operate for the second and subsequent phases of landfill development described

in the approved facility plan for a permitted solid waste management facility.

b. An application for the five-year renewal of a permit for a permitted solid waste management facility or for a permit review of a permitted solid waste management facility.

c. Any application that proposes a change in ownership or corporate structure of a permitted solid waste management facility.

(3) "Permit modification" means any of the following:

a. An application for any change to the plans approved in a permit for a solid waste management facility that does not constitute a "permit amendment" or a "new permit".

b. A second or subsequent permit to operate for a constructed portion of a phase included in the permit to construct.

c. An application for a five-year limited review of a 10-year permit, as required by G.S. 130A-294(a2), including review of the operations plan, closure plan, post-closure plan, financial assurance cost estimates, environmental monitoring plans, and any other applicable plans for the facility.

(4) "Major permit modification" means an application for any change to the approved engineering plans for a sanitary landfill or transfer station permitted for a 10-year design capacity that does not constitute a "permit amendment," "new permit," or "permit modification."

(c) An applicant for a permit shall pay an application fee upon submission of an application according to the following schedule:

(1) Municipal Solid Waste Landfill accepting less than 100,000 tons/year of solid waste, New ~~Permit~~ Permit (Five-Year) – $25,000.

(1a) Municipal Solid Waste Landfill accepting less than 100,000 tons/year of solid waste, New Permit (Ten-Year) – $38,500.

(2) Municipal Solid Waste Landfill accepting less than 100,000 tons/year of solid waste, ~~Amendment~~ Amendment (Five-Year) – $15,000.

(2a) Municipal Solid Waste Landfill accepting less than 100,000 tons/year of solid waste, Amendment (Ten-Year) – $28,500.

(3) Municipal Solid Waste Landfill accepting less than 100,000 tons/year of solid waste, ~~Modification~~ Modification (Five-Year) – $1,500.

(3a) Municipal Solid Waste Landfill accepting less than 100,000 tons/year of solid waste, Major Modification (Ten-Year) – $7,500.

(4) Municipal Solid Waste Landfill accepting 100,000 tons/year or more of solid waste, New ~~Permit~~ Permit (Five-Year) – $50,000.

(4a) Municipal Solid Waste Landfill accepting 100,000 tons/year or more of solid waste, New Permit (Ten-Year) – $77,000.

(5) Municipal Solid Waste Landfill accepting 100,000 tons/year or more of solid waste, ~~Amendment~~ Amendment (Five-Year) – $30,000.

(5a) Municipal Solid Waste Landfill accepting 100,000 tons/year or more of solid waste, Amendment (Ten-Year) – $57,000.

(6) Municipal Solid Waste Landfill accepting 100,000 tons/year or more of solid waste, ~~Modification~~ Modification (Five-Year) – $3,000.

(6a) Municipal Solid Waste Landfill accepting 100,000 tons/year or more of solid waste, Major Modification (Ten-Year) – $15,000.

(7) Construction and Demolition Landfill accepting less than 100,000 tons/year of solid waste, New ~~Permit~~ Permit (Five-Year) – $15,000.

(7a) Construction and Demolition Landfill accepting less than 100,000 tons/year of solid waste, New Permit (Ten-Year) – $22,500.

(8) Construction and Demolition Landfill accepting less than 100,000 tons/year of solid waste, ~~Amendment~~ Amendment (Five-Year) – $9,000.

(8a) Construction and Demolition Landfill accepting less than 100,000 tons/year of solid waste, Amendment (Ten-Year) – $16,500.

(9) Construction and Demolition Landfill accepting less than 100,000 tons/year of solid waste, ~~Modification~~ Modification (Five-Year) – $1,500.

(9a) Construction and Demolition Landfill accepting less than 100,000 tons/year of solid waste, Major Modification (Ten-Year) – $4,500.

(10) Construction and Demolition Landfill accepting 100,000 tons/year or more of solid waste, New ~~Permit~~ Permit (Five-Year) – $30,000.

(10a) Construction and Demolition Landfill accepting 100,000 tons/year or more of solid waste, New Permit (Ten-Year) – $46,000.

(11) Construction and Demolition Landfill accepting 100,000 tons/year or more of solid waste, ~~Amendment~~ Amendment (Five-Year) – $18,500.

(11a) Construction and Demolition Landfill accepting 100,000 tons/year or more of solid waste, Amendment (Ten-Year) – $34,500.

(12) Construction and Demolition Landfill accepting 100,000 tons/year or more of solid waste, ~~Modification~~ Modification (Five-Year) – $2,500.

(12a) Construction and Demolition Landfill accepting 100,000 tons/year or more of solid waste, Major Modification (Ten-Year) – $9,250.

(13) Industrial Landfill accepting less than 100,000 tons/year of solid waste, New ~~Permit~~ Permit (Five-Year) – $15,000.

(13a) Industrial Landfill accepting less than 100,000 tons/year of solid waste, New Permit (Ten-Year) – $22,500.

(14) Industrial Landfill accepting less than 100,000 tons/year of solid waste, ~~Amendment~~ Amendment (Five-Year) – $9,000.

(14a) Industrial Landfill accepting less than 100,000 tons/year of solid waste, Amendment (Ten-Year) – $16,500.

(15) Industrial Landfill accepting less than 100,000 tons/year of solid waste, ~~Modification~~ Modification (Five-Year) – $1,500.

(15a) Industrial Landfill accepting less than 100,000 tons/year of solid waste, Major Modification (Ten-Year) – $4,500.

(16) Industrial Landfill accepting 100,000 tons/year or more of solid waste, New ~~Permit~~ Permit (Five-Year) – $30,000.

(16a) Industrial Landfill accepting 100,000 tons/year or more of solid waste, New Permit (Ten-Year) – $46,000.

(17) Industrial Landfill accepting 100,000 tons/year or more of solid waste, ~~Amendment~~ Amendment (Five-Year) – $18,500.

(17a) Industrial Landfill accepting 100,000 tons/year or more of solid waste, Amendment (Ten-Year) – $34,500.

(18) Industrial Landfill accepting 100,000 tons/year or more of solid waste, ~~Modification~~ Modification (Five-Year) – $2,500.

(18a) Industrial Landfill accepting 100,000 tons/year or more of solid waste, Major Modification (Ten-Year) – $9,250.

(19) Tire Monofill, New Permit – $1,750.

(19a) Tire Monofill, New Permit (Ten-Year) – $2,500.

(20) Tire Monofill, Amendment – $1,250.

(20a) Tire Monofill, Amendment (Ten-Year) – $2,000.

(21) Tire Monofill, Modification – $500.

(21a) Tire Monofill, Major Modification – $625.
(22) Treatment and Processing, New Permit – $1,750.
(23) Treatment and Processing, Amendment – $1,250.
(24) Treatment and Processing, Modification – $500.
(25) Transfer Station, New ~~Permit~~ Permit (Five-Year) – $5,000.
(25a) Transfer Station, New Permit (Ten-Year) – $7,500.
(26) Transfer Station, ~~Amendment~~ Amendment (Five-Year) – $3,000.
(26a) Transfer Station, Amendment (Ten-Year) – $5,500.
(27) Transfer Station, ~~Modification~~ Modification (Five-Year) – $500.
(27a) Transfer Station, Major Modification (Ten-Year) – $1,500.
(28) Incinerator, New Permit – $1,750.
(29) Incinerator, Amendment – $1,250.
(30) Incinerator, Modification – $500.
(31) Large Compost Facility, New Permit – $1,750.
(32) Large Compost Facility, Amendment – $1,250.
(33) Large Compost Facility, Modification – $500.
(34) Land Clearing and Inert, New Permit – $1,000.
(35) Land Clearing and Inert, Amendment – $500.
(36) Land Clearing and Inert, Modification – $250.

(d) A permitted solid waste management facility shall pay an annual permit fee on or before 1 August of each year according to the following schedule:

(1) Municipal Solid Waste Landfill – $3,500.
(2) Post-Closure Municipal Solid Waste Landfill – $1,000.
(3) Construction and Demolition Landfill – $2,750.
(4) Post-Closure Construction and Demolition Landfill – $500.
(5) Industrial Landfill – $2,750.
(6) Post-Closure Industrial Landfill – $500.
(7) Transfer Station – $750.
(8) Treatment and Processing Facility – $500.
(9) Tire Monofill – $500.
(10) Incinerator – $500.
(11) Large Compost Facility – $500.
(12) Land Clearing and Inert Debris Landfill – $500.

(e) The Department shall determine whether an application for a permit for a solid waste management facility that is subject to a fee under this section is complete within 90 days after the Department receives the application for the permit. A determination of completeness means that the application includes all required components but does not mean that the required components provide all of the information that is required for the Department to make a decision on the application. If the Department determines that an application is not complete, the Department shall notify the applicant of the components needed to complete the application. An applicant may submit additional information to the Department to cure the deficiencies in the application. The Department shall make a final determination as to whether the application is complete within the later of: (i) 90 days after the Department receives the application for the permit less the number of days that the applicant uses to provide the additional information; or (ii) 30 days after the Department receives the additional information from the applicant. The Department shall issue a draft permit decision on an application for a permit within one year after the Department determines that the application is complete. The Department shall hold a public hearing and accept written comment on the draft permit decision for a period of not less than 30 or more than 60 days after the Department issues a draft permit decision. The Department shall issue a final permit decision on an application for a permit within 90 days after the comment period on the draft permit decision closes. The

Department and the applicant may mutually agree to extend any time period under this subsection. If the Department fails to act within any time period set out in this subsection, the applicant may treat the failure to act as a denial of the permit and may challenge the denial as provided in Chapter 150B of the General Statutes."

SECTION 3. This act is effective when it becomes law and applies to permit applications submitted on or after July 1, 2013.

SENATE BILL 380:
Adjust Landfill Permit Fee Timing

Favorable

2013-2014 General Assembly

Committee:	Senate Ref to Agriculture/Environment/Natural Resources. If fav, re-ref to Finance	**Date:**	April 30, 2013
Introduced by:	Sen. Jackson	**Prepared by:**	Jennifer McGinnis Committee Counsel
Analysis of:	PCS to First Edition S380-CSRIf-14		

SUMMARY: ***The Proposed Committee Substitute (PCS) for Senate Bill 380 would make adjustments to the fee schedule for permits for sanitary landfills and transfer stations to reflect extension of the duration of these permits as directed by legislation enacted in 2012. The legislation was a recommendation of the Environmental Review Commission.***

[As introduced, this bill was identical to H135, as introduced by Reps. Samuelson, McElraft, McGrady, which is currently in Senate Agriculture/Environment/Natural Resources. If fav, re-ref to Finance.]

The PCS would add modifications to permit fees for tire monofill facilities, which were inadvertently omitted in the First Edition of the bill.

CURRENT LAW and BACKGROUND:

Prior to legislation enacted in 2012, the duration of permits for sanitary landfills and transfer stations was five years. S.L. 2012-187 directed the Commission for Public Health to adopt rules to allow applicants for permits for sanitary landfills and transfer stations the option to apply for a permit to construct (and operate) a facility for a period of ten years, with a limited review of the permit five years after issuance. In addition, the legislation directed the Department of Environment and Natural Resources (Department) to examine the fee schedule for permits for sanitary landfills and transfer stations and to formulate recommendations for adjustments to the applicable fees that would be sufficient to address any additional demands associated with review of permits issued for a longer period of time. The legislation further provided that the rule changes to allow permits of extended duration would not become effective until the fee schedule was amended to address any additional demands associated with review of permits issued for longer periods of time. The Department reported its findings and recommendations, including a legislative proposal, to the Environmental Review Commission (ERC) in December 2012. Senate Bill 380 embodies the Department's legislative proposal concerning needed fee adjustments, and was a recommendation of the ERC.

BILL ANALYSIS:

In conformance with the legislation enacted in 2012 that extended the duration of permits for sanitary landfills and transfer stations to ten years, the PCS would add language to the statutes specifying that permits for sanitary landfills and transfer stations may be issued for a design and operation phase of 10 years, with a limited review five years after the date of issuance. In addition, the PCS would make changes to the fee schedule under the General Statutes for sanitary landfills and transfer stations, based on the directive for an extended duration.

EFFECTIVE DATE:

The PCS would be effective when it became law and apply to permit applications submitted on or after July 1, 2013.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

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SENATE BILL 380*

Short Title:	Adjust Landfill Permit Fee Timing.	(Public)
Sponsors:	Senators Jackson (Primary Sponsor); and Ford.	
Referred to:	Agriculture/Environment/Natural Resources.	

March 21, 2013

A BILL TO BE ENTITLED

AN ACT TO MAKE ADJUSTMENTS TO THE FEE SCHEDULE FOR PERMITS FOR SANITARY LANDFILLS AND TRANSFER STATIONS TO REFLECT EXTENSION OF THE DURATION OF THESE PERMITS AS DIRECTED BY S.L. 2012-187, AS RECOMMENDED BY THE ENVIRONMENTAL REVIEW COMMISSION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 130A-294 is amended by adding a new subsection to read:

"(a2) Permits for sanitary landfills and transfer stations shall be issued for (i) a design and operation phase of five years or (ii) a design and operation phase of 10 years. A permit issued for a design and operation phase of 10 years shall be subject to a limited review within five years of the issuance date."

SECTION 2. G.S. 130A-295.8 reads as rewritten:

"**§ 130A-295.8. Fees applicable to permits for solid waste management facilities.**

(a) The Solid Waste Management Account is established as a nonreverting account within the Department. All fees collected under this section shall be credited to the Account and shall be used to support the solid waste management program established pursuant to G.S. 130A-294.

(b) As used in this section:

(1) "New permit" means any of the following:

a. An application for a permit for a solid waste management facility that has not been previously permitted by the Department. The term includes one site suitability review, the initial permit to construct, and one permit to operate the constructed portion of a phase included in the permit to construct.

b. An application that proposes to expand the boundary of a permitted waste management facility for the purpose of expanding the permitted activity.

c. An application that includes a proposed expansion to the boundary of a waste disposal unit within a permitted solid waste management facility.

d. An application for a substantial amendment to a solid waste permit, as defined in G.S. 130A-294.

(2) "Permit amendment" means any of the following:

a. An application for a permit to construct and one permit to operate for the second and subsequent phases of landfill development described

in the approved facility plan for a permitted solid waste management facility.

b. An application for the five-year renewal of a permit for a permitted solid waste management facility or for a permit review of a permitted solid waste management facility.

c. Any application that proposes a change in ownership or corporate structure of a permitted solid waste management facility.

(3) "Permit modification" means any of the following:

a. An application for any change to the plans approved in a permit for a solid waste management facility that does not constitute a "permit amendment" or a "new permit".

b. A second or subsequent permit to operate for a constructed portion of a phase included in the permit to construct.

c. An application for a five-year limited review of a 10-year permit, as required by G.S. 130A-294(a2), including review of the operations plan, closure plan, post-closure plan, financial assurance cost estimates, environmental monitoring plans, and any other applicable plans for the facility.

(4) "Major permit modification" means an application for any change to the approved engineering plans for a sanitary landfill or transfer station permitted for a 10-year design capacity that does not constitute a "permit amendment," "new permit," or "permit modification."

(c) An applicant for a permit shall pay an application fee upon submission of an application according to the following schedule:

(1) Municipal Solid Waste Landfill accepting less than 100,000 tons/year of solid waste, New ~~Permit~~ Permit (Five-Year) – $25,000.

(1a) Municipal Solid Waste Landfill accepting less than 100,000 tons/year of solid waste, New Permit (Ten-Year) – $38,500.

(2) Municipal Solid Waste Landfill accepting less than 100,000 tons/year of solid waste, ~~Amendment~~ Amendment (Five-Year) – $15,000.

(2a) Municipal Solid Waste Landfill accepting less than 100,000 tons/year of solid waste, Amendment (Ten-Year) – $28,500.

(3) Municipal Solid Waste Landfill accepting less than 100,000 tons/year of solid waste, ~~Modification~~ Modification (Five-Year) – $1,500.

(3a) Municipal Solid Waste Landfill accepting less than 100,000 tons/year of solid waste, Major Modification (Ten-Year) – $7,500.

(4) Municipal Solid Waste Landfill accepting 100,000 tons/year or more of solid waste, New ~~Permit~~ Permit (Five-Year) – $50,000.

(4a) Municipal Solid Waste Landfill accepting 100,000 tons/year or more of solid waste, New Permit (Ten-Year) – $77,000.

(5) Municipal Solid Waste Landfill accepting 100,000 tons/year or more of solid waste, ~~Amendment~~ Amendment (Five-Year) – $30,000.

(5a) Municipal Solid Waste Landfill accepting 100,000 tons/year or more of solid waste, Amendment (Ten-Year) – $57,000.

(6) Municipal Solid Waste Landfill accepting 100,000 tons/year or more of solid waste, ~~Modification~~ Modification (Five-Year) – $3,000.

(6a) Municipal Solid Waste Landfill accepting 100,000 tons/year or more of solid waste, Major Modification (Ten-Year) – $15,000.

(7) Construction and Demolition Landfill accepting less than 100,000 tons/year of solid waste, New ~~Permit~~ Permit (Five-Year) – $15,000.

(7a) Construction and Demolition Landfill accepting less than 100,000 tons/year of solid waste, New Permit (Ten-Year) – $22,500.

(8) Construction and Demolition Landfill accepting less than 100,000 tons/year of solid waste, ~~Amendment~~ Amendment (Five-Year) – $9,000.

(8a) Construction and Demolition Landfill accepting less than 100,000 tons/year of solid waste, Amendment (Ten-Year) – $16,500.

(9) Construction and Demolition Landfill accepting less than 100,000 tons/year of solid waste, ~~Modification~~ Modification (Five-Year) – $1,500.

(9a) Construction and Demolition Landfill accepting less than 100,000 tons/year of solid waste, Major Modification (Ten-Year) – $4,500.

(10) Construction and Demolition Landfill accepting 100,000 tons/year or more of solid waste, New ~~Permit~~ Permit (Five-Year) – $30,000.

(10a) Construction and Demolition Landfill accepting 100,000 tons/year or more of solid waste, New Permit (Ten-Year) – $46,000.

(11) Construction and Demolition Landfill accepting 100,000 tons/year or more of solid waste, ~~Amendment~~ Amendment (Five-Year) – $18,500.

(11a) Construction and Demolition Landfill accepting 100,000 tons/year or more of solid waste, Amendment (Ten-Year) – $34,500.

(12) Construction and Demolition Landfill accepting 100,000 tons/year or more of solid waste, ~~Modification~~ Modification (Five-Year) – $2,500.

(12a) Construction and Demolition Landfill accepting 100,000 tons/year or more of solid waste, Major Modification (Ten-Year) – $9,250.

(13) Industrial Landfill accepting less than 100,000 tons/year of solid waste, New ~~Permit~~ Permit (Five-Year) – $15,000.

(13a) Industrial Landfill accepting less than 100,000 tons/year of solid waste, New Permit (Ten-Year) – $22,500.

(14) Industrial Landfill accepting less than 100,000 tons/year of solid waste, ~~Amendment~~ Amendment (Five-Year) – $9,000.

(14a) Industrial Landfill accepting less than 100,000 tons/year of solid waste, Amendment (Ten-Year) – $16,500.

(15) Industrial Landfill accepting less than 100,000 tons/year of solid waste, ~~Modification~~ Modification (Five-Year) – $1,500.

(15a) Industrial Landfill accepting less than 100,000 tons/year of solid waste, Major Modification (Ten-Year) – $4,500.

(16) Industrial Landfill accepting 100,000 tons/year or more of solid waste, New ~~Permit~~ Permit (Five-Year) – $30,000.

(16a) Industrial Landfill accepting 100,000 tons/year or more of solid waste, New Permit (Ten-Year) – $46,000.

(17) Industrial Landfill accepting 100,000 tons/year or more of solid waste, ~~Amendment~~ Amendment (Five-Year) – $18,500.

(17a) Industrial Landfill accepting 100,000 tons/year or more of solid waste, Amendment (Ten-Year) – $34,500.

(18) Industrial Landfill accepting 100,000 tons/year or more of solid waste, ~~Modification~~ Modification (Five-Year) – $2,500.

(18a) Industrial Landfill accepting 100,000 tons/year or more of solid waste, Major Modification (Ten-Year) – $9,250.

(19) Tire Monofill, New Permit – $1,750.

(20) Tire Monofill, Amendment – $1,250.

(21) Tire Monofill, Modification – $500.

(22) Treatment and Processing, New Permit – $1,750.

(23) Treatment and Processing, Amendment – $1,250.

(24) Treatment and Processing, Modification – $500.
(25) Transfer Station, New ~~Permit~~ Permit (Five-Year) – $5,000.
(25a) Transfer Station, New Permit (Ten-Year) – $7,500.
(26) Transfer Station, ~~Amendment~~ Amendment (Five-Year) – $3,000.
(26a) Transfer Station, Amendment (Ten-Year) – $5,500.
(27) Transfer Station, ~~Modification~~ Modification (Five-Year) – $500.
(27a) Transfer Station, Major Modification (Ten-Year) – $1,500.
(28) Incinerator, New Permit – $1,750.
(29) Incinerator, Amendment – $1,250.
(30) Incinerator, Modification – $500.
(31) Large Compost Facility, New Permit – $1,750.
(32) Large Compost Facility, Amendment – $1,250.
(33) Large Compost Facility, Modification – $500.
(34) Land Clearing and Inert, New Permit – $1,000.
(35) Land Clearing and Inert, Amendment – $500.
(36) Land Clearing and Inert, Modification – $250.

(d) A permitted solid waste management facility shall pay an annual permit fee on or before 1 August of each year according to the following schedule:

(1) Municipal Solid Waste Landfill – $3,500.
(2) Post-Closure Municipal Solid Waste Landfill – $1,000.
(3) Construction and Demolition Landfill – $2,750.
(4) Post-Closure Construction and Demolition Landfill – $500.
(5) Industrial Landfill – $2,750.
(6) Post-Closure Industrial Landfill – $500.
(7) Transfer Station – $750.
(8) Treatment and Processing Facility – $500.
(9) Tire Monofill – $500.
(10) Incinerator – $500.
(11) Large Compost Facility – $500.
(12) Land Clearing and Inert Debris Landfill – $500.

(e) The Department shall determine whether an application for a permit for a solid waste management facility that is subject to a fee under this section is complete within 90 days after the Department receives the application for the permit. A determination of completeness means that the application includes all required components but does not mean that the required components provide all of the information that is required for the Department to make a decision on the application. If the Department determines that an application is not complete, the Department shall notify the applicant of the components needed to complete the application. An applicant may submit additional information to the Department to cure the deficiencies in the application. The Department shall make a final determination as to whether the application is complete within the later of: (i) 90 days after the Department receives the application for the permit less the number of days that the applicant uses to provide the additional information; or (ii) 30 days after the Department receives the additional information from the applicant. The Department shall issue a draft permit decision on an application for a permit within one year after the Department determines that the application is complete. The Department shall hold a public hearing and accept written comment on the draft permit decision for a period of not less than 30 or more than 60 days after the Department issues a draft permit decision. The Department shall issue a final permit decision on an application for a permit within 90 days after the comment period on the draft permit decision closes. The Department and the applicant may mutually agree to extend any time period under this subsection. If the Department fails to act within any time period set out in this subsection, the

applicant may treat the failure to act as a denial of the permit and may challenge the denial as provided in Chapter 150B of the General Statutes."

SECTION 3. This act is effective when it becomes law and applies to permit applications submitted on or after July 1, 2013.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

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SENATE BILL 507
PROPOSED COMMITTEE SUBSTITUTE S507-PCS75294-TF-2

Short Title: Eliminate Outdated Env Reports. (Public)

Sponsors:

Referred to:

March 28, 2013

A BILL TO BE ENTITLED

AN ACT TO DELETE OR REPEAL VARIOUS ENVIRONMENTAL AND NATURAL RESOURCES REPORTING REQUIREMENTS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 74-54.1(c) is repealed.

SECTION 2. G.S. 113-175.6 is repealed.

SECTION 3. G.S. 113-182.1(e) reads as rewritten:

"**§ 113-182.1. Fishery Management Plans.**

...

(e) The Secretary of Environment and Natural Resources shall monitor progress in the development and adoption of Fishery Management Plans in relation to the Schedule for development and adoption of the plans established by the Marine Fisheries Commission. ~~The Secretary of Environment and Natural Resources shall report to the Joint Legislative Commission on Governmental Operations on progress in developing and implementing the Fishery Management Plans on or before 1 September of each year.~~ The Secretary of Environment and Natural Resources shall report to the Joint Legislative Commission on Governmental Operations within 30 days of the completion or substantial revision of each proposed Fishery Management Plan. The Joint Legislative Commission on Governmental Operations shall review each proposed Fishery Management Plan within 30 days of the date the proposed Plan is submitted by the Secretary. The Joint Legislative Commission on Governmental Operations may submit comments and recommendations on the proposed Plan to the Secretary within 30 days of the date the proposed Plan is submitted by the Secretary."

SECTION 4. G.S. 143-215.3A reads as rewritten:

"**§ 143-215.3A. Water and Air Quality Account; use of application and permit fees; Title V Account; I & M Air Pollution Control Account; reports.**

...

(c) The Department shall report to the Environmental Review Commission and the Fiscal Research Division on the cost of the State's environmental permitting programs contained within the Department on or before 1 November of each year. ~~In addition, the Department shall report to the Environmental Review Commission and the Fiscal Research Division on the cost of the Title V Program on or before 1 November of each year.~~ The ~~reports~~ report shall include, but ~~are~~ is not limited to, fees set and established under this Article, fees collected under this Article, revenues received from other sources for environmental permitting and compliance programs, changes made in the fee schedule since the last report, anticipated revenues from all other sources, interest earned and any other information requested by the General Assembly."

SECTION 5. G.S. 143-215.108(g) is repealed.

SECTION 6. G.S. 143B-279.15 is repealed.

SECTION 7. G.S. 143B-289.44(d) is repealed.

SECTION 8. G.S. 143B-344.38 is repealed.

SECTION 9. G.S. 159I-29 is repealed.

SECTION 10. Section 15.42 of S.L. 1997-443 is repealed.

SECTION 11. Section 11 of S.L. 2002-4, as amended by Section 12 of S.L. 2006-79 and Section 12 of S.L. 2002-4, is repealed.

SECTION 12. Section 2.3 of S.L. 2007-485 is repealed.

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

SENATE BILL 507:
Eliminate Outdated Env. Reports

2013-2014 General Assembly

Committee:	Senate Agriculture/Environment/Natural Resources	**Date:**	April 30, 2013
Introduced by:	Sens. Jackson, Brock, Cook	**Prepared by:**	Mariah Matheson
Analysis of:	PCS to 1st Edition (S507-CSTF-2 [v.7])		Research Assistant

SUMMARY: The Proposed Committee Substitute (PCS) would delete or repeal various environmental and natural resources reporting requirements.

BILL ANALYSIS:

Section 1 would repeal the requirement for the Department of Environment and Natural Resources (DENR) to annually report on the fees established, collected, and disbursed under the Mining Act of 1971 to the Environmental Review Commission (ERC), the Fiscal Research Division of the General Assembly, and the North Carolina Mining and Energy Commission.

Section 2 would repeal the requirement for the Marine Fisheries Commission (MFC) and the Wildlife Resources Commission to annually report on the Marine Resources Fund and Marine Resources Endowment Fund to the Joint Legislative Commission on Governmental Operations (Gov Ops).

Section 3 would delete the requirement for DENR to annually report on its progress in developing and implementing Fishery Management Plans to Gov Ops. DENR must continue to monitor progress in the development and adoption of Fishery Management Plans and must continue to report to Gov Ops within 30 days of the completion or substantial revision of each Fishery Management Plan. Gov Ops will continue to review each proposed Plan within 30 days of the date the proposed plan is submitted.

Section 4 would delete the requirement for DENR to annually report to the ERC and the Fiscal Research Division on the cost of the Title V Program. The U.S. Environmental Protection Agency (U.S. EPA) provides oversight of this federally mandated permitting program. Title V is a federal program designed to standardize air quality permits and the permitting process for major sources of emissions across the country. The name "Title V" comes from Title V of the 1990 federal Clean Air Act Amendments, which requires the U.S. EPA to establish a national, operating permit program.

Section 5 would repeal the requirement for air pollution permit holders to submit to DENR a written description of their current and projected plans to reduce the emission of air contaminants under such permits by source reduction or recycling. The written description is required to accompany the payment of the annual permit fee, any application for a new permit, or for modification of an existing permit. The written description is not considered part of a permit application and does not serve as the basis for the denial of a permit or permit modification.

Section 6 would repeal the requirement for DENR to annually report on the One-Stop Permitting Program and Express Permitting Program to the ERC and the Fiscal Research Division.

Section 7 would repeal the requirement for the Division of North Carolina Aquariums of DENR to annually report to Gov Ops, the House and Senate Appropriations Subcommittees on Natural and Economic Resources, and the Fiscal Research Division on the North Carolina Aquariums Fund.

Section 8 would repeal the requirement for the North Carolina Sustainable Communities Task Force to annually report to the Governor, the House Committee on Commerce and Job Development, the Senate Commerce Committee, and Gov Ops.

Section 9 would repeal the requirement for the OSBM and the Division of Waste Management of DENR to report to Gov Ops on the allocation of loans from Solid Waste Management Loan Program. No report is required during a fiscal year in which no funds were appropriated or otherwise available for loans.

Section 10 would repeal the requirement for the DMF of DENR to annually report on the expenditure of the Shellfish Rehabilitation Program to the Joint Legislative Commission on Seafood and Aquaculture (JLCSA). The JLCSA was eliminated in 2011 and its duties transferred to Gov Ops. The report focuses on cultch planting activities, oyster sanctuary development, and the oyster shell recycling program.

Section 11 would repeal the requirement for the Environmental Management Commission (EMC) to report on the desirability of requiring and the feasibility of obtaining reductions in emissions of oxides of nitrogen (NO_x) and sulfur dioxide (SO_2) beyond those required by the Clean Smokestacks Act to the ERC and the General Assembly. The reporting requirement was amended from annual to biennial in 2011.

Section 11 would also repeal the requirement for the Division of Air Quality of DENR to annually report its interim findings and recommendations on issues related to monitoring emissions of mercury from coal-fired generating units to the EMC and the ERC.

Section 12 would repeal the requirement for the Advisory Committee for the Coordination of Waterfront Access of DENR to annually report to Gov Ops (formerly to the JLCSA). The Fund was used to acquire waterfront properties or develop facilities to provide, improve, or develop public and commercial waterfront access.

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

SENATE BILL 507

Short Title:	Eliminate Outdated Env. Reports.	(Public)
Sponsors:	Senators Jackson, Brock, Cook (Primary Sponsors); and Meredith.	
Referred to:	Agriculture/Environment/Natural Resources.	

March 28, 2013

A BILL TO BE ENTITLED

AN ACT TO REMOVE OUTDATED OR UNNECESSARY ENVIRONMENTAL REPORTING REQUIREMENTS.

The General Assembly of North Carolina enacts:

SECTION 1. Section 11 of S.L. 2002-4, as amended by Section 12 of S.L. 2006-79 and Section 12 of S.L. 2002-4, is repealed.

SECTION 2. G.S. 143B-289.44(d) is repealed.

SECTION 3. Section 15.42 of S.L. 1997-443 is repealed.

SECTION 4. G.S. 113-175.6 is repealed.

SECTION 5. G.S. 159I-29 is repealed.

SECTION 6. G.S. 143-215.3A reads as rewritten:

"**§ 143-215.3A. Water and Air Quality Account; use of application and permit fees; Title V Account; I & M Air Pollution Control Account; reports.**

...

(c) The Department shall report to the Environmental Review Commission and the Fiscal Research Division on the cost of the State's environmental permitting programs contained within the Department on or before 1 November of each year. ~~In addition, the Department shall report to the Environmental Review Commission and the Fiscal Research Division on the cost of the Title V Program on or before 1 November of each year.~~ The ~~reports~~ report shall include, but ~~are~~ is not limited to, fees set and established under this Article, fees collected under this Article, revenues received from other sources for environmental permitting and compliance programs, changes made in the fee schedule since the last report, anticipated revenues from all other sources, interest earned and any other information requested by the General Assembly."

SECTION 7. G.S. 74-54.1(c) is repealed.

SECTION 8. G.S. 113-182.1(e) reads as rewritten:

"**§ 113-182.1. Fishery Management Plans.**

...

(e) The Secretary of Environment and Natural Resources shall monitor progress in the development and adoption of Fishery Management Plans in relation to the Schedule for development and adoption of the plans established by the Marine Fisheries Commission. ~~The Secretary of Environment and Natural Resources shall report to the Joint Legislative Commission on Governmental Operations on progress in developing and implementing the Fishery Management Plans on or before 1 September of each year.~~ The Secretary of Environment and Natural Resources shall report to the Joint Legislative Commission on Governmental Operations within 30 days of the completion or substantial revision of each

proposed Fishery Management Plan. The Joint Legislative Commission on Governmental Operations shall review each proposed Fishery Management Plan within 30 days of the date the proposed Plan is submitted by the Secretary. The Joint Legislative Commission on Governmental Operations may submit comments and recommendations on the proposed Plan to the Secretary within 30 days of the date the proposed Plan is submitted by the Secretary."

SECTION 9. Section 2.3 of S.L. 2007-485 is repealed.

SECTION 10. G.S. 143B-279.15 is repealed.

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

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

Discussion only

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SENATE BILL 412

Short Title:	Water Infrastructure Authority/Water Grants.	(Public)
Sponsors:	Senator Hartsell (Primary Sponsor).	
Referred to:	Agriculture/Environment/Natural Resources.	

March 26, 2013

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, 2016. 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, 2014. 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 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 drinking water 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 4. 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 5. 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 6. 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, 2015, 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, 2015.

SECTION 7. 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) Repealed by Session Laws 2011-145, s. 13.3(ggg), effective July 1, 2011.~~

~~(5) Division of Water Quality. – The Division of Water Quality of the Department of Environment and Natural Resources.~~

(5a) Division of Water Resources. – The Division of Water Resources 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 (3/4%) of the median household income in an area that receives only water service or only sewer service.

(10a) Investor-owned drinking water corporation. – A corporation owned by investors and incorporated solely for the purpose of providing drinking water services for profit.

(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 8. 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 9. 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 10. 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 Water Resources 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.

(13) Low-income residents. – A project that is located in an area annexed by a municipality under Article 4A of Chapter 160A of the General Statutes in order to provide water or sewer services to low-income residents has priority. For purposes of this section, low-income residents are those with a family income that is eighty percent (80%) or less of median family income."

SECTION 11. G.S. 159G-24(b) reads as rewritten:

"(b) Departmental Receipt. – The fee on a loan from the Water Infrastructure Fund 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 Water Infrastructure Fund 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 12. 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 13. 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 Water Resources.~~ 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 14. G.S. 159G-30 reads as rewritten:

"**§ 159G-30. ~~Department's~~ Authority's responsibility.**

The ~~Department,~~Authority, through the Division of Water Quality and the Division of Water Resources, 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 Water Resources administers loans and grants from the DWSRF and the Drinking Water Reserve.~~"

SECTION 15. 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 16. 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 17. 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 18. 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 19. 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 Water Resources 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 20. 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 Water Resources, as appropriate,~~ Authority 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 Water Resources, 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 21. 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 Water Resources, 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 22. 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 and to an investor-owned drinking 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, a nonprofit water corporation, and an investor-owned drinking 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, nonprofit water corporations, and investor-owned drinking 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 23. 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 24. 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 25. 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, nonprofit water corporation, or investor-owned drinking 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 26. 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 27. Article 4 of Chapter 159G of the General Statutes is repealed.

SECTION 28. This act becomes effective July 1, 2014.

SENATE BILL 412:
Water Infrastructure Authority/Water Grants

2013-2014 General Assembly

Committee:	Senate Agriculture/Environment/Natural Resources	**Date:**	April 30, 2013
Introduced by:	Sen. Hartsell	**Prepared by:**	Jennifer Mundt Committee Analyst
Analysis of:	First Edition		

SUMMARY: ***Senate Bill 412 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 412 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 412 would (1) establish the North Carolina Water and Wastewater Infrastructure Authority (Authority) to administer the State's funding for water and wastewater

[1] The Department of Environment and Natural Resources, including (1) the Division of Water Quality, Construction Grants and Loans Section and (2) the Division of Environmental Health, Public Water Supply Section, Financial Services Unit; (3) the Department of Commerce, including the Division of Community Assistance and(4) the Commerce Finance Center; (5) the Rural Center; and (6) 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) must not fund wastewater projects; and, (4) 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.

EFFECTIVE DATE: Senate Bill 412 would become effective July 1, 2014.

Jennifer McGinnis, counsel to the Senate Committee on Agriculture/Environment/Natural Resources, 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	

4/30

SENATE PAGES ATTENDING

COMMITTEE: Agriculture ROOM: 544

DATE: 4-30 TIME: 11 Am

PLEASE PRINT LEGIBILY!!!!!!!!!!!!....*or else!*

Page Name	Hometown	Sponsoring Senator
1. Christine Long	Raleigh	Berger
2. Mary McCall Leland	Tarboro	Jenkins
3. Andrew Cavari	Garner	Barefoot
4.		
5.		
6.		
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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 Sergeant-at-Arms.

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(Committee Name)

4/30/2013 april
Date

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William Jones	Jordan Price
Rob Lamm	NCFB
JAKE PARKER	NCFB
BILLY GUILLET	NCRC
Paul Sherman	NCFB
Mitch Peele	"
PGP	"
Angel Sams	CR
Joy Hicks	NCDA
Johanna Reese	NCACC
Penny Hamlin	School of Gov.
Angie Harris	Ward & Smith
Heather Barnett	Ward & Smith
J.D Solomon	ASCE
[illegible]	NP
[illegible]	M.

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Jack Gorrell	NSS
Melera Cuevas	NSJ
Will Morgan	TNC
Henry Jones	Jordan Price
Nancy Pierce	CLT Business Journal
AB Swindell	Waste Industries
Rick Kaylin	Kaylin Law
Kathy Hanks	Duke Energy
Kelli Kutcuna	Dulce Energy
BRUCE THOMPSON	PARKER POE
Casey Wentz	Staff
J GOODMAN	NC CHAMBER

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Lori Hamilton	[illegible]
Allen Hardison	CRSWMA
Erin Wynia	NCLM
Cady Thomas	NCAR
[illegible]	NCSTA
[illegible]	NC HBA
Preston Howard	NCMA
[illegible]	Shurtape Technologies
George Everett	Duke Energy
Bob Schaad	NCFA
Nancy Thompson	Weyerhaeuser
Vicki Bayer	self

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4/30/2013
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Alex Badgett	CSS
Alan Briggs	NC Food Banks
Will Grantham	MWC
Betsy Bailey	PEAC
Chris Dillon	NCWRA
Tom Fransen	DWR, NCDENR
[illegible]	"
Nadia Luhr	NCCN
Jimmy Gentry	NC State Grange
Anita Gentry	NC State Grange
R Rogers	CWMTF
Kim Colson	NC DOHR
Patrick Woodie	NCRED C
Dexter Matthews	NCDENR Waste Mangmt
Cassie Gavin	Sierra Club
Matt Viola	CW Consult
Conor McLamb	DENR

09-21-201

Senate Committee on Agriculture/Environment/Natural Resources
Tuesday, May 7, 2013, 11:00 AM
544 Legislative Office Building

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

	BILL NO.	SHORT TITLE	SPONSOR
2	SB 626	Recodify Animal Shelter Law.	Senator McKissick Senator Jackson Senator Meredith
3	SB 636	Wildlife Resources Comm. Penalty Changes.	Senator Newton
1	SB 638	NC Farm Act of 2013.	Senator Jackson Senator Brock
	SB 689	Amend Trapping Law.	Senator Sanderson – DISCUSSION ONLY
4	HB 484	Permitting of Wind Energy Facilities.	Representative J. Bell Representative Dixon Representative McElraft Representative Whitmire

Presentations

Other Business

Adjournment

Senate Committee on Agriculture/Environment/Natural Resources
Tuesday, May 7, 2013 at 11:00 AM
Room 544 of the Legislative Office Building

MINUTES

The Senate Committee on Agriculture/Environment/Natural Resources met at 11:00 AM on May 7, 2013 in Room 544 of the Legislative Office Building. Thirteen (13) members were present.

Senator Andrew C. Brock, Chair, presided.

Sen. Brock introduced the pages – Chad Lee, Greensboro, NC sponsored by Sen. Robinson, Trevis Watts, Brown Summit, NC sponsored by Sen. Robinson, Evan McDow, Albemarle, NC sponsored by Sen. McLaurin, Brandon O'Dell, Spring Lake, NC sponsored by Sen. Rabin and Kateleigh Johnson, Kipling, NC sponsored by Sen. Rabin.

Sen. Brock introduced the Sgt. of Arms – Ronald Spann, Charles Harper, Donna Blake.

Bills on the Agenda:

SB638 – NC Farm Act of 2013 - Sen. Jackson

Sen. Jackson moved for an adoption to a PCS for this bill. The motion carried. Sen. Jackson explained the bill and had some follow up questions from Sen. Allran which Chris Saunders from Research responded to Sen. Allran. Sen. Bingham moved for a Favorable Report for the PCS and the motion carried.

SB 636 - Wildlife Resources Comm.Penalty Changes – Sen. Newton

Sen. Newton asked Jennifer McGinnis from Research to explain the bill. Maggie Morressey from Fiscal Research explained the Fiscal Note with the bill. Sen. Bingham moved for a Favorable Report for the bill and the motion carried. This bill has a Sequential Referral to JII.

SB 626 – Recodify Animal Shelter Law – Sen. McKissick

Sen. McKissick explained the bill. Sen. Barefoot offered an amendment to the bill which Jeff Hudson from Research explained the amendment. With follow up questions from Sen. Tucker and Sen. Wade and much discussion from Sen. Wade, it was agreed that more work needed to be done to the bill. Sen. McKissick agreed to recommendation from Sen. Wade to make needed changes and having the bill heard at Agriculture/Environment/Natural Resources meeting on Thursday, May 9, 2013.

HB 484 – Permitting of Wind Energy Facilities – Rep. Bell and Rep. Whitmire

Rep. Bell explained the bill. Sen. Barefoot made a motion for a Favorable Report at the appropriate time. There were comments from the audience regarding the bill. Sen. Brock introduced Bruce Thompson from the American Wind Energy Association that spoke against the bill. Sen. Brock introduced Brad Ives from DENR who spoke in favor of the bill. Rep. Bell responded to the comments. Sen. Hartsell had a technical question which Jennifer McGinnis

from Research answered. Sen. Cook followed up with a question which Jennifer Mundt from Research was able to answer. Rep. Whitmire made comments on the bill. Sen. Allran asked a question which Jennifer Mundt from Research answered. Sen. Bingham had a follow-up question which Rep. Bell responded. Sen. Rabon followed up with a question and Rep. Bell responded. There was more discussion from Sen. Hartsell and Sen. Allran which Sen. Brock responded. The motion made by Sen. Barefoot for a Favorable Report was put before the committee and the motion carried. This bill has a sequential referral to Finance and a recommended referral to Commerce.

SB 689 – Amend Trapping Law – Sen. Sanderson

This bill was pulled from the agenda as time ran out. This bill will be heard on May 9, 2013 meeting.

The meeting adjourned at 12:00 pm.

Senator Andrew C. Brock, Chair
Presiding

Judy Edwards, Committee Clerk

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES COMMITTEE REPORT
Senator Brock, Co-Chair
Senator Jackson, Co-Chair

Tuesday, May 07, 2013

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

FAVORABLE

HB **484** **(CS#3)** Permitting of Wind Energy Facilities.

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

SB **636** Wildlife Resources Comm. Penalty Changes.

Draft Number:	None
Sequential Referral:	Judiciary II
Recommended Referral:	None
Long Title Amended:	No

TOTAL REPORTED: 2

Senator Harry Brown will handle HB 484
Senator E.S. Newton will handle SB 636



NORTH CAROLINA GENERAL ASSEMBLY
SENATE

AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES COMMITTEE REPORT
Senator Brock, Co-Chair
Senator Jackson, Co-Chair

Wednesday, May 08, 2013

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

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

SB **638** NC Farm Act of 2013.

Draft Number:	S638-PCS75315-TQ-26
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

TOTAL REPORTED: 1

Senator W. Jackson will handle SB 638



GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

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SENATE BILL 638
PROPOSED COMMITTEE SUBSTITUTE S638-PCS75315-TQ-26

Short Title: NC Farm Act of 2013. (Public)

Sponsors:

Referred to:

April 4, 2013

A BILL TO BE ENTITLED

AN ACT TO ENACT THE NORTH CAROLINA FARM ACT OF 2013 TO: (1) LIMIT THE LIABILITY OF FARM ANIMAL ACTIVITY SPONSORS AND PROFESSIONALS AS A RESULT OF INHERENT RISKS OF FARM ANIMAL ACTIVITIES; (2) ALLOW THE COMMISSIONER OF AGRICULTURE TO ASSESS NONMONETARY PENALTIES TO ADDRESS VIOLATIONS WHEN APPROPRIATE; (3) DECREASE THE FREQUENCY OF THE AGRICULTURAL WATER USE SURVEY; (4) LIMIT THE PERSONALLY IDENTIFYING INFORMATION THAT THE DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES MAY DISCLOSE ABOUT ITS ANIMAL HEALTH PROGRAMS; (5) REPEAL THE INTERSTATE PEST CONTROL COMPACT; (6) REPEAL CERTAIN CLEANLINESS STANDARDS FOR CREAMERIES AND DAIRY FACILITIES THAT ARE ADDRESSED BY THE NC FOOD, DRUG, AND COSMETIC ACT; (7) CHANGE SETBACK DISTANCES AND BURN TIMES FOR FLAMMABLE MATERIALS RESULTING FROM GROUND CLEARING ACTIVITIES; (8) REPEAL THE STATE SULFUR CONTENT STANDARDS FOR GASOLINE; (9) EXEMPT CERTAIN STRUCTURES FROM THE SPRINKLER SYSTEM REQUIREMENTS OF THE NORTH CAROLINA BUILDING CODE; (10) ALLOW A FARM BUILDING THAT IS USED FOR PUBLIC OR PRIVATE EVENTS TO MAINTAIN ITS FARM BUILDING STATUS FOR PURPOSES OF THE STATE BUILDING CODE; (11) PROVIDE THAT A WATER QUALITY PERMIT IS NOT REQUIRED FOR ACTIVITIES IN WETLANDS THAT ARE NOT WATERS OF THE UNITED STATES; (12) EXPAND THE AGRICULTURAL DAM EXEMPTION TO THE DAM SAFETY ACT; (13) ALLOW A LANDOWNER TO WITHDRAW WATER FOR AGRICULTURAL USE DURING WATER SHORTAGE EMERGENCIES UNDER CERTAIN CONDITIONS; AND (14) DIRECT THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES AND THE DEPARTMENT OF TRANSPORTATION TO JOINTLY PETITION THE WILMINGTON DISTRICT OF THE UNITED STATES ARMY CORPS OF ENGINEERS TO ALLOW FOR GREATER FLEXIBILITY AND OPPORTUNITY TO PERFORM WETLANDS MITIGATION BEYOND THE IMMEDIATE WATERSHED WHERE DEVELOPMENT WILL OCCUR.

The General Assembly of North Carolina enacts:

PART I. TITLE

SECTION 1. This act shall be known and may be cited as the "North Carolina Farm Act of 2013."

PART II. LIMIT THE LIABILITY OF FARM ANIMAL ACTIVITY SPONSORS AND PROFESSIONALS AS A RESULT OF INHERENT RISKS OF FARM ANIMAL ACTIVITIES

SECTION 2. Article 1 of Chapter 99E of the General Statutes reads as rewritten:

"Article 1.

"Equine and Farm Animal Activity Liability.

"Part 1.Equine Activity Liability.

"§ 99E-1. Definitions.

As used in this ~~Article,~~Part, the term:

(1) "Engage in an equine activity" means participate in an equine activity, assist a participant in an equine activity, or assist an equine activity sponsor or equine professional. The term "engage in an equine activity" does not include being a spectator at an equine activity, except in cases in which the spectator places himself in an unauthorized area and in immediate proximity to the equine activity.

(2) "Equine" means a horse, pony, mule, donkey, or hinny.

(3) "Equine activity" means any activity involving an equine.

(4) "Equine activity sponsor" means an individual, group, club, partnership, or corporation, whether the sponsor is operating for profit or nonprofit, which sponsors, organizes, or provides the facilities for an equine activity. The term includes operators and promoters of equine facilities.

(5) "Equine professional" means a person engaged for compensation in any one or more of the following:

a. Instructing a participant.

b. Renting an equine to a participant for the purpose of riding, driving, or being a passenger upon the equine.

c. Renting equipment or tack to a participant.

d. Examining or administering medical treatment to an equine.

e. Hooftrimming or placing or replacing horseshoes on an equine.

(6) "Inherent risks of equine activities" means those dangers or conditions that are an integral part of engaging in an equine activity, including any of the following:

a. The possibility of an equine behaving in ways that may result in injury, harm, or death to persons on or around them.

b. The unpredictability of an equine's reaction to such things as sounds, sudden movement, unfamiliar objects, persons, or other animals.

Inherent risks of equine activities does not include a collision or accident involving a motor vehicle.

(7) "Participant" means any person, whether amateur or professional, who engages in an equine activity, whether or not a fee is paid to participate in the equine activity.

"§ 99E-2. Liability.

(a) Except as provided in subsection (b) of this section, an equine activity sponsor, an equine professional, or any other person engaged in an equine activity, including a corporation or partnership, shall not be liable for an injury to or the death of a participant resulting from the inherent risks of equine activities and, except as provided in subsection (b) of this section, no participant or participant's representative shall maintain an action against or recover from an equine activity sponsor, an equine professional, or any other person engaged in an equine activity for injury, loss, damage, or death of the participant resulting exclusively from any of the inherent risks of equine activities.

(b) Nothing in subsection (a) of this section shall prevent or limit the liability of an equine activity sponsor, an equine professional, or any other person engaged in an equine activity if the equine activity sponsor, equine professional, or person engaged in an equine activity does any one or more of the following:

(1) Provides the equipment or tack, and knew or should have known that the equipment or tack was faulty, and such faulty equipment or tack proximately caused the injury, damage, or death.

(2) Provides the equine and failed to make reasonable and prudent efforts to determine the ability of the participant to engage safely in the equine activity or to safely manage the particular equine.

(3) Commits an act or omission that constitutes willful or wanton disregard for the safety of the participant, and that act or omission proximately caused the injury, damage, or death.

(4) Commits any other act of negligence or omission that proximately caused the injury, damage, or death.

(c) Nothing in subsection (a) of this section shall prevent or limit the liability of an equine activity sponsor, an equine professional, or any other person engaged in an equine activity under liability provisions as set forth in the products liability laws.

"**§ 99E-3. Warning required.**

(a) Every equine professional and every equine activity sponsor shall post and maintain signs which contain the warning notice specified in subsection (b) of this section. The signs required by this section shall be placed in a clearly visible location on or near stables, corrals, or arenas where the equine professional or the equine activity sponsor conducts equine activities. The warning notice specified in subsection (b) of this section shall be designed by the Department of Agriculture and Consumer Services and shall consist of a sign in black letters, with each letter to be a minimum of one inch in height. Every written contract entered into by an equine professional or by an equine activity sponsor for the providing of professional services, instruction, or the rental of equipment or tack or an equine to a participant, whether or not the contract involves equine activities on or off the location or site of the equine professional's or the equine activity sponsor's business, shall contain in clearly readable print the warning notice specified in subsection (b) of this section.

(b) The signs and contracts described in subsection (a) of this section shall contain the following warning notice:

"WARNING

Under North Carolina law, an equine activity sponsor or equine professional is not liable for an injury to or the death of a participant in equine activities resulting exclusively from the inherent risks of equine activities. Chapter 99E of the North Carolina General Statutes."

(c) Failure to comply with the requirements concerning warning signs and notices provided in this ~~Article~~Part shall prevent an equine activity sponsor or equine professional from invoking the privileges of immunity provided by this ~~Article.~~Part.

"Part 2. Farm Animal Activity Liability.

"**§ 99E-4. Definitions.**

As used in this Part, the term:

(1) "Engage in a farm animal activity" means participate in a farm animal activity, assist a participant in a farm animal activity, or assist a farm animal activity sponsor or farm animal activity professional. The term "engage in a farm animal activity" does not include being a spectator at a farm animal activity, except in cases in which the spectator voluntarily places himself or herself in an unauthorized area and in immediate proximity to the farm animal activity.

(2) "Equine" means a horse, pony, mule, donkey, or hinny.
(3) "Equine activity" means a farm animal activity involving only equines.
(4) "Farm animal" means one or more of the following domesticated animals: cattle, oxen, bison, sheep, swine, goats, horses, ponies, mules, donkeys, hinnies, llamas, alpacas, lagomorphs, ratites, and poultry.
(5) "Farm animal activity" means an activity in which participants observe, engage with, or learn about one or more farm animals, including, but not limited to, all of the following:
a. Shows, fairs, exhibits, competitions, performances, or parades that involve farm animals.
b. Training or teaching activities, or both, involving farm animals.
c. Boarding farm animals, including normal daily care.
d. Rides, trips, shows, clinics, hunts, parades, games, exhibitions, or other activities of any kind, however informal or impromptu, that are sponsored by a farm animal activity sponsor.
e. Testing, riding, inspecting, or evaluating a farm animal belonging to another, whether or not the owner has received some monetary consideration or other thing of value for the use of the farm animal or is permitting a prospective purchaser of the farm animal to ride, inspect, or evaluate the farm animal.
f. Placing or repairing horseshoes, trimming the hooves on a farm animal, or otherwise providing farrier services.
g. Examining or administering medical treatment to a farm animal by a veterinarian.
(6) "Farm animal activity sponsor" means an individual, group, club, partnership, corporation, educational organization, or other legally constituted entity, whether the sponsor is operating for profit or nonprofit, which sponsors, organizes, allows, or provides the facilities for a farm animal activity, including, but not limited to, pony clubs; 4-H clubs; Future Farmers of America organizations; hunt clubs; riding clubs; polo clubs; school- and college-sponsored classes, programs, and activities; therapeutic riding programs; and operators, instructors, and promoters of farm animal facilities, including, but not limited to, stables, clubhouses, ponyride strings, fairs, exhibitions, and arenas at which the activity is held.
(7) "Farm animal facility" means any area used for any farm animal activity, including, but not limited to, farms, ranches, riding arenas, training stables or barns, pastures, riding trails, show rings, polo fields, petting zoos, and other areas or facilities used or provided by farm animal activity sponsors or where participants engage in farm animal activities.
(8) "Farm animal professional" means a person engaged for compensation in any of the following:
a. Instructing a participant.
b. Renting a farm animal to a participant for the purpose of riding, driving, or being a passenger upon the farm animal.
c. Providing daily care of farm animals boarded at a farm animal facility.
d. Renting equipment or tack to a participant.
e. Training a farm animal.
f. Examining or administering medical treatment to a farm animal.
g. Providing farrier services to a farm animal.
h. Hooftrimming or placing or replacing horseshoes on a farm animal.

(9) "Inherent risks of farm animal activities" means those dangers or conditions that are an integral part of engaging in a farm animal activity, including any of the following:

a. The possibility of a farm animal behaving in ways that may result in injury, harm, or death to persons on or around them.

b. The unpredictability of a farm animal's reaction to such things as sounds, sudden movement, unfamiliar objects, persons, or other animals.

c. The risk of contracting an illness due to coming into contact with animals, animal feed, animal waste, or surfaces that have been in contact with animal waste.

Inherent risks of farm animal activities does not include a collision or accident involving a motor vehicle.

(10) "Participant" means any person, whether amateur or professional, who engages in a farm animal activity, whether or not a fee is paid to participate in the farm animal activity.

"**§ 99E-5. Liability.**

(a) Except as provided in subsection (b) of this section, a farm animal activity sponsor, a farm animal professional, or any other person engaged in a farm animal activity, including a corporation or partnership, shall not be liable for an injury to or the death of a participant resulting from the inherent risks of farm animal activities and, except as provided in subsection (b) of this section, no participant or participant's representative shall maintain an action against or recover from a farm animal sponsor, a farm animal professional, or any other person engaged in a farm animal activity for injury, loss, damage, or death of the participant resulting exclusively from any of the inherent risks of farm animal activities.

(b) Nothing in subsection (a) of this section shall prevent or limit the liability of a farm animal activity sponsor, a farm animal professional, or any other person engaged in a farm animal activity if the farm animal activity sponsor, professional, or person engaged in a farm animal activity does any one or more of the following:

(1) Provides the equipment or tack and knew or should have known that the equipment or tack was faulty, and such faulty equipment or tack proximately caused the injury, damage, or death.

(2) Provides the farm animal and failed to make reasonable and prudent efforts to determine the ability of the participant to engage safely in the farm animal activity or to safely manage the particular farm animal.

(3) Commits an act or omission that constitutes willful or wanton disregard for the safety of the participant, and that act or omission proximately caused the injury, damage, or death.

(4) Commits any other act of negligence or omission that proximately caused the injury, damage, or death.

(c) Nothing in subsection (a) of this section shall prevent or limit the liability of a farm animal activity sponsor, a farm animal professional, or any other person engaged in a farm animal activity under liability provisions as set forth in the products liability laws.

"**§ 99E-6. Warning required.**

(a) Every farm animal activity sponsor and every farm animal professional shall post and maintain signs which contain the warning notices specified in subsections (b) or (c) of this section. The signs required by this section shall be placed in a clearly visible location on or near stables, corrals, arenas, or other farm animal facilities where the farm animal professional or the farm animal activity sponsor conducts animal activities. The warning notices specified in subsections (b) and (c) of this section shall be designed by the Department of Agriculture and Consumer Services and shall consist of a sign in black letters, with each letter to be a minimum

of one inch in height. Every written contract entered into by a farm animal professional or by a farm animal activity sponsor for the providing of professional services, instruction, or the rental of equipment or tack or a farm animal to a participant, whether or not the contract involves farm animal activities on or off the location or site of the farm animal professional's or farm animal activity sponsor's business, shall contain in clearly readable print the warning notice specified in subsections (b) or (c) of this section.

(b) The signs and contracts described in subsection (a) of this section shall contain the following warning notice:

"WARNING

Under North Carolina law, a farm animal activity sponsor or farm animal professional is not liable for an injury to or the death of a participant in farm animal activities resulting exclusively from the inherent risks of farm animal activities. Chapter 99E of the North Carolina General Statutes."

(c) If a farm animal activity sponsor or farm animal professional sponsors or engages in farm animal activities only involving equines, the signs and contracts described in subsection (a) of this section may contain the following warning notice:

"WARNING

Under North Carolina law, an equine activity sponsor or equine professional is not liable for an injury to or the death of a participant in equine activities resulting exclusively from the inherent risks of equine activities. Chapter 99E of the North Carolina General Statutes."

(d) Failure to comply with the requirements concerning warning signs and notices provided in this Part shall prevent a farm animal activity sponsor or farm animal professional from invoking the privileges of immunity provided by this Part."

SECTION 3. G.S. 99E-31 reads as rewritten:

"**§ 99E-31. Liability.**

(a) Except as provided in subsection (b) of this section, an agritourism professional is not liable for injury to or death of a participant resulting from the inherent risks of agritourism activities, so long as the warning contained in G.S. 99E-32 is posted as required and, except as provided in subsection (b) of this section, no participant or participant's representative can maintain an action against or recover from an agritourism professional for injury, loss, damage, or death of the participant resulting exclusively from any of the inherent risks of agritourism activities. In any action for damages against an agritourism professional for agritourism activity, the agritourism professional must plead the affirmative defense of assumption of the risk of agritourism activity by the participant.

(b) Nothing in subsection (a) of this section prevents or limits the liability of an agritourism professional if the agritourism professional does any one or more of the following:

(1) Commits an act or omission that constitutes gross negligence or willful or wanton disregard for the safety of the participant, and that act or omission proximately causes injury, damage, or death to the participant.

(2) Has actual knowledge or reasonably should have known of ~~a~~an existing dangerous condition on the land, facilities, or equipment used in the activity or the dangerous propensity of a particular animal used in such activity and does not make the danger known to the participant, and the danger proximately causes injury, damage, or death to the participant.

(c) Nothing in subsection (a) of this section prevents or limits the liability of an agritourism professional under liability provisions as set forth in Chapter 99B of the General Statutes.

(d) Any limitation on legal liability afforded by this section to an agritourism professional is in addition to any other limitations of legal liability otherwise provided by law."

PART III. ALLOW THE COMMISSIONER OF AGRICULTURE TO ASSESS NONMONETARY PENALTIES TO ADDRESS VIOLATIONS WHEN APPROPRIATE

SECTION 4. Chapter 106 of the General Statutes is amended by adding a new section to read:

"**§ 106-22.6. Exercise of enforcement powers.**

When any board, commission, or official within the North Carolina Department of Agriculture and Consumer Services has the authority to assess civil penalties, such authority shall not be construed to require the issuance of a monetary penalty when the board, commission, or official determines that nonmonetary sanctions, education, or training are sufficient to address the underlying violation."

PART IV. DECREASE THE FREQUENCY OF THE AGRICULTURAL WATER USE SURVEY

SECTION 5. G.S. 106-24 reads as rewritten:

"**§ 106-24. Collection and publication of information relating to agriculture; cooperation.**

(a) The Department of Agriculture and Consumer Services shall collect, compile, systematize, tabulate, and publish statistical information relating to agriculture. The Department is authorized to use sample surveys to collect primary data relating to agriculture. The Department is authorized to cooperate with the United States Department of Agriculture and the several boards of county commissioners of the State, to accomplish the purpose of this Part.

(b) The Department of Agriculture and Consumer Services shall ~~annually~~biennially collect information on water use by persons who withdraw 10,000 gallons per day or more of water from the surface or groundwater sources of the State for activities directly related or incidental to the production of crops, fruits, vegetables, ornamental and flowering plants, dairy products, livestock, poultry, and other agricultural products. The information shall be collected by survey conducted pursuant to subsection (a) of this section and in accordance with Title 7 United States Code Section 2276 (Confidential Information Protection and Statistical Efficiency Act). The Department shall develop the survey form in consultation with the Department of Environment and Natural Resources. The Department shall report the results of the water use survey to the Environmental Review Commission no later than July 1 of each year in which the survey was collected and shall provide a copy of the report to the Department of Environment and Natural Resources. The report shall include recommendations about modifications to the survey, including changes in the gallons per day threshold for water use data collection. The report shall provide agricultural water use data by county. If the county is located in more than one river basin, the report shall separate the county data to show agricultural water use by river basin within the county. If publication of county or watershed data would result in disclosure of an individual operation's water use, the data will be combined with data from another county or watershed."

PART V. LIMIT THE PERSONALLY IDENTIFYING INFORMATION THAT THE DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES MAY DISCLOSE ABOUT ITS ANIMAL HEALTH PROGRAMS

SECTION 6. G.S. 106-24.1 reads as rewritten:

"**§ 106-24.1. Confidentiality of information collected and published.**

All information published by the Department of Agriculture and Consumer Services pursuant to this Part shall be classified so as to prevent the identification of information received from individual farm operators. All information received pursuant to this Part from individual farm operators shall be held confidential by the Department and its employees. ~~Information~~All information collected by the Department from individual farm operators for the

purposes of its animal health ~~programs may be disclosed by the State Veterinarian when, in his judgment, the disclosure will assist in the implementation of these programs. Animal disease diagnostic tests that identify the owner of the animal~~ programs, including, but not limited to, certificates of veterinary inspection, animal medical records, laboratory reports, or other records that may be used to identify a person or private business entity subject to regulation by the Department shall not be disclosed without the permission of the owner unless the State Veterinarian determines that disclosure is necessary to prevent the spread of an animal disease or to protect the public ~~health.~~health, or the disclosure is necessary in the implementation of these animal health programs."

PART VI. REPEAL THE INTERSTATE PEST CONTROL COMPACT AND CERTAIN CLEANLINESS STANDARDS FOR CREAMERIES AND DAIRY FACILITIES THAT ARE ADDRESSED BY THE NC FOOD, DRUG, AND COSMETIC ACT

SECTION 7. Article 4E of Chapter 106 of the General Statutes is repealed.

SECTION 8. G.S. 106-246 is repealed.

SECTION 9. G.S. 106-248 is repealed.

PART VII. CHANGE SETBACK DISTANCES AND BURN TIMES FOR FLAMMABLE MATERIALS RESULTING FROM GROUND CLEARING ACTIVITIES

SECTION 10. G.S. 106-942 reads as rewritten:

"**§ 106-942. High hazard counties; permits required; standards.**

...

(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. 106-942(b).

...

(2) The location of the burning must be at least ~~1,000~~500 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.

...

(6) Initial burning may be commenced only between the hours of ~~9:00~~8:00 A.M. and ~~3:00~~4:00 P.M. and no combustible material may be added to the fire between ~~3:00~~4:00 P.M. on one day and ~~9:00~~8:00 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."

PART VIII. REPEAL THE STATE SULFUR CONTENT STANDARDS FOR GASOLINE

SECTION 11. G.S. 119-26.2 is repealed.

PART IX. EXEMPT CERTAIN STRUCTURES FROM THE SPRINKLER SYSTEM REQUIREMENTS OF THE NORTH CAROLINA BUILDING CODE AND ALLOW FARM BUILDINGS THAT ARE USED FOR PUBLIC OR PRIVATE EVENTS TO

MAINTAIN THEIR FARM BUILDING STATUS FOR PURPOSES OF THE STATE BUILDING CODE

SECTION 12. G.S. 143-138 reads as rewritten:

"§ 143-138. North Carolina State Building Code.

...

(b) Contents of the Code. – The North Carolina State Building Code, as adopted by the Building Code Council, may include reasonable and suitable classifications of buildings and structures, both as to use and occupancy; general building restrictions as to location, height, and floor areas; rules for the lighting and ventilation of buildings and structures; requirements concerning means of egress from buildings and structures; requirements concerning means of ingress in buildings and structures; rules governing construction and precautions to be taken during construction; rules as to permissible materials, loads, and stresses; rules governing chimneys, heating appliances, elevators, and other facilities connected with the buildings and structures; rules governing plumbing, heating, air conditioning for the purpose of comfort cooling by the lowering of temperature, and electrical systems; and such other reasonable rules pertaining to the construction of buildings and structures and the installation of particular facilities therein as may be found reasonably necessary for the protection of the occupants of the building or structure, its neighbors, and members of the public at large.

(b1) Fire Protection; Smoke Detectors. – The Code may regulate activities and conditions in buildings, structures, and premises that pose dangers of fire, explosion, or related hazards. Such fire prevention code provisions shall be considered the minimum standards necessary to preserve and protect public health and safety, subject to approval by the Council of more stringent provisions proposed by a municipality or county as provided in G.S. 143-138(e). These provisions may include regulations requiring the installation of either battery-operated or electrical smoke detectors in every dwelling unit used as rental property, regardless of the date of construction of the rental property. For dwelling units used as rental property constructed prior to 1975, smoke detectors shall have an Underwriters' Laboratories, Inc., listing or other equivalent national testing laboratory approval, and shall be installed in accordance with either the standard of the National Fire Protection Association or the minimum protection designated in the manufacturer's instructions, which the property owner shall retain or provide as proof of compliance.

(b2) Carbon Monoxide Detectors. – The Code may contain provisions requiring the installation of either battery-operated or electrical carbon monoxide detectors in every dwelling unit having a fossil-fuel burning heater, appliance, or fireplace, and in any dwelling unit having an attached garage. Carbon monoxide detectors shall be those listed by a nationally recognized testing laboratory that is OSHA-approved to test and certify to American National Standards Institute/Underwriters Laboratories Standards ANSI/UL2034 or ANSI/UL2075 and shall be installed in accordance with either the standard of the National Fire Protection Association or the minimum protection designated in the manufacturer's instructions, which the property owner shall retain or provide as proof of compliance. A carbon monoxide detector may be combined with smoke detectors if the combined detector does both of the following: (i) complies with ANSI/UL2034 or ANSI/UL2075 for carbon monoxide alarms and ANSI/UL217 for smoke detectors; and (ii) emits an alarm in a manner that clearly differentiates between detecting the presence of carbon monoxide and the presence of smoke.

(b3) Applicability of the Code. – Except as provided by ~~subsection (c1)~~ subsections (b4) and (c1) of this section, the Code may contain provisions regulating every type of building or structure, wherever it might be situated in the State.

(b4) Exclusion for Certain Farm Buildings. – 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 remain subject only to an annual safety inspection by the applicable city or county building inspection department of any grandstand, bleachers, or other spectator-seating structures in the farm building. An annual safety inspection shall include an evaluation of the overall safety of spectator-seating structures as well as ensuring the spectator-seating structure's compliance with any building codes related to the construction of spectator-seating structures in effect at the time of the construction of the spectator-seating.

(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.

(3) A "farm building" shall include any structure used for the display and sale of produce, no more than 1,000 square feet in size, open to the public for no more than 180 days per year, and certified by the Department of Agriculture and Consumer Services as a Certified Roadside Farm Market.

(4) A "farm building" shall not lose its status as a farm building because it is used for public or private events, including, but not limited to, weddings, receptions, meetings, demonstrations of farm activities, meals, and other events that are taking place on the farm because of its farm or rural setting.

(b5) Exclusion for Certain Minor Activities in Residential and Farm Structures. – No building permit shall be required under the Code or any local variance thereof approved under subsection (e) for any construction, installation, repair, replacement, or alteration costing five thousand dollars ($5,000) or less in any single family residence or farm building unless the work involves: the addition, repair, or replacement of load bearing structures; the addition (excluding replacement of same capacity) or change in the design of plumbing; the addition, replacement or change in the design of heating, air conditioning, or electrical wiring, devices, fixtures (excluding repair or replacement of electrical lighting devices and fixtures of the same type), appliances (excluding replacement of water heaters, provided that the energy use rate or thermal input is not greater than that of the water heater which is being replaced, and there is no change in fuel, energy source, location, capacity, or routing or sizing of venting and piping), or equipment, the use of materials not permitted by the North Carolina Uniform Residential Building Code; or the addition (excluding replacement of like grade of fire resistance) of roofing. The exclusions from building permit requirements set forth in this paragraph for electrical lighting devices and fixtures and water heaters shall apply only to work performed on a one- or two-family dwelling. In addition, exclusions for electrical lighting devices and fixtures and electric water heaters shall apply only to work performed by a person licensed

under G.S. 87-43 and exclusions for water heaters, generally, to work performed by a person licensed under G.S. 87-21.

(b6) No State Agency Permit. – No building permit shall be required under such Code from any State agency for the construction of any building or structure, the total cost of which is less than twenty thousand dollars ($20,000), except public or institutional buildings.

(b7) Appendices. – For the information of users thereof, the Code shall include as appendices the following:

(1) Any rules governing boilers adopted by the Board of Boiler and Pressure Vessels Rules,

(2) Any rules relating to the safe operation of elevators adopted by the Commissioner of Labor, and

(3) Any rules relating to sanitation adopted by the Commission for Public Health which the Building Code Council believes pertinent.

~~(b7)~~ The Code may include references to such other rules of special types, such as those of the Medical Care Commission and the Department of Public Instruction as may be useful to persons using the Code. No rule issued by any agency other than the Building Code Council shall be construed as a part of the Code, nor supersede that Code, it being intended that they be presented with the Code for information only.

(b8) Exclusion for Certain Utilities. – Nothing in this Article shall extend to or be construed as being applicable to the regulation of the design, construction, location, installation, or operation of (1) equipment for storing, handling, transporting, and utilizing liquefied petroleum gases for fuel purposes or anhydrous ammonia or other liquid fertilizers, except for liquefied petroleum gas from the outlet of the first stage pressure regulator to and including each liquefied petroleum gas utilization device within a building or structure covered by the Code, or (2) equipment or facilities, other than buildings, of a public utility, as defined in G.S. 62-3, or an electric or telephone membership corporation, including without limitation poles, towers, and other structures supporting electric or communication lines.

(b9) Exclusion for Industrial Machinery. – Nothing in this Article shall extend to or be construed as being applicable to the regulation of the design, construction, location, installation, or operation of industrial machinery. However, if during the building code inspection process, an electrical inspector has any concerns about the electrical safety of a piece of industrial machinery, the electrical inspector may refer that concern to the Occupational Safety and Health Division in the North Carolina Department of Labor but shall not withhold the certificate of occupancy nor mandate third-party testing of the industrial machinery based solely on this concern. For the purposes of this paragraph, "industrial machinery" means equipment and machinery used in a system of operations for the explicit purpose of producing a product or acquired by a State-supported center providing testing, research, and development services to manufacturing clients. The term does not include equipment that is permanently attached to or a component part of a building and related to general building services such as ventilation, heating and cooling, plumbing, fire suppression or prevention, and general electrical transmission.

(b10) Replacement Water Heaters. – The Code may contain rules concerning minimum efficiency requirements for replacement water heaters, which shall consider reasonable availability from manufacturers to meet installation space requirements and may contain rules concerning energy efficiency that require all hot water plumbing pipes that are larger than one-fourth of an inch to be insulated.

(b11) School Seclusion Rooms. – No State, county, or local building code or regulation shall prohibit the use of special locking mechanisms for seclusion rooms in the public schools approved under G.S. 115C-391.1(e)(1)e., provided that the special locking mechanism shall be constructed so that it will engage only when a key, knob, handle, button, or other similar device is being held in position by a person, and provided further that, if the mechanism is electrically

or electronically controlled, it automatically disengages when the building's fire alarm is activated. Upon release of the locking mechanism by a supervising adult, the door must be able to be opened readily.

(b12) Cisterns. – The Code may include rules pertaining to the construction or renovation of residential or commercial buildings and structures that permit the use of cisterns to provide water for flushing toilets and for outdoor irrigation. No State, county, or local building code or regulation shall prohibit the use of cisterns to provide water for flushing toilets and for outdoor irrigation. As used in this subsection, "cistern" means a storage tank that is watertight; has smooth interior surfaces and enclosed lids; is fabricated from nonreactive materials such as reinforced concrete, galvanized steel, or plastic; is designed to collect rainfall from a catchment area; may be installed indoors or outdoors; and is located underground, at ground level, or on elevated stands.

(b13) Migrant Housing. – The Council shall provide for an exemption from any requirements in the fire prevention code for installation of an automatic sprinkler system applicable to buildings meeting all of the following:

(1) Has one floor.

(2) Meets all requirements of 29 C.F.R. § 1910.142, as amended.

(3) Meets all requirements of Article 19 of Chapter 95 of the General Statutes and rules implementing that Article.

For purposes of this subsection, "migrant housing" and "migrant" shall be defined as in G.S. 95-223.

...."

PART X. WATER QUALITY PERMIT IS NOT REQUIRED FOR ACTIVITIES IN WETLANDS THAT ARE NOT WATERS OF THE UNITED STATES

SECTION 13.1. G.S. 143-212 reads as rewritten:

"**§ 143-212. Definitions.**

...

(6) "Waters" means any stream, river, brook, swamp, lake, sound, tidal estuary, bay, creek, reservoir, waterway, or other body or accumulation of water, whether surface or underground, public or private, or natural or artificial, that is contained in, flows through, or borders upon any portion of this State, including any portion of the Atlantic Ocean over which the State has jurisdiction. Wetlands classified as waters are restricted to waters of the United States."

SECTION 13.2. 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. – Except as provided in ~~subsection (a6)~~subsections (a6) and (a7) 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.

...

(a7) No permit shall be required under this section for activities in wetlands that are not waters of the United States.

...."

PART XI. EXPAND THE AGRICULTURAL DAM EXEMPTION TO THE DAM SAFETY ACT

SECTION 14. G.S. 143-215.25A reads as rewritten:

"**§ 143-215.25A. Exempt dams.**

(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~~Natural Resources 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 25 feet in height or that has an impoundment capacity of less than 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 and maintains the purpose of providing water for agricultural use, when a person who is licensed as a professional engineer or is employed by the Natural Resources Conservation Service, county, or local Soil and Water Conservation District, and has federal engineering job approval authority under Chapter 89C of the General Statutes designed or approved plans for the dam, supervised its construction, and registered the dam with the Division of Energy, Mineral, and Land Resources of the ~~Department.~~Department prior to construction of the dam. This exemption shall not apply to dams that are determined to be high-hazard by the Department.

...."

PART XII. ALLOW A LANDOWNER TO WITHDRAW WATER FOR AGRICULTURAL USE DURING WATER SHORTAGE EMERGENCIES UNDER CERTAIN CONDITIONS

SECTION 15. G.S. 143-355.3 reads as rewritten:

"**§ 143-355.3. Water shortage emergency powers.**

(a) Declaration of Water Shortage Emergency. – If, after consultation with the affected water system and the unit of local government with jurisdiction over the area served by the water system, the Secretary determines that the needs of human consumption, necessary sanitation, and public safety require emergency action, the Secretary shall provide the Governor with written findings setting out the basis for declaration of a water shortage emergency. The Governor shall have the authority to declare a water shortage emergency in the area affected by the water shortage emergency, which may include both the water system experiencing a water shortage emergency and the area served by a water system required under subdivision (1) of subsection (b) of this section to provide water in response to the water shortage emergency. No emergency period shall exceed 30 days, but the Governor may declare successive emergencies based upon the written findings of the Secretary.

...

(f) Nothing in this section shall limit a landowner from withdrawing water for use in agricultural activities, as described in G.S. 106-581.1, when the water is withdrawn from any of the following:

(1) Surface water sources located wholly on the landowner's property, including, but not limited to, impoundments constructed by or owned by the landowner and captured stormwater.

(2) Groundwater sources, including, but not limited to, wells constructed on the landowner's property, springs, and artesian wells."

PART XIII. DIRECT THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES AND THE DEPARTMENT OF TRANSPORTATION TO JOINTLY PETITION THE WILMINGTON DISTRICT OF THE UNITED STATES ARMY CORPS OF ENGINEERS TO ALLOW FOR GREATER FLEXIBILITY AND OPPORTUNITY TO PERFORM WETLANDS MITIGATION BEYOND THE IMMEDIATE WATERSHED WHERE DEVELOPMENT WILL OCCUR

SECTION 16.1. No later than October 1, 2013, the Department of Environment and Natural Resources and the Department of Transportation shall jointly petition the Wilmington District of the United States Army Corps of Engineers (Wilmington District) to allow for greater flexibility and opportunity to perform wetlands mitigation outside of the eight-digit Hydrologic Unit Code (HUC) where development will occur. The Departments shall seek this greater flexibility and opportunity for mitigation for both public and private development. The Departments shall request that the Wilmington District review the flexibility and opportunities for mitigation allowed by other Districts of the United States Army Corps of Engineers.

SECTION 16.2. The Departments shall jointly report on their progress in petitioning the Wilmington District as required by Section 16.1 of this act to the Environmental Review Commission no later than January 1, 2014.

SECTION 17. Sections 2 and 3 of this act become effective July 1, 2013. The remainder of this act is effective when it becomes law.

SENATE BILL 638:
NC Farm Act of 2013

2013-2014 General Assembly

Committee:	Senate Agriculture/Environment/Natural Resources	**Date:**	May 6, 2013
Introduced by:	Sens. Jackson, Brock	**Prepared by:**	Chris Saunders Committee Counsel
Analysis of:	PCS to First Edition S638-CSTQ-26 [v.12]		

SUMMARY: The Proposed Committee Substitute (PCS) for Senate Bill 638 would amend certain laws relating to agriculture and agritourism.

BILL ANALYSIS:

Section 1 sets out the informal title of the bill.

Sections 2 and 3 would exempt farm animal activity operators from liability for the inherent risks of farm animal activities and expand the liability limitation for agritourism operations.

Section 4 would allow North Carolina Department of Agriculture ("Department") boards, commissions, and officials with the authority to assess civil penalties to assess nonmonetary penalties when appropriate to address the underlying violation.

Section 5 would decrease the frequency of the survey of persons who withdraw 10,000 gallons per day for agricultural purposes from annually to biennially.

Section 6 would provide that no information collected by the Department for its animal health programs, including certificates of veterinary inspection, animal medical records, laboratory reports, or other information that may identify a person or private business subject to regulation by the Department, may be disclosed without the permission of the owner, unless the State Veterinarian determines that the disclosure is necessary to prevent the spread of an animal disease, to maintain public health, or to implement animal health programs.

Section 7 would repeal the Interstate Pest Control Compact (IPCC), Article 4E of Chapter 106 of the General Statutes. The IPCC was formed as an interstate compact in 1968, but has not been active in recent years and earlier this year chose to dissolve because of an issue with the IPCC's tax-exempt status.

Sections 8 and 9 would repeal G.S. 106-246 and G.S. 106-248, which set out cleanliness and purity standards for ice cream plants, creameries, and cheese factories. These statutes have been rendered obsolete by the NC Food, Drug, and Cosmetic Act, which prohibits adulterated food from being entered into commerce at G.S. 106-129.

Section 10 would change setback distances and burn times for debris, stumps, brush, or other flammable materials resulting from ground clearing activities. The burning setbacks would be decreased from at least 1,000 feet to at least 500 feet from dwellings or structures besides those on the property. The time period for when initial burning could be commenced would be expanded from between 9:00 A.M. and 3:00 P.M. to between 8:00 A.M. and 4:00 P.M. The time period for when no combustible material could

be added to the fire would be reduced from between 3:00 P.M. on one day and 9:00 A.M. on the next to between 4:00 P.M. on one day and 8:00 A.M. on the next.

Section 11 would repeal G.S. 119-26.2, which provides sulfur content standards in gasoline. This section was adopted prior to the promulgation of EPA standards for sulfur content in gasoline (40 CFR 80 subpart H). The standard set by G.S. 119-26.2 is the same as the EPA standard.

Section 12 would exempt migrant housing from requirements in the fire prevention code for installation of an automatic sprinkler system if the building (1) has one floor, (2) meets all federal Occupational Safety & Health Administration regulations for temporary labor camps, and (3) meets all State requirements of the Migrant Housing Act of North Carolina.

Additionally, Section 12 would allow a farm building that is used for public or private events such as weddings, receptions, or meetings, to maintain its farm building status for purposes of the State Building Code. Farm buildings located outside the building-rules jurisdiction of any municipality are exempt from State building rules.

Sections 13.1 and 13.2 would amend the definition of waters under the environmental statutes to include only those wetlands that are waters of the United States and would provide that a water quality permit would not be required for activities in wetlands that are not waters of the United States.

Section 14 would provide that the current exemption from the Dam Safety Act of dams constructed to provide water for agricultural use that were designed and constructed by or under the supervision of a professional engineer also applies to such dams designed and constructed by or under the supervision of a person who is employed by the Natural Resources Conservation Service, County, or local Soil and Water Conservation District and has federal engineering job approval authority under Chapter 89C of the General Statutes.

Section 15 would provide that nothing in the statute governing water shortage emergencies could limit a landowner from withdrawing water for use in agricultural activities when the water is withdrawn from surface water sources located wholly on the landowner's property and from groundwater sources.

Sections 16.1 and 16.2 would direct the Department of Environment and Natural Resources (DENR) and the Department of Transportation (DOT) to jointly petition the United States Army Corps of Engineers (Corps) to allow for greater flexibility and opportunity to perform wetlands mitigation outside of the watershed where development occurs. DENR and DOT will report on the progress in petitioning the Corps to the Environmental Review Commission (ERC) no later than January 1, 2014.

EFFECTIVE DATE: Sections 2 and 3 of this act would become effective on July 1, 2013, and would apply to claims arising on or after that date. The remainder of the act would become effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

S 1

SENATE BILL 638

Short Title:	NC Farm Act of 2013.	(Public)
Sponsors:	Senators Jackson, Brock (Primary Sponsors); Barefoot, Barringer, Cook, Hise, Jenkins, McLaurin, Meredith, Pate, Rabin, Sanderson, Tillman, and Walters.	
Referred to:	Agriculture/Environment/Natural Resources.	

April 4, 2013

A BILL TO BE ENTITLED

AN ACT TO ENACT THE NORTH CAROLINA FARM ACT OF 2013.

The General Assembly of North Carolina enacts:

SECTION 1. This act shall be known and may be cited as the "North Carolina Farm Act of 2013."

SECTION 2. Chapter 106 of the General Statutes is amended by adding a new section to read:

"**§ 106-22.6. Exercise of enforcement powers.**

When any board, commission, or official within the North Carolina Department of Agriculture and Consumer Services has the authority to assess civil penalties, such authority shall not be read to require the issuance of a monetary penalty when the board, commission, or official determines that nonmonetary sanctions, education, or training are sufficient to address the underlying violation."

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

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

S 1

Favorable
Ref. DH

SENATE BILL 636

Short Title:	Wildlife Resources Comm. Penalty Changes.	(Public)
Sponsors:	Senator Newton (Primary Sponsor).	
Referred to:	Agriculture/Environment/Natural Resources.	

April 4, 2013

A BILL TO BE ENTITLED

AN ACT TO AMEND THE BOATING SAFETY ACT BY INCREASING THE PENALTIES AND OTHERWISE AMENDING THE PENALTY AND OTHER PROVISIONS OF THAT ACT AND BY AMENDING THE PENALTY PROVISIONS FOR SPECIFIC VIOLATIONS OF THE WILDLIFE LAWS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 75A-3 reads as rewritten:

"**§ 75A-3. Wildlife Resources Commission to administer Chapter; ~~Vessel Committee;~~Boating Safety Committee; funds for administration.**

(a) The Commission shall enforce and administer the provisions of this Chapter.

(b) The chair of the Commission shall designate from among the members of the Commission three members who shall serve as the ~~Vessel Committee~~Boating Safety Committee of the Commission, and who shall, in their activities with the Commission, place special emphasis on the administration and enforcement of this Chapter.

(c) The Boating Account is established within the Wildlife Resources Fund created under G.S. 143-250. Interest and other investment income earned by the Account accrues to the Account. All moneys collected pursuant to the numbering and titling provisions of this Chapter shall be credited to this Account. Motor fuel excise tax revenue is credited to the Account under G.S. 105-449.126. The Commission shall use revenue in the Account, subject to the Executive Budget Act and the Personnel Act, for the administration and enforcement of this Chapter; for activities relating to boating and water safety including education and waterway marking and improvement; and for boating access area acquisition, development, and maintenance. The Commission shall use at least three dollars ($3.00) of each one-year certificate of number fee and at least nine dollars ($9.00) of each three-year certificate of number fee collected under the numbering provisions of G.S. 75A-5 for boating access area acquisition, development, and maintenance."

SECTION 2. G.S. 75A-6.1(c) reads as rewritten:

"(c) Violation of ~~the navigation rules specified in subsection (a) of this section~~any rule governing navigational lighting adopted by the Commission shall constitute a Class 3 ~~misdemeanor and is punishable only by a fine not to exceed one hundred dollars ($100.00).~~misdemeanor."

SECTION 3. G.S. 75A-10 reads as rewritten:

"**§ 75A-10. Operating vessel or manipulating water skis, etc., in reckless manner; operating, etc., while intoxicated, etc.; depositing or discharging litter, etc.**

(a) No person shall operate any motorboat or vessel, or manipulate any water skis, surfboard, or similar device on the waters of this State in a reckless or negligent manner so as to endanger the life, limb, or property of any person.

(b) No person shall manipulate any water skis, surfboard, nonmotorized vessel, or similar device on the waters of this State while under the influence of an impairing substance.

(b1) No person shall operate any vessel while underway on the waters of this State:

(1) While under the influence of an impairing substance, or

(2) After having consumed sufficient alcohol that the person has, at any relevant time after the boating, an alcohol concentration of 0.08 or more.

(b2) The fact that a person charged with violating this subsection is or has been legally entitled to use alcohol or a drug is not a defense to a charge under subsections (b) and (b1) of this section. The relevant definitions contained in G.S. 20-4.01 shall apply to subsections (b), (b1), and (b2) of this section.

(b3) A person who violates a provision of ~~subsection (a), (b), or (b1)~~subsection (a) or (b) of this section is guilty of a Class 2 misdemeanor.

(b4) A person who violates subsection (b1) of this section is guilty of a Class 2 misdemeanor, punishable by a fine of not less than two hundred fifty dollars ($250.00).

(c) No person shall place, throw, deposit, or discharge or cause to be placed, thrown, deposited, or discharged on the waters of this State or into the inland lake waters of this State, any litter, raw sewage, bottles, cans, papers, or other liquid or solid materials which render the waters unsightly, noxious, or otherwise unwholesome so as to be detrimental to the public health or welfare or to the enjoyment and safety of the water for recreational purposes..

(d) No person shall place, throw, deposit, or discharge or cause to be placed, thrown, deposited, or discharged on the waters of this State or into the inland lake waters of this State any medical waste as defined by G.S. 130A-290 which renders the waters unsightly, noxious, or otherwise unwholesome so as to be detrimental to the public health or welfare or to the enjoyment and safety of the water for recreational purposes.

(e) A person who willfully violates subsection (d) of this section is guilty of a Class 1 misdemeanor. A person who willfully violates subsection (d) of this section and in so doing releases medical waste that creates a substantial risk of physical injury to any person who is not a participant in the offense is guilty of a Class F felony which may include a fine not to exceed fifty thousand dollars ($50,000) per day of violation."

SECTION 4. G.S. 75A-13.3 reads as rewritten:

"(b1) A person who is the lawful owner of a personal watercraft or a person having control of a personal watercraft who knowingly allows a person under 16 years of age ~~who operates~~to operate a personal watercraft in violation of the provisions of subsection (b) of this section is guilty of an infraction as provided in G.S. 14-3.1."

SECTION 5. G.S. 75A-16.2 reads as rewritten:

"**§ 75A-16.2. Boating safety education required.**

(a) No person shall operate a vessel with a motor of 10 horsepower or greater on the public waters of this State unless the operator has met the requirements for boating safety education.

(b) A person shall be considered in compliance with the requirements of boating safety education if the person does one of the following:

(1) Completes and passes the boating safety course instituted by the Wildlife Resources Commission under G.S. 75A-16.1 or another boating safety course that is approved by the National Association of State Boating Law Administrators (NASBLA) and accepted by the Wildlife Resources Commission;

(2) Passes a proctored equivalency examination that tests the knowledge of information included in the curriculum of an approved course;

(3) Possesses a valid or expired license to operate a vessel issued to maritime personnel by the United States Coast Guard;
(4) Possesses a State-approved nonrenewable temporary operator's certificate to operate a vessel for 90 days that was issued with the certificate of number for the vessel, if the boat was new or was sold with a transfer of ownership;
(5) Possesses a rental or lease agreement from a vessel rental or leasing business that lists the person as the authorized operator of the vessel;
(6) Properly displays Commission-issued dealer registration numbers during the demonstration of the vessel;
(7) Operates the vessel under onboard direct supervision of a person who is at least 18 years of age and who meets the requirements of this section;
(8) Demonstrates that he or she is not a resident, is temporarily using the waters of this State for a period not to exceed 90 days, and meets any applicable boating safety education requirements of the state or nation of residency;
(9) Has assumed operation of the vessel due to the illness or physical impairment of the initial operator, and is returning the vessel to shore in order to provide assistance or care for the operator;
(10) Is registered as a commercial fisherman or a person who is under the onboard direct supervision of a commercial fisherman while operating the commercial fisherman's boat; or
(11) Provides proof that he or she ~~is at least 26 years of age.~~was born before January 1, 1988.

Any person who operates a vessel with a motor of 10 horsepower or greater on the waters of this State shall, upon the request of a law enforcement officer, present to the officer a certification card or proof that the person has complied with the provisions of this section.

(c) Any person who violates a provision of this section or a rule adopted pursuant to this section is guilty of an infraction, as provided in ~~G.S. 14-3.1. The court shall assess court costs for each violation but shall not assess a penalty.~~G.S. 14-3.1, and shall pay a fine of fifty dollars ($50.00). A person may not be convicted of violating this section if, when tried for the offense, the person produces in court a certification card or proof that the person has completed and passed a boating safety course in compliance with subdivision (b)(1) of this section.

(d) No unit of local government shall enact any ordinance or rule relating to boating safety education, and this law preempts all existing ordinances or rules.

(e) An operator of a personal watercraft on the public waters of this State remains subject to any more specific provision of law found in G.S. 75A-13.3."

SECTION 6. G.S. 75A-18 reads as rewritten:

"**§ 75A-18. Penalties.**

(a) Except as otherwise provided, a person who violates a provision of this Article ~~or who violates a rule adopted under authority of this Chapter~~ is guilty of a Class 3 misdemeanor and shall only be subject to a fine not to exceed two hundred and fifty dollars ($250.00) for each violation. This limitation shall not apply in a case where a more severe penalty is prescribed in this Chapter.

(b) through (e) Repealed by Session Laws 2006-185, s. 1.

(f) Except as otherwise provided in this Chapter, a person who violates a rule adopted by the Commission under the authority of this Chapter is guilty of an infraction, as provided in G.S. 14-3.1, and shall pay a fine of fifty dollars ($50.00). A person convicted of an infraction under this Chapter shall not be assessed court costs."

SECTION 7. G.S. 113-294 reads as rewritten:

"**§ 113-294. Specific violations.**

(a) Any person who unlawfully sells, possesses for sale, or buys any wildlife is guilty of a Class 2 misdemeanor, punishable by a fine of not less than two hundred fifty dollars ($250.00) unless a greater penalty is prescribed for the offense in question.

(b) Any person who unlawfully sells, possesses for sale, or buys any deer or wild turkey is guilty of a Class 2 misdemeanor, punishable by a fine of not less than ~~two hundred fifty dollars ($250.00)~~five hundred dollars ($500.00) in addition to such other punishment prescribed for the offense in question.

(c) Any person who unlawfully takes, possesses, or transports any wild turkey is guilty of a Class 2 misdemeanor, punishable by a fine of not less than two hundred fifty dollars ($250.00) in addition to such other punishment prescribed for the offense in question.

(c1) Any person who unlawfully takes, possesses, transports, sells, possesses for sale, or buys any bear or bear part is guilty of a Class 1 misdemeanor, punishable by a fine of not less than two thousand dollars ($2,000) in addition to such other punishment prescribed for the offense in question. Each of the acts specified shall constitute a separate offense.

(c2) Any person who unlawfully takes, possesses, transports, sells, possesses for sale, or buys any cougar (Felis concolor) is guilty of a Class 1 misdemeanor, unless a greater penalty is prescribed for the offense in question.

(c3) Any person who unlawfully takes, possesses, or transports any elk from State-owned land is guilty of a Class 1 misdemeanor, punishable by a fine of not less than two thousand five hundred dollars ($2,500) in addition to such other punishment prescribed for the offense in question.

(d) Any person who unlawfully takes, possesses, or transports any deer is guilty of a Class 3 misdemeanor, punishable by a fine of not less than ~~one hundred dollars ($100.00)~~ two hundred fifty dollars ($250.00) in addition to such other punishment prescribed for the offense in question.

(d1) Any person who unlawfully takes, possesses, or transports any deer from land that has been posted in accordance with the provisions of G.S. 14-159.7 without written permission of the landowner, lessee, or the agent of the landowner or lessee is guilty of a Class 2 misdemeanor, punishable by a fine of not less than five hundred dollars ($500.00).

(e) Any person who unlawfully takes deer between a half hour after sunset and a half hour before sunrise with the aid of an artificial light is guilty of a Class 2 misdemeanor, punishable by a fine of not less than ~~two hundred fifty dollars ($250.00)~~ five hundred dollars ($500.00) in addition to such other punishment prescribed for the offense in question.

(f) Any person who unlawfully takes, possesses, transports, sells, or buys any beaver, or violates any rule of the Wildlife Resources Commission adopted to protect beavers, is guilty of a Class 3 misdemeanor, unless a greater penalty is prescribed for the offense in question.

(g) Any person who unlawfully takes wild animals or birds from or with the use of a vessel equipped with a motor or with motor attached is guilty of a Class 2 misdemeanor, unless a greater penalty is prescribed for the offense in question.

(h) Any person who willfully makes any false or misleading statement in order to secure for himself or another any license, permit, privilege, exemption, or other benefit under this Subchapter to which he or the person in question is not entitled is guilty of a Class 1 misdemeanor.

(i) Any person who violates any provision of G.S. 113-291.6, regulating trapping, is guilty of a Class 2 misdemeanor, unless a greater penalty is prescribed for the offense in question.

(j) Any person who unlawfully sells, possesses for sale, or buys a fox, or who takes any fox by unlawful trapping or with the aid of any electronic calling device is guilty of a Class 2 misdemeanor, unless a greater penalty is prescribed for the offense in question.

(k) Repealed by Session Laws 1995, c. 209, s. 1.

(l) Any person who unlawfully takes, possesses, transports, sells or buys any bald eagle or golden eagle, alive or dead, or any part, nest or egg of a bald eagle or golden eagle is guilty of a Class 1 misdemeanor, unless a greater penalty is prescribed for the offense in question.

(m) Any person who unlawfully takes any migratory game bird with a rifle; or who unlawfully takes any migratory game bird with the aid of live decoys or any salt, grain, fruit, or other bait; or who unlawfully takes any migratory game bird during the closed season or during prohibited shooting hours; or who unlawfully exceeds the bag limits or possession limits applicable to any migratory game bird; or who violates any of the migratory game bird permit or tagging rules of the Wildlife Resources Commission is guilty of a Class 2 misdemeanor, punishable by a fine of not less than ~~one hundred dollars ($100.00)~~two hundred fifty dollars ($250.00) in addition to any other punishment prescribed for the offense in question.

(n) Any person who violates any rule of the Commission that restricts access by vehicle on game lands to a person who holds a special vehicular access identification card and permit issued by the Commission to persons who have a handicap that limits physical mobility shall be guilty of a Class 2 misdemeanor and shall be fined not less than one hundred dollars ($100.00) in addition to any other punishment prescribed for the offense.

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

(p) Any person who willfully imports or possesses black-tailed or mule deer (Odocoileus hemionus and all subspecies) in this State for any purpose is guilty of a Class 1 misdemeanor.

(q) Any person who violates any provision of G.S. 113-291.1A is guilty of a Class 1 misdemeanor.

(r) It is unlawful to place processed food products as bait in any area of the State where the Wildlife Resources Commission has set an open season for taking black bears. For purposes of this subsection, the term "processed food products" means any food substance or flavoring that has been modified from its raw components by the addition of ingredients or by treatment to modify its chemical composition or form or to enhance its aroma or taste. The term includes substances modified by sugar, honey, syrups, oils, salts, spices, peanut butter, grease, meat, bones, or blood, as well as extracts of such substances. The term also includes sugary products such as candies, pastries, gums, and sugar blocks, as well as extracts of such products. Nothing in this subsection prohibits the lawful disposal of solid waste or the legitimate feeding of domestic animals, livestock, or birds. The prohibition against taking bears with the use and aid of bait shall not apply to the release of dogs in the vicinity of any food source that is not a processed food product as defined herein. Violation of this subsection constitutes a ~~Class 2 misdemeanor.~~Class 2 misdemeanor, punishable by a fine of not less than two hundred fifty dollars ($250.00).

(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.~~Class 2 misdemeanor, punishable by a fine of not less than two hundred fifty dollars ($250.00). The acts of removal from a trap and of transporting the swine after removal shall constitute separate offenses."

SECTION 8. This act becomes effective December 1, 2013, and applies to offenses committed on or after that date.

SENATE BILL 636:
Wildlife Resources Comm. Penalty Changes

2013-2014 General Assembly

Committee:	Senate Ref to Agriculture/Environment/Natural Resources. If fav, re-ref to Judiciary II	**Date:**	May 7, 2013
Introduced by:	Sen. Newton	**Prepared by:**	Jennifer McGinnis Committee Counsel
Analysis of:	First Edition		

SUMMARY: Senate Bill 636 would amend various penalties applicable to violations of boating safety and hunting laws that may be imposed by the Wildlife Resources Commission (WRC).

CURRENT LAW: Among other things, the WRC is charged with administration and enforcement of the Chapter governing boating safety and the Article governing regulation of wildlife under the General Statutes, and with adoption and enforcement of associated rules.

BACKGROUND: The changes to penalties included in Senate Bill 636 were requested by the WRC, reportedly in an effort to increase compliance with the State's boating and hunting laws.

BILL ANALYSIS: Senate Bill 636 would change the name of the WRC's "Vessel Committee" to the Boating Safety Committee" and amend various penalties applicable to violations of boating safety and hunting laws that may be imposed by the WRC, as follows[1]:

- Amend the following penalties applicable to boating safety violations, to change the:
  - Penalties associated with a violation of the WRC's "navigational rules," which was a Class 3 misdemeanor with a penalty not to exceed $100, to remove the $100 limit (retaining the Class 3 misdemeanor[2]) for a violation of the rule governing "navigational lighting."
  - Penalty associated with operation of a vessel while under the influence of an impairing substance or having an alcohol concentration beyond the legal limit, to specify that the violation is punishable by a fine not less than $250 (a violation remains a Class 2 misdemeanor[3] as provided under current law).
  - Violation associated with allowing a person under the age of 16 to operate a personal watercraft, to limit its applicability to a person who is the **lawful owner or a person having control** of a personal watercraft who **knowingly** allows operation of the watercraft by an underage person.
  - Penalty associated with violation of boating safety education requirements to specify that a violation is punishable by a fine of $50 (a violation remains an infraction as provided under current law, but there is no specific fine amount provided).

[1] Additional detail on violations, and current and proposed penalties, is attached to this summary in a document prepared by staff of WRC.

[2] The presumptive range of punishment for a Class 3 misdemeanor when there are no prior convictions is 1 to 10 days of community punishment.

[3] The presumptive range of punishment for a Class 2 misdemeanor when there are no prior convictions is 1 to 30 days of community punishment.

- Penalty associated with rules adopted by the WRC under the Boating and Water Safety Chapter of the General Statutes from a Class 3 misdemeanor with a fine not to exceed $250, to an infraction with a fine of $50 and provides that a person convicted of an infraction must not be assessed court costs (a violation of the statutes associated with the Boating and Safety Act remains a Class 3 misdemeanor as provided under current law).

- Amend the following penalties applicable to violations associated with regulation of wildlife, to change the:
  - Penalty associated with the unlawful sale, possession for sale, or purchase of wildlife to specify that the violation is punishable by a fine of not less than $250 (a violation remains a Class 2 misdemeanor as provided under current law, but there is no specific fine amount provided).
  - Penalty associated with the unlawful sale, possession for sale, or purchase of deer or wild turkey to specify that the violation is punishable by a fine of not less than $500 (a violation remains a Class 2 misdemeanor as provided under current law, but the minimum amount of the current fine is $250).
  - Penalty associated with the unlawful taking, possession, or transportation of deer to specify that the violation is punishable by a fine of not less than $250 (a violation remains a Class 3 misdemeanor as provided under current law, but the minimum amount of the current fine is $100).
  - Penalty associated with the unlawful taking of deer between a half hour after sunset and a half hour before sunrise with the aid of an artificial light to specify that the violation is punishable by a fine of not less than $500 (a violation remains a Class 2 misdemeanor as provided under current law, but the minimum amount of the current fine is $250).
  - Penalty associated with various prohibitions on the taking, permit, or tagging rules pertaining to migratory game birds, to specify that violations are punishable by a fine of not less than $250 (a violation remains a Class 2 misdemeanor as provided under current law, but the minimum amount of the current fine is $100).
  - Penalty associated with the unlawful taking of black bears with the use and aid of bait, to specify that violations are punishable by a fine of not less than $250 (a violation remains a Class 2 misdemeanor as provided under current law, but no minimum penalty amount is provided).
  - Penalty associated with the unlawful removal of feral swine from a trap while the swine is still alive, or by transporting the swine after removal, to specify that violations are punishable by a fine of not less than $250 (a violation remains a Class 2 misdemeanor as provided under current law, but no minimum penalty amount is provided).

  The bill would also create two new, separate violations for the: (1) unlawful taking, possession, or transportation of elk from State-owned land, which would be punishable as a Class 1 misdemeanor[4] with a fine of not less than $2,500; and (2) unlawful taking, possession, or transportation of deer from properly posted land without written permission from the landowner or their agent, which would be punishable as a Class 2 misdemeanor with a fine of not less than $500.

EFFECTIVE DATE: The bill would become effective December 1, 2013, and apply to offenses committed on or after that date.

[4] The presumptive range of punishment for a Class 1 misdemeanor when there are no prior convictions is 1 to 45 days of community punishment

Proposed Penalty Changes to Wild[illegible] sources Commission Violations

Offense	Statute/Rule Citation	Current Classification	Fine	Court Costs	Proposed Classification	Fine	Court Costs
Registration and Numbering							
Operate without requ. Numbers	GS 75A-4(1)	Class 3 GS 75A-18, fine not to exceed $250	$35.00	$180.00	Infraction	$50.00	none
Operate numbers not in full force and effect	GS 75A-4(2)	Class 3 GS 75A-18, fine not to exceed $250	$35.00	$180.00	Infraction	$50.00	none
Operate numbers not displayed	GS 75A-4(3)	Class 3 GS 75A-18, fine not to exceed $250	$35.00	$180.00	Infraction	$50.00	none
Operate no validation decal or decal improp	GS 75A-5(a)	Class 3 GS 75A-18, fine not to exceed $250	$35.00	$180.00	Infraction	$50.00	none
Numbers not displayed properly, illegible etc.	15A NCAC 10F .0106(a)	Class 3 GS 75A-18, fine not to exceed $250	$35.00	$180.00	Infraction	$50.00	none
Operate without registration card on board	GS 75A-5(a)	Class 3 GS 75A-18, fine not to exceed $250	$35.00	$180.00	Infraction	$50.00	none
Operate out of state registration in excess of 90 days in NC waters/fail to register.	GS 75A-5(b)	Class 3 GS 75A-18, fine not to exceed $250	$35.00	$180.00	Infraction	$50.00	none
Fail to notify WRC of transfer of interest	GS 75A-5(i)	Class 3 GS 75A-18, fine not to exceed $250	$35.00	$180.00	Infraction	$50.00	none
Fail to notify WRC of destruction of vessel	GS 75A-5(i1)	Class 3 GS 75A-18, fine not to exceed $250	$35.00	$180.00	Infraction	$50.00	none
Fail to notify WRC of change of address	GS 75A-5(j)	Class 3 GS 75A-18, fine not to exceed $250	$35.00	$180.00	Infraction	$50.00	none
Display number other than reg.number	GS 75A-5(k)	Class 3 GS 75A-18, fine not to exceed $250	$35.00	$180.00	Infraction	$50.00	none
Equipment Offenses/Operation Offenses							
Operate vessel 10hp or less without at least one PFD (Sailboards ,racing shells, racing canoes, racing kayaks exempt)	GS 75A-6(n)	Class 3 GS 75A-18, fine not to exceed $250	$35.00	$180.00	Infraction	$50.00	none
Operate vessel while under the influence of an impairing substance or an alcohol concentration of 0.08	GS 75A-10(b1)	Class 2 as defined GS 75A-10 (b3)	structured sentence	$180.00	Remain Class 2, increase $250 for OWI. in fine for OWI		$180.00
Operating vessel or manipulating water skis, etc in reckless manner	GS 75A-10(a)&(b)	Class 2 as defined GS 75A-10 (b3)	structured sentence	$180.00	No Change	No Change	No Change
Requirements for personal flotation devices	15A NCAC 10F .0201(b)	Class 3 GS 75A-18, fine not to exceed $250	$35.00	$180.00	Infraction	$50.00	none
Operate a vessel at greater than no-wake speed in a designated and marked no wake zone	15 NCAC 10F .0301-.0376	Class 3 GS 75A-18, fine not to exceed $250	$35.00	$180.00	Infraction	$50.00	none
Operate a vessel of 10hp or more without meeting the boating safety education requirements	GS 75A-16.2	Class 3 GS 75A-18, fine not to exceed $250	none	$180.00	Infraction	$50.00	none
Operate vessel which was not equipped with fire extiquishers	15A NCAC 10F .0201(c)	Class 3 GS 75A-18, fine not to exceed $250	$35.00	$180.00	Infraction	$50.00	none
Operate vessel which was not equipped with sound devices	15A NCAC 10F .0201(f)	Class 3 GS 75A-18, fine not to exceed $250	$35.00	$180.00	Infraction	$50.00	none

Prepared by Chis Dillon and Major Huebner, NC WRC

Proposed Penalty Changes to Wildlife Resources Commission Violations

Offense	Statute/Rule Citation	Current Classification	Fine	Court Costs	Proposed Classification	Fine	Court Costs
Personal Watercraft							
Operate PWC at greater than No Wake speed within 100 ft. of anchored moored vessel,dock, pier, swim float, etc...etc.	GS 75A-13.3(a1)	Class 3 GS 75A-18, fine not to exceed $250	$35.00	$180.00	Infraction	$50.00	none
Allow to operate PWC under age 14 or in violation of boater safety requirement	GS 75A-13.3(b1)	Infraction	none	$180.00	Remain infraction, clarify statute	$50.00	none
Operate/Allow to operate PWC while any person riding or being towed by PWC not wearing a PFD or operator not secured to lanyard cut off switch.	75A-13.3(d)(1)&(2)	Class 3 GS 75A-18, fine not to exceed $250	$35.00	$180.00	Infraction	$50.00	none
Operate a PWC while towing another person and total number of persons exceed the carrying capacity. Or Operate a PWC while towing another person and no rear view mirror or observer	GS 75A-13.3(d1)(1)&(2)	Class 3 GS 75A-18, fine not to exceed $250	$35.00	$180.00	Infraction	$50.00	none
Navigation Lights							
Operate vessel without white all around light to display from sunset to sunrise	GS 75A-6(n) and 15A NCAC 10F .0201(g)	Class 3 GS 75A-6.1, fine not to exceed $100	$35.00	$180.00	No Change	No Change	No Change
Hunting, Trapping and Importation							
Unlawfully sells, possesses for sale, or buys any wildlife	GS 113-294(a)	Class 2 misdemeanor	No Minimum	$180.00	Remain Class 2, increase fine	Not less than $250	$180.00
Unlawfully sells, possesses for sale, or buys any deer or wild turkey	GS 113-294(b)	Class 2 misdemeanor, fine of not less than $250	Minimum $250	$180.00	Remain Class 2, increase fine	Not less than $500	$180.00
Unlawfully takes, possesses, or transports any deer	GS 113-294(d)	Class 3 misdemeanor, fine of not less than $100	Minimum $100	$180.00	Remain Class 3, increase fine	Not less than $250	$180.00
Unlawfully takes, possesses, or transports any deer from posted land without written permission	GS 113-294(d1)	N/A	N/A	N/A	Class 2 misdemenaor	Not less than $500	$180.00
Unlawfully takes deer between a half hour after sunset and a half hour before sunrise with the aid of an artifical light	GS 113-294(e)	Class 2 misdemeanor, fine of not less than $250	Minimum $250	$180.00	Remain Class 2, increase fine	Not less than $500	$180.00
Unlawfully takes migratory game bird	GS 113-294(m)	Class 2 misdemeanor, fine of not less than $100	Minimum $100	$180.00	Remain Class 2, increase fine	Not less than $250	$180.00
Unlawful to place processed food products as bait in any area of the State where the WRC has set an open season for taking black bears	GS 113-294(r)	Class 2 misdemeanor	No Minimum	$180.00	Remain Class 2, increase fine	Not less than $250	$180.00
Unlawfully removing feral swine from a trap while the swine is still alive or by transporting such swine after that removal	GS 113-294(s)	Class 2 misdemeanor	No Minimum	$180.00	Remain Class 2, increase fine	Not less than $250	$180.00

Prepared by Chis Dillon and M ıner, NC WRC

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2013

Legislative Incarceration Fiscal Note

(G.S. 120-36.7)

BILL NUMBER: Senate Bill 636 (First Edition)

SHORT TITLE: Wildlife Resources Comm. Penalty Changes.

SPONSOR(S): Senator Newton

FISCAL IMPACT
($ in millions)

☑ Yes ☐ No ☑ No Estimate Available

	FY 2013-14	FY 2014-15	FY 2015-16	FY 2016-17	FY 2017-18
State Impact					
General Fund Revenues:					
General Fund Expenditures:					
NET STATE IMPACT	**Likely budget cost. See Assumptions & Methodology section for additional details.**				

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED:
Administrative Office of the Courts, Indigent Defense Services, Department of Public Safety

EFFECTIVE DATE: December 1, 2013 and applies to offenses committed on or after that date

TECHNICAL CONSIDERATIONS:
None

FISCAL IMPACT SUMMARY:

The proposed bill may have a fiscal impact to address new chargeable offenses being enforced, adjudicated and having penalties applied to those convicted of the offenses. However, given there is no historical data on these new offenses, or similar offenses to use as a proxy for predicting the total number of new offenses, the Fiscal Research Division cannot reasonably estimate the total additional costs that may be incurred. The following costs may be incurred for every one person charged and convicted of these crimes:

- Administrative Office of the Courts: $88-$165 per disposition
- Indigent Defense Services: Savings of $166 to a cost of $0 in district court
  Savings of $321 to a cost of $0 in superior court without a trial
  Savings of $847 to a cost of $0 in superior court with a trial
- Prison Section: No estimated impact
- Community Corrections: Minimum of $1,416-$1,960

In addition, this bill would generate an additional $57,100 for the Civil Penalty and Forfeiture Fund annually.

Please see the Assumptions and Methodology section for additional information.

BILL SUMMARY:

Sections 2 through 7 of this bill make numerous changes to existing penalties for violating specific wildlife laws and create some new offenses.

Section 2 amends existing G.S. 75A-6.1(c) to state that violation of any rule governing navigational lighting adopted by the commission shall constitute a Class 3 misdemeanor. Currently it is a Class 3 misdemeanor punishable only by a fine not to exceed $100 if an individual violates the navigational rules specified in subsection (a).

Section 3 amends existing G.S. 75A-10, Operating vessel or manipulating water skis etc.; in reckless manner; operating, etc.; while intoxicated, etc.: depositing or discharging litter, etc. by changing the penalty for subsection (b1) – no person shall operate any vessel while underway on the waters of this State while under the influence of any impairing substance, or after having consumed sufficient alcohol that the person has, at any relevant time after the boating, an alcohol concentration of .08 or more – from just a Class 2 misdemeanor offense to a Class 2 misdemeanor offense plus a fine of not less than $250.

Section 5 amends existing G.S. 75A-16.2, Boating safety education required, by changing subsection (b)(11) to require that the person was born before January 1, 1988 (was that he or she was at least 26 years of age). Subsection (c), which states that a person who violates a provision of this section or a rule adopted pursuant to this section is guilty of an infraction and the court shall access court costs for each violation but shall not assess a penalty. This bill amends subsection (c) to require a $50 fine.

Section 6 of the bill decriminalizes some Class 3 misdemeanors via an amendment to G.S. 75A-18, Penalties. Currently, G.S. 75A-18(a) states that a person who violates a provision of Article 1, the Boating Safety Act, of Chapter 75A of the General Statues or a rule adopted under the authority of Chapter 75A shall be guilty of a Class 3 misdemeanor and shall only be subject to a fine not to exceed $250 for each violation. The proposed amendment decriminalizes some of the Class 3 misdemeanors by striking the language "or who violates a rule adopted under authority of this Chapter" from G.S. 75A-18(a) and adding subsection (f) to provide that a person who violates a rule adopted by the Wildlife Resources Commission is guilty of an infraction and shall pay a fine of $50 and shall not be assessed court costs. According to the Wildlife Resources Commission, the rules for which a violation would be made an infraction by this bill include:

- 15A NCAC 10F .0106(a), Numbers not displayed properly, illegible, etc.
- 15A NCAC 10F .0201(b), Requirements for personal flotation devices
- 15A NCAC 10F .0301-.0376, Operate a vessel at greater than no-wake speed in a designated and marked no wake zone
- 15A NCAC 10F .0201(c), Operate vessel which was not equipped with fire extinguishers
- 15A NCAC 10F .0201(f), Operate vessel which was not equipped with sound devices

Section 7 of this bill creates two new misdemeanor offenses in Chapter 113, Conservation and Development, of the General Statutes, by amending G.S. 113-294, Specific violations. The bill creates a new subsection (c3) which provides that it shall be a Class 1 misdemeanor, punishable by a fine of not less than $2,500 in addition to such other punishment prescribed for the offense, for any person to unlawfully take, possess, or transport any elk from State-owned land. The bill also creates a Class 2 misdemeanor with the addition of subsection (d1) to G.S. 113-294, which states that any person who unlawfully, without written permission of the landowner, lessee, or agent of the landowner or lessee, takes, possesses, or transports any deer from land that has been posted in accordance with G.S. 14-159.7.

This bill has an effective date of December 1, 2013, and applies to offenses committed on or after that date.

ASSUMPTIONS AND METHODOLOGY:

General

The Sentencing and Policy Advisory Commission prepares prison population projections for each bill containing a criminal penalty. The Commission assumes for such bills that expanding existing or creating new criminal offenses produces no deterrent or incapacitative effect on crime. Therefore, the Fiscal Research Division does not assume deterrent effects for any criminal penalty bill.

S.L. 2011-192 (H.B. 642), the Justice Reinvestment Act (JRA), made changes to North Carolina's court system, corrections system (both to prisons and probation), and to post-release supervision (PRS). The Act also created a statewide confinement program for housing misdemeanants with sentences of less than 180 days in county jails. Previously, county jails were only required to house misdemeanants with sentences of 90 days or less. All F-I felons are now subject to nine months of PRS, and PRS for all B1-E felonies has been increased from nine months to twelve months. Due to the lack of historical data about JRA implementation, it is not possible to estimate the number of prison beds that may be needed as a result of revocations.

Judicial Branch

The Administrative Office of the Courts provides Fiscal Research with a fiscal impact analysis for most criminal penalty bills. For such bills, fiscal impact is typically based on the assumption that court time will increase due to anticipated increases in trials and corresponding increases in workload for judges, clerks, and prosecutors. This increased court time is also expected to result in greater expenditures for jury fees and indigent defense.

Section 2 of this bill amends existing G.S. 75A-6.1(c). This change expands the pool of potential types of offenses punishable under this statute, which may result in an increase in the number of charges for this offense, and eliminates the provision that requires that these violations be punishable only by a fine. The Administrative Office of the Courts currently does not have a specific offense code for the Class 3 misdemeanor offense. The lack of an AOC offense code is some indication that this offense is infrequently charged and/or infrequently results in convictions.

Section 3 of this bill amends existing G.S. 75A-10. In FY 2011-12, 257 defendants were charged with operating a vessel or manipulating water skis in a reckless manner or depositing or discharging litter. The addition of a fine of not less than $250 may result in a more rigorous defense and fewer pleas in these types of cases. Since trials are a more costly and time intensive manner of disposition than pleas, any increase in the number of trials will impact the workload of the court system. The number of additional trials and corresponding costs cannot be estimated.

Section 5 of this bill amends existing G.S.75A-16.2. AOC data shows that 47 individuals were cited for this infraction in FY 2011-12. Court costs for infractions are currently $173; by only requiring the payment of a $50 fine instead of court costs there may be fewer instances of respondents contesting the citation and possibly fewer dismissals. The workload requirements for court staff to process these cases will remain essentially the same. By removing the requirement to pay court costs, there will be some decline in General Fund revenue, as well as to the other funds that receive a portion of these costs (detail in table below).

New District Court Criminal Filings		
Fee:	Revenue to:	Amount per case:
General Court of Justice	General Fund	127.05
	State Bar*	2.45
Phone	Court System	4.00
Facilities	Local Government*	12.00
Misdemeanant Confinement Fund Fee	Misdemeanant Confinement Fund	18.00
LEO Retirement/Insurance		7.50
LEO Training and Certification Fee		2.00
Collection Assistance Fee	General Fund*	*
TOTAL TO GENERAL FUND		**$173.00**

*Ten percent (10%) of the State Bar and Facilities fee is remitted to the General Fund as a collection assistance fee.
Note: plus a $10.00 Chapter 20 Fee for conviction of any Chapter 20 offense; plus a $2.00 DNA fee for criminal offenses only (does not apply to infractions); plus a $5.00 service fee for each arrest or service of criminal process, including citations and subpoenas.

Section 6 amends existing G.S. 75A-18, so that only violations of the provisions of this Article are Class 3 misdemeanor offenses subject to a fine not to exceed $250. New subsection (f) is added to provide that a person who violates a rule adopted by the Commission is guilty of an infraction and shall pay a fine of $50 and not be assessed court costs. AOC does not have offense codes for these violations, which may be some indication that these offenses are infrequently charged. On average, the monetary value of court personnel time to process these offenses at their current level as Class 3 misdemeanors is estimated at $31. The average cost associated with disposing of infractions is also $31, so there will be no measurable cost savings to the court system from this change.

Court costs for infractions are currently $180; instead of requiring the payment of court costs and a fine up to $250 (as is current law), this bill would require the payment of a $50 fine and no court costs. The result may be fewer instances of respondents contesting the citation and fewer dismissals. As is the case with the changes proposed in Section 5 above, by removing the requirement to pay court costs there will be some decline in General Fund revenue as well as to other funds that receive a portion of these costs (detail in table above).

Section 7 amends G.S. 113-294 by adding a fine or increasing the allowable fine for certain offenses listed in subsections (a), (b), (d), (e), (m), (r), and (s). Subsection (d) is a class 3 misdemeanor offense; the others are Class 2 misdemeanors. The addition of a fine or the increase of an existing fine may result in a more rigorous defense and fewer pleas in these types of cases. Since trials are a more costly and time intensive manner of disposition than pleas, any increase in the number of trials will impact the workload of the court system. The number of additional trials and corresponding costs cannot be estimated.

New subsection (c)(3) creates the offense of unlawfully taking, possessing, or transporting an elk from State-owned land, which shall be a Class 1 misdemeanor punishable by a fine of not less than $2,500. New subsection (d1) creates the offense of unlawfully taking, possessing or transporting any deer from land that has been posted in accordance with the provisions of G.S. 14-159.7 without written permission of the landowner or lessee. This is a Class 2 misdemeanor punishable by a fine of not less than $500.

Since these are new charges, it is not known how many individuals will be charged. For every additional person charged with a Class 1 misdemeanor, AOC estimates the average cost to the court would be $165.

For every additional person charged with a Class 2 misdemeanor, AOC estimates the average cost to the court would be $88.

The Office of Indigent Defense Services (IDS) provides Fiscal Research with a fiscal impact analysis for criminal penalty bills that will result in greater expenditures for indigent defense. IDS's private assigned counsel costs do not distinguish between classes of misdemeanors, so IDS is unable to quantify the impact on PAC costs from the second two changes in the chart below. Reclassifying an existing misdemeanor as an infraction would generate savings for IDS because there is no right to appointed counsel for an infraction. The following chart represents the changes in IDS' per case costs for each indigent case disposed in district court.

Current Statute	Proposed Statute	Current Class	Proposed Class	Per Case Cost Change for PAC
75A-18(a)	75A-18(f)	Class 3 MD	Infraction	-$166
113-294(a)	113-294(c3)	Class 2 MD	Class 1 MD	Not quantifiable
113-294(d)	113-294(d1)	Class 3 MD	Class 2 MD	Not quantifiable

The following chart represents the changes in IDS' per case costs for each indigent case disposed in superior court.

Current Statute	Proposed Statute	Current Class	Proposed Class	Per Case Cost Change for PAC
75A-18(a)	75A-18(f)	Class 3 MD	Infraction	-$321 non-trial -$847 trial
113-294(a)	113-294(c3)	Class 2 MD	Class 1 MD	Not quantifiable
113-294(d)	113-294(d1)	Class 3 MD	Class 2 MD	Not quantifiable

Civil Penalty and Forfeiture Fund

The Civil Penalty and Forfeiture Fund (CPFF) is a significant source of revenue for North Carolina's public schools. Fines and forfeitures are the proceeds of all civil penalties, civil forfeitures, and civil fines that are collected by State agencies. This bill would increase the fines for several misdemeanors and infractions, which would go directly to the CPFF.

G.S. 113-294, Specific violations, contains 19 misdemeanor offenses (subsections (a) through (s)). Four of the offenses have AOC Offense Codes. There are no offense codes for G.S. 75A-6.1 or G.S. 75A-18, indicating that these may be infrequently charged. In addition there also may be convictions that are not being counted. The Sentencing Commission, which provided this data, counts convictions where this offense is the most serious offense; in other words, if a person has a conviction for one of these misdemeanors and for a felony, they will show up as a conviction for the felony and not for the misdemeanor. The following chart shows the revenue generated for the Civil Penalty and Forfeiture Fund due to changes in this bill

Current Statute	Offense	Current Fine	Proposed Fine	Number of Convictions in FY 2011-12	Total to Civil Penalty and Forfeiture Fund
G.S. 14-3.1	Boating safety education	$0	$50	47	$2,350
G.S. 75A-10	Operating a vessel while impaired	$0	$250	105	$26,250
G.S. 113-294(a)	Selling/buying wildlife	$0	$250	1	$250
G.S. 113-294(d)	Possessed deer taken closed season	$100	$250	18	$2,700
G.S. 113-294(e)	Spotlight deer/night deer hunt	$250	$500	77	$19,250
G.S. 113-295(m)	Unlawfully take migratory bird	$100	$250	42	$6,300
				Total:	**$57,100**

Department of Public Safety –Prison Section

This bill decriminalizes some misdemeanors and creates two new Class 2 misdemeanors. The North Carolina Sentencing and Policy Advisory Commission expect no impact on the prison population since offenders who receive active sentences will serve them in a local jail. The Department of Public Safety does not anticipate an impact on prison custody projections. It is also not known how many offenders might be convicted and sentenced to supervision in the community under the proposed bill.

Department of Public Safety – Community Correction Section

Offenders given intermediate or community sanctions requiring supervision are supervised by the Community Corrections Section (CCS); CCS also oversees community service.[1] General supervision of intermediate and community offenders by a probation officer costs $3.63 per offender, per day; no cost is assumed for those receiving unsupervised probation, or who are only ordered to pay fines, fees, or restitution. Total costs are based on average supervision length and the percentage of offenders (per offense class) sentenced to intermediate sanctions and supervised probations.

Section 2 of this bill expands the pool of potential types of offenses punishable under this statute. In FY 2011-12, 30% of offenders convicted of a Class 3 misdemeanor were sentenced to active sentences; none received intermediate sentences; and 70% received community punishments. Only felony offenses result in Post Release Supervision (PRS), therefore there is no additional cost for a misdemeanant sentenced to an active sentence. The average length of community punishment imposed for this offense class was 12 months. The average cost to community corrections for any individual convicted of a Class 1 misdemeanor who receives community supervision is $1,307 (360 days times $3.63 per day).

Section 6 of this bill reclassifies violations of G.S. 75A-18(a) from Class 3 misdemeanors to infractions. Currently, violations of G.S. 75A-18(a) are punishable by a fine only. Therefore reclassifying these violations as infractions has no impact on community corrections.

Section 7 of this bill creates a Class 1 misdemeanor and a Class 2 misdemeanor with the additions of subsections (c) and (d1) respectively to G.S. 113-294. Since the proposed section creates a new offense, the Sentencing Commission does not have any historical data from which to estimate the impact of this section on community corrections. In FY 2011-12, 26% of offenders convicted of a Class 1 misdemeanor were sentenced to active sentences for an average length of 39 days; 2% received intermediate sentences; and

[1] CCS incurs costs of $1.29 per day for each offender sentenced to the Community Service Work Program.

72% received community punishments. Only felony offenses result in Post Release Supervision (PRS), therefore there is no additional cost for a misdemeanant sentenced to an active sentence. The average length of intermediate and community punishment imposed for this offense class was 18 and 15 months, respectively. The average cost to community corrections for any individual convicted of a Class 1 misdemeanor who receives an intermediate sentence is $1,960 (540 days times $3.63 per day). Of those convicted to a community sentence, around 40% received supervised sentences. The average cost to community corrections for any individual convicted of a Class 1 misdemeanor who receives community supervision is $1,634 (450 days times $3.63 per day).

In FY 2011-12, 29% of offenders convicted of a Class 2 misdemeanor were sentenced to active sentences for an average length of 39 days; 1% received intermediate sentences; and 70% received community punishments. Only felony offenses result in Post Release Supervision (PRS), therefore there is no additional cost for a misdemeanant sentenced to an active sentence. The average length of intermediate and community punishment imposed for this offense class was 16 and 13 months, respectively. The average cost to community corrections for any individual convicted of a Class 2 misdemeanor who receives an intermediate sentence is $1,742 (480 days times $3.63 per day). The average cost to community corrections for any individual convicted of a Class 2 misdemeanor who receives community supervision is $1,416 (390 days times $3.63 per day).

SOURCES OF DATA: Department of Public Safety; Administrative Office of the Courts; North Carolina Sentencing and Policy Advisory Commission; Office of Indigent Defense Services.

TECHNICAL CONSIDERATIONS: None

FISCAL RESEARCH DIVISION: (919) 733-4910

PREPARED BY:

Maggie Morrissey

Kristine Leggett

APPROVED BY:

Mark Trogdon, Director
Fiscal Research Division

DATE: May 6, 2013



Signed Copy Located in the NCGA Principal Clerk's Offices

HOUSE BILL 484*
Committee Substitute Favorable 4/11/13
Committee Substitute #2 Favorable 4/18/13
Committee Substitute #3 Favorable 4/30/13
Fifth Edition Engrossed 5/1/13

Short Title: Permitting of Wind Energy Facilities. (Public)

Sponsors:

Referred to:

April 1, 2013

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH A PERMITTING PROGRAM FOR THE SITING AND OPERATION OF WIND ENERGY FACILITIES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 62-2(a) reads as rewritten:

"(a) Upon investigation, it has been determined that the rates, services and operations of public utilities as defined herein, are affected with the public interest and that the availability of an adequate and reliable supply of electric power and natural gas to the people, economy and government of North Carolina is a matter of public policy. It is hereby declared to be the policy of the State of North Carolina:

...

(10) To promote the development of renewable energy and energy efficiency through the implementation of a Renewable Energy and Energy Efficiency Portfolio Standard (REPS) that will do all of the following:

a. Diversify the resources used to reliably meet the energy needs of consumers in the State.

b. Provide greater energy security through the use of indigenous energy resources available within the ~~State.~~State in a manner compatible with the efficient use of resources and the State's military and economic interests.

c. Encourage private investment in renewable energy and energy efficiency.

d. Provide improved air quality and other benefits to energy consumers and citizens of the State."

SECTION 2. Chapter 143 of the General Statutes is amended by adding a new Article to read:

"Article 21C.

"Permitting of Wind Energy Facilities.

"**§ 143-215.115. Definitions.**

In addition to the definitions set forth in G.S. 143-212, the following definitions apply to this Article:

(1) "Major military installation" means Fort Bragg, Pope Army Airfield, Marine Corps Base Camp Lejeune, New River Marine Corps Air Station, Cherry

Point Marine Corps Air Station, Military Ocean Terminal at Sunny Point, the United States Coast Guard Air Station at Elizabeth City, Naval Support Activity Northwest, Air Route Surveillance Radar (ARSR-4) at Fort Fisher, and Seymour Johnson Air Force Base, in its own right and as the responsible entity for the Dare County Bombing Range, and any facility located within the State that is subject to the installations' oversight and control.

(2) "Wind energy facility" means the turbines, accessory buildings, transmission facilities, and any other equipment necessary for the operation of the facility that cumulatively, with any other wind energy facility whose turbines are located within one-half mile of one another, have a rated capacity of one megawatt or more of energy.

(3) "Wind energy facility expansion" means any activity that (i) adds or substantially modifies turbines or transmission facilities, including increasing the height of such equipment, over that which was initially permitted or (ii) increases the footprint of the wind energy facility over that which was initially permitted.

"**§ 143-215.116. Permit to site wind energy facilities.**

No person shall undertake construction, operation, or expansion activities associated with a wind energy facility in this State without first obtaining a permit from the Department.

"**§ 143-215.117. Permit preapplication site evaluation meeting; notice; preapplication package requirements.**

(a) Permit Preapplication Site Evaluation Meeting. – No less than 180 days prior to filing an application for a permit to construct, operate, or expand a wind energy facility, a person shall request a preapplication site evaluation meeting to be held between the applicant and the Department. The preapplication site evaluation meeting shall be held no less than 120 days prior to filing an application for a permit to construct, operate, or expand a wind energy facility and may be used by the participants to:

(1) Conduct a preliminary evaluation of the site or sites for the proposed wind energy facility or wind energy facility expansion. The preliminary evaluation of the proposed wind energy facility or proposed wind energy facility expansion shall determine if the site or sites:

a. Pose serious risk to civil air navigation or military air navigation routes, air traffic control areas, military training routes, special-use air space, radar, or other potentially affected military operations.

b. Pose serious risk to natural resources and uses, including to species of concern or their habitats.

(2) Identify areas where proposed construction or expansion activities pose minimal risk of interference with civil air navigation or military air navigation routes, air traffic control areas, military training routes, special-use air space, radar, or other potentially affected military operations.

(3) Identify areas where proposed construction or expansion activities pose minimal risk to natural resources and uses, including avian, bat, and endangered and threatened species.

(b) Permit Preapplication Package. – No less than 45 days prior to the date of the permit preapplication site evaluation meeting scheduled in accordance with subsection (a) of this section, the applicant for a wind energy facility or wind energy facility expansion shall submit a preapplication package to the Department. To the extent that any documents contain trade secrets or confidential business information, those portions of the documents shall not be subject to disclosure under the North Carolina Public Records Act. The preapplication package shall include all of the following:

(1) A narrative description of the proposed wind energy facility or proposed wind energy facility expansion, including (i) the approximate number, type, and height of wind turbines to be constructed; (ii) the total planned capacity of the facility; and (iii) a description of any ancillary facilities.

(2) A map showing the approximate location of the proposed wind energy facility or proposed wind energy facility expansion.

(3) A description of any known potential impacts of the proposed wind energy project location on civil air navigation or military air navigation routes, air traffic control areas, military training routes, special-use air space, radar, or other potentially affected military operations. The applicant may use data made available by the Department pursuant to G.S. 143-215.123 to satisfy this requirement.

(4) A description of species of concern, habitats that support species of concern, critical areas of wildlife congregation, and protected lands, as those species, habitats, and critical areas are referenced in the March 23, 2012, United States Fish and Wildlife Service Land-Based Wind Energy Guidelines (OMB Control No. 1018-0148) that are or believed to be present at the site of the proposed wind energy facility or proposed wind energy facility expansion. The applicant may use data made available by the North Carolina Wildlife Resources Commission, the Department, or other governmental agency to satisfy this requirement.

(5) A list of the federal, State, and local agencies from which approvals will be obtained and the name of those approvals required in order to authorize the construction, operation, or expansion of the proposed wind energy facility.

(6) A schedule showing the anticipated dates for commencement of construction, testing, and commercial operation of the proposed wind energy facility or proposed wind energy facility expansion.

(c) Notice to Interested Parties. – No less than 21 days prior to the date of the permit preapplication site evaluation meeting scheduled in accordance with subsection (a) of this section, the Department shall provide written notice of the meeting to the United States Army Corps of Engineers, the United States Fish and Wildlife Service, the North Carolina Wildlife Resources Commission, the commanding military officer or the commanding military officer's designee of any potentially affected major military installation, and any other party that the Department deems relevant. The notice shall include an invitation to participate in the permit preapplication site evaluation meeting.

"**§ 143-215.118. Permit application scoping meeting and notice.**

(a) Scoping Meeting. – No less than 60 days prior to filing an application for a permit for a proposed wind energy facility or proposed wind energy facility expansion, the applicant shall request the scheduling of a scoping meeting between the applicant and the Department. The scoping meeting shall be held no less than 30 days prior to filing an application for a permit for a proposed wind energy facility or proposed wind energy facility expansion. The applicant and the Department shall review the permit for the proposed wind energy facility or proposed facility expansion at the scoping meeting.

(b) Notice of Scoping Meeting. – No less than 21 days prior to the scheduled permit application scoping meeting with an applicant, the Department shall provide written notice of the meeting to the commanding military officer of each major military installation, or the commanding military officer's designee, the Federal Aviation Administration, the North Carolina Wildlife Resources Commission, the United States Fish and Wildlife Service, the board of commissioners for each county and the governing body of each municipality in which the wind energy facility or proposed wind energy facility expansion is proposed to be located,

and those local governments with jurisdictions over areas in which a major military installation is located. The notice shall include an invitation to participate in the scoping meeting.

"**§ 143-215.119. Permit application requirements; fees; notice of receipt of completed permit; public hearing; public comment.**

(a) Permit Requirements. – A person applying for a permit for a proposed wind energy facility or proposed wind energy facility expansion shall include all of the following in an application for the permit:

(1) A narrative description of the proposed wind energy facility or proposed wind energy facility expansion.

(2) A map showing the location of the proposed wind energy facility or proposed wind energy facility expansion that identifies the specific location of each turbine.

(3) A copy of a deed, purchase agreement, lease agreement, or other legal instrument demonstrating the right to construct, expand, or otherwise develop a wind energy facility on the property.

(4) Identification by name and address of property owners adjacent to the proposed wind energy facility or proposed wind energy facility expansion. The applicant shall notify every property owner identified pursuant to this subdivision by registered or certified mail or by any means authorized by G.S. 1A-1, Rule 4, in a form approved by the Department. The notice shall include all of the following:

a. The location of the proposed wind energy facility or proposed wind energy facility expansion and the specific location of each turbine proposed to be located within one-half mile of the boundary of the adjacent property owner.

b. A description of the proposed wind energy facility or proposed wind energy facility expansion.

(5) A description of civil air navigation or military air navigation routes, air traffic control areas, military training routes, special-use air space, radar, or other military operations that may be affected by the construction or operation of the proposed wind energy facility or proposed wind energy facility expansion.

(6) Documentation that addresses any potential adverse impact on military operations and readiness as identified by the Department of Defense Clearinghouse pursuant to Part 211 of Title 32 Code of Federal Regulations (July 1, 2012 edition) and any mitigation actions agreed to by the applicant.

(7) Documentation that the applicant has either (i) submitted Federal Aviation Administration Form 7460-1 for the turbines associated with the proposed wind energy facility or proposed wind energy facility expansion or (ii) initiated an informal review by the Department of Defense Siting Clearinghouse of the proposed wind energy facility or proposed wind energy facility expansion. If the applicant has submitted Federal Aviation Administration Form 7460-1 in order to fulfill the requirements of this subdivision, the applicant shall provide any determination reached by the Federal Aviation Administration at the time the application is submitted to the Department. If the Federal Aviation Administration has not made a determination at the time the application is submitted to the Department, the application shall include a description of the status of the applicant's engagement with the Federal Aviation Administration and the Department of Defense Siting Clearinghouse.

(8) A study of the noise impacts of the turbines to be associated with the proposed wind energy facility or proposed wind energy facility expansion.

(9) A study on shadow flicker impacts of the turbines to be associated with the proposed wind energy facility or proposed wind energy facility expansion, unless the turbines will be located in a sound or in offshore waters.

(10) A study of the impact of the proposed wind energy facility or proposed wind energy facility expansion on natural resources and uses, including avian, bat, and endangered and threatened species.

(11) An explanation of how the proposed wind energy facility or proposed wind energy facility expansion would be consistent with the criteria in subsection (a) of G.S. 143-215.120.

(12) The application fee required by subsection (b) of this section.

(13) A plan regarding the action to be taken upon the decommissioning and removal of the wind energy facility. The plan shall include an estimate of the cost to decommission and remove the wind energy facility. The plan shall also include the anticipated life of the project, an estimate of the cost to decommission and remove the wind energy facility, a description of the manner in which the facility will be decommissioned, and a description of the expected condition of the site once the wind energy facility has been decommissioned and removed.

(14) Other data or information the Department may reasonably require.

(a1) Confidentiality of Trade Secrets and Business Information. – To the extent that any documents included in the permit application contain trade secrets or confidential business information, those portions of the documents shall not be subject to disclosure under the North Carolina Public Records Act.

(b) Fees. – An applicant for a permit for a proposed wind energy facility or proposed wind energy facility expansion under this section shall submit with the application required pursuant to subsection (a) of this section, an application fee of three thousand five hundred dollars ($3,500).

(c) Notice of Receipt of Complete Permit Application. – Within 10 days of receipt of a complete permit application for a proposed wind energy facility or proposed wind energy facility expansion submitted pursuant to subsection (a) of this section, the Department shall provide notice of the permit application to (i) the commanding military officer of all major military installations, (ii) the commanding military officer of any military installation located outside the State that is located within 50 nautical miles of the location of the proposed wind energy facility or proposed wind energy facility expansion, and (iii) the board of commissioners for each county and the governing body of each municipality in which the wind energy facility or wind energy facility expansion is proposed to be located. The notice shall include:

(1) A copy of the map showing the location of the proposed wind energy facility or proposed wind energy facility expansion that includes the specific locations of wind turbines.

(2) A written request to the commanding military officer of a major military installation or the commanding military officer's designee, for technical information related to any adverse impact on the installation's operations, training, or mission, including military air navigation routes, air traffic control areas, military training routes, special-use air space, radar or other military operations that may be affected.

(3) A written request for information related to potential adverse impacts of the proposed wind energy facility or proposed wind energy facility expansion on

local governments from the board of commissioners for each county and the governing body of each municipality.

(d) Provision of Permit Application to Affected Entities. – Except as provided by G.S. 143-215.124, within 10 days of receipt of a written request from the commanding military officer of any major military installation or the commanding military officer's designee, the board of commissioners for any county in which the site is proposed to be located or the governing body of any municipality in which the site is proposed to be located, the Department shall provide a copy of a permit application filed pursuant to subsection (a) of this section, in addition to any supplements, changes, or amendments to the permit application to the requesting commanding military officer or local government.

(e) Public Hearing and Comment. – The Department shall hold a public hearing in each county in which the wind energy facility or wind energy facility expansion is proposed to be located within 75 days of receipt of a completed permit application. The Department shall provide notice including the time and location of the public hearing in a newspaper of general circulation in each applicable county. The notice of public hearing shall be published for at least two consecutive weeks beginning no less than 45 days prior to the scheduled date of the hearing. The notice shall provide that any comments on the proposed wind energy facility or proposed wind energy facility expansion should be submitted to the Department by a specified date, not less than 15 days from the date of the newspaper publication of the notice or 15 days after distribution of the mailed notice, whichever is later. No less than 30 days prior to the scheduled public hearing, the Department shall provide written notice of the hearing to:

(1) The North Carolina Utilities Commission.

(2) The Office of the Attorney General of North Carolina.

(3) The commanding military officer of any potentially affected major military installation or the commanding military officer's designee.

(4) The board of commissioners for each county and the governing body of each municipality with jurisdictions over areas in which a potentially affected major military installation is located.

"**§ 143-215.120. Criteria for permit approval; time frame; permit conditions; other approvals required.**

(a) Permit Approval. – The Department shall approve an application for a permit for a proposed wind energy facility or proposed wind energy facility expansion unless the Department finds any one or more of the following:

(1) Construction or operation of the proposed wind energy facility or proposed wind energy facility expansion would be inconsistent with or violate rules adopted by the Department or any other provision of law.

(2) Construction or operation of the proposed wind energy facility or proposed wind energy facility expansion would encroach upon or would otherwise have a significant adverse impact on the mission, training, or operations of any major military installation or branch of military in North Carolina and result in a detriment to continued military presence in the State. In its evaluation, the Department may consider whether the proposed wind energy facility or proposed wind energy facility expansion would cause interference with air navigation routes, air traffic control areas, military training routes, or radar based on information submitted by the applicant pursuant to subdivisions (5) and (6) of subsection (a) of G.S. 143-215.119, and any information received by the Department pursuant to subdivision (2) of subsection (c) of G.S. 143-215.119.

(3) Construction or operation of the proposed wind energy facility or proposed wind energy facility expansion would result in significant adverse impacts to ecological systems, natural resources, cultural sites, recreation areas, or

historic sites of more than local significance; including national or State parks or forests, wilderness areas, historic sites, recreation areas, segments of the natural and scenic rivers system, wildlife refuges, preserves and management areas, areas that provide habitat for threatened or endangered species, primary nursery areas designated by the Marine Fisheries Commission and the Wildlife Resources Commission, and critical fisheries habitat identified pursuant to the Coastal Habitat Protection Plan.

(4) Construction or operation of the proposed wind energy facility or proposed wind energy facility expansion would have a significant adverse impact on fish or wildlife.

(5) Construction or operation of the proposed wind energy facility or proposed wind energy facility expansion would have a significant adverse impact on views from any State or national park, wilderness area, significant natural heritage area as compiled by the North Carolina Natural Heritage Program, or other public lands or private conservation lands designated or dedicated due to their high recreational values.

(6) Construction or operation of the proposed wind energy facility or proposed wind energy facility expansion would obstruct major navigation channels or create a significant obstacle to navigation in coastal waters, as determined by the United States Army Corps of Engineers and the United States Coast Guard.

(7) A permit for a proposed wind energy facility or proposed wind energy facility expansion would be denied under any other criteria set out in G.S. 113A-120.

(8) Construction of the proposed wind energy facility or proposed wind energy facility expansion would be prohibited under Article 14 of Chapter 113A of the General Statutes, the Mountain Ridge Protection Act of 1983.

(9) The applicant is not in compliance with all applicable federal, State, or local permit requirements, licenses, or approvals, including local zoning requirements.

(b) Permit Decision. – The Department shall make a final decision on a permit application within 90 days following receipt of a completed application, except that the Department shall not be required to make a final decision until the Department has received a written "Determination of No Hazard to Air Navigation" issued by the Federal Aviation Administration pursuant to Subpart D of Part 77 of Title 14 of the Code of Federal Regulations (January 1, 2012 edition). If the Department requests additional information following the receipt of a completed application, the Department shall make a final decision on a permit application within 30 days of receipt of the requested information. If the Department determines that an application for a wind energy facility or a wind energy facility expansion fails to meet the requirements for a permit under this section, the Department shall deny the application, and the application shall be returned to the applicant accompanied by a written statement of the reasons for the denial and any modifications to the permit application that would make the application acceptable. If the Department fails to act within the time period set forth in this subsection, the applicant may treat the failure to act as a denial of the permit and may challenge the denial as provided under Chapter 150B of the General Statutes.

(c) Permit Conditions. – The Department (i) may include as a condition of a permit for a proposed wind energy facility or proposed wind energy facility expansion a requirement that the permit holder mitigate any adverse impacts and (ii) shall include as a condition of a permit for a proposed wind energy facility or proposed wind energy facility expansion a requirement that the permit holder obtain a written "Determination of No Hazard to Air Navigation" issued by the Federal Aviation Administration pursuant to Subpart D of Part 77 of Title 14 of the

Code of Federal Regulations (January 1, 2012 edition) for the facility. No permit for a wind energy facility or wind energy facility expansion shall become effective until the Department has received and reviewed the "Determination of No Hazard to Air Navigation" issued by the Federal Aviation Administration for the facility. If the specific location of a turbine authorized to be constructed pursuant to a "Determination of No Hazard to Air Navigation" or the configuration of the wind energy facility varies from the information submitted by the applicant upon which the Department has made its permit decision, the Department may reevaluate the permit application and require the applicant to submit any additional information the Department deems necessary to approve or deny a permit for the facility as reconfigured.

(d) Other Approvals Required. – The issuance of a permit under this section shall not obviate the need for the applicant to obtain any and all other applicable local, State, or federal permits, licenses, or approvals. Furthermore, nothing in this Article shall be interpreted to limit, as applicable, (i) the application of Article 7 of Chapter 113A of the General Statutes to facilities permitted under this section, including the permitting requirements of G.S. 113A-118 or (ii) the ability of a city or county to plan for and regulate the siting of a wind energy facility in accordance with land-use regulations authorized under Chapter 160A and Chapter 153A of the General Statutes.

"**§ 143-215.121. Financial assurance requirements.**

The applicant for a permit or a permit holder for a wind energy facility shall establish financial assurance that will ensure that sufficient funds are available for decommissioning of the facility and reclamation of the property to its condition prior to commencement of activities on the site, even if the applicant or permit holder becomes insolvent or ceases to reside in, be incorporated, do business, or maintain assets in the State. To establish sufficient availability of funds under this section, the applicant for a permit or a permit holder for a wind energy facility may use insurance, financial tests, third-party guarantees by persons who can pass the financial test, guarantees by corporate parents who can pass the financial test, irrevocable letters of credit, trusts, surety bonds, or any other financial device, 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.

"**§ 143-215.122. Monitoring and reporting.**

The applicant shall annually submit copies to the Department of any post-construction monitoring, such as reports on the impacts on wildlife in the location of and in the area proximate to the wind energy facility or wind energy facility expansion and any impacts on military operations that are required by the United States Fish and Wildlife Service, the North Carolina Wildlife Resources Commission, the North Carolina Utilities Commission, or any other government agency.

"**§ 143-215.123. Annual review of military presence.**

The Department shall consult with representatives of the major military installations to review information regarding military air navigation routes, air traffic control areas, military training routes, special-use air space, radar, or other potentially affected military operations at least once per year. The Department shall provide relevant information on civil air navigation or military air navigation routes, air traffic control areas, military training routes, special-use air space, radar, or other potentially affected military operations to permit applicants as requested.

"**§ 143-215.124. Record keeping.**

The Department shall serve as the custodian of all data, information, and records received from a permit applicant or a major military installation pursuant to this Article and shall ensure that information provided to the Department that constitutes trade secrets, as that term is defined in G.S. 66-152, and that is designated as confidential or as a trade secret under G.S. 132-1.2, is limited only to the Department, State employees, and other persons who have executed a confidentiality agreement with the owner of such information. Information

designated as confidential or as a trade secret under G.S. 132-1.2 shall not be subject to disclosure pursuant to G.S. 132-6.

"**§ 143-215.125. Rule making.**

The Environmental Management Commission shall adopt any rules necessary for the implementation of this Article. In adopting rules, the Commission shall consult with the Coastal Resources Commission to ensure that the development of statewide permitting requirements is consistent with and in consideration of the characteristics unique to the coastal area of the State to the maximum extent practicable.

"**§ 143-215.126. Civil penalties.**

(a) The Secretary of Environment and Natural Resources may impose an administrative penalty on a person who constructs a wind energy facility or wind energy facility expansion without obtaining a permit under this Article or who constructs or operates a wind energy facility in violation of its permit terms and conditions. Each day of a continuing violation shall constitute a separate violation. The penalty shall not exceed ten thousand dollars ($10,000) per day.

(b) The Secretary of Environment and Natural Resources, irrespective of all other remedies at law, may institute an action for injunctive relief against a person who constructs a wind energy facility without first obtaining a permit under this Article or who constructs or operates a wind energy facility or wind energy facility expansion in violation of its permit terms and conditions."

SECTION 3. This act is effective when it becomes law and applies only to those wind energy facilities or wind energy facility expansions that have not received a written "Determination of No Hazard to Air Navigation" issued by the Federal Aviation Administration on or before that date.

HOUSE BILL 484:
Permitting of Wind Energy Facilities

2013-2014 General Assembly

Committee:	Senate Ref to Agriculture/Environment/Natural Resources. If fav, re-ref to Commerce. If fav, re-ref to Finance	**Date:**	May 7, 2013
Introduced by:	Reps. J. Bell, Dixon, McElraft, Whitmire	**Prepared by:**	Jennifer Mundt Committee Analyst
Analysis of:	Fifth Edition		

SUMMARY: House Bill 484 would establish a permitting program for the siting and operation of wind energy facilities in North Carolina.

[As introduced, this bill was identical to S491, as introduced by Sen. Brown, which is currently in Senate Ref to Agriculture/Environment/Natural Resources. If fav, re-ref to Finance.]

BILL ANALYSIS: House Bill 484 would establish a permitting program, to be implemented by the Department of Environment and Natural Resources (Department or DENR), for the siting and operation of wind energy facilities in the State. The bill would create a new Article 21C in Chapter 143 of the General Statutes (Permitting of Wind Energy Facilities).

Definitions: Three new terms are defined for purposes of the Article, "major military installation," "wind energy facility," and "wind energy facility expansion."

Permit to site wind energy facilities: Provides that no person may undertake construction, operation, or expansion activities associated with a wind energy facility without first obtaining a permit from the Department.

Pre-permit application requirements: At least 180 days before filing an application for a permit to construct, operate, or expand a wind energy facility, a permit applicant must request a ***pre-application site evaluation meeting*** with DENR to determine if proposed sites pose a serious risk to civil air navigation, military activities, or natural resources. The pre-application site evaluation meeting must be held within 120 days prior to filing an application.

At least 45 days before the date of the pre-application site evaluation meeting, the applicant must submit a ***pre-application package*** to DENR that includes: a narrative description and map of the proposed facility, a description of potential impacts to civil air navigation, military activities, or natural resources; and a timetable for development through commercial operation.

At least 21 days before the pre-application site evaluation meeting, DENR must provide written ***notice to interested parties*** of the meeting, with an invitation to participate in the meeting, to the United States Army Corps of Engineers, the United States Fish and Wildlife Service (USFWS), the North Carolina Wildlife Resources Commission (WRC), the commanding military officer of any potentially affected major military installation, and any other party the Department deems relevant.

Scoping meeting and notice: At least 60 days prior to filing an application for a permit to construct, operate, or expand a wind energy facility, the applicant must request a ***scoping meeting*** with the Department to review the permit. The scoping meeting must be held within 30 days prior to filing an application.

At least 21 days prior to the scoping meeting, DENR must provide ***written notice*** to the commanding officer of each major military installation, the Federal Aviation Administration (FAA), WRC,

USFWS, the board of commissioners for each county and governing body of each municipality in which the facility is proposed to be located, and those local governments with jurisdictions over areas in which a major military installation is located.

Permit requirements: A ***permit application*** for a wind energy facility must include:

- A narrative description of the proposed facility and map showing the location of each turbine.
- A description of civil air navigation or military activities that may be affected by the construction or operation of the proposed facility.
- Documentation addressing any potential adverse impacts on military activities as identified by the Department of Defense (DOD) Clearinghouse[1] and any mitigation actions agreed to by the applicant.
- A study of the noise and shadow flicker[2] impacts of the turbines associated with the proposed facility.
- A study of the proposed facility on natural resources.
- The permit application fee of $3,500.
- A plan for decommissioning and removal of the facility.

Within 10 days of receiving a complete permit application, DENR must ***provide notice*** of the permit application, accompanied by a request for information related to potential adverse impacts of the proposed facility, to the commanding military officer of all major military installations, the commanding military officer of any military installation located outside the State that is within 50 nautical miles of the proposed facility, and the board of commissioners and the governing body of each municipality in which the facility is proposed to be located.

Within 75 days of receipt of a complete permit application, the Department must hold ***a public hearing*** in each county in which the facility is proposed to be located.

Permit approval and conditions: The Department must approve an application for a proposed wind energy facility unless the Department finds that construction or operation of the facility would:

- Be inconsistent with or violate rules of the Department or any other provision of law.
- Encroach upon or otherwise have a significant adverse impact on military operations.
- Result in significant adverse impacts to natural resources, fish, wildlife, or views from State or national parks and other areas with high recreational values.
- Obstruct major navigation channels.
- Be denied based on criteria under the Coastal Area Management Act or prohibited under the Mountain Ridge Protection Act.

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[1] The DOD Clearinghouse was established by DOD to provide a one-stop shop for industry, state, Tribal, and local governments, and the public to communicate with and receive feedback from DOD on the impacts of energy projects on military missions. The Clearinghouse coordinates the efforts of all DOD Components (including the Joint Staff, Army, Navy, Air Force, Marines, and other critical offices) in the assessment of energy project proposals and the coordination of official DOD positions on the impacts of those projects on military missions. http://www.acq.osd.mil/dodsc/

[2] Shadow flicker from wind turbines is the effect resulting from the shadows cast by the rotating blades of the turbine on sunny days. The effect may be more or less pronounced depending on the intensity of the sun/shadow contrast and the distance from the turbines to a receptor. From: Maine Department of Environmental Protection.

- Not comply with all applicable federal, State, or local permitting requirements, licenses, or approvals, including local zoning requirements.

Following receipt of a complete application, DENR must make a final a ***decision on a permit*** application within 90 days and within a total of 120 days if additional information is requested by the Department. The Department is not required to make a final decision on a permit application until the Department has received a written "Determination of No Hazard to Air Navigation3" (Determination) issued by the FAA. If the application is denied, the Department must return the application to the applicant with a written statement of the reasons for the denial and any modifications that would make the application acceptable.

A permit for a facility may not become effective until the Department has received and reviewed the FAA Determination. If the specific location of a turbine authorized by the FAA Determination or the configuration of the facility varies from the information submitted by the applicant upon which the Department has made its permit decision, the Department may reevaluate the permit application and require the applicant to submit any additional information the Department deems necessary to approve or deny a permit for the facility as reconfigured.

Issuance of a permit for the construction and operation of a wind energy facility by the Department does not obviate the need for the applicant to **obtain any and all other local, State, and federal permits, licenses, or approvals.**

Financial assurance: The applicant or permit holder must establish financial assurance that will ensure sufficient funds are available for decommissioning of the facility and reclamation of the property to its condition prior to commencement of activities on the site even if the applicant or permit holder becomes insolvent or ceases to reside in, be incorporated, do business, or maintain assets in the State.

Monitoring and reporting: The applicant must submit copies of any required post-construction monitoring annually to the Department.

Annual review of military presence: The Department must consult with representatives of the major military installations to review information pertaining to military operations at least once per year and provide relevant information to permit applicants as requested.

Record keeping: The Department will be responsible for all data, information, and records received from a permit applicant or a major military installation. Information constituting trade secrets or designated as confidential must not be disclosed.

Rulemaking: The Environmental Management Commission must adopt any rules necessary to implement Article 21C and is directed to consult with the Coastal Resources Commission to ensure that the rules are consistent with and in consideration of the characteristics unique to the coastal area.

Civil penalties: Authorizes the Secretary of Environment and Natural Resources to impose an administrative penalty on a person who constructs a wind energy facility without a permit or operates a facility in violation of the permit terms. The Secretary may institute an action for injunctive relief on a person who constructs a wind energy facility without a permit or operates a facility in violation of the permit terms.

FAA has oversight over any object that could have an impact on the navigable airspace or communications/navigation technology of iation (commercial or military) or DOD operations. The FAA requires that a Notice of Proposed Construction (Form 7460-1) be filed for y object that would extend more than 200 feet above ground. For any filed project, the FAA undertakes an initial aeronautical study within the relevant FAA region, and issues either a Determination of No Hazard to Air Navigation (DNH) or a Notice of Presumed Hazard (NPH). http://www.masscec.com/masscec/file/Airspace%20Issues%20Page_Final.pdf

EFFECTIVE DATE: House Bill 484 would become effective when it becomes law and applies only to those wind energy facilities that have not received a written "Determination of No Hazard to Air Navigation" issued by the FAA on or before that date.

House Bill 484
Permitting of Wind Energy Facilities

Congressman George Holding – 13th District
Wayne County Board of Commissioners
Wayne County Chamber of Commerce
Mayor and Goldsboro City Council
Wayne County Public Schools
Town of Mount Olive
Town of Pikeville
Village of Walnut Creek
NC Community Federal Credit Union, Goldsboro
Danny Hood Realty, Goldsboro
Seegers Fence Company, Inc., Goldsboro
Carteret County Board of Commissioners
Carteret County Chamber of Commerce
Craven County Board of Commissioners
City of Havelock
Havelock Chamber of Commerce
New Bern Area Chamber of Commerce
Allies for Cherry Point's Tomorrow (ACT)
Cumberland County Board of Commissioners
Dare County Board of Commissioners
Greene County Chamber of Commerce
Harnett County Board of Commissioners
Lenoir County Board of Commissioners
Kinston-Lenoir County Chamber of Commerce
Town of Princeton

The above listed have sent letters and emails supporting the permitting process of wind energy facilities to protect our military instillations

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

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SENATE BILL 626

Short Title: Recodify Animal Shelter Law. (Public)

Sponsors: Senators McKissick, Jackson, Meredith (Primary Sponsors); and Woodard.

Referred to: Agriculture/Environment/Natural Resources.

April 4, 2013

A BILL TO BE ENTITLED

AN ACT TO RECODIFY AND AMEND THE EXISTING LAW ENACTED TO ASSIST OWNERS IN RECOVERING LOST PETS, RELIEVE OVERCROWDING AT ANIMAL SHELTERS, AND FACILITATE ADOPTIONS FROM ANIMAL SHELTERS, AND TO PROVIDE FOR IMPROVED ENFORCEMENT OF THAT LAW BY MAKING IT PART OF THE ANIMAL WELFARE ACT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 19A-23 is amended by redesignating subdivision (5a) as subdivision (5c) and by adding two new subdivisions to read:

"(5a) "Approved foster care provider" mean an individual, nonprofit corporation, or association that cares for stray animals that has been favorably assessed by the operator of the animal shelter through the application of written standards.

(5b) "Approved rescue organization" means a nonprofit corporation or association that cares for stray animals that has been favorably assessed by the operator of the animal shelter through the application of written standards."

SECTION 2. Chapter 19A of the General Statutes is amended by adding a new section to read:

"**§ 19A-32.1. Minimum holding period for animals in animal shelters; public viewing of animals in animal shelters; disposition of animals.**

(a) Except as otherwise provided in this section, all animals received by an animal shelter or by an agent of an animal shelter shall be held for a minimum holding period of 72 hours, or for any longer minimum period established by a board of county commissioners, prior to being sold, euthanized, or otherwise disposed of.

(b) Before an animal may be sold, euthanized, or otherwise disposed of, it shall be made available for adoption under procedures that enable members of the public to inspect the animal, except in the following cases:

(1) The animal has been found by the operator of the shelter to be unadoptable due to injury or defects of health or temperament.

(2) The animal is seriously ill or injured, in which case the animal may be euthanized before the expiration of the minimum holding period if the manager of the animal shelter determines, in writing, that it is appropriate to do so. The writing shall include the reason for the determination.

(3) The animal is being held as evidence in a pending criminal case.

(c) Except as otherwise provided in this subsection, a person who comes to an animal shelter attempting to locate a lost pet is entitled to view every animal held at the shelter, subject to rules providing for such viewing during at least four hours a day, three days a week. If the shelter is housing animals that must be kept apart from the general public for health reasons, public safety concerns, or in order to preserve evidence for criminal proceedings, the shelter shall make reasonable arrangements that allow pet owners to determine whether their lost pets are among those animals.

(d) During the minimum holding period, an animal shelter may place an animal it is holding into foster care by transferring possession of the animal to an approved foster care provider, an approved rescue organization, or the person who found the animal. If an animal shelter transfers possession of an animal under this subsection, at least one photograph depicting the head and face of the animal shall be displayed at the shelter in a conspicuous location that is available to the general public during hours of operation, and that photograph shall remain posted until the animal is disposed of as provided in subsection (f) of this section.

(e) If a shelter places an animal in foster care, the shelter may, in writing, appoint the person or organization possessing of the animal to be an agent of the shelter. After the expiration of the minimum holding period, the shelter may (i) direct the agent possessing the animal to return it to the shelter, (ii) allow the agent to adopt the animal consistent with the shelter's adoption policies, or (iii) extend the period of time that the agent holds the animal on behalf of the shelter. A shelter may terminate an agency created under this subsection at any time by directing the agent to deliver the animal to the shelter. The local government or organization operating the shelter, as principal in the agency relationship, shall not be liable to reimburse the agent for the costs of care of the animal and shall not be liable to the owner of the animal for harm to the animal caused by the agent, absent a written contract providing otherwise.

(f) An animal that is surrendered to an animal shelter by the animal's owner and not reclaimed by that owner during the minimum holding period may be disposed of in one of the following manners:

(1) Returned to the owner.

(2) Adopted as a pet by a new owner.

(3) Euthanized by a procedure approved by rules adopted by the Department of Agriculture and Consumer Services or, in the absence of such rules, by a procedure approved by the American Veterinary Medical Association, the Humane Society of the United States, or the American Humane Association.

(g) An animal that is surrendered to an animal shelter by the animal's owner may be disposed of before the expiration of the minimum holding period in a manner authorized under subsection (f) of this section if the owner provides to the shelter (i) some proof of ownership of the animal and (ii) a signed written consent to the disposition of the animal before the expiration of the minimum holding period.

(h) An animal shelter shall require every person to whom an animal is released to present one of the following valid forms of government-issued photographic identification: (i) a drivers license, (ii) a special identification card issued under G.S. 20-37.7, (iii) a military identification card, or (iv) a passport. Upon presentation of the required photographic identification, the shelter shall document the name of the person, the type of photographic identification presented by the person, and the photographic identification number.

(i) Animal shelters shall maintain a record of all animals impounded at the shelter, shall retain those records for a period of at least three years from the date of impoundment, and shall make those records available for inspection during regular inspections pursuant to this Article or upon the request of a representative of the Animal Welfare Section. These records shall contain, at a minimum:

(1) The date of impoundment.

(2) The length of impoundment.
(3) The disposition of each animal, including the name and address of any person to whom the animal is released, any institution that person represents, and the identifying information required under subsection (h) of this section.
(4) Other information required by rules adopted by the Board of Agriculture."

SECTION 3. G.S. 130A-192 reads as rewritten:

"**§ 130A-192. Animals not wearing required rabies vaccination tags.**

(a) The Animal Control Officer shall canvass the county to determine if there are any animals not wearing the required rabies vaccination tag. If an animal required to wear a tag is found not wearing one, the Animal Control Officer shall check to see if the owner's identification can be found on the animal. If the animal is wearing an owner identification tag with information enabling the owner of the animal to be contacted, or if the Animal Control Officer otherwise knows who the owner is, the Animal Control Officer shall notify the owner in writing to have the animal vaccinated against rabies and to produce the required rabies vaccination certificate to the Animal Control Officer within three days of the notification. If the animal is not wearing an owner identification tag and the Animal Control Officer does not otherwise know who the owner is, the Animal Control Officer may impound the animal. The duration of the impoundment of these animals shall be established by the county board of commissioners, but the duration shall not be less than 72 hours. During the impoundment period, the Animal Control Officer shall make a reasonable effort to locate the owner of the animal. If the Animal Control Officer has access at no cost or at a reasonable cost to a microchip scanning device, the Animal Control Officer may scan the animal and utilize any information that may be available through a microchip to locate the owner of the animal, if possible. If the animal is not reclaimed by its owner during the impoundment period, the animal shall be disposed of in one of the following manners: returned to the owner; adopted as a pet by a new owner; ~~sold to institutions within this State registered by the United States Department of Agriculture pursuant to the Federal Animal Welfare Act, as amended;~~ or put to death by a procedure approved by rules adopted by the Department of Agriculture and Consumer Services or, in the absence of such rules, by a procedure approved by the American Veterinary Medical Association, the Humane Society of the United States or of the American Humane Association.

(a1) Before an animal may be sold or put to death, it shall be made available for adoption ~~under procedures that enable members of the public to inspect the animal, except in cases in which the animal is found by the operator of the shelter to be unadoptable due to injury or defects of health or temperament. An animal that is seriously ill or injured may be euthanized if the manager of the animal shelter determines, in writing, that it is appropriate to do so. Nothing in this subsection shall supercede (i) any rules adopted by the Board of Agriculture which specify the number of animals allowed for kennel space in animal shelters, or (ii) the duration of impoundment established by the county board of commissioners, or the 72-hour holding period, as provided in subsection (a) of this section.~~ as provided in G.S. 19A-32.1.

~~(a2) Except as otherwise provided in this subsection, a person who comes to an animal shelter attempting to locate a lost pet is entitled to view every animal held at the shelter, subject to rules providing for such viewing during at least four hours a day, three days a week. If the shelter is housing animals that must be kept apart from the general public for health reasons, public safety concerns, or in order to preserve evidence for criminal proceedings, the shelter shall make reasonable arrangements that allow pet owners to determine whether their lost pets are among those animals.~~

(a3) The Animal Control Officer shall maintain a record of all animals impounded under this section which shall include the date of impoundment, the length of impoundment, the method of disposal of the animal and the name of the person or institution to whom any animal has been released.

~~(b) In addition to domesticated dogs and cats not wearing the required rabies tags, the provisions of subsection (a) of this section concerning the holding of animals for at least 72 hours and the permissible means of disposition of animals after expiration of that holding period also apply to all of the following:~~

~~(1) Dogs and cats that are wearing rabies tags but are taken into custody for violation of statutes or ordinances not related to rabies control, such as ordinances requiring the leashing or restraining of dogs and cats.~~

~~(2) Dogs and cats surrendered to an animal shelter by the owners of the animals, unless an owner provides to the shelter the following:~~

~~a. Some proof of ownership of the animal, and~~

~~b. A signed written consent to the disposition of the animal, in a manner authorized by this section, before the expiration of the 72-hour holding period or of a longer period established by ordinance or local rule to which the shelter is subject.~~

~~(c) If an animal is not wearing tags, or other mode of identification indicating its owner, and is delivered to an animal shelter by (i) a person who has found and captured the animal, or (ii) by an approved rescue organization that received the animal from a person who found and captured the animal, then the shelter may, in writing, appoint the finder or approved rescue organization to be the agent of the shelter. For purposes of this subsection, the term "approved rescue organization" means a nonprofit corporation or association that cares for stray animals that has been favorably assessed by the operator of the animal shelter through the application of written standards.~~

~~(1) If the animal is a dog or cat, the finder or approved rescue organization shall hold the animal for the 72-hour holding period provided for in subsection (a) of this section or such longer holding period that may be applicable to the shelter by ordinance or local rule. If the animal is not a dog or cat, then the holding period shall be by agreement between the animal shelter and the person or organization receiving the animal.~~

~~(2) After the expiration of the applicable holding period, the shelter may:~~

~~a. Transfer the animal by adoption to the person or organization that has held it as agent, or~~

~~b. Extend the period of time the finder or rescue organization holds the animal as agent of the shelter.~~

~~(3) A shelter may terminate an agency created under this subsection at any time by directing the finder or rescue organization to deliver the animal to the shelter.~~

~~(4) The city, county, or organization operating the animal shelter, as principal in the agency relationship, shall not be liable to reimburse the agent for the costs of care of the animal and shall not be liable to the owner of the animal for harm to the animal caused by the agent, absent a written contract providing otherwise.~~

~~(d) During the 72-hour or longer holding period established under subsection (a) of this section, an animal shelter may place an animal it is holding in foster care.~~

~~(e) If an animal shelter transfers physical possession of a dog or cat under subsection (c) or (d) of this section, so that the animal is no longer on the animal shelter premises, at least one photograph which depicts the head and face of the animal shall (i) be displayed at the shelter in a conspicuous location that is available to the general public during hours of operation, and (ii) remain posted for the 72-hour or longer holding period established under subsection (a) of this section.~~"

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

SENATE BILL 626:
Recodify Animal Shelter Law

2013-2014 General Assembly

Committee:	Senate Agriculture/Environment/Natural Resources	**Date:**	May 7, 2013
Introduced by:	Sens. McKissick, Jackson, Meredith	**Prepared by:**	Jeff Hudson Committee Counsel
Analysis of:	First Edition		

SUMMARY: ***Senate Bill 626 would recodify the procedures for the holding and disposition of animals in animal shelters from the rabies statutes to the animal welfare statutes.***

CURRENT LAW:

In 2009, the General Assembly enacted S.L. 2009-304 (Senate Bill 467), which sets out procedures for the holding and disposition of animals in animal shelters. These provisions were enacted in the public health statutes for communicable diseases, specifically rabies. These statutes are administered by the Commission for Public Health.

BILL ANALYSIS:

Senate Bill 626 would recodify the procedures for the holding and disposition of animals in animal shelters to the animal welfare statutes where they would be administered by the Board of Agriculture. The specific provisions that would be recodified are as follows:

- Animals received by an animal shelter must be held for a minimum of 72 hours before they may be sold, euthanized, or otherwise disposed of.
- Before an animal may be sold, euthanized, or otherwise disposed of, it must be made available for adoption.
- A person who comes to an animal shelter to locate a lost pet is entitled to view every animal held at the shelter.
- During the minimum holding period, an animal shelter may place an animal into foster care.
- An animal shelter must require every person to whom an animal is released to present a valid form of government issued photographic identification. This provision is new and was not enacted as part of S.L. 2009-304.
- Animal shelters must maintain a record of all animals impounded at the shelter, retain those records for at least three years, and make the records available for inspection by the Animal Welfare Section of the Department of Agriculture and Consumer Services. The records must contain the date of impoundment, the length of impoundment, the disposition of each animal, and any other information required by the Board of Agriculture.

EFFECTIVE DATE:

This act would become effective when it becomes law.

O. Walker Reagan
Director

S626-SMSB-34 E1 -V2

Research Division
(919) 733-2578

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 626

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

S626-ASB-32 [v.2]

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

Date _____,2013

Senator _____

moves to amend the bill on page 1, lines 25 and 26,
by rewriting those lines to read:

"to being euthanized or otherwise disposed of.
(b) Before an animal may be euthanized or otherwise disposed of, it shall be" and

on page 3, line 31,
by rewriting the line to read:

"(a1) Before an animal may be ~~sold or~~ put to death, it shall be made available for adoption".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

Pulled because of time

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

S 1

SENATE BILL 689

Short Title:	Amend Trapping Law.	(Public)
Sponsors:	Senators Sanderson (Primary Sponsor); Goolsby and Jackson.	
Referred to:	Agriculture/Environment/Natural Resources.	

April 4, 2013

A BILL TO BE ENTITLED

AN ACT TO AMEND THE TRAPPING LAW RELATING TO CONIBEAR TYPE TRAPS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 113-291.6(d) reads as rewritten:

"(d) Conibear type traps ~~that have an inside jaw spread or opening (width or height) greater than seven and one-half inches and no larger than 26 inches in width and 12 inches in height~~ may only be set in the water and in areas in which beaver and otter may be lawfully trapped. For the purposes of this section:

(1) A water-set trap is one totally covered by water with the anchor secured in water deep enough to drown the animal trapped quickly.

(2) In areas of tidal waters, the mean high water is considered covering water.

(3) In reservoir areas, covering water is the low water level prevailing during the preceding 24 hours.

(4) Marshland, as defined in G.S. 113-229(n)(3), is not considered dry land."

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

SENATE PAGES ATTENDING

COMMITTEE: Agriculture ROOM: 544

DATE: 5-7 TIME: 11 AM

PLEASE PRINT LEGIBILY!!!!!!!!!!!!!....*or else!*

Page Name	Hometown	Sponsoring Senator
1. Chael Lee	Greensboro	Robinson
2. Trevis Watts	Brown Summit	Robinson
3. Evan McDow	Albemarle	McLaurin
4. Brandon O'Dell	Springlake [redacted]	Rabin
5. Kateleigh Johnson	Kipling	Rabin
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 t-at-Arms.

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Senate/Agriculture/Environment/Natural Resources
(Committee Name)

5/7/2013
Date

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MIKE CARPENTER	NCHBA
LISA MARTIN	NCHBA
CAMERON MOORE	NCBASA
Doug Lassiter	NCSTA
Rick Zechini	WRA
BRAD IVES	DENR
R Rogers	CWMTF
CHRIS DILLON	NCWRC
GORDON MYERS	" "
COLLEEN OFFENBUTLE	" "
MAL MARTIN	" "
DAN CRAWFORD	NCLCV
Kevin L. Myers	North Carolina Trappers Ass.
W.D. Hall Jr	NC Trappers Assoc
Rod Vinson	NCFA
Carl D	NCFA

09-21-201

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Senate/Agriculture/Environment/Natural Resources
(Committee Name)

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Jessica Marlies	NCDENR
KRISHN TRIVEDI	NCDENR
Paul Sherman	NCFB
Tommy Stevens	NCPC
Dianna Downey	PSNUC
BRUCE THOMPSON	PARKER POE
Leah Burns	Governor's Office
Penny Hughes	School of Gov.
Mary Maureen Arbill	SELC
Katherine Ross	PPAB
[illegible]	NC [illegible]
Joy Hicks	NCDA&CS
Lee Hunter	"
Ronny Page	"
Heather Barnett	Ward & Smith
Nancy Thompson	Weyerhaeuser

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(Committee Name)

5/7/2013
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Tony Mitchell	
Harry Ennis	
Dick Hamilton	
Nelson Pearce	
Dustin Hale	Sen. Brown
John Peans	NC Trappers Assn.
David Denton	NCTA
Dan Jones	NC Trappers Assn.
Leary Sink	NC Trappers Assn.
Charles Sanders	NC Trappers Assn.
Bill Schauber	NC Trappers Assoc.
Tony White	NC Trappers Assoc.
Tonnie Davis	N.C. Trappers Assoc.
Mike Mann	NCTA
Kristina Ronneberg	NCCN
Nadia Luhr	NCCN

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Chris Anderson	
Mitch Peele	MFB
TomBEAN	EDF, NCSEA, ACWP
Bill Holman	TCF
Will Morgan	TNC
PETER BISHOP	CURRITUCK COUNTY
Layton Long	DHHS
Erin Wynia	NCLM
Peter Rumbe	American Rivers
Cassie Gavin	Sierra Club
Joe McClees	McClees Consulting
~~AMANDA SKINNER~~	NCACC
Mark Diggin	Sierra Club
Angie Marie	NCPC
[illegible]	MacNab Associates CPA
[illegible]	[illegible]

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5/7/2013
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Tina Orr	DENR
Mark Gillespie	DENR
Bo Heath	McDowell Hospital
Bill James	Northern Hospital
Cameron Moon	BASF
Ryan Hall	DHHS DPH
Ken Burgess	Vidant Health
Anne Burdette	Vidant Health
Alex Bozzo	CSS
Dan Conrad	NCCN
John Cooper	Compass OR

09-21-201

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2013–2014 Biennium

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Senator Bill Cook, Vice-Chair
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Joey Stansbury

Senator Michael Walters
Room 517-B LOB (919) 733-5651
Vicki Spears

NORTH CAROLINA GENERAL ASSEMBLY
Senate Agriculture/Environment/Natural Resources Committee
2013 – 2014 SESSION



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Co-Chair



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Vice chair



Austin Allran



Chad Barefoot



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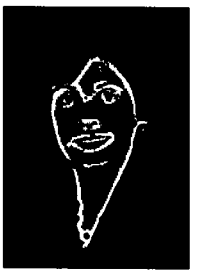
Bill Rabon



Shirley Randleman



Tommy Tucker



Trudy Wade



Michael Walters

Senate Committee on Agriculture/Environment/Natural Resources
Thursday, May 9, 2013, 9:00 AM
421 Legislative Office Building

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

BILL NO.	SHORT TITLE	SPONSOR
SB 689	Amend Trapping Law.	Senator Sanderson
SB 626	Recodify Animal Shelter Law.	Senator McKissick Senator Jackson Senator Meredith
SB 112	Amend Environmental Laws 2013.	Senator Jackson

Adjournment

Senate Committee on Agriculture/Environment/Natural Resources
Thursday, May 9, 2013 at 9:00 AM
Room 421 of the Legislative Office Building

MINUTES

The Senate Committee on Agriculture/Environment/Natural Resources met at 9:00 AM on May 9, 2013 in Room 421 of the Legislative Office Building. Seven (7) members were present.

Senator Andrew Brock presided.

Senator Brock introduced the pages – Jordan Thomas of Garner sponsored by Sen. Blue, Lauren Coker of Garner sponsored by Sen. Sanderson, Kateleigh Johnson of Kipling sponsored by Sen. Rabin, Donald Kernodle of Burlington sponsored by Sen. Berger and JohnAnge Kernoodle of Burlington sponsored by Sen. Gunn.

Senator Brock introduced the Sgt. of Arms – Charles Harper, Ronald Spann and Donna Blake.

Senator Brock introduced Sen. Sanderson who explained **SB 689 – Amend Trapping Law.** Senator Sanderson informed the committee that a PCS is being prepared on this bill and that this bill would be discussed during the May 14th Agriculture/Environment/Natural Resources meeting.

Senator Brock introduced Sen. Floyd McKissick to discuss **SB 626 – Recodify Animal Shelter Law**. There was a PCS on this bill and Sen. Randleman made a motion to accept the PCS. The motion carried. Sen. McKissick explained the bill. Senator Rabin had follow-up questions for which Sen. McKissick responded. Sen. Ford moved for a Favorable Report to the PCS and Unfavorable to the original bill. The motion carried.

SB 112 was removed from the agenda to be heard at the Tuesday, May 14th meeting.

The meeting adjourned at 9:10 AM.

Senator Andrew Brock
Presiding

Judy Edwards, Committee Clerk

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES COMMITTEE REPORT
Senator Brock, Co-Chair
Senator Jackson, Co-Chair

Thursday, May 09, 2013

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

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

SB **626** Recodify Animal Shelter Law.

Draft Number:	S626-PCS15267-SB-17
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

TOTAL REPORTED: 1

Senator Floyd McKissick will handle SB 626



SENATE BILL 626

Short Title:	Recodify Animal Shelter Law.	(Public)
Sponsors:	Senators McKissick, Jackson, Meredith (Primary Sponsors); and Woodard.	
Referred to:	Agriculture/Environment/Natural Resources.	

April 4, 2013

A BILL TO BE ENTITLED

AN ACT TO RECODIFY AND AMEND THE EXISTING LAW ENACTED TO ASSIST OWNERS IN RECOVERING LOST PETS, RELIEVE OVERCROWDING AT ANIMAL SHELTERS, AND FACILITATE ADOPTIONS FROM ANIMAL SHELTERS, AND TO PROVIDE FOR IMPROVED ENFORCEMENT OF THAT LAW BY MAKING IT PART OF THE ANIMAL WELFARE ACT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 19A-23 is amended by redesignating subdivision (5a) as subdivision (5c) and by adding two new subdivisions to read:

"(5a) "Approved foster care provider" mean an individual, nonprofit corporation, or association that cares for stray animals that has been favorably assessed by the operator of the animal shelter through the application of written standards.

(5b) "Approved rescue organization" means a nonprofit corporation or association that cares for stray animals that has been favorably assessed by the operator of the animal shelter through the application of written standards."

SECTION 2. Chapter 19A of the General Statutes is amended by adding a new section to read:

"**§ 19A-32.1. Minimum holding period for animals in animal shelters; public viewing of animals in animal shelters; disposition of animals.**

(a) Except as otherwise provided in this section, all animals received by an animal shelter or by an agent of an animal shelter shall be held for a minimum holding period of 72 hours, or for any longer minimum period established by a board of county commissioners, prior to being sold, euthanized, or otherwise disposed of.

(b) Before an animal may be sold, euthanized, or otherwise disposed of, it shall be made available for adoption under procedures that enable members of the public to inspect the animal, except in the following cases:

(1) The animal has been found by the operator of the shelter to be unadoptable due to injury or defects of health or temperament.

(2) The animal is seriously ill or injured, in which case the animal may be euthanized before the expiration of the minimum holding period if the manager of the animal shelter determines, in writing, that it is appropriate to do so. The writing shall include the reason for the determination.

(3) The animal is being held as evidence in a pending criminal case.

(c) Except as otherwise provided in this subsection, a person who comes to an animal shelter attempting to locate a lost pet is entitled to view every animal held at the shelter, subject to rules providing for such viewing during at least four hours a day, three days a week. If the shelter is housing animals that must be kept apart from the general public for health reasons, public safety concerns, or in order to preserve evidence for criminal proceedings, the shelter shall make reasonable arrangements that allow pet owners to determine whether their lost pets are among those animals.

(d) During the minimum holding period, an animal shelter may place an animal it is holding into foster care by transferring possession of the animal to an approved foster care provider, an approved rescue organization, or the person who found the animal. If an animal shelter transfers possession of an animal under this subsection, at least one photograph depicting the head and face of the animal shall be displayed at the shelter in a conspicuous location that is available to the general public during hours of operation, and that photograph shall remain posted until the animal is disposed of as provided in subsection (f) of this section.

(e) If a shelter places an animal in foster care, the shelter may, in writing, appoint the person or organization possessing of the animal to be an agent of the shelter. After the expiration of the minimum holding period, the shelter may (i) direct the agent possessing the animal to return it to the shelter, (ii) allow the agent to adopt the animal consistent with the shelter's adoption policies, or (iii) extend the period of time that the agent holds the animal on behalf of the shelter. A shelter may terminate an agency created under this subsection at any time by directing the agent to deliver the animal to the shelter. The local government or organization operating the shelter, as principal in the agency relationship, shall not be liable to reimburse the agent for the costs of care of the animal and shall not be liable to the owner of the animal for harm to the animal caused by the agent, absent a written contract providing otherwise.

(f) An animal that is surrendered to an animal shelter by the animal's owner and not reclaimed by that owner during the minimum holding period may be disposed of in one of the following manners:

(1) Returned to the owner.

(2) Adopted as a pet by a new owner.

(3) Euthanized by a procedure approved by rules adopted by the Department of Agriculture and Consumer Services or, in the absence of such rules, by a procedure approved by the American Veterinary Medical Association, the Humane Society of the United States, or the American Humane Association.

(g) An animal that is surrendered to an animal shelter by the animal's owner may be disposed of before the expiration of the minimum holding period in a manner authorized under subsection (f) of this section if the owner provides to the shelter (i) some proof of ownership of the animal and (ii) a signed written consent to the disposition of the animal before the expiration of the minimum holding period.

(h) An animal shelter shall require every person to whom an animal is released to present one of the following valid forms of government-issued photographic identification: (i) a drivers license, (ii) a special identification card issued under G.S. 20-37.7, (iii) a military identification card, or (iv) a passport. Upon presentation of the required photographic identification, the shelter shall document the name of the person, the type of photographic identification presented by the person, and the photographic identification number.

(i) Animal shelters shall maintain a record of all animals impounded at the shelter, shall retain those records for a period of at least three years from the date of impoundment, and shall make those records available for inspection during regular inspections pursuant to this Article or upon the request of a representative of the Animal Welfare Section. These records shall contain, at a minimum:

(1) The date of impoundment.

(2) The length of impoundment.
(3) The disposition of each animal, including the name and address of any person to whom the animal is released, any institution that person represents, and the identifying information required under subsection (h) of this section.
(4) Other information required by rules adopted by the Board of Agriculture."

SECTION 3. G.S. 130A-192 reads as rewritten:

"**§ 130A-192. Animals not wearing required rabies vaccination tags.**

(a) The Animal Control Officer shall canvass the county to determine if there are any animals not wearing the required rabies vaccination tag. If an animal required to wear a tag is found not wearing one, the Animal Control Officer shall check to see if the owner's identification can be found on the animal. If the animal is wearing an owner identification tag with information enabling the owner of the animal to be contacted, or if the Animal Control Officer otherwise knows who the owner is, the Animal Control Officer shall notify the owner in writing to have the animal vaccinated against rabies and to produce the required rabies vaccination certificate to the Animal Control Officer within three days of the notification. If the animal is not wearing an owner identification tag and the Animal Control Officer does not otherwise know who the owner is, the Animal Control Officer may impound the animal. The duration of the impoundment of these animals shall be established by the county board of commissioners, but the duration shall not be less than 72 hours. During the impoundment period, the Animal Control Officer shall make a reasonable effort to locate the owner of the animal. If the Animal Control Officer has access at no cost or at a reasonable cost to a microchip scanning device, the Animal Control Officer may scan the animal and utilize any information that may be available through a microchip to locate the owner of the animal, if possible. If the animal is not reclaimed by its owner during the impoundment period, the animal shall be disposed of in one of the following manners: returned to the owner; adopted as a pet by a new owner; ~~sold to institutions within this State registered by the United States Department of Agriculture pursuant to the Federal Animal Welfare Act, as amended;~~ or put to death by a procedure approved by rules adopted by the Department of Agriculture and Consumer Services or, in the absence of such rules, by a procedure approved by the American Veterinary Medical Association, the Humane Society of the United States or of the American Humane Association.

(a1) Before an animal may be sold or put to death, it shall be made available for adoption ~~under procedures that enable members of the public to inspect the animal, except in cases in which the animal is found by the operator of the shelter to be unadoptable due to injury or defects of health or temperament. An animal that is seriously ill or injured may be euthanized if the manager of the animal shelter determines, in writing, that it is appropriate to do so. Nothing in this subsection shall supercede (i) any rules adopted by the Board of Agriculture which specify the number of animals allowed for kennel space in animal shelters, or (ii) the duration of impoundment established by the county board of commissioners, or the 72-hour holding period, as provided in subsection (a) of this section.~~ as provided in G.S. 19A-32.1.

~~(a2) Except as otherwise provided in this subsection, a person who comes to an animal shelter attempting to locate a lost pet is entitled to view every animal held at the shelter, subject to rules providing for such viewing during at least four hours a day, three days a week. If the shelter is housing animals that must be kept apart from the general public for health reasons, public safety concerns, or in order to preserve evidence for criminal proceedings, the shelter shall make reasonable arrangements that allow pet owners to determine whether their lost pets are among those animals.~~

(a3) The Animal Control Officer shall maintain a record of all animals impounded under this section which shall include the date of impoundment, the length of impoundment, the method of disposal of the animal and the name of the person or institution to whom any animal has been released.

~~(b) In addition to domesticated dogs and cats not wearing the required rabies tags, the provisions of subsection (a) of this section concerning the holding of animals for at least 72 hours and the permissible means of disposition of animals after expiration of that holding period also apply to all of the following:~~

~~(1) Dogs and cats that are wearing rabies tags but are taken into custody for violation of statutes or ordinances not related to rabies control, such as ordinances requiring the leashing or restraining of dogs and cats.~~

~~(2) Dogs and cats surrendered to an animal shelter by the owners of the animals, unless an owner provides to the shelter the following:~~

~~a. Some proof of ownership of the animal, and~~

~~b. A signed written consent to the disposition of the animal, in a manner authorized by this section, before the expiration of the 72-hour holding period or of a longer period established by ordinance or local rule to which the shelter is subject.~~

~~(c) If an animal is not wearing tags, or other mode of identification indicating its owner, and is delivered to an animal shelter by (i) a person who has found and captured the animal, or (ii) by an approved rescue organization that received the animal from a person who found and captured the animal, then the shelter may, in writing, appoint the finder or approved rescue organization to be the agent of the shelter. For purposes of this subsection, the term "approved rescue organization" means a nonprofit corporation or association that cares for stray animals that has been favorably assessed by the operator of the animal shelter through the application of written standards.~~

~~(1) If the animal is a dog or cat, the finder or approved rescue organization shall hold the animal for the 72-hour holding period provided for in subsection (a) of this section or such longer holding period that may be applicable to the shelter by ordinance or local rule. If the animal is not a dog or cat, then the holding period shall be by agreement between the animal shelter and the person or organization receiving the animal.~~

~~(2) After the expiration of the applicable holding period, the shelter may:~~

~~a. Transfer the animal by adoption to the person or organization that has held it as agent, or~~

~~b. Extend the period of time the finder or rescue organization holds the animal as agent of the shelter.~~

~~(3) A shelter may terminate an agency created under this subsection at any time by directing the finder or rescue organization to deliver the animal to the shelter.~~

~~(4) The city, county, or organization operating the animal shelter, as principal in the agency relationship, shall not be liable to reimburse the agent for the costs of care of the animal and shall not be liable to the owner of the animal for harm to the animal caused by the agent, absent a written contract providing otherwise.~~

~~(d) During the 72-hour or longer holding period established under subsection (a) of this section, an animal shelter may place an animal it is holding in foster care.~~

~~(e) If an animal shelter transfers physical possession of a dog or cat under subsection (c) or (d) of this section, so that the animal is no longer on the animal shelter premises, at least one photograph which depicts the head and face of the animal shall (i) be displayed at the shelter in a conspicuous location that is available to the general public during hours of operation, and (ii) remain posted for the 72-hour or longer holding period established under subsection (a) of this section.~~"

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

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

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SENATE BILL 626
PROPOSED COMMITTEE SUBSTITUTE S626-PCS15267-SB-17

Short Title: Recodify Animal Shelter Law. (Public)

Sponsors:

Referred to:

April 4, 2013

A BILL TO BE ENTITLED

AN ACT TO RECODIFY AND AMEND THE EXISTING LAW ENACTED TO ASSIST OWNERS IN RECOVERING LOST PETS, RELIEVE OVERCROWDING AT ANIMAL SHELTERS, FACILITATE ADOPTIONS FROM ANIMAL SHELTERS, AND TO PROVIDE FOR IMPROVED ENFORCEMENT OF THAT LAW BY MAKING IT PART OF THE ANIMAL WELFARE ACT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 19A-23 is amended by redesignating subdivision (5a) as subdivision (5c) and by adding two new subdivisions to read:

"(5a) "Approved foster care provider" mean an individual, nonprofit corporation, or association that cares for stray animals that has been favorably assessed by the operator of the animal shelter through the application of written standards.

(5b) "Approved rescue organization" means a nonprofit corporation or association that cares for stray animals that has been favorably assessed by the operator of the animal shelter through the application of written standards."

SECTION 2. Chapter 19A of the General Statutes is amended by adding a new section to read:

"**§ 19A-32.1. Minimum holding period for animals in animal shelters; public viewing of animals in animal shelters; disposition of animals.**

(a) Except as otherwise provided in this section, all animals received by an animal shelter or by an agent of an animal shelter shall be held for a minimum holding period of 96 hours. An animal shelter or an agent of an animal shelter may hold an animal for a minimum holding period of 72 hours if the animal shelter posts at least one photograph depicting the head and face of the animal on the animal shelter's Web site or on any other Web site designed to facilitate the adoption of animals and the photograph remains on the Web site until the animal is euthanized or otherwise disposed of. An animal shelter or an agent of an animal shelter may hold an animal for any longer minimum period established by a board of county commissioners, prior to being euthanized or otherwise disposed of.

(b) Before an animal may be euthanized or otherwise disposed of, it shall be made available for adoption under procedures that enable members of the public to inspect the animal, except in the following cases:

(1) The animal has been found by the operator of the shelter to be unadoptable due to injury or defects of health or temperament.

(2) The animal is seriously ill or injured, in which case the animal may be euthanized before the expiration of the minimum holding period if the manager of the animal shelter determines, in writing, that it is appropriate to do so. The writing shall include the reason for the determination.

(3) The animal is being held as evidence in a pending criminal case.

(c) Except as otherwise provided in this subsection, a person who comes to an animal shelter attempting to locate a lost pet is entitled to view every animal held at the shelter, subject to rules providing for such viewing during at least four hours a day, three days a week. If the shelter is housing animals that must be kept apart from the general public for health reasons, public safety concerns, or in order to preserve evidence for criminal proceedings, the shelter shall make reasonable arrangements that allow pet owners to determine whether their lost pets are among those animals.

(d) During the minimum holding period, an animal shelter may place an animal it is holding into foster care by transferring possession of the animal to an approved foster care provider, an approved rescue organization, or the person who found the animal. If an animal shelter transfers possession of an animal under this subsection, at least one photograph depicting the head and face of the animal shall be displayed at the shelter in a conspicuous location that is available to the general public during hours of operation, and that photograph shall remain posted until the animal is disposed of as provided in subsection (f) of this section.

(e) If a shelter places an animal in foster care, the shelter may, in writing, appoint the person or organization possessing the animal to be an agent of the shelter. After the expiration of the minimum holding period, the shelter may (i) direct the agent possessing the animal to return it to the shelter, (ii) allow the agent to adopt the animal consistent with the shelter's adoption policies, or (iii) extend the period of time that the agent holds the animal on behalf of the shelter. A shelter may terminate an agency created under this subsection at any time by directing the agent to deliver the animal to the shelter. The local government or organization operating the shelter, as principal in the agency relationship, shall not be liable to reimburse the agent for the costs of care of the animal and shall not be liable to the owner of the animal for harm to the animal caused by the agent, absent a written contract providing otherwise.

(f) An animal that is surrendered to an animal shelter by the animal's owner and not reclaimed by that owner during the minimum holding period may be disposed of in one of the following manners:

(1) Returned to the owner.

(2) Adopted as a pet by a new owner.

(3) Euthanized by a procedure approved by rules adopted by the Department of Agriculture and Consumer Services or, in the absence of such rules, by a procedure approved by the American Veterinary Medical Association, the Humane Society of the United States, or the American Humane Association.

(g) An animal that is surrendered to an animal shelter by the animal's owner may be disposed of before the expiration of the minimum holding period in a manner authorized under subsection (f) of this section if the owner provides to the shelter (i) some proof of ownership of the animal and (ii) a signed written consent to the disposition of the animal before the expiration of the minimum holding period.

(h) If the owner of a dog surrenders the dog to an animal shelter, the owner shall state in writing whether the dog has bitten any individual within the 10 days preceding the date of surrender.

(i) An animal shelter shall require every person to whom an animal is released to present one of the following valid forms of government-issued photographic identification: (i) a drivers license, (ii) a special identification card issued under G.S. 20-37.7, (iii) a military identification card, or (iv) a passport. Upon presentation of the required photographic

identification, the shelter shall document the name of the person, the type of photographic identification presented by the person, and the photographic identification number.

(j) Animal shelters shall maintain a record of all animals impounded at the shelter, shall retain those records for a period of at least three years from the date of impoundment, and shall make those records available for inspection during regular inspections pursuant to this Article or upon the request of a representative of the Animal Welfare Section. These records shall contain, at a minimum:

(1) The date of impoundment.

(2) The length of impoundment.

(3) The disposition of each animal, including the name and address of any person to whom the animal is released, any institution that person represents, and the identifying information required under subsection (i) of this section.

(4) Other information required by rules adopted by the Board of Agriculture."

SECTION 3. G.S. 130A-192 reads as rewritten:

"**§ 130A-192. Animals not wearing required rabies vaccination tags.**

(a) The Animal Control Officer shall canvass the county to determine if there are any animals not wearing the required rabies vaccination tag. If an animal required to wear a tag is found not wearing one, the Animal Control Officer shall check to see if the owner's identification can be found on the animal. If the animal is wearing an owner identification tag with information enabling the owner of the animal to be contacted, or if the Animal Control Officer otherwise knows who the owner is, the Animal Control Officer shall notify the owner in writing to have the animal vaccinated against rabies and to produce the required rabies vaccination certificate to the Animal Control Officer within three days of the notification. If the animal is not wearing an owner identification tag and the Animal Control Officer does not otherwise know who the owner is, the Animal Control Officer may impound the animal. The duration of the impoundment of these animals shall be established by the county board of commissioners, but the duration shall not be less than 72 hours. During the impoundment period, the Animal Control Officer shall make a reasonable effort to locate the owner of the animal. If the Animal Control Officer has access at no cost or at a reasonable cost to a microchip scanning device, the Animal Control Officer ~~may~~ shall scan the animal and utilize any information that may be available through a microchip to locate the owner of the animal, if possible. If the animal is not reclaimed by its owner during the impoundment period, the animal shall be disposed of in one of the following manners: returned to the owner; adopted as a pet by a new owner; ~~sold to institutions within this State registered by the United States Department of Agriculture pursuant to the Federal Animal Welfare Act, as amended;~~ or put to death by a procedure approved by rules adopted by the Department of Agriculture and Consumer Services or, in the absence of such rules, by a procedure approved by the American Veterinary Medical Association, the Humane Society of the United States or of the American Humane Association.

(a1) Before an animal may be put to death, it shall be made available for adoption ~~under procedures that enable members of the public to inspect the animal, except in cases in which the animal is found by the operator of the shelter to be unadoptable due to injury or defects of health or temperament. An animal that is seriously ill or injured may be euthanized if the manager of the animal shelter determines, in writing, that it is appropriate to do so. Nothing in this subsection shall supercede (i) any rules adopted by the Board of Agriculture which specify the number of animals allowed for kennel space in animal shelters, or (ii) the duration of impoundment established by the county board of commissioners, or the 72-hour holding period, as provided in subsection (a) of this section.~~ as provided in G.S. 19A-32.1.

~~(a2) Except as otherwise provided in this subsection, a person who comes to an animal shelter attempting to locate a lost pet is entitled to view every animal held at the shelter, subject to rules providing for such viewing during at least four hours a day, three days a week. If the shelter is housing animals that must be kept apart from the general public for health reasons,~~

~~public safety concerns, or in order to preserve evidence for criminal proceedings, the shelter shall make reasonable arrangements that allow pet owners to determine whether their lost pets are among those animals.~~

(a3) The Animal Control Officer shall maintain a record of all animals impounded under this section which shall include the date of impoundment, the length of impoundment, the method of disposal of the animal and the name of the person or institution to whom any animal has been released.

~~(b) In addition to domesticated dogs and cats not wearing the required rabies tags, the provisions of subsection (a) of this section concerning the holding of animals for at least 72 hours and the permissible means of disposition of animals after expiration of that holding period also apply to all of the following:~~

~~(1) Dogs and cats that are wearing rabies tags but are taken into custody for violation of statutes or ordinances not related to rabies control, such as ordinances requiring the leashing or restraining of dogs and cats.~~

~~(2) Dogs and cats surrendered to an animal shelter by the owners of the animals, unless an owner provides to the shelter the following:~~

~~a. Some proof of ownership of the animal, and~~

~~b. A signed written consent to the disposition of the animal, in a manner authorized by this section, before the expiration of the 72-hour holding period or of a longer period established by ordinance or local rule to which the shelter is subject.~~

~~(c) If an animal is not wearing tags, or other mode of identification indicating its owner, and is delivered to an animal shelter by (i) a person who has found and captured the animal, or (ii) by an approved rescue organization that received the animal from a person who found and captured the animal, then the shelter may, in writing, appoint the finder or approved rescue organization to be the agent of the shelter. For purposes of this subsection, the term "approved rescue organization" means a nonprofit corporation or association that cares for stray animals that has been favorably assessed by the operator of the animal shelter through the application of written standards.~~

~~(1) If the animal is a dog or cat, the finder or approved rescue organization shall hold the animal for the 72-hour holding period provided for in subsection (a) of this section or such longer holding period that may be applicable to the shelter by ordinance or local rule. If the animal is not a dog or cat, then the holding period shall be by agreement between the animal shelter and the person or organization receiving the animal.~~

~~(2) After the expiration of the applicable holding period, the shelter may:~~

~~a. Transfer the animal by adoption to the person or organization that has held it as agent, or~~

~~b. Extend the period of time the finder or rescue organization holds the animal as agent of the shelter.~~

~~(3) A shelter may terminate an agency created under this subsection at any time by directing the finder or rescue organization to deliver the animal to the shelter.~~

~~(4) The city, county, or organization operating the animal shelter, as principal in the agency relationship, shall not be liable to reimburse the agent for the costs of care of the animal and shall not be liable to the owner of the animal for harm to the animal caused by the agent, absent a written contract providing otherwise.~~

~~(d) During the 72-hour or longer holding period established under subsection (a) of this section, an animal shelter may place an animal it is holding in foster care.~~

~~(e) If an animal shelter transfers physical possession of a dog or cat under subsection (c) or (d) of this section, so that the animal is no longer on the animal shelter premises, at least one photograph which depicts the head and face of the animal shall (i) be displayed at the shelter in a conspicuous location that is available to the general public during hours of operation, and (ii) remain posted for the 72-hour or longer holding period established under subsection (a) of this section.~~"

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

SENATE BILL 626:
Recodify Animal Shelter Law

2013-2014 General Assembly

Committee:	Senate Agriculture/Environment/Natural Resources	**Date:**	May 9, 2013
Introduced by:	Sens. McKissick, Jackson, Meredith	**Prepared by:**	Jeff Hudson Committee Counsel
Analysis of:	PCS to First Edition S626-CSSB-17 [v.3]		

SUMMARY: The Proposed Committee Substitute for Senate Bill 626 would recodify the procedures for the holding and disposition of animals in animal shelters from the rabies statutes to the animal welfare statutes.

CURRENT LAW:

In 2009, the General Assembly enacted S.L. 2009-304 (Senate Bill 467), which sets out procedures for the holding and disposition of animals in animal shelters. These provisions were enacted in the public health statutes for communicable diseases, specifically rabies. These statutes are administered by the Commission for Public Health.

BILL ANALYSIS:

The Proposed Committee Substitute for Senate Bill 626 (PCS) would recodify the procedures for the holding and disposition of animals in animal shelters to the animal welfare statutes where they would be administered by the Board of Agriculture. The specific provisions are as follows:

- Animals received by an animal shelter must be held for:
  - A minimum of 96 hours before the animal may be euthanized or otherwise disposed of.
  - A minimum of 72 hours if the animal shelter posts at least one photograph of the animal on an animal adoption website.
  - A longer minimum period established by the board of county commissioners.
- Before an animal may be euthanized or otherwise disposed of, it must be made available for adoption.
- A person who comes to an animal shelter to locate a lost pet is entitled to view every animal held at the shelter.
- During the minimum holding period, an animal shelter may place an animal into foster care.
- If the owner of a dog surrenders the dog to an animal shelter, the owner must state in writing whether the dog has bitten any individual within the 10 days preceding the date of surrender.
- An animal shelter must require every person to whom an animal is released to present a valid form of government issued photographic identification. This provision is new and was not enacted as part of S.L. 2009-304.

- Animal shelters must maintain a record of all animals impounded at the shelter, retain those records for at least three years, and make the records available for inspection by the Animal Welfare Section of the Department of Agriculture and Consumer Services. The records must contain the date of impoundment, the length of impoundment, the disposition of each animal, and any other information required by the Board of Agriculture.

EFFECTIVE DATE:

The PCS would become effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

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SENATE BILL 112*

Pulled from Agenda

1

Short Title:	Amend Environmental Laws 2013.	(Public)
Sponsors:	Senators Jackson (Primary Sponsor); Brock and J. Davis.	
Referred to:	Agriculture/Environment/Natural Resources.	

February 21, 2013

A BILL TO BE ENTITLED

AN ACT TO AMEND CERTAIN ENVIRONMENTAL AND NATURAL RESOURCES LAWS TO (1) ALLOW 10-YEAR PHASE LANDFILL DEVELOPMENTS TO APPLY FOR A PERMIT TO OPERATE; AND (2) CLARIFY THE PROCESS FOR APPEALS FROM CIVIL PENALTIES ASSESSED BY A LOCAL GOVERNMENT THAT HAS ESTABLISHED AND ADMINISTERS AN EROSION AND SEDIMENTATION CONTROL PROGRAM APPROVED UNDER G.S. 113A-60 AND PROVIDE THAT CIVIL PENALTIES ASSESSED BY A LOCAL GOVERNMENT PURSUANT TO THE SEDIMENTATION POLLUTION CONTROL ACT OF 1973 SHALL BE REMITTED TO THE CIVIL PENALTY AND FORFEITURE FUND, AS RECOMMENDED BY THE ENVIRONMENTAL REVIEW COMMISSION.

The General Assembly of North Carolina enacts:

SECTION 1. Section 15.1 of S.L. 2012-187 reads as rewritten:

"**SECTION 15.1.** No later than July 1, 2013, the Commission for Public Health shall adopt rules to allow applicants for sanitary landfills the option to (i) apply for a permit to construct and operate a five-year phase of landfill development and apply to amend the permit to construct and operate subsequent five-year phases of landfill development; or (ii) apply for a permit to construct and operate a 10-year phase of landfill development and apply to amend the permit to construct and operate subsequent 10-year phases of landfill development, with a limited review of the permit five years after issuance of the initial permit and five years after issuance of each amendment for subsequent phases of development. No later than July 1, 2013, the Commission shall also adopt rules to allow applicants for permits for transfer stations the option to (i) apply for a permit with a five-year duration to construct and operate a transfer station; or (ii) apply for a permit with a 10-year duration to construct and operate a transfer station, with a limited review of the permit five years after issuance of the initial permit and five years after issuance of any amendment to the permit. In developing these rules, the Department of Environment and Natural Resources shall examine the current fee schedule for permits for sanitary landfills and transfer stations as set forth under G.S. 130A-295.8 and formulate recommendations for adjustments to the current fee schedule sufficient to address any additional demands associated with review of permits issued for 10-year phases of landfill development and the issuance permits with a duration of up to 10 years for transfer stations. The Department shall report its findings and recommendations, including any legislative proposals, to the Environmental Review Commission on or before December 1, 2012. The rules required by this section shall not become effective until the fee schedule set forth under G.S. 130A-295.8 is amended as necessary to address any additional demands associated with

review of permits issued for 10-year phases of landfill development and the issuance of permits with a duration of up to 10 years to construct and operate transfer stations."

SECTION 2. G.S. 113A-64 reads as rewritten:

"**§ 113A-64. Penalties.**

(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.

(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 the reason for assessing the penalty. The notice of assessment shall be served by any means authorized under ~~G.S. 1A-1, Rule 4, and~~ G.S. 1A-1. A notice of assessment by the Secretary 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. A notice of assessment by a local government shall direct the violator to either pay the assessment or contest the assessment within 30 days by filing a petition for hearing with the local government as directed by procedures within the local ordinances or regulations adopted to establish and enforce the erosion and sedimentation control program. 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.

(3) In determining the amount of the penalty, the Secretary or a local government shall consider the degree and extent of harm caused by the violation, the cost of rectifying the damage, the amount of money the violator saved by noncompliance, whether the violation was committed willfully and the prior record of the violator in complying or failing to comply with this ~~Article.~~Article, or any ordinance, rule, or order adopted or issued pursuant to this Article by the Commission or by a local government.

(4) Repealed by Session Laws 1993 (Reg. Sess., 1994), c. 776, s. 11.

(5) The clear proceeds of civil penalties collected by the Department or other State agency or a local government under this subsection shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2.

~~Civil penalties collected by a local government under this subsection shall be credited to the general fund of the local government as nontax revenue.~~

(b) Criminal Penalties. – Any person who knowingly or willfully violates any provision of this Article or any ordinance, rule, regulation, or order duly adopted or issued by the Commission or a local government, or who knowingly or willfully 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, shall be guilty of a Class 2 misdemeanor that may include a fine not to exceed five thousand dollars ($5,000)."

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

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

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SENATE BILL 112*
PROPOSED COMMITTEE SUBSTITUTE S112-CSTA-11 [v.11]
5/8/2013 4:36:25 PM

Short Title: Amend Environmental Laws 2013. (Public)

Sponsors:

Referred to:

February 21, 2013

A BILL TO BE ENTITLED

AN ACT TO AMEND CERTAIN ENVIRONMENTAL AND NATURAL RESOURCES LAWS TO: (1) CLARIFY THAT EXTENDED-DURATION PERMITS FOR SANITARY LANDFILLS AND TRANSFER STATIONS AUTHORIZED BY S.L. 2012-187 ARE PERMITS FOR OPERATION AS WELL AS CONSTRUCTION; (2) CLARIFY THE PROCESS FOR APPEALS FROM CIVIL PENALTIES ASSESSED BY A LOCAL GOVERNMENT THAT HAS ESTABLISHED AND ADMINISTERS AN EROSION AND SEDIMENTATION CONTROL PROGRAM APPROVED UNDER G.S. 113A-60 AND PROVIDE THAT CIVIL PENALTIES ASSESSED BY A LOCAL GOVERNMENT PURSUANT TO THE SEDIMENTATION POLLUTION CONTROL ACT OF 1973 SHALL BE REMITTED TO THE CIVIL PENALTY AND FORFEITURE FUND; (3) AMEND DREDGE AND FILL PERMIT APPLICANT PROCEDURE FOR NOTICE TO ADJOINING PROPERTY OWNERS; (4) MAKE TECHNICAL AND CONFORMING CHANGES TO PROTECTED SPECIES, MARINE, AND WILDLIFE RESOURCES STATUTES; (5) MAKE CLARIFYING AND CONFORMING CHANGES TO THE STATUTES PERTAINING TO THE MANAGEMENT OF SNAKES AND OTHER REPTILES; (6) AMEND THE ADMINISTRATIVE PROCEDURE ACT TO PROVIDE THE WILDLIFE RESOURCES COMMISSION WITH TEMPORARY RULEMAKING AUTHORITY FOR MANNER OF TAKE; (7) AMEND THE DEFINITION OF "BUILT-UPON AREA"; (8) CLARIFY THOSE UNDERGROUND STORAGE TANKS THAT ARE NOT REQUIRED TO PROVIDE SECONDARY CONTAINMENT UNTIL JANUARY 1, 2020; (9) AMEND THE RULES THAT PERTAIN TO OPEN BURNING FOR LAND CLEARING OR RIGHT OF WAY MAINTENANCE; (10) EXEMPT PONDS THAT ARE CONSTRUCTED AND USED FOR AGRICULTURAL PURPOSES FROM RIPARIAN BUFFER RULES; (11) PROVIDE FOR LOW-FLOW DESIGN ALTERNATIVES FOR WASTEWATER SYSTEMS; (12) AMEND THE CONTINUING EDUCATION REQUIREMENTS FOR CERTIFIED WELL CONTRACTORS; AND (13) DIRECT THE DEPARTMENT OF TRANSPORTATION TO ADOPT RULES FOR SELECTIVE PRUNING WITHIN HIGHWAY RIGHTS-OF-WAY.

The General Assembly of North Carolina enacts:

PART I. CLARIFY THAT EXTENDED-DURATION PERMITS FOR SANITARY LANDFILLS AND TRANSFER STATIONS AUTHORIZED BY S.L. 2012-187 ARE PERMITS FOR OPERATION AS WELL AS CONSTRUCTION

SECTION 1. Section 15.1 of S.L. 2012-187 reads as rewritten:



"**SECTION 15.1.** No later than July 1, 2013, the Commission for Public Health shall adopt rules to allow applicants for sanitary landfills the option to (i) apply for a permit to construct and operate a five-year phase of landfill development and apply to amend the permit to construct and operate subsequent five-year phases of landfill development; or (ii) apply for a permit to construct and operate a 10-year phase of landfill development and apply to amend the permit to construct and operate subsequent 10-year phases of landfill development, with a limited review of the permit five years after issuance of the initial permit and five years after issuance of each amendment for subsequent phases of development. No later than July 1, 2013, the Commission shall also adopt rules to allow applicants for permits for transfer stations the option to (i) apply for a permit with a five-year duration to construct and operate a transfer station; or (ii) apply for a permit with a 10-year duration to construct and operate a transfer station, with a limited review of the permit five years after issuance of the initial permit and five years after issuance of any amendment to the permit. In developing these rules, the Department of Environment and Natural Resources shall examine the current fee schedule for permits for sanitary landfills and transfer stations as set forth under G.S. 130A-295.8 and formulate recommendations for adjustments to the current fee schedule sufficient to address any additional demands associated with review of permits issued for 10-year phases of landfill development and the issuance permits with a duration of up to 10 years for transfer stations. The Department shall report its findings and recommendations, including any legislative proposals, to the Environmental Review Commission on or before December 1, 2012. The rules required by this section shall not become effective until the fee schedule set forth under G.S. 130A-295.8 is amended as necessary to address any additional demands associated with review of permits issued for 10-year phases of landfill development and the issuance of permits with a duration of up to 10 years to construct and operate transfer stations."

PART II. CLARIFY LOCAL GOVERNMENT AUTHORITY UNDER THE SEDIMENTATION AND POLLUTION CONTROL ACT

SECTION 2. G.S. 113A-64 reads as rewritten:

"**§ 113A-64. Penalties.**

(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.

(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 the reason for assessing the penalty. The notice of assessment shall be served by any means authorized under ~~G.S. 1A-1, Rule 4, and~~ G.S. 1A-1. A notice of assessment by the Secretary 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. A notice of assessment by a

local government shall direct the violator to either pay the assessment or contest the assessment within 30 days by filing a petition for hearing with the local government as directed by procedures within the local ordinances or regulations adopted to establish and enforce the erosion and sedimentation control program. 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.

(3) In determining the amount of the penalty, the Secretary or a local government shall consider the degree and extent of harm caused by the violation, the cost of rectifying the damage, the amount of money the violator saved by noncompliance, whether the violation was committed willfully and the prior record of the violator in complying or failing to comply with this ~~Article.~~Article, or any ordinance, rule, or order adopted or issued pursuant to this Article by the Commission or by a local government.

(4) Repealed by Session Laws 1993 (Reg. Sess., 1994), c. 776, s. 11.

(5) The clear proceeds of civil penalties collected by the Department or other State agency or a local government under this subsection shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2. ~~Civil penalties collected by a local government under this subsection shall be credited to the general fund of the local government as nontax revenue.~~

(b) Criminal Penalties. – Any person who knowingly or willfully violates any provision of this Article or any ordinance, rule, regulation, or order duly adopted or issued by the Commission or a local government, or who knowingly or willfully 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, shall be guilty of a Class 2 misdemeanor that may include a fine not to exceed five thousand dollars ($5,000)."

PART III. AMEND DREDGE AND FILL PERMIT APPLICANT PROCEDURE FOR NOTICE TO ADJOINING PROPERTY OWNERS

SECTION 3. G.S. 113-229 reads as rewritten:

"§ 113-229. Permits to dredge or fill in or about estuarine waters or State-owned lakes.

...

(d) An applicant for a permit, other than an emergency permit, shall ~~send a copy of his application to~~ notify the owner of each tract of riparian property that adjoins that of the applicant. ~~The copy shall be served~~ An applicant may satisfy the required notification of adjoining riparian property owners by either (i) obtaining from each adjoining riparian property owner a signed statement that the adjoining riparian property owner has no objection to the proposed project or (ii) providing a copy of the applicant's permit application to each adjoining riparian property owner by certified ~~mail~~ mail. ~~or, if~~If the owner's address is unknown and cannot be ascertained with due diligence or if a diligent but unsuccessful effort has been made to serve the copy by certified mail, ~~by~~ publication in accordance with the rules of the ~~Commission.~~Commission shall serve to satisfy the notification requirement. An owner may file written objections to the permit with the Department for 30 days after ~~he~~the owner is served with a copy of the ~~application.~~application by certified mail. In the case of a special emergency dredge or fill permit the applicant must certify that ~~he~~the applicant took all reasonable steps to

notify adjacent riparian owners of the application for a special emergency dredge and fill permit prior to submission of the application. Upon receipt of this certification, the Secretary shall issue or deny the permit within the time period specified in subsection (e) of this section, upon the express understanding from the applicant that ~~he~~ the applicant will be entirely liable and hold the State harmless for all damage to adjacent riparian landowners directly and proximately caused by the dredging or filling for which approval may be given.

...."

PART IV. TECHNICAL AND CONFORMING CHANGES TO PROTECTED SPECIES AND MARINE/WILDLIFE RESOURCES STATUTES

SECTION 4.(a) 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:

...

(7) Fish; Fishes. – All ~~marine mammals;~~finfish; all shellfish; and all ~~crustaceans; and all other fishes.~~crustaceans.

...

(15) Wild Animals. – Game animals; fur-bearing animals; feral swine; and all other wild ~~mammals except marine mammals found in coastal fishing waters.~~mammals. 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.

...

(17) Wildlife Resources. – All wild birds; all wild ~~mammals other than marine mammals found in coastal fishing waters;~~mammals; all fish found in inland fishing waters, including migratory saltwater fish; all inland game fish; all uncultivated or undomesticated plant and animal life inhabiting or depending upon inland fishing waters; waterfowl food plants wherever found, except that to the extent such plants in coastal fishing waters affect the conservation of marine and estuarine resources the Department is given concurrent jurisdiction as to such plants; all undomesticated terrestrial creatures; and the entire ecology supporting such birds, mammals, fish, plant and animal life, and creatures.

...."

SECTION 4.(b) G.S. 113-189 reads as rewritten:

"**§ 113-189. Protection of sea ~~turtles and porpoises.~~turtles, marine mammals, migratory birds, and finfish.**

(a) It is unlawful to willfully take, harm, disturb or destroy any sea turtles protected under the federal Endangered Species Act of 1973 (Public Law 93-205), as it may be subsequently amended, including green, hawksbill, loggerhead, Kemp's ridley and leatherback turtles, or their nests or eggs.

(b) It shall be unlawful willfully to take, ~~harm~~ harm, disturb, or destroy ~~porpoises.~~marine mammals protected under the federal Marine Mammal Protection Act of 1972 (Public Law 92-522), as it may be subsequently amended.

(c) It shall be unlawful willfully to take, harm, disturb, or destroy migratory birds protected under the federal Migratory Bird Treaty Act of 1918 (16 U.S.C 703 through 712), as it may be subsequently amended, unless such action is permitted by regulations.

(d) It shall be unlawful willfully to take, harm, disturb, or destroy finfish protected under the federal Endangered Species Act of 1973 (Public Law 93-205), as it may be subsequently amended."

PART V. CLARIFYING AND CONFORMING CHANGES TO STATUTES PERTAINING TO THE MANAGEMENT OF SNAKES AND OTHER REPTILES

SECTION 5.(a) G.S. 14-417 reads as rewritten:

"**§ 14-417. Regulation of ownership or use of venomous reptiles.**

(a) It shall be unlawful for any person to own, possess, use, transport, or traffic in any venomous reptile that is not housed in a sturdy and secure enclosure. Permanent enclosures shall be designed to be escape-proof, bite-proof, and have an operable lock. Transport containers shall be designed to be escape-proof and bite-proof.

(b) Each enclosure shall be clearly and visibly labeled "Venomous Reptile Inside" with scientific name, common name, appropriate ~~antivenom,~~antivenin, and owner's identifying information noted on the container. A written bite protocol that includes emergency contact information, local animal control office, the name and location of suitable ~~antivenom,~~antivenin, first aid procedures, and treatment guidelines, as well as an escape recovery plan must be within sight of permanent housing, and a copy must accompany the transport of any venomous reptile.

(c) In the event of an escape of a venomous reptile, the owner or possessor of the venomous reptile shall immediately notify local law enforcement."

SECTION 5.(b) G.S. 14-419 reads as rewritten:

"**§ 14-419. Investigation of suspected violations; seizure and examination of reptiles; disposition of reptiles.**

(a) In any case in which any law-enforcement officer or animal control officer has probable cause to believe that any of the provisions of this Article have been or are about to be violated, it shall be the duty of the officer and the officer is authorized, empowered, and directed to immediately investigate the violation or impending violation and to consult with representatives of the North Carolina Museum of Natural Sciences or the North Carolina Zoological Park or a designated representative of either the Museum or Zoological Park to identify appropriate and safe methods to seize the reptile or reptiles involved, to seize the reptile or reptiles involved, and the officer is authorized and directed to deliver: (i) a reptile believed to be venomous to the North Carolina State Museum of Natural Sciences or to its designated representative for examination for the purpose of ascertaining whether the reptile is regulated under this Article; and, (ii) a reptile believed to be a large constricting snake or crocodilian to the North Carolina Zoological Park for the purpose of ascertaining whether the reptile is regulated under this Article.

(b) If the Museum or the Zoological Park or their designated representatives find that a seized reptile is a venomous reptile, large constricting snake, or crocodilian regulated under this Article, the Museum or the Zoological Park or their designated representative shall determine final disposition of the reptile in a manner consistent with the safety of the ~~public.~~public, which in the case of a venomous reptile for which antivenin is not readily available, may include euthanasia.

(c) If the Museum or the Zoological Park or their designated representatives find that the reptile is not a venomous reptile, large constricting snake, or crocodilian regulated under

this Article, and either no criminal warrants or indictments are initiated in connection with the reptile within 10 days of initial seizure, or a court of law determines that the reptile is not being owned, possessed, used, transported, or trafficked in violation of this Article, then it shall be the duty of the law enforcement officer to return the reptile or reptiles to the person from whom they were seized within 15 days."

PART VI. AMEND THE ADMINISTRATIVE PROCEDURE ACT TO PROVIDE THE WILDLIFE RESOURCES COMMISSION WITH TEMPORARY RULEMAKING AUTHORITY FOR MANNER OF TAKE

SECTION 6. G.S. 150B-21.1 reads as rewritten:

"**§ 150B-21.1. Procedure for adopting a temporary rule.**

(a) Adoption. – An agency may adopt a temporary rule when it finds that adherence to the notice and hearing requirements of G.S. 150B-21.2 would be contrary to the public interest and that the immediate adoption of the rule is required by one or more of the following:

...

(7) The need for the Wildlife Resources Commission to establish any of the following:

a. No wake zones.

b. Hunting or fishing ~~seasons.~~seasons, including provisions for manner of take or any other conditions required for the implementation of such season.

c. Hunting or fishing bag limits.

d. Management of public game lands as defined in G.S. 113-129(8a).

...."

PART VII. AMEND DEFINITION OF BUILT-UPON AREA

SECTION 7.(a) Section 12 of S.L. 2004-163 reads as rewritten:

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

...

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

...."

SECTION 7.(b) Section 2 of S.L. 2006-246 reads as rewritten:

"**SECTION 2.** Definitions. – The following definitions apply to this act and its implementation:

...

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

...."

PART VIII. CLARIFY THOSE UNDERGROUND STORAGE TANKS THAT ARE NOT REQUIRED TO PROVIDE SECONDARY CONTAINMENT UNTIL JANUARY 1, 2020

SECTION 8. Section 11.6(a) of S.L. 2011-394 reads as rewritten:

"**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,~~1991, and prior to April 1, 2001, shall not be required to provide secondary containment until January 1, 2020."

PART IX. AMEND THE RULES THAT PERTAIN TO OPEN BURNING FOR LAND CLEARING OR RIGHT-OF-WAY MAINTENANCE

SECTION 9.(a) 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 9.(c) 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 9.(b) of this act.

SECTION 9.(b) Implementation. – Notwithstanding 15A NCAC 02D .1093(b)(2)(F) (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 materials are not carried off-site or transported over public roads for open burning unless the materials are carried or transported to:

(1) Facilities permitted in accordance with 15A NCAC 02D .1904 (Air Curtain Burners) for the operation of an air curtain burner at a permanent site; or

(2) A location, where the material is burned not more than 4 times per year, that meets all of the following criteria:

a. 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.

b. There are no more than 2 piles, each 20 feet in diameter, being burned at one time.

c. The location is not a permitted solid waste management facility.

SECTION 9.(c) Additional Rulemaking Authority. – The Commission shall adopt a rule to amend 15A NCAC 02D .1903 (Open Burning Without an Air Quality Permit) consistent with Section 9.(b) of this act. 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 9.(b) of this act. Rules adopted pursuant to this section are not subject to G.S. 150B-21.8 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 9.(d) Sunset. – Section 9.(b) of this act expires on the date that rules adopted pursuant to Section 9.(c) of this act become effective.

SECTION 9.(e) G.S. 130A-294(a) is amended to read:

"(a) The Department is authorized and directed to engage in research, conduct investigations and surveys, make inspections and establish a statewide solid waste management program. In establishing a program, the Department shall have authority to:

(1) Develop a comprehensive program for implementation of safe and sanitary practices for management of solid waste;

(2) Advise, consult, cooperate and contract with other State agencies, units of local government, the federal government, industries and individuals in the formulation and carrying out of a solid waste management program;

(3) Develop and adopt rules to establish standards for qualification as a "recycling, reduction or resource recovering facility" or as "recycling, reduction or resource recovering equipment" for the purpose of special tax classifications or treatment, and to certify as qualifying those applicants which meet the established standards. The standards shall be developed to qualify only those facilities and equipment exclusively used in the actual waste recycling, reduction or resource recovering process and shall exclude any incidental or supportive facilities and equipment;

(4) a. Develop a permit system governing the establishment and operation of solid waste management facilities. A landfill with a disposal area of 1/2 acre or less for the on-site disposal of land clearing and inert debris is exempt from the permit requirement of this section and shall be governed by G.S. 130A-301.1. The Department shall not approve an application for a new permit, the renewal of a permit, or a substantial amendment to a permit for a sanitary landfill, excluding demolition landfills as defined in the rules of the Commission, except as provided in subdivisions (3) and (4) of subsection (b1) of this section. No permit shall be granted for a solid waste management facility having discharges that are point sources until the Department has referred the complete plans and specifications to the Environmental Management Commission and has received advice in writing that the plans and specifications are approved in accordance with the provisions of G.S. 143-215.1. If the applicant is a unit of local government, and has not submitted a solid waste management plan that has been approved by the Department pursuant to G.S. 130A-309.09A(b), the Department may deny a permit for a sanitary landfill or a facility that disposes of solid waste by incineration, unless the Commission has not adopted rules pursuant to G.S. 130A-309.29 for local solid waste management plans. In any case where the Department denies a permit for a solid waste management facility, it shall state in writing the reason for denial and shall also state its estimate of the changes in the applicant's proposed activities or plans that will be required for the applicant to obtain a permit.

...

d. Management of land clearing debris burned in accordance with 15A NCAC 02D .1903 shall not require a permit pursuant to this section.

...."

PART X. EXEMPT PONDS THAT ARE CONSTRUCTED AND USED FOR AGRICULTURAL PURPOSES FROM RIPARIAN BUFFER RULES

SECTION 10.(a) Except as required by federal law or in an imminent threat to public health or safety: (i) 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 Basin; (ii) the temporary rule adopted January 1, 2000, and the permanent rule adopted and effective August 1, 2000, as 15A NCAC 02B .0259 regarding the protection and maintenance of existing riparian buffers in the Tar-Pamlico River Basin; (iii) the permanent

rule adopted and effective August 11, 2009, Session Law 2009-216, Session Law 2009-484, and the permanent rule, as amended, effective September 1, 2011, as 15A NCAC 02B .0267 regarding the protection and maintenance of existing riparian buffers in the Jordan Water Supply Watershed; (iv) the permanent rule adopted effective April 1, 1999, and the permanent rule, as amended, effective June 1, 2010, as 15A NCAC 02B .0250 regarding the protection and maintenance of existing riparian buffers in the Randleman Lake Water Supply Watershed; (v) the temporary rule effective June 30, 2001 and the permanent rule effective August 1, 2004, as 15A NCAC 02B .0243 regarding the protection and maintenance of existing riparian buffers in the Catawba River Basin; (vi) the permanent rule adopted and effective February 1, 2009, as 15A NCAC 02B .0605 and the permanent rule adopted and effective February 1, 2009, as 15A NCAC 2B .0607 regarding the protection and maintenance of existing riparian buffers in the Goose Creek Watershed (Yadkin Pee-Dee River Basin); (vii) and any similar rule adopted for the protection and maintenance of riparian buffers, collectively referred to as "Riparian Buffer Rules" for the purposes of this section; shall not apply to a pond to which Riparian Buffer Rules would otherwise apply if all of the following conditions are met:

(1) The property on which the pond is located is used for agriculture as that term is defined in G.S. 106-581.1.

(2) Except for the Riparian Buffer Rules and any similar rule adopted for the protection and maintenance of riparian buffers, the use of the property is in compliance with all other water quality and water quantity statutes and rules applicable to the property before the adoption of the Riparian Buffer Rules for the river basin or watershed in which the property is located.

SECTION 10.(b) If the use of property on which a pond is located changes such that the use no longer meets the criteria in subdivision (1) of subsection (a) of this Section, the Riparian Buffer Rules for the river basin or watershed in which the property is located shall apply.

SECTION 10.(c) The Commission shall not adopt rules for the protection or maintenance of ponds located within riparian buffers provided the ponds are constructed or used for agriculture as that term is defined in G.S. 106-581.1.

SECTION 10.(d) Units of local government shall not adopt ordinances, resolutions, plans, or policies for the protection or maintenance of ponds located within riparian buffers provided the ponds are constructed or used for agriculture as that term is defined in G.S. 106-581.1.

SECTION 10.(e) The Environmental Management Commission shall adopt rules to amend the Neuse River Basin Riparian Buffer Rule, the Tar-Pamlico River Basin Riparian Buffer Rule, the Jordan Water Supply Riparian Buffer Rule, the Randleman Lake Water Supply Watershed Riparian Buffer Rule, the Catawba River Basin Riparian Buffer Rule, the Goose Creek Watershed (Yadkin Pee-Dee River Basin) Riparian Buffer Rule, and any other similar riparian buffer rules in accordance with Sections (a), (b), and (c) of this Section. Notwithstanding G.S. 150B-19(4), the rule adopted by the Commission pursuant to this section shall be substantively identical to the provisions of subsections (a), (b), and (c) of this Section. 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 10.(f) Section 10.(a) of this act expires on the date that rules adopted pursuant to Section 10.(e) of this act become effective.

PART XI. PROVIDE FOR LOW-FLOW DESIGN ALTERNATIVES FOR WASTEWATER SYSTEMS

SECTION 11.(a) 15A NCAC 18A .1949(b) (Sewage Flow Rates for Design Units). – Until the effective date of the revised permanent rule that the Commission is required to adopt pursuant to Section 11.(c) of this act, the Commission, the Department, and any other political subdivision of the State shall implement 15A NCAC 18A .1949 (Sewage Flow Rates for Design Units) as provided in Section 11.(b) of this act.

SECTION 11.(b) Implementation. – Notwithstanding the Daily Flow for Design rates listed in Table No. 1 of 15A NCAC 18A .1949(b) (Sewage Flow Rates for Design Units), a wastewater system shall be exempt from the Daily Flow for Design, and any other design flow standards that are established by the Department of Health and Human Services or the Commission for Public Health provided flow rates that are less than those listed in Table No. 1 of 15A NCAC 18A .1949(b) (Sewage Flow Rates for Design Units) can be achieved through engineering design that utilizes low-flow fixtures and low-flow technologies and the design is prepared, sealed, and signed by a professional engineer licensed pursuant to Chapter 89C of the General Statutes. The Department and Commission may establish lower limits on reduced flow rates as necessary to ensure wastewater system integrity and protect public health, safety, and welfare. Proposed daily design flows for wastewater systems that are calculated to be less than 3,000 total gallons per day shall not require State review pursuant to 15A NCAC .1938(e).

SECTION 11.(c) Additional Rulemaking Authority. – The Commission shall adopt a rule to amend 15A NCAC 18A .1949(b) (Sewage Flow Rates for Design Units) consistent with Section 11.(b) of this act. 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 11.(b) of this act. Rules adopted pursuant to this section are not subject to G.S. 150B-21.8 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 11.(d) Sunset. – Section 11.(b) of this act expires on the date that rules adopted pursuant to Section 11.(c) of this act become effective.

PART XII. AMEND THE CONTINUING EDUCATION REQUIREMENTS FOR CERTIFIED WELL CONTRACTORS

SECTION 12. G.S. 87-98.12 reads as rewritten:

"**§ 87-98.12. Continuing education requirements.**

In order to continue to be certified under this Article, a well contractor shall satisfactorily complete ~~the number of~~six hours of approved continuing education within a three-year period as required by the Commission. The Commission shall establish the ~~minimum number of hours of continuing education that shall be required to maintain certification,~~requirements for completing continuing education within the three-year period, shall specify the scope of required continuing education courses, and shall approve continuing education courses."

PART XIII. DIRECT THE DEPARTMENT OF TRANSPORTATION TO ADOPT RULES FOR SELECTIVE PRUNING WITHIN HIGHWAY RIGHTS-OF-WAY

SECTION 13. The Department of Transportation shall adopt rules to authorize selective pruning within highway rights-of-way for vegetation that obstructs motorists' view of properties on which agritourism activities, as that term is defined in G.S. 99E-30, occur.

PART XV. EFFECTIVE DATE

SECTION 14. Section 10 is effective when it becomes law and applies to ponds used for agriculture that were either in existence on or constructed after July 22, 1997. Section 12 of this act becomes effective July 1, 2013. The remainder of this act is effective when it becomes law.

SENATE BILL 112:
Amend Environmental Laws 2013

2013-2014 General Assembly

Committee:	Senate Agriculture/Environment/Natural Resources	**Date:**	May 9, 2013
Introduced by:	Sen. Jackson	**Prepared by:**	Jennifer Mundt
Analysis of:	PCS to First Edition S112-CSTA-11 [v.11]		Committee Analyst

SUMMARY: ***The Proposed Committee Substitute for Senate Bill 112 (PCS) would amend certain environmental and natural resources laws.***

[As introduced, this bill was identical to H94, as introduced by Reps. McElraft, Samuelson, McGrady, which is currently in House Environment, if favorable, Finance.]

BILL ANALYSIS:

Section 1 clarifies a provision enacted in 2012 that extended the duration of permits for sanitary landfills and transfer stations that such permits are for both construction and operation of the facility.

Section 2 clarifies the process for appeals from civil penalties assessed by a local government that has established and administers a State-approved erosion and sedimentation control program. This section also provides that civil penalties assessed by a local government under the Sedimentation and Pollution Control Act of 1973 must be remitted to the Civil Penalty and Forfeiture Fund.

Section 3 amends the notice procedure to riparian property owners that adjoin property subject to an application for a dredge and fill permit.

Section 4 amends various statutes governing protected species, marine, and wildlife resources to conform to analogous federal law.

Section 5.(a) amends the statute regulating ownership or use of venomous reptiles to correctly refer to the term "antivenin," not "antivenom," as the serum or treatment for venom.

Section 5.(b) amends the statute governing the investigation of suspected violations, seizure, and disposition of reptiles to direct law enforcement personnel to consult with representatives of the North Carolina Museum of Natural Sciences or the North Carolina Zoological Park to identify appropriate and safe methods to seize a reptile. This section further provides that representatives of the Museum or the Zoological Park may euthanize a venomous reptile for which antivenin is not readily available.

Section 6 amends the Administrative Procedure Act to provide the Wildlife Resources Commission with temporary rulemaking authority for manner of take.

Section 7 amends the definition of the term "built-upon area" as it pertains to stormwater management.

Section 8 provides that underground storage tanks and systems installed after January 1, 1991, *and prior to April 1, 2001,* are not required to comply with well setback requirements or provide secondary containment until January 1, 2020.

Section 9 amends the rules in the North Carolina Administrative Code (NCAC) that pertain to open burning for land clearing or right-of-way maintenance to provide that an air quality permit is not required if materials are not carried offsite or transported over public roads for open burning unless the

materials are carried or transported to: (i) facilities permitted for the operation of an air curtain burner; or (ii) a location where the material is burned no more than 4 times per year, that is at least 500 feet from any dwelling or occupied structure not located on the property, there are no more than 2 piles, each 20 feet in diameter burned at one time, and the location is not a permitted solid waste facility. This section also makes conforming statutory changes.

Section 10 exempts ponds that are constructed and used for agriculture (as that term is defined in G.S. 106-581.1) from the: (i) Neuse River Basin riparian buffer rules; (ii) Tar-Pamlico River Basin riparian buffer rules; (iii) Jordan Water Supply Watershed riparian buffer rules; (iv) Randleman Lake Water Supply Watershed riparian buffer rules; (v) riparian buffer rules in the Catawba River Basin; (vi) riparian buffer rules in the Goose Creek Watershed (Yadkin Pee-Dee River Basin) and; (vii) any similar rule adopted for the protection and maintenance of riparian buffers.

This section provides that the riparian buffer rules must apply if the use of the property adjacent to the pond changes such that it no longer is used for agriculture.

This section becomes effective when this act becomes law and applies to ponds used for agriculture that were either in existence on or constructed after July 22, 1997.

Section 11 amends the rules in the NCAC to provide for reduced flow alternatives to the Daily Flow Rate for Design for wastewater systems as required by Table No. 1 in 15A NCAC 18A .1949(b). This section would exempt proposed wastewater systems from complying with the Daily Flow Rate for Design and any design flow standard established by the Commission for Public Health or the Department of Health and Human Services provided (i) the daily flow rate for design of the system is less than the rate listed by rule (Table No. 1, 15A NCAC 18A .1949(b)), (ii) the daily flow rate for design can be achieved through engineering design that utilizes low-flow fixtures and low-flow technologies, and (iii) the design is prepared, sealed, and signed by a professional engineer licensed in North Carolina.

This section further provides that proposed wastewater systems with a daily flow for design of less than 3,000 gallons per day are not required to obtain State-level review for the system.

Section 12 amends the continuing education requirements for certified well contractors to provide that a well contractor must obtain six hours of continuing education within a three-year period rather than obtaining six continuing education units within a one-year period as is currently required by rule .

This section becomes effective July 1, 2013.

Section 13 directs the Department of Transportation to adopt rules for selective pruning within highway rights-of way for vegetation that obstructs a motorists' view of properties on which agritourism activities occur.

EFFECTIVE DATE: Unless otherwise indicated above, this act becomes effective when it becomes law.

SENATE PAGES ATTENDING

COMMITTEE: Agriculture ROOM: 421

DATE: 5-9 TIME: 9 Am

PLEASE PRINT LEGIBILY!!!!!!!!!!!!!....*or else!*

Page Name	Hometown	Sponsoring Senator
1. Jordan Thomas	Garner	Blue
2. Lauren Coker	Garner	Sanderson
3. Kateleigh Johnson	Kipling	Rabin
~~John Easterling~~	~~Laurinburg~~	~~Meloccia~~
5. Donald Kernodle	Burlington	Berger
6. ~~John~~ Angie Kernodle	Burlington	Gunn
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 Sergeant-at-Arms.

-1-

VISITOR REGISTRATION SHEET

Senate/Agriculture/Environment/Natural Resources
(Committee Name)

5/9/2013
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Christopher W. Hett	197 Pine Cliff Rd Havelock NCTA
Jay Dixon	ENCFHA
Sheila Goffe	American Kennel Club
Kay Emanuel	School of Government
TJ Bunyea	NP
Tom BEAN	EDF, WCWF
DURWOOD LAUGHINGHOUSE	NS
CHRIS DILLON	ANARC
CHRIS HUEBNER	" "
Rob Lumm	FHA
Nelson PEACE	
Billy Holland	NC Trapper Assoc.
Lori Ann Harris	LANA
Nelson Ames	Good Pasture
MAX MARTIN	NC WRC
GORDON MYERS	WRC
Chris Hoke	DHHS - DPH

09-21-201

VISITOR REGISTRATION SHEET

Senate/Agriculture/Environment/Natural Resources
(Committee Name)

5/9/2013
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Penny Page	NCDA&CS
Lee Hunter	"
Joy Hatch	NCDA&CS
Doug Lassiter	NCSTA
Preston Howard	NCMA
Nadia Luhr	NCCN
Steven Webb	NCHBA
Lisa Martin	NCRMA
Cary Thomas	NCRA
Mike Abraczinskas	NCDENR-DAQ
Jessica Mathies	NC-DENR
Tracy Davis	DENR-DEMLR
Dexter Matthews	DENR
Mitch Gillespie	DENR
Trina Ozer	DENR
Layla Cummings	DENR
Carr McLamb	DENR

VISITOR REGISTRATION SHEET

Senate/Agriculture/Environment/Natural Resources
(Committee Name)

5/9/2013
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
BERRY Jenkins	CAROLINAS AGC
Erin Wynia	NCLM

09-21-201

Senate Committee on Agriculture/Environment/Natural Resources
Tuesday, May 14, 2013, 11:00 AM
544 Legislative Office Building

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

BILL NO.	SHORT TITLE	SPONSOR
SB 515	Nutrient Management Standards Reform Act.	Senator Gunn Senator Wade
SB 112	Amend Environmental Laws 2013.	Senator Jackson
SB 689	Amend Trapping Law.	Senator Sanderson
SB 151	Coastal Policy Reform Act of 2013.	Senator Rabon
SB 703	Limit Local Regulation Of Outdoor Smoking.	Senator Newton Senator Jackson Senator Brock
SB 580	Expedite Cleanup of Orphan Landfill Sites.	Senator Tarte - Pulled - Will be heard on May 15th
SB 376	Landowners/Lessees May Trap Coyotes.	Senator Bingham - Pulled & will be heard on May 15th

Adjournment

Senate Committee on Agriculture/Environment/Natural Resources
Tuesday, May 14, 2013 at 11:00 AM
Room 544 of the Legislative Office Building

MINUTES

The Senate Committee on Agriculture/Environment/Natural Resources met at 11:00 AM on May 14, 2013 in Room 544 of the Legislative Office Building. Seventeen (17) members were present.

Senator Andrew Brock, presided.

Sen. Brock introduced the pages – Dillian Phillips from Louisburg sponsored by Sen. Barefoot, Jamera Williams from Weldon sponsored by Sen. Bryant, Kristen Alderman from Lewisville sponsored by Sen. Brunstetter, Kay Alderman of Lewisville sponsored by Sen. Brunstetter, Kennedy Terrell of Matthews sponsored by Sen. Tarte and Ivy O'Donnell of Bostic sponsored by Sen. Hise.

The Sgt. of Arms for today's meeting are Charles Harper, Ronald Spann, Justin Owens, and Steve Wilson.

The following bills were heard:

SB 515 - Nutrient Management Standards Reform Act – Sen. Gunn.

Sen. Cook moved to accept the PCS. The motion carried.
Sen. Gunn explained the bill and there were follow up questions from Sen. Kinnaird, Sen. Rabon, Sen. Bryant, Sen. Tucker, Sen. Clodfelter, Sen. Hartsell and Sen. Tucker for which Sen. Gunn and Jeff Hudson from Research responded to all the questions. Sen. Cook moved for a Favorable Report to the PCS. The motion carried.

SB 112 – Amend Environmental Laws – Sen. Jackson

Sen. Jackson moved to accept the PCS. The motion carried.
Sen. Jackson explained the bill. There were follow up questions from Sen. Ford, and Sen. Tucker. Responses to these follow-up questions were from Jennifer McGinnis of Research and Gordon Myers, Director of the Wildlife Resource Commission. Sen. Bingham moved for a Favorable Report to the PCS and the motion carried.

SB 689 – Amend Trapping Law – Sen. Sanderson

Sen. Jackson offered an amendment. Sen. Sanderson explained the original bill then explained the amendment. There was a PCS on this bill. Harry Ennis, President of the Eastern NC Fox Hunters Association spoke in Favor of the bill. Tony White of the NC Trappers Association spoke against the bill. Kim Albolm of the Humane Society of the United States spoke in favor of the bill. Shane Phillips from the audience spoke against the bill. There were follow up questions from Sen. Walters and Sen. Wade for which Gordon Myers, Dir. of the Wildlife Resource Commission

responded. Sen. Bingham moved for a Favorable Report to the amended bill (PCS) and the motion carried.

SB151 – Coastal Policy Reform Act of 2013 – Sen. Rabon

Sen. Rabon moved to accept the PCS. The motion carried.

Sen. Rabon explained the bill. There were follow up questions from Sen. Bryant, Sen. Kinnaird, Sen. Rabin, and Sen. Allran. All follow up questions were responded to by Jeff Hudson from Research and Sen. Rabon. Rob Lamme, lobbyist who represents the NC Coastal Federation spoke against the bill. Mary Asbell from the Southern Environmental Law Center spoke against the bill and Sen. Rabon responded to both Rob Lamme and Mary Asbell. Sen. Rabin moved for a Favorable Report to the PCS and the motion carried.

SB 703 – Limit Local Regulation of Outdoor Smoking – Sen. Newton

Sen. Jackson moved to accept the PCS. The motion carried.

Sen. Newton had Chris Saunders from Research explain the technical corrections in the PCS. Sen. Newton explained the bill. There were follow- up questions from Sen. Bryant, Sen. Cook, Sen. Allran, Sen. Ford, Sen. Bingham, and Sen. Rabin and Sen. Brock. Sen. Newton responded to the follow up questions from the committee. Sen. Brock told the committee that this bill has a sequential referral to State and Local Government. Sen. Jackson moved for a Favorable Report on the bill and the motion carried.

The meeting adjourned at 12:36 pm.

Senator Andrew Brock
Presiding

Judy Edwards, Committee Clerk

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES COMMITTEE REPORT
Senator Brock, Co-Chair
Senator Jackson, Co-Chair

Tuesday, May 14, 2013

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

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

SB **112** Amend Environmental Laws 2013.
- Draft Number: S112-PCS85227-TA-18
- Sequential Referral: None
- Recommended Referral: None
- Long Title Amended: Yes

SB **151** Coastal Policy Reform Act of 2013.
- Draft Number: S151-PCS85230-SB-2
- Sequential Referral: None
- Recommended Referral: None
- Long Title Amended: Yes

SB **515** Nutrient Management Standards Reform Act.
- Draft Number: S515-PCS15270-SB-20
- Sequential Referral: None
- Recommended Referral: None
- Long Title Amended: No

SB **703** Limit Local Regulation Of Outdoor Smoking.
- Draft Number: S703-PCS85231-TQ-35
- Sequential Referral: State and Local Government
- Recommended Referral: None
- Long Title Amended: No

TOTAL REPORTED: 4

Senator W. Jackson will handle SB 112
Senator William Rabon will handle SB 151
Senator Richard Gunn will handle SB 515
Senator E.S. Newton will handle SB 703



NORTH CAROLINA GENERAL ASSEMBLY
SENATE

AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES COMMITTEE REPORT
Senator Brock, Co-Chair
Senator Jackson, Co-Chair

Tuesday, May 14, 2013

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

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

SB **689** Amend Trapping Law.

Draft Number:	S689-PCS35343-RI-18
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

TOTAL REPORTED: 1

Senator Norman Sanderson will handle SB 689



GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

S D

SENATE BILL 515
PROPOSED COMMITTEE SUBSTITUTE S515-PCS15270-SB-20

Short Title: Jordan Lake Water Quality Act. (Public)

Sponsors:

Referred to:

March 28, 2013

A BILL TO BE ENTITLED

AN ACT TO REVISE THE NUTRIENT MANAGEMENT STANDARDS APPLICABLE TO THE JORDAN LAKE WATERSHED.

Whereas, the United States Congress authorized the United States Army Corps of Engineers (USACE) to create what is now the B. Everett Jordan Lake in 1963; and

Whereas, the USACE submitted a Final Environmental Impact Statement (EIS) in November 1971 that stated, "Of primary concern is the eutrophic tendency of the lake. Eutrophication is a term used to describe the natural change in productivity of a lake during aging. It is usually a long-term phenomenon, which may be measured in geologic time .... Studies have shown that, assuming that all other elements necessary are available, the amounts of nitrogen and phosphorus presently found in the influent are adequate to produce algae blooms in the lake."; and

Whereas, the USACE stated in the EIS, "Several studies have indicated that the major water quality problem will be associated with anticipated nuisance algal growths resulting from excess nutrients from upstream sources."; and

Whereas, the United States Environmental Protection Agency (EPA) commented in the EIS, "Nutrient concentration in both the Haw River and New Hope River are high, and nuisance algal growth detrimental to water supply and recreation are a virtual certainty .... Impoundment should not take place until there is a strong technical basis for the prediction that nuisance algal growths will not occur."; and

Whereas, the USACE, in responding to the EPA's comments in the EIS, stated, "... it is doubtful whether a strong technical basis exists for the prediction that nuisance algal growths will not occur on most existing reservoirs ...."; and

Whereas, the United States Department of the Interior Bureau of Sport Fisheries and Wildlife commented in the EIS that, "High nutrient concentrations will intensify and extend water quality problems into the upper surface layers. Therefore, impoundment will create a pollution problem to the detriment of the ecosystem."; and

Whereas, the EIS contained a summary of complaints from pending litigation that included, "Even in the absence of nutrients from wastes, the shallowness ... would ensure abnormally heavy algae growths that could not be controlled .... Probably the most serious deficiency of defendants' environmental statement is its de-emphasis on the certainty that the water ... will be of exceptionally bad quality."; and

Whereas, Colonel Homer Johnstone, the USACE Wilmington District Engineer signed a Notice of Decision to Impound on September 14, 1976, to create the B. Everett Jordan Lake permanent conservation pool; and

Whereas, in the USACE Notice of Decision to Impound, Colonel Johnstone considered work of the National Eutrophication Survey by the United States Environmental Protection Agency and stated, "That there is common agreement that B. Everett Jordan Lake will be eutrophic. Over 70 percent of the lakes in North Carolina are eutrophic." and that "Algal blooms are common in eutrophic lakes."; and

Whereas, in the USACE Notice of Decision to Impound, Colonel Johnstone stated, "I find that most of the lake will be acceptable for boating and primary (water) contact recreation. However, above SR 1008 crossing, I anticipate heavy growth of algae and aquatic plants such as water lilies in response to the high nutrient inflows"; and

Whereas, in the USACE Notice of Decision to Impound, Colonel Johnstone stated that, "The trophic state of the lake can affect public water supplies if algal growths become quite large and taste and odor problems develop. This problem may develop on occasion if water is withdrawn above the natural topographical constriction near the confluence of the two rivers up to SR 1008. There are apt to be increased treatment costs .... These effects are not unusual, however, and can be minimized by careful selection of withdrawal location."; and

Whereas, the USACE Notice of Decision to Impound also addressed bacteriological quality in the proposed lake and Colonel Johnstone stated, "The bacteriological quality standards for raw water supply are less stringent than those for recreational activities such as swimming and water skiing.", and "Problem areas are the inflows of both the Haw and New Hope Rivers which sometimes contain excessive bacteriological levels.", and "During the summer months, bacterial standards may be exceeded on the first 1.5 miles of the upper Haw arm of the lake, Robeson Creek Cove and the area above SR 1008 on the New Hope River."; and

Whereas, the USACE Notice of Decision to Impound addressed heavy metal concentrations in the proposed lake and Colonel Johnstone stated, "I know of no reliable technique to predict accurately the effects of dilution on the concentrations of heavy metals, but I am confident that dilution will ameliorate these concentrations at their point of withdrawal or discharge from the lake."; and

Whereas, in the USACE Notice of Decision to Impound, Colonel Johnstone stated, "Further, the predicted concentrations of heavy metals in the water and fish do not pose a threat to human life or the environment and do not affect the purposes of the project as authorized. However, I will institute a program of sampling and testing to be continued after impoundment."; and

Whereas, in the USACE Notice of Decision to Impound, Colonel Johnstone stated, "Adverse impacts include the possibility that portions of the lake will not be desirable for recreation. This has been expected from the start of planning and recreation areas planned accordingly. Then, too, there is the presence of mercury in fish which warrants concern but does not pose a threat to human health or the environment."; and

Whereas, in the USACE Notice of Decision to Impound, Colonel Johnstone stated, "Along with flood control, project purposes which will be served impoundment are downstream low-flow augmentation, water supply, fish and wildlife conservation and recreation. The projected water quality within the impounded waters, while reflecting problems present in many lakes and streams in the region, will provide for these original purposes."; Now, therefore,

The General Assembly of North Carolina enacts:

PART I. LEGISLATIVE INTENT

SECTION 1. It is the intent of the North Carolina General Assembly to address the water quality in the B. Everett Jordan Lake (Lake) by recognizing all of the following to be true:

(1) The Lake was authorized, designed, and constructed by the federal government and, prior to impoundment, documentation shows that the federal government knew the Lake would be an impaired water body.

(2) The design of the Lake creates a situation of perpetual impairment regardless of upstream variables. Therefore, the State's existing nutrient management strategies regulating the Lake basin will continue to have little or no effect on water quality improvement in the Lake itself.

(3) The continued application of the current nutrient management strategy within the Lake basin, which is both inadequate and ineffective, creates an unfair and unattainable regulatory burden on North Carolina's citizens with direct results that include wasteful expenditure of private and taxpayer-funded resources, development restrictions, and the inhibition of economic growth.

(4) A completely new approach for water quality management is deemed necessary with a primary focus on mitigation of the water quality within the Lake itself, which can only be done by first achieving a complete repeal of the existing session laws and rules that address nutrient management standards within the Lake basin.

(5) The cost of development and implementation of a new or revised regulatory framework must take into consideration that all of the municipal and county governments within the Lake basin have invested taxpayer dollars at different levels to implement previous nutrient management strategies mandated by the State and federal governments. Therefore, future costs of a new nutrient management and water quality strategy must be fairly distributed and based, in part, on a prorated share of these differing levels of previous good-faith efforts and investments.

(6) During its 2013 session, the General Assembly will authorize a study to provide recommendations for consideration by the full General Assembly to direct the State's efforts on development of a new regulatory framework to address water quality within the Lake basin to begin as early as May 2014 with implementation soon thereafter.

PART II. REPEAL OF EXISTING RULES AND STATUTES

SECTION 2.(a) The Environmental Management Commission shall, no later than October 1, 2013, repeal the following rules:

(1) 15A NCAC 02B .0262 through .0273

(2) 15A NCAC 02B .0311

SECTION 2.(b) S.L. 2009-216, Part II of S.L. 2009-484, Section 14 of S.L. 2011-394, Section 12.1 of S.L. 2012-187, Subsections 9(c) through 9(g) of S.L. 2012-200, and Subsections 11(a) through 11(e) of S.L. 2012-201 are repealed.

SECTION 2.(c) The rules to be repealed pursuant to subsection (a) of this section and the Session Laws to be repealed pursuant to subsection (b) of this section shall not be enforced by the State or any of its subdivisions.

PART III. LRC STUDY JORDAN LAKE NUTRIENT LOADING ISSUES

SECTION 3. The Legislative Research Commission shall establish the Jordan Lake Study Subcommittee to consider all issues deemed relevant to addressing the water quality in Jordan Lake. The subcommittee shall consist of five Senators appointed by the President Pro Tempore of the Senate and five Representatives appointed by the Speaker of the House of Representatives. The subcommittee shall undertake, at a minimum, the following activities:

(1) Review the history of Jordan Lake and its nutrient loading issues.

(2) Evaluate the current condition and uses of Jordan Lake.

(3) Consider the potential future conditions and uses of Jordan Lake.
(4) Review the development, policies, and content of the rules and Session Laws repealed in Subsections 2(a) and 2(b) of this act.
(5) Review statutory law for the management of nutrients in the State.
(6) Receive input from experts in nutrient management on strategies for management of nutrients in Jordan Lake.
(7) Receive input from interested stakeholders, including local governments and representatives of agricultural, development, environmental, and other interests, on strategies for management of nutrients in Jordan Lake.
(8) Develop recommendations, including legislative proposals, addressing water quality in Jordan Lake. The recommendations should include a projected timeline for implementation, including rule development by appropriate agencies, boards, and commissions. The recommendations shall consider the efficacy of a primary water quality strategy that focuses on treatment and remediation of Jordan Lake rather than upstream mitigation strategies, the projected costs, the distribution of cost-sharing between local governments within the affected basin, and an assessment of the likelihood in achieving measureable protection of the water quality in Jordan Lake.

The Commission shall report any findings and recommendations to the 2014 Regular Session of the 2013 General Assembly. The Commission shall also transmit any findings and recommendations to the Environmental Review Commission and the Fiscal Research Division.

SECTION 5. Consultation. – The Department of Environment and Natural Resources and the Environmental Management Commission shall consult with the United States Army Corps of Engineers and the United States Environmental Protection Agency to identify mitigation strategies that focus on treatment and remediation of the lake rather than upstream mitigation strategies.

SECTION 6. Effective date. – Subsection 2(b) of this act becomes effective October 1, 2013. The remainder of this act is effective when it becomes law.

SENATE BILL 515:
Nutrient Management Standards Reform Act

2013-2014 General Assembly

Committee:	Senate Agriculture/Environment/Natural Resources	**Date:**	May 14, 2013
Introduced by:	Senators Gunn and Wade	**Prepared by:**	Jeff Hudson Committee Counsel
Analysis of:	PCS to First Edition S515-PCS15270-SB-20		

SUMMARY: The Proposed Committee Substitute for Senate Bill 515 would repeal the Jordan Lake Rules and related Session Laws and provide for a study of water quality in Jordan Lake.

BACKGROUND AND CURRENT LAW: Jordan Lake is located in the piedmont region of central North Carolina in the upper Cape Fear River Basin. Its watershed contains large portions of the urbanized Triangle and Triad regions as well as significant agricultural lands. The Lake was created in 1983 for the purposes of flood control, downstream water quality, fish and wildlife conservation, recreation, and water supply.

Jordan Lake has been consistently rated as eutrophic or hyper-eutrophic since its impoundment in 1983. "Eutrophic" is an over-abundance of nutrients in the lake, primarily nitrogen and phosphorus, which may result in algal blooms and poor water quality. Nutrients make their way to the lake from sources such as wastewater discharges, rainfall runoff from agriculture, and stormwater runoff from new and existing developed lands throughout the entire Jordan watershed. Excessive nutrient inputs drive excessive growth of microscopic algae, which imparts a greenish, murky appearance to the water, causes taste and odor problems in potable water, and robs the water of oxygen, stressing or killing fish and other aquatic life. While not necessarily making the lake unfit for fishing, swimming, or drinking uses, excess nutrients are impacting these uses, and undesirable algae are present in the lake.

The State began taking actions to address the nutrient problems early in the lake's history. The Environmental Management Commission (EMC) designated the Reservoir a Nutrient Sensitive Water (NSW) the year of its impoundment, and imposed phosphorus limits on wastewater dischargers. The lake did not respond to these controls, and in 2002, the EMC determined that the Upper New Hope arm was impaired after it exceeded the State's chlorophyll-a standard. The rest of the lake exceeded the standard in 2006. (Chlorophyll-a is used as an indicator of excess nutrients in waterbodies.)

Several pieces of legislation directed the EMC to address Jordan Lake's impairment. The Clean Water Responsibility Act of 1997 required the EMC to establish improvement goals for nutrient-impaired waters, and to develop and implement management plans that entail sharing of responsibility for reducing nutrient inputs to these waters between point sources and nonpoint sources in a fair, reasonable, and proportionate manner. Session Law 2005-190 directed the EMC to adopt permanent rules to establish and implement nutrient management strategies to protect drinking water supply reservoirs. In addition, requirements of the federal Clean Water Act were set in motion when the lake became impaired, including the need to set load reduction limits for point and nonpoint sources and to enforce discharge limits.

To comply with the Clean Water Responsibility Act of 1997, Haw wastewater dischargers developed a reservoir model in the late 1990s to estimate the lake's nutrient reduction needs. The EMC approved a reservoir model in 2002. Beginning in 2003, the Division of Water Quality (Division) in the

Department of Environment and Natural Resources (DENR) conducted a 1½-year stakeholder meeting process, facilitated by the Triangle J Council of Governments, to seek consensus on nutrient loading goals, discharge allocation methods, and a conceptual nonpoint source strategy. In 2005, the Division held public meetings and solicited public comments on a rules framework. The Division then drafted a set of rules, and held technical stakeholder meetings through 2006 that resulted in rule refinements.

The formal rule-making process began when the rules were published on June 15, 2007, and a 90-day public comment period followed. This included three public hearings held in different locations in the watershed. Following the comment period, five Hearing Officers, all members of the EMC, deliberated for eight months over changes needed to address the comments received. The EMC adopted a revised set of 13 rules, the Jordan Lake Rules, in May, 2008. The rules include a rule for managing nutrients from agricultural sources (Agriculture Rule), a rule for managing stormwater from new development (New Development Rule), a rule for managing stormwater from existing development (Existing Development Rule), several riparian buffer rules, and a rule for managing nutrients from wastewater discharges (Wastewater Discharge Rule).

In June 2008, the Jordan Lake Rules were brought before the Rules Review Commission (RRC). The RRC reviewed and approved the rules over the course of five meetings, with the last approvals on November 20, 2008. A large number of technical changes were made to the rules in response to objections from the RRC, but the content of the rules remained essentially unchanged.

The RRC received a sufficient number of objection letters to the Jordan Lake Rules to necessitate their review by the General Assembly during its 2009 Regular Session. Several disapproval bills were introduced, including House Bill 239, which was ultimately enacted as S.L. 2009-216. This legislation delayed the compliance date of the Wastewater Discharge Rule by two years and provided for phased-in implementation of the Existing Development Rule. The General Assembly has enacted five subsequent pieces of legislation dealing with the Jordan Lake Rules: Part II of S.L. 2009-484, Section 14 of S.L. 2011-394, Section 12.1 of S.L. 2012-187, Subsections 9(c) through 9(g) of S.L. 2012-200, and Subsections 11(a) through 11(e) of S.L. 2012-201. *(Some background information excerpted from the DENR website at: http://portal.ncdenr.org/web/jordanlake/background)*

BILL ANALYSIS AND EFFECTIVE DATES: The Proposed Committee Substitute for Senate Bill 515 (PCS) would:

- Provide that the Jordan Lake Rules and related Session Laws are not enforceable when the act becomes law.
- Direct the EMC to repeal the Jordan Lake Rules no later than October 1, 2013.
- Repeal the related Session Laws effective October 1, 2103.
- Direct the Legislative Research Commission (LRC) to establish the Jordan Lake Study Subcommittee to study issues related to water quality in Jordan Lake. The LRC must report the results of the study to the 2014 Regular Session of the 2013 General Assembly. (Effective when the act becomes law.)
- Direct DENR and the EMC to consult with the United States Army Corps of Engineers and the United States Environmental Protection Agency to identify mitigation strategies that focus on treatment and remediation of Jordan Lake rather than on upstream mitigation. (Effective when the act becomes law.)

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

S 1

SENATE BILL 515

Short Title:	Nutrient Management Standards Reform Act.	(Public)
Sponsors:	Senators Gunn and Wade (Primary Sponsors).	
Referred to:	Agriculture/Environment/Natural Resources.	

March 28, 2013

A BILL TO BE ENTITLED

AN ACT TO REVISE THE NUTRIENT MANAGEMENT STANDARDS APPLICABLE TO THE JORDAN LAKE WATERSHED.

The General Assembly of North Carolina enacts:

SECTION 1.(a) Definitions. – "Riparian Buffer Rule" means 15A NCAC 2B .0267 (Jordan Water Supply Nutrient Strategy: Protection of Existing Riparian Buffers) for purposes of this act.

SECTION 1.(b) Riparian Buffer Rule. – Until the effective date of the revised permanent rule that the Environmental Management Commission is required to adopt pursuant to Section 1(c) of this act, the Commission and the Department of Environment and Natural Resources shall implement the Riparian Buffer Rule as provided in Section 2 of this act.

SECTION 1.(c) Additional Rule-Making Authority. – The Commission shall adopt a rule to replace the Riparian Buffer Rule. 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 of this act. Rules adopted pursuant to this section are not subject to G.S. 150B-21.9 through G.S. 150B-21.14. The rule 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.(a) The Commission shall give primary implementation responsibility for the Riparian Buffer Rule to the Department, unless a unit of local government requests authority to implement some or all of the Riparian Buffer Rule.

SECTION 2.(b) The Commission shall exempt nonelectric utilities impacting the riparian buffer with an other than perpendicular crossing, when those impacts are limited to Zone Two of the buffer. For purposes of this subsection, "exempt" shall have the meaning set forth in the Riparian Buffer Rule's requirements for categories of use.

SECTION 2.(c) The Commission shall add piping of streams as a new category of allowable use when the piping is allowed under a permit issued by the United States Army Corps of Engineers. For purposes of this subsection, "allowable" shall have the meaning set forth in the Riparian Buffer Rule's requirements for categories of use.

SECTION 3. Effective date. – Section 1(b) of this act expires when permanent rules to replace Section 1(b) of this act and meeting the requirements of Section 2 of this act have become effective.

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

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

S D

SENATE BILL 112*
PROPOSED COMMITTEE SUBSTITUTE S112-PCS85227-TA-18

Short Title: Amend Environmental Laws 2013. (Public)

Sponsors:

Referred to:

February 21, 2013

A BILL TO BE ENTITLED

AN ACT TO AMEND CERTAIN ENVIRONMENTAL AND NATURAL RESOURCES LAWS TO (1) CLARIFY THAT EXTENDED-DURATION PERMITS FOR SANITARY LANDFILLS AND TRANSFER STATIONS AUTHORIZED BY S.L. 2012-187 ARE PERMITS FOR OPERATION AS WELL AS CONSTRUCTION; (2) CLARIFY THE PROCESS FOR APPEALS FROM CIVIL PENALTIES ASSESSED BY A LOCAL GOVERNMENT THAT HAS ESTABLISHED AND ADMINISTERS AN EROSION AND SEDIMENTATION CONTROL PROGRAM APPROVED UNDER G.S. 113A-60 AND PROVIDE THAT CIVIL PENALTIES ASSESSED BY A LOCAL GOVERNMENT PURSUANT TO THE SEDIMENTATION POLLUTION CONTROL ACT OF 1973 SHALL BE REMITTED TO THE CIVIL PENALTY AND FORFEITURE FUND; (3) AMEND DREDGE AND FILL PERMIT APPLICANT PROCEDURE FOR NOTICE TO ADJOINING PROPERTY OWNERS; (4) MAKE TECHNICAL AND CONFORMING CHANGES TO PROTECTED SPECIES, MARINE, AND WILDLIFE RESOURCES STATUTES; (5) MAKE CLARIFYING AND CONFORMING CHANGES TO THE STATUTES PERTAINING TO THE MANAGEMENT OF SNAKES AND OTHER REPTILES; (6) AMEND THE ADMINISTRATIVE PROCEDURE ACT TO PROVIDE THE WILDLIFE RESOURCES COMMISSION WITH TEMPORARY RULE-MAKING AUTHORITY FOR MANNER OF TAKE; (7) AMEND THE DEFINITION OF "BUILT-UPON AREA"; (8) CLARIFY THOSE UNDERGROUND STORAGE TANKS THAT ARE NOT REQUIRED TO PROVIDE SECONDARY CONTAINMENT UNTIL JANUARY 1, 2020; (9) AMEND THE RULES THAT PERTAIN TO OPEN BURNING FOR LAND CLEARING OR RIGHT OF WAY MAINTENANCE; (10) EXEMPT PONDS THAT ARE CONSTRUCTED AND USED FOR AGRICULTURAL PURPOSES FROM RIPARIAN BUFFER RULES; (11) PROVIDE FOR LOW-FLOW DESIGN ALTERNATIVES FOR WASTEWATER SYSTEMS; (12) AMEND THE CONTINUING EDUCATION REQUIREMENTS FOR CERTIFIED WELL CONTRACTORS; (13) DIRECT THE DEPARTMENT OF TRANSPORTATION TO ADOPT RULES FOR SELECTIVE PRUNING WITHIN HIGHWAY RIGHTS-OF-WAY; (14) PROHIBIT PUBLIC ENTITIES FROM PURCHASING OR ACQUIRING PROPERTY WITH KNOWN CONTAMINATION WITHOUT APPROVAL OF THE GOVERNOR AND COUNCIL OF STATE; AND (15) LIMIT LOCAL GOVERNMENT REGULATION OF STORAGE, RETENTION, OR USE OF NONHAZARDOUS RECYCLED MATERIALS.

The General Assembly of North Carolina enacts:

PART I. CLARIFY THAT EXTENDED-DURATION PERMITS FOR SANITARY LANDFILLS AND TRANSFER STATIONS AUTHORIZED BY S.L. 2012-187 ARE PERMITS FOR OPERATION AS WELL AS CONSTRUCTION

SECTION 1. Section 15.1 of S.L. 2012-187 reads as rewritten:

"**SECTION 15.1.** No later than July 1, 2013, the Commission for Public Health shall adopt rules to allow applicants for sanitary landfills the option to (i) apply for a permit to construct and operate a five-year phase of landfill development and apply to amend the permit to construct and operate subsequent five-year phases of landfill development; or (ii) apply for a permit to construct and operate a 10-year phase of landfill development and apply to amend the permit to construct and operate subsequent 10-year phases of landfill development, with a limited review of the permit five years after issuance of the initial permit and five years after issuance of each amendment for subsequent phases of development. No later than July 1, 2013, the Commission shall also adopt rules to allow applicants for permits for transfer stations the option to (i) apply for a permit with a five-year duration to construct and operate a transfer station; or (ii) apply for a permit with a 10-year duration to construct and operate a transfer station, with a limited review of the permit five years after issuance of the initial permit and five years after issuance of any amendment to the permit. In developing these rules, the Department of Environment and Natural Resources shall examine the current fee schedule for permits for sanitary landfills and transfer stations as set forth under G.S. 130A-295.8 and formulate recommendations for adjustments to the current fee schedule sufficient to address any additional demands associated with review of permits issued for 10-year phases of landfill development and the issuance permits with a duration of up to 10 years for transfer stations. The Department shall report its findings and recommendations, including any legislative proposals, to the Environmental Review Commission on or before December 1, 2012. The rules required by this section shall not become effective until the fee schedule set forth under G.S. 130A-295.8 is amended as necessary to address any additional demands associated with review of permits issued for 10-year phases of landfill development and the issuance of permits with a duration of up to 10 years to construct and operate transfer stations."

PART II. CLARIFY LOCAL GOVERNMENT AUTHORITY UNDER THE SEDIMENTATION AND POLLUTION CONTROL ACT

SECTION 2. G.S. 113A-64 reads as rewritten:

"**§ 113A-64. Penalties.**

(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.

(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 the reason for assessing the penalty. The notice of assessment shall be served by any means authorized under ~~G.S. 1A-1, Rule 4, and~~ G.S. 1A-1. A notice of assessment by the Secretary 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. A notice of assessment by a local government shall direct the violator to either pay the assessment or contest the assessment within 30 days by filing a petition for hearing with the local government as directed by procedures within the local ordinances or regulations adopted to establish and enforce the erosion and sedimentation control program. 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.

(3) In determining the amount of the penalty, the Secretary or a local government shall consider the degree and extent of harm caused by the violation, the cost of rectifying the damage, the amount of money the violator saved by noncompliance, whether the violation was committed willfully and the prior record of the violator in complying or failing to comply with this ~~Article.~~Article, or any ordinance, rule, or order adopted or issued pursuant to this Article by the Commission or by a local government.

(4) Repealed by Session Laws 1993 (Reg. Sess., 1994), c. 776, s. 11.

(5) The clear proceeds of civil penalties collected by the Department or other State agency or a local government under this subsection shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2. ~~Civil penalties collected by a local government under this subsection shall be credited to the general fund of the local government as nontax revenue.~~

(b) Criminal Penalties. – Any person who knowingly or willfully violates any provision of this Article or any ordinance, rule, regulation, or order duly adopted or issued by the Commission or a local government, or who knowingly or willfully 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, shall be guilty of a Class 2 misdemeanor that may include a fine not to exceed five thousand dollars ($5,000)."

PART III. AMEND DREDGE AND FILL PERMIT APPLICANT PROCEDURE FOR NOTICE TO ADJOINING PROPERTY OWNERS

SECTION 3. G.S. 113-229 reads as rewritten:

"**§ 113-229. Permits to dredge or fill in or about estuarine waters or State-owned lakes.**

...

(d) An applicant for a permit, other than an emergency permit, shall ~~send a copy of his application to~~ notify the owner of each tract of riparian property that adjoins that of the applicant. ~~The copy shall be served~~ An applicant may satisfy the required notification of adjoining riparian property owners by either (i) obtaining from each adjoining riparian property owner a signed statement that the adjoining riparian property owner has no objection to the proposed project or (ii) providing a copy of the applicant's permit application to each adjoining riparian property owner by certified ~~mail~~ mail. ~~or, if~~If the owner's address is unknown and cannot be ascertained with due diligence or if a diligent but unsuccessful effort has been made to serve the copy by certified mail, ~~by~~ publication in accordance with the rules of the

~~Commission.~~Commission shall serve to satisfy the notification requirement. An owner may file written objections to the permit with the Department for 30 days after ~~he~~the owner is served with a copy of the ~~application.~~application by certified mail. In the case of a special emergency dredge or fill permit the applicant must certify that ~~he~~the applicant took all reasonable steps to notify adjacent riparian owners of the application for a special emergency dredge and fill permit prior to submission of the application. Upon receipt of this certification, the Secretary shall issue or deny the permit within the time period specified in subsection (e) of this section, upon the express understanding from the applicant that ~~he~~ the applicant will be entirely liable and hold the State harmless for all damage to adjacent riparian landowners directly and proximately caused by the dredging or filling for which approval may be given.

...."

PART IV. TECHNICAL AND CONFORMING CHANGES TO PROTECTED SPECIES AND MARINE/WILDLIFE RESOURCES STATUTES

SECTION 4.(a) 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:

...

(7) Fish; Fishes. – All ~~marine mammals;~~finfish; all shellfish; and all ~~crustaceans; and all other fishes.~~crustaceans.

...."

SECTION 4.(b) G.S. 113-189 reads as rewritten:

"§ 113-189. Protection of sea ~~turtles and porpoises.~~turtles, marine mammals, migratory birds, and finfish.

(a) It is unlawful to willfully take, harm, disturb or destroy any sea turtles protected under the federal Endangered Species Act of 1973 (Public Law 93-205), as it may be subsequently amended, including green, hawksbill, loggerhead, Kemp's ridley and leatherback turtles, or their nests or eggs.

(b) It shall be unlawful willfully to take, ~~harm~~ harm, disturb, or destroy ~~porpoises.~~marine mammals protected under the federal Marine Mammal Protection Act of 1972 (Public Law 92-522), as it may be subsequently amended.

(c) It shall be unlawful willfully to take, harm, disturb, or destroy migratory birds protected under the federal Migratory Bird Treaty Act of 1918 (16 U.S.C. 703 through 712), as it may be subsequently amended, unless such action is permitted by regulations.

(d) It shall be unlawful willfully to take, harm, disturb, or destroy finfish protected under the federal Endangered Species Act of 1973 (Public Law 93-205), as it may be subsequently amended."

PART V. CLARIFYING AND CONFORMING CHANGES TO STATUTES PERTAINING TO THE MANAGEMENT OF SNAKES AND OTHER REPTILES

SECTION 5.(a) G.S. 14-417 reads as rewritten:

"§ 14-417. Regulation of ownership or use of venomous reptiles.

(a) It shall be unlawful for any person to own, possess, use, transport, or traffic in any venomous reptile that is not housed in a sturdy and secure enclosure. Permanent enclosures shall be designed to be escape-proof, bite-proof, and have an operable lock. Transport containers shall be designed to be escape-proof and bite-proof.

(b) Each enclosure shall be clearly and visibly labeled "Venomous Reptile Inside" with scientific name, common name, appropriate ~~antivenom,~~antivenin, and owner's identifying information noted on the container. A written bite protocol that includes emergency contact information, local animal control office, the name and location of suitable ~~antivenom,~~antivenin,

first aid procedures, and treatment guidelines, as well as an escape recovery plan must be within sight of permanent housing, and a copy must accompany the transport of any venomous reptile.

(c) In the event of an escape of a venomous reptile, the owner or possessor of the venomous reptile shall immediately notify local law enforcement."

SECTION 5.(b) G.S. 14-419 reads as rewritten:

"**§ 14-419. Investigation of suspected violations; seizure and examination of reptiles; disposition of reptiles.**

(a) In any case in which any law-enforcement officer or animal control officer has probable cause to believe that any of the provisions of this Article have been or are about to be violated, it shall be the duty of the officer and the officer is authorized, empowered, and directed to immediately investigate the violation or impending violation and to consult with representatives of the North Carolina Museum of Natural Sciences or the North Carolina Zoological Park or a designated representative of either the Museum or Zoological Park to identify appropriate and safe methods to seize the reptile or reptiles involved, to seize the reptile or reptiles involved, and the officer is authorized and directed to deliver: (i) a reptile believed to be venomous to the North Carolina State Museum of Natural Sciences or to its designated representative for examination for the purpose of ascertaining whether the reptile is regulated under this Article; and, (ii) a reptile believed to be a large constricting snake or crocodilian to the North Carolina Zoological Park for the purpose of ascertaining whether the reptile is regulated under this Article.

(b) If the Museum or the Zoological Park or their designated representatives find that a seized reptile is a venomous reptile, large constricting snake, or crocodilian regulated under this Article, the Museum or the Zoological Park or their designated representative shall determine final disposition of the reptile in a manner consistent with the safety of the ~~public.~~public, which in the case of a venomous reptile for which antivenin is not readily available, may include euthanasia.

(c) If the Museum or the Zoological Park or their designated representatives find that the reptile is not a venomous reptile, large constricting snake, or crocodilian regulated under this Article, and either no criminal warrants or indictments are initiated in connection with the reptile within 10 days of initial seizure, or a court of law determines that the reptile is not being owned, possessed, used, transported, or trafficked in violation of this Article, then it shall be the duty of the law enforcement officer to return the reptile or reptiles to the person from whom they were seized within 15 days."

PART VI. AMEND THE ADMINISTRATIVE PROCEDURE ACT TO PROVIDE THE WILDLIFE RESOURCES COMMISSION WITH TEMPORARY RULEMAKING AUTHORITY FOR MANNER OF TAKE

SECTION 6. G.S. 150B-21.1 reads as rewritten:

"**§ 150B-21.1. Procedure for adopting a temporary rule.**

(a) Adoption. – An agency may adopt a temporary rule when it finds that adherence to the notice and hearing requirements of G.S. 150B-21.2 would be contrary to the public interest and that the immediate adoption of the rule is required by one or more of the following:

...

(7) The need for the Wildlife Resources Commission to establish any of the following:

a. No wake zones.

b. Hunting or fishing ~~seasons.~~seasons, including provisions for manner of take or any other conditions required for the implementation of such season.

c. Hunting or fishing bag limits.

d. Management of public game lands as defined in G.S. 113-129(8a).

...."

PART VII. AMEND DEFINITION OF BUILT-UPON AREA

SECTION 7.(a) Section 12 of S.L. 2004-163 reads as rewritten:

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

...

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

...."

SECTION 7.(b) Section 2 of S.L. 2006-246 reads as rewritten:

"**SECTION 2.** Definitions. – The following definitions apply to this act and its implementation:

...

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

...."

PART VIII. CLARIFY THOSE UNDERGROUND STORAGE TANKS THAT ARE NOT REQUIRED TO PROVIDE SECONDARY CONTAINMENT UNTIL JANUARY 1, 2020

SECTION 8. Section 11.6(a) of S.L. 2011-394 reads as rewritten:

"**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,~~1991, and prior to April 1, 2001, shall not be required to provide secondary containment until January 1, 2020."

PART IX. AMEND THE RULES THAT PERTAIN TO OPEN BURNING FOR LAND CLEARING OR RIGHT-OF-WAY MAINTENANCE

SECTION 9.(a) 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 9(c) 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 9(b) of this act.

SECTION 9.(b) Implementation. – Notwithstanding 15A NCAC 02D .1093(b)(2)(F) (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 materials are not

carried off site or transported over public roads for open burning unless the materials are carried or transported to:

(1) Facilities permitted in accordance with 15A NCAC 02D .1904 (Air Curtain Burners) for the operation of an air curtain burner at a permanent site; or

(2) A location, where the material is burned not more than 4 times per year, that meets all of the following criteria:

a. 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.

b. There are no more than 2 piles, each 20 feet in diameter, being burned at one time.

c. The location is not a permitted solid waste management facility.

SECTION 9.(c) Additional Rule-Making Authority. – The Commission shall adopt a rule to amend 15A NCAC 02D .1903 (Open Burning Without an Air Quality Permit) consistent with Section 9(b) of this act. 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 9(b) of this act. Rules adopted pursuant to this section are not subject to G.S. 150B-21.8 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 9.(d) Sunset. – Section 9(b) of this act expires on the date that rules adopted pursuant to Section 9(c) of this act become effective.

SECTION 9.(e) G.S. 130A-294(a) reads as rewritten:

"(a) The Department is authorized and directed to engage in research, conduct investigations and surveys, make inspections and establish a statewide solid waste management program. In establishing a program, the Department shall have authority to:

(1) Develop a comprehensive program for implementation of safe and sanitary practices for management of solid waste;

(2) Advise, consult, cooperate and contract with other State agencies, units of local government, the federal government, industries and individuals in the formulation and carrying out of a solid waste management program;

(3) Develop and adopt rules to establish standards for qualification as a "recycling, reduction or resource recovering facility" or as "recycling, reduction or resource recovering equipment" for the purpose of special tax classifications or treatment, and to certify as qualifying those applicants which meet the established standards. The standards shall be developed to qualify only those facilities and equipment exclusively used in the actual waste recycling, reduction or resource recovering process and shall exclude any incidental or supportive facilities and equipment;

(4) a. Develop a permit system governing the establishment and operation of solid waste management facilities. A landfill with a disposal area of 1/2 acre or less for the on-site disposal of land clearing and inert debris is exempt from the permit requirement of this section and shall be governed by G.S. 130A-301.1. The Department shall not approve an application for a new permit, the renewal of a permit, or a substantial amendment to a permit for a sanitary landfill, excluding demolition landfills as defined in the rules of the Commission, except as provided in subdivisions (3) and (4) of subsection (b1) of this section. No permit shall be granted for a solid waste management facility having discharges that are point sources until the Department has referred the complete plans and specifications to the

Environmental Management Commission and has received advice in writing that the plans and specifications are approved in accordance with the provisions of G.S. 143-215.1. If the applicant is a unit of local government, and has not submitted a solid waste management plan that has been approved by the Department pursuant to G.S. 130A-309.09A(b), the Department may deny a permit for a sanitary landfill or a facility that disposes of solid waste by incineration, unless the Commission has not adopted rules pursuant to G.S. 130A-309.29 for local solid waste management plans. In any case where the Department denies a permit for a solid waste management facility, it shall state in writing the reason for denial and shall also state its estimate of the changes in the applicant's proposed activities or plans that will be required for the applicant to obtain a permit.

...

d. Management of land clearing debris burned in accordance with 15A NCAC 02D .1903 shall not require a permit pursuant to this section.

...."

PART X. EXEMPT PONDS THAT ARE CONSTRUCTED AND USED FOR AGRICULTURAL PURPOSES FROM RIPARIAN BUFFER RULES

SECTION 10.(a) Except as required by federal law or in an imminent threat to public health or safety (i) 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 Basin; (ii) the temporary rule adopted January 1, 2000, and the permanent rule adopted and effective August 1, 2000, as 15A NCAC 02B .0259 regarding the protection and maintenance of existing riparian buffers in the Tar-Pamlico River Basin; (iii) the permanent rule adopted and effective August 11, 2009, Session Law 2009-216, Session Law 2009-484, and the permanent rule, as amended, effective September 1, 2011, as 15A NCAC 02B .0267 regarding the protection and maintenance of existing riparian buffers in the Jordan Water Supply Watershed; (iv) the permanent rule adopted effective April 1, 1999, and the permanent rule, as amended, effective June 1, 2010, as 15A NCAC 02B .0250 regarding the protection and maintenance of existing riparian buffers in the Randleman Lake Water Supply Watershed; (v) the temporary rule effective June 30, 2001, and the permanent rule effective August 1, 2004, as 15A NCAC 02B .0243 regarding the protection and maintenance of existing riparian buffers in the Catawba River Basin; (vi) the permanent rule adopted and effective February 1, 2009, as 15A NCAC 02B .0605 and the permanent rule adopted and effective February 1, 2009, as 15A NCAC 02B .0607 regarding the protection and maintenance of existing riparian buffers in the Goose Creek Watershed (Yadkin Pee-Dee River Basin); (vii) and any similar rule adopted for the protection and maintenance of riparian buffers, collectively referred to as "Riparian Buffer Rules" for the purposes of this section; shall not apply to a pond to which Riparian Buffer Rules would otherwise apply if all of the following conditions are met:

(1) The property on which the pond is located is used for agriculture as that term is defined in G.S. 106-581.1.

(2) Except for the Riparian Buffer Rules and any similar rule adopted for the protection and maintenance of riparian buffers, the use of the property is in compliance with all other water quality and water quantity statutes and rules applicable to the property before the adoption of the Riparian Buffer Rules for the river basin or watershed in which the property is located.

SECTION 10.(b) If the use of property on which a pond is located changes such that the use no longer meets the criteria in subdivision (1) of subsection (a) of this section, the Riparian Buffer Rules for the river basin or watershed in which the property is located shall apply.

SECTION 10.(c) The Commission shall not adopt rules for the protection or maintenance of riparian buffers that apply to ponds provided the ponds are constructed or used for agriculture as that term is defined in G.S. 106-581.1.

SECTION 10.(d) Units of local government shall not adopt ordinances, resolutions, plans, or policies for the protection or maintenance of riparian buffers that apply to ponds provided the ponds are constructed or used for agriculture as that term is defined in G.S. 106-581.1.

SECTION 10.(e) The Environmental Management Commission shall adopt rules to amend the Neuse River Basin Riparian Buffer Rule, the Tar-Pamlico River Basin Riparian Buffer Rule, the Jordan Water Supply Riparian Buffer Rule, the Randleman Lake Water Supply Watershed Riparian Buffer Rule, the Catawba River Basin Riparian Buffer Rule, the Goose Creek Watershed (Yadkin Pee-Dee River Basin) Riparian Buffer Rule, and any other similar riparian buffer rules in accordance with subsections (a), (b), and (c) of this section. Notwithstanding G.S. 150B-19(4), the rule adopted by the Commission pursuant to this section shall be substantively identical to the provisions of subsections (a), (b), and (c) of this section. 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 10.(f) Section 10(a) of this act expires on the date that rules adopted pursuant to Section 10(e) of this act become effective.

PART XI. PROVIDE FOR LOW-FLOW DESIGN .ALTERNATIVES FOR WASTEWATER SYSTEMS

SECTION 11.(a) 15A NCAC 18A .1949(b) (Sewage Flow Rates for Design Units). – Until the effective date of the revised permanent rule that the Commission is required to adopt pursuant to Section 11(c) of this act, the Commission, the Department, and any other political subdivision of the State shall implement 15A NCAC 18A .1949 (Sewage Flow Rates for Design Units) as provided in Section 11(b) of this act.

SECTION 11.(b) Implementation. – Notwithstanding the Daily Flow for Design rates listed in Table No. 1 of 15A NCAC 18A .1949(b) (Sewage Flow Rates for Design Units), a wastewater system shall be exempt from the Daily Flow for Design, and any other design flow standards that are established by the Department of Health and Human Services or the Commission for Public Health provided flow rates that are less than those listed in Table No. 1 of 15A NCAC 18A .1949(b) (Sewage Flow Rates for Design Units) can be achieved through engineering design that utilizes low-flow fixtures and low-flow technologies and the design is prepared, sealed, and signed by a professional engineer licensed pursuant to Chapter 89C of the General Statutes. The Department and Commission may establish lower limits on reduced flow rates as necessary to ensure wastewater system integrity and protect public health, safety, and welfare. Proposed daily design flows for wastewater systems that are calculated to be less than 3,000 total gallons per day shall not require State review pursuant to 15A NCAC 18A .1938(e).

SECTION 11.(c) Additional Rule-Making Authority. – The Commission shall adopt a rule to amend 15A NCAC 18A .1949(b) (Sewage Flow Rates for Design Units) consistent with Section 11(b) of this act. 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 11(b) of this act. Rules adopted pursuant to this section are not subject to G.S. 150B-21.8 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 11.(d) Sunset. – Section 11(b) of this act expires on the date that rules adopted pursuant to Section 11(c) of this act become effective.

PART XII. AMEND THE CONTINUING EDUCATION REQUIREMENTS FOR CERTIFIED WELL CONTRACTORS

SECTION 12. G.S. 87-98.12 reads as rewritten:

"**§ 87-98.12. Continuing education requirements.**

In order to continue to be certified under this Article, a well contractor shall satisfactorily complete ~~the number of~~six hours of approved continuing education within a three-year period as required by the Commission. The Commission shall establish the ~~minimum number of hours of continuing education that shall be required to maintain certification,~~requirements for completing continuing education within the three-year period, shall specify the scope of required continuing education courses, and shall approve continuing education courses."

PART XIII. DIRECT THE DEPARTMENT OF TRANSPORTATION TO ADOPT RULES FOR SELECTIVE PRUNING WITHIN HIGHWAY RIGHTS-OF-WAY

SECTION 13. The Department of Transportation shall adopt rules to authorize selective pruning within highway rights-of-way for vegetation that obstructs motorists' views of properties on which agritourism activities, as that term is defined in G.S. 99E-30, occur.

PART XIV. PROHIBIT PUBLIC ENTITIES FROM PURCHASING OR ACQUIRING PROPERTY WITH KNOWN CONTAMINATION WITHOUT APPROVAL OF THE GOVERNOR AND COUNCIL OF STATE

SECTION 14. Chapter 133 of the General Statutes is amended by adding a new Article to read:

"Article 4.

"Purchase of Contaminated Property by Public Entities.

"**§ 133-40. Purchase of contaminated property by public entities.**

(a) For purposes of this Article, the term "public entity" means any entity, department, or agency of the State, a political subdivision, a municipal corporation, a State university or college, a special district, a public authority, and other similar entities.

(b) No public entity, as defined in subsection (a) of this section, shall purchase or otherwise acquire an ownership interest in any real property with known contamination, as that term is defined in G.S. 130A-310.65(5), without approval of the Governor and the Council of State. A public entity seeking to purchase or otherwise acquire an ownership interest in such property shall petition the Governor and Council of State for approval of the transaction, with sufficient information to identify the property, the nature and extent of the contamination present, and a plan of paying for the project without the use of General Fund appropriations. The approval of such a transaction by the Governor and Council of State may be evidenced by a duly certified copy of excerpt of minutes of the meeting of the Governor and Council of State, attested by the private secretary to the Governor or the Governor, reciting such approval, affixed to the instrument of acquisition or transfer, and said certificate may be recorded as a part thereof, and the same shall be conclusive evidence of review and approval of the subject transaction by the Governor and Council of State. The Governor, acting with the approval of the Council of State, may delegate the review and approval of such transactions as the Governor deems advisable.

(c) This Article shall not apply to situations in which a public entity acquires ownership or control of real property involuntarily, including having obtained the property through

bankruptcy, tax delinquency, abandonment, or other circumstances in which the public entity involuntarily acquires title by virtue of its function as a sovereign."

PART XV. LIMIT LOCAL GOVERNMENT REGULATION OF STORAGE, RETENTION, OR USE OF NONHAZARDOUS RECYCLED MATERIALS

SECTION 15. G.S. 130A-309.09A is amended by adding a new subsection to read:

"(h) The storage, retention, and use of nonhazardous recycled materials, including asphalt pavement, rap, or roofing shingles, shall be encouraged by units of local government. A unit of local government shall not impede the storage, retention, or use of nonhazardous recycled products in properly zoned storage facilities through the regulation of the height of recycled material stockpiles."

PART XVI. EFFECTIVE DATE

SECTION 16. Section 10 of this act is effective when it becomes law and applies to ponds used for agriculture that were either in existence on or constructed after July 22, 1997. Section 12 of this act becomes effective July 1, 2013. Section 14 of this act becomes effective July 1, 2013, and applies to a purchase or acquisition of interest in real property occurring on or after that date. The remainder of this act is effective when it becomes law.

SENATE BILL 112:
Amend Environmental Laws 2013

2013-2014 General Assembly

Committee:	Senate Agriculture/Environment/Natural Resources	**Date:**	May 14, 2013
Introduced by:	Sen. Jackson	**Prepared by:**	Jennifer Mundt Committee Analyst
Analysis of:	PCS to First Edition S112-CSTA-18		

The Proposed Committee Substitute for Senate Bill 112 (PCS) would amend certain environmental and natural resources laws.

[As introduced, this bill was identical to H94, as introduced by Reps. McElraft, Samuelson, McGrady, which is currently in House Environment, if favorable, Finance.]

BILL ANALYSIS:

Section 1 clarifies a provision enacted in 2012 that extended the duration of permits for sanitary landfills and transfer stations that such permits are for both construction and operation of the facility.

Section 2 clarifies the process for appeals from civil penalties assessed by a local government that has established and administers a State-approved erosion and sedimentation control program. This section also provides that civil penalties assessed by a local government under the Sedimentation and Pollution Control Act of 1973 must be remitted to the Civil Penalty and Forfeiture Fund.

Section 3 amends the notice procedure to riparian property owners that adjoin property subject to an application for a dredge and fill permit.

Section 4 amends various statutes governing protected species, marine, and wildlife resources to conform to analogous federal law.

Section 5.(a) amends the statute regulating ownership or use of venomous reptiles to correctly refer to the term "antivenin," not "antivenom," as the serum or treatment for venom.

Section 5.(b) amends the statute governing the investigation of suspected violations, seizure, and disposition of reptiles to direct law enforcement personnel to consult with representatives of the North Carolina Museum of Natural Sciences or the North Carolina Zoological Park to identify appropriate and safe methods to seize a reptile. This section further provides that representatives of the Museum or the Zoological Park may euthanize a venomous reptile for which antivenin is not readily available.

Section 6 amends the Administrative Procedure Act to provide the Wildlife Resources Commission with temporary rulemaking authority for manner of take.

Section 7 amends the definition of the term "built-upon area" as it pertains to stormwater management.

Section 8 provides that underground storage tanks and systems installed after January 1, 1991, *and prior to April 1, 2001,* are not required to comply with well setback requirements or provide secondary containment until January 1, 2020.

Section 9 amends the rules in the North Carolina Administrative Code (NCAC) that pertain to open burning for land clearing or right-of-way maintenance to provide that an air quality permit is not required if materials are not carried offsite or transported over public roads for open burning unless the

materials are carried or transported to: (i) facilities permitted for the operation of an air curtain burner; or (ii) a location where the material is burned no more than 4 times per year, that is at least 500 feet from any dwelling or occupied structure not located on the property, there are no more than 2 piles, each 20 feet in diameter burned at one time, and the location is not a permitted solid waste facility. This section also makes conforming statutory changes.

Section 10 exempts ponds that are constructed and used for agriculture (as that term is defined in G.S. 106-581.1) from the: (i) Neuse River Basin riparian buffer rules; (ii) Tar-Pamlico River Basin riparian buffer rules; (iii) Jordan Water Supply Watershed riparian buffer rules; (iv) Randleman Lake Water Supply Watershed riparian buffer rules; (v) riparian buffer rules in the Catawba River Basin; (vi) riparian buffer rules in the Goose Creek Watershed (Yadkin Pee-Dee River Basin) and; (vii) any similar rule adopted for the protection and maintenance of riparian buffers.

This section provides that the riparian buffer rules must apply if the use of the property adjacent to the pond changes such that it no longer is used for agriculture.

This section becomes effective when this act becomes law and applies to ponds used for agriculture that were either in existence on or constructed after July 22, 1997.

Section 11 amends the rules in the NCAC to provide for reduced flow alternatives to the Daily Flow Rate for Design for wastewater systems as required by Table No. 1 in 15A NCAC 18A .1949(b). This section would exempt proposed wastewater systems from complying with the Daily Flow Rate for Design and any design flow standard established by the Commission for Public Health or the Department of Health and Human Services provided (i) the daily flow rate for design of the system is less than the rate listed by rule (Table No. 1, 15A NCAC 18A .1949(b)), (ii) the daily flow rate for design can be achieved through engineering design that utilizes low-flow fixtures and low-flow technologies, and (iii) the design is prepared, sealed, and signed by a professional engineer licensed in North Carolina.

This section further provides that proposed wastewater systems with a daily flow for design of less than 3,000 gallons per day are not required to obtain State-level review for the system.

Section 12 amends the continuing education requirements for certified well contractors to provide that a well contractor must obtain six hours of continuing education within a three-year period rather than obtaining six continuing education units within a one-year period as is currently required by rule .

This section becomes effective July 1, 2013.

Section 13 directs the Department of Transportation to adopt rules for selective pruning within highway rights-of way for vegetation that obstructs a motorists' view of properties on which agritourism activities occur.

Section 14 prohibits public entities from purchasing or acquiring an ownership interest in real property with known contamination without approval of the Governor and the Council of State.

This section becomes effective July 1, 2013 and applies to a purchase or acquisition of interest in real property occurring on or after that date.

Section 15 prohibits a local government from impeding the storage, retention, or use of nonhazardous recycled materials; including asphalt pavement, rap, or roofing shingles in properly zoned storage facilities through regulation of the height of recycled materials stockpiles.

EFFECTIVE DATE: Unless otherwise indicated above, this act becomes effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

SENATE BILL 112*

Short Title:	Amend Environmental Laws 2013.	(Public)
Sponsors:	Senators Jackson (Primary Sponsor); Brock and J. Davis.	
Referred to:	Agriculture/Environment/Natural Resources.	

February 21, 2013

A BILL TO BE ENTITLED

AN ACT TO AMEND CERTAIN ENVIRONMENTAL AND NATURAL RESOURCES LAWS TO (1) ALLOW 10-YEAR PHASE LANDFILL DEVELOPMENTS TO APPLY FOR A PERMIT TO OPERATE; AND (2) CLARIFY THE PROCESS FOR APPEALS FROM CIVIL PENALTIES ASSESSED BY A LOCAL GOVERNMENT THAT HAS ESTABLISHED AND ADMINISTERS AN EROSION AND SEDIMENTATION CONTROL PROGRAM APPROVED UNDER G.S. 113A-60 AND PROVIDE THAT CIVIL PENALTIES ASSESSED BY A LOCAL GOVERNMENT PURSUANT TO THE SEDIMENTATION POLLUTION CONTROL ACT OF 1973 SHALL BE REMITTED TO THE CIVIL PENALTY AND FORFEITURE FUND, AS RECOMMENDED BY THE ENVIRONMENTAL REVIEW COMMISSION.

The General Assembly of North Carolina enacts:

SECTION 1. Section 15.1 of S.L. 2012-187 reads as rewritten:

"**SECTION 15.1.** No later than July 1, 2013, the Commission for Public Health shall adopt rules to allow applicants for sanitary landfills the option to (i) apply for a permit to construct and operate a five-year phase of landfill development and apply to amend the permit to construct and operate subsequent five-year phases of landfill development; or (ii) apply for a permit to construct and operate a 10-year phase of landfill development and apply to amend the permit to construct and operate subsequent 10-year phases of landfill development, with a limited review of the permit five years after issuance of the initial permit and five years after issuance of each amendment for subsequent phases of development. No later than July 1, 2013, the Commission shall also adopt rules to allow applicants for permits for transfer stations the option to (i) apply for a permit with a five-year duration to construct and operate a transfer station; or (ii) apply for a permit with a 10-year duration to construct and operate a transfer station, with a limited review of the permit five years after issuance of the initial permit and five years after issuance of any amendment to the permit. In developing these rules, the Department of Environment and Natural Resources shall examine the current fee schedule for permits for sanitary landfills and transfer stations as set forth under G.S. 130A-295.8 and formulate recommendations for adjustments to the current fee schedule sufficient to address any additional demands associated with review of permits issued for 10-year phases of landfill development and the issuance permits with a duration of up to 10 years for transfer stations. The Department shall report its findings and recommendations, including any legislative proposals, to the Environmental Review Commission on or before December 1, 2012. The rules required by this section shall not become effective until the fee schedule set forth under G.S. 130A-295.8 is amended as necessary to address any additional demands associated with

review of permits issued for 10-year phases of landfill development and the issuance of permits with a duration of up to 10 years to construct and operate transfer stations."

SECTION 2. G.S. 113A-64 reads as rewritten:

"**§ 113A-64. Penalties.**

(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.

(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 the reason for assessing the penalty. The notice of assessment shall be served by any means authorized under ~~G.S. 1A-1, Rule 4, and~~ G.S. 1A-1. A notice of assessment by the Secretary 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. A notice of assessment by a local government shall direct the violator to either pay the assessment or contest the assessment within 30 days by filing a petition for hearing with the local government as directed by procedures within the local ordinances or regulations adopted to establish and enforce the erosion and sedimentation control program. 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.

(3) In determining the amount of the penalty, the Secretary or a local government shall consider the degree and extent of harm caused by the violation, the cost of rectifying the damage, the amount of money the violator saved by noncompliance, whether the violation was committed willfully and the prior record of the violator in complying or failing to comply with this ~~Article.~~Article, or any ordinance, rule, or order adopted or issued pursuant to this Article by the Commission or by a local government.

(4) Repealed by Session Laws 1993 (Reg. Sess., 1994), c. 776, s. 11.

(5) The clear proceeds of civil penalties collected by the Department or other State agency or a local government under this subsection shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2.

~~Civil penalties collected by a local government under this subsection shall be credited to the general fund of the local government as nontax revenue.~~

(b) Criminal Penalties. – Any person who knowingly or willfully violates any provision of this Article or any ordinance, rule, regulation, or order duly adopted or issued by the Commission or a local government, or who knowingly or willfully 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, shall be guilty of a Class 2 misdemeanor that may include a fine not to exceed five thousand dollars ($5,000)."

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

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

S D

SENATE BILL 689
PROPOSED COMMITTEE SUBSTITUTE S689-PCS35343-RI-18

Short Title: Amend Trapping Law. (Public)

Sponsors:

Referred to:

April 4, 2013

A BILL TO BE ENTITLED

AN ACT TO AMEND THE TRAPPING LAW RELATING TO CONIBEAR TYPE TRAPS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 113-291.6 reads as rewritten:

"...

(d) Conibear type traps that have an inside jaw spread or opening (width or height) greater than seven and one-half inches and no larger than 26 inches in width and 12 inches in height may only be set in the water and in areas in which beaver and otter may be lawfully trapped. For the purposes of this section:

(1) A water-set trap is one totally covered by water with the anchor secured in water deep enough to drown the animal trapped quickly.

(2) In areas of tidal waters, the mean high water is considered covering water.

(3) In reservoir areas, covering water is the low water level prevailing during the preceding 24 hours.

(4) Marshland, as defined in G.S. 113-229(n)(3), is not considered dry land.

(d1) "Bucket sets" are prohibited.

(d2) Conibear type traps set with bait and having an inside jaw spread or opening (width or height) greater than five and one-half inches and no more than seven and one-half inches may be set on dry land only under the following restrictions:

(1) Within an enclosure approved by the rules of the North Carolina Wildlife Resources Commission subject to the following minimum requirements: no openings on the enclosure may exceed 60 square inches, the trap trigger shall be recessed at least eight inches from all openings, and the top surface of the enclosure entrance shall include an overhang such that the trigger recess distance and the overhang distance are no less than 12 inches in combination.

(2) In an elevated position of at least four feet above ground level.

(d3) Conibear type traps set without an enclosure as described in this section and without bait may be set on dry land only under the following restrictions:

(1) On public lands (i) traps having an inside jaw spread or opening (width or height) greater than five and one-half inches and no more than six and one-half inches must be set such that the top of the trap is no more than eight inches above the ground or (ii) the bottom of the trap shall be elevated at least five feet above the ground.

(2) On private lands (i) traps may not have an inside jaw spread or opening (width or height) greater than six and one-half inches or (ii) traps having an

inside jaw spread or opening (width or height) no more than seven and one-half inches may be set in buildings and structures or as authorized by a depredation permit issued by the North Carolina Wildlife Resources Commission."

SECTION 2. G.S. 113-270.5(a) reads as rewritten:

"(a) Except as otherwise specifically provided by law, no one may take fur-bearing animals by trapping, or by any other authorized special method that preserves the pelt from injury, without first having procured a current and valid trapping license. All individuals licensed under this section after October 1, 2014, shall complete a trapper education course approved by the North Carolina Wildlife Resources Commission. When the trapping license is required, it serves in lieu of a hunting license in the taking of fur-bearing animals. If fur-bearing animals are taken as game, at the times and by the hunting methods that may be authorized, hunting license requirements apply."

SECTION 3. The North Carolina Wildlife Resources Commission shall adopt rules to require the reporting of domestic animals taken by trapping.

SECTION 4. This act becomes effective December 1, 2013, and applies to offenses committed on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

S 1

SENATE BILL 689

Short Title:	Amend Trapping Law.	(Public)
Sponsors:	Senators Sanderson (Primary Sponsor); Goolsby and Jackson.	
Referred to:	Agriculture/Environment/Natural Resources.	

April 4, 2013

A BILL TO BE ENTITLED

AN ACT TO AMEND THE TRAPPING LAW RELATING TO CONIBEAR TYPE TRAPS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 113-291.6(d) reads as rewritten:

"(d) Conibear type traps ~~that have an inside jaw spread or opening (width or height) greater than seven and one-half inches and no larger than 26 inches in width and 12 inches in height~~ may only be set in the water and in areas in which beaver and otter may be lawfully trapped. For the purposes of this section:

(1) A water-set trap is one totally covered by water with the anchor secured in water deep enough to drown the animal trapped quickly.

(2) In areas of tidal waters, the mean high water is considered covering water.

(3) In reservoir areas, covering water is the low water level prevailing during the preceding 24 hours.

(4) Marshland, as defined in G.S. 113-229(n)(3), is not considered dry land."

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

SENATE BILL 689:
Amend Trapping Law

2013-2014 General Assembly

Committee:	Senate Agriculture/Environment/Natural Resources	**Date:**	May 7, 2013
Introduced by:	Sen. Sanderson	**Prepared by:**	Jennifer McGinnis
Analysis of:	First Edition		Committee Counsel

SUMMARY: Senate Bill 689 would amend the laws governing conibear traps to require that all such traps be set in the water and only in areas in which beaver and otter may be lawfully trapped.

CURRENT LAW: G.S. 113-291.6 regulates the trapping of wild animals. The statute prohibits trapping on the land of another without having written permission from the landowner and prevents an animal from being taken by trapping with any steel-jaw, leg hold, or conibear trap unless certain conditions are met.

With regard to conibear traps, the statute provides that no one may take wild animals by such a trap unless it: (1) has a jaw spread of not more than seven and one-half inches; (2) is horizontally offset with closed jaw spread of at least three sixteenths of an inch for a trap with a jaw spread of more than five and one-half inches (except if the trap is set in the water with quick-drown type of set); (3) is smooth edged and without teeth or spikes; and (4) has a weather-resistant permanent tag attached legibly giving the trapper's name and address. **In addition, such traps with an inside jaw spread or opening (width or height) greater than seven and one-half inches and no larger than 26 inches in width and 12 inches in height may only be set in the water and in areas in which beaver and otter may be lawfully trapped.**

A person who violates G.S. 113-291.6 is guilty of a Class 2 misdemeanor[1].

BACKGROUND: Body-gripping traps are designed to kill animals quickly. They are often called "conibear" traps after Canadian inventor Frank Conibear who began their manufacture in the late 1950s. Animals that are caught squarely on the neck by such a trap are killed quickly, and are therefore not left to suffer or given a chance to escape.

BILL ANALYSIS: Senate Bill 689 would amend the laws governing conibear traps to require that all such traps be set in the water and only in areas in which beaver and otter may be lawfully trapped. As previously noted, under current law only those conibear traps with an inside jaw spread or opening (width or height) greater than seven and one-half inches and no larger than 26 inches in width and 12 inches in height must be set in this manner.

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

[1] The presumptive range of punishment for a Class 2 misdemeanor when there are no prior convictions is 1 to 30 days of community punishment

O. Walker Reagan
Director

Research Division
(919) 733-2578

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 689

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

S689-ARI-34 [v.5]

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

Date _____,2013

Senator Jackson

moves to amend the bill on page 1, lines 4 through 15,
by rewriting those lines to read:

"**SECTION 1.** G.S. 113-291.6 reads as rewritten:

"...

(d) Conibear type traps that have an inside jaw spread or opening (width or height) greater than seven and one-half inches and no larger than 26 inches in width and 12 inches in height may only be set in the water and in areas in which beaver and otter may be lawfully trapped. For the purposes of this section:

(1) A water-set trap is one totally covered by water with the anchor secured in water deep enough to drown the animal trapped quickly.

(2) In areas of tidal waters, the mean high water is considered covering water.

(3) In reservoir areas, covering water is the low water level prevailing during the preceding 24 hours.

(4) Marshland, as defined in G.S. 113-229(n)(3), is not considered dry land.

(d1) "Bucket sets" are prohibited.

(d2) Conibear type traps set with bait and having an inside jaw spread or opening (width or height) greater than five and one-half inches and no more than seven and one-half inches may be set on dry land only under the following restrictions:

(1) Within an enclosure approved by the rules of the Wildlife Resources Commission subject to the following minimum requirements: No openings on the enclosure may exceed 60 square inches, the trap trigger shall be recessed at least 8 inches from all openings, and the top surface of the enclosure entrance shall include an overhang such that the trigger recess distance and the overhang distance are no less than 12 inches in combination.

(2) In an elevated position of at least four feet above ground level.

(d3) Conibear type traps set without an enclosure as described in this section and without bait may be set on dry land only under the following restrictions:

(1) On public lands (i) traps having an inside jaw spread or opening (width or height) greater than five and one-half inches and no more than six and one half inches must be set such that the top of the trap is no more than eight

inches above the ground; or (ii) the bottom of the trap shall be elevated at least five feet above the ground.

(2) On private lands: (i) traps may not have an inside jaw spread or opening (width or height) greater than six and one half inches; or (ii) traps having an inside jaw spread or opening (width or height) no more than seven and one half inches may be set in buildings and structures or as authorized by a depredation permit issued by the Wildlife Resources Commission."

SECTION 2. G.S. 113-270.5(a) reads as rewritten:

"(a) Except as otherwise specifically provided by law, no one may take fur-bearing animals by trapping, or by any other authorized special method that preserves the pelt from injury, without first having procured a current and valid trapping license. All individuals licensed under this section after October 1, 2014 shall complete a trapper education course approved by the Wildlife Resources Commission. When the trapping license is required, it serves in lieu of a hunting license in the taking of fur-bearing animals. If fur-bearing animals are taken as game, at the times and by the hunting methods that may be authorized, hunting license requirements apply."

SECTION 3. The Wildlife Resources Commission shall adopt rules to require the reporting of domestic animals taken by trapping.

SECTION 4. This act becomes effective December 1, 2013, and applies to offenses committed on or after that date.".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

S D

SENATE BILL 151
PROPOSED COMMITTEE SUBSTITUTE S151-PCS85230-SB-2

Short Title: Coastal Policy Reform Act of 2013. (Public)

Sponsors:

Referred to:

March 4, 2013

A BILL TO BE ENTITLED

AN ACT TO AMEND MARINE FISHERIES LAWS, AMEND THE LAW GOVERNING THE CONSTRUCTION OF TERMINAL GROINS, AMEND CAMA PERMITTING LAWS, AND CLARIFY THAT CITIES AND COUNTIES MAY ENFORCE ORDINANCES WITHIN THE STATE'S PUBLIC TRUST AREAS.

The General Assembly of North Carolina enacts:

PART I. AMEND MARINE FISHERIES LAW

SECTION 1. G.S. 113-172 reads as rewritten:

"**§ 113-172. License agents.**

(a) The Secretary shall designate license agents for the Department. ~~At least one license agent shall be designated for each county that contains or borders on coastal fishing waters. The Secretary may designate additional license agents in any county if the Secretary determines that additional agents are needed to provide efficient service to the public.~~ The Division and license agents designated by the Secretary under this section shall issue licenses authorized under this Article in accordance with this Article and the rules of the Commission. The Secretary may require license agents to enter into a contract that provides for their duties and compensation, post a bond, and submit to reasonable inspections and audits. If a license agent violates any provision of this Article, the rules of the Commission, or the terms of the contract, the Secretary may initiate proceedings for the forfeiture of the license agent's bond and may summarily suspend, revoke, or refuse to renew a designation as a license agent and may impound or require the return of all licenses, moneys, record books, reports, license forms and other documents, ledgers, and materials pertinent or apparently pertinent to the license agency. The Secretary shall report evidence or misuse of State property, including license fees, by a license agent to the State Bureau of Investigation as provided by G.S. 114-15.1.

(b) License agents shall be compensated by adding a surcharge of one dollar ($1.00) to each license sold and retaining the surcharge. If more than one license is listed on a consolidated license form, the license agent shall be compensated as if a single license were sold. It is unlawful for a license agent to add more than the surcharge authorized by this section to the fee for each license sold."

SECTION 2.(a) G.S. 113-168.5 reads as rewritten:

"(a), (b) Repealed by Session Laws 1998-225, s. 4.14.

~~(c) Menhaden Endorsements. Except as provided in G.S. 113-169, it is unlawful to use a vessel to take menhaden by purse seine in coastal fishing waters, to land menhaden taken by purse seine, or to sell menhaden taken by purse seine without obtaining a menhaden endorsement of a SCFL. The fee for a menhaden endorsement shall be two dollars ($2.00) per~~

~~ton, based on gross tonnage as determined by the custom house measurement for the mother ship. The menhaden endorsement shall be required for the mother ship but no separate endorsement shall be required for a purse boat carrying a purse seine. The application for a menhaden endorsement must state the name of the person in command of the vessel. Upon a change in command of a menhaden vessel, the owner must notify the Division in writing within 30 days.~~

(d) Shellfish Endorsement for North Carolina Residents. – The Division shall issue a shellfish endorsement of a SCFL to a North Carolina resident at no charge. The holder of a SCFL with a shellfish endorsement is authorized to take and sell shellfish."

SECTION 2.(b) G.S. 113-169 is repealed.

SECTION 2.(c) G.S. 113-168.2(a1) reads as rewritten:

"(a1) Use of Vessels. – The holder of a SCFL is authorized to use only one vessel in a commercial fishing operation at any given time. The Commission may adopt a rule to exempt from this requirement a person in command of a vessel that is auxiliary to a vessel engaged in a pound net operation, long-haul operation, or beach seine ~~operation, or menhaden~~ operation."

PART II. AMEND TERMINAL GROIN CONSTRUCTION LAW

SECTION 3.(a) 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~~ one or more structures 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~~ subsection shall not apply to 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 July 1, 2003.

(2) Any permanent erosion control structure that was originally constructed prior to 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 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 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.~~threatened by erosion.

(2) An environmental impact statement that satisfies the requirements of G.S. 113A-4. An environmental impact statement prepared pursuant to the National Environmental Policy Act (NEPA), 42 U.S.C. § 4321, et seq., for the construction of the terminal groin shall satisfy the requirements of this subdivision.

(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.

(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 monitoring and mitigation requirements must be reasonable and are not required to address unduly speculative or remote matters or impose requirements whose cost outweigh the benefits. The inlet management plan is not required to address sea level rise. 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~~ of 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 the potential benefits of the project, including protection of beaches, protective dunes, wildlife habitats, roads, homes, and infrastructure, and 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) The Commission may issue no more than four permits for the construction of a terminal groin pursuant to this section.~~

~~(h) No permit may be issued where funds are generated from any of the following financing mechanisms and would be used for any activity related to the terminal groin or its accompanying beach fill project:~~

~~(1) Special obligation bonds issued pursuant to Chapter 159I of the General Statutes.~~

~~(2) Nonvoted general obligation bonds issued pursuant to G.S. 159-48(b)(4).~~

~~(3) Financing contracts entered into under G.S. 160A-20 or G.S. 159-148.~~

(i) No later than September 1 of each year, the Coastal Resources Commission shall report to the Environmental Review Commission on the implementation of this section. The report shall provide a detailed description of each proposed and permitted terminal groin and its accompanying beach fill project, including the information required to be submitted pursuant to subsection (e) of this section. For each permitted terminal groin and its accompanying beach fill project, the report shall also provide all of the following:

(1) The findings of the Commission required pursuant to subsection (f) of this section.

(2) The status of construction and maintenance of the terminal groin and its accompanying beach fill project, including the status of the implementation of the plan for construction and maintenance and the inlet management plan.

(3) A description and assessment of the benefits of the terminal groin and its accompanying beach fill project, if any.

(4) A description and assessment of the adverse impacts of the terminal groin and its accompanying beach fill project, if any, including a description and assessment of any mitigation measures implemented to address adverse impacts."

SECTION 3.(b) Sections 3 and 4 of S.L. 2011-387 are repealed.

PART III. AMEND CAMA PERMITTING LAW

SECTION 4. G.S. 113A-120 is amended by adding a new subsection to read:

"(d) Review of a permit application submitted pursuant to this Article shall be limited to consideration of areas of environmental concern officially designated as such at the time the application was submitted and shall not include consideration of any areas that have not been designated as areas of environmental concern or for which a designation as an area of environmental concern is pending at the time the application was submitted."

PART IV. CLARIFY THAT CITIES MAY ENFORCE ORDINANCES WITHIN THE STATE'S PUBLIC TRUST AREAS

SECTION 5.(a) Article 8 of Chapter 160A of the General Statutes is amended by adding a new section to read as follows:

"**§ 160A-203. Municipalities may enforce ordinances in public trust areas.**

(a) Notwithstanding the provisions of G.S. 113-131 or any other provision of law, a city may, by ordinance, define, prohibit, regulate, or abate acts, omissions, or conditions upon the State's ocean beaches and prevent or abate any unreasonable restriction of the public's rights to use the State's ocean beaches. A city may enforce any ordinance adopted pursuant to this section or any other provision of law upon the State's ocean beaches located within or adjacent to the city's jurisdictional boundaries to the same extent that a city may enforce ordinances within the city's jurisdictional boundaries. For purposes of this section, the term "ocean beaches" has the same meaning as in G.S. 77-20(e).

(b) The authority of a city under this section includes, but is not limited to, the following:

(1) A city may regulate, restrict, or prohibit the placement, development, maintenance, repair, alteration, improvement, location, or use of structures, equipment, personal property, or debris upon the State's ocean beaches located within or adjacent to the city's jurisdictional boundaries.

(2) Any ordinance adopted by the city may provide for summary procedures to remove or abate any unreasonable restrictions on the public's rights to use the State's ocean beaches located within or adjacent to the city's jurisdictional boundaries. However, any procedure potentially resulting in the removal or demolition of an otherwise lawful building or structure that is not in imminent danger of collapse shall include provisions that provide the record owner of the building or structure with notice and a hearing and the city with a means to recover costs that are the same as or equivalent to the following: service of complaints and orders as provided in G.S. 160A-445; notice and hearing as provided in G.S. 160A-443(2); findings of fact and order as provided in G.S. 160A-443(3)b. and G.S. 24 160A-443(5); liens as provided in G.S. 160A-443(6); and remedies as provided in G.S. 160A-446.

(3) A city may enforce a violation of any ordinance adopted pursuant to this section by any remedy provided for in G.S. 160A-175. A city may, in lieu of any other remedy provided for in this section, seek a court order from a court of competent jurisdiction to remove or abate a building or structure that is in violation of an ordinance adopted under this section.

(c) Nothing in this section shall be construed to (i) limit the authority of the State or any State agency to regulate the State's ocean beaches as authorized by G.S. 113-131, or common law as interpreted and applied by the courts of this State; (ii) limit any other authority granted to cities by the State to regulate the State's ocean beaches; (iii) deny the existence of the authority recognized in this section prior to the date this section becomes effective; or (iv)

impair the right of the people of this State to the customary free use and enjoyment of the State's ocean beaches, which rights remain reserved to the people of this State as provided in G.S. 77-20(d). Nothing in this section changes or modifies existing common or statutory law with respect to the riparian, littoral, or other ownership rights of owners of property bounded by the Atlantic Ocean."

SECTION 5.(b) G.S. 113-131 reads as rewritten:

"**§ 113-131. Resources belong to public; stewardship of conservation agencies; grant and delegation of powers; injunctive relief.**

(a) The marine and estuarine and wildlife resources of the State belong to the people of the State as a whole. The Department and the Wildlife Resources Commission are charged with stewardship of these resources.

(b) The following powers are hereby granted to the Department and the Wildlife Resources Commission and may be delegated to the Fisheries Director and the Executive Director:

(1) Comment on and object to permit applications submitted to State agencies which may affect the public trust resources in the land and water areas subject to their respective management duties so as to conserve and protect the public trust rights in such land and water areas;

(2) Investigate alleged encroachments upon, usurpations of, or other actions in violation of the public trust rights of the people of the State; and

(3) Initiate contested case proceedings under Chapter 150B for review of permit decisions by State agencies which will adversely affect the public trust rights of the people of the State or initiate civil actions to remove or restrain any unlawful or unauthorized encroachment upon, usurpation of, or any other violation of the public trust rights of the people of the State or legal rights of access to such public trust areas.

(c) Whenever there exists reasonable cause to believe that any person or other legal entity has unlawfully encroached upon, usurped, or otherwise violated the public trust rights of the people of the State or legal rights of access to such public trust areas, a civil action may be instituted by the responsible agency for injunctive relief to restrain the violation and for a mandatory preliminary injunction to restore the resources to an undisturbed condition. The action shall be brought in the superior court of the county in which the violation occurred. The institution of an action for injunctive relief under this section shall not relieve any party to such proceeding from any civil or criminal penalty otherwise prescribed for the violation.

(d) The Attorney General shall act as the attorney for the agencies and shall initiate actions in the name of and at the request of the Department or the Wildlife Resources Commission.

(e) In this section, the term "public trust resources" means land and water areas, both public and private, subject to public trust rights as that term is defined in G.S. 1-45.1.

(f) Notwithstanding the provisions of this section, a city may adopt and enforce ordinances as provided in G.S. 160A-203."

PART V. EFFECTIVE DATE

SECTION 6. Sections 3 and 4 of this act are effective when the act becomes law and apply to permit applications submitted on or after that date. Section 5 of this act becomes effective July 1, 2013. The remainder of this act is effective when it becomes law.

SENATE BILL 151:
Coastal Policy Reform Act of 2013

2013-2014 General Assembly

Committee:	Senate Agriculture/Environment/Natural Resources	**Date:**	May 14, 2013
Introduced by:	Senator Rabon	**Prepared by:**	Jeff Hudson and Chris Saunders Committee Counsels
Analysis of:	PCS to First Edition S151-CSSB-2 [v.9]		

SUMMARY: The Proposed Committee Substitute for Senate Bill 151 would amend laws relating to marine fisheries licenses, the construction of terminal groins, Coastal Area Management Act permitting, and the ability of cities to enforce ordinances within public trust areas.

CURRENT LAW AND BILL ANALYSIS:

The Proposed Committee Substitute (PCS) for Senate Bill 151 would make the following changes to State coastal law:

Part I. Amend Marine Fisheries Law

Under current law, the Secretary of Environment and Natural Resources (Secretary) is required to designate at least one license agent in each county bordering coastal fishing waters. Section 1 would remove this requirement.

In 2012, the General Assembly made it unlawful to take menhaden by the use of a purse seine net deployed by a mother ship and one or more runner boats in coastal fishing waters. Section 2 would repeal various licenses for the taking of menhaden by these means.

Part II. Amend Terminal Groin Construction Law

In 2011, the General Assembly authorized the permitting and construction of up to four terminal groins on the ocean shorelines of inlets under certain circumstances. Section 3 would make the following changes to the 2011 law:

- Provide that an environmental impact statement prepared for a terminal groin pursuant to federal law is sufficient to satisfy the requirements of the State terminal groin law.
- Repeal the requirement for financial assurance adequate to cover the cost of:
  - Long term maintenance and monitoring of the terminal groin.
  - Implementation of mitigation measures set out in the inlet management plan.
  - Restoration of public, private, or public trust property if the groin has an adverse impact on the environment or property.
- Provide that the requirements of an inlet management plan must be reasonable and may not be required to address speculative matters or impose requirements whose costs outweigh the benefits.

- Repeal the requirement that an applicant for a terminal groin demonstrate that structures or infrastructure are imminently threatened by erosion and that nonstructural approaches to erosion control, including relocation of threatened structures, are impractical.
- Provide that the Coastal Resources Commission (CRC) consider the benefits of a terminal groin when determining whether the terminal groin will result in significant adverse impacts to private property or the public beach.
- Repeal the requirement that the inlet management plan be adequate for purposes of monitoring and mitigating the impacts of the terminal groin.
- Repeal the limitation that no more than four terminal groins may be permitted.
- Repeal the prohibition on the use of certain types of local government financing to construct a terminal groin.
- Repeal the prohibition on using State funds to construct a terminal groin unless the General Assembly enacts legislation appropriating funds explicitly for such purpose.
- Repeal the direction to the Department of Environment and Natural Resources to adopt rules to implement the terminal groin law.

Part III. Amend CAMA Permitting Law

The Coastal Area Management Act (CAMA) requires any person developing property in an area of environmental concern to obtain a CAMA permit. Section 4 would limit areas of environmental concern to those areas so designated at the time the permit application is submitted.

Part IV. Clarify that Cities May Enforce Ordinances within the State's Public Trust Areas

In 2012, the North Carolina Court of Appeals held that only the Attorney General may initiate an action to abate and remove unreasonable interferences with public trust rights on the State's ocean beaches. Section 5.(a) would clarify that cities may adopt and enforce ordinances on the State's ocean beaches and abate unreasonable interferences with public trust rights on State's ocean beaches. Any ordinance allowing the removal of a structure to abate an interference with public trust rights must provide the owner of the structure with notice and a hearing. In order for the city to recover the costs of demolition and removal of a structure, the ordinance must set forth procedural requirements equivalent to those in the Minimum Housing Standards in Chapter 160A of the General Statutes. Section 5.(b) would make a clarifying change to provide that cities may adopt and enforce ordinances on the State's ocean beaches as provided in Section 5.(a).

EFFECTIVE DATE: The provisions governing the issuance of terminal groin and CAMA permits would become effective when the act becomes law and apply to permit applications submitted on or after that date. The provisions governing the ability of cities to enforce ordinances within public trust areas would become effective July 1, 2013. The remainder of the act would become effective when the act becomes law.

SENATE BILL 151

Short Title:	Coastal Policy Reform Act of 2013.	(Public)
Sponsors:	Senators Rabon (Primary Sponsor); Barringer, J. Davis, and Rabin.	
Referred to:	Agriculture/Environment/Natural Resources.	

March 4, 2013

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH AN EXPEDITED PROCESS FOR THE MODIFICATION OF INTERBASIN TRANSFER CERTIFICATES AND FOR THE ISSUANCE OF INTERBASIN TRANSFER CERTIFICATES IN THE CENTRAL COASTAL PLAIN CAPACITY USE AREA AND THE COASTAL AREA COUNTIES AND TO CLARIFY THE AUTHORITY OF COUNTIES AND MUNICIPALITIES TO HAVE STRUCTURES REMOVED FROM THE STATE'S PUBLIC TRUST OCEAN BEACHES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 143-215.22G reads as rewritten:

"**§ 143-215.22G. Definitions.**

In addition to the definitions set forth in G.S. 143-212 and G.S. 143-213, the following definitions apply to this Part.

(1) "River basin" means any of the following river basins designated on the map entitled "Major River Basins and Sub-basins in North Carolina" and filed in the Office of the Secretary of State on 16 April 1991. The term "river basin" includes any portion of the river basin that extends into another state. Any area outside North Carolina that is not included in one of the river basins listed in this subdivision comprises a separate river basin.

a.	1-1	Broad River.
b.	2-1	Haw River.
c.	2-2	Deep River.
d.	2-3	Cape Fear River.
e.	2-4	South River.
f.	2-5	Northeast Cape Fear River.
g.	2-6	New River.
h.	3-1	Catawba River.
i.	3-2	South Fork Catawba River.
j.	4-1	Chowan River.
k.	4-2	Meherrin River.
l.	5-1	Nolichucky River.
m.	5-2	French Broad River.
n.	5-3	Pigeon River.
o.	6-1	Hiwassee River.
p.	7-1	Little Tennessee River.
q.	7-2	Tuskasegee (Tuckasegee) River.
r.	8-1	Savannah River.

s.	9-1	Lumber River.
t.	9-2	Big Shoe Heel Creek.
u.	9-3	Waccamaw River.
v.	9-4	Shallotte River.
w.	10-1	Neuse River.
x.	10-2	Contentnea Creek.
y.	10-3	Trent River.
z.	11-1	New River.
aa.	12-1	Albemarle Sound.
bb.	13-1	Ocoee River.
cc.	14-1	Roanoke River.
dd.	15-1	Tar River.
ee.	15-2	Fishing Creek.
ff.	15-3	Pamlico River and Sound.
gg.	16-1	Watauga River.
hh.	17-1	White Oak River.
ii.	18-1	Yadkin (Yadkin-Pee Dee) River.
jj.	18-2	South Yadkin River.
kk.	18-3	Uwharrie River.
ll.	18-4	Rocky River.

(2) "Surface water" means any of the waters of the State located on the land surface that are not derived by pumping from groundwater.

(3) "Transfer" means the withdrawal, diversion, or pumping of surface water from one river basin and discharge of all or any part of the water in a river basin different from the origin. However, notwithstanding the basin definitions in G.S. 143-215.22G(1), the following are not transfers under this Part:

a. The discharge of water upstream from the point where it is withdrawn.

b. The discharge of water downstream from the point where it is withdrawn.

(4) "Public water system" means any unit of local government or large community water system subject to the requirements of G.S. 143-355(l).

(5) "Mainstem" means that portion of a river having the same name as a River basin defined in subdivision (1) of this section. "Mainstem" does not include named or unnamed tributaries."

SECTION 2. G.S. 143-215.22L reads as rewritten:

"**§ 143-215.22L. Regulation of surface water transfers.**

(a) Certificate Required. – No person, without first obtaining a certificate from the Commission, may:

(1) Initiate a transfer of 2,000,000 gallons of water or more per ~~day~~ day, calculated as a daily average of a calendar month and not to exceed 5,000,000 gallons per day in any one day, from one river basin to another.

~~(2) Increase the amount of an existing transfer of water from one river basin to another by twenty-five percent (25%) or more above the average daily amount transferred during the year ending 1 July 1993 if the total transfer including the increase is 2,000,000 gallons or more per day.~~

(3) Increase an existing transfer of water from one river basin to another above the amount approved by the Commission in a certificate issued under G.S. 162A-7 prior to 1 July 1993.

(b) Exception. – Notwithstanding the provisions of subsection (a) of this section, a certificate shall not be required to transfer water from one river basin to another up to the full capacity of a facility to transfer water from one basin to another if the facility was in existence or under construction on 1 July 1993.

(c) Notice of Intent to File a Petition. – An applicant shall prepare a notice of intent to file a petition that includes a nontechnical description of the applicant's request and an identification of the proposed water source. Within 90 days after the applicant files a notice of intent to file a petition, the applicant shall hold at least one public meeting in the source river basin upstream from the proposed point of withdrawal, at least one public meeting in the source river basin downstream from the proposed point of withdrawal, and at least one public meeting in the receiving river basin to provide information to interested parties and the public regarding the nature and extent of the proposed transfer and to receive comment on the scope of the environmental documents. Written notice of the public meetings shall be provided at least 30 days before the public meetings. At the time the applicant gives notice of the public meetings, the applicant shall request comment on the alternatives and issues that should be addressed in the environmental documents required by this section. The applicant shall accept written comment on the scope of the environmental documents for a minimum of 30 days following the last public meeting. Notice of the public meetings and opportunity to comment on the scope of the environmental documents shall be provided as follows:

(1) By publishing notice in the North Carolina Register.

(2) By publishing notice in a newspaper of general circulation in:

a. Each county in this State located in whole or in part of the area of the source river basin upstream from the proposed point of withdrawal.

b. Each city or county located in a state located in whole or in part of the surface drainage basin area of the source river basin that also falls within, in whole or in part, the area denoted by one of the following eight-digit cataloging units as organized by the United States Geological Survey:

03050105 (Broad River: NC and SC);
03050106 (Broad River: SC);
03050107 (Broad River: SC);
03050108 (Broad River: SC);
05050001 (New River: NC and VA);
05050002 (New River: VA and WV);
03050101 (Catawba River: NC and SC);
03050103 (Catawba River: NC and SC);
03050104 (Catawba River: SC);
03010203 (Chowan River: NC and VA);
03010204 (Chowan River: NC and VA);
06010105 (French Broad River: NC and TN);
06010106 (French Broad River: NC and TN);
06010107 (French Broad River: TN);
06010108 (French Broad River: NC and TN);
06020001 (Hiwassee River: AL, GA, TN);
06020002 (Hiwassee River: GA, NC, TN);
06010201 (Little Tennessee River: TN);
06010202 (Little Tennessee River: TN, GA, and NC);
06010204 (Little Tennessee River: NC and TN);
03060101 (Savannah River: NC and SC);
03060102 (Savannah River: GA, NC, and SC);
03060103 (Savannah River: GA and SC);

03060104 (Savannah River: GA);
03060105 (Savannah River: GA);
03040203 (Lumber River: NC and SC);
03040204 (Lumber River: NC and SC);
03040206 (Lumber River: NC and SC);
03040207 (Lumber River: NC and SC);
03010205 (Albemarle Sound: NC and VA);
06020003 (Ocoee River: GA, NC, and TN);
03010101 (Roanoke River: VA);
03010102 (Roanoke River: NC and VA);
03010103 (Roanoke River: NC and VA);
03010104 (Roanoke River: NC and VA);
03010105 (Roanoke River: VA);
03010106 (Roanoke River: NC and VA);
06010102 (Watauga River: TN and VA);
06010103 (Watauga River: NC and TN);
03040101 (Yadkin River: VA and NC);
03040104 (Yadkin River: NC and SC);
03040105 (Yadkin River: NC and SC);
03040201 (Yadkin River: NC and SC);
03040202 (Yadkin River: NC and SC).

c. Each county in this State located in whole or in part of the area of the source river basin downstream from the proposed point of withdrawal.

d. Any area in the State in a river basin for which the source river basin has been identified as a future source of water in a local water supply plan prepared pursuant to G.S. 143-355(l).

e. Each county in the State located in whole or in part of the receiving river basin.

(3) By giving notice by first-class mail or electronic mail to each of the following:

a. The board of commissioners of each county in this State or the governing body of any county or city that is politically independent of a county in any state that is located entirely or partially within the source river basin of the proposed transfer and that also falls within, in whole or in part, the area denoted by one of the eight-digit cataloging units listed in sub-subdivision b. of subdivision (2) of this subsection.

b. The board of commissioners of each county in this State or the governing body of any county or city that is politically independent of a county in any state that is located entirely or partially within the receiving river basin of the proposed transfer and that also falls within, in whole or in part, the area denoted by one of the eight-digit cataloging units listed in sub-subdivision b. of subdivision (2) of this subsection.

c. The governing body of any public water ~~supply~~ system that withdraws water upstream or downstream from the withdrawal point of the proposed transfer.

d. If any portion of the source or receiving river basins is located in another state, all state water management or use agencies, environmental protection agencies, and the office of the governor in

that state upstream or downstream from the withdrawal point of the proposed transfer.

e. All persons who have registered a water withdrawal or transfer from the proposed source river basin under this Part or under similar law in an another state.

f. All persons who hold a certificate for a transfer of water from the proposed source river basin under this Part or under similar law in an another state.

g. All persons who hold a National Pollutant Discharge Elimination System (NPDES) wastewater discharge permit for a discharge of 100,000 gallons per day or more upstream or downstream from the proposed point of withdrawal.

h. To any other person who submits to the applicant a written request to receive all notices relating to the petition.

(d) Environmental Documents. – The definitions set out in G.S. 113A-9 apply to this section. The Department shall conduct a study of the environmental impacts of any proposed transfer of water for which a certificate is required under this section. The study shall meet all of the requirements set forth in G.S. 113A-4 and rules adopted pursuant to G.S. 113A-4. An environmental assessment shall be prepared for any petition for a certificate under this section. The determination of whether an environmental impact statement shall also be required shall be made in accordance with the provisions of Article 1 of Chapter 113A of the General Statutes; except that an environmental impact statement shall be prepared for every proposed transfer of water from one major river basin to another for which a certificate is required under this section. The applicant who petitions the Commission for a certificate under this section shall pay the cost of special studies necessary to comply with Article 1 of Chapter 113A of the General Statutes. An environmental impact statement prepared pursuant to this subsection shall include all of the following:

(1) A comprehensive analysis of the impacts that would occur in the source river basin and the receiving river basin if the petition for a certificate is granted.

(2) An evaluation of alternatives to the proposed interbasin transfer, including water supply sources that do not require an interbasin transfer and use of water conservation measures.

(3) A description of measures to mitigate any adverse impacts that may arise from the proposed interbasin transfer.

(e) Public Hearing on the Draft Environmental Document. – The Commission shall hold a public hearing on the draft environmental document for a proposed interbasin transfer after giving at least 30 days' written notice of the hearing in the Environmental Bulletin and as provided in subdivisions (2) and (3) of subsection (c) of this section. The notice shall indicate where a copy of the environmental document can be reviewed and the procedure to be followed by anyone wishing to submit written comments and questions on the environmental document. The Commission shall prepare a record of all comments and written responses to questions posed in writing. The record shall include complete copies of scientific or technical comments related to the potential impact of the interbasin transfer. The Commission shall accept written comment on the draft environmental document for a minimum of 30 days following the last public hearing. The applicant who petitions the Commission for a certificate under this section shall pay the costs associated with the notice and public hearing on the draft environmental document.

(f) Determination of Adequacy of Environmental Document. – The Commission shall not act on any petition for an interbasin transfer until the Commission has determined that the environmental document is complete and adequate. A decision on the adequacy of the

environmental document is subject to review in a contested case on the decision of the Commission to issue or deny a certificate under this section.

(g) Petition. – An applicant for a certificate shall petition the Commission for the certificate. The petition shall be in writing and shall include all of the following:

(1) A general description of the facilities to be used to transfer the water, ~~including the location and capacity of water intakes, pumps, pipelines, and other facilities.~~including current and projected areas to be served by the transfer, current and projected capacities of intakes, and other relevant facilities.

(2) A description of all the proposed consumptive and nonconsumptive uses of the water to be transferred.

(3) A description of the water quality of the source river and receiving river, including information on aquatic habitat for rare, threatened, and endangered species; in-stream flow data for segments of the source and receiving rivers that may be affected by the transfer; and any waters that are impaired pursuant to section 303(d) of the federal Clean Water Act (33 U.S.C. § 1313(d)).

(4) A description of the water conservation measures used by the applicant at the time of the petition and any additional water conservation measures that the applicant will implement if the certificate is granted.

(5) A description of all sources of water within the receiving river basin, including surface water impoundments, groundwater wells, reinjection storage, and purchase of water from another source within the river basin, that is a practicable alternative to the proposed transfer that would meet the applicant's water supply needs. The description of water sources shall include sources available at the time of the petition for a certificate and any planned or potential water sources.

(6) A description of water transfers and withdrawals registered under G.S. 143-215.22H or included in a local water supply plan prepared pursuant to G.S. 143-355(l) from the source river basin, including transfers and withdrawals at the time of the petition for a certificate and any planned or reasonably foreseeable transfers or withdrawals by a public water system with service area located within the source river basin.

(7) A demonstration that the proposed transfer, if added to all other transfers and withdrawals required to be registered under G.S. 143-215.22H or included in any local water supply plan prepared by a public water system with service area located within the source basin pursuant to G.S. 143-355(l) from the source river basin at the time of the petition for a certificate, would not reduce the amount of water available for use in the source river basin to a degree that would impair existing uses, pursuant to the antidegradation policy set out in 40 Code of Federal Regulation § 131.12 (Antidegradation Policy) (1 July 2006 Edition) and the statewide antidegradation policy adopted pursuant thereto, or existing and planned consumptive and nonconsumptive uses of the water in the source river basin. If the proposed transfer would impact a reservoir within the source river basin, the demonstration must include a finding that the transfer would not result in a water level in the reservoir that is inadequate to support existing uses of the reservoir, including recreational uses.

(8) The applicant's future water supply needs and the present and reasonably foreseeable future water supply needs for public water systems with service area located within the source river basin. The analysis of future water

supply needs shall include agricultural, recreational, and industrial uses, and electric power generation. Local water supply plans prepared pursuant to G.S. 143-355(l) for water systems with service area located within the source river basin shall be used to evaluate the projected future water needs in the source river basin that will be met by public water systems.

(9) The applicant's water supply plan prepared pursuant to G.S. 143-355(l). If the applicant's water supply plan is more than two years old at the time of the petition, then the applicant shall include with the petition an updated water supply plan.

(10) Any other information deemed necessary by the Commission for review of the proposed water transfer.

(h) Settlement Discussions. – Upon the request of the applicant, any interested party, or the Department, or upon its own motion, the Commission may appoint a mediation officer. The mediation officer may be a member of the Commission, an employee of the Department, or a neutral third party but shall not be a hearing officer under subsections (e) or (j) of this section. The mediation officer shall make a reasonable effort to initiate settlement discussions between the applicant and all other interested parties. Evidence of statements made and conduct that occurs in a settlement discussion conducted under this subsection, whether attributable to a party, a mediation officer, or other person shall not be subject to discovery and shall be inadmissible in any subsequent proceeding on the petition for a certificate. The Commission may adopt rules to govern the conduct of the mediation process.

(i) Draft Determination. – Within 90 days after the Commission determines that the environmental document prepared in accordance with subsection (d) of this section is adequate or the applicant submits its petition for a certificate, whichever occurs later, the Commission shall issue a draft determination on whether to grant the certificate. The draft determination shall be based on the criteria set out in this section and shall include the conditions and limitations, findings of fact, and conclusions of law that would be required in a final determination. Notice of the draft determination shall be given as provided in subsection (c) of this section.

(j) Public Hearing on the Draft Determination. – Within 60 days of the issuance of the draft determination as provided in subsection (i) of this section, the Commission shall hold public hearings on the draft determination. At least one hearing shall be held in the affected area of the source river basin, and at least one hearing shall be held in the affected area of the receiving river basin. In determining whether more than one public hearing should be held within either the source or receiving river basins, the Commission shall consider the differing or conflicting interests that may exist within the river basins, including the interests of both upstream and downstream parties potentially affected by the proposed transfer. The public hearings shall be conducted by one or more hearing officers appointed by the Chair of the Commission. The hearing officers may be members of the Commission or employees of the Department. The Commission shall give at least 30 days' written notice of the public hearing as provided in subsection (c) of this section. The Commission shall accept written comment on the draft determination for a minimum of 30 days following the last public hearing. The Commission shall prepare a record of all comments and written responses to questions posed in writing. The record shall include complete copies of scientific or technical comments related to the potential impact of the interbasin transfer. The applicant who petitions the Commission for a certificate under this section shall pay the costs associated with the notice and public hearing on the draft determination.

(k) Final Determination: Factors to be Considered. – In determining whether a certificate may be issued for the transfer, the Commission shall specifically consider each of the following items and state in writing its findings of fact and conclusions of law with regard to each item:

(1) The necessity and reasonableness of the amount of surface water proposed to be transferred and its proposed uses.

(2) The present and reasonably foreseeable future detrimental effects on the source river basin, including present and future effects on public, industrial, economic, recreational, and agricultural water supply needs, wastewater assimilation, water quality, fish and wildlife habitat, electric power generation, navigation, and recreation. Local water supply plans for public water systems with service area located within the source river basin prepared pursuant to G.S. 143-355(l) shall be used to evaluate the projected future water needs in the source river basin that will be met by public water systems. Information on projected future water needs for public water systems with service area located within the source river basin that is more recent than the local water supply plans may be used if the Commission finds the information to be reliable. The determination shall include a specific finding as to measures that are necessary or advisable to mitigate or avoid detrimental impacts on the source river basin.

(3) The cumulative effect on the source major river basin of any water transfer or consumptive water use that, at the time the Commission considers the petition for a certificate is occurring, is authorized under this section, or is projected in any local water supply plan for public water systems with service area located within the source river basin that has been submitted to the Department in accordance with G.S. 143-355(l).

(4) The present and reasonably foreseeable future beneficial and detrimental effects on the receiving river basin, including present and future effects on public, industrial, economic, recreational, and agricultural water supply needs, wastewater assimilation, water quality, fish and wildlife habitat, electric power generation, navigation, and recreation. Local water supply plans prepared pursuant to G.S. 143-355(l) that affect the receiving river basin shall be used to evaluate the projected future water needs in the receiving river basin that will be met by public water systems. Information on projected future water needs that is more recent than the local water supply plans may be used if the Commission finds the information to be reliable. The determination shall include a specific finding as to measures that are necessary or advisable to mitigate or avoid detrimental impacts on the receiving river basin.

(5) The availability of reasonable alternatives to the proposed transfer, including the potential capacity of alternative sources of water, the potential of each alternative to reduce the amount of or avoid the proposed transfer, probable costs, and environmental impacts. In considering alternatives, the Commission is not limited to consideration of alternatives that have been proposed, studied, or considered by the applicant. The determination shall include a specific finding as to why the applicant's need for water cannot be satisfied by alternatives within the receiving basin, including unused capacity under a transfer for which a certificate is in effect or that is otherwise authorized by law at the time the applicant submits the petition. The determination shall consider the extent to which access to potential sources of surface water or groundwater within the receiving river basin is no longer available due to depletion, contamination, or the declaration of a capacity use area under Part 2 of Article 21 of Chapter 143 of the General Statutes. The determination shall consider the feasibility of the applicant's purchase of water from other water suppliers within the receiving basin and

of the transfer of water from another sub-basin within the receiving major river basin. Except in circumstances of technical or economic infeasibility or adverse environmental impact, the Commission's determination as to reasonable alternatives shall give preference to alternatives that would involve a transfer from one sub-basin to another within the major receiving river basin over alternatives that would involve a transfer from one major river basin to another major river basin.

(6) If applicable to the proposed project, the applicant's present and proposed use of impoundment storage capacity to store water during high-flow periods for use during low-flow periods and the applicant's right of withdrawal under G.S. 143-215.44 through G.S. 143-215.50.

(7) If the water to be withdrawn or transferred is stored in a multipurpose reservoir constructed by the United States Army Corps of Engineers, the purposes and water storage allocations established for the reservoir at the time the reservoir was authorized by the Congress of the United States.

(8) Whether the service area of the applicant is located in both the source river basin and the receiving river basin.

(9) Any other facts and circumstances that are reasonably necessary to carry out the purposes of this Part.

(l) Final Determination: Information to be Considered. – In determining whether a certificate may be issued for the transfer, the Commission shall consider all of the following sources of information:

(1) The petition.

(2) The environmental document prepared pursuant to subsection (d) of this section.

(3) All oral and written comment and all accompanying materials or evidence submitted pursuant to subsections (e) and (j) of this section.

(4) Information developed by or available to the Department on the water quality of the source river basin and the receiving river basin, including waters that are identified as impaired pursuant to section 303(d) of the federal Clean Water Act (33 U.S.C. § 1313(d)), that are subject to a total maximum daily load (TMDL) limit under subsections (d) and (e) of section 303 of the federal Clean Water Act, or that would have their assimilative capacity impaired if the certificate is issued.

(5) Any other information that the Commission determines to be relevant and useful.

(m) Final Determination: Burden and Standard of Proof; Specific Findings. – The Commission shall grant a certificate for a water transfer if the Commission finds that the applicant has established by a preponderance of the evidence all of the following:

(1) The benefits of the proposed transfer outweigh the detriments of the proposed transfer. In making this determination, the Commission shall be guided by the approved environmental document and the policy set out in subsection (t) of this section.

(2) The detriments have been or will be mitigated to the maximum degree practicable.

(3) The amount of the transfer does not exceed the amount of the projected shortfall under the applicant's water supply plan after first taking into account all other sources of water that are available to the applicant.

(4) There are no reasonable alternatives to the proposed transfer.

(n) Final Determination: Certificate Conditions and Limitations. – The Commission may grant the certificate in whole or in part, or deny the certificate. The Commission may

impose any conditions or limitations on a certificate that the Commission finds necessary to achieve the purposes of this Part including a limit on the period for which the certificate is valid. The conditions and limitations shall include any mitigation measures proposed by the applicant to minimize any detrimental effects within the source and receiving river basins. In addition, the certificate shall require all of the following conditions and limitations:

(1) A water conservation plan that specifies the water conservation measures that will be implemented by the applicant in the receiving river basin to ensure the efficient use of the transferred water. Except in circumstances of technical or economic infeasibility or adverse environmental impact, the water conservation plan shall provide for the mandatory implementation of water conservation measures by the applicant that equal or exceed the most stringent water conservation plan implemented by a ~~community water system, as defined in G.S. 143-355(l),~~ public water system that withdraws water from the source river basin.

(2) A drought management plan that specifies how the transfer shall be managed to protect the source river basin during drought conditions or other emergencies that occur within the source river basin. Except in circumstances of technical or economic infeasibility or adverse environmental impact, this drought management plan shall include mandatory reductions in the permitted amount of the transfer based on the severity and duration of a drought occurring within the source river basin and shall provide for the mandatory implementation of a drought management plan by the applicant that equals or exceeds the most stringent water conservation plan implemented by a ~~community water system, as defined in G.S. 143-355(l),~~public water system that withdraws water from the source river basin.

(3) The maximum amount of water that may be ~~transferred on a daily basis,~~transferred, calculated as a daily average of a calendar month, and methods or devices required to be installed and operated that measure the amount of water that is transferred.

(4) A provision that the Commission may amend a certificate to reduce the maximum amount of water authorized to be transferred whenever it appears that an alternative source of water is available to the certificate holder from within the receiving river basin, including, but not limited to, the purchase of water from another water supplier within the receiving basin or to the transfer of water from another sub-basin within the receiving major river basin.

(5) A provision that the Commission shall amend the certificate to reduce the maximum amount of water authorized to be transferred if the Commission finds that the applicant's current projected water needs are significantly less than the applicant's projected water needs at the time the certificate was granted.

(6) A requirement that the certificate holder report the quantity of water transferred during each calendar quarter. The report required by this subdivision shall be submitted to the Commission no later than 30 days after the end of the quarter.

(7) Except as provided in this subdivision, a provision that the applicant will not resell the water that would be transferred pursuant to the certificate to another public water ~~supply~~ system. This limitation shall not apply in the case of a proposed resale or transfer among public water ~~supply~~ systems within the receiving river basin as part of an interlocal agreement or other

regional water supply arrangement, provided that each participant in the interlocal agreement or regional water supply arrangement is a co-applicant for the certificate and will be subject to all the terms, conditions, and limitations made applicable to any lead or primary applicant.

(o) Administrative and Judicial Review. – Administrative and judicial review of a final decision on a petition for a certificate under this section shall be governed by Chapter 150B of the General Statutes.

(p) Certain Preexisting Transfers. – In cases where an applicant requests approval to increase a transfer that existed on 1 July 1993, the Commission may approve or disapprove only the amount of the increase. If the Commission approves the increase, the certificate shall be issued for the amount of the preexisting transfer plus any increase approved by the Commission. A certificate for a transfer approved by the Commission under G.S. 162A-7 shall remain in effect as approved by the Commission and shall have the same effect as a certificate issued under this Part. A certificate for the increase of a preexisting transfer shall contain all of the conditions and limitations required by subsection (m) of this section.

(q) Emergency Transfers. – In the case of water supply problems caused by drought, a pollution incident, temporary failure of a water plant, or any other temporary condition in which the public health, safety, or welfare requires a transfer of water, the Secretary of Environment and Natural Resources may grant approval for a temporary transfer. Prior to approving a temporary transfer, the Secretary shall consult with those parties listed in subdivision (3) of subsection (c) of this section that are likely to be affected by the proposed transfer. However, the Secretary shall not be required to satisfy the public notice requirements of this section or make written findings of fact and conclusions of law in approving a temporary transfer under this subsection. If the Secretary approves a temporary transfer under this subsection, the Secretary shall specify conditions to protect other water users. A temporary transfer shall not exceed six months in duration, but the approval may be renewed for a period of six months by the Secretary based on demonstrated need as set forth in this subsection.

(r) Relationship to Federal Law. – The substantive restrictions, conditions, and limitations upon surface water transfers authorized in this section may be imposed pursuant to any federal law that permits the State to certify, restrict, or condition any new or continuing transfers or related activities licensed, relicensed, or otherwise authorized by the federal government. This section shall govern the transfer of water from one river basin to another unless preempted by federal law.

(s) Planning Requirements. – When any transfer for which a certificate was issued under this section equals or exceeds eighty percent (80%) of the maximum amount authorized in the certificate, the applicant shall submit to the Department a detailed plan that specifies how the applicant intends to address future foreseeable water needs. If the applicant is required to have a local water supply plan, then this plan shall be an amendment to the local water supply plan required by G.S.143-355(l). When the transfer equals or exceeds ninety percent (90%) of the maximum amount authorized in the certificate, the applicant shall begin implementation of the plan submitted to the Department.

(t) Statement of Policy. – It is the public policy of the State to maintain, protect, and enhance water quality within North Carolina. It is the public policy of this State that the reasonably foreseeable future water needs of a public water system with its service area located primarily in the receiving river basin are subordinate to the reasonably foreseeable future water needs of a public water system with its service area located primarily in the source river basin. Further, it is the public policy of the State that the cumulative impact of transfers from a source river basin shall not result in a violation of the antidegradation policy set out in 40 Code of Federal Regulations § 131.12 (1 July 2006 Edition) and the statewide antidegradation policy adopted pursuant thereto.

~~(u) Renewal of Certificate. – A petition to extend or renew a certificate shall be treated as a new petition.~~

(v) Modification of Certificate. – A certificate may be modified as provided in this subsection.

(1) The Commission or the Department may make any of the following modifications to a certificate after providing electronic notice to persons who have identified themselves in writing as interested parties:

a. Correction of typographical errors.

b. Clarification of existing conditions or language.

c. Updates to a conservation plan, drought management plan, or compliance and monitoring plan.

d. Modifications requested by the certificate holder to reflect altered requirements due to the amendment of this section.

(2) The Commission may make modifications that it deems to be minor after providing electronic notice to persons who have identified themselves in writing as interested parties.

(3) A person who holds a certificate for an interbasin transfer of water may request that the Commission modify the certificate. The request shall be considered and a determination made according to the following procedures:

a. The certificate must have been issued pursuant to G.S. 162A-7, 143-215.22I, or 143-215.22L and the certificate holder must be in substantial compliance with the certificate.

b. The certificate holder shall file a notice of intent to file a request for modification that includes a nontechnical description of the certificate holder's request and identification of the proposed water source.

c. The certificate holder shall prepare an environmental document pursuant to subsection (d) of this section, except that an environmental impact statement shall not be required for the modification of a certificate unless it would otherwise be required by Article 1 of Chapter 113A of the General Statutes.

d. Upon determining that the documentation submitted by the certificate holder is adequate to satisfy the requirements of this subsection, the Department shall publish a notice of the request for modification in the North Carolina Register and shall hold a public hearing at a location convenient to both the source and receiving river basins. The Department shall provide written notice of the request for the modification and the public hearing in the Environmental Bulletin, a newspaper of general circulation in the source river basin, a newspaper of general circulation in the receiving river basin, and as provided in subdivision (3) of subsection (c) of this section. The certificate holder who petitions the Commission for a modification under this subdivision shall pay the costs associated with the notice and public hearing.

e. The Department shall accept comments on the requested modification for a minimum of 30 days following the public hearing.

f. The Commission or the Department may require the certificate holder to provide any additional information or documentation it deems reasonably necessary in order to make a final determination.

g. The Commission shall make a final determination whether to grant the requested modification based on the factors set out in subsection

(k) of this section, information provided by the certificate holder, and any other information the Commission deems relevant. The Commission shall state in writing its findings of fact and conclusions of law with regard to each factor.

h. The Commission shall grant the requested modification if it finds that the certificate holder has established by a preponderance of the evidence that the requested modification satisfies the requirements of subsection (m) of this section. The Commission may grant the requested modification in whole or in part, or deny the request, and may impose such limitations and conditions on the modified certificate as it deems necessary and relevant to the modification.

i. The Commission shall not grant a request for modification if the modification would result in the transfer of water to an additional major river basin.

(w) Requirements for Coastal Counties. – A petition for a certificate to transfer surface water to supplement ground water supplies in the 15 counties designated as the Central Capacity Use Area under 15A NCAC 2E .0501, or to transfer surface water withdrawn from the mainstem of a river to provide service to one of the coastal area counties designated pursuant to G.S. 113A-103, shall be considered and a determination made according to the following procedures:

(1) The applicant shall file a notice of intent that includes a nontechnical description of the applicant's request and identification of the proposed water source.

(2) The applicant shall prepare an environmental document pursuant to subsection (d) of this section, except that an environmental impact statement shall not be required unless it would otherwise be required by Article 1 of Chapter 113A of the General Statutes.

(3) Upon determining that the documentation submitted by the applicant is adequate to satisfy the requirements of this subsection, the Department shall publish a notice of the petition in the North Carolina Register and shall hold a public hearing at a location convenient to both the source and receiving river basins. The Department shall provide written notice of the petition and the public hearing in the Environmental Bulletin, a newspaper of general circulation in the source river basin, a newspaper of general circulation in the receiving river basin, and as provided in subdivision (3) of subsection (c) of this section. The applicant who petitions the Commission for a certificate under this subdivision shall pay the costs associated with the notice and public hearing.

(4) The Department shall accept comments on the petition for a minimum of 30 days following the public hearing.

(5) The Commission or the Department may require the applicant to provide any additional information or documentation it deems reasonably necessary in order to make a final determination.

(6) The Commission shall make a final determination whether to grant the certificate based on the factors set out in subsection (k) of this section, information provided by the applicant, and any other information the Commission deems relevant. The Commission shall state in writing its findings of fact and conclusions of law with regard to each factor.

(7) The Commission shall grant the certificate if it finds that the applicant has established by a preponderance of the evidence that the petition satisfies the requirements of subsection (m) of this section. The Commission may grant

the certificate in whole or in part, or deny the request, and may impose such limitations and conditions on the certificate as it deems necessary and relevant."

SECTION 3.(a) Section 1 of S.L. 2011-298 reads as rewritten:

"**SECTION 1.** Notwithstanding G.S. 143-215.22I and 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 3.(b) Section 4 of S.L. 2011-298 reads as rewritten:

"**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.~~exceeds 20,300,000 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."

SECTION 3.(c) Section 7 of S.L. 2007-518, as amended by Section 4 of S.L. 2010-155 and Section 2 of S.L. 2011-298, reads as rewritten:

"~~**SECTION 7.(a)** Except as provided in subsections (b), (c) and (d) of this section, this~~ **SECTION 7.** 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.(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 4. Article 6 of Chapter 153A of the General Statutes is amended by adding a new section to read:

"**§ 153A-145.1. Structures on public trust ocean beaches.**

Whenever there exists reasonable cause to believe that a structure, fixture, or debris therefrom located oceanward of the mean high water mark unlawfully violates the public trust rights of the people of the State or legal rights of access to public trust areas, a civil action may

be instituted by a county within its jurisdiction for injunctive relief to restrain the violation and restore the resources to an undisturbed condition. The action shall be brought in the superior court of the county in which the violation occurred. The institution of an action for injunctive relief under this section shall not relieve any party to a proceeding from any civil or criminal penalty otherwise prescribed for the violation."

SECTION 5. Article 8 of Chapter 160A of the General Statutes is amended by adding a new section to read:

"**§ 160A-203. Structures on public trust ocean beaches.**

Whenever there exists reasonable cause to believe that a structure, fixture, or debris therefrom located oceanward of the mean high water mark unlawfully violates the public trust rights of the people of the State or legal rights of access to public trust areas, a civil action may be instituted by a city within its jurisdiction for injunctive relief to restrain the violation and restore the resources to an undisturbed condition. The action shall be brought in the superior court of the county in which the violation occurred. The institution of an action for injunctive relief under this section shall not relieve any party to a proceeding from any civil or criminal penalty otherwise prescribed for the violation."

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

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

S D

SENATE BILL 703
PROPOSED COMMITTEE SUBSTITUTE S703-PCS85231-TQ-35

Short Title: Limit Local Regulation Of Outdoor Smoking. (Public)

Sponsors:

Referred to:

April 4, 2013

A BILL TO BE ENTITLED

AN ACT PROHIBITING LOCAL GOVERNMENTS AND LOCAL COMMUNITY COLLEGES FROM REGULATING OUTDOOR SMOKING IN A MANNER THAT IS MORE RESTRICTIVE THAN STATE LAW.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 130A-498 reads as rewritten:

"**§ 130A-498. Local governments may restrict smoking in public places.**

(a) Except as otherwise provided in ~~subsection~~subsections (b1) and (b2) of this section, and notwithstanding any other provision of Article 64 of Chapter 143 of the General Statutes to the contrary, a local government may adopt and enforce ordinances, board of health rules, and policies restricting or prohibiting smoking that are more restrictive than State law and that apply in local government buildings, ~~on local government grounds,~~ in local vehicles, or in public places. A rule or policy adopted on and after July 1, 2009 pursuant to this subsection by a local board of health or an entity exercising the powers of a local board of health must be approved by an ordinance adopted by the Board of County Commissioners of the county to which the rule applies. The definitions set forth in G.S. 130A-492 in Part 1A of this Article apply to this section and shall apply to any local ordinance, rule, or law adopted by a local government under this section.

(b) Repealed by Session Laws 2009-27, s. 1, effective January 2, 2010.

(b1) A local ordinance or other rules, laws, or policies adopted under this section may not restrict or prohibit smoking in the following places:

(1) A private residence.

(2) A private vehicle.

(3) A tobacco shop if smoke from the business does not migrate into an enclosed area where smoking is prohibited pursuant to this Article. A tobacco shop that begins operation after July 1, 2009, may only allow smoking if it is located in a freestanding structure occupied solely by the tobacco shop and smoke from the shop does not migrate into an enclosed area where smoking is prohibited pursuant to this Article.

(4) All of the premises, facilities, and vehicles owned, operated, or leased by any tobacco products processor or manufacturer, or any tobacco leaf grower, processor, or dealer.

(5) A designated smoking guest room in a lodging establishment. No greater than twenty percent (20%) of a lodging establishment's guest rooms may be designated smoking guest rooms.

(6) A cigar bar if smoke from the cigar bar does not migrate into an enclosed area where smoking is prohibited pursuant to this Article. A cigar bar that begins operation after July 1, 2009, may only allow smoking if it is located in a freestanding structure occupied solely by the cigar bar and smoke from the cigar bar does not migrate into an enclosed area where smoking is prohibited pursuant to this Article. To qualify under this subsection, the cigar bar must satisfactorily report on a quarterly basis to the Department, on a form prescribed by the Department, the revenue generated from the sale of alcoholic beverages and cigars as a percentage of quarterly gross revenue. The Department shall determine whether any additional documentation is required of the cigar bar to authenticate or verify revenue data submitted by the cigar bar. This subdivision shall not apply to any business that is established for the purpose of avoiding compliance with this Article.

(7) A private club.

(8) A motion picture, television, theater, or other live production set. This exemption applies only to the actor or performer portraying the use of tobacco products during the production.

(b2) A local government may adopt and enforce ordinances, board of health rules, and policies restricting or prohibiting smoking on local government grounds as long as the ordinances, rules, or policies are not more restrictive than State law.

(c) Repealed by Session Laws 2009-27, s. 1, effective January 2, 2010.

(c1) Continuing to smoke in violation of a local ordinance or other rules, laws, or policies adopted under this section constitutes an infraction, and the person committing the infraction may be punished by a fine of not more than fifty dollars ($50.00). Conviction of an infraction under this section has no consequence other than payment of a penalty. A person smoking in violation of a local ordinance or other rules, laws, or policies adopted under this section may not be assessed court costs.

(d) Repealed by Session Laws 2009-27, s. 1, effective January 2, 2010.

(d1) Notwithstanding G.S. 130A-25 or any other provision of law, a violation of a local ordinance, rule, law, or policy adopted under this section shall not be punishable as a misdemeanor.

(d2) A local government may enforce an ordinance, rule, law, or policy under this section against a person who manages, operates, or controls a public place only as provided in G.S. 130A-22(h1).

(e) A county ordinance adopted under this section is subject to the provisions of G.S. 153A-122."

SECTION 2. G.S. 115D-20.1 reads as rewritten:

"**§ 115D-20.1. Policy prohibiting tobacco use in community college buildings, grounds, and at community college-sponsored events.**

(a) As used in this section:

(1) "Tobacco product" includes cigarettes, cigars, blunts, bidis, pipes, chewing tobacco, snus, snuff, and any other items containing or reasonably resembling tobacco or tobacco products.

(2) "Tobacco use" includes smoking, chewing, dipping, or any other use of tobacco products.

(b) Local community college boards of trustees may adopt, implement, and enforce a written policy prohibiting at all times the use of any tobacco product by any person in community college buildings, in community college facilities, on community college campuses, in vehicles owned, leased, or operated by the local community college, and in or on any other community college property owned, leased, or operated by the local community

college. The policy may also prohibit the use of all tobacco products by persons attending a community college-sponsored event.

(c) The policy adopted by a local community college board of trustees may include the following elements:

(1) Adequate notice of the policy to students, parents, the public, and school personnel.

(2) Posting of signs prohibiting at all times the use of tobacco products by any person in and on community college property.

(3) Requirements that community college personnel develop plans for successful implementation of and compliance with the policy.

(4) Permission for tobacco products to be included in instructional or research activities in community college buildings if the activity is conducted or supervised by the faculty member overseeing the instruction or research and the activity does not include smoking, chewing, or otherwise ingesting the tobacco product.

(d) Nothing in ~~G.S. 130A-498,~~ G.S. 143-595 through G.S. 143-601, or any other section prohibits a local community college board of trustees from adopting and enforcing a more restrictive policy on the use of tobacco in community college buildings, in community college facilities, on community college campuses, or at community college-related or community college-sponsored events, and in or on other community college ~~property.~~property, except as provided in subsection (d1) of this section.

(d1) A local community college board of trustees is prohibited from adopting and enforcing a policy on smoking on local community college grounds or at outdoor community college-related or community college-sponsored events that is more restrictive than State law. For the purpose of this subsection, the terms "grounds" and "smoking" are as defined in G.S. 130A-492.

(e) The North Carolina Tobacco Prevention and Control Branch and the Health and Wellness Trust Fund Commission shall work with local community college boards of trustees to provide assistance with the development and implementation of the policy including providing information regarding smoking cessation and prevention resources."

SECTION 3. This act becomes effective October 1, 2013.

SENATE BILL 703:
Limit Local Regulation Of Outdoor Smoking

2013-2014 General Assembly

Committee:	Senate Ref to Agriculture/Environment/Natural Resources. If fav, re-ref to State and Local Government	**Date:**	May 14, 2013
Introduced by:	Sens. Newton, Jackson, Brock	**Prepared by:**	Chris Saunders Committee Counsel
Analysis of:	PCS to First Edition S703-CSTQ-35 [v.3]		

SUMMARY: ***Senate Bill 703 would prohibit local governments and community colleges from regulating smoking in a way that is more restrictive than State law.***

The Proposed Committee Substitute (PCS) makes technical and clarifying changes.

CURRENT LAW: Currently, smoking is banned inside State government buildings, State vehicles, and enclosed areas in bars and restaurants. Smoking on State government grounds is allowed without restriction.

Under G.S. 130A-498, a local government may adopt ordinances, board of health rules, and policies restricting or prohibiting smoking that are more restrictive than State law and that apply in local government buildings, on local government grounds, in local government vehicles, or in public places. Accordingly, a local government may regulate or prohibit smoking on any unenclosed areas owned, leased, or occupied by the local government.

G.S. 115D-20.1 allows a community college board of trustees to adopt and enforce a policy prohibiting at all times the use of any tobacco product by any person in community college buildings, in community college facilities, on community college campuses, in vehicles owned, leased, or operated by the local community college, and in or on any other community college property owned, leased, or operated by the local community college. A community college may regulate or prohibit smoking on any unenclosed areas owned, leased, or operated by the community college.

G.S. 130A-492 defines "grounds" as "an unenclosed area owned, leased, or occupied by State or local government" and "public place" as "an enclosed area to which the public is invited or in which the public is permitted."

BILL ANALYSIS: The PCS to Senate Bill 703 would prohibit a local government from adopting and enforcing ordinances, board of health rules, and policies restricting or prohibiting smoking that are more restrictive than State law. The PCS would also prohibit a community college board of trustees from adopting and enforcing a policy on community college grounds or outdoor community college-related or community-college sponsored events that is more restrictive than State law.

EFFECTIVE DATE: This act would become effective October 1, 2013.

O. Walker Reagan
Director

S703-SMTQ-68 CSTQ-35 -V3

Research Division
(919) 733-2578

SENATE BILL 703

Short Title:	Limit Local Regulation Of Outdoor Smoking.	(Public)
Sponsors:	Senators Newton, Jackson, and Brock (Primary Sponsors).	
Referred to:	Agriculture/Environment/Natural Resources.	

April 4, 2013

A BILL TO BE ENTITLED

AN ACT PROHIBITING LOCAL GOVERNMENTS AND LOCAL COMMUNITY COLLEGES FROM REGULATING OUTDOOR SMOKING IN A MANNER THAT IS MORE RESTRICTIVE THAN STATE LAW.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 130A-498 reads as rewritten:

"**§ 130A-498. Local governments may restrict smoking in public places.**

(a) Except as otherwise provided in ~~subsection~~subsections (b1) and (b2) of this section, and notwithstanding any other provision of Article 64 of Chapter 143 of the General Statutes to the contrary, a local government may adopt and enforce ordinances, board of health rules, and policies restricting or prohibiting smoking that are more restrictive than State law and that apply in local government buildings, ~~on local government grounds,~~ in local vehicles, or in public places. A rule or policy adopted on and after July 1, 2009 pursuant to this subsection by a local board of health or an entity exercising the powers of a local board of health must be approved by an ordinance adopted by the Board of County Commissioners of the county to which the rule applies. The definitions set forth in G.S. 130A-492 in Part 1A of this Article apply to this section and shall apply to any local ordinance, rule, or law adopted by a local government under this section.

(b) Repealed by Session Laws 2009-27, s. 1, effective January 2, 2010.

(b1) A local ordinance or other rules, laws, or policies adopted under this section may not restrict or prohibit smoking in the following places:

(1) A private residence.

(2) A private vehicle.

(3) A tobacco shop if smoke from the business does not migrate into an enclosed area where smoking is prohibited pursuant to this Article. A tobacco shop that begins operation after July 1, 2009, may only allow smoking if it is located in a freestanding structure occupied solely by the tobacco shop and smoke from the shop does not migrate into an enclosed area where smoking is prohibited pursuant to this Article.

(4) All of the premises, facilities, and vehicles owned, operated, or leased by any tobacco products processor or manufacturer, or any tobacco leaf grower, processor, or dealer.

(5) A designated smoking guest room in a lodging establishment. No greater than twenty percent (20%) of a lodging establishment's guest rooms may be designated smoking guest rooms.

(6) A cigar bar if smoke from the cigar bar does not migrate into an enclosed area where smoking is prohibited pursuant to this Article. A cigar bar that begins operation after July 1, 2009, may only allow smoking if it is located in a freestanding structure occupied solely by the cigar bar and smoke from the cigar bar does not migrate into an enclosed area where smoking is prohibited pursuant to this Article. To qualify under this subsection, the cigar bar must satisfactorily report on a quarterly basis to the Department, on a form prescribed by the Department, the revenue generated from the sale of alcoholic beverages and cigars as a percentage of quarterly gross revenue. The Department shall determine whether any additional documentation is required of the cigar bar to authenticate or verify revenue data submitted by the cigar bar. This subdivision shall not apply to any business that is established for the purpose of avoiding compliance with this Article.

(7) A private club.

(8) A motion picture, television, theater, or other live production set. This exemption applies only to the actor or performer portraying the use of tobacco products during the production.

(b1) A local government may adopt and enforce ordinances, board of health rules, and policies restricting or prohibiting smoking on local government grounds as long as the ordinances, rules, or policies are not more restrictive than State law.

(c) Repealed by Session Laws 2009-27, s. 1, effective January 2, 2010.

(c1) Continuing to smoke in violation of a local ordinance or other rules, laws, or policies adopted under this section constitutes an infraction, and the person committing the infraction may be punished by a fine of not more than fifty dollars ($50.00). Conviction of an infraction under this section has no consequence other than payment of a penalty. A person smoking in violation of a local ordinance or other rules, laws, or policies adopted under this section may not be assessed court costs.

(d) Repealed by Session Laws 2009-27, s. 1, effective January 2, 2010.

(d1) Notwithstanding G.S. 130A-25 or any other provision of law, a violation of a local ordinance, rule, law, or policy adopted under this section shall not be punishable as a misdemeanor.

(d2) A local government may enforce an ordinance, rule, law, or policy under this section against a person who manages, operates, or controls a public place only as provided in G.S. 130A-22(h1).

(e) A county ordinance adopted under this section is subject to the provisions of G.S. 153A-122."

SECTION 2. G.S. 115D-20.1 reads as rewritten:

"**§ 115D-20.1. Policy prohibiting tobacco use in community college buildings, grounds, and at community college-sponsored events.**

(a) As used in this section:

(1) "Tobacco product" includes cigarettes, cigars, blunts, bidis, pipes, chewing tobacco, snus, snuff, and any other items containing or reasonably resembling tobacco or tobacco products.

(2) "Tobacco use" includes smoking, chewing, dipping, or any other use of tobacco products.

(b) Local community college boards of trustees may adopt, implement, and enforce a written policy prohibiting at all times the use of any tobacco product by any person in community college buildings, in community college facilities, on community college campuses, in vehicles owned, leased, or operated by the local community college, and in or on any other community college property owned, leased, or operated by the local community

college. The policy may also prohibit the use of all tobacco products by persons attending a community college-sponsored event.

(c) The policy adopted by a local community college board of trustees may include the following elements:

(1) Adequate notice of the policy to students, parents, the public, and school personnel.

(2) Posting of signs prohibiting at all times the use of tobacco products by any person in and on community college property.

(3) Requirements that community college personnel develop plans for successful implementation of and compliance with the policy.

(4) Permission for tobacco products to be included in instructional or research activities in community college buildings if the activity is conducted or supervised by the faculty member overseeing the instruction or research and the activity does not include smoking, chewing, or otherwise ingesting the tobacco product.

(d) Nothing in ~~G.S. 130A-498,~~ G.S. 143-595 through G.S. 143-601, or any other section prohibits a local community college board of trustees from adopting and enforcing a more restrictive policy on the use of tobacco in community college buildings, in community college facilities, on community college campuses, or at community college-related or community college-sponsored events, and in or on other community college ~~property.~~property, except as provided in subsection (d1) of this section.

(d1) A local community college board of trustees is prohibited from adopting and enforcing a more restrictive policy on smoking on local community college grounds or at outdoor community college-related or community college-sponsored events. For the purpose of this subsection, the terms "grounds" and "smoking" are as defined in G.S. 130A-492.

(e) The North Carolina Tobacco Prevention and Control Branch and the Health and Wellness Trust Fund Commission shall work with local community college boards of trustees to provide assistance with the development and implementation of the policy including providing information regarding smoking cessation and prevention resources."

SECTION 3. This act becomes effective October 1, 2013.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

S 2

SENATE BILL 703

Agriculture/Environment/Natural Resources Committee Substitute Adopted 5/14/13

Short Title: Limit Local Regulation Of Outdoor Smoking. (Public)

Sponsors:

Referred to:

April 4, 2013

A BILL TO BE ENTITLED

AN ACT PROHIBITING LOCAL GOVERNMENTS AND LOCAL COMMUNITY COLLEGES FROM REGULATING OUTDOOR SMOKING IN A MANNER THAT IS MORE RESTRICTIVE THAN STATE LAW.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 130A-498 reads as rewritten:

"**§ 130A-498. Local governments may restrict smoking in public places.**

(a) Except as otherwise provided in ~~subsection~~subsections (b1) and (b2) of this section, and notwithstanding any other provision of Article 64 of Chapter 143 of the General Statutes to the contrary, a local government may adopt and enforce ordinances, board of health rules, and policies restricting or prohibiting smoking that are more restrictive than State law and that apply in local government buildings, ~~on local government grounds,~~ in local vehicles, or in public places. A rule or policy adopted on and after July 1, 2009 pursuant to this subsection by a local board of health or an entity exercising the powers of a local board of health must be approved by an ordinance adopted by the Board of County Commissioners of the county to which the rule applies. The definitions set forth in G.S. 130A-492 in Part 1A of this Article apply to this section and shall apply to any local ordinance, rule, or law adopted by a local government under this section.

(b) Repealed by Session Laws 2009-27, s. 1, effective January 2, 2010.

(b1) A local ordinance or other rules, laws, or policies adopted under this section may not restrict or prohibit smoking in the following places:

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(7) A private club.

(8) A motion picture, television, theater, or other live production set. This exemption applies only to the actor or performer portraying the use of tobacco products during the production.

(b2) A local government may adopt and enforce ordinances, board of health rules, and policies restricting or prohibiting smoking on local government grounds as long as the ordinances, rules, or policies are not more restrictive than State law.

(c) Repealed by Session Laws 2009-27, s. 1, effective January 2, 2010.

(c1) Continuing to smoke in violation of a local ordinance or other rules, laws, or policies adopted under this section constitutes an infraction, and the person committing the infraction may be punished by a fine of not more than fifty dollars ($50.00). Conviction of an infraction under this section has no consequence other than payment of a penalty. A person smoking in violation of a local ordinance or other rules, laws, or policies adopted under this section may not be assessed court costs.

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(b) Local community college boards of trustees may adopt, implement, and enforce a written policy prohibiting at all times the use of any tobacco product by any person in community college buildings, in community college facilities, on community college campuses, in vehicles owned, leased, or operated by the local community college, and in or on any other community college property owned, leased, or operated by the local community

college. The policy may also prohibit the use of all tobacco products by persons attending a community college-sponsored event.

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(e) The North Carolina Tobacco Prevention and Control Branch and the Health and Wellness Trust Fund Commission shall work with local community college boards of trustees to provide assistance with the development and implementation of the policy including providing information regarding smoking cessation and prevention resources."

SECTION 3. This act becomes effective October 1, 2013.

SENATE SERGEANT-AT-ARMS

COMMITTEE: **SENATE AGRICULTURE / ENR**

DATE: 05/14/13 ROOM: 544

TIME: 11:00 AM

1. CHARLES HARPER
2. RON SPANN
3. JUSTIN OWENS
4. STEVE WILSON
5. _____
6. _____

SENATE PAGES ATTENDING

COMMITTEE: Agriculture ROOM: 544 LOB

DATE: 5-14 TIME: 11 AM

PLEASE PRINT LEGIBILY!!!!!!!!!!!!!....*or else!*

Page Name	Hometown	Sponsoring Senator
1. Dillon Phillips	Louisburg	Barefoot
2. Jamera Williams	Weldon	Bryant
3. Kaisten Alderman	Lewisville	Brunstetter
4. Kayla Alderman	Lewisville	Brunstetter
5. Kennedy Terrell	Matthews	Tarte
6. Ivy O'Donnell	Bostic	Hise
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.

VISITOR REGISTRATION SHEET

Senate/Agriculture/Environment/Natural Resources
(Committee Name)

5/14/2013
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Julie Mayfield	NCWMA
Rob Hamme	RLA
Will Morgan	TNC
Jeray Hardison	NCPC / NCCH
Sally Herndon	NC DPH DHHS TPCB
Jim Martin	NC DPH / TPCB
Gretchen Kelly	FirstHealth of the Carolinas
Mavis Wilson	Novant Health
Angie Hamm	Ward and Smith
Mark McConnell	Carolina Health Care
Heather Barnett	Ward & Smith
Christine Craig	WakeMed
Doug Heron	William & Mary
Daniel VanLiere	Vidant Health
Tim Ryan	MWC
R Rogers	CWMTF

VISITOR REGISTRATION SHEET

Senate/Agriculture/Environment/Natural Resources
(Committee Name)

5/14/2013
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
MIKE MAHER	NCTA
TYLER NEWMAN	COW
Erin Wynia	NCLM
Michael Layne	City of Burlington
Lynn Culbreth	NCLM
Dan Conrad	NCOC
Layton Long	DHHS
Angie Maier	NCPC
JAKE PARKER	NCFB
~~WANDA HALL~~	~~SPEAKER'S STAFF~~
C.S. Hollis	TSS
~~Jon Hicks~~	NCDA
Mary Blumenthal	NCCS
JAY PETERS	CSS
Amanda Hraker	TSS

09-21-201

VISITOR REGISTRATION SHEET

Senate/Agriculture/Environment/Natural Resources
(Committee Name)

5/14/2013
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Dawn Jarman	Public Works Commission + Fayetteville
Marlene Sanford	TREBIC, City of Burlington
Jason Cannon	GSP Partnership
Robert C Patterson	City of Burlington
[illegible]	NCPHA
Melva Okeem	NC Prev. Partners
Betsy Bailey	PENC
Berry Jenkins	CAGS
Sarah Sandt	NP
Bronwyn Lucas	YES!
Christine Loucher	YES!
Lee Storrow	NC AH
Sheri Mouw	N.C Prevention Partners
Pam Seamans	NC Alliance for Health
J REEDER	NC DWR
TRACY DAVIS	DENR-DEMLR
Amy McConkey	NC Beverage Ass'n

09-21-201

VISITOR REGISTRATION SHEET

Senate/Agriculture/Environment/Natural Resources
(Committee Name)

5/14/2013
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Tommy Stevens	NCPC
Preston Howard	NCMA
Alex Badgett	CSS
	NCRMA
Frank Kiraly	NCRCA
BRUCE THOMPSON	PARKER POE
GENE AINSWORTH	A&A
Allison Waller	Nelson Mullins
TJ Brybee	NP
Nancy Thompson	Weyerhaeuser

VISITOR REGISTRATION SHEET

Senate/Agriculture/Environment/Natural Resources
(Committee Name)

5/14/2013
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Christie Barhoo,	CAJH
Doug Hong	NLPIA
Christine Wilson	ACS CAN
Kathy Hawkins	Duke Energy
Jay Reese	NCAFC
Lori Abrahams	LANA
[illegible]	CIL
Angel [illegible]	CP
Carr McLamb	DENR
Adam Sholar	DHHS

VISITOR REGISTRATION SHEET

Senate/Agriculture/Environment/Natural Resources
(Committee Name)

5/14/2013
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Courtney Phillips	NCTA
Robin Lenz	HSUS
Kim Alboum	HSUS
Kay Emanuel	School of Government
Tony Brown	EDF
Matt Colussi	DENR
Dustin Chicoine-Bayer	Sierra Club.
Molly Diggins	Sierra Club
DAN CRAWFORD	NCLCV
Cassie Gavin	Sierra Club
Paul Halloran	[illegible]
Joe McCleeb	McClees Consulting
Henri McClees	McClees Consulting
[illegible]	BCI
Jon Carr	Jordan Price Law Firm
Jay Stein	NCRA
Doug Lassiter	NCSTA

09-21-201

VISITOR REGISTRATION SHEET

Senate/Agriculture/Environment/Natural Resources
(Committee Name)

5/14/2013
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
PERRY SUMNER	NCWRC
Elizabeth Biser	Brooks Pierce
Graff Cantrell	NCWRC
Dale Caveny	NCWRC
Tim Gestwicki	NCWF
Alvin Braswell	Museum Nat. Sci/DENR
Tom Carruthers	City of Greensboro
Harry Ellis	ENCFHA
Rod Vinson	ENCFHA
Charlotte Jessup	NC DENR-DWM
Linda Culpepper	NC DENR - DWR
TONNIE DAVIS	NCTA
Nelson Pearce	
DAVID DENTON	
LEARY SINK	NCTA
Shane Phillips	NCTA
Tony White	NCTA

09-21-201

VISITOR REGISTRATION SHEET

Senate/Agriculture/Environment/Natural Resources
(Committee Name)

5/14/2013
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Stephanie Hawco	WPTF
Nadia Luhr	NCCN
Brooks Rainey Pearson	SELC
[signature]	P.W.C City of Fayetteville
Michael Houser	Houser Consulting
Meg Madi Ashvil	SELC
Bill Scarbrel	No. Carl. Trappers Assoc.
Layla Cummings	DENR
Trina Ozer	DENR
Kathryn Trogdon	NCMMC
Sheila Holman	DENR - Division of Air Quality
Debbie Hughes	KLG
Logan Mohg	NCLCV
Dick Hamilton	NCWF
Michael Grubert	nclcv
GORDON MYERS	NCWRC
CHRIS DILLON	NCWRC

09-21-201

Senate Committee on Agriculture/Environment/Natural Resources
Wednesday, May 15, 2013, 9:00 AM
421 Legislative Office Building

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

BILL NO.	SHORT TITLE	SPONSOR
SB 376	Landowners/Lessees May Trap Coyotes.	Senator Bingham
SB 580	Expedite Cleanup of Orphan Landfill Sites.	Senator Tarte

Adjournment

Senate Committee on Agriculture/Environment/Natural Resources
Wednesday, May 15, 2013 at 9:00 AM
Room 421 of the Legislative Office Building

MINUTES

The Senate Committee on Agriculture/Environment/Natural Resources met at 9:00 AM on May 15, 2013 in Room 421 of the Legislative Office Building. Eleven (11) members were present.

Senator Brent Jackson, presided.

Senator Jackson introduced the pages: James Averette of Henderson sponsored by Sen. Bryant, Jamera Williams of Weldon sponsored by Sen. Bryant, Kayla Alderman of Lewisville sponsored by Sen. Brunstetter, Kristen Alderman of Lewisville sponsored by Sen. Brunstetter, Dillan Phillips of Louisburg sponsored by Sen. Barefoot and Ivy O'Donnell of Bostic sponsored by Sen. Hise.

Senator Jackson introduced the Sgt. of Arms – Charles Marsalis, Ernie Sherrill, and Ed Kesler.

The following bills were discussed:

SB 580 – Sen. Tarte – Expedite Cleanup of Orphan Landfill Sites.

Sen. Randleman made a motion to accept the PCS on this bill. The motion carried. Sen. Tarte explained the bill. There were follow up questions from Sen. Ford, Sen. Kinnaird and Sen. Bingham. Jennifer McGinnis from the staff and Sen. Tarte were able to answer satisfactorily the questions. Mitch Gillespie, Assistant Secretary of DENR spoke for the bill. Sen. Rabin spoke on the bill. Sen. Rabin made a motion for a Favorable Report to the PCS and Unfavorable to the Original Bill. The motion carried.

SB 376 – Landowners/Lessees May Trap Coyotes – Sen. Bingham

Sen. Brock made a motion to accept the PCS for this bill. The motion carried. Sen Bingham explained the bill. Gordon Myers, Director of Wildlife Resource spoke in favor of the bill. Sen. Kinnaird had a follow-up question which Gordon Myers was able to answer. Sen. Randleman made a motion for a Favorable Report for the PCS and Unfavorable to the Original bill.

The meeting adjourned at 9:30 AM

Senator Brent Jackson
Presiding

Judy Edwards, Committee Clerk

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES COMMITTEE REPORT
Senator Brock, Co-Chair
Senator Jackson, Co-Chair

Wednesday, May 15, 2013

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

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

SB **376** Landowners/Lessees May Trap Coyotes.

Draft Number:	S376-PCS85225-TQ-36
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

SB **580** Expedite Cleanup of Orphan Landfill Sites.

Draft Number:	S580-PCS85228-RI-17
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

TOTAL REPORTED: 2

Senator Stan Bingham will handle SB 376
Senator Jeffery Tarte will handle SB 580



GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

S 1

SENATE BILL 376

Short Title:	Landowners/Lessees May Trap Coyotes.	(Public)
Sponsors:	Senators Bingham (Primary Sponsor); Brock and Newton.	
Referred to:	Agriculture/Environment/Natural Resources.	

March 21, 2013

A BILL TO BE ENTITLED

AN ACT TO ALLOW LANDOWNERS AND LESSEES TO TRAP COYOTES ON THEIR LAND AT ANY TIME.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 113-291.2 is amended by adding a new subsection to read:

"(g) Subject to all the trapping requirements set forth in G.S. 113-291.6, a person may trap coyotes and authorize the trapping of coyotes on lands owned by or under lease to that person, in order to control populations of coyotes at any time during the year."

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

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

S D

SENATE BILL 376
PROPOSED COMMITTEE SUBSTITUTE S376-PCS85225-TQ-36

Short Title: Landowners/Lessees May Trap Coyotes. (Public)

Sponsors:

Referred to:

March 21, 2013

A BILL TO BE ENTITLED

AN ACT TO DIRECT THE WILDLIFE RESOURCES COMMISSION TO ENACT RULES FOR THE YEAR ROUND TRAPPING OF COYOTES AND ESTABLISH A PERMIT FOR THE YEAR ROUND TRAPPING OF COYOTES BY LANDOWNERS AND LESSEES ON THEIR LAND; TO PROVIDE THE WILDLIFE RESOURCES COMMISSION WITH AUTHORITY TO ESTABLISH TRAPPING SEASONS IN THE EXERCISE OF ITS TEMPORARY RULE-MAKING AUTHORITY; TO INCREASE THE PENALTY FOR UNLAWFULLY SELLING, POSSESSING FOR SALE, BUYING A FOX, OR TAKING ANY FOX BY UNLAWFUL TRAPPING OR WITH THE AID OF ANY ELECTRONIC CALLING DEVICE; AND TO CREATE PENALTIES FOR REMOVING A LIVE COYOTE FROM A TRAP AND TRANSPORTING A LIVE COYOTE AFTER REMOVAL.

The General Assembly of North Carolina enacts:

SECTION 1. Rule making. – The Wildlife Resources Commission is directed to adopt rules allowing a landowner or lessee to trap coyotes on the landowner's or lessee's land outside of trapping seasons established by the Wildlife Resources Commission.

SECTION 2. G.S. 113-274(c) reads as rewritten:

"**§ 113-274. Permits.**

...

(c) The Wildlife Resources Commission may issue the following permits:

...

(1d) Out-of-Season Coyote Trapping Permit. – Authorizes a landowner or lessee to trap coyote on the landowner's or lessee's land outside any lawfully established trapping seasons. It shall be unlawful under this permit to remove any coyote taken from a trap while the coyote is still alive or to transport the live coyote after that removal, unless such animal is affixed with an electronic collar. Animals affixed with electronic collars must be handled in accordance with rules of the Wildlife Resources Commission. The permit must state the types of traps used and the disposition of wildlife or wildlife resources authorized and the time for which the permit is valid, plus other restrictions that may be administratively imposed in accordance with rules of the Wildlife Resources Commission, including, but not limited to, required education and understanding of trapping best management practices. Landowners or lessees shall be issued an out-of-season coyote trapping permit upon request.

...."

SECTION 3. G.S. 150B-21.1 reads as rewritten:

"**§ 150B-21.1. Procedure for adopting a temporary rule.**

(a) Adoption. – An agency may adopt a temporary rule when it finds that adherence to the notice and hearing requirements of G.S. 150B-21.2 would be contrary to the public interest and that the immediate adoption of the rule is required by one or more of the following:

...

(7) The need for the Wildlife Resources Commission to establish any of the following:

a. No wake zones.

b. Hunting or fishing seasons.

c. Hunting or fishing bag limits.

d. Management of public game lands as defined in G.S. 113-129(8a).

e. Trapping seasons.

...."

SECTION 4. G.S. 113-294 reads as rewritten:

"**§ 113-294. Specific violations.**

...

(j) Any person who unlawfully sells, possesses for sale, or buys a fox, or who takes any fox by unlawful trapping or with the aid of any electronic calling device is guilty of a Class 2 misdemeanor, punishable by a fine of not less than five hundred dollars ($500.00) in addition to any other punishment prescribed for the offense in question. Each of the acts specified shall constitute a separate offense, unless a greater penalty is prescribed for the offense in question.

...

(t) Any person who violates the provisions of G.S. 113-274(c)(1d) by unlawfully removing any coyote taken from a trap while the coyote is still alive or to transport the live coyote after that removal is guilty of a Class 2 misdemeanor, punishable by a fine of not less than five hundred dollars ($500.00) in addition to any other punishment prescribed for the offense in question. The acts of removal from a trap and of transporting the coyote after removal shall constitute separate offenses.

...."

SECTION 5. This act becomes effective October 1, 2013.

SENATE BILL 376:
Landowners/Lessees May Trap Coyotes

2013-2014 General Assembly

Committee:	Senate Agriculture/Environment/Natural Resources	**Date:**	May 14, 2013
Introduced by:	Sen. Bingham	**Prepared by:**	Chris Saunders Committee Counsel
Analysis of:	PCS to First Edition S376-CSTQ-36 [v.8]		

SUMMARY: ***The Proposed Committee Substitute to Senate Bill 376 would (1) direct the Wildlife Resources Commission ("Commission") to adopt rules allowing landowners and lessees to trap coyotes on their land outside of designated trapping seasons; (2) establish an Out-of-Season Coyote Trapping Permit to be issued by the Commission; (3) allow the Commission to adopt temporary rules relating to trapping seasons; (4) increase the penalty for unlawfully selling, possessing for sale, or buying a fox, or taking any fox by unlawful trapping or with the aid of any electronic calling device; and (5) create penalties for unlawfully removing a live coyote from a trap and transporting the live coyote after removal.***

CURRENT LAW: Coyote trapping is regulated by the Wildlife Resources Commission ("Commission"). Currently, coyote trapping is allowed during the regular fur season, which runs from December 1 to February 28 in and east of Hertford, Bertie, Martin, Pitt, Greene, Lenoir, Duplin, Pender and New Hanover counties, and from November 1 to February 28 west of those counties. Coyote trapping is also allowed during fox-trapping season in those counties where fox-trapping is allowed by statute.

BILL ANALYSIS:

Section 1 would direct the Commission to adopt rules allowing landowners or lessees to trap coyotes on their land outside of established trapping seasons.

Section 2 would create an Out-of-Season Coyote Trapping Permit to be issued by the Commission, which would allow a landowner or lessee to trap coyote on the landowner's or lessee's land outside any lawfully established trapping seasons. A permit would be issued to a landowner or lessee upon request.

Section 3 would allow the Commission to adopt temporary rules relating to trapping seasons.

Section 4 would provide that the penalty for unlawfully selling, possessing for sale, or buying a fox, or for taking any fox by unlawful trapping or with the aid of any electronic calling device, is a Class 2 misdemeanor, punishable by a fine of at least $500. Section 4 would also provide that the penalties for the offenses of (1) unlawfully removing any live coyote from a trap and (2) transporting the live coyote after removal are each Class 2 misdemeanors, punishable by a fine of at least $500.

EFFECTIVE DATE: This act would become effective October 1, 2013.

O. Walker Reagan
Director

S376-SMTQ-71 CSTQ-36 -V5

Research Division
(919) 733-2578

SENATE BILL 580

Short Title:	Expedite Cleanup of Orphan Landfill Sites.	(Public)
Sponsors:	Senators Tarte (Primary Sponsor); J. Davis and Goolsby.	
Referred to:	Agriculture/Environment/Natural Resources.	

April 4, 2013

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH A PILOT PUBLIC-PRIVATE PARTNERSHIP FOR THE REMEDIATION OF PRE-1983 LANDFILLS.

The General Assembly of North Carolina enacts:

SECTION 1. Legislative findings. – The General Assembly makes the following findings regarding the remediation of pre-1983 landfills:

(1) Despite a dedicated source of revenue and a considerable fund balance, the Department of Environment and Natural Resources has made little progress in cleanup of these landfill sites.

(2) The Department has had statutory authorization and adopted rules for voluntary remedial actions for sites in the State Inactive Hazardous Sites program with oversight by consultants and engineers approved by the Department as Registered Environmental Consultants since 1997.

(3) Qualified private firms should be given the opportunity to demonstrate they can remediate pre-1983 landfill sites under Department oversight more quickly and less expensively than a traditional remedial action developed and conducted by the Department.

SECTION 2. G.S. 130A-310.6 reads as rewritten:

"**§ 130A-310.6. State action upon default of responsible parties or when no responsible party can be located.**

...

(c) The Secretary shall use funds allocated to the Department under G.S. 130A-295.9(1) to assess pre-1983 landfills, to determine the priority for remediation of pre-1983 landfills, ~~and~~ to develop and implement a remedial action plan for each pre-1983 landfill that requires ~~remediation.~~remediation, and to implement a public-private partnership for cleanup of pre-1983 landfills pursuant to section 2 of this act. Environmental and human health risks posed by a pre-1983 landfill may be mitigated using a risk-based approach for assessment and remediation.

...

(e) The Secretary shall develop and implement remedial action plans for pre-1983 landfills in the order of their priority determined as provided in subsection (c) of this ~~section.~~section, except as provided in section 2 of this act. The Secretary shall not develop or implement a remedial action plan for a pre-1983 landfill unless the Secretary determines that sufficient funds will be available from the Inactive Hazardous Sites Cleanup Fund to pay the costs of development and implementation of a remedial action plan for that pre-1983 landfill."

SECTION 3. The Division of Solid Waste of the Department of Environment and Natural Resources shall develop and present to the Environmental Management Commission for approval no later than October 1, 2013, a plan for a pilot public-private partnership for cleanup of no less than nine pre-1983 landfill sites. The plan shall include the following:

(1) Sites selected by the Department and approved by the Environmental Management Commission shall be representative of the types of sites included within the Department's list of identified pre-1983 landfills. For purposes of this subdivision, "representative" means that if all landfill sites identified were sorted into a matrix of nine categories with the degree of risk to groundwater and human receptors (grouped into categories of low, medium, and high) being three columns and size of site (grouped into categories of small, medium, and large) being three rows, the nine sites chosen for the pilot program would include one site in each category. The Department shall select the nine sites no later than October 1, 2013.

(2) The Department shall issue a request for proposal no later than November 15, 2013, and shall reward contracts for remediation no later than March 1, 2014.

(3) The Department shall not impose any requirements on consultants undertaking remediation under this section that are more stringent than those set forth in the Department's rules for "Voluntary Remedial Action Oversight by Registered Environmental Consultants," codified at 15A NCAC 13C .0300.

(4) The Department shall report to the Environmental Review Commission and the Joint Legislative Commission on Governmental Operations no later than May 15, 2014, on the implementation of this act. The Department shall continue to report as set forth in this subdivision every six months until all nine sites have received a "no further action" determination from the Department, or until all active site remediation activities other than periodic monitoring and reporting have been completed to the satisfaction of the Department, whichever occurs first. The final report provided by the Department under this subdivision shall also include a recommendation as to whether the pilot public-private partnership created by this act has achieved cost or time savings and whether the program should be continued and expanded.

SECTION 4. The Revisor of Statutes shall change the reference to "this act" in G.S. 130A-310.6, as amended by Section 2 of this act, to the Session Law number assigned to this act.

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

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

S D

SENATE BILL 580
PROPOSED COMMITTEE SUBSTITUTE S580-PCS85228-RI-17

Short Title: Expedite Cleanup of Orphan Landfill Sites. (Public)

Sponsors:

Referred to:

April 4, 2013

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH THE NORTH CAROLINA CONTAMINATION SOURCE REMOVAL AND DISPOSAL BOARD, AND TO DIRECT THE BOARD AND THE DIVISION OF WASTE MANAGEMENT OF THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES TO STUDY DEVELOPMENT AND IMPLEMENTATION OF A PILOT PROGRAM TO ALLOW A PUBLIC-PRIVATE PARTNERSHIP FOR THE SAFE AND EXPEDITED REMEDIATION OF PRE-1983 LANDFILLS AT LITTLE OR NO COST TO THE STATE.

The General Assembly of North Carolina enacts:

SECTION 1. Legislative findings. – The General Assembly makes the following findings regarding the remediation of pre-1983 landfills:

(1) Despite a dedicated source of revenue and a considerable fund balance, little progress has been made in active cleanup of these landfill sites.

(2) Qualified private firms should be given the opportunity to demonstrate they can remediate pre-1983 landfill sites under the oversight of the Department of Environment and Natural Resources more quickly and less expensively than a traditional remedial action developed and conducted by the Department.

(3) Implementation of a pilot program to allow a public-private partnership for the safe and expedited remediation of pre-1983 landfills at little or no cost to the State may result in multiple benefits to the State and its citizenry, including (i) eliminating environmental hazards that are associated with the many sites across the State that have yet to be remediated; (ii) decreasing the State's economic liability for these sites; and (iii) promoting economic growth through job creation associated with returning these sites to beneficial and productive use due to jobs that may be expected from active remediation activities at these sites, and jobs that may be expected after these sites have been returned to developable commercial and other uses.

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

"Part 9. North Carolina Contamination Source Removal and Disposal Board.

"**§ 130A-310.80. North Carolina Contamination Source Removal and Disposal Board – creation; powers and duties.**

(a) Creation. – There is hereby created the North Carolina Contamination Source Removal and Disposal Board of the Department of Environment and Natural Resources.

(b) Purpose. – The purposes and functions of the Contamination Source Removal and Disposal Board are to identify, evaluate, and facilitate innovative processes and mechanisms for safe and more expeditious and cost-effective cleanup of pre-1983 landfills, as that term is defined under G.S. 130A-290(a)(22a), to return these sites to beneficial and productive use for the good of the State and its citizens.

(c) Authority. – To achieve its purposes, the Board shall have all of the following powers and duties:

(1) To pursue efforts directed at the expeditious and cost-effective cleanup of pre-1983 landfills.

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

(3) To establish standing and ad hoc committees. The Board shall determine the purpose of each standing or ad hoc committee.

(4) To seek, apply for, and accept grants from public or private sources. The Board may accept or expend funds only after an affirmative vote by a majority of the members of the Board.

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

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

(7) To designate a fiscal agent.

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

(d) Membership. – The Board shall consist of seven members as follows:

(1) The Secretary of Environment and Natural Resources or the Secretary's designee, ex officio.

(2) One appointed by the Governor with extensive private sector experience in waste handling, removal, transportation, and disposal.

(3) One appointed by the Governor representing a local government with a pre-1983 landfill located within its jurisdiction.

(4) One appointed by the General Assembly upon recommendation of the President Pro Tempore of the Senate who shall be a licensed private sector environmental engineer with experience in contamination source removal, transportation, and disposal.

(5) One appointed by the General Assembly upon recommendation of the President Pro Tempore of the Senate who shall be a private sector manager with extensive experience in industrial wastes, environmental restoration, remediation, and mitigation of contamination resulting from industrial activities.

(6) One appointed by the General Assembly upon recommendation of the Speaker of the House of Representatives who shall be a licensed private sector attorney with experience in legal matters associated with contamination removal, transportation, and disposal.

(7) One appointed by the General Assembly upon recommendation of the Speaker of the House of Representatives who is a member of the Commission for Public Health and knowledgeable in the principles of waste management.

(e) Terms. – The term of office of members of the Board is three years. A member may be reappointed to no more than two consecutive three-year terms. The term of a member who no longer meets the qualifications of their respective appointment, as set forth in subsection (d) of this section, shall terminate but the member may continue to serve until a new member who meets the qualifications is appointed. The terms of members appointed under subdivisions (2), (4), and (6) of subsection (d) of this section shall expire on June 30 of years evenly divisible by three. The terms of members appointed under subdivisions (3), (5), and (7) of subsection (d) of this section shall expire on June 30 of years that precede by one year those years that are evenly divisible by three.

(f) Vacancies; Removal from Office. –

(1) Any appointment by the Governor to fill a vacancy on the Board created by the resignation, dismissal, death, or disability of a member shall be for the balance of the unexpired term. The Governor shall have the power to remove any member of the Board from office for misfeasance, malfeasance, or nonfeasance in accordance with the provisions of G.S. 143B-13 of the Executive Organization Act of 1973.

(2) Members appointed by the President Pro Tempore of the Senate and the Speaker of the House of Representatives shall be made in accordance with G.S. 120-121, and vacancies in those appointments shall be filled in accordance with G.S. 120-122. In accordance with Section 10 of Article VI of the North Carolina Constitution, a member may continue to serve until a successor is duly appointed.

(g) Compensation. – The members of the Board shall receive per diem and necessary traveling and subsistence expenses in accordance with the provisions of G.S. 138-5.

(h) Quorum. – A majority of the Board shall constitute a quorum for the transaction of business.

(i) Officers. – The Governor shall appoint a chair and vice-chair, and any other officers the Governor considers necessary, and shall determine the length of the term of office of each officer.

(j) Staff. – All staff support required by the Board shall be supplied by the Division of Waste Management of the Department of Environment and Natural Resources.

(k) Reports. – The Board shall submit quarterly written reports as to its operation, activities, programs, and progress to the Environmental Review Commission. The Board shall supplement the written reports required by this subsection with additional written and oral reports as may be requested by the Environmental Review Commission. The Board shall submit the written reports required by this subsection whether or not the General Assembly is in session at the time the report is due.

(l) Meetings. – The Board shall meet at least quarterly and may hold special meetings at any time and place within the State at the call of the chair or upon the written request of at least four members.

(m) Advisory role. – The role of the Board is advisory in nature, and in no way shall the Board be construed to have regulatory authority. No action of the Board supercedes any decision of the Division of Waste Management or the Department of Environment and Natural Resources.

SECTION 3.(a) The North Carolina Contamination Source Removal and Disposal Board and the Division of Waste Management of the Department of Environment and Natural Resources shall study development and implementation of a pilot program to be primarily administered under the Board's oversight that allows cleanup of pre-1983 landfill sites using a public-private partnership for the expedited and safe remediation of pre-1983 landfills to return those sites to safe and beneficial and productive use, at little or no cost to the State. At a minimum, the study shall include all of the following:

(1) Identification of no less than nine pre-1983 landfills suitable for inclusion in a pilot program (pilot sites), which are representative of the types of sites included within the Department's list of pre-1983 landfills. For purposes of this subdivision, "representative" means that if all landfill sites identified were sorted into a matrix of nine categories with the degree of risk to groundwater and human receptors (grouped into categories of low, medium, and high) being three columns and size of site (grouped into categories of small, medium, and large) being three rows, the nine sites chosen for the pilot program would include one site in each category.

(2) Evaluation of the feasibility of contracting with private entities for remediation of the pilot sites identified at little or no cost to the State, with all or most of the compensation given from the State to the private entities for the remediation performed resulting from the private entities' recovery of recyclable and reusable materials from the pilot sites.

(3) Evaluation of contracts with private entities that may be executed as proposed under the principles of the pilot program in terms of compatibility with and adherence to the laws of the State governing public contracting requirements under Article 3 of Chapter 143 of the General Statutes.

(4) Evaluation of allowing use of remediation requirements for the pilot sites in accordance with those set forth in the Department's rules for "Voluntary Remedial Action Oversight by Registered Environmental Consultants," codified at 15A NCAC 13C .0300, or other requirements that will allow the pilot sites to return to safe and beneficial and productive use in the most cost-effective manner.

(5) Requirements for periodic monitoring of pilot sites to ensure remediation is safely performed for subsequent use of the properties and completed to the satisfaction of the Department.

(6) Review and evaluation of other states' requirements, programs, and policies for remediation of sites similar to those classified as "pre-1983 landfills" as defined by the State of North Carolina, with a focus on other states that may have implemented requirements, programs, and policies that are resulting in safe remediation of such sites, which are performed in a more cost-effective and expeditious manner than that performed in North Carolina under traditional remediation requirements, programs, and policies.

SECTION 3.(b) In the conduct of the study, the Department shall seek United States Environmental Protection Agency approval for implementation of all elements of a pilot program proposed pursuant to this study. On or before December 31, 2013, the Department of Environment shall develop and submit any Memoranda of Agreement, delineations of programmatic responsibility, procedure for coordination, and other information that the United States Environmental Protection Agency may require in order to effectuate the elements of a pilot program proposed pursuant to this study.

SECTION 3.(c) The Board and the Department shall report their findings and recommendations, including any legislative proposals, to the Environmental Review Commission and the Joint Legislative Commission on Governmental Operations on or before January 15, 2014.

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

SENATE BILL 580:
Expedite Cleanup of Orphan Landfill Sites

2013-2014 General Assembly

Committee:	Senate Agriculture/Environment/Natural Resources	**Date:**	May 14, 2013
Introduced by:	Sen. Tarte	**Prepared by:**	Jennifer McGinnis
Analysis of:	PCS to First Edition S580-CSRI-17[v.8]		Committee Counsel

SUMMARY: The Proposed Committee Substitute (PCS) for Senate Bill 580 would create the North Carolina Contamination Source Removal and Disposal board, and direct the Board and the Division of Waste Management of the Department of Environment and Natural Resources to study development and implementation of a pilot program to allow a public-private partnership for the safe and expedited remediation of pre-1983 landfills at little or no cost to the State.

CURRENT LAW and BACKGROUND:

North Carolina defines a "pre-1983 landfill" as "any land area, whether publicly or privately owned, on which municipal solid waste disposal occurred prior to 1 January 1983 but not thereafter, but does not include any landfill used primarily for the disposal of industrial solid waste." These landfills are also called "pre-regulatory landfills" as they pre-date solid and hazardous waste permitting laws, they are also sometimes referred to as "orphan landfills." The Department of Environment and Natural Resources (Department) maintains a list of these sites by county.

Legislation enacted in 2007 (S.L. 2007-550 /SB1492) established a program to address these pre-regulatory landfills that closed prior to January 1, 1983. In addition, the law imposed a tax of $2/ton on municipal solid waste and construction and demolition debris disposed of in landfills in the State or transferred out-of-state for disposal. The tax took effect July 1, 2008. One half of this tax is allocated to the Inactive Hazardous Sites Cleanup Fund. The law requires the Department to use these funds to assess, prioritize, and to develop and implement a remedial action plan for each pre-regulatory landfill that requires remediation.

Inactive Hazardous Sites Cleanup Fund[1]
(pre-1983 landfills)

	FY 2008-09 Actuals	FY 2009-10 Actuals	FY 2010-11 Actuals	FY 2011-12 Actuals	FY 2012-13 Budget *
Expenditures	46,846	749,888	2,846,728	2,824,889	3,485,629
Receipts	3,904,261	9,338,018	9,175,888	9,521,021	6,874,935
Change in Cash Balance	3,857,415	8,588,130	6,329,160	6,696,132	3,389,306
Encumbrances	754,207	9,751,325	18,774,705	19,916,306	33,174,752
Ending Cash Balance	3,857,415	12,445,544	18,774,705	25,470,837	28,860,143

[1] Information provided by the Fiscal Research Division of the General Assembly, and current as of May 8, 2013 (Budget code 65304, fund 6379)

O. Walker Reagan
Director

Research Division
(919) 733-2578

Generally, the law prohibits the Department from seeking cost recovery from units of local government for Departmental assessment and remedial action performed at these sites. In lieu of the Department performing remedial action, the statutes also allow a unit of local government to voluntarily undertake assessment of the site and remedial action of imminent hazards and receive reimbursement if the work is pre-approved by the Pre-Regulatory Landfill Unit ((Unit) within the Inactive Hazardous Sites Branch in the Superfund Section of the Division of Waste Management (Division))) and complies with the requirements of the applicable statutes. The statutes allow use of risk-based assessment and remediation to address contamination at these sites.

According to the Department's website for these sites, the Unit has dedicated staff to oversee (private) contractors that conduct the remediation work at these landfills. The website indicates that letters of interest for the second round of contracting have been received and reviewed, and a short list of designer firms that will to be interviewed has been selected and notified.

According to the Inactive Hazardous Sites Program Annual Report to the General Assembly for FY 2011-2012 the Department has identified 676 pre-regulatory landfills. The Division has documented that 86% of these landfills have residences, schools, day care centers, churches, parks or drinking water sources on or within 1,000 feet of the landfill or have explosive levels of methane present. Seven old landfill sites were screened in FY 2011-2012; of those, two new sites were added to the Inactive Hazardous Sites program catalog. The report indicates the following Department activity with regard to these sites in FY 2011-2012:

Pre-Regulatory Landfill (PRLF) Sites - FY2011-12 Actions	
1st Phase Assessments *(receptor research, geophysical perimeter assessment)*	**14**
Delineation Phase Assessments *(can be multiple field events)*	**5**
1st Phase Assessments Ongoing	**10**
Delineation Phase Assessments Ongoing	**45**
Remedial Design Ongoing	**5**
Homes Provided Alternate Water	**7**
Number of water supply wells sampled	**168**

BILL ANALYSIS: The Proposed Committee Substitute (PCS) for Senate Bill 580 would create the North Carolina Contamination Source Removal and Disposal Board (Board), and direct the Board and the Division to study development and implementation of a pilot program to allow a public-private partnership for the safe and expedited remediation of pre-1983 landfills at little or no cost to the State.

The Board

Under the PCS, the purpose of the Board would be to identify, evaluate, and facilitate innovative processes and mechanisms for safe and more expeditious and cost-effective cleanup of pre-1983 landfills, as that term is defined under G.S. 130A-290(a)(22a), to return these sites to beneficial and productive use for the good of the State and its citizens. Among other things, the Board would be given the authority to pursue efforts directed at the expeditious and cost-effective cleanup of pre-1983 landfills, however, the PCS explicitly provides that the role of the Board is advisory in nature, and in no way shall the Board be construed to have regulatory authority. In addition, the PCS states that no action of the Board supercedes any decision of the Division or the Department.

The Board would consist of seven members as follows:

- The Secretary of Environment and Natural Resources or the Secretary's designee, ex officio.
- Two appointed by the Governor: (1) one with extensive private sector experience in waste handling, removal, transportation, and disposal; and (2) one representing a local government with a pre-1983 landfill located within its jurisdiction.
- Two appointed by the General Assembly upon recommendation of the President Pro Tempore of the Senate: (1) one who is a licensed private sector environmental engineer with experience in contamination source removal, transportation, and disposal; and (2) one who is a private sector

manager with extensive experience in industrial wastes, environmental restoration, remediation, and mitigation of contamination resulting from industrial activities.

- Two appointed by the General Assembly upon recommendation of the Speaker of the House of Representatives: (1) one who is a licensed private sector attorney with experience in legal matters associated with contamination removal, transportation, and disposal; and (2) one who is a member of the Commission for Public Health and knowledgeable in the principles of waste management.

The Study

The PCS would direct the Board and the Division to study development and implementation of a pilot program to be primarily administered by the Board that would allow cleanup of pre-1983 landfill sites using a public-private partnership for the expedited and safe remediation of pre-1983 landfills to return those sites to safe and beneficial and productive use, at little or no cost to the State. At a minimum, the study would include all of the following:

- Identification of no less than nine pre-1983 landfills suitable for inclusion in a pilot program (pilot sites), which are representative of the types of sites included within the Department's list of pre-1983 landfills, based on degree of risk to groundwater and human receptors (low, medium, and high), and size of site (small, medium, and large).
- Evaluation of the feasibility of contracting with private entities for remediation of the pilot sites identified at little or no-cost to the State, with all or most of the compensation given from the State to the private entities for the remediation performed resulting from the private entities' recovery of recyclable and reusable materials from the pilot sites.
- Evaluation of contracts with private entities that may be executed as proposed under the principles of the pilot program in terms of compatibility with and adherence to the laws of the State governing public contracting requirements under Article 3 of Chapter 143 of the General Statutes.
- Evaluation of allowing use of remediation requirements for the pilot sites in accordance with those set forth in the Department's rules for "Voluntary Remedial Action Oversight by Registered Environmental Consultants," codified at 15A NCAC 13C .0300, or other requirements that will allow the pilot sites to return to safe and beneficial and productive use in the most cost-effective manner.
- Requirements for periodic monitoring of pilot sites to ensure remediation is safely performed for subsequent use of the properties and completed to the satisfaction of the Department.
- Review and evaluation of other states' requirements, programs, and policies for remediation of sites similar to those the State classifies as "pre-1983 landfills," with a focus on other states that may have implemented requirements, programs, and policies that are resulting in safe remediation of such sites, and are performed in a more cost-effective and expeditious manner than that performed in North Carolina under traditional remediation requirements, programs, and policies.

The PCS would direct the Department to seek United States Environmental Protection Agency (USEPA) approval for implementation of all elements of a pilot program proposed pursuant to this study, and to develop and submit any Memoranda of Agreement, delineations of programmatic responsibility, procedure for coordination, and other information that the USEPA may require in order to effectuate the elements of the pilot program proposed pursuant to the study.

The PCS would require the Board and the Department to report their findings and recommendations, including any legislative proposals, to the Environmental Review Commission and the Joint Legislative Commission on Governmental Operations on or before January 15, 2014.

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

SENATE PAGES ATTENDING

COMMITTEE: Agriculture ROOM: 421

DATE: 5-15 TIME: 9 AM

PLEASE PRINT LEGIBILY!!!!!!!!!!!!!....*or else!*

Page Name	Hometown	Sponsoring Senator
1. James Averette	Henderson	Bryant
2. Jamera Williams	Weldon	Bryant
3. Kayla Alderman	Lewisville	Brunstetter
4. Kristen Alderman	Lewisville	↓ ↓
5. Dilan Phillips	Louisberg	Barefoot
6. Ivy O'Donnell	Bostic	Hise
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 t-at-Arms.

VISITOR REGISTRATION SHEET

Senate/Agriculture/Environment/Natural Resources
(Committee Name)

5/15/2013
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Matthew Babcock	NC Chamber
JGOODMAN	"
George Everett	Duke Energy
Jon Hinton	NCDA
Doug Lassiter	NCSTA
Joe McClees	McClees Consulting
BRUCE THOMPSON	PARKER POE
Tommy Stevens	NCPC
Amanda Honaker	TSS
Tina Hicks	NCDACS
RBP	NCFB
Connie Wilson	ECNC
Dana Fenton	CLT
Harry Ennis	ENCFHA
Sam Skinner	NCACC
MATTHEW GUNNET	"
Erin Wynia	NCLM

09-21-201

VISITOR REGISTRATION SHEET

Senate/Agriculture/Environment/Natural Resources
(Committee Name)

5/15/2013
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Logan Mobis	NCLCV
Michael Gerbert	NCLCV
Cam McLamb	DENR

09-21-201

VISITOR REGISTRATION SHEET

Senate/Agriculture/Environment/Natural Resources
(Committee Name)

5/15/2013
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Preston Howard	NCMA
JAKE PARKER	NCFB
Sarah Wolfe	MWCLCV
TJ Brigbee	NP
Dan Comfort	NCLCV
Neal Robbins	NC DENR
GORDON MYERS	NCWRC
CHRIS DILLON	NCWRC
Trina Ozer	DENR
Linda Culpepper	NC DENR
Charlotte Jeinck	NC DENR
Mitch Gillespie	DENR

Senate Committee on Agriculture/Environment/Natural Resources
Thursday, May 30, 2013, 9:00 AM
421 Legislative Office Building

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

BILL NO.	SHORT TITLE	SPONSOR
HB 368	Bd. of Agriculture Forestry/Nursery Appts.-AB	Representative Langdon Representative Dixon
HB 279	Transfer Environmental Permits.	Representative Millis Representative Hager Representative McElraft Representative Moffitt
HB 383	Amend Grain Dealer Licensing Laws.-AB	Representative J. Bell Representative Langdon Representative Dixon
HB 517	Rockingham/No Right-of-Way Spotlighting.	Representative Jones Representative Holloway

Adjournment

Senate Committee on Agriculture/Environment/Natural Resources
Thursday, May 30, 2013 at 9:00 AM
Room 421 of the Legislative Office Building

MINUTES

The Senate Committee on Agriculture/Environment/Natural Resources met at 9:00 AM on May 30, 2013 in Room 421 of the Legislative Office Building. Eleven (11)members were present.

Senator Andrew Brock presided.

Sen. Brock introduced the pages: Kara Jerdan from Rutherfordton sponsored by Sen. Hise, Larry Turlington from Clinton sponsored by Sen. Jackson, Thomas McBrayer from Hickory sponsored by Sen. Allran, Brian Clark from Tarboro sponsored by Sen. Jenkins, Gabby Gordon from Rockingham sponsored by Sen. Berger and Jonathan Johns from Knightdale sponsored by Sen. Apodaca.

Sgt. of Arms are Charles Harper, Donna Blake, and Ronald Spann.

The following bills were on the agenda:

HB 383 – Amend Grain Dealer Licensing Laws-AB – Rep. J. Bell

Rep. Bell explained the bill with no follow-up questions. Sen. Ford made a motion for a Favorable Report and the motion carried.

HB 279 – Transfer Environmental Permits - Rep. Millis

There was a PCS on this bill and Sen. Ford made a motion to accept the PCS and the motion carried. Rep. Millis explained the bill. Sen. Cook moved for an Unfavorable Report for the original bill and a Favorable Report to the PCS. The motion carried.

HB 368 – Bd. Of Agriculture Forestry/Nursery Appts.-AB – Rep. Langdon

Sen. Jackson ran this bill for Rep. Langdon. Sen. Jackson explained the bill. Shivaugn Rail, Policy Director for the Carolina Farm Stewardship Association spoke on the bill. Her association supports the bill, but asked that before the bill was voted out of the committee, she would request that a seat for the organic industry while this bill is being considered. Sen. Tucker followed up with a question regarding the organic industry which Sen. Jackson answered. Sen. Cook moved for a Favorable Report to the bill and the motion carried.

HB 517 – Rockingham/No Right-of-Way Spotlighting – Rep. Jones.

Sen. Brock explained this bill. Sen. McLaurin made a motion to a Favorable Report and the motion carried

The meeting adjourned at 9:40 AM

Senator Andrew Brock
Presiding

Judy Edwards, Committee Clerk

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES COMMITTEE REPORT
Senator Brock, Co-Chair
Senator Jackson, Co-Chair

Thursday, May 30, 2013

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

FAVORABLE

HB **368** **(CS#1)** Bd. of Agriculture Forestry/Nursery Appts.-AB
Draft Number: None
Sequential Referral: None
Recommended Referral: None
Long Title Amended: No

HB **383** **(CS#1)** Amend Grain Dealer Licensing Laws.-AB
Draft Number: None
Sequential Referral: None
Recommended Referral: None
Long Title Amended: No

HB **517** Rockingham/No Right-of-Way Spotlighting.
Draft Number: None
Sequential Referral: None
Recommended Referral: None
Long Title Amended: No

TOTAL REPORTED: 3

Senator W. Jackson will handle HB 368
Senator Andrew Brock will handle HB 383
Senator Philip Berger will handle HB 517



NORTH CAROLINA GENERAL ASSEMBLY
SENATE

AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES COMMITTEE REPORT
Senator Brock, Co-Chair
Senator Jackson, Co-Chair

Thursday, May 30, 2013

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

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

HB **279** **(CS#2)** Transfer Environmental Permits.

Draft Number:	H279-PCS10414-SB-26
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

TOTAL REPORTED: 1

Senator Andrew Brock will handle HB 279



GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

H 2

HOUSE BILL 368*
Committee Substitute Favorable 4/9/13

Short Title: Bd. of Agriculture Forestry/Nursery Appts.-AB (Public)

Sponsors:

Referred to:

March 21, 2013

A BILL TO BE ENTITLED

AN ACT TO PROVIDE REPRESENTATION OF FORESTRY AND NURSERY INTERESTS ON THE BOARD OF AGRICULTURE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 106-2 reads as rewritten:

"**§ 106-2. Department of Agriculture and Consumer Services established; Board of Agriculture, membership, terms of office, etc.**

(a) Department and Board Established. – The Department of Agriculture and Consumer Services is created and established and shall be under the control of the Commissioner of Agriculture, with the consent and advice of a board to be ~~styled~~ established and named "The Board of Agriculture."

(b) Membership; Qualifications. – The Board of Agriculture shall consist of the Commissioner of Agriculture, who shall be an ex officio ~~a~~ member and chairman thereof and shall preside at all meetings, and of 10 other members from the ~~State at large,~~ State, so distributed as to reasonably represent the different sections and agriculture of the State. The Commissioner of Agriculture and the members of the Board of Agriculture shall be practicing farmers engaged in their profession. The members of the Board shall be appointed by the Governor by and with the consent of the Senate. In the appointment of the members of the Board the Governor shall also take into consideration the different agricultural interests of the State, and shall appoint members with the following qualifications:

(1) ~~one~~ One member who shall be a ~~practical~~ practicing tobacco farmer to represent the tobacco farming ~~interest,~~interest.

(2) ~~one~~One member who shall be a ~~practical~~ practicing cotton grower to represent the cotton ~~interest,~~interest.

(3) ~~one~~One member who shall be a ~~practical~~ practicing ~~truck~~fruit or vegetable farmer ~~or general farmer~~ to represent the ~~truck and general~~ fruit and vegetable farming ~~interest,~~interest.

(4) ~~one~~ One member who shall be a ~~practical~~ practicing dairy farmer to represent the dairy and livestock interest of the ~~State,~~State.

(5) ~~one~~One member who shall be a ~~practical~~ practicing poultryman to represent the poultry interest of the ~~State,~~State.

(6) ~~one~~One member who shall be a ~~practical~~ practicing peanut grower to represent the peanut ~~interests,~~interests of the State.

(7) ~~one~~One member who shall be experienced in marketing to represent the marketing of products of the State.

(8) One member who shall be actively involved in forestry to represent the forestry interests of the State.

(9) One member who shall be actively involved in the nursery business to represent the nursery industry of the State.

(10) One member who shall be a practicing general farmer to represent the general farming interest.

(c) Terms. – ~~The members of such Board shall be appointed by the Governor by and with the consent of the Senate, when the terms of the incumbents respectively expire.~~ The term of office of ~~such~~ members of the Board shall be six years and until their successors are duly appointed and qualified. ~~The terms of office of the five members constituting the present Board of Agriculture shall continue for the time for which they were appointed. In making appointments for the enlarged Board of Agriculture, the Governor shall make the appointments so that the term of three members will be for two years, three for four and four for six years. Thereafter the appointments shall be made for six years.~~

(d) Vacancies. – Vacancies in ~~such~~ the Board shall be filled by the Governor for the unexpired term. ~~The Commissioner of Agriculture and the members of the Board of Agriculture shall be practical farmers engaged in their profession.~~"

SECTION 2. This act becomes effective July 1, 2013, and applies to appointments to the Board of Agriculture made on or after that date.

HOUSE BILL 368:
Bd. of Agriculture Forestry/Nursery Appts.-AB

2013-2014 General Assembly

Committee:	Senate Agriculture/Environment/Natural Resources	**Date:**	May 30, 2013
Introduced by:	Reps. Langdon, Dixon	**Prepared by:**	Chris Saunders Committee Counsel
Analysis of:	Second Edition		

SUMMARY: House Bill 368 would add a member who is actively involved in forestry, a member who is actively involved in the nursery business, and a practicing general farmer to the required membership of the Board of Agriculture.

[As introduced, this bill was identical to S381, as introduced by Sens. Barefoot, Rabin, Cook, which is currently in Rules and Operations of the Senate.]

CURRENT LAW: The Board of Agriculture is made up of the Commissioner of Agriculture plus ten other members from the State. The membership of the Board of Agriculture must currently include: (1) a tobacco farmer; (2) a cotton grower; (3) a truck farmer or general farmer; (4) a dairy farmer; (5) a poultry farmer; (6) a peanut grower; and (7) a member who is experienced in marketing.

All members of the Board of Agriculture must be farmers engaged in the profession of farming.

BILL ANALYSIS: The bill would amend G.S. 106-2 to provide that the membership of the Board of Agriculture must also include a member who is actively involved in forestry, a member who is actively involved in the nursery business, and a practicing general farmer.

The bill would make several technical changes to eliminate outdated language. The bill would also modify a current membership designation for "truck farmer" to read "fruit or vegetable farmer".

EFFECTIVE DATE: This act would become effective July 1, 2013, and would apply to appointments to the Board of Agriculture made on or after that date.

O. Walker Reagan
Director

H368-SMTQ-88 E2 -V4

Research Division
(919) 733-2578

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

H 2

HOUSE BILL 383*
Committee Substitute Favorable 4/3/13

Short Title: Amend Grain Dealer Licensing Laws.-AB (Public)

Sponsors:

Referred to:

March 21, 2013

A BILL TO BE ENTITLED

AN ACT TO AMEND THE GRAIN DEALER LICENSING ACT TO INCREASE THE BONDING AMOUNT THAT MUST ACCOMPANY LICENSE APPLICATIONS AND TO SPECIFY ADDITIONAL GROUNDS FOR LICENSE REFUSAL OR REVOCATION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 106-604 reads as rewritten:

"**§ 106-604. License fee; bond required; exemption.**

All applications shall be accompanied by an initial or renewal license fee of fifty dollars ($50.00) plus thirty dollars ($30.00) per certificate or decal for each separate buying station or truck and a good and sufficient bond in the amount of ~~ten thousand dollars ($10,000)~~ one hundred thousand dollars ($100,000) to satisfy the initial license application. A fee of five dollars ($5.00) shall be charged for each duplicate license, certificate or decal. "Cash buyers" upon written request to the Commissioner showing proof satisfactory to the Commissioner that the person is a "cash buyer" under this Article shall be exempted from the bonding requirements ~~hereunder.~~of this section. The exemption shall be granted within 20 days of the receipt of the exemption request or unless the Commissioner requests the dealer to provide additional necessary information or unless the request is denied."

SECTION 2. G.S. 106-610 reads as rewritten:

"**§ 106-610. Grounds for refusal, suspension or revocation of license.**

The Commissioner may refuse to grant or renew any license, may suspend or may revoke any license upon a showing by substantial and competent evidence ~~that:~~of any of the following:

(1) The dealer has suffered a final money judgment to be entered against him and such judgment remains ~~unsatisfied; or~~unsatisfied.

(2) The dealer has failed to promptly and properly account and pay for ~~grain; or~~grain.

(3) The dealer has failed to keep and maintain business records of his grain transactions as required ~~herein; or~~by this Article.

(4) The dealer has engaged in fraudulent or deceptive practices in the transaction of his business as a ~~dealer; or~~dealer.

(5) The dealer has failed to collect from a producer and remit to the Commissioner of Agriculture such assessments as have been approved by the producers and are required to be collected under the provisions of Article 50 of Chapter 106 of the General ~~Statutes; or~~Statutes.

(6) The dealer or applicant has been convicted, pled guilty or nolo contendere within three years in any state or federal court of a crime involving moral ~~turpitude;~~turpitude.

(7) The dealer has failed either to file the required bond or to keep such bond in force.

(8) The applicant has acted or held himself or herself out as a grain dealer without first having obtained a license under the provisions of this Article.

(9) The dealer has hired a person who has been convicted of a crime involving fraud, deceit, or misrepresentation in any capacity involving the buying or selling of grain, or the handling of payments for grain.

(10) The dealer or applicant has violated any provision of this Article or rules adopted pursuant to this Article."

SECTION 3. This act becomes effective October 1, 2013.

HOUSE BILL 383:
Amend Grain Dealer Licensing Laws.-AB

2013-2014 General Assembly

Committee:	Senate Agriculture/Environment/Natural Resources	**Date:**	May 30, 2013
Introduced by:	Reps. J. Bell, Langdon, Dixon	**Prepared by:**	Chris Saunders Committee Counsel
Analysis of:	Second Edition		

SUMMARY: House Bill 383 would increase the bonding requirement accompanying an application for a grain dealer license from $10,000 to $100,000 and would add additional grounds for the refusal, suspension, or revocation of a grain dealer license.

[As introduced, this bill was identical to S386, as introduced by Sens. Barefoot, Rabin, Walters, which is currently in House Agriculture.]

CURRENT LAW: Pursuant to G.S. 106-604 (License fee; bond required; exemption), the bonding amount that must accompany a grain dealer license application is currently $10,000.

There are several reasons for which the Commissioner of Agriculture may suspend, revoke, or deny an application for a grain dealer license under G.S. 106-610 (Grounds for refusal, suspension or revocation of license):

1) The dealer has suffered a final money judgment to be entered against him which remains unsatisfied;
2) The dealer has failed to promptly and properly account and pay for grain;
3) The dealer has failed to keep and maintain business records of his grain transactions;
4) The dealer has engaged in fraudulent or deceptive practices in the transaction of his business as a dealer;
5) The dealer has failed to collect from a producer and remit to the Commissioner of Agriculture the assessments required to be collected under Article 50 of Chapter 106 of the General Statutes;
6) The dealer or applicant has been convicted, pled guilty or nolo contendere within three years in any state or federal court of a crime involving moral turpitude; or
7) The dealer has failed to file the required bond or to keep such bond in force.

BACKGROUND: There is not a designated licensing board for grain dealers. Pursuant to G.S. 106-603, the Commissioner of Agriculture issues grain dealer licenses.

BILL ANALYSIS: Section 1 would amend G.S. 106-604 by increasing the bonding amount accompanying a grain dealer license application from $10,000 to $100,000.

Section 2 would amend G.S. 106-610 by adding three additional grounds for revoking or suspending a grain dealer license: (1) the applicant has acted or held himself or herself out as a grain dealer without first having obtained a license; (2) the dealer has hired a person who has been convicted of a crime involving fraud, deceit, or misrepresentation in any capacity involving the buying or selling of grain, or the handling of payments for grain; or (3) the dealer or applicant has violated any provision of Article 53 (Grain Dealers) of Chapter 106 of the General Statutes, or rules adopted under the Article.

EFFECTIVE DATE: This act would become effective October 1, 2013.

O. Walker Reagan
Director

H383-SMTQ-87 E2 -V4

Research Division
(919) 733-2578

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

HOUSE BILL 517

Short Title:	Rockingham/No Right-of-Way Spotlighting.	(Local)
Sponsors:	Representatives Jones and Holloway (Primary Sponsors). *For a complete list of Sponsors, refer to the North Carolina General Assembly Web Site.*	
Referred to:	Agriculture.	

April 3, 2013

A BILL TO BE ENTITLED

AN ACT TO REGULATE HUNTING WITH ARTIFICIAL LIGHT IN ROCKINGHAM COUNTY.

The General Assembly of North Carolina enacts:

SECTION 1. Notwithstanding any other provision of law, it is unlawful for any person to shine a light intentionally upon any wild animal, including, but not limited to, deer, coyotes, or feral swine, from the right-of-way of any public road, street, or highway between the hours of one-half hour after sunset and one-half hour before sunrise.

SECTION 2. Section 1 of this act does not apply to the necessary shining lights by motorists engaged in normal travel on the highway or to landowners, campers, or others who are not attempting to attract or immobilize wildlife by the use of lights.

SECTION 3. Violation of this act is a Class 2 misdemeanor.

SECTION 4. This act is enforceable by law enforcement officers of the Wildlife Resources Commission, by sheriffs and deputy sheriffs, and by other law enforcement officers with general subject matter jurisdiction.

SECTION 5. This act applies only to Rockingham County.

SECTION 6. This act becomes effective October 1, 2013, and applies to offenses committed on or after that date.

HOUSE BILL 517:
Rockingham/No Right-of-Way Spotlighting

2013-2014 General Assembly

Committee:	Senate Agriculture/Environment/Natural Resources	**Date:**	May 30, 2013
Introduced by:	Reps. Jones, Holloway	**Prepared by:**	Chris Saunders Committee Counsel
Analysis of:	First Edition		

SUMMARY: House Bill 517 would make it a Class 2 misdemeanor to intentionally shine a light on any wild animal from the right-of-way of a public road between one-half hour before sunset and one-half hour before sunrise in Rockingham County.

CURRENT LAW: G.S. 113-291.1(a) provides for the taking of the taking of game only between one-half hour before sunrise and one-half hour after sunset. G.S. 113-291.1(b)(2) specifically prohibits the taking of wild animals or wild birds with the use of artificial lights except as provided by rules adopted by the Wildlife Resources Commission (WRC). In addition, pursuant to G.S. 113-291.1(e1) and (e2), the WRC may adopt rules prohibiting shining lights on deer when there is sufficient evidence that an area is subject to substantial unlawful night deer hunting and the residents have been greatly inconvenienced by the shining lights. Many counties have regulations restricting shining lights in deer areas.

By rule, the WRC allows night hunting and the use of artificial lights in the taking of raccoons, opossum, feral swine, and coyote.

G.S. 113-294(e) makes it a Class 2 misdemeanor to unlawfully take deer at night with the aid of an artificial light.

BILL ANALYSIS: Section 1 of the bill would prohibit a person from intentionally shining a light on any wild animal, including deer, coyote, and feral swine, from the right-of-way of any public road between the hours of one-half hour after sunset to one-half hour before sunrise.

Section 2 would provide that the prohibition does not apply to the necessary shining of lights by a motorist in normal travel on a highway, or to landowners, campers, or others who are not attempting to attract or immobilize wildlife by the use of lights.

Sections 3 and 4 would make violation of the act a Class 2 misdemeanor, enforceable by law enforcement officers of the WRC, sheriffs and deputy sheriffs, and other law enforcement officers with general subject matter jurisdiction.

Section 5 would make the act applicable to Rockingham County only.

EFFECTIVE DATE: This act becomes effective October 1, 2013 and applies to offenses committed on or after that date.

Barbara Riley, counsel to House Agriculture, substantially contributed to this summary.

O. Walker Reagan
Director

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Research Division
(919) 733-2578

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

H D

HOUSE BILL 279
Committee Substitute Favorable 4/18/13
Committee Substitute #2 Favorable 4/24/13
PROPOSED COMMITTEE SUBSTITUTE H279-PCS70437-SB-24

Short Title: Transfer Environmental Permits. (Public)

Sponsors:

Referred to:

March 13, 2013

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES TO TRANSFER CERTAIN ENVIRONMENTAL PERMITS ASSOCIATED WITH PROPERTY DEVELOPMENT WHEN THE ORIGINAL PROPERTY OWNER IS UNWILLING OR UNABLE TO AGREE TO THE PERMIT TRANSFER.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 143-214.7 is amended by adding a new subsection to read:

"**§ 143-214.7. Stormwater runoff rules and programs.**

...

(c5) The Department may transfer a permit issued pursuant to this section without the consent of the permit holder to a successor-owner of the property on which the permitted activity is occurring or will occur as provided in this subsection.

(1) The Department may transfer a permit if all of the following conditions are met:

a. The successor-owner of the property submits to the Department a written request for the transfer of the permit.

b. The Department finds all of the following:

1. The permit holder is one of the following:

I. A natural person who is deceased.

II. A partnership, limited liability corporation, corporation, or any other business association that has been dissolved.

III. A person who has been lawfully and finally divested of title to the property on which the permitted activity is occurring or will occur.

IV. A person who has sold the property on which the permitted activity is occurring or will occur.

2. The successor-owner holds title to the property on which the permitted activity is occurring or will occur.

3. The successor-owner is the sole claimant of the right to engage in the permitted activity.

4. There will be no substantial change in the permitted activity.

(2) The permit holder shall comply with all terms and conditions of the permit until such time as the permit is transferred.

(3) The successor-owner shall comply with all terms and conditions of the permit once the permit has been transferred.

(4) Notwithstanding changes to law made after the original issuance of the permit, the Department may not impose new or different terms and conditions in the permit without the prior express consent of the successor-owner.

...."

SECTION 2. G.S. 143-215.1 is amended by adding a new subsection to read:

"**§ 143-215.1. Control of sources of water pollution; permits required.**

...

(d3) The Department may transfer a permit issued pursuant to subsection (d) of this section without the consent of the permit holder to a successor-owner of the property on which the permitted activity is occurring or will occur as provided in this subsection.

(1) The Department may transfer a permit if all of the following conditions are met:

a. The successor-owner of the property submits to the Department a written request for the transfer of the permit.

b. The Department finds all of the following:

1. The permit holder is one of the following:

I. A natural person who is deceased.

II. A partnership, limited liability corporation, corporation, or any other business association that has been dissolved.

III. A person who has been lawfully and finally divested of title to the property on which the permitted activity is occurring or will occur.

IV. A person who has sold the property on which the permitted activity is occurring or will occur.

2. The successor-owner holds title to the property on which the permitted activity is occurring or will occur.

3. The successor-owner is the sole claimant of the right to engage in the permitted activity.

4. There will be no substantial change in the permitted activity.

(2) The permit holder shall comply with all terms and conditions of the permit until such time as the permit is transferred.

(3) The successor-owner shall comply with all terms and conditions of the permit once the permit has been transferred.

(4) Notwithstanding changes to law made after the original issuance of the permit, the Department may not impose new or different terms and conditions in the permit without the prior express consent of the successor-owner.

...."

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. 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.

(b) If, following commencement of a land-disturbing activity pursuant to an approved erosion and sedimentation control plan, the Commission determines that the plan is inadequate to meet the requirements of this Article, the Commission may require any revision of the plan that is necessary to comply with this Article. 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.

(c) The Commission shall disapprove an erosion and sedimentation control plan if implementation of the plan would result in a violation of rules adopted by the Environmental Management Commission to protect riparian buffers along surface waters. The Director of the Division of Energy, Mineral, and Land Resources may disapprove an erosion and sedimentation control plan or disapprove a transfer of a plan under subsection (d1) of this section upon finding that an applicant or a parent, subsidiary, or other affiliate of the applicant:

(1) Is conducting or has conducted land-disturbing activity without an approved plan, or has received notice of violation of a plan previously approved by the Commission or a local government pursuant to this Article and has not complied with the notice within the time specified in the notice;

(2) Has failed to pay a civil penalty assessed pursuant to this Article or a local ordinance adopted pursuant to this Article by the time the payment is due;

(3) Has been convicted of a misdemeanor pursuant to G.S. 113A-64(b) or any criminal provision of a local ordinance adopted pursuant to this Article; or

(4) Has failed to substantially comply with State rules or local ordinances and regulations adopted pursuant to this Article.

(d) In the event that an erosion and sedimentation control plan or a transfer of a plan is disapproved by the Director pursuant to subsection (c) of this section, the Director shall state in writing the specific reasons that the plan was disapproved. The applicant or the proposed transferee may appeal the Director's disapproval of the plan to the Commission. For purposes of this subsection and subsection (c) of this section, an applicant's record or a proposed transferee's record may be considered for only the two years prior to the application date.

(d1) The Department may transfer an erosion and sedimentation control plan approved pursuant to this section without the consent of the plan holder to a successor-owner of the

property on which the permitted activity is occurring or will occur as provided in this subsection.

(1) The Department may transfer a plan if all of the following conditions are met:

a. The successor-owner of the property submits to the Department a written request for the transfer of the plan and an authorized statement of financial responsibility and ownership.

b. The Department finds all of the following:

1. The plan holder is one of the following:

I. A natural person who is deceased.

II. A partnership, limited liability corporation, corporation, or any other business association that has been dissolved.

III. A person who has been lawfully and finally divested of title to the property on which the permitted activity is occurring or will occur.

IV. A person who has sold the property on which the permitted activity is occurring or will occur.

2. The successor-owner holds title to the property on which the permitted activity is occurring or will occur.

3. The successor-owner is the sole claimant of the right to engage in the permitted activity.

4. There will be no substantial change in the permitted activity.

(2) The plan holder shall comply with all terms and conditions of the plan until such time as the plan is transferred.

(3) The successor-owner shall comply with all terms and conditions of the plan once the plan has been transferred.

(4) Notwithstanding changes to law made after the original issuance of the plan, the Department may not impose new or different terms and conditions in the plan without the prior express consent of the successor-owner. Nothing in this subsection shall prevent the Commission from requiring a revised plan pursuant to G.S. 113A-54.1(b).

(e) The landowner, the financially responsible party, or the landowner's or the financially responsible party's agent shall perform an inspection of the area covered by the plan after each phase of the plan has been completed and after establishment of temporary ground cover in accordance with G.S. 113A-57(2). The person who performs the inspection shall maintain and make available a record of the inspection at the site of the land-disturbing activity. The record shall set out any significant deviation from the approved erosion control plan, identify any measures that may be required to correct the deviation, and document the completion of those measures. The record shall be maintained until permanent ground cover has been established as required by the approved erosion and sedimentation control plan. The inspections required by this subsection shall be in addition to inspections required by G.S. 113A-61.1."

SECTION 4. G.S. 113A-61 reads as rewritten:

"**§ 113A-61. Local approval of erosion and sedimentation control plans.**

(a) For those land-disturbing activities for which prior approval of an erosion and sedimentation control plan is required, the Commission may require that a local government that administers an erosion and sedimentation control program approved under G.S. 113A-60 require the applicant to submit a copy of the erosion and sedimentation control plan to the appropriate soil and water conservation district or districts at the same time the applicant submits the erosion and sedimentation control plan to the local government for approval. The

soil and water conservation district or districts shall review the plan and submit any comments and recommendations to the local government within 20 days after the soil and water conservation district received the erosion and sedimentation control plan or within any shorter period of time as may be agreed upon by the soil and water conservation district and the local government. Failure of a soil and water conservation district to submit comments and recommendations within 20 days or within agreed upon shorter period of time shall not delay final action on the proposed plan by the local government.

(b) Local governments shall review each erosion and sedimentation control plan submitted to them and within 30 days of receipt thereof shall notify the person submitting the plan that it has been approved, approved with modifications, or disapproved. A local government shall only approve a plan upon determining that it complies with all applicable State and local regulations for erosion and sedimentation control.

(b1) A local government 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. A local government shall disapprove an erosion and sedimentation control plan if implementation of the plan would result in a violation of rules adopted by the Environmental Management Commission to protect riparian buffers along surface waters. A local government may disapprove an erosion and sedimentation control plan or disapprove a transfer of a plan under subsection (b3) of this section upon finding that an applicant or a parent, subsidiary, or other affiliate of the applicant:

(1) Is conducting or has conducted land-disturbing activity without an approved plan, or has received notice of violation of a plan previously approved by the Commission or a local government pursuant to this Article and has not complied with the notice within the time specified in the notice.

(2) Has failed to pay a civil penalty assessed pursuant to this Article or a local ordinance adopted pursuant to this Article by the time the payment is due.

(3) Has been convicted of a misdemeanor pursuant to G.S. 113A-64(b) or any criminal provision of a local ordinance adopted pursuant to this Article.

(4) Has failed to substantially comply with State rules or local ordinances and regulations adopted pursuant to this Article.

(b2) In the event that an erosion and sedimentation control plan or a transfer of a plan is disapproved by a local government pursuant to subsection (b1) of this section, the local government shall so notify the Director of the Division of Energy, Mineral, and Land Resources within 10 days of the disapproval. The local government shall advise the applicant or the proposed transferee and the Director in writing as to the specific reasons that the plan was disapproved. Notwithstanding the provisions of subsection (c) of this section, the applicant may appeal the local government's disapproval of the plan directly to the Commission. For purposes of this subsection and subsection (b1) of this section, an applicant's record or the proposed transferee's record may be considered for only the two years prior to the application date.

(b3) A local government administering an erosion and sedimentation control program may transfer an erosion and sedimentation control plan approved pursuant to this section without the consent of the plan holder to a successor-owner of the property on which the permitted activity is occurring or will occur as provided in this subsection.

(1) The local government may transfer a plan if all of the following conditions are met:

a. The successor-owner of the property submits to the local government a written request for the transfer of the plan and an authorized statement of financial responsibility and ownership.

b. The local government finds all of the following:

1. The plan holder is one of the following:

I. A natural person who is deceased.
II. A partnership, limited liability corporation, corporation, or any other business association that has been dissolved.
III. A person who has been lawfully and finally divested of title to the property on which the permitted activity is occurring or will occur.
IV. A person who has sold the property on which the permitted activity is occurring or will occur.

2. The successor-owner holds title to the property on which the permitted activity is occurring or will occur.
3. The successor-owner is the sole claimant of the right to engage in the permitted activity.
4. There will be no substantial change in the permitted activity.

(2) The plan holder shall comply with all terms and conditions of the plan until such time as the plan is transferred.

(3) The successor-owner shall comply with all terms and conditions of the plan once the plan has been transferred.

(4) Notwithstanding changes to law made after the original issuance of the plan, the local government may not impose new or different terms and conditions in the plan without the prior express consent of the successor-owner. Nothing in this subsection shall prevent the local government from requiring a revised plan pursuant to G.S. 113A-54.1(b).

(c) The disapproval or modification of any proposed erosion and sedimentation control plan by a local government shall entitle the person submitting the plan to a public hearing if the person submits written demand for a hearing within 15 days after receipt of written notice of the disapproval or modification. The hearings shall be conducted pursuant to procedures adopted by the local government. If the local government upholds the disapproval or modification of a proposed erosion and sedimentation control plan following the public hearing, the person submitting the erosion and sedimentation control plan is entitled to appeal the local government's action disapproving or modifying the plan to the Commission. The Commission, by regulation, shall direct the Secretary to appoint such employees of the Department as may be necessary to hear appeals from the disapproval or modification of erosion and sedimentation control plans by local governments. In addition to providing for the appeal of local government decisions disapproving or modifying erosion and sedimentation control plans to designated employees of the Department, the Commission shall designate an erosion and sedimentation control plan review committee consisting of three members of the Commission. The person submitting the erosion and sedimentation control plan may appeal the decision of an employee of the Department who has heard an appeal of a local government action disapproving or modifying an erosion and sedimentation control plan to the erosion and sedimentation control plan review committee of the Commission. Judicial review of the final action of the erosion and sedimentation control plan review committee of the Commission may be had in the superior court of the county in which the local government is situated.

(d) Repealed by Session Laws 1989, c. 676, s. 4."

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

HOUSE BILL 279:
Transfer Environmental Permits

2013-2014 General Assembly

Committee:	Senate Agriculture/Environment/Natural Resources	**Date:**	May 30, 2013
Introduced by:	Reps. Millis, Hager, McElraft, Moffitt	**Prepared by:**	Jeff Hudson Committee Counsel
Analysis of:	PCS to Third Edition H279-CSSB-24 [v.3]		

SUMMARY: ***The Proposed Committee Substitute for House Bill 279 would authorize the Department of Environment and Natural Resources and local governments to transfer certain environmental permits associated with property development when the original permit holder is unable or unwilling to agree to the permit transfer.***

BILL ANALYSIS: The Proposed Committee Substitute for House Bill 279 (PCS) authorizes the Department of Environment and Natural Resources (DENR) to transfer stormwater management system permits, sewer system permits, and State administered erosion control plans and local governments to transfer locally administered erosion control plans without the consent of the permit or plan holder to a successor-owner of the property on which the permitted activity is occurring or will occur under the following conditions:

- The successor-owner of the property submits a written request for the transfer. For erosion control plans, the successor-owner must also submit a statement of financial responsibility and ownership.
- DENR or the local government finds that the permit or plan holder is one of the following:
  - A deceased person.
  - A dissolved partnership, limited liability corporation, corporation, or other business assocation.
  - A person who has been lawfully and finally divested of title to the property on which the permitted activity is occurring or will occur.
  - A person who has sold the property on which the permitted activity is occurring or will occur.
- DENR or the local government also finds all of the following:
  - The successor-owner holds title to the property on which the permitted activity is occurring or will occur.
  - The successor-owner is the sole claimant of the right to engage in the permitted activity.
  - There will be no substantial change in the permitted activity.

The permit or plan holder must comply with all terms and conditions of the permit or plan until the permit or plan is transferred. The successor-owner must comply with all terms and conditions of the permit or plan once the permit or plan has been transferred. Except for revisions to erosion control plans allowed under current law, neither DENR nor a local government may impose new or different terms or conditions in a plan or permit, even if the law has changed after the initial issuance of the plan or permit, unless the successor-owner expressly consents to the new or different terms or conditions.

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

VISITOR REGISTRATION SHEET

Senate/Agriculture/Environment/Natural Resources
(Committee Name)

5/30/2013
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
JODI SCHUR	RESEARCH NV.
Kathy Hawkins	Duke
Mike Carroll	DENR
George Everett	Duke Energy
Tommy Stevens	NCPC
Peter H Lyle	NCFDC
[signature]	NC FDC
Shivangi	CFSA
Cameron Moore	RAE
David McLeod	NCDACS
Tina Hlabse	NCDACS
Elizabeth Merritt	office of the Governor
Paul Sherman	NCFB

VISITOR REGISTRATION SHEET

Senate/Agriculture/Environment/Natural Resources
(Committee Name)

5/30/2013
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Sarah Wolfe	MWC LLC
CHRIS DILLON	NCWRA
Erin Wynia	NCLM
Penny Griffin	School of Gov.
TJ Brigbee	NP
David Crawford	AIA NC
Benton Albritton	ABC Carolinas
Lauren Payne	NC GRANGE

09-21-201

Senate Committee on Agriculture/Environment/Natural Resources
Tuesday, June 4, 2013, 11:00 AM
544 Legislative Office Building

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

BILL NO.	SHORT TITLE	SPONSOR
HB 821	Triad Farmers Mkt/Rename for Sen. Bob Shaw.	Representative Blust Representative Hardister Representative Faircloth Representative Adams
HB 369	Increased Penalty/Seed Law Violations.-AB	Representative Waddell Representative Brody Representative Langdon Representative Dixon
HB 505	Extend DSWC Animal Waste Inspections.	Representative Waddell Representative Millis Representative Iler Representative McElraft
HB 480	Environmental Permitting Reform.	Representative Millis Representative Moffitt Representative Catlin Representative Hardister
HB 707	Ensure Safe Navigation Channels.	Representative Millis Representative McElraft Representative Warren Representative Tine
HB 789	USTs Eligible for Brownfields.	Representative Catlin
HB 581	Trophy Wildlife Sale Permit.	Representative Elmore Representative West

Adjournment

Senate Committee on Agriculture/Environment/Natural Resources
Tuesday, June 4, 2013 at 11:00 AM
Room 544 of the Legislative Office Building

MINUTES

The Senate Committee on Agriculture/Environment/Natural Resources met at 11:00 AM on June 4, 2013 in Room 544 of the Legislative Office Building. Twelve (12) members were present.

Senator Brent Jackson presided.

Sen. Jackson introduced the pages: Eva Barlowe from Wilmington sponsored by Sen Jackson, Allison Clark from Raleigh sponsored by Sen. Berger, Madison Bell from Louisburg sponsored by Sen Barefoot, Grayson Russell of Knightdale sponsored by Sen Berger, Amelia Mangan of Granite Falls sponsored by Sen. Soucek, Mary Catherine Starnes from Hickory sponsored by Sen. Soucek, Grace Repiogle from Raleigh sponsored by Sen. Stein, Lilly Kinney from Riedsville sponsored by Sen. Berger and Haley Webb from Summerville sponsored by Sen. Berger.

The Sgt. of Arms were Charles Harper, Ed Kesler, and Justin Owens.

The following bills were on the agenda:

HB 821 – Triad Farmers Mkt/Rename for Sen. Bob Shaw – Rep. Blust

Rep. Blust explained the bill. Sen. Wade spoke in favor of the bill. Sen. Wade moved for a Favorable Report and the motion carried.

HB 369 – Increased Penalty/Seed Law Violations.-AB - Rep. Waddell

Rep. Waddell explained the bill. With no further discussion, Sen. Rabin moved for a Favorable Report to the bill and the motion carried.

HB 505 – Extend DSWC Animal Waste Inspections. – Rep. Waddell

Rep. Waddell explained the bill. There was a technical amendment to the bill which was put into a PCS. Sen. Wade moved for acceptance of this technical amendment and the motion was passed. Sen. Walters made a motion for a Favorable Report as to the amended bill (PCS). The motion carried.

HB 480 – Environmental Permitting Reform – Rep. Millis

Rep. Millis explained the bill. Sen. Kinnaird had a follow-up question which Rep. Millis responded. Sen. Cook motion for Favorable Report for the bill and the motion carried.

HB 707 – Ensure Safe Navigation Channels – Rep. Millis

Rep. Millis explained the bill. There was a follow up question from Sen. Cook which Rep. Millis responded. Sen. Rabon spoke in favor of the bill. Sen. Rabon made a motion for a Favorable Report for the bill and the motion carried.

HB 789 – USTs Eligible for Brownfields –Rep. Catlin

Rep. Catlin explained the bill. There was no discussion. Sen. Cook made a motion for a Favorable Report. The motion carried.

HB 581 – Trophy Wildlife Sale Permit – Rep. Elmore

Rep. Elmore explained the bill. Sen. Kinnaird had a follow-up to the bill. Rep. Elmore responded. Sen. Rabon made a motion for a Favorable Report. The motion carried.

The meeting adjourned at 11:38 AM.

Sen. Brent Jackson
Presiding

Judy Edwards, Committee Clerk

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES COMMITTEE REPORT
Senator Brock, Co-Chair
Senator Jackson, Co-Chair

Tuesday, June 04, 2013

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

FAVORABLE

HB **369** **(CS#1)** Increased Penalty/Seed Law Violations.-AB

Draft Number:	None
Sequential Referral:	Judiciary I
Recommended Referral:	None
Long Title Amended:	No

HB **480** **(CS#2)** Environmental Permitting Reform.

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

HB **581** **(CS#1)** Trophy Wildlife Sale Permit.

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

HB **707** Ensure Safe Navigation Channels.

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

HB **789** USTs Eligible for Brownfields.

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

HB **821** **(CS#1)** Triad Farmers Mkt/Rename for Sen. Bob Shaw.

Draft Number:	None
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

HB **505** **(CS#1)** Extend DSWC Animal Waste Inspections.

Draft Number:	H505-PCS10415-SB-27
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

TOTAL REPORTED: 7

Senator John Barefoot will handle HB 369
Senator William Rabon will handle HB 480
Senator Shirley Randleman will handle HB 581
Senator William Rabon will handle HB 707
Senator Eugene McLaurin will handle HB 789
Senator Trudy Wade will handle HB 821
Senator William Rabon will handle HB 505



GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

H 2

HOUSE BILL 821
Committee Substitute Favorable 5/1/13

Short Title: Triad Farmers Mkt/Rename for Sen. Bob Shaw. (Public)

Sponsors:

Referred to:

April 11, 2013

A BILL TO BE ENTITLED

AN ACT TO NAME THE PIEDMONT TRIAD FARMERS MARKET IN MEMORY OF SENATOR ROBERT G. SHAW.

Whereas, Robert G. Shaw served in the United States Army Air Corps from 1943 to 1946; and

Whereas, Robert G. Shaw was a member of the Guilford County Board of County Commissioners from 1968 to 1976, during which time he served as chair and vice-chair; and

Whereas, Senator Robert G. Shaw of Greensboro, North Carolina, was a member of the North Carolina Senate for nine terms, from 1985 until 2002; and

Whereas, during his nine terms as a member of the General Assembly, Senator Shaw served as Minority Leader and as vice-chair on a number of committees, including the Banks and Thrift Institutions, Finance, and Redistricting Committees; and a member of the Agriculture/Marine Resources and Wildlife, Commerce, Insurance and Consumer Protection, Pensions & Retirement, Aging, and Transportation Committees; and

Whereas, in 1990, Senator Shaw was awarded the Order of the Longleaf Pine in recognition of his extraordinary service to the State and during that same year received the Legislator of the Year Award from the North Carolina Wildlife Federation; and

Whereas, the Piedmont Triad Farmers Market, located at Colfax in Guilford County, is part of the North Carolina Department of Agriculture and Consumer Services; and

Whereas, Senator Shaw was a strong supporter of the Piedmont Triad Farmers Market; Now, therefore,

The General Assembly of North Carolina enacts:

SECTION 1. The Piedmont Triad Farmers Market is hereby designated the Robert G. Shaw Piedmont Triad Farmers Market in recognition of Robert G. Shaw's dedicated leadership in the North Carolina General Assembly and his commitment to the citizens of this State, the Piedmont Triad region, and Guilford County.

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

HOUSE BILL 821:
Triad Farmers Mkt/Rename for Sen. Bob Shaw

2013-2014 General Assembly

Committee:	Senate Agriculture/Environment/Natural Resources	**Date:**	June 4, 2013
Introduced by:	Reps. Blust, Hardister, Faircloth, Adams	**Prepared by:**	Chris Saunders Committee Counsel
Analysis of:	Second Edition		

SUMMARY: ***House Bill 821 would designate the Piedmont Triad Farmers Market as the "Robert G. Shaw Piedmont Triad Farmers Market".***

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

BACKGROUND: The Piedmont Triad Farmers Market is located in Colfax in Guilford County and is part of the North Carolina Department of Agriculture and Consumer Services.

O. Walker Reagan
Director

H821-SMTQ-90 E2 -V1

Research Division
(919) 733-2578

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

H 2

HOUSE BILL 369*
Committee Substitute Favorable 4/9/13

Short Title: Increased Penalty/Seed Law Violations.-AB (Public)

Sponsors:

Referred to:

March 21, 2013

A BILL TO BE ENTITLED

AN ACT TO INCREASE PENALTIES FOR VIOLATION OF THE SEED LAW.

The General Assembly of North Carolina enacts:

SECTION 1.(a) G.S. 106-277.19 reads as rewritten:

"**§ 106-277.19. ~~Revocation~~ Revocation, suspension, or refusal of license for cause; hearing; appeal.**

In accordance with Chapter 150B of the General Statutes, the Commissioner is authorized to suspend any seed license issued for a period not to exceed three years, revoke any seed license issued, or to refuse to issue a seed license to any person ~~as hereinafter provided,~~ upon satisfactory proof that said person has repeatedly violated any of the provisions of this Article or any of the rules ~~and regulations made and promulgated~~adopted thereunder.~~thereunder; provided that no license shall be revoked or refused until the person shall have first been given an opportunity to appear at a hearing before the Commissioner. Any person who is refused a license, or whose license is revoked by any order of the Commissioner, may appeal within 30 days from said order to the Superior Court of Wake County or the superior court of the county of his residence.~~"

SECTION 1.(b) G.S. 106-277.24 reads as rewritten:

"**§ 106-277.24. Penalty for violations.**

Any person, firm or corporation violating any provision of this Article or any rule or regulation adopted pursuant thereto shall be guilty of a Class 3 misdemeanor and upon conviction thereof shall ~~only~~ pay a fine of not more than ~~five hundred dollars ($500.00).~~ten thousand dollars ($10,000). In determining the amount of the fine, the court shall consider the retail value of the seed sold in violation of the law, and in cases involving the unlawful sale of seed protected under the federal Plant Variety Protection Act, the court shall order the payment of restitution to any injured party for any losses incurred as a result of the unlawful sale."

SECTION 2. This act becomes effective December 1, 2013, and applies to violations committed on or after that date.

HOUSE BILL 369:
Increased Penalty/Seed Law Violations.-AB

2013-2014 General Assembly

Committee:	Senate Ref to Agriculture/Environment/Natural Resources. If fav, re-ref to Judiciary I	**Date:**	June 4, 2013
Introduced by:	Reps. Waddell, Brody, Langdon, Dixon	**Prepared by:**	Jennifer McGinnis Committee Counsel
Analysis of:	Second Edition		

SUMMARY: House Bill 369 would increase the maximum penalty for violations of the State's seed law from $500 to $10,000. In cases involving the unlawful sale of seed protected under the federal Plant Variety Protection Act, the bill would require a court to order restitution to any injured party for losses incurred as a result of the unlawful sale. The bill would also authorize the Commissioner of Agriculture to suspend a violator's seed license for a period of up to three years; and provide that the appeals process for suspension, revocation, or denial of a license must proceed in conformance with the provisions of Chapter 150B of the General Statutes (the Administrative Procedure Act).

[As introduced, this bill was identical to S455, as introduced by Sens. Cook, Rabin, Barefoot, which is currently in House Agriculture, if favorable, Judiciary Subcommittee B.]

CURRENT LAW: The North Carolina Seed Law, which governs the transportation, distribution, testing, labeling, and tagging of agricultural and vegetable seeds, is set out in Article 31 of Chapter 106 of the General Statutes. The Commissioner of Agriculture (Commissioner), after field testing for performance and trueness to variety, is authorized to register any variety, blend, or hybrid seed and to prohibit the sale of inferior or misrepresented seed. All seed dealers are required to register with and obtain a license from the Department of Agriculture and Consumer Services. Actions prohibited under the Seed Law include the transportation, distribution, or sale of seed unless a license has been obtained, a germination test has been completed within a nine-month period immediately prior to sale; and the seed is properly labeled. Sale of seed containing noxious weed seed is also prohibited. Violation of the Seed Law is a Class 3 misdemeanor punishable by a fine of not more than $500. The $500 limit on the fine that may be imposed for violations of the Seed Law was originally enacted in 1941, and apparently has not been increased since that time. The Commissioner has the authority to revoke a seed license for repeated violations of the Seed Law, and appeals for revocations (or denials of issuance) may be heard in the Superior Court of Wake County or in the superior court of the county in which the violator resides.

BILL ANALYSIS: House Bill 369 would:

- Increase the maximum fine for violations of the State's seed law from $500 to $10,000.
- In cases involving the unlawful sale of seed protected under the federal Plant Variety Protection Act, the bill would require a court to order restitution to any injured party for losses incurred as a result of the unlawful sale.
- Give the Commissioner authority to suspend a violator's seed license for a period of up to three years (in addition to the Commissioner's current authority to revoke or deny a license for repeated violations of the seed law).

- Provide that the appeals process for suspension, revocation, or denial of a seed license must proceed in conformance with the provisions of Chapter 150B of the General Statutes (the Administrative Procedure Act).

EFFECTIVE DATE: The bill would become effective December 1, 2013, and apply to offenses committed on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

H D

HOUSE BILL 505
Committee Substitute Favorable 5/6/13
PROPOSED SENATE COMMITTEE SUBSTITUTE H505-PCS10415-SB-27

Short Title: Extend DSWC Animal Waste Inspections. (Public)

Sponsors:

Referred to:

April 3, 2013

A BILL TO BE ENTITLED

AN ACT TO CODIFY AND MAKE PERMANENT THE PROGRAM FOR INSPECTIONS OF CERTAIN ANIMAL OPERATIONS BY THE DIVISION OF SOIL AND WATER CONSERVATION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 143-215.10F reads as rewritten:

"**§ 143-215.10F. Inspections.**

(a) ~~The~~ Except as provided in subsection (b) of this section, the Division shall conduct inspections of all animal operations that are subject to a permit under G.S. 143-215.10C at least once a year to determine whether the system is causing a violation of water quality standards and whether the system is in compliance with its animal waste management plan or any other condition of the permit.

(b) As an alternative to the inspection program set forth in subsection (a) of this section, the Division of Soil and Water Conservation of the Department of Agriculture and Consumer Services shall conduct inspections of all animal operations that are subject to a permit under G.S. 143-215.10C at least once a year to determine whether the system is causing a violation of water quality standards and whether the system is in compliance with its animal waste management plan or any other condition of the permit. The alternative inspection program shall be located in up to four counties selected using the criteria set forth in Section 15.4(a) of S.L. 1997-443, as amended, as it existed prior to its expiration. The Department of Agriculture and Consumer Services shall establish procedures whereby resources within the local Soil and Water Conservation Districts serving the counties are used for quick response to complaints and reported problems previously referred only to the Division of Water Quality."

SECTION 2. The Department of Environment and Natural Resources and the Division of Soil and Water Conservation of the Department of Agriculture and Consumer Services shall continue and transition the inspection program and practices required by and developed pursuant to Section 15.4(a) of S.L. 1997-443, as it existed prior to its expiration, into the inspection program and practices required by G.S. 143-215.10F, as amended by Section 1 of this act, including the counties in which the alternative inspection program is conducted.

SECTION 3. This act becomes effective June 30, 2013.

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 505

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

H505-ASB-48 [v.1]

Comm. Sub. [YES]
Amends Title [NO]
Second Edition

Date _____,2013

Senator Brock

moves to amend the bill on page 1, line 28,
by deleting "Section 2" and substituting "Section 1".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

HOUSE BILL 505
Committee Substitute Favorable 5/6/13

Short Title: Extend DSWC Animal Waste Inspections. (Public)

Sponsors:

Referred to:

April 3, 2013

A BILL TO BE ENTITLED

AN ACT TO CODIFY AND MAKE PERMANENT THE PROGRAM FOR INSPECTIONS OF CERTAIN ANIMAL OPERATIONS BY THE DIVISION OF SOIL AND WATER CONSERVATION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 143-215.10F reads as rewritten:

"**§ 143-215.10F. Inspections.**

(a) ~~The~~ Except as provided in subsection (b) of this section, the Division shall conduct inspections of all animal operations that are subject to a permit under G.S. 143-215.10C at least once a year to determine whether the system is causing a violation of water quality standards and whether the system is in compliance with its animal waste management plan or any other condition of the permit.

(b) As an alternative to the inspection program set forth in subsection (a) of this section, the Division of Soil and Water Conservation of the Department of Agriculture and Consumer Services shall conduct inspections of all animal operations that are subject to a permit under G.S. 143-215.10C at least once a year to determine whether the system is causing a violation of water quality standards and whether the system is in compliance with its animal waste management plan or any other condition of the permit. The alternative inspection program shall be located in up to four counties selected using the criteria set forth in Section 15.4(a) of S.L. 1997-443, as amended, as it existed prior to its expiration. The Department of Agriculture and Consumer Services shall establish procedures whereby resources within the local Soil and Water Conservation Districts serving the counties are used for quick response to complaints and reported problems previously referred only to the Division of Water Quality."

SECTION 2. The Department of Environment and Natural Resources and the Division of Soil and Water Conservation of the Department of Agriculture and Consumer Services shall continue and transition the inspection program and practices required by and developed pursuant to Section 15.4(a) of S.L. 1997-443, as it existed prior to its expiration, into the inspection program and practices required by G.S. 143-215.10F, as amended by Section 2 of this act, including the counties in which the alternative inspection program is conducted.

SECTION 3. This act becomes effective June 30, 2013.

HOUSE BILL 505:
Extend DSWC Animal Waste Inspections

2013-2014 General Assembly

Committee:	Senate Agriculture/Environment/Natural Resources	**Date:**	June 4, 2013
Introduced by:	Reps. Waddell, Millis, Iler, McElraft	**Prepared by:**	Jeff Hudson Committee Counsel
Analysis of:	Second Edition		

SUMMARY: ***House Bill 505 would codify and make permanent the program for inspections of certain animal operations by the Division of Soil and Water Conservation of the Department of Agriculture and Consumer Services.***

CURRENT LAW AND BACKGROUND: The program was initially created in 1997 in Columbus and Jones Counties and was subsequently expanded in 1999 and again in 2005, to include Brunswick and Pender Counties, respectively. The Division of Soil and Water Conservation is required to conduct inspections of certain animal operations in these four counties at least once per year to determine whether any animal waste management system is causing a violation of water quality standards and whether the system is in compliance with its animal waste management plan or any other condition of the permit.

BILL ANALYSIS: House Bill 505 would codify and make permanent the program for the inspection of certain animal waste management systems by the Division of Soil and Water Conservation of the Department of Agriculture and Consumer Services.

EFFECTIVE DATE: The act would become effective June 30, 2013.

Jennifer Mundt and Mariah Matheson, Staff to the Senate Committee on Agriculture, Environment, and Natural Resources, contributed to this summary.

O. Walker Reagan
Director

H505-SMSB-48 E2 -V2

Research Division
(919) 733-2578

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

H 3

HOUSE BILL 480
Committee Substitute Favorable 5/6/13
Committee Substitute #2 Favorable 5/13/13

Short Title: Environmental Permitting Reform. (Public)

Sponsors:

Referred to:

April 1, 2013

A BILL TO BE ENTITLED

AN ACT TO PROVIDE REGULATORY CERTAINTY FOR NORTH CAROLINA BY REQUIRING THE DEVELOPMENT OF MINIMUM DESIGN CRITERIA FOR STORMWATER PERMITS TO GUIDE THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES IN PERMIT ISSUANCE AND TO REFORM THE PERMITTING PROCESS TO ALLOW A FAST-TRACK PERMITTING PROCESS FOR APPLICATIONS CERTIFIED BY A QUALIFIED PROFESSIONAL TO BE IN COMPLIANCE WITH THE MINIMUM DESIGN CRITERIA.

The General Assembly of North Carolina enacts:

SECTION 1. The Department of Environment and Natural Resources shall develop Minimum Design Criteria for permits issued by the stormwater runoff permitting programs authorized by G.S. 143-214.7. The Minimum Design Criteria shall include all requirements for siting, site preparation, design and construction, and post-construction monitoring and evaluation necessary for the Department to issue stormwater permits that comply with State water quality standards adopted pursuant to G.S. 143-214.1, 143-214.7, and 143-215.3(a)(1). In developing and updating the Minimum Design Criteria, the Department shall consult with a technical working group that consists of industry experts, engineers, environmental consultants, relevant faculty from The University of North Carolina, and other interested stakeholders. The Department shall submit its recommendations to the Environmental Review Commission no later than September 1, 2014.

SECTION 2. Article 21 of Chapter 143 of the General Statutes is amended by adding a new section to read:

"**§ 143-214.7B. Fast-track permitting for stormwater management systems.**

The Commission shall adopt rules to establish a fast-track permitting process that allows for the issuance of stormwater management system permits without a technical review when the permit applicant (i) complies with the Minimum Design Criteria for stormwater management developed by the Department and (ii) submits a permit application prepared by a qualified professional. In developing the rules, the Commission shall consult with a technical working group that consists of industry experts, engineers, environmental consultants, relevant faculty from The University of North Carolina, and other interested stakeholders. The rules shall, at a minimum, provide for all of the following:

(1) A process for permit application, review, and determination.

(2) The types of professionals that are qualified to prepare a permit application submitted pursuant to this section and the types of qualifications such professionals must have.

(3) A process for ensuring compliance with the Minimum Design Criteria.
(4) That permits issued pursuant to the fast-track permitting process comply with State water quality standards adopted pursuant to G.S. 143-214.1, 143-214.7, and 143-215.3(a)(1).
(5) A process for establishing the liability of a qualified professional who prepares a permit application for a stormwater management system that fails to comply with the Minimum Design Criteria."

SECTION 3. The Environmental Management Commission shall adopt rules implementing Section 2 of this act no later than July 1, 2016.

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

HOUSE BILL 480:
Environmental Permitting Reform

2013-2014 General Assembly

Committee:	Senate Agriculture/Environment/Natural Resources	**Date:**	June 4, 2013
Introduced by:	Reps. Millis, Moffitt, Catlin, Hardister	**Prepared by:**	Jeff Hudson Committee Counsel
Analysis of:	Third Edition		

SUMMARY: House Bill 480 would direct the Department of Environment and Natural Resources to develop Minimum Design Criteria for stormwater programs and would direct the Environmental Management Commission to adopt rules to establish a fast-track process for the issuance of stormwater management system permits.

BILL ANALYSIS:

House Bill 480 would direct the Department of Environment and Natural Resources (DENR) to develop Minimum Design Criteria (MDC) for stormwater programs. The MDC must include all requirements for siting, site preparation, design and construction, and post-construction monitoring and evaluation necessary for DENR to issue stormwater permits that comply with State water quality standards. In developing and updating the MDC, DENR must consult with a technical working group consisting of ndustry experts, engineers, environmental consultants, relevant faculty from The University of North Carolina, and other interested stakeholders. DENR must submit its recommendations to the Environmental Review Commission (ERC) no later than September 1, 2014.

The bill would also direct the Environmental Management Commission (EMC) to adopt rules to establish a fast-track process for the issuance of stormwater management system permits. The fast-track permitting process would not include technical review, but would only be available if the permit applicant complies with the MDC developed by DENR and submits a permit application prepared by a qualified professional. In developing the rules, the EMC must consult with a technical working group consisting of industry experts, engineers, environmental consultants, relevant faculty from The University of North Carolina, and other interested stakeholders. The rules, at a minimum, must provide for:

- A process for permit application, review, and determination.
- The types of professionals that are qualified to prepare a permit application and the types of qualifications such professionals must have.
- A process for ensuring compliance with the MDC.
- Compliance with State water quality standards.
- A process for establishing the liability of a qualified professional who prepares a permit application for a stormwater management system that fails to comply with the MDC.

The EMC must adopt these rules no later than July 1, 2016.

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

O. Walker Reagan
Director

H480-SMSB-50 E3 -V1

Research Division
(919) 733-2578

HOUSE BILL 707

Short Title:	Ensure Safe Navigation Channels.	(Public)
Sponsors:	Representatives Millis, McElraft, Warren, and Tine (Primary Sponsors). *For a complete list of Sponsors, refer to the North Carolina General Assembly Web Site.*	
Referred to:	Environment.	

April 11, 2013

A BILL TO BE ENTITLED

AN ACT TO DIRECT THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES TO PURSUE VARIOUS STRATEGIES TO ENSURE THAT THE STATE'S SHALLOW DRAFT NAVIGATION CHANNELS ARE SAFE AND NAVIGABLE.

The General Assembly of North Carolina enacts:

SECTION 1. For purposes of this act, the following definitions apply:

(1) "Department" means the Department of Environment and Natural Resources.

(2) "Corps" means the United States Army Corps of Engineers.

(3) "Shallow draft navigation channel" means (i) a waterway connection with a maximum depth of 16 feet between the Atlantic Ocean and a bay or the Atlantic Intracoastal Waterway, (ii) a river entrance to the Atlantic Ocean through which tidal and other currents flow, or (iii) other interior coastal waterways. "Shallow draft navigation channel" includes the Atlantic Intracoastal Waterway and its side channels, Beaufort Harbor, Bogue Inlet, Carolina Beach Inlet, the channel from Back Sound to Lookout Back, channels connected to federal navigation channels, Lockwoods Folly River, Manteo/Shallowbag Bay, including Oregon Inlet, Masonboro Inlet, New River, New Topsail Inlet, Rodanthe, Rollinson, Shallotte River, Silver Lake Harbor, and the waterway connecting Pamlico Sound and Beaufort Harbor.

SECTION 2. The Department shall take all of the following steps in order to ensure that the State's shallow draft navigation channels are safe and navigable:

(1) The Department shall utilize long-term agreements with Corps to maintain the dredging of the State's shallow draft navigation channels to depths authorized on the date this act becomes law.

(2) The Department shall assist local governments in their pursuit of general permit authorizations from the Corps to allow the local governments to dredge shallow draft navigation channels to depths and according to project designs authorized on the date this act becomes law.

(3) The Department shall assist local governments in their pursuit of individual permits under the State Coastal Area Management Act permits issued by the Corps to allow the dredging of shallow draft navigation channels to depths greater than authorized on the date this act becomes law and to allow the placement of dredged materials on beaches.

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

HOUSE BILL 707:
Ensure Safe Navigation Channels

2013-2014 General Assembly

Committee:	Senate Agriculture/Environment/Natural Resources	**Date:**	June 4, 2013
Introduced by:	Reps. Millis, McElraft, Warren, Tine	**Prepared by:**	Jeff Hudson Committee Counsel
Analysis of:	First Edition		

SUMMARY: ***House Bill 707 directs the Department of Environment and Natural Resources to pursue various strategies to ensure that the State's shallow draft navigation channels are safe and navigable.***

BILL ANALYSIS:

House Bill 707 directs the Department of Environment and Natural Resources (DENR) to take all of the following steps in order to ensure that the State's shallow draft navigation channels are safe and navigable:

- Utilize long-term agreements with the United States Army Corps of Engineers (Corps) to maintain the dredging of the State's shallow draft navigation channels to depths authorized on the date this act becomes law.
- Assist local governments in their pursuit of general permit authorizations from the Corps to allow the local governments to dredge shallow draft navigation channels to depths and according to project designs authorized on the date this act becomes law.
- Assist local governments in their pursuit of individual permits under the State Coastal Area Management Act permits issued by the Corps to allow the dredging of shallow draft navigation channels to depths greater than authorized on the date this act becomes law and to allow the placement of dredged materials on beaches.

House Bill 707 defines shallow draft navigation channel as (i) a waterway connection with a maximum depth of 16 feet between the Atlantic Ocean and a bay or the Atlantic Intracoastal Waterway, (ii) a river entrance to the Atlantic Ocean through which tidal and other currents flow, or (iii) other interior coastal waterways. "Shallow draft navigation channel" includes the Atlantic Intracoastal Waterway and its side channels, Beaufort Harbor, Bogue Inlet, Carolina Beach Inlet, the channel from Back Sound to Lookout Back, channels connected to federal navigation channels, Lockwoods Folly River, Manteo/Shallowbag Bay, including Oregon Inlet, Masonboro Inlet, New River, New Topsail Inlet, Rodanthe, Rollinson, Shallotte River, Silver Lake Harbor, and the waterway connecting Pamlico Sound and Beaufort Harbor.

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

O. Walker Reagan
Director

H707-SMSB-49 E1 -V1

Research Division
(919) 733-2578

HOUSE BILL 789

Short Title:	USTs Eligible for Brownfields.	(Public)
Sponsors:	Representative Catlin (Primary Sponsor). *For a complete list of Sponsors, refer to the North Carolina General Assembly Web Site.*	
Referred to:	Environment.	

April 11, 2013

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THAT THE PRESENCE OF A SUBSTANCE RELEASED FROM AN UNDERGROUND STORAGE TANK DOES NOT DISQUALIFY A PROPERTY FROM PARTICIPATION IN THE NORTH CAROLINA BROWNFIELDS PROGRAM.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 130A-310.31 reads as rewritten:

"**§ 130A-310.31. Definitions.**

(a) Unless a different meaning is required by the context or unless a different meaning is set out in subsection (b) of this section, the definitions in G.S. 130A-2 and G.S. 130A-310 apply throughout this Part.

(b) Unless a different meaning is required by the context:

...

(3) "Brownfields property" or "brownfields site" means abandoned, idled, or underused property at which expansion or redevelopment is hindered by actual environmental contamination or the possibility of environmental contamination and that is or may be subject to remediation under any State remedial program ~~other than Part 2A of Article 21A of Chapter 143 of the General Statutes~~ or that is or may be subject to remediation under the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C. § 9601, et seq.) except for a site listed on the National Priorities List pursuant to 42 U.S.C. § 9605.

...

(11) "Regulated substance" means a hazardous waste, as defined in G.S 130A-290; a hazardous substance, as defined in G.S. 143-215.77A; oil, as defined in G.S. 143-215.77; or other substance regulated under any remedial program implemented by the ~~Department other than Part 2A of Article 21A of Chapter 143 of the General Statutes.~~Department.

...."

SECTION 2. The Department of Environment and Natural Resources shall report to the Environmental Review Commission no later than April 1, 2014, regarding the impact of this act on the Brownfields Property Reuse program and the Leaking Petroleum Underground Storage Tank Cleanup program.

SECTION 3. This act becomes effective July 1, 2013.

HOUSE BILL 789:
USTs Eligible for Brownfields

2013-2014 General Assembly

Committee:	Senate Agriculture/Environment/Natural Resources	**Date:**	June 4, 2013
Introduced by:	Rep. Catlin	**Prepared by:**	Jennifer McGinnis
Analysis of:	First Edition		Committee Counsel

SUMMARY: House Bill 789 would make properties with contamination due to releases from underground petroleum storage tanks eligible for participation in the State's Brownfields Program.

CURRENT LAW:

A Brownfields site is any real property that is abandoned, idled, or underutilized where environmental contamination, or perceived environmental contamination, hinders redevelopment. The Brownfields Property Reuse Act (Act) of 1997 was enacted to encourage and facilitate redevelopment of these sites by removing barriers to redevelopment posed by a prospective developer's (PD's) potential liability for clean-up costs. To be eligible for participation in the Brownfields Program (Program), a PD must not have caused or contributed to contamination at a site. The Act does not obviate practical or necessary remediation of properties under any State or federal cleanup program, but it does authorize the Department of Environment and Natural Resources (Department) to work with PDs toward the safe redevelopment of sites, and to provide PDs regulatory flexibility and liability protection that would not be available to parties who actually caused or contributed to contamination at a site.

If a site is included in the Brownfields Program, the Department will enter into an agreement with the developer that is in effect a covenant not-to-sue contingent on the developer making the site suitable for the reuse proposed. Additionally, a Brownfields agreement obtained from the Program entitles the developer to a property tax exclusion on the improvements made to the property for a period of five years, which can more than pay for assessment and cleanup activities on many projects. Site remedies (cleanup requirements) under the Program are also less costly and time consuming than they would be for a party who caused or contributed to the contamination, as site remedies under the Brownfields Program are designed to prevent exposure and make the site suitable for reuse, rather than meet environmental standards required under the traditional cleanup programs. A brochure prepared by the Department describing the Brownfields Program is attached to this summary, and more detailed information is available at *http://portal.ncdenr.org/web/wm/bf/faqs*.

Two types of sites have traditionally been ineligible for Brownfields agreements: (1) sites on the federal National Priorities List (these are sites that are part of the federal Superfund program's list of most contaminated sites); and (2) **sites with contamination due to releases from underground petroleum storage tanks (USTs).** Historically UST sites have been excluded from Brownfields' eligibility if contamination from an UST was the only type of contaminant on the site (i.e., mixed contamination sites that include UST contamination with contamination from other sources are eligible for Brownfields agreements under existing law, as are sites contaminated by releases from aboveground petroleum storage tanks). In cases where there is mixed contamination on a site, the Department addresses UST

remediation within a Brownfields agreement by conditioning the agreement on a commitment, either from the PD or from the parties responsible for the UST, to deal with UST problems in accordance with the laws governing USTs. Ultimately, however, redevelopment pursuant to a Brownfield's agreement is not allowed to impede the final remediation of contamination from a UST that is present on a site.

BILL ANALYSIS: House Bill 789 would make properties with contamination due to releases from underground petroleum storage tanks eligible for participation in the State's Brownfields Program. The bill also requires the Department to report to the Environmental Review Commission no later than April 1, 2014, regarding the impact of the provisions of the bill on the Brownfields Property Reuse Program and the Leaking Petroleum Underground Storage Tank Cleanup Program.

EFFECTIVE DATE: This bill would become effective July 1, 2013.

For a developer of brownfields properties, what are the benefits of obtaining a brownfields agreement?

In short, a brownfields agreement is designed as a tool for developers to remove uncertainties in environmental liability. Properties with such agreements in place can be viewed as assets for investment rather than uncertain environmental liabilities. The following are specific benefits:

1) The agreement provides strong liability protection in the form of a covenant not-to-sue that can be shown to a lender in order to obtain project financing;

2) The liability protection in the brownfields agreement passes on to all new owners so long as they adhere to the land use restrictions (e.g. don't use the groundwater). This can be a selling point for the property;

3) The site remedies under the program are designed to prevent exposure and make the site suitable for reuse, not to meet environmental standards required of the site polluter in traditional cleanup programs. Thus, they are less costly and less time consuming, particularly with respect to groundwater remedies;

4) Since remedies are put in the agreement up-front and therefore represent known costs, a business decision can be made with much reduced uncertainty;

5) Closure for the prospective developer can be obtained reasonably quickly, typically in much less time than for most other cleanup programs (see 3 above); and,

6) The brownfields property tax incentive significantly reduces property taxes on the improved value for five years after completion of improvements to the property. This benefit typically pays for (or at least offsets) site environmental assessment, risk mitigation, or cleanup activities that the developer may need to conduct under the agreement.

(More information on the Brownfields Program is available at the Department's website at http://portal.ncdenr.org/web/wm/bf/faqs)

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

H 2

HOUSE BILL 581
Committee Substitute Favorable 4/30/13

Short Title: Trophy Wildlife Sale Permit. (Public)

Sponsors:

Referred to:

April 8, 2013

A BILL TO BE ENTITLED

AN ACT TO DIRECT THE WILDLIFE RESOURCES COMMISSION TO ADOPT RULES TO IMPLEMENT THE TROPHY WILDLIFE SALE PERMIT.

The General Assembly of North Carolina enacts:

SECTION 1. The Wildlife Resources Commission shall adopt rules to implement the Trophy Wildlife Sale Permit issued pursuant to G.S. 113-274(c)(3a).

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

HOUSE BILL 581:
Trophy Wildlife Sale Permit

2013-2014 General Assembly

Committee:	Senate Agriculture/Environment/Natural Resources	**Date:**	June 4, 2013
Introduced by:	Reps. Elmore, West	**Prepared by:**	Chris Saunders Committee Counsel
Analysis of:	Second Edition		

SUMMARY: House Bill 581 directs the Wildlife Resources Commission to adopt rules to implement the Trophy Wildlife Sale Permit.

CURRENT LAW:

Under current law, the Wildlife Resources Commission (WRC) is authorized to issue a Trophy Wildlife Sale Permit. The Trophy Wildlife Sale Permit authorizes the owner of lawfully taken and possessed dead wildlife specimens or their parts that are mounted, stuffed, or otherwise permanently preserved to sell identified individual specimens that may lawfully be sold under applicable laws and rules. The WRC has not adopted rules to implement the issuance of the Trophy Wildlife Sale Permit.

BILL ANALYSIS:

House Bill 581 directs the WRC to adopt rules to implement the Trophy Wildlife Sale Permit. This direction for the adoption of rules allows the WRC to adopt temporary rules based on a provision of the Administrative Procedure Act that allows an agency to adopt temporary rules in response to a recent act of the General Assembly.

EFFECTIVE DATE:

This act would become effective when it becomes law.

Jeff Hudson, counsel to House Environment, substantially contributed to this summary.

O. Walker Reagan
Director

H581-SMTQ-93 E2 -V1

Research Division
(919) 733-2578

SENATE PAGES ATTENDING

COMMITTEE: Agriculture ROOM: 544

DATE: 6-4 TIME: 11 AM

PLEASE PRINT LEGIBILY!!!!!!!!!!!!!!....*or else!*

Page Name	Hometown	Sponsoring Senator
1. Eva Barlowe	Wilmington	Jackson
2. Allison Clark	Raleigh	Berger
3. Madison Bell	Louisburg	Barefoot
4. Grayson Russell	Knightdale	Berger
5. Amelia Mangan	Granite Falls	Soucek
6. Mary Catherine Starnes	Hickory	Soucek
7. Grace Replogle	Raleigh	Stein
8. Lilly Kinney	Reidsville	Berger
9. Haley Webb	Summerfield	Berger
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 SERGEANT-AT-ARMS

COMMITTEE: **SENATE AGRICULTURE / ENR**

DATE: 06/04/13 ROOM: 544

1. CHARLES HARPER
2. ED KESLER
3. JUSTIN OWENS
4. _____

Senate Committee on Agriculture/Environment/Natural Resources
Thursday, June 6, 2013, 9:00 AM
421 Legislative Office Building

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

BILL NO.	SHORT TITLE	SPONSOR
HB 628	Protect/Promote NC Lumber.	Representative Presnell Representative Catlin
SB 328	Solid Waste Management Reform Act of 2013.	Senator Wade Senator Brown Senator Jackson

Pulled from Agenda

Adjournment

Senate Committee on Agriculture/Environment/Natural Resources
Thursday, June 6, 2013 at 9:00 AM
Room 421 of the Legislative Office Building

MINUTES

The Senate Committee on Agriculture/Environment/Natural Resources met at 9:00 AM on June 6, 2013 in Room 421 of the Legislative Office Building. Fifteen members were present.

Senator Andrew Brock presided.

Sen. Brock introduced the pages: Max Toney from Reidsville sponsored by Sen. Berger, Carol Ann Schwarzenback from Jacksonville sponsored by Sen. Brown, Eva Barlowe from Wilmington sponsored by Sen. Jackson, Madison Bell from Louisburg sponsored by Sen. Barefoot, Grayson Russell of Knightdale sponsored by Sen. Berger, Will Finch from Reidsville sponsored by Sen. Berger and Alex Hale from Eden sponsored by Sen. Berger.

Sgt. of Arms were Anderson Meadows, Ed Kesler, and Justin Owens.

The following bill was on the agenda:

SB 328 – Solid Waste Management Reform Act of 2013 – Sen.Wade

This bill had a PCS and Sen. Jackson moved to accept the PCS and the motion carried. Sen. Wade briefly spoke on the bill and had staff person, Jennifer McGinnis explain the bill in its entirety. Assistant Sec. of DENR, Mitch Gillespie, spoke on the bill. There were follow-up questions from Sen. Clodfelter, Sen. Bryant, Sen. Hartsell, Sen. McLaurin and Sen. Kinnaird. Speakers from the audience were Sandy Sands from National Solid Wastes Management Assn., Mary Maclean Asbill, Southern Environmental Law Center and Rob Lamme of NC Coastal Federation. With no further discussion, Sen. Jackson made a motion for a Favorable Report for the PCS and the motion carried.

SB 628 - Protect/Promote NC Lumber – Rep. Presnell

This bill was pulled from the agenda as there was not enough time to hear the bill.

Meeting adjourned at 9:55 AM.

Sen. Andrew Brock
Presiding

Judy Edwards, Committee Clerk

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES COMMITTEE REPORT
Senator Brock, Co-Chair
Senator Jackson, Co-Chair

Thursday, June 06, 2013

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

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

SB 328 Solid Waste Management Reform Act of 2013.

Draft Number:	S328-PCS35361-RIf-20
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

TOTAL REPORTED: 1

Senator Trudy Wade will handle SB 328



GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

S D

SENATE BILL 328
PROPOSED COMMITTEE SUBSTITUTE S328-CSRIf-20 [v.9]

Short Title: Solid Waste Management Reform Act of 2013. (Public)

Sponsors:

Referred to:

March 19, 2013

A BILL TO BE ENTITLED

AN ACT TO (1) EXTEND THE DURATION OF PERMITS FOR SANITARY LANDFILLS AND TRANSFER STATIONS TO THIRTY YEARS ("LIFE OF SITE"); (2) MODIFY THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES' AUTHORITY TO ISSUE AND TRANSFER PERMITS FOR SOLID WASTE MANAGEMENT FACILITIES; (3) MODIFY CERTAIN REQUIREMENTS GOVERNING SANITARY LANDFILLS, INCLUDING CONDUCT OF ENVIRONMENTAL IMPACTS STUDIES, APPLICABLE BUFFERS, CLEANING AND INSPECTION OF LEACHATE COLLECTION LINES, ALTERNATIVE DAILY COVER, AND LANDFILL GAS TO ENERGY FEASIBILITY STUDY; (4) MODIFY REQUIREMENTS FOR FINANCIAL RESPONSIBILITY APPLICABLE TO APPLICANTS AND PERMIT HOLDERS FOR SOLID WASTE MANAGEMENT FACILITIES; (5) SPECIFY THAT CLEANUP OF ON-SITE LEACHATE IS NOT REQUIRED WHEN CONDUCTING RISK-BASED REMEDIATION OF LANDFILLS; (6) LIMIT THE FREQUENCY OF CHANGES TO GROUNDWATER STANDARDS; (7) AMEND THE RULE GOVERNING COLLECTION AND TRANSPORT OF SOLID WASTE TO REQUIRE THAT CONTAINERS BE "LEAK-RESISTANT" RATHER THAN "LEAK-PROOF"; (8) AMEND RULES GOVERNING CONTROL OF LEACHATE TO CLARIFY THAT LIQUID ADHERING TO TIRES OF VEHICLES LEAVING SANITARY LANDFILLS OR LIQUID GENERATED DURING THE TRANSPORT OF SOLID WASTE SHALL NOT BE TREATED AS VIOLATIONS OF LEACHATE CONTROL REQUIREMENTS; (9) CITIES AND COUNTIES THAT ACCEPT SOLID WASTE FROM OTHER LOCAL GOVERNMENTS TO LEVY A SURCHARGE ON FEES FOR USE OF THEIR DISPOSAL FACILITIES, AND TO MAKE APPROPRIATIONS FROM A UTILITY OR PUBLIC SERVICE ENTERPRISE FUND USED FOR OPERATION OF A LANDFILL TO THE JURISDICTION'S GENERAL FUND UPON CERTAIN FINDINGS; AND (10) MAKE RELATED CLARIFYING, CONFORMING, AND TECHNICAL CHANGES..

Whereas, the provision of effectively managed solid waste services is of vital importance to North Carolina's economy and environment; and

Whereas, previous changes to the statutes and rules of the State that govern solid waste matters have significantly and negatively impacted the ability of providers of solid waste disposal services to site landfills within the State, have raised the cost of waste disposal for the State's citizens, and have put North Carolina at a competitive disadvantage in the recruitment of industry; Now, therefore,

The General Assembly of North Carolina enacts:



PART I. EXTENSION OF DURATION OF PERMITS FOR SANITARY LANDFILLS AND TRANSFER STATIONS TO THIRTY YEARS ("LIFE OF SITE") AND CONFORMING CHANGES

SECTION 1.(a) G.S. 130A-294 is amended by adding a new subsection to read:

"(a2) Permits for sanitary landfills and transfer stations shall be issued for a design and operation phase of 30 years, unless revoked as otherwise provided under this Article or upon the expiration of any local government franchise required for the facility pursuant to subsection (b1) of this section. Each permit shall have a limited review of the permit five years after issuance of the initial permit and at five year intervals thereafter until expiration of the permit."

SECTION 1.(b) No later than July 1, 2014, the Commission for Public Health shall adopt rules to allow applicants for permits for sanitary landfills to apply for a permit to construct and operate a 30-year phase of landfill development. No later than July 1, 2014, the Commission shall also adopt rules to allow applicants for permits for transfer stations to apply for a permit with a 30-year duration to construct and operate a transfer station.

SECTION 1.(c) G.S. 130A-295.8 reads as rewritten:

"**§ 130A-295.8. Fees applicable to permits for solid waste management facilities.**

(a) The Solid Waste Management Account is established as a nonreverting account within the Department. All fees collected under this section shall be credited to the Account and shall be used to support the solid waste management program established pursuant to G.S. 130A-294.

(b) As used in this section:

(1) "New permit" means any of the following:

a. An application for a permit for a solid waste management facility that has not been previously permitted by the Department. The term includes one site suitability review, the initial permit to construct, and one permit to operate the constructed portion of a phase included in the permit to construct.

b. An application that proposes to expand the boundary of a permitted waste management facility for the purpose of expanding the permitted activity.

c. An application that includes a proposed expansion to the boundary of a waste disposal unit within a permitted solid waste management facility.

d. An application for a substantial amendment to a solid waste permit, as defined in G.S. 130A-294.

(2) "Permit amendment" means any of the following:

a. An application for a permit to construct and one permit to operate for the second and subsequent phases of landfill development described in the approved facility plan for a permitted solid waste management facility.

b. An application for the five-year renewal of a permit for a permitted solid waste management facility or for a permit review of a permitted solid waste management facility.

c. Any application that proposes a change in ownership or corporate structure of a permitted solid waste management facility.

(3) "Permit modification" means any of the following:

a. An application for any change to the plans approved in a permit for a solid waste management facility that does not constitute a "permit amendment" or a "new permit".

b. A second or subsequent permit to operate for a constructed portion of a phase included in the permit to construct.

c. An application for a five-year limited review of a 30-year permit, as required by G.S. 130A-294(a2), including review of the operations plan, closure plan, post-closure plan, financial assurance cost estimates, environmental monitoring plans, and any other applicable plans for the facility.

(4) "Major permit modification" means an application for any change to the approved engineering plans for a sanitary landfill or transfer station permitted for a 30-year design capacity that does not constitute a "permit amendment," "new permit," or "permit modification."

(c) An applicant for a permit shall pay an application fee to the Department. For applications for facilities set forth in subdivisions (1) through (21), and (25) through (27), fifty percent (50%) of the applicable fee shall be paid upon submission of the application, twenty-five percent (25%) shall be paid at 10 years after issuance of the permit, and (25%) shall be paid at 20 years after issuance of the permit. For applications for facilities set forth in subdivisions (22) through (24), and (28) through (36), the applicable fee shall be paid upon submission of an ~~application~~ application. As of July 1, 2014, fees are applicable according to the following schedule:

(1) Municipal Solid Waste Landfill accepting less than 100,000 tons/year of solid waste, New Permit – ~~$25,000.~~$150,000

(2) Municipal Solid Waste Landfill accepting less than 100,000 tons/year of solid waste, Amendment – ~~$15,000.~~$90,000.

(3) Municipal Solid Waste Landfill accepting less than 100,000 tons/year of solid waste, Modification – ~~$1,500.~~$9,000.

(4) Municipal Solid Waste Landfill accepting 100,000 tons/year or more of solid waste, New Permit – ~~$50,000.~~$300,000.

(5) Municipal Solid Waste Landfill accepting 100,000 tons/year or more of solid waste, Amendment – ~~$30,000.~~$180,000.

(6) Municipal Solid Waste Landfill accepting 100,000 tons/year or more of solid waste, Modification – ~~$3,000.~~$18,000.

(7) Construction and Demolition Landfill accepting less than 100,000 tons/year of solid waste, New Permit – ~~$15,000.~~$90,000.

(8) Construction and Demolition Landfill accepting less than 100,000 tons/year of solid waste, Amendment – ~~$9,000.~~$54,000.

(9) Construction and Demolition Landfill accepting less than 100,000 tons/year of solid waste, Modification – ~~$1,500.~~$9,000.

(10) Construction and Demolition Landfill accepting 100,000 tons/year or more of solid waste, New Permit – ~~$30,000.~~$180,000.

(11) Construction and Demolition Landfill accepting 100,000 tons/year or more of solid waste, Amendment – ~~$18,500.~~$111,000.

(12) Construction and Demolition Landfill accepting 100,000 tons/year or more of solid waste, Modification – ~~$2,500.~~$15,000.

(13) Industrial Landfill accepting less than 100,000 tons/year of solid waste, New Permit – ~~$15,000.~~$90,000.

(14) Industrial Landfill accepting less than 100,000 tons/year of solid waste, Amendment – ~~$9,000.~~$54,000.

(15) Industrial Landfill accepting less than 100,000 tons/year of solid waste, Modification – ~~$1,500.~~$9,000.

(16) Industrial Landfill accepting 100,000 tons/year or more of solid waste, New Permit – ~~$30,000.~~$180,000.

(17) Industrial Landfill accepting 100,000 tons/year or more of solid waste, Amendment – ~~$18,500.~~$111,000.
(18) Industrial Landfill accepting 100,000 tons/year or more of solid waste, Modification – ~~$2,500.~~$15,000.
(19) Tire Monofill, New Permit – ~~$1,750.~~$10,500.
(20) Tire Monofill, Amendment – ~~$1,250.~~$7,500.
(21) Tire Monofill, Modification – ~~$500.~~$3,000.
(22) Treatment and Processing, New Permit – $1,750.
(23) Treatment and Processing, Amendment – $1,250.
(24) Treatment and Processing, Modification – $500.
(25) Transfer Station, New Permit – ~~$5,000.~~$30,000.
(26) Transfer Station, Amendment – ~~$3,000.~~$18,000.
(27) Transfer Station, Modification – ~~$500.~~$3,000.
(28) Incinerator, New Permit – $1,750.
(29) Incinerator, Amendment – $1,250.
(30) Incinerator, Modification – $500.
(31) Large Compost Facility, New Permit – $1,750.
(32) Large Compost Facility, Amendment – $1,250.
(33) Large Compost Facility, Modification – $500.
(34) Land Clearing and Inert, New Permit – $1,000.
(35) Land Clearing and Inert, Amendment – $500.
(36) Land Clearing and Inert, Modification – $250.

(c1) On January 1 of each year, the Department shall adjust the fees set forth in subsection (c) of this section for inflation, calculated by the ratio of the Consumer Price Index to the Index one year earlier to the nearest tenth of one percent (1/10th of 1%).

(d) A permitted solid waste management facility shall pay an annual permit fee on or before ~~1 August~~ August 1 of each year according to the following schedule:

(1) Municipal Solid Waste Landfill – ~~$3,500.~~$10,500.
(2) Post-Closure Municipal Solid Waste Landfill – ~~$1,000.~~$3,000.
(3) Construction and Demolition Landfill – $2,750.
(4) Post-Closure Construction and Demolition Landfill – $500.
(5) Industrial Landfill – $2,750.
(6) Post-Closure Industrial Landfill – $500.
(7) Transfer Station – ~~$750.~~$2,250.
(8) Treatment and Processing Facility – ~~$500.~~$1,500.
(9) Tire Monofill – $500.
(10) Incinerator – ~~$500.~~$1,500.
(11) Large Compost Facility – $500.
(12) Land Clearing and Inert Debris Landfill – $500.

...."

SECTION 1.(d) G.S. 130A-295.3 reads as rewritten:

"**§ 130A-295.3. Environmental compliance review requirements for applicants and permit holders.**

...

(b) The Department shall conduct an environmental compliance review of each applicant for a new ~~permit, permit renewal,~~permit and permit amendment 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 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.

...."

SECTION 1.(e) Section 15.1 of S.L. 2012-187 is repealed.

SECTION 1.(f) S.L. 2013-25 is repealed.

SECTION 1.(g) If House Bill 135, 2013 Regular Session, becomes law, it is repealed when it becomes law.

SECTION 1.(h) If Senate Bill 380, 2013 Regular Session, becomes law, it is repealed when it becomes law.

SECTION 1.(i) This section is effective August 1, 2013, except that G.S. 130A-294(a2), as enacted by Section 1(a) of this act, and G.S. 130A-295.8, as amended by Section 1(b) of this act, apply only to applications for new permits submitted on or after July 1, 2014.

PART II. MISCELLANEOUS MODIFICATIONS TO THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES' AUTHORITY TO ISSUE AND TRANSFER PERMITS FOR SOLID WASTE MANAGEMENT FACILITIES AND CONFORMING CHANGES

SECTION 2. G.S. 130A-294 reads as rewritten:

"**§ 130A-294. Solid waste management program.**

(a) The Department is authorized and directed to engage in research, conduct investigations and surveys, make inspections and establish a statewide solid waste management program. In establishing a program, the Department shall have authority to:

...

(4) a. Develop a permit system governing the establishment and operation of solid waste management facilities. A landfill with a disposal area of 1/2 acre or less for the on-site disposal of land clearing and inert debris is exempt from the permit requirement of this section and shall be governed by G.S. 130A-301.1. Demolition debris from the decommissioning of manufacturing buildings, including electric generating stations, that is disposed of on the same site as the decommissioned buildings, is exempt from the permit requirement of this section and rules adopted pursuant to this section and shall be governed by G.S. 130A-301.3. The Department shall not approve an application for a new permit ~~permit, the renewal of a permit,~~ or a substantial amendment to a permit for a sanitary landfill, excluding demolition landfills as defined in the rules of the Commission, except as provided in subdivisions (3) and (4) of subsection (b1) of this section. No permit shall be granted for a solid waste management facility having discharges that are point sources until the Department has referred the complete plans and specifications to the Environmental Management Commission and has received advice in writing that the plans and specifications are approved in accordance with the provisions of G.S. 143-215.1. If the applicant is a unit of local government, and has not

submitted a solid waste management plan that has been approved by the Department pursuant to G.S. 130A-309.09A(b), the Department may deny a permit for a sanitary landfill or a facility that disposes of solid waste incineration, unless the Commission has not adopted rules pursuant to G.S. 130A-309.29 for local solid waste management plans. In any case where the Department denies a permit for a solid waste management facility, it shall state in writing the reason for denial and shall also state its estimate of the changes in the applicant's proposed activities or plans that will be required for the applicant to obtain a permit.

b. Repealed by Session Laws 2007-550, s. 1(a), effective August 1, 2007.

c. The Department shall deny an application for a permit for a solid waste management facility if the Department finds that:

1. Construction or operation of the proposed facility would ~~be inconsistent with or~~ violate this Article or rules adopted by the ~~Commission.~~Commission pursuant to this Article.

2. Construction or operation of the proposed facility would result in a violation of water quality standards adopted by the Environmental Management Commission pursuant to G.S. 143-214.1 for waters, as defined in G.S. 143-213.

~~3. Construction or operation of the facility would result in significant damage to ecological systems, natural resources, cultural sites, recreation areas, or historic sites of more than local significance. These areas include, but are not limited to, national or State parks or forests; wilderness areas; historic sites; recreation areas; segments of the natural and scenic rivers system; wildlife refuges, preserves, and management areas; areas that provide habitat for threatened or endangered species; primary nursery areas and critical fisheries habitat designated by the Marine Fisheries Commission; and Outstanding Resource Waters designated by the Environmental Management Commission.~~

4. Construction or operation of the proposed facility would substantially limit ~~or threaten~~ access to ~~or use of~~ public trust waters or public lands.

5. The proposed facility would be located in a natural hazard area, including ~~a floodplain,~~ a landslide hazard area, or an area subject to storm surge or excessive seismic activity, such that the facility will present a significant risk to public health or safety.

~~6. There is a practical alternative that would accomplish the purposes of the proposed facility with less adverse impact on public resources, considering engineering requirements and economic costs.~~

~~7. The cumulative impacts of the proposed facility and other facilities in the area of the proposed facility would violate the criteria set forth in sub-sub-subdivisions 2. through 5. of this sub-subdivision.~~

8. Construction or operation of the proposed facility would ~~be inconsistent with~~ violate the State solid waste management policy and goals as set out in G.S. 130A-309.04 and with the

State solid waste management plan developed as provided in G.S. 130A-309.07.

9. The cumulative impact of the proposed facility, when considered in relation to other similar impacts of facilities located or proposed in the community, would have a disproportionate adverse impact on a minority or low-income community protected by Title VI of the federal Civil Rights Act of 1964. This subdivision shall apply only to the extent required by federal law.

...

(a1) A permit for a solid waste management facility may be transferred ~~only with the approval of the Department.~~upon 30 days' written notice to the Department to include such information as the Department may reasonably require to complete the Department's review pursuant to subsection (b2) of this section, G.S. 130A-295.2, and G.S. 130A-295.3.

...

(b1) (1) For purposes of this subsection and subdivision (4) of subsection (a) of this section, a "substantial amendment" means either:

a. An increase of ten percent (10%) or more in:

1. The population of the geographic area to be served by the sanitary landfill;
2. The quantity of solid waste to be disposed of in the sanitary landfill; or
3. The geographic area to be served by the sanitary landfill.

b. A change in the categories of solid waste to be disposed of in the sanitary landfill.~~landfill or any other change to the application for a permit or to the permit for a sanitary landfill that the Commission or the Department determines to be substantial.~~

(2) A person who intends to apply for a new permit ~~permit, the renewal of a permit, or~~ a substantial amendment to a permit for a sanitary landfill shall obtain, prior to applying for a permit, a franchise for the operation of the sanitary landfill from each local government then having jurisdiction over any part of the land on which the sanitary landfill and its appurtenances are located or to be located. A local government may adopt a franchise ordinance under G.S. 153A-136 or G.S. 160A-319. A franchise granted for a sanitary landfill shall include all of the following:

a. A statement of the population to be served, including a description of the geographic area.
b. A description of the volume and characteristics of the waste stream.
c. A projection of the useful life of the sanitary landfill.
d. An explanation of how the franchise will be consistent with the jurisdiction's solid waste management plan required under G.S. 130A-309.09A, including provisions for waste reduction, reuse, and recycling.
e. The procedures to be followed for governmental oversight and regulation of the fees and rates to be charged by facilities subject to the franchise for waste generated in the jurisdiction of the franchising entity.
f. A facility plan for the sanitary landfill that shall include the boundaries of the proposed facility, proposed development of the facility site in five-year operational phases, the boundaries of all waste disposal units, final elevations and capacity of all waste

disposal units, the amount of waste to be received per day in tons, the total waste disposal capacity of the sanitary landfill in tons, a description of environmental controls, and a description of any other waste management activities to be conducted at the facility. In addition, the facility plan shall show the proposed location of soil borrow areas, leachate facilities, and all other facilities and infrastructure, including ingress and egress to the facility.

...

(4) An applicant for a new permit ~~permit, the renewal of a permit,~~ or a substantial amendment to a permit for a sanitary landfill shall request each local government having jurisdiction over any part of the land on which the sanitary landfill and its appurtenances are located or to be located to issue a determination as to whether the local government has in effect a franchise, zoning, subdivision, or land-use planning ordinance applicable to the sanitary landfill and whether the proposed sanitary landfill, or the existing sanitary landfill as it would be operated under the ~~renewed or~~ substantially amended permit, would be consistent with the applicable ordinances. The request to the local government shall be accompanied by a copy of the permit application and shall be delivered to the clerk of the local government personally or by certified mail. In order to serve as a basis for a determination that an application for a new permit ~~permit, the renewal of a permit,~~ or a substantial amendment to a permit for a sanitary landfill is consistent with a zoning, subdivision, or land-use planning ordinance, an ordinance or zoning classification applicable to the real property designated in the permit application shall have been in effect not less than 90 days prior to the date the request for a determination of consistency is delivered to the clerk of the local government. The determination shall be verified or supported by affidavit signed by the chief administrative officer, the chief administrative officer's designee, clerk, or other official designated by the local government to make the determination and, if the local government states that the sanitary landfill as it would be operated under the new ~~new, renewed,~~ or substantially amended permit is inconsistent with a franchise, zoning, subdivision, or land-use planning ordinance, shall include a copy of the ordinance and the specific reasons for the determination of inconsistency. A copy of the determination shall be provided to the applicant when the determination is submitted to the Department. The Department shall not act upon an application for a permit under this section until it has received a determination from each local government requested to make a determination by the applicant; provided that if a local government fails to submit a determination to the Department as provided by this subsection within 15 days after receipt of the request, the Department shall proceed to consider the permit application without regard to a franchise, local zoning, subdivision, and land-use planning ordinances. Unless the local government makes a subsequent determination of consistency with all ordinances cited in the determination or the sanitary landfill as it would be operated under the ~~new, renewed,~~new or substantially amended permit is determined by a court of competent jurisdiction to be consistent with the cited ordinances, the Department shall attach as a condition of the permit a requirement that the applicant, prior to construction or operation of the sanitary landfill under the permit, comply with all lawfully adopted local ordinances cited in the determination that apply to the sanitary landfill. This subsection shall not be

construed to affect the validity of any lawfully adopted franchise, local zoning, subdivision, or land-use planning ordinance or to affect the responsibility of any person to comply with any lawfully adopted franchise, local zoning, subdivision, or land-use planning ordinance. This subsection shall not be construed to limit any opportunity a local government may have to comment on a permit application under any other law or rule. This subsection shall not apply to any facility with respect to which local ordinances are subject to review under either G.S. 104E-6.2 or G.S. 130A-293.

(5) As used in this subdivision, "coal-fired generating unit" and "investor-owned public utility" have the same meaning as in G.S. 143-215.107D(a). Notwithstanding subdivisions (a)(4), (b1)(3), or (b1)(4) of this section, no franchise shall be required for a sanitary landfill used only to dispose of waste generated by a coal-fired generating unit that is owned or operated by an investor-owned utility subject to the requirements of G.S. 143-215.107D.

...."

PART III. MODIFICATIONS TO CERTAIN REQUIREMENTS GOVERNING SANITARY LANDFILLS INCLUDING ENVIRONMENTAL IMPACTS STUDY, APPLICABLE BUFFERS, CLEANING AND INSPECTION OF LEACHATE COLLECTION LINES, ALTERNATIVE DAILY COVER, AND LANDFILL GAS TO ENERGY FEASIBILITY STUDY

SECTION 3.(a) G.S. 130A-295.6 reads as rewritten:

"**§ 130A-295.6. Additional requirements for sanitary landfills.**

~~(a) The Department shall conduct a study of the environmental impacts of any proposed sanitary landfill. The study shall meet all of the requirements set forth in G.S. 113A-4 and rules adopted pursuant to G.S. 113A-4. If an environmental impact statement is required, the Department shall publish notice of the draft environmental impact statement and shall hold a public hearing in the county where the landfill will be located no sooner than 30 days following the public notice. The Department shall consider the study of environmental impacts and any mitigation measures proposed by the applicant in deciding whether to issue or deny a permit. An applicant for a permit for a sanitary landfill shall pay all costs incurred by the Department to comply with this subsection including the costs of any special studies that may be required.~~

(b) The Department shall require a buffer between any ~~perennial~~ surface water impoundment or any stream ~~or wetland~~with continuous flow and the nearest waste disposal unit of a sanitary landfill of at least 200 feet. The Department may approve a buffer of less than 200 ~~feet, but in no case less than 100~~ feet, if it finds all of the following:

(1) The proposed sanitary landfill or expansion of the sanitary landfill will serve a critical need in the community.

(2) There is no feasible alternative location that would allow siting or expansion of the sanitary landfill with 200-foot buffers.

(c) A waste disposal unit of a sanitary landfill shall not be constructed within:

(1) A 100-year floodplain, as shown on the current floodplain maps prepared pursuant to the National Flood Insurance Program, ~~floodplain or land removed from a 100-year floodplain designation pursuant to 44 Code of Federal Regulations Part 72 (1 October 2006 Edition) as a result of man-made alterations within the floodplain such as the placement of fill,~~ except as authorized by variance granted under G.S. 143-215.54A(b). ~~This subdivision does not apply to land removed from a 100-year floodplain designation (i) as a result of floodplain map corrections or updates not resulting from man-made alterations of the affected areas within the~~

~~floodplain, or (ii) pursuant to 44 Code of Federal Regulations Part 70 (1 October 2006 Edition) by a letter of map amendment.~~

(2) Wetlands classified as waters of the United States, except in compliance with applicable federal and State laws.~~A wetland, unless the applicant or permit holder can show all of the following, as to the waste disposal unit:~~

~~a. Where applicable under section 404 of the federal Clean Water Act or applicable State wetlands laws, the presumption that a practicable alternative to the proposed waste disposal unit is available which does not involve wetlands is clearly rebutted;~~

~~b. Construction of the waste disposal unit will not do any of the following:~~

~~1. Cause or contribute to violations of any applicable State water quality standard.~~

~~2. Violate any applicable toxic effluent standard or prohibition under section 307 of the federal Clean Water Act.~~

~~3. Jeopardize the continued existence of endangered or threatened species or result in the destruction or adverse modification of a critical habitat, protected under the federal Endangered Species Act of 1973.~~

~~4. Violate any requirement under the federal Marine Protection, Research, and Sanctuaries Act of 1972.~~

~~c. Construction of the waste disposal unit will not cause or contribute to significant degradation of wetlands.~~

~~d. To the extent required under section 404 of the federal Clean Water Act or applicable State wetlands laws, any unavoidable wetlands impacts will be mitigated.~~

(d) The Department shall not issue a permit to construct any disposal unit of a sanitary landfill if, at the earlier of (i) the acquisition by the applicant or permit holder of the land or of an option to purchase the land on which the waste disposal unit will be located, (ii) the application by the applicant or permit holder for a franchise agreement, or (iii) at the time of the application for a permit, any portion of the proposed waste disposal unit would be located within:

~~(1) Five miles of the outermost boundary of a National Wildlife Refuge.~~

~~(2) One mile of the outermost boundary of a State gameland owned, leased, or managed by the Wildlife Resources Commission pursuant to G.S. 113-306.~~

~~(3) Two miles of the outermost boundary of a component of the State Parks System.~~

(4) Designated critical habitat for a threatened or endangered species.

(5) Historically or archaeologically sensitive sites of more than local significance.

(6) Fifteen hundred feet of a national or State park, forest, wilderness area, recreation area, segment of the Natural and Scenic Rivers System, National Wildlife Refuge, preserve or management area, critical fisheries habitat designated by the Marine Fisheries' Commission, or Outstanding Resource Waters designated by the Environmental Management Commission.

...

(h) The following requirements apply to any sanitary landfill for which a liner is required:

(1) A geomembrane base liner system shall be tested for leaks and damage by methods approved by the Department that ensure that the entire liner is evaluated.

(2) A leachate collection system shall be designed to return the head of the liner to 30 centimeters or less within 72 hours. The design shall be based on the precipitation that would fall on an empty cell of the sanitary landfill as a result of a 25-year-24-hour storm event. The leachate collection system shall maintain a head of less than 30 centimeters at all times during leachate recirculation. The Department may require the operator to monitor the head of the liner to demonstrate that the head is being maintained in accordance with this subdivision and any applicable rules.

(3) All leachate collection lines shall be designed and constructed to permanently allow cleaning and remote camera inspection.~~All leachate collection lines shall be cleaned at least once a year, except that the Department may allow leachate collection lines to be cleaned once every two years if: (i) the facility has continuous flow monitoring; and (ii) the permit holder demonstrates to the Department that the leachate collection lines are clear and functional based on at least three consecutive annual cleanings. Remote camera inspections of the leachate collection lines shall occur upon completion of construction, at least once every five years thereafter, and following the clearing of blockages.~~

(4) Any pipes used to transmit leachate shall provide dual containment outside of the disposal unit. The bottom liner of a sanitary landfill shall be constructed without pipe penetrations.

(h1) With respect to requirements for daily cover at sanitary landfills, once the Department has approved use of an alternative method of daily cover for use at any sanitary landfill, that alternative method of daily cover shall be approved for use at all sanitary landfills located within the State.

(h2) Studies and research and development pertaining to alternative disposal techniques and waste-to-energy matters shall be conducted by certain sanitary landfills as follows:

(1) The owner or operator of any sanitary landfill permitted to receive more than 240,000 tons of waste per year shall research the development of alternative disposal technologies. In addition, the owner or operator shall allow access to nonproprietary information and provide site resources for individual research and development projects related to alternative disposal techniques for the purpose of studies that may be conducted by local community or State colleges and universities or other third-party developers or consultants. The owner or operator shall report on research and development activities conducted pursuant to this subdivision, and any results of these activities, to the Department annually on or before July 1.

(2) The owner or operator of any sanitary landfill permitted to receive more than 240,000 tons of waste per year shall perform a feasibility study of landfill gas-to-energy, or other waste-to-energy technology, to determine opportunities for production of renewable energy from landfills in order to promote economic development and job creation in the State. The owner or operator shall initiate the study when sufficient waste is in place at the landfill to produce gas, as determined by the United States Environmental Protection Agency's Landfill Gas Emissions Model (LandGEM), and may consult and coordinate with other entities to facilitate conduct of the study, including local and State government agencies, economic development organizations, consultants, and third-party developers. The study shall specifically examine opportunities for returning a portion of the benefits derived from energy produced from the landfill to the jurisdiction within which the landfill is located in the form of direct supply of energy to the

local government and its citizens, or through revenue sharing with the local government from sale of the energy, with revenues owing to the local government credited to a fund specifically designated for economic development within the jurisdiction. The owner or operator shall report on its activities associated with the study, and any results of the study, to the Department annually on or before July 1.

(i) The Department shall not issue a permit for a sanitary landfill that authorizes:

(1) A capacity of more than 55 million cubic yards of waste.

(2) A disposal area of more than 350 acres.

(3) A maximum height, including the cap and cover vegetation, of more than ~~250~~ 300 feet above the mean natural elevation of the disposal area. The Department shall include a condition for enhanced closure requirements concerning vegetative cover and reclamation of the property, in any permit issued for a sanitary landfill that authorizes a maximum height, including the cap and cover vegetation, between 101 feet and 300 feet above the mean natural elevation of the disposal area.

(j) This section does not apply to landfills for the disposal of land clearing and inert debris or to Type I or Type II compost facilities."

SECTION 3.(b) This section is effective August 1, 2013, except that: (i) the repeal of G.S. 130A-295.6(d)(2), as enacted by Section 3(a) of this act, applies retroactively to applications for permits submitted on or after January 1, 2013; and (ii) G.S. 130A-295.6(h2), as enacted by Section 3(a) of this act, applies to landfills for which a permit is issued on or after August 1, 2013.

PART IV. MODIFICATIONS TO REQUIREMENTS FOR FINANCIAL RESPONSIBILITY APPLICABLE TO APPLICANTS AND PERMIT HOLDERS FOR SOLID WASTE MANAGEMENT FACILITIES

SECTION 4. 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 two million dollars ($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.

...

(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 ~~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."

PART V. SPECIFY THAT CLEANUP OF ON-SITE LEACHATE IS NOT REQUIRED WHEN CONDUCTING RISK-BASED REMEDIATION OF LANDFILLS

SECTION 5. G.S. 130A-310.68 is amended by adding a new subsection to read:

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

...

(c) Notwithstanding any other requirement of this Article, with respect to sanitary landfills, a permit holder shall not be required to take assessment or corrective action to address leachate unless the leachate has reached the compliance boundary of the facility."

PART VI. LIMIT FREQUENCY OF CHANGES TO GROUNDWATER STANDARDS

SECTION 6. G.S. 143-214.1 reads as rewritten:

"**§ 143-214.1. Water; water quality standards and classifications; duties of Commission.**

(a) Development and Adoption of Classifications and Standards. – 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:

(1) To develop and adopt, after proper study, a series of classifications and the standards applicable to each such classification, which will be appropriate for the purpose of classifying each of the waters of the State in such a way as to promote the policy and purposes of this Article most effectively;

(2) To survey all the waters of the State and to separately identify all such waters as the Commission believes ought to be classified separately in order to promote the policy and purposes of this Article, omitting only such waters, as in the opinion of the Commission, are insufficiently important to justify classification or control under this Article; and

(3) To assign to each identified water of the State such classification, from the series adopted as specified above, as the Commission deems proper in order to promote the policy and purposes of this Article most effectively.

(a1) Limitation on Development of Groundwater Standards. – Notwithstanding any requirement of this section, the Commission shall not adopt and the Department shall not enforce rules providing for a review of groundwater standards more frequently than on a five-year basis.

(b) Criteria for Classification. – In developing and adopting classifications, and the standards applicable to each, the Commission shall recognize that a number of different classifications should be provided for (with different standards applicable to each) so as to give effect to the need for balancing conflicting considerations as to usage and other variable factors; that different classifications with different standards applicable thereto may frequently be appropriate for different segments of the same water; and that each classification and the

standards applicable thereto should be adopted with primary reference to the best usage to be made of the waters to which such classification will be assigned.

(c) Criteria for Standards. – In establishing the standards applicable to each classification, the Commission shall consider and the standards when finally adopted and published shall state: the extent to which any physical, chemical, or biological properties should be prescribed as essential to the contemplated best usage.

(d) Criteria for Assignment of Classifications. – In assigning to each identified water the appropriate classifications (with its accompanying standards), the Commission shall consider, and the decision of the Commission when finally adopted and published shall contain its conclusions with respect to the following factors as related to such identified waters:

(1) The size, depth, surface area covered, volume, direction and rate of flow, stream gradient and temperature of the water;

(2) The character of the district bordering said water, including any peculiar suitability such district may have or any dominant economic interest or development which has become established in relation to or by reason of any particular use of such water;

(3) The uses and extent thereof which have been made, are being made, or may in the future be made, of such water for domestic consumption, bathing, fish or wildlife and their culture, industrial consumption, transportation, fire prevention, power generation, scientific or research uses, the disposal of sewage, industrial wastes and other wastes, or any other uses;

(4) In revising existing or adopting new water quality classifications or standards, the Commission shall consider the use and value of State waters for public water supply, propagation of fish and wildlife, recreation, agriculture, industrial and other purposes, use and value for navigation, and shall take into consideration, among other things, an estimate as prepared under section 305(b)(1) of the Federal Water Pollution Control Act amendments of 1972 of the environmental impact, the economic and social costs necessary to achieve the proposed standards, the economic and social benefits of such achievement and an estimate of the date of such achievement;

(5) With regard to the groundwaters, the factors to be considered shall include the natural quality of the water below land surface and the condition of occurrences, recharge, movement and discharge, the vulnerability to pollution from wastewaters and other substances, and the potential for improvement of the quality and quantity of the water.

(e) Chapter 150B of the General Statutes governs the adoption and publication of rules under this Article.

(f), (g) Repealed by Session Laws 1987, c. 827, s. 156."

PART VII. AMEND RULE GOVERNING COLLECTION AND TRANSPORT OF SOLID WASTE TO REQUIRE THAT CONTAINERS BE "LEAK-RESISTANT" RATHER THAN "LEAK-PROOF"

SECTION 7.(a) Definitions. – "Collection and Transport Rule" means 15A NCAC 13B .0105 (Collection and Transportation of Solid Waste) for purposes of this section and its implementation.

SECTION 7.(b) Collection and Transport Rule. – Until the effective date of the revised permanent rule that the Commission for Public Health is required to adopt pursuant to Section 7(d) of this act, the Commission and the Department of Environment and Natural Resources shall implement the Collection and Transport Rule, as provided in Section 7(c) of this act.

SECTION 7.(c) Implementation. – Notwithstanding any provision of the Collection and Transport Rule, the Commission shall not require vehicles or containers used for the collection and transportation of solid waste to be leak-proof; however, they may require design of these containers to be leak-resistant in accordance with industry standards.

SECTION 7.(d) Additional Rule-Making Authority. – The Commission shall adopt a rule to replace the Collection and Transport Rule. 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 7(c) of this act. Rules adopted pursuant to this section are not subject to G.S. 150B-21.9 through G.S. 150B-21.14. The rule 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 7.(e) Effective Date. – Section 7(c) of this act expires when permanent rules to replace Section 7(c) of this act have become effective, as provided by Section 7(d) of this act.

PART VIII. AMEND RULES GOVERNING CONTROL OF LEACHATE TO CLARIFY THAT LIQUID ADHERING TO TIRES OF VEHICLES LEAVING SANITARY LANDFILLS OR LIQUID GENERATED DURING THE TRANSPORT OF SOLID WASTE SHALL NOT BE TREATED AS VIOLATIONS OF LEACHATE CONTROL REQUIREMENTS

SECTION 8.(a) G.S. 130A-290 is amended by adding a new subdivision to read:

"(16a) "Leachate" means a liquid that has passed through or emerged from solid waste and contains soluble, suspended, or miscible materials removed from such waste. The term "leachate" does not include liquid adhering to tires of vehicles leaving a sanitary landfill or liquids that are generated during the transportation of solid waste."

SECTION 8.(b) Definitions. – "Leachate Storage Requirements Rule" means 15A NCAC 13B .1680 (Leachate Storage Requirements) for purposes of this section and its implementation.

SECTION 8.(c) Leachate Storage Requirements Rule. – Until the effective date of the revised permanent rule that the Commission for Public Health is required to adopt pursuant to Section 8(e) of this act, the Commission and the Department of Environment and Natural Resources shall implement the Leachate Storage Requirements Rule and any other rule governing control of leachate under Chapter 13 of Title 15A of the North Carolina Administrative Code, as provided in Section 8(d) of this act.

SECTION 8.(d) Implementation. – Notwithstanding any provision of the Leachate Storage Requirements Rule, or any other rule governing control of leachate under Chapter 13 of Title 15A of the North Carolina Administrative Code, liquid adhering to tires of vehicles leaving a sanitary landfill or liquid generated during the transportation of solid waste shall not be treated by the Commission or the Department as a violation of any leachate control requirements under the Administrative Code.

SECTION 8.(e) Additional Rule-Making Authority. – The Commission shall adopt a rule to replace the Leachate Storage Requirements Rule and any other rule governing control of leachate under Chapter 13 of Title 15A of the North Carolina Administrative Code. 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 8(d) of this act. Rules adopted pursuant to this section are not subject to G.S. 150B-21.9 through G.S. 150B-21.14. The rule 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 8.(f) Effective Date. – Section 8(d) of this act expires when permanent rules to replace Section 8(d) of this act have become effective, as provided by Section 8(e) of this act.

PART IX. AUTHORIZE: CITIES AND COUNTIES THAT ACCEPT SOLID WASTE FROM OTHER LOCAL GOVERNMENTS TO LEVY A SURCHARGE ON FEES FOR USE OF THEIR DISPOSAL FACILITIES, AND TO MAKE APPROPRIATIONS FROM A UTILITY OR PUBLIC SERVICE ENTERPRISE FUND USED FOR OPERATION OF A LANDFILL TO THE JURISDICTION'S GENERAL FUND UPON CERTAIN FINDINGS

SECTION 9.(a) G.S. 153A-292(b) reads as rewritten:

"(b) The board of county commissioners may impose a fee for the collection of solid waste. The fee may not exceed the costs of collection.

The board of county commissioners may impose a fee for the use of a disposal facility provided by the county. ~~The~~ Except as provided in this subsection, the fee for use may not exceed the cost of operating the ~~facility and may be imposed only on those who use the~~ facility. The fee may exceed those costs if the county enters into a contract with another county or city to accept the other entity's solid waste and the county by ordinance levies a surcharge on the fee which may be used for any purpose for which the county may appropriate funds. A fee under this paragraph may be imposed only on those who use the facility. The fee for use may vary based on the amount, characteristics, and form of recyclable materials present in solid waste brought to the facility for disposal. A county may not impose a fee for the use of a disposal facility on a city located in the county or a contractor or resident of the city unless the fee is based on a schedule that applies uniformly throughout the county.

The board of county commissioners may impose a fee for the availability of a disposal facility provided by the county. A fee for availability may not exceed the cost of providing the facility and may be imposed on all improved property in the county that benefits from the availability of the facility. A county may not impose an availability fee on property whose solid waste is collected by a county, a city, or a private contractor for a fee if the fee imposed by a county, a city, or a private contractor for the collection of solid waste includes a charge for the availability and use of a disposal facility provided by the county. Property served by a private contractor who disposes of solid waste collected from the property in a disposal facility provided by a private contractor that provides the same services as those provided by the county disposal facility is not considered to benefit from a disposal facility provided by the county and is not subject to a fee imposed by the county for the availability of a disposal facility provided by the county. To the extent that the services provided by the county disposal facility differ from the services provided by the disposal facility provided by a private contractor in the same county, the county may charge an availability fee to cover the costs of the additional services provided by the county disposal facility.

In determining the costs of providing and operating a disposal facility, a county may consider solid waste management costs incidental to a county's handling and disposal of solid waste at its disposal facility, including the costs of the methods of solid waste management specified in G.S. 130A-309.04(a) of the Solid Waste Management Act of 1989. A fee for the availability or use of a disposal facility may be based on the combined costs of the different disposal facilities provided by the county."

SECTION 9.(b) G.S. 159-13(b)(14) reads as rewritten:

"(b) The following directions and limitations shall bind the governing board in adopting the budget ordinance:

...

(14) No appropriation may be made from a utility or public service enterprise fund to any other fund than the appropriate debt service fund unless the total of all other appropriations in the fund equal or exceed the amount that will be required during the fiscal year, as shown by the budget ordinance, to meet operating expenses, capital outlay, and debt service on outstanding utility or enterprise bonds or notes. A county may, upon a finding that a fund balance in a utility or public service enterprise fund used for operation of a landfill exceeds the requirements for funding the operation of that fund, including closure and postclosure expenditures, transfer excess funds to be used to support the other services supported by the county's general fund."

SECTION 9.(c) G.S. 160A-314.1 reads as rewritten:

"**§ 160A-314.1. Availability fees for solid waste disposal facilities; collection of any solid waste fees.**

(a) A city may impose a fee for the collection of solid waste. The fee may not exceed the costs of collection.

A city may impose a fee for the use of a disposal facility provided by the city. Except as provided in this subsection, the fee for use may not exceed the cost of operating the facility. The fee may exceed those costs if the city enters into a contract with another county or city to accept the other entity's solid waste and the city by ordinance levies a surcharge on the fee which may be used for any purpose for which the city may appropriate funds. A fee under this paragraph may be imposed only on those who use the facility. The fee for use may vary based on the amount, characteristics, and form of recyclable materials present in solid waste brought to the facility for disposal.

(a1) In addition to a fee that a city may impose for collecting solid waste or for using a disposal facility, a city may impose a fee for the availability of a disposal facility provided by the city. A fee for availability may not exceed the cost of providing the facility and may be imposed on all improved property in the city that benefits from the availability of the facility. A city may not impose an availability fee on property whose solid waste is collected by a county, a city, or a private contractor for a fee if the fee imposed by a county, a city, or a private contractor for the collection of solid waste includes a charge for the availability and use of a disposal facility provided by the city. Property served by a private contractor who disposes of solid waste collected from the property in a disposal facility provided by a private contractor that provides the same services as those provided by the city disposal facility is not considered to benefit from a disposal facility provided by the city and is not subject to a fee imposed by the city for the availability of a disposal facility provided by the city. To the extent that the services provided by the city disposal facility differ from the services provided by the disposal facility provided by a private contractor in the same city, the city may charge an availability fee to cover the costs of the additional services provided by the city disposal facility.

In determining the costs of providing and operating a disposal facility, a city may consider solid waste management costs incidental to a city's handling and disposal of solid waste at its disposal facility. A fee for the availability or use of a disposal facility may be based on the combined costs of the different disposal facilities provided by the city.

(b) A city may adopt an ordinance providing that any fee imposed under subsection (a) or under G.S. 160A-314 for collecting or disposing of solid waste may be billed with property taxes, may be payable in the same manner as property taxes, and, in the case of nonpayment, may be collected in any manner by which delinquent personal or real property taxes can be collected. If an ordinance states that delinquent fees can be collected in the same manner as delinquent real property taxes, the fees are a lien on the real property described on the bill that includes the fee."

SECTION 9.(d) G.S. 160A-314(a2) reads as rewritten:

"**§ 160A-314. Authority to fix and enforce rates.**

(a2) A fee for the use of a disposal facility provided by the city may vary based on the amount, characteristics, and form of recyclable materials present in solid waste brought to the facility for disposal. This section does not prohibit a city from providing aid to low-income persons to pay all or part of the cost of solid waste management services for those persons. A city may, upon a finding that a fund balance in a utility or public service enterprise fund used for operation of a landfill exceeds the requirements for funding the operation of that fund, including closure and postclosure expenditures, transfer excess funds to be used to support the other services supported by the city's general fund."

SECTION 9.(e) G.S. 130A-294(b1) is amended by adding a new subdivision to read:

"(2b) A local government may elect to include as part of a franchise agreement a surcharge on waste disposed of in its jurisdiction by other local governments located within the State."

SECTION 9.(f) This section is effective August 1, 2013, and Section 9(e) is applicable to franchise agreements executed on or after that date.

PART X. SEVERABILITY AND EFFECTIVE DATE

SECTION 10.(a) If any section or provision of this act is declared unconstitutional or invalid by the courts, it does not affect the validity of this act as a whole or any part other than the part so declared to be unconstitutional or invalid.

SECTION 10.(b) Except as otherwise provided, this act is effective when it becomes law.

SENATE BILL 328:
Solid Waste Management Reform Act of 2013

2013-2014 General Assembly

Committee:	Senate Agriculture/Environment/Natural Resources	**Date:**	June 6, 2013
Introduced by:	Sens. Wade, Brown, Jackson	**Prepared by:**	Jennifer McGinnis Committee Counsel
Analysis of:	PCS to First Edition S328-CSRIf-20 [v.9]		

SUMMARY: ***The Proposed Committee Substitute (PCS) for Senate Bill 328 would: (1) extend the duration of permits for sanitary landfills and transfer stations to thirty years ("life of site"); (2) modify the Department of Environment and Natural Resources' authority to issue and transfer permits for solid waste management facilities; (3) modify certain requirements governing sanitary landfills including conduct of environmental impacts studies, applicable buffers, cleaning and inspection of leachate collection lines, alternative daily cover, and require landfill operators to study certain issues; (4) modify requirements for financial responsibility applicable to applicants and permit holders for solid waste management facilities; (5) specify that cleanup of onsite leachate is not required when conducting risk-based remediation of landfills; (6) limit the frequency with which the Department and the Environmental Management Commission may change groundwater standards; (7) amend the rule governing collection and transport of solid waste to require that containers be "leak-resistant" rather than "leak-proof"; (8) amend rules governing control of leachate to clarify hat liquid adhering to tires of vehicles leaving sanitary landfills or liquid generated during the ransport of solid waste shall not be treated as violations of leachate control requirements; and (9) make related clarifying, conforming, and technical changes to the statutes and rules governing solid waste matters.***

BILL ANALYSIS:

Section 1.(a) of the PCS would extend the duration of permits for sanitary landfills and transfer stations to 30 years (from the current option for a 5- or 10-year permit), unless revoked as otherwise provided under the statutes governing solid waste management or upon the expiration of any local government franchise required for the facility. A limited review of the permit would be required five years after issuance of the initial permit, and at five-year intervals thereafter until expiration. This provision would be applicable to new facilities for which permit applications were submitted on or after July 1, 2014.

Section 1.(b) of the PCS would require the Commission for Public Health, by July 1, 2014, to adopt rules to: (i) allow applicants for new sanitary landfills to apply for a permit to construct and operate a 30-year phase of landfill development; and (ii) allow applicants for permits for new transfer stations to apply for a permit with a 30-year duration to construct and operate a transfer station.

Section 1.(c) of the PCS would increase the fees applicable to new sanitary landfills and transfer stations permitted on or after July 1, 2014 to reflect the extension to the duration of permits for these facilities to 30 years. In addition, the PCS would direct the Department to adjust these fees annually for inflation.

Section 1.(d) of the PCS would make a conforming change to the statutes governing solid waste management to reflect extension of the duration of permits to 30 years, by striking the word "renewal."

Section 1.(e) of the PCS would repeal a provision enacted last year as part of the Regulatory Reform Act of 2012 that directed the Commission for Public Health to amend its rules to extend the duration of permits for sanitary landfills and transfer stations, and allow owners and operators of landfills and transfer stations the option to apply for: (i) a 5-year permit; or (ii) 10-year permit with a limited review at the 5-year interval.

Section 1.(f) of the PCS would repeal Senate Bill 24 enacted this year that decreased the buffer requirement from State gamelands for landfills for the disposal of construction and demolition debris from 1 mile to 500 feet when both of the following apply: (i) the disposal unit would be located within the primary corporate limits of a municipality located in a county with a population less than 15,000; and (ii) all portions of the gameland within one mile of the proposed disposal unit are separated from the disposal unit by a primary highway designated by the Federal Highway Administration as a U.S. Highway.

Sections 1.(g) and (h) of the PCS would repeal two pending bills (H135 and S380), if they became law. These bills would increase the fees applicable to sanitary landfills and transfer stations to reflect the extension of the duration of permits for these facilities that was authorized in 2012 (see Sec. 1.(e) above).

Section 1.(f) of the PCS would provide that the preceding sections would become effective August 1, 2013, except as otherwise provided.

Section 2 of the PCS would

- Make conforming changes to the statutes governing solid waste management to reflect extension of the duration of permits to 30 years (see Section 1 above), by striking the word "renewal."
- Modify or repeal certain basis on which the Department of Environment and Natural Resources (DENR) must deny permits for solid waste management facilities. Under current law, DENR must deny a permit if construction or operation of the proposed facility would:
  - Be **inconsistent with or violate rules** adopted by the Environmental Management Commission (EMC). The PCS would modify this provision to direct DENR to deny a permit where the proposed facility would **violate** the **Article** governing solid waste management under the General Statutes (Article 9 of Chapter 130A) or the associated rules.
  - Result in significant damage to ecological systems, natural resources, cultural sites, recreation areas, or historic sites of more than local significance (including detail on the types of sites included). The PCS would repeal this provision.
  - **Substantially limit or threaten access to or use** of public trust waters or public lands. The PCS would modify this provision to direct DENR to deny a permit where the proposed facility would **substantially limit access to** public trust waters or public lands.
  - **Be inconsistent with** the State's solid waste management policy and goals and the State's solid waste management plan developed as provided in the General Statutes. The PCS would modify this provision to direct DENR to deny a permit where the proposed facility would **violate** the State's solid waste management policy, goals, and plan.

In addition, the PCS would modify or repeal the following basis on which the Department of Environment and Natural Resources (DENR) must deny permits for solid waste management facilities under current law:

- The proposed facility would be located in a natural hazard area, including a floodplain, a landslide hazard area, or an area subject to storm surge or excessive seismic activity, such that the facility will present a risk to public health or safety. The PCS would modify this provision to delete the reference to a floodplain.
- There is a practical alternative that would accomplish the purposes of the proposed facility with less adverse impact on public resources, considering engineering requirements and economic costs. The PCS would repeal this provision.
- The cumulative impacts of the proposed facility and other facilities in the area of the proposed facility would violate water quality standards, result in significant damage to ecological systems and other specified areas. The PCS would repeal this provision.
- The cumulative impact of the proposed facility, when considered in relation to other similar impacts of facilities located or proposed in the community, would have a disproportionate adverse impact on a minority or low-income community protected by Title VI of the federal Civil Rights Act of 1964. The PCS would modify this provision to specify that the provision only applies to the extent required by federal law.

- Modify the basis on which DENR may transfer a permit for a solid waste management facility, to provide that DENR must transfer upon 30 days' written notice with such information as DENR may reasonably require (current law provides only that permits may be transferred upon approval of DENR).
- Modifies the definition of what constitutes a "substantial amendment." Current law provides that a substantial amendment includes, among other things, "... any other change to the application for a permit for a sanitary landfill that the Commission or the Department determines to be substantial." The PCS would delete this language.

Section 3 of the PCS would:

- Eliminate a requirement under existing law that DENR conduct a study of the environmental impacts of any proposed sanitary landfill.
- Amend a provision under existing law that requires a buffer between any **perennial stream or wetland** and the nearest waste disposal unit of a sanitary landfill of at least 200 feet, but allows DENR to approve a buffer of less than 200 feet, **but no less than 100 feet,** if certain criteria are met. The PCS would modify the language to require a buffer of 200 feet to **surface water impoundments or any streams with continuous flow,** and would allow DENR by variance to approve a **buffer of less than 100 feet** if certain criteria are met.
- Amend provisions under existing law that prohibit construction of a waste disposal unit of a sanitary landfill within:
  - A 100 year floodplain, or land removed from a 100 year floodplain as a result of man-made alterations. The PCS would delete the prohibition on siting waste disposal units on land removed from a 100 year floodplain.
  - A wetland, unless the applicant can make a showing on a number of specific criteria involving State and federal law. The PCS repeals the details associated with the showings an applicant must make, and in lieu, provides that a waste disposal unit may not be constructed within a wetland classified as a water of the United States, except in compliance with applicable federal and State laws.

- Delete the following buffers to waste disposal units: five miles of the outermost boundary of a National Wildlife Refuge; one mile of the outermost boundary of a State gameland owned, leased, or managed by the Wildlife Resources Commission; and two miles of the outermost boundary of a component of the State Parks System. The PCS would replace these buffers with a prohibition on constructing a waste disposal unit:
  - In a designated critical habitat for a threatened or endangered species.
  - In historically or archaeologically sensitive sites of more than local significance.
  - Within fifteen hundred feet of a national or State park, forest, wilderness area, recreation area, segment of the Natural and Scenic Rivers System, National Wildlife Refuge, preserve or management area, critical fisheries habitat designated by the Marine Fisheries Commission, or Outstanding Resource Waters designated by the Environmental Management Commission.
- Delete requirements for annual cleaning of leachate collection lines and remote camera inspections of the lines every five years.
- Add a requirement that with respect to requirements for daily cover at sanitary landfills, once the Department has approved use of an alternative method of daily cover for use at any sanitary landfill, that alternative method of daily cover shall be approved for use at all sanitary landfills located within the State.
- Add requirements that owners or operators of sanitary landfills permitted to receive more than $240,000 tons of waste per year: (i) research the development of alternative disposal technologies and allow access to nonproprietary information and provide site resources for individual research and development projects related to alternative disposal techniques for the purpose of studies that may be conducted by local community or State colleges and universities or other third-party developers or consultants; and (ii) perform a feasibility study of landfill gas-to-energy, or other waste-to-energy technology, to determine opportunities for production of renewable energy from landfills in order to promote economic development and job creation in the State, and specifically examine opportunities for returning a portion of the benefits derived from energy produced from the landfill to the jurisdiction within which the landfill is located in the form of direct supply of energy to the local government and its citizens, or through revenue sharing with the local government from sale of the energy, with revenues owing to the local government credited to a fund specifically designated for economic development within the jurisdiction.
- Modify a provision under existing law that prohibits DENR from issuing a permit for a sanitary landfill that authorizes a maximum height, including the cap and cover vegetation, of more than 250 feet. In lieu, the PCS would limit the maximum height to 300 feet, but provide that the Department must include a condition for enhanced closure requirements concerning vegetative cover and reclamation of the property, in any permit issued for a sanitary landfill that authorizes a maximum height, including the cap and cover vegetation, between 101 feet and 300 feet above the mean natural elevation of the disposal area.

Section 4 of the PCS would delete a provision under existing law that applicants and permit holders for solid waste management facilities establish financial assurance sufficient to cover a minimum $2,000,000 in costs for potential assessment and corrective action at the facility. Existing law still requires applicants and permit holders to establish financial assurance in amount sufficient to cover closure, post-closure maintenance and monitoring, and any corrective action that DENR may require during the active life of the facility, at closure, and for any post-closure period of time that DENR 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.

Section 5 of the PCS would amend the laws governing risk-based remediation to specify that with respect to sanitary landfills, a permit holder would not be required to take assessment or corrective action to address leachate unless the leachate has reached the compliance boundary of the facility.

Section 6 of the PCS would amend the law governing development of groundwater standards to prohibit the EMC from adopting and DENR from enforcing rules providing for a review of groundwater standards more frequently than on a five-year basis.

Section 7 of the PCS would direct the Commission for Public Health to amend a rule governing containers for collection and transport of solid waste to provide that vehicles or containers used for the collection and transportation of solid waste be designed to be leak-resistant in accordance with industry standards, rather than be leak-proof as required under existing law.

Section 8 of the PCS would amend the statutes governing solid waste to define "leachate" as:

> "a liquid that has passed through or emerged from solid waste and contains soluble, suspended, or miscible materials removed from such waste. The term "leachate" does not include liquid adhering to tires of vehicles leaving a sanitary landfill or liquids that are generated during the transportation of solid waste."

The provision would also direct the Commission for Public Health to amend a rule governing leachate storage requirements, and any other rule governing control of leachate, to provide that liquid adhering to tires of vehicles leaving a sanitary landfill or liquid generated during the transportation of solid waste is not a violation of any leachate control requirements.

Section 9 of the PCS would authorize cities and counties to levy a surcharge on existing fees for use of waste disposal facilities provided by them on other cities and counties located within the State that use the disposal facility, and authorizes cities and counties imposing such a surcharge to use the funds that accrue in excess of the amount needed to operate the landfill for other purposes. In addition, the PCS authorizes cities and counties to include such a surcharge on other local governments' waste as part of a franchise agreement entered into with a private landfill owner or operator.

Section 10.(a) of the PCS would provide that if any section or provision of the act is declared unconstitutional or invalid by the courts, it would not affect the validity of the act as a whole or any part other than the part declared to be unconstitutional or invalid.

Section 10.(b) of the PCS would provide that the act would be effective when it becomes law except otherwise noted.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

S 2

SENATE BILL 328

Agriculture/Environment/Natural Resources Committee Substitute Adopted 6/6/13

Short Title: Solid Waste Management Reform Act of 2013. (Public)

Sponsors:

Referred to:

March 19, 2013

A BILL TO BE ENTITLED

AN ACT TO (1) EXTEND THE DURATION OF PERMITS FOR SANITARY LANDFILLS AND TRANSFER STATIONS TO THIRTY YEARS ("LIFE OF SITE"); (2) MODIFY THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES' AUTHORITY TO ISSUE AND TRANSFER PERMITS FOR SOLID WASTE MANAGEMENT FACILITIES; (3) MODIFY CERTAIN REQUIREMENTS GOVERNING SANITARY LANDFILLS, INCLUDING CONDUCT OF ENVIRONMENTAL IMPACTS STUDIES, APPLICABLE BUFFERS, CLEANING AND INSPECTION OF LEACHATE COLLECTION LINES, ALTERNATIVE DAILY COVER, AND LANDFILL GAS TO ENERGY FEASIBILITY STUDY; (4) MODIFY REQUIREMENTS FOR FINANCIAL RESPONSIBILITY APPLICABLE TO APPLICANTS AND PERMIT HOLDERS FOR SOLID WASTE MANAGEMENT FACILITIES; (5) SPECIFY THAT CLEANUP OF ON-SITE LEACHATE IS NOT REQUIRED WHEN CONDUCTING RISK-BASED REMEDIATION OF LANDFILLS; (6) LIMIT THE FREQUENCY OF CHANGES TO GROUNDWATER STANDARDS; (7) AMEND THE RULE GOVERNING COLLECTION AND TRANSPORT OF SOLID WASTE TO REQUIRE THAT CONTAINERS BE "LEAK-RESISTANT" RATHER THAN "LEAK-PROOF"; (8) AMEND RULES GOVERNING CONTROL OF LEACHATE TO CLARIFY THAT LIQUID ADHERING TO TIRES OF VEHICLES LEAVING SANITARY LANDFILLS OR LIQUID GENERATED DURING THE TRANSPORT OF SOLID WASTE SHALL NOT BE TREATED AS VIOLATIONS OF LEACHATE CONTROL REQUIREMENTS; (9) CITIES AND COUNTIES THAT ACCEPT SOLID WASTE FROM OTHER LOCAL GOVERNMENTS TO LEVY A SURCHARGE ON FEES FOR USE OF THEIR DISPOSAL FACILITIES, AND TO MAKE APPROPRIATIONS FROM A UTILITY OR PUBLIC SERVICE ENTERPRISE FUND USED FOR OPERATION OF A LANDFILL TO THE JURISDICTION'S GENERAL FUND UPON CERTAIN FINDINGS; AND (10) MAKE RELATED CLARIFYING, CONFORMING, AND TECHNICAL CHANGES.

Whereas, the provision of effectively managed solid waste services is of vital importance to North Carolina's economy and environment; and

Whereas, previous changes to the statutes and rules of the State that govern solid waste matters have significantly and negatively impacted the ability of providers of solid waste disposal services to site landfills within the State, have raised the cost of waste disposal for the State's citizens, and have put North Carolina at a competitive disadvantage in the recruitment of industry; Now, therefore,

The General Assembly of North Carolina enacts:

PART I. EXTENSION OF DURATION OF PERMITS FOR SANITARY LANDFILLS AND TRANSFER STATIONS TO THIRTY YEARS ("LIFE OF SITE") AND CONFORMING CHANGES

SECTION 1.(a) G.S. 130A-294 is amended by adding a new subsection to read:

"(a2) Permits for sanitary landfills and transfer stations shall be issued for a design and operation phase of 30 years, unless revoked as otherwise provided under this Article or upon the expiration of any local government franchise required for the facility pursuant to subsection (b1) of this section. Each permit shall have a limited review of the permit five years after issuance of the initial permit and at five-year intervals thereafter until expiration of the permit."

SECTION 1.(b) No later than July 1, 2014, the Commission for Public Health shall adopt rules to allow applicants for permits for sanitary landfills to apply for a permit to construct and operate a 30-year phase of landfill development. No later than July 1, 2014, the Commission shall also adopt rules to allow applicants for permits for transfer stations to apply for a permit with a 30-year duration to construct and operate a transfer station.

SECTION 1.(c) G.S. 130A-295.8 reads as rewritten:

"**§ 130A-295.8. Fees applicable to permits for solid waste management facilities.**

(a) The Solid Waste Management Account is established as a nonreverting account within the Department. All fees collected under this section shall be credited to the Account and shall be used to support the solid waste management program established pursuant to G.S. 130A-294.

(b) As used in this section:

(1) "New permit" means any of the following:

a. An application for a permit for a solid waste management facility that has not been previously permitted by the Department. The term includes one site suitability review, the initial permit to construct, and one permit to operate the constructed portion of a phase included in the permit to construct.

b. An application that proposes to expand the boundary of a permitted waste management facility for the purpose of expanding the permitted activity.

c. An application that includes a proposed expansion to the boundary of a waste disposal unit within a permitted solid waste management facility.

d. An application for a substantial amendment to a solid waste permit, as defined in G.S. 130A-294.

(2) "Permit amendment" means any of the following:

a. An application for a permit to construct and one permit to operate for the second and subsequent phases of landfill development described in the approved facility plan for a permitted solid waste management facility.

b. An application for the five-year renewal of a permit for a permitted solid waste management facility or for a permit review of a permitted solid waste management facility.

c. Any application that proposes a change in ownership or corporate structure of a permitted solid waste management facility.

(3) "Permit modification" means any of the following:

a. An application for any change to the plans approved in a permit for a solid waste management facility that does not constitute a "permit amendment" or a "new permit".

b. A second or subsequent permit to operate for a constructed portion of a phase included in the permit to construct.

c. An application for a five-year limited review of a 30-year permit, as required by G.S. 130A-294(a2), including review of the operations plan, closure plan, post-closure plan, financial assurance cost estimates, environmental monitoring plans, and any other applicable plans for the facility.

(4) "Major permit modification" means an application for any change to the approved engineering plans for a sanitary landfill or transfer station permitted for a 30-year design capacity that does not constitute a "permit amendment," "new permit," or "permit modification."

(c) An applicant for a permit shall pay an application fee to the Department. For applications for facilities set forth in subdivisions (1) through (21) and (25) through (27), fifty percent (50%) of the applicable fee shall be paid upon submission of the application, twenty-five percent (25%) shall be paid at 10 years after issuance of the permit, and twenty-five percent (25%) shall be paid at 20 years after issuance of the permit. For applications for facilities set forth in subdivisions (22) through (24) and (28) through (36), the applicable fee shall be paid upon submission of an ~~application~~ application. As of July 1, 2014, fees are applicable according to the following schedule:

(1) Municipal Solid Waste Landfill accepting less than 100,000 tons/year of solid waste, New Permit – ~~$25,000.~~$150,000.

(2) Municipal Solid Waste Landfill accepting less than 100,000 tons/year of solid waste, Amendment – ~~$15,000.~~$90,000.

(3) Municipal Solid Waste Landfill accepting less than 100,000 tons/year of solid waste, Modification – ~~$1,500.~~$9,000.

(4) Municipal Solid Waste Landfill accepting 100,000 tons/year or more of solid waste, New Permit – ~~$50,000.~~$300,000.

(5) Municipal Solid Waste Landfill accepting 100,000 tons/year or more of solid waste, Amendment – ~~$30,000.~~$180,000.

(6) Municipal Solid Waste Landfill accepting 100,000 tons/year or more of solid waste, Modification – ~~$3,000.~~$18,000.

(7) Construction and Demolition Landfill accepting less than 100,000 tons/year of solid waste, New Permit – ~~$15,000.~~$90,000.

(8) Construction and Demolition Landfill accepting less than 100,000 tons/year of solid waste, Amendment – ~~$9,000.~~$54,000.

(9) Construction and Demolition Landfill accepting less than 100,000 tons/year of solid waste, Modification – ~~$1,500.~~$9,000.

(10) Construction and Demolition Landfill accepting 100,000 tons/year or more of solid waste, New Permit – ~~$30,000.~~$180,000.

(11) Construction and Demolition Landfill accepting 100,000 tons/year or more of solid waste, Amendment – ~~$18,500.~~$111,000.

(12) Construction and Demolition Landfill accepting 100,000 tons/year or more of solid waste, Modification – ~~$2,500.~~$15,000.

(13) Industrial Landfill accepting less than 100,000 tons/year of solid waste, New Permit – ~~$15,000.~~$90,000.

(14) Industrial Landfill accepting less than 100,000 tons/year of solid waste, Amendment – ~~$9,000.~~$54,000.

(15) Industrial Landfill accepting less than 100,000 tons/year of solid waste, Modification – ~~$1,500.~~$9,000.

(16) Industrial Landfill accepting 100,000 tons/year or more of solid waste, New Permit – ~~$30,000.~~$180,000.

(17) Industrial Landfill accepting 100,000 tons/year or more of solid waste, Amendment – ~~$18,500.~~$111,000.
(18) Industrial Landfill accepting 100,000 tons/year or more of solid waste, Modification – ~~$2,500.~~$15,000.
(19) Tire Monofill, New Permit – ~~$1,750.~~$10,500.
(20) Tire Monofill, Amendment – ~~$1,250.~~$7,500.
(21) Tire Monofill, Modification – ~~$500.~~$3,000.
(22) Treatment and Processing, New Permit – $1,750.
(23) Treatment and Processing, Amendment – $1,250.
(24) Treatment and Processing, Modification – $500.
(25) Transfer Station, New Permit – ~~$5,000.~~$30,000.
(26) Transfer Station, Amendment – ~~$3,000.~~$18,000.
(27) Transfer Station, Modification – ~~$500.~~$3,000.
(28) Incinerator, New Permit – $1,750.
(29) Incinerator, Amendment – $1,250.
(30) Incinerator, Modification – $500.
(31) Large Compost Facility, New Permit – $1,750.
(32) Large Compost Facility, Amendment – $1,250.
(33) Large Compost Facility, Modification – $500.
(34) Land Clearing and Inert, New Permit – $1,000.
(35) Land Clearing and Inert, Amendment – $500.
(36) Land Clearing and Inert, Modification – $250.

(c1) On January 1 of each year, the Department shall adjust the fees set forth in subsection (c) of this section for inflation, calculated by the ratio of the Consumer Price Index to the Index one year earlier to the nearest tenth of one percent (1/10th of 1%).

(d) A permitted solid waste management facility shall pay an annual permit fee on or before ~~1 August~~ August 1 of each year according to the following schedule:

(1) Municipal Solid Waste Landfill – ~~$3,500.~~$10,500.
(2) Post-Closure Municipal Solid Waste Landfill – ~~$1,000.~~$3,000.
(3) Construction and Demolition Landfill – $2,750.
(4) Post-Closure Construction and Demolition Landfill – $500.
(5) Industrial Landfill – $2,750.
(6) Post-Closure Industrial Landfill – $500.
(7) Transfer Station – ~~$750.~~$2,250.
(8) Treatment and Processing Facility – ~~$500.~~$1,500.
(9) Tire Monofill – $500.
(10) Incinerator – ~~$500.~~$1,500.
(11) Large Compost Facility – $500.
(12) Land Clearing and Inert Debris Landfill – $500.

...."

SECTION 1.(d) G.S. 130A-295.3 reads as rewritten:

"**§ 130A-295.3. Environmental compliance review requirements for applicants and permit holders.**

...

(b) The Department shall conduct an environmental compliance review of each applicant for a new ~~permit, permit renewal,~~permit and permit amendment 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 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.

...."

SECTION 1.(e) Section 15.1 of S.L. 2012-187 is repealed.

SECTION 1.(f) S.L. 2013-25 is repealed.

SECTION 1.(g) If House Bill 135, 2013 Regular Session, becomes law, it is repealed when it becomes law.

SECTION 1.(h) If Senate Bill 380, 2013 Regular Session, becomes law, it is repealed when it becomes law.

SECTION 1.(i) This section becomes effective August 1, 2013, except that G.S. 130A-294(a2), as enacted by Section 1(a) of this act, and G.S. 130A-295.8, as amended by Section 1(b) of this act, apply only to applications for new permits submitted on or after July 1, 2014.

PART II. MISCELLANEOUS MODIFICATIONS TO THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES' AUTHORITY TO ISSUE AND TRANSFER PERMITS FOR SOLID WASTE MANAGEMENT FACILITIES AND CONFORMING CHANGES

SECTION 2. G.S. 130A-294 reads as rewritten:

"**§ 130A-294. Solid waste management program.**

(a) The Department is authorized and directed to engage in research, conduct investigations and surveys, make inspections and establish a statewide solid waste management program. In establishing a program, the Department shall have authority to:

...

(4) a. Develop a permit system governing the establishment and operation of solid waste management facilities. A landfill with a disposal area of 1/2 acre or less for the on-site disposal of land clearing and inert debris is exempt from the permit requirement of this section and shall be governed by G.S. 130A-301.1. Demolition debris from the decommissioning of manufacturing buildings, including electric generating stations, that is disposed of on the same site as the decommissioned buildings, is exempt from the permit requirement of this section and rules adopted pursuant to this section and shall be governed by G.S. 130A-301.3. The Department shall not approve an application for a new permit ~~permit, the renewal of a permit,~~ or a substantial amendment to a permit for a sanitary landfill, excluding demolition landfills as defined in the rules of the Commission, except as provided in subdivisions (3) and (4) of subsection (b1) of this section. No permit shall be granted for a solid waste management facility having discharges that are point sources until the Department has referred the complete plans and specifications to the Environmental Management Commission and has received advice in writing that the plans and specifications are approved in accordance

with the provisions of G.S. 143-215.1. If the applicant is a unit of local government, and has not submitted a solid waste management plan that has been approved by the Department pursuant to G.S. 130A-309.09A(b), the Department may deny a permit for a sanitary landfill or a facility that disposes of solid waste incineration, unless the Commission has not adopted rules pursuant to G.S. 130A-309.29 for local solid waste management plans. In any case where the Department denies a permit for a solid waste management facility, it shall state in writing the reason for denial and shall also state its estimate of the changes in the applicant's proposed activities or plans that will be required for the applicant to obtain a permit.

b. Repealed by Session Laws 2007-550, s. 1(a), effective August 1, 2007.

c. The Department shall deny an application for a permit for a solid waste management facility if the Department finds that:

1. Construction or operation of the proposed facility would ~~be inconsistent with or~~ violate this Article or rules adopted by the ~~Commission.~~Commission pursuant to this Article.

2. Construction or operation of the proposed facility would result in a violation of water quality standards adopted by the Environmental Management Commission pursuant to G.S. 143-214.1 for waters, as defined in G.S. 143-213.

~~3. Construction or operation of the facility would result in significant damage to ecological systems, natural resources, cultural sites, recreation areas, or historic sites of more than local significance. These areas include, but are not limited to, national or State parks or forests; wilderness areas; historic sites; recreation areas; segments of the natural and scenic rivers system; wildlife refuges, preserves, and management areas; areas that provide habitat for threatened or endangered species; primary nursery areas and critical fisheries habitat designated by the Marine Fisheries Commission; and Outstanding Resource Waters designated by the Environmental Management Commission.~~

4. Construction or operation of the proposed facility would substantially limit ~~or threaten~~ access to ~~or use of~~ public trust waters or public lands.

5. The proposed facility would be located in a natural hazard area, including ~~a floodplain,~~ a landslide hazard area, or an area subject to storm surge or excessive seismic activity, such that the facility will present a significant risk to public health or safety.

~~6. There is a practical alternative that would accomplish the purposes of the proposed facility with less adverse impact on public resources, considering engineering requirements and economic costs.~~

~~7. The cumulative impacts of the proposed facility and other facilities in the area of the proposed facility would violate the criteria set forth in sub-sub-subdivisions 2. through 5. of this sub-subdivision.~~

8. Construction or operation of the proposed facility would ~~be inconsistent with~~ violate the State solid waste management policy and goals as set out in G.S. 130A-309.04 and with the State solid waste management plan developed as provided in G.S. 130A-309.07.
9. The cumulative impact of the proposed facility, when considered in relation to other similar impacts of facilities located or proposed in the community, would have a disproportionate adverse impact on a minority or low-income community protected by Title VI of the federal Civil Rights Act of 1964. This subdivision shall apply only to the extent required by federal law.

...

(a1) A permit for a solid waste management facility may be transferred ~~only with the approval of the Department.~~upon 30 days' written notice to the Department to include such information as the Department may reasonably require to complete the Department's review pursuant to subsection (b2) of this section, G.S. 130A-295.2, and G.S. 130A-295.3.

...

(b1) (1) For purposes of this subsection and subdivision (4) of subsection (a) of this section, a "substantial amendment" means either:

a. An increase of ten percent (10%) or more in:
   1. The population of the geographic area to be served by the sanitary landfill;
   2. The quantity of solid waste to be disposed of in the sanitary landfill; or
   3. The geographic area to be served by the sanitary landfill.

b. A change in the categories of solid waste to be disposed of in the sanitary landfill.~~landfill or any other change to the application for a permit or to the permit for a sanitary landfill that the Commission or the Department determines to be substantial.~~

(2) A person who intends to apply for a new permit ~~permit, the renewal of a permit,~~ or a substantial amendment to a permit for a sanitary landfill shall obtain, prior to applying for a permit, a franchise for the operation of the sanitary landfill from each local government then having jurisdiction over any part of the land on which the sanitary landfill and its appurtenances are located or to be located. A local government may adopt a franchise ordinance under G.S. 153A-136 or G.S. 160A-319. A franchise granted for a sanitary landfill shall include all of the following:

a. A statement of the population to be served, including a description of the geographic area.
b. A description of the volume and characteristics of the waste stream.
c. A projection of the useful life of the sanitary landfill.
d. An explanation of how the franchise will be consistent with the jurisdiction's solid waste management plan required under G.S. 130A-309.09A, including provisions for waste reduction, reuse, and recycling.
e. The procedures to be followed for governmental oversight and regulation of the fees and rates to be charged by facilities subject to the franchise for waste generated in the jurisdiction of the franchising entity.

f. A facility plan for the sanitary landfill that shall include the boundaries of the proposed facility, proposed development of the facility site in five-year operational phases, the boundaries of all waste disposal units, final elevations and capacity of all waste disposal units, the amount of waste to be received per day in tons, the total waste disposal capacity of the sanitary landfill in tons, a description of environmental controls, and a description of any other waste management activities to be conducted at the facility. In addition, the facility plan shall show the proposed location of soil borrow areas, leachate facilities, and all other facilities and infrastructure, including ingress and egress to the facility.

...

(4) An applicant for a new permit ~~permit, the renewal of a permit,~~ or a substantial amendment to a permit for a sanitary landfill shall request each local government having jurisdiction over any part of the land on which the sanitary landfill and its appurtenances are located or to be located to issue a determination as to whether the local government has in effect a franchise, zoning, subdivision, or land-use planning ordinance applicable to the sanitary landfill and whether the proposed sanitary landfill, or the existing sanitary landfill as it would be operated under the ~~renewed or~~ substantially amended permit, would be consistent with the applicable ordinances. The request to the local government shall be accompanied by a copy of the permit application and shall be delivered to the clerk of the local government personally or by certified mail. In order to serve as a basis for a determination that an application for a new permit ~~permit, the renewal of a permit,~~ or a substantial amendment to a permit for a sanitary landfill is consistent with a zoning, subdivision, or land-use planning ordinance, an ordinance or zoning classification applicable to the real property designated in the permit application shall have been in effect not less than 90 days prior to the date the request for a determination of consistency is delivered to the clerk of the local government. The determination shall be verified or supported by affidavit signed by the chief administrative officer, the chief administrative officer's designee, clerk, or other official designated by the local government to make the determination and, if the local government states that the sanitary landfill as it would be operated under the new ~~new, renewed,~~ or substantially amended permit is inconsistent with a franchise, zoning, subdivision, or land-use planning ordinance, shall include a copy of the ordinance and the specific reasons for the determination of inconsistency. A copy of the determination shall be provided to the applicant when the determination is submitted to the Department. The Department shall not act upon an application for a permit under this section until it has received a determination from each local government requested to make a determination by the applicant; provided that if a local government fails to submit a determination to the Department as provided by this subsection within 15 days after receipt of the request, the Department shall proceed to consider the permit application without regard to a franchise, local zoning, subdivision, and land-use planning ordinances. Unless the local government makes a subsequent determination of consistency with all ordinances cited in the determination or the sanitary landfill as it would be operated under the ~~new, renewed,~~new or substantially amended permit is determined by a court of competent jurisdiction to be consistent with the cited ordinances, the

Department shall attach as a condition of the permit a requirement that the applicant, prior to construction or operation of the sanitary landfill under the permit, comply with all lawfully adopted local ordinances cited in the determination that apply to the sanitary landfill. This subsection shall not be construed to affect the validity of any lawfully adopted franchise, local zoning, subdivision, or land-use planning ordinance or to affect the responsibility of any person to comply with any lawfully adopted franchise, local zoning, subdivision, or land-use planning ordinance. This subsection shall not be construed to limit any opportunity a local government may have to comment on a permit application under any other law or rule. This subsection shall not apply to any facility with respect to which local ordinances are subject to review under either G.S. 104E-6.2 or G.S. 130A-293.

(5) As used in this subdivision, "coal-fired generating unit" and "investor-owned public utility" have the same meaning as in G.S. 143-215.107D(a). Notwithstanding subdivisions (a)(4), (b1)(3), or (b1)(4) of this section, no franchise shall be required for a sanitary landfill used only to dispose of waste generated by a coal-fired generating unit that is owned or operated by an investor-owned utility subject to the requirements of G.S. 143-215.107D.

...."

PART III. MODIFICATIONS TO CERTAIN REQUIREMENTS GOVERNING SANITARY LANDFILLS INCLUDING ENVIRONMENTAL IMPACTS STUDY, APPLICABLE BUFFERS, CLEANING AND INSPECTION OF LEACHATE COLLECTION LINES, ALTERNATIVE DAILY COVER, AND LANDFILL GAS TO ENERGY FEASIBILITY STUDY

SECTION 3.(a) G.S. 130A-295.6 reads as rewritten:

"**§ 130A-295.6. Additional requirements for sanitary landfills.**

~~(a) The Department shall conduct a study of the environmental impacts of any proposed sanitary landfill. The study shall meet all of the requirements set forth in G.S. 113A-4 and rules adopted pursuant to G.S. 113A-4. If an environmental impact statement is required, the Department shall publish notice of the draft environmental impact statement and shall hold a public hearing in the county where the landfill will be located no sooner than 30 days following the public notice. The Department shall consider the study of environmental impacts and any mitigation measures proposed by the applicant in deciding whether to issue or deny a permit. An applicant for a permit for a sanitary landfill shall pay all costs incurred by the Department to comply with this subsection including the costs of any special studies that may be required.~~

(b) The Department shall require a buffer between any ~~perennial~~ surface water impoundment or any stream ~~or wetland~~with continuous flow and the nearest waste disposal unit of a sanitary landfill of at least 200 feet. The Department may approve a buffer of less than 200 ~~feet, but in no case less than 100~~ feet, if it finds all of the following:

(1) The proposed sanitary landfill or expansion of the sanitary landfill will serve a critical need in the community.

(2) There is no feasible alternative location that would allow siting or expansion of the sanitary landfill with 200-foot buffers.

(c) A waste disposal unit of a sanitary landfill shall not be constructed within:

(1) A 100-year floodplain, as shown on the current floodplain maps prepared pursuant to the National Flood Insurance Program, ~~floodplain or land removed from a 100-year floodplain designation pursuant to 44 Code of Federal Regulations Part 72 (1 October 2006 Edition) as a result of man-made alterations within the floodplain such as the placement of fill,~~

except as authorized by variance granted under G.S. 143-215.54A(b). ~~This subdivision does not apply to land removed from a 100-year floodplain designation (i) as a result of floodplain map corrections or updates not resulting from man-made alterations of the affected areas within the floodplain, or (ii) pursuant to 44 Code of Federal Regulations Part 70 (1 October 2006 Edition) by a letter of map amendment.~~

(2) Wetlands classified as waters of the United States, except in compliance with applicable federal and State laws. ~~A wetland, unless the applicant or permit holder can show all of the following, as to the waste disposal unit:~~

~~a. Where applicable under section 404 of the federal Clean Water Act or applicable State wetlands laws, the presumption that a practicable alternative to the proposed waste disposal unit is available which does not involve wetlands is clearly rebutted;~~

~~b. Construction of the waste disposal unit will not do any of the following:~~

~~1. Cause or contribute to violations of any applicable State water quality standard.~~

~~2. Violate any applicable toxic effluent standard or prohibition under section 307 of the federal Clean Water Act.~~

~~3. Jeopardize the continued existence of endangered or threatened species or result in the destruction or adverse modification of a critical habitat, protected under the federal Endangered Species Act of 1973.~~

~~4. Violate any requirement under the federal Marine Protection, Research, and Sanctuaries Act of 1972.~~

~~c. Construction of the waste disposal unit will not cause or contribute to significant degradation of wetlands.~~

~~d. To the extent required under section 404 of the federal Clean Water Act or applicable State wetlands laws, any unavoidable wetlands impacts will be mitigated.~~

(d) The Department shall not issue a permit to construct any disposal unit of a sanitary landfill if, at the earlier of (i) the acquisition by the applicant or permit holder of the land or of an option to purchase the land on which the waste disposal unit will be located, (ii) the application by the applicant or permit holder for a franchise agreement, or (iii) at the time of the application for a permit, any portion of the proposed waste disposal unit would be located within:

~~(1) Five miles of the outermost boundary of a National Wildlife Refuge.~~

~~(2) One mile of the outermost boundary of a State gameland owned, leased, or managed by the Wildlife Resources Commission pursuant to G.S. 113-306.~~

~~(3) Two miles of the outermost boundary of a component of the State Parks System.~~

(4) Designated critical habitat for a threatened or endangered species.

(5) Historically or archaeologically sensitive sites of more than local significance.

(6) Fifteen hundred feet of a national or State park, forest, wilderness area, recreation area, segment of the Natural and Scenic Rivers System, National Wildlife Refuge, preserve or management area, critical fisheries habitat designated by the Marine Fisheries' Commission, or Outstanding Resource Waters designated by the Environmental Management Commission.

...

(h) The following requirements apply to any sanitary landfill for which a liner is required:

(1) A geomembrane base liner system shall be tested for leaks and damage by methods approved by the Department that ensure that the entire liner is evaluated.

(2) A leachate collection system shall be designed to return the head of the liner to 30 centimeters or less within 72 hours. The design shall be based on the precipitation that would fall on an empty cell of the sanitary landfill as a result of a 25-year-24-hour storm event. The leachate collection system shall maintain a head of less than 30 centimeters at all times during leachate recirculation. The Department may require the operator to monitor the head of the liner to demonstrate that the head is being maintained in accordance with this subdivision and any applicable rules.

(3) All leachate collection lines shall be designed and constructed to permanently allow cleaning and remote camera inspection. ~~All leachate collection lines shall be cleaned at least once a year, except that the Department may allow leachate collection lines to be cleaned once every two years if: (i) the facility has continuous flow monitoring; and (ii) the permit holder demonstrates to the Department that the leachate collection lines are clear and functional based on at least three consecutive annual cleanings. Remote camera inspections of the leachate collection lines shall occur upon completion of construction, at least once every five years thereafter, and following the clearing of blockages.~~

(4) Any pipes used to transmit leachate shall provide dual containment outside of the disposal unit. The bottom liner of a sanitary landfill shall be constructed without pipe penetrations.

(h1) With respect to requirements for daily cover at sanitary landfills, once the Department has approved use of an alternative method of daily cover for use at any sanitary landfill, that alternative method of daily cover shall be approved for use at all sanitary landfills located within the State.

(h2) Studies and research and development pertaining to alternative disposal techniques and waste-to-energy matters shall be conducted by certain sanitary landfills as follows:

(1) The owner or operator of any sanitary landfill permitted to receive more than 240,000 tons of waste per year shall research the development of alternative disposal technologies. In addition, the owner or operator shall allow access to nonproprietary information and provide site resources for individual research and development projects related to alternative disposal techniques for the purpose of studies that may be conducted by local community or State colleges and universities or other third-party developers or consultants. The owner or operator shall report on research and development activities conducted pursuant to this subdivision, and any results of these activities, to the Department annually on or before July 1.

(2) The owner or operator of any sanitary landfill permitted to receive more than 240,000 tons of waste per year shall perform a feasibility study of landfill gas-to-energy, or other waste-to-energy technology, to determine opportunities for production of renewable energy from landfills in order to promote economic development and job creation in the State. The owner or operator shall initiate the study when sufficient waste is in place at the landfill to produce gas, as determined by the United States Environmental Protection Agency's Landfill Gas Emissions Model (LandGEM), and may consult and coordinate with other entities to facilitate conduct of the study,

including local and State government agencies, economic development organizations, consultants, and third-party developers. The study shall specifically examine opportunities for returning a portion of the benefits derived from energy produced from the landfill to the jurisdiction within which the landfill is located in the form of direct supply of energy to the local government and its citizens, or through revenue sharing with the local government from sale of the energy, with revenues owing to the local government credited to a fund specifically designated for economic development within the jurisdiction. The owner or operator shall report on its activities associated with the study, and any results of the study, to the Department annually on or before July 1.

(i) The Department shall not issue a permit for a sanitary landfill that authorizes:

(1) A capacity of more than 55 million cubic yards of waste.

(2) A disposal area of more than 350 acres.

(3) A maximum height, including the cap and cover vegetation, of more than ~~250~~ 300 feet above the mean natural elevation of the disposal area. The Department shall include a condition for enhanced closure requirements concerning vegetative cover and reclamation of the property, in any permit issued for a sanitary landfill that authorizes a maximum height, including the cap and cover vegetation, between 101 feet and 300 feet above the mean natural elevation of the disposal area.

(j) This section does not apply to landfills for the disposal of land clearing and inert debris or to Type I or Type II compost facilities."

SECTION 3.(b) This section becomes effective August 1, 2013, except that (i) the repeal of G.S. 130A-295.6(d)(2), as enacted by Section 3(a) of this act, applies retroactively to applications for permits submitted on or after January 1, 2013; and (ii) G.S. 130A-295.6(h2), as enacted by Section 3(a) of this act, applies to landfills for which a permit is issued on or after August 1, 2013.

PART IV. MODIFICATIONS TO REQUIREMENTS FOR FINANCIAL RESPONSIBILITY APPLICABLE TO APPLICANTS AND PERMIT HOLDERS FOR SOLID WASTE MANAGEMENT FACILITIES

SECTION 4. 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 two million dollars ($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.

...

(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 ~~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."

PART V. SPECIFY THAT CLEANUP OF ON-SITE LEACHATE IS NOT REQUIRED WHEN CONDUCTING RISK-BASED REMEDIATION OF LANDFILLS

SECTION 5. G.S. 130A-310.68 is amended by adding a new subsection to read:

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

...

(c) Notwithstanding any other requirement of this Article, with respect to sanitary landfills, a permit holder shall not be required to take assessment or corrective action to address leachate unless the leachate has reached the compliance boundary of the facility."

PART VI. LIMIT FREQUENCY OF CHANGES TO GROUNDWATER STANDARDS

SECTION 6. G.S. 143-214.1 reads as rewritten:

"**§ 143-214.1. Water; water quality standards and classifications; duties of Commission.**

(a) Development and Adoption of Classifications and Standards. – 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:
(1) To develop and adopt, after proper study, a series of classifications and the standards applicable to each such classification, which will be appropriate for the purpose of classifying each of the waters of the State in such a way as to promote the policy and purposes of this Article most effectively;
(2) To survey all the waters of the State and to separately identify all such waters as the Commission believes ought to be classified separately in order to promote the policy and purposes of this Article, omitting only such waters, as in the opinion of the Commission, are insufficiently important to justify classification or control under this Article; and
(3) To assign to each identified water of the State such classification, from the series adopted as specified above, as the Commission deems proper in order to promote the policy and purposes of this Article most effectively.

(a1) Limitation on Development of Groundwater Standards. – Notwithstanding any requirement of this section, the Commission shall not adopt and the Department shall not enforce rules providing for a review of groundwater standards more frequently than on a five-year basis.

(b) Criteria for Classification. – In developing and adopting classifications, and the standards applicable to each, the Commission shall recognize that a number of different classifications should be provided for (with different standards applicable to each) so as to give effect to the need for balancing conflicting considerations as to usage and other variable factors; that different classifications with different standards applicable thereto may frequently be appropriate for different segments of the same water; and that each classification and the standards applicable thereto should be adopted with primary reference to the best usage to be made of the waters to which such classification will be assigned.

(c) Criteria for Standards. – In establishing the standards applicable to each classification, the Commission shall consider and the standards when finally adopted and published shall state: the extent to which any physical, chemical, or biological properties should be prescribed as essential to the contemplated best usage.

(d) Criteria for Assignment of Classifications. – In assigning to each identified water the appropriate classifications (with its accompanying standards), the Commission shall consider, and the decision of the Commission when finally adopted and published shall contain its conclusions with respect to the following factors as related to such identified waters:

(1) The size, depth, surface area covered, volume, direction and rate of flow, stream gradient and temperature of the water;

(2) The character of the district bordering said water, including any peculiar suitability such district may have or any dominant economic interest or development which has become established in relation to or by reason of any particular use of such water;

(3) The uses and extent thereof which have been made, are being made, or may in the future be made, of such water for domestic consumption, bathing, fish or wildlife and their culture, industrial consumption, transportation, fire prevention, power generation, scientific or research uses, the disposal of sewage, industrial wastes and other wastes, or any other uses;

(4) In revising existing or adopting new water quality classifications or standards, the Commission shall consider the use and value of State waters for public water supply, propagation of fish and wildlife, recreation, agriculture, industrial and other purposes, use and value for navigation, and shall take into consideration, among other things, an estimate as prepared under section 305(b)(1) of the Federal Water Pollution Control Act amendments of 1972 of the environmental impact, the economic and social costs necessary to achieve the proposed standards, the economic and social benefits of such achievement and an estimate of the date of such achievement;

(5) With regard to the groundwaters, the factors to be considered shall include the natural quality of the water below land surface and the condition of occurrences, recharge, movement and discharge, the vulnerability to pollution from wastewaters and other substances, and the potential for improvement of the quality and quantity of the water.

(e) Chapter 150B of the General Statutes governs the adoption and publication of rules under this Article.

(f), (g) Repealed by Session Laws 1987, c. 827, s. 156."

PART VII. AMEND RULE GOVERNING COLLECTION AND TRANSPORT OF SOLID WASTE TO REQUIRE THAT CONTAINERS BE "LEAK-RESISTANT" RATHER THAN "LEAK-PROOF"

SECTION 7.(a) Definitions. – "Collection and Transport Rule" means 15A NCAC 13B .0105 (Collection and Transportation of Solid Waste) for purposes of this section and its implementation.

SECTION 7.(b) Collection and Transport Rule. – Until the effective date of the revised permanent rule that the Commission for Public Health is required to adopt pursuant to Section 7(d) of this act, the Commission and the Department of Environment and Natural Resources shall implement the Collection and Transport Rule, as provided in Section 7(c) of this act.

SECTION 7.(c) Implementation. – Notwithstanding any provision of the Collection and Transport Rule, the Commission shall not require vehicles or containers used for the collection and transportation of solid waste to be leak-proof; however, they may require design of these containers to be leak-resistant in accordance with industry standards.

SECTION 7.(d) Additional Rule-Making Authority. – The Commission shall adopt a rule to replace the Collection and Transport Rule. 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 7(c) of this act. Rules adopted pursuant to this section are not subject to G.S. 150B-21.9 through G.S. 150B-21.14. The rule 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 7.(e) Effective Date. – Section 7(c) of this act expires when permanent rules to replace Section 7(c) of this act have become effective, as provided by Section 7(d) of this act.

PART VIII. AMEND RULES GOVERNING CONTROL OF LEACHATE TO CLARIFY THAT LIQUID ADHERING TO TIRES OF VEHICLES LEAVING SANITARY LANDFILLS OR LIQUID GENERATED DURING THE TRANSPORT OF SOLID WASTE SHALL NOT BE TREATED AS VIOLATIONS OF LEACHATE CONTROL REQUIREMENTS

SECTION 8.(a) G.S. 130A-290 is amended by adding a new subdivision to read:

"(16a) "Leachate" means a liquid that has passed through or emerged from solid waste and contains soluble, suspended, or miscible materials removed from such waste. The term "leachate" does not include liquid adhering to tires of vehicles leaving a sanitary landfill or liquids that are generated during the transportation of solid waste."

SECTION 8.(b) Definitions. – "Leachate Storage Requirements Rule" means 15A NCAC 13B .1680 (Leachate Storage Requirements) for purposes of this section and its implementation.

SECTION 8.(c) Leachate Storage Requirements Rule. – Until the effective date of the revised permanent rule that the Commission for Public Health is required to adopt pursuant to Section 8(e) of this act, the Commission and the Department of Environment and Natural Resources shall implement the Leachate Storage Requirements Rule and any other rule governing control of leachate under Chapter 13 of Title 15A of the North Carolina Administrative Code, as provided in Section 8(d) of this act.

SECTION 8.(d) Implementation. – Notwithstanding any provision of the Leachate Storage Requirements Rule, or any other rule governing control of leachate under Chapter 13 of Title 15A of the North Carolina Administrative Code, liquid adhering to tires of vehicles leaving a sanitary landfill or liquid generated during the transportation of solid waste shall not be treated by the Commission or the Department as a violation of any leachate control requirements under the Administrative Code.

SECTION 8.(e) Additional Rule-Making Authority. – The Commission shall adopt a rule to replace the Leachate Storage Requirements Rule and any other rule governing control

of leachate under Chapter 13 of Title 15A of the North Carolina Administrative Code. 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 8(d) of this act. Rules adopted pursuant to this section are not subject to G.S. 150B-21.9 through G.S. 150B-21.14. The rule 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 8.(f) Effective Date. – Section 8(d) of this act expires when permanent rules to replace Section 8(d) of this act have become effective, as provided by Section 8(e) of this act.

PART IX. AUTHORIZE: CITIES AND COUNTIES THAT ACCEPT SOLID WASTE FROM OTHER LOCAL GOVERNMENTS TO LEVY A SURCHARGE ON FEES FOR USE OF THEIR DISPOSAL FACILITIES, AND TO MAKE APPROPRIATIONS FROM A UTILITY OR PUBLIC SERVICE ENTERPRISE FUND USED FOR OPERATION OF A LANDFILL TO THE JURISDICTION'S GENERAL FUND UPON CERTAIN FINDINGS

SECTION 9.(a) G.S. 153A-292(b) reads as rewritten:

"(b) The board of county commissioners may impose a fee for the collection of solid waste. The fee may not exceed the costs of collection.

The board of county commissioners may impose a fee for the use of a disposal facility provided by the county. ~~The~~ Except as provided in this subsection, the fee for use may not exceed the cost of operating the ~~facility and may be imposed only on those who use the~~ facility. The fee may exceed those costs if the county enters into a contract with another county or city to accept the other entity's solid waste and the county by ordinance levies a surcharge on the fee which may be used for any purpose for which the county may appropriate funds. A fee under this paragraph may be imposed only on those who use the facility. The fee for use may vary based on the amount, characteristics, and form of recyclable materials present in solid waste brought to the facility for disposal. A county may not impose a fee for the use of a disposal facility on a city located in the county or a contractor or resident of the city unless the fee is based on a schedule that applies uniformly throughout the county.

The board of county commissioners may impose a fee for the availability of a disposal facility provided by the county. A fee for availability may not exceed the cost of providing the facility and may be imposed on all improved property in the county that benefits from the availability of the facility. A county may not impose an availability fee on property whose solid waste is collected by a county, a city, or a private contractor for a fee if the fee imposed by a county, a city, or a private contractor for the collection of solid waste includes a charge for the availability and use of a disposal facility provided by the county. Property served by a private contractor who disposes of solid waste collected from the property in a disposal facility provided by a private contractor that provides the same services as those provided by the county disposal facility is not considered to benefit from a disposal facility provided by the county and is not subject to a fee imposed by the county for the availability of a disposal facility provided by the county. To the extent that the services provided by the county disposal facility differ from the services provided by the disposal facility provided by a private contractor in the same county, the county may charge an availability fee to cover the costs of the additional services provided by the county disposal facility.

In determining the costs of providing and operating a disposal facility, a county may consider solid waste management costs incidental to a county's handling and disposal of solid waste at its disposal facility, including the costs of the methods of solid waste management specified in G.S. 130A-309.04(a) of the Solid Waste Management Act of 1989. A fee for the availability or use of a disposal facility may be based on the combined costs of the different disposal facilities provided by the county."

SECTION 9.(b) G.S. 159-13(b)(14) reads as rewritten:

"(b) The following directions and limitations shall bind the governing board in adopting the budget ordinance:

...

(14) No appropriation may be made from a utility or public service enterprise fund to any other fund than the appropriate debt service fund unless the total of all other appropriations in the fund equal or exceed the amount that will be required during the fiscal year, as shown by the budget ordinance, to meet operating expenses, capital outlay, and debt service on outstanding utility or enterprise bonds or notes. A county may, upon a finding that a fund balance in a utility or public service enterprise fund used for operation of a landfill exceeds the requirements for funding the operation of that fund, including closure and post-closure expenditures, transfer excess funds to be used to support the other services supported by the county's general fund."

SECTION 9.(c) G.S. 160A-314.1 reads as rewritten:

"**§ 160A-314.1. Availability fees for solid waste disposal facilities; collection of any solid waste fees.**

(a) A city may impose a fee for the collection of solid waste. The fee may not exceed the costs of collection.

A city may impose a fee for the use of a disposal facility provided by the city. Except as provided in this subsection, the fee for use may not exceed the cost of operating the facility. The fee may exceed those costs if the city enters into a contract with another county or city to accept the other entity's solid waste and the city by ordinance levies a surcharge on the fee which may be used for any purpose for which the city may appropriate funds. A fee under this paragraph may be imposed only on those who use the facility. The fee for use may vary based on the amount, characteristics, and form of recyclable materials present in solid waste brought to the facility for disposal.

(a1) In addition to a fee that a city may impose for collecting solid waste or for using a disposal facility, a city may impose a fee for the availability of a disposal facility provided by the city. A fee for availability may not exceed the cost of providing the facility and may be imposed on all improved property in the city that benefits from the availability of the facility. A city may not impose an availability fee on property whose solid waste is collected by a county, a city, or a private contractor for a fee if the fee imposed by a county, a city, or a private contractor for the collection of solid waste includes a charge for the availability and use of a disposal facility provided by the city. Property served by a private contractor who disposes of solid waste collected from the property in a disposal facility provided by a private contractor that provides the same services as those provided by the city disposal facility is not considered to benefit from a disposal facility provided by the city and is not subject to a fee imposed by the city for the availability of a disposal facility provided by the city. To the extent that the services provided by the city disposal facility differ from the services provided by the disposal facility provided by a private contractor in the same city, the city may charge an availability fee to cover the costs of the additional services provided by the city disposal facility.

In determining the costs of providing and operating a disposal facility, a city may consider solid waste management costs incidental to a city's handling and disposal of solid waste at its disposal facility. A fee for the availability or use of a disposal facility may be based on the combined costs of the different disposal facilities provided by the city.

(b) A city may adopt an ordinance providing that any fee imposed under subsection (a) or under G.S. 160A-314 for collecting or disposing of solid waste may be billed with property taxes, may be payable in the same manner as property taxes, and, in the case of nonpayment, may be collected in any manner by which delinquent personal or real property taxes can be collected. If an ordinance states that delinquent fees can be collected in the same manner as

delinquent real property taxes, the fees are a lien on the real property described on the bill that includes the fee."

SECTION 9.(d) G.S. 160A-314(a2) reads as rewritten:

"**§ 160A-314. Authority to fix and enforce rates.**

(a2) A fee for the use of a disposal facility provided by the city may vary based on the amount, characteristics, and form of recyclable materials present in solid waste brought to the facility for disposal. This section does not prohibit a city from providing aid to low-income persons to pay all or part of the cost of solid waste management services for those persons. A city may, upon a finding that a fund balance in a utility or public service enterprise fund used for operation of a landfill exceeds the requirements for funding the operation of that fund, including closure and post-closure expenditures, transfer excess funds to be used to support the other services supported by the city's general fund."

SECTION 9.(e) G.S. 130A-294(b1) is amended by adding a new subdivision to read:

"(2b) A local government may elect to include as part of a franchise agreement a surcharge on waste disposed of in its jurisdiction by other local governments located within the State."

SECTION 9.(f) This section is effective August 1, 2013, and Section 9(e) is applicable to franchise agreements executed on or after that date.

PART X. SEVERABILITY AND EFFECTIVE DATE

SECTION 10.(a) If any section or provision of this act is declared unconstitutional or invalid by the courts, it does not affect the validity of this act as a whole or any part other than the part so declared to be unconstitutional or invalid.

SECTION 10.(b) Except as otherwise provided, this act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

S 1

SENATE BILL 328

Short Title:	Solid Waste Management Reform Act of 2013.	(Public)
Sponsors:	Senators Wade, Brown, and Jackson (Primary Sponsors).	
Referred to:	Agriculture/Environment/Natural Resources.	

March 19, 2013

A BILL TO BE ENTITLED

AN ACT TO DIRECT THE COMMISSION FOR PUBLIC HEALTH AND THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES TO ADOPT AND ENFORCE A RULE REQUIRING VEHICLES OR CONTAINERS USED FOR THE COLLECTION AND TRANSPORTATION OF SOLID WASTE TO BE LEAK-RESISTANT, RATHER THAN LEAK-PROOF.

The General Assembly of North Carolina enacts:

SECTION 1.(a) Definitions. – "Collection and Transport Rule" means 15A NCAC 13B .0105 (Collection and Transportation of Solid Waste) for purposes of this section and its implementation.

SECTION 1.(b) Collection and Transport Rule. – Until the effective date of the revised permanent rule that the Commission for Public Health is required to adopt pursuant to Section 1(c) of this act, the Commission and the Department of Environment and Natural Resources shall implement the Collection and Transport Rule, as provided in Section 1(c) of this act.

SECTION 1.(c) Implementation. – Notwithstanding any provision of the Collection and Transport Rule, the Commission shall not require vehicles or containers used for the collection and transportation of solid waste to be leak-proof; however, they may require design of these containers to be leak-resistant in accordance with industry standards.

SECTION 1.(d) Additional Rule-Making Authority. – The Commission shall adopt a rule to replace the Collection and Transport Rule. 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 1(c) of this act. Rules adopted pursuant to this section are not subject to G.S. 150B-21.9 through G.S. 150B-21.14. The rule 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 1.(e) Effective Date. – Section 1(b) of this act expires when permanent rules to replace Section 1(b) of this act have become effective, as provided by Section 1(c) of this act.

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

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

S 1

SENATE BILL 628

Short Title:	DMV Block Registration/Unpaid Parking Fines.	(Public)
Sponsors:	Senators Wade, Tillman, and Barringer (Primary Sponsors).	
Referred to:	Transportation.	

April 4, 2013

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE DIVISION OF MOTOR VEHICLES TO REFUSE REGISTRATION OR ISSUANCE OF A CERTIFICATE OF TITLE OR ANY TRANSFER OF REGISTRATION IF A CITY HAS NOTIFIED THE DIVISION OF MOTOR VEHICLES THAT THE OWNER OF THE MOTOR VEHICLE HAS UNPAID PARKING FINES OR PENALTIES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-54 is amended by adding a new subdivision to read:

"**§ 20-54. Authority for refusing registration or certificate of title.**

The Division shall refuse registration or issuance of a certificate of title or any transfer of registration upon any of the following grounds:

...

(11) A city has notified the Division pursuant to G.S. 160A-301(f) that the owner of the vehicle has not paid the amount of fines or penalties imposed upon the owner for committing a parking violation."

SECTION 2. G.S. 160A-301 is amended by adding a new subsection to read:

"(f) A city may notify the Division of Motor Vehicles that a person has failed to pay any fine or penalty imposed for a violation of an ordinance adopted pursuant to this section. Upon receiving notice from the city and pursuant to G.S. 20-54, the Division shall refuse registration or issuance of a certificate of title or any transfer of registration for a motor vehicle owned by the person who failed to pay the fine or penalty. The Division of Motor Vehicles shall continue to refuse registration or issuance of a certificate of title or any transfer of registration until the city notifies the Division of Motor Vehicles that the person has (i) demonstrated to the city that he or she is not the person charged with the offense in which the fine was imposed, (ii) paid the fine or penalty owed to the city, or (iii) demonstrated to the city that his or her failure to pay the fine or penalty was not willful and that he or she is making a good faith effort to pay the fine or penalty. The provisions of this subsection shall be in addition to any other actions a city may take to enforce the payment of any fine or penalty imposed for a violation of an ordinance adopted pursuant to this section."

SECTION 3. This act becomes effective December 1, 2013, and applies to any fines or penalties imposed on or after that date.

VISITOR REGISTRATION SHEET

Senate/Agriculture/Environment/Natural Resources
(Committee Name)

6/6/2013
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Tom Bean	EDF, NCWF, NCSEA
Mark Ashill	SELC
Julie Robinson	NCSEA
Sarah Wolfe	MWC LLC
[illegible]	NS
Chris Emanuel	The C.G. Emanuel Group
Danielle Lee	The C.G. Emanuel Group
Courtney Dupree	The C.G. Emanuel Group
Kristin Tenwey	NC DENR
Jacob Davis	NC DENR
Jessica M Marlies	NC DENR
Johanna Reese	NCACC
Julie Hochstein	NCACC
Will Culpepper	MVA
Richard Poindexter	Columbia Forest Products
Nadia Luhr	NCCN
William ARENT	CRMCA

VISITOR REGISTRATION SHEET

Senate/Agriculture/Environment/Natural Resources
(Committee Name)

6/6/2013
Date

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Cassie Gavin	Sierra Club
Tatuis-Ain	Gobb N TR
Elizabeth Merritt	Governor's Office
Dexter Matthews	DENR - Div of Waste Management
Mitch Gillespie	DENR
Denny Murphy	ARCHITECTS TRIANGLE PLLC
Laura Klaicke	USGBC-NC
David Crawford	AIA NC
Molly Diggins	Sierra Club
Susan Vick	FSP
Betsy Bailey	PFNC
Heather Barrett	Ward & Smith
Leslie Young	Ward & Smith
Neal Robbins	NC DENR
D'Lane Wiser	DWA
DYLAN WATTS	SMITH A.
Andrew Tayor	SENATE STAFF

09-21-201

VISITOR REGISTRATION SHEET

Senate/Agriculture/Environment/Natural Resources
(Committee Name)

6/6/2013
Date

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DAVID WARD	LOWE'S
Keith Richardson	City of Charlotte
Carr McLamb	DENR
DANIEL BRAUN	TROUTMAN SANDERS
Dave Simpson	CAUC
CHRIS DILLON	NCWRC
Angus Thomson	NFIB
Lonnie Payne	NC GRANGE
VALE PARKER	NCFB
Wade Thompson	Weyerhaeuser
Sam Kendall	Weyerhaeuser
Rudy Underwood	Am. Chemistry Council
Amy Fullbright	K&L Gates
Hayden Baucom	FSP
Tom Fetzer	FSP
BB Schaefer	NCFA
JACK JORDAN	JORDAN Lumber Co PO Box 98 Mt. Gilead NC

09-21-201

VISITOR REGISTRATION SHEET

Senate/Agriculture/Environment/Natural Resources
(Committee Name)

6/6/2013
Date

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NAME	FIRM OR AGENCY AND ADDRESS
Savanna Davis	WM
Bertha Albritton	ABC Carolinas
Kelli Kuhlman	Duke Energy
Pam Kilpatrick	Nelson Mullins
Bill Schrum	Republic Services
BRUCE THOMPSON	PARKER POE
Marissa Fennell	K+L Gates
TJ Bugbee	NP
Chris Anderson	
George Smith	NP
Phil Carter	WASTE INDUSTRIES
Sam Sessoms	NP
Allen Harrison	CRSWMA
Joy Hicks	NCDA
Tom Steen	NCPC
Preston Howard	NCMA
Kay Emanuel	School of Government

09-21-201

VISITOR REGISTRATION SHEET

Senate/Agriculture/Environment/Natural Resources
(Committee Name)

6/6/2013
Date

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NAME	FIRM OR AGENCY AND ADDRESS
Mark Lanier	UNCW
Erin Wynia	NCLM
Edgar M. Hoer	CTNC
Lori Ann Harris	LATA
Steven Webb	NCACA

09-21-201

SENATE PAGES ATTENDING

COMMITTEE: Agriculture ROOM: 421

DATE: 6-6 TIME: 9 AM

PLEASE PRINT LEGIBILY!!!!!!!!!!!!....*or else!*

Page Name	Hometown	Sponsoring Senator
1. Max Toney	Reidsville	Berger
2. Carol Ann Schwarzenbach	Jacksonville	Brown
3. Eva Barlowe	Wilmington	Jackson
4. Madison Bell	Louisburg	Barefoot
5. Grayson Russell	Knightdale	Berger
6. Will Finch	Reidsville	Berger
7. Alex Hale	Eden	Berger
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 SERGEANT-AT-ARMS

COMMITTEE: **SENATE AGRICULTURE / ENR**

DATE: 06/06/13 ROOM: 421

1. ANDERSON MEADOWS
2. ED KESLER
3. JUSTIN OWENS
4. _____

Senate Committee on Agriculture/Environment/Natural Resources
Tuesday, June 11, 2013, 11:00 AM
544 Legislative Office Building

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

BILL NO.	SHORT TITLE	SPONSOR
HB 628	Protect/Promote NC Lumber.	Representative Presnell Representative Catlin
HB 614	NC Agriculture and Forestry Act.	Representative Ramsey Representative Presnell Representative Waddell
HB 548	Marine Fisheries Rulebook Production.	Representative Steinburg Representative Samuelson Representative Moffitt Representative Hastings
HB 686	NC Seafood Park/Name Change.	Representative Tine Representative Stone Representative Steinburg
HB 936	Wildlife Poacher Reward Fund.	Representative Wray Representative Faircloth Representative Moffitt Representative J. Bell
HB 396	Enact Private Well Water Education Act.-AB	Representative Catlin Representative Moffitt Representative Millis Representative Hollo

Adjournment

Senate Committee on Agriculture/Environment/Natural Resources
Tuesday, June 11, 2013 at 11:00 AM
Room 544 of the Legislative Office Building

MINUTES

The Senate Committee on Agriculture/Environment/Natural Resources met at 11:00 AM on June 11, 2013 in Room 544 of the Legislative Office Building. Sixteen (16) members were present.

Sen. Brent Jackson presided.

Sen. Jackson introduced the pages: Maggie Powell from Wilmington sponsored by Sen. Goolsby, Kathy Jarema from Raleigh sponsored by Sen. Hunt, Lilly Myers from Winston-Salem sponsored by Sen. Brunstetter, Ashlyn Murray from Laurinburg sponsored by Sen. McLaurin, Jelisa Murray from Raleigh sponsored by Sen. Blue and Tristan Gordon from Monroe sponsored by Sen. Tucker.

Sgt. of Arms for the meeting were Charles Harper, Ed Kesler, Ken Kirby, and Justin Owens.

The following bills were heard:

HB 396 – Enact Private Well Water Education Act –AB – Rep. Catlin

Rep. Catlin explained the bill. There were no follow-up questions. Sen. Ford moved for a Favorable Report. The motion carried. Sen. McLaurin will handle on the floor

HB 628 – Protect/Promote NC Lumber – Rep. Presnell

Rep. Presnell explained the bill. Sen Walters went on record with Senate Rule 29 and recused himself from participating in the discussion on this bill. Sen. Tucker submitted an amendment. The amendment was explained by Sen. Tucker and staff member, Jennifer McGinnis. There was a follow-up from Sen. Bryant which Jennifer McGinnis responded. Sen. Rabin moved for a Favorable Report on the amendment. The motion carried. The following people from the audience spoke on the amendment: Laura Klauke, US Green Building Council; Will Culpepper, NCCOR Steel Corporation; Richard Poindexter, Columbia Forest Products; Jim Sitts, Appalachian Timber Manager for Columbia Forest Products; Connie Wilson, NC Ready Mix Association; Dave Crawford, America Institute of Architect; Rudy Underwood, American Chemical Council, and Bob Schaefer, NC Forestry Association; Tom Bean, NC Sustainable Energy Association. Sen. Tucker had a follow-up question for Mr. Bean and Mr. Bean responded. Teresa Kostrzewa from NORESCO spoke regarding the 10 year proof of savings in the bill. She felt that this timeframe should be extended. Sen. Tucker responded to Ms. Kostrzewa that he would be amendable to extending the timeframe to make it more manageable, but would not be amendable to extending it so far that it makes the numbers work. Sen. Kinnaird followed up. Rep. Presnell stated that 10 years was all that she was willing to go. Sen. Kinnaird followed up. Sen. Cook made a motion

for a Favorable Report to the bill as amended. The motion carried. The amendment was rolled into a PCS. Sen. Tucker will handle on the floor.

HB 686 – NC Seafood Park/Name Change – Rep. Tine

Rep. Tine explained the bill. There were no follow up questions. Sen. Ford moved for a Favorable Report. This bill has a serial referral to Judiciary 1. The motion carried. Sen. Cook will handle on the floor.

HB 548 – Marine Fisheries Rulebook Production – Rep. Steinburg

Rep. Steinburg explained the bill. Sen. Wade had a follow up question which Rep. Steinburg responded. Sen. Bingham moved for a Favorable Report. The motion carried. Sen. Bingham will handle on the floor.

HB 936 – Wildlife Poacher Reward Fund – Rep. Faircloth

Rep. Faircloth explained the bill. Sen. Bingham had a follow-up question which Rep. Faircloth responded. Mr. J. R. Stone from the audience spoke in support of the bill. Sen. Wade moved for a Favorable Report and the motion carried. This bill has a serial referral to Finance. Sen. Wade will handle on the floor.

Sen. Brock took over presiding as Sen. Jackson explained the following bill:

HB 614 – NC Agriculture and Forestry Act - Sen. Jackson for Rep. Ramsey

Sen. Jackson moved to accept the PCS. The motion carried. Sen. Jackson explained the bill. Sen. Jackson had an amendment with a technical change. Sen. Jackson moved to accept the amendment. The motion carried. Sen. Tucker had a follow-up which Sen. Jackson answered. Sen. Kinnaird had a follow-up which Sen. Jackson responded. Sen. Bingham moved for an Unfavorable Report to the Original and a Favorable Report to the PCS as amended. The motion carried. Sen. Jackson will handle on the floor.

The meeting adjourned at 11:55 AM

Sen. Brent Jackson
Presiding

Judy Edwards, Committee Clerk

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES COMMITTEE REPORT
Senator Brock, Co-Chair
Senator Jackson, Co-Chair

Tuesday, June 11, 2013

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

FAVORABLE

HB **396** **(CS#1)** Enact Private Well Water Education Act.-AB
Draft Number: None
Sequential Referral: None
Recommended Referral: None
Long Title Amended: No

HB **548** **(CS#1)** Marine Fisheries Rulebook Production.
Draft Number: None
Sequential Referral: None
Recommended Referral: None
Long Title Amended: No

HB **686** **(CS#1)** NC Seafood Park/Name Change.
Draft Number: None
Sequential Referral: Judiciary I
Recommended Referral: None
Long Title Amended: No

HB **936** **(CS#2)** Wildlife Poacher Reward Fund.
Draft Number: None
Sequential Referral: Finance
Recommended Referral: None
Long Title Amended: No

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 1, BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL

HB **628** **(CS#1)** Protect/Promote NC Lumber.
Draft Number: H628-PCS80375-RI-25
Sequential Referral: None
Recommended Referral: None
Long Title Amended: Yes



Tuesday, June 11, 2013

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

HB **614** **(CS#2)** NC Agriculture and Forestry Act.

Draft Number:	H614-PCS70450-TQ-49
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

TOTAL REPORTED: 6

Senator Eugene McLaurin will handle HB 396
Senator Stan Bingham will handle HB 548
Senator Bill Cook will handle HB 686
Senator Trudy Wade will handle HB 936
Senator Tommy Tucker will handle HB 628
Senator W. Jackson will handle HB 614



GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

H D

HOUSE BILL 628
Committee Substitute Favorable 5/8/13
Third Edition Engrossed 5/13/13
PROPOSED SENATE COMMITTEE SUBSTITUTE H628-PCS80375-RI-25

Short Title: Protect/Promote Locally Sourced Bldg. Mtrl's. (Public)

Sponsors:

Referred to:

April 10, 2013

A BILL TO BE ENTITLED

AN ACT TO REQUIRE NET SAVINGS IN ASSOCIATION WITH MAJOR FACILITY CONSTRUCTION AND RENOVATION PROJECTS AND PROTECT USE OF NORTH CAROLINA PRODUCTS IN MAJOR FACILITY CONSTRUCTION AND RENOVATION PROJECTS UNDER THE SUSTAINABLE ENERGY-EFFICIENT BUILDINGS PROGRAM.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 143-135.37 is amended by adding two new subsections to read:

"(a1) Net Savings Required. – The requirements of this section apply to a major facility construction or renovation project only if the Department determines that the application of the requirements to the project will result in an anticipated net savings. There is an anticipated net savings if the cost of construction or renovation in accordance with the requirements of this section plus the estimated operating costs for the first 10 years post-construction would be less than the cost of construction or renovation if the project were not subject to the requirements of this section plus the estimated operating costs for the first 10 years post-construction. All third-party certification costs before and after construction or renovation shall be included in determining construction and operating costs.

...

(f) Locally Sourced Materials. – To achieve sustainable building standards as required by this section, a major facility construction or renovation project may utilize a building rating system so long as the rating system (i) provides certification credits for, (ii) provides a preference to be given to, (iii) does not disadvantage, and (iv) promotes building materials or furnishings, including masonry, concrete, steel, textiles, or wood that are manufactured or produced within the State."

SECTION 2. This act becomes effective October 1, 2013, and applies to construction and renovation projects for which the bidding process is initiated on or after that date.

HOUSE BILL 628:
Protect/Promote NC Lumber

2013-2014 General Assembly

Committee:	Senate Agriculture/Environment/Natural Resources	**Date:**	June 6, 2013
Introduced by:	Reps. Presnell, Catlin	**Prepared by:**	Jennifer McGinnis Committee Counsel
Analysis of:	Third Edition		

SUMMARY: ***With respect to sustainable energy-efficient building standards required for certain public construction and renovation projects, House Bill 628 would only allow application of a rating system that: (1) uses a material or product-based credit system that does not disadvantage materials or products manufactured or produced in this State; (2) gives certification credits equally to forest products grown, manufactured, and certified under the Sustainable Forestry Initiative, the American Tree Farm System, and the Forest Stewardship Council; (3) is developed in conformity with American National Standards Institute procedures; and (4) is approved by the American National Standards Institute or developed by a designator audited by the American National Standards Institute.***

CURRENT LAW: Current law generally requires new State, university, and community college buildings and major renovations of these buildings to use energy and water efficient construction standards. The following definitions apply:

- *Major facility construction project* means a construction project larger than 20,000 gross square feet of occupied or conditioned space (except for projects to construct transmitter buildings or pumping stations).
- *Major facility renovation project* means a project to renovate a building when the cost of the project is greater than 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 (except for projects to construct transmitter buildings or pumping stations, and projects to renovate buildings that have historic, architectural, or cultural significance).

The Sustainable Energy-Efficient Buildings Program (Program) is administered by the Department of Administration (Department) and 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 (covered projects). Specifically, the Program requires all major construction projects to be designed, constructed, and certified to at least 30% greater energy efficiency standards than ASHRAE 90.1-2004, and 20% greater energy efficiency than ASHRAE 90.1-2004 for major facility renovation projects. There are also requirements applicable to water systems water systems for covered projects.

ASHRAE 90.1-2004 is a standard that provides minimum energy-efficient requirements for the design and construction of new buildings and their systems, portions of buildings and their systems, and systems and equipment in existing buildings. The standard also includes criteria for determining compliance with these requirements.

The applicable statutes do allow use of other standards when the energy efficient standards mandated are not practicable.

BILL ANALYSIS: With respect to sustainable energy-efficient building standards required for covered projects, House Bill 628 would only allow application of a rating system that:

1. Uses a material or product-based credit system that does not disadvantage materials or products manufactured or produced in this State;
2. Gives certification credits equally to forest products grown, manufactured, and certified under the Sustainable Forestry Initiative, the American Tree Farm System, and the Forest Stewardship Council;
3. Is developed in conformity with American National Standards Institute procedures; and
4. Is approved by the American National Standards Institute or developed by a designator audited by the American National Standards Institute.

BACKGROUND:

Sustainable Energy-efficient building standards ratings system

LEED (Leadership in Energy and Environmental Design) is a voluntary program that provides third-party verification of green buildings.

For LEED Certification, commercial building and neighborhood projects must satisfy all LEED prerequisites and earn a minimum of 40 points on a 110-point LEED rating system scale. Homes must earn a minimum of 45 points on a 136-point scale.

Under the LEED system, points can be awarded in five categories: sustainable sites, water efficiency, energy & atmosphere, materials & resources, indoor environmental quality, and innovation & design process. Credit 7 under the "materials & resources" category addresses the issue of certified wood, with the intent of encouraging environmentally responsible forest management. The requirements for the credit are:

> *"Use a minimum of 50% of wood-based materials and products, which are certified in accordance with the **Forest Stewardship Council's** (FSC) Principles and Criteria, for wood building components. These components include, but are not limited to, structural framing and general dimensional framing, flooring, sub-flooring, wood doors and finishes..." - LEED NC V2.2*

As previously noted, House Bill 628 would authorize use of a rating system associated with sustainable energy-efficient building standards only if application of the rating system **gives certification credits equally to forest products grown, manufactured, and certified under the Sustainable Forestry Initiative, the American Tree Farm System, and the Forest Stewardship Council.**

The Sustainable Forestry Initiative (SFI) is an independent, non-profit organization that maintains a sustainable forestry certification program. According to SFI, the 2010-2014 Standard is based on principles and measures that promote sustainable forest management and consider all forest values. It

includes unique fiber sourcing requirements to promote responsible forest management on all forest lands in North America.

The American Tree Farm System certifies forest management to eight standards of sustainability.

The Forest Stewardship Council is an independent, non-profit organization that sets standards under which forests and companies are certified.

As previously noted, House Bill 628 also allows use of a rating system associated with sustainable energy-efficient building standards only if application of the rating system is developed in conformity with American National Standards Institute (ANSI) procedures, and is approved by the American National Standards Institute or developed by a designator audited by the American National Standards Institute. Per the ANSI website, ANSI oversees the creation, promulgation and use of thousands of norms and guidelines that directly impact businesses in nearly every sector.

EFFECTIVE DATE: The bill would be effective October 1, 2013, and would apply to construction and renovation projects for which the bidding process is initiated on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

H 3

HOUSE BILL 628
Committee Substitute Favorable 5/8/13
Third Edition Engrossed 5/13/13

Short Title: Protect/Promote NC Lumber. (Public)

Sponsors:

Referred to:

April 10, 2013

A BILL TO BE ENTITLED

AN ACT TO PROTECT NORTH CAROLINA TIMBER PRODUCERS BY REQUIRING THAT SUSTAINABLE BUILDING STANDARDS NOT DISADVANTAGE OR FORBID THE USE OF BUILDING MATERIALS PRODUCED IN THIS STATE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 143-135.37(b) 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.**

...

(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. To achieve sustainable building standards, a construction project may utilize a nationally recognized high-performance environmental building rating system, provided that any such rating system (i) does not use a material or product-based credit system disadvantaging materials or products manufactured or produced in this State; (ii) gives certification credits equally to forest products grown, manufactured, and certified under the Sustainable Forestry Initiative, the American Tree Farm System, and the Forest Stewardship Council; (iii) must be developed in conformity with American National Standards Institute procedures; and (iv) must either be approved by the American National Standards Institute or developed by a designator audited by the American National Standards Institute. 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."

SECTION 2. This act becomes effective October 1, 2013, and applies to construction and renovation projects for which the bidding process is initiated on or after that date.



NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 628

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

H628-ARI-52 [v.6]

Comm. Sub. [YES]
Amends Title [YES]
Third Edition

Date _____,2013

Senator Tucker

moves to amend the bill by deleting the Short Title and substituting the following:

"Protect/Promote Locally Sourced Bldg. Materials."; and

on page 1, lines 1 through 28,
by rewriting those lines to read:

"A BILL TO BE ENTITLED

AN ACT TO REQUIRE NET SAVINGS IN ASSOCIATION WITH MAJOR FACILITY CONSTRUCTION AND RENOVATION PROJECTS AND PROTECT USE OF NORTH CAROLINA PRODUCTS IN MAJOR FACILITY CONSTRUCTION AND RENOVATION PROJECTS UNDER THE SUSTAINABLE ENERGY-EFFICIENT BUILDINGS PROGRAM.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 143-135.37 is amended by adding two new subsections to read:

"(a1) Net Savings Required. – The requirements of this section apply to a major facility construction or renovation project only if the Department determines that the application of the requirements to the project will result in an anticipated net savings. There is an anticipated net savings if the cost of construction or renovation in accordance with the requirements of this section plus the estimated operating costs for the first ten years post-construction would be less than the cost of construction or renovation if the project were not subject to the requirements of this section plus the estimated operating costs for the first ten years post-construction. All third-party certification costs before and after construction or renovation shall be included in determining construction and operating costs.

...

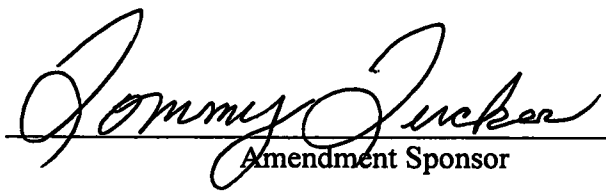
(f) Locally Sourced Materials. – To achieve sustainable building standards as required by this section, a major facility construction or renovation project may utilize a building rating system so long as the rating system: (i) provides certification credits for, (ii) provides a preference to be given to, (iii) does not disadvantage, and (iv) promotes, building materials or furnishings, including masonry, concrete, steel, textiles, or wood, that are manufactured or produced within the State."".

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 628

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

H628-ARI-52 [v.6]

1
2
3

SIGNED 
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

H D

HOUSE BILL 614*
Committee Substitute Favorable 5/8/13
Committee Substitute #2 Favorable 5/15/13
PROPOSED SENATE COMMITTEE SUBSTITUTE H614-CSTQ-49 [v.3]

6/10/2013 5:37:21 PM

Short Title: NC Agriculture and Forestry Act. (Public)

Sponsors:

Referred to:

April 10, 2013

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT AGRICULTURAL AND FORESTRY OPERATIONS ARE NOT NUISANCES UNDER CERTAIN CIRCUMSTANCES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 106-701 reads as rewritten:

"**§ 106-701. When agricultural and forestry operation, etc., not constituted nuisance by changed conditions in or about the ~~locality.~~locality outside of the operation.**

(a) No agricultural or forestry operation or any of its appurtenances shall be or become a nuisance, private or public, by any changed conditions in or about the locality ~~thereof~~outside of the operation after the ~~same~~operation has been in operation for more than one year, when such operation was not a nuisance at the time the operation ~~began; provided, that the provisions of this subsection shall not apply whenever a nuisance results from the negligent or improper operation of any such agricultural or forestry operation or its appurtenances.~~began.

(a1) The provisions of subsection (a) of this section shall not apply when the plaintiff demonstrates that the agricultural or forestry operation has undergone a fundamental change. A fundamental change to the operation does not include any of the following:

(1) A change in ownership or size.

(2) An interruption of farming for a period of no more than three years.

(3) Participation in a government-sponsored agricultural program.

(4) Employment of new technology.

(5) A change in the type of agricultural or forestry product produced.

(a2) The provisions of subsection (a) of this section shall not apply whenever a nuisance results from the negligent or improper operation of any agricultural or forestry operation or its appurtenances.

(b) For the purposes of this Article, "agricultural operation" includes, without limitation, any facility for the production for commercial purposes of crops, livestock, poultry, livestock products, or poultry products.

(b1) For the purposes of this Article, "forestry operation" shall mean those activities involved in the growing, managing, and harvesting of ~~trees, but not sawmill operations.~~trees.

(c) The provisions of subsection (a) shall not affect or defeat the right of any person, firm, or corporation to recover damages for any injuries or damages sustained by him on account of any pollution of, or change in condition of, the waters of any stream or on the account of any overflow of lands of any such person, firm, or corporation.

(d) Any and all ordinances of any unit of local government now in effect or hereafter adopted that would make the operation of any such agricultural or forestry operation or its appurtenances a nuisance or providing for abatement thereof as a nuisance in the circumstance set forth in this section are and shall be null and void; provided, however, that the provisions of this subsection shall not apply whenever a nuisance results from the negligent or improper operation of any such agricultural or forestry operation or any of its appurtenances. Provided further, that the provisions shall not apply whenever a nuisance results from an agricultural or forestry operation located within the corporate limits of any city at the time of enactment hereof.

(e) This section shall not be construed to invalidate any contracts heretofore made but insofar as contracts are concerned, it is only applicable to contracts and agreements to be made in the future.

(f) In any civil action in which an agricultural or forestry operation is alleged to be a nuisance, a prevailing defendant shall recover the aggregate amount of costs and expenses determined by the court to have been reasonably incurred in the defense of the nuisance action, including a reasonable amount for attorneys' fees."

SECTION 2. This act becomes effective October 1, 2013, and applies to causes of action arising on or after that date.

HOUSE BILL 614:
NC Agriculture and Forestry Act

2013-2014 General Assembly

Committee:	Senate Agriculture/Environment/Natural Resources	**Date:**	June 11, 2013
Introduced by:	Reps. Ramsey, Presnell, Waddell	**Prepared by:**	Chris Saunders Committee Counsel
Analysis of:	PCS to Third Edition H614-CSTQ-49 [v.3]		

SUMMARY: ***The Proposed Committee Substitute (PCS) to House Bill 614 would narrow the circumstances under which an agricultural or forestry operation could be found liable in a nuisance lawsuit, and would provide that a plaintiff in a nuisance lawsuit against an agricultural or forestry operation must pay a prevailing defendant's attorney fees.***

[As introduced, this bill was identical to S509, as introduced by Sens. Jackson, Barefoot, Brock, which is currently in Senate Judiciary I.]

CURRENT LAW: Nuisance law in North Carolina is governed by the common law. Private nuisance is defined as any unreasonable invasion of a person's interest in the private use and enjoyment of his or her land by any type of liability-forming conduct. Determining whether an interference is unreasonable is largely fact-specific and determined by the circumstances in each case. In order for the plaintiff to prevail, the interference with plaintiff's use and enjoyment must be "substantial." The plaintiff must show an effect on the health, comfort, or property of those who live nearby that results in substantial annoyance, material physical discomfort, or injury to the plaintiff's health or property.[1] A slight inconvenience or petty annoyance is not enough to support a claim. Additionally, the question in a nuisance case is whether reasonable persons generally, examining the situation as a whole and taking into account the interests of the plaintiff, defendant, and the community, would consider the interference unreasonable.

G.S. 106-701(a) modifies the common law for agricultural and forestry operations by providing that no agricultural or forestry operation that has been in operation for over a year can become a nuisance based on changed conditions in the surrounding area, except when operated negligently or improperly. The N.C. Court of Appeals has held that G.S. 106-701(a) does not apply to situations in which the landowner fundamentally changes the agricultural use of the land.[2]

BILL ANALYSIS: The PCS to House Bill 614 would amend G.S. 106-701 to provide that an agricultural or forestry operation (defined to include a sawmill operation) that has been in operation for more than one year may become a nuisance if the plaintiff alleging the nuisance demonstrates that the operation has undergone a fundamental change. A fundamental change to the operation does not include:

- A change in ownership or size.
- An interruption of farming for a period of no more than three years.
- Participation in a government-sponsored agricultural program.

[1] *Pake v. Morris*, 230 N.C. 424, 53 S.E.2d 300 (1949).

[2] *Durham v. Britt*, 17 N.C.App. 260, 451 S.E.2d 1 (1994) (holding that a change in land use from a turkey farm to a hog production facility was a fundamental change in the use of the land and could be a basis for a nuisance action).

- Employment of new technology.
- A change in the type of agricultural or forestry product produced.

The PCS would also entitle a prevailing defendant in a civil action in which an agricultural or forestry operation is alleged to be a nuisance to recover the aggregate amount of costs and expenses reasonably incurred in the defense of the action, including attorneys' fees.

EFFECTIVE DATE: The act would become effective October 1, 2013, and would apply to causes of action arising on or after that date.

HOUSE BILL 614*
Committee Substitute Favorable 5/8/13
Committee Substitute #2 Favorable 5/15/13

Short Title: NC Agriculture and Forestry Act. (Public)

Sponsors:

Referred to:

April 10, 2013

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT AGRICULTURAL AND FORESTRY OPERATIONS ARE NOT NUISANCES UNDER CERTAIN CIRCUMSTANCES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 106-701 reads as rewritten:

"**§ 106-701. When agricultural and forestry operation, etc., not constituted nuisance by changed conditions in locality.**

(a) No agricultural or forestry operation or any of its appurtenances shall be or become a nuisance, private or public, ~~by any changed conditions in or about the locality thereof after the same has been in operation for more than one year, when such operation was not a nuisance at the time the operation began; provided, that the provisions of this subsection shall not apply whenever a nuisance results from the negligent or improper operation of any such agricultural or forestry operation or its appurtenances.~~when all of the following conditions are met:

(1) There has been a changed condition in or about the locality outside of the operation.

(2) The operation has been in operation for more than one year.

(3) The operation was not a nuisance at the time the operation began.

(4) There have been no fundamental changes to the operation.

(a1) For the purposes of subsection (a) of this section, a fundamental change to the operation does not include any of the following:

(1) A change in ownership or size.

(2) Nonpermanent cessation or interruption of farming.

(3) Participation in any government-sponsored agricultural program.

(4) Employment of new technology.

(5) A change in the type of agricultural or forestry product produced.

(a2) The provisions of subsection (a) of this section shall not apply whenever a nuisance results from the negligent or improper operation of any agricultural or forestry operation or its appurtenances.

(b) For the purposes of this Article, "agricultural operation" includes, without limitation, any facility for the production for commercial purposes of crops, livestock, poultry, livestock products, or poultry products.

(b1) For the purposes of this Article, "forestry operation" shall mean those activities involved in the growing, managing, and harvesting of ~~trees, but not sawmill operations.~~trees.

(c) The provisions of subsection (a) shall not affect or defeat the right of any person, firm, or corporation to recover damages for any injuries or damages sustained by him on

account of any pollution of, or change in condition of, the waters of any stream or on the account of any overflow of lands of any such person, firm, or corporation.

(d) Any and all ordinances of any unit of local government now in effect or hereafter adopted that would make the operation of any such agricultural or forestry operation or its appurtenances a nuisance or providing for abatement thereof as a nuisance in the circumstance set forth in this section are and shall be null and void; provided, however, that the provisions of this subsection shall not apply whenever a nuisance results from the negligent or improper operation of any such agricultural or forestry operation or any of its appurtenances. Provided further, that the provisions shall not apply whenever a nuisance results from an agricultural or forestry operation located within the corporate limits of any city at the time of enactment hereof.

(e) This section shall not be construed to invalidate any contracts heretofore made but insofar as contracts are concerned, it is only applicable to contracts and agreements to be made in the future."

SECTION 2. This act becomes effective October 1, 2013, and applies to causes of action arising on or after that date.

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 614*

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

H614-ATQ-19 [v.3]

Comm. Sub. [YES]
Amends Title [YES]
Third Edition

Date _____,2013

Senator _____

moves to amend the bill on page 1, line 3 by rewriting that line to read:

"NOT NUISANCES UNDER CERTAIN CIRCUMSTANCES AND TO PROVIDE FOR THE AWARD OF COSTS AND ATTORNEYS' FEES TO A PREVAILING DEFENDANT.".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

H 2

HOUSE BILL 548
Committee Substitute Favorable 4/22/13

Short Title: Marine Fisheries Rulebook Production. (Public)

Sponsors:

Referred to:

April 4, 2013

A BILL TO BE ENTITLED

AN ACT TO MODIFY THE MEANS OF PROVIDING ACCESS TO RULES OF THE DIVISION OF MARINE FISHERIES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 113-221 reads as rewritten:

"**§ 113-221. Rules.**

...

(b) Upon purchasing a license, each licensee shall be ~~given~~ provided access to a copy of the rules concerning the activities authorized by the license. The copy may be in written or electronic form, including by file download over the Internet. A written copy of the rules shall be provided to a licensee upon request.

(c) The Fisheries Director shall notify licensees of a new rule or change to a rule by sending each licensee either a newsletter containing the text of the rule or change or an updated codification of the rules of the Marine Fisheries Commission that contains the new rule or change. The Director may elect to use electronic means rather than mail to notify licensees if electronic means would be more timely and cost-effective. A written copy of any notification produced in accordance with this section shall be provided to a licensee upon request.

...."

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

HOUSE BILL 548:
Marine Fisheries Rulebook Production

2013-2014 General Assembly

Committee:	Senate Agriculture/Environment/Natural Resources	**Date:**	June 11, 2013
Introduced by:	Reps. Steinburg, Samuelson, Moffitt, Hastings	**Prepared by:**	Jennifer Mundt Committee Analyst
Analysis of:	Second Edition		

SUMMARY: ***House Bill 548 would allow the Division of Marine Fisheries to provide new licensees with electronic copies of the rules concerning activities authorized by the licenses and allows the Division to send electronic notices of new rules or changes to existing rules.***

CURRENT LAW: G.S. 113-221 requires the Division of Marine Fisheries (Division) in the Department of Environment and Natural Resources to provide a copy of the rules concerning authorized activities to each licensee upon purchasing a license. The Fisheries Director is also required to notify licensees of a new rule or change to a rule by sending each licensee either a newsletter or an updated codification of the rules.

BILL ANALYSIS: House Bill 548 would authorize the Division to provide licensees with the rules electronically upon purchase of a license, however, a written copy of the rules must be provided upon request by the licensee. In addition, the bill would allow the Fisheries Director to send licensees electronic notices of new rules or changes to existing rules. A licensee may request, and the Division must provide, a written copy of any notification issued pursuant to G.S. 113-221.

EFFECTIVE DATE: House Bill 548 would be effective when it becomes law.

BACKGROUND: The Division of Marine Fisheries issues the following licenses:

- Coastal Recreational Fishing Licenses (CRFL)
- Ten-Day CRFL
- Fish Dealer License
- For Hire Blanket CRFL
- Land or Sell License
- License to Land Flounder from the Atlantic Ocean
- Standard Commercial Fishing License (SCFL)
- Menhaden License for Non-Residents without a SCFL
- Ocean Fishing Pier License
- Recreational Commercial Gear License
- Recreational Fishing Tournament License to Sell Fish
- Retired Standard Commercial Fishing License
- Shellfish License for North Carolina Residents without a SCFL
- Spotter Plane License

Kelly Quick, staff to the House Committee on Government, substantially contributed to this summary.

O. Walker Reagan
Director

H548-SMTA-49 E2 -V2

Research Division
(919) 733-2578

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

H 2

HOUSE BILL 686
Committee Substitute Favorable 4/24/13

Short Title: NC Seafood Park/Name Change. (Public)

Sponsors:

Referred to:

April 11, 2013

A BILL TO BE ENTITLED

AN ACT TO RENAME THE NC SEAFOOD INDUSTRIAL PARK AUTHORITY TO REFLECT ITS BROADER MISSION AND TO MAKE OTHER MODIFICATIONS TO THE AUTHORITY'S ENABLING LEGISLATION.

The General Assembly of North Carolina enacts:

SECTION 1. Article 23C of Chapter 113 of the General Statutes reads as rewritten:

"Article 23C.

"North Carolina ~~Seafood~~ Marine Industrial Park Authority.

"**§ 113-315.25. Creation of Authority; membership; appointment; terms and vacancies; officers; meetings and quorum; compensation.**

(a) There is hereby created the North Carolina ~~Seafood~~ Marine Industrial Park Authority. It shall be governed by a board composed of 11 members to be appointed as follows. The Board is hereby designated as the Authority.

(b) Nine members shall be appointed by the Governor.

The initial appointments by the Governor shall be made on or after the date of ratification, four terms to expire July 1, 1981; four terms to expire July 1, 1983; and one term to expire July 1, 1985. Thereafter, at the expiration of each stipulated term of office all appointments shall be for a term of four years. The members of the Authority shall be selected as follows: one member be appointed to the Authority for a term to expire July 1, 1983, who is a resident of ~~the~~ a village or town where ~~the a Seafood~~ Marine Industrial Park is located; one member be appointed to the Authority for a term to expire July 1, 1983, who is a resident of ~~the~~ a county where ~~the a Seafood~~ Marine Industrial Park is located; two members be appointed to the Authority for terms which expire July 1, 1981, from the area of the State where ~~the a Seafood~~ Marine Industrial Park is located; five members (two terms expire July 1, 1981; two terms expire July 1, 1983; and one term expires July 1, 1985) be appointed to the Authority who are residents of the State at large and insofar as practicable shall represent all the other sections of the State. At the expiration of the terms for the representatives as stated above the Governor shall use his discretion on reappointments. However, there shall be no less than five members of the Authority from coastal counties and there should be at least one member on the Authority from each village or town in which the ~~Seafood~~ Marine Parks are located. Any vacancy occurring in the membership of the Authority shall be filled by the appointing authority for the unexpired term. The Governor shall have the authority to remove any member appointed by the Governor.

(c) Repealed by Session Laws 1981 (Regular Session, 1982), c. 1191, s. 36.

(d) The General Assembly shall appoint two persons, one upon the recommendation of the Speaker of the House of Representatives, and one upon the recommendation of the President Pro Tempore of the Senate. Appointments by the General Assembly shall be made in accordance with G.S. 120-121, and vacancies in those appointments shall be filled in accordance with G.S. 120-122. The terms of the initial appointees by the General Assembly shall expire on June 30, 1983. The terms of subsequent appointees by the General Assembly shall be two years.

(e) The Governor shall annually appoint from the members of the Authority the chairman and vice-chairman of the Authority. The Secretary of Commerce or his designee shall serve as secretary of the Authority.

(f) No person shall serve on the Authority for more than two complete consecutive terms.

(g) The Authority shall meet once in each 90 days at such regular meeting time as the Authority by rule may provide and at any place within the State as the Authority may provide, and shall also meet upon the call of its chairman or a majority of its members. A majority of its members shall constitute a quorum for the transaction of business. The members of the Authority shall not be entitled to compensation for their services, but shall receive per diem and necessary travel and subsistence expense in accordance with G.S. 138-5 and 138-6.

"**§ 113-315.26. Personnel.**

The Secretary of Commerce shall appoint ~~such~~ any personnel as deemed necessary who shall serve at the pleasure of the Secretary of Commerce. The Secretary of Commerce shall have the power to appoint, employ and dismiss ~~such number of~~any employees ~~as he may deem~~deemed necessary to accomplish the purposes of this Article subject to the availability of funds. It is recommended that, to the fullest extent possible, the Secretary of Commerce consult with the Authority on matters of personnel.

...

"**§ 113-315.28. Purposes of Authority.**

Through the Authority ~~hereinbefore~~ created by this Article, the State of North Carolina may engage in promoting, developing, constructing, equipping, maintaining and operating ~~the seafood~~one or more marine industrial parks within the State, or within the jurisdiction of the State, and works of internal improvements ~~incident thereto,~~related to the purposes set forth in this section, including the acquisition or construction, maintenance and operation ~~as such seafood industrial parks~~ of watercraft and facilities ~~thereon~~ located at the parks or essential for the proper operation ~~thereof.~~ of the parks. ~~Said~~ The Authority is created as an instrumentality of the State of North Carolina for the accomplishment of the following general purposes:

(1) To develop and improve the Wanchese ~~Seafood~~ Marine Industrial Park, and such other ~~places,~~marine industrial parks, including inland ports and facilities, as may be deemed feasible for a more expeditious and efficient handling of ~~seafood~~ marine commerce from and to any place or places in the State of North Carolina and other states and foreign countries;

(2) To acquire, construct, equip, maintain, develop and improve the port facilities at ~~said~~ the parks and to maintain, develop, and improve ~~such portions of the~~ the navigability of waterways ~~thereat~~ in or adjacent to the parks ~~as are within the jurisdiction of the federal government~~ and ~~the~~ those waterways connecting the ~~Wanchese Seafood Industrial Park~~parks with the channels of commerce of the Atlantic ~~Ocean, consistent with the project designed by the United States Army Corps of Engineers pursuant to the Manteo (Shallowbag) Bay navigation project as authorized in the Rivers and Harbors Act of 1970 (P.L. 91-611);~~Ocean;

(3) To foster and stimulate the ~~shipment of seafood commerce through said ports, whether originating within or without the State of North Carolina,~~

~~including the investigation and handling of matters pertaining to all transportation rates and rate structures affecting the same;~~growth of marine-related industries in the State of North Carolina;

~~(4) To cooperate with the United States of America and any agency, department, corporation or instrumentality thereof in the maintenance, development, improvement and use of said seafood harbors and the waterways connecting the parks with the channels of commerce of the Atlantic Ocean;~~

(5) To accept funds from any ~~of said~~ counties or cities ~~wherein said ports are located~~ containing a marine industrial park and to use the same in such manner, within the purposes of said Authority, as shall be stipulated by the ~~said~~ funding county or city, and to act as agent or instrumentality of any ~~of said~~funding counties or cities in any matter coming within the general purposes of said Authority;

(5a) To encourage and develop the general maritime and marine-related industries and activities at or in the vicinity of the ~~seafood~~ marine industrial parks;

(6) And in general to do and perform any act or function which may tend to be useful toward the development and improvement of ~~seafood~~ marine industrial parks ~~of~~ in the State of North Carolina, and to increase the movement of waterborne ~~seafood~~ marine commerce, foreign and domestic, to, through, and from ~~said seafood~~ the marine industrial parks.

The enumeration of the above purposes shall not limit or circumscribe the broad objective of developing to the utmost the ~~seafood~~ marine industry possibilities of the State of North Carolina.

"§ 113-315.29. Powers of Authority.

In order to enable it to carry out the purposes of this Article, the Authority shall:

(1) Have the powers of a body corporate, including the power to sue and be sued, to make contracts, and to adopt and use a common seal and to alter the same as may be deemed expedient;

(2) Have the authority to make all necessary contracts and arrangements with other ~~seafood~~ marine industrial park or port authorities of this and other states for the interchange of business, and for such other purposes as will facilitate and increase the ~~seafood~~ marine industries;

(3) Be authorized and empowered to rent, lease, buy, own, acquire, mortgage, otherwise encumber, and dispose of such property, real or personal, as said Authority may deem proper to carry out the purposes and provisions of this Article, all or any of them;

(4) Be authorized and empowered to acquire, construct, maintain, equip and operate any wharves, docks, piers, quays, elevators, compresses, refrigeration storage plants, warehouses and other structures, and any and all facilities needful for the convenient use of the same in the aid of commerce, including the dredging of approaches ~~thereto;~~to port facilities at the parks and improving the navigability of those waterways connecting the parks with the channels of commerce of the Atlantic Ocean;

(5) Be authorized and empowered to pay all necessary costs and expenses involved and incident to the formation and organization of ~~said~~ the Authority, and incident to ~~the~~ its administration and ~~operation thereof~~,operation, and to pay all other costs and expenses reasonably necessary or expedient in carrying out and accomplishing the purposes of this Article;

(6) Be authorized and empowered to apply for and accept loans and grants of money from any federal agency or the State of North Carolina ~~or any political subdivision thereof~~ and its political subdivisions or from any public or private sources available for any and all of the purposes authorized in this Article, and to expend ~~the same~~these funds in accordance with the directions and requirements ~~attached thereto,~~of the granting or loaning authority, or imposed ~~thereon~~ on the loans and grants by any ~~such~~ federal agency, the State of North ~~Carolina, or any political subdivision thereof,~~Carolina and its political subdivisions, or any public or private lender or donor, and to give such evidences of indebtedness as shall be required, provided, however, that no indebtedness of any kind incurred or created by the Authority shall constitute an indebtedness of the State of North Carolina, or any of its political ~~subdivisions thereof,~~subdivisions, and no such indebtedness shall involve or be secured by the faith, credit or taxing power of the State of North Carolina, or any of its political ~~subdivision thereof;~~subdivisions;

(7) Be authorized and empowered to act as agent for the United States of America, or any ~~agency, department, corporation, or instrumentality thereof,~~of its agencies, departments, corporations, or instrumentalities in any matter coming within the purposes or powers of the Authority;

(8) Have power to adopt, alter or repeal bylaws and rules governing the manner in which its business may be transacted and in which the power granted to it may be enjoyed, and may provide for the appointment of ~~such committees, and the functions thereof,~~any committees as the Authority may deem necessary or expedient in facilitating its business;

(8a) Have the authority to assess and collect fees for its services or for the use of its facilities;

(9) Be authorized and empowered to do any and all other acts and things in this Article authorized or required to be done, whether or not included in the general powers in this section mentioned; and

(10) Be authorized and empowered to do any and all things necessary to accomplish the purposes of this Article.

"§ 113-315.30. Approval of acquisition and disposition of real property.

Any transactions relating to the acquisition or disposition of real property or any estate or interest in real property, by the North Carolina State ~~Seafood~~ Marine Industrial Park Authority, shall be subject to prior review by the Governor and Council of State, and shall become effective only after the same has been approved by the Governor and Council of State. Upon the acquisition of real property or other estate ~~therein,~~or interest in real property, by the Authority, the fee title or other estate shall vest in and the instrument of conveyance shall name the "~~Seafood~~ North Carolina Marine Industrial Park Authority" as grantee, lessee, or transferee. Upon the disposition of real property or any interest or estate therein, the instrument of conveyance or transfer shall be executed by the North Carolina ~~Seafood~~ Marine Industrial Park Authority. The approval of any transaction by the Governor and Council of State may be evidenced by a duly certified copy of excerpt of minutes of the meeting of the Governor and Council of State, attested by the private secretary to the Governor or the Governor, reciting such approval, affixed to the instrument of acquisition or transfer, and ~~said~~ the certificate may be recorded as a part ~~thereof,~~of the instrument of acquisition or transfer, and ~~the same~~ shall be conclusive evidence of review and approval of the subject transaction by the Governor and Council of State. The Governor, acting with the approval of the Council of State, may delegate the review and approval of such classes of lease, rental, easement, or right-of-way transactions as ~~he~~ the Governor deems advisable, and ~~he~~ the Governor may likewise delegate the review and approval of the severance of buildings and timber from the land.

"**§ 113-315.31. Issuance of bonds.**

(a) As a means of raising the funds needed from time to time in the acquisition, construction, equipment, maintenance and operation of any facility, building, structure, or any other matter or thing which the Authority is ~~herein~~ authorized to acquire, construct, equip, maintain, or ~~operate,~~operate by this Article, all or any of them, the ~~said~~ Authority is hereby authorized at one time or from time to time to issue with the approval of the Governor negotiable revenue bonds of the Authority. The principal and interest of revenue bonds shall be payable solely from the revenue to be derived from the operation of all or any part of its properties and facilities.

(b) A pledge of the net revenues derived from the operation of ~~said~~ the properties and facilities, all or any of them, shall be made to secure the payment of ~~said bonds~~the bonds issued to finance them as and when they mature.

(c) Revenue bonds issued under the provisions of this Article shall not be deemed to constitute a debt of the State of North Carolina or a pledge of the faith and credit of the State. The issuance of such revenue bonds shall not directly or indirectly or contingently obligate the State to levy or to pledge any form of taxation whatever ~~therefor~~ or to make any appropriation for their payment.

(d) Such bonds and the income ~~thereof~~ derived from them shall be exempt from all taxation within the State.

(e) Notwithstanding any other provisions of this Article, the State Treasurer shall have the exclusive power to issue bonds and notes authorized under the act upon request of the Authority and with the approval of the Governor after receiving the advice of the Local Government Commission. The State Treasurer in his sole discretion shall determine the interest rates, maturities, and other terms and conditions of the bonds and notes authorized by this Article. The North Carolina ~~Seafood~~ Marine Industrial Park Authority shall determine when a bond issue is indicated. The Authority shall cooperate with the State Treasurer in structuring any bond issue in general, and also in soliciting proposals from financial consultants, underwriters, and bond attorneys.

"**§ 113-315.32. Power of eminent domain.**

For the acquiring of rights-of-way and property necessary for the construction of wharves, piers, ships, docks, quays, elevators, compresses, refrigerator storage plants, warehouses and other riparian and littoral terminals and structures and approaches thereto, including the navigation stabilization structures ~~recommended by the United States Army Corps of Engineers pursuant to the authorization in United States Public Law 91-611,~~ and transportation facilities needful for the convenient use of same, the Authority shall have the right and power to acquire the same by purchase, by negotiation, or by condemnation, and should it elect to exercise the right of eminent domain, condemnation proceedings shall be maintained by and in the name of the Authority, and it may proceed in the manner provided for the Board of Transportation by Article 9 of Chapter 136 of the General Statutes. The power of eminent domain shall not apply to property of persons, State agency or corporations already devoted to public use, other than lands subject to the power of eminent domain by the State of North Carolina in the reservation clauses of a deed recorded in the Dare County Registry at Book 79 Page 548.

"**§ 113-315.33. Exchange of property; removal of buildings, etc.**

The Authority may exchange any property or properties acquired under the authority of this Chapter for other property, or properties usable in carrying out the powers ~~hereby conferred,~~conferred by this Article, and also may remove from lands needed for its purposes and reconstruct on other locations, buildings, terminals, or other structures, upon the payment of just compensation, if in its judgment, it is necessary or expedient so to do in order to carry out any of its plans for ~~seafood~~ marine industrial park development, under the authorization of this Article.

"**§ 113-315.34. Jurisdiction of the Authority; application of Chapter 20; appointment and authority of special police.**

(a) The jurisdiction of the Authority in any of ~~said harbors or seaports within the State for the shipment of seafood commerce~~the parks shall extend to all properties owned by or under control of the Authority and shall also extend over the waters and shores ~~of such harbors or seaports~~within the parks and over that part of all tributary streams flowing into ~~such harbors or seaports~~the parks in which the tide ebbs and flows, and shall extend to the outer edge of the outer bar situated at ~~such harbors or seaports.~~the approach to the port of any park.

(b) All the provisions of Chapter 20 of the General Statutes relating to the use of the highways of the State and the operation of motor vehicles thereon are hereby made applicable to the streets, alleys and driveways on the properties owned by or under the control of the North Carolina ~~Seafood~~ Marine Industrial Park Authority. Any person violating any of the provisions of said Chapter in or on such streets, alleys or driveways shall, upon conviction thereof, be punished as therein prescribed. Nothing herein contained shall be construed as in any way interfering with the ownership and control of such streets, alleys and driveways on the properties of said Authority as is now vested by law in the said Authority.

(c) The Authority shall post copies of rules concerning traffic and parking at appropriate places on property of the Authority. Violation of a rule concerning traffic or parking on property of the Authority is a Class 3 misdemeanor.

(d) The Secretary of Commerce is authorized to appoint such number of employees of the Authority as he may think proper as special policemen, who, when so appointed, shall have within the jurisdiction of the Authority all the powers of policemen of incorporated towns. Special policemen may arrest persons who violate State law or a rule adopted by the Authority. Employees appointed as such special policemen shall take the general oath of office prescribed by G.S. 11-11.

"**§ 113-315.35. Audit.**

The operations of the North Carolina ~~Seafood~~ Marine Industrial Park Authority shall be subject to the oversight of the State Auditor pursuant to Article 5A of Chapter 147 of the General Statutes.

"**§ 113-315.36. Building contracts.**

(a) The following general laws, to the extent provided below, do not apply to the North Carolina ~~Seafood~~ Marine Industrial Park Authority:

(1) Repealed by Session Laws 1999-368, s. 1.

(2) Except for G.S. 143-128.2, Article 8 of Chapter 143 of the General Statutes does not apply to public building contracts of the Authority that require the estimated expenditure of public money in an amount less than two hundred fifty thousand dollars ($250,000). With respect to a contract that is exempted from certain provisions of Article 8 under this subdivision, the powers and duties set out in Article 8 shall be exercised by the Authority, and the Secretary of Administration and other State officers, employees, or agencies shall have no duties or responsibilities concerning the contract.

(3) G.S. 143-341(3) does not apply to plans and specifications for construction or renovation authorized by the Authority that require the estimated expenditure of public money in an amount less than two hundred fifty thousand dollars ($250,000).

(b) Notwithstanding the other provisions of this section, the services of the Department of Administration may be made available to the Authority, when requested by the Authority, with regard to matters governed by Article 8 of Chapter 143 of the General Statutes and G.S. 143-341(3). The Authority shall report quarterly to the Joint Legislative Commission on Governmental Operations on any building contract to which this exemption is applied. The

quarterly report required by this subsection shall specifically include information regarding the Authority's compliance with the provisions of G.S. 143-128.2.

...

"§ 113-315.38. Warehouses, wharves, etc., on property abutting navigable waters.

The powers, authority and jurisdiction granted to the North Carolina ~~Seafood~~ Marine Industrial Park Authority under this Article and Chapter shall not be construed so as to prevent other persons, firms and corporations, including municipalities, from owning, constructing, leasing, managing and operating warehouses, structures and other improvements on property ~~owned, leased or under the control of such other persons, firms and corporations~~they own, lease, or control abutting upon and adjacent to navigable waters and streams in this State, nor to prevent ~~such~~ other persons, firms and corporations from constructing, owning, leasing and operating ~~in connection therewith~~ wharves, docks and ~~piers,~~piers associated with the warehouses, structures, and other improvements, nor to prevent ~~such~~ other persons, firms and corporations from encumbering, leasing, selling, conveying or otherwise dealing with and disposing of ~~such~~ the properties, facilities, lands and improvements after ~~such~~ construction.

"§ 113-315.39. Taxation.

The property of the Authority shall not be subject to any taxes or ~~assessments thereon.~~assessments."

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

HOUSE BILL 686:
NC Seafood Park/Name Change

2013-2014 General Assembly

Committee:	Senate Ref to Agriculture/Environment/Natural Resources. If fav, re-ref to Judiciary I	**Date:**	June 11, 2013
Introduced by:	Reps. Tine, Stone, Steinburg	**Prepared by:**	Jennifer Mundt Committee Analyst
Analysis of:	Second Edition		

SUMMARY: ***House Bill 686 changes the name of the NC Seafood Park Authority to the NC Marine Industrial Park Authority and makes modifications to the Authority's purposes and powers in keeping with its expanded mission.***

CURRENT LAW: The NC Seafood Industrial Park Authority was established in 1979. The Wanchese Seafood Industrial Park was the original park operated by the authority. It opened in 1981 and consists of 53 acres on the south end of Roanoke Island in Dare County. The Park is fully leased and is home to a number of marine businesses including boat building, commercial fishing, marina, and supply chain operations. In June 2012, the 7.5 acre Engelhard Marine Industrial Park secured its first tenant, Southern Diesel Corp. A third park, Perquimans Marine Industrial Park, a 72 acre site in Perquimans County, is currently ready for development.

BILL ANALYSIS: House Bill 686 renames the NC Seafood Industrial Park Authority as the NC Marine Industrial Authority. The bill updates and makes clarifying and conforming changes to the language in the original Article and amends the purpose and powers of the Authority consistent with the change in its name.

In particular the bill authorizes the Authority to promote, develop, construct, equip, maintain, and operate one or more marine industrial parks and to maintain, develop, and improve the navigability of waterways in or adjacent to the parks and those connecting the parks with the channels of commerce of the Atlantic Ocean. The bill deletes the requirement that such improvements be consistent with project design by the United States Army Corps of Engineers (Corps) pursuant to the Manteo Bay navigation project. The Authority is also directed to foster the growth of marine-related industries in the State and to accept funds from cities and counties in which a marine industrial park is located.

The powers of the Authority are also amended to include the power to acquire, equip, and operate wharves, docks, elevators, and other facilities in the aid of commerce including dredging of approaches to port facilities at the parks and improving the navigability of those waterways connecting the parks to the Atlantic Ocean. The Authority's power of eminent domain is amended to remove the reference to navigation stabilization structures recommended by the Corps under the Rivers and Harbors Act of 1970.

EFFECTIVE DATE: The act is effective when it becomes law.

Barbara Riley, Research staff, substantially contributed to this summary.

O. Walker Reagan
Director

H686-SMTA-48 E2 -V1

Research Division
(919) 733-2578

HOUSE BILL 936
Committee Substitute Favorable 5/14/13
Committee Substitute #2 Favorable 5/15/13

Short Title: Wildlife Poacher Reward Fund. (Public)

Sponsors:

Referred to:

April 15, 2013

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH A WILDLIFE POACHER REWARD FUND TO PAY REWARDS TO PERSONS WHO GIVE INFORMATION TO LAW ENFORCEMENT AUTHORITIES THAT RESULTS IN THE ARREST AND CONVICTION OF PERSONS WHO COMMIT SERIOUS WILDLIFE VIOLATIONS AND TO AUTHORIZE THE USE OF COMPENSATION PAID TO THE WILDLIFE RESOURCES COMMISSION AS CONDITIONS OF OFFENDERS' PROBATION AS ASSETS OF THE FUND.

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:

"**§ 113-294.1. Wildlife Poacher Reward Fund.**

(a) There is established in the Office of the State Treasurer the Wildlife Poacher Reward Fund. Monies in the Fund shall be used to pay rewards to persons who provide information to the Wildlife Resources Commission or to law enforcement authorities that results in the arrest and conviction of persons who have committed criminal offenses involving the taking, injury, removal, damage, or destruction of wildlife resources. The Wildlife Resources Commission shall adopt rules for the administration of the Fund for these purposes.

(b) The assets of the Wildlife Poacher Reward Fund shall be derived from the following:

(1) A percentage of the compensation paid annually to the Commission as special conditions of offenders' probation in criminal cases involving the taking, injury, removal, damage, or destruction of wildlife pursuant to G.S. 15A-1343(b1)(5), to be set by the Commission at not less than ten percent (10%) of those amounts paid as replacement costs and investigative costs.

(2) All amounts paid to the Commission under G.S. 15A-1343(b1)(5) as compensation for rewards paid from the Fund.

(3) The proceeds of any gifts, grants, and contributions to the State which are specifically designated for inclusion in the Fund.

(4) Any other sources specified by law."

SECTION 2. G.S. 15A-1343(b1) reads as rewritten:

"(b1) Special Conditions. – In addition to the regular conditions of probation specified in subsection (b), the court may, as a condition of probation, require that during the probation the defendant comply with one or more of the following special conditions:

...

(5) Compensate the Department of Environment and Natural Resources or the North Carolina Wildlife Resources Commission, as the case may be, for the replacement costs of any marine and estuarine resources or any wildlife resources which were taken, injured, removed, harmfully altered, damaged or destroyed as a result of a criminal offense of which the defendant was convicted. If any investigation is required by officers or agents of the Department of Environment and Natural Resources or the Wildlife Resources Commission in determining the extent of the destruction of resources involved, the court may include compensation of the agency for investigative costs as a condition of probation. The court may also include, as a condition of probation, compensation of an agency for any reward paid for information leading to the arrest and conviction of the offender. This subdivision does not apply in any case governed by G.S. 143-215.3(a)(7).

...."

SECTION 3. Section 2 of this act becomes effective December 1, 2013, and applies to offenses committed on or after that date. The remainder of this act becomes effective July 1, 2013.

HOUSE BILL 936:
Wildlife Poacher Reward Fund

2013-2014 General Assembly

Committee:	Senate Ref to Agriculture/Environment/Natural Resources. If fav, re-ref to Finance	**Date:**	June 11, 2013
Introduced by:	Reps. Wray, Faircloth, Moffitt, J. Bell	**Prepared by:**	Chris Saunders Committee Counsel
Analysis of:	Third Edition		

SUMMARY: ***House Bill 936 would establish a Wildlife Poacher Reward Fund to pay rewards to individuals who report information to law enforcement authorities resulting in the arrest and conviction of persons who commit serious wildlife violations.***

CURRENT LAW: G.S. 15A-1343(b1)(5) (*Conditions of probation*) currently provides that a court may, as a condition of probation, require a defendant to compensate the Department of Environment and Natural Resources ("Department") or the Wildlife Resources Commission ("Commission"), as appropriate, for the replacement costs of marine, estuarine, or wildlife resources that were taken, damaged, or destroyed as a result of a criminal offense of which the defendant was convicted. If the Department or Commission must investigate to determine the extent of the damage to these resources, the court may also require the defendant to compensate the agency for investigative costs.

BILL ANALYSIS:

Section 1 of House Bill 936 would establish the Wildlife Poacher Reward Fund ("Fund") in the Office of the State Treasurer. Monies in the fund would be used to pay rewards to persons who provide information to the Commission or law enforcement authorities resulting in the arrest and conviction of persons who commit serious wildlife violations. The Commission would be instructed to adopt rules for the administration of the Fund.

The assets of the Fund would be derived from (1) a percentage no greater than 10% of the compensation paid annually to the Commission as replacement and investigative costs pursuant to G.S. 15A-1343(b1)(5); (2) 100% of funds paid to the Commission as compensation for any reward paid for information leading to the arrest and conviction of the defendant pursuant to G.S. 15A-1343(b1)(5); (3) gifts, grants, and contributions that are specifically designated for inclusion in the Fund; and (4) any other sources specified by law.

Section 2 of House Bill 936 would provide that a court may, as a special condition of probation under G.S. 15A-1343(b1)(5), require a defendant to compensate an agency for any reward paid for information leading to the arrest and conviction of the defendant.

EFFECTIVE DATE:

Section 2 of this act would become effective December 1, 2013, and would apply to offenses committed on or after that date. The remainder of this act would become effective July 1, 2013.

O. Walker Reagan
Director

H936-SMTQ-104 E3 -V1

Research Division
(919) 733-2578

HOUSE BILL 396
Committee Substitute Favorable 4/4/13

Short Title: Enact Private Well Water Education Act.-AB (Public)

Sponsors:

Referred to:

March 21, 2013

A BILL TO BE ENTITLED

AN ACT TO ENACT THE PRIVATE WELL WATER EDUCATION ACT AT THE REQUEST OF THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES.

The General Assembly of North Carolina enacts:

SECTION 1. This act shall be known as the Private Well Water Education Act.

SECTION 2. G.S. 87-97(i) reads as rewritten:

"(i) Commission for Public Health to Adopt Drinking Water Testing Rules. – The Commission for Public Health shall adopt rules governing the sampling and testing of well water and the reporting of test results. The rules shall allow local health departments to designate third parties to collect and test samples and report test results. The rules shall also provide for corrective action and retesting where appropriate. The Commission for Public Health may by rule require testing for additional parameters, including volatile organic compounds, if the Commission makes a specific finding that testing for the additional parameters is necessary to protect public health. If the Commission finds that testing for certain volatile organic compounds is necessary to protect public health and initiates rule making to require testing for certain volatile organic compounds, the Commission shall consider all of the following factors in the development of the rule: (i) known current and historic land uses around well sites and associated contaminants; (ii) known contaminated sites within a given radius of a well and any known data regarding dates of contamination, geology, and other relevant factors; (iii) any GIS-based information on known contamination sources from databases available to the Department of Environment and Natural Resources; and (iv) visual on-site inspections of well sites. In addition, the rules shall require local health departments to educate citizens for whom new private drinking water wells are constructed and for citizens who contact local health departments regarding testing an existing well on all of the following:

(1) The scope of the testing required pursuant to this Article.
(2) Optional testing available pursuant to this Article.
(3) The limitations of both the required and optional testing.
(4) Minimum drinking water standards."

SECTION 3. G.S. 87-97(j) reads as rewritten:

"(j) Test Results. – The local health department shall provide test results to the owner of the newly constructed private drinking water well and, to the extent practicable, to any leaseholder of a dwelling unit or other facility served by the well at the time the water is sampled. The local health department shall include with any test results provided to an owner of a private drinking water well, information regarding the scope of the required and optional testing as established by rules adopted pursuant to subsection (i) of this section."

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

HOUSE BILL 396:
Enact Private Well Water Education Act.-AB

2013-2014 General Assembly

Committee:	Senate Agriculture/Environment/Natural Resources	**Date:**	June 11, 2013
Introduced by:	Reps. Catlin, Moffitt, Millis, Hollo	**Prepared by:**	Jennifer Mundt Committee Analyst
Analysis of:	Second Edition		

SUMMARY: ***House Bill 396 would direct the Commission for Public Health to educate citizens on water testing for private drinking water wells.***

CURRENT LAW: Article 7 of Chapter 87 of the General Statutes (North Carolina Well Construction Act (Act)) includes provisions for the permitting, inspection, and testing of private drinking water wells.

G.S. 87-97(h) requires a local health department to either test or ensure that water from a newly constructed private drinking water well has been sampled and tested by a certified laboratory for certain chemical, metal, and bacterial indicators.

G.S. 87-97(i) directs the Commission for Public Health (Commission) to adopt rules governing the sampling and testing of well water and the reporting of test results. G.S. 87-97(i) further authorizes the Commission to adopt rules for testing additional parameters, including volatile organic compounds, if the Commission finds that testing for those parameters is necessary to protect public health.

Pursuant to G.S. 87-97(j), the local health department must provide test results to the owner of a newly constructed private drinking water well.

BILL ANALYSIS: House Bill 396 would direct the Commission to adopt rules requiring local health departments to educate citizens for whom new private drinking water wells are constructed and citizens who contact local health departments regarding testing on an existing well on all of the following:

1. The well water testing required under the Act.
2. Optional well water testing available under the Act.
3. The limitations of both the required and optional testing under the Act.
4. A description of minimum drinking water standards.

House Bill 396 would also require the local health department to include information on the required and optional testing with any test results that are provided to an owner of a drinking water well.

EFFECTIVE DATE: House Bill 396 would become effective when it becomes law.

O. Walker Reagan
Director

H396-SMTA-50 E2 -V1

Research Division
(919) 733-2578

SENATE PAGES ATTENDING

COMMITTEE: Agriculture ROOM: 544

DATE: 6-11 TIME: 11 AM

PLEASE PRINT LEGIBILY!!!!!!!!!!!!!....*or else!*

Page Name	Hometown	Sponsoring Senator
1. Maggie Powell	Wilmington	Goolsby
2. Katy Jarema	Raleigh	Hunt
3. Lilly Myers	Winston-Salem	Brunstetter
4. Ashlyn Murray	Laurinburg	McLaurin
5. Jelisa Murray	Raleigh	Blue
6. Tristan Gordon	Monroe	Tucker
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 Sergeant-at-Arms.

SENATE SERGEANT-AT-ARMS

COMMITTEE: **SENATE AGRICULTURE / ENR**

DATE: 06/11/13 ROOM: 544

1. CHARLES HARPER
2. ED KESLER
3. KEN KIRBY
4. JUSTIN OWENS

VISITOR REGISTRATION SHEET

Senate/Agriculture/Environment/Natural Resources
(Committee Name)

6/11/2013
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Joe McClees	McClees Consulting
JAKE PARKER	NCFB
Chris Dillon	NCWRC
Angie Maier	NCPC
[illegible]	NCPC/NCCR
Tommy Stevens	NCPC
Steve Metcalf	NCPC
Nancy Thompson	Weyerhaeuser
Jimmy Fullbright	K&L Gates
Rudy Underwood	Am Chemistry Council
Bill Schaefer	NCFA
Chris Sizemore	DENR - Sea Grant
Chris Anderson	
Rush Saunders	20A Dist. Atty
Lonnie Payne	NC GRANGE
Scott Bissell	NCFS
Angie Harris	Ward & Smith
Heather Barrett	Ward & Smith

09-21-201

VISITOR REGISTRATION SHEET

Senate/Agriculture/Environment/Natural Resources
(Committee Name)

6/11/2013
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Neal Robbins	NC DENR
Robin Ramsey	Rep. Ramsey's office
Kristin Terwilliger	NCDENR
Jacob Davis	NC DENR
Jack Tarpey	NCSC
Debbie Hughes	KLG
Sam Hahn	USGBC-NC
Richard Poindexter	Columbia Forest Products
Jim Sitts	Columbia Forest Products
Tom Bean	EDF

09-21-201

VISITOR REGISTRATION SHEET

Senate/Agriculture/Environment/Natural Resources
(Committee Name)

6/11/2013
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Joan Akalaonu	N.C. Guardian Ad Litem (Intern)
Will Morgan	TNC
George Everett	Duke Energy
J Goodman	N/C CHAMBER
Erin Wynia	NCLM

09-21-201

Senate Committee on Agriculture/Environment/Natural Resources
Tuesday, June 25, 2013, 11:00 AM
544 Legislative Office Building

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

BILL NO.	SHORT TITLE	SPONSOR
HB 816	Tobacco Growers Assessment Act.	Representative Langdon
HB 94	Amend Environmental Laws 2013.	Representative McElraft Representative Samuelson Representative McGrady

Adjournment

Senate Committee on Agriculture/Environment/Natural Resources
Tuesday, June 25, 2013 at 11:00 AM
Room 544 of the Legislative Office Building

MINUTES

The Senate Committee on Agriculture/Environment/Natural Resources met at 11:00 AM on June 25, 2013 in Room 544 of the Legislative Office Building. Fifteen (15) members were present.

Senator Andrew Brock presided.

Senator Brock introduced the pages: Sara Newby from Raleigh sponsored by Sen. Curtis, Darren Suggs from Garner sponsored by Sen. Blue, Jacob Fuquay from Hendersonville sponsored by Sen. Apodaca, Evan Herodotus from Gastonia sponsored by Sen. Harrington, Jacob Duboi from Hendersonville sponsored by Sen. Apodaca, Victoria Fahnestoc from Rocky Mount sponsored by Sen. Bryant, Dana Walker from Chapel Hill sponsored by Sen. Kinnaird, A.J. Smith from Concord sponsored by Sen. Hartsell, and Rebecca Howard from Garner sponsored by Sen. Jackson.

Sgt. at Arms for today are Charles Harper, Donna Blake, Justin Owens, and Steve McKaig.

Sen. Brock welcomed students from the North Carolina State Grainge to the meeting today.

The following bills were heard in committee today:

HB 816 – Tobacco Growers Assessment Act – Rep. Langdon

Senator Brent Jackson moved for adoption of the PCS on this bill. The motion carried. Sen. Jackson explained the bill. Sen. Rabin moved for a Favorable report. Sen. Bryant had follow up questions regarding Sec. 2.1 (this section was an addition to the bill) of the bill which Sen. Jackson responded. Sen. Bryant had another follow-up which Chris Saunders responded. There were also follow-up questions regarding this section from Sen. Ford which Sen. Jackson responded and Sen. Kinnaird which Sen. Jackson and Chris Saunders responded. Sen. Bryant followed up with the fact that she felt this section was a health issue and not a DENR issue. Mitch Gillespie, Assistant Secretary of DENR spoke against this section of the bill. Sen. Kinnaird sent forth an amendment to strike the language beginning on Page 3, Line 22 through Page 4, Line 2, removing Section 2.1 and 2.2 of the bill. The motion on the amendment carried. Senator Bryant moved for a Favorable Report to the PCS as amended. The motion carried.

HB 94 – Amend Environmental Laws 2013 – Rep. McElraft

Senator Brent Jackson moved for adoption of the PCS on this bill. The motion carried. Sen. Jackson explained the bill. Sen. Jackson sent forth an amendment to the bill which Jennifer Mundt explained to the committee. The amendment was adopted. There were Follow up questions from the following committee members: Sen. Allran, Sen. Ford, Sen. Rabin and Sen. Bryant. These follow-up questions were answered by Sen. Jackson, staff person, Jeff Hudson, staff person Jennifer Mundt, and Assistant Secretary of

DENR, Mitch Gillespie. Mary McClean Asbill from Southern Environmental Law Center spoke against the bill. Sen. Wade moved for a Favorable Report to the PCS as amended. The motion carried.

The meeting adjourned at 12:04 PM.

Senator Andrew Brock
Presiding

Judy Edwards, Committee Clerk

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES COMMITTEE REPORT
Senator Brock, Co-Chair
Senator Jackson, Co-Chair

Tuesday, June 25, 2013

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

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 1, BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL

HB **816** **(CS#1)** Tobacco Growers Assessment Act.

Draft Number:	H816-PCS70471-TQ-50
Sequential Referral:	Finance
Recommended Referral:	None
Long Title Amended:	No

TOTAL REPORTED: 1

Senator W. Jackson will handle HB 816



NORTH CAROLINA GENERAL ASSEMBLY
SENATE

AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES COMMITTEE REPORT
Senator Brock, Co-Chair
Senator Jackson, Co-Chair

Wednesday, June 26, 2013

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

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 1, BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL

HB 94 (CS#1) Amend Environmental Laws 2013.

Draft Number:	H94-PCS30579-TA-23
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

TOTAL REPORTED: 1

Senator W. Jackson will handle HB 94



GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

H D

HOUSE BILL 816
Committee Substitute Favorable 5/14/13
PROPOSED SENATE COMMITTEE SUBSTITUTE H816-PCS70471-TQ-50

Short Title: Tobacco Growers Assessment Act. (Public)

Sponsors:

Referred to:

April 11, 2013

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE TOBACCO GROWERS TO ASSESS THEMSELVES TO PROMOTE THE INTERESTS OF TOBACCO GROWERS.

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 50D.
"Tobacco Growers Assessment Act.

"**§ 106-568.40. Title.**

This Article shall be known as the "Tobacco Growers Assessment Act."

"**§ 106-568.41. Purpose.**

It is in the public interest for the State to enable growers of tobacco to assess themselves in order to raise funds to promote the interests of tobacco growers. This assessment shall be in addition to the assessment authorized by Article 50C of Chapter 106 of the General Statutes to promote export sales of tobacco and the assessment authorized by Article 50A of Chapter 106 of the General Statutes for tobacco research.

"**§ 106-568.42. Definitions.**

The following definitions apply in this Article:

(1) Association. – The Tobacco Growers Association of North Carolina, Inc., a North Carolina nonprofit corporation.

(2) Buyer. – Any person engaged in the business of buying tobacco from a producer of tobacco grown in North Carolina, including a broker, dealer, or agent of the buyer.

(3) Department. – The North Carolina Department of Agriculture and Consumer Services.

(4) Person. – An individual, a partnership, a firm, or a corporation.

(5) Tobacco. – Flue-cured tobacco.

(6) Tobacco grower. – A person who (i) is a North Carolina resident, (ii) owns, manages, or has a financial interest in tobacco production, and (iii) is actively involved in tobacco production.

"**§ 106-568.43. Referendum.**

(a) The Association may conduct among tobacco growers a referendum upon the question of whether an assessment shall be levied on tobacco sold in this State.

(b) The Association shall determine the amount of the proposed assessment and the date by which the referendum ballot must be returned by mail as provided in this section.

(c) The amount of the proposed assessment shall be stated on the referendum ballot. The amount may not exceed fifteen cents (15¢) for each hundred pounds of tobacco marketed in this State. If the assessment is approved in the referendum, the Association may set the assessment at an amount equal to or less than the amount stated on the ballot. If the Association sets a lower amount than the amount approved by referendum, it may increase the amount annually without a referendum by no more than one cent (1¢) for each hundred pounds of tobacco marketed. The increased rate may not exceed the amount approved by referendum and may not exceed the maximum allowable rate of fifteen cents (15¢) for each hundred pounds.

(d) The Association shall mail a referendum ballot to all known tobacco growers in the State for whom the Association has a current and valid mailing address at least three months prior to the date the ballot must be returned. Additionally, the Association must, for the greater of three months or 90 days before the date the ballot must be returned, (i) provide a printable referendum ballot on the Association's official Web site and (ii) make hard copies of the referendum ballot available at all county North Carolina Cooperative Extension Service offices. The ballots shall be returned to the Commissioner of Agriculture by the date set by the Association. The Department shall be responsible for counting the votes and reporting the results of the referendum to the Association.

(e) All tobacco growers may vote in the referendum. Any dispute over eligibility to vote or any other matter relating to the referendum shall be determined by the Association. The Association shall make reasonable efforts to provide tobacco growers with notice of the referendum and an opportunity to vote.

"**§ 106-568.44. Payment and collection of assessment.**

(a) The assessment shall not be collected unless more than two-thirds of the votes cast in the referendum are in favor of the assessment. If more than two-thirds of the votes cast in the referendum are in favor of the assessment, then the Association shall notify the Department of the amount of the assessment and the effective date of the assessment. The Department shall notify all tobacco buyers of the assessment.

(b) Each tobacco producer shall pay the assessment on all tobacco sold to a buyer.

(c) A buyer shall collect the assessment when buying tobacco by deducting the assessment from the price paid to the producer. The buyer shall remit collected assessments to the Department no later than the 10th day of the following month. The Department shall provide forms to buyers for reporting the assessment. If the total assessments collected by a buyer in a month are less than twenty-five dollars ($25.00), the buyer may keep the assessments until the total amount due is at least twenty-five dollars ($25.00) or the end of the calendar quarter, whichever comes first. All buyers shall file at least one report in each calendar quarter in which they purchase tobacco from a producer, regardless of the amount due.

(d) A buyer shall keep records of the amount of tobacco purchased and the date purchased. All information or records regarding purchases of tobacco by individual buyers shall be kept confidential by employees or agents of the Department and the Association and shall not be disclosed except by court order.

(e) The Association may bring an action to recover any unpaid assessments, plus the reasonable costs, including attorneys' fees, incurred in the action.

"**§ 106-568.45. Use of assessments; refunds; annual audit.**

(a) At least once per month, the Department shall remit all funds collected under this Article to the Association. The Association shall use the funds to promote the interests of tobacco growers. The Association shall prepare an annual report on the assessment funds collected and the use of assessment funds. The Association shall publicly post the annual report on its official Web site at least 30 days before the Association's annual meeting. Copies of the annual report shall be made available to growers at the Association's annual meeting, and a copy shall also be sent to the Commissioner of Agriculture.

(b) A tobacco grower may request a refund of the assessment collected under this Article by submitting a written request for a refund to the Association postmarked on or before December 31 of the same year. A refund request shall be accompanied by proof of payment of the assessment satisfactory to the Association. The Association shall mail a refund to the grower within 30 days of receipt of a properly documented refund request.

(c) The Association shall designate a third party to conduct an annual audit of the implementation of this Article. The Association shall also designate the time at which the audit may be conducted each year, provided that the results of the audit be available before or in conjunction with the annual report.

"**§ 106-568.46. Termination of assessment.**

Upon receipt of a petition signed by at least ten percent (10%) of the tobacco growers in North Carolina known to the Association, the Department shall notify the Association, and the Association shall, within six months, conduct a referendum upon the question of continuing the assessment. If a majority of the votes cast in the referendum are against continuing the assessment, or if the Association fails to conduct a referendum within the six-month period, the assessment expires at the end of the six-month period. If a majority of the votes cast in the referendum are in favor of continuing the assessment, then no subsequent referendum shall be held for at least three years."

SECTION 2. This act is effective when it becomes law. The Tobacco Growers Association of North Carolina, Inc., may conduct a referendum at any time after the effective date of this act.

HOUSE BILL 816
Committee Substitute Favorable 5/14/13

Short Title: Tobacco Growers Assessment Act. (Public)

Sponsors:

Referred to:

April 11, 2013

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE TOBACCO GROWERS TO ASSESS THEMSELVES TO PROMOTE THE INTERESTS OF TOBACCO GROWERS

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This Article shall be known as the "Tobacco Growers Assessment Act."

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It is in the public interest for the State to enable growers of tobacco to assess themselves in order to raise funds to promote the interests of tobacco growers. This assessment shall be in addition to the assessment authorized by Article 50C of Chapter 106 of the General Statutes to promote export sales of tobacco and the assessment authorized by Article 50A of Chapter 106 of the General Statutes for tobacco research.

"**§ 106-568.42. Definitions.**

The following definitions apply in this Article:

(1) Association. – The Tobacco Growers Association of North Carolina, Inc., a North Carolina nonprofit corporation.

(2) Buyer. – Any person engaged in the business of buying tobacco from a producer of tobacco grown in North Carolina, including a broker, dealer, or agent of the buyer.

(3) Department. – The North Carolina Department of Agriculture and Consumer Services.

(4) Person. – An individual, a partnership, a firm, or a corporation.

(5) Tobacco. – Flue-cured tobacco.

(6) Tobacco grower. – A person who (i) is a North Carolina resident, (ii) owns, manages, or has a financial interest in tobacco production, and (iii) is actively involved in tobacco production.

"**§ 106-568.43. Referendum.**

(a) The Association may conduct among tobacco growers a referendum upon the question of whether an assessment shall be levied on tobacco sold in this State.

(b) The Association shall determine:

(1) The amount of the proposed assessment.

(2) The time and place of the referendum.

(3) Procedures for conducting the referendum and counting of votes.

(4) Any other matters pertaining to the referendum.

(c) The amount of the proposed assessment shall be stated on the referendum ballot. The amount may not exceed fifteen cents (15¢) for each hundred pounds of tobacco marketed in this State. If the assessment is approved in the referendum, the Association may set the assessment at an amount equal to or less than the amount stated on the ballot. If the Association sets a lower amount than the amount approved by referendum, it may increase the amount annually without a referendum by no more than one cent (1¢) for each hundred pounds of tobacco marketed. The increased rate may not exceed the amount approved by referendum and may not exceed the maximum allowable rate of fifteen cents (15¢) for each hundred pounds.

(d) All tobacco growers may vote in the referendum. Any dispute over eligibility to vote or any other matter relating to the referendum shall be determined by the Association. The Association shall make reasonable efforts to provide tobacco growers with notice of the referendum and an opportunity to vote.

"**§ 106-568.44. Payment and collection of assessment.**

(a) The assessment shall not be collected unless more than two-thirds of the votes cast in the referendum are in favor of the assessment. If more than two-thirds of the votes cast in the referendum are in favor of the assessment, then the Association shall notify the Department of the amount of the assessment and the effective date of the assessment. The Department shall notify all tobacco buyers of the assessment.

(b) Each tobacco producer shall pay the assessment on all tobacco sold to a buyer.

(c) A buyer of tobacco shall collect the assessment when buying tobacco by deducting the assessment from the price paid to the producer. The buyer shall remit collected assessments to the Department no later than the 10th day of the following month. The Department shall provide forms to buyers for reporting the assessment. If the total assessments collected by a buyer in a month are less than twenty-five dollars ($25.00), the buyer may keep the assessments until the total amount due is at least twenty-five dollars ($25.00) or the end of the calendar quarter, whichever comes first. All buyers shall file at least one report in each calendar quarter in which they purchase tobacco from a producer, regardless of the amount due.

(d) A buyer of tobacco shall keep records of the amount of tobacco purchased and the date purchased. All information or records regarding purchases of tobacco by individual buyers shall be kept confidential by employees or agents of the Department and the Association and shall not be disclosed except by court order.

(e) The Association may bring an action to recover any unpaid assessments, plus the reasonable costs, including attorneys' fees, incurred in the action.

"**§ 106-568.45. Use of assessments; refunds.**

(a) At least once per month, the Department shall remit all funds collected under this Article to the Association. The Association shall use the funds to promote the interests of tobacco growers. The Association shall prepare an annual report on the use of assessment funds. Copies of the annual report shall be made available to growers at the Association's annual meeting, and a copy shall also be sent to the Commissioner of Agriculture.

(b) A tobacco grower may request a refund of the assessment collected under this Article by submitting a written request for a refund to the Association within 30 days from the last date on which the assessment was collected from the grower. A refund request shall be accompanied by proof of payment of the assessment satisfactory to the Association. The Association shall mail a refund to the grower within 30 days of receipt of a properly documented refund request.

"**§ 106-568.46. Termination of assessment.**

Upon receipt of a petition signed by at least ten percent (10%) of the tobacco growers in North Carolina known to the Association, the Department shall notify the Association, and the Association shall, within six months, conduct a referendum upon the question of continuing the

assessment. If a majority of the votes cast in the referendum are against continuing the assessment, or if the Association fails to conduct a referendum within the six-month period, the assessment expires at the end of the six-month period. If a majority of the votes cast in the referendum are in favor of continuing the assessment, then no subsequent referendum shall be held for at least three years."

SECTION 2. This act is effective when it becomes law. The Association may conduct a referendum at any time after the effective date of this act.

HOUSE BILL 816:
Tobacco Growers Assessment Act

2013-2014 General Assembly

Committee:	Senate Ref to Agriculture/Environment/Natural Resources. If fav, re-ref to Finance	**Date:**	June 25, 2013
Introduced by:	Rep. Langdon	**Prepared by:**	Chris Saunders Committee Counsel
Analysis of:	PCS to Second Edition H816-CSTQ-50 [v.13]		

SUMMARY: ***The Proposed Committee Substitute (PCS) for House Bill 816 would authorize the Tobacco Growers Association of North Carolina, Inc., (Association) to conduct a referendum and to assess tobacco marketed in the State. The Association would use the funds to promote the interests of tobacco growers. The maximum assessment would be 15¢ for each 100 pounds of tobacco marketed in this State and would be in addition to existing assessments for export sales of tobacco (Article 50C of Chapter 106) and tobacco research (Article 50A of Chapter 106).***

CURRENT LAW AND BILL ANALYSIS: **Section 1** of the PCS would authorize the Tobacco Growers Association of North Carolina, Inc., (Association) to conduct a referendum and to assess tobacco marketed in the State. The Association would use the funds to promote the interests of tobacco growers. A "tobacco grower" is defined as a North Carolina resident who owns, manages, or has a financial interest in tobacco production and who is actively involved in tobacco production. All tobacco growers may vote in the referendum.

The assessment would only be collected if two-thirds of the votes cast in the referendum are in favor of the assessment. The referendum would be conducted by mail, and the Department of Agriculture and Consumer Services (Department) would count the votes and report the results of the referendum. This assessment would operate in addition to the existing assessments authorized by Article 50A (10¢ per 100 pounds of tobacco marketed to provide funds for research and dissemination of research facts concerning tobacco) and Article 50C ($4 per acre per year on all flue-cured tobacco in the State for the promotion of the export trade of flue-cured tobacco) of Chapter 106 of the General Statutes. The amount of the assessment may not exceed 15¢ per 100 pounds of tobacco marketed in the State. If the Association sets a lower amount than the amount approved by referendum, the Association may increase the amount by no more than 1¢ annually without a referendum, but the increased rate may not exceed the amount approved by referendum.

If 10% of the tobacco growers in the State petition the Department to end the assessment, the Association must conduct another referendum within 6 months of the receipt of the petition to determine whether to continue the assessment. If a majority of the votes in the referendum are against the assessment, then the assessment expires at the end of the 6-month period. If a majority of votes in the referendum are in favor of continuing the assessment, another referendum cannot be held for at least 3 years.

Section 2 of the PCS would direct the Department of Environment and Natural Resources to adopt rules for the implementation and enforcement of the ban on smoking in bars and restaurants. The Commission for Public Health was originally tasked with adopting rules to implement the smoking ban, and would retain the authority to enforce its rules until the rules adopted by Department of Environment and Natural Resources become effective.

EFFECTIVE DATE: This act would be effective when it becomes law, and the Association would be permitted to conduct a referendum at any time after the effective date.

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. PCS H816-CSTQ-50[V.13]

H. B. No. 816 DATE 6-25-13

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

COMMITTEE SUBSTITUTE ✓

Rep.) Sen.) Kinnaird

moves to amend the bill on page ~~3~~ 3 1, line ~~3~~ 3 through 6

(✓) WHICH CHANGES THE TITLE

by rewriting the lines to read:

"PROMOTE THE INTERESTS OF TOBACCO GROWERS."; and

on page 3, line 22 through page 4 line 2

by deleting those lines; and

on page 4, line 3,

by deleting "SECTION 3" and substituting "SECTION 2".

SIGNED _____

ADOPTED ✓ FAILED _____ TABLED _____

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

H D

HOUSE BILL 94
Committee Substitute Favorable 5/9/13
PROPOSED SENATE COMMITTEE SUBSTITUTE H94-PCS30579-TA-23

Short Title: Amend Environmental Laws 2013. (Public)

Sponsors:

Referred to:

February 13, 2013

A BILL TO BE ENTITLED

AN ACT TO AMEND CERTAIN ENVIRONMENTAL AND NATURAL RESOURCES LAWS TO (1) REPEAL 2008 AND SUBSEQUENT MODEL YEAR HEAVY-DUTY DIESEL VEHICLE REQUIREMENTS; (2) DIRECT THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES TO STUDY THE CONTINUED NEED TO CONDUCT VEHICLE EMISSIONS INSPECTIONS; (3) PROVIDE THE ENVIRONMENTAL MANAGEMENT COMMISSION WITH THE FLEXIBILITY TO DETERMINE WHETHER RULES ARE NECESSARY FOR CONTROLLING THE EFFECTS OF COMPLEX SOURCES ON AIR QUALITY; (4) AMEND THE RULES THAT PERTAIN TO OPEN BURNING FOR LAND CLEARING OR RIGHT-OF-WAY MAINTENANCE; (5) CLARIFY THAT AN AIR QUALITY PERMIT SHALL BE ISSUED FOR A TERM OF EIGHT YEARS AND PROVIDE THAT A THIRD PARTY WHO IS DISSATISFIED WITH A DECISION OF THE ENVIRONMENTAL MANAGEMENT COMMISSION REGARDING AN AIR QUALITY PERMIT MAY FILE A CONTESTED CASE UNDER THE ADMINISTRATIVE PROCEDURE ACT WITHIN 30 DAYS; (6) AMEND COASTAL AREA MANAGEMENT ACT MINOR PERMIT NOTICE REQUIREMENTS; (7) AMEND THE PROVISION OF HYDRAULIC FRACTURING FLUID CHEMICALS AND CONSTITUENTS DATA TO THE MINING AND ENERGY COMMISSION AND THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES; (8) EXEMPT THE MINING AND ENERGY COMMISSION, THE ENVIRONMENTAL MANAGEMENT COMMISSION, AND THE COMMISSION FOR PUBLIC HEALTH FROM PREPARING FISCAL NOTES FOR RULES THAT PERTAIN TO THE MANAGEMENT OF OIL AND GAS DEVELOPMENT; (9) CLARIFY THE PROCESS FOR APPEALS FROM CIVIL PENALTIES ASSESSED BY A LOCAL GOVERNMENT THAT HAS ESTABLISHED AND ADMINISTERS AN EROSION AND SEDIMENTATION CONTROL PROGRAM APPROVED UNDER G.S. 113A-60 AND PROVIDE THAT CIVIL PENALTIES ASSESSED BY A LOCAL GOVERNMENT PURSUANT TO THE SEDIMENTATION POLLUTION CONTROL ACT OF 1973 SHALL BE REMITTED TO THE CIVIL PENALTY AND FORFEITURE FUND; (10) PROVIDE FOR LOW-FLOW DESIGN ALTERNATIVES FOR WASTEWATER SYSTEMS; (11) DIRECT THE COMMISSION FOR PUBLIC HEALTH TO ADOPT RULES TO PROVIDE FOR NOTICE OF KNOWN CONTAMINATION TO APPLICANTS WHO SEEK TO CONSTRUCT NEW PRIVATE DRINKING WATER WELLS AND TO DIRECT LOCAL HEALTH DEPARTMENTS TO EITHER ISSUE A PERMIT OR DENY AN APPLICATION FOR THE CONSTRUCTION, REPAIR, OR

OPERATION OF A WELL WITHIN 30 DAYS OF RECEIPT OF AN APPLICATION; (12) CLARIFY THOSE UNDERGROUND STORAGE TANKS THAT ARE NOT REQUIRED TO PROVIDE SECONDARY CONTAINMENT UNTIL JANUARY 1, 2020; (13) MAKE TECHNICAL AND CONFORMING CHANGES TO PROTECTED SPECIES, MARINE, AND WILDLIFE RESOURCES STATUTES; (14) MAKE CLARIFYING AND CONFORMING CHANGES TO THE STATUTES PERTAINING TO THE MANAGEMENT OF SNAKES AND OTHER REPTILES; (15) AMEND THE ADMINISTRATIVE PROCEDURE ACT TO PROVIDE THE WILDLIFE RESOURCES COMMISSION WITH TEMPORARY RULE-MAKING AUTHORITY FOR MANNER OF TAKE; (16) PROHIBIT PUBLIC ENTITIES FROM PURCHASING OR ACQUIRING PROPERTY WITH KNOWN CONTAMINATION WITHOUT APPROVAL OF THE GOVERNOR AND COUNCIL OF STATE; (17) CLARIFY THAT NO BUILDING PERMIT IS REQUIRED FOR ROUTINE MAINTENANCE OF FUEL DISPENSERS; (18) CLARIFY THE FEES THAT THE SECRETARY FOR ENVIRONMENT AND NATURAL RESOURCES MAY ADOPT FOR THE NORTH CAROLINA AQUARIUMS; (19) REPEAL THE MOUNTAIN RESOURCES PLANNING ACT; (20) PROVIDE AN EXEMPTION FROM LOCAL GOVERNMENT REQUIREMENTS REGARDING THE NUMBER OF ACRES REQUIRED FOR PROPERTY DEVELOPMENT FOR BROWNFIELDS AGREEMENTS; (21) DIRECT THE DEPARTMENT OF TRANSPORTATION TO ADOPT RULES FOR SELECTIVE PRUNING WITHIN HIGHWAY RIGHTS-OF-WAY; (22) CLARIFY REQUIREMENTS FOR COMPLIANCE BOUNDARIES WITH RESPECT TO GROUNDWATER QUALITY STANDARDS; (23) EXEMPT CERTAIN RADIO TOWERS FROM APPLICABILITY WITH THE MILITARY LANDS PROTECTION ACT; (24) CLARIFY THAT EXTENDED DURATION PERMITS FOR SANITARY LANDFILLS AND TRANSFER STATIONS AUTHORIZED BY S.L. 2012-187 ARE PERMITS FOR OPERATION AS WELL AS CONSTRUCTION; (25) ADD A FACTOR FOR CONSIDERATION IN ASSESSING SOLID WASTE PENALTIES; (26) LIMIT LOCAL GOVERNMENT REGULATION OF STORAGE, RETENTION, OR USE OF NONHAZARDOUS RECYCLED MATERIALS; (27) DIRECT THE ENVIRONMENTAL REVIEW COMMISSION TO STUDY THE REQUIREMENTS APPLICABLE TO RECYCLING OF DISCARDED COMPUTER EQUIPMENT; (28) AMEND THE DEFINITION OF "BUILT-UPON AREA" FOR PURPOSES OF IMPLEMENTING STORMWATER PROGRAMS; (29) EXEMPT PONDS THAT ARE CONSTRUCTED AND USED FOR AGRICULTURAL PURPOSES FROM RIPARIAN BUFFER RULES; (30) PROVIDE THAT A THIRD PARTY WHO IS DISSATISFIED WITH A DECISION OF THE ENVIRONMENTAL MANAGEMENT COMMISSION REGARDING A WATER QUALITY PERMIT MAY FILE A CONTESTED CASE UNDER THE ADMINISTRATIVE PROCEDURE ACT WITHIN 30 DAYS; (31) REPEAL REQUIREMENTS FOR INCREASES IN VEHICULAR SURFACE AREAS; (32) AMEND DREDGE AND FILL PERMIT APPLICANT PROCEDURE FOR NOTICE TO ADJOINING PROPERTY OWNERS; (33) PROVIDE THAT CERTAIN WATER TREATMENT SYSTEMS WITH EXPIRED AUTHORIZATIONS MAY OBTAIN NEW AUTHORIZATIONS THAT ALLOW THE SYSTEMS TO WITHDRAW SURFACE WATER FROM THE SAME WATER BODY AT THE SAME RATE AS WAS APPROVED IN THE EXPIRED AUTHORIZATION; (34) AMEND S.L. 2013-50, AN ACT TO PROMOTE THE PROVISION OF REGIONAL WATER AND SEWER SERVICES BY TRANSFERRING OWNERSHIP AND OPERATION OF CERTAIN PUBLIC WATER AND SEWER SYSTEMS TO A METROPOLITAN WATER AND SEWERAGE DISTRICT; AND (35) COMBINE THE DIVISION OF WATER QUALITY AND THE DIVISION OF WATER RESOURCES TO CREATE A NEW DIVISION OF

WATER RESOURCES IN THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES AND MAKE CONFORMING CHANGES.

The General Assembly of North Carolina enacts:

PART I. REPEAL 2008 AND SUBSEQUENT MODEL YEAR HEAVY-DUTY DIESEL VEHICLE REQUIREMENTS

SECTION 1. The Environmental Management Commission shall repeal 15A NCAC 02D .1009 (Model Year 2008 and Subsequent Model Year Heavy-Duty Vehicle Requirements) on or before December 1, 2013. Until the effective date of the repeal of the rule required pursuant to this section, the Environmental Management Commission, the Department of Environment and Natural Resources, or any other political subdivision of the State shall not implement or enforce 15A NCAC 02D .1009 (Model Year 2008 and Subsequent Model Year Heavy-Duty Vehicle Requirements).

PART II. DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES TO STUDY THE CONTINUED NEED TO CONDUCT VEHICLE EMISSIONS INSPECTIONS

SECTION 2. The Department of Environment and Natural Resources shall conduct a study to examine whether all of the counties covered under the emissions testing and maintenance program pursuant to G.S. 143-215.107A are needed to meet and maintain the current and proposed federal ozone standards in North Carolina. The Department shall report its interim findings to the Environmental Review Commission on or before April 1, 2015, and shall submit its final report, including any findings and legislative recommendations, to the Environmental Review Commission on or before April 1, 2016.

PART III. PROVIDE THE ENVIRONMENTAL MANAGEMENT COMMISSION WITH FLEXIBILITY TO DETERMINE WHETHER RULES ARE NECESSARY FOR CONTROLLING THE EFFECTS OF COMPLEX SOURCES ON AIR QUALITY

SECTION 3. G.S. 143-215.109(a) reads as rewritten:

"(a) The Commission ~~shall~~ may by rule establish criteria for controlling the effects of complex sources on air quality. The rules shall set forth such basic minimum criteria or standards under which the Commission shall approve or disapprove any such construction or modification. The rules shall further provide for the submission of plans, specifications and such other information as may be necessary for the review and evaluation of proposed or modified complex sources."

PART IV. AMEND THE RULES THAT PERTAIN TO OPEN BURNING FOR LAND CLEARING OR RIGHT-OF-WAY MAINTENANCE

SECTION 4.(a) 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 4(c) 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 4(b) of this act.

SECTION 4.(b) Implementation. – Notwithstanding 15A NCAC 02D .1093(b)(2)(F) (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 materials are not carried off site or transported over public roads for open burning unless the materials are carried or transported to:

(1) Facilities permitted in accordance with 15A NCAC 02D .1904 (Air Curtain Burners) for the operation of an air curtain burner at a permanent site; or

(2) A location, where the material is burned not more than four times per year, that meets all of the following criteria:

a. 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.

b. There are no more than two piles, each 20 feet in diameter, being burned at one time.

c. The location is not a permitted solid waste management facility.

SECTION 4.(c) Additional Rule-Making Authority. – The Commission shall adopt a rule to amend 15A NCAC 02D .1903 (Open Burning Without an Air Quality Permit) consistent with Section 4(b) of this act. 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 4(b) of this act. Rules adopted pursuant to this section are not subject to G.S. 150B-21.8 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.(d) Sunset. – Section 4(b) of this act expires on the date that rules adopted pursuant to Section 4(c) of this act become effective.

SECTION 4.(e) G.S. 130A-294(a) reads as rewritten:

"(a) The Department is authorized and directed to engage in research, conduct investigations and surveys, make inspections and establish a statewide solid waste management program. In establishing a program, the Department shall have authority to:

(1) Develop a comprehensive program for implementation of safe and sanitary practices for management of solid waste;

(2) Advise, consult, cooperate and contract with other State agencies, units of local government, the federal government, industries and individuals in the formulation and carrying out of a solid waste management program;

(3) Develop and adopt rules to establish standards for qualification as a "recycling, reduction or resource recovering facility" or as "recycling, reduction or resource recovering equipment" for the purpose of special tax classifications or treatment, and to certify as qualifying those applicants which meet the established standards. The standards shall be developed to qualify only those facilities and equipment exclusively used in the actual waste recycling, reduction or resource recovering process and shall exclude any incidental or supportive facilities and equipment;

(4) a. Develop a permit system governing the establishment and operation of solid waste management facilities. A landfill with a disposal area of 1/2 acre or less for the on-site disposal of land clearing and inert debris is exempt from the permit requirement of this section and shall be governed by G.S. 130A-301.1. Demolition debris from the decommissioning of manufacturing buildings, including electric generating stations, that is disposed of on the same site as the decommissioned buildings, is exempt from the permit requirement of this section and rules adopted pursuant to this section and shall be governed by G.S. 130A-301.3. The Department shall not approve an application for a new permit, the renewal of a permit, or a substantial amendment to a permit for a sanitary landfill, excluding demolition landfills as defined in the rules of the Commission, except as provided in subdivisions (3) and (4) of subsection (b1) of this section. No permit shall be granted for a solid waste management facility having discharges that are point sources until the Department

has referred the complete plans and specifications to the Environmental Management Commission and has received advice in writing that the plans and specifications are approved in accordance with the provisions of G.S. 143-215.1. If the applicant is a unit of local government, and has not submitted a solid waste management plan that has been approved by the Department pursuant to G.S. 130A-309.09A(b), the Department may deny a permit for a sanitary landfill or a facility that disposes of solid waste by incineration, unless the Commission has not adopted rules pursuant to G.S. 130A-309.29 for local solid waste management plans. In any case where the Department denies a permit for a solid waste management facility, it shall state in writing the reason for denial and shall also state its estimate of the changes in the applicant's proposed activities or plans that will be required for the applicant to obtain a permit.

...

d. Management of land clearing debris burned in accordance with 15A NCAC 02D .1903 shall not require a permit pursuant to this section.

...."

PART V. CLARIFY THAT AN AIR QUALITY PERMIT SHALL BE ISSUED FOR A TERM OF EIGHT YEARS AND PROVIDE THAT A THIRD PARTY WHO IS DISSATISFIED WITH A DECISION OF THE ENVIRONMENTAL MANAGEMENT COMMISSION REGARDING AN AIR QUALITY PERMIT MAY FILE A CONTESTED CASE UNDER THE ADMINISTRATIVE PROCEDURE ACT WITHIN 30 DAYS

SECTION 5. G.S. 143-215.108 reads as rewritten:

"**§ 143-215.108. Control of sources of air pollution; permits required.**

...

(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 ~~not to exceed~~of eight years.

(e) A permit ~~applicant or permittee~~applicant, a permittee, or a third party who is dissatisfied with a decision of the Commission may commence a contested case by filing a petition under G.S. 150B-23 within 30 days after the Commission notifies the applicant or permittee of its decision. If the permit applicant or permittee does not file a petition within the required time, the Commission's decision on the application is final and is not subject to review.

...."

PART VI. AMEND CAMA MINOR PERMIT NOTICE REQUIREMENTS

SECTION 6. G.S. 113A-119 reads as rewritten:

"**§ 113A-119. Permit applications generally.**

(a) Any person required to obtain a permit under this Part shall file with the Secretary and (in the case of a permit sought from a city or county) with the designated local official an application for a permit in accordance with the form and content designated by the Secretary and approved by the Commission. The applicant must submit with the application a check or money order payable to the Department or the city or county, as the case may be, constituting a fee set by the Commission pursuant to G.S. 113A-119.1.

(b) Upon receipt of any application, a significant modification to an application for a major permit, or an application to modify substantially a previously issued major permit, the

Secretary shall issue public notice of the proposed development (i) by mailing a copy of the application or modification, or a brief description thereof together with a statement indicating where a detailed copy of the proposed development may be inspected, to any citizen or group which has filed a request to be notified of the proposed development, and to any interested State agency; (ii) by posting or causing to be posted a notice at the location of the proposed development stating that an application, a modification of an application for a major permit, or an application to modify a previously issued major permit for development has been made, where the application or modification may be inspected, and the time period for comments; and (iii) with the exception of minor permit applications, by publishing notice of the application or modification at least once in one newspaper of general circulation in the county or counties wherein the development would be located at least 20 days before final action on a major permit ~~and at least seven days before final action on a permit under G.S. 113A-121~~ or before the beginning of the hearing on a permit under G.S. 113A-122. The notice shall set out that any comments on the development should be submitted to the Secretary by a specified date, not less than 15 days from the date of the newspaper publication of the notice or 15 days after mailing of the mailed notice, whichever is later. ~~Public notice under this subsection is mandatory, except for a proposed modification to an application for a minor permit or proposed modification of a previously issued minor permit that does not substantially alter the original project.~~

(c) Within the meaning of this Part, the "designated local official" is the official who has been designated by the local governing body to receive and consider permit applications under this Part."

PART VII. AMEND THE PROVISION OF HYDRAULIC FRACTURING FLUID CHEMICALS AND CONSTITUENTS DATA TO THE MINING AND ENERGY COMMISSION AND THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

SECTION 7. G.S. 113-391 reads as rewritten:

"§ 113-391. Jurisdiction and authority; rules and orders.

...

(b1) In the exercise of their respective authority over oil and gas exploration and development activities, the Commission and the Department, as applicable, shall have access to all data, records, and information related to such activities, including, but not limited to, seismic surveys, stratigraphic testing, geologic cores, proposed well bore trajectories, hydraulic fracturing fluid chemicals and constituents, drilling mud chemistry, and geophysical borehole logs. ~~With the exception of information designated as a trade secret, as defined in G.S. 66-152(3), and that is designated as confidential or as a trade secret under G.S. 132-1.2, the Department shall make any information it receives available to the public.~~ The State Geologist shall serve as the custodian of all data, information, and records received by the Department pursuant to this subsection and shall ensure that the information is maintained securely as provided in G.S. 132-7. With the exception of information designated as a trade secret, as defined in G.S. 66-152(3), and that is designated as confidential or as a trade secret under G.S. 132-1.2, the Department shall make any information it receives available to the public. In addition, the following provisions shall apply to information designated as a trade secret, as defined in G.S. 66-152(3), and that is designated as confidential or as a trade secret under G.S. 132-1.2:

(1) The Commission or the Department may disclose confidential information to officers, employees, or authorized representatives of federal, State, or local agencies if such disclosure is determined to be necessary by the Secretary of Environment and Natural Resources, or the Secretary's designee, to respond to a situation that endangers the public health or the environment. Any

officer or employee of the State who knowingly discloses information designated as confidential in violation of this subsection shall be guilty of a Class 1 misdemeanor and shall be removed from office or discharged from employment, and may be subject to civil liability for improper disclosure as provided in G.S. 66-154. The following information either received or prepared by the Commission or Department in the course of carrying out their duties and responsibilities of this Article is deemed confidential information and shall not be subject to disclosure under G.S. 132-6:

a. Information that is entitled to confidential treatment pursuant to G.S. 132-1.2.

b. Information that is confidential under any provision of federal or State law.

c. Information compiled in anticipation of enforcement or criminal proceedings, but only to the extent disclosure could reasonably be expected to interfere with the institution of such proceedings.

(2) Notwithstanding any other provisions of this section, persons subject to regulation under this Chapter may withhold any information that constitutes a trade secret, as that term is defined in G.S. 66-152(3), related to hydraulic fracturing fluid chemicals and constituents. Any person who withholds such information shall submit a claim of entitlement that the trade secret is valid to the Secretary of Environment and Natural Resources. Upon a determination by the Secretary of Environment and Natural Resources that information withheld as a trade secret pursuant to this subsection is necessary to respond to a situation that endangers the public health or the environment, the Secretary may issue a written declaration that the trade secret information shall be submitted to the Commission and the Department within two hours of the time the written declaration is issued.

(3) The Commission, Department, an agency of the State, a local government emergency response official, or a landowner or other person having a legal interest in real property on which a hydraulically fractured wellhead is located or that is adjacent to such property where a hydraulically fractured wellhead is located may bring an action challenging the designation of information as a trade secret as defined in G.S. 66-152(3) or information designated as confidential as defined in G.S. 132-1.2 under this subsection. The North Carolina Business Court shall be the court of exclusive jurisdiction in determining whether a trade secret is valid under this subsection."

PART VIII. EXEMPT THE MINING AND ENERGY COMMISSION, THE ENVIRONMENTAL MANAGEMENT COMMISSION, AND THE COMMISSION FOR PUBLIC HEALTH FROM PREPARING FISCAL NOTES FOR RULES THAT PERTAIN TO THE MANAGEMENT OF OIL AND GAS EXPLORATION AND DEVELOPMENT

SECTION 8. The Mining and Energy Commission, the Environmental Management Commission, and the Commission for Public Health are exempt from the provisions of G.S. 150B of the General Statutes that require the preparation of fiscal notes for any rule proposed for the creation of a modern regulatory program for the management of oil and gas exploration and development activities in the State, including the use of horizontal drilling and hydraulic fracturing for that purpose.

PART IX. CLARIFY LOCAL GOVERNMENT AUTHORITY UNDER THE SEDIMENTATION AND POLLUTION CONTROL ACT

SECTION 9. G.S. 113A-64 reads as rewritten:

"**§ 113A-64. Penalties.**

(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.

(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 the reason for assessing the penalty. The notice of assessment shall be served by any means authorized under ~~G.S. 1A-1, Rule 4, and~~ G.S. 1A-1. A notice of assessment by the Secretary 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. A notice of assessment by a local government shall direct the violator to either pay the assessment or contest the assessment within 30 days by filing a petition for hearing with the local government as directed by procedures within the local ordinances or regulations adopted to establish and enforce the erosion and sedimentation control program. 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.

(3) In determining the amount of the penalty, the Secretary or a local government shall consider the degree and extent of harm caused by the violation, the cost of rectifying the damage, the amount of money the violator saved by noncompliance, whether the violation was committed willfully and the prior record of the violator in complying or failing to comply with this ~~Article.~~Article, or any ordinance, rule, or order adopted or issued pursuant to this Article by the Commission or by a local government.

(4) Repealed by Session Laws 1993 (Reg. Sess., 1994), c. 776, s. 11.

(5) The clear proceeds of civil penalties collected by the Department or other State agency or a local government under this subsection shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2.

~~Civil penalties collected by a local government under this subsection shall be credited to the general fund of the local government as nontax revenue.~~

(b) Criminal Penalties. – Any person who knowingly or willfully violates any provision of this Article or any ordinance, rule, regulation, or order duly adopted or issued by the Commission or a local government, or who knowingly or willfully 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, shall be guilty of a Class 2 misdemeanor that may include a fine not to exceed five thousand dollars ($5,000)."

PART X. PROVIDE FOR LOW-FLOW DESIGN ALTERNATIVES FOR WASTEWATER SYSTEMS

SECTION 10.(a) 15A NCAC 18A .1949(b) (Sewage Flow Rates for Design Units). – Until the effective date of the revised permanent rule that the Commission is required to adopt pursuant to Section 10(c) of this act, the Commission, the Department, and any other political subdivision of the State shall implement 15A NCAC 18A .1949(b) (Sewage Flow Rates for Design Units) as provided in Section 10(b) of this act.

SECTION 10.(b) Implementation. – Notwithstanding the Daily Flow for Design rates listed in Table No. 1 of 15A NCAC 18A .1949(b) (Sewage Flow Rates for Design Units), a wastewater system shall be exempt from the Daily Flow for Design, and any other design flow standards that are established by the Department of Health and Human Services or the Commission for Public Health provided flow rates that are less than those listed in Table No. 1 of 15A NCAC 18A .1949(b) (Sewage Flow Rates for Design Units) can be achieved through engineering design that utilizes low-flow fixtures and low-flow technologies and the design is prepared, sealed, and signed by a professional engineer licensed pursuant to Chapter 89C of the General Statutes. The Department and Commission may establish lower limits on reduced flow rates as necessary to ensure wastewater system integrity and protect public health, safety, and welfare. Proposed daily design flows for wastewater systems that are calculated to be less than 3,000 total gallons per day shall not require State review pursuant to 15A NCAC 18A .1938(e).

SECTION 10.(c) Additional Rule-Making Authority. – The Commission shall adopt a rule to amend 15A NCAC 18A .1949(b) (Sewage Flow Rates for Design Units) consistent with Section 10(b) of this act. 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 10(b) of this act. Rules adopted pursuant to this section are not subject to G.S. 150B-21.8 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 10.(d) Sunset. – Section 10(b) of this act expires on the date that rules adopted pursuant to Section 10(c) of this act become effective.

PART XI. DIRECT THE COMMISSION FOR PUBLIC HEALTH TO ADOPT RULES TO PROVIDE FOR NOTICE OF KNOWN CONTAMINATION TO APPLICANTS WHO SEEK TO CONSTRUCT NEW PRIVATE DRINKING WATER WELLS AND TO DIRECT LOCAL HEALTH DEPARTMENTS TO EITHER ISSUE A PERMIT OR DENY AN APPLICATION FOR THE CONSTRUCTION, REPAIR, OR OPERATION OF A WELL WITHIN 30 DAYS OF RECEIPT OF AN APPLICATION

SECTION 11. G.S. 87-97 is amended by rewriting that section to read:

"**§ 87-97. Permitting, inspection, and testing of private drinking water wells.**

(a) Mandatory Local Well Programs. – Each county, through the local health department that serves the county, shall implement a private drinking water well permitting, inspection, and testing program. Local health departments shall administer the program and enforce the minimum well construction, permitting, inspection, repair, and testing requirements

set out in this Article and rules adopted pursuant to this Article. 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.

(b) Permit Required. – Except for those wells required to be permitted by the Environmental Management Commission pursuant to G.S. 87-88, no person shall:

(1) Construct or assist in the construction of a private drinking water well unless a construction permit has been obtained from the local health department.

(2) Repair or assist in the repair of a private drinking water well unless a repair permit has been obtained from the local health department, except that a permit shall not be required for the repair or replacement of a pump or tank.

(c) Permit Not Required for Maintenance or Pump Repair or Replacement. – A repair permit shall not be required for any private drinking water well maintenance work that does not involve breaking or opening the well seal. A repair permit shall not be required for any private drinking water well repair work that involves only the repair or replacement of a pump or tank.

(d) Well Site Evaluation. – The local health department shall conduct a field investigation to evaluate the site on which a private drinking water well is proposed to be located before issuing a permit pursuant to this section. The field investigation shall determine whether there is any abandoned well located on the site, and if so, the construction permit shall be conditioned upon the proper closure of all abandoned wells located on the site in accordance with the requirements of this Article and rules adopted pursuant to this Article. If a private drinking water well is proposed to be located on a site on which a wastewater system subject to the requirements of Article 11 of Chapter 130A of the General Statutes is located or proposed to be located, the application for a construction permit shall be accompanied by a plat or site plan, as defined in G.S. 130A-334.

(e) Issuance of Permit. – ~~The local health department shall issue a construction permit or repair permit if it determines that a private drinking water well can be constructed or repaired and operated in compliance with this Article and rules adopted pursuant to this Article.~~ Within 30 days of receipt of an application to construct or repair a well, a local health department shall make a determination whether the proposed private drinking water well can be constructed or repaired and operated in compliance with this Article and rules adopted pursuant to this Article and shall issue a permit or denial accordingly. If a local health department fails to act within 30 days, the applicant may treat the failure to act as a denial of the permit and may challenge the denial as provided in Chapter 150B of the General Statutes. 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.

(e1) Notice for Wells at Contamination Sites. – The Commission shall adopt rules governing permits issued for private drinking water wells for circumstances in which the local health department has determined that the proposed site for a private drinking water well is located within 1,000 feet of a known source of release of contamination. Rules adopted pursuant to this subsection shall provide for notice and information of the known source of release of contamination and any known risk of issuing a permit for the construction and use of a private drinking water well on such a site.

...."

PART XII. CLARIFY THOSE UNDERGROUND STORAGE TANKS THAT ARE NOT REQUIRED TO PROVIDE SECONDARY CONTAINMENT UNTIL JANUARY 1, 2020

SECTION 12. Section 11.6(a) of S.L. 2011-394 reads as rewritten:

"**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,~~1991, and prior to April 1, 2001, shall not be required to provide secondary containment until January 1, 2020."

PART XIII. TECHNICAL AND CONFORMING CHANGES TO PROTECTED SPECIES AND MARINE/WILDLIFE RESOURCES STATUTES

SECTION 13.(a) 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:

...

(7) Fish; Fishes. – All ~~marine mammals;~~finfish; all shellfish; and all ~~crustaceans; and all other fishes.~~crustaceans.

...."

SECTION 13.(b) G.S. 113-189 reads as rewritten:

"**§ 113-189. Protection of sea ~~turtles and porpoises.~~turtles, marine mammals, migratory birds, and finfish.**

(a) It is unlawful to willfully take, harm, disturb or destroy any sea turtles protected under the federal Endangered Species Act of 1973 (Public Law 93-205), as it may be subsequently amended, including green, hawksbill, loggerhead, Kemp's ridley and leatherback turtles, or their nests or eggs.

(b) It shall be unlawful willfully to take, ~~harm~~ harm, disturb, or destroy ~~porpoises.~~marine mammals protected under the federal Marine Mammal Protection Act of 1972 (Public Law 92-522), as it may be subsequently amended.

(c) It shall be unlawful willfully to take, harm, disturb, or destroy migratory birds protected under the federal Migratory Bird Treaty Act of 1918 (16 U.S.C. §§ 703 through 712), as it may be subsequently amended, unless such action is permitted by regulations.

(d) It shall be unlawful willfully to take, harm, disturb, or destroy finfish protected under the federal Endangered Species Act of 1973 (Public Law 93-205), as it may be subsequently amended."

PART XIV. CLARIFYING AND CONFORMING CHANGES TO STATUTES PERTAINING TO THE MANAGEMENT OF SNAKES AND OTHER REPTILES

SECTION 14.(a) G.S. 14-417 reads as rewritten:

"**§ 14-417. Regulation of ownership or use of venomous reptiles.**

(a) It shall be unlawful for any person to own, possess, use, transport, or traffic in any venomous reptile that is not housed in a sturdy and secure enclosure. Permanent enclosures shall be designed to be escape-proof, bite-proof, and have an operable lock. Transport containers shall be designed to be escape-proof and bite-proof.

(b) Each enclosure shall be clearly and visibly labeled "Venomous Reptile Inside" with scientific name, common name, appropriate ~~antivenom,~~antivenin, and owner's identifying information noted on the container. A written bite protocol that includes emergency contact information, local animal control office, the name and location of suitable ~~antivenom,~~antivenin, first aid procedures, and treatment guidelines, as well as an escape recovery plan must be within sight of permanent housing, and a copy must accompany the transport of any venomous reptile.

(c) In the event of an escape of a venomous reptile, the owner or possessor of the venomous reptile shall immediately notify local law enforcement."

SECTION 14.(b) G.S. 14-419 reads as rewritten:

"§ 14-419. Investigation of suspected violations; seizure and examination of reptiles; disposition of reptiles.

(a) In any case in which any law-enforcement officer or animal control officer has probable cause to believe that any of the provisions of this Article have been or are about to be violated, it shall be the duty of the officer and the officer is authorized, empowered, and directed to immediately investigate the violation or impending violation and to consult with representatives of the North Carolina Museum of Natural Sciences or the North Carolina Zoological Park or a designated representative of either the Museum or Zoological Park to identify appropriate and safe methods to seize the reptile or reptiles involved, to seize the reptile or reptiles involved, and the officer is authorized and directed to deliver: (i) a reptile believed to be venomous to the North Carolina State Museum of Natural Sciences or to its designated representative for examination for the purpose of ascertaining whether the reptile is regulated under this Article; and, (ii) a reptile believed to be a large constricting snake or crocodilian to the North Carolina Zoological Park for the purpose of ascertaining whether the reptile is regulated under this Article. In any case in which a law enforcement officer or animal control officer determines that there is an immediate risk to public safety, the officer shall not be required to consult with representatives of the North Carolina Museum of Natural Sciences or the North Carolina Zoological Park as provided by this subsection.

(b) If the Museum or the Zoological Park or their designated representatives find that a seized reptile is a venomous reptile, large constricting snake, or crocodilian regulated under this Article, the Museum or the Zoological Park or their designated representative shall determine final disposition of the reptile in a manner consistent with the safety of the ~~public.~~public, which in the case of a venomous reptile for which antivenin is not readily available, may include euthanasia.

(c) If the Museum or the Zoological Park or their designated representatives find that the reptile is not a venomous reptile, large constricting snake, or crocodilian regulated under this Article, and either no criminal warrants or indictments are initiated in connection with the reptile within 10 days of initial seizure, or a court of law determines that the reptile is not being owned, possessed, used, transported, or trafficked in violation of this Article, then it shall be the duty of the law enforcement officer to return the reptile or reptiles to the person from whom they were seized within 15 days."

PART XV. AMEND THE ADMINISTRATIVE PROCEDURE ACT TO PROVIDE THE WILDLIFE RESOURCES COMMISSION WITH TEMPORARY RULE-MAKING AUTHORITY FOR MANNER OF TAKE

SECTION 15. G.S. 150B-21.1 reads as rewritten:

"**§ 150B-21.1. Procedure for adopting a temporary rule.**

(a) Adoption. – An agency may adopt a temporary rule when it finds that adherence to the notice and hearing requirements of G.S. 150B-21.2 would be contrary to the public interest and that the immediate adoption of the rule is required by one or more of the following:

...

(7) The need for the Wildlife Resources Commission to establish any of the following:

a. No wake zones.

b. Hunting or fishing ~~seasons.~~seasons, including provisions for manner of take or any other conditions required for the implementation of such season.

c. Hunting or fishing bag limits.

d. Management of public game lands as defined in G.S. 113-129(8a).

...."

PART XVI. PROHIBIT PUBLIC ENTITIES FROM PURCHASING OR ACQUIRING PROPERTY WITH KNOWN CONTAMINATION WITHOUT APPROVAL OF THE GOVERNOR AND COUNCIL OF STATE

SECTION 16. Chapter 133 of the General Statutes is amended by adding a new Article to read:

"Article 4.

"Purchase of Contaminated Property by Public Entities.

"**§ 133-40. Purchase of contaminated property by public entities.**

(a) For purposes of this Article, the term "public entity" means any department or agency of the State, a State university or college, and other similar entities.

(b) No public entity, as defined in subsection (a) of this section, shall purchase or otherwise acquire an ownership interest in any real property with known contamination, as that term is defined in G.S. 130A-310.65(5), without approval of the Governor and the Council of State. A public entity seeking to purchase or otherwise acquire an ownership interest in such property shall petition the Governor and Council of State for approval of the transaction, with sufficient information to identify the property, the nature and extent of the contamination present, and a plan of paying for the project and for remediation of any contamination without the use of General Fund appropriations. The approval of such a transaction by the Governor and Council of State may be evidenced by a duly certified copy of excerpt of minutes of the meeting of the Governor and Council of State, attested by the private secretary to the Governor or the Governor, reciting such approval, affixed to the instrument of acquisition or transfer, and said certificate may be recorded as a part thereof, and the same shall be conclusive evidence of review and approval of the subject transaction by the Governor and Council of State. The Governor, acting with the approval of the Council of State, may delegate the review and approval of such transactions as the Governor deems advisable.

(c) This Article shall not apply to situations in which a public entity acquires ownership or control of real property involuntarily, including having obtained the property through bankruptcy, tax delinquency, abandonment, or other circumstances in which the public entity involuntarily acquires title by virtue of its function as a sovereign."

PART XVII. CLARIFY THAT NO BUILDING PERMIT IS REQUIRED FOR ROUTINE MAINTENANCE ON FUEL DISPENSERS

SECTION 17. G.S. 143-138 is amended by adding a new subsection to read:

"...

(b13) No building permit shall be required under the Code for routine maintenance on fuel dispensing pumps and other dispensing devices. For purposes of this subsection, "routine maintenance" includes repair or replacement of hoses, O-rings, nozzles, or emergency breakaways."

PART XVIII. CLARIFY THE FEES THAT THE SECRETARY OF ENVIRONMENT AND NATURAL RESOURCES MAY ADOPT FOR THE NORTH CAROLINA AQUARIUMS

SECTION 18. G.S. 143B-289.44 reads as rewritten:

"**§ 143B-289.44. North Carolina Aquariums; fees; fund.**

(a) Fees. – The Secretary of Environment and Natural Resources may adopt a schedule of ~~uniform entrance~~ fees for the aquariums and piers operated by the North Carolina ~~Aquariums.~~Aquariums, including:

(1) Gate admission fees.

(2) Facility rental fees.

(3) Educational programs.

...."

PART XIX. REPEAL THE MOUNTAIN RESOURCES PLANNING ACT

SECTION 19. Chapter 153B of the General Statutes is repealed.

PART XX. PROVIDE AN EXEMPTION FROM LOCAL GOVERNMENT REQUIREMENTS REGARDING THE NUMBER OF ACRES FOR PROPERTY DEVELOPMENT FOR BROWNFIELDS DEVELOPMENTS

SECTION 20.(a) G.S. 153A-349.4 reads as rewritten:

"**§ 153A-349.4. Developed property must contain certain number of acres; permissible durations of agreements.**

(a) A local government may enter into a development agreement with a developer for the development of property as provided in this Part, provided the property contains 25 acres or more of developable property (exclusive of wetlands, mandatory buffers, unbuildable slopes, and other portions of the property which may be precluded from development at the time of application). Development agreements shall be of a term specified in the agreement, provided they may not be for a term exceeding 20 years.

(b) Notwithstanding the acreage requirements of subsection (a) of this section, a local government may enter into a development agreement with a developer for the development of property as provided in this Part for developable property of any size (exclusive of wetlands, mandatory buffers, unbuildable slopes, and other portions of the property which may be precluded from development at the time of application), if the developable property that would be subject to the development agreement is subject to an executed brownfields agreement pursuant to Part 5 of Article 9 of Chapter 130A of the General Statutes. Development agreements shall be of a term specified in the agreement, provided they may not be for a term exceeding 20 years."

SECTION 20.(b) G.S. 160A-400.23 reads as rewritten:

"**§ 160A-400.23. Developed property must contain certain number of acres; permissible durations of agreements.**

(a) A local government may enter into a development agreement with a developer for the development of property as provided in this Part, provided the property contains 25 acres or more of developable property (exclusive of wetlands, mandatory buffers, unbuildable slopes, and other portions of the property which may be precluded from development at the time of application). Development agreements shall be of a term specified in the agreement, provided they may not be for a term exceeding 20 years.

(b) Notwithstanding the acreage requirements of subsection (a) of this section, a local government may enter into a development agreement with a developer for the development of property as provided in this Part for developable property of any size (exclusive of wetlands, mandatory buffers, unbuildable slopes, and other portions of the property which may be precluded from development at the time of application), if the developable property that would be subject to the development agreement is subject to an executed brownfields agreement pursuant to Part 5 of Article 9 of Chapter 130A of the General Statutes. Development agreements shall be of a term specified in the agreement, provided they may not be for a term exceeding 20 years."

PART XXI. DIRECT THE DEPARTMENT OF TRANSPORTATION TO ADOPT RULES FOR SELECTIVE PRUNING WITHIN HIGHWAY RIGHTS-OF-WAY

SECTION 21. The Department of Transportation shall adopt rules to authorize selective pruning within highway rights-of-way for vegetation that obstructs motorists' views of properties on which agritourism activities, as that term is defined in G.S. 99E-30, occur. The Department of Transportation is exempt from the provisions of G.S. 150B that require the preparation of fiscal notes for any rule proposed pursuant to this Section.

PART XXII. CLARIFY REQUIREMENTS FOR COMPLIANCE BOUNDARIES WITH RESPECT TO GROUNDWATER QUALITY STANDARDS

SECTION 22.(a) G.S. 143-215.1 is amended by adding three new subsections to read:

"**§ 143-215.1. Control of sources of water pollution; permits required.**

...

(i) Any person subject to the requirements of this section who is required to obtain an individual permit from the Commission for a disposal system under the authority of G.S. 143-215.1 or Chapter 130A of the General Statutes shall have a compliance boundary as may be established by rule or permit for various categories of disposal systems and beyond which groundwater quality standards may not be exceeded. The location of the compliance boundary shall be established at the property boundary, except as otherwise established by the Commission. Multiple contiguous properties under common ownership and permitted for use as a disposal system shall be treated as a single property with regard to determination of a compliance boundary under this subsection. Nothing in this subsection shall be interpreted to require a revision to an existing compliance boundary previously approved by rule or permit.

(j) When operation of a disposal system permitted under this section results in an exceedance of the groundwater quality standards adopted in accordance with G.S. 143-214.1, the Commission shall require that the exceedances within the compliance boundary be remedied through cleanup, recovery, containment, or other response only when any of the following conditions occur:

(1) A violation of any water quality standard in adjoining classified waters of the State occurs or can be reasonably predicted to occur considering hydrogeological conditions, modeling, or any other available evidence.

(2) An imminent hazard or threat to the environment, public health, or safety exists.

(3) A violation of any standard in groundwater occurring in the bedrock other than limestones found in the Coastal Plain sediments, unless it can be demonstrated that the violation will not adversely affect, or have the potential to adversely affect, a water supply well.

(k) Where operation of a disposal system permitted under this section results in exceedances of the groundwater quality standards at or beyond the compliance boundary established under subsection (i) of this section, exceedances shall be remedied through cleanup, recovery, containment, or other response as directed by the Commission."

SECTION 22.(b) With respect to exceedances of groundwater quality standards within a compliance boundary and related remedy requirements, G.S. 143-215.1(j) as set forth in Section 22(a) of this act shall apply in lieu of the restricted designation directives found in 15A NCAC 2L .0104(d) and (e) until the Department of Environment and Natural Resources has adopted revisions to those rules to comply with this act.

PART XXIII. EXEMPT CERTAIN RADIO TOWERS FROM APPLICABILITY WITH THE MILITARY LANDS PROTECTION ACT OF 2013

SECTION 23. If House Bill 433, 2013 Regular Session becomes law, then G.S. 143-151.74, as amended by Section 1 of House Bill 433, Regular Session, reads as rewritten:

"**§ 143-151.74. Exemptions from applicability.**

(a) Wind energy facilities and wind energy facility expansions, as those terms are defined in Chapter 143 of the General Statutes, that are subject to the applicable permit requirements of that Chapter shall be exempt from obtaining the endorsement required by this Article.

(b) ~~Cellular~~ Cellular, radio, and television towers erected to temporarily replace ~~cellular~~ cellular, radio, and television towers that are damaged or destroyed due to a natural disaster shall be exempt from obtaining the endorsement required by this Article provided all of the following conditions are met:

(1) The height of the ~~cellular~~ cellular, radio, or television tower that is erected to temporarily replace the ~~cellular~~ cellular, radio, or television tower that is damaged or destroyed does not exceed the height of the original ~~cellular~~ cellular, radio, or television tower.

(2) A disaster has been declared pursuant to Chapter 166A of the General Statutes for the area in which the damaged or destroyed ~~cellular~~ cellular, radio, or television tower is located.

(3) The temporary ~~cellular~~ cellular, radio, or television tower shall only remain in place until the expiration of the declared disaster.

(c) The modification, replacement, removal, or addition of antennas on ~~cellular~~ cellular, radio, or television towers in an area surrounding a major military installation shall be exempt from obtaining the endorsement required by this Article provided the modification, replacement, removal, or addition does not increase the vertical height of the structure."

PART XXIV. CLARIFY THAT EXTENDED-DURATION PERMITS FOR SANITARY LANDFILLS AND TRANSFER STATIONS AUTHORIZED BY S.L. 2012-187 ARE PERMITS FOR OPERATION AS WELL AS CONSTRUCTION

SECTION 24.(a) Section 15.1 of S.L. 2012-187 reads as rewritten:

"**SECTION 15.1.** No later than July 1, 2013, the Commission for Public Health shall adopt rules to allow applicants for sanitary landfills the option to (i) apply for a permit to construct and operate a five-year phase of landfill development and apply to amend the permit to construct and operate subsequent five-year phases of landfill development; or (ii) apply for a permit to construct and operate a 10-year phase of landfill development and apply to amend the permit to construct and operate subsequent 10-year phases of landfill development, with a limited review of the permit five years after issuance of the initial permit and five years after issuance of each amendment for subsequent phases of development. No later than July 1, 2013, the Commission shall also adopt rules to allow applicants for permits for transfer stations the option to (i) apply for a permit with a five-year duration to construct and operate a transfer station; or (ii) apply for a permit with a 10-year duration to construct and operate a transfer station, with a limited review of the permit five years after issuance of the initial permit and five years after issuance of any amendment to the permit. In developing these rules, the Department of Environment and Natural Resources shall examine the current fee schedule for permits for sanitary landfills and transfer stations as set forth under G.S. 130A-295.8 and formulate recommendations for adjustments to the current fee schedule sufficient to address any additional demands associated with review of permits issued for 10-year phases of landfill development and the issuance permits with a duration of up to 10 years for transfer stations. The Department shall report its findings and recommendations, including any legislative proposals, to the Environmental Review Commission on or before December 1, 2012. The rules required by this section shall not become effective until the fee schedule set forth under G.S. 130A-295.8 is amended as necessary to address any additional demands associated with review of permits issued for 10-year phases of landfill development and the issuance of permits with a duration of up to 10 years to construct and operate transfer stations."

SECTION 24.(b) If Senate Bill 328, 2013 Regular Session becomes law, then Section 24(a) of this act is repealed.

PART XXV. ADD A FACTOR FOR CONSIDERATION IN ASSESSING SOLID WASTE PENALTIES

SECTION 25. G.S. 130A-22 reads as rewritten:

"**§ 130A-22. Administrative penalties.**

...

(d) In determining the amount of the penalty in subsections (a), (b) and (c), the Secretary and the Secretary of Environment and Natural Resources shall consider ~~the degree and extent of the harm caused by the violation and the cost of rectifying the damage.~~all of the following factors:

(1) Type of violation.
(2) Type of waste involved.
(3) Duration of the violation.
(4) Cause (whether resulting from a negligent, reckless, or intentional act or omission).
(5) Potential effect on public health and the environment.
(6) Effectiveness of responsive measures taken by the violator.
(7) Damage to private property.
(8) The degree and extent of harm caused by the violation.
(9) Cost of rectifying any damage.
(10) The amount of money the violator saved by noncompliance.
(11) The violator's previous record in complying or not complying with the provisions of Article 9 of this Chapter, Article 11 of this Chapter, or G.S. 130A-325, and any regulations adopted thereunder, as applicable to the violation in question.

...."

PART XXVI. LIMIT LOCAL GOVERNMENT REGULATION OF STORAGE, RETENTION, OR USE OF NONHAZARDOUS RECYCLED MATERIALS

SECTION 26. G.S. 130A-309.09A is amended by adding a new subsection to read:

"(h) The storage, retention, and use of nonhazardous recycled materials, including asphalt pavement, rap, or roofing shingles, shall be encouraged by units of local government. A unit of local government shall not impede the storage, retention, or use of nonhazardous recycled products in properly zoned storage facilities through the regulation of the height of recycled material stockpiles, except when such facilities are located on lots within 200 yards of residential districts."

PART XXVII. DIRECT THE ENVIRONMENTAL REVIEW COMMISSION TO STUDY THE REQUIREMENTS APPLICABLE TO RECYCLING OF DISCARDED COMPUTER EQUIPMENT

SECTION 27. The Environmental Review Commission shall study the State requirements applicable to recycling of discarded computer equipment and televisions, the results of program implementation since enactment of these provisions, and whether any changes may be required or advisable to improve recycling rates and overall effectiveness of the State program. As part of this study, the Environmental Review Commission shall evaluate all information submitted by the Department pursuant to G.S. 130A-309.140. The Commission shall report its findings, together with any recommended legislation, to the 2014 Regular Session of the 2013 General Assembly upon its convening.

PART XXVIII. AMEND THE DEFINITION OF "BUILT-UPON AREA" FOR PURPOSES OF IMPLEMENTING STORMWATER PROGRAMS

SECTION 28.(a) G.S. 143-214.7 is amended by adding a new subsection to read:

"(b2) For purposes of implementing stormwater programs, "built-upon area" means impervious surface and partially impervious surface to the extent that the partially impervious surface does not allow water to infiltrate through the surface and into the subsoil. "Built-upon area" does not include a wooden slatted deck, the water area of a swimming pool, or gravel."

SECTION 28.(b) Subdivision (7) of Section 2 of S.L. 2006-246 is repealed.

SECTION 28.(c) Subdivision (3) of subsection (a) of Section 2 of S.L. 2008-211 is repealed.

SECTION 28.(d) The Environmental Management Commission shall amend its rules to be consistent with the definition of "built-upon area" set out in subsection (b2) of G.S. 143-214.7, as enacted by Section 28(a) of this act.

PART XXIX. EXEMPT PONDS THAT ARE CONSTRUCTED AND USED FOR AGRICULTURAL PURPOSES FROM RIPARIAN BUFFER RULES

SECTION 29.(a) Except as required by federal law or in an imminent threat to public health or safety (i) 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 Basin; (ii) the temporary rule adopted January 1, 2000, and the permanent rule adopted and effective August 1, 2000, as 15A NCAC 02B .0259 regarding the protection and maintenance of existing riparian buffers in the Tar-Pamlico River Basin; (iii) the permanent rule adopted and effective August 11, 2009, Session Law 2009-216, Session Law 2009-484, and the permanent rule, as amended, effective September 1, 2011, as 15A NCAC 02B .0267 regarding the protection and maintenance of existing riparian buffers in the Jordan Water Supply Watershed; (iv) the permanent rule adopted effective April 1, 1999, and the permanent rule, as amended, effective June 1, 2010, as 15A NCAC 02B .0250 regarding the protection and maintenance of existing riparian buffers in the Randleman Lake Water Supply Watershed; (v) the temporary rule effective June 30, 2001, and the permanent rule effective August 1, 2004, as 15A NCAC 02B .0243 regarding the protection and maintenance of existing riparian buffers in the Catawba River Basin; (vi) the permanent rule adopted and effective February 1, 2009, as 15A NCAC 02B .0605 and the permanent rule adopted and effective February 1, 2009, as 15A NCAC 02B .0607 regarding the protection and maintenance of existing riparian buffers in the Goose Creek Watershed (Yadkin Pee-Dee River Basin); and (vii) any similar rule adopted for the protection and maintenance of riparian buffers, collectively referred to as "Riparian Buffer Rules" for the purposes of this section, shall not apply to a freshwater pond to which Riparian Buffer Rules would otherwise apply if all of the following conditions are met:

(1) The property on which the pond is located is used for agriculture as that term is defined in G.S. 106-581.1.

(2) Except for the Riparian Buffer Rules and any similar rule adopted for the protection and maintenance of riparian buffers, the use of the property is in compliance with all other water quality and water quantity statutes and rules applicable to the property before the adoption of the Riparian Buffer Rules for the river basin or watershed in which the property is located.

(3) The pond is not a component of an animal waste management system as defined in G.S. 143-215.10B(3).

SECTION 29.(b) If the use of property on which a pond is located changes such that the use no longer meets the criteria in subdivision (1) of subsection (a) of this section, the Riparian Buffer Rules for the river basin or watershed in which the property is located shall apply.

SECTION 29.(c) The Commission shall not adopt rules for the protection or maintenance of riparian buffers that apply to ponds provided the ponds are constructed or used for agriculture as that term is defined in G.S. 106-581.1.

SECTION 29.(d) Units of local government shall not adopt ordinances, resolutions, plans, or policies for the protection or maintenance of riparian buffers that apply to ponds provided the ponds are constructed or used for agriculture as that term is defined in G.S. 106-581.1.

SECTION 29.(e) The Environmental Management Commission shall adopt rules to amend the Neuse River Basin Riparian Buffer Rule, the Tar-Pamlico River Basin Riparian Buffer Rule, the Jordan Water Supply Riparian Buffer Rule, the Randleman Lake Water Supply Watershed Riparian Buffer Rule, the Catawba River Basin Riparian Buffer Rule, the Goose Creek Watershed (Yadkin Pee-Dee River Basin) Riparian Buffer Rule, and any other similar riparian buffer rules in accordance with subsections (a), (b), and (c) of this section. Notwithstanding G.S. 150B-19(4), the rule adopted by the Commission pursuant to this section shall be substantively identical to the provisions of subsections (a), (b), and (c) of this section. 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 29.(f) Section 29(a) of this act expires on the date that rules adopted pursuant to Section 29(e) of this act become effective.

PART XXX. PROVIDE THAT A THIRD PARTY WHO IS DISSATISFIED WITH A DECISION OF THE ENVIRONMENTAL MANAGEMENT COMMISSION REGARDING A WATER QUALITY PERMIT MAY FILE A CONTESTED CASE UNDER THE ADMINISTRATIVE PROCEDURE ACT WITHIN 30 DAYS

SECTION 30. G.S. 143-215.1 reads as rewritten:

"**§ 143-215.1. Control of sources of water pollution; permits required.**

...

(e) Administrative Review. – A permit ~~applicant or permittee~~ applicant, a permittee, or a third party who is dissatisfied with a decision of the Commission may commence a contested case by filing a petition under G.S. 150B-23 within 30 days after the Commission notifies the applicant or permittee of its decision. If the permit applicant or permittee does not file a petition within the required time, the Commission's decision is final and is not subject to review.

...."

PART XXXI. REPEAL REQUIREMENTS FOR INCREASES IN VEHICULAR SURFACE AREAS

SECTION 31. Article 4A of Chapter 113A of the General Statutes is repealed.

PART XXXII. AMEND DREDGE AND FILL PERMIT APPLICANT PROCEDURE FOR NOTICE TO ADJOINING PROPERTY OWNERS

SECTION 32. G.S. 113-229 reads as rewritten:

"**§ 113-229. Permits to dredge or fill in or about estuarine waters or State-owned lakes.**

...

(d) An applicant for a permit, other than an emergency permit, shall ~~send a copy of his application to~~ notify the owner of each tract of riparian property that adjoins that of the applicant. ~~The copy shall be served~~ An applicant may satisfy the required notification of adjoining riparian property owners by either (i) obtaining from each adjoining riparian property owner a signed statement that the adjoining riparian property owner has no objection to the proposed project or (ii) providing a copy of the applicant's permit application to each adjoining riparian property owner by certified ~~mail~~ mail. ~~or, if~~If the owner's address is unknown and cannot be ascertained with due diligence or if a diligent but unsuccessful effort has been made to serve the copy by certified mail, ~~by~~ publication in accordance with the rules of the

~~Commission.~~Commission shall serve to satisfy the notification requirement. An owner may file written objections to the permit with the Department for 30 days after ~~he~~the owner is served with a copy of the ~~application.~~application by certified mail. In the case of a special emergency dredge or fill permit the applicant must certify that ~~he~~the applicant took all reasonable steps to notify adjacent riparian owners of the application for a special emergency dredge and fill permit prior to submission of the application. Upon receipt of this certification, the Secretary shall issue or deny the permit within the time period specified in subsection (e) of this section, upon the express understanding from the applicant that ~~he~~ the applicant will be entirely liable and hold the State harmless for all damage to adjacent riparian landowners directly and proximately caused by the dredging or filling for which approval may be given.

...."

PART XXXIII. PROVIDE THAT CERTAIN WATER TREATMENT SYSTEMS WITH EXPIRED AUTHORIZATIONS MAY OBTAIN NEW AUTHORIZATIONS THAT ALLOW THE SYSTEMS TO WITHDRAW SURFACE WATER FROM THE SAME WATER BODY AT THE SAME RATE AS WAS APPROVED IN THE EXPIRED AUTHORIZATION

SECTION 33.(a) Public water systems with expired authorizations for water treatment plants that have been deactivated may obtain new water treatment plant authorizations that allow the system to withdraw surface water from the same water body and at the same rate as approved in the expired authorization and such new authorizations shall not be required to prepare an environmental document pursuant to Article 1 of Chapter 113A of the General Statutes.

SECTION 33.(b) This section applies only to those public water systems for which the authorization for the water treatment plant expired within the last ten calendar years of the effective date of this act.

PART XXXIV. AMEND S.L. 2013-50, AN ACT TO PROMOTE THE PROVISION OF REGIONAL WATER AND SEWER SERVICES BY TRANSFERRING OWNERSHIP AND OPERATION OF CERTAIN PUBLIC WATER AND SEWER SYSTEMS TO A METROPOLITAN WATER AND SEWERAGE DISTRICT

SECTION 34. Section 1(a)(2) of S.L. 2013-50 is repealed.

PART XXXV. COMBINE THE DIVISION OF WATER QUALITY AND THE DIVISION OF WATER RESOURCES TO CREATE A NEW DIVISION OF WATER RESOURCES IN THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES AND MAKE CONFORMING CHANGES

SECTION 35.(a) The Department of Environment and Natural Resources shall combine the Division of Water Quality and the Division of Water Resources to create a new Division of Water Resources.

SECTION 35.(b) G.S. 74-50(b3) reads as rewritten:

"(b3) When the Department receives an application for a new mining permit or for a modification of a mining permit to add land to the permitted area, the Department shall send a notice of the application to each of the following agencies with a request that each agency review and provide written comment on the application within 30 days of the date on which the request is made:

(1) Division of Air Quality, Department of Environment and Natural Resources.

(2) Division of Parks and Recreation, Department of Environment and Natural Resources.

~~(3) Division of Water Quality, Department of Environment and Natural Resources.~~

(4) Division of Water Resources, Department of Environment and Natural Resources.
(5) North Carolina Geological Survey, Division of Energy, Mineral, and Land Resources, Department of Environment and Natural Resources.
(6) Wildlife Resources Commission, Department of Environment and Natural Resources.
(7) Office of Archives and History, Department of Cultural Resources.
(8) United States Fish and Wildlife Service, United States Department of the Interior.
(9) Any other federal or State agency that the Department determines to be appropriate, including the Division of Coastal Management, Department of Environment and Natural Resources; the Division of Marine Fisheries, Department of Environment and Natural Resources; the Division of Waste Management, Department of Environment and Natural Resources; and the Department of Transportation."

SECTION 35.(c) G.S. 90A-47.3 reads as rewritten:

"**§ 90A-47.3. Qualifications for certification; training; examination.**

(a) The Commission shall develop and administer a certification program for animal waste management system operators in charge that provides for receipt of applications, training and examination of applicants, and investigation of the qualifications of applicants.

(b) The Commission, in cooperation with the Division of Water ~~Quality~~ Resources of the Department of Environment and Natural Resources, and the Cooperative Extension Service, shall develop and administer a training program for animal waste management system operators in charge. An applicant for initial certification shall complete 10 hours of classroom instruction prior to taking the examination. In order to remain certified, an animal waste management system operator in charge shall complete six hours of approved additional training during each three-year period following initial certification. A certified animal waste management system operator in charge who fails to complete approved additional training within 30 days of the end of the three-year period shall take and pass the examination for certification in order to renew the certificate."

SECTION 35.(d) G.S. 106-805 reads as rewritten:

"**§ 106-805. Written notice of swine farms.**

Any person who intends to construct a swine farm whose animal waste management system is subject to a permit under Part 1 or 1A of Article 21 of Chapter 143 of the General Statutes shall, after completing a site evaluation and before the farm site is modified, notify all adjoining property owners; all property owners who own property located across a public road, street, or highway from the swine farm; the county or counties in which the farm site is located; and the local health department or departments having jurisdiction over the farm site of that person's intent to construct the swine farm. This notice shall be by certified mail sent to the address on record at the property tax office in the county in which the land is located. Notice to a county shall be sent to the county manager or, if there is no county manager, to the chair of the board of county commissioners. Notice to a local health department shall be sent to the local health director. The written notice shall include all of the following:

(1) The name and address of the person intending to construct a swine farm.
(2) The type of swine farm and the design capacity of the animal waste management system.
(3) The name and address of the technical specialist preparing the waste management plan.
(4) The address of the local Soil and Water Conservation District office.
(5) Information informing the adjoining property owners and the property owners who own property located across a public road, street, or highway

from the swine farm that they may submit written comments to the Division of Water ~~Quality,~~Resources, Department of Environment and Natural Resources."

SECTION 35.(e) G.S. 106-860(d) 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 Agriculture and Consumer Services or the Director's designee.

(12) The Director of the Division of Energy, Mineral, and 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 35.(f) G.S. 113A-57 reads as rewritten:

"**§ 113A-57. Mandatory standards for land-disturbing activity.**

No land-disturbing activity subject to this Article shall be undertaken except in accordance with the following mandatory requirements:

(1) No land-disturbing activity during periods of construction or improvement to land shall be permitted in proximity to a lake or natural watercourse unless a buffer zone is provided along the margin of the watercourse of sufficient width to confine visible siltation within the twenty-five percent (25%) of the buffer zone nearest the land-disturbing activity. Waters that have been classified as trout waters by the Environmental Management Commission

shall have an undisturbed buffer zone 25 feet wide or of sufficient width to confine visible siltation within the twenty-five percent (25%) of the buffer zone nearest the land-disturbing activity, whichever is greater. Provided, however, that the Sedimentation Control Commission may approve plans which include land-disturbing activity along trout waters when the duration of said disturbance would be temporary and the extent of said disturbance would be minimal. This subdivision shall not apply to a land-disturbing activity in connection with the construction of facilities to be located on, over, or under a lake or natural watercourse.

(2) The angle for graded slopes and fills shall be no greater than the angle that can be retained by vegetative cover or other adequate erosion-control devices or structures. In any event, slopes left exposed will, within 21 calendar days of completion of any phase of grading, be planted or otherwise provided with temporary or permanent ground cover, devices, or structures sufficient to restrain erosion.

(3) Whenever land-disturbing activity that will disturb more than one acre is undertaken on a tract, the person conducting the land-disturbing activity shall install erosion and sedimentation control devices and practices that are sufficient to retain the sediment generated by the land-disturbing activity within the boundaries of the tract during construction upon and development of the tract, and shall plant or otherwise provide a permanent ground cover sufficient to restrain erosion after completion of construction or development within a time period to be specified by rule of the Commission.

(4) No person shall initiate any land-disturbing activity that will disturb more than one acre on a tract unless, 30 or more days prior to initiating the activity, an erosion and sedimentation control plan for the activity is filed with the agency having jurisdiction and approved by the agency. An erosion and sedimentation control plan may be filed less than 30 days prior to initiation of a land-disturbing activity if the plan is submitted under an approved express permit program, and the land-disturbing activity may be initiated and conducted in accordance with the plan once the plan has been approved. The agency having jurisdiction shall forward to the Director of the Division of Water ~~Quality~~ Resources a copy of each erosion and sedimentation control plan for a land-disturbing activity that involves the utilization of ditches for the purpose of de-watering or lowering the water table of the tract.

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

SECTION 35.(g) G.S. 136-44.7D reads as rewritten:

"**§ 136-44.7D. Bridge construction guidelines.**

A bridge crossing rivers and streams in watersheds shall be constructed to accommodate the hydraulics of a flood water level equal to the water level projected for a 100-year flood for the region in which the bridge is built. The bridge shall be built without regard for the riparian buffer zones as designated by the Department of Environment and Natural Resources, Division of Water ~~Quality.~~Resources. No Memorandums of Agreement may be made between Departments to bypass this construction mandate. No agency rules shall be enacted contrary to this section."

SECTION 35.(h) G.S. 143-214.7(c3) reads as rewritten:

"(c3) In accordance with the Federal Aviation Administration August 28, 2007, Advisory Circular No. 150/5200-33B (Hazardous Wildlife Attractants on or Near Airports), the Department shall not require the use of stormwater retention ponds, stormwater detention

ponds, or any other stormwater control measure that promotes standing water in order to comply with this section at public airports that support commercial air carriers or general aviation services. Development projects located within five statute miles from the farthest edge of an airport air operations area, as that term is defined in 14 C.F.R. § 153.3 (July 2011 Edition), shall not be required to use stormwater retention ponds, stormwater detention ponds, or any other stormwater control measure that promotes standing water in order to comply with this section. Existing stormwater retention ponds, stormwater detention ponds, or any other stormwater control measure that promotes standing water in order to comply with this section located at public airports or that are within five statute miles from the farthest edge of an airport operations area may be replaced with alternative measures included in the Division of Water ~~Quality's~~ Resources' Best Management Practice Manual chapter on airports. In order to be approved by the Department, alternative measures or management designs that are not expressly included in the Division of Water ~~Quality's~~ Resources' Best Management Practice Manual shall provide for equal or better stormwater control based on the pre- and post-development hydrograph. Any replacement of existing stormwater retention ponds, stormwater detention ponds, or any other stormwater control measure that promotes standing water shall be considered a minor modification to the State general stormwater permit."

SECTION 35.(i) G.S. 143-214.7A reads as rewritten:

"**§ 143-214.7A. Stormwater control best management practices.**

(a) The Department of Environment and Natural Resources shall establish standard stormwater control best management practices and standard process water treatment processes or equivalent performance standards for composting operations that are required to be permitted by the Division of Water ~~Quality~~ Resources in the Department and the Division of Waste Management in the Department. These practices, processes, and standards shall be developed for the purpose of protecting water quality by controlling and containing stormwater that is associated with composting operations, by reducing the pollutant levels of process water from composting operations, and by reducing the opportunities for generation of such waters.

(b) Unless otherwise provided in this subsection, the Division of Water ~~Quality~~ Resources shall clarify that stormwater is water that does not contact anything considered a feedstock, intermediate product, or final product of composting operations. Unless otherwise provided in this subsection, the Division of Water ~~Quality~~ Resources 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~~ Resources shall establish threshold quantities of feedstocks, intermediate products, and final products above which water quality permitting will be required. A Type 1 solid waste compost facility shall be subject only to applicable State stormwater requirements and federal stormwater requirements established pursuant to 33 U.S.C. § 1342(p)(3)(B). A Type 1 solid waste compost facility shall not be required to obtain a National Pollutant Discharge Elimination System (NPDES) permit for discharge of process wastewater based solely on the discharge of stormwater that has come into contact with feedstock, intermediate product, or final product at the facility. For purposes of this section, "Type 1 solid waste compost facilities" are facilities that may receive yard and garden waste, silvicultural waste, untreated and unpainted wood waste, or any combination thereof.

(c) The Department shall establish revised water quality permitting procedures for the composting industry. The revised permitting procedures shall identify the various circumstances that determine which water quality permit is required for various composting activities. The Department shall determine whether selected low-risk subsets of the composting industry may be suitable for expedited or reduced water quality permitting procedures. The determination shall include consideration of the economic impact of regulatory decisions.

(d) In developing the practices, processes, and standards and the revised water quality permitting procedures required by this section, the Department shall review practices, processes, and standards and permitting procedures adopted by other states and similar federal programs.

(e) The Department shall form a Compost Operation Stakeholder Advisory Group composed of representatives from the North Carolina Chapter of the United States Composting Council, the North Carolina Association of County Commissioners, the North Carolina League of Municipalities, the North Carolina State Agricultural Extension Service, the North Carolina Chapter of the American Water Works Association-Water Environment Federation, the North Carolina Pumper Group, the North Carolina Chapter of the Solid Waste Association of North America, the North Carolina Septic Tank Association, and any individual or group commenting to the Department on issues related to water quality at composting operations. The Compost Operation Stakeholder Advisory Group shall be convened periodically to provide input and assistance to the Department.

(f) The practices, processes, and standards and the revised permitting procedures shall address the site size of an operation, the nature of the feedstocks composted, the type of compost production method employed, the quantity and water quality of the stormwater or process water associated with composting facilities, the water quality of the receiving waters, as well as operation and maintenance requirements for the resulting standard stormwater control best management practices and standard process water treatment processes."

SECTION 35.(j) G.S. 143-214.10 reads as rewritten:

"**§ 143-214.10. Ecosystem Enhancement Program: development and implementation of basinwide restoration plans.**

Develop Basinwide Restoration Plans. – The Department shall develop basinwide plans for wetlands and riparian area restoration with the goal of protecting and enhancing water quality, flood prevention, fisheries, wildlife habitat, and recreational opportunities within each of the 17 major river basins in the State. The Department shall develop and implement a basinwide restoration plan for each of the 17 river basins in the State in accordance with the basinwide schedule currently established by the Division of Water ~~Quality.~~Resources."

SECTION 35.(k) G.S. 143-214.25A reads as rewritten:

"**§ 143-214.25A. Riparian Buffer Protection Program: Surface Water Identification Training and Certification Program.**

(a) The Division of Water ~~Quality~~ Resources 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;~~Resources; 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~~ Resources 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~~ Resources determines that an individual is failing to make correct determinations, revoke the certification of that individual.

(b) The Division of Water ~~Quality~~ Resources shall develop standard forms for use in making and reporting determinations. Each individual who is certified to make determinations under this section shall prepare a written report of each determination and shall submit the report to the agency that employs the individual. Each agency shall maintain reports of determinations made by its employees, shall forward a copy of each report to the Director of

the Division of Water ~~Quality,~~Resources, and shall maintain these reports and all other records related to determinations so that they will be readily accessible to the public.

(c) In implementing the Surface Water Identification Training and Certification Program established by this section, the Division of Water ~~Quality~~ Resources of the Department of Environment and Natural Resources shall give priority to training and certifying the most highly qualified and experienced personnel in each agency. The Division of Water ~~Quality~~ Resources shall evaluate the effectiveness of the Surface Water Identification Training and Certification Program and shall submit an annual report of its findings and recommendations, if any, to the Environmental Review Commission on or before October 1 of each year."

SECTION 35.(l) G.S. 143-215.9C reads as rewritten:

"**§ 143-215.9C. Use of certain types of culverts allowed.**

(a) The Division of Water ~~Quality~~ Resources in the Department of Environment and Natural Resources shall allow the use of structures known as three-sided, open-bottom, or bottomless culverts. A culvert authorized under this section shall be designed, constructed, and installed so that it satisfies all of the following requirements:

(1) Adheres to professional engineering standards and sound engineering practices.

(2) To the extent practicable, minimizes the erosive velocity of water.

(3) Has an inside that is greater than or equal to 1.2 times the bankfull width of the spanned waterbody. For purposes of this subdivision, "bankfull width" means the width of the stream where over-bank flow begins during a flood event.

(b) The Division shall allow the use of culverts authorized under this section throughout the State and may not limit their use to locations where they must be tied into bedrock. Culverts authorized under this section may only be used on private property and may not be transferred to, or operated or maintained by, the Department of Transportation."

SECTION 35.(m) 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 will be provided by the Division of Soil and Water Conservation of the Department of Agriculture and Consumer Services. Inspection and enforcement will be provided by the Division of Water ~~Quality.~~Resources."

SECTION 35.(n) G.S. 143-215.10B reads as rewritten:

"**§ 143-215.10B. Definitions.**

As used in this Part:

(1) "Animal operation" means any agricultural feedlot activity involving 250 or more swine, 100 or more confined cattle, 75 or more horses, 1,000 or more sheep, or 30,000 or more confined poultry with a liquid animal waste management system, or any agricultural feedlot activity with a liquid animal waste management system that discharges to the surface waters of the State. A public livestock market regulated under Article 35 of Chapter 106 of the General Statutes is an animal operation for purposes of this Part.

(2) "Animal waste" means livestock or poultry excreta or a mixture of excreta with feed, bedding, litter, or other materials from an animal operation.

(3) "Animal waste management system" means a combination of structures and nonstructural practices serving a feedlot that provide for the collection, treatment, storage, or land application of animal waste.

(4) "Division" means the Division of Water ~~Quality~~ Resources of the Department.

(5) "Feedlot" means a lot or building or combination of lots and buildings intended for the confined feeding, breeding, raising, or holding of animals and either specifically designed as a confinement area in which animal waste may accumulate or where the concentration of animals is such that an established vegetative cover cannot be maintained. A building or lot is not a feedlot unless animals are confined for 45 or more days, which may or may not be consecutive, in a 12-month period. Pastures shall not be considered feedlots for purposes of this Part.

(6) "Technical specialist" means an individual designated by the Soil and Water Conservation Commission, pursuant to rules adopted by that Commission, to certify animal waste management plans."

SECTION 35.(o) 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:

(1) The number of permits for animal waste management systems, itemized by type of animal subject to such permits, issued since the last report.

(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.

(6) The number of compliance inspections of animal waste management systems that the Division of Water ~~Quality~~ Resources has conducted since the last report.

(7) The number of follow-up inspections associated with compliance inspections conducted by the Division of Water ~~Quality~~ Resources since the last report.

(8) The average length of time for each category of reviews and inspections under subdivisions (2) through (7) of this subsection.

(9) The number of violations found during each category of review and inspection under subdivisions (2) through (7) of this subsection, the status of enforcement actions taken and pending, and the penalties imposed, collected, and in the process of being negotiated for each such violation.

(10) Any other information that the Department determines to be appropriate or that is requested by the Environmental Review Commission or the Fiscal Research Division."

SECTION 35.(p) G.S. 143B-279.7(a) reads as rewritten:

"(a) The Department of Environment and Natural Resources shall coordinate an intradepartmental effort to develop scientific protocols to respond to significant fish kill events utilizing staff from the Division of Water ~~Quality,~~Resources, Division of Marine Fisheries, Department of Health and Human Services, Wildlife Resources Commission, the scientific community, and other agencies, as necessary. In developing these protocols, the Department of Environment and Natural Resources shall address the unpredictable nature of fish kills caused by both natural and man-made factors. The protocols shall contain written procedures to respond to significant fish kill events including:

(1) Developing a plan of action to evaluate the impact of fish kills on public health and the environment.
(2) Responding to fish kills within 24 hours.
(3) Investigating and collecting data relating to fish kill events.
(4) Summarizing and distributing fish kill information to participating agencies, scientists and other interested parties."

SECTION 35.(q) G.S. 159G-20(5) is repealed.

SECTION 35.(r) 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 Water Resources must ~~each~~ establish a system of assigning points to applications based on the following criteria:

...."

SECTION 35.(s) G.S. 159G-26(a) reads as rewritten:

"§ 159G-26. Annual reports on Water Infrastructure Fund.

(a) Requirement. – The Department 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 Water Resources. The report must be published by 1 November of each year and cover the preceding fiscal year. The Department 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 35.(t) G.S. 159G-30 reads as rewritten:

"§ 159G-30. Department's responsibility.

The Department, through ~~the Division of Water Quality and~~ the Division of Water Resources, 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 Water Resources administers loans and grants from the DWSRF and the Drinking Water Reserve.~~"

SECTION 35.(u) 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. An application for a loan or grant from the DWSRF or the Drinking Water Reserve must be filed with the~~ CWSRF, the Wastewater Reserve, the DWSRF, or the Drinking Water Reserve must be filed with the Division of Water Resources of the Department. An application must be submitted on a form prescribed by the Division and must contain the information required by the Division. An applicant must submit to the Division any additional information requested by the Division to enable the Division to make a determination on the application. An application that does not contain information required on the application or requested by the Division 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 35.(v) 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 Review. – If, after reviewing an application, ~~the Division of Water Quality or~~ the Division of Water ~~Resources, as appropriate,~~Resources determines that a project requires an environmental assessment, the assessment must be submitted before the Division continues its review of the application. If, after reviewing an environmental assessment, the Division concludes that an environmental impact statement is required, the Division 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 Water ~~Resources, as appropriate,~~ Resources 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 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 decision on whether to hold a hearing is conclusive. The Division must keep all written requests for a hearing on an application as part of the records pertaining to the application."

SECTION 35.(w) G.S. 159G-39(a) reads as rewritten:

"(a) Point Assignment. – The ~~Division of Water Quality or the~~ Division of Water ~~Resources, as appropriate,~~Resources must review all applications filed for a loan or grant under this Article for an application period. The Division must rank each application in accordance with the points assigned to the evaluation criteria. The Division must make a written determination of an application's rank and attach the determination to the application. The Division's determination of rank is conclusive."

SECTION 35.(x) Section 1.6 of S.L. 1998-221 reads as rewritten:

"Section 1.6. **Delegation of riparian buffer protection requirements to local governments.** – (a) The Commission may delegate responsibility for the implementation and enforcement of the State's riparian buffer protection requirements in the Neuse River Basin to units of local government that have the power to regulate land use. A delegation under this section shall not affect the jurisdiction of the Commission over State agencies and units of local government. Any unit of local government in the Neuse River Basin that has the power to regulate land use may request that responsibility for the implementation and enforcement of the State's riparian buffer protection requirements be delegated to the unit of local government. To this end, units of local government may adopt ordinances and regulations necessary to establish and enforce the State's riparian buffer protection requirements.

(b) Within 90 days after the Commission receives a complete application requesting delegation of responsibility for the implementation and enforcement of the State's riparian buffer protection requirement, the Commission shall review the application and notify the unit of local government that submitted the application whether the application has been approved,

approved with modifications, or disapproved. The Commission shall not approve a delegation unless the Commission finds that local implementation and enforcement of the State's riparian buffer protection requirements will equal implementation and enforcement by the State.

(c) If the Commission determines that any unit of local government is failing to implement or enforce the State's riparian buffer protection requirements, the Commission shall notify the unit of local government in writing and shall specify the deficiencies in implementation and enforcement. If the local government has not corrected the deficiencies within 90 days after the unit of local government receives the notification, the Commission shall rescind delegation and shall implement and enforce the State's riparian buffer protection program. If the unit of local government indicates that it is willing and able to resume implementation and enforcement of the State's riparian buffer protection requirements, the unit of local government may reapply for delegation under this section.

(d) The Division of Water ~~Quality~~ Resources in the Department shall provide technical assistance to units of local government in the development, implementation, and enforcement of the State's riparian buffer protection requirements.

(e) The Commission may adopt rules to implement this section and may recommend any legislation it determines to be necessary or desirable to achieve the purposes of this section. Rules to implement this section shall not be codified as a part of 15A NCAC 2B.0233 but shall be set out as a separately numbered rule."

SECTION 35.(y) Section 2(c) of S.L. 2001-355 reads as rewritten:

"**SECTION 2.(c)** The Director of the Division of Water ~~Quality~~ Resources and the Director of the Division of Soil and Water Conservation of the Department of Environment and Natural Resources shall jointly appoint members described in subdivisions (1) through (4) of subsection (b) of this section. The Commissioner of Agriculture shall appoint the members described in subdivisions (5) and (6) of subsection (b) of this section. The Commissioner of Agriculture shall appoint the members described in subdivision (6) of subsection (b) of this section from persons nominated by nongovernmental organizations whose members produce or manage significant agricultural commodities in each county or watershed."

SECTION 35.(z) Section 2 of S.L. 2006-246 reads as rewritten:

"**SECTION 2.** Definitions. – The following definitions apply to this act and its implementation:

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

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

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

(4) The definitions set out in 15A NCAC 2H .1002 (Definitions), except for the definitions of "Built-upon area", "Development", and "Redevelopment", which are defined below.

(5) "One-year, 24-hour storm" means a rainfall of an intensity expected to be equaled or exceeded, on average, once in 12 months and with a duration of 24 hours.

(6) "BMP" means Best Management Practice.

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

(8) "Development" means any land-disturbing activity that increases the amount of built-upon area or that otherwise decreases the infiltration of precipitation into the soil.

(9) "Division" means the Division of Water ~~Quality~~ Resources in the Department.

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

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

(12) "Redevelopment" means any land-disturbing activity that does not result in a net increase in built-upon area and that provides greater or equal stormwater control than the previous development.

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

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

a. Waters that are classified as high quality, outstanding resource, shellfish, trout, or nutrient-sensitive waters in accordance with subsections (d) and (e) of 15A NCAC 2B .0101 (Procedures for Assignment of Water Quality Standards – General Procedures).

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

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

(15) "Shellfish resource waters" means Class SA waters that contain an average concentration of 500 parts per million of natural chloride ion. Average concentration is determined by averaging the chloride concentrations of five water samples taken one-half mile downstream from the project site that are taken on separate days, within one hour of high tide, and not within 48 hours following a rain event. The chloride ion concentrations are to be determined by a State-certified laboratory.

(16) "Significant contributor of pollutants" means a municipal separate storm sewer system (MS4) or a discharge that contributes to the pollutant loading of a water body or that destabilizes the physical structure of a water body such that the contribution to pollutant loading or the destabilization may reasonably be expected to adversely affect the quality and uses of the water body. Uses of a water body shall be determined pursuant to 15A NCAC 2B .0211 through 15A NCAC 2B .0222 (Classifications and Water Quality

Standards Applicable to Surface Waters and Wetlands of North Carolina) and 15A NCAC 2B .0300, et seq. (Assignment of Stream Classifications).

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

SECTION 35.(aa) S.L. 2008-211 reads as rewritten:

"**SECTION 1.(a)** Disapprove Rule. – Pursuant to G.S. 150B-21.3(b1), 15A NCAC 02H .1005 (Stormwater Requirements: Coastal Counties), as adopted by the Environmental Management Commission on 10 January 2008 and approved by the Rules Review Commission on 20 March 2008, is disapproved.

"**SECTION 1.(b)** Supersede Rule. – 15A NCAC 02H .1005 (Stormwater Requirements: Coastal Counties), effective 1 September 1995, is superseded by this act. References in the North Carolina Administrative Code to 15A NCAC 02H .1005 shall be deemed to refer to the equivalent provisions of this act.

"**SECTION 2.(a)** Definitions. – The following definitions apply to this act and its implementation:

(1) The definitions set out in 15A NCAC 02H .1002 (Definitions).

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

(3) "Built upon area" has the same meaning as in Session Law 2006-246 and means that portion of a project that is covered by impervious or partially impervious surface including, but not limited to, buildings; pavement and gravel areas such as roads, parking lots, and paths; and recreation facilities such as tennis courts. "Built upon area" does not include a wooden slatted deck, the water area of a swimming pool, or pervious or partially pervious paving material to the extent that the paving material absorbs water or allows water to infiltrate through the paving material.

(4) "Permeable pavement" means paving material that absorbs water or allows water to infiltrate through the paving material. Permeable pavement materials include porous concrete, permeable interlocking concrete pavers, concrete grid pavers, porous asphalt, and any other material with similar characteristics. Compacted gravel shall not be considered permeable pavement.

(5) "Residential development activities" has the same meaning as in 15A NCAC 02B .0202(54).

(6) "Vegetative buffer" has the same meaning as in 15A NCAC 02H .1002(22) and means an area of natural or established vegetation directly adjacent to surface waters through which stormwater runoff flows in a diffuse manner to protect surface waters from degradation due to development activities.

(7) "Vegetative conveyance" means a permanent, designed waterway lined with vegetation that is used to convey stormwater runoff at a non-erosive velocity within or away from a developed area.

"**SECTION 2.(b)** Requirements for Certain Nonresidential and Residential Development in the Coastal Counties. – All nonresidential development activities that occur within the Coastal Counties that will add more than 10,000 square feet of built upon area or that require a Sedimentation and Erosion Control Plan, pursuant to G.S. 113A-57 or a Coastal Area Management Act (CAMA) Major Development Permit, pursuant to G.S. 113A-118 and all residential development activities within the Coastal Counties that require a Sedimentation and Erosion Control Plan, pursuant to G.S. 113A-57 or a Coastal Area Management Act (CAMA) Major Development Permit, pursuant to G.S. 113A-118 shall manage stormwater runoff as provided in this subsection. A development activity or project requires a Sedimentation and Erosion Control Plan if the activity or project disturbs one acre or more of land, including an

activity or project that disturbs less than one acre of land that is part of a larger common plan of development. Whether an activity or project that disturbs less than one acre of land is part of a larger common plan of development shall be determined in a manner consistent with the memorandum referenced as "Guidance Interpreting Phase 2 Stormwater Requirements" from the Director of the Division of Water Quality of the Department of Environment and Natural Resources to Interested Parties dated 24 July 2006.

(1) Development Near Outstanding Resource Waters (ORW). – Development activities within the Coastal Counties and located within 575 feet of the mean high waterline of areas designated by the Commission as Outstanding Resource Waters (ORW) shall meet the requirements of 15A NCAC 02H .1007 (Stormwater Requirements: Outstanding Resource Waters) and shall be permitted as follows:

a. Low-Density Option. – Development shall be permitted pursuant to 15A NCAC 02H .1003(d)(1) if the development meets all of the following requirements:

1. The development has a built upon area of twelve percent (12%) or less. A development project with an overall density at or below the low-density threshold, but containing areas with a density greater than the overall project density, shall be considered low-density as long as the project meets or exceeds the requirements for low-density development and locates the higher density development in upland areas and away from surface waters and drainageways to the maximum extent practicable.

2. Stormwater runoff from the development is transported primarily by vegetated conveyances. As used in this sub-sub-subdivision, "conveyance system" shall not include a stormwater collection system. Stormwater runoff from built upon areas that is directed to flow through any wetlands shall flow into and through these wetlands at a non-erosive velocity.

3. The development contains a 50-foot-wide vegetative buffer for new development activities and a 30-foot-wide vegetative buffer for redevelopment activities. The width of a buffer is measured horizontally from the normal pool elevation of impounded structures, from the bank of each side of streams or rivers, and from the mean high waterline of tidal waters, perpendicular to the shoreline. The vegetative buffer may be cleared or graded, but must be planted with and maintained in grass or any other vegetative or plant material. The Division of Water ~~Quality~~ Resources may, on a case-by-case basis, grant a minor variance from the vegetative buffer requirements of this section pursuant to the procedures set out in 15A NCAC 02B .0233(9)(b). Vegetative buffers and filters required by this section and any other buffers or filters required by State water quality or coastal management rules or local government requirements may be met concurrently and may contain, in whole or in part, coastal, isolated, or 404 jurisdictional wetlands that are located landward of the normal waterline.

b. High-Density Option. – Development shall be permitted pursuant to 15A NCAC 02H .1003(d)(2) if the development meets all of the following requirements:

1. The development has a built upon area of greater than twelve percent (12%).
2. The development has no direct outlet channels or pipes to Class SA waters unless permitted in accordance with 15A NCAC 02H .0126. Stormwater runoff from built upon areas that is directed to flow through any wetlands shall flow into and through these wetlands at a non-erosive velocity.
3. The development utilizes control systems that are any combination of infiltration systems, bioretention systems, constructed stormwater wetlands, sand filters, rain barrels, cisterns, rain gardens or alternative low impact development stormwater management systems designed in accordance with 15A NCAC 02H .1008 to control and treat the runoff from all surfaces generated by one and one-half inches of rainfall, or the difference in the stormwater runoff from all surfaces from the predevelopment and postdevelopment conditions for a one-year, 24-hour storm, whichever is greater. Wet detention ponds may be used as a stormwater control system to meet the requirements of this sub-sub-subdivision, provided that the stormwater control system fully complies with the requirements of this sub-subdivision. If a wet detention pond is used within one-half mile of Class SA waters, installation of a stormwater best management practice in series with the wet detention pond shall be required to treat the discharge from the wet detention pond. Secondary stormwater best management practices that are used in series with another stormwater best management practice do not require any minimum separation from the seasonal high water table. Alternatives as described in 15A NCAC 02H .1008(h) may also be approved if they meet the requirements of this sub-subdivision.
4. Stormwater runoff from the development that is in excess of the design volume must flow overland through a vegetative filter designed in accordance with 15A NCAC 02H .1008 with a minimum length of 50 feet measured from mean high water of Class SA waters.
5. The development contains a 50-foot-wide vegetative buffer for new development activities and a 30-foot-wide vegetative buffer for redevelopment activities. The width of a buffer is measured horizontally from the normal pool elevation of impounded structures, from the bank of each side of streams or rivers, and from the mean high waterline of tidal waters, perpendicular to the shoreline. The vegetative buffer may be cleared or graded, but must be planted with, and maintained in, grass or any other vegetative or plant material. Furthermore, stormwater control best management practices (BMPs), or stormwater control structures, with the exception of wet detention ponds, may be located within this vegetative

buffer. The Division of Water ~~Quality~~ Resources may, on a case by case basis, grant a minor variance from the vegetative buffer requirements of this section pursuant to the procedures set out in 15A NCAC 02B .0233(9)(b). Vegetative buffers and filters required by this section and any other buffers or filters required by State water quality or coastal management rules or local government requirements may be met concurrently and may contain, in whole or in part, coastal, isolated, or 404 jurisdictional wetlands that are located landward of the normal waterline.

c. Stormwater Discharges Prohibited. – All development activities, including both low- and high-density projects, shall prohibit new points of stormwater discharge to Class SA waters or an increase in the volume of stormwater flow through conveyances or increase in capacity of conveyances of existing stormwater conveyance systems that drain to Class SA waters. Any modification or redesign of a stormwater conveyance system within the contributing drainage basin must not increase the net amount or rate of stormwater discharge through existing outfalls to Class SA waters. The following shall not be considered a direct point of stormwater discharge:

1. Infiltration of the stormwater runoff from the design storm as described in sub-sub-subdivision 3. of sub-subdivision b. of subdivision (1) of this subsection.
2. Diffuse flow of stormwater at a non-erosive velocity to a vegetated buffer or other natural area, that is capable of providing effective infiltration of the runoff from the design storm as described in sub-sub-subdivision 3. of sub-subdivision b. of subdivision (1) of this subsection. Notwithstanding the other requirements of this section, the infiltration mandated in this sub-sub-subdivision does not require a minimum separation from the seasonal high-water table.
3. The discharge from a wet detention pond that is treated by a secondary stormwater best management practice, provided that both the wet detention pond and the secondary stormwater best management practice meet the requirements of this sub-subdivision.

d. Limitation on the Density of Development. – Development shall be limited to a built upon area of twenty-five percent (25%) or less.

(2) Development Near Class SA Waters. – Development activities within one-half mile of and draining to those waters classified by the Commission as Class SA waters or within one-half mile of waters classified by the Commission as Class SA waters and draining to unnamed freshwater tributaries to Class SA waters shall meet the requirements of sub-subdivisions a., b., and c. of subdivision (1) of this subsection. The extent of Class SA waters is limited to those waters that are determined to be at least an intermittent stream based on a site stream determination made in accordance with the procedures that are delineated in the Division of Water Quality's "Identification Methods for the Origin of Intermittent and Perennial Streams" prepared pursuant to Session Law 2001-404.

(3) Other Coastal Development. – Development activities within the Coastal Counties except those areas described in subdivisions (1) and (2) of this subsection shall meet all of the following requirements:

a. Low-Density Option: Development shall be permitted pursuant to 15A NCAC 02H .1003(d)(1) if the development meets all of the following requirements:

1. The development has a built upon area of twenty-four percent (24%) or less. A development project with an overall density at or below the low-density threshold, but containing areas with a density greater than the overall project density, shall be considered low density as long as the project meets or exceeds the requirements for low-density development and locates the higher density in upland areas and away from surface waters and drainageways to the maximum extent practicable.

2. Stormwater runoff from the development is transported primarily by vegetated conveyances. As used in this sub-sub-subdivision, "conveyance system" shall not include a stormwater collection system. Stormwater runoff from built upon areas that is directed to flow through any wetlands shall flow into and through these wetlands at a non-erosive velocity.

3. The development contains a 50-foot-wide vegetative buffer for new development activities and a 30-foot-wide vegetative buffer for redevelopment activities. The width of a buffer is measured horizontally from the normal pool elevation of impounded structures, from the bank of each side of streams or rivers, and from the mean high waterline of tidal waters, perpendicular to the shoreline. The vegetative buffer may be cleared or graded, but must be planted with, and maintained in, grass or any other vegetative or plant material. The Division of Water ~~Quality~~ Resources may, on a case-by-case basis, grant a minor variance from the vegetative buffer requirements of this section pursuant to the procedures set out in 15A NCAC 02B .0233(9)(b). Vegetative buffers and filters required by this section and any other buffers or filters required by State water quality or coastal management rules or local government requirements may be met concurrently and may contain, in whole or in part, coastal, isolated, or 404 jurisdictional wetlands that are located landward of the normal waterline.

b. High-Density Option: Higher density developments shall be permitted pursuant to 15A NCAC 02H .1003(d)(2) if the development meets all of the following requirements:

1. The development has a built upon area of greater than twenty-four percent (24%).

2. The development uses control systems that are any combination of infiltration systems, wet detention ponds, bioretention systems, constructed stormwater wetlands, sand filters, rain barrels, cisterns, rain gardens or alternative

stormwater management systems designed in accordance with 15A NCAC 02H .1008.

3. Control systems must be designed to store, control, and treat the stormwater runoff from all surfaces generated by one and one-half inch of rainfall.
4. Stormwater runoff from built upon areas that is directed to flow through any wetlands shall flow into and through these wetlands at a non-erosive velocity.
5. A 50-foot-wide vegetative buffer for new development activities and a 30-foot-wide vegetative buffer for redevelopment activities. The width of a buffer is measured horizontally from the normal pool elevation of impounded structures, from the bank of each side of streams or rivers, and from the mean high waterline of tidal waters, perpendicular to the shoreline. The vegetative buffer may be cleared or graded, but must be planted with, and maintained in, grass or any other vegetative or plant material. Furthermore, stormwater control best management practices (BMPs), or stormwater control structures, with the exception of wet detention ponds, may be located within this vegetative buffer. The Division of Water ~~Quality~~ Resources may, on a case by case basis, grant a minor variance from the vegetative buffer requirements of this section pursuant to the procedures set out in 15A NCAC 02B .0233(9)(b). Vegetative buffers and filters required by this section and any other buffers or filters required by State water quality or coastal management rules or local government requirements may be met concurrently and may contain, in whole or in part, coastal, isolated, or 404 jurisdictional wetlands that are located landward of the normal waterline.

(4) Requirements for Structural Stormwater Controls. – Structural stormwater controls required under this section shall meet all of the following requirements:

a. Remove an eighty-five percent (85%) average annual amount of Total Suspended Solids.
b. For detention ponds, draw down the treatment volume no faster than 48 hours, but no slower than 120 hours.
c. Discharge the storage volume at a rate equal to or less than the predevelopment discharge rate for the one-year, 24-hour storm.
d. Meet the General Engineering Design Criteria set forth in 15A NCAC 02H .1008(c).
e. For structural stormwater controls that are required under this section and that require separation from the seasonal high-water table, a minimum separation of two feet is required. Where a separation of two feet from the seasonal highwater table is not practicable, the Division of Water ~~Quality~~ Resources may grant relief from the separation requirement pursuant to the Alternative Design Criteria set out in 15A NCAC 02H .1008(h). No minimum separation from the seasonal highwater table is required for a secondary stormwater best management practice that is used in a series with another stormwater best management practice.

(5) Certain Wetlands Excluded From Density Calculation. – For the purposes of this section, areas defined as Coastal Wetlands under 15A NCAC 07H .0205, as measured landward from the normal high waterline, shall not be included in the overall project area to calculate impervious surface density. Wetlands that are not regulated as coastal wetlands pursuant to 15A NCAC 07H .0205 and that are located landward of the normal high waterline may be included in the overall project area to calculate impervious surface density.

"**SECTION 2.(c)** Requirements for Limited Residential Development in Coastal Counties. – For residential development activities within the 20 Coastal Counties that are located within one-half mile and draining to Class SA waters, that have a built upon area greater than twelve percent (12%), that do not require a stormwater management permit under subsection (b) of this section, and that will add more than 10,000 square feet of built upon area, a one-time, nonrenewable stormwater management permit shall be obtained. The permit shall require recorded deed restrictions or protective covenants to ensure that the plans and specifications approved in the permit are maintained. Under this permit, stormwater runoff shall be managed using any one or combination of the following practices:

(1) Install rain cisterns or rain barrels designed to collect all rooftop runoff from the first one and one-half inches of rain. Rain barrels and cisterns shall be installed in such a manner as to facilitate the reuse of the collected rain water on site and shall be installed in such a manner that any overflow from these devices is directed to a vegetated area in a diffuse flow. Construct all uncovered driveways, uncovered parking areas, uncovered walkways, and uncovered patios out of permeable pavement or other pervious materials.

(2) Direct rooftop runoff from the first one and one-half inches of rain to an appropriately sized and designed rain garden. Construct all uncovered driveways, uncovered parking areas, uncovered walkways, and uncovered patios out of permeable pavement or other pervious materials.

(3) Install any other stormwater best management practice that meets the requirements of 15A NCAC 02H .1008 to control and treat the stormwater runoff from all built upon areas of the site from the first one and one-half inches of rain.

"**SECTION 2.(d)** Exclusions. – The requirements of this section shall not apply to any of the following:

(1) Activities of the North Carolina Department of Transportation that are regulated in accordance with the provisions of the Department's National Pollutant Discharge Elimination System (NPDES) Stormwater Permit.

(2) Development activities that are conducted pursuant to and consistent with one of the following authorizations, or any timely renewal thereof, shall be regulated by those provisions and requirements of 15A NCAC 02H .1005 that were effective at the time of the original issuance of the following authorizations:

a. State Stormwater Permit issued under the provisions of 15A NCAC 02H .1005.

b. Stormwater Certification issued pursuant to 15A NCAC 02H .1000 prior to 1 December 1995.

c. A Coastal Area Management Act Major Permit.

d. 401 Certification that contains an approved Stormwater Management Plan.

e. A building permit pursuant to G.S. 153A-357 or G.S. 160A-417.

f. A site-specific development plan as defined by G.S. 153A-344.1(b)(5) and G.S. 160A-385.1(b)(5).

g. A phased development plan approved pursuant to G.S. 153A-344.1 or G.S. 160A-385.1 that shows:

1. For the initial or first phase of development, the type and intensity of use for a specific parcel or parcels, including at a minimum, the boundaries of the project and a subdivision plan that has been approved pursuant to G.S. 153A-330 through G.S. 153A-335 or G.S. 160A-371 through G.S. 160A-376.

2. For any subsequent phase of development, sufficient detail so that implementation of the requirements of this section to that phase of development would require a material change in that phase of the plan.

h. A vested right to the development pursuant to common law.

(3) Redevelopment activities that result in no net increase in built upon area and provide stormwater control equal to the previous development.

(4) Development activities for which a complete Stormwater Permit Application has been accepted by the Division of Water ~~Quality~~ Resources prior to the effective date of this act, shall be regulated by the provisions and requirements of 15A NCAC 02H .1005 that were effective at the time that this application was accepted as complete by the Division of Water ~~Quality~~ Resources. For purposes of this subsection, a Stormwater Permit Application is deemed accepted as complete by the Division of Water ~~Quality~~Resources when the application is assigned a permit number in the Division's Basinwide Information Management System.

(5) Development activities for which only a minor modification of a State Stormwater Permit is required shall be regulated by the provisions and requirements of 15A NCAC 02H .1005 that were effective at the time of the original issuance of the State Stormwater Permit. For purposes of this subsection, a minor modification of a State Stormwater Permit is defined as a modification that does not increase the net area of built upon area within the project site or does not increase the overall size of the stormwater controls that have been previously approved for that development activity.

(6) Municipalities designated as a National Pollutant Discharge Elimination System (NPDES) Phase 2 municipality located within the 20 Coastal Counties until such time as the NPDES Phase 2 Stormwater Permit expires and is subject to renewal. Upon renewal of the NPDES Phase 2 Stormwater Permits for municipalities located within the 20 Coastal Counties, the Department shall review the permits to determine whether the permits should be amended to include the provisions of this section.

...."

SECTION 35.(bb) S.L. 2009-322 reads as rewritten:

"**SECTION 1.(a)** The Department of Environment and Natural Resources shall establish standard stormwater control best management practices and standard process water treatment processes or equivalent performance standards for composting operations that are required to be permitted by the Division of Water ~~Quality~~ Resources in the Department and the Division of Waste Management in the Department. These practices, processes, and standards shall be developed for the purpose of protecting water quality by controlling and containing stormwater that is associated with composting operations, by reducing the pollutant levels of process water from composting operations, and by reducing the opportunities for generation of such waters.

"**SECTION 1.(b)** The Division of Water ~~Quality~~ Resources 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~~ Resources 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~~ Resources shall establish threshold quantities of feedstocks, intermediate products, and final products above which water quality permitting will be required.

"**SECTION 1.(c)** The Department shall establish revised water quality permitting procedures for the composting industry. The revised permitting procedures shall identify the various circumstances that determine which water quality permit is required for various composting activities. The Department shall determine whether selected low-risk subsets of the composting industry may be suitable for expedited or reduced water quality permitting procedures. The determination shall include consideration of the economic impact of regulatory decisions.

"**SECTION 1.(d)** In developing the practices, processes, and standards and the revised water quality permitting procedures required by this section, the Department shall review practices, processes, and standards and permitting procedures adopted by other states and similar federal programs.

"**SECTION 1.(e)** The Department shall form a Compost Operation Stakeholder Advisory Group composed of representatives from the North Carolina Chapter of the United States Composting Council, the North Carolina Association of County Commissioners, the North Carolina League of Municipalities, the North Carolina State Agricultural Extension Service, the North Carolina Chapter of the American Water Works Association-Water Environment Federation, the North Carolina Pumper Group, the North Carolina Chapter of the Solid Waste Association of North America, the North Carolina Septic Tank Association, and any individual or group commenting to the Department on issues related to water quality at composting operations. The Compost Operation Stakeholder Advisory Group shall be convened periodically to provide input and assistance to the Department.

"**SECTION 1.(f)** The practices, processes, and standards and the revised permitting procedures shall address the site size of an operation, the nature of the feedstocks composted, the type of compost production method employed, the quantity and water quality of the stormwater or process water associated with composting facilities, the water quality of the receiving waters, as well as operation and maintenance requirements for the resulting standard stormwater control best management practices and standard process water treatment processes.

"**SECTION 2.** Not later than December 31, 2009, the Department shall report to the Environmental Review Commission on the progress of the implementation of the provisions of this act and any recommendations from the Compost Operation Stakeholder Advisory Group and other commenters. The Department shall periodically make other progress reports as the Commission may subsequently direct.

"**SECTION 3.(a)** For the period of time between the effective date of this act and phase-in provided by Section 3(d) of this act, permits for composting facilities shall be handled as follows:

(1) The Division of Water ~~Quality~~ Resources shall issue interim water quality permit extensions to all composting facilities applying for a water quality permit renewal until the revised final water quality permitting procedures are phased in, as provided in Section 3(d) of this act. The issuance of interim water quality permit extensions shall be contingent upon no significant changes to the existing quantities, feedstocks, and composting methods permitted by the Division of Waste Management. For any facility found to

be causing or contributing to a violation of water quality standards, the Division of Water ~~Quality~~ Resources may subsequently determine that the facility is ineligible for continued coverage under an interim water quality permit extension.

(2) For facilities renewing permits issued by the Division of Waste Management prior to the phase-in provided in Section 3(d) of this act, but operating without the appropriate water quality permits, the Division of Water ~~Quality~~ Resources will work with those facilities on a case-by-case basis to establish appropriate permit coverage.

(3) New water quality permit applications filed after July 1, 2009, shall be handled on a case-by-case basis.

"**SECTION 3.(b)** Not later than January 1, 2010, the Department shall request comments and recommendations from the Compost Operation Stakeholder Advisory Group as to standard stormwater control best management practices, standard process water treatment processes, and performance standards and the elements of the revised water quality permitting procedures.

"**SECTION 3.(c)** Not later than January 1, 2011, the Department shall establish standard stormwater control best management practices and standard process water treatment processes or performance standards, including standard methods for the reduction in volume for both of these waters.

"**SECTION 3.(d)** Not later than January 1, 2011, the Department shall begin the phase-in of the revised water quality permitting procedures for the composting industry. Complete phase in of the revised water quality permitting procedures shall be accomplished not later than October 1, 2012.

"**SECTION 3.(e)** Water quality permits for the composting industry shall include a reopener clause that may be used to revise permit conditions to reflect the results of the stakeholder process.

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

SECTION 35.(cc) Section 4(b) of S.L. 2010-180 reads as rewritten:

"**SECTION 4.(b)** In implementing the Surface Water Identification Training and Certification Program established by G.S. 143-214.25A, as enacted by Section 4(a) of this act, the Division of Water ~~Quality~~ Resources of the Department of Environment and Natural Resources shall give priority to training and certifying the most highly qualified and experienced personnel in each agency. The Division of Water ~~Quality~~ Resources shall evaluate the effectiveness of the Surface Water Identification Training and Certification Program and shall submit an annual report of its findings and recommendations, if any, to the Environmental Review Commission on or before October 1 of each year. The Division of Water ~~Quality~~ Resources shall submit the first report required by this section on or before October 1, 2011."

SECTION 35.(dd) Section 4 of S.L. 2005-190, as amended by Section 31 of S.L. 2006-59 and Section 12 of S.L. 2010-180, reads as rewritten:

"**SECTION 4. Other drinking water supply reservoirs.** – The Environmental Management Commission shall not make any new or increased nutrient loading allocation to any person who is required to obtain a permit under G.S. 143-215 for an individual wastewater discharge directly or indirectly into any impaired drinking water supply reservoir for which the Division of Water ~~Quality~~ Resources of the Department of Environment and Natural Resources has prepared or updated a calibrated nutrient response model since 1 July 2002 until permanent rules adopted by the Commission to implement the nutrient management strategy for that reservoir become effective. The Commission shall report its progress in developing and implementing nutrient management strategies for reservoirs to which this section applies to the Environmental Review Commission by 1 April of each year beginning 1 April 2006."

SECTION 35.(ee) Section 13.4(b) of S.L. 2011-145 reads as rewritten:

"**SECTION 13.4.(b)** During the 2011-2012 fiscal year and the 2012-2013 fiscal year, the Groundwater Investigation Unit of the Division of Water ~~Quality~~ Resources of the Department of Environment and Natural Resources shall bid to contract to perform well drilling services for any division within the Department of Environment and Natural Resources that needs to have wells drilled to monitor groundwater, as part of remediating a contaminated site, or as part of any other division or program responsibility, except for a particular instance when this would be impracticable. The provisions of Article 3 of Chapter 143 of the General Statutes apply to any contract entered into under this section."

SECTION 35.(ff) Section 21 of Session Law 2011-394 reads as rewritten:

"**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~~ Resources in the Department of Environment and Natural Resources shall transfer Clean Water Act (CWA) Section 319 Nonpoint Source Management Program Base Grant funds to the Division of Forest Resources and Division of Soil and Water Conservation, where consistent with the federal grant program requirements, 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 base grant 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 319 Nonpoint Source Management Program Competitive Grant funds shall consider water quality benefit and be distributed in a fair and equitable manner based on the grant requirements and the benefit. The Division of Water ~~Quality~~ Resources will establish a Workgroup of Nonpoint Source Agencies, including the Division of Forest Resources and the Division of Soil and Water Conservation, which will consider the competitive grant project proposals. The Workgroup will be given full input to the project funding decisions."

SECTION 35.(gg) G.S. 143-215.10F, as amended by S.L. 2013-131, reads as rewritten:

"**§ 143-215.10F. Inspections.**

(a) Except as provided in subsection (b) of this section, the Division shall conduct inspections of all animal operations that are subject to a permit under G.S. 143-215.10C at least once a year to determine whether the system is causing a violation of water quality standards and whether the system is in compliance with its animal waste management plan or any other condition of the permit.

(b) As an alternative to the inspection program set forth in subsection (a) of this section, the Division of Soil and Water Conservation of the Department of Agriculture and Consumer Services shall conduct inspections of all animal operations that are subject to a permit under G.S. 143-215.10C at least once a year to determine whether the system is causing a violation of water quality standards and whether the system is in compliance with its animal waste management plan or any other condition of the permit. The alternative inspection program shall be located in up to four counties selected using the criteria set forth in Section 15.4(a) of S.L. 1997-443, as amended, as it existed prior to its expiration. The Department of Agriculture and Consumer Services shall establish procedures whereby resources within the local Soil and Water Conservation Districts serving the counties are used for quick response to complaints and reported problems previously referred only to the Division of Water ~~Quality.~~ Resources."

PART XXXVI. SEVERABILITY CLAUSE AND EFFECTIVE DATE

SECTION 36.(a) If any section or provision of this act is declared unconstitutional or invalid by the courts, it does not affect the validity of this act as a whole or any part other than the part so declared to be unconstitutional or invalid.

SECTION 36.(b) G.S. 87-97(e), as amended by Section 11 of this act, is effective when this act becomes law and applies to applications to construct or repair a private drinking water well that are received by a local health department on or after that date. Section 29 of this act is effective when it becomes law and applies to ponds used for agriculture that were either in existence on or constructed after July 22, 1997. Section 18 of this act becomes effective July 1, 2013. Section 16 becomes effective July 1, 2013, and applies to a purchase or acquisition of interest in real property occurring on or after that date. Section 28 of this act is effective when this act becomes law and subsection (b2) of G.S. 143-214.7, as enacted by subsection (a) of Section 28 of this act, applies to projects for which permit applications are received on or after that date. The remainder of this act is effective when it becomes law.

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 94

AMENDMENT NO. 1
(to be filled in by Principal Clerk)

H94-ASB-56 [v.1]

Comm. Sub. [YES]
Amends Title [NO]
H94-CSTA-23 [v.9]

Date June 25 ,2013

Senator Jackson

moves to amend the bill on page 3, lines 22 through 24,
by rewriting those lines to read:

"its interim findings to the Environmental Review Commission on or before April 1, 2015 and shall submit its final report, including any findings and legislative recommendations, to the Environmental Review Commission on or before April 1, 2016."; and

on page 6, line 46,
by rewriting that line to read:

"under G.S. 132-1.2:"; and

on page 7, line 16,
by rewriting that line to read:

"(2) Notwithstanding any other provisions of this section, persons subject to regulation under this Chapter may withhold any"; and

on page 7, line 34,
by rewriting that line to read:

"designated as confidential as defined in G.S. 132-1.2 under this subsection."; and

on page 43, lines 10 through 13,
by rewriting those lines to read:

"interest in real property occurring on or after that date. Section 28 of this act is effective when the act becomes law and subsection (b2) of G.S. 143-214.7, as enacted by subsection (a) of Section 28 of this act, applies to projects for which permit applications are received on or after that date. The remainder of this act is effective when it becomes law.".

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 94

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

H94-ASB-56 [v.1]

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

HOUSE BILL 94
Committee Substitute Favorable 5/9/13

Short Title: Amend Environmental Laws 2013. (Public)

Sponsors:

Referred to:

February 13, 2013

A BILL TO BE ENTITLED

AN ACT TO AMEND CERTAIN ENVIRONMENTAL AND NATURAL RESOURCES LAWS TO (1) CLARIFY THAT EXTENDED DURATION PERMITS FOR SANITARY LANDFILLS AND TRANSFER STATIONS AUTHORIZED BY S.L. 2012-187 ARE PERMITS FOR OPERATION AS WELL AS CONSTRUCTION; (2) CLARIFY THE PROCESS FOR APPEALS FROM CIVIL PENALTIES ASSESSED BY A LOCAL GOVERNMENT THAT HAS ESTABLISHED AND ADMINISTERS AN EROSION AND SEDIMENTATION CONTROL PROGRAM APPROVED UNDER G.S. 113A-60 AND PROVIDE THAT CIVIL PENALTIES ASSESSED BY A LOCAL GOVERNMENT PURSUANT TO THE SEDIMENTATION POLLUTION CONTROL ACT OF 1973 SHALL BE REMITTED TO THE CIVIL PENALTY AND FORFEITURE FUND; (3) REPEAL THE REQUIREMENT FOR AIR POLLUTION PERMIT HOLDERS TO SUBMIT A WRITTEN DESCRIPTION OF PLANS TO REDUCE EMISSIONS OF AIR CONTAMINANTS BY SOURCE REDUCTION OR RECYCLING; (4) ADD A FACTOR FOR CONSIDERATION IN ASSESSING SOLID WASTE PENALTIES; (5) CLARIFY THOSE UNDERGROUND STORAGE TANKS THAT ARE NOT REQUIRED TO PROVIDE SECONDARY CONTAINMENT UNTIL JANUARY 1, 2020; AND (6) DIRECT THE COMMISSION FOR PUBLIC HEALTH TO ADOPT RULES TO PROVIDE FOR NOTICE OF KNOWN CONTAMINATION TO APPLICANTS WHO SEEK TO CONSTRUCT NEW PRIVATE DRINKING WATER WELLS.

The General Assembly of North Carolina enacts:

PART I. CLARIFY THAT EXTENDED-DURATION PERMITS FOR SANITARY LANDFILLS AND TRANSFER STATIONS AUTHORIZED BY S.L. 2012-187 ARE PERMITS FOR OPERATION AS WELL AS CONSTRUCTION

SECTION 1. Section 15.1 of S.L. 2012-187 reads as rewritten:

"**SECTION 15.1.** No later than July 1, 2013, the Commission for Public Health shall adopt rules to allow applicants for sanitary landfills the option to (i) apply for a permit to construct and operate a five-year phase of landfill development and apply to amend the permit to construct and operate subsequent five-year phases of landfill development; or (ii) apply for a permit to construct and operate a 10-year phase of landfill development and apply to amend the permit to construct and operate subsequent 10-year phases of landfill development, with a limited review of the permit five years after issuance of the initial permit and five years after issuance of each amendment for subsequent phases of development. No later than July 1, 2013, the Commission shall also adopt rules to allow applicants for permits for transfer stations the option to (i) apply for a permit with a five-year duration to construct and operate a transfer

station; or (ii) apply for a permit with a 10-year duration to construct and operate a transfer station, with a limited review of the permit five years after issuance of the initial permit and five years after issuance of any amendment to the permit. In developing these rules, the Department of Environment and Natural Resources shall examine the current fee schedule for permits for sanitary landfills and transfer stations as set forth under G.S. 130A-295.8 and formulate recommendations for adjustments to the current fee schedule sufficient to address any additional demands associated with review of permits issued for 10-year phases of landfill development and the issuance permits with a duration of up to 10 years for transfer stations. The Department shall report its findings and recommendations, including any legislative proposals, to the Environmental Review Commission on or before December 1, 2012. The rules required by this section shall not become effective until the fee schedule set forth under G.S. 130A-295.8 is amended as necessary to address any additional demands associated with review of permits issued for 10-year phases of landfill development and the issuance of permits with a duration of up to 10 years to construct and operate transfer stations."

PART II. CLARIFY LOCAL GOVERNMENT AUTHORITY UNDER THE SEDIMENTATION AND POLLUTION CONTROL ACT

SECTION 2. G.S. 113A-64 reads as rewritten:

"**§ 113A-64. Penalties.**

(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.

(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 the reason for assessing the penalty. The notice of assessment shall be served by any means authorized under ~~G.S. 1A-1, Rule 4, and~~ G.S. 1A-1. A notice of assessment by the Secretary 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. A notice of assessment by a local government shall direct the violator to either pay the assessment or contest the assessment within 30 days by filing a petition for hearing with the local government as directed by procedures within the local ordinances or regulations adopted to establish and enforce the erosion and sedimentation control program. 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.

(3) In determining the amount of the penalty, the Secretary or a local government shall consider the degree and extent of harm caused by the violation, the cost of rectifying the damage, the amount of money the violator saved by noncompliance, whether the violation was committed willfully and the prior record of the violator in complying or failing to comply with this ~~Article.~~Article, or any ordinance, rule, or order adopted or issued pursuant to this Article by the Commission or by a local government.

(4) Repealed by Session Laws 1993 (Reg. Sess., 1994), c. 776, s. 11.

(5) The clear proceeds of civil penalties collected by the Department or other State agency or a local government under this subsection shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2. ~~Civil penalties collected by a local government under this subsection shall be credited to the general fund of the local government as nontax revenue.~~

(b) Criminal Penalties. – Any person who knowingly or willfully violates any provision of this Article or any ordinance, rule, regulation, or order duly adopted or issued by the Commission or a local government, or who knowingly or willfully 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, shall be guilty of a Class 2 misdemeanor that may include a fine not to exceed five thousand dollars ($5,000)."

PART III. REPEAL THE REQUIREMENT FOR AIR POLLUTION PERMIT HOLDERS TO SUBMIT A WRITTEN DESCRIPTION OF PLANS TO REDUCE EMISSIONS OF AIR CONTAMINANTS BY SOURCE REDUCTION OR RECYCLING

SECTION 3. G.S. 143-215.108(g) is repealed.

PART IV. ADD A FACTOR FOR CONSIDERATION IN ASSESSING SOLID WASTE PENALTIES

SECTION 4. G.S. 130A-22 reads as rewritten:

"§ 130A-22. Administrative penalties.

...

(d) In determining the amount of the penalty in subsections (a), (b) and (c), the Secretary and the Secretary of Environment and Natural Resources shall consider all of the following factors:~~the degree and extent of the harm caused by the violation and the cost of rectifying the damage.~~

(1) Type of violation.

(2) Type of waste involved.

(3) Duration of the violation.

(4) Cause (whether resulting from a negligent, reckless, or intentional act or omission).

(5) Potential effect on public health and the environment.

(6) Effectiveness of responsive measures taken by the violator.

(7) Damage to private property.

(8) The degree and extent of harm caused by the violation.

(9) Cost of rectifying any damage.

(10) The amount of money the violator saved by noncompliance.

(11) The violator's previous record in complying or not complying with the provisions of Article 9 of this Chapter, Article 11 of this Chapter, or

G.S. 130A-325, and any regulations adopted thereunder, as applicable to the violation in question.

...."

PART V. CLARIFY THOSE UNDERGROUND STORAGE TANKS THAT ARE NOT REQUIRED TO PROVIDE SECONDARY CONTAINMENT UNTIL JANUARY 1, 2020

SECTION 5. Section 11.6(a) of S.L. 2011-394 reads as rewritten:

"**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,~~1991, and prior to April 1, 2001, shall not be required to provide secondary containment until January 1, 2020."

PART VI. DIRECT THE COMMISSION FOR PUBLIC HEALTH TO ADOPT RULES TO PROVIDE FOR NOTICE OF KNOWN CONTAMINATION TO APPLICANTS WHO SEEK TO CONSTRUCT NEW PRIVATE DRINKING WATER WELLS

SECTION 6. G.S. 87-97 is amended by adding a new subsection to read:

"(e1) Notice for Wells at Contamination Sites. – The Commission shall adopt rules governing permits issued for private drinking water wells for circumstances in which the local health department has determined that the proposed site for a private drinking water well is located within 1,000 feet of a known source of release of contamination. Rules adopted pursuant to this subsection shall provide for notice and information of the known source of release of contamination and any known risk of issuing a permit for the construction and use of a private drinking water well on such a site."

PART VII. EFFECTIVE DATE

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

HOUSE BILL 94:
Amend Environmental Laws 2013

2013-2014 General Assembly

Committee:	Senate Agriculture/Environment/Natural Resources	**Date:**	June 25, 2013
Introduced by:	Reps. McElraft, Samuelson, McGrady	**Prepared by:**	Jennifer Mundt Committee Analyst
Analysis of:	PCS to Second Edition H94-CSTA-23 [v.9]		

SUMMARY: ***The Proposed Committee Substitute (PCS) for House Bill 94 would amend certain environmental and natural resources laws.***

[As introduced, this bill was identical to S112, as introduced by Sen. Jackson, which is currently in House Environment.]

BILL ANALYSIS:

Section 1 directs the Environmental Management Commission to repeal the "Model Year 2008 and Subsequent Model Year Heavy-Duty Diesel Requirements" (15A NCAC 02D .1009) rule on or before December 1, 2013. The rule provides that no model year 2008 or subsequent model year heavy-duty vehicle may be leased or registered in North Carolina unless the vehicle or its engine has been certified by the California Air Resources Boards as meeting the applicable model year requirements of the California Code of Regulations.

Section 2 directs the Department of Environment and Natural Resources to study whether all of the counties covered under the emissions testing and maintenance program are needed to maintain the current and proposed federal ozone standards in the State.

Section 3 provides the Environmental Management Commission with the flexibility to determine whether rules are necessary for controlling the effects of complex sources on air quality.

Section 4 amends the rules in the North Carolina Administrative Code (NCAC) that pertain to open burning for land clearing or right-of-way maintenance to provide that an air quality permit is not required if materials are not carried offsite or transported over public roads for open burning unless the materials are carried or transported to: (i) facilities permitted for the operation of an air curtain burner; or (ii) a location where the material is burned no more than 4 times per year; that is at least 500 feet from any dwelling or occupied structure not located on the property; there are no more than 2 piles, each 20 feet in diameter burned at one time; and the location is not a permitted solid waste facility. This section also makes conforming statutory changes.

Section 5 provides that with the exception of permits issued pursuant to Title V of the federal Clean Air Act, air quality permits must be issued for a term of eight years. This section also provides that in addition to a permit applicant and a permittee, a third party who is dissatisfied with a decision of the Environmental Management Commission may commence a contested case within 30 days of the Commission notifying the applicant of its decision.

Section 6 amends the Department of Environment and Natural Resources' notice requirements for minor permits issued pursuant to the Coastal Area Management Act.

Section 7 amends the statutes governing the provision of hydraulic fracturing fluid chemicals and constituent data to the Mining and Energy Commission (Commission) and the Department of Environment and Natural Resources (Department). The following provisions apply to information designated as "confidential" or as a "trade secret," as those terms are defined in the General Statutes:

- The Commission or the Department may disclose "confidential" information to officers, employees, or authorized representatives of federal, State, or local agencies if the disclosure is determined to be necessary by the Secretary of Environment and Natural Resources (Secretary) or the Secretary's designee to respond to a situation that endangers the public health or the environment.
- Information related to hydraulic fracturing fluid chemicals and constituents that constitute a "trade secret" may be withheld. A person must submit a claim of entitlement that the trade secret is valid to the Secretary. Upon a determination by the Secretary that trade secret information is necessary to respond to a situation that endangers the public health or the environment, the Secretary may issue a written declaration that the trade secret information be submitted to the Commission and the Department within two hours of the time the written declaration is issued.
- The Commission, Department, an agency of the State, local government emergency response official, or a landowner or other person having legal interest in real property on which a hydraulically-fractured well-head is located may bring an action challenging the designation of information as confidential or as a trade secret.

Section 8 exempts the Mining and Energy Commission, the Environmental Management Commission, and the Commission for Public Health from preparing fiscal notes for proposed rules for the creation of a modern regulatory program for the management of oil and gas exploration activities in the State, including the use of horizontal drilling and hydraulic fracturing.

Section 9 clarifies the process for appeals from civil penalties assessed by a local government that has established and administers a State-approved erosion and sedimentation control program. This section also provides that civil penalties assessed by a local government under the Sedimentation and Pollution Control Act of 1973 must be remitted to the Civil Penalty and Forfeiture Fund.

Section 10 amends the rules in the North Carolina Administrative Code to provide for reduced flow alternatives to the Daily Flow Rate for Design for wastewater systems as required by Table No. 1 in 15A NCAC 18A .1949(b). This section would exempt proposed wastewater systems from complying with the Daily Flow Rate for Design and any design flow standard established by the Commission for Public Health or the Department of Health and Human Services provided (i) the daily flow rate for design of the system is less than the rate listed by rule (Table No. 1, 15A NCAC 18A .1949(b)), (ii) the daily flow rate for design can be achieved through engineering design that utilizes low-flow fixtures and low-flow technologies, and (iii) the design is prepared, sealed, and signed by a professional engineer licensed in North Carolina.

This section further provides that proposed wastewater systems with a daily flow for design of less than 3,000 gallons per day are not required to obtain State-level review for the system.

Section 11 directs the Commission for Public Health (Commission) to adopt rules governing permits issued for private drinking water wells for circumstances in which the local health department has determined that the proposed site for the well is located within 1,000 feet of a known source of contamination. The rules adopted by the Commission must provide for notice and information of the known sources of contamination and any known risk of issuing a permit for the construction and use of a private drinking water well on such a site. This section also directs local health departments to either

issue a permit or deny an application for a permit for the construction, repair, or operation of a private drinking water well within 30 days of receipt of an application.

The provision requiring a local health department to issue or deny an application for a permit to construct or repair a private drinking water well within 30 days becomes effective when this act becomes law and applies to applications to construct or repair a well that are received by a local health department on or after that date.

Section 12 provides that underground storage tanks and systems installed after January 1, 1991, *and prior to April 1, 2001,* are not required to comply with well setback requirements or provide secondary containment until January 1, 2020.

Section 13 amends various statutes governing protected species, marine, and wildlife resources to conform to analogous federal law.

Section 14(a) amends the statute regulating ownership or use of venomous reptiles to correctly refer to the term "antivenin," not "antivenom," as the serum or treatment for venom.

Section 14(b) amends the statute governing the investigation of suspected violations, seizure, and disposition of reptiles to direct law enforcement personnel to consult with representatives of the North Carolina Museum of Natural Sciences or the North Carolina Zoological Park to identify appropriate and safe methods to seize a reptile. If there is an immediate risk to public safety, the officer is not required to first consult with Museum or Zoo representatives. This section further provides that representatives of the Museum or the Zoological Park may euthanize a venomous reptile for which antivenin is not readily available.

Section 15 amends the Administrative Procedure Act to provide the Wildlife Resources Commission with temporary rulemaking authority for manner of take.

Section 16 prohibits certain public entities from purchasing or acquiring an ownership interest in real property with known contamination without approval of the Governor and the Council of State.

This section becomes effective July 1, 2013 and applies to a purchase or acquisition of interest in real property occurring on or after that date.

Section 17 clarifies that no building permit is required under the Building Code for routine maintenance on fuel dispensing pumps and other dispensing devices.

Section 18 clarifies that the Secretary of Environment and Natural Resources may, in addition to adopting a schedule of entrance fees for the aquariums, may do so for the piers operated by the aquariums, and may adopt fees for facility rentals and educational programs.

Section 19 repeals the Mountain Resources Planning Act.

Sections 20(a) and 20(b) provide an exemption from the 25 acre or more size requirement for local governments entering into development agreements for developable properties of any size provided the property is subject to an executed brownfields agreement.

Section 21 directs the Department of Transportation to adopt rules for selective pruning within highway rights-of way for vegetation that obstructs a motorists' view of properties on which agritourism activities occur. The Department is exempt from preparing fiscal notes for any rules proposed pursuant to this section.

Section 22(a) amends the statute that regulates sources of water pollution and the activities for which a permit is required by requiring any source that must obtain a permit must also have a compliance boundary established, either by the permit or by a rule adopted by the Environmental Management

Commission, beyond which groundwater quality standards may not be exceeded. The compliance boundary must be established at the property boundary, unless otherwise established by the Commission. Multiple contiguous properties under common ownership and permitted for use as a disposal site must be treated as a single property.

This Section also provides that the Commission must only require a permitted disposal system to remedy an exceedance of groundwater quality standards within the compliance boundary when certain conditions are met. Where operation of a disposal system results in an exceedance of groundwater quality standards at or beyond the compliance boundary, the exceedance must be remedied through clean-up, recovery, containment, or other response as directed by the Commission.

Section 22(b) provides that the statutory amendments described above in Section 22(a) apply to exceedances of groundwater quality standards within a compliance boundary rather than certain requirements of the Restricted Designations rule (15A NCAC 2L .0104(d) and (e)) until the Department of Environment and Natural Resources revises the rules to comply with Section 22(a).

Section 23 adds radio towers to those towers exempt from applicability with the Military Lands Protection Act of 2013 under certain conditions.

Section 24(a) clarifies a provision enacted in 2012 that extended the duration of permits for sanitary landfills and transfer stations such that permits are for both construction and operation of the facility.

Section 24(b) provides that if Senate Bill 328, 2013 Regular Session becomes law, Section 24(a) would be repealed.

Section 25 codifies existing factors and adds the amount of money a violator saved as a new factor for consideration in assessing solid waste penalties. Current law under the General Statutes and the North Carolina Administrative Code (15A NCAC 13B .0702) requires the Secretary of Environment and Natural Resources to consider numerous factors to determine the amount of a penalty for violations of solid waste management laws.

Section 26 prohibits a local government from impeding the storage, retention, or use of nonhazardous recycled materials, including asphalt pavement, rap, or roofing shingles in properly zoned storage facilities through regulation of the height of recycled materials stockpiles, except when such facilities are located on lots within 200 yards of residential districts.

Section 27 directs the Environmental Review Commission to study the State requirements applicable to recycling of discarded computer equipment and televisions, the results of the program implementation since enactment of those provisions, and whether changes may be required or advisable to improve recycling rates and overall effectiveness of the State program

For purposes of implementing stormwater programs, **Section 28** amends the definition of "built-upon area" to mean " impervious surface and partially impervious surface to the extent that the partially impervious surface does not allow water to infiltrate through the surface into the subsoil. "Built-upon area" does not include a wooden slatted deck, the water area of a swimming pool, or gravel. This Section directs the Environmental Management Commission to amend its rules to be consistent with the definition of "built-upon area."

The definition of "built-upon area" applies to projects for which permit applications are received on or after the effective date of this act.

Section 29 exempts freshwater ponds that are constructed and used for agriculture (as that term is defined in G.S. 106-581.1), provided the pond is not a component of an animal waste management system, from the: (i) Neuse River Basin riparian buffer rules; (ii) Tar-Pamlico River Basin riparian

buffer rules; (iii) Jordan Water Supply Watershed riparian buffer rules; (iv) Randleman Lake Water Supply Watershed riparian buffer rules; (v) riparian buffer rules in the Catawba River Basin; (vi) riparian buffer rules in the Goose Creek Watershed (Yadkin Pee-Dee River Basin) and; (vii) any similar rule adopted for the protection and maintenance of riparian buffers.

This section provides that the riparian buffer rules must apply if the use of the property adjacent to the pond changes such that it no longer is used for agriculture.

This section becomes effective when this act becomes law and applies to ponds used for agriculture that were either in existence on or constructed after July 22, 1997.

Section 30 provides that in addition to a permit applicant and a permittee, a third party who is dissatisfied with a decision of the Environmental Management Commission may commence a contested case within 30 days of the Commission notifying the applicant of its decision.

Section 31 repeals the Article that provides alternative requirements for land-disturbing activity that results in an increase in vehicular surface area of one acre or more

Section 32 amends the notice procedure to riparian property owners that adjoin property subject to an application for a dredge and fill permit.

Section 33 provides that water treatment systems with expired authorizations may obtain new authorizations that allow the systems to withdraw surface water from the same water body and at the same rate as was approved in the expired authorization and such new authorizations are not required to prepare an environmental document pursuant to the State Environmental Policy Act. This section applies only those systems whose authorization for the water treatment plant expired within the last ten calendar years of the effective date of this act.

Section 34 amends S.L. 2013-50, an act to promote the provision of regional water and sewer services by transferring ownership and operation of certain public water and sewer systems to a metropolitan water and sewer district, by removing from the criteria for determining affected public water systems that the public water system has not been issued an interbasin transfer certificate.

Section 35(a) directs the Department of Environment and Natural Resources to combine the Division of Water Quality and the Division of Water Resources to create a new Division of Water Resources.

Sections 35(b) through 35(gg) make conforming statutory and Session Law changes related to combining the Division of Water Quality with the Division of Water Resources.

Section 36(a) provides that if any section or provision of the act is declared unconstitutional or invalid by the courts, it would not affect the validity of the act as a whole or any part other than the part declared to be unconstitutional or invalid.

EFFECTIVE DATE: Unless otherwise indicated above, this act becomes effective when it becomes law.

Jeff Hudson, counsel to the Senate Agriculture/Environment/Natural Resources Committee, contributed to this summary.

VISITOR REGISTRATION SHEET

Senate/Agriculture/Environment/Natural Resources
(Committee Name)

June 25, 2013
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Patrick McKenzie	LCPP
Trina Ozer	DENR
Layla Cummings	DENR
Debbie Hyden	KCG
Mary Maides Abbill	SELC
Alex Badger	CSS
Benton Albritton	ABC
DYLAN WATTS	SMITH A.
Mike Gebert	NCLCV
Logan Mohs	NCLCV
Whitney Christensen	NCRLA
T REEDER	NC DWR
Sarah Lindh	DENR
Joanne Stevens	NCNA
Carr McLamb	DENR
Mikey Abraczinskas	DENR - DAQ
Matt Gillespie	DENR

VISITOR REGISTRATION SHEET

Senate/Agriculture/Environment/Natural Resources
(Committee Name)

June 25, 2013
Date

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John Cooper	Compass NC
Graham Boyd	TGANC
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Amanda Honaker	TSS
Kim Alboum	HSUS
Matt Dominguez	HSUS
Chris Sigmann	Intern - Sen. Kinnaird
Mac McCord	NCCN
Drew Elliot	DENR
Sachi Pathak	shadowing sen. kinnaird
Michael Ellison	DENR
Erin Wynia	NCLM
BRAD IVES	DENR
Lawton Ives	Shadowing DENR
Ben Scogin	TS

VISITOR REGISTRATION SHEET

Senate/Agriculture/Environment/Natural Resources
(Committee Name)

June 25, 2013
Date

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Tamara Winslow	NCCUL
David Ferrell	Van Black
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Patrick Buffkin	NCAEC
Jake Parker	NCFB
LC Rampman	CSS
Preston Howard	NCMA
Doug Lassiter	NCSTA
PGP	NCFB
Terry Mann	State Grange Youth
Sarah L. Miller	Self
Mike Carpenter	NCMSA
Dennis Young	Ag Alliance + Et L

09-21-201

VISITOR REGISTRATION SHEET

Senate/Agriculture/Environment/Natural Resources
(Committee Name)

June 25, 2013
Date

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Will Morgan	TNC
CHRIS DILLON	ARMA
Jacob Davis	DENR
KRISTIN TERRY	DENR
Marissa Yarnell	K&L Gates
Ken Melton	K.M.A.
Bo Heath	McGuireWoods
Dana Fenton	CLT
Mike Smallwood	SOG
Chris Emanuel	The CG Emanuel Group
BRAD IVES	DENR
John Merrill	MWL LLC
TYLER NEWMAN	WILMINGTON
Angie Maier	NCPC
[illegible]	NCAC/NECA
Rob Lemire	RLA
TJ Brigbee	NP

09-21-201

VISITOR REGISTRATION SHEET

Senate/Agriculture/Environment/Natural Resources
(Committee Name)

June 25, 2013
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Tom Fransen	DWR, NCDENR
Johanna Reese	NCACC
Lauri Payne	NC Grange
TRACY DAVIS	DENR-DEMLR
Lori Andrews	LAHA
Dan Sp	SA
Peter Rumbe	American Rivers
Cassie Gavin	Sierra Club
Hugh Johnson	Governor's office
TOM BEAN	EDF, NCWF

09-21-201

Senate Committee on Agriculture/Environment/Natural Resources
Tuesday, July 2, 2013, 11:00 AM
544 Legislative Office Building

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

BILL NO.	SHORT TITLE	SPONSOR
HB 15	Various Emergency Management Changes.	Representative Faircloth Representative Saine Representative Boles
HB 321	Amend Local Solid Waste Planning.	Representative McGrady Representative McElraft Representative G. Graham Representative Speciale

Presentations

Other Business

Adjournment

Senate Committee on Agriculture/Environment/Natural Resources
Tuesday, July 2, 2013 at 11:00 AM
Room 544 of the Legislative Office Building

MINUTES

The Senate Committee on Agriculture/Environment/Natural Resources met at 11:00 AM on July 2, 2013 in Room 544 of the Legislative Office Building. Eleven (11) members were present.

Senator Brent Jackson, Chair, presided.

Senator Jackson introduced the Sgt.- at –Arms – Charles Harper, Ken Kirby, Justin Owens, Anderson Meadows, and Graham Whitaker.\

Pages for the meeting – Bailey Sherrill from Hiddenite sponsored by Sen. Berger, Jackson Widener from Charlotte sponsored by Sen. Ford, Nathaniel Vang from Charlotte sponsored by Sen Ford, Bryanna Thompson of Knightdale sponsored by Sen. McKissick, and Warren Babb from Charlotte sponsored by Sen. Rucho.

Sen. Jackson turned gavel over to Sen. Brock. The following bills were heard:

HB 15 – Various Emergency Management Changes – Rep. Faircloth

Sen. Brock moved to accept the PCS on this bill. The motion carried. Rep. Faircloth explained the bill and then turned the floor over to Sen. Jackson to explain parts of the bill. Sen. Kinnaird had a follow-up question which Sen. Jackson responded. Sen. Cook moved for an Unfavorable report to the original and a Favorable report to the PCS. The motion carried.

HB 321 – Amend Local Solid Waste Planning – Rep. McGrady

Sen. Jackson ran the bill in Rep. McGrady's absence. Sen. Jackson explained the bill. Sen. Hartsell sent forth 2 proposed amendments. First amendment (ARI-75 (v.2) was explained by Sen. Hartsell. Sen. Allran had a question regarding this amendment which Jennifer McGinnis, Staff, responded. Sen. Jackson had no problems with this amendment. Sen. Hartsell moved to accept the first amendment and the motion carried. Amendment No. 2 (ARI-76 –(v-1) – Sen. Hartsell explained that this was a technical amendment and turned the floor over to Jennifer McGinnis, Staff who fully explained the technical amendment. Sen. Allran had a follow up question which Jennifer McGinnis responded. Sen.Hartsell moved to accept the amendment and the motion carried. With the amendments being accepted, Sen. Hartsell moved to an Unfavorable Report to the original bill and a Favorable Report to the new PCS. Motion carried.

The meeting adjourned at 11:30 AM.

Senator Brent Jackson, Chair

Judy Edwards, Committee Clerk

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES COMMITTEE REPORT
Senator Brock, Co-Chair
Senator Jackson, Co-Chair

Tuesday, July 02, 2013

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

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 1, BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL

HB **15** **(CS#1)** Various Emergency Management Changes.

Draft Number:	H15-PCS30588-TA-27
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

HB **321** **(CS#1)** Amend Local Solid Waste Planning.

Draft Number:	H321-PCS80410-TA-28
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

TOTAL REPORTED: 2

Senator W. Jackson will handle HB 15
Senator W. Jackson will handle HB 321



GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

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HOUSE BILL 15
Committee Substitute Favorable 2/13/13
PROPOSED SENATE COMMITTEE SUBSTITUTE H15-PCS30588-TA-27

Short Title: Various Emergency Management Changes. (Public)

Sponsors:

Referred to:

January 31, 2013

A BILL TO BE ENTITLED

AN ACT TO (1) FACILITATE THE USE OF VEHICLES EXCLUSIVELY FOR LAW ENFORCEMENT, FIREFIGHTING, OR OTHER EMERGENCY RESPONSE PURPOSES BY THE DIVISION OF PARKS AND RECREATION OF THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES AND THE NORTH CAROLINA FOREST SERVICE OF THE DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES; (2) DIRECT THE DEPARTMENT OF PUBLIC SAFETY TO STUDY METHODS OF ALLOWING PRISONERS TO CONTRIBUTE TO CLEANUP AND MITIGATION EFFORTS IN CONNECTION WITH STATES OF EMERGENCY DECLARED IN THIS STATE; AND (3) AMEND THE LAW GOVERNING ASSIGNMENT OF STATE-OWNED MOTOR VEHICLES.

The General Assembly of North Carolina enacts:

SECTION 1.(a) G.S. 20-125(b) reads as rewritten:

"(b) Every vehicle owned ~~and~~ or operated by a police department or by the Department of Public Safety including the State Highway Patrol or by the Wildlife Resources Commission or the Division of Marine ~~Fisheries~~ Fisheries, or by the Division of Parks and Recreation of the Department of Environment and Natural Resources, or by the North Carolina Forest Service of the Department of Agriculture and Consumer Services, and used exclusively for law ~~enforcement~~ enforcement, firefighting, or other emergency response purposes, or by the Division of Emergency Management, or by a fire department, either municipal or rural, or by a fire patrol, whether such fire department or patrol be a paid organization or a voluntary association, vehicles used by an organ procurement organization or agency for the recovery and transportation of human tissues and organs for transplantation, and every ambulance or emergency medical service emergency support vehicle used for answering emergency calls, shall be equipped with special lights, bells, sirens, horns or exhaust whistles of a type approved by the Commissioner of Motor Vehicles.

The operators of all such vehicles so equipped are hereby authorized to use such equipment at all times while engaged in the performance of their duties and services, both within their respective corporate limits and beyond.

In addition to the use of special equipment authorized and required by this subsection, the chief and assistant chiefs of any police department or of any fire department, whether the same be municipal or rural, paid or voluntary, county fire marshals, assistant fire marshals, transplant coordinators, and emergency management coordinators, are hereby authorized to use such special equipment on privately owned vehicles operated by them while actually engaged in the

performance of their official or semiofficial duties or services either within or beyond their respective corporate limits.

And vehicles driven by law enforcement officers of the North Carolina Division of Motor Vehicles shall be equipped with a bell, siren, or exhaust whistle of a type approved by the Commissioner, and all vehicles owned and operated by the State Bureau of Investigation for the use of its agents and officers in the performance of their official duties may be equipped with special lights, bells, sirens, horns or exhaust whistles of a type approved by the Commissioner of Motor Vehicles.

Every vehicle used or operated for law enforcement purposes by the sheriff or any salaried deputy sheriff or salaried rural policeman of any county, whether owned by the county or not, may be, but is not required to be, equipped with special lights, bells, sirens, horns or exhaust whistles of a type approved by the Commissioner of Motor Vehicles. Such special equipment shall not be operated or activated by any person except by a law enforcement officer while actively engaged in performing law enforcement duties.

In addition to the use of special equipment authorized and required by this subsection, the chief and assistant chiefs of each emergency rescue squad which is recognized or sponsored by any municipality or civil preparedness agency, are hereby authorized to use such special equipment on privately owned vehicles operated by them while actually engaged in their official or semiofficial duties or services either within or beyond the corporate limits of the municipality which recognizes or sponsors such organization."

SECTION 1.(b) G.S. 20-130.1 reads as rewritten:

"**§ 20-130.1. Use of red or blue lights on vehicles prohibited; exceptions.**

(a) It is unlawful for any person to install or activate or operate a red light in or on any vehicle in this State. As used in this subsection, unless the context requires otherwise, "red light" means an operable red light not sealed in the manufacturer's original package which: (i) is designed for use by an emergency vehicle or is similar in appearance to a red light designed for use by an emergency vehicle; and (ii) can be operated by use of the vehicle's battery, vehicle's electrical system, or a dry cell battery. As used in this subsection, the term "red light" shall also mean any forward facing red light installed on a vehicle after initial manufacture of the vehicle.

(b) The provisions of subsection (a) of this section do not apply to the following:

(1) A police ~~car;~~vehicle.

(2) A highway patrol ~~car;~~vehicle.

(3) A vehicle owned by the Wildlife Resources Commission and operated exclusively for ~~law enforcement purposes;~~law enforcement, firefighting, or other emergency response purposes.

(4) An ~~ambulance;~~ambulance.

(5) A vehicle used by an organ procurement organization or agency for the recovery and transportation of blood, human tissues, or organs for ~~transplantation;~~transplantation.

(6) A fire-fighting ~~vehicle;~~vehicle.

(7) A school ~~bus;~~bus.

(8) A vehicle operated by any member of a municipal or rural fire department in the performance of his duties, regardless of whether members of that fire department are paid or ~~voluntary;~~voluntary.

(9) A vehicle of a voluntary lifesaving organization (including the private vehicles of the members of such an organization) that has been officially approved by the local police authorities and which is manned or operated by members of that organization while answering an official ~~call;~~call.

(10) A vehicle operated by medical doctors or anesthetists in ~~emergencies;~~emergencies.

(11) A motor vehicle used in law enforcement by the sheriff, or any salaried rural policeman in any county, regardless of whether or not the county owns the ~~vehicle;~~vehicle.

(11a) A vehicle operated by the State Fire Marshal or his representatives in the performance of their duties, whether or not the State owns the ~~vehicle;~~vehicle.

(12) A vehicle operated by any county fire marshal, assistant fire marshal, or emergency management coordinator in the performance of his duties, regardless of whether or not the county owns the ~~vehicle;~~vehicle.

(13) A light required by the Federal Highway ~~Administration;~~Administration.

(14) A vehicle operated by a transplant coordinator who is an employee of an organ procurement organization or agency when the transplant coordinator is responding to a call to recover or transport human tissues or organs for ~~transplantation;~~transplantation.

(15) A vehicle operated by an emergency medical service as an emergency support ~~vehicle;~~vehicle.

(16) A State emergency management ~~vehicle; and~~vehicle.

(17) An Incident Management Assistance Patrol vehicle operated by the Department of Transportation, when using rear-facing red lights while stopped for the purpose of providing assistance or incident management.

(18) A vehicle operated by the Division of Marine Fisheries or the Division of Parks and Recreation of the Department of Environment and Natural Resources that is used for law enforcement, firefighting, or other emergency response purpose.

(19) A vehicle operated by the North Carolina Forest Service of the Department of Agriculture and Consumer Services that is used for law enforcement, firefighting, or other emergency response purpose.

(20) A vehicle operated by official members or Teams of REACT International, Inc., that is used to provide additional manpower authorized by law enforcement, firefighting, or other emergency response entities.

...."

SECTION 1.(c) G.S. 20-145 reads as rewritten:

"**§ 20-145. When speed limit not applicable.**

The speed limitations set forth in this Article shall not apply to vehicles when operated with due regard for safety under the direction of the police in the chase or apprehension of violators of the law or of persons charged with or suspected of any such violation, nor to fire department or fire patrol vehicles when traveling in response to a fire alarm, nor to public or private ambulances and rescue squad emergency service vehicles when traveling in emergencies, nor to vehicles operated by county fire marshals and civil preparedness coordinators when traveling in the performances of their ~~duties.~~duties, nor to any of the following when either operated by a law enforcement officer in the chase or apprehension of violators of the law or of persons charged with or suspected of any such violation, when traveling in response to a fire alarm, or for other emergency response purposes: (i) a vehicle operated by the Division of Marine Fisheries or the Division of Parks and Recreation of the Department of Environment and Natural Resources or (ii) a vehicle operated by the North Carolina Forest Service of the Department of Agriculture and Consumer Services. This exemption shall not, however, protect the driver of any such vehicle from the consequence of a reckless disregard of the safety of others."

SECTION 1.(d) G.S. 20-156(b) reads as rewritten:

"(b) The driver of a vehicle upon the highway shall yield the right-of-way to police and fire department vehicles and public and private ambulances, vehicles used by an organ

procurement organization or agency for the recovery or transportation of human tissues and organs for transplantation or a vehicle operated by a transplant coordinator who is an employee of an organ procurement organization or agency when the transplant coordinator is responding to a call to recover or transport human tissues or organs for transplantation, and to rescue squad emergency service vehicles and vehicles operated by county fire marshals and civil preparedness ~~coordinators~~ coordinators, and to a vehicle operated by the Division of Marine Fisheries or the Division of Parks and Recreation of the Department of Environment and Natural Resources when used for law enforcement, firefighting, or other emergency response purpose, and to a vehicle operated by the North Carolina Forest Service of the Department of Agriculture and Consumer Services when used for a law enforcement, firefighting, or other emergency response purpose, when the operators of said vehicles are giving a warning signal by appropriate light and by bell, siren or exhaust whistle audible under normal conditions from a distance not less than 1,000 feet. When appropriate warning signals are being given, as provided in this subsection, an emergency vehicle may proceed through an intersection or other place when the emergency vehicle is facing a stop sign, a yield sign, or a traffic light which is emitting a flashing strobe signal or a beam of steady or flashing red light. This provision shall not operate to relieve the driver of a police or fire department ~~vehicle~~ vehicle, or a vehicle owned or operated by the Department of Environment and Natural Resources, or the Department of Agriculture and Consumer Services, or public or private ambulance or vehicles used by an organ procurement organization or agency for the recovery or transportation of human tissues and organs for transplantation or a vehicle operated by a transplant coordinator who is an employee of an organ procurement organization or agency when the transplant coordinator is responding to a call to recover or transport human tissues or organs for transplantation, or rescue squad emergency service vehicle or county fire marshals or civil preparedness coordinators from the duty to drive with due regard for the safety of all persons using the highway, nor shall it protect the driver of any such vehicle or county fire marshal or civil preparedness coordinator from the consequence of any arbitrary exercise of such right-of-way."

SECTION 1.(e) G.S. 20-157(a) reads as rewritten:

"(a) Upon the approach of any law enforcement or fire department vehicle or public or private ambulance or rescue squad emergency service ~~vehicle~~ vehicle, or a vehicle operated by the Division of Marine Fisheries, or the Division of Parks and Recreation of the Department of Environment and Natural Resources, or the North Carolina Forest Service of the Department of Agriculture and Consumer Services when traveling in response to a fire alarm or other emergency response purpose, giving warning signal by appropriate light and by audible bell, siren or exhaust whistle, audible under normal conditions from a distance not less than 1000 feet, the driver of every other vehicle shall immediately drive the same to a position as near as possible and parallel to the right-hand edge or curb, clear of any intersection of streets or highways, and shall stop and remain in such position unless otherwise directed by a law enforcement or traffic officer until the law enforcement or fire department ~~vehicle~~ vehicle, or the vehicle operated by the Division of Marine Fisheries, or the Division of Parks and Recreation of the Department of Environment and Natural Resources, or the North Carolina Forest Service of the Department of Agriculture and Consumer Services, or the public or private ambulance or rescue squad emergency service vehicle shall have passed. Provided, however, this subsection shall not apply to vehicles traveling in the opposite direction of the vehicles herein enumerated when traveling on a four-lane limited access highway with a median divider dividing the highway for vehicles traveling in opposite directions, and provided further that the violation of this subsection shall be negligence per se. Violation of this subsection is a Class 2 misdemeanor."

SECTION 2. The Department of Public Safety shall study methods of allowing prisoners to contribute to cleanup and mitigation efforts in connection with states of emergency

declared in this State. No later than October 1, 2013, the Department shall report its findings and recommendations to the Joint Legislative Emergency Management Oversight Committee and to the Joint Legislative Oversight Committee on Justice and Public Safety. The report shall include at least the following:

(1) A list of the type and number of prisoners incarcerated by the Department of Public Safety that might be available to respond to emergencies in this State.

(2) Options for methods of deploying prisoners to respond to, and assist with, cleanup and mitigation efforts in connection with states of emergency based on the type and location of an emergency.

(3) A statement of the resources that would be required to implement these options and an estimate of the cost of each option.

(4) Identification of any legal, practical, or financial obstacles that would need to be addressed before prisoners could be deployed in this manner.

SECTION 3. G.S. 143-341 reads as rewritten:

"**§ 143-341. Powers and duties of Department.**

The Department of Administration has the following powers and duties:

...

(8) General Services:

...

i. To establish and operate a central motor pool and such subsidiary related facilities as the Secretary may deem necessary, and to that end:

...

7a. To adopt with the approval of the Governor and to enforce rules and to coordinate State policy regarding (i) the permanent assignment of state-owned passenger motor vehicles and (ii) the use of and reimbursement for those vehicles for the limited commuting permitted by this subdivision. For the purpose of this subdivision 7a, "state-owned passenger motor vehicle" includes any state-owned passenger motor vehicle, whether or not owned, maintained or controlled by the Department of Administration, and regardless of the source of the funds used to purchase it. Notwithstanding the provisions of G.S. 20-190 or any other provisions of law, all state-owned passenger motor vehicles are subject to the provisions of this subdivision 7a; no permanent assignment shall be made and no one shall be exempt from payment of reimbursement for commuting or from the other provisions of this subdivision 7a except as provided by this subdivision 7a. Commuting, as defined and regulated by this subdivision, is limited to those specific cases in which the Secretary has received and accepted written justification, verified by historical data. The Department shall not assign any state-owned motor vehicle that may be used for commuting other than those authorized by the procedure prescribed in this ~~subdivision.~~subdivision, except the Department may assign a vehicle to an official elected to a statewide office who also has statewide emergency response duties, and any such assignment shall be exempt from the payment of reimbursement for commuting under this subdivision.

...."

SECTION 4. Section 1 of this act becomes effective October 1, 2013. The remainder of this act is effective when it becomes law.

HOUSE BILL 15:
Various Emergency Management Changes

2013-2014 General Assembly

Committee:	Senate Agriculture/Environment/Natural Resources	**Date:**	July 2, 2013
Introduced by:	Reps. Faircloth, Saine, Boles	**Prepared by:**	Jeff Hudson Committee Counsel
Analysis of:	PCS to Second Edition H15-CSTA-27 [v.4]		

SUMMARY: ***The Proposed Committee Substitute for House Bill 15 (PCS) makes various changes to the emergency management laws, as recommended by the Joint Legislative Emergency Management Oversight Committee; directs the Department of Public Safety to study methods of allowing prisoners to contribute cleanup and mitigation during states of emergency; and amends the law governing the assignment of state-owned motor vehicles.***

[As introduced, this bill was identical to S38, as introduced by Sen. Jackson, which is currently in House Environment, if favorable, Transportation.]

BILL ANALYSIS:

Section 1 of the PCS makes changes to various statutes in order to facilitate the use of vehicles exclusively for law enforcement, fire-fighting, or other emergency response purposes by the Divisions of Parks and Recreation and Marine Fisheries of the Department of Environment and Natural Resources, and the North Carolina Forest Service of the Department of Agriculture and Consumer Services.

Section 1.(a) requires the installation of lights and sirens on those vehicles.

Section 1.(b) authorizes the use of the red or blue lights by those vehicles.

Section 1.(c) authorizes those vehicles to exceed the speed limit when being operated by a law enforcement officer to apprehend a violator of the law, when traveling in response to a fire alarm, or for other emergency response purposes.

Section 1.(d) requires motorists to yield the right of way to those vehicles when they are operating lights and sirens.

Section 1.(e) requires motorists to move to the side of the road and stop for those vehicles when they are operating lights and sirens.

Section 2 of the PCS requires the Department of Public Safety to study methods of allowing prisoners to contribute to cleanup and mitigation efforts in connection with states of emergency declared in this State. The Department is required to report to the Joint Legislative Emergency Management Oversight Committee and the Joint Legislative Oversight Committee on Justice and Public Safety no later than October 1, 2013.

Section 3 of the PCS provides that the Department of Administration may assign a state-owned motor vehicle that may be used in commuting to an official elected to statewide office who also has statewide emergency response. Such assignment will be exempt from the payment of reimbursement for commuting.

EFFECTIVE DATE: Section 1 of this act becomes effective October 1, 2013. The remainder of this act is effective when it becomes law.

Susan Sitze, counsel to House Judiciary Subcommittee A, substantially contributed to this summary.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

H 2

HOUSE BILL 15
Committee Substitute Favorable 2/13/13

Short Title: Various Emergency Management Changes. (Public)

Sponsors:

Referred to:

January 31, 2013

A BILL TO BE ENTITLED

AN ACT TO MAKE VARIOUS CHANGES TO THE EMERGENCY MANAGEMENT LAWS OF THIS STATE, AS RECOMMENDED BY THE JOINT LEGISLATIVE EMERGENCY MANAGEMENT OVERSIGHT COMMITTEE.

The General Assembly of North Carolina enacts:

SECTION 1.(a) G.S. 20-125(b) reads as rewritten:

"(b) Every vehicle owned ~~and~~ or operated by a police department or by the Department of Public Safety including the State Highway Patrol or by the Wildlife Resources Commission or the Division of Marine ~~Fisheries~~ Fisheries, or by the Division of Parks and Recreation of the Department of Environment and Natural Resources, or by the North Carolina Forest Service of the Department of Agriculture and Consumer Services, and used exclusively for law ~~enforcement~~ enforcement, fire-fighting, or other emergency response purposes, or by the Division of Emergency Management, or by a fire department, either municipal or rural, or by a fire patrol, whether such fire department or patrol be a paid organization or a voluntary association, vehicles used by an organ procurement organization or agency for the recovery and transportation of human tissues and organs for transplantation, and every ambulance or emergency medical service emergency support vehicle used for answering emergency calls, shall be equipped with special lights, bells, sirens, horns or exhaust whistles of a type approved by the Commissioner of Motor Vehicles.

The operators of all such vehicles so equipped are hereby authorized to use such equipment at all times while engaged in the performance of their duties and services, both within their respective corporate limits and beyond.

In addition to the use of special equipment authorized and required by this subsection, the chief and assistant chiefs of any police department or of any fire department, whether the same be municipal or rural, paid or voluntary, county fire marshals, assistant fire marshals, transplant coordinators, and emergency management coordinators, are hereby authorized to use such special equipment on privately owned vehicles operated by them while actually engaged in the performance of their official or semiofficial duties or services either within or beyond their respective corporate limits.

And vehicles driven by law enforcement officers of the North Carolina Division of Motor Vehicles shall be equipped with a bell, siren, or exhaust whistle of a type approved by the Commissioner, and all vehicles owned and operated by the State Bureau of Investigation for the use of its agents and officers in the performance of their official duties may be equipped with special lights, bells, sirens, horns or exhaust whistles of a type approved by the Commissioner of Motor Vehicles.

Every vehicle used or operated for law enforcement purposes by the sheriff or any salaried deputy sheriff or salaried rural policeman of any county, whether owned by the county or not, may be, but is not required to be, equipped with special lights, bells, sirens, horns or exhaust whistles of a type approved by the Commissioner of Motor Vehicles. Such special equipment shall not be operated or activated by any person except by a law enforcement officer while actively engaged in performing law enforcement duties.

In addition to the use of special equipment authorized and required by this subsection, the chief and assistant chiefs of each emergency rescue squad which is recognized or sponsored by any municipality or civil preparedness agency, are hereby authorized to use such special equipment on privately owned vehicles operated by them while actually engaged in their official or semiofficial duties or services either within or beyond the corporate limits of the municipality which recognizes or sponsors such organization."

SECTION 1.(b) G.S. 20-130.1 reads as rewritten:

"**§ 20-130.1. Use of red or blue lights on vehicles prohibited; exceptions.**

(a) It is unlawful for any person to install or activate or operate a red light in or on any vehicle in this State. As used in this subsection, unless the context requires otherwise, "red light" means an operable red light not sealed in the manufacturer's original package which: (i) is designed for use by an emergency vehicle or is similar in appearance to a red light designed for use by an emergency vehicle; and (ii) can be operated by use of the vehicle's battery, vehicle's electrical system, or a dry cell battery. As used in this subsection, the term "red light" shall also mean any forward facing red light installed on a vehicle after initial manufacture of the vehicle.

(b) The provisions of subsection (a) of this section do not apply to the following:

(1) A police ~~car;~~vehicle.

(2) A highway patrol ~~car;~~vehicle.

(3) A vehicle owned by the Wildlife Resources Commission and operated exclusively for ~~law enforcement purposes;~~law enforcement, fire-fighting, or other emergency response purposes.

(4) An ~~ambulance;~~ambulance.

(5) A vehicle used by an organ procurement organization or agency for the recovery and transportation of blood, human tissues, or organs for ~~transplantation;~~transplantation.

(6) A fire-fighting ~~vehicle;~~vehicle.

(7) A school ~~bus;~~bus.

(8) A vehicle operated by any member of a municipal or rural fire department in the performance of his duties, regardless of whether members of that fire department are paid or ~~voluntary;~~voluntary.

(9) A vehicle of a voluntary lifesaving organization (including the private vehicles of the members of such an organization) that has been officially approved by the local police authorities and which is manned or operated by members of that organization while answering an official ~~call;~~call.

(10) A vehicle operated by medical doctors or anesthetists in ~~emergencies;~~emergencies.

(11) A motor vehicle used in law enforcement by the sheriff, or any salaried rural policeman in any county, regardless of whether or not the county owns the ~~vehicle;~~vehicle.

(11a) A vehicle operated by the State Fire Marshal or his representatives in the performance of their duties, whether or not the State owns the ~~vehicle;~~vehicle.

(12) A vehicle operated by any county fire marshal, assistant fire marshal, or emergency management coordinator in the performance of his duties, regardless of whether or not the county owns the ~~vehicle;~~vehicle.
(13) A light required by the Federal Highway ~~Administration;~~Administration.
(14) A vehicle operated by a transplant coordinator who is an employee of an organ procurement organization or agency when the transplant coordinator is responding to a call to recover or transport human tissues or organs for ~~transplantation;~~transplantation.
(15) A vehicle operated by an emergency medical service as an emergency support ~~vehicle;~~vehicle.
(16) A State emergency management ~~vehicle; and~~vehicle.
(17) An Incident Management Assistance Patrol vehicle operated by the Department of Transportation, when using rear-facing red lights while stopped for the purpose of providing assistance or incident management.
(18) A vehicle operated by the Division of Marine Fisheries or the Division of Parks and Recreation of the Department of Environment and Natural Resources that is used for law enforcement, fire-fighting, or other emergency response purpose.
(19) A vehicle operated by the North Carolina Forest Service of the Department of Agriculture and Consumer Services that is used for law enforcement, fire-fighting, or other emergency response purpose.

...."

SECTION 1.(c) G.S. 20-145 reads as rewritten:

"**§ 20-145. When speed limit not applicable.**

The speed limitations set forth in this Article shall not apply to vehicles when operated with due regard for safety under the direction of the police in the chase or apprehension of violators of the law or of persons charged with or suspected of any such violation, nor to fire department or fire patrol vehicles when traveling in response to a fire alarm, nor to public or private ambulances and rescue squad emergency service vehicles when traveling in emergencies, nor to vehicles operated by county fire marshals and civil preparedness coordinators when traveling in the performances of their ~~duties.~~duties, nor to any of the following when either operated by a law enforcement officer in the chase or apprehension of violators of the law or of persons charged with, or suspected of, any such violation, when traveling in response to a fire alarm or for other emergency response purposes: (i) a vehicle operated by the Division of Marine Fisheries or the Division of Parks and Recreation of the Department of Environment and Natural Resources or (ii) a vehicle operated by the North Carolina Forest Service of the Department of Agriculture and Consumer Services. This exemption shall not, however, protect the driver of any such vehicle from the consequence of a reckless disregard of the safety of others."

SECTION 1.(d) G.S. 20-156(b) reads as rewritten:

"(b) The driver of a vehicle upon the highway shall yield the right-of-way to police and fire department vehicles and public and private ambulances, vehicles used by an organ procurement organization or agency for the recovery or transportation of human tissues and organs for transplantation or a vehicle operated by a transplant coordinator who is an employee of an organ procurement organization or agency when the transplant coordinator is responding to a call to recover or transport human tissues or organs for transplantation, and to rescue squad emergency service vehicles and vehicles operated by county fire marshals and civil preparedness ~~coordinators~~ coordinators, and to a vehicle operated by the Division of Marine Fisheries or the Division of Parks and Recreation of the Department of Environment and Natural Resources when used for law enforcement, fire-fighting, or other emergency response purpose, and to a vehicle operated by the North Carolina Forest Service of the Department of

Agriculture and Consumer Services when used for a law enforcement, fire-fighting, or other emergency response purpose, when the operators of said vehicles are giving a warning signal by appropriate light and by bell, siren or exhaust whistle audible under normal conditions from a distance not less than 1,000 feet. When appropriate warning signals are being given, as provided in this subsection, an emergency vehicle may proceed through an intersection or other place when the emergency vehicle is facing a stop sign, a yield sign, or a traffic light which is emitting a flashing strobe signal or a beam of steady or flashing red light. This provision shall not operate to relieve the driver of a police or fire department ~~vehicle~~ vehicle, or a vehicle owned or operated by the Department of Environment and Natural Resources, or the Department of Agriculture and Consumer Services, or public or private ambulance or vehicles used by an organ procurement organization or agency for the recovery or transportation of human tissues and organs for transplantation or a vehicle operated by a transplant coordinator who is an employee of an organ procurement organization or agency when the transplant coordinator is responding to a call to recover or transport human tissues or organs for transplantation, or rescue squad emergency service vehicle or county fire marshals or civil preparedness coordinators from the duty to drive with due regard for the safety of all persons using the highway, nor shall it protect the driver of any such vehicle or county fire marshal or civil preparedness coordinator from the consequence of any arbitrary exercise of such right-of-way."

SECTION 1.(e) G.S. 20-157(a) reads as rewritten:

"(a) Upon the approach of any law enforcement or fire department vehicle or public or private ambulance or rescue squad emergency service ~~vehicle~~ vehicle, or a vehicle operated by the Division of Marine Fisheries, or the Division of Parks and Recreation of the Department of Environment and Natural Resources, or the North Carolina Forest Service of the Department of Agriculture and Consumer Services when traveling in response to a fire alarm or other emergency response purpose giving warning signal by appropriate light and by audible bell, siren or exhaust whistle, audible under normal conditions from a distance not less than 1000 feet, the driver of every other vehicle shall immediately drive the same to a position as near as possible and parallel to the right-hand edge or curb, clear of any intersection of streets or highways, and shall stop and remain in such position unless otherwise directed by a law enforcement or traffic officer until the law enforcement or fire department ~~vehicle~~ vehicle, or the vehicle operated by the Division of Marine Fisheries, or the Division of Parks and Recreation of the Department of Environment and Natural Resources, or the North Carolina Forest Service of the Department of Agriculture and Consumer Services, or the public or private ambulance or rescue squad emergency service vehicle shall have passed. Provided, however, this subsection shall not apply to vehicles traveling in the opposite direction of the vehicles herein enumerated when traveling on a four-lane limited access highway with a median divider dividing the highway for vehicles traveling in opposite directions, and provided further that the violation of this subsection shall be negligence per se. Violation of this subsection is a Class 2 misdemeanor."

SECTION 2. The Department of Public Safety shall study methods of allowing prisoners to contribute to cleanup and mitigation efforts in connection with states of emergency declared in this State. No later than October 1, 2013, the Department shall report its findings and recommendations to the Joint Legislative Emergency Management Oversight Committee and to the Joint Legislative Oversight Committee on Justice and Public Safety. The report shall include at least the following:

(1) A list of the type and number of prisoners incarcerated by the Department of Public Safety that might be available to respond to emergencies in this State.

(2) Options for methods of deploying prisoners to respond to, and assist with, cleanup and mitigation efforts in connection with states of emergency based on the type and location of an emergency.

(3) A statement of the resources that would be required to implement these options and an estimate of the cost of each option.

(4) Identification of any legal, practical, or financial obstacles that would need to be addressed before prisoners could be deployed in this manner.

SECTION 3. Section 1 of this act becomes effective October 1, 2013. The remainder of this act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

H D

HOUSE BILL 321
Committee Substitute Favorable 4/4/13
PROPOSED SENATE COMMITTEE SUBSTITUTE H321-PCS80410-TA-28

Short Title: Amend Local Solid Waste Planning. (Public)

Sponsors:

Referred to:

March 18, 2013

A BILL TO BE ENTITLED

AN ACT TO (1) REPEAL THE REQUIREMENT THAT LOCAL GOVERNMENTS DEVELOP AND MAINTAIN A SOLID WASTE MANAGEMENT PLAN; AND (2) EXEMPT CERTAIN LANDFILLS FROM THE REQUIREMENT THAT THEY OBTAIN A FRANCHISE TO OPERATE FROM A LOCAL GOVERNMENT IN LIMITED CIRCUMSTANCES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 130A-309.09A reads as rewritten:

"**§ 130A-309.09A. Local government solid waste responsibilities.**

(a) The governing board of each unit of local government shall assess local solid waste collection services and disposal capacity and shall determine the adequacy of collection services and disposal capacity to meet local needs and to protect human health and the environment. Each unit of local government shall implement programs and take other actions that it determines are necessary to address deficiencies in service or capacity required to meet local needs and to protect human health and the environment. A unit of local government may adopt ordinances governing the disposal, in facilities that it operates, of solid waste generated outside of the area designated to be served by the facility. Such ordinances shall not be construed to apply to privately operated disposal facilities located within the boundaries of the unit of local government.

(b) ~~Each unit of local government, either individually or in cooperation with other units of local government, shall develop a 10-year comprehensive solid waste management plan.~~Units of local government shall make a good-faith effort to achieve the State's forty percent (40%) municipal solid waste reduction goal and to comply with the State's comprehensive solid waste management plan. ~~Each unit of local government shall develop its solid waste management plan with public participation, including, at a minimum, one advertised public meeting. The Department shall assist units of local government in the preparation of the plan required by this subsection if the unit of local government requests assistance. Each plan shall be updated at least every three years. In order to assure compliance with this subsection, each unit of local government shall provide the Department with a copy of its current plan upon request by the Department. Each plan shall:~~

~~(1) Evaluate the solid waste stream in the geographic area covered by the plan.~~

~~(2) Include a goal for the reduction of municipal solid waste on a per capita basis by 30 June 2001 and a goal for the further reduction of municipal solid waste by 30 June 2006. The solid waste reduction goals shall be determined by the unit or units of local government that prepare the plan, and shall be~~

~~determined so as to assist the State, to the maximum extent practical, to achieve the State's forty percent (40%) municipal solid waste reduction goal as set out in G.S. 130A-309.04(c).~~

~~(3) Be designed to achieve the solid waste reduction goals established by the plan.~~

~~(4) Include a description of the process by which the plan was developed, including provisions for public participation in the development of the plan.~~

~~(5) Include an assessment of current programs and a description of intended actions with respect to the following solid waste management methods:~~

~~a. Reduction at the source.~~

~~b. Collection.~~

~~c. Recycling and reuse.~~

~~d. Composting and mulching.~~

~~e. Incineration with energy recovery.~~

~~f. Incineration without energy recovery.~~

~~g. Transfer outside the geographic area covered by the plan.~~

~~h. Disposal.~~

~~(6) Include an assessment of current programs and a description of intended actions with respect to:~~

~~a. Education with the community and through the schools.~~

~~b. Management of special wastes.~~

~~c. Prevention of illegal disposal and management of litter.~~

~~d. Purchase of recycled materials and products manufactured with recycled materials.~~

~~e. For each county and each municipality with a population in excess of 25,000, collection of discarded computer equipment and televisions, as defined in G.S. 130A-309.131.~~

~~(7) Include a description and assessment of the full cost of solid waste management, including the costs of collection, disposal, waste reduction, and other programs, and of the methods of financing those costs.~~

~~(8) Consider the use of facilities and other resources for management of solid waste that may be available through private enterprise.~~

~~(9) (Expires October 1, 2023) Include as a component a written plan for the management of abandoned manufactured homes as required under G.S. 130A-309.113(a).~~

(d) In order to assess the progress in meeting the goal set out in G.S. 130A-309.04, each unit of local government shall report to the Department on the solid waste management programs and waste reduction activities within the unit of local government by 1 September of each year. At a minimum, the report shall include:

(1) A description of public education programs on recycling.

(2) The amount of solid waste received at municipal solid waste management facilities, by type of solid waste.

(3) The amount and type of materials from the solid waste stream that were recycled.

(4) The percentage of the population participating in various types of recycling activities instituted.

(5) The annual reduction in municipal solid waste, measured as provided in G.S. 130A-309.04.

~~(6) Information regarding programs and other actions implemented as part of the local comprehensive solid waste management plan.~~

(7) A statement of the costs of solid waste management programs implemented by the unit of local government and the methods of financing those costs.

(8) Information regarding permanent recycling programs for discarded computer equipment and televisions for which funds are received pursuant to G.S. 130A-309.137, and information on operative interlocal agreements executed in conjunction with funds received, if any.

(9) A description of the disaster debris management program.

(10) A description of scrap tire disposal procedures.

(11) A description of white goods management procedures.

(12) Information regarding the prevention of illegal disposal and management of litter.

...."

SECTION 2. G.S. 130A-309.09B(a) reads as rewritten:

"**§ 130A-309.09B. Local government waste reduction programs.**

(a) Each unit of local government shall establish and maintain a solid waste reduction ~~program that will enable the unit of local government to meet the local solid waste reduction goals established pursuant to G.S. 130A-309.09A(b)(2).~~program. The following requirements shall apply:

...."

SECTION 3. G.S. 130A-309.09C(g) reads as rewritten:

"**§ 130A-309.09C. Additional powers of local governments; construction of this Part; effect of noncompliance.**

...

(g) In addition to any other penalties provided by law, a unit of local government that does not comply with the requirements of ~~G.S. 130A-309.09A(b)~~G.S. 130A-309.09A(b), G.S. 130A-309.09A(d), and G.S. 130A-309.09B(a) shall not be eligible for grants from the Solid Waste Management Trust Fund, the Scrap Tire Disposal Account, or the White Goods Management Account and shall not receive the proceeds of the scrap tire disposal tax imposed by Article 5B of Chapter 105 of the General Statutes or the proceeds of the white goods disposal tax imposed by Article 5C of Chapter 105 of the General Statutes to which the unit of local government would otherwise be entitled. The Secretary shall notify the Secretary of Revenue to withhold payment of these funds to any unit of local government that fails to comply with the requirements of ~~G.S. 130A-309.09A(b)~~ G.S. 130A-309.09A(b), G.S. 130A-309.09A(d), and G.S. 130A-309.09B(a). Proceeds of the scrap tire disposal tax that are withheld pursuant to this subsection shall be credited to the Scrap Tire Disposal Account and may be used as provided in G.S. 130A-309.63. Proceeds of the white goods disposal tax that are withheld pursuant to this subsection shall be credited to the White Goods Management Account and may be used as provided in G.S. 130A-309.83."

SECTION 4. G.S. 130A-309.58(d) reads as rewritten:

"**§ 130A-309.58. Disposal of scrap tires.**

...

(d) Each county is responsible for developing a description of scrap tire disposal procedures. ~~These procedures shall be included in any solid waste management plan required by the Department under this Article.~~ These procedures shall be included in the annual report required under G.S. 130A-309.09A. Further, any revisions to the initial description of the scrap tire disposal procedures shall be forwarded to the Department."

SECTION 5. G.S. 130A-309.81(c) reads as rewritten:

"**§ 130A-309.81. Management of discarded white goods; disposal fee prohibited.**

...

(c) Plan. – Each county shall establish written procedures for the management of white goods. ~~The county shall include the procedures in any solid waste management plan required~~

~~by the Department under this Article.~~These procedures shall be included in the annual report required under G.S. 130A-309.09A."

SECTION 6. G.S. 130A-309.113(a) reads as rewritten:

"**§ 130A-309.113. (Effective July 1, 2009, and expiring October 1, 2023) Management of abandoned manufactured homes.**

(a) Plan. – Each county shall consider whether to implement a program for the management of abandoned manufactured homes. ~~If, after consideration, the county decides not to implement a program, the county must state in the comprehensive solid waste management plan that it is required to develop under G.S. 130A-309.09A(b) that the county considered whether to implement a program for the management of abandoned manufactured homes and decided not to do so. A county may, at any time, reconsider its decision not to implement a program for the management of abandoned manufactured homes. If~~ If at any time the county decides to implement a program, the county shall develop a written plan for the management of abandoned manufactured ~~homes and include the plan as a component of the comprehensive solid waste management plan it is required to develop under G.S. 130A-309.09A(b).~~homes. This plan shall be included in the annual report required under G.S. 130A-309.09A. At a minimum, the plan shall include:

(1) A method by which the county proposes to identify abandoned manufactured homes in the county, including, without limitation, a process by which manufactured home owners or other responsible parties may request designation of their home as an abandoned manufactured home.

(2) A plan for the deconstruction of these abandoned manufactured homes.

(3) A plan for the removal of the deconstructed components, including mercury switches from thermostats, for reuse or recycling, as appropriate.

(4) A plan for the proper disposal of abandoned manufactured homes that are not deconstructed under subdivision (2) of this subsection."

SECTION 7. G.S. 130A-309.137 reads as rewritten:

"**§ 130A-309.137. (See editor's note) Electronics Management Fund.**

...

(c) Eligibility. – Except as provided in subsection (d) of this section, no more than one unit of local government per county, including the county itself, may receive funding pursuant to this section for a program to manage discarded computer equipment, televisions, and other electronic devices. ~~In order to be eligible for funding, a~~ A unit of local government ~~shall:~~shall submit a plan to include:

(1) ~~Submit a comprehensive solid waste management plan required pursuant to G.S. 130A-309.09A, amended as necessary to include the following information:~~

~~a.~~ Information on existing programs within the jurisdiction to recycle or reuse discarded computer equipment, televisions, and other electronic devices, or information on a plan to begin such a program on a date certain. This information shall include a description of the implemented or planned practices for collection of the equipment and a description of the types of equipment to be collected and how the equipment will be marketed for recycling.

(2) ~~b.~~ Information on a public awareness and education program concerning the recycling and reuse of discarded computer equipment, televisions, and other electronic devices.

(3) ~~c.~~ Information on methods to track and report total tonnage of computer equipment, televisions, and other electronic devices collected and recycled in the jurisdiction.

(4) ~~d.~~ Information on interactions with other units of local government to provide or receive services concerning disposal of discarded computer equipment, televisions, and other electronic devices.

(5) ~~e.~~ Information on how the unit of local government will account for the expenditure of funds received pursuant to this section.

~~(2) Establish a separate local budget account for the receipt and expenditure of funds received pursuant to this section.~~

~~(3)~~(6) ~~Contract~~ Proof of contract or agreement with a recycler that is certified as adhering to Responsible Recycling ("R2") practices or that is certified as an e-Steward recycler adhering to the e-Stewards Standard for Responsible Recycling and Reuse of Electronic Equipment® to process the discarded computer equipment, televisions, and other electronic devices that the unit of local government collects.

(c1) Submittal of Information for Distribution of Funding. – Documentation meeting the requirements of subdivision (6) of subsection (c) of this section, and other information required by subsection (c) of this section, including new plans or revisions to plans as necessary, must be submitted annually on or before December 31 in order to be eligible for funding during the next distribution by the Department.

(d) Local Government Designation. – If more than one unit of local government in a county, including the county itself, requests funding pursuant to this section, the units of local government in question ~~may: (i)~~may enter into interlocal agreements for provision of services concerning disposal of discarded computer equipment and televisions, and distribution of funds received pursuant to this section among the parties to the ~~agreement; or (ii) submit separate and distinct comprehensive solid waste management plans pursuant to G.S. 130A-309.09A, with the information set forth in sub-subdivisions a. through e. of subdivision (1) of subsection (c) of this section. In the case of (ii), the Department shall distribute funds to the local governments determined to be eligible based on the percentage of the county's population to be served under each eligible local government's program.~~agreement. If the units of local government do not enter into an interlocal agreement regarding funding under this section, the Department shall distribute funds to the eligible local governments based on the percentage of the county's population to be served under each eligible local government's program.

...."

SECTION 8. G.S. 130A-294 reads as rewritten:

"**§ 130A-294. Solid waste management program.**

(a) The Department is authorized and directed to engage in research, conduct investigations and surveys, make inspections and establish a statewide solid waste management program. In establishing a program, the Department shall have authority to:

...

(4) a. Develop a permit system governing the establishment and operation of solid waste management facilities. A landfill with a disposal area of 1/2 acre or less for the on-site disposal of land clearing and inert debris is exempt from the permit requirement of this section and shall be governed by G.S. 130A-301.1. Demolition debris from the decommissioning of manufacturing buildings, including electric generating stations, that is disposed of on the same site as the decommissioned buildings, is exempt from the permit requirement of this section and rules adopted pursuant to this section and shall be governed by G.S. 130A-301.3. The Department shall not approve an application for a new permit, the renewal of a permit, or a substantial amendment to a permit for a sanitary landfill, excluding demolition

landfills as defined in the rules of the Commission, except as provided in subdivisions (3) and (4) of subsection (b1) of this section. No permit shall be granted for a solid waste management facility having discharges that are point sources until the Department has referred the complete plans and specifications to the Environmental Management Commission and has received advice in writing that the plans and specifications are approved in accordance with the provisions of G.S. 143-215.1. ~~If the applicant is a unit of local government, and has not submitted a solid waste management plan that has been approved by the Department pursuant to G.S. 130A-309.09A(b), the Department may deny a permit for a sanitary landfill or a facility that disposes of solid waste by incineration, unless the Commission has not adopted rules pursuant to G.S. 130A-309.29 for local solid waste management plans.~~ In any case where the Department denies a permit for a solid waste management facility, it shall state in writing the reason for denial and shall also state its estimate of the changes in the applicant's proposed activities or plans that will be required for the applicant to obtain a permit.

...

(b1) ...

(2) A person who intends to apply for a new permit, the renewal of a permit, or a substantial amendment to a permit for a sanitary landfill shall obtain, prior to applying for a permit, a franchise for the operation of the sanitary landfill from each local government having jurisdiction over any part of the land on which the sanitary landfill and its appurtenances are located or to be located. A local government may adopt a franchise ordinance under G.S. 153A-136 or G.S. 160A-319. A franchise granted for a sanitary landfill shall include all of the following:

a. A statement of the population to be served, including a description of the geographic area.

b. A description of the volume and characteristics of the waste stream.

c. A projection of the useful life of the sanitary landfill.

~~d. An explanation of how the franchise will be consistent with the jurisdiction's solid waste management plan required under G.S. 130A-309.09A, including provisions for waste reduction, reuse, and recycling.~~

e. The procedures to be followed for governmental oversight and regulation of the fees and rates to be charged by facilities subject to the franchise for waste generated in the jurisdiction of the franchising entity.

f. A facility plan for the sanitary landfill that shall include the boundaries of the proposed facility, proposed development of the facility site in five-year operational phases, the boundaries of all waste disposal units, final elevations and capacity of all waste disposal units, the amount of waste to be received per day in tons, the total waste disposal capacity of the sanitary landfill in tons, a description of environmental controls, and a description of any other waste management activities to be conducted at the facility. In addition, the facility plan shall show the proposed location of soil

borrow areas, leachate facilities, and all other facilities and infrastructure, including ingress and egress to the facility.

...."

SECTION 9. G.S. 130A-294(b1) is amended by adding a new subdivision to read:

"(6) Notwithstanding any provision of this section, no franchise for the operation of a sanitary landfill shall be required from a local government if the property on which the landfill is located is incorporated within a local government's boundaries by act of the General Assembly and the landfill was validly operating in another jurisdiction prior to the time the legislative act became effective. This subdivision only applies to sanitary landfills for the disposal of construction and demolition debris that had a permit from the Department to operate the landfill on January 1, 2008."

SECTION 10. This act is effective when it becomes law.

HOUSE BILL 321:
Amend Local Solid Waste Planning

2013-2014 General Assembly

Committee:	Senate Agriculture/Environment/Natural Resources	**Date:**	July 2, 2013
Introduced by:	Reps. McGrady, McElraft, G. Graham, Speciale	**Prepared by:**	Jennifer McGinnis Committee Counsel
Analysis of:	Second Edition		

SUMMARY: ***House Bill 321 would eliminate the requirement that each unit of local government, either individually or in cooperation with other units of local government, develop a 10-year comprehensive solid waste management plan, and would make conforming changes to the statutes. In addition, the bill would move reporting requirements on several matters from the plan that would be repealed under the bill to an annual report that must be submitted by local governments pursuant to existing law, and add one additional matter to the annual report.***

CURRENT LAW: Since 1989, the statutes have required that each local government, acting individually or in cooperation with other local governments, develop a 10-year comprehensive solid waste management plan (plan), which must be updated at least every three years. A plan must:

- Evaluate the solid waste stream in the geographic area covered by the plan.
- Include goals for the reduction of municipal solid waste in the jurisdiction on a per capita basis to assist the State in achieving the State's 40% municipal solid waste reduction goal set forth in the statutes. The plan must be designed to achieve the goals established by the plan.
- Include a description of the process by which the plan was developed, including provisions for public participation in the development of the plan.
- Include an assessment of current programs and a description of intended actions with respect to various solid waste management methods, including reduction, reuse, recycling, incineration, disposal, etc.
- Include an assessment of current programs and a description of intended actions with respect to community education, management of special wastes, prevention of illegal disposal and management of litter, purchase of recycled materials and products manufactured with recycled materials, and, for certain local governments, collection of discarded computer equipment and televisions.
- Include a description and assessment of the full cost of solid waste management, including the costs of collection, disposal, waste reduction, and other programs, and of the methods of financing those costs.
- Consider the use of facilities and other resources for management of solid waste that may be available through private enterprise.
- Include as a component a written plan for the management of abandoned manufactured homes.

The statutes also require each unit of local government to annually report to the Department of Environment and Natural Resources on the solid waste management programs and waste reduction activities within its jurisdiction.

O. Walker Reagan
Director

H321-SMRI-54 E2 -V1

Research Division
(919) 733-2578

BILL ANALYSIS: The bill would eliminate the requirement under existing law that each unit of local government, either individually or in cooperation with other units of local government, develop a 10-year comprehensive solid waste management plan, and would make conforming changes to the statutes. In addition, the bill would move reporting requirements on several matters from the plan that would be repealed under the bill to an annual report that must be submitted by local governments pursuant to existing law (a description of scrap tire disposal and white goods management procedures, and information regarding the prevention of illegal disposal and management of litter), and add one additional matter to the annual report (information on its disaster debris management program)

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

HOUSE BILL 321
Committee Substitute Favorable 4/4/13

Short Title: Amend Local Solid Waste Planning. (Public)

Sponsors:

Referred to:

March 18, 2013

A BILL TO BE ENTITLED

AN ACT TO REPEAL THE REQUIREMENT THAT LOCAL GOVERNMENTS DEVELOP AND MAINTAIN A SOLID WASTE MANAGEMENT PLAN.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 130A-309.09A reads as rewritten:

"**§ 130A-309.09A. Local government solid waste responsibilities.**

(a) The governing board of each unit of local government shall assess local solid waste collection services and disposal capacity and shall determine the adequacy of collection services and disposal capacity to meet local needs and to protect human health and the environment. Each unit of local government shall implement programs and take other actions that it determines are necessary to address deficiencies in service or capacity required to meet local needs and to protect human health and the environment. A unit of local government may adopt ordinances governing the disposal, in facilities that it operates, of solid waste generated outside of the area designated to be served by the facility. Such ordinances shall not be construed to apply to privately operated disposal facilities located within the boundaries of the unit of local government.

(b) ~~Each unit of local government, either individually or in cooperation with other units of local government, shall develop a 10-year comprehensive solid waste management plan.~~Units of local government shall make a good-faith effort to achieve the State's forty percent (40%) municipal solid waste reduction goal and to comply with the State's comprehensive solid waste management plan. ~~Each unit of local government shall develop its solid waste management plan with public participation, including, at a minimum, one advertised public meeting. The Department shall assist units of local government in the preparation of the plan required by this subsection if the unit of local government requests assistance. Each plan shall be updated at least every three years. In order to assure compliance with this subsection, each unit of local government shall provide the Department with a copy of its current plan upon request by the Department. Each plan shall:~~

~~(1) Evaluate the solid waste stream in the geographic area covered by the plan.~~

~~(2) Include a goal for the reduction of municipal solid waste on a per capita basis by 30 June 2001 and a goal for the further reduction of municipal solid waste by 30 June 2006. The solid waste reduction goals shall be determined by the unit or units of local government that prepare the plan, and shall be determined so as to assist the State, to the maximum extent practical, to achieve the State's forty percent (40%) municipal solid waste reduction goal as set out in G.S. 130A-309.04(c).~~

~~(3) Be designed to achieve the solid waste reduction goals established by the plan.~~

~~(4) Include a description of the process by which the plan was developed, including provisions for public participation in the development of the plan.~~

~~(5) Include an assessment of current programs and a description of intended actions with respect to the following solid waste management methods:~~

~~a. Reduction at the source.~~

~~b. Collection.~~

~~c. Recycling and reuse.~~

~~d. Composting and mulching.~~

~~e. Incineration with energy recovery.~~

~~f. Incineration without energy recovery.~~

~~g. Transfer outside the geographic area covered by the plan.~~

~~h. Disposal.~~

~~(6) Include an assessment of current programs and a description of intended actions with respect to:~~

~~a. Education with the community and through the schools.~~

~~b. Management of special wastes.~~

~~c. Prevention of illegal disposal and management of litter.~~

~~d. Purchase of recycled materials and products manufactured with recycled materials.~~

~~e. For each county and each municipality with a population in excess of 25,000, collection of discarded computer equipment and televisions, as defined in G.S. 130A-309.131.~~

~~(7) Include a description and assessment of the full cost of solid waste management, including the costs of collection, disposal, waste reduction, and other programs, and of the methods of financing those costs.~~

~~(8) Consider the use of facilities and other resources for management of solid waste that may be available through private enterprise.~~

~~(9) (Expires October 1, 2023) Include as a component a written plan for the management of abandoned manufactured homes as required under G.S. 130A-309.113(a).~~

(d) In order to assess the progress in meeting the goal set out in G.S. 130A-309.04, each unit of local government shall report to the Department on the solid waste management programs and waste reduction activities within the unit of local government by 1 September of each year. At a minimum, the report shall include:

(1) A description of public education programs on recycling.

(2) The amount of solid waste received at municipal solid waste management facilities, by type of solid waste.

(3) The amount and type of materials from the solid waste stream that were recycled.

(4) The percentage of the population participating in various types of recycling activities instituted.

(5) The annual reduction in municipal solid waste, measured as provided in G.S. 130A-309.04.

~~(6) Information regarding programs and other actions implemented as part of the local comprehensive solid waste management plan.~~

(7) A statement of the costs of solid waste management programs implemented by the unit of local government and the methods of financing those costs.

(8) Information regarding permanent recycling programs for discarded computer equipment and televisions for which funds are received pursuant to

G.S. 130A-309.137, and information on operative interlocal agreements executed in conjunction with funds received, if any.

(9) A description of the disaster debris management program.

(10) A description of scrap tire disposal procedures.

(11) A description of white goods management procedures.

(12) Information regarding the prevention of illegal disposal and management of litter.

...."

SECTION 2. G.S. 130A-309.09B(a) reads as rewritten:

"**§ 130A-309.09B. Local government waste reduction programs.**

(a) Each unit of local government shall establish and maintain a solid waste reduction ~~program that will enable the unit of local government to meet the local solid waste reduction goals established pursuant to G.S. 130A-309.09A(b)(2).~~program. The following requirements shall apply:

...."

SECTION 3. G.S. 130A-309.09C(g) reads as rewritten:

"**§ 130A-309.09C. Additional powers of local governments; construction of this Part; effect of noncompliance.**

...

(g) In addition to any other penalties provided by law, a unit of local government that does not comply with the requirements of ~~G.S. 130A-309.09A(b)~~G.S. 130A-309.09A(b), G.S. 130A-309.09A(d), and G.S. 130A-309.09B(a) shall not be eligible for grants from the Solid Waste Management Trust Fund, the Scrap Tire Disposal Account, or the White Goods Management Account and shall not receive the proceeds of the scrap tire disposal tax imposed by Article 5B of Chapter 105 of the General Statutes or the proceeds of the white goods disposal tax imposed by Article 5C of Chapter 105 of the General Statutes to which the unit of local government would otherwise be entitled. The Secretary shall notify the Secretary of Revenue to withhold payment of these funds to any unit of local government that fails to comply with the requirements of ~~G.S. 130A-309.09A(b)~~ G.S. 130A-309.09A(b), G.S. 130A-309.09A(d), and G.S. 130A-309.09B(a). Proceeds of the scrap tire disposal tax that are withheld pursuant to this subsection shall be credited to the Scrap Tire Disposal Account and may be used as provided in G.S. 130A-309.63. Proceeds of the white goods disposal tax that are withheld pursuant to this subsection shall be credited to the White Goods Management Account and may be used as provided in G.S. 130A-309.83."

SECTION 4. G.S. 130A-309.58(d) reads as rewritten:

"**§ 130A-309.58. Disposal of scrap tires.**

...

(d) Each county is responsible for developing a description of scrap tire disposal procedures. ~~These procedures shall be included in any solid waste management plan required by the Department under this Article.~~ These procedures shall be included in the annual report required under G.S. 130A-309.09A. Further, any revisions to the initial description of the scrap tire disposal procedures shall be forwarded to the Department."

SECTION 5. G.S. 130A-309.81(c) reads as rewritten:

"**§ 130A-309.81. Management of discarded white goods; disposal fee prohibited.**

...

(c) Plan. – Each county shall establish written procedures for the management of white goods. ~~The county shall include the procedures in any solid waste management plan required by the Department under this Article.~~These procedures shall be included in the annual report required under G.S. 130A-309.09A."

SECTION 6. G.S. 130A-309.113(a) reads as rewritten:

"**§ 130A-309.113. (Effective July 1, 2009, and expiring October 1, 2023) Management of abandoned manufactured homes.**

(a) Plan. – Each county shall consider whether to implement a program for the management of abandoned manufactured homes. ~~If, after consideration, the county decides not to implement a program, the county must state in the comprehensive solid waste management plan that it is required to develop under G.S. 130A-309.09A(b) that the county considered whether to implement a program for the management of abandoned manufactured homes and decided not to do so. A county may, at any time, reconsider its decision not to implement a program for the management of abandoned manufactured homes. If~~ If at any time the county decides to implement a program, the county shall develop a written plan for the management of abandoned manufactured ~~homes and include the plan as a component of the comprehensive solid waste management plan it is required to develop under G.S. 130A-309.09A(b).~~homes. This plan shall be included in the annual report required under G.S. 130A-309.09A. At a minimum, the plan shall include:

(1) A method by which the county proposes to identify abandoned manufactured homes in the county, including, without limitation, a process by which manufactured home owners or other responsible parties may request designation of their home as an abandoned manufactured home.

(2) A plan for the deconstruction of these abandoned manufactured homes.

(3) A plan for the removal of the deconstructed components, including mercury switches from thermostats, for reuse or recycling, as appropriate.

(4) A plan for the proper disposal of abandoned manufactured homes that are not deconstructed under subdivision (2) of this subsection."

SECTION 7. G.S. 130A-309.137 reads as rewritten:

"**§ 130A-309.137. (See editor's note) Electronics Management Fund.**

...

(c) Eligibility. – Except as provided in subsection (d) of this section, no more than one unit of local government per county, including the county itself, may receive funding pursuant to this section for a program to manage discarded computer equipment, televisions, and other electronic devices. ~~In order to be eligible for funding, a~~ A unit of local government ~~shall:~~shall submit a plan to include:

(1) ~~Submit a comprehensive solid waste management plan required pursuant to G.S. 130A-309.09A, amended as necessary to include the following information:~~

~~a.~~ Information on existing programs within the jurisdiction to recycle or reuse discarded computer equipment, televisions, and other electronic devices, or information on a plan to begin such a program on a date certain. This information shall include a description of the implemented or planned practices for collection of the equipment and a description of the types of equipment to be collected and how the equipment will be marketed for recycling.

(2) ~~b.~~ Information on a public awareness and education program concerning the recycling and reuse of discarded computer equipment, televisions, and other electronic devices.

(3) ~~c.~~ Information on methods to track and report total tonnage of computer equipment, televisions, and other electronic devices collected and recycled in the jurisdiction.

(4) ~~d.~~ Information on interactions with other units of local government to provide or receive services concerning disposal of discarded computer equipment, televisions, and other electronic devices.

(5) ~~e.~~ Information on how the unit of local government will account for the expenditure of funds received pursuant to this section.

~~(2) Establish a separate local budget account for the receipt and expenditure of funds received pursuant to this section.~~

~~(3)~~(6) ~~Contract~~ Proof of contract or agreement with a recycler that is certified as adhering to Responsible Recycling ("R2") practices or that is certified as an e-Steward recycler adhering to the e-Stewards Standard for Responsible Recycling and Reuse of Electronic Equipment® to process the discarded computer equipment, televisions, and other electronic devices that the unit of local government collects.

(c1) Submittal of Information for Distribution of Funding. – Documentation meeting the requirements of subdivision (6) of subsection (c) of this section, and other information required by subsection (c) of this section, including new plans or revisions to plans as necessary, must be submitted annually on or before December 31 in order to be eligible for funding during the next distribution by the Department.

(d) Local Government Designation. – If more than one unit of local government in a county, including the county itself, requests funding pursuant to this section, the units of local government in question ~~may: (i)~~may enter into interlocal agreements for provision of services concerning disposal of discarded computer equipment and televisions, and distribution of funds received pursuant to this section among the parties to the ~~agreement; or (ii) submit separate and distinct comprehensive solid waste management plans pursuant to G.S. 130A-309.09A, with the information set forth in sub-subdivisions a. through e. of subdivision (1) of subsection (c) of this section. In the case of (ii), the Department shall distribute funds to the local governments determined to be eligible based on the percentage of the county's population to be served under each eligible local government's program.~~agreement. If the units of local government do not enter into an interlocal agreement regarding funding under this section, the Department shall distribute funds to the eligible local governments based on the percentage of the county's population to be served under each eligible local government's program.

...."

SECTION 8. G.S. 130A-294 reads as rewritten:

"**§ 130A-294. Solid waste management program.**

(a) The Department is authorized and directed to engage in research, conduct investigations and surveys, make inspections and establish a statewide solid waste management program. In establishing a program, the Department shall have authority to:

...

(4) a. Develop a permit system governing the establishment and operation of solid waste management facilities. A landfill with a disposal area of 1/2 acre or less for the on-site disposal of land clearing and inert debris is exempt from the permit requirement of this section and shall be governed by G.S. 130A-301.1. The Department shall not approve an application for a new permit, the renewal of a permit, or a substantial amendment to a permit for a sanitary landfill, excluding demolition landfills as defined in the rules of the Commission, except as provided in subdivisions (3) and (4) of subsection (b1) of this section. No permit shall be granted for a solid waste management facility having discharges that are point sources until the Department has referred the complete plans and specifications to the Environmental Management Commission and has received advice in writing that the plans and specifications are approved in accordance with the provisions of G.S. 143-215.1. ~~If the applicant is a unit of~~

~~local government, and has not submitted a solid waste management plan that has been approved by the Department pursuant to G.S. 130A-309.09A(b), the Department may deny a permit for a sanitary landfill or a facility that disposes of solid waste by incineration, unless the Commission has not adopted rules pursuant to G.S. 130A-309.29 for local solid waste management plans.~~ In any case where the Department denies a permit for a solid waste management facility, it shall state in writing the reason for denial and shall also state its estimate of the changes in the applicant's proposed activities or plans that will be required for the applicant to obtain a permit.

...

(b1) ...

(2) A person who intends to apply for a new permit, the renewal of a permit, or a substantial amendment to a permit for a sanitary landfill shall obtain, prior to applying for a permit, a franchise for the operation of the sanitary landfill from each local government having jurisdiction over any part of the land on which the sanitary landfill and its appurtenances are located or to be located. A local government may adopt a franchise ordinance under G.S. 153A-136 or G.S. 160A-319. A franchise granted for a sanitary landfill shall include all of the following:

a. A statement of the population to be served, including a description of the geographic area.

b. A description of the volume and characteristics of the waste stream.

c. A projection of the useful life of the sanitary landfill.

~~d. An explanation of how the franchise will be consistent with the jurisdiction's solid waste management plan required under G.S. 130A-309.09A, including provisions for waste reduction, reuse, and recycling.~~

e. The procedures to be followed for governmental oversight and regulation of the fees and rates to be charged by facilities subject to the franchise for waste generated in the jurisdiction of the franchising entity.

f. A facility plan for the sanitary landfill that shall include the boundaries of the proposed facility, proposed development of the facility site in five-year operational phases, the boundaries of all waste disposal units, final elevations and capacity of all waste disposal units, the amount of waste to be received per day in tons, the total waste disposal capacity of the sanitary landfill in tons, a description of environmental controls, and a description of any other waste management activities to be conducted at the facility. In addition, the facility plan shall show the proposed location of soil borrow areas, leachate facilities, and all other facilities and infrastructure, including ingress and egress to the facility.

...."

SECTION 9. This act is effective when it becomes law.

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 321

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

H321-ARI-75 [v.2]

Comm. Sub. [YES]
Amends Title [YES]
Second Edition

Date _____,2013

Senator _____

moves to amend the bill on page 1, lines 2 and 3,
by rewriting those lines to read:

"AN ACT TO: (1) REPEAL THE REQUIREMENT THAT LOCAL GOVERNMENTS DEVELOP AND MAINTAIN A SOLID WASTE MANAGEMENT PLAN; AND (2) EXEMPT CERTAIN LANDFILLS FROM THE REQUIREMENT THAT THEY OBTAIN A FRANCHISE TO OPERATE FROM A LOCAL GOVERNMENT IN LIMITED CIRCUMSTANCES."; AND

on page 6, line 46,
by rewriting that line to read:

"**SECTION 9.** G.S. 130A-294(b1) is amended by adding a new subdivision to read:

"(6) Notwithstanding any provision of this section, no franchise for the operation of a sanitary landfill shall be required from a local government if the property on which the landfill is located is incorporated within a local government's boundaries by act of the General Assembly and the landfill was validly operating in another jurisdiction prior to the time the legislative act became effective. This subdivision only applies to sanitary landfills for the disposal of construction and demolition debris that had a permit from the Department to operate the landfill on January 1, 2008."

SECTION 10. This act is effective when it becomes law.".

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 321

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

H321-ARI-75 [v.2]

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 321

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

H321-ARI-76 [v.1]

Comm. Sub. [YES]
Amends Title [NO]
Second Edition

Date _____,2013

Senator Hartsell

moves to amend the bill on page 5, line 37, through page 6, line 11, by rewriting those lines to read:

"(4) a. Develop a permit system governing the establishment and operation of solid waste management facilities. A landfill with a disposal area of 1/2 acre or less for the on-site disposal of land clearing and inert debris is exempt from the permit requirement of this section and shall be governed by G.S. 130A-301.1. Demolition debris from the decommissioning of manufacturing buildings, including electric generating stations, that is disposed of on the same site as the decommissioned buildings, is exempt from the permit requirement of this section and rules adopted pursuant to this section and shall be governed by G.S. 130A-301.3. The Department shall not approve an application for a new permit, the renewal of a permit, or a substantial amendment to a permit for a sanitary landfill, excluding demolition landfills as defined in the rules of the Commission, except as provided in subdivisions (3) and (4) of subsection (b1) of this section. No permit shall be granted for a solid waste management facility having discharges that are point sources until the Department has referred the complete plans and specifications to the Environmental Management Commission and has received advice in writing that the plans and specifications are approved in accordance with the provisions of G.S. 143-215.1. ~~If the applicant is a unit of local government, and has not submitted a solid waste management plan that has been approved by the Department pursuant to G.S. 130A-309.09A(b), the Department may deny a permit for a sanitary landfill or a facility that disposes of solid waste by incineration, unless the Commission has not adopted rules pursuant to G.S. 130A-309.29 for local solid waste management plans.~~ In any case where the Department denies a permit for a solid waste management facility, it shall state in writing the reason for denial and shall also state its estimate of the changes in the applicant's proposed

activities or plans that will be required for the applicant to obtain a permit.".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

SENATE PAGES ATTENDING

COMMITTEE: Agriculture ROOM: 544

DATE: 7-2 TIME: 11 AM

PLEASE PRINT LEGIBILY!!!!!!!!!!!!!....*or else!*

Page Name	Hometown	Sponsoring Senator
1. Bailey Sherrill	Hiddenite	Berger
2. Jackson Widener	Charlotte	Sen. Ford
3. Nathaniel Vang	Charlotte	Ford
4. Bryanna Thompson	Knightdale	McKissick
5. Warren Babb	Charlotte	Sen Rucho
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 SERGEANT-AT-ARMS

COMMITTEE: **SENATE AGRICULTURE**

DATE: 07/02/13 ROOM: 544

1. CHARLES HARPER
2. KEN KIRBY
3. JUSTIN OWENS
4. ANDERSON MEADOWS
5. GRAHAM WHITAKER

VISITOR REGISTRATION SHEET

Senate/Agriculture/Environment/Natural Resources
(Committee Name)

July 2, 2013
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
OE Hemy	NCPCN
Andy Chase	KMA
Heather Barnett	Ward & Smith
TJ Bugbee	NP
Allen Hardison	CRSWMA
Lori Ann Harris	LHHA
Kevin Leonard	NCACC
Betsy Bailey	PEAC
Dyl T Dotts	SA
Sarah Lindh	DENR
Tom Bean	EDF
Nadia Luhr	NCCN
Kay Emanuel	School of Government
Kaitlin Rothecker	BRubaker & Assoc.
Mike Gebert	NCLCV
Logan Mohs	NCLCV
Dan Crumpler	NCCC

VISITOR REGISTRATION SHEET

Senate/Agriculture/Environment/Natural Resources
(Committee Name)

July 2, 2013
Date

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NAME	FIRM OR AGENCY AND ADDRESS
Amanda Honaker	TSS
Chris Emanuel	Emanuel Group
Danielle Lee	" "
Chris Sigmann	Intern - Sen. Kinnaird
Debbie Hughes	KCG
CHRIS DICCON	NCWRC
JOY HICKS	NCDACS
Colleen Jeffries	NCPC
Angie Maier	NCPC
[illegible]	NCPC / NCCA
Will Polk	NCDPS
Lamm Payne	NC Grange
Henry Hutaff	N.C.B.A.
J Goodman	NC Chamber
Preston Howard	NCMA
Kathy Hanlon	Duke Energy
Erin Wynia	NCLM

09-21-201

VISITOR REGISTRATION SHEET

Senate/Agriculture/Environment/Natural Resources
(Committee Name)

July 2, 2013
Date

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NAME	FIRM OR AGENCY AND ADDRESS
STEVEN WEBB	NCHBA

09-21-201

VISITOR REGISTRATION SHEET

Senate/Agriculture/Environment/Natural Resources
(Committee Name)

July 2, 2013
Date

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NAME	FIRM OR AGENCY AND ADDRESS
Sgmr Rleggen	DOA

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2013–2014 Biennium

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Maria Kinnaird

Senator Andrew Brock, Co-Chair
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Judy Edwards

Senator Bill Cook, Vice-Chair
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Senator Fletcher Hartsell
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Gerry Johnson

Senator Brent Jackson
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Jeb Kelly

Senator Tommy Tucker
Room 311, LOB (919) 733-7659
Joey Stansbury

Senator Trudy Wade
Room 2106, LB (919) 733-5856
Kathy Hartsell

Senator Michael Walters
Room 517-B, LOB (919) 733-5651
Cindy Davis

INDEX OF BILLS

DATE OF MEETING	BILLS
May 20, 2014	SB 734 Authority to Adopt Certain Ordainances
June 5, 2014	SB 729 Governor's Coal Ash Action Plan
June 16, 2014	SB 729 Governor's Coal Ash Action Plan
June 17, 2014	SB 729 Governor's Coal Ash Action Plan
June 24, 2014	HB 366 NC Farm Act of 2014
	HB 379 Clarify Board of Agriculture Authority/Plants – AB
	HB 1139 State Nat. & Hist. Pres. Adds & Dels.

Senate Committee on Agriculture/Environment/Natural Resources
Tuesday, May 20, 2014, 11:00 AM
544 Legislative Office Building

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

BILL NO.	SHORT TITLE	SPONSOR
SB 734	Authority to Adopt Certain Ordinances.	Senator Wade Senator B. Jackson Senator Brock

Adjournment

Senate Committee on Agriculture/Environment/Natural Resources
Tuesday, May 20, 2014 at 11:00 AM
Room 544 of the Legislative Office Building

MINUTES

The Senate Committee on Agriculture/Environment/Natural Resources met at 11:09 AM on May 20, 2014 in Room 544 of the Legislative Office Building. Eighteen members were present.

Senator Andrew C. Brock, Chair, presided. Senator Brock introduced the Sgt.- at-Arms and the Pages. A motion was made by Sen. Trudy Wade to consider the PCS for **SB 734 Regulatory Reform Act of 2014. (Senators Wade, B. Jackson, Brock).** Staff was asked to explain the PCS. Staff who spoke included Jeff Hudson, Karen Cochrane-Brown, Heather Fennell, Peter Ledford, Mariah Matheson, Jennifer McGinnis, Jennifer Mundt and Chris Saunders. Following the bill's explanation, the Committee members had a series of questions.

Senator Hartsell asked about APO oversight and the staff provided a location.

Senator Ford asked if it was accurate that a business owner did not need an attorney, with a follow-up question regarding the fact that no broker was needed for a small business owner to sell property. Staff responded to his questions.

Senator McLaurin asked about the transfer of the drinking water authority in sections 3.33 and 3.34 and Sen. Wade responded that the process was streamlined by NC DENR.

Senator Ford asked to clarify section 3.2 that allows alcohol to be sold on Community College campuses. Senator Wade responded that a permit was needed and that it would be in limited quantity, for a limited time period.

Senator Bryant asked about the transfer of the rule-making authority for public health from DHHS to DENR. Senator Wade responded that the standards would be the same.

Senator Hartsell commented that public health was formerly a part of DENR.

Senator Tucker asked about section 3.35. He wanted to know if the language for an electrical contractor could be stricter. Staff replied that it was as strict as could be.

Senator Wade was recognized for an amendment to the PCS (see attachment).

Senator Tucker asked if the amendment applied to the whole state, and Senator Wade answered in the affirmative.

Senator Tucker made a motion to adopt the amendment.

The amendment was adopted.

Senator Bingham made a motion for a favorable report for the PCS with the amendment rolled into the PCS and unfavorable to the original bill.

The motion carried.

The meeting adjourned at 11:55.

Senator Andrew C. Brock, Chair
Presiding

Maria Kinnaird, Committee Clerk

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES COMMITTEE REPORT
Senator Bingham, Co-Chair
Senator Brock, Co-Chair

Tuesday, May 20, 2014

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

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

SB **734** Authority to Adopt Certain Ordinances.

Draft Number:	S734-PCS35532-SBxf-38
Sequential Referral:	Finance
Recommended Referral:	None
Long Title Amended:	Yes

TOTAL REPORTED: 1

Senator Trudy Wade will handle SB 734



GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

S D

SENATE BILL 734
PROPOSED COMMITTEE SUBSTITUTE S734-PCS35528-TAxf-35

Short Title: Regulatory Reform Act of 2014. (Public)

Sponsors:

Referred to:

May 15, 2014

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FURTHER REGULATORY RELIEF TO THE CITIZENS OF NORTH CAROLINA BY PROVIDING FOR VARIOUS ADMINISTRATIVE REFORMS, BY ELIMINATING CERTAIN UNNECESSARY OR OUTDATED STATUTES AND REGULATIONS AND MODERNIZING OR SIMPLIFYING CUMBERSOME OR OUTDATED REGULATIONS, BY MAKING VARIOUS OTHER STATUTORY CHANGES, AND BY UPDATING AND AMENDING CERTAIN ENVIRONMENTAL AND NATURAL RESOURCES LAWS.

The General Assembly of North Carolina enacts:

PART I. ADMINISTRATIVE REFORMS

HARDISON AMENDMENT CLARIFICATION

SECTION 1.1.(a) G.S. 150B-19.3 reads as rewritten:

"**§ 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:~~subdivisions of this subsection. A rule required by one of the subdivisions of this subsection shall be subject to the provisions of G.S. 150B-21.3(b1) as if the rule received written objections from 10 or more persons under G.S. 150B-21.3(b2).

(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 North Carolina Mining and Energy Commission created pursuant to G.S. 143B-293.1.
(9) The Pesticide Board created pursuant to G.S. 143-436."

SECTION 1.1.(b) G.S. 150B-21.3A(a) reads as rewritten:

"**§ 150B-21.3A. Periodic review and expiration of existing rules.**

(a) Definitions. – For purposes of this section, the following definitions apply:

...

(3) Necessary with substantive public interest. – Means any rule for which the agency has received public comments within the past two years. A rule is also "necessary with substantive public interest" if either or both of the following applies:

a. ~~the~~ The rule affects the property interest of the regulated public and the agency knows or suspects that any person may object to the rule.

b. The rule 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."

SECTION 1.1.(c) Section 1.1(a) of this section becomes effective July 1, 2014, and applies to rules adopted or readopted on or after that date. Section 1.1(b) of this section becomes effective August 23, 2013, and applies to rules reviewed on or after that date.

SCOPE OF LOCAL AUTHORITY FOR ORDINANCES

SECTION 1.2.(a) Section 10.2 of S.L. 2013-413 is repealed.

SECTION 1.2.(b) No later than November 1, 2014, and November 1, 2015, the Department of Agriculture and Consumer Services shall report to the Environmental Review Commission on any local government ordinances that impinge on or interfere with any area subject to regulation by the Department.

SECTION 1.2.(c) No later than November 1, 2014, and November 1, 2015, the Department of Environment and Natural Resources shall report to the Environmental Review Commission on any local government ordinances that impinge on or interfere with any area subject to regulation by the Department.

SECTION 1.2.(d) Article 56 of Chapter 106 of the General Statutes is amended by adding a new section to read:

"**§ 106-678. Authority of local governments to regulate fertilizers.**

No county or city shall adopt or continue in effect any ordinance, rule, regulation, or resolution regulating the use, sale, distribution, storage, transportation, disposal, formulation, labeling, registration, manufacture, or application of fertilizer. Nothing in this section shall prohibit a county, city, or other political subdivision of the State from exercising its planning and zoning authority under Article 19 of Chapter 160A of the General Statutes or Article 18 of Chapter 153A of the General Statutes or from exercising its fire prevention or inspection authority. Nothing in this section shall limit the authority of the Department of Environment and Natural Resources to enforce water quality standards."

LOTTERY OVERSIGHT COMMITTEE ELIMINATED

SECTION 1.4.(a) G.S. 18C-172 is repealed.

SECTION 1.4.(b) G.S. 18C-115 reads as rewritten:

"**§ 18C-115. Reports.**

The Commission shall send quarterly and annual reports on the operations of the Commission to the Governor, State Treasurer, ~~the Lottery Oversight Committee,~~ and to the General Assembly. The reports shall include complete statements of lottery revenues, prize disbursements, expenses, net revenues, and all other financial transactions involving lottery funds, including the occurrence of any audit."

REPRESENTATION OF SMALL BUSINESS ENTITIES IN ADMINISTRATIVE APPEALS

SECTION 1.5.(a) 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, an attorney representing a party, or other representative of the party as may specifically be authorized by law, 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.

If the party is a small business entity, it may be represented by one or more of its owners with the written consent of all the owners, and the Office of Administrative Hearings may not require that the entity retain or be represented by an attorney. A small business entity is a limited liability company or a corporation that is owned, directly or indirectly, by no more than two individuals. An individual is an indirect owner if the individual is a member or shareholder of a limited liability company or a corporation that is an owner of the small business entity."

SECTION 1.5.(b) G.S. 105-290 is amended by adding a new subsection to read:

"(d2) Small Business Entity Representation. – If a property owner is a small business entity, that entity may be represented by one or more of its owners with the written consent of all the owners, and the Commission may not require that the entity retain or be represented by an attorney. A small business entity is a limited liability company or a corporation that is owned, directly or indirectly, by no more than two individuals. An individual is an indirect owner if the individual is a member or shareholder of a limited liability company or a corporation that is an owner of the small business entity."

SECTION 1.5.(c) This section is effective when it becomes law and applies to contested cases and appeals commenced on or after that date.

EXEMPT SMALL BUSINESS ENTITIES BUYING OR SELLING ENTITY-OWNED PROPERTY

SECTION 1.6.(a) G.S. 93A-2(c)(1) reads as rewritten:

"(c) The provisions of G.S. 93A-1 and G.S. 93A-2 do not apply to and do not include:

(1) Any partnership, corporation, limited liability company, association, or other business entity that, as owner or lessor, shall perform any of the acts aforesaid with reference to property owned or leased by them, where the acts are performed in the regular course of or as incident to the management of that property and the investment therein. The exemption from licensure under this subsection shall extend to the following persons when those persons are engaged in acts or services for which the corporation, partnership, limited liability company, or other business entity would be exempt hereunder:

a. The officers and employees of an exempt ~~corporation, the~~ corporation.

b. The general partners and employees of an exempt ~~partnership, and the~~partnership.

c. The managers and employees of an exempt limited liability ~~company when said persons are engaged in acts or services for which the corporation, partnership, or limited liability company would be exempt hereunder.~~company.

d. The owners of an exempt closely held business entity. For purposes of this subdivision, a closely held business entity is a limited liability company or a corporation with no more than two legal owners.

e. The officers, managers, and employees of a closely held business entity owned by a person exempt under sub-subdivision d. of this subdivision."

REDUCE STATE AGENCY MOBILE DEVICE REPORTING FREQUENCY

SECTION 1.7 Subsection 6A.14(a) of Session Law 2011-145 reads as rewritten:

"**SECTION 6A.14.(a)** Every executive branch agency within State government shall develop a policy to limit the issuance and use of mobile electronic devices to the minimum required to carry out the agency's mission. By September 1, 2011, each agency shall provide a copy of its policy to the Chairs of the Appropriations Committee and the Appropriations Subcommittee on General Government of the House of Representatives, the Chairs of the Appropriations/Base Budget Committee and the Appropriations Committee on General Government and Information Technology of the Senate, the Chairs of the Joint Legislative Oversight Committee on Information Technology, the Fiscal Research Division, and the Office of State Budget and Management.

State-issued mobile electronic devices shall be used only for State business. Agencies shall limit the issuance of cell phones, smart phones, and any other mobile electronic devices to employees for whom access to a mobile electronic device is a critical requirement for job performance. The device issued and the plan selected shall be the minimum required to support the employees' work requirements. This shall include considering the use of pagers in lieu of a more sophisticated device. The requirement for each mobile electronic device issued shall be documented in a written justification that shall be maintained by the agency and reviewed annually. All State agency heads, in consultation with the Office of Information Technology Services and the Office of State Budget and Management, shall document and review all authorized cell phone, smart phone, and other mobile electronic communications device procurement, and related phone, data, Internet, and other usage plans for and by their employees. Agencies shall conduct periodic audits of mobile device usage to ensure that State employees and contractors are complying with agency policies and State requirements for their use.

Beginning October 1, 2011, each agency shall report ~~quarterly~~ annually to the Chairs of the House of Representatives Committee on Appropriations and the House of Representatives Subcommittee on General Government, the Chairs of the Senate Committee on Appropriations and the Senate Appropriations Committee on General Government and Information Technology, the Joint Legislative Oversight Committee on Information Technology, the Fiscal Research Division, and the Office of State Budget and Management on the following:

(1) Any changes to agency policies on the use of mobile devices.
(2) The number and types of new devices issued since the last report.
(3) The total number of mobile devices issued by the agency.
(4) The total cost of mobile devices issued by the agency.
(5) The number of each type of mobile device issued, with the total cost for each type."

ELIMINATE, AS OBSOLETE, THE SMALL BUSINESS CONTRACTOR AUTHORITY, THE COMMITTEE ON DROPOUT PREVENTION, THE STATE EDUCATION COMMITTEE, THE STATE EDUCATION COMMISSION, THE NATIONAL HERITAGE AREA DESIGNATION COMMISSION, THE GOVERNOR'S MANAGEMENT COUNCIL, THE BOARD OF DIRECTORS OF THE NORTH CAROLINA CENTER FOR NURSING, THE BOARD OF CORRECTIONS; AND TO ENCOURAGE THE CHIEF JUSTICE TO ABOLISH THE ACTUAL INNOCENCE COMMISSION

SECTION 1.8.(a) Part 20 of Article 10 of Chapter 143B of the General Statutes is repealed.

SECTION 1.8.(b) Section 7.32(e) of S.L. 2007-323, as rewritten by Section 7.14(a) of S.L. 2008-107 and Section 7.19(e) of S.L. 2010-31, reads as rewritten:

"**SECTION 7.32.(e)** Report. – The Committee shall report to the Joint Legislative Commission on Dropout Prevention and High School Graduation created in subsection (f) of this section by December 1, 2007, on the grants awarded under subsection (d) of this section. The Committee shall terminate July 1, 2014."

SECTION 1.8.(c) G.S. 116C-1 reads as rewritten:

"**§ 116C-1. Education Cabinet created.**

(a) The Education Cabinet is created. The Education Cabinet shall be located administratively within, and shall exercise its powers within existing resources of, the Office of the Governor. However, the Education Cabinet shall exercise its statutory powers independently of the Office of the Governor.

(b) The Education Cabinet shall consist of the Governor, who shall serve as chair, the President of The University of North Carolina, the State Superintendent of Public Instruction, the Chairman of the State Board of Education, the President of the North Carolina Community Colleges System, the Secretary of Health and Human Services, and the President of the North Carolina Independent Colleges and Universities. The Education Cabinet may invite other representatives of education to participate in its deliberations as adjunct members.

(c) The Education Cabinet shall be a nonvoting body that:

(1) Works to resolve issues between existing providers of education.
~~(2) Sets the agenda for the State Education Commission.~~
(3) Develops a strategic design for a continuum of education programs, in accordance with G.S. 116C-3.
(4) Studies other issues referred to it by the Governor or the General Assembly.

(d) The Office of the Governor, in coordination with the staffs of The University of North Carolina, the North Carolina Community College System, and the Department of Public Instruction, shall provide staff to the Education Cabinet."

SECTION 1.8.(d) G.S. 116C-2 is repealed.

SECTION 1.8.(e) Article 26 of Chapter 143 of the General Statutes is repealed.

SECTION 1.8.(f) Section 18.10 of S.L. 2001-491 reads as rewritten:

"**SECTION 18.10.** Notwithstanding G.S. 158-8.1, the Western North Carolina Regional Economic Development Commission shall develop a regional heritage tourism plan and shall present the plan to the 2002 Regular Session of the 2001 General Assembly no later than May 1, 2002. The National Heritage Area Designation Commission created pursuant to Section 18.4 of this act shall terminate July 1, 2014."

SECTION 1.8.(g) Part 24 of Article 9 of Chapter 143B is repealed.

SECTION 1.8.(h) G.S. 90-171.71 is repealed.

SECTION 1.8.(i) G.S. 143B-711 reads as rewritten:

"**§ 143B-711. Division of Adult Correction of the Department of Public Safety – organization.**

The Division of Adult Correction of the Department of Public Safety shall be organized initially to include the Post-Release Supervision and Parole Commission, ~~the Board of Correction,~~the Section of Prisons of the Division of Adult Correction, the Section of Community Corrections, the Section of Alcoholism and Chemical Dependency Treatment Programs, and such other divisions as may be established under the provisions of the Executive Organization Act of 1973."

SECTION 1.8.(j) G.S. 143B-715 is repealed.

SECTION 1.8.(k) The North Carolina Actual Innocence Commission was established by the Chief Justice of the North Carolina Supreme Court. Its primary purpose was to make recommendations which would reduce or eliminate the possibility of the wrongful conviction of an innocent person. In 2006, the General Assembly enacted S.L. 2006-184, which established the North Carolina Innocence Inquiry Commission, as recommended by the North Carolina Actual Innocence Commission. Inasmuch as it appears that the work of the Actual Innocence Commission is complete, the Chief Justice of the North Carolina Supreme Court is encouraged to take appropriate action to formally abolish the Commission.

CLARIFY PROCESS FOR READOPTION OF EXISTING RULES

SECTION 1.9. G.S. 150B-21.3A(d) reads as rewritten:

"(d) Timetable. – The Commission shall establish a schedule for the review and readoption of existing rules in accordance with this section on a decennial basis as follows:

(1) With regard to the review process, the Commission shall assign ~~by assigning~~ each Title of the Administrative Code a date by which the review required by this section must be completed. In establishing the schedule, the Commission shall consider the scope and complexity of rules subject to this section and the resources required to conduct the review required by this section. The Commission shall have broad authority to modify the schedule and extend the time for review in appropriate circumstances. Except as provided in ~~subsection~~ subsections (d1) and (e) of this section, if the agency fails to conduct the review by the date set by the Commission, the rules contained in that Title which have not been reviewed will expire. The Commission shall report to the Committee any agency that fails to conduct the review. The Commission may exempt rules that have been adopted or amended within the previous 10 years from the review required by this section. However, any rule exempted on this basis must be reviewed in accordance with this section no more than 10 years following the last time the rule was amended.

(2) With regard to the readoption of rules as required by sub-subdivision (c)(2)g. of this section, once the final determination report becomes effective, the Commission shall establish a date by which the agency must readopt the

rules. The Commission shall consult with the agency and shall consider the agency's rule-making priorities in establishing the readoption date. The agency may amend a rule as part of the readoption process. If a rule is readopted without change, the agency is not required to prepare a fiscal note as provided by G.S. 150B-21.4."

AUTHORIZE LICENSING BOARDS TO ADOPT RULES FOR PROFESSIONAL CORPORATIONS

SECTION 1.10. G.S. 55B-12 reads as rewritten:

"**§ 55B-12. Application of regulations of licensing boards.**

(a) A professional corporation shall be subject to the applicable rules and regulations adopted by, and all the disciplinary powers of, the licensing board as herein defined. Nothing in this Chapter shall impair the disciplinary powers of any licensing board applicable to a licensee as herein defined. No professional corporation may do any act which its shareholders as licensees are prohibited from doing.

(b) Subject to the requirements of Article 2A of Chapter 150B of the General Statutes, any licensing board subject to this Chapter may adopt rules to implement the provisions of this Chapter, including any rules needed to establish fees within the limits set by this Chapter."

OCCUPATIONAL LICENSING BOARD REPORTING AMENDMENTS

SECTION 1.11. G.S. 93B-2 reads as rewritten:

"**§ 93B-2. Annual reports required; contents; open to inspection; sanction for failure to report.**

(a) No later than October 31 of each year, each occupational licensing board shall file electronically with the Secretary of State, the Attorney General, and the Joint ~~Regulatory Reform~~Legislative Administrative Procedure Oversight Committee an annual report containing all of the following information:

(1) The address of the board, and the names of its members and officers.

(1a) The total number of licensees supervised by the board.

(2) The number of persons who applied to the board for examination.

(3) The number who were refused examination.

(4) The number who took the examination.

(5) The number to whom initial licenses were issued.

(5a) The number who failed the examination.

(6) The number who applied for license by reciprocity or comity.

(7) The number who were granted licenses by reciprocity or comity.

(7a) The number of official complaints received involving licensed and unlicensed activities.

(7b) The number of disciplinary actions taken against licensees, or other actions taken against nonlicensees, including injunctive relief.

(8) The number of licenses suspended or revoked.

(9) The number of licenses terminated for any reason other than failure to pay the required renewal fee.

(10) The substance of any anticipated request by the occupational licensing board to the General Assembly to amend statutes related to the occupational licensing board.

(11) The substance of any anticipated change in rules adopted by the occupational licensing board or the substance of any anticipated adoption of new rules by the occupational licensing board.

(b) No later than October 31 of each year, each occupational licensing board shall file electronically with the Secretary of State, the Attorney General, the Office of State Budget and

Management, and the Joint ~~Regulatory Reform~~Legislative Administrative Procedure Oversight Committee a financial report that includes the source and amount of all funds credited to the occupational licensing board and the purpose and amount of all funds disbursed by the occupational licensing board during the previous fiscal year.

(c) The reports required by this section shall be open to public inspection.

(d) The Joint Legislative Administrative Procedure Oversight Committee shall notify any board that fails to file the reports required by this section. Failure of a board to comply with the reporting requirements of this section by October 31 of each year shall result in a suspension of the board's authority to expend any funds until such time as the board files the required reports. Suspension of a board's authority to expend funds under this subsection shall not affect the board's duty to issue and renew licenses or the validity of any application or license for which fees have been tendered in accordance with law. Each board shall adopt rules establishing a procedure for implementing this subsection and shall maintain an escrow account into which any fees tendered during a board's period of suspension under this subsection shall be deposited."

OAH ELECTRONIC FILING

SECTION 1.12.(a) Article 3 of Chapter 150B of the General Statutes is amended by adding a new section to read:

"**§ 150B-23.3. Electronic filing.**

(a) In addition to any other method specified in G.S. 150B-23, documents filed and served in a contested case may be filed and served electronically by means of an Electronic Filing Service Provider. For purposes of this section, the following definitions apply:

(1) Electronic filing means the electronic transmission of the petition, notice of hearing, pleadings, or any other documents filed in a contested case with the Office of Administrative Hearings, as further defined by rules adopted by the Office of Administrative Hearings.

(2) Electronic Filing Service Provider (EFSP) means the service provided by the Office of Administrative Hearings for e-filing and e-service of documents via the Internet.

(3) Electronic service means the electronic transmission of the petition, notice of hearing, pleadings, or any other documents in a contested case, as further defined by rules adopted by the Office of Administrative Hearings."

SECTION 1.12.(b) This section is effective when it becomes law and applies to contested cases filed on or after that date.

STATE BOARD OF EDUCATION RULEMAKING CLARIFICATION

SECTION 1.13.(a) G.S. 115C-12 reads as rewritten:

"**§ 115C-12. Powers and duties of the Board generally.**

The general supervision and administration of the free public school system shall be vested in the State Board of Education. The State Board of Education shall establish policy for the system of free public schools, subject to laws enacted by the General Assembly. The State Board of Education is subject to Article 2A of Chapter 150B of the General Statutes. The State Board of Education may not implement or enforce against any person a policy that meets the definition of a rule contained in G.S. 150B-2(8a) if the policy has not been adopted as a rule in accordance with Article 2A of Chapter 150B of the General Statutes. The powers and duties of the State Board of Education are defined as follows:

...."

SECTION 1.13.(b) G.S. 150B-23 is amended by adding a new subsection to read:

"(a4) If an agency fails to take any required action within the time period specified by law, any person whose rights are substantially prejudiced by the agency's failure to act may

commence a contested case in accordance with this section seeking an order that the agency act as required by law. If the administrative law judge finds that the agency has failed to act as required by law, the administrative law judge may order that the agency take the required action within a specified time period."

SECTION 1.13.(c) G.S. 150B-44 reads as rewritten:

"**§ 150B-44. Right to judicial intervention when final 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.~~ 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 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.~~"

STREAMLINE RULE-MAKING PROCESS

SECTION 1.14.(a) G.S. 150B-19.1(h) is repealed.

SECTION 1.14.(b) G.S. 150B-21.4(b1) reads as rewritten:

"(b1) Substantial Economic Impact. – Before an agency adopts 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 shall prepare a fiscal note for the proposed rule change and have the note approved by the Office of State Budget and Management. The agency must also obtain from the Office a certification that the agency adhered to the regulatory principles set forth in G.S. 150B-19.1(a)(2), (5), and (6). 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 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 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 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 one million dollars ($1,000,000) 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%)."

SECTION 1.14.(c) This section is effective when it becomes law and applies to proposed rules published on or after that date.

BURDEN OF PROOF IN CERTAIN CONTESTED CASES

SECTION 1.15.(a) Article 3 of Chapter 150B of the General Statutes is amended by adding a new section to read:

"**§ 150B-25.1. Burden of proof.**

(a) Except as provided by this section, the petitioner in a contested case has the burden of proving the facts alleged in the petition by a preponderance of the evidence.

(b) In a contested case involving the imposition of civil fines or penalties by a State agency for violation of the law, the burden of showing that the person who was fined actually committed the act for which the fine or penalty was imposed rests with the State agency.

(c) The burden of showing that a career State employee subject to Chapter 126 of the General Statutes was discharged, suspended, or demoted for just cause rests with the agency employer."

SECTION 1.15.(b) The Joint Legislative Administrative Procedure Oversight Committee shall study whether there are other categories of contested cases in which the burden of proof should be placed with the agency.

SECTION 1.15.(c) This section is effective when it becomes law and applies to contested cases commenced on or after that date.

LEGISLATIVE APPOINTMENTS

SECTION 1.16.(a) G.S. 120-121 is amended by adding two new subsections to read:

"(e) The following applies in any case where the Speaker of the House of Representatives or the President Pro Tempore of the Senate is directed by law to make a recommendation for an appointment by the General Assembly, and the legislator is also directed to make the recommendation in consultation with or upon the recommendation of a third party:

(1) The recommendation or consultation is discretionary and is not binding upon the legislator.

(2) The third party must submit the recommendation or consultation at least 60 days prior to the expiration of the term or within 10 business days from the occurrence of a vacancy.

(3) Failure by the third party to submit the recommendation or consultation to the legislator within the time periods required under this subsection shall be deemed a waiver by the third party of the opportunity.

(f) The following applies in any case where the Speaker of the House of Representatives or the President Pro Tempore of the Senate is directed by law to make a recommendation for an appointment by the General Assembly and the legislator is also directed to make the recommendation from nominees provided by a third party:

(1) The third party must submit the nominees at least 60 days prior to the expiration of the term or within 10 business days from the occurrence of a vacancy.

(2) Failure by the third party to submit the nomination to the legislator within the time periods required under this subsection shall be deemed a waiver by the third party of the opportunity."

SECTION 1.16.(b) Article 16 of Chapter 120 of the General Statutes is amended by adding a new section to read:

"**§ 120-124. Appointments made by legislators.**

(a) In any case where a legislator is called upon by law to appoint a member to a board or commission upon the recommendation of or in consultation with a third party, the recommendation or consultation is discretionary and is not binding upon the legislator. The third party must submit the recommendation or consultation at least 60 days prior to the expiration of the term or within 10 business days from the occurrence of a vacancy.

(b) In any case where a legislator is called upon by law to appoint a member to a board or commission from nominees provided by a third party, the third party must submit the nominees at least 60 days prior to the expiration of the term or within 10 business days from the occurrence of a vacancy. This subsection does not apply to nominations made under G.S. 120-99(a) or G.S. 120-100(b).

(c) Failure to submit the recommendation, consultation, or nomination within the time periods required under this section shall be deemed a waiver by the third party of the opportunity."

SECTION 1.16.(c) This section is effective when it becomes law and applies to recommendations, consultations, and nominations made on or after that date.

PART II. PERMITTING REFORMS

CAPSTONE PERMITTING

SECTION 2.1. G.S. 150B-23 is amended by adding a new subsection to read:

"**§ 150B-23. Commencement; assignment of administrative law judge; hearing required; notice; intervention.**

...

(g) Where multiple licenses are required from an agency for a single activity, the Secretary or chief administrative officer of the agency may issue a written determination that the administrative decision reviewable under Article 3 of this Chapter occurs on the date the last license for the activity is issued, denied, or otherwise disposed of. The written determination of the administrative decision is not reviewable under this Article. Any licenses issued for the activity prior to the date of the last license identified in the written determination are not reviewable under this Article until the last license for the activity is issued, denied, or otherwise disposed of. A contested case challenging the last license decision for the activity may include challenges to agency decisions on any of the previous licenses required for the activity."

CONTESTED CASES FOR AIR QUALITY PERMITS

SECTION 2.2. G.S. 143-215.108 reads as rewritten:

"**§ 143-215.108. Control of sources of air pollution; permits required.**

...

(e) A permit ~~applicant, permittee, or third party~~applicant or permittee who is dissatisfied with a decision of the Commission on a permit application may commence a contested case by filing a petition under G.S. 150B-23 within 30 days after the Commission notifies the applicant or permittee of its decision. If the permit ~~applicant, permittee, or third~~

~~party~~applicant or permittee does not file a petition within the required time, the Commission's decision on the application is final and is not subject to review. The filing of a petition under this subsection will stay the Commission's decision until resolution of the contested case.

(e1) A person other than a permit applicant or permittee who is a person aggrieved by the Commission's decision on a permit application may commence a contested case by filing a petition under G.S. 150B-23 within 30 days after the Commission provides notice of its decision on a permit application, as provided in G.S. 150B-23(f), or by posting the decision on a publically available Web site. "Substantial prejudice" to the petitioner in a contested case filed under this subsection means the exceedance of a national ambient air quality standard. The filing of a petition under this subsection does not stay the Commission's decision except as ordered by the administrative law judge under G.S. 150B-33(b).

...."

CLOSURE OF CERTAIN ANIMAL WASTE CONTAINMENT BASINS

SECTION 2.3. Part 1A of Article 21 of Chapter 143 of the General Statutes is amended by adding a new section to read:

"**§ 143-215.10J Closure of certain animal waste containment basins.**

(a) The Department shall consider any waste containment basin to be a fresh water storage facility meeting all requirements for closure under 15A NCAC 02T. 1306 if the owner of the basin demonstrates to the satisfaction of the Department that the basin meets all of the following requirements:

(1) The basin has been used only for the containment of dairy cattle waste.

(2) The basin was constructed prior to 1967.

(3) The basin has not been used for the containment of dairy cattle waste after September 1, 2006, and the only liquid currently held in the basin is from rainwater or rainwater runoff.

(4) Nitrogen levels in the basin water do not exceed 40 parts per million.

(b) The Department shall provide written notification to the owner of a basin meeting the requirements of subsection (a) of this section that the basin is no longer considered an animal waste management system."

CONTESTED CASES FOR CAMA PERMITS

SECTION 2.4. G.S. 113A-121.1 reads as rewritten:

"**§ 113A-121.1. Administrative review of permit decisions.**

(a) An applicant for a minor or major development permit who is dissatisfied with the 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. When a local official makes a decision to grant or deny a minor development permit and the Secretary is dissatisfied with the decision, the Secretary may file a petition for a contested case within 20 days after the decision is made.

(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 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.

(c) ~~A~~ When the applicant seeks administrative review of a decision concerning a permit under subsection (a) of this section, the 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 a final decision in ~~a~~ the contested ~~case, as appropriate,~~case, and no action may be taken during that time that would be unlawful in the absence of a permit.

(d) A permit challenged under subsection (b) of this section remains in effect unless a stay is issued by the administrative law judge as set forth in G.S. 150B-33 or by a reviewing court as set forth in G.S. 150B-48."

GUBERNATORIAL ENVIRONMENTAL PERMIT WAIVER AUTHORITY

SECTION 2.5.(a) G.S. 166A-19.30(a) reads as rewritten:

"**§ 166A-19.30. Additional powers of the Governor during state of emergency.**

(a) In addition to any other powers conferred upon the Governor by law, during a gubernatorially or legislatively declared state of emergency, the Governor shall have the following powers:

(1) To utilize all available State resources as reasonably necessary to cope with an emergency, including the transfer and direction of personnel or functions of State agencies or units thereof for the purpose of performing or facilitating emergency services.

(2) To take such action and give such directions to State and local law enforcement officers and agencies as may be reasonable and necessary for the purpose of securing compliance with the provisions of this Article and with the orders, rules, and regulations made pursuant thereto.

(3) To take steps to assure that measures, including the installation of public utilities, are taken when necessary to qualify for temporary housing assistance from the federal government when that assistance is required to protect the public health, welfare, and safety.

(4) Subject to the provisions of the State Constitution to relieve any public official having administrative responsibilities under this Article of such responsibilities for willful failure to obey an order, rule, or regulation adopted pursuant to this Article.

(5) Through issuance of an executive order, to waive requirements for an environmental document or permit issued under Articles 1, 4, and 7 of Chapter 113A of the General Statutes for the repair, protection, safety enhancement, or replacement of a component of the State highway system that provides the sole road access to an incorporated municipality or an unincorporated inhabited area bordering the Atlantic Ocean or any coastal sound, where bridge or road conditions as a result of the events leading to the declaration of the state of emergency pose a substantial risk to public health, safety, or welfare. The executive order shall list the duration of the waiver and the activities to which the waiver applies. For purposes of this

subdivision, "coastal sound" shall have the definition set forth in G.S. 113A-103, and "replacement" shall not be interpreted to exclude a replacement that increases size or capacity or that is located in a different location than the component that is replaced."

SECTION 2.5.(b) G.S. 113A-12 is amended by adding a new subdivision to read:

"(7) The issuance of an executive order under G.S. 166A-19.30(a)(5) waiving the requirement for an environmental document."

SECTION 2.5.(c) 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:

...

(4) For the duration of an emergency, activities essential to protect human ~~life.~~life, including activities specified in an executive order issued under G.S. 166A-19.30(a)(5)."

SECTION 2.5.(d) G.S. 113A-103(5) reads as rewritten:

"§ 113A-103. Definitions.

As used in this Article:

...

(5) a. "Development" means any activity in a duly designated area of environmental concern (except as provided in paragraph b of this subdivision) involving, requiring, or consisting of the construction or enlargement of a structure; excavation; dredging; filling; dumping; removal of clay, silt, sand, gravel or minerals; bulkheading, driving of pilings; clearing or alteration of land as an adjunct of construction; alteration or removal of sand dunes; alteration of the shore, bank, or bottom of the Atlantic Ocean or any sound, bay, river, creek, stream, lake, or canal; or placement of a floating structure in an area of environmental concern identified in G.S. 113A-113(b)(2) or (b)(5).

b. The following activities including the normal and incidental operations associated therewith shall not be deemed to be development under this section:

1. Work by a highway or road agency for the maintenance of an existing road, if the work is carried out on land within the boundaries of the existing ~~right-of-way;~~right-of-way, or for emergency repairs and safety enhancements of an existing road as described in an executive order issued under G.S. 166A-19.30(a)(5).

...."

FEE ROLLBACK FOR OYSTER PERMITS UNDER PRIVATE DOCKS

SECTION 2.6.(a) Subsections (l) and (m) of G.S. 113-210 are repealed.

SECTION 2.6.(b) This section becomes effective July 1, 2014.

LOCAL GOVERNMENT LEASES FOR RENEWABLE ENERGY FACILITIES

SECTION 2.7. G.S. 160A-272 reads as rewritten:

"§ 160A-272. Lease or rental of property.

...

(c) The council may approve a lease for the siting and operation of a renewable energy facility, as that term is defined in G.S. 62-133.8(a)(7), for a term up to ~~20~~25 years without treating the lease as a sale of property and without giving notice by publication of the intended lease. ~~This subsection applies to Catawba, Mecklenburg, and Wake Counties, the Cities of~~

~~Asheville, Raleigh, and Winston-Salem, and the Towns of Apex, Carrboro, Cary, Chapel Hill, Fuquay-Varina, Garner, Holly Springs, Knightdale, Morrisville, Rolesville, Wake Forest, Wendell, and Zebulon only.~~"

CLOSING-OUT SALES

SECTION 2.8. G.S. 66-77 reads as rewritten:

"**§ 66-77. License required; contents of applications; inventory required; fees; bond; extension of licenses; records; false statements.**

(a) No person shall advertise or offer for sale a stock of goods, wares or merchandise under the description of closing-out sale, or a sale of goods, wares or merchandise damaged by fire, smoke, water or otherwise, or a distress sale unless he shall have obtained a license to conduct such sale from the ~~clerk of the~~officer designated by the governing board of the city or town in which he proposes to conduct such a sale or from the officer designated by the Board of County Commissioners if the sale is conducted in an unincorporated area. The applicant for such a license shall make to ~~such clerk~~the designated officer an application ~~therefor,~~ in writing and under oath at least seven days prior to the opening date of sale, showing all the facts relating to the reasons and character of such sale, including the opening and terminating dates of the proposed sale, the opening and terminating dates of any previous distress sale or closing-out sale held by the applicant within that county during the preceding 12 months, a complete inventory of the goods, wares or merchandise actually on hand in the place ~~whereat such~~where the sale is to be conducted, and all details necessary to locate exactly and identify fully the goods, wares or merchandise to be sold. Provided, the seller in a distress sale need not file an inventory.

(b) If ~~such clerk~~ the designated officer shall be satisfied from said application that the proposed sale is of the character which the applicant desires to advertise and conduct, the ~~clerk~~ designated officer shall issue a license, upon the payment of a fee of fifty dollars ($50.00) therefor, together with a bond, payable to the city or town or county in the penal sum of five hundred dollars ($500.00), conditioned upon compliance with this Article, to the applicant authorizing him to advertise and conduct a sale of the particular kind mentioned in the application. The license fee provided for herein shall be good for a period of 30 days from its date, and if the applicant shall not complete said sale within said 30-day period then the applicant shall make application to ~~such clerk~~ the designated officer for a license for a new permit, which shall be good for an additional period of 30 days, and shall pay therefor the sum of fifty dollars ($50.00), and a second extension period of 30 days may be similarly applied for and granted by the ~~clerk~~ designated officer upon payment of an additional fee of fifty dollars ($50.00) and upon the ~~clerk~~ designated officer being satisfied that the applicant is holding a bona fide sale of the kind contemplated by this Article and is acting in a bona fide manner; provided, however, that the ~~clerk~~ designated officer may not grant an extension period as provided in this subsection if (i) the applicant conducted a distress sale immediately preceding the current sale for which the extension is applied for and (ii) the period of the extension applied for, when added to the period of the preceding sale and the period of the current sale, will exceed 120 days. No additional bond shall be required in the event of one or more extensions as herein provided for. Any merchant who shall have been conducting a business in the same location where the sale is to be held for a period of not less than one year, prior to the date of holding such sale, or any merchant who shall have been conducting a business in one location for such period but who shall, by reason of the building being untenantable or by reason of the fact that said merchant shall have no existing lease or ownership of the building and shall be forced to hold such sale at another location, shall be exempted from the payment of the fees and the filing of the bond herein provided for.

...."

PART III. REGULATORY AND STATUTORY MODIFICATIONS

REGULATION OF IMPACT TO ISOLATED WETLANDS

SECTION 3.1.(a) Until the effective date of the revised permanent rule that the Environmental Management Commission is required to adopt pursuant to subsection (c) of this section, the Commission and the Department of Environment and Natural Resources shall implement 15A NCAC 02H .1305 (Review of Applications) as provided in subsection (c) of this section.

SECTION 3.1.(b) Notwithstanding 15A NCAC 02H .1305 (Review of Applications), both of the following shall apply to the implementation of 15A NCAC 02H .1305:

(1) The amount of impacts of isolated wetlands under 15A NCAC 02H .1305(d)(2) shall be less than or equal to one acre of isolated wetlands east of Interstate 95 for the entire project and less than or equal to one-third acre of isolated wetlands west of Interstate 95 for the entire project.

(2) The mitigation ratio under 15A NCAC 02H .1305(g)(6) shall be 1:1.

SECTION 3.1.(c) The Environmental Management Commission shall adopt a rule to amend 15A NCAC 02H .1305 (Review of Applications) consistent with subsection (b) of this section. Notwithstanding G.S. 150B-19(4), the rule adopted by the Commission pursuant to this section shall be substantively identical to the provisions of subsection (b) of this section. Rules adopted pursuant to this section are not subject to Part 3 of Article 2A of Chapter 150B of the General Statutes. 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 3.1.(d) The Department of Environment and Natural Resources shall study the surface area thresholds for the regulation of mountain bog isolated wetlands, including whether mountain bog isolated wetlands should have surface area regulatory thresholds different from other types of isolated wetlands. The Department shall report its findings and recommendations to the Environmental Review Commission on or before November 1, 2014.

SECTION 3.1.(e) Subsection (b) of this section expires on the date that rules adopted pursuant to subsection (c) of this section become effective.

COMMUNITY COLLEGE BREWING COURSE WAIVER

SECTION 3.2.(a) Article 11 of Chapter 18B of the General Statutes is amended by adding a new section to read:

"**§ 18B-1114.6. Brewing, Distillation, and Fermentation course authorization.**

(a) Authorization. – The holder of a brewing, distillation, and fermentation course authorization may:

(1) Manufacture malt beverages on the school's campus or the school's contracted or leased property for the purpose of providing instruction and education on the making of malt beverages.

(2) Possess malt beverages manufactured during the brewing, distillation, and fermentation program for the purpose of conducting malt beverage tasting seminars and classes for students who are 21 years of age or older.

(3) Sell malt beverages produced during the course to wholesalers or to retailers upon obtaining a malt beverages wholesaler permit under G.S. 18B-1109, except that the permittee may not receive shipments of malt beverages from other producers.

(4) Sell malt beverages produced during the course, upon obtaining a permit under G.S. 18B-1001(2).

(b) Limitation. – Authorization for a brewing, distillation, and fermentation course shall be granted by the Commission only for a community college or college that offers a brewing, distillation, and fermentation program as a part of its curriculum offerings for students of the school. For purposes of this section, the term "brewing, distillation, and fermentation program" includes a fermentation sciences program offered by a community college or college as part of its curriculum offerings for students of the school.

(c) Malt Beverage Special Event Permit. – The holder of a brewing, distillation, and fermentation course authorization who obtains a malt beverages wholesaler permit under G.S. 18B-1109 subject to the limitation in subsection (a) of this section may obtain a malt beverage special event permit under G.S. 18B-1114.5 and where the permit is valid may participate in approved events and sell at retail at those events any malt beverages produced incident to the operation of the brewing, distillation, and fermentation program. The holder of a brewing, distillation, and fermentation course authorization may participate in not more than six malt beverage special events within a 12-month period and may sell up to 64 cases of malt beverages, or the equivalent volume of 64 cases of malt beverages, at each event. For purposes of this subsection, a "case of malt beverages" is a package containing not more than 24 12-ounce bottles of malt beverage. Net proceeds from the program's retail sale of malt beverages pursuant to this subsection shall be retained by the school and used for support of the brewing, distillation, and fermentation program.

(d) Limited Application. – The holder of a brewing, distillation, and fermentation course authorization shall not be considered a brewery for the purposes of this Chapter or Chapter 105 of the General Statutes."

SECTION 3.2.(b) G.S. 18B-1114.5(a) reads as rewritten:

"(a) Authorization. – The holder of a ~~brewery;~~brewery permit, a malt ~~beverage importer;~~beverages importer permit, a brewing, distillation, and fermentation course authorization, or a nonresident malt beverage vendor permit may obtain a malt beverage special event permit allowing the permittee to give free tastings of its malt beverages and to sell its malt beverages by the glass or in closed containers at trade shows, conventions, shopping malls, malt beverage festivals, street festivals, holiday festivals, agricultural festivals, balloon races, local fund-raisers, and other similar events approved by the Commission. Except for a brewery operating under the provisions of G.S. 18B-1104(7), all malt beverages sampled or sold pursuant to this section must be purchased from a licensed malt beverages wholesaler."

SECTION 3.2.(c) G.S. 18B-1001(2) reads as rewritten:

"**§ 18B-1001. Kinds of ABC permits; places eligible.**

When the issuance of the permit is lawful in the jurisdiction in which the premises are located, the Commission may issue the following kinds of permits:

...

(2) Off-Premises Malt Beverage Permit. – An off-premises malt beverage permit authorizes (i) the retail sale of malt beverages in the manufacturer's original container for consumption off the premises, (ii) the retail sale of malt beverages in a cleaned, sanitized, resealable container as defined in 4 NCAC 2T.0308(a) that is filled or refilled and sealed for consumption off the premises, complies with 4 NCAC 2T.0303, 4 NCAC 2T.0305, and 4 NCAC 2T.0308(d)-(e), and the container identifies the permittee and the date the container was filled or refilled, and (iii) the holder of the permit to ship malt beverages in closed containers to individual purchasers inside and outside the State. The permit may be issued for any of the following:

a. ~~Restaurants;~~Restaurants.
b. ~~Hotels;~~Hotels.
c. Eating ~~establishments;~~establishments.
d. Food ~~businesses;~~businesses.

e. Retail businesses.
f. The holder of a brewing, distillation, and fermentation course authorization under G.S. 18B-1114.6. A school obtaining a permit under this subdivision is authorized to sell malt beverages manufactured during its brewing, distillation, and fermentation program at one noncampus location in a county where the permittee holds and offers classes on a regular full-time basis in a facility owned by the permittee.

...."

SECTION 3.2.(d) G.S. 66-58(c)(1a) reads as rewritten:

"**§ 66-58. Sale of merchandise or services by governmental units.**

...

(c) The provisions of subsection (a) shall not prohibit:

...

(1a) The sale of products raised or produced incident to the operation of a community college or college viticulture/enology program as authorized by ~~G.S. 18B-1114.4.~~G.S. 18B-1114.4 or the operation of a community college or college brewing, distillation, or fermentation program as authorized by G.S. 18B-1114.6.

...."

CARBON MONOXIDE ALARMS

SECTION 3.3.(a) Section 19(c) of Session Law 2013-413 is repealed.

SECTION 3.3.(b) Section 19(e) of Session Law 2013-413 reads as rewritten:

"**SECTION 19.(e)** This section is effective when it becomes law, except that ~~(i) subsection (b) of this section becomes effective October 1, 2013, and expires October 1, 2014; and (ii) subsection (c) of this section becomes effective October 1, 2014.~~subsection (b) of this section becomes effective October 1, 2013."

SECTION 3.3.(c) G.S. 143-138(b2) reads as rewritten:

"(b2) Carbon Monoxide ~~Detectors.~~Alarms. – The Code (i) may contain provisions requiring the installation of either battery-operated or electrical carbon monoxide ~~detectors~~alarms in every dwelling unit having a ~~fossil-fuel-burning~~combustion heater, appliance, or fireplace, and in any dwelling unit having an attached garage and (ii) shall contain provisions requiring the installation of electrical carbon monoxide ~~detectors~~alarms at a lodging establishment. The Building Code Council may require carbon monoxide alarms in dwelling units with no combustion heater, appliance, or fireplace other than a wood-burning fireplace only upon (i) a finding by the Council that carbon monoxide emissions from wood-burning fireplaces constitute a substantial threat to public health and safety and (ii) a report by the Council to the Joint Legislative Commission on Government Operations that provides the basis for the Council's finding of a substantial threat to public health and safety. Violations of this subsection and rules adopted pursuant to this subsection shall be punishable in accordance with subsection (h) of this section and G.S. 143-139. In particular, the rules shall provide:

(1) For dwelling units, carbon monoxide ~~detectors~~alarms shall be those listed by a nationally recognized testing laboratory that is OSHA-approved to test and certify to American National Standards Institute/Underwriters Laboratories Standards ANSI/UL2034 or ANSI/UL2075 and shall be installed in accordance with either the standard of the National Fire Protection Association or the minimum protection designated in the manufacturer's instructions, which the property owner shall retain or provide as proof of compliance. A carbon monoxide ~~detector~~alarm may be combined with smoke detectors if the combined ~~detector~~alarm does both of the following:

(i) complies with ANSI/UL2034 or ANSI/UL2075 for carbon monoxide alarms and ANSI/UL217 for smoke detectors; and (ii) emits an alarm in a manner that clearly differentiates between detecting the presence of carbon monoxide and the presence of smoke.

(2) For lodging establishments, including tourist homes that provide accommodations for seven or more continuous days (extended stay establishments), and bed and breakfast inns and bed and breakfast homes as defined in G.S. 130A-247, carbon monoxide ~~detectors~~alarms shall be installed in every ~~enclosed space~~dwelling unit or sleeping unit having a ~~fossil fuel burning~~combustion heater, appliance, or fireplace and in ~~any enclosed space, including a sleeping room,~~every dwelling unit or sleeping unit that shares a common wall, floor, or ceiling ~~with an enclosed space~~with a room having a combustion~~fossil fuel burning~~ heater, appliance, or fireplace. Carbon monoxide ~~detectors~~alarms shall be (i) listed by a nationally recognized testing laboratory that is ~~OSHA approved~~approved to test and certify to American National Standards Institute/Underwriters Laboratories (ANSI/UL) Standards ANSI/UL2034 or ANSI/UL2075, (ii) installed in accordance with either the standard of the National Fire Protection Association (NFPA) or the minimum protection designated in the manufacturer's instructions, which the lodging establishment shall retain or provide as proof of compliance, (iii) receive primary power from the building's wiring, where such wiring is served from a commercial source, and (iv) receive power from a battery when primary power is interrupted. A carbon monoxide ~~detector~~alarms may be combined with smoke detectors if the combined ~~detector~~alarm complies with the requirements of this subdivision for carbon monoxide alarms and ANSI/UL217 for smoke ~~detectors.~~alarms. In lieu of the carbon monoxide alarms required by this subsection, a carbon monoxide detection system, which includes carbon monoxide detectors and audible notification appliances installed and maintained in accordance with NFPA 720 shall be permitted. The carbon monoxide detectors shall be listed as complying with ANSI/UL2075. For purposes of this subsection, "lodging establishment" means any hotel, motel, tourist home, or other establishment permitted under authority of G.S. 130A-248 to provide lodging accommodations for pay to the ~~public.~~public, and "combustion heater, appliance, or fireplace" means any heater, appliance, or fireplace that burns combustion fuels, including, but not limited to, natural or liquefied petroleum gas, fuel oil, kerosene, wood, or coal, for heating, cooking, drying, or decorative purposes, including, but not limited to, space heaters, wall and ceiling heaters, ranges, ovens, stoves, furnaces, fireplaces, water heaters, and clothes dryers. For purposes of this subsection, candles and canned fuels are not considered to be combustion appliances.

(3) The Building Code Council shall modify the NC State Building Code (Fire Prevention) to regulate the provisions of this subsection in new and existing lodging establishments, including hotels, motels, tourist homes that provide accommodations for seven or more continuous days (extended stay establishments), and bed and breakfast inns and bed and breakfast homes as defined in G.S. 130A-247; provided, nothing in this subsection shall prevent the Building Code Council from establishing more stringent rules regulating carbon monoxide alarms or detectors for new lodging establishments, including hotels, motels, tourist homes that provide accommodations for

seven or more continuous days (extended stay establishments), and bed and breakfast inns and bed and breakfast homes as defined in G.S. 130A-247. The Building Code Council shall modify the NC State Building Code (Fire Prevention) minimum inspection schedule to include annual inspections of new and existing lodging establishments, including hotels, motels, and tourist homes that provide accommodations for seven or more continuous days (extended stay establishments), and bed and breakfast inns and bed and breakfast homes as defined in G.S. 130A-247 for the purpose of compliance with this subsection.

(4) Upon discovery of a violation of this subsection that poses an imminent hazard and that is not corrected during an inspection of a lodging establishment subject to the provisions of G.S. 130A-248, the code official responsible for enforcing the NC State Building Code (Fire Prevention) shall immediately notify the local health director, or the director's designee, for the county in which the violation was discovered by verbal contact and shall also submit a written report documenting the violation of this subsection to the local health director, or the director's designee, for the county in which the violation was discovered on the next working day following the discovery of the violation. Within one working day of receipt of the written report documenting a violation of this subsection, the local health director, or the director's designee, for the county in which the violation was discovered shall investigate and take appropriate action regarding the permit for the lodging establishment, as provided in G.S. 130A-248. Lodging establishments having five or more rooms that are exempted from the requirements of G.S. 130A-248 by G.S. 130A-250 shall be subject to the penalties set forth in the NC State Building Code (Fire Prevention).

(5) Upon discovery of a violation of this subsection that does not pose an imminent hazard and that is not corrected during an inspection of a lodging establishment subject to the provisions of G.S. 130A-248, the owner or operator of the lodging establishment shall have a correction period of three working days following the discovery of the violation to notify the code official responsible for enforcing the NC State Building Code (Fire Prevention) verbally or in writing that the violation has been corrected. If the code official receives such notification, the code official may reinspect the portions of the lodging establishment that contained violations, but any fees for reinspection shall not exceed the fee charged for the initial inspection. If the code official receives no such notification, or if the results of a reinspection reveal that previous violations were not corrected, the code official shall submit a written report documenting the violation of this subsection to the local health director, or the director's designee, for the county in which the violation was discovered within three working days following the termination of the correction period or the reinspection, whichever is later. The local health director shall investigate and may take appropriate action regarding the permit for the lodging establishment, as provided in G.S. 130A-248. Lodging establishments having five or more rooms that are exempted from the requirements of G.S. 130A-248 by G.S. 130A-250 shall be subject to the penalties set forth in the NC State Building Code (Fire Prevention)."

SECTION 3.3.(d) G.S. 130A-248 reads as rewritten:

"**§ 130A-248. Regulation of food and lodging establishments.**

...

(b) No establishment shall commence or continue operation without a permit or transitional permit issued by the Department. The permit or transitional permit shall be issued to the owner or operator of the establishment and shall not be transferable. If the establishment is leased, the permit or transitional permit shall be issued to the lessee and shall not be transferable. If the location of an establishment changes, a new permit shall be obtained for the establishment. A permit shall be issued only when the establishment satisfies all of the requirements of the ~~rules and the requirements of subsection (g) of this section.~~rules. The Commission shall adopt rules establishing the requirements that must be met before a transitional permit may be issued, and the period for which a transitional permit may be issued. The Department may also impose conditions on the issuance of a permit or transitional permit in accordance with rules adopted by the Commission. A permit or transitional permit shall be immediately revoked in accordance with G.S. 130A-23(d) for failure of the establishment to maintain a minimum grade of C. A permit or transitional permit may otherwise be suspended or revoked in accordance with G.S. 130A-23.

...

(g) All hotels, motels, tourist homes, and other establishments that provide lodging for pay shall ~~install either a battery-operated or electrical carbon monoxide detector in every enclosed space having a fossil fuel-burning heater, appliance, or fireplace and in any enclosed space, including a sleeping room, that shares a common wall, floor, or ceiling with an enclosed space having a fossil fuel-burning heater, appliance, or fireplace. Carbon monoxide detectors shall be listed by a nationally recognized testing laboratory that is OSHA-approved to test and certify to American National Standards Institute/Underwriters Laboratories Standards ANSI/UL2034 or ANSI/UL2075, and installed in accordance with either the standard of the National Fire Protection Association or the minimum protection designated in the manufacturer's instructions, which the establishment shall retain or provide as proof of compliance. A carbon monoxide detector may be combined with smoke detectors if the combined detector complies with the requirements of this subdivision for carbon monoxide alarms and ANSI/UL217 for smoke detectors.~~comply with the requirements of G.S. 143-138(b2)(2). Upon notification of a violation of G.S. 143-138(b2)(2) by the code official responsible for enforcing the NC State Building Code (Fire Prevention) in accordance with G.S. 143-138(b2)(4), the local health department is authorized to suspend a permit issued pursuant to this section in accordance with G.S. 130A-23."

WATER SUPPLY WATERSHED CLASSIFICATIONS

SECTION 3.4.(a) G.S. 143-214.5 is amended by adding a new subsection to read:

"(c1) This subsection applies to water supply watersheds reclassified by the Commission after January 1, 2012. When the Commission receives a rule-making petition under G.S. 150B-20 that (i) is from a unit of local government with jurisdiction over an area to be served by a proposed water intake that is impacted by a reclassification to which this subsection applies and (ii) requests repeal of the reclassification, the Commission shall grant the rule-making petition, and the reclassification as well as any local ordinance changes required under subsection (d) of this section shall be stayed until the Commission has promulgated rules in response to the rule-making petition that are retroactive to the effective date of the original water supply watershed reclassification."

SECTION 3.4.(b) Notwithstanding any other provision of law, a unit of local government shall repeal local ordinance changes required in order to implement a water supply watershed reclassification upon filing a rule-making petition under G.S. 143-214.5(c1), as enacted by subsection (a) of this section.

SECTION 3.4.(c) This section is effective when it becomes law and applies to any petitions for rule making regarding water supply watershed reclassifications received by the Environmental Management Commission on or after January 1, 2012, and prior to the effective

date of this section. Subsection (a) of this section expires when the Commission issues permanent rules in response to a rule-making petition under G.S. 143-214.5(c1), as enacted by subsection (a) of this section.

ADA REQUIREMENTS FOR PRIVATE POOLS

SECTION 3.5.(a) Notwithstanding Section 1109.14 of the 2012 NC State Building Code (Building Code), swimming pools shall be required to be accessible only to the extent required by the Americans with Disabilities Act, 42 U.S.C. § 12101 et. seq., and federal rules and regulations adopted pursuant to that act.

SECTION 3.5.(b) The Building Code Council shall adopt a rule to amend Section 1109.14 of the 2012 NC State Building Code (Building Code) consistent with Section 3.5(a) of this act.

SECTION 3.5.(c) Section 3.5(a) of this section expires on the date that the rule adopted pursuant to Section 3.5(b) of this section becomes effective.

ENVIRONMENTAL SELF AUDIT PRIVILEGE AND LIMITED IMMUNITY

SECTION 3.6.(a) Chapter 8 of the General Statutes is amended by adding a new Part to read:

"Part 7D. Environmental Audit Privilege and Limited Immunity.

"**§ 8-58.50. Purpose.**

(a) In order to encourage owners and operators of facilities and persons conducting activities regulated under those portions of the General Statutes set forth in G.S. 8-58.52, or conducting activities regulated under other environmental laws, to conduct voluntary internal environmental audits of their compliance programs and management systems and to assess and improve compliance with statutes, an environmental audit privilege is recognized to protect the confidentiality of communications relating to voluntary internal environmental audits.

(b) Notwithstanding any other provisions of law, nothing in this Part shall be construed to protect owners and operators of facilities and regulated persons from a criminal investigation or prosecution carried out by any appropriate governmental entity.

(c) Notwithstanding any other provision of law, any privilege granted by this Part shall apply only to those communications, oral or written, pertaining to and made in connection with the environmental audit and shall not apply to the facts relating to the violation itself.

"**§ 8-58.51. Definitions.**

The following definitions apply in this Part:

(1) "Department" means the Department of Environment and Natural Resources.

(2) "Environmental audit" means a voluntary, internal evaluation or review of one or more facilities or an activity at one or more facilities regulated under federal, State, regional, or local environmental law, or of compliance programs, or management systems related to the facility or activity if designed to identify and prevent noncompliance and to improve compliance with these laws. For the purposes of this Part, an environmental audit does not include an environmental site assessment of a facility conducted solely in anticipation of the purchase, sale, or transfer of the business or facility. An environmental audit may be conducted by the owner or operator, the parent corporation of the owner or operator or by their officers or employees, or by independent contractors. An environmental audit must be a discrete activity with a specified beginning date and scheduled ending date reflecting the auditor's bona fide intended completion schedule.

(3) "Environmental audit report" means a document marked or identified as such with a completion date existing either individually or as a compilation prepared in connection with an environmental audit. An environmental audit

report may include field notes and records of observations, findings, opinions, suggestions, recommendations, conclusions, drafts, memoranda, drawings, photographs, computer-generated or electronically-recorded information, maps, charts, graphs, and surveys, provided the supporting information is collected or developed for the primary purpose and in the course of an environmental audit. An environmental audit report, when completed, may include all of the following components:

a. An audit report prepared by an auditor, which may include the scope and date of the audit and the information gained in the audit, together with exhibits and appendices and may include conclusions, recommendations, exhibits, and appendices.

b. Memoranda and documents analyzing any portion of the audit report or issues relating to the implementation of an audit report.

c. An implementation plan that addresses correcting past noncompliance, improving current compliance, or preventing future noncompliance.

(4) "Enforcement agencies" means the Department, any other agency of the State, and units of local government responsible for enforcement of environmental laws.

(5) "Environmental laws" means all provisions of federal, State, and local laws, rules, and ordinances pertaining to environmental matters.

"**§ 8-58.52. Applicability.**

This Part applies to activities regulated under environmental laws, including all of the following provisions of the General Statutes, and rules adopted thereunder:

(1) Article 7 of Chapter 74.
(2) Chapter 104E.
(3) Article 25 of Chapter 113.
(4) Articles 1,4, and 7 of Chapter 113A.
(5) Article 9 of Chapter 130A.
(6) Articles 21, 21A, and 21B of Chapter 143.
(7) Part 1 of Article 7 of Chapter 143B.

"**§ 8-58.53. Environmental audit report; privilege.**

(a) An environmental audit report or any part of an environmental audit report is privileged and, therefore, immune from discovery and is not admissible as evidence in civil or administrative proceedings instituted by an enforcement agency, except as provided in G.S. 8-58.54 and G.S. 8-58.55. Provided, however, all of the following documents are exempt from the privilege established by this Part:

(1) Information obtained by observation of an enforcement agency.
(2) Information obtained from a source independent of the environmental audit.
(3) Documents, communication, data, reports, or other information required to be collected, maintained, otherwise made available, or reported to a enforcement agency or any other entity by environmental laws, permit, order, consent agreement, or as otherwise provided by law.
(4) Documents prepared either prior to the beginning of the environmental audit or subsequent to the completion date of the audit report and, in all cases, any documents prepared independent of the audit or audit report.
(5) Documents prepared as a result of multiple or continuous self-auditing conducted in an effort to intentionally avoid liability for violations.
(6) Information which is knowingly misrepresented or misstated or which is knowingly deleted or withheld from an environmental audit report, whether or not included in a subsequent environmental audit report.

(7) Information in instances where the material shows evidence of noncompliance with environmental laws, permits, orders, consent agreements, and the owner or operator failed to either promptly take corrective action or eliminate any violation of law identified during the environmental audit within a reasonable period of time.

(b) If an environmental audit report or any part of an environmental audit report is subject to the privilege provided for in subsection (a) of this section, no person who conducted or participated in the audit or who significantly reviewed the audit report may be compelled to testify regarding the audit report or a privileged part of the audit report except as provided for in G.S. 8-58.53(d), 8-58.54, or 8-58.55.

(c) Nothing in this Part shall be construed to restrict a party in a proceeding before the Industrial Commission from obtaining or discovering any evidence necessary or appropriate for the proof of any issue pending in an action before the Commission, regardless of whether evidence is privileged pursuant to this Part. Further, nothing in this Part shall be construed to prevent the admissibility of evidence which is otherwise relevant and admissible in a proceeding before the Industrial Commission, regardless of whether the evidence is privileged pursuant to this Part. Provided, however, the Commission, upon motion made by a party to the proceeding, may issue appropriate protective orders preventing disclosure of information outside of the Commission's proceeding.

(d) Nothing in this Part shall be construed to circumvent the employee protection provisions provided by federal or State law.

(e) The privilege created by this Part does not apply to criminal investigations or proceedings. Where an audit report is obtained, reviewed, or used in a criminal proceeding, the privilege created by this Part shall continue to apply and is not waived in civil and administrative proceedings and is not discoverable or admissible in civil or administrative proceedings even if disclosed during a criminal proceeding.

"**§ 8-58.54. Waiver of privilege.**

(a) The privilege established under G.S. 8-58.53 does not apply to the extent that it is expressly waived in writing by the owner or operator of a facility at which an environmental audit was conducted and who prepared or caused to be prepared the audit report as a result of the audit.

(b) The audit report and information generated by the audit may be disclosed without waiving the privilege established under G.S. 8-58.53 to all of the following persons:

(1) A person employed by the owner or operator or the parent corporation of the audited facility.

(2) A legal representative of the owner or operator or parent corporation.

(3) An independent contractor retained by the owner or operator or parent corporation to conduct an audit on or to address an issue or issues raised by the audit.

(c) Disclosure of an audit report or information generated by the audit under all of the following circumstances shall not constitute a waiver of the privilege established under G.S. 8-58.53:

(1) Disclosure made under the terms of a confidentiality agreement between the owner or operator of the facility audited and a potential purchaser of the business or facility audited.

(2) Disclosure made under the terms of a confidentiality agreement between governmental officials and the owner or operator of the facility audited.

(3) Disclosure made under the terms of a confidentiality agreement between a customer, lending institution, or insurance company with an existing or proposed relationship with the facility.

"**§ 8-58.55. Notification of audit.**

In order to assert the privilege established under G.S. 8-58.53, the owner or operator of the facility conducting the environmental audit shall, upon inspection of the facility by an enforcement agency, or no later than 10 working days after completion of an agency's inspection, notify the enforcement agency of the existence of any audit relevant to the subject of the agency's inspection, as well as the beginning date and completion date of that audit. Any environmental audit report shall include a signed certification from the owner or operator of the facility that documents the date the audit began and the completion date of the audit.

"**§ 8-58.55. Revocation of privilege in civil and administrative proceedings.**

In a civil or administrative proceeding, an enforcement agency may seek by motion a declaratory ruling on the issue of whether an environmental audit report is privileged. The court shall revoke the privilege established under G.S. 8-58.53 for an audit report if the factors set forth in this section apply. In a civil proceeding, the court, after an in camera review, shall revoke the privilege established under G.S. 8-58.53 if the court determines that disclosure of the environmental audit report was sought after the effective date of this Part and either of the following apply:

(1) The privilege is asserted for purposes of deception or evasion.

(2) The material shows evidence of significant noncompliance with applicable environmental laws; the owner or operator of the facility has not promptly initiated and pursued with diligence appropriate action to achieve compliance with these environmental laws or has not made reasonable efforts to complete any necessary permit application; and, as a result, the owner or operator of the facility did not or will not achieve compliance with applicable environmental laws or did not or will not complete the necessary permit application within a reasonable period of time.

"**§ 8-58.56. Privilege in criminal proceedings.**

The privilege established under G.S. 8-58.53 is not applicable in any criminal proceeding.

"**§ 8-58.57. Burden of proof.**

A party asserting the privilege established under G.S. 8-58.53 has the burden of proving that (i) the materials claimed as privileged constitute an environmental audit report as defined by this Part and (ii) compliance has been achieved or will be achieved with a reasonable period of time. A party seeking disclosure under G.S.8-58.55 has the burden of proving the condition for disclosure set forth in that section.

"**§ 8-58.58. Stipulations; declaratory rulings.**

The parties to a proceeding may at any time stipulate to entry of an order directing that specific information contained in an environmental audit report is or is not subject to the privilege. In the absence of an ongoing proceeding, where the parties are not in agreement, an enforcement agency may seek a declaratory ruling from a court on the issue of whether the materials are privileged under G.S. 8-58.53 and whether the privilege, if existing, should be revoked pursuant to G.S. 8-58.55.

"**§ 8-58.59. Construction of Part.**

Nothing in this Part limits, waives, or abrogates any of the following:

(1) The scope or nature of any statutory or common law privilege, including the work-product privilege or the attorney-client privilege.

(2) Any existing ability or authority under State law to challenge privilege.

(3) An enforcement agency's ability to obtain or use documents or information that the agency otherwise has the authority to obtain under State law adopted pursuant to federally delegated programs.

"**§ 8-58.60. Voluntary disclosure; limited immunity from civil and administrative penalties and fines.**

(a) An owner or operator of a facility is immune from imposition of civil and administrative penalties and fines by enforcement agencies for a violation of environmental

laws voluntarily disclosed subject to the requirements and criteria set forth in this section. Provided, however, that waiver of penalties and fines shall not be granted until the applicable enforcement agency has certified that the violation was corrected within a reasonable period of time. If compliance is not certified by the enforcement agency, the enforcement agency shall retain discretion to assess penalties and fines for the violation.

(b) If a person or entity makes a voluntary disclosure of a violation of environmental laws discovered through performance of an environmental audit, that person has the burden of proving (i) that the disclosure is voluntary by establishing the elements set forth in subsection (c) of this section and (ii) that the person is therefore entitled to immunity from any administrative or civil penalties associated with the issues disclosed. Nothing in this section may be construed to provide immunity from criminal penalties.

(c) For purposes of this section, disclosure is voluntary if all of the following criteria are met:

(1) The disclosure is made within 14 days following a reasonable investigation of the violation's discovery through the environmental audit.

(2) The disclosure is made to an enforcement agency having regulatory authority over the violation disclosed.

(3) The person or entity making the disclosure initiates an action to resolve the violation identified in the disclosure in a diligent manner.

(4) The person or entity making the disclosure cooperates with the applicable enforcement agency in connection with investigation of the issues identified in the disclosure.

(5) The person or entity making the disclosure diligently pursues compliance and promptly corrects the noncompliance within a reasonable period of time.

(d) A disclosure is not voluntary for purposes of this section if any of the following factors apply:

(1) Specific permit conditions require monitoring or sampling records and reports or assessment plans and management plans to be maintained or submitted to the enforcement agency pursuant to an established schedule.

(2) Environmental laws or specific permit conditions require notification of releases to the environment.

(3) The violation was committed intentionally, wilfully, or through criminal negligence by the person or entity making the disclosure.

(4) The violation was not corrected in a diligent manner.

(5) The violation posed or poses a significant threat to public health, safety, and welfare; the environment; and natural resources.

(6) The violation occurred within one year of a similar prior violation at the same facility, and immunity from civil and administrative penalties was granted by the applicable enforcement agency for the prior violation.

(7) The violation has resulted in a substantial economic benefit to the owner or operator of the facility.

(8) The violation is a violation of the specific terms of a judicial or administrative order.

(e) If a person meets the burden of proving that the disclosure is voluntary, the burden shifts to the enforcement agency to prove that the disclosure was not voluntary, based upon the factors set forth in this section. The person claiming immunity from civil or administrative penalties or fines under this section retains the ultimate burden of proving the violations were voluntarily disclosed.

(f) A voluntary disclosure made pursuant to this section is subject to disclosure pursuant to the Public Records Act in accordance with the provisions of Chapter 132 of the General Statutes.

"§ 8-58.61. Preemption of other State and local laws.

No local law, rule, ordinance, or permit condition may circumvent or limit the privilege established by this Part or the exercise of the privileges or the presumption and immunity established by this Part.

SECTION 3.6.(b) This section becomes effective July 1, 2014, and applies to environmental audits, as defined in G.S. 8-58.51, as enacted by subsection (a) of this section, that are conducted on or after that date.

CLARIFY DEFINITION OF "CHILD CARE"

SECTION 3.7. G.S. 110-86(2)f. reads as rewritten:

"**§ 110-86. Definitions.**

Unless the context or subject matter otherwise requires, the terms or phrases used in this Article shall be defined as follows:

...

(2) Child care. – A program or arrangement where three or more children less than 13 years old, who do not reside where the care is provided, receive care on a regular basis of at least once per week for more than four hours but less than 24 hours per day from persons other than their guardians or full-time custodians, or from persons not related to them by birth, marriage, or adoption. Child care does not include the following:

...

f. Nonpublic schools described in Part 2 of Article 39 of Chapter 115C of the General Statutes that are accredited by national or regional accrediting agencies with early childhood standards and that operate a child care facility as defined in subdivision (3) of this section for less than six and one-half hours per day either on or off the school ~~site;~~site. For purposes of this sub-subdivision, the "six and one-half hours per day" requirement shall relate to instructional hours only and shall not include before or after school programs;"

AMBIENT AIR MONITORING

SECTION 3.9.(a) The Department of Environment and Natural Resources shall review its ambient air monitoring network and, in the next annual monitoring network plan submitted to the United States Environmental Protection Agency, shall request the removal of any ambient air monitors not required by applicable federal laws and regulations.

SECTION 3.9.(b) No later than September 1, 2014, the Department of Environment and Natural Resources shall discontinue all ambient air monitors not required by applicable federal laws and regulations if approval from the United States Environmental Protection Agency is not required for the discontinuance.

SECTION 3.9.(c) Nothing in this section is intended to prevent the Department from installing temporary ambient air monitors as part of an investigation of a suspected violation of air quality rules, standards, or limitations or in response to an emergency situation causing an imminent danger to human health and safety.

SECTION 3.9.(d) The Department of Environment and Natural Resources, Division of Air Quality, shall report to the Environmental Review Commission no later than November 1, 2014, on the status of the ambient air monitoring network and the Division's implementation of the requirements of this section.

GOOD SAMARITAN LAW

SECTION 3.10. G.S. 90-21.14 reads as rewritten:

"**§ 90-21.14. First aid or emergency treatment; liability limitation.**

(a) Any person, including a volunteer medical or health care provider at a facility of a local health department as defined in G.S. 130A-2 or at a nonprofit community health center or a volunteer member of a rescue squad, who ~~receives no compensation for his services as an emergency medical care provider, who~~ voluntarily and without expectation of compensation renders first aid or emergency health care treatment to a person who is unconscious, ill or injured,

(1) When the reasonably apparent circumstances require prompt decisions and actions in medical or other health care, and

(2) When the necessity of immediate health care treatment is so reasonably apparent that any delay in the rendering of the treatment would seriously worsen the physical condition or endanger the life of the person,

shall not be liable for damages for injuries alleged to have been sustained by the person or for damages for the death of the person alleged to have occurred by reason of an act or omission in the rendering of the treatment unless it is established that the injuries were or the death was caused by gross negligence, wanton conduct or intentional wrongdoing on the part of the person rendering the treatment. The immunity conferred in this section also applies to any person who uses an automated external defibrillator (AED) and otherwise meets the requirements of this section.

...."

OPEN BURNING

SECTION 3.11.(a) The definitions set out in G.S. 143-212, G.S. 143-213, and 15A NCAC 02D .1902 (Definitions) apply to this section.

SECTION 3.11.(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 3.11(d) of this section, the Commission and the Department shall implement 15A NCAC 02D .1903 (Open Burning Without an Air Quality Permit) as provided in Section 3.11(c) of this section.

SECTION 3.11.(c) Implementation. – Notwithstanding Paragraph (b) of 15A NCAC 02D .1903 (Open Burning Without an Air Quality Permit), no air quality permit is required for the open burning of leaves, logs, stumps, tree branches, or yard trimmings if the following conditions are met:

(1) The material burned originates on the premises of private residences and is burned on those premises.

(2) There are no public pickup services available.

(3) Nonvegetative materials, such as household garbage, lumber, or any other synthetic materials, are not burned.

(4) The burning is initiated no earlier than 8:00 A.M. and no additional combustible material is added to the fire between 6:00 P.M. on one day and 8:00 A.M. on the following day.

(5) The burning does not create a nuisance.

(6) Material is not burned when the North Carolina Forest Service has banned burning for that area.

The burning of logs or stumps of any size shall not be considered to create a nuisance for purposes of the application of the open burning air quality permitting exception described in this subsection.

SECTION 3.11.(d) Additional Rule-Making Authority. – The Commission shall adopt a rule to amend 15A NCAC 02D .1903 (Open Burning Without an Air Quality Permit) consistent with Section 3.11(c) of this section. 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 3.11(c) of this act. Rules adopted pursuant to this section are not subject

to Part 3 of Article 2A of Chapter 150B of the General Statutes. 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 3.11.(e) Sunset. – Section 3.11(c) of this section expires on the date that rules adopted pursuant to Section 3.11(d) of this section become effective.

SECTION 3.11.(f) Local Government Air Pollution Control Program Limitation. – G.S. 143-215.112(c) is amended by adding a new subdivision to read:

"**§ 143-215.112. Local air pollution control programs.**

...

(c) (1) The governing body of any county, municipality, or group of counties and municipalities within a designated area of the State, as defined in this Article and Article 21, subject to the approval of the Commission, is hereby authorized to establish, administer, and enforce a local air pollution control program for the county, municipality, or designated area of the State which includes but is not limited to:

a. Development of a comprehensive plan for the control and abatement of new and existing sources of air pollution;

b. Air quality monitoring to determine existing air quality and to define problem areas, as well as to provide background data to show the effectiveness of a pollution abatement program;

c. An emissions inventory to identify specific sources of air contamination and the contaminants emitted, together with the quantity of material discharged into the outdoor atmosphere;

d. Adoption, after notice and public hearing, of air quality and emission control standards, or adoption by reference, without public hearing, of any applicable rules and standards duly adopted by the Commission; and administration of such rules and standards in accordance with provisions of this section.

e. Provisions for the establishment or approval of time schedules for the control or abatement of existing sources of air pollution and for the review of plans and specifications and issuance of approval documents covering the construction and operation of pollution abatement facilities at existing or new sources;

f. Provision for adequate administrative staff, including an air pollution control officer and technical personnel, and provision for laboratory and other necessary facilities.

...

(6) No local air pollution control program may limit or otherwise regulate any combustion heater, appliance, or fireplace in private dwellings. For purposes of this subdivision, "combustion heater, appliance, or fireplace" means any heater, appliance, or fireplace that burns combustion fuels, including, but not limited to, natural or liquefied petroleum gas, fuel oil, kerosene, wood, or coal, for heating, cooking, drying, or decorative purposes."

SECTION 3.11.(g) G.S. 143-215.108 is amended by adding a new subsection to read:

"**§ 143-215.108. Control of sources of air pollution; permits required.**

...

(j) No Power to Regulate Residential Combustion. – Nothing in this section shall be interpreted to give the Commission or the Department the power to regulate any combustion heater, appliance, or fireplace in private dwellings, except to the extent required by federal law. For purposes of this subsection, "combustion heater, appliance, or fireplace" means any heater,

appliance, or fireplace that burns combustion fuels, including, but not limited to, natural or liquefied petroleum gas, fuel oil, kerosene, wood, or coal, for heating, cooking, drying, or decorative purposes."

SECTION 3.11.(h) G.S. 160A-193 is amended by adding a new subsection to read:

"**§ 160A-193. Abatement of public health nuisances.**

(a) A city shall have authority to summarily remove, abate, or remedy everything in the city limits, or within one mile thereof, that is dangerous or prejudicial to the public health or public safety. Pursuant to this section, the governing board of a city may order the removal of a swimming pool and its appurtenances upon a finding that the swimming pool or its appurtenances is dangerous or prejudicial to public health or safety. The expense of the action shall be paid by the person in default. If the expense is not paid, it is a lien on the land or premises where the nuisance occurred. A lien established pursuant to this subsection shall have the same priority and be collected as unpaid ad valorem taxes.

...

(c) The authority granted by this section does not authorize the application of a city ordinance banning or otherwise limiting outdoor burning to persons living within one mile of the city, unless the city provides those persons with either (i) trash and yard waste collection services or (ii) access to solid waste dropoff sites on the same basis as city residents."

INLET HAZARD AREAS

SECTION 3.12.(a) The definitions set out in G.S. 113A-103 apply to this section.

SECTION 3.12.(b) 15A NCAC 07H .0304 (AECs Within Ocean Hazard Areas). – Until the effective date of the revised permanent rule that the Commission is required to adopt pursuant to Section 3.12(d) of this section, the Commission and the Department shall implement 15A NCAC 07H .0304 (AECs Within Ocean Hazard Areas) as provided in Section 3.12(c) of this section.

SECTION 3.12.(c) Implementation. – Notwithstanding Subparagraph (3) of 15A NCAC 07H .0304 (AECs Within Ocean Hazard Areas), the Commission shall not establish any inlet hazard area in any location with the following characteristics:

(1) The location is the former location of an inlet, but the inlet has been closed for at least 15 years.

(2) Due to shoreline migration, the location no longer includes the current location of the inlet.

(3) The location includes an inlet providing access to a State Port via a channel maintained by the United States Army Corps of Engineers.

SECTION 3.12.(d) Additional Rule-Making Authority. – The Commission shall adopt a rule to amend 15A NCAC 07H .0304 (AECs Within Ocean Hazard Areas) consistent with Section 3.12(c) of this section. 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 3.12(c) of this act. Rules adopted pursuant to this section are not subject to Part 3 of Article 2A of Chapter 150B of the General Statutes. 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 3.12.(e) Sunset. – Section 3.12(c) of this section expires on the date that rules adopted pursuant to subsection (d) of this section become effective.

SECTION 3.12.(f) Nothing in this section is intended to prevent the Commission from (i) studying any current inlet hazard area or any other area considered by the Commission for designation as an inlet hazard area or (ii) designating new inlet hazard areas.

HUNTING TRIALS

SECTION 3.13.(a) G.S. 113-274 reads as rewritten:

"**§ 113-274. Permits.**

(a) As used in this Article, the word "permit" refers to a written authorization issued without charge by an employee or agent of the Wildlife Resources Commission to an individual or a person to conduct some activity over which the Wildlife Resources Commission has jurisdiction. When sale of wildlife resources is permitted, rules or the directives of the Executive Director may require the retention of invoices or copies of invoices in lieu of a permit.

(b) Except as otherwise specifically provided, no one may engage in any activity for which a permit is required without having first procured a current and valid permit.

(c) The Wildlife Resources Commission may issue the following permits:

...

(3d) Field trial dog handler or judge permit. – Authorizes a person to participate as a dog handler or judge in a field trial authorized under G.S. 113-291.1(d) without possessing a hunting license so long as that person does not participate in any hunting activities with the dog. For purposes of this subdivision, the term "hunting activities" does not include field trials using exclusively either domestically raised waterfowl and game birds or legally taken dead game.

...."

SECTION 3.13.(b) This section becomes effective July 1, 2014.

ADJUST UTILITY REGULATORY FEE

SECTION 3.15.(a) G.S. 62-302 reads as rewritten:

"**§ 62-302. Regulatory fee.**

(a) Fee Imposed. – It is the policy of the State of North Carolina to provide fair regulation of public utilities in the interest of the public, as provided in G.S. 62-2. The cost of regulating public utilities is a burden incident to the privilege of operating as a public utility. Therefore, for the purpose of defraying the cost of regulating public utilities, every public utility subject to the jurisdiction of the Commission shall pay a quarterly regulatory fee, in addition to all other fees and taxes, as provided in this section. The fees collected shall be used only to pay the expenses of the Commission and the Public Staff in regulating public utilities in the interest of the public.

It is also the policy of the State to provide limited oversight of certain electric membership corporations as provided in G.S. 62-53. Therefore, for the purpose of defraying the cost of providing the oversight authorized by G.S. 62-53 and G.S. 117-18.1, each fiscal year each electric membership corporation whose principal purpose is to furnish or cause to be furnished bulk electric supplies at wholesale as provided in G.S. 117-16 shall pay an annual fee as provided in this section.

(b) Public Utility Rate. –

(1) Repealed by Session Laws 2000-140, s. 56, effective July 21, 2000.

(2) ~~The~~ For noncompetitive jurisdictional revenues as defined in sub-subdivision (4)a. of this subsection, the public utility regulatory fee for each fiscal year ~~shall be~~ is the greater of (i) a percentage rate, established by the General Assembly, of each public utility's ~~North Carolina~~ noncompetitive jurisdictional revenues for each quarter or (ii) six dollars and twenty-five cents ($6.25) each quarter. For subsection (h) competitive jurisdictional revenues as defined in sub-subdivision (4)b. of this subsection and subsection (m) competitive jurisdictional revenues as defined in sub-subdivision (4)c. of this subsection, the public utility regulatory fee for

each fiscal year is a percentage rate established by the General Assembly of each public utility's competitive jurisdictional revenues for each quarter.

When the Commission prepares its budget request for the upcoming fiscal year, the Commission shall propose a percentage rate of the public utility regulatory fee. For fiscal years beginning in an odd-numbered year, that proposed rate shall be included in the budget message the Governor submits to the General Assembly pursuant to G.S. 143C-3-5. For fiscal years beginning in an even-numbered year, that proposed rate shall be included in a special budget message the Governor shall submit to the General Assembly. The General Assembly shall set the percentage rate of the public utility regulatory fee by law.

The percentage rate may not exceed the amount necessary to generate funds sufficient to defray the estimated cost of the operations of the Commission and the Public Staff for the upcoming fiscal year, including a reasonable margin for a reserve fund. The amount of the reserve may not exceed the estimated cost of operating the Commission and the Public Staff for the upcoming fiscal year. In calculating the amount of the reserve, the General Assembly shall consider all relevant factors that may affect the cost of operating the Commission or the Public Staff or a possible unanticipated increase or decrease in North Carolina jurisdictional revenues.

(3) If the Commission, the Public Staff, or both experience a revenue shortfall, the Commission shall implement a temporary public utility regulatory fee surcharge to avert the deficiency that would otherwise occur. In no event may the total percentage rate of the public utility regulatory fee plus any surcharge established by the Commission exceed twenty-five hundredths percent (0.25%).

(4) As used in this ~~section, the term "North Carolina jurisdictional revenues" means:~~section:

a. ~~All~~"Noncompetitive jurisdictional revenues" means all revenues derived or realized from intrastate tariffs, rates, and charges approved or allowed by the Commission or collected pursuant to Commission order or rule, but not including tap-on fees or any other form of contributions in aid of construction.

b. ~~All~~"Subsection (h) competitive jurisdictional revenues" means all revenues derived from retail services provided by local exchange companies and competing local providers that have elected to operate under ~~no longer otherwise regulated by the operation of G.S. 62-133.5(h) or G.S. 62-133.5(m) for a local exchange company or competing local provider that has elected to be regulated under those subsections.~~G.S. 62-133.5(h).

c. "Subsection (m) competitive jurisdictional revenues" means all revenues derived from retail services provided by local exchange companies and competing local providers that have elected to operate under G.S. 62-133.5(m).

...

(e) Recovery of Fee Increase. – If a utility's regulatory fee obligation is increased, the Commission shall either adjust the utility's rates to allow for the recovery of the increased fee obligation or approve the utility's request for an accounting order allowing deferral of the increase in the fee obligation."

SECTION 3.15.(b) The percentage rate to be used in calculating the public utility regulatory fee under G.S. 62-302(b)(2) for each public utility's North Carolina subsection (h)

competitive jurisdictional revenues as defined by G.S. 62-302(b)(4)b. earned during each quarter that begins on or after July 1, 2015, is six-hundredths of one percent (0.06%).

SECTION 3.15.(c) The percentage rate to be used in calculating the public utility regulatory fee under G.S. 62-302(b)(2) for each public utility's North Carolina subsection (h) competitive jurisdictional revenues as defined by G.S. 62-302(b)(4)b. earned during each quarter that begins on or after July 1, 2016, is four-hundredths of one percent (0.04%).

SECTION 3.15.(d) The percentage rate to be used in calculating the public utility regulatory fee under G.S. 62-302(b)(2) for each public utility's North Carolina subsection (m) competitive jurisdictional revenues as defined by G.S. 62-302(b)(4)c. earned during each quarter that begins on or after July 1, 2015, is five-hundredths of one percent (0.05%).

SECTION 3.15.(e) The percentage rate to be used in calculating the public utility regulatory fee under G.S. 62-302(b)(2) for each public utility's North Carolina subsection (m) competitive jurisdictional revenues as defined by G.S. 62-302(b)(4)c. earned during each quarter that begins on or after July 1, 2016, is two-hundredths of one percent (0.02%).

SECTION 3.15.(f) For the 2015-2016 and 2016-2017 fiscal years, the percentage rate to be used in calculating the public utility regulatory fee under G.S. 62-302(b)(2) for each public utility's North Carolina noncompetitive jurisdictional revenues as defined by G.S. 62-302(b)(4)a. shall be adjusted to reflect the decrease in the total regulatory fee collected as a result of subsections (b), (c), (d), and (e) of this section and shall be set to ensure the total regulatory fee collected for each fiscal year is at least an amount sufficient to defray the cost of the operations of the Commission and the Public Staff for the upcoming fiscal year, including a reasonable margin for a reserve fund.

SECTION 3.15.(g) This section becomes effective July 1, 2015.

AMEND JORDAN LAKE RULE FOR EXISTING RIPARIAN BUFFERS

SECTION 3.16. Section 2(c) of S.L. 2013-395 reads as rewritten:

"**SECTION 2.(c)** Implementation. – The Protection of Existing Riparian Buffers Rule shall be implemented as follows:

(1) Notwithstanding the Table of Uses set out in subdivision (9) of the Protection of Existing Riparian Buffers Rule, utility, nonelectric, other than perpendicular crossings that have impacts only in Zone Two shall be categorized as exempt.

(2) Notwithstanding the Table of Uses set out in subdivision (9) of the Protection of Existing Riparian Buffers Rule, the piping of a stream allowed under a permit issued by the United States Army Corps of Engineers shall be categorized as an ~~allowable~~exempt use.

(3) Notwithstanding the definition of "Airport Facilities" set out in sub-subdivision (b) of subdivision (2) of the Protection of Existing Riparian Buffers Rule, "Airport Facilities" shall include any aeronautic industrial facilities that require direct access to the airfield."

ELIMINATE OUTDATED AIR QUALITY REPORTING REQUIREMENTS

SECTION 3.17.(a) G.S. 143-215.3A reads as rewritten:

"**§ 143-215.3A. Water and Air Quality Account; use of application and permit fees; Title V Account; I & M Air Pollution Control Account; reports.**

...

(c) The Department shall report to the Environmental Review Commission and the Fiscal Research Division on the cost of the State's environmental permitting programs contained within the Department on or before 1 November of each year. ~~In addition, the Department shall report to the Environmental Review Commission and the Fiscal Research Division on the cost of the Title V Program on or before 1 November of each year.~~ The ~~reports~~

report shall include, but ~~are~~ is not limited to, fees set and established under this Article, fees collected under this Article, revenues received from other sources for environmental permitting and compliance programs, changes made in the fee schedule since the last report, anticipated revenues from all other sources, interest earned and any other information requested by the General Assembly."

SECTION 3.17.(b) The following sections of S.L. 2002-4 are repealed:

(1) Section 10.

(2) Section 11, as amended by Section 12 of S.L. 2006-79 and S.L. 2010-142.

(3) Section 12.

(4) Section 13.

SECTION 3.17.(c) G.S. 143-215.108(g) is repealed.

CLARIFYING CHANGES TO STATUTES PERTAINING TO THE MANAGEMENT OF VENOMOUS SNAKES AND OTHER REPTILES

SECTION 3.18. G.S. 114-419(b) reads as rewritten:

"**§ 14-419. Investigation of suspected violations; seizure and examination of reptiles; disposition of reptiles.**

...

(b) If the Museum or the Zoological Park or their designated representatives find that a seized reptile is a venomous reptile, large constricting snake, or crocodilian regulated under this Article, the Museum or the Zoological Park or their designated representative shall determine final disposition of the reptile in a manner consistent with the safety of the public, which in the case of a venomous reptile for which antivenin approved by the United States Food and Drug Administration is not readily available, ~~may include euthanasia.~~shall be euthanized unless the species is protected under the federal Endangered Species Act of 1973."

TRANSFER RULE-MAKING AUTHORITY FOR WASTEWATER SYSTEMS FROM COMMISSION FOR PUBLIC HEALTH TO ENVIRONMENTAL MANAGEMENT COMMISSION AND MAKE OTHER CHANGES TO ACHIEVE ON-SITE WASTEWATER REGULATORY REFORM

SECTION 3.19.(a) G.S. 130A-334 reads as rewritten:

"**§ 130A-334. Definitions.**

The following definitions shall apply throughout this Article:

(1) "Commission" means the Environmental Management Commission.

~~(1)~~(1a) "Construction" means any work at the site of placement done for the purpose of preparing a residence, place of business or place of public assembly for initial occupancy, or subsequent additions or modifications which increase sewage flow.

~~(1a)~~(1b) "Department" means the Department of Health and Human Services.

(1c) "Ground absorption system" means a system of tanks, treatment units, nitrification fields and appurtenances for wastewater collection, treatment, and subsurface disposal.

...

(7a) "Plat" means a property survey prepared by a registered land surveyor, drawn to a scale of one inch equals no more than 60 feet, that includes: the specific location of the proposed facility and appurtenances, the site for the proposed wastewater system, and the location of water supplies and surface waters. "Plat" also means, for subdivision lots approved by the local planning authority ~~and recorded with the county register of deeds,~~if a local planning authority exists at the time of application for a permit under this Article, a copy of the ~~recorded~~ subdivision plat that has been recorded with

the county register of deeds and is accompanied by a site plan that is drawn to scale.

...

(14) "Wastewater" means any sewage or industrial process wastewater discharged, transmitted, or collected from a residence, place of business, place of public assembly, or other places into a wastewater system.

(15) "Wastewater system" means a system of wastewater collection, treatment, and disposal in single or multiple components, including a ground absorption system, privy, septic tank system, public or community wastewater system, wastewater reuse or recycle system, mechanical or biological wastewater treatment system, any other similar system, and any chemical toilet used only for human waste. A wastewater system located on multiple adjoining lots or tracts of land under common ownership or control shall be considered a single system for purposes of permitting under this Article."

SECTION 3.19.(b) G.S. 130A-335 reads as rewritten:

"**§ 130A-335. Wastewater collection, treatment and disposal; rules.**

(a) A person owning or controlling a residence, place of business or a place of public assembly shall provide an approved wastewater system. Except as may be allowed under another provision of law, all wastewater from water-using fixtures and appliances connected to a water supply source shall discharge to the approved wastewater system. A wastewater system may include components for collection, treatment and disposal of wastewater.

(b) ~~All wastewater~~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:~~Commission, including all of the following:

(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.

...

(f1) A preconstruction conference with the owner or developer, or an agent of the owner or developer, and a representative of the local health department shall be required for any authorization for wastewater system construction issued with an improvement permit under G.S. 130-336 when the authorization is greater than five years old. Following the conference, the local health department shall ~~issue a revised authorization~~ advise the owner or developer of any rule changes for wastewater system construction ~~that includes~~ incorporating current technology that can reasonably be expected to improve the performance of the system. The local health department shall issue a revised authorization for wastewater system construction incorporating the rule changes upon the written request of the owner or developer.

...

(h) Except as provided in this subsection, a chemical or portable toilet may be placed at any location where the chemical or portable toilet can be operated and maintained under sanitary conditions. A chemical or portable toilet shall not be used as a replacement or substitute for a water closet or urinal where a water closet or urinal connected to a permanent wastewater treatment system is required by the North Carolina State Building Code, except that a chemical or portable toilet may be used to supplement a water closet or urinal during periods of peak use. A chemical or portable toilet shall not be used as an alternative to the repair of a

water closet, urinal, or wastewater treatment system. It shall be unlawful to discharge sewage or other waste from a chemical or portable toilet used for human waste except into a wastewater system that has been approved by the Department under rules adopted by the Commission ~~or by the Environmental Management Commission~~ or at a site that is permitted by the Department under G.S. 130A-291.1."

SECTION 3.19.(c) G.S. 130A-336 reads as rewritten:

"**§ 130A-336. Improvement permit and authorization for wastewater system construction required.**

...

(b) The local health department shall issue an authorization for wastewater system construction authorizing work to proceed and the installation or repair of a wastewater system when it has determined after a field investigation that the system can be installed and operated in compliance with this Article and rules adopted pursuant to this Article. This authorization for wastewater system construction shall be valid for a period equal to the period of validity of the improvement permit~~, not to exceed five years,~~ and may be issued at the same time the improvement permit is issued. No person shall commence or assist in the installation, construction, or repair of a wastewater system unless an improvement permit and an authorization for wastewater system construction have been obtained from the Department or the local health department. No improvement permit or authorization for wastewater system construction shall be required for maintenance of a wastewater system. The Department and the local health department may impose conditions on the issuance of an improvement permit and an authorization for wastewater system construction.

(c) Unless the Commission otherwise provides by rule, plans, and specifications for all wastewater systems designed for the collection, treatment, and disposal of industrial process wastewater shall be reviewed and approved by the Department prior to the issuance of an authorization for wastewater system construction by the local health department.

(d) If a local health department repeatedly fails to issue or deny improvement permits for conventional septic tank systems within 60 days of receiving completed applications for the permits, then the Department of Environment and Natural Resources may withhold public health funding from that local health department."

REPEAL WASTE MANAGEMENT BOARD RULES

SECTION 3.20.(a) The General Assembly finds that the statutory authority for the Governor's Waste Management Board was repealed by S.L. 1993-501 and, therefore, regulations previously promulgated by that Board are no longer enforceable or necessary.

SECTION 3.20.(b) The Secretary of Environment and Natural Resources shall repeal 15A NCAC Chapter 14 (Governor's Waste Management Board) on or before December 1, 2014. Until the effective date of the repeal of the rule required pursuant to this section, the Secretary, the Department of Environment and Natural Resources, the Environmental Management Commission, or any other political subdivision of the State shall not implement or enforce 15A NCAC Chapter 14 (Governor's Waste Management Board).

EXPAND DAILY FLOW DESIGN EXEMPTION FOR LOW-FLOW FIXTURES

SECTION 3.21. Section 34(b) of Session Law 2013-413 reads as rewritten:

"**SECTION 34.(b)** Implementation. – Notwithstanding the Daily Flow for Design rates listed for dwelling units in 15A NCAC 18A .1949(a) or for other establishments in Table No. 1 of 15A NCAC 18A .1949(b) (Sewage Flow Rates for Design Units), a wastewater system shall be exempt from the Daily Flow for Design, and any other design flow standards that are established by the Department of Health and Human Services or the Commission for Public Health provided flow rates that are less than those listed in ~~Table No. 1 of 15A NCAC 18A .1949(b)~~15A NCAC 18A .1949 (Sewage Flow Rates for Design Units) can be achieved through

engineering design that utilizes low-flow fixtures and low-flow technologies and the design is prepared, sealed, and signed by a professional engineer licensed pursuant to Chapter 89C of the General Statutes. The Department and Commission may ~~establish~~ establish, by rule, lower limits on reduced flow rates as necessary to ensure wastewater system integrity and protect public health, safety, and ~~welfare~~welfare, provided that the Commission relies on scientific evidence specific to soil types found in North Carolina that the lower limits are necessary for those soil types. 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). Proposed daily design flows for wastewater systems that are calculated to be less than 3,000 total gallons per day shall not require State review pursuant to 15A NCAC 18A .1938(e)."

REPEAL OBSOLETE STATUTES

SECTION 3.22. The following statues are repealed:

(1) G.S. 14-197. Using profane or indecent language on public highways; counties exempt.

(2) G.S. 14-401.8. Refusing to relinquish party telephone line in emergency; false statement of emergency.

INCREASE CERTAIN PENALTIES FOR TAKING OF PROTECTED PLANTS

SECTION 3.23.(a). G.S. 14-129 reads as rewritten:

"**§ 14-129. Taking, etc., of certain wild plants from land of another.**

No person, firm or corporation shall dig up, pull up or take from the land of another or from any public domain, the whole or any part of any Venus flytrap (Dionaea muscipula), trailing arbutus, Aaron's Rod (Thermopsis caroliniana), Bird-foot Violet (Viola pedata), Bloodroot (Sanguinaria canadensis), Blue Dogbane (Amsonia tabernaemontana), Cardinal-flower (Lobelia cardinalis), Columbine (Aquilegia canadensis), Dutchman's Breeches (Dicentra cucullaria), Maidenhair Fern (Adiantum pedatum), Walking Fern (Camptosorus rhizophyllus), Gentians (Gentiana), Ground Cedar, Running Cedar, Hepatica (Hepatica americana and acutiloba), Jack-in-the-Pulpit (Arisaema triphyllum), Lily (Lilium), Lupine (Lupinus), Monkshood (Aconitum uncinatum and reclinatum), May Apple (Podophyllum peltatum), Orchids (all species), Pitcher Plant (Sarracenia), Shooting Star (Dodecatheon meadia), Oconee Bells (Shortia galacifolia), Solomon's Seal (Polygonatum), Trailing Christmas (Greens-Lycopodium), Trillium (Trillium), Virginia Bluebells (Mertensia virginica), and Fringe Tree (Chionanthus virginicus), American holly, white pine, red cedar, hemlock or other coniferous trees, or any flowering dogwood, any mountain laurel, any rhododendron, or any ground pine, or any Christmas greens, or any Judas tree, or any leucothea, or any azalea, without having in his possession a permit to dig up, pull up or take such plants, signed by the owner of such land, or by his duly authorized agent. Any person convicted of violating the provisions of this section shall be guilty of a Class 3 misdemeanor only punished by a fine of not less than ~~ten dollars ($10.00)~~seventy-five dollars ($75.00) nor more than ~~fifty dollars ($50.00)~~one hundred seventy-five dollars ($175.00) for each ~~offense.~~offense, with each plant taken in violation of this section constituting a separate offense. The Clerk of Court for the jurisdiction in which a conviction occurs under this section involving any species listed in this section that also appears on the North Carolina Protected Plants list created under the authority granted by Article 19B of Chapter 106 of the General Statutes shall report the conviction to the Plant Conservation Board so the Board may consider a civil penalty under the authority of that Article.~~The provisions of this section shall not apply to the Counties of Cabarrus, Carteret, Catawba, Cherokee, Chowan, Cumberland, Currituck, Dare, Duplin, Edgecombe, Franklin, Gaston, Granville, Hertford, McDowell, Pamlico, Pender, Person, Richmond, Rockingham, Rowan and Swain.~~"

SECTION 3.23.(b) G.S. 106-202.19 reads as rewritten:

"**§ 106-202.19. Unlawful acts; penalties; enforcement.**

(a) Unless the conduct is covered under some other provision of law providing greater punishment, it is unlawful to engage in any of the following conduct:

(1) To uproot, dig, take or otherwise disturb or remove for any purpose from the lands of another, any plant on a protected plant list without a written permit from the owner which is dated and valid for no more than 180 days and which indicates the species or higher taxon of plants for which permission is granted; except that the incidental disturbance of protected plants during agricultural, forestry or development operations is not illegal so long as the plants are not collected for sale or commercial use.

...

(a1) Any person convicted of violating this Article, or any rule of the Board adopted pursuant to this Article shall be guilty of a Class 2 misdemeanor. Each illegal movement or distribution of a protected plant shall constitute a separate violation. In addition, if any person continues to violate or further violates any provision of this Article after written notice from the Board, the court may determine that each day during which the violation continued or is repeated constitutes a separate violation subject to the foregoing penalties.

(a2) A civil penalty of not more than two thousand dollars ($2,000) ~~may~~ shall be assessed by the Board against any person guilty of violating this Article a second or subsequent time. The clear proceeds of civil penalties assessed pursuant to this subsection shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2.

...."

INCREASE PENALTIES FOR PARKING IN HANDICAPPED SPACE WITHOUT REQUIRED PLACARD

SECTION 3.24.(a) G.S. 20-37.6 reads as rewritten:

"**§ 20-37.6. Parking privileges for handicapped drivers and passengers.**

...

(d) Designation of Parking Spaces. – Designation of parking spaces for handicapped persons on streets and public vehicular areas shall comply with G.S. 136-30. A sign designating a parking space for handicapped persons ~~shall~~may state the maximum penalty for parking in the space in violation of the law. A sign designating a parking space for handicapped persons shall not state the incorrect maximum penalty for parking in the space in violation of the law.

...

(f) Penalties for Violation. –

(1) A violation of G.S. 20-37.6(e)(1), ~~(2)~~(2), or (3) is an infraction which carries a penalty of at least ~~one~~three hundred dollars ~~($100.00)~~($300.00) but not more than ~~two~~five hundred ~~fifty~~ dollars ~~($250.00)~~($500.00), and whenever evidence shall be presented in any court of the fact that any automobile, truck, or other vehicle was found to be parked in a properly designated handicapped parking space in violation of the provisions of this section, it shall be prima facie evidence in any court in the State of North Carolina that the vehicle was parked and left in the space by the person, firm, or corporation in whose name the vehicle is registered and licensed according to the records of the Division. No evidence tendered or presented under this authorization shall be admissible or competent in any respect in any court or tribunal except in cases concerned solely with a violation of this section.

...."

SECTION 3.24.(b) This section becomes effective December 1, 2014, and applies to violations committed on or after that date.

REPEAL OUTDATED PUBLIC UTILITIES STATUTES OR REPORTS

SECTION 3.25.(a) G.S. 62-36A and G.S. 62-36.1 are repealed.

SECTION 3.25.(b) G.S. 62-133.2(g) is repealed.

SECTION 3.25.(c) Section 14 of S.L. 2002-4 is repealed.

SECTION 3.25.(d) Section 14 of S.L. 2007-397 is repealed.

SECTION 3.25.(e) Section 6.1 of S.L. 1995-27 is repealed.

REPEAL ENERGY AUDIT REQUIREMENTS

SECTION 3.26. G.S. 143-64.12 reads as rewritten:

"**§ 143-64.12. Authority and duties of the Department; State agencies and State institutions of higher learning.**

(a) The Department of Environment and Natural Resources through the State Energy Office shall develop a comprehensive program to manage energy, water, and other utility use for State agencies and State institutions of higher learning and shall update this program annually. Each State agency and State institution of higher learning shall develop and implement a management plan that is consistent with the State's comprehensive program under this subsection to manage energy, water, and other utility use, and that addresses any findings or recommendations resulting from the energy audit required by subsection (b1) of this section. The energy consumption per gross square foot for all State buildings in total shall be reduced by twenty percent (20%) by 2010 and thirty percent (30%) by 2015 based on energy consumption for the 2002-2003 fiscal year. Each State agency and State institution of higher learning shall update its management plan ~~annually~~ biennially and include strategies for supporting the energy consumption reduction requirements under this subsection. Each community college shall submit to the State Energy Office ~~an annual~~a biennial written report of utility consumption and costs. Management plans submitted ~~annually~~biennially by State institutions of higher learning shall include all of the following:

(1) Estimates of all costs associated with implementing energy conservation measures, including pre-installation and post-installation costs.

(2) The cost of analyzing the projected energy savings.

(3) Design costs, engineering costs, pre-installation costs, post-installation costs, debt service, and any costs for converting to an alternative energy source.

(4) An analysis that identifies projected annual energy savings and estimated payback periods.

...

(b1) The Department of Administration, as part of the Facilities Condition and Assessment Program, shall identify and recommend energy conservation maintenance and operating procedures that are designed to reduce energy consumption within the facility of a State agency or a State institution of higher learning and that require no significant expenditure of funds. Every State agency or State institution of higher learning shall implement these recommendations. Where energy management equipment is proposed for any facility of a State agency or of a State institution of higher learning, the maximum interchangeability and compatibility of equipment components shall be required. ~~As part of the Facilities Condition and Assessment Program under this section, the Department of Administration, in consultation with the State Energy Office, shall develop an energy audit and a procedure for conducting energy audits. Every five years the Department shall conduct an energy audit for each State agency or State institution of higher learning, and the energy audits conducted shall serve as a preliminary energy survey. The State Energy Office shall be responsible for system-level detailed surveys.~~

~~(b2) The Department of Administration shall submit a report of the energy audit required by subsection (b1) of this section to the affected State agency or State institution of higher~~

~~learning and to the State Energy Office. The State Energy Office shall review each audit and, in consultation with the affected State agency or State institution of higher learning, incorporate the audit findings and recommendations into the management plan required by subsection (a) of this section.~~

(c) through (g) Repealed by Session Laws 1993, c. 334, s. 4.

~~(h) When conducting a facilities condition and assessment under this section, the Department of Administration shall identify and recommend to the State Energy Office any facility of a State agency or State institution of higher learning as suitable for building commissioning to reduce energy consumption within the facility or as suitable for installing an energy savings measure pursuant to a guaranteed energy savings contract under Part 2 of this Article.~~

~~(i) Consistent with G.S. 150B-2(8a)h., the Department of Administration may adopt architectural and engineering standards to implement this section.~~

(j) The State Energy Office shall submit a report by December 1 of ~~each~~every odd-numbered year to the Joint Legislative ~~Commission on Governmental Operations~~Energy Policy Commission describing the comprehensive program to manage energy, water, and other utility use for State agencies and State institutions of higher learning required by subsection (a) of this section. The report shall also contain the following:

(1) A comprehensive overview of how State agencies and State institutions of higher learning are managing energy, water, and other utility use and achieving efficiency gains.

(2) Any new measures that could be taken by State agencies and State institutions of higher learning to achieve greater efficiency gains, including any changes in general law that might be needed.

(3) A summary of the State agency and State institutions of higher learning management plans required by subsection (a) of this ~~section and the energy audits required by subsection (b1) of this~~ section.

(4) A list of the State agencies and State institutions of higher learning that did and did not submit management plans required by subsection (a) of this ~~section and a list of the State agencies and State institutions of higher learning that received an energy audit.~~section.

(5) Any recommendations on how management plans can be better managed and implemented."

COASTAL STORMWATER GRANDFATHER

SECTION 3.27.(a) The definitions set out in G.S. 143-212, G.S. 143-213, and 15A NCAC 2H .1002 apply to this section.

SECTION 3.27.(b) 15A NCAC 02H .1005 (Stormwater Requirements: Coastal Counties). – Until the effective date of the revised permanent rule that the Commission is required to adopt pursuant to Section 3.28(d) of this section, the Commission and the Department shall implement 15A NCAC 02H .1005 (Stormwater Requirements: Coastal Counties) as provided in Section 3.28(c) of this section.

SECTION 3.27.(c) Implementation. – Notwithstanding Paragraph (h) of 15A NCAC 02H .1005 (Stormwater Requirements: Coastal Counties), the provisions and requirements applicable to any grandfathered development activity subject to Subparagraph (a)(2) of 15A NCAC 02H .1005 shall also be applicable to an expansion of the development activity. For purposes of this subsection, "grandfathered development activity" means development activity that is regulated by provisions and requirements of 15A NCAC 02H .1005 (Stormwater Requirements: Coastal Counties) that was effective at the time of the original issuance of any of the authorizations listed in Subparagraph (h)(2) of 15A NCAC 02H .1005, because the authorization meets the criteria set forth in that Subparagraph; and

"expansion of the development activity" means development activity conducted on a contiguous property or properties under a subdivision plat approved by the local government prior to July 3, 2012.

SECTION 3.27.(d) Additional Rule-Making Authority. – The Commission shall adopt a rule to amend 15A NCAC 02H .1005 (Stormwater Requirements: Coastal Counties) consistent with Section 3.28(c) of this section. 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 3.28(c) of this act. Rules adopted pursuant to this section are not subject to Part 3 of Article 2A of Chapter 150B of the General Statutes. 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 3.27.(e) Sunset. – Section 3.28(c) of this section expires on the date that rules adopted pursuant to Section 3.28(d) of this section become effective.

PESTICIDE USE FOR MOLES

SECTION 3.28. G.S. 113-300.2 is amended by adding a new subsection to read:

"(g) Notwithstanding any other provision of law, it is lawful to use any pesticide registered by the Pesticide Board to control any species of mole other than the Star-Nosed mole (Condyluria cristata parva), provided that (i) all rules regulating the application of pesticides adopted by the Pesticide Board are followed, and (ii) pesticides used to control these species are applied in a manner that minimizes hazards to nontarget species."

CLARIFY PERIODIC INSPECTIONS AUTHORITY OF HOUSING FINANCE AGENCY

SECTION 3.29.(a) G.S. 153A-364 reads as rewritten:

"**§ 153A-364. Periodic inspections for hazardous or unlawful conditions.**

...

(b) A county may require periodic inspections as part of a targeted effort within a geographic area that has been designated by the county commissioners. The county shall not discriminate in its selection of areas or housing types to be targeted and shall (i) provide notice to all owners and residents of properties in the affected area about the periodic inspections plan and information regarding a public hearing regarding the plan; (ii) hold a public hearing regarding the plan; and (iii) establish a plan to address the ability of low-income residential property owners to comply with minimum housing code standards. A residential building or structure that is subject to periodic inspections by the North Carolina Housing Finance Agency (hereinafter "Agency") shall not be subject to periodic inspections under this subsection if the Agency has issued a finding that the building or structure is in compliance with federal standards established by the United States Department of Housing and Urban Development to assess the physical condition of residential property. The owner or manager of a residential building or structure subject to periodic inspections by the Agency shall, within 10 days of receipt, submit to the inspection department a copy of the Compliance Results Letter issued by the Agency showing that the residential building or structure is in compliance with federal housing inspection standards. If the owner or manager fails to submit a copy of the Compliance Results Letter as provided in this subsection, the residential building or structure shall be subject to periodic inspections as provided in this subsection until the Compliance Results Letter is submitted to the inspection department.

...."

SECTION 3.29.(b) G.S. 160A-424 reads as rewritten:

"**§ 160A-424. Periodic inspections.**

...

(b) A city may require periodic inspections as part of a targeted effort within a geographic area that has been designated by the city council. The municipality shall not discriminate in its selection of areas or housing types to be targeted and shall (i) provide notice to all owners and residents of properties in the affected area about the periodic inspections plan and information regarding a public hearing regarding the plan; (ii) hold a public hearing regarding the plan; and (iii) establish a plan to address the ability of low-income residential property owners to comply with minimum housing code standards. A residential building or structure that is subject to periodic inspections by the North Carolina Housing Finance Agency (hereinafter "Agency") shall not be subject to periodic inspections under this subsection if the Agency has issued a finding that the building or structure is in compliance with federal standards established by the United States Department of Housing and Urban Development to assess the physical condition of residential property. The owner or manager of a residential building or structure subject to periodic inspections by the Agency shall, within 10 days of receipt, submit to the inspection department a copy of the Compliance Results Letter issued by the Agency showing that the residential building or structure is in compliance with federal housing inspection standards. If the owner or manager fails to submit a copy of the Compliance Results Letter as provided in this subsection, the residential building or structure shall be subject to periodic inspections as provided in this subsection until the Compliance Results Letter is submitted to the inspection department.

...."

SECURITY GRILLES

SECTION 3.30.(a) Notwithstanding Section 1008.1.4.5 of the 2012 NC State Building Code (Fire Code), horizontal sliding or vertical security grilles shall be permitted at all exits or exit access doorways, provided that the grilles are openable from the inside without the use of a key or special knowledge or effort during periods that the space is occupied by authorized persons and that the grilles remain secured in the full-open position during the period of occupancy by the general public.

SECTION 3.30.(b) The Building Code Council shall adopt a rule to amend Section 1008.1.4.5 of the 2012 NC State Building Code (Fire Code) consistent with Section 3.31(a) of this section.

SECTION 3.30.(c) Section 3.31(a) of this section expires on the date that the rule adopted pursuant to Section 3.31(b) of this section becomes effective.

REWRITE LANDSCAPE CONTRACTOR LICENSING STATUTES

SECTION 3.31.(a) G.S. 89D-1 through G.S. 89D-10 are repealed.

SECTION 3.31.(b) Chapter 89D of the General Statutes is amended by adding the following new sections to read:

"**§ 89D-11. Definitions.**

The following definitions apply in this Chapter:

(1) Board. – The North Carolina Landscape Contractors' Licensing Board.

(2) Landscape construction or contracting. – The act of providing services as a landscape contractor, as defined in this section, for compensation or other consideration.

(3) Landscape contractor. – Any person who, for compensation or other consideration, does any of the following:

a. Engages in the business requiring the art, experience, ability, knowledge, science, and skill to prepare contracts and bid for the performance of landscape services, including installing, planting, repairing, and managing gardens, lawns, shrubs, vines, trees, or other decorative vegetation, including the finish grading and preparation of

plots and areas of land for decorative utilitarian treatment and arrangement.

b. Practices the act of horticulture consultation or planting design for employment purposes.

c. Constructs, installs, or maintains landscape drainage systems and cisterns; provided the landscaping contractor makes no connection to pipes, fixtures, apparatus, or appurtenances installed upon the premises, or in a building, to supply water thereto or convey sewage or other waste therefrom as defined in G.S. 87-21.

d. Designs, installs, or maintains low-voltage landscape lighting systems; provided (i) the work does not exceed the scope of the exception set forth in G.S. 87-43.1(7); and (ii) the low-voltage lighting systems do not exceed 50 volts and constitute a Class II or Class III cord and plug connected power system.

e. Engages in the construction of garden pools, retaining walls, walks, patios, or other decorative landscape features.

(4) Person. – An individual, firm, partnership, association, corporation, or other legal entity.

"**§ 89D-12. License required; use of seal; posting license.**

(a) Except as otherwise provided in this Chapter, no person shall engage in the practice of landscape construction or contracting, use the designation "landscape contractor," or advertise using any title or description that implies licensure as a landscape contractor unless the person is licensed as a landscape contractor as provided by this Chapter. All landscape construction or contracting performed by a partnership, association, corporation, firm, or other group shall be performed under an individual who is readily available to exercise supervision over the landscape construction and contracting work and who is licensed by the Board under this Chapter.

(b) Nothing in this Chapter shall be construed to authorize a landscape contractor to engage in any of the following:

(1) The practice of landscape architecture as defined in G.S. 89A-1.

(2) The practice of engineering as defined in G.S. 89C-3.

(3) Practice as a well contractor certified under Article 7A of Chapter 87 of the General Statutes.

(4) The practice of irrigation contracting as defined in G.S. 89G-1.

(5) The practice of architecture as defined in G.S. 83A-1.

(6) The practice of plumbing, heating group number one, heating group number two, heating group number three, fire sprinkler, or fuel piping contracting as defined in G.S. 87-21; provided the landscaping contractor may install piping, fittings, valves, and associated components for the purpose of landscape contracting that is downstream of a potable water source, groundwater source, or grey water source, and downstream of a backflow prevention assembly.

(7) The practice of electrical contracting as defined in G.S. 87-43.

(c) A landscape contractor licensed under this Chapter is not required to be licensed as a general contractor under Article 1 of Chapter 87 of the General Statutes if the licensed landscape contractor is performing landscape construction or contracting work valued at an amount greater than thirty thousand dollars ($30,000).

(d) Upon licensure by the Board, each landscape contractor shall obtain a seal of the design authorized by the Board and bearing the name of the licensee, the number of the license, and the legend "N.C. Licensed Landscape Contractor." A landscape contractor may use the seal only while the license is valid.

(e) Every landscape contractor issued a license under this Chapter shall display the license conspicuously in the landscape contractor's place of business. Every landscape contractor shall display the license number issued to the contractor by the Board on all business cards, contracts, and vehicles used by the contractor in the landscape contracting business.

"**§ 89D-13. Exemptions.**

The provisions of this Chapter shall not apply to the following:

(1) Any federal, State, or local governmental agency performing landscaping on public property.

(2) The North Carolina Department of Transportation (NCDOT). However, for landscape installations or establishment periods for any project that exceeds the current contract amount requiring performance and payment bonds according to State law, NCDOT shall require a licensed landscape contractor to perform the work. NCDOT, at its discretion, may require a licensed landscape contractor for landscape projects of any cost.

(3) Any property owner performing landscape work on his or her own property.

(4) Any person or business owning or operating a golf course.

(5) Any landscaping work where the price of all contracts for labor, material, and other items for a given job site during any consecutive 12-month period is less than twenty-five thousand dollars ($25,000). A local governmental unit shall not enact a local ordinance or regulation requiring licensure for landscaping work performed pursuant to this subdivision.

(6) Any person or business licensed pursuant to Article 1 of Chapter 87 of the General Statutes who possesses a classification under G.S. 87-10(b) as a building contractor, a residential contractor, or a public utilities contractor when the contractor uses the contractor's own employees to perform landscape construction or contracting. A public utilities contractor exempted by this subdivision may only perform the activities described in G.S. 87-10(b)(3)a.

(7) Any person or business licensed as an electrical contractor under Article 4 of Chapter 87 of the General Statutes who is designing, installing, or maintaining any electric work, wiring, devices, appliances, or equipment.

(8) Any person or business licensed as a plumbing contractor under Article 2 of Chapter 87 of the General Statutes who is installing pipes, fixtures, apparatus, or appurtenances to supply water thereto or convey sewage or other waste therefrom, including the installation, repair, or maintenance of water mains, water taps, services lines, water meters, or backflow prevention assemblies supplying water for irrigation systems or repairs to an irrigation system.

(9) A professional engineer licensed pursuant to Chapter 89C of the General Statutes.

(10) A professional landscape architect licensed under Chapter 89A of the General Statutes.

(11) An individual or a business engaged in any of the following activities while performing that activity:

a. Clearing and grading plots and areas of land.

b. Erosion control.

c. Arboriculture, including consultations on pruning and removal of trees.

d. The installation of sod, seed, or plugs by sod producers certified by the Plant Industry Division of the North Carolina Department of Agriculture and Consumer Services.

e. Landscape construction performed by utilities contractors for the purpose of grading and erosion control.
f. Lawn mowing, turf edging, and debris removal services.
g. Turf management or lawn care services only, including fertilization, aeration, weed control, or other turf management or lawn care practices other than mowing or edging.
h. Design, installation, and maintenance of on-site wastewater disposal or reuse systems within the on-site wastewater permit specifications.

(12) Any person performing landscaping work on a farm for use in agriculture production, farming, or ranching.

"**§ 89D-14. The North Carolina Landscape Contractors' Licensing Board.**

(a) There is created the North Carolina Landscape Contractors' Licensing Board. The Board shall consist of nine members appointed as follows:

(1) One member appointed by the Governor who is a member of the general public.
(2) One member appointed by the Commissioner of Agriculture pursuant to recommendations from The North Carolina Green Industry Council.
(3) One member appointed by the Board of Directors of the North Carolina Nursery and Landscape Association, Inc., who is a practicing nurseryman operating a nursery certified by the North Carolina Department of Agriculture and Consumer Services Plant Industry Division.
(4) Four members who are licensed landscape contractors in the business of landscape construction or contracting. One of the four members shall be appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives pursuant to recommendations from The North Carolina Green Industry Council; one shall be appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate pursuant to recommendations from the Carolinas Irrigation Association, who is also a licensed irrigation contractor; and two shall be appointed by the Board of Directors of the North Carolina Nursery and Landscape Association, Inc.
(5) One member appointed by the Board of Directors of the North Carolina Chapter of the American Society of Landscape Architects who is a registered landscape architect.
(6) One member appointed by the President of The University of North Carolina from within the land grant university community who is knowledgeable in landscaping methods and practices.

(b) All appointments shall be for three-year terms. No member shall serve more than two complete consecutive terms.

(c) A vacancy on the Board created by death, resignation, or otherwise shall be filled in the same manner as the original appointment, except that all unexpired terms of Board members appointed by the General Assembly shall be filled in accordance with G.S. 120-122. Appointees to fill vacancies shall serve the remainder of the unexpired term and until their successors are appointed and qualified.

(d) The Board shall elect annually a chair and other officers as it deems necessary to carry out the purposes of this Chapter and shall hold meetings at least twice a year. A majority of the Board shall constitute a quorum.

(e) Each member of the Board may receive per diem and reimbursement for travel and subsistence as set forth in G.S. 93B-5.

(f) The Board shall be entitled to the services of the Attorney General in connection with the affairs of the Board or may, in its discretion, employ an attorney to assist or represent it in the enforcement of this Chapter.

"**§ 89D-15. Powers and duties.**

The Board shall have the following powers and duties:

(1) Administer and enforce the provisions of this Chapter.

(2) Adopt, amend, or repeal rules to carry out the provisions of this Chapter.

(3) Examine and determine the qualifications and fitness of applicants for licensure and licensure renewal.

(4) Issue, renew, deny, restrict, suspend, or revoke licenses.

(5) Reprimand or otherwise discipline licensees under this Chapter.

(6) Receive and investigate complaints from members of the public.

(7) Conduct investigations to determine whether violations of this Chapter exist or constitute grounds for disciplinary action against licensees under this Chapter.

(8) Conduct administrative hearings in accordance with Article 3A of Chapter 150B of the General Statutes.

(9) Seek injunctive relief through any court of competent jurisdiction for violations of this Chapter.

(10) Collect fees required by G.S. 89D-21 and any other monies permitted by law to be paid to the Board.

(11) Require licensees to file and maintain an adequate surety bond.

(12) Establish and approve continuing education requirements for persons licensed under this Chapter.

(13) Employ a secretary-treasurer and any other clerical personnel the Board deems necessary to carry out the provisions of this Chapter and to fix compensation for employees.

(14) Maintain a record of all proceedings conducted by the Board and make available to licensees and other concerned parties an annual report of all Board action.

(15) Adopt and publish a code of professional conduct for all persons licensed under this Chapter.

(16) Adopt and publish a code of minimum practice standards for landscape construction and contracting.

(17) Adopt a seal containing the name of the Board for use on licenses and official reports issued by the Board.

"**§ 89D-16. Application for license; qualifications; examination; issuance.**

(a) Upon application to the Board and payment of the required fees, an applicant for licensure as a landscape contractor may sit for the examination if the applicant submits evidence demonstrating the applicant's qualifications for licensure under this Chapter as prescribed in rules adopted by the Board and meets all of the following qualifications:

(1) Is at least 18 years of age.

(2) Is of good moral character as determined by the Board.

(3) Provides evidence of business identification as required by the Board.

(4) Files with the Board and maintains a corporate surety bond executed by a company authorized to do business in this State or an irrevocable letter of credit issued by an insured institution. The surety bond or the letter of credit shall be in the amount of ten thousand dollars ($10,000). The surety bond or letter of credit shall be approved by the Board as to form and shall be conditioned upon the obligor faithfully conforming to and abiding by the provisions of this Chapter. Any person claiming to be injured by an act of a

licensed landscape contractor that constitutes a violation of this Chapter may institute an action to recover against the licensee and the surety.

(b) If the applicant meets all the qualifications in subsection (a) of this section, the applicant shall be required to pass an examination administered by the Board before the Board may issue the license. The Board shall establish the scope and subject matter of the examination to be administered. The Board shall administer examinations at least twice a year at a time and place to be determined by the Board.

(c) When the Board determines that an applicant has met all the qualifications for licensure, submitted the required fee, and passed the examination, the Board shall issue a license to the applicant.

"**§ 89D-17. Corporations; partnerships; persons doing business under trade name.**

(a) The Board may issue a license in the name of a corporation if the corporation complies with the following:

(1) One or more officers or full-time employees, or both, empowered to act for the corporation are individuals licensed under this Chapter.

(2) Only the officers or employees described in subdivision (1) of this subsection execute contracts for landscape construction or contracting in the name of a corporation and are readily available to exercise supervision over the work performed pursuant to the contract.

(b) The Board may issue a license in the name of a limited liability company if the company complies with the following:

(1) One or more managers, as defined in G.S. 57D-1-03, executives, or full-time employees, or a combination thereof, are individuals licensed under this Chapter.

(2) Only the managers, executives, or employees described in subdivision (1) of this subsection execute contracts for landscape construction or contracting in the name of the limited liability company and are readily available to exercise supervision over the work performed pursuant to the contract.

(c) The Board may issue a license in the name of a partnership if the partnership complies with the following:

(1) One or more general partners or full-time employees empowered to act for the partnership are individuals licensed under this Chapter.

(2) Only the partners or employees described in subdivision (1) of this subsection execute contracts for landscape construction or contracting in the name of the partnership and are readily available to exercise supervision over the work performed pursuant to the contract.

(d) The Board may issue a license in an assumed or designated trade name if the owner of the business complies with the following:

(1) The owner or one or more full-time employees empowered to act for the owner is an individual licensed under this Chapter.

(2) Only the persons described in subdivision (1) of this subsection execute contracts for landscape construction or contracting in the assumed or designated trade name of the business and are readily available to exercise supervision over the work performed pursuant to the contract.

(e) When the Board issues a license under this section, the Board shall indicate on the license the name and license number of the individual licensee connected to the corporation, partnership, or business conducted under an assumed or designated trade name.

(f) A person licensed pursuant to this section shall be readily available to exercise supervision over a contract for landscape construction or contracting until the contract is completed.

(g) When a licensee executes a contract for landscape construction or contracting in any capacity other than as a sole proprietor contracting on the licensee's own behalf, the person on whose behalf the licensee is executing the contract shall be licensed under this section.

(h) A corporation, partnership, or person doing business under an assumed or designated trade name shall notify the Board in accordance with rules adopted by the Board if an individual licensee who is indicated in the license issued under this section ceases to be an officer, partner, owner, or employee of the corporation, partnership, or person doing business under the assumed or designated trade name. If the corporation, partnership, or person no longer has an officer, general partner, owner, or employee described in subdivision (a)(1), (b)(1), or (c)(1) of this section, the corporation, partnership, or person shall have 120 days from the date the officer, general partner, owner, or employee ceases the relationship with the corporation, partnership, or person to satisfy the requirements described in subdivision (a)(1), (b)(1), or (c)(1) of this section. The Board may, in its discretion, grant the corporation, partnership, or person a period greater than 120 days to satisfy the requirements described in subdivision (a)(1), (b)(1), or (c)(1) of this section as it deems appropriate. After 120 days, or a time period greater than 120 days as approved by the Board, if the corporation, partnership, or person does not have an officer, general partner, owner, or employee as described in subdivision (a)(1), (b)(1), or (c)(1) of this section, the license issued under this section is automatically suspended and the corporation, partnership, or person shall cease practicing landscape construction or contracting.

"**§ 89D-18. Licensing of nonresidents.**

(a) Definitions. – The following definitions apply in this section:

(1) Delinquent income tax debt. – The amount of income tax due as stated in a final notice of assessment issued to a taxpayer by the Secretary of Revenue when the taxpayer no longer has the right to contest the amount.

(2) Foreign corporation. – A corporation as defined in G.S. 55-1-40.

(3) Foreign entity. – A foreign corporation, a foreign limited liability company, or a foreign partnership.

(4) Foreign limited liability company. – A company as defined in G.S. 57D-1-03.

(5) Foreign partnership. – One of the following that does not have a permanent place of business in this State:

a. A foreign limited partnership as defined in G.S. 59-102.

b. A general partnership formed under the laws of a jurisdiction other than this State.

(b) Licensing. – Except as provided in this section, the Board may issue a license to a nonresident individual or a foreign entity that meets the requirements for licensure under this Chapter.

(c) Certificate of Authority Required. – The Board shall not issue a license for a foreign corporation unless the corporation has obtained a certificate of authority from the Secretary of State pursuant to Article 15 of Chapter 55 of the General Statutes. The Board shall not issue a license for a foreign limited liability company unless the company has obtained a certificate of authority from the Secretary of State pursuant to Article 7 of Chapter 57D of the General Statutes.

(d) Information. – The Board, upon request, shall provide the Secretary of Revenue the name, address, and tax identification number of every nonresident individual and foreign entity licensed by the Board. The information to be provided under this section shall be in a form required by the Secretary of Revenue.

(e) Delinquents. – If the Secretary of Revenue determines that any nonresident individual or foreign entity licensed by the Board owes a delinquent income tax debt, the Secretary of Revenue may notify the Board of the nonresident individual and foreign entity and

instruct the Board not to renew the nonresident individual or foreign entity's license. The Board shall not renew the license of a nonresident individual or foreign entity identified by the Secretary of Revenue unless the Board receives a written statement from the Secretary that (i) the debt has been paid or (ii) the debt is being paid pursuant to an installment agreement.

"**§ 89D-19. Reciprocity.**

The Board may issue a license, without examination, to any person who is a landscape contractor licensed, certified, or registered in another state or country if the requirements for licensure, certification, or registration in the other state or country are substantially equivalent to the requirements for licensure in this State.

"**§ 89D-20. License renewal and continuing education.**

(a) Every license issued under this Chapter shall be renewed on or before the first day of August of each year. Any person who desires to continue to practice shall apply for a license renewal and shall submit the required fee. Licenses that are not renewed shall be automatically revoked. A license may be renewed at any time within one year after its expiration if (i) the applicant pays the required renewal fee and late renewal fee, (ii) the Board finds that the applicant has not used the license in a manner inconsistent with the provisions of this Chapter or engaged in the practice of landscape construction or contracting after notice of revocation, and (iii) the applicant is otherwise eligible for licensure under the provisions of this Chapter. When necessary, the Board may require licensees to demonstrate continued competence as a condition of license renewal.

(b) As a condition of license renewal, a licensee shall meet the continuing education requirements set by the Board. Each licensee shall complete seven continuing education units per year. The Board may suspend a licensee's license for 30 days for failure to obtain continuing education units required by this subsection. Upon payment of a reinstatement fee, submitting to the Board proof of the continuing education units required by this subsection, and payment of the license renewal fee and late renewal fee, the licensee's license shall be reinstated. Failure to request a reinstatement of the license and failure to pay the reinstatement fee, renewal fee, and late renewal fee shall result in the forfeiture of a license. Upon forfeiture, a person shall be required to submit a new application and retake the examination as provided in this Chapter.

"**§ 89D-21. Expenses and fees.**

(a) The Board may impose the following fees not to exceed the amounts listed below:

(1)	Application fee	$100.00
(2)	Examination fee	250.00
(3)	Individual license fee and individual license renewal	100.00
(4)	Initial corporate, limited liability company, partnership, or trade name license	100.00
(5)	Corporate, limited liability company, partnership, or trade-name license renewal	100.00
(6)	Late renewal fee	50.00
(7)	Reinstatement fee	250.00
(8)	License by reciprocity	250.00
(9)	Duplicate license	25.00

(b) When the Board uses a testing service for the preparation, administration, or grading of examinations, the Board may charge the applicant the actual cost of the examination services and a prorated portion of the examination fee.

"**§ 89D-22. Disciplinary action.**

(a) The Board may deny, restrict, suspend, or revoke a license or refuse to issue or renew a license if a licensee or applicant does any of the following:

(1) Employs the use of fraud, deceit, or misrepresentation in obtaining or attempting to obtain a license or the renewal of a license.

(2) Practices or attempts to practice landscape construction or contracting by fraudulent misrepresentation.
(3) Commits an act of gross malpractice or incompetence as determined by the Board.
(4) Has been convicted of or pled guilty or no contest to a crime that indicates that the person is unfit or incompetent to practice as a landscape contractor or that indicates that the person has deceived or defrauded the public.
(5) Has been declared incompetent by a court of competent jurisdiction.
(6) Has willfully violated any provision in this Chapter or any rules adopted by the Board.
(7) Uses or attempts to use the seal in a fraudulent or unauthorized manner.
(8) Fails to file the required surety bond or letter of credit or to keep the bond or letter of credit in force.

(b) The Board may assess costs, including reasonable attorneys' fees and investigatory costs, in a proceeding under this section against an applicant or licensee found to be in violation of this Chapter.

"**§ 89D-23. Civil penalties.**

(a) In addition to taking any of the actions permitted under G.S. 89D-22, the Board may assess a civil penalty not in excess of two thousand dollars ($2,000) for each violation of any section of this Chapter or the violation of any rules adopted by the Board. The clear proceeds of any civil penalty assessed under this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2.

(b) Before imposing and assessing a civil penalty and fixing the amount of the penalty, the Board shall, as a part of its deliberations, take into consideration the following factors:

(1) The nature, gravity, and persistence of the particular violation.
(2) The appropriateness of the imposition of a civil penalty when considered alone or in combination with other punishment.
(3) Whether the violation was willful and malicious.
(4) Any other factors that would tend to mitigate or aggravate the violations found to exist.

"**§ 89D-24. Injunction to prevent violation; notification of complaints.**

(a) If the Board finds that a person who does not have a license issued under this Chapter is engaging in the practice of landscape construction or contracting, the Board may appear in its own name in superior court in actions for injunctive relief to prevent any person from violating the provisions of this Chapter or the rules adopted by the Board.

(b) A licensed landscape contractor shall notify the Board of any written complaints filed against the landscape contractor not resolved within 30 days from the date the complaint was filed by registered mail to the Board."

SECTION 3.31.(c) Members serving on the North Carolina Landscape Contractors' Registration Board on the effective date of this act shall continue to serve until members of the North Carolina Landscape Contractors' Licensing Board, newly structured under G.S. 89D-14(a), as enacted by Section 3.31(b) of this act, are appointed.

SECTION 3.31.(d) Once the term of one of the current public members appointed by the Governor expires, the General Assembly, upon the recommendation of the Speaker of the House of Representatives, shall appoint a licensed landscape contractor in the business of landscape construction and contracting. Once the term of one of the current members appointed by the Commissioner of Agriculture expires, the General Assembly, upon the recommendation of the President Pro Tempore of the Senate, shall appoint a licensed landscape contractor in the business of landscape construction and contracting. All records, staff, funds, and other items of the North Carolina Landscape Contractors' Registration Board are transferred to and made the property of the North Carolina Landscape Contractors' Licensing Board.

SECTION 3.31.(e) Any person who, on or before December 31, 2014, meets at least one of the following criteria shall be issued a landscape contractor's license by the North Carolina Landscape Contractors' Licensing Board, without the requirement of examination, upon submission of a completed application and payment of the application fee on or before August 1, 2015:

(1) Is registered as a landscape contractor.
(2) Is licensed as an irrigation contractor.
(3) Is certified as a turf grass professional.
(4) Has three years of documented experience in the person's own business as a landscape contractor or three years of documented experience as an employee in a landscape contracting business and meets all other requirements and qualifications for licensure as a landscape contractor. Educational experience can be applied towards the three-year experience requirement as follows:
   a. One year of credit for a two-year degree in related educational training.
   b. Two years of credit for a four-year degree in related educational training.
   c. Up to two years of credit for education or business experience in general business management.

Landscape contractors currently registered under Chapter 89D of the General Statutes shall not be required to renew the registration for the 2015 calendar year to qualify for the landscape contractor's license, as enacted by Subsection 3.31(b) of this section.

SECTION 3.31.(f) Subsection (a) of this section becomes effective August 1, 2015.

CLARIFY RIGHTS OF MARINE ARTIFACT DONORS

SECTION 3.32.(a) Article 3 of Chapter 121 of the General Statutes is amended by adding a new section to read:

"**§ 121-23.1. Right of donor to display artifacts.**

(a) Any person who legally discovers a shipwreck or a shipwreck site or who salvages marine artifacts on or after November 21, 1996, within State waters and donates the artifacts or any contractual interest in the artifacts gained under this Article to the State shall retain the right to access the artifacts and the right, either within the State or outside the State, to (i) display or tour these artifacts or (ii) conduct nondestructive analysis and research if all of the following occur:

(1) Forty percent (40%) of the net proceeds from any display of the artifacts are paid annually to the General Fund no later than January 15 of any year following a year when the artifacts are displayed.
(2) At least one-third of the salvaged artifacts, that represent a cross section of the collection, remain in State custody.
(3) To-scale replicas of any artifacts determined to be unique by the Department of Cultural Resources and not remaining in State custody under subdivision (2) of this section are provided to the State at no cost while the artifacts are on display.
(4) The display or tour will return to the State at least once every two years for a period of no less than one year upon the request of the Department of Cultural Resources.
(5) Any display or tour of artifacts shall also include information identifying the State as the location where the artifacts were found and generally promoting the natural and cultural heritage of the State.

For purposes of this section, "marine artifacts" shall mean an artifact described by G.S. 121-22 that was retained by a person holding a license under G.S. 121-25.

(b) Rights granted under this section shall be valid for a period of 30 years after discovery of the shipwreck, shipwreck site, or marine artifacts. At the end of the 30-year period, the Department shall return the replicas provided under subdivision (a)(3) to the person who donated the artifacts or the person's heir or designee."

SECTION 3.32.(b) This section is effective when it becomes law and applies to any marine artifacts or contractual interest in marine artifacts donated to the State on or after January 1, 1998.

TRANSFER SOLID WASTE RULE-MAKING AUTHORITY FROM COMMISSION FOR PUBLIC HEALTH TO ENVIRONMENTAL MANAGEMENT COMMISSION

SECTION 3.33.(a) G.S. 130A-29 reads as rewritten:

"§ 130A-29. Commission for Public Health – Creation, powers and duties.

...

(c) The Commission shall adopt rules:

(1) Repealed by Session Laws 1983 (Regular Session, 1984), c. 1022, s. 5.

(2) Establishing standards for approving sewage-treatment devices and holding tanks for marine toilets as provided in G.S. 75A-6(o).

(3) Establishing specifications for sanitary privies for schools where water-carried sewage facilities are unavailable as provided in G.S. 115C-522.

(4) Establishing requirements for the sanitation of local confinement facilities as provided in Part 2 of Article 10 of Chapter 153A of the General Statutes.

(5) Repealed by Session Laws 1989 (Regular Session, 1990), c. 1075, s. 1.

(5a) Establishing eligibility standards for participation in Department reimbursement programs.

~~(6) Requiring proper treatment and disposal of sewage and other waste from chemical and portable toilets.~~

(7) Establishing statewide health outcome objectives and delivery standards.

(8) Establishing permit requirements for the sanitation of premises, utensils, equipment, and procedures to be used by a person engaged in tattooing, as provided in Part 11 of Article 8 of this Chapter.

(9) Implementing immunization requirements for adult care homes as provided in G.S. 131D-9 and for nursing homes as provided in G.S. 131E-113.

(10) Pertaining to the biological agents registry in accordance with G.S. 130A-479.

(11) For matters within its jurisdiction that allow for and regulate horizontal drilling and hydraulic fracturing for the purpose of oil and gas exploration and development.

...."

SECTION 3.33.(b) G.S. 130A-290 reads as rewritten:

"§ 130A-290. Definitions.

(a) Unless a different meaning is required by the context, the following definitions shall apply throughout this Article:

...

(3a) "Commission" means the Environmental Management Commission.

...

(35) "Solid waste" 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.~~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.

...."

SECTION 3.33.(c) G.S. 130A-291.1 reads as rewritten:

"**§ 130A-291.1. Septage management program; permit fees.**

...

(d) Septage shall be treated and disposed only at a wastewater system that has been approved by the Department under rules adopted by the Commission ~~or by the Environmental Management Commission~~ or at a site that is permitted by the Department under this section. A permit shall be issued only if the site satisfies all of the requirements of the rules adopted by the Commission.

...."

SECTION 3.33.(d) G.S. 130A-294(a)(4) reads as rewritten:

"**§ 130A-294. Solid waste management program.**

(a) The Department is authorized and directed to engage in research, conduct investigations and surveys, make inspections and establish a statewide solid waste management program. In establishing a program, the Department shall have authority to:

...

(4) a. Develop a permit system governing the establishment and operation of solid waste management facilities. A landfill with a disposal area of 1/2 acre or less for the on-site disposal of land clearing and inert debris is exempt from the permit requirement of this section and shall be governed by G.S. 130A-301.1. Demolition debris from the decommissioning of manufacturing buildings, including electric generating stations, that is disposed of on the same site as the decommissioned buildings, is exempt from the permit requirement of this section and rules adopted pursuant to this section and shall be governed by G.S. 130A-301.3. The Department shall not approve an application for a new permit, the renewal of a permit, or a substantial amendment to a permit for a sanitary landfill, excluding demolition landfills as defined in the rules of the Commission, except as

provided in subdivisions (3) and (4) of subsection (b1) of this section. No permit shall be granted for a solid waste management facility having discharges that are point sources until the Department has referred the complete plans and specifications to the ~~Environmental Management~~ Commission and has received advice in writing that the plans and specifications are approved in accordance with the provisions of G.S. 143-215.1. In any case where the Department denies a permit for a solid waste management facility, it shall state in writing the reason for denial and shall also state its estimate of the changes in the applicant's proposed activities or plans that will be required for the applicant to obtain a permit.

b. Repealed by Session Laws 2007-550, s. 1(a), effective August 1, 2007.

c. The Department shall deny an application for a permit for a solid waste management facility if the Department finds that:

1. Construction or operation of the proposed facility would be inconsistent with or violate rules adopted by the Commission.
2. Construction or operation of the proposed facility would result in a violation of water quality standards adopted by the ~~Environmental Management~~ Commission pursuant to G.S. 143-214.1 for waters, as defined in G.S. 143-213.
3. Construction or operation of the facility would result in significant damage to ecological systems, natural resources, cultural sites, recreation areas, or historic sites of more than local significance. These areas include, but are not limited to, national or State parks or forests; wilderness areas; historic sites; recreation areas; segments of the natural and scenic rivers system; wildlife refuges, preserves, and management areas; areas that provide habitat for threatened or endangered species; primary nursery areas and critical fisheries habitat designated by the Marine Fisheries Commission; and Outstanding Resource Waters designated by the ~~Environmental Management~~ Commission.

...."

SECTION 3.33.(e) G.S. 130A-300 reads as rewritten:

"**§ 130A-300. Effect on laws applicable to water pollution control.**

This Article shall not be considered as amending, repealing or in any manner abridging or interfering with those sections of the General Statutes of North Carolina relative to the control of water pollution as now administered by the ~~Environmental Management~~ Commission nor shall the provisions of this Article be construed as being applicable to or in any way affecting the authority of the ~~Environmental Management~~ Commission to control the discharges of wastes to the waters of the State as provided in Articles 21 and 21A, Chapter 143 of the General Statutes."

SECTION 3.33.(f) G.S. 130A-302 reads as rewritten:

"**§ 130A-302. Sludge deposits at sanitary landfills.**

Sludges generated by the treatment of wastewater discharges which are point sources subject to permits granted under Section 402 of the Federal Water Pollution Act, as amended (P.L. 92-500), or permits generated under G. S. 143-215.1 by the ~~Environmental Management~~ Commission shall not be deposited in or on a sanitary landfill permitted under this Article unless in a compliance with the rules concerning solid waste adopted under this Article."

SECTION 3.33.(g) G.S. 130A-310.3 reads as rewritten:

"**§ 130A-310.3. Remedial action programs for inactive hazardous substance or waste disposal sites.**

...

(b) Where possible, the Secretary shall work cooperatively with any owner, operator, responsible party, or any appropriate agency of the State or federal government to develop and implement the inactive hazardous substance or waste disposal site remedial action program. The Secretary shall not take action under this section to the extent that the ~~Environmental Management~~ Commission, the Commissioner of Agriculture, or the Pesticide Board has assumed jurisdiction pursuant to Articles 21 or 21A of Chapter 143 of the General Statutes.

...

(d) In any inactive hazardous substance or waste disposal site remedial action program implemented hereunder, the Secretary shall ascertain the most nearly applicable cleanup standard as would be applied under CERCLA/SARA, and may seek federal approval of any such program to insure concurrent compliance with federal standards. State standards may exceed and be more comprehensive than such federal standards. The Secretary shall assure concurrent compliance with applicable standards set by the ~~Environmental Management~~ Commission.

...."

SECTION 3.33.(h) G.S. 130A-310.4(g) reads as rewritten:

"(g) The Commission ~~on Health Services [Commission for Public Health]~~ shall adopt rules prescribing the form and content of the notices required by this section. The proposed remedial action plan shall include a summary of all alternatives considered in the development of the plan. A record shall be maintained of all comment received by the Department regarding the remedial action plan."

SECTION 3.33.(i) G.S. 130A-310.31(b)(5) reads as rewritten:

"(5) "Unrestricted use standards" when used in connection with "cleanup", "remediated", or "remediation" means contaminant concentrations for each environmental medium that are considered acceptable for all uses and that comply with generally applicable standards, guidance, or established methods governing the contaminants that are established by statute or adopted, published, or implemented by the ~~Environmental Management Commission, the~~ Commission, or the Department instead of the site-specific contaminant levels established pursuant to this Part."

SECTION 3.33.(j) G.S. 130A-310.65 reads as rewritten:

"**§ 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.~~

...

(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,~~Commission or the Department."

SECTION 3.33.(k) G.S. 113-391(a)f. reads as rewritten:

"f. Management of wastes produced in connection with oil and gas exploration and development and use of horizontal drilling and hydraulic fracturing treatments for that purpose. Such rules shall

address storage, transportation, and disposal of wastes that may contain radioactive materials or wastes that may be toxic or have other hazardous wastes' characteristics that are not otherwise regulated as a hazardous waste by the federal Resource Conservation and Recovery Act (RCRA), such as top-hole water, brines, drilling fluids, additives, drilling muds, stimulation fluids, well servicing fluids, oil, production fluids, and drill cuttings from the drilling, alteration, production, plugging, or other activity associated with oil and gas wells. Wastes generated in connection with oil and gas exploration and development and use of horizontal drilling and hydraulic fracturing treatments for that purpose that constitute hazardous waste under RCRA shall be subject to rules adopted by the Environmental Management Commission ~~for Public Health~~ to implement RCRA requirements in the State."

SECTION 3.33.(l) G.S. 113-415 reads as rewritten:

"**§ 113-415. Conflicting laws.**

No provision of this Article shall be construed to repeal, amend, abridge or otherwise ~~affect: (i)~~ affect the authority and ~~responsibility~~responsibility (i) vested in the Environmental Management Commission by Article 7 of Chapter 87 of the General Statutes, pertaining to the location, construction, repair, operation and abandonment of ~~wells, or the authority and responsibility~~ wells; (ii) vested in the Environmental Management Commission related to the control of water and air pollution as provided in Articles 21 and 21A of Chapter 143 of the General Statutes; ~~or (ii) the authority or responsibility~~(iii) vested in the Department and the Environmental Management Commission ~~for Public Health~~ by Article 10 of Chapter 130A of the General Statutes pertaining to public water-supply ~~requirements;~~requirements; or ~~the authority and responsibility~~(iv) vested in the Environmental Management Commission ~~for Public Health~~ related to the management of solid and hazardous waste as provided in Article 9 of Chapter 130A of the General Statutes."

SECTION 3.33.(m) The Revisor of Statutes shall make any conforming statutory changes necessary to reflect the transfer of rule-making authority under Article 9 of Chapter 130A of the General Statutes from the Commission for Public Health to the Environmental Management Commission.

SECTION 3.33.(n) The Codifier of Rules shall make any conforming rule changes necessary to reflect the transfer of rule-making authority under Article 9 of Chapter 130A of the General Statutes from the Commission for Public Health to the Environmental Management Commission.

TRANSFER DRINKING WATER RULE-MAKING AUTHORITY FROM COMMISSION FOR PUBLIC HEALTH TO ENVIRONMENTAL MANAGEMENT COMMISSION

SECTION 3.34.(a) G.S. 130A-313 is amended by adding a new subdivision to read:

"(2a) "Commission" means the Environmental Management Commission."

SECTION 3.34.(b) G.S. 87-97(i) reads as rewritten:

"**§ 87-97. Permitting, inspection, and testing of private drinking water wells.**

...

(i) ~~Commission for Public Health~~Environmental Management Commission to Adopt Drinking Water Testing Rules. – The ~~Commission for Public Health~~Environmental Management Commission shall adopt rules governing the sampling and testing of well water and the reporting of test results. The rules shall allow local health departments to designate third parties to collect and test samples and report test results. The rules shall also provide for

corrective action and retesting where appropriate. The ~~Commission for Public Health~~Commission may by rule require testing for additional parameters, including volatile organic compounds, if the Commission makes a specific finding that testing for the additional parameters is necessary to protect public health. If the Commission finds that testing for certain volatile organic compounds is necessary to protect public health and initiates rule making to require testing for certain volatile organic compounds, the Commission shall consider all of the following factors in the development of the rule: (i) known current and historic land uses around well sites and associated contaminants; (ii) known contaminated sites within a given radius of a well and any known data regarding dates of contamination, geology, and other relevant factors; (iii) any GIS-based information on known contamination sources from databases available to the Department of Environment and Natural Resources; and (iv) visual on-site inspections of well sites. In addition, the rules shall require local health departments to educate citizens for whom new private drinking water wells are constructed and for citizens who contact local health departments regarding testing an existing well on all of the following:

(1) The scope of the testing required pursuant to this Article.
(2) Optional testing available pursuant to this Article.
(3) The limitations of both the required and optional testing.
(4) Minimum drinking water standards."

SECTION 3.34.(c) The Codifier of Rules shall make any conforming rule changes necessary to reflect the transfer of rule-making authority under Article 10 of Chapter 130A of the General Statutes from the Commission for Public Health to the Environmental Management Commission.

WELL CONTRACTOR LICENSING CHANGES

SECTION 3.35.(a) G.S. 87-43.1 is amended by adding the following new subdivision to read:

"**§ 87-43.1. Exceptions.**

The provisions of this Article shall not apply:

...

(10) To the installation, construction, maintenance, or repair of electrical wiring, devices, appliances, or equipment by a person certified as a well contractor under Article 7A of this Chapter when running electrical wires from the well pump to the pressure switch."

SECTION 3.35.(b) G.S. 87-98.6 reads as rewritten:

"**§ 87-98.6. Well contractor qualifications and examination.**

(a) The Commission, with the advice and assistance of the Secretary, shall establish minimum requirements of education, experience, and knowledge for each type of certification for well contractors and shall establish procedures for receiving applications for certification, conducting examinations, and making investigations of applicants as may be necessary and appropriate so that prompt and fair consideration will be given to each applicant.

(b) The Commission, with the advice and assistance of the Secretary, shall establish minimum requirements of education, experience, and knowledge for each type of certification for well contractors for the installation, construction, maintenance, and repair of electrical wiring devices, appliances, and equipment related to the construction, operation, and repair of wells. Requirements developed pursuant to this subsection shall apply only to the initial certification of an applicant and shall not be required as part of continuing education or as a condition of certification renewal."

SECTION 3.35.(c) This section is effective when it becomes law. The requirements of subsection (b) of G.S. 87-98.6, as enacted by Section 3.35(b) of this section, apply to applicants applying for certification on or after the date this section becomes effective.

STANDARDIZE LOCAL WELL PROGRAMS

SECTION 3.36.(a) G.S. 87-97 reads as rewritten:

"**§ 87-97. Permitting, inspection, and testing of private drinking water wells.**

(a) Mandatory Local Well Programs. – Each county, through the local health department that serves the county, shall implement a private drinking water well permitting, inspection, and testing program. Local health departments shall administer the program and enforce the minimum well construction, permitting, inspection, repair, and testing requirements set out in this Article and rules adopted pursuant to this Article. 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.

(a1) Use of Standard Forms. – Local well programs shall use the standard forms created by the Department for all required submittals and shall not create their own forms unless the local program submits a petition for rule making to the Environmental Management Commission, and the Commission by rule finds that conditions or circumstances unique to the area served by the local well program constitute a threat to public health that will be mitigated by use of a local form different from the form used by the Department.

...

(k) Registry of Permits and Test Results. – Each local health department shall maintain a registry of all private drinking water wells for which a construction permit or repair permit is ~~issued.~~issued that is searchable by address or addresses served by the well. The registry shall specify the physical location of each private drinking water well and shall include the results of all tests of water from each well. The local health department shall retain a record of the results of all tests of water from a private drinking water well until the well is properly closed in accordance with the requirements of this Article and rules adopted pursuant to this Article.

...."

SECTION 3.36.(b) Notwithstanding 15A NCAC 02C .0107(j)(2), neither the Department of Environment and Natural Resources nor any local well program shall require that well contractor identification plates include the well construction permit numbers. Local well programs may install a plate with the well construction permit number or any other information deemed relevant on a well at the expense of the local program.

SECTION 3.36.(c) The Environmental Management Commission shall adopt a rule to amend 15A NCAC 02C .0107(j)(2) consistent with Section 3.36(b) of this section.

SECTION 3.36.(d) Section 3.36(b) of this section expires on the date that the rule adopted pursuant to Section 3.36(c) of this section becomes effective.

SECTION 3.36.(e) If the well location marked on the map submitted with an application to a local well program is also marked with a stake or similar marker on the property, then the local well program may not require the contractor to be onsite during the on-site predrill inspection, as long as the contractor is available by telephone to answer questions.

PART IV. STUDIES

HONEYBEE WORKING GROUP

SECTION 4.1.(a) The General Assembly recognizes the importance of the State's agriculture sector and heritage and the importance of honeybee pollination to this sector. In an effort to proactively address the issue of Colony Collapse Disorder and its damaging effects on honeybee populations, the Department of Agriculture and Consumer Services shall create the Honeybee Improvement for Vital Ecology (HIVE) working group. The group shall consist of nine members appointed as follows:

(1) The Commissioner of Agriculture, or the Commissioner's designee, serving ex officio.

(2) A representative from the Plant Protection Section of the Department of Agriculture and Consumer Services.
(3) A representative from the Department of Transportation.
(4) A representative from the Utilities Commission Public Staff.
(5) Two representatives from publicly owned utilities that operate within the State.
(6) Two representatives from the biotechnology sector whose company is actively involved in honeybee research.
(7) One researcher from North Carolina State University, who shall be an entomologist or apiculturist.

Vacancies in the HIVE group shall be filled by the Department of Agriculture and Consumer Services. A quorum of the group shall consist of five members.

The HIVE group may contract for professional, clerical, or consultant services.

SECTION 4.1.(b) Purpose. – The HIVE group shall create and issue a report containing the following:

(1) A list of bee-friendly vegetation and planting requirements for such vegetation. The list shall include a recommendation as to the appropriateness of locating each bee-friendly plant with respect to:
a. Department of Transportation public road rights-of-way,
b. Rights-of-way held by publicly owned utilities.
(2) Whether planting requirements for bee-friendly vegetation within rights-of-way for public utilities should be voluntary or required.
(3) A recommendation from the Department of Transportation as to whether priority should be given to bee-friendly vegetation for landscaping projects within Department-owned rights-of-way and rest areas. Any recommendation of priority shall also include a percentage breakdown of urban and rural areas to be targeted.
(4) A recommendation from the Utilities Commission Public Staff, publicly owned utilities, or both as to dedications of rural easements for bee-friendly vegetation, including a percentage breakdown of urban and rural areas to be targeted.
(5) A recommendation from the Department of Agriculture and Consumer Services as to whether a statewide bee-friendly vegetation planting program would be beneficial to the State's agriculture industry, including any estimated benefit. In doing so, the Department of Agriculture and Consumer Services shall address the following:
a. The willingness of farms to plant bee-friendly vegetation in rural areas;
b. The ability of the Department of Agriculture and Consumer Services to provide support for a farm planting program from existing funds; and
c. The ability of research stations or other properties to plant bee-friendly vegetation.

SECTION 4.1.(c) Staff. – The Department of Agriculture and Consumer Services shall assign professional and clerical staff to assist in the work of the HIVE group.

SECTION 4.1.(d) Report. – The HIVE group shall submit a final report to the Environmental Review Commission by November 30, 2014. The report shall contain the information required in this section and any findings, legislative proposals, cost/benefit analyses, or additional recommendations for legislative action to proactively address Colony Collapse Disorder or other honeybee-related issues that may threaten the economy, ecology, and agricultural heritage of the State.

SENATOR JEAN PRESTON MARINE SHELLFISH SANCTUARY

SECTION 4.2.(a) It is the intent of the General Assembly to establish a marine shellfish sanctuary in the Pamlico Sound to be named in honor of former Senator Jean Preston, to be called the "Senator Jean Preston Marine Shellfish Sanctuary."

SECTION 4.2.(b) The Division of Marine Fisheries of the Department of Environment and Natural Resources shall designate a contiguous area of approximately 10,000 acres within the Pamlico Sound as a recommendation to the Environmental Review Commission for establishment of the "Senator Jean Preston Marine Shellfish Sanctuary" and create a plan for managing the sanctuary that includes the following components:

(1) Location and delineation of the sanctuary. – The plan should include a location for the sanctuary that minimizes the impact on commercial trawling. In addition, the sanctuary should be gridded into areas leased to private parties for restoration and harvest and areas operated and maintained by the State for restoration that are not open for harvest. The leased and unleased areas should be arranged in a pattern where leased squares are surrounded on four sides by unleased squares.

(2) Administration. – The plan should include the prices to be charged for the leased portions of the sanctuary, including an administration fee to be retained by the Division to support the leasing and monitoring program. The plan shall also provide that the balance of lease payments collected by the Division be transferred to the General Fund with a recommendation that some or all of the proceeds be used for the support of the State's special education programs in memory of Senator Jean Preston.

(3) Funding. – The plan should include a request for appropriations sufficient to provide funds for the construction of appropriate bottom habitat and shellfish seeding and for Division staff necessary to conduct oyster restoration and monitoring activities. The plan should provide that, whenever possible, construction and shellfish seeding be carried out by contract with private entities.

(4) Commercial fisherman relief. – To promote the diversification of commercial fishing opportunities, the plan should include a program to award free or discounted leases under this section to commercial fishermen who (i) have held one or more commercial fishing licenses continually for a period of 10 or more years and (ii) receive at least fifty (50%) of their income from commercial fishing with those licenses.

(5) Recommendations. – The plan should include recommendations for statutory or regulatory changes needed to expedite the expansion of shellfish restoration and harvesting in order to improve water quality, restore ecological habitats, and expand the coastal economy.

SECTION 4.2.(c) No later than October 1, 2014, and quarterly thereafter until submission of a final plan to the Environmental Review Commission, the Department of Environment and Natural Resources shall report to the Environmental Review Commission regarding its implementation of this section and its recommended plan.

DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES TO STUDY INTERBASIN TRANSFERS

SECTION 4.3.(a) The Department of Environment and Natural Resources shall study the statutes and rules governing interbasin transfers and make recommendations as to whether the statutes and rules should be amended. The study shall specifically examine all of the following:

(1) Whether and to what extent temporary and emergency interbasin transfers, including interbasin transfers to provide drought relief, should be subject to different regulatory requirements than long-term interbasin transfers.

(2) Whether and to what extent interbasin transfers between river sub-basins should be subject to different regulatory requirements than interbasin transfers between major river basins.

(3) Whether there are types of interbasin transfers that should be exempted from the interbasin certification or other regulatory requirements.

SECTION 4.3.(b) No later than October 1, 2014, the Department of Environment and Natural Resources shall report its findings and recommendations to the Environmental Review Commission.

PROGRAM EVALUATION DIVISION TO STUDY WATER AND SEWER SYSTEMS

SECTION 4.4.(a) The Joint Legislative Program Evaluation Oversight Committee shall include in the 2014-2015 Work Plan for the Program Evaluation Division of the General Assembly a study of the benefits that may result from the merger of public water systems and wastewater collection and treatment works. The Program Evaluation Division shall specifically include the following in the study:

(1) Consideration of whether the benefits that have resulted from the merger of certain public water systems and certain wastewater collection and treatment works can be replicated for other systems. In considering this issue, the Program Evaluation Division shall investigate the performance of the Charlotte-Mecklenburg Utility Department, the Cape Fear Public Utility Authority, and Two Rivers Utilities.

(2) Whether the State can incentivize public water systems and wastewater collection and treatment works that provide service that is affordable, reliable, and in compliance with all applicable laws to purchase, to interconnect with, or enter into joint management agreements with public water systems and wastewater collection and treatment works that do not provide service that is affordable, reliable, and in compliance with all applicable laws.

(3) Whether the State can allow public water systems and wastewater collection and treatment works that provide service that is affordable, reliable, and in compliance with all applicable laws to apply for grant funding or other assistance on the behalf of public water systems and wastewater collection and treatment works that do not provide service that is affordable, reliable, and in compliance with all applicable laws if the award of such funding is contingent on purchase, interconnection, or a joint management agreement between the systems.

SECTION 4.4.(b) The Program Evaluation Division shall submit its findings and recommendations to the Joint Legislative Program Evaluation Oversight Committee and the Environmental Review Commission at a date to be determined by the Joint Legislative Program Evaluation Oversight Committee.

PART V. SEVERABILITY CLAUSE AND EFFECTIVE DATE

SECTION 5.1. If any section or provision of this act is declared unconstitutional or invalid by the courts, it does not affect the validity of this act as a whole or any part other than the part declared to be unconstitutional or invalid.

SECTION 5.2. Except as otherwise provided, this act is effective when it becomes law.

SENATE BILL 734:
Regulatory Reform Act of 2014

2013-2014 General Assembly

Committee:	Senate Ref to Agriculture/Environment/Natural Resources. If fav, re-ref to State and Local Government	**Date:**	May 20, 2014
Introduced by:	Sens. Wade, B. Jackson, Brock	**Prepared by:**	Karen Cochrane-Brown, Heather Fennell, Jeff Hudson, Peter Ledford, Mariah Matheson, Jennifer McGinnis, Jennifer Mundt, Chris Saunders Committee Staff
Analysis of:	PCS to First Edition S734-PCS35528-TAxf-35		

SUMMARY: ***The Proposed Committee Substitute (PCS) for Senate Bill 734 would make various changes to administrative, environmental, and other State laws.***

BILL ANALYSIS:

PART I. ADMINISTRATIVE REFORMS

HARDISON AMENDMENT CLARIFICATION

SECTION 1.1.(a) of the PCS would delay the effective date of rules adopted by certain agencies which impose standards for the protection of the environment or natural resources that are more restrictive than standards imposed by federal law or rule until the next legislative session. Under current law, these agencies are prohibited from adopting rules that are more stringent than applicable federal law or rules, ***unless*** the rule is required by one of the following exceptions:

- A serious and unforeseen threat to the public health safety, or welfare.
- An act of the General Assembly or United States Congress that expressly requires the agency to adopt the rules.
- A change in federal or State budgetary policy.
- A federal regulation required by an act of the United States Congress to be adopted or administered by the State.
- A court order.

This provision would delay the effective date of rules required by one of these exceptions until the next legislative session at which time a legislator could introduce a bill to disapprove the rule. This section would become effective July 1, 2014, and apply to rules adopted or readopted on or after that date.

SECTION 1.1.(b) of the PCS would amend the process for the periodic review of existing rules that was enacted in the Regulatory Reform Act of 2013. This provision would amend the

definition of "necessary with substantive public interest," thereby requiring that agencies readopt all existing rules that impose a more restrictive standard than is imposed by federal law or rule. This provision is made retroactive to the effective date of last year's law (August 13, 2013), so all agencies that have already completed the review would have to redo the process using the new definition.

SCOPE OF LOCAL AUTHORITY FOR ORDINANCES

SECTION 1.2.(a) of the PCS would repeal a temporary limitation on enactment of environmental ordinances by cities and counties and direct the Environmental Review Commission (ERC) to study the circumstances under which cities and counties should be authorized to enact such ordinances and report its findings and recommendations to the 2014 Regular Session of the 2013 General Assembly.

SECTIONS 1.2.(b) and (c) of the PCS would require the Department of Agriculture and Consumer Services (DACS) and the Department of Environment and Natural Resources (DENR) to report to the ERC on any local government ordinances that impinge on or interfere with any area subject to regulation by the agencies no later than November 1, 2014, and November 1, 2015.

SECTION 1.2.(d) of the PCS would prohibit cities and counties from regulating the use, sale, distribution, storage, transportation, disposal, formulation, labeling, registration, manufacture, or application of fertilizer. This section would not limit the authority of DENR to enforce water quality standards.

LOTTERY OVERSIGHT COMMITTEE ELIMINATED

SECTION 1.4.(a) of the PCS would repeal the Lottery Oversight Commission.

SECTION 1.4(b) of the PCS is a conforming change.

REPRESENTATION OF SMALL BUSINESS ENTITIES IN ADMINISTRATIVE APPEALS

SECTION 1.5.(a) of the PCS would amend the Administrative Procedure Act to allow a small business to be represented by one or more of its owners in a contested case and prohibits the Office of Administrative Hearings from requiring that the business be represented by an attorney. The provision defines a small business entity as a limited liability company or a corporation that is owned directly or indirectly by no more than two individuals.

SECTION 1.5.(b) of the PCS would amend the Tax Law to allow a small business to be represented by one or more of its owners in an appeal before the Property Tax Commission and prohibits the Commission from requiring that the business be represented by an attorney. The provision defines a small business entity as a limited liability company or a corporation that is owned directly or indirectly by no more than two individuals.

EXEMPT SMALL BUSINESS ENTITIES BUYING OR SELLING ENTITY-OWNED PROPERTY

SECTION 1.6.(a) of the PCS would amend the Real Estate License Law to exempt the owners, officers, managers, and employees of a closely held business entity from the requirement of obtaining a license in order to act as a real estate broker in connection with property owned or leased by the business. A closely held business is defined in the provision as a limited liability company or a corporation with no more than two legal owners.

REDUCE STATE AGENCY MOBILE DEVICE REPORTING FREQUENCY

SECTION 1.7. of the PCS would reduce the reporting requirement for State agencies with regard to the number, type and use of mobile devices issued by the agency. Since 2011, agencies have

been required to report to the Legislature and the Office of State Budget and Management on a quarterly basis. This provision would reduce the reporting requirement to annually.

ELIMINATE, AS OBSOLETE, THE SMALL BUSINESS CONTRACTOR AUTHORITY, THE COMMITTEE ON DROPOUT PREVENTION, THE STATE EDUCATION COMMITTEE, THE STATE EDUCATION COMMISSION, THE NATIONAL HERITAGE AREA DESIGNATION COMMISSION, THE GOVERNOR'S MANAGEMENT COUNCIL, THE BOARD OF DIRECTORS OF THE NORTH CAROLINA CENTER FOR NURSING, THE BOARD OF CORRECTIONS; AND ENCOURAGE THE CHIEF JUSTICE TO ABOLISH THE ACTUAL INNOCENCE COMMISSION

SECTION 1.8.(a) of the PCS would repeal the **Small Business Contractor Act**, which authorized the creation of the Small Business Contractor Authority to assist small businesses. The Authority is not currently funded.

SECTION 1.8.(b) of the PCS would terminate, effective July 1, 2014, the **Committee on Dropout Prevention** of the Department of Public Instruction, overseeing dropout prevention grants. The Committee is not currently funded.

SECTION 1.8.(c) and (d) of the PCS would repeal the **State Education Commission** (created by G.S. 116C-2 in 1993), and make a conforming change. This Commission consists of the Board of Governors of The University of North Carolina, the State Community College Board, and the State Board of Education. It is a "forum for airing proposals and engaging in dialogue about issues the Education Cabinet is addressing." Section 1.5(a) is a conforming change.

SECTION 1.8.(e) of the PCS would repeal the statutes (Article 26 of Chapter 143 of the General Statutes) that created an earlier **State Education Commission** in 1947. This Commission was established to study the State's educational problems, and report to the Governor and the General Assembly in 1949. This Commission has not been active in recent years.

SECTION 1.8.(f) of the PCS would, effective July 1, 2014, terminate the **National Heritage Area Designation Commission**. This Commission was created in the 2001 Studies Act to seek from Congress the designation of the North Carolina Appalachian Heritage Area as a National Heritage Area. The Commission is no longer functioning.

SECTION 1.8.(g) of the PCS would repeal the **Governor's Management Council,** created in 1983 to assist the Governor with management and productivity issues. The Council has not been active in recent years.

SECTION 1.8.(h) of the PCS would repeal the **North Carolina Center for Nursing Board of Directors**, created in 1991 to address issues of supply and demand for nursing. The Center and the Board have not been funded for several years.

SECTION 1.8.(i) and (j) of the PCS would repeal the **Board of Correction**, an advisory board to the Secretary of Public Safety, and make a conforming change to the statutes. The Board has not met in over a decade.

SECTION 1.8.(k) of the PCS would encourage the Chief Justice of the North Carolina Supreme Court to take appropriate action to formally abolish the **Actual Innocence Commission.** The Actual Innocence Commission was established by the Chief Justice to make recommendations which would reduce or eliminate the possibility of the wrongful conviction of an innocent person. In 2006, the General Assembly established the Innocence Inquiry Commission, as recommended by the Actual Innocence Commission.

CLARIFY PROCESS FOR READOPTION OF EXISTING RULES

SECTION 1.9. of the PCS would clarify the process for readoption of existing rules in accordance with the periodic review and expiration of existing rules provision of the Administrative

Procedure Act (APA). The Rules Review Commission (RRC) established the schedule for agencies to review their existing rules as directed by the Regulatory Reform Act of 2013, and the process has proceeded accordingly. The original statute did not set the process for agencies to readopt rules once the review process was complete. This provision would direct the RRC to set the date by which each agency must readopt its rules, after consulting with the agency. The agency may amend rules as part of the readoption process, but if the rule is readopted without change, the agency is not required to prepare a fiscal note.

AUTHORIZE LICENSING BOARDS TO ADOPT RULES FOR PROFESSIONAL CORPORATIONS

SECTION 1.10. of the PCS would authorize licensing boards subject to the Professional Corporations Act to adopt rules to implement the provisions of the Act. Professional corporations are corporations that provide professional services that require the obtaining of a license from a State licensing board, such as architects, doctors, or engineers. The Act sets the requirements for creating a professional corporation, including the requirement that the corporation be registered with the appropriate licensing board. Licensing boards are authorized by the Act to charge a fee for registration, not to exceed $50 and a fee for renewal not to exceed $25; however, there is no statute which specifically authorizes each licensing board to adopt rules to set the specific amount of the fee. This provision would grant the needed rulemaking authority.

OCCUPATIONAL LICENSING BOARD REPORTING AMENDMENTS

SECTION 1.11. of the PCS would amend the reporting requirements for occupational licensing boards to include the total number of licensees supervised by the board and the number of applicants who fail the examination each year. The provision would also require the Joint Legislative Administrative Procedure Oversight Committee to notify any board that fails to file the reports as required. It also adds a requirement that the reports be submitted electronically and corrects the name of the legislative oversight committee.

OAH ELECTRONIC FILING

SECTION 1.12. of the PCS would authorize the Office of Administrative Hearings to allow documents in a contested case to be filed and served electronically.

STATE BOARD OF EDUCATION RULEMAKING CLARIFICATION

SECTION 1.13. of the PCS would clarify that the State Board of Education (SBOE) is subject to rulemaking under the APA and provides a remedy when an agency fails to act as directed by statute. The provision would add language similar to that found in G.S. 150B-18 to the Education law to clarify that the SBOE is subject to the Administrative Procedure Act (APA) and that policies not adopted in accordance with the APA are unenforceable. It would also amend the APA to clarify that a person who is aggrieved by an agency's failure to act may commence a contested case and if the administrative law judge (ALJ) finds that the agency has failed to act as required by law, the ALJ may order the agency to act within a specified time. Finally, the provision would clarify that the right to judicial intervention applies when a final decision has been unreasonably delayed.

STREAMLINE RULEMAKING PROCESS

SECTION 1.14. of the PCS would streamline the rulemaking process by eliminating the requirement that an agency obtain a certification of adherence to rulemaking principles prior to submitting the proposed text of a rule for publication. The provision also amends the fiscal note section

of the APA to provide that the agency must obtain certification from OSBM that the agency has adhered to certain principles in preparing a substantial economic impact fiscal note.

BURDEN OF PROOF IN CERTAIN CONTESTED CASES

SECTION 1.15. of the PCS would clarify that the petitioner has the burden of proof in most contested cases and establishes that the State agency has the burden of proof in certain contested cases; including cases involving the imposition of civil fines or penalties and cases involving the demotion, suspension or discharge of a career State employee. The Joint Legislative Administrative Procedure Oversight Committee is directed to study whether there are other categories of cases in which the burden should be placed with the agency.

This section would become effective when it becomes law and would apply to contested cases commenced on or after that date.

LEGISLATIVE APPOINTMENTS

SECTION 1.16.(a) of the PCS would amend the law governing legislative appointments to boards and commissions to provide that in cases where the Speaker and the President Pro Tempore are directed by law to make a recommendation for an appointment by the General Assembly and the recommendation must be made in consultation with a third party, (1) the consultation is not binding on the legislator, (2) the third party must submit the recommendation at least 60 days before expiration of the term or within 10 days of a vacancy, and (3) failure to submit the recommendation within the time period is deemed a waiver of the opportunity. The provision also sets the same time limits and consequence for failure to meet the time limits in cases where the Speaker and President Pro Tempore are directed to make recommendations from nominees provided by a third party.

SECTION 1.16.(b) of the PCS would add a new section to the law governing legislative appointments to boards and commissions. In cases where a legislator is authorized to make an appointment upon the recommendation or consultation with a third party, the party must submit the recommendation at least 60 days before expiration of the term or within 10 days of a vacancy. In cases where a legislator is authorized to appoint a member of a board or commission from nominees provided by a third party, the party must meet the same time limits. Failure to submit recommendations or nominees within the time limits is deemed a waiver of the opportunity.

SECTION 1.16.(d) These sections would become effective when they become law and apply to recommendations, consultations, and nominations made on or after that date.

PART II. PERMITTING REFORMS

CAPSTONE PERMITTING

SECTION 2.1. of the PCS would amend the Administrative Procedure Act to create a new process for contested cases in which multiple licenses are required from an agency for a single activity. The Secretary or chief administrative officer of the agency is authorized to issue a written determination that the agency decision is only reviewable on the date the last license for the activity is issued, denied, or otherwise disposed of. The written determination is not subject to a contested case.

CONTESTED CASES FOR AIR QUALITY PERMITS

SECTION 2.2. of the PCS would amend the process for filing a contested case regarding an air quality permit decision of the Environmental Management Commission (EMC) by:

- Providing that the filing for a contested case by a permit applicant or permittee would stay the EMC's decision while the filing for a contested case by a person who is not the permit applicant or permittee would not automatically stay the EMC's decision.
- Limiting the ability of a person who is not the permit applicant or permittee to file a contested case to circumstances where the EMC's decision would result in an exceedance of a national air quality standard.
- Limiting these contested case provisions to permit application decisions rather than other types of permit decisions, such as permit modification, suspension, or revocation.

CLOSURE OF CERTAIN ANIMAL WASTE CONTAINMENT BASINS

SECTION 2.3. of the PCS would direct the Department of Environment and Natural Resources (DENR) to treat a waste containment basin as closed and no longer part of an animal waste management system if the owner of the basin demonstrates to the satisfaction of DENR that the basin has been used only for dairy cattle waste; it was constructed prior to 1967; it has not been used to contain dairy cattle waste since September 1, 2006; the only liquid currently in the basin is from rainwater or rainwater runoff; and the nitrogen levels in the basin do not exceed 40 parts per million.

CONTESTED CASES FOR CAMA PERMITS

SECTION 2.4. of the PCS would amend the process for filing a contested case regarding a Coastal Area Management Act (CAMA) development permit decision by the Coastal Resources Commission (CRC) by providing that the filing for a contested case by a permit applicant would suspend the permit and prevent any action that would be unlawful in the absence of a permit while the filing for a contested case by a person who is not the permit applicant would not automatically suspend the permit.

GUBERNATORIAL ENVIRONMENTAL PERMIT WAIVER AUTHORITY

SECTION 2.5. of the PCS would authorize the Governor, during a state of emergency, to issue an executive order to waive the requirements for an environmental document or permit issued under Article 1 (Environmental Policy Act), Article 4 (Sedimentation Pollution Control Act), or Article 7 (Coastal Area Management Act) of Chapter 113A of the General Statutes for the repair, protection, safety enhancement, or replacement of a component of the State highway system that provides the sole road access to an incorporated municipality or an unincorporated inhabited area bordering the Atlantic Ocean or any coastal sound where bridge or road conditions as a result of the events leading to the declaration of the state of emergency pose a substantial risk to public health, safety, or welfare. The executive order must include the duration of the waiver and the activities to which the waiver applies.

FEE ROLLBACK FOR OYSTER PERMITS UNDER PRIVATE DOCKS

SECTION 2.6. of the PCS would repeal the fee for an Under Dock Oyster Culture Permit. An Under Dock Oyster Culture Permit authorizes the holder of the permit to attach up to 90 square feet of oyster cultivation containers to a dock or pier owned by the permit holder. Under current law, the annual fee for an Under Dock Oyster Culture Permit is $100.

LOCAL GOVERNMENT LEASES FOR RENEWABLE ENERGY FACILITIES

SECTION 2.7. Under current law, cities are authorized by G.S. 160A-272 to lease property owned by the city for up to 10 years. Certain cities are authorized by G.S. 160A-272(c) to lease property owned by the city for the siting and operation of a renewable energy facility for up to 20 years. This

section of the PCS would amend the statute to allow a lease term of up to 25 years and remove the language that restricts the provision to certain cities.

CLOSING-OUT SALES

SECTION 2.8. Article 17 of Chapter 66 of the General Statutes, Closing-Out Sales, regulates the sales that occur when a business liquidates inventory during a going out of business sale. Under current law, the business must obtain a license from the clerk of the city or, if the business is in an unincorporated area, from an officer designated by the Board of County Commissioners. This section of the PCS would amend G.S. 66-77 so that the license would be obtained from an officer designated by the governing board of the city.

PART III. REGULATORY AND STATUTORY MODIFICATIONS

REGULATION OF IMPACT TO ISOLATED WETLANDS

SECTION 3.1. of the PCS would make the following changes to the regulation of activities that impact isolated wetlands:

- Increase the amount of isolated wetlands that could be impacted without requiring a permit from 1/3 of an acre to 1 acre east of Interstate 95 and from 0.1 acre to 1/3 of an acre west of Interstate 95.
- Decrease the amount of mitigation that would be required for impacts to isolated wetlands.
- Direct the Department of Environment and Natural Resources (DENR) to study regulatory thresholds for mountain bog isolated wetlands and to report its findings and recommendations to the Environmental Review Commission (ERC) on or before November 1, 2014.

COMMUNITY COLLEGE BREWING COURSE WAIVER

SECTION 3.2. of the PCS would authorize the Alcoholic Beverage Control Commission to grant a brewing, distillation, and fermenting course authorization to a college or community college that offers the program as part of its curriculum offerings. This authorization provides that the college or community college may possess and sell malt beverages manufactured and produced during the course to wholesalers or retailers upon obtaining appropriate permits. The sale of products raised or produced incident to the operation of a community college or college brewing, distillation, or fermentation program would be exempt from the Umstead Act, a law that generally prohibits the sale of merchandise or services by governmental units in competition with citizens of the State.

CARBON MONOXIDE ALARMS

SECTION 3.3. of the PCS would amend the requirements for carbon monoxide alarms that apply to lodging establishments, including hotels and motels. The provision includes technical revisions to comply with industry terminology and also directs the Building Code Council to amend the building code to require carbon monoxide alarms in both new and existing lodging establishments. The amendments require that for all violations that pose an imminent hazard discovered during a fire inspection the inspector immediately notify the local health director who must investigate and take appropriate action regarding the permit for the lodging establishment. The amendments would further require that for all violations that do not pose an imminent hazard, the owner of the lodging establishment has three working days to correct the violation, after which the inspector may re-inspect the lodging establishment and, if the violation has not been corrected, submit the violation to the local

health director who must investigate and may take appropriate action regarding the permit for the lodging establishment.

WATER SUPPLY WATERSHED CLASSIFICATIONS

SECTION 3.4. of the PCS would provide that if the Environmental Management Commission (EMC) receives a rule-making petition from a unit of local government with jurisdiction over an area to be served by a proposed water intake that is impacted by a reclassification made by the EMC after January 1, 2012, and the unit of local government requests the repeal of the reclassification, the EMC must grant the rule-making petition. The reclassification and any related local ordinance changes will be stayed until the EMC has promulgated rules that are retroactively effective to the date of the original reclassification. The unit of local government that filed the petition for rule-making must repeal local ordinance changes required to implement the reclassification upon filing the petition.

This section is effective when it becomes law and applies to petitions for rule-making received by the EMC on or after January 1, 2012, and before the effective date of this section. This section will expire when the EMC issues rules in response to the petition for rule-making.

ADA REQUIREMENTS FOR PRIVATE POOLS

SECTION 3.5. Section 1109.14 of the NC State Building Code (Building Code) requires all recreational and sports facilities, including swimming pools, be provided with handicap accessible features. This section of the PCS would require the Building Code Council to amend the building code such that swimming pools are required to be accessible only to the extent required by the Americans with Disabilities Act.

ENVIRONMENTAL SELF AUDIT PRIVILEGE AND LIMITED IMMUNITY

SECTION 3.6. of the PCS would establish a disclosure privilege for environmental audit reports that would generally prevent the use of the reports as evidence in civil or administrative proceedings. The provision would also prohibit persons who conducted or participated in an audit or who significantly reviewed an audit report from being compelled to testify regarding the audit report or a privileged part of the audit, except in certain circumstances. In addition, the provision would generally establish immunity for owners and operators of facilities from imposition of civil and administrative penalties and fines by enforcement agencies for a violation of environmental laws discovered through the conduct of an environmental audit and voluntarily disclosed to an enforcement agency in conformance with requirements established by the provision. The provision specifically provides, however, that waiver of penalties and fines shall not be granted until the applicable enforcement agency has certified that the violation was corrected within a reasonable period of time (i.e., the enforcement agency retains discretion to assess penalties and fines for the violation until it is corrected).

CLARIFY DEFINITION OF "CHILD CARE"

SECTION 3.7. of the PCS would exempt a child care program operated by a nonpublic school before or after normal school hours from licensure and regulation by the Child Care Commission.

AMBIENT AIR MONITORING

SECTION 3.9. of the PCS would direct the Department of Environment and Natural Resources (DENR) to review its ambient air monitoring network and request from the United States Environmental Protection Agency (EPA) the authority to remove any monitor not required by federal law. This section would also direct DENR, no later than September 1, 2014, to discontinue all ambient air monitors not required by federal law and for which EPA approval for discontinuance is not required. This section would not preclude DENR from installing temporary ambient air monitors as part of an

investigation of a suspected air quality violation or in response to an emergency causing an imminent danger to human health and safety.

GOOD SAMARITAN LAW

SECTION 3.10. of the PCS would clarify that a person who provides emergency services voluntarily, not expecting at that time to be paid for those services, is protected from liability under the Good Samaritan Law.

OPEN BURNING

SECTION 3.11. of the PCS would amend rules in the North Carolina Administrative Code (NCAC) that pertain to open burning without an air quality permit to provide that, in addition to the open burning of leaves, tree branches, and yard trimmings, a permit is not required for the burning of logs and stumps when certain conditions are met. This section would also amend the statutes to prohibit local air pollution control program authorities, the Department of Environment and Natural Resources and the Environmental Management Commission from regulating combustion heaters, appliances, or fireplaces in private dwellings, except as authorized by federal law.

INLET HAZARD AREAS

SECTION 3.12. of the PCS would direct the Coastal Resources Commission (Commission) to adopt rules disallowing the establishment of any inlet hazard area in any location where (i) the location formerly contained an inlet, but the inlet has been closed for at least 15 years, (ii) the location no longer contains the inlet due to shoreline migration, or (iii) the location includes an inlet providing access to a State Port via a channel maintained by the U.S. Army Corps of Engineers. An inlet hazard area is an area vulnerable to erosion and flooding due to its proximity to ocean inlets. This section would not prevent the Commission from studying current or potential inlet hazard areas, or designating new inlet hazard areas.

HUNTING TRIALS

SECTION 3.13. of the PCS would authorize the Wildlife Resources Commission to issue a Field Trial Dog Handler or Judge Permit, which would allow a person to participate as a dog handler or judge in a field trial without possessing a hunting license. The person could not participate in hunting activities with the dog. Field trials using exclusively domestically-raised waterfowl and game birds or legally taken dead game are not considered "hunting activities."

This section would become effective July 1, 2014.

ADJUST UTILITY REGULATORY FEE

SECTION 3.15. All public utilities operating in the State pay a regulatory fee set by the General Assembly that is a percentage of their jurisdictional revenues. The regulatory fee is used to pay the expenses incurred by the Utilities Commission and the Public Staff in regulating public utilities. Reforms enacted by the General Assembly in 2009 and 2011 allow a local exchange company (telecommunications company) whose territory is open to competition from other local providers to elect to participate in alternative forms of regulation which require less oversight from the Utilities Commission.

This section of the PCS would lower the regulatory fee beginning July 1, 2015, for those companies electing to participate in alternative forms of regulation, and lower the fee further beginning July 1, 2016. This section also directs that the regulatory fee for all other public utilities be adjusted to compensate for the overall decrease in revenues such that the total regulatory fee collected for each fiscal year is sufficient to cover the operations of the Utilities Commission and the Public Staff.

AMEND JORDAN LAKE RULE FOR EXISTING RIPARIAN BUFFERS

SECTION 3.16. of the PCS would amend a 2013 legislative change to 15A NCAC 02B .0267 (Jordan Water Supply Nutrient Strategy: Protection of Existing Riparian Buffers), by providing that the piping of a stream allowed under a permit issued by the United States Army Corps of Engineers would be an exempt use rather than an allowable use. Under the Jordan Water Supply Nutrient Strategy: Protection of Existing Riparian Buffers Rule, an exempt use does not require local government authorization while an allowable use does.

ELIMINATE OUTDATED AIR QUALITY REPORTING REQUIREMENTS

SECTION 3.17.(a) of the PCS would delete the requirement for the Department of Environment and Natural Resources (DENR) to annually report to the Environmental Review Commission (ERC) and the Fiscal Research Division on the cost of the Title V Program. The federal Clean Air Act requires the Title V program to be funded entirely by fees collected from permitted facilities. The annual report discusses the costs and other aspects of North Carolina's Title V permit program. The U.S. Environmental Protection Agency (EPA) provides oversight of this federally mandated permitting program.

SECTION 3.17.(b) of the PCS would repeal:

- The requirement that the State use resources, means, negotiation, participation in interstate compacts, petitions, and litigation to induce other states and entities, including the Tennessee Valley Authority, to achieve reductions in emissions of oxides of nitrogen (NOx) and sulfur dioxide (SO_2) comparable to those required by the Clean Smokestacks Act.
- The requirement for the Environmental Management Commission (EMC) to report on the desirability of requiring and the feasibility of obtaining reductions in NOx and SO_2 beyond those required by the Clean Smokestacks Act to the ERC and the General Assembly. The reporting requirement was amended from annual to biennial in 2011.
- The requirement for the Division of Air Quality (DAQ) of DENR to annually report its interim findings and recommendations on issues related to monitoring emissions of mercury from coal-fired generating units to the EMC and the ERC.
- The requirement that the DAQ study issues related to the development and implementation of standards and plans to control emissions of carbon dioxide (CO2) from coal-fired generating units and other stationary sources of air pollution, evaluate control technologies, estimate the cost and benefits of alternative strategies to reduce emissions of CO2 and report its findings and recommendations to the EMC and ERC.

SECTION 3.17.(c) of the PCS would repeal the requirement for air pollution permit holders to submit to DENR a written description of their current and projected plans to reduce the emission of air contaminants under such permits by source reduction or recycling. The written description is required to accompany the payment of the annual permit fee, any application for a new permit, or for modification of an existing permit. The written description is not considered part of a permit application and does not serve as the basis for the denial of a permit or permit modification.

CLARIFYING CHANGES TO STATUTES PERTAINING TO THE MANAGEMENT OF VENOMOUS SNAKES AND OTHER REPTILES

SECTION 3.18. of the PCS would clarify that when a venomous reptile is seized, and antivenin approved by the U.S. Food and Drug Administration for that reptile is not readily available,

the North Carolina Museum of Natural Sciences or the North Carolina Zoological Park or their designated representative must euthanize the reptile unless the species is protected under the federal Endangered Species Act of 1973.

TRANSFER RULEMAKING AUTHORITY FOR WASTEWATER SYSTEMS FROM COMMISSION FOR PUBLIC HEALTH TO ENVIRONMENTAL MANAGEMENT COMMISSION AND MAKE OTHER CHANGES TO ACHIEVE ONSITE WASTEWATER REGULATORY REFORM

SECTION 3.19. of the PCS would:

- Transfer the rulemaking responsibility for onsite wastewater management systems from the Commission for Public Health to the Environmental Management Commission.
- Define "ground absorption system" (a system of tanks, treatment units, nitrification fields, and appurtenances for wastewater collection, treatment, and subsurface disposal) as a wastewater system and provide that systems located on multiple adjoining lots or tracts under common ownership or control must be considered a single system for permitting purposes.
- Remove the five-year limit on improvement permits.

REPEAL WASTE MANAGEMENT BOARD RULES

SECTION 3.20. of the PCS would provide that the General Assembly finds that the Governor's Waste Board (Board) was repealed in 1993 and that the Board's rules are no longer enforceable or necessary. This section would also direct the Secretary of Environment and Natural Resouces to repeal the Board's rules on or before December 1, 2014, and prohibit any political subdivision of the State from implementing or enforcing the rules.

The Board was authorized to preempt local ordinances that would have the effect of prohibiting the siting or operation of a low-level radioactive waste facility. The 1993 legislation that repealed the Board transferred most of the Board's duties and responsibilities to the Secretary of Environment and Natural Resources.

EXPAND DAILY FLOW DESIGN EXEMPTION FOR LOW-FLOW FIXTURES

SECTION 3.21. of the PCS would amend a provision enacted in 2013 to provide for reduced flow alternatives to the Daily Flow Rate for Design for wastewater systems as required by 15A NCAC 18A .1949 (Sewage Flow Rates for Design Units) such that, in addition to exempting establishments, dwellings would be exempt from the Daily Flow Rate for Design and any design flow standard under certain conditions. This section would also direct the Commission for Public Health and the Department of Health and Human Services to establish flow rate limits by rule based on scientific evidence specific to soil types found in the State.

REPEAL OBSOLETE STATUTES

SECTION 3.22. of the PCS would repeal obsolete provisions in the criminal law related to using profane or indecent language on public highways and refusing to relinquish a party telephone line in an emergency.

INCREASE CERTAIN PENALTIES FOR TAKING OF PROTECTED PLANTS

SECTION 3.23.(a) of the PCS would increase certain penalties for the taking of protected plants. Under current law, any person convicted of pulling or taking protected plants without having a permit is subject to a Class 3 misdemeanor only punished by a fine of not less than $10 and not more than $50 for each offense. The PCS would increase the fine to not less than $75 and no more than $175

for each offense. This fine has not been increased since 1941. The section of the PCS would also require the Clerk of Court for the jurisdiction to report the conviction to the Plant Conservation Board (Board), provided that the plant taken is also listed under the Protected Plants list pursuant to the Plant Protection and Conservation Act (Act).

SECTION 3.23.(b) of the PCS would require the Board to assess a civil penalty of up to $2,000 to any person guilty of violating the Act a second or subsequent time. Current law allows the Board to use discretion when assessing this civil penalty.

INCREASE PENALTIES FOR PARKING IN HANDICAPPED SPACE WITHOUT REQUIRED PLACARD

SECTION 3.24. of the PCS would amend the Motor Vehicle Law to increase the penalty range for violating the handicapped parking privileges provision from a minimum of $100.00 to a maximum of $250.00 under current law, to a minimum of $300.00 and a maximum of $500.00. The provision also removes the requirement that signs designating handicapped parking spaces must state the maximum penalty for parking in violation of the law. The provision prohibits signs displaying incorrect maximum penalties.

This section would become effective December 1, 2014 and would apply to violations committed on or after that date.

REPEAL OUTDATED PUBLIC UTILITIES STATUTES OR REPORTS

SECTION 3.25.(a) through 3.25.(e) of the PCS would repeal redundant and obsolete reports as requested by the North Carolina Utilities Commission.

REPEAL ENERGY AUDIT REQUIREMENTS

SECTION 3.26. of the PCS would repeal the requirement for the State Energy Office to conduct energy audits of each State agency and institution of higher learning as a part of the Department of Administration's Facilities Condition and Assessment Program. This section would also change, from annual to biennial, the required updates to the management plans developed by State agencies and institutions of higher learning to manage energy, water, and utility use.

COASTAL STORMWATER GRANDFATHER

SECTION 3.27. of the PCS would exempt from the requirements of 15A NCAC 02H .1005 (Stormwater Requirements: Coastal Counties) development activity on certain properties that are contiguous to properties already exempt from the requirements of the rule. 15A NCAC 02H .1005 (Stormwater Requirements: Coastal Counties) manages stormwater in the coastal counties by regulating development in those counties, including regulation of the amount of impervious surface allowed for any particular development.

PESTICIDE USE FOR MOLES

SECTION 3.28. of the PCS would authorize the use of any pesticide registered by the Pesticide Board to control any species of mole other than the Star-Nosed mole if Pesticide Board rules are followed and hazards to nontarget species are minimized.

CLARIFY PERIODIC INSPECTIONS AUTHORITY OF HOUSING FINANCE AGENCY

SECTION 3.29. of the PCS would exempt any residential building subject to periodic inspections by the North Carolina Housing Finance Agency from a county or city's authority to conduct periodic inspections as part of a targeted effort within a geographic area, if the residential building is in compliance with federal standards and provided the owner of the residential building supplies the

compliance results letters from the North Carolina Housing Financing Agency to the local inspections department.

SECURITY GRILLES

SECTION 3.30. Section 1008.1.4.5 of the NC State Building Code (Fire Code) requires that no more than one-half of the doors of certain buildings be equipped with security grilles when two or more means of egress are required. This section of the PCS would require the Building Code Council to amend the code such that security grilles are permitted at all exits if the grilles may be opened from the inside during periods when the building is occupied by authorized persons and remain open when the building is occupied by the general public.

REWRITE LANDSCAPE CONTRACTOR LICENSING STATUTES

SECTION 3.31. of the PCS, effective August 1, 2015, would rewrite the laws to require that any person engaged in the business of landscape contracting must obtain a license. This section would: more clearly define the term "landscape contractor"; establish requirements for landscape contractor licensure including application requirements, qualifications, and examination and continuing education; provide for exemptions for licensure; establish the North Carolina Landscape Contractors' Licensing Board; establish standards for issuing licenses to corporations, partnerships, and persons doing business under a trade name; establish fees; and articulate causes for disciplinary action, civil penalties, and injunctions.

CLARIFY RIGHTS OF MARINE ARTIFACT DONORS

SECTION 3.32. of the PCS would allow a person who discovers a shipwreck or salvages marine artifacts from State waters and who donates the artifacts or a contractual interest in the artifacts to the State to retain the right to access the artifacts and display them on tour or conduct nondestructive research on them. The person would retain this right if he or she (i) pays 40% of the net proceeds from display of the artifacts to the General Fund, (ii) leaves at least 1/3 of the artifacts in State custody, (iii) provides to the State to-scale replicas of unique artifacts at no cost while the artifacts are on display elsewhere, (iv) returns the artifacts to the State at least every two years for a period of at least one year, and (v) promotes the cultural and natural heritage of the State in any display of the artifacts. The right would be valid for 30 years after discovery of the artifacts, and the State would return replicas to the person who donated the artifacts, or the person's heir or designee, at the end of the 30 year period.

TRANSFER SOLID WASTE RULEMAKING AUTHORITY FROM COMMISSION FOR PUBLIC HEALTH TO ENVIRONMENTAL MANAGEMENT COMMISSION

SECTION 3.33. of the PCS would transfer all rule-making authority for matters related to solid and hazardous waste management (Article 9 of Chapter 130A of the General Statutes), from the Commission for Public Health to the Environmental Management Commission, and makes conforming changes throughout the statutes.

TRANSFER DRINKING WATER RULEMAKING AUTHORITY FROM COMMISSION FOR PUBLIC HEALTH TO ENVIRONMENTAL MANAGEMENT COMMISSION

SECTION 3.34. of the PCS would transfer all rule-making authority for matters under the North Carolina Drinking Water Act (Article 10 of Chapter 130A of the General Statutes) from the Commission for Public Health to the Environmental Management Commission, including drinking water rules to regulate public water systems.

WELL CONTRACTOR LICENSING CHANGES

SECTION 3.35. Under current law, no person may engage in electrical contracting without having received a license from the State Board of Examiners of Electrical Contractors. This section of the PCS would exempt from the requirements of the electrical contractor statutes, including the licensure requirements, the installation, construction, maintenance, or repair of electrical wiring, devices, appliances, or equipment by a person certified as a well contractor when running electrical wires from the well pump to the pressure switch. This section would also direct the Well Contractors Certification Commission to establish minimum education, experience, and knowledge requirements for each type of certification for well contractors for the installation, construction, maintenance, and repair of electrical wiring devices, appliances, and equipment related to the construction, operation, and repair of wells. These requirements would apply only to the initial certification and would not be required as part of continuing education or as a condition of certification renewal.

STANDARDIZE LOCAL WELL PROGRAMS

SECTION 3.36.(a) of the PCS would provide that private drinking water well permitting, inspection, and testing programs administered by county health departments must use the standard forms created by the Department of Environment and Natural Resources (Department) unless the local program submits a petition for rule-making to the Environmental Management Commission (EMC), and the EMC finds by rule that the area has unique conditions constituting a threat to public health that would be mitigated by the use of a different form. The PCS would also provide that local health department registries of private drinking water wells must be searchable by the address or addresses served by the well.

SECTIONS 3.36.(b) through (d) of the PCS would provide that neither the Department nor any local well program may require that well contractor identification plates include well construction permit numbers, and directs the EMC to adopt conforming rules. A local well program may install a plate with the well construction permit number or any other relevant information on a well at its own expense.

SECTION 3.36.(e) would provide that if the well location marked on the map submitted with an application to a local well program is also marked with a stake or similar marker on the property, the local well program may not require the contractor to be onsite during the onsite pre-drill inspection provided that the contractor is available to answer questions by telephone.

PART IV. STUDIES

HONEYBEE WORKING GROUP

SECTION 4.1. of the PCS would direct the Department of Agriculture and Consumer Service to create the Honeybee Improvement for Vital Ecology (HIVE) Working Group. The Working Group would include representatives from various government agencies and organizations directed to proactively address the issue of Colony Collapse Disorder. The Working Group would report its findings and recommendations to the Environmental Review Commission by November 30, 2014.

SENATOR JEAN PRESTON MARINE SHELLFISH SANCTUARY

SECTION 4.2. of the PCS would direct the Division of Marine Fisheries (DMF) of the Department of Environment and Natural Resources (DENR) to designate an area of approximately 10,000 acres within the Pamlico Sound as a recommendation to the Environmental Review Commission (ERC) for the establishment of the "Senator Jean Preston Marine Shellfish Sanctuary" and to create a plan for managing the sanctuary. The plan would include components for the location and delineation of the sanctuary, the administration of the sanctuary, the funding of the sanctuary, free or discounted

leasing in the sanctuary for commercial fishermen, and recommendations related to the sanctuary. No later than October 1, 2014 and quarterly thereafter, DENR would report to the ERC on the implementation of the plan.

DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES TO STUDY INTERBASIN TRANSFERS

SECTION 4.3. of the PCS would direct the Department of Environment and Natural Resources (DENR) to study the statutes and rules governing interbasin transfers and make recommendations as to whether the statutes and rules should be amended. Specifically, DENR is directed to examine whether temporary and emergency interbasin transfers should be subject to different regulatory requirements than long-term interbasin transfers, whether interbasin transfers between river subbasins should be subject to different regulatory requirements than interbasin transfers between major river basins, and whether there are types of interbasin transfers that should be exempted from the interbasin certification or other regulatory requirements. DENR must report its findings and recommendations to the Environmental Review Commission no later than October 1, 2014.

PROGRAM EVALUATION DIVISION TO STUDY WATER AND SEWER SYSTEMS

SECTION 4.4. of the PCS would direct the Joint Legislative Program Evaluation Oversight Committee to direct the Program Evaluation Division (PED) to study the benefits that may result from the merger of public water systems and wastewater collection and treatment works. Specifically, PED is directed to consider whether the benefits that have resulted from the merger of certain systems can be replicated for other systems, whether the State can incentivize systems to purchase, interconnect with, or enter into joint management agreements with systems that do not provide sufficient service, and whether the State can allow systems and works to apply for grant funding or other assistance on the behalf of systems that do not provide sufficient service if the award of such funding is contingent on purchase, interconnection, or a joint management agreement between the systems.

PART V. SEVERABILITY CLAUSE AND EFFECTIVE DATE

SECTION 5.1. If any section or provision of this act is declared unconstitutional or invalid by the courts, it does not affect the validity of this act as a whole or any part other than the part declared to be unconstitutional or invalid.

EFFECTIVE DATE: Except as otherwise provided, this act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

SENATE BILL 734

Short Title:	Authority to Adopt Certain Ordinances.	(Public)
Sponsors:	Senators Wade, B. Jackson, and Brock (Primary Sponsors).	
Referred to:	Agriculture/Environment/Natural Resources.	

May 15, 2014

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THE AUTHORITY OF LOCAL GOVERNMENTS TO ADOPT CERTAIN AGRICULTURAL AND ENVIRONMENTAL ORDINANCES, AS RECOMMENDED BY THE ENVIRONMENTAL REVIEW COMMISSION.

The General Assembly of North Carolina enacts:

SECTION 1. Section 10.2 of S.L. 2013-413 is repealed.

SECTION 2. No later than November 1, 2014, and November 1, 2015, the Department of Agriculture and Consumer Services shall report to the Environmental Review Commission on any local government ordinances that impinge on or interfere with any area subject to regulation by the Department.

SECTION 3. No later than November 1, 2014, and November 1, 2015, the Department of Environment and Natural Resources shall report to the Environmental Review Commission on any local government ordinances that impinge on or interfere with any area subject to regulation by the Department.

SECTION 4. Article 56 of Chapter 106 of the General Statutes is amended by adding a new section to read:

"**§ 106-678. Authority of Board of Agriculture to regulate fertilizers.**

No county, city, or other political subdivision of the State shall adopt or continue in effect any ordinance, rule, regulation, or resolution regulating the use, sale, distribution, storage, transportation, disposal, formulation, labeling, registration, manufacture, or application of fertilizer in any area subject to regulation by the Board pursuant to this Article. Nothing in this section shall prohibit a county, city, or other political subdivision of the State from exercising its planning and zoning authority under Article 19 of Chapter 160A of the General Statutes or Article 18 of Chapter 153A of the General Statutes or from exercising its fire prevention or inspection authority. Nothing in this section shall limit the authority of the Department of Environment and Natural Resources to enforce water quality standards."

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

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 734

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

S734-ASB-87 [v.1]

Comm. Sub. [YES]
Amends Title [NO]
S734-PCS35528-TAxf-35

Date 5-20 ,2014

Senator Wade

moves to amend the bill on page 16, lines 12 through 15,
by rewriting the lines to read:

"(1) The amount of impacts of isolated wetlands under 15A NCAC 02H .1305(d)(2) shall be less than or equal to 1 acre of isolated wetlands for the entire project.".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED √ FAILED _____ TABLED _____

VISITOR REGISTRATION SHEET

Senate/Agriculture/Environment/Natural Resources
(Committee Name)

5/20/2014
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
George Everett	Duke Energy
Kathy Hawkins	Duke Energy
Paul Sherman	NCFB
Lori Wortey	Weyerhaeuser
AARON WELCH	WEYERHAEUSER
Nancy Thompson	weyerhaeuser
Weldon Jones	Jordan, Price
Tommy Stevens	NCPC
Angie Maier	NLPC
Graham Boyd	PEANC
Jenny Suhill	NC Fisheries Assoc.
Christian McDonald	Stevens Lobbying
Kara Weishaar	SA
Kim Albourn	HSUS
Matthew Dominguez	HSUS
Mia Bailey	Electri Cities
Andy Chase	FMA

VISITOR REGISTRATION SHEET

Senate/Agriculture/Environment/Natural Resources
(Committee Name)

5/20/2014
Date

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Erin Wynia	NCLM
Sarah Collins	NCLM
Hugh Johnson	NC Gov. Office
Nicole M. Hines	Governor
Keith Larick	NCDA & CS
Johanna Reese	NCACC
Rick Zechini	WM
[illegible]	NCSA
[illegible]	NCDAN&CI
[illegible]	CMC
Mikeam Cook	ITS
[illegible]	School of Gov
Charles King	School of Gov.
[illegible]	Focus Consulting
Sarah Bales	Brubaker & Assoc
[illegible]	Time Warner Inc.
Jonathan Brubaker	Brubaker & Assoc.

09-21-201

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Senate/Agriculture/Environment/Natural Resources
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5/20/2014
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NAME	FIRM OR AGENCY AND ADDRESS
Doug Lassiter	NCSTA
Allen Hardison	CRSWMA
Cady Thomas	NCAR
Rob Browne	NCAR
[illegible]	North State Strategies
[illegible]	KLG
Bob Ford	NCPF
David Ward	Lowes
David McGowan	NC Petroleum Council
[illegible]	NCACC
Tommy Sewter	Moore Van Allen
RANDALL ESSICK	WM
Felicia Hyde	NCLM
[illegible]	NCLM
Lori Ann Harris	LAHA
Enes Ardeniz	NC Governor's Page
Elissa Lew	NC Governor's Page

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Anderson Clayton	NC Governor's Page
Jessica Askew	NC Governor's Page
Ethan Ogden	NC Governers Page
Yahaira Guadarrama	NC Governor's Page
Megan Rhodes	NC Governor's Page
Matthew Bright	NC Governors Page
Chris McClure	BP
Elizabeth Bizer	BP
Susanna Davis	WM
	Misc

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Senate/Agriculture/Environment/Natural Resources
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5/20/2014
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NAME	FIRM OR AGENCY AND ADDRESS
Brian Jones	DENR
Mary Gray Bell	DENR
Sara Brown	DENR
Fawn Pattison	Toxic Free NC
Nadia Lahr	NCCN
Cassie Gavin	Sierra Club
Claire Hannapel	citizen
ROB Lamm	RLA
Mack DAVIS	NC GRANGE / NC C.E.S
Laurie Payne	NC GRANGE
Jimmy GENTRY	NC GRANGE
STEVE WATKINS	NC DMV - LICENSE & THEFT
Robert Sawyer	NC DMV - License & Theft
JAMES CRISSMAN	" "
Hope Mozingo	NCDOT - DMV
Corinne Schmidt	CTNC
Morgan Abbott	CTNC

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Senate/Agriculture/Environment/Natural Resources
(Committee Name)

5/20/2014
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NAME	FIRM OR AGENCY AND ADDRESS
Edgar Miller	CTWC

09-21-201

Senate Committee on Agriculture/Environment/Natural Resources
Thursday, June 5, 2014, 9:30 AM
643 Legislative Office Building

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

BILL NO.	SHORT TITLE	SPONSOR
SB 729	Governor's Coal Ash Action Plan. For Discussion Only (no votes). Public comment will be allowed	Senator Apodaca Senator Berger

Presentations

Dr. John Skvarla - Secretary of NC Department of Environment and Natural Resources

Staff from NC Department of Environment and Natural Resources

Questions from Committee Members

Public Comment

Adjournment

Senate Committee on Agriculture/Environment/Natural Resources
Thursday, June 5, 2014 at 9:30 AM
Room 643 of the Legislative Office Building

MINUTES

The Senate Committee on Agriculture/Environment/Natural Resources met at 9:30 AM on June 5, 2014 in Room 643 of the Legislative Office Building. Fifteen members were present – Senator Stan Bingham, Senator Andrew Brock, Senator Bill Cook, Senator Austin Allran, Senator Chad Barefoot, Senator Angela Bryant, Senator Joel Ford, Senator Valerie Foushee, Senator Fletcher Hartsell, Senator Brent Jackson, Senator Jeff Jackson, Senator Gene McLaurin, Senator Ron Rabin, Senator Bill Rabon, Senator Shirley Randleman, Senator Tommy Tucker, Senator Trudy Wade, and Senator Michael Walters.

Senator Bingham presided.

Sgt-at-Arms for today's meeting were Ernie Sherrell, Donna Blake, Steve McKaig, Giles Jeffreys, Isaac Walker and Billy Fritscher.

Pages for today were Ada Ebuomwan from Raleigh, Anjalique Knight from Fayetteville, Jazsmin McNeil from Raleigh, Erial Harris from Weldon, Gerard Wilder from Raleigh, Nick Williams from Albertson, Mary Scott Willson from Raleigh, Aaron McKinney from Marion and Patrick Sugg from Wilmington

Agenda

SB 729 -Governor's Coal Ash Action Plan - Senator Apodaca and Senator Berger (Discussion Only) (Attachment 1)

Presentations:

Dr. John Skvarla, Secretary of NC Department of Environment and Natural Resources

Dr. Skvarla introduced his staff members that would also be speaking on SB 729 – Tracy Davis, Director of Division of Energy, Mineral and Mine Resources, Tom Reeder, Water Resources Protection and Linda Culpepper, Division of Waste Management.

Dr. Skvarla stated that on TV this morning, he saw a report that this hearing was going to take place and that the Governor's roadmap did two things- it required the closing of three coal ash ponds and left the others in place, which is not true. The Governor's roadmap does several things: (1) The State of North Carolina is in charge of this process, no one else; (2) It is flexible in that science and engineering will determine what decisions are made for these 33 coal ash ponds with a 160 million tons of coal ash; (3) It is workable; (4) The plan protects the environment. The plan has been broken down into three areas – Dam Safety, Water Resources, and Waste Management. Lastly, they are requesting 19 new positions specifically addressing

coal ash and they will be dedicated to the creation of the solution of these problems including the science and engineering.

Tracy Davis, Director of Division of Energy, Mineral and Mine Resources spoke to the committee about the proposed bill as it relates to his division. His division regulates dam safety.

Tom Reeder, Director of Division of Water Resources spoke to the committee regarding how the governor's plan and blueprint aggressively and comprehensively protects the most important part of the whole plan which is the state's water resources.

Linda Culpepper, Director of Division of Waste Management talked to the committee about the solid waste definition and the moratorium on the structural fillers.

Questions:

Senator Tommy Tucker asked if any of the language in here (coal ash) have any adverse effect on dams that are used for hydro or generating power. Tracy Davis (DENR staff) responded that they do not regulate the hydro dams. Senator Tucker followed up by asking about the four closures that are being talked about, how does that impact the ability of Duke to generate power? Sec. Skvarla responded that would form part of the closing plan that they required to submit to DENR on the timeframe given in the (?). Senator Tucker followed up by asking about the four plants for closure if there were any requirements in the bill that Duke would move the coal ash and put in lineage which would eliminate the possibility of seepage in the future. Secretary Skvarla responded that they were looking into all the options.

Senator Brock asked Secretary Skvarla how many tons was the spill in Tennessee. Secretary Skvarla responded 1.1billion. Senator Brock followed up by asking what the spill was in Dan River and Secretary Skvarla responded 35 to 39 thousand tons. Tennessee was about 250 times greater.

Senator Ford asked other than airport runways and a sub-base for concrete or asphalt for paved roads, under what other circumstance would the administration allow coal ash left in place without a liner and without ground water monitoring? Secretary Skvarla responded "No".

Senator Hartsell what is the extinct of the plan for looking at reuse? Secretary Skvarla responded that beneficial use is an integral part. Senator Hartsell followed up by saying that 4 specific closure plans had been identified in a very short period of time. What happens if the plan is not completed and submitted in that period of time? Mr. Reeder responded that if it was in the legislation, they could take an enforcement out against Duke.

Senator Bryant asked about the timeframe on the four priority sites. Secretary Skvarla responded that would be dictated closure claimants. Senator Bryant followed up by asking who would control that timeframe. Secretary Skvarla responded "DENR". Senator Bryant followed up by asking how we regulate the existing structural and landfills around the state that are aside from these sites. Do we regulate those sites? Secretary Skvarla responded that the definition of solid waste will encompass all of that.

Senator Walters asked what the plan was for the facilities that had been mothballed. Secretary Skvarla responded that they would be prioritized after the first four. Senator Walters followed up by saying that he would just caution that this mothballed plants don't need to be sitting around. Secretary Skvarla responded that three of the four were already mothballed.

Senator Rabin asked if 24 hours after finding out that something has spilled is really a very expeditious notification time? Secretary Skvarla responded that the language says "as soon as possible, no later than 24 hours".

Secretary McLaurin said he was following up on the testing of other locations and asked why we could not be doing that testing now. Do we have to wait for the legislation to actually be approved before we can go ahead and do that? Secretary Skvarla responded that the legislation is forthcoming, but they have already started that. Secretary McLaurin followed up that there may be problematic issues out there that we are not aware of yet. There are four that everybody seems to know are the priorities, but maybe there are actually some we do not know about that should be priorities and he feels that the sooner they do the testing, the better off we are.

Senator Allran asked why the North Carolina Concrete Industry would buy coal ash from Maryland. Secretary Skvarla responded that as he understands it, it is the type and quality of the coal ash because they have been focused on air quality that creates a different caliber of coal ash than they are buying from out of state. Senator Allran followed up by saying that it was a scientific base and was wondering if that could be corrected and reversed? Secretary Skvarla responded that he would have to get back to him on that.

Senator Rabin commented that he still stands on the idea that within 24 hours is too much time. He does not understand why that kind of cushion is given. He thinks it should change.

Public Comment

Cassie Gavin from the Sierra Club; Anna Jane Joyner from Western Carolina Alliance; Mary Maclean Asbill from Southern Environmental Law Center; Henry Batten, President of Concrete Supply Co. in Charlotte; Sharon Miller from Carolina Utility Customer Association; Matthew Star from the Neuse Riverkeeper

Questions:

Senator Allran asked about the recycling of the coal ash, can we use this coal ash here or can we not? Secretary Skvarla responded that he could not comment on the coal ash but referred to Mr. Batten from Concrete Supply Co to answer. Mr. Batten said he would like to buy the coal ash. Some of the ash is unusable by his company. There are technologies that can convert the ash so it could be used. George Everett from Duke Energy responded that Duke sells ash into the concrete market and have been for years. The quality of that ash is at issue. If you are in the concrete business or the cement business, the specifications of that ash have to meet very tight limits, and otherwise the ash doesn't perform well and meet its purpose in the concrete. Duke produces just over a million tons per year. They have 100 million tons on their sites but in order

to match up the supply they have stored with the demand, they can do that, but remember the market is just over a million tons per year. If all of the ash on all of their sites was perfectly ready to go to the market, it would take a hundred years to use it. They are not stopping and saying it cannot be done. They can convert that ash on their sites to be used in the concrete market. They have the technology to use it today. The older plants that were on their system that produce all that stored ash did not work as efficiently as the new plants on their system. The old retired plants with the ash that was not efficiently burned has to be re-burned which is called carbon burn out. If they can lower the carbon content in that ash to the point where the concrete business can use it, they can do that. They have investigated building new facilities to produce more of that ash that would be usable in the concrete business and for about $30,000,000, they can build a facility that will produce more ash. The problem is if they invest that money to generate a lot more usable ash and the concrete market goes away, they have invested a lot of money into a product that no longer anybody wants.

Comments on today's meeting were made by Senator Ford, Senator Hartsell and Senator Tommy Tucker with closing comments by Secretary Skvarla.

The meeting adjourned at 10:55 AM.

Stan Bingham

Senator Stan Bingham
Presiding

Judy Edwards

Judy Edwards, Committee Clerk

ATTACHMENT 1

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

S 1

SENATE BILL 729

Short Title:	Governor's Coal Ash Action Plan.	(Public)
Sponsors:	Senators Apodaca, Berger (Primary Sponsors); Allran, Daniel, Pate, Tarte, and Tucker.	
Referred to:	Agriculture/Environment/Natural Resources.	

May 15, 2014

A BILL TO BE ENTITLED

AN ACT TO (1) CHANGE NOTIFICATION REQUIREMENTS APPLICABLE TO DISCHARGES OF WASTEWATER; (2) ESTABLISH COAL COMBUSTION PRODUCTS IMPOUNDMENT WATER MONITORING PROGRAM; (3) IDENTIFY AND ADDRESS UNPERMITTED WASTEWATER DISCHARGES AT COAL COMBUSTION PRODUCTS IMPOUNDMENT SITES; (4) AMEND S.L. 2009-390; (5) REQUIRE EMERGENCY ACTION PLANS FOR HIGH AND INTERMEDIATE HAZARD DAMS; (6) CHANGE NOTIFICATION REQUIREMENTS APPLICABLE TO DAM REPAIRS; (7) INCREASE COAL COMBUSTION PRODUCTS IMPOUNDMENT INSPECTION REQUIREMENTS; (8) MODIFY THE DEFINITION OF SOLID WASTE TO INCLUDE REMOVED COMBUSTION PRODUCTS; (9) PLACE A TEMPORARY MORATORIUM ON THE USE OF COAL COMBUSTION PRODUCTS AS STRUCTURAL FILL; AND (10) ESTABLISH REQUIREMENTS FOR COAL COMBUSTION PRODUCTS IMPOUNDMENT CLOSURE.

Whereas, the issue of coal ash storage has not been adequately addressed in North Carolina for more than six decades; and

Whereas, on February 2, 2014, an estimated 39,000 tons of coal ash was released into the Dan River following the failure of a stormwater pipe under a utility coal ash impoundment pond in Eden, North Carolina; and

Whereas, the Department of Environment and Natural Resources ("Department") finds that coal combustion products have settled into the sediment of the river bottom and will require an extensive clean-up plan to complete remediation; and

Whereas, the Department is in the process of reassessing previous efforts at achieving compliance at coal ash facilities and developing short term and long term policies in light of the Dan River spill, violations discovered in light of increased inspections of coal combustion products disposal facilities and anticipated new federal regulations on coal combustion products; and

Whereas, it is the intent of the Department to ensure that spills of wastewater are reported to the Department in a defined and adequate time frame; and

Whereas, it is the intent of the Department to protect surface water and groundwater resources for their best usage; and

Whereas, it is the intent of the Department to ensure that all unpermitted wastewater discharges are eliminated or addressed in an environmentally responsible manner; and

Whereas, it is the intent of the Department to equally subject all dams under jurisdiction of G.S. 143-215.23 to the requirements of statute and administrative code; and

Whereas, it is the intent of the Department for the owners of all dams under jurisdiction of G.S. 143-215.23 deemed intermediate and high hazard by the Department to prepare at their own cost documents that describe full and adequate response to emergency situations at their dams and to submit those documents to the Department; and

Whereas, it is the intent of the Department to ensure that emergency situations at dams are reported to the Department in a defined and adequate time frame; and

Whereas, the it is the intent of the Department to increase oversight of dam structure integrity to protect the health and safety of the public; and

Whereas, state law exempts coal combustion products removed from impoundments from being defined as a solid waste; and

Whereas, the Department finds that consistent environmental standards should apply to coal combustion products removed from impoundments for management or disposal and coal combustion products managed or disposed of as a solid waste; and

Whereas, the Department finds the federal Environmental Protection Agency is under consent decree to complete new regulations by December 2014 for coal combustion products that are proposed to bring consistency to requirements for large fills such as structural fills and landfills; and

Whereas, the Department finds that conversion and closure of coal ash storage ponds is necessary for protection of the health and safety of the public; Now, therefore,

The General Assembly of North Carolina enacts:

PART I. NOTIFICATION REQUIREMENTS APPLICABLE TO DISCHARGES OF WASTEWATER

SECTION 1. G.S. 143-215.1C reads as rewritten:

"**§ 143-215.1C. Report to wastewater system customers on system performance; report discharge of untreated wastewater and wastewater containing coal combustion products to the Department; publication of notice of discharge of untreated wastewater and waste.**

(a) Report to Wastewater System Customers. – The owner or operator of any wastewater collection or treatment works, the operation of which is primarily to collect or treat municipal or domestic wastewater and for which a permit is issued under this Part and having an average annual flow greater than 200,000 gallons per day, shall provide to the users or customers of the collection system or treatment works and to the Department an annual report that summarizes the performance of the collection system or treatment works and the extent to which the collection system or treatment works has violated the permit or federal or State laws, regulations, or rules related to the protection of water quality. The report shall be prepared on either a calendar or fiscal year basis and shall be provided no later than 60 days after the end of the calendar or fiscal year.

(a1) Report of Discharge of Untreated Wastewater or Wastewater Containing Coal Combustion Products to the Department. – The owner or operator of any wastewater collection or treatment works shall report a discharge of 1,000 gallons or more of untreated wastewater or wastewater containing coal combustion products, or a spill of any amount of untreated wastewater or wastewater containing coal combustion products that reaches waters of the State to the Department as soon as possible but not later than 24 hours after first knowledge of the spill. This reporting requirement shall be in addition to any other reporting requirement applicable to the owner or operator of the wastewater collection or treatment works.

(b) Publication of Notice of Discharge of Untreated Wastewater. – The owner or operator of any wastewater collection or treatment works, the operation of which is primarily to

collect or treat municipal or domestic wastewater ~~and for which a permit is issued under this Part~~ shall:

(1) In the event of a discharge of 1,000 gallons or more of untreated wastewater or wastewater containing coal combustion products to the surface waters of the State, issue a press release to all print and electronic news media that provide general coverage in the county where the discharge occurred setting out the details of the discharge. The owner or operator shall issue the press release within ~~48~~ 24 hours after the owner or operator has ~~determined that the discharge has reached the surface waters of the State.~~ first knowledge of the spill. The owner or operator shall retain a copy of the press release and a list of the news media to which it was distributed for at least one year after the discharge and shall provide a copy of the press release and the list of the news media to which it was distributed to any person upon request.

(2) In the event of a discharge of 15,000 gallons or more of untreated wastewater to the surface waters of the State, publish a notice of the discharge in a newspaper having general circulation in the county in which the discharge occurs and the county immediately downstream and in each county downstream from the point of discharge that is significantly affected by the discharge. The Secretary shall determine, at the Secretary's sole discretion, which counties are significantly affected by the discharge and shall approve the form and content of the notice and the newspapers in which the notice is to be published. The notice shall be captioned "NOTICE OF DISCHARGE OF UNTREATED SEWAGE". The owner or operator shall publish the notice within 10 days after the Secretary has determined the counties that are significantly affected by the discharge and approved the form and content of the notice and the newspapers in which the notice is to be published. The owner or operator shall file a copy of the notice and proof of publication with the Department within 30 days after the notice is published. Publication of a notice of discharge under this subdivision is in addition to the requirement to issue a press release under subdivision (1) of this subsection.

(c) Publication of Notice of Discharge of Untreated Waste as defined in G.S. 143-213(18). – The owner or operator of any wastewater collection or treatment works, other than a wastewater collection or treatment works the operation of which is primarily to collect or treat municipal or domestic ~~wastewater, for which a permit is issued under this Part~~ wastewater shall:

(1) In the event of a discharge of 1,000 gallons or more of untreated waste to the surface waters of the State, issue a press release to all print and electronic news media that provide general coverage in the county where the discharge occurred setting out the details of the discharge. The owner or operator shall issue the press release within ~~48~~ 24 hours after the owner or operator has ~~determined that the discharge has reached the surface waters of the State.~~ first knowledge of the spill. The owner or operator shall retain a copy of the press release and a list of the news media to which it was distributed for at least one year after the discharge and shall provide a copy of the press release and the list of the news media to which it was distributed to any person upon request.

(2) In the event of a discharge of 15,000 gallons or more of untreated waste to the surface waters of the State, publish a notice of the discharge in a newspaper having general circulation in the county in which the discharge occurs and the county immediately downstream and in each county

downstream from the point of discharge that is significantly affected by the discharge. The Secretary shall determine, at the Secretary's sole discretion, which counties are significantly affected by the discharge and shall approve the form and content of the notice and the newspapers in which the notice is to be published. The notice shall be captioned "NOTICE OF DISCHARGE OF UNTREATED WASTE". The owner or operator shall publish the notice within 10 days after the Secretary has determined the counties that are significantly affected by the discharge and approved the form and content of the notice and the newspapers in which the notice is to be published. The owner or operator shall file a copy of the notice and proof of publication with the Department within 30 days after the notice is published. Publication of a notice of discharge under this subdivision is in addition to the requirement to issue a press release under subdivision (1) of this subsection."

PART II. COAL COMBUSTION PRODUCTS IMPOUNDMENT WATER MONITORING PROGRAM

SECTION 2. Article 21 of Chapter 143 of the General Statutes is amended by adding a new section to read:

"**§ 143-215.1D. Coal combustion products impoundment water monitoring program.**

(a) Groundwater Assessment – Owners of coal ash impoundments located at all investor-owned public utilities shall conduct groundwater monitoring according to the following schedule and procedures:

(1) No later than 45 days from enactment of this Act, the owner shall submit to the Division of Water Resources a Plan of proposed assessment activities to evaluate groundwater impacts from all coal combustions products impoundments located at all investor owned public utilities. At a minimum the plan shall:

a. Identify all receptors and significant exposure pathways.

b. Assess horizontal and vertical extent of soil and groundwater contamination for all contaminants confirmed to be present in groundwater in exceedance of groundwater quality standards and all significant factors affecting contaminant transport.

c. Identify the geological and hydrogeological features influencing the movement, chemical, and physical character of the contaminants.

d. Propose a schedule for continued groundwater monitoring.

Upon review and approval by the Division of Water Resources, the investor-owned public utility shall initiate assessment activities.

(2) No later than 180 days from the Division of Water Resources' written approval of the Plan required under subdivision (1) of subsection (a) of this section, or a time frame otherwise approved by the Division of Water Resources, the owner shall submit a Report detailing the findings of the Plan. The Report shall set forth the extent of any and all exceedances of the groundwater quality standards.

(3) No later than 270 days from the Division of Water Resources' written approval of the Plan required under subdivision (1) of subsection (a) of this section, or a time frame otherwise approved by the Division of Water Resources, the owner shall submit to the Division of Water Resources a proposed Corrective Action Plan. The Corrective Action Plan shall, at a minimum, contain:

a. A listing of all exceedances of the groundwater quality standards including any exceedances that the owner asserts are the result of natural background conditions.

b. Except as provided in subsubdivision f. of this subdivision, a description of the proposed corrective action employing the best available technology for the restoration of groundwater quality to the level of the groundwater quality standards and reasons for its selection.

c. Specific plans, including engineering details where applicable, for restoring groundwater quality.

d. A schedule for the implementation of the proposed corrective action plan.

e. A monitoring plan for evaluating the effectiveness of the proposed corrective action and the movement of the contaminant plume.

f. The owner may request alternative remediation as provided for under the requirements of 15A NCAC 2L .0106 (k), (l), or (m).

(4) No later than 30 days from the Division of Water Resources' approval of a Final Corrective Action Plan, the owner shall implement the Final Corrective Action Plan in accordance with a schedule established by Division of Water Resources. The approval of a Final Corrective Action Plan is not a final agency action pursuant to G.S. 150B.

(b) Drinking Water Assessment. – Within 60 days of enactment of this Act, owners of coal ash impoundments located at all investor-owned public utilities shall conduct and submit to the Division of Water Resources a water supply receptor survey. The Survey shall identify all receptors within a radius of 2,640 feet (0.5 mile) from the established compliance boundary of each impoundment. The owner shall sample each receptor identified by the Division of Water Resources. For any well exceeding the groundwater standards, the owner shall replace the water supply with a supply of potable drinking water.

(c) Annual Reporting Requirement. – In addition to any other reports required by the Division of Water Resources, the owners of coal combustion products impoundments located at all investor owned public utilities shall submit an annual report to the Division of Water Resources no later than January 31 of each year. The Annual report shall include a summary of all monitoring data collected over the year, status of Plans and Final Corrective Action Plans, and a summary of water supply receptor survey results."

PART III. IDENTIFY AND ADDRESS UNPERMITTED WASTEWATER DISCHARGES AT COAL COMBUSTION PRODUCTS IMPOUNDMENT SITES

SECTION 3. Article 21 of Chapter 143 of the General Statutes is amended by adding a new section to read:

"**§ 143-215.1E. Identify and address unpermitted wastewater discharges at coal combustion products impoundment sites.**

(a) Owners of coal combustion products impoundments located at all investor-owned public utilities shall implement the plan described in subsections (b) through (h) of this section to identify and address any unpermitted discharges to surface waters at those coal combustion products impoundment sites.

(b) No later than 90 days from enactment of this act, the owner shall submit a topographic map at a scale approved by Division of Water Resources that indicates the locations of all outfalls from engineered channels designed and/or improved for the purpose of collecting water from the toe of the coal combustion products impoundments. For each outfall, the map will:

(1) Specify its latitude and longitude.

(2) Specify whether the discharge is continuous or intermittent.
(3) Provide an average flow measurement, including a description of the method used to measure flow.

With the topographic map, the owner will submit to the Division of Water Resources a schedule according to which the owner shall conduct water quality sampling of the toe drain outfalls in order to further characterize the discharging water. No later than 30 days from receipt of the map and sampling schedule, Division of Water Resources will provide the owner with review comments, either approving the plan or noting any deficiencies to be corrected and a date by which a corrected map and/or sampling schedule is to be submitted for further review and comment. Within 30 days of approval of the schedule by the Division of Water Resources, the owner shall begin to sample the toe drain outfalls in accordance with the schedule and submit the samples for water quality analysis. Water quality analyses shall include the same parameters required for a coal-fired power plant per EPA Application Form 2C – Wastewater Discharge Information, Consolidated Permits Program (EPA Form 3510-2C, August 1990). If the owner demonstrates to the satisfaction of Division of Water Resources that sampling of a toe drain outfall is unlikely to generate usable data or is otherwise infeasible, the owner will not be required to sample that toe drain outfall.

(c) No later than 180 days from the enactment of this act, the owner shall submit a topographic map at a scale approved by the Division of Water Resources that indicates the locations of any seeps or drains reflecting discharges from the ash ponds but are not captured by an engineered channel identified pursuant to subsection (b) of this section. For any seep so identified that is believed to not reflect flows from any of the ash ponds, the owner shall provide to the Division of Water Resources the basis for such belief, including hydrological data or water quality testing information. For the seeps from the impoundments, the map will:

(1) Specify its latitude and longitude.
(2) Specify whether the discharge is continuous or intermittent.
(3) Provide an average flow measurement, including a description of the method used to measure flow.
(4) Specify whether the discharge from the seep reaches surface waters.
(5) If the discharge from the seep reaches surface water, identify the location where the seep reaches surface water on the map to include latitude and longitude.

(d) No later than 180 days from the enactment of this act, the owner shall submit a plan to determine whether toe drain or seep discharges from the impoundments have reached surface waters of the state and are causing violations of surface water quality standards. The plan shall include the following:

(1) Sampling locations upstream and downstream within all channels that potentially carry such discharges.
(2) Water quality analyses shall include the same parameters required for a coal-fired power plant per EPA Application Form 2C – Wastewater Discharge Information, Consolidated Permits Program (EPA Form 3510-2C, August 1990).
(3) Frequency and duration of the sampling activities.
(4) Reporting requirements.

No later than 30 days from receipt of the plan, the Division of Water Resources will provide the owner with review comments, either approving the plan, or noting any deficiencies to be corrected and a date by which a corrected plan is to be submitted for further review and comment or approval. Within 180 days from the Division of Water Resources' approval of the plan, the owner will implement and complete the plan and submit a report summarizing that work and its results.

(e) If the Division of Water Resources determines, based on information submitted pursuant to subsections (b) through (d) of this section, that discharges, whether from toe drains or seeps, are causing a violation of G.S. 143-215.1 or any other law, it shall so notify the owner. Within 120 days of such notification, the owner shall do one of the following:

(1) Stop the discharge.

(2) Capture and route the discharge so that it is discharged through an NPDES permitted outfall.

(3) Address the seep using Best Management Practices approved by the Division of Water Resources pursuant to subsection (f) of this section.

(4) Propose alternative Best Management Practices subject to the approval of the Division of Water Resources.

(5) Apply for an NPDES discharge permit or permit amendment to regulate the discharge.

(f) No later than 180 days from the date of enactment of this act, The owner shall submit to the Division of Water Resources for approval a set of best management practices designed to prevent unpermitted discharges of pollutants from the ash ponds to surface waters. Thereafter, the owner may submit additional best management practices for the Division of Water Resources approval.

(g) No later than 30 days from enactment of this act, the owner shall submit to the Division of Water Resources a plan for identifying new seeps on the dike areas of the ash ponds that arise after the submission of the maps described in subsections (b) and (c) of this section. The plan shall include, at a minimum, the following elements:

(1) A procedure for routine inspection of the coal combustion products impoundment areas to identify indicators of potential new seeps.

(2) A decision flow chart (including criteria and procedures) for determining whether a new seep is actually present.

(3) A procedure for notifying the Division of Water Resources after a new seep is confirmed.

No later than 30 days from receipt of the plan, the Division of Water Resources will provide the owner with review comments noting any deficiencies.

(h) No later than 12 months from the enactment of this act, the owner shall submit any information, forms, and fees necessary to request that the Division of Water Resources incorporate the process described in subsections (b) through (g) of this section into the owner's NPDES permit."

PART IV. AMEND S.L. 2009-390 (SB 1004)

SECTION 4. Section 3.(b) of S.L. 2009-390 is repealed.

PART V. EMERGENCY ACTION PLANS

SECTION 5. G.S. 143-215.31 is amended by adding two subsections to read:

"**§ 143-215.31. Supervision over maintenance and operation of dams.**

...

(f) Develop Emergency Action Plan. – Owners of high and intermediate hazard dams shall develop at their cost an Emergency Action Plan for their dam in document format in triplicate copy to be submitted to the Department by January 1, 2015. The emergency action plan at minimum shall:

(1) Identify potential emergency conditions that can occur at the dam.

(2) List preplanned actions to be taken during an emergency condition at the dam.

(3) Document emergency notification procedures to aid in warning and evacuations during an emergency condition at the dam.

(4) Provide a downstream inundation map depicting areas affected by a dam failure and sudden release of the impoundment.

If a dam owner fails to provide the Department with an Emergency Action Plan in triplicate copy by January 1, 2015, it shall be subject to Enforcement Procedures under G.S. 143-215.36. Dam owners shall update their emergency action plans annually and submit the updated plans in triplicate copy to the Department each year subsequent to January 1, 2015. The Department shall provide the appropriate local Emergency Management Agency and the Regional Office of the Department with the triplicate copy.

(g) Confidentiality of Sensitive Public Security Information – To the extent that any documents included in the Emergency Action Plan developed under this section contain sensitive public security information, those portions of documents shall not be subject to disclosure under the North Carolina Public Records Act."

PART VI. NOTIFICATION OF EMERGENCY REPAIR OF A DAM

SECTION 6. G.S. 143-215.27 reads as rewritten:

"**§143-215.27. Repair, alteration, or removal of dam.**

(a) Before commencing the repair, alteration or removal of a dam, application shall be made for written approval by the Department, except as otherwise provided by this Part. The application shall state the name and address of the applicant, shall adequately detail the changes it proposes to effect and shall be accompanied by maps, plans and specifications setting forth such details and dimensions as the Department requires. The Department may waive any such requirements. The application shall give such other information concerning the dam and reservoir required by the Department, such information concerning the safety of any change as it may require, and shall state the proposed time of commencement and completion of the work. When an application has been completed it may be referred by the Department for agency review and report, as provided by subsection (b) of G.S. 143-215.26 in the case of original construction.

(b) When repairs are necessary to safeguard life and property they may be started immediately but the Department shall be notified ~~forthwith~~ of the proposed repairs and of the work under ~~way;~~way as soon as possible but not later than 24 hours after first knowledge of the necessity for emergency repairs, and ~~they~~ such repairs shall be made to conform to its orders."

PART VII. INSPECTION OF IMPOUNDMENTS

SECTION 7. G.S. 143-215.32 is amended by adding two sections to read:

"(e) Investor-owned public utilities shall inspect each coal combustion products impoundment weekly and after storms to detect evidence of any of the following:

(1) Deterioration, malfunctions, or improper operation of spillway control systems.

(2) Sudden drops in the level of the impoundment's contents.

(3) Severe erosion or other signs of deterioration in dikes or other containment devices.

(4) New or enlarged seeps along the downstream slope or toe of the dike or other containment devices.

(5) Any other abnormal conditions at the impoundment that may pose a health or safety risk.

If any abnormalities in subdivisions (1) through (5) of this subsection are observed, documentation shall be provided to a registered professional engineer for further investigation and appropriate action.

(f) Each coal combustion products impoundment located at investor-owned public utilities shall be inspected annually by an independent registered professional engineer to assure structural integrity and that the design, operation, and maintenance of the surface

impoundment are in accordance with generally accepted engineering standards. The owner or operator must notify the Department by way of a certification by the independent registered professional engineer that the dam is structurally sound and the design, operation, and maintenance of the surface impoundment is in accordance with generally accepted engineering standards. The inspection report shall be submitted to the Department within 30 days of the completion of the inspection and shall be placed on a publicly accessible internet site."

PART VIII. DEFINITION OF SOLID WASTE

SECTION 8.(a) G.S. 130A-290(a)(35) reads as rewritten:

"(35) "Solid waste" 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~~ combustion products removed from impoundments subject to permits 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 shall be a solid waste. 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 and Energy Commission (as defined under G.S. 143B-293.1). 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 8.(b) G.S. 143-213(18) reads as rewritten:

"(18) "Waste" shall mean and include the ~~following:~~following with the exception of solid waste as defined by G.S. 130A-290(a)(35):

a. "Sewage," which shall mean water-carried human waste discharged, transmitted, and collected from residences, buildings, industrial establishments, or other places into a unified sewerage system or an arrangement for sewage disposal or a group of such sewerage arrangements or systems, together with such ground, surface, storm, or other water as may be present.

b. "Industrial waste" shall mean any liquid, solid, gaseous, or other waste substance or a combination thereof resulting from any process of industry, manufacture, trade or business, or from the development of any natural resource.

c. "Other waste" means sawdust, shavings, lime, refuse, offal, oil, tar chemicals, dissolved and suspended solids, sediment, and all other substances, except industrial waste, sewage, and toxic chemicals which may be discharged into or placed in such proximity to the water that drainage therefrom may reach the water.

d. "Toxic waste" means that waste, or combinations of wastes, including disease-causing agents, which after discharge and upon exposure, ingestion, inhalation, or assimilation into any organism, either directly from the environment or indirectly by ingestion through food chains, will cause death, disease, behavioral abnormalities, cancer, genetic mutations, physiological malfunctions (including malfunctions in reproduction) or physical deformities, in such organisms or their offspring."

PART IX. TEMPORARY MORATORIUM ON STRUCTURAL FILL

SECTION 9.(a) Moratorium Established. – Notwithstanding rules adopted by the Commission for Public Health there is hereby established a moratorium on the use of coal combustion products as a structural fill unless the fill is used under an airport runway or base or sub-base of a concrete or asphalt paved road, constructed under the authority of a public entity. The moratorium established by this section shall be in effect until rules are amended by the Commission for Public Health for the management of coal combustion products.

SECTION 9.(b) For purposes of this section, the moratorium does not apply to structural fill sites of less than 5,000 cubic yards.

SECTION 9.(c) This section is effective when this act becomes law and applies only to those coal combustion products structural fills that have not begun construction or have not received a permit to begin construction on or before that date.

PART X. COAL COMBUSTION PRODUCTS IMPOUNDMENT CLOSURE

SECTION 10.(a) Article 21 of Chapter 143 of the General Statutes is amended by adding a new Part to read:

"Part 12. Coal Combustion Products Impoundment Closure

"**§ 143-215.74Q. Closure of Coal Combustion Products Impoundments to Protect Groundwater and Surface Water**

(a) The Department shall establish the priority for closure of all active and inactive investor-owned coal combustion products impoundments. Once priorities for closure are established, the owner of the active and inactive ash ponds shall propose a schedule for beginning closure activities for each prioritized facility, and shall submit a proposed schedule

in accordance with the time frame established by the Department. Six months (180 days) before the scheduled closure activities begin, the owner must submit five (5) paper copies and one (1) electronic copy of a closure plan to the Division of Water Resources for approval. The closure plan shall include the following sections:

(1) Facility and Ash Pond Description. – A description of the operation of the facility that shall include, but not be limited to:
  a. Site and history of site operations; ash handling and storage operations.
  b. Types of flows discharging into the impoundment.
  c. Estimated volume of material contained in the impoundment.
  d. Analysis of the structural integrity of dikes or dams associated with impoundment.
  e. Composition of liner (lined or unlined pond).
  f. Summarized results of any previous environmental investigations performed at the site.

(2) Site Map. – Site maps that illustrate the following:
  a. All structures associated with operations of the ash ponds within the power plant property boundary.
  b. All identified current and former ash disposal and storage areas including structural fills.
  c. All property boundaries and established compliance boundaries.
  d. All potential receptors (i.e. water supply wells, surface water bodies (streams, springs, lakes, ponds and other surface drainage features, and wetlands) within 2,640 feet from the compliance boundary.
  e. Topographic contour intervals of the site shall be selected to enable an accurate representation of site features and terrain and in most cases should be less than 20 feet intervals.
  f. Locations of all on-site active and inactive Division of Waste Management permitted solid waste facilities along with their associated compliance boundaries and monitoring wells.
  g. All existing and proposed groundwater monitoring wells associated with monitoring of the active and inactive ash ponds.
  h. All existing and proposed sample collection locations associated with the operation or closure of the impoundment(s).

(3) Hydrogeologic, Geologic, and Geotechnical Investigations. – The results of a hydrogeologic, geologic, and geotechnical investigation of the facility, that shall include, but not be limited to:
  a. A description of the hydrogeology and geology of the site.
  b. A description of the stratigraphy of the geologic units underlying the ash ponds.
  c. The saturated hydraulic conductivity for the ash and liner if present.
  d. The geotechnical properties for the ash, liner if present, and the uppermost identified stratigraphic unit underlying the impoundment including the soil classification by Unified Soil Classification System, in-place moisture content, particle size distribution, Atterberg limits, specific gravity, effective friction angle, maximum dry density, optimum moisture content, and permeability.
  e. A chemical analysis of the impoundment water, ash, and ash-affected soil. Identify constituents with concentrations found to be in excess of 15A NCAC 02L. 0202 Groundwater Quality Standards including all laboratory results for these analyses.

f. Summary tables of historical records of groundwater sampling results.

g. A map that illustrates the potentiometric contours and flow directions for all identified aquifers underlying impoundments (shallow, intermediate, and deep) and the horizontal extent of areas where 15A NCAC 02L. 0202 Groundwater Quality Standards are exceeded.

h. Cross-sections that illustrate the following: vertical and horizontal extent of the ash within the impoundment; Stratigraphy of the geologic units underlying the ash pond and the vertical extent of areas where 15A NCAC 02L. 0202 Groundwater Quality Standards are exceeded.

(4) Hydrogeologic Modeling. – The results of groundwater modeling of the site that shall include, but not be limited to:

a. An account of the design of the proposed pond closure method that: is based on the site hydrogeologic conceptual model developed, includes predictions on post-closure groundwater elevations, groundwater flow directions and velocities including the effects on/from the potential receptors, and includes predictions at the compliance boundary for constituents identified in subsubdivision e. of subdivision (3) of this subsection as exceeding 15A NCAC 2L .0202 Groundwater Quality Standards.

b. Predictions that include the effects on the groundwater chemistry, and should describe migration, concentration, mobilization and fate of the constituents that exceed 15A NCAC 2L standards before and after closure activities including the effects on/from potential receptors.

c. A description of the groundwater trend analysis methods used to demonstrate compliance with 15A NCAC 02L .0202 Groundwater Quality Standards and 15A NCAC 02L .0106.

(5) Closure Method. – The owner shall provide a proposed closure method. The proposed closure method must demonstrate that where groundwater quality is degraded, restoration to the level of the groundwater standards will be obtained as is economically and technically feasible. The selected proposed closure method shall be from one of the following alternatives, and shall include, but not be limited to:

a. A description of the closure method identified for each ash pond. Closure methods include:

i. Closure-in-Place. – This alternative entails placing an engineered cover system such as a composite geomembrane, impermeable clay, and/or a soil cover over the ash pond. No ash or ash-affected soil would leave the ash pond area.

ii. Clean Closure. – This alternative assumes that all coal ash can be excavated and the ash pond area will be returned to a non-erosive and stable condition.

iii. Hybrid Closure. – This alternative entails consolidating ash and ash-affected soil into as small area as feasible within the ash pond footprint. An engineered cover system (e.g. composite geomembrane, impermeable clay, and/or a soil cover) would be installed over the consolidated ash and ash-affected soil. The remaining ash pond area will be returned to a non-erosive and stable condition.

iv. Other. – Must be equally or more effective at protecting water quality than the other closure options.

b. A description concerning any plans for beneficial reuse of the coal ash under 15A NCAC 02T .1200 (if applicable).

c. All engineering drawings, schematics, and specifications for the proposed closure method. If required by G.S. 89C, engineering design documents should be prepared, signed, and sealed by a professional engineer. Describe the construction quality assurance and quality control program including the responsibilities and authorities; monitoring and testing activities; sampling strategies; and reporting requirements.

d. A description of the provisions for disposal of wastewater through an NPDES permit or any other relevant permit.

e. A description of the provisions for the final disposition of the ash. If the ash is to be removed, the owner must identify the site location and the permit number for ash sent to a permitted disposal site. If the ash is left in place, the owner must provide a description of how the ash will be stabilized during closure and post closure and an estimate of the volume of ash left in place.

f. A list of all permits that will need to be acquired or modified to complete closure activities.

(6) Post-Closure Plan. – The owner shall provide post-closure plans for a minimum of 30 years. If required by G.S. 89C, these plans should be signed and sealed by a professional engineer. These plans shall include, but not be limited to:

a. A description of the post-closure care and maintenance activities.

b. A demonstration of the long-term control of all leachate, affected groundwater, and stormwater.

c. A description of a groundwater monitoring program that includes:

i. Post closure groundwater monitoring, including parameters to be sampled and sampling schedules.

ii. Any additional monitoring well installations, including a map with the proposed location/s and well construction details.

iii. A description of the actions proposed to mitigate statistically significant increasing groundwater quality trends.

d. The length of the post-closure care period. This period may be proposed to be decreased or the frequency and parameter list modified if the owner demonstrates that the reduced period or modifications are sufficient to protect human health and the environment and this demonstration is approved by the Department. The length of the post-closure care period may be increased by the Department at the end of the post-closure period if there are statistically significant increasing groundwater quality trends or contaminant concentrations have not decreased to a level protective of human health and the environment. If the owner determines that the post-closure care period is no longer needed and the Department agrees, the owner shall provide a certification, signed by a registered professional engineer, verifying that post-closure care has been completed in accordance with the post-closure plan.

(7) Schedules. – The owner shall provide an estimate of the milestone dates for all activities related to closure and post-closure.

(8) Future Site Use. – The owner shall describe the anticipated future use of the site and the necessity for deed restrictions following closure.

(9) Final Submittal Determination and Approval. – Within 90 days of receipt of a completed closure plan, the Department will send a letter either approving the closure plan or requesting additional information. Upon approval, the owner must begin closure activities within 30 days."

SECTION 10.(b) Part 3 of Article 21 of Chapter 143 of the General Statutes is amended by adding a new section to read:

"**§ 143-215.37A. Closure of coal combustion products impoundments to render such facilities exempt from the North Carolina Dam Safety Law of 1967.**

(a) Decommissioning Request Submittal. – Any party seeking to decommission a coal combustion products impoundment facility shall submit a document from the ownership entity requesting that the facility be decommissioned to the Division of Energy, Mineral, and Land Resources. The document shall include as a minimum the following:

(1) A proposed geotechnical investigation plan scope of work. Upon preliminary plan approval as described below, the owner shall proceed with necessary field work and submit a geotechnical report with site specific field data indicating that the containment dam and material impounded by the containment dam are stable, and that the impounded material is not subject to liquid flow behavior under expected static and dynamic loading conditions. Material testing should be performed along the full extent of the containment dam and in a pattern throughout the area of impounded material.

(2) A topographic map depicting existing conditions of the containment dam and impoundment area at two foot contour intervals or less.

(3) If the facility contains areas capable of impounding by topography, a breach plan must be included which ensures that there shall be no place within the facility capable of impounding. The breach plan shall include at minimum proposed grading contours superimposed on the existing topographic map as well as necessary engineering calculations, construction details and construction specifications.

(4) A permanent vegetation and stabilization or capping plan by synthetic liner or other means if needed. These plans shall include at minimum, proposed grading contours superimposed on the existing topographic map where applicable as well as necessary engineering calculations, construction details, construction specifications and all details for the establishment of surface area stabilization.

(5) A statement indicating that the impoundment facility has not received sluiced coal ash material for at least three years and there are no future plans to place coal ash in the facility by sluicing methods.

(b) Preliminary Submittal Determination and Approval. – The submitted document shall undergo a preliminary review by the Division of Energy, Mineral, and Land Resources for completeness and approval of the proposed geotechnical investigation plan scope of work.

(1) The owner shall be notified by letter with results of the preliminary review including approval or revision request relative to the proposed scope of work included in the geotechnical investigation plan.

(2) Upon receipt of a letter issued by the Division approving the preliminary geotechnical plan scope of work, the owner may proceed with field work and development of the geotechnical report.

(c) Final Submittal Determination and Approval. – Upon receipt of the geotechnical report, the Division of Energy, Mineral, and Land Resources shall complete the submittal review.

(1) If it is determined that sufficient evidence has been presented to clearly show that the facility no longer functions as a dam in its current state, a letter decommissioning the facility shall be issued by the Division of Energy, Mineral, and Land Resources and the facility shall no longer be under jurisdiction of the Dam Safety Law of 1967, G.S. 143-215.23.

(2) If modifications such as breach construction and/or implementation of a permanent vegetation or surface lining plan are needed, such plans shall be reviewed per standard procedures for consideration of letter of approval to modify and/or breach.

(3) If approved, such plans shall follow standard procedure for construction including: construction supervision by a North Carolina registered professional engineer, as-built submittal by a North Carolina registered professional engineer, and follow up final inspection by Division of Energy, Mineral, and Land Resources staff.

(4) Final approval shall be issued by the Division of Energy, Mineral, and Land Resources in the form of a letter decommissioning the facility and the facility shall no longer be under jurisdiction of the Dam Safety Law of 1967, G.S. 143-215.23."

PART XI. CLOSURE PLANS SCHEDULE

SECTION 11. Notwithstanding G.S. 143-215.74Q and G.S. 143-215.37A as enacted by Sections 10.(a) and 10.(b) of this act:

(a) The closure plan for Riverbend shall be submitted to the Department no later than 60 days after the Act is ratified and shall include detailed provisions that ensure all ash in the impoundments will be moved to a lined structural fill, a lined landfill, or an alternative disposition approved by Department.

(b) The closure plan for Asheville shall be submitted to the Department no later than 60 days after the Act is ratified and include detailed provisions that ensure all ash in the impoundments will be moved to a lined structural fill, a lined landfill, or an alternative disposition approved by the Department.

(c) The closure plan for Dan River shall be submitted to the Department no later than 90 days after the Act is ratified and include detailed provisions that ensure all ash in the impoundments will be moved to a lined structural fill, a lined landfill, or an alternative disposition approved by the Department.

(d) The closure plan for Sutton shall be submitted to the Department no later than 90 days after the Act is ratified, and include detailed provisions that ensure all ash in the impoundments will be moved to a lined structural fill, a lined landfill, or an alternative disposition approved by Department.

PART XII. APPROPRIATION

SECTION 12. There is appropriated from the General Fund to the Department of Environment and Natural Resources the sum of one million four hundred thousand dollars ($1,400,000) for the 2013-2014 Fiscal Year to establish nineteen permanent positions and associated operating costs to implement this act."

PART XIII. EFFECTIVE DATE

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

SENATE PAGES ATTENDING

COMMITTEE: Agriculture ROOM: 643

DATE: 6-5 TIME: 9:30

PLEASE PRINT LEGIBILY!!!!!!!!!!!!!....*or else!*

Page Name	Hometown	Sponsoring Senator
1. Ebuom wan Ada Ebuomwan	Raleigh	Barefoot
2. Anjalique Knight	Fayetteville	Clark
3. Jazsmin McNeil	Raliegh	Dan Blue
4. Erial Harris	Weldon	Bryant
5. Gerard Wilder	Raleigh	Berger
6. Nick Williams	Albertson	Brent Jackson
7. Victoria Kiger	State Road	Shirley Randleman
8. Mary ~~Scott~~ Willson	Raleigh	Jeff Tarte
9. Aaron McKinney	~~Hoke~~ Mario Hise	
10. Patrick Sugg	Wilmington	Goolsby

Do not add names below the grid.

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

SENATE SERGEANT-AT-ARMS

COMMITTEE: Sen. Agriculture /Environment /Natural Resources

DATE: 06-05-2014 **ROOM:** 643

1. ERNIE SHERRELL
2. DONNA BLAKE
3. STEVE McKAIG
4. GILES JEFFREYS
5. ISAAC WALKER
6. BILLY FRITSCHER

PUBLIC COMMENT LIST

Senate Agriculture/ Environment / Natural Resources

06/05/2014

SB 729

2:00 Minutes

1. Cassie Gavin, Sierra Club
2. Anna Jane Joyner, Western NC Alliance
3. Mary Maddox Ashill, SELC
4. Henry Batten, Concrete Supply Co
5. ~~Matthew Starr, Neuse Riverkeeper~~
6. Gary Salamido, NC Chamber (Did not Speak)
7. Sharon Miller, Carolina Utility Customers Association
8. George Everett
9. 3 under
10.

VISITOR REGISTRATION SHEET

Agriculture/Environment/Natural Resources

June 5, 2014

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
JERRY SCHILL	NC Fisheries Assoc.
Nicole Hines	Governor's Office
Dwight Allen	Allen Law Office PLLC
Forrest Johnson	Asheville NC
Anna Jane Joyner	WNC Alliance
Wardsylvester	Parent of Page
[illegible]	SA
[illegible]	
Robert Thrush Jr.	GESINC
Nicole Grein	intern SPC
Dan Conrad	NCUC
Tom BEAN	EDF
John Runkle	NC WARN
Dan Crawford	NCCCV
Rebekah Givens	NCLCV
Sarah Collins	NCLCV
Henry M Lamontagne	UCA

09-21-201

VISITOR REGISTRATION SHEET

Agriculture/Environment/Natural Resources

June 5, 2014

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
DAVID BARNES	Duke Energy
Patrick Buffkin	NCAEC
Dianna Downey	PSNCUC
James McLawhorn	PSNCUC
Keith Larick	NCDA&CS
Amanda Hoover	Troutman Sanders
Dave Fenton	City of Charlotte
[illegible]	NSS
Erin Wynia	NCLM
Celia Sax	OSBM
Mercedes Benton	OSBM
Nadia Luhr	NCCN
Layla Cummings	DENR
Sharon Miller	CUCA
Michael Dise	NC Justice Center
Mary Maclean Asbill	SELC
Megan Ware	SELC

VISITOR REGISTRATION SHEET

Agriculture/Environment/Natural Resources

June 5, 2014

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Brooks Rainey Pearson	SELC
Morgan Abbott	CTNC
Brian Jones	DENR
Sabrina O'Hare	DENR
Kees Burns	DENR
[illegible]	—
[illegible]	—
Matt Domínguez	USUS
Hayden [illegible]	FSP
Matthew Starr	Neuse Riverkeeper
Tom Dodge	PS, NCUC
Steve David	NCCADV
Alex Hill	ICLG

09-21-201

VISITOR REGISTRATION SHEET

Agriculture/Environment/Natural Resources

June 5, 2014

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
PAIGE WORSHAM	NC Center for Public Policy Research
Peter Raabe	American Rivers

09-21-201

Senate Committee on Agriculture/Environment/Natural Resources
Monday, June 16, 2014, 3:00 PM
643 Legislative Office Building

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

BILL NO.	SHORT TITLE	SPONSOR
SB 729	Governor's Coal Ash Action Plan.	Senator Apodaca Senator Berger

Adjournment

Senate Committee on Agriculture/Environment/Natural Resources
Monday, June 16, 2014 at 3:00 PM
Room 643 of the Legislative Office Building

MINUTES

The Senate Committee on Agriculture/Environment/Natural Resources met at 3:00 PM on June 16, 2014 in Room 643 of the Legislative Office Building. Sixteen members were present: Senator Andrew Brock, Senator Bill Cook, Senator Austin Allran, Senator Chad Barefoot, Senator Angela Bryant, Senator Joel Ford, Senator Valerie Foushee, Senator Fletcher Hartsell, Senator Jeff Jackson, Senator Brent Jackson, Senator Gene McLaurin, Senator Ron Rabin, Senator Shirley Randleman, Senator Tommy Tucker, Senator Trudy Wade and Senator Michael Walters.

Senator Brent Jackson called the meeting to order as Senator Brock, Co-Chair was stuck in traffic and will preside as soon as he gets in.

Sgt. at Arms for meeting was Steve Wilson, Giles Jefferys and Billy Fritscher.

Senator Jackson announced that this meeting was to discuss the Coal Ash Bill SB729 which would be for discussion only. There was a PCS on this bill and Senator Jackson asked for a motion to accept the PCS. The motion was accepted by all. Senator Jackson recognized Senator Berger to open the discussion on the bill

SB 729 Coal Ash Management Act of 2014. (Senators Apodaca, Berger)

Senator Berger told the committee that the bill before them represents the most comprehensive effort to address the issue of Coal Ash in the nation and it is something that goes a long way to protecting our water and protecting our people from the dangers and environmental risks of Coal Ash. Senator Berger turned the discussion over to Senator Apodaca.

Senator Apodaca did a broad overview of the bill and went through the highpoints of the bill. Senator Apodaca said this bill would give North Carolina the strictest regulation on Coal Ash in the entire country and make us the first state to force closure of all Coal Ash ponds. Addressing the environmental, regulatory and consumer protection concerns caused by Coal Ash ponds is one of the Senate's top priorities. The goal is to get North Carolina out of the Coal Ash business. The big picture of this bill is that it dries out and closes each pond. It stops the disposal of wet Coal Ash and requires future Coal Ash to be put to a beneficial use or into a lined facility. It requires that all 33 Coal Ash ponds in North Carolina be dewatered and closed within 15 years. Ponds will be closed according to the overall risk they pose. Four sites have been designated to be excavated and closed as quickly as possible and no later than 2019. Those four are Dan River, Asheville, River Bend and Sutton. Remaining sites will be classified as high, medium, or low risks. This classification must happen by August of next year. High Risk must be closed by no later than August 1, 2019. Intermediate risks must be closed by no later than August 1, 2024. Low risks must be closed by no later than August 1, 2029.

Senator Brock, presiding, turned the meeting over to staff for discussion on the PCS for SB 729. Heather Fennell talked about cost recovery and resources for implementation; Jennifer McGinnis talked about prioritization and closure and Jeff Hudson talked about ground water and service water protection and the dam safety provision in the PCS.

Following the explanation of the PCS from the staff and many questions from the members, Senator Brock turned the meeting over for public comment. Public Comment was made by Mary Maclean Asbil from SELC speaking in opposition to the bill and Nicholas Wood from NC Warn who also spoke in opposition to the bill.

The meeting adjourned at 5:49 PM.

Senator Andrew Brock, Presiding

Judy Edwards, Committee Clerk

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

S D

SENATE BILL 729
PROPOSED COMMITTEE SUBSTITUTE S729-PCS45193-RIx-39

Short Title: Coal Ash Management Act of 2014. (Public)

Sponsors:

Referred to:

May 15, 2014

A BILL TO BE ENTITLED

AN ACT TO (1) PROHIBIT RECOVERY OF COSTS RELATED TO UNLAWFUL DISCHARGES FROM COAL COMBUSTION RESIDUALS SURFACE IMPOUNDMENTS; (2) ESTABLISH A MORATORIUM ON CERTAIN RATE CASES; (3) CREATE THE COAL ASH MANAGEMENT COMMISSION TO REVIEW AND APPROVE COAL COMBUSTION RESIDUALS SURFACE IMPOUNDMENTS CLASSIFICATIONS AND CLOSURE PLANS AND OTHERWISE STUDY AND MAKE RECOMMENDATIONS ON LAWS GOVERNING MANAGEMENT OF COAL COMBUSTION RESIDUALS; (4) REQUIRE EXPEDITED REVIEW BY THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES OF ANY PERMIT NECESSARY TO CONDUCT ACTIVITIES REQUIRED BY THIS ACT; (5) ESTABLISH VARIOUS REPORTING REQUIREMENTS TO THE GENERAL ASSEMBLY, INCLUDING A QUARTERLY REPORT FROM THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES ON ITS OPERATIONS, ACTIVITIES, PROGRAMS, AND PROGRESS WITH RESPECT TO ITS OBLIGATIONS UNDER THIS ACT FOR COAL COMBUSTION RESIDUALS SURFACE IMPOUNDMENTS; (6) PROHIBIT LOCAL GOVERNMENT REGULATION OF MANAGEMENT OF COAL COMBUSTION RESIDUALS OR COAL COMBUSTION PRODUCTS; (7) PROHIBIT CONSTRUCTION OF NEW OR EXPANSION OF EXISTING COAL COMBUSTION RESIDUALS SURFACE IMPOUNDMENTS EFFECTIVE JULY 1, 2014; (8) PROHIBIT THE DISPOSAL OF COAL COMBUSTION RESIDUALS INTO COAL COMBUSTION RESIDUALS SURFACE IMPOUNDMENTS AT COAL-FIRED GENERATING UNITS THAT ARE NO LONGER PRODUCING COAL COMBUSTION RESIDUALS EFFECTIVE OCTOBER 1, 2014; (9) PROHIBIT DISPOSAL OF STORMWATER TO COAL COMBUSTION RESIDUALS SURFACE IMPOUNDMENTS EFFECTIVE DECEMBER 31, 2018; (10) REQUIRE ALL ELECTRIC GENERATING FACILITIES TO CONVERT TO GENERATION OF DRY FLY ASH ON OR BEFORE DECEMBER 31, 2017, AND DRY BOTTOM ASH ON OR BEFORE DECEMBER 31, 2020, OR RETIRE; (11) REQUIRE THE ASSESSMENT OF GROUNDWATER AT COAL COMBUSTION RESIDUALS SURFACE IMPOUNDMENTS; (12) REQUIRE CORRECTIVE ACTION FOR THE RESTORATION OF GROUNDWATER QUALITY AT COAL COMBUSTION RESIDUALS SURFACE IMPOUNDMENTS; (13) REQUIRE A SURVEY OF DRINKING WATER SUPPLY WELLS AND REPLACEMENT OF CONTAMINATED WATER SUPPLIES; (14) REQUIRE THE IDENTIFICATION, ASSESSMENT, AND CORRECTION OF UNPERMITTED DISCHARGES FROM

COAL COMBUSTION RESIDUALS SURFACE IMPOUNDMENTS; (15) REQUIRE THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES TO, AS SOON AS PRACTICABLE BUT NO LATER THAN AUGUST 1, 2015, PRIORITIZE FOR THE PURPOSE OF CLOSURE AND REMEDIATION COAL COMBUSTION RESIDUALS SURFACE IMPOUNDMENTS, INCLUDING ACTIVE AND RETIRED SITES, BASED ON THESE SITES' RISKS TO PUBLIC HEALTH, SAFETY, WELFARE, THE ENVIRONMENT, AND NATURAL RESOURCES; (16) REQUIRE OWNERS OF COAL COMBUSTION RESIDUALS SURFACE IMPOUNDMENTS TO SUBMIT A PROPOSED PLAN FOR CLOSURE OF ALL IMPOUNDMENTS TO THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES; (17) REQUIRE CLOSURE AND REMEDIATION OF CERTAIN COAL COMBUSTION RESIDUALS SURFACE IMPOUNDMENTS AS SOON AS PRACTICABLE, BUT NO LATER THAN AUGUST 1, 2019; (18) REQUIRE THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES TO ESTABLISH A SCHEDULE AND PROCESS FOR CLOSURE AND REMEDIATION OF ALL COAL COMBUSTION RESIDUALS SURFACE IMPOUNDMENTS BASED UPON THE DEPARTMENT'S RISK ASSESSMENT OF THESE SITES, BASELINE REQUIREMENTS SET BY THE GENERAL ASSEMBLY, EVALUATION OF PROPOSED CLOSURE PLANS SUBMITTED BY IMPOUNDMENT OWNERS, AND INPUT FROM THE PUBLIC AND OTHER STAKEHOLDERS; (19) ESTABLISH MINIMUM STATUTORY REQUIREMENTS FOR STRUCTURAL FILL PROJECTS USING COAL COMBUSTION PRODUCTS AND REQUIRE THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES TO INVENTORY AND INSPECT CERTAIN STRUCTURAL FILL PROJECTS; (20) PLACE A MORATORIUM ON CERTAIN PROJECTS USING COAL COMBUSTION PRODUCTS AS STRUCTURAL FILL UNTIL AUGUST 1, 2015, AND DIRECT THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES AND THE ENVIRONMENTAL MANAGEMENT COMMISSION TO STUDY THE ADEQUACY OF CURRENT LAW GOVERNING USE OF COAL COMBUSTION PRODUCTS AS STRUCTURAL FILL AND FOR BENEFICIAL USE; (21) PLACE A MORATORIUM ON THE EXPANSION AND CONSTRUCTION OF COAL COMBUSTION RESIDUALS LANDFILLS UNTIL AUGUST 1, 2015, AND DIRECT THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES TO ASSESS THE RISKS TO PUBLIC HEALTH, SAFETY, WELFARE, THE ENVIRONMENT, AND NATURAL RESOURCES OF COAL COMBUSTION RESIDUALS SURFACE IMPOUNDMENTS LOCATED BENEATH THESE LANDFILLS TO DETERMINE THE ADVISABILITY OF CONTINUED OPERATION OF THESE LANDFILLS; (22) STRENGTHEN THE REPORTING AND NOTIFICATION REQUIREMENTS APPLICABLE TO DISCHARGES OF WASTEWATER TO WATERS OF THE STATE; (23) REQUIRE CERTAIN EMERGENCY CALLS TO BE RECORDED; (24) REQUIRE DEVELOPMENT OF EMERGENCY ACTION PLANS FOR HIGH AND INTERMEDIATE HAZARD DAMS AND AMEND OTHER DAM SAFETY LAW REQUIREMENTS APPLICABLE TO COAL COMBUSTION RESIDUALS SURFACE IMPOUNDMENTS; (25) TRANSFER SOLID WASTE RULE-MAKING AUTHORITY FROM COMMISSION FOR PUBLIC HEALTH TO ENVIRONMENTAL MANAGEMENT COMMISSION; (26) PROVIDE FOR VARIOUS STUDIES; AND (27) PROVIDE RESOURCES FOR IMPLEMENTATION OF THIS ACT.

The General Assembly of North Carolina enacts:

PART I. PROHIBIT RECOVERY OF COSTS RELATED TO UNLAWFUL DISCHARGES FROM COAL COMBUSTION RESIDUALS SURFACE IMPOUNDMENTS; MORATORIUM ON RATE CASES

SECTION 1.(a) Article 7 of Chapter 62 of the General Statutes is amended by adding a new section to read:

"**§ 62-133.13. Recovery of costs related to unlawful discharges from coal combustion residuals surface impoundments to the surface waters of the State.**

The Commission shall not allow an electric public utility to recover from the retail electric customers of the State costs resulting from an unlawful discharge to the surface waters of the State from a coal combustion residuals surface impoundment, unless the Commission determines the discharge was due to an event of force majeure. For the purposes of this section, "coal combustion residuals surface impoundments" has the same meaning as in G.S. 130A-309.201. For the purposes of this section, "unlawful discharge" shall mean a discharge that results in a violation of State or federal surface water quality standards."

SECTION 1.(b) Section 1(a) of this act is effective when it becomes law and applies to discharges occurring on or after January 1, 2014.

SECTION 2.(a) Moratorium on Cost Recovery. – The Utilities Commission shall not issue an order authorizing an electric public utility the recovery of any additional costs related to coal combustion residuals surface impoundments until the end of the moratorium provided in this section. For the purposes of this section, "coal combustion residuals surface impoundments" has the same meaning as in G.S. 130A-309.201. The Utilities Commission shall not enter a final order granting an increase in base rates of an electric public utility for costs related to coal combustion residuals surface impoundments under G.S. 62-133 or G.S. 62-134 prior to January 15, 2015.

SECTION 2.(b) Purpose of Moratorium. – The purpose of the moratorium is to allow the State to study the disposition of coal combustion residuals surface impoundments, including any final rules adopted by the United States Environmental Protection Agency on the regulation of coal combustion residuals.

PART II. PROVISIONS FOR COMPREHENSIVE MANAGEMENT OF COAL COMBUSTION RESIDUALS

SECTION 3.(a) Article 9 of Chapter 130A of the General Statutes is amended by adding a new Part to read:

"Part 2I. Coal Ash Management.

"Subpart 1. Short Title, Definitions, and General Provisions.

"**§ 130A-309.200. Title.**

This Part may be cited as the "Coal Ash Management Act of 2014."

"**§ 130A-309.201. Definitions.**

Unless a different meaning is required by the context, the definitions of G.S. 130A-290 and the following definitions shall apply throughout this Part:

(1) "Beneficial and beneficial use" means projects promoting public health and environmental protection, offering equivalent success relative to other alternatives, and preserving natural resources.

(2) "Boiler slag" means the molten bottom ash collected at the base of slag tap and cyclone type furnaces that is quenched with water. It is made up of hard, black, angular particles that have a smooth, glassy appearance.

(3) "Bottom ash" means the agglomerated, angular ash particles formed in pulverized coal furnaces that are too large to be carried in the flue gases and collect on the furnace walls or fall through open grates to an ash hopper at the bottom of the furnace.

(4) "Coal combustion products" means fly ash, bottom ash, boiler slag, or flue gas desulfurization materials, which are beneficially used, including use for structural fill.

(5) "Coal combustion residuals" has the same meaning as defined in G.S. 130A-290.

(6) "Coal combustion residuals surface impoundment" means a topographic depression, excavation, or diked area that is: (i) primarily formed from earthen materials; (ii) without a base liner approved for use by Article 9 of Chapter 130A of the General Statutes or rules adopted thereunder for a combustion products landfill or coal combustion residuals landfill, industrial landfill, or municipal solid waste landfill; and (iii) designed to hold accumulated coal combustion residuals in the form of liquid wastes, wastes containing free liquids, or sludges, and that is not backfilled or otherwise covered during periods of deposition. "Coal combustion residuals surface impoundment" includes all of the following:

a. An impoundment that is dry due to the deposited liquid having evaporated, volatilized, or leached.

b. An impoundment that is wet with exposed liquid.

c. Lagoons, ponds, aeration pits, settling ponds, tailings ponds, and sludge pits, when these structures are designed to hold accumulated coal combustion residuals.

d. A coal combustion residuals surface impoundment that has been covered with soil after the final deposition of coal combustion residuals at the impoundment.

(7) "Commission" means the Environmental Management Commission.

(8) "Fly ash" means the very fine, powdery material, composed mostly of silica with nearly all particles spherical in shape, which is a product of burning finely ground coal in a boiler to produce electricity and is removed from the plant exhaust gases by air emission control devices.

(9) "Flue gas desulfurization material" means the material produced through a process used to reduce sulfur dioxide emissions from the exhaust gas system of a coal-fired boiler. The physical nature of these materials varies from a wet sludge to a dry powdered material, depending on the process, and their composition comprises either sulfites, sulfates, or a mixture thereof.

(10) "Mine" means an area of land from which minerals, inorganic and organic, have been extracted from their natural deposits.

(11) "Minerals" means soil, clay, coal, phosphate, metallic ore, and any other solid material or substance of commercial value found in natural deposits on or in the earth.

(12) "Owner" or "owner of a coal combustion residuals surface impoundment" means a public utility, as defined in G.S. 62-3, that owns a coal combustion residuals surface impoundment.

(13) "Receptor" means any human, plant, animal, or structure which is, or has the potential to be, affected by the release or migration of contaminants. Any well constructed for the purpose of monitoring groundwater and contaminant concentrations shall not be considered a receptor.

(14) "Structural fill" means an engineered fill with a projected beneficial end use constructed using coal combustion products that are properly placed and compacted. For purposes of this Part, the term includes fill used to reclaim abandoned mines and for embankments, greenscapes, foundations, construction foundations, and for bases/sub-bases under a structure or a

footprint of a paved road, parking lot, sidewalk, walkway, or similar structure.

(15) "Use or reuse of coal combustion products" means the procedure whereby coal combustion products are directly used as either of the following:

a. As an ingredient in an industrial process to make a product, unless distinct components of the coal combustion products are recovered as separate end products.

b. In a function or application as an effective substitute for a commercial product or natural resource.

"**§ 130A-309.202. Coal Ash Management Commission.**

(a) Creation. – In recognition of the complexity and magnitude of the issues associated with the management of coal combustion residuals and the proper closure and remediation of coal combustion residuals surface impoundments, the Coal Ash Management Commission is hereby established.

(b) Membership. – The Commission shall consist of nine members as follows:

(1) One appointed by the General Assembly upon recommendation of the President Pro Tempore of the Senate in accordance with G.S. 120-121 who shall at the time of appointment be a resident of the State.

(2) One appointed by the General Assembly upon recommendation of the President Pro Tempore of the Senate in accordance with G.S. 120-121 who shall at the time of appointment have special training or scientific expertise in waste management, including solid waste disposal, hauling, or beneficial use.

(3) One appointed by the General Assembly upon recommendation of the President Pro Tempore of the Senate in accordance with G.S. 120-121 who shall at the time of appointment be a licensed physician or a person with experience in public health.

(4) One appointed by the General Assembly upon recommendation of the Speaker of the House of Representatives in accordance with G.S. 120-121 who shall at the time of appointment be a member of a nongovernmental conservation interest.

(5) One appointed by the General Assembly upon recommendation of the Speaker of the House of Representatives in accordance with G.S. 120-121 who shall at the time of appointment be actively employed by, or recently retired from, an industrial manufacturing facility.

(6) One appointed by the General Assembly upon recommendation of the Speaker of the House of Representatives in accordance with G.S. 120-121 who shall at the time of appointment have experience in the use of coal combustion residuals as structural fill for construction or development projects.

(7) One appointed by the Governor who shall at the time of appointment have experience in economic development.

(8) One appointed by the Governor who shall at the time of appointment be a representative of an electric membership corporation organized under Article 2 of Chapter 117 of the General Statutes.

(9) One appointed by the Governor who shall at the time of appointment be a be a person with experience in science or engineering.

(c) Chair; Vice-Chair. – The Commission shall have a chair and a vice-chair. The Commission shall elect one of its members to serve as chair and one of its members to serve as vice-chair. The chair and vice-chair shall serve two-year terms.

(d) Vacancies. – Any appointment to fill a vacancy on the Commission created by the resignation, dismissal, death, or disability of a member shall be for the balance of the unexpired term. The Governor may reappoint a gubernatorial appointee of the Commission to an additional term if, at the time of the reappointment, the member qualifies for membership on the Commission under subdivisions (7) through (9) of subsection (b) of this section. Appointments by the General Assembly shall be made in accordance with G.S. 120-121, and vacancies in those appointments shall be filled in accordance with G.S. 120-122.

(e) Removal. – The Governor shall have the power to remove any member of the Commission from office for misfeasance, malfeasance, or nonfeasance in accordance with the provisions of G.S. 143B-13 of the Executive Organization Act of 1973.

(f) Powers and Duties. – The Commission shall have all of the following powers and duties:

(1) To review and approve the classification of coal combustion residuals surface impoundments required by G.S. 130A-309.211.

(2) To review and approve Coal Combustion Residuals Surface Impoundment Closure Plans as provided in G.S. 130A-309.212.

(3) To review and make recommendations on the provisions of this Part and other statutes and rules related to the management of coal combustion residuals.

(4) To undertake any additional studies as requested by the General Assembly.

(g) Reimbursement. – The members of the Commission shall receive per diem and necessary travel and subsistence expenses in accordance with the provisions of G.S. 138-5.

(h) Quorum. – Five members of the Commission shall constitute a quorum for the transaction of business.

(i) Staff. – The Commission is authorized and empowered to employ staff as the Commission may determine to be necessary for the proper discharge of the Commission's duties and responsibilities. The Chair of the Commission shall organize and direct the work of the Commission staff. The salaries and compensation of all such personnel shall be fixed in the manner provided by law for fixing and regulating salaries and compensation by other State agencies. The chair, within allowed budgetary limits and as allowed by law, shall authorize and approve travel, subsistence, and related expenses of such personnel incurred while traveling on official business. All State agencies, including the constituent institutions of The University of North Carolina, shall provide information and support to the Commission upon request.

(j) Conflicts of Interest; Disclosure. – The Governor shall require adequate disclosure of potential conflicts of interest by members. The Governor, by executive order, shall promulgate criteria regarding conflicts of interest and disclosure thereof for determining the eligibility of persons under this subsection, giving due regard to the requirements of federal legislation and, for this purpose, may promulgate rules, regulations, or guidelines in conformance with those established by any federal agency interpreting and applying provisions of federal law.

(k) Covered Persons. – All members of the Commission are covered persons for the purposes of Chapter 138A of the General Statutes, the State Government Ethics Act. As covered persons, members of the Commission shall comply with the applicable requirements of the State Government Ethics Act, including mandatory training, the public disclosure of economic interests, and ethical standards for covered persons. Members of the Commission shall comply with the provisions of the State Government Ethics Act to avoid conflicts of interest.

(l) Meetings. – The Commission shall meet at least once every two months and may hold special meetings at any time and place within the State at the call of the Chair or upon the written request of at least five members.

(m) Reports. – The Commission shall submit quarterly written reports as to its operation, activities, programs, and progress to the Environmental Review Commission. The Commission shall supplement the written reports required by this subsection with additional written and oral reports as may be requested by the Environmental Review Commission. The Commission shall submit the written reports required by this subsection whether or not the General Assembly is in session at the time the report is due.

(n) Administrative Location; Independence. – The Commission shall be administratively located in the Division of Emergency Management of the Department of Public Safety. The Commission shall exercise all of its powers and duties independently and shall not be subject to the supervision, direction, or control of the Division or Department.

"**§ 130A-309.203. Expedited permit review.**

(a) The Department shall act as expeditiously as practicable, but no later than the deadlines established under subsection (b) of this section, except in compliance with subsection (c) of this section, to issue all permits necessary to conduct activities required by this Part.

(b) Notwithstanding G.S. 130A-295.8(e), the Department shall determine whether an application for any permit necessary to conduct activities required by this Part is complete within 30 days after the Department receives the application for the permit. A determination of completeness means that the application includes all required components but does not mean that the required components provide all of the information that is required for the Department to make a decision on the application. If the Department determines that an application is not complete, the Department shall notify the applicant of the components needed to complete the application. An applicant may submit additional information to the Department to cure the deficiencies in the application. The Department shall make a final determination as to whether the application is complete within the later of (i) 30 days after the Department receives the application for the permit less the number of days that the applicant uses to provide the additional information or (ii) 10 days after the Department receives the additional information from the applicant. The Department shall issue a draft permit decision on an application for a permit within 60 days after the Department determines that the application is complete. The Department shall hold a public hearing and accept written comment on the draft permit decision for a period of not less than 30 or more than 60 days after the Department issues a draft permit decision. The Department shall issue a final permit decision on an application for a permit within 30 days after the comment period on the draft permit decision closes. If the Department fails to act within any time period set out in this subsection, the applicant may treat the failure to act as a denial of the permit and may challenge the denial as provided in Chapter 150B of the General Statutes.

(c) If the Department finds that compliance with the deadlines established under subsection (b) of this section would result in insufficient review of a permit application that would pose a risk to public health, safety, and welfare; the environment; or natural resources, the applicable deadline shall be waived for the application as necessary to allow for adequate review. If a deadline is waived pursuant to this subsection, the Secretary shall issue a written declaration, including findings of fact, documenting the need for the waiver.

"**§ 130A-309.204. Reports.**

(a) The Department shall submit quarterly written reports to the Environmental Review Commission and the Coal Ash Management Commission on its operations, activities, programs, and progress with respect to its obligations under this Part concerning all coal combustion residuals surface impoundments. At a minimum, the report shall include information concerning the status of assessment, corrective action, prioritization, and closure for each coal combustion residual surface impoundment and information on costs connected therewith. The report shall include an executive summary of each annual Groundwater Protection and Restoration Report submitted to the Department by the operator of any coal combustion residuals surface impoundments pursuant to G.S. 130A-309.209(d) and a summary

of all groundwater sampling, protection, and restoration activities related to the impoundment for the preceding year. The report shall also include an executive summary of each annual Surface Water Protection and Restoration Report submitted to the Department by the operator of any coal combustion residuals surface impoundments pursuant to G.S. 130A-309.210(e) and a summary of all surface water sampling, protection, and restoration activities related to the impoundment for the preceding year, including the status of the identification, assessment, and correction of unpermitted discharges from coal combustion residuals surface impoundments to the surface waters of the State. The Department shall supplement the written reports required by this subsection with additional written and oral reports as may be requested by the Environmental Review Commission. The Department shall submit the written reports required by this subsection whether or not the General Assembly is in session at the time the report is due.

(b) On or before October 1 of each year, the Department shall report to each member of the General Assembly who has a coal combustion residuals surface impoundment in the member's district. This report shall include the location of each impoundment in the member's district, the amount of coal combustion residuals known or believed to be located in the impoundment, the last action taken at the impoundment, and the date of that last action.

(c) On or before October 1 of each year, the generators of coal combustion residuals and coal combustion products shall submit an annual summary to the Department. The annual summary shall be for the period July 1 through June 30 and shall include all of the following:

(1) The volume of coal combustion residuals and products produced.

(2) The volume of coal combustion residuals disposed.

(3) The volume of coal combustion products used in structural fill projects.

(4) The volume of coal combustion products beneficially used, other than for structural fill.

"**§ 130A-309.205. Local ordinances regulating management of coal combustion residuals and coal combustion products invalid; petition to preempt local ordinance.**

(a) It is the intent of the General Assembly to maintain a uniform system for the management of coal combustion residuals and coal combustion products, including matters of disposal and beneficial use, and to place limitations upon the exercise by all units of local government in North Carolina of the power to regulate the management of coal combustion residuals and coal combustion products by means of ordinances, property restrictions, zoning regulations, or otherwise. Notwithstanding any authority granted to counties, municipalities, or other local authorities to adopt local ordinances, including those imposing taxes, fees, or charges or regulating health, environment, or land use, all provisions of local ordinances, including those regulating land use, adopted by counties, municipalities, or other local authorities that regulate or have the effect of regulating the management of coal combustion residuals and coal combustion products within the jurisdiction of a local government are invalidated, to the extent necessary to effectuate the purposes of this Part, that do the following:

(1) Place any restriction or condition not placed by this Part upon management of coal combustion residuals and coal combustion products within any county, city, or other political subdivision.

(2) Conflict or are in any manner inconsistent with the provisions of this Part.

(b) If a local zoning or land-use ordinance imposes requirements, restrictions, or conditions that are generally applicable to development, including, but not limited to, setback, buffer, and stormwater requirements, and coal combustion residuals and coal combustion products would be regulated under the ordinance of general applicability, the operator of the proposed activities may petition the Environmental Management Commission to review the matter. After receipt of a petition, the Commission shall hold a hearing in accordance with the procedures in subsection (c) of this section and shall determine whether or to what extent to

preempt the local ordinance to allow for the management of coal combustion residuals and coal combustion products.

(c) When a petition described in subsection (b) of this section has been filed with the Environmental Management Commission, the Commission shall hold a public hearing to consider the petition. The public hearing shall be held in the affected locality within 60 days after receipt of the petition by the Commission. The Commission shall give notice of the public hearing by both of the following means:

(1) Publication in a newspaper or newspapers having general circulation in the county or counties where the activities are to be conducted, once a week for three consecutive weeks, the first notice appearing at least 30 days prior to the scheduled date of the hearing.

(2) First-class mail to persons who have requested notice. The Commission shall maintain a mailing list of persons who request notice in advance of the hearing pursuant to this section. Notice by mail shall be complete upon deposit of a copy of the notice in a postage-paid wrapper addressed to the person to be notified at the address that appears on the mailing list maintained by the Commission in a post office or official depository under the exclusive care and custody of the United States Postal Service.

(d) Any interested person may appear before the Environmental Management Commission at the hearing to offer testimony. In addition to testimony before the Commission, any interested person may submit written evidence to the Commission for the Commission's consideration. At least 20 days shall be allowed for receipt of written comment following the hearing.

(e) A local zoning or land-use ordinance is presumed to be valid and enforceable to the extent the zoning or land-use ordinance imposes requirements, restrictions, or conditions that are generally applicable to development, including, but not limited to, setback, buffer, and stormwater requirements, unless the Environmental Management Commission makes a finding of fact to the contrary. The Commission shall determine whether or to what extent to preempt local ordinances so as to allow the project involving management of coal combustion residuals and coal combustion products no later than 60 days after conclusion of the hearing. The Commission shall preempt a local ordinance only if the Commission makes all of the following findings:

(1) That there is a local ordinance that would regulate the management of coal combustion residuals and coal combustion products.

(2) That all legally required State and federal permits or approvals have been issued by the appropriate State and federal agencies or that all State and federal permit requirements have been satisfied and that the permits or approvals have been denied or withheld only because of the local ordinance.

(3) That local citizens and elected officials have had adequate opportunity to participate in the permitting process.

(4) That the project involving management of coal combustion residuals and coal combustion products will not pose an unreasonable health or environmental risk to the surrounding locality and that the operator has taken or consented to take reasonable measures to avoid or manage foreseeable risks and to comply to the maximum feasible extent with applicable local ordinances.

(f) If the Environmental Management Commission does not make all of the findings under subsection (e) of this section, the Commission shall not preempt the challenged local ordinance. The Commission's decision shall be in writing and shall identify the evidence submitted to the Commission plus any additional evidence used in arriving at the decision.

(g) The decision of the Environmental Management Commission shall be final, unless a party to the action files a written appeal under Article 4 of Chapter 150B of the General Statutes, as modified by this section, within 30 days of the date of the decision. The record on appeal shall consist of all materials and information submitted to or considered by the Commission, the Commission's written decision, a complete transcript of the hearing, the specific findings required by subsection (e) of this section, and any minority positions on the specific findings required by subsection (e) of this section. The scope of judicial review shall be as set forth in G.S. 150B-51, except as this subsection provides regarding the record on appeal.

(h) If the court reverses or modifies the decision of the Environmental Management Commission, the judge shall set out in writing, which writing shall become part of the record, the reasons for the reversal or modification.

(i) In computing any period of time prescribed or allowed by the procedure in this section, the provisions of Rule 6(a) of the Rules of Civil Procedure, G.S. 1A-1, shall apply.

"**§ 130A-309.206. Federal preemption; severability.**

The provisions of this Part shall be severable, and if any phrase, clause, sentence, or provision is declared to be unconstitutional or otherwise invalid or is preempted by federal law or regulation, the validity of the remainder of this Part shall not be affected thereby.

"**§ 130A-309.207. General rulemaking for Part.**

The Environmental Management Commission shall adopt rules as necessary to implement the provisions of the Part. Such rules shall be exempt from the requirements of G.S. 150B-19.3.

"Subpart 2. Management of Coal Ash Residuals; Closure of Coal Ash Impoundments.

"**§ 130A-309.208. Generation, disposal, and use of coal combustion residuals.**

(a) On or after July 1, 2014, the construction of new and expansion of existing coal combustion residuals surface impoundments is prohibited.

(b) On or after October 1, 2014, the disposal of coal combustion residuals into a coal combustion residuals surface impoundment at an electric generating facility where the coal-fired generating units are no longer producing coal combustion residuals is prohibited.

(c) On or after December 31, 2018, the discharge of stormwater into a coal combustion surface impoundment at an electric generating facility where the coal-fired generating units are no longer producing coal combustion residuals is prohibited.

(d) On or after December 31, 2019, the discharge of stormwater into a coal combustion surface impoundment at an electric generating facility where the coal-fired generating units are actively producing coal combustion residuals is prohibited.

(e) On or before December 31, 2018, all electric generating facilities shall convert to the disposal of "dry" fly ash or the facility shall be retired. For purposes of this subsection, the term "dry" shall mean coal combustion residuals which are not in the form of liquid wastes, wastes containing free liquids, or sludges.

(f) On or before December 31, 2019, all electric generating facilities shall convert to the disposal of "dry" bottom ash or the facility shall be retired. For purposes of this subsection, the term "dry" shall mean coal combustion residuals which are not in the form of liquid wastes, wastes containing free liquids, or sludges.

"**§ 130A-309.209. Groundwater assessment and corrective action; drinking water supply well survey and provision of alternate water supply; reporting.**

(a) Groundwater Assessment of Coal Combustion Residuals Surface Impoundments. – The owner of a coal combustion residuals surface impoundment shall conduct groundwater monitoring and assessment as provided in this subsection. The requirements for groundwater monitoring and assessment set out in this subsection are in addition to any other groundwater monitoring and assessment requirements applicable to the owners of coal combustion residuals surface impoundments.

(1) No later than December 31, 2014, the owner of a coal combustion residuals surface impoundment shall submit a proposed Groundwater Assessment

Plan for the impoundment to the Department for its review and approval. The Groundwater Assessment Plan shall, at a minimum, provide for all of the following:

a. A description of all receptors and significant exposure pathways.

b. An assessment of the horizontal and vertical extent of soil and groundwater contamination for all contaminants confirmed to be present in groundwater in exceedance of groundwater quality standards.

c. A description of all significant factors affecting movement and transport of contaminants.

d. A description of the geological and hydrogeological features influencing the chemical and physical character of the contaminants.

e. A schedule for continued groundwater monitoring.

f. Any other information related to groundwater assessment required by the Department.

(2) The Department shall approve the Groundwater Assessment Plan if it determines that the Plan complies with the requirements of this subsection and will be sufficient to protect public health, safety, and welfare; the environment; and natural resources.

(3) No later than 10 days from approval of the Groundwater Assessment Plan, the owner shall begin implementation of the Plan.

(4) No later than 180 days from approval of the Groundwater Assessment Plan, the owner shall submit a Groundwater Assessment Report to the Department. The Report shall describe all exceedances of groundwater quality standards associated with the impoundment.

(b) Corrective Action for the Restoration of Groundwater Quality. – The owner of a coal combustion residuals surface impoundment shall implement corrective action for the restoration of groundwater quality as provided in this subsection. The requirements for corrective action for the restoration of groundwater quality set out in this subsection are in addition to any other corrective action for the restoration of groundwater quality requirements applicable to the owners of coal combustion residuals surface impoundments.

(1) No later than 90 days from submission of the Groundwater Assessment Report required by subsection (a) of this section, the owner of the coal combustion residuals surface impoundment shall submit a proposed Groundwater Corrective Action Plan to the Department for its review and approval. The Groundwater Corrective Action Plan shall provide for the restoration of groundwater in conformance with the requirements of Subchapter L of Chapter 2 of Title 15A of the North Carolina Administrative Code. The Groundwater Corrective Action Plan shall include, at a minimum, all of the following:

a. A description of all exceedances of the groundwater quality standards, including any exceedances that the owner asserts are the result of natural background conditions.

b. A description of the methods for restoring groundwater in conformance with the requirements of Subchapter L of Chapter 2 of Title 15A of the North Carolina Administrative Code and a detailed explanation of the reasons for selecting these methods.

c. Specific plans, including engineering details, for restoring groundwater quality.

d. A schedule for implementation of the Plan.

e. A monitoring plan for evaluating the effectiveness of the proposed corrective action and detecting movement of any contaminant plumes.

f. Any other information related to groundwater assessment required by the Department.

(2) The Department shall approve the Groundwater Corrective Action Plan if it determines that the Plan complies with the requirements of this subsection and will be sufficient to protect public health, safety, and welfare; the environment; and natural resources.

(3) No later than 30 days from the approval of the Groundwater Corrective Action Plan, the owner shall begin implementation of the Plan in accordance with the Plan's schedule.

(c) Drinking Water Supply Well Survey and Provision of Alternate Water Supply. – No later than October 1, 2014, the owner of a coal combustion residuals surface impoundment shall conduct a Drinking Water Supply Well Survey that identifies all drinking water supply wells within one-half mile down-gradient from the established compliance boundary of the impoundment and submit the Survey to the Department. The Survey shall include well locations, the nature of water uses, available well construction details, and information regarding ownership of the wells. No later than December 1, 2014, the Department shall determine, based on the Survey, which drinking water supply wells the owner is required to sample and how frequently and for what period sampling is required. The Department shall require sampling for drinking water supply wells where data regarding groundwater quality and flow and depth in the area of any surveyed well provide a reasonable basis to predict that the quality of water from the surveyed well may be adversely impacted by constituents associated with the presence of the impoundment. No later than January 1, 2015, the owner shall initiate sampling and water quality analysis of the drinking water supply wells. A property owner may elect to have an independent third party selected from a laboratory certified by the Department's Wastewater/Groundwater Laboratory Certification program sample wells located on their property in lieu of sampling conducted by the owner of the coal combustion residuals surface impoundment. The owner of the coal combustion residuals surface impoundment shall pay for the reasonable costs of such sampling. Nothing in this subsection shall be construed to preclude or impair the right of any property owner to refuse such sampling of wells on their property. If the sampling and water quality analysis indicates that water from a drinking water supply well exceeds groundwater quality standards for constituents associated with the presence of the impoundment, the owner shall replace the contaminated drinking water supply well with an alternate supply of potable drinking water. The alternate supply of potable drinking water shall be supplied within 30 days of the Department's determination that there is an exceedance of groundwater quality standards attributable to constituents associated with the presence of the impoundment. The requirement to replace a contaminated drinking water supply well with an alternate supply of potable drinking water set out in this subsection is in addition to any other requirements to replace a contaminated drinking water supply well with an alternate supply of potable drinking water applicable to the owners of coal combustion residuals surface impoundments.

(d) Reporting. – In addition to any other reporting required by the Department, the owner of a coal combustion residuals surface impoundment shall submit an annual Groundwater Protection and Restoration Report to the Department no later than January 31 of each year. The Report shall include a summary of all groundwater monitoring, protection, and restoration activities related to the impoundment for the preceding year, including the status of the Groundwater Assessment Plan, the Groundwater Assessment Report, the Groundwater Corrective Action Plan, the Drinking Water Supply Well Survey, and the replacement of any contaminated drinking water supply wells. The owner of a coal combustion residuals surface

impoundment shall also submit all information required to be submitted to the Department pursuant to this section to the Coal Ash Management Commission.

"**§ 130A-309.210. Identification, assessment, and correction of unpermitted discharges.**

(a) Identification of Unpermitted Discharges from Coal Combustion Residuals Surface Impoundments to the Surface Waters of the State. –

(1) The owner of a coal combustion residuals surface impoundment shall identify all unpermitted discharges from the impoundment to the surface waters of the State as provided in this subsection. The requirements for identifying all unpermitted discharges from an impoundment set out in this subsection are in addition to any other requirements for identifying unpermitted discharges applicable to the owners of coal combustion residuals surface impoundments.

(2) No later than December 31, 2014, the owner of a coal combustion residuals surface impoundment shall submit a topographic map that identifies the location of all: (i) outfalls from engineered channels designed or improved for the purpose of collecting water from the toe of the impoundment to the Department; and (ii) seeps discharging from the impoundment that are not captured by engineered channels designed or improved for the purpose of collecting water from the toe of the impoundment to the Department. The topographic map shall comply with all of the following:

a. Be at a scale as required by the Department.

b. Specify the latitude and longitude of each toe drain outfall and each seep.

c. Specify whether the discharge from each toe drain outfall and each seep is continuous or intermittent.

d. Provide an average flow measurement of the discharge from each toe drain outfall and each seep, including a description of the method used to measure average flow.

e. Specify whether the discharge from each toe drain outfall and seep identified reaches the surface waters of the State. If the discharge from a toe drain outfall or seep reaches the surface waters of the State, the map shall specify the latitude and longitude of where the discharge reaches the surface waters of the State.

f. Any other information related to the topographic map required by the Department.

(b) Assessment of Unpermitted Discharges from Coal Combustion Residuals Surface Impoundments to the Surface Waters of the State. – The owner of a coal combustion residuals surface impoundment shall conduct an assessment of unpermitted discharges from the coal combustion residuals surface impoundment to the surface waters of the State as provided in this subsection. The requirements for assessment of unpermitted discharges from the coal combustion residuals surface impoundment to the surface waters of the State set out in this subsection are in addition to any other requirements for the assessment of unpermitted discharges from coal combustion residuals surface impoundments to surface waters of the State applicable to the owners of coal combustion residuals surface impoundments.

(1) No later than December 31, 2014, the owner of a coal combustion residuals surface impoundment shall submit a proposed Unpermitted Discharge Assessment Plan to the Department. The Unpermitted Discharge Assessment Plan shall include information sufficient to allow the Department to determine whether any unpermitted discharge, including a discharge from a toe drain outfall or seep, has reached the surface waters of the State and has caused a violation of surface water quality standards. The Unpermitted

Discharge Assessment Plan shall include, at a minimum, all of the following:

a. Upstream and downstream sampling locations within all channels that could potentially carry a discharge.

b. A description of the surface water quality analyses that will be performed.

c. A sampling schedule, including the frequency and duration of sampling activities.

d. Reporting requirements.

e. Any other information related to the assessment of unpermitted discharges required by the Department.

(2) The Department shall approve the Unpermitted Discharge Assessment Plan if it determines that the Plan complies with the requirements of this subsection and will be sufficient to protect public health, safety, and welfare; the environment; and natural resources.

(3) No later than 30 days from the approval of the Unpermitted Discharge Assessment Plan, the owner shall begin implementation of the Plan in accordance with the Plan's schedule.

(c) Corrective Action to Prevent Unpermitted Discharges from Coal Combustion Residuals Surface Impoundments to the Surface Waters of the State. – The owner of a coal combustion residuals surface impoundment shall implement corrective action to prevent unpermitted discharges from the coal combustion residuals surface impoundment to the surface waters of the State as provided in this subsection. The requirements for corrective action to prevent unpermitted discharges from coal combustion residuals surface impoundments to the surface waters of the State set out in this subsection are in addition to any other requirements for corrective action to prevent unpermitted discharges from coal combustion residuals surface impoundments to the surface waters of the State applicable to the owners of coal combustion residuals surface impoundments.

(1) If the Department determines, based on surface water quality sampling information provided in an Unpermitted Discharge Assessment Plan submitted pursuant to subsection (b) of this section, that an unpermitted discharge from a coal combustion residuals surface impoundment, including a discharge from a toe drain outfall or seep, has violated State or federal surface water quality standards, the Department shall notify the owner of the impoundment of its determination.

(2) No later than 30 days from the notification of violation, the owner of the coal combustion residuals surface impoundment shall submit a proposed Unpermitted Discharge Corrective Action Plan to the Department for its review and approval. The proposed Unpermitted Discharge Corrective Action Plan shall include, at a minimum, all of the following:

a. One of the following methods of proposed corrective action:

1. Elimination of the unpermitted discharge.

2. Capture and rerouting of the unpermitted discharge through a permitted outfall.

3. Implementation of best management practices to prevent the unpermitted discharge.

4. Application for a National Pollutant Discharge Elimination System (NPDES) permit amendment to bring the unpermitted discharge under permit regulations.

b. A detailed explanation of the reasons for selecting the method of corrective action.

c. Specific plans, including engineering details, to prevent the unpermitted discharge.
d. A schedule for implementation of the Plan.
e. A monitoring plan for evaluating the effectiveness of the proposed corrective action.
f. Any other information related to the correction of unpermitted discharges required by the Department.

(3) The Department shall approve the Unpermitted Discharge Corrective Action Plan if it determines that the Plan complies with the requirements of this subsection and will be sufficient to protect public health, safety, and welfare; the environment; and natural resources.

(4) No later than 30 days from the approval of the Unpermitted Discharge Corrective Action Plan, the owner shall begin implementation of the Plan in accordance with the Plan's schedule.

(d) Identification of New Unpermitted Discharges. – No later than August 1, 2014, the owner of a coal combustion residuals surface impoundment shall submit a proposed Plan for the Identification of New Unpermitted Discharges to the Department for its review and approval as provided in this subsection.

(1) The proposed Plan for the Identification of New Unpermitted Discharges shall include, at a minimum, all of the following:
a. A procedure for routine inspection of the coal combustion residuals surface impoundment to identify indicators of potential new unpermitted discharges, including toe drain outfalls and seeps.
b. A procedure for determining whether a new unpermitted discharge is actually present.
c. A procedure for notifying the Department when a new unpermitted discharge is confirmed.
d. Any other information related to the identification of new unpermitted discharges required by the Department.

(2) The Department shall approve the Plan for the Identification of New Unpermitted Discharges if it determines that the Plan complies with the requirements of this subsection and will be sufficient to protect public health, safety, and welfare; the environment; and natural resources.

(3) No later than 30 days from the approval of the Plan for the Identification of New Unpermitted Discharges, the owner shall begin implementation of the Plan in accordance with the Plan.

(e) Reporting. – In addition to any other reporting required by the Department, the owner of a coal combustion residuals surface impoundment shall submit an annual Surface Water Protection and Restoration Report to the Department no later than January 31 of each year. The Report shall include a summary of all surface water sampling, protection, and restoration activities related to the impoundment for the preceding year, including the status of the identification, assessment, and correction of unpermitted discharges from coal combustion residuals surface impoundments to the surface waters of the State. The owner of a coal combustion residuals surface impoundment shall also submit all information required to be submitted to the Department pursuant to this section to the Coal Ash Management Commission.

"**§ 130A-309.211. Prioritization of coal combustion residuals surface impoundments.**

(a) As soon as practicable, but no later than August 1, 2015, the Department shall develop proposed classifications for all coal combustion residuals surface impoundments, including active and retired sites, for the purpose of closure and remediation based on these sites' risks to public health, safety, and welfare; the environment; and natural resources and

shall determine a schedule for closure and required remediation that is based on the degree of risk to public health, safety, and welfare; the environment; and natural resources posed by the impoundments and that gives priority to the closure and required remediation of impoundments that pose the greatest risk. In assessing the risk, the Department shall evaluate information received pursuant to G.S. 130A-309.209 and G.S. 130A-309.210 and any other information deemed relevant and, at a minimum, consider all of the following:

(1) Any imminent hazards to public health, safety, or welfare resulting from the impoundment.

(2) Structural condition and hazard potential of the impoundment.

(3) The proximity of surface waters to the impoundment and whether any surface waters are contaminated or imminently threatened by contamination as a result of the impoundment.

(4) Information concerning the horizontal and vertical extent of soil and groundwater contamination for all contaminants confirmed to be present in groundwater in exceedance of groundwater quality standards and all significant factors affecting contaminant transport.

(5) The location and nature of all receptors and significant exposure pathways.

(6) The geological and hydrogeological features influencing the movement and chemical and physical character of the contaminants.

(7) Amount and characteristics of coal combustion residuals in the impoundment.

(8) Any other factor the Department deems relevant to establishment of risk.

(b) The Department shall issue a proposed classification for each coal combustion residuals surface impoundment based upon the assessment conducted pursuant to subsection (a) of this section as high-risk, intermediate-risk, or low-risk. Within 30 days after a proposed classification has been issued, the Department shall issue a written declaration, including findings of fact, documenting the proposed classification. The Department shall provide for public participation on the proposed risk classification as follows:

(1) The Department shall make copies of the written declaration issued pursuant to this subsection available for inspection as follows:

a. A copy of the declaration shall be provided to the local health director.

b. A copy of the declaration shall be provided to the public library located in closest proximity to the site in the county or counties in which the site is located.

c. The Department shall post a copy of the declaration on the Department's Web site.

d. The Department may place copies of the declaration in other locations so as to assure the availability thereof to the public.

(2) Before issuing a proposed classification of an impoundment as high-risk, intermediate-risk, or low-risk, the Department shall give notice of the written declaration issued pursuant to this subsection as follows:

a. A notice and summary of the declaration shall be published weekly for a period of three consecutive weeks in a newspaper having general circulation in the county or counties where the site is located.

b. Notice of the written declaration shall be given by first-class mail to persons who have requested such notice. Such notice shall include a summary of the written declaration and state the locations where a copy of the written declaration is available for inspection. The Department shall maintain a mailing list of persons who request notice pursuant to this section.

c. Notice of the written declaration shall be given by electronic mail to persons who have requested such notice. Such notice shall include a summary of the written declaration and state the locations where a copy of the written declaration is available for inspection. The Department shall maintain a mailing list of persons who request notice pursuant to this section.

(3) No later than 60 days after issuance of the written declaration, the Department shall conduct a public meeting in the county or counties in which the site is located to explain the written declaration to the public. The Department shall give notice of the hearing at least 15 days prior to the date thereof by all of the following methods:

a. Publication as provided in subdivision (1) of this subsection, with first publication to occur not less than 30 days prior to the scheduled date of the hearing.

b. First-class mail to persons who have requested notice as provided in subdivision (2) of this subsection.

c. Electronic mail to persons who have requested notice as provided in subdivision (2) of this subsection.

(4) At least 30 days from the latest date on which notice is provided pursuant to subdivision (2) of this subsection shall be allowed for the receipt of written comment on the written declaration prior to issuance of a final risk classification. At least 20 days will be allowed for receipt of written comment following a hearing conducted pursuant to subdivision (3) of this subsection prior to issuance of a final risk classification.

(c) Within 30 days of the receipt of all written comment as required by subdivision (4) of subsection (b) of this section, the Department shall submit a proposed classification for a coal combustion residuals surface impoundment to the Coal Ash Management Commission established pursuant to G.S. 130A-309.202. The Commission shall evaluate all information submitted in accordance with this Part related to the proposed classification and any other information the Commission deems relevant. The Commission shall only approve the proposed classification if it determines that the classification was developed in accordance with this section and that the classification accurately reflects the level of risk posed by the coal combustion residuals surface impoundment. The Commission shall issue its determination in writing, including findings in support of its determination. If the Commission fails to act on a proposed classification within 60 days of receipt of the proposed classification, the proposed classification shall be deemed approved. Parties aggrieved by a final decision of the Commission pursuant to this subsection may appeal the decision as provided under Article 4 of Chapter 150B of the General Statutes.

"**§ 130A-309.212. Closure of coal combustion residuals surface impoundments.**

(a) An owner of a coal combustion residuals surface impoundment shall submit a proposed Coal Combustion Residuals Surface Impoundment Closure Plan for the Department's approval. If corrective action to restore groundwater has not been completed pursuant to the requirements of G.S. 130A-309.209(b), the proposed closure plan shall include provisions for completion of activities to restore groundwater in conformance with the requirements of Subchapter L of Chapter 2 of Title 15A of the North Carolina Administrative Code. In addition, the following requirements, at a minimum, shall apply to such plans:

(1) High-risk impoundments shall be closed as soon as practicable, but no later than December 31, 2019. A proposed closure plan for such impoundments must be submitted as soon as practicable, but no later than December 31, 2016. At a minimum, such impoundments shall be dewatered, and the owner of an impoundment shall either:

a. Convert the coal combustion residuals impoundment to an industrial landfill, as that term is defined by this Article, by removing all coal combustion residuals from the impoundment temporarily, safely storing the residuals on-site, and complying with the siting and design requirements for disposal sites established by Section .0503 of Subchapter B of Chapter 13 of Title 15A of the North Carolina Administrative Code, except with respect to those requirements that pertain to buffers. In lieu of the buffer requirement established by Section .0503(f)(2)(iii) of Subchapter B of Chapter 13 of Title 15A of the North Carolina Administrative Code, the owner of the impoundment shall establish and maintain a 300-foot buffer between streams and rivers and disposal areas. After the temporarily displaced coal combustion residuals have been returned for disposal in the industrial landfill constructed pursuant to the requirements of this sub-subdivision, the owner of the landfill shall comply with the closure and post-closure requirements established by Section .1627 of Subchapter B of Chapter 13 of Title 15A of the North Carolina Administrative Code. A landfill constructed pursuant to this sub-subdivision shall otherwise be subject to all applicable requirements of this Chapter and rules adopted thereunder. Prior to closure, the Department may allow the disposal of coal combustion residuals, in addition to those originally contained in the impoundment, to the landfill constructed pursuant to this sub-subdivision, if the Department determines that the site is suitable for additional capacity and that disposal of additional coal combustion residuals will not pose an unacceptable risk to public health, safety, welfare; the environment; and natural resources.

b. Remove all coal combustion residuals from the impoundment, return the former impoundment to a nonerosive and stable condition, and (i) transfer the coal combustion residuals for disposal in a coal combustion residuals landfill, industrial landfill, or municipal solid waste landfill or (ii) use the coal combustion products in a structural fill or other beneficial use as allowed by law. The use of coal combustion products (i) as structural fill shall be conducted in accordance with the requirements Subpart 3 of this Part and (ii) for other beneficial uses shall be conducted in accordance with the requirements of 15A NCAC 13B .1701, et seq., (Requirements for Beneficial Use of Coal Combustion By-Products).

(2) Intermediate-risk impoundments shall be closed as soon as practicable, but no later than December 31, 2024. A proposed closure plan for such impoundments must be submitted as soon as practicable, but no later than December 31, 2017. At a minimum, such impoundments shall be dewatered, and the owner of an impoundment shall close the impoundment in any manner allowed pursuant to subdivision (1) of this subsection.

(3) Low-risk impoundments shall be closed as soon as practicable, but no later than December 31, 2029. A proposed closure plan for such impoundments must be submitted as soon as practicable, but no later than December 31, 2018. Such impoundments shall be dewatered. The Department shall require such sites to comply with the closure and post-closure requirements established by Section .1627 of Subchapter B of Chapter 13 of Title 15A of the North Carolina Administrative Code. The Department may require

implementation of any other measure it deems necessary to protect public health, safety, and welfare; the environment; and natural resources, including imposition of institutional controls that are sufficient to protect public health, safety, and welfare; the environment; and natural resources.

(4) Closure Plans for all impoundments shall include all of the following:

a. Facility and coal combustion residuals surface impoundment description. – A description of the operation of the site that shall include, at a minimum, all of the following:

1. Site history and history of site operations, including details on the manner in which coal combustion residuals have been stored and disposed of historically.
2. Estimated volume of material contained in the impoundment.
3. Analysis of the structural integrity of dikes or dams associated with impoundment.
4. All sources of discharge into the impoundment, including volume and characteristics of each discharge.
5. Whether the impoundment is lined, and, if so, the composition thereof.
6. A summary of all information available concerning the impoundment as a result of inspections and monitoring conducted pursuant to this Part and otherwise available.

b. Site maps, which, at a minimum, illustrate all of the following:

1. All structures associated with the operation of any coal combustion residuals surface impoundment located on the site. For purposes of this sub-subdivision, the term "site" shall mean the land or waters within the property boundary of the applicable electric generating station.
2. All current and former coal combustion residuals disposal and storage areas on the site, including details concerning coal combustion residuals produced historically by the electric generating station and disposed of through transfer to structural fills.
3. The property boundary for the applicable site, including established compliance boundaries within the site.
4. All potential receptors within 2,640 feet from established compliance boundaries.
5. Topographic contour intervals of the site shall be selected to enable an accurate representation of site features and terrain and in most cases should be less than 20-foot intervals.
6. Locations of all sanitary landfills permitted pursuant to this Article on the site, which are actively receiving waste or are closed, as well as the established compliance boundaries and components of associated groundwater and surface water monitoring systems.
7. All existing and proposed groundwater monitoring wells associated with any coal combustion residuals surface impoundment on the site.
8. All existing and proposed surface water sample collection locations associated with any coal combustion residuals surface impoundment on the site.

c. The results of a hydrogeologic, geologic, and geotechnical investigation of the site, including, at a minimum, all of the following:

1. A description of the hydrogeology and geology of the site.
2. A description of the stratigraphy of the geologic units underlying each coal combustion residuals surface impoundment located on the site.
3. The saturated hydraulic conductivity for (i) the coal combustion residuals within any coal combustion residuals surface impoundment located on the site and (ii) the saturated hydraulic conductivity of any existing liner installed at an impoundment, if any.
4. The geotechnical properties for (i) the coal combustion residuals within any coal combustion residuals surface impoundment located on the site, (ii) the geotechnical properties of any existing liner installed at an impoundment, if any, and (iii) the uppermost identified stratigraphic unit underlying the impoundment, including the soil classification based upon the Unified Soil Classification System, in-place moisture content, particle size distribution, Atterberg limits, specific gravity, effective friction angle, maximum dry density, optimum moisture content, and permeability.
5. A chemical analysis of the coal combustion residuals surface impoundment, including water, coal combustion residuals, and coal combustion residuals-affected soil.
6. Identification of all substances with concentrations determined to be in excess of the groundwater quality standards for the substance established by Subchapter L of Chapter 2 of Title 15A of the North Carolina Administrative Code, including all laboratory results for these analyses.
7. Summary tables of historical records of groundwater sampling results.
8. A map that illustrates the potentiometric contours and flow directions for all identified aquifers underlying impoundments (shallow, intermediate, and deep) and the horizontal extent of areas where groundwater quality standards established by Subchapter L of Chapter 2 of Title 15A of the North Carolina Administrative Code for a substance are exceeded.
9. Cross-sections that illustrate the following: the vertical and horizontal extent of the coal combustion residuals within an impoundment; stratigraphy of the geologic units underlying a impoundment; and the vertical extent of areas where groundwater quality standards established by Subchapter L of Chapter 2 of Title 15A of the North Carolina Administrative Code for a substance are exceeded.

d. The results of groundwater modeling of the site that shall include, at a minimum, all of the following:

1. An account of the design of the proposed Closure Plan that is based on the site hydrogeologic conceptual model developed and includes (i) predictions on post-closure groundwater

elevations and groundwater flow directions and velocities, including the effects on and from the potential receptors, and (ii) predictions at the compliance boundary for substances with concentrations determined to be in excess of the groundwater quality standards for the substance established Subchapter L of Chapter 2 of Title 15A of the North Carolina Administrative Code.

2. Predictions that include the effects on the groundwater chemistry and should describe migration, concentration, mobilization, and fate for substances with concentrations determined to be in excess of the groundwater quality standards for the substance established by Subchapter L of Chapter 2 of Title 15A of the North Carolina Administrative Code pre- and post-closure, including the effects on and from potential receptors.

3. A description of the groundwater trend analysis methods used to demonstrate compliance with groundwater quality standards for the substance established by Subchapter L of Chapter 2 of Title 15A of the North Carolina Administrative Code and requirements for corrective action of groundwater contamination established by Subchapter L of Chapter 2 of Title 15A of the North Carolina Administrative Code.

e. A description of any plans for beneficial use of the coal combustion residuals in compliance with the requirements of Section .1200 of Subchapter T of Chapter 2 of Title 15A of the North Carolina Administrative Code and Section .1700 of Subchapter B of Chapter 13 of Title 15A of the North Carolina Administrative Code.

f. All engineering drawings, schematics, and specifications for the proposed Closure Plan. If required by Chapter 89C of the General Statutes, engineering design documents should be prepared, signed, and sealed by a professional engineer.

g. A description of the construction quality assurance and quality control program to be implemented in conjunction with the Closure Plan, including the responsibilities and authorities for monitoring and testing activities, sampling strategies, and reporting requirements.

h. A description of the provisions for disposal of wastewater and management of stormwater and the plan for obtaining all required permits.

i. A description of the provisions for the final disposition of the coal combustion residuals. If the coal combustion residuals are to be removed, the owner must (i) identify the location and permit number for the coal combustion residuals landfills, industrial landfills, or municipal solid waste landfills in which the coal combustion residuals will be disposed and (ii) in the case where the coal combustion residuals are planned for beneficial use, the location and manner in which the residuals will be temporarily stored. If the coal combustion residuals are to be left in the impoundment, the owner must (i) in the case of closure pursuant to sub-subdivision (a)(1)a. of this section, provide a description of how the ash will be stabilized prior to completion of closure in accordance with closure and post-closure requirements established by Section .1627 of Subchapter

B of Chapter 13 of Title 15A of the North Carolina Administrative Code and (ii) in the case of closure pursuant to sub-subdivision (a)(1)b. of this section, provide a description of how the ash will be stabilized pre- and post-closure. If the coal combustion residuals are to be left in the impoundment, the owner must provide an estimate of the volume of coal combustion residuals remaining.

j. A list of all permits that will need to be acquired or modified to complete closure activities.

k. A description of the plan for post-closure monitoring and care for an impoundment for a minimum of 30 years. The length of the post-closure care period may be (i) proposed to be decreased or the frequency and parameter list modified if the owner demonstrates that the reduced period or modifications are sufficient to protect public health, safety, and welfare; the environment; and natural resources and (ii) increased by the Department at the end of the post-closure monitoring and care period if there are statistically significant increasing groundwater quality trends or if contaminant concentrations have not decreased to a level protective of public health, safety, and welfare; the environment; and natural resources. If the owner determines that the post-closure care monitoring and care period is no longer needed and the Department agrees, the owner shall provide a certification, signed and sealed by a professional engineer, verifying that post-closure monitoring and care has been completed in accordance with the post-closure plan. If required by Chapter 89C of the General Statutes, the proposed plan for post-closure monitoring and care should be signed and sealed by a professional engineer. The plan shall include, at a minimum, all of the following:

1. A demonstration of the long-term control of all leachate, affected groundwater, and stormwater.
2. A description of a groundwater monitoring program that includes (i) post-closure groundwater monitoring, including parameters to be sampled and sampling schedules; (ii) any additional monitoring well installations, including a map with the proposed locations and well construction details; and (iii) the actions proposed to mitigate statistically significant increasing groundwater quality trends.

l. An estimate of the milestone dates for all activities related to closure and post-closure.

m. A description of the anticipated future use of the site and the necessity for the implementation of institutional controls following closure, including property use restrictions, and requirements for recordation of notices documenting the presence of contamination, if applicable, or historical site use.

(b) The Department shall review a proposed Coal Combustion Residuals Surface Impoundment Closure Plan for consistency with the minimum requirements set forth in subsection (a) of this section and whether the proposed Closure Plan is protective of public health, safety, and welfare; the environment; and natural resources and otherwise complies with the requirements of this Part. Prior to issuing a decision on a proposed Closure Plan, the Department shall provide for public participation on the proposed Closure Plan as follows:

(1) The Department shall make copies of the proposed Closure Plan available for inspection as follows:
a. A copy of the proposed Closure Plan shall be provided to the local health director.
b. A copy of the proposed Closure Plan shall be provided to the public library located in closest proximity to the site in the county or counties in which the site is located.
c. The Department shall post a copy of the proposed Closure Plan on the Department's Web site.
d. The Department may place copies of the proposed Closure Plan in other locations so as to assure the availability thereof to the public.

(2) Before approving a proposed Closure Plan, the Department shall give notice as follows:
a. A notice and summary of the proposed Closure Plan shall be published weekly for a period of three consecutive weeks in a newspaper having general circulation in the county or counties where the site is located.
b. Notice that a proposed Closure Plan has been developed shall be given by first-class mail to persons who have requested such notice. Such notice shall include a summary of the proposed Closure Plan and state the locations where a copy of the proposed Closure Plan is available for inspection. The Department shall maintain a mailing list of persons who request notice pursuant to this section.
c. Notice that a proposed Closure Plan has been developed shall be given by electronic mail to persons who have requested such notice. Such notice shall include a summary of the proposed Closure Plan and state the locations where a copy of the proposed Closure Plan is available for inspection. The Department shall maintain a mailing list of persons who request notice pursuant to this section.

(3) No later than 60 days after receipt of a proposed Closure Plan, the Department shall conduct a public meeting in the county or counties in which the site is located to explain the proposed Closure Plan and alternatives to the public. The Department shall give notice of the hearing at least 30 days prior to the date thereof by all of the following methods:
a. Publication as provided in subdivision (1) of this subsection, with first publication to occur not less than 30 days prior to the scheduled date of the hearing.
b. First-class mail to persons who have requested notice as provided in subdivision (2) of this subsection.
c. Electronic mail to persons who have requested notice as provided in subdivision (2) of this subsection.

(4) At least 30 days from the latest date on which notice is provided pursuant to subdivision (2) of this subsection shall be allowed for the receipt of written comment on the proposed Closure Plan prior to its approval. At least 20 days will be allowed for receipt of written comment following a hearing conducted pursuant to subdivision (3) of this subsection prior to the approval of the proposed Closure Plan.

(c) The Department shall disapprove a proposed Coal Combustion Residuals Surface Impoundment Closure Plan unless the Department finds that the Closure Plan is protective of public health, safety, and welfare; the environment; and natural resources and otherwise complies with the requirements of this Part. The Department shall provide specific findings to

support its decision to approve or disapprove a proposed Closure Plan. If the Department disapproves a proposed Closure Plan, the person who submitted the Closure 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 Closure Plan within 120 days after a complete Closure Plan has been submitted, the person who submitted the proposed Closure Plan may treat the Closure Plan as having been disapproved at the end of that time period. The Department may require a person who proposes a Closure Plan to supply any additional information necessary for the Department to approve or disapprove the Closure Plan.

(d) Within 30 days of its approval of a Coal Combustion Residuals Surface Impoundment Closure Plan, the Department shall submit the Closure Plan to the Coal Ash Management Commission. The Commission shall evaluate all information submitted in accordance with this Part related to the Closure Plan and any other information the Commission deems relevant. The Commission shall only approve the Closure Plan if it determines that the Closure Plan was developed in accordance with this section: that implementation of the Closure Plan according to the Closure Plan's schedule is technologically feasible; and that the benefits to public health, safety, and welfare; the environment; and natural resources outweigh the negative impacts on electricity costs and reliability. The Commission shall issue its determination in writing, including findings in support of its determination. If the Commission fails to act on a Closure Plan within 60 days of receipt of the Closure Plan, the Closure Plan shall be deemed approved. Parties aggrieved by a final decision of the Commission pursuant to this subsection may appeal the decision as provided under Article 4 of Chapter 150B of the General Statutes.

(e) As soon as practicable, but no later than 60 days after a Coal Combustion Residuals Surface Impoundment Closure Plan has been approved by the Coal Ash Management Commission, the owner of the coal combustion residuals impoundment shall begin implementation of the approved plan. Modifications to an approved closure plan may only be allowed in conformance with the requirements of this Part, upon written request of an owner of an impoundment, with the written approval of the Department, and after public notice of the change in accordance with the requirements of subdivision (2) of subsection (b) of this section.

(f) Nothing in this section shall be construed to obviate the need for sampling, remediation, and monitoring activities at the site as required by G.S. 130A-309.209 and G.S. 130A-309.310.

"Subpart 3. Use of Coal Combustion Products in Structural Fill.

"**§ 130A-309.213. Applicability.**

The provisions of this Subpart shall apply to the siting, design, construction, operation, and closure of projects that utilize coal combustion products for structural fill.

"**§ 130A-309.214. Permit requirements for projects using coal combustion products for structural fill.**

(a) Permit Requirements. –

(1) Projects using coal combustion products as structural fill involving the placement of less than 10,000 tons of coal combustion products per acre or less than 100,000 tons of coal combustion products in total per project, which proceed in compliance with the requirements of this section and rules adopted thereunder, are deemed permitted. Any person proposing such a project shall submit an application for a permit to the Department upon such form as the Department may prescribe including, at a minimum, the information set forth in subdivision (1) of subsection (b) of this section.

(2) No person shall commence or operate a project using coal combustion residuals as structural fill involving the placement of 10,000 or more tons of coal combustion products per acre or 100,000 or more tons of coal combustion products in total per project without first receiving an individual

permit from the Department. Any person proposing such a project shall submit an application for a permit to the Department upon such form as the Department may prescribe including, at a minimum, the information set forth in subdivisions (1) and (2) of subsection (b) of this section.

(b) Information to Be Provided to the Department. – At least 60 days before initiation of a proposed project using coal combustion products as structural fill, the person proposing the project shall submit all of the following information to the Department on a form as prescribed by the Department:

(1) For projects involving placement of less than 10,000 tons of coal combustion products per acre or less than 100,000 tons of coal combustion products in total per project, the person shall provide, at a minimum, the following information:

a. The description of the nature, purpose, and location of the project.

b. The estimated start and completion dates for the project.

c. An estimate of the volume of coal combustion products to be used in the project.

d. A Toxicity Characteristic Leaching Procedure analysis from a representative sample of each different coal combustion product's source to be used in the project for, at a minimum, all of the following constituents: arsenic, barium, cadmium, lead, chromium, mercury, selenium, and silver.

e. A signed and dated statement by the owner of the land on which the structural fill is to be placed, acknowledging and consenting to the use of coal combustion products as structural fill on the property and agreeing to record the fill in accordance with the requirements of G.S. 130A-390.218.

f. The name, address, and contact information for the generator of the coal combustion products.

g. Physical location of the project at which the coal combustion products were generated.

(2) For projects involving placement of 10,000 or more tons of coal combustion products per acre or 100,000 or more tons of coal combustion products in total per project, the person shall provide all information required pursuant to subdivision (1) of this subsection and shall provide construction plans for the project, including a stability analysis as the Department may require. If required by the Department, a stability analysis shall be prepared, signed, and sealed by a professional engineer in accordance with sound engineering practices. A construction plan shall, at a minimum, include a groundwater monitoring system and an encapsulation liner system in compliance with the requirements of G.S. 130A-309.215.

"**§ 130A-309.215. Design requirements for projects using coal combustion products for structural fill.**

(a) Design, Construction, and Operation of Structural Fill Sites. –

(1) A structural fill site must be designed, constructed, operated, closed, and maintained in such a manner as to minimize the potential for harmful release of constituents of coal combustion residuals to the environment or create a nuisance to the public.

(2) Coal combustion products shall be collected and transported in a manner that will prevent nuisances and hazards to public health and safety. Coal combustion products shall be moisture conditioned, as necessary, and transported in covered trucks to prevent dusting.

(3) Coal combustion products shall be placed uniformly and compacted in lifts not exceeding one foot in thickness and shall be compacted to standards, including in-situ density, compaction effort, and relative density, specified by a registered professional engineer for a specific end-use purpose.

(4) Equipment shall be provided which is capable of placing and compacting the coal combustion products and handling the earthwork required during the periods that coal combustion products are received at the fill project.

(5) The coal combustion product structural fill project shall be effectively maintained and operated as a nondischarge system to prevent discharge to surface water resulting from the project.

(6) The coal combustion product structural fill project shall be effectively maintained and operated to ensure no violations of groundwater standards adopted by the Commission pursuant to Article 21 of Chapter 143 of the General Statutes due to the project.

(7) Surface waters resulting from precipitation shall be diverted away from the active coal combustion product placement area during filling and construction activity.

(8) Site development shall comply with the North Carolina Sedimentation Pollution Control Act of 1973, as amended.

(9) The structural fill project shall be operated with sufficient dust control measures to minimize airborne emissions and to prevent dust from creating a nuisance or safety hazard and shall not violate applicable air quality regulations.

(10) Coal combustion products utilized on an exterior slope of a structural fill shall not be placed with a slope greater than 3.0 horizontal to 1.0 vertical.

(11) Compliance with this subsection shall not insulate any of the owners or operators of a structural fill project from claims for damages to surface waters, groundwater, or air resulting from the operation of the structural fill project. If the project fails to comply with the requirements of this section, the constructor, generator, owner, or operator shall notify the Department and shall take any immediate corrective action as may be required by the Department.

(b) Liners, Leachate Collection System, Cap, and Groundwater Monitoring System Required for Large Structural Fills. – For projects involving placement of 10,000 or more tons of coal combustion products per acre or 100,000 or more tons of coal combustion products in total per project shall have an encapsulation liner system. The encapsulation liner system shall be constructed on and around the structural fill and shall be designed to efficiently contain, collect, and remove leachate generated by the coal combustion products, as well as separate the coal combustion products from any exposure to surrounding environs. At a minimum, the components of the liner system shall consist of the following:

(1) A base liner. The base liner shall consist of one of the following designs:

a. A composite liner utilizing a compacted clay liner. This composite liner is one liner that consists of two components: a geomembrane liner installed above and in direct and uniform contact with a compacted clay liner with a minimum thickness of 24 inches (0.61 m) and a permeability of no more than 1.0×10^{-7} centimeters per second.

b. A composite liner utilizing a geosynthetic clay liner. This composite liner is one liner that consists of three components: a geomembrane liner installed above and in uniform contact with a geosynthetic clay liner overlying a compacted clay liner with a minimum thickness of

18 inches (0.46 m) and a permeability of no more than 1.0 X 10^{-5} centimeters per second.

(2) A leachate collection system, which is constructed directly above the base liner and shall be designed to effectively collect and remove leachate from the project.

(3) A cap liner, which shall consist of two components: a geomembrane liner installed across the limits of the coal combustion products covered with a minimum thickness of 24 inches (0.61 m) compacted earth, and a permeability of no more than 1.0 X 10^{-7} centimeters per second, and an additional surface six inches of soil capable of supporting native plant growth.

(4) A groundwater monitoring system, which shall be approved by the Department and, at a minimum, consist of all of the following:

a. A sufficient number of wells, installed at appropriate locations and depths, to yield groundwater samples from the uppermost aquifer that represent the quality of groundwater passing the relevant point of compliance as approved by the Department. A downgradient monitoring system shall be installed at the relevant point of compliance so as to ensure detection of groundwater contamination in the uppermost aquifer.

b. A proposed monitoring plan, which shall be certified by a licensed geologist or professional engineer to be effective in providing early detection of any release of hazardous constituents from any point in a structural fill or leachate surface impoundment to the uppermost aquifer, so as to be protective of public health, safety, and welfare; the environment; and natural resources.

c. A groundwater monitoring program, which shall include consistent sampling and analysis procedures that are designed to ensure monitoring results that provide an accurate representation of groundwater quality at the background and downgradient wells. Monitoring shall be conducted through construction and the post-closure care period. The sampling procedures and frequency shall be protective of public health, safety, and welfare; the environment; and natural resources.

d. A detection monitoring program for all Appendix I constituents. For purposes of this subdivision, the term "Appendix I" means Appendix I to 40 C.F.R. Part 258, "Appendix I Constituents for Detection Monitoring," including subsequent amendments and editions.

e. An assessment monitoring program and corrective action plan if one or more of the constituents listed in Appendix I is detected in exceedance of a groundwater protection standard.

"**§ 130A-309.216. Financial assurance requirements for large projects using coal combustion products for structural fill.**

(a) For projects involving placement of 10,000 or more tons of coal combustion products per acre or 100,000 or more tons of coal combustion products in total per project, the applicant for a permit or a permit holder to construct or operate a structural fill shall establish financial assurance that will ensure that sufficient funds are available for facility closure, post-closure maintenance and monitoring, any corrective action that the Department may require, and to satisfy any potential liability for sudden and nonsudden accidental occurrences, and subsequent costs incurred by the Department in response to an incident at a structural fill

project, even if the applicant or permit holder becomes insolvent or ceases to reside, be incorporated, do business, or maintain assets in the State.

(b) To establish sufficient availability of funds under this section, the applicant for a permit or a permit holder may use insurance, financial tests, third-party guarantees by persons who can pass the financial test, guarantees by corporate parents who can pass the financial test, irrevocable letters of credit, trusts, surety bonds, or any other financial device, 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.

(c) The applicant for a permit or a permit holder, and any parent, subsidiary, or other affiliate of the applicant, permit holder, or parent, including any joint venturer with a direct or indirect interest in the applicant, permit holder, or parent shall be a guarantor of payment for closure, post-closure maintenance and monitoring, any corrective action that the Department may require, and to satisfy any potential liability for sudden and nonsudden accidental occurrences arising from the operation of the hazardous waste facility.

(d) 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.

(e) The Department may provide a copy of any filing that an applicant for a permit or a permit holder submits to the Department to meet the financial responsibility requirements under this section to the State Treasurer. The State Treasurer shall review the filing and provide the Department with a written opinion as to the adequacy of the filing to meet the purposes of this section, including any recommended changes.

(f) In order to continue to hold a permit for a structural fill, a permit holder must maintain financial responsibility as required by this Part and must provide any information requested by the Department to establish that the permit holder continues to maintain financial responsibility.

(g) An applicant for a permit or a permit holder shall satisfy the Department that the applicant or permit holder has met the financial responsibility requirements of this Part before the Department is required to otherwise review the application.

"**§ 130A-309.217. Closure of projects using coal combustion products for structural fill.**

(a) Closure of Structural Fill Projects. –

(1) No later than 30 working days or 60 calendar days, whichever is less, after coal combustion product placement has ceased, the final cover shall be applied over the coal combustion product placement area.

(2) The final surface of the structural fill shall be graded and provided with drainage systems that do all of the following:

a. Minimize erosion of cover materials.

b. Promote drainage of area precipitation, minimize infiltration, and prevent ponding of surface water on the structural fill.

(3) Other erosion control measures, such as temporary mulching, seeding, or silt barriers shall be installed to ensure no visible coal combustion product migration to adjacent properties until the beneficial end use of the project is realized.

(4) The constructor or operator shall submit a certification to the Department signed and sealed by a registered professional engineer or signed by the Secretary of the Department of Transportation or his designee certifying that all requirements of this Subpart have been met. The report shall be submitted within 30 days of application of the final cover.

(b) Additional Closure and Post-Closure Requirements for Large Structural Fill Projects. – For projects involving placement of 10,000 or more tons of coal combustion

products per acre or 100,000 or more tons of coal combustion products in total per project, a constructor or operator shall conduct post-closure care. Post-closure care shall be conducted for 20 years, which period may be increased by the Department upon a determination that a longer period is necessary to protect public health, safety, welfare; the environment; and natural resources, or decreased upon a determination that a shorter period is sufficient to protect public health, safety, welfare; the environment; and natural resources. Additional closure and post-closure requirements include, at a minimum, all of the following:

(1) Submit a written closure plan, which includes all of the following:

a. A description of the cap liner system and the methods and procedures used to install the cap that conforms to the requirement in G.S. 130A-309.215(b).

b. An estimate of the largest area of the structural fill project ever requiring the cap liner system at any time during the overall construction period that is consistent with the drawings prepared for the structural fill.

c. An estimate of the maximum inventory of coal combustion products ever on-site over the construction duration of the structural fill.

d. A schedule for completing all activities necessary to satisfy the closure criteria set forth in this section.

(2) Submit a written post-closure plan, which includes all of the following:

a. A description of the monitoring and maintenance activities required for the project and the frequency at which these activities must be performed.

b. The name, address, and telephone number of the person or office responsible for the project during the post-closure period.

c. A description of the planned uses of the property during the post-closure period. Post-closure use of the property must not disturb the integrity of the cap system, base liner system, or any other components of the containment system, or the function of the monitoring systems unless necessary to comply with the requirements of this subsection. The Department may approve disturbance if the constructor or operator demonstrates that disturbance of the cap system, base liner system, or other component of the containment system will not increase the potential threat to public health, safety, and welfare; the environment; and natural resources.

d. The cost estimate for post-closure activities required under this section.

(3) Maintain the integrity and effectiveness of any cap system, including repairing the system as necessary to correct the defects of settlement, subsidence, erosion, or other events and preventing run-on and runoff from eroding or otherwise damaging the cap system.

(4) Maintain and operate the leachate collection system as necessary to allow the coal combustion products to reach terminal moisture condition. Upon a satisfactory showing to the Department by the constructor or operator that the encapsulating liner system has eliminated any recharge sources, and contact water and leachate generation has ceased and no longer poses a threat to public health, safety, and welfare; the environment; and natural resources, the leachate collection system may be closed.

(5) Monitor and maintain the groundwater monitoring system in accordance with G.S. 130A-309.215 and monitor the surface water in accordance with 15A NCAC 13B .0602.

(c) Completion of Post-Closure Care. – Following completion of the post-closure care period, the constructor or operator shall submit a certification, signed by a registered professional engineer, to the Department, verifying that post-closure care has been completed in accordance with the post-closure plan, and include the certification in the operating record.

"**§ 130A-309.218. Recordation of projects using coal combustion products for structural fill.**

(a) The owner of land where coal combustion products have been used in volumes of more than 1,000 cubic yards shall file a statement of the volume and locations of the coal combustion residuals with the Register of Deeds in the county or counties where the property is located. The statement shall identify the parcel of land according to the complete legal description on the recorded deed, either by metes and bounds, or by reference to a recorded plat map. The statement shall be signed and acknowledged by the landowners in the form prescribed by G.S. 47-38 through G.S. 47-43.

(b) Recordation shall be required within 90 days after completion of a structural fill project using coal combustion residuals.

(c) The Register of Deeds, in accordance with G.S. 161-14, shall record the notarized statement and index it in the Grantor Index under the name of the owner of the land. The original notarized statement with the Register's seal and the date, book, and page number of recording shall be returned to the Department after recording.

(d) When property with more than 1,000 cubic yards of coal combustion products is sold, leased, conveyed, or transferred in any manner, the deed or other instrument of transfer shall contain in the description section in no smaller type than used in the body of the deed or instrument a statement that coal combustion products have been used as structural fill material on the property.

"**§ 130A-309.219. Department of Transportation projects.**

The Department and the Department of Transportation may agree on specific design, construction, siting, operation, and closure criteria that may apply to the Department of Transportation structural fill projects.

"**§ 130A-309.220. Inventory and inspection of certain structural fill projects.**

No later than July 1, 2015, the Department shall prepare an inventory of all structural fill projects with a volume of 10,000 cubic yards or more. The Department shall update the structural fill project inventory at least annually. The Department shall inspect each structural fill project with a volume of 10,000 cubic yards or more at least annually to determine if the project or facility has been constructed and operated in compliance with 15A NCAC 13B .1701, et seq., (Requirements for Beneficial Use of Coal Combustion By-Products) and all other applicable laws.

"**§ 130A-309.221. Amendments required to rules.**

Requirements under existing rules governing the use of coal combustion products for structural fill that do not conflict with the provisions of this Subpart shall continue to apply to such projects. The Environmental Management Commission shall amend existing rules governing the use of coal combustion products for structural fill as necessary to implement the provisions of this Subpart. Such rules shall be exempt from the requirements of G.S. 150B-19.3."

SECTION 3.(b) Notwithstanding G.S. 130A-309.211 or G.S. 130A-309.212, as enacted by Section 3(a) of this act, and except as otherwise preempted by the requirements of federal law, the following coal combustion residuals surface impoundments shall be deemed high-priority, and, as soon as practicable, but no later than August 1, 2019, shall be closed in conformance with Section 3(c) of this act:

(1) Coal combustion residuals surface impoundments located at the Dan River Steam Station, owned and operated by Duke Energy Progress, and located in Rockingham County.

(2) Coal combustion residuals surface impoundments located at the Riverbend Steam Station, owned and operated by Duke Energy Carolinas, and located in Gaston County.

(3) Coal combustion residuals surface impoundments located at the Asheville Steam Electric Generating Plant, owned and operated by Duke Energy Progress, and located in Buncombe County.

(4) Coal combustion residuals surface impoundments located at the Sutton Plant, owned and operated by Duke Energy Progress, and located in New Hanover County.

SECTION 3.(c) The impoundments identified in subsection (b) of this section shall be closed as follows:

(1) The impoundments shall be dewatered.

(2) All coal combustion residuals shall be removed from the impoundments and transferred for (i) disposal in a coal combustion residuals landfill, industrial landfill, or municipal solid waste landfill or (ii) use in a structural fill or other beneficial use as allowed by law. Any disposal or use of coal combustion products pursuant to this section shall comply with the moratoriums enacted under Section 4(a) and Section 5(a) of this act and any extensions thereof. The use of coal combustion products (i) as structural fill, as authorized by Section 4(b) of this act, shall be conducted in accordance with the requirements of Subpart 3 of Part 2I of Article 9 of the General Statutes, as enacted by Section 3(a) of this act, and (ii) for other beneficial uses shall be conducted in accordance with the requirements of 15A NCAC 13B .1701, et seq., (Requirements for Beneficial Use of Coal Combustion By-Products).

(3) Where groundwater quality is degraded as a result of the impoundment, corrective action to restore groundwater quality shall be implemented by the owner or operator as provided in G.S. 130A-309.204.

SECTION 3.(d) G.S. 130A-290(a) reads as rewritten:

"**§ 130A-290. Definitions.**

(a) Unless a different meaning is required by the context, the following definitions shall apply throughout this Article:

...

(2b) ~~"Combustion products"~~"Coal combustion residuals" means residuals, including fly ash, bottom ash, boiler slag, mill rejects, and flue gas desulfurization residue produced by a coal-fired generating ~~unit.~~unit destined for disposal. The term does not include coal combustion products as defined in G.S. 130A-309.201(4).

(2c) ~~"Combustion products landfill"~~"Coal combustion residuals landfill" means a facility or unit for the disposal of combustion products, where the landfill is located at the same facility with the coal-fired generating unit or units producing the combustion products, and where the landfill is located wholly or partly on top of a facility that is, or was, being used for the disposal or storage of such combustion products, including, but not limited to, landfills, wet and dry ash ponds, and structural fill facilities.

...

(3a) "Commission" means the Environmental Management Commission.

...

(20) "Open dump" means any facility or site where solid waste is disposed of that is not a sanitary landfill and that is not a coal combustion residuals surface impoundment or a facility for the disposal of hazardous waste.

...

(35) "Solid waste" 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. Notwithstanding sub-sub-subdivision b.3. of this subdivision, the term includes coal combustion residuals. 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.~~ Commission, including coal combustion products. However, any sludges that meet the criteria for hazardous waste under RCRA shall also be a solid waste for the purposes of this Article.

...."

SECTION 3.(e) This section is effective when it becomes law. Subpart 3 of Part 2I of Article 9 of the General Statutes, as enacted by Section 3(a) of this act, applies to the use of coal combustion products as structural fill contracted for on or after that date. The first report due under G.S. 130A-309.210, as enacted by Section 3(a) of this act, is due October 1, 2014. Members to be appointed pursuant to G.S. 130A-309.202(b), as enacted by Section 3(a) of this act, shall be appointed no later than September 1, 2014.

PART III. MORATORIUMS AND STUDY ON (1) USE OF COAL COMBUSTION PRODUCTS AS STRUCTURAL FILL AND (2) CONSTRUCTION OR EXPANSION OF COMBUSTION PRODUCTS LANDFILLS

SECTION 4.(a) Notwithstanding 15A NCAC 13B .1701, et seq., and except as provided in Section 4(b) of this act, the use of coal combustion products, as defined in G.S. 130A-290, as structural fill is prohibited until August 1, 2015, in order to allow the Department of Environment and Natural Resources, the Environmental Management Commission, and the General Assembly time to review and evaluate the use of coal combustion residuals as structural fill.

SECTION 4.(b) Coal combustion products may be used as structural fill for any of the following types of projects:

(1) A project where the structural fill is used with a base liner, leachate collection system, cap liner, groundwater monitoring system and where the constructor or operator establishes financial assurance, as required by G.S. 130A–309.216.

(2) As the base or sub-base of a concrete or asphalt paved road constructed under the authority of a public entity.

SECTION 4.(c) The use of coal combustion products (i) as structural fill as authorized by Section 4(b) of this act shall be conducted in accordance with the requirements of Subpart 3 of Part 2I of Article 9 of the General Statutes, as enacted by Section 3(a) of this act, and (ii) for other beneficial uses shall be conducted in accordance with the requirements of 15A NCAC 13B .1701, et seq., (Requirements for Beneficial Use of Coal Combustion By-Products).

SECTION 4.(d) The Department of Environment and Natural Resources and the Environmental Management Commission shall jointly review Subpart 3 of Part 2I of Article 9 of the General Statutes, as enacted by Section 3(a) of this act, and 15A NCAC 13B .1701, et seq. In conducting this review, the Department and Commission shall do all of the following:

(1) Review the uses of coal combustion products as structural fill and the regulation of this use under Subpart 3 of Part 2I of Article 9 of the General Statutes, as enacted by Section 3(a) of this act, to protect public health, safety, and welfare; the environment; and natural resources.

(2) Review the uses of coal combustion products for other beneficial uses and the regulation of these uses under 15A NCAC 13B .1701, et seq., and other applicable rules, to determine if the rules are sufficient to protect public health, safety, and welfare; the environment; and natural resources.

(3) Evaluate additional opportunities for the use of coal combustion products as structural fill and for other beneficial uses that would reduce the volume of coal combustion residuals that are being disposed of in coal combustion residuals landfills, industrial landfills, or municipal solid waste landfills while still being protective of public health, safety, and welfare; the environment; and natural resources.

(4) Monitor any actions of the United States Environmental Protection Agency regarding the use of coal combustion products as structural fill or for other beneficial uses.

(5) Jointly report to the Environmental Review Commission no later than January 15, 2015, on their findings and recommendations regarding the use of coal combustion products as structural fill and for other beneficial uses.

SECTION 4.(e) All electric generating facilities that produce coal combustion residuals and coal combustion products shall issue a request for proposals on or before December 31, 2014, for (i) the conduct of a market analysis for the concrete industry and other industries that might beneficially use coal combustion residuals and coal combustion products; (ii) the study of the feasibility and advisability of installation of technology to convert existing and newly generated coal combustion residuals to commercial-grade coal combustion products suitable for use in the concrete industry and other industries that might beneficially use coal combustion residuals; and (iii) an examination of all innovative technologies that might be applied to diminish, recycle or reuse, or mitigate the impact of existing and newly generated coal combustion residuals.

SECTION 4.(f) This section is effective when it becomes law and applies to the use of coal combustion residuals as structural fill contracted for on or after that date.

SECTION 5.(a) There is hereby established a moratorium on construction of new or expansion of existing coal combustion residuals landfills, as defined by G.S. 130A-290(2c) and amended by Section 3(d) of this act. The purpose of this moratorium is to allow the State to

assess the risks to public health, safety, welfare; the environment; and natural resources of coal combustion residuals impoundments located beneath coal combustion residuals landfills to determine the advisability of continued operation of these landfills.

SECTION 5.(b) The Department of Environment and Natural Resources shall evaluate each coal combustion residuals landfills currently operating in the State, and, in particular, assess the risks to public health, safety, welfare; the environment; and natural resources, of coal combustion residuals surface impoundments located beneath coal combustion residuals landfills to determine the advisability of continued operation of these landfills. The Department shall report to the Environmental Review Commission no later than January 15, 2015, on its findings and recommendations concerning the risk assessment of each of these sites and the advisability of continued operation of coal combustion residuals landfills.

SECTION 5.(c) This section is effective when it becomes law and expires August 1, 2015.

PART IV. STRENGTHEN THE REPORTING AND NOTIFICATION REQUIREMENTS APPLICABLE TO DISCHARGES OF WASTEWATER TO WATERS OF THE STATE; REQUIRE CERTAIN EMERGENCY CALLS TO BE RECORDED

SECTION 6.(a) G.S. 143-215.1C reads as rewritten:

"**§ 143-215.1C. Report to wastewater system customers on system performance; report discharge of untreated wastewater to the Department; publication of notice of discharge of untreated wastewater and waste.**

(a) Report to Wastewater System Customers. – The owner or operator of any wastewater collection or treatment works, the operation of which is primarily to collect or treat municipal or domestic wastewater and for which a permit is issued under this Part and having an average annual flow greater than 200,000 gallons per day, shall provide to the users or customers of the collection system or treatment works and to the Department an annual report that summarizes the performance of the collection system or treatment works and the extent to which the collection system or treatment works has violated the permit or federal or State laws, regulations, or rules related to the protection of water quality. The report shall be prepared on either a calendar or fiscal year basis and shall be provided no later than 60 days after the end of the calendar or fiscal year.

(a1) Report Discharge of Untreated Wastewater to the Department. – The owner or operator of any wastewater collection or treatment works for which a permit is issued under this Part shall report a discharge of 1,000 gallons or more of untreated wastewater to the surface waters of the State to the Department within 24 hours after the owner or operator has determined that the discharge has reached the surface waters of the State. This reporting requirement shall be in addition to any other reporting requirements applicable to the owner or operator of the wastewater collection or treatment works.

(b) Publication of Notice of Discharge of Untreated Wastewater. – The owner or operator of any wastewater collection or treatment works, the operation of which is primarily to collect or treat municipal or domestic wastewater and for which a permit is issued under this Part shall:

(1) In the event of a discharge of 1,000 gallons or more of untreated wastewater to the surface waters of the State, issue a press release to all print and electronic news media that provide general coverage in the county where the discharge occurred setting out the details of the discharge. The owner or operator shall issue the press release within ~~48~~ 24 hours after the owner or operator has determined that the discharge has reached the surface waters of the State. The owner or operator shall retain a copy of the press release and a list of the news media to which it was distributed for at least one year after

the discharge and shall provide a copy of the press release and the list of the news media to which it was distributed to any person upon request.

(2) In the event of a discharge of 15,000 gallons or more of untreated wastewater to the surface waters of the State, publish a notice of the discharge in a newspaper having general circulation in the county in which the discharge occurs and in each county downstream from the point of discharge that is significantly affected by the discharge. The Secretary shall determine, at the Secretary's sole discretion, which counties are significantly affected by the discharge and shall approve the form and content of the notice and the newspapers in which the notice is to be published. The notice shall be captioned "NOTICE OF DISCHARGE OF UNTREATED SEWAGE". The owner or operator shall publish the notice within 10 days after the Secretary has determined the counties that are significantly affected by the discharge and approved the form and content of the notice and the newspapers in which the notice is to be published. The owner or operator shall file a copy of the notice and proof of publication with the Department within 30 days after the notice is published. Publication of a notice of discharge under this subdivision is in addition to the requirement to issue a press release under subdivision (1) of this subsection.

(c) Publication of Notice of Discharge of Untreated Waste. – The owner or operator of any wastewater collection or treatment works, other than a wastewater collection or treatment works the operation of which is primarily to collect or treat municipal or domestic wastewater, for which a permit is issued under this Part shall:

(1) In the event of a discharge of 1,000 gallons or more of untreated waste to the surface waters of the State, issue a press release to all print and electronic news media that provide general coverage in the county where the discharge occurred setting out the details of the discharge. The owner or operator shall issue the press release within ~~48~~ 24 hours after the owner or operator has determined that the discharge has reached the surface waters of the State. The owner or operator shall retain a copy of the press release and a list of the news media to which it was distributed for at least one year after the discharge and shall provide a copy of the press release and the list of the news media to which it was distributed to any person upon request.

(2) In the event of a discharge of 15,000 gallons or more of untreated waste to the surface waters of the State, publish a notice of the discharge in a newspaper having general circulation in the county in which the discharge occurs and in each county downstream from the point of discharge that is significantly affected by the discharge. The Secretary shall determine, at the Secretary's sole discretion, which counties are significantly affected by the discharge and shall approve the form and content of the notice and the newspapers in which the notice is to be published. The notice shall be captioned "NOTICE OF DISCHARGE OF UNTREATED WASTE". The owner or operator shall publish the notice within 10 days after the Secretary has determined the counties that are significantly affected by the discharge and approved the form and content of the notice and the newspapers in which the notice is to be published. The owner or operator shall file a copy of the notice and proof of publication with the Department within 30 days after the notice is published. Publication of a notice of discharge under this subdivision is in addition to the requirement to issue a press release under subdivision (1) of this subsection."

SECTION 6.(b) Section 6(a) of this act becomes effective September 1, 2014.

SECTION 6.(c) G.S. 166A-19.12(16) reads as rewritten:

"(16) Establishing and operating a 24-hour Operations Center to serve as a single point of contact for local governments to report the occurrence of emergency and disaster events and to coordinate local and State response assets. The Division shall record all telephone calls to the 24-hour Operations Center emergency hotline and shall maintain the recording of each telephone call for at least one year."

PART V. REQUIRE NOTIFICATION OF THE DEPARTMENT OF EMERGENCY DAM REPAIRS; REQUIRE EMERGENCY ACTION PLANS FOR CERTAIN DAMS; REQUIRE INSPECTION OF DAMS AT COAL COMBUSTION RESIDUALS SURFACE IMPOUNDMENTS

SECTION 7. G.S. 143-215.27 reads as rewritten:

"**§ 143-215.27. Repair, alteration, or removal of dam.**

(a) Before commencing the repair, alteration or removal of a dam, application shall be made for written approval by the Department, except as otherwise provided by this Part. The application shall state the name and address of the applicant, shall adequately detail the changes it proposes to effect and shall be accompanied by maps, plans and specifications setting forth such details and dimensions as the Department requires. The Department may waive any such requirements. The application shall give such other information concerning the dam and reservoir required by the Department, such information concerning the safety of any change as it may require, and shall state the proposed time of commencement and completion of the work. When an application has been completed it may be referred by the Department for agency review and report, as provided by subsection (b) of G.S. 143-215.26 in the case of original construction.

(b) When emergency repairs are necessary to safeguard life and property they may be started immediately but the Department shall be notified ~~forthwith~~ of the proposed repairs and of the work ~~under way, and they~~underway as soon as possible, but not later than 24 hours after first knowledge of the necessity for the emergency repairs, and the emergency repairs shall be made to conform to ~~its~~ the Department's orders."

SECTION 8.(a) G.S. 143-215.31 reads as rewritten:

"**§ 143-215.31. Supervision over maintenance and operation of dams.**

(a) The Commission shall have jurisdiction and supervision over the maintenance and operation of dams to safeguard life and property and to satisfy minimum streamflow requirements. The Commission may adopt standards for the maintenance and operation of dams as may be necessary for the purposes of this Part. The Commission may vary the standards applicable to various dams, giving due consideration to the minimum flow requirements of the stream, the type and location of the structure, the hazards to which it may be exposed, and the peril of life and property in the event of failure of a dam to perform its function.

(a1) The owner of a dam classified by the Department as a high hazard dam or an intermediate hazard dam shall develop an Emergency Action Plan for the dam as provided in this subsection.

(1) The owner of the dam shall submit a proposed Emergency Action Plan for the dam within 90 days after the dam is classified as a high hazard dam or an intermediate hazard dam to the Department and the Department of Public Safety for their review and approval. The Department and the Department of Public Safety shall approve the Emergency Action Plan if they determine that it complies with the requirements of this subsection and will protect public health, safety, and welfare; the environment; and natural resources.

(2) The Emergency Action Plan shall include, at a minimum, all of the following:
a. A description of potential emergency conditions that could occur at the dam.
b. A description of actions to be taken in response to an emergency condition at the dam.
c. Emergency notification procedures to aid in warning and evacuations during an emergency condition at the dam.
d. A downstream inundation map depicting areas affected by a dam failure and sudden release of the impoundment.
(3) The owner of the dam shall update the Emergency Action Plan annually and shall submit it to the Department and the Department of Public Safety for their review and approval within one year of the prior approval.
(4) The Department shall provide a copy of the Emergency Action Plan to the regional offices of the Department that might respond to an emergency condition at the dam.
(5) The Department of Public Safety shall provide a copy of the Emergency Action Plan to all local emergency management agencies that might respond to an emergency condition at the dam.
(6) Information included in an Emergency Action Plan that constitutes sensitive public security information, as provided in G.S. 132-1.7, shall be maintained as confidential information and shall not be subject to disclosure under the Public Records Act. For purposes of this section, "sensitive public security information" shall include Critical Energy Infrastructure Information protected from disclosure under rules adopted by the Federal Energy Regulatory Commission in 18 C.F.R. § 333.112.

...."

SECTION 8.(b) Notwithstanding G.S. 143-215.31, as amended by Section 8(a) of this act, the owners of all high hazard dams and intermediate hazard dams in operation on the effective date of this act shall submit their proposed Emergency Action Plans to the Department of Environment and Natural Resources and the Department of Public Safety no later than October 1, 2015.

SECTION 9. Section 3(b) of S.L. 2009-390 reads as rewritten:

"**SECTION 3.(b)** Any impoundments or other facilities that were in use ~~on the effective date of this section~~January 1, 2010, in connection with nonnuclear electric generating facilities under the jurisdiction of the North Carolina Utilities Commission, and that had been exempted under the provisions of G.S. 143-215.25A(4), prior to ~~amendment by Section 3(a) of this act,~~ January 1, 2010, shall be deemed to have received all of the necessary approvals from the Department of Environment and Natural Resources and the Commission for Safety. ~~Dam Safety, and shall not be required to submit application, certificate, or other materials in connection with the continued normal operation and maintenance of those facilities.~~"

SECTION 10. G.S. 143-215.32 reads as rewritten:

"**§ 143-215.32. Inspection of dams.**

(a) The Department may at any time inspect any dam, including a dam that is otherwise exempt from this Part, upon receipt of a written request of any affected person or agency, or upon a motion of the Environmental Management Commission. Within the limits of available funds the Department shall endeavor to provide for inspection of all dams at intervals of approximately five years.

(a1) Coal combustion residuals surface impoundments, as defined by G.S. 130A-309.201, shall be inspected as provided in this subsection.

(1) The Department shall inspect each dam associated with a coal combustion residuals surface impoundment at least annually.

(2) The owner of a coal combustion residuals surface impoundment shall inspect the impoundment weekly and after storms to detect evidence of any of the following conditions:

a. Deterioration, malfunction, or improper operation of spillway control systems.

b. Sudden drops in the level of the contents of the impoundment.

c. Severe erosion or other signs of deterioration in dikes or other containment devices or structures.

d. New or enlarged seeps along the downstream slope or toe of the dike or other containment devices or structures.

e. Any other abnormal conditions at the impoundment that could pose a risk to public health, safety, or welfare; the environment; or natural resources.

(3) If any of the conditions described in subdivision (2) of this subsection are observed, the owner shall provide documentation of the conditions to the Department and a registered professional engineer. The registered professional engineer shall investigate the conditions and, if necessary, develop a plan of corrective action to be implemented by the owner of the impoundment. The owner of the impoundment shall provide documentation of the completed corrective action to the Department.

(4) The owner of a coal combustion residuals surface impoundment shall provide for the annual inspection of the impoundment by an independent registered professional engineer to ensure that the structural integrity and the design, operation, and maintenance of the impoundment is in accordance with generally accepted engineering standards. Within 30 days of the inspection, the owner shall provide to the Department the inspection report and a certification by the engineer that the impoundment is structurally sound and that the design, operation, and maintenance of the impoundment is in accordance with generally accepted engineering standards. The owner and the Department shall each place the inspection report and certification on a publicly accessible Internet site.

(b) If the Department upon inspection finds that any dam is not sufficiently strong, is not maintained in good repair or operating condition, is dangerous to life or property, or does not satisfy minimum streamflow requirements, the Department shall present its findings to the Commission and the Commission may issue an order directing the owner or owners of the dam to make at his or her expense maintenance, alterations, repairs, reconstruction, change in construction or location, or removal as may be deemed necessary by the Commission within a time limited by the order, not less than 90 days from the date of issuance of each order, except in the case of extreme danger to the safety of life or property, as provided by subsection (c) of this section.

(c) If at any time the condition of any dam becomes so dangerous to the safety of life or property, in the opinion of the Environmental Management Commission, as not to permit sufficient time for issuance of an order in the manner provided by subsection (b) of this section, the Environmental Management Commission may immediately take such measures as may be essential to provide emergency protection to life and property, including the lowering of the level of a reservoir by releasing water impounded or the destruction in whole or in part of the dam or reservoir. The Environmental Management Commission may recover the costs of such measures from the owner or owners by appropriate legal action.

(d) An order issued under this Part shall be served on the owner of the dam as provided in G.S. 1A-1, Rule 4."

PART VI. TRANSFER SOLID WASTE RULE-MAKING AUTHORITY FROM COMMISSION FOR PUBLIC HEALTH TO ENVIRONMENTAL MANAGEMENT COMMISSION

SECTION 11.(a) G.S. 130A-29 reads as rewritten:

"**§ 130A-29. Commission for Public Health – Creation, powers and duties.**

...

(c) The Commission shall adopt rules:

(1) Repealed by Session Laws 1983 (Regular Session, 1984), c. 1022, s. 5.

(2) Establishing standards for approving sewage-treatment devices and holding tanks for marine toilets as provided in G.S. 75A-6(o).

(3) Establishing specifications for sanitary privies for schools where water-carried sewage facilities are unavailable as provided in G.S. 115C-522.

(4) Establishing requirements for the sanitation of local confinement facilities as provided in Part 2 of Article 10 of Chapter 153A of the General Statutes.

(5) Repealed by Session Laws 1989 (Regular Session, 1990), c. 1075, s. 1.

(5a) Establishing eligibility standards for participation in Department reimbursement programs.

~~(6) Requiring proper treatment and disposal of sewage and other waste from chemical and portable toilets.~~

(7) Establishing statewide health outcome objectives and delivery standards.

(8) Establishing permit requirements for the sanitation of premises, utensils, equipment, and procedures to be used by a person engaged in tattooing, as provided in Part 11 of Article 8 of this Chapter.

(9) Implementing immunization requirements for adult care homes as provided in G.S. 131D-9 and for nursing homes as provided in G.S. 131E-113.

(10) Pertaining to the biological agents registry in accordance with G.S. 130A-479.

(11) For matters within its jurisdiction that allow for and regulate horizontal drilling and hydraulic fracturing for the purpose of oil and gas exploration and development.

...."

SECTION 11.(b) G.S. 130A-291.1 reads as rewritten:

"**§ 130A-291.1. Septage management program; permit fees.**

...

(d) Septage shall be treated and disposed only at a wastewater system that has been approved by the Department under rules adopted by the Commission ~~or by the Environmental Management Commission~~ or at a site that is permitted by the Department under this section. A permit shall be issued only if the site satisfies all of the requirements of the rules adopted by the Commission.

...."

SECTION 11.(c) G.S. 130A-294(a)(4) reads as rewritten:

"**§ 130A-294. Solid waste management program.**

(a) The Department is authorized and directed to engage in research, conduct investigations and surveys, make inspections and establish a statewide solid waste management program. In establishing a program, the Department shall have authority to:

...

(4) a. Develop a permit system governing the establishment and operation of solid waste management facilities. A landfill with a disposal area of 1/2 acre or less for the on-site disposal of land clearing and inert debris is exempt from the permit requirement of this section and shall be governed by G.S. 130A-301.1. Demolition debris from the decommissioning of manufacturing buildings, including electric generating stations, that is disposed of on the same site as the decommissioned buildings, is exempt from the permit requirement of this section and rules adopted pursuant to this section and shall be governed by G.S. 130A-301.3. The Department shall not approve an application for a new permit, the renewal of a permit, or a substantial amendment to a permit for a sanitary landfill, excluding demolition landfills as defined in the rules of the Commission, except as provided in subdivisions (3) and (4) of subsection (b1) of this section. No permit shall be granted for a solid waste management facility having discharges that are point sources until the Department has referred the complete plans and specifications to the ~~Environmental Management~~ Commission and has received advice in writing that the plans and specifications are approved in accordance with the provisions of G.S. 143-215.1. In any case where the Department denies a permit for a solid waste management facility, it shall state in writing the reason for denial and shall also state its estimate of the changes in the applicant's proposed activities or plans that will be required for the applicant to obtain a permit.

b. Repealed by Session Laws 2007-550, s. 1(a), effective August 1, 2007.

c. The Department shall deny an application for a permit for a solid waste management facility if the Department finds that:

1. Construction or operation of the proposed facility would be inconsistent with or violate rules adopted by the Commission.
2. Construction or operation of the proposed facility would result in a violation of water quality standards adopted by the ~~Environmental Management~~ Commission pursuant to G.S. 143-214.1 for waters, as defined in G.S. 143-213.
3. Construction or operation of the facility would result in significant damage to ecological systems, natural resources, cultural sites, recreation areas, or historic sites of more than local significance. These areas include, but are not limited to, national or State parks or forests; wilderness areas; historic sites; recreation areas; segments of the natural and scenic rivers system; wildlife refuges, preserves, and management areas; areas that provide habitat for threatened or endangered species; primary nursery areas and critical fisheries habitat designated by the Marine Fisheries Commission; and Outstanding Resource Waters designated by the ~~Environmental Management~~ Commission.

...."

SECTION 11.(d) G.S. 130A-300 reads as rewritten:

"**§ 130A-300. Effect on laws applicable to water pollution control.**

This Article shall not be considered as amending, repealing or in any manner abridging or interfering with those sections of the General Statutes of North Carolina relative to the control

of water pollution as now administered by the ~~Environmental Management~~ Commission nor shall the provisions of this Article be construed as being applicable to or in any way affecting the authority of the ~~Environmental Management~~ Commission to control the discharges of wastes to the waters of the State as provided in Articles 21 and 21A, Chapter 143 of the General Statutes."

SECTION 11.(e) G.S. 130A-302 reads as rewritten:

"**§ 130A-302. Sludge deposits at sanitary landfills.**

Sludges generated by the treatment of wastewater discharges which are point sources subject to permits granted under Section 402 of the Federal Water Pollution Act, as amended (P.L. 92-500), or permits generated under G. S. 143-215.1 by the ~~Environmental Management~~ Commission shall not be deposited in or on a sanitary landfill permitted under this Article unless in a compliance with the rules concerning solid waste adopted under this Article."

SECTION 11.(f) G.S. 130A-310.3 reads as rewritten:

"**§ 130A-310.3. Remedial action programs for inactive hazardous substance or waste disposal sites.**

...

(b) Where possible, the Secretary shall work cooperatively with any owner, operator, responsible party, or any appropriate agency of the State or federal government to develop and implement the inactive hazardous substance or waste disposal site remedial action program. The Secretary shall not take action under this section to the extent that the ~~Environmental Management~~ Commission, the Commissioner of Agriculture, or the Pesticide Board has assumed jurisdiction pursuant to Articles 21 or 21A of Chapter 143 of the General Statutes.

...

(d) In any inactive hazardous substance or waste disposal site remedial action program implemented hereunder, the Secretary shall ascertain the most nearly applicable cleanup standard as would be applied under CERCLA/SARA, and may seek federal approval of any such program to insure concurrent compliance with federal standards. State standards may exceed and be more comprehensive than such federal standards. The Secretary shall assure concurrent compliance with applicable standards set by the ~~Environmental Management~~ Commission.

...."

SECTION 11.(g) G.S. 130A-310.4(g) reads as rewritten:

"(g) The Commission ~~on Health Services [Commission for Public Health]~~ shall adopt rules prescribing the form and content of the notices required by this section. The proposed remedial action plan shall include a summary of all alternatives considered in the development of the plan. A record shall be maintained of all comment received by the Department regarding the remedial action plan."

SECTION 11.(h) G.S. 130A-310.31(b)(5) reads as rewritten:

"(5) "Unrestricted use standards" when used in connection with "cleanup", "remediated", or "remediation" means contaminant concentrations for each environmental medium that are considered acceptable for all uses and that comply with generally applicable standards, guidance, or established methods governing the contaminants that are established by statute or adopted, published, or implemented by the ~~Environmental Management Commission, the~~ Commission, or the Department instead of the site-specific contaminant levels established pursuant to this Part."

SECTION 11.(i) G.S. 130A-310.65 reads as rewritten:

"**§ 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.~~

...

(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,~~Commission or the Department."

SECTION 11.(j) G.S. 113-391(a)(5)f. reads as rewritten:

"f. Management of wastes produced in connection with oil and gas exploration and development and use of horizontal drilling and hydraulic fracturing treatments for that purpose. Such rules shall address storage, transportation, and disposal of wastes that may contain radioactive materials or wastes that may be toxic or have other hazardous wastes' characteristics that are not otherwise regulated as a hazardous waste by the federal Resource Conservation and Recovery Act (RCRA), such as top-hole water, brines, drilling fluids, additives, drilling muds, stimulation fluids, well servicing fluids, oil, production fluids, and drill cuttings from the drilling, alteration, production, plugging, or other activity associated with oil and gas wells. Wastes generated in connection with oil and gas exploration and development and use of horizontal drilling and hydraulic fracturing treatments for that purpose that constitute hazardous waste under RCRA shall be subject to rules adopted by the Environmental Management Commission ~~for Public Health~~ to implement RCRA requirements in the State."

SECTION 11.(k) G.S. 113-415 reads as rewritten:

"**§ 113-415. Conflicting laws.**

No provision of this Article shall be construed to repeal, amend, abridge or otherwise ~~affect: (i)~~ affect the authority and ~~responsibility~~responsibility (i) vested in the Environmental Management Commission by Article 7 of Chapter 87 of the General Statutes, pertaining to the location, construction, repair, operation and abandonment of ~~wells, or the authority and responsibility~~ wells; (ii) vested in the Environmental Management Commission related to the control of water and air pollution as provided in Articles 21 and 21A of Chapter 143 of the General Statutes; ~~or (ii) the authority or responsibility~~(iii) vested in the Department and the Environmental Management Commission ~~for Public Health~~ by Article 10 of Chapter 130A of the General Statutes pertaining to public water-supply ~~requirements,~~requirements; or ~~the authority and responsibility~~(iv) vested in the Environmental Management Commission ~~for Public Health~~ related to the management of solid and hazardous waste as provided in Article 9 of Chapter 130A of the General Statutes."

SECTION 11.(l) The Revisor of Statutes shall make any conforming statutory changes necessary to reflect the transfer of rule-making authority under Article 9 of Chapter 130A of the General Statutes from the Commission for Public Health to the Environmental Management Commission.

SECTION 11.(m) The Codifier of Rules shall make any conforming rule changes necessary to reflect the transfer of rule-making authority under Article 9 of Chapter 130A of the General Statutes from the Commission for Public Health to the Environmental Management Commission.

PART VII. OTHER STUDIES

SECTION 12. The Coal Ash Management Commission, established pursuant to G.S. 130A-309.202, as enacted by Section 3(a) of this act, shall study whether and under what circumstances no further action or natural attenuation is appropriate for a coal combustion residuals surface impoundment that is classified as low-priority pursuant to G.S. 130A-309.211, as enacted by Section 3(a) of this act. In conducting this study, the Commission shall specifically consider whether there is any contact or interaction between coal combustion residuals and groundwater and surface water, whether the area has reverted to a natural state as evidenced by the presence of wildlife and vegetation, and whether no further action or natural attenuation would be protective of public health, safety, and welfare; the environment; and natural resources. The Commission shall report the results of its study, including any recommendations, to the Environmental Review Commission no later than October 1, 2015.

SECTION 13. The Department of Transportation shall evaluate additional opportunities for the use of coal combustion residuals in the construction and maintenance of roads and bridges within the State. The Department shall report the results of its study, including any recommendations, to the Environmental Review Commission no later than December 1, 2014.

PART VIII. PROVIDE RESOURCES FOR IMPLEMENTATION OF THIS ACT

SECTION 14.(a) Article 14 of Chapter 62 of the General Statutes is amended by adding a new section to read:

"**§ 62-302.1. Regulatory fee for combustion residual surface impoundments.**

(a) Fee Imposed. – Each public utility with a coal combustion residuals surface impoundment shall pay a regulatory fee for the purpose of defraying the costs of oversight of coal combustion residuals. The fee is in addition to the fee imposed under G.S. 62-302. The fees collected under this section shall only be used to pay the expenses of the Coal Ash Management Commission and the Department of Environment and Natural Resources in providing oversight of coal combustion residuals.

(b) Rate. – The combustion residuals surface impoundment fee shall be three-hundredths of one percent (0.03%) of the North Carolina jurisdictional revenues of each public utility with a coal combustion residuals surface impoundment. For the purposes of this section, the term "North Carolina jurisdictional revenues" has the same meaning as in G.S. 62-302.

(c) When Due. – The fee shall be paid in quarterly installments. The fee is payable to the Coal Ash Management Commission on or before the 15th of the second month following the end of each quarter. Each public utility subject to this fee shall, on or before the date the fee is due for each quarter, prepare and render a report on a form prescribed by the Commission. The report shall state the public utility's total North Carolina jurisdictional revenues for the preceding quarter and shall be accompanied by any supporting documentation that the Coal Ash Management Commission may by rule require. Receipts shall be reported on an accrual basis.

(d) Use of Proceeds. – A special fund in the Office of State Treasurer and the Coal Ash Management Commission is created. The fees collected pursuant to this section and all other funds received by the Coal Ash Management Commission shall be deposited in the Coal Combustion Residuals Management Fund. The Fund shall be placed in an interest-bearing account, and any interest or other income derived from the Fund shall be credited to the Fund. Moneys in the Fund shall only be spent pursuant to appropriation by the General Assembly. The Commission shall be subject to the provisions of the State Budget Act, except that no unexpended surplus of the Coal Combustion Residuals Management Fund shall revert to the General Fund. All funds credited to the Commission Fund shall be used only to pay the

expenses of the Coal Ash Management Commission and the Department of Environment and Natural Resources in providing oversight of coal combustion residuals.

(e) Recovery of Fee. – The North Carolina Utilities Commission shall not allow an electric public utility to recover this fee from the retail electric customers of the State."

SECTION 14.(b) Notwithstanding G.S. 62-302.1, as enacted by this section, for the first two quarters of fiscal year 2014-2015, each public utility shall pay the fee in G.S. 62-302.1 on a monthly basis. The fee shall be paid by the fifteenth of the following month.

SECTION 14.(c) Twenty-five receipt-supported positions are created in the Department of Environment and Natural Resources to carry out the duties in Part 2I of Article 9 of Chapter 130A of the General Statutes. There is appropriated from the Coal Combustion Residuals Management Fund the sum of one million seven hundred fifty thousand dollars ($1,750,000) to the Department of Environment and Natural Resources to support the positions for the 2014-2015 fiscal year.

SECTION 14.(d) Four receipt supported positions are created in the Division of Emergency Management of the Department of Public Safety to carry out the duties in G.S. 130A-309.202. The funds remaining in the Coal Combustion Residuals Management Fund after the appropriation to the Department of Environment and Natural Resources are appropriated to the Department of Public Safety for the 2014-2015 fiscal year. These positions shall be used to provide assistance to the Coal Ash Commission. The positions shall be assigned in the following manner: one of the positions shall be the executive director of the staff, two positions shall be assigned as analysts, and one position shall be assigned as administrative. The Division of Emergency Management in the Department of Public Safety shall consult with the Chair of the Commission in hiring the staff for the Coal Ash Commission. The Division of Emergency Management in the Department of Public Safety shall provide support to the Commission until the staff of the Commission is hired, including the designation of an individual to serve as an interim executive director of the staff.

SECTION 14.(e) This section becomes effective July 1, 2014.

PART IX. SEVERABILITY CLAUSE AND EFFECTIVE DATE

SECTION 15. If any provision of this act or its application is held invalid, the invalidity does not affect other provisions or applications of this act that can be given effect without the invalid provisions or application, and to this end the provisions of this act are severable.

SECTION 16. Except as otherwise provided, this act is effective when it becomes law.

SENATE BILL 729:
Coal Ash Management Act of 2014.

2013-2014 General Assembly

Committee:	Senate Agriculture/Environment/Natural Resources	**Date:**	June 16, 2014
Introduced by:	Sens. Apodaca, Berger	**Prepared by:**	Jennifer McGinnis and Jeff Hudson, Commission Counsels; Heather Fennell, Staff Attorney
Analysis of:	PCS to First Edition S729-PCS45193-RIx-39		

BILL ANALYSIS:

PART I. PROHIBIT RECOVERY OF COSTS RELATED TO UNLAWFUL DISCHARGES FROM COAL COMBUSTION RESIDUALS SURFACE IMPOUNDMENTS; MORATORIUM ON RATE CASES

SECTION 1. of the PCS would prohibit the Utilities Commission from allowing an electric public utility to recover from the retail electric customers of the State costs resulting from an unlawful discharge to the surface waters of the State from a coal combustion residuals surface impoundment (impoundment), unless the Commission determines the discharge was due to an event of force majeure. The section would apply to discharges occurring on or after January 1, 2014.

SECTION 2. of the PCS would establish a moratorium on orders of the Utilities Commission to grant an increase in base rates of an electric public utility for costs related to impoundments prior to January 15, 2015, in order to allow the State to study the disposition of impoundments including any final rules adopted by the United States Environmental Protection Agency (USEPA) on the regulation of coal combustion residuals (CCR).

PART II. PROVISIONS FOR COMPREHENSIVE MANAGEMENT OF COAL COMBUSTION RESIDUALS

SECTION 3. of the PCS would create a new Part in the Article of the General Statutes governing management of solid and hazardous waste to address matters related to management of coal ash. Specifically the Part would include provisions as follows:

SUBPART 1. Short Title, Definitions, and General Provisions

- **Definitions**: Establish pertinent definitions. *Note that in a subsequent portion of the bill, the definition for "solid waste" is modified to include wet CCR, which has historically been excluded from the definition of solid waste (see Sec. 3(d)).*
- **Coal Ash Management Commission**: Establish a nine member Coal Ash Management Commission (Commission), which would, in recognition of the complexity and magnitude of the issues associated with the management of coal combustion residuals and the proper closure and remediation of coal combustion residuals surface impoundments, have the following powers and duties:
  - To review and approve the prioritization classification of impoundments.
  - To review and approve closure plans for impoundments.

- To review and make recommendations on the provisions of this legislation and other statutes and rules related to the management of CCR.
- To undertake any additional studies as requested by the General Assembly.

The Commission would be:

- Administratively located in the Division of Emergency Management of the Department of Public Safety, but exercise all of its powers and duties independently of the agency and would not be subject to the supervision, direction, or control of the agency.
- Required to submit quarterly written reports as to its operation, activities, programs, and progress to the Environmental Review Commission (ERC).

- **Expedited permit review**: Require expedited review by the Department of Environment and Natural Resources (DENR) of permits necessary to conduct activities required by the legislation. In particular, DENR would be required to issue a draft permit decision on an application for a permit within 60 days after DENR determines that the application is complete. After DENR issues a draft permit decision, it would be required to hold a public hearing and accept written comment on the draft permit decision. DENR would be required to issue a final permit decision on an application for a permit within 30 days after the comment period on the draft permit decision closes. If DENR finds, however, that compliance with the deadlines would result in insufficient review of a permit application that would pose a risk to public health, safety, and welfare, the environment, or natural resources, the applicable deadline would be waived for the application as necessary to allow for adequate review. If a deadline is waived, the Secretary would be required to issue a written declaration, including findings of fact, documenting the need for the waiver.
- **Reports:** Require a number of reports:
  - Quarterly written reports from DENR to the ERC on DENR's operations, activities, programs, and progress with respect to its obligations under the legislation concerning impoundments. At a minimum, the report shall include information concerning the status of assessment, corrective action, prioritization, and closure for each coal combustion residual surface impoundment, and information on costs connected therewith, as well as a summary of all surface and groundwater sampling, protection, and restoration activities related to the impoundment for the preceding year.
  - Annual reports from DENR to each member of the General Assembly who has an impoundment in the member's district, including the location, the amount of CCR known or believed to be located in the impoundment, the last action taken at the impoundment, and the date of that last action.
  - Annual reports from generators of CCR and coal combustion products (CCP) summarizing the following:
    - The volume of CCR and CCP produced.
    - The volume of CCR disposed.
    - The volume of CCP used in structural fill projects.
    - The volume of CCP beneficially used, other than for structural fill.
- **Preemption of local regulation**: Invalidate local ordinances that prohibit or have the effect of regulating the management of coal combustion residuals and coal combustion products. The provision closely mirrors a statute preempting local government regulation of hazardous waste facilities (G.S. 130A-293). Specifically, the provision would invalidate ordinances that:
  - Regulate the management of coal combustion residuals and coal combustion products within any county, city, or other political subdivision.
  - Place any restriction or condition not placed by this legislation upon management of coal combustion residuals and coal combustion products within any county, city, or other political subdivision.
  - In any manner are in conflict or inconsistent with the provisions of this legislation.

- **Federal preemption**: Provide that if any phrase, clause, sentence, or provision of the legislation is declared to be unconstitutional or otherwise invalid or is preempted by federal law or regulation, that provision would be severable and the validity of the remainder of this Part would not be affected thereby.
- **Rulemaking**: Direct the Environmental Management Commission (EMC) to adopt rules as necessary to implement the provisions of the legislation, and exempt such rules from the requirements of G.S. 150B-19.3 (a provision under the Administrative Procedure Act that places limitations on the adoption of certain environmental rules).

SUBPART 2. Management of Coal Ash Residuals; Closure of Coal Ash Impoundments

Restrictions on generation, disposal, and use of coal combustion residuals:

- Prohibit the construction of new and expansion of existing impoundments on or after July 1, 2014.
- Prohibit the disposal of CCR into an impoundment at an electric generating facility where the coal-fired generating units are no longer producing CCR on or after October 1, 2014.
- Prohibit the discharge of stormwater into an impoundment: (i) at an electric generating facility where the coal-fired generating units are no longer producing CCR on or after December 31, 2018; and (ii) at an electric generating facility where the coal-fired generating units are actively producing CCR on or after December 31, 2019.
- Require all electric generating to convert to disposal of "dry" fly ash, or retire the facility on or before December 31, 2018.
- Require all electric generating facilities to convert to disposal of "dry" bottom ash, or retire the facility on or before December 31, 2019.

Groundwater assessment and corrective action; drinking water supply well survey and provision of alternate water supply; reporting:

- Require the owner of an impoundment to conduct groundwater monitoring and assessment on a specified timeline, including:
  - Submission of a Groundwater Assessment Plan to DENR for its review and approval, and implementation of the Plan, followed by submission of a Groundwater Assessment Report to DENR describing all exceedances of groundwater quality standards associated with the impoundment.
  - Submission of a Groundwater Corrective Action Plan to DENR for its review and approval, and implementation of corrective action for the restoration of groundwater in conformance with the requirements of Subchapter 2L of Title 15A of the North Carolina Administrative Code.
  - Conduct of a Drinking Water Supply Well Survey that identifies all drinking water supply wells within one-half mile from the established compliance boundary of the impoundment, and submission of the Survey to DENR. DENR would be directed to: (i) determine, based on the Survey, which drinking water supply wells the owner of the impoundment is required to sample and how frequently and for what period sampling is required; and (ii) require sampling for drinking water supply wells where data regarding groundwater quality and flow and depth in the area of any surveyed well provide a reasonable basis to predict that the quality of water from the surveyed well may be adversely impacted by constituents associated with the presence of the impoundment. The owner would be required to initiate sampling and water quality analysis of the drinking water supply wells (or pay the costs of third party sampling upon election of a property owner). If the sampling and water quality analysis indicated that water from a drinking water supply well exceeds groundwater quality standards for constituents associated with the presence of the impoundment, the owner would be required to replace the contaminated drinking water supply well with an alternate supply of potable drinking water within 30 days of the determination that there is an exceedance of groundwater quality standards.
  - Submission of an annual Groundwater Protection and Restoration Report from an impoundment owner to DENR and the Commission, to include a summary of all groundwater monitoring,

protection, and restoration activities related to the impoundment for the preceding year, including the status of the Groundwater Assessment Plan, the Groundwater Assessment Report, the Groundwater Corrective Action Plan, the Drinking Water Supply Well Survey, and the replacement of any contaminated drinking water supply wells.

Identification, assessment, and correction of unpermitted discharges:

- Require an impoundment owner to identify, assess, and correct all unpermitted discharges from the impoundment to the surface waters of the State on a specified timeline, including:
  - Submission of topographic maps to DENR that identify: (i) the location of all outfalls from engineered channels designed or improved for the purpose of collecting water from the toe of the impoundment; and (ii) the location of all seeps discharging from the impoundment that are not captured by engineered channels designed or improved for the purpose of colleting water from the toe of the impoundment.
  - Conduct of an assessment of unpermitted discharges from the impoundment to surface waters of the State including submission of a proposed Unpermitted Discharge Assessment Plan to DENR with information sufficient to allow DENR to determine whether any unpermitted discharge, including a discharge from a toe drain outfall or seep, has reached the surface waters of the State and has caused a violation of surface water quality standards. Within 30 days after DENR approval of a Plan, the owner would be required to begin implementation of the Plan in accordance with the Plan's schedule.
  - Implementation of corrective action to prevent unpermitted discharges from the impoundment to the surface waters of the State. If DENR determines, based on surface water quality sampling information provided in an Unpermitted Discharge Assessment Plan that an unpermitted discharge from an impoundment, including a discharge from a toe drain outfall or seep, has violated State or federal surface water quality laws, DENR must notify the owner of the impoundment of its determination. Within 30 days from the notification of violation, the owner of an impoundment must submit a proposed Unpermitted Discharge Corrective Action Plan to DENR for its review and approval. Within 30 days after DENR approval of a Plan, the owner would be required to begin implementation of the Plan in accordance with the Plan's schedule.
  - Submission of a plan for the Identification of New Unpermitted Discharges for DENR's review and approval. Within 30 days after DENR approval of a Plan, the owner would be required to begin implementation of the Plan in accordance with the Plan's schedule.
  - Submission of an annual Surface Water Protection and Restoration Report to DENR and the Commission, including a summary of all surface water sampling, protection, and restoration activities related to the impoundment for the preceding year, including the status of the identification, assessment, and correction of unpermitted discharges from coal combustion residuals surface impoundments to the surface waters of the State.

Prioritization of coal combustion residuals surface impoundments: would require DENR to develop, no later than August 1, 2015, proposed classifications for all impoundments, including active and retired sites, for the purpose of closure and remediation based on these sites' risks to public health, safety, and welfare; the environment; and natural resources, and to determine a schedule for closure and required remediation that is based on the degree of risk to public health, safety, and welfare; the environment; and natural resources posed by the impoundments and that gives priority to the closure and required remediation of impoundments that pose the greatest risk. In assessing the risk, DENR would be required to evaluate information received pursuant to assessments conducted of the impoundments and impacts to groundwater and surface water, and any other information deemed relevant, and, at a minimum, consider all of the following:

- Any imminent hazards to public health, safety, or welfare resulting from the impoundment.
- Structural condition and hazard potential of the impoundment.
- The proximity of surface waters to the impoundment, and whether any surface waters are contaminated or imminently threatened by contamination as a result of the impoundment.

- Information concerning the horizontal and vertical extent of soil and groundwater contamination for all contaminants confirmed to be present in groundwater in exceedance of groundwater quality standards and all significant factors affecting contaminant transport.
- The location and nature of all receptors and significant exposure pathways.
- The geological and hydrogeological features influencing the movement, chemical, and physical character of the contaminants.
- The amount and characteristics of coal combustion residuals in the impoundment.
- Any other factor DENR deems relevant to establishment of risk.

DENR would be required to issue a proposed classification for each impoundment as low-risk, intermediate-risk, or high-risk. Within 30 days after issuance of a proposed classification DENR would be required to issue a written declaration, including findings of fact, documenting the proposed classification, provide public notice, and conduct public hearings on the proposed classification.

Within 30 days of the receipt of all written comment received through public notice and public hearings, DENR would be required to submit a proposed classification for an impoundment to the Coal Ash Management Commission. The Commission would be required to approve a proposed classification if it determines that the classification was developed in accordance with the relevant requirements of the legislation and that the classification accurately reflects the level of risk posed by the impoundment. The Commission would be required to issue its determination in writing, including findings in support of its determination. Parties aggrieved by a final decision of the Commission on classification could appeal the decision as provided under Article 4 of Chapter 150B of the General Statutes.

Closure of coal combustion residual surface impoundments: An owner of a coal combustion residuals surface impoundment would be required to submit a proposed Coal Combustion Residuals Surface Impoundment Closure Plan for DENR's approval subject to the following requirements:

- High-risk impoundments would be required to close as soon as practicable, but no later than December 31, 2019. A proposed closure plan for such impoundments would need to be submitted as soon as practicable, but no later than December 31, 2016. At a minimum, such impoundments would be required to be dewatered, and the owner of an impoundment could either:
  - Convert the impoundment to an industrial landfill, by removing all CCR from the impoundment temporarily, safely storing the CCR on-site, and complying with the siting and design requirements for sanitary landfills under the Administrative Code, except with respect to those requirements that pertain to buffers. In lieu of the buffer requirements under the Administrative Code, the owner of the impoundment would be required to establish and maintain a 300-foot buffer between streams and rivers and disposal areas. After the temporarily displaced CCR's are returned for disposal in the industrial landfill, the owner of the landfill would be required to comply with the closure and post-closure requirements for sanitary landfills established by the Administrative Code. Prior to closure, however, DENR could allow the disposal of CCR, in addition to those originally contained in the impoundment, to the landfill, if DENR determines that the site is suitable for additional capacity, and that disposal of additional CCR would not pose an unacceptable risk to public health, safety, welfare; the environment; and natural resources.
  - Remove all CCR from the impoundment, return the former impoundment to a non-erosive and stable condition, and: (i) transfer the CCR for disposal in a combustion products landfill or coal combustion residuals landfill, industrial landfill, or municipal solid waste landfill; or (ii) use the CCP in a structural fill, or other beneficial use as allowed by law. The use of CCP as structural fill would need to be conducted in accordance with the enhanced requirements for structural fill included in the legislation, and other beneficial uses would need to be conducted in accordance with the applicable requirements of the Administrative Code.

- Intermediate-risk impoundments would be required to close as soon as practicable, but no later than December 31, 2024. A proposed closure plan for such impoundments would need to be submitted as soon as practicable, but no later than December 31, 2017. At a minimum, such impoundments would need to be dewatered, and the owner of such an impoundment would be required to close it in any manner allowed for high-risk impoundments.

- Low-risk impoundments would be required to close as soon as practicable, but no later than December 31, 2029. A proposed closure plan for such impoundments would need to be submitted as soon as practicable, but no later than December 31, 2018. At a minimum, such impoundments would need to be dewatered and would be required to comply with the closure and post-closure requirements applicable to sanitary landfills under the Administrative Code. The applicable rule requires installation of a cap system and conduct of post-closure care for a period of 30 years, including, among other things:
  - Maintaining the integrity and effectiveness of any cap system, including making repairs to the cover as necessary to correct the effects of settlement, subsidence, erosion, or other events, and preventing run-on and run-off from eroding or otherwise damaging the cap system.
  - Maintaining and operating a leachate collection system.
  - Monitoring the ground water and surface water and maintaining the groundwater monitoring system.

  In addition, DENR may require implementation of any other measure it deems necessary to protect public health, safety, and welfare; the environment; and natural resources, including imposition of institutional controls that are sufficient to protect public health, safety, and welfare; the environment; and natural resources.

DENR would be required to review a proposed Closure Plan for consistency with the minimum requirements for closure established by the legislation, and to determine whether the proposed Closure Plan otherwise complies with the legislation and is protective of public health, safety, and welfare; the environment; and natural resources. Prior to issuing a decision on a proposed Closure Plan, DENR would be required to provide public notice, and conduct public hearings on the proposed classification.

DENR would be required to provide specific findings to support its decision to approve or disapprove a proposed Closure Plan, and within 30 days of an approval of a Closure Plan, DENR would need to submit the Closure Plan to the Coal Ash Management Commission. The Commission could approve a Closure Plan only if it determines that the Closure Plan was developed in accordance with the legislation; that implementation of the Closure Plan according to the Closure Plan's schedule is technologically feasible; and that the benefits to public health, safety, and welfare; the environment; and natural resources outweigh the negative impacts on electricity costs and reliability. The Commission would be required to issue its determination in writing, including findings in support of its determination. Parties aggrieved by a final decision of the Commission on classification could appeal the decision as provided under Article 4 of Chapter 150B of the General Statutes.

An impoundment owner would be required to begin implementation of a Closure Plan within 60 days after Commission approval.

Notwithstanding the requirements for prioritization and closure methods described above, the following impoundments would be deemed high-priority (see Sec. 3(b)):

(1) Coal combustion residuals surface impoundment(s) located at the Dan River Steam Station, owned and operated by Duke Energy Progress, and located in Rockingham County.

(2) Coal combustion residuals surface impoundment(s) located at the Riverbend Steam Station, owned and operated by Duke Energy Carolinas, and located in Gaston County.

(3) Coal combustion residuals surface impoundment(s) located at the Asheville Steam Electric Generating Plant, owned and operated by Duke Energy Progress, and located in Buncombe County.

(4) Coal combustion residuals surface impoundment(s) located at the Sutton Plant, owned and operated by Duke Energy Progress, and located in New Hanover County.

Except as preempted by federal law, these impoundments would need to be closed as soon as practicable, but no later than August 1, 2019, as follows:

- *The impoundments would be required to be dewatered.*
- *All CCR would need to be removed from the impoundments and transferred for: (i) disposal in a a combustion products landfill or coal combustion residuals landfill, industrial landfill, or municipal solid waste landfill; or (ii) use in a structural fill, or other beneficial use as allowed by law.*
- *Where groundwater quality is degraded as a result of the impoundment, corrective action would be required to restore groundwater quality.*

SUBPART 3. Use of Coal Combustion Products in Structural Fill

This portion of the legislation would codify requirements applicable to the use of CCP's in structural fill currently found under the Administrative Code, and would add a number of new requirements to large structural fill projects (those involving the placement of 10,000 or more tons of coal combustion products per acre or 100,000 or more tons of coal combustion products in total per project). In particular, the provisions would do the following:

- Require individual permits for large structural fill projects using CCP (smaller structural fill projects would be deemed permitted), and specify information to be provided to DENR for permitting purposes.
- Codify design and siting requirements for projects using CCP for structural fill currently in rule, and establish new provisions requiring large structural fill projects to have an encapsulation liner system constructed on and around the structural fill to efficiently contain, collect, and remove leachate generated by the CCP, as well as separate the CCP from any exposure to surrounding environs. At a minimum, the components of the liner system would need to include a base liner, a leachate collection system, and a cap liner.
- Require groundwater monitoring for large structural fill projects using CCP. Specifically, large structural fills would be required to install a groundwater monitoring system and conduct groundwater monitoring through construction and the post-closure care period. In addition, a constructor or operator of a large structural fill would be required to implement an assessment monitoring program and initiate corrective action measures if exceedances of groundwater standards are detected through monitoring.
- Require financial assurance for large structural fill projects using CCP for structural fill that will ensure that sufficient funds are available for facility closure, post-closure maintenance and monitoring, any corrective action that DENR may require, and to satisfy any potential liability for sudden and nonsudden accidental occurrences, and subsequent costs incurred by DENR in response to an incident at a structural fill project, even if the applicant or permit holder becomes insolvent or ceases to reside, be incorporated, do business, or maintain assets in the State.
- Codify closure requirements for projects using CCP for structural fill currently in rule, and establish new provisions requiring large structural fill projects to submit closure and post-closure plans and conduct post-closure care for 20 years, which period may be increased or decreased by DENR based on evaluations of impacts to public health, welfare, the environment, and natural resources, or decreased upon a determination that a shorter period is sufficient to protect public health, welfare, the environment, and natural resources.

- Codify recordation requirements for projects using CCP structural fill facilities currently in rule.
- Codify an exemption for Department of Transportation projects using CCP structural fill facilities currently in rule.
- Require DENR to prepare an inventory of all structural fill projects with a volume of 10,000 cubic yards or more, and update the inventory at least annually. In addition, DENR would be directed to inspect each structural fill project with a volume of 10,000 cubic yards or more at least annually to determine if the project or facility has been constructed and operated in compliance with governing law.
- Direct the EMC to amend existing rules governing the use of CCP for structural fill as necessary to implement the provisions of the legislation, and exempt these rules from a limitation found in the Administrative Procedure Act on adoption of certain environmental rules.

PART III. MORATORIUMS AND STUDY ON: (1) USE OF COAL COMBUSTION PRODUCTS AS STRUCTURAL FILL AND (2) DISPOSAL OF COAL COMBUSTION RESIDUALS TO COMBUSTION PRODUCTS LANDFILLS

SECTION 4.(a) through (d) of the PCS would prohibit certain uses of CCP's as structural fill until August 1, 2015, in order to allow DENR, the EMC, and the General Assembly time to review and evaluate the use of coal combustion residuals as structural fill.

CCP's used as structural fill for any of the following types of projects would be exempt from the moratorium, provided, however, that they comply with requirements of the legislation:

- A project where the structural fill is used with a base liner, leachate collection system, cap liner, groundwater monitoring system, and with sufficient financial assurance.
- As the base or sub-base of a concrete or asphalt paved road constructed under the authority of a public entity.

During the pendency of the moratorium, DENR and the EMC would be required to jointly review the requirements for structural fills using CCP's included in the legislation, as well as rules for beneficial use under the Administrative Code. In particular DENR and EMC would be required to study all of the following:

- Review the uses of CCP: (i) as structural fill, and the regulation of this use as would be established by the legislation, to determine if the requirements are sufficient to protect public health, safety, and welfare; the environment; and natural resources; and (ii) for other beneficial uses and the regulation of these uses under the rules to determine if the rules are sufficient to protect public health, safety, and welfare; the environment; and natural resources.
- Evaluate additional opportunities for the use of CCP as structural fill and for other beneficial uses that would reduce the volume of CCR that are being disposed of in sanitary landfills while still being protective of public health, safety, and welfare; the environment; and natural resources.
- Monitor any actions of the USEPA regarding the use of CCP as structural fill or for other beneficial uses.
- Jointly report to the ERC no later than January 15, 2015, on their findings and recommendations regarding the use of CCP as structural fill and for other beneficial uses.

SECTION 4.(e) of the PCS would require all electric generating facilities that produce CCR's and CCP's to issue a request for proposals on or before December 31, 2014, for (i) the conduct of a market analysis for the concrete industry and other industries that might beneficially use CCR's and CCP's; (ii) the study of the feasibility and advisability of installation of technology to convert existing and newly generated CCR's to commercial-grade CCP's suitable for use in the concrete industry and other industries that might beneficially use coal combustion residuals; and (iii) an examination of all innovative technologies that might be applied to diminish, recycle or reuse, or mitigate the impact of existing and newly generated CCR's.

SECTION 5. of the PCS would establish a moratorium on construction of new or expansion of existing combustion products landfills through August 1, 2015. During the pendency of the moratorium DENR would be required to evaluate each combustion products landfill currently operating in the State, and, in particular, assess the risks to public health, safety, welfare; the environment; and natural resources, of coal combustion residuals surface impoundments located beneath combustion products landfills to determine the advisability of continued operation of these landfills. DENR would be required to report to the ERC no later than January 15, 2015.

PART IV. STRENGTHEN THE REPORTING AND NOTIFICATION REQUIREMENTS APPLICABLE TO DISCHARGES OF WASTEWATER TO WATERS OF THE STATE; REQUIRE CERTAIN EMERGENCY CALLS TO BE RECORDED

SECTION 6.(a) and (b) of the PCS would amend existing requirements for reporting and notification applicable to discharges of wastewater to waters of the State, to: (i) require an owner or operator of any wastewater collection or treatment works to report a discharge of 1,000 gallons or more of untreated wastewater to the surface waters of the State to DENR within 24 hours after the owner or operator has determined that the discharge has reached the surface waters of the State; and (ii) reduce the time periods allowed for a publication of notice of discharge of untreated wastewater from a wastewater collection or treatment works from 48 to 24 hours.

SECTION 6.(c) of the PCS would require that the 24-hour Operations Center established to serve as a single point of contact for local governments to report the occurrence of emergency and disaster events and to coordinate local and State response assets record all telephone calls to the emergency hotline and maintain the recording of each telephone call for at least one year.

PART V. REQUIRE NOTIFICATION TO DENR OF EMERGENCY DAM REPAIRS; REQUIRE EMERGENCY ACTION PLANS FOR CERTAIN DAMS; REQUIRE INSPECTION OF DAMS AT COAL COMBUSTION RESIDUALS SURFACE IMPOUNDMENTS

SECTION 7. of the PCS would amend requirements applicable to dam safety to require that a dam owner notify DENR as soon as possible, but not later than 24 hours after first knowledge of the necessity for emergency repairs to a dam.

SECTION 8. of the PCS would amend requirements applicable to dam safety to require that the owner of a dam classified by DENR as a high hazard dam or an intermediate hazard dam develop an Emergency Action Plan for the dam, addressing specific criteria outlined in the legislation, which must be submitted to DENR and the of Public Safety for approval.

SECTION 9. of the PCS would amend legislation enacted in 2009 that brought certain dams used in connection with electric generating facilities, not including those associated with nuclear generating facilities, under the State Dam Safety Act. The 2009 legislation provided that those facilities would be deemed to have received all of the necessary approvals from DENR and the Commission for Dam Safety, and were not required to submit application, certificate, or other materials in connection with the continued normal operation and maintenance of those facilities. The PCS would eliminate the language exempting these facilities from submission applications, certificates, or other materials.

SECTION 10. of the PCS would amend dam safety requirements to establish specific inspection requirements for impoundments as follows:

- Require DENR to inspect each dam associated with an impoundment at least annually.

- Require the owner of an impoundment to inspect the impoundment weekly and after storms to detect evidence of any of the following conditions:
  - Deterioration, malfunction, or improper operation of spillway control systems.
  - Sudden drops in the level of the contents of the impoundment.
  - Severe erosion or other signs of deterioration in dikes or other containment devices or structures.
  - New or enlarged seeps along the downstream slope or toe of the dike or other containment devices or structures.
  - Any other abnormal conditions at the impoundment that could pose a risk to public health, safety, or welfare; the environment; or natural resources.
- Require the owner of an impoundment to have the impoundment inspected annually by an independent registered professional engineer to ensure that the structural integrity and the design, operation, and maintenance of the impoundment is in accordance with generally accepted engineering standards. Within 30 days of the inspection, the owner must provide DENR the inspection report and a certification by the engineer that the impoundment is structurally sound and that the design, operation, and maintenance of the impoundment is in accordance with generally accepted engineering standards.

PART VI. TRANSFER SOLID WASTE RULE-MAKING AUTHORITY FROM COMMISSION FOR PUBLIC HEALTH TO ENVIRONMENTAL MANAGEMENT COMMISSION

SECTION 11. of the PCS would transfer all rule-making authority for matters related to solid and hazardous waste management (Article 9 of Chapter 130A of the General Statutes), from the Commission for Public Health to the Environmental Management Commission, and makes conforming changes throughout the statutes.

PART VII. OTHER STUDIES

SECTION 12. of the PCS would require the Coal Ash Management Commission, to study whether and under what circumstances no further action or natural attenuation is appropriate for impoundments classified as low-risk. In conducting the study, the Commission must specifically consider whether there is any contact or interaction between CCR and groundwater and surface water, whether the area has reverted to a natural state as evidenced by the presence of wildlife and vegetation, and whether no further action or natural attenuation would be protective of public health, safety, and welfare; the environment; and natural resources. The Commission would be required to report the results of its study, including any recommendations, to the ERC no later than October 1, 2015.

SECTION 13. of the PCS would require the Department of Transportation to evaluate additional opportunities for the use of CCR in the construction and maintenance of roads and bridges within the State. The Department would be required to report the results of its study, including any recommendations, to the ERC no later than December 1, 2014.

PART VIII. PROVIDE RESOURCES FOR IMPLEMENTATION OF THIS ACT

SECTION 14. of the PCS would create a new regulatory fee to defray the costs to the State of CCR management and appropriates the funds. Currently, all public utilities operating in the State pay a regulatory fee that is a percentage of their jurisdictional revenues. This regulatory fee is used to pay the expenses incurred by the Utilities Commission and the Public Staff in regulating public utilities. Section 14(a) of the PCS would create a new regulatory fee that will only be used to pay the costs of the Coal Ash Management Commission and the costs of DENR in providing oversight for CCR and CCP. The fee is set at 0.03% of the jurisdictional revenues of public utilities with an impoundment. Section 14(c) appropriates $1.75 million of the fee to DENR to fund 25 positions to carry out the duties of CCR and CCP management. Section 14(d)

appropriates the funds generated by the new regulatory fee remaining after the appropriation to DENR to the Coal Ash Management Commission to fund 4 positions to support the Commission.

PART XI. SEVERABILITY CLAUSE AND EFFECTIVE DATE

SECTION 15. of the PCS would provide that if any provision of the act or its application were held invalid, the invalidity would not affect other provisions or applications of the act that can be given effect without the invalid provisions or application, and to this end the provisions of this act would be severable.

SECTION 16. Except as otherwise provided, the act would be effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

S 1

SENATE BILL 729

Short Title:	Governor's Coal Ash Action Plan.	(Public)
Sponsors:	Senators Apodaca, Berger (Primary Sponsors); Allran, Daniel, Pate, Tarte, and Tucker.	
Referred to:	Agriculture/Environment/Natural Resources.	

May 15, 2014

A BILL TO BE ENTITLED

AN ACT TO (1) CHANGE NOTIFICATION REQUIREMENTS APPLICABLE TO DISCHARGES OF WASTEWATER; (2) ESTABLISH COAL COMBUSTION PRODUCTS IMPOUNDMENT WATER MONITORING PROGRAM; (3) IDENTIFY AND ADDRESS UNPERMITTED WASTEWATER DISCHARGES AT COAL COMBUSTION PRODUCTS IMPOUNDMENT SITES; (4) AMEND S.L. 2009-390; (5) REQUIRE EMERGENCY ACTION PLANS FOR HIGH AND INTERMEDIATE HAZARD DAMS; (6) CHANGE NOTIFICATION REQUIREMENTS APPLICABLE TO DAM REPAIRS; (7) INCREASE COAL COMBUSTION PRODUCTS IMPOUNDMENT INSPECTION REQUIREMENTS; (8) MODIFY THE DEFINITION OF SOLID WASTE TO INCLUDE REMOVED COMBUSTION PRODUCTS; (9) PLACE A TEMPORARY MORATORIUM ON THE USE OF COAL COMBUSTION PRODUCTS AS STRUCTURAL FILL; AND (10) ESTABLISH REQUIREMENTS FOR COAL COMBUSTION PRODUCTS IMPOUNDMENT CLOSURE.

Whereas, the issue of coal ash storage has not been adequately addressed in North Carolina for more than six decades; and

Whereas, on February 2, 2014, an estimated 39,000 tons of coal ash was released into the Dan River following the failure of a stormwater pipe under a utility coal ash impoundment pond in Eden, North Carolina; and

Whereas, the Department of Environment and Natural Resources ("Department") finds that coal combustion products have settled into the sediment of the river bottom and will require an extensive clean-up plan to complete remediation; and

Whereas, the Department is in the process of reassessing previous efforts at achieving compliance at coal ash facilities and developing short term and long term policies in light of the Dan River spill, violations discovered in light of increased inspections of coal combustion products disposal facilities and anticipated new federal regulations on coal combustion products; and

Whereas, it is the intent of the Department to ensure that spills of wastewater are reported to the Department in a defined and adequate time frame; and

Whereas, it is the intent of the Department to protect surface water and groundwater resources for their best usage; and

Whereas, it is the intent of the Department to ensure that all unpermitted wastewater discharges are eliminated or addressed in an environmentally responsible manner; and

Whereas, it is the intent of the Department to equally subject all dams under jurisdiction of G.S. 143-215.23 to the requirements of statute and administrative code; and

Whereas, it is the intent of the Department for the owners of all dams under jurisdiction of G.S. 143-215.23 deemed intermediate and high hazard by the Department to prepare at their own cost documents that describe full and adequate response to emergency situations at their dams and to submit those documents to the Department; and

Whereas, it is the intent of the Department to ensure that emergency situations at dams are reported to the Department in a defined and adequate time frame; and

Whereas, the it is the intent of the Department to increase oversight of dam structure integrity to protect the health and safety of the public; and

Whereas, state law exempts coal combustion products removed from impoundments from being defined as a solid waste; and

Whereas, the Department finds that consistent environmental standards should apply to coal combustion products removed from impoundments for management or disposal and coal combustion products managed or disposed of as a solid waste; and

Whereas, the Department finds the federal Environmental Protection Agency is under consent decree to complete new regulations by December 2014 for coal combustion products that are proposed to bring consistency to requirements for large fills such as structural fills and landfills; and

Whereas, the Department finds that conversion and closure of coal ash storage ponds is necessary for protection of the health and safety of the public; Now, therefore,

The General Assembly of North Carolina enacts:

PART I. NOTIFICATION REQUIREMENTS APPLICABLE TO DISCHARGES OF WASTEWATER

SECTION 1. G.S. 143-215.1C reads as rewritten:

"**§ 143-215.1C. Report to wastewater system customers on system performance; <u>report discharge of untreated wastewater and wastewater containing coal combustion products to the Department; publication of notice of discharge of untreated wastewater and waste.</u>**

(a) Report to Wastewater System Customers. – The owner or operator of any wastewater collection or treatment works, the operation of which is primarily to collect or treat municipal or domestic wastewater and for which a permit is issued under this Part and having an average annual flow greater than 200,000 gallons per day, shall provide to the users or customers of the collection system or treatment works and to the Department an annual report that summarizes the performance of the collection system or treatment works and the extent to which the collection system or treatment works has violated the permit or federal or State laws, regulations, or rules related to the protection of water quality. The report shall be prepared on either a calendar or fiscal year basis and shall be provided no later than 60 days after the end of the calendar or fiscal year.

<u>(a1) Report of Discharge of Untreated Wastewater or Wastewater Containing Coal Combustion Products to the Department. – The owner or operator of any wastewater collection or treatment works shall report a discharge of 1,000 gallons or more of untreated wastewater or wastewater containing coal combustion products, or a spill of any amount of untreated wastewater or wastewater containing coal combustion products that reaches waters of the State to the Department as soon as possible but not later than 24 hours after first knowledge of the spill. This reporting requirement shall be in addition to any other reporting requirement applicable to the owner or operator of the wastewater collection or treatment works.</u>

(b) Publication of Notice of Discharge of Untreated Wastewater. – The owner or operator of any wastewater collection or treatment works, the operation of which is primarily to

collect or treat municipal or domestic wastewater ~~and for which a permit is issued under this Part~~ shall:

(1) In the event of a discharge of 1,000 gallons or more of untreated wastewater or wastewater containing coal combustion products to the surface waters of the State, issue a press release to all print and electronic news media that provide general coverage in the county where the discharge occurred setting out the details of the discharge. The owner or operator shall issue the press release within ~~48~~ 24 hours after the owner or operator has ~~determined that the discharge has reached the surface waters of the State.~~ first knowledge of the spill. The owner or operator shall retain a copy of the press release and a list of the news media to which it was distributed for at least one year after the discharge and shall provide a copy of the press release and the list of the news media to which it was distributed to any person upon request.

(2) In the event of a discharge of 15,000 gallons or more of untreated wastewater to the surface waters of the State, publish a notice of the discharge in a newspaper having general circulation in the county in which the discharge occurs and the county immediately downstream and in each county downstream from the point of discharge that is significantly affected by the discharge. The Secretary shall determine, at the Secretary's sole discretion, which counties are significantly affected by the discharge and shall approve the form and content of the notice and the newspapers in which the notice is to be published. The notice shall be captioned "NOTICE OF DISCHARGE OF UNTREATED SEWAGE". The owner or operator shall publish the notice within 10 days after the Secretary has determined the counties that are significantly affected by the discharge and approved the form and content of the notice and the newspapers in which the notice is to be published. The owner or operator shall file a copy of the notice and proof of publication with the Department within 30 days after the notice is published. Publication of a notice of discharge under this subdivision is in addition to the requirement to issue a press release under subdivision (1) of this subsection.

(c) Publication of Notice of Discharge of Untreated Waste as defined in G.S. 143-213(18). – The owner or operator of any wastewater collection or treatment works, other than a wastewater collection or treatment works the operation of which is primarily to collect or treat municipal or domestic ~~wastewater, for which a permit is issued under this Part~~ wastewater shall:

(1) In the event of a discharge of 1,000 gallons or more of untreated waste to the surface waters of the State, issue a press release to all print and electronic news media that provide general coverage in the county where the discharge occurred setting out the details of the discharge. The owner or operator shall issue the press release within ~~48~~ 24 hours after the owner or operator has ~~determined that the discharge has reached the surface waters of the State.~~ first knowledge of the spill. The owner or operator shall retain a copy of the press release and a list of the news media to which it was distributed for at least one year after the discharge and shall provide a copy of the press release and the list of the news media to which it was distributed to any person upon request.

(2) In the event of a discharge of 15,000 gallons or more of untreated waste to the surface waters of the State, publish a notice of the discharge in a newspaper having general circulation in the county in which the discharge occurs and the county immediately downstream and in each county

downstream from the point of discharge that is significantly affected by the discharge. The Secretary shall determine, at the Secretary's sole discretion, which counties are significantly affected by the discharge and shall approve the form and content of the notice and the newspapers in which the notice is to be published. The notice shall be captioned "NOTICE OF DISCHARGE OF UNTREATED WASTE". The owner or operator shall publish the notice within 10 days after the Secretary has determined the counties that are significantly affected by the discharge and approved the form and content of the notice and the newspapers in which the notice is to be published. The owner or operator shall file a copy of the notice and proof of publication with the Department within 30 days after the notice is published. Publication of a notice of discharge under this subdivision is in addition to the requirement to issue a press release under subdivision (1) of this subsection."

PART II. COAL COMBUSTION PRODUCTS IMPOUNDMENT WATER MONITORING PROGRAM

SECTION 2. Article 21 of Chapter 143 of the General Statutes is amended by adding a new section to read:

"**§ 143-215.1D. Coal combustion products impoundment water monitoring program.**

(a) Groundwater Assessment – Owners of coal ash impoundments located at all investor-owned public utilities shall conduct groundwater monitoring according to the following schedule and procedures:

(1) No later than 45 days from enactment of this Act, the owner shall submit to the Division of Water Resources a Plan of proposed assessment activities to evaluate groundwater impacts from all coal combustions products impoundments located at all investor owned public utilities. At a minimum the plan shall:

a. Identify all receptors and significant exposure pathways.

b. Assess horizontal and vertical extent of soil and groundwater contamination for all contaminants confirmed to be present in groundwater in exceedance of groundwater quality standards and all significant factors affecting contaminant transport.

c. Identify the geological and hydrogeological features influencing the movement, chemical, and physical character of the contaminants.

d. Propose a schedule for continued groundwater monitoring.

Upon review and approval by the Division of Water Resources, the investor-owned public utility shall initiate assessment activities.

(2) No later than 180 days from the Division of Water Resources' written approval of the Plan required under subdivision (1) of subsection (a) of this section, or a time frame otherwise approved by the Division of Water Resources, the owner shall submit a Report detailing the findings of the Plan. The Report shall set forth the extent of any and all exceedances of the groundwater quality standards.

(3) No later than 270 days from the Division of Water Resources' written approval of the Plan required under subdivision (1) of subsection (a) of this section, or a time frame otherwise approved by the Division of Water Resources, the owner shall submit to the Division of Water Resources a proposed Corrective Action Plan. The Corrective Action Plan shall, at a minimum, contain:

a. A listing of all exceedances of the groundwater quality standards including any exceedances that the owner asserts are the result of natural background conditions.

b. Except as provided in subsubdivision f. of this subdivision, a description of the proposed corrective action employing the best available technology for the restoration of groundwater quality to the level of the groundwater quality standards and reasons for its selection.

c. Specific plans, including engineering details where applicable, for restoring groundwater quality.

d. A schedule for the implementation of the proposed corrective action plan.

e. A monitoring plan for evaluating the effectiveness of the proposed corrective action and the movement of the contaminant plume.

f. The owner may request alternative remediation as provided for under the requirements of 15A NCAC 2L .0106 (k), (l), or (m).

(4) No later than 30 days from the Division of Water Resources' approval of a Final Corrective Action Plan, the owner shall implement the Final Corrective Action Plan in accordance with a schedule established by Division of Water Resources. The approval of a Final Corrective Action Plan is not a final agency action pursuant to G.S. 150B.

(b) Drinking Water Assessment. – Within 60 days of enactment of this Act, owners of coal ash impoundments located at all investor-owned public utilities shall conduct and submit to the Division of Water Resources a water supply receptor survey. The Survey shall identify all receptors within a radius of 2,640 feet (0.5 mile) from the established compliance boundary of each impoundment. The owner shall sample each receptor identified by the Division of Water Resources. For any well exceeding the groundwater standards, the owner shall replace the water supply with a supply of potable drinking water.

(c) Annual Reporting Requirement. – In addition to any other reports required by the Division of Water Resources, the owners of coal combustion products impoundments located at all investor owned public utilities shall submit an annual report to the Division of Water Resources no later than January 31 of each year. The Annual report shall include a summary of all monitoring data collected over the year, status of Plans and Final Corrective Action Plans, and a summary of water supply receptor survey results."

PART III. IDENTIFY AND ADDRESS UNPERMITTED WASTEWATER DISCHARGES AT COAL COMBUSTION PRODUCTS IMPOUNDMENT SITES

SECTION 3. Article 21 of Chapter 143 of the General Statutes is amended by adding a new section to read:

"**§ 143-215.1E. Identify and address unpermitted wastewater discharges at coal combustion products impoundment sites.**

(a) Owners of coal combustion products impoundments located at all investor-owned public utilities shall implement the plan described in subsections (b) through (h) of this section to identify and address any unpermitted discharges to surface waters at those coal combustion products impoundment sites.

(b) No later than 90 days from enactment of this act, the owner shall submit a topographic map at a scale approved by Division of Water Resources that indicates the locations of all outfalls from engineered channels designed and/or improved for the purpose of collecting water from the toe of the coal combustion products impoundments. For each outfall, the map will:

(1) Specify its latitude and longitude.

(2) Specify whether the discharge is continuous or intermittent.
(3) Provide an average flow measurement, including a description of the method used to measure flow.

With the topographic map, the owner will submit to the Division of Water Resources a schedule according to which the owner shall conduct water quality sampling of the toe drain outfalls in order to further characterize the discharging water. No later than 30 days from receipt of the map and sampling schedule, Division of Water Resources will provide the owner with review comments, either approving the plan or noting any deficiencies to be corrected and a date by which a corrected map and/or sampling schedule is to be submitted for further review and comment. Within 30 days of approval of the schedule by the Division of Water Resources, the owner shall begin to sample the toe drain outfalls in accordance with the schedule and submit the samples for water quality analysis.. Water quality analyses shall include the same parameters required for a coal-fired power plant per EPA Application Form 2C – Wastewater Discharge Information, Consolidated Permits Program (EPA Form 3510-2C, August 1990). If the owner demonstrates to the satisfaction of Division of Water Resources that sampling of a toe drain outfall is unlikely to generate usable data or is otherwise infeasible, the owner will not be required to sample that toe drain outfall.

(c) No later than 180 days from the enactment of this act, the owner shall submit a topographic map at a scale approved by the Division of Water Resources that indicates the locations of any seeps or drains reflecting discharges from the ash ponds but are not captured by an engineered channel identified pursuant to subsection (b) of this section. For any seep so identified that is believed to not reflect flows from any of the ash ponds, the owner shall provide to the Division of Water Resources the basis for such belief, including hydrological data or water quality testing information. For the seeps from the impoundments, the map will:

(1) Specify its latitude and longitude.
(2) Specify whether the discharge is continuous or intermittent.
(3) Provide an average flow measurement, including a description of the method used tomeasure flow.
(4) Specify whether the discharge from the seep reaches surface waters.
(5) If the discharge from the seep reaches surface water, identify the location where the seep reaches surface water on the map to include latitude and longitude.

(d) No later than 180 days from the enactment of this act, the owner shall submit a plan to determine whether toe drain or seep discharges from the impoundments have reached surface waters of the state and are causing violations of surface water quality standards. The plan shall include the following:

(1) Sampling locations upstream and downstream within all channels that potentially carry such discharges.
(2) Water quality analyses shall include the same parameters required for a coal-fired power plant per EPA Application Form 2C – Wastewater Discharge Information, Consolidated Permits Program (EPA Form 3510-2C, August 1990).
(3) Frequency and duration of the sampling activities.
(4) Reporting requirements.

No later than 30 days from receipt of the plan, the Division of Water Resources will provide the owner with review comments, either approving the plan, or noting any deficiencies to be corrected and a date by which a corrected plan is to be submitted for further review and comment or approval. Within 180 days from the Division of Water Resources' approval of the plan, the owner will implement and complete the plan and submit a report summarizing that work and its results.

(e) If the Division of Water Resources determines, based on information submitted pursuant to subsections (b) through (d) of this section, that discharges, whether from toe drains or seeps, are causing a violation of G.S. 143-215.1 or any other law, it shall so notify the owner. Within 120 days of such notification, the owner shall do one of the following:

(1) Stop the discharge.

(2) Capture and route the discharge so that it is discharged through an NPDES permitted outfall.

(3) Address the seep using Best Management Practices approved by the Division of Water Resources pursuant to subsection (f) of this section.

(4) Propose alternative Best Management Practices subject to the approval of the Division of Water Resources.

(5) Apply for an NPDES discharge permit or permit amendment to regulate the discharge.

(f) No later than 180 days from the date of enactment of this act, The owner shall submit to the Division of Water Resources for approval a set of best management practices designed to prevent unpermitted discharges of pollutants from the ash ponds to surface waters. Thereafter, the owner may submit additional best management practices for the Division of Water Resources approval.

(g) No later than 30 days from enactment of this act, the owner shall submit to the Division of Water Resources a plan for identifying new seeps on the dike areas of the ash ponds that arise after the submission of the maps described in subsections (b) and (c) of this section. The plan shall include, at a minimum, the following elements:

(1) A procedure for routine inspection of the coal combustion products impoundment areas to identify indicators of potential new seeps.

(2) A decision flow chart (including criteria and procedures) for determining whether a new seep is actually present.

(3) A procedure for notifying the Division of Water Resources after a new seep is confirmed.

No later than 30 days from receipt of the plan, the Division of Water Resources will provide the owner with review comments noting any deficiencies.

(h) No later than 12 months from the enactment of this act, the owner shall submit any information, forms, and fees necessary to request that the Division of Water Resources incorporate the process described in subsections (b) through (g) of this section into the owner's NPDES permit."

PART IV. AMEND S.L. 2009-390 (SB 1004)

SECTION 4. Section 3.(b) of S.L. 2009-390 is repealed.

PART V. EMERGENCY ACTION PLANS

SECTION 5. G.S. 143-215.31 is amended by adding two subsections to read:

"**§ 143-215.31. Supervision over maintenance and operation of dams.**

...

(f) Develop Emergency Action Plan. – Owners of high and intermediate hazard dams shall develop at their cost an Emergency Action Plan for their dam in document format in triplicate copy to be submitted to the Department by January 1, 2015. The emergency action plan at minimum shall:

(1) Identify potential emergency conditions that can occur at the dam.

(2) List preplanned actions to be taken during an emergency condition at the dam.

(3) Document emergency notification procedures to aid in warning and evacuations during an emergency condition at the dam.

(4) Provide a downstream inundation map depicting areas affected by a dam failure and sudden release of the impoundment.

If a dam owner fails to provide the Department with an Emergency Action Plan in triplicate copy by January 1, 2015, it shall be subject to Enforcement Procedures under G.S. 143-215.36. Dam owners shall update their emergency action plans annually and submit the updated plans in triplicate copy to the Department each year subsequent to January 1, 2015. The Department shall provide the appropriate local Emergency Management Agency and the Regional Office of the Department with the triplicate copy.

(g) Confidentiality of Sensitive Public Security Information – To the extent that any documents included in the Emergency Action Plan developed under this section contain sensitive public security information, those portions of documents shall not be subject to disclosure under the North Carolina Public Records Act."

PART VI. NOTIFICATION OF EMERGENCY REPAIR OF A DAM

SECTION 6. G.S. 143-215.27 reads as rewritten:

"§143-215.27. Repair, alteration, or removal of dam.

(a) Before commencing the repair, alteration or removal of a dam, application shall be made for written approval by the Department, except as otherwise provided by this Part. The application shall state the name and address of the applicant, shall adequately detail the changes it proposes to effect and shall be accompanied by maps, plans and specifications setting forth such details and dimensions as the Department requires. The Department may waive any such requirements. The application shall give such other information concerning the dam and reservoir required by the Department, such information concerning the safety of any change as it may require, and shall state the proposed time of commencement and completion of the work. When an application has been completed it may be referred by the Department for agency review and report, as provided by subsection (b) of G.S. 143-215.26 in the case of original construction.

(b) When repairs are necessary to safeguard life and property they may be started immediately but the Department shall be notified ~~forthwith~~ of the proposed repairs and of the work under ~~way,~~way as soon as possible but not later than 24 hours after first knowledge of the necessity for emergency repairs, and ~~they~~ such repairs shall be made to conform to its orders."

PART VII. INSPECTION OF IMPOUNDMENTS

SECTION 7. G.S. 143-215.32 is amended by adding two sections to read:

"(e) Investor-owned public utilities shall inspect each coal combustion products impoundment weekly and after storms to detect evidence of any of the following:

(1) Deterioration, malfunctions, or improper operation of spillway control systems.

(2) Sudden drops in the level of the impoundment's contents.

(3) Severe erosion or other signs of deterioration in dikes or other containment devices.

(4) New or enlarged seeps along the downstream slope or toe of the dike or other containment devices.

(5) Any other abnormal conditions at the impoundment that may pose a health or safety risk.

If any abnormalities in subdivisions (1) through (5) of this subsection are observed, documentation shall be provided to a registered professional engineer for further investigation and appropriate action.

(f) Each coal combustion products impoundment located at investor-owned public utilities shall be inspected annually by an independent registered professional engineer to assure structural integrity and that the design, operation, and maintenance of the surface

impoundment are in accordance with generally accepted engineering standards. The owner or operator must notify the Department by way of a certification by the independent registered professional engineer that the dam is structurally sound and the design, operation, and maintenance of the surface impoundment is in accordance with generally accepted engineering standards. The inspection report shall be submitted to the Department within 30 days of the completion of the inspection and shall be placed on a publicly accessible internet site."

PART VIII. DEFINITION OF SOLID WASTE

SECTION 8.(a) G.S. 130A-290(a)(35) reads as rewritten:

"(35) "Solid waste" 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~~ combustion products removed from impoundments subject to permits 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 shall be a solid waste. 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 and Energy Commission (as defined under G.S. 143B-293.1). 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 8.(b) G.S. 143-213(18) reads as rewritten:

"(18) "Waste" shall mean and include the ~~following:~~following with the exception of solid waste as defined by G.S. 130A-290(a)(35):

a. "Sewage," which shall mean water-carried human waste discharged, transmitted, and collected from residences, buildings, industrial establishments, or other places into a unified sewerage system or an arrangement for sewage disposal or a group of such sewerage arrangements or systems, together with such ground, surface, storm, or other water as may be present.

b. "Industrial waste" shall mean any liquid, solid, gaseous, or other waste substance or a combination thereof resulting from any process of industry, manufacture, trade or business, or from the development of any natural resource.

c. "Other waste" means sawdust, shavings, lime, refuse, offal, oil, tar chemicals, dissolved and suspended solids, sediment, and all other substances, except industrial waste, sewage, and toxic chemicals which may be discharged into or placed in such proximity to the water that drainage therefrom may reach the water.

d. "Toxic waste" means that waste, or combinations of wastes, including disease-causing agents, which after discharge and upon exposure, ingestion, inhalation, or assimilation into any organism, either directly from the environment or indirectly by ingestion through food chains, will cause death, disease, behavioral abnormalities, cancer, genetic mutations, physiological malfunctions (including malfunctions in reproduction) or physical deformities, in such organisms or their offspring."

PART IX. TEMPORARY MORATORIUM ON STRUCTURAL FILL

SECTION 9.(a) Moratorium Established. – Notwithstanding rules adopted by the Commission for Public Health there is hereby established a moratorium on the use of coal combustion products as a structural fill unless the fill is used under an airport runway or base or sub-base of a concrete or asphalt paved road, constructed under the authority of a public entity. The moratorium established by this section shall be in effect until rules are amended by the Commission for Public Health for the management of coal combustion products.

SECTION 9.(b) For purposes of this section, the moratorium does not apply to structural fill sites of less than 5,000 cubic yards.

SECTION 9.(c) This section is effective when this act becomes law and applies only to those coal combustion products structural fills that have not begun construction or have not received a permit to begin construction on or before that date.

PART X. COAL COMBUSTION PRODUCTS IMPOUNDMENT CLOSURE

SECTION 10.(a) Article 21 of Chapter 143 of the General Statutes is amended by adding a new Part to read:

"Part 12. Coal Combustion Products Impoundment Closure

"**§ 143-215.74Q. Closure of Coal Combustion Products Impoundments to Protect Groundwater and Surface Water**

(a) The Department shall establish the priority for closure of all active and inactive investor-owned coal combustion products impoundments. Once priorities for closure are established, the owner of the active and inactive ash ponds shall propose a schedule for beginning closure activities for each prioritized facility, and shall submit a proposed schedule

in accordance with the time frame established by the Department. Six months (180 days) before the scheduled closure activities begin, the owner must submit five (5) paper copies and one (1) electronic copy of a closure plan to the Division of Water Resources for approval. The closure plan shall include the following sections:

(1) Facility and Ash Pond Description. – A description of the operation of the facility that shall include, but not be limited to:
  a. Site and history of site operations; ash handling and storage operations.
  b. Types of flows discharging into the impoundment.
  c. Estimated volume of material contained in the impoundment.
  d. Analysis of the structural integrity of dikes or dams associated with impoundment.
  e. Composition of liner (lined or unlined pond).
  f. Summarized results of any previous environmental investigations performed at the site.

(2) Site Map. – Site maps that illustrate the following:
  a. All structures associated with operations of the ash ponds within the power plant property boundary.
  b. All identified current and former ash disposal and storage areas including structural fills.
  c. All property boundaries and established compliance boundaries.
  d. All potential receptors (i.e. water supply wells, surface water bodies (streams, springs, lakes, ponds and other surface drainage features, and wetlands) within 2,640 feet from the compliance boundary.
  e. Topographic contour intervals of the site shall be selected to enable an accurate representation of site features and terrain and in most cases should be less than 20 feet intervals.
  f. Locations of all on-site active and inactive Division of Waste Management permitted solid waste facilities along with their associated compliance boundaries and monitoring wells.
  g. All existing and proposed groundwater monitoring wells associated with monitoring of the active and inactive ash ponds;
  h. All existing and proposed sample collection locations associated with the operation or closure of the impoundment(s).

(3) Hydrogeologic, Geologic, and Geotechnical Investigations. – The results of a hydrogeologic, geologic, and geotechnical investigation of the facility, that shall include, but not be limited to:
  a. A description of the hydrogeology and geology of the site.
  b. A description of the stratigraphy of the geologic units underlying the ash ponds.
  c. The saturated hydraulic conductivity for the ash and liner if present.
  d. The geotechnical properties for the ash, liner if present, and the uppermost identified stratigraphic unit underlying the impoundment including the soil classification by Unified Soil Classification System, in-place moisture content, particle size distribution, Atterberg limits, specific gravity, effective friction angle, maximum dry density, optimum moisture content, and permeability.
  e. A chemical analysis of the impoundment water, ash, and ash-affected soil. Identify constituents with concentrations found to be in excess of 15A NCAC 02L. 0202 Groundwater Quality Standards including all laboratory results for these analyses.

f. Summary tables of historical records of groundwater sampling results.

g. A map that illustrates the potentiometric contours and flow directions for all identified aquifers underlying impoundments (shallow, intermediate, and deep) and the horizontal extent of areas where 15A NCAC 02L. 0202 Groundwater Quality Standards are exceeded.

h. Cross-sections that illustrate the following: vertical and horizontal extent of the ash within the impoundment; Stratigraphy of the geologic units underlying the ash pond and the vertical extent of areas where 15A NCAC 02L. 0202 Groundwater Quality Standards are exceeded.

(4) Hydrogeologic Modeling. – The results of groundwater modeling of the site that shall include, but not be limited to:

a. An account of the design of the proposed pond closure method that: is based on the site hydrogeologic conceptual model developed, includes predictions on post-closure groundwater elevations, groundwater flow directions and velocities including the effects on/from the potential receptors, and includes predictions at the compliance boundary for constituents identified in subsubdivision e. of subdivision (3) of this subsection as exceeding 15A NCAC 2L .0202 Groundwater Quality Standards.

b. Predictions that include the effects on the groundwater chemistry, and should describe migration, concentration, mobilization and fate of the constituents that exceed 15A NCAC 2L standards before and after closure activities including the effects on/from potential receptors.

c. A description of the groundwater trend analysis methods used to demonstrate compliance with 15A NCAC 02L .0202 Groundwater Quality Standards and 15A NCAC 02L .0106.

(5) Closure Method. – The owner shall provide a proposed closure method. The proposed closure method must demonstrate that where groundwater quality is degraded, restoration to the level of the groundwater standards will be obtained as is economically and technically feasible. The selected proposed closure method shall be from one of the following alternatives, and shall include, but not be limited to:

a. A description of the closure method identified for each ash pond. Closure methods include:

i. Closure-in-Place. – This alternative entails placing an engineered cover system such as a composite geomembrane, impermeable clay, and/or a soil cover over the ash pond. No ash or ash-affected soil would leave the ash pond area.

ii. Clean Closure. – This alternative assumes that all coal ash can be excavated and the ash pond area will be returned to a non-erosive and stable condition.

iii. Hybrid Closure. – This alternative entails consolidating ash and ash-affected soil into as small area as feasible within the ash pond footprint. An engineered cover system (e.g. composite geomembrane, impermeable clay, and/or a soil cover) would be installed over the consolidated ash and ash-affected soil. The remaining ash pond area will be returned to a non-erosive and stable condition.

iv. Other. – Must be equally or more effective at protecting water quality than the other closure options.

b. A description concerning any plans for beneficial reuse of the coal ash under 15A NCAC 02T .1200 (if applicable).

c. All engineering drawings, schematics, and specifications for the proposed closure method. If required by G.S. 89C, engineering design documents should be prepared, signed, and sealed by a professional engineer. Describe the construction quality assurance and quality control program including the responsibilities and authorities; monitoring and testing activities; sampling strategies; and reporting requirements.

d. A description of the provisions for disposal of wastewater through an NPDES permit or any other relevant permit.

e. A description of the provisions for the final disposition of the ash. If the ash is to be removed, the owner must identify the site location and the permit number for ash sent to a permitted disposal site. If the ash is left in place, the owner must provide a description of how the ash will be stabilized during closure and post closure and an estimate of the volume of ash left in place.

f. A list of all permits that will need to be acquired or modified to complete closure activities.

(6) Post-Closure Plan. – The owner shall provide post-closure plans for a minimum of 30 years. If required by G.S. 89C, these plans should be signed and sealed by a professional engineer. These plans shall include, but not be limited to:

a. A description of the post-closure care and maintenance activities.

b. A demonstration of the long-term control of all leachate, affected groundwater, and stormwater.

c. A description of a groundwater monitoring program that includes:

i. Post closure groundwater monitoring, including parameters to be sampled and sampling schedules.

ii. Any additional monitoring well installations, including a map with the proposed location/s and well construction details.

iii. A description of the actions proposed to mitigate statistically significant increasing groundwater quality trends.

d. The length of the post-closure care period. This period may be proposed to be decreased or the frequency and parameter list modified if the owner demonstrates that the reduced period or modifications are sufficient to protect human health and the environment and this demonstration is approved by the Department. The length of the post-closure care period may be increased by the Department at the end of the post-closure period if there are statistically significant increasing groundwater quality trends or contaminant concentrations have not decreased to a level protective of human health and the environment. If the owner determines that the post-closure care period is no longer needed and the Department agrees, the owner shall provide a certification, signed by a registered professional engineer, verifying that post-closure care has been completed in accordance with the post-closure plan.

(7) Schedules. – The owner shall provide an estimate of the milestone dates for all activities related to closure and post-closure.

(8) Future Site Use. – The owner shall describe the anticipated future use of the site and the necessity for deed restrictions following closure.

(9) Final Submittal Determination and Approval. – Within 90 days of receipt of a completed closure plan, the Department will send a letter either approving the closure plan or requesting additional information. Upon approval, the owner must begin closure activities within 30 days."

SECTION 10.(b) Part 3 of Article 21 of Chapter 143 of the General Statutes is amended by adding a new section to read:

"**§ 143-215.37A. Closure of coal combustion products impoundments to render such facilities exempt from the North Carolina Dam Safety Law of 1967.**

(a) Decommissioning Request Submittal. – Any party seeking to decommission a coal combustion products impoundment facility shall submit a document from the ownership entity requesting that the facility be decommissioned to the Division of Energy, Mineral, and Land Resources. The document shall include as a minimum the following:

(1) A proposed geotechnical investigation plan scope of work. Upon preliminary plan approval as described below, the owner shall proceed with necessary field work and submit a geotechnical report with site specific field data indicating that the containment dam and material impounded by the containment dam are stable, and that the impounded material is not subject to liquid flow behavior under expected static and dynamic loading conditions. Material testing should be performed along the full extent of the containment dam and in a pattern throughout the area of impounded material.

(2) A topographic map depicting existing conditions of the containment dam and impoundment area at two foot contour intervals or less.

(3) If the facility contains areas capable of impounding by topography, a breach plan must be included which ensures that there shall be no place within the facility capable of impounding. The breach plan shall include at minimum proposed grading contours superimposed on the existing topographic map as well as necessary engineering calculations, construction details and construction specifications.

(4) A permanent vegetation and stabilization or capping plan by synthetic liner or other means if needed. These plans shall include at minimum, proposed grading contours superimposed on the existing topographic map where applicable as well as necessary engineering calculations, construction details, construction specifications and all details for the establishment of surface area stabilization.

(5) A statement indicating that the impoundment facility has not received sluiced coal ash material for at least three years and there are no future plans to place coal ash in the facility by sluicing methods.

(b) Preliminary Submittal Determination and Approval. – The submitted document shall undergo a preliminary review by the Division of Energy, Mineral, and Land Resources for completeness and approval of the proposed geotechnical investigation plan scope of work.

(1) The owner shall be notified by letter with results of the preliminary review including approval or revision request relative to the proposed scope of work included in the geotechnical investigation plan.

(2) Upon receipt of a letter issued by the Division approving the preliminary geotechnical plan scope of work, the owner may proceed with field work and development of the geotechnical report.

(c) Final Submittal Determination and Approval. – Upon receipt of the geotechnical report, the Division of Energy, Mineral, and Land Resources shall complete the submittal review.

(1) If it is determined that sufficient evidence has been presented to clearly show that the facility no longer functions as a dam in its current state, a letter decommissioning the facility shall be issued by the Division of Energy, Mineral, and Land Resources and the facility shall no longer be under jurisdiction of the Dam Safety Law of 1967, G.S. 143-215.23.

(2) If modifications such as breach construction and/or implementation of a permanent vegetation or surface lining plan are needed, such plans shall be reviewed per standard procedures for consideration of letter of approval to modify and/or breach.

(3) If approved, such plans shall follow standard procedure for construction including: construction supervision by a North Carolina registered professional engineer, as-built submittal by a North Carolina registered professional engineer, and follow up final inspection by Division of Energy, Mineral, and Land Resources staff.

(4) Final approval shall be issued by the Division of Energy, Mineral, and Land Resources in the form of a letter decommissioning the facility and the facility shall no longer be under jurisdiction of the Dam Safety Law of 1967, G.S. 143-215.23."

PART XI. CLOSURE PLANS SCHEDULE

SECTION 11. Notwithstanding G.S. 143-215.74Q and G.S. 143-215.37A as enacted by Sections 10.(a) and 10.(b) of this act:

(a) The closure plan for Riverbend shall be submitted to the Department no later than 60 days after the Act is ratified and shall include detailed provisions that ensure all ash in the impoundments will be moved to a lined structural fill, a lined landfill, or an alternative disposition approved by Department.

(b) The closure plan for Asheville shall be submitted to the Department no later than 60 days after the Act is ratified and include detailed provisions that ensure all ash in the impoundments will be moved to a lined structural fill, a lined landfill, or an alternative disposition approved by the Department.

(c) The closure plan for Dan River shall be submitted to the Department no later than 90 days after the Act is ratified and include detailed provisions that ensure all ash in the impoundments will be moved to a lined structural fill, a lined landfill, or an alternative disposition approved by the Department.

(d) The closure plan for Sutton shall be submitted to the Department no later than 90 days after the Act is ratified, and include detailed provisions that ensure all ash in the impoundments will be moved to a lined structural fill, a lined landfill, or an alternative disposition approved by Department.

PART XII. APPROPRIATION

SECTION 12. There is appropriated from the General Fund to the Department of Environment and Natural Resources the sum of one million four hundred thousand dollars ($1,400,000) for the 2013-2014 Fiscal Year to establish nineteen permanent positions and associated operating costs to implement this act."

PART XIII. EFFECTIVE DATE

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

SENATE SERGEANT-AT-ARMS

COMMITTEE: Senate Committee on Agriculture / Environment / Natural Resources

DATE: 06-16-2014 ROOM: 544

1. STEVE WILSON
2. GILES JEFFERYS
3. BILLY FRITSCHER
4. _____
5. _____
6. _____

PUBLIC COMMENT LIST

Senate Agriculture/ Environment / Natural Resources

06/16/2014

SB 729

2:00 Minutes

1. Mary Maclean Abell — SELC
2. Nicholas Wood — NC WARN
3.
4.
5.
6.
7.
8.
9.
10.

VISITOR REGISTRATION SHEET

Agriculture/Environment/Natural Resources

June 16, 2014

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Matt Doolin	NC Conservation Network
Kirin Dalton	NCLN
Morgan Abbott	CTNC
[illegible]	NRS
John Runkle	NC WARN
Dan Conrad	NCUC
Lillian Jackson	visitor - Vermont
Peter Jackson	" Michigan
Ruth Bartman	" "
Josue Burdett	Sierra Club
Kees Burns	NC DENR
Katie Mills	DENR
Brian Jones	DENR
Sabrina O'Hare	DENR
Sara Salisbury	NC DOJ
Erin Wynia	NCLM
Sarah Collins	NCLM

VISITOR REGISTRATION SHEET

Agriculture/Environment/Natural Resources

June 16, 2014

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Destin Chitwood-Bryant	Sierra Club
Cassie Gavin	Sierra Club
Molly Diggins	Sierra Club
Matt Spangler	SELC
Libby Malcolm	SELC
Brooke Raney Reaves	SELC
Meg Mackie Ashwill	SELC
Nadia Luhr	NCCN
Tom Peters	Duke
Kathy Hamilton	Duke
Hayden Barnes	FSP
Susan Vick	FSP
J C Perryman	CSS
Preston Howard	NCMA
Don Safrit	Secure Resources
Vicki Baze	League of Women Voters

VISITOR REGISTRATION SHEET

Agriculture/Environment/Natural Resources

June 16, 2014

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Mike Mahan	Concrete Supply Co.
Henry Batten	Concrete Supply Co.
Henry M Lancaster*	LCA
Sharon Miller	CUCA
Hugh Johnson	Gov. Office
Peter Raabe	American Rivers
Ben Green	American Rivers
Sarah Collins	NCLCV
Rebekah Givens	NCLCV
Teresa Rosenberger	Environment NC
Nate McLafferty	Environment NC
TRACY DAVIS	DENR - DENR
Linda Culpepper	DENR - DWM
Michael Scott	DENR - DWM
Layla Cummings	DENR
Drew Elliot	DENR
Tom Reeder	//

09-21-201

VISITOR REGISTRATION SHEET

Agriculture/Environment/Natural Resources

June 16, 2014

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Bob Kaylor	Kaylor Law Firm
[illegible]	Misc
George Matthis	River Guardian Foundation
Charles King	School of Govt
Jeff Brooks	Duke Energy
George Everett	Duke Energy
Rob Hamme	RHA
Betsy Bailey	PENC
James McLawhorn	Public Staff - NCUC
Tony Wike	Public Staff - NCUC
Dianna Downey	Public Staff - NCUC
Celia Cox	OSBM
Mercedes Benton	OSBM
Michael Papich	Indy Week Newspaper
Michael Clive	Duke Energy
Tracy Kimbrell	Parker Poe
Tommy Sears	Moore Van Allen

09-21-201

VISITOR REGISTRATION SHEET

Agriculture/Environment/Natural Resources

June 16, 2014

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Chris McClure	BP
Rebecca Tinsley	NCACC
Steve Metcalf	NC Electrical Cooperatives
Jay Rouse	in with Steve
Paul Sherman	NCFB
Keith Larick	NCDA&CS
Joy Hicks	NCDA&CS
Dana Sipes	SA
David McGowan	NC Petroleum Council
Cameron Hanby	MVA
Connie Wilson	CRNCA
Chris Anderson	
Patrick Bufflin	NCAEC
Kara Weishaar	SA
J. Tunnell	PNA
Daniel Rawls	Troutman Sanders

Senate Committee on Agriculture/Environment/Natural Resources
Monday, June 17, 2014, 11:00 AM
544 Legislative Office Building

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

BILL NO.	SHORT TITLE	SPONSOR
SB 729	Governor's Coal Ash Action Plan.	Senator Apodaca Senator Berger

Adjournment

Senate Committee on Agriculture/Environment/Natural Resources
Tuesday, June 17, 2014 at 11:00 AM
Room 544 of the Legislative Office Building

MINUTES

The Senate Committee on Agriculture/Environment/Natural Resources met at 11:00 AM on June 17, 2014 in Room 544 of the Legislative Office Building. Seventeen members were present: Senator Stan Bingham, Senator Andrew Brock, Senator Bill Cook, Senator Austin Allran, Senator Chad Barefoot, Senator Angela Bryant, Senator Joel Ford, Senator Valerie Foushee, Senator Fletcher Hartsell, Senator Jeff Jackson, Senator Brent Jackson, Senator Gene McLaurin, Senator Ron Rabin, Senator Shirley Randleman, Senator Tommy Tucker, Senator Trudy Wade, Senator Michael Walters.

Senator Stan Bingham, presided.

Sgt. at Arms for today's meeting was Steve Wilson, Giles Jefferys, and Charles Harper

Pages today was Parker Castleberry, Raleigh – Senator Tillman; Spencer Mangum, Raleigh – Senator Daniel; Chandler Byrd, Wake Forest,- Senator Brent Jackson; Caitlyn Ebert, Hickory,- Senator Allran; Thomas McBrayer, Hickory – Senator Allran; Paul Wood, Hickory – Senator Allran; Quinton Beale, Raleigh- Senator Blue; and Sophia Politis, Harrisburg – Senator Hartsell.

SB 729 Coal Ash Management Act of 2014. (Senators Apodaca, Berger)

Senator Apodaca cleared the air on the issue of the moratorium and what it applies to. It is the intent of this legislation to have the moratorium apply to all fields from 0 to whatever and will deal with the classifications of those areas during the moratorium period. We are not trying to be lax and allow any particular coal ash pond or facilities to skirt the law.

Senator Bingham opened the floor for questions.

Senator Wade asked a question regarding structural fields and staff member, Jennifer McGinnis, responded. Senator Wade had several follow-up questions which Senator Apodaca responded.

Amendments:

Senator Hartsell presented an amendment. Senator Apodaca asked for 5 minutes to study Senator Hartsell's amendment.

Senator Ford presented an amendment. After discussion on the amendment, Senator Cook made a motion to approve the amendment and the motion carried.

Senator Brock presented an amendment. After discussion on the amendment, Senator Brent Jackson made a motion to approve the amendment and the motion carried.

Senator Hartsell withdrew his amendment.

Senator Bingham recognized George Everett from Duke Energy for public comment on the bill. After Mr. Everett's comments, Senator Bingham opened the floor to members for questions . There were questions from Senator Allran, Senator Hartsell, Senator Rabin, and Senator Wade for Mr. Everett and he responded to each question.

Senator Wade had a question for Senator Apodaca for which he asked Jennifer McGinnis from staff to respond.

Senator Trudy Wade made a motion for a favorable report on the PCS for SB 729 as amended. The motion passed.

The meeting adjourned at 12:30 PM.

Stan Bingham
Senator Stan Bingham, Presiding

Judy Edwards
Judy Edwards, Committee Clerk

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES COMMITTEE REPORT
Senator Bingham, Co-Chair
Senator Brock, Co-Chair

Tuesday, June 17, 2014

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

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

SB **729** Governors Coal Ash Action Plan.

Draft Number:	S729-PCS15451-RIx-40
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

TOTAL REPORTED: 1

Senator Tom Apodaca will handle SB 729



GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

S D

SENATE BILL 729
PROPOSED COMMITTEE SUBSTITUTE S729-PCS15451-RIx-40

Short Title: Coal Ash Management Act of 2014. (Public)

Sponsors:

Referred to:

May 15, 2014

A BILL TO BE ENTITLED

AN ACT TO (1) PROHIBIT RECOVERY OF COSTS RELATED TO UNLAWFUL DISCHARGES FROM COAL COMBUSTION RESIDUALS SURFACE IMPOUNDMENTS; (2) ESTABLISH A MORATORIUM ON CERTAIN RATE CASES; (3) CREATE THE COAL ASH MANAGEMENT COMMISSION TO REVIEW AND APPROVE COAL COMBUSTION RESIDUALS SURFACE IMPOUNDMENTS CLASSIFICATIONS AND CLOSURE PLANS AND OTHERWISE STUDY AND MAKE RECOMMENDATIONS ON LAWS GOVERNING MANAGEMENT OF COAL COMBUSTION RESIDUALS; (4) REQUIRE EXPEDITED REVIEW BY THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES OF ANY PERMIT NECESSARY TO CONDUCT ACTIVITIES REQUIRED BY THIS ACT; (5) ESTABLISH VARIOUS REPORTING REQUIREMENTS TO THE GENERAL ASSEMBLY, INCLUDING A QUARTERLY REPORT FROM THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES ON ITS OPERATIONS, ACTIVITIES, PROGRAMS, AND PROGRESS WITH RESPECT TO ITS OBLIGATIONS UNDER THIS ACT FOR COAL COMBUSTION RESIDUALS SURFACE IMPOUNDMENTS; (6) PROHIBIT LOCAL GOVERNMENT REGULATION OF MANAGEMENT OF COAL COMBUSTION RESIDUALS OR COAL COMBUSTION PRODUCTS; (7) PROHIBIT CONSTRUCTION OF NEW OR EXPANSION OF EXISTING COAL COMBUSTION RESIDUALS SURFACE IMPOUNDMENTS EFFECTIVE JULY 1, 2014; (8) PROHIBIT THE DISPOSAL OF COAL COMBUSTION RESIDUALS INTO COAL COMBUSTION RESIDUALS SURFACE IMPOUNDMENTS AT COAL-FIRED GENERATING UNITS THAT ARE NO LONGER PRODUCING COAL COMBUSTION RESIDUALS EFFECTIVE OCTOBER 1, 2014; (9) PROHIBIT DISPOSAL OF STORMWATER TO COAL COMBUSTION RESIDUALS SURFACE IMPOUNDMENTS EFFECTIVE DECEMBER 31, 2018; (10) REQUIRE ALL ELECTRIC GENERATING FACILITIES TO CONVERT TO GENERATION OF DRY FLY ASH ON OR BEFORE DECEMBER 31, 2017, AND DRY BOTTOM ASH ON OR BEFORE DECEMBER 31, 2020, OR RETIRE; (11) REQUIRE THE ASSESSMENT OF GROUNDWATER AT COAL COMBUSTION RESIDUALS SURFACE IMPOUNDMENTS; (12) REQUIRE CORRECTIVE ACTION FOR THE RESTORATION OF GROUNDWATER QUALITY AT COAL COMBUSTION RESIDUALS SURFACE IMPOUNDMENTS; (13) REQUIRE A SURVEY OF DRINKING WATER SUPPLY WELLS AND REPLACEMENT OF CONTAMINATED WATER SUPPLIES; (14) REQUIRE THE IDENTIFICATION, ASSESSMENT, AND CORRECTION OF UNPERMITTED DISCHARGES FROM

COAL COMBUSTION RESIDUALS SURFACE IMPOUNDMENTS; (15) REQUIRE THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES TO, AS SOON AS PRACTICABLE BUT NO LATER THAN AUGUST 1, 2015, PRIORITIZE FOR THE PURPOSE OF CLOSURE AND REMEDIATION COAL COMBUSTION RESIDUALS SURFACE IMPOUNDMENTS, INCLUDING ACTIVE AND RETIRED SITES, BASED ON THESE SITES' RISKS TO PUBLIC HEALTH, SAFETY, WELFARE, THE ENVIRONMENT, AND NATURAL RESOURCES; (16) REQUIRE OWNERS OF COAL COMBUSTION RESIDUALS SURFACE IMPOUNDMENTS TO SUBMIT A PROPOSED PLAN FOR CLOSURE OF ALL IMPOUNDMENTS TO THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES; (17) REQUIRE CLOSURE AND REMEDIATION OF CERTAIN COAL COMBUSTION RESIDUALS SURFACE IMPOUNDMENTS AS SOON AS PRACTICABLE, BUT NO LATER THAN AUGUST 1, 2019; (18) REQUIRE THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES TO ESTABLISH A SCHEDULE AND PROCESS FOR CLOSURE AND REMEDIATION OF ALL COAL COMBUSTION RESIDUALS SURFACE IMPOUNDMENTS BASED UPON THE DEPARTMENT'S RISK ASSESSMENT OF THESE SITES, BASELINE REQUIREMENTS SET BY THE GENERAL ASSEMBLY, EVALUATION OF PROPOSED CLOSURE PLANS SUBMITTED BY IMPOUNDMENT OWNERS, AND INPUT FROM THE PUBLIC AND OTHER STAKEHOLDERS; (19) ESTABLISH MINIMUM STATUTORY REQUIREMENTS FOR STRUCTURAL FILL PROJECTS USING COAL COMBUSTION PRODUCTS AND REQUIRE THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES TO INVENTORY AND INSPECT CERTAIN STRUCTURAL FILL PROJECTS; (20) PLACE A MORATORIUM ON CERTAIN PROJECTS USING COAL COMBUSTION PRODUCTS AS STRUCTURAL FILL UNTIL AUGUST 1, 2015, AND DIRECT THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES AND THE ENVIRONMENTAL MANAGEMENT COMMISSION TO STUDY THE ADEQUACY OF CURRENT LAW GOVERNING USE OF COAL COMBUSTION PRODUCTS AS STRUCTURAL FILL AND FOR BENEFICIAL USE; (21) PLACE A MORATORIUM ON THE EXPANSION AND CONSTRUCTION OF COAL COMBUSTION RESIDUALS LANDFILLS UNTIL AUGUST 1, 2015, AND DIRECT THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES TO ASSESS THE RISKS TO PUBLIC HEALTH, SAFETY, WELFARE, THE ENVIRONMENT, AND NATURAL RESOURCES OF COAL COMBUSTION RESIDUALS SURFACE IMPOUNDMENTS LOCATED BENEATH THESE LANDFILLS TO DETERMINE THE ADVISABILITY OF CONTINUED OPERATION OF THESE LANDFILLS; (22) STRENGTHEN THE REPORTING AND NOTIFICATION REQUIREMENTS APPLICABLE TO DISCHARGES OF WASTEWATER TO WATERS OF THE STATE; (23) REQUIRE CERTAIN EMERGENCY CALLS TO BE RECORDED; (24) REQUIRE DEVELOPMENT OF EMERGENCY ACTION PLANS FOR HIGH AND INTERMEDIATE HAZARD DAMS AND AMEND OTHER DAM SAFETY LAW REQUIREMENTS APPLICABLE TO COAL COMBUSTION RESIDUALS SURFACE IMPOUNDMENTS; (25) TRANSFER SOLID WASTE RULE-MAKING AUTHORITY FROM COMMISSION FOR PUBLIC HEALTH TO ENVIRONMENTAL MANAGEMENT COMMISSION; (26) PROVIDE FOR VARIOUS STUDIES; AND (27) PROVIDE RESOURCES FOR IMPLEMENTATION OF THIS ACT.

The General Assembly of North Carolina enacts:

PART I. PROHIBIT RECOVERY OF COSTS RELATED TO UNLAWFUL DISCHARGES FROM COAL COMBUSTION RESIDUALS SURFACE IMPOUNDMENTS; MORATORIUM ON RATE CASES

SECTION 1.(a) Article 7 of Chapter 62 of the General Statutes is amended by adding a new section to read:

"**§ 62-133.13. Recovery of costs related to unlawful discharges from coal combustion residuals surface impoundments to the surface waters of the State.**

The Commission shall not allow an electric public utility to recover from the retail electric customers of the State costs resulting from an unlawful discharge to the surface waters of the State from a coal combustion residuals surface impoundment, unless the Commission determines the discharge was due to an event of force majeure. For the purposes of this section, "coal combustion residuals surface impoundments" has the same meaning as in G.S. 130A-309.201. For the purposes of this section, "unlawful discharge" shall mean a discharge that results in a violation of State or federal surface water quality standards."

SECTION 1.(b) Section 1(a) of this act is effective when it becomes law and applies to discharges occurring on or after January 1, 2014.

SECTION 2.(a) Moratorium on Cost Recovery. – The Utilities Commission shall not issue an order authorizing an electric public utility the recovery of any additional costs related to coal combustion residuals surface impoundments until the end of the moratorium provided in this section. For the purposes of this section, "coal combustion residuals surface impoundments" has the same meaning as in G.S. 130A-309.201. The Utilities Commission shall not enter a final order granting an increase in base rates of an electric public utility for costs related to coal combustion residuals surface impoundments under G.S. 62-133 or G.S. 62-134 prior to January 15, 2015.

SECTION 2.(b) Purpose of Moratorium. – The purpose of the moratorium is to allow the State to study the disposition of coal combustion residuals surface impoundments, including any final rules adopted by the United States Environmental Protection Agency on the regulation of coal combustion residuals.

PART II. PROVISIONS FOR COMPREHENSIVE MANAGEMENT OF COAL COMBUSTION RESIDUALS

SECTION 3.(a) Article 9 of Chapter 130A of the General Statutes is amended by adding a new Part to read:

"Part 2I. Coal Ash Management.

"Subpart 1. Short Title, Definitions, and General Provisions.

"**§ 130A-309.200. Title.**

This Part may be cited as the "Coal Ash Management Act of 2014."

"**§ 130A-309.201. Definitions.**

Unless a different meaning is required by the context, the definitions of G.S. 130A-290 and the following definitions shall apply throughout this Part:

(1) "Beneficial and beneficial use" means projects promoting public health and environmental protection, offering equivalent success relative to other alternatives, and preserving natural resources.

(2) "Boiler slag" means the molten bottom ash collected at the base of slag tap and cyclone type furnaces that is quenched with water. It is made up of hard, black, angular particles that have a smooth, glassy appearance.

(3) "Bottom ash" means the agglomerated, angular ash particles formed in pulverized coal furnaces that are too large to be carried in the flue gases and collect on the furnace walls or fall through open grates to an ash hopper at the bottom of the furnace.

(4) "Coal combustion products" means fly ash, bottom ash, boiler slag, or flue gas desulfurization materials, which are beneficially used, including use for structural fill.

(5) "Coal combustion residuals" has the same meaning as defined in G.S. 130A-290.

(6) "Coal combustion residuals surface impoundment" means a topographic depression, excavation, or diked area that is: (i) primarily formed from earthen materials; (ii) without a base liner approved for use by Article 9 of Chapter 130A of the General Statutes or rules adopted thereunder for a combustion products landfill or coal combustion residuals landfill, industrial landfill, or municipal solid waste landfill; and (iii) designed to hold accumulated coal combustion residuals in the form of liquid wastes, wastes containing free liquids, or sludges, and that is not backfilled or otherwise covered during periods of deposition. For purposes of this Part, "coal combustion residuals surface impoundment" shall only include impoundments owned by a public utility, as defined in G.S. 62-3. "Coal combustion residuals surface impoundment" includes all of the following:

a. An impoundment that is dry due to the deposited liquid having evaporated, volatilized, or leached.

b. An impoundment that is wet with exposed liquid.

c. Lagoons, ponds, aeration pits, settling ponds, tailings ponds, and sludge pits, when these structures are designed to hold accumulated coal combustion residuals.

d. A coal combustion residuals surface impoundment that has been covered with soil after the final deposition of coal combustion residuals at the impoundment.

(7) "Commission" means the Environmental Management Commission.

(8) "Fly ash" means the very fine, powdery material, composed mostly of silica with nearly all particles spherical in shape, which is a product of burning finely ground coal in a boiler to produce electricity and is removed from the plant exhaust gases by air emission control devices.

(9) "Flue gas desulfurization material" means the material produced through a process used to reduce sulfur dioxide emissions from the exhaust gas system of a coal-fired boiler. The physical nature of these materials varies from a wet sludge to a dry powdered material, depending on the process, and their composition comprises either sulfites, sulfates, or a mixture thereof.

(10) "Mine" means an area of land from which minerals, inorganic and organic, have been extracted from their natural deposits.

(11) "Minerals" means soil, clay, coal, phosphate, metallic ore, and any other solid material or substance of commercial value found in natural deposits on or in the earth.

(12) "Owner" or "owner of a coal combustion residuals surface impoundment" means a public utility, as defined in G.S. 62-3, that owns a coal combustion residuals surface impoundment.

(13) "Receptor" means any human, plant, animal, or structure which is, or has the potential to be, affected by the release or migration of contaminants. Any well constructed for the purpose of monitoring groundwater and contaminant concentrations shall not be considered a receptor.

(14) "Structural fill" means an engineered fill with a projected beneficial end use constructed using coal combustion products that are properly placed and compacted. For purposes of this Part, the term includes fill used to reclaim

abandoned mines and for embankments, greenscapes, foundations, construction foundations, and for bases/sub-bases under a structure or a footprint of a paved road, parking lot, sidewalk, walkway, or similar structure.

(15) "Use or reuse of coal combustion products" means the procedure whereby coal combustion products are directly used as either of the following:

a. As an ingredient in an industrial process to make a product, unless distinct components of the coal combustion products are recovered as separate end products.

b. In a function or application as an effective substitute for a commercial product or natural resource.

"**§ 130A-309.202. Coal Ash Management Commission.**

(a) Creation. – In recognition of the complexity and magnitude of the issues associated with the management of coal combustion residuals and the proper closure and remediation of coal combustion residuals surface impoundments, the Coal Ash Management Commission is hereby established.

(b) Membership. – The Commission shall consist of nine members as follows:

(1) One appointed by the General Assembly upon recommendation of the President Pro Tempore of the Senate in accordance with G.S. 120-121 who shall at the time of appointment be a resident of the State.

(2) One appointed by the General Assembly upon recommendation of the President Pro Tempore of the Senate in accordance with G.S. 120-121 who shall at the time of appointment have special training or scientific expertise in waste management, including solid waste disposal, hauling, or beneficial use.

(3) One appointed by the General Assembly upon recommendation of the President Pro Tempore of the Senate in accordance with G.S. 120-121 who shall at the time of appointment be a licensed physician or a person with experience in public health.

(4) One appointed by the General Assembly upon recommendation of the Speaker of the House of Representatives in accordance with G.S. 120-121 who shall at the time of appointment be a member of a nongovernmental conservation interest.

(5) One appointed by the General Assembly upon recommendation of the Speaker of the House of Representatives in accordance with G.S. 120-121 who shall at the time of appointment be actively employed by, or recently retired from, an industrial manufacturing facility.

(6) One appointed by the General Assembly upon recommendation of the Speaker of the House of Representatives in accordance with G.S. 120-121 who shall at the time of appointment have experience in the use of coal combustion residuals as structural fill for construction or development projects.

(7) One appointed by the Governor who shall at the time of appointment have experience in economic development.

(8) One appointed by the Governor who shall at the time of appointment be a representative of an electric membership corporation organized under Article 2 of Chapter 117 of the General Statutes.

(9) One appointed by the Governor who shall at the time of appointment be a be a person with experience in science or engineering.

(c) Chair; Vice-Chair. – The Commission shall have a chair and a vice-chair. The Commission shall elect one of its members to serve as chair and one of its members to serve as vice-chair. The chair and vice-chair shall serve two-year terms.

(d) Vacancies. – Any appointment to fill a vacancy on the Commission created by the resignation, dismissal, death, or disability of a member shall be for the balance of the unexpired term. The Governor may reappoint a gubernatorial appointee of the Commission to an additional term if, at the time of the reappointment, the member qualifies for membership on the Commission under subdivisions (7) through (9) of subsection (b) of this section. Appointments by the General Assembly shall be made in accordance with G.S. 120-121, and vacancies in those appointments shall be filled in accordance with G.S. 120-122.

(e) Removal. – The Governor shall have the power to remove any member of the Commission from office for misfeasance, malfeasance, or nonfeasance in accordance with the provisions of G.S. 143B-13 of the Executive Organization Act of 1973.

(f) Powers and Duties. – The Commission shall have all of the following powers and duties:

(1) To review and approve the classification of coal combustion residuals surface impoundments required by G.S. 130A-309.211.

(2) To review and approve Coal Combustion Residuals Surface Impoundment Closure Plans as provided in G.S. 130A-309.212.

(3) To review and make recommendations on the provisions of this Part and other statutes and rules related to the management of coal combustion residuals.

(4) To undertake any additional studies as requested by the General Assembly.

(g) Reimbursement. – The members of the Commission shall receive per diem and necessary travel and subsistence expenses in accordance with the provisions of G.S. 138-5.

(h) Quorum. – Five members of the Commission shall constitute a quorum for the transaction of business.

(i) Staff. – The Commission is authorized and empowered to employ staff as the Commission may determine to be necessary for the proper discharge of the Commission's duties and responsibilities. The Chair of the Commission shall organize and direct the work of the Commission staff. The salaries and compensation of all such personnel shall be fixed in the manner provided by law for fixing and regulating salaries and compensation by other State agencies. The chair, within allowed budgetary limits and as allowed by law, shall authorize and approve travel, subsistence, and related expenses of such personnel incurred while traveling on official business. All State agencies, including the constituent institutions of The University of North Carolina, shall provide information and support to the Commission upon request.

(j) Conflicts of Interest; Disclosure. – The Governor shall require adequate disclosure of potential conflicts of interest by members. The Governor, by executive order, shall promulgate criteria regarding conflicts of interest and disclosure thereof for determining the eligibility of persons under this subsection, giving due regard to the requirements of federal legislation and, for this purpose, may promulgate rules, regulations, or guidelines in conformance with those established by any federal agency interpreting and applying provisions of federal law.

(k) Covered Persons. – All members of the Commission are covered persons for the purposes of Chapter 138A of the General Statutes, the State Government Ethics Act. As covered persons, members of the Commission shall comply with the applicable requirements of the State Government Ethics Act, including mandatory training, the public disclosure of economic interests, and ethical standards for covered persons. Members of the Commission shall comply with the provisions of the State Government Ethics Act to avoid conflicts of interest.

(l) Meetings. – The Commission shall meet at least once every two months and may hold special meetings at any time and place within the State at the call of the Chair or upon the written request of at least five members.

(m) Reports. – The Commission shall submit quarterly written reports as to its operation, activities, programs, and progress to the Environmental Review Commission. The Commission shall supplement the written reports required by this subsection with additional written and oral reports as may be requested by the Environmental Review Commission. The Commission shall submit the written reports required by this subsection whether or not the General Assembly is in session at the time the report is due.

(n) Administrative Location; Independence. – The Commission shall be administratively located in the Division of Emergency Management of the Department of Public Safety. The Commission shall exercise all of its powers and duties independently and shall not be subject to the supervision, direction, or control of the Division or Department.

"**§ 130A-309.203. Expedited permit review.**

(a) The Department shall act as expeditiously as practicable, but no later than the deadlines established under subsection (b) of this section, except in compliance with subsection (c) of this section, to issue all permits necessary to conduct activities required by this Part.

(b) Notwithstanding G.S. 130A-295.8(e), the Department shall determine whether an application for any permit necessary to conduct activities required by this Part is complete within 30 days after the Department receives the application for the permit. A determination of completeness means that the application includes all required components but does not mean that the required components provide all of the information that is required for the Department to make a decision on the application. If the Department determines that an application is not complete, the Department shall notify the applicant of the components needed to complete the application. An applicant may submit additional information to the Department to cure the deficiencies in the application. The Department shall make a final determination as to whether the application is complete within the later of (i) 30 days after the Department receives the application for the permit less the number of days that the applicant uses to provide the additional information or (ii) 10 days after the Department receives the additional information from the applicant. The Department shall issue a draft permit decision on an application for a permit within 60 days after the Department determines that the application is complete. The Department shall hold a public hearing and accept written comment on the draft permit decision for a period of not less than 30 or more than 60 days after the Department issues a draft permit decision. The Department shall issue a final permit decision on an application for a permit within 30 days after the comment period on the draft permit decision closes. If the Department fails to act within any time period set out in this subsection, the applicant may treat the failure to act as a denial of the permit and may challenge the denial as provided in Chapter 150B of the General Statutes.

(c) If the Department finds that compliance with the deadlines established under subsection (b) of this section would result in insufficient review of a permit application that would pose a risk to public health, safety, and welfare; the environment; or natural resources, the applicable deadline shall be waived for the application as necessary to allow for adequate review. If a deadline is waived pursuant to this subsection, the Secretary shall issue a written declaration, including findings of fact, documenting the need for the waiver.

"**§ 130A-309.204. Reports.**

(a) The Department shall submit quarterly written reports to the Environmental Review Commission and the Coal Ash Management Commission on its operations, activities, programs, and progress with respect to its obligations under this Part concerning all coal combustion residuals surface impoundments. At a minimum, the report shall include information concerning the status of assessment, corrective action, prioritization, and closure for each coal combustion residual surface impoundment and information on costs connected

therewith. The report shall include an executive summary of each annual Groundwater Protection and Restoration Report submitted to the Department by the operator of any coal combustion residuals surface impoundments pursuant to G.S. 130A-309.209(d) and a summary of all groundwater sampling, protection, and restoration activities related to the impoundment for the preceding year. The report shall also include an executive summary of each annual Surface Water Protection and Restoration Report submitted to the Department by the operator of any coal combustion residuals surface impoundments pursuant to G.S. 130A-309.210(e) and a summary of all surface water sampling, protection, and restoration activities related to the impoundment for the preceding year, including the status of the identification, assessment, and correction of unpermitted discharges from coal combustion residuals surface impoundments to the surface waters of the State. The Department shall supplement the written reports required by this subsection with additional written and oral reports as may be requested by the Environmental Review Commission. The Department shall submit the written reports required by this subsection whether or not the General Assembly is in session at the time the report is due.

(b) On or before October 1 of each year, the Department shall report to each member of the General Assembly who has a coal combustion residuals surface impoundment in the member's district. This report shall include the location of each impoundment in the member's district, the amount of coal combustion residuals known or believed to be located in the impoundment, the last action taken at the impoundment, and the date of that last action.

(c) On or before October 1 of each year, a public utility generating coal combustion residuals and coal combustion products shall submit an annual summary to the Department. The annual summary shall be for the period July 1 through June 30 and shall include all of the following:

(1) The volume of coal combustion residuals and products produced.

(2) The volume of coal combustion residuals disposed.

(3) The volume of coal combustion products used in structural fill projects.

(4) The volume of coal combustion products beneficially used, other than for structural fill.

"**§ 130A-309.205. Local ordinances regulating management of coal combustion residuals and coal combustion products invalid; petition to preempt local ordinance.**

(a) It is the intent of the General Assembly to maintain a uniform system for the management of coal combustion residuals and coal combustion products, including matters of disposal and beneficial use, and to place limitations upon the exercise by all units of local government in North Carolina of the power to regulate the management of coal combustion residuals and coal combustion products by means of ordinances, property restrictions, zoning regulations, or otherwise. Notwithstanding any authority granted to counties, municipalities, or other local authorities to adopt local ordinances, including those imposing taxes, fees, or charges or regulating health, environment, or land use, all provisions of local ordinances, including those regulating land use, adopted by counties, municipalities, or other local authorities that regulate or have the effect of regulating the management of coal combustion residuals and coal combustion products within the jurisdiction of a local government are invalidated, to the extent necessary to effectuate the purposes of this Part, that do the following:

(1) Place any restriction or condition not placed by this Part upon management of coal combustion residuals and coal combustion products within any county, city, or other political subdivision.

(2) Conflict or are in any manner inconsistent with the provisions of this Part.

(b) If a local zoning or land-use ordinance imposes requirements, restrictions, or conditions that are generally applicable to development, including, but not limited to, setback, buffer, and stormwater requirements, and coal combustion residuals and coal combustion products would be regulated under the ordinance of general applicability, the operator of the

proposed activities may petition the Environmental Management Commission to review the matter. After receipt of a petition, the Commission shall hold a hearing in accordance with the procedures in subsection (c) of this section and shall determine whether or to what extent to preempt the local ordinance to allow for the management of coal combustion residuals and coal combustion products.

(c) When a petition described in subsection (b) of this section has been filed with the Environmental Management Commission, the Commission shall hold a public hearing to consider the petition. The public hearing shall be held in the affected locality within 60 days after receipt of the petition by the Commission. The Commission shall give notice of the public hearing by both of the following means:

(1) Publication in a newspaper or newspapers having general circulation in the county or counties where the activities are to be conducted, once a week for three consecutive weeks, the first notice appearing at least 30 days prior to the scheduled date of the hearing.

(2) First-class mail to persons who have requested notice. The Commission shall maintain a mailing list of persons who request notice in advance of the hearing pursuant to this section. Notice by mail shall be complete upon deposit of a copy of the notice in a postage-paid wrapper addressed to the person to be notified at the address that appears on the mailing list maintained by the Commission in a post office or official depository under the exclusive care and custody of the United States Postal Service.

(d) Any interested person may appear before the Environmental Management Commission at the hearing to offer testimony. In addition to testimony before the Commission, any interested person may submit written evidence to the Commission for the Commission's consideration. At least 20 days shall be allowed for receipt of written comment following the hearing.

(e) A local zoning or land-use ordinance is presumed to be valid and enforceable to the extent the zoning or land-use ordinance imposes requirements, restrictions, or conditions that are generally applicable to development, including, but not limited to, setback, buffer, and stormwater requirements, unless the Environmental Management Commission makes a finding of fact to the contrary. The Commission shall determine whether or to what extent to preempt local ordinances so as to allow the project involving management of coal combustion residuals and coal combustion products no later than 60 days after conclusion of the hearing. The Commission shall preempt a local ordinance only if the Commission makes all of the following findings:

(1) That there is a local ordinance that would regulate the management of coal combustion residuals and coal combustion products.

(2) That all legally required State and federal permits or approvals have been issued by the appropriate State and federal agencies or that all State and federal permit requirements have been satisfied and that the permits or approvals have been denied or withheld only because of the local ordinance.

(3) That local citizens and elected officials have had adequate opportunity to participate in the permitting process.

(4) That the project involving management of coal combustion residuals and coal combustion products will not pose an unreasonable health or environmental risk to the surrounding locality and that the operator has taken or consented to take reasonable measures to avoid or manage foreseeable risks and to comply to the maximum feasible extent with applicable local ordinances.

(f) If the Environmental Management Commission does not make all of the findings under subsection (e) of this section, the Commission shall not preempt the challenged local

ordinance. The Commission's decision shall be in writing and shall identify the evidence submitted to the Commission plus any additional evidence used in arriving at the decision.

(g) The decision of the Environmental Management Commission shall be final, unless a party to the action files a written appeal under Article 4 of Chapter 150B of the General Statutes, as modified by this section, within 30 days of the date of the decision. The record on appeal shall consist of all materials and information submitted to or considered by the Commission, the Commission's written decision, a complete transcript of the hearing, the specific findings required by subsection (e) of this section, and any minority positions on the specific findings required by subsection (e) of this section. The scope of judicial review shall be as set forth in G.S. 150B-51, except as this subsection provides regarding the record on appeal.

(h) If the court reverses or modifies the decision of the Environmental Management Commission, the judge shall set out in writing, which writing shall become part of the record, the reasons for the reversal or modification.

(i) In computing any period of time prescribed or allowed by the procedure in this section, the provisions of Rule 6(a) of the Rules of Civil Procedure, G.S. 1A-1, shall apply.

"**§ 130A-309.206. Federal preemption; severability.**

The provisions of this Part shall be severable, and if any phrase, clause, sentence, or provision is declared to be unconstitutional or otherwise invalid or is preempted by federal law or regulation, the validity of the remainder of this Part shall not be affected thereby.

"**§ 130A-309.207. General rulemaking for Part.**

The Environmental Management Commission shall adopt rules as necessary to implement the provisions of the Part. Such rules shall be exempt from the requirements of G.S. 150B-19.3.

"Subpart 2. Management of Coal Ash Residuals; Closure of Coal Ash Impoundments.

"**§ 130A-309.208. Generation, disposal, and use of coal combustion residuals.**

(a) On or after July 1, 2014, the construction of new and expansion of existing coal combustion residuals surface impoundments is prohibited.

(b) On or after October 1, 2014, the disposal of coal combustion residuals into a coal combustion residuals surface impoundment at an electric generating facility where the coal-fired generating units are no longer producing coal combustion residuals is prohibited.

(c) On or after December 31, 2018, the discharge of stormwater into a coal combustion surface impoundment at an electric generating facility where the coal-fired generating units are no longer producing coal combustion residuals is prohibited.

(d) On or after December 31, 2019, the discharge of stormwater into a coal combustion surface impoundment at an electric generating facility where the coal-fired generating units are actively producing coal combustion residuals is prohibited.

(e) On or before December 31, 2018, all electric generating facilities owned by a public utility shall convert to the disposal of "dry" fly ash or the facility shall be retired. For purposes of this subsection, the term "dry" shall mean coal combustion residuals which are not in the form of liquid wastes, wastes containing free liquids, or sludges.

(f) On or before December 31, 2019, all electric generating facilities owned by a public utility shall convert to the disposal of "dry" bottom ash or the facility shall be retired. For purposes of this subsection, the term "dry" shall mean coal combustion residuals which are not in the form of liquid wastes, wastes containing free liquids, or sludges.

"**§ 130A-309.209. Groundwater assessment and corrective action; drinking water supply well survey and provision of alternate water supply; reporting.**

(a) Groundwater Assessment of Coal Combustion Residuals Surface Impoundments. – The owner of a coal combustion residuals surface impoundment shall conduct groundwater monitoring and assessment as provided in this subsection. The requirements for groundwater monitoring and assessment set out in this subsection are in addition to any other groundwater monitoring and assessment requirements applicable to the owners of coal combustion residuals surface impoundments.

(1) No later than December 31, 2014, the owner of a coal combustion residuals surface impoundment shall submit a proposed Groundwater Assessment Plan for the impoundment to the Department for its review and approval. The Groundwater Assessment Plan shall, at a minimum, provide for all of the following:

a. A description of all receptors and significant exposure pathways.

b. An assessment of the horizontal and vertical extent of soil and groundwater contamination for all contaminants confirmed to be present in groundwater in exceedance of groundwater quality standards.

c. A description of all significant factors affecting movement and transport of contaminants.

d. A description of the geological and hydrogeological features influencing the chemical and physical character of the contaminants.

e. A schedule for continued groundwater monitoring.

f. Any other information related to groundwater assessment required by the Department.

(2) The Department shall approve the Groundwater Assessment Plan if it determines that the Plan complies with the requirements of this subsection and will be sufficient to protect public health, safety, and welfare; the environment; and natural resources.

(3) No later than 10 days from approval of the Groundwater Assessment Plan, the owner shall begin implementation of the Plan.

(4) No later than 180 days from approval of the Groundwater Assessment Plan, the owner shall submit a Groundwater Assessment Report to the Department. The Report shall describe all exceedances of groundwater quality standards associated with the impoundment.

(b) Corrective Action for the Restoration of Groundwater Quality. – The owner of a coal combustion residuals surface impoundment shall implement corrective action for the restoration of groundwater quality as provided in this subsection. The requirements for corrective action for the restoration of groundwater quality set out in this subsection are in addition to any other corrective action for the restoration of groundwater quality requirements applicable to the owners of coal combustion residuals surface impoundments.

(1) No later than 90 days from submission of the Groundwater Assessment Report required by subsection (a) of this section, the owner of the coal combustion residuals surface impoundment shall submit a proposed Groundwater Corrective Action Plan to the Department for its review and approval. The Groundwater Corrective Action Plan shall provide for the restoration of groundwater in conformance with the requirements of Subchapter L of Chapter 2 of Title 15A of the North Carolina Administrative Code. The Groundwater Corrective Action Plan shall include, at a minimum, all of the following:

a. A description of all exceedances of the groundwater quality standards, including any exceedances that the owner asserts are the result of natural background conditions.

b. A description of the methods for restoring groundwater in conformance with the requirements of Subchapter L of Chapter 2 of Title 15A of the North Carolina Administrative Code and a detailed explanation of the reasons for selecting these methods.

c. Specific plans, including engineering details, for restoring groundwater quality.

d. A schedule for implementation of the Plan.
e. A monitoring plan for evaluating the effectiveness of the proposed corrective action and detecting movement of any contaminant plumes.
f. Any other information related to groundwater assessment required by the Department.

(2) The Department shall approve the Groundwater Corrective Action Plan if it determines that the Plan complies with the requirements of this subsection and will be sufficient to protect public health, safety, and welfare; the environment; and natural resources.

(3) No later than 30 days from the approval of the Groundwater Corrective Action Plan, the owner shall begin implementation of the Plan in accordance with the Plan's schedule.

(c) Drinking Water Supply Well Survey and Provision of Alternate Water Supply. – No later than October 1, 2014, the owner of a coal combustion residuals surface impoundment shall conduct a Drinking Water Supply Well Survey that identifies all drinking water supply wells within one-half mile down-gradient from the established compliance boundary of the impoundment and submit the Survey to the Department. The Survey shall include well locations, the nature of water uses, available well construction details, and information regarding ownership of the wells. No later than December 1, 2014, the Department shall determine, based on the Survey, which drinking water supply wells the owner is required to sample and how frequently and for what period sampling is required. The Department shall require sampling for drinking water supply wells where data regarding groundwater quality and flow and depth in the area of any surveyed well provide a reasonable basis to predict that the quality of water from the surveyed well may be adversely impacted by constituents associated with the presence of the impoundment. No later than January 1, 2015, the owner shall initiate sampling and water quality analysis of the drinking water supply wells. A property owner may elect to have an independent third party selected from a laboratory certified by the Department's Wastewater/Groundwater Laboratory Certification program sample wells located on their property in lieu of sampling conducted by the owner of the coal combustion residuals surface impoundment. The owner of the coal combustion residuals surface impoundment shall pay for the reasonable costs of such sampling. Nothing in this subsection shall be construed to preclude or impair the right of any property owner to refuse such sampling of wells on their property. If the sampling and water quality analysis indicates that water from a drinking water supply well exceeds groundwater quality standards for constituents associated with the presence of the impoundment, the owner shall replace the contaminated drinking water supply well with an alternate supply of potable drinking water. The alternate supply of potable drinking water shall be supplied within 30 days of the Department's determination that there is an exceedance of groundwater quality standards attributable to constituents associated with the presence of the impoundment. The requirement to replace a contaminated drinking water supply well with an alternate supply of potable drinking water set out in this subsection is in addition to any other requirements to replace a contaminated drinking water supply well with an alternate supply of potable drinking water applicable to the owners of coal combustion residuals surface impoundments.

(d) Reporting. – In addition to any other reporting required by the Department, the owner of a coal combustion residuals surface impoundment shall submit an annual Groundwater Protection and Restoration Report to the Department no later than January 31 of each year. The Report shall include a summary of all groundwater monitoring, protection, and restoration activities related to the impoundment for the preceding year, including the status of the Groundwater Assessment Plan, the Groundwater Assessment Report, the Groundwater Corrective Action Plan, the Drinking Water Supply Well Survey, and the replacement of any

contaminated drinking water supply wells. The owner of a coal combustion residuals surface impoundment shall also submit all information required to be submitted to the Department pursuant to this section to the Coal Ash Management Commission.

"**§ 130A-309.210. Identification, assessment, and correction of unpermitted discharges.**

(a) Identification of Unpermitted Discharges from Coal Combustion Residuals Surface Impoundments to the Surface Waters of the State. –

(1) The owner of a coal combustion residuals surface impoundment shall identify all unpermitted discharges from the impoundment to the surface waters of the State as provided in this subsection. The requirements for identifying all unpermitted discharges from an impoundment set out in this subsection are in addition to any other requirements for identifying unpermitted discharges applicable to the owners of coal combustion residuals surface impoundments.

(2) No later than December 31, 2014, the owner of a coal combustion residuals surface impoundment shall submit a topographic map that identifies the location of all: (i) outfalls from engineered channels designed or improved for the purpose of collecting water from the toe of the impoundment to the Department; and (ii) seeps discharging from the impoundment that are not captured by engineered channels designed or improved for the purpose of collecting water from the toe of the impoundment to the Department. The topographic map shall comply with all of the following:

a. Be at a scale as required by the Department.

b. Specify the latitude and longitude of each toe drain outfall and each seep.

c. Specify whether the discharge from each toe drain outfall and each seep is continuous or intermittent.

d. Provide an average flow measurement of the discharge from each toe drain outfall and each seep, including a description of the method used to measure average flow.

e. Specify whether the discharge from each toe drain outfall and seep identified reaches the surface waters of the State. If the discharge from a toe drain outfall or seep reaches the surface waters of the State, the map shall specify the latitude and longitude of where the discharge reaches the surface waters of the State.

f. Any other information related to the topographic map required by the Department.

(b) Assessment of Unpermitted Discharges from Coal Combustion Residuals Surface Impoundments to the Surface Waters of the State. – The owner of a coal combustion residuals surface impoundment shall conduct an assessment of unpermitted discharges from the coal combustion residuals surface impoundment to the surface waters of the State as provided in this subsection. The requirements for assessment of unpermitted discharges from the coal combustion residuals surface impoundment to the surface waters of the State set out in this subsection are in addition to any other requirements for the assessment of unpermitted discharges from coal combustion residuals surface impoundments to surface waters of the State applicable to the owners of coal combustion residuals surface impoundments.

(1) No later than December 31, 2014, the owner of a coal combustion residuals surface impoundment shall submit a proposed Unpermitted Discharge Assessment Plan to the Department. The Unpermitted Discharge Assessment Plan shall include information sufficient to allow the Department to determine whether any unpermitted discharge, including a discharge from a toe drain outfall or seep, has reached the surface waters of the State and has

caused a violation of surface water quality standards. The Unpermitted Discharge Assessment Plan shall include, at a minimum, all of the following:

a. Upstream and downstream sampling locations within all channels that could potentially carry a discharge.

b. A description of the surface water quality analyses that will be performed.

c. A sampling schedule, including the frequency and duration of sampling activities.

d. Reporting requirements.

e. Any other information related to the assessment of unpermitted discharges required by the Department.

(2) The Department shall approve the Unpermitted Discharge Assessment Plan if it determines that the Plan complies with the requirements of this subsection and will be sufficient to protect public health, safety, and welfare; the environment; and natural resources.

(3) No later than 30 days from the approval of the Unpermitted Discharge Assessment Plan, the owner shall begin implementation of the Plan in accordance with the Plan's schedule.

(c) Corrective Action to Prevent Unpermitted Discharges from Coal Combustion Residuals Surface Impoundments to the Surface Waters of the State. – The owner of a coal combustion residuals surface impoundment shall implement corrective action to prevent unpermitted discharges from the coal combustion residuals surface impoundment to the surface waters of the State as provided in this subsection. The requirements for corrective action to prevent unpermitted discharges from coal combustion residuals surface impoundments to the surface waters of the State set out in this subsection are in addition to any other requirements for corrective action to prevent unpermitted discharges from coal combustion residuals surface impoundments to the surface waters of the State applicable to the owners of coal combustion residuals surface impoundments.

(1) If the Department determines, based on surface water quality sampling information provided in an Unpermitted Discharge Assessment Plan submitted pursuant to subsection (b) of this section, that an unpermitted discharge from a coal combustion residuals surface impoundment, including a discharge from a toe drain outfall or seep, has violated State or federal surface water quality standards, the Department shall notify the owner of the impoundment of its determination.

(2) No later than 30 days from the notification of violation, the owner of the coal combustion residuals surface impoundment shall submit a proposed Unpermitted Discharge Corrective Action Plan to the Department for its review and approval. The proposed Unpermitted Discharge Corrective Action Plan shall include, at a minimum, all of the following:

a. One of the following methods of proposed corrective action:

1. Elimination of the unpermitted discharge.

2. Capture and rerouting of the unpermitted discharge through a permitted outfall.

3. Implementation of best management practices to prevent the unpermitted discharge.

4. Application for a National Pollutant Discharge Elimination System (NPDES) permit amendment to bring the unpermitted discharge under permit regulations.

b. A detailed explanation of the reasons for selecting the method of corrective action.
c. Specific plans, including engineering details, to prevent the unpermitted discharge.
d. A schedule for implementation of the Plan.
e. A monitoring plan for evaluating the effectiveness of the proposed corrective action.
f. Any other information related to the correction of unpermitted discharges required by the Department.

(3) The Department shall approve the Unpermitted Discharge Corrective Action Plan if it determines that the Plan complies with the requirements of this subsection and will be sufficient to protect public health, safety, and welfare; the environment; and natural resources.

(4) No later than 30 days from the approval of the Unpermitted Discharge Corrective Action Plan, the owner shall begin implementation of the Plan in accordance with the Plan's schedule.

(d) Identification of New Unpermitted Discharges. – No later than August 1, 2014, the owner of a coal combustion residuals surface impoundment shall submit a proposed Plan for the Identification of New Unpermitted Discharges to the Department for its review and approval as provided in this subsection.

(1) The proposed Plan for the Identification of New Unpermitted Discharges shall include, at a minimum, all of the following:
a. A procedure for routine inspection of the coal combustion residuals surface impoundment to identify indicators of potential new unpermitted discharges, including toe drain outfalls and seeps.
b. A procedure for determining whether a new unpermitted discharge is actually present.
c. A procedure for notifying the Department when a new unpermitted discharge is confirmed.
d. Any other information related to the identification of new unpermitted discharges required by the Department.

(2) The Department shall approve the Plan for the Identification of New Unpermitted Discharges if it determines that the Plan complies with the requirements of this subsection and will be sufficient to protect public health, safety, and welfare; the environment; and natural resources.

(3) No later than 30 days from the approval of the Plan for the Identification of New Unpermitted Discharges, the owner shall begin implementation of the Plan in accordance with the Plan.

(e) Reporting. – In addition to any other reporting required by the Department, the owner of a coal combustion residuals surface impoundment shall submit an annual Surface Water Protection and Restoration Report to the Department no later than January 31 of each year. The Report shall include a summary of all surface water sampling, protection, and restoration activities related to the impoundment for the preceding year, including the status of the identification, assessment, and correction of unpermitted discharges from coal combustion residuals surface impoundments to the surface waters of the State. The owner of a coal combustion residuals surface impoundment shall also submit all information required to be submitted to the Department pursuant to this section to the Coal Ash Management Commission.

"**§ 130A-309.211. Prioritization of coal combustion residuals surface impoundments.**

(a) As soon as practicable, but no later than August 1, 2015, the Department shall develop proposed classifications for all coal combustion residuals surface impoundments,

including active and retired sites, for the purpose of closure and remediation based on these sites' risks to public health, safety, and welfare; the environment; and natural resources and shall determine a schedule for closure and required remediation that is based on the degree of risk to public health, safety, and welfare; the environment; and natural resources posed by the impoundments and that gives priority to the closure and required remediation of impoundments that pose the greatest risk. In assessing the risk, the Department shall evaluate information received pursuant to G.S. 130A-309.209 and G.S. 130A-309.210 and any other information deemed relevant and, at a minimum, consider all of the following:

(1) Any imminent hazards to public health, safety, or welfare resulting from the impoundment.

(2) Structural condition and hazard potential of the impoundment.

(3) The proximity of surface waters to the impoundment and whether any surface waters are contaminated or imminently threatened by contamination as a result of the impoundment.

(4) Information concerning the horizontal and vertical extent of soil and groundwater contamination for all contaminants confirmed to be present in groundwater in exceedance of groundwater quality standards and all significant factors affecting contaminant transport.

(5) The location and nature of all receptors and significant exposure pathways.

(6) The geological and hydrogeological features influencing the movement and chemical and physical character of the contaminants.

(7) Amount and characteristics of coal combustion residuals in the impoundment.

(8) Any other factor the Department deems relevant to establishment of risk.

(b) The Department shall issue a proposed classification for each coal combustion residuals surface impoundment based upon the assessment conducted pursuant to subsection (a) of this section as high-risk, intermediate-risk, or low-risk. Within 30 days after a proposed classification has been issued, the Department shall issue a written declaration, including findings of fact, documenting the proposed classification. The Department shall provide for public participation on the proposed risk classification as follows:

(1) The Department shall make copies of the written declaration issued pursuant to this subsection available for inspection as follows:

a. A copy of the declaration shall be provided to the local health director.

b. A copy of the declaration shall be provided to the public library located in closest proximity to the site in the county or counties in which the site is located.

c. The Department shall post a copy of the declaration on the Department's Web site.

d. The Department may place copies of the declaration in other locations so as to assure the availability thereof to the public.

(2) Before issuing a proposed classification of an impoundment as high-risk, intermediate-risk, or low-risk, the Department shall give notice of the written declaration issued pursuant to this subsection as follows:

a. A notice and summary of the declaration shall be published weekly for a period of three consecutive weeks in a newspaper having general circulation in the county or counties where the site is located.

b. Notice of the written declaration shall be given by first-class mail to persons who have requested such notice. Such notice shall include a summary of the written declaration and state the locations where a copy of the written declaration is available for inspection. The

Department shall maintain a mailing list of persons who request notice pursuant to this section.

c. Notice of the written declaration shall be given by electronic mail to persons who have requested such notice. Such notice shall include a summary of the written declaration and state the locations where a copy of the written declaration is available for inspection. The Department shall maintain a mailing list of persons who request notice pursuant to this section.

(3) No later than 60 days after issuance of the written declaration, the Department shall conduct a public meeting in the county or counties in which the site is located to explain the written declaration to the public. The Department shall give notice of the hearing at least 15 days prior to the date thereof by all of the following methods:

a. Publication as provided in subdivision (1) of this subsection, with first publication to occur not less than 30 days prior to the scheduled date of the hearing.

b. First-class mail to persons who have requested notice as provided in subdivision (2) of this subsection.

c. Electronic mail to persons who have requested notice as provided in subdivision (2) of this subsection.

(4) At least 30 days from the latest date on which notice is provided pursuant to subdivision (2) of this subsection shall be allowed for the receipt of written comment on the written declaration prior to issuance of a final risk classification. At least 20 days will be allowed for receipt of written comment following a hearing conducted pursuant to subdivision (3) of this subsection prior to issuance of a final risk classification.

(c) Within 30 days of the receipt of all written comment as required by subdivision (4) of subsection (b) of this section, the Department shall submit a proposed classification for a coal combustion residuals surface impoundment to the Coal Ash Management Commission established pursuant to G.S. 130A-309.202. The Commission shall evaluate all information submitted in accordance with this Part related to the proposed classification and any other information the Commission deems relevant. The Commission shall only approve the proposed classification if it determines that the classification was developed in accordance with this section and that the classification accurately reflects the level of risk posed by the coal combustion residuals surface impoundment. The Commission shall issue its determination in writing, including findings in support of its determination. If the Commission fails to act on a proposed classification within 60 days of receipt of the proposed classification, the proposed classification shall be deemed approved. Parties aggrieved by a final decision of the Commission pursuant to this subsection may appeal the decision as provided under Article 4 of Chapter 150B of the General Statutes.

"**§ 130A-309.212. Closure of coal combustion residuals surface impoundments.**

(a) An owner of a coal combustion residuals surface impoundment shall submit a proposed Coal Combustion Residuals Surface Impoundment Closure Plan for the Department's approval. If corrective action to restore groundwater has not been completed pursuant to the requirements of G.S. 130A-309.209(b), the proposed closure plan shall include provisions for completion of activities to restore groundwater in conformance with the requirements of Subchapter L of Chapter 2 of Title 15A of the North Carolina Administrative Code. In addition, the following requirements, at a minimum, shall apply to such plans:

(1) High-risk impoundments shall be closed as soon as practicable, but no later than December 31, 2019. A proposed closure plan for such impoundments must be submitted as soon as practicable, but no later than December 31,

2016. At a minimum, such impoundments shall be dewatered, and the owner of an impoundment shall either:

a. Convert the coal combustion residuals impoundment to an industrial landfill, as that term is defined by this Article, by removing all coal combustion residuals from the impoundment temporarily, safely storing the residuals on-site, and complying with the siting and design requirements for disposal sites established by Section .0503 of Subchapter B of Chapter 13 of Title 15A of the North Carolina Administrative Code, except with respect to those requirements that pertain to buffers. In lieu of the buffer requirement established by Section .0503(f)(2)(iii) of Subchapter B of Chapter 13 of Title 15A of the North Carolina Administrative Code, the owner of the impoundment shall establish and maintain a 300-foot buffer between streams and rivers and disposal areas. After the temporarily displaced coal combustion residuals have been returned for disposal in the industrial landfill constructed pursuant to the requirements of this sub-subdivision, the owner of the landfill shall comply with the closure and post-closure requirements established by Section .1627 of Subchapter B of Chapter 13 of Title 15A of the North Carolina Administrative Code. A landfill constructed pursuant to this sub-subdivision shall otherwise be subject to all applicable requirements of this Chapter and rules adopted thereunder. Prior to closure, the Department may allow the disposal of coal combustion residuals, in addition to those originally contained in the impoundment, to the landfill constructed pursuant to this sub-subdivision, if the Department determines that the site is suitable for additional capacity and that disposal of additional coal combustion residuals will not pose an unacceptable risk to public health, safety, welfare; the environment; and natural resources.

b. Remove all coal combustion residuals from the impoundment, return the former impoundment to a nonerosive and stable condition, and (i) transfer the coal combustion residuals for disposal in a coal combustion residuals landfill, industrial landfill, or municipal solid waste landfill or (ii) use the coal combustion products in a structural fill or other beneficial use as allowed by law. The use of coal combustion products (i) as structural fill shall be conducted in accordance with the requirements Subpart 3 of this Part and (ii) for other beneficial uses shall be conducted in accordance with the requirements of 15A NCAC 13B .1701, et seq., (Requirements for Beneficial Use of Coal Combustion By-Products).

(2) Intermediate-risk impoundments shall be closed as soon as practicable, but no later than December 31, 2024. A proposed closure plan for such impoundments must be submitted as soon as practicable, but no later than December 31, 2017. At a minimum, such impoundments shall be dewatered, and the owner of an impoundment shall close the impoundment in any manner allowed pursuant to subdivision (1) of this subsection.

(3) Low-risk impoundments shall be closed as soon as practicable, but no later than December 31, 2029. A proposed closure plan for such impoundments must be submitted as soon as practicable, but no later than December 31, 2018. Such impoundments shall be dewatered. The Department shall require such sites to comply with the closure and post-closure requirements

established by Section .1627 of Subchapter B of Chapter 13 of Title 15A of the North Carolina Administrative Code. The Department may require implementation of any other measure it deems necessary to protect public health, safety, and welfare; the environment; and natural resources, including imposition of institutional controls that are sufficient to protect public health, safety, and welfare; the environment; and natural resources.

(4) Closure Plans for all impoundments shall include all of the following:

a. Facility and coal combustion residuals surface impoundment description. – A description of the operation of the site that shall include, at a minimum, all of the following:

1. Site history and history of site operations, including details on the manner in which coal combustion residuals have been stored and disposed of historically.
2. Estimated volume of material contained in the impoundment.
3. Analysis of the structural integrity of dikes or dams associated with impoundment.
4. All sources of discharge into the impoundment, including volume and characteristics of each discharge.
5. Whether the impoundment is lined, and, if so, the composition thereof.
6. A summary of all information available concerning the impoundment as a result of inspections and monitoring conducted pursuant to this Part and otherwise available.

b. Site maps, which, at a minimum, illustrate all of the following:

1. All structures associated with the operation of any coal combustion residuals surface impoundment located on the site. For purposes of this sub-subdivision, the term "site" shall mean the land or waters within the property boundary of the applicable electric generating station.
2. All current and former coal combustion residuals disposal and storage areas on the site, including details concerning coal combustion residuals produced historically by the electric generating station and disposed of through transfer to structural fills.
3. The property boundary for the applicable site, including established compliance boundaries within the site.
4. All potential receptors within 2,640 feet from established compliance boundaries.
5. Topographic contour intervals of the site shall be selected to enable an accurate representation of site features and terrain and in most cases should be less than 20-foot intervals.
6. Locations of all sanitary landfills permitted pursuant to this Article on the site, which are actively receiving waste or are closed, as well as the established compliance boundaries and components of associated groundwater and surface water monitoring systems.
7. All existing and proposed groundwater monitoring wells associated with any coal combustion residuals surface impoundment on the site.

8. All existing and proposed surface water sample collection locations associated with any coal combustion residuals surface impoundment on the site.

c. The results of a hydrogeologic, geologic, and geotechnical investigation of the site, including, at a minimum, all of the following:

1. A description of the hydrogeology and geology of the site.
2. A description of the stratigraphy of the geologic units underlying each coal combustion residuals surface impoundment located on the site.
3. The saturated hydraulic conductivity for (i) the coal combustion residuals within any coal combustion residuals surface impoundment located on the site and (ii) the saturated hydraulic conductivity of any existing liner installed at an impoundment, if any.
4. The geotechnical properties for (i) the coal combustion residuals within any coal combustion residuals surface impoundment located on the site, (ii) the geotechnical properties of any existing liner installed at an impoundment, if any, and (iii) the uppermost identified stratigraphic unit underlying the impoundment, including the soil classification based upon the Unified Soil Classification System, in-place moisture content, particle size distribution, Atterberg limits, specific gravity, effective friction angle, maximum dry density, optimum moisture content, and permeability.
5. A chemical analysis of the coal combustion residuals surface impoundment, including water, coal combustion residuals, and coal combustion residuals-affected soil.
6. Identification of all substances with concentrations determined to be in excess of the groundwater quality standards for the substance established by Subchapter L of Chapter 2 of Title 15A of the North Carolina Administrative Code, including all laboratory results for these analyses.
7. Summary tables of historical records of groundwater sampling results.
8. A map that illustrates the potentiometric contours and flow directions for all identified aquifers underlying impoundments (shallow, intermediate, and deep) and the horizontal extent of areas where groundwater quality standards established by Subchapter L of Chapter 2 of Title 15A of the North Carolina Administrative Code for a substance are exceeded.
9. Cross-sections that illustrate the following: the vertical and horizontal extent of the coal combustion residuals within an impoundment; stratigraphy of the geologic units underlying a impoundment; and the vertical extent of areas where groundwater quality standards established by Subchapter L of Chapter 2 of Title 15A of the North Carolina Administrative Code for a substance are exceeded.

d. The results of groundwater modeling of the site that shall include, at a minimum, all of the following:

1. An account of the design of the proposed Closure Plan that is based on the site hydrogeologic conceptual model developed and includes (i) predictions on post-closure groundwater elevations and groundwater flow directions and velocities, including the effects on and from the potential receptors, and (ii) predictions at the compliance boundary for substances with concentrations determined to be in excess of the groundwater quality standards for the substance established Subchapter L of Chapter 2 of Title 15A of the North Carolina Administrative Code.
2. Predictions that include the effects on the groundwater chemistry and should describe migration, concentration, mobilization, and fate for substances with concentrations determined to be in excess of the groundwater quality standards for the substance established by Subchapter L of Chapter 2 of Title 15A of the North Carolina Administrative Code pre- and post-closure, including the effects on and from potential receptors.
3. A description of the groundwater trend analysis methods used to demonstrate compliance with groundwater quality standards for the substance established by Subchapter L of Chapter 2 of Title 15A of the North Carolina Administrative Code and requirements for corrective action of groundwater contamination established by Subchapter L of Chapter 2 of Title 15A of the North Carolina Administrative Code.

e. A description of any plans for beneficial use of the coal combustion residuals in compliance with the requirements of Section .1200 of Subchapter T of Chapter 2 of Title 15A of the North Carolina Administrative Code and Section .1700 of Subchapter B of Chapter 13 of Title 15A of the North Carolina Administrative Code.

f. All engineering drawings, schematics, and specifications for the proposed Closure Plan. If required by Chapter 89C of the General Statutes, engineering design documents should be prepared, signed, and sealed by a professional engineer.

g. A description of the construction quality assurance and quality control program to be implemented in conjunction with the Closure Plan, including the responsibilities and authorities for monitoring and testing activities, sampling strategies, and reporting requirements.

h. A description of the provisions for disposal of wastewater and management of stormwater and the plan for obtaining all required permits.

i. A description of the provisions for the final disposition of the coal combustion residuals. If the coal combustion residuals are to be removed, the owner must (i) identify the location and permit number for the coal combustion residuals landfills, industrial landfills, or municipal solid waste landfills in which the coal combustion residuals will be disposed and (ii) in the case where the coal combustion residuals are planned for beneficial use, the location and manner in which the residuals will be temporarily stored. If the coal combustion residuals are to be left in the impoundment, the owner must (i) in the case of closure pursuant to sub-subdivision (a)(1)a. of

this section, provide a description of how the ash will be stabilized prior to completion of closure in accordance with closure and post-closure requirements established by Section .1627 of Subchapter B of Chapter 13 of Title 15A of the North Carolina Administrative Code and (ii) in the case of closure pursuant to sub-subdivision (a)(1)b. of this section, provide a description of how the ash will be stabilized pre- and post-closure. If the coal combustion residuals are to be left in the impoundment, the owner must provide an estimate of the volume of coal combustion residuals remaining.

j. A list of all permits that will need to be acquired or modified to complete closure activities.

k. A description of the plan for post-closure monitoring and care for an impoundment for a minimum of 30 years. The length of the post-closure care period may be (i) proposed to be decreased or the frequency and parameter list modified if the owner demonstrates that the reduced period or modifications are sufficient to protect public health, safety, and welfare; the environment; and natural resources and (ii) increased by the Department at the end of the post-closure monitoring and care period if there are statistically significant increasing groundwater quality trends or if contaminant concentrations have not decreased to a level protective of public health, safety, and welfare; the environment; and natural resources. If the owner determines that the post-closure care monitoring and care period is no longer needed and the Department agrees, the owner shall provide a certification, signed and sealed by a professional engineer, verifying that post-closure monitoring and care has been completed in accordance with the post-closure plan. If required by Chapter 89C of the General Statutes, the proposed plan for post-closure monitoring and care should be signed and sealed by a professional engineer. The plan shall include, at a minimum, all of the following:

1. A demonstration of the long-term control of all leachate, affected groundwater, and stormwater.
2. A description of a groundwater monitoring program that includes (i) post-closure groundwater monitoring, including parameters to be sampled and sampling schedules; (ii) any additional monitoring well installations, including a map with the proposed locations and well construction details; and (iii) the actions proposed to mitigate statistically significant increasing groundwater quality trends.

l. An estimate of the milestone dates for all activities related to closure and post-closure.

m. A description of the anticipated future use of the site and the necessity for the implementation of institutional controls following closure, including property use restrictions, and requirements for recordation of notices documenting the presence of contamination, if applicable, or historical site use.

(b) The Department shall review a proposed Coal Combustion Residuals Surface Impoundment Closure Plan for consistency with the minimum requirements set forth in subsection (a) of this section and whether the proposed Closure Plan is protective of public health, safety, and welfare; the environment; and natural resources and otherwise complies with

the requirements of this Part. Prior to issuing a decision on a proposed Closure Plan, the Department shall provide for public participation on the proposed Closure Plan as follows:

(1) The Department shall make copies of the proposed Closure Plan available for inspection as follows:

a. A copy of the proposed Closure Plan shall be provided to the local health director.

b. A copy of the proposed Closure Plan shall be provided to the public library located in closest proximity to the site in the county or counties in which the site is located.

c. The Department shall post a copy of the proposed Closure Plan on the Department's Web site.

d. The Department may place copies of the proposed Closure Plan in other locations so as to assure the availability thereof to the public.

(2) Before approving a proposed Closure Plan, the Department shall give notice as follows:

a. A notice and summary of the proposed Closure Plan shall be published weekly for a period of three consecutive weeks in a newspaper having general circulation in the county or counties where the site is located.

b. Notice that a proposed Closure Plan has been developed shall be given by first-class mail to persons who have requested such notice. Such notice shall include a summary of the proposed Closure Plan and state the locations where a copy of the proposed Closure Plan is available for inspection. The Department shall maintain a mailing list of persons who request notice pursuant to this section.

c. Notice that a proposed Closure Plan has been developed shall be given by electronic mail to persons who have requested such notice. Such notice shall include a summary of the proposed Closure Plan and state the locations where a copy of the proposed Closure Plan is available for inspection. The Department shall maintain a mailing list of persons who request notice pursuant to this section.

(3) No later than 60 days after receipt of a proposed Closure Plan, the Department shall conduct a public meeting in the county or counties in which the site is located to explain the proposed Closure Plan and alternatives to the public. The Department shall give notice of the hearing at least 30 days prior to the date thereof by all of the following methods:

a. Publication as provided in subdivision (1) of this subsection, with first publication to occur not less than 30 days prior to the scheduled date of the hearing.

b. First-class mail to persons who have requested notice as provided in subdivision (2) of this subsection.

c. Electronic mail to persons who have requested notice as provided in subdivision (2) of this subsection.

(4) At least 30 days from the latest date on which notice is provided pursuant to subdivision (2) of this subsection shall be allowed for the receipt of written comment on the proposed Closure Plan prior to its approval. At least 20 days will be allowed for receipt of written comment following a hearing conducted pursuant to subdivision (3) of this subsection prior to the approval of the proposed Closure Plan.

(c) The Department shall disapprove a proposed Coal Combustion Residuals Surface Impoundment Closure Plan unless the Department finds that the Closure Plan is protective of

public health, safety, and welfare; the environment; and natural resources and otherwise complies with the requirements of this Part. The Department shall provide specific findings to support its decision to approve or disapprove a proposed Closure Plan. If the Department disapproves a proposed Closure Plan, the person who submitted the Closure 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 Closure Plan within 120 days after a complete Closure Plan has been submitted, the person who submitted the proposed Closure Plan may treat the Closure Plan as having been disapproved at the end of that time period. The Department may require a person who proposes a Closure Plan to supply any additional information necessary for the Department to approve or disapprove the Closure Plan.

(d) Within 30 days of its approval of a Coal Combustion Residuals Surface Impoundment Closure Plan, the Department shall submit the Closure Plan to the Coal Ash Management Commission. The Commission shall evaluate all information submitted in accordance with this Part related to the Closure Plan and any other information the Commission deems relevant. The Commission shall only approve the Closure Plan if it determines that the Closure Plan was developed in accordance with this section; that implementation of the Closure Plan according to the Closure Plan's schedule is technologically feasible; and that the benefits to public health, safety, and welfare; the environment; and natural resources outweigh the negative impacts on electricity costs and reliability. The Commission shall issue its determination in writing, including findings in support of its determination. If the Commission fails to act on a Closure Plan within 60 days of receipt of the Closure Plan, the Closure Plan shall be deemed approved. Parties aggrieved by a final decision of the Commission pursuant to this subsection may appeal the decision as provided under Article 4 of Chapter 150B of the General Statutes.

(e) As soon as practicable, but no later than 60 days after a Coal Combustion Residuals Surface Impoundment Closure Plan has been approved by the Coal Ash Management Commission, the owner of the coal combustion residuals impoundment shall begin implementation of the approved plan. Modifications to an approved closure plan may only be allowed in conformance with the requirements of this Part, upon written request of an owner of an impoundment, with the written approval of the Department, and after public notice of the change in accordance with the requirements of subdivision (2) of subsection (b) of this section.

(f) Nothing in this section shall be construed to obviate the need for sampling, remediation, and monitoring activities at the site as required by G.S. 130A-309.209 and G.S. 130A-309.310.

"Subpart 3. Use of Coal Combustion Products in Structural Fill.

"**§ 130A-309.213. Applicability.**

The provisions of this Subpart shall apply to the siting, design, construction, operation, and closure of projects that utilize coal combustion products for structural fill.

"**§ 130A-309.214. Permit requirements for projects using coal combustion products for structural fill.**

(a) Permit Requirements. –

(1) Projects using coal combustion products as structural fill involving the placement of less than 10,000 tons of coal combustion products per acre or less than 100,000 tons of coal combustion products in total per project, which proceed in compliance with the requirements of this section and rules adopted thereunder, are deemed permitted. Any person proposing such a project shall submit an application for a permit to the Department upon such form as the Department may prescribe including, at a minimum, the information set forth in subdivision (1) of subsection (b) of this section.

(2) No person shall commence or operate a project using coal combustion residuals as structural fill involving the placement of 10,000 or more tons of

coal combustion products per acre or 100,000 or more tons of coal combustion products in total per project without first receiving an individual permit from the Department. Any person proposing such a project shall submit an application for a permit to the Department upon such form as the Department may prescribe including, at a minimum, the information set forth in subdivisions (1) and (2) of subsection (b) of this section.

(b) Information to Be Provided to the Department. – At least 60 days before initiation of a proposed project using coal combustion products as structural fill, the person proposing the project shall submit all of the following information to the Department on a form as prescribed by the Department:

(1) For projects involving placement of less than 10,000 tons of coal combustion products per acre or less than 100,000 tons of coal combustion products in total per project, the person shall provide, at a minimum, the following information:

a. The description of the nature, purpose, and location of the project.

b. The estimated start and completion dates for the project.

c. An estimate of the volume of coal combustion products to be used in the project.

d. A Toxicity Characteristic Leaching Procedure analysis from a representative sample of each different coal combustion product's source to be used in the project for, at a minimum, all of the following constituents: arsenic, barium, cadmium, lead, chromium, mercury, selenium, and silver.

e. A signed and dated statement by the owner of the land on which the structural fill is to be placed, acknowledging and consenting to the use of coal combustion products as structural fill on the property and agreeing to record the fill in accordance with the requirements of G.S. 130A-390.218.

f. The name, address, and contact information for the generator of the coal combustion products.

g. Physical location of the project at which the coal combustion products were generated.

(2) For projects involving placement of 10,000 or more tons of coal combustion products per acre or 100,000 or more tons of coal combustion products in total per project, the person shall provide all information required pursuant to subdivision (1) of this subsection and shall provide construction plans for the project, including a stability analysis as the Department may require. If required by the Department, a stability analysis shall be prepared, signed, and sealed by a professional engineer in accordance with sound engineering practices. A construction plan shall, at a minimum, include a groundwater monitoring system and an encapsulation liner system in compliance with the requirements of G.S. 130A-309.215.

"**§ 130A-309.215. Design requirements for projects using coal combustion products for structural fill.**

(a) Design, Construction, and Operation of Structural Fill Sites. –

(1) A structural fill site must be designed, constructed, operated, closed, and maintained in such a manner as to minimize the potential for harmful release of constituents of coal combustion residuals to the environment or create a nuisance to the public.

(2) Coal combustion products shall be collected and transported in a manner that will prevent nuisances and hazards to public health and safety. Coal

combustion products shall be moisture conditioned, as necessary, and transported in covered trucks to prevent dusting.

(3) Coal combustion products shall be placed uniformly and compacted in lifts not exceeding one foot in thickness and shall be compacted to standards, including in-situ density, compaction effort, and relative density, specified by a registered professional engineer for a specific end-use purpose.

(4) Equipment shall be provided which is capable of placing and compacting the coal combustion products and handling the earthwork required during the periods that coal combustion products are received at the fill project.

(5) The coal combustion product structural fill project shall be effectively maintained and operated as a nondischarge system to prevent discharge to surface water resulting from the project.

(6) The coal combustion product structural fill project shall be effectively maintained and operated to ensure no violations of groundwater standards adopted by the Commission pursuant to Article 21 of Chapter 143 of the General Statutes due to the project.

(7) Surface waters resulting from precipitation shall be diverted away from the active coal combustion product placement area during filling and construction activity.

(8) Site development shall comply with the North Carolina Sedimentation Pollution Control Act of 1973, as amended.

(9) The structural fill project shall be operated with sufficient dust control measures to minimize airborne emissions and to prevent dust from creating a nuisance or safety hazard and shall not violate applicable air quality regulations.

(10) Coal combustion products utilized on an exterior slope of a structural fill shall not be placed with a slope greater than 3.0 horizontal to 1.0 vertical.

(11) Compliance with this subsection shall not insulate any of the owners or operators of a structural fill project from claims for damages to surface waters, groundwater, or air resulting from the operation of the structural fill project. If the project fails to comply with the requirements of this section, the constructor, generator, owner, or operator shall notify the Department and shall take any immediate corrective action as may be required by the Department.

(b) Liners, Leachate Collection System, Cap, and Groundwater Monitoring System Required for Large Structural Fills. – For projects involving placement of 10,000 or more tons of coal combustion products per acre or 100,000 or more tons of coal combustion products in total per project shall have an encapsulation liner system. The encapsulation liner system shall be constructed on and around the structural fill and shall be designed to efficiently contain, collect, and remove leachate generated by the coal combustion products, as well as separate the coal combustion products from any exposure to surrounding environs. At a minimum, the components of the liner system shall consist of the following:

(1) A base liner. The base liner shall consist of one of the following designs:

a. A composite liner utilizing a compacted clay liner. This composite liner is one liner that consists of two components: a geomembrane liner installed above and in direct and uniform contact with a compacted clay liner with a minimum thickness of 24 inches (0.61 m) and a permeability of no more than 1.0×10^{-7} centimeters per second.

b. A composite liner utilizing a geosynthetic clay liner. This composite liner is one liner that consists of three components: a geomembrane

liner installed above and in uniform contact with a geosynthetic clay liner overlying a compacted clay liner with a minimum thickness of 18 inches (0.46 m) and a permeability of no more than 1.0 X 10^{-5} centimeters per second.

(2) A leachate collection system, which is constructed directly above the base liner and shall be designed to effectively collect and remove leachate from the project.

(3) A cap liner, which shall consist of two components: a geomembrane liner installed across the limits of the coal combustion products covered with a minimum thickness of 24 inches (0.61 m) compacted earth, and a permeability of no more than 1.0 X 10^{-7} centimeters per second, and an additional surface six inches of soil capable of supporting native plant growth.

(4) A groundwater monitoring system, which shall be approved by the Department and, at a minimum, consist of all of the following:

a. A sufficient number of wells, installed at appropriate locations and depths, to yield groundwater samples from the uppermost aquifer that represent the quality of groundwater passing the relevant point of compliance as approved by the Department. A downgradient monitoring system shall be installed at the relevant point of compliance so as to ensure detection of groundwater contamination in the uppermost aquifer.

b. A proposed monitoring plan, which shall be certified by a licensed geologist or professional engineer to be effective in providing early detection of any release of hazardous constituents from any point in a structural fill or leachate surface impoundment to the uppermost aquifer, so as to be protective of public health, safety, and welfare; the environment; and natural resources.

c. A groundwater monitoring program, which shall include consistent sampling and analysis procedures that are designed to ensure monitoring results that provide an accurate representation of groundwater quality at the background and downgradient wells. Monitoring shall be conducted through construction and the post-closure care period. The sampling procedures and frequency shall be protective of public health, safety, and welfare; the environment; and natural resources.

d. A detection monitoring program for all Appendix I constituents. For purposes of this subdivision, the term "Appendix I" means Appendix I to 40 C.F.R. Part 258, "Appendix I Constituents for Detection Monitoring," including subsequent amendments and editions.

e. An assessment monitoring program and corrective action plan if one or more of the constituents listed in Appendix I is detected in exceedance of a groundwater protection standard.

"**§ 130A-309.216. Financial assurance requirements for large projects using coal combustion products for structural fill.**

(a) For projects involving placement of 10,000 or more tons of coal combustion products per acre or 100,000 or more tons of coal combustion products in total per project, the applicant for a permit or a permit holder to construct or operate a structural fill shall establish financial assurance that will ensure that sufficient funds are available for facility closure, post-closure maintenance and monitoring, any corrective action that the Department may require, and to satisfy any potential liability for sudden and nonsudden accidental occurrences,

and subsequent costs incurred by the Department in response to an incident at a structural fill project, even if the applicant or permit holder becomes insolvent or ceases to reside, be incorporated, do business, or maintain assets in the State.

(b) To establish sufficient availability of funds under this section, the applicant for a permit or a permit holder may use insurance, financial tests, third-party guarantees by persons who can pass the financial test, guarantees by corporate parents who can pass the financial test, irrevocable letters of credit, trusts, surety bonds, or any other financial device, 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.

(c) The applicant for a permit or a permit holder, and any parent, subsidiary, or other affiliate of the applicant, permit holder, or parent, including any joint venturer with a direct or indirect interest in the applicant, permit holder, or parent shall be a guarantor of payment for closure, post-closure maintenance and monitoring, any corrective action that the Department may require, and to satisfy any potential liability for sudden and nonsudden accidental occurrences arising from the operation of the hazardous waste facility.

(d) 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.

(e) The Department may provide a copy of any filing that an applicant for a permit or a permit holder submits to the Department to meet the financial responsibility requirements under this section to the State Treasurer. The State Treasurer shall review the filing and provide the Department with a written opinion as to the adequacy of the filing to meet the purposes of this section, including any recommended changes.

(f) In order to continue to hold a permit for a structural fill, a permit holder must maintain financial responsibility as required by this Part and must provide any information requested by the Department to establish that the permit holder continues to maintain financial responsibility.

(g) An applicant for a permit or a permit holder shall satisfy the Department that the applicant or permit holder has met the financial responsibility requirements of this Part before the Department is required to otherwise review the application.

"**§ 130A-309.217. Closure of projects using coal combustion products for structural fill.**

(a) Closure of Structural Fill Projects. –

(1) No later than 30 working days or 60 calendar days, whichever is less, after coal combustion product placement has ceased, the final cover shall be applied over the coal combustion product placement area.

(2) The final surface of the structural fill shall be graded and provided with drainage systems that do all of the following:

a. Minimize erosion of cover materials.

b. Promote drainage of area precipitation, minimize infiltration, and prevent ponding of surface water on the structural fill.

(3) Other erosion control measures, such as temporary mulching, seeding, or silt barriers shall be installed to ensure no visible coal combustion product migration to adjacent properties until the beneficial end use of the project is realized.

(4) The constructor or operator shall submit a certification to the Department signed and sealed by a registered professional engineer or signed by the Secretary of the Department of Transportation or his designee certifying that all requirements of this Subpart have been met. The report shall be submitted within 30 days of application of the final cover.

(b) Additional Closure and Post-Closure Requirements for Large Structural Fill Projects. – For projects involving placement of 10,000 or more tons of coal combustion products per acre or 100,000 or more tons of coal combustion products in total per project, a constructor or operator shall conduct post-closure care. Post-closure care shall be conducted for 20 years, which period may be increased by the Department upon a determination that a longer period is necessary to protect public health, safety, welfare; the environment; and natural resources, or decreased upon a determination that a shorter period is sufficient to protect public health, safety, welfare; the environment; and natural resources. Additional closure and post-closure requirements include, at a minimum, all of the following:

(1) Submit a written closure plan, which includes all of the following:

a. A description of the cap liner system and the methods and procedures used to install the cap that conforms to the requirement in G.S. 130A-309.215(b).

b. An estimate of the largest area of the structural fill project ever requiring the cap liner system at any time during the overall construction period that is consistent with the drawings prepared for the structural fill.

c. An estimate of the maximum inventory of coal combustion products ever on-site over the construction duration of the structural fill.

d. A schedule for completing all activities necessary to satisfy the closure criteria set forth in this section.

(2) Submit a written post-closure plan, which includes all of the following:

a. A description of the monitoring and maintenance activities required for the project and the frequency at which these activities must be performed.

b. The name, address, and telephone number of the person or office responsible for the project during the post-closure period.

c. A description of the planned uses of the property during the post-closure period. Post-closure use of the property must not disturb the integrity of the cap system, base liner system, or any other components of the containment system, or the function of the monitoring systems unless necessary to comply with the requirements of this subsection. The Department may approve disturbance if the constructor or operator demonstrates that disturbance of the cap system, base liner system, or other component of the containment system will not increase the potential threat to public health, safety, and welfare; the environment; and natural resources.

d. The cost estimate for post-closure activities required under this section.

(3) Maintain the integrity and effectiveness of any cap system, including repairing the system as necessary to correct the defects of settlement, subsidence, erosion, or other events and preventing run-on and runoff from eroding or otherwise damaging the cap system.

(4) Maintain and operate the leachate collection system as necessary to allow the coal combustion products to reach terminal moisture condition. Upon a satisfactory showing to the Department by the constructor or operator that the encapsulating liner system has eliminated any recharge sources, and contact water and leachate generation has ceased and no longer poses a threat to public health, safety, and welfare; the environment; and natural resources, the leachate collection system may be closed.

(5) Monitor and maintain the groundwater monitoring system in accordance with G.S. 130A-309.215 and monitor the surface water in accordance with 15A NCAC 13B .0602.

(c) Completion of Post-Closure Care. – Following completion of the post-closure care period, the constructor or operator shall submit a certification, signed by a registered professional engineer, to the Department, verifying that post-closure care has been completed in accordance with the post-closure plan, and include the certification in the operating record.

"**§ 130A-309.218. Recordation of projects using coal combustion products for structural fill.**

(a) The owner of land where coal combustion products have been used in volumes of more than 1,000 cubic yards shall file a statement of the volume and locations of the coal combustion residuals with the Register of Deeds in the county or counties where the property is located. The statement shall identify the parcel of land according to the complete legal description on the recorded deed, either by metes and bounds, or by reference to a recorded plat map. The statement shall be signed and acknowledged by the landowners in the form prescribed by G.S. 47-38 through G.S. 47-43.

(b) Recordation shall be required within 90 days after completion of a structural fill project using coal combustion residuals.

(c) The Register of Deeds, in accordance with G.S. 161-14, shall record the notarized statement and index it in the Grantor Index under the name of the owner of the land. The original notarized statement with the Register's seal and the date, book, and page number of recording shall be returned to the Department after recording.

(d) When property with more than 1,000 cubic yards of coal combustion products is sold, leased, conveyed, or transferred in any manner, the deed or other instrument of transfer shall contain in the description section in no smaller type than used in the body of the deed or instrument a statement that coal combustion products have been used as structural fill material on the property.

"**§ 130A-309.219. Department of Transportation projects.**

The Department and the Department of Transportation may agree on specific design, construction, siting, operation, and closure criteria that may apply to the Department of Transportation structural fill projects.

"**§ 130A-309.220. Inventory and inspection of certain structural fill projects.**

No later than July 1, 2015, the Department shall prepare an inventory of all structural fill projects with a volume of 10,000 cubic yards or more. The Department shall update the structural fill project inventory at least annually. The Department shall inspect each structural fill project with a volume of 10,000 cubic yards or more at least annually to determine if the project or facility has been constructed and operated in compliance with 15A NCAC 13B .1701, et seq., (Requirements for Beneficial Use of Coal Combustion By-Products) and all other applicable laws.

"**§ 130A-309.221. Amendments required to rules.**

Requirements under existing rules governing the use of coal combustion products for structural fill that do not conflict with the provisions of this Subpart shall continue to apply to such projects. The Environmental Management Commission shall amend existing rules governing the use of coal combustion products for structural fill as necessary to implement the provisions of this Subpart. Such rules shall be exempt from the requirements of G.S. 150B-19.3."

SECTION 3.(b) Notwithstanding G.S. 130A-309.211 or G.S. 130A-309.212, as enacted by Section 3(a) of this act, and except as otherwise preempted by the requirements of federal law, the following coal combustion residuals surface impoundments shall be deemed high-priority, and, as soon as practicable, but no later than August 1, 2019, shall be closed in conformance with Section 3(c) of this act:

(1) Coal combustion residuals surface impoundments located at the Dan River Steam Station, owned and operated by Duke Energy Progress, and located in Rockingham County.

(2) Coal combustion residuals surface impoundments located at the Riverbend Steam Station, owned and operated by Duke Energy Carolinas, and located in Gaston County.

(3) Coal combustion residuals surface impoundments located at the Asheville Steam Electric Generating Plant, owned and operated by Duke Energy Progress, and located in Buncombe County.

(4) Coal combustion residuals surface impoundments located at the Sutton Plant, owned and operated by Duke Energy Progress, and located in New Hanover County.

SECTION 3.(c) The impoundments identified in subsection (b) of this section shall be closed as follows:

(1) The impoundments shall be dewatered.

(2) All coal combustion residuals shall be removed from the impoundments and transferred for (i) disposal in a coal combustion residuals landfill, industrial landfill, or municipal solid waste landfill or (ii) use in a structural fill or other beneficial use as allowed by law. Any disposal or use of coal combustion products pursuant to this section shall comply with the moratoriums enacted under Section 4(a) and Section 5(a) of this act and any extensions thereof. The use of coal combustion products (i) as structural fill, as authorized by Section 4(b) of this act, shall be conducted in accordance with the requirements of Subpart 3 of Part 2I of Article 9 of the General Statutes, as enacted by Section 3(a) of this act, and (ii) for other beneficial uses shall be conducted in accordance with the requirements of 15A NCAC 13B .1701, et seq., (Requirements for Beneficial Use of Coal Combustion By-Products).

(3) Where groundwater quality is degraded as a result of the impoundment, corrective action to restore groundwater quality shall be implemented by the owner or operator as provided in G.S. 130A-309.204.

SECTION 3.(d) G.S. 130A-290(a) reads as rewritten:

"**§ 130A-290. Definitions.**

(a) Unless a different meaning is required by the context, the following definitions shall apply throughout this Article:

...

(2b) ~~"Combustion products"~~"Coal combustion residuals" means residuals, including fly ash, bottom ash, boiler slag, mill rejects, and flue gas desulfurization residue produced by a coal-fired generating ~~unit.~~unit destined for disposal. The term does not include coal combustion products as defined in G.S. 130A-309.201(4).

(2c) ~~"Combustion products landfill"~~"Coal combustion residuals landfill" means a facility or unit for the disposal of combustion products, where the landfill is located at the same facility with the coal-fired generating unit or units producing the combustion products, and where the landfill is located wholly or partly on top of a facility that is, or was, being used for the disposal or storage of such combustion products, including, but not limited to, landfills, wet and dry ash ponds, and structural fill facilities.

...

(3a) "Commission" means the Environmental Management Commission.

...

(20) "Open dump" means any facility or site where solid waste is disposed of that is not a sanitary landfill and that is not a coal combustion residuals surface impoundment or a facility for the disposal of hazardous waste.

...

(35) "Solid waste" 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. Notwithstanding sub-sub-subdivision b.3. of this subdivision, the term includes coal combustion residuals. 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.~~ Commission, including coal combustion products. However, any sludges that meet the criteria for hazardous waste under RCRA shall also be a solid waste for the purposes of this Article.

...."

SECTION 3.(e) This section is effective when it becomes law. Subpart 3 of Part 2I of Article 9 of the General Statutes, as enacted by Section 3(a) of this act, applies to the use of coal combustion products as structural fill contracted for on or after that date. The first report due under G.S. 130A-309.210, as enacted by Section 3(a) of this act, is due October 1, 2014. Members to be appointed pursuant to G.S. 130A-309.202(b), as enacted by Section 3(a) of this act, shall be appointed no later than September 1, 2014.

PART III. MORATORIUMS AND STUDY ON (1) USE OF COAL COMBUSTION PRODUCTS AS STRUCTURAL FILL AND (2) CONSTRUCTION OR EXPANSION OF COMBUSTION PRODUCTS LANDFILLS

SECTION 4.(a) Notwithstanding 15A NCAC 13B .1701, et seq., and except as provided in Section 4(b) of this act, the use of coal combustion products, as defined in G.S. 130A-290, as structural fill is prohibited until August 1, 2015, in order to allow the Department of Environment and Natural Resources, the Environmental Management Commission, and the General Assembly time to review and evaluate the use of coal combustion residuals as structural fill.

SECTION 4.(b) Coal combustion products may be used as structural fill for any of the following types of projects:

(1) A project where the structural fill is used with a base liner, leachate collection system, cap liner, groundwater monitoring system and where the constructor or operator establishes financial assurance, as required by G.S. 130A–309.216.

(2) As the base or sub-base of a concrete or asphalt paved road constructed under the authority of a public entity.

SECTION 4.(c) The use of coal combustion products (i) as structural fill as authorized by Section 4(b) of this act shall be conducted in accordance with the requirements of Subpart 3 of Part 2I of Article 9 of the General Statutes, as enacted by Section 3(a) of this act, and (ii) for other beneficial uses shall be conducted in accordance with the requirements of 15A NCAC 13B .1701, et seq., (Requirements for Beneficial Use of Coal Combustion By-Products).

SECTION 4.(d) The Department of Environment and Natural Resources and the Environmental Management Commission shall jointly review Subpart 3 of Part 2I of Article 9 of the General Statutes, as enacted by Section 3(a) of this act, and 15A NCAC 13B .1701, et seq. In conducting this review, the Department and Commission shall do all of the following:

(1) Review the uses of coal combustion products as structural fill and the regulation of this use under Subpart 3 of Part 2I of Article 9 of the General Statutes, as enacted by Section 3(a) of this act, to protect public health, safety, and welfare; the environment; and natural resources.

(2) Review the uses of coal combustion products for other beneficial uses and the regulation of these uses under 15A NCAC 13B .1701, et seq., and other applicable rules, to determine if the rules are sufficient to protect public health, safety, and welfare; the environment; and natural resources.

(3) Evaluate additional opportunities for the use of coal combustion products as structural fill and for other beneficial uses that would reduce the volume of coal combustion residuals that are being disposed of in coal combustion residuals landfills, industrial landfills, or municipal solid waste landfills while still being protective of public health, safety, and welfare; the environment; and natural resources.

(4) Monitor any actions of the United States Environmental Protection Agency regarding the use of coal combustion products as structural fill or for other beneficial uses.

(5) Jointly report to the Environmental Review Commission no later than January 15, 2015, on their findings and recommendations regarding the use of coal combustion products as structural fill and for other beneficial uses.

SECTION 4.(e) All electric generating facilities owned by a public utility that produce coal combustion residuals and coal combustion products shall issue a request for proposals on or before December 31, 2014, for (i) the conduct of a market analysis for the concrete industry and other industries that might beneficially use coal combustion residuals and coal combustion products; (ii) the study of the feasibility and advisability of installation of technology to convert existing and newly generated coal combustion residuals to commercial-grade coal combustion products suitable for use in the concrete industry and other industries that might beneficially use coal combustion residuals; and (iii) an examination of all innovative technologies that might be applied to diminish, recycle or reuse, or mitigate the impact of existing and newly generated coal combustion residuals. All electric generating facilities shall present the materials and information received in response to a request for proposals issued pursuant to this section and an assessment of the materials and information, including a forecast of specific actions to be taken in response to the materials and information received, to the Environmental Management Commission and the Coal Ash Management Commission on or before August 1, 2016.

SECTION 4.(f) This section is effective when it becomes law and applies to the use of coal combustion residuals as structural fill contracted for on or after that date.

SECTION 5.(a) There is hereby established a moratorium on construction of new or expansion of existing coal combustion residuals landfills, as defined by G.S. 130A-290(2c) and amended by Section 3(d) of this act. The purpose of this moratorium is to allow the State to assess the risks to public health, safety, welfare; the environment; and natural resources of coal combustion residuals impoundments located beneath coal combustion residuals landfills to determine the advisability of continued operation of these landfills.

SECTION 5.(b) The Department of Environment and Natural Resources shall evaluate each coal combustion residuals landfills currently operating in the State, and, in particular, assess the risks to public health, safety, welfare; the environment; and natural resources, of coal combustion residuals surface impoundments located beneath coal combustion residuals landfills to determine the advisability of continued operation of these landfills. The Department shall report to the Environmental Review Commission no later than January 15, 2015, on its findings and recommendations concerning the risk assessment of each of these sites and the advisability of continued operation of coal combustion residuals landfills.

SECTION 5.(c) This section is effective when it becomes law and expires August 1, 2015.

PART IV. STRENGTHEN THE REPORTING AND NOTIFICATION REQUIREMENTS APPLICABLE TO DISCHARGES OF WASTEWATER TO WATERS OF THE STATE; REQUIRE CERTAIN EMERGENCY CALLS TO BE RECORDED

SECTION 6.(a) G.S. 143-215.1C reads as rewritten:

"**§ 143-215.1C. Report to wastewater system customers on system performance; report discharge of untreated wastewater to the Department; publication of notice of discharge of untreated wastewater and waste.**

(a) Report to Wastewater System Customers. – The owner or operator of any wastewater collection or treatment works, the operation of which is primarily to collect or treat municipal or domestic wastewater and for which a permit is issued under this Part and having an average annual flow greater than 200,000 gallons per day, shall provide to the users or customers of the collection system or treatment works and to the Department an annual report that summarizes the performance of the collection system or treatment works and the extent to which the collection system or treatment works has violated the permit or federal or State laws, regulations, or rules related to the protection of water quality. The report shall be prepared on either a calendar or fiscal year basis and shall be provided no later than 60 days after the end of the calendar or fiscal year.

(a1) Report Discharge of Untreated Wastewater to the Department. – The owner or operator of any wastewater collection or treatment works for which a permit is issued under this Part shall report a discharge of 1,000 gallons or more of untreated wastewater to the surface waters of the State to the Department within 24 hours after the owner or operator has determined that the discharge has reached the surface waters of the State. This reporting requirement shall be in addition to any other reporting requirements applicable to the owner or operator of the wastewater collection or treatment works.

(b) Publication of Notice of Discharge of Untreated Wastewater. – The owner or operator of any wastewater collection or treatment works, the operation of which is primarily to collect or treat municipal or domestic wastewater and for which a permit is issued under this Part shall:

(1) In the event of a discharge of 1,000 gallons or more of untreated wastewater to the surface waters of the State, issue a press release to all print and electronic news media that provide general coverage in the county where the

discharge occurred setting out the details of the discharge. The owner or operator shall issue the press release within ~~48~~ 24 hours after the owner or operator has determined that the discharge has reached the surface waters of the State. The owner or operator shall retain a copy of the press release and a list of the news media to which it was distributed for at least one year after the discharge and shall provide a copy of the press release and the list of the news media to which it was distributed to any person upon request.

(2) In the event of a discharge of 15,000 gallons or more of untreated wastewater to the surface waters of the State, publish a notice of the discharge in a newspaper having general circulation in the county in which the discharge occurs and in each county downstream from the point of discharge that is significantly affected by the discharge. The Secretary shall determine, at the Secretary's sole discretion, which counties are significantly affected by the discharge and shall approve the form and content of the notice and the newspapers in which the notice is to be published. The notice shall be captioned "NOTICE OF DISCHARGE OF UNTREATED SEWAGE". The owner or operator shall publish the notice within 10 days after the Secretary has determined the counties that are significantly affected by the discharge and approved the form and content of the notice and the newspapers in which the notice is to be published. The owner or operator shall file a copy of the notice and proof of publication with the Department within 30 days after the notice is published. Publication of a notice of discharge under this subdivision is in addition to the requirement to issue a press release under subdivision (1) of this subsection.

(c) Publication of Notice of Discharge of Untreated Waste. – The owner or operator of any wastewater collection or treatment works, other than a wastewater collection or treatment works the operation of which is primarily to collect or treat municipal or domestic wastewater, for which a permit is issued under this Part shall:

(1) In the event of a discharge of 1,000 gallons or more of untreated waste to the surface waters of the State, issue a press release to all print and electronic news media that provide general coverage in the county where the discharge occurred setting out the details of the discharge. The owner or operator shall issue the press release within ~~48~~ 24 hours after the owner or operator has determined that the discharge has reached the surface waters of the State. The owner or operator shall retain a copy of the press release and a list of the news media to which it was distributed for at least one year after the discharge and shall provide a copy of the press release and the list of the news media to which it was distributed to any person upon request.

(2) In the event of a discharge of 15,000 gallons or more of untreated waste to the surface waters of the State, publish a notice of the discharge in a newspaper having general circulation in the county in which the discharge occurs and in each county downstream from the point of discharge that is significantly affected by the discharge. The Secretary shall determine, at the Secretary's sole discretion, which counties are significantly affected by the discharge and shall approve the form and content of the notice and the newspapers in which the notice is to be published. The notice shall be captioned "NOTICE OF DISCHARGE OF UNTREATED WASTE". The owner or operator shall publish the notice within 10 days after the Secretary has determined the counties that are significantly affected by the discharge and approved the form and content of the notice and the newspapers in which the notice is to be published. The owner or operator shall file a copy

of the notice and proof of publication with the Department within 30 days after the notice is published. Publication of a notice of discharge under this subdivision is in addition to the requirement to issue a press release under subdivision (1) of this subsection."

SECTION 6.(b) Section 6(a) of this act becomes effective September 1, 2014.

SECTION 6.(c) G.S. 166A-19.12(16) reads as rewritten:

"(16) Establishing and operating a 24-hour Operations Center to serve as a single point of contact for local governments to report the occurrence of emergency and disaster events and to coordinate local and State response assets. The Division shall record all telephone calls to the 24-hour Operations Center emergency hotline and shall maintain the recording of each telephone call for at least one year."

PART V. REQUIRE NOTIFICATION OF THE DEPARTMENT OF EMERGENCY DAM REPAIRS; REQUIRE EMERGENCY ACTION PLANS FOR CERTAIN DAMS; REQUIRE INSPECTION OF DAMS AT COAL COMBUSTION RESIDUALS SURFACE IMPOUNDMENTS

SECTION 7. G.S. 143-215.27 reads as rewritten:

"**§ 143-215.27. Repair, alteration, or removal of dam.**

(a) Before commencing the repair, alteration or removal of a dam, application shall be made for written approval by the Department, except as otherwise provided by this Part. The application shall state the name and address of the applicant, shall adequately detail the changes it proposes to effect and shall be accompanied by maps, plans and specifications setting forth such details and dimensions as the Department requires. The Department may waive any such requirements. The application shall give such other information concerning the dam and reservoir required by the Department, such information concerning the safety of any change as it may require, and shall state the proposed time of commencement and completion of the work. When an application has been completed it may be referred by the Department for agency review and report, as provided by subsection (b) of G.S. 143-215.26 in the case of original construction.

(b) When emergency repairs are necessary to safeguard life and property they may be started immediately but the Department shall be notified ~~forthwith~~ of the proposed repairs and of the work ~~under way, and they~~underway as soon as possible, but not later than 24 hours after first knowledge of the necessity for the emergency repairs, and the emergency repairs shall be made to conform to ~~its~~ the Department's orders."

SECTION 8.(a) G.S. 143-215.31 reads as rewritten:

"**§ 143-215.31. Supervision over maintenance and operation of dams.**

(a) The Commission shall have jurisdiction and supervision over the maintenance and operation of dams to safeguard life and property and to satisfy minimum streamflow requirements. The Commission may adopt standards for the maintenance and operation of dams as may be necessary for the purposes of this Part. The Commission may vary the standards applicable to various dams, giving due consideration to the minimum flow requirements of the stream, the type and location of the structure, the hazards to which it may be exposed, and the peril of life and property in the event of failure of a dam to perform its function.

(a1) The owner of a dam classified by the Department as a high hazard dam or an intermediate hazard dam shall develop an Emergency Action Plan for the dam as provided in this subsection.

(1) The owner of the dam shall submit a proposed Emergency Action Plan for the dam within 90 days after the dam is classified as a high hazard dam or an intermediate hazard dam to the Department and the Department of Public

Safety for their review and approval. The Department and the Department of Public Safety shall approve the Emergency Action Plan if they determine that it complies with the requirements of this subsection and will protect public health, safety, and welfare; the environment; and natural resources.

(2) The Emergency Action Plan shall include, at a minimum, all of the following:

a. A description of potential emergency conditions that could occur at the dam.

b. A description of actions to be taken in response to an emergency condition at the dam.

c. Emergency notification procedures to aid in warning and evacuations during an emergency condition at the dam.

d. A downstream inundation map depicting areas affected by a dam failure and sudden release of the impoundment.

(3) The owner of the dam shall update the Emergency Action Plan annually and shall submit it to the Department and the Department of Public Safety for their review and approval within one year of the prior approval.

(4) The Department shall provide a copy of the Emergency Action Plan to the regional offices of the Department that might respond to an emergency condition at the dam.

(5) The Department of Public Safety shall provide a copy of the Emergency Action Plan to all local emergency management agencies that might respond to an emergency condition at the dam.

(6) Information included in an Emergency Action Plan that constitutes sensitive public security information, as provided in G.S. 132-1.7, shall be maintained as confidential information and shall not be subject to disclosure under the Public Records Act. For purposes of this section, "sensitive public security information" shall include Critical Energy Infrastructure Information protected from disclosure under rules adopted by the Federal Energy Regulatory Commission in 18 C.F.R. § 333.112.

...."

SECTION 8.(b) Notwithstanding G.S. 143-215.31, as amended by Section 8(a) of this act, the owners of all high hazard dams and intermediate hazard dams in operation on the effective date of this act shall submit their proposed Emergency Action Plans to the Department of Environment and Natural Resources and the Department of Public Safety no later than October 1, 2015.

SECTION 9. Section 3(b) of S.L. 2009-390 reads as rewritten:

"**SECTION 3.(b)** Any impoundments or other facilities that were in use ~~on the effective date of this section~~January 1, 2010, in connection with nonnuclear electric generating facilities under the jurisdiction of the North Carolina Utilities Commission, and that had been exempted under the provisions of G.S. 143-215.25A(4), prior to ~~amendment by Section 3(a) of this act,~~ January 1, 2010, shall be deemed to have received all of the necessary approvals from the Department of Environment and Natural Resources and the Commission for Safety.~~Dam Safety, and shall not be required to submit application, certificate, or other materials in connection with the continued normal operation and maintenance of those facilities.~~"

SECTION 10. G.S. 143-215.32 reads as rewritten:

"**§ 143-215.32. Inspection of dams.**

(a) The Department may at any time inspect any dam, including a dam that is otherwise exempt from this Part, upon receipt of a written request of any affected person or agency, or upon a motion of the Environmental Management Commission. Within the limits of available

funds the Department shall endeavor to provide for inspection of all dams at intervals of approximately five years.

(a1) Coal combustion residuals surface impoundments, as defined by G.S. 130A-309.201, shall be inspected as provided in this subsection.

(1) The Department shall inspect each dam associated with a coal combustion residuals surface impoundment at least annually.

(2) The owner of a coal combustion residuals surface impoundment shall inspect the impoundment weekly and after storms to detect evidence of any of the following conditions:

a. Deterioration, malfunction, or improper operation of spillway control systems.

b. Sudden drops in the level of the contents of the impoundment.

c. Severe erosion or other signs of deterioration in dikes or other containment devices or structures.

d. New or enlarged seeps along the downstream slope or toe of the dike or other containment devices or structures.

e. Any other abnormal conditions at the impoundment that could pose a risk to public health, safety, or welfare; the environment; or natural resources.

(3) If any of the conditions described in subdivision (2) of this subsection are observed, the owner shall provide documentation of the conditions to the Department and a registered professional engineer. The registered professional engineer shall investigate the conditions and, if necessary, develop a plan of corrective action to be implemented by the owner of the impoundment. The owner of the impoundment shall provide documentation of the completed corrective action to the Department.

(4) The owner of a coal combustion residuals surface impoundment shall provide for the annual inspection of the impoundment by an independent registered professional engineer to ensure that the structural integrity and the design, operation, and maintenance of the impoundment is in accordance with generally accepted engineering standards. Within 30 days of the inspection, the owner shall provide to the Department the inspection report and a certification by the engineer that the impoundment is structurally sound and that the design, operation, and maintenance of the impoundment is in accordance with generally accepted engineering standards. The owner and the Department shall each place the inspection report and certification on a publicly accessible Internet site.

(b) If the Department upon inspection finds that any dam is not sufficiently strong, is not maintained in good repair or operating condition, is dangerous to life or property, or does not satisfy minimum streamflow requirements, the Department shall present its findings to the Commission and the Commission may issue an order directing the owner or owners of the dam to make at his or her expense maintenance, alterations, repairs, reconstruction, change in construction or location, or removal as may be deemed necessary by the Commission within a time limited by the order, not less than 90 days from the date of issuance of each order, except in the case of extreme danger to the safety of life or property, as provided by subsection (c) of this section.

(c) If at any time the condition of any dam becomes so dangerous to the safety of life or property, in the opinion of the Environmental Management Commission, as not to permit sufficient time for issuance of an order in the manner provided by subsection (b) of this section, the Environmental Management Commission may immediately take such measures as may be essential to provide emergency protection to life and property, including the lowering of the

level of a reservoir by releasing water impounded or the destruction in whole or in part of the dam or reservoir. The Environmental Management Commission may recover the costs of such measures from the owner or owners by appropriate legal action.

(d) An order issued under this Part shall be served on the owner of the dam as provided in G.S. 1A-1, Rule 4."

PART VI. TRANSFER SOLID WASTE RULE-MAKING AUTHORITY FROM COMMISSION FOR PUBLIC HEALTH TO ENVIRONMENTAL MANAGEMENT COMMISSION

SECTION 11.(a) G.S. 130A-29 reads as rewritten:

"§ 130A-29. Commission for Public Health – Creation, powers and duties.

...

(c) The Commission shall adopt rules:

(1) Repealed by Session Laws 1983 (Regular Session, 1984), c. 1022, s. 5.

(2) Establishing standards for approving sewage-treatment devices and holding tanks for marine toilets as provided in G.S. 75A-6(o).

(3) Establishing specifications for sanitary privies for schools where water-carried sewage facilities are unavailable as provided in G.S. 115C-522.

(4) Establishing requirements for the sanitation of local confinement facilities as provided in Part 2 of Article 10 of Chapter 153A of the General Statutes.

(5) Repealed by Session Laws 1989 (Regular Session, 1990), c. 1075, s. 1.

(5a) Establishing eligibility standards for participation in Department reimbursement programs.

~~(6) Requiring proper treatment and disposal of sewage and other waste from chemical and portable toilets.~~

(7) Establishing statewide health outcome objectives and delivery standards.

(8) Establishing permit requirements for the sanitation of premises, utensils, equipment, and procedures to be used by a person engaged in tattooing, as provided in Part 11 of Article 8 of this Chapter.

(9) Implementing immunization requirements for adult care homes as provided in G.S. 131D-9 and for nursing homes as provided in G.S. 131E-113.

(10) Pertaining to the biological agents registry in accordance with G.S. 130A-479.

(11) For matters within its jurisdiction that allow for and regulate horizontal drilling and hydraulic fracturing for the purpose of oil and gas exploration and development.

...."

SECTION 11.(b) G.S. 130A-291.1 reads as rewritten:

"§ 130A-291.1. Septage management program; permit fees.

...

(d) Septage shall be treated and disposed only at a wastewater system that has been approved by the Department under rules adopted by the Commission ~~or by the Environmental Management Commission~~ or at a site that is permitted by the Department under this section. A permit shall be issued only if the site satisfies all of the requirements of the rules adopted by the Commission.

...."

SECTION 11.(c) G.S. 130A-294(a)(4) reads as rewritten:

"§ 130A-294. Solid waste management program.

(a) The Department is authorized and directed to engage in research, conduct investigations and surveys, make inspections and establish a statewide solid waste management program. In establishing a program, the Department shall have authority to:

...

(4) a. Develop a permit system governing the establishment and operation of solid waste management facilities. A landfill with a disposal area of 1/2 acre or less for the on-site disposal of land clearing and inert debris is exempt from the permit requirement of this section and shall be governed by G.S. 130A-301.1. Demolition debris from the decommissioning of manufacturing buildings, including electric generating stations, that is disposed of on the same site as the decommissioned buildings, is exempt from the permit requirement of this section and rules adopted pursuant to this section and shall be governed by G.S. 130A-301.3. The Department shall not approve an application for a new permit, the renewal of a permit, or a substantial amendment to a permit for a sanitary landfill, excluding demolition landfills as defined in the rules of the Commission, except as provided in subdivisions (3) and (4) of subsection (b1) of this section. No permit shall be granted for a solid waste management facility having discharges that are point sources until the Department has referred the complete plans and specifications to the ~~Environmental Management~~ Commission and has received advice in writing that the plans and specifications are approved in accordance with the provisions of G.S. 143-215.1. In any case where the Department denies a permit for a solid waste management facility, it shall state in writing the reason for denial and shall also state its estimate of the changes in the applicant's proposed activities or plans that will be required for the applicant to obtain a permit.

b. Repealed by Session Laws 2007-550, s. 1(a), effective August 1, 2007.

c. The Department shall deny an application for a permit for a solid waste management facility if the Department finds that:

1. Construction or operation of the proposed facility would be inconsistent with or violate rules adopted by the Commission.

2. Construction or operation of the proposed facility would result in a violation of water quality standards adopted by the ~~Environmental Management~~ Commission pursuant to G.S. 143-214.1 for waters, as defined in G.S. 143-213.

3. Construction or operation of the facility would result in significant damage to ecological systems, natural resources, cultural sites, recreation areas, or historic sites of more than local significance. These areas include, but are not limited to, national or State parks or forests; wilderness areas; historic sites; recreation areas; segments of the natural and scenic rivers system; wildlife refuges, preserves, and management areas; areas that provide habitat for threatened or endangered species; primary nursery areas and critical fisheries habitat designated by the Marine Fisheries Commission; and Outstanding Resource Waters designated by the ~~Environmental Management~~ Commission.

...."

SECTION 11.(d) G.S. 130A-300 reads as rewritten:

"**§ 130A-300. Effect on laws applicable to water pollution control.**

This Article shall not be considered as amending, repealing or in any manner abridging or interfering with those sections of the General Statutes of North Carolina relative to the control of water pollution as now administered by the ~~Environmental Management~~ Commission nor shall the provisions of this Article be construed as being applicable to or in any way affecting the authority of the ~~Environmental Management~~ Commission to control the discharges of wastes to the waters of the State as provided in Articles 21 and 21A, Chapter 143 of the General Statutes."

SECTION 11.(e) G.S. 130A-302 reads as rewritten:

"**§ 130A-302. Sludge deposits at sanitary landfills.**

Sludges generated by the treatment of wastewater discharges which are point sources subject to permits granted under Section 402 of the Federal Water Pollution Act, as amended (P.L. 92-500), or permits generated under G. S. 143-215.1 by the ~~Environmental Management~~ Commission shall not be deposited in or on a sanitary landfill permitted under this Article unless in a compliance with the rules concerning solid waste adopted under this Article."

SECTION 11.(f) G.S. 130A-310.3 reads as rewritten:

"**§ 130A-310.3. Remedial action programs for inactive hazardous substance or waste disposal sites.**

...

(b) Where possible, the Secretary shall work cooperatively with any owner, operator, responsible party, or any appropriate agency of the State or federal government to develop and implement the inactive hazardous substance or waste disposal site remedial action program. The Secretary shall not take action under this section to the extent that the ~~Environmental Management~~ Commission, the Commissioner of Agriculture, or the Pesticide Board has assumed jurisdiction pursuant to Articles 21 or 21A of Chapter 143 of the General Statutes.

...

(d) In any inactive hazardous substance or waste disposal site remedial action program implemented hereunder, the Secretary shall ascertain the most nearly applicable cleanup standard as would be applied under CERCLA/SARA, and may seek federal approval of any such program to insure concurrent compliance with federal standards. State standards may exceed and be more comprehensive than such federal standards. The Secretary shall assure concurrent compliance with applicable standards set by the ~~Environmental Management~~ Commission.

...."

SECTION 11.(g) G.S. 130A-310.4(g) reads as rewritten:

"(g) The Commission ~~on Health Services [Commission for Public Health]~~ shall adopt rules prescribing the form and content of the notices required by this section. The proposed remedial action plan shall include a summary of all alternatives considered in the development of the plan. A record shall be maintained of all comment received by the Department regarding the remedial action plan."

SECTION 11.(h) G.S. 130A-310.31(b)(5) reads as rewritten:

"(5) "Unrestricted use standards" when used in connection with "cleanup", "remediated", or "remediation" means contaminant concentrations for each environmental medium that are considered acceptable for all uses and that comply with generally applicable standards, guidance, or established methods governing the contaminants that are established by statute or adopted, published, or implemented by the ~~Environmental Management Commission, the~~ Commission, or the Department instead of the site-specific contaminant levels established pursuant to this Part."

SECTION 11.(i) G.S. 130A-310.65 reads as rewritten:

"**§ 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.~~

...

(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,~~Commission or the Department."

SECTION 11.(j) G.S. 113-391(a)(5)f. reads as rewritten:

"f. Management of wastes produced in connection with oil and gas exploration and development and use of horizontal drilling and hydraulic fracturing treatments for that purpose. Such rules shall address storage, transportation, and disposal of wastes that may contain radioactive materials or wastes that may be toxic or have other hazardous wastes' characteristics that are not otherwise regulated as a hazardous waste by the federal Resource Conservation and Recovery Act (RCRA), such as top-hole water, brines, drilling fluids, additives, drilling muds, stimulation fluids, well servicing fluids, oil, production fluids, and drill cuttings from the drilling, alteration, production, plugging, or other activity associated with oil and gas wells. Wastes generated in connection with oil and gas exploration and development and use of horizontal drilling and hydraulic fracturing treatments for that purpose that constitute hazardous waste under RCRA shall be subject to rules adopted by the Environmental Management Commission ~~for Public Health~~ to implement RCRA requirements in the State."

SECTION 11.(k) G.S. 113-415 reads as rewritten:

"**§ 113-415. Conflicting laws.**

No provision of this Article shall be construed to repeal, amend, abridge or otherwise ~~affect: (i)~~ affect the authority and ~~responsibility~~responsibility (i) vested in the Environmental Management Commission by Article 7 of Chapter 87 of the General Statutes, pertaining to the location, construction, repair, operation and abandonment of ~~wells, or the authority and responsibility~~ wells; (ii) vested in the Environmental Management Commission related to the control of water and air pollution as provided in Articles 21 and 21A of Chapter 143 of the General Statutes; ~~or (ii) the authority or responsibility~~(iii) vested in the Department and the Environmental Management Commission ~~for Public Health~~ by Article 10 of Chapter 130A of the General Statutes pertaining to public water-supply ~~requirements,~~requirements; or ~~the authority and responsibility~~(iv) vested in the Environmental Management Commission ~~for Public Health~~ related to the management of solid and hazardous waste as provided in Article 9 of Chapter 130A of the General Statutes."

SECTION 11.(l) The Revisor of Statutes shall make any conforming statutory changes necessary to reflect the transfer of rule-making authority under Article 9 of Chapter 130A of the General Statutes from the Commission for Public Health to the Environmental Management Commission.

SECTION 11.(m) The Codifier of Rules shall make any conforming rule changes necessary to reflect the transfer of rule-making authority under Article 9 of Chapter 130A of

the General Statutes from the Commission for Public Health to the Environmental Management Commission.

PART VII. OTHER STUDIES

SECTION 12. The Coal Ash Management Commission, established pursuant to G.S. 130A-309.202, as enacted by Section 3(a) of this act, shall study whether and under what circumstances no further action or natural attenuation is appropriate for a coal combustion residuals surface impoundment that is classified as low-priority pursuant to G.S. 130A-309.211, as enacted by Section 3(a) of this act. In conducting this study, the Commission shall specifically consider whether there is any contact or interaction between coal combustion residuals and groundwater and surface water, whether the area has reverted to a natural state as evidenced by the presence of wildlife and vegetation, and whether no further action or natural attenuation would be protective of public health, safety, and welfare; the environment; and natural resources. The Commission shall report the results of its study, including any recommendations, to the Environmental Review Commission no later than October 1, 2015.

SECTION 13. The Department of Transportation shall evaluate additional opportunities for the use of coal combustion residuals in the construction and maintenance of roads and bridges within the State. The Department shall report the results of its study, including any recommendations, to the Environmental Review Commission no later than December 1, 2014.

PART VIII. PROVIDE RESOURCES FOR IMPLEMENTATION OF THIS ACT

SECTION 14.(a) Article 14 of Chapter 62 of the General Statutes is amended by adding a new section to read:

"**§ 62-302.1. Regulatory fee for combustion residual surface impoundments.**

(a) Fee Imposed. – Each public utility with a coal combustion residuals surface impoundment shall pay a regulatory fee for the purpose of defraying the costs of oversight of coal combustion residuals. The fee is in addition to the fee imposed under G.S. 62-302. The fees collected under this section shall only be used to pay the expenses of the Coal Ash Management Commission and the Department of Environment and Natural Resources in providing oversight of coal combustion residuals.

(b) Rate. – The combustion residuals surface impoundment fee shall be three-hundredths of one percent (0.03%) of the North Carolina jurisdictional revenues of each public utility with a coal combustion residuals surface impoundment. For the purposes of this section, the term "North Carolina jurisdictional revenues" has the same meaning as in G.S. 62-302.

(c) When Due. – The fee shall be paid in quarterly installments. The fee is payable to the Coal Ash Management Commission on or before the 15th of the second month following the end of each quarter. Each public utility subject to this fee shall, on or before the date the fee is due for each quarter, prepare and render a report on a form prescribed by the Commission. The report shall state the public utility's total North Carolina jurisdictional revenues for the preceding quarter and shall be accompanied by any supporting documentation that the Coal Ash Management Commission may by rule require. Receipts shall be reported on an accrual basis.

(d) Use of Proceeds. – A special fund in the Office of State Treasurer and the Coal Ash Management Commission is created. The fees collected pursuant to this section and all other funds received by the Coal Ash Management Commission shall be deposited in the Coal Combustion Residuals Management Fund. The Fund shall be placed in an interest-bearing account, and any interest or other income derived from the Fund shall be credited to the Fund. Moneys in the Fund shall only be spent pursuant to appropriation by the General Assembly.

The Commission shall be subject to the provisions of the State Budget Act, except that no unexpended surplus of the Coal Combustion Residuals Management Fund shall revert to the General Fund. All funds credited to the Commission Fund shall be used only to pay the expenses of the Coal Ash Management Commission and the Department of Environment and Natural Resources in providing oversight of coal combustion residuals.

(e) Recovery of Fee. – The North Carolina Utilities Commission shall not allow an electric public utility to recover this fee from the retail electric customers of the State."

SECTION 14.(b) Notwithstanding G.S. 62-302.1, as enacted by this section, for the first two quarters of fiscal year 2014-2015, each public utility shall pay the fee in G.S. 62-302.1 on a monthly basis. The fee shall be paid by the fifteenth of the following month.

SECTION 14.(c) Twenty-five receipt-supported positions are created in the Department of Environment and Natural Resources to carry out the duties in Part 2I of Article 9 of Chapter 130A of the General Statutes. There is appropriated from the Coal Combustion Residuals Management Fund the sum of one million seven hundred fifty thousand dollars ($1,750,000) to the Department of Environment and Natural Resources to support the positions for the 2014-2015 fiscal year.

SECTION 14.(d) Four receipt supported positions are created in the Division of Emergency Management of the Department of Public Safety to carry out the duties in G.S. 130A-309.202. The funds remaining in the Coal Combustion Residuals Management Fund after the appropriation to the Department of Environment and Natural Resources are appropriated to the Department of Public Safety for the 2014-2015 fiscal year. These positions shall be used to provide assistance to the Coal Ash Commission. The positions shall be assigned in the following manner: one of the positions shall be the executive director of the staff, two positions shall be assigned as analysts, and one position shall be assigned as administrative. The Division of Emergency Management in the Department of Public Safety shall consult with the Chair of the Commission in hiring the staff for the Coal Ash Commission. The Division of Emergency Management in the Department of Public Safety shall provide support to the Commission until the staff of the Commission is hired, including the designation of an individual to serve as an interim executive director of the staff.

SECTION 14.(e) This section becomes effective July 1, 2014.

PART IX. SEVERABILITY CLAUSE AND EFFECTIVE DATE

SECTION 15. If any provision of this act or its application is held invalid, the invalidity does not affect other provisions or applications of this act that can be given effect without the invalid provisions or application, and to this end the provisions of this act are severable.

SECTION 16. Except as otherwise provided, this act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

S D

SENATE BILL 729
PROPOSED COMMITTEE SUBSTITUTE S729-PCS45193-RIx-39

Short Title: Coal Ash Management Act of 2014. (Public)

Sponsors:

Referred to:

May 15, 2014

A BILL TO BE ENTITLED

AN ACT TO (1) PROHIBIT RECOVERY OF COSTS RELATED TO UNLAWFUL DISCHARGES FROM COAL COMBUSTION RESIDUALS SURFACE IMPOUNDMENTS; (2) ESTABLISH A MORATORIUM ON CERTAIN RATE CASES; (3) CREATE THE COAL ASH MANAGEMENT COMMISSION TO REVIEW AND APPROVE COAL COMBUSTION RESIDUALS SURFACE IMPOUNDMENTS CLASSIFICATIONS AND CLOSURE PLANS AND OTHERWISE STUDY AND MAKE RECOMMENDATIONS ON LAWS GOVERNING MANAGEMENT OF COAL COMBUSTION RESIDUALS; (4) REQUIRE EXPEDITED REVIEW BY THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES OF ANY PERMIT NECESSARY TO CONDUCT ACTIVITIES REQUIRED BY THIS ACT; (5) ESTABLISH VARIOUS REPORTING REQUIREMENTS TO THE GENERAL ASSEMBLY, INCLUDING A QUARTERLY REPORT FROM THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES ON ITS OPERATIONS, ACTIVITIES, PROGRAMS, AND PROGRESS WITH RESPECT TO ITS OBLIGATIONS UNDER THIS ACT FOR COAL COMBUSTION RESIDUALS SURFACE IMPOUNDMENTS; (6) PROHIBIT LOCAL GOVERNMENT REGULATION OF MANAGEMENT OF COAL COMBUSTION RESIDUALS OR COAL COMBUSTION PRODUCTS; (7) PROHIBIT CONSTRUCTION OF NEW OR EXPANSION OF EXISTING COAL COMBUSTION RESIDUALS SURFACE IMPOUNDMENTS EFFECTIVE JULY 1, 2014; (8) PROHIBIT THE DISPOSAL OF COAL COMBUSTION RESIDUALS INTO COAL COMBUSTION RESIDUALS SURFACE IMPOUNDMENTS AT COAL-FIRED GENERATING UNITS THAT ARE NO LONGER PRODUCING COAL COMBUSTION RESIDUALS EFFECTIVE OCTOBER 1, 2014; (9) PROHIBIT DISPOSAL OF STORMWATER TO COAL COMBUSTION RESIDUALS SURFACE IMPOUNDMENTS EFFECTIVE DECEMBER 31, 2018; (10) REQUIRE ALL ELECTRIC GENERATING FACILITIES TO CONVERT TO GENERATION OF DRY FLY ASH ON OR BEFORE DECEMBER 31, 2017, AND DRY BOTTOM ASH ON OR BEFORE DECEMBER 31, 2020, OR RETIRE; (11) REQUIRE THE ASSESSMENT OF GROUNDWATER AT COAL COMBUSTION RESIDUALS SURFACE IMPOUNDMENTS; (12) REQUIRE CORRECTIVE ACTION FOR THE RESTORATION OF GROUNDWATER QUALITY AT COAL COMBUSTION RESIDUALS SURFACE IMPOUNDMENTS; (13) REQUIRE A SURVEY OF DRINKING WATER SUPPLY WELLS AND REPLACEMENT OF CONTAMINATED WATER SUPPLIES; (14) REQUIRE THE IDENTIFICATION, ASSESSMENT, AND CORRECTION OF UNPERMITTED DISCHARGES FROM

COAL COMBUSTION RESIDUALS SURFACE IMPOUNDMENTS; (15) REQUIRE THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES TO, AS SOON AS PRACTICABLE BUT NO LATER THAN AUGUST 1, 2015, PRIORITIZE FOR THE PURPOSE OF CLOSURE AND REMEDIATION COAL COMBUSTION RESIDUALS SURFACE IMPOUNDMENTS, INCLUDING ACTIVE AND RETIRED SITES, BASED ON THESE SITES' RISKS TO PUBLIC HEALTH, SAFETY, WELFARE, THE ENVIRONMENT, AND NATURAL RESOURCES; (16) REQUIRE OWNERS OF COAL COMBUSTION RESIDUALS SURFACE IMPOUNDMENTS TO SUBMIT A PROPOSED PLAN FOR CLOSURE OF ALL IMPOUNDMENTS TO THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES; (17) REQUIRE CLOSURE AND REMEDIATION OF CERTAIN COAL COMBUSTION RESIDUALS SURFACE IMPOUNDMENTS AS SOON AS PRACTICABLE, BUT NO LATER THAN AUGUST 1, 2019; (18) REQUIRE THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES TO ESTABLISH A SCHEDULE AND PROCESS FOR CLOSURE AND REMEDIATION OF ALL COAL COMBUSTION RESIDUALS SURFACE IMPOUNDMENTS BASED UPON THE DEPARTMENT'S RISK ASSESSMENT OF THESE SITES, BASELINE REQUIREMENTS SET BY THE GENERAL ASSEMBLY, EVALUATION OF PROPOSED CLOSURE PLANS SUBMITTED BY IMPOUNDMENT OWNERS, AND INPUT FROM THE PUBLIC AND OTHER STAKEHOLDERS; (19) ESTABLISH MINIMUM STATUTORY REQUIREMENTS FOR STRUCTURAL FILL PROJECTS USING COAL COMBUSTION PRODUCTS AND REQUIRE THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES TO INVENTORY AND INSPECT CERTAIN STRUCTURAL FILL PROJECTS; (20) PLACE A MORATORIUM ON CERTAIN PROJECTS USING COAL COMBUSTION PRODUCTS AS STRUCTURAL FILL UNTIL AUGUST 1, 2015, AND DIRECT THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES AND THE ENVIRONMENTAL MANAGEMENT COMMISSION TO STUDY THE ADEQUACY OF CURRENT LAW GOVERNING USE OF COAL COMBUSTION PRODUCTS AS STRUCTURAL FILL AND FOR BENEFICIAL USE; (21) PLACE A MORATORIUM ON THE EXPANSION AND CONSTRUCTION OF COAL COMBUSTION RESIDUALS LANDFILLS UNTIL AUGUST 1, 2015, AND DIRECT THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES TO ASSESS THE RISKS TO PUBLIC HEALTH, SAFETY, WELFARE, THE ENVIRONMENT, AND NATURAL RESOURCES OF COAL COMBUSTION RESIDUALS SURFACE IMPOUNDMENTS LOCATED BENEATH THESE LANDFILLS TO DETERMINE THE ADVISABILITY OF CONTINUED OPERATION OF THESE LANDFILLS; (22) STRENGTHEN THE REPORTING AND NOTIFICATION REQUIREMENTS APPLICABLE TO DISCHARGES OF WASTEWATER TO WATERS OF THE STATE; (23) REQUIRE CERTAIN EMERGENCY CALLS TO BE RECORDED; (24) REQUIRE DEVELOPMENT OF EMERGENCY ACTION PLANS FOR HIGH AND INTERMEDIATE HAZARD DAMS AND AMEND OTHER DAM SAFETY LAW REQUIREMENTS APPLICABLE TO COAL COMBUSTION RESIDUALS SURFACE IMPOUNDMENTS; (25) TRANSFER SOLID WASTE RULE-MAKING AUTHORITY FROM COMMISSION FOR PUBLIC HEALTH TO ENVIRONMENTAL MANAGEMENT COMMISSION; (26) PROVIDE FOR VARIOUS STUDIES; AND (27) PROVIDE RESOURCES FOR IMPLEMENTATION OF THIS ACT.

The General Assembly of North Carolina enacts:

PART I. PROHIBIT RECOVERY OF COSTS RELATED TO UNLAWFUL DISCHARGES FROM COAL COMBUSTION RESIDUALS SURFACE IMPOUNDMENTS; MORATORIUM ON RATE CASES

SECTION 1.(a) Article 7 of Chapter 62 of the General Statutes is amended by adding a new section to read:

"**§ 62-133.13. Recovery of costs related to unlawful discharges from coal combustion residuals surface impoundments to the surface waters of the State.**

The Commission shall not allow an electric public utility to recover from the retail electric customers of the State costs resulting from an unlawful discharge to the surface waters of the State from a coal combustion residuals surface impoundment, unless the Commission determines the discharge was due to an event of force majeure. For the purposes of this section, "coal combustion residuals surface impoundments" has the same meaning as in G.S. 130A-309.201. For the purposes of this section, "unlawful discharge" shall mean a discharge that results in a violation of State or federal surface water quality standards."

SECTION 1.(b) Section 1(a) of this act is effective when it becomes law and applies to discharges occurring on or after January 1, 2014.

SECTION 2.(a) Moratorium on Cost Recovery. – The Utilities Commission shall not issue an order authorizing an electric public utility the recovery of any additional costs related to coal combustion residuals surface impoundments until the end of the moratorium provided in this section. For the purposes of this section, "coal combustion residuals surface impoundments" has the same meaning as in G.S. 130A-309.201. The Utilities Commission shall not enter a final order granting an increase in base rates of an electric public utility for costs related to coal combustion residuals surface impoundments under G.S. 62-133 or G.S. 62-134 prior to January 15, 2015.

SECTION 2.(b) Purpose of Moratorium. – The purpose of the moratorium is to allow the State to study the disposition of coal combustion residuals surface impoundments, including any final rules adopted by the United States Environmental Protection Agency on the regulation of coal combustion residuals.

PART II. PROVISIONS FOR COMPREHENSIVE MANAGEMENT OF COAL COMBUSTION RESIDUALS

SECTION 3.(a) Article 9 of Chapter 130A of the General Statutes is amended by adding a new Part to read:

"Part 2I. Coal Ash Management.

"Subpart 1. Short Title, Definitions, and General Provisions.

"**§ 130A-309.200. Title.**

This Part may be cited as the "Coal Ash Management Act of 2014."

"**§ 130A-309.201. Definitions.**

Unless a different meaning is required by the context, the definitions of G.S. 130A-290 and the following definitions shall apply throughout this Part:

(1) "Beneficial and beneficial use" means projects promoting public health and environmental protection, offering equivalent success relative to other alternatives, and preserving natural resources.

(2) "Boiler slag" means the molten bottom ash collected at the base of slag tap and cyclone type furnaces that is quenched with water. It is made up of hard, black, angular particles that have a smooth, glassy appearance.

(3) "Bottom ash" means the agglomerated, angular ash particles formed in pulverized coal furnaces that are too large to be carried in the flue gases and collect on the furnace walls or fall through open grates to an ash hopper at the bottom of the furnace.

(4) "Coal combustion products" means fly ash, bottom ash, boiler slag, or flue gas desulfurization materials, which are beneficially used, including use for structural fill.

(5) "Coal combustion residuals" has the same meaning as defined in G.S. 130A-290.

(6) "Coal combustion residuals surface impoundment" means a topographic depression, excavation, or diked area that is: (i) primarily formed from earthen materials; (ii) without a base liner approved for use by Article 9 of Chapter 130A of the General Statutes or rules adopted thereunder for a combustion products landfill or coal combustion residuals landfill, industrial landfill, or municipal solid waste landfill; and (iii) designed to hold accumulated coal combustion residuals in the form of liquid wastes, wastes containing free liquids, or sludges, and that is not backfilled or otherwise covered during periods of deposition. "Coal combustion residuals surface impoundment" includes all of the following:

a. An impoundment that is dry due to the deposited liquid having evaporated, volatilized, or leached.

b. An impoundment that is wet with exposed liquid.

c. Lagoons, ponds, aeration pits, settling ponds, tailings ponds, and sludge pits, when these structures are designed to hold accumulated coal combustion residuals.

d. A coal combustion residuals surface impoundment that has been covered with soil after the final deposition of coal combustion residuals at the impoundment.

(7) "Commission" means the Environmental Management Commission.

(8) "Fly ash" means the very fine, powdery material, composed mostly of silica with nearly all particles spherical in shape, which is a product of burning finely ground coal in a boiler to produce electricity and is removed from the plant exhaust gases by air emission control devices.

(9) "Flue gas desulfurization material" means the material produced through a process used to reduce sulfur dioxide emissions from the exhaust gas system of a coal-fired boiler. The physical nature of these materials varies from a wet sludge to a dry powdered material, depending on the process, and their composition comprises either sulfites, sulfates, or a mixture thereof.

(10) "Mine" means an area of land from which minerals, inorganic and organic, have been extracted from their natural deposits.

(11) "Minerals" means soil, clay, coal, phosphate, metallic ore, and any other solid material or substance of commercial value found in natural deposits on or in the earth.

(12) "Owner" or "owner of a coal combustion residuals surface impoundment" means a public utility, as defined in G.S. 62-3, that owns a coal combustion residuals surface impoundment.

(13) "Receptor" means any human, plant, animal, or structure which is, or has the potential to be, affected by the release or migration of contaminants. Any well constructed for the purpose of monitoring groundwater and contaminant concentrations shall not be considered a receptor.

(14) "Structural fill" means an engineered fill with a projected beneficial end use constructed using coal combustion products that are properly placed and compacted. For purposes of this Part, the term includes fill used to reclaim abandoned mines and for embankments, greenscapes, foundations, construction foundations, and for bases/sub-bases under a structure or a

footprint of a paved road, parking lot, sidewalk, walkway, or similar structure.

(15) "Use or reuse of coal combustion products" means the procedure whereby coal combustion products are directly used as either of the following:

a. As an ingredient in an industrial process to make a product, unless distinct components of the coal combustion products are recovered as separate end products.

b. In a function or application as an effective substitute for a commercial product or natural resource.

"**§ 130A-309.202. Coal Ash Management Commission.**

(a) Creation. – In recognition of the complexity and magnitude of the issues associated with the management of coal combustion residuals and the proper closure and remediation of coal combustion residuals surface impoundments, the Coal Ash Management Commission is hereby established.

(b) Membership. – The Commission shall consist of nine members as follows:

(1) One appointed by the General Assembly upon recommendation of the President Pro Tempore of the Senate in accordance with G.S. 120-121 who shall at the time of appointment be a resident of the State.

(2) One appointed by the General Assembly upon recommendation of the President Pro Tempore of the Senate in accordance with G.S. 120-121 who shall at the time of appointment have special training or scientific expertise in waste management, including solid waste disposal, hauling, or beneficial use.

(3) One appointed by the General Assembly upon recommendation of the President Pro Tempore of the Senate in accordance with G.S. 120-121 who shall at the time of appointment be a licensed physician or a person with experience in public health.

(4) One appointed by the General Assembly upon recommendation of the Speaker of the House of Representatives in accordance with G.S. 120-121 who shall at the time of appointment be a member of a nongovernmental conservation interest.

(5) One appointed by the General Assembly upon recommendation of the Speaker of the House of Representatives in accordance with G.S. 120-121 who shall at the time of appointment be actively employed by, or recently retired from, an industrial manufacturing facility.

(6) One appointed by the General Assembly upon recommendation of the Speaker of the House of Representatives in accordance with G.S. 120-121 who shall at the time of appointment have experience in the use of coal combustion residuals as structural fill for construction or development projects.

(7) One appointed by the Governor who shall at the time of appointment have experience in economic development.

(8) One appointed by the Governor who shall at the time of appointment be a representative of an electric membership corporation organized under Article 2 of Chapter 117 of the General Statutes.

(9) One appointed by the Governor who shall at the time of appointment be a be a person with experience in science or engineering.

(c) Chair; Vice-Chair. – The Commission shall have a chair and a vice-chair. The Commission shall elect one of its members to serve as chair and one of its members to serve as vice-chair. The chair and vice-chair shall serve two-year terms.

(d) Vacancies. – Any appointment to fill a vacancy on the Commission created by the resignation, dismissal, death, or disability of a member shall be for the balance of the unexpired term. The Governor may reappoint a gubernatorial appointee of the Commission to an additional term if, at the time of the reappointment, the member qualifies for membership on the Commission under subdivisions (7) through (9) of subsection (b) of this section. Appointments by the General Assembly shall be made in accordance with G.S. 120-121, and vacancies in those appointments shall be filled in accordance with G.S. 120-122.

(e) Removal. – The Governor shall have the power to remove any member of the Commission from office for misfeasance, malfeasance, or nonfeasance in accordance with the provisions of G.S. 143B-13 of the Executive Organization Act of 1973.

(f) Powers and Duties. – The Commission shall have all of the following powers and duties:

(1) To review and approve the classification of coal combustion residuals surface impoundments required by G.S. 130A-309.211.

(2) To review and approve Coal Combustion Residuals Surface Impoundment Closure Plans as provided in G.S. 130A-309.212.

(3) To review and make recommendations on the provisions of this Part and other statutes and rules related to the management of coal combustion residuals.

(4) To undertake any additional studies as requested by the General Assembly.

(g) Reimbursement. – The members of the Commission shall receive per diem and necessary travel and subsistence expenses in accordance with the provisions of G.S. 138-5.

(h) Quorum. – Five members of the Commission shall constitute a quorum for the transaction of business.

(i) Staff. – The Commission is authorized and empowered to employ staff as the Commission may determine to be necessary for the proper discharge of the Commission's duties and responsibilities. The Chair of the Commission shall organize and direct the work of the Commission staff. The salaries and compensation of all such personnel shall be fixed in the manner provided by law for fixing and regulating salaries and compensation by other State agencies. The chair, within allowed budgetary limits and as allowed by law, shall authorize and approve travel, subsistence, and related expenses of such personnel incurred while traveling on official business. All State agencies, including the constituent institutions of The University of North Carolina, shall provide information and support to the Commission upon request.

(j) Conflicts of Interest; Disclosure. – The Governor shall require adequate disclosure of potential conflicts of interest by members. The Governor, by executive order, shall promulgate criteria regarding conflicts of interest and disclosure thereof for determining the eligibility of persons under this subsection, giving due regard to the requirements of federal legislation and, for this purpose, may promulgate rules, regulations, or guidelines in conformance with those established by any federal agency interpreting and applying provisions of federal law.

(k) Covered Persons. – All members of the Commission are covered persons for the purposes of Chapter 138A of the General Statutes, the State Government Ethics Act. As covered persons, members of the Commission shall comply with the applicable requirements of the State Government Ethics Act, including mandatory training, the public disclosure of economic interests, and ethical standards for covered persons. Members of the Commission shall comply with the provisions of the State Government Ethics Act to avoid conflicts of interest.

(l) Meetings. – The Commission shall meet at least once every two months and may hold special meetings at any time and place within the State at the call of the Chair or upon the written request of at least five members.

(m) Reports. – The Commission shall submit quarterly written reports as to its operation, activities, programs, and progress to the Environmental Review Commission. The Commission shall supplement the written reports required by this subsection with additional written and oral reports as may be requested by the Environmental Review Commission. The Commission shall submit the written reports required by this subsection whether or not the General Assembly is in session at the time the report is due.

(n) Administrative Location; Independence. – The Commission shall be administratively located in the Division of Emergency Management of the Department of Public Safety. The Commission shall exercise all of its powers and duties independently and shall not be subject to the supervision, direction, or control of the Division or Department.

"**§ 130A-309.203. Expedited permit review.**

(a) The Department shall act as expeditiously as practicable, but no later than the deadlines established under subsection (b) of this section, except in compliance with subsection (c) of this section, to issue all permits necessary to conduct activities required by this Part.

(b) Notwithstanding G.S. 130A-295.8(e), the Department shall determine whether an application for any permit necessary to conduct activities required by this Part is complete within 30 days after the Department receives the application for the permit. A determination of completeness means that the application includes all required components but does not mean that the required components provide all of the information that is required for the Department to make a decision on the application. If the Department determines that an application is not complete, the Department shall notify the applicant of the components needed to complete the application. An applicant may submit additional information to the Department to cure the deficiencies in the application. The Department shall make a final determination as to whether the application is complete within the later of (i) 30 days after the Department receives the application for the permit less the number of days that the applicant uses to provide the additional information or (ii) 10 days after the Department receives the additional information from the applicant. The Department shall issue a draft permit decision on an application for a permit within 60 days after the Department determines that the application is complete. The Department shall hold a public hearing and accept written comment on the draft permit decision for a period of not less than 30 or more than 60 days after the Department issues a draft permit decision. The Department shall issue a final permit decision on an application for a permit within 30 days after the comment period on the draft permit decision closes. If the Department fails to act within any time period set out in this subsection, the applicant may treat the failure to act as a denial of the permit and may challenge the denial as provided in Chapter 150B of the General Statutes.

(c) If the Department finds that compliance with the deadlines established under subsection (b) of this section would result in insufficient review of a permit application that would pose a risk to public health, safety, and welfare; the environment; or natural resources, the applicable deadline shall be waived for the application as necessary to allow for adequate review. If a deadline is waived pursuant to this subsection, the Secretary shall issue a written declaration, including findings of fact, documenting the need for the waiver.

"**§ 130A-309.204. Reports.**

(a) The Department shall submit quarterly written reports to the Environmental Review Commission and the Coal Ash Management Commission on its operations, activities, programs, and progress with respect to its obligations under this Part concerning all coal combustion residuals surface impoundments. At a minimum, the report shall include information concerning the status of assessment, corrective action, prioritization, and closure for each coal combustion residual surface impoundment and information on costs connected therewith. The report shall include an executive summary of each annual Groundwater Protection and Restoration Report submitted to the Department by the operator of any coal combustion residuals surface impoundments pursuant to G.S. 130A-309.209(d) and a summary

of all groundwater sampling, protection, and restoration activities related to the impoundment for the preceding year. The report shall also include an executive summary of each annual Surface Water Protection and Restoration Report submitted to the Department by the operator of any coal combustion residuals surface impoundments pursuant to G.S. 130A-309.210(e) and a summary of all surface water sampling, protection, and restoration activities related to the impoundment for the preceding year, including the status of the identification, assessment, and correction of unpermitted discharges from coal combustion residuals surface impoundments to the surface waters of the State. The Department shall supplement the written reports required by this subsection with additional written and oral reports as may be requested by the Environmental Review Commission. The Department shall submit the written reports required by this subsection whether or not the General Assembly is in session at the time the report is due.

(b) On or before October 1 of each year, the Department shall report to each member of the General Assembly who has a coal combustion residuals surface impoundment in the member's district. This report shall include the location of each impoundment in the member's district, the amount of coal combustion residuals known or believed to be located in the impoundment, the last action taken at the impoundment, and the date of that last action.

(c) On or before October 1 of each year, the generators of coal combustion residuals and coal combustion products shall submit an annual summary to the Department. The annual summary shall be for the period July 1 through June 30 and shall include all of the following:

(1) The volume of coal combustion residuals and products produced.

(2) The volume of coal combustion residuals disposed.

(3) The volume of coal combustion products used in structural fill projects.

(4) The volume of coal combustion products beneficially used, other than for structural fill.

"**§ 130A-309.205. Local ordinances regulating management of coal combustion residuals and coal combustion products invalid; petition to preempt local ordinance.**

(a) It is the intent of the General Assembly to maintain a uniform system for the management of coal combustion residuals and coal combustion products, including matters of disposal and beneficial use, and to place limitations upon the exercise by all units of local government in North Carolina of the power to regulate the management of coal combustion residuals and coal combustion products by means of ordinances, property restrictions, zoning regulations, or otherwise. Notwithstanding any authority granted to counties, municipalities, or other local authorities to adopt local ordinances, including those imposing taxes, fees, or charges or regulating health, environment, or land use, all provisions of local ordinances, including those regulating land use, adopted by counties, municipalities, or other local authorities that regulate or have the effect of regulating the management of coal combustion residuals and coal combustion products within the jurisdiction of a local government are invalidated, to the extent necessary to effectuate the purposes of this Part, that do the following:

(1) Place any restriction or condition not placed by this Part upon management of coal combustion residuals and coal combustion products within any county, city, or other political subdivision.

(2) Conflict or are in any manner inconsistent with the provisions of this Part.

(b) If a local zoning or land-use ordinance imposes requirements, restrictions, or conditions that are generally applicable to development, including, but not limited to, setback, buffer, and stormwater requirements, and coal combustion residuals and coal combustion products would be regulated under the ordinance of general applicability, the operator of the proposed activities may petition the Environmental Management Commission to review the matter. After receipt of a petition, the Commission shall hold a hearing in accordance with the procedures in subsection (c) of this section and shall determine whether or to what extent to

preempt the local ordinance to allow for the management of coal combustion residuals and coal combustion products.

(c) When a petition described in subsection (b) of this section has been filed with the Environmental Management Commission, the Commission shall hold a public hearing to consider the petition. The public hearing shall be held in the affected locality within 60 days after receipt of the petition by the Commission. The Commission shall give notice of the public hearing by both of the following means:

(1) Publication in a newspaper or newspapers having general circulation in the county or counties where the activities are to be conducted, once a week for three consecutive weeks, the first notice appearing at least 30 days prior to the scheduled date of the hearing.

(2) First-class mail to persons who have requested notice. The Commission shall maintain a mailing list of persons who request notice in advance of the hearing pursuant to this section. Notice by mail shall be complete upon deposit of a copy of the notice in a postage-paid wrapper addressed to the person to be notified at the address that appears on the mailing list maintained by the Commission in a post office or official depository under the exclusive care and custody of the United States Postal Service.

(d) Any interested person may appear before the Environmental Management Commission at the hearing to offer testimony. In addition to testimony before the Commission, any interested person may submit written evidence to the Commission for the Commission's consideration. At least 20 days shall be allowed for receipt of written comment following the hearing.

(e) A local zoning or land-use ordinance is presumed to be valid and enforceable to the extent the zoning or land-use ordinance imposes requirements, restrictions, or conditions that are generally applicable to development, including, but not limited to, setback, buffer, and stormwater requirements, unless the Environmental Management Commission makes a finding of fact to the contrary. The Commission shall determine whether or to what extent to preempt local ordinances so as to allow the project involving management of coal combustion residuals and coal combustion products no later than 60 days after conclusion of the hearing. The Commission shall preempt a local ordinance only if the Commission makes all of the following findings:

(1) That there is a local ordinance that would regulate the management of coal combustion residuals and coal combustion products.

(2) That all legally required State and federal permits or approvals have been issued by the appropriate State and federal agencies or that all State and federal permit requirements have been satisfied and that the permits or approvals have been denied or withheld only because of the local ordinance.

(3) That local citizens and elected officials have had adequate opportunity to participate in the permitting process.

(4) That the project involving management of coal combustion residuals and coal combustion products will not pose an unreasonable health or environmental risk to the surrounding locality and that the operator has taken or consented to take reasonable measures to avoid or manage foreseeable risks and to comply to the maximum feasible extent with applicable local ordinances.

(f) If the Environmental Management Commission does not make all of the findings under subsection (e) of this section, the Commission shall not preempt the challenged local ordinance. The Commission's decision shall be in writing and shall identify the evidence submitted to the Commission plus any additional evidence used in arriving at the decision.

(g) The decision of the Environmental Management Commission shall be final, unless a party to the action files a written appeal under Article 4 of Chapter 150B of the General Statutes, as modified by this section, within 30 days of the date of the decision. The record on appeal shall consist of all materials and information submitted to or considered by the Commission, the Commission's written decision, a complete transcript of the hearing, the specific findings required by subsection (e) of this section, and any minority positions on the specific findings required by subsection (e) of this section. The scope of judicial review shall be as set forth in G.S. 150B-51, except as this subsection provides regarding the record on appeal.

(h) If the court reverses or modifies the decision of the Environmental Management Commission, the judge shall set out in writing, which writing shall become part of the record, the reasons for the reversal or modification.

(i) In computing any period of time prescribed or allowed by the procedure in this section, the provisions of Rule 6(a) of the Rules of Civil Procedure, G.S. 1A-1, shall apply.

"**§ 130A-309.206. Federal preemption; severability.**

The provisions of this Part shall be severable, and if any phrase, clause, sentence, or provision is declared to be unconstitutional or otherwise invalid or is preempted by federal law or regulation, the validity of the remainder of this Part shall not be affected thereby.

"**§ 130A-309.207. General rulemaking for Part.**

The Environmental Management Commission shall adopt rules as necessary to implement the provisions of the Part. Such rules shall be exempt from the requirements of G.S. 150B-19.3.

"Subpart 2. Management of Coal Ash Residuals; Closure of Coal Ash Impoundments.

"**§ 130A-309.208. Generation, disposal, and use of coal combustion residuals.**

(a) On or after July 1, 2014, the construction of new and expansion of existing coal combustion residuals surface impoundments is prohibited.

(b) On or after October 1, 2014, the disposal of coal combustion residuals into a coal combustion residuals surface impoundment at an electric generating facility where the coal-fired generating units are no longer producing coal combustion residuals is prohibited.

(c) On or after December 31, 2018, the discharge of stormwater into a coal combustion surface impoundment at an electric generating facility where the coal-fired generating units are no longer producing coal combustion residuals is prohibited.

(d) On or after December 31, 2019, the discharge of stormwater into a coal combustion surface impoundment at an electric generating facility where the coal-fired generating units are actively producing coal combustion residuals is prohibited.

(e) On or before December 31, 2018, all electric generating facilities shall convert to the disposal of "dry" fly ash or the facility shall be retired. For purposes of this subsection, the term "dry" shall mean coal combustion residuals which are not in the form of liquid wastes, wastes containing free liquids, or sludges.

(f) On or before December 31, 2019, all electric generating facilities shall convert to the disposal of "dry" bottom ash or the facility shall be retired. For purposes of this subsection, the term "dry" shall mean coal combustion residuals which are not in the form of liquid wastes, wastes containing free liquids, or sludges.

"**§ 130A-309.209. Groundwater assessment and corrective action; drinking water supply well survey and provision of alternate water supply; reporting.**

(a) Groundwater Assessment of Coal Combustion Residuals Surface Impoundments. – The owner of a coal combustion residuals surface impoundment shall conduct groundwater monitoring and assessment as provided in this subsection. The requirements for groundwater monitoring and assessment set out in this subsection are in addition to any other groundwater monitoring and assessment requirements applicable to the owners of coal combustion residuals surface impoundments.

(1) No later than December 31, 2014, the owner of a coal combustion residuals surface impoundment shall submit a proposed Groundwater Assessment

Plan for the impoundment to the Department for its review and approval. The Groundwater Assessment Plan shall, at a minimum, provide for all of the following:

a. A description of all receptors and significant exposure pathways.

b. An assessment of the horizontal and vertical extent of soil and groundwater contamination for all contaminants confirmed to be present in groundwater in exceedance of groundwater quality standards.

c. A description of all significant factors affecting movement and transport of contaminants.

d. A description of the geological and hydrogeological features influencing the chemical and physical character of the contaminants.

e. A schedule for continued groundwater monitoring.

f. Any other information related to groundwater assessment required by the Department.

(2) The Department shall approve the Groundwater Assessment Plan if it determines that the Plan complies with the requirements of this subsection and will be sufficient to protect public health, safety, and welfare; the environment; and natural resources.

(3) No later than 10 days from approval of the Groundwater Assessment Plan, the owner shall begin implementation of the Plan.

(4) No later than 180 days from approval of the Groundwater Assessment Plan, the owner shall submit a Groundwater Assessment Report to the Department. The Report shall describe all exceedances of groundwater quality standards associated with the impoundment.

(b) Corrective Action for the Restoration of Groundwater Quality. – The owner of a coal combustion residuals surface impoundment shall implement corrective action for the restoration of groundwater quality as provided in this subsection. The requirements for corrective action for the restoration of groundwater quality set out in this subsection are in addition to any other corrective action for the restoration of groundwater quality requirements applicable to the owners of coal combustion residuals surface impoundments.

(1) No later than 90 days from submission of the Groundwater Assessment Report required by subsection (a) of this section, the owner of the coal combustion residuals surface impoundment shall submit a proposed Groundwater Corrective Action Plan to the Department for its review and approval. The Groundwater Corrective Action Plan shall provide for the restoration of groundwater in conformance with the requirements of Subchapter L of Chapter 2 of Title 15A of the North Carolina Administrative Code. The Groundwater Corrective Action Plan shall include, at a minimum, all of the following:

a. A description of all exceedances of the groundwater quality standards, including any exceedances that the owner asserts are the result of natural background conditions.

b. A description of the methods for restoring groundwater in conformance with the requirements of Subchapter L of Chapter 2 of Title 15A of the North Carolina Administrative Code and a detailed explanation of the reasons for selecting these methods.

c. Specific plans, including engineering details, for restoring groundwater quality.

d. A schedule for implementation of the Plan.

e. A monitoring plan for evaluating the effectiveness of the proposed corrective action and detecting movement of any contaminant plumes.

f. Any other information related to groundwater assessment required by the Department.

(2) The Department shall approve the Groundwater Corrective Action Plan if it determines that the Plan complies with the requirements of this subsection and will be sufficient to protect public health, safety, and welfare; the environment; and natural resources.

(3) No later than 30 days from the approval of the Groundwater Corrective Action Plan, the owner shall begin implementation of the Plan in accordance with the Plan's schedule.

(c) Drinking Water Supply Well Survey and Provision of Alternate Water Supply. – No later than October 1, 2014, the owner of a coal combustion residuals surface impoundment shall conduct a Drinking Water Supply Well Survey that identifies all drinking water supply wells within one-half mile down-gradient from the established compliance boundary of the impoundment and submit the Survey to the Department. The Survey shall include well locations, the nature of water uses, available well construction details, and information regarding ownership of the wells. No later than December 1, 2014, the Department shall determine, based on the Survey, which drinking water supply wells the owner is required to sample and how frequently and for what period sampling is required. The Department shall require sampling for drinking water supply wells where data regarding groundwater quality and flow and depth in the area of any surveyed well provide a reasonable basis to predict that the quality of water from the surveyed well may be adversely impacted by constituents associated with the presence of the impoundment. No later than January 1, 2015, the owner shall initiate sampling and water quality analysis of the drinking water supply wells. A property owner may elect to have an independent third party selected from a laboratory certified by the Department's Wastewater/Groundwater Laboratory Certification program sample wells located on their property in lieu of sampling conducted by the owner of the coal combustion residuals surface impoundment. The owner of the coal combustion residuals surface impoundment shall pay for the reasonable costs of such sampling. Nothing in this subsection shall be construed to preclude or impair the right of any property owner to refuse such sampling of wells on their property. If the sampling and water quality analysis indicates that water from a drinking water supply well exceeds groundwater quality standards for constituents associated with the presence of the impoundment, the owner shall replace the contaminated drinking water supply well with an alternate supply of potable drinking water. The alternate supply of potable drinking water shall be supplied within 30 days of the Department's determination that there is an exceedance of groundwater quality standards attributable to constituents associated with the presence of the impoundment. The requirement to replace a contaminated drinking water supply well with an alternate supply of potable drinking water set out in this subsection is in addition to any other requirements to replace a contaminated drinking water supply well with an alternate supply of potable drinking water applicable to the owners of coal combustion residuals surface impoundments.

(d) Reporting. – In addition to any other reporting required by the Department, the owner of a coal combustion residuals surface impoundment shall submit an annual Groundwater Protection and Restoration Report to the Department no later than January 31 of each year. The Report shall include a summary of all groundwater monitoring, protection, and restoration activities related to the impoundment for the preceding year, including the status of the Groundwater Assessment Plan, the Groundwater Assessment Report, the Groundwater Corrective Action Plan, the Drinking Water Supply Well Survey, and the replacement of any contaminated drinking water supply wells. The owner of a coal combustion residuals surface

impoundment shall also submit all information required to be submitted to the Department pursuant to this section to the Coal Ash Management Commission.

"**§ 130A-309.210. Identification, assessment, and correction of unpermitted discharges.**

(a) Identification of Unpermitted Discharges from Coal Combustion Residuals Surface Impoundments to the Surface Waters of the State. –

(1) The owner of a coal combustion residuals surface impoundment shall identify all unpermitted discharges from the impoundment to the surface waters of the State as provided in this subsection. The requirements for identifying all unpermitted discharges from an impoundment set out in this subsection are in addition to any other requirements for identifying unpermitted discharges applicable to the owners of coal combustion residuals surface impoundments.

(2) No later than December 31, 2014, the owner of a coal combustion residuals surface impoundment shall submit a topographic map that identifies the location of all: (i) outfalls from engineered channels designed or improved for the purpose of collecting water from the toe of the impoundment to the Department; and (ii) seeps discharging from the impoundment that are not captured by engineered channels designed or improved for the purpose of collecting water from the toe of the impoundment to the Department. The topographic map shall comply with all of the following:

a. Be at a scale as required by the Department.

b. Specify the latitude and longitude of each toe drain outfall and each seep.

c. Specify whether the discharge from each toe drain outfall and each seep is continuous or intermittent.

d. Provide an average flow measurement of the discharge from each toe drain outfall and each seep, including a description of the method used to measure average flow.

e. Specify whether the discharge from each toe drain outfall and seep identified reaches the surface waters of the State. If the discharge from a toe drain outfall or seep reaches the surface waters of the State, the map shall specify the latitude and longitude of where the discharge reaches the surface waters of the State.

f. Any other information related to the topographic map required by the Department.

(b) Assessment of Unpermitted Discharges from Coal Combustion Residuals Surface Impoundments to the Surface Waters of the State. – The owner of a coal combustion residuals surface impoundment shall conduct an assessment of unpermitted discharges from the coal combustion residuals surface impoundment to the surface waters of the State as provided in this subsection. The requirements for assessment of unpermitted discharges from the coal combustion residuals surface impoundment to the surface waters of the State set out in this subsection are in addition to any other requirements for the assessment of unpermitted discharges from coal combustion residuals surface impoundments to surface waters of the State applicable to the owners of coal combustion residuals surface impoundments.

(1) No later than December 31, 2014, the owner of a coal combustion residuals surface impoundment shall submit a proposed Unpermitted Discharge Assessment Plan to the Department. The Unpermitted Discharge Assessment Plan shall include information sufficient to allow the Department to determine whether any unpermitted discharge, including a discharge from a toe drain outfall or seep, has reached the surface waters of the State and has caused a violation of surface water quality standards. The Unpermitted

Discharge Assessment Plan shall include, at a minimum, all of the following:

a. Upstream and downstream sampling locations within all channels that could potentially carry a discharge.

b. A description of the surface water quality analyses that will be performed.

c. A sampling schedule, including the frequency and duration of sampling activities.

d. Reporting requirements.

e. Any other information related to the assessment of unpermitted discharges required by the Department.

(2) The Department shall approve the Unpermitted Discharge Assessment Plan if it determines that the Plan complies with the requirements of this subsection and will be sufficient to protect public health, safety, and welfare; the environment; and natural resources.

(3) No later than 30 days from the approval of the Unpermitted Discharge Assessment Plan, the owner shall begin implementation of the Plan in accordance with the Plan's schedule.

(c) Corrective Action to Prevent Unpermitted Discharges from Coal Combustion Residuals Surface Impoundments to the Surface Waters of the State. – The owner of a coal combustion residuals surface impoundment shall implement corrective action to prevent unpermitted discharges from the coal combustion residuals surface impoundment to the surface waters of the State as provided in this subsection. The requirements for corrective action to prevent unpermitted discharges from coal combustion residuals surface impoundments to the surface waters of the State set out in this subsection are in addition to any other requirements for corrective action to prevent unpermitted discharges from coal combustion residuals surface impoundments to the surface waters of the State applicable to the owners of coal combustion residuals surface impoundments.

(1) If the Department determines, based on surface water quality sampling information provided in an Unpermitted Discharge Assessment Plan submitted pursuant to subsection (b) of this section, that an unpermitted discharge from a coal combustion residuals surface impoundment, including a discharge from a toe drain outfall or seep, has violated State or federal surface water quality standards, the Department shall notify the owner of the impoundment of its determination.

(2) No later than 30 days from the notification of violation, the owner of the coal combustion residuals surface impoundment shall submit a proposed Unpermitted Discharge Corrective Action Plan to the Department for its review and approval. The proposed Unpermitted Discharge Corrective Action Plan shall include, at a minimum, all of the following:

a. One of the following methods of proposed corrective action:

1. Elimination of the unpermitted discharge.

2. Capture and rerouting of the unpermitted discharge through a permitted outfall.

3. Implementation of best management practices to prevent the unpermitted discharge.

4. Application for a National Pollutant Discharge Elimination System (NPDES) permit amendment to bring the unpermitted discharge under permit regulations.

b. A detailed explanation of the reasons for selecting the method of corrective action.

c. Specific plans, including engineering details, to prevent the unpermitted discharge.
d. A schedule for implementation of the Plan.
e. A monitoring plan for evaluating the effectiveness of the proposed corrective action.
f. Any other information related to the correction of unpermitted discharges required by the Department.

(3) The Department shall approve the Unpermitted Discharge Corrective Action Plan if it determines that the Plan complies with the requirements of this subsection and will be sufficient to protect public health, safety, and welfare; the environment; and natural resources.

(4) No later than 30 days from the approval of the Unpermitted Discharge Corrective Action Plan, the owner shall begin implementation of the Plan in accordance with the Plan's schedule.

(d) Identification of New Unpermitted Discharges. – No later than August 1, 2014, the owner of a coal combustion residuals surface impoundment shall submit a proposed Plan for the Identification of New Unpermitted Discharges to the Department for its review and approval as provided in this subsection.

(1) The proposed Plan for the Identification of New Unpermitted Discharges shall include, at a minimum, all of the following:
a. A procedure for routine inspection of the coal combustion residuals surface impoundment to identify indicators of potential new unpermitted discharges, including toe drain outfalls and seeps.
b. A procedure for determining whether a new unpermitted discharge is actually present.
c. A procedure for notifying the Department when a new unpermitted discharge is confirmed.
d. Any other information related to the identification of new unpermitted discharges required by the Department.

(2) The Department shall approve the Plan for the Identification of New Unpermitted Discharges if it determines that the Plan complies with the requirements of this subsection and will be sufficient to protect public health, safety, and welfare; the environment; and natural resources.

(3) No later than 30 days from the approval of the Plan for the Identification of New Unpermitted Discharges, the owner shall begin implementation of the Plan in accordance with the Plan.

(e) Reporting. – In addition to any other reporting required by the Department, the owner of a coal combustion residuals surface impoundment shall submit an annual Surface Water Protection and Restoration Report to the Department no later than January 31 of each year. The Report shall include a summary of all surface water sampling, protection, and restoration activities related to the impoundment for the preceding year, including the status of the identification, assessment, and correction of unpermitted discharges from coal combustion residuals surface impoundments to the surface waters of the State. The owner of a coal combustion residuals surface impoundment shall also submit all information required to be submitted to the Department pursuant to this section to the Coal Ash Management Commission.

"**§ 130A-309.211. Prioritization of coal combustion residuals surface impoundments.**

(a) As soon as practicable, but no later than August 1, 2015, the Department shall develop proposed classifications for all coal combustion residuals surface impoundments, including active and retired sites, for the purpose of closure and remediation based on these sites' risks to public health, safety, and welfare; the environment; and natural resources and

shall determine a schedule for closure and required remediation that is based on the degree of risk to public health, safety, and welfare; the environment; and natural resources posed by the impoundments and that gives priority to the closure and required remediation of impoundments that pose the greatest risk. In assessing the risk, the Department shall evaluate information received pursuant to G.S. 130A-309.209 and G.S. 130A-309.210 and any other information deemed relevant and, at a minimum, consider all of the following:

(1) Any imminent hazards to public health, safety, or welfare resulting from the impoundment.

(2) Structural condition and hazard potential of the impoundment.

(3) The proximity of surface waters to the impoundment and whether any surface waters are contaminated or imminently threatened by contamination as a result of the impoundment.

(4) Information concerning the horizontal and vertical extent of soil and groundwater contamination for all contaminants confirmed to be present in groundwater in exceedance of groundwater quality standards and all significant factors affecting contaminant transport.

(5) The location and nature of all receptors and significant exposure pathways.

(6) The geological and hydrogeological features influencing the movement and chemical and physical character of the contaminants.

(7) Amount and characteristics of coal combustion residuals in the impoundment.

(8) Any other factor the Department deems relevant to establishment of risk.

(b) The Department shall issue a proposed classification for each coal combustion residuals surface impoundment based upon the assessment conducted pursuant to subsection (a) of this section as high-risk, intermediate-risk, or low-risk. Within 30 days after a proposed classification has been issued, the Department shall issue a written declaration, including findings of fact, documenting the proposed classification. The Department shall provide for public participation on the proposed risk classification as follows:

(1) The Department shall make copies of the written declaration issued pursuant to this subsection available for inspection as follows:

a. A copy of the declaration shall be provided to the local health director.

b. A copy of the declaration shall be provided to the public library located in closest proximity to the site in the county or counties in which the site is located.

c. The Department shall post a copy of the declaration on the Department's Web site.

d. The Department may place copies of the declaration in other locations so as to assure the availability thereof to the public.

(2) Before issuing a proposed classification of an impoundment as high-risk, intermediate-risk, or low-risk, the Department shall give notice of the written declaration issued pursuant to this subsection as follows:

a. A notice and summary of the declaration shall be published weekly for a period of three consecutive weeks in a newspaper having general circulation in the county or counties where the site is located.

b. Notice of the written declaration shall be given by first-class mail to persons who have requested such notice. Such notice shall include a summary of the written declaration and state the locations where a copy of the written declaration is available for inspection. The Department shall maintain a mailing list of persons who request notice pursuant to this section.

c. Notice of the written declaration shall be given by electronic mail to persons who have requested such notice. Such notice shall include a summary of the written declaration and state the locations where a copy of the written declaration is available for inspection. The Department shall maintain a mailing list of persons who request notice pursuant to this section.

(3) No later than 60 days after issuance of the written declaration, the Department shall conduct a public meeting in the county or counties in which the site is located to explain the written declaration to the public. The Department shall give notice of the hearing at least 15 days prior to the date thereof by all of the following methods:

a. Publication as provided in subdivision (1) of this subsection, with first publication to occur not less than 30 days prior to the scheduled date of the hearing.

b. First-class mail to persons who have requested notice as provided in subdivision (2) of this subsection.

c. Electronic mail to persons who have requested notice as provided in subdivision (2) of this subsection.

(4) At least 30 days from the latest date on which notice is provided pursuant to subdivision (2) of this subsection shall be allowed for the receipt of written comment on the written declaration prior to issuance of a final risk classification. At least 20 days will be allowed for receipt of written comment following a hearing conducted pursuant to subdivision (3) of this subsection prior to issuance of a final risk classification.

(c) Within 30 days of the receipt of all written comment as required by subdivision (4) of subsection (b) of this section, the Department shall submit a proposed classification for a coal combustion residuals surface impoundment to the Coal Ash Management Commission established pursuant to G.S. 130A-309.202. The Commission shall evaluate all information submitted in accordance with this Part related to the proposed classification and any other information the Commission deems relevant. The Commission shall only approve the proposed classification if it determines that the classification was developed in accordance with this section and that the classification accurately reflects the level of risk posed by the coal combustion residuals surface impoundment. The Commission shall issue its determination in writing, including findings in support of its determination. If the Commission fails to act on a proposed classification within 60 days of receipt of the proposed classification, the proposed classification shall be deemed approved. Parties aggrieved by a final decision of the Commission pursuant to this subsection may appeal the decision as provided under Article 4 of Chapter 150B of the General Statutes.

"**§ 130A-309.212. Closure of coal combustion residuals surface impoundments.**

(a) An owner of a coal combustion residuals surface impoundment shall submit a proposed Coal Combustion Residuals Surface Impoundment Closure Plan for the Department's approval. If corrective action to restore groundwater has not been completed pursuant to the requirements of G.S. 130A-309.209(b), the proposed closure plan shall include provisions for completion of activities to restore groundwater in conformance with the requirements of Subchapter L of Chapter 2 of Title 15A of the North Carolina Administrative Code. In addition, the following requirements, at a minimum, shall apply to such plans:

(1) High-risk impoundments shall be closed as soon as practicable, but no later than December 31, 2019. A proposed closure plan for such impoundments must be submitted as soon as practicable, but no later than December 31, 2016. At a minimum, such impoundments shall be dewatered, and the owner of an impoundment shall either:

a. Convert the coal combustion residuals impoundment to an industrial landfill, as that term is defined by this Article, by removing all coal combustion residuals from the impoundment temporarily, safely storing the residuals on-site, and complying with the siting and design requirements for disposal sites established by Section .0503 of Subchapter B of Chapter 13 of Title 15A of the North Carolina Administrative Code, except with respect to those requirements that pertain to buffers. In lieu of the buffer requirement established by Section .0503(f)(2)(iii) of Subchapter B of Chapter 13 of Title 15A of the North Carolina Administrative Code, the owner of the impoundment shall establish and maintain a 300-foot buffer between streams and rivers and disposal areas. After the temporarily displaced coal combustion residuals have been returned for disposal in the industrial landfill constructed pursuant to the requirements of this sub-subdivision, the owner of the landfill shall comply with the closure and post-closure requirements established by Section .1627 of Subchapter B of Chapter 13 of Title 15A of the North Carolina Administrative Code. A landfill constructed pursuant to this sub-subdivision shall otherwise be subject to all applicable requirements of this Chapter and rules adopted thereunder. Prior to closure, the Department may allow the disposal of coal combustion residuals, in addition to those originally contained in the impoundment, to the landfill constructed pursuant to this sub-subdivision, if the Department determines that the site is suitable for additional capacity and that disposal of additional coal combustion residuals will not pose an unacceptable risk to public health, safety, welfare; the environment; and natural resources.

b. Remove all coal combustion residuals from the impoundment, return the former impoundment to a nonerosive and stable condition, and (i) transfer the coal combustion residuals for disposal in a coal combustion residuals landfill, industrial landfill, or municipal solid waste landfill or (ii) use the coal combustion products in a structural fill or other beneficial use as allowed by law. The use of coal combustion products (i) as structural fill shall be conducted in accordance with the requirements Subpart 3 of this Part and (ii) for other beneficial uses shall be conducted in accordance with the requirements of 15A NCAC 13B .1701, et seq., (Requirements for Beneficial Use of Coal Combustion By-Products).

(2) Intermediate-risk impoundments shall be closed as soon as practicable, but no later than December 31, 2024. A proposed closure plan for such impoundments must be submitted as soon as practicable, but no later than December 31, 2017. At a minimum, such impoundments shall be dewatered, and the owner of an impoundment shall close the impoundment in any manner allowed pursuant to subdivision (1) of this subsection.

(3) Low-risk impoundments shall be closed as soon as practicable, but no later than December 31, 2029. A proposed closure plan for such impoundments must be submitted as soon as practicable, but no later than December 31, 2018. Such impoundments shall be dewatered. The Department shall require such sites to comply with the closure and post-closure requirements established by Section .1627 of Subchapter B of Chapter 13 of Title 15A of the North Carolina Administrative Code. The Department may require

implementation of any other measure it deems necessary to protect public health, safety, and welfare; the environment; and natural resources, including imposition of institutional controls that are sufficient to protect public health, safety, and welfare; the environment; and natural resources.

(4) Closure Plans for all impoundments shall include all of the following:

a. Facility and coal combustion residuals surface impoundment description. – A description of the operation of the site that shall include, at a minimum, all of the following:

1. Site history and history of site operations, including details on the manner in which coal combustion residuals have been stored and disposed of historically.
2. Estimated volume of material contained in the impoundment.
3. Analysis of the structural integrity of dikes or dams associated with impoundment.
4. All sources of discharge into the impoundment, including volume and characteristics of each discharge.
5. Whether the impoundment is lined, and, if so, the composition thereof.
6. A summary of all information available concerning the impoundment as a result of inspections and monitoring conducted pursuant to this Part and otherwise available.

b. Site maps, which, at a minimum, illustrate all of the following:

1. All structures associated with the operation of any coal combustion residuals surface impoundment located on the site. For purposes of this sub-subdivision, the term "site" shall mean the land or waters within the property boundary of the applicable electric generating station.
2. All current and former coal combustion residuals disposal and storage areas on the site, including details concerning coal combustion residuals produced historically by the electric generating station and disposed of through transfer to structural fills.
3. The property boundary for the applicable site, including established compliance boundaries within the site.
4. All potential receptors within 2,640 feet from established compliance boundaries.
5. Topographic contour intervals of the site shall be selected to enable an accurate representation of site features and terrain and in most cases should be less than 20-foot intervals.
6. Locations of all sanitary landfills permitted pursuant to this Article on the site, which are actively receiving waste or are closed, as well as the established compliance boundaries and components of associated groundwater and surface water monitoring systems.
7. All existing and proposed groundwater monitoring wells associated with any coal combustion residuals surface impoundment on the site.
8. All existing and proposed surface water sample collection locations associated with any coal combustion residuals surface impoundment on the site.

c. The results of a hydrogeologic, geologic, and geotechnical investigation of the site, including, at a minimum, all of the following:
1. A description of the hydrogeology and geology of the site.
2. A description of the stratigraphy of the geologic units underlying each coal combustion residuals surface impoundment located on the site.
3. The saturated hydraulic conductivity for (i) the coal combustion residuals within any coal combustion residuals surface impoundment located on the site and (ii) the saturated hydraulic conductivity of any existing liner installed at an impoundment, if any.
4. The geotechnical properties for (i) the coal combustion residuals within any coal combustion residuals surface impoundment located on the site, (ii) the geotechnical properties of any existing liner installed at an impoundment, if any, and (iii) the uppermost identified stratigraphic unit underlying the impoundment, including the soil classification based upon the Unified Soil Classification System, in-place moisture content, particle size distribution, Atterberg limits, specific gravity, effective friction angle, maximum dry density, optimum moisture content, and permeability.
5. A chemical analysis of the coal combustion residuals surface impoundment, including water, coal combustion residuals, and coal combustion residuals-affected soil.
6. Identification of all substances with concentrations determined to be in excess of the groundwater quality standards for the substance established by Subchapter L of Chapter 2 of Title 15A of the North Carolina Administrative Code, including all laboratory results for these analyses.
7. Summary tables of historical records of groundwater sampling results.
8. A map that illustrates the potentiometric contours and flow directions for all identified aquifers underlying impoundments (shallow, intermediate, and deep) and the horizontal extent of areas where groundwater quality standards established by Subchapter L of Chapter 2 of Title 15A of the North Carolina Administrative Code for a substance are exceeded.
9. Cross-sections that illustrate the following: the vertical and horizontal extent of the coal combustion residuals within an impoundment; stratigraphy of the geologic units underlying a impoundment; and the vertical extent of areas where groundwater quality standards established by Subchapter L of Chapter 2 of Title 15A of the North Carolina Administrative Code for a substance are exceeded.

d. The results of groundwater modeling of the site that shall include, at a minimum, all of the following:
1. An account of the design of the proposed Closure Plan that is based on the site hydrogeologic conceptual model developed and includes (i) predictions on post-closure groundwater

elevations and groundwater flow directions and velocities, including the effects on and from the potential receptors, and (ii) predictions at the compliance boundary for substances with concentrations determined to be in excess of the groundwater quality standards for the substance established Subchapter L of Chapter 2 of Title 15A of the North Carolina Administrative Code.

2. Predictions that include the effects on the groundwater chemistry and should describe migration, concentration, mobilization, and fate for substances with concentrations determined to be in excess of the groundwater quality standards for the substance established by Subchapter L of Chapter 2 of Title 15A of the North Carolina Administrative Code pre- and post-closure, including the effects on and from potential receptors.

3. A description of the groundwater trend analysis methods used to demonstrate compliance with groundwater quality standards for the substance established by Subchapter L of Chapter 2 of Title 15A of the North Carolina Administrative Code and requirements for corrective action of groundwater contamination established by Subchapter L of Chapter 2 of Title 15A of the North Carolina Administrative Code.

e. A description of any plans for beneficial use of the coal combustion residuals in compliance with the requirements of Section .1200 of Subchapter T of Chapter 2 of Title 15A of the North Carolina Administrative Code and Section .1700 of Subchapter B of Chapter 13 of Title 15A of the North Carolina Administrative Code.

f. All engineering drawings, schematics, and specifications for the proposed Closure Plan. If required by Chapter 89C of the General Statutes, engineering design documents should be prepared, signed, and sealed by a professional engineer.

g. A description of the construction quality assurance and quality control program to be implemented in conjunction with the Closure Plan, including the responsibilities and authorities for monitoring and testing activities, sampling strategies, and reporting requirements.

h. A description of the provisions for disposal of wastewater and management of stormwater and the plan for obtaining all required permits.

i. A description of the provisions for the final disposition of the coal combustion residuals. If the coal combustion residuals are to be removed, the owner must (i) identify the location and permit number for the coal combustion residuals landfills, industrial landfills, or municipal solid waste landfills in which the coal combustion residuals will be disposed and (ii) in the case where the coal combustion residuals are planned for beneficial use, the location and manner in which the residuals will be temporarily stored. If the coal combustion residuals are to be left in the impoundment, the owner must (i) in the case of closure pursuant to sub-subdivision (a)(1)a. of this section, provide a description of how the ash will be stabilized prior to completion of closure in accordance with closure and post-closure requirements established by Section .1627 of Subchapter

B of Chapter 13 of Title 15A of the North Carolina Administrative Code and (ii) in the case of closure pursuant to sub-subdivision (a)(1)b. of this section, provide a description of how the ash will be stabilized pre- and post-closure. If the coal combustion residuals are to be left in the impoundment, the owner must provide an estimate of the volume of coal combustion residuals remaining.

j. A list of all permits that will need to be acquired or modified to complete closure activities.

k. A description of the plan for post-closure monitoring and care for an impoundment for a minimum of 30 years. The length of the post-closure care period may be (i) proposed to be decreased or the frequency and parameter list modified if the owner demonstrates that the reduced period or modifications are sufficient to protect public health, safety, and welfare; the environment; and natural resources and (ii) increased by the Department at the end of the post-closure monitoring and care period if there are statistically significant increasing groundwater quality trends or if contaminant concentrations have not decreased to a level protective of public health, safety, and welfare; the environment; and natural resources. If the owner determines that the post-closure care monitoring and care period is no longer needed and the Department agrees, the owner shall provide a certification, signed and sealed by a professional engineer, verifying that post-closure monitoring and care has been completed in accordance with the post-closure plan. If required by Chapter 89C of the General Statutes, the proposed plan for post-closure monitoring and care should be signed and sealed by a professional engineer. The plan shall include, at a minimum, all of the following:

1. A demonstration of the long-term control of all leachate, affected groundwater, and stormwater.
2. A description of a groundwater monitoring program that includes (i) post-closure groundwater monitoring, including parameters to be sampled and sampling schedules; (ii) any additional monitoring well installations, including a map with the proposed locations and well construction details; and (iii) the actions proposed to mitigate statistically significant increasing groundwater quality trends.

l. An estimate of the milestone dates for all activities related to closure and post-closure.

m. A description of the anticipated future use of the site and the necessity for the implementation of institutional controls following closure, including property use restrictions, and requirements for recordation of notices documenting the presence of contamination, if applicable, or historical site use.

(b) The Department shall review a proposed Coal Combustion Residuals Surface Impoundment Closure Plan for consistency with the minimum requirements set forth in subsection (a) of this section and whether the proposed Closure Plan is protective of public health, safety, and welfare; the environment; and natural resources and otherwise complies with the requirements of this Part. Prior to issuing a decision on a proposed Closure Plan, the Department shall provide for public participation on the proposed Closure Plan as follows:

(1) The Department shall make copies of the proposed Closure Plan available for inspection as follows:
a. A copy of the proposed Closure Plan shall be provided to the local health director.
b. A copy of the proposed Closure Plan shall be provided to the public library located in closest proximity to the site in the county or counties in which the site is located.
c. The Department shall post a copy of the proposed Closure Plan on the Department's Web site.
d. The Department may place copies of the proposed Closure Plan in other locations so as to assure the availability thereof to the public.

(2) Before approving a proposed Closure Plan, the Department shall give notice as follows:
a. A notice and summary of the proposed Closure Plan shall be published weekly for a period of three consecutive weeks in a newspaper having general circulation in the county or counties where the site is located.
b. Notice that a proposed Closure Plan has been developed shall be given by first-class mail to persons who have requested such notice. Such notice shall include a summary of the proposed Closure Plan and state the locations where a copy of the proposed Closure Plan is available for inspection. The Department shall maintain a mailing list of persons who request notice pursuant to this section.
c. Notice that a proposed Closure Plan has been developed shall be given by electronic mail to persons who have requested such notice. Such notice shall include a summary of the proposed Closure Plan and state the locations where a copy of the proposed Closure Plan is available for inspection. The Department shall maintain a mailing list of persons who request notice pursuant to this section.

(3) No later than 60 days after receipt of a proposed Closure Plan, the Department shall conduct a public meeting in the county or counties in which the site is located to explain the proposed Closure Plan and alternatives to the public. The Department shall give notice of the hearing at least 30 days prior to the date thereof by all of the following methods:
a. Publication as provided in subdivision (1) of this subsection, with first publication to occur not less than 30 days prior to the scheduled date of the hearing.
b. First-class mail to persons who have requested notice as provided in subdivision (2) of this subsection.
c. Electronic mail to persons who have requested notice as provided in subdivision (2) of this subsection.

(4) At least 30 days from the latest date on which notice is provided pursuant to subdivision (2) of this subsection shall be allowed for the receipt of written comment on the proposed Closure Plan prior to its approval. At least 20 days will be allowed for receipt of written comment following a hearing conducted pursuant to subdivision (3) of this subsection prior to the approval of the proposed Closure Plan.

(c) The Department shall disapprove a proposed Coal Combustion Residuals Surface Impoundment Closure Plan unless the Department finds that the Closure Plan is protective of public health, safety, and welfare; the environment; and natural resources and otherwise complies with the requirements of this Part. The Department shall provide specific findings to

support its decision to approve or disapprove a proposed Closure Plan. If the Department disapproves a proposed Closure Plan, the person who submitted the Closure 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 Closure Plan within 120 days after a complete Closure Plan has been submitted, the person who submitted the proposed Closure Plan may treat the Closure Plan as having been disapproved at the end of that time period. The Department may require a person who proposes a Closure Plan to supply any additional information necessary for the Department to approve or disapprove the Closure Plan.

(d) Within 30 days of its approval of a Coal Combustion Residuals Surface Impoundment Closure Plan, the Department shall submit the Closure Plan to the Coal Ash Management Commission. The Commission shall evaluate all information submitted in accordance with this Part related to the Closure Plan and any other information the Commission deems relevant. The Commission shall only approve the Closure Plan if it determines that the Closure Plan was developed in accordance with this section; that implementation of the Closure Plan according to the Closure Plan's schedule is technologically feasible; and that the benefits to public health, safety, and welfare; the environment; and natural resources outweigh the negative impacts on electricity costs and reliability. The Commission shall issue its determination in writing, including findings in support of its determination. If the Commission fails to act on a Closure Plan within 60 days of receipt of the Closure Plan, the Closure Plan shall be deemed approved. Parties aggrieved by a final decision of the Commission pursuant to this subsection may appeal the decision as provided under Article 4 of Chapter 150B of the General Statutes.

(e) As soon as practicable, but no later than 60 days after a Coal Combustion Residuals Surface Impoundment Closure Plan has been approved by the Coal Ash Management Commission, the owner of the coal combustion residuals impoundment shall begin implementation of the approved plan. Modifications to an approved closure plan may only be allowed in conformance with the requirements of this Part, upon written request of an owner of an impoundment, with the written approval of the Department, and after public notice of the change in accordance with the requirements of subdivision (2) of subsection (b) of this section.

(f) Nothing in this section shall be construed to obviate the need for sampling, remediation, and monitoring activities at the site as required by G.S. 130A-309.209 and G.S. 130A-309.310.

"Subpart 3. Use of Coal Combustion Products in Structural Fill.

"**§ 130A-309.213. Applicability.**

The provisions of this Subpart shall apply to the siting, design, construction, operation, and closure of projects that utilize coal combustion products for structural fill.

"**§ 130A-309.214. Permit requirements for projects using coal combustion products for structural fill.**

(a) Permit Requirements. –

(1) Projects using coal combustion products as structural fill involving the placement of less than 10,000 tons of coal combustion products per acre or less than 100,000 tons of coal combustion products in total per project, which proceed in compliance with the requirements of this section and rules adopted thereunder, are deemed permitted. Any person proposing such a project shall submit an application for a permit to the Department upon such form as the Department may prescribe including, at a minimum, the information set forth in subdivision (1) of subsection (b) of this section.

(2) No person shall commence or operate a project using coal combustion residuals as structural fill involving the placement of 10,000 or more tons of coal combustion products per acre or 100,000 or more tons of coal combustion products in total per project without first receiving an individual

permit from the Department. Any person proposing such a project shall submit an application for a permit to the Department upon such form as the Department may prescribe including, at a minimum, the information set forth in subdivisions (1) and (2) of subsection (b) of this section.

(b) Information to Be Provided to the Department. – At least 60 days before initiation of a proposed project using coal combustion products as structural fill, the person proposing the project shall submit all of the following information to the Department on a form as prescribed by the Department:

(1) For projects involving placement of less than 10,000 tons of coal combustion products per acre or less than 100,000 tons of coal combustion products in total per project, the person shall provide, at a minimum, the following information:

a. The description of the nature, purpose, and location of the project.

b. The estimated start and completion dates for the project.

c. An estimate of the volume of coal combustion products to be used in the project.

d. A Toxicity Characteristic Leaching Procedure analysis from a representative sample of each different coal combustion product's source to be used in the project for, at a minimum, all of the following constituents: arsenic, barium, cadmium, lead, chromium, mercury, selenium, and silver.

e. A signed and dated statement by the owner of the land on which the structural fill is to be placed, acknowledging and consenting to the use of coal combustion products as structural fill on the property and agreeing to record the fill in accordance with the requirements of G.S. 130A-390.218.

f. The name, address, and contact information for the generator of the coal combustion products.

g. Physical location of the project at which the coal combustion products were generated.

(2) For projects involving placement of 10,000 or more tons of coal combustion products per acre or 100,000 or more tons of coal combustion products in total per project, the person shall provide all information required pursuant to subdivision (1) of this subsection and shall provide construction plans for the project, including a stability analysis as the Department may require. If required by the Department, a stability analysis shall be prepared, signed, and sealed by a professional engineer in accordance with sound engineering practices. A construction plan shall, at a minimum, include a groundwater monitoring system and an encapsulation liner system in compliance with the requirements of G.S. 130A-309.215.

"**§ 130A-309.215. Design requirements for projects using coal combustion products for structural fill.**

(a) Design, Construction, and Operation of Structural Fill Sites. –

(1) A structural fill site must be designed, constructed, operated, closed, and maintained in such a manner as to minimize the potential for harmful release of constituents of coal combustion residuals to the environment or create a nuisance to the public.

(2) Coal combustion products shall be collected and transported in a manner that will prevent nuisances and hazards to public health and safety. Coal combustion products shall be moisture conditioned, as necessary, and transported in covered trucks to prevent dusting.

(3) Coal combustion products shall be placed uniformly and compacted in lifts not exceeding one foot in thickness and shall be compacted to standards, including in-situ density, compaction effort, and relative density, specified by a registered professional engineer for a specific end-use purpose.

(4) Equipment shall be provided which is capable of placing and compacting the coal combustion products and handling the earthwork required during the periods that coal combustion products are received at the fill project.

(5) The coal combustion product structural fill project shall be effectively maintained and operated as a nondischarge system to prevent discharge to surface water resulting from the project.

(6) The coal combustion product structural fill project shall be effectively maintained and operated to ensure no violations of groundwater standards adopted by the Commission pursuant to Article 21 of Chapter 143 of the General Statutes due to the project.

(7) Surface waters resulting from precipitation shall be diverted away from the active coal combustion product placement area during filling and construction activity.

(8) Site development shall comply with the North Carolina Sedimentation Pollution Control Act of 1973, as amended.

(9) The structural fill project shall be operated with sufficient dust control measures to minimize airborne emissions and to prevent dust from creating a nuisance or safety hazard and shall not violate applicable air quality regulations.

(10) Coal combustion products utilized on an exterior slope of a structural fill shall not be placed with a slope greater than 3.0 horizontal to 1.0 vertical.

(11) Compliance with this subsection shall not insulate any of the owners or operators of a structural fill project from claims for damages to surface waters, groundwater, or air resulting from the operation of the structural fill project. If the project fails to comply with the requirements of this section, the constructor, generator, owner, or operator shall notify the Department and shall take any immediate corrective action as may be required by the Department.

(b) Liners, Leachate Collection System, Cap, and Groundwater Monitoring System Required for Large Structural Fills. – For projects involving placement of 10,000 or more tons of coal combustion products per acre or 100,000 or more tons of coal combustion products in total per project shall have an encapsulation liner system. The encapsulation liner system shall be constructed on and around the structural fill and shall be designed to efficiently contain, collect, and remove leachate generated by the coal combustion products, as well as separate the coal combustion products from any exposure to surrounding environs. At a minimum, the components of the liner system shall consist of the following:

(1) A base liner. The base liner shall consist of one of the following designs:

a. A composite liner utilizing a compacted clay liner. This composite liner is one liner that consists of two components: a geomembrane liner installed above and in direct and uniform contact with a compacted clay liner with a minimum thickness of 24 inches (0.61 m) and a permeability of no more than 1.0 X 10^{-7} centimeters per second.

b. A composite liner utilizing a geosynthetic clay liner. This composite liner is one liner that consists of three components: a geomembrane liner installed above and in uniform contact with a geosynthetic clay liner overlying a compacted clay liner with a minimum thickness of

18 inches (0.46 m) and a permeability of no more than 1.0 X 10^{-5} centimeters per second.

(2) A leachate collection system, which is constructed directly above the base liner and shall be designed to effectively collect and remove leachate from the project.

(3) A cap liner, which shall consist of two components: a geomembrane liner installed across the limits of the coal combustion products covered with a minimum thickness of 24 inches (0.61 m) compacted earth, and a permeability of no more than 1.0 X 10^{-7} centimeters per second, and an additional surface six inches of soil capable of supporting native plant growth.

(4) A groundwater monitoring system, which shall be approved by the Department and, at a minimum, consist of all of the following:

a. A sufficient number of wells, installed at appropriate locations and depths, to yield groundwater samples from the uppermost aquifer that represent the quality of groundwater passing the relevant point of compliance as approved by the Department. A downgradient monitoring system shall be installed at the relevant point of compliance so as to ensure detection of groundwater contamination in the uppermost aquifer.

b. A proposed monitoring plan, which shall be certified by a licensed geologist or professional engineer to be effective in providing early detection of any release of hazardous constituents from any point in a structural fill or leachate surface impoundment to the uppermost aquifer, so as to be protective of public health, safety, and welfare; the environment; and natural resources.

c. A groundwater monitoring program, which shall include consistent sampling and analysis procedures that are designed to ensure monitoring results that provide an accurate representation of groundwater quality at the background and downgradient wells. Monitoring shall be conducted through construction and the post-closure care period. The sampling procedures and frequency shall be protective of public health, safety, and welfare; the environment; and natural resources.

d. A detection monitoring program for all Appendix I constituents. For purposes of this subdivision, the term "Appendix I" means Appendix I to 40 C.F.R. Part 258, "Appendix I Constituents for Detection Monitoring," including subsequent amendments and editions.

e. An assessment monitoring program and corrective action plan if one or more of the constituents listed in Appendix I is detected in exceedance of a groundwater protection standard.

"**§ 130A-309.216. Financial assurance requirements for large projects using coal combustion products for structural fill.**

(a) For projects involving placement of 10,000 or more tons of coal combustion products per acre or 100,000 or more tons of coal combustion products in total per project, the applicant for a permit or a permit holder to construct or operate a structural fill shall establish financial assurance that will ensure that sufficient funds are available for facility closure, post-closure maintenance and monitoring, any corrective action that the Department may require, and to satisfy any potential liability for sudden and nonsudden accidental occurrences, and subsequent costs incurred by the Department in response to an incident at a structural fill

project, even if the applicant or permit holder becomes insolvent or ceases to reside, be incorporated, do business, or maintain assets in the State.

(b) To establish sufficient availability of funds under this section, the applicant for a permit or a permit holder may use insurance, financial tests, third-party guarantees by persons who can pass the financial test, guarantees by corporate parents who can pass the financial test, irrevocable letters of credit, trusts, surety bonds, or any other financial device, 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.

(c) The applicant for a permit or a permit holder, and any parent, subsidiary, or other affiliate of the applicant, permit holder, or parent, including any joint venturer with a direct or indirect interest in the applicant, permit holder, or parent shall be a guarantor of payment for closure, post-closure maintenance and monitoring, any corrective action that the Department may require, and to satisfy any potential liability for sudden and nonsudden accidental occurrences arising from the operation of the hazardous waste facility.

(d) 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.

(e) The Department may provide a copy of any filing that an applicant for a permit or a permit holder submits to the Department to meet the financial responsibility requirements under this section to the State Treasurer. The State Treasurer shall review the filing and provide the Department with a written opinion as to the adequacy of the filing to meet the purposes of this section, including any recommended changes.

(f) In order to continue to hold a permit for a structural fill, a permit holder must maintain financial responsibility as required by this Part and must provide any information requested by the Department to establish that the permit holder continues to maintain financial responsibility.

(g) An applicant for a permit or a permit holder shall satisfy the Department that the applicant or permit holder has met the financial responsibility requirements of this Part before the Department is required to otherwise review the application.

"**§ 130A-309.217. Closure of projects using coal combustion products for structural fill.**

(a) Closure of Structural Fill Projects. –

(1) No later than 30 working days or 60 calendar days, whichever is less, after coal combustion product placement has ceased, the final cover shall be applied over the coal combustion product placement area.

(2) The final surface of the structural fill shall be graded and provided with drainage systems that do all of the following:

a. Minimize erosion of cover materials.

b. Promote drainage of area precipitation, minimize infiltration, and prevent ponding of surface water on the structural fill.

(3) Other erosion control measures, such as temporary mulching, seeding, or silt barriers shall be installed to ensure no visible coal combustion product migration to adjacent properties until the beneficial end use of the project is realized.

(4) The constructor or operator shall submit a certification to the Department signed and sealed by a registered professional engineer or signed by the Secretary of the Department of Transportation or his designee certifying that all requirements of this Subpart have been met. The report shall be submitted within 30 days of application of the final cover.

(b) Additional Closure and Post-Closure Requirements for Large Structural Fill Projects. – For projects involving placement of 10,000 or more tons of coal combustion

products per acre or 100,000 or more tons of coal combustion products in total per project, a constructor or operator shall conduct post-closure care. Post-closure care shall be conducted for 20 years, which period may be increased by the Department upon a determination that a longer period is necessary to protect public health, safety, welfare; the environment; and natural resources, or decreased upon a determination that a shorter period is sufficient to protect public health, safety, welfare; the environment; and natural resources. Additional closure and post-closure requirements include, at a minimum, all of the following:

(1) Submit a written closure plan, which includes all of the following:
  a. A description of the cap liner system and the methods and procedures used to install the cap that conforms to the requirement in G.S. 130A-309.215(b).
  b. An estimate of the largest area of the structural fill project ever requiring the cap liner system at any time during the overall construction period that is consistent with the drawings prepared for the structural fill.
  c. An estimate of the maximum inventory of coal combustion products ever on-site over the construction duration of the structural fill.
  d. A schedule for completing all activities necessary to satisfy the closure criteria set forth in this section.

(2) Submit a written post-closure plan, which includes all of the following:
  a. A description of the monitoring and maintenance activities required for the project and the frequency at which these activities must be performed.
  b. The name, address, and telephone number of the person or office responsible for the project during the post-closure period.
  c. A description of the planned uses of the property during the post-closure period. Post-closure use of the property must not disturb the integrity of the cap system, base liner system, or any other components of the containment system, or the function of the monitoring systems unless necessary to comply with the requirements of this subsection. The Department may approve disturbance if the constructor or operator demonstrates that disturbance of the cap system, base liner system, or other component of the containment system will not increase the potential threat to public health, safety, and welfare; the environment; and natural resources.
  d. The cost estimate for post-closure activities required under this section.

(3) Maintain the integrity and effectiveness of any cap system, including repairing the system as necessary to correct the defects of settlement, subsidence, erosion, or other events and preventing run-on and runoff from eroding or otherwise damaging the cap system.

(4) Maintain and operate the leachate collection system as necessary to allow the coal combustion products to reach terminal moisture condition. Upon a satisfactory showing to the Department by the constructor or operator that the encapsulating liner system has eliminated any recharge sources, and contact water and leachate generation has ceased and no longer poses a threat to public health, safety, and welfare; the environment; and natural resources, the leachate collection system may be closed.

(5) Monitor and maintain the groundwater monitoring system in accordance with G.S. 130A-309.215 and monitor the surface water in accordance with 15A NCAC 13B .0602.

(c) Completion of Post-Closure Care. – Following completion of the post-closure care period, the constructor or operator shall submit a certification, signed by a registered professional engineer, to the Department, verifying that post-closure care has been completed in accordance with the post-closure plan, and include the certification in the operating record.

"**§ 130A-309.218. Recordation of projects using coal combustion products for structural fill.**

(a) The owner of land where coal combustion products have been used in volumes of more than 1,000 cubic yards shall file a statement of the volume and locations of the coal combustion residuals with the Register of Deeds in the county or counties where the property is located. The statement shall identify the parcel of land according to the complete legal description on the recorded deed, either by metes and bounds, or by reference to a recorded plat map. The statement shall be signed and acknowledged by the landowners in the form prescribed by G.S. 47-38 through G.S. 47-43.

(b) Recordation shall be required within 90 days after completion of a structural fill project using coal combustion residuals.

(c) The Register of Deeds, in accordance with G.S. 161-14, shall record the notarized statement and index it in the Grantor Index under the name of the owner of the land. The original notarized statement with the Register's seal and the date, book, and page number of recording shall be returned to the Department after recording.

(d) When property with more than 1,000 cubic yards of coal combustion products is sold, leased, conveyed, or transferred in any manner, the deed or other instrument of transfer shall contain in the description section in no smaller type than used in the body of the deed or instrument a statement that coal combustion products have been used as structural fill material on the property.

"**§ 130A-309.219. Department of Transportation projects.**

The Department and the Department of Transportation may agree on specific design, construction, siting, operation, and closure criteria that may apply to the Department of Transportation structural fill projects.

"**§ 130A-309.220. Inventory and inspection of certain structural fill projects.**

No later than July 1, 2015, the Department shall prepare an inventory of all structural fill projects with a volume of 10,000 cubic yards or more. The Department shall update the structural fill project inventory at least annually. The Department shall inspect each structural fill project with a volume of 10,000 cubic yards or more at least annually to determine if the project or facility has been constructed and operated in compliance with 15A NCAC 13B .1701, et seq., (Requirements for Beneficial Use of Coal Combustion By-Products) and all other applicable laws.

"**§ 130A-309.221. Amendments required to rules.**

Requirements under existing rules governing the use of coal combustion products for structural fill that do not conflict with the provisions of this Subpart shall continue to apply to such projects. The Environmental Management Commission shall amend existing rules governing the use of coal combustion products for structural fill as necessary to implement the provisions of this Subpart. Such rules shall be exempt from the requirements of G.S. 150B-19.3."

SECTION 3.(b) Notwithstanding G.S. 130A-309.211 or G.S. 130A-309.212, as enacted by Section 3(a) of this act, and except as otherwise preempted by the requirements of federal law, the following coal combustion residuals surface impoundments shall be deemed high-priority, and, as soon as practicable, but no later than August 1, 2019, shall be closed in conformance with Section 3(c) of this act:

(1) Coal combustion residuals surface impoundments located at the Dan River Steam Station, owned and operated by Duke Energy Progress, and located in Rockingham County.
(2) Coal combustion residuals surface impoundments located at the Riverbend Steam Station, owned and operated by Duke Energy Carolinas, and located in Gaston County.
(3) Coal combustion residuals surface impoundments located at the Asheville Steam Electric Generating Plant, owned and operated by Duke Energy Progress, and located in Buncombe County.
(4) Coal combustion residuals surface impoundments located at the Sutton Plant, owned and operated by Duke Energy Progress, and located in New Hanover County.

SECTION 3.(c) The impoundments identified in subsection (b) of this section shall be closed as follows:

(1) The impoundments shall be dewatered.
(2) All coal combustion residuals shall be removed from the impoundments and transferred for (i) disposal in a coal combustion residuals landfill, industrial landfill, or municipal solid waste landfill or (ii) use in a structural fill or other beneficial use as allowed by law. Any disposal or use of coal combustion products pursuant to this section shall comply with the moratoriums enacted under Section 4(a) and Section 5(a) of this act and any extensions thereof. The use of coal combustion products (i) as structural fill, as authorized by Section 4(b) of this act, shall be conducted in accordance with the requirements of Subpart 3 of Part 2I of Article 9 of the General Statutes, as enacted by Section 3(a) of this act, and (ii) for other beneficial uses shall be conducted in accordance with the requirements of 15A NCAC 13B .1701, et seq., (Requirements for Beneficial Use of Coal Combustion By-Products).
(3) Where groundwater quality is degraded as a result of the impoundment, corrective action to restore groundwater quality shall be implemented by the owner or operator as provided in G.S. 130A-309.204.

SECTION 3.(d) G.S. 130A-290(a) reads as rewritten:

"**§ 130A-290. Definitions.**

(a) Unless a different meaning is required by the context, the following definitions shall apply throughout this Article:

...

(2b) ~~"Combustion products"~~"Coal combustion residuals" means residuals, including fly ash, bottom ash, boiler slag, mill rejects, and flue gas desulfurization residue produced by a coal-fired generating ~~unit.~~unit destined for disposal. The term does not include coal combustion products as defined in G.S. 130A-309.201(4).

(2c) ~~"Combustion products landfill"~~"Coal combustion residuals landfill" means a facility or unit for the disposal of combustion products, where the landfill is located at the same facility with the coal-fired generating unit or units producing the combustion products, and where the landfill is located wholly or partly on top of a facility that is, or was, being used for the disposal or storage of such combustion products, including, but not limited to, landfills, wet and dry ash ponds, and structural fill facilities.

...

(3a) "Commission" means the Environmental Management Commission.

...

(20) "Open dump" means any facility or site where solid waste is disposed of that is not a sanitary landfill and that is not a coal combustion residuals surface impoundment or a facility for the disposal of hazardous waste.

...

(35) "Solid waste" 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. Notwithstanding sub-sub-subdivision b.3. of this subdivision, the term includes coal combustion residuals. 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.~~ Commission, including coal combustion products. However, any sludges that meet the criteria for hazardous waste under RCRA shall also be a solid waste for the purposes of this Article.

...."

SECTION 3.(e) This section is effective when it becomes law. Subpart 3 of Part 2I of Article 9 of the General Statutes, as enacted by Section 3(a) of this act, applies to the use of coal combustion products as structural fill contracted for on or after that date. The first report due under G.S. 130A-309.210, as enacted by Section 3(a) of this act, is due October 1, 2014. Members to be appointed pursuant to G.S. 130A-309.202(b), as enacted by Section 3(a) of this act, shall be appointed no later than September 1, 2014.

PART III. MORATORIUMS AND STUDY ON (1) USE OF COAL COMBUSTION PRODUCTS AS STRUCTURAL FILL AND (2) CONSTRUCTION OR EXPANSION OF COMBUSTION PRODUCTS LANDFILLS

SECTION 4.(a) Notwithstanding 15A NCAC 13B .1701, et seq., and except as provided in Section 4(b) of this act, the use of coal combustion products, as defined in G.S. 130A-290, as structural fill is prohibited until August 1, 2015, in order to allow the Department of Environment and Natural Resources, the Environmental Management Commission, and the General Assembly time to review and evaluate the use of coal combustion residuals as structural fill.

SECTION 4.(b) Coal combustion products may be used as structural fill for any of the following types of projects:

(1) A project where the structural fill is used with a base liner, leachate collection system, cap liner, groundwater monitoring system and where the constructor or operator establishes financial assurance, as required by G.S. 130A–309.216.

(2) As the base or sub-base of a concrete or asphalt paved road constructed under the authority of a public entity.

SECTION 4.(c) The use of coal combustion products (i) as structural fill as authorized by Section 4(b) of this act shall be conducted in accordance with the requirements of Subpart 3 of Part 2I of Article 9 of the General Statutes, as enacted by Section 3(a) of this act, and (ii) for other beneficial uses shall be conducted in accordance with the requirements of 15A NCAC 13B .1701, et seq., (Requirements for Beneficial Use of Coal Combustion By-Products).

SECTION 4.(d) The Department of Environment and Natural Resources and the Environmental Management Commission shall jointly review Subpart 3 of Part 2I of Article 9 of the General Statutes, as enacted by Section 3(a) of this act, and 15A NCAC 13B .1701, et seq. In conducting this review, the Department and Commission shall do all of the following:

(1) Review the uses of coal combustion products as structural fill and the regulation of this use under Subpart 3 of Part 2I of Article 9 of the General Statutes, as enacted by Section 3(a) of this act, to protect public health, safety, and welfare; the environment; and natural resources.

(2) Review the uses of coal combustion products for other beneficial uses and the regulation of these uses under 15A NCAC 13B .1701, et seq., and other applicable rules, to determine if the rules are sufficient to protect public health, safety, and welfare; the environment; and natural resources.

(3) Evaluate additional opportunities for the use of coal combustion products as structural fill and for other beneficial uses that would reduce the volume of coal combustion residuals that are being disposed of in coal combustion residuals landfills, industrial landfills, or municipal solid waste landfills while still being protective of public health, safety, and welfare; the environment; and natural resources.

(4) Monitor any actions of the United States Environmental Protection Agency regarding the use of coal combustion products as structural fill or for other beneficial uses.

(5) Jointly report to the Environmental Review Commission no later than January 15, 2015, on their findings and recommendations regarding the use of coal combustion products as structural fill and for other beneficial uses.

SECTION 4.(e) All electric generating facilities that produce coal combustion residuals and coal combustion products shall issue a request for proposals on or before December 31, 2014, for (i) the conduct of a market analysis for the concrete industry and other industries that might beneficially use coal combustion residuals and coal combustion products; (ii) the study of the feasibility and advisability of installation of technology to convert existing and newly generated coal combustion residuals to commercial-grade coal combustion products suitable for use in the concrete industry and other industries that might beneficially use coal combustion residuals; and (iii) an examination of all innovative technologies that might be applied to diminish, recycle or reuse, or mitigate the impact of existing and newly generated coal combustion residuals.

SECTION 4.(f) This section is effective when it becomes law and applies to the use of coal combustion residuals as structural fill contracted for on or after that date.

SECTION 5.(a) There is hereby established a moratorium on construction of new or expansion of existing coal combustion residuals landfills, as defined by G.S. 130A-290(2c) and amended by Section 3(d) of this act. The purpose of this moratorium is to allow the State to

assess the risks to public health, safety, welfare; the environment; and natural resources of coal combustion residuals impoundments located beneath coal combustion residuals landfills to determine the advisability of continued operation of these landfills.

SECTION 5.(b) The Department of Environment and Natural Resources shall evaluate each coal combustion residuals landfills currently operating in the State, and, in particular, assess the risks to public health, safety, welfare; the environment; and natural resources, of coal combustion residuals surface impoundments located beneath coal combustion residuals landfills to determine the advisability of continued operation of these landfills. The Department shall report to the Environmental Review Commission no later than January 15, 2015, on its findings and recommendations concerning the risk assessment of each of these sites and the advisability of continued operation of coal combustion residuals landfills.

SECTION 5.(c) This section is effective when it becomes law and expires August 1, 2015.

PART IV. STRENGTHEN THE REPORTING AND NOTIFICATION REQUIREMENTS APPLICABLE TO DISCHARGES OF WASTEWATER TO WATERS OF THE STATE; REQUIRE CERTAIN EMERGENCY CALLS TO BE RECORDED

SECTION 6.(a) G.S. 143-215.1C reads as rewritten:

"**§ 143-215.1C. Report to wastewater system customers on system performance; report discharge of untreated wastewater to the Department; publication of notice of discharge of untreated wastewater and waste.**

(a) Report to Wastewater System Customers. – The owner or operator of any wastewater collection or treatment works, the operation of which is primarily to collect or treat municipal or domestic wastewater and for which a permit is issued under this Part and having an average annual flow greater than 200,000 gallons per day, shall provide to the users or customers of the collection system or treatment works and to the Department an annual report that summarizes the performance of the collection system or treatment works and the extent to which the collection system or treatment works has violated the permit or federal or State laws, regulations, or rules related to the protection of water quality. The report shall be prepared on either a calendar or fiscal year basis and shall be provided no later than 60 days after the end of the calendar or fiscal year.

(a1) Report Discharge of Untreated Wastewater to the Department. – The owner or operator of any wastewater collection or treatment works for which a permit is issued under this Part shall report a discharge of 1,000 gallons or more of untreated wastewater to the surface waters of the State to the Department within 24 hours after the owner or operator has determined that the discharge has reached the surface waters of the State. This reporting requirement shall be in addition to any other reporting requirements applicable to the owner or operator of the wastewater collection or treatment works.

(b) Publication of Notice of Discharge of Untreated Wastewater. – The owner or operator of any wastewater collection or treatment works, the operation of which is primarily to collect or treat municipal or domestic wastewater and for which a permit is issued under this Part shall:

(1) In the event of a discharge of 1,000 gallons or more of untreated wastewater to the surface waters of the State, issue a press release to all print and electronic news media that provide general coverage in the county where the discharge occurred setting out the details of the discharge. The owner or operator shall issue the press release within ~~48~~ 24 hours after the owner or operator has determined that the discharge has reached the surface waters of the State. The owner or operator shall retain a copy of the press release and a list of the news media to which it was distributed for at least one year after

the discharge and shall provide a copy of the press release and the list of the news media to which it was distributed to any person upon request.

(2) In the event of a discharge of 15,000 gallons or more of untreated wastewater to the surface waters of the State, publish a notice of the discharge in a newspaper having general circulation in the county in which the discharge occurs and in each county downstream from the point of discharge that is significantly affected by the discharge. The Secretary shall determine, at the Secretary's sole discretion, which counties are significantly affected by the discharge and shall approve the form and content of the notice and the newspapers in which the notice is to be published. The notice shall be captioned "NOTICE OF DISCHARGE OF UNTREATED SEWAGE". The owner or operator shall publish the notice within 10 days after the Secretary has determined the counties that are significantly affected by the discharge and approved the form and content of the notice and the newspapers in which the notice is to be published. The owner or operator shall file a copy of the notice and proof of publication with the Department within 30 days after the notice is published. Publication of a notice of discharge under this subdivision is in addition to the requirement to issue a press release under subdivision (1) of this subsection.

(c) Publication of Notice of Discharge of Untreated Waste. – The owner or operator of any wastewater collection or treatment works, other than a wastewater collection or treatment works the operation of which is primarily to collect or treat municipal or domestic wastewater, for which a permit is issued under this Part shall:

(1) In the event of a discharge of 1,000 gallons or more of untreated waste to the surface waters of the State, issue a press release to all print and electronic news media that provide general coverage in the county where the discharge occurred setting out the details of the discharge. The owner or operator shall issue the press release within ~~48~~ 24 hours after the owner or operator has determined that the discharge has reached the surface waters of the State. The owner or operator shall retain a copy of the press release and a list of the news media to which it was distributed for at least one year after the discharge and shall provide a copy of the press release and the list of the news media to which it was distributed to any person upon request.

(2) In the event of a discharge of 15,000 gallons or more of untreated waste to the surface waters of the State, publish a notice of the discharge in a newspaper having general circulation in the county in which the discharge occurs and in each county downstream from the point of discharge that is significantly affected by the discharge. The Secretary shall determine, at the Secretary's sole discretion, which counties are significantly affected by the discharge and shall approve the form and content of the notice and the newspapers in which the notice is to be published. The notice shall be captioned "NOTICE OF DISCHARGE OF UNTREATED WASTE". The owner or operator shall publish the notice within 10 days after the Secretary has determined the counties that are significantly affected by the discharge and approved the form and content of the notice and the newspapers in which the notice is to be published. The owner or operator shall file a copy of the notice and proof of publication with the Department within 30 days after the notice is published. Publication of a notice of discharge under this subdivision is in addition to the requirement to issue a press release under subdivision (1) of this subsection."

SECTION 6.(b) Section 6(a) of this act becomes effective September 1, 2014.

SECTION 6.(c) G.S. 166A-19.12(16) reads as rewritten:

"(16) Establishing and operating a 24-hour Operations Center to serve as a single point of contact for local governments to report the occurrence of emergency and disaster events and to coordinate local and State response assets. The Division shall record all telephone calls to the 24-hour Operations Center emergency hotline and shall maintain the recording of each telephone call for at least one year."

PART V. REQUIRE NOTIFICATION OF THE DEPARTMENT OF EMERGENCY DAM REPAIRS; REQUIRE EMERGENCY ACTION PLANS FOR CERTAIN DAMS; REQUIRE INSPECTION OF DAMS AT COAL COMBUSTION RESIDUALS SURFACE IMPOUNDMENTS

SECTION 7. G.S. 143-215.27 reads as rewritten:

"**§ 143-215.27. Repair, alteration, or removal of dam.**

(a) Before commencing the repair, alteration or removal of a dam, application shall be made for written approval by the Department, except as otherwise provided by this Part. The application shall state the name and address of the applicant, shall adequately detail the changes it proposes to effect and shall be accompanied by maps, plans and specifications setting forth such details and dimensions as the Department requires. The Department may waive any such requirements. The application shall give such other information concerning the dam and reservoir required by the Department, such information concerning the safety of any change as it may require, and shall state the proposed time of commencement and completion of the work. When an application has been completed it may be referred by the Department for agency review and report, as provided by subsection (b) of G.S. 143-215.26 in the case of original construction.

(b) When emergency repairs are necessary to safeguard life and property they may be started immediately but the Department shall be notified ~~forthwith~~ of the proposed repairs and of the work ~~under way, and they~~underway as soon as possible, but not later than 24 hours after first knowledge of the necessity for the emergency repairs, and the emergency repairs shall be made to conform to ~~its~~ the Department's orders."

SECTION 8.(a) G.S. 143-215.31 reads as rewritten:

"**§ 143-215.31. Supervision over maintenance and operation of dams.**

(a) The Commission shall have jurisdiction and supervision over the maintenance and operation of dams to safeguard life and property and to satisfy minimum streamflow requirements. The Commission may adopt standards for the maintenance and operation of dams as may be necessary for the purposes of this Part. The Commission may vary the standards applicable to various dams, giving due consideration to the minimum flow requirements of the stream, the type and location of the structure, the hazards to which it may be exposed, and the peril of life and property in the event of failure of a dam to perform its function.

(a1) The owner of a dam classified by the Department as a high hazard dam or an intermediate hazard dam shall develop an Emergency Action Plan for the dam as provided in this subsection.

(1) The owner of the dam shall submit a proposed Emergency Action Plan for the dam within 90 days after the dam is classified as a high hazard dam or an intermediate hazard dam to the Department and the Department of Public Safety for their review and approval. The Department and the Department of Public Safety shall approve the Emergency Action Plan if they determine that it complies with the requirements of this subsection and will protect public health, safety, and welfare; the environment; and natural resources.

(2) The Emergency Action Plan shall include, at a minimum, all of the following:
a. A description of potential emergency conditions that could occur at the dam.
b. A description of actions to be taken in response to an emergency condition at the dam.
c. Emergency notification procedures to aid in warning and evacuations during an emergency condition at the dam.
d. A downstream inundation map depicting areas affected by a dam failure and sudden release of the impoundment.
(3) The owner of the dam shall update the Emergency Action Plan annually and shall submit it to the Department and the Department of Public Safety for their review and approval within one year of the prior approval.
(4) The Department shall provide a copy of the Emergency Action Plan to the regional offices of the Department that might respond to an emergency condition at the dam.
(5) The Department of Public Safety shall provide a copy of the Emergency Action Plan to all local emergency management agencies that might respond to an emergency condition at the dam.
(6) Information included in an Emergency Action Plan that constitutes sensitive public security information, as provided in G.S. 132-1.7, shall be maintained as confidential information and shall not be subject to disclosure under the Public Records Act. For purposes of this section, "sensitive public security information" shall include Critical Energy Infrastructure Information protected from disclosure under rules adopted by the Federal Energy Regulatory Commission in 18 C.F.R. § 333.112.

...."

SECTION 8.(b) Notwithstanding G.S. 143-215.31, as amended by Section 8(a) of this act, the owners of all high hazard dams and intermediate hazard dams in operation on the effective date of this act shall submit their proposed Emergency Action Plans to the Department of Environment and Natural Resources and the Department of Public Safety no later than October 1, 2015.

SECTION 9. Section 3(b) of S.L. 2009-390 reads as rewritten:

"**SECTION 3.(b)** Any impoundments or other facilities that were in use ~~on the effective date of this section~~January 1, 2010, in connection with nonnuclear electric generating facilities under the jurisdiction of the North Carolina Utilities Commission, and that had been exempted under the provisions of G.S. 143-215.25A(4), prior to ~~amendment by Section 3(a) of this act,~~ January 1, 2010, shall be deemed to have received all of the necessary approvals from the Department of Environment and Natural Resources and the Commission for Safety.~~Dam Safety, and shall not be required to submit application, certificate, or other materials in connection with the continued normal operation and maintenance of those facilities.~~"

SECTION 10. G.S. 143-215.32 reads as rewritten:

"**§ 143-215.32. Inspection of dams.**

(a) The Department may at any time inspect any dam, including a dam that is otherwise exempt from this Part, upon receipt of a written request of any affected person or agency, or upon a motion of the Environmental Management Commission. Within the limits of available funds the Department shall endeavor to provide for inspection of all dams at intervals of approximately five years.

(a1) Coal combustion residuals surface impoundments, as defined by G.S. 130A-309.201, shall be inspected as provided in this subsection.

(1) The Department shall inspect each dam associated with a coal combustion residuals surface impoundment at least annually.

(2) The owner of a coal combustion residuals surface impoundment shall inspect the impoundment weekly and after storms to detect evidence of any of the following conditions:

a. Deterioration, malfunction, or improper operation of spillway control systems.

b. Sudden drops in the level of the contents of the impoundment.

c. Severe erosion or other signs of deterioration in dikes or other containment devices or structures.

d. New or enlarged seeps along the downstream slope or toe of the dike or other containment devices or structures.

e. Any other abnormal conditions at the impoundment that could pose a risk to public health, safety, or welfare; the environment; or natural resources.

(3) If any of the conditions described in subdivision (2) of this subsection are observed, the owner shall provide documentation of the conditions to the Department and a registered professional engineer. The registered professional engineer shall investigate the conditions and, if necessary, develop a plan of corrective action to be implemented by the owner of the impoundment. The owner of the impoundment shall provide documentation of the completed corrective action to the Department.

(4) The owner of a coal combustion residuals surface impoundment shall provide for the annual inspection of the impoundment by an independent registered professional engineer to ensure that the structural integrity and the design, operation, and maintenance of the impoundment is in accordance with generally accepted engineering standards. Within 30 days of the inspection, the owner shall provide to the Department the inspection report and a certification by the engineer that the impoundment is structurally sound and that the design, operation, and maintenance of the impoundment is in accordance with generally accepted engineering standards. The owner and the Department shall each place the inspection report and certification on a publicly accessible Internet site.

(b) If the Department upon inspection finds that any dam is not sufficiently strong, is not maintained in good repair or operating condition, is dangerous to life or property, or does not satisfy minimum streamflow requirements, the Department shall present its findings to the Commission and the Commission may issue an order directing the owner or owners of the dam to make at his or her expense maintenance, alterations, repairs, reconstruction, change in construction or location, or removal as may be deemed necessary by the Commission within a time limited by the order, not less than 90 days from the date of issuance of each order, except in the case of extreme danger to the safety of life or property, as provided by subsection (c) of this section.

(c) If at any time the condition of any dam becomes so dangerous to the safety of life or property, in the opinion of the Environmental Management Commission, as not to permit sufficient time for issuance of an order in the manner provided by subsection (b) of this section, the Environmental Management Commission may immediately take such measures as may be essential to provide emergency protection to life and property, including the lowering of the level of a reservoir by releasing water impounded or the destruction in whole or in part of the dam or reservoir. The Environmental Management Commission may recover the costs of such measures from the owner or owners by appropriate legal action.

(d) An order issued under this Part shall be served on the owner of the dam as provided in G.S. 1A-1, Rule 4."

PART VI. TRANSFER SOLID WASTE RULE-MAKING AUTHORITY FROM COMMISSION FOR PUBLIC HEALTH TO ENVIRONMENTAL MANAGEMENT COMMISSION

SECTION 11.(a) G.S. 130A-29 reads as rewritten:

"**§ 130A-29. Commission for Public Health – Creation, powers and duties.**

...

(c) The Commission shall adopt rules:

(1) Repealed by Session Laws 1983 (Regular Session, 1984), c. 1022, s. 5.

(2) Establishing standards for approving sewage-treatment devices and holding tanks for marine toilets as provided in G.S. 75A-6(o).

(3) Establishing specifications for sanitary privies for schools where water-carried sewage facilities are unavailable as provided in G.S. 115C-522.

(4) Establishing requirements for the sanitation of local confinement facilities as provided in Part 2 of Article 10 of Chapter 153A of the General Statutes.

(5) Repealed by Session Laws 1989 (Regular Session, 1990), c. 1075, s. 1.

(5a) Establishing eligibility standards for participation in Department reimbursement programs.

~~(6) Requiring proper treatment and disposal of sewage and other waste from chemical and portable toilets.~~

(7) Establishing statewide health outcome objectives and delivery standards.

(8) Establishing permit requirements for the sanitation of premises, utensils, equipment, and procedures to be used by a person engaged in tattooing, as provided in Part 11 of Article 8 of this Chapter.

(9) Implementing immunization requirements for adult care homes as provided in G.S. 131D-9 and for nursing homes as provided in G.S. 131E-113.

(10) Pertaining to the biological agents registry in accordance with G.S. 130A-479.

(11) For matters within its jurisdiction that allow for and regulate horizontal drilling and hydraulic fracturing for the purpose of oil and gas exploration and development.

...."

SECTION 11.(b) G.S. 130A-291.1 reads as rewritten:

"**§ 130A-291.1. Septage management program; permit fees.**

...

(d) Septage shall be treated and disposed only at a wastewater system that has been approved by the Department under rules adopted by the Commission ~~or by the Environmental Management Commission~~ or at a site that is permitted by the Department under this section. A permit shall be issued only if the site satisfies all of the requirements of the rules adopted by the Commission.

...."

SECTION 11.(c) G.S. 130A-294(a)(4) reads as rewritten:

"**§ 130A-294. Solid waste management program.**

(a) The Department is authorized and directed to engage in research, conduct investigations and surveys, make inspections and establish a statewide solid waste management program. In establishing a program, the Department shall have authority to:

...

(4) a. Develop a permit system governing the establishment and operation of solid waste management facilities. A landfill with a disposal area of 1/2 acre or less for the on-site disposal of land clearing and inert debris is exempt from the permit requirement of this section and shall be governed by G.S. 130A-301.1. Demolition debris from the decommissioning of manufacturing buildings, including electric generating stations, that is disposed of on the same site as the decommissioned buildings, is exempt from the permit requirement of this section and rules adopted pursuant to this section and shall be governed by G.S. 130A-301.3. The Department shall not approve an application for a new permit, the renewal of a permit, or a substantial amendment to a permit for a sanitary landfill, excluding demolition landfills as defined in the rules of the Commission, except as provided in subdivisions (3) and (4) of subsection (b1) of this section. No permit shall be granted for a solid waste management facility having discharges that are point sources until the Department has referred the complete plans and specifications to the ~~Environmental Management~~ Commission and has received advice in writing that the plans and specifications are approved in accordance with the provisions of G.S. 143-215.1. In any case where the Department denies a permit for a solid waste management facility, it shall state in writing the reason for denial and shall also state its estimate of the changes in the applicant's proposed activities or plans that will be required for the applicant to obtain a permit.

b. Repealed by Session Laws 2007-550, s. 1(a), effective August 1, 2007.

c. The Department shall deny an application for a permit for a solid waste management facility if the Department finds that:

1. Construction or operation of the proposed facility would be inconsistent with or violate rules adopted by the Commission.
2. Construction or operation of the proposed facility would result in a violation of water quality standards adopted by the ~~Environmental Management~~ Commission pursuant to G.S. 143-214.1 for waters, as defined in G.S. 143-213.
3. Construction or operation of the facility would result in significant damage to ecological systems, natural resources, cultural sites, recreation areas, or historic sites of more than local significance. These areas include, but are not limited to, national or State parks or forests; wilderness areas; historic sites; recreation areas; segments of the natural and scenic rivers system; wildlife refuges, preserves, and management areas; areas that provide habitat for threatened or endangered species; primary nursery areas and critical fisheries habitat designated by the Marine Fisheries Commission; and Outstanding Resource Waters designated by the ~~Environmental Management~~ Commission.

...."

SECTION 11.(d) G.S. 130A-300 reads as rewritten:

"**§ 130A-300. Effect on laws applicable to water pollution control.**

This Article shall not be considered as amending, repealing or in any manner abridging or interfering with those sections of the General Statutes of North Carolina relative to the control

of water pollution as now administered by the ~~Environmental Management~~ Commission nor shall the provisions of this Article be construed as being applicable to or in any way affecting the authority of the ~~Environmental Management~~ Commission to control the discharges of wastes to the waters of the State as provided in Articles 21 and 21A, Chapter 143 of the General Statutes."

SECTION 11.(e) G.S. 130A-302 reads as rewritten:

"**§ 130A-302. Sludge deposits at sanitary landfills.**

Sludges generated by the treatment of wastewater discharges which are point sources subject to permits granted under Section 402 of the Federal Water Pollution Act, as amended (P.L. 92-500), or permits generated under G. S. 143-215.1 by the ~~Environmental Management~~ Commission shall not be deposited in or on a sanitary landfill permitted under this Article unless in a compliance with the rules concerning solid waste adopted under this Article."

SECTION 11.(f) G.S. 130A-310.3 reads as rewritten:

"**§ 130A-310.3. Remedial action programs for inactive hazardous substance or waste disposal sites.**

...

(b) Where possible, the Secretary shall work cooperatively with any owner, operator, responsible party, or any appropriate agency of the State or federal government to develop and implement the inactive hazardous substance or waste disposal site remedial action program. The Secretary shall not take action under this section to the extent that the ~~Environmental Management~~ Commission, the Commissioner of Agriculture, or the Pesticide Board has assumed jurisdiction pursuant to Articles 21 or 21A of Chapter 143 of the General Statutes.

...

(d) In any inactive hazardous substance or waste disposal site remedial action program implemented hereunder, the Secretary shall ascertain the most nearly applicable cleanup standard as would be applied under CERCLA/SARA, and may seek federal approval of any such program to insure concurrent compliance with federal standards. State standards may exceed and be more comprehensive than such federal standards. The Secretary shall assure concurrent compliance with applicable standards set by the ~~Environmental Management~~ Commission.

...."

SECTION 11.(g) G.S. 130A-310.4(g) reads as rewritten:

"(g) The Commission ~~on Health Services [Commission for Public Health]~~ shall adopt rules prescribing the form and content of the notices required by this section. The proposed remedial action plan shall include a summary of all alternatives considered in the development of the plan. A record shall be maintained of all comment received by the Department regarding the remedial action plan."

SECTION 11.(h) G.S. 130A-310.31(b)(5) reads as rewritten:

"(5) "Unrestricted use standards" when used in connection with "cleanup", "remediated", or "remediation" means contaminant concentrations for each environmental medium that are considered acceptable for all uses and that comply with generally applicable standards, guidance, or established methods governing the contaminants that are established by statute or adopted, published, or implemented by the ~~Environmental Management Commission, the~~ Commission, or the Department instead of the site-specific contaminant levels established pursuant to this Part."

SECTION 11.(i) G.S. 130A-310.65 reads as rewritten:

"**§ 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.~~

...

(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,~~Commission or the Department."

SECTION 11.(j) G.S. 113-391(a)(5)f. reads as rewritten:

"f. Management of wastes produced in connection with oil and gas exploration and development and use of horizontal drilling and hydraulic fracturing treatments for that purpose. Such rules shall address storage, transportation, and disposal of wastes that may contain radioactive materials or wastes that may be toxic or have other hazardous wastes' characteristics that are not otherwise regulated as a hazardous waste by the federal Resource Conservation and Recovery Act (RCRA), such as top-hole water, brines, drilling fluids, additives, drilling muds, stimulation fluids, well servicing fluids, oil, production fluids, and drill cuttings from the drilling, alteration, production, plugging, or other activity associated with oil and gas wells. Wastes generated in connection with oil and gas exploration and development and use of horizontal drilling and hydraulic fracturing treatments for that purpose that constitute hazardous waste under RCRA shall be subject to rules adopted by the Environmental Management Commission ~~for Public Health~~ to implement RCRA requirements in the State."

SECTION 11.(k) G.S. 113-415 reads as rewritten:

"**§ 113-415. Conflicting laws.**

No provision of this Article shall be construed to repeal, amend, abridge or otherwise ~~affect: (i)~~ affect the authority and ~~responsibility~~responsibility (i) vested in the Environmental Management Commission by Article 7 of Chapter 87 of the General Statutes, pertaining to the location, construction, repair, operation and abandonment of ~~wells, or the authority and responsibility~~ wells; (ii) vested in the Environmental Management Commission related to the control of water and air pollution as provided in Articles 21 and 21A of Chapter 143 of the General Statutes; ~~or (ii) the authority or responsibility~~(iii) vested in the Department and the Environmental Management Commission ~~for Public Health~~ by Article 10 of Chapter 130A of the General Statutes pertaining to public water-supply ~~requirements,~~requirements; or ~~the authority and responsibility~~(iv) vested in the Environmental Management Commission ~~for Public Health~~ related to the management of solid and hazardous waste as provided in Article 9 of Chapter 130A of the General Statutes."

SECTION 11.(l) The Revisor of Statutes shall make any conforming statutory changes necessary to reflect the transfer of rule-making authority under Article 9 of Chapter 130A of the General Statutes from the Commission for Public Health to the Environmental Management Commission.

SECTION 11.(m) The Codifier of Rules shall make any conforming rule changes necessary to reflect the transfer of rule-making authority under Article 9 of Chapter 130A of the General Statutes from the Commission for Public Health to the Environmental Management Commission.

PART VII. OTHER STUDIES

SECTION 12. The Coal Ash Management Commission, established pursuant to G.S. 130A-309.202, as enacted by Section 3(a) of this act, shall study whether and under what circumstances no further action or natural attenuation is appropriate for a coal combustion residuals surface impoundment that is classified as low-priority pursuant to G.S. 130A-309.211, as enacted by Section 3(a) of this act. In conducting this study, the Commission shall specifically consider whether there is any contact or interaction between coal combustion residuals and groundwater and surface water, whether the area has reverted to a natural state as evidenced by the presence of wildlife and vegetation, and whether no further action or natural attenuation would be protective of public health, safety, and welfare; the environment; and natural resources. The Commission shall report the results of its study, including any recommendations, to the Environmental Review Commission no later than October 1, 2015.

SECTION 13. The Department of Transportation shall evaluate additional opportunities for the use of coal combustion residuals in the construction and maintenance of roads and bridges within the State. The Department shall report the results of its study, including any recommendations, to the Environmental Review Commission no later than December 1, 2014.

PART VIII. PROVIDE RESOURCES FOR IMPLEMENTATION OF THIS ACT

SECTION 14.(a) Article 14 of Chapter 62 of the General Statutes is amended by adding a new section to read:

"**§ 62-302.1. Regulatory fee for combustion residual surface impoundments.**

(a) Fee Imposed. – Each public utility with a coal combustion residuals surface impoundment shall pay a regulatory fee for the purpose of defraying the costs of oversight of coal combustion residuals. The fee is in addition to the fee imposed under G.S. 62-302. The fees collected under this section shall only be used to pay the expenses of the Coal Ash Management Commission and the Department of Environment and Natural Resources in providing oversight of coal combustion residuals.

(b) Rate. – The combustion residuals surface impoundment fee shall be three-hundredths of one percent (0.03%) of the North Carolina jurisdictional revenues of each public utility with a coal combustion residuals surface impoundment. For the purposes of this section, the term "North Carolina jurisdictional revenues" has the same meaning as in G.S. 62-302.

(c) When Due. – The fee shall be paid in quarterly installments. The fee is payable to the Coal Ash Management Commission on or before the 15th of the second month following the end of each quarter. Each public utility subject to this fee shall, on or before the date the fee is due for each quarter, prepare and render a report on a form prescribed by the Commission. The report shall state the public utility's total North Carolina jurisdictional revenues for the preceding quarter and shall be accompanied by any supporting documentation that the Coal Ash Management Commission may by rule require. Receipts shall be reported on an accrual basis.

(d) Use of Proceeds. – A special fund in the Office of State Treasurer and the Coal Ash Management Commission is created. The fees collected pursuant to this section and all other funds received by the Coal Ash Management Commission shall be deposited in the Coal Combustion Residuals Management Fund. The Fund shall be placed in an interest-bearing account, and any interest or other income derived from the Fund shall be credited to the Fund. Moneys in the Fund shall only be spent pursuant to appropriation by the General Assembly. The Commission shall be subject to the provisions of the State Budget Act, except that no unexpended surplus of the Coal Combustion Residuals Management Fund shall revert to the General Fund. All funds credited to the Commission Fund shall be used only to pay the

expenses of the Coal Ash Management Commission and the Department of Environment and Natural Resources in providing oversight of coal combustion residuals.

(e) Recovery of Fee. – The North Carolina Utilities Commission shall not allow an electric public utility to recover this fee from the retail electric customers of the State."

SECTION 14.(b) Notwithstanding G.S. 62-302.1, as enacted by this section, for the first two quarters of fiscal year 2014-2015, each public utility shall pay the fee in G.S. 62-302.1 on a monthly basis. The fee shall be paid by the fifteenth of the following month.

SECTION 14.(c) Twenty-five receipt-supported positions are created in the Department of Environment and Natural Resources to carry out the duties in Part 2I of Article 9 of Chapter 130A of the General Statutes. There is appropriated from the Coal Combustion Residuals Management Fund the sum of one million seven hundred fifty thousand dollars ($1,750,000) to the Department of Environment and Natural Resources to support the positions for the 2014-2015 fiscal year.

SECTION 14.(d) Four receipt supported positions are created in the Division of Emergency Management of the Department of Public Safety to carry out the duties in G.S. 130A-309.202. The funds remaining in the Coal Combustion Residuals Management Fund after the appropriation to the Department of Environment and Natural Resources are appropriated to the Department of Public Safety for the 2014-2015 fiscal year. These positions shall be used to provide assistance to the Coal Ash Commission. The positions shall be assigned in the following manner: one of the positions shall be the executive director of the staff, two positions shall be assigned as analysts, and one position shall be assigned as administrative. The Division of Emergency Management in the Department of Public Safety shall consult with the Chair of the Commission in hiring the staff for the Coal Ash Commission. The Division of Emergency Management in the Department of Public Safety shall provide support to the Commission until the staff of the Commission is hired, including the designation of an individual to serve as an interim executive director of the staff.

SECTION 14.(e) This section becomes effective July 1, 2014.

PART IX. SEVERABILITY CLAUSE AND EFFECTIVE DATE

SECTION 15. If any provision of this act or its application is held invalid, the invalidity does not affect other provisions or applications of this act that can be given effect without the invalid provisions or application, and to this end the provisions of this act are severable.

SECTION 16. Except as otherwise provided, this act is effective when it becomes law.

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 729

AMENDMENT NO. 1
(to be filled in by Principal Clerk)

S729-ARI-168 [v.1]

Comm. Sub. [YES]
Amends Title [NO]
S729-PCS45193-RIx-39

Date _____,2014

Senator Hartsell

moves to amend the bill on page 10, lines 41 and 42,
by inserting between those lines:

""**§ 130A-309.209. Goal for reduced disposal of coal combustion residuals; increased beneficial use of coal combustion products.**

It is the policy of the State to promote strategies for the management of coal combustion residuals that are alternatives to disposal in landfills and place a preference on beneficial use of coal combustion products, and to encourage innovative technologies to that end. In furtherance of this State policy, the State hereby establishes a goal to reduce the amount of coal combustion residuals disposed of by public utilities in the State by twelve and one-half percent (12.5%) by December 31, 2018, and increase the amount of coal combustion residuals put to beneficial use in the State by a corresponding amount by that same date.";

and renumbering the remaining sections in the Part accordingly;

and on page 44, lines 28 and 29,
by inserting between those lines:

"PART IX. PREFERENCE FOR USE OF ENCAPSULATED COAL ASH IN PUBLIC PROCUREMENT

SECTION 15. G.S. 143-59 is amended by adding a new subsection to read:
"(g) Preference for Encapsulated Coal Combustion Products. – Notwithstanding any other provision of law, all departments, institutions, and agencies of the State, including the constituent institutions of The University of North Carolina, when procuring supplies, materials, or construction services through any procurement process in which award of the contract is made, shall give substantially increased criteria weighting to products that use encapsulated coal ash. The Secretary of Administration and appropriate agency officials are required to adopt rules and policies to reflect this statutory preference."";

and renumbering the remaining Part and sections accordingly.

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 729

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

S729-ARI-168 [v.1]

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 729

AMENDMENT NO. 2
(to be filled in by Principal Clerk)

S729-ARI-169 [v.1]

Comm. Sub. [YES]
Amends Title [NO]
S729-PCS45193-RIx-39

Date _____,2014

Senator Ford

moves to amend the bill on page 33, line 46,
by rewriting that line to read:

"coal combustion residuals. All electric generating facilities shall present the materials and information received in response to a request for proposals issued pursuant to this section and an assessment of the materials and information, including a forecast of specific actions to be taken in response to the materials and information received, to the Environmental Management Commission and the Coal Ash Management Commission on or before August 1, 2016.".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 729

AMENDMENT NO. 3
(to be filled in by Principal Clerk)

S729-ARI-167 [v.1]

Comm. Sub. [YES]
Amends Title [NO]
S729-PCS45193-RIx-39

Date _____,2014

Senator Brock

moves to amend the bill on page 4, lines 6 through 24,
by rewriting those lines to read:

"(6) "Coal combustion residuals surface impoundment" means a topographic depression, excavation, or diked area that is: (i) primarily formed from earthen materials; (ii) without a base liner approved for use by Article 9 of Chapter 130A of the General Statutes or rules adopted thereunder for a combustion products landfill or coal combustion residuals landfill, industrial landfill, or municipal solid waste landfill; and (iii) designed to hold accumulated coal combustion residuals in the form of liquid wastes, wastes containing free liquids, or sludges, and that is not backfilled or otherwise covered during periods of deposition. For purposes of this Part, "Coal combustion residuals surface impoundment" shall only include impoundments owned by a public utility, as defined in G.S. 62-3. "Coal combustion residuals surface impoundment" includes all of the following:

a. An impoundment that is dry due to the deposited liquid having evaporated, volatilized, or leached.

b. An impoundment that is wet with exposed liquid.

c. Lagoons, ponds, aeration pits, settling ponds, tailings ponds, and sludge pits, when these structures are designed to hold accumulated coal combustion residuals.

d. A coal combustion residuals surface impoundment that has been covered with soil after the final deposition of coal combustion residuals at the impoundment.";

and on page 8, lines 18 through 25,
by rewriting those lines to read:

"(c) On or before October 1 of each year, a public utility generating coal combustion residuals and coal combustion products shall submit an annual summary to the Department. The annual summary shall be for the period July 1 through June 30 and shall include all of the following:

(1) The volume of coal combustion residuals and products produced.
(2) The volume of coal combustion residuals disposed.
(3) The volume of coal combustion products used in structural fill projects.
(4) The volume of coal combustion products beneficially used, other than for structural fill.

and on page 10, lines 34 through 41,
by rewriting those lines to read:

"(e) On or before December 31, 2018, all electric generating facilities owned by a public utility shall convert to the disposal of "dry" fly ash or the facility shall be retired. For purposes of this subsection, the term "dry" shall mean coal combustion residuals which are not in the form of liquid wastes, wastes containing free liquids, or sludges.

(f) On or before December 31, 2019, all electric generating facilities owned by a public utility shall convert to the disposal of "dry" bottom ash or the facility shall be retired. For purposes of this subsection, the term "dry" shall mean coal combustion residuals which are not in the form of liquid wastes, wastes containing free liquids, or sludges.";

and on page 33, lines 37 through 46,
by rewriting those lines to read:

"**SECTION 4.(e)** All electric generating facilities owned by a public utility that produce coal combustion residuals and coal combustion products shall issue a request for proposals on or before December 31, 2014, for (i) the conduct of a market analysis for the concrete industry and other industries that might beneficially use coal combustion residuals and coal combustion products; (ii) the study of the feasibility and advisability of installation of technology to convert existing and newly generated coal combustion residuals to commercial-grade coal combustion products suitable for use in the concrete industry and other industries that might beneficially use coal combustion residuals; and (iii) an examination of all innovative technologies that might be applied to diminish, recycle or reuse, or mitigate the impact of existing and newly generated coal combustion residuals.".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

SENATE BILL 729

Short Title:	Governor's Coal Ash Action Plan.	(Public)
Sponsors:	Senators Apodaca, Berger (Primary Sponsors); Allran, Daniel, Pate, Tarte, and Tucker.	
Referred to:	Agriculture/Environment/Natural Resources.	

May 15, 2014

A BILL TO BE ENTITLED

AN ACT TO (1) CHANGE NOTIFICATION REQUIREMENTS APPLICABLE TO DISCHARGES OF WASTEWATER; (2) ESTABLISH COAL COMBUSTION PRODUCTS IMPOUNDMENT WATER MONITORING PROGRAM; (3) IDENTIFY AND ADDRESS UNPERMITTED WASTEWATER DISCHARGES AT COAL COMBUSTION PRODUCTS IMPOUNDMENT SITES; (4) AMEND S.L. 2009-390; (5) REQUIRE EMERGENCY ACTION PLANS FOR HIGH AND INTERMEDIATE HAZARD DAMS; (6) CHANGE NOTIFICATION REQUIREMENTS APPLICABLE TO DAM REPAIRS; (7) INCREASE COAL COMBUSTION PRODUCTS IMPOUNDMENT INSPECTION REQUIREMENTS; (8) MODIFY THE DEFINITION OF SOLID WASTE TO INCLUDE REMOVED COMBUSTION PRODUCTS; (9) PLACE A TEMPORARY MORATORIUM ON THE USE OF COAL COMBUSTION PRODUCTS AS STRUCTURAL FILL; AND (10) ESTABLISH REQUIREMENTS FOR COAL COMBUSTION PRODUCTS IMPOUNDMENT CLOSURE.

Whereas, the issue of coal ash storage has not been adequately addressed in North Carolina for more than six decades; and

Whereas, on February 2, 2014, an estimated 39,000 tons of coal ash was released into the Dan River following the failure of a stormwater pipe under a utility coal ash impoundment pond in Eden, North Carolina; and

Whereas, the Department of Environment and Natural Resources ("Department") finds that coal combustion products have settled into the sediment of the river bottom and will require an extensive clean-up plan to complete remediation; and

Whereas, the Department is in the process of reassessing previous efforts at achieving compliance at coal ash facilities and developing short term and long term policies in light of the Dan River spill, violations discovered in light of increased inspections of coal combustion products disposal facilities and anticipated new federal regulations on coal combustion products; and

Whereas, it is the intent of the Department to ensure that spills of wastewater are reported to the Department in a defined and adequate time frame; and

Whereas, it is the intent of the Department to protect surface water and groundwater resources for their best usage; and

Whereas, it is the intent of the Department to ensure that all unpermitted wastewater discharges are eliminated or addressed in an environmentally responsible manner; and

Whereas, it is the intent of the Department to equally subject all dams under jurisdiction of G.S. 143-215.23 to the requirements of statute and administrative code; and

Whereas, it is the intent of the Department for the owners of all dams under jurisdiction of G.S. 143-215.23 deemed intermediate and high hazard by the Department to prepare at their own cost documents that describe full and adequate response to emergency situations at their dams and to submit those documents to the Department; and

Whereas, it is the intent of the Department to ensure that emergency situations at dams are reported to the Department in a defined and adequate time frame; and

Whereas, the it is the intent of the Department to increase oversight of dam structure integrity to protect the health and safety of the public; and

Whereas, state law exempts coal combustion products removed from impoundments from being defined as a solid waste; and

Whereas, the Department finds that consistent environmental standards should apply to coal combustion products removed from impoundments for management or disposal and coal combustion products managed or disposed of as a solid waste; and

Whereas, the Department finds the federal Environmental Protection Agency is under consent decree to complete new regulations by December 2014 for coal combustion products that are proposed to bring consistency to requirements for large fills such as structural fills and landfills; and

Whereas, the Department finds that conversion and closure of coal ash storage ponds is necessary for protection of the health and safety of the public; Now, therefore,

The General Assembly of North Carolina enacts:

PART I. NOTIFICATION REQUIREMENTS APPLICABLE TO DISCHARGES OF WASTEWATER

SECTION 1. G.S. 143-215.1C reads as rewritten:

"**§ 143-215.1C. Report to wastewater system customers on system performance; report discharge of untreated wastewater and wastewater containing coal combustion products to the Department; publication of notice of discharge of untreated wastewater and waste.**

(a) Report to Wastewater System Customers. – The owner or operator of any wastewater collection or treatment works, the operation of which is primarily to collect or treat municipal or domestic wastewater and for which a permit is issued under this Part and having an average annual flow greater than 200,000 gallons per day, shall provide to the users or customers of the collection system or treatment works and to the Department an annual report that summarizes the performance of the collection system or treatment works and the extent to which the collection system or treatment works has violated the permit or federal or State laws, regulations, or rules related to the protection of water quality. The report shall be prepared on either a calendar or fiscal year basis and shall be provided no later than 60 days after the end of the calendar or fiscal year.

(a1) Report of Discharge of Untreated Wastewater or Wastewater Containing Coal Combustion Products to the Department. – The owner or operator of any wastewater collection or treatment works shall report a discharge of 1,000 gallons or more of untreated wastewater or wastewater containing coal combustion products, or a spill of any amount of untreated wastewater or wastewater containing coal combustion products that reaches waters of the State to the Department as soon as possible but not later than 24 hours after first knowledge of the spill. This reporting requirement shall be in addition to any other reporting requirement applicable to the owner or operator of the wastewater collection or treatment works.

(b) Publication of Notice of Discharge of Untreated Wastewater. – The owner or operator of any wastewater collection or treatment works, the operation of which is primarily to

collect or treat municipal or domestic wastewater ~~and for which a permit is issued under this Part~~ shall:

(1) In the event of a discharge of 1,000 gallons or more of untreated wastewater or wastewater containing coal combustion products to the surface waters of the State, issue a press release to all print and electronic news media that provide general coverage in the county where the discharge occurred setting out the details of the discharge. The owner or operator shall issue the press release within ~~48~~ 24 hours after the owner or operator has ~~determined that the discharge has reached the surface waters of the State.~~ first knowledge of the spill. The owner or operator shall retain a copy of the press release and a list of the news media to which it was distributed for at least one year after the discharge and shall provide a copy of the press release and the list of the news media to which it was distributed to any person upon request.

(2) In the event of a discharge of 15,000 gallons or more of untreated wastewater to the surface waters of the State, publish a notice of the discharge in a newspaper having general circulation in the county in which the discharge occurs and the county immediately downstream and in each county downstream from the point of discharge that is significantly affected by the discharge. The Secretary shall determine, at the Secretary's sole discretion, which counties are significantly affected by the discharge and shall approve the form and content of the notice and the newspapers in which the notice is to be published. The notice shall be captioned "NOTICE OF DISCHARGE OF UNTREATED SEWAGE". The owner or operator shall publish the notice within 10 days after the Secretary has determined the counties that are significantly affected by the discharge and approved the form and content of the notice and the newspapers in which the notice is to be published. The owner or operator shall file a copy of the notice and proof of publication with the Department within 30 days after the notice is published. Publication of a notice of discharge under this subdivision is in addition to the requirement to issue a press release under subdivision (1) of this subsection.

(c) Publication of Notice of Discharge of Untreated Waste as defined in G.S. 143-213(18). – The owner or operator of any wastewater collection or treatment works, other than a wastewater collection or treatment works the operation of which is primarily to collect or treat municipal or domestic ~~wastewater, for which a permit is issued under this Part~~ wastewater shall:

(1) In the event of a discharge of 1,000 gallons or more of untreated waste to the surface waters of the State, issue a press release to all print and electronic news media that provide general coverage in the county where the discharge occurred setting out the details of the discharge. The owner or operator shall issue the press release within ~~48~~ 24 hours after the owner or operator has ~~determined that the discharge has reached the surface waters of the State.~~ first knowledge of the spill. The owner or operator shall retain a copy of the press release and a list of the news media to which it was distributed for at least one year after the discharge and shall provide a copy of the press release and the list of the news media to which it was distributed to any person upon request.

(2) In the event of a discharge of 15,000 gallons or more of untreated waste to the surface waters of the State, publish a notice of the discharge in a newspaper having general circulation in the county in which the discharge occurs and the county immediately downstream and in each county

downstream from the point of discharge that is significantly affected by the discharge. The Secretary shall determine, at the Secretary's sole discretion, which counties are significantly affected by the discharge and shall approve the form and content of the notice and the newspapers in which the notice is to be published. The notice shall be captioned "NOTICE OF DISCHARGE OF UNTREATED WASTE". The owner or operator shall publish the notice within 10 days after the Secretary has determined the counties that are significantly affected by the discharge and approved the form and content of the notice and the newspapers in which the notice is to be published. The owner or operator shall file a copy of the notice and proof of publication with the Department within 30 days after the notice is published. Publication of a notice of discharge under this subdivision is in addition to the requirement to issue a press release under subdivision (1) of this subsection."

PART II. COAL COMBUSTION PRODUCTS IMPOUNDMENT WATER MONITORING PROGRAM

SECTION 2. Article 21 of Chapter 143 of the General Statutes is amended by adding a new section to read:

"**§ 143-215.1D. Coal combustion products impoundment water monitoring program.**

(a) Groundwater Assessment – Owners of coal ash impoundments located at all investor-owned public utilities shall conduct groundwater monitoring according to the following schedule and procedures:

(1) No later than 45 days from enactment of this Act, the owner shall submit to the Division of Water Resources a Plan of proposed assessment activities to evaluate groundwater impacts from all coal combustions products impoundments located at all investor owned public utilities. At a minimum the plan shall:

a. Identify all receptors and significant exposure pathways.

b. Assess horizontal and vertical extent of soil and groundwater contamination for all contaminants confirmed to be present in groundwater in exceedance of groundwater quality standards and all significant factors affecting contaminant transport.

c. Identify the geological and hydrogeological features influencing the movement, chemical, and physical character of the contaminants.

d. Propose a schedule for continued groundwater monitoring.

Upon review and approval by the Division of Water Resources, the investor-owned public utility shall initiate assessment activities.

(2) No later than 180 days from the Division of Water Resources' written approval of the Plan required under subdivision (1) of subsection (a) of this section, or a time frame otherwise approved by the Division of Water Resources, the owner shall submit a Report detailing the findings of the Plan. The Report shall set forth the extent of any and all exceedances of the groundwater quality standards.

(3) No later than 270 days from the Division of Water Resources' written approval of the Plan required under subdivision (1) of subsection (a) of this section, or a time frame otherwise approved by the Division of Water Resources, the owner shall submit to the Division of Water Resources a proposed Corrective Action Plan. The Corrective Action Plan shall, at a minimum, contain:

a. A listing of all exceedances of the groundwater quality standards including any exceedances that the owner asserts are the result of natural background conditions.

b. Except as provided in subsubdivision f. of this subdivision, a description of the proposed corrective action employing the best available technology for the restoration of groundwater quality to the level of the groundwater quality standards and reasons for its selection.

c. Specific plans, including engineering details where applicable, for restoring groundwater quality.

d. A schedule for the implementation of the proposed corrective action plan.

e. A monitoring plan for evaluating the effectiveness of the proposed corrective action and the movement of the contaminant plume.

f. The owner may request alternative remediation as provided for under the requirements of 15A NCAC 2L .0106 (k), (l), or (m).

(4) No later than 30 days from the Division of Water Resources' approval of a Final Corrective Action Plan, the owner shall implement the Final Corrective Action Plan in accordance with a schedule established by Division of Water Resources. The approval of a Final Corrective Action Plan is not a final agency action pursuant to G.S. 150B.

(b) Drinking Water Assessment. – Within 60 days of enactment of this Act, owners of coal ash impoundments located at all investor-owned public utilities shall conduct and submit to the Division of Water Resources a water supply receptor survey. The Survey shall identify all receptors within a radius of 2,640 feet (0.5 mile) from the established compliance boundary of each impoundment. The owner shall sample each receptor identified by the Division of Water Resources. For any well exceeding the groundwater standards, the owner shall replace the water supply with a supply of potable drinking water.

(c) Annual Reporting Requirement. – In addition to any other reports required by the Division of Water Resources, the owners of coal combustion products impoundments located at all investor owned public utilities shall submit an annual report to the Division of Water Resources no later than January 31 of each year. The Annual report shall include a summary of all monitoring data collected over the year, status of Plans and Final Corrective Action Plans, and a summary of water supply receptor survey results."

PART III. IDENTIFY AND ADDRESS UNPERMITTED WASTEWATER DISCHARGES AT COAL COMBUSTION PRODUCTS IMPOUNDMENT SITES

SECTION 3. Article 21 of Chapter 143 of the General Statutes is amended by adding a new section to read:

"**§ 143-215.1E. Identify and address unpermitted wastewater discharges at coal combustion products impoundment sites.**

(a) Owners of coal combustion products impoundments located at all investor-owned public utilities shall implement the plan described in subsections (b) through (h) of this section to identify and address any unpermitted discharges to surface waters at those coal combustion products impoundment sites.

(b) No later than 90 days from enactment of this act, the owner shall submit a topographic map at a scale approved by Division of Water Resources that indicates the locations of all outfalls from engineered channels designed and/or improved for the purpose of collecting water from the toe of the coal combustion products impoundments. For each outfall, the map will:

(1) Specify its latitude and longitude.

(2) Specify whether the discharge is continuous or intermittent.
(3) Provide an average flow measurement, including a description of the method used to measure flow.

With the topographic map, the owner will submit to the Division of Water Resources a schedule according to which the owner shall conduct water quality sampling of the toe drain outfalls in order to further characterize the discharging water. No later than 30 days from receipt of the map and sampling schedule, Division of Water Resources will provide the owner with review comments, either approving the plan or noting any deficiencies to be corrected and a date by which a corrected map and/or sampling schedule is to be submitted for further review and comment. Within 30 days of approval of the schedule by the Division of Water Resources, the owner shall begin to sample the toe drain outfalls in accordance with the schedule and submit the samples for water quality analysis. Water quality analyses shall include the same parameters required for a coal-fired power plant per EPA Application Form 2C – Wastewater Discharge Information, Consolidated Permits Program (EPA Form 3510-2C, August 1990). If the owner demonstrates to the satisfaction of Division of Water Resources that sampling of a toe drain outfall is unlikely to generate usable data or is otherwise infeasible, the owner will not be required to sample that toe drain outfall.

(c) No later than 180 days from the enactment of this act, the owner shall submit a topographic map at a scale approved by the Division of Water Resources that indicates the locations of any seeps or drains reflecting discharges from the ash ponds but are not captured by an engineered channel identified pursuant to subsection (b) of this section. For any seep so identified that is believed to not reflect flows from any of the ash ponds, the owner shall provide to the Division of Water Resources the basis for such belief, including hydrological data or water quality testing information. For the seeps from the impoundments, the map will:

(1) Specify its latitude and longitude.
(2) Specify whether the discharge is continuous or intermittent.
(3) Provide an average flow measurement, including a description of the method used to measure flow.
(4) Specify whether the discharge from the seep reaches surface waters.
(5) If the discharge from the seep reaches surface water, identify the location where the seep reaches surface water on the map to include latitude and longitude.

(d) No later than 180 days from the enactment of this act, the owner shall submit a plan to determine whether toe drain or seep discharges from the impoundments have reached surface waters of the state and are causing violations of surface water quality standards. The plan shall include the following:

(1) Sampling locations upstream and downstream within all channels that potentially carry such discharges.
(2) Water quality analyses shall include the same parameters required for a coal-fired power plant per EPA Application Form 2C – Wastewater Discharge Information, Consolidated Permits Program (EPA Form 3510-2C, August 1990).
(3) Frequency and duration of the sampling activities.
(4) Reporting requirements.

No later than 30 days from receipt of the plan, the Division of Water Resources will provide the owner with review comments, either approving the plan, or noting any deficiencies to be corrected and a date by which a corrected plan is to be submitted for further review and comment or approval. Within 180 days from the Division of Water Resources' approval of the plan, the owner will implement and complete the plan and submit a report summarizing that work and its results.

(e) If the Division of Water Resources determines, based on information submitted pursuant to subsections (b) through (d) of this section, that discharges, whether from toe drains or seeps, are causing a violation of G.S. 143-215.1 or any other law, it shall so notify the owner. Within 120 days of such notification, the owner shall do one of the following:

(1) Stop the discharge.

(2) Capture and route the discharge so that it is discharged through an NPDES permitted outfall.

(3) Address the seep using Best Management Practices approved by the Division of Water Resources pursuant to subsection (f) of this section.

(4) Propose alternative Best Management Practices subject to the approval of the Division of Water Resources.

(5) Apply for an NPDES discharge permit or permit amendment to regulate the discharge.

(f) No later than 180 days from the date of enactment of this act, The owner shall submit to the Division of Water Resources for approval a set of best management practices designed to prevent unpermitted discharges of pollutants from the ash ponds to surface waters. Thereafter, the owner may submit additional best management practices for the Division of Water Resources approval.

(g) No later than 30 days from enactment of this act, the owner shall submit to the Division of Water Resources a plan for identifying new seeps on the dike areas of the ash ponds that arise after the submission of the maps described in subsections (b) and (c) of this section. The plan shall include, at a minimum, the following elements:

(1) A procedure for routine inspection of the coal combustion products impoundment areas to identify indicators of potential new seeps.

(2) A decision flow chart (including criteria and procedures) for determining whether a new seep is actually present.

(3) A procedure for notifying the Division of Water Resources after a new seep is confirmed.

No later than 30 days from receipt of the plan, the Division of Water Resources will provide the owner with review comments noting any deficiencies.

(h) No later than 12 months from the enactment of this act, the owner shall submit any information, forms, and fees necessary to request that the Division of Water Resources incorporate the process described in subsections (b) through (g) of this section into the owner's NPDES permit."

PART IV. AMEND S.L. 2009-390 (SB 1004)

SECTION 4. Section 3.(b) of S.L. 2009-390 is repealed.

PART V. EMERGENCY ACTION PLANS

SECTION 5. G.S. 143-215.31 is amended by adding two subsections to read:

"**§ 143-215.31. Supervision over maintenance and operation of dams.**

...

(f) Develop Emergency Action Plan. – Owners of high and intermediate hazard dams shall develop at their cost an Emergency Action Plan for their dam in document format in triplicate copy to be submitted to the Department by January 1, 2015. The emergency action plan at minimum shall:

(1) Identify potential emergency conditions that can occur at the dam.

(2) List preplanned actions to be taken during an emergency condition at the dam.

(3) Document emergency notification procedures to aid in warning and evacuations during an emergency condition at the dam.

(4) Provide a downstream inundation map depicting areas affected by a dam failure and sudden release of the impoundment.

If a dam owner fails to provide the Department with an Emergency Action Plan in triplicate copy by January 1, 2015, it shall be subject to Enforcement Procedures under G.S. 143-215.36. Dam owners shall update their emergency action plans annually and submit the updated plans in triplicate copy to the Department each year subsequent to January 1, 2015. The Department shall provide the appropriate local Emergency Management Agency and the Regional Office of the Department with the triplicate copy.

(g) Confidentiality of Sensitive Public Security Information – To the extent that any documents included in the Emergency Action Plan developed under this section contain sensitive public security information, those portions of documents shall not be subject to disclosure under the North Carolina Public Records Act."

PART VI. NOTIFICATION OF EMERGENCY REPAIR OF A DAM

SECTION 6. G.S. 143-215.27 reads as rewritten:

"**§143-215.27. Repair, alteration, or removal of dam.**

(a) Before commencing the repair, alteration or removal of a dam, application shall be made for written approval by the Department, except as otherwise provided by this Part. The application shall state the name and address of the applicant, shall adequately detail the changes it proposes to effect and shall be accompanied by maps, plans and specifications setting forth such details and dimensions as the Department requires. The Department may waive any such requirements. The application shall give such other information concerning the dam and reservoir required by the Department, such information concerning the safety of any change as it may require, and shall state the proposed time of commencement and completion of the work. When an application has been completed it may be referred by the Department for agency review and report, as provided by subsection (b) of G.S. 143-215.26 in the case of original construction.

(b) When repairs are necessary to safeguard life and property they may be started immediately but the Department shall be notified ~~forthwith~~ of the proposed repairs and of the work under ~~way;~~way as soon as possible but not later than 24 hours after first knowledge of the necessity for emergency repairs, and ~~they~~ such repairs shall be made to conform to its orders."

PART VII. INSPECTION OF IMPOUNDMENTS

SECTION 7. G.S. 143-215.32 is amended by adding two sections to read:

"(e) Investor-owned public utilities shall inspect each coal combustion products impoundment weekly and after storms to detect evidence of any of the following:

(1) Deterioration, malfunctions, or improper operation of spillway control systems.

(2) Sudden drops in the level of the impoundment's contents.

(3) Severe erosion or other signs of deterioration in dikes or other containment devices.

(4) New or enlarged seeps along the downstream slope or toe of the dike or other containment devices.

(5) Any other abnormal conditions at the impoundment that may pose a health or safety risk.

If any abnormalities in subdivisions (1) through (5) of this subsection are observed, documentation shall be provided to a registered professional engineer for further investigation and appropriate action.

(f) Each coal combustion products impoundment located at investor-owned public utilities shall be inspected annually by an independent registered professional engineer to assure structural integrity and that the design, operation, and maintenance of the surface

impoundment are in accordance with generally accepted engineering standards. The owner or operator must notify the Department by way of a certification by the independent registered professional engineer that the dam is structurally sound and the design, operation, and maintenance of the surface impoundment is in accordance with generally accepted engineering standards. The inspection report shall be submitted to the Department within 30 days of the completion of the inspection and shall be placed on a publicly accessible internet site."

PART VIII. DEFINITION OF SOLID WASTE

SECTION 8.(a) G.S. 130A-290(a)(35) reads as rewritten:

"(35) "Solid waste" 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~~ combustion products removed from impoundments subject to permits 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 shall be a solid waste. 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 and Energy Commission (as defined under G.S. 143B-293.1). 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 8.(b) G.S. 143-213(18) reads as rewritten:

"(18) "Waste" shall mean and include the ~~following:~~following with the exception of solid waste as defined by G.S. 130A-290(a)(35):

a. "Sewage," which shall mean water-carried human waste discharged, transmitted, and collected from residences, buildings, industrial establishments, or other places into a unified sewerage system or an arrangement for sewage disposal or a group of such sewerage arrangements or systems, together with such ground, surface, storm, or other water as may be present.

b. "Industrial waste" shall mean any liquid, solid, gaseous, or other waste substance or a combination thereof resulting from any process of industry, manufacture, trade or business, or from the development of any natural resource.

c. "Other waste" means sawdust, shavings, lime, refuse, offal, oil, tar chemicals, dissolved and suspended solids, sediment, and all other substances, except industrial waste, sewage, and toxic chemicals which may be discharged into or placed in such proximity to the water that drainage therefrom may reach the water.

d. "Toxic waste" means that waste, or combinations of wastes, including disease-causing agents, which after discharge and upon exposure, ingestion, inhalation, or assimilation into any organism, either directly from the environment or indirectly by ingestion through food chains, will cause death, disease, behavioral abnormalities, cancer, genetic mutations, physiological malfunctions (including malfunctions in reproduction) or physical deformities, in such organisms or their offspring."

PART IX. TEMPORARY MORATORIUM ON STRUCTURAL FILL

SECTION 9.(a) Moratorium Established. – Notwithstanding rules adopted by the Commission for Public Health there is hereby established a moratorium on the use of coal combustion products as a structural fill unless the fill is used under an airport runway or base or sub-base of a concrete or asphalt paved road, constructed under the authority of a public entity. The moratorium established by this section shall be in effect until rules are amended by the Commission for Public Health for the management of coal combustion products.

SECTION 9.(b) For purposes of this section, the moratorium does not apply to structural fill sites of less than 5,000 cubic yards.

SECTION 9.(c) This section is effective when this act becomes law and applies only to those coal combustion products structural fills that have not begun construction or have not received a permit to begin construction on or before that date.

PART X. COAL COMBUSTION PRODUCTS IMPOUNDMENT CLOSURE

SECTION 10.(a) Article 21 of Chapter 143 of the General Statutes is amended by adding a new Part to read:

"Part 12. Coal Combustion Products Impoundment Closure

"**§ 143-215.74Q. Closure of Coal Combustion Products Impoundments to Protect Groundwater and Surface Water**

(a) The Department shall establish the priority for closure of all active and inactive investor-owned coal combustion products impoundments. Once priorities for closure are established, the owner of the active and inactive ash ponds shall propose a schedule for beginning closure activities for each prioritized facility, and shall submit a proposed schedule

in accordance with the time frame established by the Department. Six months (180 days) before the scheduled closure activities begin, the owner must submit five (5) paper copies and one (1) electronic copy of a closure plan to the Division of Water Resources for approval. The closure plan shall include the following sections:

(1) Facility and Ash Pond Description. – A description of the operation of the facility that shall include, but not be limited to:
  a. Site and history of site operations; ash handling and storage operations.
  b. Types of flows discharging into the impoundment.
  c. Estimated volume of material contained in the impoundment.
  d. Analysis of the structural integrity of dikes or dams associated with impoundment.
  e. Composition of liner (lined or unlined pond).
  f. Summarized results of any previous environmental investigations performed at the site.

(2) Site Map. – Site maps that illustrate the following:
  a. All structures associated with operations of the ash ponds within the power plant property boundary.
  b. All identified current and former ash disposal and storage areas including structural fills.
  c. All property boundaries and established compliance boundaries.
  d. All potential receptors (i.e. water supply wells, surface water bodies (streams, springs, lakes, ponds and other surface drainage features, and wetlands) within 2,640 feet from the compliance boundary.
  e. Topographic contour intervals of the site shall be selected to enable an accurate representation of site features and terrain and in most cases should be less than 20 feet intervals.
  f. Locations of all on-site active and inactive Division of Waste Management permitted solid waste facilities along with their associated compliance boundaries and monitoring wells.
  g. All existing and proposed groundwater monitoring wells associated with monitoring of the active and inactive ash ponds.
  h. All existing and proposed sample collection locations associated with the operation or closure of the impoundment(s).

(3) Hydrogeologic, Geologic, and Geotechnical Investigations. – The results of a hydrogeologic, geologic, and geotechnical investigation of the facility, that shall include, but not be limited to:
  a. A description of the hydrogeology and geology of the site.
  b. A description of the stratigraphy of the geologic units underlying the ash ponds.
  c. The saturated hydraulic conductivity for the ash and liner if present.
  d. The geotechnical properties for the ash, liner if present, and the uppermost identified stratigraphic unit underlying the impoundment including the soil classification by Unified Soil Classification System, in-place moisture content, particle size distribution, Atterberg limits, specific gravity, effective friction angle, maximum dry density, optimum moisture content, and permeability.
  e. A chemical analysis of the impoundment water, ash, and ash-affected soil. Identify constituents with concentrations found to be in excess of 15A NCAC 02L .0202 Groundwater Quality Standards including all laboratory results for these analyses.

f. Summary tables of historical records of groundwater sampling results.

g. A map that illustrates the potentiometric contours and flow directions for all identified aquifers underlying impoundments (shallow, intermediate, and deep) and the horizontal extent of areas where 15A NCAC 02L. 0202 Groundwater Quality Standards are exceeded.

h. Cross-sections that illustrate the following: vertical and horizontal extent of the ash within the impoundment; Stratigraphy of the geologic units underlying the ash pond and the vertical extent of areas where 15A NCAC 02L. 0202 Groundwater Quality Standards are exceeded.

(4) Hydrogeologic Modeling. – The results of groundwater modeling of the site that shall include, but not be limited to:

a. An account of the design of the proposed pond closure method that: is based on the site hydrogeologic conceptual model developed, includes predictions on post-closure groundwater elevations, groundwater flow directions and velocities including the effects on/from the potential receptors, and includes predictions at the compliance boundary for constituents identified in subsubdivision e. of subdivision (3) of this subsection as exceeding 15A NCAC 2L .0202 Groundwater Quality Standards.

b. Predictions that include the effects on the groundwater chemistry, and should describe migration, concentration, mobilization and fate of the constituents that exceed 15A NCAC 2L standards before and after closure activities including the effects on/from potential receptors.

c. A description of the groundwater trend analysis methods used to demonstrate compliance with 15A NCAC 02L .0202 Groundwater Quality Standards and 15A NCAC 02L .0106.

(5) Closure Method. – The owner shall provide a proposed closure method. The proposed closure method must demonstrate that where groundwater quality is degraded, restoration to the level of the groundwater standards will be obtained as is economically and technically feasible. The selected proposed closure method shall be from one of the following alternatives, and shall include, but not be limited to:

a. A description of the closure method identified for each ash pond. Closure methods include:

i. Closure-in-Place. – This alternative entails placing an engineered cover system such as a composite geomembrane, impermeable clay, and/or a soil cover over the ash pond. No ash or ash-affected soil would leave the ash pond area.

ii. Clean Closure. – This alternative assumes that all coal ash can be excavated and the ash pond area will be returned to a non-erosive and stable condition.

iii. Hybrid Closure. – This alternative entails consolidating ash and ash-affected soil into as small area as feasible within the ash pond footprint. An engineered cover system (e.g. composite geomembrane, impermeable clay, and/or a soil cover) would be installed over the consolidated ash and ash-affected soil. The remaining ash pond area will be returned to a non-erosive and stable condition.

iv. Other. – Must be equally or more effective at protecting water quality than the other closure options.

b. A description concerning any plans for beneficial reuse of the coal ash under 15A NCAC 02T .1200 (if applicable).

c. All engineering drawings, schematics, and specifications for the proposed closure method. If required by G.S. 89C, engineering design documents should be prepared, signed, and sealed by a professional engineer. Describe the construction quality assurance and quality control program including the responsibilities and authorities; monitoring and testing activities; sampling strategies; and reporting requirements.

d. A description of the provisions for disposal of wastewater through an NPDES permit or any other relevant permit.

e. A description of the provisions for the final disposition of the ash. If the ash is to be removed, the owner must identify the site location and the permit number for ash sent to a permitted disposal site. If the ash is left in place, the owner must provide a description of how the ash will be stabilized during closure and post closure and an estimate of the volume of ash left in place.

f. A list of all permits that will need to be acquired or modified to complete closure activities.

(6) Post-Closure Plan. – The owner shall provide post-closure plans for a minimum of 30 years. If required by G.S. 89C, these plans should be signed and sealed by a professional engineer. These plans shall include, but not be limited to:

a. A description of the post-closure care and maintenance activities.

b. A demonstration of the long-term control of all leachate, affected groundwater, and stormwater.

c. A description of a groundwater monitoring program that includes:

i. Post closure groundwater monitoring, including parameters to be sampled and sampling schedules.

ii. Any additional monitoring well installations, including a map with the proposed location/s and well construction details.

iii. A description of the actions proposed to mitigate statistically significant increasing groundwater quality trends.

d. The length of the post-closure care period. This period may be proposed to be decreased or the frequency and parameter list modified if the owner demonstrates that the reduced period or modifications are sufficient to protect human health and the environment and this demonstration is approved by the Department. The length of the post-closure care period may be increased by the Department at the end of the post-closure period if there are statistically significant increasing groundwater quality trends or contaminant concentrations have not decreased to a level protective of human health and the environment. If the owner determines that the post-closure care period is no longer needed and the Department agrees, the owner shall provide a certification, signed by a registered professional engineer, verifying that post-closure care has been completed in accordance with the post-closure plan.

(7) Schedules. – The owner shall provide an estimate of the milestone dates for all activities related to closure and post-closure.

(8) Future Site Use. – The owner shall describe the anticipated future use of the site and the necessity for deed restrictions following closure.

(9) Final Submittal Determination and Approval. – Within 90 days of receipt of a completed closure plan, the Department will send a letter either approving the closure plan or requesting additional information. Upon approval, the owner must begin closure activities within 30 days."

SECTION 10.(b) Part 3 of Article 21 of Chapter 143 of the General Statutes is amended by adding a new section to read:

"**§ 143-215.37A. Closure of coal combustion products impoundments to render such facilities exempt from the North Carolina Dam Safety Law of 1967.**

(a) Decommissioning Request Submittal. – Any party seeking to decommission a coal combustion products impoundment facility shall submit a document from the ownership entity requesting that the facility be decommissioned to the Division of Energy, Mineral, and Land Resources. The document shall include as a minimum the following:

(1) A proposed geotechnical investigation plan scope of work. Upon preliminary plan approval as described below, the owner shall proceed with necessary field work and submit a geotechnical report with site specific field data indicating that the containment dam and material impounded by the containment dam are stable, and that the impounded material is not subject to liquid flow behavior under expected static and dynamic loading conditions. Material testing should be performed along the full extent of the containment dam and in a pattern throughout the area of impounded material.

(2) A topographic map depicting existing conditions of the containment dam and impoundment area at two foot contour intervals or less.

(3) If the facility contains areas capable of impounding by topography, a breach plan must be included which ensures that there shall be no place within the facility capable of impounding. The breach plan shall include at minimum proposed grading contours superimposed on the existing topographic map as well as necessary engineering calculations, construction details and construction specifications.

(4) A permanent vegetation and stabilization or capping plan by synthetic liner or other means if needed. These plans shall include at minimum, proposed grading contours superimposed on the existing topographic map where applicable as well as necessary engineering calculations, construction details, construction specifications and all details for the establishment of surface area stabilization.

(5) A statement indicating that the impoundment facility has not received sluiced coal ash material for at least three years and there are no future plans to place coal ash in the facility by sluicing methods.

(b) Preliminary Submittal Determination and Approval. – The submitted document shall undergo a preliminary review by the Division of Energy, Mineral, and Land Resources for completeness and approval of the proposed geotechnical investigation plan scope of work.

(1) The owner shall be notified by letter with results of the preliminary review including approval or revision request relative to the proposed scope of work included in the geotechnical investigation plan.

(2) Upon receipt of a letter issued by the Division approving the preliminary geotechnical plan scope of work, the owner may proceed with field work and development of the geotechnical report.

(c) Final Submittal Determination and Approval. – Upon receipt of the geotechnical report, the Division of Energy, Mineral, and Land Resources shall complete the submittal review.

(1) If it is determined that sufficient evidence has been presented to clearly show that the facility no longer functions as a dam in its current state, a letter decommissioning the facility shall be issued by the Division of Energy, Mineral, and Land Resources and the facility shall no longer be under jurisdiction of the Dam Safety Law of 1967, G.S. 143-215.23.

(2) If modifications such as breach construction and/or implementation of a permanent vegetation or surface lining plan are needed, such plans shall be reviewed per standard procedures for consideration of letter of approval to modify and/or breach.

(3) If approved, such plans shall follow standard procedure for construction including: construction supervision by a North Carolina registered professional engineer, as-built submittal by a North Carolina registered professional engineer, and follow up final inspection by Division of Energy, Mineral, and Land Resources staff.

(4) Final approval shall be issued by the Division of Energy, Mineral, and Land Resources in the form of a letter decommissioning the facility and the facility shall no longer be under jurisdiction of the Dam Safety Law of 1967, G.S. 143-215.23."

PART XI. CLOSURE PLANS SCHEDULE

SECTION 11. Notwithstanding G.S. 143-215.74Q and G.S. 143-215.37A as enacted by Sections 10.(a) and 10.(b) of this act:

(a) The closure plan for Riverbend shall be submitted to the Department no later than 60 days after the Act is ratified and shall include detailed provisions that ensure all ash in the impoundments will be moved to a lined structural fill, a lined landfill, or an alternative disposition approved by Department.

(b) The closure plan for Asheville shall be submitted to the Department no later than 60 days after the Act is ratified and include detailed provisions that ensure all ash in the impoundments will be moved to a lined structural fill, a lined landfill, or an alternative disposition approved by the Department.

(c) The closure plan for Dan River shall be submitted to the Department no later than 90 days after the Act is ratified and include detailed provisions that ensure all ash in the impoundments will be moved to a lined structural fill, a lined landfill, or an alternative disposition approved by the Department.

(d) The closure plan for Sutton shall be submitted to the Department no later than 90 days after the Act is ratified, and include detailed provisions that ensure all ash in the impoundments will be moved to a lined structural fill, a lined landfill, or an alternative disposition approved by Department.

PART XII. APPROPRIATION

SECTION 12. There is appropriated from the General Fund to the Department of Environment and Natural Resources the sum of one million four hundred thousand dollars ($1,400,000) for the 2013-2014 Fiscal Year to establish nineteen permanent positions and associated operating costs to implement this act."

PART XIII. EFFECTIVE DATE

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

SENATE BILL 729:
Coal Ash Management Act of 2014.

2013-2014 General Assembly

Committee:	Senate Agriculture/Environment/Natural Resources	**Date:**	June 16, 2014
Introduced by:	Sens. Apodaca, Berger	**Prepared by:**	Jennifer McGinnis and Jeff Hudson, Commission Counsels; Heather Fennell, Staff Attorney
Analysis of:	PCS to First Edition S729-PCS45193-RIx-39		

BILL ANALYSIS:

PART I. PROHIBIT RECOVERY OF COSTS RELATED TO UNLAWFUL DISCHARGES FROM COAL COMBUSTION RESIDUALS SURFACE IMPOUNDMENTS; MORATORIUM ON RATE CASES

SECTION 1. of the PCS would prohibit the Utilities Commission from allowing an electric public utility to recover from the retail electric customers of the State costs resulting from an unlawful discharge to the surface waters of the State from a coal combustion residuals surface impoundment (impoundment), unless the Commission determines the discharge was due to an event of force majeure. The section would apply to discharges occurring on or after January 1, 2014.

SECTION 2. of the PCS would establish a moratorium on orders of the Utilities Commission to grant an increase in base rates of an electric public utility for costs related to impoundments prior to January 15, 2015, in order to allow the State to study the disposition of impoundments including any final rules adopted by the United States Environmental Protection Agency (USEPA) on the regulation of coal combustion residuals (CCR).

PART II. PROVISIONS FOR COMPREHENSIVE MANAGEMENT OF COAL COMBUSTION RESIDUALS

SECTION 3. of the PCS would create a new Part in the Article of the General Statutes governing management of solid and hazardous waste to address matters related to management of coal ash. Specifically the Part would include provisions as follows:

SUBPART 1. Short Title, Definitions, and General Provisions

- **Definitions**: Establish pertinent definitions. *Note that in a subsequent portion of the bill, the definition for "solid waste" is modified to include wet CCR, which has historically been excluded from the definition of solid waste (see Sec. 3(d)).*
- **Coal Ash Management Commission**: Establish a nine member Coal Ash Management Commission (Commission), which would, in recognition of the complexity and magnitude of the issues associated with the management of coal combustion residuals and the proper closure and remediation of coal combustion residuals surface impoundments, have the following powers and duties:
  - To review and approve the prioritization classification of impoundments.
  - To review and approve closure plans for impoundments.

- To review and make recommendations on the provisions of this legislation and other statutes and rules related to the management of CCR.
- To undertake any additional studies as requested by the General Assembly.

The Commission would be:

- Administratively located in the Division of Emergency Management of the Department of Public Safety, but exercise all of its powers and duties independently of the agency and would not be subject to the supervision, direction, or control of the agency.
- Required to submit quarterly written reports as to its operation, activities, programs, and progress to the Environmental Review Commission (ERC).

- **Expedited permit review**: Require expedited review by the Department of Environment and Natural Resources (DENR) of permits necessary to conduct activities required by the legislation. In particular, DENR would be required to issue a draft permit decision on an application for a permit within 60 days after DENR determines that the application is complete. After DENR issues a draft permit decision, it would be required to hold a public hearing and accept written comment on the draft permit decision. DENR would be required to issue a final permit decision on an application for a permit within 30 days after the comment period on the draft permit decision closes. If DENR finds, however, that compliance with the deadlines would result in insufficient review of a permit application that would pose a risk to public health, safety, and welfare, the environment, or natural resources, the applicable deadline would be waived for the application as necessary to allow for adequate review. If a deadline is waived, the Secretary would be required to issue a written declaration, including findings of fact, documenting the need for the waiver.
- **Reports:** Require a number of reports:
  - Quarterly written reports from DENR to the ERC on DENR's operations, activities, programs, and progress with respect to its obligations under the legislation concerning impoundments. At a minimum, the report shall include information concerning the status of assessment, corrective action, prioritization, and closure for each coal combustion residual surface impoundment, and information on costs connected therewith, as well as a summary of all surface and groundwater sampling, protection, and restoration activities related to the impoundment for the preceding year.
  - Annual reports from DENR to each member of the General Assembly who has an impoundment in the member's district, including the location, the amount of CCR known or believed to be located in the impoundment, the last action taken at the impoundment, and the date of that last action.
  - Annual reports from generators of CCR and coal combustion products (CCP) summarizing the following:
    - The volume of CCR and CCP produced.
    - The volume of CCR disposed.
    - The volume of CCP used in structural fill projects.
    - The volume of CCP beneficially used, other than for structural fill.
- **Preemption of local regulation**: Invalidate local ordinances that prohibit or have the effect of regulating the management of coal combustion residuals and coal combustion products. The provision closely mirrors a statute preempting local government regulation of hazardous waste facilities (G.S. 130A-293). Specifically, the provision would invalidate ordinances that:
  - Regulate the management of coal combustion residuals and coal combustion products within any county, city, or other political subdivision.
  - Place any restriction or condition not placed by this legislation upon management of coal combustion residuals and coal combustion products within any county, city, or other political subdivision.
  - In any manner are in conflict or inconsistent with the provisions of this legislation.

- **Federal preemption**: Provide that if any phrase, clause, sentence, or provision of the legislation is declared to be unconstitutional or otherwise invalid or is preempted by federal law or regulation, that provision would be severable and the validity of the remainder of this Part would not be affected thereby.
- **Rulemaking**: Direct the Environmental Management Commission (EMC) to adopt rules as necessary to implement the provisions of the legislation, and exempt such rules from the requirements of G.S. 150B-19.3 (a provision under the Administrative Procedure Act that places limitations on the adoption of certain environmental rules).

SUBPART 2. Management of Coal Ash Residuals; Closure of Coal Ash Impoundments

Restrictions on generation, disposal, and use of coal combustion residuals:

- Prohibit the construction of new and expansion of existing impoundments on or after July 1, 2014.
- Prohibit the disposal of CCR into an impoundment at an electric generating facility where the coal-fired generating units are no longer producing CCR on or after October 1, 2014.
- Prohibit the discharge of stormwater into an impoundment: (i) at an electric generating facility where the coal-fired generating units are no longer producing CCR on or after December 31, 2018; and (ii) at an electric generating facility where the coal-fired generating units are actively producing CCR on or after December 31, 2019.
- Require all electric generating to convert to disposal of "dry" fly ash, or retire the facility on or before December 31, 2018.
- Require all electric generating facilities to convert to disposal of "dry" bottom ash, or retire the facility on or before December 31, 2019.

Groundwater assessment and corrective action; drinking water supply well survey and provision of alternate water supply; reporting:

- Require the owner of an impoundment to conduct groundwater monitoring and assessment on a specified timeline, including:
  - Submission of a Groundwater Assessment Plan to DENR for its review and approval, and implementation of the Plan, followed by submission of a Groundwater Assessment Report to DENR describing all exceedances of groundwater quality standards associated with the impoundment.
  - Submission of a Groundwater Corrective Action Plan to DENR for its review and approval, and implementation of corrective action for the restoration of groundwater in conformance with the requirements of Subchapter 2L of Title 15A of the North Carolina Administrative Code.
  - Conduct of a Drinking Water Supply Well Survey that identifies all drinking water supply wells within one-half mile from the established compliance boundary of the impoundment, and submission of the Survey to DENR. DENR would be directed to: (i) determine, based on the Survey, which drinking water supply wells the owner of the impoundment is required to sample and how frequently and for what period sampling is required; and (ii) require sampling for drinking water supply wells where data regarding groundwater quality and flow and depth in the area of any surveyed well provide a reasonable basis to predict that the quality of water from the surveyed well may be adversely impacted by constituents associated with the presence of the impoundment. The owner would be required to initiate sampling and water quality analysis of the drinking water supply wells (or pay the costs of third party sampling upon election of a property owner). If the sampling and water quality analysis indicated that water from a drinking water supply well exceeds groundwater quality standards for constituents associated with the presence of the impoundment, the owner would be required to replace the contaminated drinking water supply well with an alternate supply of potable drinking water within 30 days of the determination that there is an exceedance of groundwater quality standards.
  - Submission of an annual Groundwater Protection and Restoration Report from an impoundment owner to DENR and the Commission, to include a summary of all groundwater monitoring,

protection, and restoration activities related to the impoundment for the preceding year, including the status of the Groundwater Assessment Plan, the Groundwater Assessment Report, the Groundwater Corrective Action Plan, the Drinking Water Supply Well Survey, and the replacement of any contaminated drinking water supply wells.

Identification, assessment, and correction of unpermitted discharges:

- Require an impoundment owner to identify, assess, and correct all unpermitted discharges from the impoundment to the surface waters of the State on a specified timeline, including:
  - Submission of topographic maps to DENR that identify: (i) the location of all outfalls from engineered channels designed or improved for the purpose of collecting water from the toe of the impoundment; and (ii) the location of all seeps discharging from the impoundment that are not captured by engineered channels designed or improved for the purpose of colleting water from the toe of the impoundment.
  - Conduct of an assessment of unpermitted discharges from the impoundment to surface waters of the State including submission of a proposed Unpermitted Discharge Assessment Plan to DENR with information sufficient to allow DENR to determine whether any unpermitted discharge, including a discharge from a toe drain outfall or seep, has reached the surface waters of the State and has caused a violation of surface water quality standards. Within 30 days after DENR approval of a Plan, the owner would be required to begin implementation of the Plan in accordance with the Plan's schedule.
  - Implementation of corrective action to prevent unpermitted discharges from the impoundment to the surface waters of the State. If DENR determines, based on surface water quality sampling information provided in an Unpermitted Discharge Assessment Plan that an unpermitted discharge from an impoundment, including a discharge from a toe drain outfall or seep, has violated State or federal surface water quality laws, DENR must notify the owner of the impoundment of its determination. Within 30 days from the notification of violation, the owner of an impoundment must submit a proposed Unpermitted Discharge Corrective Action Plan to DENR for its review and approval. Within 30 days after DENR approval of a Plan, the owner would be required to begin implementation of the Plan in accordance with the Plan's schedule.
  - Submission of a plan for the Identification of New Unpermitted Discharges for DENR's review and approval. Within 30 days after DENR approval of a Plan, the owner would be required to begin implementation of the Plan in accordance with the Plan's schedule.
  - Submission of an annual Surface Water Protection and Restoration Report to DENR and the Commission, including a summary of all surface water sampling, protection, and restoration activities related to the impoundment for the preceding year, including the status of the identification, assessment, and correction of unpermitted discharges from coal combustion residuals surface impoundments to the surface waters of the State.

Prioritization of coal combustion residuals surface impoundments: would require DENR to develop, no later than August 1, 2015, proposed classifications for all impoundments, including active and retired sites, for the purpose of closure and remediation based on these sites' risks to public health, safety, and welfare; the environment; and natural resources, and to determine a schedule for closure and required remediation that is based on the degree of risk to public health, safety, and welfare; the environment; and natural resources posed by the impoundments and that gives priority to the closure and required remediation of impoundments that pose the greatest risk. In assessing the risk, DENR would be required to evaluate information received pursuant to assessments conducted of the impoundments and impacts to groundwater and surface water, and any other information deemed relevant, and, at a minimum, consider all of the following:

- Any imminent hazards to public health, safety, or welfare resulting from the impoundment.
- Structural condition and hazard potential of the impoundment.
- The proximity of surface waters to the impoundment, and whether any surface waters are contaminated or imminently threatened by contamination as a result of the impoundment.

- Information concerning the horizontal and vertical extent of soil and groundwater contamination for all contaminants confirmed to be present in groundwater in exceedance of groundwater quality standards and all significant factors affecting contaminant transport.
- The location and nature of all receptors and significant exposure pathways.
- The geological and hydrogeological features influencing the movement, chemical, and physical character of the contaminants.
- The amount and characteristics of coal combustion residuals in the impoundment.
- Any other factor DENR deems relevant to establishment of risk.

DENR would be required to issue a proposed classification for each impoundment as low-risk, intermediate-risk, or high-risk. Within 30 days after issuance of a proposed classification DENR would be required to issue a written declaration, including findings of fact, documenting the proposed classification, provide public notice, and conduct public hearings on the proposed classification.

Within 30 days of the receipt of all written comment received through public notice and public hearings, DENR would be required to submit a proposed classification for an impoundment to the Coal Ash Management Commission. The Commission would be required to approve a proposed classification if it determines that the classification was developed in accordance with the relevant requirements of the legislation and that the classification accurately reflects the level of risk posed by the impoundment. The Commission would be required to issue its determination in writing, including findings in support of its determination. Parties aggrieved by a final decision of the Commission on classification could appeal the decision as provided under Article 4 of Chapter 150B of the General Statutes.

Closure of coal combustion residual surface impoundments: An owner of a coal combustion residuals surface impoundment would be required to submit a proposed Coal Combustion Residuals Surface Impoundment Closure Plan for DENR's approval subject to the following requirements:

- High-risk impoundments would be required to close as soon as practicable, but no later than December 31, 2019. A proposed closure plan for such impoundments would need to be submitted as soon as practicable, but no later than December 31, 2016. At a minimum, such impoundments would be required to be dewatered, and the owner of an impoundment could either:
  - Convert the impoundment to an industrial landfill, by removing all CCR from the impoundment temporarily, safely storing the CCR on-site, and complying with the siting and design requirements for sanitary landfills under the Administrative Code, except with respect to those requirements that pertain to buffers. In lieu of the buffer requirements under the Administrative Code, the owner of the impoundment would be required to establish and maintain a 300-foot buffer between streams and rivers and disposal areas. After the temporarily displaced CCR's are returned for disposal in the industrial landfill, the owner of the landfill would be required to comply with the closure and post-closure requirements for sanitary landfills established by the Administrative Code. Prior to closure, however, DENR could allow the disposal of CCR, in addition to those originally contained in the impoundment, to the landfill, if DENR determines that the site is suitable for additional capacity, and that disposal of additional CCR would not pose an unacceptable risk to public health, safety, welfare; the environment; and natural resources.
  - Remove all CCR from the impoundment, return the former impoundment to a non-erosive and stable condition, and: (i) transfer the CCR for disposal in a combustion products landfill or coal combustion residuals landfill, industrial landfill, or municipal solid waste landfill; or (ii) use the CCP in a structural fill, or other beneficial use as allowed by law. The use of CCP as structural fill would need to be conducted in accordance with the enhanced requirements for structural fill included in the legislation, and other beneficial uses would need to be conducted in accordance with the applicable requirements of the Administrative Code.

- Intermediate-risk impoundments would be required to close as soon as practicable, but no later than December 31, 2024. A proposed closure plan for such impoundments would need to be submitted as soon as practicable, but no later than December 31, 2017. At a minimum, such impoundments would need to be dewatered, and the owner of such an impoundment would be required to close it in any manner allowed for high-risk impoundments.

- Low-risk impoundments would be required to close as soon as practicable, but no later than December 31, 2029. A proposed closure plan for such impoundments would need to be submitted as soon as practicable, but no later than December 31, 2018. At a minimum, such impoundments would need to be dewatered and would be required to comply with the closure and post-closure requirements applicable to sanitary landfills under the Administrative Code. The applicable rule requires installation of a cap system and conduct of post-closure care for a period of 30 years, including, among other things:
  - Maintaining the integrity and effectiveness of any cap system, including making repairs to the cover as necessary to correct the effects of settlement, subsidence, erosion, or other events, and preventing run-on and run-off from eroding or otherwise damaging the cap system.
  - Maintaining and operating a leachate collection system.
  - Monitoring the ground water and surface water and maintaining the groundwater monitoring system.

  In addition, DENR may require implementation of any other measure it deems necessary to protect public health, safety, and welfare; the environment; and natural resources, including imposition of institutional controls that are sufficient to protect public health, safety, and welfare; the environment; and natural resources.

DENR would be required to review a proposed Closure Plan for consistency with the minimum requirements for closure established by the legislation, and to determine whether the proposed Closure Plan otherwise complies with the legislation and is protective of public health, safety, and welfare; the environment; and natural resources. Prior to issuing a decision on a proposed Closure Plan, DENR would be required to provide public notice, and conduct public hearings on the proposed classification.

DENR would be required to provide specific findings to support its decision to approve or disapprove a proposed Closure Plan, and within 30 days of an approval of a Closure Plan, DENR would need to submit the Closure Plan to the Coal Ash Management Commission. The Commission could approve a Closure Plan only if it determines that the Closure Plan was developed in accordance with the legislation; that implementation of the Closure Plan according to the Closure Plan's schedule is technologically feasible; and that the benefits to public health, safety, and welfare; the environment; and natural resources outweigh the negative impacts on electricity costs and reliability. The Commission would be required to issue its determination in writing, including findings in support of its determination. Parties aggrieved by a final decision of the Commission on classification could appeal the decision as provided under Article 4 of Chapter 150B of the General Statutes.

An impoundment owner would be required to begin implementation of a Closure Plan within 60 days after Commission approval.

Notwithstanding the requirements for prioritization and closure methods described above, the following impoundments would be deemed high-priority (see Sec. 3(b)):

(1) Coal combustion residuals surface impoundment(s) located at the Dan River Steam Station, owned and operated by Duke Energy Progress, and located in Rockingham County.

(2) Coal combustion residuals surface impoundment(s) located at the Riverbend Steam Station, owned and operated by Duke Energy Carolinas, and located in Gaston County.

(3) Coal combustion residuals surface impoundment(s) located at the Asheville Steam Electric Generating Plant, owned and operated by Duke Energy Progress, and located in Buncombe County.

(4) Coal combustion residuals surface impoundment(s) located at the Sutton Plant, owned and operated by Duke Energy Progress, and located in New Hanover County.

Except as preempted by federal law, these impoundments would need to be closed as soon as practicable, but no later than August 1, 2019, as follows:

- *The impoundments would be required to be dewatered.*
- *All CCR would need to be removed from the impoundments and transferred for: (i) disposal in a a combustion products landfill or coal combustion residuals landfill, industrial landfill, or municipal solid waste landfill; or (ii) use in a structural fill, or other beneficial use as allowed by law.*
- *Where groundwater quality is degraded as a result of the impoundment, corrective action would be required to restore groundwater quality.*

SUBPART 3. Use of Coal Combustion Products in Structural Fill

This portion of the legislation would codify requirements applicable to the use of CCP's in structural fill currently found under the Administrative Code, and would add a number of new requirements to large structural fill projects (those involving the placement of 10,000 or more tons of coal combustion products per acre or 100,000 or more tons of coal combustion products in total per project). In particular, the provisions would do the following:

- Require individual permits for large structural fill projects using CCP (smaller structural fill projects would be deemed permitted), and specify information to be provided to DENR for permitting purposes.
- Codify design and siting requirements for projects using CCP for structural fill currently in rule, and establish new provisions requiring large structural fill projects to have an encapsulation liner system constructed on and around the structural fill to efficiently contain, collect, and remove leachate generated by the CCP, as well as separate the CCP from any exposure to surrounding environs. At a minimum, the components of the liner system would need to include a base liner, a leachate collection system, and a cap liner.
- Require groundwater monitoring for large structural fill projects using CCP. Specifically, large structural fills would be required to install a groundwater monitoring system and conduct groundwater monitoring through construction and the post-closure care period. In addition, a constructor or operator of a large structural fill would be required to implement an assessment monitoring program and initiate corrective action measures if exceedances of groundwater standards are detected through monitoring.
- Require financial assurance for large structural fill projects using CCP for structural fill that will ensure that sufficient funds are available for facility closure, post-closure maintenance and monitoring, any corrective action that DENR may require, and to satisfy any potential liability for sudden and nonsudden accidental occurrences, and subsequent costs incurred by DENR in response to an incident at a structural fill project, even if the applicant or permit holder becomes insolvent or ceases to reside, be incorporated, do business, or maintain assets in the State.
- Codify closure requirements for projects using CCP for structural fill currently in rule, and establish new provisions requiring large structural fill projects to submit closure and post-closure plans and conduct post-closure care for 20 years, which period may be increased or decreased by DENR based on evaluations of impacts to public health, welfare, the environment, and natural resources, or decreased upon a determination that a shorter period is sufficient to protect public health, welfare, the environment, and natural resources.

- Codify recordation requirements for projects using CCP structural fill facilities currently in rule.
- Codify an exemption for Department of Transportation projects using CCP structural fill facilities currently in rule.
- Require DENR to prepare an inventory of all structural fill projects with a volume of 10,000 cubic yards or more, and update the inventory at least annually. In addition, DENR would be directed to inspect each structural fill project with a volume of 10,000 cubic yards or more at least annually to determine if the project or facility has been constructed and operated in compliance with governing law.
- Direct the EMC to amend existing rules governing the use of CCP for structural fill as necessary to implement the provisions of the legislation, and exempt these rules from a limitation found in the Administrative Procedure Act on adoption of certain environmental rules.

PART III. MORATORIUMS AND STUDY ON: (1) USE OF COAL COMBUSTION PRODUCTS AS STRUCTURAL FILL AND (2) DISPOSAL OF COAL COMBUSTION RESIDUALS TO COMBUSTION PRODUCTS LANDFILLS

SECTION 4.(a) through (d) of the PCS would prohibit certain uses of CCP's as structural fill until August 1, 2015, in order to allow DENR, the EMC, and the General Assembly time to review and evaluate the use of coal combustion residuals as structural fill.

CCP's used as structural fill for any of the following types of projects would be exempt from the moratorium, provided, however, that they comply with requirements of the legislation:

- A project where the structural fill is used with a base liner, leachate collection system, cap liner, groundwater monitoring system, and with sufficient financial assurance.
- As the base or sub-base of a concrete or asphalt paved road constructed under the authority of a public entity.

During the pendency of the moratorium, DENR and the EMC would be required to jointly review the requirements for structural fills using CCP's included in the legislation, as well as rules for beneficial use under the Administrative Code. In particular DENR and EMC would be required to study all of the following:

- Review the uses of CCP: (i) as structural fill, and the regulation of this use as would be established by the legislation, to determine if the requirements are sufficient to protect public health, safety, and welfare; the environment; and natural resources; and (ii) for other beneficial uses and the regulation of these uses under the rules to determine if the rules are sufficient to protect public health, safety, and welfare; the environment; and natural resources.
- Evaluate additional opportunities for the use of CCP as structural fill and for other beneficial uses that would reduce the volume of CCR that are being disposed of in sanitary landfills while still being protective of public health, safety, and welfare; the environment; and natural resources.
- Monitor any actions of the USEPA regarding the use of CCP as structural fill or for other beneficial uses.
- Jointly report to the ERC no later than January 15, 2015, on their findings and recommendations regarding the use of CCP as structural fill and for other beneficial uses.

SECTION 4.(e) of the PCS would require all electric generating facilities that produce CCR's and CCP's to issue a request for proposals on or before December 31, 2014, for (i) the conduct of a market analysis for the concrete industry and other industries that might beneficially use CCR's and CCP's; (ii) the study of the feasibility and advisability of installation of technology to convert existing and newly generated CCR's to commercial-grade CCP's suitable for use in the concrete industry and other industries that might beneficially use coal combustion residuals; and (iii) an examination of all innovative technologies that might be applied to diminish, recycle or reuse, or mitigate the impact of existing and newly generated CCR's.

SECTION 5. of the PCS would establish a moratorium on construction of new or expansion of existing combustion products landfills through August 1, 2015. During the pendency of the moratorium DENR would be required to evaluate each combustion products landfill currently operating in the State, and, in particular, assess the risks to public health, safety, welfare; the environment; and natural resources, of coal combustion residuals surface impoundments located beneath combustion products landfills to determine the advisability of continued operation of these landfills. DENR would be required to report to the ERC no later than January 15, 2015.

PART IV. STRENGTHEN THE REPORTING AND NOTIFICATION REQUIREMENTS APPLICABLE TO DISCHARGES OF WASTEWATER TO WATERS OF THE STATE; REQUIRE CERTAIN EMERGENCY CALLS TO BE RECORDED

SECTION 6.(a) and (b) of the PCS would amend existing requirements for reporting and notification applicable to discharges of wastewater to waters of the State, to: (i) require an owner or operator of any wastewater collection or treatment works to report a discharge of 1,000 gallons or more of untreated wastewater to the surface waters of the State to DENR within 24 hours after the owner or operator has determined that the discharge has reached the surface waters of the State; and (ii) reduce the time periods allowed for a publication of notice of discharge of untreated wastewater from a wastewater collection or treatment works from 48 to 24 hours.

SECTION 6.(c) of the PCS would require that the 24-hour Operations Center established to serve as a single point of contact for local governments to report the occurrence of emergency and disaster events and to coordinate local and State response assets record all telephone calls to the emergency hotline and maintain the recording of each telephone call for at least one year.

PART V. REQUIRE NOTIFICATION TO DENR OF EMERGENCY DAM REPAIRS; REQUIRE EMERGENCY ACTION PLANS FOR CERTAIN DAMS; REQUIRE INSPECTION OF DAMS AT COAL COMBUSTION RESIDUALS SURFACE IMPOUNDMENTS

SECTION 7. of the PCS would amend requirements applicable to dam safety to require that a dam owner notify DENR as soon as possible, but not later than 24 hours after first knowledge of the necessity for emergency repairs to a dam.

SECTION 8. of the PCS would amend requirements applicable to dam safety to require that the owner of a dam classified by DENR as a high hazard dam or an intermediate hazard dam develop an Emergency Action Plan for the dam, addressing specific criteria outlined in the legislation, which must be submitted to DENR and the of Public Safety for approval.

SECTION 9. of the PCS would amend legislation enacted in 2009 that brought certain dams used in connection with electric generating facilities, not including those associated with nuclear generating facilities, under the State Dam Safety Act. The 2009 legislation provided that those facilities would be deemed to have received all of the necessary approvals from DENR and the Commission for Dam Safety, and were not required to submit application, certificate, or other materials in connection with the continued normal operation and maintenance of those facilities. The PCS would eliminate the language exempting these facilities from submission applications, certificates, or other materials.

SECTION 10. of the PCS would amend dam safety requirements to establish specific inspection requirements for impoundments as follows:

- Require DENR to inspect each dam associated with an impoundment at least annually.

- Require the owner of an impoundment to inspect the impoundment weekly and after storms to detect evidence of any of the following conditions:
  - Deterioration, malfunction, or improper operation of spillway control systems.
  - Sudden drops in the level of the contents of the impoundment.
  - Severe erosion or other signs of deterioration in dikes or other containment devices or structures.
  - New or enlarged seeps along the downstream slope or toe of the dike or other containment devices or structures.
  - Any other abnormal conditions at the impoundment that could pose a risk to public health, safety, or welfare; the environment; or natural resources.
- Require the owner of an impoundment to have the impoundment inspected annually by an independent registered professional engineer to ensure that the structural integrity and the design, operation, and maintenance of the impoundment is in accordance with generally accepted engineering standards. Within 30 days of the inspection, the owner must provide DENR the inspection report and a certification by the engineer that the impoundment is structurally sound and that the design, operation, and maintenance of the impoundment is in accordance with generally accepted engineering standards.

PART VI. TRANSFER SOLID WASTE RULE-MAKING AUTHORITY FROM COMMISSION FOR PUBLIC HEALTH TO ENVIRONMENTAL MANAGEMENT COMMISSION

SECTION 11. of the PCS would transfer all rule-making authority for matters related to solid and hazardous waste management (Article 9 of Chapter 130A of the General Statutes), from the Commission for Public Health to the Environmental Management Commission, and makes conforming changes throughout the statutes.

PART VII. OTHER STUDIES

SECTION 12. of the PCS would require the Coal Ash Management Commission, to study whether and under what circumstances no further action or natural attenuation is appropriate for impoundments classified as low-risk. In conducting the study, the Commission must specifically consider whether there is any contact or interaction between CCR and groundwater and surface water, whether the area has reverted to a natural state as evidenced by the presence of wildlife and vegetation, and whether no further action or natural attenuation would be protective of public health, safety, and welfare; the environment; and natural resources. The Commission would be required to report the results of its study, including any recommendations, to the ERC no later than October 1, 2015.

SECTION 13. of the PCS would require the Department of Transportation to evaluate additional opportunities for the use of CCR in the construction and maintenance of roads and bridges within the State. The Department would be required to report the results of its study, including any recommendations, to the ERC no later than December 1, 2014.

PART VIII. PROVIDE RESOURCES FOR IMPLEMENTATION OF THIS ACT

SECTION 14. of the PCS would create a new regulatory fee to defray the costs to the State of CCR management and appropriates the funds. Currently, all public utilities operating in the State pay a regulatory fee that is a percentage of their jurisdictional revenues. This regulatory fee is used to pay the expenses incurred by the Utilities Commission and the Public Staff in regulating public utilities. Section 14(a) of the PCS would create a new regulatory fee that will only be used to pay the costs of the Coal Ash Management Commission and the costs of DENR in providing oversight for CCR and CCP. The fee is set at 0.03% of the jurisdictional revenues of public utilities with an impoundment. Section 14(c) appropriates $1.75 million of the fee to DENR to fund 25 positions to carry out the duties of CCR and CCP management. Section 14(d)

appropriates the funds generated by the new regulatory fee remaining after the appropriation to DENR to the Coal Ash Management Commission to fund 4 positions to support the Commission.

PART XI. SEVERABILITY CLAUSE AND EFFECTIVE DATE

SECTION 15. of the PCS would provide that if any provision of the act or its application were held invalid, the invalidity would not affect other provisions or applications of the act that can be given effect without the invalid provisions or application, and to this end the provisions of this act would be severable.

SECTION 16. Except as otherwise provided, the act would be effective when it becomes law.

PAGES ATTENDING

Date: 6-17 11 AM

Committee: Agriculture **Room:** 544

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Page Name	Hometown	Sponsoring Senator
1 Parker Castleberry	Raleigh	Tillman
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5 Thomas McBrayer	Hickory	Allran
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9		

Do not add additional names below the grid.

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COMMITTEE: Senate Committee on Agriculture / Environment / Natural Resources

DATE: 06-17-2014 ROOM: 544

1. STEVE WILSON
2. GILES JEFFERYS
3. CHARLES HARPER
4. _____
5. _____
6. _____

PUBLIC COMMENT LIST

Senate Agriculture/ Environment / Natural Resources

06/16/2014

SB 729

2:00 Minutes

1. George Everett - Duke Energy
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VISITOR REGISTRATION SHEET

Agriculture/Environment/Natural Resources

June 17, 2014

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Meaghan Lewis	NC Chamber
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Bo Heath	McGuireWoods
Cameron Henry	NVA
Eric Cantor	
TJ Bradbee	NF
Will Smith	MIB
Mike Mann	CONCRETE SUPPLY
Richard Steven	Smith Anderson
Cassie Ashcraft	volunteer, N.C. Conservation Network
Destin Chicurel-Bayard	Sierra Club
Mary Jane Beeson	United Healthcare
Heather Barrett	W&S
Kristin Shields	UNC Law

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VISITOR REGISTRATION SHEET

Agriculture/Environment/Natural Resources

June 17, 2014

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VISITOR REGISTRATION SHEET

Agriculture/Environment/Natural Resources

June 17, 2014

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Erica Eggers	NCCN
Padraig Gibbons	Capitol
[illegible]	NCDENR
Henry Huntoff	N.C.B.A.
[illegible]	
John Runkle	NC WARN
Amanda Horaker	TSS
Mia Bailey	Electricities
[illegible]	North State Strategies
[illegible]	SELANC
[illegible]	BSA
Sabrina Oliver	DENR

09-21-201

VISITOR REGISTRATION SHEET

Agriculture/Environment/Natural Resources

June 17, 2014

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Erin Ball	UNC School of Law
Mary Flinchum	UNC School of Law
Sharon Miller	CUCA
Brianna VanSickelenburg	Sierra Club
Rochelle Sparks	Carolina Farm Stewardship Assn
Charles King	School of Government
Will Culpepper	MVA
Janine Zanin	UNC School of Law
Sara Salisbury	NC DOJ
Sarah Gillins	NCLCV
Rebekah Givens	NCLCV
Matt Magiotto	UNC Law
[illegible]	UNC Law

Senate Committee on Agriculture/Environment/Natural Resources
Tuesday, June 24, 2014, 11:00 AM
544 Legislative Office Building

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

BILL NO.	SHORT TITLE	SPONSOR
HB 366	NC Farm Act of 2014.	Representative Langdon Representative Dixon Representative Brisson Representative S. Martin
HB 379	Clarify Board. of Agric. Authority/Plants.-AB	Representative Langdon Representative Samuelson
HB 1139	State Nat. & Hist. Pres. Adds & Dels.	

Adjournment

Senate Committee on Agriculture/Environment/Natural Resources
Tuesday, June 24, 2014 at 11:00 AM
Room 544 of the Legislative Office Building

MINUTES

The Senate Committee on Agriculture/Environment/Natural Resources met at 11:00 AM on June 24, 2014 in Room 544 of the Legislative Office Building. Seventeen members were present: Senator Stan Bingham, Senator Andrew Brock, Senator Bill Cook, Senator Austin Allran, Senator Chad Barefoot, Senator Angela Bryant, Senator Joel Ford, Senator Valerie Foushee, Senator Fletcher Hartsell, Senator Jeff Jackson, Senator Brent Jackson, Senator Gene McLaurin, Senator Ron Rabin, Senator Bill Rabon, Senator Shirley Randleman, Senator Tommy Tucker and Senator Trudy Wade.

Senator Stan Bingham presided.

Pages: William Gaines, Wilmington – Senator Goolsby; Harrison Idol, High Point –Senator Bingham; Chase Cranford, High Point – Senator Bingham; Troy Garrett, Asheboro – Senator Tillman; Ryan Burnett, Raleigh – Senator Hunt; Jake Satishy, Raleigh – Senator Stein; Walter Jackson, Laurinburg – Senator McLaurin; Noah Dubois, Hendersonville – Senator Apodaca; Andrew Smith, Raleigh – Senator Stein.

Sgt. at Arms for today's meeting was Giles Jeffreys, Matt Urben, Charles Marsalis, Ernie Sherrell and Canton Lewis.

HB 366 NC Farm Act of 2014. (Representatives Langdon, Dixon, Brisson, S. Martin)

Senator Ford made a motion to hear the PCS for HB 366. The motion carried. Senator Brock and Senator Brent Jackson ran this PCS.

There were questions from Senator Rabon, Senator Tucker, Senator Ford, and Senator Bryant for which Senator Brent Jackson, Senator Brock and staff members Jeff Hudson and Chris Saunders responded. Joy Hicks from the Department of Agriculture responded to Senator Bryant.

Senator Trudy Wade made a motion for a favorable report on the PCS as amended. The motion carried.

HB 379 Amend Veterinary Practice Act/Fees. (Representative Langdon)

Senator Brock made a motion to hear the PCS for HB 379. The motion carried. Senator Trudy presented the bill before the committee. There was no discussion or questions regarding this legislation. Senator Rabin made a motion for a favorable report for the PCS and the motion carried.

HB 1139 State Nat. & Hist. Pres. Adds & Dels. (Representative Samuelson)

Representative Samuelson presented this bill. Senator Tucker had a question regarding this bill and Representative Samuelson responded.

Senator Ford made a motion for a favorable report on this bill and the motion carried.

The meeting adjourned at 11:45 AM.

Stan Bingham
Senator Stan Bingham, Presiding

Judy Edwards
Judy Edwards, Committee Clerk

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES COMMITTEE REPORT
Senator Bingham, Co-Chair
Senator Brock, Co-Chair

Tuesday, June 24, 2014

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

UNFAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL NO. 1, BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL NO. 2

HB **366** **(SCS#1)** NC Farm Act of 2014.

Draft Number:	H366-PCS30788-TQf-86
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

TOTAL REPORTED: 1

Senator W. Jackson will handle HB 366



NORTH CAROLINA GENERAL ASSEMBLY
SENATE

AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES COMMITTEE REPORT
Senator Bingham, Co-Chair
Senator Brock, Co-Chair

Tuesday, June 24, 2014

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

FAVORABLE

HB **1139 (CS#1)** State Nat. & Hist. Pres. Adds & Dels.
Draft Number: None
Sequential Referral: None
Recommended Referral: None
Long Title Amended: No

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

HB **379** Clarify Board. of Agric. Authority/Plants.-AB
Draft Number: H379-PCS40262-TQf-83
Sequential Referral: None
Recommended Referral: None
Long Title Amended: Yes

TOTAL REPORTED: 2

Senator Andrew Brock will handle HB 1139
Senator William Rabon will handle HB 379



GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

H D

HOUSE BILL 366

Committee Substitute Favorable 4/3/13
Senate Judiciary II Committee Substitute Adopted 6/23/14
PROPOSED SENATE COMMITTEE SUBSTITUTE H366-CSTQf-86 [v.1]
6/24/2014 9:10:28 AM

Short Title: NC Farm Act of 2014. (Public)

Sponsors:

Referred to:

March 21, 2013

A BILL TO BE ENTITLED

AN ACT TO (1) MAINTAIN THE CONFIDENTIALITY OF ENVIRONMENTAL INVESTIGATIONS FOR AGRICULTURAL OPERATIONS AND DIRECT THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES TO ADOPT RULES FOR A FORMAL COMPLAINT PROCEDURE; (2) CLARIFY THE AUTHORITY OF LOCAL GOVERNMENTS TO ADOPT ORDINANCES RELATED TO FERTILIZER; (3) REWRITE THE LANDSCAPE CONTRACTOR LICENSING STATUTES; (4) STUDY THE STATE'S PARTICIPATION IN THE COMMERCIAL VEHICLE SAFETY ALLIANCE NORTH AMERICAN STANDARD INSPECTION PROGRAM; (5) CLARIFY THE MEANING OF THE TERMS "PLANTING AND HARVESTING SEASON" AND "PLANTING AND HARVESTING PERIOD" FOR PURPOSES OF APPLYING FEDERAL LAWS OR REGULATIONS RELATING TO HOURS OF SERVICE RULES FOR CERTAIN DRIVERS TRANSPORTING AGRICULTURAL PRODUCTS; (6) AMEND THE CHAIRMANSHIP OF THE AGRICULTURE AND FORESTRY AWARENESS STUDY COMMISSION; (7) ALLOW THE COMMISSIONER OF AGRICULTURE TO APPOINT LAW ENFORCEMENT OFFICERS TO CARRY OUT THE LAW ENFORCEMENT RESPONSIBILITIES OF THE DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES; (8) ALLOW THE USE OF PESTICIDES TO CONTROL MOLES; (9) CLASSIFY TRESPASSING ON AN AGRICULTURAL FACILITY AS A FIRST DEGREE TRESPASS; (10) REQUIRE WRITTEN CONSENT TO OPERATE AN ALL TERRAIN VEHICLE ON PROPERTY OWNED BY ANOTHER; (11) ALLOW DRAINAGE DISTRICTS TO MAINTAIN DITCHES IN BUFFER ZONES; (12) CLARIFY PERIODIC INSPECTIONS AUTHORITY OF THE NORTH CAROLINA HOUSING FINANCE AGENCY; AND (13) PERMIT SECURITY GRILLES AT ALL EXITS OF A BUILDING SUBJECT TO CERTAIN CONDITIONS.

The General Assembly of North Carolina enacts:

MAINTAIN CONFIDENTIALITY OF ENVIRONMENTAL INVESTIGATIONS FOR AGRICULTURAL OPERATIONS AND DIRECT THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES TO ADOPT RULES FOR A FORMAL COMPLAINT PROCEDURE

SECTION 1.(a) Article 21 of Chapter 143 of the General Statutes is amended by adding two new sections to read:

"§ 143-215.9D. Agricultural operation investigations confidential.

Complaints of violations of this Article relating to an agricultural operation and all other records accumulated in conjunction with the investigation of these complaints shall be considered confidential records and may be released only by order of a court of competent jurisdiction. Any information obtained by the Department from any law enforcement agency, administrative agency, or regulatory organization on a confidential or otherwise restricted basis in the course of an investigation shall be confidential and exempt from G.S. 132-6 to the same extent that it is confidential in the possession of the providing agency or organization.

"§ 143-215.9E. Initial consideration of complaint.

(a) When a complaint alleging a violation of this Article is filed with the Department, the Department may, at its sole discretion, request additional information to be provided by the complainant within a specified period of time of no less than seven business days.

(b) The Department may decline to accept or further investigate a complaint about an agricultural operation if, after an initial assessment of the complaint, the Department finds reasonable grounds to believe that the complaint is frivolous or was filed in bad faith."

SECTION 1.(b) The Department of Environment and Natural Resources shall adopt rules developing a system for receiving, investigating, and responding to environmental complaints about agricultural operations, in accordance with Article 2A of Chapter 150B of the General Statutes, the Administrative Procedure Act.

CLARIFY THE AUTHORITY OF LOCAL GOVERNMENTS TO ADOPT ORDINANCES RELATED TO FERTILIZER

SECTION 2.(a) If Senate Bill 38, 2013 Regular Session, becomes law, then G.S. 106-678 as enacted by Senate Bill 38 reads as rewritten:

"**§ 106-678. Authority to regulate fertilizers.**

No county, city, or other political subdivision of the State shall adopt or continue in effect any ordinance or resolution regulating the use, sale, distribution, storage, transportation, disposal, formulation, labeling, registration, manufacture, or application of fertilizer. Nothing in this section shall prohibit a county, city, or other political subdivision of the State from exercising its planning and zoning authority under Article 19 of Chapter 160A of the General Statutes or Article 18 of Chapter 153A of the General Statutes, or from exercising its fire prevention or inspection authority. Nothing in this section shall limit the authority of the Department of Environment and Natural Resources or the Environmental Management Commission to enforce water quality standards. Nothing in this section shall prohibit a county, city, or other political subdivision of the State from adopting ordinances regulating fertilizers to protect water quality, provided that the ordinances have been approved by the Environmental Management Commission or the Department of Environment and Natural Resources as part of a local plan or National Pollutant Discharge Elimination System permit application and do not exceed the State's minimum requirements to protect water quality as established by the Environmental Management Commission under Part 1, Article 21 of Chapter 143 of the General Statutes. Nothing in this section shall prohibit a county or city from exercising its authority to regulate explosive, corrosive, inflammable, or radioactive substances pursuant to G.S. 153A-128 or G.S. 160A-183."

SECTION 2.(b) If Senate Bill 38, 2013 Regular Session, does not become law, then Article 56 of Chapter 106 of the General Statutes is amended by adding a new section to read:

"§ 106-678. Authority to regulate fertilizers.

No county, city, or other political subdivision of the State shall adopt or continue in effect any ordinance or resolution regulating the use, sale, distribution, storage, transportation, disposal, formulation, labeling, registration, manufacture, or application of fertilizer. Nothing in this section shall prohibit a county, city, or other political subdivision of the State from

exercising its planning and zoning authority under Article 19 of Chapter 160A of the General Statutes or Article 18 of Chapter 153A of the General Statutes, or from exercising its fire prevention or inspection authority. Nothing in this section shall limit the authority of the Department of Environment and Natural Resources or the Environmental Management Commission to enforce water quality standards. Nothing in this section shall prohibit a county, city, or other political subdivision of the State from adopting ordinances regulating fertilizers to protect water quality, provided that the ordinances have been approved by the Environmental Management Commission or the Department of Environment and Natural Resources as part of a local plan or National Pollutant Discharge Elimination System permit application and do not exceed the State's minimum requirements to protect water quality as established by the Environmental Management Commission under Part 1, Article 21 of Chapter 143 of the General Statutes. Nothing in this section shall prohibit a county or city from exercising its authority to regulate explosive, corrosive, inflammable, or radioactive substances pursuant to G.S. 153A-128 or G.S. 160A-183."

REWRITE LANDSCAPE CONTRACTOR LICENSING STATUTES

SECTION 3.(a) G.S. 89D-1 through G.S. 89D-10 are repealed.

SECTION 3.(b) Chapter 89D of the General Statutes is amended by adding the following new sections to read:

"**§ 89D-11. Definitions.**

The following definitions apply in this Chapter:

(1) Board. – The North Carolina Landscape Contractors' Licensing Board.

(2) Landscape construction or contracting. – The act of providing services as a landscape contractor, as defined in this section, for compensation or other consideration.

(3) Landscape contractor. – Any person who, for compensation or other consideration, does any of the following:

a. Engages in the business requiring the art, experience, ability, knowledge, science, and skill to prepare contracts and bid for the performance of landscape services, including installing, planting, repairing, and managing gardens, lawns, shrubs, vines, trees, or other decorative vegetation, including the finish grading and preparation of plots and areas of land for decorative utilitarian treatment and arrangement.

b. Practices the act of horticulture consultation or planting design for employment purposes.

c. Constructs, installs, or maintains landscape drainage systems and cisterns; provided the landscaping contractor makes no connection to pipes, fixtures, apparatus, or appurtenances installed upon the premises, or in a building, to supply water thereto or convey sewage or other waste therefrom as defined in G.S. 87-21.

d. Designs, installs, or maintains low-voltage landscape lighting systems; provided (i) the work does not exceed the scope of the exception set forth in G.S. 87-43.1(7); and (ii) the low-voltage lighting systems do not exceed 50 volts and constitute a Class II or Class III cord and plug connected power system.

e. Engages in the construction of garden pools, retaining walls, walks, patios, or other decorative landscape features.

(4) Person. – An individual, firm, partnership, association, corporation, or other legal entity.

"**§ 89D-12. License required; use of seal; posting license.**

(a) Except as otherwise provided in this Chapter, no person shall engage in the practice of landscape construction or contracting, use the designation "landscape contractor," or advertise using any title or description that implies licensure as a landscape contractor unless the person is licensed as a landscape contractor as provided by this Chapter. All landscape construction or contracting performed by a partnership, association, corporation, firm, or other group shall be performed under an individual who is readily available to exercise supervision over the landscape construction and contracting work and who is licensed by the Board under this Chapter.

(b) Nothing in this Chapter shall be construed to authorize a landscape contractor to engage in any of the following:

(1) The practice of landscape architecture as defined in G.S. 89A-1.

(2) The practice of engineering as defined in G.S. 89C-3.

(3) Practice as a well contractor certified under Article 7A of Chapter 87 of the General Statutes.

(4) The practice of irrigation contracting as defined in G.S. 89G-1.

(5) The practice of architecture as defined in G.S. 83A-1.

(6) The practice of plumbing, heating group number one, heating group number two, heating group number three, fire sprinkler, or fuel piping contracting as defined in G.S. 87-21; provided the landscaping contractor may install piping, fittings, valves, and associated components for the purpose of landscape contracting that is downstream of a potable water source, groundwater source, or grey water source, and downstream of a backflow prevention assembly.

(7) The practice of electrical contracting as defined in G.S. 87-43.

(c) A landscape contractor licensed under this Chapter is not required to be licensed as a general contractor under Article 1 of Chapter 87 of the General Statutes if the licensed landscape contractor is performing landscape construction or contracting work valued at an amount greater than thirty thousand dollars ($30,000).

(d) Upon licensure by the Board, each landscape contractor shall obtain a seal of the design authorized by the Board and bearing the name of the licensee, the number of the license, and the legend "N.C. Licensed Landscape Contractor." A landscape contractor may use the seal only while the license is valid.

(e) Every landscape contractor issued a license under this Chapter shall display the license conspicuously in the landscape contractor's place of business. Every landscape contractor shall display the license number issued to the contractor by the Board on all business cards, contracts, and vehicles used by the contractor in the landscape contracting business.

"**§ 89D-13. Exemptions.**

The provisions of this Chapter shall not apply to the following:

(1) Any federal, State, or local governmental agency performing landscaping on public property.

(2) The North Carolina Department of Transportation (NCDOT). However, for landscape installations or establishment periods for any project that exceeds the current contract amount requiring performance and payment bonds according to State law, NCDOT shall require a licensed landscape contractor to perform the work. NCDOT, at its discretion, may require a licensed landscape contractor for landscape projects of any cost.

(3) Any property owner performing landscape work on his or her own property.

(4) Any person or business owning or operating a golf course.

(5) Any landscaping work where the price of all contracts for labor, material, and other items for a given job site during any consecutive 12-month period is less than twenty-five thousand dollars ($25,000). A local governmental

unit shall not enact a local ordinance or regulation requiring licensure for landscaping work performed pursuant to this subdivision.

(6) A general contractor licensed under Article 1 of Chapter 87 of the General Statutes who possesses a classification under G.S. 87-10(b) as a building contractor, a residential contractor, or a public utilities contractor.

(7) Any person or business licensed as an electrical contractor under Article 4 of Chapter 87 of the General Statutes who is designing, installing, or maintaining any electric work, wiring, devices, appliances, or equipment.

(8) Any person or business licensed as a plumbing contractor under Article 2 of Chapter 87 of the General Statutes who is installing pipes, fixtures, apparatus, or appurtenances to supply water thereto or convey sewage or other waste therefrom, including the installation, repair, or maintenance of water mains, water taps, services lines, water meters, or backflow prevention assemblies supplying water for irrigation systems or repairs to an irrigation system.

(9) A professional engineer licensed pursuant to Chapter 89C of the General Statutes.

(10) A professional landscape architect licensed under Chapter 89A of the General Statutes.

(11) An individual or a business engaged in any of the following activities while performing that activity:

a. Clearing and grading plots and areas of land.

b. Erosion control.

c. Arboriculture, including consultations on pruning and removal of trees.

d. The installation of sod, seed, or plugs by sod producers certified by the Plant Industry Division of the North Carolina Department of Agriculture and Consumer Services.

e. Landscape construction performed by utilities contractors for the purpose of grading and erosion control.

f. Lawn mowing, turf edging, and debris removal services.

g. Turf management or lawn care services only, including fertilization, aeration, weed control, or other turf management or lawn care practices other than mowing or edging.

h. Design, installation, and maintenance of on-site wastewater disposal or reuse systems within the on-site wastewater permit specifications.

(12) Any person performing landscaping work on a farm for use in agriculture production, farming, or ranching.

"**§ 89D-14. The North Carolina Landscape Contractors' Licensing Board.**

(a) There is created the North Carolina Landscape Contractors' Licensing Board. The Board shall consist of nine members appointed as follows:

(1) One member appointed by the Governor who is a member of the general public.

(2) One member appointed by the Commissioner of Agriculture pursuant to recommendations from The North Carolina Green Industry Council.

(3) One member appointed by the Board of Directors of the North Carolina Nursery and Landscape Association, Inc., who is a practicing nurseryman operating a nursery certified by the North Carolina Department of Agriculture and Consumer Services Plant Industry Division.

(4) Four members who are licensed landscape contractors in the business of landscape construction or contracting. One of the four members shall be

appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives pursuant to recommendations from The North Carolina Green Industry Council; one shall be appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate pursuant to recommendations from the Carolinas Irrigation Association, who is also a licensed irrigation contractor; and two shall be appointed by the Board of Directors of the North Carolina Nursery and Landscape Association, Inc.

(5) One member appointed by the Board of Directors of the North Carolina Chapter of the American Society of Landscape Architects who is a registered landscape architect.

(6) One member appointed by the President of The University of North Carolina from within the land grant university community who is knowledgeable in landscaping methods and practices.

(b) All appointments shall be for three-year terms. No member shall serve more than two complete consecutive terms.

(c) A vacancy on the Board created by death, resignation, or otherwise shall be filled in the same manner as the original appointment, except that all unexpired terms of Board members appointed by the General Assembly shall be filled in accordance with G.S. 120-122. Appointees to fill vacancies shall serve the remainder of the unexpired term and until their successors are appointed and qualified.

(d) The Board shall elect annually a chair and other officers as it deems necessary to carry out the purposes of this Chapter and shall hold meetings at least twice a year. A majority of the Board shall constitute a quorum.

(e) Each member of the Board may receive per diem and reimbursement for travel and subsistence as set forth in G.S. 93B-5.

(f) The Board shall be entitled to the services of the Attorney General in connection with the affairs of the Board or may, in its discretion, employ an attorney to assist or represent it in the enforcement of this Chapter.

"**§ 89D-15. Powers and duties.**

The Board shall have the following powers and duties:

(1) Administer and enforce the provisions of this Chapter.

(2) Adopt, amend, or repeal rules to carry out the provisions of this Chapter.

(3) Examine and determine the qualifications and fitness of applicants for licensure and licensure renewal.

(4) Issue, renew, deny, restrict, suspend, or revoke licenses.

(5) Reprimand or otherwise discipline licensees under this Chapter.

(6) Receive and investigate complaints from members of the public.

(7) Conduct investigations to determine whether violations of this Chapter exist or constitute grounds for disciplinary action against licensees under this Chapter.

(8) Conduct administrative hearings in accordance with Article 3A of Chapter 150B of the General Statutes.

(9) Seek injunctive relief through any court of competent jurisdiction for violations of this Chapter.

(10) Collect fees required by G.S. 89D-21 and any other monies permitted by law to be paid to the Board.

(11) Require licensees to file and maintain an adequate surety bond.

(12) Establish and approve continuing education requirements for persons licensed under this Chapter.

(13) Employ a secretary-treasurer and any other clerical personnel the Board deems necessary to carry out the provisions of this Chapter and to fix compensation for employees.

(14) Maintain a record of all proceedings conducted by the Board and make available to licensees and other concerned parties an annual report of all Board action.

(15) Adopt and publish a code of professional conduct for all persons licensed under this Chapter.

(16) Adopt and publish a code of minimum practice standards for landscape construction and contracting.

(17) Adopt a seal containing the name of the Board for use on licenses and official reports issued by the Board.

"**§ 89D-16. Application for license; qualifications; examination; issuance.**

(a) Upon application to the Board and payment of the required fees, an applicant for licensure as a landscape contractor may sit for the examination if the applicant submits evidence demonstrating the applicant's qualifications for licensure under this Chapter as prescribed in rules adopted by the Board and meets all of the following qualifications:

(1) Is at least 18 years of age.

(2) Is of good moral character as determined by the Board.

(3) Provides evidence of business identification as required by the Board.

(4) Files with the Board and maintains a corporate surety bond executed by a company authorized to do business in this State or an irrevocable letter of credit issued by an insured institution. The surety bond or the letter of credit shall be in the amount of ten thousand dollars ($10,000). The surety bond or letter of credit shall be approved by the Board as to form and shall be conditioned upon the obligor faithfully conforming to and abiding by the provisions of this Chapter. Any person claiming to be injured by an act of a licensed landscape contractor that constitutes a violation of this Chapter may institute an action to recover against the licensee and the surety.

(b) If the applicant meets all the qualifications in subsection (a) of this section, the applicant shall be required to pass an examination administered by the Board before the Board may issue the license. The Board shall establish the scope and subject matter of the examination to be administered. The Board shall administer examinations at least twice a year at a time and place to be determined by the Board.

(c) When the Board determines that an applicant has met all the qualifications for licensure, submitted the required fee, and passed the examination, the Board shall issue a license to the applicant.

"**§ 89D-17. Corporations; partnerships; persons doing business under trade name.**

(a) The Board may issue a license in the name of a corporation if the corporation complies with the following:

(1) One or more officers or full-time employees, or both, empowered to act for the corporation are individuals licensed under this Chapter.

(2) Only the officers or employees described in subdivision (1) of this subsection execute contracts for landscape construction or contracting in the name of a corporation and are readily available to exercise supervision over the work performed pursuant to the contract.

(b) The Board may issue a license in the name of a limited liability company if the company complies with the following:

(1) One or more managers, as defined in G.S. 57D-1-03, executives, or full-time employees, or a combination thereof, are individuals licensed under this Chapter.

(2) Only the managers, executives, or employees described in subdivision (1) of this subsection execute contracts for landscape construction or contracting in the name of the limited liability company and are readily available to exercise supervision over the work performed pursuant to the contract.

(c) The Board may issue a license in the name of a partnership if the partnership complies with the following:

(1) One or more general partners or full-time employees empowered to act for the partnership are individuals licensed under this Chapter.

(2) Only the partners or employees described in subdivision (1) of this subsection execute contracts for landscape construction or contracting in the name of the partnership and are readily available to exercise supervision over the work performed pursuant to the contract.

(d) The Board may issue a license in an assumed or designated trade name if the owner of the business complies with the following:

(1) The owner or one or more full-time employees empowered to act for the owner is an individual licensed under this Chapter.

(2) Only the persons described in subdivision (1) of this subsection execute contracts for landscape construction or contracting in the assumed or designated trade name of the business and are readily available to exercise supervision over the work performed pursuant to the contract.

(e) When the Board issues a license under this section, the Board shall indicate on the license the name and license number of the individual licensee connected to the corporation, partnership, or business conducted under an assumed or designated trade name.

(f) A person licensed pursuant to this section shall be readily available to exercise supervision over a contract for landscape construction or contracting until the contract is completed.

(g) When a licensee executes a contract for landscape construction or contracting in any capacity other than as a sole proprietor contracting on the licensee's own behalf, the person on whose behalf the licensee is executing the contract shall be licensed under this section.

(h) A corporation, partnership, or person doing business under an assumed or designated trade name shall notify the Board in accordance with rules adopted by the Board if an individual licensee who is indicated in the license issued under this section ceases to be an officer, partner, owner, or employee of the corporation, partnership, or person doing business under the assumed or designated trade name. If the corporation, partnership, or person no longer has an officer, general partner, owner, or employee described in subdivision (a)(1), (b)(1), or (c)(1) of this section, the corporation, partnership, or person shall have 120 days from the date the officer, general partner, owner, or employee ceases the relationship with the corporation, partnership, or person to satisfy the requirements described in subdivision (a)(1), (b)(1), or (c)(1) of this section. The Board may, in its discretion, grant the corporation, partnership, or person a period greater than 120 days to satisfy the requirements described in subdivision (a)(1), (b)(1), or (c)(1) of this section as it deems appropriate. After 120 days, or a time period greater than 120 days as approved by the Board, if the corporation, partnership, or person does not have an officer, general partner, owner, or employee as described in subdivision (a)(1), (b)(1), or (c)(1) of this section, the license issued under this section is automatically suspended and the corporation, partnership, or person shall cease practicing landscape construction or contracting.

"**§ 89D-18. Licensing of nonresidents.**

(a) Definitions. – The following definitions apply in this section:

(1) Delinquent income tax debt. – The amount of income tax due as stated in a final notice of assessment issued to a taxpayer by the Secretary of Revenue when the taxpayer no longer has the right to contest the amount.

(2) Foreign corporation. – A corporation as defined in G.S. 55-1-40.
(3) Foreign entity. – A foreign corporation, a foreign limited liability company, or a foreign partnership.
(4) Foreign limited liability company. – A company as defined in G.S. 57D-1-03.
(5) Foreign partnership. – One of the following that does not have a permanent place of business in this State:
a. A foreign limited partnership as defined in G.S. 59-102.
b. A general partnership formed under the laws of a jurisdiction other than this State.

(b) Licensing. – Except as provided in this section, the Board may issue a license to a nonresident individual or a foreign entity that meets the requirements for licensure under this Chapter.

(c) Certificate of Authority Required. – The Board shall not issue a license for a foreign corporation unless the corporation has obtained a certificate of authority from the Secretary of State pursuant to Article 15 of Chapter 55 of the General Statutes. The Board shall not issue a license for a foreign limited liability company unless the company has obtained a certificate of authority from the Secretary of State pursuant to Article 7 of Chapter 57D of the General Statutes.

(d) Information. – The Board, upon request, shall provide the Secretary of Revenue the name, address, and tax identification number of every nonresident individual and foreign entity licensed by the Board. The information to be provided under this section shall be in a form required by the Secretary of Revenue.

(e) Delinquents. – If the Secretary of Revenue determines that any nonresident individual or foreign entity licensed by the Board owes a delinquent income tax debt, the Secretary of Revenue may notify the Board of the nonresident individual and foreign entity and instruct the Board not to renew the nonresident individual or foreign entity's license. The Board shall not renew the license of a nonresident individual or foreign entity identified by the Secretary of Revenue unless the Board receives a written statement from the Secretary that (i) the debt has been paid or (ii) the debt is being paid pursuant to an installment agreement.

"**§ 89D-19. Reciprocity.**

The Board may issue a license, without examination, to any person who is a landscape contractor licensed, certified, or registered in another state or country if the requirements for licensure, certification, or registration in the other state or country are substantially equivalent to the requirements for licensure in this State.

"**§ 89D-20. License renewal and continuing education.**

(a) Every license issued under this Chapter shall be renewed on or before the first day of August of each year. Any person who desires to continue to practice shall apply for a license renewal and shall submit the required fee. Licenses that are not renewed shall be automatically revoked. A license may be renewed at any time within one year after its expiration if (i) the applicant pays the required renewal fee and late renewal fee, (ii) the Board finds that the applicant has not used the license in a manner inconsistent with the provisions of this Chapter or engaged in the practice of landscape construction or contracting after notice of revocation, and (iii) the applicant is otherwise eligible for licensure under the provisions of this Chapter. When necessary, the Board may require licensees to demonstrate continued competence as a condition of license renewal.

(b) As a condition of license renewal, a licensee shall meet the continuing education requirements set by the Board. Each licensee shall complete seven continuing education units per year. The Board may suspend a licensee's license for 30 days for failure to obtain continuing education units required by this subsection. Upon payment of a reinstatement fee, submitting to the Board proof of the continuing education units required by this subsection, and

payment of the license renewal fee and late renewal fee, the licensee's license shall be reinstated. Failure to request a reinstatement of the license and failure to pay the reinstatement fee, renewal fee, and late renewal fee shall result in the forfeiture of a license. Upon forfeiture, a person shall be required to submit a new application and retake the examination as provided in this Chapter.

"**§ 89D-21. Expenses and fees.**

(a) The Board may impose the following fees not to exceed the amounts listed below:

(1)	Application fee	$100.00
(2)	Examination fee	250.00
(3)	Individual license fee and individual license renewal	100.00
(4)	Initial corporate, limited liability company, partnership, or trade name license	100.00
(5)	Corporate, limited liability company, partnership, or trade-name license renewal	100.00
(6)	Late renewal fee	50.00
(7)	Reinstatement fee	250.00
(8)	License by reciprocity	250.00
(9)	Duplicate license	25.00

(b) When the Board uses a testing service for the preparation, administration, or grading of examinations, the Board may charge the applicant the actual cost of the examination services and a prorated portion of the examination fee.

"**§ 89D-22. Disciplinary action.**

(a) The Board may deny, restrict, suspend, or revoke a license or refuse to issue or renew a license if a licensee or applicant does any of the following:

(1) Employs the use of fraud, deceit, or misrepresentation in obtaining or attempting to obtain a license or the renewal of a license.

(2) Practices or attempts to practice landscape construction or contracting by fraudulent misrepresentation.

(3) Commits an act of gross malpractice or incompetence as determined by the Board.

(4) Has been convicted of or pled guilty or no contest to a crime that indicates that the person is unfit or incompetent to practice as a landscape contractor or that indicates that the person has deceived or defrauded the public.

(5) Has been declared incompetent by a court of competent jurisdiction.

(6) Has willfully violated any provision in this Chapter or any rules adopted by the Board.

(7) Uses or attempts to use the seal in a fraudulent or unauthorized manner.

(8) Fails to file the required surety bond or letter of credit or to keep the bond or letter of credit in force.

(b) The Board may assess costs, including reasonable attorneys' fees and investigatory costs, in a proceeding under this section against an applicant or licensee found to be in violation of this Chapter.

"**§ 89D-23. Civil penalties.**

(a) In addition to taking any of the actions permitted under G.S. 89D-22, the Board may assess a civil penalty not in excess of two thousand dollars ($2,000) for each violation of any section of this Chapter or the violation of any rules adopted by the Board. The clear proceeds of any civil penalty assessed under this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2.

(b) Before imposing and assessing a civil penalty and fixing the amount of the penalty, the Board shall, as a part of its deliberations, take into consideration the following factors:

(1) The nature, gravity, and persistence of the particular violation.

(2) The appropriateness of the imposition of a civil penalty when considered alone or in combination with other punishment.
(3) Whether the violation was willful and malicious.
(4) Any other factors that would tend to mitigate or aggravate the violations found to exist.

"**§ 89D-24. Injunction to prevent violation; notification of complaints.**

(a) If the Board finds that a person who does not have a license issued under this Chapter is engaging in the practice of landscape construction or contracting, the Board may appear in its own name in superior court in actions for injunctive relief to prevent any person from violating the provisions of this Chapter or the rules adopted by the Board.

(b) A licensed landscape contractor shall notify the Board of any written complaints filed against the landscape contractor not resolved within 30 days from the date the complaint was filed by registered mail to the Board."

SECTION 3.(c) Members serving on the North Carolina Landscape Contractors' Registration Board on the effective date of this act shall continue to serve until members of the North Carolina Landscape Contractors' Licensing Board, newly structured under G.S. 89D-14(a), as enacted by Section 3.31(b) of this act, are appointed.

SECTION 3.(d) Once the term of one of the current public members appointed by the Governor expires, the General Assembly, upon the recommendation of the Speaker of the House of Representatives, shall appoint a licensed landscape contractor in the business of landscape construction and contracting. Once the term of one of the current members appointed by the Commissioner of Agriculture expires, the General Assembly, upon the recommendation of the President Pro Tempore of the Senate, shall appoint a licensed landscape contractor in the business of landscape construction and contracting. All records, staff, funds, and other items of the North Carolina Landscape Contractors' Registration Board are transferred to and made the property of the North Carolina Landscape Contractors' Licensing Board.

SECTION 3.(e) Any person who, on or before December 31, 2014, meets at least one of the following criteria shall be issued a landscape contractor's license by the North Carolina Landscape Contractors' Licensing Board, without the requirement of examination, upon submission of a completed application and payment of the application fee on or before August 1, 2015:

(1) Is registered as a landscape contractor.
(2) Is licensed as an irrigation contractor.
(3) Is certified as a turf grass professional.
(4) Has three years of documented experience in the person's own business as a landscape contractor or three years of documented experience as an employee in a landscape contracting business and meets all other requirements and qualifications for licensure as a landscape contractor. Educational experience can be applied towards the three-year experience requirement as follows:
    a. One year of credit for a two-year degree in related educational training.
    b. Two years of credit for a four-year degree in related educational training.
    c. Up to two years of credit for education or business experience in general business management.

Landscape contractors currently registered under Chapter 89D of the General Statutes shall not be required to renew the registration for the 2015 calendar year to qualify for the landscape contractor's license, as enacted by Subsection 3.31(b) of this section.

SECTION 3.(f) This section becomes effective August 1, 2015.

STUDY PARTICIPATION IN THE COMMERCIAL VEHICLE SAFETY ALLIANCE NORTH AMERICAN STANDARD INSPECTION PROGRAM

SECTION 4. The Department of Public Safety shall study the State's participation in the Commercial Vehicle Safety Alliance North American Standard Inspection Program for roadside commercial vehicle safety inspections. The study shall include (i) a history of when North Carolina joined the program; (ii) an explanation of how the program is currently being implemented; (iii) data on how many safety inspection decals are issued annually; and (iv) a geographic analysis of where safety inspection decals are issued within the State. The Department shall report the results of its study to the Agriculture and Forestry Awareness Study Commission on or before November 1, 2014.

CLARIFY THE MEANING OF THE TERMS "PLANTING AND HARVESTING SEASON" AND "PLANTING AND HARVESTING PERIOD" FOR PURPOSES OF APPLYING FEDERAL LAWS OR REGULATIONS RELATING TO HOURS OF SERVICE RULES FOR CERTAIN DRIVERS TRANSPORTING AGRICULTURAL PRODUCTS

SECTION 5. G.S. 20-381 is amended by adding a new subsection to read:

"**§ 20-381. Specific powers and duties of Department of Public Safety applicable to motor carriers; agricultural exemption.**

...

(c) For purposes of 49 C.F.R. § 395.1(k) and any other federal law or regulation relating to hours-of-service rules for drivers engaged in the transportation of agricultural commodities and farm supplies for agricultural purposes, the terms "planting and harvesting season" and "planting and harvesting period" refer to the period from January 1 through December 31 of each year."

AMEND CHAIRMANSHIP OF AGRICULTURE AND FORESTRY AWARENESS STUDY COMMISSION

SECTION 6. G.S. 120-150 reads as rewritten:

"**§ 120-150. Creation; appointment of members.**

There is created an Agriculture and Forestry Awareness Study Commission. Members of the Commission shall be citizens of North Carolina who are interested in the vitality of the agriculture and forestry sectors of the State's economy. Members shall be as follows:

(1) Three appointed by the Governor.
(2) Three appointed by the President Pro Tempore of the Senate.
(3) Three appointed by the Speaker of the ~~House.~~House of Representatives.
(4) ~~The chairs of the House Agriculture Committee.~~Two members of the House of Representatives appointed by the Speaker of the House of Representatives.
(5) ~~The chairs of the Senate Committee on Agriculture, Environment, and Natural Resources.~~Two members of the Senate appointed by the President Pro Tempore of the Senate.
(6) The Commissioner of Agriculture or the Commissioner's designee.
(7) A member of the Board of Agriculture designated by the chair of the Board of Agriculture.
(8) The President of the North Carolina Farm Bureau Federation, Inc., or the President's designee.
(9) The President of the North Carolina State Grange or the President's designee.
(10) The Secretary of Environment and Natural Resources or the Secretary's designee.

(11) The President of the North Carolina Forestry Association, Inc., or the President's designee.

Members shall be appointed for two-year terms beginning October 1 of each odd-numbered year. ~~The Chairs of the House Agriculture Committee and the Chairs of the Senate Committee on Agriculture, Environment, and Natural Resources shall serve as cochairs.~~The President Pro Tempore of the Senate and the Speaker of the House of Representatives shall each designate two members to serve as cochairs of the Commission."

ALLOW COMMISSIONER OF AGRICULTURE TO APPOINT LAW ENFORCEMENT OFFICERS TO CARRY OUT LAW ENFORCEMENT RESPONSIBILITIES OF THE DEPARTMENT OF AGRICULTURE

SECTION 7. G.S. 106-900 reads as rewritten:

"**§ 106-900. Powers of ~~forest~~ Department of Agriculture and Consumer Services law-enforcement officers.**

The Commissioner is authorized to appoint as many ~~forest~~ Department of Agriculture and Consumer Services law-enforcement officers as he or she deems necessary to ~~carry out the forest law-enforcement responsibilities of the Department~~ investigate and enforce any violation of the laws within the authority of the Department or which occur on Department property. Such officers shall meet the requirements of Chapter 17C of the General Statutes and shall take the oath of office prescribed by Article VI, Section 7 of the North Carolina Constitution. ~~Forest law-enforcement officers shall~~ Of these officers, the Commissioner may designate certain officers to also have ~~all~~ the powers and the duties of a forest ranger enumerated in G.S. 106-898 and ~~G.S. 106-899.~~ G.S. 106-899 and the power to enforce the forest laws. ~~Forest law-enforcement officers shall, in addition to their other duties, have the powers of peace officers to enforce the forest laws. Any forest~~ A Department law-enforcement officer may arrest, without warrant, any person or persons committing any crime in ~~his~~ the officer's presence or ~~whom~~ who such officer has probable cause for believing has committed a crime in ~~his~~ the officer's presence and bring such person or persons forthwith before a district court or other officer having jurisdiction. ~~Forest~~ Department law-enforcement officers shall also have authority to obtain and serve warrants including warrants for violation of any duly promulgated rule of the Department.

PESTICIDE USE FOR MOLES

SECTION 8. G.S. 113-300.2 is amended by adding a new subsection to read:

"(g) Notwithstanding any other provision of law, it is lawful to use any pesticide registered by the Pesticide Board to control any species of mole other than the Star-Nosed mole (Condyluria cristata parva), provided that (i) all rules regulating the application of pesticides adopted by the Pesticide Board are followed, and (ii) pesticides used to control these species are applied in a manner that minimizes hazards to nontarget species."

ADD AGRICULTURAL FACILITIES TO FIRST DEGREE TRESPASS

SECTION 9.(a) G.S. 14-159.12(c)(1) is amended by adding a new sub-subdivision to read:

"**§ 14-159.12. First degree trespass.**

...

(c) Except as otherwise provided in subsection (d) of this section, a violation of subsection (a) of this section is a Class A1 misdemeanor if all of the following circumstances exist:

(1) The offense is committed on the premises of any of the following:

a. A facility that is owned or operated by an electric power supplier as defined in G.S. 62-133.8(a)(3) and that is either an electric

generation facility, a transmission substation, a transmission switching station, a transmission switching structure, or a control center used to manage transmission operations or electrical power generating at multiple plant locations.

b. Any facility used or available for use in the collection, treatment, testing, storing, pumping, or distribution of water for a public water system.

c. Any facility, including any liquefied natural gas storage facility or propane air facility, that is owned or operated by a natural gas local distribution company, natural gas pipeline carrier operating under a certificate of public convenience and necessity from the Utilities Commission, municipal corporation operating a municipally owned gas distribution system, or regional natural gas district organized and operated pursuant to Article 28 of Chapter 160A of the General Statutes used for transmission, distribution, measurement, testing, regulating, compression, control, or storage of natural gas.

d. Any facility used or operated for agricultural activities, as that term is defined in G.S. 106-581.1."

SECTION 9.(b) This section becomes effective December 1, 2014, and applies to offenses committed on or after that date.

REQUIRE WRITTEN CONSENT TO OPERATE ALL TERRAIN VEHICLES ON PRIVATE PROPERTY

SECTION 10.(a) G.S. 14-159.3 reads as rewritten:

"**§ 14-159.3. Trespass to land on motorized all terrain vehicle.**

(a) No person shall operate any motorized all terrain vehicle:

(1) On any private property not owned by the operator, without the written consent of the owner; or

(2) Within the banks of any stream or waterway, but excluding a sound or the Atlantic Ocean, the adjacent lands of which are not owned by the operator, without the consent of the owner or outside the restrictions imposed by the owner.

(a1) A landowner who gives a person written consent to operate an all terrain vehicle on his or her property owes the person the same duty of care that he owes a trespasser.

(b) A "motorized all terrain vehicle", as used in this section, is a two or more wheeled vehicle designed for recreational off-road use.

(c) A violation of this section shall be a Class 2 misdemeanor."

SECTION 10.(b) This section becomes effective December 1, 2014, and applies to offenses committed on or after that date.

ALLOW DRAINAGE DISTRICTS TO MAINTAIN DITCHES IN BUFFER ZONES

SECTION 11. G.S. 156-82.1 is amended by adding a new subsection to read:

"**§ 156-82.1. Duties and powers of the board of drainage commissioners.**

(a) The board of drainage commissioners shall proceed with the levying of assessments, issuance of bonds and construction of canals, water retardant structures and other improvements and acquisition of equipment as approved by the court in the adjudication upon the final report of the board of viewers, either in the creation of the district or in subsequent proceedings authorized by Article 7B.

(b) The commissioners shall maintain the canals, water retardant structures, and all other improvements and equipment of the district.

(b1) No State statute or rule or local government ordinance for the establishment, preservation, or maintenance of riparian buffers for the protection of water quality shall apply to the construction, operation, maintenance, or repair of canals, water retardant structures, or other improvements under the control and supervision of a board of drainage commissioners.

...."

CLARIFY PERIODIC INSPECTIONS AUTHORITY OF HOUSING FINANCE AGENCY

SECTION 12.(a) G.S. 153A-364 reads as rewritten:

"**§ 153A-364. Periodic inspections for hazardous or unlawful conditions.**

...

(b) A county may require periodic inspections as part of a targeted effort within a geographic area that has been designated by the county commissioners. The county shall not discriminate in its selection of areas or housing types to be targeted and shall (i) provide notice to all owners and residents of properties in the affected area about the periodic inspections plan and information regarding a public hearing regarding the plan; (ii) hold a public hearing regarding the plan; and (iii) establish a plan to address the ability of low-income residential property owners to comply with minimum housing code standards. A residential building or structure that is subject to periodic inspections by the North Carolina Housing Finance Agency (hereinafter "Agency") shall not be subject to periodic inspections under this subsection if the Agency has issued a finding that the building or structure is in compliance with federal standards established by the United States Department of Housing and Urban Development to assess the physical condition of residential property. The owner or manager of a residential building or structure subject to periodic inspections by the Agency shall, within 10 days of receipt, submit to the inspection department a copy of the Compliance Results Letter issued by the Agency showing that the residential building or structure is in compliance with federal housing inspection standards. If the owner or manager fails to submit a copy of the Compliance Results Letter as provided in this subsection, the residential building or structure shall be subject to periodic inspections as provided in this subsection until the Compliance Results Letter is submitted to the inspection department.

...."

SECTION 12.(b) G.S. 160A-424 reads as rewritten:

"**§ 160A-424. Periodic inspections.**

...

(b) A city may require periodic inspections as part of a targeted effort within a geographic area that has been designated by the city council. The municipality shall not discriminate in its selection of areas or housing types to be targeted and shall (i) provide notice to all owners and residents of properties in the affected area about the periodic inspections plan and information regarding a public hearing regarding the plan; (ii) hold a public hearing regarding the plan; and (iii) establish a plan to address the ability of low-income residential property owners to comply with minimum housing code standards. A residential building or structure that is subject to periodic inspections by the North Carolina Housing Finance Agency (hereinafter "Agency") shall not be subject to periodic inspections under this subsection if the Agency has issued a finding that the building or structure is in compliance with federal standards established by the United States Department of Housing and Urban Development to assess the physical condition of residential property. The owner or manager of a residential building or structure subject to periodic inspections by the Agency shall, within 10 days of receipt, submit to the inspection department a copy of the Compliance Results Letter issued by the Agency showing that the residential building or structure is in compliance with federal housing inspection standards. If the owner or manager fails to submit a copy of the Compliance Results Letter as provided in this subsection, the residential building or structure shall be

subject to periodic inspections as provided in this subsection until the Compliance Results Letter is submitted to the inspection department.

...."

SECURITY GRILLES

SECTION 13.(a) Notwithstanding Section 1008.1.4.5 of the 2012 NC State Building Code (Fire Code), horizontal sliding or vertical security grilles shall be permitted at all exits or exit access doorways, provided that the grilles are openable from the inside without the use of a key or special knowledge or effort during periods that the space is occupied by authorized persons and that the grilles remain secured in the full-open position during the period of occupancy by the general public.

SECTION 13.(b) The Building Code Council shall adopt a rule to amend Section 1008.1.4.5 of the 2012 NC State Building Code (Fire Code) consistent with Section 13.(a) of this section.

SECTION 13.(c) Section 13.(a) of this section expires on the date that the rule adopted pursuant to Section 13.(b) of this section becomes effective.

EFFECTIVE DATE

SECTION 14. Except as otherwise provided, this act is effective when it becomes law.

HOUSE BILL 366:
NC Farm Act of 2014

2013-2014 General Assembly

Committee:	Senate Agriculture/Environment/Natural Resources	**Date:**	June 24, 2014
Introduced by:	Reps. Langdon, Dixon, Brisson, S. Martin	**Prepared by:**	Chris Saunders Committee Counsel
Analysis of:	PCS to Third Edition H366-CSTQ-84 [v.5]		

SUMMARY: The Proposed Committee Substitute (PCS) to House Bill 366 would amend various agricultural and environmental laws.

[As introduced, this bill was identical to S387, as introduced by Sens. Barefoot, Cook, Walters]

BILL ANALYSIS:

Section 1 of the PCS would provide that complaints to the Department of Environment and Natural Resources (DENR) concerning an agricultural operation, and all records accumulated in conjunction with the investigation of the complaint, are confidential and may be released only by court order. This section would also allow DENR to request additional information from a complainant and permit the Department to decline to accept or further investigate a complaint about an agricultural operation if an initial assessment of the complaint leads to a finding that the complaint is frivolous or was filed in bad faith. Section 1 would also direct DENR to adopt rules to develop a formal system for receiving, investigating, and responding to environmental complaints.

Section 2 of the PCS would prohibit cities and counties from adopting ordinances regulating the use, sale, distribution, storage, transportation, disposal, formulation, labeling, registration, manufacture, or application of fertilizer. This section would not limit the authority of DENR or the Environmental Management Committee (EMC) to enforce water quality standards. Cities and counties would be permitted to adopt ordinances to regulate fertilizers to protect water quality, provided that the ordinances have been approved by the EMC or DENR as part of a local plan or National Pollutant Discharge Elimination System permit application and do not exceed the State's minimum requirements to protect water quality. This section would not prohibit a city or county from regulating explosive or inflammable substances by ordinance.

Section 3 of the PCS would, effective August 1, 2015, rewrite the laws to require that any person engaged in the business of landscape contracting must obtain a license. This section would: more clearly define the term "landscape contractor"; establish requirements for landscape contractor licensure including application requirements, qualifications, and examination and continuing education; provide for exemptions for licensure; establish the North Carolina Landscape Contractors' Licensing Board; establish standards for issuing licenses to corporations, partnerships, and persons doing business under a trade name; establish fees; and articulate causes for disciplinary action, civil penalties, and injunctions.

Section 4 of the PCS would direct The Department of Public Safety to study North Carolina's participation in the Commercial Vehicle Safety Alliance North American Standard Inspection Program. This program allows commercial vehicles that pass a roadside safety inspection to receive a decal indicating that another inspection is not needed for a certain period of time.

Section 5 of the PCS would define the "planting and harvesting season" and "planting and harvesting period" as January 1 through December 31 of each year, for purposes of the agricultural operations exemption to the federal motor carrier regulations on hours of service.

Section 6 of the PCS would amend the chairmanship of the Agriculture and Forestry Awareness Study Commission to allow the President Pro Tempore of the Senate to appoint two members of the Senate and the Speaker of the House to appoint two members of the House of Representatives to serve as co-chairs of the Commission.

Section 7 of the PCS would authorize the Commissioner of Agriculture to appoint as many Department of Agriculture and Consumer Services (DACS) law-enforcement officers as he or she deems necessary to carry out the Department's law-enforcement responsibilities. These officers must meet the training standards of the North Carolina Criminal Justice Education and Training Standards Commission and take the constitutional oath of office. Certain officers could be designated to have the powers and duties of forest rangers and the power to enforce the forest laws. The officers would have the authority to arrest, without warrant, any person or persons committing any crime in their presence or whom they have probable cause to believe has committed a crime in their presence. These powers are currently granted to forest law-enforcement officers.

Session Law 2008-107 requires State agencies, including DACS, to receive approval from the Director of the Budget to establish a new receipt supported position. The Department's State Fair Police are receipt supported positions, so DACS would have to receive approval from the Director of the Budget before creating any more of these positions.

Section 8 of the PCS would authorize the use of any pesticide registered by the Pesticide Board to control any species of mole other than the Star-Nosed mole if Pesticide Board rules are followed and hazards to nontarget species are minimized.

Section 9 of the PCS would amend the statute for first degree trespass to provide that trespassing in an agricultural facility is a first degree trespass punishable as a Class A1 misdemeanor (the statute in question currently addresses trespass to locations such as electric generation facilities, water treatment facilities, and liquefied natural gas storage facilities). If the trespass is committed with the intent to disrupt the normal operation of the facility or if it places the offender or others at serious risk of bodily injury, the trespass is punishable as a Class H felony.

This section would become effective December 1, 2014, and would apply to offenses committed on or after that date.

Section 10 of the PCS would require a person, before operating a motorized all terrain vehicle on property not owned by the person, to obtain written consent from the owner of the property. A person given written consent under this section is owed the duty of care that a trespasser would be owed. Under current law, only verbal consent from the owner of the property is required.

This section would become effective December 1, 2014, and would apply to offenses committed on or after that date.

Section 11 of the PCS would provide that no State statute or rule or local government ordinance concerning riparian buffers for the protection of water quality shall apply to the construction, operation, maintenance, or repair of canals, water retardant structures, or other improvements under the control and supervision of a board of drainage commissioners.

Section 12 of the PCS would exempt any residential building subject to periodic inspections by the North Carolina Housing Finance Agency from a county or city's authority to conduct periodic inspections as part of a targeted effort within a geographic area, if the residential building is in

compliance with federal standards and provided the owner of the residential building supplies the compliance results letters from the North Carolina Housing Financing Agency to the local inspections department.

Section 13 of the PCS would require the Building Code Council to amend the NC State Building Code (Code) such that security grilles are permitted at all exits if the grilles may be opened from the inside during periods when the building is occupied by authorized persons and remain open when the building is occupied by the general public. Under current law, Section 1008.1.4.5 of the Code requires that no more than one-half of the doors of certain buildings be equipped with security grilles when two or more means of egress are required.

EFFECTIVE DATE: Except as otherwise provided, this act would be effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

H 3

HOUSE BILL 366

Committee Substitute Favorable 4/3/13
Senate Judiciary II Committee Substitute Adopted 6/23/14

Short Title: NC Farm Act of 2014. (Public)

Sponsors:

Referred to:

March 21, 2013

A BILL TO BE ENTITLED

AN ACT TO (1) MAINTAIN THE CONFIDENTIALITY OF ENVIRONMENTAL INVESTIGATIONS FOR AGRICULTURAL OPERATIONS AND DIRECT THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES TO ADOPT RULES FOR A FORMAL COMPLAINT PROCEDURE; (2) CLARIFY THE AUTHORITY OF LOCAL GOVERNMENTS TO ADOPT ORDINANCES RELATED TO FERTILIZER; (3) STUDY THE STATE'S PARTICIPATION IN THE COMMERCIAL VEHICLE SAFETY ALLIANCE NORTH AMERICAN STANDARD INSPECTION PROGRAM; (4) CLARIFY THE MEANING OF THE TERMS "PLANTING AND HARVESTING SEASON" AND "PLANTING AND HARVESTING PERIOD" FOR PURPOSES OF APPLYING FEDERAL LAWS OR REGULATIONS RELATING TO HOURS OF SERVICE RULES FOR CERTAIN DRIVERS TRANSPORTING AGRICULTURAL PRODUCTS; (5) AMEND THE CHAIRMANSHIP OF THE AGRICULTURE AND FORESTRY AWARENESS STUDY COMMISSION; (6) ALLOW THE COMMISSIONER OF AGRICULTURE TO APPOINT LAW ENFORCEMENT OFFICERS TO CARRY OUT THE LAW ENFORCEMENT RESPONSIBILITIES OF THE DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES; (7) CLASSIFY TRESPASSING ON AN AGRICULTURAL FACILITY AS A FIRST DEGREE TRESPASS; (8) REQUIRE WRITTEN CONSENT TO OPERATE AN ALL TERRAIN VEHICLE ON PROPERTY OWNED BY ANOTHER; AND (9) ALLOW DRAINAGE DISTRICTS TO MAINTAIN DITCHES IN BUFFER ZONES.

The General Assembly of North Carolina enacts:

MAINTAIN CONFIDENTIALITY OF ENVIRONMENTAL INVESTIGATIONS FOR AGRICULTURAL OPERATIONS AND DIRECT THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES TO ADOPT RULES FOR A FORMAL COMPLAINT PROCEDURE

SECTION 1.(a) Article 21 of Chapter 143 of the General Statutes is amended by adding two new sections to read:

"**§ 143-215.9D. Agricultural operation investigations confidential.**

Complaints of violations of this Article relating to an agricultural operation and all other records accumulated in conjunction with the investigation of these complaints shall be considered confidential records and may be released only by order of a court of competent jurisdiction. Any information obtained by the Department from any law enforcement agency, administrative agency, or regulatory organization on a confidential or otherwise restricted basis

in the course of an investigation shall be confidential and exempt from G.S. 132-6 to the same extent that it is confidential in the possession of the providing agency or organization.

"**§ 143-215.9E. Initial consideration of complaint.**

(a) When a complaint alleging a violation of this Article is filed with the Department, the Department may, at its sole discretion, request additional information to be provided by the complainant within a specified period of time of no less than seven business days.

(b) The Department may decline to accept or further investigate a complaint about an agricultural operation if, after an initial assessment of the complaint, the Department finds reasonable grounds to believe that the complaint is frivolous or was filed in bad faith."

SECTION 1.(b) The Department of Environment and Natural Resources shall adopt rules developing a system for receiving, investigating, and responding to environmental complaints about agricultural operations, in accordance with Article 2A of Chapter 150B of the General Statutes, the Administrative Procedure Act.

CLARIFY THE AUTHORITY OF LOCAL GOVERNMENTS TO ADOPT ORDINANCES RELATED TO FERTILIZER

SECTION 2. Article 56 of Chapter 106 of the General Statutes is amended by adding a new section to read:

"**§ 106-678. Authority to regulate fertilizers.**

No county, city, or other political subdivision of the State shall adopt or continue in effect any ordinance or resolution regulating the use, sale, distribution, storage, transportation, disposal, formulation, labeling, registration, manufacture, or application of fertilizer. Nothing in this section shall prohibit a county, city, or other political subdivision of the State from exercising its planning and zoning authority under Article 19 of Chapter 160A of the General Statutes or Article 18 of Chapter 153A of the General Statutes, or from exercising its fire prevention or inspection authority. Nothing in this section shall limit the authority of the Department of Environment and Natural Resources or the Environmental Management Commission to enforce water quality standards. Nothing in this section shall prohibit a county, city, or other political subdivision of the State from adopting ordinances regulating fertilizers to protect water quality, provided that the ordinances have been approved by the Environmental Management Commission or the Department of Environment and Natural Resources as part of a local plan or National Pollutant Discharge Elimination System permit application and do not exceed the State's minimum requirements to protect water quality as established by the Environmental Management Commission under Part 1, Article 21 of Chapter 143 of the General Statutes. Nothing in this section shall prohibit a county or city from exercising its authority to regulate explosive, corrosive, inflammable, or radioactive substances pursuant to G.S. 153A-128 or G.S. 160A-183."

STUDY PARTICIPATION IN THE COMMERCIAL VEHICLE SAFETY ALLIANCE NORTH AMERICAN STANDARD INSPECTION PROGRAM

SECTION 3. The Department of Public Safety shall study the State's participation in the Commercial Vehicle Safety Alliance North American Standard Inspection Program for roadside commercial vehicle safety inspections. The study shall include (i) a history of when North Carolina joined the program; (ii) an explanation of how the program is currently being implemented; (iii) data on how many safety inspection decals are issued annually; and (iv) a geographic analysis of where safety inspection decals are issued within the State. The Department shall report the results of its study to the Agriculture and Forestry Awareness Study Commission on or before November 1, 2014.

CLARIFY THE MEANING OF THE TERMS "PLANTING AND HARVESTING SEASON" AND "PLANTING AND HARVESTING PERIOD" FOR PURPOSES OF

APPLYING FEDERAL LAWS OR REGULATIONS RELATING TO HOURS OF SERVICE RULES FOR CERTAIN DRIVERS TRANSPORTING AGRICULTURAL PRODUCTS

SECTION 4. G.S. 20-381 is amended by adding a new subsection to read:

"**§ 20-381. Specific powers and duties of Department of Public Safety applicable to motor carriers; agricultural exemption.**

...

(c) For purposes of 49 C.F.R. § 395.1(k) and any other federal law or regulation relating to hours-of-service rules for drivers engaged in the transportation of agricultural commodities and farm supplies for agricultural purposes, the terms "planting and harvesting season" and "planting and harvesting period" refer to the period from January 1 through December 31 of each year."

AMEND CHAIRMANSHIP OF AGRICULTURE AND FORESTRY AWARENESS STUDY COMMISSION

SECTION 5. G.S. 120-150 reads as rewritten:

"**§ 120-150. Creation; appointment of members.**

There is created an Agriculture and Forestry Awareness Study Commission. Members of the Commission shall be citizens of North Carolina who are interested in the vitality of the agriculture and forestry sectors of the State's economy. Members shall be as follows:

(1) Three appointed by the Governor.

(2) Three appointed by the President Pro Tempore of the Senate.

(3) Three appointed by the Speaker of the ~~House.~~House of Representatives.

(4) ~~The chairs of the House Agriculture Committee.~~Two members of the House of Representatives appointed by the Speaker of the House of Representatives.

(5) ~~The chairs of the Senate Committee on Agriculture, Environment, and Natural Resources.~~Two members of the Senate appointed by the President Pro Tempore of the Senate.

(6) The Commissioner of Agriculture or the Commissioner's designee.

(7) A member of the Board of Agriculture designated by the chair of the Board of Agriculture.

(8) The President of the North Carolina Farm Bureau Federation, Inc., or the President's designee.

(9) The President of the North Carolina State Grange or the President's designee.

(10) The Secretary of Environment and Natural Resources or the Secretary's designee.

(11) The President of the North Carolina Forestry Association, Inc., or the President's designee.

Members shall be appointed for two-year terms beginning October 1 of each odd-numbered year. ~~The Chairs of the House Agriculture Committee and the Chairs of the Senate Committee on Agriculture, Environment, and Natural Resources shall serve as cochairs.~~The President Pro Tempore of the Senate and the Speaker of the House of Representatives shall each designate two members to serve as cochairs of the Commission."

ALLOW COMMISSIONER OF AGRICULTURE TO APPOINT LAW ENFORCEMENT OFFICERS TO CARRY OUT LAW ENFORCEMENT RESPONSIBILITIES OF THE DEPARTMENT OF AGRICULTURE

SECTION 6. G.S. 106-900 reads as rewritten:

"**§ 106-900. Powers of ~~forest~~ Department of Agriculture and Consumer Services law-enforcement officers.**

The Commissioner is authorized to appoint as many ~~forest~~ Department of Agriculture and Consumer Services law-enforcement officers as he or she deems necessary to ~~carry out the forest law-enforcement responsibilities of the Department~~ investigate and enforce any violation of the laws within the authority of the Department or which occur on Department property. Such officers shall meet the requirements of Chapter 17C of the General Statutes and shall take the oath of office prescribed by Article VI, Section 7 of the North Carolina Constitution. ~~Forest law-enforcement officers shall~~ Of these officers, the Commissioner may designate certain officers to also have ~~all~~ the powers and the duties of a forest ranger enumerated in G.S. 106-898 and ~~G.S. 106-899.~~ G.S. 106-899 and the power to enforce the forest laws. ~~Forest law-enforcement officers shall, in addition to their other duties, have the powers of peace officers to enforce the forest laws. Any forest~~ A Department law-enforcement officer may arrest, without warrant, any person or persons committing any crime in ~~his~~ the officer's presence or ~~whom~~ who such officer has probable cause for believing has committed a crime in ~~his~~ the officer's presence and bring such person or persons forthwith before a district court or other officer having jurisdiction. ~~Forest~~ Department law-enforcement officers shall also have authority to obtain and serve warrants including warrants for violation of any duly promulgated rule of the Department.

ADD AGRICULTURAL FACILITIES TO FIRST DEGREE TRESPASS

SECTION 7.(a) G.S. 14-159.12(c)(1) is amended by adding a new sub-subdivision to read:

"**§ 14-159.12. First degree trespass.**

...

(c) Except as otherwise provided in subsection (d) of this section, a violation of subsection (a) of this section is a Class A1 misdemeanor if all of the following circumstances exist:

(1) The offense is committed on the premises of any of the following:

a. A facility that is owned or operated by an electric power supplier as defined in G.S. 62-133.8(a)(3) and that is either an electric generation facility, a transmission substation, a transmission switching station, a transmission switching structure, or a control center used to manage transmission operations or electrical power generating at multiple plant locations.

b. Any facility used or available for use in the collection, treatment, testing, storing, pumping, or distribution of water for a public water system.

c. Any facility, including any liquefied natural gas storage facility or propane air facility, that is owned or operated by a natural gas local distribution company, natural gas pipeline carrier operating under a certificate of public convenience and necessity from the Utilities Commission, municipal corporation operating a municipally owned gas distribution system, or regional natural gas district organized and operated pursuant to Article 28 of Chapter 160A of the General Statutes used for transmission, distribution, measurement, testing, regulating, compression, control, or storage of natural gas.

d. Any facility used or operated for agricultural activities, as that term is defined in G.S. 106-581.1."

SECTION 7.(b) This section becomes effective December 1, 2014, and applies to offenses committed on or after that date.

REQUIRE WRITTEN CONSENT TO OPERATE ALL TERRAIN VEHICLES ON PRIVATE PROPERTY

SECTION 8.(a) G.S. 14-159.3 reads as rewritten:

"**§ 14-159.3. Trespass to land on motorized all terrain vehicle.**

(a) No person shall operate any motorized all terrain vehicle:

(1) On any private property not owned by the operator, without the written consent of the owner; or

(2) Within the banks of any stream or waterway, but excluding a sound or the Atlantic Ocean, the adjacent lands of which are not owned by the operator, without the consent of the owner or outside the restrictions imposed by the owner.

(a1) A landowner who gives a person written consent to operate an all terrain vehicle on his or her property owes the person the same duty of care that he owes a trespasser.

(b) A "motorized all terrain vehicle", as used in this section, is a two or more wheeled vehicle designed for recreational off-road use.

(c) A violation of this section shall be a Class 2 misdemeanor."

SECTION 8.(b) This section becomes effective December 1, 2014, and applies to offenses committed on or after that date.

ALLOW DRAINAGE DISTRICTS TO MAINTAIN DITCHES IN BUFFER ZONES

SECTION 9. G.S. 156-82.1 is amended by adding a new subsection to read:

"**§ 156-82.1. Duties and powers of the board of drainage commissioners.**

(a) The board of drainage commissioners shall proceed with the levying of assessments, issuance of bonds and construction of canals, water retardant structures and other improvements and acquisition of equipment as approved by the court in the adjudication upon the final report of the board of viewers, either in the creation of the district or in subsequent proceedings authorized by Article 7B.

(b) The commissioners shall maintain the canals, water retardant structures, and all other improvements and equipment of the district.

(b1) No State statute or rule or local government ordinance for the establishment, preservation, or maintenance of riparian buffers for the protection of water quality shall apply to the construction, operation, maintenance, or repair of canals, water retardant structures, or other improvements under the control and supervision of a board of drainage commissioners.

...."

EFFECTIVE DATE

SECTION 10. Except as otherwise provided, this act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

H D

HOUSE BILL 379
PROPOSED SENATE COMMITTEE SUBSTITUTE H379-PCS40262-TQf-83

Short Title: Amend Veterinary Practice Act/Fees. (Public)

Sponsors:

Referred to:

March 21, 2013

A BILL TO BE ENTITLED

AN ACT AUTHORIZING THE NORTH CAROLINA VETERINARY MEDICAL BOARD TO AMEND THE BOARD'S LAWS PERTAINING TO LICENSURE FEES AND LICENSE REINSTATEMENT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 90-186(6) reads as rewritten:

"**§ 90-186. Special powers of the Board.**

In addition to the powers set forth in G.S. 90-185 above, the Board may:

...

(6) Set and require fees pursuant to administrative ~~rule for the following:~~rule. The Board may increase the following fees, provided (i) no fee shall be increased more than fifteen percent (15%) within a calendar year and (ii) the cumulative total increases of any fee shall not exceed one hundred percent (100%) of the fee amounts set in this subdivision:

a. Issuance or renewal of a certificate of registration for a professional corporation, in ~~an~~ the amount ~~not to exceed~~of one hundred fifty dollars ($150.00).

b. Administering a North Carolina license ~~examination,~~examination for applicants for licensure, certification, and registration, in ~~an~~ the amount ~~not to exceed~~of two hundred fifty dollars ($250.00).

c. ~~Securing and administering national examinations, including the National Board Examination or the Clinical Competency Test,~~Administering competency examinations for applicants seeking licensure or registration, in amounts directly related to ~~the~~ costs to the Board. Fees associated with administering national competency examinations shall be set in rules adopted by the Board.

d. Inspection of a veterinary practice facility in ~~an amount not to exceed seventy-five dollars ($75.00).~~the amount of one hundred twenty-five dollars ($125.00).

e. Issuance or renewal of a license or a limited ~~license~~license, in ~~an~~ the amount ~~not to exceed~~of one hundred fifty dollars ($150.00).

f. Issuance or renewal of a veterinary faculty certificate, in ~~an~~ the amount ~~not to exceed~~of one hundred fifty dollars ($150.00).

g. Issuance or renewal of a zoo veterinary certificate, in ~~an~~ the amount ~~not to exceed~~of one hundred fifty dollars ($150.00).

h. Reinstatement of ~~an expired~~ a revoked license, a limited license, a veterinary faculty certificate, a zoo veterinary certificate, a veterinary technician registration, or a professional corporation ~~registration~~ registration, in ~~an~~ the amount ~~not to exceed~~of one hundred dollars ($100.00).

i. Issuance or renewal of a veterinary technician registration, in ~~an~~ the amount ~~not to exceed~~of fifty dollars ($50.00).

j. Issuance of a veterinary student intern registration, in ~~an~~ the amount ~~not to exceed~~of twenty-five dollars ($25.00).

k. Issuance of a veterinary student preceptee registration, in ~~an~~ the amount ~~not to exceed~~of twenty-five dollars ($25.00).

l. Late fee for renewal of a license, a limited license, a veterinary technician registration, a veterinary faculty certificate, a zoo veterinary certificate, or a professional corporation registration, in ~~an~~ the amount ~~not to exceed~~of fifty dollars ($50.00).

m. Issuance of a temporary permit to practice veterinary ~~medicine~~ medicine, in ~~an~~ the amount ~~not to exceed~~of one hundred fifty dollars ($150.00).

~~n. Providing copies, upon request, of Board publications, rosters, or other materials available for distribution from the Board, in an amount determined by the Board that is reasonably related to the costs of providing those copies.~~

The fees set under this subdivision for the renewal of a license, a limited license, a registration, or a certificate apply to each year of the renewal period."

SECTION 2. G.S. 90-187.9 reads as rewritten:

"**§ 90-187.9. Reinstatement.**

~~Any person whose license is suspended or revoked may, at the discretion of the Board, be relicensed or reinstated at any time without an examination by majority vote of the Board on written application made to the Board showing cause justifying relicensing or reinstatement.~~

(a) A person licensed or registered as a veterinary technician under this Article who has had his or her license or registration revoked for failure to apply for renewal may be reinstated at any time within three years following revocation upon filing an application for reinstatement and paying all accrued renewal fees and the reinstatement fee. As a condition of reinstatement, the applicant shall submit proof to the Board that the applicant has earned the continuing education credits required under this Article and rules adopted by the Board for each year the license or registration was revoked.

(b) A person whose license has been revoked for more than three years for failure to apply for license renewal may qualify for licensure upon filing an application with the Board and meeting the requirements of G.S. 90-187 or G.S. 90-187.3.

(c) A person whose registration has been revoked for more than three years for failure to apply for registration renewal may qualify for registration upon filing an application with the Board and meeting the requirements of G.S. 90-186(4) and any applicable rules adopted by the Board.

(d) Subject to conditions as may be imposed by the Board, any person whose license or registration is revoked for reasons other than failure to apply for renewal may, in the Board's discretion, be relicensed or reregistered at any time by majority vote of the Board upon submitting written application to the Board showing cause for justifying relicensure or reregistration."

SECTION 3. This act becomes effective October 1, 2014.

HOUSE BILL 379:
Amend Veterinary Practice Act/Fees

2013-2014 General Assembly

Committee:	Senate Agriculture/Environment/Natural Resources	**Date:**	June 24, 2014
Introduced by:	Rep. Langdon	**Prepared by:**	Chris Saunders Committee Counsel
Analysis of:	PCS to First Edition H379-CSTQf-83 [v.3]		

SUMMARY: ***The Proposed Committee Substitute (PCS) for House Bill 379 would (1) allow the North Carolina Veterinary Medical Board ("Board") to increase fees provided that no fee is increased more than 15% in a calendar year and the cumulative total increases of any fee do not exceed 100% of the fee amounts in statute; and (2) create a new process for reinstatement of a license or registration under the North Carolina Veterinary Practice Act and amend laws pertaining to license and registration reinstatement.***

CURRENT LAW AND BILL ANALYSIS: **Section 1** of the PCS would allow the Board to increase fees provided no fee is increased more than 15% in a calendar year and the cumulative total increases of any fee does not exceed 100% of the fee amounts set in G.S. 90-186(6). Section 1 would also set fees on the various certifications, licenses, and examinations covered under G.S. 90-186(6) at the highest rate previously allowed. Under current law, maximum fees are set, but the Board may require less than the maximum fee. Section 1 would increase the cost of inspection of a veterinary practice facility from $75 to $125.

Section 2 of the PCS would create a new process for reinstatement of a license to practice veterinary medicine or registration as a veterinary technician under the North Carolina Veterinary Practice Act. Under this process:

- A person who has lost his or her license or registration for failure to apply for renewal may be reinstated at any time within three years of the revocation upon submitting proof of continuing education and paying required fees.
- A person whose license has been revoked for more than three years for failure to apply for license renewal may qualify for licensure by filing an application with the Board and meeting the requirements for a new license.
- A person whose registration has been revoked for more than three years for failure to apply for registration renewal may qualify for registration by filing an application with the Board and meeting the Board's requirements for special registration of veterinary technicians.
- A person whose license or registration was revoked for reasons other than failure to apply for renewal may be relicensed or reregistered at any time by a majority vote of the Board if the applicant submits a written application showing cause to justify why he or she should be relicensed or reregistered.

EFFECTIVE DATE: This act becomes effective October 1, 2014.

O. Walker Reagan
Director

H379-SMTQ-160 CSTQF-83 -V2

Research Division
(919) 733-2578

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

H D

HOUSE BILL 379
PROPOSED SENATE COMMITTEE SUBSTITUTE H379-CSTQf-83 [v.3]

6/23/2014 7:17:30 PM

Short Title: Amend Veterinary Practice Act/Fees. (Public)

Sponsors:

Referred to:

March 21, 2013

A BILL TO BE ENTITLED

AN ACT AUTHORIZING THE NORTH CAROLINA VETERINARY MEDICAL BOARD TO AMEND THE BOARD'S LAWS PERTAINING TO LICENSURE FEES AND LICENSE REINSTATEMENT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 90-186(6) reads as rewritten:

"**§ 90-186. Special powers of the Board.**

In addition to the powers set forth in G.S. 90-185 above, the Board may:

...

(6) Set and require fees pursuant to administrative ~~rule for the following:~~rule. The Board may increase the following fees, provided (i) no fee shall be increased more than fifteen percent (15%) within a calendar year and (ii) the cumulative total increases of any fee shall not exceed one hundred percent (100%) of the fee amounts set in this subdivision:

a. Issuance or renewal of a certificate of registration for a professional corporation, in ~~an~~ the amount ~~not to exceed~~of one hundred fifty dollars ($150.00).

b. Administering a North Carolina license ~~examination,~~examination for applicants for licensure, certification, and registration, in ~~an~~ the amount ~~not to exceed~~of two hundred fifty dollars ($250.00).

c. ~~Securing and administering national examinations, including the National Board Examination or the Clinical Competency Test,~~Administering competency examinations for applicants seeking licensure or registration, in amounts directly related to ~~the~~ costs to the Board. Fees associated with administering national competency examinations shall be set in rules adopted by the Board.

d. Inspection of a veterinary practice facility in ~~an amount not to exceed seventy-five dollars ($75.00).~~the amount of one hundred twenty-five dollars ($125.00).

e. Issuance or renewal of a license or a limited ~~license~~ license, in ~~an~~ the amount ~~not to exceed~~of one hundred fifty dollars ($150.00).

f. Issuance or renewal of a veterinary faculty certificate, in ~~an~~ the amount ~~not to exceed~~of one hundred fifty dollars ($150.00).

g. Issuance or renewal of a zoo veterinary certificate, in ~~an~~ the amount ~~not to exceed~~of one hundred fifty dollars ($150.00).



h. Reinstatement of ~~an expired~~ a revoked license, a limited license, a veterinary faculty certificate, a zoo veterinary certificate, a veterinary technician registration, or a professional corporation ~~registration~~registration, in ~~an~~ the amount ~~not to exceed~~of one hundred dollars ($100.00).

i. Issuance or renewal of a veterinary technician registration, in ~~an~~the amount ~~not to exceed~~of fifty dollars ($50.00).

j. Issuance of a veterinary student intern registration, in ~~an~~ the amount ~~not to exceed~~of twenty-five dollars ($25.00).

k. Issuance of a veterinary student preceptee registration, in ~~an~~ the amount ~~not to exceed~~of twenty-five dollars ($25.00).

l. Late fee for renewal of a license, a limited license, a veterinary technician registration, a veterinary faculty certificate, a zoo veterinary certificate, or a professional corporation registration, in ~~an~~ the amount ~~not to exceed~~of fifty dollars ($50.00).

m. Issuance of a temporary permit to practice veterinary ~~medicine~~medicine, in ~~an~~ the amount ~~not to exceed~~of one hundred fifty dollars ($150.00).

~~n. Providing copies, upon request, of Board publications, rosters, or other materials available for distribution from the Board, in an amount determined by the Board that is reasonably related to the costs of providing those copies.~~

The fees set under this subdivision for the renewal of a license, a limited license, a registration, or a certificate apply to each year of the renewal period.

...."

SECTION 2. G.S. 90-187.9 reads as rewritten:

"**§ 90-187.9. Reinstatement.**

~~Any person whose license is suspended or revoked may, at the discretion of the Board, be relicensed or reinstated at any time without an examination by majority vote of the Board on written application made to the Board showing cause justifying relicensing or reinstatement.~~

(a) A person licensed or registered as a veterinary technician under this Article who has had his or her license or registration revoked for failure to apply for renewal may be reinstated at any time within three years following revocation upon filing an application for reinstatement and paying all accrued renewal fees and the reinstatement fee. As a condition of reinstatement, the applicant shall submit proof to the Board that the applicant has earned the continuing education credits required under this Article and rules adopted by the Board for each year the license or registration was revoked.

(b) A person whose license has been revoked for more than three years for failure to apply for license renewal may qualify for licensure upon filing an application with the Board and meeting the requirements of G.S. 90-187 or G.S. 90-187.3.

(c) A person whose registration has been revoked for more than three years for failure to apply for registration renewal may qualify for registration upon filing an application with the Board and meeting the requirements of G.S. 90-186(4) and any applicable rules adopted by the Board.

(d) Subject to conditions as may be imposed by the Board, any person whose license or registration is revoked for reasons other than failure to apply for renewal may, in the Board's discretion, be relicensed or reregistered at any time by majority vote of the Board upon submitting written application to the Board showing cause for justifying relicensure or reregistration."

SECTION 3. This act becomes effective October 1, 2014.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

H 1

HOUSE BILL 379

Short Title:	Clarify Board. of Agric. Authority/Plants.-AB	(Public)
Sponsors:	Representative Langdon (Primary Sponsor).	
	For a complete list of Sponsors, refer to the North Carolina General Assembly Web Site.	
Referred to:	Agriculture, if favorable, Environment.	

March 21, 2013

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THE AUTHORITY OF THE BOARD OF AGRICULTURE OVER PLANTS.

The General Assembly of North Carolina enacts:

SECTION 1. Article 36 of Chapter 106 of the General Statutes is amended by adding a new section to read:

"**§ 106-421.1 Authority of Board of Agriculture to Regulate Plants.**

The Board of Agriculture shall have the sole authority to prohibit the planting, cultivation, harvesting, disposal, handling, or movement of plants as defined in G.S. 106-202.12. This section shall not prevent the designation of plants as noxious aquatic weeds pursuant to Article 15 of Chapter 113A of the General Statutes, nor shall it prevent the adoption or enforcement of city or county ordinances regulating the appearance of property or the handling and collection of solid waste."

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

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

H 2

HOUSE BILL 1139
Committee Substitute Favorable 6/18/14

Short Title: State Nat. & Hist. Pres. Adds & Dels. (Public)

Sponsors:

Referred to:

May 21, 2014

A BILL TO BE ENTITLED

AN ACT TO DEDICATE AND ACCEPT CERTAIN PROPERTIES AS PART OF THE STATE NATURE AND HISTORIC PRESERVE AND TO REMOVE CERTAIN LANDS FROM THE STATE NATURE AND HISTORIC PRESERVE.

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

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

Whereas, more than 17,000 acres have been added to the State Parks System since the last dedication and acceptance of properties as part of the State Nature and Historic Preserve pursuant to a petition to the Council of State dated May 5, 2009; and

Whereas, in accordance with G.S. 143-260.8, on May 6, 2014, the Council of State voted to petition to the General Assembly to enact a law pursuant to Section 5 of Article XIV of the North Carolina Constitution to dedicate and accept properties added to the State Parks System and designated in the petition for inclusion as parts of the State Nature and Historic Preserve; and

Whereas, as a part of its petition of May 6, 2014, the Council of State also requested the General Assembly to remove certain properties from the State Nature and Historic Preserve; and

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

The General Assembly of North Carolina enacts:

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

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

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

(1) All lands and waters within the boundaries of the following units of the State Parks System as of ~~May 5, 2009:~~ May 6, 2014: Baldhead Island State Natural Area, Bay Tree Lake State Park, Bear Paw State Natural Area,

Beech Creek Bog State Natural Area, Bullhead Mountain State Natural Area, Bushy Lake State Natural Area, Carolina Beach State Park, Carvers Creek State Park, Cliffs of the Neuse State Park, Chowan Swamp State Natural Area, Deep River State Trail, Dismal Swamp State Park, Elk Knob State Park, Fort Fisher State Recreation Area, Fort Macon State Park, Goose Creek State Park, ~~Gorges State Park,~~ Grandfather Mountain State Park, Haw River State Park, Hammocks Beach State Park, Jones Lake State Park, Lake Norman State Park, Lea Island State Natural Area, ~~Lower Haw River State Natural Area, Lumber River State Park,~~ Mayo River State Park, Medoc Mountain State Park, Merchants Millpond State Park, ~~Mitchells Millpond State Natural Area,~~ Mount Mitchell State Park, Occoneechee Mountain State Natural Area, Pettigrew State Park, Pilot Mountain State Park, Pineola Bog State Natural Area, Raven Rock State Park, Run Hill State Natural Area, Sandy Run Savannas State Natural Area, Singletary Lake State Park, Sugar Mountain State Natural Area, Theodore Roosevelt State Natural Area, ~~and~~ Weymouth Woods-Sandhills ~~Nature Preserve~~State Natural Area, and Yellow Mountain State Natural Area.

(2) All lands and waters within the boundaries of William B. Umstead State Park as of ~~May 5, 2009,~~May 6, 2014, with the exception of Tract Number 65, containing 22.93140 acres as shown on a survey prepared by John S. Lawrence (RLS) and Bennie R. Smith (RLS), entitled "Property of The State of North Carolina William B. Umstead State Park", dated January 14, 1977 and filed in the State Property Office, which was removed from the State Nature and Historic Preserve by Chapter 450, Section 1 of the 1985 Session Laws. The tract excluded from the State Nature and Historic Preserve under this subdivision is deleted from the State Parks System in accordance with G.S. 113-44.14. The State of North Carolina may only exchange this land for other land for the expansion of William B. Umstead State Park or sell and use the proceeds for that purpose. The State of North Carolina may not otherwise sell or exchange this land.

(3) Repealed by Session Laws 1999-268, s. 2.

(4) All lands within the boundaries of Morrow Mountain State Park as of ~~May 5, 2009,~~ May 6, 2014, with the exception of the following tract: That certain tract or parcel of land at Morrow Mountain State Park in Stanly County, North Albemarle Township, containing 0.303 acres, more or less, as surveyed and platted by Thomas W. Harris R.L.S., on a map dated August 27, 1988, and filed in the State Property Office, reference to which is hereby made for a more complete description.

(5) Repealed by Session Laws 1999-268, s. 2.

(6) All land within the boundaries of Crowders Mountain State Park as of ~~May 5, 2009,~~ May 6, 2014, with the exception of the following tracts. The tracts excluded from the State Nature and Historic Preserve under this subdivision are deleted from the State Parks System in accordance with G.S. 113-44.14. The State of North Carolina may only exchange this land for other land for the expansion of Crowders Mountain State Park or sell this land and use the proceeds for that purpose. The State may not otherwise sell or exchange this land.

a. The portion of that certain tract or parcel of land at Crowders Mountain State Park in Gaston County, Crowders Mountain Township, described in Deed Book 1939, page 800, and containing 757.28 square feet and as shown in a survey by Tanner and

McConnaughey, P.A. dated July 22, 1988 and filed in the State Property Office.

b. The portion of that certain tract or parcel of land at Crowders Mountain State Park in Gaston County, east of and including the right-of-way along and across Old Peach Orchard Road, as shown in a survey by the City of Gastonia, File No. 400-194, dated November 23, 1998, and filed in the State Property Office.

c. The portion of that certain tract or parcel of land at Crowders Mountain State Park in Cleveland County, described in Deed Book 1286, Page No. 85, located on the north side of SR 2245 (Bethlehem Road) and containing 14,964 square feet as shown on the survey entitled "Survey for Crowders Mountain State Park, Deed Book 1103-107, Township 4 Kings Mountain, Cleveland County, N.C." by David W. Dickson, P.A. dated February 28, 2008.

d. The portion of that certain tract or parcel of land at Crowders Mountain State Park in Cleveland County, described in Deed Book 1286, Page 85, and containing 0.06 acres and 0.515 acres as shown on the survey entitled "Boundary Survey for the State of N.C. Department of Administration, Township No. Four Cleveland County, N.C." by Carolinas Design Group, PLLC, dated November 6, 2007.

e. The portion of that certain tract or parcel of land at Crowders Mountain State Park in Gaston County, described in Deed Book 2829, page 518, and containing 0.15 acres as shown on the survey entitled "Survey Made at Request of Larry Hyde, Park Superintendent, Crowders Mountain State Park" by Gray Surveying Co., Inc., dated September 12, 2012.

(7) All lands owned in fee simple by the State within the boundaries of New River State Park as of ~~May 5, 2009~~May 6, 2014.

(8) All lands and waters within the boundaries of Stone Mountain State Park as of ~~May 5, 2009~~May 6, 2014, with the exception of the following tracts: The portion of that certain tract or parcel of land at Stone Mountain State Park in Wilkes County, Traphill Township, described as parcel 33-02 in Deed Book 633-193, and more particularly described as all of the land in this parcel lying to the west of the eastern edge of the Air Bellows Road, as shown on the National Park Service Land Status Map 33 dated March 24, 1981 and filed in the State Property Office, containing approximately 72 acres. The tract excluded from the State Nature and Historic Preserve under this subdivision is deleted from the State Parks System in accordance with G.S. 113-44.14.

(9) All lands and waters located within the boundaries of the following State Historic Sites as of ~~May 5, 2009:~~May 6, 2014: Alamance Battleground, Charles B. Aycock Birthplace, Historic Bath, Bennett Place, Bentonville Battleground, Brunswick Town/Fort Anderson, C.S.S. Neuse and Governor Caswell Memorial, Charlotte Hawkins Brown Memorial, Duke Homestead, Historic Edenton, Fort Dobbs, Fort Fisher, Historic Halifax, Horne Creek Living Historical Farm, House in the Horseshoe, North Carolina Transportation Museum, James K. Polk Memorial, Reed Gold Mine, Somerset Place, Stagville, State Capitol, Town Creek Indian Mound, Tryon Palace Historic Sites & Gardens, Zebulon B. Vance Birthplace, and Thomas Wolfe Memorial.

(10), (11) Repealed by Session Laws 2001-217, s. 2, effective June 15, 2001.

(12) All lands and waters located within the boundaries of Hanging Rock State Park as of ~~May 5, 2009,~~May 6, 2014, with the exception of the following tract: The portion of that tract or property at Hanging Rock State Park in Stokes County, Danbury Township, described in Deed Book 360, Page 160, for a 30-foot wide right-of-way beginning approximately 183 feet south of SR 1001 and extending in a southerly direction approximately 1,479 feet to the southwest corner of the Bobby Joe Lankford tract and more particularly shown on a survey entitled, "J. Spot Taylor Heirs Survey, Danbury Township, Stokes County, N.C.", by Grinski Surveying Company, dated June 1985, and filed in the State Property Office. The tract excluded from the State Nature and Historic Preserve under this subdivision is deleted from the State Parks System in accordance with G.S. 113-44.14.

(13) All lands and waters located within the boundaries of South Mountains State Park as of ~~May 5, 2009,~~May 6, 2014, with the exception of the following tracts. The tracts excluded from the State Nature and Historic Preserve under this subdivision are deleted from the State Parks System in accordance with G.S. 113-44.14.

a, b. Repealed by Session Laws 2007-307, s. 1, effective July 28, 2007.

c. The portions of land at South Mountains State Park that lie south of the centerline of the CCC road as shown on the drawing entitled "Land Trade between South Mountains State Park and Adjacent Game Lands along CCC Road" prepared by the ~~Division of Parks and Recreation, dated March 15, 1999,~~ Wildlife Resources Commission in January 2013 and filed in the State Property Office and that lie within: (i) the tract or property in Burke County, Lower Fork Township, described in Deed Book 495, Page 501; (ii) the tract or property in Burke County, Lower Fork and Upper Fork Townships, described in Deed Book 715, Page 719; ~~or,~~ (iii) within the tracts or property in Burke County, Upper Fork Township, described in Deed Book 860, Page 341, and Deed Book 884, Page ~~1640.~~1640; (iv) within that tract or property in Burke County, Silver Creek Township, described in Deed Book 1847, Page 287; (v) within that tract or property in Burke County, Upper Creek Township, described in Deed Book 882, Page 2347; (vi) within that tract or property in Burke County, Upper Creek Township, described in Deed Book 882, Page 2352; (vii) within that tract or property in Burke County, Upper Fork Township, described in Deed Book 886, Page 1964; (viii) within that tract or property in Burke County, Upper Fork Township, Deed Book 767, Page 1360; (ix) within that tract or property in Burke County, Upper Fork Township, Deed Book 884, Page 1648; or (x) within that tract or property in Burke County, Upper Fork Township, Book 886, Page 2228. The State of North Carolina may only exchange this land for other land for the expansion of South Mountains State Park or sell this land and use the proceeds for that purpose. The State may not otherwise sell or exchange this land.

d. Repealed by Session Laws 2007-307, s. 1, effective July 28, 2007.

(14) Repealed by Session Laws 2003-234, s. 1, effective June 19, 2003.

(15) All lands and waters within the boundaries of Jockey's Ridge State Park as of ~~May 5, 2009,~~May 6, 2014, with the exception of the following tracts: The

portion of those certain tracts or parcels of land at Jockey's Ridge State Park in Dare County, Nags Head Township, described in Deed Book 227, Page 499, and Deed Book 227, Page 501, and containing 33,901 square feet as shown on the survey prepared by Styons Surveying Services entitled "Raw Water Well Site 13 Jockey's Ridge State Park" dated March 7, 2001, and filed in the State Property Office; the portion of that certain tract or parcel of land at Jockey's Ridge State Park in Dare County, Nags Head Township, described in Deed Book 222, Page 726, and containing 42,909 square feet as shown on the survey prepared by Styons Surveying Services entitled "Raw Water Well Site 14 Jockey's Ridge State Park" dated March 7, 2001, and filed in the State Property Office; and the portion of that certain tract or parcel of land at Jockey's Ridge State Park in Dare County, Nags Head Township, described in Deed Book 224, Page 790, and Deed Book 224, Page 794, and containing 34,471 square feet as shown on the survey prepared by Styons Surveying Services entitled "Raw Water Well Site 15 Jockey's Ridge State Park" dated March 7, 2001, and filed in the State Property ~~Office.~~Office; and the portion of those certain tracts or parcels of land at Jockey's Ridge State Park in Dare County, Nags Head Township, described in Deed Book 227, Page 501, and Deed Book 230, Page 525, and containing 12,655 square feet as shown on the preliminary plat entitled "Easement Survey for Town of Nags Head" prepared by Seaboard Surveying & Planning, Inc., dated August 29, 2012.

(16) All lands and waters located within the boundaries of Mount Jefferson State Natural Area as of ~~May 5, 2009.~~May 6, 2014. With respect to the communications tower site on the top of Mount Jefferson and located on that certain tract or parcel of land at Mount Jefferson State Natural Area in Ashe County, West Jefferson Township, described in Deed Book F-3, Page 94, the State may provide space at the communications tower site to State public safety and emergency management agencies for the placement of antennas, repeaters, and other communications devices for public communications purposes. Notwithstanding G.S. 146-29.2, the State may lease space at the communications tower site to local governments in Ashe County for the placement of antennas, repeaters, and other communications devices for public communications purposes. State agencies and local governments that are authorized to place communications devices at the communications tower site pursuant to this subdivision may also locate at or near the communications tower site communications equipment that is necessary for the proper operation of the communications devices. The use of the communications tower site pursuant to this subdivision is authorized by the General Assembly as a purpose other than the public purposes specified in Article XIV, Section 5, of the North Carolina Constitution, Article 25B of Chapter 143 of the General Statutes, and Article 2C of Chapter 113 of the General Statutes.

(17) All lands and waters within the Eno River State Park as of ~~May 5, 2009,~~May 6, 2014, with the exception of the following tracts:

a. The portion of that certain tract or parcel of land at Eno River State Park in Durham County, Durham Outside Township, described in Deed Book 435, Page 673, and Plat Book 87, Page 66, containing 11,000 square feet and being the portion of Lot No. 2 shown as the existing scenic easement hereby removed on the drawing prepared by Sear-Brown entitled "Recombination Plat Eno Forest Subdivision"

bearing the preparer's file name 00-208-07.dwg, and filed with State Property Office. The tract excluded from the State Nature and Historic Preserve under this subdivision is deleted from the State Parks System pursuant to G.S. 113-44.14. The State of North Carolina may only exchange this land for other land for the expansion of Eno River State Park or sell this land and use the proceeds for that purpose. The State may not otherwise sell or exchange this land.

b. The portion of that certain tract or parcel of land at Eno River State Park in Orange County, described in Deed Book 3878, Page 461, and Plat Book 98, Page 11, containing 5,313 square feet and required for the permanent easements for bridge replacement project B-4216 on SR 1002 (St. Mary's Road), as shown in the drawing entitled "Preliminary Plans, Project Reference No. B-4216" prepared for North Carolina Department of Transportation by Mulkey Engineers and Consultants dated March 10, 2009, and filed with the State Property Office. The tracts excluded from the State Nature and Historic Preserve under this section are deleted from the State Parks System pursuant to G.S. 113-44.14. The State of North Carolina may only exchange this land for other land for the expansion of Eno River State Park or sell this land and use the proceeds for that purpose. The State may not otherwise sell or exchange this land.

(18) All land and waters within the boundaries of Hemlock Bluffs State Natural Area as of ~~May 5, 2009,~~May 6, 2014, with the exception of the following tracts: The portion of that certain tract or parcel of land at Hemlock Bluffs State Natural Area in Wake County, Swift Creek Township, described in Deed Book 2461, Page 037, containing 2,025 square feet and being the portion of this tract shown as proposed R/W on the drawing prepared by Titan Atlantic Group entitled "Right of Way Acquisition Map for Town of Cary Widening of Kildaire Farm Road (SR 1300) from Autumgate Drive to Palace Green" sheet 1 of 3 bearing the preparer's file name Town of Cary Case File No. TOC 01-37, dated 26 September 2003, and filed with the State Property Office; and the portion of those certain tracts or parcels of land at Hemlock Bluffs State Natural Area in Wake County, Swift Creek Township, described in Deed Book 4670, Page 420, containing 24,092 square feet and being the portion of these tracts shown as proposed R/W on the drawing prepared by Titan Atlantic Group entitled "Right of Way Acquisition Map for Town of Cary Widening of Kildaire Farm Road (SR 1300) from Autumgate Drive to Palace Green" sheet 3 of 3 bearing the preparer's file name Town of Cary Case File No. TOC 01-37, dated 26 September 2003, and filed with the State Property Office. The tracts excluded from the State Nature and Historic Preserve under this subdivision are deleted from the State Parks System pursuant to G.S. 113-44.14. The State of North Carolina may only exchange this land for other land for the expansion of Hemlock Bluffs State Natural Area or sell this land and use the proceeds for that purpose. The State may not otherwise sell or exchange this land.

(19) All lands and waters within the boundaries of Lake James State Park as of ~~May 5, 2009,~~May 6, 2014, with the exception of the following tracts:

a. The portion of that certain tract or parcel of land at Lake James State Park containing 13.85 acres, and being 100 feet to the east and 150 feet to the west of a centerline shown on a survey by Witherspoon

Surveying PLLC, dated February 9, 2007, and filed in the State Property Office. The State of North Carolina may grant a temporary easement to Duke Energy Corporation across this tract to facilitate the Catawba Dam Embankment Seismic Stability Improvements Project. The grant of the easement within Lake James State Park to Duke Energy Corporation under this sub-subdivision constitutes authorization by the General Assembly that the described tract of land may be used for a purpose other than the public purposes specified in Article XIV, Section 5, of the North Carolina Constitution, Article 25B of Chapter 143 of the General Statutes, and Article 2C of Chapter 113 of the General Statutes. The State of North Carolina may use the proceeds from the easement only for the expansion or improvement of Lake James State Park or another State park. The State may not otherwise sell or exchange this land.

b. The portion of that certain tract or parcel of land at Lake James State Park in McDowell County, Nebo Township, described in Deed Book 377, Page 423, and also shown as Tract B on the plat of survey prepared by Kenneth D. Suttles, RLS, dated December 4, 1987, entitled "Lake James State Park," Sheet 1 of 2, recorded in Plat Book 4, Page 275 of the McDowell County Registry, for a 40-foot right-of-way beginning at the southwest corner of Tract B and continuing along the southern boundary 86 38' 51" E for 400 feet to the now or former John D. Walker property. The State of North Carolina may grant an easement across this tract to extinguish prescriptive easements on Tract B to improve management of the State park property. The State may not otherwise sell or exchange this land. The easement excluded from the State Nature and Historic Preserve under this subdivision is deleted from the State Parks System pursuant to G.S. 113-44.14.

c. That portion of that certain tract or parcel of land at Lake James State Park in Burke County, Linville Township, described in Deed Book 1431, Page 859, and shown on the survey prepared by Suttles Surveying, PA dated May 2, 2014, entitled "Survey for State of North Carolina," containing 3.41 acres and on file with the State Property Office. The tracts excluded from the State Nature and Historic Preserve under this subdivision are deleted from the State Parks System in accordance with G.S. 113-44.14. The State of North Carolina may only exchange this land for other land for the expansion of Lake James State Park or sell this land and use the proceeds for that purpose. The State may not otherwise sell or exchange this land.

(20) All lands and waters within the boundaries of Lake Waccamaw State Park as of ~~May 5, 2009~~,May 6, 2014, with the exception of the following tracts: The portions of that certain tract or parcel of land at Lake Waccamaw State Park in Columbus County described in Deed Book 835, Page 590, containing 48,210 square feet and being the portion of this tract shown as new R/W and permanent utility easement on drawing prepared by State of North Carolina Department of Transportation entitled "Map of Proposed Right of Way Property of State of North Carolina (Parks and Recreation) Columbus County" for Tip B-3830 on SR 1947 (Bella Coola Road) done by John E. Kaukola, PLS No. 3999 and compiled 1-18-2008, and filed with the State

Property Office. The tracts excluded from the State Nature and Historic Preserve under this section are deleted from the State Parks System pursuant to G.S. 113-44.14. The State of North Carolina may only exchange this land for other land for the expansion of Lake Waccamaw State Park or sell this land and use the proceeds for that purpose. The State may not otherwise sell or exchange this land.

(21) All lands and waters within the boundaries of Chimney Rock State Park as of ~~May 5, 2009,~~May 6, 2014, with the exception of the following ~~tract:~~tracts: The portion of that certain tract or parcel of land at Chimney Rock State Park in Rutherford County being a portion of Parcel 2 as described in Deed Book 933, Page 598, containing 346 square feet and being shown as proposed right-of-way for bridge replacement project B-4258 on U.S. 64 over the Broad River on drawing prepared by Kimley-Horn and Associates for the North Carolina Department of Transportation and revised October 26, 2007, and filed with the State Property Office. The portion of that certain tract or parcel of land at Chimney Rock State Park in Polk County, Cooper Gap Township, Deed Book 393, Page 1402, containing 6.5 acres more or less and shown on the survey entitled "Plat of Survey for The State of North Carolina" prepared by Stacy Kent Rhodes dated May 15, 2014, and filed with the State Property Office. The tracts excluded from the State Nature and Historic Preserve under this section are deleted from the State Parks System pursuant to G.S. 113-44.14. The State of North Carolina may only exchange this land for other land for the expansion of Chimney Rock State Park or sell this land and use the proceeds for that purpose. The State may not otherwise sell or exchange this land.

(22) All State-owned land and waters within the boundaries of the Mountains-to-Sea Trail as of ~~May 5, 2009,~~May 6, 2014, with the exception of the following tract: The portion of that certain tract or parcel in Johnston County described in Deed Book 3634, Page 278, containing 4.72 acres and being described as proposed easement area for Piedmont Natural Gas Company transmission line on drawing entitled "Easement Survey Prepared for Piedmont Natural Gas Company, Line 142, Easement to be Acquired from the State of North Carolina" by McKim & Creed and dated July 31, 2008, and revised March 11, 2009. The State of North Carolina may grant an easement to Piedmont Natural Gas Company across this tract to facilitate the transmission of natural gas. The grant of the easement within the Mountains-to-Sea Trail to Piedmont Natural Gas Company under this section constitutes authorization by the General Assembly that the described tract of land may be used for a purpose other than the public purposes specified in Section 5 of Article XIV of the North Carolina Constitution, Article 25B of Chapter 143 of the General Statutes, and Article 2C of Chapter 113 of the General Statutes. The State of North Carolina may use the proceeds from the easement only for the expansion or improvement of the Mountains-to-Sea Trail or another State park. The State may not otherwise sell or exchange this land.

(23) All State-owned land and waters within the boundaries of Gorges State Park as of May 6, 2014, with the exception of the following tracts: The portions of that certain tract or parcel of land in Transylvania County, described in Deed Book 267, Page 838, containing a total of 7.26 acres for the North Carolina Department of Transportation project TIP R-2409C US 64 Safety Improvements. As shown on right-of-way drawing from the North Carolina

Department of Transportation dated May 22, 2014, for TIP R-2409C, Parcel 002, on file with the State Property Office. The tract excluded from the State Nature and Historic Preserve under this subdivision is deleted from the State Parks System in accordance with G.S. 113-44.14. The State of North Carolina may only exchange this land for other land for the expansion of Gorges State Park or sell this land and use the proceeds for that purpose. The State may not otherwise sell or exchange this land.

(24) All State-owned land and waters within the boundaries of Lower Haw State Natural Area as of May 6, 2014, with the exception of the following tract: the portion of that certain tract or parcels in Chatham County, described in Deed Book 1319, Page 1047, containing 12,501 square feet and shown on a survey entitled "Recombination Survey for the North Carolina Division of Parks and Recreation and PK Ventures I LTD Partnership" prepared by S.D. Puckett and Associates dated April 22, 2014, and on file with the State Property Office. The tract excluded from the State Nature and Historic Preserve under this subdivision is deleted from the State Parks System in accordance with G.S. 113-44.14. The State of North Carolina may only exchange this land for other land for the expansion of Lower Haw State Natural Area or sell this land and use the proceeds for that purpose. The State may not otherwise sell or exchange this land.

(25) All State-owned land and waters within the boundaries of Lumber River State Park as of May 6, 2014, with the exception of the following tracts: The portions of those certain tracts or parcels of land in Robeson County, described in Deed Book 919, Page 862, Deed Book 1097, Page 837, Deed Book 935, Page 170, Deed Book 1125, Page 562, and Deed Book 1117, Page 680, containing a total of 3.39 acres for the North Carolina Department of Transportation secondary road project 6C.078030 SR 2245 (VC Britt Road) and shown on the survey entitled "Survey of Tracts 1A and 1B, VC Britt Rd, Orrum NC" prepared by the North Carolina Department of Transportation. The tracts excluded from the State Nature and Historic Preserve under this subdivision are deleted from the State Parks System in accordance with G.S. 113-44.14. The State of North Carolina may only exchange this land for other land for the expansion of Lumber River State Park or sell this land and use the proceeds for that purpose. The State may not otherwise sell or exchange this land.

(26) All State-owned land and waters within the boundaries of Mitchells Millpond State Natural Area as of May 6, 2014, with the exception of the following tract: the portions of that certain tract or parcel in Wake County, described in Deed Book 2445, Page 62, containing approximately 0.215 acres as shown on the right-of-way plan for SR 2224 (Mitchell Mill Road) bridge No. 162 replacement project and on file with the State Property Office. The tract excluded from the State Nature and Historic Preserve under this subdivision is deleted from the State Parks System in accordance with G.S. 113-44.14. The State of North Carolina may only exchange this land for other land for the expansion of the State Parks system or sell this land and use the proceeds for that purpose. The State may not otherwise sell or exchange this land."

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

HOUSE BILL 1139:
State Nat. & Hist. Pres. Adds & Dels

2013-2014 General Assembly

Committee:	Senate Agriculture/Environment/Natural Resources	**Date:**	June 24, 2014
Introduced by:	Rep. Samuelson	**Prepared by:**	Jennifer Mundt Committee Staff
Analysis of:	Second Edition		

SUMMARY: ***House Bill 1139 would dedicate and accept certain properties as part of the State Nature and Historic Preserve (Preserve), and remove certain lands from the Preserve.***

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

BACKGROUND: Properties were last accepted into the Preserve in 2009. Since that time over 17,000 acres have been added to the North Carolina Park System. The Council of State met on May 6, 2014 to petition the General Assembly to accept into the Preserve various State parklands and historic sites. In its petition, the Council of State also requested that certain small parcels be deleted for various reasons in order to improve the management of units, allow for existing road relocations, or allow for utility easements.

BILL ANALYSIS: House Bill 1139 would:

- Add Grandfather Mountain State Park and Yellow Mountain State Natural Area to the Preserve (each is a new unit of the State Parks System authorized since the last dedication of State property in 2009).
- Make a conforming change to amend the designation of Weymouth Woods-Sandhills Nature Preserve as the Weymouth Woods-Sandhills State Natural Area.
- Except from dedication and/or delete from the State Parks System several parcels of land proposed for disposition. These are small parcels and their disposition is to improve the management of the units, allow for existing road relocations, or to allow for utility easements as follows:

  (6) d. and e. – Concerning Crowders Mountain State Park: Add language to the statute to except two parcels of land totaling 0.521 acres in Cleveland County to facilitate a boundary line management and a third parcel of land totaling 0.15 acres that was found to be an encroachment

on the property of an adjacent landowner discovered when the Gaston County portion of the Park was recently surveyed. The parcel would be sold to the adjacent landowner and the encroachment resolved.

(13) c. – Concerning South Mountains State Park: Add language to the statute to except tracts for an exchange with the Wildlife Resources Commission to improve a common boundary between the Park and adjacent game lands. In total, the Park will receive 85 acres and the South Mountain State Game Lands will receive 80 acres.

(15) – Concerning Jockey's Ridge State Park: Add language to the statute to except a 12,655 square foot parcel of land for an easement for a water line crossing the Park to provide an additional source of water to an adjacent subdivision.

(19) c. – Concerning Lake James State Park: Add language to the statute to except 3.41 acres for an exchange with an adjacent land owner for an inholding along the main park road.

(21) – Concerning Chimney Rock State Park: Add language to the statute to except approximately 6.5 acres for an exchange with an adjacent land owner to improve public access to the "Worlds Edge" area of the Park.

(23) – Concerning Gorges State Park: Add language to the statute to except 7.26 acres in tracts needed for a new right-of-way for realignment and safety improvements along US-64, including an additional climbing lane adjacent to the Park. The right-of-way would be acquired by the North Carolina Department of Transportation (DOT).

(24) – Concerning Lower Haw State Natural Area: Add language to the statute to except approximately 12,501 square foot parcel of land needed to improve public safety and to improve boundary line management around Bynum Mill.

(25) – Concerning Lumber River State Park: Add language to the statute that excepts certain tracts or parcels totaling 3.39 acres along VC Britt Road in Robeson County for additional DOT right-of-way for straightening and paving of the existing secondary road, which is presently a soil road.

(26) – Concerning Mitchells Millpond State Natural Area: Add language to the statute to except approximately 0.215 acres in Wake County for a DOT right-of-way for a needed bridge replacement over the Little River.

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

PAGES ATTENDING

Date: 6-24

Committee: Agriculture **Room:** 544 11 AM

PLEASE PRINT LEGIBILY!!!!!

Page Name	Hometown	Sponsoring Senator
1 William Gaines	Wilmington	Thom Goolsby
2 Harrison Idol	High Point	Stan Bingham
3 Chase Crawford	High Point	Stan Bingham
4 Troy Garrett	Asheboro	Jerry Tillman
5 Ryan Burnett	Raleigh	Neil Hunt
6 Jake Satisky	Raleigh	Josh Stein
7 Walter Jackson	Laurinburg	McLaurin
8 Noah Dubois	Hendersonville	Apodaca
9 Andrew W. Smith	Raleigh	Josh Stein

Do not add additional names below the grid.

Pages: Please present this form to either the Committee Clerk at the meeting or a Sgt. at Arms.

6-24-14

Senate Sgt-At-Arms

1) Giles Jeffreys
2) Matt Urben
3) Charles Marsalis
4) Ernie Sherrell
5) Canton Lewis

Senate Committee on Agriculture/Environment/Natural Resources
Tuesday, June 24, 2014, 11:00 AM
544 Legislative Office Building

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

BILL NO.	SHORT TITLE	SPONSOR
HB 366	NC Farm Act of 2014.	Representative Langdon Representative Dixon Representative Brisson Representative S. Martin
HB 379	Clarify Board. of Agric. Authority/Plants.-AB	Representative Langdon Representative Samuelson
HB 1139	State Nat. & Hist. Pres. Adds & Dels.	

Adjournment

VISITOR REGISTRATION SHEET

Agriculture/Environment/Natural Resources

June 24, 2014

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
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Cassie Gavin	Sierra Club
	NC 7IA
Susanna Davis	WM
Vernon Cox	NCDAYCS /
Sarah Preston	ACLU-NC
	attorney
Mark Peters	NC Green Industry Council
Brianna VanSteenbergen	Sierra Club
Peter Raabe	American Rivers
	New Frame
Meaghan Lewis	NC chamber
Kees Burns	NC DENR
Mary Margaret Hanna	Student
Laura Gunter	NCBIO
Brian Schaefer	NCLCV
Rebekah Givens	NCLCV

09-21-201

VISITOR REGISTRATION SHEET

Agriculture/Environment/Natural Resources

June 24, 2014

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NAME	FIRM OR AGENCY AND ADDRESS
Fawn Pattison	Toxic Free NC
Rhiannon Bell	NCMMC
Linda Culpepper	NCDENR
Tonya Horton	TSS
Jennifer Stanley	NCACC
Dr. Jennifer Rungquist	
Dr. Al Rungquist	
Tom Beason	EDF, NCWF
	SELC
Cari McLamb	NCDENR

09-21-201

VISITOR REGISTRATION SHEET

Agriculture/Environment/Natural Resources

June 24, 2014

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Erin Wynia	NCLM
David McGowan	NC Petro Council
Laurie Onorio	LALC
Elizabeth Biser	Brooks Pierce
Angie Harris	Ward and Smith
Lauren Payne	NC State Grange
Sara Salisbury	NC DOJ
BRAD IVES	DENR
Jennifer Haigwood	NCDOL
Doug Howey	Petro Mktrs
Angre Maier	NRPC
Nancy Thompson	Weyerhaeuser
JAKE PARKER	NCFB
PRESTON HOWARD	NCMA
Henry Jones	Attorney Raleigh

09-21-201

VISITOR REGISTRATION SHEET

Agriculture/Environment/Natural Resources

June 24, 2014

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Patrick Buffkin	NCAEC
George Everett	Duke Energy
Kathy Hawley	Duke
Matthew Domingue	HSUS
Ashley Perkins	Perkinson Law
Kim Alburum	HSUS
Sue Regier	NCDENR - DPR
Paul Sherman	NCFB
Joy Wells	NCFBA
Keith Larick	NCDA
Henry Hutaff	NCBA.
Henry Bell	Bunker
Jerry Schill	NC Fisheries Assoc.
Aaron Bryant	NCSEA
Maggie Clark	NCSEA
Jeff Moore	NC Commerce

09-21-201

Box Contents for 2013-2014 Standing Committee Minutes (Item 25894)

Box #	Year Begin	Year End	Chamber	Committee
8	2013	2014	Senate	Appropriations - Base Budget
8	2013	2013	Senate	Appropriations - Education
8	2013	2013	Senate	Appropriations - Health & Human Services
8	2013	2013	Senate	Appropriations - Justice & Public Safety
8	2013	2014	Senate	Appropriations - Natural & Economic Resources