2013-2014

SENATE
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MINUTES

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COMMERCE SENATE COMMITTEE

2013 - 2014

Wesley Meredith
Co-Chair

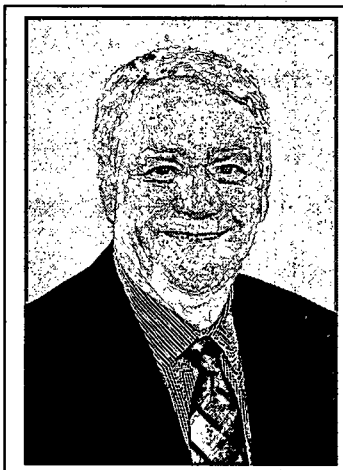
Rick Gunn
Co-Chair

Tamara Barringer
Vice-Chair

Harry Brown
Vice-Chair

Tom Apodaca

Dan Blue



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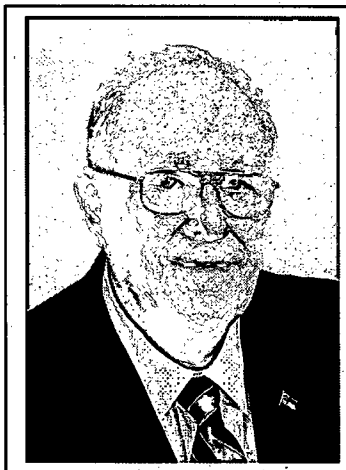

Jerry Tillman

Tommy Tucker

Mike Woodard

Through Senate Committee on

2013-2014 Biennium
Leg. Day: H-98/S-98

Date: 07/18/2013
Time: 10:03:20 AM

Bill	Introducer	Short Title		Latest Action	Date In	Date Out
H 56	Howard	Amend State Contract Review Laws.	*R	Ch. SL 2013-234	03/04/2013	06/18/2013
H 119	Hager	Natural Gas/Rate Adjustment Mechanism.	R	Ch. SL 2013-54	03/04/2013	05/14/2013
H 120	Hager	Blding Codes: Local Consistency/Exempt Cable.	*R	Ch. SL 2013-118	03/13/2013	06/11/2013
H 150	Dollar	Zoning/Design & Aesthetic Controls.	*S	Re-ref Com On Rules and Operations of the Senate	04/15/2013	04/23/2013
H 201	Torbett	Reinstate 2009 Energy Conservation Codes.	*S	Re-ref Com On Rules and Operations of the Senate	05/15/2013	06/18/2013
H 223	Presnell	Electric Membership Corps/Member Control.	*R	Ch. SL 2013-187	04/01/2013	06/06/2013
H 276	Graham, Jr.	Zoning/Board of Adjustment Changes.	*R	Ch. SL 2013-126	04/10/2013	05/30/2013
H 278	Ross	HOAs/Voluntary Prelitigation Mediation.	*R	Ch. SL 2013-127	04/24/2013	06/04/2013
H 293	Szoka	Mortgages/S.A.F.E. Act.	S	Re-ref Com On Judiciary I	04/09/2013	04/30/2013
H 301	Arp, Jr.	Clarifying Changes/Engineers/Surveyors Laws.	*R	Ch. SL 2013-98	04/15/2013	05/30/2013
H 315	McGrady	Plastics Labeling Requirements.	*R	Ch. SL 2013-74	04/23/2013	06/04/2013
H 390	Saine	State IT Governance Changes.-AB	*R	Ch. SL 2013-188	04/16/2013	06/06/2013
H 433	Bell	Land Use Surrounding Military Installations.	*R	Ch. SL 2013-206	04/15/2013	04/23/2013
H 444	Davis, Jr.	Confirm Andrew T. Heath to Industrial Comm.	R	Ch. Res 2013-11	05/06/2013	05/09/2013
H 474	Ross	Redeposit Govt. Funds Into Ins. Deposit Acct.	H	Pres. To Gov. 7/11/2013	06/25/2013	07/02/2013
H 476	Hager	Rewrite Underground Damage Prevention Act.	*S	Passed 3rd Reading	06/24/2013	07/02/2013
H 484	Bell	Permitting of Wind Energy Facilities.	*R	Ch. SL 2013-51	05/14/2013	05/14/2013
H 515	Bell	Amend Credit Union Laws.	R	Ch. SL 2013-132	05/07/2013	05/30/2013
H 563	Steinburg, Sr.	Foreign Trade Zone/Expand Def of Pub Corp.	S	Ref To Com On Commerce	06/24/2013	

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H 565	Szoka	Amend Real Estate Appraisers' Laws/Fees.	*S	Com Substitute Adopted	07/10/2013	07/16/2013
H 610	Hardister	Modify Requirements for In-Stand Beer Sales.	*R	Ch. SL 2013-83	05/08/2013	06/04/2013
H 616	Szoka	Transitional Mortgage Loan Originator.	*H	Pres. To Gov. 7/17/2013	05/30/2013	07/02/2013
H 629	Martin	Amend Definition of Special Purpose Project.	*R	Ch. SL 2013-135	05/14/2013	06/06/2013
H 662	Samuelson	Limited License/Install Backflow Assemblies.	*H	Pres. To Gov. 7/16/2013	05/01/2013	06/06/2013
H 664	Hager	Cell Tower Deployment Act.	*R	Ch. SL 2013-185	05/14/2013	05/30/2013
H 680	Murry	Jump-Start Our Business Start-Ups Act.	*S	Ref to Commerce. If fav, re-ref to Finance	06/24/2013	
H 687	Hardister	Homeless Shelters/Remove Age Limits.	*R	Ch. SL 2013-77	05/08/2013	05/30/2013
H 688	Hardister	Amend Continuing Ed Req's/Cert. Well K'ors.	*S	Conf Com Appointed	04/29/2013	05/30/2013
H 692	Szoka	Amend Predatory Lending Law.	*S	Com Substitute Adopted	05/09/2013	07/16/2013
H 700	Saine	Omnibus State IT Governance Changes.	*H	Pres. To Gov. 7/18/2013	05/09/2013	06/18/2013
H 761	Hardister	Exempt Well K'ors/Electrical K'ors Lic Reqs.	*S	Re-ref Com On Rules and Operations of the Senate	04/29/2013	07/02/2013
H 773	Brawley, Jr.	Local Gov'ts/Bldgs/Structures/Inspections.	*S	Ref To Com On Commerce	05/15/2013	
H 774	Jordan	Building Code Exclusion/Primitive Structures.	*R	Ch. SL 2013-75	05/14/2013	06/04/2013
H 793	Saine	HOAs/Fidelity Bonds.	*S	Re-ref Com On Insurance	05/16/2013	06/04/2013
H 796	Whitmire	Exempt Certain Columbariums/Cemetery Act.	*H	Pres. To Gov. 7/17/2013	05/15/2013	07/02/2013
H 810	Boles, Jr.	Modify Certain Cemetery Requirements.	*S	Ref To Com On Commerce	05/15/2013	
H 829	McGrady	Sale of Growlers by Certain ABC Permittees.	*R	Ch. SL 2013-76	05/07/2013	06/04/2013
H 872	Moffitt	Protect NC Right-To-Work.	S	Ref to Commerce. If fav, re-ref to Judiciary I	05/06/2013	
H 894	Catlin	Allocation of Excess Stormwater/Local Govt.	S	Ref To Com On Commerce	05/01/2013	
H1007		Confirm Ayers as ED of Public Staff/NCUC.	*R	Ch. Res 2013-12	05/29/2013	05/30/2013
S 9	Meredith	Utilities/Design/Survey Location Services.	*R	Ch. SL 2013-142	01/31/2013	03/12/2013

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Through Senate Committee on

S 19	Bingham	Bldg. Contracts/Local Business Participation.	S	Ref To Com On Commerce	01/31/2013	
S 31	Hartsell	Workers' Comp Fund/Safety Workers Allocation.	S	Ref to Commerce. If fav, re-ref to Finance	02/04/2013	
S 43	Brown	Study Savings for Administration of Claims.	S	Pres. To Gov. 07/17/2013	02/05/2013	02/26/2013
S 44	Brown	Workers Comp Coverage/Public Records.	*R	Ch. SL 2013-20	02/05/2013	02/26/2013
S 51	Brown	GBICC/Workers' Comp Program Integrity.	*H	Assigned To Regulatory Reform Subcommittee on Business and Labor	02/06/2013	02/26/2013
S 63	Wade	ABC Permit for Dessert Bar.	S	Ref To Com On Commerce	02/11/2013	
S 71	Tucker	Amend Irrigation Contractors Licensing Laws.	*H	Re-ref Com On Rules, Calendar, and Operations of the House	02/11/2013	02/26/2013
S 73	Hartsell	Local Workforce Dev./Dislocated Workers.	*S	Ordered Enrolled	02/11/2013	05/09/2013
S 76	Newton	Domestic Energy Jobs Act.	*H	Conf Com Appointed	02/14/2013	02/25/2013
S 89	Tillman	Deferred Presentment Services.	S	Ref To Com On Commerce	02/14/2013	
S 108	Apodaca	Building Inspections/Local Consistency.	S	Ref To Com On Commerce	02/20/2013	
S 127	Brown	Economic Development Modifications.	*S	Re-ref to Finance. If fav, re-ref to Commerce. If fav, re-ref to Appropriations/Base Budget	02/25/2013	05/08/2013
S 139	Clodfelter	Zoning/Design & Aesthetic Controls.	S	Ref To Com On Commerce	02/27/2013	
S 147	Hartsell	Reform Workforce Development.	S	Ref To Com On Commerce	02/28/2013	
S 148	Hunt	Exempt Certain Steel Tubing/Electrical K'ors.	R	Ch. SL 2013-36	02/28/2013	03/19/2013
S 174	Brown	Disapprove Industrial Commission Rules.	*S	Pres. To Gov. 07/10/2013	03/05/2013	03/18/2013
S 175	Brown	Banking Laws Clarifications/Corrections.	*R	Ch. SL 2013-29	03/05/2013	03/19/2013
S 194	Hartsell	Eliminate Safety Insp./Emission Insp. Req.	S	Re-ref Com On Rules and Operations of the Senate	03/06/2013	03/25/2013
S 198	Soucek	Sunset America's 400th Anniversary Comm.	S	Ref To Com On Commerce	03/06/2013	
S 199	Meredith	Electric Membership Corps/Member Control.	*S	Re-ref Com On Rules and Operations of the Senate	03/06/2013	05/07/2013
S 228	Cook	HOAs/Lim. Com. Elements/Amend of Declaration.	*R	Ch. SL 2013-34	03/11/2013	03/26/2013
S 263	Brown	Liens/Self-Service Storage Facilities.	S	Ref to Commerce. If fav, re-ref to Finance	03/13/2013	

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Through Senate Committee on

S 281	Rabon	Clarifying Changes/Engineers/Surveyors Laws.	S	Ref To Com On Commerce	03/14/2013	
S 284	Hise	OSC/Gov't Data Analytics/State Data Sharing.	*S	Re-ref Com On Judiciary I	03/14/2013	04/30/2013
S 293	Parmon	WC/Subrogation/Employer Consent.	S	Re-ref Com On Judiciary II	03/14/2013	03/18/2013
S 294	Parmon	Allow Use of DOT Stormwater BMPs.	*H	Ref To Com On Commerce and Job Development	03/14/2013	05/14/2013
S 297	Parmon	Winston-Salem/Local Development.	*H	Re-ref Com On Rules, Calendar, and Operations of the House	03/14/2013	05/14/2013
S 327	Apodaca	Clarify Motor Vehicle Licensing Law.	*H	Ref to the Com on Transportation, if favorable, Commerce and Job Development	03/19/2013	05/09/2013
S 329	Cook	UI/Some Formerly Disabled Workers Eligible.	S	Re-ref Com On Commerce	05/09/2013	
S 339	Apodaca	Planned Communities/Amendment of Declaration.	S	Ref To Com On Commerce	03/19/2013	
S 344	Hartsell	Vintage Auto Inspections.	*S	Pres. To Gov. 07/16/2013	03/19/2013	04/09/2013
S 358	Meredith	Guaranteed Asset Protection Waivers.	*R	Ch. SL 2013-193	04/02/2013	04/10/2013
S 365	Brock	Affordable and Reliable Energy Act.	*S	Re-ref Com On Commerce	05/01/2013	
S 375	Bingham	Dealers Must Provide Used Car Histories.	S	Ref To Com On Commerce	03/21/2013	
S 378	Jackson	Assess Propane Dealers/Distributors.	*S	Pres. To Gov. 07/12/2013	03/21/2013	04/16/2013
S 389	Brown	Land Use Surrounding Military Installations.	S	Ref To Com On Commerce	03/21/2013	
S 397	Newton	Natural Gas/Rate Adjustment Mechanism.	S	Ref To Com On Commerce	03/25/2013	
S 400	Allran	Revise Homeowner/Homebuyer Protection Act.	S	Ref to Commerce. If fav, re-ref to Judiciary II	03/25/2013	
S 403	Bingham	Investments/Cemeteries/Funeral Funds.	*H	Ref To Com On Banking	03/26/2013	05/09/2013
S 407	Brunstetter	Electronic Vehicle Lien/Title.	*S	Pres. To Gov. 07/16/2013	04/03/2013	05/13/2013
S 420	Clark	UI/Clarify Required Contributions.	*H	Ref To Com On Finance	03/27/2013	05/07/2013
S 430	Brown	Clarify Electric Load Control Process.	*R	Ch. SL 2013-58	03/27/2013	04/17/2013
S 431	Brown	Confirm Commissioner of Banks.	R	Ch. Res 2013-13	05/13/2013	05/14/2013
S 442	Brock	Omnibus State IT Governance Changes.	S	Ref To Com On Commerce	03/27/2013	

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S 445	Brock	ABC Permit Issuance.	*H	Ref To Com On Commerce and Job Development Subcommittee on Alcoholic Beverage Control	03/27/2013	04/02/2013
S 450	Goolsby	WC/Adjust Organ Injury Benefit Annually.	S	Re-ref Com On Rules and Operations of the Senate	03/27/2013	04/09/2013
S 468	Jenkins	Align Inspections W/Installer Licensing.	*R	Ch. SL 2013-160	03/28/2013	05/09/2013
S 470	Wade	No Beer/Wine if Permit Revoked or Suspended.	*H	Ref To Com On Commerce and Job Development Subcommittee on Alcoholic Beverage Control	03/28/2013	04/10/2013
S 482	Apodaca	Regulate Certified Food Protection Managers.	S	Ref To Com On Commerce	03/28/2013	
S 489	Gunn	Consumer Finance Act Amendments.	*R	Ch. SL 2013-162	03/28/2013	05/01/2013
S 505	Jackson	Clarify Agricultural Zoning.	*S	Pres. To Gov. 07/17/2013	03/28/2013	04/04/2013
S 520	Daniel	WC/Record Full IC Hearings.	*R	Ch. SL 2013-163	04/09/2013	04/17/2013
S 545	Rabin	Master Meters/Landlord-Tenant Agreement.	*R	Ch. SL 2013-168	04/01/2013	04/23/2013
S 547	Hunt	Energy Savings Contracting Amendments.	*H	Placed On Cal For 07/18/2013	04/01/2013	04/16/2013
S 583	Tucker	Metal Theft Statute Amendments.	*R	Ch. SL 2013-169	04/03/2013	05/14/2013
S 607	Hise	Exempt Certain Columbariums/Cemetery Act.	S	Ref To Com On Commerce	04/03/2013	
S 611	Brown	Public Contracts/Project Labor.	S	Ref To Com On Commerce	04/03/2013	
S 612	Brown	Regulatory Reform Act of 2013.	*H	Ref To Com On Regulatory Reform	04/23/2013	04/30/2013
S 613	Brown	Create Military Affairs Commission.	*R	Ch. SL 2013-227	05/06/2013	05/08/2013
S 635	Newton	Transmission Line Ownership.	*R	Ch. SL 2013-232	04/03/2013	04/16/2013
S 642	Jackson	Modifications/Certain Farm Buildings.	S	Ref To Com On Commerce	04/03/2013	
S 648	Jackson	NC Commerce Protection Act of 2013.	*S	Re-ref Com On Rules and Operations of the Senate	04/03/2013	05/07/2013
S 651	Jackson	Critical Economic Opportunity Projects.	S	Ref To Com On Commerce	04/03/2013	
S 670	Tucker	Workers' Comp Fund/Safety Workers Allocation.	S	Ref To Com On Commerce	04/03/2013	
S 713	Bryant	Close ATM Loophole/Copper Purchasing Sites.	S	Ref To Com On Commerce	04/03/2013	
S 720	Newton	NCEMPA/Duke Energy Negotiations.	S	Ref To Com On Commerce	04/03/2013	

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Senate Committee on Commerce
Tuesday, February 19, 2013, 11:00 AM
1027/1128 Legislative Building

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

BILL NO.	SHORT TITLE	SPONSOR
SB 76	Domestic Energy Jobs Act.	Senator Newton Senator Rucho Senator Brock

Senate Committee on Commerce
Tuesday, February 19, 2013 at 11:00 AM
Room 1027/1128 of the Legislative Building

MINUTES

The Senate Committee on Commerce met at 11:00 AM on February 19, 2013 in Room 1027/1128 of the Legislative Building. Twenty four members were present.

Senator Wesley A. Meredith presided.

Sam Ess from Rocky Mount, Ad Lane from Holly Springs, and Chris Yerton from Waxhaw served as pages.

S.B. 76 – Domestic Energy Jobs Act

Senator Tillman moved to adopt the proposed committee substitute for discussion and the motion carried. The PCS for Senate Bill 76 would modify provisions related to oil and gas exploration and development activities in the State, including the use of horizontal drilling and hydraulic fracturing treatments for that purpose; impose a tax for the severance of energy minerals from the soil or water of the State and make associated changes; appropriate monies to the Department of Environment and Natural Resources to operate the Mining and Energy Commission and for related expenditures; assign future revenue from offshore energy production; encourage the Governor to develop a regional compact for offshore energy exploration; amend the Energy Policy Act (renamed as the Energy Policy and Jobs Act) and the Energy Policy Council (reconstituted as the Energy Jobs Council): and direct the Medical Care Commission to adopt rules authorizing facilities licensed by the Department of Health and Human Services to use compressed natural gas as an emergency fuel.

Senator Newton was recognized to speak on the bill and then introduced Jennifer McGinnis an attorney from the Research Division to explain the proposed committee substitute. Heather Fennell an attorney from The Research Division assisted with the section in the PCS regarding "severance taxes". There were many questions from the membership and all of the questions were fielded by Senator Newton. Jennifer McGinnis was asked to speak in regards to the bonds. The discussion was ended by the presiding co-chair Senator Meredith to allow comments from the attending public. Senator Meredith announced that the discussion would continue Thursday, February 21, 2013 due to the time constraints of that meeting. No motion was made and Senator Meredith referenced a "Request to Speak" signup sheet that was facilitated by the Sargent of Arms to call on the speakers. Each speaker was given a two minute time limit. The below list were the speakers and it is in the order that they spoke:

Alegenon L. Cash
Managing Director for Wharton Gladden

Elizabeth Ouzts
State Director for Environment North Carolina

Amy Fullbright
Governmental Affairs Counselor for K & L
America National Gas (ANGA)

Bill Weatherspoon
Executive Director of Energy API

Dan Crawford
Director of Governmental Relations for NC League of Conservation Voters

The meeting adjourned at 12:00 PM.

W. A. Meredith

Senator Wesley A. Meredith
Presiding

Debbie Lown, Committee Clerk

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

S D

SENATE BILL 76

Finance Committee Substitute Adopted 2/14/13
PROPOSED COMMITTEE SUBSTITUTE S76-CSRIf-2 [v.2]
2/18/2013 3:14:06 PM

Short Title: Domestic Energy Jobs Act. (Public)

Sponsors:

Referred to:

February 12, 2013

A BILL TO BE ENTITLED

AN ACT TO (1) AUTHORIZE THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES TO ISSUE PERMITS ON OR AFTER MARCH 1, 2015, FOR OIL AND GAS EXPLORATION AND DEVELOPMENT ACTIVITIES IN THE STATE, INCLUDING THE USE OF HORIZONTAL DRILLING AND HYDRAULIC FRACTURING TREATMENTS FOR THAT PURPOSE; (2) DIRECT THE MINING AND ENERGY COMMISSION TO STUDY DEVELOPMENT OF A COMPREHENSIVE ENVIRONMENTAL PERMIT FOR OIL AND GAS EXPLORATION AND DEVELOPMENT ACTIVITIES USING HORIZONTAL DRILLING AND HYDRAULIC FRACTURING TREATMENTS; (3) MODIFY APPOINTMENTS TO THE MINING AND ENERGY COMMISSION; (4) MODIFY PROVISIONS IN THE OIL AND GAS CONSERVATION ACT CONCERNING THE MINING AND ENERGY COMMISSION'S AUTHORITY TO SET "ALLOWABLES"; (5) ELIMINATE THE REGISTRATION REQUIREMENTS FOR PERSONS CONDUCTING LANDMEN ACTIVITIES IN THE STATE; (6) AMEND THE STATUTE GOVERNING SUBSURFACE INJECTION OF FLUID; (7) PROVIDE A TAX FOR THE SEVERANCE OF ENERGY MINERALS FROM THE SOIL OR WATER OF THE STATE, REPEAL OUTDATED OIL AND GAS TAX STATUTES, AND AUTHORIZE THE SUSPENSION OF PERMITS FOR FAILURE TO FILE A RETURN FOR SEVERANCE TAXES; (8) APPROPRIATE MONIES FROM THE MINERAL INTEREST FUND TO THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES TO OPERATE THE MINING AND ENERGY COMMISSION AND FOR RELATED EXPENDITURES; (9) ASSIGN FUTURE REVENUE FROM ENERGY EXPLORATION, DEVELOPMENT, AND PRODUCTION OF ENERGY RESOURCES IN ORDER TO PROTECT AND PRESERVE THE STATE'S NATURAL RESOURCES, CULTURAL HERITAGE, AND QUALITY OF LIFE; (10) ENCOURAGE THE GOVERNOR TO DEVELOP THE REGIONAL INTERSTATE OFFSHORE ENERGY POLICY COMPACT; (11) AMEND THE ENERGY POLICY ACT OF 1975 AND THE ENERGY POLICY COUNCIL; AND (12) DIRECT THE MEDICAL CARE COMMISSION TO ADOPT RULES AUTHORIZING FACILITIES LICENSED BY THE DEPARTMENT OF HEALTH AND HUMAN SERVICES TO USE COMPRESSED NATURAL GAS AS AN EMERGENCY FUEL.

The General Assembly of North Carolina enacts:

PART I. ISSUANCE OF PERMITS

SECTION 1.(a) Effective March 1, 2015, the Department of Environment and Natural Resources and the Mining and Energy Commission are authorized to issue permits for oil and gas exploration and development activities using horizontal drilling and hydraulic fracturing treatments in the State pursuant to G.S. 113-395.

SECTION 1.(b) Section 3.(d) of S.L. 2012-143 is repealed.

SECTION 1.(c) The Mining and Energy Commission, with the assistance of the Department of Environment and Natural Resources, shall study development of a coordinated permitting program for oil and gas exploration and development activities using horizontal drilling and hydraulic fracturing treatments in order that a single comprehensive environmental permit may be issued to a permit applicant to govern the applicant's exploration and development activities at a site, including, but not limited to, regulation of the following matters: well construction, siting, and closure requirements; hydraulic fracturing treatments, including subsurface injection of fluids for that purpose; water quality, including stormwater control, and management of water resources; management of waste; and regulation of air emissions. The Department of Environment and Natural Resources shall seek any approvals necessary from the United States Environmental Protection Agency for a coordinated permitting program to allow issuance of a single comprehensive environmental permit for oil and gas exploration and development activities using horizontal drilling and hydraulic fracturing treatments. The Mining and Energy Commission shall report its findings and recommendations to the Environmental Review Commission and the Joint Legislative Commission on Energy Policy on or before October 1, 2013.

PART II. MINING AND ENERGY COMMISSION APPOINTMENT MODIFICATIONS

SECTION 2.(a) G.S. 143B-293.2 reads as rewritten:

"**§ 143B-293.2. North Carolina Mining and Energy Commission – members; selection; removal; compensation; quorum; services.**

(a) Members Selection. – The North Carolina Mining and Energy Commission shall consist of ~~15~~ 13 members appointed as follows:

(1) The Chair of the North Carolina State University Minerals Research Laboratory Advisory Committee, or the Chair's designee, ex officio.

~~(2) The State Geologist, or the State Geologist's designee, ex officio.~~

~~(3) The Assistant Secretary of Energy for the Department of Commerce, ex officio.~~

(4) One appointed by the General Assembly upon recommendation of the Speaker of the House of Representatives who is a member of a nongovernmental conservation interest.

(5) One appointed by the General Assembly upon recommendation of the Speaker of the House of Representatives ~~who~~ who, at the time of initial appointment, is an elected official of a municipal government located in ~~the Triassic Basin of North Carolina.~~ a region of North Carolina that has oil and gas potential. A person serving in this seat may complete a term on the Commission even if they are no longer serving as an elected official of a municipal government and may be reappointed to a second term.

(6) One appointed by the General Assembly upon recommendation of the Speaker of the House of Representatives who is a representative of the mining industry.

(7) One appointed by the General Assembly upon recommendation of the Speaker of the House of Representatives who shall be a geologist with experience in oil and gas exploration and development.

(8) One appointed by the General Assembly upon recommendation of the President Pro Tempore of the Senate who is a member of a nongovernmental conservation interest.

(9) One appointed by the General Assembly upon recommendation of the President Pro Tempore of the Senate ~~who~~ who, at the time of initial appointment, is a member of a county board of commissioners of a county located in ~~the Triassic Basin of North Carolina.~~a region of North Carolina that has oil and gas potential. A person serving in this seat may complete a term on the Commission even if they are no longer serving as county commissioner and may be reappointed to a second term.

(10) One appointed by the General Assembly upon recommendation of the President Pro Tempore of the Senate who is a representative of the mining industry.

(11) One appointed by the General Assembly upon recommendation of the President Pro Tempore of the Senate who shall be an engineer with experience in oil and gas exploration and development.

(12) One appointed by the Governor who shall be a representative of a publicly traded natural gas company.

(13) One appointed by the Governor who shall be a licensed attorney with experience in legal matters associated with oil and gas exploration and development.

(14) One appointed by the Governor who is a member of the Environmental Management Commission.~~Commission and knowledgeable in the principles of water and air resources management.~~

(15) One appointed by the Governor who is a member of the Commission for Public Health.~~Health and knowledgeable in the principles of waste management.~~

...

(h) Office May Be Held Concurrently with Others. – Membership on the Mining and Energy Commission is hereby declared to be an office that may be held concurrently with other elective or appointive offices in addition to the maximum number of offices permitted to be held by one person under G.S. 128-1.1.

...."

SECTION 2.(b) The term of the member serving pursuant to subdivision (14) of G.S. 143B-293.2(a), as amended by Section 2(a) of this act, shall terminate immediately should that individual's membership on the Environmental Management Commission terminate. The term of the member serving pursuant to subdivision (15) of G.S. 143B-293.2(a), as amended by Section 2(a) of this act, shall terminate immediately should that individual's membership on the Commission for Public Health terminate.

PART III. MISCELLANEOUS MODIFICATIONS TO THE OIL AND GAS CONSERVATION ACT: ALLOWABLES AND REPEAL OF LANDMEN REGISTRY.

SECTION 3.(a) G.S. 113-394 reads as rewritten:

"§ 113-394. Limitations on production; allocating and prorating "allowables."

(a) ~~Whenever the total amount of oil, including condensate, which all the pools in the State can produce, exceeds the amount reasonably required to meet the reasonable market demand for oil, including condensate, produced in this State, then the~~The Commission ~~shall~~ may limit the total amount of oil, including condensate, which may be produced in the State by fixing an amount which shall be designated "allowable" for ~~this State, which will not exceed the reasonable market demand for oil, including condensate, produced in this~~ the State. The Commission ~~shall~~ may then allocate or distribute the "allowable" for the State among the pools

on a reasonable basis and in such manner as to avoid undue discrimination, and so that waste will be prevented. In allocating the "allowable" for the State, and in fixing "allowables" for pools producing oil or hydrocarbons forming condensate, or both oil and such hydrocarbons, the Commission ~~shall~~ may take into account the producing conditions and other relevant facts with respect to such pools, including the separate needs for oil, gas and condensate, and ~~shall~~ may formulate rules setting forth standards or a program for the distribution of the "allowable" for the State, and ~~shall~~ distribute the "allowable" for the State in accordance with such standards or program, and where conditions in one pool or area are substantially similar to those in another pool or area, then the same standards or programs shall be applied to such pools and areas so that as far as practicable a uniform program will be followed; provided, however, the Commission shall allow the production of a sufficient amount of natural gas from any pool to supply adequately the reasonable market demand for such gas for light and fuel purposes if such production can be obtained without waste, and the condensate "allowable" for such pool shall not be less than the total amount of condensate produced or obtained in connection with the production of the gas "allowable" for light and fuel purposes, and provided further that, if the amount allocated to pool as its share of the "allowable" for the State is in excess of the amount which the pool should produce to prevent waste, then the Commission shall fix the "allowable" for the pool so that waste will be prevented.

~~(b) The Commission shall not be required to determine the reasonable market demand applicable to any single pool except in relation to all pools producing oil of similar kind and quality and in relation to the demand applicable to the State, and in relation to the effect of limiting the production of pools in the State.~~ In allocating "allowables" to pools, the Commission shall not be bound by nominations or desires of purchasers to purchase oil from particular fields or areas, and the Commission shall allocate the "allowable" for the State in such manner as will prevent undue discrimination against any pool or area in favor of another or others which would result from selective buying or nominating by purchasers of oil, as such term "selective buying or nominating" is understood in the oil business.

(c) Whenever the Commission limits the total amount of oil or gas which may be produced in any pool in this State to an amount less than that which the pool could produce if no restrictions were imposed (which limitation may be imposed either incidental to, or without, a limitation of the total amount of oil or gas which may be produced in the State), the Commission shall prorate or distribute the "allowable" production among the producers in the pool on a reasonable basis, and so that each producer will have the opportunity to produce or receive his just and equitable share, as such share is set forth in subsection G.S. 113-392(d), subject to the reasonable necessities for the prevention of waste.

(d) Whenever ~~the total amount of gas which can be produced from any pool in this State exceeds the amount of gas reasonably required to meet the reasonable market demand therefrom,~~ the Commission ~~shall limit~~ limits the total amount of gas which may be produced from ~~such pool. The~~ a pool, the Commission shall then allocate or distribute the allowable production among the developed areas in the pool on a reasonable basis, so that each producer will have the opportunity to produce his just and equitable share, as such share is set forth in subsection G.S. 113-392(d), whether the restriction for the pool as a whole is accomplished by order or by the automatic operation of the prohibitory provisions of this law. As far as applicable, the provisions of subsection (a) of this section shall be followed in allocating any "allowable" of gas for the State.

(e) After the effective date of any rule or order of the Commission fixing the "allowable" production of oil or gas, or both, or condensate, no person shall produce from any well, lease, or property more than the "allowable" production which is fixed, nor shall such amount be produced in a different manner than that which may be authorized."

SECTION 3.(b) G.S. 113-425 is repealed.

PART IV. AMEND STATUTE GOVERNING SUBSURFACE FLUID INJECTION

SECTION 4. G.S. 143-214.2 reads as rewritten:

"**§ 143-214.2. Prohibited discharges.**

(a) The discharge of any radiological, chemical or biological warfare agent or high-level radioactive waste to the waters of the State is prohibited.

(b) The discharge of any wastes to the subsurface or groundwaters of the State by means of wells is prohibited. This section shall not be construed to prohibit (i) the operation of closed-loop groundwater remediation systems in accordance with G.S. 143-215.1A or (ii) injection of ~~hydraulic fracturing~~ fluid ~~for~~ associated with the ~~exploration~~ exploration, production, or development of natural gas resources.

(c) Unless permitted by a rule of the Commission, the discharge of wastes, including thermal discharges, to the open waters of the Atlantic Ocean over which the State has jurisdiction are prohibited."

PART V. SEVERANCE TAXES

SECTION 5.(a) Chapter 105 of the General Statutes is amended by adding a new Article to read:

"Article 5I.

"Severance Tax.

"**§ 105-187.71. Definitions.**

The following definitions apply in this Article:

(1) Casinghead gas. – Gas or vapor indigenous to an oil stratum and produced from the stratum with oil.

(2) Condensate. – Liquid hydrocarbon that is or can be recovered from gas by a separator or other means.

(3) Energy mineral. – All forms of natural gas, oil, and related condensates.

(4) First purchaser. – A person who purchases an energy mineral from a producer.

(5) Gas. – All natural gas, including casinghead gas, and all other hydrocarbons not defined as oil or condensates.

(6) MCF. – One thousand cubic feet of natural gas.

(7) Oil. – Crude petroleum oil, and other hydrocarbons, regardless of gravity, which are produced at the well in liquid form by ordinary production methods and which are not the result of condensation of gas after it leaves the reservoir.

(8) Owner. – An owner of a landowner's royalty interest, of an overriding royalty, of profits and working interests, or any combination thereof in energy minerals. The term does not include an owner of federal, state, or local governmental royalty interest.

(9) Person. – Defined in G.S. 105-228.90.

(10) Producer. – A person who takes an energy mineral from the soil or water in this State.

(11) Return. – Any report or statement required to be filed under this Article to determine the tax due.

(12) Royalty interest. – An interest in mineral rights in a producing leasehold in the State. A royalty interest does not include the interest of a person having only the management and operation of a well.

(13) Secretary. – The Secretary of Revenue.

(14) Severance. – The extraction or other removal of an energy mineral from the soil or water of this State.

(15) Severed. – The point at which the energy mineral has been separated from the soil or water of this State.

(16) Standard barrel of oil. – A barrel of oil containing 42 gallons.

(17) Taxpayer. – Any person required to pay the severance tax levied by this Article.

"**§ 105-187.72. Tax on severance of energy minerals.**

(a) Purpose. – An excise tax, to be termed a "severance tax," is levied on the privilege of engaging in the severance of energy minerals from the soil or water of this State. The purpose of the tax is to provide revenue to administer and enforce the provisions of this Article, to administer the State's natural gas and oil reclamation regulatory program, to meet the environmental and resource management needs of this State, and to reclaim land affected by exploration for, drilling for, and production of natural gas and oil. The severance tax is imposed upon all energy minerals severed when sold or consumed, whichever occurs first.

(b) Calculation of Tax. – The amount of the severance tax shall be determined as follows:

(1) Condensates. – The applicable percentage rate of tax multiplied by the market value per each barrel of oil equivalents (BOE) of the condensates sold.

(2) Gas. – The applicable percentage rate of tax multiplied by the market value per each MCF of the gas sold.

(3) Oil. – The applicable percentage rate of tax multiplied by the market value per each standard barrel of the oil sold.

(c) Rate of Tax, Condensates. – The applicable percentage rate of the severance tax on condensates shall be determined in accordance with the following schedule:

(1) For condensates sold from a well in calendar year 2015, 2016, or 2017, the rate of tax shall be one percent (1%).

(2) For condensates sold from a well in calendar year 2018 or 2019, the rate of tax shall be two and one-half percent (2.5%).

(3) For condensates sold from a well in calendar year 2020 and thereafter, the rate of tax shall be six percent (6%).

(d) Rate of Tax, Gas. – The applicable percentage rate of the severance tax on gas shall be calculated for each sale of gas. The rate will be the sales price of each MCF divided by 100 stated as a percentage, within the following limitations:

(1) For gas sold from a well in calendar year 2015, 2016, or 2017, the rate of tax shall not exceed one percent (1%).

(2) For gas sold from a well in calendar year 2018 or 2019, the rate of tax shall not exceed two and one-half percent (2.5%).

(3) For gas sold from a well in calendar year 2020 and thereafter, the rate of tax shall be at least two and one-half percent (2.5%) and shall not exceed six percent (6%).

(e) Rate of Tax, Oil. – The applicable percentage rate of the severance tax on condensates shall be determined in accordance with the following schedule:

(1) For oil sold from a well in calendar year 2015, 2016, or 2017, the rate of tax shall be one percent (1%).

(2) For oil sold from a well in calendar year 2018 or 2019, the rate of tax shall be two and one-half percent (2.5%).

(3) For oil sold from a well in calendar year 2020 and thereafter, the rate of tax shall be six percent (6%).

(f) Exemption. – The severance of energy minerals from land or water in this State owned legally or beneficially by the producer, which energy minerals are used on the land from which they are taken by the producer as part of the improvement of or use in the producer's

homestead, is exempt from the severance tax. To claim the exemption allowed by this subsection, the taxpayer shall provide any information required by the Secretary. Every taxpayer claiming the exemption under this subsection shall maintain and make available for inspection by the Secretary any records the Secretary considers necessary to determine and verify the amount of the exemption or special rate of tax to which the taxpayer is entitled. The burden of proving eligibility for the exemption and the amount of the exemption shall rest upon the taxpayer, and no exemption shall be allowed to a taxpayer that fails to maintain adequate records or to make them available for inspection.

"**§ 105-187.73. Market value.**

(a) Market Value. – For the calculation of the severance tax, market value is the following:

(1) Condensates. – The market value of condensates is the total actual gross price in U.S. dollars paid by the first purchaser of condensates at the mouth of the well from which it was produced.

(2) Gas. – The market value of gas is the total actual gross price in U.S. dollars paid by the first purchaser at the mouth of the well from which the gas is produced as adjusted in this section. The market value of gas at the mouth of the well shall be determined by subtracting the producer's actual marketing costs from the producer's total gross cash receipts from the sale of the gas.

(3) Oil. – The market value of oil is the total actual gross price in U.S. dollars paid by the first purchaser of the oil at the mouth of the well from which it was produced.

(b) Marketing Costs. – Marketing costs are the costs incurred by the producer to get the gas from the mouth of the well to the market. Marketing costs do not include costs for which a producer receives a cost reimbursement from the gas purchaser. Marketing costs do not include costs incurred in producing the gas, costs incurred in normal lease separation of the oil or condensate from the gas, or insurance premiums on the marketing facility. Marketing costs include all of the following:

(1) Costs for compressing the gas sold.

(2) Costs for dehydrating the gas sold.

(3) Costs for sweetening the gas sold.

(4) Costs for delivering the gas to the purchaser.

(5) Costs for gathering the gas sold.

(c) Records. – In order to be eligible to subtract the marketing costs from the producer's gross receipts for purposes of calculating the market value of gas, the producer shall provide any information required by the Secretary. Every producer subtracting the marketing costs as permitted under this section shall maintain and make available for inspection by the Secretary of Revenue any records the Secretary considers necessary to determine and verify the amount of the marketing costs the producer is eligible to subtract. The burden of proving eligibility for subtracting the marketing costs and the amount of the marketing costs to be subtracted shall rest upon the producer, and no subtraction of marketing costs shall be allowed to a producer that fails to maintain adequate records or to make them available for inspection.

"**§ 105-187.74. Returns and payment of tax.**

(a) General. – Severance taxes are payable when a return is due. A return is due quarterly or monthly as specified in this section. A return must be filed by the producer of the energy mineral with the Secretary on a form prescribed by the Secretary and in the manner required by the Secretary. A return must be signed by the taxpayer or the taxpayer's agent.

(b) Payment. – A producer of energy minerals shall pay the tax for all owners of the energy minerals. The producer shall withhold from any payment due owners the proportionate tax due for remittance to the Secretary.

(c) Quarterly. – A taxpayer who is consistently liable for less than one thousand dollars ($1,000) a month in severance taxes must file a return and pay the taxes due on a quarterly basis. A quarterly return covers a calendar quarter and is due by the last day of the month following the end of the quarter.

(d) Monthly. – A taxpayer who is consistently liable for at least one thousand dollars ($1,000) a month in severance taxes must file a return and pay the taxes due on a monthly basis. A monthly return is due by the 20th day of the month following the calendar month covered by the return.

(e) Category. – The Secretary must monitor the amount of severance taxes paid by a taxpayer or estimate the amount of taxes to be paid by a new taxpayer and must direct each taxpayer to pay tax and file returns as required by this section. In determining the amount of taxes due from a taxpayer, the Secretary must consider the total amount due from all places of business owned or operated by the same person as the amount due from that person. A taxpayer must file a return and pay tax in accordance with the Secretary's direction.

(f) Information on Return. – The amount of tax due and any other information required by the Secretary must be included on the return. Returns that do not contain the required information will not be accepted. When an unacceptable return is submitted, the Secretary will require a corrected return to be filed. The return must contain the following information concerning energy minerals produced during the month being reported:

(1) The gross amount of energy minerals produced that are subject to the tax imposed by this Article.

(2) The leases from which the energy minerals were produced.

(3) The names and addresses of the first purchasers of the energy minerals.

"**§ 105-187.75. Bond or letter of credit required.**

A producer must file with the Secretary a bond or an irrevocable letter of credit if the producer fails to file a return required under this Article. A bond or an irrevocable letter of credit must be conditioned upon compliance with the requirements of this Article, be payable to the State, and be in the form required by the Secretary. The amount of the bond or irrevocable letter of credit is two times the applicant's average expected monthly tax liability under this Article, as determined by the Secretary. When notified to do so by the Secretary, a person that is required to file a bond or an irrevocable letter of credit must file the bond or irrevocable letter of credit in the amount required by the Secretary within 30 days after receiving the notice from the Secretary.

"**§ 105-187.76. Allocation of revenue.**

The Secretary shall allocate the tax levied in this Article as follows:

(1) Twenty-five percent (25%), not to exceed one million dollars ($1,000,000) per year, to the Department of Environment and Natural Resources for purposes of administering its duties and responsibilities under Article 27 of Chapter 113 of the General Statutes.

(2) After allocation pursuant to subsection (a) of this section, the Secretary shall allocate:

a. Fifty percent (50%) to the General Fund.

b. Fifty percent (50%) to the Onshore Energy Management Fund until the Fund reaches ten million dollars ($10,000,000). The Onshore Energy Management Fund is an interest-bearing special revenue fund to be established within the State treasury. This fund shall be used only for emergency preparation, emergency response, emergency environmental protection, or mitigation associated with a release of liquid hydrocarbons or associated fluids directly related to onshore energy exploration, development, production, or transmission. Once the fund balance reaches the amount of ten million dollars

($10,000,000), funds over that amount shall be allocated to the General Fund. If monies are withdrawn from the Onshore Energy Emergency Fund to carry out the provisions in this sub-subdivision, revenues generated by the tax levied in this Article shall be deposited in the Onshore Energy Emergency Fund until a total of ten million dollars ($10,000,000) is reestablished.

"**§ 105-187.77. Liability of producer for tax.**

The tax imposed by this Article is the primary liability of the producer except as provided in this section. A first purchaser may not take delivery of energy minerals from a producer unless the producer furnishes the purchaser with a taxpayer identification number assigned by the Secretary. A first purchaser failing to secure the producer's taxpayer number, either from the producer or the Secretary, will be liable for any tax, penalty, and interest due on the energy minerals purchased from the producer.

"**§ 105-187.78. Royalty owner's records.**

The owner of a royalty interest shall keep both of the following:

(1) A record of all money received as royalty from each producing leasehold in the State.

(2) A copy of all settlement sheets furnished by a purchaser or operator or other statement showing the amount of energy minerals for which a royalty was received and the amount of severance tax deducted.

"**§ 105-187.79. Permits suspended for failure to report.**

If an entity fails to file any report or return or to pay any tax or fee required by this Article for 90 days after it is due, the Secretary shall inform the Secretary of Environment and Natural Resources of this failure. The Secretary of Environment and Natural Resources shall suspend permits for oil and gas exploration using horizontal drilling and hydraulic fracturing under G.S. 113-395 of any entity that fails to file a return under this Article. The Secretary of Environment and Natural Resources shall immediately notify by mail an entity of a suspension under this section.

"**§ 105-187.80. No local taxation.**

A city or county may not impose a franchise, privilege, license, income, or excise tax on the severing, production, treating, processing, ownership, sale, storage, purchase, marketing, or transportation on any energy minerals produced in the State, or upon the business of severing, producing, treating, processing, owning, selling, buying, storing, marketing, or transporting such energy minerals, or upon the ownership, operation, or maintenance of plants, facilities, machinery, pipelines, and gathering lines related to the severing, production, treating, processing, ownership, storage, sale, purchase, marketing, or transportation of energy minerals. This section does not preclude the taxation of the property in accordance with Article 11 of this Chapter."

SECTION 5.(b) G.S. 105-259(b) is amended by adding a new subdivision to read:

"(44) To furnish to the Department of Environment and Natural Resources the name, address, tax year end, and account and identification numbers of an entity liable for severance tax to enable the Secretary of Environment and Natural Resources to notify the entity that the Department of Environment and Natural Resources shall suspend permits of the entity for oil and gas exploration using horizontal drilling and hydraulic fracturing under G.S. 113-395."

SECTION 5.(c) G.S. 113-387 and G.S. 113-388 are repealed.

PART VI. APPROPRIATION FROM MINERAL INTEREST FUND FOR OPERATION OF MEC

SECTION 6. There is appropriated from the Mineral Interest Fund to the Department of Environment and Natural Resources the sum of twenty-two thousand nine hundred dollars ($22,900) for the 2012-2013 fiscal year to be used to operate the Mining and Energy Commission and for payment of expenditures related to the Commission's implementation of legislative mandates to the Commission, including the hiring of temporary or contract employees to assist with policy development and rule making.

PART VII. REVENUE FROM OFFSHORE ENERGY PRODUCTION

SECTION 7. Chapter 113B of the General Statutes is amended by adding a new Article to read:

"Article 3.

"Revenues from Offshore Energy Production.

"**§ 113B-30. Allocation of revenues from offshore energy production; creation of Offshore Energy Management Fund.**

(a) Any revenues and royalties paid to the State as a result of offshore leasing, exploration, development, and production of all energy resources shall be deposited in the Offshore Emergency Fund until the Fund reaches fifty million dollars ($50,000,000). The Offshore Energy Management Fund is an interest-bearing special revenue fund to be established within the State treasury. This Fund shall be used only for emergency preparation, emergency response, emergency environmental protection, or mitigation associated with a release of liquid hydrocarbons or associated fluids directly related to offshore energy exploration, development, production, or transmission. Once the Fund balance reaches the amount of fifty million dollars ($50,000,000), the funds shall be used as provided in subsection (b) of this section. If monies are withdrawn from this Fund to carry out the provisions in this section, all revenues and royalties paid to the State as a result of offshore leasing, exploration, development, and production of all energy resources shall be deposited in the Fund until a total of fifty million dollars ($50,000,000) is reestablished. Once the Fund balance reaches the amount of fifty million dollars ($50,000,000), the funds shall be used as provided in subsection (b) of this section.

(b) Any revenues and royalties paid to the State as a result of offshore leasing, exploration, development, and production of all energy resources in excess of the amount needed to establish the Fund created in subsection (a) of this section are annually appropriated and shall be used for the following purposes:

(1) Thirty percent (30%) of such revenues and royalties shall be credited to the General Fund.

(2) Ten percent (10%) of such revenues and royalties shall be credited to the North Carolina Highway Trust Fund established under G.S. 136-176.

(3) Ten percent (10%) of such revenues and royalties shall be transferred to the Community Colleges System Office to establish and manage a fund for curriculum development and implementation as well as financial assistance for students attending community college to receive vocational training through this curriculum in fields directly related to energy exploration and development and related energy infrastructure.

(4) Ten percent (10%) of such revenues and royalties shall be transferred to the Board of Governors of The University of North Carolina System to establish and manage research and development funds for programs directly related to energy research and development.

(5) Thirty percent (30%) of such revenues and royalties shall be transferred to the Department of Environment and Natural Resources for conservation, protection, and mitigation, including, but not limited to, beach and inlet management projects, dredging operations, channel navigation and

maintenance, public beach and water access, water quality management, and habitat restoration.

(6) Eight percent (8%) of such revenues and royalties shall be transferred to the State Ports Authority for expansion and maintenance of State Port infrastructure associated with energy-related commerce.

(7) Two percent (2%) of such revenues and royalties shall be transferred to the Department of Commerce for recruitment of energy-related industries to the State."

PART VIII. REGIONAL INTERSTATE OFFSHORE ENERGY POLICY COMPACT

SECTION 8.(a) Development of Regional Interstate Offshore Energy Policy Compact. – The Governor is strongly encouraged to commence negotiations on the development of a regional energy compact with the governors of South Carolina and Virginia in order to develop a unified regional strategy for the exploration, development, and production of all commercially viable federal and state offshore energy resources within the three-state region. The Governor shall develop recommendations for the General Assembly to consider for the development of a statutory regional compact, and these recommendations shall reflect the collective agreement of all three governors in the three-state region in order to provide common language for consideration by each state's General Assembly. During the development of these compact recommendations, the Governor or the Governor's designee is authorized to work directly with each of the three states' Congressional delegations, the United States Department of the Interior, the United States Environmental Protection Agency, and other appropriate federal agencies on behalf of the State of North Carolina to develop appropriate strategies to be considered in the development of the three-state compact for increasing domestic energy exploration, development, and production within each state in the three-state region and their adjacent state and federal waters. The compact negotiations and recommendations shall address at least all of the following:

(1) Ensure a timely review and consideration of permits and proposals at both the state and federal level for both state and federal waters adjacent to each state in the three-state region for seismic and other marine geophysical exploration to identify and quantify natural gas and related hydrocarbon resources along the continental margin.

(2) Amend the 2012 to 2017 Five Year Leasing Plan of the United States Department of the Interior to include leasing federal waters adjacent to the State and the three-state region for the exploration, quantification, and development of natural gas and related hydrocarbon energy resources.

(3) Advocate proactively with each state's Congressional delegation and appropriate federal agencies to ensure direct sharing of royalties and revenues related to energy leasing, exploration, development, and production of all offshore energy resources in federal waters adjacent to the State and the three-state region.

(4) Request the United States Department of the Interior to reinstate the federal Offshore Policy Committee with new members and new alternate members to be nominated by the governor of the state represented on the Offshore Policy Committee and appointed by the Secretary of the Interior, six of whom are to be one member and one alternate member each from North Carolina, Virginia, and South Carolina.

(5) Request the United States Department of the Interior to immediately move forward with permitting geological and geophysical data acquisition activities associated with oil and gas exploration in the Mid- and South Atlantic Planning Areas of the Atlantic Outer Continental Shelf immediately

as outlined in Alternative A of the Bureau of Ocean Energy Management's Draft Programmatic Environmental Impact Statement entitled "Atlantic OCS Proposed Geological and Geophysical Activities" published in 2012.

SECTION 8.(b) No later than three months after the effective date of this act, and at least every three months thereafter, the Governor or the Governor's designee shall report to the General Assembly on the progress of the Governor and others in complying with the requirements under this section, to include providing copies of correspondence and other relevant materials to or from the Office of the Governor when the correspondence or materials pertain to the subject under this section or to any requirement under this section. The Governor shall report the Governor's final recommendations for the three-state energy compact to the Joint Energy Oversight Committee no later than March 1, 2014.

SECTION 8.(c) In addition to the provisions in Sections 8(a) and 8(b) of this act, the Governor is encouraged to join the Governors of Alaska, Texas, Louisiana, Mississippi, Alabama, South Carolina, and Virginia and any others who may sign on to the Outer Continental Shelf Governors Coalition announced on May 3, 2011, to promote a constructive dialogue among the coastal state governors and the federal government on offshore energy issues important to the future of North Carolina and the United States. The Governor is authorized to expend funds related to membership in the Coalition.

SECTION 8.(d) The Governor is also encouraged to write letters to the North Carolina Congressional delegation, the governors of South Carolina and Virginia, the legislative bodies of South Carolina and Virginia, the Secretary of the United States Department of the Interior, and the President of the United States, urging their support of the recommendations set forth in subdivision (1) through (5) of Section 8(a) of this act.

SECTION 8.(e) Upon ratification, the Secretary of State shall furnish certified copies of this act to each member of the North Carolina Congressional delegation, the governors of South Carolina and Virginia, the legislative bodies of South Carolina and Virginia, the Secretary of the United States Department of the Interior, and the President of the United States.

PART IX. ENERGY POLICY ACT AND ENERGY POLICY COUNCIL AMENDMENTS

SECTION 9.(a) The title of Chapter 113B of the General Statutes reads as rewritten:

"**North Carolina Energy Policy ~~Act of 1975.~~and Jobs Act.**"

SECTION 9.(b) The title of Article 1 of Chapter 113B of the General Statutes reads as rewritten:

"Article 1.

"Energy ~~Policy~~ Jobs Council.

SECTION 9.(c) G.S. 113B-1 reads as rewritten:

"**§ 113B-1. Legislative findings and purpose.**

Upon investigation the General Assembly hereby finds that:

(1) Energy is essential to the health, safety and welfare of the people of this State and to the workings of the State ~~economy;~~economy.

~~(2) Growth in the consumption of energy resources is in some part due to wasteful, uneconomic and inefficient uses of energy and a continuation of this trend will adversely affect the future social, economic and environmental development of North Carolina;~~

(3) It is ~~the responsibility of State government to encourage~~in the State's best interest to support the development of a reliable and adequate supply of energy for North Carolina ~~at a level consistent with such energy needs required for the protection of public health and safety, and for the promotion~~

~~of the general welfare; and~~that is secure, stable, and predictable in order to facilitate economic growth, job creation, and expansion of business and industry opportunities.

(3a) It is in the State's best interest to support the exploration, development, and production of domestic energy supplies, preferably from the resources within the State or region and most certainly from within the country.

(3b) It is the duty of State government to protect and preserve the State's natural resources, cultural heritage, and quality of life and, above all, the public health and safety of its residents during the exploration, development, and production of domestic energy resources.

(4) The State ~~has not provided~~must provide the basis for development of a long-range unified energy policy to encompass comprehensive energy resource planning and efficient management of ~~the rate of consumption of~~ existing energy resources in relation to economic growth, to effectively meet an energy crisis, to encourage development of alternative sources of ~~energy,~~energy that are capable of achieving a positive benefit-to-cost ratio, and to ~~prudently conserve~~ ensure efficient utilization of energy resources in a manner consistent with assuring a reliable and adequate supply of energy for North ~~Carolina.~~Carolina, including active support and collaboration with the federal government to ensure access to the nation's energy resources located on the outer continental shelf directly adjacent to the State's coastal waters.

(5) It is the expressed intent of this Chapter to provide for development of such a unified domestic energy policy for the State of North ~~Carolina.~~Carolina as part of a nationwide effort for increased domestic energy production in the interest of national security and economic growth and stability."

SECTION 9.(d) G.S. 113B-2 reads as rewritten:

"§ 113B-2. Creation of Energy ~~Policy~~ Jobs Council; purpose of Council.

(a) ~~There~~ The Energy Jobs Council is ~~hereby~~ created ~~a council~~ to advise and make recommendations on increasing domestic energy ~~policy~~ exploration, development, and production within the State and region to promote economic growth and job creation to the Governor and the General ~~Assembly to be known as the Energy Policy~~Assembly. The Energy Jobs Council ~~which~~ shall be located within the Department of ~~Commerce.~~Environment and Natural Resources.

(b) Except as otherwise provided in this Chapter, the powers, duties and functions of the Energy ~~Policy~~ Jobs Council shall be as prescribed by the Secretary of ~~Commerce.~~Environment and Natural Resources.

(c) The Energy ~~Policy~~ Jobs Council shall serve as the central energy policy planning body of the State and shall communicate and cooperate with federal, State, regional and local bodies and agencies to the end of effecting a coordinated energy policy."

SECTION 9.(e) G.S. 113B-3 reads as rewritten:

"§ 113B-3. Composition of Council; appointments; terms of members; qualifications.

(a) The Energy ~~Policy~~ Jobs Council shall consist of ~~16~~ 13 members to be appointed as follows:

~~(1) Two members of the North Carolina House of Representatives to be appointed by the Speaker of the House of Representatives;~~

~~(2) Two members of the North Carolina Senate to be appointed by the President Pro Tempore of the Senate;~~

(2a) The Secretary of Environment and Natural Resources.

(2b) The Secretary of Commerce.

(3) ~~Twelve~~ Eleven public members who are citizens of the State of North ~~Carolina to be appointed by the Governor. The Governor shall designate one of the public members as chair of the Council.~~Carolina and who are appointed in accordance with subsection (c) of this section.

(b) Appointments to the Energy ~~Policy~~ Jobs Council shall be made by ~~July 15, 2009,~~ July 1, 2013. ~~and each such appointee shall serve until January 31, 2011. Thereafter, the appointed members of the General Assembly shall serve two-year terms, and the appointed public members shall serve four-year terms. A member of the Energy Policy Council shall continue to serve until his successor is duly appointed, but such holdover shall not affect the expiration date of such succeeding term.~~ The terms of office of members of the Council are three years. The terms of members appointed under subdivisions (1), (4), and (6) of subsection (c) of this section shall expire on June 30 of years evenly divisible by three. The terms of members appointed under subdivisions (2), (5), (8), and (10) of subsection (c) of this section shall expire on June 30 of years that precede by one year those years that are evenly divisible by three. The terms of members appointed under subdivisions (3), (7), (11), and (12) of subsection (c) of this section shall expire on June 30 of years that follow by one year those years that are evenly divisible by three. Appointments made by the President Pro Tempore of the Senate and the Speaker of the House of Representatives shall be allowed when the General Assembly is not in session.

(c) The public members of the Energy ~~Policy~~ Jobs Council shall have the ~~following qualifications:~~qualifications and shall be appointed as follows:

(1) One member shall be ~~experienced in the electric power industry;~~a representative of an investor-owned electric public utility, to be appointed by the Governor.

(2) One member shall ~~be experienced in the natural gas industry;~~have experience in natural gas and associated hydrocarbon exploration, development, and production, to be appointed by the Governor.

~~(2a) One member shall be experienced in energy policy matters;~~

(3) One member shall be ~~experienced in alternative fuels and biofuels;~~a representative of an investor-owned natural gas public utility, to be appointed by the Speaker of the House of Representatives.

(4) One member shall be ~~experienced in energy efficient building design or construction;~~an energy economist or a person with experience in the financing or business development of an energy-related business, to be appointed by the President Pro Tempore of the Senate.

(5) One member shall ~~be experienced in environmental protection;~~have experience in energy policy, to be appointed by the President Pro Tempore of the Senate.

(6) One member ~~who is engaged in a business providing renewable energy or other energy services;~~shall be an industrial energy consumer, to be appointed by the Speaker of the House of Representatives.

(7) One member shall be knowledgeable of alternative and renewable sources of ~~energy;~~energy, to be appointed by the Governor.

(8) One member ~~who, at the time of appointment, is a county commissioner; or elected municipal officer; provided, the member's term on the Council shall expire immediately in the event that he or she vacates office as a county commissioner or municipal officer;~~shall have experience in trucking, rail, or shipping transportation, to be appointed by the Speaker of the House of Representatives.

(9) Repealed by Session Laws 2009-446, s. 4, effective August 7, 2009.

(10) ~~One member shall be knowledgeable in the finance, business development, or technology development of energy-related business;~~One member shall have experience in energy research and development, to be appointed by the President Pro Tempore of the Senate.

(11) ~~One member shall be experienced in low-income energy policy matters or low-income residential weatherization.~~One member shall have experience in environmental management, appointed by the Speaker of the House of Representatives.

(12) ~~One member shall be experienced in the petroleum industry.~~One member shall have experience in the biofuels industry, to be appointed by the President Pro Tempore of the Senate."

SECTION 9.(f) G.S. 113B-4 reads as rewritten:

"§ 113B-4. Chairman of Council; replacement; reimbursement of members.

(a) ~~On August 15, 2009, on January 31, 2011, and every four years thereafter, the Governor shall appoint a chair of the Council.~~The Council shall elect one of its members to serve as chair. The chair shall serve for a term of two years and may serve no more than two terms in total.

(b) In case of a vacancy in the membership on the Energy ~~Policy~~Jobs Council prior to the expiration of a member's term, a successor shall be appointed within 30 days of such vacancy for the remainder of the unexpired term by the appropriate official pursuant to the provisions of G.S. 113B-3.

(c) Members of the Energy ~~Policy~~ Jobs Council shall be reimbursed for their services pursuant to the provisions of G.S. 138-5."

SECTION 9.(g) G.S. 113B-5 reads as rewritten:

"§ 113B-5. Organization of the Council; adoption of rules of procedure therefor.

(a) To facilitate the work of the Energy ~~Policy~~ Jobs Council and for administrative purposes, the chairman of the Energy ~~Policy~~ Jobs Council, with the consent and approval of the members, may organize the work of the Council so as to carry out the provisions of this Chapter and to insure the efficient operation of the Council.

(b) The Energy ~~Policy~~ Jobs Council shall adopt its own rules of procedure and shall meet regularly at such times and in such places as it may deem necessary to carry out its functions.

(c) The Energy ~~Policy~~ Jobs Council is authorized to create such advisory committees as will be needed to assist the Council in its efforts and to assure adequate citizen-consumer input into those efforts. Members of advisory committees shall be appointed by the Council for terms not to exceed the expiration date of terms of then present public members of the Council."

SECTION 9.(h) G.S. 113B-6 reads as rewritten:

"§ 113B-6. General duties and responsibilities.

The goal of the Energy Jobs Council is to identify and utilize all domestic energy resources in order to ensure a secure, stable, and predictable energy supply and to protect the economy of the State, promote job creation, and expand business and industry opportunities while ensuring the protection and preservation of the State's natural resources, cultural heritage, and quality of life. The Energy ~~Policy~~Jobs Council ~~shall~~ may delegate its duties where appropriate to the Division of Energy, Mineral, and Land Resources of the Department of Environment and Natural Resources. The Council shall provide oversight and approval to the duties delegated to the Division. The Energy Jobs Council shall have the following general duties and responsibilities:

(1) To develop and recommend to the Governor and the General Assembly a comprehensive ~~long-range~~ State energy policy that addresses requirements in the short term (10 years), in the midterm (25 years), and in the long term (50 years) to achieve maximum effective management and use of present

and future sources of energy, such policy to include but not be limited to energy efficiency, renewable and alternative sources of energy, research and development into alternative energy technologies, and improvements to the State's energy infrastructure and energy ~~economy;~~economy, including smart grid and domestic energy resources that shall include at least natural gas, coal, hydroelectric power, solar, wind, nuclear energy, and biomass. For utilities regulated under Chapter 62 of the General Statutes, the policy developed under this subdivision shall be consistent with the analysis and plan developed under G.S. 62-110.1(c).

(2) To conduct an ongoing assessment of the opportunities and constraints presented by various uses of all forms of energy to facilitate the expansion of the domestic energy supply and to encourage the efficient use of all such energy forms in a manner consistent with State energy ~~policy;~~policy.

(3) To continually review and coordinate all State government research, education and management programs relating to energy ~~matters and~~matters, to continually educate and inform the general public regarding such energy ~~matters;~~matters, and to actively engage in discussions with the federal government, its agencies, and its leaders to identify opportunities to increase domestic energy supply within North Carolina and its adjacent offshore waters.

(4) To recommend to the Governor and to the General Assembly needed energy legislation and rule making, and to recommend for implementation such modifications of energy policy, ~~plans~~ plans, and programs as the Council considers necessary and desirable."

SECTION 9.(i) G.S. 113B-7 reads as rewritten:

"**§ 113B-7. Energy Efficiency Program; components.**

(a) The Energy ~~Policy~~ Jobs Council shall prepare a recommended Energy Efficiency Program for transmittal to the Governor, the initial plan to be completed by January 30, 1976.

(b) The Energy Efficiency Program shall be designed to assure the public health and safety of the people of North Carolina and to encourage and promote conservation of energy through reducing wasteful, inefficient or uneconomical uses of energy resources.

(c) The Energy Efficiency Program shall include but not be limited to the following recommendations:

(1) Recommendations to the Building Code Council for lighting, insulation, climate control systems and other building design and construction standards which increase the efficient use of energy and are economically feasible to implement;

(2) Recommendations to the Building Code Council for per unit energy requirement allotments based upon square footage for various classes of buildings which would reduce energy consumption, yet are both technically and economically feasible and not injurious to public health and safety;

(3) Recommendations for minimum levels of operating efficiency for all appliances whose use requires a significant amount of energy based upon both technical and economic feasibility considerations;

(4) Recommendations for State government purchases of supplies, vehicles and equipment and such operating practices as will make possible more efficient use of energy;

(5) Recommendations on energy conservation policies, programs and procedures for local units of government;

(6) Any other recommendations which the Energy ~~Policy~~ Jobs Council considers to be a significant part of a statewide conservation effort and

which include provisions for sufficient incentives to further energy conservation;

(7) An economic and environmental impact analysis of the recommended program.

(d) In addition to specific conservation recommendations, the Energy Efficiency Program shall contain proposals for implementation of such recommendations as can be carried out by executive order. Upon completion of a draft recommended program, the Council shall arrange for its distribution to interested parties and shall make the program available to the public and the Council further shall set a date for public hearing on said program.

(e) Upon completion of the Energy Efficiency Program, the Council shall transmit said program, to be known as the State Energy Efficiency Program, to the Governor for approval or disapproval. Upon approval, the Governor shall assign administrative responsibility for such implementation as can be carried out by executive order to appropriate agencies of State government, and submit to the General Assembly such proposals which require legislative action for implementation. The Governor shall have the authority to accept, administer, and enforce federal programs, program measures and permissive delegations of authority delegated to the Governor by the President of the United States, Congress, or the United States Department of Energy, on behalf of the State of North Carolina, which pertain to the conservation of energy resources.

(f) The Governor shall transmit the approved Energy Efficiency Program to the President Pro Tempore of the Senate, to the Speaker of the House of Representatives, to the heads of all State agencies and shall further seek to publicize such plan and make it available to all units of local government and to the public at large.

(g) At least every two years and whenever such changes take place as would significantly affect energy supply or demand in North Carolina, the Energy ~~Policy~~ Jobs Council shall review and, if necessary, revise the Energy Efficiency Program, transmitting such revised plan to the Governor pursuant to the procedures contained in subsections (e) and (f) of this section."

SECTION 9.(j) G.S. 113B-8(a) reads as rewritten:

"§ 113B-8. Energy Management Plan; components.

(a) The Energy ~~Policy~~ Jobs Council shall prepare a recommended Energy Management Plan for transmittal to the Governor, the initial plan to be completed by June 30, 1976."

SECTION 9.(k) G.S. 113B-9 reads as rewritten:

"§ 113B-9. Emergency Energy Program; components.

(a) The Energy ~~Policy~~ Jobs Council shall, in accordance with the provisions of this Article, develop contingency and emergency plans to deal with possible shortages of energy to protect public health, safety and welfare, such plans to be compiled into an Emergency Energy Program.

(b) ~~Within four months of July 1, 1975:~~ If required for an update of the program provided under subsection (j) of this section:

(1) Each electric utility and natural gas utility in the State shall prepare and submit to the Energy ~~Policy~~ Jobs Council a proposed emergency curtailment plan setting forth proposals for identifying priority loads or users in the event of the declaration of an energy crisis pursuant to G.S. 113B-20, and proposals for supply allocation to such priority loads or users. Utilities regulated under Chapter 62 of the General Statutes may satisfy this requirement by submitting the General Load Reduction and System Restoration Plan that is prepared annually for the Utilities Commission.

(2) Each major oil producer doing business in this State as determined by the Energy ~~Policy~~ Jobs Council shall prepare and submit to the Energy ~~Policy~~ Jobs Council an analysis of how any national supply curtailment pursuant to

federal regulations shall affect the supply for North Carolina and how priority users will be determined and available supplies allocated to such users.

(c) The Energy ~~Policy~~ Jobs Council shall encourage the preparation of joint emergency curtailment plans and analyses. If such cooperative plans and analyses are developed between two or more utilities, major producers or by an association of such companies, the joint plans or analyses may be submitted to the Energy ~~Policy~~ Jobs Council in lieu of information required pursuant to subsection (b) of this section.

(d) The Energy ~~Policy~~ Jobs Council shall collect from all relevant governmental agencies any existing contingency plans for dealing with sudden energy shortages or information related thereto.

(e) The Energy ~~Policy~~ Jobs Council shall hold one or more public hearings, investigate and review the plans submitted pursuant to this section, and, within nine months after July 1, 1975, the Energy ~~Policy~~ Jobs Council shall approve and recommend to the Governor guidelines for emergency curtailment to be known as the Emergency Energy Program and to be implemented upon adoption by the Governor after the declaration of an energy crisis and pursuant to G.S. 113B-20 and 113B-23. Said program shall be based upon the plans presented to the Energy ~~Policy~~ Jobs Council, upon independent analysis and study by the Council, and upon information provided at the hearing or hearings, provided, however, that they are consistent with such federal programs and regulations as are already in effect at that time.

(f) The Emergency Energy Program shall provide for the maintenance of essential services, the protection of public health, safety, and welfare, and the maintenance of a sound basic State economy. For utilities regulated under Chapter 62 of the General Statutes, the program shall be consistent with the General Load Reduction and System Restoration Plan that is prepared annually for the Utilities Commission. Provisions also shall be made in said program to differentiate curtailment of energy consumption by users on the basis of ability to accommodate such curtailments, and shall also include, but not be limited to, the following:

(1) A variety of strategies and staged conservation measures of increasing intensity and authority to reduce energy use during an energy crisis, as defined in G.S. 113B-20 and guidelines and criteria for allocation of energy sources to priority users. The program shall contain alternative conservation actions and allocation plans to reasonably meet various foreseeable shortage circumstances and to allow a choice of appropriate responses;

(2) Evidence that the program is consistent with requirements of federal emergency energy conservation and allocation laws and regulations;

(3) Proposals to assist such individuals, institutions, agriculture and businesses which have engaged in energy saving measures;

(g) The Energy ~~Policy~~ Jobs Council shall carry out such investigations and studies as are necessary to determine if and when potentially serious shortages of energy are likely to affect North Carolina and the Council shall make recommendations to the Governor concerning administrative and legislative actions required to avert such shortages, such recommendations to be included as a section of the Emergency Energy Program.

(h) In addition to the above information and recommendations, the program shall contain proposals for implementation of such recommendations which include procedures, rules and regulations and agency administrative responsibilities for implementation, and shall further contain procedures for fair and equitable review of complaints and requests for special exemptions from emergency conservation measures or emergency allocations. Upon completion of a draft recommended plan, the Council shall arrange for its distribution to interested parties and shall make such plan available to the public and the Council further shall set a date for public hearing on said plan.

(i) Upon completion of the Emergency Energy Allocation Program, the Council and the Governor shall follow the procedures as outlined in G.S. 113B-7(e) and (f).

(j) The Council shall update the Emergency Energy Allocation Program ~~said program~~ upon ~~a~~ finding ~~by it~~ that an update is ~~justified and~~justified. The Council shall follow the procedures for adoption pursuant to G.S. 113B-7(e) and (f).

(k) The Governor shall have the authority to accept, administer and enforce federal programs, program measures and permissive delegations of authority delegated to the Governor by the President of the United States, Congress, or the United States Department of Energy, on behalf of the State of North Carolina, which pertain to actions necessary to deal with an actual or impending energy shortage."

SECTION 9.(l) G.S. 113B-11 reads as rewritten:

"**§ 113B-11. Powers and authority.**

(a) The Energy ~~Policy~~ Jobs Council is authorized to secure directly from any officer, office, department, commission, board, bureau, institution and other agency of the State and its political subdivisions any information it deems necessary to carry out its functions; and all such officers and agencies shall cooperate with the Council and, to the extent permitted by law, furnish such information to the Council as it may request.

...

(e) Staff support required by the Council shall be supplied by the Division of Energy, Mineral, and Land Resources of the Department of Environment and Natural Resources. ~~The Department of Commerce shall provide the staffing capability to the Energy Policy Jobs Council so as to fully and effectively develop recommendations for a comprehensive State energy policy as contained in the provisions of this Article.~~ The Department of Commerce and the Utilities Commission ~~is~~ are hereby authorized to make ~~its~~ their staff available to the Council to assist in the development of a State energy policy."

SECTION 9.(m) G.S. 113B-12 reads as rewritten:

"**§ 113B-12. Annual reports; contents.**

(a) ~~Beginning January 1, 1977, and every year~~Every two years ~~thereafter,~~ the Energy ~~Policy~~ Jobs Council shall transmit to the Governor, the Speaker of the House of Representatives, the President Pro Tempore of the Senate, the Environmental Review Commission, the Joint Legislative Commission on Energy Policy, and the chairman of the Utilities Commission ~~Commission and the appropriate chairmen of the House and Senate committees concerned with energy matters,~~ a comprehensive report providing a general overview of energy conditions in the State. ~~On January 1, 1976, the Energy Policy Council shall transmit a progress report to the public officials named above.~~

(b) The report shall include, but not be limited to, the following:

(1) An overview of statewide growth and development as they relate to future requirements for energy, including patterns of urban and metropolitan expansion, shifts in transportation modes, modifications in building types and design, and other trends and factors which, as determined by the Council, will significantly affect energy needs;

(2) The level of statewide and multi-county regional energy demand for a five, 10- and 20-year forecast period which, in the judgment of the Council, can reasonably be met, with proposals as to possible energy supply sources;

(3) An assessment of growth trends in energy consumption and production and an identification of potential adverse social, economic, or environmental impacts which might be imposed by continuation of the present trends, including energy costs to consumers, significant increases in air, water, and other forms of pollution, threats to public health and safety, and loss of scenic and natural areas;

(4) An analysis of the role of energy efficiency, renewable energy, improvements to the State's energy infrastructure, and other means in meeting the State's current and projected energy demand;

(5) Repealed by Session Laws 2009-446, s. 9, effective August 7, 2009.

(6) Recommendations to the Governor and the General Assembly for additional administrative and legislative actions on energy matters;

(7) A summary of the Council's activities since ~~its inception,~~the last report, a description of major plans developed by the Council, an assessment of plan implementation, and a review of Council plans and programs for the coming biennium."

SECTION 9.(n) G.S. 113B-21(a) reads as rewritten:

"(a) ~~There is hereby created~~Upon the declaration of an energy crisis by the Governor, a Legislative Committee on Energy Crisis Management shall be created to consist of the Speaker, ~~as chairman,~~ the Speaker pro tempore of the House of ~~Representatives and~~Representatives, the President ~~pro tempore~~ Pro Tempore of the Senate, and the majority leader of the Senate. The Lieutenant Governor shall serve as chair, and shall be a nonvoting ex officio member, provided, however, that ~~he~~ the chair shall vote to break a tie."

SECTION 9.(o) G.S. 113B-23 reads as rewritten:

"§ 113B-23. Administration of plans and procedures.

(a) Upon the declaration of an energy crisis, pursuant to G.S. 113B-20, the Energy ~~Policy~~ Jobs Council shall become the emergency energy coordinating body for the State and shall carry out the following duties:

(1) Identify and determine the nature and severity of expected energy shortages;

(2) Provide for daily communications with and gather information from significant energy producers, distributors, transporters and major consumers, as determined by the Energy ~~Policy~~ Jobs Council, to carry out its responsibilities pursuant to this section;

(3) Provide data, carry out continuing assessments of the crisis situation, and make recommendations to the Governor and to the Legislative Committee on Energy Crisis Management for further action.

(b) Upon the declaration of an energy crisis, the Governor shall order the Energy ~~Policy~~ Jobs Council, the Utilities Commission, the Attorney General and other appropriate State and local agencies to implement and enforce the Emergency Energy Program pursuant to G.S. 113B-9 and any emergency rules, orders or regulations approved pursuant to G.S. 113B-22.

(c) Upon the declaration of an energy crisis, the Governor may employ such measures and give such direction to State and local offices and agencies as may be reasonable and necessary for the purpose of securing compliance with the provisions of this Article and with emergency rules, orders and regulations issued pursuant to G.S. 113B-22."

SECTION 9.(p) G.S. 113B-24(c) reads as rewritten:

"(c) The provisions of this Article or any rules, orders or regulations promulgated pursuant to G.S. 113B-22 may be enforced by bringing an action to enjoin such acts or practices as may be in violation and, upon a proper showing, a temporary restraining order or a preliminary or permanent injunction shall be issued. The relief sought may include a mandatory injunction commanding any person to comply with any such order, rule or regulation and restitution of money received in violation of any such order, rule or regulation. The Attorney General shall bring any action under this subsection upon the request of the Governor, the Legislative Committee on Energy Crisis Management, the Energy ~~Policy~~ Jobs Council, or upon his direction if he deems such action advisable and in the public interest. The Attorney General may institute such action in the Superior Court of Wake County, or, in his discretion, in the

superior court of the county in which the acts or practices constituting a violation occurred, are occurring or may occur."

SECTION 9.(q) G.S. 114-4.2D reads as rewritten:

"**§ 114-4.2D. Employment of attorney for Energy ~~Policy~~ Jobs Council of the Department of Environment and Natural Resources and the Energy Efficiency Program of the Department of Commerce.**

The Attorney General shall assign an attorney to work full time with the Energy ~~Policy~~ Jobs Council of the Department of Environment and Natural Resources and the Energy Efficiency Program of the Department of Commerce. Such attorney shall be subject to all provisions of Chapter 126 of the General Statutes relating to the State Personnel System. Such attorney shall also perform such additional duties as may be assigned by the Attorney General."

SECTION 9.(r) G.S. 143-58.5(c) reads as rewritten:

"(c) The Fund shall be used to offset the incremental fuel cost of biodiesel and biodiesel blend fuel with a minimum biodiesel concentration of B-20 for use in State vehicles, for the purchase of ethanol fuel with a minimum ethanol concentration of E-85 for use in State vehicles, the incremental vehicle cost of purchasing AFVs, for the development of related refueling infrastructure, for the costs of administering the Fund, and for projects approved by the Energy ~~Policy~~ Jobs Council."

SECTION 9.(s) G.S. 143-345.13 reads as rewritten:

"**§ 143-345.13. Reporting of stocks of coal and petroleum fuels.**

The Department of Administration may, with the prior express approval of the Energy ~~Policy~~ Jobs Council and the Governor, require that all coal and petroleum suppliers in North Carolina supplying coal, motor gasoline, middle distillates, residual oils, and propane for resale within the State, file with the Department of Administration, on forms prepared by the Department, accurate reports as to the stocks of coal and petroleum products and storage capacities maintained by the supplier, including the supplier's current inventory and stock of coal, motor gasoline, middle distillates, residual oils and propane, the expected time such supplies will last under ordinary distribution demand and the schedule for receiving additional or replacement stocks. The reports and the information contained therein shall be proprietary information available only to regular employees of the Department of Administration, except that aggregate tables or schedules consolidating information from the reports may be released if they do not reveal individual report data for any named supplier. It is further the intent of this section that no information shall be required from coal and petroleum suppliers, that is, at the time the reports are requested, already on file with any agency, commission, or department of State government.

It is the intent of this section that the reports be filed only at such times as the Energy ~~Policy~~ Jobs Council and the Governor determine that an energy crisis as defined in G.S. 113B-20 exists or may be imminent.

If any petroleum or coal supplier fails to file the accurate reports as may be required by this section for more than 10 days after the date on which any such report is due, the Secretary of Administration is authorized and empowered to petition the district court, Division of the General Court of Justice, in the county in which the principal office or place of business of the supplier is located, for a mandatory injunction compelling the supplier to file the report."

SECTION 9.(t) Article 7 of Chapter 143B of the General Statutes is amended by adding a new Part to read:

"Part 31. Energy Jobs Council.

"**§ 143B-281.1. Energy Jobs Council – transfer.**

The Energy Jobs Council, as established by Chapter 113B of the General Statutes and other applicable laws of this State, is hereby transferred to the Department of Environment and Natural Resources by a Type II transfer as defined in G.S. 143A-6."

SECTION 9.(u) Notwithstanding G.S. 113B-3 or any other law to the contrary, the terms of all members of the Energy Policy Council serving as of the effective date of this act shall expire on the effective date of this act or on June 30, 2013, whichever comes first. Initial appointments shall be made pursuant to subsection (c) of G.S. 113B-3, as amended by Section 9(e) of this act, no later than July 1, 2013.

SECTION 9.(v) The Revisor of Statutes shall make the conforming statutory changes necessary to reflect renaming of the Energy Jobs Act and the Energy Jobs Council as provided in this section. The Revisor of Statutes may correct any reference in the General Statutes to the statutes that are recodified by this section and make any other conforming changes necessitated by this section.

PART X. MODIFY ELECTRICAL REQUIREMENTS RULE TO ALLOW HOSPITALS TO USE COMPRESSED NATURAL GAS AS EMERGENCY FUEL

SECTION 10.(a) Definitions. – "Electrical Requirements Rule" means 10A NCAC 13B .6227 (Licensing of Hospitals: Electrical Requirements) for purposes of this section and its implementation.

SECTION 10.(b) Electrical Requirements Rule. – Until the effective date of the revised permanent rule that the Medical Care Commission is required to adopt pursuant to Section 10(c) of this act, the Commission and the Department of Health and Human Services shall implement the Electrical Requirements Rule, as provided in Section 10(c) of this act.

SECTION 10.(c) Implementation. – Notwithstanding subdivision (2) of subsection (f) of the Electrical Requirements Rule, the Commission shall authorize facilities licensed by the Department to use bi-fuel generators that operate with both liquid fuel and natural gas (methane) that is not stored on the site, provided that the natural gas is delivered via pipe or pipeline by a natural gas utility. These bi-fuel generators shall be exempt from liquid fuel capacity standards established by the Commission. Bi-fuel generators that operate on both liquid and other gaseous fuels, including propane and butane, that are stored on the site shall also be authorized, provided that the combined capacity of both liquid and gaseous fuels meet minimum on-site fuel requirements established by the Commission. The Commission may adopt rules to require a licensed facility with a bi-fuel generator to develop a contingency plan for liquid fuel delivery onto the site in the event of a natural gas (methane) supply disruption.

SECTION 10.(d) Additional Rule-Making Authority. – The Commission shall adopt a rule to replace the Electrical Requirements 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 10(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. 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.(e) Effective Date. – Subsection (b) of this section expires when permanent rules to replace subsection (b) of this section have become effective, as provided by subsection (c) of this section.

PART XI. EFFECTIVE DATE

SECTION 11. Section 1(b) of this act becomes effective March 1, 2015. Section 3(b) of this act is effective when it becomes law and applies retroactively to October 1, 2012. Sections 5(a) through 5(c) of this act are effective for energy minerals sold on or after March 1, 2015, except that G.S. 105-187.76, as enacted by Section 5(a) of this act, becomes effective only if authorized by the General Assembly in the Current Operations and Capital Improvements Appropriations Act of 2013. G.S. 113B-30, enacted by Section 7 of this act, becomes effective only if authorized by the General Assembly in the Current Operations and

Capital Improvements Appropriations Act of 2013. The first report due pursuant to G.S. 113B-12, as amended by Section 9(m) of this act, shall be transmitted on or before January 1, 2014. Except as otherwise provided, the remainder of this act is effective when it becomes law.

SENATE BILL 76:
Domestic Energy Jobs Act

2013-2014 General Assembly

Committee:	Senate Commerce	**Date:**	February 19, 2013
Introduced by:	Sens. Newton, Rucho, Brock	**Prepared by:**	Jennifer McGinnis and Heather Fennell Staff Attorneys
Analysis of:	PCS to Second Edition S76-CSRIf-2		

SUMMARY: ***The Proposed Committee Substitute (PCS) for Senate Bill 76 would modify provisions related to oil and gas exploration and development activities in the State, including the use of horizontal drilling and hydraulic fracturing treatments for that purpose; impose a tax for the severance of energy minerals from the soil or water of the State and make associated changes; appropriate monies to the Department of Environment and Natural Resources to operate the Mining and Energy Commission and for related expenditures; assign future revenue from offshore energy production; encourage the Governor to develop a regional compact for offshore energy exploration; amend the Energy Policy Act (renamed as the Energy Policy and Jobs Act) and the Energy Policy Council (reconstituted as the Energy Jobs Council); and direct the Medical Care Commission to adopt rules authorizing facilities licensed by the Department of Health and Human Services to use compressed natural gas as an emergency fuel.***

CHANGES MADE BY PCS TO 2nd ED: The PCS would add language to the statute governing appointments to the Mining and Energy Commission (MEC) to provide that membership on the Commission may be held concurrently with other elective or appointive offices in addition to the maximum number of offices permitted to be held by one person under G.S. 128-1.1 (which generally allows for dual office holding), and would make other technical and clarifying changes.

CURRENT LAW AND BACKGROUND: In 2012, the General Assembly enacted legislation that directed various State agencies to develop 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 (S.L. 2012-143 (S820, "Clean Energy and Economic Security Act")). Specifically, the act gave MEC the authority to adopt rules necessary to administer the State's Oil and Gas Conservation Act and to make determinations and issue orders accordingly. MEC and other entities were specifically directed to adopt rules no later than October 1, 2014.

The act also amended several statutes that had historically prohibited the processes of horizontal drilling and hydraulic fracturing in order to authorize these processes, but prohibited issuance of permits for these activities until such time as the General Assembly took subsequent legislative action to allow issuance of permits.

BILL ANALYSIS:

PART I. Issuance of Permits

Section 1.(a) of the PCS would authorize issuance of permits for oil and gas exploration and development activities using horizontal drilling and hydraulic fracturing treatments in the State by the the Department of Environment and Natural Resources (DENR) and MEC, effective March 1, 2015.

Section 1.(b) of the PCS, which would become effective March 1, 2015, would repeal Section 3.(d) of the Clean Energy and Economic Security Act, which provides:

> "The issuance of permits for oil and gas exploration and development activities using horizontal drilling and hydraulic fracturing treatments in the State... shall be prohibited in order to allow the Mining and Energy Commission sufficient time for development of a modern regulatory program for the management of oil and gas exploration and development in the State and the use of horizontal drilling and hydraulic fracturing treatments for that purpose, and for adoption of appropriate environmental standards applicable to these activities. No agency of the State, including the Department of Environment and Natural Resources, the Environmental Management Commission, the Commission on Public Health, or the Mining and Energy Commission, shall issue a permit for oil or gas exploration or development activities using horizontal drilling and hydraulic fracturing treatments until the General Assembly takes legislative action to allow the issuance of such permits."

Section 1.(b) of the PCS would require MEC to study development of a coordinated permitting program for oil and gas exploration and development activities using horizontal drilling and hydraulic fracturing treatments in order that a single comprehensive environmental permit could be issued that would govern all of an applicant's exploration and development activities. MEC must report its findings and recommendations to the Environmental Review Commission and the Joint Legislative Commission on Energy Policy on or before October 1, 2013.

PART II. Mining and Energy Commission Appointment Modifications

Section 2.(a) of the PCS would eliminate two ex officio members of MEC, the State Geologist and the Assistant Secretary of Energy for the Department of Commerce. In addition, the provision modifies: (1) two positions designated for elected officials of local governments, to provide that they may continue to serve as a member of MEC even if they are no longer serving as a local elected official; and (2) the positions designated for the Environmental Management Commission and the Commission for Public Health to eliminate specific knowledge requirements as to principles of water and air resources management, and principles of waste management, respectively. The PCS would also add language to provide that membership on MEC may be held concurrently with other elective or appointive offices in addition to the maximum number of offices permitted to be held by one person under G.S. 128-1.1 (which generally allows for dual office holding).

Section 2.(b) of the PCS would provide that the membership of persons serving in the positions designated for the Environmental Management Commission or the Commission for Public Health terminate immediately should those persons' membership in their respective commission terminate.

PART III. Miscellaneous Modifications to the Oil and Gas Conservation Act: "Allowables" and Repeal of Landmen Registry

Section 3.(a) of the PCS would eliminate language under existing law that would require MEC to limit the total amount of oil and gas produced in the State if the total amount of oil and gas that can be produced from all pools in the State exceeds the amount reasonably required to meet the reasonable market demand in the State. Instead, the PCS would allow MEC to fix an amount that may be produced (an "allowable"), and would allow MEC to formulate rules accordingly.

Section 3.(b) of the PCS would repeal the landmen registry enacted in 2012 as part of the Clean Energy and Economic Security Act. The 2012 provision required DENR to establish and maintain a registry of landmen operating in this State. Under the statute "landman" is defined as a person that, in the course and scope of the person's business, does any of the following: (1) acquires or manages oil or gas interests; (2) performs title or contract functions related to the exploration, exploitation, or disposition of oil, gas; (3) negotiates for the acquisition or divestiture of oil, gas, including the acquisition or divestiture of land or oil, gas, for a pipeline; or (4) negotiates business agreements that provide for the exploration for or development of oil, gas. The statute also authorizes DENR to deny registration to an applicant, reprimand a registrant, suspend or revoke a registration, or impose a civil penalty on a

registrant if the Department determines that the applicant or registrant does any of the following: (1) fraudulently or deceptively obtains, or attempts to obtain, a registration; (2) uses or attempts to use an expired, suspended, or revoked registration; (3) falsely represents oneself as a registered landman; (4) engages in any other fraud, deception, misrepresentation, or knowing omission of material facts related to oil or gas interests; or (5) had a similar registration or license denied, suspended, or revoked in another state or jurisdiction. The PCS would repeal the provision retroactively to the date it originally became effective, October 1, 2012.

PART IV. Amend Statute Governing Subsurface Fluid Injection

Section 3.(b) of the PCS would amend a statute that prohibits the discharge of any wastes to the subsurface or groundwaters of the State by means of wells. In 2012, as part of the Clean Energy and Economic Security Act, the statute was modified to exempt injections of hydraulic fracturing fluid associated with exploration or development of natural gas resources. That language would be modified under the PCS to exempt "fluid associated with exploration, production, or development of natural gas resources."

PART V. Severance Taxes

Section 5 of the PCS would repeal North Carolina's current severance tax and levies a new severance tax on the removal of energy minerals from the soil and water of the State. The current State severance tax was enacted in 1945 and has not been modified since 1973. No tax is currently collected. The current tax is five mills on each barrel of oil (the equivalent of .5¢ per barrel of oil) and one-half mill on each 1000 cubic feet of gas (the equivalent of .05¢ per 1000 cubic feet of gas). The new severance tax would add condensates to the tax base, raise the tax rate on oil, and create a floating tax rate for gas.

Energy minerals are defined in the PCS to include all forms of natural gas, oil, and related condensates. Thirty one states, including North Carolina, currently impose some form of severance taxes on the extraction of oil and gas. Of the 31 states, 23 states impose a tax as a percentage of the value of the resource extracted, 3 states impose a tax per standard unit of the resource extracted, and 5 states impose a tax that is a combination of the two methods.

Rate of Tax – The rate of the severance tax varies by type of mineral extracted.

Type	Year	Amount
Condensates	2015, 2016, 2017	1% of market value
	2018, 2019	2.5% of market value
	2020 and thereafter	6% of market value
Gas		Rate floats with market price. Tax rate calculated on each transaction. Rate is sales price per 1,000 cubic feet of gas, divided by 100, stated as a percentage.[1] The tax rate is subject to the following limits:
	2015, 2016, 2017	Not to exceed 1%
	2018, 2019	Not to exceed 2.5%
	2020 and thereafter	At least 2.5% but not to exceed 6%
Oil	2015, 2016, 2017	1% of market value
	2018, 2019	2.5% of market value
	2020 and thereafter	6% of market value

[1] For example, the price of natural gas was $3.35 in Nov 2012. 3.35/100 stated as a percentage is 3.35%. According to the US Energy Information Administration (an agency within the US Department of Energy), the price of natural gas over the past 5 years has ranged from $1.89 per MCF to $10.79 per MCF, which would result in a tax rate ranging from 1.89% to 10.79%, subject to the statutory rate limits.

Tax Base, Market value – The tax rate would be applied to the market value of the mineral sold. For condensates and oil, the market rate is the total actual gross price paid by the first purchaser of the condensate or oil.

For gas, the market value is the actual gross price paid minus marketing costs. As defined in the PCS, marketing costs do not include costs for which a producer receives a reimbursement, production costs, or insurance premiums. Marketing costs include:

- Costs for compressing the gas sold.
- Costs for dehydrating the gas sold.
- Costs for sweetening the gas sold.
- Costs for delivering the gas to the purchaser.
- Costs for gathering the gas sold.

Administration – The tax would be the liability of the producer of the gas. The producer is the entity that extracts the mineral from the soil or the water of the State. Returns and taxes are due on either a monthly or quarterly basis, depending on the tax liability of the producer. A bond or letter of credit would be required for producers that fail to file a return or make a payment of tax due.

Allocation of Revenue – The revenue received from severance taxes would be allocated in the following manner:

- First 25%, up to $1 million each year to DENR to administer its duties under Article 27 of Chapter 113, the Oil and Gas Conservation Act.
- Of the remaining revenue:
    - 50% to General Fund.
    - 50% to Onshore Emergency Management Fund to reach and maintain a balance of $10 million. Once the Fund balance is reached, revenues would be directed to General Fund. The Onshore Emergency Management Fund must be used for emergency preparation, emergency response, emergency environmental protection, or mitigation associated with onshore energy.

Permit Suspension – Permits for oil and gas exploration using horizontal drilling or hydraulic fracturing would be suspended for any producer that fails to file a return or make a payment for severance taxes.

No Local Taxes – Local governments would not be authorized to impose any additional taxes on the severance of energy minerals in the State.

The provisions concerning the severance tax would be effective for energy minerals sold on or after March 1, 2015, except that the provision concerning the allocation of revenue becomes effective only if authorized by the General Assembly in the Current Operations and Capital Improvements Appropriations Act of 2013.

PART VI. Appropriation from Mineral Interest Fund for Operation of MEC

Section 6 of the PCS would appropriate $22,900 from the Mineral Interest Fund to DENR for the 2012-2013 fiscal year to be used to operate MEC and for payment of expenditures related to the MEC's implementation of legislative mandates, including the hiring of temporary or contract employees to assist with policy development and rule making.

PART VII. Revenue from Offshore Energy Production

Section 7 of the PCS would require that any revenues or royalties paid to the State from offshore leasing, exploration, development, and production of energy would be deposited in an interest-bearing special revenue fund to be established within the State treasury until the fund reaches $50 million. The fund could be used only for emergency preparation, emergency response, emergency environmental protection, or mitigation associated with a release of liquid hydrocarbons or associated fluids directly related to offshore energy exploration, development, production, or transmission. At any point the fund exceeds $50 million (allowing use and replenishment up to that amount for the specified purposes) the revenues or royalties paid to the State from offshore leasing, exploration, development, and production of energy would be directed to the General Fund, the Highway Trust Fund, the Community Colleges System Office and the Board of Governors of The University of North Carolina System for certain programs, DENR, the State Ports Authority, and the Department of Commerce for certain purposes).

This provision becomes effective only if authorized by the General Assembly in the Current Operations and Capital Improvements Appropriations Act of 2013.

PART VIII. Regional Interstate Offshore Energy Policy Compact

Section 8 of the PCS would strongly encourage the Governor to develop a compact with the governors of South Carolina and Virginia to develop a regional strategy for exploration of offshore energy resources. The PCS provides that the compact negotiations and recommendations should address at least all of the following:

- Timely review and consideration of state and federal permits and proposals for seismic and other marine geophysical exploration to identify and quantify natural gas and related hydrocarbon resources along the continental margin.
- Amendment of the 2012 to 2017 Five Year Leasing Plan of the United States Department of the Interior (DOI) to include leasing federal waters adjacent to the State and the three-state region for the exploration, quantification, and development of natural gas and related hydrocarbon energy resources.
- Proactive advocacy with federal officials to ensure direct sharing of royalties and revenues related to energy leasing, exploration, development, and production of all offshore energy resources in federal waters adjacent to the State and the three-state region.
- Request that DOI: (1) reinstate and reappoint the federal Offshore Policy Committee; and (2) immediately move forward with permitting geological and geophysical data acquisition activities associated with oil and gas exploration in the Mid- and South Atlantic Planning Areas of the Atlantic Outer Continental Shelf as outlined in Alternative A of the Bureau of Ocean Energy Management's Draft Programmatic Environmental Impact Statement entitled "Atlantic OCS Proposed Geological and Geophysical Activities" published in 2012.

The Governor would also be encouraged to work with the states' Congressional delegations and applicable federal agencies to develop strategies for increasing domestic energy supply. The Governor is directed to develop recommendations for the General Assembly's consideration in enacting a regional compact, and report to the General Assembly periodically on the progress of the matter.

In addition, the PCS would encourage the Governor to join the Governors of Alaska, Texas, Louisiana, Mississippi, Alabama, South Carolina, and Virginia and any others who may sign on to the Outer Continental Shelf Governors Coalition announced on May 3, 2011, to promote a constructive dialogue among the coastal state governors and the federal government concerning offshore energy issues. The Governor would be authorized to expend funds related to membership in the Coalition.

PART IX. Energy Policy Act and Energy Policy Council Amendments

Section 9 of the PCS would retitle the Energy Policy Act as the Energy Policy and Jobs Act (Act), and rename the Energy Policy Council as the Energy Jobs Council (Council). The PCS would transfer the Energy Jobs Council from the Department of Commerce to DENR, and designate that staff support would be supplied by the Division of Energy, Mineral, and Land Resources of DENR.

The Council would be reconstituted with new membership requirements, and the number of appointments would be reduced from 16 to 13. Under the PCS the terms of the current members of the Energy Policy Council would terminate when the bill became law or on June 30, 2013, whichever comes first, and new appointments would be made no later than July 1, 2013.

The purpose of the reconstituted council would be to advise and make recommendations to increase domestic energy exploration, development, and production within the State and region in order to promote economic growth and jobs. The goal of the Energy Jobs Council would be to identify and utilize domestic energy sources to ensure a secure, stable, and predictable energy supply, and for other purposes. The duties of the Council would be amended to include the following:

- Develop and recommend a comprehensive State energy policy that addresses requirements in the short term (10 years), in the midterm (25 years), and in the long term (50 years) to achieve maximum effective management and use of present and future sources of domestic energy resources, including smart grid and domestic energy resources such as natural gas, coal, hydroelectric power, solar, wind, nuclear energy, and biomass.
- Conduct ongoing assessments of opportunities and constraints presented by uses of all forms of energy to facilitate the expansion of the domestic energy supply.
- Actively engage in discussions with the federal government, its agencies, and its leaders to identify opportunities to increase domestic energy supply within North Carolina and its adjacent offshore waters.

PART X. Modify Electrical Requirements Rule to Allow Hospitals to Use Compressed Natural Gas as Emergency Fuel

Section 10 of the PCS would direct the Medical Care Commission to adopt a rule to replace the "Electrical Requirements Rule" (10A NCAC 13B .6227(f)(2), "Licensing of Hospitals: Electrical Requirements"), which currently provides that facilities licensed by the Department of Health and Human Services must provide emergency electrical to the facilities with **fuel that is stored on site** in sufficient quantity to provide for not less than 24 hours of operation. The PCS would require replacement of this rule to allow such facilities to use bi-fuel generators that operate with both liquid fuel and natural gas (methane) **that is not stored on the site**, provided that the natural gas is delivered via pipe or pipeline by a natural gas utility. These bi-fuel generators would be exempt from liquid fuel capacity standards established by the Medical Care Commission. Bi-fuel generators that operate on both liquid and other gaseous fuels, including propane and butane, that are stored on the site would also be authorized, provided that the combined capacity of both liquid and gaseous fuels meet minimum on-site fuel requirements established by the Commission. Further, the Medical Care Commission would be authorized to adopt rules to require a licensed facility with a bi-fuel generator to develop a contingency plan for liquid fuel delivery onto the site in the event of a natural gas (methane) supply disruption.

PART XI. Effective Date

Except as otherwise noted, the provisions of the PCS would become effective when the bill becomes law.

SENATE BILL 76
Finance Committee Substitute Adopted 2/14/13

Short Title: Domestic Energy Jobs Act. (Public)

Sponsors:

Referred to:

February 12, 2013

A BILL TO BE ENTITLED

AN ACT TO (1) AUTHORIZE THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES TO ISSUE PERMITS ON OR AFTER MARCH 1, 2015, FOR OIL AND GAS EXPLORATION AND DEVELOPMENT ACTIVITIES IN THE STATE, INCLUDING THE USE OF HORIZONTAL DRILLING AND HYDRAULIC FRACTURING TREATMENTS FOR THAT PURPOSE; (2) DIRECT THE MINING AND ENERGY COMMISSION TO STUDY DEVELOPMENT OF A COMPREHENSIVE ENVIRONMENTAL PERMIT FOR OIL AND GAS EXPLORATION AND DEVELOPMENT ACTIVITIES USING HORIZONTAL DRILLING AND HYDRAULIC FRACTURING TREATMENTS; (3) MODIFY APPOINTMENTS TO THE MINING AND ENERGY COMMISSION; (4) MODIFY PROVISIONS IN THE OIL AND GAS CONSERVATION ACT CONCERNING THE MINING AND ENERGY COMMISSION'S AUTHORITY TO SET "ALLOWABLES"; (5) ELIMINATE THE REGISTRATION REQUIREMENTS FOR PERSONS CONDUCTING LANDMEN ACTIVITIES IN THE STATE; (6) AMEND THE STATUTE GOVERNING SUBSURFACE INJECTION OF FLUID; (7) PROVIDE A TAX FOR THE SEVERANCE OF ENERGY MINERALS FROM THE SOIL OR WATER OF THE STATE, REPEAL OUTDATED OIL AND GAS TAX STATUTES, AND AUTHORIZE THE SUSPENSION OF PERMITS FOR FAILURE TO FILE A RETURN FOR SEVERANCE TAXES; (8) APPROPRIATE MONIES FROM THE MINERAL INTEREST FUND TO THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES TO OPERATE THE MINING AND ENERGY COMMISSION AND FOR RELATED EXPENDITURES; (9) ASSIGN FUTURE REVENUE FROM ENERGY EXPLORATION, DEVELOPMENT, AND PRODUCTION OF ENERGY RESOURCES IN ORDER TO PROTECT AND PRESERVE THE STATE'S NATURAL RESOURCES, CULTURAL HERITAGE, AND QUALITY OF LIFE; (10) ENCOURAGE THE GOVERNOR TO DEVELOP THE REGIONAL INTERSTATE OFFSHORE ENERGY POLICY COMPACT; (11) AMEND THE ENERGY POLICY ACT OF 1975 AND THE ENERGY POLICY COUNCIL; AND (12) DIRECT THE MEDICAL CARE COMMISSION TO ADOPT RULES AUTHORIZING FACILITIES LICENSED BY THE DEPARTMENT OF HEALTH AND HUMAN SERVICES TO USE COMPRESSED NATURAL GAS AS AN EMERGENCY FUEL.

The General Assembly of North Carolina enacts:

PART I. ISSUANCE OF PERMITS

SECTION 1.(a) Effective March 1, 2015, the Department of Environment and Natural Resources and the Mining and Energy Commission are authorized to issue permits for oil and gas exploration and development activities using horizontal drilling and hydraulic fracturing treatments in the State pursuant to G.S. 113-395.

SECTION 1.(b) Section 3(d) of S.L. 2012-143 is repealed.

SECTION 1.(c) The Mining and Energy Commission, with the assistance of the Department of Environment and Natural Resources, shall study development of a coordinated permitting program for oil and gas exploration and development activities using horizontal drilling and hydraulic fracturing treatments in order that a single comprehensive environmental permit may be issued to a permit applicant to govern the applicant's exploration and development activities at a site, including, but not limited to, regulation of the following matters: well construction, siting, and closure requirements; hydraulic fracturing treatments, including subsurface injection of fluids for that purpose; water quality, including stormwater control, and management of water resources; management of waste; and regulation of air emissions. The Department of Environment and Natural Resources shall seek any approvals necessary from the United States Environmental Protection Agency for a coordinated permitting program to allow issuance of a single comprehensive environmental permit for oil and gas exploration and development activities using horizontal drilling and hydraulic fracturing treatments. The Mining and Energy Commission shall report its findings and recommendations to the Environmental Review Commission and the Joint Legislative Commission on Energy Policy on or before October 1, 2013.

PART II. MINING AND ENERGY COMMISSION APPOINTMENT MODIFICATIONS

SECTION 2.(a) G.S. 143B-293.2 reads as rewritten:

"**§ 143B-293.2. North Carolina Mining and Energy Commission – members; selection; removal; compensation; quorum; services.**

(a) Members Selection. – The North Carolina Mining and Energy Commission shall consist of ~~15~~ 13 members appointed as follows:

(1) The Chair of the North Carolina State University Minerals Research Laboratory Advisory Committee, or the Chair's designee, ex officio.

~~(2) The State Geologist, or the State Geologist's designee, ex officio.~~

~~(3) The Assistant Secretary of Energy for the Department of Commerce, ex officio.~~

(4) One appointed by the General Assembly upon recommendation of the Speaker of the House of Representatives who is a member of a nongovernmental conservation interest.

(5) One appointed by the General Assembly upon recommendation of the Speaker of the House of Representatives ~~who~~ who, at the time of initial appointment, is an elected official of a municipal government located in ~~the Triassic Basin of North Carolina.~~ a region of North Carolina that has oil and gas potential. A person serving in this seat may complete a term on the Commission even if they are no longer serving as an elected official of a municipal government and may be reappointed to a second term.

(6) One appointed by the General Assembly upon recommendation of the Speaker of the House of Representatives who is a representative of the mining industry.

(7) One appointed by the General Assembly upon recommendation of the Speaker of the House of Representatives who shall be a geologist with experience in oil and gas exploration and development.

(8) One appointed by the General Assembly upon recommendation of the President Pro Tempore of the Senate who is a member of a nongovernmental conservation interest.

(9) One appointed by the General Assembly upon recommendation of the President Pro Tempore of the Senate ~~who~~ who, at the time of initial appointment, is a member of a county board of commissioners of a county located in ~~the Triassic Basin of North Carolina.~~a region of North Carolina that has oil and gas potential. A person serving in this seat may complete a term on the Commission even if they are no longer serving as county commissioner and may be reappointed to a second term.

(10) One appointed by the General Assembly upon recommendation of the President Pro Tempore of the Senate who is a representative of the mining industry.

(11) One appointed by the General Assembly upon recommendation of the President Pro Tempore of the Senate who shall be an engineer with experience in oil and gas exploration and development.

(12) One appointed by the Governor who shall be a representative of a publicly traded natural gas company.

(13) One appointed by the Governor who shall be a licensed attorney with experience in legal matters associated with oil and gas exploration and development.

(14) One appointed by the Governor who is a member of the Environmental Management Commission.~~Commission and knowledgeable in the principles of water and air resources management.~~

(15) One appointed by the Governor who is a member of the Commission for Public Health.~~Health and knowledgeable in the principles of waste management.~~

...."

SECTION 2.(b) The term of the member serving pursuant to subdivision (14) of G.S. 143B-293.2(a), as amended by Section 2(a) of this act, shall terminate immediately should that individual's membership on the Environmental Management Commission terminate. The term of the member serving pursuant to subdivision (15) of G.S. 143B-293.2(a), as amended by Section 2(a) of this act, shall terminate immediately should that individual's membership on the Commission for Public Health terminate.

PART III. MISCELLANEOUS MODIFICATIONS TO THE OIL AND GAS CONSERVATION ACT: ALLOWABLES AND REPEAL OF LANDMEN REGISTRY.

SECTION 3.(a) G.S. 113-394 reads as rewritten:

"**§ 113-394. Limitations on production; allocating and prorating "allowables."**

(a) ~~Whenever the total amount of oil, including condensate, which all the pools in the State can produce, exceeds the amount reasonably required to meet the reasonable market demand for oil, including condensate, produced in this State, then the~~The Commission ~~shall~~ may limit the total amount of oil, including condensate, which may be produced in the State by fixing an amount which shall be designated "allowable" for ~~this State, which will not exceed the reasonable market demand for oil, including condensate, produced in this~~ the State. The Commission ~~shall~~ may then allocate or distribute the "allowable" for the State among the pools on a reasonable basis and in such manner as to avoid undue discrimination, and so that waste will be prevented. In allocating the "allowable" for the State, and in fixing "allowables" for pools producing oil or hydrocarbons forming condensate, or both oil and such hydrocarbons, the Commission ~~shall~~ may take into account the producing conditions and other relevant facts with respect to such pools, including the separate needs for oil, gas and condensate, and ~~shall~~

may formulate rules setting forth standards or a program for the distribution of the "allowable" for the State, and ~~shall~~ distribute the "allowable" for the State in accordance with such standards or program, and where conditions in one pool or area are substantially similar to those in another pool or area, then the same standards or programs shall be applied to such pools and areas so that as far as practicable a uniform program will be followed; provided, however, the Commission shall allow the production of a sufficient amount of natural gas from any pool to supply adequately the reasonable market demand for such gas for light and fuel purposes if such production can be obtained without waste, and the condensate "allowable" for such pool shall not be less than the total amount of condensate produced or obtained in connection with the production of the gas "allowable" for light and fuel purposes, and provided further that, if the amount allocated to pool as its share of the "allowable" for the State is in excess of the amount which the pool should produce to prevent waste, then the Commission shall fix the "allowable" for the pool so that waste will be prevented.

~~(b) The Commission shall not be required to determine the reasonable market demand applicable to any single pool except in relation to all pools producing oil of similar kind and quality and in relation to the demand applicable to the State, and in relation to the effect of limiting the production of pools in the State.~~ In allocating "allowables" to pools, the Commission shall not be bound by nominations or desires of purchasers to purchase oil from particular fields or areas, and the Commission shall allocate the "allowable" for the State in such manner as will prevent undue discrimination against any pool or area in favor of another or others which would result from selective buying or nominating by purchasers of oil, as such term "selective buying or nominating" is understood in the oil business.

(c) Whenever the Commission limits the total amount of oil or gas which may be produced in any pool in this State to an amount less than that which the pool could produce if no restrictions were imposed (which limitation may be imposed either incidental to, or without, a limitation of the total amount of oil or gas which may be produced in the State), the Commission shall prorate or distribute the "allowable" production among the producers in the pool on a reasonable basis, and so that each producer will have the opportunity to produce or receive his just and equitable share, as such share is set forth in subsection G.S. 113-392(d), subject to the reasonable necessities for the prevention of waste.

(d) Whenever ~~the total amount of gas which can be produced from any pool in this State exceeds the amount of gas reasonably required to meet the reasonable market demand therefrom,~~ the Commission ~~shall limit~~ limits the total amount of gas which may be produced from ~~such pool. The~~ a pool, the Commission shall then allocate or distribute the allowable production among the developed areas in the pool on a reasonable basis, so that each producer will have the opportunity to produce his just and equitable share, as such share is set forth in subsection G.S. 113-392(d), whether the restriction for the pool as a whole is accomplished by order or by the automatic operation of the prohibitory provisions of this law. As far as applicable, the provisions of subsection (a) of this section shall be followed in allocating any "allowable" of gas for the State.

(e) After the effective date of any rule or order of the Commission fixing the "allowable" production of oil or gas, or both, or condensate, no person shall produce from any well, lease, or property more than the "allowable" production which is fixed, nor shall such amount be produced in a different manner than that which may be authorized."

SECTION 3.(b) G.S. 113-425 is repealed.

PART IV. AMEND STATUTE GOVERNING SUBSURFACE FLUID INJECTION

SECTION 4. G.S. 143-214.2 reads as rewritten:

"**§ 143-214.2. Prohibited discharges.**

(a) The discharge of any radiological, chemical or biological warfare agent or high-level radioactive waste to the waters of the State is prohibited.

(b) The discharge of any wastes to the subsurface or groundwaters of the State by means of wells is prohibited. This section shall not be construed to prohibit (i) the operation of closed-loop groundwater remediation systems in accordance with G.S. 143-215.1A or (ii) injection of ~~hydraulic fracturing~~ fluid ~~for~~ associated with the ~~exploration~~ exploration, production, or development of natural gas resources.

(c) Unless permitted by a rule of the Commission, the discharge of wastes, including thermal discharges, to the open waters of the Atlantic Ocean over which the State has jurisdiction are prohibited."

PART V. SEVERANCE TAXES

SECTION 5.(a) Chapter 105 of the General Statutes is amended by adding a new Article to read:

"Article 5I.

"Severance Tax.

"**§ 105-187.71. Definitions.**

The following definitions apply in this Article:

(1) Casinghead gas. – Gas or vapor indigenous to an oil stratum and produced from the stratum with oil.

(2) Condensate. – Liquid hydrocarbon that is or can be recovered from gas by a separator or other means.

(3) Energy mineral. – All forms of natural gas, oil, and related condensates.

(4) First purchaser. – A person who purchases an energy mineral from a producer.

(5) Gas. – All natural gas, including casinghead gas, and all other hydrocarbons not defined as oil or condensates.

(6) MCF. – One thousand cubic feet of natural gas.

(7) Oil. – Crude petroleum oil, and other hydrocarbons, regardless of gravity, which are produced at the well in liquid form by ordinary production methods and which are not the result of condensation of gas after it leaves the reservoir.

(8) Owner. – An owner of a landowner's royalty interest, of an overriding royalty, of profits and working interests, or any combination thereof in energy minerals. The term does not include an owner of federal, state, or local governmental royalty interest.

(9) Person. – Defined in G.S. 105-228.90.

(10) Producer. – A person who takes an energy mineral from the soil or water in this State.

(11) Return. – Any report or statement required to be filed under this Article to determine the tax due.

(12) Royalty interest. – An interest in mineral rights in a producing leasehold in the State. A royalty interest does not include the interest of a person having only the management and operation of a well.

(13) Secretary. – The Secretary of Revenue.

(14) Severance. – The extraction or other removal of an energy mineral from the soil or water of this State.

(15) Severed. – The point at which the energy mineral has been separated from the soil or water of this State.

(16) Standard barrel of oil. – A barrel of oil containing 42 gallons.

(17) Taxpayer. – Any person required to pay the severance tax levied by this Article.

"**§ 105-187.72. Tax on severance of energy minerals.**

(a) Purpose. – An excise tax, to be termed a "severance tax," is levied on the privilege of engaging in the severance of energy minerals from the soil or water of this State. The purpose of the tax is to provide revenue to administer and enforce the provisions of this Article, to administer the State's natural gas and oil reclamation regulatory program, to meet the environmental and resource management needs of this State, and to reclaim land affected by exploration for, drilling for, and production of natural gas and oil. The severance tax is imposed upon all energy minerals severed when sold or consumed, whichever occurs first.

(b) Calculation of Tax. – The amount of the severance tax shall be determined as follows:

(1) Condensates. – The applicable percentage rate of tax multiplied by the market value per each barrel of oil equivalents (BOE) of the condensates sold.

(2) Gas. – The applicable percentage rate of tax multiplied by the market value per each MCF of the gas sold.

(3) Oil. – The applicable percentage rate of tax multiplied by the market value per each standard barrel of the oil sold.

(c) Rate of Tax, Condensates. – The applicable percentage rate of the severance tax on condensates shall be determined in accordance with the following schedule:

(1) For condensates sold from a well in calendar year 2015, 2016, or 2017, the rate of tax shall be one percent (1%).

(2) For condensates sold from a well in calendar year 2018 or 2019, the rate of tax shall be two and one-half percent (2.5%).

(3) For condensates sold from a well in calendar year 2020 and thereafter, the rate of tax shall be six percent (6%).

(d) Rate of Tax, Gas. – The applicable percentage rate of the severance tax on gas shall be calculated for each sale of gas. The rate will be the sales price of each MCF divided by 100 stated as a percentage, within the following limitations:

(1) For gas sold from a well in calendar year 2015, 2016, or 2017, the rate of tax shall not exceed one percent (1%).

(2) For gas sold from a well in calendar year 2018 or 2019, the rate of tax shall not exceed two and one-half percent (2.5%).

(3) For gas sold from a well in calendar year 2020 and thereafter, the rate of tax shall be at least two and one-half percent (2.5%) and shall not exceed six percent (6%).

(e) Rate of Tax, Oil. – The applicable percentage rate of the severance tax on condensates shall be determined in accordance with the following schedule:

(1) For oil sold from a well in calendar year 2015, 2016, or 2017, the rate of tax shall be one percent (1%).

(2) For oil sold from a well in calendar year 2018 or 2019, the rate of tax shall be two and one-half percent (2.5%).

(3) For oil sold from a well in calendar year 2020 and thereafter, the rate of tax shall be six percent (6%).

(f) Exemption. – The severance of energy minerals from land or water in this State owned legally or beneficially by the producer, which energy minerals are used on the land from which they are taken by the producer as part of the improvement of or use in the producer's homestead, is exempt from the severance tax. To claim the exemption allowed by this subsection, the taxpayer shall provide any information required by the Secretary. Every taxpayer claiming the exemption under this subsection shall maintain and make available for inspection by the Secretary any records the Secretary considers necessary to determine and verify the amount of the exemption or special rate of tax to which the taxpayer is entitled. The burden of proving eligibility for the exemption and the amount of the exemption shall rest upon

the taxpayer, and no exemption shall be allowed to a taxpayer that fails to maintain adequate records or to make them available for inspection.

"**§ 105-187.73. Market value.**

(a) Market Value. – For the calculation of the severance tax, market value is the following:

(1) Condensates. – The market value of condensates is the total actual gross price in U.S. dollars paid by the first purchaser of condensates at the mouth of the well from which it was produced.

(2) Gas. – The market value of gas is the total actual gross price in U.S. dollars paid by the first purchaser at the mouth of the well from which the gas is produced as adjusted in this section. The market value of gas at the mouth of the well shall be determined by subtracting the producer's actual marketing costs from the producer's total gross cash receipts from the sale of the gas.

(3) Oil. – The market value of oil is the total actual gross price in U.S. dollars paid by the first purchaser of the oil at the mouth of the well from which it was produced.

(b) Marketing Costs. – Marketing costs are the costs incurred by the producer to get the gas from the mouth of the well to the market. Marketing costs do not include costs for which a producer receives a cost reimbursement from the gas purchaser. Marketing costs do not include costs incurred in producing the gas, costs incurred in normal lease separation of the oil or condensate from the gas, or insurance premiums on the marketing facility. Marketing costs include all of the following:

(1) Costs for compressing the gas sold.

(2) Costs for dehydrating the gas sold.

(3) Costs for sweetening the gas sold.

(4) Costs for delivering the gas to the purchaser.

(5) Costs for gathering the gas sold.

(c) Records. – In order to be eligible to subtract the marketing costs from the producer's gross receipts for purposes of calculating the market value of gas, the producer shall provide any information required by the Secretary. Every producer subtracting the marketing costs as permitted under this section shall maintain and make available for inspection by the Secretary of Revenue any records the Secretary considers necessary to determine and verify the amount of the marketing costs the producer is eligible to subtract. The burden of proving eligibility for subtracting the marketing costs and the amount of the marketing costs to be subtracted shall rest upon the producer, and no subtraction of marketing costs shall be allowed to a producer that fails to maintain adequate records or to make them available for inspection.

"**§ 105-187.74. Returns and payment of tax.**

(a) General. – Severance taxes are payable when a return is due. A return is due quarterly or monthly as specified in this section. A return must be filed by the producer of the energy mineral with the Secretary on a form prescribed by the Secretary and in the manner required by the Secretary. A return must be signed by the taxpayer or the taxpayer's agent.

(b) Payment. – A producer of energy minerals shall pay the tax for all owners of the energy minerals. The producer shall withhold from any payment due owners the proportionate tax due for remittance to the Secretary.

(c) Quarterly. – A taxpayer who is consistently liable for less than one thousand dollars ($1,000) a month in severance taxes must file a return and pay the taxes due on a quarterly basis. A quarterly return covers a calendar quarter and is due by the last day of the month following the end of the quarter.

(d) Monthly. – A taxpayer who is consistently liable for at least one thousand dollars ($1,000) a month in severance taxes must file a return and pay the taxes due on a monthly

basis. A monthly return is due by the 20th day of the month following the calendar month covered by the return.

(e) Category. – The Secretary must monitor the amount of severance taxes paid by a taxpayer or estimate the amount of taxes to be paid by a new taxpayer and must direct each taxpayer to pay tax and file returns as required by this section. In determining the amount of taxes due from a taxpayer, the Secretary must consider the total amount due from all places of business owned or operated by the same person as the amount due from that person. A taxpayer must file a return and pay tax in accordance with the Secretary's direction.

(f) Information on Return. – The amount of tax due and any other information required by the Secretary must be included on the return. Returns that do not contain the required information will not be accepted. When an unacceptable return is submitted, the Secretary will require a corrected return to be filed. The return must contain the following information concerning energy minerals produced during the month being reported:

(1) The gross amount of energy minerals produced that are subject to the tax imposed by this Article.

(2) The leases from which the energy minerals were produced.

(3) The names and addresses of the first purchasers of the energy minerals.

"**§ 105-187.75. Bond or letter of credit required.**

A producer must file with the Secretary a bond or an irrevocable letter of credit if the producer fails to file a return required under this Article. A bond or an irrevocable letter of credit must be conditioned upon compliance with the requirements of this Article, be payable to the State, and be in the form required by the Secretary. The amount of the bond or irrevocable letter of credit is two times the applicant's average expected monthly tax liability under this Article, as determined by the Secretary. When notified to do so by the Secretary, a person that is required to file a bond or an irrevocable letter of credit must file the bond or irrevocable letter of credit in the amount required by the Secretary within 30 days after receiving the notice from the Secretary.

"**§ 105-187.76. Allocation of revenue.**

The Secretary shall allocate the tax levied in this Article as follows:

(1) Twenty-five percent (25%), not to exceed one million dollars ($1,000,000) per year, to the Department of Environment and Natural Resources for purposes of administering its duties and responsibilities under Article 27 of Chapter 113 of the General Statutes.

(2) After allocation pursuant to subsection (a) of this section, the Secretary shall allocate:

a. Fifty percent (50%) to the General Fund.

b. Fifty percent (50%) to the Onshore Energy Management Fund until the Fund reaches ten million dollars ($10,000,000). The Onshore Energy Management Fund is an interest-bearing special revenue fund to be established within the State treasury. This fund shall be used only for emergency preparation, emergency response, emergency environmental protection, or mitigation associated with a release of liquid hydrocarbons or associated fluids directly related to onshore energy exploration, development, production, or transmission. Once the fund balance reaches the amount of ten million dollars ($10,000,000), funds over that amount shall be allocated to the General Fund. If monies are withdrawn from the Onshore Energy Emergency Fund to carry out the provisions in this sub-subdivision, revenues generated by the tax levied in this Article shall be deposited in the Onshore Energy Emergency Fund until a total of ten million dollars ($10,000,000) is reestablished.

"**§ 105-187.77. Liability of producer for tax.**

The tax imposed by this Article is the primary liability of the producer except as provided in this section. A first purchaser may not take delivery of energy minerals from a producer unless the producer furnishes the purchaser with a taxpayer identification number assigned by the Secretary. A first purchaser failing to secure the producer's taxpayer number, either from the producer or the Secretary, will be liable for any tax, penalty, and interest due on the energy minerals purchased from the producer.

"**§ 105-187.78. Royalty owner's records.**

The owner of a royalty interest shall keep both of the following:

(1) A record of all money received as royalty from each producing leasehold in the State.

(2) A copy of all settlement sheets furnished by a purchaser or operator or other statement showing the amount of energy minerals for which a royalty was received and the amount of severance tax deducted.

"**§ 105-187.79. Permits suspended for failure to report.**

If an entity fails to file any report or return or to pay any tax or fee required by this Article for 90 days after it is due, the Secretary shall inform the Secretary of Environment and Natural Resources of this failure. The Secretary of Environment and Natural Resources shall suspend permits for oil and gas exploration using horizontal drilling and hydraulic fracturing under G.S. 113-395 of any entity that fails to file a return under this Article. The Secretary of Environment and Natural Resources shall immediately notify by mail an entity of a suspension under this section.

"**§ 105-187.80. No local taxation.**

A city or county may not impose a franchise, privilege, license, income, or excise tax on the severing, production, treating, processing, ownership, sale, storage, purchase, marketing, or transportation on any energy minerals produced in the State, or upon the business of severing, producing, treating, processing, owning, selling, buying, storing, marketing, or transporting such energy minerals, or upon the ownership, operation, or maintenance of plants, facilities, machinery, pipelines, and gathering lines related to the severing, production, treating, processing, ownership, storage, sale, purchase, marketing, or transportation of energy minerals. This section does not preclude the taxation of the property in accordance with Article 11 of this Chapter."

SECTION 5.(b) G.S. 105-259(b) is amended by adding a new subdivision to read:

"(44) To furnish to the Department of Environment and Natural Resources the name, address, tax year end, and account and identification numbers of an entity liable for severance tax to enable the Secretary of Environment and Natural Resources to notify the entity that the Department of Environment and Natural Resources shall suspend permits of the entity for oil and gas exploration using horizontal drilling and hydraulic fracturing under G.S. 113-395."

SECTION 5.(c) G.S. 113-387 and G.S. 113-388 are repealed.

PART VI. APPROPRIATION FROM MINERAL INTEREST FUND FOR OPERATION OF MEC

SECTION 6. There is appropriated from the Mineral Interest Fund to the Department of Environment and Natural Resources the sum of twenty-two thousand nine hundred dollars ($22,900) for the 2012-2013 fiscal year to be used to operate the Mining and Energy Commission and for payment of expenditures related to the Commission's implementation of legislative mandates to the Commission, including the hiring of temporary or contract employees to assist with policy development and rule making.

PART VII. REVENUE FROM OFFSHORE ENERGY PRODUCTION

SECTION 7. Chapter 113B of the General Statutes is amended by adding a new Article to read:

"Article 3.

"Revenues from Offshore Energy Production.

"**§ 113B-30. Allocation of revenues from offshore energy production; creation of Offshore Energy Management Fund.**

(a) Any revenues and royalties paid to the State as a result of offshore leasing, exploration, development, and production of all energy resources shall be deposited in the Offshore Emergency Fund until the Fund reaches fifty million dollars ($50,000,000). The Offshore Energy Management Fund is an interest-bearing special revenue fund to be established within the State treasury. This Fund shall be used only for emergency preparation, emergency response, emergency environmental protection, or mitigation associated with a release of liquid hydrocarbons or associated fluids directly related to offshore energy exploration, development, production, or transmission. Once the Fund balance reaches the amount of fifty million dollars ($50,000,000), the funds shall be used as provided in subsection (b) of this section. If monies are withdrawn from this Fund to carry out the provisions in this section, all revenues and royalties paid to the State as a result of offshore leasing, exploration, development, and production of all energy resources shall be deposited in the Fund until a total of fifty million dollars ($50,000,000) is reestablished. Once the Fund balance reaches the amount of fifty million dollars ($50,000,000), the funds shall be used as provided in subsection (b) of this section.

(b) Any revenues and royalties paid to the State as a result of offshore leasing, exploration, development, and production of all energy resources in excess of the amount needed to establish the Fund created in subsection (a) of this section are annually appropriated and shall be used for the following purposes:

(1) Thirty percent (30%) of such revenues and royalties shall be credited to the General Fund.

(2) Ten percent (10%) of such revenues and royalties shall be credited to the North Carolina Highway Trust Fund established under G.S. 136-176.

(3) Ten percent (10%) of such revenues and royalties shall be transferred to the Community Colleges System Office to establish and manage a fund for curriculum development and implementation as well as financial assistance for students attending community college to receive vocational training through this curriculum in fields directly related to energy exploration and development and related energy infrastructure.

(4) Ten percent (10%) of such revenues and royalties shall be transferred to the Board of Governors of The University of North Carolina System to establish and manage research and development funds for programs directly related to energy research and development.

(5) Thirty percent (30%) of such revenues and royalties shall be transferred to the Department of Environment and Natural Resources for conservation, protection, and mitigation, including, but not limited to, beach and inlet management projects, dredging operations, channel navigation and maintenance, public beach and water access, water quality management, and habitat restoration.

(6) Eight percent (8%) of such revenues and royalties shall be transferred to the State Ports Authority for expansion and maintenance of State Port infrastructure associated with energy-related commerce.

(7) Two percent (2%) of such revenues and royalties shall be transferred to the Department of Commerce for recruitment of energy-related industries to the State."

PART VIII. REGIONAL INTERSTATE OFFSHORE ENERGY POLICY COMPACT

SECTION 8.(a) Development of Regional Interstate Offshore Energy Policy Compact. – The Governor is strongly encouraged to commence negotiations on the development of a regional energy compact with the governors of South Carolina and Virginia in order to develop a unified regional strategy for the exploration, development, and production of all commercially viable federal and state offshore energy resources within the three-state region. The Governor shall develop recommendations for the General Assembly to consider for the development of a statutory regional compact, and these recommendations shall reflect the collective agreement of all three governors in the three-state region in order to provide common language for consideration by each state's General Assembly. During the development of these compact recommendations, the Governor or the Governor's designee is authorized to work directly with each of the three states' Congressional delegations, the United States Department of the Interior, the United States Environmental Protection Agency, and other appropriate federal agencies on behalf of the State of North Carolina to develop appropriate strategies to be considered in the development of the three-state compact for increasing domestic energy exploration, development, and production within each state in the three-state region and their adjacent state and federal waters. The compact negotiations and recommendations shall address at least all of the following:

(1) Ensure a timely review and consideration of permits and proposals at both the state and federal level for both state and federal waters adjacent to each state in the three-state region for seismic and other marine geophysical exploration to identify and quantify natural gas and related hydrocarbon resources along the continental margin.

(2) Amend the 2012 to 2017 Five Year Leasing Plan of the United States Department of the Interior to include leasing federal waters adjacent to the State and the three-state region for the exploration, quantification, and development of natural gas and related hydrocarbon energy resources.

(3) Advocate proactively with each state's Congressional delegation and appropriate federal agencies to ensure direct sharing of royalties and revenues related to energy leasing, exploration, development, and production of all offshore energy resources in federal waters adjacent to the State and the three-state region.

(4) Request the United States Department of the Interior to reinstate the federal Offshore Policy Committee with new members and new alternate members to be nominated by the governor of the state represented on the Offshore Policy Committee and appointed by the Secretary of the Interior, six of whom are to be one member and one alternate member each from North Carolina, Virginia, and South Carolina.

(5) Request the United States Department of the Interior to immediately move forward with permitting geological and geophysical data acquisition activities associated with oil and gas exploration in the Mid- and South Atlantic Planning Areas of the Atlantic Outer Continental Shelf immediately as outlined in Alternative A of the Bureau of Ocean Energy Management's Draft Programmatic Environmental Impact Statement entitled "Atlantic OCS Proposed Geological and Geophysical Activities" published in 2012.

SECTION 8.(b) No later than three months after the effective date of this act, and at least every three months thereafter, the Governor or the Governor's designee shall report to

the General Assembly on the progress of the Governor and others in complying with the requirements under this section, to include providing copies of correspondence and other relevant materials to or from the Office of the Governor when the correspondence or materials pertain to the subject under this section or to any requirement under this section. The Governor shall report the Governor's final recommendations for the three-state energy compact to the Joint Energy Oversight Committee no later than March 1, 2014.

SECTION 8.(c) In addition to the provisions in Sections 8(a) and 8(b) of this act, the Governor is encouraged to join the Governors of Alaska, Texas, Louisiana, Mississippi, Alabama, South Carolina, and Virginia and any others who may sign on to the Outer Continental Shelf Governors Coalition announced on May 3, 2011, to promote a constructive dialogue among the coastal state governors and the federal government on offshore energy issues important to the future of North Carolina and the United States. The Governor is authorized to expend funds related to membership in the Coalition.

SECTION 8.(d) The Governor is also encouraged to write letters to the North Carolina Congressional delegation, the governors of South Carolina and Virginia, the legislative bodies of South Carolina and Virginia, the Secretary of the United States Department of the Interior, and the President of the United States, urging their support of the recommendations set forth in subdivision (1) through (5) of Section 8(a) of this act.

SECTION 8.(e) Upon ratification, the Secretary of State shall furnish certified copies of this act to each member of the North Carolina Congressional delegation, the governors of South Carolina and Virginia, the legislative bodies of South Carolina and Virginia, the Secretary of the United States Department of the Interior, and the President of the United States.

PART IX. ENERGY POLICY ACT AND ENERGY POLICY COUNCIL AMENDMENTS

SECTION 9.(a) The title of Chapter 113B of the General Statutes reads as rewritten:

"**North Carolina Energy Policy ~~Act of 1975.~~and Jobs Act.**"

SECTION 9.(b) The title of Article 1 of Chapter 113B of the General Statutes reads as rewritten:

"Article 1.

"Energy ~~Policy~~ Jobs Council.

SECTION 9.(c) G.S. 113B-1 reads as rewritten:

"**§ 113B-1. Legislative findings and purpose.**

Upon investigation the General Assembly hereby finds that:

(1) Energy is essential to the health, safety and welfare of the people of this State and to the workings of the State ~~economy;~~economy.

~~(2) Growth in the consumption of energy resources is in some part due to wasteful, uneconomic and inefficient uses of energy and a continuation of this trend will adversely affect the future social, economic and environmental development of North Carolina;~~

~~(3)~~ It is ~~the responsibility of State government to encourage~~in the State's best interest to support the development of a reliable and adequate supply of energy for North Carolina ~~at a level consistent with such energy needs required for the protection of public health and safety, and for the promotion of the general welfare; and~~that is secure, stable, and predictable in order to facilitate economic growth, job creation, and expansion of business and industry opportunities.

(3a) It is in the State's best interest to support the exploration, development, and production of domestic energy supplies, preferably from the resources within the State or region and most certainly from within the country.

(3b) It is the duty of State government to protect and preserve the State's natural resources, cultural heritage, and quality of life and, above all, the public health and safety of its residents during the exploration, development, and production of domestic energy resources.

(4) The State ~~has not provided~~must provide the basis for development of a long-range unified energy policy to encompass comprehensive energy resource planning and efficient management of ~~the rate of consumption of~~ existing energy resources in relation to economic growth, to effectively meet an energy crisis, to encourage development of alternative sources of ~~energy,~~energy that are capable of achieving a positive benefit-to-cost ratio, and to ~~prudently conserve~~ ensure efficient utilization of energy resources in a manner consistent with assuring a reliable and adequate supply of energy for North ~~Carolina.~~Carolina, including active support and collaboration with the federal government to ensure access to the nation's energy resources located on the outer continental shelf directly adjacent to the State's coastal waters.

(5) It is the expressed intent of this Chapter to provide for development of such a unified domestic energy policy for the State of North ~~Carolina.~~Carolina as part of a nationwide effort for increased domestic energy production in the interest of national security and economic growth and stability."

SECTION 9.(d) G.S. 113B-2 reads as rewritten:

"**§ 113B-2. Creation of Energy ~~Policy~~ Jobs Council; purpose of Council.**

(a) ~~There~~ The Energy Jobs Council is ~~hereby~~ created ~~a council~~ to advise and make recommendations on increasing domestic energy ~~policy~~ exploration, development, and production within the State and region to promote economic growth and job creation to the Governor and the General ~~Assembly to be known as the Energy Policy~~Assembly. The Energy Jobs Council ~~which~~ shall be located within the Department of ~~Commerce.~~Environment and Natural Resources.

(b) Except as otherwise provided in this Chapter, the powers, duties and functions of the Energy ~~Policy~~ Jobs Council shall be as prescribed by the Secretary of ~~Commerce.~~Environment and Natural Resources.

(c) The Energy ~~Policy~~ Jobs Council shall serve as the central energy policy planning body of the State and shall communicate and cooperate with federal, State, regional and local bodies and agencies to the end of effecting a coordinated energy policy."

SECTION 9.(e) G.S. 113B-3 reads as rewritten:

"**§ 113B-3. Composition of Council; appointments; terms of members; qualifications.**

(a) The Energy ~~Policy~~ Jobs Council shall consist of ~~16~~ 13 members to be appointed as follows:

~~(1) Two members of the North Carolina House of Representatives to be appointed by the Speaker of the House of Representatives;~~

~~(2) Two members of the North Carolina Senate to be appointed by the President Pro Tempore of the Senate;~~

(2a) The Secretary of Environment and Natural Resources.

(2b) The Secretary of Commerce.

(3) ~~Twelve~~ Eleven public members who are citizens of the State of North ~~Carolina to be appointed by the Governor. The Governor shall designate one of the public members as chair of the Council.~~Carolina and who are appointed in accordance with subsection (c) of this section.

(b) Appointments to the Energy ~~Policy~~ Jobs Council shall be made by ~~July 15, 2009,~~ July 1, 2013. ~~and each such appointee shall serve until January 31, 2011. Thereafter, the appointed members of the General Assembly shall serve two-year terms, and the appointed public members shall serve four-year terms. A member of the Energy Policy Council shall continue to serve until his successor is duly appointed, but such holdover shall not affect the expiration date of such succeeding term.~~ The terms of office of members of the Council are three years. The terms of members appointed under subdivisions (1), (4), and (6) of subsection (c) of this section shall expire on June 30 of years evenly divisible by three. The terms of members appointed under subdivisions (2), (5), (8), and (10) of subsection (c) of this section shall expire on June 30 of years that precede by one year those years that are evenly divisible by three. The terms of members appointed under subdivisions (3), (7), (11), and (12) of subsection (c) of this section shall expire on June 30 of years that follow by one year those years that are evenly divisible by three. Appointments made by the President Pro Tempore of the Senate and the Speaker of the House of Representatives shall be allowed when the General Assembly is not in session.

(c) The public members of the Energy ~~Policy~~ Jobs Council shall have the ~~following qualifications:~~qualifications and shall be appointed as follows:

(1) One member shall be ~~experienced in the electric power industry;~~a representative of an investor-owned electric public utility, to be appointed by the Governor.

(2) One member shall ~~be experienced in the natural gas industry;~~have experience in natural gas and associated hydrocarbon exploration, development, and production, to be appointed by the Governor.

~~(2a) One member shall be experienced in energy policy matters;~~

(3) One member shall be ~~experienced in alternative fuels and biofuels;~~a representative of an investor-owned natural gas public utility, to be appointed by the Speaker of the House of Representatives.

(4) One member shall be ~~experienced in energy efficient building design or construction;~~an energy economist or a person with experience in the financing or business development of an energy-related business, to be appointed by the President Pro Tempore of the Senate.

(5) One member shall ~~be experienced in environmental protection;~~have experience in energy policy, to be appointed by the President Pro Tempore of the Senate.

(6) One member ~~who is engaged in a business providing renewable energy or other energy services;~~shall be an industrial energy consumer, to be appointed by the Speaker of the House of Representatives.

(7) One member shall be knowledgeable of alternative and renewable sources of ~~energy;~~energy, to be appointed by the Governor.

(8) One member ~~who, at the time of appointment, is a county commissioner; or elected municipal officer; provided, the member's term on the Council shall expire immediately in the event that he or she vacates office as a county commissioner or municipal officer;~~shall have experience in trucking, rail, or shipping transportation, to be appointed by the Speaker of the House of Representatives.

(9) Repealed by Session Laws 2009-446, s. 4, effective August 7, 2009.

(10) ~~One member shall be knowledgeable in the finance, business development, or technology development of energy-related business;~~One member shall have experience in energy research and development, to be appointed by the President Pro Tempore of the Senate.

(11) ~~One member shall be experienced in low-income energy policy matters or low-income residential weatherization.~~One member shall have experience in environmental management, appointed by the Speaker of the House of Representatives.

(12) ~~One member shall be experienced in the petroleum industry.~~One member shall have experience in the biofuels industry, to be appointed by the President Pro Tempore of the Senate."

SECTION 9.(f) G.S. 113B-4 reads as rewritten:

"§ 113B-4. Chairman of Council; replacement; reimbursement of members.

(a) ~~On August 15, 2009, on January 31, 2011, and every four years thereafter, the Governor shall appoint a chair of the Council.~~The Council shall elect one of its members to serve as chair. The chair shall serve for a term of two years and may serve no more than two terms in total.

(b) In case of a vacancy in the membership on the Energy ~~Policy~~Jobs Council prior to the expiration of a member's term, a successor shall be appointed within 30 days of such vacancy for the remainder of the unexpired term by the appropriate official pursuant to the provisions of G.S. 113B-3.

(c) Members of the Energy ~~Policy~~ Jobs Council shall be reimbursed for their services pursuant to the provisions of G.S. 138-5."

SECTION 9.(g) G.S. 113B-5 reads as rewritten:

"§ 113B-5. Organization of the Council; adoption of rules of procedure therefor.

(a) To facilitate the work of the Energy ~~Policy~~ Jobs Council and for administrative purposes, the chairman of the Energy ~~Policy~~ Jobs Council, with the consent and approval of the members, may organize the work of the Council so as to carry out the provisions of this Chapter and to insure the efficient operation of the Council.

(b) The Energy ~~Policy~~ Jobs Council shall adopt its own rules of procedure and shall meet regularly at such times and in such places as it may deem necessary to carry out its functions.

(c) The Energy ~~Policy~~ Jobs Council is authorized to create such advisory committees as will be needed to assist the Council in its efforts and to assure adequate citizen-consumer input into those efforts. Members of advisory committees shall be appointed by the Council for terms not to exceed the expiration date of terms of then present public members of the Council."

SECTION 9.(h) G.S. 113B-6 reads as rewritten:

"§ 113B-6. General duties and responsibilities.

The goal of the Energy Jobs Council is to identify and utilize all domestic energy resources in order to ensure a secure, stable, and predictable energy supply and to protect the economy of the State, promote job creation, and expand business and industry opportunities while ensuring the protection and preservation of the State's natural resources, cultural heritage, and quality of life. The Energy ~~Policy~~Jobs Council ~~shall~~ may delegate its duties where appropriate to the Division of Energy, Mineral, and Land Resources of the Department of Environment and Natural Resources. The Council shall provide oversight and approval to the duties delegated to the Division. The Energy Jobs Council shall have the following general duties and responsibilities:

(1) To develop and recommend to the Governor and the General Assembly a comprehensive ~~long-range~~ State energy policy that addresses requirements in the short term (10 years), in the midterm (25 years), and in the long term (50 years) to achieve maximum effective management and use of present and future sources of energy, such policy to include but not be limited to energy efficiency, renewable and alternative sources of energy, research and development into alternative energy technologies, and improvements to the State's energy infrastructure and energy ~~economy;~~economy, including smart

grid and domestic energy resources that shall include at least natural gas, coal, hydroelectric power, solar, wind, nuclear energy, and biomass. For utilities regulated under Chapter 62 of the General Statutes, the policy developed under this subdivision shall be consistent with the analysis and plan developed under G.S. 62-110.1(c).

(2) To conduct an ongoing assessment of the opportunities and constraints presented by various uses of all forms of energy to facilitate the expansion of the domestic energy supply and to encourage the efficient use of all such energy forms in a manner consistent with State energy ~~policy;~~policy.

(3) To continually review and coordinate all State government research, education and management programs relating to energy ~~matters and~~matters, to continually educate and inform the general public regarding such energy ~~matters;~~matters, and to actively engage in discussions with the federal government, its agencies, and its leaders to identify opportunities to increase domestic energy supply within North Carolina and its adjacent offshore waters.

(4) To recommend to the Governor and to the General Assembly needed energy legislation and rule making, and to recommend for implementation such modifications of energy policy, ~~plans~~ plans, and programs as the Council considers necessary and desirable."

SECTION 9.(i) G.S. 113B-7 reads as rewritten:

"**§ 113B-7. Energy Efficiency Program; components.**

(a) The Energy ~~Policy~~ Jobs Council shall prepare a recommended Energy Efficiency Program for transmittal to the Governor, the initial plan to be completed by January 30, 1976.

(b) The Energy Efficiency Program shall be designed to assure the public health and safety of the people of North Carolina and to encourage and promote conservation of energy through reducing wasteful, inefficient or uneconomical uses of energy resources.

(c) The Energy Efficiency Program shall include but not be limited to the following recommendations:

(1) Recommendations to the Building Code Council for lighting, insulation, climate control systems and other building design and construction standards which increase the efficient use of energy and are economically feasible to implement;

(2) Recommendations to the Building Code Council for per unit energy requirement allotments based upon square footage for various classes of buildings which would reduce energy consumption, yet are both technically and economically feasible and not injurious to public health and safety;

(3) Recommendations for minimum levels of operating efficiency for all appliances whose use requires a significant amount of energy based upon both technical and economic feasibility considerations;

(4) Recommendations for State government purchases of supplies, vehicles and equipment and such operating practices as will make possible more efficient use of energy;

(5) Recommendations on energy conservation policies, programs and procedures for local units of government;

(6) Any other recommendations which the Energy ~~Policy~~ Jobs Council considers to be a significant part of a statewide conservation effort and which include provisions for sufficient incentives to further energy conservation;

(7) An economic and environmental impact analysis of the recommended program.

(d) In addition to specific conservation recommendations, the Energy Efficiency Program shall contain proposals for implementation of such recommendations as can be carried out by executive order. Upon completion of a draft recommended program, the Council shall arrange for its distribution to interested parties and shall make the program available to the public and the Council further shall set a date for public hearing on said program.

(e) Upon completion of the Energy Efficiency Program, the Council shall transmit said program, to be known as the State Energy Efficiency Program, to the Governor for approval or disapproval. Upon approval, the Governor shall assign administrative responsibility for such implementation as can be carried out by executive order to appropriate agencies of State government, and submit to the General Assembly such proposals which require legislative action for implementation. The Governor shall have the authority to accept, administer, and enforce federal programs, program measures and permissive delegations of authority delegated to the Governor by the President of the United States, Congress, or the United States Department of Energy, on behalf of the State of North Carolina, which pertain to the conservation of energy resources.

(f) The Governor shall transmit the approved Energy Efficiency Program to the President Pro Tempore of the Senate, to the Speaker of the House of Representatives, to the heads of all State agencies and shall further seek to publicize such plan and make it available to all units of local government and to the public at large.

(g) At least every two years and whenever such changes take place as would significantly affect energy supply or demand in North Carolina, the Energy ~~Policy~~ Jobs Council shall review and, if necessary, revise the Energy Efficiency Program, transmitting such revised plan to the Governor pursuant to the procedures contained in subsections (e) and (f) of this section."

SECTION 9.(j) G.S. 113B-8(a) reads as rewritten:

"**§ 113B-8. Energy Management Plan; components.**

(a) The Energy ~~Policy~~ Jobs Council shall prepare a recommended Energy Management Plan for transmittal to the Governor, the initial plan to be completed by June 30, 1976."

SECTION 9.(k) G.S. 113B-9 reads as rewritten:

"**§ 113B-9. Emergency Energy Program; components.**

(a) The Energy ~~Policy~~ Jobs Council shall, in accordance with the provisions of this Article, develop contingency and emergency plans to deal with possible shortages of energy to protect public health, safety and welfare, such plans to be compiled into an Emergency Energy Program.

(b) ~~Within four months of July 1, 1975:~~ If required for an update of the program provided under subsection (j) of this section:

(1) Each electric utility and natural gas utility in the State shall prepare and submit to the Energy ~~Policy~~ Jobs Council a proposed emergency curtailment plan setting forth proposals for identifying priority loads or users in the event of the declaration of an energy crisis pursuant to G.S. 113B-20, and proposals for supply allocation to such priority loads or users. Utilities regulated under Chapter 62 of the General Statutes may satisfy this requirement by submitting the General Load Reduction and System Restoration Plan that is prepared annually for the Utilities Commission.

(2) Each major oil producer doing business in this State as determined by the Energy ~~Policy~~ Jobs Council shall prepare and submit to the Energy ~~Policy~~ Jobs Council an analysis of how any national supply curtailment pursuant to federal regulations shall affect the supply for North Carolina and how priority users will be determined and available supplies allocated to such users.

(c) The Energy ~~Policy~~ Jobs Council shall encourage the preparation of joint emergency curtailment plans and analyses. If such cooperative plans and analyses are developed between two or more utilities, major producers or by an association of such companies, the joint plans or analyses may be submitted to the Energy ~~Policy~~ Jobs Council in lieu of information required pursuant to subsection (b) of this section.

(d) The Energy ~~Policy~~ Jobs Council shall collect from all relevant governmental agencies any existing contingency plans for dealing with sudden energy shortages or information related thereto.

(e) The Energy ~~Policy~~ Jobs Council shall hold one or more public hearings, investigate and review the plans submitted pursuant to this section, and, within nine months after July 1, 1975, the Energy ~~Policy~~ Jobs Council shall approve and recommend to the Governor guidelines for emergency curtailment to be known as the Emergency Energy Program and to be implemented upon adoption by the Governor after the declaration of an energy crisis and pursuant to G.S. 113B-20 and 113B-23. Said program shall be based upon the plans presented to the Energy ~~Policy~~ Jobs Council, upon independent analysis and study by the Council, and upon information provided at the hearing or hearings, provided, however, that they are consistent with such federal programs and regulations as are already in effect at that time.

(f) The Emergency Energy Program shall provide for the maintenance of essential services, the protection of public health, safety, and welfare, and the maintenance of a sound basic State economy. For utilities regulated under Chapter 62 of the General Statutes, the program shall be consistent with the General Load Reduction and System Restoration Plan that is prepared annually for the Utilities Commission. Provisions also shall be made in said program to differentiate curtailment of energy consumption by users on the basis of ability to accommodate such curtailments, and shall also include, but not be limited to, the following:

(1) A variety of strategies and staged conservation measures of increasing intensity and authority to reduce energy use during an energy crisis, as defined in G.S. 113B-20 and guidelines and criteria for allocation of energy sources to priority users. The program shall contain alternative conservation actions and allocation plans to reasonably meet various foreseeable shortage circumstances and to allow a choice of appropriate responses;

(2) Evidence that the program is consistent with requirements of federal emergency energy conservation and allocation laws and regulations;

(3) Proposals to assist such individuals, institutions, agriculture and businesses which have engaged in energy saving measures;

(g) The Energy ~~Policy~~ Jobs Council shall carry out such investigations and studies as are necessary to determine if and when potentially serious shortages of energy are likely to affect North Carolina and the Council shall make recommendations to the Governor concerning administrative and legislative actions required to avert such shortages, such recommendations to be included as a section of the Emergency Energy Program.

(h) In addition to the above information and recommendations, the program shall contain proposals for implementation of such recommendations which include procedures, rules and regulations and agency administrative responsibilities for implementation, and shall further contain procedures for fair and equitable review of complaints and requests for special exemptions from emergency conservation measures or emergency allocations. Upon completion of a draft recommended plan, the Council shall arrange for its distribution to interested parties and shall make such plan available to the public and the Council further shall set a date for public hearing on said plan.

(i) Upon completion of the Emergency Energy Allocation Program, the Council and the Governor shall follow the procedures as outlined in G.S. 113B-7(e) and (f).

(j) The Council shall update the Emergency Energy Allocation Program ~~said program~~ upon ~~a~~ finding ~~by it~~ that an update is ~~justified and~~justified. The Council shall follow the procedures for adoption pursuant to G.S. 113B-7(e) and (f).

(k) The Governor shall have the authority to accept, administer and enforce federal programs, program measures and permissive delegations of authority delegated to the Governor by the President of the United States, Congress, or the United States Department of Energy, on behalf of the State of North Carolina, which pertain to actions necessary to deal with an actual or impending energy shortage."

SECTION 9.(l) G.S. 113B-11 reads as rewritten:

"**§ 113B-11. Powers and authority.**

(a) The Energy ~~Policy~~ Jobs Council is authorized to secure directly from any officer, office, department, commission, board, bureau, institution and other agency of the State and its political subdivisions any information it deems necessary to carry out its functions; and all such officers and agencies shall cooperate with the Council and, to the extent permitted by law, furnish such information to the Council as it may request.

...

(e) Staff support required by the Council shall be supplied by the Division of Energy, Mineral, and Land Resources of the Department of Environment and Natural Resources. ~~The Department of Commerce shall provide the staffing capability to the Energy Policy Jobs Council so as to fully and effectively develop recommendations for a comprehensive State energy policy as contained in the provisions of this Article.~~ The Department of Commerce and the Utilities Commission ~~is~~ are hereby authorized to make ~~its~~ their staff available to the Council to assist in the development of a State energy policy."

SECTION 9.(m) G.S. 113B-12 reads as rewritten:

"**§ 113B-12. Annual reports; contents.**

(a) ~~Beginning January 1, 1977, and every year~~Every two years ~~thereafter,~~ the Energy ~~Policy~~ Jobs Council shall transmit to the Governor, the Speaker of the House of Representatives, the President Pro Tempore of the Senate, the Environmental Review Commission, the Joint Legislative Commission on Energy Policy, and the chairman of the Utilities Commission ~~Commission and the appropriate chairmen of the House and Senate committees concerned with energy matters,~~ a comprehensive report providing a general overview of energy conditions in the State. ~~On January 1, 1976, the Energy Policy Council shall transmit a progress report to the public officials named above.~~

(b) The report shall include, but not be limited to, the following:

(1) An overview of statewide growth and development as they relate to future requirements for energy, including patterns of urban and metropolitan expansion, shifts in transportation modes, modifications in building types and design, and other trends and factors which, as determined by the Council, will significantly affect energy needs;

(2) The level of statewide and multi-county regional energy demand for a five, 10- and 20-year forecast period which, in the judgment of the Council, can reasonably be met, with proposals as to possible energy supply sources;

(3) An assessment of growth trends in energy consumption and production and an identification of potential adverse social, economic, or environmental impacts which might be imposed by continuation of the present trends, including energy costs to consumers, significant increases in air, water, and other forms of pollution, threats to public health and safety, and loss of scenic and natural areas;

(4) An analysis of the role of energy efficiency, renewable energy, improvements to the State's energy infrastructure, and other means in meeting the State's current and projected energy demand;

(5) Repealed by Session Laws 2009-446, s. 9, effective August 7, 2009.
(6) Recommendations to the Governor and the General Assembly for additional administrative and legislative actions on energy matters;
(7) A summary of the Council's activities since ~~its inception,~~the last report, a description of major plans developed by the Council, an assessment of plan implementation, and a review of Council plans and programs for the coming biennium."

SECTION 9.(n) G.S. 113B-21(a) reads as rewritten:

"(a) ~~There is hereby created~~Upon the declaration of an energy crisis by the Governor, a Legislative Committee on Energy Crisis Management shall be created to consist of the Speaker, ~~as chairman,~~ the Speaker pro tempore of the House of ~~Representatives and~~Representatives, the President ~~pro tempore~~ Pro Tempore of the Senate, and the majority leader of the Senate. The Lieutenant Governor shall serve as chair, and shall be a nonvoting ex officio member, provided, however, that ~~he~~ the chair shall vote to break a tie."

SECTION 9.(o) G.S. 113B-23 reads as rewritten:

"**§ 113B-23. Administration of plans and procedures.**

(a) Upon the declaration of an energy crisis, pursuant to G.S. 113B-20, the Energy ~~Policy~~ Jobs Council shall become the emergency energy coordinating body for the State and shall carry out the following duties:

(1) Identify and determine the nature and severity of expected energy shortages;
(2) Provide for daily communications with and gather information from significant energy producers, distributors, transporters and major consumers, as determined by the Energy ~~Policy~~ Jobs Council, to carry out its responsibilities pursuant to this section;
(3) Provide data, carry out continuing assessments of the crisis situation, and make recommendations to the Governor and to the Legislative Committee on Energy Crisis Management for further action.

(b) Upon the declaration of an energy crisis, the Governor shall order the Energy ~~Policy~~ Jobs Council, the Utilities Commission, the Attorney General and other appropriate State and local agencies to implement and enforce the Emergency Energy Program pursuant to G.S. 113B-9 and any emergency rules, orders or regulations approved pursuant to G.S. 113B-22.

(c) Upon the declaration of an energy crisis, the Governor may employ such measures and give such direction to State and local offices and agencies as may be reasonable and necessary for the purpose of securing compliance with the provisions of this Article and with emergency rules, orders and regulations issued pursuant to G.S. 113B-22."

SECTION 9.(p) G.S. 113B-24(c) reads as rewritten:

"(c) The provisions of this Article or any rules, orders or regulations promulgated pursuant to G.S. 113B-22 may be enforced by bringing an action to enjoin such acts or practices as may be in violation and, upon a proper showing, a temporary restraining order or a preliminary or permanent injunction shall be issued. The relief sought may include a mandatory injunction commanding any person to comply with any such order, rule or regulation and restitution of money received in violation of any such order, rule or regulation. The Attorney General shall bring any action under this subsection upon the request of the Governor, the Legislative Committee on Energy Crisis Management, the Energy ~~Policy~~ Jobs Council, or upon his direction if he deems such action advisable and in the public interest. The Attorney General may institute such action in the Superior Court of Wake County, or, in his discretion, in the superior court of the county in which the acts or practices constituting a violation occurred, are occurring or may occur."

SECTION 9.(q) G.S. 114-4.2D reads as rewritten:

"§ 114-4.2D. Employment of attorney for Energy ~~Policy~~ Jobs Council of the Department of Environment and Natural Resources and the Energy Efficiency Program of the Department of Commerce.

The Attorney General shall assign an attorney to work full time with the Energy ~~Policy~~ Jobs Council of the Department of Environment and Natural Resources and the Energy Efficiency Program of the Department of Commerce. Such attorney shall be subject to all provisions of Chapter 126 of the General Statutes relating to the State Personnel System. Such attorney shall also perform such additional duties as may be assigned by the Attorney General."

SECTION 9.(r) G.S. 143-58.5(c) reads as rewritten:

"(c) The Fund shall be used to offset the incremental fuel cost of biodiesel and biodiesel blend fuel with a minimum biodiesel concentration of B-20 for use in State vehicles, for the purchase of ethanol fuel with a minimum ethanol concentration of E-85 for use in State vehicles, the incremental vehicle cost of purchasing AFVs, for the development of related refueling infrastructure, for the costs of administering the Fund, and for projects approved by the Energy ~~Policy~~ Jobs Council."

SECTION 9.(s) G.S. 143-345.13 reads as rewritten:

"§ 143-345.13. Reporting of stocks of coal and petroleum fuels.

The Department of Administration may, with the prior express approval of the Energy ~~Policy~~ Jobs Council and the Governor, require that all coal and petroleum suppliers in North Carolina supplying coal, motor gasoline, middle distillates, residual oils, and propane for resale within the State, file with the Department of Administration, on forms prepared by the Department, accurate reports as to the stocks of coal and petroleum products and storage capacities maintained by the supplier, including the supplier's current inventory and stock of coal, motor gasoline, middle distillates, residual oils and propane, the expected time such supplies will last under ordinary distribution demand and the schedule for receiving additional or replacement stocks. The reports and the information contained therein shall be proprietary information available only to regular employees of the Department of Administration, except that aggregate tables or schedules consolidating information from the reports may be released if they do not reveal individual report data for any named supplier. It is further the intent of this section that no information shall be required from coal and petroleum suppliers, that is, at the time the reports are requested, already on file with any agency, commission, or department of State government.

It is the intent of this section that the reports be filed only at such times as the Energy ~~Policy~~ Jobs Council and the Governor determine that an energy crisis as defined in G.S. 113B-20 exists or may be imminent.

If any petroleum or coal supplier fails to file the accurate reports as may be required by this section for more than 10 days after the date on which any such report is due, the Secretary of Administration is authorized and empowered to petition the district court, Division of the General Court of Justice, in the county in which the principal office or place of business of the supplier is located, for a mandatory injunction compelling the supplier to file the report."

SECTION 9.(t) Article 7 of Chapter 143B of the General Statutes is amended by adding a new Part to read:

"Part 31. Energy Jobs Council.

"§ 143B-281.1. Energy Jobs Council – transfer.

The Energy Jobs Council, as established by Chapter 113B of the General Statutes and other applicable laws of this State, is hereby transferred to the Department of Environment and Natural Resources by a Type II transfer as defined in G.S. 143A-6."

SECTION 9.(u) Notwithstanding G.S. 113B-3 or any other law to the contrary, the terms of all members of the Energy Policy Council serving as of the effective date of this act shall expire on the effective date of this act or on June 30, 2013, whichever comes first. Initial

appointments shall be made pursuant to subsection (c) of G.S. 113B-3, as amended by Section 9(e) of this act, no later than July 1, 2013.

SECTION 9.(v) The Revisor of Statutes shall make the conforming statutory changes necessary to reflect the transfers under this section. The Revisor of Statutes may correct any reference in the General Statutes to the statutes that are recodified by this section and make any other conforming changes necessitated by this section.

PART X. MODIFY ELECTRICAL REQUIREMENTS RULE TO ALLOW HOSPITALS TO USE COMPRESSED NATURAL GAS AS EMERGENCY FUEL

SECTION 10.(a) Definitions. – "Electrical Requirements Rule" means 10A NCAC 13B .6227 (Licensing of Hospitals: Electrical Requirements) for purposes of this section and its implementation.

SECTION 10.(b) Electrical Requirements Rule. – Until the effective date of the revised permanent rule that the Medical Care Commission is required to adopt pursuant to Section 10(c) of this act, the Commission and the Department of Health and Human Services shall implement the Electrical Requirements Rule, as provided in Section 10(c) of this act.

SECTION 10.(c) Implementation. – Notwithstanding subdivision (2) of subsection (f) of the Electrical Requirements Rule, the Commission shall authorize facilities licensed by the Department to use bi-fuel generators that operate with both liquid fuel and natural gas (methane) that is not stored on the site, provided that the natural gas is delivered via pipe or pipeline by a natural gas utility. These bi-fuel generators shall be exempt from liquid fuel capacity standards established by the Commission. Bi-fuel generators that operate on both liquid and other gaseous fuels, including propane and butane, that are stored on the site shall also be authorized, provided that the combined capacity of both liquid and gaseous fuels meet minimum on-site fuel requirements established by the Commission. The Commission may adopt rules to require a licensed facility with a bi-fuel generator to develop a contingency plan for liquid fuel delivery onto the site in the event of a natural gas (methane) supply disruption.

SECTION 10.(d) Additional Rule-Making Authority. – The Commission shall adopt a rule to replace the Electrical Requirements 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 10(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. 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.(e) Effective Date. – Subsection (b) of this section expires when permanent rules to replace subsection (b) of this section have become effective, as provided by subsection (c) of this section.

PART XI. EFFECTIVE DATE

SECTION 11. Section 1(b) of this act becomes effective March 1, 2015. Section 3(b) of this act is effective when it becomes law and applies retroactively to October 1, 2012. Sections 5(a) through 5(c) of this act are effective for energy minerals sold on or after March 1, 2015, except that G.S. 105-187.76, as enacted by Section 5(a) of this act, becomes effective only if authorized by the General Assembly in the Current Operations and Capital Improvements Appropriations Act of 2013. G.S. 113B-30, enacted by Section 7 of this act, becomes effective only if authorized by the General Assembly in the Current Operations and Capital Improvements Appropriations Act of 2013. The first report due pursuant to G.S. 113B-12, as amended by Section 9(m) of this act, shall be transmitted on or before January 1, 2014. Except as otherwise provided, the remainder of this act is effective when it becomes law.

VISITOR REGISTRATION SHEET

Senate COMMERCE Committee — **Name of Committee**

February 19, 2013 — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO Debbie Lown

NAME	FIRM OR AGENCY AND ADDRESS
Steven Osby	Lakewood High School 245 Lakewood School Rd Salisbury NC. 28385
Jakyra Braxton	Lakewood High School 245 Lakewood School Rd. Salisbury NC, 28385
Arturo Reyes	P.O. Box 242 Salisbury, NC 28385
Sharon Miller	CUCA
Will Culpepper	MVA
Kay Emanuel	School of Government
David Beck	Self-Help
Betsy Bailey	PENC
Berry Jenkins	Carolinas AGC
Jay Harris	NC Petroleum & Convs
Bill Scoggin	ITS

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February 19, 2013
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	NC CO-OPS
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Albert Eckel	ADT
BRUCE THOMPSON	PARKER POE
Nathan Batts	NCBA
	NMRS
Jillie Robinson	NC Sustainable Energy Assoc
TOM BEAN	EDF, NCSEN, NCWF
Dan Crawford	NCLCV
Nadia Luhr	NCCN

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Donna Jordan	Lakewood High School 245 Lakewood School Rd. Salemburg NC, 28385
John Langley	Lakewood High School 245 Lakewood School Rd Salemburg NC, 28385
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R M. Fr Reid	909 W Rowan ST Fayetteville, NC 28301
Lessa Crocker	Lakewood High School 245 Lakewood School Rd. Salemburg NC, 28385
Rashyda Parker	Lakewood High School 245 Lakewood School Rd. Salemburg NC, 28385

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Elizabeth Ouzts	Environment NC
Molly Diggins	Sierra Club
Dustin Chicoine (Bayard)	Sierra Club.
SUSAN LUPTON	CRL
Mary Moore	CRL
Heming Hutchaff	N.C.B.A.
Scott Mooney	The Insider
[illegible]	WNC-TV
Pat Can	NCUL
Brooks Rainey Pearson	SELC
Becki Gray	GXT
Michael Houser	NCDOR

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Senate COMMERCE Committee
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Meg Maden Atbill	SELC
Jay Stem	NCAA
George Smith	Nexsen Pruet
Erin Wynia	NCLM
Jaz Tunnell	PNG
Paul Sherman	NCFB
TRACY DAVIS	DENR
Trina Ozer	DENR
ZEB ALLEY	NMRS
Chip Killian	NMRS

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February 19, 2013
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Lauren Whalen	NCCUL
Chris Kukla	CCL
Ellen Hamil	CCL
Rochelle Sparko	NC Justice Center
Jonni Jamborough	Check Into Cash
Jackson Corcoran	NSS
Elizabeth Van Brocklin	Indy Week
Carley Ruff	NCHC
M Ring	NCJC
Sarah Hardin	CTL
Steve Brewer	CTL

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Senate COMMERCE Committee
Name of Committee

February 19, 2013
Date

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NAME	FIRM OR AGENCY AND ADDRESS
RW Kaylor	Kaylor Law Firm
Bill McAuley	PSNC Energy
Bob Heath	Melanie Dodge
Daniel Baum	Troutman Sanders
John Herrera	Self-Help.
Ed Regan	NCRGEA
Tommy Senter	Moore and Van Allen
Kemi Bunch	NWJC
Carson Thiel	MVA
Jabo Covert	CFSA
Chris Agnew	DOJ

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Senate COMMERCE Committee
Name of Committee

February 19, 2013
Date

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NAME	FIRM OR AGENCY AND ADDRESS
Kelli Kuhlman	Duke Energy

REQUEST TO SPEAK

Senate COMMERCE Committee
February 19, 2013

STATEMENT: The number of speakers allowed to speak and the time allowed by each will be announced during this meeting. This will be contingent on time remaining. By placing your name below acknowledges that you understand this statement.

PLEASE PRINT

NAME	FIRM OR AGENCY AND ADDRESS
Algenon Cash	NC Energy Forum 43337 Creekview Ct, Kernersville
Elizabeth OUZTS	ENVIRONMENT NORTH CAROLINA
Dan Crawford	NCLCV
BILL WEATHERSPOON	North Carolina Petroleum Council
Amy Fullbright	ANGA
Henry Jones	Jordan Price

Senate Committee on Commerce
Thursday, February 21, 2013, 11:00 AM
1027/1128 Legislative Building

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

BILL NO.	SHORT TITLE	SPONSOR
SB 76	Domestic Energy Jobs Act.	Senator Newton Senator Rucho Senator Brock

Senate Committee on Commerce
Thursday, February 21, 2013 at 11:00 AM
Room 1027/1128 of the Legislative Building

MINUTES

The Senate Committee on Commerce met at 11:00 AM on February 21, 2013 in Room 1027/1128 of the Legislative Building. Twenty four members were present.

Senator Rick Gunn, Co-Chair presided.

Ad Lane from Holly Springs, John Rabon from Holly Springs and Tate Replogle from Raleigh served as pages.

S.B. 76 – Domestic Energy Jobs Act

Senator Newton was introduced by Senator Gunn to make brief comments before the floor was opened for continued discussion from Tuesday, February 19, 2013 committee meeting. Senator Rucho offered to 2 amendments. Heather Fennell an attornery from the Research Division explained the amendment. Senator Rucho motioned to accept the amendment and Senator Curtis seconded that motion and it carried. Senator Rucho explained the 2nd amendment with the assistance of Jennifer McGuinnis an attorney from the Research Division who explained how it will change the PCS. Senator Bryant suggested to amend the 2nd amendment stating that North Carolina would not receive brine waters from other states. This was accepted and was included in the 2nd amendment. Senator Tillman motioned to accept the 2nd amendment, it was seconded and the motion carried. Senator Gunn opened the floor for more discussion. Senator Barringer expressed concern for the "surface owners" and bonds that would protect them. Jennifer McGuinnis responded to her concern and stated that as it read, it was ambiguious. Senator Barringer asked if Senator Newton would be willing to work with her to draft an amendment. Senator Newton agreed and said that the amendment could be given during session.

Senator Tillman made the motion - unfavorable to the bill – favorable to the PCS as amended. Senator Brown seconded the motion and it carried by a majority.

The meeting adjourned at 11:42 AM.

Senator Rick Gunn, Chair
Presiding

Debbie Lown, Committee Clerk

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

COMMERCE COMMITTEE REPORT
Senator Gunn, Co-Chair
Senator Meredith, Co-Chair

Monday, February 25, 2013

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

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 1, BUT FAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 2

SB **76** **(CS#1)** Domestic Energy Jobs Act.

Draft Number:	S76-PCS75068-RIxf-2
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

TOTAL REPORTED: 1

Senator E.S. Newton will handle SB 76

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

S 2

SENATE BILL 76
Finance Committee Substitute Adopted 2/14/13

Short Title: Domestic Energy Jobs Act. (Public)

Sponsors:

Referred to:

February 12, 2013

A BILL TO BE ENTITLED

AN ACT TO (1) AUTHORIZE THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES TO ISSUE PERMITS ON OR AFTER MARCH 1, 2015, FOR OIL AND GAS EXPLORATION AND DEVELOPMENT ACTIVITIES IN THE STATE, INCLUDING THE USE OF HORIZONTAL DRILLING AND HYDRAULIC FRACTURING TREATMENTS FOR THAT PURPOSE; (2) DIRECT THE MINING AND ENERGY COMMISSION TO STUDY DEVELOPMENT OF A COMPREHENSIVE ENVIRONMENTAL PERMIT FOR OIL AND GAS EXPLORATION AND DEVELOPMENT ACTIVITIES USING HORIZONTAL DRILLING AND HYDRAULIC FRACTURING TREATMENTS; (3) MODIFY APPOINTMENTS TO THE MINING AND ENERGY COMMISSION; (4) MODIFY PROVISIONS IN THE OIL AND GAS CONSERVATION ACT CONCERNING THE MINING AND ENERGY COMMISSION'S AUTHORITY TO SET "ALLOWABLES"; (5) ELIMINATE THE REGISTRATION REQUIREMENTS FOR PERSONS CONDUCTING LANDMEN ACTIVITIES IN THE STATE; (6) AMEND THE STATUTE GOVERNING SUBSURFACE INJECTION OF FLUID; (7) PROVIDE A TAX FOR THE SEVERANCE OF ENERGY MINERALS FROM THE SOIL OR WATER OF THE STATE, REPEAL OUTDATED OIL AND GAS TAX STATUTES, AND AUTHORIZE THE SUSPENSION OF PERMITS FOR FAILURE TO FILE A RETURN FOR SEVERANCE TAXES; (8) APPROPRIATE MONIES FROM THE MINERAL INTEREST FUND TO THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES TO OPERATE THE MINING AND ENERGY COMMISSION AND FOR RELATED EXPENDITURES; (9) ASSIGN FUTURE REVENUE FROM ENERGY EXPLORATION, DEVELOPMENT, AND PRODUCTION OF ENERGY RESOURCES IN ORDER TO PROTECT AND PRESERVE THE STATE'S NATURAL RESOURCES, CULTURAL HERITAGE, AND QUALITY OF LIFE; (10) ENCOURAGE THE GOVERNOR TO DEVELOP THE REGIONAL INTERSTATE OFFSHORE ENERGY POLICY COMPACT; (11) AMEND THE ENERGY POLICY ACT OF 1975 AND THE ENERGY POLICY COUNCIL; AND (12) DIRECT THE MEDICAL CARE COMMISSION TO ADOPT RULES AUTHORIZING FACILITIES LICENSED BY THE DEPARTMENT OF HEALTH AND HUMAN SERVICES TO USE COMPRESSED NATURAL GAS AS AN EMERGENCY FUEL.

The General Assembly of North Carolina enacts:

PART I. ISSUANCE OF PERMITS

SECTION 1.(a) Effective March 1, 2015, the Department of Environment and Natural Resources and the Mining and Energy Commission are authorized to issue permits for oil and gas exploration and development activities using horizontal drilling and hydraulic fracturing treatments in the State pursuant to G.S. 113-395.

SECTION 1.(b) Section 3(d) of S.L. 2012-143 is repealed.

SECTION 1.(c) The Mining and Energy Commission, with the assistance of the Department of Environment and Natural Resources, shall study development of a coordinated permitting program for oil and gas exploration and development activities using horizontal drilling and hydraulic fracturing treatments in order that a single comprehensive environmental permit may be issued to a permit applicant to govern the applicant's exploration and development activities at a site, including, but not limited to, regulation of the following matters: well construction, siting, and closure requirements; hydraulic fracturing treatments, including subsurface injection of fluids for that purpose; water quality, including stormwater control, and management of water resources; management of waste; and regulation of air emissions. The Department of Environment and Natural Resources shall seek any approvals necessary from the United States Environmental Protection Agency for a coordinated permitting program to allow issuance of a single comprehensive environmental permit for oil and gas exploration and development activities using horizontal drilling and hydraulic fracturing treatments. The Mining and Energy Commission shall report its findings and recommendations to the Environmental Review Commission and the Joint Legislative Commission on Energy Policy on or before October 1, 2013.

PART II. MINING AND ENERGY COMMISSION APPOINTMENT MODIFICATIONS

SECTION 2.(a) G.S. 143B-293.2 reads as rewritten:

"**§ 143B-293.2. North Carolina Mining and Energy Commission – members; selection; removal; compensation; quorum; services.**

(a) Members Selection. – The North Carolina Mining and Energy Commission shall consist of ~~15~~ 13 members appointed as follows:

(1) The Chair of the North Carolina State University Minerals Research Laboratory Advisory Committee, or the Chair's designee, ex officio.

~~(2) The State Geologist, or the State Geologist's designee, ex officio.~~

~~(3) The Assistant Secretary of Energy for the Department of Commerce, ex officio.~~

(4) One appointed by the General Assembly upon recommendation of the Speaker of the House of Representatives who is a member of a nongovernmental conservation interest.

(5) One appointed by the General Assembly upon recommendation of the Speaker of the House of Representatives ~~who~~ who, at the time of initial appointment, is an elected official of a municipal government located in ~~the Triassic Basin of North Carolina.~~ a region of North Carolina that has oil and gas potential. A person serving in this seat may complete a term on the Commission even if they are no longer serving as an elected official of a municipal government and may be reappointed to a second term.

(6) One appointed by the General Assembly upon recommendation of the Speaker of the House of Representatives who is a representative of the mining industry.

(7) One appointed by the General Assembly upon recommendation of the Speaker of the House of Representatives who shall be a geologist with experience in oil and gas exploration and development.

(8) One appointed by the General Assembly upon recommendation of the President Pro Tempore of the Senate who is a member of a nongovernmental conservation interest.

(9) One appointed by the General Assembly upon recommendation of the President Pro Tempore of the Senate ~~who~~ who, at the time of initial appointment, is a member of a county board of commissioners of a county located in ~~the Triassic Basin of North Carolina.~~a region of North Carolina that has oil and gas potential. A person serving in this seat may complete a term on the Commission even if they are no longer serving as county commissioner and may be reappointed to a second term.

(10) One appointed by the General Assembly upon recommendation of the President Pro Tempore of the Senate who is a representative of the mining industry.

(11) One appointed by the General Assembly upon recommendation of the President Pro Tempore of the Senate who shall be an engineer with experience in oil and gas exploration and development.

(12) One appointed by the Governor who shall be a representative of a publicly traded natural gas company.

(13) One appointed by the Governor who shall be a licensed attorney with experience in legal matters associated with oil and gas exploration and development.

(14) One appointed by the Governor who is a member of the Environmental Management Commission.~~Commission and knowledgeable in the principles of water and air resources management.~~

(15) One appointed by the Governor who is a member of the Commission for Public Health.~~Health and knowledgeable in the principles of waste management.~~

...."

SECTION 2.(b) The term of the member serving pursuant to subdivision (14) of G.S. 143B-293.2(a), as amended by Section 2(a) of this act, shall terminate immediately should that individual's membership on the Environmental Management Commission terminate. The term of the member serving pursuant to subdivision (15) of G.S. 143B-293.2(a), as amended by Section 2(a) of this act, shall terminate immediately should that individual's membership on the Commission for Public Health terminate.

PART III. MISCELLANEOUS MODIFICATIONS TO THE OIL AND GAS CONSERVATION ACT: ALLOWABLES AND REPEAL OF LANDMEN REGISTRY.

SECTION 3.(a) G.S. 113-394 reads as rewritten:

"**§ 113-394. Limitations on production; allocating and prorating "allowables."**

(a) ~~Whenever the total amount of oil, including condensate, which all the pools in the State can produce, exceeds the amount reasonably required to meet the reasonable market demand for oil, including condensate, produced in this State, then the~~The Commission ~~shall~~ may limit the total amount of oil, including condensate, which may be produced in the State by fixing an amount which shall be designated "allowable" for ~~this State, which will not exceed the reasonable market demand for oil, including condensate, produced in this~~ the State. The Commission ~~shall~~ may then allocate or distribute the "allowable" for the State among the pools on a reasonable basis and in such manner as to avoid undue discrimination, and so that waste will be prevented. In allocating the "allowable" for the State, and in fixing "allowables" for pools producing oil or hydrocarbons forming condensate, or both oil and such hydrocarbons, the Commission ~~shall~~ may take into account the producing conditions and other relevant facts with respect to such pools, including the separate needs for oil, gas and condensate, and ~~shall~~

may formulate rules setting forth standards or a program for the distribution of the "allowable" for the State, and ~~shall~~ distribute the "allowable" for the State in accordance with such standards or program, and where conditions in one pool or area are substantially similar to those in another pool or area, then the same standards or programs shall be applied to such pools and areas so that as far as practicable a uniform program will be followed; provided, however, the Commission shall allow the production of a sufficient amount of natural gas from any pool to supply adequately the reasonable market demand for such gas for light and fuel purposes if such production can be obtained without waste, and the condensate "allowable" for such pool shall not be less than the total amount of condensate produced or obtained in connection with the production of the gas "allowable" for light and fuel purposes, and provided further that, if the amount allocated to pool as its share of the "allowable" for the State is in excess of the amount which the pool should produce to prevent waste, then the Commission shall fix the "allowable" for the pool so that waste will be prevented.

~~(b) The Commission shall not be required to determine the reasonable market demand applicable to any single pool except in relation to all pools producing oil of similar kind and quality and in relation to the demand applicable to the State, and in relation to the effect of limiting the production of pools in the State.~~ In allocating "allowables" to pools, the Commission shall not be bound by nominations or desires of purchasers to purchase oil from particular fields or areas, and the Commission shall allocate the "allowable" for the State in such manner as will prevent undue discrimination against any pool or area in favor of another or others which would result from selective buying or nominating by purchasers of oil, as such term "selective buying or nominating" is understood in the oil business.

(c) Whenever the Commission limits the total amount of oil or gas which may be produced in any pool in this State to an amount less than that which the pool could produce if no restrictions were imposed (which limitation may be imposed either incidental to, or without, a limitation of the total amount of oil or gas which may be produced in the State), the Commission shall prorate or distribute the "allowable" production among the producers in the pool on a reasonable basis, and so that each producer will have the opportunity to produce or receive his just and equitable share, as such share is set forth in subsection G.S. 113-392(d), subject to the reasonable necessities for the prevention of waste.

(d) Whenever ~~the total amount of gas which can be produced from any pool in this State exceeds the amount of gas reasonably required to meet the reasonable market demand therefrom,~~ the Commission ~~shall limit~~ limits the total amount of gas which may be produced from ~~such pool. The~~ a pool, the Commission shall then allocate or distribute the allowable production among the developed areas in the pool on a reasonable basis, so that each producer will have the opportunity to produce his just and equitable share, as such share is set forth in subsection G.S. 113-392(d), whether the restriction for the pool as a whole is accomplished by order or by the automatic operation of the prohibitory provisions of this law. As far as applicable, the provisions of subsection (a) of this section shall be followed in allocating any "allowable" of gas for the State.

(e) After the effective date of any rule or order of the Commission fixing the "allowable" production of oil or gas, or both, or condensate, no person shall produce from any well, lease, or property more than the "allowable" production which is fixed, nor shall such amount be produced in a different manner than that which may be authorized."

SECTION 3.(b) G.S. 113-425 is repealed.

PART IV. AMEND STATUTE GOVERNING SUBSURFACE FLUID INJECTION

SECTION 4. G.S. 143-214.2 reads as rewritten:

"**§ 143-214.2. Prohibited discharges.**

(a) The discharge of any radiological, chemical or biological warfare agent or high-level radioactive waste to the waters of the State is prohibited.

(b) The discharge of any wastes to the subsurface or groundwaters of the State by means of wells is prohibited. This section shall not be construed to prohibit (i) the operation of closed-loop groundwater remediation systems in accordance with G.S. 143-215.1A or (ii) injection of ~~hydraulic fracturing~~ fluid ~~for~~ associated with the ~~exploration~~ exploration, production, or development of natural gas resources.

(c) Unless permitted by a rule of the Commission, the discharge of wastes, including thermal discharges, to the open waters of the Atlantic Ocean over which the State has jurisdiction are prohibited."

PART V. SEVERANCE TAXES

SECTION 5.(a) Chapter 105 of the General Statutes is amended by adding a new Article to read:

"Article 5I.

"Severance Tax.

"**§ 105-187.71. Definitions.**

The following definitions apply in this Article:

(1) Casinghead gas. – Gas or vapor indigenous to an oil stratum and produced from the stratum with oil.

(2) Condensate. – Liquid hydrocarbon that is or can be recovered from gas by a separator or other means.

(3) Energy mineral. – All forms of natural gas, oil, and related condensates.

(4) First purchaser. – A person who purchases an energy mineral from a producer.

(5) Gas. – All natural gas, including casinghead gas, and all other hydrocarbons not defined as oil or condensates.

(6) MCF. – One thousand cubic feet of natural gas.

(7) Oil. – Crude petroleum oil, and other hydrocarbons, regardless of gravity, which are produced at the well in liquid form by ordinary production methods and which are not the result of condensation of gas after it leaves the reservoir.

(8) Owner. – An owner of a landowner's royalty interest, of an overriding royalty, of profits and working interests, or any combination thereof in energy minerals. The term does not include an owner of federal, state, or local governmental royalty interest.

(9) Person. – Defined in G.S. 105-228.90.

(10) Producer. – A person who takes an energy mineral from the soil or water in this State.

(11) Return. – Any report or statement required to be filed under this Article to determine the tax due.

(12) Royalty interest. – An interest in mineral rights in a producing leasehold in the State. A royalty interest does not include the interest of a person having only the management and operation of a well.

(13) Secretary. – The Secretary of Revenue.

(14) Severance. – The extraction or other removal of an energy mineral from the soil or water of this State.

(15) Severed. – The point at which the energy mineral has been separated from the soil or water of this State.

(16) Standard barrel of oil. – A barrel of oil containing 42 gallons.

(17) Taxpayer. – Any person required to pay the severance tax levied by this Article.

"**§ 105-187.72. Tax on severance of energy minerals.**

(a) Purpose. – An excise tax, to be termed a "severance tax," is levied on the privilege of engaging in the severance of energy minerals from the soil or water of this State. The purpose of the tax is to provide revenue to administer and enforce the provisions of this Article, to administer the State's natural gas and oil reclamation regulatory program, to meet the environmental and resource management needs of this State, and to reclaim land affected by exploration for, drilling for, and production of natural gas and oil. The severance tax is imposed upon all energy minerals severed when sold or consumed, whichever occurs first.

(b) Calculation of Tax. – The amount of the severance tax shall be determined as follows:

(1) Condensates. – The applicable percentage rate of tax multiplied by the market value per each barrel of oil equivalents (BOE) of the condensates sold.

(2) Gas. – The applicable percentage rate of tax multiplied by the market value per each MCF of the gas sold.

(3) Oil. – The applicable percentage rate of tax multiplied by the market value per each standard barrel of the oil sold.

(c) Rate of Tax, Condensates. – The applicable percentage rate of the severance tax on condensates shall be determined in accordance with the following schedule:

(1) For condensates sold from a well in calendar year 2015, 2016, or 2017, the rate of tax shall be one percent (1%).

(2) For condensates sold from a well in calendar year 2018 or 2019, the rate of tax shall be two and one-half percent (2.5%).

(3) For condensates sold from a well in calendar year 2020 and thereafter, the rate of tax shall be six percent (6%).

(d) Rate of Tax, Gas. – The applicable percentage rate of the severance tax on gas shall be calculated for each sale of gas. The rate will be the sales price of each MCF divided by 100 stated as a percentage, within the following limitations:

(1) For gas sold from a well in calendar year 2015, 2016, or 2017, the rate of tax shall not exceed one percent (1%).

(2) For gas sold from a well in calendar year 2018 or 2019, the rate of tax shall not exceed two and one-half percent (2.5%).

(3) For gas sold from a well in calendar year 2020 and thereafter, the rate of tax shall be at least two and one-half percent (2.5%) and shall not exceed six percent (6%).

(e) Rate of Tax, Oil. – The applicable percentage rate of the severance tax on condensates shall be determined in accordance with the following schedule:

(1) For oil sold from a well in calendar year 2015, 2016, or 2017, the rate of tax shall be one percent (1%).

(2) For oil sold from a well in calendar year 2018 or 2019, the rate of tax shall be two and one-half percent (2.5%).

(3) For oil sold from a well in calendar year 2020 and thereafter, the rate of tax shall be six percent (6%).

(f) Exemption. – The severance of energy minerals from land or water in this State owned legally or beneficially by the producer, which energy minerals are used on the land from which they are taken by the producer as part of the improvement of or use in the producer's homestead, is exempt from the severance tax. To claim the exemption allowed by this subsection, the taxpayer shall provide any information required by the Secretary. Every taxpayer claiming the exemption under this subsection shall maintain and make available for inspection by the Secretary any records the Secretary considers necessary to determine and verify the amount of the exemption or special rate of tax to which the taxpayer is entitled. The burden of proving eligibility for the exemption and the amount of the exemption shall rest upon

the taxpayer, and no exemption shall be allowed to a taxpayer that fails to maintain adequate records or to make them available for inspection.

"**§ 105-187.73. Market value.**

(a) Market Value. – For the calculation of the severance tax, market value is the following:

(1) Condensates. – The market value of condensates is the total actual gross price in U.S. dollars paid by the first purchaser of condensates at the mouth of the well from which it was produced.

(2) Gas. – The market value of gas is the total actual gross price in U.S. dollars paid by the first purchaser at the mouth of the well from which the gas is produced as adjusted in this section. The market value of gas at the mouth of the well shall be determined by subtracting the producer's actual marketing costs from the producer's total gross cash receipts from the sale of the gas.

(3) Oil. – The market value of oil is the total actual gross price in U.S. dollars paid by the first purchaser of the oil at the mouth of the well from which it was produced.

(b) Marketing Costs. – Marketing costs are the costs incurred by the producer to get the gas from the mouth of the well to the market. Marketing costs do not include costs for which a producer receives a cost reimbursement from the gas purchaser. Marketing costs do not include costs incurred in producing the gas, costs incurred in normal lease separation of the oil or condensate from the gas, or insurance premiums on the marketing facility. Marketing costs include all of the following:

(1) Costs for compressing the gas sold.

(2) Costs for dehydrating the gas sold.

(3) Costs for sweetening the gas sold.

(4) Costs for delivering the gas to the purchaser.

(5) Costs for gathering the gas sold.

(c) Records. – In order to be eligible to subtract the marketing costs from the producer's gross receipts for purposes of calculating the market value of gas, the producer shall provide any information required by the Secretary. Every producer subtracting the marketing costs as permitted under this section shall maintain and make available for inspection by the Secretary of Revenue any records the Secretary considers necessary to determine and verify the amount of the marketing costs the producer is eligible to subtract. The burden of proving eligibility for subtracting the marketing costs and the amount of the marketing costs to be subtracted shall rest upon the producer, and no subtraction of marketing costs shall be allowed to a producer that fails to maintain adequate records or to make them available for inspection.

"**§ 105-187.74. Returns and payment of tax.**

(a) General. – Severance taxes are payable when a return is due. A return is due quarterly or monthly as specified in this section. A return must be filed by the producer of the energy mineral with the Secretary on a form prescribed by the Secretary and in the manner required by the Secretary. A return must be signed by the taxpayer or the taxpayer's agent.

(b) Payment. – A producer of energy minerals shall pay the tax for all owners of the energy minerals. The producer shall withhold from any payment due owners the proportionate tax due for remittance to the Secretary.

(c) Quarterly. – A taxpayer who is consistently liable for less than one thousand dollars ($1,000) a month in severance taxes must file a return and pay the taxes due on a quarterly basis. A quarterly return covers a calendar quarter and is due by the last day of the month following the end of the quarter.

(d) Monthly. – A taxpayer who is consistently liable for at least one thousand dollars ($1,000) a month in severance taxes must file a return and pay the taxes due on a monthly

basis. A monthly return is due by the 20th day of the month following the calendar month covered by the return.

(e) Category. – The Secretary must monitor the amount of severance taxes paid by a taxpayer or estimate the amount of taxes to be paid by a new taxpayer and must direct each taxpayer to pay tax and file returns as required by this section. In determining the amount of taxes due from a taxpayer, the Secretary must consider the total amount due from all places of business owned or operated by the same person as the amount due from that person. A taxpayer must file a return and pay tax in accordance with the Secretary's direction.

(f) Information on Return. – The amount of tax due and any other information required by the Secretary must be included on the return. Returns that do not contain the required information will not be accepted. When an unacceptable return is submitted, the Secretary will require a corrected return to be filed. The return must contain the following information concerning energy minerals produced during the month being reported:

(1) The gross amount of energy minerals produced that are subject to the tax imposed by this Article.

(2) The leases from which the energy minerals were produced.

(3) The names and addresses of the first purchasers of the energy minerals.

"**§ 105-187.75. Bond or letter of credit required.**

A producer must file with the Secretary a bond or an irrevocable letter of credit if the producer fails to file a return required under this Article. A bond or an irrevocable letter of credit must be conditioned upon compliance with the requirements of this Article, be payable to the State, and be in the form required by the Secretary. The amount of the bond or irrevocable letter of credit is two times the applicant's average expected monthly tax liability under this Article, as determined by the Secretary. When notified to do so by the Secretary, a person that is required to file a bond or an irrevocable letter of credit must file the bond or irrevocable letter of credit in the amount required by the Secretary within 30 days after receiving the notice from the Secretary.

"**§ 105-187.76. Allocation of revenue.**

The Secretary shall allocate the tax levied in this Article as follows:

(1) Twenty-five percent (25%), not to exceed one million dollars ($1,000,000) per year, to the Department of Environment and Natural Resources for purposes of administering its duties and responsibilities under Article 27 of Chapter 113 of the General Statutes.

(2) After allocation pursuant to subsection (a) of this section, the Secretary shall allocate:

a. Fifty percent (50%) to the General Fund.

b. Fifty percent (50%) to the Onshore Energy Management Fund until the Fund reaches ten million dollars ($10,000,000). The Onshore Energy Management Fund is an interest-bearing special revenue fund to be established within the State treasury. This fund shall be used only for emergency preparation, emergency response, emergency environmental protection, or mitigation associated with a release of liquid hydrocarbons or associated fluids directly related to onshore energy exploration, development, production, or transmission. Once the fund balance reaches the amount of ten million dollars ($10,000,000), funds over that amount shall be allocated to the General Fund. If monies are withdrawn from the Onshore Energy Emergency Fund to carry out the provisions in this sub-subdivision, revenues generated by the tax levied in this Article shall be deposited in the Onshore Energy Emergency Fund until a total of ten million dollars ($10,000,000) is reestablished.

"**§ 105-187.77. Liability of producer for tax.**

The tax imposed by this Article is the primary liability of the producer except as provided in this section. A first purchaser may not take delivery of energy minerals from a producer unless the producer furnishes the purchaser with a taxpayer identification number assigned by the Secretary. A first purchaser failing to secure the producer's taxpayer number, either from the producer or the Secretary, will be liable for any tax, penalty, and interest due on the energy minerals purchased from the producer.

"**§ 105-187.78. Royalty owner's records.**

The owner of a royalty interest shall keep both of the following:

(1) A record of all money received as royalty from each producing leasehold in the State.

(2) A copy of all settlement sheets furnished by a purchaser or operator or other statement showing the amount of energy minerals for which a royalty was received and the amount of severance tax deducted.

"**§ 105-187.79. Permits suspended for failure to report.**

If an entity fails to file any report or return or to pay any tax or fee required by this Article for 90 days after it is due, the Secretary shall inform the Secretary of Environment and Natural Resources of this failure. The Secretary of Environment and Natural Resources shall suspend permits for oil and gas exploration using horizontal drilling and hydraulic fracturing under G.S. 113-395 of any entity that fails to file a return under this Article. The Secretary of Environment and Natural Resources shall immediately notify by mail an entity of a suspension under this section.

"**§ 105-187.80. No local taxation.**

A city or county may not impose a franchise, privilege, license, income, or excise tax on the severing, production, treating, processing, ownership, sale, storage, purchase, marketing, or transportation on any energy minerals produced in the State, or upon the business of severing, producing, treating, processing, owning, selling, buying, storing, marketing, or transporting such energy minerals, or upon the ownership, operation, or maintenance of plants, facilities, machinery, pipelines, and gathering lines related to the severing, production, treating, processing, ownership, storage, sale, purchase, marketing, or transportation of energy minerals. This section does not preclude the taxation of the property in accordance with Article 11 of this Chapter."

SECTION 5.(b) G.S. 105-259(b) is amended by adding a new subdivision to read:

"(44) To furnish to the Department of Environment and Natural Resources the name, address, tax year end, and account and identification numbers of an entity liable for severance tax to enable the Secretary of Environment and Natural Resources to notify the entity that the Department of Environment and Natural Resources shall suspend permits of the entity for oil and gas exploration using horizontal drilling and hydraulic fracturing under G.S. 113-395."

SECTION 5.(c) G.S. 113-387 and G.S. 113-388 are repealed.

PART VI. APPROPRIATION FROM MINERAL INTEREST FUND FOR OPERATION OF MEC

SECTION 6. There is appropriated from the Mineral Interest Fund to the Department of Environment and Natural Resources the sum of twenty-two thousand nine hundred dollars ($22,900) for the 2012-2013 fiscal year to be used to operate the Mining and Energy Commission and for payment of expenditures related to the Commission's implementation of legislative mandates to the Commission, including the hiring of temporary or contract employees to assist with policy development and rule making.

PART VII. REVENUE FROM OFFSHORE ENERGY PRODUCTION

SECTION 7. Chapter 113B of the General Statutes is amended by adding a new Article to read:

"Article 3.

"Revenues from Offshore Energy Production.

"**§ 113B-30. Allocation of revenues from offshore energy production; creation of Offshore Energy Management Fund.**

(a) Any revenues and royalties paid to the State as a result of offshore leasing, exploration, development, and production of all energy resources shall be deposited in the Offshore Emergency Fund until the Fund reaches fifty million dollars ($50,000,000). The Offshore Energy Management Fund is an interest-bearing special revenue fund to be established within the State treasury. This Fund shall be used only for emergency preparation, emergency response, emergency environmental protection, or mitigation associated with a release of liquid hydrocarbons or associated fluids directly related to offshore energy exploration, development, production, or transmission. Once the Fund balance reaches the amount of fifty million dollars ($50,000,000), the funds shall be used as provided in subsection (b) of this section. If monies are withdrawn from this Fund to carry out the provisions in this section, all revenues and royalties paid to the State as a result of offshore leasing, exploration, development, and production of all energy resources shall be deposited in the Fund until a total of fifty million dollars ($50,000,000) is reestablished. Once the Fund balance reaches the amount of fifty million dollars ($50,000,000), the funds shall be used as provided in subsection (b) of this section.

(b) Any revenues and royalties paid to the State as a result of offshore leasing, exploration, development, and production of all energy resources in excess of the amount needed to establish the Fund created in subsection (a) of this section are annually appropriated and shall be used for the following purposes:

(1) Thirty percent (30%) of such revenues and royalties shall be credited to the General Fund.

(2) Ten percent (10%) of such revenues and royalties shall be credited to the North Carolina Highway Trust Fund established under G.S. 136-176.

(3) Ten percent (10%) of such revenues and royalties shall be transferred to the Community Colleges System Office to establish and manage a fund for curriculum development and implementation as well as financial assistance for students attending community college to receive vocational training through this curriculum in fields directly related to energy exploration and development and related energy infrastructure.

(4) Ten percent (10%) of such revenues and royalties shall be transferred to the Board of Governors of The University of North Carolina System to establish and manage research and development funds for programs directly related to energy research and development.

(5) Thirty percent (30%) of such revenues and royalties shall be transferred to the Department of Environment and Natural Resources for conservation, protection, and mitigation, including, but not limited to, beach and inlet management projects, dredging operations, channel navigation and maintenance, public beach and water access, water quality management, and habitat restoration.

(6) Eight percent (8%) of such revenues and royalties shall be transferred to the State Ports Authority for expansion and maintenance of State Port infrastructure associated with energy-related commerce.

(7) Two percent (2%) of such revenues and royalties shall be transferred to the Department of Commerce for recruitment of energy-related industries to the State."

PART VIII. REGIONAL INTERSTATE OFFSHORE ENERGY POLICY COMPACT

SECTION 8.(a) Development of Regional Interstate Offshore Energy Policy Compact. – The Governor is strongly encouraged to commence negotiations on the development of a regional energy compact with the governors of South Carolina and Virginia in order to develop a unified regional strategy for the exploration, development, and production of all commercially viable federal and state offshore energy resources within the three-state region. The Governor shall develop recommendations for the General Assembly to consider for the development of a statutory regional compact, and these recommendations shall reflect the collective agreement of all three governors in the three-state region in order to provide common language for consideration by each state's General Assembly. During the development of these compact recommendations, the Governor or the Governor's designee is authorized to work directly with each of the three states' Congressional delegations, the United States Department of the Interior, the United States Environmental Protection Agency, and other appropriate federal agencies on behalf of the State of North Carolina to develop appropriate strategies to be considered in the development of the three-state compact for increasing domestic energy exploration, development, and production within each state in the three-state region and their adjacent state and federal waters. The compact negotiations and recommendations shall address at least all of the following:

(1) Ensure a timely review and consideration of permits and proposals at both the state and federal level for both state and federal waters adjacent to each state in the three-state region for seismic and other marine geophysical exploration to identify and quantify natural gas and related hydrocarbon resources along the continental margin.

(2) Amend the 2012 to 2017 Five Year Leasing Plan of the United States Department of the Interior to include leasing federal waters adjacent to the State and the three-state region for the exploration, quantification, and development of natural gas and related hydrocarbon energy resources.

(3) Advocate proactively with each state's Congressional delegation and appropriate federal agencies to ensure direct sharing of royalties and revenues related to energy leasing, exploration, development, and production of all offshore energy resources in federal waters adjacent to the State and the three-state region.

(4) Request the United States Department of the Interior to reinstate the federal Offshore Policy Committee with new members and new alternate members to be nominated by the governor of the state represented on the Offshore Policy Committee and appointed by the Secretary of the Interior, six of whom are to be one member and one alternate member each from North Carolina, Virginia, and South Carolina.

(5) Request the United States Department of the Interior to immediately move forward with permitting geological and geophysical data acquisition activities associated with oil and gas exploration in the Mid- and South Atlantic Planning Areas of the Atlantic Outer Continental Shelf immediately as outlined in Alternative A of the Bureau of Ocean Energy Management's Draft Programmatic Environmental Impact Statement entitled "Atlantic OCS Proposed Geological and Geophysical Activities" published in 2012.

SECTION 8.(b) No later than three months after the effective date of this act, and at least every three months thereafter, the Governor or the Governor's designee shall report to

the General Assembly on the progress of the Governor and others in complying with the requirements under this section, to include providing copies of correspondence and other relevant materials to or from the Office of the Governor when the correspondence or materials pertain to the subject under this section or to any requirement under this section. The Governor shall report the Governor's final recommendations for the three-state energy compact to the Joint Energy Oversight Committee no later than March 1, 2014.

SECTION 8.(c) In addition to the provisions in Sections 8(a) and 8(b) of this act, the Governor is encouraged to join the Governors of Alaska, Texas, Louisiana, Mississippi, Alabama, South Carolina, and Virginia and any others who may sign on to the Outer Continental Shelf Governors Coalition announced on May 3, 2011, to promote a constructive dialogue among the coastal state governors and the federal government on offshore energy issues important to the future of North Carolina and the United States. The Governor is authorized to expend funds related to membership in the Coalition.

SECTION 8.(d) The Governor is also encouraged to write letters to the North Carolina Congressional delegation, the governors of South Carolina and Virginia, the legislative bodies of South Carolina and Virginia, the Secretary of the United States Department of the Interior, and the President of the United States, urging their support of the recommendations set forth in subdivision (1) through (5) of Section 8(a) of this act.

SECTION 8.(e) Upon ratification, the Secretary of State shall furnish certified copies of this act to each member of the North Carolina Congressional delegation, the governors of South Carolina and Virginia, the legislative bodies of South Carolina and Virginia, the Secretary of the United States Department of the Interior, and the President of the United States.

PART IX. ENERGY POLICY ACT AND ENERGY POLICY COUNCIL AMENDMENTS

SECTION 9.(a) The title of Chapter 113B of the General Statutes reads as rewritten:

"**North Carolina Energy Policy ~~Act of 1975.~~and Jobs Act.**"

SECTION 9.(b) The title of Article 1 of Chapter 113B of the General Statutes reads as rewritten:

"Article 1.

"Energy ~~Policy~~ Jobs Council.

SECTION 9.(c) G.S. 113B-1 reads as rewritten:

"**§ 113B-1. Legislative findings and purpose.**

Upon investigation the General Assembly hereby finds that:

(1) Energy is essential to the health, safety and welfare of the people of this State and to the workings of the State ~~economy;~~economy.

~~(2) Growth in the consumption of energy resources is in some part due to wasteful, uneconomic and inefficient uses of energy and a continuation of this trend will adversely affect the future social, economic and environmental development of North Carolina;~~

~~(3)~~ It is ~~the responsibility of State government to encourage~~in the State's best interest to support the development of a reliable and adequate supply of energy for North Carolina ~~at a level consistent with such energy needs required for the protection of public health and safety, and for the promotion of the general welfare; and~~that is secure, stable, and predictable in order to facilitate economic growth, job creation, and expansion of business and industry opportunities.

(3a) It is in the State's best interest to support the exploration, development, and production of domestic energy supplies, preferably from the resources within the State or region and most certainly from within the country.

(3b) It is the duty of State government to protect and preserve the State's natural resources, cultural heritage, and quality of life and, above all, the public health and safety of its residents during the exploration, development, and production of domestic energy resources.

(4) The State ~~has not provided~~must provide the basis for development of a long-range unified energy policy to encompass comprehensive energy resource planning and efficient management of ~~the rate of consumption of~~ existing energy resources in relation to economic growth, to effectively meet an energy crisis, to encourage development of alternative sources of ~~energy,~~energy that are capable of achieving a positive benefit-to-cost ratio, and to ~~prudently conserve~~ ensure efficient utilization of energy resources in a manner consistent with assuring a reliable and adequate supply of energy for North ~~Carolina.~~Carolina, including active support and collaboration with the federal government to ensure access to the nation's energy resources located on the outer continental shelf directly adjacent to the State's coastal waters.

(5) It is the expressed intent of this Chapter to provide for development of such a unified domestic energy policy for the State of North ~~Carolina.~~Carolina as part of a nationwide effort for increased domestic energy production in the interest of national security and economic growth and stability."

SECTION 9.(d) G.S. 113B-2 reads as rewritten:

"**§ 113B-2. Creation of Energy ~~Policy~~ Jobs Council; purpose of Council.**

(a) ~~There~~ The Energy Jobs Council is ~~hereby~~ created ~~a council~~ to advise and make recommendations on increasing domestic energy ~~policy~~ exploration, development, and production within the State and region to promote economic growth and job creation to the Governor and the General ~~Assembly to be known as the Energy Policy~~Assembly. The Energy Jobs Council ~~which~~ shall be located within the Department of ~~Commerce.~~Environment and Natural Resources.

(b) Except as otherwise provided in this Chapter, the powers, duties and functions of the Energy ~~Policy~~ Jobs Council shall be as prescribed by the Secretary of ~~Commerce.~~Environment and Natural Resources.

(c) The Energy ~~Policy~~ Jobs Council shall serve as the central energy policy planning body of the State and shall communicate and cooperate with federal, State, regional and local bodies and agencies to the end of effecting a coordinated energy policy."

SECTION 9.(e) G.S. 113B-3 reads as rewritten:

"**§ 113B-3. Composition of Council; appointments; terms of members; qualifications.**

(a) The Energy ~~Policy~~ Jobs Council shall consist of ~~16~~ 13 members to be appointed as follows:

~~(1) Two members of the North Carolina House of Representatives to be appointed by the Speaker of the House of Representatives;~~

~~(2) Two members of the North Carolina Senate to be appointed by the President Pro Tempore of the Senate;~~

(2a) The Secretary of Environment and Natural Resources.

(2b) The Secretary of Commerce.

(3) ~~Twelve~~ Eleven public members who are citizens of the State of North ~~Carolina to be appointed by the Governor. The Governor shall designate one of the public members as chair of the Council.~~Carolina and who are appointed in accordance with subsection (c) of this section.

(b) Appointments to the Energy ~~Policy~~ Jobs Council shall be made by ~~July 15, 2009,~~ July 1, 2013. ~~and each such appointee shall serve until January 31, 2011. Thereafter,~~ the ~~appointed members of the General Assembly shall serve two-year terms, and the appointed public members shall serve four-year terms. A member of the Energy Policy Council shall continue to serve until his successor is duly appointed, but such holdover shall not affect the expiration date of such succeeding term.~~ The terms of office of members of the Council are three years. The terms of members appointed under subdivisions (1), (4), and (6) of subsection (c) of this section shall expire on June 30 of years evenly divisible by three. The terms of members appointed under subdivisions (2), (5), (8), and (10) of subsection (c) of this section shall expire on June 30 of years that precede by one year those years that are evenly divisible by three. The terms of members appointed under subdivisions (3), (7), (11), and (12) of subsection (c) of this section shall expire on June 30 of years that follow by one year those years that are evenly divisible by three. Appointments made by the President Pro Tempore of the Senate and the Speaker of the House of Representatives shall be allowed when the General Assembly is not in session.

(c) The public members of the Energy ~~Policy~~ Jobs Council shall have the ~~following qualifications:~~qualifications and shall be appointed as follows:

(1) One member shall be ~~experienced in the electric power industry;~~a representative of an investor-owned electric public utility, to be appointed by the Governor.

(2) One member shall ~~be experienced in the natural gas industry;~~have experience in natural gas and associated hydrocarbon exploration, development, and production, to be appointed by the Governor.

~~(2a) One member shall be experienced in energy policy matters;~~

(3) One member shall be ~~experienced in alternative fuels and biofuels;~~a representative of an investor-owned natural gas public utility, to be appointed by the Speaker of the House of Representatives.

(4) One member shall be ~~experienced in energy efficient building design or construction;~~an energy economist or a person with experience in the financing or business development of an energy-related business, to be appointed by the President Pro Tempore of the Senate.

(5) One member shall ~~be experienced in environmental protection;~~have experience in energy policy, to be appointed by the President Pro Tempore of the Senate.

(6) One member ~~who is engaged in a business providing renewable energy or other energy services;~~shall be an industrial energy consumer, to be appointed by the Speaker of the House of Representatives.

(7) One member shall be knowledgeable of alternative and renewable sources of ~~energy;~~energy, to be appointed by the Governor.

(8) One member ~~who, at the time of appointment, is a county commissioner; or elected municipal officer; provided, the member's term on the Council shall expire immediately in the event that he or she vacates office as a county commissioner or municipal officer;~~shall have experience in trucking, rail, or shipping transportation, to be appointed by the Speaker of the House of Representatives.

(9) Repealed by Session Laws 2009-446, s. 4, effective August 7, 2009.

(10) ~~One member shall be knowledgeable in the finance, business development, or technology development of energy-related business;~~One member shall have experience in energy research and development, to be appointed by the President Pro Tempore of the Senate.

(11) ~~One member shall be experienced in low income energy policy matters or low income residential weatherization.~~One member shall have experience in environmental management, appointed by the Speaker of the House of Representatives.

(12) ~~One member shall be experienced in the petroleum industry.~~One member shall have experience in the biofuels industry, to be appointed by the President Pro Tempore of the Senate."

SECTION 9.(f) G.S. 113B-4 reads as rewritten:

"**§ 113B-4. Chairman of Council; replacement; reimbursement of members.**

(a) ~~On August 15, 2009, on January 31, 2011, and every four years thereafter, the Governor shall appoint a chair of the Council.~~The Council shall elect one of its members to serve as chair. The chair shall serve for a term of two years and may serve no more than two terms in total.

(b) In case of a vacancy in the membership on the Energy ~~Policy~~Jobs Council prior to the expiration of a member's term, a successor shall be appointed within 30 days of such vacancy for the remainder of the unexpired term by the appropriate official pursuant to the provisions of G.S. 113B-3.

(c) Members of the Energy ~~Policy~~ Jobs Council shall be reimbursed for their services pursuant to the provisions of G.S. 138-5."

SECTION 9.(g) G.S. 113B-5 reads as rewritten:

"**§ 113B-5. Organization of the Council; adoption of rules of procedure therefor.**

(a) To facilitate the work of the Energy ~~Policy~~ Jobs Council and for administrative purposes, the chairman of the Energy ~~Policy~~ Jobs Council, with the consent and approval of the members, may organize the work of the Council so as to carry out the provisions of this Chapter and to insure the efficient operation of the Council.

(b) The Energy ~~Policy~~ Jobs Council shall adopt its own rules of procedure and shall meet regularly at such times and in such places as it may deem necessary to carry out its functions.

(c) The Energy ~~Policy~~ Jobs Council is authorized to create such advisory committees as will be needed to assist the Council in its efforts and to assure adequate citizen-consumer input into those efforts. Members of advisory committees shall be appointed by the Council for terms not to exceed the expiration date of terms of then present public members of the Council."

SECTION 9.(h) G.S. 113B-6 reads as rewritten:

"**§ 113B-6. General duties and responsibilities.**

The goal of the Energy Jobs Council is to identify and utilize all domestic energy resources in order to ensure a secure, stable, and predictable energy supply and to protect the economy of the State, promote job creation, and expand business and industry opportunities while ensuring the protection and preservation of the State's natural resources, cultural heritage, and quality of life. The Energy ~~Policy~~Jobs Council ~~shall~~ may delegate its duties where appropriate to the Division of Energy, Mineral, and Land Resources of the Department of Environment and Natural Resources. The Council shall provide oversight and approval to the duties delegated to the Division. The Energy Jobs Council shall have the following general duties and responsibilities:

(1) To develop and recommend to the Governor and the General Assembly a comprehensive ~~long-range~~ State energy policy that addresses requirements in the short term (10 years), in the midterm (25 years), and in the long term (50 years) to achieve maximum effective management and use of present and future sources of energy, such policy to include but not be limited to energy efficiency, renewable and alternative sources of energy, research and development into alternative energy technologies, and improvements to the State's energy infrastructure and energy ~~economy;~~economy, including smart

grid and domestic energy resources that shall include at least natural gas, coal, hydroelectric power, solar, wind, nuclear energy, and biomass. For utilities regulated under Chapter 62 of the General Statutes, the policy developed under this subdivision shall be consistent with the analysis and plan developed under G.S. 62-110.1(c).

(2) To conduct an ongoing assessment of the opportunities and constraints presented by various uses of all forms of energy to facilitate the expansion of the domestic energy supply and to encourage the efficient use of all such energy forms in a manner consistent with State energy ~~policy;~~policy.

(3) To continually review and coordinate all State government research, education and management programs relating to energy ~~matters and~~matters, to continually educate and inform the general public regarding such energy ~~matters;~~matters, and to actively engage in discussions with the federal government, its agencies, and its leaders to identify opportunities to increase domestic energy supply within North Carolina and its adjacent offshore waters.

(4) To recommend to the Governor and to the General Assembly needed energy legislation and rule making, and to recommend for implementation such modifications of energy policy, ~~plans~~ plans, and programs as the Council considers necessary and desirable."

SECTION 9.(i) G.S. 113B-7 reads as rewritten:

"**§ 113B-7. Energy Efficiency Program; components.**

(a) The Energy ~~Policy~~ Jobs Council shall prepare a recommended Energy Efficiency Program for transmittal to the Governor, the initial plan to be completed by January 30, 1976.

(b) The Energy Efficiency Program shall be designed to assure the public health and safety of the people of North Carolina and to encourage and promote conservation of energy through reducing wasteful, inefficient or uneconomical uses of energy resources.

(c) The Energy Efficiency Program shall include but not be limited to the following recommendations:

(1) Recommendations to the Building Code Council for lighting, insulation, climate control systems and other building design and construction standards which increase the efficient use of energy and are economically feasible to implement;

(2) Recommendations to the Building Code Council for per unit energy requirement allotments based upon square footage for various classes of buildings which would reduce energy consumption, yet are both technically and economically feasible and not injurious to public health and safety;

(3) Recommendations for minimum levels of operating efficiency for all appliances whose use requires a significant amount of energy based upon both technical and economic feasibility considerations;

(4) Recommendations for State government purchases of supplies, vehicles and equipment and such operating practices as will make possible more efficient use of energy;

(5) Recommendations on energy conservation policies, programs and procedures for local units of government;

(6) Any other recommendations which the Energy ~~Policy~~ Jobs Council considers to be a significant part of a statewide conservation effort and which include provisions for sufficient incentives to further energy conservation;

(7) An economic and environmental impact analysis of the recommended program.

(d) In addition to specific conservation recommendations, the Energy Efficiency Program shall contain proposals for implementation of such recommendations as can be carried out by executive order. Upon completion of a draft recommended program, the Council shall arrange for its distribution to interested parties and shall make the program available to the public and the Council further shall set a date for public hearing on said program.

(e) Upon completion of the Energy Efficiency Program, the Council shall transmit said program, to be known as the State Energy Efficiency Program, to the Governor for approval or disapproval. Upon approval, the Governor shall assign administrative responsibility for such implementation as can be carried out by executive order to appropriate agencies of State government, and submit to the General Assembly such proposals which require legislative action for implementation. The Governor shall have the authority to accept, administer, and enforce federal programs, program measures and permissive delegations of authority delegated to the Governor by the President of the United States, Congress, or the United States Department of Energy, on behalf of the State of North Carolina, which pertain to the conservation of energy resources.

(f) The Governor shall transmit the approved Energy Efficiency Program to the President Pro Tempore of the Senate, to the Speaker of the House of Representatives, to the heads of all State agencies and shall further seek to publicize such plan and make it available to all units of local government and to the public at large.

(g) At least every two years and whenever such changes take place as would significantly affect energy supply or demand in North Carolina, the Energy ~~Policy~~ Jobs Council shall review and, if necessary, revise the Energy Efficiency Program, transmitting such revised plan to the Governor pursuant to the procedures contained in subsections (e) and (f) of this section."

SECTION 9.(j) G.S. 113B-8(a) reads as rewritten:

"**§ 113B-8. Energy Management Plan; components.**

(a) The Energy ~~Policy~~ Jobs Council shall prepare a recommended Energy Management Plan for transmittal to the Governor, the initial plan to be completed by June 30, 1976."

SECTION 9.(k) G.S. 113B-9 reads as rewritten:

"**§ 113B-9. Emergency Energy Program; components.**

(a) The Energy ~~Policy~~ Jobs Council shall, in accordance with the provisions of this Article, develop contingency and emergency plans to deal with possible shortages of energy to protect public health, safety and welfare, such plans to be compiled into an Emergency Energy Program.

(b) ~~Within four months of July 1, 1975:~~ If required for an update of the program provided under subsection (j) of this section:

(1) Each electric utility and natural gas utility in the State shall prepare and submit to the Energy ~~Policy~~ Jobs Council a proposed emergency curtailment plan setting forth proposals for identifying priority loads or users in the event of the declaration of an energy crisis pursuant to G.S. 113B-20, and proposals for supply allocation to such priority loads or users. Utilities regulated under Chapter 62 of the General Statutes may satisfy this requirement by submitting the General Load Reduction and System Restoration Plan that is prepared annually for the Utilities Commission.

(2) Each major oil producer doing business in this State as determined by the Energy ~~Policy~~ Jobs Council shall prepare and submit to the Energy ~~Policy~~ Jobs Council an analysis of how any national supply curtailment pursuant to federal regulations shall affect the supply for North Carolina and how priority users will be determined and available supplies allocated to such users.

(c) The Energy ~~Policy~~ Jobs Council shall encourage the preparation of joint emergency curtailment plans and analyses. If such cooperative plans and analyses are developed between two or more utilities, major producers or by an association of such companies, the joint plans or analyses may be submitted to the Energy ~~Policy~~ Jobs Council in lieu of information required pursuant to subsection (b) of this section.

(d) The Energy ~~Policy~~ Jobs Council shall collect from all relevant governmental agencies any existing contingency plans for dealing with sudden energy shortages or information related thereto.

(e) The Energy ~~Policy~~ Jobs Council shall hold one or more public hearings, investigate and review the plans submitted pursuant to this section, and, within nine months after July 1, 1975, the Energy ~~Policy~~ Jobs Council shall approve and recommend to the Governor guidelines for emergency curtailment to be known as the Emergency Energy Program and to be implemented upon adoption by the Governor after the declaration of an energy crisis and pursuant to G.S. 113B-20 and 113B-23. Said program shall be based upon the plans presented to the Energy ~~Policy~~ Jobs Council, upon independent analysis and study by the Council, and upon information provided at the hearing or hearings, provided, however, that they are consistent with such federal programs and regulations as are already in effect at that time.

(f) The Emergency Energy Program shall provide for the maintenance of essential services, the protection of public health, safety, and welfare, and the maintenance of a sound basic State economy. For utilities regulated under Chapter 62 of the General Statutes, the program shall be consistent with the General Load Reduction and System Restoration Plan that is prepared annually for the Utilities Commission. Provisions also shall be made in said program to differentiate curtailment of energy consumption by users on the basis of ability to accommodate such curtailments, and shall also include, but not be limited to, the following:

(1) A variety of strategies and staged conservation measures of increasing intensity and authority to reduce energy use during an energy crisis, as defined in G.S. 113B-20 and guidelines and criteria for allocation of energy sources to priority users. The program shall contain alternative conservation actions and allocation plans to reasonably meet various foreseeable shortage circumstances and to allow a choice of appropriate responses;

(2) Evidence that the program is consistent with requirements of federal emergency energy conservation and allocation laws and regulations;

(3) Proposals to assist such individuals, institutions, agriculture and businesses which have engaged in energy saving measures;

(g) The Energy ~~Policy~~ Jobs Council shall carry out such investigations and studies as are necessary to determine if and when potentially serious shortages of energy are likely to affect North Carolina and the Council shall make recommendations to the Governor concerning administrative and legislative actions required to avert such shortages, such recommendations to be included as a section of the Emergency Energy Program.

(h) In addition to the above information and recommendations, the program shall contain proposals for implementation of such recommendations which include procedures, rules and regulations and agency administrative responsibilities for implementation, and shall further contain procedures for fair and equitable review of complaints and requests for special exemptions from emergency conservation measures or emergency allocations. Upon completion of a draft recommended plan, the Council shall arrange for its distribution to interested parties and shall make such plan available to the public and the Council further shall set a date for public hearing on said plan.

(i) Upon completion of the Emergency Energy Allocation Program, the Council and the Governor shall follow the procedures as outlined in G.S. 113B-7(e) and (f).

(j) The Council shall update the Emergency Energy Allocation Program ~~said program~~ upon ~~a~~ finding ~~by it~~ that an update is ~~justified and~~justified. The Council shall follow the procedures for adoption pursuant to G.S. 113B-7(e) and (f).

(k) The Governor shall have the authority to accept, administer and enforce federal programs, program measures and permissive delegations of authority delegated to the Governor by the President of the United States, Congress, or the United States Department of Energy, on behalf of the State of North Carolina, which pertain to actions necessary to deal with an actual or impending energy shortage."

SECTION 9.(l) G.S. 113B-11 reads as rewritten:

"**§ 113B-11. Powers and authority.**

(a) The Energy ~~Policy~~ Jobs Council is authorized to secure directly from any officer, office, department, commission, board, bureau, institution and other agency of the State and its political subdivisions any information it deems necessary to carry out its functions; and all such officers and agencies shall cooperate with the Council and, to the extent permitted by law, furnish such information to the Council as it may request.

...

(e) Staff support required by the Council shall be supplied by the Division of Energy, Mineral, and Land Resources of the Department of Environment and Natural Resources. ~~The Department of Commerce shall provide the staffing capability to the Energy Policy Jobs Council so as to fully and effectively develop recommendations for a comprehensive State energy policy as contained in the provisions of this Article.~~ The Department of Commerce and the Utilities Commission ~~is~~ are hereby authorized to make ~~its~~ their staff available to the Council to assist in the development of a State energy policy."

SECTION 9.(m) G.S. 113B-12 reads as rewritten:

"**§ 113B-12. Annual reports; contents.**

(a) ~~Beginning January 1, 1977, and every year~~Every two years ~~thereafter,~~ the Energy ~~Policy~~ Jobs Council shall transmit to the Governor, the Speaker of the House of Representatives, the President Pro Tempore of the Senate, the Environmental Review Commission, the Joint Legislative Commission on Energy Policy, and the chairman of the Utilities Commission ~~Commission and the appropriate chairmen of the House and Senate committees concerned with energy matters,~~ a comprehensive report providing a general overview of energy conditions in the State. ~~On January 1, 1976, the Energy Policy Council shall transmit a progress report to the public officials named above.~~

(b) The report shall include, but not be limited to, the following:

(1) An overview of statewide growth and development as they relate to future requirements for energy, including patterns of urban and metropolitan expansion, shifts in transportation modes, modifications in building types and design, and other trends and factors which, as determined by the Council, will significantly affect energy needs;

(2) The level of statewide and multi-county regional energy demand for a five, 10- and 20-year forecast period which, in the judgment of the Council, can reasonably be met, with proposals as to possible energy supply sources;

(3) An assessment of growth trends in energy consumption and production and an identification of potential adverse social, economic, or environmental impacts which might be imposed by continuation of the present trends, including energy costs to consumers, significant increases in air, water, and other forms of pollution, threats to public health and safety, and loss of scenic and natural areas;

(4) An analysis of the role of energy efficiency, renewable energy, improvements to the State's energy infrastructure, and other means in meeting the State's current and projected energy demand;

(5) Repealed by Session Laws 2009-446, s. 9, effective August 7, 2009.
(6) Recommendations to the Governor and the General Assembly for additional administrative and legislative actions on energy matters;
(7) A summary of the Council's activities since ~~its inception,~~the last report, a description of major plans developed by the Council, an assessment of plan implementation, and a review of Council plans and programs for the coming biennium."

SECTION 9.(n) G.S. 113B-21(a) reads as rewritten:

"(a) ~~There is hereby created~~Upon the declaration of an energy crisis by the Governor, a Legislative Committee on Energy Crisis Management shall be created to consist of the Speaker, ~~as chairman,~~ the Speaker pro tempore of the House of ~~Representatives and~~Representatives, the President ~~pro tempore~~ Pro Tempore of the Senate, and the majority leader of the Senate. The Lieutenant Governor shall serve as chair, and shall be a nonvoting ex officio member, provided, however, that ~~he~~ the chair shall vote to break a tie."

SECTION 9.(o) G.S. 113B-23 reads as rewritten:

"**§ 113B-23. Administration of plans and procedures.**

(a) Upon the declaration of an energy crisis, pursuant to G.S. 113B-20, the Energy ~~Policy~~ Jobs Council shall become the emergency energy coordinating body for the State and shall carry out the following duties:
(1) Identify and determine the nature and severity of expected energy shortages;
(2) Provide for daily communications with and gather information from significant energy producers, distributors, transporters and major consumers, as determined by the Energy ~~Policy~~ Jobs Council, to carry out its responsibilities pursuant to this section;
(3) Provide data, carry out continuing assessments of the crisis situation, and make recommendations to the Governor and to the Legislative Committee on Energy Crisis Management for further action.

(b) Upon the declaration of an energy crisis, the Governor shall order the Energy ~~Policy~~ Jobs Council, the Utilities Commission, the Attorney General and other appropriate State and local agencies to implement and enforce the Emergency Energy Program pursuant to G.S. 113B-9 and any emergency rules, orders or regulations approved pursuant to G.S. 113B-22.

(c) Upon the declaration of an energy crisis, the Governor may employ such measures and give such direction to State and local offices and agencies as may be reasonable and necessary for the purpose of securing compliance with the provisions of this Article and with emergency rules, orders and regulations issued pursuant to G.S. 113B-22."

SECTION 9.(p) G.S. 113B-24(c) reads as rewritten:

"(c) The provisions of this Article or any rules, orders or regulations promulgated pursuant to G.S. 113B-22 may be enforced by bringing an action to enjoin such acts or practices as may be in violation and, upon a proper showing, a temporary restraining order or a preliminary or permanent injunction shall be issued. The relief sought may include a mandatory injunction commanding any person to comply with any such order, rule or regulation and restitution of money received in violation of any such order, rule or regulation. The Attorney General shall bring any action under this subsection upon the request of the Governor, the Legislative Committee on Energy Crisis Management, the Energy ~~Policy~~ Jobs Council, or upon his direction if he deems such action advisable and in the public interest. The Attorney General may institute such action in the Superior Court of Wake County, or, in his discretion, in the superior court of the county in which the acts or practices constituting a violation occurred, are occurring or may occur."

SECTION 9.(q) G.S. 114-4.2D reads as rewritten:

"**§ 114-4.2D. Employment of attorney for Energy ~~Policy~~ Jobs Council of the Department of Environment and Natural Resources and the Energy Efficiency Program of the Department of Commerce.**

The Attorney General shall assign an attorney to work full time with the Energy ~~Policy~~ Jobs Council of the Department of Environment and Natural Resources and the Energy Efficiency Program of the Department of Commerce. Such attorney shall be subject to all provisions of Chapter 126 of the General Statutes relating to the State Personnel System. Such attorney shall also perform such additional duties as may be assigned by the Attorney General."

SECTION 9.(r) G.S. 143-58.5(c) reads as rewritten:

"(c) The Fund shall be used to offset the incremental fuel cost of biodiesel and biodiesel blend fuel with a minimum biodiesel concentration of B-20 for use in State vehicles, for the purchase of ethanol fuel with a minimum ethanol concentration of E-85 for use in State vehicles, the incremental vehicle cost of purchasing AFVs, for the development of related refueling infrastructure, for the costs of administering the Fund, and for projects approved by the Energy ~~Policy~~ Jobs Council."

SECTION 9.(s) G.S. 143-345.13 reads as rewritten:

"**§ 143-345.13. Reporting of stocks of coal and petroleum fuels.**

The Department of Administration may, with the prior express approval of the Energy ~~Policy~~ Jobs Council and the Governor, require that all coal and petroleum suppliers in North Carolina supplying coal, motor gasoline, middle distillates, residual oils, and propane for resale within the State, file with the Department of Administration, on forms prepared by the Department, accurate reports as to the stocks of coal and petroleum products and storage capacities maintained by the supplier, including the supplier's current inventory and stock of coal, motor gasoline, middle distillates, residual oils and propane, the expected time such supplies will last under ordinary distribution demand and the schedule for receiving additional or replacement stocks. The reports and the information contained therein shall be proprietary information available only to regular employees of the Department of Administration, except that aggregate tables or schedules consolidating information from the reports may be released if they do not reveal individual report data for any named supplier. It is further the intent of this section that no information shall be required from coal and petroleum suppliers, that is, at the time the reports are requested, already on file with any agency, commission, or department of State government.

It is the intent of this section that the reports be filed only at such times as the Energy ~~Policy~~ Jobs Council and the Governor determine that an energy crisis as defined in G.S. 113B-20 exists or may be imminent.

If any petroleum or coal supplier fails to file the accurate reports as may be required by this section for more than 10 days after the date on which any such report is due, the Secretary of Administration is authorized and empowered to petition the district court, Division of the General Court of Justice, in the county in which the principal office or place of business of the supplier is located, for a mandatory injunction compelling the supplier to file the report."

SECTION 9.(t) Article 7 of Chapter 143B of the General Statutes is amended by adding a new Part to read:

"Part 31. Energy Jobs Council.

"**§ 143B-281.1. Energy Jobs Council – transfer.**

The Energy Jobs Council, as established by Chapter 113B of the General Statutes and other applicable laws of this State, is hereby transferred to the Department of Environment and Natural Resources by a Type II transfer as defined in G.S. 143A-6."

SECTION 9.(u) Notwithstanding G.S. 113B-3 or any other law to the contrary, the terms of all members of the Energy Policy Council serving as of the effective date of this act shall expire on the effective date of this act or on June 30, 2013, whichever comes first. Initial

appointments shall be made pursuant to subsection (c) of G.S. 113B-3, as amended by Section 9(e) of this act, no later than July 1, 2013.

SECTION 9.(v) The Revisor of Statutes shall make the conforming statutory changes necessary to reflect the transfers under this section. The Revisor of Statutes may correct any reference in the General Statutes to the statutes that are recodified by this section and make any other conforming changes necessitated by this section.

PART X. MODIFY ELECTRICAL REQUIREMENTS RULE TO ALLOW HOSPITALS TO USE COMPRESSED NATURAL GAS AS EMERGENCY FUEL

SECTION 10.(a) Definitions. – "Electrical Requirements Rule" means 10A NCAC 13B .6227 (Licensing of Hospitals: Electrical Requirements) for purposes of this section and its implementation.

SECTION 10.(b) Electrical Requirements Rule. – Until the effective date of the revised permanent rule that the Medical Care Commission is required to adopt pursuant to Section 10(c) of this act, the Commission and the Department of Health and Human Services shall implement the Electrical Requirements Rule, as provided in Section 10(c) of this act.

SECTION 10.(c) Implementation. – Notwithstanding subdivision (2) of subsection (f) of the Electrical Requirements Rule, the Commission shall authorize facilities licensed by the Department to use bi-fuel generators that operate with both liquid fuel and natural gas (methane) that is not stored on the site, provided that the natural gas is delivered via pipe or pipeline by a natural gas utility. These bi-fuel generators shall be exempt from liquid fuel capacity standards established by the Commission. Bi-fuel generators that operate on both liquid and other gaseous fuels, including propane and butane, that are stored on the site shall also be authorized, provided that the combined capacity of both liquid and gaseous fuels meet minimum on-site fuel requirements established by the Commission. The Commission may adopt rules to require a licensed facility with a bi-fuel generator to develop a contingency plan for liquid fuel delivery onto the site in the event of a natural gas (methane) supply disruption.

SECTION 10.(d) Additional Rule-Making Authority. – The Commission shall adopt a rule to replace the Electrical Requirements 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 10(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. 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.(e) Effective Date. – Subsection (b) of this section expires when permanent rules to replace subsection (b) of this section have become effective, as provided by subsection (c) of this section.

PART XI. EFFECTIVE DATE

SECTION 11. Section 1(b) of this act becomes effective March 1, 2015. Section 3(b) of this act is effective when it becomes law and applies retroactively to October 1, 2012. Sections 5(a) through 5(c) of this act are effective for energy minerals sold on or after March 1, 2015, except that G.S. 105-187.76, as enacted by Section 5(a) of this act, becomes effective only if authorized by the General Assembly in the Current Operations and Capital Improvements Appropriations Act of 2013. G.S. 113B-30, enacted by Section 7 of this act, becomes effective only if authorized by the General Assembly in the Current Operations and Capital Improvements Appropriations Act of 2013. The first report due pursuant to G.S. 113B-12, as amended by Section 9(m) of this act, shall be transmitted on or before January 1, 2014. Except as otherwise provided, the remainder of this act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

S D

SENATE BILL 76

Finance Committee Substitute Adopted 2/14/13
PROPOSED COMMITTEE SUBSTITUTE S76-CSRIf-2 [v.2]
2/18/2013 3:14:06 PM

Short Title: Domestic Energy Jobs Act. (Public)

Sponsors:

Referred to:

February 12, 2013

A BILL TO BE ENTITLED

AN ACT TO (1) AUTHORIZE THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES TO ISSUE PERMITS ON OR AFTER MARCH 1, 2015, FOR OIL AND GAS EXPLORATION AND DEVELOPMENT ACTIVITIES IN THE STATE, INCLUDING THE USE OF HORIZONTAL DRILLING AND HYDRAULIC FRACTURING TREATMENTS FOR THAT PURPOSE; (2) DIRECT THE MINING AND ENERGY COMMISSION TO STUDY DEVELOPMENT OF A COMPREHENSIVE ENVIRONMENTAL PERMIT FOR OIL AND GAS EXPLORATION AND DEVELOPMENT ACTIVITIES USING HORIZONTAL DRILLING AND HYDRAULIC FRACTURING TREATMENTS; (3) MODIFY APPOINTMENTS TO THE MINING AND ENERGY COMMISSION; (4) MODIFY PROVISIONS IN THE OIL AND GAS CONSERVATION ACT CONCERNING THE MINING AND ENERGY COMMISSION'S AUTHORITY TO SET "ALLOWABLES"; (5) ELIMINATE THE REGISTRATION REQUIREMENTS FOR PERSONS CONDUCTING LANDMEN ACTIVITIES IN THE STATE; (6) AMEND THE STATUTE GOVERNING SUBSURFACE INJECTION OF FLUID; (7) PROVIDE A TAX FOR THE SEVERANCE OF ENERGY MINERALS FROM THE SOIL OR WATER OF THE STATE, REPEAL OUTDATED OIL AND GAS TAX STATUTES, AND AUTHORIZE THE SUSPENSION OF PERMITS FOR FAILURE TO FILE A RETURN FOR SEVERANCE TAXES; (8) APPROPRIATE MONIES FROM THE MINERAL INTEREST FUND TO THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES TO OPERATE THE MINING AND ENERGY COMMISSION AND FOR RELATED EXPENDITURES; (9) ASSIGN FUTURE REVENUE FROM ENERGY EXPLORATION, DEVELOPMENT, AND PRODUCTION OF ENERGY RESOURCES IN ORDER TO PROTECT AND PRESERVE THE STATE'S NATURAL RESOURCES, CULTURAL HERITAGE, AND QUALITY OF LIFE; (10) ENCOURAGE THE GOVERNOR TO DEVELOP THE REGIONAL INTERSTATE OFFSHORE ENERGY POLICY COMPACT; (11) AMEND THE ENERGY POLICY ACT OF 1975 AND THE ENERGY POLICY COUNCIL; AND (12) DIRECT THE MEDICAL CARE COMMISSION TO ADOPT RULES AUTHORIZING FACILITIES LICENSED BY THE DEPARTMENT OF HEALTH AND HUMAN SERVICES TO USE COMPRESSED NATURAL GAS AS AN EMERGENCY FUEL.

The General Assembly of North Carolina enacts:

PART I. ISSUANCE OF PERMITS

SECTION 1.(a) Effective March 1, 2015, the Department of Environment and Natural Resources and the Mining and Energy Commission are authorized to issue permits for oil and gas exploration and development activities using horizontal drilling and hydraulic fracturing treatments in the State pursuant to G.S. 113-395.

SECTION 1.(b) Section 3.(d) of S.L. 2012-143 is repealed.

SECTION 1.(c) The Mining and Energy Commission, with the assistance of the Department of Environment and Natural Resources, shall study development of a coordinated permitting program for oil and gas exploration and development activities using horizontal drilling and hydraulic fracturing treatments in order that a single comprehensive environmental permit may be issued to a permit applicant to govern the applicant's exploration and development activities at a site, including, but not limited to, regulation of the following matters: well construction, siting, and closure requirements; hydraulic fracturing treatments, including subsurface injection of fluids for that purpose; water quality, including stormwater control, and management of water resources; management of waste; and regulation of air emissions. The Department of Environment and Natural Resources shall seek any approvals necessary from the United States Environmental Protection Agency for a coordinated permitting program to allow issuance of a single comprehensive environmental permit for oil and gas exploration and development activities using horizontal drilling and hydraulic fracturing treatments. The Mining and Energy Commission shall report its findings and recommendations to the Environmental Review Commission and the Joint Legislative Commission on Energy Policy on or before October 1, 2013.

PART II. MINING AND ENERGY COMMISSION APPOINTMENT MODIFICATIONS

SECTION 2.(a) G.S. 143B-293.2 reads as rewritten:

"**§ 143B-293.2. North Carolina Mining and Energy Commission – members; selection; removal; compensation; quorum; services.**

(a) Members Selection. – The North Carolina Mining and Energy Commission shall consist of ~~15~~ 13 members appointed as follows:

(1) The Chair of the North Carolina State University Minerals Research Laboratory Advisory Committee, or the Chair's designee, ex officio.

~~(2) The State Geologist, or the State Geologist's designee, ex officio.~~

~~(3) The Assistant Secretary of Energy for the Department of Commerce, ex officio.~~

(4) One appointed by the General Assembly upon recommendation of the Speaker of the House of Representatives who is a member of a nongovernmental conservation interest.

(5) One appointed by the General Assembly upon recommendation of the Speaker of the House of Representatives ~~who~~ who, at the time of initial appointment, is an elected official of a municipal government located in ~~the Triassic Basin of North Carolina.~~ a region of North Carolina that has oil and gas potential. A person serving in this seat may complete a term on the Commission even if they are no longer serving as an elected official of a municipal government and may be reappointed to a second term.

(6) One appointed by the General Assembly upon recommendation of the Speaker of the House of Representatives who is a representative of the mining industry.

(7) One appointed by the General Assembly upon recommendation of the Speaker of the House of Representatives who shall be a geologist with experience in oil and gas exploration and development.

(8) One appointed by the General Assembly upon recommendation of the President Pro Tempore of the Senate who is a member of a nongovernmental conservation interest.

(9) One appointed by the General Assembly upon recommendation of the President Pro Tempore of the Senate ~~who~~ who, at the time of initial appointment, is a member of a county board of commissioners of a county located in ~~the Triassic Basin of North Carolina.~~a region of North Carolina that has oil and gas potential. A person serving in this seat may complete a term on the Commission even if they are no longer serving as county commissioner and may be reappointed to a second term.

(10) One appointed by the General Assembly upon recommendation of the President Pro Tempore of the Senate who is a representative of the mining industry.

(11) One appointed by the General Assembly upon recommendation of the President Pro Tempore of the Senate who shall be an engineer with experience in oil and gas exploration and development.

(12) One appointed by the Governor who shall be a representative of a publicly traded natural gas company.

(13) One appointed by the Governor who shall be a licensed attorney with experience in legal matters associated with oil and gas exploration and development.

(14) One appointed by the Governor who is a member of the Environmental Management Commission.~~Commission and knowledgeable in the principles of water and air resources management.~~

(15) One appointed by the Governor who is a member of the Commission for Public Health.~~Health and knowledgeable in the principles of waste management.~~

...

(h) Office May Be Held Concurrently with Others. – Membership on the Mining and Energy Commission is hereby declared to be an office that may be held concurrently with other elective or appointive offices in addition to the maximum number of offices permitted to be held by one person under G.S. 128-1.1.

...."

SECTION 2.(b) The term of the member serving pursuant to subdivision (14) of G.S. 143B-293.2(a), as amended by Section 2(a) of this act, shall terminate immediately should that individual's membership on the Environmental Management Commission terminate. The term of the member serving pursuant to subdivision (15) of G.S. 143B-293.2(a), as amended by Section 2(a) of this act, shall terminate immediately should that individual's membership on the Commission for Public Health terminate.

PART III. MISCELLANEOUS MODIFICATIONS TO THE OIL AND GAS CONSERVATION ACT: ALLOWABLES AND REPEAL OF LANDMEN REGISTRY.

SECTION 3.(a) G.S. 113-394 reads as rewritten:

"§ 113-394. Limitations on production; allocating and prorating "allowables."

(a) ~~Whenever the total amount of oil, including condensate, which all the pools in the State can produce, exceeds the amount reasonably required to meet the reasonable market demand for oil, including condensate, produced in this State, then the~~The Commission ~~shall~~ may limit the total amount of oil, including condensate, which may be produced in the State by fixing an amount which shall be designated "allowable" for ~~this State, which will not exceed the reasonable market demand for oil, including condensate, produced in this~~ the State. The Commission ~~shall~~ may then allocate or distribute the "allowable" for the State among the pools

on a reasonable basis and in such manner as to avoid undue discrimination, and so that waste will be prevented. In allocating the "allowable" for the State, and in fixing "allowables" for pools producing oil or hydrocarbons forming condensate, or both oil and such hydrocarbons, the Commission ~~shall~~ may take into account the producing conditions and other relevant facts with respect to such pools, including the separate needs for oil, gas and condensate, and ~~shall~~ may formulate rules setting forth standards or a program for the distribution of the "allowable" for the State, and ~~shall~~ distribute the "allowable" for the State in accordance with such standards or program, and where conditions in one pool or area are substantially similar to those in another pool or area, then the same standards or programs shall be applied to such pools and areas so that as far as practicable a uniform program will be followed; provided, however, the Commission shall allow the production of a sufficient amount of natural gas from any pool to supply adequately the reasonable market demand for such gas for light and fuel purposes if such production can be obtained without waste, and the condensate "allowable" for such pool shall not be less than the total amount of condensate produced or obtained in connection with the production of the gas "allowable" for light and fuel purposes, and provided further that, if the amount allocated to pool as its share of the "allowable" for the State is in excess of the amount which the pool should produce to prevent waste, then the Commission shall fix the "allowable" for the pool so that waste will be prevented.

~~(b) The Commission shall not be required to determine the reasonable market demand applicable to any single pool except in relation to all pools producing oil of similar kind and quality and in relation to the demand applicable to the State, and in relation to the effect of limiting the production of pools in the State.~~ In allocating "allowables" to pools, the Commission shall not be bound by nominations or desires of purchasers to purchase oil from particular fields or areas, and the Commission shall allocate the "allowable" for the State in such manner as will prevent undue discrimination against any pool or area in favor of another or others which would result from selective buying or nominating by purchasers of oil, as such term "selective buying or nominating" is understood in the oil business.

(c) Whenever the Commission limits the total amount of oil or gas which may be produced in any pool in this State to an amount less than that which the pool could produce if no restrictions were imposed (which limitation may be imposed either incidental to, or without, a limitation of the total amount of oil or gas which may be produced in the State), the Commission shall prorate or distribute the "allowable" production among the producers in the pool on a reasonable basis, and so that each producer will have the opportunity to produce or receive his just and equitable share, as such share is set forth in subsection G.S. 113-392(d), subject to the reasonable necessities for the prevention of waste.

(d) Whenever ~~the total amount of gas which can be produced from any pool in this State exceeds the amount of gas reasonably required to meet the reasonable market demand therefrom,~~ the Commission ~~shall limit~~ limits the total amount of gas which may be produced from ~~such pool. The~~ a pool, the Commission shall then allocate or distribute the allowable production among the developed areas in the pool on a reasonable basis, so that each producer will have the opportunity to produce his just and equitable share, as such share is set forth in subsection G.S. 113-392(d), whether the restriction for the pool as a whole is accomplished by order or by the automatic operation of the prohibitory provisions of this law. As far as applicable, the provisions of subsection (a) of this section shall be followed in allocating any "allowable" of gas for the State.

(e) After the effective date of any rule or order of the Commission fixing the "allowable" production of oil or gas, or both, or condensate, no person shall produce from any well, lease, or property more than the "allowable" production which is fixed, nor shall such amount be produced in a different manner than that which may be authorized."

SECTION 3.(b) G.S. 113-425 is repealed.

PART IV. AMEND STATUTE GOVERNING SUBSURFACE FLUID INJECTION

SECTION 4. G.S. 143-214.2 reads as rewritten:

"**§ 143-214.2. Prohibited discharges.**

(a) The discharge of any radiological, chemical or biological warfare agent or high-level radioactive waste to the waters of the State is prohibited.

(b) The discharge of any wastes to the subsurface or groundwaters of the State by means of wells is prohibited. This section shall not be construed to prohibit (i) the operation of closed-loop groundwater remediation systems in accordance with G.S. 143-215.1A or (ii) injection of ~~hydraulic fracturing~~ fluid ~~for~~ associated with the ~~exploration~~ exploration, production, or development of natural gas resources.

(c) Unless permitted by a rule of the Commission, the discharge of wastes, including thermal discharges, to the open waters of the Atlantic Ocean over which the State has jurisdiction are prohibited."

PART V. SEVERANCE TAXES

SECTION 5.(a) Chapter 105 of the General Statutes is amended by adding a new Article to read:

"Article 5I.

"Severance Tax.

"**§ 105-187.71. Definitions.**

The following definitions apply in this Article:

(1) Casinghead gas. – Gas or vapor indigenous to an oil stratum and produced from the stratum with oil.

(2) Condensate. – Liquid hydrocarbon that is or can be recovered from gas by a separator or other means.

(3) Energy mineral. – All forms of natural gas, oil, and related condensates.

(4) First purchaser. – A person who purchases an energy mineral from a producer.

(5) Gas. – All natural gas, including casinghead gas, and all other hydrocarbons not defined as oil or condensates.

(6) MCF. – One thousand cubic feet of natural gas.

(7) Oil. – Crude petroleum oil, and other hydrocarbons, regardless of gravity, which are produced at the well in liquid form by ordinary production methods and which are not the result of condensation of gas after it leaves the reservoir.

(8) Owner. – An owner of a landowner's royalty interest, of an overriding royalty, of profits and working interests, or any combination thereof in energy minerals. The term does not include an owner of federal, state, or local governmental royalty interest.

(9) Person. – Defined in G.S. 105-228.90.

(10) Producer. – A person who takes an energy mineral from the soil or water in this State.

(11) Return. – Any report or statement required to be filed under this Article to determine the tax due.

(12) Royalty interest. – An interest in mineral rights in a producing leasehold in the State. A royalty interest does not include the interest of a person having only the management and operation of a well.

(13) Secretary. – The Secretary of Revenue.

(14) Severance. – The extraction or other removal of an energy mineral from the soil or water of this State.

(15) Severed. – The point at which the energy mineral has been separated from the soil or water of this State.

(16) Standard barrel of oil. – A barrel of oil containing 42 gallons.

(17) Taxpayer. – Any person required to pay the severance tax levied by this Article.

"**§ 105-187.72. Tax on severance of energy minerals.**

(a) Purpose. – An excise tax, to be termed a "severance tax," is levied on the privilege of engaging in the severance of energy minerals from the soil or water of this State. The purpose of the tax is to provide revenue to administer and enforce the provisions of this Article, to administer the State's natural gas and oil reclamation regulatory program, to meet the environmental and resource management needs of this State, and to reclaim land affected by exploration for, drilling for, and production of natural gas and oil. The severance tax is imposed upon all energy minerals severed when sold or consumed, whichever occurs first.

(b) Calculation of Tax. – The amount of the severance tax shall be determined as follows:

(1) Condensates. – The applicable percentage rate of tax multiplied by the market value per each barrel of oil equivalents (BOE) of the condensates sold.

(2) Gas. – The applicable percentage rate of tax multiplied by the market value per each MCF of the gas sold.

(3) Oil. – The applicable percentage rate of tax multiplied by the market value per each standard barrel of the oil sold.

(c) Rate of Tax, Condensates. – The applicable percentage rate of the severance tax on condensates shall be determined in accordance with the following schedule:

(1) For condensates sold from a well in calendar year 2015, 2016, or 2017, the rate of tax shall be one percent (1%).

(2) For condensates sold from a well in calendar year 2018 or 2019, the rate of tax shall be two and one-half percent (2.5%).

(3) For condensates sold from a well in calendar year 2020 and thereafter, the rate of tax shall be six percent (6%).

(d) Rate of Tax, Gas. – The applicable percentage rate of the severance tax on gas shall be calculated for each sale of gas. The rate will be the sales price of each MCF divided by 100 stated as a percentage, within the following limitations:

(1) For gas sold from a well in calendar year 2015, 2016, or 2017, the rate of tax shall not exceed one percent (1%).

(2) For gas sold from a well in calendar year 2018 or 2019, the rate of tax shall not exceed two and one-half percent (2.5%).

(3) For gas sold from a well in calendar year 2020 and thereafter, the rate of tax shall be at least two and one-half percent (2.5%) and shall not exceed six percent (6%).

(e) Rate of Tax, Oil. – The applicable percentage rate of the severance tax on condensates shall be determined in accordance with the following schedule:

(1) For oil sold from a well in calendar year 2015, 2016, or 2017, the rate of tax shall be one percent (1%).

(2) For oil sold from a well in calendar year 2018 or 2019, the rate of tax shall be two and one-half percent (2.5%).

(3) For oil sold from a well in calendar year 2020 and thereafter, the rate of tax shall be six percent (6%).

(f) Exemption. – The severance of energy minerals from land or water in this State owned legally or beneficially by the producer, which energy minerals are used on the land from which they are taken by the producer as part of the improvement of or use in the producer's

homestead, is exempt from the severance tax. To claim the exemption allowed by this subsection, the taxpayer shall provide any information required by the Secretary. Every taxpayer claiming the exemption under this subsection shall maintain and make available for inspection by the Secretary any records the Secretary considers necessary to determine and verify the amount of the exemption or special rate of tax to which the taxpayer is entitled. The burden of proving eligibility for the exemption and the amount of the exemption shall rest upon the taxpayer, and no exemption shall be allowed to a taxpayer that fails to maintain adequate records or to make them available for inspection.

"**§ 105-187.73. Market value.**

(a) Market Value. – For the calculation of the severance tax, market value is the following:

(1) Condensates. – The market value of condensates is the total actual gross price in U.S. dollars paid by the first purchaser of condensates at the mouth of the well from which it was produced.

(2) Gas. – The market value of gas is the total actual gross price in U.S. dollars paid by the first purchaser at the mouth of the well from which the gas is produced as adjusted in this section. The market value of gas at the mouth of the well shall be determined by subtracting the producer's actual marketing costs from the producer's total gross cash receipts from the sale of the gas.

(3) Oil. – The market value of oil is the total actual gross price in U.S. dollars paid by the first purchaser of the oil at the mouth of the well from which it was produced.

(b) Marketing Costs. – Marketing costs are the costs incurred by the producer to get the gas from the mouth of the well to the market. Marketing costs do not include costs for which a producer receives a cost reimbursement from the gas purchaser. Marketing costs do not include costs incurred in producing the gas, costs incurred in normal lease separation of the oil or condensate from the gas, or insurance premiums on the marketing facility. Marketing costs include all of the following:

(1) Costs for compressing the gas sold.

(2) Costs for dehydrating the gas sold.

(3) Costs for sweetening the gas sold.

(4) Costs for delivering the gas to the purchaser.

(5) Costs for gathering the gas sold.

(c) Records. – In order to be eligible to subtract the marketing costs from the producer's gross receipts for purposes of calculating the market value of gas, the producer shall provide any information required by the Secretary. Every producer subtracting the marketing costs as permitted under this section shall maintain and make available for inspection by the Secretary of Revenue any records the Secretary considers necessary to determine and verify the amount of the marketing costs the producer is eligible to subtract. The burden of proving eligibility for subtracting the marketing costs and the amount of the marketing costs to be subtracted shall rest upon the producer, and no subtraction of marketing costs shall be allowed to a producer that fails to maintain adequate records or to make them available for inspection.

"**§ 105-187.74. Returns and payment of tax.**

(a) General. – Severance taxes are payable when a return is due. A return is due quarterly or monthly as specified in this section. A return must be filed by the producer of the energy mineral with the Secretary on a form prescribed by the Secretary and in the manner required by the Secretary. A return must be signed by the taxpayer or the taxpayer's agent.

(b) Payment. – A producer of energy minerals shall pay the tax for all owners of the energy minerals. The producer shall withhold from any payment due owners the proportionate tax due for remittance to the Secretary.

(c) Quarterly. – A taxpayer who is consistently liable for less than one thousand dollars ($1,000) a month in severance taxes must file a return and pay the taxes due on a quarterly basis. A quarterly return covers a calendar quarter and is due by the last day of the month following the end of the quarter.

(d) Monthly. – A taxpayer who is consistently liable for at least one thousand dollars ($1,000) a month in severance taxes must file a return and pay the taxes due on a monthly basis. A monthly return is due by the 20th day of the month following the calendar month covered by the return.

(e) Category. – The Secretary must monitor the amount of severance taxes paid by a taxpayer or estimate the amount of taxes to be paid by a new taxpayer and must direct each taxpayer to pay tax and file returns as required by this section. In determining the amount of taxes due from a taxpayer, the Secretary must consider the total amount due from all places of business owned or operated by the same person as the amount due from that person. A taxpayer must file a return and pay tax in accordance with the Secretary's direction.

(f) Information on Return. – The amount of tax due and any other information required by the Secretary must be included on the return. Returns that do not contain the required information will not be accepted. When an unacceptable return is submitted, the Secretary will require a corrected return to be filed. The return must contain the following information concerning energy minerals produced during the month being reported:

(1) The gross amount of energy minerals produced that are subject to the tax imposed by this Article.

(2) The leases from which the energy minerals were produced.

(3) The names and addresses of the first purchasers of the energy minerals.

"**§ 105-187.75. Bond or letter of credit required.**

A producer must file with the Secretary a bond or an irrevocable letter of credit if the producer fails to file a return required under this Article. A bond or an irrevocable letter of credit must be conditioned upon compliance with the requirements of this Article, be payable to the State, and be in the form required by the Secretary. The amount of the bond or irrevocable letter of credit is two times the applicant's average expected monthly tax liability under this Article, as determined by the Secretary. When notified to do so by the Secretary, a person that is required to file a bond or an irrevocable letter of credit must file the bond or irrevocable letter of credit in the amount required by the Secretary within 30 days after receiving the notice from the Secretary.

"**§ 105-187.76. Allocation of revenue.**

The Secretary shall allocate the tax levied in this Article as follows:

(1) Twenty-five percent (25%), not to exceed one million dollars ($1,000,000) per year, to the Department of Environment and Natural Resources for purposes of administering its duties and responsibilities under Article 27 of Chapter 113 of the General Statutes.

(2) After allocation pursuant to subsection (a) of this section, the Secretary shall allocate:

a. Fifty percent (50%) to the General Fund.

b. Fifty percent (50%) to the Onshore Energy Management Fund until the Fund reaches ten million dollars ($10,000,000). The Onshore Energy Management Fund is an interest-bearing special revenue fund to be established within the State treasury. This fund shall be used only for emergency preparation, emergency response, emergency environmental protection, or mitigation associated with a release of liquid hydrocarbons or associated fluids directly related to onshore energy exploration, development, production, or transmission. Once the fund balance reaches the amount of ten million dollars

($10,000,000), funds over that amount shall be allocated to the General Fund. If monies are withdrawn from the Onshore Energy Emergency Fund to carry out the provisions in this sub-subdivision, revenues generated by the tax levied in this Article shall be deposited in the Onshore Energy Emergency Fund until a total of ten million dollars ($10,000,000) is reestablished.

"**§ 105-187.77. Liability of producer for tax.**

The tax imposed by this Article is the primary liability of the producer except as provided in this section. A first purchaser may not take delivery of energy minerals from a producer unless the producer furnishes the purchaser with a taxpayer identification number assigned by the Secretary. A first purchaser failing to secure the producer's taxpayer number, either from the producer or the Secretary, will be liable for any tax, penalty, and interest due on the energy minerals purchased from the producer.

"**§ 105-187.78. Royalty owner's records.**

The owner of a royalty interest shall keep both of the following:

(1) A record of all money received as royalty from each producing leasehold in the State.

(2) A copy of all settlement sheets furnished by a purchaser or operator or other statement showing the amount of energy minerals for which a royalty was received and the amount of severance tax deducted.

"**§ 105-187.79. Permits suspended for failure to report.**

If an entity fails to file any report or return or to pay any tax or fee required by this Article for 90 days after it is due, the Secretary shall inform the Secretary of Environment and Natural Resources of this failure. The Secretary of Environment and Natural Resources shall suspend permits for oil and gas exploration using horizontal drilling and hydraulic fracturing under G.S. 113-395 of any entity that fails to file a return under this Article. The Secretary of Environment and Natural Resources shall immediately notify by mail an entity of a suspension under this section.

"**§ 105-187.80. No local taxation.**

A city or county may not impose a franchise, privilege, license, income, or excise tax on the severing, production, treating, processing, ownership, sale, storage, purchase, marketing, or transportation on any energy minerals produced in the State, or upon the business of severing, producing, treating, processing, owning, selling, buying, storing, marketing, or transporting such energy minerals, or upon the ownership, operation, or maintenance of plants, facilities, machinery, pipelines, and gathering lines related to the severing, production, treating, processing, ownership, storage, sale, purchase, marketing, or transportation of energy minerals. This section does not preclude the taxation of the property in accordance with Article 11 of this Chapter."

SECTION 5.(b) G.S. 105-259(b) is amended by adding a new subdivision to read:

"(44) To furnish to the Department of Environment and Natural Resources the name, address, tax year end, and account and identification numbers of an entity liable for severance tax to enable the Secretary of Environment and Natural Resources to notify the entity that the Department of Environment and Natural Resources shall suspend permits of the entity for oil and gas exploration using horizontal drilling and hydraulic fracturing under G.S. 113-395."

SECTION 5.(c) G.S. 113-387 and G.S. 113-388 are repealed.

PART VI. APPROPRIATION FROM MINERAL INTEREST FUND FOR OPERATION OF MEC

SECTION 6. There is appropriated from the Mineral Interest Fund to the Department of Environment and Natural Resources the sum of twenty-two thousand nine hundred dollars ($22,900) for the 2012-2013 fiscal year to be used to operate the Mining and Energy Commission and for payment of expenditures related to the Commission's implementation of legislative mandates to the Commission, including the hiring of temporary or contract employees to assist with policy development and rule making.

PART VII. REVENUE FROM OFFSHORE ENERGY PRODUCTION

SECTION 7. Chapter 113B of the General Statutes is amended by adding a new Article to read:

"Article 3.

"Revenues from Offshore Energy Production.

"**§ 113B-30. Allocation of revenues from offshore energy production; creation of Offshore Energy Management Fund.**

(a) Any revenues and royalties paid to the State as a result of offshore leasing, exploration, development, and production of all energy resources shall be deposited in the Offshore Emergency Fund until the Fund reaches fifty million dollars ($50,000,000). The Offshore Energy Management Fund is an interest-bearing special revenue fund to be established within the State treasury. This Fund shall be used only for emergency preparation, emergency response, emergency environmental protection, or mitigation associated with a release of liquid hydrocarbons or associated fluids directly related to offshore energy exploration, development, production, or transmission. Once the Fund balance reaches the amount of fifty million dollars ($50,000,000), the funds shall be used as provided in subsection (b) of this section. If monies are withdrawn from this Fund to carry out the provisions in this section, all revenues and royalties paid to the State as a result of offshore leasing, exploration, development, and production of all energy resources shall be deposited in the Fund until a total of fifty million dollars ($50,000,000) is reestablished. Once the Fund balance reaches the amount of fifty million dollars ($50,000,000), the funds shall be used as provided in subsection (b) of this section.

(b) Any revenues and royalties paid to the State as a result of offshore leasing, exploration, development, and production of all energy resources in excess of the amount needed to establish the Fund created in subsection (a) of this section are annually appropriated and shall be used for the following purposes:

(1) Thirty percent (30%) of such revenues and royalties shall be credited to the General Fund.

(2) Ten percent (10%) of such revenues and royalties shall be credited to the North Carolina Highway Trust Fund established under G.S. 136-176.

(3) Ten percent (10%) of such revenues and royalties shall be transferred to the Community Colleges System Office to establish and manage a fund for curriculum development and implementation as well as financial assistance for students attending community college to receive vocational training through this curriculum in fields directly related to energy exploration and development and related energy infrastructure.

(4) Ten percent (10%) of such revenues and royalties shall be transferred to the Board of Governors of The University of North Carolina System to establish and manage research and development funds for programs directly related to energy research and development.

(5) Thirty percent (30%) of such revenues and royalties shall be transferred to the Department of Environment and Natural Resources for conservation, protection, and mitigation, including, but not limited to, beach and inlet management projects, dredging operations, channel navigation and

maintenance, public beach and water access, water quality management, and habitat restoration.

(6) Eight percent (8%) of such revenues and royalties shall be transferred to the State Ports Authority for expansion and maintenance of State Port infrastructure associated with energy-related commerce.

(7) Two percent (2%) of such revenues and royalties shall be transferred to the Department of Commerce for recruitment of energy-related industries to the State."

PART VIII. REGIONAL INTERSTATE OFFSHORE ENERGY POLICY COMPACT

SECTION 8.(a) Development of Regional Interstate Offshore Energy Policy Compact. – The Governor is strongly encouraged to commence negotiations on the development of a regional energy compact with the governors of South Carolina and Virginia in order to develop a unified regional strategy for the exploration, development, and production of all commercially viable federal and state offshore energy resources within the three-state region. The Governor shall develop recommendations for the General Assembly to consider for the development of a statutory regional compact, and these recommendations shall reflect the collective agreement of all three governors in the three-state region in order to provide common language for consideration by each state's General Assembly. During the development of these compact recommendations, the Governor or the Governor's designee is authorized to work directly with each of the three states' Congressional delegations, the United States Department of the Interior, the United States Environmental Protection Agency, and other appropriate federal agencies on behalf of the State of North Carolina to develop appropriate strategies to be considered in the development of the three-state compact for increasing domestic energy exploration, development, and production within each state in the three-state region and their adjacent state and federal waters. The compact negotiations and recommendations shall address at least all of the following:

(1) Ensure a timely review and consideration of permits and proposals at both the state and federal level for both state and federal waters adjacent to each state in the three-state region for seismic and other marine geophysical exploration to identify and quantify natural gas and related hydrocarbon resources along the continental margin.

(2) Amend the 2012 to 2017 Five Year Leasing Plan of the United States Department of the Interior to include leasing federal waters adjacent to the State and the three-state region for the exploration, quantification, and development of natural gas and related hydrocarbon energy resources.

(3) Advocate proactively with each state's Congressional delegation and appropriate federal agencies to ensure direct sharing of royalties and revenues related to energy leasing, exploration, development, and production of all offshore energy resources in federal waters adjacent to the State and the three-state region.

(4) Request the United States Department of the Interior to reinstate the federal Offshore Policy Committee with new members and new alternate members to be nominated by the governor of the state represented on the Offshore Policy Committee and appointed by the Secretary of the Interior, six of whom are to be one member and one alternate member each from North Carolina, Virginia, and South Carolina.

(5) Request the United States Department of the Interior to immediately move forward with permitting geological and geophysical data acquisition activities associated with oil and gas exploration in the Mid- and South Atlantic Planning Areas of the Atlantic Outer Continental Shelf immediately

as outlined in Alternative A of the Bureau of Ocean Energy Management's Draft Programmatic Environmental Impact Statement entitled "Atlantic OCS Proposed Geological and Geophysical Activities" published in 2012.

SECTION 8.(b) No later than three months after the effective date of this act, and at least every three months thereafter, the Governor or the Governor's designee shall report to the General Assembly on the progress of the Governor and others in complying with the requirements under this section, to include providing copies of correspondence and other relevant materials to or from the Office of the Governor when the correspondence or materials pertain to the subject under this section or to any requirement under this section. The Governor shall report the Governor's final recommendations for the three-state energy compact to the Joint Energy Oversight Committee no later than March 1, 2014.

SECTION 8.(c) In addition to the provisions in Sections 8(a) and 8(b) of this act, the Governor is encouraged to join the Governors of Alaska, Texas, Louisiana, Mississippi, Alabama, South Carolina, and Virginia and any others who may sign on to the Outer Continental Shelf Governors Coalition announced on May 3, 2011, to promote a constructive dialogue among the coastal state governors and the federal government on offshore energy issues important to the future of North Carolina and the United States. The Governor is authorized to expend funds related to membership in the Coalition.

SECTION 8.(d) The Governor is also encouraged to write letters to the North Carolina Congressional delegation, the governors of South Carolina and Virginia, the legislative bodies of South Carolina and Virginia, the Secretary of the United States Department of the Interior, and the President of the United States, urging their support of the recommendations set forth in subdivision (1) through (5) of Section 8(a) of this act.

SECTION 8.(e) Upon ratification, the Secretary of State shall furnish certified copies of this act to each member of the North Carolina Congressional delegation, the governors of South Carolina and Virginia, the legislative bodies of South Carolina and Virginia, the Secretary of the United States Department of the Interior, and the President of the United States.

PART IX. ENERGY POLICY ACT AND ENERGY POLICY COUNCIL AMENDMENTS

SECTION 9.(a) The title of Chapter 113B of the General Statutes reads as rewritten:

"**North Carolina Energy Policy ~~Act of 1975.~~and Jobs Act.**"

SECTION 9.(b) The title of Article 1 of Chapter 113B of the General Statutes reads as rewritten:

"Article 1.

"Energy ~~Policy~~ Jobs Council.

SECTION 9.(c) G.S. 113B-1 reads as rewritten:

"**§ 113B-1. Legislative findings and purpose.**

Upon investigation the General Assembly hereby finds that:

(1) Energy is essential to the health, safety and welfare of the people of this State and to the workings of the State ~~economy;~~economy.

~~(2) Growth in the consumption of energy resources is in some part due to wasteful, uneconomic and inefficient uses of energy and a continuation of this trend will adversely affect the future social, economic and environmental development of North Carolina;~~

(3) It is ~~the responsibility of State government to encourage~~in the State's best interest to support the development of a reliable and adequate supply of energy for North Carolina ~~at a level consistent with such energy needs required for the protection of public health and safety, and for the promotion~~

~~of the general welfare; and~~that is secure, stable, and predictable in order to facilitate economic growth, job creation, and expansion of business and industry opportunities.

(3a) It is in the State's best interest to support the exploration, development, and production of domestic energy supplies, preferably from the resources within the State or region and most certainly from within the country.

(3b) It is the duty of State government to protect and preserve the State's natural resources, cultural heritage, and quality of life and, above all, the public health and safety of its residents during the exploration, development, and production of domestic energy resources.

(4) The State ~~has not provided~~must provide the basis for development of a long-range unified energy policy to encompass comprehensive energy resource planning and efficient management of ~~the rate of consumption of~~ existing energy resources in relation to economic growth, to effectively meet an energy crisis, to encourage development of alternative sources of ~~energy,~~energy that are capable of achieving a positive benefit-to-cost ratio, and to ~~prudently conserve~~ ensure efficient utilization of energy resources in a manner consistent with assuring a reliable and adequate supply of energy for North ~~Carolina.~~Carolina, including active support and collaboration with the federal government to ensure access to the nation's energy resources located on the outer continental shelf directly adjacent to the State's coastal waters.

(5) It is the expressed intent of this Chapter to provide for development of such a unified domestic energy policy for the State of North ~~Carolina.~~Carolina as part of a nationwide effort for increased domestic energy production in the interest of national security and economic growth and stability."

SECTION 9.(d) G.S. 113B-2 reads as rewritten:

"**§ 113B-2. Creation of Energy ~~Policy~~ Jobs Council; purpose of Council.**

(a) ~~There~~ The Energy Jobs Council is ~~hereby~~ created ~~a council~~ to advise and make recommendations on increasing domestic energy ~~policy~~ exploration, development, and production within the State and region to promote economic growth and job creation to the Governor and the General ~~Assembly to be known as the Energy Policy~~Assembly. The Energy Jobs Council ~~which~~ shall be located within the Department of ~~Commerce.~~Environment and Natural Resources.

(b) Except as otherwise provided in this Chapter, the powers, duties and functions of the Energy ~~Policy~~ Jobs Council shall be as prescribed by the Secretary of ~~Commerce.~~Environment and Natural Resources.

(c) The Energy ~~Policy~~ Jobs Council shall serve as the central energy policy planning body of the State and shall communicate and cooperate with federal, State, regional and local bodies and agencies to the end of effecting a coordinated energy policy."

SECTION 9.(e) G.S. 113B-3 reads as rewritten:

"**§ 113B-3. Composition of Council; appointments; terms of members; qualifications.**

(a) The Energy ~~Policy~~ Jobs Council shall consist of ~~16~~ 13 members to be appointed as follows:

~~(1) Two members of the North Carolina House of Representatives to be appointed by the Speaker of the House of Representatives;~~

~~(2) Two members of the North Carolina Senate to be appointed by the President Pro Tempore of the Senate;~~

(2a) The Secretary of Environment and Natural Resources.

(2b) The Secretary of Commerce.

(3) ~~Twelve~~ Eleven public members who are citizens of the State of North ~~Carolina to be appointed by the Governor. The Governor shall designate one of the public members as chair of the Council.~~Carolina and who are appointed in accordance with subsection (c) of this section.

(b) Appointments to the Energy ~~Policy~~ Jobs Council shall be made by ~~July 15, 2009,~~ July 1, 2013. ~~and each such appointee shall serve until January 31, 2011. Thereafter,~~ the ~~appointed members of the General Assembly shall serve two year terms, and the appointed public members shall serve four year terms. A member of the Energy Policy Council shall continue to serve until his successor is duly appointed, but such holdover shall not affect the expiration date of such succeeding term.~~ The terms of office of members of the Council are three years. The terms of members appointed under subdivisions (1), (4), and (6) of subsection (c) of this section shall expire on June 30 of years evenly divisible by three. The terms of members appointed under subdivisions (2), (5), (8), and (10) of subsection (c) of this section shall expire on June 30 of years that precede by one year those years that are evenly divisible by three. The terms of members appointed under subdivisions (3), (7), (11), and (12) of subsection (c) of this section shall expire on June 30 of years that follow by one year those years that are evenly divisible by three. Appointments made by the President Pro Tempore of the Senate and the Speaker of the House of Representatives shall be allowed when the General Assembly is not in session.

(c) The public members of the Energy ~~Policy~~ Jobs Council shall have the ~~following qualifications:~~qualifications and shall be appointed as follows:

(1) One member shall be ~~experienced in the electric power industry;~~a representative of an investor-owned electric public utility, to be appointed by the Governor.

(2) One member shall ~~be experienced in the natural gas industry;~~have experience in natural gas and associated hydrocarbon exploration, development, and production, to be appointed by the Governor.

~~(2a) One member shall be experienced in energy policy matters;~~

(3) One member shall be ~~experienced in alternative fuels and biofuels;~~a representative of an investor-owned natural gas public utility, to be appointed by the Speaker of the House of Representatives.

(4) One member shall be ~~experienced in energy efficient building design or construction;~~an energy economist or a person with experience in the financing or business development of an energy-related business, to be appointed by the President Pro Tempore of the Senate.

(5) One member shall ~~be experienced in environmental protection;~~have experience in energy policy, to be appointed by the President Pro Tempore of the Senate.

(6) One member ~~who is engaged in a business providing renewable energy or other energy services;~~shall be an industrial energy consumer, to be appointed by the Speaker of the House of Representatives.

(7) One member shall be knowledgeable of alternative and renewable sources of ~~energy;~~energy, to be appointed by the Governor.

(8) One member ~~who, at the time of appointment, is a county commissioner; or elected municipal officer; provided, the member's term on the Council shall expire immediately in the event that he or she vacates office as a county commissioner or municipal officer;~~shall have experience in trucking, rail, or shipping transportation, to be appointed by the Speaker of the House of Representatives.

(9) Repealed by Session Laws 2009-446, s. 4, effective August 7, 2009.

(10) ~~One member shall be knowledgeable in the finance, business development, or technology development of energy-related business;~~One member shall have experience in energy research and development, to be appointed by the President Pro Tempore of the Senate.

(11) ~~One member shall be experienced in low-income energy policy matters or low-income residential weatherization.~~One member shall have experience in environmental management, appointed by the Speaker of the House of Representatives.

(12) ~~One member shall be experienced in the petroleum industry.~~One member shall have experience in the biofuels industry, to be appointed by the President Pro Tempore of the Senate."

SECTION 9.(f) G.S. 113B-4 reads as rewritten:

"§ 113B-4. Chairman of Council; replacement; reimbursement of members.

(a) ~~On August 15, 2009, on January 31, 2011, and every four years thereafter, the Governor shall appoint a chair of the Council.~~The Council shall elect one of its members to serve as chair. The chair shall serve for a term of two years and may serve no more than two terms in total.

(b) In case of a vacancy in the membership on the Energy ~~Policy~~Jobs Council prior to the expiration of a member's term, a successor shall be appointed within 30 days of such vacancy for the remainder of the unexpired term by the appropriate official pursuant to the provisions of G.S. 113B-3.

(c) Members of the Energy ~~Policy~~ Jobs Council shall be reimbursed for their services pursuant to the provisions of G.S. 138-5."

SECTION 9.(g) G.S. 113B-5 reads as rewritten:

"§ 113B-5. Organization of the Council; adoption of rules of procedure therefor.

(a) To facilitate the work of the Energy ~~Policy~~ Jobs Council and for administrative purposes, the chairman of the Energy ~~Policy~~ Jobs Council, with the consent and approval of the members, may organize the work of the Council so as to carry out the provisions of this Chapter and to insure the efficient operation of the Council.

(b) The Energy ~~Policy~~ Jobs Council shall adopt its own rules of procedure and shall meet regularly at such times and in such places as it may deem necessary to carry out its functions.

(c) The Energy ~~Policy~~ Jobs Council is authorized to create such advisory committees as will be needed to assist the Council in its efforts and to assure adequate citizen-consumer input into those efforts. Members of advisory committees shall be appointed by the Council for terms not to exceed the expiration date of terms of then present public members of the Council."

SECTION 9.(h) G.S. 113B-6 reads as rewritten:

"§ 113B-6. General duties and responsibilities.

The goal of the Energy Jobs Council is to identify and utilize all domestic energy resources in order to ensure a secure, stable, and predictable energy supply and to protect the economy of the State, promote job creation, and expand business and industry opportunities while ensuring the protection and preservation of the State's natural resources, cultural heritage, and quality of life. The Energy ~~Policy~~Jobs Council ~~shall~~ may delegate its duties where appropriate to the Division of Energy, Mineral, and Land Resources of the Department of Environment and Natural Resources. The Council shall provide oversight and approval to the duties delegated to the Division. The Energy Jobs Council shall have the following general duties and responsibilities:

(1) To develop and recommend to the Governor and the General Assembly a comprehensive ~~long-range~~ State energy policy that addresses requirements in the short term (10 years), in the midterm (25 years), and in the long term (50 years) to achieve maximum effective management and use of present

and future sources of energy, such policy to include but not be limited to energy efficiency, renewable and alternative sources of energy, research and development into alternative energy technologies, and improvements to the State's energy infrastructure and energy ~~economy;~~economy, including smart grid and domestic energy resources that shall include at least natural gas, coal, hydroelectric power, solar, wind, nuclear energy, and biomass. For utilities regulated under Chapter 62 of the General Statutes, the policy developed under this subdivision shall be consistent with the analysis and plan developed under G.S. 62-110.1(c).

(2) To conduct an ongoing assessment of the opportunities and constraints presented by various uses of all forms of energy to facilitate the expansion of the domestic energy supply and to encourage the efficient use of all such energy forms in a manner consistent with State energy ~~policy;~~policy.

(3) To continually review and coordinate all State government research, education and management programs relating to energy ~~matters and~~matters, to continually educate and inform the general public regarding such energy ~~matters;~~matters, and to actively engage in discussions with the federal government, its agencies, and its leaders to identify opportunities to increase domestic energy supply within North Carolina and its adjacent offshore waters.

(4) To recommend to the Governor and to the General Assembly needed energy legislation and rule making, and to recommend for implementation such modifications of energy policy, ~~plans~~ plans, and programs as the Council considers necessary and desirable."

SECTION 9.(i) G.S. 113B-7 reads as rewritten:

"**§ 113B-7. Energy Efficiency Program; components.**

(a) The Energy ~~Policy~~ Jobs Council shall prepare a recommended Energy Efficiency Program for transmittal to the Governor, the initial plan to be completed by January 30, 1976.

(b) The Energy Efficiency Program shall be designed to assure the public health and safety of the people of North Carolina and to encourage and promote conservation of energy through reducing wasteful, inefficient or uneconomical uses of energy resources.

(c) The Energy Efficiency Program shall include but not be limited to the following recommendations:

(1) Recommendations to the Building Code Council for lighting, insulation, climate control systems and other building design and construction standards which increase the efficient use of energy and are economically feasible to implement;

(2) Recommendations to the Building Code Council for per unit energy requirement allotments based upon square footage for various classes of buildings which would reduce energy consumption, yet are both technically and economically feasible and not injurious to public health and safety;

(3) Recommendations for minimum levels of operating efficiency for all appliances whose use requires a significant amount of energy based upon both technical and economic feasibility considerations;

(4) Recommendations for State government purchases of supplies, vehicles and equipment and such operating practices as will make possible more efficient use of energy;

(5) Recommendations on energy conservation policies, programs and procedures for local units of government;

(6) Any other recommendations which the Energy ~~Policy~~ Jobs Council considers to be a significant part of a statewide conservation effort and

which include provisions for sufficient incentives to further energy conservation;

(7) An economic and environmental impact analysis of the recommended program.

(d) In addition to specific conservation recommendations, the Energy Efficiency Program shall contain proposals for implementation of such recommendations as can be carried out by executive order. Upon completion of a draft recommended program, the Council shall arrange for its distribution to interested parties and shall make the program available to the public and the Council further shall set a date for public hearing on said program.

(e) Upon completion of the Energy Efficiency Program, the Council shall transmit said program, to be known as the State Energy Efficiency Program, to the Governor for approval or disapproval. Upon approval, the Governor shall assign administrative responsibility for such implementation as can be carried out by executive order to appropriate agencies of State government, and submit to the General Assembly such proposals which require legislative action for implementation. The Governor shall have the authority to accept, administer, and enforce federal programs, program measures and permissive delegations of authority delegated to the Governor by the President of the United States, Congress, or the United States Department of Energy, on behalf of the State of North Carolina, which pertain to the conservation of energy resources.

(f) The Governor shall transmit the approved Energy Efficiency Program to the President Pro Tempore of the Senate, to the Speaker of the House of Representatives, to the heads of all State agencies and shall further seek to publicize such plan and make it available to all units of local government and to the public at large.

(g) At least every two years and whenever such changes take place as would significantly affect energy supply or demand in North Carolina, the Energy ~~Policy~~ Jobs Council shall review and, if necessary, revise the Energy Efficiency Program, transmitting such revised plan to the Governor pursuant to the procedures contained in subsections (e) and (f) of this section."

SECTION 9.(j) G.S. 113B-8(a) reads as rewritten:

"**§ 113B-8. Energy Management Plan; components.**

(a) The Energy ~~Policy~~ Jobs Council shall prepare a recommended Energy Management Plan for transmittal to the Governor, the initial plan to be completed by June 30, 1976."

SECTION 9.(k) G.S. 113B-9 reads as rewritten:

"**§ 113B-9. Emergency Energy Program; components.**

(a) The Energy ~~Policy~~ Jobs Council shall, in accordance with the provisions of this Article, develop contingency and emergency plans to deal with possible shortages of energy to protect public health, safety and welfare, such plans to be compiled into an Emergency Energy Program.

(b) ~~Within four months of July 1, 1975:~~ If required for an update of the program provided under subsection (j) of this section:

(1) Each electric utility and natural gas utility in the State shall prepare and submit to the Energy ~~Policy~~ Jobs Council a proposed emergency curtailment plan setting forth proposals for identifying priority loads or users in the event of the declaration of an energy crisis pursuant to G.S. 113B-20, and proposals for supply allocation to such priority loads or users. Utilities regulated under Chapter 62 of the General Statutes may satisfy this requirement by submitting the General Load Reduction and System Restoration Plan that is prepared annually for the Utilities Commission.

(2) Each major oil producer doing business in this State as determined by the Energy ~~Policy~~ Jobs Council shall prepare and submit to the Energy ~~Policy~~ Jobs Council an analysis of how any national supply curtailment pursuant to

federal regulations shall affect the supply for North Carolina and how priority users will be determined and available supplies allocated to such users.

(c) The Energy ~~Policy~~ Jobs Council shall encourage the preparation of joint emergency curtailment plans and analyses. If such cooperative plans and analyses are developed between two or more utilities, major producers or by an association of such companies, the joint plans or analyses may be submitted to the Energy ~~Policy~~ Jobs Council in lieu of information required pursuant to subsection (b) of this section.

(d) The Energy ~~Policy~~ Jobs Council shall collect from all relevant governmental agencies any existing contingency plans for dealing with sudden energy shortages or information related thereto.

(e) The Energy ~~Policy~~ Jobs Council shall hold one or more public hearings, investigate and review the plans submitted pursuant to this section, and, within nine months after July 1, 1975, the Energy ~~Policy~~ Jobs Council shall approve and recommend to the Governor guidelines for emergency curtailment to be known as the Emergency Energy Program and to be implemented upon adoption by the Governor after the declaration of an energy crisis and pursuant to G.S. 113B-20 and 113B-23. Said program shall be based upon the plans presented to the Energy ~~Policy~~ Jobs Council, upon independent analysis and study by the Council, and upon information provided at the hearing or hearings, provided, however, that they are consistent with such federal programs and regulations as are already in effect at that time.

(f) The Emergency Energy Program shall provide for the maintenance of essential services, the protection of public health, safety, and welfare, and the maintenance of a sound basic State economy. For utilities regulated under Chapter 62 of the General Statutes, the program shall be consistent with the General Load Reduction and System Restoration Plan that is prepared annually for the Utilities Commission. Provisions also shall be made in said program to differentiate curtailment of energy consumption by users on the basis of ability to accommodate such curtailments, and shall also include, but not be limited to, the following:

(1) A variety of strategies and staged conservation measures of increasing intensity and authority to reduce energy use during an energy crisis, as defined in G.S. 113B-20 and guidelines and criteria for allocation of energy sources to priority users. The program shall contain alternative conservation actions and allocation plans to reasonably meet various foreseeable shortage circumstances and to allow a choice of appropriate responses;

(2) Evidence that the program is consistent with requirements of federal emergency energy conservation and allocation laws and regulations;

(3) Proposals to assist such individuals, institutions, agriculture and businesses which have engaged in energy saving measures;

(g) The Energy ~~Policy~~ Jobs Council shall carry out such investigations and studies as are necessary to determine if and when potentially serious shortages of energy are likely to affect North Carolina and the Council shall make recommendations to the Governor concerning administrative and legislative actions required to avert such shortages, such recommendations to be included as a section of the Emergency Energy Program.

(h) In addition to the above information and recommendations, the program shall contain proposals for implementation of such recommendations which include procedures, rules and regulations and agency administrative responsibilities for implementation, and shall further contain procedures for fair and equitable review of complaints and requests for special exemptions from emergency conservation measures or emergency allocations. Upon completion of a draft recommended plan, the Council shall arrange for its distribution to interested parties and shall make such plan available to the public and the Council further shall set a date for public hearing on said plan.

(i) Upon completion of the Emergency Energy Allocation Program, the Council and the Governor shall follow the procedures as outlined in G.S. 113B-7(e) and (f).

(j) The Council shall update the Emergency Energy Allocation Program ~~said program~~ upon ~~a~~ finding ~~by it~~ that an update is ~~justified and~~justified. The Council shall follow the procedures for adoption pursuant to G.S. 113B-7(e) and (f).

(k) The Governor shall have the authority to accept, administer and enforce federal programs, program measures and permissive delegations of authority delegated to the Governor by the President of the United States, Congress, or the United States Department of Energy, on behalf of the State of North Carolina, which pertain to actions necessary to deal with an actual or impending energy shortage."

SECTION 9.(l) G.S. 113B-11 reads as rewritten:

"**§ 113B-11. Powers and authority.**

(a) The Energy ~~Policy~~ Jobs Council is authorized to secure directly from any officer, office, department, commission, board, bureau, institution and other agency of the State and its political subdivisions any information it deems necessary to carry out its functions; and all such officers and agencies shall cooperate with the Council and, to the extent permitted by law, furnish such information to the Council as it may request.

...

(e) Staff support required by the Council shall be supplied by the Division of Energy, Mineral, and Land Resources of the Department of Environment and Natural Resources. ~~The Department of Commerce shall provide the staffing capability to the Energy Policy Jobs Council so as to fully and effectively develop recommendations for a comprehensive State energy policy as contained in the provisions of this Article.~~ The Department of Commerce and the Utilities Commission ~~is~~ are hereby authorized to make ~~its~~ their staff available to the Council to assist in the development of a State energy policy."

SECTION 9.(m) G.S. 113B-12 reads as rewritten:

"**§ 113B-12. Annual reports; contents.**

(a) ~~Beginning January 1, 1977, and every year~~Every two years ~~thereafter,~~ the Energy ~~Policy~~ Jobs Council shall transmit to the Governor, the Speaker of the House of Representatives, the President Pro Tempore of the Senate, the Environmental Review Commission, the Joint Legislative Commission on Energy Policy, and the chairman of the Utilities Commission ~~Commission and the appropriate chairmen of the House and Senate committees concerned with energy matters,~~ a comprehensive report providing a general overview of energy conditions in the State. ~~On January 1, 1976, the Energy Policy Council shall transmit a progress report to the public officials named above.~~

(b) The report shall include, but not be limited to, the following:

(1) An overview of statewide growth and development as they relate to future requirements for energy, including patterns of urban and metropolitan expansion, shifts in transportation modes, modifications in building types and design, and other trends and factors which, as determined by the Council, will significantly affect energy needs;

(2) The level of statewide and multi-county regional energy demand for a five, 10- and 20-year forecast period which, in the judgment of the Council, can reasonably be met, with proposals as to possible energy supply sources;

(3) An assessment of growth trends in energy consumption and production and an identification of potential adverse social, economic, or environmental impacts which might be imposed by continuation of the present trends, including energy costs to consumers, significant increases in air, water, and other forms of pollution, threats to public health and safety, and loss of scenic and natural areas;

(4) An analysis of the role of energy efficiency, renewable energy, improvements to the State's energy infrastructure, and other means in meeting the State's current and projected energy demand;
(5) Repealed by Session Laws 2009-446, s. 9, effective August 7, 2009.
(6) Recommendations to the Governor and the General Assembly for additional administrative and legislative actions on energy matters;
(7) A summary of the Council's activities since ~~its inception,~~the last report, a description of major plans developed by the Council, an assessment of plan implementation, and a review of Council plans and programs for the coming biennium."

SECTION 9.(n) G.S. 113B-21(a) reads as rewritten:

"(a) ~~There is hereby created~~Upon the declaration of an energy crisis by the Governor, a Legislative Committee on Energy Crisis Management shall be created to consist of the Speaker, ~~as chairman,~~ the Speaker pro tempore of the House of ~~Representatives and~~Representatives, the President ~~pro tempore~~ Pro Tempore of the Senate, and the majority leader of the Senate. The Lieutenant Governor shall serve as chair, and shall be a nonvoting ex officio member, provided, however, that ~~he~~ the chair shall vote to break a tie."

SECTION 9.(o) G.S. 113B-23 reads as rewritten:

"**§ 113B-23. Administration of plans and procedures.**

(a) Upon the declaration of an energy crisis, pursuant to G.S. 113B-20, the Energy ~~Policy~~ Jobs Council shall become the emergency energy coordinating body for the State and shall carry out the following duties:
(1) Identify and determine the nature and severity of expected energy shortages;
(2) Provide for daily communications with and gather information from significant energy producers, distributors, transporters and major consumers, as determined by the Energy ~~Policy~~ Jobs Council, to carry out its responsibilities pursuant to this section;
(3) Provide data, carry out continuing assessments of the crisis situation, and make recommendations to the Governor and to the Legislative Committee on Energy Crisis Management for further action.

(b) Upon the declaration of an energy crisis, the Governor shall order the Energy ~~Policy~~ Jobs Council, the Utilities Commission, the Attorney General and other appropriate State and local agencies to implement and enforce the Emergency Energy Program pursuant to G.S. 113B-9 and any emergency rules, orders or regulations approved pursuant to G.S. 113B-22.

(c) Upon the declaration of an energy crisis, the Governor may employ such measures and give such direction to State and local offices and agencies as may be reasonable and necessary for the purpose of securing compliance with the provisions of this Article and with emergency rules, orders and regulations issued pursuant to G.S. 113B-22."

SECTION 9.(p) G.S. 113B-24(c) reads as rewritten:

"(c) The provisions of this Article or any rules, orders or regulations promulgated pursuant to G.S. 113B-22 may be enforced by bringing an action to enjoin such acts or practices as may be in violation and, upon a proper showing, a temporary restraining order or a preliminary or permanent injunction shall be issued. The relief sought may include a mandatory injunction commanding any person to comply with any such order, rule or regulation and restitution of money received in violation of any such order, rule or regulation. The Attorney General shall bring any action under this subsection upon the request of the Governor, the Legislative Committee on Energy Crisis Management, the Energy ~~Policy~~ Jobs Council, or upon his direction if he deems such action advisable and in the public interest. The Attorney General may institute such action in the Superior Court of Wake County, or, in his discretion, in the

superior court of the county in which the acts or practices constituting a violation occurred, are occurring or may occur."

SECTION 9.(q) G.S. 114-4.2D reads as rewritten:

"**§ 114-4.2D. Employment of attorney for Energy ~~Policy~~ Jobs Council of the Department of Environment and Natural Resources and the Energy Efficiency Program of the Department of Commerce.**

The Attorney General shall assign an attorney to work full time with the Energy ~~Policy~~ Jobs Council of the Department of Environment and Natural Resources and the Energy Efficiency Program of the Department of Commerce. Such attorney shall be subject to all provisions of Chapter 126 of the General Statutes relating to the State Personnel System. Such attorney shall also perform such additional duties as may be assigned by the Attorney General."

SECTION 9.(r) G.S. 143-58.5(c) reads as rewritten:

"(c) The Fund shall be used to offset the incremental fuel cost of biodiesel and biodiesel blend fuel with a minimum biodiesel concentration of B-20 for use in State vehicles, for the purchase of ethanol fuel with a minimum ethanol concentration of E-85 for use in State vehicles, the incremental vehicle cost of purchasing AFVs, for the development of related refueling infrastructure, for the costs of administering the Fund, and for projects approved by the Energy ~~Policy~~ Jobs Council."

SECTION 9.(s) G.S. 143-345.13 reads as rewritten:

"**§ 143-345.13. Reporting of stocks of coal and petroleum fuels.**

The Department of Administration may, with the prior express approval of the Energy ~~Policy~~ Jobs Council and the Governor, require that all coal and petroleum suppliers in North Carolina supplying coal, motor gasoline, middle distillates, residual oils, and propane for resale within the State, file with the Department of Administration, on forms prepared by the Department, accurate reports as to the stocks of coal and petroleum products and storage capacities maintained by the supplier, including the supplier's current inventory and stock of coal, motor gasoline, middle distillates, residual oils and propane, the expected time such supplies will last under ordinary distribution demand and the schedule for receiving additional or replacement stocks. The reports and the information contained therein shall be proprietary information available only to regular employees of the Department of Administration, except that aggregate tables or schedules consolidating information from the reports may be released if they do not reveal individual report data for any named supplier. It is further the intent of this section that no information shall be required from coal and petroleum suppliers, that is, at the time the reports are requested, already on file with any agency, commission, or department of State government.

It is the intent of this section that the reports be filed only at such times as the Energy ~~Policy~~ Jobs Council and the Governor determine that an energy crisis as defined in G.S. 113B-20 exists or may be imminent.

If any petroleum or coal supplier fails to file the accurate reports as may be required by this section for more than 10 days after the date on which any such report is due, the Secretary of Administration is authorized and empowered to petition the district court, Division of the General Court of Justice, in the county in which the principal office or place of business of the supplier is located, for a mandatory injunction compelling the supplier to file the report."

SECTION 9.(t) Article 7 of Chapter 143B of the General Statutes is amended by adding a new Part to read:

"Part 31. Energy Jobs Council.

"**§ 143B-281.1. Energy Jobs Council – transfer.**

The Energy Jobs Council, as established by Chapter 113B of the General Statutes and other applicable laws of this State, is hereby transferred to the Department of Environment and Natural Resources by a Type II transfer as defined in G.S. 143A-6."

SECTION 9.(u) Notwithstanding G.S. 113B-3 or any other law to the contrary, the terms of all members of the Energy Policy Council serving as of the effective date of this act shall expire on the effective date of this act or on June 30, 2013, whichever comes first. Initial appointments shall be made pursuant to subsection (c) of G.S. 113B-3, as amended by Section 9(e) of this act, no later than July 1, 2013.

SECTION 9.(v) The Revisor of Statutes shall make the conforming statutory changes necessary to reflect renaming of the Energy Jobs Act and the Energy Jobs Council as provided in this section. The Revisor of Statutes may correct any reference in the General Statutes to the statutes that are recodified by this section and make any other conforming changes necessitated by this section.

PART X. MODIFY ELECTRICAL REQUIREMENTS RULE TO ALLOW HOSPITALS TO USE COMPRESSED NATURAL GAS AS EMERGENCY FUEL

SECTION 10.(a) Definitions. – "Electrical Requirements Rule" means 10A NCAC 13B .6227 (Licensing of Hospitals: Electrical Requirements) for purposes of this section and its implementation.

SECTION 10.(b) Electrical Requirements Rule. – Until the effective date of the revised permanent rule that the Medical Care Commission is required to adopt pursuant to Section 10(c) of this act, the Commission and the Department of Health and Human Services shall implement the Electrical Requirements Rule, as provided in Section 10(c) of this act.

SECTION 10.(c) Implementation. – Notwithstanding subdivision (2) of subsection (f) of the Electrical Requirements Rule, the Commission shall authorize facilities licensed by the Department to use bi-fuel generators that operate with both liquid fuel and natural gas (methane) that is not stored on the site, provided that the natural gas is delivered via pipe or pipeline by a natural gas utility. These bi-fuel generators shall be exempt from liquid fuel capacity standards established by the Commission. Bi-fuel generators that operate on both liquid and other gaseous fuels, including propane and butane, that are stored on the site shall also be authorized, provided that the combined capacity of both liquid and gaseous fuels meet minimum on-site fuel requirements established by the Commission. The Commission may adopt rules to require a licensed facility with a bi-fuel generator to develop a contingency plan for liquid fuel delivery onto the site in the event of a natural gas (methane) supply disruption.

SECTION 10.(d) Additional Rule-Making Authority. – The Commission shall adopt a rule to replace the Electrical Requirements 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 10(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. 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.(e) Effective Date. – Subsection (b) of this section expires when permanent rules to replace subsection (b) of this section have become effective, as provided by subsection (c) of this section.

PART XI. EFFECTIVE DATE

SECTION 11. Section 1(b) of this act becomes effective March 1, 2015. Section 3(b) of this act is effective when it becomes law and applies retroactively to October 1, 2012. Sections 5(a) through 5(c) of this act are effective for energy minerals sold on or after March 1, 2015, except that G.S. 105-187.76, as enacted by Section 5(a) of this act, becomes effective only if authorized by the General Assembly in the Current Operations and Capital Improvements Appropriations Act of 2013. G.S. 113B-30, enacted by Section 7 of this act, becomes effective only if authorized by the General Assembly in the Current Operations and

Capital Improvements Appropriations Act of 2013. The first report due pursuant to G.S. 113B-12, as amended by Section 9(m) of this act, shall be transmitted on or before January 1, 2014. Except as otherwise provided, the remainder of this act is effective when it becomes law.

SENATE BILL 76:
Domestic Energy Jobs Act

2013-2014 General Assembly

Committee:	Senate Commerce	**Date:**	February 19, 2013
Introduced by:	Sens. Newton, Rucho, Brock	**Prepared by:**	Jennifer McGinnis and Heather Fennell Staff Attorneys
Analysis of:	PCS to Second Edition S76-CSRIf-2		

SUMMARY: ***The Proposed Committee Substitute (PCS) for Senate Bill 76 would modify provisions related to oil and gas exploration and development activities in the State, including the use of horizontal drilling and hydraulic fracturing treatments for that purpose; impose a tax for the severance of energy minerals from the soil or water of the State and make associated changes; appropriate monies to the Department of Environment and Natural Resources to operate the Mining and Energy Commission and for related expenditures; assign future revenue from offshore energy production; encourage the Governor to develop a regional compact for offshore energy exploration; amend the Energy Policy Act (renamed as the Energy Policy and Jobs Act) and the Energy Policy Council (reconstituted as the Energy Jobs Council); and direct the Medical Care Commission to adopt rules authorizing facilities licensed by the Department of Health and Human Services to use compressed natural gas as an emergency fuel.***

CHANGES MADE BY PCS TO 2nd ED. The PCS would add language to the statute governing appointments to the Mining and Energy Commission (MEC) to provide that membership on the Commission may be held concurrently with other elective or appointive offices in addition to the maximum number of offices permitted to be held by one person under G.S. 128-1.1 (which generally allows for dual office holding), and would make other technical and clarifying changes.

CURRENT LAW AND BACKGROUND: In 2012, the General Assembly enacted legislation that directed various State agencies to develop 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 (S.L. 2012-143 (S820, "Clean Energy and Economic Security Act")). Specifically, the act gave MEC the authority to adopt rules necessary to administer the State's Oil and Gas Conservation Act and to make determinations and issue orders accordingly. MEC and other entities were specifically directed to adopt rules no later than October 1, 2014.

The act also amended several statutes that had historically prohibited the processes of horizontal drilling and hydraulic fracturing in order to authorize these processes, but prohibited issuance of permits for these activities until such time as the General Assembly took subsequent legislative action to allow issuance of permits.

BILL ANALYSIS:

PART I. Issuance of Permits

Section 1.(a) of the PCS would authorize issuance of permits for oil and gas exploration and development activities using horizontal drilling and hydraulic fracturing treatments in the State by the the Department of Environment and Natural Resources (DENR) and MEC, effective March 1, 2015.

Section 1.(b) of the PCS, which would become effective March 1, 2015, would repeal Section 3.(d) of the Clean Energy and Economic Security Act, which provides:

> "The issuance of permits for oil and gas exploration and development activities using horizontal drilling and hydraulic fracturing treatments in the State... shall be prohibited in order to allow the Mining and Energy Commission sufficient time for development of a modern regulatory program for the management of oil and gas exploration and development in the State and the use of horizontal drilling and hydraulic fracturing treatments for that purpose, and for adoption of appropriate environmental standards applicable to these activities. No agency of the State, including the Department of Environment and Natural Resources, the Environmental Management Commission, the Commission on Public Health, or the Mining and Energy Commission, shall issue a permit for oil or gas exploration or development activities using horizontal drilling and hydraulic fracturing treatments until the General Assembly takes legislative action to allow the issuance of such permits."

Section 1.(b) of the PCS would require MEC to study development of a coordinated permitting program for oil and gas exploration and development activities using horizontal drilling and hydraulic fracturing treatments in order that a single comprehensive environmental permit could be issued that would govern all of an applicant's exploration and development activities. MEC must report its findings and recommendations to the Environmental Review Commission and the Joint Legislative Commission on Energy Policy on or before October 1, 2013.

PART II. Mining and Energy Commission Appointment Modifications

Section 2.(a) of the PCS would eliminate two ex officio members of MEC, the State Geologist and the Assistant Secretary of Energy for the Department of Commerce. In addition, the provision modifies: (1) two positions designated for elected officials of local governments, to provide that they may continue to serve as a member of MEC even if they are no longer serving as a local elected official; and (2) the positions designated for the Environmental Management Commission and the Commission for Public Health to eliminate specific knowledge requirements as to principles of water and air resources management, and principles of waste management, respectively. The PCS would also add language to provide that membership on MEC may be held concurrently with other elective or appointive offices in addition to the maximum number of offices permitted to be held by one person under G.S. 128-1.1 (which generally allows for dual office holding).

Section 2.(b) of the PCS would provide that the membership of persons serving in the positions designated for the Environmental Management Commission or the Commission for Public Health terminate immediately should those persons' membership in their respective commission terminate.

PART III. Miscellaneous Modifications to the Oil and Gas Conservation Act: "Allowables" and Repeal of Landmen Registry

Section 3.(a) of the PCS would eliminate language under existing law that would require MEC to limit the total amount of oil and gas produced in the State if the total amount of oil and gas that can be produced from all pools in the State exceeds the amount reasonably required to meet the reasonable market demand in the State. Instead, the PCS would allow MEC to fix an amount that may be produced (an "allowable"), and would allow MEC to formulate rules accordingly.

Section 3.(b) of the PCS would repeal the landmen registry enacted in 2012 as part of the Clean Energy and Economic Security Act. The 2012 provision required DENR to establish and maintain a registry of landmen operating in this State. Under the statute "landman" is defined as a person that, in the course and scope of the person's business, does any of the following: (1) acquires or manages oil or gas interests; (2) performs title or contract functions related to the exploration, exploitation, or disposition of oil, gas; (3) negotiates for the acquisition or divestiture of oil, gas, including the acquisition or divestiture of land or oil, gas, for a pipeline; or (4) negotiates business agreements that provide for the exploration for or development of oil, gas. The statute also authorizes DENR to deny registration to an applicant, reprimand a registrant, suspend or revoke a registration, or impose a civil penalty on a

registrant if the Department determines that the applicant or registrant does any of the following: (1) fraudulently or deceptively obtains, or attempts to obtain, a registration; (2) uses or attempts to use an expired, suspended, or revoked registration; (3) falsely represents oneself as a registered landman; (4) engages in any other fraud, deception, misrepresentation, or knowing omission of material facts related to oil or gas interests; or (5) had a similar registration or license denied, suspended, or revoked in another state or jurisdiction. The PCS would repeal the provision retroactively to the date it originally became effective, October 1, 2012.

PART IV. Amend Statute Governing Subsurface Fluid Injection

Section 3.(b) of the PCS would amend a statute that prohibits the discharge of any wastes to the subsurface or groundwaters of the State by means of wells. In 2012, as part of the Clean Energy and Economic Security Act, the statute was modified to exempt injections of hydraulic fracturing fluid associated with exploration or development of natural gas resources. That language would be modified under the PCS to exempt "fluid associated with exploration, production, or development of natural gas resources."

PART V. Severance Taxes

Section 5 of the PCS would repeal North Carolina's current severance tax and levies a new severance tax on the removal of energy minerals from the soil and water of the State. The current State severance tax was enacted in 1945 and has not been modified since 1973. No tax is currently collected. The current tax is five mills on each barrel of oil (the equivalent of .5¢ per barrel of oil) and one-half mill on each 1000 cubic feet of gas (the equivalent of .05¢ per 1000 cubic feet of gas). The new severance tax would add condensates to the tax base, raise the tax rate on oil, and create a floating tax rate for gas.

Energy minerals are defined in the PCS to include all forms of natural gas, oil, and related condensates. Thirty one states, including North Carolina, currently impose some form of severance taxes on the extraction of oil and gas. Of the 31 states, 23 states impose a tax as a percentage of the value of the resource extracted, 3 states impose a tax per standard unit of the resource extracted, and 5 states impose a tax that is a combination of the two methods.

Rate of Tax – The rate of the severance tax varies by type of mineral extracted.

Type	Year	Amount
Condensates	2015, 2016, 2017	1% of market value
	2018, 2019	2.5% of market value
	2020 and thereafter	6% of market value
Gas		Rate floats with market price. Tax rate calculated on each transaction. Rate is sales price per 1,000 cubic feet of gas, divided by 100, stated as a percentage.[1] The tax rate is subject to the following limits:
	2015, 2016, 2017	Not to exceed 1%
	2018, 2019	Not to exceed 2.5%
	2020 and thereafter	At least 2.5% but not to exceed 6%
Oil	2015, 2016, 2017	1% of market value
	2018, 2019	2.5% of market value
	2020 and thereafter	6% of market value

[1] For example, the price of natural gas was $3.35 in Nov 2012. 3.35/100 stated as a percentage is 3.35%. According to the US Energy Information Administration (an agency within the US Department of Energy), the price of natural gas over the past 5 years has ranged from $1.89 per MCF to $10.79 per MCF, which would result in a tax rate ranging from 1.89% to 10.79%, subject to the statutory rate limits.

Tax Base, Market value – The tax rate would be applied to the market value of the mineral sold. For condensates and oil, the market rate is the total actual gross price paid by the first purchaser of the condensate or oil.

For gas, the market value is the actual gross price paid minus marketing costs. As defined in the PCS, marketing costs do not include costs for which a producer receives a reimbursement, production costs, or insurance premiums. Marketing costs include:

- Costs for compressing the gas sold.
- Costs for dehydrating the gas sold.
- Costs for sweetening the gas sold.
- Costs for delivering the gas to the purchaser.
- Costs for gathering the gas sold.

Administration – The tax would be the liability of the producer of the gas. The producer is the entity that extracts the mineral from the soil or the water of the State. Returns and taxes are due on either a monthly or quarterly basis, depending on the tax liability of the producer. A bond or letter of credit would be required for producers that fail to file a return or make a payment of tax due.

Allocation of Revenue – The revenue received from severance taxes would be allocated in the following manner:

- First 25%, up to $1 million each year to DENR to administer its duties under Article 27 of Chapter 113, the Oil and Gas Conservation Act.
- Of the remaining revenue:
    - 50% to General Fund.
    - 50% to Onshore Emergency Management Fund to reach and maintain a balance of $10 million. Once the Fund balance is reached, revenues would be directed to General Fund. The Onshore Emergency Management Fund must be used for emergency preparation, emergency response, emergency environmental protection, or mitigation associated with onshore energy.

Permit Suspension – Permits for oil and gas exploration using horizontal drilling or hydraulic fracturing would be suspended for any producer that fails to file a return or make a payment for severance taxes.

No Local Taxes – Local governments would not be authorized to impose any additional taxes on the severance of energy minerals in the State.

The provisions concerning the severance tax would be effective for energy minerals sold on or after March 1, 2015, except that the provision concerning the allocation of revenue becomes effective only if authorized by the General Assembly in the Current Operations and Capital Improvements Appropriations Act of 2013.

PART VI. Appropriation from Mineral Interest Fund for Operation of MEC

Section 6 of the PCS would appropriate $22,900 from the Mineral Interest Fund to DENR for the 2012-2013 fiscal year to be used to operate MEC and for payment of expenditures related to the MEC's implementation of legislative mandates, including the hiring of temporary or contract employees to assist with policy development and rule making.

PART VII. Revenue from Offshore Energy Production

Section 7 of the PCS would require that any revenues or royalties paid to the State from offshore leasing, exploration, development, and production of energy would be deposited in an interest-bearing special revenue fund to be established within the State treasury until the fund reaches $50 million. The fund could be used only for emergency preparation, emergency response, emergency environmental protection, or mitigation associated with a release of liquid hydrocarbons or associated fluids directly related to offshore energy exploration, development, production, or transmission. At any point the fund exceeds $50 million (allowing use and replenishment up to that amount for the specified purposes) the revenues or royalties paid to the State from offshore leasing, exploration, development, and production of energy would be directed to the General Fund, the Highway Trust Fund, the Community Colleges System Office and the Board of Governors of The University of North Carolina System for certain programs, DENR, the State Ports Authority, and the Department of Commerce for certain purposes).

This provision becomes effective only if authorized by the General Assembly in the Current Operations and Capital Improvements Appropriations Act of 2013.

PART VIII. Regional Interstate Offshore Energy Policy Compact

Section 8 of the PCS would strongly encourage the Governor to develop a compact with the governors of South Carolina and Virginia to develop a regional strategy for exploration of offshore energy resources. The PCS provides that the compact negotiations and recommendations should address at least all of the following:

- Timely review and consideration of state and federal permits and proposals for seismic and other marine geophysical exploration to identify and quantify natural gas and related hydrocarbon resources along the continental margin.
- Amendment of the 2012 to 2017 Five Year Leasing Plan of the United States Department of the Interior (DOI) to include leasing federal waters adjacent to the State and the three-state region for the exploration, quantification, and development of natural gas and related hydrocarbon energy resources.
- Proactive advocacy with federal officials to ensure direct sharing of royalties and revenues related to energy leasing, exploration, development, and production of all offshore energy resources in federal waters adjacent to the State and the three-state region.
- Request that DOI: (1) reinstate and reappoint the federal Offshore Policy Committee; and (2) immediately move forward with permitting geological and geophysical data acquisition activities associated with oil and gas exploration in the Mid- and South Atlantic Planning Areas of the Atlantic Outer Continental Shelf as outlined in Alternative A of the Bureau of Ocean Energy Management's Draft Programmatic Environmental Impact Statement entitled "Atlantic OCS Proposed Geological and Geophysical Activities" published in 2012.

The Governor would also be encouraged to work with the states' Congressional delegations and applicable federal agencies to develop strategies for increasing domestic energy supply. The Governor is directed to develop recommendations for the General Assembly's consideration in enacting a regional compact, and report to the General Assembly periodically on the progress of the matter.

In addition, the PCS would encourage the Governor to join the Governors of Alaska, Texas, Louisiana, Mississippi, Alabama, South Carolina, and Virginia and any others who may sign on to the Outer Continental Shelf Governors Coalition announced on May 3, 2011, to promote a constructive dialogue among the coastal state governors and the federal government concerning offshore energy issues. The Governor would be authorized to expend funds related to membership in the Coalition.

PART IX. Energy Policy Act and Energy Policy Council Amendments

Section 9 of the PCS would retitle the Energy Policy Act as the Energy Policy and Jobs Act (Act), and rename the Energy Policy Council as the Energy Jobs Council (Council). The PCS would transfer the Energy Jobs Council from the Department of Commerce to DENR, and designate that staff support would be supplied by the Division of Energy, Mineral, and Land Resources of DENR.

The Council would be reconstituted with new membership requirements, and the number of appointments would be reduced from 16 to 13. Under the PCS the terms of the current members of the Energy Policy Council would terminate when the bill became law or on June 30, 2013, whichever comes first, and new appointments would be made no later than July 1, 2013.

The purpose of the reconstituted council would be to advise and make recommendations to increase domestic energy exploration, development, and production within the State and region in order to promote economic growth and jobs. The goal of the Energy Jobs Council would be to identify and utilize domestic energy sources to ensure a secure, stable, and predictable energy supply, and for other purposes. The duties of the Council would be amended to include the following:

- Develop and recommend a comprehensive State energy policy that addresses requirements in the short term (10 years), in the midterm (25 years), and in the long term (50 years) to achieve maximum effective management and use of present and future sources of domestic energy resources, including smart grid and domestic energy resources such as natural gas, coal, hydroelectric power, solar, wind, nuclear energy, and biomass.
- Conduct ongoing assessments of opportunities and constraints presented by uses of all forms of energy to facilitate the expansion of the domestic energy supply.
- Actively engage in discussions with the federal government, its agencies, and its leaders to identify opportunities to increase domestic energy supply within North Carolina and its adjacent offshore waters.

PART X. Modify Electrical Requirements Rule to Allow Hospitals to Use Compressed Natural Gas as Emergency Fuel

Section 10 of the PCS would direct the Medical Care Commission to adopt a rule to replace the "Electrical Requirements Rule" (10A NCAC 13B .6227(f)(2), "Licensing of Hospitals: Electrical Requirements"), which currently provides that facilities licensed by the Department of Health and Human Services must provide emergency electrical to the facilities with **fuel that is stored on site** in sufficient quantity to provide for not less than 24 hours of operation. The PCS would require replacement of this rule to allow such facilities to use bi-fuel generators that operate with both liquid fuel and natural gas (methane) **that is not stored on the site**, provided that the natural gas is delivered via pipe or pipeline by a natural gas utility. These bi-fuel generators would be exempt from liquid fuel capacity standards established by the Medical Care Commission. Bi-fuel generators that operate on both liquid and other gaseous fuels, including propane and butane, that are stored on the site would also be authorized, provided that the combined capacity of both liquid and gaseous fuels meet minimum on-site fuel requirements established by the Commission. Further, the Medical Care Commission would be authorized to adopt rules to require a licensed facility with a bi-fuel generator to develop a contingency plan for liquid fuel delivery onto the site in the event of a natural gas (methane) supply disruption.

PART XI. Effective Date

Except as otherwise noted, the provisions of the PCS would become effective when the bill becomes law.

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 76

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

S76-ATD-9 [v.2]

Comm. Sub. [YES]
Amends Title [NO]
PCS to the Second Edition

Date _____,2013

Senator Rucho

moves to amend the bill on page 7, line 32 by substituting the term "first purchaser" for the term "purchaser".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

S76-ATD-9-V-2

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 76

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

S76-ARI-6 [v.3]

Comm. Sub. [YES]
Amends Title [YES]
S76-CSRIf-2 [v.2]

Date 2-21 ,2013

Senator Rucho

moves to amend the bill on page 2, lines 1 through 4,
by rewriting those lines to read:

"**SECTION 1.(a)** All rules required to be adopted by the Mining and Energy Commission, the Environmental Management Commission, and the Commission for Public Health to create 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, shall be adopted no later than October 1, 2014, as provided in Section 2.(m) of S.L. 2012-143. Effective March 1, 2015, the Department of Environment and Natural Resources and the Mining and Energy Commission are authorized to issue permits for oil and gas exploration and development activities using horizontal drilling and hydraulic fracturing treatments in the State pursuant to G.S. 113-395, however, the Department of Environment and Natural Resources and the Mining and Energy Commission are not required to issue such permits until all rules required to be adopted pursuant to Section 2.(m) of S.L. 2012-143 have become effective.";

and on page 5, lines 1 through 13,
by rewriting those lines to read:

"**PART IV. AMEND STATUTE GOVERNING SUBSURFACE FLUID INJECTION**

SECTION 4. G.S. 143-214.2 reads as rewritten:

"**§ 143-214.2. Prohibited discharges.**

(a) The discharge of any radiological, chemical or biological warfare agent or high-level radioactive waste to the waters of the State is prohibited.

(b) The discharge of any wastes to the subsurface or groundwaters of the State by means of wells is prohibited. This section shall not be construed to prohibit (i) the operation of closed-loop groundwater remediation systems in accordance with G.S. 143-215.1A or (ii) injection of hydraulic fracturing fluid for the exploration or development of natural gas ~~resources.~~resources, and water produced from subsurface geologic formations during the extraction of natural gas, condensate, or oil, in North Carolina.

(c) Unless permitted by a rule of the Commission, the discharge of wastes, including thermal discharges, to the open waters of the Atlantic Ocean over which the State has jurisdiction are prohibited."".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

VISITOR REGISTRATION SHEET

Senate **COMMERCE** Committee — February 21, 2013

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Jaz Tunnell	PNG
Neal Robbins	DENR
Steve Brewer	CTL
George Smith	Nexsen Pruet
TJ Brymer	Nexsen Pruet
John Pollard	NCAPA
Sharon Miller	CUCA
Tommy Sevier	Moore and Van Allen
Kerri Burdo	NWOC
Ray Emanuel	School of Government
Carson Hine	MVA
Camera Henly	MVA

VISITOR REGISTRATION SHEET

Senate **COMMERCE** Committee — February 21, 2013

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Jackson Gibbs	NSS
Johanna Reese	NCACC
Andrew Blackburn	SSG
Heather Barnett	WQS
Dirk Calton	
	EDF&A, Inc
Ellise McDowell	Troutman Sanders
Tom Fennebresque	S+H
Bob Hall	McGuireWoods
Katy Feinberg	McGuireWoods Consulting
John Monaghan	Piedmont Natural Gas

VISITOR REGISTRATION SHEET

Senate **COMMERCE** Committee — February 21, 2013

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Paul Sherman	NCFB
Tommy Stevens	NCPC
Jay [illegible]	NCAFC
Patrick Buffk	NCAFC
Robin Smith	
Erin Wynia	NCLM
Jordan Smith	NCLM
DAVID BROWN	UNC School of GOVT
TRACY DAVIS	DENR
Trina Ozer	DENR
Travis Hyatt	NCSC

VISITOR REGISTRATION SHEET

Senate **COMMERCE** Committee — February 21, 2013

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Lyle Snider	Citizen
Ross Bernhardt	Citizen
[signature]	SELC
[signature]	ELW.NC
[signature]	EDF
Susanna Davis	Williams Mullen
[signature]	NCSTA.
[signature]	MJG
Nadia Luhr	NCCN
Destin Chicurel-Bayard	Sierra Club
[signature]	Sierra Club

VISITOR REGISTRATION SHEET

Senate **COMMERCE** Committee — February 21, 2013

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Dan Crawford	NCLCV
Tom Beam	EDF, NCSEA, NCWF

Senate Committee on Commerce
Tuesday, February 26, 2013, 11:00 AM
1027/1128 Legislative Building

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

BILL NO.	SHORT TITLE	SPONSOR
SB 43	Study Savings for Administration of Claims.	Senator Brown
SB 44	Workers Comp Coverage/Public Records.	Senator Brown
SB 51	GBICC/Workers' Comp Program Integrity.	Senator Brown
SB 71	Amend Irrigation Contractors Licensing Laws.	Senator Tucker

Senate Committee on Commerce
Tuesday, February 26, 2013 at 11:00 AM
Room 1027/1128 of the Legislative Building

MINUTES

The Senate Committee on Commerce met at 11:00 AM on February 26, 2013 in Room 1027/1128 of the Legislative Building. Twenty four members were present.

Senator Meredith presided.

Josh Page from Clinton and Max Shafer from Warsaw served as pages.

S.B. 43 – Study Savings for Administration of Claims
Senator Brown was introduced to explain the bill. Senate Bill 43 requires the Office of State Personnel to study the expenses related to the management of workers' compensation claims submitted by State and local government employees, and to make recommendations by October 1, 2013 as to how efficiency can be improved and expenses can be reduced. Senator McKissick moved for a favorable to report and it carried.

S.B. 44 – Workers Comp Coverage/Public Records
Senator Tillman moved to accept the PCS to the committee and it was carried. The PCS to Senate Bill 44 would authorize the Industrial Commission to release information received from the NC Rate Bureau relating to workers' compensation insurance coverage carried by North Carolina employers to the public. The PCS removes language prohibiting the release of information relating to policies becoming effective prior to January 1, 2012. Senator Brown was introduced to explain the PCS and the bill. Senator Tillman motioned – unfavorable to the bill favorable to the PCS

S.B. 51 – GBICC/Workers' Comp Program Integrity
Senate Bill 51 would require the State Controller and the Government Business Intelligence Competency Center to collect and analyze data relating to workers' compensation claims for the purpose of preventing and detecting fraud. Senator Brown was introduced to explain the bill and also brought forth an amendment. Senator Sanderson moved to accept the amendment and it carried. Senator Tillman motioned – unfavorable to the bill and favorable to the PCS as amended and it carried.

S. B. 71 – Amend Irrigation Contractors Licensing Laws
Senator Meredith asked for Senator Gunn to preside over the committee for this bill. Senator Curtis moved to accept the PCS before the committee and it carried. The PCS for Senate Bill 71 makes the following changes to the statutes that regulate irrigation contractors:

- Makes clarifying changes to exemptions from regulation and adds an exemption for persons entering into subcontracts with licensed irrigation contractors, as long as the licensee does the actual irrigation work.
- Adds provisions to allow licensing of business entities, nonresident individuals, and foreign entities.
- Provides for suspension, rather than forfeiture, of license for failure to obtain continuing education units. Licensee has 60 days to complete continuing education, request reinstatement, and pay a reinstatement fee.
- Authorizes business entity or foreign entity license fee of $100 and reinstatement fee of $250.
- Authorizes the Board to assess costs in a proceeding against an applicant or licensee found to be in violation of the Chapter.
- Provides new grandfathering period for those who can document 10 years in the irrigation contracting business and competency in the practice of irrigation contracting. Qualifying persons can be licensed without examination if they submit an application before October 1, 2013.

Senator Gunn introduced Senator Tucker to speak on the PCS and the bill. Senator Stein made the motion – unfavorable to the bill favorable to the PCS and it carried.

The meeting adjourned at 11:14 AM.

Senator Wesley Meredith, Presiding Chair

Debbie Lown, Committee Clerk

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

COMMERCE COMMITTEE REPORT
Senator Gunn, Co-Chair
Senator Meredith, Co-Chair

Tuesday, February 26, 2013

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

FAVORABLE

SB 43 Study Savings for Administration of Claims.
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 44 Workers Comp Coverage/Public Records.
Draft Number: S44-PCS75072-TG-1
Sequential Referral: None
Recommended Referral: None
Long Title Amended: No

SB 51 GBICC/Workers Comp Program Integrity.
Draft Number: S51-PCS85049-TP-2
Sequential Referral: None
Recommended Referral: None
Long Title Amended: No

SB 71 Amend Irrigation Contractors Licensing Laws.
Draft Number: S71-PCS35069-SUf-2
Sequential Referral: Finance
Recommended Referral: None
Long Title Amended: No

TOTAL REPORTED: 4

Senator Harry Brown will handle SB 43
Senator Harry Brown will handle SB 44
Senator Harry Brown will handle SB 51
Senator Tommy Tucker will handle SB 71

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

S 1

SENATE BILL 43

Short Title:	Study Savings for Administration of Claims.	(Public)
Sponsors:	Senators Brown (Primary Sponsor); Brock, Daniel, J. Davis, and Rabon.	
Referred to:	Commerce.	

February 5, 2013

A BILL TO BE ENTITLED

AN ACT TO DIRECT THE OFFICE OF STATE PERSONNEL, IN CONJUNCTION WITH THE DEPARTMENT OF PUBLIC INSTRUCTION AND THE OFFICE OF STATE BUDGET AND MANAGEMENT, TO STUDY AND MAKE RECOMMENDATIONS REGARDING THE MANAGEMENT OF WORKERS' COMPENSATION CLAIMS SUBMITTED BY STATE AND LOCAL GOVERNMENT EMPLOYEES, AS RECOMMENDED BY THE JOINT LEGISLATIVE COMMITTEE ON WORKERS' COMPENSATION INSURANCE COVERAGE COMPLIANCE AND FRAUD PREVENTION AND DETECTION.

The General Assembly of North Carolina enacts:

SECTION 1. The Office of State Personnel, in conjunction with the Department of Public Instruction and the Office of State Budget and Management, shall study the expenses related to the management of workers' compensation claims submitted by State and local government employees, and make recommendations as to how efficiency can be improved and expenses can be reduced. The study shall examine at least all of the following:

(1) An identification of State agencies that currently include budget line items for expenses related to workers' compensation claims.

(2) An identification of State agencies that do not currently include budget line items for expenses related to workers' compensation claims, including an explanation as to how these expenses are paid.

(3) An explanation of how the expenses related to the management of workers' compensation claims are allocated among the State agencies, including fees and expenses payable to third-party administrators and legal fees and expenses incurred in the defense of these claims.

(4) Recommendations for alternative budgeting methods that can be used for anticipated expenses related to workers' compensation claims, including the use of a fractional percentage of State agency payroll based on historical data or actuarial analysis.

(5) In order to increase the flexibility of State agencies to settle workers' compensation claims, recommendations for alternative budgeting methods that can be used for anticipated expenses related to lump sum settlements of workers' compensation claims.

(6) Recommendations for strategies that may be implemented to further motivate State agencies to return injured employees to work as soon as possible.

(7) An identification of State agencies that would be the best candidates for a pilot program to assess the efficacy of implementing one or more of the recommendations identified in this study for achieving greater efficiency and reducing expenses in the management of workers' compensation claims.

SECTION 2. No later than October 1, 2013, the Office of State Personnel shall report its findings and recommendations to the General Assembly.

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

SENATE BILL 43:
Study Savings for Administration of Claims

2013-2014 General Assembly

Committee:	Senate Commerce	**Date:**	February 21, 2013
Introduced by:	Sen. Brown	**Prepared by:**	Peter Ledford
Analysis of:	First Edition		Committee Counsel

SUMMARY: ***Senate Bill 43 requires the Office of State Personnel to study the expenses related to the management of workers' compensation claims submitted by State and local government employees, and to make recommendations by October 1, 2013 as to how efficiency can be improved and expenses can be reduced.***

BILL ANALYSIS: Senate Bill 43 requires the Office of State Personnel, in conjunction with the Department of Public Instruction and the Office of State Budget and Management, to study the expenses related to the management of workers' compensation claims submitted by State and local government employees, and to make recommendations as to how efficiency can be improved and expenses can be reduced. The study would be required to do all of the following:

- Identify State agencies that have budget line items for expenses related to workers' compensation claims.
- Identify State agencies that do not have budget line items for expenses related to workers' compensation claims, and explain how these expenses are paid.
- Explain how expenses related to the management of workers' compensation claims are allocated among State agencies.
- Recommend alternative budgeting methods for anticipated expenses related to workers' compensation claims.
- Recommend alternative budgeting methods for anticipated expenses related to lump sum settlements of workers' compensation claims.
- Recommend strategies to motivate State agencies to return injured employees to work as soon as possible.
- Identify State agencies for a pilot program to implement one or more of the recommendations identified.

EFFECTIVE DATE: This act is effective when it becomes law. The Office of State Personnel must report its findings and recommendations to the General Assembly by October 1, 2013.

BACKGROUND: Enactment of this legislation is one of the recommendations contained in the final report of the Joint Legislative Committee on Workers' Compensation Insurance Coverage Compliance and Fraud Prevention and Detection:

> "The Committee finds that the cost to the State of workers' compensation claims submitted by State and local government employees has risen significantly over the past several years and that it is desirable to consider ways in which efficiency in the management of these claims can be improved. The Committee therefore recommends enactment of Bill Draft 2013-MLz-27 [v.3] enclosed in Appendix C to require the Office of State Personnel, in conjunction with the Department of Public Instruction and the State

Budget Office, to study this issue and report their findings and recommendations to the 2013 General Assembly."

SENATE BILL 44

Short Title:	Workers Comp Coverage/Public Records.	(Public)
Sponsors:	Senators Brown (Primary Sponsor); Brock and Daniel.	
Referred to:	Commerce.	

February 5, 2013

A BILL TO BE ENTITLED

AN ACT TO PERMIT DISCLOSURE OF CERTAIN INFORMATION PERTAINING TO WORKERS' COMPENSATION COVERAGE BY THE NORTH CAROLINA INDUSTRIAL COMMISSION, AS RECOMMENDED BY THE JOINT LEGISLATIVE COMMITTEE ON WORKERS' COMPENSATION INSURANCE COVERAGE COMPLIANCE AND FRAUD PREVENTION AND DETECTION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 58-36-17 reads as rewritten:

"**§ 58-36-17. Bureau to share information with the North Carolina Industrial Commission.**

The Bureau shall provide to the North Carolina Industrial Commission information contained in the Bureau's records indicating the status of workers' compensation insurance coverage on North Carolina employers as reported to the Bureau by the Bureau's member companies. The North Carolina Industrial Commission shall take such steps, including obtaining software or software licenses, as are necessary to be able to receive and process such information from the Bureau. The records provided to the North Carolina Industrial Commission under this section shall be confidential and shall not be public records as that term is defined in G.S. 132-1. Notwithstanding the previous sentence and with respect to policies becoming effective on and after January 1, 2012, the North Carolina Industrial Commission may release data showing ~~workers~~ workers' compensation insurance policy information that includes ~~only~~ only: employer name and address; carrier name, address, and telephone number; policy number; policy effective ~~dates,~~dates; policy cancellation ~~dates,~~dates; and policy reinstatement dates. This data shall not be confidential data and shall be a public record as that term is defined in G.S. 132-1. The North Carolina Industrial Commission shall use the information provided pursuant to this section only to carry out its statutory duties and obligations under The North Carolina Workers' Compensation Act. The Bureau shall be immune from civil liability for releasing information pursuant to this section, even if the information is erroneous, provided the Bureau acted in good faith and without malicious or willful intent to harm in releasing the information."

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

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

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SENATE BILL 44
PROPOSED COMMITTEE SUBSTITUTE S44-CSTG-1 [v.2]
2/25/2013 3:49:37 PM

Short Title: Workers Comp Coverage/Public Records. (Public)

Sponsors:

Referred to:

February 5, 2013

A BILL TO BE ENTITLED

AN ACT TO PERMIT DISCLOSURE OF CERTAIN INFORMATION PERTAINING TO WORKERS' COMPENSATION COVERAGE BY THE NORTH CAROLINA INDUSTRIAL COMMISSION, AS RECOMMENDED BY THE JOINT LEGISLATIVE COMMITTEE ON WORKERS' COMPENSATION INSURANCE COVERAGE COMPLIANCE AND FRAUD PREVENTION AND DETECTION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 58-36-17 reads as rewritten:

"**§ 58-36-17. Bureau to share information with the North Carolina Industrial Commission.**

The Bureau shall provide to the North Carolina Industrial Commission information contained in the Bureau's records indicating the status of workers' compensation insurance coverage on North Carolina employers as reported to the Bureau by the Bureau's member companies. The North Carolina Industrial Commission shall take such steps, including obtaining software or software licenses, as are necessary to be able to receive and process such information from the Bureau. The records provided to the North Carolina Industrial Commission under this section shall be confidential and shall not be public records as that term is defined in G.S. 132-1. Notwithstanding the previous sentence, ~~sentence and with respect to policies becoming effective on and after January 1, 2012,~~ the North Carolina Industrial Commission may release data showing ~~workers~~ workers' compensation insurance policy information that includes ~~only~~ only: employer name and address; carrier name, address, and telephone number; policy number; policy effective ~~dates,~~dates; policy cancellation ~~dates,~~dates; and policy reinstatement dates. This data shall not be confidential data and shall be a public record as that term is defined in G.S. 132-1. The North Carolina Industrial Commission shall use the information provided pursuant to this section only to carry out its statutory duties and obligations under The North Carolina Workers' Compensation Act. The Bureau shall be immune from civil liability for releasing information pursuant to this section, even if the information is erroneous, provided the Bureau acted in good faith and without malicious or willful intent to harm in releasing the information."

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

SENATE BILL 44:
Workers Comp Coverage/Public Records

2013-2014 General Assembly

Committee:	Senate Commerce	**Date:**	February 25, 2013
Introduced by:	Sen. Brown	**Prepared by:**	Peter Ledford
Analysis of:	PCS to First Edition S44-CSTG-1		Committee Counsel

SUMMARY: ***The PCS to Senate Bill 44 would authorize the Industrial Commission to release information received from the N.C. Rate Bureau relating to workers' compensation insurance coverage carried by North Carolina employers to the public. The PCS removes language prohibiting the release of information relating to policies becoming effective prior to January 1, 2012.***

[As introduced, this bill was identical to H111, as introduced by Reps. McElraft, Collins, Dollar, which is currently in House Judiciary Subcommittee A.]

CURRENT LAW: G.S. 58-36-17 requires the North Carolina Rate Bureau to provide the North Carolina Industrial Commission with information in its records indicating the status of workers' compensation insurance coverage carried by North Carolina employers. This information is confidential and is not a public record subject to Chapter 132 of the General Statutes, except for the following information, which is a "public record" as defined in G.S. 132-1:

- Policy effective dates
- Policy cancellation dates
- Policy reinstatement dates

BILL ANALYSIS: The PCS to Senate Bill 44 would amend G.S. 58-36-17 to authorize the Industrial Commission to release as public records under Chapter 132 of the General Statutes the following information provided to it by the Rate Bureau relating to workers' compensation insurance coverage carried by North Carolina employers, regardless of when the policy became effective:

- Employer name and address
- Carrier name, address, and telephone number
- Policy number

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

BACKGROUND: Enactment of this legislation is one of the recommendations contained in the final report of the Joint Legislative Committee on Workers' Compensation Insurance Coverage Compliance and Fraud Prevention and Detection:

> "The Committee finds that it is in the public interest to expand the categories of information relating to employer workers' compensation insurance coverage that the Industrial Commission is authorized to release to the public, as agreed to by the Industrial Commission, the N.C. Rate Bureau, and the N.C. Press Association. The Committee is informed that upon receiving this authorization, the Industrial Commission will make this information available on its website. The Committee therefore recommends enactment of Bill Draft 2013-TGz-2 [v.4] enclosed in Appendix C to authorize the Industrial Commission to release this information."

Bill Patterson, counsel to House Judiciary Subcommittee A, substantially contributed to this summary.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

S 1

SENATE BILL 51*

Short Title:	GBICC/Workers' Comp Program Integrity.	(Public)
Sponsors:	Senators Brown (Primary Sponsor); and Brock.	
Referred to:	Commerce.	

February 6, 2013

A BILL TO BE ENTITLED

AN ACT REQUIRING THAT THE STATE CONTROLLER, GOVERNMENT BUSINESS INTELLIGENCE COMPETENCY CENTER, ENHANCE THE STATE'S ENTERPRISE-LEVEL BUSINESS INTELLIGENCE THROUGH THE COLLECTION AND ANALYSIS OF DATA FROM VARIOUS STATE AGENCIES RELATED TO WORKERS' COMPENSATION INSURANCE COVERAGE AND CLAIMS FOR THE PURPOSE OF FRAUD PREVENTION AND DETECTION, AS RECOMMENDED BY THE JOINT LEGISLATIVE COMMITTEE ON WORKERS' COMPENSATION INSURANCE COVERAGE COMPLIANCE AND FRAUD PREVENTION AND DETECTION.

The General Assembly of North Carolina enacts:

SECTION 1. Section 6A.7A(g) of S.L. 2012-142 is amended by adding a new subdivision to read:

"**SECTION 6A.7A.(g)** Miscellaneous Provisions. –

...

(3) Workers' Compensation Program Integrity. – The State Controller and the GBICC shall enhance the State's business intelligence through the collection and analysis of data relating to workers' compensation claims for the purpose of preventing and detecting fraud, as follows:

a. The North Carolina Industrial Commission shall release to GBICC, or otherwise provide electronic access to, all data requested by GBICC relating to workers' compensation insurance coverage, claims, appeals, compliance, and enforcement under Chapter 97 of the General Statutes.

b. The North Carolina Rate Bureau shall release to GBICC, or otherwise provide electronic access to, all data requested by GBICC relating to workers' compensation insurance coverage, claims, business ratings, and premiums under Chapter 58 of the General Statutes.

c. The Department of Commerce, Division of Employment Security (DES), shall release to GBICC, or otherwise provide access to, all data requested by GBICC relating to unemployment insurance coverage, claims, and business reporting under Chapter 96 of the General Statutes.

d. The Department of Labor shall release to GBICC, or otherwise provide access to, all data requested by GBICC relating to safety

inspections, wage and hour complaints, and enforcement activities under Chapter 95 of the General Statutes.

e. The Department of Revenue shall release to GBICC, or otherwise provide access to, all data requested by GBICC relating to the registration and address information of active businesses, business tax reporting, and aggregate federal tax Form 1099 data for comparison with information from DES, the Rate Bureau, and the Department of the Secretary of State for the evaluation of business reporting. The Department of Revenue and the Office of the State Controller shall work jointly to assure that the evaluation of tax information pursuant to this subdivision is performed in accordance with applicable federal law.

f. All information shared with GBICC and the State Controller under this subdivision is protected from release and disclosure in the same manner as any other information available to GBICC and the State Controller pursuant to this section."

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

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 51*

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

S51-ATP-1 [v.1]

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

Date February 26 ,2013

Senator Brown

moves to amend the bill on page 1, line 25, by rewriting the line to read:

"b. The North Carolina Rate Bureau (Bureau) shall release to GBICC, or"

and on page 1, line 29, by rewriting the line to read:

"Statutes. The Bureau shall be immune from civil liability for releasing information pursuant to this subsection, even if the information is erroneous, provided the Bureau acted in good faith and without malicious or willful intent to harm in releasing the information."

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

SENATE BILL 51:
GBICC/Workers' Comp Program Integrity

2013-2014 General Assembly

Committee:	Senate Commerce	**Date:**	February 25, 2013
Introduced by:	Sen. Brown	**Prepared by:**	Peter Ledford Committee Counsel
Analysis of:	First Edition		

SUMMARY: ***Senate Bill 51 would require the State Controller and the Government Business Intelligence Competency Center to collect and analyze data relating to workers' compensation claims for the purpose of preventing and detecting fraud.***

[As introduced, this bill was identical to H112, as introduced by Reps. Dollar, Collins, McElraft, which is currently in House Commerce and Job Development.]

CURRENT LAW: Session Law 2012-142, the Current Operations and Capital Improvements Appropriations Act of 2012, created the enterprise-level business intelligence initiative ("initiative") in the Office of the State Controller to support the effective and efficient development of State agency business intelligence capability in a coordinated manner and to reduce unnecessary information silos and technological barriers. The Act also created the Government Business Intelligence Competency Center ("GBICC") in the Office of the State Controller to assist in the management of the initiative. Currently, the State Controller, through the GBICC, is tasked with:

- coordinating enterprise data integration efforts
- identifying technologies that can support the initiative and the State's business intelligence effort
- ensuring proper implementation by State agencies
- ensuring data privacy and security
- seeking waivers of State and federal law to effectuate data sharing
- coordinating data requirements and usage for State business intelligence applications, and
- recommending the most cost-effective and reliable long-term hosting solution for State business intelligence.

BILL ANALYSIS: This bill would require the State Controller and the GBICC to collect and analyze data relating to workers' compensation claims for the purpose of preventing and detecting fraud. Data would be collected from the North Carolina Industrial Commission, the North Carolina Rate Bureau, the Division of Employment Security in the Department of Commerce, the Department of Labor, and the Department of Revenue.

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

BACKGROUND: Enactment of this legislation is one of the recommendations contained in the final report of the Joint Legislative Committee on Workers' Compensation Insurance Coverage Compliance and Fraud Prevention and Detection:

> "The Committee finds that the State Controller, through the Government Business Intelligence Competency Center (GBICC), has technical expertise in data analysis that will benefit the Industrial Commission in the detection and prevention of workers' compensation fraud by employers and employees. The Committee therefore recommends

enactment of Bill Draft 2013-LRz-28A [v. 2] enclosed in Appendix C to require agencies to work with the State Controller as necessary to support GBICC in this project."

SENATE BILL 71

Short Title:	Amend Irrigation Contractors Licensing Laws.	(Public)
Sponsors:	Senators Tucker (Primary Sponsor); and Brown.	
Referred to:	Commerce.	

February 11, 2013

A BILL TO BE ENTITLED

AN ACT AMENDING THE LAWS REGULATING IRRIGATION CONTRACTORS TO PROVIDE SUBSTANTIVE REQUIREMENTS FOR LICENSING CORPORATIONS, TO PROVIDE FOR THE ISSUANCE OF LICENSES TO NONRESIDENTS, TO CLARIFY THE FEE STRUCTURE, TO PROVIDE FOR LICENSURE OF EXPERIENCED IRRIGATION CONTRACTORS WITHOUT THE REQUIREMENT OF AN EXAMINATION WHERE CERTAIN CONDITIONS ARE MET, AND TO MAKE OTHER CONFORMING CHANGES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 89G-1 reads as rewritten:

"**§ 89G-1. Definitions.**

The following definitions apply in this Chapter:

(1) Board. – The North Carolina Irrigation Contractors' Licensing Board.

(1a) Business entity. – A person that is not an individual.

(1b) 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.

(1c) Foreign corporation. – A corporation as defined in G.S. 55-1-40.

(1d) Foreign entity. – A foreign corporation, a foreign limited liability company, or a foreign partnership.

(1e) Foreign limited liability company. – A company as defined in G.S. 57C-1-03.

(1f) 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.

(2) Irrigation construction or irrigation contracting. – The act of providing services as an irrigation contractor for compensation or other consideration.

(3) Irrigation contractor. – Any person who, for compensation or other consideration, constructs, installs, expands, services, or repairs irrigation systems.

(4) Irrigation system. – All piping, fittings, sprinklers, drip tubing, valves, control wiring of 30 volts or less, and associated components installed for the delivery and application of water for the purpose of irrigation that are downstream of a well, pond or other surface water, potable water or

groundwater source, or grey water source and downstream of a backflow prevention assembly. Surface water, potable water or groundwater sources, water taps, utility piping, water service lines, water meters, backflow prevention assemblies, stormwater systems that service only the interior of a structure, and sanitary drainage systems are not part of an irrigation system.

(4a) Nonresident individual. – An individual who is not a resident of this State.

(5) Person. – An individual, firm, partnership, association, corporation, or other legal entity."

SECTION 2. G.S. 89G-3 reads as rewritten:

"**§ 89G-3. Exemptions.**

The provisions ~~in~~ of this Chapter shall not apply to:

(1) Any federal or State agency or any political subdivision performing irrigation construction or irrigation contracting work on public ~~property.~~property and using its own employees.

(2) Any property owner who performs irrigation construction ~~or contracting~~ work on his or her own property.

(3) A landscape architect registered under Chapter 89A of the General Statutes.

(4) A professional engineer licensed under Chapter 89C of the General Statutes.

(5) Any irrigation construction or irrigation contracting work where the price of all contracts for labor, material, and other items for a given jobsite is less than two thousand five hundred dollars ($2,500).

(6) Any person performing irrigation construction or irrigation contracting work for temporary irrigation to establish vegetative cover for erosion control.

(7) Any person performing irrigation construction or irrigation contracting work to control dust on commercial construction sites or mining operations.

(8) Any person performing irrigation construction or irrigation contracting work for use in agricultural production, farming, or ranching, including land application of animal wastewater.

(9) Any person performing irrigation construction or irrigation contracting work for use in commercial sod production.

(10) Any person performing irrigation construction or irrigation contracting work for use in the commercial production of horticultural crops, including nursery and greenhouse operators.

(11) A general contractor licensed under Article 1 of Chapter 87 of the General ~~Statutes.~~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 irrigation construction or irrigation contracting work. A public utilities contractor exempted by this subdivision may perform only the activities described in G.S. 87-10(b)(3)a.

(12) A wastewater contractor certified under Article 5 of Chapter 90A of the General Statutes who performs only the construction of or repair to a wastewater dispersal system.

~~(13) A public utility contractor licensed under Article 1 of Chapter 87 of the General Statutes.~~

(14) A plumbing contractor licensed under Article 2 of Chapter 87 of the General Statutes who performs only the following work: installation, repairs, or maintenance of water mains, water taps, service lines, water meters, or backflow prevention assemblies supplying water for irrigation systems; or repairs to an irrigation system.

(15) Any person performing irrigation construction or irrigation contracting work for a golf course.

(16) Any ~~person~~full-time employee of a homeowners association maintaining or repairing an irrigation system owned by the homeowners association of a planned community and located within the planned community's common elements as defined in G.S. 47F-1-103.

(17) Any unlicensed person or entity who enters into a subcontract with a North Carolina licensed irrigation contractor, where the irrigation work is performed entirely by the North Carolina licensed irrigation contractor in accordance with this Chapter."

SECTION 3. G.S. 89G-5(11) reads as rewritten:

"**§ 89G-5. Powers and duties.**

The Board shall have the following powers and duties:

...

(11) To require licensees to file and maintain an adequate surety ~~bond.~~bond or letter of credit.

...."

SECTION 4. Chapter 89G of the General Statutes is amended by adding a new section to read:

"**§ 89G-6.1. Licensing of business entities, nonresident individuals, and foreign entities.**

(a) The Board may issue a license in the name of a business entity if the business entity pays the license fee required by G.S. 89G-10 and one of the following applies:

(1) For a corporation, one or more officers or full-time employees empowered to act for the corporation are individuals licensed under this Chapter and only the individuals licensed under this Chapter execute contracts for irrigation construction and irrigation contracting.

(2) For a limited liability company, one or more managers or executives as defined in G.S. 57C-1-03 or full-time employees empowered to act for the company are individuals licensed under this Chapter and only the individuals licensed under this Chapter execute contracts for irrigation construction and irrigation contracting.

(3) For a partnership, one or more general partners or full-time employees empowered to act for the partnership are individuals licensed under this Chapter and only the individuals licensed under this Chapter execute contracts for irrigation construction and irrigation contracting.

(4) For a business entity using an assumed name or designated trade name, the owner or one or more full-time employees empowered to act for the owner are individuals licensed under this Chapter and only the individuals licensed under this Chapter execute contracts for irrigation construction and irrigation contracting.

(b) The Board may issue a license to a nonresident individual who meets the requirements for licensure under this Chapter. A nonresident individual licensed under this Chapter may qualify as the licensed individual under subdivisions (1), (2), and (3) of subsection (a) of this section.

(c) The Board may issue a license in the name of a foreign entity if the following apply:

(1) For a foreign corporation, the corporation has obtained a certificate of authority from the Secretary of State pursuant to Article 15 of Chapter 55 of the General Statutes and complies with the requirements of subdivision (1) of subsection (a) of this section.

(2) For a foreign limited liability company, the company has obtained a certificate of authority from the Secretary of State pursuant to Article 7 of

Chapter 57C of the General Statutes and complies with the requirements of subdivision (2) of subsection (a) of this section.

(3) For a foreign partnership, the partnership complies with the requirements of subdivision (3) of subsection (a) of this section.

(d) When the Board issues a license to a business entity or a foreign entity under this section, the Board shall indicate on the license the name and license number of the individual licensee required under subsection (a) of this section.

(e) The individual licensee required under subsection (a) of this section shall exercise direct supervision over a contract by a business entity or a foreign entity for irrigation construction or irrigation contracting until the contract is completed.

(f) All of the following shall apply if the individual licensee required under subsection (a) of this section ceases to be an officer, full-time employee, manager, executive, general partner, or owner of the business entity or foreign entity licensed under this section:

(1) The business entity or foreign entity shall provide written notice to the Board pursuant to rules adopted by the Board.

(2) The business entity or foreign entity must satisfy the requirements of subsection (a) of this section within 90 days of the effective date of the notice required under subdivision (1) of this subsection.

The Board shall suspend the license of a business entity or foreign entity licensed under this section that fails after 90 days to satisfy the requirements of subsection (a) of this section."

SECTION 5. G.S. 89G-9 reads as rewritten:

"**§ 89G-9. License renewal and continuing education.**

(a) Every license issued under this Chapter shall be renewed on or before December 31 of each year. Any person who desires to continue to practice irrigation contracting or irrigation construction shall apply for license renewal and shall submit the required fees. 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 irrigation 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 a licensee to demonstrate continued competence as a condition of license renewal.

(b) As a condition of license renewal, ~~a~~ an individual licensee shall meet continuing education requirements set by the Board. Each individual licensee shall complete 10 continuing education units per year. ~~Failure to obtain continuing education units shall result in the forfeiture of a license.~~

(c) The Board shall suspend an individual licensee's license for 60 days for failure to obtain continuing education units required by subsection (b) of this section. The Board shall suspend a business entity's or a foreign entity's license for 60 days for failure by the individual licensee required under G.S. 89G-6.1(a) to obtain continuing education units required by subsection (b) of this section. Upon completion of the required continuing education and payment of the reinstatement fee, the Board shall reinstate the license. Failure by an individual licensee to meet the education requirements, to request a reinstatement of the license, or to pay the reinstatement fee within the time provided shall result in the revocation of the license. Upon ~~forfeiture, a person~~revocation, an individual shall be required to submit a new application and retake the examination as provided in this Chapter."

SECTION 6. G.S. 89G-10(a) reads as rewritten:

"(a) The Board may impose the following fees not to exceed the amounts listed below:

(1)	Application fee	$100.00
(2)	Examination fee	200.00
(3)	~~License~~ Individual license fee and individual	

	license renewal fee	100.00
(3a)	Business entity or foreign entity license fee and business entity or foreign entity license renewal fee	100.00
(4)	Late renewal fee	50.00
(5)	License by reciprocity	250.00
(6)	~~Corporate license~~Reinstatement fee	~~100.00~~250.00
(7)	Duplicate license	25.00."

SECTION 7. G.S. 89G-11 reads as rewritten:

"**§ 89G-11. 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:

(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 irrigation 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 an irrigation 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."

SECTION 8. The Revisor of Statutes shall change the phrase "irrigation construction or contracting" to "irrigation construction or irrigation contracting" wherever it appears in Chapter 89G of the General Statutes.

SECTION 9.(a) Any person who can document 10 years in business as an irrigation contractor as of January 1, 2009, can document competency in the practice of irrigation construction or irrigation contracting, as determined by the North Carolina Irrigation Contractors' Licensing Board, and meets all other requirements and qualifications for licensure may be issued an irrigation contractor's license under Chapter 89G of the General Statutes, without the requirement of examination, provided that the person submits an application for licensure to the Board prior to October 1, 2013.

SECTION 9.(b) The North Carolina Irrigation Contractors' Licensing Board shall notify the North Carolina Cooperative Extension of the provision for licensure of experienced irrigation contractors without the requirement of an examination as provided in Section 9(a) of this act as quickly as practicable upon the effective date of this section.

SECTION 10. Sections 9(a) and 9(b) of this act are effective when this act becomes law. The remainder of this act becomes effective October 1, 2013.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

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SENATE BILL 71
PROPOSED COMMITTEE SUBSTITUTE S71-CSSUf-2 [v.1]
2/25/2013 1:26:41 PM

Short Title: Amend Irrigation Contractors Licensing Laws. (Public)

Sponsors:

Referred to:

February 11, 2013

A BILL TO BE ENTITLED

AN ACT AMENDING THE LAWS REGULATING IRRIGATION CONTRACTORS TO PROVIDE SUBSTANTIVE REQUIREMENTS FOR LICENSING CORPORATIONS, TO PROVIDE FOR THE ISSUANCE OF LICENSES TO NONRESIDENTS, TO CLARIFY THE FEE STRUCTURE, TO PROVIDE FOR LICENSURE OF EXPERIENCED IRRIGATION CONTRACTORS WITHOUT THE REQUIREMENT OF AN EXAMINATION WHERE CERTAIN CONDITIONS ARE MET, AND TO MAKE OTHER CONFORMING CHANGES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 89G-1 reads as rewritten:

"**§ 89G-1. Definitions.**

The following definitions apply in this Chapter:

(1) Board. – The North Carolina Irrigation Contractors' Licensing Board.

(1a) Business entity. – A person that is not an individual.

(1b) Foreign corporation. – A corporation as defined in G.S. 55-1-40.

(1c) Foreign entity. – A foreign corporation, a foreign limited liability company, or a foreign partnership.

(1d) Foreign limited liability company. – A company as defined in G.S. 57C-1-03.

(1e) 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.

(2) Irrigation construction or irrigation contracting. – The act of providing services as an irrigation contractor for compensation or other consideration.

(3) Irrigation contractor. – Any person who, for compensation or other consideration, constructs, installs, expands, services, or repairs irrigation systems.

(4) Irrigation system. – All piping, fittings, sprinklers, drip tubing, valves, control wiring of 30 volts or less, and associated components installed for the delivery and application of water for the purpose of irrigation that are downstream of a well, pond or other surface water, potable water or groundwater source, or grey water source and downstream of a backflow prevention assembly. Surface water, potable water or groundwater sources, water taps, utility piping, water service lines, water meters, backflow

prevention assemblies, stormwater systems that service only the interior of a structure, and sanitary drainage systems are not part of an irrigation system.

(4a) Nonresident individual. – An individual who is not a resident of this State.

(5) Person. – An individual, firm, partnership, association, corporation, or other legal entity."

SECTION 2. G.S. 89G-3 reads as rewritten:

"**§ 89G-3. Exemptions.**

The provisions ~~in~~ of this Chapter shall not apply to:

(1) Any federal or State agency or any political subdivision performing irrigation construction or irrigation contracting work on public ~~property.~~property and using its own employees.

(2) Any property owner who performs irrigation construction ~~or contracting~~ work on his or her own property.

(3) A landscape architect registered under Chapter 89A of the General Statutes.

(4) A professional engineer licensed under Chapter 89C of the General Statutes.

(5) Any irrigation construction or irrigation contracting work where the price of all contracts for labor, material, and other items for a given jobsite is less than two thousand five hundred dollars ($2,500).

(6) Any person performing irrigation construction or irrigation contracting work for temporary irrigation to establish vegetative cover for erosion control.

(7) Any person performing irrigation construction or irrigation contracting work to control dust on commercial construction sites or mining operations.

(8) Any person performing irrigation construction or irrigation contracting work for use in agricultural production, farming, or ranching, including land application of animal wastewater.

(9) Any person performing irrigation construction or irrigation contracting work for use in commercial sod production.

(10) Any person performing irrigation construction or irrigation contracting work for use in the commercial production of horticultural crops, including nursery and greenhouse operators.

(11) A general contractor licensed under Article 1 of Chapter 87 of the General ~~Statutes.~~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 irrigation construction or irrigation contracting work. A public utilities contractor exempted by this subdivision may perform only the activities described in G.S. 87-10(b)(3)a.

(12) A wastewater contractor certified under Article 5 of Chapter 90A of the General Statutes who performs only the construction of or repair to a wastewater dispersal system.

~~(13) A public utility contractor licensed under Article 1 of Chapter 87 of the General Statutes.~~

(14) A plumbing contractor licensed under Article 2 of Chapter 87 of the General Statutes who performs only the following work: installation, repairs, or maintenance of water mains, water taps, service lines, water meters, or backflow prevention assemblies supplying water for irrigation systems; or repairs to an irrigation system.

(15) Any person performing irrigation construction or irrigation contracting work for a golf course.

(16) Any ~~person~~full-time employee of a homeowners association maintaining or repairing an irrigation system owned by the homeowners association of a

planned community and located within the planned community's common elements as defined in G.S. 47F-1-103.

(17) Any unlicensed person or entity who enters into a subcontract with a North Carolina licensed irrigation contractor, where the irrigation work is performed entirely by the North Carolina licensed irrigation contractor in accordance with this Chapter."

SECTION 3. G.S. 89G-5(11) reads as rewritten:

"**§ 89G-5. Powers and duties.**

The Board shall have the following powers and duties:

...

(11) To require licensees to file and maintain an adequate surety ~~bond.~~bond or letter of credit.

...."

SECTION 4. Chapter 89G of the General Statutes is amended by adding a new section to read:

"**§ 89G-6.1. Licensing of business entities, nonresident individuals, and foreign entities.**

(a) The Board may issue a license in the name of a business entity if the business entity pays the license fee required by G.S. 89G-10 and one of the following applies:

(1) For a corporation, one or more officers or full-time employees empowered to act for the corporation are individuals licensed under this Chapter and only the individuals licensed under this Chapter execute contracts for irrigation construction and irrigation contracting.

(2) For a limited liability company, one or more managers or executives as defined in G.S. 57C-1-03 or full-time employees empowered to act for the company are individuals licensed under this Chapter and only the individuals licensed under this Chapter execute contracts for irrigation construction and irrigation contracting.

(3) For a partnership, one or more general partners or full-time employees empowered to act for the partnership are individuals licensed under this Chapter and only the individuals licensed under this Chapter execute contracts for irrigation construction and irrigation contracting.

(4) For a business entity using an assumed name or designated trade name, the owner or one or more full-time employees empowered to act for the owner are individuals licensed under this Chapter and only the individuals licensed under this Chapter execute contracts for irrigation construction and irrigation contracting.

(b) The Board may issue a license to a nonresident individual who meets the requirements for licensure under this Chapter. A nonresident individual licensed under this Chapter may qualify as the licensed individual under subdivisions (1), (2), and (3) of subsection (a) of this section.

(c) The Board may issue a license in the name of a foreign entity if the following apply:

(1) For a foreign corporation, the corporation has obtained a certificate of authority from the Secretary of State pursuant to Article 15 of Chapter 55 of the General Statutes and complies with the requirements of subdivision (1) of subsection (a) of this section.

(2) For a foreign limited liability company, the company has obtained a certificate of authority from the Secretary of State pursuant to Article 7 of Chapter 57C of the General Statutes and complies with the requirements of subdivision (2) of subsection (a) of this section.

(3) For a foreign partnership, the partnership complies with the requirements of subdivision (3) of subsection (a) of this section.

(d) When the Board issues a license to a business entity or a foreign entity under this section, the Board shall indicate on the license the name and license number of the individual licensee required under subsection (a) of this section.

(e) The individual licensee required under subsection (a) of this section shall exercise direct supervision over a contract by a business entity or a foreign entity for irrigation construction or irrigation contracting until the contract is completed.

(f) All of the following shall apply if the individual licensee required under subsection (a) of this section ceases to be an officer, full-time employee, manager, executive, general partner, or owner of the business entity or foreign entity licensed under this section:

(1) The business entity or foreign entity shall provide written notice to the Board pursuant to rules adopted by the Board.

(2) The business entity or foreign entity must satisfy the requirements of subsection (a) of this section within 90 days of the effective date of the notice required under subdivision (1) of this subsection.

The Board shall suspend the license of a business entity or foreign entity licensed under this section that fails after 90 days to satisfy the requirements of subsection (a) of this section."

SECTION 5. G.S. 89G-9 reads as rewritten:

"**§ 89G-9. License renewal and continuing education.**

(a) Every license issued under this Chapter shall be renewed on or before December 31 of each year. Any person who desires to continue to practice irrigation contracting or irrigation construction shall apply for license renewal and shall submit the required fees. 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 irrigation 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 a licensee to demonstrate continued competence as a condition of license renewal.

(b) As a condition of license renewal, ~~a~~ an individual licensee shall meet continuing education requirements set by the Board. Each individual licensee shall complete 10 continuing education units per year. ~~Failure to obtain continuing education units shall result in the forfeiture of a license.~~

(c) The Board shall suspend an individual licensee's license for 60 days for failure to obtain continuing education units required by subsection (b) of this section. The Board shall suspend a business entity's or a foreign entity's license for 60 days for failure by the individual licensee required under G.S. 89G-6.1(a) to obtain continuing education units required by subsection (b) of this section. Upon completion of the required continuing education and payment of the reinstatement fee, the Board shall reinstate the license. Failure by an individual licensee to meet the education requirements, to request a reinstatement of the license, or to pay the reinstatement fee within the time provided shall result in the revocation of the license. Upon ~~forfeiture, a person~~revocation, an individual shall be required to submit a new application and retake the examination as provided in this Chapter."

SECTION 6. G.S. 89G-10(a) reads as rewritten:

"(a) The Board may impose the following fees not to exceed the amounts listed below:

(1)	Application fee	$100.00
(2)	Examination fee	200.00
(3)	~~License~~ Individual license fee and individual license renewal fee	100.00
(3a)	Business entity or foreign entity license fee and business entity or foreign entity license renewal fee	100.00

(4)	Late renewal fee	50.00
(5)	License by reciprocity	250.00
(6)	~~Corporate license~~Reinstatement fee	~~100.00~~250.00
(7)	Duplicate license	25.00."

SECTION 7. G.S. 89G-11 reads as rewritten:

"**§ 89G-11. 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:

(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 irrigation 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 an irrigation 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."

SECTION 8. The Revisor of Statutes shall change the phrase "irrigation construction or contracting" to "irrigation construction or irrigation contracting" wherever it appears in Chapter 89G of the General Statutes.

SECTION 9.(a) Any person who can document 10 years in business as an irrigation contractor as of January 1, 2009, can document competency in the practice of irrigation construction or irrigation contracting, as determined by the North Carolina Irrigation Contractors' Licensing Board, and meets all other requirements and qualifications for licensure may be issued an irrigation contractor's license under Chapter 89G of the General Statutes, without the requirement of examination, provided that the person submits an application for licensure to the Board prior to October 1, 2013.

SECTION 9.(b) The North Carolina Irrigation Contractors' Licensing Board shall notify the North Carolina Cooperative Extension of the provision for licensure of experienced irrigation contractors without the requirement of an examination as provided in Section 9(a) of this act as quickly as practicable upon the effective date of this section.

SECTION 10. Sections 9(a) and 9(b) of this act are effective when this act becomes law. The remainder of this act becomes effective October 1, 2013.

SENATE BILL 71:
Amend Irrigation Contractors Licensing Laws

2013-2014 General Assembly

Committee:	Senate Ref to Commerce. If fav, re-ref to Finance	**Date:**	February 26, 2013
Introduced by:	Sen. Tucker	**Prepared by:**	Wendy Graf Ray Committee Counsel
Analysis of:	PCS to First Edition S71-CSSUf-2		

SUMMARY: ***The Proposed Committee Substitute for Senate Bill 71 makes the following changes to the statutes that regulate irrigation contractors:***

- ***Makes clarifying changes to exemptions from regulation and adds an exemption for persons entering into subcontracts with licensed irrigation contractors, as long as the licensee does the actual irrigation work.***
- ***Adds provisions to allow licensing of business entities, nonresident individuals, and foreign entities.***
- ***Provides for suspension, rather than forfeiture, of license for failure to obtain continuing education units. Licensee has 60 days to complete continuing education, request reinstatement, and pay a reinstatement fee.***
- ***Authorizes business entity or foreign entity license fee of $100 and reinstatement fee of $250.***
- ***Authorizes the Board to assess costs in a proceeding against an applicant or licensee found to be in violation of the Chapter.***
- ***Provides new grandfathering period for those who can document 10 years in the irrigation contracting business and competency in the practice of irrigation contracting. Qualifying persons can be licensed without examination if they submit an application before October 1, 2013.***

CURRENT LAW: Chapter 89G of the General Statutes provides for licensing and regulation of persons practicing irrigation contracting in North Carolina. The provisions were originally enacted in 2008 (S.L. 2008-177) and went into effect January 1, 2009. The North Carolina Irrigation Contractors' Licensing Board has the authority to administer and enforce the provisions of the Chapter.

BILL ANALYSIS: The PCS for Senate Bill 71 makes the following changes to Chapter 89G:

Exemptions. G.S. 89G-3 lists persons/entities that are exempt from regulation as irrigation contractors. The PCS makes clarifying changes to some of the existing exemptions and adds a new exemption for any unlicensed person or entity who enters into a subcontract with a licensed irrigation contractor, as long as the irrigation work is performed entirely by the licensed irrigation contractor.

Licensing of business entities, nonresident individuals, and foreign entities. The PCS adds a new section G.S. 89G-6.1 to Chapter 89G, which provides for licensing of:

- Nonresident individuals – individuals who are not residents of this State. These individuals may be licensed as long as they meet all requirements for licensure.

- Business entities – corporations, limited liability companies, partnerships, or business entities using an assumed name or designated trade name.
- Foreign entities – foreign corporations or foreign limited liability companies that have obtained a certificate of authority from the Secretary of State or foreign partnerships.

For business and foreign entities, one or more individuals empowered to act for the entity must be licensed under Chapter 89G, and only the licensed individual is authorized to execute contracts for irrigation contracting. The individual licensee is required to exercise direct supervision over a contract until it is completed. If the individual licensee ceases to be an officer, employee, manager, executive, partner, or owner, the entity must provide written notice to the Board and replace that individual within 90 days. If the entity fails to do so within 90 days, the Board is required to suspend the license.

Suspension for failure to obtain continuing education. Currently, when a licensee fails to obtain required continuing education units, the license is forfeited. The PCS provides for a 60-day suspension following failure to obtain continuing education units. The licensee then has 60 days to obtain the continuing education units, request reinstatement, and pay a reinstatement fee of $250. If the licensee fails to do so within the 60-day period, the license is revoked.

Fees. The PCS authorizes a business entity or foreign entity license and renewal fee of $100. It also authorizes a $250 reinstatement fee.

Cost assessment for violations. The PCS authorizes the Board to assess costs, including reasonable attorney fees and investigatory costs, against an applicant or licensee that is found to be in violation of the provisions of Chapter 89G.

Grandfathering provision. The PCS provides a new window of opportunity for individuals who had irrigation contracting experience prior to the enactment of Chapter 89G to become licensed without taking an examination. Any person who can document 10 years in business as an irrigation contractor as of January 1, 2009, can document competency in the practice, and meets all other qualifications for licensure, may be issued an irrigation contractor license without taking an examination, if the person submits an application to the Board prior to October 1, 2013.

The Board is required to notify the North Carolina Cooperative Extension of this opportunity as quickly as practicable after the provision is enacted.

EFFECTIVE DATE: Section 9 (grandfathering provision) is effective when the act becomes law. The remainder of the act becomes effective October 1, 2013.

VISITOR REGISTRATION SHEET

Senate **COMMERCE** Committee — February 26, 2013

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DEBBIE LOWN

NAME	FIRM OR AGENCY AND ADDRESS
	Troy Batts
	P. Clark & Assoc.
Nathan Batts	NCBA.
Ha Nguyen	NCCOB
Adam Prudence	NCASA
Mike Olsen	NC State Office
DAVID RICE	MANNING FULTON
	NMRS
Meredith Henderson	NCIC
Abby Hammond	NCIC
Staci Meyer	Chair, N.C. Industrial Commission

VISITOR REGISTRATION SHEET

Senate **COMMERCE** Committee — February 26, 2013

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DEBBIE LOWN

NAME	FIRM OR AGENCY AND ADDRESS
[signature]	SEANC
Henry Jones	Jordan Price
Whitney Christensen	NCRLA
Sarah Hardin	CDL
Casey Waltz	Barringer
Henry Hutaff	N.C. B.I.A.
Haley Spalding	Staff
Sue Taylor	NC Rate Bureau
Mickey Spivey	Young Moore and Henderson
RAY EVANS	NC RATE BUREAU
John McMillan	MF&S

VISITOR REGISTRATION SHEET

Senate **COMMERCE** Committee — February 26, 2013

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DEBBIE LOWN

NAME	FIRM OR AGENCY AND ADDRESS
Susan Valauri	Nationwide
Michelle Frazier	MF+S
David Crawford	AIA NC
Daniel Bacon	Troutman Sanders
J Goodman	NC Chamber
Steven Wells	NCHBA
Erik Anderson	Pitt County
Kevin Otts	Masonic Home for Children
A.B. Swindell	Rocky Mount
George Smith	Nash Post

VISITOR REGISTRATION SHEET

Senate **COMMERCE** Committee — February 26, 2013

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DEBBIE LOWN

NAME	FIRM OR AGENCY AND ADDRESS
Ken Kinion	Springleaf Financial
Jake Cashion	NC Chamber
Tim Kent	NC Beer & Wine
Rick Zechini	Williams Mullen
Alex Badger	CSS
Matt Vinl	CW Consult.
[illegible]	NCRMD
Canaan Shive	Moore & Van Allen
Rita Harris	McGuireWoods
Ray Meyer	OSC
Anne Bander	OSC

VISITOR REGISTRATION SHEET

Senate **COMMERCE** Committee — February 26, 2013

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DEBBIE LOWN

NAME	FIRM OR AGENCY AND ADDRESS
Sarah Wolfe	MWC LLC
Kay Emanuel	UNC School of Government
Cindy Berta	League of Women's
Camen Hanley	MVA
Jeffrey Lubin	Brain Injury Assoc of NC
Todd Barlow	NC Advocates for Justice
Ellen Hurnick	Center for Responsible Credit
Benton Albritton	ABC of the Carolinas
Bill Sparrow	irrigation contractor Durham County
Will Carlton	attorney at law
David Kabakoff	NC Board of Nursing
John Merritt	MWC LLC

VISITOR REGISTRATION SHEET

Senate **COMMERCE** Committee — February 26, 2013

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DEBBIE LOWN

NAME	FIRM OR AGENCY AND ADDRESS
Janet Thoren	NCREC
Mitch Reynolds	SEANC

Senate Committee on Commerce
Tuesday, March 12, 2013, 11:15 AM
1027/1128 Legislative Building

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

BILL NO.	SHORT TITLE	SPONSOR
SB 9	Utilities/Design/Survey Location Services.	Senator Meredith

Special Introduction

Secretary Decker will be introduced. She will speak regarding the North Carolina Department of Commerce agenda and the new administration's vision for job creation.

Senate Committee on Commerce
Tuesday, March 12, 2013 at 11:15 AM
Room 1027/1128 of the Legislative Building

MINUTES

The Senate Committee on Commerce met at 11:15 AM on March 12, 2013 in Room 1027/1128 of the Legislative Building. Twenty three members were present.

Senator Rick Gunn presided.

Lance Hunter from Cary, Joseph Vuke from Cary and Emma Burri from Charlotte served as pages.

S. B. 9 Utilities/Design/Survey Location Services

Senator Tillman moved to adopt the proposed committee substitute (PCS to the committee for discussion and it was carried. Senate Bill 9 would allow surveyors and designers to request utility owners provide information about the location of underground utilities prior to surveying. Senator Meredith was recognized to speak on the bill and then introduced Peter Ledford an attorney from the Research Division to explain the PCS. He also answered several questions brought forth by the members. Senator Gunn then introduced Randy Rambeau, Secretary Treasurer for the North Carolina Surveyors society and Christy Davis, Executive Director for the North Carolina Surveyors Society. Both spoke positively about the bill and stated that it received unanimous positive reviews across the state by the NCSS. Senator Jenkins made the motion – unfavorable to the bill – favorable to the PCS and the motion carried.

Senator Gunn introduced Secretary Sharon Decker from the NC Department of Commerce. She spoke regarding the North Carolina Department of Commerce agenda and the new administration's vision for job creation.

The meeting adjourned at 11:52 PM.

Senator Rick Gunn, Co-Chair
Presiding

Debbie Lown, Committee Clerk

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

COMMERCE COMMITTEE REPORT
Senator Gunn, Co-Chair
Senator Meredith, Co-Chair

Tuesday, March 12, 2013

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

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

SB 9 Utilities/Design/Survey Location Services.

Draft Number:	S9-PCS75155-TP-4
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

TOTAL REPORTED: 1

Senator Richard Gunn will handle SB 9

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

S 1

SENATE BILL 9

Short Title:	Utilities/Design/Survey Location Services.	(Public)
Sponsors:	Senators Meredith (Primary Sponsor); and Clark.	
Referred to:	Commerce.	

January 31, 2013

A BILL TO BE ENTITLED

AN ACT REQUIRING UTILITY OWNERS TO LOCATE AND DESCRIBE UNDERGROUND UTILITIES UPON WRITTEN OR ORAL REQUEST FROM A PERSON WHO IS RESPONSIBLE FOR DESIGNING OR SURVEYING UNDERGROUND FACILITIES OR REQUIRES A GENERAL DESCRIPTION AND LOCATION OF EXISTING UNDERGROUND FACILITIES IN AN AREA.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 87-101 is amended by adding a new subdivision to read as follows:

"**§ 87-101. Definitions.**

As used in this Article:

...

(2a) "Design/survey request" means an oral or written request from a person who is responsible for designing or surveying underground utilities or requires a general description and location of existing underground utilities in an area.

...."

SECTION 2. Article 8 of Chapter 87 of the General Statutes is amended by adding a new section to read as follows:

"**§ 87-107.1. Design/survey request; notice required; duties of utility owners.**

(a) Before surveying an area containing highways, public spaces, or private easements of a utility owner, a person who is responsible for designing or surveying underground utilities or requires a general description and location of existing underground utilities may notify each utility owner having underground utilities located in the area to be surveyed, either orally or in writing, not less than two nor more than 10 working days prior to starting, of the person's intent to survey. The written or oral notice shall contain all of the following:

(1) The name, address, and telephone number of the person filing the notice.

(2) The name, address, and telephone number of the person doing the surveying.

(3) The anticipated starting date of the surveying.

(4) The anticipated duration of the surveying.

(5) The location where the surveying will be conducted.

(b) If the notice required by subsection (a) of this section is made by telephone, an adequate record shall be made of the notification by the utility owner or the utility owner's designated representative, including an association, and the person making the notification, to document compliance with this section.

(c) Each utility owner or designated representative notified of an intent to survey under subsection (a) of this section shall, before the proposed start of the survey, unless another

period is agreed to by the person conducting the survey and the utility owner or designated representative, provide the following information to the person conducting the survey to the extent the information is reflected by records in the possession of and reasonably available to the utility owner:

(1) The location and description of all of the underground utilities within the area to be surveyed.

(2) The location and description of all utility markers indicating the location of the underground utilities within the area to be surveyed.

(3) Temporary markings with paint, flags, or other visible means on the surface of the ground indicating the location of the underground utilities in locations where permanent utility markers do not exist.

(4) Any other information that would assist in locating the underground utilities."

SECTION 2. This act becomes effective July 1, 2013, and applies to design/survey requests made on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

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SENATE BILL 9
PROPOSED COMMITTEE SUBSTITUTE S9-CSTP-4 [v.2]

3/11/2013 3:18:20 PM

Short Title: Utilities/Design/Survey Location Services. (Public)

Sponsors:

Referred to:

January 31, 2013

A BILL TO BE ENTITLED

AN ACT REQUIRING UTILITY OWNERS TO LOCATE AND DESCRIBE UNDERGROUND UTILITIES UPON WRITTEN OR ORAL REQUEST FROM A PERSON WHO IS RESPONSIBLE FOR DESIGNING OR SURVEYING UNDERGROUND FACILITIES OR REQUIRES A GENERAL DESCRIPTION AND LOCATION OF EXISTING UNDERGROUND FACILITIES IN AN AREA.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 87-101 reads as rewritten:

"**§ 87-101. Definitions.**

As used in this Article:

(1) "Association" means an association, sponsored by utility owners, that ~~will provide~~provides for receipt of notification of excavation operations and surveyor or designer operations in a defined geographical area, and that ~~will maintain~~maintains the records of the notifications.

...

(11a) "Surveyor or designer" means a person who is responsible for designing or surveying underground utilities or requires a general description and location of existing underground utilities in an area.

..."

SECTION 2. Article 8 of Chapter 87 of the General Statutes is amended by adding a new section to read as follows:

"**§ 87-107.1. Surveyor or designer requests; notice required; duties of utility owners.**

(a) Before surveying an area containing highways, public spaces, or private easements of a utility owner, a surveyor or designer may give notice to each utility owner having underground utilities located in the area to be surveyed, or to the utility owner's designated representative or association, either orally or in writing, not less than two nor more than 10 working days prior to starting, of the surveyor or designer's intent to have a survey conducted. The written or oral notice shall contain all of the following:

(1) The name, address, and telephone number of the surveyor or designer.

(2) The name, address, and telephone number of the person conducting the survey.

(3) The anticipated starting date of the survey.

(4) The anticipated duration of the survey.

(5) The area to be surveyed.

(b) If a surveyor or designer provides oral notice under subsection (a) of this section, the utility owner or designated representative or association and the surveyor or designer shall make an adequate record of the notification to document compliance with this section.

(c) Each utility owner or designated representative or association notified of an intent to survey under subsection (a) of this section shall, before the proposed start of the survey, unless another period is agreed to by the surveyor or designer and the utility owner or designated representative or association, provide the following information to surveyor or designer to the extent the information is reflected by records in the possession of and reasonably available to the utility owner:

(1) The location and description of all of the underground utilities within the area to be surveyed.

(2) The location and description of all utility markers indicating the location of the underground utilities within the area to be surveyed.

(3) Temporary markings with paint, flags, or other visible means on the surface of the ground indicating the location of the underground utilities in locations where permanent utility markers do not exist.

(4) Any other information that would assist in locating the underground utilities."

SECTION 3. This act becomes effective July 1, 2013, and applies to notices given on or after that date.

SENATE BILL 9:
Utilities/Design/Survey Location Services

2013-2014 General Assembly

Committee:	Senate Commerce	**Date:**	March 11, 2013
Introduced by:	Sen. Meredith	**Prepared by:**	Peter Ledford Committee Counsel
Analysis of:	PCS to First Edition S9-CSTP-4		

SUMMARY: ***Senate Bill 9 would allow surveyors and designers to request utility owners provide information about the location of underground utilities prior to surveying.***

CURRENT LAW: Article 8 of Chapter 87 of the General Statutes, Underground Damage Prevention, provides requirements for both excavators and utility owners to prevent damage due to excavation near underground utilities. The statutes provide that before excavating near a highway, public space, or private easement of a utility owner, written notice of the proposed excavation must be given to the underground utility owners two to ten days before the proposed excavation. Utility owners are required by statute to provide the location of the underground utilities to the excavator before excavation begins.

BILL ANALYSIS: Senate Bill 9 would require underground utility owners provide the location of underground utilities to a surveyor or designer when requested. A surveyor or designer would not be required to notify utility owners before surveying or to request the location of underground utilities. If a surveyor or designer chooses to notify the utility owners to obtain the location of underground utilities, he or she would be required to follow the same notice procedures that apply to excavators.

EFFECTIVE DATE: This act becomes effective July 1, 2013, and applies to notices given on or after that date.

BACKGROUND: North Carolina, like many other states, has created an "811" system to facilitate the underground utility location process. An individual who wishes to excavate can call 811, and in turn NC 811 notifies the utility owners. The utility owners then provide information on the location of underground utilities. The NC 811 call center is simply a conduit of information; it does not have any authority to enforce the statutes or to force a utility owner to perform underground utility location services. The NC 811 call center allows non-excavators to call and request the location of underground utilities, but it is up to the utility owners to provide the location services.

Heather Fennell, counsel to House Public Utilities and Energy, substantially contributed to this summary.

VISITOR REGISTRATION SHEET

Senate **COMMERCE** Committee — March 12, 2013

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DEBBIE LOWN

NAME	FIRM OR AGENCY AND ADDRESS
Philip Bailey	Bailey
Andrew Blackburn	SSG
J.N. Childs	CNA
Jim Morrill	Char. Observer
Chris Whalen	Whalen Group LLC

VISITOR REGISTRATION SHEET

Senate **COMMERCE** Committee — March 12, 2013

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DEBBIE LOWN

NAME	FIRM OR AGENCY AND ADDRESS
Kevin Bolin	LCA
Andy Chase	KMA
Mia Bailey	ElectriCities
Bill McAulay	PSNC Energy
BRUCE THOMPSON	PARKER POE
Thom Moss	FWOW
BILL SCOGGIN	TVA
Kelli Lukma	Duke Energy
Betsy McCorkle	NCSEA
Breeden Blackwell	CFUAC
DANA HAITHCOCK	PRIVATE CITIZEN

VISITOR REGISTRATION SHEET

Senate **COMMERCE** Committee — March 12, 2013

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DEBBIE LOWN

NAME	FIRM OR AGENCY AND ADDRESS
Zeb Alley	NMRS
Rob Lamm	RLA
[illegible]	MRC
Nikki Barker	UNCG
Mike Tarrant	UNCG
Fred Steen	Governor's office
Andy Ellen	NCHA
Bill Weathersbee	NC-API
Billen Allen	Allen Law PLLC
Townes Maxwell	PSG
Rick Zechini	Williams Mullen
Morgan Bean	Gov. Office

VISITOR REGISTRATION SHEET

Senate **COMMERCE** Committee — March 12, 2013

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DEBBIE LOWN

NAME	FIRM OR AGENCY AND ADDRESS
Mitch Leonard	SEANC
Chassidy Hinton	Intern - Senator M. Graham
John DelGrosso	Brickhaker + Assoc.
Benton Albritton	ABC Carolinas
[signature]	NCAEC
[signature]	Jordan Price
[signature]	TWC
Sarah Hardin	CTL
[signature]	[signature]
Lauren Wisely	NCCUC
Heather Barnett	Ward & Smith
Steve Brewer	CTL

Senate Committee on Commerce
Tuesday, March 19, 2013, 11:00 AM
1027/1128 Legislative Building

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

BILL NO.	SHORT TITLE	SPONSOR
SB 175	Banking Laws Clarifications/Corrections.	Senator Brown
SB 148	Exempt Certain Steel Tubing/Electrical K'ors.	Senator Hunt

Senate Committee on Commerce
Tuesday, March 19, 2013 at 11:00 AM
Room 1027/1128 of the Legislative Building

MINUTES

The Senate Committee on Commerce met at 11:00 AM on March 19, 2013 in Room 1027/1128 of the Legislative Building. Twenty two members were present.

Senator Wesley Meredith, Chair, presided.

Garrett Chavis from Raleigh and Zachery Taylor from Raleigh served as pages.

S.B. 175 Banking Laws Clarifications/Corrections

Senator Brown was introduced by Senator Meredith to explain the bill. Senate Bill 175 makes technical corrections and clarifications to the North Carolina Banking Law. Senator Brown brought and amendment for SB 175. Senator Tillman made the motion for the amendment to be considered before the committee and it carried. Ray Grace the Interim Commissioner of Banks was introduced to answer questions. Senator Jim Davis moved unfavorable to the bill – favorable to the proposed committee substitute and it carried.

S.B. 148 Exempt Certain Steel Tubing/Electrical K'ors

Senator Hunt was introduced by Senator Meredith to explain the bill. Senate Bill 148 would exempt the bonding of corrugated stainless steel tubing used for natural gas distribution in a building from requiring a licensed electrician. Senator Jenkins moved – favorable to the bill and it carried.

The meeting adjourned at 11:10 AM.

W. A. Meredith

Senator Wesley Meredith, Chair
Presiding

Debbie Lown, Committee Clerk

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

COMMERCE COMMITTEE REPORT

Senator Gunn, Co-Chair
Senator Meredith, Co-Chair

Tuesday, March 19, 2013

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

FAVORABLE

SB **148** Exempt Certain Steel Tubing/Electrical Kors.

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 **175** Banking Laws Clarifications/Corrections.

Draft Number:	S175-PCS75200-RO-4
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

TOTAL REPORTED: 2

Senator Wesley Meredith will handle SB 148
Senator Wesley Meredith will handle SB 175

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

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SENATE BILL 175

Short Title:	Banking Laws Clarifications/Corrections.	(Public)
Sponsors:	Senator Brown (Primary Sponsor).	
Referred to:	Commerce.	

March 5, 2013

A BILL TO BE ENTITLED

AN ACT TO MAKE TECHNICAL CORRECTIONS AND CLARIFICATIONS TO CHAPTER 53C OF THE GENERAL STATUTES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 53C-1-4 reads as rewritten:

"**§ 53C-1-4. Definitions and application of terms.**

Unless the context requires otherwise, the following definitions apply in this Chapter.

...

(4) Bank. – Any corporation, other than a credit union, savings institution, or trust ~~institution,~~company, that is organized under the laws of this State and is engaged in the business of receiving deposits (other than trust funds), paying monies, and making loans.

...

(20a) Consumer finance licensee. – An individual associated with a "licensee," as that term is defined in G.S. 53-165(h).

(21) Control. – The possession, directly or indirectly, of the power or right to direct or to cause the direction of the management or policies of a person by reason of an agreement, understanding, proxy, or power of attorney or through the ownership of or voting power over ten percent (10%) or more of any class of the voting securities of the person.

...

(44) Lower-tier subsidiary. – Any ~~bank operating subsidiary~~company ~~in~~ which ~~a bank subsidiary has an equity ownership interest.~~is controlled by a subsidiary.

...

(58) Public member. – A member of the Commission who is not a practical banker or a consumer finance licensee and who is not at the time of appointment to the Commission, nor was within the five years preceding the appointment, an employee of a North Carolina financial institution.

...

(68) Subsidiary. – A company over which a bank has ~~control.~~control, including a lower-tier subsidiary.

...."

SECTION 2. G.S. 53C-2-1(d) reads as rewritten:

"(d) A quorum of the Commission shall consist of a majority of its total membership. Subject to the standards of Chapter 138A of the General Statutes, a majority vote of the

members qualified with respect to a matter who are present at the meeting where such matter is considered shall constitute valid action of the Commission. In accordance with ~~G.S. 138A-38,~~G.S. 138A-38(a)(6), the State Treasurer and all disqualified members who are present at a meeting shall be counted for purposes of determining whether a quorum is present."

SECTION 3. G.S. 53C-2-2(d) reads as rewritten:

"(d) The Commissioner may sue and prosecute or defend in any action or proceeding in any courts of this State or any other state and in any court of the United States for the enforcement or protection of any right or pursuit of any remedy necessary or proper in connection with the subjects committed to the Commissioner for administration or in connection with any bank or the rights, liabilities, property, or assets thereof under the Commissioner's supervision. Nothing herein shall be construed to render the Commissioner liable to be sued except as other departments and agencies of the State may be liable under the general law. The Commissioner may exercise any jurisdiction, supervise, regulate, examine, or enforce any banking law and any State consumer protection laws or federal laws with respect to which the Commissioner has enforcement jurisdiction."

SECTION 4. G.S. 53C-4-5(c) reads as rewritten:

"(c) ~~A director must do either of the following:~~

~~(1) Appoint an agent in Wake County, North Carolina, for service of process.~~

~~(2) Consent, on a form satisfactory to the Commissioner, to the following:~~

~~a. The Commissioner may serve as the director's agent for service of process.~~

~~b. The director consents to jurisdiction in Wake County, North Carolina, but only for purposes of any action or proceeding brought by the Commissioner.~~

Following a director's election or appointment as a director, the director shall, solely for purposes of any action or proceeding that may thereafter be brought by the Commissioner, and on a form satisfactory to the Commissioner, do all of the following:

(1) Consent to the jurisdiction of the Commissioner and the General Court of Justice for the State of North Carolina in any such action or proceeding.

(2) Consent to venue in Wake County, North Carolina, in any such action or proceeding.

(3) Unless the director appoints an agent pursuant to subsection (f) of this section, appoint the Commissioner as the director's agent for service of process in any such action or proceeding and authorize and instruct the Commissioner or the Commissioner's duly appointed deputy or agent to accept service of process for the director in any such action or proceeding.

(d) When service of legal process in an action or proceeding brought by the Commissioner is made on a director by service and acceptance of service of process in the manner provided in subdivision (3) of subsection (c) of this section, the Commissioner shall, within three business days thereafter, give notice to the director of such service and acceptance of service of process by depositing a copy of the process served and accepted, together with any pleading, order, or other item accompanying the process, with a "designated delivery service" as defined in 26 U.S.C. § 7502(f)(2) and directed to the director's last known address in the Commissioner's records. The Commissioner shall keep a record which shall show the day and hour of such acceptance of service of process, any pleading, order, or other item accompanying the process, and the date upon which the above notice was given. When service of process is made pursuant to subdivision (3) of subsection (c) of this section, the time within which the director may file a responsive pleading or similar response, as provided by Chapter 1A or Chapter 150B of the General Statutes, shall be extended by 12 days.

(e) The consent and appointment described in subsections (c) and (f) of this section shall be deemed irrevocable and shall not be affected by the termination of the director's service as a director.

(f) In lieu of meeting the requirements of subdivision (3) of subsection (c) of this section, a director may appoint an agent for service of such process in Wake County, North Carolina."

SECTION 5. G.S. 53C-4-11(c) reads as rewritten:

"(c) In establishing the required level of reserve fund, the Commissioner shall include the following types of liquid reserves:

(1) Cash on hand, which shall include both United States currency and exchange of any clearinghouse association or similar ~~intermediary.~~intermediary, and balances maintained at any federal reserve bank, either directly or on a pass-through basis, to meet federal reserve system reserve requirements.

(2) Balances payable on demand from designated depository institutions.

(3) Obligations of the United States Treasury, any agency of the United States government that is guaranteed by the United States government, and any general obligation of this State or any political subdivision thereof that has an investment grade rating of A or higher by a nationally recognized rating service."

SECTION 6. Article 4 of Chapter 53C of the General Statutes is amended by adding a new section to read:

"**§ 53C-4-13. Immediate report of changes in directors and certain officers.**

Each bank shall report to the Commissioner any changes in its (i) directors, (ii) president, (iii) chief executive officer, (iv) chief financial officer, (v) chief loan officer, or (vi) chief credit officer by the close of the second day on which the bank is open for business following such change."

SECTION 7. G.S. 53C-5-1(d) reads as rewritten:

"(d) Except as provided in subsection (e) of this section, a bank that proposes to engage in any new activity shall apply to the Commissioner for approval to engage in the activity before its commencement. If the new activity will be conducted in a new or existing subsidiary in which the bank intends to make an investment, the bank shall apply to the Commissioner for approval to engage in the new activity before entering into the investment. The bank shall not engage in the new activity or make the investment unless and until the Commissioner issues a written approval of the application. An application for approval shall contain a description of the proposed activity and any other information required by the Commissioner. A copy of any notice or application the bank is required to file with any bank supervisory agency with respect to the proposed activity shall also be provided to the Commissioner. For the purpose of this section, a "new activity" is any business activity in which the bank is not currently engaged. The extension or relocation of an existing activity into a new department, division, or subsidiary of the bank shall not be considered a new activity. A bank may appeal a denial of an application by the Commissioner pursuant to G.S. 53C-2-6."

SECTION 8. G.S. 53C-5-2 reads as rewritten:

"**§ 53C-5-2. Investment authority.**

...

(c) ~~An investment by a bank or a bank subsidiary pursuant to subsection (b) or (d) of this section shall receive the same accounting and regulatory treatment as is accorded to such investment by the bank's primary federal supervisor.~~ No investment shall be made by a bank or a ~~bank~~ subsidiary pursuant to subsection (b) or (d) of this section unless the following apply:

(1) The investment is approved by the board of directors of the ~~bank.~~bank or a board-authorized committee.

(2) The bank has carefully investigated the business or activity in which the subsidiary established by the investment will engage.

(3) The bank has established the risk management and financial controls necessary to engage in the business or activity in a safe and sound manner.

(4) The bank has, and following the making of the investment and the application of the provisions of this subsection, will continue to satisfy the capital requirements of this Chapter.

(d) A ~~bank operating~~ subsidiary may ~~make an investment of any size~~invest in a ~~lower tier subsidiary.~~lower-tier subsidiary, subject to the same requirements and limitations applicable to a bank's investment in a subsidiary.

(e) Except as provided in subsection (f) of this section, a bank or ~~bank operating~~ subsidiary proposing to make an investment described in subsection ~~(b), (c), or (d)~~(b) or (d) of this section shall give prior written notice to the Commissioner, providing such detail as the Commissioner may require. Unless the Commissioner, within 30 days following receipt of the notice, notifies the bank or ~~bank operating~~ subsidiary that the Commissioner objects to the proposed investment, the bank or ~~bank operating~~ subsidiary may complete the investment. However, the Commissioner may extend the period within which to object to the proposed investment if the Commissioner determines that it raises issues that require additional information or additional time for analysis. While the objection period is so extended, the bank or ~~bank operating~~ subsidiary may not proceed with respect to the proposed investment. A bank may appeal an objection by the Commissioner pursuant to G.S. 53C-2-6.

...

(j) A bank's investment in any bonds or other debt obligations of any one person, other than obligations of the United States government or an agency thereof, or other obligations guaranteed by the United States, this State, another state, or other political subdivision of this State or another state, shall at no time exceed ten percent (10%) of ~~its required capital.~~the sum of (i) the bank's "capital," as that term is defined in G.S. 53C-1-4, plus (ii) those portions of the bank's allowance for loan and lease losses, deferred tax assets, and intangible assets that are excluded from the bank's capital under 12 C.F.R. Part 325."

SECTION 9. G.S. 53C-6-1(b) reads as rewritten:

"(b) Loans and Extensions of Credit – Limitations:

(1) The total loans and extensions of credit, both direct and indirect, by a bank to a person, other than a municipal corporation for money borrowed, including in the liabilities of a company the liabilities of the several members of the company, outstanding at one time and not fully secured, as determined in a manner consistent with subdivision (2) of this subsection, by collateral having a market value at least equal to the amount of the loan or extension of credit, shall not exceed the greater of (i) fifteen percent (15%) of the sum of the bank's capital ~~of the bank~~plus those portions of the bank's allowance for loan and lease losses, deferred tax assets, and intangible assets that are excluded from the bank's capital under 12 C.F.R. Part 325 or (ii) the ~~percentage~~amount permitted for national banks in this State by statute or regulation of the Comptroller of the Currency.

(2) The total loans and extensions of credit, both direct and indirect, by a bank to a person outstanding at one time and fully secured by readily marketable collateral having a market value, as determined by reliable and continuously available price quotations, at least equal to the amount of the loan or extension of credit outstanding, shall not exceed the greater of (i) ten percent (10%) of the sum of the bank's capital ~~of the bank~~plus those portions of the bank's allowance for loan and lease losses, deferred tax assets, and intangible assets that are excluded from the bank's capital under 12 C.F.R. Part 325 or

(ii) the ~~percentage~~amount permitted for national banks by statute or regulation of the Comptroller of the Currency. This limitation shall be separate from and in addition to the limitation contained in subdivision (1) of this subsection.

...."

SECTION 10. G.S. 53C-6-1 is amended by adding a new subsection to read:

"(e) Any bank may, by resolution duly passed at a meeting of its board of directors or a board-authorized committee, request the Commissioner to suspend the limitations on loans set forth in this section as the limitations may apply to any particular loan (i) on the bank's books that then exceeds such limitations, or (ii) which the bank desires to make or modify in a manner that would not otherwise be permitted in the absence of a suspension of such limitations. Upon receipt of a duly certified copy of such resolution, the Commissioner may, in the Commissioner's discretion and subject to such requirements, limitations, and conditions as the Commissioner deems appropriate, suspend the limitations on loans set forth in this section insofar as they apply to the loan in question."

SECTION 11. G.S. 53C-6-6(j) reads as rewritten:

"(j) Any joint account created under the provisions of G.S. 53-146.1 as it existed prior to October 1, 2012, shall for all purposes be governed by the provisions of this section on and after October 1, 2012, and any reference to G.S. 53-146.1 in any ~~statement electing a right of survivorship~~document concerning the account shall be deemed a reference to this section."

SECTION 12. G.S. 53C-6-7 is amended by adding a new subsection to read:

"(e) Any Payable on Death account created under the provisions of G.S. 53-146.2, as it existed prior to October 1, 2012, shall for all purposes be governed by the provisions of this section on and after October 1, 2012, and any reference to G.S. 53-146.2 in any document concerning the account shall be deemed a reference to this section."

SECTION 13. G.S. 53C-6-8 reads as rewritten:

"**§ 53C-6-8. Personal agency accounts.**

...

(d) The written contract referred to in subsection (a) of this section shall provide that the principal may elect to extend the authority of the agent set out in subsection (a) of this section to act on behalf of the principal in regard to the account, notwithstanding the subsequent incapacity or mental incompetence of the principal. If the principal is a natural person and elects to extend the authority of the agent, then upon the subsequent incapacity or mental incompetence of the principal, the agent may continue to exercise the authority, without the requirement of bond or of accounting to any court, until such time as the agent shall receive actual knowledge that the authority has been terminated. The duly qualified guardian of the estate of the incapacitated or incompetent principal, or the duly appointed attorney-in-fact for the incapacitated or incompetent principal acting pursuant to a durable power of attorney, as defined in G.S. 32A-8, which grants to the attorney-in-fact the authority in regard to the account that is granted to the agent by the written contract executed pursuant to the provisions of this section, shall have the power, upon notifying the agent and providing written notice to the bank where the personal agency account is established, to terminate the agent's authority to act on behalf of the principal with respect to the account. Upon termination of the agent's authority, the agent shall account to the guardian or attorney-in-fact for all actions of the agent in regard to the account during the incapacity or incompetence of the principal. If the principal is a natural person and does not elect to extend the authority of the agent, then upon the subsequent incapacity or mental incompetence of the principal, the authority of the agent set out in subsection (a) of this section terminates.

...

(g) Any personal agency account created under the provisions of G.S. 53-146.3, as it existed prior to October 1, 2012, shall for all purposes be governed by the provisions of this

section on and after October 1, 2012, and any reference to G.S. 53-146.3 in any ~~statement establishing~~document concerning the account shall be deemed a reference to this section."

SECTION 14. G.S. 53C-7-101 reads as rewritten:

"**§ 53C-7-101. Control transactions.**

(a) Except as otherwise expressly permitted by this section, a person shall not engage in a control transaction, as defined by G.S. 53C-1-4(22), involving a bank without the prior approval of the Commissioner. A person may contract to engage in a control transaction with the consummation of such control transaction being subject to receipt of the approval of the Commissioner. ~~Each bank shall report to the Commissioner any changes in its directors, president, chief executive officer, chief financial officer, chief loan officer, or chief credit officer by the close of the second day on which the holding company is open for business following such change.~~

...

(c) The following transactions shall not constitute a control transaction requiring the prior approval of the Commissioner:

(1) The acquisition of control over voting securities in connection with securing, collecting, or satisfying a debt previously contracted for in good faith and not for the purpose of acquiring control of the bank, if the acquiring person files a notice with the Commissioner, in the form required by the Commissioner, describing such transaction at least 10 days before the acquiring person first votes or directs the voting of the voting securities.

(2) The acquisition of control over voting securities by a person who has previously engaged in a control transaction with respect to the bank after receiving the approval of the Commissioner under this Article, which approval permits the acquisition of control over additional voting securities, or any person who is an affiliate of the person previously engaging in the approved control transaction with the permission and who is identified in the application submitted for the approval, if the acquiring person files a notice with the Commissioner, in the form required by the Commissioner, describing the transaction at least 10 days before the acquiring person or affiliate thereof first votes or directs the voting of the voting securities.

(3) An acquisition of control over voting securities by operation of law, will, or intestate succession, if the acquiring person files a notice with the Commissioner, in the form required by the Commissioner, describing the acquisition or transfer at least 10 days before the acquiring person first votes or directs the voting of the voting securities.

(4) Bona fide gifts.

(5) A transaction exempted by rules, orders, or declaratory rulings of the Commissioner issued because approval of such a transaction is not necessary to achieve the objectives of this Chapter.

(5a) An acquisition of control over voting shares exempt from the prior approval requirements set forth in section 3 of the Bank Holding Company Act, as amended (12 U.S.C. § 1842), pursuant to the exceptions described in items (A), (B), or (C) of subsection (a) of that section.

(6) An acquisition of control over voting securities in a transaction subject to approval under section 3 of the Bank Holding Company Act, as amended (12 U.S.C. § 1842).

...."

SECTION 15. G.S. 53C-7-102(c) reads as rewritten:

"(c) Notwithstanding any laws to the contrary, information about the character, competence, or experience of an acquiring person or its proposed management personnel or

affiliates shall be deemed a record of the Commissioner and subject to ~~G.S. 53C-2-8.~~G.S. 53C-2-7(b)."

SECTION 16. G.S. 53C-7-205 reads as rewritten:

"**§ 53C-7-205. Fiduciary powers and liabilities ~~of North Carolina financial institutions combining~~in a combination or a transferring of assets and liabilities.**

Whenever any ~~North Carolina financial~~depository institution or ~~federally chartered~~any trust institution ~~doing business in this State~~ shall combine with or shall sell to and transfer its assets and liabilities to any other ~~bank,~~depository institution, trust institution, ~~savings institution,~~ or other company, as provided by the laws of this State or the United States, all the then existing fiduciary rights, powers, duties, and liabilities of the combining or transferring institution, including the rights, powers, duties, and liabilities as executor, administrator, guardian, trustee, and/or any other fiduciary capacity, whether under appointment by order of court, will, deed, or other instrument, shall, upon the effective date of the combination or sale and transfer, vest in, devolve upon, and thereafter be performed by the surviving or transferee company, and such latter institution shall be deemed substituted for and shall have all the rights and powers of the transferring institution."

SECTION 17. G.S. 53C-7-207 reads as rewritten:

"**§ 53C-7-207. Combination with a subsidiary.**

(a) ~~With the approval of the Commissioner, a bank may do any one the following:~~Except as provided in subsection (d) of this section, a bank proposing to do any of the following combinations shall give prior written notice to the Commissioner that provides such detail of the proposed combination that the Commissioner may require:

(1) Combine with a subsidiary, ~~so long as a~~if the bank is the resulting entity of the combination.

(2) Combine a subsidiary with another company, if a subsidiary is the resulting entity.

(3) Combine two or more subsidiaries of two or more banks under common control of the same holding company.

~~The approval of the Commissioner is not required for a combination of a subsidiary and another company when a subsidiary is not the resulting entity, which shall be effected in accordance with organizational law applicable to each, or for a combination of two or more subsidiaries of the same bank.~~Unless the Commissioner, within 30 days of receiving the notice, notifies the bank or subsidiary that the Commissioner objects to the proposed combination, the bank or subsidiary may complete the combination. However, the Commissioner may extend the period to object to the proposed combination if the Commissioner determines that it raises issues that require additional information or additional time for analysis. While the objection period is so extended, the bank or subsidiary may not proceed with respect to the proposed combination.

(b) ~~The bank seeking approval of the combination shall file with the Commissioner an application for approval and such additional information as the Commissioner shall require by rule or as is required by the Commissioner in connection with the application in order to achieve the objectives of this Chapter. The bank shall pay to the Commissioner a fee as set forth by rule.~~A bank may, pursuant to G.S. 53C-2-6, appeal an objection by the Commissioner.

(c) ~~The Commissioner shall examine the proposed combination to determine whether the customers and communities served by the bank would be adversely affected by the combination, the combination would cause the bank to not be solvent, have inadequate capital, or not be in compliance with this Chapter or the rules of the Commissioner, or the combination would present other risks to the safe and sound operation of the bank deemed unacceptable by the Commissioner.~~ The prior written notice requirement of subsection (a) of this section is not required for (i) a combination of a subsidiary and another company when the subsidiary is not the resulting entity, (ii) a combination of two or more subsidiaries of the same bank, each of

which shall be effected in accordance with applicable organizational law, or (iii) if all of the following apply:

(1) The bank is well-capitalized and well-managed as demonstrated by the supervisory rating it received during its most recent examination.

(2) The subsidiary with which the combination is to be made engages in either of the following activities:

a. One in which the bank is then engaged or has previously been engaged, directly or through a different subsidiary, and for which all necessary approvals of bank supervisory agencies and of the Commissioner have previously been obtained and remain in effect.

b. One for which no prior notice or application for approval to any federal bank supervisory authority is required.

(3) The bank notifies the Commissioner in writing of the combination within 30 days thereafter."

SECTION 18. G.S. 53C-7-208 is repealed.

SECTION 19. G.S. 53C-9-403 reads as rewritten:

"**§ 53C-9-403. Authority to serve as trustee terminated.**

Whenever any bank that has been, or shall be, appointed trustee in any indenture, deed of trust, or other instrument of like character, executed to secure the payment of any bonds, notes, or other evidences of indebtedness, has been or shall be placed in receivership, a new trustee shall be appointed in the manner provided in G.S. 36C-7-704 or other applicable law, and the powers and duties of the bank as trustee in any such instrument ~~shall, upon the entry of an order of the clerk of superior court having jurisdiction under G.S. 53C-9-405 appointing a successor trustee, upon a petition as described in this Part,~~shall immediately cease."

SECTION 20. G.S. 53C-10-102(c) reads as rewritten:

"(c) The following transactions shall not constitute a control transaction under this section requiring the prior approval of the Commissioner:

(1) The acquisition of control over voting securities by a person who has previously engaged in a control transaction with respect to the holding company after receiving the approval of the Commissioner under this Article, which approval permits the acquisition of control over additional voting securities, or any person who is an affiliate of the person previously engaging in the approved control transaction with such permission and who is identified in the application submitted for the approval, if the acquiring person files a notice with the Commissioner, in the form required by the Commissioner, describing the transaction at least 10 days before the acquiring person or affiliate thereof first votes or directs the voting of the voting securities.

(2) An acquisition of control over voting securities by operation of law, will, or intestate succession, if the acquiring person files a notice with the Commissioner, in the form required by the Commissioner, describing the acquisition or transfer at least 10 days before the acquiring person first votes or directs the voting of the voting securities.

(3) Bona fide gifts.

(4) A transaction exempted by rules, orders, or declaratory rulings of the Commissioner, issued because approval of the transaction is not necessary to achieve the objectives of this Chapter.

(5) An acquisition of control over voting shares exempt from the prior approval requirements set forth in section 3 of the Bank Holding Company Act, as amended (12 U.S.C. § 1842), pursuant to the exceptions described in items (A), (B), or (C) of subsection (a) of that section.

(6) An acquisition of control over voting securities in a transaction subject to approval under section 3 of the Bank Holding Company Act, as amended (12 U.S.C. § 1842)."

SECTION 21. G.S. 53C-10-301 reads as rewritten:

"**§ 53C-10-301. Cease and desist order.**

Upon a finding that any action of a holding company subject to registration under this ~~Article~~Article, or its nonbank affiliate, may be in violation of any banking laws, the Commissioner, after a reasonable notice to the holding company and an opportunity for it to be heard, shall have the authority to order it to cease and desist from such action. If the holding company fails to appeal the decision within 10 days of the date of the issuance of the order in accordance with G.S. 53C-2-6, and continues to engage in the action in violation of the Commissioner's order to cease and desist such action, it shall be subject to a civil money penalty of twenty thousand dollars ($20,000) for each day it remains in violation of the order. The penalty provision of this section shall be in addition to and not in lieu of any other provision of law applicable to a holding company's failure to comply with an order of the Commissioner. The clear proceeds of the civil money penalty shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

SECTION 22. G.S. 53-366(a) reads as rewritten:

"(a) Except as otherwise provided in this Article, the following provisions of ~~this Chapter~~this Chapter and Chapter 53C of the General Statutes shall apply to authorized trust institutions:

(1), (2) Repealed by Session Laws 2012-56, s. 31, effective October 1, 2012.

(3) G.S. 53C-7-205.

(4) through (6) Repealed by Session Laws 2012-56, s. 31, effective October 1, 2012.

(7) Article 8 of Chapter 53C of the General Statutes, except where it clearly appears from the context that a particular provision is not applicable to trust business or trust marketing, and except that the provisions of this Article shall apply in lieu of:

a. G.S. 53C-8-2.

b. G.S. 53C-8-3.

c. G.S. 53C-8-17.

(8), (9) Repealed by Session Laws 2012-56, s. 31, effective October 1, 2012.

(10) Article 14 of this Chapter.

(11) G.S. 53C-2-7(b)."

SECTION 23. This act is effective when it becomes law.

SENATE BILL 175:
Banking Laws Clarifications/Corrections

2013-2014 General Assembly

Committee:	Senate Commerce	**Date:**	March 18, 2013
Introduced by:	Sen. Brown	**Prepared by:**	Karen Cochrane-Brown
Analysis of:	First Edition		Staff Attorney

SUMMARY: ***Senate Bill 175 makes technical corrections and clarifications to the North Carolina Banking Law.***

[As introduced, this bill was identical to H277, as introduced by Reps. Dockham, Hardister, Jeter, Stone, which is currently in House Banking.]

CURRENT LAW: In 2012, the General Assembly rewrote the State Banking Law, as recommended by the Joint Legislative Study Commission on the Modernization of North Carolina Banking Law. The Banking Law had remained largely unchanged since 1931. The act created a new Chapter 53C entitled "Regulation of Banks" and renamed the existing Chapter 53 "Regulation of Financial Services" to more accurately reflect the scope of that Chapter. The act reauthorized the State Banking Commission, reducing its membership from 22 to 15 members, and continued the authority of the Commissioner of Banks and the Office of Commissioner of Banks as the agency that supervises banks.

The remainder of the act rewrote the laws related to:

- Organization of a Bank - aligning the process with the more recently rewritten Business Corporation Law.
- Governance of a Bank - setting standards for how the board of directors must operate and control the bank.
- Powers of Banks - listing seven express powers as well as confirming that a bank has all powers "necessary and incident" to carry out the business of banking.
- Bank Operations - including authorization for all types of deposit accounts.
- Control Transactions; Combinations; Conversions – setting the process for changes to the ownership or control of a bank.
- Bank Supervision – describing the Commissioner's authority to supervise banks.
- Supervisory Liquidation; Voluntary Dissolution and Liquidation – setting the process for the Commissioner to supervise the dissolution and liquidation of a bank.
- Bank Holding Companies – defining the Commissioner's supervisory authority over these entities.

BILL ANALYSIS: Senate Bill 175 makes the following technical corrections and clarifications to the law enacted last year:

Section 1 amends several definitions including adding a new definition for the term "Consumer finance licensee".

Section 2 amends the law that establishes the State Banking Commission to clarify that the State Treasurer and disqualified members present for a meeting are counted for a quorum, in accordance with the State Ethics Act.

Section 3 clarifies that the Commissioner of Banks may enforce any banking law as well as any State consumer protection law or federal law within the Commissioner's jurisdiction.

Section 4 amends the law relating to qualifications of bank directors to revise the requirements regarding service of process. Currently, a director must either appoint an agent in Wake County for service of process or consent to the Commissioner acting as the director's agent and consent to jurisdiction in Wake County for actions and proceedings brought by the Commissioner. This section would revise the law to limit the consent for service of process to actions brought by the Commissioner and require the Commissioner to give notice when service has been made.

Section 5 amends the provision relating to reserve funds to clarify that cash balances maintained at any federal reserve bank are included in the required reserve fund.

Section 6 creates a new section requiring that banks immediately report any changes in directors or certain officers to the Commissioner. This provision is currently contained in the section relating to control transactions.

Section 7 adds a provision clarifying that a bank can appeal a denial of an application to engage in new activities.

Section 8 amends the provision relating to a bank's investment authority to clarify (i) that a board authorized committee can approve an investment; (ii) a subsidiary's investment authority is like the bank's; and (iii) that a bank may appeal the Commissioner's objection to a proposed investment. The section also modifies the limitation on a bank's investment in bonds or other debt, other than those of a government to 10% of the sum of the bank's capital plus the portion of the bank's allowances for loan and lease losses, deferred tax assets, and intangible assets that are excluded from the bank's capital. This change makes the law comparable to prior law.

Section 9 amends a provision relating to limitations on loans and extensions of credit made by a bank to make this limitation comparable to prior law.

Section 10 adds a new provision to the section dealing with loans and extensions of credit to authorize the Commissioner to suspend the limitations on loans, at the request of the board or a board authorized committee.

Section 11 clarifies that all documents concerning joint accounts created prior to the change in the law are governed by the new law.

Section 12 clarifies that all documents concerning a payable on death account created prior to the change in the law are governed by the new law.

Section 13 adds a reference to the duly appointed attorney-in-fact in the section relating to personal agency accounts.

Section 14 deletes the provision requiring banks to immediately report changes in directors or officers to the Commissioner. This language was moved to Section 6 of the bill. This section also adds a new exemption from the control transaction requirements.

Section 15 corrects a statutory reference.

Section 16 amends the provision relating to combinations to refer to depository institutions rather than financial institutions and makes a grammatical correction.

Section 17 amends the provision relating to combinations with subsidiaries to limit the requirement of prior approval by the Commissioner. The bank must give written notice of the proposed combination

and may proceed unless the Commissioner objects. The section also establishes certain cases in which prior notice is not required.

Section 18 repeals the section dealing with fiduciary powers and liabilities of combining banks. The provision is unnecessarily redundant.

Section 19 amends the provision relating to banks in receivership by referencing the section of the Trust law that deals with vacancy in a trusteeship. This amendment makes the provisions consistent.

Section 20 amends a provision relating to holding company control transactions to add another exemption from the list of transactions that do not require prior approval of the Commissioner.

Section 21 clarifies that the Commissioner has authority over nonbank affiliates of holding companies that are subject to registration.

Section 22 clarifies that the confidentiality requirements contained in Chapter 53C also apply to trust institutions.

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

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 175

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

S175-ARO-8 [v.1]

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

Date _____,2013

Senator _____

moves to amend the bill on page 7, line 20, by deleting the phrase "subsection (d)" and substituting the phrase "subsection (c)".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

S 1

SENATE BILL 148

Short Title:	Exempt Certain Steel Tubing/Electrical K'ors.	(Public)
Sponsors:	Senator Hunt (Primary Sponsor).	
Referred to:	Commerce.	

February 28, 2013

A BILL TO BE ENTITLED

AN ACT TO EXEMPT THE BONDING OF CORRUGATED STAINLESS STEEL TUBING (CSST) GAS PIPING SYSTEMS FROM LICENSING REQUIREMENTS UNDER THE LAWS PERTAINING TO ELECTRICAL CONTRACTORS.

The General Assembly of North Carolina enacts:

SECTION 1. 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:

...

(8) To the bonding of corrugated stainless steel tubing (CSST) gas piping systems as required under Section 310.1.1 of the 2012 N.C. Fuel Gas Code."

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

SENATE BILL 148:
Exempt Certain Steel Tubing/Electrical K'ors

2013-2014 General Assembly

Committee:	Senate Commerce	**Date:**	March 18, 2013
Introduced by:	Sen. Hunt	**Prepared by:**	Peter Ledford
Analysis of:	First Edition		Committee Counsel

SUMMARY: ***Senate Bill 148 would exempt the bonding of corrugated stainless steel tubing used for natural gas distribution in a building from requiring a licensed electrician.***

BACKGROUND: Corrugated stainless steel tubing (CSST) is a thin steel piping covered with a plastic sleeve used for natural gas. CSST is an inexpensive alternative to traditional copper or steel piping. If the metal in CSST is not grounded, the CSST may develop pinhole sized leaks when lightning strikes nearby.

CURRENT LAW: Section 310.1.1 of the North Carolina Fuel Gas Code requires that CSST be grounded where the natural gas service enters a building to prevent leaks from developing when lightning strikes nearby. The contractor installing the CSST piping must be licensed by the State Board of Examiners of Plumbing, Heating, and Fire Sprinkler Contractors and the contractor grounding the CSST piping must be licensed by the State Board of Examiners of Electrical Contractors.

BILL ANALYSIS: Senate Bill 148 would no longer require that a contractor licensed by the State Board of Examiners of Electrical Contractors ground the CSST piping. The requirement in the Fuel Gas Code that CSST piping be grounded would continue to be in effect, but the grounding could be performed by a contractor licensed by the State Board of Examiners of Plumbing, Heating, and Fire Sprinkler Contractors.

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

O. Walker Reagan
Director

S148-SMTP-9 E1 -V1

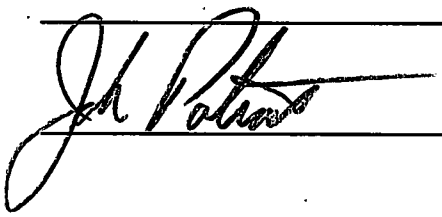
Research Division
(919) 733-2578

VISITOR REGISTRATION SHEET

Senate **COMMERCE** Committee — March 19, 2013

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DEBBIE LOWN

NAME	FIRM OR AGENCY AND ADDRESS
	

VISITOR REGISTRATION SHEET

Senate **COMMERCE** Committee — March 19, 2013

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DEBBIE LOWN

NAME	FIRM OR AGENCY AND ADDRESS
Tiffe McDowell	Troutman Sanders

Senate Committee on Commerce
Tuesday, March 26, 2013, 11:00 AM
1027/1128 Legislative Building

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

BILL N	SHORT TITLE	SPONSOR
SB 228	HOAs/Limited Common Elements.	Senator Cook Senator Rabin
SB 339	Planned Communities/Amendment of Declaration.	Senator Apodaca Senator Rabon

Senate Committee on Commerce
Tuesday, March 26, 2013 at 11:00 AM
Room 1027/1128 of the Legislative Building

MINUTES

The Senate Committee on Commerce met at 11:00 AM on March 26, 2013 in Room 1027/1128 of the Legislative Building. Seventeen members were present.

Senator Rick Gunn, Chair, presided.

Maya Finch from Durham, Christina Stone from Cary, Timothy Jordan from Winston-Salem, Nick Thomas from Gaston, Jackson Yelverton from Eureka and Matt Taylor from Wilson served as pages.

Senator Gunn announced that S.B. 339 *Planned Communities/Amendment of Declaration* would not be heared during this meeting.

S.B. 228 – HOAs/Limited Common Elements

Senator Gunn brought the proposed committee substitute (PCS) forward for the bill and Senator Newton moved to accept the PCS and it was carried. Senate Bill 228 would require a condominium owner or lot owner in a planned community to afford the association and another unit or lot owner access to a limited common element assigned to his unit or lot for the purpose of maintenance, repair, or replacement activity. Senate Bill 228 would also allow an association to direct a unit or lot owner to make repairs or pay for repairs to a limited common element when the unit or lot owner is legally responsible for damages that have occurred. The PCS would amend the North Carolina Planned Community Act to provide that the declaration, bylaws, and articles of incorporation of a planned community form the basis for the legal authority for the community except where they are inconsistent with the provisions of the Act. The changes apply to all planned communities created on or after January 1, 1999, and apply to all planned communities created before January 1, 1999 unless the articles of incorporation or the declaration expressly provide to the contrary. Sen. Cook was then introduced to explain the bill and how it was combined with S.B. 339. Henry Jones representing Jordan Price responding to questions from Senator McKissick. Senator Newton made the motion – unfavorable to the bill and favorable to the PCS and it carried.

The meeting adjourned at 11:08.

Senator Rick Gunn, Chair
Presiding

Debbie Lown, Committee Clerk

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

COMMERCE COMMITTEE REPORT
Senator Gunn, Co-Chair
Senator Meredith, Co-Chair

Tuesday, March 26, 2013

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

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

SB **228** HOAs/Limited Common Elements.

Draft Number:	S228-PCS85132-TP-8
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

TOTAL REPORTED: 1

Senator Richard Gunn will handle SB 228

SENATE BILL 228

Short Title:	HOAs/Limited Common Elements.	(Public)
Sponsors:	Senators Cook and Rabin (Primary Sponsors).	
Referred to:	Commerce.	

March 11, 2013

A BILL TO BE ENTITLED

AN ACT PROVIDING THAT A UNIT OWNER IN A CONDOMINIUM AND A LOT OWNER IN A PLANNED COMMUNITY SHALL AFFORD ACCESS THROUGH THE LIMITED COMMON ELEMENT ASSIGNED OR ALLOCATED TO THE OWNER'S UNIT OR LOT TO THE ASSOCIATION AND, WHEN NECESSARY, TO OTHER UNIT OR LOT OWNERS FOR THE PURPOSE OF CONDUCTING MAINTENANCE, REPAIR, OR REPLACEMENT ACTIVITIES AND PROVIDING THAT A UNIT OR LOT OWNER IS LEGALLY RESPONSIBLE FOR DAMAGE TO A LIMITED COMMON ELEMENT CAUSED BY THE UNIT OR LOT OWNER.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 47C-3-107 reads as rewritten:

"**§ 47C-3-107. Upkeep; damages; assessments for damages, fines.**

(a) Except as provided in G.S. 47C-3-113(h), the association is responsible for causing the common elements to be maintained, repaired, and replaced when necessary and to assess the unit owners as necessary to recover the costs of such maintenance, repair, or replacement except that the cost of maintenance, repair or replacement of a limited common element shall be assessed as provided in G.S. 47C-3-115(b). Each unit owner is responsible for maintenance, repair and replacement of his unit. Each unit owner shall afford to the association and when necessary to another unit owner access through his unit or the limited common element assigned to his unit reasonably necessary for any such maintenance, repair or replacement activity.

(b) If damage, for which a unit owner is legally responsible and which is not covered by insurance provided by the association pursuant to G.S. 47C-3-113 is inflicted on any common ~~element,~~element or limited common element, the association may direct such unit owner to repair such damage or the association may itself cause the repairs to be made and recover the costs thereof from the responsible unit owner.

...."

SECTION 2. G.S. 47F-3-107 reads as rewritten:

"**§ 47F-3-107. Upkeep of planned community; responsibility and assessments for damages.**

(a) Except as otherwise provided in the declaration, G.S. 47F-3-113(h) or subsection (b) of this section, the association is responsible for causing the common elements to be maintained, repaired, and replaced when necessary and to assess the lot owners as necessary to recover the costs of such maintenance, repair, or replacement except that the costs of maintenance, repair, or replacement of a limited common element shall be assessed as provided in G.S. 47F-3-115(c)(1). Except as otherwise provided in the declaration, each lot owner is

responsible for the maintenance and repair of his lot and any improvements thereon. Each lot owner shall afford to the association and when necessary to another lot owner access through the lot owner's lot or the limited common element allocated to the lot owner's lot reasonably necessary for any such maintenance, repair, or replacement activity.

(b) If a lot owner is legally responsible for damage inflicted on any common ~~element,~~ element or limited common element, the association may direct such lot owner to repair such damage, or the association may itself cause the repairs to be made and recover damages from the responsible lot owner.

...."

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

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

S D

SENATE BILL 228
PROPOSED COMMITTEE SUBSTITUTE S228-CSTP-8 [v.2]
3/25/2013 8:16:54 PM

Short Title: HOAs/Lim. Com. Elements/Amend of Declaration. (Public)

Sponsors:

Referred to:

March 11, 2013

A BILL TO BE ENTITLED

AN ACT PROVIDING THAT A UNIT OWNER IN A CONDOMINIUM AND A LOT OWNER IN A PLANNED COMMUNITY SHALL AFFORD ACCESS THROUGH THE LIMITED COMMON ELEMENT ASSIGNED OR ALLOCATED TO THE OWNER'S UNIT OR LOT TO THE ASSOCIATION AND, WHEN NECESSARY, TO OTHER UNIT OR LOT OWNERS FOR THE PURPOSE OF CONDUCTING MAINTENANCE, REPAIR, OR REPLACEMENT ACTIVITIES AND PROVIDING THAT A UNIT OR LOT OWNER IS LEGALLY RESPONSIBLE FOR DAMAGE TO A LIMITED COMMON ELEMENT CAUSED BY THE UNIT OR LOT OWNER AND CLARIFYING THE LAWS REGARDING THE POWERS AND DUTIES OF A PLANNED COMMUNITY AND AMENDING THE PROCEDURES REGARDING AMENDMENT OF A RECORDED DECLARATION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 47C-3-107 reads as rewritten:

"**§ 47C-3-107. Upkeep; damages; assessments for damages, fines.**

(a) Except as provided in G.S. 47C-3-113(h), the association is responsible for causing the common elements to be maintained, repaired, and replaced when necessary and to assess the unit owners as necessary to recover the costs of such maintenance, repair, or replacement except that the cost of maintenance, repair or replacement of a limited common element shall be assessed as provided in G.S. 47C-3-115(b). Each unit owner is responsible for maintenance, repair and replacement of his unit. Each unit owner shall afford to the association and when necessary to another unit owner access through his unit or the limited common element assigned to his unit reasonably necessary for any such maintenance, repair or replacement activity.

(b) If damage, for which a unit owner is legally responsible and which is not covered by insurance provided by the association pursuant to G.S. 47C-3-113 is inflicted on any common ~~element,~~element or limited common element, the association may direct such unit owner to repair such damage or the association may itself cause the repairs to be made and recover the costs thereof from the responsible unit owner.

...."

SECTION 2. G.S. 47F-3-107 reads as rewritten:

"**§ 47F-3-107. Upkeep of planned community; responsibility and assessments for damages.**

(a) Except as otherwise provided in the declaration, G.S. 47F-3-113(h) or subsection (b) of this section, the association is responsible for causing the common elements to be maintained, repaired, and replaced when necessary and to assess the lot owners as necessary to

recover the costs of such maintenance, repair, or replacement except that the costs of maintenance, repair, or replacement of a limited common element shall be assessed as provided in G.S. 47F-3-115(c)(1). Except as otherwise provided in the declaration, each lot owner is responsible for the maintenance and repair of his lot and any improvements thereon. Each lot owner shall afford to the association and when necessary to another lot owner access through the lot owner's lot or the limited common element allocated to the lot owner's lot reasonably necessary for any such maintenance, repair, or replacement activity.

(b) If a lot owner is legally responsible for damage inflicted on any common ~~element,~~ element or limited common element, the association may direct such lot owner to repair such damage, or the association may itself cause the repairs to be made and recover damages from the responsible lot owner.

...."

SECTION 3. G.S. 47F-1-104 reads as rewritten:

"**§ 47F-1-104. Variation.**

(a) Except as specifically provided in specific sections of this Chapter, the provisions of this Chapter may not be varied by the declaration or bylaws. To the extent not inconsistent with the provisions of this Chapter, the declaration, bylaws, and articles of incorporation form the basis for the legal authority for the planned community to act as provided in the declaration, bylaws, and articles of incorporation, and the declaration, bylaws, and articles of incorporation are enforceable by their terms.

...."

SECTION 4. G.S. 47F-2-103 reads as rewritten:

"**§ 47F-2-103. Construction and validity of declaration and bylaws.**

(a) To the extent not inconsistent with the provisions of this Chapter, the declaration, bylaws, and articles of incorporation form the basis for the legal authority for the planned community to act as provided in the declaration, bylaws, and articles of incorporation, and the declaration, bylaws, and articles of incorporation are enforceable by their terms. All provisions of the declaration and bylaws are severable.

...."

SECTION 5. G.S. 47F-2-117 reads as rewritten:

"**§ 47F-2-117. Amendment of declaration.**

...

(d) Any amendment passed pursuant to the provisions of this section or the procedures provided for in the declaration are presumed valid and enforceable.

...."

SECTION 6. G.S. 47F-1-102 reads as rewritten:

"**§ 47F-1-102. Applicability.**

...

(c) Notwithstanding the provisions of subsection (a) of this section, G.S. 47F-1-104 (Variation), G.S. 47F-2-103 (Construction and validity of declaration and bylaws), G.S. 47F-2-117 (Amendment of declaration), G.S. 47F-3-102(1) through (6) and (11) through (17)(Powers of owners' association), G.S. 47F-3-103(f)(Executive board members and officers), G.S. 47F-3-107(a), (b), and (c)(Upkeep of planned community; responsibility and assessments for damages), G.S. 47F-3-107.1 (Procedures for fines and suspension of planned community privileges or services), G.S. 47F-3-108 (Meetings), G.S. 47F-3-115 (Assessments for common expenses), G.S. 47F-3-116 (Lien for assessments), G.S. 47F-3-118 (Association records), and G.S. 47F-3-121 (American and State flags and political sign displays) apply to all planned communities created in this State before January 1, 1999, unless the articles of incorporation or the declaration expressly provides to the contrary, and G.S. 47F-3-120 (Declaration limits on attorneys' fees) applies to all planned communities created in this State before January 1, 1999. These sections apply only with respect to events and circumstances

occurring on or after January 1, 1999, and do not invalidate existing provisions of the declaration, bylaws, or plats and plans of those planned communities. G.S. 47F-1-103 (Definitions) also applies to all planned communities created in this State before January 1, 1999, to the extent necessary in construing any of the preceding sections.

..."

SECTION 7. Section 5 of this act becomes effective October 1, 2013, and applies to any amendment of a planned community declaration recorded on or after that date. The remainder of this act is effective when it becomes law.

SENATE BILL 228:
HOAs/Limited Common Elements

2013-2014 General Assembly

Committee:	Senate Commerce	**Date:**	March 25, 2013
Introduced by:	Sens. Cook, Rabin	**Prepared by:**	Peter Ledford
Analysis of:	PCS to First Edition S228-CSTP-8		Committee Counsel

SUMMARY: ***Senate Bill 228 would require a condominium owner or lot owner in a planned community to afford the association and another unit or lot owner access to a limited common element assigned to his unit or lot for the purpose of maintenance, repair, or replacement activity. Senate Bill 228 would also allow an association to direct a unit or lot owner to make repairs or pay for repairs to a limited common element when the unit or lot owner is legally responsible for damages that have occurred.***

The PCS would amend the North Carolina Planned Community Act to provide that the declaration, bylaws, and articles of incorporation of a planned community form the basis for the legal authority for the community except where they are inconsistent with the provisions of the Act. The changes apply to all planned communities created on or after January 1, 1999, and apply to all planned communities created before January 1, 1999 unless the articles of incorporation or the declaration expressly provide to the contrary.

CURRENT LAW: The North Carolina Condominium Act and the North Carolina Planned Community Act both require a unit or lot owner to afford the association and another unit or lot owner access through his unit or lot for the purpose of maintenance, repair, or replacement activity. The Acts also allow an association to direct a unit or lot owner to make repairs or pay for repairs to a common element when the unit or lot owner is legally responsible for damages that have occurred. The Planned Community Act also requires that a declaration be executed to create a planned community and that an owners association be incorporated and adopt bylaws. The Planned Community Act dictates that generally the provisions of the Act may not be varied by the declaration or bylaws.

BILL ANALYSIS: Senate Bill 228 would expand the access requirement to require a unit or lot owner to afford the association and another unit or lot owner access through a limited common element assigned to his unit or lot. Senate Bill 228 would also allow an association to direct a unit or lot owner to make repairs or pay for repairs to a limited common element when the unit or lot owner is legally responsible for damages that have occurred. Senate Bill 228 would also provide that the declaration, bylaws, and articles of incorporation of a planned community form the basis for the legal authority for the community and are enforceable by their terms, except where they are inconsistent with the provisions of the Planned Community Act. The bill would also provide that an amendment of the declaration passed pursuant to the Act is presumed valid and enforceable. The changes apply to all planned communities created on or after January 1, 1999, and apply to all planned communities created before January 1, 1999 unless the articles of incorporation or the declaration expressly provide to the contrary.

EFFECTIVE DATE: The sections of the bill related to access to limited common elements and the legal authority of planned communities are effective when they become law. The section related to validity of amendments is effective October 1, 2013, and applies to amendments recorded on or after that date.

VISITOR REGISTRATION SHEET

Senate **COMMERCE** Committee — March 26, 2013

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DEBBIE LOWN

NAME	FIRM OR AGENCY AND ADDRESS
Darryl Hunt	NCAD
Henry Jones	Jordan Price
Carmen Price	MUA
Catherine Peglow	NCBA

VISITOR REGISTRATION SHEET

Senate **COMMERCE** Committee — March 26, 2013

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DEBBIE LOWN

NAME	FIRM OR AGENCY AND ADDRESS
STEVEN WEBB	NCHBA
LISA MARTIN	NCHBA
	Mise
BILL RUSTIN	
JON HEYL	NCBA
	NCBA
Alex Badger	CSS
	Bolin Group
	McGuire Woods

Senate Committee on Commerce
Tuesday, April 2, 2013, 11:00 AM
1027/1128 Legislative Building

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

BILL NO.	SHORT TITLE	SPONSOR
SB 445	ABC Permit Issuance.	Senator Brock

Senate Committee on Commerce
Tuesday, April 2, 2013 at 11:00 AM
Room 1027/1128 of the Legislative Building

MINUTES

The Senate Committee on Commerce met at 11:00 AM on April 2, 2013 in Room 1027/1128 of the Legislative Building. Fourteen members were present.

Senator Wesley Meredith, Chair, presided.

Catherine Potter from Wilson, Jordan Keyes from Raleigh, Gina Higgins from Wendell, and Harrison Rhoades from Raleigh served as pages.

S. B. 445 ABC Permit Issuance

Senator Meredith introduced Senator Brock to speak on the bill. Senate Bill 445 would make the following changes to the statutes governing alcoholic beverage permits:

- Require that a person be legally present in the United States to be eligible to receive and hold an ABC permit
- For special one-time permits, provide that the permit may not be issued less than 10 days before the special event; and require that the ABC Commission notify the Alcohol Law Enforcement (ALE) Division within 3 days after the permit is issued.

Wendy Graf and attorney from the Research Division assisted with the responses from the member's questions. Agnes Stevenson for the ABC Commission had no negative remarks regarding the bill. Senator Brown moved for a favorable report to the bill and it carried.

The meeting adjourned at 11:20 AM.

W. A. Meredith

Senator Wesley Meredith, Chair
Presiding

Debbie Lown

Debbie Lown, Committee Clerk

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

COMMERCE COMMITTEE REPORT
Senator Gunn, Co-Chair
Senator Meredith, Co-Chair

Tuesday, April 02, 2013

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

FAVORABLE

SB **445** ABC Permit Issuance.

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

TOTAL REPORTED: 1

Senator Wesley Meredith will handle SB 445

SENATE BILL 445

Short Title:	ABC Permit Issuance.	(Public)
Sponsors:	Senator Brock (Primary Sponsor).	
Referred to:	Commerce.	

March 27, 2013

A BILL TO BE ENTITLED

AN ACT TO REQUIRE THAT ANY PERSON ISSUED AN ALCOHOLIC BEVERAGE PERMIT BE LAWFULLY PRESENT IN THE UNITED STATES; TO PREVENT THE ABC COMMISSION FROM ISSUING A SPECIAL ONETIME PERMIT TO ANY PERSON LESS THAN TEN BUSINESS DAYS FROM THE PLANNED EVENT; AND TO GIVE NOTICE TO THE ALCOHOL LAW ENFORCEMENT DIVISION OF ALL SPECIAL ONETIME PERMITS ISSUED WITHIN THREE BUSINESS DAYS OF THE PERMIT'S ISSUANCE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 18B-900(a) reads as rewritten:

"(a) Requirements. – To be eligible to receive and to hold an ABC permit, a person shall:

(1) Be at least 21 years old, unless the person is a manager of a business selling only malt beverages and unfortified wine, in which case the person shall be at least 19 years old;

(2) Be a resident of North Carolina unless:

a. He is an officer, director or stockholder of a corporate applicant or permittee and is not a manager or otherwise responsible for the day-to-day operation of the business; or

b. He has executed a power of attorney designating a qualified resident of this State to serve as attorney in fact for the purposes of receiving service of process and managing the business for which permits are sought; or

c. He is applying for a nonresident malt beverage vendor permit, a nonresident wine vendor permit, or a vendor representative permit;

(3) Not have been convicted of a felony within three years, and, if convicted of a felony before then, shall have had his citizenship restored;

(4) Not have been convicted of an alcoholic beverage offense within two years;

(5) Not have been convicted of a misdemeanor controlled substance offense within two years; and

(6) Not have had an alcoholic beverage permit revoked within three years, except where the revocation was based solely on a permittee's failure to pay the annual registration and inspection fee required in G.S. 18B-903(b1).

(7) Not have, whether as an individual or as an officer, director, shareholder or manager of a corporate permittee, an unsatisfied outstanding final judgment that was entered against him in an action under Article 1A of this Chapter.

(8) Have a valid social security number or be able to produce valid documentation issued to the applicant under the authority of the United States government demonstrating legal presence in the United States.

To avoid undue hardship, however, the Commission may decline to take action under G.S. 18B-104 against a permittee who is in violation of subdivisions (3), (4), or (5)."

SECTION 2. G.S. 18B-1002(d) reads as rewritten:

"(d) Administrative Procedure. – A permit issued pursuant to this section shall not be issued less than 10 days before any qualifying event described in subdivisions (1) through (5) of subsection (a) of this section. The Commission shall notify the ALE Division not more than three business days after the date a permit is issued pursuant to this section of the name and address of the applicant, the address of the event, and any conditions placed on the permit pursuant to subsection (c) of this section. Denial or revocation of a permit under this section shall not entitle the applicant or permittee to a hearing under Chapter 150B."

SECTION 3. This act is effective when it becomes law and applies to permits issued on or after that date.

SENATE BILL 445:
ABC Permit Issuance

2013-2014 General Assembly

Committee:	Senate Commerce	**Date:**	April 2, 2013
Introduced by:	Sen. Brock	**Prepared by:**	Wendy Graf Ray Committee Counsel
Analysis of:	First Edition		

SUMMARY: Senate Bill 445 would make the following changes to the statutes governing alcoholic beverage permits:

- ***Require that a person be legally present in the United States to be eligible to receive and hold an ABC permit***
- ***For special one-time permits, provide that the permit may not be issued less than 10 days before the special event; and require that the ABC Commission notify the Alcohol Law Enforcement (ALE) Division within 3 days after the permit is issued.***

CURRENT LAW: All ABC permits are issued by the ABC Commission, which is required to investigate applicants. G.S. 18B-900(a) lists eligibility requirements for applicants seeking ABC permits.

In addition to other types of permits, G.S. 18B-1002 authorizes the Commission to issue special one-time permits. These permits are intended to be for very limited purposes and not as substitutes for other permits required under Chapter 18B. The fee for a special one-time permit is $50, it is valid only for the single transaction or event specified in the permit, and it is subject to any time, place, and manner conditions imposed by the Commission. A special one-time permit may be issued under the following circumstances:

- To a person who acquires ownership or possession of alcoholic beverages through bankruptcy, inheritance, foreclosure, judicial sale, or other special occurrence, and who does not already have a permit authorizing the sale of that kind of alcoholic beverage.
- To a nonprofit organization to allow the retail sale of malt beverages, unfortified wine, fortified wine, or mixed beverages, or to allow brown bagging, at a single fund-raising event of that organization. A permit for this purpose shall not be issued for the sale of any kind of alcoholic beverage in a jurisdiction where the sale of that alcoholic beverage is unlawful.
- To a permittee who is going out of business to authorize the sale or other disposition of his alcoholic beverages stock in a manner that would not otherwise be authorized under his permit.
- To a collector of wine or decorative decanters of spirituous liquor authorizing that person to bring into the State, transport, or possess as a collector, a greater amount of those alcoholic beverages than is otherwise authorized, or to sell those alcoholic beverages in a manner prescribed by the Commission.
- To a unit of local government, or to a nonprofit organization or a political organization to serve wine, malt beverages, and spirituous liquor at a ticketed event held to allow the organization to raise funds.

BILL ANALYSIS: Senate Bill 445 would amend the statute that lists eligibility requirements for obtaining an ABC permit to provide that an applicant must have a valid social security number or be able to produce documentation that demonstrates legal presence in the United States.

The bill would also amend the provision authorizing special one-time permits to add the following requirements:

- The permit would have to be issued at least 10 days before the qualifying event; and
- The Commission would have to notify ALE within 3 days of issuing the permit and provide the applicant's name and address, the address of the event, and any conditions placed on the permit.

EFFECTIVE DATE: The act would be effective when it becomes law and would apply to permits issued on or after that date.

VISITOR REGISTRATION SHEET

Senate **COMMERCE** Committee — April 2, 2013

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DEBBIE LOWN

NAME	FIRM OR AGENCY AND ADDRESS
Rev. Marie Creech	CAL
Mike Lotz	AARP
Agnes Stevens	NC ABC Commissio
Susanna Davis	Williams Mullen
Ellen Howe	CRL
Chris Volanti	NC Beer & Wine Wholesalers
Carley Ruff	NCHC
Catherine Sevier	AARP
David Sevier	AARP
TJ Bugbee	NP
Sarah Rotheiler	Brubaker & Assoc.

VISITOR REGISTRATION SHEET

Senate **COMMERCE** Committee — April 2, 2013

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DEBBIE LOWN

NAME	FIRM OR AGENCY AND ADDRESS
Robert Gilbert	NC Auto Dealers Assn
Chris Karpish	AP

VISITOR REGISTRATION SHEET

Senate **COMMERCE** Committee — April 2, 2013

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DEBBIE LOWN

NAME	FIRM OR AGENCY AND ADDRESS
Wendy Kelly	Blizzard
Jim Kent	NC Beer & Wine
Henry Huffaff	N.C.B.A
Amanda Honaker	Troutman Sanders
David Heinen	N.C Center for Nonprofits
Canaan Duke	MVA
Benton Albritton	ABC of the Carolinas
[illegible]	NCMBA
[illegible]	Beer's Assn.

Senate Committee on Commerce
Tuesday, April 9, 2013, 11:00 AM
1027/1128 Legislative Building

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

BILL NO.	SHORT TITLE	SPONSOR
SB 344	Vintage Auto Inspections.	Senator Hartsell
SB 358	Guaranteed Asset Protection Waivers.	Senator Meredith Senator Newton Senator Ford
SB 470	No Beer/Wine if Permit Revoked or Suspended.	Senator Wade Senator Gunn
SB 635	Transmission Line Ownership.	Senator Newton

Senate Committee on Commerce
Tuesday, April 9, 2013 at 11:00 AM
Room 1027/1128 of the Legislative Building

MINUTES

The Senate Committee on Commerce met at 11:00 AM on April 9, 2013 in Room 1027/1128 of the Legislative Building. Twenty two members were present.

Senator Rick Gunn, Chair, presided.

Ruth Smith from Wilmington, Morgan Bass from Farmville, Chandria Boykin from Winterville, Lillie Gardner from Stantonsburg and Ryan Warren from Snow Hill served as pages.

S. B. 344 Vintage Auto Inspections

Senator Gunn introduced Senator Hartsell to introduce the bill to the members. Senate Bill 344 would amend the statute that requires the Division of Motor Vehicles to complete a vehicle verification before issuing a title for an out of state vehicle that is 35 years old or older or a specially constructed. The title would have to be issued:

- Within 10 days of a request for the vehicle verification required by law, if the verification is not conducted and the inspector has no probable cause to believe documentation does not match the vehicle; or
- Within 10 days of the date of the verification if it is timely performed and the vehicle passes.

Tim Hickman Assistant Director of DMV Licenses in Fayetteville also spoke. Senator Tillman moved for a favorable report and it was carried.

S. B. 358 Guaranteed Asset Protection Waivers

Senator Apodaca moved to adopt the proposed committee substitute before the committee and it was carried. Senate Bill 358 would regulate the issuance of guaranteed asset protection (GAP) waivers in North Carolina. The PCS clarifies that the definition of a creditor includes a vehicle dealer that arranges financing for a purchaser of a vehicle. Senator Meredith was introduced to speak on the bill. John Bode an attorney representing the GAP Association responded to technical questions. Senator Jenkins made the motion, unfavorable to the bill – favorable to the PCS and it carried.

S. B. 470 No Beer/Wine if Permit Revoked or Suspended

Senator Meredith moved to adopt the proposed committee substitute before the committee and it was carried. The PCS for Senate Bill 470 would prohibit the consumption of malt beverages or unfortified wine on the premises of any business that has had its on-premises permit suspended or revoked. Senator Wade was introduced to speak on the bill. Wendy Graf an attorney from the Research Department assisted with responding to some of the technical questions. Senator Hunt made the motion, unfavorable to the bill – favorable to the PCS and it carried.

S. B. 635 Transmission Line Ownership

Senator Gunn announced that this bill will be for discussion only. Senate Bill 635 would require that only a public utility may obtain a certificate to construct a new electricity transmission line. He then introduced Senator Newton to speak on the bill. Peter Ledford an attorney from the Research Department assisted with the explanation. Sharon Kay Segner, Assistant Vice President of LS Power made comments as well as Kathy Hawkins from Duke Energy. No one else requested to speak and the meeting adjourned.

The meeting adjourned at 11:48 AM.

Senator Rick Gunn, Chair
Presiding

Debbie Lown, Committee Clerk

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

COMMERCE COMMITTEE REPORT
Senator Gunn, Co-Chair
Senator Meredith, Co-Chair

Tuesday, April 09, 2013

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

FAVORABLE

SB **344** Vintage Auto Inspections.

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

TOTAL REPORTED: 1

Senator Richard Gunn will handle SB 344

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

COMMERCE COMMITTEE REPORT
Senator Gunn, Co-Chair
Senator Meredith, Co-Chair

Wednesday, April 10, 2013

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

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

SB **470** No Beer/Wine if Permit Revoked or Suspended.

Draft Number:	S470-PCS15234-SU-12
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 1, BUT FAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 2

SB **358** **(CS#1)** Guaranteed Asset Protection Waivers.

Draft Number:	S358-PCS75274-TP-11
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

TOTAL REPORTED: 2

Senator Richard Gunn will handle SB 470
Senator Richard Gunn will handle SB 358

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

S 1

SENATE BILL 344

Short Title:	Vintage Auto Inspections.	(Public)
Sponsors:	Senator Hartsell (Primary Sponsor).	
Referred to:	Commerce.	

March 19, 2013

A BILL TO BE ENTITLED

AN ACT TO ALLOW FOR THE ISSUANCE OF TITLE BY THE DIVISION OF MOTOR VEHICLES TO THE OWNER OF OUT-OF-STATE MOTOR VEHICLES THAT ARE THIRTY-FIVE MODEL YEARS OLD OR OLDER IF THE LICENSE AND THEFT BUREAU OF THE DIVISION OF MOTOR VEHICLES FAILS TO COMPLETE AN INSPECTION AND VERIFICATION OF THE VEHICLE'S IDENTIFICATION NUMBER WITHIN TEN DAYS OF RECEIVING A REQUEST FOR INSPECTION AND VERIFICATION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-53(e) reads as rewritten:

"**§ 20-53. Application for specially constructed, reconstructed, or foreign vehicle.**

...

(e) No title shall be issued to an initial applicant for (i) out-of-state vehicles that are 35 model years old or older or (ii) a specially constructed vehicle prior to the completion of a vehicle verification conducted by the License and Theft Bureau of the Division of Motor Vehicles. These verifications shall be conducted as soon as practical. For an out-of-state vehicle that is 35 model years old or older, this inspection shall consist of verifying the public vehicle identification number to ensure that it matches the vehicle and ownership documents. No covert vehicle identification numbers are to be examined on an out-of-state vehicle 35 model years or older unless the inspector develops probable cause to believe that the ownership documents or public vehicle identification number presented does not match the vehicle being examined. However, upon such application and the submission of any required documentation, the Division shall be authorized to register the vehicle pending the completion of the verification of the vehicle. The registration shall be valid for one year but shall not be renewed unless and until the vehicle examination has been completed.

If an inspection and verification is not conducted by the License and Theft Bureau of the Division of Motor Vehicles within 10 days after receiving a request for such and the inspector has no probable cause to believe that the ownership documents or public vehicle identification number presented does not match the vehicle being examined, the vehicle shall be deemed to have satisfied all inspection and verification requirements and title shall issue to the owner within 10 days thereafter. If an inspection and verification is timely performed and the vehicle passes the inspection and verification, title shall issue to the owner within 10 days of the date of the inspection.

...."

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

SENATE BILL 344:
Vintage Auto Inspections

2013-2014 General Assembly

Committee:	Senate Commerce	**Date:**	April 9, 2013
Introduced by:	Sen. Hartsell	**Prepared by:**	Wendy Graf Ray Committee Counsel
Analysis of:	First Edition		

SUMMARY: ***Senate Bill 344 would amend the statute that requires the Division of Motor Vehicles to complete a vehicle verification before issuing a title for an out-of-state vehicle that is 35 years old or older or a specially constructed. The title would have to be issued:***

- ***Within 10 days of a request for the vehicle verification required by law, if the verification is not conducted and the inspector has no probable cause to believe documentation does not match the vehicle; or***
- ***Within 10 days of the date of the verification if it is timely performed and the vehicle passes.***

CURRENT LAW: Out-of-state vehicles that are 35 years old or older and specially constructed vehicles (replica, street rod, and custom-built vehicles) are required to undergo a vehicle verification conducted by the License and Theft Bureau of the Division of Motor Vehicles prior to titling the vehicle. The statute provides that the verification shall be conducted as soon as practical, but does not give specific time frames within which verifications must be completed or titles must be issued. The Division is authorized to register the vehicle pending the verification for one year to allow the owner to schedule the verification examination and still drive the vehicle.

BILL ANALYSIS: Senate Bill 344 would amend the law that requires the Division to complete vehicle verifications before issuing titles for out-of-state vehicles that are 35 years old or older and specially constructed vehicles. The bill would provide specific time frames within which the verifications must be completed and/or titles issued.

If the Division receives a request for a verification and does not conduct it within 10 days, and the inspector does not have probable cause to believe that the documentation or numbers presented do not match the vehicle, then the vehicle would be deemed to have satisfied all requirements and the title would have to be issued within 10 days of the request.

If the Division performs the verification in a timely manner, and the vehicle satisfies all requirements, then the title would have to be issued within 10 days of the verification.

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

SENATE BILL 358
Judiciary I Committee Substitute Adopted 4/2/13

Short Title: Guaranteed Asset Protection Waivers. (Public)

Sponsors:

Referred to:

March 20, 2013

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE GUARANTEED ASSET PROTECTION WAIVERS TO BE AUTHORIZED IN THIS STATE.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 66 of the General Statutes is amended by adding a new Article to read:

"Article 46.

"Guaranteed Asset Protection Waivers.

"**§ 66-440. Definitions.**

The following definitions apply in this Article:

(1) Administrator. – A person that performs administrative or operational functions with respect to guaranteed asset protection waivers.

(2) Borrower. – A debtor, retail buyer, or lessee under a vehicle finance agreement.

(3) Creditor. – Any of the following:

a. A lender in a loan or credit transaction.

b. A lessor in a lease transaction.

c. A vehicle dealer, including a motor vehicle dealer as that term is defined in G.S. 20-286(11), that provides credit to a purchaser of a vehicle.

d. A seller in a commercial retail installment transaction.

e. An assignee of any of the foregoing to whom the credit obligation is payable.

(4) Free look period. – The period of time from the effective date of a guaranteed asset protection waiver until the date the borrower may cancel the contract without penalty, fees, or costs to the borrower.

(5) Guaranteed asset protection waiver. – A contractual agreement in which a creditor agrees for a separate charge to cancel or waive all or part of amounts due on a borrower's vehicle finance agreement in the event of a total physical damage loss or unrecovered theft of the vehicle, which agreement shall be part of, or a separate addendum to, the vehicle finance agreement.

(6) Insurer. – An insurance company licensed, registered, or otherwise authorized to do business under Chapter 58 of the General Statutes.

(7) Vehicle. – A motor vehicle, as that term is defined in G.S. 20-286(10), as well as self-propelled or towed vehicles designed for personal or commercial use, including, but not limited to, automobiles, trucks, motorcycles,

recreational vehicles, all terrain vehicles, snowmobiles, campers, boats, personal watercraft, and trailers for motorcycles, boats, campers, and personal watercraft.

(8) Vehicle finance agreement. – A loan, lease, or retail installment sales contract for the purchase or lease of a vehicle.

"**§ 66-441. Scope of Article.**

(a) Complete Exemptions. – This Article shall not apply to any of the following:

(1) An insurance policy offered by an insurer under Chapter 58 of the General Statutes, except as provided in G.S. 66-443.

(2) A debt cancellation or debt suspension contract being offered pursuant to 12 C.F.R. Part 37, 12 C.F.R. Part 721, or any other federal law.

(b) Partial Exemption for Commercial Transactions. – G.S. 66-444, 66-446(c), and 66-447 are not applicable to a guaranteed asset protection waiver offered in connection with a lease or retail installment sale associated with a commercial transaction.

"**§ 66-442. Guaranteed asset protection waivers not subject to insurance laws.**

Guaranteed asset protection waivers are not insurance and are exempt from the provisions of Chapter 58 of the General Statutes, as are persons administering, marketing, selling, or offering to sell guaranteed asset protection waivers to borrowers.

"**§ 66-443. Insurance of guaranteed asset protection waivers.**

(a) Insurance for Creditors. – Creditors may insure guaranteed asset protection waiver obligations under a contractual liability policy or other similar policy issued by an insurer but shall not be required to do so.

(b) Required Terms. – Contractual liability or other insurance policies insuring guaranteed asset protection waivers shall include terms that do all of the following:

(1) Obligate the insurer to reimburse or pay to the creditor any sums the creditor is legally obligated to waive under guaranteed asset protection waivers issued by the creditor and purchased or held by the borrower.

(2) Provide that the policy covers any subsequent assignee upon the assignment, sale, or transfer of the vehicle finance agreement.

(3) Provide that the policy remains in effect unless cancelled or terminated in compliance with applicable insurance laws of this State.

(4) Provide that the cancellation or termination of policy shall not reduce the insurer's responsibility for guaranteed asset protection waivers issued by the creditor prior to the date of cancellation or termination and for which premiums have been received by the insurer.

(c) Administrators May Procure Insurance. – An insurance policy obtained pursuant to this section may be directly obtained by a creditor or may be procured by an administrator to cover the creditor's obligations.

"**§ 66-444. Mandatory terms.**

A guaranteed asset protection waiver shall include all of the following written terms in clear, easily understandable language:

(1) The name and address of the initial creditor and the borrower at the time of sale and the identity of any administrator if different from the creditor.

(2) The purchase price and the terms of the guaranteed asset protection waiver, including without limitation, the requirements for protection, conditions, or exclusions associated with the guaranteed asset protection waiver.

(3) The length of the free look period, which shall be at least 30 days, and the procedure by which a borrower may exercise the borrower's rights during that period.

(4) The terms required by G.S. 66-445.

(5) The methodology for calculating any refund of the unearned purchase price of the guaranteed asset protection waiver due in the event of cancellation of the guaranteed asset protection waiver or early termination of the vehicle finance agreement.

(6) The procedure the borrower must follow, if any, to obtain guaranteed asset protection waiver benefits under the terms and conditions of the waiver, including a telephone number and address where the borrower may apply for waiver benefits.

(7) A statement that neither the extension of credit, the terms of the credit, nor the terms of the related vehicle sale or lease may be conditioned upon the purchase of the guaranteed asset protection waiver.

"**§ 66-445. Cancellation.**

(a) Cancellation During Free Look Period. – A guaranteed asset protection waiver shall include a term stating that if a borrower cancels the waiver within the free look period, the borrower will be entitled to a full refund so long as no benefits have been provided under the guaranteed asset protection waiver.

(b) Cancellation After the Free Look Period. – A guaranteed asset protection waiver may be either cancellable or noncancellable after the free look period. A guaranteed asset protection waiver shall include the following terms regarding cancellation after the free look period:

(1) A statement of whether or not the guaranteed asset protection waiver is cancellable or noncancellable after the expiration of the free look period.

(2) If the waiver is cancellable, all of the following terms:

a. A statement that in the event of a borrower's cancellation of the guaranteed asset protection waiver or early termination of the vehicle finance agreement, the borrower may be entitled to a refund of any unearned portion of the purchase price of the waiver unless the waiver provides otherwise.

b. The procedures by which a borrower may cancel the waiver. This term shall include a requirement that in the event the underlying vehicle finance agreement is terminated, cancellation shall be made by providing a written request to the creditor, administrator, or other party within 90 days of the event terminating the vehicle finance agreement.

(c) Cancellation in the Event of Default. – Any cancellation refund under subsections (a) and (b) of this section may be applied by the creditor as a reduction of the amount owed under the vehicle finance agreement unless the borrower can show that the vehicle finance agreement has been paid in full. A guaranteed asset protection waiver shall include a term stating that notwithstanding subsections (a) and (b) of this section, if cancellation of the waiver occurs as a result of a default under the vehicle finance agreement or the repossession of the vehicle associated with the vehicle finance agreement or any other termination of the vehicle finance agreement, any refund due may be paid directly to the creditor or administrator and applied as set forth in this subsection.

"**§ 66-446. Miscellaneous provisions.**

(a) Article Controls. – The offering and sale of guaranteed asset protection waivers in this State shall be subject to the provisions of this Article.

(b) Manner of Payment. – Guaranteed asset protection waivers may, at the option of the creditor, be sold for a single payment or may be offered with a monthly or periodic payment option.

(c) Compliance with Truth in Lending Act. – Notwithstanding any other provision of law, any cost to the borrower for a guaranteed asset protection waiver subject to the Truth in

Lending Act (15 U.S.C. § 1601, et seq.) and its implementing regulations, as they may be amended from time to time, shall be separately stated and is not to be considered a finance charge or interest.

(d) Preservation Upon Transfer. – A guaranteed asset protection waiver shall remain a part of the vehicle finance agreement upon its assignment, sale, or transfer by a creditor.

(e) Cannot Be Required. – Neither the extension of credit, the term of credit, nor the term of a related vehicle sale or lease may be conditioned upon the purchase of a guaranteed asset protection waiver.

(f) Forwarding of Proceeds. – A creditor that offers a guaranteed asset protection waiver shall report the sale of, and forward funds received on all such waivers to the designated party, if any, as prescribed in any applicable administrative services agreement, contractual liability policy, other insurance policy, or other specified program documents.

(g) Fiduciary Duty. – Funds received or held by a creditor or administrator and belonging to an insurer, creditor, or administrator, pursuant to the terms of a written agreement, shall be held by the creditor or administrator in a fiduciary capacity.

"**§ 66-447. Enforcement.**

The Attorney General may take action which is necessary or appropriate to enforce the provisions of this Article and to protect guaranteed asset protection waiver holders in this State. After proper notice and opportunity for hearing, the Attorney General may:

(1) Order a creditor, administrator, or any other person not in compliance with this Article to cease and desist from further guaranteed asset protection waiver-related operations which are in violation of this Article.

(2) Impose a penalty of not more than five hundred dollars ($500.00) per violation and no more than ten thousand dollars ($10,000) in the aggregate for all violations of a similar nature. For purposes of this Article, violations are of a similar nature if the violation consists of the same or similar course of conduct, action, or practice, irrespective of the number of times the conduct or practice that is determined to be a violation of the Article occurred.

"**§ 66-448. Severability.**

If any provision of this Article or the application of the provision to any person or circumstances is held invalid, the remainder of the Article and the application of the provision to persons or circumstances other than those as to which it is held invalid shall not be affected."

SECTION 2. This act becomes effective October 1, 2013.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

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SENATE BILL 358

Judiciary I Committee Substitute Adopted 4/2/13
PROPOSED COMMITTEE SUBSTITUTE S358-CSTP-11 [v.2]
4/8/2013 6:16:16 PM

Short Title: Guaranteed Asset Protection Waivers. (Public)

Sponsors:

Referred to:

March 20, 2013

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE GUARANTEED ASSET PROTECTION WAIVERS TO BE AUTHORIZED IN THIS STATE.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 66 of the General Statutes is amended by adding a new Article to read:

"Article 46.

"Guaranteed Asset Protection Waivers.

"**§ 66-440. Definitions.**

The following definitions apply in this Article:

(1) Administrator. – A person that performs administrative or operational functions with respect to guaranteed asset protection waivers.

(2) Borrower. – A debtor, retail buyer, or lessee under a vehicle finance agreement.

(3) Creditor. – Any of the following:

a. A lender in a loan or credit transaction.

b. A lessor in a lease transaction.

c. A vehicle dealer, including a motor vehicle dealer as that term is defined in G.S. 20-286(11), that provides credit to or arranges financing for a purchaser of a vehicle.

d. A seller in a commercial retail installment transaction.

e. An assignee of any of the foregoing to whom the credit obligation is payable.

(4) Free look period. – The period of time from the effective date of a guaranteed asset protection waiver until the date the borrower may cancel the contract without penalty, fees, or costs to the borrower.

(5) Guaranteed asset protection waiver. – A contractual agreement in which a creditor agrees for a separate charge to cancel or waive all or part of amounts due on a borrower's vehicle finance agreement in the event of a total physical damage loss or unrecovered theft of the vehicle, which agreement shall be part of, or a separate addendum to, the vehicle finance agreement.

(6) Insurer. – An insurance company licensed, registered, or otherwise authorized to do business under Chapter 58 of the General Statutes.

(7) Vehicle. – A motor vehicle, as that term is defined in G.S. 20-286(10), as well as self-propelled or towed vehicles designed for personal or commercial

use, including, but not limited to, automobiles, trucks, motorcycles, recreational vehicles, all terrain vehicles, snowmobiles, campers, boats, personal watercraft, and trailers for motorcycles, boats, campers, and personal watercraft.

(8) Vehicle finance agreement. – A loan, lease, or retail installment sales contract for the purchase or lease of a vehicle.

"**§ 66-441. Scope of Article.**

(a) Complete Exemptions. – This Article shall not apply to any of the following:

(1) An insurance policy offered by an insurer under Chapter 58 of the General Statutes, except as provided in G.S. 66-443.

(2) A debt cancellation or debt suspension contract being offered pursuant to 12 C.F.R. Part 37, 12 C.F.R. Part 721, or any other federal law.

(b) Partial Exemption for Commercial Transactions. – G.S. 66-444, 66-446(c), and 66-447 are not applicable to a guaranteed asset protection waiver offered in connection with a lease or retail installment sale associated with a commercial transaction.

"**§ 66-442. Guaranteed asset protection waivers not subject to insurance laws.**

Guaranteed asset protection waivers are not insurance and are exempt from the provisions of Chapter 58 of the General Statutes, as are persons administering, marketing, selling, or offering to sell guaranteed asset protection waivers to borrowers.

"**§ 66-443. Insurance of guaranteed asset protection waivers.**

(a) Insurance for Creditors. – Creditors may insure guaranteed asset protection waiver obligations under a contractual liability policy or other similar policy issued by an insurer but shall not be required to do so.

(b) Required Terms. – Contractual liability or other insurance policies insuring guaranteed asset protection waivers shall include terms that do all of the following:

(1) Obligate the insurer to reimburse or pay to the creditor any sums the creditor is legally obligated to waive under guaranteed asset protection waivers issued by the creditor and purchased or held by the borrower.

(2) Provide that the policy covers any subsequent assignee upon the assignment, sale, or transfer of the vehicle finance agreement.

(3) Provide that the policy remains in effect unless cancelled or terminated in compliance with applicable insurance laws of this State.

(4) Provide that the cancellation or termination of policy shall not reduce the insurer's responsibility for guaranteed asset protection waivers issued by the creditor prior to the date of cancellation or termination and for which premiums have been received by the insurer.

(c) Administrators May Procure Insurance. – An insurance policy obtained pursuant to this section may be directly obtained by a creditor or may be procured by an administrator to cover the creditor's obligations.

"**§ 66-444. Mandatory terms.**

A guaranteed asset protection waiver shall include all of the following written terms in clear, easily understandable language:

(1) The name and address of the initial creditor and the borrower at the time of sale and the identity of any administrator if different from the creditor.

(2) The purchase price and the terms of the guaranteed asset protection waiver, including without limitation, the requirements for protection, conditions, or exclusions associated with the guaranteed asset protection waiver.

(3) The length of the free look period, which shall be at least 30 days, and the procedure by which a borrower may exercise the borrower's rights during that period.

(4) The terms required by G.S. 66-445.

(5) The methodology for calculating any refund of the unearned purchase price of the guaranteed asset protection waiver due in the event of cancellation of the guaranteed asset protection waiver or early termination of the vehicle finance agreement.

(6) The procedure the borrower must follow, if any, to obtain guaranteed asset protection waiver benefits under the terms and conditions of the waiver, including a telephone number and address where the borrower may apply for waiver benefits.

(7) A statement that neither the extension of credit, the terms of the credit, nor the terms of the related vehicle sale or lease may be conditioned upon the purchase of the guaranteed asset protection waiver.

"**§ 66-445. Cancellation.**

(a) Cancellation During Free Look Period. – A guaranteed asset protection waiver shall include a term stating that if a borrower cancels the waiver within the free look period, the borrower will be entitled to a full refund so long as no benefits have been provided under the guaranteed asset protection waiver.

(b) Cancellation After the Free Look Period. – A guaranteed asset protection waiver may be either cancellable or noncancellable after the free look period. A guaranteed asset protection waiver shall include the following terms regarding cancellation after the free look period:

(1) A statement of whether or not the guaranteed asset protection waiver is cancellable or noncancellable after the expiration of the free look period.

(2) If the waiver is cancellable, all of the following terms:

a. A statement that in the event of a borrower's cancellation of the guaranteed asset protection waiver or early termination of the vehicle finance agreement, the borrower may be entitled to a refund of any unearned portion of the purchase price of the waiver unless the waiver provides otherwise.

b. The procedures by which a borrower may cancel the waiver. This term shall include a requirement that in the event the underlying vehicle finance agreement is terminated, cancellation shall be made by providing a written request to the creditor, administrator, or other party within 90 days of the event terminating the vehicle finance agreement.

(c) Cancellation in the Event of Default. – Any cancellation refund under subsections (a) and (b) of this section may be applied by the creditor as a reduction of the amount owed under the vehicle finance agreement unless the borrower can show that the vehicle finance agreement has been paid in full. A guaranteed asset protection waiver shall include a term stating that notwithstanding subsections (a) and (b) of this section, if cancellation of the waiver occurs as a result of a default under the vehicle finance agreement or the repossession of the vehicle associated with the vehicle finance agreement or any other termination of the vehicle finance agreement, any refund due may be paid directly to the creditor or administrator and applied as set forth in this subsection.

"**§ 66-446. Miscellaneous provisions.**

(a) Article Controls. – The offering and sale of guaranteed asset protection waivers in this State shall be subject to the provisions of this Article.

(b) Manner of Payment. – Guaranteed asset protection waivers may, at the option of the creditor, be sold for a single payment or may be offered with a monthly or periodic payment option.

(c) Compliance with Truth in Lending Act. – Notwithstanding any other provision of law, any cost to the borrower for a guaranteed asset protection waiver subject to the Truth in

Lending Act (15 U.S.C. § 1601, et seq.) and its implementing regulations, as they may be amended from time to time, shall be separately stated and is not to be considered a finance charge or interest.

(d) Preservation Upon Transfer. – A guaranteed asset protection waiver shall remain a part of the vehicle finance agreement upon its assignment, sale, or transfer by a creditor.

(e) Cannot Be Required. – Neither the extension of credit, the term of credit, nor the term of a related vehicle sale or lease may be conditioned upon the purchase of a guaranteed asset protection waiver.

(f) Forwarding of Proceeds. – A creditor that offers a guaranteed asset protection waiver shall report the sale of, and forward funds received on all such waivers to the designated party, if any, as prescribed in any applicable administrative services agreement, contractual liability policy, other insurance policy, or other specified program documents.

(g) Fiduciary Duty. – Funds received or held by a creditor or administrator and belonging to an insurer, creditor, or administrator, pursuant to the terms of a written agreement, shall be held by the creditor or administrator in a fiduciary capacity.

"**§ 66-447. Enforcement.**

The Attorney General may take action which is necessary or appropriate to enforce the provisions of this Article and to protect guaranteed asset protection waiver holders in this State. After proper notice and opportunity for hearing, the Attorney General may:

(1) Order a creditor, administrator, or any other person not in compliance with this Article to cease and desist from further guaranteed asset protection waiver-related operations which are in violation of this Article.

(2) Impose a penalty of not more than five hundred dollars ($500.00) per violation and no more than ten thousand dollars ($10,000) in the aggregate for all violations of a similar nature. For purposes of this Article, violations are of a similar nature if the violation consists of the same or similar course of conduct, action, or practice, irrespective of the number of times the conduct or practice that is determined to be a violation of the Article occurred.

"**§ 66-448. Severability.**

If any provision of this Article or the application of the provision to any person or circumstances is held invalid, the remainder of the Article and the application of the provision to persons or circumstances other than those as to which it is held invalid shall not be affected."

SECTION 2. This act becomes effective October 1, 2013.

SENATE BILL 358:
Guaranteed Asset Protection Waivers

2013-2014 General Assembly

Committee:	Senate Commerce	**Date:**	April 8, 2013
Introduced by:	Sens. Meredith, Newton, Ford	**Prepared by:**	Peter Ledford Committee Counsel
Analysis of:	PCS to Second Edition S358-CSTP-11		

SUMMARY: ***Senate Bill 358 would regulate the issuance of guaranteed asset protection (GAP) waivers in North Carolina.***

The PCS clarifies that the definition of a creditor includes a vehicle dealer that arranges financing for a purchaser of a vehicle.

CURRENT LAW: Guaranteed asset protection (GAP) waivers are offered to persons financing the purchase of a vehicle for an additional fee. They are designed to cover the "gap" between what the person's insurance will pay if damage to the vehicle is a total loss and what the person may still owe to a creditor.

GAP waivers are currently issued in North Carolina, but are not regulated.

BILL ANALYSIS:

Senate Bill 358 would enact a new Article 46 in Chapter 66 of the General Statutes to regulate GAP waivers.

Included in the regulations are:

- Required disclosures to the borrower
- A "free look period" during which the borrower can cancel the GAP waiver without penalty or cost.
- Provisions governing cancellation of the GAP waiver and the processing of any refund.
- Enforcement by the Attorney General and fines for violations.

Similar legislation has been passed in Georgia, Tennessee, Michigan, Washington, Nebraska, Utah, and Texas.

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

Susan Sitze, counsel to Senate Judiciary I, substantially contributed to this summary.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

SENATE BILL 470

Short Title:	No Beer/Wine if Permit Revoked or Suspended.	(Public)
Sponsors:	Senators Wade, Gunn (Primary Sponsors); Brock, Meredith, Pate, and Woodard.	
Referred to:	Commerce.	

March 28, 2013

A BILL TO BE ENTITLED

AN ACT TO PROHIBIT THE CONSUMPTION OF MALT BEVERAGES OR UNFORTIFIED WINE ON THE PREMISES OF ANY BUSINESS DURING THE PERIOD OF TIME WHERE ANY ON-PREMISES PERMIT ISSUED TO THE OWNER OF THE BUSINESS AUTHORIZING THE SALE AND CONSUMPTION OF MALT BEVERAGES OR UNFORTIFIED WINE IS SUSPENDED OR REVOKED BY THE ALCOHOLIC BEVERAGE CONTROL COMMISSION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 18B-300 is amended by adding a new subsection to read:

"(a1) Consumption on Premises During Time of Permit Revocation or Suspension. – It shall be unlawful to consume, or for an owner or his agent or employee to allow the consumption of, malt beverages or unfortified wine on the premises of any business during the period of time that any on-premises permit issued to the owner of the business authorizing the sale and consumption of malt beverages or unfortified wine has been suspended or revoked by the Commission."

SECTION 2. This act becomes effective December 1, 2013, and applies to offenses committed on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

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SENATE BILL 470
PROPOSED COMMITTEE SUBSTITUTE S470-CSSU-12 [v.1]

4/8/2013 5:17:31 PM

Short Title: No Beer/Wine if Permit Revoked or Suspended. (Public)

Sponsors:

Referred to:

March 28, 2013

A BILL TO BE ENTITLED

AN ACT TO PROHIBIT THE CONSUMPTION OF MALT BEVERAGES OR UNFORTIFIED WINE ON THE PREMISES OF ANY BUSINESS DURING THE PERIOD OF TIME WHERE ANY ON-PREMISES PERMIT ISSUED TO THE BUSINESS AUTHORIZING THE SALE AND CONSUMPTION OF MALT BEVERAGES OR UNFORTIFIED WINE IS SUSPENDED OR REVOKED BY THE ALCOHOLIC BEVERAGE CONTROL COMMISSION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 18B-300 is amended by adding a new subsection to read:

"(a1) Consumption on Premises During Time of Permit Revocation or Suspension. – It shall be unlawful to consume, or for a permittee or his agent or employee to allow the consumption of, malt beverages or unfortified wine on the premises of any business during the period of time that any on-premises permit issued to the business authorizing the sale and consumption of malt beverages or unfortified wine has been suspended or revoked by the Commission."

SECTION 2. This act becomes effective December 1, 2013, and applies to offenses committed on or after that date.

SENATE BILL 470:
No Beer/Wine if Permit Revoked or Suspended

2013-2014 General Assembly

Committee:	Senate Commerce	**Date:**	April 9, 2013
Introduced by:	Sens. Wade, Gunn	**Prepared by:**	Wendy Graf Ray Committee Counsel
Analysis of:	PCS to First Edition S470-CSSU-12		

SUMMARY: The Proposed Committee Substitute for Senate Bill 470 would prohibit the consumption of malt beverages or unfortified wine on the premises of any business that has had its on-premises permit suspended or revoked.

CURRENT LAW: G.S. 18B-300(a) generally allows the consumption of malt beverages and unfortified wine by individuals age 21 or older for their own use without restriction, unless it is specifically prohibited under Chapter 18B. A business must obtain a permit from the ABC Commission in order to sell malt beverages or unfortified wine for consumption on the premises of the business. For any violation of the ABC laws, the Commission is authorized to suspend or revoke an on-premises permit. However, there is no specific statute that would then prohibit individuals from consuming malt beverages or unfortified wine on the premises of the business that has had its permit suspended or revoked.

BILL ANALYSIS: The PCS for Senate Bill 470 would prohibit the consumption of malt beverages or unfortified wine on the premises of a business that has had its on-premises permit authorizing the sale of malt beverages or unfortified wine suspended or revoked by the ABC Commission. The prohibition would apply for the time period during which the permit is suspended or revoked.

EFFECTIVE DATE: The act would become effective December 1, 2013, and would apply to offenses committed on or after that date.

SENATE BILL 635

Short Title:	Transmission Line Ownership.	(Public)
Sponsors:	Senator Newton (Primary Sponsor).	
Referred to:	Commerce.	

April 4, 2013

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THAT ONLY INCUMBENT PROVIDERS MAY CONSTRUCT A NEW ELECTRICITY TRANSMISSION LINE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 62-100 reads as rewritten:

"**§ 62-100. Definitions.**

As used in this Article:

(1) The term "begin to construct" includes any clearing of land, excavation, or other action that would adversely affect the natural environment of the route of a transmission line; but that term does not include land surveys, boring to ascertain geological conditions, or similar preliminary work undertaken to determine the suitability of proposed routes for a transmission line that results in temporary changes to the ~~land;~~ land.

(2) The word "county" means any one of the counties listed in ~~G.S. 153A-10;~~ G.S. 153A-10.

(3) The word "land" means any real estate or any estate or interest in real estate, including water and riparian rights, regardless of the use to which it is ~~devoted;~~ devoted.

(4) The word "lines" means distribution lines and transmission lines ~~collectively;~~ collectively.

(5) The word "municipality" means any incorporated community, whether designated as a city, town, or village and any area over which it exercises any of the powers granted by Article 19 of Chapter 160A of the General ~~Statutes;~~ Statutes.

(6) The term "public utility" means any of the following:

a. A public utility, as defined in G.S. 62-3(23).

b. An electric membership cooperative.

c. A joint municipal power agency.

d. A city or county that is ~~a person, whether organized under the laws of this State or under the laws of any other state or country,~~ engaged in producing, generating, transmitting, delivering, or furnishing electricity for private or public use. ~~use, including counties, municipalities, joint municipal power agencies, electric membership corporations, and public and private corporations; and~~

(7) The term "transmission line" means an electric line designed with a capacity of at least 161 kilovolts."

SECTION 2. G.S. 62-101(a) reads as rewritten:

"(a) No public utility or any other person may begin to construct a new transmission line without first obtaining from the Commission a certificate of environmental compatibility and public convenience and necessity. Only a public utility, as defined in this Article, may obtain a certificate to construct a new transmission line."

SECTION 3. This act is effective when it becomes law and applies to certificates of environmental capability and public convenience and necessity issued on or after that date.

SENATE BILL 635:
Transmission Line Ownership

2013-2014 General Assembly

Committee:	Senate Commerce	**Date:**	April 5, 2013
Introduced by:	Sen. Newton	**Prepared by:**	Peter Ledford
Analysis of:	First Edition		Committee Counsel

SUMMARY: ***Senate Bill 635 would require that only a public utility may obtain a certificate to construct a new electricity transmission line.***

CURRENT LAW: Before constructing a new electricity transmission line with a capacity of at least 161 kilovolts, a person or public utility must obtain a certificate of environmental capability and public convenience and necessity from the North Carolina Utilities Commission ("Commission"). As used in this Article, public utilities include any person engaged in producing, generating, transmitting, delivering, or furnishing electricity for public or private use, including counties, municipalities, joint municipal power agencies, electric membership corporations, and public and private corporations.

BILL ANALYSIS: Senate Bill 635 would provide that only a public utility may obtain a certificate to construct a new transmission line from the Commission. The bill amends the definition of public utilities for this Article to include only public utilities as defined in G.S. 62-3(23) (typically, only investor-owned utilities), electric membership cooperatives, joint municipal power agencies, and cities or counties engaged in furnishing electricity for public or private use. This definition eliminates public and private corporations that do not qualify as a public utility under G.S. 62-3(23).

EFFECTIVE DATE: This act is effective when it becomes law, and applies to certificates of environmental capability and public convenience and necessity issued on or after that date.

BACKGROUND: On July 21, 2011, the Federal Energy Regulatory Commission ("FERC") issued an order[1] which required public utility electric transmission service providers to establish criteria and procedures for considering regional transmission projects that would be sponsored, built, and owned by non-incumbent transmission owners, if state law allows for such owners. Non-incumbent transmission owners are persons who own electricity transmission lines but do not serve retail customers as a public utility. The Commission investigated the implications of FERC's order and issued a report[2] identifying risks posed to the State's electricity consumers by non-incumbent transmission owners and recommending the General Assembly to pursue statutory changes. Specifically, the Commission found that:

- There is a risk that the State's electric customers would pay more for a transmission line because the return on equity would be set by FERC, which typically sets higher rates, and not the Commission.
- There is a risk that non-incumbent transmission owners would abandon a transmission line because they would not be subject to the State's obligation to serve law.
- There is a risk that a non-incumbent transmission owner would build a substandard or unreliable transmission line because a non-incumbent transmission owner would not be

[1] FERC Order No. 1000.
[2] Docket No. E-100, Sub 132.

subject to G.S. 62-42, which gives the Commission the authority to compel a public utility to upgrade its facilities if necessary to provide reliable service.

- There is a risk that system restoration would be delayed during a widespread grid outage or system emergency while a public utility coordinated with a non-incumbent transmission owner.
- There is a risk that the FERC order will encourage non-incumbent transmission owners to construct transmission lines in North Carolina, thereby increasing the occurrence of the other risks.

VISITOR REGISTRATION SHEET

Senate **COMMERCE** Committee — April 9, 2013

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DEBBIE LOWN

NAME	FIRM OR AGENCY AND ADDRESS
Bruce Kepley	Self
Jim Lors	self
[illegible]	[illegible]
David T. Hawks	Self
Sharon Segner	LS Power
Charlotte M. Mitchell	LSPOWER
Tom Beam	NCSEA
Tim Hickman	NC DMV
Antoinette Wike	Public Staff - NCUC
Dan Conrad	NCUC
John McMillan	MF&C

VISITOR REGISTRATION SHEET

Senate **COMMERCE** Committee — April 9, 2013

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DEBBIE LOWN

NAME	FIRM OR AGENCY AND ADDRESS
Mia Bailey	ElectriCities
Drew Sounders	" " "
Jim KENT	NC Beer & Wine
Patrick Buffkin	NC Assn Electric Cooperatives
Sharon Miller	CUCA
[signature]	SOS
DAVID BARNES	ElectriCities
Katherine Ross	PPAB
David Ferrell	ISANC
Kelli Kulcyna	Duke Energy
Beth Young	FPLC

VISITOR REGISTRATION SHEET

Senate **COMMERCE** Committee — April 9, 2013

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DEBBIE LOWN

NAME	FIRM OR AGENCY AND ADDRESS
	NCAOA
	N.C.B.A.
	NCJC
	PS, NCUC
J GOODMAN	NC CHAMBER
Jennifer Willis	UNC-CH

VISITOR REGISTRATION SHEET

Senate **COMMERCE** Committee — April 9, 2013

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DEBBIE LOWN

NAME	FIRM OR AGENCY AND ADDRESS
Amanda Hrabe	Traeman Sanders
Susanna Davis	WM
Paul Hoglund	Inform
Kay Emanuel	School of Government
SHAWN A GAITHER	CORVETTES INTERNATIONAL
DENNIS W. DEBORD	CORVETTES INTERNATIONAL
WESLEY J. SCHROM	NATIONAL CORVETTE RESTORERS SOCIETY
Peter Harkins	MWC
Canaan Hunt	MVA
TJ Bugbee	NP
Will Grantham	MVL

VISITOR REGISTRATION SHEET

Senate **COMMERCE** Committee — April 9, 2013

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DEBBIE LOWN

NAME	FIRM OR AGENCY AND ADDRESS
Rose Williams	NCDOT
[signature]	NMRS
Dustin Hall	Sen. Brown
Brandon Reed	NCAEC
Ken Kinion	Springleaf Financial
[signature]	SEANC
[signature]	NC Chamber
[signature]	[illegible]
[signature]	Citi
[signature]	NCBS & NCPRR
Bruce Thompson	Parker Poe

VISITOR REGISTRATION SHEET

Senate **COMMERCE** Committee — April 9, 2013

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DEBBIE LOWN

NAME	FIRM OR AGENCY AND ADDRESS
Ha Nguyen	NCCOR
Eric H. Bennett	EHI
Buck Dostal	UNC Charlotte
Gary Salamido	NC Chamber
Michelle Frazier	MF+S
AB Swell	Brooks Pierce
Julia Robinson	NCSEA
Jeff Kelly	NMRS

Senate Committee on Commerce
Tuesday, April 16, 2013, 11:00 AM
1027/1128 Legislative Building

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

BILL NO.	SHORT TITLE	SPONSOR
SB 520	WC/Record Full IC Hearings	Senator Daniel
SB 430	Clarify Electric Load Control Process.	Senator Brown
SB 547	Energy Savings Contracting Amendments.	Senator Hunt
SB 635	Transmission Line Ownership.	Senator Newton
SB 378	Assess Propane Dealers/Distributors.	Senator Jackson Senator Rabin Senator Walters

Senate Committee on Commerce
Tuesday, April 16, 2013 at 11:00 AM
Room 1027/1128 of the Legislative Building

MINUTES

The Senate Committee on Commerce met at 11:00 AM on April 16, 2013 in Room 1027/1128 of the Legislative Building. Twenty members were present.

Senator Wesley Meredith, Chair, presided.

Maranda Judd from Holly Springs, Tresten Farrington from Holly Springs, Cole Hartsell from Winston Salem, Karen Metts from Trenton and Candace Brown from Raleigh served as pages.

S. B. 520 WC/Record Full IC Hearings

Senator J. Davis moved to adopt the proposed committee substitute (PCS) to the committee for discussion and it was carried. The PCS for Senate Bill 520 would require that all hearings of the full Industrial Commission be recorded, unless waived by consent of the parties. Senator Daniel was introduced to speak on the bill. Senator McKissick moved – unfavorable to the bill – favorable to the PCS and the motion carried.

S. B. 430 Clarify Electric Load Control Process

Senator Sanderson moved to adopt the proposed committee substitute (PCS) to the committee for discussion and it was carried. Senate Bill 430 would exempt an installer of an electric load control switch who works for a public utility, electric membership corporation, or municipal service provider from needing an electrical contractor's license, so long as the work is overseen by a licensed electrical contractor, and exempt the installation, maintenance, or replacement of an electric load control switch by such a person from requiring a building permit. The PCS makes technical and clarifying changes to Section 1. Senator Brown was introduced and brought forth an amendment. Senator Jenkins moved to accept the amendment and it carried. After discussion, Senator Stein moved – unfavorable to the bill – favorable to the PCS as amended and the motion carried.

S. B. 378 Assess Propane Dealers/Distributors

Senator Brown moved to adopt the proposed committee substitute (PCS) to the committee for discussion and it was carried. Senate Bill 378 would authorize the North Carolina Propane Education & Research Foundation, a North Carolina nonprofit corporation serving the propane gas industry, to assess propane at a rate of two tenths of a cent per gallon in order to raise funds for the purposes of promoting the common good, welfare, and advancement of the propane industry. The PCS makes various technical corrections. Senator Jackson was introduced to speak on the bill. Jon Carr an attorney with Jordan Price Wall Gray Jones and

Carlton also spoke. Senator Jenkins moved – unfavorable to the bill – favorable to the PCS and it carried.

S. B. 547 Energy Savings Contracting

Senator Newton moved to adopt the proposed committee substitute (PCS) to the committee for discussion and it was carried. Senator Hunt was introduced to speak on the bill. Senate Bill 547 would make several changes to the law governing guaranteed energy savings contracts to provide additional flexibility and efficiency for governmental units wishing to enter into these contracts. It would also limit the self-performance of an energy conservation measure by a constituent institution of the UNC system to a project currently being piloted by NCSU. Senator Hunt presented and amendment and Senator Newton moved to accept the amendment and it carried. Tim Gasper with TRANE spoke regarding the bill. Trina Griffin an attorney from the Research Division assisted with questions. Senator moved – unfavorable to the bill – favorable to the PCS as amended and it carried.

S. B. 635 Transmission Line Ownership

Senator Newton was introduced to speak on the bill. Senate Bill 635 would require that only a public utility may obtain a certificate to construct a new electricity transmission line. Charlotte Mitchel representing LS Power also comments. After discussion Senator Tucker moved for a favorable report and it carried.

The meeting adjourned at 11:50 AM.

W. A. Meredith

Senator Wesley Meredith, Chair
Presiding

Debbie Lown

Debbie Lown, Committee Clerk

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

COMMERCE COMMITTEE REPORT
Senator Gunn, Co-Chair
Senator Meredith, Co-Chair

Tuesday, April 16, 2013

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

FAVORABLE

SB **635** Transmission Line Ownership.

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

TOTAL REPORTED: 1

Senator Wesley Meredith will handle SB 635

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

COMMERCE COMMITTEE REPORT
Senator Gunn, Co-Chair
Senator Meredith, Co-Chair

Tuesday, April 16, 2013

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

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

SB **378** Assess Propane Dealers/Distributors.

Draft Number:	S378-PCS75281-TP-14
Sequential Referral:	Finance
Recommended Referral:	None
Long Title Amended:	No

SB **547** Energy Savings Contracting Amendments.

Draft Number:	S547-PCS75282-SV-13
Sequential Referral:	Finance
Recommended Referral:	None
Long Title Amended:	No

TOTAL REPORTED: 2

Senator Wesley Meredith will handle SB 378
Senator Wesley Meredith will handle SB 547

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

COMMERCE COMMITTEE REPORT
Senator Gunn, Co-Chair
Senator Meredith, Co-Chair

Wednesday, April 17, 2013

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

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

SB **520** WC/Record Full IC Hearings.

Draft Number:	S520-PCS35320-SU-15
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

TOTAL REPORTED: 1

Senator Wesley Meredith will handle SB 520

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

COMMERCE COMMITTEE REPORT
Senator Gunn, Co-Chair
Senator Meredith, Co-Chair

Wednesday, April 17, 2013

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

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

SB **430** Clarify Electric Load Control Process.

Draft Number:	S430-PCS75286-TP-15
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

TOTAL REPORTED: 1

Senator Wesley Meredith will handle SB 430

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

S 1

SENATE BILL 520

Short Title:	WC/Record Full IC Hearings.	(Public)
Sponsors:	Senator Daniel (Primary Sponsor).	
Referred to:	Rules and Operations of the Senate.	

April 1, 2013

A BILL TO BE ENTITLED

AN ACT TO REQUIRE THAT HEARINGS OF THE INDUSTRIAL COMMISSION ARE RECORDED.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 97-84 reads as rewritten:

"**§ 97-84. Determination of disputes by Commission or deputy.**

(a) The Commission or any of its members shall hear the parties at issue and their representatives and witnesses, and shall determine the dispute in a summary manner. The Commission shall decide the case and issue findings of fact based upon the preponderance of the evidence in view of the entire record. The award, together with a statement of the findings of fact, rulings of law, and other matters pertinent to the questions at issue shall be filed with the record of the proceedings, within 180 days of the close of the hearing record unless time is extended for good cause by the Commission, and a copy of the award shall immediately be sent to the parties in dispute. The parties may be heard by a deputy, in which event the hearing shall be conducted in the same way and manner prescribed for hearings which are conducted by a member of the Industrial Commission, and said deputy shall proceed to a complete determination of the matters in dispute, file his written opinion within 180 days of the close of the hearing record unless time is extended for good cause by the Commission, and the deputy shall cause to be issued an award pursuant to such determination.

(b) Unless waived by consent of the parties, all hearings of the Commission sitting in full shall be recorded. Court reporters, transcription personnel, or electronic or other mechanical devices may be utilized. If an electronic or other mechanical device is utilized, it shall be the duty of some person designated by the Commission to operate the device while a hearing is in progress, and the recording shall be preserved and may be transcribed, as required. If stenotype, shorthand, or stenomask equipment is used, the original tapes, notes, discs, or other records are the property of the State, and the Commission shall keep them in its custody. The compensation and allowances of reporters shall be fixed by the Commission, in a manner that is consistent with policies set by the Administrative Officer of the Courts for the General Court of Justice."

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

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

S D

SENATE BILL 520
PROPOSED COMMITTEE SUBSTITUTE S520-CSSU-15 [v.1]

4/15/2013 8:02:34 PM

Short Title: WC/Record Full IC Hearings. (Public)

Sponsors:

Referred to:

April 1, 2013

A BILL TO BE ENTITLED

AN ACT TO REQUIRE THAT HEARINGS OF THE INDUSTRIAL COMMISSION ARE RECORDED.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 97-85 reads as rewritten:

"**§ 97-85. Review of award.**

(a) If application is made to the Commission within 15 days from the date when notice of the award shall have been given, the full Commission shall review the award, and, if good ground be shown therefor, reconsider the evidence, receive further evidence, rehear the parties or their representatives, and, if proper, amend the award: Provided, however, when application is made for review of an award, and such an award has been heard and determined by a commissioner of the North Carolina Industrial Commission, the commissioner who heard and determined the dispute in the first instance, as specified by G.S. 97-84, shall be disqualified from sitting with the full Commission on the review of such award, and the chairman of the Industrial Commission shall designate a deputy commissioner to take such commissioner's place in the review of the particular award. The deputy commissioner so designated, along with the two other commissioners, shall compose the full Commission upon review. Provided further, the chairman of the Industrial Commission shall have the authority to designate a deputy commissioner to take the place of a commissioner on the review of any case, in which event the deputy commissioner so designated shall have the same authority and duty as does the commissioner whose place he occupies on such review.

(b) Unless waived by consent of the parties, all hearings of the full Commission shall be recorded. Court reporters, transcription personnel, or electronic or other mechanical devices may be utilized. If an electronic or other mechanical device is utilized, it shall be the duty of some person designated by the Commission to operate the device while a hearing is in progress, and the recording shall be preserved and may be transcribed, as required. If stenotype, shorthand, or stenomask equipment is used, the original tapes, notes, discs, or other records are the property of the State, and the Commission shall keep them in its custody. The compensation and allowances of reporters shall be fixed by the Commission, in a manner that is consistent with policies set by the Administrative Officer of the Courts for the General Court of Justice."

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

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2013 Session 2013

Legislative Fiscal Note

BILL NUMBER: Senate Bill 520 (First Edition)

SHORT TITLE: WC/Record Full IC Hearings.

SPONSOR(S): Senator Daniel

FISCAL IMPACT

☑ Yes ☐ No ☐ No Estimate Available

State Impact	FY 2013-14	FY 2014-15	FY 2015-16	FY 2016-17	FY 2017-18
General Fund Expenditures	$ 36,216 to $42,252	$ 36,216 to $42,252	$ 36,216 to $42,252	$ 36,216 to $42,252	$ 36,216 to $42,252
NET STATE IMPACT	($36,216) to ($42,252)	($36,216) to ($42,252)	($36,216) to ($42,252)	($36,216) to ($42,252)	($36,216) to ($42,252)

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: NC Industrial Commission

EFFECTIVE DATE: When bill becomes law.

TECHNICAL CONSIDERATIONS:
None

BILL SUMMARY:

Senate Bill 520 amends GS 97-84 to require the recording of all Industrial Commission Full Commission hearings, unless waived by consent of all parties. Provides for the making of the recording and the preservation and custody of the recordings depending on the type of electronic or mechanical device used to make the recording.

ASSUMPTIONS AND METHODOLOGY:

- **The Industrial Commission estimates that requiring Full Commission hearings to be recorded will necessitate an additional six to seven days per month of court reporting services, or between 72 and 84 days per year.** This estimate is based on the Full Commission's current hearing schedule.

- **The average cost of court reporting services is $503 per day.** This estimate is based on the Industrial Commission's current court reporting services contract. The winning contractor provided a "lump sum" cost proposal that took into account full and half day trial metrics as provided in the Industrial Commission's Request for Proposals.

- **The Industrial Commission estimates that this legislation would not require additional storage costs.** The Industrial Commission anticipates this activity being incorporated into its current data storage costs.

Net State Impact

The net impact to the State is estimated to be between $36,216 ($503 cost/day * 72 days) and $42,252 ($503 cost/day * 84 days) on an annual basis. Actual costs will be based upon contract renegotiation; if current vendor is unable to accommodate increased services, the Industrial Commission will have to issue a new Request for Proposals.

SOURCES OF DATA: Industrial Commission

TECHNICAL CONSIDERATIONS: None

FISCAL RESEARCH DIVISION: (919) 733-4910

PREPARED BY: Aubrey Incorvaia

APPROVED BY: Mark Trogdon, Director
Fiscal Research Division

DATE: April 15, 2013

Signed Copy Located in the NCGA Principal Clerk's Offices

SENATE BILL 520:
WC/Record Full IC Hearings

2013-2014 General Assembly

Committee:	Senate Commerce	**Date:**	April 16, 2013
Introduced by:	Sen. Daniel	**Prepared by:**	Wendy Graf Ray
Analysis of:	PCS to First Edition S520-CSSU-15		Committee Counsel

SUMMARY: The Proposed Committee Substitute for Senate Bill 520 would require that all hearings of the full Industrial Commission be recorded, unless waived by consent of the parties.

The PCS makes technical changes to the bill.

CURRENT LAW: Under the North Carolina Workers' Compensation Act, the Industrial Commission has the authority to hear disputes and make determinations of awards. G.S. 97-84 provides that the parties may be heard by deputies. Typically, deputy commissioners travel around the State to conduct these hearings, gathering evidence and taking testimony. Pursuant to G.S. 97-79(d), hearings are stenographically reported. The Commission is responsible for providing by regulation for the preparation of a record of the hearings and other proceedings. Under G.S. 97-85, the full Commission is required to review determinations of award if application is made for review within 15 days of the date of notice of award.

BILL ANALYSIS: The PCS for Senate Bill 520 would require that all hearings of the full Commission (i.e. reviews of award, pursuant to G.S. 97-85) be recorded, unless waived by consent of the parties. The Commission would be responsible for operating any electronic or mechanical device used for recording, and for preserving the records. Compensation for reporters would be fixed by the Commission, in a manner consistent with policies developed by AOC for the General Courts of Justice.

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

SENATE BILL 430

Short Title:	Clarify Electric Load Control Process.	(Public)
Sponsors:	Senator Brown (Primary Sponsor).	
Referred to:	Commerce.	

March 27, 2013

A BILL TO BE ENTITLED

AN ACT TO EXEMPT FROM PERMITTING REQUIREMENTS PERSONS INSTALLING ELECTRIC LOAD CONTROL SWITCHES UNDER THE LAWS REGULATING ELECTRICAL CONTRACTORS AND TO MAKE CONFORMING CHANGES UNDER THE LAWS PERTAINING TO BUILDING INSPECTION PERMITS FOR COUNTIES AND CITIES.

The General Assembly of North Carolina enacts:

SECTION 1. 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:

...

(8) To the installation, maintenance, or replacement of any modification, device, or equipment by a public utility, electric membership corporation, or municipal electric service provider or a business contracted by the public utility, electric membership corporation, or municipal service provider, so long as the work is subject to oversight by an electrical contractor licensed under this Article. The public utility, electric membership corporation, or municipal electric service provider shall provide service in accordance with (i) an activity or program ordered, authorized, or approved by the North Carolina Utilities Commission pursuant to G.S. 62-133.8 or (ii) a similar program undertaken by a municipal electric service provider, whether the installation, modification, or replacement is made before or after the point of delivery of electric service to the customer. The exemption under this subdivision applies to all existing installations."

SECTION 2. G.S. 153A-357(a) reads as rewritten:

"(a) No person may commence or proceed with any of the following without first securing from the inspection department with jurisdiction over the site of the work each permit required by the State Building Code and any other State or local law or local ordinance or regulation applicable to the work:

(1) The construction, reconstruction, alteration, repair, movement to another site, removal, or demolition of any building.

(2) The installation, extension, or general repair of any plumbing system except that in any one- or two-family dwelling unit a permit shall not be required for the connection of a water heater that is being replaced, provided that the work is performed by a person licensed under G.S. 87-21, who personally

examines the work at completion and ensures that a leak test has been performed on the gas piping, and provided the energy use rate or thermal input is not greater than that of the water heater which is being replaced, there is no change in fuel, energy source, location, capacity, or routing or sizing of venting and piping, and the replacement is installed in accordance with the current edition of the State Building Code.

(3) The installation, extension, alteration, or general repair of any heating or cooling equipment system.

(4) The installation, extension, alteration, or general repair of any electrical wiring, devices, appliances, or equipment except that in any one- or two-family dwelling unit a permit shall not be required for repair or replacement of electrical lighting fixtures or devices, such as receptacles and lighting switches, or for the connection of an existing branch circuit to an electric water heater that is being replaced, provided that all of the following requirements are met:

a. With respect to electric water heaters, the replacement water heater is placed in the same location and is of the same or less capacity and electrical rating as the original.

b. With respect to electrical lighting fixtures and devices, the replacement is with a fixture or device having the same voltage and the same or less amperage.

c. The work is performed by a person licensed under G.S. 87-43.

d. The repair or replacement installation meets the current edition of the State Building Code, including the State Electrical Code.

However, a permit is not required for the installation, maintenance, or replacement of any modification, device, or equipment by a public utility, electric membership corporation, or municipal electric service provider or a business contracted by the public utility, electric membership corporation, or municipal service provider, so long as the work is subject to oversight by an electrical contractor licensed under Article 4 of Chapter 87 of the General Statutes. The public utility, electric membership corporation, or municipal electric service provider shall provide service in accordance with (i) an activity or program ordered, authorized, or approved by the North Carolina Utilities Commission pursuant to G.S. 62-133.8 or (ii) a similar program undertaken by a municipal electric service provider, whether the installation, modification, or replacement is made before or after the point of delivery of electric service to the customer. The exemption applies to all existing installations.

(a1) A permit shall be in writing and shall contain a provision that the work done shall comply with the State Building Code and all other applicable State and local laws and local ordinances and regulations. Nothing in this section shall require a county to review and approve residential building plans submitted to the county pursuant to Section R-110 of Volume VII of the North Carolina State Building Code; provided that the county may review and approve such residential building plans as it deems necessary. No permit may be issued unless the plans and specifications are identified by the name and address of the author thereof; and if the General Statutes of North Carolina require that plans for certain types of work be prepared only by a registered architect or registered engineer, no permit may be issued unless the plans and specifications bear the North Carolina seal of a registered architect or of a registered engineer. If a provision of the General Statutes of North Carolina or of any ordinance requires that work be done by a licensed specialty contractor of any kind, no permit for the work may be issued unless the work is to be performed by such a duly licensed contractor. No permit issued under Articles 9 or 9C of G.S. Chapter 143 shall be required 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 size and capacity) or change in the design of plumbing; the addition, replacement or change in the design of heating, air conditioning, or electrical wiring, devices, appliances, 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. Violation of this section constitutes a Class 1 misdemeanor."

SECTION 3. G.S. 160A-417(a) reads as rewritten:

"(a) No person shall commence or proceed with any of the following without first securing from the inspection department with jurisdiction over the site of the work any and all permits required by the State Building Code and any other State or local laws applicable to the work:

(1) The construction, reconstruction, alteration, repair, movement to another site, removal, or demolition of any building or structure.

(2) The installation, extension, or general repair of any plumbing system except that in any one- or two-family dwelling unit a permit shall not be required for the connection of a water heater that is being replaced, provided that the work is performed by a person licensed under G.S. 87-21, who personally examines the work at completion and ensures that a leak test has been performed on the gas piping, and provided the energy use rate or thermal input is not greater than that of the water heater which is being replaced, there is no change in fuel, energy source, location, capacity, or routing or sizing of venting and piping, and the replacement is installed in accordance with the current edition of the State Building Code.

(3) The installation, extension, alteration, or general repair of any heating or cooling equipment system.

(4) The installation, extension, alteration, or general repair of any electrical wiring, devices, appliances, or equipment except that in any one- or two-family dwelling unit a permit shall not be required for repair or replacement of electrical lighting fixtures or devices, such as receptacles and lighting switches, or for the connection of an existing branch circuit to an electric water heater that is being replaced, provided that all of the following requirements are met:

a. With respect to electric water heaters, the replacement water heater is placed in the same location and is of the same or less capacity and electrical rating as the original.

b. With respect to electrical lighting fixtures and devices, the replacement is with a fixture or device having the same voltage and the same or less amperage.

c. The work is performed by a person licensed under G.S. 87-43.

d. The repair or replacement installation meets the current edition of the State Building Code, including the State Electrical Code.

However, a permit is not required for the installation, maintenance, or replacement of any modification, device, or equipment by a public utility, electric membership corporation, or municipal electric service provider or a business contracted by the public utility, electric membership corporation, or municipal service provider, so long as the work is subject to oversight by an electrical contractor licensed under Article 4 of Chapter 87 of the General Statutes. The public utility, electric membership corporation, or municipal electric service provider shall provide service in accordance with (i) an activity or program ordered, authorized, or approved by the North Carolina Utilities Commission pursuant to G.S. 62-133.8 or (ii) a similar program undertaken by a municipal electric provider, whether the installation,

modification, or replacement is made before or after the point of delivery of electric service to the customer. The exemption applies to all existing installations.

(a1) A permit shall be in writing and shall contain a provision that the work done shall comply with the State Building Code and all other applicable State and local laws. Nothing in this section shall require a city to review and approve residential building plans submitted to the city pursuant to Section R-110 of Volume VII of the North Carolina State Building Code; provided that the city may review and approve such residential building plans as it deems necessary. No permits shall be issued unless the plans and specifications are identified by the name and address of the author thereof, and if the General Statutes of North Carolina require that plans for certain types of work be prepared only by a registered architect or registered engineer, no permit shall be issued unless the plans and specifications bear the North Carolina seal of a registered architect or of a registered engineer. When any provision of the General Statutes of North Carolina or of any ordinance requires that work be done by a licensed specialty contractor of any kind, no permit for the work shall be issued unless the work is to be performed by such a duly licensed contractor. No permit issued under Articles 9 or 9C of Chapter 143 shall be required 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 size and capacity) or change in the design of plumbing; the addition, replacement or change in the design of heating, air conditioning, or electrical wiring, devices, appliances, 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. Violation of this section shall constitute a Class 1 misdemeanor."

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

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

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SENATE BILL 430
PROPOSED COMMITTEE SUBSTITUTE S430-CSTP-15 [v.2]

4/15/2013 5:47:05 PM

Short Title: Clarify Electric Load Control Process. (Public)

Sponsors:

Referred to:

March 27, 2013

A BILL TO BE ENTITLED

AN ACT TO EXEMPT FROM PERMITTING REQUIREMENTS PERSONS INSTALLING ELECTRIC LOAD CONTROL SWITCHES UNDER THE LAWS REGULATING ELECTRICAL CONTRACTORS AND TO MAKE CONFORMING CHANGES UNDER THE LAWS PERTAINING TO BUILDING INSPECTION PERMITS FOR COUNTIES AND CITIES.

The General Assembly of North Carolina enacts:

SECTION 1. 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:

...

(8) To the installation, maintenance, or replacement of any load control device or equipment by an electric power supplier, as defined in G.S. 62-133.8, or an electrical contractor contracted by the electric power supplier, so long as the work is subject to supervision by an electrical contractor licensed under this Article. The electric power supplier shall provide such installation, maintenance, or replacement in accordance with (i) an activity or program ordered, authorized, or approved by the North Carolina Utilities Commission pursuant to G.S. 62-133.8 or G.S. 62-133.9 or (ii) a similar program undertaken by a municipal electric service provider, whether the installation, modification, or replacement is made before or after the point of delivery of electric service to the customer. The exemption under this subdivision applies to all existing installations."

SECTION 2. G.S. 153A-357(a) reads as rewritten:

"(a) No person may commence or proceed with any of the following without first securing from the inspection department with jurisdiction over the site of the work each permit required by the State Building Code and any other State or local law or local ordinance or regulation applicable to the work:

(1) The construction, reconstruction, alteration, repair, movement to another site, removal, or demolition of any building.

(2) The installation, extension, or general repair of any plumbing system except that in any one- or two-family dwelling unit a permit shall not be required for the connection of a water heater that is being replaced, provided that the work is performed by a person licensed under G.S. 87-21, who personally examines the work at completion and ensures that a leak test has been

performed on the gas piping, and provided the energy use rate or thermal input is not greater than that of the water heater which is being replaced, there is no change in fuel, energy source, location, capacity, or routing or sizing of venting and piping, and the replacement is installed in accordance with the current edition of the State Building Code.

(3) The installation, extension, alteration, or general repair of any heating or cooling equipment system.

(4) The installation, extension, alteration, or general repair of any electrical wiring, devices, appliances, or equipment except that in any one- or two-family dwelling unit a permit shall not be required for repair or replacement of electrical lighting fixtures or devices, such as receptacles and lighting switches, or for the connection of an existing branch circuit to an electric water heater that is being replaced, provided that all of the following requirements are met:

a. With respect to electric water heaters, the replacement water heater is placed in the same location and is of the same or less capacity and electrical rating as the original.

b. With respect to electrical lighting fixtures and devices, the replacement is with a fixture or device having the same voltage and the same or less amperage.

c. The work is performed by a person licensed under G.S. 87-43.

d. The repair or replacement installation meets the current edition of the State Building Code, including the State Electrical Code.

However, a permit is not required for the installation, maintenance, or replacement of any modification, device, or equipment by a public utility, electric membership corporation, or municipal electric service provider or a business contracted by the public utility, electric membership corporation, or municipal service provider, so long as the work is subject to oversight by an electrical contractor licensed under Article 4 of Chapter 87 of the General Statutes. The public utility, electric membership corporation, or municipal electric service provider shall provide service in accordance with (i) an activity or program ordered, authorized, or approved by the North Carolina Utilities Commission pursuant to G.S. 62-133.8 or G.S. 62-133.8 or (ii) a similar program undertaken by a municipal electric service provider, whether the installation, modification, or replacement is made before or after the point of delivery of electric service to the customer. The exemption applies to all existing installations.

(a1) A permit shall be in writing and shall contain a provision that the work done shall comply with the State Building Code and all other applicable State and local laws and local ordinances and regulations. Nothing in this section shall require a county to review and approve residential building plans submitted to the county pursuant to Section R-110 of Volume VII of the North Carolina State Building Code; provided that the county may review and approve such residential building plans as it deems necessary. No permit may be issued unless the plans and specifications are identified by the name and address of the author thereof; and if the General Statutes of North Carolina require that plans for certain types of work be prepared only by a registered architect or registered engineer, no permit may be issued unless the plans and specifications bear the North Carolina seal of a registered architect or of a registered engineer. If a provision of the General Statutes of North Carolina or of any ordinance requires that work be done by a licensed specialty contractor of any kind, no permit for the work may be issued unless the work is to be performed by such a duly licensed contractor. No permit issued under Articles 9 or 9C of G.S. Chapter 143 shall be required 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 size and capacity) or change in

the design of plumbing; the addition, replacement or change in the design of heating, air conditioning, or electrical wiring, devices, appliances, 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. Violation of this section constitutes a Class 1 misdemeanor."

SECTION 3. G.S. 160A-417(a) reads as rewritten:

"(a) No person shall commence or proceed with any of the following without first securing from the inspection department with jurisdiction over the site of the work any and all permits required by the State Building Code and any other State or local laws applicable to the work:

(1) The construction, reconstruction, alteration, repair, movement to another site, removal, or demolition of any building or structure.

(2) The installation, extension, or general repair of any plumbing system except that in any one- or two-family dwelling unit a permit shall not be required for the connection of a water heater that is being replaced, provided that the work is performed by a person licensed under G.S. 87-21, who personally examines the work at completion and ensures that a leak test has been performed on the gas piping, and provided the energy use rate or thermal input is not greater than that of the water heater which is being replaced, there is no change in fuel, energy source, location, capacity, or routing or sizing of venting and piping, and the replacement is installed in accordance with the current edition of the State Building Code.

(3) The installation, extension, alteration, or general repair of any heating or cooling equipment system.

(4) The installation, extension, alteration, or general repair of any electrical wiring, devices, appliances, or equipment except that in any one- or two-family dwelling unit a permit shall not be required for repair or replacement of electrical lighting fixtures or devices, such as receptacles and lighting switches, or for the connection of an existing branch circuit to an electric water heater that is being replaced, provided that all of the following requirements are met:

a. With respect to electric water heaters, the replacement water heater is placed in the same location and is of the same or less capacity and electrical rating as the original.

b. With respect to electrical lighting fixtures and devices, the replacement is with a fixture or device having the same voltage and the same or less amperage.

c. The work is performed by a person licensed under G.S. 87-43.

d. The repair or replacement installation meets the current edition of the State Building Code, including the State Electrical Code.

However, a permit is not required for the installation, maintenance, or replacement of any modification, device, or equipment by a public utility, electric membership corporation, or municipal electric service provider or a business contracted by the public utility, electric membership corporation, or municipal service provider, so long as the work is subject to oversight by an electrical contractor licensed under Article 4 of Chapter 87 of the General Statutes. The public utility, electric membership corporation, or municipal electric service provider shall provide service in accordance with (i) an activity or program ordered, authorized, or approved by the North Carolina Utilities Commission pursuant to G.S. 62-133.8 or G.S. 62-133.9 or (ii) a similar program undertaken by a municipal electric provider, whether the installation, modification, or replacement is made before or after the point of delivery of electric service to the customer. The exemption applies to all existing installations.

(a1) A permit shall be in writing and shall contain a provision that the work done shall comply with the State Building Code and all other applicable State and local laws. Nothing in this section shall require a city to review and approve residential building plans submitted to the city pursuant to Section R-110 of Volume VII of the North Carolina State Building Code; provided that the city may review and approve such residential building plans as it deems necessary. No permits shall be issued unless the plans and specifications are identified by the name and address of the author thereof, and if the General Statutes of North Carolina require that plans for certain types of work be prepared only by a registered architect or registered engineer, no permit shall be issued unless the plans and specifications bear the North Carolina seal of a registered architect or of a registered engineer. When any provision of the General Statutes of North Carolina or of any ordinance requires that work be done by a licensed specialty contractor of any kind, no permit for the work shall be issued unless the work is to be performed by such a duly licensed contractor. No permit issued under Articles 9 or 9C of Chapter 143 shall be required 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 size and capacity) or change in the design of plumbing; the addition, replacement or change in the design of heating, air conditioning, or electrical wiring, devices, appliances, 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. Violation of this section shall constitute a Class 1 misdemeanor."

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

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 430

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

S430-ATP-8 [v.4]

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

Date _____,2013

Senator Brown

moves to amend the bill on page 2, lines 24-34, by rewriting the lines to read:
"However, a permit is not required for the installation, maintenance, or replacement of any load control device or equipment by an electric power supplier, as defined in G.S. 62-133.8, or an electrical contractor contracted by the electric power supplier, so long as the work is subject to supervision by an electrical contractor licensed under Article 4 of Chapter 87 of the General Statutes. The electric power supplier shall provide such installation, maintenance, or replacement in accordance with (i) an activity or program ordered, authorized, or approved by the North Carolina Utilities Commission pursuant to G.S. 62-133.8 or G.S. 62-133.9 or (ii) a similar program undertaken by a municipal electric service provider, whether the installation, modification, or replacement is made before or after the point of delivery of electric service to the customer. The exemption under this subdivision applies to all existing installations."

and on page 3, lines 41-51, by rewriting the lines to read:
"However, a permit is not required for the installation, maintenance, or replacement of any load control device or equipment by an electric power supplier, as defined in G.S. 62-133.8, or an electrical contractor contracted by the electric power supplier, so long as the work is subject to supervision by an electrical contractor licensed under Article 4 of Chapter 87 of the General Statutes. The electric power supplier shall provide such installation, maintenance, or replacement in accordance with (i) an activity or program ordered, authorized, or approved by the North Carolina Utilities Commission pursuant to G.S. 62-133.8 or G.S. 62-133.9 or (ii) a similar program undertaken by a municipal electric service provider, whether the installation, modification, or replacement is made before or after the point of delivery of electric service to the customer. The exemption under this subdivision applies to all existing installations.".

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 430

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

S430-ATP-8 [v.4]

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

SENATE BILL 430:
Clarify Electric Load Control Process

2013-2014 General Assembly

Committee:	Senate Commerce	**Date:**	April 15, 2013
Introduced by:	Sen. Brown	**Prepared by:**	Peter Ledford
Analysis of:	PCS to First Edition S430-CSTP-15		Committee Counsel

SUMMARY: ***Senate Bill 430 would exempt an installer of an electric load control switch who works for a public utility, electric membership corporation, or municipal service provider from needing an electrical contractor's license, so long as the work is overseen by a licensed electrical contractor, and exempt the installation, maintenance, or replacement of an electric load control switch by such a person from requiring a building permit.***

The PCS makes technical and clarifying changes to Section 1.

[As introduced, this bill was identical to H489, as introduced by Rep. McElraft, which is currently in House Commerce and Job Development Subcommittee on Energy and Emerging Markets.]

CURRENT LAW: Under G.S. 62-133.8, public utilities are required to obtain a certain percentage of their electricity from renewable sources, up to 25% of which can come from reducing energy consumption. Under G.S. 62-133.9, public utilities, electric membership corporations, and municipal service providers are required to implement demand side management and energy efficiency measures to reduce energy consumption.

BACKGROUND INFORMATION: Electric load control switches are devices installed in a consumer's home for appliances that consume large amounts of electricity, such as air conditioners, hot water heaters, and clothes dryers. During times of peak electricity demand, the load control switch can temporarily reduce or turn off electricity to the appliance. Certain public utilities, electric membership corporations, and municipal service providers offer incentives to consumers to install electric load control switches to help the utilities meet their requirements under G.S. 62-133.8 and 62-133.9.

BILL ANALYSIS: Senate Bill 430 would exempt an installer of an electric load control switch who works for a public utility, electric membership corporation, or municipal service provider from needing an electrical contractor's license, so long as the work is overseen by a licensed electrical contractor. The bill would also exempt the installation, maintenance, or replacement of an electric control switch by such a person from requiring a building permit.

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

O. Walker Reagan
Director

S430-SMTP-28 CSTP-15 -V1

Research Division
(919) 733-2578

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

S 1

SENATE BILL 547

Short Title:	Energy Savings Contracting Amendments.	(Public)
Sponsors:	Senator Hunt (Primary Sponsor).	
Referred to:	Commerce.	

April 1, 2013

A BILL TO BE ENTITLED

AN ACT TO AMEND THE STATUTES GOVERNING GUARANTEED ENERGY SAVINGS CONTRACTS FOR GOVERNMENTAL UNITS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 143-64.17 reads as rewritten:

"**§ 143-64.17. Definitions.**

As used in this Part:

...

(5) "Qualified provider" means a person or business experienced in the design, implementation, and installation of energy conservation ~~measures.~~measures who has been prequalified by the State Energy Office according to the prequalification criteria established by that Office.

(5a) "Qualified reviewer" means an architect or engineer who is (i) licensed in this State and (ii) experienced in the design, implementation, and installation of energy efficiency measures.

...."

SECTION 2. G.S. 143-64.17A reads as rewritten:

"**§ 143-64.17A. Solicitation of guaranteed energy savings contracts.**

(a) RFP Issuance. – Before entering into a guaranteed energy savings contract, a governmental unit shall issue a request for proposals. In the case of a governmental unit wishing to enter into additional performance contracts with the same qualified provider within five years of signing a performance contract with that provider, the governmental unit may enter directly into a guaranteed energy savings contract as described in G.S. 143-64.17B with the same qualified provider. The State Energy Office shall review the terms and conditions of the agreement prior to execution. Notice of the request shall be published at least 15 days in advance of the time specified for opening of the proposals in at least one newspaper of general circulation in the geographic area for which the local governmental unit is responsible or, in the case of a State governmental unit, in which the facility or facilities are located. No guaranteed energy savings contract shall be awarded by any governmental unit unless at least two proposals have been received from qualified providers. Provided that if after the publication of the notice of the request for proposals, fewer than two proposals have been received from qualified providers or fewer than two qualified providers attend the mandatory pre-bid meeting, the governmental unit shall again publish notice of the request and if as a result of the second notice, one or more proposals by qualified providers are received, the governmental unit may then open the proposals and select a qualified provider even if only one proposal is received.

(b) Preliminary Proposal Evaluation. – The governmental unit shall evaluate a sealed proposal from any qualified provider. ~~Proposals shall contain estimates of all costs of installation, modification, or remodeling, including costs of design, engineering, installation, maintenance, repairs, debt service, and estimates of energy savings.~~A qualified reviewer shall be required to evaluate the proposals and will provide the governmental unit with a letter report containing both qualitative and quantitative evaluation of the proposals. The report shall not make a recommendation for selection.

(c) Receipt of Proposals for Unit of Local Government. – In the case of a local governmental unit, proposals received pursuant to this section shall be opened by a member or an employee of the governing body of the local governmental unit at a public opening at which the contents of the proposals shall be announced and recorded in the minutes of the governing body. Proposals shall be evaluated for the local governmental unit by ~~a licensed architect or engineer~~ a qualified reviewer on the basis of:

(1) The information required in subsection (b) of this section; and

(2) The criteria stated in the request for proposals.

The local governmental unit may require a qualified provider to include in calculating the cost of a proposal for a guaranteed energy savings contract any reasonable fee payable by the local governmental unit for the evaluation of the proposal by a ~~licensed architect or professional engineer~~qualified reviewer not employed as a member of the staff of the local governmental unit or the qualified provider.

(c1) Receipt of Proposals for Unit of State Government. – In the case of a State governmental unit, proposals received pursuant to this section shall be opened by a member or an employee of the State governmental unit at a public opening and the contents of the proposals shall be announced at this opening. Proposals shall be evaluated for the State governmental unit ~~by a licensed architect or engineer~~by a qualified reviewer who is either privately retained, employed with the Department of Administration, or employed as a member of the staff of the State governmental unit. The proposal shall be evaluated on the basis of the information and report required in subsection (b) of this section and the criteria stated in the request for proposals.

The State governmental unit shall require a qualified provider to include in calculating the cost of a proposal for a guaranteed energy savings contract any reasonable fee payable by the State governmental unit for evaluation of the proposal ~~by a licensed architect or professional engineer~~by a qualified reviewer not employed as a member of the staff of the State governmental unit or the qualified provider. The Department of Administration may charge the State governmental unit a reasonable fee for the evaluation of the proposal if the Department's services are used for the evaluation and the cost paid by the State governmental unit to the Department of Administration shall be calculated in the cost of the proposal under this subsection.

(d) Criteria for Selection of Provider. – The governmental unit shall select the qualified provider that it determines to best meet the needs of the governmental unit by evaluating all of the following and following the procedures set forth in subsection (d1) of this section:

~~(1) Prices offered.~~

~~(2) Proposed costs of construction, financing, maintenance, and training.~~

(3) Quality of the products and energy conservation measures proposed.

~~(4) Amount of energy savings.~~

(5) General reputation and performance capabilities of the qualified providers.

(6) Substantial conformity with the specifications and other conditions set forth in the request for proposals.

(7) Time specified in the proposals for the performance of the contract.

(8) Any other factors the governmental unit deems necessary, which factors shall be made a matter of record.

(d1) Process for Selection of Provider. – The governmental unit shall select a short list of finalists on the basis of its rankings of the written proposals under the criteria set forth in subsection (d) of this section as well as references from past clients. The governmental unit shall have the highest ranked qualified provider prepare a cost-savings analysis for the proposed contract showing at a minimum a comparison of the total estimated project savings to the total estimated project costs for the proposed term. If the governmental unit and the qualified provider cannot negotiate acceptable terms, pricing, and savings estimates, the governmental unit may terminate the process and begin negotiations with the second highest ranked qualified provider. The State Energy Office shall review the selected qualified provider's proposal, cost-benefit analysis, and other relevant documents prior to the governmental unit announcing the award.

(e) Nothing in this section shall limit the authority of governmental units as set forth in Article 3D of this Chapter."

SECTION 3. G.S. 143-64.17B reads as rewritten:

"**§ 143-64.17B. Guaranteed energy savings contracts.**

...

(c) A qualified provider entering into a guaranteed energy savings contract under this Part shall provide security to the governmental unit in the form acceptable to the Office of the State Treasurer and in an amount equal to one hundred percent (100%) of the ~~total cost~~annual guaranteed savings for the term of the guaranteed energy savings contract to assure the provider's faithful performance. Any bonds required by this subsection shall be subject to the provisions of Article 3 of Chapter 44A of the General Statutes. If the savings resulting from a guaranteed energy savings contract are not as great as projected under the contract and all required shortfall payments to the governmental unit have not been made, the governmental unit may terminate the contract without incurring any additional obligation to the qualified provider.

...

(g) ~~In the case of a State governmental unit, a~~A qualified provider shall provide an annual reconciliation statement based upon the results of the measurement and verification review. The statement shall disclose any shortfalls or surplus between guaranteed energy and operational savings specified in the guaranteed energy savings contract and actual, not stipulated, energy and operational savings incurred during a given guarantee year. Any guaranteed energy and operational savings shall be determined by using one of the measurement and verification methodologies listed in the United States Department of Energy's Measurement and Verification Guidelines for Energy Savings Performance Contracting, the International Performance Measurement and Verification Protocol (IPMVP) maintained by the Efficiency Valuation Organization, or Guideline 14-2002 of the American Society of Heating, Refrigerating, and Air-Conditioning Engineers. If due to existing data limitations or the nonconformance of specific project characteristics, none of the three methodologies listed in this subsection is sufficient for measuring guaranteed savings, the qualified provider shall develop an alternate method that is compatible with one of the three methodologies and mutually agreeable to the governmental unit. The guarantee year shall consist of a 12-month term commencing from the time that the energy conservation measures become fully operational. A qualified provider shall pay the State governmental unit any shortfall in the guaranteed energy and operational savings after the total year savings have been determined. ~~A~~ In the case of a State governmental unit, a surplus in any one year shall not be carried forward or applied to a shortfall in any other year."

SECTION 4. G.S. 143-64.17L reads as rewritten:

"**§ 143-64.17L. Board of Governors may authorize energy conservation measures at constituent institutions.**

(a) Authority. – Notwithstanding the provisions of this Part to the contrary, the Board of Governors of The University of North Carolina may authorize any constituent institution listed in subsection (e) of this section to implement an energy conservation measure without entering into a guaranteed energy savings contract if both of the following conditions are met:

(1) The Board of Governors finds that the energy savings resulting from the implementation of the energy conservation measure shall, according to the energy savings analysis received pursuant to G.S. 143-64.17M(a), equal or exceed the total cost of implementing the measure. If the proposed implementation will be financed with debt, then the energy savings analysis must project sufficient energy savings to pay the debt service on any bonds to be issued. As used in this subdivision, the term "total cost" shall have the same meaning as it does in G.S. 143-64.17B(d).

(2) The energy conservation measure is for an existing building or utility system.

(b) Scope of Authority. – In implementing an energy conservation measure pursuant to subsection (a) of this section, the Board of Governors may undertake or authorize any constituent institution listed in subsection (e) of this section to undertake any action that (i) could be required of a qualified provider under a guaranteed energy savings contract or (ii) is otherwise permissible under this Part.

(c) Projects Consisting of Multiple Energy Conservation Measures. – The Board of Governors may authorize the implementation of multiple energy conservation measures simultaneously as part of a single project. When doing so, the findings required by subsection (a) of this section may be made with respect to the project as a whole and need not be made with respect to individual energy conservation measures. Similarly, the analyses required by G.S. 143-64.17M may be conducted for the project as a whole instead of for individual energy conservation measures.

(d) Continuing Applicability of Part to Contracts. – If the Board of Governors or a constituent institution implements an energy conservation measure through a guaranteed energy savings contract, that contract shall accord in all respects with the requirements of this Part.

(e) ~~The~~ Prior to July 1, 2013, the Board of Governors may authorize North Carolina State University to implement an energy conservation measure without entering into a guaranteed energy savings contract pursuant to this section. On or after July 1, 2013, no constituent institution may implement an energy conservation measure without entering into a guaranteed energy savings contract pursuant to this section. However, North Carolina State University may continue to fulfill the terms of any financing agreement related to an energy conservation measure implemented on or before June 30, 2013."

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

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

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SENATE BILL 547
PROPOSED COMMITTEE SUBSTITUTE S547-CSSV-13 [v.2]
4/15/2013 12:36:01 PM

Short Title: Energy Savings Contracting Amendments. (Public)

Sponsors:

Referred to:

April 1, 2013

A BILL TO BE ENTITLED

AN ACT TO AMEND THE STATUTES GOVERNING GUARANTEED ENERGY SAVINGS CONTRACTS FOR GOVERNMENTAL UNITS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 143-64.17 reads as rewritten:

"**§ 143-64.17. Definitions.**

As used in this Part:

...

(5) "Qualified provider" means a person or business experienced in the design, implementation, and installation of energy conservation ~~measures.~~measures who has been prequalified by the State Energy Office according to the prequalification criteria established by that Office.

(5a) "Qualified reviewer" means an architect or engineer who is (i) licensed in this State and (ii) experienced in the design, implementation, and installation of energy efficiency measures.

...."

SECTION 2. G.S. 143-64.17A reads as rewritten:

"**§ 143-64.17A. Solicitation of guaranteed energy savings contracts.**

(a) RFP Issuance. – Before entering into a guaranteed energy savings contract, a governmental unit shall issue a request for proposals. Notice of the request shall be published at least 15 days in advance of the time specified for opening of the proposals in at least one newspaper of general circulation in the geographic area for which the local governmental unit is responsible or, in the case of a State governmental unit, in which the facility or facilities are located. No guaranteed energy savings contract shall be awarded by any governmental unit unless at least two proposals have been received from qualified providers. Provided that if after the publication of the notice of the request for proposals, fewer than two proposals have been received from qualified providers or fewer than two qualified providers attend the mandatory pre-bid meeting, the governmental unit shall again publish notice of the request and if as a result of the second notice, one or more proposals by qualified providers are received, the governmental unit may then open the proposals and select a qualified provider even if only one proposal is received.

(b) Preliminary Proposal Evaluation. – The governmental unit shall evaluate a sealed proposal from any qualified provider. ~~Proposals shall contain estimates of all costs of installation, modification, or remodeling, including costs of design, engineering, installation, maintenance, repairs, debt service, and estimates of energy savings.~~A qualified reviewer shall be required to evaluate the proposals and will provide the governmental unit with a letter report

containing both qualitative and quantitative evaluation of the proposals. The report may include a recommendation for selection, but the governmental unit is not obligated to follow it.

(c) Receipt of Proposals for Unit of Local Government. – In the case of a local governmental unit, proposals received pursuant to this section shall be opened by a member or an employee of the governing body of the local governmental unit at a public opening at which the contents of the proposals shall be announced and recorded in the minutes of the governing body. Proposals shall be evaluated for the local governmental unit by ~~a licensed architect or engineer~~ a qualified reviewer on the basis of:

(1) The information required in subsection (b) of this section; and

(2) The criteria stated in the request for proposals.

The local governmental unit may require a qualified provider to include in calculating the cost of a proposal for a guaranteed energy savings contract any reasonable fee payable by the local governmental unit for the evaluation of the proposal by a ~~licensed architect or professional engineer~~qualified reviewer not employed as a member of the staff of the local governmental unit or the qualified provider.

(c1) Receipt of Proposals for Unit of State Government. – In the case of a State governmental unit, proposals received pursuant to this section shall be opened by a member or an employee of the State governmental unit at a public opening and the contents of the proposals shall be announced at this opening. Proposals shall be evaluated for the State governmental unit ~~by a licensed architect or engineer~~by a qualified reviewer who is either privately retained, employed with the Department of Administration, or employed as a member of the staff of the State governmental unit. The proposal shall be evaluated on the basis of the information and report required in subsection (b) of this section and the criteria stated in the request for proposals.

The State governmental unit shall require a qualified provider to include in calculating the cost of a proposal for a guaranteed energy savings contract any reasonable fee payable by the State governmental unit for evaluation of the proposal ~~by a licensed architect or professional engineer~~by a qualified reviewer not employed as a member of the staff of the State governmental unit or the qualified provider. The Department of Administration may charge the State governmental unit a reasonable fee for the evaluation of the proposal if the Department's services are used for the evaluation and the cost paid by the State governmental unit to the Department of Administration shall be calculated in the cost of the proposal under this subsection.

(d) Criteria for Selection of Provider. – The governmental unit shall select the qualified provider that it determines to best meet the needs of the governmental unit by evaluating all of the following and following the procedures set forth in subsection (d1) of this section:

~~(1) Prices offered.~~

~~(2) Proposed costs of construction, financing, maintenance, and training.~~

(3) Quality of the products and energy conservation measures proposed.

~~(4) Amount of energy savings.~~

(5) General reputation and performance capabilities of the qualified providers.

(6) Substantial conformity with the specifications and other conditions set forth in the request for proposals.

(7) Time specified in the proposals for the performance of the contract.

(8) Any other factors the governmental unit deems necessary, which factors shall be made a matter of record.

(d1) Process for Selection of Provider. – The governmental unit shall select a short list of finalists on the basis of its rankings of the written proposals under the criteria set forth in subsection (d) of this section as well as references from past clients. The governmental unit shall have the highest ranked qualified provider prepare a cost-savings analysis for the proposed contract showing at a minimum a comparison of the total estimated project savings to

the total estimated project costs for the proposed term. If the governmental unit and the qualified provider cannot negotiate acceptable terms, pricing, and savings estimates, the governmental unit may terminate the process and begin negotiations with the second highest ranked qualified provider. The State Energy Office shall review the selected qualified provider's proposal, cost-benefit analysis, and other relevant documents prior to the governmental unit announcing the award.

(e) Nothing in this section shall limit the authority of governmental units as set forth in Article 3D of this Chapter."

SECTION 3. G.S. 143-64.17B reads as rewritten:

"**§ 143-64.17B. Guaranteed energy savings contracts.**

...

(c) A qualified provider entering into a guaranteed energy savings contract under this Part shall provide security to the governmental unit in the form acceptable to the Office of the State Treasurer and in an amount equal to one hundred percent (100%) of the ~~total cost~~ guaranteed savings for the term of the guaranteed energy savings contract to assure the provider's faithful performance. Any bonds required by this subsection shall be subject to the provisions of Article 3 of Chapter 44A of the General Statutes. If the savings resulting from a guaranteed energy savings contract are not as great as projected under the contract and all required shortfall payments to the governmental unit have not been made, the governmental unit may terminate the contract without incurring any additional obligation to the qualified provider.

...

(g) ~~In the case of a State governmental unit, a~~A qualified provider shall provide an annual reconciliation statement based upon the results of the measurement and verification review. The statement shall disclose any shortfalls or surplus between guaranteed energy and operational savings specified in the guaranteed energy savings contract and actual, not stipulated, energy and operational savings incurred during a given guarantee year. Any guaranteed energy and operational savings shall be determined by using one of the measurement and verification methodologies listed in the United States Department of Energy's Measurement and Verification Guidelines for Energy Savings Performance Contracting, the International Performance Measurement and Verification Protocol (IPMVP) maintained by the Efficiency Valuation Organization, or Guideline 14-2002 of the American Society of Heating, Refrigerating, and Air-Conditioning Engineers. If due to existing data limitations or the nonconformance of specific project characteristics, none of the three methodologies listed in this subsection is sufficient for measuring guaranteed savings, the qualified provider shall develop an alternate method that is compatible with one of the three methodologies and mutually agreeable to the governmental unit. The guarantee year shall consist of a 12-month term commencing from the time that the energy conservation measures become fully operational. A qualified provider shall pay the ~~State~~ governmental unit or its assignee any shortfall in the guaranteed energy and operational savings after the total year savings have been determined. ~~A~~ In the case of a governmental unit, a surplus in any one year shall not be carried forward or applied to a shortfall in any other year."

SECTION 4.(a) G.S. 143-64.17L and G.S. 143-64.17M are repealed.

SECTION 4.(b) G.S. 143-64.17F(b) reads as rewritten:

"(b) The Department of Administration, in consultation with the Department of Commerce through the State Energy Office, shall adopt rules for: (i) agency evaluation of guaranteed energy savings contracts; (ii) establishing time periods for consideration of guaranteed energy savings contracts by the Office of State Budget and Management, the Office of the State Treasurer, and the Council of State, and (iii) setting measurements and verification criteria, including review, audit, and precertification. Prior to adopting any rules pursuant to this section, the Department shall consult with and obtain approval of those rules from the State

Treasurer. ~~The rules adopted pursuant to this subsection shall not apply to energy conservation measures implemented pursuant to G.S. 143-64.17L.~~"

SECTION 4.(c) G.S. 143-64.17H reads as rewritten:

"**§ 143-64.17H. Report on guaranteed energy savings contracts entered into by State governmental units.**

A State governmental unit that enters into a guaranteed energy savings contract ~~or implements an energy conservation measure pursuant to G.S. 143-64.17L~~ must report ~~either~~ (i) the contract and the terms of the contract or (ii) the implementation of the measure to the State Energy Office of the Department of Commerce within 30 days of the date the contract is entered into or the measure is implemented. In addition, within 60 days after each annual anniversary date of a guaranteed energy savings contract, the State governmental unit must report the status of the contract to the State Energy Office, including any details required by the State Energy Office. The State Energy Office shall compile the information for each fiscal year and report it to the Joint Legislative Commission on Governmental Operations and to the Local Government Commission annually by December 1. In compiling the information, the State Energy Office shall include information on the energy savings expected to be realized from a contract or implementation and shall evaluate whether expected savings have in fact been realized."

SECTION 4.(d) G.S. 142-63 reads as rewritten:

"**§ 142-63. Authorization of financing contract.**

~~Subject to the terms and conditions set forth in this Article, (i) a State governmental unit that is implementing an energy conservation measure pursuant to G.S. 143-64.17L and financing it pursuant to this Article, (ii) a State governmental unit that has solicited a guaranteed energy conservation measure pursuant to G.S. 143-64.17A or G.S. 143-64.17B, or (iii) the State Treasurer, as designated by the Council of State, is authorized to execute and deliver, for and on behalf of the State of North Carolina, a financing contract to finance the costs of the energy conservation measure. The aggregate outstanding amount payable by the State under financing contracts entered pursuant to this Article shall not exceed five hundred million dollars ($500,000,000) at any one time.~~

Subject to the terms and conditions set forth in this Article, a State governmental unit that has solicited a guaranteed energy conservation measure pursuant to G.S. 143-64.17A or G.S. 143-64.17B or the State Treasurer, as designated by the Council of State, is authorized to execute and deliver, for and on behalf of the State of North Carolina, a financing contract to finance the costs of the energy conservation measure. The aggregate outstanding amount payable by the State under financing contracts entered pursuant to this Article shall not exceed five hundred million dollars ($500,000,000) at any one time."

SECTION 4.(e) G.S. 142-64 reads as rewritten:

"**§ 142-64. Procedure for incurrence or issuance of financing contract.**

(a) When a State governmental unit ~~(i) is implementing an energy conservation measure pursuant to G.S. 143-64.17L and financing it pursuant to this Article or (ii)~~ has solicited a guaranteed energy conservation measure, the State governmental unit shall request that the State Treasurer approve the State governmental unit's entering into a financing contract to finance the cost of the energy conservation measure. In connection with the request, the State governmental unit shall provide to the State Treasurer any information the State Treasurer requests in order to evaluate the request. In the event that the State Treasurer determines that financing efficiencies will be realized through the combining of financing contracts, then the State Treasurer is authorized to execute and deliver, for and on behalf of the State of North Carolina, subject to the terms and conditions set forth in this Article, a financing contract for the purpose of financing the cost of the multiple energy conservation measures.

..."

SECTION 4.(f) Notwithstanding this section, North Carolina State University may continue to self-perform the Phytotron Energy Savings Performance Contract authorized pursuant to Section 9.6D of S.L. 2011-145 and S.L. 2012-164. This project is subject to the requirements of Part 2 of Article 3B of Chapter 143 of the General Statutes, including any requirements in the statutes that are repealed or amended by this section.

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

SENATE BILL 547:
Energy Savings Contracting Amendments

2013-2014 General Assembly

Committee:	Senate Ref to Commerce. If fav, re-ref to Finance	**Date:**	April 16, 2013
Introduced by:	Sen. Hunt	**Prepared by:**	Trina Griffin Committee Counsel
Analysis of:	First Edition		

SUMMARY: ***Senate Bill 547 would make several changes to the law governing guaranteed energy savings contracts to provide additional flexibility and efficiency for governmental units wishing to enter into these contracts. It would also limit the self-performance of an energy conservation measure by a constituent institution of the UNC system to a project currently being piloted by NCSU.***

CURRENT LAW: Local governments have had the authority to enter into financing contracts to finance the cost of energy conservation measures since 1994.[1] The General Assembly extended this ability to State agencies in 2002; the law limits the aggregate principal amount payable by the State under these contracts to $500 million at any one time.[2] An energy conservation measure is a facility or meter alteration, training, or services that will provide anticipated energy savings with respect to a facility. The financing contracts are known as guaranteed energy savings contracts. Under the contract to implement energy conservation measures, all payments, except obligations on early termination, are to be made over time, and energy cost savings are guaranteed to exceed the cost of the contract.

The law provides that a guaranteed energy savings contract is not a pledge of the government's taxing power. The debt is secured by a lien on, or a security interest in, any part of the property with respect to which an energy conservation measure is undertaken and/or the land upon which the property is or will be located. It is anticipated that the energy savings will generate enough money to pay the debt service on the contract. This is a method of funding repair and renovation projects without impacting the State's debt capacity.

State agencies that enter into guaranteed energy savings contracts are required to report to the State Energy Office which in turn reports annually to the Joint Legislative Commission on Governmental Operations. State energy conservation measures are subject to inspection and compliance by the State Construction Office or the local building inspector. The cost of the evaluation of the contract by either an independent architect or engineer, or by the State Construction Office, and the costs of the necessary building inspections are included in the cost of the contract.

Before a guaranteed energy savings contract can be entered into, the Office of State Budget and Management must certify that resources are expected to be available to pay the amounts due under the contract. Next, the Council of State must approve the contract by resolution that sets out the maximum maturity and the maximum interest rates. The maximum maturity may not exceed 20 years. The State Treasurer also must approve the financing, finding that the amount to be borrowed is adequate and not excessive and will not require an excessive increase in any State revenues to provide for repayment, and that the special indebtedness can be incurred or issued on terms favorable to the State.

[1] G.S. 160A-20 and G.S. 143-64.17I.
[2] G.S. 143-64.17J and Article 8 of Chapter 142.

BILL ANALYSIS:

Section 1 would require that a qualified provider meet the prequalification criteria established by the State Energy Office. The prequalification criteria are designed to ensure that a provider has adequate technical expertise and financial backing. It would also add a definition for a "qualified reviewer." Under current law, a governmental unit seeking to enter into a guaranteed energy savings contract must have proposals evaluated by a licensed architect or engineer. **Section 1** incorporates the term "qualified reviewer" and defines it as an architect or engineer who is licensed in this State and is experienced in the design, implementation, and installation of energy efficiency measures.

Section 2 of the bill does the following:

Regarding the ***issuance of requests for proposals***:

- It would add an alternate condition under which a governmental unit must publish a second notice of a request for proposal, which is that fewer than two qualified providers attend the mandatory pre-bid meeting. Under current law, the unit is required to publish a second notice if fewer than two proposals have been received from qualified providers. The purpose of this change is to speed up the process when the unit knows there is only one possible bidder.

Regarding ***preliminary proposal evaluations***:

- It would eliminate the requirement that a preliminary proposal include detailed cost information. The purpose of this change, which goes hand-in-hand with the changes to the criteria for selection, is to provide governmental units with additional flexibility during contract negotiations. Under the current process, when costs are included in the preliminary proposal, they are essentially non-negotiable. The intent is to change to a more qualification-based system of identifying the top choices of qualified providers and negotiate costs at a later stage in the process. Preliminary proposals must be reviewed by a qualified reviewer who will prepare a detailed evaluation of the proposal. The reviewer may include a recommendation for selection, but the governmental unit is not obligated to follow it.

Regarding ***criteria for selection of a provider***:

- It would delete from the criteria to be considered by a governmental unit when selecting a provider consideration of prices offered, proposed costs of construction, financing, maintenance, and training, and the amount of energy savings. The reason for this change is twofold. First, it should reduce costs in the preliminary stages. Requiring a provider to provide a detailed estimate of costs at the preliminary stage is costly and that cost is ultimately borne by the government unit. Second, it would give governmental units more flexibility in negotiating the contracts.

Regarding the ***process for the selection of a provider***:

- It would set out the selection process as follows: The governmental unit would rank qualified providers and identify a short list of finalists based on written proposals and references from past clients. The unit would require the highest-ranked provider to prepare a cost-savings analysis. If the unit and the provider are unable to negotiate acceptable terms, the unit may begin negotiations with the second highest-ranked provider. The State Energy Office must review the proposal and analysis prior to the unit announcing the award of the contract.

Section 3 of the bill does three things:

- It would require that a qualified provider provide security for the full amount of the contract. This is consistent with the fact that the total energy savings must be fully guaranteed and that the energy savings company is responsible for any shortfall.
- It would require that the energy and operational savings be determined using one of the methodologies listed below. These references are already named in the applicable regulations in the NC Administrative Code, but this would codify them in statute.
    - The U.S. Department of Energy's Measurement and Verification Guidelines for Energy Savings Performance Contracting.
    - The International Performance Measurement and Verification Protocol maintained by the Efficiency Valuation Organization.
    - Guideline 14-2002 of the American Society of Heating, Refrigerating, and Air Conditioning Engineers.
- It would recognize the situation where a loan for these contracts is assigned to another party in order to allow for payment.

Section 4 of the bill would allow NC State University to fulfill the self-performance of the Phytotron Energy Savings Performance Contract, but it would not extend the authority previously granted to NC State to any other projects by NC State or other constituent institutions of the UNC system. It does this by repealing the statutes enacted in 2011, which were limited in application to NC State only. **Section 4(f)** specifically preserves NC State's authority to complete the above-named project despite the repeal of these statutes.

The Appropriations Act of 2011 (S.L. 2011-145) enacted two new statutes that authorized the Board of Governors to allow specifically named constituent institutions of the UNC system to implement energy conservation measures without entering into a guaranteed energy savings contract. The only named institution in those statutes is NC State University. The 2012 Nonappropriated Capital Projects Act (S.L. 2012-164) further approved self-liquidating authority for a particular project being piloted by NC State under this authority identified as the Phytotron Energy Savings Performance Contract. This project is underway and ongoing. NC State anticipates beginning construction activities in October of this year.

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

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 547

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

S547-ASV-13 [v.1]

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

Date _____,2013

Senator Hunt

moves to amend the bill on page 5, lines 1-5, by rewriting the lines to read:

"**SECTION 4.(f)** Notwithstanding this section, North Carolina State University may continue to self-perform any of the projects listed in this section. The projects are subject to the requirements of Part 2 of Article 3B of Chapter 143 of the General Statutes, including any of the requirements in the statutes repealed or amended by this section. The authorized projects are:

(1) The Phytotron Energy Savings Performance Contract authorized pursuant to Section 9.6D of S.L. 2011-145 and S.L. 2012-164.

(2) An energy conservation measure for which a request for proposal has been issued prior to December 31, 2013 and financing has been put in place by December 31, 2014.".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

SENATE BILL 635

Short Title:	Transmission Line Ownership.	(Public)
Sponsors:	Senator Newton (Primary Sponsor).	
Referred to:	Commerce.	

April 4, 2013

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THAT ONLY INCUMBENT PROVIDERS MAY CONSTRUCT A NEW ELECTRICITY TRANSMISSION LINE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 62-100 reads as rewritten:

"**§ 62-100. Definitions.**

As used in this Article:

(1) The term "begin to construct" includes any clearing of land, excavation, or other action that would adversely affect the natural environment of the route of a transmission line; but that term does not include land surveys, boring to ascertain geological conditions, or similar preliminary work undertaken to determine the suitability of proposed routes for a transmission line that results in temporary changes to the ~~land;~~ land.

(2) The word "county" means any one of the counties listed in ~~G.S. 153A-10;~~ G.S. 153A-10.

(3) The word "land" means any real estate or any estate or interest in real estate, including water and riparian rights, regardless of the use to which it is ~~devoted;~~ devoted.

(4) The word "lines" means distribution lines and transmission lines ~~collectively;~~ collectively.

(5) The word "municipality" means any incorporated community, whether designated as a city, town, or village and any area over which it exercises any of the powers granted by Article 19 of Chapter 160A of the General ~~Statutes;~~ Statutes.

(6) The term "public utility" means any of the following:

a. A public utility, as defined in G.S. 62-3(23).

b. An electric membership cooperative.

c. A joint municipal power agency.

d. A city or county that is ~~a person, whether organized under the laws of this State or under the laws of any other state or country,~~ engaged in producing, generating, transmitting, delivering, or furnishing electricity for private or public use. ~~use, including counties, municipalities, joint municipal power agencies, electric membership corporations, and public and private corporations; and~~

(7) The term "transmission line" means an electric line designed with a capacity of at least 161 kilovolts."

SECTION 2. G.S. 62-101(a) reads as rewritten:

"(a) No public utility or any other person may begin to construct a new transmission line without first obtaining from the Commission a certificate of environmental compatibility and public convenience and necessity. Only a public utility, as defined in this Article, may obtain a certificate to construct a new transmission line."

SECTION 3. This act is effective when it becomes law and applies to certificates of environmental capability and public convenience and necessity issued on or after that date.

SENATE BILL 635:
Transmission Line Ownership

2013-2014 General Assembly

Committee:	Senate Commerce	**Date:**	April 16, 2013
Introduced by:	Sen. Newton	**Prepared by:**	Peter Ledford
Analysis of:	First Edition		Committee Counsel

SUMMARY: ***Senate Bill 635 would require that only a public utility may obtain a certificate to construct a new electricity transmission line.***

CURRENT LAW: Before constructing a new electricity transmission line with a capacity of at least 161 kilovolts, a person or public utility must obtain a certificate of environmental capability and public convenience and necessity from the North Carolina Utilities Commission ("Commission"). As used in this Article, public utilities include any person engaged in producing, generating, transmitting, delivering, or furnishing electricity for public or private use, including counties, municipalities, joint municipal power agencies, electric membership corporations, and public and private corporations.

BILL ANALYSIS: Senate Bill 635 would provide that only a public utility may obtain a certificate to construct a new transmission line from the Commission. The bill amends the definition of public utilities for this Article to include only public utilities as defined in G.S. 62-3(23) (typically, only investor-owned utilities), electric membership cooperatives, joint municipal power agencies, and cities or counties engaged in furnishing electricity for public or private use. This definition eliminates public and private corporations that do not qualify as a public utility under G.S. 62-3(23).

EFFECTIVE DATE: This act is effective when it becomes law, and applies to certificates of environmental capability and public convenience and necessity issued on or after that date.

BACKGROUND: On July 21, 2011, the Federal Energy Regulatory Commission ("FERC") issued an order[1] which required public utility electric transmission service providers to establish criteria and procedures for considering regional transmission projects that would be sponsored, built, and owned by non-incumbent transmission owners, if state law allows for such owners. Non-incumbent transmission owners are persons who own electricity transmission lines but do not serve retail customers as a public utility. The Commission investigated the implications of FERC's order and issued a report[2] identifying risks posed to the State's electricity consumers by non-incumbent transmission owners and recommending the General Assembly to pursue statutory changes. Specifically, the Commission found that:

- There is a risk that the State's electric customers would pay more for a transmission line because the return on equity would be set by FERC, which typically sets higher rates, and not the Commission.
- There is a risk that non-incumbent transmission owners would abandon a transmission line because they would not be subject to the State's obligation to serve law.
- There is a risk that a non-incumbent transmission owner would build a substandard or unreliable transmission line because a non-incumbent transmission owner would not be

[1] FERC Order No. 1000.
[2] Docket No. E-100, Sub 132.

subject to G.S. 62-42, which gives the Commission the authority to compel a public utility to upgrade its facilities if necessary to provide reliable service.

- There is a risk that system restoration would be delayed during a widespread grid outage or system emergency while a public utility coordinated with a non-incumbent transmission owner.
- There is a risk that the FERC order will encourage non-incumbent transmission owners to construct transmission lines in North Carolina, thereby increasing the occurrence of the other risks.

SENATE BILL 378*

Short Title:	Assess Propane Dealers/Distributors.	(Public)
Sponsors:	Senators Jackson, Rabin, and Walters (Primary Sponsors).	
Referred to:	Commerce.	

March 21, 2013

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE A REFERENDUM OF PROPANE DEALERS AND DISTRIBUTORS REGARDING A VOLUNTARY ASSESSMENT ON PROPANE TO PROVIDE FUNDING FOR PROMOTIONAL, EDUCATIONAL, AND OTHER PROGRAMS OF THE INDUSTRY.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 119 of the General Statutes is amended by adding a new Article 5A to read as follows:

"Article 5A.

"Propane Assessment Act.

"**§ 119-63.1. Title.**

This Article shall be known as the "Propane Assessment Act."

"**§ 119-63.2. Purpose.**

It is in the public interest for the State to enable dealers and distributors of propane to assess the product in order to raise funds for the purposes of promoting the common good, welfare, and advancement of the propane industry.

"**§ 119-63.3. Definitions.**

The following definitions apply in this Article:

(1) Association. – The North Carolina Propane Gas Association, Inc., a North Carolina nonprofit corporation.

(2) Commissioner. – The Commissioner of Agriculture or his or her designee.

(3) Dealer. – Any person who is registered with the Commissioner pursuant to G.S. 119-56 to engage in:

a. The business of selling or otherwise dealing in liquefied petroleum gases requiring handling, storing, measuring, transporting, or distributing liquefied petroleum gas; or

b. The business of installing, servicing, repairing, adjusting, connecting, or disconnecting containers, equipment, or appliances using liquefied gas. A person who engages in any of the aforementioned activities only in connection with his or her employer's use of liquefied petroleum gas, and not as a business, shall not be deemed to be a "dealer" for the purposes of this Article.

Any person who retails liquefied petroleum gas in containers of less than 50 pounds water capacity, and whose retail business does not involve the filling or transportation of such containers, is not a "dealer" for purposes of this Article.

(4) Department. – The North Carolina Department of Agriculture and Consumer Services.
(5) Distributor. – A person whose primary business involves the sale of liquefied petroleum gas to a dealer.
(6) Liquefied petroleum gas. – Any material which is composed predominantly of any of the following hydrocarbons or mixtures of the same: propane, propylene, butanes (normal butanes or isobutane), and butylenes.
(7) Foundation. – North Carolina Propane Education & Research Foundation, a North Carolina nonprofit corporation that is tax exempt under section 501(c)(3) of the Internal Revenue Code.
(8) Person. – An individual, a partnership, a firm, or a corporation.
(9) Propane. – A liquefied petroleum gas.

"**§ 119-63.4. Referendum.**

(a) The Foundation may from time to time conduct referenda among dealers and distributors in this State upon the question of whether an assessment shall be levied on propane sold in this State.

(b) The Foundation, upon prior consultation with 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) The proposed effective date for the imposition of the assessment, which shall not be less than 180 days from the date the referendum ballot is required to be returned to the Foundation in order to be considered on the question presented.
(5) 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 the maximum allowable rate of two thousandths of one cent ($.002) for each gallon of propane sold in this State by distributors to dealers.

(d) All dealers and distributors may vote in the referendum. Each distributor and each dealer shall have one vote regardless of the number of bulk plants or retail sales outlets owned. Any dispute over eligibility to vote or any other matter relating to the referendum shall be resolved by the Foundation. The Foundation shall make reasonable efforts to provide all dealers and distributors with notice of the referendum and an opportunity to vote.

(e) Prior to conducting any referenda, the Foundation shall request a list of dealers and their addresses from the Department and the Department shall provide such information to the Foundation. In order to be eligible to vote, a distributor shall provide the Foundation with a written statement signed by an authorized individual containing its corporate name, address, and the individual authorized to cast a ballot on its behalf, which statement shall be effective until revoked or modified in like manner.

(f) A proposed assessment shall become effective if more than fifty percent (50%) of the eligible votes cast by dealers in the referendum are cast in favor of the assessment and if more than fifty percent (50%) of the eligible votes cast by distributors in the referendum are cast in favor of the assessment. If the assessment is approved by the referendum, then the Foundation shall notify the Department and the Association of the amount of the assessment and the effective date of the assessment. The Department shall notify all distributors and dealers of the assessment.

"**§ 119-63.5. Payment and collection of assessment; refunds.**

(a) Each distributor, as the owner of propane at the time of odorization, or at the time of import of odorized propane, shall make the assessment based on the volume of odorized propane sold and placed into commerce in this State. Each dealer must pay the assessment on each gallon of propane purchased from a distributor. The assessment charge shall be identified

and listed as a separate line item on each distributor's invoice to a dealer for the sale of odorized propane.

(b) Each distributor shall collect the assessment from the dealer to whom the sale is made. Each distributor shall remit to the Foundation the sum of the amount of the assessment multiplied by the number of gallons of propane sold to any dealer during the preceding quarter not later than the 25th day of the month following the end of the prior quarter. The Foundation shall provide forms to the distributors for reporting the assessment. Each distributor shall file the report not later than the 25th day of the month following the end of the prior quarter regardless of the amount due.

(c) A distributor shall keep records of the number of gallons of propane sold to dealers, including number of gallons, name of dealer, and rate of assessment. All documents or records regarding purchases and sales that are made or kept as required by this subsection or subsection (d) of this subsection shall be made available to the Foundation upon its written request from time to time for the purpose of determining the distributor's compliance with the provisions of this Article. The Foundation shall keep the records confidential and shall not disclose the records except to its accountants, attorneys, or financial advisors without a court order directing it to do so.

(d) The Foundation may bring an action to recover any unpaid assessments plus the reasonable costs, including attorney fees, incurred in the action and may use assessment funds to cover all reasonable costs and expenses incurred in connection with recovery of any unpaid assessment.

(e) A dealer may request a refund of the assessment collected from the dealer in the prior month by submitting a written request for a refund to the Foundation no later than 30 days after the end of the month for which the refund is requested. The refund request shall state specifically the period of time for which a refund is requested, the amount of the refund, the distributors to whom the dealer paid assessments, and the amount of each assessment paid and shall be accompanied by proof of payment of the assessment satisfactory to the Foundation. The Foundation shall mail a refund to the producer within 30 days of receipt of a properly documented refund request, provided that the Foundation shall have no obligation to make a refund to a dealer of assessments that are not yet paid to the Foundation by the distributor. Any dealer who requests and is paid a refund in accordance with this subsection shall not be eligible to receive the benefit of any consumer rebate programs for a period of one year following the date of a refund request under this subsection and shall not be entitled to the payment of any interest by the Foundation on the amount refunded.

"**§ 119-63.6. Use of assessments; reporting.**

(a) The Foundation shall use the funds to promote the common good, welfare, and advancement of the propane industry, including, but not limited to, the following activities and programs: education, training, safety compliance, equipment replacement for low-income customers, marketing, advertising, promotion, and customer rebates to encourage energy efficient appliance and equipment purchases by residential, commercial, or agricultural consumers. The Foundation shall consult with the Association regarding its proposed use of the funds. In addition, the Foundation shall consult with agricultural industry trade associations and other organizations representing agricultural consumers of propane to ensure that some programs and activities benefit the agriculture industry.

(b) No funds collected pursuant to this Article shall be used in any manner for influencing State or federal legislation or for lobbying.

(c) No more than ten percent (10%) of the funds collected pursuant to this Article shall be used by the Foundation for administrative expenses relating to the expenditure of the funds. The Foundation may advance costs of conducting referenda pursuant to this Article and reimburse those costs from the assessment funds. Costs of conducting referenda, litigation

expenses incurred in connection with actions authorized by G.S. 119-63.5, and the cost of the audit required by subsection (e) of this section are not administrative expenses.

(d) All funds received by the Foundation pursuant to this Article shall be kept in separate accounts from other Foundation funds. The Foundation shall keep minutes, books, and records that clearly reflect all of the acts and transactions of the Foundation with respect to use and expenditure of the funds. The Foundation shall submit a written report annually, not later than March 31 of each year, to the Commissioner on the use and expenditure of the funds received pursuant to this Article.

(e) The books and records of the Foundation shall be audited by a certified public accountant each fiscal year with respect to the receipt and use of the funds. Copies of such audit shall be provided to the Commissioner, to the Association, and to any other interested party upon written request. The Foundation may pay for the audit from the assessment funds.

"**§ 119-63.7. Termination of assessment.**

(a) Upon the Commissioner's receipt of a petition signed by at least ten percent (10%) of the dealers requesting a referendum pursuant to this section, or a receipt of a petition signed by at least fifty percent (50%) of the distributors requesting a referendum pursuant to this section, the Department shall notify the Foundation, and the Foundation shall, within six months, conduct a referendum upon the question of continuing the assessment. If a majority of the votes eligible to be cast by dealers in the referendum are cast against continuing the assessment then in effect and a majority of the votes eligible to be cast by distributors in the referendum are cast against continuing the assessment then in effect, or if the Foundation fails to conduct a referendum within the six-month period, the assessment expires at the end of the year that follows the year in which the Commissioner received a petition pursuant to this section. If more than two-thirds of the eligible votes cast by dealers and more than two-thirds of the eligible votes cast by distributors in the referendum conducted pursuant to this section are in favor of continuing the assessment, then no subsequent referendum shall be required to be conducted pursuant to this section for a period of at least three years from the date the petition was received by the Commissioner.

(b) The Foundation may, on its own initiative, conduct a referendum at any time upon the question of continuing the assessment. If a majority of the votes eligible to be cast by dealers in the referendum are cast against continuing the assessment and if a majority of the votes eligible to be cast by distributors in the referendum are cast against continuing the assessment, the assessment then in effect expires at the end of the year that follows the year in which the referendum was conducted.

(c) The Foundation shall certify to the Department the election results of any referendum conducted pursuant to this Article and shall provide the Department, upon written request, with any documents, papers, tallies, or other information related to the conduct of any referendum conducted by the Foundation.

"**§ 119-63.8. Association activities deemed not in restraint of trade; pricing.**

(a) No meeting or activity undertaken by the Association or the Foundation in pursuance of the provisions of this Article shall be considered illegal under antitrust law or a restraint of trade.

(b) In all cases, the price of propane shall be determined by market forces. Neither the Foundation nor the Association may take any action nor shall any provision of this Article be interpreted as establishing an agreement to pass along to consumers the cost of any assessment provided for by this Article."

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

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

S D

SENATE BILL 378*
PROPOSED COMMITTEE SUBSTITUTE S378-CSTP-14 [v.2]
4/12/2013 12:24:12 PM

Short Title: Assess Propane Dealers/Distributors. (Public)

Sponsors:

Referred to:

March 21, 2013

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE A REFERENDUM OF PROPANE DEALERS AND DISTRIBUTORS REGARDING A VOLUNTARY ASSESSMENT ON PROPANE TO PROVIDE FUNDING FOR PROMOTIONAL, EDUCATIONAL, AND OTHER PROGRAMS OF THE INDUSTRY.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 119 of the General Statutes is amended by adding a new Article 5A to read as follows:

"Article 5A.
"Propane Assessment Act.

"**§ 119-63.1. Title.**

This Article shall be known as the "Propane Assessment Act."

"**§ 119-63.2. Purpose.**

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a. The business of selling or otherwise dealing in liquefied petroleum gases requiring handling, storing, measuring, transporting, or distributing liquefied petroleum gas; or

b. The business of installing, servicing, repairing, adjusting, connecting, or disconnecting containers, equipment, or appliances using liquefied gas. A person who engages in any of the aforementioned activities only in connection with his or her employer's use of liquefied petroleum gas, and not as a business, shall not be deemed to be a "dealer" for the purposes of this Article.

Any person who retails liquefied petroleum gas in containers of less than 50 pounds water capacity, and whose retail business does not involve the filling or transportation of such containers, is not a "dealer" for purposes of this Article.

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(5) Distributor. – A person whose primary business involves the sale of liquefied petroleum gas to a dealer.
(6) Liquefied petroleum gas. – Any material which is composed predominantly of any of the following hydrocarbons or mixtures of the same: propane, propylene, butanes (normal butanes or isobutane), and butylenes.
(7) Foundation. – North Carolina Propane Education & Research Foundation, a North Carolina nonprofit corporation that is tax exempt under section 501(c)(3) of the Internal Revenue Code.
(8) Person. – An individual, a partnership, a firm, or a corporation.
(9) Propane. – A liquefied petroleum gas.

"**§ 119-63.4. Referendum.**

(a) The Foundation may from time to time conduct referenda among dealers and distributors in this State upon the question of whether an assessment shall be levied on propane sold in this State.

(b) The Foundation, upon prior consultation with 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) The proposed effective date for the imposition of the assessment, which shall not be less than 180 days from the date the referendum ballot is required to be returned to the Foundation in order to be considered on the question presented.
(5) 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 the maximum allowable rate of two tenths of one cent ($.002) for each gallon of propane sold in this State by distributors to dealers.

(d) All dealers and distributors may vote in the referendum. Each distributor and each dealer shall have one vote regardless of the number of bulk plants or retail sales outlets owned. Any dispute over eligibility to vote or any other matter relating to the referendum shall be resolved by the Foundation. The Foundation shall make reasonable efforts to provide all dealers and distributors with notice of the referendum and an opportunity to vote.

(e) Prior to conducting any referenda, the Foundation shall request a list of dealers and their addresses from the Department and the Department shall provide such information to the Foundation. In order to be eligible to vote, a distributor shall provide the Foundation with a written statement signed by an authorized individual containing its corporate name, address, and the individual authorized to cast a ballot on its behalf, which statement shall be effective until revoked or modified in like manner.

(f) A proposed assessment shall become effective if more than fifty percent (50%) of the eligible votes cast by dealers in the referendum are cast in favor of the assessment and if more than fifty percent (50%) of the eligible votes cast by distributors in the referendum are cast in favor of the assessment. If the assessment is approved by the referendum, then the Foundation shall notify the Department and the Association of the amount of the assessment and the effective date of the assessment. The Department shall notify all distributors and dealers of the assessment.

"**§ 119-63.5. Payment and collection of assessment; refunds.**

(a) Each distributor, as the owner of propane at the time of odorization, or at the time of import of odorized propane, shall make the assessment based on the volume of odorized propane sold and placed into commerce in this State. Each dealer must pay the assessment on each gallon of propane purchased from a distributor. The assessment charge shall be identified

and listed as a separate line item on each distributor's invoice to a dealer for the sale of odorized propane.

(b) Each distributor shall collect the assessment from the dealer to whom the sale is made. Each distributor shall remit to the Foundation the sum of the amount of the assessment multiplied by the number of gallons of propane sold to any dealer during the preceding quarter not later than the 25th day of the month following the end of the prior quarter. The Foundation shall provide forms to the distributors for reporting the assessment. Each distributor shall file the report not later than the 25th day of the month following the end of the prior quarter regardless of the amount due.

(c) A distributor shall keep records of the number of gallons of propane sold to dealers, including number of gallons, name of dealer, and rate of assessment. All documents or records regarding purchases and sales that are made or kept as required by this subsection or subsection (d) of this subsection shall be made available to the Foundation upon its written request from time to time for the purpose of determining the distributor's compliance with the provisions of this Article. The Foundation shall keep the records confidential and shall not disclose the records except to its accountants, attorneys, or financial advisors without a court order directing it to do so.

(d) The Foundation may bring an action to recover any unpaid assessments plus the reasonable costs, including attorney fees, incurred in the action and may use assessment funds to cover all reasonable costs and expenses incurred in connection with recovery of any unpaid assessment.

(e) A dealer may request a refund of the assessment collected from the dealer in the prior month by submitting a written request for a refund to the Foundation no later than 30 days after the end of the month for which the refund is requested. The refund request shall state specifically the period of time for which a refund is requested, the amount of the refund, the distributors to whom the dealer paid assessments, and the amount of each assessment paid and shall be accompanied by proof of payment of the assessment satisfactory to the Foundation. The Foundation shall mail a refund to the dealer within 30 days of receipt of a properly documented refund request, provided that the Foundation shall have no obligation to make a refund to a dealer of assessments that are not yet paid to the Foundation by the distributor. Any dealer who requests and is paid a refund in accordance with this subsection shall not be eligible to receive the benefit of any consumer rebate programs for a period of one year following the date of a refund request under this subsection and shall not be entitled to the payment of any interest by the Foundation on the amount refunded.

"**§ 119-63.6. Use of assessments; reporting.**

(a) The Foundation shall use the funds to promote the common good, welfare, and advancement of the propane industry, including, but not limited to, the following activities and programs: education, training, safety compliance, equipment replacement for low-income customers, marketing, advertising, promotion, and customer rebates to encourage energy efficient appliance and equipment purchases by residential, commercial, or agricultural consumers. The Foundation shall consult with the Association regarding its proposed use of the funds. In addition, the Foundation shall consult with agricultural industry trade associations and other organizations representing agricultural consumers of propane to ensure that some programs and activities benefit the agriculture industry.

(b) No funds collected pursuant to this Article shall be used in any manner for influencing State or federal legislation or for lobbying.

(c) No more than ten percent (10%) of the funds collected pursuant to this Article shall be used by the Foundation for administrative expenses relating to the expenditure of the funds. The Foundation may advance costs of conducting referenda pursuant to this Article and reimburse those costs from the assessment funds. Costs of conducting referenda, litigation

expenses incurred in connection with actions authorized by G.S. 119-63.5, and the cost of the audit required by subsection (e) of this section are not administrative expenses.

(d) All funds received by the Foundation pursuant to this Article shall be kept in separate accounts from other Foundation funds. The Foundation shall keep minutes, books, and records that clearly reflect all of the acts and transactions of the Foundation with respect to use and expenditure of the funds. The Foundation shall submit a written report annually, not later than March 31 of each year, to the Commissioner on the use and expenditure of the funds received pursuant to this Article.

(e) The books and records of the Foundation shall be audited by a certified public accountant each fiscal year with respect to the receipt and use of the funds. Copies of such audit shall be provided to the Commissioner, to the Association, and to any other interested party upon written request. The Foundation may pay for the audit from the assessment funds.

"**§ 119-63.7. Termination of assessment.**

(a) Upon the Commissioner's receipt of a petition signed by at least ten percent (10%) of the dealers requesting a referendum pursuant to this section, or a receipt of a petition signed by at least fifty percent (50%) of the distributors requesting a referendum pursuant to this section, the Department shall notify the Foundation, and the Foundation shall, within six months, conduct a referendum upon the question of continuing the assessment. If a majority of the votes eligible to be cast by dealers in the referendum are cast against continuing the assessment then in effect and a majority of the votes eligible to be cast by distributors in the referendum are cast against continuing the assessment then in effect, or if the Foundation fails to conduct a referendum within the six-month period, the assessment expires at the end of the year that follows the year in which the Commissioner received a petition pursuant to this section. If more than two-thirds of the eligible votes cast by dealers and more than two-thirds of the eligible votes cast by distributors in the referendum conducted pursuant to this section are in favor of continuing the assessment, then no subsequent referendum shall be required to be conducted pursuant to this section for a period of at least three years from the date the petition was received by the Commissioner.

(b) The Foundation may, on its own initiative, conduct a referendum at any time upon the question of continuing the assessment. If a majority of the votes eligible to be cast by dealers in the referendum are cast against continuing the assessment and if a majority of the votes eligible to be cast by distributors in the referendum are cast against continuing the assessment, the assessment then in effect expires at the end of the year that follows the year in which the referendum was conducted.

(c) The Foundation shall certify to the Department the election results of any referendum conducted pursuant to this Article and shall provide the Department, upon written request, with any documents, papers, tallies, or other information related to the conduct of any referendum conducted by the Foundation.

"**§ 119-63.8. Association activities deemed not in restraint of trade; pricing.**

(a) No meeting or activity undertaken by the Association or the Foundation in pursuance of the provisions of this Article shall be considered illegal under antitrust law or a restraint of trade.

(b) In all cases, the price of propane shall be determined by market forces. Neither the Foundation nor the Association may take any action nor shall any provision of this Article be interpreted as establishing an agreement to pass along to consumers the cost of any assessment provided for by this Article."

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

SENATE BILL 378:
Assess Propane Dealers/Distributors

2013-2014 General Assembly

Committee:	Senate Ref to Commerce. If fav, re-ref to Finance	**Date:**	April 12, 2013
Introduced by:	Sens. Jackson, Rabin, Walters	**Prepared by:**	Peter Ledford Committee Counsel
Analysis of:	PCS to First Edition S378-CSTP-14		

SUMMARY: ***Senate Bill 378 would authorize the North Carolina Propane Education & Research Foundation, a North Carolina nonprofit corporation serving the propane gas industry, to assess propane at a rate of two tenths of a cent per gallon in order to raise funds for the purposes of promoting the common good, welfare, and advancement of the propane industry.***

The PCS makes various technical corrections.

[As introduced, this bill was identical to H403, as introduced by Reps. Collins, Brisson, which is currently in House Commerce and Job Development Subcommittee on Energy and Emerging Markets.]

CURRENT LAW: There is currently no law in the State that would allow the propane gas industry to impose upon itself an assessment to be used for the common good of the industry.

BILL ANALYSIS: Senate Bill 378 would create the Propane Assessment Act.

G.S. 119-63.1 would establish the title of the act as the Propane Assessment Act.

G.S. 119-63.2 would establish the purpose of the act.

G.S. 119-63.2 would establish the definitions used in the act, including the North Carolina Propane Gas Association, Inc. (Association) and the North Carolina Propane Education & Research Foundation (Foundation).

G.S. 119-63.4 would allow the Foundation to conduct a referendum among dealers and distributors of propane in the State to determine whether an assessment should be levied. The assessment could not be levied without the approval of both more than fifty percent of the votes eligible to be cast by dealers and fifty percent of the votes eligible to be cast by distributors. The assessment, if authorized, may not exceed two tenths of a cent ($0.002) per gallon of propane.

G.S. 119-63.5 would require distributors to make the assessment based on the volume of odorized propane sold and placed into commerce in the State. It would require dealers to pay the assessment for each gallon of propane purchased from a distributor. The dealers would pay the assessment to the distributors, who would remit the assessment to the Foundation. The section also includes provisions for recordkeeping, unpaid assessments, and refunds.

G.S. 119-63.6 would set requirements for how the assessment could be used. The assessment may only be used to promote the common good, welfare, and advancement of the propane industry. It may not be used to influence legislation or lobby. No more than ten percent (10%) of the assessment may be used for administrative expenses that are not related to the referenda. The assessment funds must be kept in a separate account and the records of the Foundation must be audited every fiscal year.

G.S. 119-63.7 would establish the procedures for terminating the assessment. The Foundation may, on its own initiative, conduct a referendum at any time on the question of continuing the assessment. In

addition, a petition signed by either ten percent (10%) of the dealers or by fifty percent (50%) of the distributors will require the Foundation conduct a referendum within six months. If more than fifty percent of the votes eligible to be cast by dealers and fifty percent of the votes eligible to be cast by distributors are against continuing the assessment, the Foundation must terminate the assessment. If more than two-thirds of the votes eligible to be cast by dealers and two-thirds of the votes eligible to be cast by distributors are against continuing the assessment, the Foundation may not conduct another assessment within three years of the date of the petition.

G.S. 119-63.8 would state that the activities of the Foundation and the Association under this Act are not in restraint of trade and would prohibit the Foundation and the Association from establishing an agreement to pass the costs of the assessment on to consumers.

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

VISITOR REGISTRATION SHEET

Senate **COMMERCE** Committee — April 16, 2013

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DEBBIE LOWN

NAME	FIRM OR AGENCY AND ADDRESS
Eric Simons	Juwi Wind
Ken Kivion	Spring Leaf

VISITOR REGISTRATION SHEET

Senate **COMMERCE** Committee — April 16, 2013

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DEBBIE LOWN

NAME	FIRM OR AGENCY AND ADDRESS
Mia Bailey	ElectriCities
Ken Howell	NCSU
Kevin MacNaughton	NCSU
Drew Moretz	UNCGA
Henry Hatsaff	N.C.B.H.
John Monaghan	Piedmont Natural Gas

VISITOR REGISTRATION SHEET

Senate **COMMERCE** Committee — April 16, 2013

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DEBBIE LOWN

NAME	FIRM OR AGENCY AND ADDRESS
Jason Deans	JD+A
Sammy Robeson	TWC
Tim Gasper	Trane
Kathy Hawkins	Duke Energy
John Jessup	NC PGA
Daren Parker	Parker Gas
Jon Carr	NC Propane Gas Assn
Dan E. Way	Carolina Journal
Paul Sherman	NCFB
Todd Mattson	Element Power
David Ward	Lowe's

VISITOR REGISTRATION SHEET

Senate **COMMERCE** Committee — April 16, 2013

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DEBBIE LOWN

NAME	FIRM OR AGENCY AND ADDRESS
D Dae	NCRMA
Katherine Ross	PPAB
Abby Hammond	NCIC
Bruce Burcat	NARUC
Sid Sinnier	NCACC
George Smith	NP
Drew Saunders	Electri Cities
Jay Lowe	NCAEC
John Polanco	NCAHA
Amanda Horvath	Troutman Sanders
Canaan Hine	MVA

VISITOR REGISTRATION SHEET

Senate **COMMERCE** Committee — April 16, 2013

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DEBBIE LOWN

NAME	FIRM OR AGENCY AND ADDRESS
Bob Kaylor	Kaylor Law
Ashley Jones	Dept of Commerce
John Hardin	MF&S
Michelle Frazier	MF&S
Kelli Kukura	Duke Energy
Charlie Madison	Duke Energy
DAN Smith	Duke Energy
Dan Conrad	NCUC
Reed Fountain	YMH
Robbie Brooks	NCBEEC
Julie Robinson	NCSEA

VISITOR REGISTRATION SHEET

Senate **COMMERCE** Committee — April 16, 2013

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DEBBIE LOWN

NAME	FIRM OR AGENCY AND ADDRESS
Andrew Blackburn	SSG NC
Kara Weishaar	Smith Anderson
DAVID BARNES	Electricities
Doug Hong	NCPCM
Chip Killian	Nelson Mullins
Sarah Wolfe	MWCLLC
[illegible]	NMRS
Amy Whited	NCMS
Sharon Miller	CUCA
Cameron Hardy	MVA
[illegible]	NS

2013-2014

SENATE
COMMERCE

MINUTES

Senate Committee on Commerce
Tuesday, April 23, 2013, 11:00 AM
1027/1128 Legislative Building

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

BILL NO.	SHORT TITLE	SPONSOR
HB 150	Zoning/Design & Aesthetic Controls.	Representative Dollar Representative W. Brawley Representative Moffitt Representative Jordan
HB 433	Land Use Surrounding Military Installations.	Representative J. Bell Representative Stam Representative McElraft Representative Whitmire
SB 545	Master Meters/Landlord-Tenant Agreement.	Senator Rabin

Senate Committee on Commerce
Tuesday, April 23, 2013 at 11:00 AM
Room 1027/1128 of the Legislative Building

MINUTES

The Senate Committee on Commerce met at 11:00 AM on April 23, 2013 in Room 1027/1128 of the Legislative Building. Twenty two members were present.

Senator Wesley Meredith, Chair, presided.

Briggs Manness from Tryon, Elia Dew from Delco and Nic Carroll from Wilmington served as pages.

H. B. 150 Zoning/Design & Aesthetic Controls

Senator Tucker moved to adopt the proposed committee substitute (PCS) to the committee for discussion and it was carried. The PCS for House Bill 150 would prohibit cities and counties from adopting zoning ordinances that regulate building design elements of structures subject to regulation under the North Carolina Residential Code for One- and Two-Family Dwellings. Representative Dollar was introduced to speak on the bill. Senator Clodfelter was then introduced to speak on the bill. Wendy Graf an attorney from the Research Department assisted with the responses from questions that came from the members of the committee. The floor was then opened for comments from the visitors who signed up to speak before the committee began. They were given a 2 minute speaking time limit by Senator Meredith. The speakers were each timed by a sargent of arms. The speakers were as follows and spoke in the respective order: Mark Zimmerman/Broker Owner for ReMax, Ken Bowers, AICP/Deputy Director for the City of Raleigh's Department of City Planning, Peter P. Cieslak/Executive Director for The Brick Industry Southeast Region, Gary G. Roth/President & CEO for the Capital Area Preservation, Paul A. Meyer/Director of Governmental Affairs for the NC League of Municipalities, Joe Padilla/Executive Public Policy Director for REBIC (Real Estate & Building Industry Coalition), Gina Clapp, AICP/Director of Planning and Zoning for the town of Holly Springs, and J. Michael Carpenter/Executive Vice President and General Counsel for the North Carolina Home Builders Association. Senator Clodfelter responded to the comments made. Senator Apodaca moved – unfavorable to the bill – favorable to the PCS and the motion carried. Senator Clodfeleter will manage the bill on the Senate Floor.

H. B. 433 Land Use Surrounding Military Installations

Sentator Tucker moved to adopt the proposed committee substitute (PCS) to the committee for discussion and it was carried. The PCS eliminates the civil penalty provision but maintains the ability of the Attorney General to seek injunctive relief for violations. It also deletes the references to the Department of Defense because one of the military installations is subject to the authority of Homeland Security. Representative Stam and Bell were introduced to speak on

the bill. House Bill 433 would prohibit the construction of tall buildings or structures within a five-mile area surrounding a military installation without first receiving an endorsement from the State Construction Office of the Department of Admsintistration. Senator Brown was then introduced to express his support. Senator Apodaca moved – unfavorable to the bill – favorable to the PCS and the motion carried. Senator Brown will manage the bill on the Senate Floor.

S. B. 545 Master Meters/Landlord-Tenant Agreement

Senator Rabin was introduced to explain the bill. Senate Bill 545 would allow a landlord and a tenant to enter into a lease where electric service or natural gas service is in the landlord's name and is included in the rent. Colleen Kochanek/Attorney for Kochanek Law Group also spoke regarding the bill. Senator Tillman moved for a favorable report and it carried.

The meeting adjourned at 11:54 AM.

Senator Wesley Meredith, Chair
Presiding

Debbie Lown, Committee Clerk

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

COMMERCE COMMITTEE REPORT
Senator Gunn, Co-Chair
Senator Meredith, Co-Chair

Tuesday, April 23, 2013

Senator Meredith,
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 **433** **(CS#1)** Land Use Surrounding Military Installations.

Draft Number:	H433-PCS70344-SV-14
Sequential Referral:	Judiciary I
Recommended Referral:	None
Long Title Amended:	No

TOTAL REPORTED: 1

Senator Harry Brown will handle HB 433

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

COMMERCE COMMITTEE REPORT
Senator Gunn, Co-Chair
Senator Meredith, Co-Chair

Tuesday, April 23, 2013

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

FAVORABLE

SB **545** Master Meters/Landlord-Tenant Agreement.

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 **150** **(CS#1)** Zoning/Design & Aesthetic Controls.

Draft Number:	H150-PCS70343-SU-7
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

TOTAL REPORTED: 2

Senator Ronald Rabin will handle SB 545
Senator Daniel Clodfelter will handle HB 150

HOUSE BILL 150*
Committee Substitute Favorable 3/14/13
Third Edition Engrossed 3/20/13

Short Title: Zoning/Design & Aesthetic Controls. (Public)

Sponsors:

Referred to:

February 27, 2013

A BILL TO BE ENTITLED

AN ACT TO CLARIFY WHEN A COUNTY OR MUNICIPALITY MAY ENACT ZONING ORDINANCES RELATED TO DESIGN AND AESTHETIC CONTROLS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 160A-381 is amended by adding new subsections to read:

"(g) Any zoning and development regulation ordinance relating to building design elements adopted under this Part, under Part 2 of this Article, or under any recommendation made under G.S. 160A-452(6)c. may not be applied to any structures subject to regulation under the North Carolina Residential Code for One- and Two-Family Dwellings except under one or more of the following circumstances:

(1) The structures are located in an area designated as local historic districts pursuant to Part 3C of Chapter 160A of the General Statutes.

(2) The structures are listed on the National Registry of Historic Places.

(3) The structures are individually designated as local, State, or national historic landmarks.

(4) The regulations are directly and substantially related to the requirements of applicable safety codes adopted under G.S. 143-138.

(5) Where the regulations are applied to manufactured housing, in a manner consistent with G.S. 160A-383.1 and federal law.

(6) Where the regulations are adopted as a condition of participation in the National Flood Insurance Program.

(7) Where the regulations adopted pursuant to this Article governing the permitted uses of land or structures subject to the North Carolina Residential Code for One- and Two-Family Dwellings.

Regulations prohibited by this subsection may not be applied, directly or indirectly, in any zoning district, special use district, conditional use district, or conditional district unless voluntarily consented to by the owners of all the property to which those regulations may be applied as part of and in the course of the process of seeking and obtaining a zoning amendment or a zoning, subdivision, or development approval, nor may any such regulations be applied indirectly as part of a review pursuant to G.S. 160A-383 of any proposed zoning amendment for consistency with an adopted comprehensive plan or other applicable officially adopted plan. For the purposes of this subsection, the phrase "building design elements" means exterior building color; type or style of exterior cladding material; style or materials of roof structures or porches; exterior nonstructural architectural ornamentation; location or architectural styling of windows and doors, including garage doors; the number and types of

rooms; and the interior layout of rooms. The phrase does not include any of the following: (i) the height, bulk, orientation, or location of a structure on a zoning lot; and (ii) the use of buffering or screening to minimize visual impacts, to mitigate the impacts of light and noise, or to protect the privacy of neighbors.

(h) Nothing in subsection (g) of this section shall affect the validity or enforceability of private covenants or other contractual agreements among property owners relating to building design elements."

SECTION 2. G.S. 153A-340 is amended by adding new subsections to read:

"(k) Any zoning and development regulation ordinance relating to building design elements adopted under this Part, under Part 2 of this Article, or under any recommendation made under G.S. 160A-452(6)c. may not be applied to any structures subject to regulation under the North Carolina Residential Code for One- and Two-Family Dwellings except under one or more of the following circumstances:

(1) The structures are located in an area designated as local historic districts pursuant to Part 3C of Chapter 160A of the General Statutes.

(2) The structures are listed on the National Register of Historic Places.

(3) The structures are individually designated as local, State, or national historic landmarks.

(4) The regulations are directly and substantially related to the requirements of applicable safety codes adopted under G.S. 143-138.

(5) Where the regulations are applied to manufactured housing, in a manner consistent with G.S. 153A-341.1 and federal law.

(6) Where the regulations are adopted as a condition of participation in the National Flood Insurance Program.

(7) Where the regulations adopted pursuant to this Article governing the permitted uses of land or structures subject to the North Carolina Residential Code for One- and Two-Family Dwellings.

Regulations prohibited by this subsection may not be applied, directly or indirectly, in any zoning district, special use district, conditional use district, or conditional district unless voluntarily consented to by the owners of all the property to which those regulations may be applied as part of and in the course of the process of seeking and obtaining a zoning amendment or a zoning, subdivision, or development approval, nor may any such regulations be applied indirectly as part of a review pursuant to G.S. 153A-341 of any proposed zoning amendment for consistency with an adopted comprehensive plan or other applicable officially adopted plan. For the purposes of this subsection, the phrase "building design elements" means exterior building color; type or style of exterior cladding material; style or materials of roof structures or porches; exterior nonstructural architectural ornamentation; location or architectural styling of windows and doors, including garage doors; the number and types of rooms; and the interior layout of rooms. The phrase does not include any of the following: (i) the height, bulk, orientation, or location of a structure on a zoning lot; and (ii) the use of buffering or screening to minimize visual impacts, to mitigate the impacts of light and noise, or to protect the privacy of neighbors.

(l) Nothing in subsection (k) of this section shall affect the validity or enforceability of private covenants or other contractual agreements among property owners relating to building design elements."

SECTION 3. This act is effective when it becomes law and applies to development approvals granted on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

H D

HOUSE BILL 150*
Committee Substitute Favorable 3/14/13
Third Edition Engrossed 3/19/13
PROPOSED SENATE COMMITTEE SUBSTITUTE H150-CSSU-7 [v.4]
4/22/2013 6:06:27 PM

Short Title: Zoning/Design & Aesthetic Controls. (Public)

Sponsors:

Referred to:

February 27, 2013

A BILL TO BE ENTITLED

AN ACT TO CLARIFY WHEN A COUNTY OR MUNICIPALITY MAY ENACT ZONING ORDINANCES RELATED TO DESIGN AND AESTHETIC CONTROLS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 160A-381 is amended by adding new subsections to read:

"(g) Any zoning and development regulation ordinance relating to building design elements adopted under this Part, under Part 2 of this Article, or under any recommendation made under G.S. 160A-452(6)c. may not be applied to any structures subject to regulation under the North Carolina Residential Code for One- and Two-Family Dwellings except under one or more of the following circumstances:

(1) The structures are located in an area designated as a local historic district pursuant to Part 3C of Article 19 of Chapter 160A of the General Statutes.

(2) The structures are located in an area designated as an historic district on the National Register of Historic Places.

(3) The structures are individually designated as local, State, or national historic landmarks.

(4) The regulations are directly and substantially related to the requirements of applicable safety codes adopted under G.S. 143-138.

(5) Where the regulations are applied to manufactured housing, in a manner consistent with G.S. 160A-383.1 and federal law.

(6) Where the regulations are adopted as a condition of participation in the National Flood Insurance Program.

Regulations prohibited by this subsection may not be applied, directly or indirectly, in any zoning district, special use district, conditional use district, or conditional district unless voluntarily consented to by the owners of all the property to which those regulations may be applied as part of and in the course of the process of seeking and obtaining a zoning amendment or a zoning, subdivision, or development approval, nor may any such regulations be applied indirectly as part of a review pursuant to G.S. 160A-383 of any proposed zoning amendment for consistency with an adopted comprehensive plan or other applicable officially adopted plan. For the purposes of this subsection, the phrase "building design elements" means exterior building color; type or style of exterior cladding material; style or materials of roof structures or porches; exterior nonstructural architectural ornamentation; location or architectural styling of windows and doors, including garage doors; the number and types of rooms; and the interior layout of rooms. The phrase "building design elements" does not

include any of the following: (i) the height, bulk, orientation, or location of a structure on a zoning lot; (ii) the use of buffering or screening to minimize visual impacts, to mitigate the impacts of light and noise, or to protect the privacy of neighbors; or (iii) regulations adopted pursuant to this Article governing the permitted uses of land or structures subject to the North Carolina Residential Code for One- and Two-Family Dwellings.

(h) Nothing in subsection (g) of this section shall affect the validity or enforceability of private covenants or other contractual agreements among property owners relating to building design elements."

SECTION 2. G.S. 153A-340 is amended by adding new subsections to read:

"(k) Any zoning and development regulation ordinance relating to building design elements adopted under this Part, under Part 2 of this Article, or under any recommendation made under G.S. 160A-452(6)c. may not be applied to any structures subject to regulation under the North Carolina Residential Code for One- and Two-Family Dwellings except under one or more of the following circumstances:

(1) The structures are located in an area designated as a local historic district pursuant to Part 3C of Article 19 of Chapter 160A of the General Statutes.

(2) The structures are located in an area designated as an historic district on the National Register of Historic Places.

(3) The structures are individually designated as local, State, or national historic landmarks.

(4) The regulations are directly and substantially related to the requirements of applicable safety codes adopted under G.S. 143-138.

(5) Where the regulations are applied to manufactured housing, in a manner consistent with G.S. 153A-341.1 and federal law.

(6) Where the regulations are adopted as a condition of participation in the National Flood Insurance Program.

Regulations prohibited by this subsection may not be applied, directly or indirectly, in any zoning district, special use district, conditional use district, or conditional district unless voluntarily consented to by the owners of all the property to which those regulations may be applied as part of and in the course of the process of seeking and obtaining a zoning amendment or a zoning, subdivision, or development approval, nor may any such regulations be applied indirectly as part of a review pursuant to G.S. 153A-341 of any proposed zoning amendment for consistency with an adopted comprehensive plan or other applicable officially adopted plan. For the purposes of this subsection, the phrase "building design elements" means exterior building color; type or style of exterior cladding material; style or materials of roof structures or porches; exterior nonstructural architectural ornamentation; location or architectural styling of windows and doors, including garage doors; the number and types of rooms; and the interior layout of rooms. The phrase "building design elements" does not include any of the following: (i) the height, bulk, orientation, or location of a structure on a zoning lot; (ii) the use of buffering or screening to minimize visual impacts, to mitigate the impacts of light and noise, or to protect the privacy of neighbors; or (iii) regulations adopted pursuant to this Article governing the permitted uses of land or structures subject to the North Carolina Residential Code for One- and Two-Family Dwellings.

(l) Nothing in subsection (k) of this section shall affect the validity or enforceability of private covenants or other contractual agreements among property owners relating to building design elements."

SECTION 3. This act is effective when it becomes law. The act clarifies and restates the intent of existing law and applies to ordinances adopted before, on, and after the effective date.

HOUSE BILL 150:
Zoning/Design & Aesthetic Controls

2013-2014 General Assembly

Committee:	Senate Commerce	**Date:**	April 23, 2013
Introduced by:	Reps. Dollar, W. Brawley, Moffitt, Jordan	**Prepared by:**	Wendy Graf Ray Committee Counsel
Analysis of:	PCS to Third Edition H150-CSSU-7		

SUMMARY: ***The Proposed Committee Substitute for House Bill 150 would prohibit cities and counties from adopting zoning ordinances that regulate building design elements of structures subject to regulation under the North Carolina Residential Code for One- and Two-Family Dwellings.***

[As introduced, this bill was identical to S139, as introduced by Sens. Clodfelter, Gunn, Tarte, which is currently in Senate Commerce.]

CURRENT LAW: Municipalities (Chapter 160A) and counties (153A) may adopt zoning ordinances and subdivision regulation ordinances. Subdivision regulation ordinances may be as part of a unified development ordinance or as a separate subdivision ordinance to regulate the subdivision of land within the territorial jurisdiction of the county or city. A zoning ordinance may regulate and restrict the height, number of stories and size of buildings and other structures, the percentage of lots that may be occupied, the size of yards, courts and other open spaces, the density of population, and the location and use of buildings, structures, and land for trade, industry, residence, or other purposes.

Municipalities and counties may also create a "special appearance commission" pursuant to G.S. 160A-451, and confer upon that commission the authority to formulate and recommend the adoption of ordinances that will enhance the appearance of the municipality or county.

BILL ANALYSIS: The PCS for House Bill 150 would prohibit cities and counties from adopting regulations controlling "building design elements" for one- and two-family dwellings.

The PCS defines "building design elements" as exterior building color; type of style or cladding materials; style or materials of roof structure or porches; exterior nonstructural architectural ornamentation; location and architectural styling of windows or doors; and the number, types, and interior layout of rooms.

The PCS also specifies that "building design elements" would not include height, bulk, orientation, or location of a structure on a zoning lot; use of buffering or screening to minimize visual impacts, mitigate impacts of light and noise, or to protect privacy of neighbors; or the permitted uses of the land or structures.

Cities or counties could adopt ordinances regulating building design elements under the following circumstances:

- If the structures are located in historic districts, or if the structures are designated as historic landmarks.
- If regulation is directly and substantially related to applicable safety codes.
- Where regulations apply to manufactured housing, consistent with State and federal law.

- Where regulations are a condition of participation in the National Flood Insurance Program.

The provisions would not impact the enforcement or validity of restrictive covenants.

EFFECTIVE DATE: The act would be effective when it becomes law, and, because it clarifies and restates the intent of existing law, it would apply to ordinances adopted before, on, and after that date.

Erika Churchill, counsel to House Regulatory Reform Subcommittee on Local Government, substantially contributed to this summary.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

H 3

HOUSE BILL 433*
Committee Substitute Favorable 4/10/13
Third Edition Engrossed 4/11/13

Short Title: Land Use Surrounding Military Installations. (Public)

Sponsors:

Referred to:

March 27, 2013

A BILL TO BE ENTITLED

AN ACT TO SUPPORT THE ACTIVITIES OF THE ARMED FORCES AND TO MAINTAIN AND ENHANCE THE MILITARY'S PRESENCE IN NORTH CAROLINA BY REGULATING THE HEIGHT OF BUILDINGS AND STRUCTURES LOCATED IN AREAS THAT SURROUND MILITARY INSTALLATIONS IN THE STATE.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 143 of the General Statutes is amended by adding a new Article to read:

"Article 9G.
"Military Lands Protection.

"**§ 143-151.70. Short title.**

This Article shall be known as the Military Lands Protection Act of 2013.

"**§ 143-151.71. Definitions.**

Within the meaning of this Article:

(1) "Area surrounding major Department of Defense military installations" is the area that extends five miles beyond the boundary of a major Department of Defense military installation and may include incorporated and unincorporated areas of counties and municipalities.

(2) "Commissioner" means the Commissioner of Insurance.

(3) "Construction" includes reconstruction, alteration, or expansion.

(4) "Major Department of Defense military installation" means Fort Bragg, Pope Army Airfield, Camp Lejeune Marine Corps Air Base, 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, 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.

(5) "Person" includes any individual, partnership, firm, association, joint venture, public or private corporation, trust, estate, commission, board, public or private institution, utility, cooperative, interstate body, the State of North Carolina and its agencies and political subdivisions, or other legal entity.

(6) "State Construction Office" means the State Construction Office within the Department of Administration.

(7) "Tall buildings or structures" includes any building, structure, or unit within a multiunit building with a vertical height of more than 200 feet measured from the top of the foundation of the building, structure, or unit and the uppermost point of the building, structure, or unit. "Tall buildings or structures" does not include:

a. Water, radio, telephone, cellular, or television towers or any equipment for the transmission of electricity or communications or both.

b. Slender structures and minor vertical projections of a parent building, including chimneys, flagpoles, flues, spires, steeples, belfries, cupolas, antennas, poles, wires, or windmills. Windmills exempt pursuant to this sub-subdivision shall project no more than 20 vertical feet above the parent building.

c. Buildings and structures listed individually or as contributing resources within a district listed in the National Register of Historic Places.

"**§ 143-151.72. Legislative findings.**

North Carolina has a vested economic interest in preserving, maintaining, and sustaining land uses that are compatible with military activities at major Department of Defense installations. Development located proximate to military installations has been identified as a critical issue impacting the long-term viability of the military in this State. Additional concerns associated with development include loss of access to air space and coastal and marine areas and radio frequency encroachment. The construction of tall buildings or structures in areas surrounding major Department of Defense military installations is of utmost concern to the State as those buildings and structures may interfere with or impede the military's ability to carry out activities that are vital to its function and future presence in North Carolina.

"**§ 143-151.73. Certain buildings and structures prohibited without endorsement.**

(a) No county or city may authorize the construction of, and no person may construct, a tall building or structure in any area surrounding a major Department of Defense military installation in this State unless the county or city is in receipt of either a letter of endorsement issued to the person by the State Construction Office pursuant to G.S. 143-151.75 or proof of the Office's failure to act within the time allowed pursuant to G.S. 143-151.75.

(b) No county or city may authorize the provision of the following utility services to any building or structure constructed in violation of subsection (a) of this section: electricity, telephone, gas, water, sewer, or septic system.

"**§ 143-151.74. Exemption from applicability.**

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.

"**§ 143-151.75. Endorsement for construction of tall buildings or structures required.**

(a) No person shall undertake construction of a tall building or structure in any area surrounding a major Department of Defense military installation in this State without either first obtaining the endorsement from the State Construction Office or proof of the Office's failure to act within the time allowed.

(b) A person seeking endorsement for the construction of a tall building or structure in any area surrounding a major Department of Defense military installation in this State shall provide all of the following to the State Construction Office:

(1) Identification of the major Department of Defense military installation and the base commander of such installation that is located within five miles of the proposed construction of a tall building or structure.

(2) Certification of written notice to the commanders of the installation identified in subdivision (1) of this subsection that is located within five miles of the proposed construction of a tall building or structure.

(3) A written statement from the base commander of the installation identified in subdivision (1) of this subsection that includes both of the following:

a. A determination whether the location of the proposed construction of the tall building or structure is within a protected area that surrounds the installation.

b. A determination whether any activities of the installation may be adversely affected by the proposed construction of the tall building or structure. A detailed description of the potential adverse effects, including frequency disturbances and physical obstructions, shall accompany the determination required by this sub-subdivision.

(4) 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 Code of Federal Regulations (January 1, 2012 Edition) for the proposed construction of the tall building or structure.

(c) The State Construction Office shall not endorse the construction of a tall building or structure if the Office finds any one or more of the following:

(1) Construction of the proposed tall building or structure would encroach upon or otherwise interfere with the mission, training, or operations of any major Department of Defense military installation in North Carolina and result in a detriment to continued military presence in the State. In its evaluation, the State Construction Office may consider whether the proposed tall building or structure would cause interference with air navigation routes, air traffic control areas, military training routes, or radar based on the written statement received from a commander of a major Department of Defense military installation required pursuant to subdivision (3) of subsection (b) of this section and written comments received by members of affected communities.

(2) The Office is not in receipt of the written "Determination of No Hazard to Air Navigation" issued to the person by the Federal Aviation Administration required pursuant to subdivision (4) of subsection (b) of this section.

(d) The State Construction Office shall make a final decision on the request for endorsement of the construction of a tall building or structure within 60 days of receipt of the items provided by the person pursuant to subsection (b) of this section. If the Office determines that a request for the construction of a tall building or structure fails to meet the requirements for endorsement under this section, the Office shall deny the request, and the request shall be returned to the person accompanied by a written statement of the reasons for the denial. If the Office fails to act within any time period set forth in this section, the person may treat the failure to act as a decision to endorse the construction.

"**§ 143-151.76. Application to existing tall buildings and structures.**

G.S. 143-151.73 applies to tall buildings or structures that existed in an area surrounding major Department of Defense military installations upon the effective date of this Article as follows:

(1) No reconstruction, alteration, or expansion may aggravate or intensify a violation by an existing building or structure that did not comply with G.S. 143-151.73 upon its effective date.

(2) No reconstruction, alteration, or expansion may cause or create a violation by an existing building or structure that did comply with G.S. 143-151.73 upon its effective date.

"**§ 143-151.77. Enforcement and penalties.**

In addition to injunctive relief, the Commissioner may assess and collect a civil penalty against any person who violates any of the provisions of this Article or rules adopted pursuant to this Article, as provided in this subsection. 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 may constitute a separate violation if the person is not in the process of remedying the violation.

(1) The Commissioner 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 shall direct the violator to either pay the assessment or contest the assessment within 30 calendar 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 Commissioner within 30 calendar days after it is due, the Commissioner shall request that the Attorney General 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. A civil action must be filed within one year 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.

(2) In determining the amount of the penalty, the Commissioner 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, the prior record of the violator in complying or failing to comply with this Article, and the action of the person to remedy the violation.

(3) The clear proceeds of civil penalties collected by the Commissioner under this subsection shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

SECTION 2. This act becomes effective October 1, 2013.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

H D

HOUSE BILL 433*
Committee Substitute Favorable 4/10/13
Third Edition Engrossed 4/11/13
PROPOSED SENATE COMMITTEE SUBSTITUTE H433-CSSV-14 [v.3]
4/22/2013 7:23:56 PM

Short Title: Land Use Surrounding Military Installations. (Public)

Sponsors:

Referred to:

March 27, 2013

A BILL TO BE ENTITLED

AN ACT TO SUPPORT THE ACTIVITIES OF THE ARMED FORCES AND TO MAINTAIN AND ENHANCE THE MILITARY'S PRESENCE IN NORTH CAROLINA BY REGULATING THE HEIGHT OF BUILDINGS AND STRUCTURES LOCATED IN AREAS THAT SURROUND MILITARY INSTALLATIONS IN THE STATE.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 143 of the General Statutes is amended by adding a new Article to read:

"Article 9G.
"Military Lands Protection.

"**§ 143-151.70. Short title.**

This Article shall be known as the Military Lands Protection Act of 2013.

"**§ 143-151.71. Definitions.**

Within the meaning of this Article:

(1) "Area surrounding major military installations" is the area that extends five miles beyond the boundary of a major military installation and may include incorporated and unincorporated areas of counties and municipalities.
(2) "Construction" includes reconstruction, alteration, or expansion.
(3) "Major military installation" means Fort Bragg, Pope Army Airfield, Camp Lejeune Marine Corps Air Base, 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, 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.
(4) "Person" means any individual, partnership, firm, association, joint venture, public or private corporation, trust, estate, commission, board, public or private institution, utility, cooperative, interstate body, the State of North Carolina and its agencies and political subdivisions, or other legal entity.
(5) "Secretary" means the Secretary of Administration.
(6) "State Construction Office" means the State Construction Office within the Department of Administration.

(7) "Tall buildings or structures" means any building, structure, or unit within a multiunit building with a vertical height of more than 200 feet measured from the top of the foundation of the building, structure, or unit and the uppermost point of the building, structure, or unit. "Tall buildings or structures" does not include:

a. Water, radio, telephone, cellular, or television towers or any equipment for the transmission of electricity or communications or both.

b. Slender structures and minor vertical projections of a parent building, including chimneys, flagpoles, flues, spires, steeples, belfries, cupolas, antennas, poles, wires, or windmills. Windmills exempt pursuant to this sub-subdivision shall project no more than 20 vertical feet above the parent building.

c. Buildings and structures listed individually or as contributing resources within a district listed in the National Register of Historic Places.

"**§ 143-151.72. Legislative findings.**

North Carolina has a vested economic interest in preserving, maintaining, and sustaining land uses that are compatible with military activities at major installations. Development located proximate to military installations has been identified as a critical issue impacting the long-term viability of the military in this State. Additional concerns associated with development include loss of access to air space and coastal and marine areas and radio frequency encroachment. The construction of tall buildings or structures in areas surrounding major military installations is of utmost concern to the State as those buildings and structures may interfere with or impede the military's ability to carry out activities that are vital to its function and future presence in North Carolina.

"**§ 143-151.73. Certain buildings and structures prohibited without endorsement.**

(a) No county or city may authorize the construction of, and no person may construct, a tall building or structure in any area surrounding a major military installation in this State unless the county or city is in receipt of either a letter of endorsement issued to the person by the State Construction Office pursuant to G.S. 143-151.75 or proof of the Office's failure to act within the time allowed pursuant to G.S. 143-151.75.

(b) No county or city may authorize the provision of the following utility services to any building or structure constructed in violation of subsection (a) of this section: electricity, telephone, gas, water, sewer, or septic system.

"**§ 143-151.74. Exemption from applicability.**

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.

"**§ 143-151.75. Endorsement for construction of tall buildings or structures required.**

(a) No person shall undertake construction of a tall building or structure in any area surrounding a major military installation in this State without either first obtaining the endorsement from the State Construction Office or proof of the Office's failure to act within the time allowed.

(b) A person seeking endorsement for the construction of a tall building or structure in any area surrounding a major military installation in this State shall provide written notice of the intent to seek endorsement to the commanders of the installation that is located within five miles of the proposed construction of a tall building or structure and shall provide all of the following to the State Construction Office:

(1) Identification of the major military installation and the base commander of the installation that is located within five miles of the proposed construction of a tall building or structure.

(2) A copy of the written notice sent to the commanders of the installation identified in subdivision (1) of this subsection that is located within five miles of the proposed construction of a tall building or structure.

(3) A written statement from the base commander of the installation identified in subdivision (1) of this subsection that includes both of the following:

a. A determination whether the location of the proposed construction of the tall building or structure is within a protected area that surrounds the installation.

b. A determination whether any activities of the installation may be adversely affected by the proposed construction of the tall building or structure. A detailed description of the potential adverse effects, including frequency disturbances and physical obstructions, shall accompany the determination required by this sub-subdivision.

(4) 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 Code of Federal Regulations (January 1, 2012 Edition) for the proposed construction of the tall building or structure.

(c) The State Construction Office shall not endorse the construction of a tall building or structure if the Office finds any one or more of the following:

(1) Construction of the proposed tall building or structure would encroach upon or otherwise interfere with the mission, training, or operations of any major military installation in North Carolina and result in a detriment to continued military presence in the State. In its evaluation, the State Construction Office may consider whether the proposed tall building or structure would cause interference with air navigation routes, air traffic control areas, military training routes, or radar based on the written statement received from a commander of a major military installation required pursuant to subdivision (3) of subsection (b) of this section and written comments received by members of affected communities.

(2) The Office is not in receipt of the written "Determination of No Hazard to Air Navigation" issued to the person by the Federal Aviation Administration required pursuant to subdivision (4) of subsection (b) of this section.

(d) The State Construction Office shall make a final decision on the request for endorsement of the construction of a tall building or structure within 60 days of receipt of the items provided by the person pursuant to subsection (b) of this section. If the Office determines that a request for the construction of a tall building or structure fails to meet the requirements for endorsement under this section, the Office shall deny the request. The Office shall notify the person of the denial, and the notice shall include a written statement of the reasons for the denial. If the Office fails to act within any time period set forth in this section, the person may treat the failure to act as a decision to endorse the construction.

"**§ 143-151.76. Application to existing tall buildings and structures.**

G.S. 143-151.73 applies to tall buildings or structures that existed in an area surrounding major military installations upon the effective date of this Article as follows:

(1) No reconstruction, alteration, or expansion may aggravate or intensify a violation by an existing building or structure that did not comply with G.S. 143-151.73 upon its effective date.

(2) No reconstruction, alteration, or expansion may cause or create a violation by an existing building or structure that did comply with G.S. 143-151.73 upon its effective date.

"**§ 143-151.77. Injunctive relief.**

Whenever reasonable cause exists to believe that a person has violated this Article or rules adopted pursuant to this Article, the Secretary may request the Attorney General to institute a civil action for injunctive relief to restrain the violation. The Attorney General may institute the action in the name of the State upon relation of the Department of Administration in the superior court of the county in which the violation occurred. Upon a determination by the court that the alleged violation of the provisions of this Article or of rules adopted pursuant to this Article has occurred or is threatened, the court shall grant the relief necessary to prevent or abate the violation or threatened violation."

SECTION 2. This act becomes effective October 1, 2013.

HOUSE BILL 433:
Land Use Surrounding Military Installations

2013-2014 General Assembly

Committee:	Senate Ref to Commerce. If fav, re-ref to Judiciary I	**Date:**	April 23, 2013
Introduced by:	Reps. J. Bell, Stam, McElraft, Whitmire	**Prepared by:**	Trina Griffin Committee Counsel
Analysis of:	PCS to Third Edition H433-CSSV-14		

SUMMARY: ***House Bill 433 would prohibit the construction of tall buildings or structures within a five-mile area surrounding a military installation without first receiving an endorsement from the State Construction Office of the Department of Administration.***

The PCS eliminates the civil penalty provision but maintains the ability of the Attorney General to seek injunctive relief for violations. It also deletes the references to the Department of Defense because one of the military installations is subject to the authority of Homeland Security.

[As introduced, this bill was identical to S389, as introduced by Sen. Brown, which is currently in Senate Commerce.]

BILL ANALYSIS: House Bill 433 establishes a new Article in Chapter 143 of the General Statutes: The Military Lands Protection Act of 2013. The bill provides definitions for terms used in the Article, including "Major military installation" and "Tall buildings or structures," and provides that:

- A county or city cannot authorize, and no person may construct, the construction of a tall building or structure with a vertical height of more than 200 feet in any area surrounding a major military installation (area that extends five miles beyond the installation boundary), unless the county or city is (1) in receipt of either a letter of endorsement issued to the person by the State Construction Office (Office) of the Department of Administration, or (2) proof of the Office's failure to act within the time allowed by law.
- No utility services may be provided to any building or structure constructed in violation of the provisions of the Article (electricity, telephone, gas, water, sewer, or septic system).
- Wind energy facilities and wind energy facility expansions that are subject to permit requirements of Chapter 143 are exempt from obtaining the endorsement required by the Article.
- A person seeking to construct a tall building or structure in any area surrounding a major military installation must notify the installation of its intent and must obtain an endorsement from the State Construction Office. A person seeking an endorsement must provide the Office with the following:
  - Identification of the major military installation and the base commander of such installation that is located within five miles of the proposed construction of a tall building or structure.
  - A copy of the written notice to the commanders of the installation that is located within five miles of the proposed construction of a tall building or structure.
  - A written statement from the base commander of the installation that includes:
    - A determination whether the location of the proposed construction of the tall building or structure is within a protected area that surrounds the installation.

    - A determination whether any activities of the installation may be adversely affected by the proposed construction of the tall building or structure.
  - 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 Code of Federal Regulations (January 1, 2012 Edition) for the proposed construction of the tall building or structure.
- The State Construction Office may not endorse the construction of a tall building or structure if it finds any one of the following:
  - Construction of the proposed tall building or structure would encroach upon or otherwise interfere with the mission, training, or operations of any major military installation in North Carolina and result in a detriment to continued military presence in the State.
  - The Office did not receive a written "Determination of No Hazard to Air Navigation" issued to the applicant by the Federal Aviation Administration.
- The act provides procedures for a decision of endorsement by the Office upon receipt of all required information, including a deadline for the Office's decision (within 60 days). If the Office fails to act within the time period provided, the person may treat the failure to act as a decision to endorse the construction.
- The Article applies to buildings existing on the effective date, i.e., no reconstruction, alteration or expansion without compliance with the Article.
- The Article allows the Attorney General to seek injunctive relief for violations of the Article.

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

Hal Pell, counsel to the House Committee on Homeland Security, Military, and Veterans' Affairs, and Jennifer Mundt, Legislative Analyst, substantially contributed to this summary.

SENATE BILL 545*

Short Title:	Master Meters/Landlord-Tenant Agreement.	(Public)
Sponsors:	Senator Rabin (Primary Sponsor).	
Referred to:	Commerce.	

April 1, 2013

A BILL TO BE ENTITLED

AN ACT PROVIDING FOR THE USE OF A MASTER METER FOR ELECTRIC AND NATURAL GAS SERVICE WHEN THE TENANT AND LANDLORD HAVE AGREED IN THE LEASE THAT THE COST OF THE SERVICES SHALL BE INCLUDED IN THE RENTAL PAYMENTS AND THE SERVICE SHALL BE IN THE LANDLORD'S NAME.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 143-151.42 reads as rewritten:

"**§ 143-151.42. Prohibition of master meters for electric and natural gas service.**

(a) From and after September 1, 1977, in order that each occupant of an apartment or other individual dwelling unit may be responsible for his own conservation of electricity and gas, it shall be unlawful for any new residential building, as hereinafter defined, to be served by a master meter for electric service or natural gas service. Each individual dwelling unit shall have individual electric service with a separate electric meter and, if it has natural gas, individual natural gas service with a separate natural gas meter, which service and meters shall be in the name of the tenant or other occupant of said apartment or other dwelling unit. No electric supplier or natural gas supplier, whether regulated public utility or municipal corporation or electric membership corporation supplying said utility service, shall connect any residential building for electric service or natural gas service through a master meter, and said electric or natural gas supplier shall serve each said apartment or dwelling unit by separate service and separate meter and shall bill and charge each individual occupant of said separate apartment or dwelling unit for said electric or natural gas service. A new residential building is hereby defined for the purposes of this section as any building for which a building permit is issued on or after September 1, 1977, which includes two or more apartments or other family dwelling units. Provided, however, that any owner or builder of a multi-unit residential building who desires to provide central heat or air conditioning or central hot water from a central furnace, air conditioner or hot water heater which incorporates solar assistance or other designs which accomplish greater energy conservation than separate heat, hot water, or air conditioning for each dwelling unit, may apply to the North Carolina Utilities Commission for approval of said central heat, air conditioning or hot water system, which may include a central meter for electricity or gas used in said central system, and the Utilities Commission shall promptly consider said application and approve it for such central meters if energy is conserved by said design. This section shall apply to any dwelling unit normally rented or leased for a minimum period of one month or longer, including apartments, condominiums and townhouses, but shall not apply to hotels, motels, hotels or motels that have been converted into condominiums, dormitories, rooming houses or nursing homes, ~~or~~ homes for the ~~elderly.~~elderly, or situations

where the tenant and landlord have agreed in the lease that the cost of the electric service or natural gas service, or both, shall be included in the rental payments and the service shall be in the name of the landlord.

...."

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

SENATE BILL 545:
Master Meters/Landlord-Tenant Agreement

2013-2014 General Assembly

Committee:	Senate Commerce	**Date:**	April 22, 2013
Introduced by:	Sen. Rabin	**Prepared by:**	Peter Ledford
Analysis of:	First Edition		Committee Counsel

SUMMARY: ***Senate Bill 545 would allow a landlord and a tenant to enter into a lease where electric service or natural gas service is in the landlord's name and is included in the rent.***

[As introduced, this bill was identical to H522, as introduced by Reps. Avila, Pittman, Jeter, Speciale, which is currently in House Public Utilities and Energy, if favorable, Judiciary Subcommittee B.]

CURRENT LAW: G.S. 143-151.42 generally prohibits the use of master meters for electric service and natural gas service, where a single meter serves a residential building with multiple individual dwelling units that are rented for periods of one month or longer. Master meters are not prohibited at hotels, motels, dormitories, rooming houses, nursing homes, or homes for the elderly.

BILL ANALYSIS: Senate Bill 545 would allow the use of a master meter where a landlord and a tenant have agreed in a lease that the cost of electric service or natural gas service will be included in the rental payments and the service will be in the name of the landlord.

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

O. Walker Reagan
Director

S545-SMTP-35 E1 -V1

Research Division
(919) 733-2578

REQUEST TO SPEAK

Senate COMMERCE Committee
April 23, 2013

STATEMENT: The number of speakers allowed to speak and the time allowed by each will be announced during this meeting. This will be contingent on time remaining. By placing your name below acknowledges that you understand this statement.

PLEASE PRINT

NAME	FIRM OR AGENCY AND ADDRESS
(HB150) Ken Bowers *Handouts	NC Planning Association
(HB150) Mark Zimmerman	NCAR Legislative Chair
HB150 Pete Cieslak	The Brick Industry
HB150 Gary Roth *Handouts	Capital Area Preservation
HB 150 Joe Padilla	Real Estate + Building Industry Coalition
Paul Meyer	NCLM
HB 150 Mike Carpenter	NC Home Builders Association
HB150 Gina Clapp	Town of Holly Springs

VISITOR REGISTRATION SHEET

Senate **COMMERCE** Committee — April 23, 2013

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DEBBIE LOWN

NAME	FIRM OR AGENCY AND ADDRESS
Jay Rouse	NCAFC
Patrick Bafflin	"
Erin Wynia	NCLM
Bill Williams	Piedmont
John Monaghan	Piedmont
John Palumbo	NCSBA
Ken Kinyon	Spring Leaf

VISITOR REGISTRATION SHEET

Senate **COMMERCE** Committee — April 23, 2013

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DEBBIE LOWN

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Brad Cagle	NCAR.
Lolita Malau-	NCAR
Nancy Radtke	NCAR
Colleen Kochanek	AANC
Steven Webb	NCHBA
Lisa Martin	NCHBA
Mike Carpenter	NCHBA
Peter Harris	McGuireWoods
Betsy Bridges	PENC
David Crawford	AIANC

VISITOR REGISTRATION SHEET

Senate **COMMERCE** Committee — April 23, 2013

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DEBBIE LOWN

NAME	FIRM OR AGENCY AND ADDRESS
Ellen Harnick	CRL 301 W main st durham
Julie White	NCMMC
Kathryn Trogdon	NCMMC
Rhonda Todd	DOA
DAVE SIMPSON	ACG
Joe Padilla	REBIC
Alison Combs	NCCAR
Gary Roth	CAP, INC.
Jeremy Bradham	CAP, Inc.
Carr McLamb	DENR
Mia Bailey	Electricities

VISITOR REGISTRATION SHEET

Senate **COMMERCE** Committee — April 23, 2013

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DEBBIE LOWN

NAME	FIRM OR AGENCY AND ADDRESS
Frank DeRonja	NCAR
TARA ROBBINS	NC ASSN REALTORS
BRAD HUNTER	NC ASSN REALTORS
Janice Hassell	NC ASSN REALTORS
Dominic Palvisak	NCAR
Kelli Kukura	Duke Energy
Lana Hygh	Town of Cary
Paul Meyer	NCLM
Alice Kovach	NCAR
Teresa MacFarlane	NC ASSN REALTORS
ROYCE BENNETT	NCAR

VISITOR REGISTRATION SHEET

Senate **COMMERCE** Committee — April 23, 2013

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DEBBIE LOWN

NAME	FIRM OR AGENCY AND ADDRESS
Bob Kaylor	Kaylor Law
Cassie Gamm	Sierra Club
Jeff Peters	CCS

VISITOR REGISTRATION SHEET

Senate **COMMERCE** Committee — April 23, 2013

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DEBBIE LOWN

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J Tunnell	PNG
Paul Hoffman	Imm
Tyler VANNMAN	COW
C Wentz	Barringer
Greg Danner	DOA/SCO
Carley Ruff	NCHC
Wendy Kelly	Policy Group
Amanda Hraker	Trautman Sanders
Will Morgan	TWC
Keith Richards	City of Charlotte
Will Grantham	MWC

VISITOR REGISTRATION SHEET

Senate **COMMERCE** Committee — April 23, 2013

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DEBBIE LOWN

NAME	FIRM OR AGENCY AND ADDRESS
Jack Cozort	NSS
Allison Cozort	NSS
Gina Clapp	Town of Holly Springs
Ken Bowers	APA - NC
Dick Hails	APA - NC
Canaan Shue	MVA
Michael Smallwood	SOG Daily Bulletin
Christine Wunsche	SOG Daily Bulletin
Mark Simmons	NCAR Leg. Chair
Cody Thomas	NCAR
Chris Kardish	AP

VISITOR REGISTRATION SHEET

Senate **COMMERCE** Committee — April 23, 2013

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DEBBIE LOWN

NAME	FIRM OR AGENCY AND ADDRESS
Tony Adams	NCOAA
BRUCE THOMPSON	PARKER POE
April Montgomery	Invenergy
Henry Huntaff	N.P.B.D.
Kim Crouch	NCBA
Fred Bo[illegible]	Bom: Asso
PETE CIESIEL	BRICK
Johanna Reese	NCACC
Butch Gunnells	NCBA
Dan Conrad	NCUC
Chris Anderson	

Senate Committee on Commerce
Thursday, April 25, 2013, 11:00 AM
1027/1128 Legislative Building

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

BILL NO.	SHORT TITLE	SPONSOR
SB 612	Regulatory Reform Act of 2013.	Senator Brown Senator Jackson Senator Brock

Senate Committee on Commerce
Thursday, April 25, 2013 at 11:00 AM
Room 1027/1128 of the Legislative Building

MINUTES

The Senate Committee on Commerce met at 11:00 AM on April 25, 2013 in Room 1027/1128 of the Legislative Building. Twenty three members were present.

Senator Rick Gunn, Chair, presided.

Briggs Manness from Tryon, Elia Dew from Delco, and Nic Carroll from Willmington served as pages.

S. B. 612 Regulatory Reform Act 2013

Senator Tillman moved to adopt the proposed committee substitute (PCS) to the committee for discussion and it carried. The PCS to Senate Bill 612 would make numerous changes to various environmental and rulemaking laws and procedures, as well as changes to statutes pertaining to how cities lease property for renewable energy facilities, how a license for a going out of business sale is obtained, and what advisory board members subject to the state Government Ethics Act must disclose. The PCS removes Parts IV and VI from the first edition of the bill, adds Parts IV and VI-X, and makes substantial changes to Part III. Senator Brown was introduced to speak and brought forth the first amendment. Senator Gunn requested that the committee consider the first amendment and it carried. Senator Jackson was introduced to speak. Peter Ledford, an attorney from the Research Division, assisted with responses to the members. As a result of issues brought forth, Senator Newton suggested that an amendment be drafted during this committee. The amendment was created, brought before the committee and was accepted. Senator Brock was then introduced. Peter Ledford assisted Senator Brock with questions that came from the members. During the discussion a few members requested comments from North Carolina Department of Environmental and Natural Resources (NCDENR). Senator Gunn asked if there was a representative from NCDENR that was available for comments and to respond to questions. Dexter R. Matthews/Director from NCDENR and Theodore L. Bush, Jr./ Deputy Director from the Division of Water Quality for NCDENR were present and spoke respectively. There was a third amendment that was prepared prior to the committee meeting that addressed technical repairs. Senator Gunn asked Peter Ledford to explain the changes and the members accepted this amendment. Mary Maclean D. Asbill/ Senior Attorney with Southern Environmental Law, was permitted to address the members. Senator Jenkins made the motion unfavorable to the bill, favorable to the PCS as amended, with all three amendments and it carried.

The meeting adjourned at 11:48 AM

Senator Rick Gunn, Chair
Presiding

Debbie Lown, Committee Clerk

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

COMMERCE COMMITTEE REPORT
Senator Gunn, Co-Chair
Senator Meredith, Co-Chair

Tuesday, April 30, 2013

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

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

SB **612** Regulatory Reform Act of 2013.

Draft Number:	S612-PCS35333-TP-23
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

TOTAL REPORTED: 1

Senator Harry Brown will handle SB 612

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

S 1

SENATE BILL 612

Short Title:	Regulatory Reform Act of 2013.	(Public)
Sponsors:	Senators Brown, Jackson, Brock (Primary Sponsors); Cook, Hise, Rabin, Randleman, Soucek, and Tucker.	
Referred to:	Agriculture/Environment/Natural Resources.	

April 4, 2013

A BILL TO BE ENTITLED

AN ACT TO PROVIDE REGULATORY RELIEF TO THE CITIZENS OF NORTH CAROLINA BY CLARIFYING THE PREEMPTION OF CITY ORDINANCES AND CLARIFYING THAT SIMILAR RULES APPLY TO COUNTY ORDINANCES; BY CLARIFYING WHAT TYPES OF DEBRIS MAY BE USED AS STRUCTURAL FILL; BY CLARIFYING THE LAWS RELATING TO GROUNDWATER COMPLIANCE BOUNDARIES; BY EXTENDING THE TERMS OF CERTAIN ENVIRONMENTAL PERMITS; BY CLARIFYING THE PROHIBITION ON MASTER METERING TO PERMIT AN ALL-INCLUSIVE LEASE; BY EXEMPTING CERTAIN PROPERTIES FROM RIPARIAN BUFFER RULES; AND BY PROVIDING THE RULES REVIEW COMMISSION THE AUTHORITY TO REVIEW EXISTING RULES.

The General Assembly of North Carolina enacts:

PART I. FAST TRACK PERMITTING FOR CERTAIN ENVIRONMENTAL PERMITS

SECTION 1.1.(a) Stormwater. – 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 a stormwater permit

SECTION 1.1.(b) Erosion and Sedimentation Control. – The Department of Environment and Natural Resources shall develop Minimum Design Criteria for erosion and sedimentation control plans issued by the Department and local governments under the authority of Article 4 of Chapter 113A of the General Statutes. 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 or a local government stormwater program to approve an erosion and sedimentation control plan.

SECTION 1.2. In developing the Minimum Design Criteria, the Department shall consult with a technical working group that consists of industry experts, environmental engineers or 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 March 1, 2014.

SECTION 1.3. Article 21 of Chapter 143 of the General Statutes is amended by adding a new section to read:

"**§ 143-214.7B. Fast track permitting.**

The Commission shall adopt rules implementing a fast-track permitting process allowing for 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 sealed by a professional engineer."

SECTION 1.4. Article 4 of Chapter 113A of the General Statutes is amended by adding a new section to read:

"**§ 113A-68. Fast track plan approval.**

The Commission shall adopt rules implementing a fast-track plan approval process allowing for approval of erosion and sedimentation control plans by the Department or a local erosion and sedimentation control program without a technical review when the person files a plan that (i) complies with the Minimum Design Criteria for erosion and sedimentation control developed by the Department and (ii) is sealed by a professional engineer."

SECTION 1.5.(a) The Environmental Management Commission shall adopt rules implementing Section 1.3 of this act no later than February 1, 2014.

SECTION 1.5.(b) The Sedimentation Control Commission shall adopt rules implementing Section 1.4 of this act no later than February 1, 2014.

SECTION 1.6. The Department of Environment and Natural Resources shall identify other permitting programs for which the fast-track permitting process described by this Part would be appropriate and make a report, including proposed legislation, to the Environmental Review Commission no later than May 1, 2014.

PART II. CLARIFY LOCAL GOVERNMENT PREEMPTION

SECTION 2.1. G.S. 160A-174(b) reads as rewritten:

"(b) A city ordinance shall be consistent with the Constitution and laws of North Carolina and of the United States. An ordinance is not consistent with State or federal law when:

(1) The ordinance infringes a liberty guaranteed to the people by the State or federal Constitution;

(2) The ordinance makes unlawful an act, omission or condition which is expressly made lawful by State or federal law;

(3) The ordinance makes lawful an act, omission, or condition which is expressly made unlawful by State or federal law;

(4) The ordinance purports to regulate a subject that cities are expressly forbidden to regulate by State or federal law;

(5) The ordinance purports to regulate a field for which a State or federal statute clearly shows a legislative intent to provide a complete and integrated regulatory scheme to the exclusion of local regulation;

(5a) The ordinance regulates a field that is also regulated by a State or federal statute or regulation and the ordinance is more stringent than the State or federal statute or regulation.

(6) The elements of an offense defined by a city ordinance are identical to the elements of an offense defined by State or federal law.

The fact that a State or federal law, standing alone, makes a given act, omission, or condition unlawful shall ~~not~~ preclude city ordinances requiring a higher standard of conduct or condition."

SECTION 2.2. G.S. 153A-121 is amended by adding a new subsection to read:

"(a1) A county ordinance shall be consistent with the Constitution and laws of North Carolina and of the United States. An ordinance is not consistent with State or federal law when:

(1) The ordinance infringes a liberty guaranteed to the people by the State or federal Constitution;
(2) The ordinance makes unlawful an act, omission, or condition which is expressly made lawful by State or federal law;
(3) The ordinance makes lawful an act, omission, or condition which is expressly made unlawful by State or federal law;
(4) The ordinance purports to regulate a subject that cities are expressly forbidden to regulate by State or federal law;
(5) The ordinance purports to regulate a field for which a State or federal statute clearly shows a legislative intent to provide a complete and integrated regulatory scheme to the exclusion of local regulation;
(5a) The ordinance regulates a field that is also regulated by a State or federal statute or regulation and the ordinance is more stringent than the State or federal statute or regulation.
(6) The elements of an offense defined by a city ordinance are identical to the elements of an offense defined by State or federal law.

The fact that a State or federal law, standing alone, makes a given act, omission, or condition unlawful shall preclude county ordinances requiring a higher standard of conduct or condition."

PART III. ENVIRONMENTAL REGULATORY REFORM

SECTION 3.1.(a) G.S. 130A-309.09B 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). The following requirements shall apply:

(1) ~~Demolition~~ Inert debris or demolition debris consisting of used asphalt or used asphalt mixed with dirt, sand, gravel, rock, concrete, brick, wood, or similar nonhazardous material may be used as fill and need not be disposed of in a permitted landfill or solid waste disposal facility, provided that demolition debris may not be placed in the waters of the State or at or below the seasonal high water table.
(3) Units of local government are encouraged to separate marketable plastics, glass, metal, and all grades of paper for recycling prior to final disposal and are further encouraged to recycle yard trash and other organic solid waste into compost available for agricultural and other acceptable uses.

...."

SECTION 3.1.(b) G.S. 130A-294(m) reads as rewritten:

"**§ 130A-294. Solid waste management program.**

...

(m) ~~Demolition~~ Inert debris or demolition debris consisting of used asphalt or used asphalt mixed with dirt, sand, gravel, rock, concrete, brick, wood, or similar nonhazardous material may be used as fill and need not be disposed of in a permitted landfill or solid waste disposal facility. Such demolition debris may not be placed in the waters of the State or at or below the seasonal high water table."

SECTION 3.2.(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 shall have a compliance boundary as the Commission may establish by rule for various categories of disposal systems and beyond which groundwater quality standards may not be exceeded. Rules promulgated by the Commission pursuant to this subsection may not establish a compliance boundary beyond the property boundary. 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.

(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 clean-up, recovery, containment, or other response 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 outside the compliance boundary established under subsection (i) of this section, exceedances shall be remedied through clean-up, recovery, containment, or other response as directed by the Commission."

SECTION 3.2.(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 3.1(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.

SECTION 3.3.(a) G.S. 143-215.1 reads as rewritten:

"**§ 143-215.1. Control of sources of water pollution; permits required.**

...

(d2) No permit issued pursuant to subsection (c) of this section shall be issued or renewed for a term exceeding five years. All other permits issued pursuant to this section for which an expiration date is specified shall be issued for a term not to exceed ~~eight~~ 10 years.

(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.

...."

SECTION 3.3.(b) 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 ~~eight~~ 10 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 IV. CLARIFY MASTER METER PROHIBITION TO PERMIT AN ALL-INCLUSIVE LEASE

SECTION 4. G.S. 143-151.42 reads as rewritten:

"**§ 143-151.42. Prohibition of master meters for electric and natural gas service.**

(a) From and after September 1, 1977, in order that each occupant of an apartment or other individual dwelling unit may be responsible for his own conservation of electricity and gas, it shall be unlawful for any new residential building, as hereinafter defined, to be served by a master meter for electric service or natural gas service. Each individual dwelling unit shall have individual electric service with a separate electric meter and, if it has natural gas, individual natural gas service with a separate natural gas meter, which service and meters shall be in the name of the tenant or other occupant of said apartment or other dwelling unit. No electric supplier or natural gas supplier, whether regulated public utility or municipal corporation or electric membership corporation supplying said utility service, shall connect any residential building for electric service or natural gas service through a master meter, and said electric or natural gas supplier shall serve each said apartment or dwelling unit by separate service and separate meter and shall bill and charge each individual occupant of said separate apartment or dwelling unit for said electric or natural gas service. A new residential building is hereby defined for the purposes of this section as any building for which a building permit is issued on or after September 1, 1977, which includes two or more apartments or other family dwelling units. Provided, however, that any owner or builder of a multi-unit residential building who desires to provide central heat or air conditioning or central hot water from a central furnace, air conditioner or hot water heater which incorporates solar assistance or other designs which accomplish greater energy conservation than separate heat, hot water, or air conditioning for each dwelling unit, may apply to the North Carolina Utilities Commission for approval of said central heat, air conditioning or hot water system, which may include a central meter for electricity or gas used in said central system, and the Utilities Commission shall promptly consider said application and approve it for such central meters if energy is conserved by said design. This section shall apply to any dwelling unit normally rented or leased for a minimum period of one month or longer, including apartments, condominiums and townhouses, but shall not ~~apply~~ apply (i) to hotels, motels, hotels or motels that have been converted into condominiums, dormitories, rooming houses or nursing homes, or homes for the ~~elderly.~~elderly; or (ii) unless the tenant and the landlord have agreed to an all-inclusive lease where the electric and natural gas utilities are included in the rental payments and the service remains in the name of the landlord.

...."

PART V. EXEMPT CERTAIN PROPERTIES FROM RIPARIAN BUFFER RULES

SECTION 5. Part 1 of Article 21 of Chapter 143 of the General Statutes is amended by adding a new section to read:

"**§ 143-214.18. Exemption to riparian buffer requirements for certain private properties in the Neuse River and Tar-Pamlico River Basins.**

(a) Absent a requirement of federal law or an imminent threat to public health or safety, the temporary rules adopted July 22, 1997, January 22, 1998, April 22, 1998, and June 22, 1999, and the permanent rule adopted and effective August 1, 2000, as 15A NCAC 02B .0233, regarding the protection and maintenance of existing riparian buffers in the Neuse River and

Tar-Pamlico River Basins shall not apply to any tract of land that meets all of the following criteria:

(1) The property is private property.

(2) Prior to August 1, 2000, the property was private property and was platted and recorded in the register of deeds in the county where the property is located.

(3) With the exception of 15A NCAC 02B .0233, the use of the property complies with the rules and other laws regulating and applicable to that property prior to August 1, 2000.

(b) If a property described in subsection (a) of this section is converted to a use that does not comply with subdivisions (1) and (3) of subsection (a) of this section, then 15A NCAC 02B .0233 shall apply."

PART VI. EXPANDED RRC AUTHORITY

SECTION 6. Article 2A of Chapter 150B of the General Statutes is amended by adding a new section to read:

"**§ 150B-21.14A. Review by Commission of existing rules.**

(a) Authority. – At the request of any person or upon its own motion, the Commission may review any existing rule that was adopted in accordance with Part 2 of this Article.

(b) Notice. – At least 30 days prior to reviewing an existing rule, the Commission shall notify the agency that adopted the rule. If the agency that adopted the rule no longer exists or has become a part of another agency, the Commission shall provide the notice required by this subsection to the agency responsible for enforcing the rule.

(c) Standards. – The Commission shall review an existing rule under the criteria set forth in subdivisions (a)(1), (a)(2), and (a)(3) of G.S. 150B-21.9. The Commission shall not consider questions relating to the quality or efficacy of the rule but shall restrict its review to determination of the standards set forth in this subsection.

(d) Procedures. – When it reviews an existing rule, the Commission shall follow the procedures set forth in G.S. 150B-21.10 and subsections (a), (b), and (c) of G.S. 150B-21.12. If the Commission approves the rule, it will notify the agency. If the Commission disapproves the rule and the agency responds to the Commission that it has decided not to change the rule, the Commission shall provide a written report within 30 days to the Joint Legislative Administrative Procedure Oversight Committee and the Joint Legislative Commission on Governmental Operations. The report shall include the written statement required by G.S. 150B-21.12(a) together with all subsequent communications between the agency and the Commission."

PART VII. SEVERABILITY AND EFFECTIVE DATE PROVISIONS

SECTION 7.1. 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 so declared to be unconstitutional or invalid.

SECTION 7.2. Except as otherwise provided, this act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

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SENATE BILL 612
PROPOSED COMMITTEE SUBSTITUTE S612-PCS75290-MH-7

Short Title: Regulatory Reform Act of 2013. (Public)

Sponsors:

Referred to:

April 4, 2013

A BILL TO BE ENTITLED

AN ACT TO PROVIDE REGULATORY RELIEF TO THE CITIZENS OF NORTH CAROLINA BY CREATING A FAST TRACK PERMITTING PROCESS FOR CERTAIN ENVIRONMENTAL PERMITS; BY CLARIFYING THE PREEMPTION OF CITY ORDINANCES AND CLARIFYING THAT SIMILAR RULES APPLY TO COUNTY ORDINANCES; BY PROVIDING 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; BY CLARIFYING THE LAWS RELATING TO GROUNDWATER COMPLIANCE BOUNDARIES; BY EXTENDING THE TERMS OF CERTAIN ENVIRONMENTAL PERMITS; BY AMENDING THE ADMINISTRATIVE PROCEDURE ACT TO ELIMINATE THE REQUIREMENT THAT AN AGENCY PREPARE A FISCAL NOTE WHEN REPEALING A RULE; BY EXEMPTING CERTAIN PROPERTIES FROM RIPARIAN BUFFER RULES; BY REQUIRING THE REPEAL OR REVISION OF EXISTING ENVIRONMENTAL RULES MORE RESTRICTIVE THAN FEDERAL RULES PERTAINING TO THE SAME SUBJECT MATTER; BY ALLOWING MUNICIPALITIES TO LEASE REAL PROPERTY FOR A TERM OF UP TO TWENTY-FIVE YEARS TO PRIVATE COMPANIES CONSTRUCTING RENEWABLE ENERGY FACILITIES; BY ALLOWING GOING-OUT-OF-BUSINESS SALE LICENSES TO BE ISSUED BY ANY MUNICIPAL OFFICIAL DESIGNATED BY THE GOVERNING BODY OF THE MUNICIPALITY; BY DIRECTING 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; AND BY REQUIRING MEMBERS OF ADVISORY BODIES TO STATE AGENCIES AND BOARDS TO DISCLOSE POTENTIAL CONFLICTS OF INTEREST PRIOR TO MAKING ANY RECOMMENDATION.

The General Assembly of North Carolina enacts:

PART I. FAST TRACK PERMITTING FOR CERTAIN ENVIRONMENTAL PERMITS

SECTION 1.1.(a) Stormwater. – 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 a stormwater permit

SECTION 1.1.(b) Erosion and Sedimentation Control. – The Department of Environment and Natural Resources shall develop Minimum Design Criteria for erosion and sedimentation control plans issued by the Department and local governments under the authority of Article 4 of Chapter 113A of the General Statutes. 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 or a local government stormwater program to approve an erosion and sedimentation control plan.

SECTION 1.1.(c) Designation of Appropriate Professionals. – In the development of Minimum Design Criteria under this section, the Department shall specify types of licensed professionals qualified to certify the design, effectiveness, and appropriateness of each criterion. For purposes of this subsection, "licensed professionals" shall include, but not be limited to, engineers certified under Chapter 89C of the General Statutes, geologists certified under Chapter 89E of the General Statutes, and landscape architects certified under Chapter 89A of the General Statutes, and "qualified to certify" means, at a minimum, that the licensing board for that professional has the statutory authority to discipline the professional for falsely certifying design, effectiveness, or appropriateness of the particular criterion.

SECTION 1.2. Technical Working Group. – In developing the Minimum Design Criteria, the Department may consult with a technical working group that consists of industry experts, environmental engineers or consultants, relevant faculty from the University of North Carolina, and other interested stakeholders. The Department shall submit the final Minimum Design Criteria to the Environmental Review Commission no later than March 1, 2014.

SECTION 1.3. Article 21 of Chapter 143 of the General Statutes is amended by adding a new section to read:

"**§ 143-214.7B. Fast-track permitting.**

The Commission shall adopt rules implementing a fast-track permitting process allowing for 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 sealed by the appropriate professional specified in the criteria."

SECTION 1.4. Article 4 of Chapter 113A of the General Statutes is amended by adding a new section to read:

"**§ 113A-68. Fast-track plan approval.**

The Commission shall adopt rules implementing a fast-track plan approval process allowing for approval of erosion and sedimentation control plans by the Department or a local erosion and sedimentation control program without a technical review when the person files a plan that (i) complies with the Minimum Design Criteria for erosion and sedimentation control developed by the Department and (ii) is sealed by the appropriate professional specified in the criteria."

SECTION 1.5.(a) The Environmental Management Commission shall adopt temporary rules implementing Section 1.3 of this act no later than May 1, 2014. The temporary rules shall remain in effect until permanent rules that replace the temporary rules become effective.

SECTION 1.5.(b) The Sedimentation Control Commission shall adopt temporary rules implementing Section 1.4 of this act no later than May 1, 2014. The temporary rules shall remain in effect until permanent rules that replace the temporary rules become effective.

SECTION 1.6. G.S. 89C-19 reads as rewritten:

"§ 89C-19. Public works; requirements where public safety involved.

This State and its political subdivisions such as counties, cities, towns, or other political entities or legally constituted boards, commissions, public utility companies, or authorities, or officials, or employees of these entities shall not engage in the practice of engineering or land surveying involving either public or private property where the safety of the public is directly involved without the project being under the supervision of a professional engineer for the preparations of plans and specifications for engineering projects, or a professional land surveyor for land surveying projects, as provided for the practice of the respective professions by this Chapter. These entities shall not, in the course of conducting technical review of an application for a permit or the submission of a plan for approval by the entity, require revisions to that part of the application or plan that constitutes the practice of engineering and that has been supervised and sealed by a professional engineer unless the employee or official of the entity requiring the revision is also a professional engineer or is supervised by a professional engineer, and the reviewing professional engineer seals and assumes professional responsibility for the requested revisions under the rules of professional responsibility issued by the Board.

An official or employee of the State or any political subdivision specified in this section, holding the positions set out in this section as of June 19, 1975, shall be exempt from the provisions of this section so long as such official or employee is engaged in substantially the same type of work as is involved in the present position.

Nothing in this section shall be construed to prohibit inspection, maintenance and service work done by employees of the State of North Carolina, any political subdivision of the State, or any municipality including construction, installation, servicing, and maintenance by regular full-time employees of, secondary roads and drawings incidental to work on secondary roads, streets, street lighting, traffic-control signals, police and fire alarm systems, waterworks, steam, electric and sewage treatment and disposal plants, the services of superintendents, inspectors or foremen regularly employed by the State of North Carolina or any political subdivision of the State, or municipal corporation.

The provisions in this section shall not be construed to alter or modify the requirements of Article 1 of Chapter 133 of the General Statutes."

SECTION 1.7. The Department of Environment and Natural Resources shall identify other permitting programs for which the fast-track permitting process described by this Part would be appropriate and make a report, including proposed legislation, to the Environmental Review Commission no later than May 1, 2014.

PART II. CLARIFY LOCAL GOVERNMENT PREEMPTION

SECTION 2.1. G.S. 160A-174(b) reads as rewritten:

"(b) A city ordinance shall be consistent with the Constitution and laws of North Carolina and of the United States. An ordinance is not consistent with State or federal law when:

(1) The ordinance infringes a liberty guaranteed to the people by the State or federal Constitution;

(2) The ordinance makes unlawful an act, omission or condition which is expressly made lawful by State or federal law;

(3) The ordinance makes lawful an act, omission, or condition which is expressly made unlawful by State or federal law;

(4) The ordinance purports to regulate a subject that cities are expressly forbidden to regulate by State or federal law;

(5) The ordinance purports to regulate a field for which a State or federal statute clearly shows a legislative intent to provide a complete and integrated regulatory scheme to the exclusion of local regulation;

(5a) The ordinance regulates a field that is also regulated by a State or federal statute enforced or regulation promulgated by an agency authorized to implement and enforce State and federal environmental laws and the ordinance is more stringent than the State or federal statute or regulation; and

(6) The elements of an offense defined by a city ordinance are identical to the elements of an offense defined by State or federal law.

The fact that a State or federal law, standing alone, makes a given act, omission, or condition unlawful shall not preclude city ordinances requiring a higher standard of conduct or condition.

(c) The limitation set forth in subdivision (5a)of subsection (b) of this section does not apply to any ordinance if adoption of the ordinance was and continues to be required by one of the following:

(1) A serious and unforeseen threat to the public health, safety, or welfare.

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

(3) A provision 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.

(d) For purposes of this section, "an agency authorized to implement and enforce State and federal environmental laws" means any of the following:

(1) The Department of Environment and Natural Resources created pursuant to G.S. 143B-279.1.

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

(3) The Coastal Resources Commission established pursuant to G.S. 113A-104.

(4) The Marine Fisheries Commission created pursuant to G.S. 143B-289.51.

(5) The Wildlife Resources Commission created pursuant to G.S. 143-240.

(6) The Commission for Public Health created pursuant to G.S. 130A-29.

(7) The Sedimentation Control Commission created pursuant to G.S. 143B-298.

(8) The Mining and Energy Commission created pursuant to G.S. 143B-293.1.

(9) The Pesticide Board created pursuant to G.S. 143-436."

SECTION 2.2. G.S. 153A-121 is amended by adding a new subsection to read:

"(a1) A county ordinance shall be consistent with the Constitution and laws of North Carolina and of the United States. An ordinance is not consistent with State or federal law when:

(1) The ordinance infringes a liberty guaranteed to the people by the State or federal Constitution;

(2) The ordinance makes unlawful an act, omission, or condition which is expressly made lawful by State or federal law;

(3) The ordinance makes lawful an act, omission, or condition which is expressly made unlawful by State or federal law;

(4) The ordinance purports to regulate a subject that counties are expressly forbidden to regulate by State or federal law;

(5) The ordinance purports to regulate a field for which a State or federal statute clearly shows a legislative intent to provide a complete and integrated regulatory scheme to the exclusion of local regulation;

(6) The ordinance regulates a field that is also regulated by a State or federal statute enforced or regulation promulgated by an agency authorized to implement and enforce State and federal environmental laws and the

ordinance is more stringent than the State or federal statute or regulation; and

(7) The elements of an offense defined by a county ordinance are identical to the elements of an offense defined by State or federal law.

The fact that a State or federal law, standing alone, makes a given act, omission, or condition unlawful shall not preclude county ordinances requiring a higher standard of conduct or condition.

(a2) The limitation set forth in subdivision (6) of subsection (a1) of this section does not apply to any ordinance if adoption of the ordinance was and continues to be required by one of the following:

(1) A serious and unforeseen threat to the public health, safety, or welfare.

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

(3) A provision 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.

(a3) For purposes of this section, "an agency authorized to implement and enforce State and federal environmental laws" means any of the following:

(1) The Department of Environment and Natural Resources created pursuant to G.S. 143B-279.1.

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

(3) The Coastal Resources Commission established pursuant to G.S. 113A-104.

(4) The Marine Fisheries Commission created pursuant to G.S. 143B-289.51.

(5) The Wildlife Resources Commission created pursuant to G.S. 143-240.

(6) The Commission for Public Health created pursuant to G.S. 130A-29.

(7) The Sedimentation Control Commission created pursuant to G.S. 143B-298.

(8) The Mining and Energy Commission created pursuant to G.S. 143B-293.1.

(9) The Pesticide Board created pursuant to G.S. 143-436."

PART III. ENVIRONMENTAL REGULATORY REFORM

SECTION 3.1.(a) 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:

...

(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 3.1.(b) 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 3.1.(c) 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 3.2.(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 clean-up, 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 clean-up, recovery, containment, or other response as directed by the Commission."

SECTION 3.2.(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 3.1(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.

SECTION 3.3.(a) G.S. 143-215.1 reads as rewritten:

"§ 143-215.1. Control of sources of water pollution; permits required.

...

(d2) No permit issued pursuant to subsection (c) of this section shall be issued or renewed for a term exceeding five years. All other permits issued pursuant to this section for which an expiration date is specified shall be issued for a term ~~not to exceed eight~~ of 10 years.

(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.

...."

SECTION 3.3.(b) 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 eight~~ of 10 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 IV. NO FISCAL NOTE FOR RULE REPEAL

SECTION 4.1. G.S. 150B-4 is amended by adding a new subsection to read:

"(d) If an agency proposes the repeal of an existing rule, the agency is not required to prepare a fiscal note on the proposed rule change as provided by this section."

SECTION 4.2. This act is effective when it becomes law and applies to all proposed rules published in the North Carolina Register on or after that date.

PART V. EXEMPT CERTAIN PROPERTIES FROM RIPARIAN BUFFER RULES

SECTION 5. Part 1 of Article 21 of Chapter 143 of the General Statutes is amended by adding a new section to read:

"**§ 143-214.18. Exemption to riparian buffer requirements for certain private properties in the Neuse River and Tar-Pamlico River Basins.**

(a) Absent a requirement of federal law or an imminent threat to public health or safety, (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; and (ii) the temporary rule adopted January 1, 2000, and the permanent rule adopted and effective August 1, 2000, as 15A NCAC 2B .0259 regarding the protection and maintenance of existing riparian buffers in the Tar-Pamlico River Basin; shall not apply to any tract of land that meets all of the following criteria:

(1) The property is private property.

(2) Prior to August 1, 2000, the property was private property and was platted and recorded in the register of deeds in the county where the property is located.

(3) With the exception of 15A NCAC 02B .0233, the use of the property complies with the rules and other laws regulating and applicable to that property prior to August 1, 2000.

(b) If a property described in subsection (a) of this section is converted to a use that does not comply with subdivisions (1) and (3) of subsection (a) of this section, then 15A NCAC 02B .0233 shall apply."

PART VI. REFORM OF EXISTING RULES.

SECTION 6.1.(a) Definitions. – For purposes of this section, "an agency authorized to implement and enforce State and federal environmental laws" means any of the following:

(1) The Department of Environment and Natural Resources created pursuant to G.S. 143B-279.1.

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

(3) The Coastal Resources Commission established pursuant to G.S. 113A-104.

(4) The Marine Fisheries Commission created pursuant to G.S. 143B-289.51.

(5) The Wildlife Resources Commission created pursuant to G.S. 143-240.

(6) The Commission for Public Health created pursuant to G.S. 130A-29.

(7) The Sedimentation Control Commission created pursuant to G.S. 143B-298.

(8) The Mining and Energy Commission created pursuant to G.S. 143B 293.1.

(9) The Pesticide Board created pursuant to G.S. 143-436.

SECTION 6.1.(b) An agency authorized to implement and enforce State and federal environmental laws shall identify all existing rules for the protection of the environment

or natural resources that impose 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 6.1.(c) No later than September 1, 2013, agencies identifying rules under subsection (b) of this section shall initiate rule-making proceedings to (i) repeal the rules; or (ii) rewrite the rules to make them no more restrictive than the corresponding federal laws or rules. Rules adopted pursuant to this subsection are not subject to G.S. 150B-21.9 through G.S. 150B-21.14.

SECTION 6.1.(d). The rule-making proceedings required by subsection (c) of this section are not required for any rule identified under subsection (b) of this section if adoption of the rule was and continues to be required by one of the following:

(1) A serious and unforeseen threat to the public health, safety, or welfare.
(2) An act of the General Assembly or United States Congress that expressly requires the agency to adopt rules.
(3) A provision 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.

PART VII. PERMIT LONGER ALTERNATE ENERGY LEASING PERIODS

SECTION 7. G.S. 160A-272 reads as rewritten:

"**§ 160A-272. Lease or rental of property.**

...

(c) **(Effective until June 30, 2015)** 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.~~

(c) **(Effective June 30, 2015)** 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 Raleigh and Winston-Salem, and the Towns of Apex, Cary, Fuquay-Varina, Garner, Holly Springs, Knightdale, Morrisville, Rolesville, Wake Forest, Wendell, and Zebulon only.~~"

PART VIII. GOING OUT OF BUSINESS SALE LICENSING FLEXIBILITY

SECTION 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 IX. WETLANDS AND STREAM MITIGATION HUC FLEXIBILITY

SECTION 9.1. 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 and stream 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 9.2. The Departments shall jointly report on their progress in petitioning the Wilmington District as required by Section 9.1 of this act to the Environmental Review Commission no later than January 1, 2014.

PART X. ETHICS/ADVISORY BOARDS

SECTION 10. G.S. 138A-15 is amended by adding a new subsection to read:

"**§ 138A-15. Duties of heads of State agencies.**

...

(i) Before receiving or accepting any recommendation, the head of each State agency, including the chair of each board subject to this Chapter, shall require each member of an advisory body appointed or created by the State to serve that State agency or board, or appointed or created by the State agency or board subject to this Chapter, to disclose all reasonably foreseeable financial benefits from the matter under recommendation, which financial benefit would impair the member of the advisory body's independence of judgment or from which it could reasonably be inferred that the financial benefit would influence the member of the advisory body participation in the advisory body. Each member of an advisory body appointed or created by a State agency or board subject to this Chapter shall also provide to that State agency or board subject to this Chapter a list of all grants or employment pertaining to the matter under recommendation held or awarded within the previous 24 months before the recommendation and a copy of any deliverable associated with such grants."

PART XI. SEVERABILITY AND EFFECTIVE DATE PROVISIONS

SECTION 11.1. 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 so declared to be unconstitutional or invalid.

SECTION 11.2. Sections 3.1 and 10 of this act become effective July 1, 2013. Except as otherwise provided, the remainder of this act is effective when it becomes law.

SENATE BILL 612:
Regulatory Reform Act of 2013

2013-2014 General Assembly

Committee:	Senate Commerce	**Date:**	April 25, 2013
Introduced by:	Sens. Brown, Jackson, Brock	**Prepared by:**	Peter Ledford Committee Counsel
Analysis of:	PCS to First Edition S612-PCS75290-MH-7		

SUMMARY: ***The PCS to Senate Bill 612 would make numerous changes to various environmental and rulemaking laws and procedures, as well as changes to statutes pertaining to how cities lease property for renewable energy facilities, how a license for a going out of business sale is obtained, and what advisory board members subject to the State Government Ethics Act must disclose.***

The PCS removes Parts IV and VI from the first edition of the bill, adds Parts IV and VI-X, and makes substantial changes to Part III.

CURRENT LAW & BILL ANALYSIS:

PART I. FAST TRACK PERMITTING FOR CERTAIN ENVIRONMENTAL PERMITS

Sections 1.1.(a), 1.1.(b), 1.1.(c), and 1.2 of the bill direct the Department of Environment and Natural Resources (DENR) to develop minimum design criteria for stormwater runoff permitting programs authorized by G.S. 143-214.7 and for erosion and sedimentation control plans authorized by Article 4 of Chapter 113A of the General Statutes. G.S. 143-214.7 authorizes the Environmental Management Commission (EMC) to implement stormwater runoff rules and programs. Pursuant to this authority, the EMC has created stormwater runoff permitting programs. Article 4 of Chapter 113A, the Sedimentation Pollution Control Act of 1973, creates the Sedimentation Control Commission (SCC). The SCC approves erosion and sedimentation control plans, which are required to be submitted by those responsible for land-disturbing activities prior to commencing the activities. These sections direct DENR to specify the types of licensed professionals qualified to certify the various minimum design criteria and authorizes DENR to consult with a technical working group to develop the minimum design criteria. DENR is required to submit the final minimum design criteria to the Environmental Review Commission (ERC) by March 1, 2014.

Section 1.3 of the bill creates G.S. 143-214.7B, which requires the EMC to adopt rules implementing a fast-track permitting process for stormwater management system permits. The fast-track permitting process would not include a technical review if the applicant (i) complies with the minimum design criteria, and (ii) submits an application sealed by a designated appropriate professional. Section 1.5.(a) directs the ERC to adopt temporary rules implementing Section 1.3 no later than May 1, 2014.

Section 1.4 of the bill creates G.S. 113A-68, which requires the SCC to adopt rules implementing a fast-track permitting process for erosion and sedimentation control plans. The fast-track permitting process would not include a technical review if the applicant (i) complies with the minimum design criteria, and (ii) submits an application sealed by a designated appropriate professional. Section 1.5.(b) directs the SCC to adopt temporary rules implementing Section 1.4 no later than May 1, 2014.

Section 1.6 of the bill amends G.S. 89C-19, which generally prohibits the State and its political subdivisions from engaging in the practice of engineering or land surveying unless the project is under the supervision of a professional engineer or a professional land surveyor. Section 1.6 amends G.S. 89C-19 to prohibit the State and its political subdivisions from requiring revisions to an application or plan that has been supervised and sealed by a professional engineer during the course of a technical

review unless the official requiring the revision is, or is supervised by, a professional engineer and the official assumes professional responsibility for the revisions under the Rules of Professional Responsibility issued by the North Carolina State Board of Examiners for Engineers and Surveyors.

Section 1.7 of the bill directs DENR to identify other permitting programs for which the fast-track permitting program would be appropriate. DENR is directed to report these programs, including proposed legislation, to the ERC by May 1, 2014.

PART II. CLARIFY LOCAL GOVERNMENT PREEMPTION

Part II of the bill amends G.S. 160A-174(b) and G.S. 153A-121, which grant cities and counties respectively the authority to adopt ordinances as an exercise of their general police powers. The amendment to the county authority requires that all ordinances be consistent with the Constitution and laws of North Carolina and the United States, language that already applied to cities.

The amendments to both counties and cities further clarifies that an ordinance is not consistent with State or federal law when:

- It regulates a field that is also regulated by either:
    - A State or federal statute enforced by an agency authorized to implement and enforce State and federal environmental laws, or
    - A regulation promulgated by such an agency, and
- The ordinance is more stringent than the State or federal statute or regulation.

This limitation does not apply if an ordinance was and continues to be required by either (1) a serious and unforeseen threat to the public health, safety, or welfare, (2) an act of the General Assembly or United States Congress, (3) a provision in the federal or State budget, (4) a federal regulation adopted or administered by the State, or (5) a court order. Finally, the amendments list the agencies authorized to implement and enforce State and federal environmental laws, as they apply to ordinances that are not consistent with regulations.

PART III. ENVIRONMENTAL REGULATORY REFORM

G.S. 130A-294(a)(4)a. directs DENR 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 DENR's landfill permitting requirements and is subject to different requirements. Sections 3.1.(a), 3.1.(b), and 3.1.(c) would authorize the disposal of demolition debris from decommissioned buildings, including electric generating stations, on the same site as these buildings, rather than require debris to be landfilled, provided the debris meets all of the following requirements:

- It is composed of inert debris and is not characterized as a hazardous waste.
- 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 DENR, and 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.

Section 3.2.(a) would add three new subsections to G.S. 143-215.1, which regulates sources of water pollution and specifies the activities for which a permit is required. The new subsection (i) requires that 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 EMC, beyond which groundwater quality standards may not be exceeded. The subsection requires the compliance boundary be established at the property boundary, unless the EMC establishes otherwise. The subsection requires that multiple contiguous properties that are under common ownership and permitted for use as a disposal site shall be treated as a single property, and that nothing in the subsection shall require a revision to an existing compliance boundary approved by rule or permit. The new subsection (j) requires that the EMC shall only require a permitted disposal system to remedy a groundwater violation *within the compliance boundary* when (1) a violation of water quality standards in adjoining classified waters occurs or can be reasonably predicted to occur, (2) an imminent hazard or threat to the environment, public health, or safety exists, or (3) a violation occurs in the bedrock, unless it can be demonstrated that the violation will not adversely affect or have the potential to adversely affect a water supply well. The new subsection (k) requires that a groundwater violation *at or beyond the compliance boundary* be remedied as directed by the EMC. Section 3.2.(b) would require the new G.S. 143-215.1(j) apply to existing violations of groundwater quality standards within a compliance boundary rather than the existing 15A NCAC 2L .0104(d) and (e) until DENR has revised the rules to comply with the act.

Sections 3.3.(a) and 3.3.(b) would amend G.S. 143-215.1 and G.S. 143-215.108 respectively. G.S. 143-215.1 regulates sources of water pollution and specifies the activities for which a permit is required, and G.S. 143-215.108 regulates sources of air pollution and specifies the activities for which a permit is required. The changes extend the period of a permit, other than those for discharges to surface waters and Title V air permits, from eight years to ten years. The changes also specify that, in addition to an applicant or permittee, a third party who is dissatisfied with a decision of the EMC regarding a permit may file a contested case under the Administrative Procedure Act within 30 days. Currently, the statutes specify that an applicant or permittee is required to file a contested case within 30 days, but they are silent to third parties, which allows third parties to file a contested case within 60 days pursuant to G.S. 150A-23(f).

PART IV. NO FISCAL NOTE FOR RULE REPEAL

Under current law, when a State agency wishes to repeal an existing administrative rule, the agency must go through the same process as when the agency adopts a new rule or amends an existing rule. Before an agency publishes a notice of text for a proposed rule change in the North Carolina Register, which is the first step in the official rule-making process, the agency must submit a fiscal note to the

Office of State Budget and Management and obtain certification from the Office that any State funds needed for the rule change are available.

In addition, if the proposed rule change would affect the expenditures or revenues of a local government, the agency must submit a fiscal note to the Office of State Budget and Management, the Fiscal Research Division of the General Assembly, the North Carolina Association of County Commissioners, and the North Carolina League of Municipalities stating the amount by which the proposed rule change would increase or decrease the local government's expenditures or revenues.

Finally, if the proposed rule change would have an aggregate financial impact on all persons affected of at least $500,000 in a 12-month period, the agency must prepare a substantial economic impact fiscal note. This fiscal note must also be approved by the Office of State Budget and Management, or alternatively, the agency may request that the Office prepare the fiscal note.

Part IV would add a new provision to the law governing the requirements for fiscal notes in the administrative rule-making process. The provision would exempt agencies from the requirement that a fiscal note be prepared when the proposed rule change is the repeal of a rule.

PART V. EXEMPT CERTAIN PROPERTIES FROM RIPARIAN BUFFER RULES

Part V would create G.S. 143-214.18. Currently, G.S. 143-214.20, et. seq., establish the Riparian Buffer Protection Program, and the EMC has established rules for the Program pursuant to its statutory authority. The purpose of the Program is to maintain and protect existing riparian buffers along the rivers of the State. In the Neuse River Basin, 15A NCAC 02B .0233 requires a 50 foot buffer between development and any waters of the river basin. In the Tar-Pamlico River Basin, 15A NCAC 02B .0259 requires the same distance buffer. Part V would exempt property owners from these requirements if the following criteria are all met:

- The property is currently privately owned.
- The property was privately owned prior to August 1, 2000, and was platted and recorded with the Register of Deeds.
- For the Tar-Pamlico River Basin, the use of the property complies with the rules and laws applicable to the property prior to August 1, 2000.

This exemption will not apply if the property is no longer privately owned or if the use of the property changes such that it would not comply with the rules and laws applicable prior to August 1, 2000.

PART VI. REFORM OF EXISTING RULES

Part VI of the bill requires all agencies authorized to implement and enforce State and federal environmental laws to identify all existing rules for the protection of the environment or natural resources that are stricter than a corresponding federal law or rule, if there is one. The Part goes on to require that these agencies initiate rulemaking proceedings no later than September 1, 2013 to either repeal the rules or to rewrite the rules to make them no more restrictive than the corresponding federal laws or rules. Rulemaking proceedings initiated pursuant to this Part would not be subject to review by the Rules Review Commission under the Administrative Procedure Act.

Part VI defines agencies authorized to implement and enforce State and federal environmental laws as DENR, the EMC, the Coastal Resources Commission, the Marine Fisheries Commission, the Wildlife Resources Commission, the Commission for Public Health, the SCC, the Mining and Energy Commission, and the Pesticide Board.

This requirement would not apply if a rule was and continues to be required by either (1) a serious and unforeseen threat to the public health, safety, or welfare, (2) an act of the General Assembly or United

States Congress, (3) a provision in the federal or State budget, (4) a federal regulation adopted or administered by the State, or (5) a court order.

PART VII. PERMIT LONGER ALTERNATIVE ENERGY LEASING PERIODS

Currently, cities are authorized by G.S. 160A-272 to lease property owned by the city for up to ten 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 twenty years. Part VII would amend subsection (c) to allow a lease term of up to twenty-five years and remove the language restricting the provision to certain cities.

PART VIII. GOING OUT OF BUSINESS SALE LICENSING FLEXIBILITY

Article 17 of Chapter 66 of the General Statutes, Closing-Out Sales, regulates the sales that occur when a business is liquidating inventory during a going out of business sale. Currently, the business is required to 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. Part VIII 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 IX. WETLANDS AND STREAM MITIGATION HUC FLEXIBILITY

Under Section 404 of the Clean Water Act, an individual may obtain a permit to perform compensatory mitigation to offset impacts to wetlands and streams caused by development. The permits are overseen by the United States Army Corps of Engineers (Corps), although in the State some oversight is shared with DENR's Ecosystem Enhancement Program. Currently, the Wilmington District of the Corps, which oversees implementation of Section 404 in all of the State, generally requires that mitigation occur in the same eight-digit Hydrologic Unit Code (HUC) as the development. There are approximately 54 eight-digit HUCs in or partially in the State. Part IX of the bill would require DENR and the Department of Transportation to jointly petition the Wilmington District of the Corps to allow for greater flexibility and opportunity to perform mitigation outside of the eight-digit HUC. The Departments would be required to report their progress to the ERC by January 1, 2014.

PART X. ETHICS/ADVISORY BOARDS

Currently, the heads of State agencies and the chairs of boards subject to the State Government Ethics Act are required to take various actions under G.S. 138A-15 to effectuate compliance with the Act. Part X of the bill would add an additional requirement to G.S. 138A-15 for the heads of State agencies and the chairs of boards subject to the Act to require the members of any advisory board to disclose any reasonably foreseeable financial benefits the member may receive from the matter under recommendation when the benefit would impair the member's independence of judgment or when it could be reasonably inferred that the benefit would influence the member's participation. Part X would also require the members to provide a list of all grants awarded or employment held during the previous two years that pertain to the matter under recommendation.

EFFECTIVE DATE: Sections 3.1 and 10 of this act become effective July 1, 2013. The remainder of this act is effective when it becomes law.

Jennifer Mundt, legislative analyst to the House Environment Committee, and Karen Cochrane-Brown, counsel to the House Regulatory Reform Subcommittee on the Environment, substantially contributed to this summary.

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 612

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

S612-ATP-16 [v.3]

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

Date _____,2013

Senator _____

moves to amend the bill on page 4, line 11, by rewriting the line to read:
"(c) The limitation set forth in subdivision (5a) of subsection (b) of this section does not";

and on page 9, lines 6 through 7, by deleting those lines;

and on page 9, line 20, by replacing the phrase "15A NCAC 2B .0259" with the phrase "15A NCAC 02B .0259";

and on page 12, line 24, by adding the following at the end of the line:
"Section 4.1 of this act is effective when it becomes law and applies to all proposed rules published in the North Carolina Register on or after that date.".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 612

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

S612-AMH-5 [v.4]

Comm. Sub. [YES]
Amends Title [NO]
PCS S612-CSMH-7

Date _____,2013

Senator Brown

moves to amend the bill on page 3, lines 9-15, by rewriting the lines to read:

"by this Chapter. These entities shall not, in the course of conducting technical review of an application for a permit or a plan submitted for approval by the entity, require revisions to that part of the application or plan that constitutes the practice of engineering and that has been supervised and sealed by a professional engineer unless the employee or official of the reviewing entity requiring the revision is also a professional engineer or is an engineering intern under the responsible charge of a professional engineer. Any revisions to the application or plan that are required by the reviewing entity and that constitute the practice of engineering shall be provided by written notice to the permit applicant or the person submitting a plan for approval. The written notice shall be on agency letterhead, and shall be signed by the professional engineer reviewing or supervising the review of the submission and shall include the engineer's state license number.";

and on page 4, lines 1-4, by rewriting the lines to read:

"(5a) The ordinance (i) regulates a field that is also regulated by a State or federal statute enforced by, or a regulation promulgated by, an environmental agency; and (ii) is more stringent than the State or federal statute or regulation;";

and on page 4, lines 21-22, by rewriting the lines to read:

"(d) For purposes of this section, "an environmental agency" means any of the following:";

and on page 4, line 30, by rewriting the line to read:

"(6) The Commission for Public Health created pursuant to G.S. 130A-29, when regulating pursuant to the authority granted by Articles 9, 10, 11, 19, 19A, and 19B of Chapter 130A of the General Statutes.";

and on page 4, line 49 through page 5, line 1, by rewriting the lines to read:

"(6) The ordinance (i) regulates a field that is also regulated by a State or federal statute enforced by, or a regulation promulgated by, an environmental agency; and (ii) is more stringent than the State or federal statute or regulation;";

and on page 5, lines 18-19, by rewriting the lines to read:
"(a3) For purposes of this section, "an environmental agency" means any of the following:";

and on page 5, line 27, by rewriting the line to read:
"(6) The Commission for Public Health created pursuant to G.S. 130A-29, when regulating pursuant to the authority granted by Articles 9, 10, 11, 19, 19A, and 19B of Chapter 130A of the General Statutes.

and on page 9, line 3, by rewriting the line to read:
"**SECTION 4.1.** G.S. 150B-21.4 is amended by adding a new subsection to read:".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. _____ DATE _____

S. B. No. 612 Amendment No. 1
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE X

Rep.) Newton
(Sen.)

1 moves to amend the bill on page 9, line S 24-25
2 ( ) WHICH CHANGES THE TITLE
3 by deleting the words "platted and".
4
5
6
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SIGNED _____

ADOPTED _____ FAILED _____ TABLED _____

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

VISITOR REGISTRATION SHEET

Senate **COMMERCE** Committee — April 25, 2013

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DEBBIE LOWN

NAME	FIRM OR AGENCY AND ADDRESS
Chris Dillon	ACWPC
Angel Sams	CR
Jim H. Lynch	GMC
Doug Lassiter	NCSTA
George Everett	Duke Energy
Kathy Hawkins	Duke Energy
Heather Barnett	Ward & Smith
Tim Mahoney	WAKE CO. GOV.
Rick Zechini	W, Rhm, Mgh
Kelli Ickes	Duke Energy
Betsy Vetter	American Heart Assn
Chuck Stone	SEANC
Dexter Mathews	DENR - Waste Management

VISITOR REGISTRATION SHEET

Senate **COMMERCE** Committee — April 25, 2013

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DEBBIE LOWN

NAME	FIRM OR AGENCY AND ADDRESS
Beth Young	FPLC
Ellen Harnick	CRL
George Smith	NP
Sarah Wolfe	MWCLLC
Carr McLamb	DENR
John Palumbo	NCHBA
Chip Killian	Nelson Mullins
Steven Wood	NCHBA
David McGowan	NCPC
Johanna Reese	NCACC
Amanda Reeder	RRC

VISITOR REGISTRATION SHEET

Senate **COMMERCE** Committee — April 25, 2013

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DEBBIE LOWN

NAME	FIRM OR AGENCY AND ADDRESS
Weldon Jones	James Poole
Al Ripley	NCJC
Mathey Christenson	NCBA
	Mike Charles
Trish Peterson	NCEOA
Anca Grozav	OSBM
Chris Nida	NCLM
Gwen	Staff
Cameron Hardy	MWA
Alan Briggs	NC Food Banks
David Heinen	NC Center for Nonprofits

VISITOR REGISTRATION SHEET

Senate **COMMERCE** Committee — April 25, 2013

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DEBBIE LOWN

NAME	FIRM OR AGENCY AND ADDRESS
JGOODMAN	NC CHAMBER
SUSAN Stabley	Charlotte Business Journal

VISITOR REGISTRATION SHEET

Senate **COMMERCE** Committee — April 25, 2013

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DEBBIE LOWN

NAME	FIRM OR AGENCY AND ADDRESS
Nathan Batts	NCBA
[illegible]	NCCOE
Will Morgan	TNC
[illegible]	[illegible]
[illegible]	NCMS
Amy Whited	NCMS
Allen Hardison	CRSWMA
[illegible]	AP
Mary Maile Asbill	SELC
Brook Rainey Pearson	SELC
Nadia Luhr	NCCN

VISITOR REGISTRATION SHEET

Senate **COMMERCE** Committee — April 25, 2013

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DEBBIE LOWN

NAME	FIRM OR AGENCY AND ADDRESS
Tom Bean	EDF, NCWF
Molly Diggins	Sierra Club
Dede Chicord-Bryant	Sierra Club
Jordan Paschal	Intern: Rep. Hamilton
Dirk Walton	
Ted Bush	DENR/DWQ
Betsy Bailey	PENC
Andrew Ritter	NC Board of Examiners for PE + PLS
Adam Stallings	Real Estate Commission
DAVID WARD	LOWE'S
Jennifer Haigwood	NCDOL
Justin Delancey	NCDOL

VISITOR REGISTRATION SHEET

Senate **COMMERCE** Committee — April 25, 2013

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DEBBIE LOWN

NAME	FIRM OR AGENCY AND ADDRESS
Justin Delaney	NC DOL
Kimberly Robinson	NCRMA
Jay Peters	CSS
Lu-Ann C Thompson	CSS
Laquita Peters	CSS
Preston Howard	NCMA
J Goodman	NC CHAMBER
Susan Stabley	Charlotte Business Journal
Amy Stamido	NC Chamber
Dana Singleton	SM
Angie Hamm	Ward & Smith

VISITOR REGISTRATION SHEET

Senate **COMMERCE** Committee — April 25, 2013

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DEBBIE LOWN

NAME	FIRM OR AGENCY AND ADDRESS
Bill Rush	AMA

Senate Committee on Commerce
Tuesday, April 30, 2013, 11:00 AM
1027/1128 Legislative Building

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

BILL NO.	SHORT TITLE	SPONSOR
HB 293	Mortgages/S.A.F.E. Act.	Representative Szoka Representative J. Bell Representative Hardister
SB 284	OSC/GBICC/State Data Sharing.	Senator Hise
SB 489	Consumer Finance Act Amendments.	Senator Gunn Senator Newton Senator Clodfelter

Senate Committee on Commerce
Tuesday, April 30, 2013 at 11:00 AM
Room 1027/1128 of the Legislative Building

MINUTES

The Senate Committee on Commerce met at 11:00 AM on April 30, 2013 in Room 1027/1128 of the Legislative Building. Twenty four members were present.

Senator Wesley Meredith, Chair, presided.

Odom Williford from Chapel Hill, Annie Linn Johnson from Fayetteville, and Rue Quawn Anderson from Wilson served as pages.

H. B. 293 Mortgages/S.A.F.E. Act

Representative Szoka was introduced to speak on the bill. Senator Harrington moved for a favorable report and it carried.

S. B. 284 OCS/Gov't Data Analytics/State Data Sharing

Senator Brown moved to adopt the proposed committee substitute (PCS) to the committee for discussion and it carried. Senator Hise was introduced to speak on the bill. Senator Clark brought forth 2 amendments. Senator Tillman moved to accept the first amendment for review by the committee and it carried. A second amendment was brought forth and Senator Hise did not support this amendment and it was withdrawn by Senator Clark. Senator Tarte moved – unfavorable to the bill – favorable to the PCS as amended and it carried.

S. B. 489 Consumer Finance Act Amendments

Senator Brown moved to adopt the proposed committee substitute (PCS) to the committee for discussion and it carried. Senator Gunn was introduced to speak on the bill. Wendy Graf an attorney from the Research Division also explained the bill and remained available for questions. Senator Clark brought forth 3 amendments. After discussion, Senator Clark withdrew all three amendments. Senator Bryant had concerns regarding the bill and Senator Meredith asked if there was someone present who could address these concerns. Ken Kinion/Regional Director in Government Relations for Springleaf assisted. Ray Grace/Interim Commissioner of Banks for the State of North Carolina Office of the Commissioner of Banks also assisted with responses. Senator Meredith then allowed visitors to speak with a 2 minute time limit. Speakers are as follows in the respective order: Jennifer Epperson/Special Counsel State of North Carolina Department of Justice, Laura Collins Britton/Clinical Assistant Professor of Law for the UNC School of Law, Helen Savage/Associate State Director for AARP of North Carolina, Rebekay O'Connell from Triangle Family Services, Erin Wagner DiNero/Vice President for Wagner Financial Service, Inc and Stephanie Ceccato/Attorney for the Legal Services of

Southern Piedmont. Senator Tillman moved – unfavorable to the bill – favorable to the PCS as amended and it carried.

The meeting adjourned at 11:55 AM.

Senator Wesley Meredith, Chair
Presiding

Karen Johns, Committee Clerk

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

COMMERCE COMMITTEE REPORT
Senator Gunn, Co-Chair
Senator Meredith, Co-Chair

Tuesday, April 30, 2013

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

FAVORABLE

HB **293** Mortgages/S.A.F.E. Act.

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

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

SB **284** OSC/GBICC/State Data Sharing.

Draft Number:	S284-PCS15257-TP-24
Sequential Referral:	Judiciary I
Recommended Referral:	None
Long Title Amended:	Yes

TOTAL REPORTED: 2

Senator Wesley Meredith will handle HB 293
Senator Ralph Hise will handle SB 284

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

COMMERCE COMMITTEE REPORT
Senator Gunn, Co-Chair
Senator Meredith, Co-Chair

CORRECTED REPORT #1

Wednesday, May 01, 2013

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

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

SB **489** Consumer Finance Act Amendments.

Draft Number:	S489-PCS85212-SU-17
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

TOTAL REPORTED: 1

Senator Richard Gunn will handle SB 489

HOUSE BILL 293

Short Title:	Mortgages/S.A.F.E. Act.	(Public)
Sponsors:	Representatives Szoka, J. Bell, and Hardister (Primary Sponsors). *For a complete list of Sponsors, refer to the North Carolina General Assembly Web Site.*	
Referred to:	Judiciary Subcommittee A, if favorable, Banking.	

March 14, 2013

A BILL TO BE ENTITLED

AN ACT AMENDING THE SECURE AND FAIR ENFORCEMENT MORTGAGE LICENSING ACT TO REDUCE REGULATORY BURDENS, MAKING CLARIFYING AND TECHNICAL CHANGES, AND MODIFYING CERTAIN FORECLOSURE PROCEEDINGS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 53-244.050 reads as rewritten:

"**§ 53-244.050. License and registration application; claim of exemption.**

...

(b) The eligibility requirements for an application for licensure under this Article are as follows:

(1) Each individual applicant for licensure as a mortgage loan originator or qualifying individual shall:

...

c. Have passed, within the ~~three~~ five years immediately preceding the date of application, the test required under G.S. 53-244.080.

...

(3) If an individual applicant to be licensed as a mortgage broker is a licensed mortgage loan originator and meets the requirements for licensure as a mortgage broker, but is not an employee as defined in G.S. 53-244.030(10) and does not meet the experience requirements of G.S. 53-244.050(b)(2)a., the individual may be licensed as an exclusive mortgage broker upon compliance with all of the following:

a. Successfully completes ~~a 16-hour residential mortgage lending course approved by the Commissioner supplementing~~the prelicensing education required under G.S. 53-244.070."

SECTION 2. G.S. 53-244.080 reads as rewritten:

"**§ 53-244.080. Testing requirements for mortgage loan originators.**

...

(e) An applicant may retake a test three consecutive times with each consecutive test occurring at least 30 days after the preceding test. After failing three consecutive tests, an applicant must wait at least six months before retaking the test. A licensed mortgage loan originator who fails to maintain a valid license for a period of ~~three~~ five years or longer must retake the test."

SECTION 3. G.S. 53-244.102 reads as rewritten:

"**§ 53-244.102. Continuing education for mortgage loan originators.**

...

(d) A licensed mortgage loan originator:

(1) Except for G.S. 53-244.070(a) and subsection (e) of this section, may ~~only~~ receive credit for a continuing education course ~~in the year in which the course is taken; and~~taken prior to the end of the reinstatement period under G.S. 53-244.101(d); and

...."

SECTION 4. G.S. 53-244.114 reads as rewritten:

"**§ 53-244.114. Licensure authority.**

(a) The Commissioner may, by order, deny, suspend, revoke, or refuse to issue or renew a license of a licensee or applicant under this Article, or may restrict or limit the manner in which a licensee, applicant, or any person who owns an interest in or participates in the business of a licensee engages in the mortgage business, if the Commissioner finds both of the following:

...

(2) That any of the following circumstances apply to the applicant, licensee, or any partner, member, manager, officer, director, loan ~~officer, limited loan officer,~~ originator, qualifying individual, or any person occupying a similar status or performing similar functions or any person directly or indirectly controlling the applicant or licensee. The person:

...

e. Is the subject of an order entered within the past five years by the authority of any state or federal agency with jurisdiction over ~~that state's~~ the mortgage brokerage, mortgage lending, or mortgage servicing ~~industry denying that person's license as a mortgage loan originator, mortgage broker, mortgage lender, or mortgage servicer;~~industry;

...."

SECTION 5. G.S. 53-244.116 reads as rewritten:

"**§ 53-244.116. Disciplinary authority.**

...

(b) When a licensee is accused of any act, omission, or misconduct that would subject the licensee to disciplinary action, the licensee, with the consent and approval of the Commissioner, may surrender the license and all the rights and privileges pertaining to it. A person who surrenders a license shall not be eligible for or submit any application for licensure under this ~~Article.~~Article during any period specified by the Commissioner.

...."

SECTION 6. G.S. 53-244.117 is repealed.

SECTION 7. G.S. 45-21.16B is repealed.

SECTION 8. G.S. 45-94 reads as rewritten:

"**§ 45-94. Remedies.**

In addition to any equitable remedies and any other remedies at law, any borrower injured by any violation of this Article may bring an action for recovery of actual damages, including reasonable attorneys' fees. The Commissioner of Banks, the Attorney General, or any party to a home loan may enforce the provisions of this section. ~~The Clerk of Superior Court shall also suspend foreclosure proceedings for 60 days if notified by the Commissioner of Banks as provided in G.S. 53-243.12(n).~~ With the exception of an action by the Commissioner of Banks or the Attorney General, at least 30 days before a borrower or a borrower's representative institutes a civil action for damages against a servicer for a violation of this Article, the borrower or a borrower's representative shall notify the servicer in writing of any claimed errors

or disputes regarding the borrower's home loan that forms the basis of the civil action. The notice must be sent to the address as designated on any of the servicer's bills, statements, invoices, or other written communication, and must enable the servicer to identify the name and loan account of the borrower. For purposes of this section, notice shall not include a complaint or summons. Nothing in this section shall limit the rights of a borrower to enjoin a civil action, or make a counterclaim, cross-claim, or plead a defense in a civil action. A servicer will not be in violation of this Article if the servicer shows by a preponderance of evidence that:

(1) The violation was not intentional or the result of bad faith; and

(2) Within 30 days after discovering or being notified of an error, and prior to the institution of any legal action by the borrower against the servicer under this section, the servicer corrected the error and compensated the borrower for any fees or charges incurred by the borrower as a result of the violation."

SECTION 9. This act is effective when it becomes law.

HOUSE BILL 293: Mortgages/S.A.F.E. Act

2013-2014 General Assembly

Committee:	Senate Ref to Commerce. If fav, re-ref to Judiciary I	**Date:**	April 30, 2013
Introduced by:	Reps. Szoka, J. Bell, Hardister	**Prepared by:**	Trina Griffin Committee Counsel
Analysis of:	First Edition		

SUMMARY: ***House Bill 293 makes various clarifying and technical changes to the Secure and Fair Enforcement Mortgage Licensing Act and repeals the provision authorizing the Commissioner of Banks to suspend foreclosures in certain cases because the Commissioner is no longer involved in the Foreclosure Prevention Program.***

CURRENT LAW:

In 2009, the General Assembly enacted the Secure and Fair Enforcement Mortgage Licensing Act (S.A.F.E.) in order to conform to the requirements of Title V of the federal Housing and Economic Recovery Act of 2008. The federal act required that any residential mortgage loan originator be either State licensed or federally registered. The State had until August 1, 2009, to conform their statutes to the federal standards. After that date, loan originators in states that did not have conforming licensing statutes became subject to the federal registration system.

The act established license and registration requirements for mortgage loan originators as well as mortgage brokers, mortgage lenders, and mortgage servicers, and is administered by the Commissioner of Banks. Under the law, each applicant must be at least 18 years of age, have completed within 3 years, the mortgage lending prelicensing education, and have passed, within 3 years, a test developed and administered by the Nationwide Mortgage Licensing System and Registry. Licenses must be renewed annually and licensees must complete at least 8 hours of continuing education including State and federal laws, ethics, and training related to lending standards for nontraditional mortgage products. The Commissioner of Banks has specific regulatory authority including authority to discipline licensees and to impose civil penalties.

The act also continued the Commissioner's authority to suspend a foreclosure proceeding when the Commissioner has evidence that a material violation of the law has occurred.

BILL ANALYSIS:

House Bill 293 makes the following changes to the S.A.F.E. Mortgage Licensing Act:

- Extends from 3 to 5 years (i) the time within which an applicant must pass the licensing test and (ii) after which a loan originator who fails to maintain a valid license must retake the test. The five-year period conforms to federal law.
- Eliminates an additional and duplicative 16-hour educational requirement for exclusive mortgage brokers.
- Allows a loan originator to receive credit for continuing education courses taken prior to the end of the reinstatement period.

- Allows the Commissioner to discipline a licensee for having been found in violation of federal law as well as any state law.
- Authorizes the Commissioner of Banks to specify a time within which an individual may re-apply for licensure after surrendering a license. Currently, a licensee who has surrendered a license may not reapply for a license. The former Mortgage Lending Act allowed the Commissioner of Banks to specify the period of time in which an individual surrendering a license may re-apply for licensure.
- Repeals the foreclosure suspension program, which authorizes the Commissioner of Banks to suspend a foreclosure proceeding for 60 days if the Commissioner finds evidence that a material violation of law has occurred in the origination or servicing of a loan being foreclosed or in threat of foreclosure. The Clerk of Court must suspend foreclosure upon notice from the Commissioner. However, the Commissioner no longer administers the foreclosure prevention program because it was moved under the authority of the Housing Finance Agency.[1]

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

Karen Cochrane-Brown, counsel to House Banking, substantially contributed to this summary.

[1] S.L. 2011-288 and Section 2.17 of S.L. 2012-79.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

S 1

SENATE BILL 284

Short Title:	OSC/GBICC/State Data Sharing.	(Public)
Sponsors:	Senators Hise (Primary Sponsor); and Brock.	
Referred to:	Commerce.	

March 14, 2013

A BILL TO BE ENTITLED

AN ACT AUGMENTING THE WORK OF THE GOVERNMENT BUSINESS INTELLIGENCE COMPETENCY CENTER, OFFICE OF STATE CONTROLLER, BY CODIFYING ITS MISSION, POWERS, AND DUTIES AND AMENDING THE REVENUE AND MOTOR VEHICLE LAWS TO ENHANCE THE DATA SHARING REQUIRED TO INCREASE THE STATE'S BUSINESS INTELLIGENCE.

The General Assembly of North Carolina enacts:

SECTION 1.(a) G.S. 20-7(b2) reads as rewritten:

"(b2) Disclosure of Social Security Number. – The social security number of an applicant is not a public record. The Division may not disclose an applicant's social security number except as allowed under federal law. A violation of the disclosure restrictions is punishable as provided in 42 U.S.C. § 408, and amendments to that law.

In accordance with 42 U.S.C. 405 and 42 U.S.C. 666, and amendments thereto, the Division may disclose a social security number obtained under subsection (b1) of this section only as follows:

(1) For the purpose of administering the driver's license laws.

(2) To the Department of Health and Human Services, Child Support Enforcement Program for the purpose of establishing paternity or child support or enforcing a child support order.

(3) To the Department of Revenue for the purpose of verifying taxpayer identity.

(4) To the Office of Indigent Defense Services of the Judicial Department for the purpose of verifying the identity of a represented client and enforcing a court order to pay for the legal services rendered.

(5) To each county jury commission for the purpose of verifying the identity of deceased persons whose names should be removed from jury lists.

(6) To the Office of the State Controller for the purposes of G.S. 143B-426.38A."

SECTION 1.(b) G.S. 20-43(a) reads as rewritten:

"(a) All records of the Division, other than those declared by law to be confidential for the use of the Division, shall be open to public inspection during office hours in accordance with G.S. 20-43.1. A ~~photographic image or~~ signature recorded in any format by the Division for a drivers license or a special identification card is confidential and shall not be released except for law enforcement purposes. A photographic image recorded in any format by the Division for a drivers license or a special identification card is confidential and shall not be

released except for law enforcement purposes or to the Office of the State Controller for the purposes of G.S. 143B-426.38A."

SECTION 2. G.S.105-259(b) is amended by adding a new subdivision to read:

"(44) To furnish tax information to the Office of the State Controller under G.S. 143B-426.38A. The use and reporting of individual data may be restricted to only those activities specifically allowed by law when potential fraud or other illegal activity is indicated."

SECTION 3.(a) Part 28 of Article 9 of Chapter 143B of the General Statutes is amended by adding a new section to read:

"**§ 143B-426.38A. Government Business Intelligence Competency Center; State data sharing requirements.**

(a) State Government Business Intelligence. – The State shall initiate across State agencies, departments, and institutions a data integration and data sharing initiative that is not intended to replace transactional systems, but is instead intended to leverage the data from those systems for enterprise-level State business intelligence.

(1) Creation of Initiative. – In carrying out the purposes of this section, the Office of State Controller shall conduct an ongoing, comprehensive evaluation of State data analytics projects and plans in order to identify data integration and business intelligence opportunities that will generate greater efficiencies in, and improved service delivery by, State agencies, departments, and institutions. The Office of State Controller may partner with current vendors and providers to assist in the initiative. However, to limit the cost to the State, the Office of the State Controller shall use current licensing agreements wherever feasible.

(2) Application to State government. – The initiative shall include all State agencies, departments, and institutions, including The University of North Carolina.

(3) Governance. – The State Controller shall lead the initiative established pursuant to this section. The Chief Justice of the North Carolina Supreme Court and the Legislative Services Commission each shall designate an officer or agency to advise and assist the State Controller with respect to implementation of the initiative in their respective branches of government. The judicial and legislative branches shall fully cooperate in the initiative mandated by this section in the same manner as is required of State agencies.

(b) Government Business Intelligence Competency Center. –

(1) GBICC established. – There is established in the Office of the State Controller the Government Business Intelligence Competency Center (GBICC). GBICC shall assume the work, purpose, and resources of the current data integration effort in the Office of the State Controller and shall otherwise advise and assist the State Controller in the management of the initiative. The State Controller shall make any organizational changes necessary to maximize the effectiveness and efficiency of GBICC.

(2) Powers and duties of the GBICC. – The State Controller shall, through the GBICC, do all of the following:

a. Continue and coordinate ongoing enterprise data integration efforts, including:

1. The deployment, support, technology improvements, and expansion for CJLEADS.

2. The pilot and subsequent phase initiative for NC FACTS.

3. Individual-level student data and workforce data from all levels of education and the State workforce.

4. Other capabilities developed as part of the initiative.

b. Identify technologies currently used in North Carolina that have the capability to support the initiative.

c. Identify other technologies, especially those with unique capabilities, that could support the State's business intelligence effort.

d. Compare capabilities and costs across State agencies.

e. Ensure implementation is properly supported across State agencies.

f. Ensure that data integration and sharing is performed in a manner that preserves data privacy and security in transferring, storing, and accessing data, as appropriate.

g. Immediately seek any waivers and enter into any written agreements that may be required by State or federal law to effectuate data sharing and to carry out the purposes of this section.

h. Coordinate data requirements and usage for State business intelligence applications in a manner that (i) limits impacts on participating State agencies as those agencies provide data and business knowledge expertise and (ii) assists in defining business rules so the data can be properly used.

i. Recommend the most cost-effective and reliable long-term hosting solution for enterprise-level State business intelligence as well as data integration, notwithstanding Section 6A.2(f) of S.L. 2011-145.

(c) Implementation of the Enterprise-Level Business Intelligence Initiative. –

(1) Phases of the initiative. – The initiative shall cycle through these phases on an ongoing basis:

a. Phase I requirements. – In the first phase, the State Controller through GBICC shall:

1. Inventory existing State agency business intelligence projects, both completed and under development.

2. Develop a plan of action that does all of the following:

I. Defines the program requirements, objectives, and end state of the initiative.

II. Prioritizes projects and stages of implementation in a detailed plan and benchmarked time line.

III. Includes the effective coordination of all of the State's current data integration initiatives.

IV. Utilizes a common approach that establishes standards for business intelligence initiatives for all State agencies and prevents the development of projects that do not meet the established standards.

V. Determines costs associated with the development effort and identifies potential sources of funding.

VI. Includes a privacy framework for business intelligence consisting of adequate access controls and end user security requirements.

VII. Estimates expected savings.

3. Inventory existing external data sources that are purchased by State agencies to determine whether consolidation of licenses is appropriate for the enterprise.

4. Determine whether current, ongoing projects support the enterprise-level objectives.

5. Determine whether current applications are scalable, or are applicable for multiple State agencies, or both.

b. Phase II requirements. – In the second phase, the State Controller through the GBICC shall:

1. Identify redundancies and determine which projects should be discontinued.

2. Determine where gaps exist in current or potential capabilities.

c. Phase III requirements. – In the third phase:

1. The State Controller through GBICC shall incorporate or consolidate existing projects, as appropriate.

2. The State Controller shall, notwithstanding G.S. 147-33.76 or any rules adopted pursuant thereto, eliminate redundant business intelligence projects, applications, software, and licensing.

3. The State Controller through GBICC shall complete all necessary steps to ensure data integration in a manner that adequately protects privacy.

(2) Commencement of projects. – The State Controller may expand existing data integration or business intelligence contracts with current data integration efforts, as appropriate, in order to implement the plan required by this section in accordance with the schedule established and the priorities developed during Phase I of the initiative, and may use public-private partnerships as appropriate to implement the plan.

(d) Funding. – The Office of State Controller, with the support of the Office of State Budget and Management, shall identify and make all efforts to secure any matching funds or other resources to assist in funding this initiative. Savings resulting from the cancellation of projects, software, and licensing, as well as any other savings from the initiative, shall be returned to the General Fund and shall remain unexpended and unencumbered until appropriated by the General Assembly in a subsequent fiscal year. It is the intent of the General Assembly that expansion of the initiative in subsequent fiscal years be funded with these savings and that the General Assembly appropriate funds for projects in accordance with the priorities identified by the Office of the State Controller in Phase I of the initiative.

(e) Reporting. – The Office of the State Controller shall:

(1) Submit and present quarterly reports on the implementation of Phase I of the initiative and the plan developed as part of that phase to the Chairs of the House of Representatives Appropriations and Senate Base Budget/Appropriations Committees, to the Joint Legislative Oversight Committee on Information Technology, and to the Fiscal Research Division of the General Assembly. The State Controller shall submit a report prior to implementing any improvements, expending funding for expansion of existing business intelligence efforts, or establishing other projects as a result of its evaluations, and quarterly thereafter, a written report detailing progress on, and identifying any issues associated with, State business intelligence efforts.

(2) Report the following information as needed:

a. Any failure of a State agency to provide information requested pursuant to this section. The failure shall be reported to the Joint Legislative Committee on Information Technology and to the Chairs of the House of Representatives Appropriations and Senate Base Budget/Appropriations Committees.

b. Any additional information to the Joint Legislative Commission on Governmental Operations and the Joint Legislative Oversight Committee on Information Technology that is requested by those entities.

(f) Data Sharing. –

(1) General Duties of All State Agencies. – The head of each State agency, department, and institution shall do all of the following:

a. Grant the Office of the State Controller access to all information required to develop and support State business intelligence applications pursuant to this section. The State Controller and the GBICC shall take all necessary actions and precautions, including training, certifications, background checks, and governance policy and procedure, to ensure the security, integrity, and privacy of the data in accordance with State and federal law and as may be required by contract.

b. Provide complete information on the State agency's information technology, operational, and security requirements.

c. Provide information on all of the State agency's information technology activities relevant to the State business intelligence effort.

d. Forecast the State agency's projected future business intelligence information technology needs and capabilities.

e. Ensure that the State agency's future information technology initiatives coordinate efforts with the GBICC to include planning and development of data interfaces to incorporate data into the initiative and to ensure the ability to leverage analytics capabilities.

f. Provide technical and business resources to participate in the initiative by providing, upon request and in a timely and responsive manner, complete and accurate data, business rules and policies, and support.

g. Identify potential resources for deploying business intelligence in their respective State agencies and as part of the enterprise-level effort.

h. Immediately seek any waivers and enter into any written agreements that may be required by State or federal law to effectuate data sharing and to carry out the purposes of this section, as appropriate.

(2) Specific Requirements. –

a. The State Controller and the GBICC shall enhance the State's business intelligence through the collection and analysis of data relating to workers' compensation claims for the purpose of preventing and detecting fraud, as follows:

1. The North Carolina Industrial Commission shall release to GBICC, or otherwise provide electronic access to, all data requested by GBICC relating to workers' compensation insurance coverage, claims, appeals, compliance, and enforcement under Chapter 97 of the General Statutes.

2. The North Carolina Rate Bureau (Bureau) shall release to GBICC, or otherwise provide electronic access to, all data requested by GBICC relating to workers' compensation insurance coverage, claims, business ratings, and premiums under Chapter 58 of the General Statutes. The Bureau shall be immune from civil liability for releasing information pursuant

to this subsection, even if the information is erroneous, provided the Bureau acted in good faith and without malicious or willful intent to harm in releasing the information.

b. The Department of Commerce, Division of Employment Security (DES), shall release to GBICC, or otherwise provide access to, all data requested by GBICC relating to unemployment insurance coverage, claims, and business reporting under Chapter 96 of the General Statutes.

c. The Department of Labor shall release to GBICC, or otherwise provide access to, all data requested by GBICC relating to safety inspections, wage and hour complaints, and enforcement activities under Chapter 95 of the General Statutes.

d. The Department of Revenue shall release to GBICC, or otherwise provide access to, all data requested by GBICC relating to the registration and address information of active businesses, business tax reporting, and aggregate federal tax Form 1099 data for comparison with information from DES, the Rate Bureau, and the Department of the Secretary of State for the evaluation of business reporting. The Department of Revenue and the Office of the State Controller shall work jointly to assure that the evaluation of tax information pursuant to this subdivision is performed in accordance with applicable federal law.

(3) All information shared with GBICC and the State Controller under this subdivision is protected from release and disclosure in the same manner as any other information is protected under this section.

(g) Provisions on Privacy and Confidentiality of Information. –

(1) Status with respect to certain information. – The State Controller and the GBICC shall be deemed to be all of the following for the purposes of this section:

a. With respect to criminal information, and to the extent allowed by federal law, a criminal justice agency (CJA), as defined under Criminal Justice Information Services (CJIS) Security Policy. The State CJIS Systems Agency (CSA) shall ensure that CJLEADS receives access to federal criminal information deemed to be essential in managing CJLEADS to support criminal justice professionals.

b. With respect to health information covered under the Health Insurance Portability and Accountability Act of 1996 (HIPAA), as amended, and to the extent allowed by federal law:

1. A business associate with access to protected health information acting on behalf of the State's covered entities in support of data integration, analysis, and business intelligence.

2. Authorized to access and view individually identifiable health information, provided that the access is essential to the enterprise fraud, waste, and improper payment detection program or required for future initiatives having specific definable need for the data.

c. Authorized to access all State and federal data, including revenue and labor information, deemed to be essential to the enterprise fraud,

waste, and improper payment detection program or future initiatives having specific definable need for the data.

d. Authorized to develop agreements with the federal government to access data deemed to be essential to the enterprise fraud, waste, and improper payment detection program or future initiatives having specific definable need for such data.

(2) Release of information. – The following limitations apply to (i) the release of information compiled as part of the initiative, (ii) data from State agencies that is incorporated into the initiative, and (iii) data released as part of the implementation of the initiative:

a. Information compiled as part of the initiative. – Notwithstanding the provisions of Chapter 132 of the General Statutes, information compiled by the State Controller and the GBICC related to the initiative may be released as a public record only if the State Controller, in that officer's sole discretion, finds that the release of information is in the best interest of the general public and is not in violation of law or contract.

b. Data from State agencies. – Any data that is not classified as a public record under G.S. 132-1 shall not be deemed a public record when incorporated into the data resources comprising the initiative. To maintain confidentiality requirements attached to the information provided to the State Controller and GBICC, each source agency providing data shall be the sole custodian of the data for the purpose of any request for inspection or copies of the data under Chapter 132 of the General Statutes.

c. Data released as part of implementation. – Information released to persons engaged in implementing the State's business intelligence strategy under this section that is used for purposes other than official State business is not a public record pursuant to Chapter 132 of the General Statutes."

SECTION 3.(b) G.S. 143B-426.39 is amended by adding a new subdivision to read:

"(17) Coordinate data integration and data sharing pursuant to G.S. 143B-426.38A across State agencies, departments, and institutions to support the State's enterprise-level business intelligence initiative."

SECTION 3.(c) The purpose of this section is to codify provisions of Section 6A.7A of S.L. 2012-142, and to the extent that any provision of that section conflicts with G.S. 143B-426.38A as enacted by this act, then the provisions of the statute shall be construed to prevail over any conflicting noncodified provisions.

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

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

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SENATE BILL 284
PROPOSED COMMITTEE SUBSTITUTE S284-CSTP-24 [v.1]
4/29/2013 12:19:53 PM

Short Title: OSC/Gov't Data Analytics/State Data Sharing. (Public)

Sponsors:

Referred to:

March 14, 2013

A BILL TO BE ENTITLED

AN ACT TO RENAME THE GOVERNMENT BUSINESS INTELLIGENCE COMPETENCY CENTER IN THE OFFICE OF THE STATE CONTROLLER AS THE GOVERNMENT DATA ANALYTICS CENTER, TO AUGMENT ITS WORK BY CODIFYING ITS MISSION, POWERS, AND DUTIES, AND TO AMEND THE REVENUE AND MOTOR VEHICLE LAWS TO ENHANCE THE DATA SHARING REQUIRED TO INCREASE THE STATE'S BUSINESS INTELLIGENCE.

The General Assembly of North Carolina enacts:

SECTION 1.(a) G.S. 20-7(b2) reads as rewritten:

"(b2) Disclosure of Social Security Number. – The social security number of an applicant is not a public record. The Division may not disclose an applicant's social security number except as allowed under federal law. A violation of the disclosure restrictions is punishable as provided in 42 U.S.C. § 408, and amendments to that law.

In accordance with 42 U.S.C. 405 and 42 U.S.C. 666, and amendments thereto, the Division may disclose a social security number obtained under subsection (b1) of this section only as follows:

(1) For the purpose of administering the driver's license laws.

(2) To the Department of Health and Human Services, Child Support Enforcement Program for the purpose of establishing paternity or child support or enforcing a child support order.

(3) To the Department of Revenue for the purpose of verifying taxpayer identity.

(4) To the Office of Indigent Defense Services of the Judicial Department for the purpose of verifying the identity of a represented client and enforcing a court order to pay for the legal services rendered.

(5) To each county jury commission for the purpose of verifying the identity of deceased persons whose names should be removed from jury lists.

(6) To the Office of the State Controller for the purposes of G.S. 143B-426.38A."

SECTION 1.(b) G.S. 20-43(a) reads as rewritten:

"(a) All records of the Division, other than those declared by law to be confidential for the use of the Division, shall be open to public inspection during office hours in accordance with G.S. 20-43.1. A ~~photographic image or~~ signature recorded in any format by the Division for a drivers license or a special identification card is confidential and shall not be released except for law enforcement purposes. A photographic image recorded in any format by the Division for a drivers license or a special identification card is confidential and shall not be

released except for law enforcement purposes or to the Office of the State Controller for the purposes of G.S. 143B-426.38A."

SECTION 2. G.S.105-259(b) is amended by adding a new subdivision to read:

"(44) To furnish tax information to the Office of the State Controller under G.S. 143B-426.38A. The use and reporting of individual data may be restricted to only those activities specifically allowed by law when potential fraud or other illegal activity is indicated."

SECTION 3.(a) Part 28 of Article 9 of Chapter 143B of the General Statutes is amended by adding a new section to read:

"**§ 143B-426.38A. Government Data Analytics Center; State data sharing requirements.**

(a) State Government Data Analytics. – The State shall initiate across State agencies, departments, and institutions a data integration and data sharing initiative that is not intended to replace transactional systems, but is instead intended to leverage the data from those systems for enterprise-level State business intelligence.

(1) Creation of Initiative. – In carrying out the purposes of this section, the Office of State Controller shall conduct an ongoing, comprehensive evaluation of State data analytics projects and plans in order to identify data integration and business intelligence opportunities that will generate greater efficiencies in, and improved service delivery by, State agencies, departments, and institutions. The Office of State Controller may partner with current vendors and providers to assist in the initiative. However, to limit the cost to the State, the Office of the State Controller shall use current licensing agreements wherever feasible.

(2) Application to State government. – The initiative shall include all State agencies, departments, and institutions, including The University of North Carolina.

(3) Governance. – The State Controller shall lead the initiative established pursuant to this section. The Chief Justice of the North Carolina Supreme Court and the Legislative Services Commission each shall designate an officer or agency to advise and assist the State Controller with respect to implementation of the initiative in their respective branches of government. The judicial and legislative branches shall fully cooperate in the initiative mandated by this section in the same manner as is required of State agencies.

(b) Government Data Analytics Center. –

(1) GDAC established. – There is established in the Office of the State Controller the Government Data Analytics Center (GDAC). GDAC shall assume the work, purpose, and resources of the current data integration effort in the Office of the State Controller and shall otherwise advise and assist the State Controller in the management of the initiative. The State Controller shall make any organizational changes necessary to maximize the effectiveness and efficiency of GDAC.

(2) Powers and duties of the GDAC. – The State Controller shall, through the GDAC, do all of the following:

a. Continue and coordinate ongoing enterprise data integration efforts, including:

1. The deployment, support, technology improvements, and expansion for CJLEADS.
2. The pilot and subsequent phase initiative for NC FACTS.
3. Individual-level student data and workforce data from all levels of education and the State workforce.
4. Other capabilities developed as part of the initiative.

b. Identify technologies currently used in North Carolina that have the capability to support the initiative.
c. Identify other technologies, especially those with unique capabilities, that could support the State's business intelligence effort.
d. Compare capabilities and costs across State agencies.
e. Ensure implementation is properly supported across State agencies.
f. Ensure that data integration and sharing is performed in a manner that preserves data privacy and security in transferring, storing, and accessing data, as appropriate.
g. Immediately seek any waivers and enter into any written agreements that may be required by State or federal law to effectuate data sharing and to carry out the purposes of this section.
h. Coordinate data requirements and usage for State business intelligence applications in a manner that (i) limits impacts on participating State agencies as those agencies provide data and business knowledge expertise and (ii) assists in defining business rules so the data can be properly used.
i. Recommend the most cost-effective and reliable long-term hosting solution for enterprise-level State business intelligence as well as data integration, notwithstanding Section 6A.2(f) of S.L. 2011-145.

(c) Implementation of the Enterprise-Level Business Intelligence Initiative. –

(1) Phases of the initiative. – The initiative shall cycle through these phases on an ongoing basis:

a. Phase I requirements. – In the first phase, the State Controller through GDAC shall:

1. Inventory existing State agency business intelligence projects, both completed and under development.
2. Develop a plan of action that does all of the following:
I. Defines the program requirements, objectives, and end state of the initiative.
II. Prioritizes projects and stages of implementation in a detailed plan and benchmarked time line.
III. Includes the effective coordination of all of the State's current data integration initiatives.
IV. Utilizes a common approach that establishes standards for business intelligence initiatives for all State agencies and prevents the development of projects that do not meet the established standards.
V. Determines costs associated with the development effort and identifies potential sources of funding.
VI. Includes a privacy framework for business intelligence consisting of adequate access controls and end user security requirements.
VII. Estimates expected savings.
3. Inventory existing external data sources that are purchased by State agencies to determine whether consolidation of licenses is appropriate for the enterprise.
4. Determine whether current, ongoing projects support the enterprise-level objectives.
5. Determine whether current applications are scalable, or are applicable for multiple State agencies, or both.

b. Phase II requirements. – In the second phase, the State Controller through the GDAC shall:
1. Identify redundancies and determine which projects should be discontinued.
2. Determine where gaps exist in current or potential capabilities.

c. Phase III requirements. – In the third phase:
1. The State Controller through GDAC shall incorporate or consolidate existing projects, as appropriate.
2. The State Controller shall, notwithstanding G.S. 147-33.76 or any rules adopted pursuant thereto, eliminate redundant business intelligence projects, applications, software, and licensing.
3. The State Controller through GDAC shall complete all necessary steps to ensure data integration in a manner that adequately protects privacy.

(2) Commencement of projects. – The State Controller may expand existing data integration or business intelligence contracts with current data integration efforts, as appropriate, in order to implement the plan required by this section in accordance with the schedule established and the priorities developed during Phase I of the initiative, and may use public-private partnerships as appropriate to implement the plan.

(d) Funding. – The Office of State Controller, with the support of the Office of State Budget and Management, shall identify and make all efforts to secure any matching funds or other resources to assist in funding this initiative. Savings resulting from the cancellation of projects, software, and licensing, as well as any other savings from the initiative, shall be returned to the General Fund and shall remain unexpended and unencumbered until appropriated by the General Assembly in a subsequent fiscal year. It is the intent of the General Assembly that expansion of the initiative in subsequent fiscal years be funded with these savings and that the General Assembly appropriate funds for projects in accordance with the priorities identified by the Office of the State Controller in Phase I of the initiative.

(e) Reporting. – The Office of the State Controller shall:

(1) Submit and present quarterly reports on the implementation of Phase I of the initiative and the plan developed as part of that phase to the Chairs of the House of Representatives Appropriations and Senate Base Budget/Appropriations Committees, to the Joint Legislative Oversight Committee on Information Technology, and to the Fiscal Research Division of the General Assembly. The State Controller shall submit a report prior to implementing any improvements, expending funding for expansion of existing business intelligence efforts, or establishing other projects as a result of its evaluations, and quarterly thereafter, a written report detailing progress on, and identifying any issues associated with, State business intelligence efforts.

(2) Report the following information as needed:

a. Any failure of a State agency to provide information requested pursuant to this section. The failure shall be reported to the Joint Legislative Committee on Information Technology and to the Chairs of the House of Representatives Appropriations and Senate Base Budget/Appropriations Committees.

b. Any additional information to the Joint Legislative Commission on Governmental Operations and the Joint Legislative Oversight

Committee on Information Technology that is requested by those entities.

(f) Data Sharing. –

(1) General Duties of All State Agencies. – The head of each State agency, department, and institution shall do all of the following:

a. Grant the Office of the State Controller access to all information required to develop and support State business intelligence applications pursuant to this section. The State Controller and the GDAC shall take all necessary actions and precautions, including training, certifications, background checks, and governance policy and procedure, to ensure the security, integrity, and privacy of the data in accordance with State and federal law and as may be required by contract.

b. Provide complete information on the State agency's information technology, operational, and security requirements.

c. Provide information on all of the State agency's information technology activities relevant to the State business intelligence effort.

d. Forecast the State agency's projected future business intelligence information technology needs and capabilities.

e. Ensure that the State agency's future information technology initiatives coordinate efforts with the GDAC to include planning and development of data interfaces to incorporate data into the initiative and to ensure the ability to leverage analytics capabilities.

f. Provide technical and business resources to participate in the initiative by providing, upon request and in a timely and responsive manner, complete and accurate data, business rules and policies, and support.

g. Identify potential resources for deploying business intelligence in their respective State agencies and as part of the enterprise-level effort.

h. Immediately seek any waivers and enter into any written agreements that may be required by State or federal law to effectuate data sharing and to carry out the purposes of this section, as appropriate.

(2) Specific Requirements. – The State Controller and the GDAC shall enhance the State's business intelligence through the collection and analysis of data relating to workers' compensation claims for the purpose of preventing and detecting fraud, as follows:

a. The North Carolina Industrial Commission shall release to GDAC, or otherwise provide electronic access to, all data requested by GDAC relating to workers' compensation insurance coverage, claims, appeals, compliance, and enforcement under Chapter 97 of the General Statutes.

b. The North Carolina Rate Bureau (Bureau) shall release to GDAC, or otherwise provide electronic access to, all data requested by GDAC relating to workers' compensation insurance coverage, claims, business ratings, and premiums under Chapter 58 of the General Statutes. The Bureau shall be immune from civil liability for releasing information pursuant to this subsection, even if the information is erroneous, provided the Bureau acted in good faith and without malicious or willful intent to harm in releasing the information.

c. The Department of Commerce, Division of Employment Security (DES), shall release to GDAC, or otherwise provide access to, all data requested by GDAC relating to unemployment insurance coverage, claims, and business reporting under Chapter 96 of the General Statutes.

d. The Department of Labor shall release to GDAC, or otherwise provide access to, all data requested by GDAC relating to safety inspections, wage and hour complaints, and enforcement activities under Chapter 95 of the General Statutes.

e. The Department of Revenue shall release to GDAC, or otherwise provide access to, all data requested by GDAC relating to the registration and address information of active businesses, business tax reporting, and aggregate federal tax Form 1099 data for comparison with information from DES, the Rate Bureau, and the Department of the Secretary of State for the evaluation of business reporting. The Department of Revenue and the Office of the State Controller shall work jointly to assure that the evaluation of tax information pursuant to this subdivision is performed in accordance with applicable federal law.

(3) All information shared with GDAC and the State Controller under this subdivision is protected from release and disclosure in the same manner as any other information is protected under this section.

(g) Provisions on Privacy and Confidentiality of Information. –

(1) Status with respect to certain information. – The State Controller and the GDAC shall be deemed to be all of the following for the purposes of this section:

a. With respect to criminal information, and to the extent allowed by federal law, a criminal justice agency (CJA), as defined under Criminal Justice Information Services (CJIS) Security Policy. The State CJIS Systems Agency (CSA) shall ensure that CJLEADS receives access to federal criminal information deemed to be essential in managing CJLEADS to support criminal justice professionals.

b. With respect to health information covered under the Health Insurance Portability and Accountability Act of 1996 (HIPAA), as amended, and to the extent allowed by federal law:

1. A business associate with access to protected health information acting on behalf of the State's covered entities in support of data integration, analysis, and business intelligence.

2. Authorized to access and view individually identifiable health information, provided that the access is essential to the enterprise fraud, waste, and improper payment detection program or required for future initiatives having specific definable need for the data.

c. Authorized to access all State and federal data, including revenue and labor information, deemed to be essential to the enterprise fraud, waste, and improper payment detection program or future initiatives having specific definable need for the data.

d. Authorized to develop agreements with the federal government to access data deemed to be essential to the enterprise fraud, waste, and

improper payment detection program or future initiatives having specific definable need for such data.

(2) Release of information. – The following limitations apply to (i) the release of information compiled as part of the initiative, (ii) data from State agencies that is incorporated into the initiative, and (iii) data released as part of the implementation of the initiative:

a. Information compiled as part of the initiative. – Notwithstanding the provisions of Chapter 132 of the General Statutes, information compiled by the State Controller and the GDAC related to the initiative may be released as a public record only if the State Controller, in that officer's sole discretion, finds that the release of information is in the best interest of the general public and is not in violation of law or contract.

b. Data from State agencies. – Any data that is not classified as a public record under G.S. 132-1 shall not be deemed a public record when incorporated into the data resources comprising the initiative. To maintain confidentiality requirements attached to the information provided to the State Controller and GDAC, each source agency providing data shall be the sole custodian of the data for the purpose of any request for inspection or copies of the data under Chapter 132 of the General Statutes.

c. Data released as part of implementation. – Information released to persons engaged in implementing the State's business intelligence strategy under this section that is used for purposes other than official State business is not a public record pursuant to Chapter 132 of the General Statutes."

SECTION 3.(b) G.S. 143B-426.39 is amended by adding a new subdivision to read:

"(17) Coordinate data integration and data sharing pursuant to G.S. 143B-426.38A across State agencies, departments, and institutions to support the State's enterprise-level business intelligence initiative."

SECTION 3.(c) The purpose of this section is to codify provisions of Section 6A.7A of S.L. 2012-142, and to the extent that any provision of that section conflicts with G.S. 143B-426.38A as enacted by this act, then the provisions of the statute shall be construed to prevail over any conflicting noncodified provisions.

SECTION 4.(a) The Revisor of Statutes shall replace the name of the Government Business Intelligence Competency Center with the name Government Data Analytics Center wherever it is used in S.L. 2012-142.

SECTION 4.(b) The Revisor of Statutes shall replace the acronym GBICC with the acronym GDAC wherever it is used in S.L. 2012-142.

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

SENATE BILL 284:
OSC/GBICC/State Data Sharing

2013-2014 General Assembly

Committee:	Senate Ref to Commerce. If fav, re-ref to Judiciary I	**Date:**	April 29, 2013
Introduced by:	Sen. Hise	**Prepared by:**	Peter Ledford Committee Counsel
Analysis of:	PCS to First Edition S284-CSTP-24		

SUMMARY: ***The PCS to Senate Bill 284 would codify various provisions of the 2012 Budget and require the State Controller to collect and analyze data relating to workers' compensation claims for the purpose of preventing and detecting fraud.***

The PCS changes the name of the center at the Office of the State Controller from the Government Business Intelligence Competency Center to the Government Data Analytics Center.

CURRENT LAW: Session Law 2012-142, the Current Operations and Capital Improvements Appropriations Act of 2012, created the enterprise-level business intelligence initiative ("initiative") in the Office of the State Controller to support the effective and efficient development of State agency business intelligence capability in a coordinated manner and to reduce unnecessary information silos and technological barriers. The Act also created the Government Business Intelligence Competency Center ("GBICC") in the Office of the State Controller to assist in the management of the initiative. Currently, the State Controller, through the GBICC, is tasked with:

- coordinating enterprise data integration efforts
- identifying technologies that can support the initiative and the State's business intelligence effort
- ensuring proper implementation by State agencies
- ensuring data privacy and security
- seeking waivers of State and federal law to effectuate data sharing
- coordinating data requirements and usage for State business intelligence applications, and recommending the most cost-effective and reliable long-term hosting solution for State business intelligence.

BILL ANALYSIS:

Section 1.(a) would allow the Division of Motor Vehicles to share the social security number of an applicant for a drivers license with the Office of the State Controller.

Section 1.(b) would allow the Division of Motor Vehicles to share a photographic image recorded for a drivers license or special identification card with the Office of the State Controller.

Section 2 would allow the Department of Revenue to share tax information with the Office of the State Controller, and restricts the sharing of individual tax information to activities specifically allowed by law when potential fraud or illegal activity is indicated.

Section 3.(a) would codify Section 6A.7A of S.L. 2012-142 as G.S. 143B-246.38A and make various amendments and technical changes. The section would change the name of the center established in the Office of the State Controller from the Government Business Intelligence Competency Center (GBICC) to the Government Dada Analytics Center (GDAC).

The section would also add subdivision (2) to subsection (f) of G.S. 143B-426.38A. The subdivision would require the State Controller and GDAC to collect and analyze data relating to workers' compensation claims for the purpose of preventing and detecting fraud. Data would be collected from the North Carolina Industrial Commission, the North Carolina Rate Bureau, the Division of Employment Security in the Department of Commerce, the Department of Labor, and the Department of Revenue. This subdivision would require that any information released by the Department of Revenue be performed in accordance with applicable federal law. The subdivision would also provide that the North Carolina Rate Bureau will be immune from civil liability for releasing information pursuant to this requirement. The language of this subdivision was recommended by the final report of the Joint Legislative Committee on Workers' Compensation Insurance Coverage Compliance and Fraud Prevention and Detection.

Section 3.(b) would direct the Office of the State Controller to coordinate data integration and data sharing across State agencies.

Section 3.(c) states that the purpose of the section is to codify the data integration and sharing provisions of S.L. 2012-142, and **Section 4.(a)** and **Section 4.(b)** would direct the Revisor of Statutes to make the necessary changes to S.L. 2012-142 to reflect the new name of the center.

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

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 284

AMENDMENT NO. 1
(to be filled in by
Principal Clerk)

S284-ATP-19 [v.1]

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

Date _____,2013

Senator Clark

moves to amend the bill on page 6, line 16, by rewriting the line to read:
"reporting. Additionally, the Department of Revenue shall furnish to the GDAC, upon request, other tax information, provided that the information furnished does not impair or violate any information sharing agreements between the Department and the United States Internal Revenue Service. Notwithstanding any other provision of law, a determination of whether furnishing the information requested by GDAC would impair or violate any information sharing agreements between the Department of Revenue and the United States Internal Revenue Service shall be within the sole discretion of the Secretary of the Department of Revenue. The Department of Revenue and the Office of the State"

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

SENATE BILL 489

Short Title:	Consumer Finance Act Amendments.	(Public)
Sponsors:	Senators Gunn, Newton, Clodfelter (Primary Sponsors); Barringer, Bingham, Brock, Brown, Cook, Daniel, D. Davis, J. Davis, Goolsby, Hise, Hunt, Jackson, Jenkins, Meredith, Parmon, Pate, Rabin, Randleman, Rucho, Tarte, and Tucker.	
Referred to:	Commerce.	

March 28, 2013

A BILL TO BE ENTITLED

AN ACT TO MODIFY THE MAXIMUM INTEREST RATE ALLOWED AND TO MAKE VARIOUS AMENDMENTS TO THE NORTH CAROLINA CONSUMER FINANCE ACT TO ENSURE CONTINUED ACCESS TO CREDIT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 53-166(a) reads as rewritten:

"(a) Scope. – No person shall engage in the business of lending in amounts of ~~ten thousand dollars ($10,000)~~fifteen thousand dollars ($15,000) or less and contract for, exact, or receive, directly or indirectly, on or in connection with any such loan, any charges whether for interest, compensation, consideration, or expense, or any other purpose whatsoever, which in the aggregate are greater than permitted by Chapter 24 of the General Statutes, except as provided in and authorized by this Article, and without first having obtained a license from the Commissioner. The word "lending" as used in this section, shall include, but shall not be limited to, endorsing or otherwise securing loans or contracts for the repayment of loans."

SECTION 2. G.S. 53-172(a) reads as rewritten:

"(a) No licensee shall conduct the business of making loans under this Article within any office, suite, room, or place of business in which any other business is solicited or transacted.

Installment paper dealers as defined in G.S. 105-83, ~~and~~ the collection by a licensee of loans legally made in North ~~Carolina,~~Carolina or another state by another government regulated lender or lending agency, and the collection by a licensee of claims of, payments to, or payments for an insurance company licensed in North Carolina and arising in any way from a nonfiling or nonrecording insurance policy approved by the Commissioner of Insurance shall not be considered as being any other business within the meaning of this section."

SECTION 3. G.S. 53-173 reads as rewritten:

"**§ 53-173. ~~Maximum rate of interest and fee; computation~~Computation of interest; application of payments; limitation on interest after judgment; limitation on interest after maturity of the loan.**

~~(a) Maximum Rate of Interest. Every licensee under this section may make loans in installments not exceeding three thousand dollars ($3,000) in amount, at interest rates not exceeding thirty-six percent (36%) per annum on the outstanding principal balance of any loan not in excess of six hundred dollars ($600.00) and fifteen percent (15%) per annum on any remainder of such unpaid principal balance. Interest shall be contracted for and collected at the single simple interest rate applied to the outstanding balance that would earn the same amount of interest as the above rates for payment according to schedule.~~

~~(a1) Maximum Fee. – In addition to the interest authorized in subsection (a) of this section, a licensee making loans under this section may collect from the borrower a fee for processing the loan equal to five percent (5%) of the loan amount not to exceed twenty-five dollars ($25.00), provided that such charges may not be assessed more than twice in any 12-month period.~~

(b) Computation of Interest. – Interest on loans made pursuant to this section shall not be paid, deducted, or received in advance. Such interest shall not be compounded but interest on loans shall (i) be computed and paid only as a percentage of the unpaid principal balance or portion thereof and (ii) computed on the basis of the number of days actually elapsed; provided, however, if part or all of the consideration for a loan contract is the unpaid principal balance of a prior loan, then the principal amount payable under the loan contract may include any unpaid interest on the prior loan which have accrued within 90 days before the making of the new loan contract. For the purpose of computing interest, a day shall equal 1/365th of a year.~~Any payment made on a loan shall be applied first to any accrued interest and then to principal, and any portion or all of the principal balance may be prepaid at any time without penalty.~~

(b1) Application of Payments. – Any payment made on a loan shall be applied first to late charges and other permissible charges under this Article, then to any accrued interest, and then to principal. Any portion or all of the principal balance may be prepaid at any time without penalty.

...."

SECTION 4. G.S. 53-176 reads as rewritten:

"**§ 53-176. ~~Optional rates,~~Rates, maturities and amounts.**

(a) ~~In lieu of making loans in the amount and at the interest stated in G.S. 53-173 and for the terms stated in G.S. 53-180, a~~A licensee may ~~at any time elect to~~ make loans in installments not exceeding ~~ten thousand dollars ($10,000)~~fifteen thousand dollars ($15,000) and which shall not be repayable in less than ~~six~~12 months or more than ~~84~~96 months and which shall not be secured by deeds of trust or mortgages on real estate and which are repayable in substantially equal consecutive monthly payments and to charge and collect interest in connection therewith which shall not exceed the following actuarial rates:

(1) ~~With respect to a loan not exceeding seven thousand five hundred dollars ($7,500), thirty~~Thirty percent (30%) per annum on that part of the unpaid principal balance not exceeding ~~one thousand dollars ($1,000) and eighteen percent (18%) per annum on the remainder of the unpaid principal balance. Interest shall be contracted for and collected at the single simple interest rate applied to the outstanding balance that would earn the same amount of interest as the above rates for payment according to schedule.~~five thousand dollars ($5,000).

(2) ~~With respect to a loan exceeding seven thousand five hundred dollars ($7,500), eighteen percent (18%) per annum on the outstanding principal balance.~~Twenty-four percent (24%) per annum on that part of the unpaid principal balance exceeding five thousand dollars ($5,000) but not exceeding ten thousand dollars ($10,000).

(3) Eighteen percent (18%) per annum on that part of the remainder of the unpaid principal balance.

Interest shall be contracted for and collected at the single simple interest rate applied to the outstanding balance that would earn the same amount of interest as the above rates for payment according to schedule.

(b) In addition to the interest permitted in this section, a licensee may assess at closing a fee for processing the loan as agreed upon by the parties, not to exceed twenty-five dollars ($25.00) for loans up to two thousand five hundred dollars ($2,500) and one percent (1%) of the cash advance for loans above two thousand five hundred dollars ($2,500), not to exceed a

total fee of forty dollars ($40.00), provided that such charges may not be assessed more than twice in any 12-month period.

(c) The provisions of G.S. 53-173(b), (c) and (d) and G.S. 53-180(b), (c), (d), (e), (f), (g), (h) and (i) shall apply to loans made pursuant to this section.

~~(d) Any licensee under this Article shall have the right to elect to make loans in accordance with this section by the filing of a written statement to that effect with the Commissioner and no sooner than 30 days from the date of such notification begin making loans regulated by this section. After such election a licensee may continue to make loans in accordance with this section unless the licensee notifies the Commissioner in writing of its intention to terminate such election on a date not sooner than 30 days from the notification.~~

(e) The due date of the first monthly payment shall not be more than 45 days following the disbursement of funds under any such installment loan. A borrower under this section may prepay all or any part of a loan made under this section without penalty. Except as otherwise provided for pursuant to G.S. 75-20(a), no more than twice in a 12-month period, a borrower may cancel a loan with the same licensee within three business days after disbursement of the loan proceeds without incurring or paying interest so long as the amount financed, minus any fees or charges, is returned to and received by the licensee within that time.

~~(f) No individual, partnership, or corporate licensee and no corporation which is the parent, subsidiary or affiliate of a corporate licensee that is making loans under this Article except as authorized in this section, shall be permitted to make loans under the provisions of this section. Any corporate licensee or individual or partnership licensee that elects to make loans in accordance with the provisions of this section shall be bound by that election with respect to all of its offices and locations in this State and all offices and locations in this State of its parent, subsidiary or affiliated corporate licensee, or with respect to all of his or their offices and locations in this State.~~"

SECTION 5. G.S. 53-177 reads as rewritten:

"**§ 53-177. ~~Recording fees.~~Fees.**

(a) Recording Fees. – The licensee may collect from the borrower the amount of any fees necessary to file or record its security interest with any public official or agency of a county or the State as may be required pursuant to Article 9 of Chapter 25 of the General Statutes or G.S. 20-58 et seq. Upon full disclosure to the borrower on how the fees will be applied, such fees may either (i) be paid by the licensee to such public official or agency of the county or ~~State,~~State or (ii) in lieu of recording or filing, applied by the licensee to purchase nonfiling or nonrecording insurance on the instrument securing the ~~loan, or (iii) be retained by a licensee that elects to self insure against the loss of a security interest by reason of not filing or recording its security instrument: Provided,~~loan; provided, however, the amount collected by the licensee from the borrower for the purchase of a nonfiling or nonrecording insurance ~~policy, or for self insurance,~~policy shall be the premium amount for such insurance as fixed by the Commissioner of Insurance. Such premium shall be at least one dollar ($1.00) less than the cost of recording or filing a security interest. Provided further, a licensee shall not collect or permit to be collected any notary fee in connection with any loan made under this Article, nor may a licensee collect any fee from the borrower for the cost of releasing a security interest except such fee as actually paid to any public official or agency of the county or State for such purpose.

(b) Late Fees. –

(1) A licensee may charge a late payment fee for any payment which remains past due for 10 days or more after the due date.

(2) No licensee may charge a late payment fee in an amount greater than fifteen dollars ($15.00) nor charge a late payment fee more than once with respect to a single late payment.

(c) Deferral Charges. – A licensee may, by agreement with the borrower, collect a deferral charge and defer the due date of all or part of one or more installments under an existing loan contract as permitted in the provisions of G.S. 25A-30.

(d) Insurance Policy. – If a licensee, in lieu of recording, collects a fee to purchase a nonfiling or nonrecording insurance policy as authorized under subsection (a) of this section, to be valid, any claim arising from such policy shall only be used to compensate the licensee for damages arising from failure to record or file its security interest in accordance with Article 9 of Chapter 25 of the General Statutes. Following payment of such claim, the licensee shall do the following:

(1) Properly credit the full claim amount posted to the balance of the loan effective the date the proceeds were received.

(2) Close the loan account and cease collection efforts on any loan that was paid in full by a claim.

(3) Provide the borrower written notice, unless otherwise prohibited by federal law, that (i) the claim has been partially paid or paid in full and (ii) to the extent the loan is subject to the insurance company's subrogation rights, instructions about direction of future payments.

(4) Cancel of record or properly credit, as appropriate, any judgments against the borrower arising from the loan and, if the judgment has been paid in part, file a certificate of partial satisfaction.

(5) Accurately report any account adjustments to any credit bureau used by the licensee."

SECTION 6. G.S. 53-180 reads as rewritten:

"**§ 53-180. Limitations and prohibitions on practices and agreements.**

(a) Time and Payment Limitation. – ~~Except as otherwise provided in this Article, no licensee making a loan pursuant to G.S. 53-173 shall enter into any contract of loan under this Article providing for any scheduled repayment of principal more than 25 months from the date of making the contract if the cash advance is six hundred dollars ($600.00) or less; more than 37 months from the date of making the contract if the cash advance is in excess of six hundred dollars ($600.00) but not in excess of fifteen hundred dollars ($1,500); more than 49 months from the date of making the contract if the cash advance is in excess of fifteen hundred dollars ($1,500) but not in excess of two thousand five hundred dollars ($2,500); or more than 61 months if the cash advance is in excess of two thousand five hundred dollars ($2,500).~~ Every loan contract shall provide for repayment of the amount loaned in substantially equal installments, either of principal or of principal and charges in the aggregate, at approximately equal periodic intervals of time. Nothing contained herein shall prevent a loan being considered a new loan because the proceeds of the loan are used to pay an existing contract.

...

(c) Limitation on Default Provisions. – An agreement between a licensee and a borrower pursuant to a loan under this Article with respect to default by the borrower is enforceable only to the extent that (i) the borrower fails to make a payment as required by the ~~agreement,~~agreement or fails to maintain contractually required insurance coverage or (ii) the prospect of payment, performance, or realization of collateral is significantly endangered or impaired, the burden of establishing the prospect of a significant endangerment or impairment being on the licensee.

...

(e) Limitation on Attorney's Fees. – With respect to a loan made pursuant to the provisions of ~~G.S. 53-173,~~G.S. 53-176, the agreement may not provide for payment by the borrower of attorney fees.

...."

SECTION 7. Article 15 of Chapter 53 of the General Statutes is amended by adding a new section to read:

"§ 53-180.1. Military service members limitation.

(a) Definition. – For purposes of this section, the term "military service member" means a member of the armed forces who is either (i) on active duty under a call or order that does not specify a period of 30 days or fewer or (ii) on active Guard and Reserve Duty, as that term is defined in 10 U.S.C. § 101(d)(6).

(b) Verification; Requirements for Granting Loan. – Prior to making a loan under this Article, a licensee will confirm whether the borrower is a military service member and document this in the person's loan file. A licensee may not make a loan to a borrower who is a military service member with a rank of E4 or below unless the following requirements are met:

(1) The licensee notifies the borrower's company-level commander or the company-level commander's equivalent designee before the loan is consummated. Notification may occur verbally, by electronic means, United States mail, or other equivalent methods of notification. The notification method and date shall be recorded in writing and included in the loan file along with the name of the company-level commander or equivalent designee communicated with and the date of the communication with the company-level commander or equivalent designee.

(2) The licensee shall deposit in the United States mail a copy of the federal Truth in Lending Act, 15 U.S.C. § 1601, et seq., disclosures and the complete contract for the loan addressed to the borrower's company-level commander or equivalent designee within five business days of the consummation of the loan.

(3) A military service member who has entered into a loan contract made pursuant to this Article may, within 30 days of entering into the loan contract, rescind the loan contract by returning to the licensee in cash or by certified bank check the amount advanced to or for the benefit of the military service member under the loan contract, and upon delivery of those funds to the licensee, the borrower shall have no further liability or obligations under the loan contract. Nothing in this provision shall be construed to restrict or eliminate any other penalties provided by State or federal law.

(4) The licensee shall give the military service member a separate disclosure that includes the statements and information required under G.S. 53-181(a). The licensee shall include the name and address of the North Carolina Commissioner of Banks, the Consumer Protection Division of the North Carolina Department of Justice, and the Consumer Financial Protection Bureau. The licensee may include internal compliance information on the same disclosure.

(5) Notwithstanding Section 2 of Title 9 of the United States Code, 9 U.S.C. § 2, or any other federal or State law, rule, or regulation, no agreement to arbitrate any dispute involving the extension of consumer credit shall be enforceable against any military service member or dependent of such a member or any person who was a military service member or dependent of that member when the agreement was made.

(6) A licensee shall take reasonable precaution to prevent making loans in violation of this section. In the event that a licensee does not take reasonable precautions to identify military service members prior to making a loan, such loans granted to military service members shall have the interest rate on the loan adjusted to eight percent (8%) per annum.

(c) Penalties and remedies. –

(1) The remedies and rights provided under this section are in addition to and do not preclude any remedy otherwise available under law to the person claiming relief under this section, including any incidental, consequential, or punitive damages.

(2) Except as provided in subdivision (6) of subsection (b) of this section, any credit agreement, promissory note, or other contract prohibited under this section is null and void.

(3) Nothing in this section may be construed to limit or otherwise affect the applicability of Section 207 of the Servicemembers Civil Relief Act, 50 U.S.C. App. § 527.

(d) Additional Restriction. – When a military service member has been deployed to a theater of combat, a licensee shall not contact the military service member by telephone or electronic mail for purposes of collecting on the loan upon receiving sufficient proof of the military service member's deployment. An official copy of the military service member's orders for deployment shall constitute sufficient proof."

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

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

S D

SENATE BILL 489
PROPOSED COMMITTEE SUBSTITUTE S489-CSSU-17 [v.2]
4/29/2013 7:10:55 PM

Short Title: Consumer Finance Act Amendments. (Public)

Sponsors:

Referred to:

March 28, 2013

A BILL TO BE ENTITLED

AN ACT TO MODIFY THE MAXIMUM INTEREST RATE ALLOWED AND TO MAKE VARIOUS AMENDMENTS TO THE NORTH CAROLINA CONSUMER FINANCE ACT TO ENSURE CONTINUED ACCESS TO CREDIT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 53-166(a) reads as rewritten:

"(a) Scope. – No person shall engage in the business of lending in amounts of ~~ten thousand dollars ($10,000)~~fifteen thousand dollars ($15,000) or less and contract for, exact, or receive, directly or indirectly, on or in connection with any such loan, any charges whether for interest, compensation, consideration, or expense, or any other purpose whatsoever, which in the aggregate are greater than permitted by Chapter 24 of the General Statutes, except as provided in and authorized by this Article, and without first having obtained a license from the Commissioner. The word "lending" as used in this section, shall include, but shall not be limited to, endorsing or otherwise securing loans or contracts for the repayment of loans."

SECTION 2. G.S. 53-172(a) reads as rewritten:

"(a) No licensee shall conduct the business of making loans under this Article within any office, suite, room, or place of business in which any other business is solicited or transacted.

Installment paper dealers as defined in G.S. 105-83, ~~and~~ the collection by a licensee of loans legally made in North ~~Carolina,~~Carolina or another state by another government regulated lender or lending agency, and the collection by a licensee of claims of, payments to, or payments for an insurance company licensed in North Carolina and arising in any way from a nonfiling or nonrecording insurance policy approved by the Commissioner of Insurance shall not be considered as being any other business within the meaning of this section."

SECTION 3. G.S. 53-173 reads as rewritten:

"**§ 53-173. ~~Maximum rate of interest and fee; computation~~Computation of interest; application of payments; limitation on interest after judgment; limitation on interest after maturity of the loan.**

~~(a) Maximum Rate of Interest. Every licensee under this section may make loans in installments not exceeding three thousand dollars ($3,000) in amount, at interest rates not exceeding thirty six percent (36%) per annum on the outstanding principal balance of any loan not in excess of six hundred dollars ($600.00) and fifteen percent (15%) per annum on any remainder of such unpaid principal balance. Interest shall be contracted for and collected at the single simple interest rate applied to the outstanding balance that would earn the same amount of interest as the above rates for payment according to schedule.~~

~~(a1) Maximum Fee. In addition to the interest authorized in subsection (a) of this section, a licensee making loans under this section may collect from the borrower a fee for~~

~~processing the loan equal to five percent (5%) of the loan amount not to exceed twenty-five dollars ($25.00), provided that such charges may not be assessed more than twice in any 12-month period.~~

(b) Computation of Interest. – Interest on loans made pursuant to this section shall not be paid, deducted, or received in advance. Such interest shall not be compounded but interest on loans shall (i) be computed and paid only as a percentage of the unpaid principal balance or portion thereof and (ii) computed on the basis of the number of days actually elapsed; provided, however, if part or all of the consideration for a loan contract is the unpaid principal balance of a prior loan, then the principal amount payable under the loan contract may include any unpaid interest on the prior loan which have accrued within 90 days before the making of the new loan contract. For the purpose of computing interest, a day shall equal 1/365th of a year.~~Any payment made on a loan shall be applied first to any accrued interest and then to principal, and any portion or all of the principal balance may be prepaid at any time without penalty.~~

(b1) Application of Payments. – Any payment made on a loan shall be applied first to late charges and other permissible charges under this Article, then to any accrued interest, and then to principal. Any portion or all of the principal balance may be prepaid at any time without penalty.

...."

SECTION 4. G.S. 53-176 reads as rewritten:

"**§ 53-176. ~~Optional rates,~~Rates, maturities and amounts.**

(a) ~~In lieu of making loans in the amount and at the interest stated in G.S. 53-173 and for the terms stated in G.S. 53-180, a~~A licensee may ~~at any time elect to~~ make loans in installments not exceeding ~~ten thousand dollars ($10,000)~~fifteen thousand dollars ($15,000) and which shall not be repayable in less than ~~six~~12 months or more than ~~84~~96 months and which shall not be secured by deeds of trust or mortgages on real estate and which are repayable in substantially equal consecutive monthly payments and to charge and collect interest in connection therewith which shall not exceed the following actuarial rates:

(1) ~~With respect to a loan not exceeding seven thousand five hundred dollars ($7,500), thirty~~Thirty percent (30%) per annum on that part of the unpaid principal balance not exceeding ~~one thousand dollars ($1,000) and eighteen percent (18%) per annum on the remainder of the unpaid principal balance. Interest shall be contracted for and collected at the single simple interest rate applied to the outstanding balance that would earn the same amount of interest as the above rates for payment according to schedule.~~five thousand dollars ($5,000).

(2) ~~With respect to a loan exceeding seven thousand five hundred dollars ($7,500), eighteen percent (18%) per annum on the outstanding principal balance.~~Twenty-four percent (24%) per annum on that part of the unpaid principal balance exceeding five thousand dollars ($5,000) but not exceeding ten thousand dollars ($10,000).

(3) Eighteen percent (18%) per annum on that part of the remainder of the unpaid principal balance.

Interest shall be contracted for and collected at the single simple interest rate applied to the outstanding balance that would earn the same amount of interest as the above rates for payment according to schedule.

(b) In addition to the interest permitted in this section, a licensee may assess at closing a fee for processing the loan as agreed upon by the parties, not to exceed twenty-five dollars ($25.00) for loans up to two thousand five hundred dollars ($2,500) and one percent (1%) of the cash advance for loans above two thousand five hundred dollars ($2,500), not to exceed a total fee of forty dollars ($40.00), provided that such charges may not be assessed more than twice in any 12-month period.

(c) The provisions of G.S. 53-173(b), (c) and (d) and G.S. 53-180(b), (c), (d), (e), (f), (g), (h) and (i) shall apply to loans made pursuant to this section.

~~(d) Any licensee under this Article shall have the right to elect to make loans in accordance with this section by the filing of a written statement to that effect with the Commissioner and no sooner than 30 days from the date of such notification begin making loans regulated by this section. After such election a licensee may continue to make loans in accordance with this section unless the licensee notifies the Commissioner in writing of its intention to terminate such election on a date not sooner than 30 days from the notification.~~

(e) The due date of the first monthly payment shall not be more than 45 days following the disbursement of funds under any such installment loan. A borrower under this section may prepay all or any part of a loan made under this section without penalty. Except as otherwise provided for pursuant to G.S. 75-20(a), no more than twice in a 12-month period, a borrower may cancel a loan with the same licensee within three business days after disbursement of the loan proceeds without incurring or paying interest so long as the amount financed, minus any fees or charges, is returned to and received by the licensee within that time.

~~(f) No individual, partnership, or corporate licensee and no corporation which is the parent, subsidiary or affiliate of a corporate licensee that is making loans under this Article except as authorized in this section, shall be permitted to make loans under the provisions of this section. Any corporate licensee or individual or partnership licensee that elects to make loans in accordance with the provisions of this section shall be bound by that election with respect to all of its offices and locations in this State and all offices and locations in this State of its parent, subsidiary or affiliated corporate licensee, or with respect to all of his or their offices and locations in this State.~~"

SECTION 5. G.S. 53-177 reads as rewritten:

"**§ 53-177. ~~Recording fees.~~Fees.**

(a) Recording Fees. – The licensee may collect from the borrower the amount of any fees necessary to file or record its security interest with any public official or agency of a county or the State as may be required pursuant to Article 9 of Chapter 25 of the General Statutes or G.S. 20-58 et seq. Upon full disclosure to the borrower on how the fees will be applied, such fees may either (i) be paid by the licensee to such public official or agency of the county or ~~State,~~State or (ii) in lieu of recording or filing, applied by the licensee to purchase nonfiling or nonrecording insurance on the instrument securing the ~~loan, or (iii) be retained by a licensee that elects to self insure against the loss of a security interest by reason of not filing or recording its security instrument: Provided,~~loan; provided, however, the amount collected by the licensee from the borrower for the purchase of a nonfiling or nonrecording insurance ~~policy, or for self insurance,~~policy shall be the premium amount for such insurance as fixed by the Commissioner of Insurance. Such premium shall be at least one dollar ($1.00) less than the cost of recording or filing a security interest. Provided further, a licensee shall not collect or permit to be collected any notary fee in connection with any loan made under this Article, nor may a licensee collect any fee from the borrower for the cost of releasing a security interest except such fee as actually paid to any public official or agency of the county or State for such purpose.

(b) Late Fees. –

(1) A licensee may charge a late payment fee for any payment which remains past due for 10 days or more after the due date.

(2) No licensee may charge a late payment fee in an amount greater than fifteen dollars ($15.00) nor charge a late payment fee more than once with respect to a single late payment.

(c) Deferral Charges. – A licensee may, by agreement with the borrower, collect a deferral charge and defer the due date of all or part of one or more installments under an existing loan contract as permitted in the provisions of G.S. 25A-30.

(d) Insurance Policy. – If a licensee, in lieu of recording, collects a fee to purchase a nonfiling or nonrecording insurance policy as authorized under subsection (a) of this section, to be valid, any claim arising from such policy shall only be used to compensate the licensee for damages arising from failure to record or file its security interest in accordance with Article 9 of Chapter 25 of the General Statutes. Following payment of such claim, the licensee shall do the following:

(1) Properly credit the full claim amount posted to the balance of the loan effective the date the proceeds were received.

(2) Close the loan account and cease collection efforts on any loan that was paid in full by a claim.

(3) Provide the borrower written notice, unless otherwise prohibited by federal law, that (i) the claim has been partially paid or paid in full and (ii) to the extent the loan is subject to the insurance company's subrogation rights, instructions about direction of future payments.

(4) Cancel of record or properly credit, as appropriate, any judgments against the borrower arising from the loan and, if the judgment has been paid in part, file a certificate of partial satisfaction.

(5) Accurately report any account adjustments to any credit bureau used by the licensee."

SECTION 6. G.S. 53-180 reads as rewritten:

"**§ 53-180. Limitations and prohibitions on practices and agreements.**

(a) Time and Payment Limitation. – ~~Except as otherwise provided in this Article, no licensee making a loan pursuant to G.S. 53-173 shall enter into any contract of loan under this Article providing for any scheduled repayment of principal more than 25 months from the date of making the contract if the cash advance is six hundred dollars ($600.00) or less; more than 37 months from the date of making the contract if the cash advance is in excess of six hundred dollars ($600.00) but not in excess of fifteen hundred dollars ($1,500); more than 49 months from the date of making the contract if the cash advance is in excess of fifteen hundred dollars ($1,500) but not in excess of two thousand five hundred dollars ($2,500); or more than 61 months if the cash advance is in excess of two thousand five hundred dollars ($2,500).~~ Every loan contract shall provide for repayment of the amount loaned in substantially equal installments, either of principal or of principal and charges in the aggregate, at approximately equal periodic intervals of time. Nothing contained herein shall prevent a loan being considered a new loan because the proceeds of the loan are used to pay an existing contract.

...

(c) Limitation on Default Provisions. – An agreement between a licensee and a borrower pursuant to a loan under this Article with respect to default by the borrower is enforceable only to the extent that (i) the borrower fails to make a payment as required by the ~~agreement,~~agreement or fails to maintain contractually required insurance coverage or (ii) the prospect of payment, performance, or realization of collateral is significantly endangered or impaired, the burden of establishing the prospect of a significant endangerment or impairment being on the licensee.

...

(e) Limitation on Attorney's Fees. – With respect to a loan made pursuant to the provisions of ~~G.S. 53-173,~~G.S. 53-176, the agreement may not provide for payment by the borrower of attorney fees.

...."

SECTION 7. Article 15 of Chapter 53 of the General Statutes is amended by adding a new section to read:

"**§ 53-180.1. Military service members limitation.**

(a) Definition. – For purposes of this section, the term "military service member" means a member of the armed forces who is either (i) on active duty under a call or order that does not specify a period of 30 days or fewer or (ii) on active Guard and Reserve Duty, as that term is defined in 10 U.S.C. § 101(d)(6).

(b) Verification; Requirements for Granting Loan. – Prior to making a loan under this Article, a licensee will confirm whether the borrower is a military service member and document this in the person's loan file. A licensee may not make a loan to a borrower who is a military service member with a rank of E4 or below ("covered member") unless the following requirements are met:

(1) The licensee notifies the borrower's company-level commander or equivalent designee of the covered member before the loan is consummated. Notification may occur verbally, by electronic means, United States mail, or other equivalent methods of notification. The notification method and date shall be recorded in writing and included in the loan file along with the name of the company-level commander or equivalent designee communicated with and the date of the communication with the company-level commander or equivalent designee.

(2) The licensee shall deposit in the United States mail a copy of the federal Truth in Lending Act, 15 U.S.C. § 1601, et seq., disclosures and the complete contract for the loan addressed to the borrower's company-level commander or equivalent designee of the covered member within five business days of the consummation of the loan.

(3) A covered member who has entered into a loan contract made pursuant to this Article may, within 30 days of entering into the loan contract, rescind the loan contract by returning to the licensee in cash or by certified bank check the amount advanced to or for the benefit of the covered member under the loan contract, and upon delivery of those funds to the licensee, the borrower shall have no further liability or obligations under the loan contract. Nothing in this provision shall be construed to restrict or eliminate any other penalties provided by State or federal law.

(4) The licensee shall give the covered member a separate disclosure that includes the statements and information required under G.S. 53-181(a). The licensee shall include the name and address of the North Carolina Commissioner of Banks, the Consumer Protection Division of the North Carolina Department of Justice, and the Consumer Financial Protection Bureau. The licensee may include internal compliance information on the same disclosure.

(5) Notwithstanding Section 2 of Title 9 of the United States Code, 9 U.S.C. § 2, or any other federal or State law, rule, or regulation, no agreement to arbitrate any dispute involving the extension of consumer credit shall be enforceable against any covered member or dependent of such a member or any person who was a covered member or dependent of that member when the agreement was made.

(6) A licensee shall take reasonable precaution to prevent making loans in violation of this section. In the event that a licensee does not take reasonable precautions to identify covered members prior to making a loan, such loans granted to covered members shall have the interest rate on the loan adjusted to eight percent (8%) per annum.

(c) Penalties and remedies. –

(1) The remedies and rights provided under this section are in addition to and do not preclude any remedy otherwise available under law to the person

claiming relief under this section, including any incidental, consequential, or punitive damages.

(2) Except as provided in subdivision (6) of subsection (b) of this section, any credit agreement, promissory note, or other contract prohibited under this section is null and void.

(3) Nothing in this section may be construed to limit or otherwise affect the applicability of Section 207 of the Servicemembers Civil Relief Act, 50 U.S.C. App. § 527.

(d) Additional Restriction. – When a military service member has been deployed to a theater of combat, a licensee shall not contact the military service member by telephone or electronic mail for purposes of collecting on the loan upon receiving sufficient proof of the military service member's deployment. An official copy of the military service member's orders for deployment shall constitute sufficient proof."

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

SENATE BILL 489:
Consumer Finance Act Amendments

2013-2014 General Assembly

Committee:	Senate Commerce	**Date:**	April 30, 2013
Introduced by:	Sens. Gunn, Newton, Clodfelter	**Prepared by:**	Wendy Graf Ray Committee Counsel
Analysis of:	PCS to First Edition S489-CSSU-17		

SUMMARY: ***The Proposed Committee Substitute for Senate Bill 489 would make the following amendments to the Consumer Finance Act:***

- ***Allow lenders to loan up to $15,000 (currently $10,000).***
- ***Modify the maximum interest rates allowed and the length of time allowed for repayment.***
- ***Allow lenders to charge late payment fees.***
- ***Allow lenders to collect charges by agreement with the borrower for deferring payments.***
- ***Require lenders to comply with certain requirements when the lender receives payment of a claim arising from an insurance policy purchased in lieu of filing a security interest on the instrument securing the loan.***
- ***Provide additional requirements and restrictions for lenders entering into loan agreements with military service members.***

CURRENT LAW & BILL ANALYSIS: The North Carolina Consumer Finance Act authorizes individuals to become licensed by the Banking Commission and engage in the business of lending in amounts of $10,000 or less, under the terms and subject to maximum interest rates set out in the Act. The PCS for Senate Bill 489 would amend the provisions of the Act as follows:

Loan amounts, interest rates, and terms. Under the current law, lenders can make loans up to $10,000. There are two statutes under which lenders may operate, G.S. 53-173 and G.S. 53-176. They must specifically elect to operate under G.S. 53-176 or be subject to the provisions of G.S. 53-173.

- G.S. 53-173 allows a lender to make loans up to $3,000. The maximum interest rate is 36% for the first $600 and 15% for the remaining $2400. The maximum term of the loan is 25 months for $600 or less, 37 months for $600-$1,500, 49 months for $1,500-$2,500, and 61 months for $2,500-3,000.
- G.S. 53-176 allows a lender to make loans up to $10,000. For loans of $7,500 or less, the maximum interest rate is 30% for the first $1,000 and 18% for the remaining $6,500. For loans over $7,500 up to $10,000, the maximum interest rate is 18%. The minimum term for the loan is 6 months, and the maximum term is 84 months.

[As of December 31, 2011, there were 81 consumer finance lenders operating in North Carolina. Eight of them operate under G.S. 53-173, and 73 of them elect to operate under G.S. 53-176.]

The PCS for Senate Bill 489 would eliminate the option of electing to operate under one of these two provisions. All lenders under the Act would operate under the same provisions. They would be allowed to make loans up to $15,000. The maximum interest rate would be 30% for the first $5,000, 24% for the

second $5,000, and 18% for the remaining $5,000. The minimum term for loans would be 12 months and the maximum term would be 96 months.

Late fees. Under current law, no late fees are authorized. The PCS would allow a lender to charge a late fee for any payment that is 10 days or more past due. The fee could not be more than $15, and a late fee could not be charged more than once for a single late payment. The PCS would also provide that any payments made on a loan would first be applied to late fees and other permissible charges, before being applied to accrued interest and principal.

Deferral charges. Under current law, deferral charges are not authorized. The PCS would allow the lender, by agreement with the borrower, to collect a deferral charge for deferring the due date of a payment. The deferral charge could be up to 1.5% of the payment deferred.

Nonfiling or nonrecording insurance. Current law allows the lender to file or record its security interest, or, in lieu of recording or filing, purchase nonfiling insurance on the instrument securing the loan or elect to self-insure. The PCS would eliminate the option to self-insure. The lender would still be allowed to purchase nonfiling insurance, but the PCS would require that any claim paid to the lender under such a policy only be used to compensate the lender for damages arising from failing to record the security interest, and following payment of a claim, the lender would be required to:

- Credit the full claim amount to the balance of the loan.
- Close the loan account and cease collection efforts if paid in full.
- Provide written notice to the borrower that the claim is paid and give directions on future payments if the insurer has subrogation rights.
- Cancel or credit any judgments against the borrower arising from the loan.
- Report any account adjustments to credit bureau.

Additional requirements for loans to military service members. The PCS would provide for additional requirements and restrictions for lenders making loans to certain military service members. A military service member is a member of the armed forces who is on active duty under a call order that does not specify a period of 30 days or fewer or who is on active Guard and Reserve Duty. Prior to making a loan, a lender must confirm whether the borrower is a military service member and document that in the person's file. If the borrower is a "covered member" (a military service member with a rank of E4 or below), the lender may not make the loan unless the following requirements are met:

- The lender notifies the covered member's company-level commander or designee before the loan is consummated.
- The lender mails a copy of the loan contract and disclosures to the company-level commander or designee within 5 business days of the consummation of the loan.
- A covered member must be allowed to rescind the loan contract within 30 days by returning the funds advanced under the loan.
- The lender must give the covered member the disclosure required under current law (including name and address of lender, date of loan, schedule of installments, cash advance, face amount of loan note, amount paid for insurance, fees, collateral or security for the loan, information on previous loan if it is a refinance), as well as the name and address of the Commissioner of Banks, the Consumer Protection Division of the Department of Justice, and the Consumer Financial Protection Bureau.

- No agreement to arbitrate is enforceable against any covered member or his/her dependent.
- If the lender does not take reasonable precautions to identify covered members prior to making a loan, loans granted to covered members shall have the interest rate adjusted to 8%.

The PCS also prohibits a lender from contacting a military service member for purposes of collecting a loan when the service member has been deployed to a theater of combat and the lender has received sufficient proof of deployment.

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

VISITOR REGISTRATION SHEET

Senate **COMMERCE** Committee — April 30, 2013

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DEBBIE LOWN

NAME	FIRM OR AGENCY AND ADDRESS
Susan Vick	FSP
Laura Orono	FSP
Kay Emanuel	School of Government
Travis Hoppe	Security Financial Services Corp.
Matthew D. Machaek	Security Financial Services Corp
Katherine Torres	ED&A, Inc
Kimberly Marlowe	Basic Finance, Inc.
Jeff Scott	Basic Finance, Inc.
Kris Haston	DHHS
Bill McKee	DST Reg 8
Lib Sheffield	NCPW

VISITOR REGISTRATION SHEET

Senate **COMMERCE** Committee — April 30, 2013

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DEBBIE LOWN

NAME	FIRM OR AGENCY AND ADDRESS
Michael Munn	Security Finance Wilmington, NC
Shane Murray	Resident Lenders of N.C.
Scott Oliver	North State Acceptance - Raleigh, NC
David Hocks	North State Acceptance Rgl. N.C.
Dennis Triplett	Welcome Finance Co., Inc.
Pam Smith	Century Finance Rocky Mt. NC
Wayne Smith	Century Finance, Rocky Mt, NC
Jamie Bore	Bore and Associates, LLC
Paul Fogleman	Insurance
Kay Mayer	OSC
Abby Hammond	NCIC

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Senate **COMMERCE** Committee — April 30, 2013

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DEBBIE LOWN

NAME	FIRM OR AGENCY AND ADDRESS
SUSAN LUPTON	CENTER FOR RESPONSIBLE LENDING
Cedric Johnson	BTC
Lucy Martinez	NC Justice Center
Stephanie Cecato	Legal Services of Southern Piedmont
Ellen Harnick	Center for Responsible Lending
Rochelle Spanko	NC Justice center
Laura Collins Britton	UNC School of Law
[signature]	CSS
[signature]	CIC
[signature]	118 Bobia Rd, Greenville, NC 27858
Glenn Hall	Resident Lenders of NC

VISITOR REGISTRATION SHEET

Senate **COMMERCE** Committee — April 30, 2013

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DEBBIE LOWN

NAME	FIRM OR AGENCY AND ADDRESS
[signature]	DOC
[signature]	[illegible]
Ken Kinion	NCFSA
Don McConnaughhay	SAS
Gary Salamis	UC Union
DAVID REECE	MFS
Bill Rowe	NCJC

VISITOR REGISTRATION SHEET

Senate **COMMERCE** Committee — April 30, 2013

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DEBBIE LOWN

NAME	FIRM OR AGENCY AND ADDRESS
Jon Hall	MPS
Jennifer Haigwood	NCDOL
Amanda Honaker	Troutman Sanders
Steven Wells	NCHBA
Chris Agner	DOJ
Mary Bell	AARP - NC
John Monaghan	Piedmont Natural Gas
Justin DeLancey	NC DOL
	Citi
Don Laney	Regional Finance of NC, Inc.
Adam Shular	DHHS

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Senate **COMMERCE** Committee — April 30, 2013

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DEBBIE LOWN

NAME	FIRM OR AGENCY AND ADDRESS
Edith Roby	Security Financial Services NC
Angela S Rogers	Security Financial Services NC
CHRIS MCKINLEY	GREEN CAP FINANCIAL
VICTOR BARR	SECURITY FINANCE
Carley Ruff	NC Housing Coalition
Lauren Knott	NC Housing Coalition
Elizabeth Biser	Brooks Pierce
Lauren Whaley	NCCUL
Nathan Batts	NCBA
JERRY RIDENHOUR	SPRINGLEAF FINANCIAL
Stephen Kuhn	Compass

VISITOR REGISTRATION SHEET

Senate **COMMERCE** Committee — April 30, 2013

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DEBBIE LOWN

NAME	FIRM OR AGENCY AND ADDRESS
Willie Hartzell	
JAN NICHOLS	148 FAIRVIEW Rd MONCURE NC 27559
Helen Savage	AARP NC
Rebekah O'Connell	Triangle Family Services
Beth Young	FPLC
Chris Kukla	CML
Al Ripley	NCJC
LEAH KANE	Legal Services of Southern Piedmont
Dan Way	Carolina Journal
Jennifer Epperson	NC DOJ
Erin Wagner	Resident Lenders of NC

VISITOR REGISTRATION SHEET

Senate **COMMERCE** Committee — April 30, 2013

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DEBBIE LOWN

NAME	FIRM OR AGENCY AND ADDRESS
Becki Gray	927
Burton Albritton	ABC Carolinas
C Stokes	TSS
Ed Turlington	KP
Michael Hamser	The Hamser Consulting Group
Canaan Duie	MVA
John Cooper	Compass NC
Dana Simps	SA
Amy Smith	JKS
Michelle Frazier	MFS
John McMillan	MFS

Senate Committee on Commerce
Tuesday, May 7, 2013, 11:00 AM
1027/1128 Legislative Building

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

BILL NO.	SHORT TITLE	SPONSOR
SB 613	Create Military Affairs Commission	Senator Brown
SB 127	Customer Srvc., Econ. Dev., and Transport'n .	Senator Brown
SB 199	Electric Membership Corps/Member Control.	Senator Meredith Senator Brown Senator McLaurin
SB 420	UI/Clarify Required Contributions.	Senator Clark
SB 648	NC Commerce Protection Act of 2013.	Senator Jackson Senator Meredith Senator J. Davis

NOTE: SB648 is for discussion only.

Senate Committee on Commerce
Tuesday, May 7, 2013 at 11:00 AM
Room 1027/1128 of the Legislative Building

MINUTES

The Senate Committee on Commerce met at 11:00 AM on May 7, 2013 in Room 1027/1128 of the Legislative Building. 23 members were present.

Kristin Marrow from Roper, Olivia de Araujo from Goldsboro, Trey Oenland from Burnsville, and Gabbie Holmes from Sanford served as Senate Pages.

Senator Gunn informed the Committee that S.B 613 would be heard first.

S.B 613 Create Military Affairs Commission

Senator Tillman moved to adopt the proposed committee substitute (PCS) to the committee for discussion and it was carried. Senator Brown was introduced to speak on the bill. Senator Jenkins moved unfavorable to the bill, favorable to the PCS and it carried.

S.B. 127 Customer Srvc. Econ. Dev., and Transport'n

Senator J. Davis moved to adopt the proposed committee substitute (PCS) to the committee for discussion and it was carried. Senator Brown was introduced to speak on the bill. After discussion Senator Brown offered an amendment. Trina Griffin, an attorney with the Research Division explained the amendment. The members accepted the amendment. Senator Tillman moved unfavorable to the bill, but favorable to the PCS as amended and it carried.

S.B 199 Electric membership Corps/Member Control

Senator Stein moved to adopt the proposed committee substitute (PCS) to the committee for discussion and it carried. Senator Meredith was introduced to speak on the bill. Peter Ledford, an attorney with the Research Division assisted with the explanation. Senator Tillman moved unfavorable to the bill, but favorable to the PCS and was carried.

S.B 420 UI/Clarify Required Contributions

Senator Apodaca moved to adopt the proposed committee substitute (PCS) to the committee for discussion and it was carried. Senator B. Clark was introduced to speak on the bill. Cindy Avrette, an attorney with the Research Division assisted with the explanation. Senator Meredith moves unfavorable to the bill, favorable to the PCS and it carried.

S.B 648 NC Commerce Protection Act of 2013

Senator Meredith moved to adopt the proposed committee substitute (PCS) to the committee for discussion and it was carried. Senator Gunn announced that this bill would be for discussion only and introduced Senator Jackson to speak on the bill. Peter Ledford and attorney with the Research Division assisted with the explanation and responses to the members. Senator Apodaca stated that this was a good bill and should be voted on today and because it had a referral to the Senate Judiciary 1 Committee. Senator Gunn asked if anyone would like to speak on the bill. Three people came to speak; Mark Prak with Brooks Pierce, Ashley Perkinson, attorney at law with Perkin Law Firm and Matthew Dominguez, Public Policy Manager with The Humane Society of the United States. Senator Apodaca moved unfavorable to the bill, favorable to the PCS and it was referred to SJ1.

Senator Rick Gunn, Chair, presided.

The meeting adjourned at 11:55 AM.

Senator Rick Gunn, Chair
Presiding

Karen Johns, Committee Clerk

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

COMMERCE COMMITTEE REPORT
Senator Gunn, Co-Chair
Senator Meredith, Co-Chair

Wednesday, May 08, 2013

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

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

SB **613** Create Military Affairs Commission.

Draft Number:	S613-PCS85219-SU-21
Sequential Referral:	Rules and Operations of the Senate
Recommended Referral:	None
Long Title Amended:	No

TOTAL REPORTED: 1

Senator Harry Brown will handle SB 613

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

COMMERCE COMMITTEE REPORT
Senator Gunn, Co-Chair
Senator Meredith, Co-Chair

Tuesday, May 07, 2013

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

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

SB **648** NC Commerce Protection Act of 2013.

Draft Number:	S648-PCS35337-TP-10
Sequential Referral:	Judiciary I
Recommended Referral:	None
Long Title Amended:	Yes

TOTAL REPORTED: 1

Senator W. Jackson will handle SB 648

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

COMMERCE COMMITTEE REPORT
Senator Gunn, Co-Chair
Senator Meredith, Co-Chair

Tuesday, May 07, 2013

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

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

SB **199** Electric Membership Corps/Member Control.

Draft Number:	S199-PCS75311-TP-28
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

SB **420** UI/Clarify Required Contributions.

Draft Number:	S420-PCS75312-RB-8
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

TOTAL REPORTED: 2

Senator Wesley Meredith will handle SB 199
Senator Robert Clark will handle SB 420

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

S 1

SENATE BILL 613

Short Title:	Create Military Affairs Commission.	(Public)
Sponsors:	Senators Brown (Primary Sponsor); Barefoot, D. Davis, Hise, McLaurin, Parmon, Pate, Rabin, and Sanderson.	
Referred to:	Rules and Operations of the Senate.	

April 4, 2013

A BILL TO BE ENTITLED

AN ACT TO CREATE THE NORTH CAROLINA MILITARY AFFAIRS COMMISSION.

The General Assembly of North Carolina enacts:

SECTION 1. The North Carolina Advisory Commission on Military Affairs is hereby abolished.

SECTION 2. Chapter 127C of the General Statutes reads as rewritten:

"**Chapter 127C.**

"~~**Advisory Commission on Military Affairs.**~~**North Carolina Military Affairs Commission.**

"**§ 127C-1.** ~~**Creation of the North Carolina Advisory Commission on Military Affairs.**~~**Commission established; purpose; membership; transaction of business.**

(a) Establishment. – There is established the North Carolina Military Affairs Commission. The Commission shall be located within the Department of Public Safety for organizational, budgetary, and administrative purposes.

(b) Purpose. – The purpose of the Commission is to advise the General Assembly, State officials, and State agencies on:

(1) Strengthening the State's relationship with the military to protect the installations of this State from future defense budget cuts or military downsizing by providing a sound infrastructure, affordable housing, and affordable education for military members and their families and to be viewed by national military leaders as the most military-friendly State in the nation.

(2) Supporting the long-term goal of a viable and prosperous military presence in this State, which shall include, at a minimum, the Commission's development of a comprehensive economic impact study of military activities in North Carolina, with recommendations for initiatives to support this goal.

(3) Ways to coordinate the State's interests in future activities of the Department of Defense with the promotion of the State's economic interests in the development of the State's natural resources, including wind, solar, and natural gas and oil exploration.

(4) Initiatives to improve the quality of life for military personnel and their dependents, including educational opportunities, occupational licensure, recreational activities, and access to the courts.

(5) Any other issue or matter that the Commission deems appropriate in relation to the presence of the military in this State.

~~There is created in the Office of the Governor the North Carolina Advisory Commission on Military Affairs to advise the Governor and the Secretary of Commerce on protecting the existing military infrastructure in this State and to promote new military missions and economic opportunities for the State and its citizens.~~

"§ 127C-2. Membership.

(a) The North Carolina ~~Advisory Commission on~~ Military Affairs Commission shall consist of ~~21~~15 voting members, who shall serve on the Executive Committee, and 17 nonvoting, ex officio members, who shall serve by reason of their ~~positions.~~positions, as provided in subsections (b) and (c) of this section.

(b) The Executive Committee shall be appointed as follows:

(1) ~~Three~~ Four members appointed by the Speaker of the House of ~~Representatives, one of whom shall be a member of a recognized veterans' organization.~~Representatives, who shall be members of the House, with one member from or residing near each of the following communities: Jacksonville, Havelock, Goldsboro, and Fayetteville.

(2) ~~Three~~ Four members appointed by the President Pro Tempore of the ~~Senate, one of whom shall be a member of a recognized veterans' organization.~~Senate, who shall be members of the Senate, with one member from or residing near each of the following communities: Jacksonville, Havelock, Goldsboro, and Fayetteville.

(3) ~~Fifteen~~ Seven members appointed by the Governor, consisting of:

a. ~~Three representatives~~ One representative from the Jacksonville ~~community.~~community, who shall have retired from the Armed Forces of the United States, with more than 20 years of military service.

b. ~~Three representatives~~ One representative from the Havelock ~~community.~~community, who shall have retired from the Armed Forces of the United States, with more than 20 years of military service.

c. ~~Three representatives~~ One representative from the Goldsboro ~~community.~~community, who shall have retired from the Armed Forces of the United States, with more than 20 years of military service.

d. ~~Three representatives~~ One representative from the Fayetteville ~~community.~~community, who shall have retired from the Armed Forces of the United States, with more than 20 years of military service.

e. Three public members from across the State.

(c) The following members, or their designee, shall serve ex officio:

(1) The Lieutenant Governor.
(1a) Secretary of Public Safety.
(2) Secretary of Commerce.
(2a) The Secretary of Transportation.
(2b) The Secretary of the Department of Environment and Natural Resources.
(3) Commanding General 18th Airborne Corps, Fort Bragg.
(4) Commanding General Marine Corps Base, Camp Lejeune.
(5) Commanding General Marine Corps Air Station, Cherry Point.
(6) Commander 4th FW, Seymour Johnson Air Force Base.
(7) Commander 43rd Airlift Wing, Pope Air Force Base.

(8) Commander of the U.S. Coast Guard Support Center, Elizabeth City.
(9) Adjutant General of the North Carolina National Guard.
(10) The Executive Director of the North Carolina League of Municipalities.
(11) The Executive Director of the North Carolina Association of County Commissioners.
(12) The Assistant Secretary for Veterans Affairs, Department of Administration.
(13) The President of The University of North Carolina.
(14) The President of the North Carolina Community College System.

(d) The ~~Governor shall designate one member of the Executive Committee appointed pursuant to subsection (b) of this section to serve as chair. The Executive Committee shall elect four persons from amongst its membership to serve as vice chairs.~~chair of the Commission shall be elected by a majority vote of the Executive Committee membership of the Commission.

(e) The terms of the appointed members of the ~~Executive Committee~~Commission shall be ~~as follows:~~two years.

~~(1) The members initially appointed by the Speaker of the House of Representatives and the President Pro Tempore of the Senate shall serve terms ending on December 31, 2003.~~
~~(2) Seven of the members appointed by the Governor shall serve initial terms ending on December 31, 2002.~~
~~(3) Eight of the members appointed by the Governor shall serve initial terms ending on December 31, 2003.~~

~~Thereafter, all members shall serve two-year terms.~~

(f) The initial meeting of the Commission shall be within 30 days of the effective date of this act at a time and place to be determined by the Secretary of Public Safety. The first order of business at the initial meeting of the Commission shall be the election of a chair, after which the Commission shall meet upon the call of the chairman or the Military Advisor within the Office of the Governor. The members shall receive no compensation for attendance at meetings, except a per diem expense reimbursement. Members of the Commission who are not officers or employees of the State shall receive reimbursement for subsistence and travel expenses at rates set out in G.S. 138-5 from funds made available to the Commission. Members of the Commission who are officers or employees of the State shall be reimbursed for travel and subsistence at the rates set out in G.S. 138-6 from funds made available to the Commission.

"**§ 127C-3. Military Advisor.**

The Military Advisor within the Office of the Governor shall serve as the administrative head of the Commission and be responsible for the operations and normal business activities of the Commission, with oversight by the Executive Committee.

"~~**§ 127C-4. Purposes.**~~

~~The Commission shall have the following responsibilities and duties:~~

~~(1) Advise the Governor and Secretary of Commerce on how to strengthen the State's relationship with the military to protect the installations of this State from the results of any future defense budget cuts or military downsizing by providing a sound infrastructure, affordable housing, and affordable education for military members and their families, working to be viewed by national military leaders as the most military-friendly State in the nation.~~
~~(2) Develop a strategic plan to provide initiatives to support the long-term viability and prosperity of the military of this State that shall include, at least:~~
~~a. A comprehensive Economic Impact Study of Military Activities in North Carolina to be conducted by the North Carolina State~~

~~University Department of Economics and the East Carolina University Office of Regional Development.~~

~~b. A Strengths/Weaknesses/Opportunities/Threats (SWOT) Analysis conducted by a professional strategic planning group on the current status of the military in North Carolina.~~

~~(3) Study ways to improve educational opportunities for military personnel in North Carolina.~~

~~(4) Assist in coordinating the State's interests in future activities of the Department of Defense.~~

~~(5) Promote initiatives to improve the quality of life for military personnel in this State.~~"

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

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

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SENATE BILL 613
PROPOSED COMMITTEE SUBSTITUTE S613-CSSU-21 [v.7]
5/7/2013 10:23:59 AM

Short Title: Create Military Affairs Commission. (Public)

Sponsors:

Referred to:

April 4, 2013

A BILL TO BE ENTITLED

AN ACT TO CREATE THE NORTH CAROLINA MILITARY AFFAIRS COMMISSION.

The General Assembly of North Carolina enacts:

SECTION 1. The North Carolina Advisory Commission on Military Affairs is hereby abolished.

SECTION 2. Chapter 127C of the General Statutes reads as rewritten:

"**Chapter 127C.**

"~~**Advisory Commission on Military Affairs.**~~**North Carolina Military Affairs Commission.**

"**§ 127C-1.** ~~**Creation of the North Carolina Advisory Commission on Military Affairs.**~~**Commission established; purpose; transaction of business.**

(a) Establishment. – There is established the North Carolina Military Affairs Commission. The Commission shall be established within the Office of the Governor. The Department of Commerce is responsible for organizational, budgetary, and administrative purposes.

(b) Purpose. – The Commission shall provide advice, counsel, and recommendations to the Governor, the General Assembly, the Secretary of Commerce, and other State agencies on initiatives, programs, and legislation that will continue and increase the role that North Carolina's military installations, the National Guard, and Reserves play in America's defense strategy and the economic health and vitality of the State. The Commission is authorized to:

(1) Coordinate and provide recommendations to the Governor, General Assembly, and State agencies to protect North Carolina's military installations from incompatible development, encroachment, or other initiatives that could result in degradation or restrictions to military operations, training ranges, or low level routes.

(2) Cooperate with military installations to facilitate the military mission, training, and continued presence of major military installations in the State, and notify the commanding military officer of a military installation and the governing body in affected counties and municipalities of any economic development or other projects that may impact military installations.

(3) Identify and support ways to promote quality of life for military members and their families, such as providing a sound infrastructure, affordable housing, affordable education, and transition support into North Carolina's workforce for military members and their families, military retirees, and veterans.

(4) Lead the State's initiative to prepare for the next round of Base Realignment and Closure (BRAC), as defined by the Governor and the General Assembly, with input from local military communities.

(5) Identify and support economic development organizations and initiatives that focus on leveraging the military and other business opportunities to help create jobs and expand defense and homeland security related economic development activity in North Carolina.

(6) Assist military installations located within the State by coordinating with commanders, communities, and State and federal agencies on affairs that affect military installations and may require State coordination and assistance.

(7) Support the long-term goal of a viable and prosperous military presence in the State, which shall include development of comprehensive economic impact studies of military activities in North Carolina, updated every two years with recommendations for initiatives to support this goal.

(8) Supporting environmental and sustainability initiatives such as the Southeast Regional Partnership for Planning and Sustainability; the Army's Compatible Use Buffer Program; the Working Lands Group; Regional Environmental Protection Initiative, their successors, and related initiatives.

(9) Adopt processes to ensure that all planning, coordination, and actions are conducted with timely consideration having been given to relevant military readiness or training concerns and with appropriate communications with all potentially affected military entities.

(10) Share information and coordinate efforts with the North Carolina congressional delegation and other federal agencies, as appropriate.

(11) Any other issue or matter that the Commission deems essential to fulfilling its purpose.

(c) Transaction of business. – The Commission shall provide a report on military affairs to the Governor at least every six months, and to the General Assembly prior to the start of the legislative sessions, or as required by the members. Priority actions or issues may be submitted at any time.

~~There is created in the Office of the Governor the North Carolina Advisory Commission on Military Affairs to advise the Governor and the Secretary of Commerce on protecting the existing military infrastructure in this State and to promote new military missions and economic opportunities for the State and its citizens.~~

"§ 127C-2. Membership.

(a) The North Carolina ~~Advisory Commission on~~ Military Affairs Commission shall consist of ~~21 voting members, who shall serve on the Executive Committee, and 17 nonvoting, ex officio members who shall serve by reason of their positions~~ voting members who are either appointed by the Governor, the Speaker of the House of Representatives, and the President Pro Tempore of the Senate or serve as nonvoting ex officio members as provided in this section.

(b) The ~~Executive Committee~~ voting members of the Commission shall be appointed as follows:

(1) ~~Three members appointed by the Speaker of the House of Representatives, one of whom shall be a member of a recognized veterans' organization.~~Ten members appointed by the Governor, consisting of:

a. One person residing near Camp Lejeune, who is retired from the military or is involved in military issues through civic, commercial, or governmental relationships.

b. One person residing near Marine Corps Air Station Cherry Point, who is retired from the military or is involved in military issues through civic, commercial, or governmental relationships.
c. One person residing near Seymour Johnson Air Force Base, who is retired from the military or is involved in military issues through civic, commercial, or governmental relationships.
d. One person residing near Ft. Bragg, who is retired from the military or is involved in military issues through civic, commercial, or governmental relationships.
e. One person residing near Coast Guard Station Elizabeth City, who is retired from the military or is involved in military issues through civic, commercial, or governmental relationships.
f. Five persons who may reside in any part of the State, who are involved in military issues through civic, commercial, or governmental relationships.

(2) ~~Three members appointed by the President Pro Tempore of the Senate, one of whom shall be a member of a recognized veterans' organization.~~Five members appointed by the Speaker of the House of Representatives, consisting of:
a. One member of the House of Representatives, who will serve as the liaison to the Commission.
b. One person residing near Camp Lejeune, who is retired from the military or is involved in military issues through civic, commercial, or governmental relationships.
c. One person residing near Marine Corps Air Station Cherry Point, who is retired from the military or is involved in military issues through civic, commercial, or governmental relationships.
d. One person residing near Seymour Johnson Air Force Base, who is retired from the military or is involved in military issues through civic, commercial, or governmental relationships.
e. One person residing near Ft. Bragg, who is retired from the military or is involved in military issues through civic, commercial, or governmental relationships.

(3) ~~Fifteen members appointed by the Governor, consisting of:~~Five members appointed by the President Pro Tempore of the Senate, consisting of:
a. ~~Three representatives from the Jacksonville community.~~One member of the Senate, who will serve as the liaison to the Commission.
b. ~~Three representatives from the Havelock community.~~One person residing near Camp Lejeune, who is retired from the military or is involved in military issues through civic, commercial, or governmental relationships.
c. ~~Three representatives from the Goldsboro community.~~One person residing near Marine Corps Air Station Cherry Point, who is retired from the military or is involved in military issues through civic, commercial, or governmental relationships.
d. ~~Three representatives from the Fayetteville community.~~ One person residing near Seymour Johnson Air Force Base, who is retired from the military or is involved in military issues through civic, commercial, or governmental relationships.
e. ~~Three public members from across the State.~~ One person residing near Ft. Bragg, who is retired from the military or is involved in

military issues through civic, commercial, or governmental relationships.

(c) The following ~~members,~~office holders or their designee, shall serve ~~ex officio:~~as nonvoting ex officio members of the Commission:

(1) The Lieutenant Governor.

~~(1a)~~(2) Secretary of Public Safety.

~~(2)~~(3) Secretary of Commerce.

~~(2a)~~(4) The Secretary of Transportation.

~~(2b)~~(5) The Secretary of the Department of Environment and Natural Resources.

~~(3)~~(6) ~~Commanding General 18th Airborne Corps, Fort Bragg.~~The Commissioner of Agriculture.

~~(4) Commanding General Marine Corps Base, Camp Lejeune.~~

~~(5) Commanding General Marine Corps Air Station, Cherry Point.~~

~~(6) Commander 4th FW, Seymour Johnson Air Force Base.~~

~~(7) Commander 43rd Airlift Wing, Pope Air Force Base.~~

~~(8) Commander of the U.S. Coast Guard Support Center, Elizabeth City.~~

~~(9)~~(7) Adjutant General of the North Carolina National Guard.

~~(10)~~(8) The Executive Director of the North Carolina League of Municipalities.

~~(11) The Executive Director of the North Carolina Association of County Commissioners.~~

~~(12)~~(9) The Assistant Secretary for Veterans Affairs, Department of Administration.

~~(13)~~(10) The President of The University of North Carolina.

~~(14)~~(11) The President of the North Carolina Community College System.

(c1) The following officers, or their designee, shall be invited to serve as nonvoting ex officio members of the Commission:

(1) Commanding General, 18th Airborne Corps, Ft. Bragg.

(2) Commanding General, Marine Corps Installations East.

(3) Commanding Officer, Marine Corps Air Station, Cherry Point.

(4) Commanding Officer, 4th Fighter Wing, Seymour Johnson Air Force Base.

(5) Commanding Officer, U.S. Army Corps of Engineers, Wilmington District.

(6) Commanding Officer, U.S. Coast Guard Base Elizabeth City.

(8) Commanding Officer, Marine Corps Air Station New River.

(9) Commanding Officer, Camp Lejeune Marine Corps Base.

(10) Commanding Officer, Fleet Readiness Center East.

(11) Commanding Officer, Military Ocean Terminal Sunny Point.

(d) The ~~Governor shall designate one member of the Executive Committee appointed pursuant to subsection (b) of this section to serve as chair. The Executive Committee shall elect four persons from amongst its membership to serve as vice chairs.~~Chair of the Commission shall be appointed by the Governor from the voting members of the Commission.

(e) The terms of the appointed members of the ~~Executive Committee~~Commission shall be ~~as follows:~~two years.

~~(1) The members initially appointed by the Speaker of the House of Representatives and the President Pro Tempore of the Senate shall serve terms ending on December 31, 2003.~~

~~(2) Seven of the members appointed by the Governor shall serve initial terms ending on December 31, 2002.~~

~~(3) Eight of the members appointed by the Governor shall serve initial terms ending on December 31, 2003.~~

~~Thereafter, all members shall serve two-year terms.~~

(f) The initial meeting of the Commission shall be within 30 days of the effective date of this act at a time and place to be determined by the Secretary of Commerce. The first order

of business at the initial meeting of the Commission shall be the adoption of bylaws and establishment of committees, after which the Commission shall meet upon the call of the Chairman or the Military Advisor within the Office of the Governor. The members shall receive no compensation for attendance at meetings, except a per diem expense reimbursement. Members of the Commission who are not officers or employees of the State shall receive reimbursement for subsistence and travel expenses at rates set out in G.S. 138-5 from funds made available to the Commission. Members of the Commission who are officers or employees of the State shall be reimbursed for travel and subsistence at the rates set out in G.S. 138-6 from funds made available to the Commission.

"**§ 127C-3. Military Advisor.**

The Military Advisor within the Office of the Governor shall serve as the administrative head of the Commission and be responsible for the operations and normal business activities of the Commission, with oversight by the ~~Executive Committee.~~Commission.

"~~**§ 127C-4. Purposes.**~~

~~The Commission shall have the following responsibilities and duties:~~

~~(1) Advise the Governor and Secretary of Commerce on how to strengthen the State's relationship with the military to protect the installations of this State from the results of any future defense budget cuts or military downsizing by providing a sound infrastructure, affordable housing, and affordable education for military members and their families, working to be viewed by national military leaders as the most military-friendly State in the nation.~~

~~(2) Develop a strategic plan to provide initiatives to support the long-term viability and prosperity of the military of this State that shall include, at least:~~

~~a. A comprehensive Economic Impact Study of Military Activities in North Carolina to be conducted by the North Carolina State University Department of Economics and the East Carolina University Office of Regional Development.~~

~~b. A Strengths/Weaknesses/Opportunities/Threats (SWOT) Analysis conducted by a professional strategic planning group on the current status of the military in North Carolina.~~

~~(3) Study ways to improve educational opportunities for military personnel in North Carolina.~~

~~(4) Assist in coordinating the State's interests in future activities of the Department of Defense.~~

~~(5) Promote initiatives to improve the quality of life for military personnel in this State.~~"

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

SENATE BILL 613:
Create Military Affairs Commission

2013-2014 General Assembly

Committee:	Re-ref to Commerce. If fav, re-ref to Rules and Operations of the Senate	**Date:**	May 7, 2013
Introduced by:	Sen. Brown	**Prepared by:**	Wendy Graf Ray Committee Counsel
Analysis of:	PCS to First Edition S613-CSSU-21		

SUMMARY: ***The Proposed Committee Substitute for Senate Bill 613 would create the North Carolina Military Affairs Commission.***

BILL ANALYSIS: The PCS for Senate Bill 613 would abolish the Advisory Commission on Military Affairs and establish the North Carolina Military Affairs Commission within the Office of the Governor and under the responsibility of the Department of Commerce for organizational, budgetary, and administrative purposes. The purpose of the Commission would be to provide advice to the Governor, General Assembly, Secretary of Commerce, and other State agencies on initiatives, programs, and legislation that would continue and increase the role of the military in America's defense strategy and the economic health and vitality of the State. The Commission would be required to provide a report on military affairs to the Governor at least every six months and to the General Assembly prior to the start of legislative sessions or as required by the members.

Membership on the Commission would consist of 20 voting members appointed by the Governor, the President Pro Tem of the Senate, and the Speaker of the House; 11 office holders as nonvoting ex officio members; and 10 officers, who shall be invited to serve as nonvoting ex officio members. The terms of the appointed members would be for two years, and the chair would be appointed by the Governor from the voting members.

The initial meeting of the Commission would have to be held within 30 days of the effective date of this act, and the first order of business would be to adopt bylaws and establish committees. Thereafter, the Commission would meet upon the call of the chair or the Military Advisor within the Office of Governor, who would serve as the administrative head of the Commission and be responsible for its operations and normal business activities.

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

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

S 1

SENATE BILL 127

Short Title:	Customer Srvc., Econ. Dev., and Transport'n .	(Public)
Sponsors:	Senators Brown (Primary Sponsor); and Cook.	
Referred to:	Commerce.	

February 25, 2013

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH UNIFORM GEOGRAPHICAL ADMINISTRATIVE DIVISIONS FOR THE STATE AND TO CREATE THE COMMISSION ON REGIONALIZATION CONFORMITY TO DEVELOP RECOMMENDATIONS ON (I) CONFORMING THE EXISTING REGIONAL DIVISIONS OF THE DEPARTMENT OF TRANSPORTATION, THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES, AND THE SEVEN REGIONAL COMMISSIONS AND PARTNERSHIPS TO THESE UNIFORM DIVISIONS, AND (II) A SCHEDULE FOR CONFORMING REGIONAL DIVISIONS OF OTHER STATE AGENCIES THAT HAVE REGIONAL OFFICES.

The General Assembly of North Carolina enacts:

PART I. CREATION OF UNIFORM REGIONAL DIVISIONS

SECTION 1.(a) Intent to Create Uniform Regional Divisions. – It is the intent of the General Assembly to establish geographically uniform administrative regions in this State for State agencies that have regional offices and, to the extent feasible, to consolidate regional offices and to establish a one-stop source in each region for citizens and businesses seeking State services at a regional office.

SECTION 1.(b) Establishment of Regional Divisions. – For purposes of regionalization conformity, the State is hereby divided into seven regions as follows:

(1) Region I, consisting of Buncombe, Burke, Cherokee, Clay, Graham, Haywood, Henderson, Jackson, Macon, Madison, McDowell, Mitchell, Polk, Rutherford, Swain, Transylvania, and Yancey Counties.

(2) Region II, consisting of Alexander, Alleghany, Ashe, Avery, Caldwell, Catawba, Cleveland, Gaston, Iredell, Lincoln, Surry, Watauga, Wilkes, and Yadkin Counties.

(3) Region III, consisting of Alamance, Caswell, Davidson, Davie, Forsyth, Guilford, Orange, Rockingham, Rowan, and Stokes Counties.

(4) Region IV, consisting of Anson, Cabarrus, Chatham, Hoke, Lee, Mecklenburg, Montgomery, Moore, Randolph, Richmond, Scotland, Stanly, and Union Counties.

(5) Region V, consisting of Durham, Edgecombe, Franklin, Granville, Halifax, Johnston, Nash, Person, Vance, Wake, Warren, Wayne, and Wilson Counties.

(6) Region VI, consisting of Bladen, Brunswick, Columbus, Cumberland, Duplin, Harnett, New Hanover, Onslow, Pender, Robeson, and Sampson Counties.

(7) Region VII, consisting of Beaufort, Bertie, Camden, Carteret, Chowan, Craven, Currituck, Dare, Gates, Greene, Hertford, Hyde, Jones, Lenoir, Martin, Northampton, Pamlico, Pasquotank, Perquimans, Pitt, Tyrrell, and Washington Counties.

PART II. IMPLEMENTATION OF UNIFORM REGIONAL DIVISIONS IN PROGRAMS ADMINISTERED BY THE DEPARTMENTS OF TRANSPORTATION, ENVIRONMENT AND NATURAL RESOURCES, AND THE REGIONAL ECONOMIC DEVELOPMENT COMMISSIONS AND PARTNERSHIPS

SECTION 2.(a) Agency-Level Study Required. – The following shall each conduct a self-study of (i) how their processes for customer and regulated client services and their existing regional alignments and online services may be most efficiently and economically aligned with the regions set out in Section 1(b) of this act and (ii) how their programs and activities at the regional level may be best coordinated with those of the other entities listed below and with other State agencies to create one-stop regional services for citizens and businesses:

(1) The Department of Transportation.

(2) The Department of Environment and Natural Resources.

(3) Each of the four regional economic development commissions created in Chapter 158 of the General Statutes (the Western North Carolina Regional Economic Development Commission (AdvantageWest), North Carolina's Northeast Commission, the Southeastern North Carolina Regional Economic Development Commission, and North Carolina's Eastern Region Development Commission).

(4) Each of the three remaining regional economic development partnerships (the Charlotte Regional Partnership, Inc., the Piedmont Triad Regional Partnership, and the Research Triangle Regional Partnership).

Each entity shall report the results of the study to the Study Commission on Regionalization Conformity no later than September 1, 2013.

SECTION 2.(b) Funding. – Each entity conducting the self-study directed in subsection (c) of this section shall use funds otherwise available to the entity to conduct the study.

SECTION 3.(a) Creation of Commission. – The Study Commission on Regionalization Conformity is established in the General Assembly.

SECTION 3.(b) Membership. – The Study Commission on Regionalization Conformity shall consist of eight members, four Senators appointed by the President Pro Tempore of the Senate and four Representatives appointed by the Speaker of the House of Representatives.

SECTION 3.(c) Cochairs; Vacancies; Quorum. – The Study Commission on Regionalization Conformity shall have two cochairs, one designated by the President Pro Tempore of the Senate and one designated by the Speaker of the House of Representatives from among their respective appointees. The Commission shall meet upon the call of the cochairs. Any vacancy on the Commission shall be filled by the original appointing authority. A majority of the members of the Commission constitutes a quorum.

SECTION 3.(d) Compensation; Administration. – Members of the Study Commission on Regionalization Conformity shall receive per diem, subsistence, and travel allowances in accordance with G.S. 120-3.1. The Commission, while in the discharge of its official duties, may exercise all powers provided for under G.S. 120-19 and G.S. 120-19.1 through G.S. 120-19.4. The Commission may meet in the Legislative Building or the Legislative Office Building.

With approval of the Legislative Services Commission, the Legislative Services Officer shall assign professional staff to assist the Study Commission on Regionalization Conformity in its work. The House of Representatives' and the Senate's Directors of Legislative Assistants shall assign clerical staff to the Study Commission on Regionalization Conformity, and the expenses relating to the clerical employees shall be borne by the Commission. The Study Commission on Regionalization Conformity may contract for professional, clerical, or consultant services as provided by G.S. 120-32.02.

SECTION 4.(a) Duties. – The Study Commission on Regionalization Conformity shall study and develop recommendations to implement the alignment of the regional divisions of the Department of Transportation, the Department of Environment and Natural Resources, and the seven regional commissions and partnerships ("the entities" or "these entities"). The study shall include a review of the self-studies submitted by these entities. The recommendations shall include:

(1) Within each region, a location suitable for a shared regional office. In developing this recommendation, the Commission shall consider:
  a. The need to include at a future time the regional offices of additional State agencies and programs.
  b. The need to reduce any economic impact on localities losing existing regional or local offices.
  c. How well a consolidated regional office at this location would be able to interface with other regional entities and multicounty areas.
  d. Any savings or additional costs that may result from the choice of location.
  e. Any other factor the Commission identifies as relevant.

(2) A plan for shared regional facilities and shared staff, equipment, and support services located at the regional facilities. The plan may include provisions for dual employment status and for intra-agency funding agreements among the entities that may need to be made. In developing this plan, the Commission shall include the identification and consideration of any savings or costs that may result, including possible reductions in staff and the need for training new staff at new locations.

(3) A plan for cross-training staff who provide direct services to citizens and businesses, especially frontline staff.

(4) Which services and programs provided by these entities at regional offices can be consolidated. In making this recommendation, the Commission shall identify what improvements in service to citizens and businesses and what savings or additional costs may result.

(5) A plan to enhance communication between the entities.

(6) Whether entities should share or cross-link Web sites.

(7) A plan for requiring local commerce entities to leverage private funding whenever possible.

(8) A proposed time line for implementation of the Commission's recommendations. In developing the time line, the Commission shall identify and consider as factors current leases, current contracts that would be affected by the proposed consolidation, obligations under federal law, any need for the economic development partnerships to amend their articles of incorporation, the need for legislative or administrative rule changes, and any other factor the Commission identifies as relevant.

(9) Other State departments, agencies, boards, or commissions with regional offices that should be aligned with the uniform regional divisions established

in Section 1(b) of this act and a proposed schedule for studying their alignment.

SECTION 4.(b) Additional Study. – The Study Commission on Regionalization Conformity shall also study and identify whether there are (i) opportunities for citizens and businesses seeking services from the entities or (ii) activities performed by the entities at regional offices that could be better done by that entity's office in Raleigh through the Internet or other means or that could be better done at the county or local level.

SECTION 4.(c) Report. – The Study Commission on Regionalization Conformity shall report the results of its study and its recommendations to the General Assembly. The Commission shall file an interim report with the 2014 Regular Session of the 2013 General Assembly and a final report with the 2015 Regular Session of the 2015 General Assembly. In addition to the recommendations required by subsection (a) of this section, the reports shall include any savings or added costs identified by the Commission that would be likely to result from establishing uniform regions and consolidating regional offices. The reports may also include any recommended legislative changes, including conforming amendments.

SECTION 4.(d) Agency Cooperation. – All State departments and agencies and local governments and their subdivisions shall furnish the Study Commission on Regionalization Conformity with any information in their possession or available to them.

SECTION 4.(e) Commission Termination. – The Study Commission on Regionalization Conformity shall terminate on July 1, 2015, or upon the filing of its final report, whichever occurs first.

PART III. EFFECTIVE DATE AND CONSTRUCTION

SECTION 5. Nothing in this act shall be construed to obligate the General Assembly to appropriate funds to implement this act.

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

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

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SENATE BILL 127
PROPOSED COMMITTEE SUBSTITUTE S127-CSMN-1 [v.10]
5/6/2013 7:22:11 PM

Short Title: Customer Srvc., Econ. Dev., and Transport'n . (Public)

Sponsors:

Referred to:

February 25, 2013

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH GEOGRAPHICALLY UNIFORM ZONES TO PROMOTE COLLABORATION FOR PROSPERITY WITHIN THIS STATE, TO REPEAL THE STATUTES RELATING TO THE REGIONAL ECONOMIC DEVELOPMENT COMMISSIONS AND TO TRANSFER THEIR FUNCTIONS WITHIN EACH ZONE TO THE DEPARTMENT OF COMMERCE, TO REQUIRE THE DEPARTMENTS OF COMMERCE, ENVIRONMENT AND NATURAL RESOURCES, AND TRANSPORTATION AND THE COMMUNITY COLLEGE SYSTEM TO MAINTAIN LIAISON PERSONNEL WITHIN EACH ZONE, AND TO CREATE THE STUDY COMMISSION ON INTER-AGENCY COLLABORATION FOR PROSPERITY.

The General Assembly of North Carolina enacts:

PART I. CREATION OF COLLABORATION FOR PROSPERITY ZONES.

SECTION 1.(a) Intent to Create Collaboration for Prosperity Zones. – It is the intent of the General Assembly to establish geographically uniform zones in this State to facilitate collaborative and coordinated planning and use of resources, to improve cooperation with other governmental and nonprofit entities at the local and regional level, to facilitate administrative efficiencies within State government, and, to the extent feasible, to establish one-stop sources in each region for citizens and businesses seeking State services at a regional level.

SECTION 1.(b) Article 1 of Chapter 143B of the General Statutes is amended by adding a new section to read:

"**§ 143B-28.1. Create Collaboration for Prosperity Zones.**

For purposes of enhanced collaboration and cooperation between governmental agencies, planning, use of resources, and improved efficiency at a regional level, the State is hereby divided into eight zones as follows:

(1) Western Region, consisting of Buncombe, Cherokee, Clay, Graham, Heywood, Henderson, Jackson, Macon, Madison, McDowell, Polk, Rutherford, Swain, Transylvania, and Yancey Counties.

(2) Northwest Region, consisting of Alleghany, Ashe, Alexander, Avery, Burke, Caldwell, Catawba, Davie, Iredell, Mitchell, Rowan, Surry, Watauga, Wilkes, and Yadkin Counties.

(3) Southwest Region, consisting of Anson, Cabarrus, Cleveland, Gaston, Lincoln, Mecklenburg, Stanly, and Union Counties.

(4) Piedmont-Triad (Central) Region, consisting of Alamance, Caswell, Davidson, Forsyth, Guilford, Montgomery, Randolph, Rockingham, and Stokes Counties.

(5) North Central Region, consisting of Chatham, Durham, Franklin, Granville, Johnston, Nash, Orange, Person, Vance, Wake, Warren, and Wilson Counties.

(6) Sandhills (South Central) Region, consisting of Bladen, Columbus, Cumberland, Harnett, Hoke, Lee, Moore, Richmond, Robeson, Sampson, and Scotland Counties.

(7) Northeast Region, consisting of Beaufort, Bertie, Camden, Chowan, Currituck, Dare, Edgecombe, Gates, Halifax, Hertford, Hyde, Martin, Northampton, Pasquotank, Perquimans, Pitt, Tyrell, and Washington Counties.

(8) Southeast Region, consisting of Brunswick, Carteret, Craven, Duplin, Greene, Jones, Lenoir, New Hanover, Onslow, Pamlico, Pender, and Wayne Counties."

SECTION 1.(c) This Part becomes effective July 1, 2013.

PART II. ABOLISH REGIONAL ECONOMIC DEVELOPMENT COMMISSIONS.

SECTION 2.1.(a) G.S. 158-8.1, 158-8.2, 158-8.3, 158-8.4, 158-8.4A, 158-8.5, 158-8.6, 158-8.7, 158-8.8, and 158-8.12 are repealed.

SECTION 2.1.(b). Article 4 of Chapter 158 is repealed.

SECTION 2.1.(c). G.S. 120-123(62) is repealed.

SECTION 2.1.(d). G.S. 143-506.10 reads as rewritten:

"**§ 143-506.10. Designation of growth centers; achieving balanced growth.**

It shall be the policy of the State of North Carolina to support the expansion of the State and to designate growth areas or centers with the potential, capacity and desire for growth. The Governor, with the advice of county and municipal government officials and citizens, is charged with designating growth areas or centers, which shall include at least one center in each North Carolina county. Designation of growth areas or centers shall be reviewed annually. These designations may be used for the purpose of establishing priority consideration for State and federal assistance for growth.

Progress toward achieving balanced growth shall be measured by the strengthening of economic activity and the adequacy of public services within each of the State's multi-county ~~regions and, as to the geographical area included, the Southeastern Economic Development Commission.~~ regions. The Governor, with the advice of county and municipal government officials and citizens, shall develop measures of progress toward achieving balanced growth."

SECTION 2.1.(e). The Western North Carolina Regional Economic Development Commission (AdvantageWest), the Southeastern North Carolina Regional Economic Development Commission, and North Carolina's Northeast Commission may either reorganize as nonprofit corporations organized to carry out the same purposes that do not receive State appropriations or wind up their affairs.

SECTION 2.2. G.S. 143B-431 is amended by adding a new subsection to read:

"(c1) Within each Collaboration for Prosperity Zone as defined in G.S. 143B-28.1, the Department of Commerce shall perform the functions formerly provided by the North Carolina Western Regional Economic Development Commission (AdvantageWest), the Southeastern North Carolina Regional Economic Development Commission, North Carolina's Northeast Commission, and North Carolina's Eastern Region Development Commission. Specifically, the Department of Commerce shall do all of the following in each zone:

(1) Provide an interface in each zone for the Department's State-wide programs and activities, especially those under subsections (c) and (e) of this section.

(2) Receive from any municipal, county, joint, or regional planning board or commission with jurisdiction within its area an economic development program for part or all of the area.

(3) Survey each zone and determine the assets, liabilities, and resources that the zone contributes to the economic development process.

(4) In collaboration with other State agencies and with local governments and regional and local government entities, develop and evaluate alternatives for economic development in each zone.

(5) In collaboration with other State agencies and with local governments and regional and local government entities, develop a preferred economic development plan for the zone and establish strategies for implementing the plan.

(6) Co-ordinate its activities in each zone with those of other State agencies and with local governments and local government entities, including coordinating activities and entering into contracts with any nonprofit corporation created to assist a former regional commission in carrying out that commission's powers and duties.

In carrying out the responsibilities required by this subsection, the Department of Commerce may conduct feasibility and other studies and formulate projects for (i) carrying out economic development programs, (ii) attracting new industries and encouraging existing industries, (iii) encouraging agricultural development, and (iv) other activities of a similar nature.

The Department of Commerce shall report annually by February 15 of each year to the Joint Legislative Commission on Governmental Operations a summary of the preceding year's program activities, objectives, and accomplishments under this subsection."

SECTION 2.5. The Department of Commerce shall use funds available to carry out the requirements of this Part.

SECTION 2.6. Except as otherwise provided, this Part becomes effective July 1, 2013.

PART III. DEPARTMENTS TO HAVE AT LEAST ONE LIAISON IN EACH COLLABORATION FOR PROSPERITY ZONE.

SECTION 3.1. No later than October 1, 2013, the Departments of Commerce, Environment and Natural Resources, and Transportation shall have at least one employee physically located in the same office in each of the Collaboration for Prosperity Zones set out in G.S. 143B-28.1 to serve as that department's liaison with the other departments and with local governments, schools and colleges, planning and development bodies, and businesses in that zone. The departments shall jointly select the office.

No later than October 1, 2013, the Community College System Office shall designate at least one representative from a community college or from the Community College System Office to serve as a liaison in each Collaboration for Prosperity Zone for the community college system, the community colleges in the zone, and other educational agencies and schools within the zone. A liaison may be from a business center located in a community college. These liaisons are not required to be co-located with the liaisons from the Departments of Commerce, Environment and Natural Resources, and Transportation.

SECTION 3.2. In addition to other related tasks assigned by their respective agencies, liaisons in each Collaboration for Prosperity Zone shall work to enhance collaboration and cooperation between their departments and other State agencies, local government agencies, and other regional public and nonprofit entities. The liaisons from the Departments of Environment and Natural Resources and Transportation shall work to consolidate and simplify the process for citizens and businesses seeking permits from their

respective agencies. The liaisons from the Department of Commerce shall be used to support local economic development efforts, to coordinate such efforts, and to coordinate the Department of Commerce's activities within each Collaboration for Prosperity Zone. The liaisons from the community college system shall work closely with the Department of Commerce and other State and local government agencies and local businesses in the zone to promote job development through career technical education.

SECTION 3.3.(a). The Departments of Transportation and Environment and Natural Resources shall jointly report to the Office of State Budget and Management, the Joint Legislative Commission on Governmental Operations, the Joint Legislative Transportation Oversight Committee, the Environmental Review Commission, and the Study Commission on Inter-Agency Collaboration for Prosperity, as follows:

(1) No later than October 1, 2013, on the establishment of co-located liaisons within each Collaboration for Prosperity Zone and a description of the activities the liaisons have been assigned to perform.

(2) No later than April 1, 2014, on the activities of the liaisons, specifically any activities undertaken that resulted in enhanced collaboration and coordination with the other Department and with other governmental agencies, improved administrative efficiencies, and any steps taken to make services to citizens and businesses within each zone more efficient, economical, and user-friendly.

SECTION 3.3.(b). The Community College System Office shall report to the Office of State Budget and Management, the Joint Legislative Commission on Governmental Operations, the Joint Legislative Education Oversight Committee, and the Study Commission on Inter-Agency Collaboration for Prosperity as follows:

(1) No later than October 1, 2013, on the establishment of liaisons within each Collaboration for Prosperity Zone and a description of the activities the liaisons have been assigned to perform.

(2) No later than April 1, 2014, on the activities of the liaisons, specifically any activities undertaken that resulted in enhanced collaboration and coordination with other governmental agencies, improved planning on use of educational resources, and improved administrative efficiencies.

SECTION 3.3.(c). The Department of Commerce shall include in its first report under G.S. 143B-431(c1), as enacted by this act, a report on the establishment and activities of its liaisons in each Collaboration for Prosperity Zone. The Department of Commerce shall send a copy of this report to the Office of State Budget and Management and to the Study Commission on Inter-Agency Collaboration for Prosperity.

SECTION 3.4. The Departments of Commerce, Environment and Natural Resources, and Transportation, and the Community College System Office shall use funds available to carry out the requirements of this section.

SECTION 3.5. Except as otherwise provided, this Part is effective July 1, 2013, and expires July 1, 2017.

PART IV. STUDY COMMISSION ON INTER-AGENCY COLLABORATION FOR PROSPERITY.

SECTION 4.1.(a) Creation of Commission. – The Study Commission on Inter-Agency Collaboration for Prosperity is established in the General Assembly.

SECTION 4.1.(b) Membership. – The Study Commission on Inter-Agency Collaboration for Prosperity shall consist of eight members, four members of the Senate appointed by the President Pro Tempore of the Senate and four members of the House of Representatives appointed by the Speaker of the House of Representatives.

SECTION 4.1.(c) Cochairs; Vacancies; Quorum. – The Study Commission on Inter-Agency Collaboration for Prosperity shall have two cochairs, one designated by the President Pro Tempore of the Senate and one designated by the Speaker of the House of Representatives from among their respective appointees. The Commission shall meet upon the call of the cochairs. Any vacancy on the Commission shall be filled by the original appointing authority. A majority of the members of the Commission constitutes a quorum.

SECTION 4.1.(d) Compensation; Administration. – Members of the Study Commission on Inter-Agency Collaboration for Prosperity shall receive per diem, subsistence, and travel allowances in accordance with G.S. 120-3.1. The Commission, while in the discharge of its official duties, may exercise all powers provided for under G.S. 120-19 and G.S. 120-19.1 through G.S. 120-19.4. The Commission may meet in the Legislative Building or the Legislative Office Building.

With approval of the Legislative Services Commission, the Legislative Services Officer shall assign professional staff to assist the Study Commission on Inter-Agency Collaboration for Prosperity in its work. The House of Representatives' and the Senate's Directors of Legislative Assistants shall assign clerical staff to the Study Commission on Inter-Agency Collaboration for Prosperity, and the expenses relating to the clerical employees shall be borne by the Commission. The Study Commission on Inter-Agency Collaboration for Prosperity Conformity may contract for professional, clerical, or consultant services, as provided by G.S. 120-32.02.

SECTION 4.2.(a) Duties. – The Study Commission on Inter-Agency Collaboration for Prosperity shall review the reports submitted by the Departments of Commerce, Environment and Natural Resources, and Transportation and the Community College System Office pursuant to Part III of this act and any other information the Commission deems relevant. The Commission may also study and recommend to the 2014 Regular Session of the 2013 General Assembly legislation on the following topics:

(1) Enhancing collaboration and cooperation between State and other governmental agencies in order to streamline and improve services to citizens and businesses, to make such services more user-friendly, and to implement collaborative and cooperative inter-agency measures to enhance access to services.

(2) Reducing barriers faced by citizens and business in accessing services that are unnecessarily caused by agency specialization (which may produce a "silo mentality").

(3) Additional recommendations regarding liaison personnel, including expanding the requirement to other State departments.

(4) Ways to integrate collaboration between educational institutions in each Collaboration for Prosperity Zone on the one hand and other governmental agencies and local businesses on the other.

(5) Requiring the establishment of inter-agency one-stop shops in each Collaboration for Prosperity Zone.

(6) Consolidation of programs or services.

(7) Cross-training of employees.

(8) Identification of offices, equipment, and support services that may be efficiently and economically shared between agencies in each Collaboration for Prosperity Zone.

The report containing the recommendations shall identify any savings or costs identified by the Commission as likely to result from its recommendations.

SECTION 4.2.(b) Report. – The Study Commission on Inter-Agency Collaboration for Prosperity shall report its recommendations under this section to the 2014 Regular Session of the 2013 General Assembly.

SECTION 4.2.(c) Agency Cooperation. – All State departments and agencies and local governments and their subdivisions shall furnish the Study Commission on Inter-Agency Collaboration for Prosperity with any information in their possession or available to them.

SECTION 4.2.(d) Commission Termination. – The Study Commission on Inter-Agency Collaboration for Prosperity shall terminate on the filing of its report or on July 1, 2014, whichever is later.

PART V. EFFECTIVE DATE AND CONSTRUCTION.

SECTION 5.(a) Nothing in this act shall be construed to obligate the General Assembly to appropriate funds to implement this act.

SECTION 5.(b) Except as otherwise provided in this act, this act is effective when it becomes law.

SENATE BILL 127:
Customer Srvc., Econ. Dev., and Transport'n

2013-2014 General Assembly

Committee:	Senate Ref to Commerce. If fav, re-ref to Transportation	**Date:**	May 7, 2013
Introduced by:	Sen. Brown	**Prepared by:**	Trina Griffin Committee Counsel
Analysis of:	PCS to First Edition S127-CSMN-1		

SUMMARY: The Proposed Committee Substitute for Senate Bill 127 does the following:

- ***Establishes geographically uniform zones to facilitate collaborative and coordinated planning and use of resources, to improve cooperation among governmental and nonprofit entities at the local and regional level, and to establish one-stop sources in each region for citizens and businesses seeking State services at a regional level.***
- ***Abolishes the regional economic development commissions and transfers their functions to the Department of Commerce.***
- ***Requires the Departments of Commerce, Environment & Natural Resources, Public Instruction, and Transportation to maintain physically co-located liaison personnel within each zone.***
- ***Creates the Study Commission on Inter-Agency Collaboration for Prosperity.***

BILL ANALYSIS:

PART I: CREATION OF "COLLABORATION FOR PROSPERITY ZONES"

Part I of the bill establishes, effective July 1, 2013, eight geographic zones to be known as "Collaboration for Prosperity Zones" for the purpose of facilitating coordinated planning and use of resources, improving cooperation with governmental and nonprofit entities at the local and regional level, facilitating administrative efficiencies within State government, and, to the extent feasible, establishing one-stop sources in each region for citizens and businesses seeking State services at a regional level.

With the exception of the repeal of the Regional Economic Development Commissions (*see Part II*), the establishment of these zones does not replace or abolish existing State administrative regions, such as DOT's 14 Divisions, DENR's 7 regional offices, or the 23 regional workforce boards. The zones will be named and consist of the counties as follows:

1 Western Region	2 Northwest Region	3 Southwest Region	4 Piedmont-Triad Region	5 North Central Region	6 Sandhills Region	7 Northeast Region	8 Southeast Region
Buncombe	Alleghany	Anson	Alamance	Chatham	Bladen	Beaufort	Brunswick
Cherokee	Ashe	Cabarrus	Caswell	Durham	Columbus	Bertie	Carteret
Clay	Alexander	Cleveland	Davidson	Franklin	Cumberland	Camden	Craven
Graham	Avery	Gaston	Forsyth	Granville	Harnett	Chowan	Duplin
Heywood	Burke	Lincoln	Guilford	Johnston	Hoke	Currituck	Greene
Henderson	Caldwell	Mecklenburg	Montgomery	Nash	Lee	Dare	Jones
Jackson	Catawba	Stanly	Randolph	Orange	Moore	Edgecombe	Lenoir

Macon Madison McDowell Polk Rutherford Swain Transylvania Yancey	Davie Iredell Mitchell Rowan Surry Watauga Wilkes Yadkin	Union	Rockingham Stokes	Person Vance Wake Warren Wilson	Richmond Robeson Sampson Scotland	Gates Halifax Hertford Hyde Martin Northampton Pasquotank Perquimans Pitt Tyrell Washington	New Hanover Onslow Pamlico Pender Wayne

PART II: ABOLITION OF REGIONAL ECONOMIC DEVELOPMENT COMMISSIONS

Section 2.1 of the bill would abolish the statutorily-created Regional Economic Development Commissions and authorizes them to either reorganize as nonprofit corporations that serve the same purpose as under existing law or wind up their affairs. Section 2.2 of the bill would transfer to the Department of Commerce the functions of the commissions.

Currently, there are seven regional economic development organizations in North Carolina – four statutorily-created commissions and three public-private partnerships that are nonprofit entities. The three partnerships, which were established prior to 1993, are the Charlotte Regional Partnership, the Piedmont Triad Partnership, and the Research Triangle Regional Partnership.[1] The four statutorily-created commissions are: Advantage West Economic Development Group, North Carolina's Eastern Region, Northeast Commission, and Southeast Commission.[2] The General Assembly appropriates recurring funds to the regions. The Department of Commerce distributes funds to the regions based on a formula that incorporates tier county rankings. Tier ranks are based on unemployment, population growth, median household income, and property value per capita.

PART III: REQUIREMENT FOR CO-LOCATED LIAISON PERSONNEL IN EACH ZONE

This Part is effective July 1, 2013, and expires July 1, 2017.

Section 3.1 would require that, by October 1, 2013, the Departments of Commerce, Environment and Natural Resources, and Transportation each have at least one employee physically located in the same office in each of the zones to serve as that department's liaison. The Departments would jointly select the office. The Community College System Office must also designate at least one representative from a community college or the System Office to serve as a liaison in each zone, but need not be co-located with the liaisons from Commerce, DENR, and Transportation.

Section 3.2 of the bill sets out the liaison duties. Generally speaking, the liaisons must work to enhance collaboration and cooperation between their departments and other State agencies, local government agencies, and other regional public and nonprofit entities. The liaisons are also specifically tasked with duties related to the role of the departments for which they work with regard to economic development.

The following table summarizes the reporting requirements for each of the agencies involved with the Collaboration for Prosperity Zones as provided in Section 3.3 of the bill:

---

[1] These three regions formed as multi-county partnerships to combine growth efforts around the three largest metropolitan areas.

[2] In 1993, the General Assembly created four additional regions to market the rural areas of the State.

Reporting Agency	What to Report (By Oct. 1, 2013)	What to Report (By Apr. 1, 2014)	What to Report (By Feb. 15, 2014)	Report to Whom
• Transportation • Environment & Natural Resources	The establishment of co-located liaisons within each Zone and a description of activities they've been assigned to perform	The activities of the liaisons and any steps taken to make services to citizens and businesses within each Zone more efficient, economical, and user-friendly.		• OSBM • Gov Ops • Transportation Oversight • ERC • Study Commission on Inter-Agency Collaboration for Prosperity
Community College System	The establishment of co-located liaisons within each Zone and a description of activities they've been assigned to perform	The activities of the liaisons, including those that resulted in enhanced collaboration and coordination with other governmental entities, improved planning on use of educational resources, and improved administrative efficiencies.		• OSBM • Gov Ops • Education Oversight • Study Commission on Inter-Agency Collaboration for Prosperity
Commerce			The establishment and activities of its liaisons in each Zone	• OSBM • Gov Ops • Study Commission on Inter-Agency Collaboration for Prosperity

PART IV: STUDY COMMISSION

Part IV would create an 8-member Study Commission on Inter-Agency Collaboration for Prosperity to review the reports submitted by the Departments of Commerce, Environment and Natural Resources, Transportation, and the Community College System. The Commission may also study and make recommendations to the 2014 Regular Session of the 2013 General Assembly regarding issues related to enhancing inter-agency collaboration, consolidating programs to streamline services, requiring the establishment of inter-agency one-stop shops in each zone, and reducing barriers faced by citizens and business in accessing services.

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. _____ DATE _____

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

COMMITTEE SUBSTITUTE _____

Rep.) Brown
Sen.)

moves to amend the bill on page 2, line 16

( ) WHICH CHANGES THE TITLE

by rewriting the line to read:

" Counties." by January 1, 2014)

Section 1. (c). Agencies ~~directed to~~ shall report to the Joint Legislative Commission on Governmental Operations and the Study Commission on Inter-Agency Collaboration for Prosperity on how they plan to abolish regions and transform them into prosperity zones as defined by this act."

and on page 2, line 40, between the words "Commission" and "and" the words "North Carolina's Eastern Region"

and on page 2, lines 41 and 42, by rewriting the lines to read:

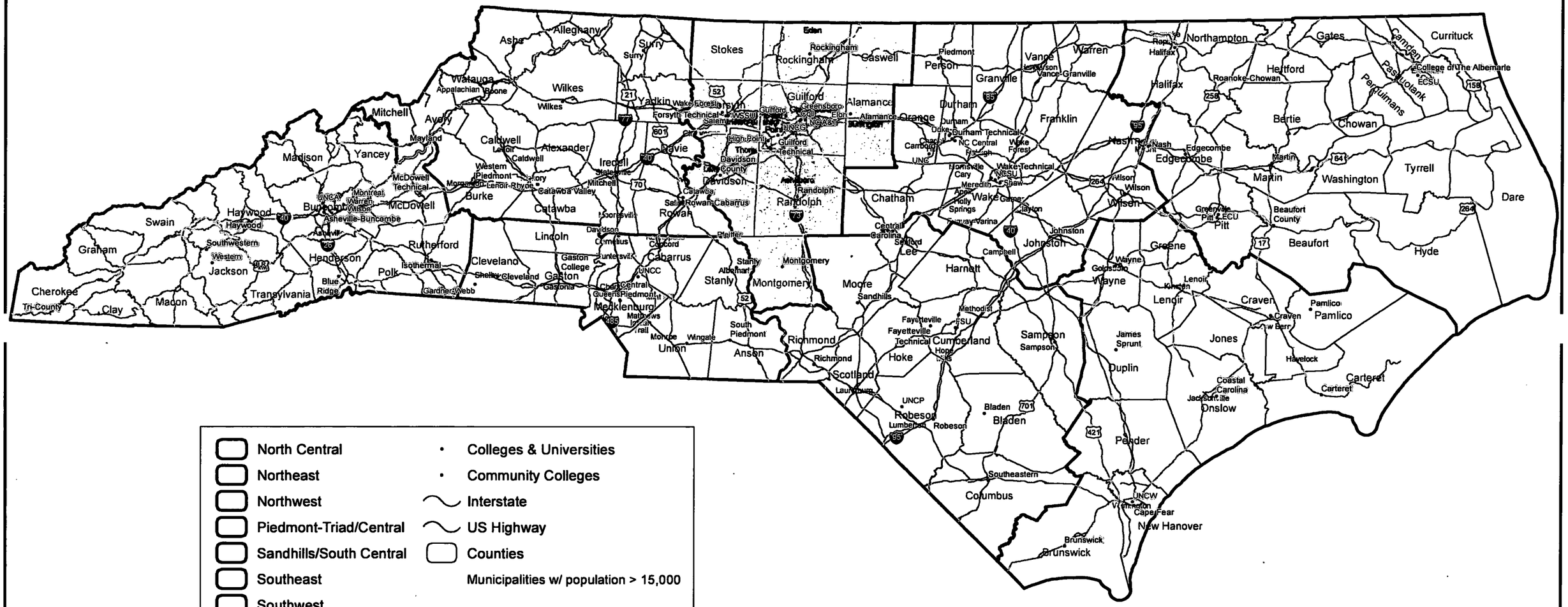
"wind up their affairs or reorganize as nonprofit corporations organized to carry out the same purposes, and the nonprofit shall not receive State appropriations."

SIGNED _____

ADOPTED _____ FAILED _____ TABLED _____

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

Proposed Prosperity Zones



- North Central
- Northeast
- Northwest
- Piedmont-Triad/Central
- Sandhills/South Central
- Southeast
- Southwest
- Western

- Colleges & Universities
- Community Colleges
- Interstate
- US Highway
- Counties
- Municipalities w/ population > 15,000

N W E S

0 25 50 100 150 200 Miles

Produced by the NC General Assembly, April 23, 2013.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

S 1

SENATE BILL 199*

Short Title:	Electric Membership Corps/Member Control.	(Public)
Sponsors:	Senators Meredith, Brown, McLaurin (Primary Sponsors); Allran, Apodaca, Blue, Brock, Bryant, Clark, Daniel, J. Davis, Ford, Graham, Gunn, Hise, Jenkins, Randleman, Soucek, Tarte, Tillman, Walters, and Woodard.	
Referred to:	Commerce.	

March 6, 2013

A BILL TO BE ENTITLED

AN ACT EXEMPTING ELECTRIC MEMBERSHIP CORPORATIONS FROM INTEGRATED RESOURCE PLANNING AND SERVICE REGULATIONS REQUIREMENTS ESTABLISHED BY THE UTILITIES COMMISSION AND RETURNING OVERSIGHT OF THE CORPORATIONS TO THEIR MEMBER BOARD OF DIRECTORS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 62-42 reads as rewritten:

"**§ 62-42. Compelling efficient service, extensions of services and facilities, additions and improvements.**

...

~~(e) For the purpose of this section, "public utility" shall include any electric membership corporation operating within this State.~~"

SECTION 2. G.S. 62-110.1 reads as rewritten:

"**§ 62-110.1. Certificate for construction of generating facility; analysis of long-range needs for expansion of facilities; ongoing review of construction costs; inclusion of approved construction costs in rates.**

...

(b) For the purpose of subsections ~~(a), (c),~~ (a) and (d) of this section, "public utility" shall include any electric membership corporation operating within this State, and the term "public utility service" shall include the service rendered by any such electric membership corporation.

...."

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

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

S D

SENATE BILL 199*
PROPOSED COMMITTEE SUBSTITUTE S199-CSTP-28 [v.1]

5/6/2013 12:53:20 PM

Short Title: Electric Membership Corps/Member Control. (Public)

Sponsors:

Referred to:

March 6, 2013

A BILL TO BE ENTITLED

AN ACT EXEMPTING ELECTRIC MEMBERSHIP CORPORATIONS FROM INTEGRATED RESOURCE PLANNING REQUIREMENTS ESTABLISHED BY THE UTILITIES COMMISSION AND RETURNING OVERSIGHT OF THE CORPORATIONS TO THEIR MEMBER BOARD OF DIRECTORS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 62-110.1 reads as rewritten:

"**§ 62-110.1. Certificate for construction of generating facility; analysis of long-range needs for expansion of facilities; ongoing review of construction costs; inclusion of approved construction costs in rates.**

...

(b) For the purpose of subsections ~~(a), (c),~~ (a) and (d) of this section, "public utility" shall include any electric membership corporation operating within this State, and the term "public utility service" shall include the service rendered by any such electric membership corporation.

...."

SECTION 2. This act becomes effective July 1, 2013.

SENATE BILL 199:
Electric Membership Corps/Member Control

2013-2014 General Assembly

Committee:	Senate Commerce	**Date:**	May 7, 2013
Introduced by:	Sens. Meredith, Brown, McLaurin	**Prepared by:**	Peter Ledford Committee Counsel
Analysis of:	PCS to First Edition S199-CSTP-28 [v.1]		

SUMMARY: Senate Bill 199 would repeal the requirement that electric membership corporations file long-range integrated resource plans with the North Carolina Utilities Commission.

The PCS removes provisions related to the authority of the Commission to compel utilities to make repairs or upgrades to ensure efficient electric service.

[As introduced, this bill was identical to H223, as introduced by Reps. Presnell, Moffitt, Hager, Arp, which is currently in Senate Commerce.]

CURRENT LAW: Unlike investor owned utilities (IOUs), electric membership corporations (EMCs) are not generally regulated by the North Carolina Utilities Commission (Commission). EMCs are regulated by their board of directors, which are elected by the members of the EMC. G.S. 62-110.1 requires IOUs and EMCs to file long-range integrated resource plans, which set out estimates of future growth in demand and how generation needs will be met.

BILL ANALYSIS: Senate Bill 199 would repeal the requirement that EMCs file integrated resource plans under G.S. 62-110.1.

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

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

S 1

SENATE BILL 420

Short Title:	UI/Clarify Required Contributions.	(Public)
Sponsors:	Senator Clark (Primary Sponsor).	
Referred to:	Commerce.	

March 27, 2013

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THE EMPLOYMENT SECURITY LAWS RELATING TO REQUIRED CONTRIBUTIONS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 96-9.2, as enacted by S.L. 2013-2, reads as rewritten:

"**§ 96-9.2. Required contributions to the Unemployment Insurance Fund.**

(a) Required Contribution. – An employer is required to make a contribution in each calendar year to the Unemployment Insurance Fund in an amount equal to the applicable percentage of the taxable wages the employer pays its employees during the year for services performed in this State. Taxable wages are determined in accordance with G.S. 96-9.3. An employer may not deduct the contributions due in whole or in part from the remuneration of the individuals employed.

The applicable percentage for an employer is considered the employer's contribution ~~rate and is determined by the employer's base rate and the balance in the Unemployment Insurance Fund as of the computation date.~~ rate. An experience rate is determined by the following:

(1) The balance in the Unemployment Insurance Fund as of the computation date, expressed as a percentage of total insured wages. "Total insured wages" are the total wages reported by all insured employers for the 12-month period ending on July 31 preceding the computation date.

(2) The employer's experience rating. ~~Taxable wages are determined in accordance with G.S. 96-9.3. An employer's base rate is either the standard beginning rate or an experience rating.~~ An employer's experience rating is computed as ~~a~~ an experience reserve ratio in accordance with G.S. 96-9.4. ~~An employer's reserve ratio percentage (ERRP) is the employer's reserve ratio multiplied by sixty-eight hundredths.~~ A positive ERRP produces a lower contribution rate, and a negative ERRP produces a higher contribution rate.

(b) Standard Beginning Rate. – The standard beginning rate is one percent (1%). The standard beginning rate applies to an employer until the employer's account has been chargeable with benefits for at least 12 calendar months ending July 31 immediately preceding the computation date. An employer's account has been chargeable with benefits for at least 12 calendar months if the employer has reported wages paid in four completed calendar quarters and these quarters are in two consecutive calendar years.

(c) ~~Contribution~~ Experience Rate. – The contribution rate for ~~an employer~~ experienced rated employers is determined in accordance with the table set out below and then rounded to the nearest one-hundredth percent (0.01%), subject to the minimum and maximum contribution

rates. The minimum contribution rate is six-hundredths of one percent (0.06%). The maximum contribution rate is five and seventy-six hundredths percent (5.76%). ~~"Total insured wages" are the total wages reported by all insured employers for the 12-month period ending on July 31 preceding the computation date.~~

~~Employer's Base Rate~~	~~UI Trust Fund Balance as Percentage of Total Insured Wages~~	~~Contribution Rate~~
~~Standard Beginning Rate~~	~~All balances~~	~~1%~~
~~Experience Rating~~	~~Less than or equal to 1%~~	~~2.9% minus ERRP~~
	~~Greater than 1% but less than or equal to 1.25%~~	~~2.4% minus ERRP~~
	~~Greater than 1.25%~~	~~1.9% minus ERRP~~

UI Trust Fund Balance as Percentage of Total Insured Wages	**Contribution Rate**
Less than or equal to 1%	2.9% minus ERRP
Greater than 1% but less than or equal to 1.25%	2.4% minus ERRP
Greater than 1.25%	1.9% minus ERRP

(d) Notification of Contribution Rate. – The Division must notify an employer of the employer's contribution rate for a calendar year by January 1 of that year. The contribution rate becomes final unless the employer files an application for review and redetermination prior to May 1 following the effective date of the contribution rate. The Division may redetermine the contribution rate on its own motion within the same time period.

(e) Voluntary Contribution. – An employer that is subject to this section may make a voluntary contribution to the Unemployment Insurance Fund in addition to its required contribution. A voluntary contribution is credited to the employer's account. A voluntary contribution made by an employer within 30 days after the date on an annual notice of its contribution rate is considered to have been made as of the previous July 31."

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

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

S D

SENATE BILL 420
PROPOSED COMMITTEE SUBSTITUTE S420-CSRB-8 [v.2]
5/6/2013 6:35:19 PM

Short Title: UI/Clarify Required Contributions. (Public)

Sponsors:

Referred to:

March 27, 2013

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THE EMPLOYMENT SECURITY LAWS RELATING TO REQUIRED CONTRIBUTIONS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 96-9.2, as enacted by S.L. 2013-2, reads as rewritten:

"**§ 96-9.2. Required contributions to the Unemployment Insurance Fund.**

(a) Required Contribution. – An employer is required to make a contribution in each calendar year to the Unemployment Insurance Fund in an amount equal to the applicable percentage of the taxable wages the employer pays its employees during the year for services performed in this State. Taxable wages are determined in accordance with G.S. 96-9.3. An employer may not deduct the contributions due in whole or in part from the remuneration of the individuals employed.

The applicable percentage for an employer is considered the employer's contribution ~~rate and is determined by the employer's base rate and the balance in the Unemployment Insurance Fund as of the computation date.~~ rate. An experience rate is determined by the following:

(1) The balance in the Unemployment Trust Fund as of the computation date, expressed as a percentage of total insured wages. "Total insured wages" are the total wages reported by all insured employers for the 12-month period ending on July 31 preceding the computation date.

(2) The employer's experience rating. ~~Taxable wages are determined in accordance with G.S. 96-9.3. An employer's base rate is either the standard beginning rate or an experience rating.~~ An employer's experience rating is computed as ~~a~~ an experience reserve ratio in accordance with G.S. 96-9.4. An employer's reserve ratio percentage (ERRP) is the employer's reserve ratio multiplied by sixty-eight hundredths. A positive ERRP produces a lower contribution rate, and a negative ERRP produces a higher contribution rate.

(b) Standard Beginning Rate. – The standard beginning rate is one percent (1%). The standard beginning rate applies to an employer until the employer's account has been chargeable with benefits for at least 12 calendar months ending July 31 immediately preceding the computation date. An employer's account has been chargeable with benefits for at least 12 calendar months if the employer has reported wages paid in four completed calendar quarters and these quarters are in two consecutive calendar years.

(c) ~~Contribution~~ Experience Rate. – The contribution rate for ~~an employer~~ experienced rated employers is determined in accordance with the table set out below and then rounded to the nearest one-hundredth percent (0.01%), subject to the minimum and maximum contribution

rates. The minimum contribution rate is six-hundredths of one percent (0.06%). The maximum contribution rate is five and seventy-six hundredths percent (5.76%). ~~"Total insured wages" are the total wages reported by all insured employers for the 12-month period ending on July 31 preceding the computation date.~~

~~Employer's Base Rate~~	~~UI Trust Fund Balance as Percentage of Total Insured Wages~~	~~Contribution Rate~~
~~Standard Beginning Rate~~	~~All balances~~	~~1%~~
~~Experience Rating~~	~~Less than or equal to 1%~~	~~2.9% minus ERRP~~
	~~Greater than 1% but less than or equal to 1.25%~~	~~2.4% minus ERRP~~
	~~Greater than 1.25%~~	~~1.9% minus ERRP~~

Unemployment Trust Fund Balance as Percentage of Total Insured Wages	**Contribution Rate**
Less than or equal to 1%	2.9% minus ERRP
Greater than 1% but less than or equal to 1.25%	2.4% minus ERRP
Greater than 1.25%	1.9% minus ERRP

(d) Notification of Contribution Rate. – The Division must notify an employer of the employer's contribution rate for a calendar year by January 1 of that year. The contribution rate becomes final unless the employer files an application for review and redetermination prior to May 1 following the effective date of the contribution rate. The Division may redetermine the contribution rate on its own motion within the same time period.

(e) Voluntary Contribution. – An employer that is subject to this section may make a voluntary contribution to the Unemployment Insurance Fund in addition to its required contribution. A voluntary contribution is credited to the employer's account. A voluntary contribution made by an employer within 30 days after the date on an annual notice of its contribution rate is considered to have been made as of the previous July 31."

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

SENATE BILL 420:
UI/Clarify Required Contributions

2013-2014 General Assembly

Committee:	Senate Commerce	**Date:**	April 17, 2013
Introduced by:	Sen. Clark	**Prepared by:**	Cindy Avrette
Analysis of:	PCS to First Edition S420-CSRB-8		Committee Counsel

SUMMARY: ***Senate Bill 420 would simplify the description of the calculation for determining an employer's experience rating for purposes of the State unemployment tax. The proposed committee substitute leaves a sentence in the statute that was inadvertently removed in the bill. The PCS does not make a substantive change to the law.***

CURRENT LAW AND BILL ANALYSIS: Private employers pay a State unemployment insurance (SUTA) tax, or contribution, on the taxable wages of each of their employees.[1] An employer's SUTA rate is 1% until the employer's account has been charged with benefits for at least 12 months. Effective January 1, 2014, the SUTA rate for all other employers varies from 0.06% to 5.76%, based upon the balance in the federal Unemployment Trust Fund (Trust Fund) and the employer's experience rating.[2] The revenue from the contribution is credited to the Unemployment Insurance Fund and used only to fund benefits.

Prior to January 1, 2014, an employer must use a series of tax schedules to determine the employer's SUTA rate. The applicable schedule is tied to the balance in the Trust Fund. For taxable years beginning on or after January 1, 2014, S. L. 2013-2 replaces the current set of stepped tax schedules with formula-based tax determination based on a reserve ratio. The change results in smoother movement between experience ratings and improves the responsiveness of the system.

With a formula-based tax determination, the slope of the linear equation is constant. The point where the line crosses the intercept that separates the positive-rated employers from the negative-rated employers varies based upon the balance in the Trust Fund. The lower the Trust Fund balance, the higher the intercept point; and the higher the intercept point, the higher the SUTA rate.

The formula-based tax determination allows an employer to quickly calculate the employer's tax rate by using the tax rate formula. An employer's tax rate is determined by multiplying the employer's reserve ratio by a constant, 0.68, and subtracting the result from 2.9%. An employer with a zero reserve rating would have a 2.9% tax rate. Employers with positive reserve ratios would have rates lower than 2.9%, while employers with negative reserve ratios would have higher rates. When the Trust Fund balance is between 1% and 1.25% of insured wages, the tax rate for zero-rated employers falls from 2.9% to 2.4%. When the balance is greater than 1.25%, the rate drops to 1.9%. The Trust Fund balance is currently less than 1%.

The bill would simplify the way the calculation is described. It does not change the calculation.

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

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[1] The taxable wage base for 2013 is $20,900.

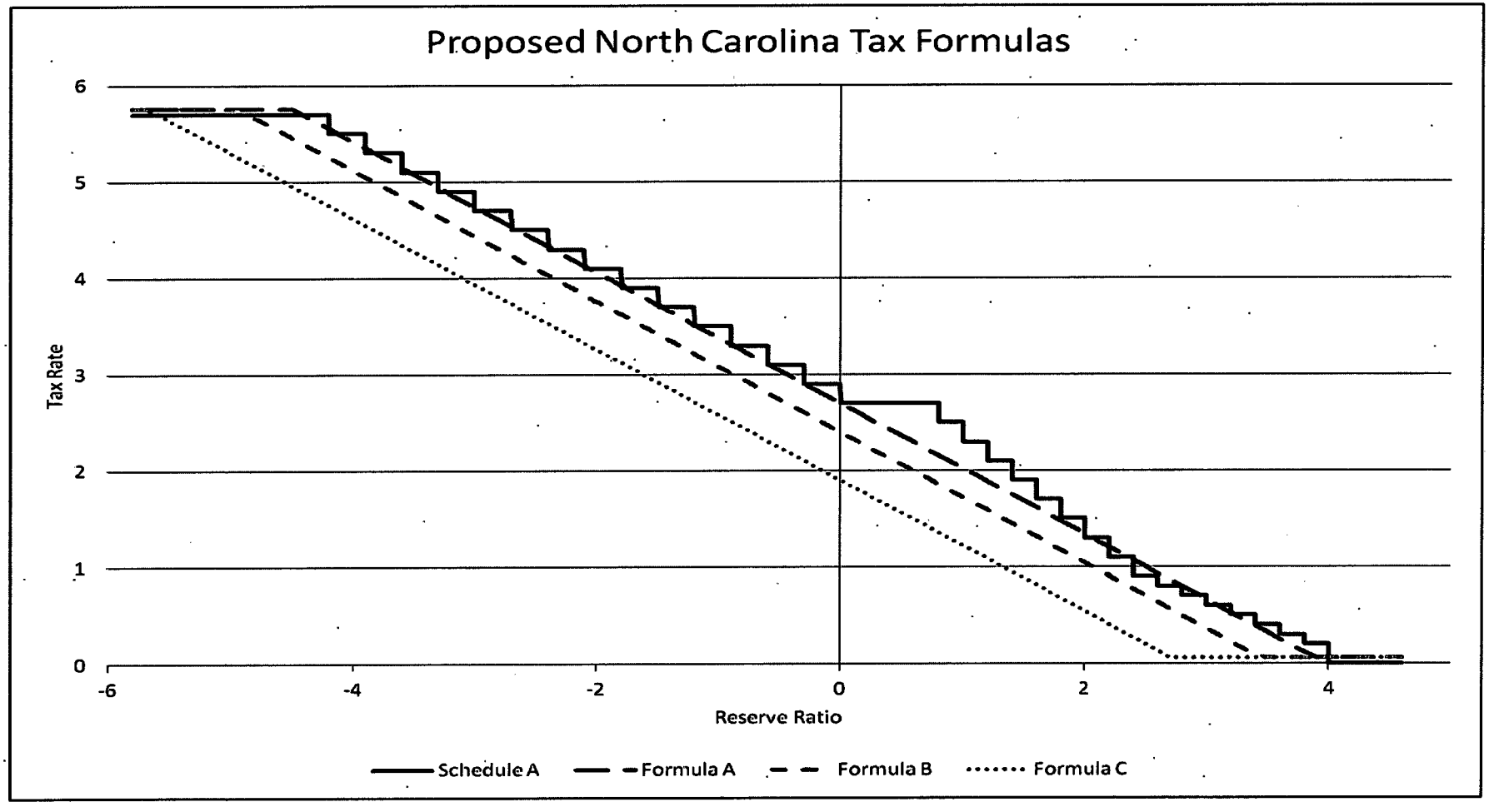
[2] The Division of Employment Security annually computes an employer's experience rating based on the contribution credits made to and benefits charges made against the employer's account. A positive experience rating produces a lower SUTA contribution rate and a negative experience rating produces a higher SUTA contribution rate.

O. Walker Reagan
Director

S420-SMRB-20 CSRB-8 -V7

Research Division
(919) 733-2578

Tax Schedule



Source: W.E. Upjohn Institute

SENATE BILL 648

Short Title:	NC Commerce Protection Act of 2013.	(Public)
Sponsors:	Senators Jackson, Meredith, J. Davis (Primary Sponsors); and Tillman.	
Referred to:	Commerce.	

April 4, 2013

A BILL TO BE ENTITLED

AN ACT TO CREATE THE CRIMINAL OFFENSE OF EMPLOYMENT FRAUD, TO PROHIBIT PREDATORY THIRD-PARTY FINANCING OF LITIGATION BY ASSIGNMENT OF PLAINTIFF'S RIGHT TO RECEIVE PROCEEDS, AND TO CREATE TRANSPARENCY IN CONTRACTS THE ATTORNEY GENERAL ENTERS INTO WITH PRIVATE ATTORNEYS TO REPRESENT THE STATE.

The General Assembly of North Carolina enacts:

SECTION 1. Article 19 of Chapter 14 of the General Statutes is amended by adding a new section to read:

"**§ 14-105.1. Employment fraud.**

(a) It is unlawful for any person to willfully make false statements or representations or to fail to disclose requested information as part of an employment application that the person knows to be false or incomplete for the purpose of gaining access to the employer's facilities to do any of the following:

(1) To create or produce a record that reproduces an image or sound occurring within the employer's facility, including a photographic, video, or audio medium record.

(2) To capture or remove data, paper, records, or any other documents through duplication, downloading, image capture, electronic mail, electronic transfer, or other means.

(b) A person who commits an offense under subsection (a) of this section is guilty of an offense punishable as follows:

(1) For the first conviction, the person is guilty of a Class 1 misdemeanor.

(2) For a second or subsequent conviction, the person is guilty of a Class I felony.

(c) Any recording made or information obtained pursuant to subsection (a) of this section shall be turned over to local law enforcement within 24 hours of recording or procurement. No recording or information submitted under this subsection shall be spliced, edited, or manipulated in any way prior to its submission.

(d) Any person who fails to turn over a record as required by subsection (c) of this section is guilty of an offense punishable as follows:

(1) For the first conviction, the person is guilty of a Class 1 misdemeanor.

(2) For a second or subsequent conviction, the person is guilty of a Class I felony."

SECTION 2. Chapter 75 of the General Statutes is amended by adding a new Article to read:

"Article 8.

"Predatory Third Party Financing of Litigation Act.

"**§ 75-140. Definitions.**

The following definitions apply in this Article:

(1) Consumer. – An individual who resides or is domiciled in this State, or who is a party to a legal action pending before a State or federal court located in this State.

(2) Lawsuit loan. – The funds provided directly or indirectly to a consumer by a lawsuit loan company in a lawsuit loan contract.

(3) Lawsuit loan company. – A person or entity that enters into a lawsuit loan contract with a consumer. The term does not include an attorney who provides professional legal services to a consumer on a contingency basis. The term does include without limitation all of the following:

a. An affiliate or subsidiary of a lawsuit loan company.

b. An entity or person who purchases an interest in a lawsuit loan.

c. A person who acts as an agent to provide a lawsuit loan from a third party for a fee.

d. A person who acts as an agent for a third party in providing a lawsuit loan for a fee, regardless of whether approval or acceptance by the third party is necessary to create a legal obligation for the third party.

e. Any other person or entity that the Attorney General determines is engaged in a transaction that is a disguised lawsuit loan or a subterfuge for the purpose of evading this Article.

(4) Lawsuit loan contract. – A written or oral agreement between a consumer and a lawsuit loan company in which the consumer assigns, conveys, or otherwise confers to the lawsuit loan company the right to receive some or all of the proceeds of a settlement, insurance payment, or award of damages obtained in the consumer's legal action.

(5) Legal action. – A bona fide civil claim for which damages may be awarded to the claimant whether a lawsuit has been initiated or not. It includes any settlement of a lawsuit and any agreement to not initiate a lawsuit.

(6) Proceeds. – The funds from a settlement, insurance payment, or award of damages obtained in the consumer's legal action.

"**§ 75-142. Lawsuit loan contracts prohibited.**

It is unlawful for a lawsuit loan company to enter into a lawsuit loan with a consumer with respect to a legal action in which the consumer is a party. All lawsuit loan contracts are void and unenforceable.

"**§ 75-144. Penalty.**

A violation of G.S. 75-142 is an unfair trade practice under G.S. 75-1.1. The rights and remedies provided herein are cumulative to and not a limitation of any other rights and remedies provided by law or equity."

SECTION 3.1. Chapter 114 of the General Statutes is amended by adding a new Article to read:

"Article 2A.

"Transparency in Third-Party Contracting by Attorney General.

"**§ 114-9.2. Title.**

This Article shall be known and may be cited as the "Transparency in Private Attorney Contracts Act (TIPAC)."

"**§ 114-9.3. Definitions.**

The following definitions apply in this Article:

(1) Government attorney. – An attorney employed by the State as a staff attorney in the Attorney General's office.

(2) Private attorney. – An attorney in private practice or employed by a private law firm.

(3) State. – The State of North Carolina, including State officers, departments, boards, commissions, divisions, bureaus, councils, and units of organization, however designated, of the executive branch of State government, and any of its agents.

"**§ 114-9.4. Procurement.**

(a) The Attorney General may not enter into a contingency fee contract with a private attorney unless the Attorney General makes a written determination prior to entering into the contract that contingency fee representation is both cost effective and in the public interest. Any written determination shall include specific findings for each of the following factors:

(1) Whether there exists sufficient and appropriate legal and financial resources within the Attorney General's office to handle the matter.

(2) The time and labor required; the novelty, complexity, and difficulty of the questions involved; and the skill requisite to perform the attorney services properly.

(3) The geographic area where the attorney services are to be provided.

(4) The amount of experience desired for the particular kind of attorney services to be provided and the nature of the private attorney's experience with similar issues or cases.

(b) If the Attorney General makes the determination described in subsection (a) of this section, the Attorney General shall request proposals from private attorneys to represent the State on a contingency fee basis, draft a written request for proposal from private attorneys, and post this request for proposal prominently on the Attorney General's Web site, unless the Attorney General determines that requesting proposals is not feasible under the circumstances and sets forth the basis for this determination in writing.

"**§ 114-9.5. Contingency Fees.**

(a) The Attorney General may not enter into a contingency fee contract that provides for the private attorney to receive an aggregate contingency fee, exclusive of reasonable costs and expenses, in excess of:

(1) Twenty-five percent (25%) of any damages up to ten million dollars ($10,000,000); plus

(2) Twenty percent (20%) of any portion of such damages between ten million dollars ($10,000,000) and fifteen million dollars ($15,000,000); plus

(3) Fifteen percent (15%) of any portion of such damages between fifteen million dollars ($15,000,000) and twenty million dollars ($20,000,000); plus

(4) Ten percent (10%) of any portion of such damages between twenty million dollars ($20,000,000) and twenty-five million dollars $25,000,000); plus

(5) Five percent (5%) of any portion of such damages exceeding twenty-five million dollars ($25,000,000).

(b) In no event shall the aggregate contingency fee exceed fifty million dollars ($50,000,000), exclusive of reasonable costs and expenses, and irrespective of the number of lawsuits filed or the number of private attorneys retained to achieve the recovery.

(c) A contingency fee shall not be based on penalties or civil fines awarded or any amounts attributable to penalties or civil fines.

"**§ 114-9.6. Control.**

(a) The Attorney General shall not enter into a contract for contingency fee attorney services unless the following requirements are met throughout the contract period and any extensions of the contract period:

(1) A government attorney retains complete control over the course and conduct of the case.
(2) A government attorney with supervisory authority is personally involved in overseeing the litigation.
(3) The government attorneys retain the full authority to reject any decisions made by outside counsel.
(4) Any defendant that is the subject of such litigation may contact the lead government attorney directly, without having to confer with contingency fee counsel.
(5) A government attorney with supervisory authority for the case attends all settlement conferences.
(6) Decisions regarding settlement of the case are reserved exclusively to the discretion of the government attorneys and the State.

(b) The Attorney General shall develop a standard addendum to every contract for contingency fee attorney services that shall be used in all cases, describing in detail what is expected of both the contracted private attorney and the State, including, without limitation, the requirements listed in subsection (a) of this section.

"**§ 114-9.7. Oversight.**

(a) Copies of any executed contingency fee contract and the Attorney General's written determination to enter into a contingency fee contract with the private attorney shall be posted on the Attorney General's Web site for public inspection within five business days after the date the contract is executed and shall remain posted on the Web site for the duration of the contingency fee contract, including any extensions or amendments of the contract period. Any payment of contingency fees shall be posted on the Attorney General's Web site within 15 days after the payment of those contingency fees to the private attorney and shall remain posted on the Web site for at least 365 days thereafter.

(b) Any private attorney under contract to provide services to the State on a contingency fee basis shall, from the inception of the contract until at least four years after the contract expires or is terminated, maintain detailed current records, including documentation of all expenses, disbursements, charges, credits, underlying receipts and invoices, and other financial transactions that concern the provision of those attorney services. The private attorney shall make all such records available for inspection and copying upon request in accordance with G.S. 132-6. The Attorney General may take reasonable steps to protect the evidentiary privileges of the State when producing these records under G.S. 132-6. In addition, the private attorney shall maintain detailed contemporaneous time records for the attorneys and paralegals working on the matter in increments of no greater than one-tenth of an hour and shall promptly provide these records to the Attorney General, upon request.

(c) By February 1 of each year, the Attorney General shall submit a report to the President Pro Tempore of the Senate and the Speaker of the House of Representatives describing the use of contingency fee contracts with private attorneys in the preceding calendar year. The Attorney General may take reasonable steps to protect the evidentiary privileges of the State when producing this report. At a minimum, the report shall:

(1) Identify each new contingency fee contract entered into during the year and each previously executed contingency fee contract that remains current during any part of the year.
(2) Include the name of the private attorney with whom the department has contracted in each instance, including the name of the attorney's law firm.
(3) Describe the nature and status of the legal matter that is the subject of each contract.
(4) Provide the name of the parties to each legal matter.
(5) Disclose the amount of recovery.

(6) Disclose the amount of any contingency fee paid.

(7) Include copies of any written determinations made under G.S. 114-9.4.

"**§ 114-9.8. No expansion of authority.**

Nothing in this Article shall be construed to expand the authority of any State agency or officer or employee of this State to enter into contracts for legal representation where no authority previously existed."

SECTION 3.2. G.S. 114-2.3 reads as rewritten:

"**§ 114-2.3. Use of private counsel limited.**

(a) Every agency, institution, department, bureau, board, or commission of the State, authorized by law to retain private counsel, shall obtain written permission from the Attorney General prior to employing private counsel. This section does not apply to counties, cities, towns, other municipal corporations or political subdivisions of the State, or any agencies of these municipal corporations or political subdivisions, or to county or city boards of education.

(b) Article 2A of this Chapter applies to any contract to retain private counsel authorized by the Attorney General under this section."

SECTION 4. Section 1 of this act becomes effective December 1, 2013, and applies to offenses committed on or after that date. Sections 2, 3.1, and 3.2 become effective October 1, 2013, and apply to contracts entered into on or after that date. The remainder of this act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

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SENATE BILL 648
PROPOSED COMMITTEE SUBSTITUTE S648-CSTP-10 [v.10]
5/6/2013 1:41:16 PM

Short Title: NC Commerce Protection Act of 2013. (Public)

Sponsors:

Referred to:

April 4, 2013

A BILL TO BE ENTITLED

AN ACT TO CREATE THE CRIMINAL OFFENSE OF EMPLOYMENT FRAUD, TO CLARIFY THE CALCULATION OF INTEREST FOR ACTIONS FOR PERSONAL INJURY OR WRONGFUL DEATH, TO PROHIBIT PREDATORY THIRD-PARTY FINANCING OF LITIGATION BY ASSIGNMENT OF PLAINTIFF'S RIGHT TO RECEIVE PROCEEDS, AND TO CREATE TRANSPARENCY IN CONTRACTS THE ATTORNEY GENERAL ENTERS INTO WITH PRIVATE ATTORNEYS TO REPRESENT THE STATE.

The General Assembly of North Carolina enacts:

SECTION 1. Article 13 of Chapter 66 of the General Statutes is amended by adding a new section to read:

"**§ 66-67.6. Employment fraud.**

(a) It is unlawful for any person to willfully make false statements or representations or to fail to disclose requested information as part of an employment application that the person knows to be false or incomplete for the purpose of gaining access to the employer's facilities to do any of the following:

(1) To create or produce a record that reproduces an image or sound occurring within the employer's facility, including a photographic, video, or audio medium record.

(2) To capture or remove data, paper, records, or any other documents through duplication, downloading, image capture, electronic mail, electronic transfer, or other means.

(b) A person who commits an offense under subsection (a) of this section is guilty of an offense punishable as follows:

(1) For the first violation, the person shall be subject to a civil penalty of ten thousand dollars ($10,000).

(2) For a second or subsequent violation, the person shall be subject to a civil penalty of fifty thousand dollars ($50,000).

(c) Any recording made or information obtained pursuant to subsection (a) of this section shall be turned over to local law enforcement within 24 hours of recording or procurement. No recording or information submitted under this subsection shall be spliced, edited, or manipulated in any way prior to its submission.

(d) Any person who fails to turn over a record as required by subsection (c) of this section is guilty of an offense punishable as follows:

(1) For the first violation, the person shall be subject to a civil penalty of ten thousand dollars ($10,000).

(2) For a second or subsequent violation, the person shall be subject to a civil penalty of fifty thousand dollars ($50,000).

(e) No confidential information or any other information obtained from a recording turned over to local law enforcement pursuant to subsection (c) of this section shall be admissible in any criminal proceeding for an offense based on any violations of this section, nor shall it be used to initiate or facilitate the prosecution of an offense under this section. This section shall not apply to any governmental agency or law enforcement officer engaged in a lawful criminal investigation of an employer.

(f) Information obtained from a recording produced, procured, or otherwise made in violation of this section shall not be deemed a waiver of proprietary trade secrets or any legal privileges held by the employer."

SECTION 2. G.S. 24-5 reads as rewritten:

"**§ 24-5. Interest on judgments.**

(a) Actions on Contracts. – In an action for breach of contract, except an action on a penal bond, the amount awarded on the contract bears interest from the date of breach. The fact finder in an action for breach of contract shall distinguish the principal from the interest in the award, and the judgment shall provide that the principal amount bears interest until the judgment is satisfied. If the parties have agreed in the contract that the contract rate shall apply after judgment, then interest on an award in a contract action shall be at the contract rate after judgment; otherwise it shall be at the legal rate. On awards in actions on contracts pursuant to which credit was extended for personal, family, household, or agricultural purposes, however, interest shall be at the lower of the legal rate or the contract rate. For purposes of this section, "after judgment" means after the date of entry of judgment under G.S. 1A-1, Rule 58.

(a1) Actions on Penal Bonds. – In an action on a penal bond, the amount of the judgment, except the costs, shall bear interest at the legal rate from the date of entry of judgment under G.S. 1A-1, Rule 58, until the judgment is satisfied.

(a2) Actions for Personal Injury or Wrongful Death. – In an action brought to recover damages for personal injury or wrongful death, the portion of a money judgment designated by the fact finder as compensatory damages for past economic damages bears interest from the date ninety (90) days after the action is commenced until the judgment is satisfied. No other portion of a money judgment in an action for personal injury or wrongful death shall bear interest. Interest on any portion of a money judgment on which interest is allowed in an action for personal injury or wrongful death shall be calculated using a per annum rate of five percent (5%).

(b) Other Actions. – In an action other than contract, personal injury, or wrongful death, any portion of a money judgment designated by the fact finder as compensatory damages bears interest from the date the action is commenced until the judgment is satisfied. Any other portion of a money judgment in an action other than contract, personal injury, or wrongful death, except the costs, bears interest from the date of entry of judgment under G.S. 1A-1, Rule 58, until the judgment is satisfied. Interest on an award in an action other than contract shall be at the legal rate."

SECTION 3. Chapter 75 of the General Statutes is amended by adding a new Article to read:

"Article 8.

"Predatory Third Party Financing of Litigation Act.

"**§ 75-140. Definitions.**

The following definitions apply in this Article:

(1) Consumer. – An individual who resides or is domiciled in this State, or who is a party to a legal action pending before a State or federal court located in this State.

(2) Lawsuit loan. – The funds provided directly or indirectly to a consumer by a lawsuit loan company in a lawsuit loan contract.

(3) Lawsuit loan company. – A person or entity that enters into a lawsuit loan contract with a consumer. The term does not include an attorney who provides professional legal services to a consumer on a contingency basis. The term does include without limitation all of the following:

a. An affiliate or subsidiary of a lawsuit loan company.

b. An entity or person who purchases an interest in a lawsuit loan.

c. A person who acts as an agent to provide a lawsuit loan from a third party for a fee.

d. A person who acts as an agent for a third party in providing a lawsuit loan for a fee, regardless of whether approval or acceptance by the third party is necessary to create a legal obligation for the third party.

e. Any other person or entity that the Attorney General determines is engaged in a transaction that is a disguised lawsuit loan or a subterfuge for the purpose of evading this Article.

(4) Lawsuit loan contract. – A written or oral agreement between a consumer and a lawsuit loan company in which the consumer assigns, conveys, or otherwise confers to the lawsuit loan company the right to receive some or all of the proceeds of a settlement, insurance payment, or award of damages obtained in the consumer's legal action.

(5) Legal action. – A bona fide civil claim for which damages may be awarded to the claimant whether a lawsuit has been initiated or not. It includes any settlement of a lawsuit and any agreement to not initiate a lawsuit.

(6) Proceeds. – The funds from a settlement, insurance payment, or award of damages obtained in the consumer's legal action.

"**§ 75-142. Lawsuit loan contracts prohibited.**

It is unlawful for a lawsuit loan company to enter into a lawsuit loan with a consumer with respect to a legal action in which the consumer is a party. All lawsuit loan contracts are void and unenforceable.

"**§ 75-144. Penalty.**

A violation of G.S. 75-142 is an unfair trade practice under G.S. 75-1.1. The rights and remedies provided herein are cumulative to and not a limitation of any other rights and remedies provided by law or equity."

SECTION 4.1. Chapter 114 of the General Statutes is amended by adding a new Article to read:

"Article 2A.

"Transparency in Third-Party Contracting by Attorney General.

"**§ 114-9.2. Title.**

This Article shall be known and may be cited as the "Transparency in Private Attorney Contracts Act (TIPAC)."

"**§ 114-9.3. Definitions.**

The following definitions apply in this Article:

(1) Contingency fee contract. – A contract entered into by a state agency to retain private counsel that contains a contingency fee arrangement, including but not limited to pure contingency fee agreements and hybrid agreements including a contingency fee aspect.

(2) Government attorney. – An attorney employed by the State as a staff attorney in a state agency.

(3) Private attorney. – An attorney in private practice or employed by a private law firm.

(4) State. – The State of North Carolina, including State officers, departments, boards, commissions, divisions, bureaus, councils, and units of organization, however designated, of the executive branch of State government, and any of its agents.

(5) State agency. – Every agency, institution, department, bureau, board, or commission of the State of North Carolina authorized by law to retain private counsel.

"**§ 114-9.4. Procurement.**

(a) A state agency may not enter into a contingency fee contract with a private attorney unless the Attorney General makes a written determination prior to entering into the contract that contingency fee representation is both cost effective and in the public interest. Any written determination shall include specific findings for each of the following factors:

(1) Whether there exists sufficient and appropriate legal and financial resources within the Attorney General's office to handle the matter.

(2) The time and labor required; the novelty, complexity, and difficulty of the questions involved; and the skill requisite to perform the attorney services properly.

(3) The geographic area where the attorney services are to be provided.

(4) The amount of experience desired for the particular kind of attorney services to be provided and the nature of the private attorney's experience with similar issues or cases.

(b) If the Attorney General makes the determination described in subsection (a) of this section, the Attorney General shall request proposals from private attorneys to represent the State on a contingency fee basis, draft a written request for proposal from private attorneys, and post this request for proposal prominently on the Attorney General's Web site, unless the Attorney General determines that requesting proposals is not feasible under the circumstances and sets forth the basis for this determination in writing.

"**§ 114-9.5. Contingency Fees.**

(a) The Attorney General may not give permission under G.S. 114-2.3 for a state agency to enter into a contingency fee contract that provides for the private attorney to receive an aggregate contingency fee, exclusive of reasonable costs and expenses, in excess of:

(1) Twenty-five percent (25%) of any damages up to ten million dollars ($10,000,000); plus

(2) Twenty percent (20%) of any portion of such damages between ten million dollars ($10,000,000) and fifteen million dollars ($15,000,000); plus

(3) Fifteen percent (15%) of any portion of such damages between fifteen million dollars ($15,000,000) and twenty million dollars ($20,000,000); plus

(4) Ten percent (10%) of any portion of such damages between twenty million dollars ($20,000,000) and twenty-five million dollars $25,000,000); plus

(5) Five percent (5%) of any portion of such damages exceeding twenty-five million dollars ($25,000,000).

(b) In no event shall the aggregate contingency fee exceed fifty million dollars ($50,000,000), exclusive of reasonable costs and expenses, and irrespective of the number of lawsuits filed or the number of private attorneys retained to achieve the recovery.

(c) A contingency fee shall not be based on penalties or civil fines awarded or any amounts attributable to penalties or civil fines.

"**§ 114-9.6. Control.**

(a) The Attorney General may not give permission under G.S. 114-2.3 for a state agency to enter into a contingency fee contract unless the following requirements are met throughout the contract period and any extensions of the contract period:

(1) A government attorney retains complete control over the course and conduct of the case.
(2) A government attorney with supervisory authority is personally involved in overseeing the litigation.
(3) A government attorney retains the full authority to reject any decisions made by the private attorney.
(4) Any defendant that is the subject of such litigation may contact the lead government attorney directly, without having to confer with the private attorney.
(5) A government attorney with supervisory authority for the case attends all settlement conferences.
(6) Decisions regarding settlement of the case are reserved exclusively to the discretion of the government attorneys and the State.

(b) The Attorney General shall develop a standard addendum to every contract for contingency fee attorney services that shall be used in all cases, describing in detail what is expected of both the contracted private attorney and the State, including, without limitation, the requirements listed in subsection (a) of this section.

"**§ 114-9.7. Oversight.**

(a) Copies of any executed contingency fee contract and the Attorney General's written determination that contingency fee representation is both cost effective and in the public interest shall be posted on the Attorney General's Web site for public inspection within five business days after the date the contract is executed and shall remain posted on the Web site for the duration of the contingency fee contract, including any extensions or amendments of the contract period. Any payment of contingency fees shall be posted on the Attorney General's Web site within 15 days after the payment of those contingency fees to the private attorney and shall remain posted on the Web site for at least 365 days thereafter.

(b) Any private attorney under contract to provide services to the State on a contingency fee basis shall, from the inception of the contract until at least four years after the contract expires or is terminated, maintain detailed current records, including documentation of all expenses, disbursements, charges, credits, underlying receipts and invoices, and other financial transactions that concern the provision of those attorney services. The private attorney shall make all such records available for inspection and copying upon request in accordance with G.S. 132-6. The Attorney General may take reasonable steps to protect the evidentiary privileges of the State when producing these records under G.S. 132-6. In addition, the private attorney shall maintain detailed contemporaneous time records for the attorneys and paralegals working on the matter in increments of no greater than one-tenth of an hour and shall promptly provide these records to the Attorney General, upon request.

(c) By February 1 of each year, the Attorney General shall submit a report to the President Pro Tempore of the Senate and the Speaker of the House of Representatives describing the use of contingency fee contracts with private attorneys in the preceding calendar year. The Attorney General may take reasonable steps to protect the evidentiary privileges of the State when producing this report. At a minimum, the report shall:

(1) Identify each new contingency fee contract entered into during the year and each previously executed contingency fee contract that remains current during any part of the year.
(2) Include the name of the private attorney with whom the department has contracted in each instance, including the name of the attorney's law firm.
(3) Describe the nature and status of the legal matter that is the subject of each contract.
(4) Provide the name of the parties to each legal matter.
(5) Disclose the amount of recovery.

(6) Disclose the amount of any contingency fee paid.

(7) Include copies of any written determinations made under G.S. 114-9.4.

"**§ 114-9.8. No expansion of authority.**

Nothing in this Article shall be construed to expand the authority of any State agency or officer or employee of this State to enter into contracts for legal representation where no authority previously existed."

SECTION 4.2. G.S. 114-2.3 reads as rewritten:

"**§ 114-2.3. Use of private counsel limited.**

(a) Every agency, institution, department, bureau, board, or commission of the State, authorized by law to retain private counsel, shall obtain written permission from the Attorney General prior to employing private counsel. This section does not apply to counties, cities, towns, other municipal corporations or political subdivisions of the State, or any agencies of these municipal corporations or political subdivisions, or to county or city boards of education.

(b) Article 2A of this Chapter applies to any contract to retain private counsel authorized by the Attorney General under this section."

SECTION 5. Section 1 of this act becomes effective December 1, 2013, and applies to offenses committed on or after that date. Sections 3, 4.1, and 4.2 become effective October 1, 2013, and apply to contracts entered into on or after that date. The remainder of this act is effective when it becomes law.

SENATE BILL 648:
NC Commerce Protection Act of 2013

2013-2014 General Assembly

Committee:	Senate Ref to Commerce. If fav, re-ref to Judiciary I	**Date:**	May 7, 2013
Introduced by:	Sens. Jackson, Meredith, J. Davis	**Prepared by:**	Peter Ledford Committee Counsel
Analysis of:	PCS to First Edition S648-CSTP-10 [v.10]		

SUMMARY: ***Senate Bill 648 would create a civil penalty for two types of employment fraud. The bill would also change the interest on judgments for personal injury or wrongful death from eight percent (8%) to five percent (5%). The bill would make it illegal for a lawsuit loan company to enter into a contract with an individual in the State in which the individual confers a right to receive proceeds from a lawsuit to the lawsuit loan company. Finally, the bill would establish a process to provide transparency for contingency fee contracts between the State and private attorneys as well as set limits for the contingency fees that may be paid to private attorneys.***

The PCS adds Section 2 and makes various changes throughout the bill.

BILL ANALYSIS:

Section 1 of the bill would establish two employment fraud offenses that are punishable by civil penalty. The first offense occurs when a person willfully makes false statements or representations, or fails to disclose requested information, on a job application for the purpose of gaining access to an employer's facilities (1) to record activities in the facility, or (2) to capture or remove documents. The second offense occurs when such a recording or captured documents are not turned over to local law enforcement. However, any recording or document turned over in accordance with this requirement may not be used in a proceeding for an offense based on violations of the section.

Section 2 of the bill would make changes to the calculation of interest on judgments in actions for personal injury or wrongful death. Currently, interest is calculated at the legal rate of eight percent (8%), set in G.S. 24-1, and begins accruing on the date judgment is entered. Under Section 2, interest would be calculated at a rate of five percent (5%), and would begin accruing ninety (90) days after the date the action is commenced.

Section 3 of the bill would prohibit lawsuit loan companies from operating in the State. Lawsuit loan companies are businesses that provide funds to a plaintiff in a lawsuit to finance the costs of the lawsuit in exchange for a right to receive some or all of the proceeds of a settlement, insurance payment, or award of damages. Lawsuit loan companies have been effectively prohibited from conducting business in North Carolina since the case *Weaver v. Speedy Bucks, Inc.* in 2001 (162 F.Supp.2d 448). Under the bill, it would be an unfair trade practice under G.S. 75-1.1 for a lawsuit loan company to enter into a lawsuit loan with a consumer.

Sections 4.1 and 4.2 of the bill would create a transparency process for when the State enters into contingency fee contracts with private attorneys and sets limits to the contingency fees that may be awarded to private attorneys. Currently, under G.S. 114-2.3, state agencies authorized by law to retain private counsel must obtain written permission from the Attorney General prior to employing private counsel. Section 4.2 of the bill amends this section so that the provisions added by Section 4.1 apply to these situations as well. Under Section 4.1 of the bill, the Attorney General could not grant permission for a state agency to retain private counsel using a contingency fee contract unless the Attorney General

has made a written determination that the representation is both cost effective and in the public interest. If the Attorney General makes such a determination, he or she would be required to draft a written request for proposal from private attorneys and post it on the Attorney General's website. Any executed contingency fee contracts would also be required to be posted on the Attorney General's website, as well as documentation of any payment of contingency fees. The private attorney would be required to maintain all documentation for at least four years after the expiration of the contract. Finally, the Attorney General would be required to report to the President Pro Tempore of the Senate and the Speaker of the House of Representatives annually describing the use of contingency fee contracts with private attorneys.

Section 4.1 would also impose limits on the aggregate contingency fee, exclusive of reasonable costs and expenses, for contingency fee agreements, up to a total contingency fee of $50,000,000. The limits are as follows:

- 25% of damages up to $10,000,000
- 20% of damages from $10,000,000 to $15,000,000
- 15% of damages from $15,000,000 to $20,000,000
- 10% of damages from $20,000,000 to $25,000,000
- 5% of damages exceeding $25,000,000

Section 4.1 would also require that, under all contingency fee agreements entered into by the State, a government attorney retains complete control over the course and conduct of the case, a supervisory government attorney is personally involved in overseeing the litigation, a government attorney may reject decisions made by the private attorney, a defendant may contact a government attorney without needing permission from the private attorney, a supervisory government attorney attends all settlement conferences, and decisions regarding settlement are made at the discretion of the government attorney and the State.

EFFECTIVE DATE: Section 1 of this act becomes effective December 1, 2013, and applies to offenses committed on or after that date. Sections 3, 4.1, and 4.2 of this act become effective October 1, 2013, and apply to contracts entered into on or after that date. The remainder of this act is effective when it becomes law.

VISITOR REGISTRATION SHEET

Senate **COMMERCE** Committee — May 7, 2013

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DEBBIE LOWN

NAME	FIRM OR AGENCY AND ADDRESS
Todd Barlow	NC Advocates for Justice
Betsy McCorkle	NCSEA
Carye Dunn	DRNC
[signature]	NCRM
KERRI BURKE	McGUIRE WOODS
Remy Coeytaux	NA - just a resident not representing anyone
David McGowan	NCPC
Benton Albritton	ABC Carolinas
Morgan Beam	Gov. Office
Brooks Rainey Pearson	SELC
Heather Jarema	NCLCV

VISITOR REGISTRATION SHEET

Senate **COMMERCE** Committee — May 7, 2013

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DEBBIE LOWN

NAME	FIRM OR AGENCY AND ADDRESS
John Ferguson	NCCBA
David Barnes	Electric Cities
Chip Bumpass	JM Family
Jeff Perry	GSK
William B. Blank	Commerce - DWS
Edith Davis	ED & A, Inc.
Angel Sanz	CTZ
Crystal Collins	NC Trucking Assoc.

VISITOR REGISTRATION SHEET

Senate **COMMERCE** Committee — May 7, 2013

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DEBBIE LOWN

NAME	FIRM OR AGENCY AND ADDRESS
	DOC
	HRI
Mia Bailey	Electricities
	NC Chamber
	NC Chamber
	NCMA
Dan Conrad	NCUC
Amanda Honake	Troutman Sanders
	PSNC
	NCFB
	HBL
	FOS

VISITOR REGISTRATION SHEET

Senate **COMMERCE** Committee — May 7, 2013

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DEBBIE LOWN

NAME	FIRM OR AGENCY AND ADDRESS
[signature]	PSNC
DAVID MINER	TRG
Johanna Reese	NCACC
John White	Durham Chamber
JASON SOPER	NCDOT

VISITOR REGISTRATION SHEET

Senate **COMMERCE** Committee — May 7, 2013

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DEBBIE LOWN

NAME	FIRM OR AGENCY AND ADDRESS
Carr McLamb	DENR
[signature]	NCRMA
Area Ace	—
Monika Miller	—
[signature]	—
Patrick Bufflin	NCAEC
Canaan Price	MVA
Brandon Reed	NCAEC
KIRK WARNER	NC ADA
Nelson Jones	Jordan Price
Henry Jones	Gordon Price

VISITOR REGISTRATION SHEET

Senate **COMMERCE** Committee — May 7, 2013

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DEBBIE LOWN

NAME	FIRM OR AGENCY AND ADDRESS
MPPAIR	BBAHC
John DelGrosso	Ruebeck+Assoc
Gayle Gunn	guest of Sen. Gunn
Linda Watkins	guest of Sen. Gunn
Bill Watkins	guest of Sen. GUNN
Kay Emanuel	School of Government
Ashley Perkinson	Perkinson Law
Kim Alboum	HSUS
Matt Dominguez	HSUS
Julia White	NC DOJ
Layla Cummings	NC DENR

VISITOR REGISTRATION SHEET

Senate **COMMERCE** Committee — May 7, 2013

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DEBBIE LOWN

NAME	FIRM OR AGENCY AND ADDRESS
Bob Ford	NC Poultry Fed
Sarah Romeda	Brubaker Assoc.
Jonathan Brubaker	Brubaker Assoc
DAVID WARD	LOWE'S
[illegible]	NC AEC
[illegible]	NMRS
Susan Valauri	NW
John McMillan	MFS
A B Swindell	Wait In
Kelli Kelly	Duke Energy
[illegible]	[illegible]

VISITOR REGISTRATION SHEET

Senate **COMMERCE** Committee — May 7, 2013

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DEBBIE LOWN

NAME	FIRM OR AGENCY AND ADDRESS
Mosley	Smith A
Mary Shuman	GSK
Bill Rowe	NC Justice Center
RONALD DHING	~~NT~~ TESLA (INDEPENDENT)
Bob Kaylor	Kaylor Law
JGOODMAN	NC CHAMBER
Nathan Baddock	NC Chamber
James Chen	Tesla Motors
Josh Levy	Commerce
Katie Lail	GA staff
Andy Chase	NCMA

VISITOR REGISTRATION SHEET

Senate **COMMERCE** Committee — May 7, 2013

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DEBBIE LOWN

NAME	FIRM OR AGENCY AND ADDRESS
Abby Hammond	NCIC
Chad Robinson	PSNC
Paul Meyer	NCLM
Lori Ann Havens	LAUN

PUBLIC SPEAKING LIST

05/07/2013

SB 648

FOR:

1.

2.

3.

4.

AGAINST:

1. Mark Pratz
2. Ashley Perkinson
3. Matt Dominguez
4.

Senate Committee on Commerce
Thursday, May 9, 2013, 11:00 AM
1027/1128 Legislative Building

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

BILL NO.	SHORT TITLE	SPONSOR
SB 73	Local Workforce Dev./Dislocated Workers.	Senator Hartsell
SB 327	Clarify Motor Vehicle Licensing Law.	Senator Apodaca
SB 403	Amend Uniform Prudent Investor Act.	Senator Bingham
SB 407	Electronic Vehicle Lien/Title.	Senator Brunstetter Senator Rabon
SB 468	Align Inspections W/Installer Licensing.	Senator Jenkins
HJR 444	Confirm Andrew T. Heath to Industrial Comm.	Representative Davis Representative T. Moore

Senate Committee on Commerce
Thursday, May 9, 2013 at 11:00 AM
Room 1027/1128 of the Legislative Building

MINUTES

The Senate Committee on Commerce met at 11:00 AM on May 9, 2013 in Room 1027/1128 of the Legislative Building. Twenty one members were present.

Senator Wesley Meredith, Chair, presided.

Kristen Marrow from Roper, Gabbie Homes from Sanford, John Esterling from Laurinburg, and Trevis Watts from Greensboro served as pages.

Senator Meredith chose to change the agenda at the beginning of the committee and the bills heard will be reflected in the order found in these minutes.

S. B. 327 Clarify Motor Vehicle Licensing Law

Senator Gunn moved to adopt the proposed committee substitute (PCS) to the committee for discussion and it was carried. The PCS for Senate Bill 327 makes changes to the Motor Vehicle Dealers and Manufacturers Licensing Law. Senator Brown announced to the committee that he was removing himself from the discussion and the voting of SB327. Senator Apodaca was then introduced to speak on the bill. Wendy Graf an attorney from the Research Division also spoke and assisted with answering questions. Senator Meredith asked if there were any visitors that would like to speak. Four people responded and spoke respectively:
Diarmuid O'Connell/VP, Corporate and Business Development for Telsa Motors, Inc.
James C. Chen/Director Of Public Policy and Associate General Counsel for Tesla Motors, Inc.
T. John Policastro/General Counsel for the North Carolina Automobile Dealers Association
Robert J. Glaser/President of the North Carolina Automobile Dealers Association
Senator Newton moved – unfavorable to the bill – favorable to the PCS and it carried.

S. B. 73 Local Workforce Dev./Dislocated Workers

Senate Bill 73 would require local workforce development boards to use a competitive selection process to award adult and dislocated worker services provider contracts. Senator Hartsell was introduced to speak on the bill and asked Steve McCulloch/Managing Partner for Winnow Create to also speak. Senator Jenkins moved for a favorable report to the bill and it carried.

H. J. R. 444 Confirm Andrew T. Heath to Industrial Commission

Resume were submitted to the clerk and were handed out by the permission of Senator Meredith to the members. HJR 444 confirms the appointment of Andrew T. Heath to the Industrial Commission for a term of six years. Mr. Heath was appointed by Governor McCrory

on February 29, 2013. His term will expire April 30, 2019. Representative Moore and Senator Goolsby were asked to introduce Mr. Andrew T. Heath. Mr. Heath was then introduced. Senator Apodaca moved for a favorable report and it carried.

S. B. 403 Amend Uniform Prudent Investor Act

Senator Gunn moved to adopt the proposed committee substitute (PCS) to the committee for discussion and it was carried. The PCS for Senate Bill 403 would amend the law to allow trustees of cemetery trust funds and preneed funeral funds to invest those funds in accordance with the Uniform Prudent Investor Act. Senator Bingham was introduced to speak on the bill. Senator J. Davis motioned – unfavorable to the bill- favorable to the PCS and it carried.

S. B. 468 Align Inspections W/Installer Licensing

Senator Jenkins was introduced to speak on the bill. Senate Bill 468 would prohibit cities and counties from requiring any permit other than a plumbing permit for the installation of a natural gas or propane appliance by an installer holding a plumbing license. Senator Bryant moved for a favorable report and it carried.

S. B. 407 Electronic Vehicle Lien/Title

Senator Brunstetter (the bill sponsor) was not available to introduce the bill. Senator Meredith chose out of courtesy to remove the bill from the agenda.

The meeting adjourned at 11:36 AM.

Senator Wesley Meredith, Chair
Presiding

Debbie Lown, Committee Clerk

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

COMMERCE COMMITTEE REPORT
Senator Gunn, Co-Chair
Senator Meredith, Co-Chair

Thursday, May 09, 2013

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

FAVORABLE

HJR **444** Confirm Andrew T. Heath to Industrial Comm.
Draft Number: None
Sequential Referral: None
Recommended Referral: None
Long Title Amended: No

SB **73** Local Workforce Dev./Dislocated Workers.
Draft Number: None
Sequential Referral: None
Recommended Referral: None
Long Title Amended: No

SB **468** Align Inspections W/Installer Licensing.
Draft Number: None
Sequential Referral: None
Recommended Referral: None
Long Title Amended: No

TOTAL REPORTED: 3

Senator Thomas Goolsby will handle HJR 444
Senator Fletcher Hartsell will handle SB 73
Senator S. Jenkins will handle SB 468

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

COMMERCE COMMITTEE REPORT
Senator Gunn, Co-Chair
Senator Meredith, Co-Chair

Thursday, May 09, 2013

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

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

SB **403** Amend Uniform Prudent Investor Act.

Draft Number:	S403-PCS85220-SU-24
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

TOTAL REPORTED: 1

Senator Stan Bingham will handle SB 403

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

COMMERCE COMMITTEE REPORT
Senator Gunn, Co-Chair
Senator Meredith, Co-Chair

Thursday, May 09, 2013

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

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

SB **327** Clarify Motor Vehicle Licensing Law.

Draft Number:	S327-PCS85223-SU-23
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

TOTAL REPORTED: 1

Senator Tom Apodaca will handle SB 327

SENATE BILL 73

Short Title:	Local Workforce Dev./Dislocated Workers.	(Public)
Sponsors:	Senator Hartsell (Primary Sponsor).	
Referred to:	Commerce.	

February 11, 2013

A BILL TO BE ENTITLED

AN ACT TO REQUIRE THAT LOCAL WORKFORCE DEVELOPMENT BOARDS USE A COMPETITIVE SELECTION PROCESS TO AWARD ADULT AND DISLOCATED WORKER SERVICES PROVIDER CONTRACTS AUTHORIZED IN THE WORKFORCE INVESTMENT ACT OF 1998.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 143B-438.11 reads as rewritten:

"**§ 143B-438.11. Local Workforce Development Boards.**

(a) Duties. – Local Workforce Development Boards shall have the following powers and duties:

(1) To develop policy and act as the governing body for local workforce development.

(2) To provide planning, oversight, and evaluation of local workforce development programs, including the local One-Stop Delivery System.

(3) To provide advice regarding workforce policy and programs to local elected officials, employers, education and employment training agencies, and citizens.

(4) To develop a local plan in coordination with the appropriate community partners to address the workforce development needs of the service area.

(5) To develop linkages with economic development efforts and activities in the service area and promote cooperation and coordination among public organizations, education agencies, and private businesses.

(6) To review local agency plans and grant applications for workforce development programs for coordination and achievement of local goals and needs.

(7) To serve as the Workforce Investment Board for the designated substate area for the purpose of the federal Workforce Investment Act of 1998.

(7a) To designate through a competitive selection process, by no later than July 1, 2014, the providers of adult and dislocated worker services authorized in the Workforce Investment Act of 1998.

(8) To provide the appropriate guidance and information to Workforce Investment Act consumers to ensure that they are prepared and positioned to make informed choices in selecting a training provider. Each local Workforce Development Board shall ensure that consumer choice is properly maintained in the one-stop centers and that consumers are provided the full array of public and private training provider information.

(9) To provide coordinated regional workforce development planning and labor market data sharing."

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

SENATE BILL 73:
Local Workforce Dev./Dislocated Workers

2013-2014 General Assembly

Committee:	Senate Commerce	**Date:**	May 9, 2013
Introduced by:	Sen. Hartsell	**Prepared by:**	Trina Griffin
Analysis of:	First Edition		Committee Counsel

SUMMARY: ***Senate Bill 73 would require local workforce development boards to use a competitive selection process to award adult and dislocated worker services provider contracts.***

CURRENT LAW: Workforce development programs established by state and federal governments are designed to help address the high unemployment rate, skills gap, and business growth and competitiveness in a global economy. These programs offer services to both individuals and businesses that fall into the categories of job placement, job training, and supportive services.[1]

The federal Workforce Investment Act of 1998 (WIA) provides the framework for the national workforce preparation and employment system and is designed to meet the needs of businesses and the needs of job seekers. The WIA established local authority and guides the creation of local workforce development areas.

The Governor, and not the General Assembly, has the authority to designate local workforce development areas based on the following considerations:

- Geographic areas served by local education agencies, postsecondary education institutions, and area vocational education schools.
- Labor market areas.
- Distance individuals will need to travel to receive services.
- Resources available to effectively administer the activities of the program.

Once an area is designated by the Governor, chief elected officials name an administrative entity and appoint a local board to administer and oversee the program. The administrative entity receives and oversees the distribution of WIA funds, and the board sets policy and oversees the WIA program. North Carolina has 23 local workforce development areas, which vary in size from one to 10 counties.

The local workforce development boards use grant funds to provide services to individuals who are 14 years of age or older and meet the local, state, and federal WIA Adult, Dislocated Worker and Youth eligibility definitions. The goal is to provide workforce investment activities that increase the employment, retention, earning, and occupational skill attainment of job seeking customers and also provide business services. The services are intended to be provided through a one-stop delivery approach where information about and access to an array of job training, education, and employment services is available for customers at a single location (JobLink Career Centers).

While youth programs are required to award contracts and grants using competitive procurement, the adult programs allow workforce boards and governors to waive these requirements under certain circumstances.

BILL ANALYSIS: This bill would require local workforce development boards to use a competitive selection process, by no later than July 1, 2014, to designate providers of adult and dislocated worker services, as authorized by the Workforce Investment Act of 1998. The providers may be public or private entities.

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

[1] Services that help reduce barriers to employment such as transportation, child care, medical equipment, and technology.

SENATE BILL 327

Short Title:	Clarify Motor Vehicle Licensing Law.	(Public)
Sponsors:	Senators Apodaca (Primary Sponsor); Bryant, Daniel, Jackson, Jenkins, and Newton.	
Referred to:	Commerce.	

March 19, 2013

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THE MOTOR VEHICLE DEALERS AND MANUFACTURERS LICENSING LAW.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-286(11)a. is amended by adding a new sub-sub-subdivision to read:

"(11) Motor vehicle dealer or dealer. –

a. A person who does any of the following:

...

6. Engages in the purchase, sale, lease, or exchange of motor vehicles by providing, either directly or indirectly, any computer or other communications facilities, hardware, or equipment at any location within this State that uses the computer or other communications facilities, hardware, or equipment for the purpose of transmitting applications, contracts, or orders for motor vehicles purchased or leased by retail purchasers or lessees located in this State."

SECTION 2. G.S. 20-287(a) reads as rewritten:

"(a) License Required. – It shall be unlawful for any new motor vehicle dealer, used motor vehicle dealer, motor vehicle sales representative, manufacturer, factory branch, factory representative, distributor, distributor branch, distributor representative, or wholesaler to engage in business in this State without first obtaining a license as provided in this Article. If any motor vehicle dealer acts as a motor vehicle sales representative, the dealer shall obtain a motor vehicle sales representative's license in addition to a motor vehicle dealer's license. A sales representative may have only one license. The license shall show the name of the dealer or wholesaler employing the sales representative. The following license holders may operate as a motor vehicle dealer without obtaining a motor vehicle dealer's license or paying an additional fee: a manufacturer, a factory branch, a distributor, and a distributor branch. Any of these license holders who operates as a motor vehicle ~~dealer~~dealer, including a person who engages in the purchase, sale, lease, or exchange of motor vehicles by providing, either directly or indirectly, any computer or other communications facilities, hardware, or equipment at any location within this State that uses the computer or other communications facilities, hardware, or equipment for the purpose of transmitting applications, contracts, or orders for motor vehicles purchased or leased by retail purchasers or lessees located in this State, may sell motor vehicles at retail only at an established salesroom."

SECTION 3. G.S. 20-305 reads as rewritten:

"**§ 20-305. Coercing dealer to accept commodities not ordered; threatening to cancel franchise; preventing transfer of ownership; granting additional franchises; terminating franchises without good cause; preventing family succession.**

It shall be unlawful for any manufacturer, factory branch, distributor, or distributor branch, or any field representative, officer, agent, or any representative whatsoever of any of them:

...

(30) To vary the price charged to any of its franchised new motor vehicle dealers located in this State for new motor vehicles based on the dealer's purchase of new facilities, supplies, tools, equipment, or other merchandise from the manufacturer, the dealer's relocation, remodeling, repair, or renovation of existing dealerships or construction of a new facility, the dealer's participation in training programs sponsored, endorsed, or recommended by the manufacturer, whether or not the dealer is dualed with one or more other line makes of new motor vehicles, or the dealer's sales penetration. Except as provided in this subdivision, it shall be unlawful for any manufacturer, factory branch, distributor, or distributor branch, or any field representative, officer, agent, or any representative whatsoever of any of them to vary the price charged to any of its franchised new motor vehicle dealers located in this State for new motor vehicles based on the dealer's sales volume, the dealer's level of sales or customer service satisfaction, the dealer's purchase of advertising materials, signage, nondiagnostic computer hardware or software, communications devices, or furnishings, or the dealer's participation in used motor vehicle inspection or certification programs sponsored or endorsed by the manufacturer.

The price of the vehicle, for purposes of this subdivision shall include the manufacturer's use of rebates, credits, or other consideration that has the effect of causing a variance in the price of new motor vehicles offered to its franchised dealers located in the State.

Notwithstanding the foregoing, nothing in this subdivision shall be deemed to preclude a manufacturer from establishing sales contests or promotions that provide or award dealers or consumers rebates or incentives; provided, however, that the manufacturer complies with all of the following conditions:

a. With respect to manufacturer to consumer rebates and incentives, the manufacturer's criteria for determining eligibility shall:
   1. Permit all of the manufacturer's franchised new motor vehicle dealers in this State to offer the rebate or incentive; and
   2. Be uniformly applied and administered to all eligible consumers.

b. With respect to manufacturer to dealer rebates and incentives, the rebate or incentive program shall:
   1. Be based solely on the dealer's actual or reasonably anticipated sales volume or on a uniform per vehicle sold or leased basis;
   2. Be uniformly available, applied, and administered to all of the manufacturer's franchised new motor vehicle dealers in this State; and
   3. Provide that any of the manufacturer's franchised new motor vehicle dealers in this State may, upon written request, obtain the method or formula used by the manufacturer in

establishing the sales volumes for receiving the rebates or incentives and the specific calculations for determining the required sales volumes of the inquiring dealer and any of the manufacturer's other franchised new motor vehicle dealers located within 75 miles of the inquiring dealer.

Nothing contained in this subdivision shall prohibit a manufacturer from providing assistance or encouragement to a franchised dealer to remodel, renovate, recondition, or relocate the dealer's existing facilities, provided that this assistance, encouragement, or rewards are not determined on a per vehicle basis.

It is unlawful for any manufacturer to charge or include the cost of any program or policy prohibited under this subdivision in the price of new motor vehicles that the manufacturer sells to its franchised dealers or purchasers located in this State.

In the event that as of October 1, 1999, a manufacturer was operating a program that varied the price charged to its franchised dealers in this State in a manner that would violate this subdivision, or had in effect a documented policy that had been conveyed to its franchised dealers in this State and that varied the price charged to its franchised dealers in this State in a manner that would violate this subdivision, it shall be lawful for that program or policy, including amendments to that program or policy that are consistent with the purpose and provisions of the existing program or policy, or a program or policy similar thereto implemented after October 1, 1999, to continue in effect as to the manufacturer's franchised dealers located in this State until June 30, ~~2014.~~2016.

In the event that as of June 30, 2001, a manufacturer was operating a program that varied the price charged to its franchised dealers in this State in a manner that would violate this subdivision, or had in effect a documented policy that had been conveyed to its franchised dealers in this State and that varied the price charged to its franchised dealers in this State in a manner that would violate this subdivision, and the program or policy was implemented in this State subsequent to October 1, 1999, and prior to June 30, 2001, and provided that the program or policy is in compliance with this subdivision as it existed as of June 30, 2001, it shall be lawful for that program or policy, including amendments to that program or policy that comply with this subdivision as it existed as of June 30, 2001, to continue in effect as to the manufacturer's franchised dealers located in this State until June 30, ~~2014.~~2016.

Any manufacturer shall be required to pay or otherwise compensate any franchise dealer who has earned the right to receive payment or other compensation under a program in accordance with the manufacturer's program or policy.

The provisions of this subdivision shall not be applicable to multiple or repeated sales of new motor vehicles made by a new motor vehicle dealer to a single purchaser under a bona fide fleet sales policy of a manufacturer, factory branch, distributor, or distributor branch.

...

(33) To either (i) fail to reimburse a dealer located in this State in full for the actual cost of providing a loaner vehicle to any customer who is having a vehicle serviced at the dealership if the provision of such a loaner vehicle is required by the ~~manufacturer.~~manufacturer or (ii) require a dealer to

purchase, lease, or otherwise title one or more new motor vehicles for use as a loaner vehicle in order to participate in or qualify for any incentive program offered or sponsored by the manufacturer or distributor, or to otherwise receive any discounts, credits, rebates, or incentives of any kind that are calculated or paid on a per vehicle basis.

(34) To require, coerce, or attempt to coerce any new motor vehicle dealer in this State to participate ~~monetarily~~ in any unreasonable training session, meeting, training program, or certification program for any purpose, including as a condition or a requirement of the manufacturer or distributor for the dealer to qualify for any incentive program offered or sponsored by the manufacturer or distributor, or to otherwise receive any discounts, credits, rebates, or incentives of any kind that are calculated or paid on a per vehicle basis. Examples of an unreasonable training session, meeting, training program, or certification program with respect to which a manufacturer is prohibited from requiring or coercing the dealer's participation include the following:

a. Any training session, meeting, training program, or certification program ~~whose~~including subject matter that is not expressly limited to specific information necessary to sell or service the models of vehicles the dealer is authorized to sell or service under the dealer's franchise with that manufacturer. ~~Examples of training programs with respect to which a manufacturer is prohibited from requiring the dealer's monetary participation include, but are not limited to, those~~

b. Any training session, meeting, training program, or certification program ~~which purport~~purporting to teach ~~morale-boosting~~morale-boosting, employee motivation, teamwork, or general principles of customer relations.

c. ~~A manufacturer is further prohibited from requiring~~Any training session, meeting, training program, or certification program requiring the personal attendance of an owner or dealer principal of any dealership located in this State ~~at any meeting or training program at which~~when it is reasonably possible for another member of the dealer's management to attend and later relate the subject matter of the ~~meeting or~~ training session, meeting, training program, or certification program to the dealership's owners or principal operator.

...

(44) Nothwithstanding the terms, provisions, or conditions of any agreement or franchise, to require, coerce, or attempt to coerce any new motor vehicle dealer located in this State to refrain from prominently displaying in the dealer's showroom or elsewhere within the dealership facility, as determined in the sole discretion of the dealer, any honors, awards, photographs, displays, or other artifacts or memorabilia related to the dealership, dealer principal, or any of the owners, investors, officers, directors, or employees of the dealer.

(45) Nothwithstanding the terms, provisions, or conditions of any agreement or franchise, to discriminate against a new motor vehicle dealer located in this State for selling or offering for sale a service contract, debt cancellation agreement, maintenance agreement, or similar product not approved, endorsed, sponsored, or offered by the manufacturer, distributor, affiliate, or captive finance source. For purposes of this subdivision, discrimination includes any of the following:

a. Requiring, coercing, or attempting to coerce a dealer to exclusively sell or offer for sale service contracts, debt cancellation agreements, or similar products approved, endorsed, sponsored, or offered by the manufacturer, distributor, affiliate, or captive finance source.

b. Taking or threatening to take any adverse action against a dealer (i) who sells or offers for sale any service contracts, debt cancellation agreements, maintenance agreements, or similar products that have not been approved, endorsed, sponsored, or offered by the manufacturer, distributor, affiliate or captive finance source or (ii) who fails to sell or offer for sale service contracts, debt cancellation agreements, maintenance agreements, or similar products approved, endorsed, sponsored, or offered by the manufacturer, distributor, affiliate, or captive finance source.

c. Measuring a dealer's performance under a franchise in any part based upon the dealer's sale of service contracts, debt cancellation agreements, or similar products approved, endorsed, sponsored, or offered by the manufacturer, distributor, affiliate, or captive finance source.

d. Requiring a dealer to promote the sale of service contracts, debt cancellation agreements, or similar products approved, endorsed, sponsored, or offered by the manufacturer, distributor, affiliate, or captive finance source.

e. Considering the dealer's sale of service contracts, debt cancellation agreements, or similar products approved, endorsed, sponsored, or offered by the manufacturer, distributor, affiliate, or captive finance source in determining any of the following:

1. The dealer's eligibility to purchase any vehicles, parts, or other products or services from the manufacturer or distributor.
2. The volume of vehicles or other parts or services the dealer shall be eligible to purchase from the manufacturer or distributor.
3. The price or prices of any vehicles, parts, or other products or services that the dealer shall be eligible to purchase from the manufacturer or distributor.
4. The availability or amount of any vehicle discount, credit, special pricing, rebate, or sales or service incentive the dealer shall be eligible to receive from the manufacturer, distributor, affiliate, or captive finance source.

For purposes of this subdivision, discrimination does not include, and nothing shall prohibit a manufacturer, distributor, affiliate, or captive finance source from, offering discounts, rebates, or other incentives to dealers who voluntarily sell or offer for sale service contracts, debt cancellation agreements, or similar products approved, endorsed, sponsored, or offered by the manufacturer, distributor, affiliate, or captive finance source; provided, however, that such discounts, rebates, or other incentives are based solely on the sales volume of the service contracts, debt cancellation agreements, or similar products sold by the dealer and do not provide vehicle sales or service incentives.

(46) To require, coerce, or attempt to coerce a dealer located in this State to purchase goods or services of any nature from a vendor selected, identified,

or designated by a manufacturer, distributor, affiliate, or captive finance source. For purposes of this subdivision, unlawful coercion includes any requirement of a manufacturer, distributor, affiliate, or captive finance source that a dealer use a specific vendor or group of vendors as a condition to receive any discount, credit, rebate, or sales incentive. When a manufacturer, distributor, affiliate, or captive finance source recommends or designates to a dealer a specific vendor or group of vendors, the manufacturer, distributor, affiliate, or captive finance source shall contemporaneously and conspicuously also disclose to the dealer the option to obtain the goods or services of substantially similar kind and quality from a vendor selected by the dealer. For purposes of this subdivision, the term "goods" does not include moveable displays, brochures, and promotional materials containing material subject to the intellectual property rights of a manufacturer or distributor, or special tools as reasonably required by the manufacturer, or parts to be used in repairs under warranty obligations of a manufacturer or distributor. If the manufacturer, distributor, affiliate, or captive finance source claims that a vendor chosen by the dealer cannot supply goods and services of substantially similar kind and quality, the manufacturer or distributor may file a protest with the Commissioner. When a protest is filed, the Commissioner shall promptly inform the dealer that a protest has been filed. The Commissioner shall conduct a hearing on the merits of the protest within 90 days following the dealer's filing of a response to the protest. The manufacturer, distributor, affiliate, or captive finance source shall bear the burden of proving that the goods or services chosen by the dealer are not of substantially similar kind and quality to those required by the manufacturer.

(47) To fail to provide to a dealer, if the goods or services to be supplied to the dealer by a vendor selected, identified, or designated by the manufacturer or distributor are signs or other franchisor image elements to be purchased or leased to the dealer, the right to purchase or lease the signs or other franchisor image elements of like kind and quality from a vendor selected by the dealer. If the vendor selected by the manufacturer or distributor is the only available vendor, the dealer must be given the opportunity to purchase the signs or other franchisor image elements at a price substantially similar to the capitalized lease costs thereof. This subdivision shall not be construed to allow a dealer to impair or eliminate the intellectual property rights of the manufacturer or distributor, or to permit a dealer to erect or maintain signs that do not conform to the reasonable intellectual property usage guidelines of the manufacturer or distributor.

(48) To unreasonably interfere with a dealer's independence in staffing the dealership by engaging in any of the following conduct: (i) requiring, coercing, or attempting to coerce a dealer located in this State to employ, appoint, or designate an individual to serve full-time or exclusively in any specific capacity, role, or job function at the dealership, other than the employment or appointment of a full-time general manager; (ii) requiring a dealer to employ, appoint, or designate an individual to serve full-time or exclusively in any specific capacity, role, or job function at the dealership, other than the employment or appointment of a full-time general manager, in order to participate in or qualify for any incentive program offered or sponsored by the manufacturer or distributor or to otherwise receive any discounts, credits, rebates, or incentives of any kind that are calculated or

paid on a per vehicle basis; or (iii) requiring that the dealer obtain the approval of the manufacturer or distributor prior to employing or appointing any individual in any capacity, role, or job function at the dealership, other than the employment or appointment of a full-time general manager. Except as expressly provided above, nothing contained in this subdivision shall be deemed to prevent or prohibit a manufacturer or distributor from requiring that a dealer employ a reasonable number of trained employees to sell and service the factory's vehicles."

SECTION 4. G.S. 20-305.2 is amended by adding a new subsection to read:

"(e) For purposes of this section, an unfair method of competition includes any warranty or nonwarranty fix, repair, update, or adjustment made or provided directly by a manufacturer or distributor to any motor vehicle located within this State without the direct participation of a dealer franchised by the manufacturer or distributor and without such dealer receiving reasonable compensation for such fix, repair, update, or adjustment as provided in G.S. 20-305.1."

SECTION 5. G.S. 20-305.7 reads as rewritten:

"**§ 20-305.7. Protecting dealership data and consent to access dealership information.**

...

(f) The following definitions apply to this section:

(1) "Dealer management computer system" – A computer hardware and software system that is owned or leased by the dealer, including a dealer's use of Web applications, software, or hardware, whether located at the dealership or provided at a remote location and that provides access to customer records and transactions by a motor vehicle dealer located in this State and that allows such motor vehicle dealer timely information in order to sell vehicles, parts or services through such motor vehicle dealership.

(2) "Dealer management computer system vendor" – A seller or reseller of dealer management computer ~~systems (but~~systems, a person that sells computer software for use on dealer management computer systems, or a person who services or maintains dealer management computer systems, but only to the extent that ~~such person is~~each of the sellers, resellers, or other persons listed in this subdivision are engaged in such ~~activities).~~activities.

(3) "Security breach" – An incident of unauthorized access to and acquisition of records or data containing dealership or dealership customer information where unauthorized use of the dealership or dealership customer information has occurred or is reasonably likely to occur or that creates a material risk of harm to a dealership or a dealership's customer. Any incident of unauthorized access to and acquisition of records or data containing dealership or dealership customer information, or any incident of disclosure of dealership customer information to one or more third parties which shall not have been specifically authorized by the dealer or customer, shall constitute a security breach.

(g1) Notwithstanding any of the terms or provisions contained in this section or in any consent, authorization, release, novation, franchise, or other contract or agreement, whenever any manufacturer, factory branch, distributor, distributor branch, dealer management computer system vendor, or any third party acting on behalf of or ~~through~~through, or approved, referred, endorsed, authorized, certified, granted preferred status, or recommended by, any manufacturer, factory branch, distributor, distributor branch, or dealer management computer system vendor requires that a new motor vehicle dealer provide any dealer, consumer, or customer data or information through direct access to a dealer's computer system, the dealer is not required to provide, and may not be required to consent to provide in any written agreement, such direct

access to its computer system. The dealer may instead provide the same dealer, consumer, or customer data or information specified by the requesting party by timely obtaining and pushing or otherwise furnishing the requested data to the requesting party in a widely accepted file format such as comma delimited; provided that, when a dealer would otherwise be required to provide direct access to its computer system under the terms of a consent, authorization, release, novation, franchise, or other contract or agreement, a dealer that elects to provide data or information through other means may be charged a reasonable initial set-up fee and a reasonable processing fee based on the actual incremental costs incurred by the party requesting the data for establishing and implementing the process for the dealer. Any term or provision contained in any consent, authorization, release, novation, franchise, or other contract or agreement which is inconsistent with any term or provision contained in this subsection shall be voidable at the option of the dealer.

(g2) Notwithstanding the terms or conditions of any consent, authorization, release, novation, franchise, or other contract or agreement, every manufacturer, factory branch, distributor, distributor branch, dealer management computer system vendor, or any third party acting on behalf of or through any manufacturer, factory branch, distributor, distributor branch, or dealer management computer system vendor, having electronic access to consumer or customer data or other information in a computer system utilized by a new motor vehicle dealer, or who has otherwise been provided consumer or customer data or information by the dealer, shall fully indemnify and hold harmless any dealer from whom it has acquired such consumer or customer data or other information from all damages, costs, and expenses incurred by such dealer, including, but not limited to, judgments, settlements, fines, penalties, litigation costs, defense costs, court costs, costs related to the disclosure of security breaches, and attorneys' fees arising out of complaints, claims, security breaches, civil or administrative actions, and, to the fullest extent allowable under the law, governmental investigations and prosecutions to the extent caused by the access, storage, maintenance, use, sharing, disclosure, or retention of such dealer's consumer or customer data or other ~~information~~information, or maintenance or services provided to any computer system utilized by a new motor vehicle dealer by the manufacturer, factory branch, distributor, distributor branch, dealer management computer system vendor, or third party acting on behalf of or through such manufacturer, factory branch, distributor, distributor branch, or dealer management computer system vendor.

...."

SECTION 6. G.S. 20-305.1 reads as rewritten:

"**§ 20-305.1. Automobile dealer warranty obligations.**

(a) Each motor vehicle manufacturer, factory branch, distributor or distributor branch, shall specify in writing to each of its motor vehicle dealers licensed in this State the dealer's obligations for preparation, delivery and warranty service on its products, the schedule of compensation to be paid such dealers for parts, work, and service in connection with warranty service, and the time allowances for the performance of such work and service. In no event shall such schedule of compensation fail to include reasonable compensation for diagnostic work and associated administrative requirements as well as repair service and labor. Time allowances for the performance of warranty work and service shall be reasonable and adequate for the work to be performed. The compensation which must be paid under this section must be reasonable, provided, however, that under no circumstances may the reasonable compensation under this section be in an amount less than the dealer's current retail labor rate and the amount charged to retail customers for the manufacturer's or distributor's original parts for nonwarranty work of like kind, provided such amount is competitive with the retail rates charged for parts and labor by other franchised dealers within the dealer's market.

(a1) The retail rate customarily charged by the dealer for parts and labor may be established at the election of the dealer by the dealer submitting to the manufacturer or distributor 100 sequential nonwarranty customer-paid service repair orders which contain

warranty-like parts, or 60 consecutive days of nonwarranty customer-paid service repair orders which contain warranty-like parts, whichever is less, covering repairs made no more than 180 days before the submission and declaring the average percentage markup. The average of the parts markup rate and the average labor rate shall both be presumed to be fair and reasonable, however, a manufacturer or distributor may, not later than 30 days after submission, rebut that presumption by reasonably substantiating that the rate is unfair and unreasonable in light of the ~~practices of~~retail rates charged for parts and labor by all other franchised motor vehicle dealers in the dealer's market offering the same line-make vehicles. In the event there are no other franchised dealers offering the same line-make of vehicle in the dealer's market, the manufacturer or distributor may compare the dealer's retail rate for parts and labor with the ~~practices of~~retail rates charged for parts and labor by other franchised dealers who are selling competing line-makes of vehicles within the dealer's market. The retail rate and the average labor rate shall go into effect 30 days following the manufacturer's approval, but in no event later than 60 days following the declaration, subject to audit of the submitted repair orders by the manufacturer or distributor and a rebuttal of the declared rate as described above. If the declared rate is rebutted, the manufacturer or distributor shall propose an adjustment of the average percentage markup based on that rebuttal not later than 30 days after such audit, but in no event later than 60 days after submission. If the dealer does not agree with the proposed average percentage markup, the dealer may file a protest with the Commissioner not later than 30 days after receipt of that proposal by the manufacturer or distributor. If such a protest is filed, the Commissioner shall inform the manufacturer or distributor that a timely protest has been filed and that a hearing will be held on such protest. In any hearing held pursuant to this subsection, the manufacturer or distributor shall have the burden of proving by a preponderance of the evidence that the rate declared by the dealer was unfair and unreasonable as described in this subsection and that the proposed adjustment of the average percentage markup is fair and reasonable pursuant to the provisions of this subsection. The reasonable rate determined at hearing shall be effective as of 60 days after the date of the dealer's initial submission of the customer-paid service orders to the manufacturer or distributor.

(a2) In calculating the retail rate customarily charged by the dealer for parts and labor, the following work shall not be included in the calculation:

(1) Repairs for manufacturer or distributor special events, specials, or promotional discounts for retail customer ~~repairs;~~repairs.
(2) Parts sold at wholesale or at reduced or specially negotiated rates for insurance ~~repairs;~~repairs.
(3) Engine assemblies and transmission ~~assemblies;~~assemblies.
(4) Routine maintenance not covered under warranty, such as fluids, filters, and belts not provided in the course of ~~repairs;~~repairs.
(5) Nuts, bolts, fasteners, and similar items that do not have an individual part ~~number;~~number.
(6) ~~Tires; and~~Tires.
(7) Vehicle reconditioning.
(8) Batteries and light bulbs.

...."

SECTION 7. The terms and provisions of this act shall be applicable to all current and future franchises and other agreements in existence between any new motor vehicle dealer located in this State and a manufacturer or distributor as of the effective date of this act.

SECTION 8. 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 9. This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

S D

SENATE BILL 327
PROPOSED COMMITTEE SUBSTITUTE S327-CSSU-23 [v.4]
5/8/2013 5:15:23 PM

Short Title: Clarify Motor Vehicle Licensing Law. (Public)

Sponsors:

Referred to:

March 19, 2013

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THE MOTOR VEHICLE DEALERS AND MANUFACTURERS LICENSING LAW.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-286(11)a. is amended by adding a new sub-sub-subdivision to read:

"(11) Motor vehicle dealer or dealer. –

a. A person who does any of the following:

1. For commission, money, or other thing of value, buys, sells, or exchanges, whether outright or on conditional sale, bailment lease, chattel mortgage, or otherwise, five or more motor vehicles within any 12 consecutive months, regardless of who owns the motor vehicles.

2. On behalf of another and for commission, money, or other thing of value, arranges, offers, attempts to solicit, or attempts to negotiate the sale, purchase, or exchange of an interest in five or more motor vehicles within any 12 consecutive months, regardless of who owns the motor vehicles.

3. Engages, wholly or in part, in the business of selling new motor vehicles or new or used motor vehicles, or used motor vehicles only, whether or not the motor vehicles are owned by that person, and sells five or more motor vehicles within any 12 consecutive months.

4. Offers to sell, displays, or permits the display for sale for any form of compensation five or more motor vehicles within any 12 consecutive months.

5. Primarily engages in the leasing or renting of motor vehicles to others and sells or offers to sell those vehicles at retail.

6. Engages in any of the activities referenced in sub-sub-subdivisions 1. through 5. of this sub-subdivision using a computer or other communications facilities, hardware, or equipment at any location within this State for the purpose of transmitting applications, contracts, or orders for motor vehicles purchased or leased by retail purchasers or lessees located in this State."

SECTION 2. G.S. 20-287(a) reads as rewritten:

"(a) License Required. – It shall be unlawful for any new motor vehicle dealer, used motor vehicle dealer, motor vehicle sales representative, manufacturer, factory branch, factory representative, distributor, distributor branch, distributor representative, or wholesaler to engage in business in this State without first obtaining a license as provided in this Article. If any motor vehicle dealer acts as a motor vehicle sales representative, the dealer shall obtain a motor vehicle sales representative's license in addition to a motor vehicle dealer's license. A sales representative may have only one license. The license shall show the name of the dealer or wholesaler employing the sales representative. The following license holders may operate as a motor vehicle dealer without obtaining a motor vehicle dealer's license or paying an additional fee: a manufacturer, a factory branch, a distributor, and a distributor branch. Any of these license holders who operates as a motor vehicle ~~dealer~~dealer, including a license holder who uses a computer or other communications facilities, hardware, or equipment at any location within this State for the purpose of transmitting applications, contracts, or orders for motor vehicles purchased or leased by retail purchasers or lessees located in this State, may sell motor vehicles at retail only at an established salesroom."

SECTION 3. G.S. 20-305 reads as rewritten:

"**§ 20-305. Coercing dealer to accept commodities not ordered; threatening to cancel franchise; preventing transfer of ownership; granting additional franchises; terminating franchises without good cause; preventing family succession.**

It shall be unlawful for any manufacturer, factory branch, distributor, or distributor branch, or any field representative, officer, agent, or any representative whatsoever of any of them:

...

(30) To vary the price charged to any of its franchised new motor vehicle dealers located in this State for new motor vehicles based on the dealer's purchase of new facilities, supplies, tools, equipment, or other merchandise from the manufacturer, the dealer's relocation, remodeling, repair, or renovation of existing dealerships or construction of a new facility, the dealer's participation in training programs sponsored, endorsed, or recommended by the manufacturer, whether or not the dealer is dualed with one or more other line makes of new motor vehicles, or the dealer's sales penetration. Except as provided in this subdivision, it shall be unlawful for any manufacturer, factory branch, distributor, or distributor branch, or any field representative, officer, agent, or any representative whatsoever of any of them to vary the price charged to any of its franchised new motor vehicle dealers located in this State for new motor vehicles based on the dealer's sales volume, the dealer's level of sales or customer service satisfaction, the dealer's purchase of advertising materials, signage, nondiagnostic computer hardware or software, communications devices, or furnishings, or the dealer's participation in used motor vehicle inspection or certification programs sponsored or endorsed by the manufacturer.

The price of the vehicle, for purposes of this subdivision shall include the manufacturer's use of rebates, credits, or other consideration that has the effect of causing a variance in the price of new motor vehicles offered to its franchised dealers located in the State.

Notwithstanding the foregoing, nothing in this subdivision shall be deemed to preclude a manufacturer from establishing sales contests or promotions that provide or award dealers or consumers rebates or incentives; provided, however, that the manufacturer complies with all of the following conditions:

a. With respect to manufacturer to consumer rebates and incentives, the manufacturer's criteria for determining eligibility shall:

1. Permit all of the manufacturer's franchised new motor vehicle dealers in this State to offer the rebate or incentive; and
2. Be uniformly applied and administered to all eligible consumers.

b. With respect to manufacturer to dealer rebates and incentives, the rebate or incentive program shall:

1. Be based solely on the dealer's actual or reasonably anticipated sales volume or on a uniform per vehicle sold or leased basis;
2. Be uniformly available, applied, and administered to all of the manufacturer's franchised new motor vehicle dealers in this State; and
3. Provide that any of the manufacturer's franchised new motor vehicle dealers in this State may, upon written request, obtain the method or formula used by the manufacturer in establishing the sales volumes for receiving the rebates or incentives and the specific calculations for determining the required sales volumes of the inquiring dealer and any of the manufacturer's other franchised new motor vehicle dealers located within 75 miles of the inquiring dealer.

Nothing contained in this subdivision shall prohibit a manufacturer from providing assistance or encouragement to a franchised dealer to remodel, renovate, recondition, or relocate the dealer's existing facilities, provided that this assistance, encouragement, or rewards are not determined on a per vehicle basis.

It is unlawful for any manufacturer to charge or include the cost of any program or policy prohibited under this subdivision in the price of new motor vehicles that the manufacturer sells to its franchised dealers or purchasers located in this State.

In the event that as of October 1, 1999, a manufacturer was operating a program that varied the price charged to its franchised dealers in this State in a manner that would violate this subdivision, or had in effect a documented policy that had been conveyed to its franchised dealers in this State and that varied the price charged to its franchised dealers in this State in a manner that would violate this subdivision, it shall be lawful for that program or policy, including amendments to that program or policy that are consistent with the purpose and provisions of the existing program or policy, or a program or policy similar thereto implemented after October 1, 1999, to continue in effect as to the manufacturer's franchised dealers located in this State until June 30, ~~2014.~~2018.

In the event that as of June 30, 2001, a manufacturer was operating a program that varied the price charged to its franchised dealers in this State in a manner that would violate this subdivision, or had in effect a documented policy that had been conveyed to its franchised dealers in this State and that varied the price charged to its franchised dealers in this State in a manner that would violate this subdivision, and the program or policy was implemented in this State subsequent to October 1, 1999, and prior to June 30, 2001, and provided that the program or policy is in compliance with this subdivision as it existed as of June 30, 2001, it shall be lawful for that program or policy, including amendments to that program or policy that comply with this subdivision as it existed as of June 30, 2001, to continue in

effect as to the manufacturer's franchised dealers located in this State until June 30, ~~2014~~2018.

Any manufacturer shall be required to pay or otherwise compensate any franchise dealer who has earned the right to receive payment or other compensation under a program in accordance with the manufacturer's program or policy.

The provisions of this subdivision shall not be applicable to multiple or repeated sales of new motor vehicles made by a new motor vehicle dealer to a single purchaser under a bona fide fleet sales policy of a manufacturer, factory branch, distributor, or distributor branch.

...

(44) Notwithstanding the terms, provisions, or conditions of any agreement or franchise, to require, coerce, or attempt to coerce any new motor vehicle dealer located in this State to refrain from displaying in the dealer's showroom or elsewhere within the dealership facility any sports-related honors, awards, photographs, displays, or other artifacts or memorabilia; provided however that such sports-related honors, awards, photographs, displays, or other artifacts or memorabilia: (i) pertain to an owner, investor, or executive manager of the dealership; (ii) relate to professional sports; (iii) do not reference or advertise a competing brand of motor vehicles; and (iv) do not conceal or disparage any of the required branding elements which are part of the dealership facility.

(45) Nothwithstanding the terms, provisions, or conditions of any agreement or franchise, to discriminate against a new motor vehicle dealer located in this State for selling or offering for sale a service contract, debt cancellation agreement, maintenance agreement, or similar product not approved, endorsed, sponsored, or offered by the manufacturer, distributor, affiliate, or captive finance source. For purposes of this subdivision, discrimination includes any of the following:

a. Requiring or coercing a dealer to exclusively sell or offer for sale service contracts, debt cancellation agreements, or similar products approved, endorsed, sponsored, or offered by the manufacturer, distributor, affiliate, or captive finance source.

b. Taking or threatening to take any adverse action against a dealer (i) because the dealer sells or offers for sale any service contracts, debt cancellation agreements, maintenance agreements, or similar products that have not been approved, endorsed, sponsored, or offered by the manufacturer, distributor, affiliate or captive finance source or (ii) because the dealer fails to sell or offer for sale service contracts, debt cancellation agreements, maintenance agreements, or similar products approved, endorsed, sponsored, or offered by the manufacturer, distributor, their affiliate, or captive finance source.

c. Measuring a dealer's performance under a franchise in any part based upon the dealer's sale of service contracts, debt cancellation agreements, or similar products approved, endorsed, sponsored, or offered by the manufacturer, distributor, affiliate, or captive finance source.

d. Requiring a dealer to promote the sale of service contracts, debt cancellation agreements, or similar products approved, endorsed, sponsored, or offered by the manufacturer, distributor, affiliate, or captive finance source.

e. Considering the dealer's sale of service contracts, debt cancellation agreements, or similar products approved, endorsed, sponsored, or offered by the manufacturer, distributor, affiliate, or captive finance source in determining any of the following:

1. The dealer's eligibility to purchase any vehicles, parts, or other products or services from the manufacturer or distributor.
2. The volume of vehicles or other parts or services the dealer shall be eligible to purchase from the manufacturer or distributor.
3. The price or prices of any vehicles, parts, or other products or services that the dealer shall be eligible to purchase from the manufacturer or distributor.
4. The availability or amount of any vehicle discount, credit, special pricing, rebate, or sales or service incentive the dealer shall be eligible to receive from the manufacturer, distributor, affiliate, or captive finance source in which the incentives are calculated or paid on a per vehicle basis or any vehicle discount, credit, special pricing, or rebate that are calculated or paid on a per vehicle basis.

For purposes of this subdivision, discrimination does not include, and nothing shall prohibit a manufacturer, distributor, affiliate, or captive finance source from, offering discounts, rebates, or other incentives to dealers who voluntarily sell or offer for sale service contracts, debt cancellation agreements, or similar products approved, endorsed, sponsored, or offered by the manufacturer, distributor, affiliate, or captive finance source; provided, however, that such discounts, rebates, or other incentives are based solely on the sales volume of the service contracts, debt cancellation agreements, or similar products sold by the dealer and do not provide vehicle sales or service incentives.

For purposes of this subdivision, a service contract provider or its representative shall not complete any sale or transaction of an extended service contract, extended maintenance plan, or similar product using contract forms that do not disclose the identity of the service contract provider.

(46) To require, coerce, or attempt to coerce a dealer located in this State to purchase goods or services of any nature from a vendor selected, identified, or designated by a manufacturer, distributor, affiliate, or captive finance source when the dealer may obtain goods or services of substantially similar quality and design from a vendor selected by the dealer, provided the dealer obtains prior approval from the manufacturer, distributor, affiliate, or captive finance source, for the use of the dealer's selected vendor. Such approval by the manufacturer, distributor, affiliate, or captive finance source, may not be unreasonably withheld. For purposes of this subdivision, the term "goods" does not include moveable displays, brochures, and promotional materials containing material subject to the intellectual property rights of a manufacturer or distributor, or special tools as reasonably required by the manufacturer, or parts to be used in repairs under warranty obligations of a manufacturer or distributor. If the manufacturer, distributor, affiliate, or captive finance source claims that a vendor chosen by the dealer cannot supply goods and services of substantially similar quality and design, the

dealer may file a protest with the Commissioner. When a protest is filed, the Commissioner shall promptly inform the manufacturer, distributor, affiliate, or captive finance source that a protest has been filed. The Commissioner shall conduct a hearing on the merits of the protest within 90 days following the filing of a response to the protest. The manufacturer, distributor, affiliate, or captive finance source shall bear the burden of proving that the goods or services chosen by the dealer are not of substantially similar quality and design to those required by the manufacturer, distributor, affiliate, or captive finance source.

(47) To fail to provide to a dealer, if the goods or services to be supplied to the dealer by a vendor selected, identified, or designated by the manufacturer or distributor are signs or other franchisor image elements to be purchased or leased to the dealer, the right to purchase or lease the signs or other franchisor image elements of similar quality and design from a vendor selected by the dealer. This subdivision and subdivision (46) of this section shall not be construed to allow a dealer or vendor to violate directly or indirectly the intellectual property rights of the manufacturer or distributor, including but not limited to the manufacturer's or distributor's intellectual property rights in any trademarks or trade dress, or other intellectual property interests owned or controlled by the manufacturer or distributor, or to permit a dealer to erect or maintain signs that do not conform to the reasonable intellectual property right or trademark and trade dress usage guidelines of the manufacturer or distributor.

(48) To unreasonably interfere with a dealer's independence in staffing the dealership by engaging in any of the following conduct: (i) requiring, coercing, or attempting to coerce a dealer located in this State to employ, appoint, or designate an individual to serve full-time or exclusively in any specific capacity, role, or job function at the dealership, other than the employment or appointment of a full-time general manager; (ii) requiring a dealer to employ, appoint, or designate an individual to serve full-time or exclusively in any specific capacity, role, or job function at the dealership, other than the employment or appointment of a full-time general manager, in order to participate in or qualify for any incentive program offered or sponsored by the manufacturer or distributor or to otherwise receive any discounts, credits, rebates, or incentives of any kind that are calculated or paid on a per vehicle basis; or (iii) requiring that the dealer obtain the approval of the manufacturer or distributor prior to employing or appointing any individual in any capacity, role, or job function at the dealership, other than the employment or appointment of a full-time general manager. Except as expressly provided above, nothing contained in this subdivision shall be deemed to prevent or prohibit a manufacturer or distributor from requiring that a dealer employ a reasonable number of trained employees to sell and service the factory's vehicles."

SECTION 4. G.S. 20-305.2 is amended by adding a new subsection to read:

"(e) For purposes of this section, an unfair method of competition includes any physical or mechanical warranty repair made or provided directly by a manufacturer or distributor to any motor vehicle located within this State requiring the direct participation of a dealer franchised by the manufacturer or distributor and without such dealer receiving reasonable compensation, equal to an amount no less than the amount provided in G.S. 20-305.1.

(f) No claim or cause of action may be brought against a dealer in this State arising out of any warranty repair, fix, repair, or update that was provided by the manufacturer or

distributor without the direct involvement and participation of the dealer. Any manufacturer or distributor that provides or attempts to provide a warranty repair, fix, repair, update, or adjustment directly to any motor vehicle located within this State without the direct participation of a dealer franchised by the manufacturer or distributor shall fully indemnify and hold harmless any dealer located in this State for all claims, demands, judgments, damages, attorney's fees, litigation expenses, and all other costs and expenses incurred by the dealer arising out of the actual or attempted warranty repair, fix, repair, update, or adjustment."

SECTION 5. G.S. 20-305.7 reads as rewritten:

"**§ 20-305.7. Protecting dealership data and consent to access dealership information.**

...

(f) The following definitions apply to this section:

(1) "Dealer management computer system" – A computer hardware and software system that is owned or leased by the dealer, including a dealer's use of Web applications, software, or hardware, whether located at the dealership or provided at a remote location and that provides access to customer records and transactions by a motor vehicle dealer located in this State and that allows such motor vehicle dealer timely information in order to sell vehicles, parts or services through such motor vehicle dealership.

(2) "Dealer management computer system vendor" – A seller or reseller of dealer management computer ~~systems (but~~systems, a person that sells computer software for use on dealer management computer systems, or a person who services or maintains dealer management computer systems, but only to the extent that ~~such person is~~each of the sellers, resellers, or other persons listed in this subdivision are engaged in such ~~activities).~~activities.

(3) "Security breach" – An incident of unauthorized access to and acquisition of records or data containing dealership or dealership customer information where unauthorized use of the dealership or dealership customer information has occurred or is reasonably likely to occur or that creates a material risk of harm to a dealership or a dealership's customer. Any incident of unauthorized access to and acquisition of records or data containing dealership or dealership customer information, or any incident of disclosure of dealership customer information to one or more third parties which shall not have been specifically authorized by the dealer or customer, shall constitute a security breach.

(g1) Notwithstanding any of the terms or provisions contained in this section or in any consent, authorization, release, novation, franchise, or other contract or agreement, whenever any manufacturer, factory branch, distributor, distributor branch, dealer management computer system vendor, or any third party acting on behalf of or ~~through~~through, or approved, referred, endorsed, authorized, certified, granted preferred status, or recommended by, any manufacturer, factory branch, distributor, distributor branch, or dealer management computer system vendor requires that a new motor vehicle dealer provide any dealer, consumer, or customer data or information through direct access to a dealer's computer system, the dealer is not required to provide, and may not be required to consent to provide in any written agreement, such direct access to its computer system. The dealer may instead provide the same dealer, consumer, or customer data or information specified by the requesting party by timely obtaining and pushing or otherwise furnishing the requested data to the requesting party in a widely accepted file format such as comma delimited; provided that, when a dealer would otherwise be required to provide direct access to its computer system under the terms of a consent, authorization, release, novation, franchise, or other contract or agreement, a dealer that elects to provide data or information through other means may be charged a reasonable initial set-up fee and a reasonable processing fee based on the actual incremental costs incurred by the party

requesting the data for establishing and implementing the process for the dealer. Any term or provision contained in any consent, authorization, release, novation, franchise, or other contract or agreement which is inconsistent with any term or provision contained in this subsection shall be voidable at the option of the dealer.

(g2) Notwithstanding the terms or conditions of any consent, authorization, release, novation, franchise, or other contract or agreement, every manufacturer, factory branch, distributor, distributor branch, dealer management computer system vendor, or any third party acting on behalf of or through any manufacturer, factory branch, distributor, distributor branch, or dealer management computer system vendor, having electronic access to consumer or customer data or other information in a computer system utilized by a new motor vehicle dealer, or who has otherwise been provided consumer or customer data or information by the dealer, shall fully indemnify and hold harmless any dealer from whom it has acquired such consumer or customer data or other information from all damages, costs, and expenses incurred by such ~~dealer, including,~~ dealer. Such indemnification by the manufacturer, factory branch, distributor, distributor branch, dealer management computer system vendor, or third party acting on behalf of these entities, includes but is not limited to, judgments, settlements, fines, penalties, litigation costs, defense costs, court costs, costs related to the disclosure of security breaches, and attorneys' fees arising out of complaints, claims, civil or administrative actions, and, to the fullest extent allowable under the law, governmental investigations and prosecutions to the extent caused by a security breach or the access, storage, maintenance, use, sharing, disclosure, or retention of such dealer's consumer or customer data or other ~~information~~information, or maintenance or services provided to any computer system utilized by a new motor vehicle dealer. ~~by the manufacturer, factory branch, distributor, distributor branch, dealer management computer system vendor, or third party acting on behalf of or through such manufacturer, factory branch, distributor, distributor branch, or dealer management computer system vendor.~~

...."

SECTION 6. G.S. 20-305.1 reads as rewritten:

"**§ 20-305.1. Automobile dealer warranty obligations.**

(a) Each motor vehicle manufacturer, factory branch, distributor or distributor branch, shall specify in writing to each of its motor vehicle dealers licensed in this State the dealer's obligations for preparation, delivery and warranty service on its products, the schedule of compensation to be paid such dealers for parts, work, and service in connection with warranty service, and the time allowances for the performance of such work and service. In no event shall such schedule of compensation fail to include reasonable compensation for diagnostic work and associated administrative requirements as well as repair service and labor. Time allowances for the performance of warranty work and service shall be reasonable and adequate for the work to be performed. The compensation which must be paid under this section must be reasonable, provided, however, that under no circumstances may the reasonable compensation under this section be in an amount less than the dealer's current retail labor rate and the amount charged to retail customers for the manufacturer's or distributor's original parts for nonwarranty work of like kind, provided such amount is competitive with the retail rates charged for parts and labor by other franchised dealers within the dealer's market.

(a1) The retail rate customarily charged by the dealer for parts and labor may be established at the election of the dealer by the dealer submitting to the manufacturer or distributor 100 sequential nonwarranty customer-paid service repair orders which contain warranty-like parts, or 60 consecutive days of nonwarranty customer-paid service repair orders which contain warranty-like parts, whichever is less, covering repairs made no more than 180 days before the submission and declaring the average percentage markup. The average of the parts markup rate and the average labor rate shall both be presumed to be ~~fair and~~ reasonable, however, a manufacturer or distributor may, not later than 30 days after submission, rebut that

presumption by reasonably substantiating that the rate is unfair and unreasonable in light of the ~~practices of~~retail rates charged for parts and labor by all other franchised motor vehicle dealers in the dealer's market offering the same line-make vehicles. In the event there are no other franchised dealers offering the same line-make of vehicle in the dealer's market, the manufacturer or distributor may compare the dealer's retail rate for parts and labor with the ~~practices of~~retail rates charged for parts and labor by other franchised dealers who are selling competing line-makes of vehicles within the dealer's market. The retail rate and the average labor rate shall go into effect 30 days following the manufacturer's approval, but in no event later than 60 days following the declaration, subject to audit of the submitted repair orders by the manufacturer or distributor and a rebuttal of the declared rate as described above. If the declared rate is rebutted, the manufacturer or distributor shall propose an adjustment of the average percentage markup based on that rebuttal not later than 30 days after such audit, but in no event later than 60 days after submission. If the dealer does not agree with the proposed average percentage markup, the dealer may file a protest with the Commissioner not later than 30 days after receipt of that proposal by the manufacturer or distributor. If such a protest is filed, the Commissioner shall inform the manufacturer or distributor that a timely protest has been filed and that a hearing will be held on such protest. In any hearing held pursuant to this subsection, the manufacturer or distributor shall have the burden of proving by a preponderance of the evidence that the rate declared by the dealer was ~~unfair and~~ unreasonable as described in this subsection and that the proposed adjustment of the average percentage markup is ~~fair and~~ reasonable pursuant to the provisions of this subsection. If the dealer prevails at a protest hearing, the dealer's proposed rate, affirmed at the hearing, shall be effective as of 60 days after the date of the dealer's initial submission of the customer-paid service orders to the manufacturer or distributor. If the manufacturer or distributor prevails at a protest hearing, the rate proposed by the manufacturer or distributor, which was affirmed at the hearing, shall be effective beginning 30 days following issuance of the final order.

(a2) In calculating the retail rate customarily charged by the dealer for parts and labor, the following work shall not be included in the calculation:

(1) Repairs for manufacturer or distributor special events, specials, or promotional discounts for retail customer ~~repairs;~~repairs.

(2) Parts sold at wholesale or at reduced or specially negotiated rates for insurance ~~repairs;~~repairs.

(3) Engine ~~assemblies and transmission assemblies;~~assemblies.

(4) Routine maintenance not covered under warranty, such as fluids, filters, and belts not provided in the course of ~~repairs;~~repairs.

(5) Nuts, bolts, fasteners, and similar items that do not have an individual part ~~number;~~number.

(6) ~~Tires; and~~Tires.

(7) Vehicle reconditioning.

(8) Batteries and light bulbs.

...."

SECTION 7. The terms and provisions of this act shall be applicable to all current and future franchises and other agreements in existence between any new motor vehicle dealer located in this State and a manufacturer or distributor as of the effective date of this act.

SECTION 8. 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 9. This act is effective when it becomes law.

SENATE BILL 327:
Clarify Motor Vehicle Licensing Law

2013-2014 General Assembly

Committee:	Senate Commerce	**Date:**	May 9, 2013
Introduced by:	Sen. Apodaca	**Prepared by:**	Wendy Graf Ray
Analysis of:	PCS to First Edition S327-CSSU-23		Committee Counsel

SUMMARY: ***The PCS for Senate Bill 327 makes changes to the Motor Vehicle Dealers and Manufacturers Licensing Law.***

CURRENT LAW AND BILL ANALYSIS: Article 12 of Chapter 20 of the General Statutes provides for regulation and licensing of motor vehicle manufacturers, distributors, dealers, salesmen, and their representatives doing business in North Carolina. The PCS for Senate Bill 327 makes the following changes to those provisions:

Section 1 amends the definition of motor vehicle dealer to include a person who engages in any of the activities that fall under the current definition of dealer using a computer or other communications facilities, hardware, or equipment at any location in the State for the purpose of transmitting applications, contracts, or orders for motor vehicles.

Section 2 specifically incorporates the new definition of dealer from *section 1* of the bill into the existing requirement that a dealer may only sell motor vehicles at retail at an established salesroom.

Section 3 amends G.S. 20-305, which makes certain acts unlawful for any manufacturer, factory branch, distributor, or distributor branch, or any field representative, officer, agent, or any representative of any of them. This section amends the statute as follows:

- Pushes back the date until which certain incentive programs can be continued in effect from 2014 to 2018.
- Adds a subdivision prohibiting a manufacturer from coercing a dealer to refrain from displaying sports-related awards, photographs, memorabilia, etc. in the dealership facility.
- Adds a subdivision prohibiting a manufacturer from discriminating against a dealer for selling a service contract, debt cancellation agreement, maintenance agreement, or similar product not sponsored by the manufacturer.
- Adds a subdivision prohibiting a manufacturer from coercing a dealer to purchase goods and services from a vendor chosen by the manufacturer when the dealer may obtain goods and services of a substantially similar quality and design from a vendor selected by the dealer.
- Adds a subdivision prohibiting a manufacturer from failing to provide a dealer the right to purchase or lease signs or other franchise image elements from a vendor chosen by the dealer rather than the manufacturer.
- Adds a subdivision prohibiting a manufacturer from unreasonably interfering with a dealer's independence in staffing the dealership.

Section 4 makes it an unfair method of competition for a manufacturer to directly provide a warranty repair to a vehicle that requires participation of a dealer franchised by the manufacturer and without the

dealer receiving reasonable compensation for the repair. No claim or cause of action could be brought against a dealer arising out of a repair provided by the manufacturer without the involvement of the dealer.

Section 5 amends the statute dealing with access to dealership information. This section amends the definition of "dealer management computer system vendor" to include a person that sells computer software for use on systems or a person who services or maintains systems (in addition to sellers or resellers of the systems themselves, which is in the current law.) This section also adds clarifying language related to third parties requesting information and damages for which the dealer shall be held harmless.

Section 6 amends the statute dealing with reasonable compensation of dealers by manufacturers for performance of warranty work and service. This section clarifies that in comparing labor rates with other franchised dealers in the market, the amount should be competitive with the "retail rates charged for parts and labor" by those other franchised dealers.

If a rate is protested with the Commissioner and a hearing is held, at which a reasonable rate is determined, then this section specifies that the rate shall be effective 60 days after the date of the dealer's initial submission of its service orders to the manufacturer if the dealer prevails, and 30 days after issuance of the final order if the manufacturer prevails. This section also provides that batteries and light bulbs shall not be included in calculating the retail rate customarily charged by the dealer for parts and labor.

Section 7 provides that the terms and provisions of the bill are applicable to all current and future franchises and other agreements.

Section 8 provides that, if any provision of the act is found to be invalid, the remainder of the act would still be valid to the extent that it could be given effect without the invalid provisions.

EFFECTIVE DATE: The act is effective when it becomes law

SENATE BILL 403

Short Title:	Amend Uniform Prudent Investor Act.	(Public)
Sponsors:	Senator Bingham (Primary Sponsor).	
Referred to:	Commerce.	

March 26, 2013

A BILL TO BE ENTITLED

AN ACT TO AMEND THE UNIFORM PRUDENT INVESTOR ACT AND TO MAKE CONFORMING CHANGES TO THE LAWS REGULATING CEMETERIES AND THE PRACTICE OF FUNERAL SERVICE AS RELATED TO TRUST FUNDS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 36C-9-901(d)(1) reads as rewritten:

"(d) This Article does not apply to:

(1) Unless the trust provides otherwise by specific reference to this Article:

a. Trusts under any federal employee retirement income security statute or other retirement or pension trusts;

~~b. Trusts that are created by legislative act;~~

c. Trusts that are created by or under premarital or postmarital agreements, divorce settlements, settlements of other proceedings or disputes;

d. Transfers under a Uniform Transfers to Minors Act;

e. Transfers under a Uniform Custodial Trust Act; or

f. Honorary trusts; trusts for pets, and trusts for cemetery lots."

SECTION 2. G.S. 65-60.1(e) reads as rewritten:

"(e) Any trustee shall invest and reinvest cemetery trust funds ~~in the same manner as provided by law for the investment of trust funds by the clerk of the superior court; provided, however, that this subsection does not apply to a perpetual trust fund described in G.S. 65-64 or cemetery trust funds held in a fund designated as Trust Fund "A" pursuant to G.S. 65-64(e), which may be invested and reinvested~~ in accordance with G.S. 32-71."

SECTION 3. G.S. 90-210.61(a)(1) reads as rewritten:

"(a) Preneed funeral funds are subject to the provisions of this Article and shall be deposited or applied as follows:

(1) If the preneed funeral contract purchaser chooses to fund the preneed funeral contract by a trust deposit or deposits, the preneed licensee shall deposit all funds in ~~an insured account in a financial institution, in trust, in the preneed licensee's name as trustee within five business days.~~accordance with G.S. 32-71 within 30 days from the end of the calendar month in which payment is received. The preneed licensee, at the time of making the ~~deposit as trustee,~~deposit, shall furnish to the ~~financial institution~~trustee the name of each preneed funeral contract purchaser and the amount of payment on each for which the deposit is being made. The preneed licensee may establish an individual trust fund for each preneed funeral contract or a ~~common trust~~

~~fund~~trust account for all preneed funeral contracts. ~~The trust accounts shall be carried in the name of the preneed licensee as trustee, but accounting~~Accounting records shall be maintained for each individual preneed funeral contract purchaser showing the amounts deposited and invested, and interest, dividends, increases, and accretions earned. Except as provided in this Article, all interest, dividends, increases, decreases, expenses, taxes, or accretions earned by the funds shall remain with the ~~principal.~~trust account. The trust fund may be charged with applicable taxes and ~~for reasonable charges paid by the trustee to itself or others for the preparation of fiduciary tax returns.~~fees. Penalties charged by a financial institution for early withdrawals caused by a transfer pursuant to G.S. 90-210.63 shall be paid by the preneed licensee. Penalties charged as a result of other early withdrawals as permitted by this Article shall be paid from the trust fund, and the financial institution shall give the preneed funeral contract purchaser prompt notice of these penalties."

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

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

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SENATE BILL 403
PROPOSED COMMITTEE SUBSTITUTE S403-CSSU-24 [v.1]

5/8/2013 3:29:03 PM

Short Title: Amend Uniform Prudent Investor Act. (Public)

Sponsors:

Referred to:

March 26, 2013

A BILL TO BE ENTITLED

AN ACT TO AMEND THE LAWS REGULATING INVESTMENTS OF CEMETERIES AND PRE-NEED FUNERAL FUNDS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 65-60.1(e) reads as rewritten:

"(e) Any trustee shall invest and reinvest cemetery trust funds ~~in the same manner as provided by law for the investment of trust funds by the clerk of the superior court; provided, however, that this subsection does not apply to a perpetual trust fund described in G.S. 65-64 or cemetery trust funds held in a fund designated as Trust Fund "A" pursuant to G.S. 65-64(e), which may be invested and reinvested~~ in accordance with ~~G.S. 32-71.~~Article 9 of Chapter 36C of the General Statutes."

SECTION 2. G.S. 90-210.61(a)(1) reads as rewritten:

"(a) Preneed funeral funds are subject to the provisions of this Article and shall be deposited or applied as follows:

(1) If the preneed funeral contract purchaser chooses to fund the preneed funeral contract by a trust deposit or deposits, the preneed licensee shall deposit all preneed funeral funds with ~~in an insured account in~~ a financial institution, in trust, in the preneed licensee's name as trustee ~~within five business days.~~and invest and reinvest funds in accordance with Article 9 of Chapter 36C of the General Statutes. The preneed licensee, at the time of making the deposit as trustee, shall furnish to the financial institution the name of each preneed funeral contract purchaser and the amount of payment on each for which the deposit is being made. The preneed licensee may establish an individual trust fund for each preneed funeral ~~contract~~ contract, but also is specifically authorized to establish commingled trust accounts for investment and reinvestment of preneed funeral funds of multiple preneed funeral contracts. ~~or a common trust fund for all preneed funeral contracts.~~ The trust accounts shall be carried in the name of the preneed licensee as trustee, but in all cases, accounting records shall be maintained for each individual preneed funeral contract purchaser showing the amounts deposited and invested, and interest, dividends, increases, ~~and accretions earned.~~accretions, decreases, and the taxes and expenses which may be charged under this subdivision. Except as provided in this Article, all interest, dividends, increases, or accretions earned by the funds shall remain ~~with the principal.~~in the trust account. The trust fund may be charged with applicable taxes and for reasonable charges paid by the trustee to itself or others for the preparation

of fiduciary tax returns. Penalties charged by a financial institution for early withdrawals caused by a transfer pursuant to G.S. 90-210.63 shall be paid by the preneed licensee. Penalties charged as a result of other early withdrawals as permitted by this Article shall be paid from the trust fund, and the financial institution shall give the preneed funeral contract purchaser prompt notice of these penalties."

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

SENATE BILL 403:
Amend Uniform Prudent Investor Act

2013-2014 General Assembly

Committee:	Senate Commerce	**Date:**	May 9, 2013
Introduced by:	Sen. Bingham	**Prepared by:**	Wendy Graf Ray
Analysis of:	PCS to First Edition S403-CSSU-24		Committee Counsel

SUMMARY: ***The PCS for Senate Bill 403 would amend the law to allow trustees of cemetery trust funds and preneed funeral funds to invest those funds in accordance with the Uniform Prudent Investor Act.***

CURRENT LAW: Currently, a trustee must invest and reinvest cemetery trust funds in the same manner as provided for investment of trust funds by the clerk of superior court. Under G.S. 7A-112, the clerk is limited to investing in obligations of the United States, the State of North Carolina, or North Carolina cities or counties, or in shares of a building and loan or savings and loan association or certificates of deposit. Perpetual trust funds may be invested in accordance with G.S. 32-71, which provides for a standard of care which an ordinarily prudent person of discretion and intelligence would observe as a fiduciary of the property of others. Preneed funeral funds must be deposited in an insured account in a financial institution in trust.

BILL ANALYSIS: The PCS for Senate bill 403 would allow trustees of cemetery trust funds and preneed funeral funds to invest and reinvest those funds in accordance with the Uniform Prudent Investor Act (see below).

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

Article 9.
Uniform Prudent Investor Act.

§ 36C-9-901. Prudent investor rule; applicability.

(a) Except as otherwise provided in subsection (b) of this section, a trustee who invests and manages trust assets owes a duty to the beneficiaries of the trust to comply with the prudent investor rule set forth in this Article.

(b) The prudent investor rule is a default rule and may be expanded, restricted, eliminated, or otherwise altered by the provisions of a trust that govern or direct investments in a manner inconsistent with this Article. A trustee is not liable to a beneficiary to the extent that the trustee acted in reasonable reliance on the terms of the trust.

(c) The following terms or comparable language in a trust, unless otherwise limited or modified, authorize any investment or strategy permitted under this Article: "Chapter 36A", "investments in accordance with Article 15 of Chapter 36A", "investments in accordance with Article 9 of Chapter 36C", "investments permissible by law for investment of trust funds", "legal investments", "authorized investments", "using the judgment and care under the circumstances then prevailing that persons of prudence, discretion, and intelligence exercise in the management of their own affairs, not in regard to speculation but in regard to the permanent disposition of their funds, considering the probable income as well as the probable safety of their capital", "prudent man rule", "prudent trustee rule", "prudent person rule", and "prudent investor rule". This Article also applies where a trust contains no investment standard.

(d) This Article does not apply to:

(1) Unless the trust provides otherwise by specific reference to this Article:

a. Trusts under any federal employee retirement income security statute or other retirement or pension trusts;

b. Trusts that are created by legislative act;

c. Trusts that are created by or under premarital or postmarital agreements, divorce settlements, settlements of other proceedings or disputes;

d. Transfers under a Uniform Transfers to Minors Act;

e. Transfers under a Uniform Custodial Trust Act; or
f. Honorary trusts, trusts for pets, and trusts for cemetery lots.

(2) Trusts imposed or required under another Chapter of the General Statutes or by rule in which the investment of the trust funds is regulated by the other Chapter or by rule, unless a provision of the other chapter or the rule provides otherwise by a specific reference to this Article.

§ 36C-9-902. Standard of care; portfolio strategy; risk and return objectives.

(a) A trustee shall invest and manage trust assets as a prudent investor would, by considering the purposes, terms, distribution requirements, and other circumstances of the trust. In satisfying this standard, the trustee shall exercise reasonable care, skill, and caution.

(b) A trustee's investment and management decisions respecting individual assets must be evaluated not in isolation but in the context of the trust portfolio as a whole and as a part of an overall investment strategy having risk and return objectives reasonably suited to the trust.

(c) Among circumstances that a trustee shall consider in investing and managing trust assets are any of the following that are relevant to the trust or its beneficiaries:

(1) General economic conditions;
(2) The possible effect of inflation or deflation;
(3) The expected tax consequences of investment decisions or strategies;
(4) The role that each investment or course of action plays within the overall trust portfolio, which may include financial assets, interests in closely held enterprises, tangible and intangible personal property, and real property;
(5) The expected total return from income and the appreciation of capital;
(6) Other resources of the beneficiaries known to the trustee;
(7) Needs for liquidity, regularity of income, and preservation or appreciation of capital; and
(8) An asset's special relationship or special value, if any, to the purposes of the trust or to one or more of the beneficiaries.

(d) A trustee shall make a reasonable effort to verify facts relevant to the investment and management of trust assets.

(e) A trustee may invest in any kind of property or type of investment consistent with the standards of this Article.

§ 36C-9-903. Diversification.

A trustee shall diversify the investments of the trust unless the trustee reasonably determines that, because of special circumstances, the purposes of the trust are better served without diversifying.

§ 36C-9-903.1. Duties as to life insurance.

(a) Notwithstanding the provisions of this Article, the duties of a trustee with respect to acquiring or retaining a contract of insurance upon the life of the settlor, or the lives of the settlor and the settlor's spouse, do not include a duty (i) to determine whether any such contract is or remains a proper investment; (ii) to exercise policy options, including investment options, available under any such contract; or (iii) to diversify any such contract. A trustee is not liable to the beneficiaries of the trust or to any party for any loss arising from the absence of those duties upon the trustee.

(b) The trustee of a trust described under subsection (a) of this section established prior to October 1, 1995, shall notify the settlor in writing that, unless the settlor provides written notice to the contrary to the trustee within 60 days of the trustee's notice, the provisions of subsection (a) of this section shall apply to the trust. Subsection (a) of this section shall not apply if, within 60 days of the trustee's notice, the settlor notifies the trustee that subsection (a) of this section shall not apply.

§ 36C-9-904. Duties at inception of trusteeship.

Within a reasonable time after accepting a trusteeship or receiving trust assets, a trustee shall review the trust assets and make and implement decisions concerning the retention and disposition of assets in order to bring the trust portfolio into compliance with the purposes, terms, distribution requirements, and other circumstances of the trust, and with the requirements of this Chapter.

§ 36C-9-905. Reviewing compliance.

Compliance with the prudent investor rule is determined in light of the facts and circumstances existing at the time of a trustee's decision or action and not by hindsight.

§ 36C-9-906. Effect on charitable remainder trusts.

Nothing in this Article shall prevent the application of Article 4B of this Chapter to a "charitable remainder trust" as defined in G.S. 36C-4B-3(1).

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

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SENATE BILL 407

Short Title:	Electronic Vehicle Lien/Title.	(Public)
Sponsors:	Senators Brunstetter, Rabon (Primary Sponsors); and Clark.	
Referred to:	Transportation.	

March 26, 2013

A BILL TO BE ENTITLED

AN ACT TO REQUIRE THE DIVISION OF MOTOR VEHICLES TO IMPLEMENT A STATEWIDE ELECTRONIC LIEN SYSTEM TO PROCESS THE NOTIFICATION AND RELEASE OF SECURITY INTEREST AND CERTIFICATE OF TITLE DATA.

The General Assembly of North Carolina enacts:

SECTION 1. Article 3 of Chapter 20 of the General Statutes is amended by adding a new section to read:

"**§ 20-58.4A. Electronic lien system.**

(a) Implementation. – By no later than July 1, 2014, the Division shall implement a statewide electronic lien system to process the notification, release, and maintenance of security interests and certificate of title data where a lien is notated, through electronic means instead of paper documents otherwise required by this Chapter. The Division shall contract with a qualified vendor to implement this statewide electronic lien system.

(b) Minimum Standards for Vendor. – When contracting with a qualified vendor to implement the system required in subsection (a) of this section, the Division shall set the following minimum standards:

(1) The contract entered into with a vendor shall include no costs or charges payable by the Division to the vendor. The vendor shall reimburse the Division for documented reasonable implementation costs directly associated with the establishment and ongoing support of the statewide electronic lien system.

(2) Upon implementation of the electronic lien system pursuant to subsection (a) of this section, the qualified vendor may charge participating lienholders and their agents a per-transaction fee in an amount not to exceed eight dollars ($8.00) for costs associated with the administration of the electronic lien system. To recover the cost of this per-transaction fee, participating lienholders and their agents may charge the borrower of a motor vehicle loan or the lessee of an automotive lease a fee in an amount not to exceed eight dollars ($8.00) for each electronic transaction where a lien is notated.

(3) A qualified vendor shall have experience in directly providing electronic lien services to both lienholders and State motor vehicle departments or agencies.

(c) Mandatory Participation. – Beginning July 1, 2015, all individuals and lienholders who are normally engaged in the business or practice of financing motor vehicles shall utilize the electronic lien system implemented in subsection (a) of this section to record information concerning the perfection and release of a security interest in a vehicle.

(d) Effect of Electronic Notice or Release. – An electronic notice or release of a security interest made through the electronic system implemented pursuant to subsection (a) of this section shall have the same force and effect as a notice or release on a paper document provided under G.S. 20-58 through G.S. 20-58.8.

(e) Rules. – The Division shall adopt rules implementing the provisions of this section."

SECTION 2. Prior to the statewide implementation of the electronic lien system pursuant to G.S. 20-58.4A, the Division, along with the qualified vendor and up to five lienholders, may conduct a pilot program of the electronic lien system for a period of up to 90 days.

SECTION 3. By no later than October 1, 2013, the Division shall report to the Chairs of the Joint Legislative Transportation Oversight Committee on the status of the implementation of the electronic lien system pursuant to G.S. 20-58.4A. The report shall include, at a minimum, the costs, benefits, and feasibility of implementing a statewide electronic lien system.

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

SENATE BILL 407:
Electronic Vehicle Lien/Title

2013-2014 General Assembly

Committee:	Senate Commerce	**Date:**	May 9, 2013
Introduced by:	Sens. Brunstetter, Rabon	**Prepared by:**	Wendy Graf Ray
Analysis of:	First Edition		Committee Counsel

SUMMARY: ***Senate Bill 407 would require the Division of Motor Vehicles to implement a statewide electronic lien system for dealing with security interests and certificate of title data under the motor vehicle statutes. The Division would have to report to the Chairs of the Joint Legislative Transportation Oversight Committee on the status of implementation by October 1, 2013. The Division would be required to implement the system by July 1, 2014. Participation by those engaged in the business of financing motor vehicles would be required beginning July 1, 2015.***

CURRENT LAW: Chapter 20 of the General Statutes contains provisions dealing with security interests and certificates of title for motor vehicles. Currently, the statutes contemplate transactions involving paper documents, rather than electronic transactions.

BILL ANALYSIS: Senate Bill 407 would require the Division of Motor Vehicles to implement a statewide electronic system for processing and maintaining security interest and certificate of title data where a lien is notated.

The Division would be directed to contract with a qualified vendor to implement the system with the following minimum standards:

- The contract may not include costs or charges payable by the Division to the vendor.
- The vendor must reimburse the Division for reasonable implementation costs.
- Upon implementation, the vendor may charge participating lienholders up to $8 per transaction.
- Lienholders may charge borrowers or lessees up to $8 for each transaction where a lien is notated.
- The vendor must have experience in providing electronic lien services to lienholders and state motor vehicle departments

By **October 1, 2013**, the Division would be required to report to the Chairs of the Joint Legislative Transportation Oversight Committee on the status of implementation of the system, including costs, benefits, and feasibility.

Prior to statewide implementation, the Division would be authorized to conduct a pilot program of the system for up to 90 days with the qualified vendor and up to five lienholders.

By **July 1, 2014**, the Division would be required to implement the system.

Beginning **July 1, 2015**, all individuals and lienholders normally engaged in the business of financing motor vehicles would be required to utilize the electronic system.

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

O. Walker Reagan
Director

S407-SMSU-37 E1 -V1

Research Division
(919) 733-2578

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

S 1

SENATE BILL 468

Short Title:	Align Inspections W/Installer Licensing.	(Public)
Sponsors:	Senators Jenkins (Primary Sponsor); Jackson, McLaurin, and Walters.	
Referred to:	Commerce.	

March 28, 2013

A BILL TO BE ENTITLED

AN ACT TO SPECIFY THAT WHEN APPLIANCE INSTALLERS ARE LICENSED TO PERFORM ALL ASPECTS OF AN INSTALLATION, JUST ONE PERMIT AND INSPECTION WILL BE REQUIRED.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 153A-360 reads as rewritten:

"**§ 153A-360. Inspections of work in progress.**

As the work pursuant to a permit progresses, local inspectors shall make as many inspections of the work as may be necessary to satisfy them that it is being done according to the provisions of the applicable State and local laws and local ordinances and regulations and of the terms of the permit. In exercising this power, each member of the inspection department has a right, upon presentation of proper credentials, to enter on any premises within the territorial jurisdiction of the department at any reasonable hour for the purposes of inspection or other enforcement action. If a permit has been obtained by an owner exempt from licensure under G.S. 87-1(b)(2), no inspection shall be conducted without the owner being personally present, unless the plans for the building were drawn and sealed by an architect licensed pursuant to Chapter 83A of the General Statutes. A county may not require any permit other than a plumbing permit for the installation of any natural gas or propane appliance by an installer holding a plumbing license, so long as the installation does not otherwise require the installer to hold another license."

SECTION 2. G.S. 160A-420 reads as rewritten:

"**§ 160A-420. Inspections of work in progress.**

As the work pursuant to a permit progresses, local inspectors shall make as many inspections thereof as may be necessary to satisfy them that the work is being done according to the provisions of any applicable State and local laws and of the terms of the permit. In exercising this power, members of the inspection department shall have a right to enter on any premises within the jurisdiction of the department at all reasonable hours for the purposes of inspection or other enforcement action, upon presentation of proper credentials. If a permit has been obtained by an owner exempt from licensure under G.S. 87-1(b)(2), no inspection shall be conducted without the owner being personally present, unless the plans for the building were drawn and sealed by an architect licensed pursuant to Chapter 83A of the General Statutes. A city may not require any permit other than a plumbing permit for the installation of any natural gas or propane appliance by an installer holding a plumbing license, so long as the installation does not otherwise require the installer to hold another license."

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

SENATE BILL 468:
Align Inspections W/Installer Licensing

2013-2014 General Assembly

Committee:	Senate Commerce	**Date:**	May 8, 2013
Introduced by:	Sen. Jenkins	**Prepared by:**	Peter Ledford
Analysis of:	First Edition		Committee Counsel

SUMMARY: ***Senate Bill 468 would prohibit cities and counties from requiring any permit other than a plumbing permit for the installation of a natural gas or propane appliance by an installer holding a plumbing license.***

CURRENT LAW: Under G.S. 153A-357(a)(2) and G.S. 160A-417(a)(2), no person may commence any installation, reconstruction, or general repair of a plumbing system, including systems for natural gas and propane, without a permit from the inspection department of the local jurisdiction. Pursuant to G.S. 153A-360 and G.S. 160A-420, the inspection department may inspect work that is in progress pursuant to a permit to satisfy them that it is being performed in accordance with the terms of the permit and applicable laws.

BILL ANALYSIS: Senate Bill 468 would prohibit cities and counties from requiring any permit other than a plumbing permit for the installation of a natural gas or propane appliance by an installer holding a plumbing license. The prohibition would not apply when the installation otherwise requires the installer hold another license.

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

O. Walker Reagan
Director

S468-SMTP-56 E1 -V1

Research Division
(919) 733-2578

H 1

HOUSE JOINT RESOLUTION 444

Sponsors: Representatives Davis and T. Moore (Primary Sponsors).
For a complete list of Sponsors, refer to the North Carolina General Assembly Web Site.

Referred to: Rules, Calendar, and Operations of the House.

March 28, 2013

A JOINT RESOLUTION TO CONFIRM THE APPOINTMENT OF ANDREW T. HEATH TO THE NORTH CAROLINA INDUSTRIAL COMMISSION.

Whereas, G.S. 97-77(a1) provides that appointments by the Governor to the North Carolina Industrial Commission are subject to confirmation by the General Assembly; and

Whereas, the Governor has appointed Andrew T. Heath to the North Carolina Industrial Commission; Now, therefore,

Be it resolved by the House of Representatives, the Senate concurring:

SECTION 1. The appointment of Andrew T. Heath to a term on the North Carolina Industrial Commission to begin on May 1, 2013, and expire on April 30, 2019, is confirmed.

SECTION 2. This resolution is effective upon ratification.

HOUSE JOINT RESOLUTION 444:
Confirm Andrew T. Heath to Industrial Comm

2013-2014 General Assembly

Committee:	Senate Commerce	**Date:**	May 8, 2013
Introduced by:	Reps. Davis, T. Moore	**Prepared by:**	Peter Ledford
Analysis of:	First Edition		Committee Counsel

SUMMARY: ***HJR 444 confirms the appointment of Andrew T. Heath to the Industrial Commission for a term of six years. Mr. Heath was appointed by Governor McCrory on February 28, 2013. His term will expire April 30, 2019.***

Confirmation by the General Assembly of Industrial Commission appointments made by the Governor is required by G.S. 97-77(a1). The resolution is effective upon ratification.

BACKGROUND: The North Carolina Industrial Commission is an agency of the State of North Carolina created by the General Assembly in 1929 to administer the North Carolina Workers' Compensation Act. In 1949, the Industrial Commission was also given authority by the General Assembly to administer the Tort Claims Act. Additionally, the Industrial Commission is charged with administering the Death Benefits Act for Law Enforcement Officers, Firemen, Rescue Squad Workers and Civil Air Patrol Members; the Childhood Vaccine-Related Injury Compensation Program; and Compensation to Persons Erroneously Convicted of Felonies.

In 2011, the General Assembly enacted numerous changes to the law related to workers' compensation. Among other changes, S.L. 2011-287 reduced the number of Commissioners on the North Carolina Industrial Commission from seven to six members. The legislation prohibits any person from serving more than two terms, including any term served prior to June 24, 2011, unless the person served a partial term of less than three years. The legislation also made the Governor's appointments subject to confirmation by the General Assembly by Joint Resolution, a process that is similar to the appointment and confirmation of members of the Utilities Commission. No person while in office as a commissioner may be nominated or appointed on an interim basis to fill the remainder of an unexpired term, or to a full term that commences prior to the expiration of the term that the Commissioner was currently serving.

Members of the Industrial Commission are subject to the same standards of conduct as a judge. They may be removed during their term of office only for cause, by impeachment. G.S. 97-77(a) provides, in part, that members of the Industrial Commission "shall devote their entire time to the duties of the Commission."

ANDREW T. HEATH

5634 Oak Bluff Lane, Wilmington, NC 28409 ▪ (910) 409-0249 ▪ drewheath1@hotmail.com

EXPERIENCE

ATTORNEY (Admitted: North Carolina State Bar; United States District Court Eastern District of North Carolina)

Hedrick Gardner Kincheloe & Garofalo, LLP *May 2009 – Present*

- § 100% of practice dedicated to Workers' Compensation litigation
- § Represent full spectrum of North Carolina employers in all phases of workers' compensation claims including investigation, compensability analysis, mediations, depositions, Deputy Commissioner hearings, and appeals to the Full Industrial Commission and North Carolina Court of Appeals
- § Provide presentations for clients on legislative and case law updates affecting the North Carolina Workers Compensation Act

Butler & Butler, LLP *Nov. 2008 – May 2009*

- § Represented debtors in consumer bankruptcy, United States Bankruptcy Court
- § Advised clients and prepared petitions under chapters 7, 11 and 13 of the US Bankruptcy Code

The Cole Law Firm, PLLC *Sept. 2006 – Nov. 2008*

- § Represented injured workers in workers' compensation claims
- § Real estate transactions and criminal defense

EDUCATION

INDIANA UNIVERSITY ROBERT H. MCKINNEY SCHOOL OF LAW *May 2006*

Iuris Doctor

Chair, Republican Law Coalition

CLERKSHIPS

The Honorable Mitchell E. Daniels, Jr., Governor of the State of Indiana

- § Drafted policy memoranda to the Governor's Special Counsel and Policy Directors
- § Drafted office memoranda for litigation defense of the Governor
- § Provided research for policy advocates for use at legislative committee hearings

The Honorable Paul D. Mathias, Indiana Court of Appeals (Intern)

- § Performed legal research, assisted Judge Mathias in drafting appellate opinions

Office of the Indiana Attorney General, Indianapolis, IN

- § Assisted attorneys in tort litigation defense of Indiana state governmental agencies

THE UNIVERSITY OF NORTH CAROLINA AT ASHEVILLE *May 2003*

Bachelor of Science, Management with Concentration in Business Administration

- § Captain, Varsity Soccer Team (NCAA Div. 1)
- § Big South Athletic Conference President's Honor Roll
- § Senator, Student Government Association

COMMUNITY INVOLVEMENT & HONORS

BUSINESS NORTH CAROLINA'S **LEGAL ELITE**	*2013*
NORTH CAROLINA LAWYERS WEEKLY **EMERGING LEGAL LEADER**	*2011*
NEW HANOVER COUNTY BAR ASSOCIATION, Board of Directors	*Jan. 2011 - Present*
PAT MCCRORY FOR GOVERNOR, Co-County Coordinator, New Hanover County	*August 2012 - Present*
MICHAEL LEE FOR NC SENATE, DISTRICT 9, Campaign Manager	*2008*
LOWER CAPE FEAR YOUNG REPUBLICANS, Executive (NCFYR 2012 Chapter of the Year)	*Jan. 2011 – Present*
WELCOME HOME, ANGEL, INC., Executive Committee	*Nov. 2007 - Present*
NORTH CAROLINA ASSOCIATION OF DEFENSE ATTORNEYS	*May 2009 - Present*

VISITOR REGISTRATION SHEET

Senate **COMMERCE** Committee — May 9, 2013

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DEBBIE LOWN

NAME	FIRM OR AGENCY AND ADDRESS
John Murawski	N&O
	CR
	NORMA
Daniel Auburn	NCRMA
Stephen Dirken	NCBFS
Pete Burke	NCBFS - RALEIGH
Travis Reddick	NCSC
Destin Chevrel-Bayard	Sierra Club
Molly Diggins	Sierra Club
Kay Emanuel	School of Government

VISITOR REGISTRATION SHEET

Senate **COMMERCE** Committee — May 9, 2013

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DEBBIE LOWN

NAME	FIRM OR AGENCY AND ADDRESS
Rob Lamm	FLA
Robert Howard	NCMA
Henry Jones	Jordan Price
Rita Harris	NWC
Richard Stevens	Smith Anderson
Jon Carr	NC Funeral Directors Assoc
	N.C. Auto Dealers Asso
	NCAOA
	NCAOA

VISITOR REGISTRATION SHEET

Senate **COMMERCE** Committee — May 9, 2013

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DEBBIE LOWN

NAME	FIRM OR AGENCY AND ADDRESS
Ronald Duhny	Tesla / Consumer
Tracy Davis	NC DMV
Susanna Davis	Williams Mullen
Esther K. Doe	EDF&A Inc
Bill McMullan	PSNC Energy
[illegible]	[illegible]
[illegible]	Bonner & Assoc.
David Barnes	ElectriCities
Beatrice Gray	GKT
[illegible]	NASCAR
James Chen	Tesla

VISITOR REGISTRATION SHEET

Senate **COMMERCE** Committee — May 9, 2013

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DEBBIE LOWN

NAME	FIRM OR AGENCY AND ADDRESS
Andrew Tripp	Senate Staff
Shelly Lee	NCDOC
Tom Beam	EDF
Mike Carpenter	NCWBA
Ken Kinion	Springleaf F.S.
Richard Combs	atty.
Dave Coyle	NBM
Bo Heath	MWC

VISITOR REGISTRATION SHEET

Senate **COMMERCE** Committee — May 9, 2013

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DEBBIE LOWN

NAME	FIRM OR AGENCY AND ADDRESS
Michael Hauser	The Hauser Group

VISITOR REGISTRATION SHEET

Senate **COMMERCE** Committee — May 9, 2013

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DEBBIE LOWN

NAME	FIRM OR AGENCY AND ADDRESS
Morgan Beam	Gov. Office
Nathan Batts	NCBA
Elizabeth Biser	Brooks Pierce
Chad McClean	Brooks Pierce
Chris Sinclair	Constellation Solutions
Alastair Mackay	Constellation Solutions
David McGowan	NCPC
J. Tunnell	PNG
Michael B. Thompson	Dominion NC Power
Mary Shuping	NCCCS
George Smith	NP

VISITOR REGISTRATION SHEET

Senate **COMMERCE** Committee — May 9, 2013

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DEBBIE LOWN

NAME	FIRM OR AGENCY AND ADDRESS
Andrew Blackburn	SSG NC
Alex Badger	CSS
Steven Webb	NCHBA
Heather Barnett	Ward & Smith
Mia Bailey	ElectriCities
Reed Fenton	NMH
Erin Wynia	NCLM
Jill Grantham	MMC
TJ Brinkee	NP
Melissa Reed	PPHS
Jake Cashion	JCCHM

VISITOR REGISTRATION SHEET

Senate **COMMERCE** Committee — May 9, 2013

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DEBBIE LOWN

NAME	FIRM OR AGENCY AND ADDRESS
Doug Herron	Williams Mullen
Wesley Kelly	Nelson Group
C S Hollis	TSS
Abby Hammond	NCIC
Canaan Hunt	MVA
Steve McCulloch	NCAWDB
Dan	SA
Chris Anderson	
Rod Vin	
Kelli Kelsey	Duke Energy
Sandy Sands	MP

Senate Committee on Commerce
Tuesday, May 14, 2013, 11:00 AM
1027/1128 Legislative Building

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

BILL NO.	SHORT TITLE	SPONSOR
SB 294	Exclusion From Post-Construction Practices.	Senator Parmon
SB 297	Winston-Salem/Local Development.	Senator Parmon Senator Brunstetter
SB 407	Electronic Vehicle Lien/Title.	Senator Brunstetter Senator Rabon
SB 583	Metal Theft Statute Amendments.	Senator Tucker
SJR 431	Confirm Commissioner of Banks.	Senator Brown
HB 119	Natural Gas/Rate Adjustment Mechanism.	Representative Hager Representative Millis Representative Moffitt Representative Arp

Senate Committee on Commerce
Tuesday, May 14, 2013 at 11:00 AM
Room 1027/1128 of the Legislative Building

MINUTES

The Senate Committee on Commerce met at 11:00 AM on May 14, 2013 in Room 1027/1128 of the Legislative Building. Twenty one members were present.

Senator Wesley Meredith, Chair, presided.

Faith Coleman from Wake Forest, Joel Rundle from Raleigh, Mason Poole from Raleigh, Elijah Hamilton from Apex, Cassie Burk from Cornelius and Amon McEachern from Goldsboro served as pages.

Senator Meredith changed the agenda to accommodate senators that had obligations in other committees. They were heard respectively.

S. R. J. 431 Confirm Commissioner of Banks

This Joint Resolution is to confirm the Governor's appointment of Ray Grace to the Office of Commissioner of Banks. Senator Brown was asked to introduce Ray Grace the interim NC Commissioner of Banks. Mr. Grace shared his resume with the members. Senator Tillman moved for a favorable report and it carried.

H. B. 119 Natural Gas/Rate Adjustment Mechanism

House Bill 119 authorizes the Utilities Commission to adopt a rate adjustment mechanism for natural gas distribution companies to recover costs incurred to comply with federal gas pipeline safety requirements. Representative Hagar was introduced to speak on the bill. Senator Rucho moved for a favorable report and it carried.

S. B. 294 Exclusion from Post-Construction Practices

Senator Woodward moved to adopt the proposed committee substitute (PCS) before the committee and it carried. The PCS for Senate Bill 294 would allow entities regulated under Phase II of the National Pollutant Discharge Elimination System to follow best management practices developed by the North Carolina Department of Transportation for linear transportation projects. Senator Parmon was introduced to speak on the bill and brought forth an amendment. Senator Woodard moved to accept the amendment and it carried. Senator Nesbitt moved unfavorable to the bill – favorable to the PCS as amended.

S. B. 297 Winston-Salem/Local Development

Senator Parmon was introduced to speak on the bill. Senate Bill 297 would exempt Winston-Salem economic development projects from public contract requirements if the activity takes place in an economically distressed area and city funds constitute no more that 50% of the total costs of the project. The exemption would expire July 1, 2018. Senator Tillman moved for a favorable report and it carried.

S. B. 407 Electronic Vehicle Lien/Title

Senator Tillman moved to adopt the proposed committee substitute (PCS) before the committee and it carried. Senator Meredith asked the committee if it would be acceptable with the members to discuss the bill without the bill sponsor. They agreed. The PCS for Senate Bill 407 would require the Division of Motor Vehicles to implement a statewide electronic lien system for dealing with security interests and certificate of title data under the motor vehicle statutes. The Division would have to report to the Chairs of the Joint Legislative Transportation Oversight Committee on the status of implementation by October 1, 2013. The Division would be required to implement the system by July 1, 2014. Participation by those engaged in the business of financing motor vehicles would be required beginning July 1, 2015. Wendy Graf an attorney from the Research Division explained the bill. Alison Roach/ Administrative Officer II of Vehicle Services for the North Carolina Department of Transportation Division of Motor Vehicles also assisted with the explanation of the bill. The motion was made unfavorable to the bill – favorable to the PCS and it carried. However, it was learned by the clerk that the bill had been removed from the Senate Commerce Committee to the Senate Finance Committee the night before during session. Due to this fact, there was no official report out of this bill.

S. B. 583 Metal theft Statute Amendments

Senator Robinson moved to adopt the proposed committee substitute (PCS) before the committee and it carried. The PCS to Senate Bill 583 would amend the definition of a cash card system used by a secondary metal recycler and would add a separate definition for copper. The PCS adds a separate definition for copper and deletes Section 2 and 3. Senator Tucker, the bill sponsor was not available to speak on the bill. Peter Ledford an attorney with the Research Division explained the bill. Travis Ward from the Recycling Association of North Carolina also explained what the bill does and responded to the questions from the members. Senator Hunt moved unfavorable to the bill – favorable to the PCS and it carried.

The meeting adjourned at 11:25 AM.

Senator Wesley Meredith, Chair

Debbie Lown, Committee Clerk

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

COMMERCE COMMITTEE REPORT
Senator Gunn, Co-Chair
Senator Meredith, Co-Chair

Tuesday, May 14, 2013

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

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

SB **294** Exclusion From Post-Construction Practices.

Draft Number:	S294-PCS75325-TP-35
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

SB **583** Metal Theft Statute Amendments.

Draft Number:	S583-PCS75324-TP-33
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

TOTAL REPORTED: 2

Senator Earline Parmon will handle SB 294
Senator Tommy Tucker will handle SB 583

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

COMMERCE COMMITTEE REPORT
Senator Gunn, Co-Chair
Senator Meredith, Co-Chair

Tuesday, May 14, 2013

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

FAVORABLE

HB **119** Natural Gas/Rate Adjustment Mechanism.
Draft Number: None
Sequential Referral: None
Recommended Referral: None
Long Title Amended: No

SB **297** Winston-Salem/Local Development.
Draft Number: None
Sequential Referral: None
Recommended Referral: None
Long Title Amended: No

SJR **431** Confirm Commissioner of Banks.
Draft Number: None
Sequential Referral: None
Recommended Referral: None
Long Title Amended: No

TOTAL REPORTED: 3

Senator E.S. Newton will handle HB 119
Senator Earline Parmon will handle SB 297
Senator Harry Brown will handle SJR 431

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

S 1

SENATE BILL 294

Short Title:	Exclusion From Post-Construction Practices.	(Local)
Sponsors:	Senator Parmon (Primary Sponsor)..	
Referred to:	Commerce.	

March 14, 2013

A BILL TO BE ENTITLED

AN ACT TO AMEND THE EXCLUSIONS FOR POST-CONSTRUCTION PRACTICES TO INCLUDE PUBLIC AND PRIVATE LINEAR TRANSPORTATION PROJECTS FOR THE CITY OF WINSTON-SALEM.

The General Assembly of North Carolina enacts:

SECTION 1. Section 8 of S.L. 2006-246, as amended by S.L. 2008-198, reads as rewritten:

"**SECTION 8.** Exclusions from Post-Construction Practices. – The post-construction practices required by Section 9 of this act shall not apply to any of the following:

(1) Development in an area where the requirements of Section 9 of this act are applicable that is conducted pursuant to one of the following authorizations, provided that the authorization was obtained prior to the effective date of the post-construction stormwater control requirements in the area and the authorization is valid, unexpired, unrevoked, and not otherwise terminated:
   a. A building permit pursuant to G.S. 153A-357 or G.S. 160A-417.
   b. A site-specific development plan as defined by G.S. 153A-344.1(b)(5) and G.S. 160A-385.1(b)(5).
   c. A phased development plan approved pursuant to G.S. 153A-344.1 for a project located in the unincorporated area of a county that is subject to the requirements of Section 9 of this act, if the Commission is responsible for implementation of the requirements of Section 9 of this act, that shows:
      1. For the initial or first phase of development, the type and intensity of use for a specific parcel or parcels, including at a minimum, the boundaries of the project and a subdivision plan that has been approved pursuant to G.S. 153A-330 through G.S. 153A-335.
      2. For any subsequent phase of development, sufficient detail so that implementation of the requirements of Section 9 of this act to that phase of development would require a material change in that phase of the plan.
   d. A vested right to the development under G.S. 153A-344(b), 153A-344.1, 160A-385(b), or 160A-385.1 issued by a local government that implements Section 9 of this act.
   e. A vested right to the development pursuant to common law.

(2) Redevelopment.

(3) Public and private linear transportation projects, provided such projects adhere to the Department of Transportation's best management practices as outlined in the "Stormwater Best Management Practices Toolbox" to the extent practicable as determined by the city."

SECTION 2. This act applies to the City of Winston-Salem only.

SECTION 3. This act becomes effective January 1, 2012.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

S D

SENATE BILL 294
PROPOSED COMMITTEE SUBSTITUTE S294-CSTP-35 [v.2]

5/13/2013 5:01:10 PM

Short Title: Allow Use of DOT Stormwater BMPs. (Local)

Sponsors:

Referred to:

March 14, 2013

A BILL TO BE ENTITLED

AN ACT TO ALLOW ENTITIES REGULATED UNDER PHASE II OF THE NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM PROGRAM TO UTILIZE THE DEPARTMENT OF TRANSPORTATION'S BEST MANAGEMENT PRACTICES TOOLBOX FOR LINEAR TRANSPORTATION PROJECTS.

The General Assembly of North Carolina enacts:

SECTION 1. Section 9 of S.L. 2006-246, as amended by S.L. 2008-198, reads as rewritten:

"**SECTION 9.** Post-Construction Practices. –

(a) For post-construction requirements, a program will be deemed compliant for the areas where it is implementing any of the following programs:

(1) Water Supply Watershed I (WS-I) – 15A NCAC 2B.0212.
(2) Water Supply Watershed II (WS-II) – 15A NCAC 2B.0214.
(3) Water Supply Watershed III (WS-III) – 15A NCAC 2B.0215.
(4) Water Supply Watershed IV (WS-IV) – 15A NCAC 2B.0216.
(5) Freshwater High Quality Waters (HQW) – 15A NCAC 2H.1006.
(6) Freshwater Outstanding Resource Waters (ORW) – 15A NCAC 2H.1007.
(7) The Neuse River Basin Nutrient Sensitive Waters (NSW) Management Strategy – 15A NCAC 2B.0235.
(8) The Tar-Pamlico River Basin Nutrient Sensitive (NSW) Management Strategy – 15A NCAC 2B.0258.
(9) The Randleman Lake Water Supply Watershed Nutrient Management Strategy – 15A NCAC 2B.0251.

(b) In order to fulfill the post-construction minimum measure program requirement, a permittee, delegated program, or regulated entity may use the Department's model ordinance, design its own post-construction practices based on the Department's guidance on scientific and engineering standards for best management practices (BMPs), incorporate the post-construction model practices described in this act, or develop its own comprehensive watershed plan that is determined by the Department to meet the post-construction stormwater management measure required by 40 Code of Federal Regulations § 122.34(b)(5) (1 July 2003 Edition).

(b1) In order to fulfill the post-construction minimum measure requirement for linear transportation projects, a permittee, delegated program, or regulated entity may use the Stormwater Best Management Practices Toolbox developed by the North Carolina Department of Transportation.

(c) Permittees, delegated programs, and regulated entities must require stormwater controls for a project that disturbs one acre or more of land, including a project that disturbs less than one acre of land that is part of a larger common plan of development or sale. The stormwater controls shall be appropriate to the project's level of density as follows:

(1) Post-construction model practices for low-density projects. – A project that is located within one-half mile of and draining to Shellfish Resource Waters

is a low-density project if it contains no more than twelve percent (12%) built-upon area. A project that is not located within one-half mile of Shellfish Resource Waters is a low-density project if it contains no more than twenty-four percent (24%) built-upon area or no more than two dwelling units per acre. Low-density projects must use vegetated conveyances to the maximum extent practicable to transport stormwater runoff from the project. On-site stormwater treatment devices such as infiltration areas, bioretention areas, and level spreaders may also be used as added controls for stormwater runoff. A project with an overall density at or below the low-density thresholds, but containing areas with a density greater than the overall project density, may be considered low density as long as the project meets or exceeds the post-construction model practices for low-density projects and locates the higher density in upland areas and away from surface waters and drainageways to the maximum extent practicable.

(2) Post-construction model practices for high-density projects. – A project that is located within one-half mile of and draining to Shellfish Resource Waters is a high-density project if it contains more than twelve percent (12%) built-upon area. A project that is not located within one-half mile of Shellfish Resource Waters is a high-density project if it contains more than twenty-four percent (24%) built-upon area or more than two dwelling units per acre. High-density projects must use structural stormwater management systems that will control and treat runoff from the first one inch of rain unless the project is in a county that is subject to the Coastal Area Management Act of 1974, in which case the project must use structural stormwater management systems that will control and treat runoff from the first one and one-half inches of rain. In addition, projects that are located within one-half mile and draining to Shellfish Resource Waters must control and treat the difference in the stormwater runoff from the predevelopment and post-development conditions for the one-year, 24- hour storm. The structural stormwater management system must also meet the following design standards:

a. Draw down the treatment volume no faster than 48 hours, but no slower than 120 hours.
b. Discharge the storage volume at a rate equal to or less than the predevelopment discharge rate for the one-year, 24-hour storm.
c. Remove an eighty-five percent (85%) average annual amount of Total Suspended Solids.
d. Meet the General Engineering Design Criteria set out in 15A NCAC 02H .1008(c).
e. Wet detention ponds designed in accordance with the requirements of subsection (h) of this section may be used for projects draining to Class SA waters.

(d) Permittees, delegated programs, and regulated entities must require built-upon areas to be located at least 30 feet landward of all perennial and intermittent surface waters. For purposes of this section, a surface water shall be present if the feature is shown on either the most recent version of the soil survey map prepared by the Natural Resources Conservation Service of the United States Department of Agriculture or the most recent version of the 1:24,000 scale (7.5 minute) quadrangle topographic maps prepared by the United States Geologic Survey (USGS). Relief from this requirement may be allowed when surface waters are not present in accordance with the provisions of 15A NCAC 02B .0233(3)(a). In addition, an exception to this requirement may be pursued in accordance with subsection (a) of Section 11 of this act.

(e) Permittees, delegated programs, and regulated entities must implement or require a fecal coliform reduction program that controls, to the maximum extent practicable, the sources of fecal coliform. At a minimum, the program shall include the development and implementation of an oversight program to ensure proper operation and maintenance of on-site wastewater treatment systems for domestic wastewater. For municipalities, this program may be coordinated with local county health departments.

(f) Permittees, delegated programs, and regulated entities must impose or require recorded restrictions and protective covenants to be recorded on the property in the Office of the Register of Deeds in the county where the property is located prior to the issuance of a certificate of occupancy in order to ensure that development activities will maintain the project consistent with approved plans.

(g) Permittees, delegated programs, and regulated entities must implement or require an operation and maintenance plan that ensures the adequate long-term operation of the structural BMPs required by the program. The operation and maintenance plan must require the owner of each structural BMP to submit a maintenance inspection report on each structural BMP annually to the local program.

(h) For areas draining to Class SA waters, permittees, delegated programs, and regulated entities must:

(1) Use BMPs that result in the highest degree of fecal coliform die-off and control to the maximum extent practicable sources of fecal coliform while still incorporating the stormwater controls required by the project's density level.

(2) Implement a program to control the sources of fecal coliform to the maximum extent practicable, including a pet waste management component, which may be achieved by revising an existing litter ordinance, and an on-site domestic wastewater treatment systems component to ensure proper operation and maintenance of such systems, which may be coordinated with local county health departments.

(3) Prohibit new points of stormwater discharge to Class SA waters and prohibit both increases in the volume of stormwater flow through conveyances and increases in capacity of conveyances in existing stormwater conveyance systems that drain to Class SA waters. Any modification or redesign of a stormwater conveyance system within the contributing drainage basin must not increase the net amount or rate of stormwater discharge through existing outfalls to Class SA waters. Diffuse flow of stormwater at a nonerosive velocity to a vegetated buffer or other natural area capable of providing effective infiltration of the runoff from the one-year, 24-hour storm shall not be considered a direct point of stormwater discharge. Consideration shall be given to soil type, slope, vegetation, and existing hydrology when evaluating infiltration effectiveness.

(i) For areas draining to Trout Waters, permittees, delegated programs, and regulated entities must:

(1) Use BMPs that avoid a sustained increase in the receiving water temperature, while still incorporating the stormwater controls required for the project's density level.

(2) Allow on-site stormwater treatment devices such as infiltration areas, bioretention areas, and level spreaders as added controls.

(j) For areas draining to Nutrient Sensitive Waters, permittees, delegated programs, and regulated entities must:

(1) Use BMPs that reduce nutrient loading, while still incorporating the stormwater controls required for the project's density level. In areas where the Department has approved a Nutrient Sensitive Water Urban Stormwater Management Program, the provisions of that program fulfill the nutrient loading reduction requirement. Nutrient Sensitive Water Urban Stormwater Management Program requirements are found in 15A NCAC 02B .0200.

(2) Implement a nutrient application management program for both inorganic fertilizer and organic nutrients to reduce nutrients entering waters of the State.

(k) For BMPs that require a separation from the seasonal high-water table, the separation shall be provided by at least 12 inches of naturally occurring soil above the seasonal high-water table.

(l) Nothing in this section shall limit, expand, or alter the requirement that a discharge fully comply with all applicable State or federal water quality standards."

SECTION 3. This act becomes effective January 1, 2012.

SENATE BILL 294:
Allow Use of DOT Stormwater BMPs

2013-2014 General Assembly

Committee:	Senate Commerce	**Date:**	May 13, 2013
Introduced by:	Sen. Parmon	**Prepared by:**	Peter Ledford Committee Counsel
Analysis of:	PCS to First Edition S294-CSTP-35		

SUMMARY: ***The Proposed Committee Substitute for Senate Bill 294 would allow entities regulated under Phase II of the National Pollutant Discharge Elimination System to follow best management practices developed by the North Carolina Department of Transportation for linear transportation projects.***

CURRENT LAW: Session Law 2006-246 provided for state implementation of the federal Phase II stormwater management requirements of the National Pollutant Discharge Elimination System (NPDES) under Section 402 of the federal Clean Water Act. The Clean Water Act generally prohibits the discharge of pollutants into surface waters, unless the discharge is in accordance with a permit obtained under certain sections of the Clean Water Act. Section 402(p) of the Clean Water Act establishes the NPDES permit program and specifies that a NPDES permit is required for discharges of stormwater. Phase II of the NPDES program expanded the permit requirement to include construction disturbing an acre or more, municipalities with a population below 100,000 residents, and public entities that own or operate a municipal separate storm sewer system.

To comply with the Phase II NPDES requirements, regulated entities must adhere to certain best management practices (BMPs). Various BMPs have been approved by the United States Environmental Protection Agency, including site plan designs (conservation easements, protection of natural features, etc.), infiltration (infiltration basins, permeable pavement, etc.), filtration (rain gardens, sand filters, etc.), and retention and detention (detention ponds, stormwater wetlands). Section 9(b) of Session Law 2006-246 requires regulated entities either (i) to adopt model ordinances developed by the Department of Environment and Natural Resources, (ii) to design their own post-construction BMPs, (iii) to incorporate the BMPs described in the session law, or (iv) to develop their own comprehensive watershed plan. The North Carolina Department of Transportation (DOT) has developed its own Stormwater Best Management Practices Toolbox to comply with the NPDES permit it has been issued.

BILL ANALYSIS: The PCS for Senate Bill 294 would allow regulated entities to comply with the BMP program developed by the DOT for linear transportation projects.

EFFECTIVE DATE: This act becomes effective retroactively January 1, 2012.

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. _____ DATE May 14, 2013

S. B. No. 294 Amendment No. _____
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE _____

Rep.) Sen.) [redacted] Woodard

moves to amend the bill on page 1, line 32

( ) WHICH CHANGES THE TITLE

by inserting after "projects," the following:

"including private transportation projects constructed to North Carolina Department of Transportation standards that will be conveyed to the State upon completion,"

SIGNED _____

ADOPTED _____ FAILED _____ TABLED _____

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

S 1

SENATE BILL 297

Short Title:	Winston-Salem/Local Development.	(Local)
Sponsors:	Senators Parmon and Brunstetter (Primary Sponsors).	
Referred to:	Commerce.	

March 14, 2013

A BILL TO BE ENTITLED

AN ACT PROVIDING THAT THE CITY OF WINSTON-SALEM MAY UNDERTAKE CERTAIN ECONOMIC DEVELOPMENT ACTIVITIES WITHOUT COMPLYING WITH THE STATE'S CONTRACT LAWS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 158-7.1 reads as rewritten:

"**§ 158-7.1. Local development.**

(a) Each county and city in this State is authorized to make appropriations for the purposes of aiding and encouraging the location of manufacturing enterprises, making industrial surveys and locating industrial and commercial plants in or near such city or in the county; encouraging the building of railroads or other purposes which, in the discretion of the governing body of the city or of the county commissioners of the county, will increase the population, taxable property, agricultural industries and business prospects of any city or county. These appropriations may be funded by the levy of property taxes pursuant to G.S. 153A-149 and 160A-209 and by the allocation of other revenues whose use is not otherwise restricted by law.

(b) A county or city may undertake the following specific economic development activities. (This listing is not intended to limit by implication or otherwise the grant of authority set out in subsection (a) of this section). The activities listed in this subsection may be funded by the levy of property taxes pursuant to G.S. 153A-149 and G.S. 160A-209 and by the allocation of other revenues whose use is not otherwise restricted by law.

(1) A county or city may acquire and develop land for an industrial park, to be used for manufacturing, assembly, fabrication, processing, warehousing, research and development, office use, or similar industrial or commercial purposes. A county may acquire land anywhere in the county, including inside of cities, for an industrial park, while a city may acquire land anywhere in the county or counties in which it is located. A county or city may develop the land by installing utilities, drainage facilities, street and transportation facilities, street lighting, and similar facilities; may demolish or rehabilitate existing structures; and may prepare the site for industrial or commercial uses. A county or city may convey property located in an industrial park pursuant to subsection (d) of this section.

(2) A county or city may acquire, assemble, and hold for resale property that is suitable for industrial or commercial use. A county may acquire such property anywhere in the county, including inside of cities, while a city may acquire such property inside the city or, if the property will be used by a

business that will provide jobs to city residents, anywhere in the county or counties in which it is located. A county or city may convey property acquired or assembled under this subdivision pursuant to subsection (d) of this section.

(3) A county or city may acquire options for the acquisition of property that is suitable for industrial or commercial use. The county or city may assign such an option, following such procedures, for such consideration, and subject to such terms and conditions as the county or city deems desirable.

(4) A county or city may acquire, construct, convey, or lease a building suitable for industrial or commercial use.

(5) A county or city may construct, extend or own utility facilities or may provide for or assist in the extension of utility services to be furnished to an industrial facility, whether the utility is publicly or privately owned.

(6) A county or city may extend or may provide for or assist in the extension of water and sewer lines to industrial properties or facilities, whether the industrial property or facility is publicly or privately owned.

(7) A county or city may engage in site preparation for industrial properties or facilities, whether the industrial property or facility is publicly or privately owned.

(c) Any appropriation or expenditure pursuant to subsection (b) of this section must be approved by the county or city governing body after a public hearing. The county or city shall publish notice of the public hearing at least 10 days before the hearing is held. If the appropriation or expenditure is for the acquisition of an interest in real property, the notice shall describe the interest to be acquired, the proposed acquisition cost of such interest, the governing body's intention to approve the acquisition, the source of funding for the acquisition and such other information needed to reasonably describe the acquisition. If the appropriation or expenditure is for the improvement of privately owned property by site preparation or by the extension of water and sewer lines to the property, the notice shall describe the improvements to be made, the proposed cost of making the improvements, the source of funding for the improvements, the public benefit to be derived from making the improvements, and any other information needed to reasonably describe the improvements and their purpose.

(c1) A city may undertake any of the economic development activities authorized in subsection (b) of this section without complying with the provisions of Article 8 of Chapter 143 of the General Statutes if the activity takes place in an economically distressed area and the funds provided by the city for the activity do not exceed fifty percent (50%) of the total cost of the activity. For purposes of this section, federal funds available for loan to private developers in connection with an economic development activity shall not be considered city funds. For purposes of this section, the term "economically distressed area" means an area in which, according to the most recent available data from the U.S. Bureau of Census, forty percent (40%) or more of the residents have an annual income that is at or below the poverty level.

...."

SECTION 2. This act applies to the City of Winston-Salem only.

SECTION 3. This act is effective when it becomes law and expires on July 1, 2018.

SENATE BILL 297:
Winston-Salem/Local Development

2013-2014 General Assembly

Committee:	Senate Commerce	**Date:**	May 14, 2013
Introduced by:	Sens. Parmon, Brunstetter	**Prepared by:**	Trina Griffin Committee Counsel
Analysis of:	First Edition		

SUMMARY: ***Senate Bill 297 would exempt Winston-Salem economic development projects from public contract requirements if the activity takes place in an economically distressed area and city funds constitute no more than 50% of the total costs of the project. The exemption would expire July 1, 2018.***

CURRENT LAW:

Local development. –G.S. 158-7.1 authorizes counties and cities to conduct activities related to local development including aiding and encouraging the location of manufacturing enterprises, industrial and commercial plants in their area. A county or city may undertake specific economic development activities related to industrial or commercial parks, including acquiring land, holding land for resale, leasing property, extending or owning utility facilities or water and sewer lines, and engaging in site preparation. A public hearing must be held prior to the appropriation of funds for these purposes. G.S. 158-7.1 also provides that appropriations and expenditures are subject to the Local Government Budget and Fiscal Control Acts, sets limits on the local development activities, and provides remedies for breach of economic development responsibilities.

Public contracts. – Article 8 of Chapter 143 of the General Statutes sets out the requirements for building contracts and bidding procedures for public contracts. Any erection, construction, alteration, or repair contract that costs in excess of $300,000 must be awarded according to the public bidding requirements of this Article. At least 25 local governments have received exemptions from certain provisions of Article 8 over the years. Also, the construction of "downtown development projects" under G.S. 160A-458.3 has a similar exemption.

BILL ANALYSIS: Senate Bill 297 would exempt economic development projects in the City of Winston-Salem from public contract requirements contained in Article 8 of Chapter 143, as long as the activity takes place in an economically distressed area and city funds constitute no more than 50% of the total costs of the project. City funds would not include federal funds available for loan to private developers for an economic development project. The term "economically distressed area" means an area in which 40% or more of the residents have an annual income that is at or below the poverty level according to the U.S. Census Bureau.

EFFECTIVE DATE: This act would become effective when it becomes law and would expire on July 1, 2018.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

S 1

SENATE BILL 407

Short Title:	Electronic Vehicle Lien/Title.	(Public)
Sponsors:	Senators Brunstetter, Rabon (Primary Sponsors); and Clark.	
Referred to:	Transportation.	

March 26, 2013

A BILL TO BE ENTITLED

AN ACT TO REQUIRE THE DIVISION OF MOTOR VEHICLES TO IMPLEMENT A STATEWIDE ELECTRONIC LIEN SYSTEM TO PROCESS THE NOTIFICATION AND RELEASE OF SECURITY INTEREST AND CERTIFICATE OF TITLE DATA.

The General Assembly of North Carolina enacts:

SECTION 1. Article 3 of Chapter 20 of the General Statutes is amended by adding a new section to read:

"**§ 20-58.4A. Electronic lien system.**

(a) Implementation. – By no later than July 1, 2014, the Division shall implement a statewide electronic lien system to process the notification, release, and maintenance of security interests and certificate of title data where a lien is notated, through electronic means instead of paper documents otherwise required by this Chapter. The Division shall contract with a qualified vendor to implement this statewide electronic lien system.

(b) Minimum Standards for Vendor. – When contracting with a qualified vendor to implement the system required in subsection (a) of this section, the Division shall set the following minimum standards:

(1) The contract entered into with a vendor shall include no costs or charges payable by the Division to the vendor. The vendor shall reimburse the Division for documented reasonable implementation costs directly associated with the establishment and ongoing support of the statewide electronic lien system.

(2) Upon implementation of the electronic lien system pursuant to subsection (a) of this section, the qualified vendor may charge participating lienholders and their agents a per-transaction fee in an amount not to exceed eight dollars ($8.00) for costs associated with the administration of the electronic lien system. To recover the cost of this per-transaction fee, participating lienholders and their agents may charge the borrower of a motor vehicle loan or the lessee of an automotive lease a fee in an amount not to exceed eight dollars ($8.00) for each electronic transaction where a lien is notated.

(3) A qualified vendor shall have experience in directly providing electronic lien services to both lienholders and State motor vehicle departments or agencies.

(c) Mandatory Participation. – Beginning July 1, 2015, all individuals and lienholders who are normally engaged in the business or practice of financing motor vehicles shall utilize the electronic lien system implemented in subsection (a) of this section to record information concerning the perfection and release of a security interest in a vehicle.

(d) Effect of Electronic Notice or Release. – An electronic notice or release of a security interest made through the electronic system implemented pursuant to subsection (a) of this section shall have the same force and effect as a notice or release on a paper document provided under G.S. 20-58 through G.S. 20-58.8.

(e) Rules. – The Division shall adopt rules implementing the provisions of this section."

SECTION 2. Prior to the statewide implementation of the electronic lien system pursuant to G.S. 20-58.4A, the Division, along with the qualified vendor and up to five lienholders, may conduct a pilot program of the electronic lien system for a period of up to 90 days.

SECTION 3. By no later than October 1, 2013, the Division shall report to the Chairs of the Joint Legislative Transportation Oversight Committee on the status of the implementation of the electronic lien system pursuant to G.S. 20-58.4A. The report shall include, at a minimum, the costs, benefits, and feasibility of implementing a statewide electronic lien system.

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

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

S D

SENATE BILL 407
PROPOSED COMMITTEE SUBSTITUTE S407-CSSU-25 [v.3]
5/13/2013 5:56:53 PM

Short Title: Electronic Vehicle Lien/Title. (Public)

Sponsors:

Referred to:

March 26, 2013

A BILL TO BE ENTITLED

AN ACT TO REQUIRE THE DIVISION OF MOTOR VEHICLES TO IMPLEMENT A STATEWIDE ELECTRONIC LIEN SYSTEM TO PROCESS THE NOTIFICATION AND RELEASE OF SECURITY INTEREST AND CERTIFICATE OF TITLE DATA.

The General Assembly of North Carolina enacts:

SECTION 1. Article 3 of Chapter 20 of the General Statutes is amended by adding a new section to read:

"**§ 20-58.4A. Electronic lien system.**

(a) Implementation. – By no later than July 1, 2014, the Division shall implement a statewide electronic lien system to process the notification, release, and maintenance of security interests and certificate of title data where a lien is notated, through electronic means instead of paper documents otherwise required by this Chapter. The Division may contract with a qualified vendor or vendors to develop and implement this statewide electronic lien system, or the Division may develop and make available to qualified service providers a well-defined set of information services that will enable secure access to the data and internal application components necessary to facilitate the creation of electronic lien systems.

(b) Minimum Standards for a Vendor Implemented System. – When contracting with a qualified vendor or vendors to implement the system required in subsection (a) of this section, the Division shall set the following minimum standards:

(1) The Division shall issue a competitive request for proposal to assess the qualifications of any vendor or vendors responsible for the establishment and ongoing support of the statewide electronic lien system. The Division may also reserve the right to receive input regarding specifications for the electronic lien system from parties that do not respond to a request for proposal to establish and operate an electronic lien system.

(2) Any contract entered into with a vendor or vendors shall include no costs or charges payable by the Division to the vendor or vendors. The vendor or vendors shall reimburse the Division for documented reasonable implementation costs directly associated with the establishment and ongoing support of the statewide electronic lien system.

(3) Upon implementation of the electronic lien system pursuant to subsection (a) of this section, the qualified vendor or vendors may charge participating lienholders or their agents a per-transaction fee for each lien notification. The per-transaction lien notification fee shall be consistent with market pricing in an amount not to exceed three dollars and fifty cents ($3.50) for costs associated with the development and ongoing administration of the

electronic lien system. The qualified vendor or vendors shall not charge lienholders or their agents any additional fee for lien releases, assignments, or transfers. To recover their costs, participating lienholders or their agents may charge the borrower of a motor vehicle loan or the lessee of an automotive lease an amount equal to the transaction fee per lien notification plus a fee in an amount not to exceed three dollars ($3.00) for each electronic transaction where a lien is notated.

(4) A qualified vendor or vendors may also serve as a service provider to lienholders, if all of the following conditions are met:

a. The contract with the vendor must include provisions specifically prohibiting the vendor from using information concerning vehicles titles for marketing or business solicitation purposes.

b. The contract with the vendor must include an acknowledgment by the vendor that it is required to enter into agreements to exchange electronic lien data with any service providers who offer electronic lien and title services in the State and who have been approved by the Division for participation in the system and with service providers who are not qualified vendors.

c. The Division must periodically monitor fees charged by a qualified vendor also serving as a service provider to lienholders and providing services as a qualified vendor to other service providers to ensure the vendor is not engaged in predatory pricing.

(c) Minimum Standards for Division Developed System. – If the Division chooses to develop an interface to enable service provider access to data to facilitate the creation of electronic lien systems, then the Division shall do so for a cost not to exceed two hundred and fifty thousand dollars ($250,000) and set the following minimum standards:

(1) The Division shall establish qualifications for third party service providers offering electronic lien services and establish a qualification process that will vet applications developed by service providers for compliance with defined security and architecture standards as follows:

a. Qualifications shall be posted within 60 days of the effective date of this act.

b. Interested service providers shall respond by providing qualifications within 30 days of posting.

c. The Division shall notify service providers of their approval.

d. Within 30 days of approval, each qualified service provider shall remit payment in an amount equal to the development costs as a fraction of the number of qualified service providers participating in the electronic lien services.

e. If there is a service provider who later wishes to participate but did not apply or pay the initial development costs, then that provider may apply to participate if the provider meets all qualifications and pays the same amount in development costs as other participating service providers.

(2) Each qualified service provider shall remit to the Division an annual fee not to exceed three thousand dollars ($3,000) on a date prescribed by the Division to be used for the operation and maintenance of the electronic lien system.

(3) Any contract entered into with a service provider shall include no costs or charges payable by the Division to the service provider.

(4) Upon implementation of the electronic lien system pursuant to subsection (a) of this section, the service provider may charge participating lienholders or their agents a per-transaction fee consistent with market pricing.

(5) The contract with the service provider must include provisions specifically prohibiting the service provider from using information concerning vehicle titles for marketing or business solicitation purposes.

(d) Qualified vendors and service providers shall have experience in directly providing electronic solutions to state motor vehicle departments or agencies.

(e) Notwithstanding any requirement in this Chapter that a lien on a motor vehicle shall be noted on the face of the certificate of title, if there are one or more liens or encumbrances on the motor vehicle or mobile home, the Division may electronically transmit the lien to the first lienholder and notify the first lienholder of any additional liens. Subsequent lien satisfactions may be electronically transmitted to the Division and shall include the name and address of the person satisfying the lien.

(f) When electronic transmission of liens and lien satisfactions is used, a certificate of title need not be issued until the last lien is satisfied and a clear certificate of title is issued to the owner of the vehicle.

(g) When a vehicle is subject to an electronic lien, the certificate of title for the vehicle shall be considered to be physically held by the lienholder for purposes of compliance with State or federal odometer disclosure requirements.

(h) A duly certified copy of the Division's electronic record of the lien shall be admissible in any civil, criminal, or administrative proceeding in this State as evidence of the existence of the lien.

(i) Mandatory Participation. – Beginning July 1, 2015, all individuals and lienholders who are normally engaged in the business or practice of financing motor vehicles, and who conduct at least five transactions annually, shall utilize the electronic lien system implemented in subsection (a) of this section to record information concerning the perfection and release of a security interest in a vehicle.

(j) Effect of Electronic Notice or Release. – An electronic notice or release of a security interest made through the electronic system implemented pursuant to subsection (a) of this section shall have the same force and effect as a notice or release on a paper document provided under G.S. 20-58 through G.S. 20-58.8.

(k) Nothing in this section shall preclude the Division from collecting a title fee for the preparation and issuance of a title."

SECTION 2. Prior to the statewide implementation of the electronic lien system pursuant to G.S. 20-58.4A, the Division, along with one or more qualified vendors and up to five lienholders, may conduct a pilot program of the electronic lien system for a period of up to 90 days.

SECTION 3. By no later than October 1, 2013, the Division shall report to the Chairs of the Joint Legislative Transportation Oversight Committee on the status of the implementation of the electronic lien system pursuant to G.S. 20-58.4A. The report shall include, at a minimum, whether the Division is proceeding with a vendor implemented system or Division implemented system and whether implementation is on schedule and on budget.

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

SENATE BILL 407:
Electronic Vehicle Lien/Title

2013-2014 General Assembly

Committee:	Senate Commerce	**Date:**	May 14, 2013
Introduced by:	Sens. Brunstetter, Rabon	**Prepared by:**	Wendy Graf Ray
Analysis of:	PCS to First Edition S407-CSSU-25		Committee Counsel

SUMMARY: ***The PCS for Senate Bill 407 would require the Division of Motor Vehicles to implement a statewide electronic lien system for dealing with security interests and certificate of title data under the motor vehicle statutes. The Division would have to report to the Chairs of the Joint Legislative Transportation Oversight Committee on the status of implementation by October 1, 2013. The Division would be required to implement the system by July 1, 2014. Participation by those engaged in the business of financing motor vehicles would be required beginning July 1, 2015.***

CURRENT LAW: Chapter 20 of the General Statutes contains provisions dealing with security interests and certificates of title for motor vehicles. Currently, the statutes contemplate transactions involving paper documents, rather than electronic transactions.

BILL ANALYSIS: The PCS for Senate Bill 407 would require the Division of Motor Vehicles to implement a statewide electronic system for processing and maintaining security interest and certificate of title data where a lien is notated.

The Division would be authorized to either contract with a qualified vendor to implement the system or to develop and make available to qualified service providers an interface that enables them to access data and facilitate the creation of a system. The PCS sets out minimum standards for each possible method of implementation as follows:

- Vendor implemented system – Division would issue competitive request for proposal to assess qualifications of vendor(s); resulting contract could not include costs payable by the Division to the vendor(s) and vendor(s) shall reimburse the Division for reasonable implementation costs; qualified vendor(s) would be able to charge participating lienholders a per-transaction fee consistent with market price but not exceeding $3.50; lienholders would be able to charge borrowers the per-transaction fee plus an amount not exceeding $3; qualified vendor(s) would also be able to serve as service providers to lienholders if certain conditions are met.
- Division implemented system – Cost to the Division must not exceed $250,000; Division would establish qualifications for service providers; approved service providers would be required to pay an equal share of the development costs plus an annual fee not to exceed $3,000 for operation and maintenance of the system; contracts could not include costs payable by the Division to the service provider; service providers would be able to charge participating lienholders a per-transaction fee consistent with market price; service providers would be prohibited from using information on vehicle titles for marketing purposes.

Qualified vendors and service providers would be required to have experience in providing electronic solutions to state motor vehicle departments or agencies.

By **October 1, 2013**, the Division would be required to report to the Chairs of the Joint Legislative Transportation Oversight Committee on the status of implementation of the system.

Prior to statewide implementation, the Division would be authorized to conduct a pilot program of the system for up to 90 days with one or more qualified vendors and up to five lienholders.

By **July 1, 2014**, the Division would be required to implement the system.

Beginning **July 1, 2015**, all individuals and lienholders normally engaged in the business of financing motor vehicles would be required to utilize the electronic system.

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

SENATE BILL 583

Short Title:	Metal Theft Statute Amendments.	(Public)
Sponsors:	Senators Tucker (Primary Sponsor); Hise, Jackson, Jenkins, Newton, Pate, Rabin, and Rabon.	
Referred to:	Commerce.	

April 4, 2013

A BILL TO BE ENTITLED

AN ACT TO MAKE VARIOUS AMENDMENTS TO THE STATUTES THAT REGULATE SECONDARY METALS RECYCLERS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 66-420 reads as rewritten:

"**§ 66-420. Definitions.**

The following definitions apply in this Part:

(1) Cash card system. — A system of payment ~~that captures a photograph of a payment recipient and~~ that provides payment in cash or in a form other than ~~cash.~~cash and that when providing payment in the form of cash (i) captures a photograph of the seller at the time payment is received and (ii) uses an automated cash dispenser, including, but not limited to, an Automated Teller Machine.

(2) Fixed site. — A site occupied by a secondary metals recycler as the owner of the site or as a lessee of the site under a lease or other rental agreement providing for occupation of the site by a nonferrous metals purchaser for a total duration of not less than 364 days.

(3) Law enforcement officer. — Any duly constituted law enforcement officer of the State or of any municipality or county.

(4) Nonferrous metals. — Metals not containing significant quantities of iron or steel, including, but not limited to, copper wire, copper clad steel wire, copper pipe, copper bars, copper sheeting, aluminum other than aluminum cans, a product that is a mixture of aluminum and copper, catalytic converters, lead-acid batteries, and stainless steel beer kegs or containers. The term shall not include precious metals as defined and regulated in Part 2 of this Article.

(5) Nonferrous metals purchaser. — A secondary metals recycler who purchases, gathers, or obtains nonferrous metals.

(6) Permit. — A permit issued pursuant to G.S. 66-426(a).

(7) Regulated metals property. — All ferrous and nonferrous metals.

(8) Secondary metals recycler. — Any person, firm, or corporation in the State:

a. That is engaged in the business of gathering or obtaining ferrous or nonferrous metals that have served their original economic purpose or is in the business of performing the manufacturing process by which ferrous metals or nonferrous metals are converted into raw

material products consisting of prepared grades and having an existing or potential economic value; or

b. That has facilities for performing the manufacturing process by which ferrous metals or nonferrous metals are converted into raw material products consisting of prepared grades and having an existing or potential economic value, by methods including, but not limited to, the processing, sorting, cutting, classifying, cleaning, baling, wrapping, shredding, shearing, or changing the physical form or chemical content of the metals, but not including the exclusive use of hand tools."

SECTION 2. G.S. 66-424(a) reads as rewritten:

"**§ 66-424. Prohibited activities and transactions.**

(a) A secondary metals recycler shall not do any of the following:

(1) Operate any business that cashes checks at a fixed site at which the secondary metals recycler purchases regulated metals property.

(2) Purchase nonferrous metals for the purpose of recycling the nonferrous metals, unless the nonferrous metals purchaser possesses a valid permit.

(3) Purchase any central air conditioner evaporator coils or ~~condensers,~~condensers that are not attached to a unit, or catalytic converters that are not attached to a vehicle, except that a secondary metals recycler may purchase these items from (i) a company, contractor, or individual that is in the business of installing, replacing, maintaining, or removing these ~~items.~~items or (ii) a seller with a purchase receipt or other proof of ownership. As used in this subdivision, the term "central air conditioner evaporator coils" shall not include coils from a window air conditioning system if the coils are contained within the system itself or a coil from a vehicle condenser.

(4) Purchase any regulated metals property that the secondary metals recycler knows or reasonably should know to be stolen."

SECTION 3. G.S. 66-421(b)(11) reads as rewritten:

"(b) Records Required. — A secondary metals recycler shall maintain a record of all purchase transactions in which the secondary metals recycler purchases regulated metals property. The record of each transaction shall contain the following information:

...

(11) In transactions involving catalytic converters that are not attached to a vehicle, and central air conditioner evaporator coils or ~~condensers,~~condensers that are not attached to a unit, the person delivering the materials shall place next to that person's signature on the receipt required under subsection (a) of this section, a clear impression of that person's index finger that is in ink and free of any smearing. A secondary metals recycler may elect to obtain the fingerprint electronically. If the secondary metals recycler has a copy of the fingerprint of the person delivering the nonferrous metal on file, the secondary metals recycler must examine the photo identification, but may reference the fingerprint that is on file without making a separate fingerprint for each subsequent transaction. As used in this subdivision, the term "central air conditioner evaporator coils" shall not include coils from a window air conditioning system if the coils are contained within the system itself or a coil from a vehicle condenser."

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

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

S D

SENATE BILL 583
PROPOSED COMMITTEE SUBSTITUTE S583-CSTP-33 [v.1]
5/10/2013 1:17:24 PM

Short Title: Metal Theft Statute Amendments. (Public)

Sponsors:

Referred to:

April 4, 2013

A BILL TO BE ENTITLED

AN ACT TO MAKE VARIOUS AMENDMENTS TO THE STATUTES THAT REGULATE SECONDARY METALS RECYCLERS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 66-420 reads as rewritten:

"**§ 66-420. Definitions.**

The following definitions apply in this Part:

(1) Cash card system. — A system of payment ~~that captures a photograph of a payment recipient and~~ that provides payment in cash or in a form other than ~~cash.~~cash and that when providing payment in the form of cash, (i) captures a photograph of the seller at the time payment is received, and (ii) uses an automated cash dispenser, including, but not limited to, an automated teller machine.

(1a) Copper. — Nonferrous metals including, but not limited to, copper wire, copper clad steel wire, copper pipe, copper bars, copper sheeting, copper tubing and pipe fittings, and insulated copper wire. The term shall not include brass alloys, bronze alloys, lead, nickel, zinc, or items not containing a significant quantity of copper.

(2) Fixed site. — A site occupied by a secondary metals recycler as the owner of the site or as a lessee of the site under a lease or other rental agreement providing for occupation of the site by a nonferrous metals purchaser for a total duration of not less than 364 days.

(3) Law enforcement officer. — Any duly constituted law enforcement officer of the State or of any municipality or county.

(4) Nonferrous metals. — Metals not containing significant quantities of iron or steel, including, but not limited to, copper,~~copper wire, copper clad steel wire, copper pipe, copper bars, copper sheeting,~~ aluminum other than aluminum cans, a product that is a mixture of aluminum and copper, catalytic converters, lead-acid batteries, and stainless steel beer kegs or containers. The term shall not include precious metals as defined and regulated in Part 2 of this Article.

(5) Nonferrous metals purchaser. — A secondary metals recycler who purchases, gathers, or obtains nonferrous metals.

(6) Permit. — A permit issued pursuant to G.S. 66-426(a).

(7) Regulated metals property. — All ferrous and nonferrous metals.

(8) Secondary metals recycler. — Any person, firm, or corporation in the State:

a. That is engaged in the business of gathering or obtaining ferrous or nonferrous metals that have served their original economic purpose or is in the business of performing the manufacturing process by which ferrous metals or nonferrous metals are converted into raw material products consisting of prepared grades and having an existing or potential economic value; or

b. That has facilities for performing the manufacturing process by which ferrous metals or nonferrous metals are converted into raw material products consisting of prepared grades and having an existing or potential economic value, by methods including, but not limited to, the processing, sorting, cutting, classifying, cleaning, baling, wrapping, shredding, shearing, or changing the physical form or chemical content of the metals, but not including the exclusive use of hand tools."

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

SENATE BILL 583:
Metal Theft Statute Amendments

2013-2014 General Assembly

Committee:	Senate Commerce	**Date:**	May 14, 2013
Introduced by:	Sen. Tucker	**Prepared by:**	Peter Ledford
Analysis of:	PCS to First Edition S583-CSTP-33[v.1]		Committee Counsel

SUMMARY: ***The Proposed Committee Substitute to Senate Bill 583 would amend the definition of a cash card system used by a secondary metal recycler and would add a separate definition for copper.***

The PCS adds a separate definition for copper and deletes Sections 2 and 3.

CURRENT LAW: The purchase and sale of metal is regulated by Part 3 of Article 45 of Chapter 66 of the General Statutes. Among other requirements, the Part prohibits secondary metal recyclers from purchasing copper or more than $100 in nonferrous metals in a cash transaction. Instead, secondary metal recyclers must use a check, money order, or cash card system in these transactions.

The definitions section of the Part provides that a cash card system is a system of payment that captures a photograph of the payment recipient and provides cash. The section also provides that nonferrous metals are metals not containing significant quantities of iron or steel, including various copper products.

BILL ANALYSIS: The PCS to Senate Bill 583 would amend the definition of a cash card system by defining it as a system of payment that provides cash using an automated dispenser and that captures a photograph of the seller when cash is dispensed. The bill would also create a separate definition for copper and would remove references to copper from the definition for nonferrous metals.

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

O. Walker Reagan
Director

S583-SMTP-60 CSTP-33 -V2

Research Division
(919) 733-2578

SENATE JOINT RESOLUTION 431

Sponsors:	Senator Brown (Primary Sponsor).
Referred to:	Rules and Operations of the Senate.

March 27, 2013

A JOINT RESOLUTION TO CONFIRM THE GOVERNOR'S APPOINTMENT OF RAY GRACE TO THE OFFICE OF COMMISSIONER OF BANKS.

Whereas, G.S. 53-92(a) directs the Governor to appoint a Commissioner of Banks, subject to confirmation by the General Assembly by joint resolution; and

Whereas, the former Commissioner of Banks, Joseph A. Smith, Jr., resigned effective February 16, 2012; and

Whereas, the Governor has submitted the name of Ray Grace to the presiding officers of the House of Representatives and the Senate to fill the unexpired term of the Commissioner of Banks; Now, therefore,

Be it resolved by the Senate, the House of Representatives concurring:

SECTION 1. The appointment of Ray Grace as Commissioner of Banks for the remainder of the term expiring March 31, 2015, is confirmed.

SECTION 2. This resolution is effective upon ratification.

RAY GRACE

EMPLOYMENT HISTORY

February 2012 – Present

North Carolina Interim Commissioner of Banks

Leader of the agency of North Carolina state government that charters, supervises and regulates state-chartered banks, savings banks and savings and loan associations; mortgage bankers, mortgage brokers, mortgage servicers and mortgage loan originators; consumer finance companies, check cashers, money transmitters, reverse mortgage lenders and refund anticipation loan facilitators.

Accomplishments during terms of office as Acting Commissioner, Chief Deputy and Deputy Commissioner include the following:

Banking, Mortgage and Consumer Lending Regulation

- As Director of Bank Applications, helped establish 95 de novo state banks.
- Helped form the North Carolina State Bank Directors' College.
- Increase in assets under supervision from $235 to $257 billion at September 30, 2012.
- Guided state-chartered banks during worse economic crisis since the Depression.
- Implemented technology to automate certain areas of the examination processes of regulated entities to increase efficiencies in supervision.

Other Initiatives

- Upon former Commissioner Joseph A. Smith's departure from the agency, testified before the Joint Legislative Study Commission on the Modernization of North Carolina Banking Laws, and led the implementation of the first substantive revision and modernization of North Carolina's banking law since 1931.
- Agency is a member of the task force to increase small business lending by North Carolina banks.
- Agency is a member of the task force to prevent financial elder abuse.

February 2012 to present	Acting or Interim Commissioner of Banks
November 2010 - February 2012	Chief Deputy Commissioner of Banks North Carolina Office of the Commissioner of Banks Raleigh, North Carolina
January 2009 - November 2010	Deputy Commissioner of Banks
1992 – 2009	Director of Bank Applications

1990 -1992	Special Supervisory Examiner (Responsible for supervision of troubled banks during a deep recession)
1985 -1990	Director of Bank Applications
1974 -1985	Commercial Bank Examiner (Helped establish and led the formation of an Electronic Data Processing (EDP) (later, IT) examination team and program for the state during 1978, and worked as both commercial and EDP bank examiner from 1978 to 1985.)
1974	Bank Examiner Trainee

EDUCATION, MILITARY SERVICE AND PROFESSIONAL LICENSURE

- Graduated from LaSalle High School, Niagara Falls, New York, 1966.
- U.S. Marine Corps, 1966 to 1969 (Honorable discharge, September, 1969
- Service in the Republic of Viet Nam, March, 1967 through April, 1968
- Honorable discharge from the United States Marine Corps, September 1969.
- B.S. in Commerce, Niagara University, Niagara Falls, New York, December 1973.

AFFILIATIONS

Conference of State Bank Supervisors

- Chairman, CSBS District III (Southeastern Region)
- Incoming Chairman, CSBS Performance Standards Committee (Establishes agency performance standards and administers agency accreditation program for state banking departments nationally)
- Member of the Board of Directors of CSBS

ADDITIONAL PERSONAL INFORMATION

Born April 5, 1948, in Niagara Falls, New York.

Resides in Raleigh, North Carolina with wife of over 20 years, Joan Grace. Father of two sons and a daughter; three grandchildren, all of Raleigh.

HOUSE BILL 119*

Short Title:	Natural Gas/Rate Adjustment Mechanism.	(Public)
Sponsors:	Representatives Hager, Millis, Moffitt, and Arp (Primary Sponsors). *For a complete list of Sponsors, refer to the North Carolina General Assembly Web Site.*	
Referred to:	Public Utilities and Energy.	

February 20, 2013

A BILL TO BE ENTITLED

AN ACT AUTHORIZING THE UTILITIES COMMISSION TO ADOPT, IMPLEMENT, MODIFY, OR ELIMINATE A RATE ADJUSTMENT MECHANISM FOR NATURAL GAS LOCAL DISTRIBUTION COMPANY RATES.

The General Assembly of North Carolina enacts:

SECTION 1. Article 7 of Chapter 62 of the General Statutes is amended by adding a new section to read as follows:

"**§ 62-133.7A. Rate adjustment mechanism for natural gas local distribution company rates.**

In setting rates for a natural gas local distribution company in a general rate case proceeding under G.S. 62-133, the Commission may adopt, implement, modify, or eliminate a rate adjustment mechanism to enable the company to recover the prudently incurred capital investment and associated costs of complying with federal gas pipeline safety requirements, including a return based on the company's then authorized return. The Commission shall adopt, implement, modify, or eliminate a rate adjustment mechanism authorized under this section only upon a finding by the Commission that the mechanism is in the public interest."

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

HOUSE BILL 119:
Natural Gas/Rate Adjustment Mechanism

2013-2014 General Assembly

Committee:	Senate Commerce	**Date:**	May 14, 2013
Introduced by:	Reps. Hager, Millis, Moffitt, Arp	**Prepared by:**	Peter Ledford
Analysis of:	First Edition		Committee Counsel

SUMMARY: ***House Bill 119 authorizes the Utilities Commission to adopt a rate adjustment mechanism for natural gas distribution companies to recover costs incurred to comply with federal gas pipeline safety requirements.***

[As introduced, this bill was identical to S397, as introduced by Sen. Newton, which is currently in Senate Commerce.]

CURRENT LAW: The rates for natural gas local distribution companies regulated by the Utilities Commission under G.S. 62-133 and 62-133.4 include the wholesale cost of gas and the "margin." The margin amount includes the prudently incurred costs for delivering the gas sold and a rate of return on the capital investment made by the company. The wholesale cost of the natural gas distributed is passed through directly to the customer. Natural gas local distribution companies do not profit from fluctuations in the wholesale price of natural gas.

G.S. 62-133.7 authorized the Commission to approve a "customer utilization tracker" (CUT) in a general rate case for natural gas local distribution companies. The CUT mechanism tracks the usage of residential customers and allows a natural gas local distribution company to include the amount of the margin that is lost due to the decline in customer usage in the general rates. Industrial rate schedules are excluded from the program.

The CUT mechanism "decouples" recovery of the margin from customer usage patterns.[1] Traditional utility regulation provides for the recovery of a utility's fixed costs through the rates charged by the utility. Decoupling separates the recovery of a utility's fixed costs from the amount of energy sold by the utility.

The federal Department of Transportation's Pipeline and Hazardous Material Safety Administration (PHMSA) monitors the operations of natural gas pipeline projects. Through PHMSA, the federal government is responsible for developing, issuing, and enforcing pipeline safety regulations. Most inspections are conducted by state regulatory agencies, which are responsible for regulation, inspection, and enforcement of pipelines within state boundaries. G.S. 62-50 authorizes the Commission to enter into agreements with PHMSA to regulate and inspect the safety standards of all natural gas pipelines in the State.

BILL ANALYSIS: House Bill 119 authorizes the Utilities Commission to adopt a rate adjustment mechanism that will allow natural gas distribution companies to recover costs incurred to comply with federal gas pipeline safety requirements. A rate adjustment mechanism for this purpose may only be adopted in a general rate case if the Commission determines that the mechanism is in the public interest. Before costs can be recovered under this mechanism, the Commission must make a determination that the costs were prudently incurred.

[1] Subsequent Commission Orders refer to this as the "Margin Decoupling Tracker" or MDT.

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

Heather Fennell, counsel to House Public Utilities, substantially contributed to this summary.

VISITOR REGISTRATION SHEET

Senate **COMMERCE** Committee — May 14, 2013

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DEBBIE LOWN

NAME	FIRM OR AGENCY AND ADDRESS
	PBRC
Dave Beck	NCPBA
Mia Bailey	Electri Cities
Andy Walsh	SAS
Don McConnaughhay	SAS
Nathan Batts	NCBA
Lauren Whaley	NCCUL
Tim KENT	NC Beer & Wine
Beatrice Williams	CUCA
Al Ripley	NCJC
Ellen Hurwitz	CRL

VISITOR REGISTRATION SHEET

Senate **COMMERCE** Committee — May 14, 2013

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DEBBIE LOWN

NAME	FIRM OR AGENCY AND ADDRESS
Sarah Zottecker	Brubaker & Assoc.
George Smith	Nexsen Pruet
Brian Pearce	Nexsen Pruet

VISITOR REGISTRATION SHEET

Senate **COMMERCE** Committee — May 14, 2013

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DEBBIE LOWN

NAME	FIRM OR AGENCY AND ADDRESS
Jaz Tunnell	PNG
David Barnes	Electric Cities
Patrick Buffkin	NCAEC
	NCS
Bill Rustad	
Brittan Allen	Allen Law Offices, PLLC
Trey Patton	AT&T
Sarah Hardin	CTIA

VISITOR REGISTRATION SHEET

Senate **COMMERCE** Committee — May 14, 2013

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DEBBIE LOWN

NAME	FIRM OR AGENCY AND ADDRESS
Ray Grace	Office of Commissioner of Banks
McNeil Abstract	For the Committees
Hue Nguyen	NCCOB
Katie Boslen	NCCOB
Rose Campbell	NCCOB
Susanna Davis	Williams Mullen
Bill McAulay	PSNC Energy
[illegible]	[illegible]
Hem [illegible]	[illegible]
Dianna Downing	PSNCUC-1
Dan Conrad	NCUC
Penny Hufft	School of Gov

VISITOR REGISTRATION SHEET

Senate **COMMERCE** Committee — May 14, 2013

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DEBBIE LOWN

NAME	FIRM OR AGENCY AND ADDRESS
Kelli Ward	Duke Energy
Dave Simpson	CAUC
Burton Albritton	ABC Carolinas
Canaan Duke	NVA
Kerri Burch	NWC
Katy Cumberland	MWC
Sarah Wolfe	MWC
Wes Bach	NCSBA
Butch Gunnells	NC Beer
GREG TURNER	CITY OF WINSTON-SALEM
Andrew Cox	Ch DWS
Lisa Martin	NC HBA
Conor McLamb	DENR

Senate Committee on Commerce
Thursday, May 30, 2013, 11:00 AM
1027/1128 Legislative Building

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

BILL NO.	SHORT TITLE	SPONSOR
HB 1007	Confirm Ayers as ED of Public Staff/NCUC	Representative Rules, Calendar, And Operations of the House
HB 664	Cell Tower Deployment Act.	Representative Hager Representative Moffitt Representative W. Brawley Representative Alexander
HB 276	Zoning/Board of Adjustment Changes.	Representative G. Graham Representative Stam
HB 687	Homeless Shelters/Remove Age Limits.	Representative Hardister Representative Hamilton Representative Harrison
HB 688	Amend Continuing Ed Req's/Cert. Well K'ors.	Representative Hardister Representative Millis Representative Tine Representative Jeter
HB 301	Clarifying Changes/Engineers/Surveyors Laws.	Representative Arp Representative Catlin Representative Millis Representative Hager
HB 515	Amend Credit Union Laws.	Representative J. Bell Representative L. Hall Representative Wells Representative Jordan

Senate Committee on Commerce
Thursday, May 30, 2013 at 11:00 AM
Room 1027/1128 of the Legislative Building

MINUTES

The Senate Committee on Commerce met at 11:00 AM on May 30, 2013 in Room 1027/1128 of the Legislative Building. Twenty four members were present.

Senator Wesley Meredith, Chair, presided.

Kira Jordan from Rutherfordton, Gabi Gordon from Summerfield, Jacob Burnette from Canton, Ariana Lindsey from Reidsville, Henry de St. Aubin from Siler City, Logan Brooks from Pittsboro, and Jasmyn Jones from Knightdale served as pages.

Senator Meredith chose to hear the bills out of order. The order of the bills in these minutes is as they were heard.

H. J. R. 1007 Confirm Ayers as ED of Public Staff/NCUC

House Joint Resolution 1007 is a joint resolution confirming the Governor's appointment of Christopher J. Ayers to a six year term as Executive Director of the Public Staff of the North Carolina Utilities Commission. The term begins July 1, 2013 and ends June 30, 2019. Senator Barringer introduced Christopher J. Ayers. Mr. Ayers gave a brief history of himself with statements of the direction and his commitment as the Executive Director of the Public Staff of the North Carolina Utilities Commission. Senator Newton moved for a favorable report and it carried.

H. B. 664 Cell Tower Deployment Act

Rep. Hager was introduced to speak on the bill. House Bill 664 would amend local government authority to regulate the equipment and facilities used for the provision of wireless service. The bill would also amend the authority for the State to lease land for communication purpose. Peter Ledford an attorney from the Research Division assisted with clarification and responses to the members. Senator Jenkins moved for a favorable report and it carried.

H. B. 515 Amend Credit Union Laws

Rep. Bell was introduced to speak on the bill. House Bill 515 amends the credit union statutes to conform with changes made to State banking laws in S.L. 2012-56, and permits credit unions to invest in corporate bonds with a minimum rating of A+. Senator Tillman moved for a favorable report and it carried.

H. B. 276 Zoning/Board of Adjustment Changes

Senator Tillman moved that the proposed committee substitute (PCS) be adopted before the committee and it carried. The PCS for House Bill 276 would update the laws pertaining to boards of adjustment for cities and counties. Rep. Stam was introduced to speak on the bill. Senator Tillman moved unfavorable to the bill – favorable to the PCS and it carried.

H. B. 301 Clarifying Changes/Engineers/Surveyors Laws

Rep. Arp was introduced to speak on the bill. House Bill 301 makes technical changes to the laws regulating engineers and land surveyors by reorganizing the statutes and deleting references to written examinations to allow for electronic examinations. The bill waives the examination requirement for GIS practitioners with certain education and experience until July 1, 2014. After July 1, 2014, GIS practitioners would be required to meet the same licensure requirements that apply to all land surveying applications. Senator Woodard moved for a favorable report and it carried.

H. B. 687 Homeless Shelters/Remove Age Limits

Rep. Hardister was introduced to speak on the bill. House Bill 687 would require the Building Code Council to amend the North Carolina Building Code to allow occupants younger than 18 in temporary overflow emergency shelters for the homeless. Senator Hunt moved for a favorable report and it carried.

H. B. 688 Amend Continuing Ed Req's/Cert. Well K'ors

Rep. Hardister was introduced to speak on the bill. House Bill 688 would provide that a well contractor must obtain two hours of continuing education within a one-year period instead of obtaining six continuing education units within a one-year period. Senator Tucker brought an amendment before the committee and the members accepted it. Senator Woodard moved unfavorable to the bill – favorable as amended. The amendment was engrossed to create a PCS and was reported out as favorable to the PCS.

The meeting adjourned at 11:22.

Senator Wesley Meredith, Chair
Presiding

Debbie Lown, Committee Clerk

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

COMMERCE COMMITTEE REPORT
Senator Gunn, Co-Chair
Senator Meredith, Co-Chair

Thursday, May 30, 2013

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

FAVORABLE

HB **301** **(CS#1)** Clarifying Changes/Engineers/Surveyors Laws.
Draft Number: None
Sequential Referral: None
Recommended Referral: None
Long Title Amended: No

HB **515** Amend Credit Union Laws.
Draft Number: None
Sequential Referral: Judiciary I
Recommended Referral: None
Long Title Amended: No

HB **664** **(CS#1)** Cell Tower Deployment Act.
Draft Number: None
Sequential Referral: Finance
Recommended Referral: None
Long Title Amended: No

HB **687** **(CS#1)** Homeless Shelters/Remove Age Limits.
Draft Number: None
Sequential Referral: None
Recommended Referral: None
Long Title Amended: No

HJR **1007** **(CS#1)** Confirm Ayers as ED of Public Staff/NCUC.
Draft Number: None
Sequential Referral: None
Recommended Referral: None
Long Title Amended: No

TOTAL REPORTED: 5

Senator William Rabon will handle HB 301
Senator Harry Brown will handle HB 515
Senator E.S. Newton will handle HB 664
Senator Trudy Wade will handle HB 687
Senator John Barefoot will handle HJR 1007

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

COMMERCE COMMITTEE REPORT
Senator Gunn, Co-Chair
Senator Meredith, Co-Chair

Thursday, May 30, 2013

Senator Meredith,
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 **276** **(CS#1)** Zoning/Board of Adjustment Changes.

Draft Number:	H276-PCS10413-TP-47
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

HB **688** **(CS#1)** Amend Continuing Ed Reqs/Cert. Well Kors.

Draft Number:	H688-PCS30565-SU-32
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

TOTAL REPORTED: 2

Senator Tamara Barringer will handle HB 276
Senator Tommy Tucker will handle HB 688

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

H 2

HOUSE JOINT RESOLUTION 1007
Committee Substitute Favorable 5/29/13

Sponsors:

Referred to:

May 2, 2013

A JOINT RESOLUTION PROVIDING FOR THE CONFIRMATION OF CHRISTOPHER J. AYERS AS EXECUTIVE DIRECTOR OF THE PUBLIC STAFF OF THE NORTH CAROLINA UTILITIES COMMISSION.

Whereas, under the provisions of G.S. 62-15, the appointment made by the Governor of the Executive Director of the Public Staff of the North Carolina Utilities Commission is subject to confirmation by the General Assembly by joint resolution; and

Whereas, the current term of office of the Executive Director of the Public Staff of the North Carolina Utilities Commission expires on June 30, 2013; and

Whereas, the Governor has submitted to the presiding officers of the House of Representatives and the Senate the name of his appointee, Christopher J. Ayers of Wake County, to serve as Executive Director of the Public Staff of the North Carolina Utilities Commission for a term to begin July 1, 2013, and expire June 30, 2019; Now, therefore,

Be it resolved by the House of Representatives, the Senate concurring:

SECTION 1. The appointment of Christopher J. Ayers as Executive Director of the Public Staff of the North Carolina Utilities Commission for a term to begin July 1, 2013, and expire June 30, 2019, is confirmed.

SECTION 2. This resolution is effective upon ratification.

HOUSE JOINT RESOLUTION 1007: Confirm Ayers as ED of Public Staff/NCUC

2013-2014 General Assembly

Committee:	Senate Commerce	**Date:**	May 29, 2013
Introduced by:	Committee on Rules, Calendar, and Operations of the House	**Prepared by:**	Peter Ledford Committee Counsel
Analysis of:	Second Edition		

SUMMARY: ***House Joint Resolution 1007 is a joint resolution confirming the Governor's appointment of Christopher J. Ayers to a six year term as Executive Director of the Public Staff of the North Carolina Utilities Commission. The term begins July 1, 2013, and ends June 30, 2019.***

CURRENT LAW: G.S. 62-15 created the office of the Public Staff to represent the using and consuming public in all matters before the Utilities Commission. It is an independent office and is not subject to control by the Utilities Commission. The Executive Director is appointed by the Governor for a six year term, subject to confirmation by the General Assembly. By statute, the salary for the Executive Director is the same as the salary for a Commissioner, which is $124,676 annually.

The Public Staff is required by G.S. 62-15 to represent the public before the Commission in all matters pertaining to the Commission's regulation of public utilities. In addition, the Public Staff is authorized to investigate all complaints regarding public utilities. The Public Staff also provides assistance to the Commission, the Commissioners, and the Attorney General to assist them in carrying out their duties with respect to the regulation of the public utilities subject to regulation under Chapter 62 of the General Statutes. Regulated utilities include suppliers to the public of electricity, natural gas, telephone service, ferry service, water and sewer services, and others. The Public Staff is authorized to appeal orders of the Commission to the Court of Appeals and the Supreme Court when the Public Staff deems it in the interest of the public.

EFFECTIVE DATE: This act is effective upon ratification.

O. Walker Reagan
Director

H1007-SMTP-75 E2 -V1

Research Division
(919) 733-2578

CHRISTOPHER JAMES AYERS

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EXPERIENCE

Poyner Spruill, LLP, Raleigh, North Carolina.
Partner. June 2009 – present. Land Use, Utilities, Government, Environment and Real Estate Practice Group.

My legal practice focuses on the representation of electric, water and wastewater public utilities regulated by the North Carolina Utilities Commission. My practice areas also include environmental, zoning and land use, real estate, renewable energy and appellate law. I regularly appear on behalf of clients before the North Carolina Utilities Commission. I also appear on behalf of clients before the North Carolina Department of Environment and Natural Resources, Office of Administrative Hearings, local zoning boards and commissions and North Carolina superior and appellate courts.

Hunton & Williams, LLP, Raleigh, North Carolina.
Associate Attorney. September 2003 – June 2009. Regulated Industry and Governmental Relations Practice Group.

My legal practice focused on the representation of electric, telecommunications, water and wastewater public utilities regulated by the North Carolina Utilities Commission and Federal Energy Regulatory Commission. My practice areas also included utility regulatory compliance, environmental and appellate law.

North Carolina Court of Appeals, Judge Linda McGee, Raleigh, North Carolina.
Judicial clerk. August 2002 – August 2003.

Hunton & Williams, Raleigh, North Carolina.
Summer Associate. Summer 2001.

North Carolina Court of Appeals, Judge Linda McGee, Raleigh, North Carolina.
Summer judicial clerk. May 2000 – August 2000.

EDUCATION

UNIVERSITY OF NORTH CAROLINA SCHOOL OF LAW, Chapel Hill, North Carolina.
J.D. with Honors, May 2002
Honors and Activities

- North Carolina Law Review
  - Managing Editor: 2001–02
  - Staff member: 2000–01
- Gressman-Pollitt Award for Oral Advocacy – Best Overall
- Mediation Training

DUKE UNIVERSITY, Durham, North Carolina.
Magna Cum Laude. A.B. in Political Science and Sociology, May 1999
Honors and Activities

- Alpha Kappa Delta
- Duke Debate: 1995–99; Captain: 1997–98
- Editor-in-Chief - *Open Forum*: 1998–99
- Undergraduate Publication Board: 1998–99

PROFESSIONAL AND COMMUNITY INVOLVEMENT

N.C. Environmental Management Commission, Raleigh, North Carolina.
Commissioner. June 2011 – present. Appointed by Speaker Thom Tillis.

Global Hope India, Raleigh, North Carolina.
President. January 2013-present. Board of Directors & Executive Committee. August 2011-present.

Wake County Republican Party, Raleigh, North Carolina.
Executive Committee and GOP House District 37 Chair. June 2005-present.

Committee to Elect Chad Barefoot. Raleigh, North Carolina.
Treasurer. January 2012–present.

Hope Community Church, Raleigh, North Carolina.
Member. August 2004-present. Small Group Program Leadership. August 2008-present.

North Carolina 4-H Alumni and Friends Association, North Carolina.
President. May 2007-December 2009. Board of Directors. January 2010-December 2010.

North Carolina 4-H Development Fund, Inc., North Carolina.
Board of Directors. July 2002–July 2009.

Orr 2008, Raleigh, North Carolina.
Treasurer. February 2007-September 2009.

Capital Area Teen Court, Raleigh, North Carolina.
Volunteer. October 2002–December 2008. Volunteer as judge and mentor attorney.

North Carolina Bar Association, Environment, Energy & Natural Resources Law Section, Raleigh, North Carolina.
Energy and Environment Subcommittee. Co-Chair. February 2006-April 2008.

North Carolina 4-H Honor Club, Raleigh, North Carolina.
Member. July 1997-present. Served as President and Chairman of Board of Directors.

PUBLICATIONS

Perry v. Bartlett: *A Preliminary Test for Campaign Finance Reform*, 79 N.C. L. REV. 1788 (2001).

The Information Technology Paradigm and Foreign Policy: The Role of Satellites in U.S. Foreign Policy (Duke University, 1999).

Regulation & Reality Blog: Utilities & the Environment in North Carolina. http://ncutilitieslaw.com

ADMITTED TO PRACTICE

North Carolina State Bar
United States District Court – Eastern District of North Carolina
United States Court of Appeals - 4th Circuit
United States Supreme Court

AWARDS AND ACCOMPLISHMENTS

Triangle Business Journal, 40 Under 40 Award, 2012
Business North Carolina, Legal Elite Young Gun, 2010-2012
Super Lawyers, North Carolina Rising Stars, 2009-2012

Triangle Business Leader, Movers & Shakers Award, 2007
North Carolina 4-H Young Alumni Award, 2005

REPRESENTATIVE EXPERIENCE

- Represent electric, telecommunication, gas, water and sewer utilities before North Carolina Utilities Commission (NCUC).
- Represent water, wastewater and electric utilities in general rate case applications.
- Represent water and wastewater utilities in mergers, acquisition and divestment negotiations and related regulatory proceedings.
- Advise and represent clients on various issues under the jurisdiction of the Federal Energy Regulatory Commission.
- Advise telecommunications companies on transition from regulated to competitive markets.
- Advise and represent telecommunications company in connection with the Telecommunications Act of 1996.
- Represent and advise competing local telephone providers (CLPs and CLECs) in certification and abandonment proceedings.
- Represent and advise natural gas and propane gas companies with respect to NCUC regulation.
- Represent and advise municipalities on public utility matters, including street lighting, wholesale service agreements and territorial disputes.
- Advise and represent municipalities regarding land use and zoning regulation and enforcement.
- Represent electric power suppliers in REPS compliance proceedings and rulemaking before the NCUC.
- Represent electric power supplier in negotiating purchased power agreement.
- Represent client in negotiating energy management services agreement.
- Represent clients in negotiating renewable energy land leases.
- Represent and advise municipalities regarding electric supplier territorial disputes.
- Represent consumer advocate in rate cases before the NCUC.
- Advise public utilities regarding compliance with utility and environmental administrative rules and regulations.
- Advise clients with respect to Senate Bill 3 renewable energy portfolio standards (REPS), renewable energy credits (RECs) and sustainable energy regulations.
- Represent utilities and commercial utility customers in general superior court litigation and appellate proceedings.
- Represent utilities in environmental and land use permitting and enforcement proceedings.
- Represent clients in appeals before state and federal appellate courts.
- Represent water, sewer and gas clients in contested case petitions before the Office of Administrative Hearings.

STATE ETHICS COMMISSION

1324 MAIL SERVICE CENTER
RALEIGH, NC 27699-1324
WWW.ETHICSCOMMISSION.NC.GOV

ROBERT L. FARMER
CHAIRMAN

PERRY Y. NEWSON
EXECUTIVE DIRECTOR

April 26, 2013

The Honorable Patrick L. McCrory
Governor of North Carolina
20301 Mail Service Center
Raleigh, NC 27699-0301

Via email

Re: Evaluation of Statement of Economic Interest for **Mr. Christopher J. Ayers**
Executive Director, Public Staff to the Utilities Commission

Dear Governor McCrory:

Our office is in receipt of **Mr. Christopher J. Ayers'** 2013 Statement of Economic Interest as the prospective Executive Director of the **Public Staff to the Utilities Commission.** We have reviewed it for actual and potential conflicts of interest pursuant to Chapter 138A of the North Carolina General Statutes ("N.C.G.S."), also known as the State Government Ethics Act.

We did not find an actual conflict of interest, but found the potential for a conflict of interest. The potential conflict identified does not prohibit service on this entity.

The State Government Ethics Act establishes ethical standards for certain public servants, including conflict of interest standards. N.C.G.S. §138A-31 prohibits public servants from using their positions for their financial benefit or for the benefit of a member of their extended family or a business with which they are associated. N.C.G.S. §138A-36(a) prohibits public servants from participating in certain official actions from which the public servant, his or her client(s), a member of the public servant's extended family, or a business or non-profit with which the public servant or a member of the public servant's immediate family is associated may receive a reasonably foreseeable financial benefit.

Mr. Ayers will fill the role of Executive Director of the Public Staff to the Utilities Commission. He is currently a Partner in Poyner & Spruill, LLP. He disclosed that he has provided legal advice and representation to various water, sewer and electric utilities, municipalities, business entities and the N.C. Attorney General's Office with respect to matters before the Utilities Commission. As such, he has the potential for a conflict of interest and should exercise appropriate caution in the performance of his public duties should Poyner & Spruill or his clients come before him for official action. Mr. Ayers stated that he would resign from Poyner & Spruill prior to assuming this position.

In addition to the conflicts standards noted above, N.C.G.S. §138A-32 prohibits public servants from accepting gifts, directly or indirectly (1) from anyone in return for being influenced in the discharge of their official responsibilities, (2) from a lobbyist or lobbyist principal, or (3) from a person or entity which is doing or seeking to do business with the public servant's agency, is regulated or controlled by the public servant's agency, or has particular financial interests that may be affected by the public servant's official actions. Exceptions to the gifts restrictions are set out in N.C.G.S. §138A-32(e).

Finally, the State Government Ethics Act mandates that all public servants attend an ethics and lobbying education presentation. Please review the attached document for additional information concerning this requirement.

Please contact our office if you have any questions concerning our evaluation or the ethical standards governing public servants under the State Government Ethics Act.

Sincerely,

Beth Carpenter

Beth Carpenter
SEI Unit

cc: Mr. Christopher J. Ayers

Attachment: Ethics Education Flyer

NORTH CAROLINA STATE ETHICS COMMISSION
2013 STATEMENT OF ECONOMIC INTEREST

919-715-2071 www.ethicscommission.nc.gov

FOR OFFICE USE ONLY
RECEIVED
APR 25 2013
STATE ETHICS COMMISSION

COMPLETE THIS FORM AND MAIL SIGNED, ORIGINAL TO
STATE ETHICS COMMISSION, 1324 MAIL SERVICE CENTER, RALEIGH, NC 27699-1324

FILER'S NAME (FIRST, MIDDLE, LAST)

First Name	Middle Name	Last Name	Suffix
Christopher	James	Ayers	

MAILING ADDRESS, CITY, STATE, ZIP+4[1]

Address	City	State	Zip
7117 Meadow Gate Dr	Apex	NC	27502

HOME ADDRESS, CITY, STATE, ZIP+4

☒ Same as Mailing Address

Address	City	State	Zip

CURRENT EMPLOYER	JOB TITLE
Poyner Spruill, LLP	Partner

NATURE OF BUSINESS

Legal

DAYTIME PHONE NUMBER	ALTERNATE PHONE NUMBER
(919) 783-1152	

E-MAIL ADDRESS

cayers13@hotmail.com

REASON FOR FILING (SELECT ALL THAT APPLY)

☒ STATE GOVERNMENT JOB (Please specify the agency for which you work)	☐ BOARD/COMMISSION (Please list all boards on which you are serving)
North Carolina Utilities Commission Public Staff - Executive Director	
☐ JUDICIAL OFFICER (Please specify the office you hold)	☐ LEGISLATOR (Please specify the legislative branch – House or Senate)

Do other immediate family members reside in your household?[2]

☒ Yes ☐ No

FULL NAME[3]	RELATIONSHIP	EMPLOYER	JOB TITLE	NATURE OF BUSINESS
Rebecca Keel Ayers	Spouse	U.S. Office of Personnel Management	Manager	Human Resources

[1] With the exception of judicial officers (including justices or judges of the General Court of Justice, district attorneys, and clerks of court), persons holding or seeking an elected office with a residency requirement must provide a home address.

[2] Immediate family includes your spouse (unless legally separated), minor children, and members of your extended family (your and your spouse's adult children, grandchildren, parents, grandparents, and siblings, and the spouses of each of those persons) that reside in your household.

[3] Filers may use the initials of unemancipated children instead of those children's names. If initials are used, the children's names should be provided on a (non-public) supplement form available from the Commission upon request.

I. $10,000 PLUS DISCLOSURES

If you, your spouse, or members of your immediate family have assets or liabilities with a market value of at least $10,000 in the following categories, please provide the requested information as of December 31st of the preceding year unless another time period is specified in the question.

- ▶Do not list the value of those assets or liabilities.
- ▶Do not list assets or liabilities held in a blind trust[4] established by or for the benefit of you or an immediate family member.

1. Do you, your spouse, or members of your immediate family have an ownership interest in North Carolina real estate with a market value of $10,000 or more?

☒ Yes ☐ No

Owner of Real Estate	% Ownership Interest	Location by City	Location by County
Christopher James and Rebecca Keel Ayers	100%	Apex	Wake

2. Do you, your spouse, or members of your immediate family lease or rent to or from the State real estate with a market value of $10,000 or more?

☐ Yes ☒ No

Name of Lessor	Name of Lessee (Renter)	Location by City	Location by County

3. Within the preceding two years, have you, your spouse, or members of your immediate family sold to or bought from the State personal property with a market value of $10,000 or more?

☐ Yes ☒ No

Name of Purchaser	Name of Seller	Type of Property

4. Do you, your spouse, or members of your immediate family currently lease or rent to or from the State personal property with a market value of $10,000 or more?

☐ Yes ☒ No

Name of Lessor	Name of Lessee (Renter)	Type of Property

[4] A "blind trust" is a trust that meets all of the following criteria: (a) the owner of the trust's assets has no knowledge of the trust's holdings and sources of income, (b) the individual or entity managing the trust's assets ("the trustee") is not a member of the covered person's extended family and is not associated with or employed by the covered person or his or her immediate family, and (c) the trustee has sole discretion to manage the trust's assets. G.S. 138A-3(1).

5(a). Do you, your spouse, or members of your immediate family own interests (generally stock) valued at $10,000 or more in a publicly owned company?

☐ Yes ☒ No

▶Do not list ownership interests in a widely held investment fund (including mutual funds, regulated investment companies, or pension or deferred compensation plans) if (i) the fund is publicly traded or its assets are widely diversified and (ii) neither you nor an immediate family member are able to control the assets held in the mutual fund, investment company, or pension or deferred compensation plan.

Owner of Interest	Full Name of Company (Do not use a ticker symbol)

5(b). Do you, your spouse, or members of your immediate family hold stock options valued at $10,000 or more in a company or business?

☐ Yes ☒ No

Owner of Stock Option	Full Name of Company (Do not use a ticker symbol)

6(a). Do you, your spouse, or members of your immediate family have financial interests valued at $10,000 or more in a non-publicly owned company or business entity (including interests in sole proprietorships, partnerships, limited partnerships, joint ventures, limited liability companies, limited liability partnerships, and closely held corporations)?

☐ Yes ☒ No - If "No", proceed to question 7.

Owner of Interest	Name of Business Entity

6(b). For each of those non-publicly owned companies or business entities identified in question 6(a) (the "primary company"), please list the names of *any other companies* in which the primary company owns securities or equity interests valued at over $10,000, *if known*.

Non-Publicly Owned Company (the Primary Company)	Other Companies in which the Primary Company Owns Security or Equity Interests
☒ None or Not Known	

6(c). If you know that any company or business entity listed in 6(a) or (b) above has any material business dealings or business contracts *with the State*, or is *regulated by the State*, provide a brief description of that business activity.

Name of Company or Business Entity	Description of Business Activity with the State
☒ None or Not Known	

7. Are you, your spouse, or members of your immediate family the beneficiaries of a vested trust with a value of $10,000 or more that is created, established, or controlled *by you*?

☐ Yes ☒ No

► Do not list blind trusts.

Name and Address of Trustee	Description of the Trust	Your Relationship to the Trust

8. Do you, your spouse, or members of your immediate family have a liability (debt) of $10,000 or more, excluding indebtedness (mortgage) on your primary personal residence? Examples include credit card debts, auto loans, and student loans.

☐ Yes ☒ No

Name of Debtor (You, Spouse, Immediate Family Member)	Type of Creditor (Commercial Bank, Credit Union, Individual, etc.)

II. OTHER DISCLOSURES

9(a). During the preceding calendar year, were you, your spouse or members of your immediate family a director, officer, governing board member, employee, independent contractor, or registered lobbyist of a nonprofit corporation or organization operating in the State primarily for religious, charitable, scientific, literary, public health and safety, or educational purposes?

☒ Yes ☐ No - If "No", proceed to question 10.

► Do not list State boards or entities, or entities created by a political subdivision of the State.
► Do not list organizations of which you are a mere member or subscriber.

Name of Person	His/Her Position	Name of Nonprofit Corporation or Organization	Nature of Business or Purpose of Organization
Rebecca Ayers	Treasurer	Junior League of Raleigh	Non-profit / Civic
Chris Ayers	Secretary / (current) President	Global Hope India	Religious non-profit
Chris Ayers	Board of Directors	Research Institute for Env't Energy and Economics	Study energy and environmental issues

Rebecca Ayers	Board of Directors	N.C. Partnership for Children	Non-profit

9(b). If the listed nonprofit corporations or organizations do business with the State or receive State funds, please provide a brief description of the nature of that business, if known, or with which due diligence could reasonably be known.

Name of Nonprofit Corporation or Organization	Describe State Business or State Funding
☐ None or Not Known	
Junior League of Raleigh	Hosted Governor's Inaugural Ball
N.C. Partnership for Children	Receive funds for Smart Start

10. List all sources of income (not specific amounts) of more than $5,000 received by you, your spouse, or members of your immediate family during the preceding calendar year. Include salary, wages, state/local government retirement, professional fees, honoraria, interest, dividends, rental income, and business income.

Do not include income received from the following sources:

- ▶ Capital gains
- ▶ Federal government retirement
- ▶ Military retirement
- ▶ Social security income/SSDI

Recipient of Income	Name of Source	Type of Business/Industry	Type of Income
☐ I had no reportable income over $5,000 in the preceding calendar year.			
Chris Ayers	Poyner Spruill LLP	Law firm	Salary
Rebecca Ayers	U.S. Office of Personnel Management	Federal Gov't - Human Resources	Salary
Rebecca Ayers	N.C. State University	Education	Salary

11. Are you a practicing attorney?

☒ Yes ☐ No ☐ Judicial Officer/State Attorney

If "Yes", check each category of legal representation in which you or the law firm with which you are associated has earned legal fees of $10,000 or more during the preceding calendar year.

☒ Administrative	☐ Admiralty	☒ Corporate	☒ Criminal
☒ Decedent's Estates	☒ Environmental	☒ Insurance	☒ Labor
☒ Local Government	☒ Real Property	☒ Securities	☒ Tax
☒ Tort litigation (including negligence)	☒ Utilities Regulation	☒ Other category not listed or did not earn legal fees of $10,000 or more during the preceding calendar year	

12. Are you (1) a licensed professional (other than an attorney) or do you provide consulting services individually or as a member of a professional association and (2) did you charge or were you paid over $10,000 for those services during the preceding calendar year?

☐ Yes ☒ No

Type of Business	Nature of Services Rendered

13. Are you or your employer, your spouse or members of your immediate family, or their employer:

- Licensed by the State board or employing entity with which you are or will be associated **or**
- Regulated by the State board or employing entity with which you are or will be associated **or**
- Have a business relationship with the State board or employing entity with which you are or will be associated?

☐ Yes ☒ No ☐ Legislator/Judicial Officer - You are not required to complete this question if you are filing because you are a legislator or a judicial officer ("judicial officer" is defined in footnote 1) or you are filing as an appointee to those offices.

Name of Person	Name of Employer (if applicable)	Type of Relationship (Licensing, Regulatory, Business)

14. During the preceding calendar year, were you, your spouse, or members of your immediate family a director, officer, or governing board member of any society, organization, or advocacy group which has an interest pertaining to subject matter areas over which your agency or board may have jurisdiction?

☐ Yes ☒ No ☐ Legislator/Judicial Officer - You are not required to complete this question if you are filing because you are a legislator or a judicial officer or you are filing as an appointee to those offices.

►Do not list organizations of which you are only a member (not a leadership role).

Name of Person	Name of Society, Organization or Advocacy Group	Leadership Position (Director, Officer, Board Member)

15. Have you ever been convicted of a felony for which you have not received either (i) a pardon of innocence or (ii) an order of expungement regarding that conviction?

☐ Yes ☒ No

Offense	Date of Conviction	County of Conviction	State of Conviction

16. During any calendar quarter in the preceding year (but only the time period after you were appointed, employed or filed or were nominated as a candidate), did you

- receive any gift(s) exceeding $200 per quarter from a person or group of persons acting together, **and**
- when both you and those person(s) were outside North Carolina at the time you accepted the gift(s), **and**
- the gift(s) were given under circumstances that would lead a reasonable person to conclude that they were given for lobbying?

☐ Yes ☒ No

►Do not report gifts given by members of your extended family.
►Do not report gifts that have previously been reported by you to the Department of the Secretary of State on the "Expense Report for Exempted Persons."

Date Item Received	Name and Address of Donor(s)	Describe Item Received	Estimated Market Value

17. During the preceding year (but only the time period after you were appointed, employed, or filed or were nominated as a candidate) have you

- accepted a "scholarship" exceeding $200 from a person or group of persons acting together **and**
- those person(s) were outside North Carolina **and**
- the scholarship was related to your public position? **A "scholarship" is a grant-in-aid to attend a conference, meeting, or similar event.**

☐ Yes ☒ No ☒ Judicial Officer - You are not required to complete this question if you are a judicial officer or you are filing as a judicial officer appointee.

► Do not report gifts that have previously been reported by you to the Department of the Secretary of State on the "Expense Report for Exempted Persons."
►Legislators are not required to report scholarships paid by a nonpartisan legislative organization of which the legislator or the General Assembly is a member or participant or an affiliate of that organization.

Date of Scholarship	Name and Address of Donor(s)	Describe Event	Estimated Market Value

18. Are you or a member of your immediate family currently registered as a lobbyist or lobbyist principal or were you registered as such within the preceding 12 months?

☐ Yes ☒ No

Name of Lobbyist	Lobbyist's Principal	Date of Registration	Registration Expiration

19(a). List the name of each business with which you are associated where you or a member of your immediate family is an employee, director, officer, partner, proprietor, or member or manager.

Name of Person	Relationship to Filer	Name of Company	Role of Person
☐ No Business Associations - If "No Business Associations", proceed to question 20.			
Chris Ayers	Self	Poyner Spruill LLP	Partner

19(b). If you know that any company or business entity listed in 19(a) above has any material business dealings or business contracts with the State, or is regulated by the State, provide a brief description of that business activity.

Name of Company or Business Entity	Description of Business Activity with the State
☐ Not applicable (No entities listed on #19a) ☐ No relationship / Not known	
Poyner Spruill LLP	Regulated by N.C. Bar. Provided legal representation of N.C. Turnpike Authority, Appalachian State University, Western Carolina University, N.C. Board of Dental Examiners, N.C. DOT, N.C. Dept. of Cultural Resources, N.C. Attorney General's office, N.C. Respiratory Care Board

20. Did a Council of State member appoint you to or recommend you for appointment to a board covered by the Ethics Act? Council of State members are:

- ▶ Governor
- ▶ Lt. Governor
- ▶ Secretary of State
- ▶ State Auditor
- ▶ State Treasurer
- ▶ Superintendent of Public Instruction
- ▶ Attorney General
- ▶ Commissioner of Agriculture
- ▶ Commissioner of Labor
- ▶ Commissioner of Insurance

☐ Yes ☒ No

If "Yes", list all contributions you (not immediate family members) made during the preceding calendar year with a cumulative total of more than $1,000 to the Council of State member who appointed you.

▶Contributions are defined in N.C.G.S. 163-278.6(6) and include, but are not limited to, "any advance, conveyance, deposit, distribution, transfer of funds, loan, payment, gift, pledge or subscription of money or anything of value whatsoever."

Date	Amount	Contributed to
☐ No contribution(s) with a cumulative total of more than $1,000		

21. Are you now, or are you a prospective appointee to:

a. the head of a principal state department (e.g. cabinet secretary) appointed by the Governor; or b. a North Carolina Supreme Court Justice, Court of Appeals, Superior or District Court Judge; or c. a member of any of the following boards: • ABC Commission • Coastal Resources Commission • State Board of Education • State Board of Elections • Division of Employment Security • Environmental Management Commission • Industrial Commission • State Personnel Commission • Rules Review Commission • Board of Transportation • UNC Board of Governors • Utilities Commission • Wildlife Resources Commission	☒ Yes ☐ No **If "No", proceed to question 22.**
d. If so, were you appointed to, or are you being considered for, appointment to your public position by a Council of State Member (Governor, Lt. Governor, Secretary of State, State Auditor, State Treasurer, Superintendent of Public Instruction, Attorney General, Commissioner of Agriculture, Commissioner of Labor, or Commissioner of Insurance)?	☒ Yes ☐ No **If "No", proceed to question 22.**
e. If so, you must indicate whether during the preceding calendar year you (not immediate family members) engaged in any of the following activities with respect to or on behalf of the candidate or campaign committee of the Council of State member who appointed you to your public position: i. Collected contributions from multiple contributors, took possession of such multiple contributions, and transferred or delivered those collected contributions to the candidate or committee? Contributions are defined in N.C.G.S. 163-278.6(6) and include, but are not limited to, "any advance, conveyance, deposit, distribution, transfer of funds, loan, payment, gift, pledge or subscription of money or anything of value whatsoever."	☐ Yes ☒ No
ii. Hosted a fundraiser at your residence or place of business?	☐ Yes ☒ No
iii. Volunteered for campaign-related activities, which include, but are not limited to, phone banks, event assistance, mailings, canvassing, surveying, or any other activity that advances the campaign of a candidate?	☒ Yes ☐ No

22. Are you aware of any other information that *you believe* may assist the State Ethics Commission in advising you concerning your compliance with the State Government Ethics Act?

☒ Yes ☐ No

In my capacity as an attorney, I have provided legal advice and representation to various water, sewer, & electric utilities, municipalities, and business entities and the N.C. Attorney General's office with respect to matters before the North Carolina Utilities Commission.

AFFIRMATION

I affirm that the information provided in this Statement of Economic Interest and any attachments hereto are true, complete, and accurate to the best of my knowledge and belief.

I also certify that I have not transferred, and will not transfer, any asset, interest, or property for the purpose of concealing it from disclosure while retaining an equitable interest.

I understand that my Statement of Economic Interest and any attachments or supplements thereto are public record.

acknowledge that I have read and understand N.C.G.S. 138A-26 regarding concealing or failing to disclose material information and N.C.G.S. 138A-27 regarding providing false information:

§ 138A-26. Concealing or failing to disclose material information.

A filing person who knowingly conceals or knowingly fails to disclose information that is required to be disclosed on a statement of economic interest under this Article shall be guilty of a Class 1 misdemeanor and shall be subject to disciplinary action under G.S. 138A-45. (2006-201, s. 1.)

§ 138A-27. Penalty for false information.

A filing person who provides false information on a statement of economic interest as required under this Article knowing that the information is false is guilty of a Class H felony and shall be subject to disciplinary action under G.S. 138A-45. (2006-201, s. 1.)

☒ I Agree

Christopher James Ayers
Printed Name

****Notarization is no longer required****

Signature

4/24/13
Date

Submit SIGNED, ORIGINAL documents.

HOUSE BILL 664
Committee Substitute Favorable 5/8/13

Short Title: Cell Tower Deployment Act. (Public)

Sponsors:

Referred to:

April 10, 2013

A BILL TO BE ENTITLED

AN ACT TO FACILITATE THE DEPLOYMENT OF MOBILE BROADBAND AND OTHER ENHANCED WIRELESS COMMUNICATIONS SERVICES BY STREAMLINING THE PROCESSES USED BY STATE AGENCIES AND LOCAL GOVERNMENTS TO APPROVE THE PLACEMENT OF WIRELESS FACILITIES IN THEIR JURISDICTIONS.

The General Assembly of North Carolina enacts:

SECTION 1. Article 19 of Chapter 160A of the General Statutes reads as rewritten:

"Part 3E. Wireless Telecommunications Facilities.

"**§ 160A-400.50. Purpose and compliance with federal law.**

(a) The purpose of this section is to ensure the safe and efficient integration of facilities necessary for the provision of advanced mobile broadband and wireless telecommunications services throughout the community and to ensure the ready availability of reliable wireless service to the public, government agencies, and first responders, with the intention of furthering the public safety and general welfare.

(a1) The deployment of wireless infrastructure is critical to ensuring first responders can provide for the health and safety of all residents of North Carolina and that, consistent with section 6409 of the federal Middle Class Tax Relief and Job Creation Act of 2012, 47 U.S.C. § 1455(a), which creates a national wireless emergency communications network for use by first responders that in large measure will be dependent on facilities placed on existing wireless communications support structures, it is the policy of this State to facilitate the placement of wireless communications support structures in all areas of North Carolina. The following standards shall apply to a city's actions, as a regulatory body, in the regulation of the placement, construction, or modification of a wireless communications facility.

(b) The placement, construction, or modification of wireless communications facilities shall be in conformity with the Federal Communications Act, 47 U.S.C. § 332 as amended, section 6409 of the federal Middle Class Tax Relief and Job Creation Act of 2012, 47 U.S.C. § 1455(a), and in accordance with the rules promulgated by the Federal Communications Commission.

"**§ 160A-400.51. Definitions.**

The following definitions apply in this Part.

(1) Antenna. – Communications equipment that transmits, receives, or transmits and receives electromagnetic radio signals used in the provision of all types of wireless communications services.

(2) Application. – A formal request submitted to the city to construct or modify a wireless support structure or a wireless facility.

(2a) Base station. – A station at a specific site authorized to communicate with mobile stations, generally consisting of radio receivers, antennas, coaxial cables, power supplies, and other associated electronics.

(3) Building permit. – An official administrative authorization issued by the city prior to beginning construction consistent with the provisions of G.S. 160A-417.

(4) Collocation. – The placement or installation of wireless facilities on existing structures, including electrical transmission towers, water towers, buildings, and other structures capable of structurally supporting the attachment of wireless facilities in compliance with applicable codes. ~~The installation of new wireless facilities on previously approved structures, including towers, buildings, utility poles, and water tanks.~~

(4a) Eligible facilities request. – A request for modification of an existing wireless tower or base station that involves collocation of new transmission equipment or replacement of transmission equipment but does not include a substantial modification.

(5) Equipment compound. – An area surrounding or near the base of a wireless support structure within which a wireless facility is located. ~~Equipment enclosure. – An enclosed structure, cabinet, or shelter used to contain radio or other equipment necessary for the transmission or reception of wireless communication signals.~~

(5a) Fall zone. – The area in which a wireless support structure may be expected to fall in the event of a structural failure, as measured by engineering standards.

(6) Land development regulation. – Any ordinance enacted pursuant to this Part.

(7) Search ring. – The area within which a wireless support facility or wireless facility must be located in order to meet service objectives of the wireless service provider using the wireless facility or wireless support structure.

(7a) Substantial modification. – The mounting of a proposed wireless facility on a wireless support structure that substantially changes the physical dimensions of the support structure. A mounting is presumed to be a substantial modification if it meets any one or more of the criteria listed below. The burden is on the local government to demonstrate that a mounting that does not meet the listed criteria constitutes a substantial change to the physical dimensions of the wireless support structure.

a. Increasing the existing vertical height of the structure by the greater of (i) more than ten percent (10%) or (ii) the height of one additional antenna array with separation from the nearest existing antenna not to exceed 20 feet.

b. Except where necessary to shelter the antenna from inclement weather or to connect the antenna to the tower via cable, adding an appurtenance to the body of a wireless support structure that protrudes horizontally from the edge of the wireless support structure the greater of (i) more than 20 feet or (ii) more than the width of the wireless support structure at the level of the appurtenance.

c. Increasing the square footage of the existing equipment compound by more than 2,500 square feet.

(8) Utility pole. – A structure that is designed for and used to carry lines, cables, or wires for telephone, cable television, or electricity, or to provide lighting.

(8a) Water tower. – A water storage tank, a standpipe, or an elevated tank situated on a support structure originally constructed for use as a reservoir or facility to store or deliver water.

(9) Wireless facility. – The set of equipment and network components, exclusive of the underlying wireless support structure or tower, including antennas, transmitters, receivers, ~~receivers~~ base stations, power supplies, cabling, and associated equipment necessary to provide wireless data and wireless telecommunications services to a discrete geographic area.

(10) Wireless support structure. – A new or existing structure, such as a monopole, lattice tower, or guyed tower that is designed to support or capable of supporting wireless facilities. A utility pole is not a wireless support structure.

"**§ 160A-400.51A. Local authority.**

A city may plan for and regulate the siting or modification of wireless support structures and wireless facilities in accordance with land development regulations and in conformity with this Part. Except as expressly stated, nothing in this Part shall limit a city from regulating applications to construct, modify, or maintain wireless support structures, or construct, modify, maintain, or collocate wireless facilities on a wireless support structure based on consideration of land use, public safety, and zoning considerations, including aesthetics, landscaping, structural design, setbacks, and fall zones, or State and local building code requirements, consistent with the provisions of federal law provided in G.S. 160A-400.50. For purposes of this Part, public safety includes, without limitation, federal, State, and local safety regulations but does not include requirements relating to radio frequency emissions of wireless facilities.

"**§ 160A-400.52. Construction of new wireless support structures or substantial modifications of ~~facilities and~~ wireless support structures.**

~~(a) A city may plan for and regulate the siting or modification of wireless support structures and wireless facilities in accordance with land development regulations and in conformity with this Part. Except as expressly stated, nothing in this Part shall limit a city from regulating applications to construct, modify, or maintain wireless support structures, or construct, modify, maintain, or collocate wireless facilities on a wireless support structure based on consideration of land use, public safety, and zoning considerations, including aesthetics, landscaping, structural design, setbacks, and fall zones, or State and local building code requirements, consistent with the provisions of federal law provided in G.S. 160A-400.50. For purposes of this Part, public safety shall not include requirements relating to radio frequency emissions of wireless facilities.~~

(b) Any person that proposes to construct a new wireless support structure or substantially modify a wireless support structure ~~or wireless facility~~ within the planning and land-use jurisdiction of a city must do both of the following:

(1) Submit a completed application with the necessary copies and attachments to the appropriate planning authority.

(2) Comply with any local ordinances concerning land use and any applicable permitting processes.

(c) A city's review of an application for the ~~placement, construction,~~placement or construction of a new wireless support structure or substantial modification of a ~~wireless facility or~~ wireless support structure shall only address public safety, land development, or zoning issues. In reviewing an application, the city may not require information on or evaluate an applicant's business decisions about its designed service, customer demand for its service, or quality of its service to or from a particular area or site. A city may not require information that concerns the specific need for the wireless support structure, including if the service to be provided from the wireless support structure is to add additional wireless coverage or additional wireless capacity. A city may not require proprietary, confidential, or other business

information to justify the need for the new wireless support structure, including propagation maps and telecommunication traffic studies. In reviewing an application, the city may review the following:

(1) Applicable public safety, land use, or zoning issues addressed in its adopted regulations, including aesthetics, landscaping, land-use based location priorities, structural design, setbacks, and fall zones.

(2) Information or materials directly related to an identified public safety, land development, or zoning issue including evidence that no existing or previously approved wireless support structure can reasonably be used for the ~~antenna~~ wireless facility placement instead of the construction of a new ~~tower,~~wireless support structure, that residential, historic, and designated scenic areas cannot be served from outside the area, or that the proposed height of a new ~~tower~~ wireless support structure or initial ~~antenna~~ wireless facility placement or a proposed height increase of a substantially modified ~~tower,~~wireless support structure, or replacement ~~tower,~~wireless support structure ~~or collocation~~ is necessary to provide the applicant's designed service.

(3) A city may require applicants for new wireless facilities to evaluate the reasonable feasibility of collocating new antennas and equipment on an existing wireless support structure or structures within the applicant's search ring. Collocation on an existing wireless support structure is not reasonably feasible if collocation is technically or commercially impractical or the owner of the ~~tower~~ existing wireless support structure is unwilling to enter into a contract for such use at fair market value. Cities may require information necessary to determine whether collocation on existing wireless support structures is reasonably feasible.

~~(d) A collocation application entitled to streamlined processing under G.S. 160A-400.53 shall be deemed complete unless the city provides notice in writing to the applicant within 45 days of submission or within some other mutually agreed upon timeframe. The notice shall identify the deficiencies in the application which, if cured, would make the application complete. The application shall be deemed complete on resubmission if the additional materials cure the deficiencies identified.~~

(e) The city shall issue a written decision approving or denying an application ~~within 45 days in the case of collocation applications entitled to streamlined processing under G.S. 160A-400.53 and~~ under this section within a reasonable period of time consistent with the issuance of other land-use permits in the case of other applications, each as measured from the time the application is deemed complete.

(f) A city may fix and charge an application fee, consulting fee, or other fee associated with the submission, review, processing, and approval of an application to site new wireless support structures or to substantially modify wireless support structures or wireless facilities that is based on the costs of the services provided and does not exceed what is usual and customary for such services. Any charges or fees assessed by a city on account of an outside consultant shall be fixed in advance and incorporated into a permit or application fee and shall be based on the reasonable costs to be incurred by the city in connection with the regulatory review authorized under this section. The foregoing does not prohibit a city from imposing additional reasonable and cost based fees for costs incurred should an applicant amend its application. On request, the amount of the consultant charges incorporated into the permit or application fee shall be separately identified and disclosed to the applicant. The fee imposed by a city for review of the application may not be used for either of the following:

(1) Travel time or expenses, meals, or overnight accommodations incurred in the review of an application by a consultant or other third party.

(2) Reimbursements for a consultant or other third party based on a contingent fee basis or a results-based arrangement.

(g) The city may condition approval of an application for a new wireless support structure on the provision of documentation prior to the issuance of a building permit establishing the existence of one or more parties, including the owner of the wireless support structure, who intend to locate wireless facilities on the wireless support structure. A city shall not deny an initial land-use or zoning permit based on such documentation. A city may condition a permit on a requirement to construct facilities within a reasonable period of time, which shall be no less than 24 months.

(h) The city may not require the placement of wireless support structures or wireless facilities on city owned or leased property, but may develop a process to encourage the placement of wireless support structures or facilities on city owned or leased property, including an expedited approval process.

(i) This section shall not be construed to limit the provisions or requirements of any historic district or landmark regulation adopted pursuant to Part 3C of this Article.

"§ 160A-400.53. Collocation and eligible facilities requests of wireless support structures. ~~facilities.~~

(a) Pursuant to section 6409 of the federal Middle Class Tax Relief and Job Creation Act of 2012, 47 U.S.C. § 1455(a), a city may not deny and shall approve any eligible facilities request as provided in this section. Nothing in this Part requires an application and approval for routine maintenance or limits the performance of routine maintenance on wireless support structures and facilities, including in-kind replacement of wireless facilities. Routine maintenance includes activities associated with regular and general upkeep of transmission equipment, including the replacement of existing wireless facilities with facilities of the same size. A city may require an application for collocation or an eligible facilities request. ~~Applications for collocation entitled to streamlined processing under this section shall be reviewed for conformance with applicable site plan and building permit requirements but shall not otherwise be subject to zoning requirements, including design or placement requirements, or public hearing review.~~

(a1) A collocation or eligible facilities request application is deemed complete unless the city provides notice that the application is incomplete in writing to the applicant within 45 days of submission or within some other mutually agreed upon time frame. The notice shall identify the deficiencies in the application which, if cured, would make the application complete. A city may deem an application incomplete if there is insufficient evidence provided to show that the proposed collocation or eligible facilities request will comply with federal, State, and local safety requirements. A city may not deem an application incomplete for any issue not directly related to the actual content of the application and subject matter of the collocation or eligible facilities request. An application is deemed complete on resubmission if the additional materials cure the deficiencies indicated.

(a2) The city shall issue a written decision approving an eligible facilities request application within 45 days of such application being deemed complete. For a collocation application that is not an eligible facilities request, the city shall issue its written decision to approve or deny the application within 45 days of the application being deemed complete.

(a3) A city may impose a fee not to exceed one thousand dollars ($1,000) for technical consultation and the review of a collocation application. The fee must be based on the actual, direct, and reasonable administrative costs incurred for the review, processing, and approval of a collocation application. A city may engage a third-party consultant for technical consultation and the review of a collocation application. The fee imposed by a city for the review of the application may not be used for either of the following:

(1) Travel expenses incurred in a third party's review of a collocation application.

(2) Reimbursement for a consultant or other third party based on a contingent fee basis or results-based arrangement.

~~(b) Applications for collocation of wireless facilities are entitled to streamlined processing if the addition of the additional wireless facility does not exceed the number of wireless facilities previously approved for the wireless support structure on which the collocation is proposed and meets all the requirements and conditions of the original approval. This provision applies to wireless support structures which are approved on or after December 1, 2007.~~

~~(c) The streamlined process set forth in subsection (a) of this section shall apply to all collocations, in addition to collocations qualified for streamlined processing under subsection (b) of this section, that meet the following requirements:~~

~~(1) The collocation does not increase the overall height and width of the tower or wireless support structure to which the wireless facilities are to be attached.~~

~~(2) The collocation does not increase the ground space area approved in the site plan for equipment enclosures and ancillary facilities.~~

~~(3) The wireless facilities in the proposed collocation comply with applicable regulations, restrictions, or conditions, if any, applied to the initial wireless facilities placed on the tower or other wireless support structure.~~

~~(4) The additional wireless facilities comply with all federal, State and local safety requirements.~~

~~(5) The collocation does not exceed the applicable weight limits for the wireless support structure.~~"

SECTION 2. Article 18 of Chapter 153A of the General Statutes reads as rewritten:

"Part 3B. Wireless Telecommunications Facilities.

"§ 153A-349.50. Purpose and compliance with federal law.

(a) Purpose. – The purpose of this section is to ensure the safe and efficient integration of facilities necessary for the provision of advanced mobile broadband and wireless telecommunications services throughout the community and to ensure the ready availability of reliable wireless service to the public, government agencies, and first responders, with the intention of furthering the public safety and general welfare.

(a1) The deployment of wireless infrastructure is critical to ensuring first responders can provide for the health and safety of all residents of North Carolina and that, consistent with section 6409 of the federal Middle Class Tax Relief and Job Creation Act of 2012, 47 U.S.C. § 1455(a), which creates a national wireless emergency communications network for use by first responders that in large measure will be dependent on facilities placed on existing wireless communications support structures, it is the policy of this State to facilitate the placement of wireless communications support structures in all areas of North Carolina. The following standards shall apply to a county's actions, as a regulatory body, in the regulation of the placement, construction, or modification of a wireless communications facility.

(b) Compliance with the Federal Communications Act. – The placement, construction, or modification of wireless communications facilities shall be in conformity with the Federal Communications Act, 47 U.S.C. § 332 as amended, section 6409 of the federal Middle Class Tax Relief and Job Creation Act of 2012, 47 U.S.C. § 1455(a), and in accordance with the rules promulgated by the Federal Communications Commission.

"§ 153A-349.51. Definitions.

The following definitions apply in this Part:

(1) Antenna. – Communications equipment that transmits, receives, or transmits and receives electromagnetic radio signals used in the provision of all types of wireless communications services.

(2a) Base station. – A station at a specific site authorized to communicate with mobile stations, generally consisting of radio receivers, antennas, coaxial cables, power supplies, and other associated electronics.

(2) Application. – A formal request submitted to the county to construct or modify a wireless support structure or a wireless facility.

(3) Building permit. – An official administrative authorization issued by the county prior to beginning construction consistent with the provisions of G.S. 153A-357.

(4) Collocation. – The placement or installation of wireless facilities on existing structures, including electrical transmission towers, water towers, buildings, and other structures capable of structurally supporting the attachment of wireless facilities in compliance with applicable codes. ~~The installation of new wireless facilities on previously approved structures, including towers, buildings, utility poles, and water tanks.~~

(4a) Eligible facilities request. – A request for modification of an existing wireless tower or base station that involves collocation of new transmission equipment or replacement of transmission equipment but does not include a substantial modification.

(5) Equipment compound. – An area surrounding or near the base of a wireless support structure within which a wireless facility is located. ~~Equipment enclosure. – An enclosed structure, cabinet, or shelter used to contain radio or other equipment necessary for the transmission or reception of wireless communication signals.~~

(5a) Fall zone. – The area in which a wireless support structure may be expected to fall in the event of a structural failure, as measured by engineering standards.

(6) Land development regulation. – Any ordinance enacted pursuant to this Part.

(7) Search ring. – The area within which a wireless support facility or wireless facility must be located in order to meet service objectives of the wireless service provider using the wireless facility or wireless support structure.

(7a) Substantial modification. – The mounting of a proposed wireless facility on a wireless support structure that substantially changes the physical dimensions of the support structure. A mounting is presumed to be a substantial modification if it meets any one or more of the criteria listed below. The burden is on the local government to demonstrate that a mounting that does not meet the listed criteria constitutes a substantial change to the physical dimensions of the wireless support structure.

a. Increasing the existing vertical height of the structure by the greater of (i) more than ten percent (10%) or (ii) the height of one additional antenna array with separation from the nearest existing antenna not to exceed 20 feet.

b. Except where necessary to shelter the antenna from inclement weather or to connect the antenna to the tower via cable, adding an appurtenance to the body of a wireless support structure that protrudes horizontally from the edge of the wireless support structure the greater of (i) more than 20 feet or (ii) more than the width of the wireless support structure at the level of the appurtenance.

c. Increasing the square footage of the existing equipment compound by more than 2,500 square feet.

(8) Utility pole. – A structure that is designed for and used to carry lines, cables, or wires for telephone, cable television, or electricity, or to provide lighting.

(8a) Water tower. – A water storage tank, a standpipe, or an elevated tank situated on a support structure originally constructed for use as a reservoir or facility to store or deliver water.

(9) Wireless facility. – The set of equipment and network components, exclusive of the underlying wireless support structure or tower, including antennas, transmitters, receivers, ~~receivers~~ base stations, power supplies, cabling, and associated equipment necessary to provide wireless data and wireless telecommunications services to a discrete geographic area.

(10) Wireless support structure. – A new or existing structure, such as a monopole, lattice tower, or guyed tower that is designed to support or capable of supporting wireless facilities. A utility pole is not a wireless support structure.

"§ 153A-349.51A. Local authority.

A county may plan for and regulate the siting or modification of wireless support structures and wireless facilities in accordance with land development regulations and in conformity with this Part. Except as expressly stated, nothing in this Part shall limit a county from regulating applications to construct, modify, or maintain wireless support structures, or construct, modify, maintain, or collocate wireless facilities on a wireless support structure based on consideration of land use, public safety, and zoning considerations, including aesthetics, landscaping, structural design, setbacks, and fall zones, or State and local building code requirements, consistent with the provisions of federal law provided in G.S. 153A-349.50. For purposes of this Part, public safety includes, without limitation, federal, State, and local safety regulations but does not include requirements relating to radio frequency emissions of wireless facilities.

"§ 153A-349.52. Construction of new wireless support structures or substantial modifications of ~~facilities and~~ wireless support structures.

~~(a) A county may plan for and regulate the siting or modification of wireless support structures and wireless facilities in accordance with land development regulations and in conformity with this Part. Except as expressly stated, nothing in this Part shall limit a county from regulating applications to construct, modify, or maintain wireless support structures, or construct, modify, maintain, or collocate wireless facilities on a wireless support structure based on consideration of land use, public safety, and zoning considerations, including aesthetics, landscaping, structural design, setbacks, and fall zones, or State and local building code requirements, consistent with the provisions of federal law provided in G.S. 153A-349.50. For purposes of this Part, public safety shall not include requirements relating to radio frequency emissions of wireless facilities.~~

(b) Any person that proposes to construct a new wireless support structure or substantially modify a wireless support structure or ~~wireless facility~~ within the planning and land-use jurisdiction of a county must do both of the following:

(1) Submit a completed application with the necessary copies and attachments to the appropriate planning authority.

(2) Comply with any local ordinances concerning land use and any applicable permitting processes.

(c) A county's review of an application for the ~~placement, construction,~~ placement or construction of a new wireless support structure or substantial modification of a ~~wireless facility or~~ wireless support structure shall only address public safety, land development, or zoning issues. In reviewing an application, the county may not require information on or evaluate an applicant's business decisions about its designed service, customer demand for its service, or quality of its service to or from a particular area or site. A county may not require information that concerns the specific need for the wireless support structure, including if the service to be provided from the wireless support structure is to add additional wireless coverage or additional wireless capacity. A county may not require proprietary, confidential, or other

business information to justify the need for the new wireless support structure, including propagation maps and telecommunication traffic studies. In reviewing an application the county may review the following:

(1) Applicable public safety, land use, or zoning issues addressed in its adopted regulations, including aesthetics, landscaping, land-use based location priorities, structural design, setbacks, and fall zones.

(2) Information or materials directly related to an identified public safety, land development or zoning issue including evidence that no existing or previously approved wireless support structure can reasonably be used for the ~~antenna~~ wireless facility placement instead of the construction of a new ~~tower,~~ wireless support structure, that residential, historic, and designated scenic areas cannot be served from outside the area, or that the proposed height of a new ~~tower~~ wireless support structure or initial ~~antenna~~ wireless facility placement or a proposed height increase of a substantially modified ~~tower,~~ wireless support structure, or replacement ~~tower,~~ wireless support structure or collocation is necessary to provide the applicant's designed service.

(3) A county may require applicants for new wireless facilities to evaluate the reasonable feasibility of collocating new antennas and equipment on an existing wireless support structure or structures within the applicant's search ring. Collocation on an existing wireless support structure is not reasonably feasible if collocation is technically or commercially impractical or the owner of the ~~tower~~ existing wireless support structure is unwilling to enter into a contract for such use at fair market value. Counties may require information necessary to determine whether collocation on existing wireless support structures is reasonably feasible.

~~(d) A collocation application entitled to streamlined processing under G.S. 153A-349.53 shall be deemed complete unless the city provides notice in writing to the applicant within 45 days of submission or within some other mutually agreed upon timeframe. The notice shall identify the deficiencies in the application which, if cured, would make the application complete. The application shall be deemed complete on resubmission if the additional materials cure the deficiencies identified.~~

(e) The county shall issue a written decision approving or denying an application ~~within 45 days in the case of collocation applications entitled to streamlined processing under G.S. 153A-349.53 and~~ under this section within a reasonable period of time consistent with the issuance of other land-use permits in the case of other applications, each as measured from the time the application is deemed complete.

(f) A county may fix and charge an application fee, consulting fee, or other fee associated with the submission, review, processing, and approval of an application to site new wireless support structures or to substantially modify wireless support structures or wireless facilities that is based on the costs of the services provided and does not exceed what is usual and customary for such services. Any charges or fees assessed by a county on account of an outside consultant shall be fixed in advance and incorporated into a permit or application fee and shall be based on the reasonable costs to be incurred by the county in connection with the regulatory review authorized under this section. The foregoing does not prohibit a county from imposing additional reasonable and cost based fees for costs incurred should an applicant amend its application. On request, the amount of the consultant charges incorporated into the permit or application fee shall be separately identified and disclosed to the applicant. The fee imposed by a county for review of the application may not be used for either of the following:

(1) Travel time or expenses, meals, or overnight accommodations incurred in the review of an application by a consultant or other third party.

(2) Reimbursements for a consultant or other third party based on a contingent fee basis or a results-based arrangement.

(g) The county may condition approval of an application for a new wireless support structure on the provision of documentation prior to the issuance of a building permit establishing the existence of one or more parties, including the owner of the wireless support structure, who intend to locate wireless facilities on the wireless support structure. A county shall not deny an initial land-use or zoning permit based on such documentation. A county may condition a permit on a requirement to construct facilities within a reasonable period of time, which shall be no less than 24 months.

(h) The county may not require the placement of wireless support structures or wireless facilities on county owned or leased property, but may develop a process to encourage the placement of wireless support structures or facilities on county owned or leased property, including an expedited approval process.

(i) This section shall not be construed to limit the provisions or requirements of any historic district or landmark regulation adopted pursuant to Part 3C of this Article.

"**§ 153A-349.53. Collocation and eligible facilities requests of wireless support structures. ~~facilities.~~**

(a) Pursuant to section 6409 of the federal Middle Class Tax Relief and Job Creation Act of 2012, 47 U.S.C. § 1455(a), a county may not deny and shall approve any eligible facilities request as provided in this section. Nothing in this Part requires an application and approval for routine maintenance or limits the performance of routine maintenance on wireless support structures and facilities, including in-kind replacement of wireless facilities. Routine maintenance includes activities associated with regular and general upkeep of transmission equipment, including the replacement of existing wireless facilities with facilities of the same size. A county may require an application for collocation or an eligible facilities request.~~Applications for collocation entitled to streamlined processing under this section shall be reviewed for conformance with applicable site plan and building permit requirements but shall not otherwise be subject to zoning requirements, including design or placement requirements, or public hearing review.~~

(a1) A collocation or eligible facilities request application is deemed complete unless the county provides notice that the application is incomplete in writing to the applicant within 45 days of submission or within some other mutually agreed upon time frame. The notice shall identify the deficiencies in the application which, if cured, would make the application complete. A county may deem an application incomplete if there is insufficient evidence provided to show that the proposed collocation or eligible facilities request will comply with federal, State, and local safety requirements. A county may not deem an application incomplete for any issue not directly related to the actual content of the application and subject matter of the collocation or eligible facilities request. An application is deemed complete on resubmission if the additional materials cure the deficiencies indicated.

(a2) The county shall issue a written decision approving an eligible facilities request application within 45 days of such application being deemed complete. For a collocation application that is not an eligible facilities request, the county shall issue its written decision to approve or deny the application within 45 days of the application being deemed complete.

(a3) A county may impose a fee not to exceed one thousand dollars ($1,000) for technical consultation and the review of a collocation application. The fee must be based on the actual, direct, and reasonable administrative costs incurred for the review, processing, and approval of a collocation application. A county may engage a third-party consultant for technical consultation and the review of a collocation application. The fee imposed by a county for the review of the application may not be used for either of the following:

(1) Travel expenses incurred in a third party's review of a collocation application.

(2) Reimbursement for a consultant or other third party based on a contingent fee basis or results-based arrangement.

~~(b) Applications for collocation of wireless facilities are entitled to streamlined processing if the addition of the additional wireless facility does not exceed the number of wireless facilities previously approved for the wireless support structure on which the collocation is proposed and meets all the requirements and conditions of the original approval. This provision applies to wireless support structures which are approved on or after December 1, 2007.~~

~~(c) The streamlined process set forth in subsection (a) of this section shall apply to all collocations, in addition to collocations qualified for streamlined processing under subsection (b) of this section, that meet the following requirements:~~

~~(1) The collocation does not increase the overall height and width of the tower or wireless support structure to which the wireless facilities are to be attached.~~

~~(2) The collocation does not increase the ground space area approved in the site plan for equipment enclosures and ancillary facilities.~~

~~(3) The wireless facilities in the proposed collocation comply with applicable regulations, restrictions, or conditions, if any, applied to the initial wireless facilities placed on the tower or other wireless support structure.~~

~~(4) The additional wireless facilities comply with all federal, State, and local safety requirements.~~

~~(5) The collocation does not exceed the applicable weight limits for the wireless support structure.~~"

SECTION 3. G.S. 146-29.2 reads as rewritten:

"**§ 146-29.2. Lease ~~provisions for communications towers.~~or interest in real property for communication purposes.**

(a) The following definitions apply in this section:

(1) Antenna. – Communications equipment that transmits, receives, or transmits and receives electromagnetic radio signals used in the provision of all types of wireless communications services.

(2) Buildings. – Structures owned or leased by the State on which equipment may be placed or attached.

(3) Collocation. – The placement or installation of wireless facilities on existing structures, including electrical transmission towers, water towers, buildings, and other structures capable of structurally supporting the attachment of wireless facilities in compliance with applicable building and line safety codes.

(4) Equipment. – Antennas, transmitters, receivers, cables, wires, transformers, power supplies, electric and communication lines necessary for the provision of television broadcast signals, radio wave signals, wireless data or wireless telecommunication services to a discrete geographic area, and all other apparatuses and appurtenances, including shelters, cabinets, buildings, platforms, and ice bridges used to house or otherwise protect equipment.

(5) Ground area. – The area of real property surrounding the base of towers on which the equipment and appurtenances necessary for the operation and stability of the towers, including guy wires and security fencing, is constructed or installed.

(6) Provider. – Any person that is engaged in the transmission, reception, or dissemination of television broadcast signals, radio wave signals or electromagnetic radio signals used in the provision of wireless communications service, or the provisioning of wireless infrastructure.

(7) Tower. – New or existing structures, such as a monopole, lattice tower, guyed tower, fire observation tower or water tower that are designed to support or are capable of supporting equipment used in the transmission or receipt of televisions broadcast signals, radio wave signals, or electromagnetic radio signals used in the provision of wireless communication service.

(b) The State may lease real property, or may grant an easement or license with an interest in real property, for the purpose of:~~any interest in real property, for the purposes of~~

(1) ~~construction and placement of communications~~Constructing, installing, and operating towers and equipment on State land.~~land or for placement of antennas upon State-owned structures.~~

(2) Installing and operating equipment on towers, buildings, or ground area owned or leased by the State.

(c) If otherwise feasible and determined by the Department of Administration to be in the best interest of the State:

(1) New towers constructed on State land shall be designed for collocation. This requirement shall not apply to towers constructed on State land by the State or any of its agencies or by a "public entity" as that term is defined in G.S. 146-29.1(b).

(2) The State shall encourage the collocation of equipment on existing towers and buildings owned by the State.

(3) The State shall sublease for collocation purposes space on any tower or ground area leased by the State, if allowed under the terms of the lease.

(4) The State shall, to the extent practicable, adopt standard terms and conditions for applications to lease, easements, or other conveyances of an interest in real property for communication purposes.

(d) Pursuant to G.S. 143-341(4)f., the Governor, acting with the approval of the Council of State, may adopt rules authorizing the Department of Administration to enter into or approve classes of leases, easements, or licenses with an interest in real property for the purposes set forth in this section. The rules may allow for execution of leases or other instruments by the Department of Administration rather than execution of the instruments in the manner prescribed in G.S. 146-74 through G.S. 146-78. No lands in the State Parks System as defined in G.S. 113-44.9 shall be leased or conveyed for the purposes of this section except as provided in Article 2C of Chapter 113 of the General Statutes, the State Parks Act.

~~The following additional requirements shall apply to such leases:~~

~~(1) The lease shall require the lessee to permit other telecommunications carriers to co-locate on the communications tower on commercially reasonable terms between the lessee and the co-locating carrier until the communications tower reaches its capacity. Unless the State determines that co-location is not feasible at that location, the communications tower shall be designed and constructed to accommodate other carriers on the tower.~~

~~(2) The State shall, in determining the location of lands to be leased for communications towers, encourage communications towers to be located near other communications towers to the extent technically desirable.~~

~~(3) The State shall, when choosing a communications tower or antenna location, choose a location which minimizes the visual impact on surrounding landscape.~~

~~(4) The State shall not lease lands of the State Parks System for such purposes.~~

~~For purposes of this section, "co-locate and co-location" mean the sharing of a communications tower by two or more services.~~

(e) City and county ordinances apply to communications towers and antennas authorized under this section."

SECTION 4. Sections 1 and 2 of this act become effective October 1, 2013, and apply to applications received on or after that date. The remainder of this act is effective when it becomes law.

HOUSE BILL 664:
Cell Tower Deployment Act

2013-2014 General Assembly

Committee:	Senate Commerce. If fav, re-ref to Finance	**Date:**	May 30, 2013
Introduced by:	Reps. Hager, Moffitt, W. Brawley, Alexander	**Prepared by:**	Peter Ledford Committee Counsel
Analysis of:	Second Edition		

SUMMARY: House Bill 664 would amend local government authority to regulate the equipment and facilities used for the provision of wireless service. The bill would also amend the authority for the State to lease land for communication purpose.

CURRENT LAW: Article 19 of Chapter 160A and Article 18 of Chapter 153A of the General Statutes provide for local government regulation of the equipment and network components necessary to provide wireless service and new or existing structures designed to support wireless facilities.

Local governments may regulate the location and modification of wireless facilities and wireless support structures based on considerations of land use, public safety, and zoning considerations. These regulations may include aesthetics, landscaping, structural design, setbacks, and State and local building code requirements. The regulations must be consistent with federal law. Any person that proposes to construct or modify a wireless facility or wireless support structure must comply with local ordinances concerning land use and applicable permitting processes. Applications for wireless facilities and wireless support structures must be submitted to the appropriate local government.

Collocation is the installation of new wireless facilities on previously-approved wireless support structures. Applications for collocation that meet the requirements are eligible for streamlined processing and are reviewed for conformance with applicable site plans and building permits, but are not subject to zoning requirements or public hearing review.

Applications eligible for the streamlined approval process are deemed complete unless the local government provides written notice within 45 days of the submission of the application. Other applications are deemed complete within a reasonable time consistent with other land use permits for other uses. Local governments may charge application fees and consulting fees for the review of applications. Any charges or fees in relation to consultant services must be fixed in advance and included in the permit or application fee.

G.S. 146-29.2 authorizes the State to lease property for the placement of communication equipment on State land or State-owned structures. When feasible, leases must allow for collocation of equipment. The State must also minimalize visual impact on the landscape when locating a tower or antenna. The State cannot lease land in the State Parks System for communication towers.[1]

The Federal Middle Class Tax Relief and Job Creation Act of 2012 preempts certain State and local regulation of wireless facilities. The Act provides, in part, "a State or local government may not deny, and shall approve, any eligible facilities request for a modification of an existing wireless tower or base station that does not substantially change the physical dimensions of such tower or base station." The Act also provides a definition of "eligible facilities request" to include a request to modify an existing

[1] G.S. 143-260.10 provides and exception to the prohibition of towers on State park land. The State may lease space in Mount Jefferson State Natural Area to local governments in Ashe County for public communications purposes.

wireless facility that involves collocation of new transmission equipment, removal of transmission equipment, or replacement of transmission equipment.

BILL ANALYSIS: Sections 1 and 2 of House Bill 664 provide identical modifications to the authority of cities and counties to regulate the construction and modification of wireless facilities.

Local Authority. – Except as otherwise limited by law, local governments may regulate the location and modification of wireless facilities and wireless support structures based on considerations of land use, public safety and zoning considerations.

The application and approval process for wireless facilities is divided into two categories: (1) construction of new facilities and substantial modification of facilities, or (2) collocation and eligible facilities requests.

Construction of new facilities and substantial modification. – An application must be filed with the local government to construct a new facility or to substantially modify an existing facility. To be considered a substantial modification, the change must meet certain criteria. If the change does not meet the criteria, the burden is on the local government to demonstrate that the modification is substantial. The criteria are:

- Increasing the existing vertical height of the structure by the greater of (i) more than ten percent (10%), or (ii) the height of one additional antenna array with separation from the nearest existing antenna not to exceed 20 feet.
- Except where necessary to shelter the antenna from inclement weather or to connect the antenna to the tower via cable, adding an appurtenance to the body of a wireless support structure that protrudes horizontally from the edge of the wireless support structure the greater of (i) more than 20 feet, or (ii) more than the width of the wireless support structure at the level of the appurtenance.
- Increasing the square footage of the existing equipment compound by more than 2,500 square feet.

The bill provides that certain information may not be requested in an application to construct a new facility or to substantially modify an existing facility. The local government may not request information that concerns the specific need for the facility, including whether the facility is needed to add additional wireless coverage or capacity. A local government may not request proprietary, confidential, or other business information, including propagation maps and telecommunication traffic studies.

The bill also provides that the fee for review of applications for new facilities and substantial modifications cannot be used for either:

- Travel expenses, meals, or overnight accommodations for consultants or third-parties.
- Reimbursements for consultants or third-parties that are paid on a contingent fee basis, or a results based arrangement.

Collocation and eligible facilities requests. – A local government may also require applications for collocation and eligible facilities requests. Applications and approval are not required for routine maintenance requests or in-kind replacement of wireless facilities.

Applications for eligible facilities requests must be approved. Eligible facilities requests do not include substantial modifications to existing structures. Eligible facilities requests do include requests to modify an existing tower or base station, including the collocation of new transmission equipment or replacement of transmission equipment.

Applications for collocation or eligible facilities requests are considered complete, unless the local government notifies the applicant within 45 days, or another mutually agreed upon time frame. Notice of an incomplete application must provide notice of the deficiencies in the application. Applications may not be deemed incomplete for any information that is not related to the content of the application or the subject matter of the application. An application may be deemed incomplete if the application lacks sufficient evidence to show the proposed action would comply with safety requirements.

Written notice of whether the application for collocation is approved or denied must be issued with 45 days of submission of a complete application. Written approval of applications for eligible facilities requests must be issued in 45 days of submission of a complete application.

A local government may impose a fee to review an application for collocation or an eligible facilities request. The fee may not exceed $1000 and must be based on the actual, direct, and reasonable administrative costs of the review of the application. The local government may use a third-party consultant for review of the application. The fee may not be used for either:

- Travel expenses, meals, or overnight accommodations for consultants or third-parties.
- Reimbursements for consultants or third-parties that are paid on a contingent fee basis, or a results based arrangement.

Section 3 of the bill amends the provisions related to the State's authority to lease State land for communications purposes. The State may lease real property, or grant an easement or license with an interest in real property for the purpose of constructing towers or other communications equipment on State land, or installing and operating equipment on towers or buildings on State land.

If otherwise feasible and determined to be in the best interest of the State, new towers shall be designed for collocation, the State shall encourage collocation, and the State shall sublease for collocation purposes. The State must also adopt standard terms and conditions for leases, easements, or other conveyances for communications purposes.

The Governor, with approval of the Council of State, may adopt rules authorizing the Department of Administration to enter into leases, easements, or licenses for communication purposes. The rules may allow for the execution of these documents by the Department. Except as provided by the State Parks Act, land in State Parks may not be leased or conveyed for communication purposes.

EFFECTIVE DATE: Sections 1 and 2 of the act are effective October 1, 2013, and applies to applications received on or after that date. The remainder of the act is effective when it becomes law.

Heather Fennell, counsel to House Public Utilities and Energy, substantially contributed to this summary.

HOUSE BILL 276
Committee Substitute Favorable 4/8/13

Short Title: Zoning/Board of Adjustment Changes. (Public)

Sponsors:

Referred to:

March 13, 2013

A BILL TO BE ENTITLED

AN ACT TO CLARIFY AND MODERNIZE STATUTES REGARDING ZONING BOARDS OF ADJUSTMENT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 160A-388 reads as rewritten:

"**§ 160A-388. Board of adjustment.**

(a) Composition and Duties. – The ~~city council~~ zoning or unified development ordinance may provide for the appointment and compensation of a board of adjustment consisting of five or more members, each to be appointed for three years. In appointing the original ~~members of such board,~~ members or in the filling of vacancies caused by the expiration of the terms of existing members, the city council may appoint certain members for less than three years ~~to the end~~ so that ~~thereafter~~ the terms of all members shall not expire at the same time. The council ~~may, in its discretion,~~ may appoint and provide compensation for alternate members to serve on the board in the absence or temporary disqualification of any regular member or to fill a vacancy pending appointment of a member. Alternate members shall be appointed for the same term, at the same time, and in the same manner as regular members. Each alternate ~~member, while attending any regular or special meeting of the board and~~ member serving on behalf of any regular ~~member, shall have and may exercise~~ member has all the powers and duties of a regular member. ~~A city~~ The ordinance may designate a planning board or governing board to perform any ~~or all~~ of the duties of a board of adjustment in addition to its other ~~duties.~~ duties and may create and designate specialized boards to hear technical appeals.

(a1) Provisions of Ordinance. – The zoning or unified development ordinance may provide that the board of adjustment hear and decide special and conditional use permits, variances, and appeals of decisions of administrative officials charged with enforcement of the ordinance. As used in this section, the term "decision" includes any final and binding order, requirement, or determination. The board of adjustment shall follow quasi-judicial procedures when deciding appeals and requests for variances and special and conditional use permits. The board shall hear and decide all matters upon which it is required to pass under any statute or ordinance that regulates land use or development.

(a2) Notice of Hearing. – Notice of hearings conducted pursuant to this section shall be mailed to the person or entity whose appeal, application, or request is the subject of the hearing; to the owner of the property that is the subject of the hearing if the owner did not initiate the hearing; to the owners of all parcels of land abutting the parcel of land that is the subject of the hearing; and to any other persons entitled to receive notice as provided by ordinance. In the absence of evidence to the contrary, the city may rely on the county tax listing to determine

owners of property entitled to mailed notice. The notice must be deposited in the mail at least 10 days, but not more than 25 days, prior to the date of the hearing. Within that same time period, the city shall also prominently post a notice of the hearing on the site that is the subject of the hearing or on an adjacent street or highway right-of-way.

(b) ~~A zoning ordinance or those provisions of a unified development ordinance adopted pursuant to the authority granted in this Part shall provide that the board of adjustment shall hear and decide appeals from and review any order, requirement, decision, or determination made by an administrative official charged with the enforcement of that ordinance. An appeal may be taken by any person aggrieved or by an officer, department, board, or bureau of the city. Appeals shall be taken within times prescribed by the board of adjustment by general rule, by filing with the officer from whom the appeal is taken and with the board of adjustment a notice of appeal, specifying the grounds thereof. The officer from whom the appeal is taken shall forthwith transmit to the board all the papers constituting the record upon which the action appealed from was taken. An appeal stays all proceedings in furtherance of the action appealed from, unless the officer from whom the appeal is taken certifies to the board of adjustment, after notice of appeal has been filed with him, that because of facts stated in the certificate a stay would, in his opinion, cause imminent peril to life or property or that because the violation charged is transitory in nature a stay would seriously interfere with enforcement of the ordinance. In that case proceedings shall not be stayed except by a restraining order, which may be granted by the board of adjustment or by a court of record on application, on notice to the officer from whom the appeal is taken and on due cause shown. The board of adjustment shall fix a reasonable time for the hearing of the appeal, give due notice thereof to the parties, and decide it within a reasonable time. The board of adjustment may reverse or affirm, wholly or partly, or may modify the order, requirement, decision, or determination appealed from, and shall make any order, requirement, decision, or determination that in its opinion ought to be made in the premises. To this end the board shall have all the powers of the officer from whom the appeal is taken.~~

(b1) Appeals. – The board of adjustment shall hear and decide appeals from any decision made by an official charged with the enforcement of a zoning or unified development ordinance and may hear appeals arising out of any other ordinance that regulates land use or development, pursuant to all of the following:

(1) Any person who has standing under G.S. 160A-393(d) or the city may appeal a decision to the board of adjustment. An appeal is taken by filing a notice of appeal with the city clerk. The notice of appeal shall state the grounds for the appeal.

(2) The official who made the decision shall give written notice to the owner of the property that it is subject of the decision and to the party who sought the decision, if different from the owner. The written notice shall be delivered by personal delivery, electronic mail, or by first-class mail.

(3) The owner or other party shall have 30 days from receipt of the written notice within which to file an appeal. Any other person with standing to appeal shall have 30 days from receipt from any source of actual or constructive notice of the decision within which to file an appeal.

(4) It shall be conclusively presumed that all persons with standing to appeal have constructive notice of the decision from the date a sign containing the words "Zoning Decision" or "Subdivision Decision" in letters at least six inches high and identifying the means to contact an official for information about the decision is prominently posted on the property that is the subject of the decision, provided the sign remains on the property for at least 10 days. Posting of signs is not the only form of constructive notice. Any such posting shall be the responsibility of the landowner or applicant. Verification

of the posting shall be provided to the official who made the decision. Absent an ordinance provision to the contrary, posting of signs shall not be required.

(5) The official whose decision is appealed shall transmit to the board all documents and exhibits constituting the record upon which the action appealed from is taken. The official shall also provide a copy of the record to the appellant and to the owner of the property that is the subject of the appeal if the appellant is not the owner.

(6) An appeal of a notice of violation or other enforcement order stays enforcement of the action appealed from unless the official whose decision is appealed certifies to the board of adjustment after notice of appeal has been filed that because of the facts stated in an affidavit, a stay would cause imminent peril to life or property or because the violation is transitory in nature, a stay would seriously interfere with enforcement of the ordinance. In that case, enforcement proceedings shall not be stayed except by a restraining order, which may be granted by a court. If enforcement proceedings are not stayed, the appellant may file with the official a request for an expedited hearing of the appeal, and the board of adjustment shall meet to hear the appeal within 15 days after such a request is filed. Notwithstanding the foregoing, appeals of decisions granting a permit or otherwise affirming that a proposed use of property is consistent with the ordinance shall not stay the further review of an application for permits or permissions to use such property; in these situations the appellant may request and the board may grant a stay of a final decision of permit applications or building permits affected by the issue being appealed.

(7) Subject to the provisions of subdivision (6) of this subsection, the board of adjustment shall hear and decide the appeal within a reasonable time.

(8) The official who made the decision shall be present at the hearing as a witness. The appellant shall not be limited at the hearing to matters stated in the notice of appeal. If any party or the city would be unduly prejudiced by the presentation of matters not presented in the notice of appeal, the board shall continue the hearing. The board of adjustment may reverse or affirm, wholly or partly, or may modify the decision appealed from and shall make any order, requirement, decision, or determination that ought to be made. The board shall have all the powers of the official from whom the appeal is taken.

(9) When hearing an appeal pursuant to G.S. 160A-400.9(e) or any other appeal in the nature of certiorari, the hearing shall be based on the record below and the scope of review shall be as provided in G.S. 160A-393(k).

(10) The parties to an appeal that have been made under this subsection may agree to mediation or other forms of alternative dispute resolution. The ordinance may set standards and procedures to facilitate and manage such voluntary alternative dispute resolution.

(c) Special and Conditional Use Permits. – The ~~zoning~~ ordinance may provide that the board of adjustment may ~~permit special exceptions to the zoning regulations in specified classes of cases or situations as provided in subsection (d) of this section, not including variances in permitted uses, and that the board may use~~ hear and decide special and conditional use ~~permits, all to be~~ permits in accordance with ~~the principles, conditions, safeguards,~~ standards and procedures specified in the ordinance. Reasonable and appropriate conditions may be imposed upon these permits. ~~The ordinance may also authorize the board to interpret zoning maps and pass upon disputed questions of lot lines or district boundary lines and similar~~

~~questions as they arise in the administration of the ordinance. The board shall hear and decide all matters referred to it or upon which it is required to pass under any zoning ordinance.~~

(d) Variances. – When ~~practical difficulties or~~ unnecessary hardships would result from carrying out the strict letter of a zoning ordinance, the board of adjustment shall ~~have the power to~~ vary ~~or modify~~ any of the ~~regulations or provisions of the ordinance so that~~ provisions of the ordinance upon a showing of all of the following:

(1) Unnecessary hardship would result from the strict application of the ordinance. It shall not be necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property.

(2) The hardship results from conditions that are peculiar to the property, such as location, size, or topography. Hardships resulting from personal circumstances, as well as hardships resulting from conditions that are common to the neighborhood or the general public, may not be the basis for granting a variance.

(3) The hardship did not result from actions taken by the applicant or the property owner. The act of purchasing property with knowledge that circumstances exist that may justify the granting of a variance shall not be regarded as a self-created hardship.

(4) The requested variance is consistent with the ~~spirit~~ spirit, purpose, and intent of the ~~ordinance shall be observed,~~ ordinance, such that public ~~safety and welfare secured,~~ safety is secured, and substantial justice ~~done.~~ is achieved.

No change in permitted uses may be authorized by variance. ~~Appropriate conditions, which must be reasonably related to the condition or circumstance that gives rise to the need for a variance, may be imposed on any approval issued by the board.~~ Appropriate conditions may be imposed on any variance, provided that the conditions are reasonably related to the variance. Any other ordinance that regulates land use or development may provide for variances consistent with the provisions of this subsection.

(e) Voting. –

(1) The concurring vote of four-fifths ~~of the members~~ of the board shall be necessary to ~~reverse any order, requirement, decision, or determination of any administrative official charged with the enforcement of an ordinance adopted pursuant to this Part, or to decide in favor of the applicant any matter upon which it is required to pass under any ordinance, or to grant a variance from the provisions of the ordinance.~~ grant a variance. A majority of the members shall be required to decide any other quasi-judicial matter or to determine an appeal made in the nature of certiorari. For the purposes of this subsection, vacant positions on the board and members who are disqualified from voting on a quasi-judicial matter shall not be considered ~~"members of the board"~~ members of the board for calculation of the requisite ~~supermajority~~ majority if there are no qualified alternates available to take the place of such members.

(e1) A member of the board or any other body exercising quasi-judicial functions pursuant to this Article shall not participate in or vote on any quasi-judicial matter in a manner that would violate affected persons' constitutional rights to an impartial decision maker. Impermissible conflicts include, but are not limited to, a member having a fixed opinion prior to hearing the matter that is not susceptible to change, undisclosed ex parte communications, a close familial, business, or other associational relationship with an affected person, or a financial interest in the outcome of the matter. If an objection is raised to a member's participation and that member does not recuse himself or herself, the remaining members shall by majority vote rule on the objection.

(e2) Quasi-Judicial Decisions and Judicial Review. –

(1) The board shall determine contested facts and make its decision within a reasonable time. Every quasi-judicial decision shall be based upon competent, material, and substantial evidence in the record. Each quasi-judicial decision shall be reduced to writing and reflect the board's determination of contested facts and their application to the applicable standards. The written decision shall be signed by the chair or other duly authorized member of the board. A quasi-judicial decision is effective upon filing the written decision with the clerk to the board or such other office or official as the ordinance specifies. The decision of the board shall be delivered by personal delivery, electronic mail, or by first-class mail to the applicant and property owner and to any other person who has submitted a written request for a copy prior to the date the decision becomes effective. The person required to provide notice shall certify that proper notice has been made.

(2) Every quasi-judicial decision ~~of the board~~ shall be subject to review by the superior court by proceedings in the nature of ~~certiorari. Any~~ certiorari pursuant to G.S. 160A-393. A petition for review ~~by the superior court~~ shall be filed with the clerk of superior court ~~within~~ by the later of 30 days after the decision ~~of the board is filed in such office as the ordinance specifies,~~ is effective or after a written copy thereof is given in accordance with subdivision (1) of this subsection. When first-class mail is used to deliver notice, three days shall be added to the time to file the petition. ~~delivered to every aggrieved party who has filed a written request for such copy with the secretary or chairman of the board at the time of its hearing of the case, whichever is later. The decision of the board may be delivered to the aggrieved party either by personal service or by registered mail or certified mail return receipt requested.~~

(f) Oaths. – The ~~chairman~~ chair of the board ~~of adjustment~~ or any member ~~temporarily~~ acting as ~~chairman,~~ chair and the clerk to the board are ~~is~~ authorized ~~in his official capacity~~ to administer oaths to witnesses in any matter coming before the board. Any person who, while under oath during a proceeding before the board of adjustment, willfully swears falsely is guilty of a Class 1 misdemeanor.

(g) Subpoenas. – The board of ~~adjustment~~ adjustment through the chair, or in the chair's absence anyone acting as chair, may subpoena witnesses and compel the production of evidence. To request issuance of a subpoena, persons with standing under G.S. 160A-393(d) may make a written request to the chair explaining why it is necessary for certain witnesses or evidence to be compelled. The chair shall issue requested subpoenas he or she determines to be relevant, reasonable in nature and scope, and not oppressive. The chair shall rule on any motion to quash or modify a subpoena. Decisions regarding subpoenas made by the chair may be appealed to the full board of adjustment. If a person fails or refuses to obey a subpoena issued pursuant to this subsection, the board of adjustment or the party seeking the subpoena may apply to the General Court of Justice for an order requiring that its ~~order~~ subpoena be obeyed, and the court shall have jurisdiction to issue these orders after notice to all proper parties. ~~No testimony of any witness before the board of adjustment pursuant to a subpoena issued in exercise of the power conferred by this subsection may be used against the witness in the trial of any civil or criminal action other than a prosecution for false swearing committed on the examination. Any person who, while under oath during a proceeding before the board of adjustment, willfully swears falsely, is guilty of a Class 1 misdemeanor.~~"

SECTION 2.(a) G.S. 160A-388(e1) is recodified as G.S. 160A-388(e)(2).

SECTION 2.(b) G.S. 160A-388(e)(2), as recodified by Section 2(a) of this act, reads as rewritten:

"(2) A member of ~~the~~ any board ~~or any other body~~ exercising quasi-judicial functions pursuant to this Article shall not participate in or vote on any quasi-judicial matter in a manner that would violate affected persons' constitutional rights to an impartial decision maker. Impermissible ~~conflicts~~ violations of due process include, but are not limited to, a member having a fixed opinion prior to hearing the matter that is not susceptible to change, undisclosed ex parte communications, a close familial, business, or other associational relationship with an affected person, or a financial interest in the outcome of the matter. If an objection is raised to a member's participation and that member does not recuse himself or herself, the remaining members shall by majority vote rule on the objection."

SECTION 3.(a) G.S. 153A-345 is repealed.

SECTION 3.(b) Article 18 of Chapter 153A of the General Statutes is amended by adding a new section to read:

"**§ 153A-345.1. Board of adjustment.**

(a) The provisions of G.S. 160A-388 are applicable to counties.

(b) For the purposes of this section, as used in G.S. 160A-388, the term "city council" is deemed to refer to the board of county commissioners, and the terms "city" or "municipality" are deemed to refer to the county.

(c) If a board of county commissioners does not zone the entire territorial jurisdiction of the county, each designated zoning area shall, if practicable, have at least one resident as a member of the board of adjustment; otherwise, the provisions of G.S. 153A-25 regarding qualifications for appointive office shall apply to board of adjustment appointments."

SECTION 4. G.S. 160A-381(c) reads as rewritten:

"(c) The regulations may also provide that the board of adjustment, the planning board, or the city council may issue special use permits or conditional use permits in the classes of cases or situations and in accordance with the principles, conditions, safeguards, and procedures specified therein and may impose reasonable and appropriate conditions and safeguards upon these permits. When deciding special use permits or conditional use permits, the city council or planning board shall follow quasi-judicial procedures. Notice of hearings on special or conditional use permit applications shall be as provided in G.S. 160A-388(a2). No vote greater than a majority vote shall be required for the city council or planning board to issue such permits. For the purposes of this section, vacant positions on the board and members who are disqualified from voting on a quasi-judicial matter shall not be considered "members of the board" for calculation of the requisite majority. Every such decision of the city council or planning board shall be subject to review of the superior court in the nature of certiorari in accordance with G.S. 160A-388.

Where appropriate, such conditions may include requirements that street and utility rights-of-way be dedicated to the public and that provision be made of recreational space and facilities."

SECTION 5. G.S. 153A-340(c1) reads as rewritten:

"(c1) The regulations may also provide that the board of adjustment, the planning board, or the board of commissioners may issue special use permits or conditional use permits in the classes of cases or situations and in accordance with the principles, conditions, safeguards, and procedures specified therein and may impose reasonable and appropriate conditions and safeguards upon these permits. Where appropriate, the conditions may include requirements that street and utility rights-of-way be dedicated to the public and that recreational space be provided. When deciding special use permits or conditional use permits, the board of county commissioners or planning board shall follow quasi-judicial procedures. Notice of hearings on special or conditional use permit applications shall be as provided in G.S. 160A-388(a2). No vote greater than a majority vote shall be required for the board of county commissioners or

planning board to issue such permits. For the purposes of this section, vacant positions on the board and members who are disqualified from voting on a quasi-judicial matter shall not be considered "members of the board" for calculation of the requisite majority. Every such decision of the board of county commissioners or planning board shall be subject to review of the superior court in the nature of certiorari consistent with G.S. 153A-345."

SECTION 6. G.S. 153A-44 reads as rewritten:

"**§ 153A-44. Members excused from voting.**

The board may excuse a member from voting, but only upon questions involving the member's own financial interest or official conduct or on matters on which the member is prohibited from voting under G.S. 14-234, 153A-340(g), or ~~153A-345(e1).~~ 160A-388(e)(2). For purposes of this section, the question of the compensation and allowances of members of the board does not involve a member's own financial interest or official conduct."

SECTION 7. G.S. 153A-336(a) reads as rewritten:

"(a) When a subdivision ordinance adopted under this Part provides that the decision whether to approve or deny a preliminary or final subdivision plat is to be made by a board of commissioners or a planning board, other than a planning board comprised solely of members of a county planning staff, and the ordinance authorizes the board of commissioners or planning board to make a quasi-judicial decision in deciding whether to approve the subdivision plat, then that quasi-judicial decision of the board of commissioners or planning board shall be subject to review by the superior court by proceedings in the nature of certiorari. The provisions of G.S. 153A-340(f), ~~153A-345(e2),~~160A-388(e2)(2) and 153A-349 shall apply to those appeals."

SECTION 8. G.S. 153A-340(c1) reads as rewritten:

"(c1) The regulations may also provide that the board of adjustment, the planning board, or the board of commissioners may issue special use permits or conditional use permits in the classes of cases or situations and in accordance with the principles, conditions, safeguards, and procedures specified therein and may impose reasonable and appropriate conditions and safeguards upon these permits. Where appropriate, the conditions may include requirements that street and utility rights-of-way be dedicated to the public and that recreational space be provided. When deciding special use permits or conditional use permits, the board of county commissioners or planning board shall follow quasi-judicial procedures. No vote greater than a majority vote shall be required for the board of county commissioners or planning board to issue such permits. For the purposes of this section, vacant positions on the board and members who are disqualified from voting on a quasi-judicial matter shall not be considered "members of the board" for calculation of the requisite majority. Every such decision of the board of county commissioners or planning board shall be subject to review of the superior court in the nature of certiorari consistent with ~~G.S. 153A-345.~~ G.S. 160A-388."

SECTION 9. G.S. 153A-349(c) is repealed.

SECTION 10. G.S. 153A-349.8(c) reads as rewritten:

"(c) If the developer fails to cure the material breach within the time given, then the local government unilaterally may terminate or modify the development agreement; provided, the notice of termination or modification may be appealed to the board of adjustment in the manner provided by ~~G.S. 153A-345(b).~~G.S. 160A-388(b1)."

SECTION 11. G.S. 160A-75 reads as rewritten:

"**§ 160A-75. Voting.**

No member shall be excused from voting except upon matters involving the consideration of the member's own financial interest or official conduct or on matters on which the member is prohibited from voting under G.S. 14-234, 160A-381(d), or ~~160A-388(e1).~~160A-388(e)(2). In all other cases, a failure to vote by a member who is physically present in the council chamber, or who has withdrawn without being excused by a majority vote of the remaining members present, shall be recorded as an affirmative vote. The question of the compensation and

allowances of members of the council is not a matter involving a member's own financial interest or official conduct.

An affirmative vote equal to a majority of all the members of the council not excused from voting on the question in issue, including the mayor's vote in case of an equal division, shall be required to adopt an ordinance, take any action having the effect of an ordinance, authorize or commit the expenditure of public funds, or make, ratify, or authorize any contract on behalf of the city. In addition, no ordinance nor any action having the effect of any ordinance may be finally adopted on the date on which it is introduced except by an affirmative vote equal to or greater than two thirds of all the actual membership of the council, excluding vacant seats and not including the mayor unless the mayor has the right to vote on all questions before the council. For purposes of this section, an ordinance shall be deemed to have been introduced on the date the subject matter is first voted on by the council."

SECTION 12. G.S. 160A-377(a) reads as rewritten:

"(a) When a subdivision ordinance adopted under this Part provides that the decision whether to approve or deny a preliminary or final subdivision plat is to be made by a city council or a planning board, other than a planning board comprised solely of members of a city planning staff, and the ordinance authorizes the council or planning board to make a quasi-judicial decision in deciding whether to approve the subdivision plat, then that quasi-judicial decision of the council or planning board shall be subject to review by the superior court by proceedings in the nature of certiorari. The provisions of G.S. 160A-381(c), ~~160A-388(e2),~~160A-388(e2)(2), and 160A-393 shall apply to those appeals."

SECTION 13. G.S. 160A-393(c)(3) reads as rewritten:

"(3) Set forth with particularity the allegations and facts, if any, in support of allegations that, as the result of impermissible conflict as described in ~~G.S. 160A-388(e1),~~G.S. 160A-388(e)(2), or locally adopted conflict rules, the decision-making body was not sufficiently impartial to comply with due process principles."

SECTION 14. G.S. 160A-393(j)(2) reads as rewritten:

"(2) Whether, as a result of impermissible conflict as described in ~~G.S. 160A-388(e1),~~G.S. 160A-388(e)(2), or locally adopted conflict rules, the decision-making body was not sufficiently impartial to comply with due process principles."

SECTION 15. This act becomes effective October 1, 2013, and applies to actions taken on or after that date by any board of adjustment.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

H D

HOUSE BILL 276
Committee Substitute Favorable 4/8/13
PROPOSED SENATE COMMITTEE SUBSTITUTE H276-CSTP-47 [v.3]
5/29/2013 6:55:54 PM

Short Title: Zoning/Board of Adjustment Changes. (Public)

Sponsors:

Referred to:

March 13, 2013

A BILL TO BE ENTITLED

AN ACT TO CLARIFY AND MODERNIZE STATUTES REGARDING ZONING BOARDS OF ADJUSTMENT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 160A-388 reads as rewritten:

"**§ 160A-388. Board of adjustment.**

(a) Composition and Duties. – The ~~city council~~ zoning or unified development ordinance may provide for the appointment and compensation of a board of adjustment consisting of five or more members, each to be appointed for three years. In appointing the original ~~members of such board,~~ members or in the filling of vacancies caused by the expiration of the terms of existing members, the city council may appoint certain members for less than three years ~~to the end~~ so that ~~thereafter~~ the terms of all members shall not expire at the same time. The council ~~may, in its discretion,~~ may appoint and provide compensation for alternate members to serve on the board in the absence or temporary disqualification of any regular member or to fill a vacancy pending appointment of a member. Alternate members shall be appointed for the same term, at the same time, and in the same manner as regular members. Each alternate ~~member, while attending any regular or special meeting of the board and~~ member serving on behalf of any regular ~~member, shall have and may exercise~~ member has all the powers and duties of a regular member. ~~A city~~ The ordinance may designate a planning board or governing board to perform any ~~or all~~ of the duties of a board of adjustment in addition to its other ~~duties.~~duties and may create and designate specialized boards to hear technical appeals.

(a1) Provisions of Ordinance. – The zoning or unified development ordinance may provide that the board of adjustment hear and decide special and conditional use permits, requests for variances, and appeals of decisions of administrative officials charged with enforcement of the ordinance. As used in this section, the term "decision" includes any final and binding order, requirement, or determination. The board of adjustment shall follow quasi-judicial procedures when deciding appeals and requests for variances and special and conditional use permits. The board shall hear and decide all matters upon which it is required to pass under any statute or ordinance that regulates land use or development.

(a2) Notice of Hearing. – Notice of hearings conducted pursuant to this section shall be mailed to the person or entity whose appeal, application, or request is the subject of the hearing; to the owner of the property that is the subject of the hearing if the owner did not initiate the hearing; to the owners of all parcels of land abutting the parcel of land that is the subject of the hearing; and to any other persons entitled to receive notice as provided by the zoning or unified

development ordinance. In the absence of evidence to the contrary, the city may rely on the county tax listing to determine owners of property entitled to mailed notice. The notice must be deposited in the mail at least 10 days, but not more than 25 days, prior to the date of the hearing. Within that same time period, the city shall also prominently post a notice of the hearing on the site that is the subject of the hearing or on an adjacent street or highway right-of-way.

(b) ~~A zoning ordinance or those provisions of a unified development ordinance adopted pursuant to the authority granted in this Part shall provide that the board of adjustment shall hear and decide appeals from and review any order, requirement, decision, or determination made by an administrative official charged with the enforcement of that ordinance. An appeal may be taken by any person aggrieved or by an officer, department, board, or bureau of the city. Appeals shall be taken within times prescribed by the board of adjustment by general rule, by filing with the officer from whom the appeal is taken and with the board of adjustment a notice of appeal, specifying the grounds thereof. The officer from whom the appeal is taken shall forthwith transmit to the board all the papers constituting the record upon which the action appealed from was taken. An appeal stays all proceedings in furtherance of the action appealed from, unless the officer from whom the appeal is taken certifies to the board of adjustment, after notice of appeal has been filed with him, that because of facts stated in the certificate a stay would, in his opinion, cause imminent peril to life or property or that because the violation charged is transitory in nature a stay would seriously interfere with enforcement of the ordinance. In that case proceedings shall not be stayed except by a restraining order, which may be granted by the board of adjustment or by a court of record on application, on notice to the officer from whom the appeal is taken and on due cause shown. The board of adjustment shall fix a reasonable time for the hearing of the appeal, give due notice thereof to the parties, and decide it within a reasonable time. The board of adjustment may reverse or affirm, wholly or partly, or may modify the order, requirement, decision, or determination appealed from, and shall make any order, requirement, decision, or determination that in its opinion ought to be made in the premises. To this end the board shall have all the powers of the officer from whom the appeal is taken.~~

(b1) Appeals. – The board of adjustment shall hear and decide appeals decisions of administrative officials charged with enforcement of the zoning or unified development ordinance and may hear appeals arising out of any other ordinance that regulates land use or development, pursuant to all of the following:

(1) Any person who has standing under G.S. 160A-393(d) or the city may appeal a decision to the board of adjustment. An appeal is taken by filing a notice of appeal with the city clerk. The notice of appeal shall state the grounds for the appeal.

(2) The official who made the decision shall give written notice to the owner of the property that it is subject of the decision and to the party who sought the decision, if different from the owner. The written notice shall be delivered by personal delivery, electronic mail, or by first-class mail.

(3) The owner or other party shall have 30 days from receipt of the written notice within which to file an appeal. Any other person with standing to appeal shall have 30 days from receipt from any source of actual or constructive notice of the decision within which to file an appeal.

(4) It shall be conclusively presumed that all persons with standing to appeal have constructive notice of the decision from the date a sign containing the words "Zoning Decision" or "Subdivision Decision" in letters at least six inches high and identifying the means to contact an official for information about the decision is prominently posted on the property that is the subject of the decision, provided the sign remains on the property for at least 10 days.

Posting of signs is not the only form of constructive notice. Any such posting shall be the responsibility of the landowner or applicant. Verification of the posting shall be provided to the official who made the decision. Absent an ordinance provision to the contrary, posting of signs shall not be required.

(5) The official who made the decision shall transmit to the board all documents and exhibits constituting the record upon which the action appealed from is taken. The official shall also provide a copy of the record to the appellant and to the owner of the property that is the subject of the appeal if the appellant is not the owner.

(6) An appeal of a notice of violation or other enforcement order stays enforcement of the action appealed from unless the official who made the decision certifies to the board of adjustment after notice of appeal has been filed that because of the facts stated in an affidavit, a stay would cause imminent peril to life or property or because the violation is transitory in nature, a stay would seriously interfere with enforcement of the ordinance. In that case, enforcement proceedings shall not be stayed except by a restraining order, which may be granted by a court. If enforcement proceedings are not stayed, the appellant may file with the official a request for an expedited hearing of the appeal, and the board of adjustment shall meet to hear the appeal within 15 days after such a request is filed. Notwithstanding the foregoing, appeals of decisions granting a permit or otherwise affirming that a proposed use of property is consistent with the ordinance shall not stay the further review of an application for permits or permissions to use such property; in these situations the appellant may request and the board may grant a stay of a final decision of permit applications or building permits affected by the issue being appealed.

(7) Subject to the provisions of subdivision (6) of this subsection, the board of adjustment shall hear and decide the appeal within a reasonable time.

(8) The official who made the decision shall be present at the hearing as a witness. The appellant shall not be limited at the hearing to matters stated in the notice of appeal. If any party or the city would be unduly prejudiced by the presentation of matters not presented in the notice of appeal, the board shall continue the hearing. The board of adjustment may reverse or affirm, wholly or partly, or may modify the decision appealed from and shall make any order, requirement, decision, or determination that ought to be made. The board shall have all the powers of the official who made the decision.

(9) When hearing an appeal pursuant to G.S. 160A-400.9(e) or any other appeal in the nature of certiorari, the hearing shall be based on the record below and the scope of review shall be as provided in G.S. 160A-393(k).

(10) The parties to an appeal that has been made under this subsection may agree to mediation or other forms of alternative dispute resolution. The ordinance may set standards and procedures to facilitate and manage such voluntary alternative dispute resolution.

(c) Special and Conditional Use Permits. – The ~~zoning~~ ordinance may provide that the board of adjustment may ~~permit special exceptions to the zoning regulations in specified classes of cases or situations as provided in subsection (d) of this section, not including variances in permitted uses, and that the board may use~~ hear and decide special and conditional use ~~permits, all to be~~ permits in accordance with ~~the principles, conditions, safeguards,~~ standards and procedures specified in the ordinance. Reasonable and appropriate conditions may be imposed upon these permits. ~~The ordinance may also authorize the board to interpret~~

~~zoning maps and pass upon disputed questions of lot lines or district boundary lines and similar questions as they arise in the administration of the ordinance. The board shall hear and decide all matters referred to it or upon which it is required to pass under any zoning ordinance.~~

(d) Variances. – When ~~practical difficulties or~~ unnecessary hardships would result from carrying out the strict letter of a zoning ordinance, the board of adjustment shall ~~have the power to~~ vary ~~or modify~~ any of the ~~regulations or provisions of the ordinance so that~~ provisions of the ordinance upon a showing of all of the following:

(1) Unnecessary hardship would result from the strict application of the ordinance. It shall not be necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property.

(2) The hardship results from conditions that are peculiar to the property, such as location, size, or topography. Hardships resulting from personal circumstances, as well as hardships resulting from conditions that are common to the neighborhood or the general public, may not be the basis for granting a variance.

(3) The hardship did not result from actions taken by the applicant or the property owner. The act of purchasing property with knowledge that circumstances exist that may justify the granting of a variance shall not be regarded as a self-created hardship.

(4) The requested variance is consistent with the ~~spirit~~ spirit, purpose, and intent of the ~~ordinance shall be observed,~~ ordinance, such that public ~~safety and welfare secured,~~ safety is secured, and substantial justice ~~done.~~ is achieved.

No change in permitted uses may be authorized by variance. ~~Appropriate conditions, which must be reasonably related to the condition or circumstance that gives rise to the need for a variance, may be imposed on any approval issued by the board.~~ Appropriate conditions may be imposed on any variance, provided that the conditions are reasonably related to the variance. Any other ordinance that regulates land use or development may provide for variances consistent with the provisions of this subsection.

(e) Voting. –

(1) The concurring vote of four-fifths ~~of the members~~ of the board shall be necessary to ~~reverse any order, requirement, decision, or determination of any administrative official charged with the enforcement of an ordinance adopted pursuant to this Part, or to decide in favor of the applicant any matter upon which it is required to pass under any ordinance, or to grant a variance from the provisions of the ordinance.~~ grant a variance. A majority of the members shall be required to decide any other quasi-judicial matter or to determine an appeal made in the nature of certiorari. For the purposes of this subsection, vacant positions on the board and members who are disqualified from voting on a quasi-judicial matter shall not be considered ~~"members of the board"~~ members of the board for calculation of the requisite ~~supermajority~~ majority if there are no qualified alternates available to take the place of such members.

(e1) A member of the board or any other body exercising quasi-judicial functions pursuant to this Article shall not participate in or vote on any quasi-judicial matter in a manner that would violate affected persons' constitutional rights to an impartial decision maker. Impermissible conflicts include, but are not limited to, a member having a fixed opinion prior to hearing the matter that is not susceptible to change, undisclosed ex parte communications, a close familial, business, or other associational relationship with an affected person, or a financial interest in the outcome of the matter. If an objection is raised to a member's participation and that member does not recuse himself or herself, the remaining members shall by majority vote rule on the objection.

(e2) Quasi-Judicial Decisions and Judicial Review. –

(1) The board shall determine contested facts and make its decision within a reasonable time. Every quasi-judicial decision shall be based upon competent, material, and substantial evidence in the record. Each quasi-judicial decision shall be reduced to writing and reflect the board's determination of contested facts and their application to the applicable standards. The written decision shall be signed by the chair or other duly authorized member of the board. A quasi-judicial decision is effective upon filing the written decision with the clerk to the board or such other office or official as the ordinance specifies. The decision of the board shall be delivered by personal delivery, electronic mail, or by first-class mail to the applicant, property owner, and to any person who has submitted a written request for a copy, prior to the date the decision becomes effective. The person required to provide notice shall certify that proper notice has been made.

(2) Every quasi-judicial decision ~~of the board~~ shall be subject to review by the superior court by proceedings in the nature of ~~certiorari. Any~~ certiorari pursuant to G.S. 160A-393. A petition for review ~~by the superior court~~ shall be filed with the clerk of superior court ~~within~~ by the later of 30 days after the decision ~~of the board is filed in such office as the ordinance specifies,~~ is effective or after a written copy thereof is given in accordance with subdivision (1) of this subsection. When first-class mail is used to deliver notice, three days shall be added to the time to file the petition. ~~delivered to every aggrieved party who has filed a written request for such copy with the secretary or chairman of the board at the time of its hearing of the case, whichever is later. The decision of the board may be delivered to the aggrieved party either by personal service or by registered mail or certified mail return receipt requested.~~

(f) Oaths. – The ~~chairman~~ chair of the board ~~of adjustment~~ or any member ~~temporarily~~ acting as ~~chairman,~~ chair and the clerk to the board are ~~is~~ authorized ~~in his official capacity~~ to administer oaths to witnesses in any matter coming before the board. Any person who, while under oath during a proceeding before the board of adjustment, willfully swears falsely is guilty of a Class 1 misdemeanor.

(g) Subpoenas. – The board of ~~adjustment~~ adjustment through the chair, or in the chair's absence anyone acting as chair, may subpoena witnesses and compel the production of evidence. To request issuance of a subpoena, persons with standing under G.S. 160A-393(d) may make a written request to the chair explaining why it is necessary for certain witnesses or evidence to be compelled. The chair shall issue requested subpoenas he or she determines to be relevant, reasonable in nature and scope, and not oppressive. The chair shall rule on any motion to quash or modify a subpoena. Decisions regarding subpoenas made by the chair may be appealed to the full board of adjustment. If a person fails or refuses to obey a subpoena issued pursuant to this subsection, the board of adjustment or the party seeking the subpoena may apply to the General Court of Justice for an order requiring that its ~~order~~ subpoena be obeyed, and the court shall have jurisdiction to issue these orders after notice to all proper parties. ~~No testimony of any witness before the board of adjustment pursuant to a subpoena issued in exercise of the power conferred by this subsection may be used against the witness in the trial of any civil or criminal action other than a prosecution for false swearing committed on the examination. Any person who, while under oath during a proceeding before the board of adjustment, willfully swears falsely, is guilty of a Class 1 misdemeanor.~~"

SECTION 2.(a) G.S. 160A-388(e1) is recodified as G.S. 160A-388(e)(2).

SECTION 2.(b) G.S. 160A-388(e)(2), as recodified by Section 2(a) of this act, reads as rewritten:

"(2) A member of ~~the~~ any board ~~or any other body~~ exercising quasi-judicial functions pursuant to this Article shall not participate in or vote on any quasi-judicial matter in a manner that would violate affected persons' constitutional rights to an impartial decision maker. Impermissible ~~conflicts~~ violations of due process include, but are not limited to, a member having a fixed opinion prior to hearing the matter that is not susceptible to change, undisclosed ex parte communications, a close familial, business, or other associational relationship with an affected person, or a financial interest in the outcome of the matter. If an objection is raised to a member's participation and that member does not recuse himself or herself, the remaining members shall by majority vote rule on the objection."

SECTION 3.(a) G.S. 153A-345 is repealed.

SECTION 3.(b) Article 18 of Chapter 153A of the General Statutes is amended by adding a new section to read:

"**§ 153A-345.1. Board of adjustment.**

(a) The provisions of G.S. 160A-388 are applicable to counties.

(b) For the purposes of this section, as used in G.S. 160A-388, the term "city council" is deemed to refer to the board of county commissioners, and the terms "city" or "municipality" are deemed to refer to the county.

(c) If a board of county commissioners does not zone the entire territorial jurisdiction of the county, each designated zoning area shall, if practicable, have at least one resident as a member of the board of adjustment; otherwise, the provisions of G.S. 153A-25 regarding qualifications for appointive office shall apply to board of adjustment appointments."

SECTION 4. G.S. 160A-381(c) reads as rewritten:

"(c) The regulations may also provide that the board of adjustment, the planning board, or the city council may issue special use permits or conditional use permits in the classes of cases or situations and in accordance with the principles, conditions, safeguards, and procedures specified therein and may impose reasonable and appropriate conditions and safeguards upon these permits. When deciding special use permits or conditional use permits, the city council or planning board shall follow quasi-judicial procedures. Notice of hearings on special or conditional use permit applications shall be as provided in G.S. 160A-388(a2). No vote greater than a majority vote shall be required for the city council or planning board to issue such permits. For the purposes of this section, vacant positions on the board and members who are disqualified from voting on a quasi-judicial matter shall not be considered "members of the board" for calculation of the requisite majority. Every such decision of the city council or planning board shall be subject to review of the superior court in the nature of certiorari in accordance with G.S. 160A-388.

Where appropriate, such conditions may include requirements that street and utility rights-of-way be dedicated to the public and that provision be made of recreational space and facilities."

SECTION 5. G.S. 153A-340(c1) reads as rewritten:

"(c1) The regulations may also provide that the board of adjustment, the planning board, or the board of commissioners may issue special use permits or conditional use permits in the classes of cases or situations and in accordance with the principles, conditions, safeguards, and procedures specified therein and may impose reasonable and appropriate conditions and safeguards upon these permits. Where appropriate, the conditions may include requirements that street and utility rights-of-way be dedicated to the public and that recreational space be provided. When deciding special use permits or conditional use permits, the board of county commissioners or planning board shall follow quasi-judicial procedures. Notice of hearings on

special or conditional use permit applications shall be as provided in G.S. 160A-388(a2). No vote greater than a majority vote shall be required for the board of county commissioners or planning board to issue such permits. For the purposes of this section, vacant positions on the board and members who are disqualified from voting on a quasi-judicial matter shall not be considered "members of the board" for calculation of the requisite majority. Every such decision of the board of county commissioners or planning board shall be subject to review of the superior court in the nature of certiorari consistent with G.S. 153A-345."

SECTION 6. G.S. 153A-44 reads as rewritten:

"**§ 153A-44. Members excused from voting.**

The board may excuse a member from voting, but only upon questions involving the member's own financial interest or official conduct or on matters on which the member is prohibited from voting under G.S. 14-234, 153A-340(g), or ~~153A-345(e1).~~ 160A-388(e)(2). For purposes of this section, the question of the compensation and allowances of members of the board does not involve a member's own financial interest or official conduct."

SECTION 7. G.S. 153A-336(a) reads as rewritten:

"(a) When a subdivision ordinance adopted under this Part provides that the decision whether to approve or deny a preliminary or final subdivision plat is to be made by a board of commissioners or a planning board, other than a planning board comprised solely of members of a county planning staff, and the ordinance authorizes the board of commissioners or planning board to make a quasi-judicial decision in deciding whether to approve the subdivision plat, then that quasi-judicial decision of the board of commissioners or planning board shall be subject to review by the superior court by proceedings in the nature of certiorari. The provisions of G.S. 153A-340(f), ~~153A-345(e2),~~160A-388(e2)(2) and 153A-349 shall apply to those appeals."

SECTION 8. G.S. 153A-340(c1) reads as rewritten:

"(c1) The regulations may also provide that the board of adjustment, the planning board, or the board of commissioners may issue special use permits or conditional use permits in the classes of cases or situations and in accordance with the principles, conditions, safeguards, and procedures specified therein and may impose reasonable and appropriate conditions and safeguards upon these permits. Where appropriate, the conditions may include requirements that street and utility rights-of-way be dedicated to the public and that recreational space be provided. When deciding special use permits or conditional use permits, the board of county commissioners or planning board shall follow quasi-judicial procedures. No vote greater than a majority vote shall be required for the board of county commissioners or planning board to issue such permits. For the purposes of this section, vacant positions on the board and members who are disqualified from voting on a quasi-judicial matter shall not be considered "members of the board" for calculation of the requisite majority. Every such decision of the board of county commissioners or planning board shall be subject to review of the superior court in the nature of certiorari consistent with ~~G.S. 153A-345.~~ G.S. 160A-388."

SECTION 9. G.S. 153A-349(c) is repealed.

SECTION 10. G.S. 153A-349.8(c) reads as rewritten:

"(c) If the developer fails to cure the material breach within the time given, then the local government unilaterally may terminate or modify the development agreement; provided, the notice of termination or modification may be appealed to the board of adjustment in the manner provided by ~~G.S. 153A-345(b).~~G.S. 160A-388(b1)."

SECTION 11. G.S. 160A-75 reads as rewritten:

"**§ 160A-75. Voting.**

No member shall be excused from voting except upon matters involving the consideration of the member's own financial interest or official conduct or on matters on which the member is prohibited from voting under G.S. 14-234, 160A-381(d), or ~~160A-388(e1).~~160A-388(e)(2). In all other cases, a failure to vote by a member who is physically present in the council chamber,

or who has withdrawn without being excused by a majority vote of the remaining members present, shall be recorded as an affirmative vote. The question of the compensation and allowances of members of the council is not a matter involving a member's own financial interest or official conduct.

An affirmative vote equal to a majority of all the members of the council not excused from voting on the question in issue, including the mayor's vote in case of an equal division, shall be required to adopt an ordinance, take any action having the effect of an ordinance, authorize or commit the expenditure of public funds, or make, ratify, or authorize any contract on behalf of the city. In addition, no ordinance nor any action having the effect of any ordinance may be finally adopted on the date on which it is introduced except by an affirmative vote equal to or greater than two thirds of all the actual membership of the council, excluding vacant seats and not including the mayor unless the mayor has the right to vote on all questions before the council. For purposes of this section, an ordinance shall be deemed to have been introduced on the date the subject matter is first voted on by the council."

SECTION 12. G.S. 160A-377(a) reads as rewritten:

"(a) When a subdivision ordinance adopted under this Part provides that the decision whether to approve or deny a preliminary or final subdivision plat is to be made by a city council or a planning board, other than a planning board comprised solely of members of a city planning staff, and the ordinance authorizes the council or planning board to make a quasi-judicial decision in deciding whether to approve the subdivision plat, then that quasi-judicial decision of the council or planning board shall be subject to review by the superior court by proceedings in the nature of certiorari. The provisions of G.S. 160A-381(c), ~~160A-388(e2),~~160A-388(e2)(2), and 160A-393 shall apply to those appeals."

SECTION 13. G.S. 160A-393(c)(3) reads as rewritten:

"(3) Set forth with particularity the allegations and facts, if any, in support of allegations that, as the result of impermissible conflict as described in ~~G.S. 160A-388(e1),~~G.S. 160A-388(e)(2), or locally adopted conflict rules, the decision-making body was not sufficiently impartial to comply with due process principles."

SECTION 14. G.S. 160A-393(j)(2) reads as rewritten:

"(2) Whether, as a result of impermissible conflict as described in ~~G.S. 160A-388(e1),~~G.S. 160A-388(e)(2), or locally adopted conflict rules, the decision-making body was not sufficiently impartial to comply with due process principles."

SECTION 15. This act becomes effective October 1, 2013, and applies to actions taken on or after that date by any board of adjustment.

HOUSE BILL 276:
Zoning/Board of Adjustment Changes

2013-2014 General Assembly

Committee:	Senate Commerce	**Date:**	May 30, 2013
Introduced by:	Reps. G. Graham, Stam	**Prepared by:**	Peter Ledford Committee Counsel
Analysis of:	PCS to Second Edition H276-CSTP-47		

SUMMARY: The PCS for House Bill 276 would update the laws pertaining to boards of adjustment for cities and counties.

The PCS makes various technical changes.

CURRENT LAW: G.S. 160A-388 governs boards of adjustment, which are quasi-judicial boards that make zoning decisions in a city. The board consists of five or more members who are appointed by the city council for terms of three years. A city may designate a planning board to perform any or all of the duties of a board of adjustment in addition to its other duties.

The board of adjustment has several statutory duties:

- Hearing and deciding appeals and reviewing decisions on the enforcement of zoning ordinances.
- Issuing special and conditional use permits.
- Interpreting zoning maps and deciding disputes over lot lines and district boundary lines.
- Issuing variances.

Decisions of the board of adjustment must be agreed upon by four-fifths of the members of the board. The statute also prohibits a member of a board of adjustment, or a member of another body exercising the function of the board, from voting on any quasi-judicial matter if it would violate the constitutional right of a party to an impartial decision maker. All decisions of the board of adjustment are subject to judicial review in superior court, and any petition for review must be filed with the clerk of superior court within 30 days after the decision of the board. The board of adjustment has the power to subpoena witnesses and compel the production of evidence.

G.S. 153A-345 provides similar provisions that apply to county boards of adjustment.

BILL ANALYSIS:

Sections 1 and 2 of the PCS would amend G.S. 160A-388. The bill would create new subsections that govern the provisions of zoning or unified development ordinances, notice of hearings, and appeals. The bill would also substantially rewrite the subsections applying to the composition and duties of the board, special and conditional use permits, variances, voting, quasi-judicial and judicial review, oaths, and subpoenas.

Composition and Duties. – The bill makes various changes to subsection (a) to simplify the language establishing the composition and duties of the board of adjustment.

Provisions of Ordinance. – The bill creates subsection (a1), which allows a zoning or unified development ordinance to provide that the board of adjustment may hear and decide special and conditional use permits, variances, and appeals of decisions of administrative officials.

Notice of Hearing. – The bill creates subsection (a2), which requires that notice of a hearing under this section be provide to the owner of the property subject to the hearing, if the owner did not request the hearing, owners of all parcels of land abutting the property subject to the hearing, and any other person entitled to receive notice by the zoning or unified development ordinance. Notice must be mailed not less than 10 days nor more than 25 days prior to the date of the hearing.

Appeals. – The bill repeals the existing subsection dealing with appeals, and creates subsection (b1), which sets for the requirements for the appeals process. The city or any person with standing may appeal a decision to the board of adjustment, and the subsection lists the steps necessary to properly appeal a decision.

Special and Conditional Use Permits. – The bill makes various changes to subsection (c), and clarifies that reasonable and appropriate conditions may be imposed on permits.

Variances. – The bill makes various changes to subsection (d) to amend the process by which variances are allowed. To receive a variance, an applicant must show that the ordinance creates an unnecessary hardship, that the hardship results from conditions unique to the property, that the hardship did not result from actions taken by the applicant, and that the variance is consistent with the spirit, purpose, and intent of the ordinance.

Voting. – The bill amends subsection (e) to require that a four-fifths vote is required to grant a variance and that a majority vote is required to decide any other quasi-judicial matter or appeal. The bill also recodifies G.S. 160A-388(e1) as G.S. 160A-388(e)(2).

Quasi-Judicial Decisions and Judicial Review. – The bill amends subsection (e2) to require that decisions be based upon competent, material, and substantial evidence. Decisions must be delivered to the applicant, property owner, and any other person who requested a copy prior to the date the decision becomes effective. Decisions are also subject to judicial review pursuant to G.S. 160A-393.

Oaths. – The bill amends subsection (f) by clarifying the language and establishing that it is a criminal offense to willfully swear falsely while under oath during a proceeding before the board of adjustment.

Subpoenas. – The bill amends subsection (g) to allow persons with standing to make a written request for the board of adjustment to issue a subpoena for a witness or evidence. The subsection also allows the person making such a request, if it is granted, to apply to the judicial system for enforcement of the subpoena.

Section 3 of the PCS would repeal G.S. 153A-345, and replace it with G.S. 153A-345.1, which establishes that the requirements of G.S. 160A-388 are also applicable to counties.

Sections 4 and 5 of the PCS would provide that the notice process set forth in G.S. 160A-388 would also be used when deciding special use and conditional use permits.

Sections 6 through 14 make various conforming changes to citations found elsewhere in the General Statutes.

EFFECTIVE DATE: October 1, 2013, and applies to actions by boards of adjustment on or after that date.

BACKGROUND: The bill is the recommendation of the North Carolina Bar Association Zoning, Planning, and Land Use Section.

Erika Churchill, counsel to House Government, substantially contributed to this summary.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

H 2

HOUSE BILL 687
Committee Substitute Favorable 5/6/13

Short Title: Homeless Shelters/Remove Age Limits. (Public)

Sponsors:

Referred to:

April 11, 2013

A BILL TO BE ENTITLED

AN ACT TO REQUIRE THE BUILDING CODE COUNCIL TO AMEND THE NC BUILDING CODE TO ALLOW OCCUPANTS YOUNGER THAN EIGHTEEN IN TEMPORARY OVERFLOW EMERGENCY SHELTERS FOR THE HOMELESS.

The General Assembly of North Carolina enacts:

SECTION 1. Definitions. – As used in this act, "Council" means the Building Code Council, "Code" means the 2012 NC Building Code, and "Homeless Shelter Provision" means the requirement set forth in Section 424.1.1 of the North Carolina Building Code requiring that homeless occupants of a temporary overflow shelter for the homeless be over the age of 18.

SECTION 2. New Code amendment. – Until the effective date of the Code amendment that the Council is required to adopt pursuant to Section 4 of this act, the Council and local governments enforcing the Code shall implement Section 424.1.1, as provided in Section 3 of this act.

SECTION 3. Implementation. – Notwithstanding any provision of the Code to the contrary, temporary overflow emergency shelters for the homeless may house occupants under the age of 18 when the shelter meets the following requirements:

(1) The shelter is intended to serve homeless families that include children under 18 and their parents or other legal guardians.

(2) The temporary shelter consists of a group of churches or other nonprofit religious entities that have agreed to host the shelter occupants on the premises of each church or religious entity on a rotating basis.

(3) The shelter is equipped with smoke detectors meeting applicable Code provisions for such devices in all sleeping areas.

SECTION 4. Additional rule-making authority. – Notwithstanding G.S. 150B-19(4), the Commission shall adopt amendments to the Homeless Shelter Provision to be substantively identical to the provisions of Section 3 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 5. Sunset. – Section 3 of this act expires on the date that rules adopted pursuant to Section 4 of this act become effective.

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

HOUSE BILL 687:
Homeless Shelters/Remove Age Limits

2013-2014 General Assembly

Committee:	Senate Commerce	**Date:**	May 30, 2013
Introduced by:	Reps. Hardister, Hamilton, Harrison	**Prepared by:**	Trina Griffin Committee Counsel
Analysis of:	Second Edition		

SUMMARY: House Bill 687 would require the Building Code Council to amend the North Carolina Building Code to allow occupants younger than 18 in temporary overflow emergency shelters for the homeless.

CURRENT LAW: Section 424 of the North Carolina Building Code governs the building requirements for temporary overflow emergency shelters for the homeless. Section 424.1.1 of the Code requires that homeless occupants in temporary overflow emergency shelters be 18 years of age or older. The total number of homeless occupants is limited to 20 individuals who must be ambulatory. Temporary overflow emergency shelters must be staffed by at least two individuals who are at least 21 years of age or older and who are trained in accordance with the North Carolina Fire Code. At least one trained individual must be awake to monitor the sleeping room and restrooms throughout the time the facility is occupied by the homeless.

BILL ANALYSIS: House Bill 687 allows temporary overflow emergency shelters for the homeless to house occupants under the age of 18 when the shelter meets the following requirements:

- The shelter is intended to serve homeless families, including children under 18, and their parents or legal guardians.
- The shelter consists of a group of churches or other nonprofit religious entities that have agreed to host the shelter occupants on the premises of each church or religious entity on a rotating basis.
- The shelter is equipped with smoke detectors meeting applicable Building Code provisions in all sleeping areas.

Section 4 requires the Rules Commission to adopt amendments to the Building Code in accordance with this act and exempts the rules from being subject to review by the Commission. The rules would become effective in accordance with G.S. 150B-21.3.

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

Kelly Quick, Research Assistant to House Government, substantially contributed to this summary.

O. Walker Reagan
Director

H687-SMSV-59 E2 -V1

Research Division
(919) 733-2578

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

H 2

HOUSE BILL 688
Committee Substitute Favorable 4/24/13

Short Title: Amend Continuing Ed Req's/Cert. Well K'ors. (Public)

Sponsors: -

Referred to:

April 11, 2013

A BILL TO BE ENTITLED

AN ACT AMENDING THE CONTINUING EDUCATION REQUIREMENTS FOR CERTIFIED WELL CONTRACTORS.

The General Assembly of North Carolina enacts:

SECTION 1. 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~~two hours of approved continuing education within a one-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 one-year period, shall specify the scope of required continuing education courses, and shall approve continuing education courses."

SECTION 2. This act becomes effective July 1, 2013.

HOUSE BILL 688:
Amend Continuing Ed Req's/Cert. Well K'ors

2013-2014 General Assembly

Committee:	Senate Commerce	**Date:**	May 30, 2013
Introduced by:	Reps. Hardister, Millis, Tine, Jeter	**Prepared by:**	Wendy Graf Ray Committee Counsel
Analysis of:	Second Edition		

SUMMARY: ***House Bill 688 would provide that a well contractor must obtain two hours of continuing education within a one-year period instead of obtaining six continuing education units within a one-year period.***

CURRENT LAW: Under current law, no person may perform, manage, or supervise any well contractor activity without being certified under the well contractor certification law. A well contractor must complete the number of hours of continuing education set by the Well Contractors Certification Commission (Commission) by rule in order to maintain certification under the well contractor certification law. The Commission requires every certified well contractor to obtain six continuing education units during the renewal period, which runs from July 1 through June 30 of each year. If a well contractor exceeds the annual requirement within any renewal period, a maximum of six continuing education units may be carried forward into the subsequent renewal period. Continuing education units may be obtained by any of the following well contractor related activities:

- Completion of college or community college courses.
- Completion of continuing education courses that provide a completion certificate.
- Teaching or instructing a course.
- Attending or making presentations at professional or technical events.
- Authoring published papers, articles, or books.
- Active participation in professional or technical societies.

BILL ANALYSIS: House Bill 688 would provide that a well contractor must obtain two hours of continuing education within a one-year period instead of obtaining six continuing education units within a one-year period.

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

Jeff Hudson, counsel to House Regulatory Reform Subcommittee on Environment, substantially contributed to this summary.

O. Walker Reagan
Director

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Research Division
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NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 688

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

H688-ASU-37 [v.1]

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

Date _____,2013

Senator _____

moves to amend the bill on page 1, lines 8-9, by rewriting the lines to read:

"complete the number of hours of approved continuing education within a one-year period as required by the ~~Commission.~~Commission, provided that the Commission may not require more than four hours within a one-year period. The Commission shall establish the ~~minimum number of hours of~~".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

HOUSE BILL 301
Committee Substitute Favorable 4/10/13

Short Title: Clarifying Changes/Engineers/Surveyors Laws. (Public)

Sponsors:

Referred to:

March 14, 2013

A BILL TO BE ENTITLED

AN ACT TO MAKE CLARIFYING CHANGES TO THE LAWS REGULATING ENGINEERS AND LAND SURVEYORS AND TO WAIVE THE EXAMINATION REQUIREMENT FOR GIS PRACTITIONERS WITH CERTAIN EXPERIENCE UNTIL JULY 1, 2014.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 89C-3 reads as rewritten:

"**§ 89C-3. Definitions.**

The following definitions apply in this Chapter:

(1) Board. – The North Carolina State Board of Examiners for Engineers and Surveyors provided for by this Chapter.

(1a) Business firm. – A partnership, firm, association, or another organization or group that is not a corporation and is acting as a unit.

(2) Engineer. – A person who, by reason of special knowledge and use of the mathematical, physical and engineering sciences and the principles and methods of engineering analysis and design, acquired by engineering education and engineering experience, is qualified to practice engineering.

(3) ~~Engineering~~ Engineer intern. – A person who complies with the requirements for education, experience and character, and has passed an examination ~~in the fundamental engineering subjects,~~on the fundamentals of engineering as provided in this Chapter.

(3a) Inactive licensee. – ~~Licensees~~ A licensee who ~~are~~ is not engaged in the practice of engineering or land surveying in this ~~State.~~State, but renews his or her license as "inactive" as provided in this Chapter.

(4) Land surveyor intern. – A person who ~~has qualified for, taken,~~complies with the requirements for education, experience, and character and has passed an examination on the ~~basic disciplines~~fundamentals of land surveying as provided in this Chapter.

...."

SECTION 2. G.S. 89C-13 reads as rewritten:

"**§ 89C-13. General requirements for licensure.**

(a) Engineer Applicant. – ~~To be eligible for licensure as a professional engineer, an applicant must be of good character and reputation. An applicant desiring to take the examination in the fundamentals of engineering must submit three character references, one of whom shall be a professional engineer. An applicant desiring to take the examination in the principles and practice of engineering must submit five references, two of whom shall be~~

~~professional engineers having personal knowledge of the applicant's engineering experiences.~~ The following shall be considered as minimum evidence satisfactory to the Board that the applicant is qualified for ~~licensure:~~licensure as a professional engineer:

(1) ~~As a professional engineer (shall meet one):~~To be certified as an engineer intern, an applicant shall (i) pass the fundamentals of engineering examination and make application to the Board, (ii) be of good character and reputation, (iii) submit three character references to the Board, one of whom is a professional engineer, (iv) comply with the requirements of this Chapter, and (v) meet one of the following requirements:

a. Education. – Be a graduate of an engineering curriculum or related science curriculum of four years or more, approved by the Board as being of satisfactory standing.

b. Education and experience. – Be a graduate of an engineering curriculum or related science curriculum of four years or more, other than curriculums approved by the Board as being of satisfactory standing, or possess equivalent education and engineering experience satisfactory to the Board with a specific record of four or more years of progressive experience on engineering projects of a grade and character satisfactory to the Board.

(1a) To be licensed as a professional engineer, an applicant shall (i) be of good character and reputation, (ii) submit five character references to the Board, three of whom are professional engineers or individuals acceptable to the Board with personal knowledge of the applicant's engineering experience, (iii) comply with the requirements of this Chapter, and (iv) meet one of the following requirements:

...

b. E.I. Certificate, Experience, and Examination. – A holder of a certificate of ~~engineering~~ engineer intern ~~issued by the Board,~~and with a specific record of an additional four years or more of progressive experience on engineering projects of a grade and character which indicates to the Board that the applicant may be competent to practice engineering, shall be admitted to the principles and practice of engineering examination. Upon passing the examination, the applicant shall be granted a certificate of licensure to practice professional engineering in this State, provided the applicant is otherwise qualified.

...

At its discretion the Board may require an applicant to submit exhibits, drawings, designs, or other tangible evidence of engineering work which the applicant personally accomplished or supervised.

~~The following shall be considered as minimum evidence that the applicant is qualified for certification:~~

~~(2) As an engineering intern (shall meet one):~~

~~a. Graduation and Examination. A graduate of an engineering curriculum or related science curriculum of four years or more, approved by the Board as being of satisfactory standing, or a student who is graduating within two semesters, or the equivalent, of the semester in which the fundamentals of engineering examination is administered, shall be admitted to the fundamentals of engineering examination. The applicant shall be notified if the examination was~~

~~passed or not passed and if passed he shall be certified as an engineering intern if the applicant is otherwise qualified.~~

~~b. Graduation, Experience, and Examination. A graduate of an engineering or related science curriculum of four years or more, other than the ones approved by the Board as being of satisfactory standing, or with equivalent education and engineering experience satisfactory to the Board and with a specific record of four or more years of progressive experience on engineering projects of a grade and character satisfactory to the Board, shall be admitted to the fundamentals of engineering examination. The applicant shall be notified if the examination was passed or not passed and if passed, the applicant shall be certified as an engineering intern if the applicant is otherwise qualified.~~

(b) Land Surveyor Applicant. – ~~To be eligible for admission to examination for land surveyor intern or professional land surveyor, an applicant must be of good character and reputation and shall submit five references with the application for licensure as a land surveyor, two of which references shall be professional land surveyors having personal knowledge of the applicant's land surveying experience, or in the case of an application for certification as a land surveyor intern by three references, one of which shall be a licensed land surveyor having personal knowledge of the applicant's land surveying experience.~~

The evaluation of a land surveyor applicant's qualifications shall involve a consideration of the applicant's education, ~~technical~~ technical, and land surveying experience, exhibits of land surveying projects with which the applicant has been associated, and recommendations by references. The land surveyor applicant's qualifications may be reviewed at an interview if the Board determines it necessary. Educational credit for institute courses, correspondence courses, or other courses shall be determined by the Board.

The following shall be considered ~~a~~ as minimum evidence satisfactory to the Board that the applicant is qualified for licensure as a professional land ~~surveyor or for certification as a land surveyor intern respectively:~~surveyor:

(1) ~~As a professional land surveyor (shall meet one):~~To be certified as a land surveyor intern, an applicant shall (i) pass the fundamentals of land surveying examination and make application to the Board, (ii) be of good character and reputation, (iii) submit three character references to the Board, one of whom is a professional land surveyor, (iv) comply with the requirements of this Chapter, and (v) satisfy one of the following requirements related to education and experience:

a. Be a graduate of a surveying curriculum of four years or more or other equivalent curriculum in surveying approved by the Board.

b. Have rightful possession of an associate degree in surveying technology approved by the Board, a record satisfactory to the Board of four years of progressive practical experience, two years of which shall have been under a practicing professional land surveyor, and have satisfactorily passed a written and oral examination as required by the Board.

c. Have graduated from high school or completed a high school equivalency certificate with a record satisfactory to the Board of 10 years of progressive, practical experience, six years of which shall have been under a practicing licensed land surveyor, and have satisfactorily passed any oral and written examinations required by the Board.

(1a) To be licensed as a professional land surveyor, an applicant shall (i) be of good character and reputation, (ii) submit five character references to the Board, three of whom are professional land surveyors or individuals acceptable to the Board, with personal knowledge of the applicant's land surveying experience, (iii) comply with the requirements of this Chapter, and (iv) meet one of the following requirements:

...

j. Any person performing activities described in G.S. 89C-3(7)a.2. and 7. with at least seven years of experience in performing mapping science surveys, two or more of which have been in responsible charge of mapping science projects that meet the requirements of 21 NCAC 56 .1608, shall, upon application, be licensed to practice surveying in their area of competence (mapping science) provided all of the following requirements are met:

1. The applicant submits certified proof of graduation from high school, high school equivalency, or higher degree.
2. The applicant submits proof of employment in responsible charge of mapping science projects within the State of North Carolina, including itemized reports detailing methods, procedures, amount of applicant's personal involvement, and the name, address, and telephone numbers of the client for five projects completed by the applicant within the State. The applicant shall also submit a final map, report, or digital product for one of the five projects.
3. Five references as to the applicant's character and quality of work, three of which shall be from professional land surveyors, are submitted to the Board.
4. The application is submitted to the Board by July 1, 2014. After July 1, 2014, no individual performing surveys described in 21 NCAC 56 .1608 shall be licensed without meeting the same requirements as to education, length of experience, and testing required of all land surveying applications.

~~(2) As a land surveyor intern (shall meet one):~~

~~a. Rightful possession of an associate degree in surveying technology approved by the Board, a record satisfactory to the Board of four years of progressive practical experience, two years of which shall have been under a practicing professional land surveyor, and satisfactorily passing a written and oral examination as required by the Board.~~

~~b. Repealed by Session Laws 2005-296, s. 1.~~

~~c. Graduation from high school or the completion of a high school equivalency certificate and a record satisfactory to the Board of 10 years of progressive, practical experience, six years of which shall have been under a practicing licensed land surveyor and satisfactorily passing any oral and written examinations required by the Board.~~

~~d. Graduation and examination. A graduate of a surveying curriculum or other equivalent curriculum in surveying approved by the Board or a student who is graduating within two semesters, or the equivalent, of the semester in which the fundamentals of surveying examination is administered, in an accredited surveying program of four years or~~

~~more shall be admitted to the fundamentals of surveying examination. The applicant shall be notified if the examination was passed or not passed, and if passed the applicant shall be certified as a surveying intern if the applicant is otherwise qualified.~~

The Board shall require an applicant to submit exhibits, drawings, plats, or other tangible evidence of land surveying work executed by the applicant under proper supervision and which the applicant has personally accomplished or supervised.

Land surveying encompasses a number of disciplines including geodetic surveying, hydrographic surveying, cadastral surveying, engineering surveying, route surveying, photogrammetric (aerial) surveying, and topographic surveying. A professional land surveyor shall practice only within the surveyor's area of expertise."

SECTION 3. G.S. 89C-15(b) reads as rewritten:

"(b) ~~Written examinations~~Examinations will be given ~~in sections and may be taken only after the applicant has met the other minimum requirements as given in G.S. 89C-13 and has been approved by the Board for admission to the examination~~as follows:

(1) ~~Engineering Fundamentals.~~Fundamentals of Engineering. – Consists of an ~~eight-hour~~ examination on the fundamentals of engineering. Passing this examination qualifies the applicant for an ~~engineering~~ engineer intern certificate, provided the applicant has met all other requirements for licensure required by this Chapter.

(2) Principles and Practice of Engineering. – Consists of an ~~eight-hour~~ examination on applied engineering. Passing this examination qualifies the applicant for licensure as a professional engineer, provided the applicant has met the other requirements for ~~registration~~ licensure required by this Chapter.

(3) ~~Surveying Fundamentals.~~Fundamentals of Land Surveying. – Consists of an ~~eight-hour~~ examination on the ~~elementary disciplines~~fundamentals of land surveying. Passing this examination qualifies the applicant for a land surveyor intern certificate provided the applicant has met all other requirements for certification required by this Chapter.

(4) Principles and ~~Practices~~ Practice of Land Surveying. – Consists of ~~a six-hour~~an examination on the ~~basic and~~applied disciplines of land surveying and ~~a two-hour~~an examination on requirements specific to the practice of land surveying in North Carolina. Passing each of these examinations qualifies the applicant for a professional land surveyor certificate provided the applicant has met all other requirements for certification required by this Chapter."

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

HOUSE BILL 301:
Clarifying Changes/Engineers/Surveyors Laws

2013-2014 General Assembly

Committee:	Senate Commerce	**Date:**	May 30, 2013
Introduced by:	Reps. Arp, Catlin, Millis, Hager	**Prepared by:**	Trina Griffin
Analysis of:	Second Edition		Committee Counsel

SUMMARY: ***House Bill 301 makes technical changes to the laws regulating engineers and land surveyors by reorganizing the statutes and deleting references to written examinations to allow for electronic examinations. The bill waives the examination requirement for GIS practitioners with certain education and experience until July 1, 2014. After July 1, 2014, GIS practitioners would be required to meet the same licensure requirements that apply to all land surveying applications.***

[As introduced, this bill was identical to S281, as introduced by Sen. Rabon, which is currently in Senate Commerce.]

CURRENT LAW: The North Carolina Board of Examiners for Engineers and Surveyors (Board) issues engineer and surveyor intern certificates once an applicant has passed the fundamentals of engineering or surveying examination and has graduated from an engineering or surveying curriculum or related science curriculum of four years or more.

The Board licenses professional engineers and surveyors who meet the statutory standards and pass the principles and practice of engineering or surveying examination. Currently, both the fundamentals of engineering (surveying) and the principles and practice examinations are each eight-hour written exams. The exams are administered by the National Council of Examiners for Engineers and Surveyors (NCEES). Beginning in 2014, the NCEES will no longer conduct written exams. All exams will be administered electronically.

BILL ANALYSIS:

Section 1 of the bill makes several technical changes to the definitions section of the law.

Section 2 rewrites several parts of the provision relating to the general requirements for licensure. The bill moves the requirements for certification as an engineer intern to the beginning of the section followed by the requirements to be licensed as a professional engineer. The bill makes the same changes to the provisions related to land surveyors.

Section 3 does the following:

- Amends the provision related to examinations to remove references to the length of the examination and to the examination being in writing to facilitate the change from written examinations to electronic examinations.
- Waives the examination requirement for presently practicing GIS practitioners with certain education and experience until July 1, 2014. It does not waive the educational or experiential requirements. After July 1, 2014, GIS practitioners would be required to meet the same licensure requirements that apply to all land surveying applications. Under current law, an applicant for licensure as a professional land surveyor, which would include a GIS practitioner, is required to pass a three-part exam – one 8-hour exam on surveying fundamentals (to become certified as a land

surveyor intern), a 6-hour examination on the basic and applied disciplines of land surveying, and a 2-hour examination on requirements specific to the practice of land surveying in North Carolina.

- Changes the number of references who must have personal knowledge of an applicant's professional experiences. Currently, to be eligible for examination to be a professional engineer or a professional land surveyor, the applicant must submit five references, two of which must be professional engineers or professional land surveyors having personal knowledge of the applicant's engineering or land surveying experience. The bill would change this requirement to three of the five references for both licensure as a professional engineer and a professional land surveyor.

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

HOUSE BILL 515

Short Title:	Amend Credit Union Laws.	(Public)
Sponsors:	Representatives J. Bell, L. Hall, Wells, and Jordan (Primary Sponsors). *For a complete list of Sponsors, refer to the North Carolina General Assembly Web Site.*	
Referred to:	Banking, if favorable, Judiciary Subcommittee A.	

April 3, 2013

A BILL TO BE ENTITLED

AN ACT TO AMEND THE LAWS GOVERNING CREDIT UNIONS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 54-109.57A is amended by adding a new subsection to read:

"(e) Any payable on death account created under the provisions of G.S. 54-109.57, as it existed prior to October 1, 2011, shall for all purposes be governed by the provisions of this section on and after October 1, 2011, and any reference to G.S. 54-109.57 in any document concerning the account shall be deemed a reference to this section."

SECTION 2. G.S. 54-109.58 reads as rewritten:

"**§ 54-109.58. Joint accounts.**

(a) Shares may be issued to and deposits received from any two or more persons opening or holding an account or accounts, but no joint tenant, unless a member in his own right, shall be permitted to vote, obtain loans, or hold office or be required to pay an entrance or membership fee. The account and any balance thereof shall be held by them as joint tenants, with or without right of survivorship, as the contract shall provide; the account may also be held pursuant to G.S. 41-2.1 and have the incidents set forth in that section, provided, however, if the account is held pursuant to G.S. 41-2.1 the contract shall set forth that fact as well.

(b) Unless the persons establishing the account have agreed with the credit union that withdrawals require more than one signature, payment by the credit union to, or on the order of, any persons holding an account authorized by this section shall be a total discharge of the credit union's obligations as to the amount so paid.

(c) Funds in a joint account established with right of survivorship shall belong to the surviving joint tenant or tenants upon the death of a joint tenant, and the funds shall be subject only to the personal representative's right of collection as set forth in G.S. 28A-15-10(a)(3), or as provided in G.S. 41-2.1 if the account is established pursuant to the provisions of that section. Payment by the credit union of funds in the joint account to a surviving joint tenant or tenants shall terminate the personal representative's authority under G.S. 28A-15-10(a)(3) to collect against the credit union for the funds so paid, but the personal representative's authority to collect such funds from the surviving joint tenant or tenants is not terminated.

(d) A pledge of such account by any holder or holders shall, unless otherwise specifically agreed upon, be a valid pledge and transfer of such account, or of the amount so pledged, and shall not operate to sever or terminate the joint ownership of all or any part of the account.

(e) A credit union is not liable to joint tenants for complying in good faith with a writ of execution, garnishment, attachment, levy, or other legal process that appears to have been

issued by a court or other authority of competent jurisdiction and seeks funds held in the name of any one or more of the joint tenants.

(f) Persons establishing an account under this section shall sign a statement showing their election of the right of survivorship in the account, and containing language set forth in a conspicuous manner and substantially similar to the following:

"CREDIT UNION (OR NAME OF INSTITUTION)
JOINT ACCOUNT WITH RIGHT OF SURVIVORSHIP
G.S. 54-109.58

We understand that by establishing a joint account under the provisions of North Carolina General Statute 54-109.58 that:

1. The credit union (or name of institution) may pay the money in the account to, or on the order of, any person named in the account unless we have agreed with the credit union that withdrawals require more than one signature; and
2. Upon the death of one joint owner the money remaining in the account will belong to the surviving joint owners and will not pass by inheritance to the heirs of the deceased joint owner or be controlled by the deceased joint owner's will.

We DO elect to create the right of survivorship in this account.

_____

_____ "

The language may be on a signature card or in an explanation of the account that is set out in a separate document whose receipt is acknowledged by the person or persons establishing the account.

(g) Any joint tenant may terminate a joint account.

(h) Where a joint account is held by two or more individuals and a joint tenant does not wish for the account to be terminated but requests to be removed from the account, the credit union shall remove the joint tenant from the account. The joint account shall continue in the names of the remaining tenant or tenants. Any joint tenant who requested to be removed from an account remains liable for any debts incurred in connection with the joint account during the period in which the individual was a named joint tenant.

~~(a1)~~(i) This section shall not be deemed exclusive. Deposit ~~accounts,~~accounts not conforming to this section shall be governed by other applicable provisions of the General Statutes or the common law as appropriate.

~~(b)~~(j) This section does not repeal or modify any provisions of laws relating to estate taxes. This section regulates and protects the credit union in its relationship with joint owners of accounts.

~~(c)~~(k) No addition to such account, nor any withdrawal or payment shall affect the nature of the account as a joint account, or affect the right of any tenant to terminate the account."

SECTION 3. Article 14F of Chapter 54 of the General Statutes is amended by adding the following sections to read:

"**§ 54-109.60A. Minors.**

(a) A credit union may issue and operate a share or deposit account in the name of (i) a minor or (ii) the names of two or more individuals, one or more of which are minors. A minor who obtains a share or deposit account from a credit union under this subsection, whether individually or together with others, is bound by the terms of the account agreement to the same extent as if the minor were of full age and legal capacity.

(b) If a minor with a share account, other than a joint account with right of survivorship or a payable on death account, dies, a parent or legal guardian of the minor may access and

withdraw the funds on deposit, and the credit union is discharged to the extent of any withdrawal.

(c) This section shall not affect the law governing transactions with minors in cases outside the scope of this section, including transactions that constitute an extension of credit to a minor.

"**§ 54-109.60B. Accounts opened by adults for minors.**

(a) One or more adults may open and maintain a custodial share account for or in the name of a minor and using the minor's taxpayer identification number. Unless otherwise provided in the agreement governing the account, the following terms apply:

(1) Beneficial ownership of the account vests exclusively in the minor. All interest credited to the account shall belong to the minor and shall be reported to the appropriate taxing authorities in the name of the minor using the minor's taxpayer identification number.

(2) Except as otherwise provided, control of the account vests exclusively in the custodian whose name appears on the credit union's records for the account. If there is more than one custodian named on the credit union's account records, each may act independently. Any one or more of the custodians named on the credit union's records may turn over control of the account to the minor at any time, either before or after the minor reaches the age of majority.

(3) If the custodian has not already transferred control, then after the minor beneficiary reaches the age of majority, the beneficiary may instruct the credit union to transfer control to the beneficiary and remove the named custodian.

(4) If the custodian or, if more than one custodian is on the account, the last of the custodians to survive dies before the minor reaches the age of majority, the minor's parent or the minor's legal guardian may act as custodian or name another custodian on the account.

(b) This section shall not be deemed exclusive. Accounts not conforming to this section shall be governed by other applicable provisions of the General Statutes, including Chapter 33A, the North Carolina Uniform Transfers to Minors Act, or the common law, as appropriate.

...

"**§ 54-109.62. Payment of balance of deceased person or person under disability to personal representative or guardian.**

(a) A credit union may pay any balance on deposit to the credit of any deceased individual to the duly qualified personal representative, collector, or public administrator of the decedent who is qualified as such under the laws of any state.

(b) A credit union may pay any balance on deposit to the credit of any individual judicially declared incompetent or otherwise under a legal disability to the duly qualified personal representative, guardian, curator, conservator, or committee of the person declared incompetent or under disability who is qualified as such under the laws of any state.

(c) The presentation of a letter of qualification as personal representative, collector, public administrator, guardian, curator, conservator, or committee of the person issued or certified by the appointing court shall be conclusive proof of the jurisdiction of the court issuing the same and sufficient authority for the payment.

(d) Payment by a credit union in good faith under the authority of this section discharges the liability of the bank to the extent of the payment.

"**§ 54-109.62A. Powers of attorney; notice of revocation; payment after notice.**

(a) Any credit union may continue to recognize any act of an attorney-in-fact or other agent until the credit union receives actual notice of the principal's death or a written notice of revocation signed by the principal who granted the authority or, in the case of a company,

evidence satisfactory to the credit union of the revocation. Payment by the credit union to or at the direction of an attorney-in-fact or other agent before receipt of the notice is a total discharge of the credit union's obligation as to the amount so paid.

(b) Notwithstanding that a credit union has received written notice of revocation of the authority of an attorney-in-fact or other designated agent, a credit union may, until 10 days after receipt of notice, pay any item made, drawn, accepted, or endorsed by the attorney-in-fact or agent prior to the revocation, provided that the item is otherwise properly payable."

SECTION 4. G.S. 54-109.63(a) reads as rewritten:

"(a) A person may open a personal agency account by written contract containing a statement that it is executed pursuant to the provisions of this section. A personal agency account may be a checking account, savings account, time deposit, or any other type of withdrawable account or certificate. The written contract shall name an agent who shall have authority to act on behalf of the depositor in regard to the account as set out in this subsection. The agent shall have the authority to:

(1) Make, sign or execute checks drawn on the account or otherwise make withdrawals from the account;

(2) Endorse checks made payable to the principal for deposit only into the account; and

(3) Deposit cash or negotiable instruments, including instruments endorsed by the principal, into the account.

A person establishing an account under this section shall sign a statement containing language substantially similar to the following in a conspicuous manner:

"CREDIT UNION (OR NAME OF INSTITUTION)
PERSONAL AGENCY ACCOUNT
G.S. 54-109.63

I understand that by establishing a personal agency account under the provisions of North Carolina General Statute 54-109.63 that the agent named in the account may:

1. Sign checks drawn on the account; and
2. Make deposits into the account.

I also understand that upon my death the money remaining in the account will be controlled by my will or inherited by my heirs.

_____"

The language may be on a signature card or in an explanation of the account that is set out in a separate document whose receipt is acknowledged by the person or persons establishing the account."

SECTION 5. G.S. 54-109.82(9) reads as rewritten:

"§ 54-109.82. Investment of funds.

The capital, deposits, undivided profits and reserve fund of the corporation may be invested only in any of the following ways:

...

(9) In any form of investment allowed by law to the State Treasurer under G.S. 147-69.1. In addition, investment in corporate bonds that bear a minimum rating of A+ by at least one nationally recognized rating service is permissible. Credit unions shall monitor overall credit exposure by setting corporate bond investment limits as a percentage of assets.

...."

SECTION 6. This act becomes effective July 1, 2013, and Sections 2 and 4 of this act apply to accounts established as of that date and accounts created on or after that date.

HOUSE BILL 515:
Amend Credit Union Laws

2013-2014 General Assembly

Committee:	Senate Ref to Commerce. If fav, re-ref to Judiciary I	**Date:**	May 30, 2013
Introduced by:	Reps. J. Bell, L. Hall, Wells, Jordan	**Prepared by:**	Wendy Graf Ray Committee Counsel
Analysis of:	First Edition		

SUMMARY: ***House Bill 515 amends the credit union statutes to conform with changes made to State banking laws in S.L. 2012-56, and permits credit unions to invest in corporate bonds with a minimum rating of A+.***

SECTION 1 – Payable on Death Accounts

CURRENT LAW: S.L. 2011-236 (House Bill 686) repealed G.S. 54-109.57 and replaced it with G.S. 54-109.57A, effective October 1, 2011. Under the new statute, credit unions were permitted to offer customers payable on death accounts (PODs) naming an entity other than a natural person as a beneficiary. PODs created by agreements executed prior to October 1, 2011, remained subject to the laws in effect at the time the parties executed the agreement.

BILL ANALYSIS: Section 1 provides that any POD account created prior to S.L. 2011-236 is governed by the new statute and that any references to the predecessor statute in documents concerning POD accounts are deemed to refer to the new statute.

SECTION 2 – Joint Accounts

CURRENT LAW: Under G.S. 54-109.58, joint accounts can be created with or without the right of survivorship.

BILL ANALYSIS: Section 2 amends G.S. 54-109.58 to:

- divide existing subsection (a) into five subsections (a) through (d) and (f)
- add subsection (e) to provide that the credit union is not liable to joint tenants for complying in good faith with legal processes that appears to have been issued by a court or other authority of competent jurisdiction and that seeks funds held in the name of any one or more of the joint tenants
- provide in subsection (f) that language required to be acknowledged by persons electing to set up a joint account with right of survivorship may be placed on a signature card or in a separate document given to the persons setting up the account
- add new subsections (g) and (h) allowing any joint tenant to terminate a joint account or be removed from the account and providing that a joint tenant removed from the account at the joint tenant's request remains liable for any debts incurred in connection with the joint account while the person was a joint tenant

SECTION 3 – New sections added to Article 14F (Savings Accounts)

54-109.60A. Accounts Opened by Minors

ANALYSIS: Provides that credit unions can issue and operate a share or deposit account in the name of a minor and the minor would be bound by the terms of the account agreement as if the minor were of full age and legal capacity. If a minor has an account that is not a POD or joint account with right of survivorship and the minor dies, the parent or legal guardian of the minor could access funds.

54-109.60B. Accounts Opened by Adults for Minors

ANALYSIS: Provides that adults may open and maintain a custodial share account for a minor. Unless otherwise agreed to in the agreement, the following conditions apply: (i) beneficial ownership of the account vests exclusively in the minor; (ii) control of the account vests exclusively in the custodian but the custodian can turn over control to the minor even before the minor reaches the age of majority; (iii) if control has not be transferred before the minor reaches the age of majority, then the minor can instruct the credit union to transfer control once the age of majority is reached and remove the custodian; (iv) if the custodian dies before the minor reaches the age of majority, the minor's parent or legal guardian can act as custodian.

The terms in the section are not deemed as exclusive.

54-109.62. Payment of Balance of Deceased Person or Person under Disability to Personal Representative or Guardian

ANALYSIS: Provides that credit unions would be allowed to pay balances on deposit to the credit of a deceased individual to a duly qualified personal representative. In addition, credit unions would be allowed to pay balances on deposit to the credit of any individual judicially declared incompetent or under a legal disability to a duly qualified personal representative or guardian. Presentations of letters of qualification issued or certified by the appointing court would be conclusive proof of the jurisdiction of the court issuing the letter and would be sufficient authority for the payment and payment by a credit union in good faith would discharge its liability to the extent of the payment.

54-109.62A. Powers of Attorney; Notice of Revocation; Payment after Notice

ANALYSIS: Provides that a credit union would be able to continue to recognize acts of attorneys-in-fact or other agents until the credit union receives actual notice of the principal's death or a written revocation signed by the principal who granted the authority of the revocation. Payments made by the credit union to or at the direction of an attorney-in-fact or other agent before receipt of the notice would be a total discharge of the credit union's obligation to the amount paid. Even if the credit union has received a written notice of revocation of an attorney-in-fact or other designated agent, the credit union may, until 10 days after receipt of the notice, pay any item made, drawn, accepted, or endorsed by the attorney-in-fact or agent prior to the revocation if the item is otherwise properly payable.

SECTION 4 – Personal Agency Accounts

CURRENT LAW: G.S. 54-109.63(a) permits a person to open a personal agency account through a written contract that names an agent who has the authority to act on behalf of the depositor and can execute checks drawn on the account and make withdrawals; endorse checks for deposit; and deposit cash or negotiable instruments into the account. The person establishing the account must sign a statement acknowledging the customer's understanding of the agent's powers and of how money remaining in the account upon the customer's death will be disposed of.

BILL ANALYSIS: Amends G.S. 54-109.63(a) to provide that the required statement may be provided on the signature card or in a separate document given to the person setting up the account.

SECTION 5 – Investment of Funds

CURRENT LAW: Pursuant to G.S. 54-109.82, State chartered credit unions may invest their capital, deposits, undivided profits, and reserve funds in a number of ways, including in any form of investment authorized for General Fund and Highway Fund assets in G.S. 147-69.1. G.S. 147-69.1(c)(10) limits the Treasurer's investments in corporate bonds to those rated AAA or equivalent by at least one nationally recognized rating service.

BILL ANALYSIS: Amends G.S. 54-109.82 to permit credit unions to invest in corporate bonds bearing a minimum rating of A+ by at least one nationally recognized rating service, and to require credit unions to monitor overall credit exposure by setting corporate bond investment limits as a percentage of assets.

EFFECTIVE DATE: This act becomes effective July 1, 2013, and Sections 2 and 4 will apply to accounts established as of that date and accounts created on or after that date.

Drupti Chauhan, counsel to House Banking Committee, substantially contributed to this summary.

VISITOR REGISTRATION SHEET

Senate **COMMERCE** Committee — May 30, 2013

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DEBBIE LOWN

NAME	FIRM OR AGENCY AND ADDRESS
Lori Ann Harris	LAHTA
Doug Lassiter	NCSTA
Sharon Miller	CUCA
Nicole M. Hines	NC Governor's Office
David Crawford	AIA NC
Betsy Bailey	PENC
David Evans	NCBELS
Gay Thompson	NCBELS
Andrew Ritter	NCBELS
John Bode	BCS
John Palumbo	NCHBA

VISITOR REGISTRATION SHEET

Senate **COMMERCE** Committee — May 30, 2013

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DEBBIE LOWN

NAME	FIRM OR AGENCY AND ADDRESS
Dwight Allen	Allen Law Offices, PLLC
Walter Wells	CSR, 150 Fayetteville St, #800. Raleigh NC
Nathan Babcock	NC Chamber
Becki Gray	gzt
Alex Hall	ICLG
Glenn Jernigan	Public Works Commission of Fayetteville
Kelli Kukura	Duke Energy
Trey Rabon	AT&T
Chuck Greene	AT+T
Mike Carpenter	NCCBA
TOM TERRELL	NC BAR ASSOC

VISITOR REGISTRATION SHEET

Senate **COMMERCE** Committee — May 30, 2013

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DEBBIE LOWN

NAME	FIRM OR AGENCY AND ADDRESS
Kim Crouch	NCBA
David Owens	UNC School of Govt.
Preston Howard	NCMA
Elizabeth Cuthrell	NCBA
Will Sagar	SERDC
[signature]	ED&A Inc.
[signature]	NFS
Rose Williams	NCDOT
Jason Barbour	Sen. Apodaca
Alex Bodzo	CSS
Carr McLamb	DENR

VISITOR REGISTRATION SHEET

Name of Committee **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
Gary Harris	NCPCM
Wendy Kelly	Policy Group
(Thomas Moore)	
	NC HBA

VISITOR REGISTRATION SHEET

Senate **COMMERCE** Committee — May 30, 2013

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DEBBIE LOWN

NAME	FIRM OR AGENCY AND ADDRESS
	P.W.C & Fayetteville, N.C
Crystal Collins	NC Trucking Assn
Jason Sorrar	NC DOT
Dana Sykes	SA
Neal Robbins	DENR
	weyerhaeuser
	BMCS
	DCI
Will	NWR
George Smith	NP
CARLOS E. SANCHEZ	AT&T
TIM KENT	NC Beer & Wine

VISITOR REGISTRATION SHEET

Senate **COMMERCE** Committee — May 30, 2013

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DEBBIE LOWN

NAME	FIRM OR AGENCY AND ADDRESS
Johanna Reese	NCACC
Sam Skinner	NCACC
John Lyon	AT&T
Jim TARMAN	AT&T
Dylan Watts	Smith A.
Todd Lucken	ATT
Ryan McGuinness	BASE
Steven Lubell	NCHBA
Cameron Moore	BASE
Will Pauy. Hui	NCHFA
Amanda Hooker	TSS
David Ferrell	NCLTA
D Ol	NCRMA

VISITOR REGISTRATION SHEET

Senate **COMMERCE** Committee — May 30, 2013

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DEBBIE LOWN

NAME	FIRM OR AGENCY AND ADDRESS
J. Tunnell	PNG
Bryan Lanier	ATC
Liz Hill	ATC
John Tyler	ATT
Kay Emanuel	School of Government
John DelGrosso	Brickboard Assoc.
Andrew Murgan	DHHS/ well contr. cert.
John Cooper	Compass NC
Mia Bailey	Electric Cities

Senate Committee on Commerce
Tuesday, June 4, 2013, 11:00 AM
1027/1128 Legislative Building

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

BILL NO.	SHORT TITLE	SPONSOR
HB 278	HOAs/Voluntary Prelitigation Mediation.	Representative D. Ross Representative D. Hall
HB 315	Plastics Labeling Requirements.	Representative McGrady Representative Samuelson Representative Szoka Representative Turner
HB 774	Building Code Exclusion/Primitive Structures.	Representative Jordan Representative McGrady Representative Dollar Representative Harrison
HB 793	HOAs/Fidelity Bonds.	Representative Saine Representative R. Moore
HB 610	Modify Requirements for In-Stand Beer Sales	Representative Hardister Representative Samuelson Representative L. Hall Representative Moffitt
HB 829	Sale of Growlers by Certain ABC Permittees.	Representative McGrady Representative Bryan Representative Moffitt Representative L. Hall

Senate Committee on Commerce
Tuesday, June 4, 2013 at 11:00 AM
Room 1027/1128 of the Legislative Building

MINUTES

The Senate Committee on Commerce met at 11:00 AM on June 4, 2013 in Room 1027/1128 of the Legislative Building. Twenty five members were present.

Senator Tamara Barringer, Vice - Chair, presided.

Cody Tatum from Yanceyville, Jordon Smith from Henderson, Kevin Treacy from Oxford, Will Finch from Reidsville, Carol Ann Schwarzenbach from Jacksonville, Caitlyn Ebert from Hickory and Alex Stroud from Aberdeen served as pages.

Senator Barringer chose to hear the bills out of order. The order is reflected in the minutes below.

H. B. 278 HOAs/Voluntary Prelitigation Mediation

Representative Hall was introduced to speak on the bill. House Bill 278 sets out the framework for and encourages voluntary mediation to resolve disputes between homeowners and unit/lot owners' associations (HOAs) prior to litigation. The bill provides that if the parties participate in mediation prior to filing a civil action, they will not be required to mediate again if a cause of action involving the dispute is later filed, and excludes from evidence statements made or conduct occurring at the mediation. The bill does not apply to disputes related solely to a homeowner's failure to timely pay an association assessment or any related fines or fees. Senator Meredith moved for a favorable report and it carried. Senator Barringer will handle the bill on the floor.

H. B. 774 Building Code Exclusion/Primitive Structures

Representative McGrady was introduced to speak on the bill. House Bill 774 would exempt primitive camps and primitive farm buildings from the Building Code. Senator Apodaca moved for a favorable report and it carried. Senator Soucek will handle the bill on the floor.

H. B. 315 Plastics Labeling Requirements

Representative McGrady was introduced to speak on the bill. House Bill 315 would require that a plastic product labeled with any term suggesting it will biodegrade must also clearly contain the statement "Not Recyclable, Do Not Recycle," to prevent contamination of recycled plastic feedstock. Representative Samuelson also spoke. Senator Tillman moved for a favorable report and it carried. Senator Newton will handle the bill on the floor.

H. B. 793 HOAs/Fidelity Bonds

Representative Saine was introduced to speak on the bill. House Bill 793 would provide that certain condominium and planned community associations must obtain and maintain a fidelity bond insuring the association from losses resulting from theft or dishonesty committed by members of the executive board or persons employed by the association. It would also provide for annual financial audits and reviews for associations if certain conditions are met. Wendy Graf an attorney from the Research Division assisted with the explanation. Senator Hunt brought an amendment before the committee. Ms. Graf explained the amendment and the members moved to accept it. Senator McKissick moved unfavorable to the bill – favorable to the bill as amended. The amendment was engrossed to create a proposed committee substitute. Senator Curtis will handle the bill on the floor.

H. B. 829 Sale of Growlers by Certain ABC Permittees

Representative McGrady was introduced to speak on the bill. House Bill 829 amends the Alcoholic Beverage Control Act to allow certain ABC permittees to sell malt beverages in certain containers for consumption off the permitted premises. Senator Jenkins moved for a favorable report and it carried. Senator Gunn will handle the bill on the floor.

H. B. 610 Modify Requirements for In-Stand Beer Sales

Representative Hardister was introduced to speak on the bill. House Bill 610 would modify the requirements for allowing in-stand sales of malt beverages during professional sporting events and would direct the ABC Commission to adopt rules for suspending the sale of alcohol in the latter portion of professional sporting events. Two people spoke: Rev. Mark Creech/Executive Director for the Christian Action League of North Carolina, Inc. (against) and Tim Kent, CAE/Executive Director for the North Carolina Beer and Wine Wholesalers Association (for). Senator Tillman moved for a favorable report and it carried. Senator Wade will handle the bill on the floor.

The meeting adjourned at 11:28 AM.

Senator Tamara Barringer, Chair
Presiding

Debbie Lown, Committee Clerk

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

COMMERCE COMMITTEE REPORT
Senator Gunn, Co-Chair
Senator Meredith, Co-Chair

Tuesday, June 04, 2013

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

FAVORABLE

HB **278** **(CS#1)** HOAs/Voluntary Prelitigation Mediation.
Draft Number: None
Sequential Referral: None
Recommended Referral: None
Long Title Amended: No

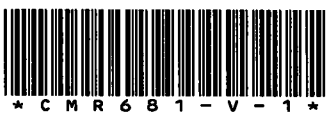
HB **315** **(CS#1)** Plastics Labeling Requirements.
Draft Number: None
Sequential Referral: None
Recommended Referral: None
Long Title Amended: No

HB **610** **(CS#1)** Modify Requirements for In-Stand Beer Sales.
Draft Number: None
Sequential Referral: None
Recommended Referral: None
Long Title Amended: No

HB **774** **(CS#1)** Building Code Exclusion/Primitive Structures.
Draft Number: None
Sequential Referral: None
Recommended Referral: None
Long Title Amended: No

HB **829** **(CS#1)** Sale of Growlers by Certain ABC Permittees.
Draft Number: None
Sequential Referral: None
Recommended Referral: None
Long Title Amended: No

TOTAL REPORTED: 5



Senator Tamara Barringer will handle HB 278
Senator E.S. Newton will handle HB 315
Senator Trudy Wade will handle HB 610
Senator Daniel Soucek will handle HB 774
Senator Richard Gunn will handle HB 829

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

COMMERCE COMMITTEE REPORT
Senator Gunn, Co-Chair
Senator Meredith, Co-Chair

Tuesday, June 04, 2013

Senator Barringer,
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 793 (CS#2) HOAs/Fidelity Bonds.

Draft Number:	H793-PCS10416-SU-33
Sequential Referral:	Insurance
Recommended Referral:	None
Long Title Amended:	No

TOTAL REPORTED: 1

Senator David Curtis will handle HB 793

HOUSE BILL 278
Committee Substitute Favorable 4/18/13

Short Title: HOAs/Voluntary Prelitigation Mediation. (Public)

Sponsors:

Referred to:

March 13, 2013

A BILL TO BE ENTITLED

AN ACT ENCOURAGING PARTIES TO A DISPUTE INVOLVING CERTAIN MATTERS RELATED TO REAL ESTATE UNDER THE JURISDICTION OF A HOMEOWNERS ASSOCIATION TO INITIATE MEDIATION TO TRY TO RESOLVE THE DISPUTE PRIOR TO FILING A CIVIL ACTION.

Whereas, homeowners associations in condominium and planned communities serve a vital role in our State by maintaining common areas, providing recreational facilities and neighborhood meeting places, and adopting rules and regulations to help preserve property values; and

Whereas, often disputes arise between homeowners associations and their members, which either do not constitute the basis for a legal cause of action or result in costly litigation; and

Whereas, the State has an interest in encouraging homeowners associations and their members to voluntarily mediate disputes in a manner that will allow both sides to be heard and to reach a mutually satisfactory agreement; Now, therefore,

The General Assembly of North Carolina enacts:

SECTION 1. Article 5 of Chapter 7A of the General Statutes is amended by adding a new section to read as follows:

"**§ 7A-38.3F. Prelitigation mediation of condominium and homeowners association disputes.**

(a) Definitions. – The following definitions apply in this section:

(1) Association. – An association of unit or lot owners organized as allowed under North Carolina law, including G.S. 47C-3-101 and G.S. 47F-3-101.

(2) Dispute. – Any matter relating to real estate under the jurisdiction of an association about which the member and association cannot agree. The term "dispute" does not include matters expressly exempted in subsection (b) of this section.

(3) Executive board. – The body, regardless of name, designated in the declaration to act on behalf of an association.

(4) Mediator. – A neutral person who acts to encourage and facilitate a resolution of a dispute between an association and a member.

(5) Member. – A person who is a member of an association of unit or lot owners organized as allowed under North Carolina law, including G.S. 47C-3-101 and G.S. 47F-3-101.

(6) Party or parties. – An association or member who is involved in a dispute, as that term is defined in subdivision (2) of this subsection.

(b) Voluntary Prelitigation Mediation. – Prior to filing a civil action, the parties to a dispute arising under Chapter 47C of the General Statutes (North Carolina Condominium Act), Chapter 47F of the General Statutes (North Carolina Planned Community Act), or an association's declaration, bylaws, or rules and regulations are encouraged to initiate mediation pursuant to this section. However, disputes related solely to a member's failure to timely pay an association assessment or any fines or fees associated with the levying or collection of an association assessment are not covered under this section.

(c) Initiation of Mediation. – Either an association or a member may contact the North Carolina Dispute Resolution Commission or the Mediation Network of North Carolina for the name of a mediator or community mediation center. Upon contacting a mediator, either the association or member may supply to the mediator the physical address of the other party, or the party's representative, and the party's telephone number and e-mail address, if known. The mediator shall contact the party, or the party's representative, to notify him or her of the request to mediate. If the parties agree to mediate, they shall request in writing that the mediator schedule the mediation. The mediator shall then notify the parties in writing of the date, time, and location of the mediation, which shall be scheduled not later than 25 days after the mediator receives the written request from the parties.

(d) Mediation Procedure. – The following procedures shall apply to mediation under this section:

(1) Attendance. – The mediator shall determine who may attend mediation. The mediator may require the executive board or a large group of members to designate one or more persons to serve as their representatives in the mediation.

(2) All parties are expected to attend mediation. The mediator may allow a party to participate in mediation by telephone or other electronic means if the mediator determines that the party has a compelling reason to do so.

(3) If the parties cannot reach a final agreement in mediation because to do so would require the approval of the full executive board or the approval of a majority or some other percentage of the members of the association, the mediator may recess the mediation meeting to allow the executive board or members to review and vote on the agreement.

(e) Decline Mediation. – Either party to a dispute may decline mediation under this section. If either party declines mediation after mediation has been initiated under subsection (c) of this section but mediation has not been held, the party declining mediation shall inform the mediator and the other party in writing of his or her decision to decline mediation. No costs shall be assessed to any party if either party declines mediation prior to the occurrence of an initial mediation meeting.

(f) Costs of Mediation. – The costs of mediation, including the mediator's fees, shall be shared equally by the parties unless otherwise agreed to by the parties. Fees shall be due and payable at the end of each mediation meeting. When an attorney represents a party to the mediation, that party shall pay his or her attorneys' fees.

(g) Certification That Mediation Concluded. – Upon the conclusion of mediation, the mediator shall prepare a certification stating the date on which the mediation was concluded and a statement that an agreement was reached or that mediation was attempted but an agreement was not reached. If both parties participate in mediation and a cause of action involving the dispute mediated is later filed, either party may file the certificate with the clerk of court, and the parties shall not be required to mediate again under any provision of law.

(h) Inadmissibility of Evidence. – Evidence of statements made and conduct occurring during mediation under this section shall not be subject to discovery and shall be inadmissible in any proceeding in a civil action arising from the dispute which was the subject of that mediation; except proceedings to enforce or rescind a settlement agreement reached at that

mediation, disciplinary proceedings before the State Bar or Dispute Resolution Commission, or proceedings to enforce laws concerning juvenile or elder abuse. No evidence otherwise discoverable shall be inadmissible merely because it is presented or discussed in a mediation under this section.

No mediator shall be compelled to testify or produce evidence concerning statements made and conduct occurring in anticipation of, during, or as a follow-up to a mediation pursuant to this section in any civil proceeding for any purpose, including proceedings to enforce or rescind the settlement agreement; except in disciplinary hearings before the State Bar or Dispute Resolution Commission and proceedings to enforce laws concerning juvenile or elder abuse, and except in proceedings to enforce or rescind an agreement reached in a mediation under this section, but only to attest to the signing of the agreement.

(i) Time Periods Tolled. – Time periods relating to the filing of a civil action, including any applicable statutes of limitations or statutes of repose, with respect to a dispute described in subsection (a) of this section, shall be tolled upon the initiation of mediation under this section until 30 days after the date on which the mediation is concluded as set forth in the mediator's certification. For purposes of this section, "initiation of mediation" shall be defined as the date upon which both parties have signed the written request to schedule the mediation.

(j) Association Duty to Notify. – Each association shall, in writing, notify the members of the association each year that they may initiate mediation under this section to try to resolve a dispute with the association. The association shall publish the notice required in this subsection on the association's Web site; but if the association does not have a Web site, the association shall publish the notice at the same time and in the same manner as the names and addresses of all officers and board members of the association are published as provided in G.S. 47C-3-103 and G.S. 47F-3-103."

SECTION 2. This act becomes effective July 1, 2013, and applies to all homeowners and condominium association disputes not specifically exempted by this act that occur on or after that date.

HOUSE BILL 278:
HOAs/Voluntary Prelitigation Mediation

2013-2014 General Assembly

Committee:	Senate Commerce	**Date:**	June 4, 2013
Introduced by:	Reps. D. Ross, D. Hall	**Prepared by:**	Wendy Graf Ray
Analysis of:	Second Edition		Committee Counsel

SUMMARY: ***House Bill 278 sets out the framework for and encourages voluntary mediation to resolve disputes between homeowners and unit/lot owners' associations (HOAs) prior to litigation. The bill provides that if the parties participate in mediation prior to filing a civil action, they will not be required to mediate again if a cause of action involving the dispute is later filed, and excludes from evidence statements made or conduct occurring at the mediation. The bill does not apply to disputes related solely to a homeowner's failure to timely pay an association assessment or any related fines or fees.***

CURRENT LAW: HOAs are nonprofit corporations organized pursuant to Chapter 47C (the Condominium Act) and Chapter 47F (the Planned Community Act). HOAs usually develop declarations, bylaws, and other rules and regulations that govern the actions of the HOA and the community. When disputes arise either under the statutes or the governing documents of the community, the parties sometimes resort to litigation. Generally, all cases in superior court are subject to mandatory mediation requirements, including disputes between homeowners and HOAs.

BILL ANALYSIS: House Bill 278 encourages homeowners and HOAs to mediate any dispute prior to litigation, except in the case of disputes related solely to a homeowner's failure to timely pay an association assessment or any related fines or fees.

The bill sets forth the framework for mediation as follows:

- Either party may initiate mediation by contacting the North Carolina Dispute Resolution Commission or the Mediation Network of North Carolina for the name of a local mediator.
- The mediator notifies the other party that mediation has been requested.
- Either party may decline to mediate; however, if the parties agree to mediate, they must request in writing that the mediator set up the mediation.
- The mediator shall set up the mediation within 25 days after receiving the written request to mediate.
- The parties shall share the cost of mediation equally, unless they agree otherwise.
- When the mediation is complete, the mediator shall prepare a certification stating that mediation was conducted and that an agreement was reached or that the parties were unable to reach an agreement.

If a civil action is later instituted pertaining to the dispute that was mediated, the parties will not be required to mediate again. Time periods related to the filing of a civil action, including any applicable statute of limitations, will be tolled upon the initiation of mediation until 30 days after the conclusion of the mediation.

The bill provides that evidence of statements made or conduct occurring during the mediation is not admissible as evidence in any court proceeding, except in disciplinary proceedings before the State Bar or Dispute Resolution Commission, or any proceedings to enforce laws concerning juvenile or elder abuse.

The bill also requires that HOAs send out a yearly notice to the homeowners notifying them of the option to mediate disputes.

EFFECTIVE DATE: This act becomes effective July 1, 2013, and applies to all disputes occurring on or after that date.

Shelly DeAdder, counsel to House Judiciary Subcommittee A, substantially contributed to this summary.

HOUSE BILL 315
Committee Substitute Favorable 3/28/13

Short Title: Plastics Labeling Requirements. (Public)

Sponsors:

Referred to:

March 18, 2013

A BILL TO BE ENTITLED

AN ACT TO REQUIRE THAT DEGRADABLE PLASTIC PRODUCTS BE CLEARLY LABELED TO PREVENT CONTAMINATION OF RECYCLED PLASTIC FEEDSTOCKS.

Whereas, recycling is a growing industry in North Carolina that employs over 15,000 people and includes numerous reclaimers of plastic bottles and manufacturers who use the material to make a wide range of products; and

Whereas, these and other North Carolina companies are developing innovative and effective new technologies for plastics recycling and are continuing to expand; and

Whereas, some new plastic packaging is being labeled as "degradable" or "biodegradable" and is designed to decompose in landfills or when exposed to soil, water, and other natural elements; and

Whereas, degradable or biodegradable plastics are incompatible with traditional hydrocarbon plastic recycling and pose potential harm to the quality and integrity of recycled plastic products, many of which are designed for durable, long-term uses; and

Whereas, no technology is currently available for recyclers to cost-effectively, rapidly, and consistently identify or segregate plastics containing degradable or biodegradable additives within the plastics recycling stream; and

Whereas, without the ability to remove degradable or biodegradable plastics from their recycled plastic feedstocks, North Carolina's plastics recycling industry will suffer costs to their operations, loss of material, and serious quality concerns in their final products; and

Whereas, consumer recycling is critical to the ability of North Carolina's recycling industry to obtain a sufficient quantity of high quality recycled plastics to use as feedstock for products such as carpet, textiles, plastic bottles, automotive parts, and construction materials; and

Whereas, simple, factual information should be provided to consumers to assist in identifying plastic degradable or biodegradable products that can be harmful to the manufacture of recycled plastic goods and that can restrict the growth of the plastics recycling industry in North Carolina; Now, therefore,

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 130A-309.10 reads as rewritten:

"**§ 130A-309.10. Prohibited acts relating to packaging; coded labeling of plastic containers required; disposal of certain solid wastes in landfills or by incineration prohibited.**

...

(e) No person shall distribute, sell, or offer for sale in this State any rigid plastic container, including a plastic beverage container, unless the container has a molded label indicating the plastic resin used to produce the container. The code shall consist of a number placed within three triangulated arrows and letters placed below the triangulated arrows. The three arrows shall form an equilateral triangle with the common point of each line forming each angle of the triangle at the midpoint of each arrow and rounded with a short radius. The arrowhead of each arrow shall be at the midpoint of each side of the triangle with a short gap separating the arrowhead from the base of the adjacent arrow. The triangle formed by the three arrows curved at their midpoints shall depict a clockwise path around the code number. The label shall appear on or near the bottom of the container and be clearly visible. A container having a capacity of less than eight fluid ounces or more than five gallons is exempt from the requirements of this subsection. The numbers and letters shall be as follows:

(1) For polyethylene terephthalate, the letters "PETE" and the number 1.
(2) For high density polyethylene, the letters "HDPE" and the number 2.
(3) For vinyl, the letter "V" and the number 3.
(4) For low density polyethylene, the letters "LDPE" and the number 4.
(5) For polypropylene, the letters "PP" and the number 5.
(6) For polystyrene, the letters "PS" and the number 6.
(7) For any other, the letters "OTHER" and the number 7.

(e1) No person shall distribute, sell, or offer for sale in this State any rigid plastic container, including a plastic beverage container labeled "degradable," "biodegradable," "compostable," or other words suggesting the container will biodegrade unless (i) the container complies with the requirements of subsection (e) of this section and (ii) the container includes a label with the statement "Not Recyclable, Do Not Recycle" in print of the same color, contrast, font, and size as the language suggesting the container will biodegrade.

...."

SECTION 2. This act is effective when it becomes law and applies to any plastic containers distributed, sold, or offered for sale after July 1, 2014.

HOUSE BILL 315:
Plastics Labeling Requirements

2013-2014 General Assembly

Committee:	Senate Commerce	**Date:**	June 4, 2013
Introduced by:	Reps. McGrady, Samuelson, Szoka, Turner	**Prepared by:**	Peter Ledford Committee Counsel
Analysis of:	Second Edition		

SUMMARY: House Bill 315 would require that a plastic product labeled with any term suggesting it will biodegrade must also clearly contain the statement "Not Recyclable, Do Not Recycle," to prevent contamination of recycled plastic feedstock.

BACKGROUND:

Section 3.(a) of S.L. 2012-200 directed the Department of Environment and Natural Resources to: (i) study and evaluate degradable plastic products and their potential to contaminate recycled plastic feedstocks; and (ii) develop and recommend standards for degradable plastic products, including labeling requirements and educational and outreach programs, to prevent contamination of recycled plastic feedstocks. A report on the matter was submitted in response to the directive in January 2013, which concluded "that North Carolina should take steps to prevent potential damaging impacts of degradable plastics on the State's plastics recycling industry, including labeling requirements and other measures that help differentiate degradable plastics from traditional materials in the recycling process." The executive summary of the report is attached.

CURRENT LAW:

Current law prohibits the sale of rigid plastic containers, including beverage containers, in the State unless the container has a molded label near the bottom that is clearly visible indicating the plastic resin used to produce the container. This requirement, commonly called "coded labeling," consists of a number placed within three triangulated arrows and letters placed below the triangulated arrows. Containers having a capacity of less than eight fluid ounces or more than five gallons are exempt from this requirement.

BILL ANALYSIS:

House Bill 315 would prohibit the sale of rigid plastic containers, including beverage containers, in the State that are labeled as "degradable," "biodegradable," "compostable," or other words suggesting the container will biodegrade unless the container also includes a label with the statement "Not Recyclable, Do Not Recycle" in print of the same color, contrast, font, and size as the language suggesting the container will biodegrade. These plastic containers must still comply with requirements for coded labeling under existing law to denote the plastic resin used to produce the container.

EFFECTIVE DATE:

The act would be effective when it became law and apply to any plastic containers distributed, sold, or offered for sale after July 1, 2014.

Jennifer McGinnis, counsel to House Environment, and Jeff Hudson, counsel to House Regulatory Reform Subcommittee on Environment, substantially contributed to this summary.

O. Walker Reagan
Director

H315-SMTP-79 E2 -V2

Research Division
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Study on the Effects of Degradable Plastic on Recycled Feedstocks*

North Carolina Department of Environment and Natural Resources

Submitted to the Environmental Review Commission

North Carolina General Assembly

January 2013

Executive Summary

Plastics are used to make a wide variety of consumer and durable products. Increasingly, many manufacturers are using recycled plastic resin to make these products just as increasing amounts of plastics are also being collected for recycling at the end of their useful life.

Plastics that are designed to break down under specific conditions are also being introduced into a range of products. These "degradable" plastics come in a few basic forms and are produced and marketed with the intent of reducing various environmental impacts from plastic disposal and littering.

Questions have been raised about the effects of degradable plastics on the recycling of traditional plastics, and in particular whether degradable plastics and degradable versions of regularly recycled plastics have a negative effect on the use of recycled plastic as a feedstock for manufactured products. As a state with a particularly heavy presence of recycled plastics processors (or "reclaimers") and manufacturers who use large amounts of recycled plastic, North Carolina has a direct stake in this issue. Plastics recycling in North Carolina is supported by a plastic bottle disposal ban that is intended to increase the supply of material to these reclaimers and manufacturers, who have made large-scale investments in the state and employ hundreds of North Carolinians.

North Carolina reclaimers, plastics product manufacturers, and key groups representing plastics recyclers and the general recycling industry are concerned that degradable plastics pose a serious problem to the plastics recycling system and to the integrity of recycled plastic products, especially those that are designed for durable uses. The potential negative effect of degradable plastics, which cannot be distinguished from traditional plastics by average consumers without specific labeling or other information, and usually cannot be machine-sorted automatically by reclaimers, could harm North Carolina's plastics recycling industry and hamper efforts to increase plastics recycling. There are also general questions about the actual advantages of degradability in plastics.

This study concludes that North Carolina should take steps to prevent potential damaging impacts of degradable plastics on the state's plastics recycling industry, including labeling requirements and other measures that help differentiate degradable plastics from traditional materials in the recycling process.

(*Full report available at this link)

HOUSE BILL 774
Committee Substitute Favorable 5/13/13

Short Title: Building Code Exclusion/Primitive Structures. (Public)

Sponsors:

Referred to:

April 11, 2013

A BILL TO BE ENTITLED

AN ACT TO EXEMPT CERTAIN PRIMITIVE STRUCTURES FROM THE BUILDING CODE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 143-138 reads as rewritten:

"**§ 143-138. North Carolina State Building Code.**

...

(b3) 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) Building rules do not apply to (i) farm buildings that are located outside the building-rules jurisdiction of any municipality, ~~or (ii)~~(ii) farm buildings that are located inside the building-rules jurisdiction of any municipality if the farm buildings are ~~greenhouses.~~greenhouses, (iii) a primitive camp, or (iv) a primitive farm building. 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 "primitive camp" shall include any structure primarily used or associated with outdoor camping activities, including structures used for educational, instructional, or recreational purposes for campers and for management training, that are (i) not greater than 4,000 square feet in size and (ii) are not intended to be occupied for more than 24 hours consecutively. "Structures primarily used or associated with outdoor camping activities" include, but are not limited to, shelters, tree stands, outhouses, sheds, rustic cabins, campfire shelters, picnic shelters, tents, tepees or other indigenous huts, support buildings used only for administrative functions and not for activities involving campers or program participants, and any other structures that are utilized to store any equipment, tools, commodities, or other items that are maintained or used in conjunction with outdoor camping activities such as hiking, fishing, hunting, or nature appreciation, regardless of material used for construction. The specific types of primitive camping 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 are exempted from building rules.

(5) A "primitive farm building" shall include any structure used for activities, instruction, training, or reenactment of traditional or heritage farming practices. "Primitive farm buildings" include, but are not limited to, sheds, barns, outhouses, doghouses, or other structures that are utilized to store any equipment, tools, commodities, livestock, or other items supporting farm management. These specific types of farming activities, structures, and uses set forth by this subdivision are for illustrative purposes and should not be construed to limit in any manner the types of activities, structures, or uses that are exempted from building rules.

...."

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

HOUSE BILL 774:
Building Code Exclusion/Primitive Structures

2013-2014 General Assembly

Committee:	Senate Commerce	**Date:**	June 4, 2013
Introduced by:	Reps. Jordan, McGrady, Dollar, Harrison	**Prepared by:**	Peter Ledford Committee Counsel
Analysis of:	Second Edition		

SUMMARY: ***House Bill 774 would exempt primitive camps and primitive farm buildings from the Building Code.***

CURRENT LAW: Under current law, the Building Code Council adopts the North Carolina Building Code (Building Code). The Building Code may regulate all of the following for buildings and structures: location, height, and floor areas; lighting and ventilation; means of ingress and egress; construction and precautions to be taken during construction; permissible materials, loads, and stresses; chimneys, heating appliances, elevators, and other facilities connected with the buildings and structures; plumbing, heating, air conditioning, and electrical systems; and other reasonable regulations for the construction of buildings and structures and the installation of facilities in buildings and structures necessary for the protection of the occupants of the building or structure, its neighbors, and members of the public at large. With certain exceptions, the Building Code applies to all buildings and structures wherever they are located. These exceptions include farm buildings and greenhouses in certain locations.

BILL ANALYSIS: House Bill 774 would also exempt the following from the Building Code:

- A primitive camp, which is any structure primarily used or associated with outdoor camping activities, including structures used for educational, instructional, or recreational purposes for campers and for management training, that are (i) not greater than 4,000 square feet in size and (ii) are not intended to be occupied for more than 24 hours consecutively. Structures primarily used or associated with outdoor camping activities include shelters, tree stands, outhouses, sheds, rustic cabins, campfire shelters, picnic shelters, tents, tepees, or other indigenous huts, support buildings used for administrative activities, and any other structures that are utilized to store any equipment, tools, commodities, or other items that are maintained or used in conjunction with outdoor camping activities such as hiking, fishing, hunting, or nature appreciation.
- A primitive farm building, which is any structure used for activities, instruction, training, or experimental reenactment of traditional or heritage farming practices. Primitive farm buildings include sheds, barns, outhouses, doghouses, or other structures that are utilized to store any equipment, tools, commodities, livestock, or other items supporting farm management.

EFFECTIVE DATE: This act would become when it becomes law.

Jeff Hudson, counsel to House Regulatory Reform, substantially contributed to this summary.

O. Walker Reagan
Director

H774-SMTP-83-E2-V1

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GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

H 3

HOUSE BILL 793
Committee Substitute Favorable 5/14/13
Committee Substitute #2 Favorable 5/15/13

Short Title: HOAs/Fidelity Bonds. (Public)

Sponsors:

Referred to:

April 11, 2013

A BILL TO BE ENTITLED

AN ACT PROVIDING THAT CERTAIN CONDOMINIUM AND PLANNED COMMUNITY ASSOCIATIONS SHALL OBTAIN AND MAINTAIN A FIDELITY BOND INSURING THE ASSOCIATIONS FROM LOSSES RESULTING FROM THEFT OR DISHONESTY COMMITTED BY MEMBERS OF THE EXECUTIVE BOARD OR PERSONS EMPLOYED BY THE ASSOCIATIONS, PROVIDING THAT ANY MANAGEMENT AGENT OR COMPANY HIRED BY AN ASSOCIATION SHALL AT ALL TIMES BE COVERED BY A FIDELITY BOND, AND PROVIDING FINANCIAL AUDIT REQUIREMENTS FOR ASSOCIATIONS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 47C-1-102 reads as rewritten:

"**§ 47C-1-102. Applicability.**

(a) This Chapter applies to all condominiums created within this State after October 1, 1986. G.S. 47C-1-105 (Separate Titles and Taxation), 47C-1-106 (Applicability of Local Ordinances, Regulations, and Building Codes), 47C-1-107 (Eminent Domain), 47C-2-103 (Construction and Validity of Declaration and Bylaws), 47C-2-104 (Description of Units), 47C-2-121 (Merger or Consolidation of Condominiums), 47C-3-102(a)(1) through (6) and (11) through (16)(Powers of Unit Owners' Association), 47C-3-103 (Executive board members and officers), 47C-3-107.1 (Procedures for fines and suspension of condominium privileges or services), 47C-3-108 (Meetings), 47C-3-111 (Tort and Contract Liability), 47C-3-112 (Conveyance or Encumbrance of Common Elements), 47C-3-113.1 (Fidelity bond required; executive board; management company), 47C-3-116 (Lien for Assessments), 47C-3-118 (Association Records), 47C-3-118.1 (Financial audit requirements), 47C-3-121 (American and State flags and political sign displays), ~~and~~ 47C-4-117 (Effect of Violation on Rights of Action; Attorney's Fees), and G.S. 47C-1-103 (Definitions), to the extent necessary in construing any of those sections, apply to all condominiums created in this State on or before October 1, 1986, unless the declaration expressly provides to the contrary. Those sections apply only with respect to events and circumstances occurring after October 1, 1986, and do not invalidate existing provisions of the declarations, bylaws, or plats or plans of those condominiums.

...."

SECTION 2. Article 3 of Chapter 47C of the General Statutes is amended by adding a new section to read as follows:

"**§ 47C-3-113.1. Fidelity bond required; executive board; management company.**

(a) Executive Board. – Any unit owners' association with annual assessments for common expenses of one hundred thousand dollars ($100,000) or more shall obtain and

maintain a fidelity bond insuring the unit owners' association against losses resulting from theft or dishonesty committed by the officers and members of the executive board or persons employed by the unit owners' association. The bond shall provide coverage in an amount at least equal to the annual operating budget of the unit owners' association, but is not required to be greater than one million dollars ($1,000,000). The executive board shall obtain the bond on behalf of the unit owners' association.

(b) Management Agent or Company. – Any management agent or company hired by a unit owners' association shall at all times be covered by a fidelity bond. For purposes of this section, a management agent or company is any person who, for compensation or the expectation thereof, performs two or more of the following: (i) acts with the authority of a unit owners' association in its business, legal, financial, or other transactions with association members and nonmembers; (ii) executes the resolutions and decisions of the government of a unit owners' association or, with the authority of the association, enforces the rights of the association secured by statute, contract, covenant, rule, or bylaw; (iii) collects, disburses, or otherwise exercises dominion or control over money or other property belonging to a unit owners' association; (iv) prepares budgets, financial statements, or other financial reports for a unit owners' association; (v) negotiates contracts or otherwise coordinates or arranges for services or the purchase of property and goods for or on behalf of a unit owners' association; or (vi) offers or solicits to perform any of the acts or services in subdivisions (i) through (v) of this subsection on behalf of a unit owners' association. The fidelity bond shall provide coverage in an amount at least equal to the annual budgets of all of their clients but is not required to be greater than two million dollars ($2,000,000) and shall comply with the following conditions:

(1) Be written by an insurance company authorized to write fidelity bonds in this State.

(2) Cover the unit owners' association manager and all or a portion of the employees and protect all or a portion of the association funds in the custody of the association manager or association employees acting under the association manager's supervision.

(3) Provide that the insurance company issuing the bond may not cancel, substantially modify, or refuse to renew the bond without giving 30 days' prior written notice to the executive board, except in the case of nonpayment of premiums, in which case 10 days' prior written notice shall be given to the executive board.

(4) Contain any other provisions as may be required by the executive board."

SECTION 2.5. G.S. 47C-3-118(a) reads as rewritten:

"(a) The association shall keep financial records sufficiently detailed to enable the association to comply with this chapter. All financial and other records, including records of meetings of the association and executive board, shall be made reasonably available for examination by any unit owner and the unit owner's authorized agents as required by the bylaws and by Chapter 55A of the General Statutes if the association is a nonprofit corporation. If the bylaws do not specify particular records to be maintained, the association shall keep accurate records of all cash receipts and expenditures and all assets and liabilities. In addition to any specific information that is required by the bylaws to be assembled and reported to the unit owners at specified times, the association shall make an annual income and expense statement and balance sheet available to all unit owners at no charge and within 75 days after the close of the fiscal year to which the information relates. ~~Notwithstanding the bylaws, a more extensive compilation, review, or audit of the association's books and records for the current or immediately preceding fiscal year may be required by a vote of the majority of the executive board or by the affirmative vote of a majority of the unit owners present and voting in person or by proxy at any annual meeting or any special meeting duly called for that purpose.~~"

SECTION 3. Article 3 of Chapter 47C of the General Statutes is amended by adding a new section to read as follows:

"**§ 47C-3-118.1. Financial audit requirements.**

(a) The executive board shall provide for an annual independent financial audit of the unit owners' association if any of the following conditions are met:

(1) The declaration, bylaws, or other governing documents expressly require conducting an annual financial audit.

(2) The unit owners' association has annual revenues or expenditures of two hundred fifty thousand dollars ($250,000) or more.

(3) An audit is requested by a vote of a majority of the board or by a vote of a majority of the unit owners present and voting in person or by proxy at any annual meeting or any special meeting duly called for that purpose.

The audit shall be completed no later than one year after the end of the fiscal year of the unit owners' association and shall be made available upon request to the unit owners within 30 days after its completion.

(b) Except as provided in subsection (a) of this section, if the unit owners' association has annual revenues or expenditures of at least one hundred fifty thousand dollars ($150,000), the executive board shall provide for an annual independent financial review of the unit owners' association. The review shall be completed no later than one year after the end of the fiscal year of the unit owners' association and shall be made available upon request to the unit owners within 30 days after its completion."

SECTION 4. G.S. 47F-1-102 reads as rewritten:

"**§ 47F-1-102. Applicability.**

...

(c) Notwithstanding the provisions of subsection (a) of this section, G.S. 47F-3-102(1) through (6) and (11) through (17)(Powers of owners' association), G.S. 47F-3-103(f)(Executive board members and officers), G.S. 47F-3-107(a), (b), and (c)(Upkeep of planned community; responsibility and assessments for damages), G.S. 47F-3-107.1 (Procedures for fines and suspension of planned community privileges or services), G.S. 47F-3-108 (Meetings), G.S. 47F-3-113.1 (Fidelity bond required; executive board; management company), G.S. 47F-3-115 (Assessments for common expenses), G.S. 47F-3-116 (Lien for assessments), G.S. 47F-3-118 (Association records), G.S. 47F-3-118.1 (Financial audit requirements), and G.S. 47F-3-121 (American and State flags and political sign displays) apply to all planned communities created in this State before January 1, 1999, unless the articles of incorporation or the declaration expressly provides to the contrary, and G.S. 47F-3-120 (Declaration limits on attorneys' fees) applies to all planned communities created in this State before January 1, 1999. These sections apply only with respect to events and circumstances occurring on or after January 1, 1999, and do not invalidate existing provisions of the declaration, bylaws, or plats and plans of those planned communities. G.S. 47F-1-103 (Definitions) also applies to all planned communities created in this State before January 1, 1999, to the extent necessary in construing any of the preceding sections.

...."

SECTION 5. Article 3 of Chapter 47F of the General Statutes is amended by adding a new section to read as follows:

"**§ 47F-3-113.1. Fidelity bond required; executive board; management company.**

(a) Executive Board. – Any association with annual assessments for common expenses of one hundred thousand dollars ($100,000) or more shall obtain and maintain a fidelity bond insuring the association against losses resulting from theft or dishonesty committed by the officers and members of the executive board or persons employed by the association. The bond shall provide coverage in an amount at least equal to the annual operating budget of the

association, but is not required to be greater than one million dollars ($1,000,000). The executive board shall obtain the bond on behalf of the association.

(b) Management Agent or Company. – Any management agent or company hired by an association shall at all times be covered by a fidelity bond. For purposes of this section, a management agent or company is any person who, for compensation or the expectation thereof, performs two or more of the following: (i) acts with the authority of an association in its business, legal, financial, or other transactions with association members and nonmembers; (ii) executes the resolutions and decisions of the government of an association or, with the authority of the association, enforces the rights of the association secured by statute, contract, covenant, rule, or bylaw; (iii) collects, disburses, or otherwise exercises dominion or control over money or other property belonging to an association; (iv) prepares budgets, financial statements, or other financial reports for an association; (v) negotiates contracts or otherwise coordinates or arranges for services or the purchase of property and goods for or on behalf of an association; or (vi) offers or solicits to perform any of the acts or services in subdivisions (i) through (v) of this subsection on behalf of an association. The bond shall provide coverage in an amount at least equal to the annual budgets of all of their clients but is not required to be greater than two million dollars ($2,000,000) and shall comply with the following conditions:

(1) Be written by an insurance company authorized to write fidelity bonds in this State.

(2) Cover the association manager and all or a portion of the employees and protect all or a portion of the association funds in the custody of the association manager or association employees acting under the association manager's supervision.

(3) Provide that the insurance company issuing the bond may not cancel, substantially modify, or refuse to renew the bond without giving 30 days' prior written notice to the executive board, except in the case of nonpayment of premiums, in which case 10 days' prior written notice shall be given to the executive board.

(4) Contain any other provisions as may be required by the executive board."

SECTION 5.5. G.S. 47F-3-118(a) reads as rewritten:

"(a) The association shall keep financial records sufficiently detailed to enable the association to comply with this Chapter. All financial and other records, including records of meetings of the association and executive board, shall be made reasonably available for examination by any lot owner and the lot owner's authorized agents as required in the bylaws and Chapter 55A of the General Statutes. If the bylaws do not specify particular records to be maintained, the association shall keep accurate records of all cash receipts and expenditures and all assets and liabilities. In addition to any specific information that is required by the bylaws to be assembled and reported to the lot owners at specified times, the association shall make an annual income and expense statement and balance sheet available to all lot owners at no charge and within 75 days after the close of the fiscal year to which the information relates. ~~Notwithstanding the bylaws, a more extensive compilation, review, or audit of the association's books and records for the current or immediately preceding fiscal year may be required by a vote of the majority of the executive board or by the affirmative vote of a majority of the lot owners present and voting in person or by proxy at any annual meeting or any special meeting duly called for that purpose.~~"

SECTION 6. Article 3 of Chapter 47F of the General Statutes is amended by adding a new section to read as follows:

"**§ 47F-3-118.1. Financial audit requirements.**

(a) The executive board shall provide for an annual independent financial audit of the association if any of the following conditions are met:

(1) The declaration, bylaws, or other governing documents expressly require conducting an annual financial audit.

(2) The association has annual revenues or expenditures of two hundred fifty thousand dollars ($250,000) or more.

(3) An audit is requested by a vote of a majority of the board or by a vote of a majority of the lot owners present and voting in person or by proxy at any annual meeting or any special meeting duly called for that purpose.

The audit shall be completed no later than one year after the end of the fiscal year of the association and shall be made available upon request to the lot owners within 30 days after its completion.

(b) Except as provided in subsection (a) of this section, if the association has annual revenues or expenditures of at least one hundred fifty thousand dollars ($150,000), the executive board shall provide for an annual independent financial review of the association. The review shall be completed no later than one year after the end of the fiscal year of the association and shall be made available upon request to the lot owners within 30 days after its completion."

SECTION 7. This act becomes effective October 1, 2013.

HOUSE BILL 793: HOAs/Fidelity Bonds

2013-2014 General Assembly

Committee:	Senate Ref to Commerce. If fav, re-ref to Insurance	**Date:**	June 4, 2013
Introduced by:	Reps. Saine, R. Moore	**Prepared by:**	Wendy Graf Ray Committee Counsel
Analysis of:	Third Edition		

SUMMARY: ***House Bill 793 would provide that certain condominium and planned community associations must obtain and maintain a fidelity bond insuring the association from losses resulting from theft or dishonesty committed by members of the executive board or persons employed by the association. It would also provide for annual financial audits and reviews for associations if certain conditions are met.***

CURRENT LAW: Chapter 47C of the General Statutes is the North Carolina Condominium Act, and Chapter 47F is the North Carolina Planned Community Act. Currently, unit owners' associations and associations are not required to maintain a fidelity bond to insure against loses resulting from theft or dishonesty committed by officers, members, or employees of the association.

BILL ANALYSIS:

Fidelity Bonds. House Bill 793 amends the North Carolina Condominium Act and the North Carolina Planned Community Act to provide that associations that have annual assessments for common expenses of $100,000 or more must obtain and maintain a fidelity bond. The fidelity bond insures against losses resulting from theft or dishonesty by the officers, members, or employees of the association. The bond must provide coverage in an amount equal to the annual operating budget of the association, but is not required to be more than $1 million.

The act also provides that management agents or companies hired by an association or unit owners' association must be covered by a fidelity bond at all times. A management agent or company is any person who performs two or more of the following:

- Acts with the authority of the association in its business, legal, financial, or other transactions with association members and nonmembers.
- Executes the resolutions and decisions of the government of an association or, with the authority of the association, enforces the rights of the association.
- Collects, disburses, or otherwise exercises dominion or control over money or other property belonging to an association.
- Prepares budgets, financial statements, or other financial reports.
- Negotiates contracts or otherwise coordinates or arranges for services or the purchase of property and goods.
- Offers or solicits to perform any of these acts or services on behalf of an association.

The fidelity bond must provide coverage in an amount at least equal to the annual budgets of all of the management company's clients, but is not required to be greater than $2 million and must comply with the following conditions:

- Be written by an insurance company authorized to write fidelity bonds in this State.
- Cover the association's manager and all or a portion of the employees and protect all or a portion of the association funds in the custody of the manager.
- Provide that the insurance company issuing the bond may not cancel, substantially modify, or refuse to renew the bond without giving 30 days' prior written notice to the executive board. In the case of nonpayment of premiums, 10 days' prior written notice must be given to the executive board.
- Contain any other provisions as may be required by the executive board.

Financial Reviews/Audits. The bill also provides that an executive board must provide for an annual independent financial audit of a unit owners' association if any of the following conditions are met:

- The declaration, bylaws, or other governing documents expressly require conducting an annual financial audit.
- The unit owners' association has annual revenues or expenditures of $250,000 or more.
- An audit is requested by a vote of a majority of the board or by a vote of a majority of the unit owners present and voting in person or by proxy at any annual meeting or any special meeting duly called for that purpose.

The audit must be completed no later than one year after the end of the fiscal year of the unit owners' association and shall be made available upon request to the unit owners within 30 days after its completion.

If the unit owners' association has annual revenues or expenditures of at least $150,000, the executive board shall provide for an annual independent financial review of the unit owners' association. The review shall be completed no later than one year after the end of the fiscal year of the unit owners' association and shall be made available upon request to the unit owners within 30 days after its completion.

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

Brad Krehely, counsel to House Judiciary Subcommittee B, substantially contributed to this summary.

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. 3

H. B. No. 793 DATE 6/4/13

S. B. No. _____ Amendment No. 1 (to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE _____

Rep.) Sen.) Hunt

moves to amend the bill on page 3, line 4

( ) WHICH CHANGES THE TITLE

by inserting between "audit" and "of" the following language: "conducted by a certified public accountant licensed pursuant to Chapter 93 of the General Statutes;"; and

on page 3, line 18, by inserting between "review" and "of" the following language: "conducted by a certified public accountant licensed pursuant to Chapter 93 of the General Statutes"; and

on page 4, line 49, and page 5, line 13, by inserting between "audit" and "of" and between "review" and "of" the following language: "conducted by a certified public accountant licensed pursuant to Chapter 93 of the General Statutes"

SIGNED _____

ADOPTED _____ FAILED _____ TABLED _____

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

H 2

HOUSE BILL 610
Committee Substitute Favorable 5/1/13

Short Title: Modify Requirements for In-Stand Beer Sales. (Public)

Sponsors:

Referred to:

April 9, 2013

A BILL TO BE ENTITLED

AN ACT TO REDUCE THE SEATING CAPACITY REQUIREMENT AND ELIMINATE THE POPULATION REQUIREMENT FOR IN-STAND SALES OF MALT BEVERAGES AND TO DIRECT THE ABC COMMISSION TO ADOPT RULES FOR THE SUSPENSION OF THE SALE OF ALCOHOLIC BEVERAGES DURING PROFESSIONAL SPORTING EVENTS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 18B-1009 reads as rewritten:

"**§ 18B-1009. In-stand sales.**

Nothing in this Chapter shall be construed to prohibit a retail permittee from selling for consumption, malt beverages in the seating areas of stadiums, ballparks, and other similar public places with a seating capacity of ~~60,000~~3,000 or more during professional sporting events, ~~in municipalities with a population greater than 450,000, according to the most recent estimate of population made by the Office of State Budget and Management,~~ provided that:

(1) The seating areas are designated as part of the retail permittee's licensed premises;

(2) The retail permittee has notified the Commission, in writing, of its intent to sell malt beverages in the seating areas at sporting events;

(3) Service of food and nonalcoholic beverages is available in the seating areas;

(4) The retail permittee has certified to the Commission that it has trained its employees:

a. To identify underage persons and intoxicated persons; and

b. To refuse to sell malt beverages to those persons as required by G.S. 18B-305; and

(5) The employees do not verbally shout or hawk the sale of malt beverages."

SECTION 2. The North Carolina Alcoholic Beverage Control Commission shall adopt rules for the suspension of alcohol sales in the latter portion of professional sporting events in order to protect public safety at these events.

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

HOUSE BILL 610:
Modify Requirements for In-Stand Beer Sales

2013-2014 General Assembly

Committee:	Senate Commerce	**Date:**	June 4, 2013
Introduced by:	Reps. Hardister, Samuelson, L. Hall, Moffitt	**Prepared by:**	Peter Ledford Committee Counsel
Analysis of:	Second Edition		

SUMMARY: ***House Bill 610 would modify the requirements for allowing in-stand sales of malt beverages during professional sporting events and would direct the ABC Commission to adopt rules for suspending the sale of alcohol in the latter portion of professional sporting events.***

CURRENT LAW: Currently, in-stand sales of malt beverages during professional sporting events are only allowed in stadiums, ballparks, and other similar public places with a seating capacity of 60,000 or more, located in municipalities with a population greater than 450,000, provided that:

1. The seating areas are designated as a part of the retail permittee's licensed premises;
2. The retail permittee has notified the ABC Commission, in writing, of its intent to sell malt beverages in the seating areas at sporting events;
3. Service of food and nonalcoholic beverages is also available in the seating areas;
4. The retail permittee has certified to the ABC Commission that it has trained its employees to identify underage persons and intoxicated persons and to refuse to sell malt beverages to those persons; and
5. The employees do not verbally shout or hawk the sale of malt beverages.

BILL ANALYSIS: House Bill 610 would allow in-stand sales of malt beverages during professional sporting events in stadiums, ballparks, and other similar public places with a seating capacity of 3,000 more. The bill would also eliminate the municipal population requirement, allowing in-stand sales in municipalities of any size if the seating capacity requirement is met.

The bill would also direct the ABC Commission to adopt rules regarding the suspension of alcohol sales in the latter portion of professional sporting events.

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

Chris Saunders, counsel to the House Commerce and Job Development Subcommittee on Alcoholic Beverage Control, substantially contributed to this summary.

HOUSE BILL 829
Committee Substitute Favorable 5/1/13

Short Title: Sale of Growlers by Certain ABC Permittees. (Public)

Sponsors:

Referred to:

April 11, 2013

A BILL TO BE ENTITLED

AN ACT TO ALLOW CERTAIN ABC PERMITTEES TO SELL MALT BEVERAGES IN CERTAIN CONTAINERS FOR CONSUMPTION OFF THE PERMITTED PREMISES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 18B-1001 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:

(1) On-Premises Malt Beverage Permit. – An on-premises malt beverage permit authorizes (i) the retail sale of malt beverages for consumption on the ~~premises and~~premises, (ii) the retail sale of malt beverages in the manufacturer's original container for consumption off the ~~premises.~~premises, and (iii) 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. It also authorizes 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;
   b. Hotels;
   c. Eating establishments;
   d. Food businesses;
   e. Retail businesses;
   f. Private clubs;
   g. Convention centers;
   h. Community theatres;
   i. Breweries as authorized by G.S. 18B-1104(7).

(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 and it authorizes~~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;
b. Hotels;
c. Eating establishments;
d. Food businesses;
e. Retail businesses.

...

(16) Wine Shop Permit. – A wine shop permit authorizes (i) the retail sale of malt beverages, unfortified wine, and fortified wine in the manufacturer's original container for consumption off the ~~premises, and authorizes~~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) wine tastings on the premises conducted and supervised by the permittee in accordance with subdivision (15) of this section. It also authorizes the holder of the permit to ship malt beverages, unfortified wine, and fortified wine in closed containers to individual purchasers inside and outside the State. The permit may be issued for retail businesses whose primary purpose is selling malt beverages and wine for consumption off the premises and regularly and customarily educating consumers through tastings, classes, and seminars about the selection, serving, and storing of wine. The holder of the permit is authorized to sell unfortified wine for consumption on the premises, provided that the sale of wine for consumption on the premises does not exceed forty percent (40%) of the establishment's total sales for any 30-day period. The holder of a wine-tasting permit not engaged in the preparation or sale of food on the premises is not subject to Part 6 of Article 8 of Chapter 130A of the General Statutes.

...."

SECTION 2. The ABC Commission shall adopt rules dealing with sanitation of growlers by January 1, 2014.

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

HOUSE BILL 829:
Sale of Growlers by Certain ABC Permittees

2013-2014 General Assembly

Committee:	Senate Commerce	**Date:**	June 4, 2013
Introduced by:	Reps. McGrady, Bryan, Moffitt, L. Hall	**Prepared by:**	Peter Ledford Committee Counsel
Analysis of:	Second Edition		

SUMMARY: ***House Bill 829 amends the Alcoholic Beverage Control Act to allow certain ABC permittees to sell malt beverages in certain containers for consumption off the permitted premises.***

CURRENT LAW: Under current law, a holder of an on-premises malt beverage permit may sell malt beverages for consumption on the premises and malt beverages in manufacturer's original containers for consumption off the premises. A holder of an off-premises malt beverage permit may only sell malt beverages in the manufacturer's original container for consumption off the premises. A holder of a wine shop permit may sell malt beverages in the manufacturer's original container for consumption off the premises.

Under a rule adopted by the Alcoholic Beverage Control Commission, the term "growler" is defined as a "refillable container no larger than 2 liters (0.5283 gallons) into which a malt beverage is poured for off-premises consumption." The rule further provides that a holder of a brewery permit that has an off-premises malt beverage permit may sell growlers filled with the brewery's malt beverage for off-premises consumption. (4 NCAC 2T .0308)

BILL ANALYSIS:

Section 1 of House Bill 829 amends the law to allow the holder of an on-premises malt beverage permit, an off-premises malt beverage permit, or a wine shop permit to sell malt beverages in a cleaned, sanitized, resealable container that meets the requirements of the Administrative Code and that identifies the permittee and the date the container was filled.

Section 2 of the bill directs the ABC Commission to adopt rules dealing with sanitation of growlers by January 1, 2014.

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

Karen Cochrane-Brown, counsel to the House Commerce and Job Development Subcommittee on Alcoholic Beverage Control, substantially contributed to this summary.

VISITOR REGISTRATION SHEET

Senate **COMMERCE** Committee — June 4, 2013

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DEBBIE LOWN

NAME	FIRM OR AGENCY AND ADDRESS
W. H. Patterson Jr	NCDS & NCPIA
L.A. Harris	~~LAHA~~
Will Sagar	SERDC
Jamsin Ettefagh	Envision Plastics
Chris Bradley	Shaw Industries
Tom Fetzer	FSP
Jim KENT	NC Beer & Wine
Herron Hunt	N.C.B.A.
Jerry Suddath	NC BEV
Amy McCurley	NC BEV
[illegible]	CAI-NC

VISITOR REGISTRATION SHEET

Senate **COMMERCE** Committee — June 4, 2013

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DEBBIE LOWN

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Corri McLamb	DENR
Sheria Reid	Sen Gov.
Chris Agner	DOJ
Jennifer Wilkes	UNC-CH
Will Grantham	MVC
Paul Meyer	NCLM
Tom West	Poyner Spruill LLP
Meredith Dillian Delamp	Poyner Spruill LLP
Kim Crouch	NCBA
Agnes Stevens	NC ABC Commission

VISITOR REGISTRATION SHEET

Senate **COMMERCE** Committee — June 4, 2013

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DEBBIE LOWN

NAME	FIRM OR AGENCY AND ADDRESS
Jeff Joyce	AVI Chamber
Marissa Fussell	K&L Gates
Amy Fullwright	K&L Gates
J Stamps	Mayes LLC

VISITOR REGISTRATION SHEET

Senate **COMMERCE** Committee — June 4, 2013

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DEBBIE LOWN

NAME	FIRM OR AGENCY AND ADDRESS
Andrew Taylor	SENATE STAFF
Elizabeth Robinson	NCRMA
John Rustin	NCFPC
Jim Ryall	NCFPC

VISITOR REGISTRATION SHEET

Senate **COMMERCE** Committee — June 4, 2013

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DEBBIE LOWN

NAME	FIRM OR AGENCY AND ADDRESS
Suzanne Beasley	SEANC
	SCS
Dean Plunkett	Bar Pub & Tavern Assoc.
Lauren Knott	NCHC
Carley Ruff	NCHC
Kathy Hawkins	Duke
Keith Tatum	CBS
Gary Harris	NC Petroleum & Convenience Marketers
Andy Chase	KMA

VISITOR REGISTRATION SHEET

Senate **COMMERCE** Committee — June 4, 2013

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DEBBIE LOWN

NAME	FIRM OR AGENCY AND ADDRESS
Debbie Hughes	KLG
Elizabeth Biser	Brooks Pierce
Jonathan Barbaker	Barbaker & Assoc.

VISITOR REGISTRATION SHEET

Commerce committee — June 4th, 2013

Name of Committee — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
[illegible]	NCRMA
ROBERT PRIVOTT	NCHBA
DAN TINGEN	NCBCC
Rev. MARK CREECH	CAL
[illegible]	[illegible]
[illegible]	NCDOL
[illegible]	NCAR
Chris EMANUEL	THE C.G. EMANUEL GROUP
DANIEL BAUM	TROUTMAN SANDERS
[illegible]	MVA

VISITOR REGISTRATION SHEET

Senate **COMMERCE** Committee — June 4, 2013

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DEBBIE LOWN

NAME	FIRM OR AGENCY AND ADDRESS
Butch Gunnells	NC Bev
Hayden Baugniss	FSP
Susan Vick	FSP.
Laurie Oriorio	FSP
[illegible]	[illegible]
[illegible]	[illegible]
Dylan Watts	Smith A.
Rose Williams	NC DOI
Todd Barlow	NC Advocates for Justice
Lauren Whaley	NCCU
Elaine Woo	NCLM

Senate Committee on Commerce
Thursday, June 6, 2013, 11:00 AM
1027/1128 Legislative Building

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

BILL NO.	SHORT TITLE	SPONSOR
HB 223	Electric Membership Corps/Member Control.	Representative Presnell Representative Moffitt Representative Hager Representative Arp
HB 390	State IT Governance Changes.-AB	Representative Saine
HB 629	Amend Definition of Special Purpose Project.	Representative Martin, S. Representative R. Brawley Representative Lewis
HB 662	Irrigation K'ors/Install Backflow Assemblies.	Representative Samuelson Representative Saine Representative Hager Representative R. Brawley

Senate Committee on Commerce
Thursday, June 6, 2013 at 11:00 AM
Room 1027/1128 of the Legislative Building

MINUTES

The Senate Committee on Commerce met at 11:00 AM on June 6, 2013 in Room 1027/1128 of the Legislative Building. Nineteen members were present.

Senator Rick Gunn, Chair, presided.

Allison Clark from Raleigh, Max Toney from Reidsville, Jordan Smith from Henderson, Alex Stroud from Aberdeen, Kevin Treacy from Oxford, Cody Tatum from Yanceyville, and Grace Replogle from Raleigh served as pages.

H. B. 223 Electric Membership Corps/Member Control

Senator Barringer moved that the proposed committee substitute (PCS) be adopted before the committee and it carried. House Bill 223 would repeal the authority of the North Carolina Utilities Commission to compel electric membership corporations to make repairs or upgrades to ensure efficient electric service and would repeal the requirement that electric membership corporations file long-range integrated resource plans with the Commission. The PCS adds Section 3, which gives the Rural Electrification Authority the power to receive and investigate complaints from members of electric membership corporations. Representative Presnell was introduced to speak on the bill. Senator McKissick asked if there was someone available from the industry that could comment. Daniel H. Conrad/Staff Attorney for the North Carolina Utilities Commission spoke. Senator Bryant moved unfavorable to the bill favorable to the PCS and it carried. Senator Hise will handle the bill on the floor.

H. B. 390 State IT Governance Changes. -AB

Senator Tucker moved that the proposed committee substitute (PCS) be adopted before the committee and it carried. The PCS for House Bill 390 would make technical and clarifying changes to statutes related to State information technology services and increase accountability oversight. The bill would also exempt standards adopted by the Office of Information Technology Services from the definition of a "rule" under the Administrative Procedure Act. Representative Saine was introduced to speak on the bill. Senator Harrington moved unfavorable to the bill – favorable to the PCS and it carried. Senator Brock will handle this bill on the floor.

H. B. 629 Amend Definition of Special Purpose Project

Representative Martin was introduced to speak on the bill. House Bill 629 would amend the definition of a special purpose project to include agricultural and forestry waste disposal

facilities. Senator Sanderson moved for a favorable report and it carried. Senator Newton will handle the bill on the floor.

H. B. 662 Irrigation K'ors/Install Backflow Assemblies

Senator McKissick moved that the proposed committee substitute (PCS) be adopted before the committee and it carried. The PCS for House Bill 662 would authorize the Board of Examiners of Plumbing, Heating, and Fire Sprinkler Contractors to issue a limited plumbing contractor license, which would allow individuals who are not licensed plumbers to install backflow prevention assemblies. It would also allow a court to award the Board reasonable costs of investigation and prosecution of violations of the article regulating plumbing and heating contractors, and would eliminate a provision specifying that actions brought by the Board be brought in the county where the violation occurred or where the defendant resides. Representative Samuelson was introduced to speak on the bill. Senator McKissick moved unfavorable to the bill – favorable to the PCS and it carried. Senator Meredith will handle the bill on the floor.

The meeting adjourned at 11:14 AM.

Senator Rick Gunn, Chair
Presiding

Debbie Lown, Committee Clerk

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

COMMERCE COMMITTEE REPORT
Senator Gunn, Co-Chair
Senator Meredith, Co-Chair

Thursday, June 06, 2013

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

FAVORABLE

HB **629** **(CS#1)** Amend Definition of Special Purpose Project.
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 **223** Electric Membership Corps/Member Control.
Draft Number: H223-PCS10428-TP-49
Sequential Referral: None
Recommended Referral: None
Long Title Amended: Yes

HB **390** State Information Technology Governance Changes.-AB
Draft Number: H390-PCS10427-SU-36
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 **662** **(CS#1)** Irrigation Kors/Install Backflow Assemblies.
Draft Number: H662-PCS10426-SU-35
Sequential Referral: None
Recommended Referral: None
Long Title Amended: Yes

TOTAL REPORTED: 4

Senator E.S. Newton will handle HB 629
Senator Ralph Hise will handle HB 223
Senator Andrew Brock will handle HB 390
Senator Wesley Meredith will handle HB 662

HOUSE BILL 223*

Short Title:	Electric Membership Corps/Member Control.	(Public)
Sponsors:	Representatives Presnell, Moffitt, Hager, and Arp (Primary Sponsors). *For a complete list of Sponsors, refer to the North Carolina General Assembly Web Site.*	
Referred to:	Public Utilities and Energy, if favorable, Regulatory Reform.	

March 6, 2013

A BILL TO BE ENTITLED

AN ACT EXEMPTING ELECTRIC MEMBERSHIP CORPORATIONS FROM INTEGRATED RESOURCE PLANNING AND SERVICE REGULATIONS REQUIREMENTS ESTABLISHED BY THE UTILITIES COMMISSION AND RETURNING OVERSIGHT OF THE CORPORATIONS TO THEIR MEMBER BOARD OF DIRECTORS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 62-42 reads as rewritten:

"**§ 62-42. Compelling efficient service, extensions of services and facilities, additions and improvements.**

...

~~(c) For the purpose of this section, "public utility" shall include any electric membership corporation operating within this State.~~"

SECTION 2. G.S. 62-110.1 reads as rewritten:

"**§ 62-110.1. Certificate for construction of generating facility; analysis of long-range needs for expansion of facilities; ongoing review of construction costs; inclusion of approved construction costs in rates.**

...

(b) For the purpose of subsections ~~(a), (c),~~ (a) and (d) of this section, "public utility" shall include any electric membership corporation operating within this State, and the term "public utility service" shall include the service rendered by any such electric membership corporation.

...."

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

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

H D

HOUSE BILL 223*
PROPOSED SENATE COMMITTEE SUBSTITUTE H223-CSTP-49 [v.2]

6/4/2013 3:25:17 PM

Short Title: Electric Membership Corps/Member Control. (Public)

Sponsors:

Referred to:

March 6, 2013

A BILL TO BE ENTITLED

AN ACT EXEMPTING ELECTRIC MEMBERSHIP CORPORATIONS FROM INTEGRATED RESOURCE PLANNING AND SERVICE REGULATIONS REQUIREMENTS ESTABLISHED BY THE UTILITIES COMMISSION, RETURNING OVERSIGHT OF THE CORPORATIONS TO THEIR MEMBER BOARD OF DIRECTORS, AND CLARIFYING THE AUTHORITY OF THE NORTH CAROLINA RURAL ELECTRIFICATION AUTHORITY TO RECEIVE AND INVESTIGATE COMPLAINTS FROM MEMBERS OF ELECTRIC MEMBERSHIP CORPORATIONS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 62-42 reads as rewritten:

"**§ 62-42. Compelling efficient service, extensions of services and facilities, additions and improvements.**

...

~~(e) For the purpose of this section, "public utility" shall include any electric membership corporation operating within this State.~~"

SECTION 2. G.S. 62-110.1 reads as rewritten:

"**§ 62-110.1. Certificate for construction of generating facility; analysis of long-range needs for expansion of facilities; ongoing review of construction costs; inclusion of approved construction costs in rates.**

...

(b) For the purpose of subsections ~~(a), (c),~~ (a) and (d) of this section, "public utility" shall include any electric membership corporation operating within this State, and the term "public utility service" shall include the service rendered by any such electric membership corporation.

...."

SECTION 3. G.S. 117-2 reads as rewritten:

"**§ 117-2. Powers.**

The purpose of said North Carolina Rural Electrification Authority is to secure electrical service for the rural districts of the State where service is not now being rendered, and it is hereby empowered to do the following in order to accomplish that purpose:

...

(11a) To receive and investigate complaints from members of electric membership corporations.

(12) To do all other acts and things which may be necessary to aid the rural communities in North Carolina to secure electric energy."

SECTION 4. This act becomes effective July 1, 2013.

HOUSE BILL 223:
Electric Membership Corps/Member Control

2013-2014 General Assembly

Committee:	Senate Commerce	**Date:**	June 6, 2013
Introduced by:	Reps. Presnell, Moffitt, Hager, Arp	**Prepared by:**	Peter Ledford Committee Counsel
Analysis of:	PCS to First Edition H223-CSTP-49		

SUMMARY: ***House Bill 223 would repeal the authority of the North Carolina Utilities Commission to compel electric membership corporations to make repairs or upgrades to ensure efficient electric service and would repeal the requirement that electric membership corporations file long-range integrated resource plans with the Commission.***

The PCS adds Section 3, which gives the Rural Electrification Authority the power to receive and investigate complaints from members of electric membership corporations.

[As introduced, this bill was identical to S199, as introduced by Sens. Meredith, Brown, McLaurin, which is currently in Rules and Operations of the Senate.]

CURRENT LAW: Unlike investor owned utilities (IOUs), electric membership corporations (EMCs) are not generally regulated by the North Carolina Utilities Commission (Commission). EMCs are regulated by their board of directors, which are elected by the members of the EMC. G.S. 62-42 gives the Commission the authority to compel IOUs and EMCs to make various repairs or upgrades to equipment to ensure efficient electric service. G.S. 62-110.1 requires IOUs and EMCs to file long-range integrated resource plans, which set out estimates of future growth in demand and how generation needs will be met.

Article 1 of Chapter 117 of the General Statutes creates the Rural Electrification Authority (REA), and gives the REA some oversight over EMCs. Pursuant to the authority granted to the REA in G.S. 117-2(12), the REA adopted 04 NCAC 08 .0210, which establishes that EMC members may file complaints with the REA and the REA will investigate the complaint.

BILL ANALYSIS: **Sections 1 and 2** of the PCS would repeal the authority of the Commission to regulate the service quality of EMCs under G.S. 62-42 and would repeal the requirement that EMCs file integrated resource plans under G.S. 62-110.1.

Section 3 of the PCS would add a provision to G.S. 117-2 establishing that the REA has the power to receive and investigate complaints from members of EMCs.

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

O. Walker Reagan
Director

Research Division
(919) 733-2578

HOUSE BILL 390

Short Title:	State IT Governance Changes.-AB	(Public)
Sponsors:	Representative Saine (Primary Sponsor). *For a complete list of Sponsors, refer to the North Carolina General Assembly Web Site.*	
Referred to:	Government.	

March 21, 2013

A BILL TO BE ENTITLED

AN ACT MAKING VARIOUS CHANGES TO THE LAWS RELATING TO STATE INFORMATION TECHNOLOGY GOVERNANCE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 143-135.9(a)(3) is repealed.

SECTION 2. G.S. 147-33.72C(e) reads as rewritten:

"(e) Performance Contracting. – All contracts between a State agency and a private party for information technology projects shall include provisions for vendor performance review and accountability. The State CIO may require that these contract provisions require a performance bond, include monetary ~~penalties~~ penalties, or require other performance assurance measures for projects that are not completed or performed within the specified time period or that involve costs in excess of those specified in the contract. The State CIO may ~~require contract provisions requiring a vendor to provide a performance bond.~~utilize cost savings realized on government-vendor partnerships, as defined in G.S. 143-135.9, as performance incentives for an information technology project vendor."

SECTION 3. G.S. 147-33.91(a) reads as rewritten:

"(a) With respect to State agencies, the State Chief Information Officer shall exercise general coordinating authority for all telecommunications matters relating to the internal management and operations of those agencies. In discharging that responsibility, the State Chief Information Officer, in cooperation with affected State agency heads, may:

(1) Provide for the establishment, management, and operation, through either State ownership, contract, or commercial leasing, of the following systems and services as they affect the internal management and operation of State agencies:

a. Central telephone systems and telephone networks.
b. Repealed by Session Laws 2004-129, s. 23, effective July 1, 2004.
c. Repealed by Session Laws 2004-129, s. 23, effective July 1, 2004.
d. Satellite services.
e. Closed-circuit TV systems.
f. Two-way radio systems.
g. Microwave systems.
h. Related systems based on telecommunication technologies.
i. The "State Network", managed by the Office, which means any connectivity designed for the purpose of providing Internet Protocol transport of information to any building.

(2) Coordinate the development of cost-sharing systems for respective user agencies for their proportionate parts of the cost of maintenance and operation of the systems and services listed in subdivision (1) of this subsection.

(3) Assist in the development of coordinated telecommunications services or systems within and among all State agencies and recommend, where appropriate, cooperative utilization of telecommunication facilities by aggregating users.

(4) Perform traffic analysis and engineering for all telecommunications services and systems listed in subdivision (1) of this subsection.

(5) ~~Pursuant to G.S. 143-49, establish~~ Establish telecommunications specifications and designs so as to promote and support compatibility of the systems within State agencies.

(6) ~~Pursuant to G.S. 143-49 and G.S. 143-50, coordinate~~ Coordinate the review of requests by State agencies for the procurement of telecommunications systems or services.

(7) ~~Pursuant to G.S. 143-341 and Chapter 146 of the General Statutes, coordinate~~ Coordinate the review of requests by State agencies for State government property acquisition, disposition, or construction for telecommunications systems requirements.

(8) Provide a periodic inventory of telecommunications costs, facilities, systems, and personnel within State agencies.

(9) Promote, coordinate, and assist in the design and engineering of emergency telecommunications systems, including, but not limited to, the 911 emergency telephone number program, Emergency Medical Services, and other emergency telecommunications services.

(10) Perform frequency coordination and management for State agencies and local governments, including all public safety radio service frequencies, in accordance with the rules and regulations of the Federal Communications Commission or any successor federal agency.

(11) Advise all State agencies on telecommunications management planning and related matters and provide through the State Personnel Training Center or the Office of Information Technology Services training to users within State agencies in telecommunications technology and systems.

(12) Assist and coordinate the development of policies and long-range plans, consistent with the protection of citizens' rights to privacy and access to information, for the acquisition and use of telecommunications systems, and base such policies and plans on current information about State telecommunications activities in relation to the full range of emerging technologies.

~~(13) Work cooperatively with the North Carolina Agency for Public Telecommunications in furthering the purpose of this section.~~"

SECTION 4. G.S. 147-33.92(b) reads as rewritten:

"(b) The State Chief Information Officer shall establish ~~switched~~ broadband telecommunications services and permit, in addition to State agencies, cities, counties, and other local government entities, the following organizations and entities to share on a not-for-profit basis:

(1) Nonprofit educational institutions.

~~(2) MCNC.~~

(3) ~~Research~~ MCNC and research affiliates of MCNC for use only in connection with research activities sponsored or funded, in whole or in part, by MCNC,

if such research activities relate to health care or education in North Carolina.

(4) Agencies of the United States government operating in North Carolina for use only in connection with activities that relate to health care or education in North Carolina.

(5) Hospitals, clinics, and other health care facilities for use only in connection with activities that relate to health care or education in North Carolina.

Provided, however, that sharing of the ~~switched~~ broadband telecommunications services by State agencies with entities or organizations in the categories set forth in this subsection shall not cause the State, the Office of Information Technology Services, or the MCNC to be classified as a public utility as that term is defined in G.S. 62-3(23) a.6. Nor shall the State, the Office of Information Technology Services, or the MCNC engage in any activities that may cause those entities to be classified as a common carrier as that term is defined in the Communications Act of 1934, 47 U.S.C. § 153(10). Provided further, authority to share the ~~switched~~ broadband telecommunications services with the non-State agencies set forth in subdivisions (1) through (5) of this subsection shall terminate one year from the effective date of a tariff that makes the broadband services available to any customer."

SECTION 5. G.S. 147-33.111 reads as rewritten:

"**§ 147-33.111. State CIO approval of security standards and security assessments.**

(a) Notwithstanding G.S. 143-48.3 or any other provision of law, and except as otherwise provided by this section, all information technology security purchased using State funds, or for use by a State agency or in a State facility, shall be subject to approval by the State Chief Information Officer in accordance with security standards adopted under this Article.

(a1) The State Chief Information Officer shall conduct assessments of information system security, network vulnerability, including network penetration or any similar procedure. The State Chief Information Officer may contract with another party or parties to perform the assessments. Detailed reports of the security issues identified shall be kept confidential as provided in G.S. 132-6.1(c).

(b) If the legislative branch, the judicial branch, The University of North Carolina and its constituent institutions, local school administrative units as defined by G.S. 115C-5, or the North Carolina Community Colleges System develop their own security standards, taking into consideration the mission and functions of that entity, that are comparable to or exceed those set by the State Chief Information Officer under this section, then these entities may elect to be governed by their own respective security standards, and approval of the State Chief Information Officer shall not be required before the purchase of information technology security. The State Chief Information Officer shall consult with the legislative branch, the judicial branch, The University of North Carolina and its constituent institutions, local school administrative units, and the North Carolina Community Colleges System in reviewing the security standards adopted by those entities.

(c) Before a State agency may enter into any contract with another party for an assessment of information system security and network vulnerability, the State agency shall notify the State Chief Information Officer and obtain approval of the request. If the State agency enters into a contract with another party for assessment and testing, after approval of the State Chief Information Officer, the State agency shall issue public reports on the general results of the reviews. The contractor shall provide the State agency with detailed reports of the security issues identified that shall not be disclosed as provided in G.S. 132-6.1(c). The State agency shall provide the State Chief Information Officer with copies of the detailed reports that shall not be disclosed as provided in G.S. 132-6.1(c).

(d) Nothing in this section shall be construed to preclude the Office of the State Auditor from assessing the security practices of State information technology systems as part of that Office's duties and responsibilities."

SECTION 6. G.S. 147-33.112 reads as rewritten:

"**§ 147-33.112. Assessment of agency compliance with security standards.**

The State Chief Information Officer shall assess periodically the ability of each agency, and each agency's contracted vendors, to comply with the current security enterprise-wide set of standards established pursuant to this section. The assessment shall include, at a minimum, the rate of compliance with the enterprise-wide security standards ~~in each agency~~ and an assessment of ~~each agency's~~ security organization, security practices, security industry standards, network security architecture, and current expenditures of State funds for information technology security. The assessment of an agency shall also estimate the cost to implement the security measures needed for agencies to fully comply with the standards. Each agency subject to the standards shall submit information required by the State Chief Information Officer for purposes of this assessment. The State Chief Information Officer shall include the information obtained from the assessment in the State Information Technology Plan required under G.S. 147-33.72B."

SECTION 7. G.S. 150B-2(8a) reads as rewritten:

"**§ 150B-2. Definitions.**

As used in this Chapter,

...

(8a) "Rule" means any agency regulation, standard, or statement of general applicability that implements or interprets an enactment of the General Assembly or Congress or a regulation adopted by a federal agency or that describes the procedure or practice requirements of an agency. The term includes the establishment of a fee and the amendment or repeal of a prior rule. The term does not include the following:

a. Statements concerning only the internal management of an agency or group of agencies within the same principal office or department enumerated in G.S. 143A-11 or 143B-6, including policies and procedures manuals, if the statement does not directly or substantially affect the procedural or substantive rights or duties of a person not employed by the agency or group of agencies.

b. Budgets and budget policies and procedures issued by the Director of the Budget, by the head of a department, as defined by G.S. 143A-2 or G.S. 143B-3, by an occupational licensing board, as defined by G.S. 93B-1, or by the State Board of Elections.

c. Nonbinding interpretative statements within the delegated authority of an agency that merely define, interpret, or explain the meaning of a statute or rule.

d. A form, the contents or substantive requirements of which are prescribed by rule or statute.

e. Statements of agency policy made in the context of another proceeding, including:

1. Declaratory rulings under G.S. 150B-4.

2. Orders establishing or fixing rates or tariffs.

f. Requirements, communicated to the public by the use of signs or symbols, concerning the use of public roads, bridges, ferries, buildings, or facilities.

g. Statements that set forth criteria or guidelines to be used by the staff of an agency in performing audits, investigations, or inspections; in settling financial disputes or negotiating financial arrangements; or in the defense, prosecution, or settlement of cases.

h. Scientific, architectural, or engineering standards, forms, or procedures, including design criteria and construction standards used to construct or maintain highways, bridges, or ferries.

i. Job classification standards, job qualifications, and salaries established for positions under the jurisdiction of the State Personnel Commission.

j. Establishment of the interest rate that applies to tax assessments under G.S. 105-241.21 and the variable component of the excise tax on motor fuel under G.S. 105-449.80.

k. The State Medical Facilities Plan, if the Plan has been prepared with public notice and hearing as provided in G.S. 131E-176(25), reviewed by the Commission for compliance with G.S. 131E-176(25), and approved by the Governor.

l. Standards adopted by the Office of Information Technology Services applied to information technology as defined by G.S. 147-33.81."

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

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

H D

HOUSE BILL 390
PROPOSED SENATE COMMITTEE SUBSTITUTE H390-CSSU-36 [v.1]

6/5/2013 3:57:15 PM

Short Title: State IT Governance Changes.-AB (Public)

Sponsors:

Referred to:

March 21, 2013

A BILL TO BE ENTITLED

AN ACT MAKING VARIOUS CHANGES TO THE LAWS RELATING TO STATE INFORMATION TECHNOLOGY GOVERNANCE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 143-135.9(a)(3) is repealed.

SECTION 2. G.S. 147-33.72C(e) reads as rewritten:

"(e) Performance Contracting. – All contracts between a State agency and a private party for information technology projects shall include provisions for vendor performance review and accountability. The State CIO may require that these contract provisions require a performance bond, include monetary ~~penalties~~ penalties, or require other performance assurance measures for projects that are not completed or performed within the specified time period or that involve costs in excess of those specified in the contract. The State CIO may ~~require contract provisions requiring a vendor to provide a performance bond.~~utilize cost savings realized on government-vendor partnerships, as defined in G.S. 143-135.9, as performance incentives for an information technology project vendor."

SECTION 3. G.S. 147-33.91(a) reads as rewritten:

"(a) With respect to State agencies, the State Chief Information Officer shall exercise general coordinating authority for all telecommunications matters relating to the internal management and operations of those agencies. In discharging that responsibility, the State Chief Information Officer, in cooperation with affected State agency heads, may:

(1) Provide for the establishment, management, and operation, through either State ownership, contract, or commercial leasing, of the following systems and services as they affect the internal management and operation of State agencies:

a. Central telephone systems and telephone networks.
b. Repealed by Session Laws 2004-129, s. 23, effective July 1, 2004.
c. Repealed by Session Laws 2004-129, s. 23, effective July 1, 2004.
d. Satellite services.
e. Closed-circuit TV systems.
f. Two-way radio systems.
g. Microwave systems.
h. Related systems based on telecommunication technologies.
i. The "State Network", managed by the Office, which means any connectivity designed for the purpose of providing Internet Protocol transport of information to any building.

(2) Coordinate the development of cost-sharing systems for respective user agencies for their proportionate parts of the cost of maintenance and operation of the systems and services listed in subdivision (1) of this subsection.

(3) Assist in the development of coordinated telecommunications services or systems within and among all State agencies and recommend, where appropriate, cooperative utilization of telecommunication facilities by aggregating users.

(4) Perform traffic analysis and engineering for all telecommunications services and systems listed in subdivision (1) of this subsection.

(5) ~~Pursuant to G.S. 143-49, establish~~ Establish telecommunications specifications and designs so as to promote and support compatibility of the systems within State agencies.

(6) ~~Pursuant to G.S. 143-49 and G.S. 143-50, coordinate~~ Coordinate the review of requests by State agencies for the procurement of telecommunications systems or services.

(7) ~~Pursuant to G.S. 143-341 and Chapter 146 of the General Statutes, coordinate~~ Coordinate the review of requests by State agencies for State government property acquisition, disposition, or construction for telecommunications systems requirements.

(8) Provide a periodic inventory of telecommunications costs, facilities, systems, and personnel within State agencies.

(9) Promote, coordinate, and assist in the design and engineering of emergency telecommunications systems, including, but not limited to, the 911 emergency telephone number program, Emergency Medical Services, and other emergency telecommunications services.

(10) Perform frequency coordination and management for State agencies and local governments, including all public safety radio service frequencies, in accordance with the rules and regulations of the Federal Communications Commission or any successor federal agency.

(11) Advise all State agencies on telecommunications management planning and related matters and provide through the State Personnel Training Center or the Office of Information Technology Services training to users within State agencies in telecommunications technology and systems.

(12) Assist and coordinate the development of policies and long-range plans, consistent with the protection of citizens' rights to privacy and access to information, for the acquisition and use of telecommunications systems, and base such policies and plans on current information about State telecommunications activities in relation to the full range of emerging technologies.

~~(13) Work cooperatively with the North Carolina Agency for Public Telecommunications in furthering the purpose of this section.~~"

SECTION 4. G.S. 147-33.92(b) reads as rewritten:

"(b) The State Chief Information Officer shall establish ~~switched~~ broadband telecommunications services and permit, in addition to State agencies, cities, counties, and other local government entities, the following organizations and entities to share on a not-for-profit basis:

(1) Nonprofit educational institutions.

~~(2) MCNC.~~

(3) ~~Research~~ MCNC and research affiliates of MCNC for use only in connection with research activities sponsored or funded, in whole or in part, by MCNC,

if such research activities relate to health care or education in North Carolina.

(4) Agencies of the United States government operating in North Carolina for use only in connection with activities that relate to health care or education in North Carolina.

(5) Hospitals, clinics, and other health care facilities for use only in connection with activities that relate to health care or education in North Carolina.

Provided, however, that sharing of the ~~switched~~ broadband telecommunications services by State agencies with entities or organizations in the categories set forth in this subsection shall not cause the State, the Office of Information Technology Services, or the MCNC to be classified as a public utility as that term is defined in G.S. 62-3(23) a.6. Nor shall the State, the Office of Information Technology Services, or the MCNC engage in any activities that may cause those entities to be classified as a common carrier as that term is defined in the Communications Act of 1934, 47 U.S.C. § 153(10). Provided further, authority to share the ~~switched~~ broadband telecommunications services with the non-State agencies set forth in subdivisions (1) through (5) of this subsection shall terminate one year from the effective date of a tariff that makes the broadband services available to any customer."

SECTION 5. G.S. 147-33.111 reads as rewritten:

"**§ 147-33.111. State CIO approval of security standards and security assessments.**

(a) Notwithstanding G.S. 143-48.3 or any other provision of law, and except as otherwise provided by this section, all information technology security purchased using State funds, or for use by a State agency or in a State facility, shall be subject to approval by the State Chief Information Officer in accordance with security standards adopted under this Article.

(a1) The State Chief Information Officer shall conduct assessments of information system security, network vulnerability, including network penetration or any similar procedure. The State Chief Information Officer may contract with another party or parties to perform the assessments. Detailed reports of the security issues identified shall be kept confidential as provided in G.S. 132-6.1(c).

(b) If the legislative branch, the judicial branch, The University of North Carolina and its constituent institutions, local school administrative units as defined by G.S. 115C-5, or the North Carolina Community Colleges System develop their own security standards, taking into consideration the mission and functions of that entity, that are comparable to or exceed those set by the State Chief Information Officer under this section, then these entities may elect to be governed by their own respective security standards, and approval of the State Chief Information Officer shall not be required before the purchase of information technology security. The State Chief Information Officer shall consult with the legislative branch, the judicial branch, The University of North Carolina and its constituent institutions, local school administrative units, and the North Carolina Community Colleges System in reviewing the security standards adopted by those entities.

(c) Before a State agency may enter into any contract with another party for an assessment of information system security or network vulnerability, the State agency shall notify the State Chief Information Officer and obtain approval of the request. If the State agency enters into a contract with another party for assessment and testing, after approval of the State Chief Information Officer, the State agency shall issue public reports on the general results of the reviews. The contractor shall provide the State agency with detailed reports of the security issues identified that shall not be disclosed as provided in G.S. 132-6.1(c). The State agency shall provide the State Chief Information Officer with copies of the detailed reports that shall not be disclosed as provided in G.S. 132-6.1(c).

(d) Nothing in this section shall be construed to preclude the Office of the State Auditor from assessing the security practices of State information technology systems as part of that Office's duties and responsibilities."

SECTION 6. G.S. 147-33.112 reads as rewritten:

"**§ 147-33.112. Assessment of agency compliance with security standards.**

The State Chief Information Officer shall assess periodically the ability of each agency, and each agency's contracted vendors, to comply with the current security enterprise-wide set of standards established pursuant to this section. The assessment shall include, at a minimum, the rate of compliance with the enterprise-wide security standards ~~in each agency~~ and an assessment of ~~each agency's~~ security organization, security practices, security industry standards, network security architecture, and current expenditures of State funds for information technology security. The assessment of an agency shall also estimate the cost to implement the security measures needed for agencies to fully comply with the standards. Each agency subject to the standards shall submit information required by the State Chief Information Officer for purposes of this assessment. The State Chief Information Officer shall include the information obtained from the assessment in the State Information Technology Plan required under G.S. 147-33.72B."

SECTION 7. G.S. 150B-2(8a) reads as rewritten:

"**§ 150B-2. Definitions.**

As used in this Chapter,

...

(8a) "Rule" means any agency regulation, standard, or statement of general applicability that implements or interprets an enactment of the General Assembly or Congress or a regulation adopted by a federal agency or that describes the procedure or practice requirements of an agency. The term includes the establishment of a fee and the amendment or repeal of a prior rule. The term does not include the following:

a. Statements concerning only the internal management of an agency or group of agencies within the same principal office or department enumerated in G.S. 143A-11 or 143B-6, including policies and procedures manuals, if the statement does not directly or substantially affect the procedural or substantive rights or duties of a person not employed by the agency or group of agencies.

b. Budgets and budget policies and procedures issued by the Director of the Budget, by the head of a department, as defined by G.S. 143A-2 or G.S. 143B-3, by an occupational licensing board, as defined by G.S. 93B-1, or by the State Board of Elections.

c. Nonbinding interpretative statements within the delegated authority of an agency that merely define, interpret, or explain the meaning of a statute or rule.

d. A form, the contents or substantive requirements of which are prescribed by rule or statute.

e. Statements of agency policy made in the context of another proceeding, including:

1. Declaratory rulings under G.S. 150B-4.

2. Orders establishing or fixing rates or tariffs.

f. Requirements, communicated to the public by the use of signs or symbols, concerning the use of public roads, bridges, ferries, buildings, or facilities.

g. Statements that set forth criteria or guidelines to be used by the staff of an agency in performing audits, investigations, or inspections; in settling financial disputes or negotiating financial arrangements; or in the defense, prosecution, or settlement of cases.

h. Scientific, architectural, or engineering standards, forms, or procedures, including design criteria and construction standards used to construct or maintain highways, bridges, or ferries.

i. Job classification standards, job qualifications, and salaries established for positions under the jurisdiction of the State Personnel Commission.

j. Establishment of the interest rate that applies to tax assessments under G.S. 105-241.21 and the variable component of the excise tax on motor fuel under G.S. 105-449.80.

k. The State Medical Facilities Plan, if the Plan has been prepared with public notice and hearing as provided in G.S. 131E-176(25), reviewed by the Commission for compliance with G.S. 131E-176(25), and approved by the Governor.

l. Standards adopted by the Office of Information Technology Services applied to information technology as defined by G.S. 147-33.81."

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

HOUSE BILL 390:
State IT Governance Changes.-AB

2013-2014 General Assembly

Committee:	Senate Commerce	**Date:**	June 6, 2013
Introduced by:	Rep. Saine	**Prepared by:**	Wendy Graf Ray
Analysis of:	PCS to First Edition H390-CSSU-36		Committee Counsel

SUMMARY: The PCS for House Bill 390 would make technical and clarifying changes to statutes related to State information technology services and increase accountability oversight. The bill would also exempt standards adopted by the Office of Information Technology Services from the definition of a "rule" under the Administrative Procedure Act.

CURRENT LAW: Article 3D of Chapter 147 governs State information technology services, which is overseen by the Chief Information Officer (CIO). The CIO exercises general coordinating authority for all telecommunications matters relating to the internal management and operations of State agencies. G.S. 147-33.91(a). The CIO, among other things, oversees broadband telecommunications services, assesses compliance with security standards, supervises State contracts with outside vendors, and conducts outside vendor performance reviews.

Information technology is defined in G.S. 147-33.81 as "electronic data processing goods and services, telecommunications goods and services, security goods and services, microprocessors, software, information processing, office systems, any services related to the foregoing, and consulting or other services for design or redesign of information technology supporting business processes."

BILL ANALYSIS: Section 1 of the PCS repeals the definition of "information technology" from Article 8 (public contracts), Chapter 143 (State Departments).

Section 2 allows the CIO to require "other performance assurance measures" in contracts between a State agency and a private party vendor in addition to those already permitted in G.S. 147-33.72C(e). This section also allows the CIO to utilize cost savings realized on government-vendor partnerships for vendor performance incentives.

Section 3 makes technical changes and removes a reference to the North Carolina Agency for Public Telecommunications, which ceased operations on April 9, 2012.

Sections 4 and 5 make technical and clarifying changes.

Section 6 provides that the CIO shall "periodically" assess the ability of each agency's contracted vendors, not just the agencies themselves, to comply with the current security enterprise-wide set of standards. This assessment is expanded under Section 6 to include "security practices" and "security industry standards."

Section 7 exempts standards adopted by the Office of Information Technology Services from the definition of a "rule" under the Administrative Procedure Act.

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

Shelly DeAdder, counsel to House Government, substantially contributed to this summary.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

H 2

HOUSE BILL 629
Committee Substitute Favorable 5/1/13

Short Title: Amend Definition of Special Purpose Project. (Public)

Sponsors:

Referred to:

April 10, 2013

A BILL TO BE ENTITLED

AN ACT TO AMEND THE DEFINITION OF A SPECIAL PURPOSE PROJECT TO INCLUDE AGRICULTURAL AND FORESTRY WASTE DISPOSAL FACILITIES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 159C-3(15a) of the General Statutes reads as rewritten:

"**§ 159C-3. Definitions.**

The following definitions apply in this Chapter:

...

(15a) Special purpose project. – Any structure, equipment, or other facility for any one or more of the following purposes:

...

g. Land, equipment, and facilities for the disposal, treatment, or recycling of (i) solid or other waste that are described in ~~G.S. 159I-8.~~G.S. 159I-8 or (ii) solid, forestry, agricultural, or other waste, including any residual material which is the by-product or excess raw material remaining after the completion of any commercial, consumer, governmental, agricultural, or industrial production process. Facilities for the handling and transport of products resulting from treatment and recycling are included within this purpose.

...."

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

HOUSE BILL 629:
Amend Definition of Special Purpose Project

2013-2014 General Assembly

Committee:	Senate Commerce	**Date:**	June 6, 2013
Introduced by:	Reps. Martin, S., R. Brawley, Lewis	**Prepared by:**	Trina Griffin Committee Counsel
Analysis of:	Second Edition		

SUMMARY: ***House Bill 629 would amend the definition of a special purpose project to include agricultural and forestry waste disposal facilities.***

CURRENT LAW: A "special purpose project" is defined as any structure, equipment, or other facility for any one or more of the following purposes: water systems or facilities; sewage disposal systems; public transportation systems; public parking lots; public auditoriums; recreational facilities, including museums; rehabilitation facilities; orphanages; or land, equipment, and facilities for the disposal, treatment, or recycling of certain solid waste, etc.

The Local Government Commission may approve the issuance of bonds for special purpose projects under the Industrial and Pollution Control Facilities Financing Act. The governing body of the county in which the special purpose project is located must notice and conduct a public hearing and approve in principle the issuance of bonds beforehand.

The Industrial and Pollution Control Facilities Financing Act authorizes the issuance of tax-exempt industrial development and pollution control bonds. Under this Act, a local political subdivision issues bonds, the proceeds of which are used to finance the acquisition and construction of industrial, pollution control, or other capital facilities to be used by a private company. The bonds are secured by and are sold exclusively on the basis of the company's obligation to make payments under a financing agreement entered into between the company and the political subdivision. Because the interest on the bonds is exempt from North Carolina and federal income taxes, the interest payments (made indirectly by the private company) are considerably lower than would be required in an ordinary taxable financing. The type and size of facilities that may be financed by industrial development and pollution control bonds are limited by both federal and state law.

BILL ANALYSIS: House Bill 629 would amend the definition of "special purpose project" to include land, equipment, and facilities for the disposal, treatment or recycling of solid waste, forestry waste, agricultural waste, or other waste including any residual material which is the byproduct or excess raw material remaining after the completion of any commercial, consumer, governmental, agricultural, or industrial production process. Included within this purpose are facilities for the handling and transport of products resulting from treatment and recycling.

BACKGROUND: Currently there are two waste wood facilities planned for North Carolina that will export wood pellets to a major English power plant. The first plant will be located in Wilson County with construction to begin this summer. The second plant is slated to be built near Gulf in Chatham County.

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

Mariah Matheson, Research Assistant to the House Commerce and Job Development Subcommittee on Military and Agriculture, and Heather Fennell, counsel to House Finance, substantially contributed to this summary.

O. Walker Reagan
Director

H629-SMSV-63 E2 -V1

Research Division
(919) 733-2578

HOUSE BILL 662
Committee Substitute Favorable 4/25/13

Short Title: Irrigation K'ors/Install Backflow Assemblies. (Public)

Sponsors:

Referred to:

April 10, 2013

A BILL TO BE ENTITLED

AN ACT ALLOWING LICENSED IRRIGATION CONTRACTORS TO INSTALL AND SERVICE BACKFLOW PREVENTION ASSEMBLIES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 89G-1(4) reads as rewritten:

"**§ 89G-1. Definitions.**

The following definitions apply in this Chapter:

...

(4) Irrigation system. – All piping, fittings, sprinklers, drip tubing, valves, control wiring of 30 volts or less, and associated components installed for the delivery and application of water for the purpose of irrigation that are downstream of a well, pond or other surface water, potable water or groundwater source, or grey water source and downstream of a ~~backflow prevention assembly.~~water meter. Surface water, potable water or groundwater sources, water taps, utility piping, water service lines, water meters, ~~backflow prevention assemblies,~~ stormwater systems that service only the interior of a structure, and sanitary drainage systems are not part of an irrigation system.

...."

SECTION 2. G.S. 89G-9(b) reads as rewritten:

"(b) As a condition of license renewal, a licensee shall meet continuing education requirements set by the Board. Each licensee shall complete 10 continuing education units per ~~year.~~ year, at least one of which shall be in the installation and service of backflow prevention assemblies. Failure to obtain continuing education units 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."

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

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

H D

HOUSE BILL 662
Committee Substitute Favorable 4/25/13
PROPOSED SENATE COMMITTEE SUBSTITUTE H662-CSSU-35 [v.3]
6/5/2013 5:29:02 PM

Short Title: Limited License/Install Backflow Assemblies. (Public)

Sponsors:

Referred to:

April 10, 2013

A BILL TO BE ENTITLED

AN ACT PROVIDING FOR ISSUANCE OF A LIMITED PLUMBING CONTRACTOR LICENSE TO INSTALL AND SERVICE BACKFLOW PREVENTION ASSEMBLIES, AND TO ALLOW COURTS TO AWARD THE BOARD OF EXAMINERS OF PLUMBING, HEATING, AND FIRE SPRINKLER CONTRACTORS REASONABLE COSTS OF INVESTIGATION AND PROSECUTION OF VIOLATIONS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 87-21(b)(2) reads as rewritten:

"(b) Classes of Licenses; Eligibility and Examination of Applicant; Necessity for License. –

...

(2) Restricted licenses or classifications. –

a. The Board shall establish and issue a fuel piping license for use by persons who do not possess the required Class I or Class II plumbing or heating license, but desire to engage in the contracting or installing of fuel piping extending from an approved fuel source at or near the premises, which piping is used or may be used to supply fuel to any systems, equipment, or appliances located inside the premises.

b. The Board shall establish and issue a limited plumbing contractor license for use by persons who do not possess the required Class I or Class II plumbing license, but desire to engage in the contracting or installation, repair, or replacement of any of the following:

1. Exterior potable water service lines or backflow preventers serving irrigation systems or domestic water service systems of two inch diameter or smaller.
2. Exterior building sewer or water service piping of two inch diameter or smaller.
3. Water purification systems or components thereof.
4. Components, pumps, or pumping equipment associated with water well systems.

c. The Board may also establish additional restricted classifications to provide for: (i) the licensing of any person, partnership, firm, or corporation desiring to engage in a specific phase of heating, plumbing, or fire sprinkling contracting; (ii) the licensing of any person, partnership, firm, or corporation desiring to engage in a

specific phase of heating, plumbing, or fire sprinkling contracting that is an incidental part of their primary business, which is a lawful business other than heating, plumbing, or fire sprinkling contracting; or (iii) the licensing of persons desiring to engage in contracting and installing fuel piping from an approved fuel source on the premises to a point inside the residence.

..."

SECTION 2. G.S. 87-25.1 reads as rewritten:

"**§ 87-25.1. Board may seek injunctive relief.**

Whenever it appears to the Board that any person, firm or corporation is violating any of the provisions of this Article or of the rules and regulations of the Board promulgated under this Article, the Board may apply to the superior court for a restraining order and injunction to restrain the violation; and the superior courts have jurisdiction to grant the requested relief, irrespective of whether or not criminal prosecution has been instituted or administrative sanctions imposed by reason of the violation. ~~The venue for actions brought under this subsection shall be the superior court of any county in which such acts are alleged to have been committed or in the county where the defendants in such action reside.~~The court may award the Board its reasonable costs associated with the investigation and prosecution of the violation."

SECTION 3. This act is effective when it becomes law. Section 2 of the act is applicable to actions brought on or after that date.

HOUSE BILL 662:
Limited License/Install Backflow Assemblies

2013-2014 General Assembly

Committee:	Senate Commerce	**Date:**	June 6, 2013
Introduced by:	Reps. Samuelson, Saine, Hager, R. Brawley	**Prepared by:**	Wendy Graf Ray Committee Counsel
Analysis of:	PCS to Second Edition H662-CSSU-35		

SUMMARY: ***The PCS for House Bill 662 would authorize the Board of Examiners of Plumbing, Heating, and Fire Sprinkler Contractors to issue a limited plumbing contractor license, which would allow individuals who are not licensed plumbers to install backflow prevention assemblies. It would also allow a court to award the Board reasonable costs of investigation and prosecution of violations of the article regulating plumbing and heating contractors, and would eliminate a provision specifying that actions brought by the Board be brought in the county where the violation occurred or where the defendant resides.***

CURRENT LAW: Under current law, only a plumbing contractor licensed under Article 2 of Chapter 87 is authorized to install or service backflow prevention assemblies.

BILL ANALYSIS: Section 1 of the PCS would authorize the Board of Examiners of Plumbing, Heating, and Fire Sprinkler Contractors to establish and issue a limited license that would allow a person who does not have a plumbing license to contract or install, repair, or replace any of the following:

- Exterior potable water service lines or backflow preventers of two inch diameter or smaller
- Exterior building sewer or water service piping of two inch diameter or smaller
- Water purification systems or components
- Water well system components

Section 2 of the PCS would allow a court to award the Board reasonable costs associated with investigating and prosecuting violations of the article regulating plumbing and heating contractors.

Section 2 would also delete language specifying that venue for an action brought by the Board is in the county where violations are alleged to have occurred or where the defendants reside.

EFFECTIVE DATE: The act would be effective when it becomes law, and section 2 would apply to actions brought on or after that date.

O. Walker Reagan
Director

H662-SMSU-61 CSSU-35 -V2

Research Division
(919) 733-2578

Visitor Name	Organization
JAY ROCH	NCAEC
DWANE POWELL	NEO
Erich Kolb	Carolinas Irrigation Assoc.
Clark O'Neill	NC Green Industry Council
Reed Fountain	Attorney
Henry Jones	Attorney
Kelly Thomas	Duke Energy
Dan Conrad	NCUC
Patrick Baffi	NCAEC
Rick Feathers	"
Brandon Reed	"
[illegible]	NAIRS
Julie Rubinson	NCSEA
Chris Agee	DOJ
Carr McLamb	DENR
Frances Liles	Rural Electrification Authority
[illegible]	EDA, Inc.
DAVID BARNES	Electricities
Carson Tobie	MVA
[illegible]	[illegible]
Jake Ford	NC Chamber
Heather Barrett	Ward & Smith
LISA MARTIN	NCHBA
STEVEN WEBB	
Betsy Bailey	PENC
[illegible]	NCSEA

Paul Billow	Womble Carlyle
Steve Mueller	Wood Fuels North Carolina
[illegible]	BCS
Chris Valaurs	May 17 Assoc of NC
Jimmy Roberson	TWC
Andy Chase	KMA
[illegible]	DSI
Vance Holbrook	DST
David Crawford	AIANC
BRUCE THOMPSON	PARKER POE
Alex Beger	CSS
Will Griffin	MWC
Chris McClure	Brooks Pierce
[illegible]	[illegible]
Paul Bone	Bell Assoc.
Steve Metcalf	Duke Energy
DYLAN WATTS	SMITH A.
Richard Stevens	Smith Anderson
Lisa Martin	State CIO Office
Penny Lindsey	ITS
[illegible]	School of Gov
[illegible]	RCA
Amanda Honaker	TSS
Leslie Yang	Ward & Smith
TOM BEAN	- EDF, NCSEA

Senate Committee on Commerce
Tuesday, June 11, 2013, 11:00 AM
1027/1128 Legislative Building

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

BILL NO.	SHORT TITLE	SPONSOR
HB 120	Blding Codes: Local Consistency/Exempt Cable.	Representative Hager Representative W. Brawley Representative Cotham Representative Arp
HB 201	Reinstate 2009 Energy Conservation Codes.	Representative Torbett
HB 700	Omnibus State IT Governance Changes.	Representative Saine Representative Avila Representative Cleveland

Senate Committee on Commerce
Tuesday, June 11, 2013 at 11:00 AM
Room 1027/1128 of the Legislative Building

MINUTES

The Senate Committee on Commerce met at 11:00 AM on June 11, 2013 in Room 1027/1128 of the Legislative Building. Twenty two members were present.

Senator Tamara Barringer, Vice Chair, presided.

Kathryn Anne Robinson from Raleigh, Austin Jeffreys from Goldsboro, Hayley Meier from Wilmington, Sara Paige Lilies from Laurinburg, Amanda Davis from Red Oak and MacKenzie Morgan from Charlotte served as pages.

Senator Barringer announced that HB 700 Omnibus State IT Governance Changes has been removed from this day's agenda.

H. B. 120 Building Codes: Local Consistency/Exempt Cable

Representative Hager was introduced to explain the bill. House Bill 120 would do all of the following:

- Prohibit cities and counties from requiring regular, routine inspections of one and two family residential buildings and structures, other than the inspections required under the North Carolina State Building Code, without the prior approval of the North Carolina Building Code Council.
- Require the North Carolina Building Code Council to:
    - Revise the Residential Code for One and Two Family Dwelling every six years
    - Publish in the North Carolina Register and post on the Council's web site:
        - All commentaries providing explanatory materials to that Code.
        - All interpretations made by staff in writing or email, and all appeal decisions.
- Exempt cable television companies from the application of the Building Code.

Peter Ledford an attorney from the Research Department assisted with responses and clarifications. Four people asked to speak. The first two were against the bill and the last two were for the bill. Their names are as follows and in the order that they spoke: Deanna M. Dennis/Manager, State Government Relations for the National Electrical Manufacturers Association, D'Lane Wisner from D'Lane Wisner & Associates, LLC, Dan Tingen/Chairman of the North Carolina Building Code Council and J. Michael Carpenter/Executive Vice President and General Counsel for the North Carolina Home Builders Association. Rose Vaughn Williams/Legislative Counsel for North Carolina Department of Insurance responded to questions from the members. Senator Tillman moved for a favorable report and it carried. Senator Apodaca will manage the bill on the floor.

H. B. 201 Reinstate 2009 Energy Conservation Codes

Senator Meredith moved to adopt the proposed committee substitute before the committee and it carried. House Bill 201 would reinstate the 2009 North Carolina Energy Conservation Codes for non-residential buildings. The PCS rewrites Section 1.(a) and Section 4, and renumbers the remaining sections. Senator Barringer announced that this bill will be for discussion only. Representative Torbett explained the bill and responded to questions.

The meeting adjourned at 11:34 AM.

Senator Tamara Barringer, Vice Chair
Presiding

Debbie Lown, Committee Clerk

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

COMMERCE COMMITTEE REPORT
Senator Gunn, Co-Chair
Senator Meredith, Co-Chair

Tuesday, June 11, 2013

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

FAVORABLE

HB **120** **(CS#1)** Blding Codes: Local Consistency/Exempt Cable.

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

TOTAL REPORTED: 1

Senator Tom Apodaca will handle HB 120

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

H 4

HOUSE BILL 120*
Committee Substitute Favorable 3/6/13
Third Edition Engrossed 3/11/13
Fourth Edition Engrossed 3/12/13

Short Title: Blding Codes: Local Consistency/Exempt Cable. (Public)

Sponsors:

Referred to:

February 20, 2013

A BILL TO BE ENTITLED

AN ACT TO REQUIRE APPROVAL FROM THE NORTH CAROLINA BUILDING CODE COUNCIL BEFORE A UNIT OF LOCAL GOVERNMENT MAY REQUIRE BUILDING INSPECTIONS IN ADDITION TO THOSE REQUIRED BY THE BUILDING CODE; TO SPECIFY THE FREQUENCY AND EFFECTIVE DATES OF CODE UPDATES; AND TO EXEMPT CABLE TELEVISION EQUIPMENT INSTALLATION FROM BUILDING CODE REQUIREMENTS.

The General Assembly of North Carolina enacts:

SECTION 1.(a) G.S.153A-352 reads as rewritten:

"**§ 153A-352. Duties and responsibilities.**

(a) The duties and responsibilities of an inspection department and of the inspectors in it are to enforce within the county's territorial jurisdiction State and local laws and local ordinances and regulations relating to:

(1) The construction of buildings;
(2) The installation of such facilities as plumbing systems, electrical systems, heating systems, refrigeration systems, and air-conditioning systems;
(3) The maintenance of buildings in a safe, sanitary, and healthful condition;
(4) Other matters that may be specified by the board of commissioners.

These duties and responsibilities include receiving applications for permits and issuing or denying permits, making necessary inspections, issuing or denying certificates of compliance, issuing orders to correct violations, bringing judicial actions against actual or threatened violations, keeping adequate records, and taking any other actions that may be required to adequately enforce the laws and ordinances and regulations. The board of commissioners may enact reasonable and appropriate provisions governing the enforcement of the laws and ordinances and regulations.

(b) Except as provided in G.S. 153A-364, a county may not adopt a local ordinance or resolution or any other policy that requires regular, routine inspections of buildings or structures constructed in compliance with the North Carolina Residential Code for One- and Two-Family Dwellings in addition to the specific inspections required by the North Carolina Building Code without first obtaining approval from the North Carolina Building Code Council. The North Carolina Building Code Council shall review all applications for additional inspections requested by a county and shall, in a reasonable manner, approve or disapprove the additional inspections. This subsection does not limit the authority of the county to require inspections upon unforeseen or unique circumstances that require immediate action."

SECTION 1.(b) G.S. 160A-412 reads as rewritten:

"**§ 160A-412. Duties and responsibilities.**

(a) The duties and responsibilities of an inspection department and of the inspectors therein shall be to enforce within their territorial jurisdiction State and local laws relating to

(1) The construction of buildings and other structures;

(2) The installation of such facilities as plumbing systems, electrical systems, heating systems, refrigeration systems, and air-conditioning systems;

(3) The maintenance of buildings and other structures in a safe, sanitary, and healthful condition;

(4) Other matters that may be specified by the city council.

These duties shall include the receipt of applications for permits and the issuance or denial of permits, the making of any necessary inspections, the issuance or denial of certificates of compliance, the issuance of orders to correct violations, the bringing of judicial actions against actual or threatened violations, the keeping of adequate records, and any other actions that may be required in order adequately to enforce those laws. The city council shall have the authority to enact reasonable and appropriate provisions governing the enforcement of those laws.

(b) Except as provided in G.S. 160A-424, a city may not adopt a local ordinance or resolution or any other policy that requires regular, routine inspections of buildings or structures constructed in compliance with the North Carolina Residential Code for One- and Two-Family Dwellings in addition to the specific inspections required by the North Carolina Building Code without first obtaining approval from the North Carolina Building Code Council. The North Carolina Building Code Council shall review all applications for additional inspections requested by a city and shall, in a reasonable manner, approve or disapprove the additional inspections. This subsection does not limit the authority of the city to require inspections upon unforeseen or unique circumstances that require immediate action."

SECTION 2. G.S. 143-138(d) reads as rewritten:

"(d) Amendments of the Code. – The Building Code Council may periodically revise and amend the North Carolina State Building Code, either on its own motion or upon application from any citizen, State agency, or political subdivision of the State. In addition to the periodic revisions or amendments made by the Council, the Council shall revise the North Carolina State Building Code: Residential Code for One- and Two-Family Dwellings, including provisions applicable to One- and Two-Family Dwellings from the NC Energy Code, NC Electrical Code, NC Fuel Gas Code, NC Plumbing Code, and NC Mechanical Code only every six years, to become effective the first day of January of the following year, with at least six months between adoption and effective date. The first six-year revision under this subsection shall be adopted to become effective January 1, 2019, and every six years thereafter. In adopting any amendment, the Council shall comply with the same procedural requirements and the same standards set forth above for adoption of the Code. The Council, through the Department of Insurance, shall publish in the North Carolina Register and shall post on the Council's Web site all appeal decisions made by the Council and all formal opinions at least semiannually. The Council, through the Department of Insurance, shall also publish at least semiannually in the North Carolina Register a statement providing the accurate Web site address and information on how to find additional commentary and interpretation of the Code."

SECTION 3. G.S. 143-138(b8) reads as rewritten:

"(b8) 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, a cable television

company, or an electric or telephone membership corporation, including without limitation poles, towers, and other structures supporting ~~electric~~ electric, cable television, or communication lines."

SECTION 3.5. The Department of Insurance shall post and maintain on its Web site written commentaries and written interpretations made and given by staff to the North Carolina Building Code Council and the Department for each section of the North Carolina Building Code.

SECTION 4. 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 5. This act becomes effective July 1, 2013.

HOUSE BILL 120:
Blding Codes: Local Consistency/Exempt Cable

2013-2014 General Assembly

Committee:	Senate Commerce	**Date:**	June 10, 2013
Introduced by:	Reps. Hager, W. Brawley, Cotham, Arp	**Prepared by:**	Peter Ledford Committee Counsel
Analysis of:	Fourth Edition		

SUMMARY: House Bill 120 would do all of the following:

- ***Prohibit cities and counties from requiring regular, routine inspections of one and two family residential buildings and structures, other than the inspections required under the North Carolina State Building Code, without the prior approval of the North Carolina Building Code Council.***
- ***Require the North Carolina Building Code Council to:***
  - ***Revise the Residential Code for One and Two Family Dwelling every six years***
  - ***Publish in the North Carolina Register and post on the Council's web site:***
    - ***All commentaries providing explanatory materials to that Code.***
    - ***All interpretations made by staff in writing or email, and all appeal decisions.***
- ***Exempt cable television companies from the application of the Building Code.***

[As introduced, this bill was identical to S108, as introduced by Sens. Apodaca, Hunt, Ford, which is currently in Senate Commerce.]

CURRENT LAW: The North Carolina Building Code Council (Building Code Council) is established in Article 9 of Chapter 143 of the General Statutes. The Council is charged with adopting the North Carolina State Building Code (Building Code). With certain exceptions, the Commissioner of Insurance is tasked with general supervision of the enforcement of the Building Code, in cooperation with local officials and local inspectors duly appointed by counties and cities.

Every county is required to enforce within its jurisdiction State laws, local laws, and local ordinances relating to: (1) the construction of buildings, (2) the installation of plumbing, electrical, heating, refrigeration, and air-conditioning systems; (3) the maintenance of buildings in a safe, sanitary, and healthful condition; and (4) others matters specified by the county board of commissioners. Under Part 4 of Article 18 of Chapter 153A, every county is to accomplish this by one of the following means:

- Creating an inspection department.
- Creating a joint inspection department with one or more other units of local government.
- Contracting with another unit of local government for the provision of inspection services.

Cities have like requirements under Part 5 of Article 19 of Chapter 160A, with the additional option of arranging for the county in which the city is located to perform the inspection services.

In both counties and cities, a permit is required prior to commencing work on any of the following general categories, with some statutory exceptions as noted:

- Construction, reconstruction, alteration, repair, movement to another site, removal, or demolition of any building or structure.

- Installation, extension, or general repair of any plumbing system, except that under certain conditions a permit is not required for replacing a water heater in a one- or two-family dwelling unit.
- Installation, extension, alteration, or general repair of any heating or cooling equipment system.
- Installation, extension, alteration, or general repair of any electrical wiring, devices, appliances, or equipment, except under certain circumstances a permit is not required for repair or replacement of electrical lighting fixtures or devices in a one- or two-family dwelling unit.

CURRENT LAW & BILL ANALYSIS:

Section 1. For work requiring a building permit, inspections of the work in progress are specifically authorized by statute, and local inspectors may make as many inspections of the work as may be necessary to satisfy the inspector that the work is being done according to the State Building Code, local laws, and local ordinances applicable to the issued permit. The inspection department has statutory authority to enter the premises at any reasonable hour for purposes of inspection upon presentation of proper credentials.

House Bill 120 would restrict the authority of inspection departments by prohibiting a county or city from adopting a local ordinance or resolution or any other policy that would require regular, routine inspections of one or two family residential buildings or structures in addition to the specific inspections required by the Building Code, unless the county or city has obtained the approval of the Building Code Council to conduct such inspections. Exempt from the prohibition would be inspections upon unforeseen or unique circumstances that require immediate action.

Section 2. House Bill 120 would require the Building Code Council to revise the North Carolina State Building Code: Residential Code for One- and Two-Family Dwellings, including provisions applicable to one- and two-family dwellings from the NC Energy Conservation Code, NC Electrical Code, NC Fuel Gas Code, NC Plumbing Code, and NC Mechanical Code only every six years. The revision would become effective the following January 1st, and must have at least six months between adoption and that January 1st, with the first revision becoming effective January 1, 2019.

Section 3. Currently, G.S. 143-138(b8) exempts the design, construction, location, installation, and operation the following from the requirements of the Building Code:

- Equipment for liquefied petroleum gases.
- Equipment, facilities, other than buildings, of a public utility or an electric or telephone membership corporation.
- Industrial machinery.

House Bill 120 would also exempt equipment and facilities, other than buildings, of cable television companies from the regulation of design, construction, location, installation, and operation.

Section 3.5. House Bill 120 would require the Department of Insurance to post on its website written commentaries and written interpretations made and given by the staff of the Building Code Council and the Department for each section of the Building Code.

EFFECTIVE DATE: July 1, 2013.

Erika Churchill, counsel to House Regulatory Reform Subcommittee on Local Government, substantially contributed to this summary.

HOUSE BILL 201
Committee Substitute Favorable 5/13/13
Third Edition Engrossed 5/14/13

Short Title: Reinstate 2009 Energy Conservation Codes. (Public)

Sponsors:

Referred to:

March 5, 2013

A BILL TO BE ENTITLED

AN ACT TO REINSTATE THE 2009 NORTH CAROLINA ENERGY CONSERVATION CODES AND REPEAL THE 2012 NORTH CAROLINA ENERGY CONSERVATION CODES.

The General Assembly of North Carolina enacts:

SECTION 1.(a) Consistent with Chapter 150B of the General Statutes and G.S. 143-138, the Building Code Council shall adopt an energy conservation building code identical to the 2009 North Carolina State Building Code Energy Conservation Code.

SECTION 1.(b) The Building Code Council shall repeal the 2012 North Carolina State Building Code Energy Conservation Code.

SECTION 2. No permit shall be denied or revoked, certificate of compliance denied, order to correct violations issued, stop order issued, defect noted, building condemned, order to take corrective action issued, judicial action brought, or any other action be made under Part 4 of Article 18 of Chapter 153A or Part 5 of Article 19 of Chapter 160A of the General Statutes because of a violation of the 2012 North Carolina State Building Code Energy Conservation Code if it would not also be a violation of the 2009 North Carolina State Building Code Energy Conservation Code.

SECTION 3. Section 1(b) of this act is effective when rules adopted in accordance with Section 1(a) of this act become effective. The remainder of this act is effective when it becomes law except as to judicial actions referred to in Section 2, and as to those actions, this act applies only to judicial actions filed on or after the effective date of this act.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

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HOUSE BILL 201
Committee Substitute Favorable 5/13/13
Third Edition Engrossed 5/14/13
PROPOSED SENATE COMMITTEE SUBSTITUTE H201-CSTP-51 [v.6]
6/10/2013 5:28:28 PM

Short Title: Energy Conserv. Codes/Savings for State Bldgs. (Public)

Sponsors:

Referred to:

March 5, 2013

A BILL TO BE ENTITLED

AN ACT TO CREATE THE NORTH CAROLINA RESIDENTIAL ENERGY CONSERVATION CODE, TO REINSTATE PORTIONS OF THE 2009 NORTH CAROLINA ENERGY CONSERVATION CODE, TO REPEAL THE 2012 NORTH CAROLINA ENERGY CONSERVATION CODE, AND TO PROVIDE THAT ENERGY AND WATER USE STANDARDS FOR PUBLIC MAJOR FACILITY CONSTRUCTION AND RENOVATION PROJECTS ONLY APPLY WHEN THEY RESULT IN A NET SAVINGS.

The General Assembly of North Carolina enacts:

SECTION 1.(a) Consistent with Chapter 150B of the General Statutes and G.S. 143-138, the Building Code Council shall adopt a North Carolina State Building Code Residential Energy Conservation Code applying to residential buildings that is identical to the portions of the 2012 North Carolina State Building Code Energy Conservation Code that apply to residential buildings.

SECTION 1.(b) Consistent with Chapter 150B of the General Statutes and G.S. 143-138, the Building Code Council shall adopt a North Carolina State Building Code Non-Residential Energy Conservation Code applying to non-residential buildings that is identical to the portions of the 2009 North Carolina State Building Code Energy Conservation Code that apply to non-residential buildings.

SECTION 2. The Building Code Council shall repeal the 2012 North Carolina State Building Code Energy Conservation Code.

SECTION 3. No permit shall be denied or revoked, certificate of compliance denied, order to correct violations issued, stop order issued, defect noted, building condemned, order to take corrective action issued, judicial action brought, or any other action be made under Part 4 of Article 18 of Chapter 153A or Part 5 of Article 19 of Chapter 160A of the General Statutes because of a violation of the 2012 North Carolina State Building Code Energy Conservation Code by a non-residential building if it would not also be a violation of the 2009 North Carolina State Building Code Energy Conservation Code.

SECTION 4. G.S. 143-135.37 reads as rewritten:

"**§ 143-135.37. Energy and water use standards for public major facility construction and renovation projects; verification and reporting of energy and water use.**

...

(a1) Net Savings Required. – The requirements of this section apply to a construction or renovation project described in subsection (a) of this section only if the Department determines

that the requirements will result in a net savings. There is a net savings if the cost of construction or renovation subject to the requirements of this section plus the operating costs for the first ten years following the completion of the project is less than the cost of construction or renovation not subject to the requirements of this section plus the operating costs for the first ten years following completion of the project. The cost of construction or renovation subject to the requirements of this section plus the operating costs for the first ten years following the completion of the project shall include all third-party certification costs that occur before, during, and after construction.

..."

SECTION 5. Section 2 of this act is effective when rules adopted in accordance with Section 1 of this act become effective. The remainder of this act is effective when it becomes law except as to judicial actions referred to in Section 3, and as to those actions, this act applies only to judicial actions filed on or after the effective date of this act.

HOUSE BILL 201:
Energy Conserv. Codes/Savings for State Bldgs

2013-2014 General Assembly

Committee:	Senate Commerce	**Date:**	June 11, 2013
Introduced by:	Rep. Torbett	**Prepared by:**	Peter Ledford
Analysis of:	PCS to Third Edition H201-CSTP-51		Committee Counsel

SUMMARY: ***House Bill 201 would reinstate the 2009 North Carolina Energy Conservation Codes for non-residential buildings.***

The PCS rewrites Section 1.(a), adds Section 1.(b) and Section 4, and renumbers the remaining sections.

CURRENT LAW AND BACKGROUND: G.S. 143-138 authorizes the North Carolina Building Code Council (Building Code Council) to prepare and adopt a North Carolina State Building Code. In accordance with this mandate, the Building Code Council has adopted a Building Code, Electrical Code, Energy Conservation Code, Fire Code, Fuel Gas Code, Mechanical Code, Plumbing Code, and Residential Code. The Building Code Council is authorized to use as guidance, but not required to adopt, the requirements of various national and international codes. The North Carolina State Building Code is based on the model International Building Code, which is published by the International Code Council every three years. The Building Code Council reviews each version of the International Building Code and makes revisions specific to development in the State, and then publishes the revised code as the North Carolina State Building Code.

Article 8C of Chapter 143 of the General Statutes sets performance standards for sustainable, energy-efficient public buildings. G.S. 143-135.37 establishes the Sustainable Energy-Efficient Buildings Program within the Department of Administration. This program requires that every major facility construction or renovation project be designed to consume less energy and potable water than applicable standards. The statute also establishes that construction contracts shall include performance verification provisions and authorizes separate meters for each building.

BILL ANALYSIS:

Section 1.(a) of the PCS would direct the Building Code Council to adopt the residential portions of the 2012 Energy Conservation Code as the North Carolina State Building Code Residential Energy Conservation Code.

Section 1.(b) would direct the Building Code Council to adopt the non-residential portions of the 2009 Energy Conservation Code as the North Carolina State Building Code Non-Residential Energy Conservation Code.

Section 2 would direct the Building Code Council to repeal the 2012 Energy Conservation Code.

Section 3 would provide that no permit can be denied or revoked, certificate of compliance denied, order to correct violations issued, stop order issued, defect noted, building condemned, order to take corrective action issued, judicial action brought, or any other action made pursuant to the statutes that authorize units of local government to inspect buildings due to a violation of the 2012 North Carolina

State Building Code Energy Conservation Code by a non-residential building if that violation would not also be a violation of the 2009 North Carolina State Energy Conservation Code.

Section 4 would amend G.S. 143-135.37 to require that the Sustainable Energy-Efficient Buildings Program only apply to construction or renovation of a building when it would result in a net savings of money for the State over the first ten years of operation of the building.

EFFECTIVE DATE: Section 2 of this act is effective when rules adopted in accordance with Section 1 become effective. The remainder of the act is effective when it becomes law, except as to judicial actions referred to in Section 3, and as to those actions, the act applies only to judicial actions filed on or after the effective date of the act.

Jennifer Mundt, committee analyst to House Commerce and Job Development, substantially contributed to this summary.

HOUSE BILL 700*
Committee Substitute Favorable 5/2/13

Short Title: Omnibus State IT Governance Changes. (Public)

Sponsors:

Referred to:

April 11, 2013

A BILL TO BE ENTITLED

AN ACT MAKING OMNIBUS CHANGES TO THE LAWS RELATING TO STATE INFORMATION TECHNOLOGY GOVERNANCE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 147-33.72B(b)(1) reads as rewritten:

"(b) The Plan shall include the following elements:

(1) An inventory of current information technology assets and major projects currently in progress. As used in this subdivision, the term "major project" includes projects subject to review and approval under ~~G.S. 147-33.72C, or that cost more than five hundred thousand dollars ($500,000) to implement.~~G.S. 147-33.72C."

SECTION 2. G.S. 147-33.72C reads as rewritten:

"**§ 147-33.72C. Project approval standards.**

(a) Project Review and Approval. – The State Chief Information Officer shall:

(1) Review all State agency information technology ~~projects that cost or are expected to cost more than five hundred thousand dollars ($500,000), whether the project is undertaken in a single phase or component or in multiple phases or components.~~ projects. If the State Chief Information Officer determines a project meets the quality assurance requirements established under this Article, the State Chief Information Officer shall approve the project.

~~(2) Establish thresholds for determining which information technology projects costing or expected to cost five hundred thousand dollars ($500,000) or less shall be subject to review and approval under subdivision (a)(1) of this section. When establishing the thresholds, the State Chief Information Officer shall consider factors such as project cost, potential project risk, agency size, and projected budget.~~

(b) Project Implementation. – No State agency shall proceed with an information technology project that is subject to review and approval under subsection (a) of this section until the State CIO approves the project. If a project is not approved, the State CIO shall specify in writing to the agency the grounds for denying the approval. The State CIO shall provide this information to the agency within five business days of the denial.

(c) Suspension of Approval. – The State Chief Information Officer may suspend the approval of any information technology project that does not continue to meet the applicable quality assurance standards. ~~This authority extends to any information technology project that costs more than five hundred thousand dollars ($500,000) to implement regardless of whether~~

~~the project was originally subject to review and approval under subsection (a) of this section.~~ If the State CIO suspends approval of a project, the State CIO shall specify in writing to the agency the grounds for suspending the approval. The State CIO shall provide this information to the agency within five business days of the suspension.

The Office of Information Technology Services shall report any suspension immediately to the Office of the State Controller and the Office of State Budget and Management. The Office of State Budget and Management shall not allow any additional expenditure of funds for a project that is no longer approved by the State Chief Information Officer.

~~(d) General Quality Assurance. Information technology projects that are not subject to review and approval under subsection (a) of this section shall meet all other standards established under this Article.~~

(e) Performance Contracting. – All contracts between a State agency and a private party for information technology projects shall include provisions for vendor performance review and accountability. The State CIO may require that these contract provisions require a performance bond, include monetary ~~penalties~~ penalties, or require other performance assurance measures for projects that are not completed or performed within the specified time period or that involve costs in excess of those specified in the contract. The State CIO may ~~require contract provisions requiring a vendor to provide a performance bond.~~utilize cost savings realized on government-vendor partnerships, as defined in G.S. 143-135.9, as performance incentives for an information technology project vendor.

(f) Notwithstanding the provisions of G.S. 114-2.3, any State agency developing and implementing an information technology project with a total cost of ownership in excess of five million dollars ($5,000,000) may be required by the State Chief Information Officer to engage the services of private counsel or subject matter experts with the appropriate information technology and intellectual property expertise. The private counsel or subject matter expert may review requests for proposals; review and provide advice and assistance during the evaluation of proposals and selection of any vendors; and review and negotiate contracts associated with the development, implementation, operation, and maintenance of the project. This requirement may also apply to information technology programs that are separated into individual projects, if the total cost of ownership for the overall program exceeds five million dollars ($5,000,000)."

SECTION 3. G.S. 147-33.72H reads as rewritten:

"**§ 147-33.72H. Information Technology Fund.**

There is established a special revenue fund to be known as the Information Technology Fund, which may receive transfers or other credits as authorized by the General Assembly. Money shall be appropriated from the Information Technology Fund to support the operation and administration of the Office of the State Chief Information Officer. Money may be appropriated from the Information Technology Fund to meet statewide requirements, including planning, project management, security, electronic mail, State portal operations, and the administration of systemwide procurement procedures. Expenditures involving funds appropriated to the Office of Information Technology Services from the Information Technology Fund shall be made by the CIO. By October 1 of each year, the State CIO shall submit to the Joint Legislative Oversight Committee on Information Technology a report on all expenditures involving funds appropriated to the Office of Information Technology Services from the Information Technology Fund for the preceding fiscal year. Interest earnings on the Information Technology Fund balance shall be credited to the Information Technology Fund."

SECTION 4. G.S. 147-33.77(a) reads as rewritten:

"(a) The State Chief Information Officer may appoint a Chief Deputy Information Officer. The salary of the Chief Deputy Information Officer shall be set by the State Chief Information Officer. The State Chief Information Officer may appoint all employees, including

legal counsel, necessary to carry out the powers and duties of the office. ~~These employees shall be subject to the State Personnel Act.~~"

SECTION 5. G.S. 126-5(c1) is amended by adding a new subdivision to read:

"(30) The State Chief Information Officer and employees of the Office of Information Technology Services and Office of the State Chief Information Officer."

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

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

H D

HOUSE BILL 700*
Committee Substitute Favorable 5/2/13
PROPOSED SENATE COMMITTEE SUBSTITUTE H700-CSSU-38 [v.1]
6/10/2013 5:57:15 PM

Short Title: Omnibus State IT Governance Changes. (Public)

Sponsors:

Referred to:

April 11, 2013

A BILL TO BE ENTITLED

AN ACT MAKING OMNIBUS CHANGES TO THE LAWS RELATING TO STATE INFORMATION TECHNOLOGY GOVERNANCE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 147-33.72B(b)(1) reads as rewritten:

"(b) The Plan shall include the following elements:

(1) An inventory of current information technology assets and major projects currently in progress. As used in this subdivision, the term "major project" includes projects subject to review and approval under ~~G.S. 147-33.72C, or that cost more than five hundred thousand dollars ($500,000) to implement.~~G.S. 147-33.72C."

SECTION 2. G.S. 147-33.72C reads as rewritten:

"**§ 147-33.72C. Project approval standards.**

(a) Project Review and Approval. – The State Chief Information Officer shall:

(1) Review all State agency information technology ~~projects that cost or are expected to cost more than five hundred thousand dollars ($500,000), whether the project is undertaken in a single phase or component or in multiple phases or components.~~ projects. If the State Chief Information Officer determines a project meets the quality assurance requirements established under this Article, the State Chief Information Officer shall approve the project.

~~(2) Establish thresholds for determining which information technology projects costing or expected to cost five hundred thousand dollars ($500,000) or less shall be subject to review and approval under subdivision (a)(1) of this section. When establishing the thresholds, the State Chief Information Officer shall consider factors such as project cost, potential project risk, agency size, and projected budget.~~

(b) Project Implementation. – No State agency shall proceed with an information technology project that is subject to review and approval under subsection (a) of this section until the State CIO approves the project. If a project is not approved, the State CIO shall specify in writing to the agency the grounds for denying the approval. The State CIO shall provide this information to the agency within five business days of the denial.

(c) Suspension of Approval. – The State Chief Information Officer may suspend the approval of any information technology project that does not continue to meet the applicable quality assurance standards. ~~This authority extends to any information technology project that~~

~~costs more than five hundred thousand dollars ($500,000) to implement regardless of whether the project was originally subject to review and approval under subsection (a) of this section.~~ If the State CIO suspends approval of a project, the State CIO shall specify in writing to the agency the grounds for suspending the approval. The State CIO shall provide this information to the agency within five business days of the suspension.

The Office of Information Technology Services shall report any suspension immediately to the Office of the State Controller and the Office of State Budget and Management. The Office of State Budget and Management shall not allow any additional expenditure of funds for a project that is no longer approved by the State Chief Information Officer.

~~(d) General Quality Assurance. Information technology projects that are not subject to review and approval under subsection (a) of this section shall meet all other standards established under this Article.~~

(e) Performance Contracting. – All contracts between a State agency and a private party for information technology projects shall include provisions for vendor performance review and accountability. The State CIO may require that these contract provisions require a performance bond, include monetary ~~penalties~~ penalties, or require other performance assurance measures for projects that are not completed or performed within the specified time period or that involve costs in excess of those specified in the contract. The State CIO may ~~require contract provisions requiring a vendor to provide a performance bond.~~utilize cost savings realized on government-vendor partnerships, as defined in G.S. 143-135.9, as performance incentives for an information technology project vendor.

(f) Notwithstanding the provisions of G.S. 114-2.3, any State agency developing and implementing an information technology project with a total cost of ownership in excess of five million dollars ($5,000,000) may be required by the State Chief Information Officer to engage the services of private counsel or subject matter experts with the appropriate information technology and intellectual property expertise. The private counsel or subject matter expert may review requests for proposals; review and provide advice and assistance during the evaluation of proposals and selection of any vendors; and review and negotiate contracts associated with the development, implementation, operation, and maintenance of the project. This requirement may also apply to information technology programs that are separated into individual projects, if the total cost of ownership for the overall program exceeds five million dollars ($5,000,000)."

SECTION 3. G.S. 147-33.72H reads as rewritten:

"**§ 147-33.72H. Information Technology Fund.**

There is established a special revenue fund to be known as the Information Technology Fund, which may receive transfers or other credits as authorized by the General Assembly. Money shall be appropriated from the Information Technology Fund to support the operation and administration of the Office of the State Chief Information Officer. Money may be appropriated from the Information Technology Fund to meet statewide requirements, including planning, project management, security, electronic mail, State portal operations, and the administration of systemwide procurement procedures. Expenditures involving funds appropriated to the Office of Information Technology Services from the Information Technology Fund shall be made by the CIO. By October 1 of each year, the State CIO shall submit to the Joint Legislative Oversight Committee on Information Technology a report on all expenditures involving funds appropriated to the Office of Information Technology Services from the Information Technology Fund for the preceding fiscal year. Interest earnings on the Information Technology Fund balance shall be credited to the Information Technology Fund."

SECTION 4. G.S. 147-33.77(a) reads as rewritten:

"(a) The State Chief Information Officer may appoint ~~a Chief Deputy Information Officer.~~ one or more Deputy Chief Information Officers. The salary of ~~the Chief~~ a Deputy Information Officer shall be set by the State Chief Information Officer. The State Chief

Information Officer may appoint all employees, including legal counsel, necessary to carry out the powers and duties of the office. These employees shall be subject to the State Personnel Act."

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

HOUSE BILL 700:
Omnibus State IT Governance Changes

2013-2014 General Assembly

Committee:	Senate Commerce	**Date:**	June 11, 2013
Introduced by:	Reps. Saine, Avila, Cleveland	**Prepared by:**	Wendy Graf Ray
Analysis of:	PCS to Second Edition H700-CSSU-38		Committee Counsel

SUMMARY: ***HB 700 makes changes to laws relating to State information technology governance. The PCS would:***

- ***Require the biennial State Information Technology Plan to include projects subject to review under G.S. 147-33.72C, which is amended to require review of all State agency information technology projects, not just those costing more than $500,000.***
- ***Permit the State CIO to require State agencies with information technology (IT) projects in excess of $5 million to engage private counsel or subject matter experts with appropriate IT and intellectual property experience.***
- ***Allow money to be appropriated from the Information Technology Fund to support the operation of the Office of the State CIO.***
- ***Allow the State CIO to appoint more than one deputy chief.***

[As introduced, this bill was identical to S442, as introduced by Sen. Brock, which is currently in Senate Commerce.]

CURRENT LAW and BILL ANALYSIS:

Section 1: G.S. 147-33.72B requires the State CIO to develop a biennial State Information Technology Plan which includes an inventory of major projects currently in progress. Major projects are defined as projects subject to review and approval under G.S. 147-33.72C, or that cost more than $500,000 to implement.

Section 5 would limit the definition of major projects to only those subject to review and approval under G.S. 147-33.72C (see Section 2 below).

Section 2: G.S. 147-33.72C requires project review and approval for all State agency information technology projects costing more than $500,000, and requires the State CIO to establish thresholds for determining which projects less than $500,000 should be subject to review and approval. G.S. 147-33.72C also requires all contracts between a State agency and a private party for IT projects to include provisions for performance review and accountability.

Section 2 would eliminate the dollar thresholds and other limitations and require review of all State agency information technology projects. Section 2 would also authorize the State CIO to require performance assurance measures for projects that are not completed or performed within the specified time period and to utilize cost savings realized on government-vendor partnerships as performance incentives for IT project vendors.

Section 2 would also create a new subsection (f) that permits the State CIO to require any State agency developing and implementing an IT project with a total cost of more than $5 million to engage the

services of private counsel or subject matter experts with the appropriate expertise. The private counsel or subject matter expert may (i) review requests for proposals; (ii) review and provide advice during the evaluation of proposals and selection of vendors; and (iii) review and negotiate contracts associated with the development, implementation, operation, and maintenance of the project. The requirement would also apply to IT programs that are separated into individual projects if the total cost of ownership for the overall program exceeds $5 million.

Section 3: G.S. 147-33.72H establishes the Information Technology Fund.

Section 3 would permit money appropriated from the Information Technology Fund to support the operation and administration of the Office of the State CIO.

Section 4: G.S. 147-33.77(a) authorizes the State CIO to appoint a Chief Deputy Information Officer.

Section 4 would authorize the State CIO to appoint one or more Chief Deputy Information Officers.

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

Kelly Quick and Kara McCraw, counsel to House Government, contributed to this summary.

VISITOR REGISTRATION SHEET

Senate **COMMERCE** Committee — June 11, 2013

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DEBBIE LOWN

NAME	FIRM OR AGENCY AND ADDRESS
	ACAP
Ellen Harnick	CRL
Chris Kukla	CRL
Andrew Blackburn	SSG NC
Scott Lasser	SSG NC
Kirsten Lasser	SSG NC
	NGA
Vidalia Dalrett	Rep Jarrett's office
Paul Meyer	NCVAS
Canaan Thrie	MVA
Elizabeth Biser	Brooks Pierce

VISITOR REGISTRATION SHEET

Senate **COMMERCE** Committee — June 11, 2013

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DEBBIE LOWN

NAME	FIRM OR AGENCY AND ADDRESS
[signature]	CR
Leah Catotti	Environment North Carolina
Hannah Anderson-Barragy	Environment NC
Dave Simpson	CMC
Lisa Porter	Offshore OBO NC
Jake Cash	NC Chamber
Butch Gunnells	NC Beer
Gretchen Kelly	FirstHealth
Bleeden Blackwell	NCHFA

VISITOR REGISTRATION SHEET

Senate **COMMERCE** Committee — June 11, 2013

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DEBBIE LOWN

NAME	FIRM OR AGENCY AND ADDRESS
Elizabeth Cluett	Environment North Carolina
Molly Diggins	NC Sierra Club
Dustin Chicurel-Bayard	Sierra Club
Allison Donnelly	NC Sustainable Energy Assn
Betsy McCorkle	NCSEA
Julie Robinson	NCSEA
KRISTEN THORNBURG	ENERGY FOUNDATION
Penny Smith	School of Gov.
Henry Jones	John Locke Foundation
Barry Williams	NCAFPM
Tommy Roberson	TWC

VISITOR REGISTRATION SHEET

Senate **COMMERCE** Committee — June 11, 2013

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DEBBIE LOWN

NAME	FIRM OR AGENCY AND ADDRESS
Leah Powers	Gov's office
Elizabeth Merritt	Governor's Office
Michelle Frazier	MF+S
ROBERT PRIVOTT	NCHBA
Lisa Martin	NCHBA
Mike Carpenter	"
Steven Webb	"
DAN Tingen	NCBCC
John Bode	BCJ
Susan Valenti	NW
Dana Hanna	SA

VISITOR REGISTRATION SHEET

Senate **COMMERCE** Committee — June 11, 2013

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DEBBIE LOWN

NAME	FIRM OR AGENCY AND ADDRESS
Brooks Rainey Pearson	SELC
Mary Maclean Asbill	SELC
Cassie Gavin	Sierra Club
Betsy Jenkins	CAGC
Rose Williams	NCDOT
	NCAEC

VISITOR REGISTRATION SHEET

Senate **COMMERCE** Committee — June 11, 2013

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DEBBIE LOWN

NAME	FIRM OR AGENCY AND ADDRESS
Tyler Newman	City of Wilmington
Mike Sandlin	SOG
Mike Pool	Eaton Corporation
Deana Dennis	NEMA
Ken Rorie	NWC
Eddie Jones	Schneider Electric
D'Lane Wisner	DWR for American Chemistry Council
Patrick Bafflin	NCAEC
Jim Johnson	BSA
Danny Lineberry	ITS
Maria Jewell	K+L Gates
Nadia Luhr	NCCN

Senate Committee on Commerce
Tuesday, June 18, 2013, 11:00 AM
1027/1128 Legislative Building

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

BILL NO.	SHORT TITLE	SPONSOR
HB 56	Amend State Contract Review Laws.	Representative Howard
HB 201	Reinstate 2009 Energy Conservation Codes.	Representative Torbett
HB 700	Omnibus State IT Governance Changes.	Representative Saine Representative Avila Representative Cleveland

Senate Committee on Commerce
Tuesday, June 18, 2013 at 11:00 AM
Room 1027/1128 of the Legislative Building

MINUTES

The Senate Committee on Commerce met at 11:00 AM on June 18, 2013 in Room 1027/1128 of the Legislative Building. Twenty four members were present.

Senator Rick Gunn, Chair, presided.

Austin Bright from Morrisville, Parker Lee from Fuquay Varina, Bradley Anderton from Wake Forest, Caroline Peebles from Raleigh, Kellen Long from Elizabeth City, JC Barringer from Cary and Brandon Thibaudeau served as pages.

H. B. 56 amend State Contract Review Laws

Senator Brown moved to adopt the proposed committee substitute (PCS) before the committee and it carried. This bill would create a contract management section (CMS) in the Division of Purchase and Contract, Department of Administration, with responsibility for review of State contracts in excess of one million dollars ($1,000,000); would provide that the Attorney General's office shall designate counsel to review contracts for services in excess of five million dollars ($5,000,000) and complete an internal review of the contracts; and would repeal the Board of Awards and transfer its responsibilities. The contract review provisions would become effective October 1, 2013, and the remainder of the bill would become effective when it becomes law. Representative Howard was introduced to speak on the bill. John Trucotte/Director of the Program Evaluation Division was asked to assist with the explanation of the bill and to help with responses to the members. After discussion Bill Daughtridge Jr. /Secretary of the North Carolina Department of Administration was asked to speak. Anthony Solari/Director of Government Relation for the State of North Carolina Department of State Treasurer also spoke and asked that it was a matter of record that the Treasurer and a problem with page 2 line 14. Trina Griffin an attorney with the Research Division responded to questions from the members. Speros J. Fleggas/Deputy Secretary for the State of North Carolina Department of Administration also spoke. Senator Tillman moved unfavorable to the bill – favorable to the PCS and it carried. Senator Hartsell will manage this bill on the floor.

H. B. 201 Reinstate 2009 Energy Conservation Codes

Senator Barringer moved to adopt the proposed committee substitute (PCS) before the committee and it carried. House Bill 201 would reinstate the 2009 North Carolina Energy Conservation codes for non-residential buildings. The PCS rewrites Sections 1.(a) and 1.(b). Representative Torbett was introduced to speak on the bill. Peter Ledford an attorney with the Research Division helped explain the bill and responded to questions from the members. Four people requested to speak and the did so in the order listed below: D'Lane Wisner from D'Lane

Wisner and Associates, LLC, Will Senner, LEED AP BD&C/Assistant Project Manager from Skanska, Dave Simpson, CAE/from Carolinas AGC, and Ward Lenz/Director of the North Carolina Energy Office. Senator Tillman moved unfavorable to the bill – favorable to the PCS and it carried. Senator Tillman will manage this bill on the floor.

H. B. 700 Omnibus State IT Governance Changes

Senator McLaurin moved to adopt the proposed committee substitute (PCS) before the committee and it carried. HB 700 makes changes to laws relating to State information technology governance. The PCS would:

- Require the biennial State Information Technology Plan to include projects subject to review under G.S. 147-33.72C, which is amended to require review of all State agency information technology projects, not just those costing more than $500,000.
- Permit the State CIO to require State agencies with information technology (IT) projects in excess of $5 million to engage private counsel or subject matter experts with appropriate IT and intellectual property experience.
- Allow money to be appropriated from the Information Technology Fund to support the operation of the Office of the State CIO.
- Allow the State CIO to appoint more than one deputy chief.

Representative Saine was introduced to speak on the bill. Senator Curtis moved unfavorable to the bill – favorable to the PCS and it carried. Senator Brock will manage this bill on the floor.

The meeting adjourned at 11:49 AM.

Senator Rick Gunn, Chair
Presiding

Debbie Lown, Committee Clerk

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

COMMERCE COMMITTEE REPORT
Senator Gunn, Co-Chair
Senator Meredith, Co-Chair

Tuesday, June 18, 2013

Senator Gunn,
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 **201** **(CS#1)** Reinstate 2009 Energy Conservation Codes.

Draft Number:	H201-PCS90115-TP-50
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

HB **700** **(CS#1)** Omnibus State IT Governance Changes.

Draft Number:	H700-PCS80385-SU-38
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

TOTAL REPORTED: 2

Senator Jerry Tillman will handle HB 201
Senator Andrew Brock will handle HB 700

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

COMMERCE COMMITTEE REPORT
Senator Gunn, Co-Chair
Senator Meredith, Co-Chair

Tuesday, June 18, 2013

Senator Gunn,
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 **56** **(CS#1)** Amend State Contract Review Laws.

Draft Number:	H56-PCS80388-SV-29
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

TOTAL REPORTED: 1

Senator Fletcher Hartsell will handle HB 56

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

H 2

HOUSE BILL 56*
Committee Substitute Favorable 2/27/13

Short Title: Amend State Contract Review Laws. (Public)

Sponsors:

Referred to:

February 5, 2013

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH THE CONTRACT MANAGEMENT SECTION OF THE DIVISION OF PURCHASE AND CONTRACT, DEPARTMENT OF ADMINISTRATION, TO AMEND THE LAWS REQUIRING NEGOTIATION AND REVIEW OF CERTAIN STATE CONTRACTS, TO PROVIDE OVERSIGHT AND REPORTING OF CERTAIN CONTRACT AWARDS, AND TO PROVIDE FOR CONTRACT MANAGEMENT AND ADMINISTRATION, AS RECOMMENDED BY THE JOINT LEGISLATIVE PROGRAM EVALUATION OVERSIGHT COMMITTEE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 114-8.3 reads as rewritten:

"**§ 114-8.3. Attorney ~~General~~ General/General Counsel;~~to~~ review certain contracts.**

(a) Except as provided in subsection (b) of this section, the Attorney General or the Attorney General's designee shall perform the duties required pursuant to G.S. 143-49(3a) for ~~review all~~ proposed contracts for ~~supplies, materials, printing, equipment, and~~ contractual services that exceed ~~one~~ five million dollars ~~($1,000,000)~~ ($5,000,000). The designee shall confirm ~~to ensure~~ that the proposed contracts are (i) in proper legal form, (ii) contain all clauses required by law, (iii) are legally enforceable, and (iv) accomplish the intended purposes of the proposed contract. The ~~term "review" as used in this section~~ designee's review shall not constitute approval or disapproval of the policy merit or lack thereof of the proposed contract. For purposes of this subsection, the term "Attorney General's designee" shall include any attorney approved by the Attorney General to review contracts as provided in this subsection. The Attorney ~~General~~ General shall:

(1) Establish ~~establish~~ procedures regarding the review of contracts subject to this section and shall provide any attorney designated under G.S. 143-49(3a) with guidelines to be used in reviewing contracts. ~~shall require that any attorney designated under this subsection comply with any rules established by the Attorney General or the Department of Administration regarding the review of contracts.~~

(2) Advise and assist the Contract Management Section of the Division of Purchase and Contract, Department of Administration, in establishing procedures and guidelines for the review of contracts pursuant to G.S. 143-50.1.

(b) For the constituent institutions of The University of North Carolina, the General Counsel of each institution or the General Counsel's designee shall review all proposed contracts for supplies, materials, printing, equipment, and contractual services that exceed one

million dollars ($1,000,000) to ensure that the proposed contracts are (i) in proper legal form, (ii) contain all clauses required by law, (iii) are legally enforceable, and (iv) accomplish the intended purposes of the proposed contract. The term "review" as used in this section shall not constitute approval or disapproval of the policy merit or lack thereof of the proposed contract. For purposes of this subsection, the term "General Counsel's designee" shall include any attorney approved by the General Counsel to review contracts as provided in this subsection. The General Counsel shall establish procedures regarding the review of contracts subject to this section and shall require that any attorney designated under this subsection comply with any ~~rules~~ procedures established by the Attorney General or the Department of Administration regarding the review of contracts.

(c) All State agencies, the constituent institutions of The University of North Carolina, or any person who will be entering into a contract on behalf of the State for supplies, materials, printing, equipment, or contractual services that exceeds one million dollars ($1,000,000) shall notify the Secretary of the Department of Administration or the Secretary's designee of the intent to enter into the contract and provide such information as required by the Department for the purposes of maintaining a centralized log of such contracts and identifying the location of the contract documents.

(d) Nothing in this section that requires an attorney designated by the Attorney General to review proposed contracts for the matters described in subsection (a) of this section shall be construed to limit the authority of the State Treasurer, pursuant to G.S. 147-69.3(g), to retain the services of attorneys for the proper administration of investment programs."

SECTION 2. G.S. 143-49 reads as rewritten:

"**§ 143-49. Powers and duties of Secretary.**

The Secretary of Administration shall have power and authority, and it shall be ~~his~~ the Secretary's duty, subject to the provisions of this Article:

...

(3a) To ~~request,~~ notify ~~and~~ the Attorney General of pending contracts for contractual services exceeding a cost of five million dollars ($5,000,000). Upon notification, the Attorney General shall assign a representative ~~of~~ from within the office of the Attorney General, the Contract Management Section of the Division of Purchase and Contract, Department of Administration, or other qualified counsel to assist in negotiation for the award of ~~any~~ the contract. ~~contract for contractual services exceeding a cost of one hundred thousand dollars ($100,000) that requires negotiation with prospective contractors.~~ It shall be the duty of such representative to assist and advise in obtaining the most favorable contract for the State, to evaluate all proposals available from prospective contractors for that purpose, to interpret proposed contract terms and to advise the Secretary or his representatives of the liabilities of the State and validity of the contract to be awarded. All contracts and drafts of such contracts shall be ~~prepared~~ reviewed by an attorney from within the office of the Attorney General and copies thereof shall be retained by such office for a period of three years following the termination of such contracts. The term "contractual services" as used in this subsection and G.S. 143-52.2 shall mean work performed by an independent contractor requiring specialized knowledge, experience, expertise or similar capabilities wherein the service rendered does not consist primarily of acquisition by this State of equipment or materials and the rental of equipment, materials and supplies. ~~The term "negotiation" as used in this~~ This subdivision shall not apply ~~be deemed to refer~~ to contracts entered into or to be entered into as a result of a competitive bidding process. In order to be valid, any contract for services reviewed pursuant to this subdivision must

include the signature and title of the attorney designated from within the office of the Attorney General to review the contract.

(3b) The following exceptions apply to the requirements in subdivision (3a) of this section:

a. The Secretary is not required to notify the Attorney General for the appointment of a representative for any contracts for contractual services to be entered into by the constituent institutions of The University of North Carolina unless requested to do so by the General Counsel of The University of North Carolina.

b. For proposed Treasurer investment contracts and debt contracts which exceed, in aggregate over the term of the contract, five million dollars ($5,000,000), the Department of State Treasurer may request that the Attorney General approve the employment of outside counsel to represent the Department. The Attorney General's Office may employ outside counsel, with the designation of counsel to be approved by the State Treasurer. For the purposes of this sub-subdivision, proposed Treasurer "investment contracts and debt contracts" means any of the following:

1. Investments to be acquired, held, or sold, directly or indirectly, by or for the State Treasurer, the Department of State Treasurer, or an investment entity created by the Department of State Treasurer, either on its own behalf or on behalf of another beneficial owner.

2. Investments administered by the North Carolina Supplemental Retirement Board of Trustees.

3. Debt issued or to be issued by the State of North Carolina under the supervision of the State Treasurer, debt issued or to be issued by the North Carolina Capital Facilities Finance Agency, and debt and other matters of finance subject to the approval or supervision of the Local Government Commission, including, in each case, services required for ongoing management and review of debt issues that have previously been incurred or that are proposed to be incurred.

...."

SECTION 3. Article 3 of Chapter 143 of the General Statutes is amended by adding a new section to read:

"**§ 143.50.1. Division of Purchase and Contract; Contract Management Section.**

(a) The Contract Management Section (CMS) is established in the Division of Purchase and Contract, Department of Administration. The CMS shall include legal counsel with the duties and responsibilities included in this section.

(b) Unless otherwise provided in G.S. 114-8.3(b) or in this section, for all proposed solicitations for supplies, materials, printing, equipment, or contractual services that exceed one million dollars ($1,000,000), the CMS shall:

(1) Participate and assist in the preparation of all proposed solicitations, and review all available proposals from prospective contractors, with the goal of obtaining the most favorable contract for the State.

(2) Interpret proposed contract terms and advise the Secretary or the Secretary's designee of the potential liabilities to the State.

(3) Review all proposed contracts to ensure that the contracts:

a. Are in proper legal form.

b. Contain all clauses required by law.

c. Are legally enforceable.
d. Require performance that will accomplish the intended purposes of the proposed contract.

The review and evaluation required by this subsection shall not constitute approval or disapproval of the policy merit or lack thereof of the proposed contract.

(c) With respect to proposed contracts for services which exceed five million dollars ($5,000,000), the CMS shall perform such duties as may be required under G.S. 143-49(3a).

(d) The CMS shall:

(1) Assist State departments, agencies, and institutions to establish formal contract administration procedures and functions.

(2) Advise personnel in contracting specialist roles as to appropriate contract management and administrative techniques and activities.

(3) Act as a general resource to State agencies on contracting issues related to procurement, including contract drafting, clarification of terms and conditions, proper solicitation and bid evaluation procedures, contract negotiation, and such other matters as directed by the State Purchasing Officer.

(4) Assist representatives of the Attorney General, agency counsel, and other legal staff, as requested, in matters related to contracting for goods and services.

(e) The Department of Administration shall adopt procedures for the record keeping of the information provided by State agencies and which has been received by the Secretary or the Secretary's designee pursuant to G.S. 114-8.3(c). The records shall be kept by the Department and shall include a log with information that provides identification of individual contracts and where the contract documents are located. The Secretary is authorized to require that entities reporting pursuant to G.S. 114-8.39(c) provide such additional information that may be required to identify the individual contracts.

(f) The CMS shall consist of personnel designated by the Secretary and perform such other functions as directed by the Secretary that are not inconsistent with this section."

SECTION 4. G.S. 143-52.1 reads as rewritten:

"**§ 143-52.1. ~~Board of Awards.~~Award recommendations; State Purchasing Officer action.**

(a) When the dollar value of a contract to be awarded under Article 3 of Chapter 143 of the General Statutes exceeds the benchmark established pursuant to G.S. 143-53.1, an award recommendation shall be submitted to the State Purchasing Officer for approval or other action. The agency or institution making the recommendation, or for which the purchase is to be made, shall be notified promptly of the State Purchasing Officer's action. ~~There is created the Board of Awards. The Board shall consist of three members at a time, appointed by the Chair of the Commission. Members of the Board shall be appointed on a rotating basis from the membership of the Commission and the Council of State. Two out of three members appointed for each meeting of the Board shall constitute a quorum of the Board.~~

~~(b) The Board shall meet weekly as called by the Chair of the Commission, except in weeks when no contracts have been submitted to the Board for review.~~

~~(c) When the dollar value of a contract exceeds the benchmark established either pursuant to G.S. 143-53.1 or G.S. 147-33.101, the Board shall review and make a recommendation on action to be taken by the Secretary of Administration on contracts to be awarded under Article 3 of Chapter 143 of the General Statutes and on contracts to be awarded by the Chief Information Officer under Article 3D of Chapter 147 of the General Statutes, prior to the awarding of the contract.~~

~~(d) The State Budget Officer shall designate a secretary for the Board. The Secretary of Administration and the State Chief Information Officer shall each submit their matters for consideration to the secretary for inclusion on the Board's agenda. Records shall be kept of each~~

~~meeting and made public by the Secretary of Administration or State Chief Information Officer, as applicable unless the Secretary of Administration or State Chief Information Officer, as applicable, determines a specific record of the meeting needs to be confidential due to the nature of the contract. The Secretary of Administration or State Chief Information Officer, as applicable, may elect to proceed with the award of a contract without a recommendation of the Board in cases of emergencies or in the event that a Board is not available. In those cases, contracts awarded without Board review shall be reported to the next meeting of the Board as a matter of record.~~

(e) ~~Reports on recommendations made by the Board on matters presented by the State Chief Information Officer to the Board~~ A report of all contract awards greater than twenty-five thousand dollars ($25,000) approved through the Division of Purchase and Contract shall be reported monthly by the ~~Board~~ State Procurement Officer to the ~~chairs of the Joint Legislative Oversight Committee on Information Technology.~~ Cochairs of the Joint Legislative Committee on Governmental Operations. The report shall include the amount of the award, the award recipient, the using agency, and a short description of the nature of the award."

SECTION 5. G.S. 147-33.101 reads as rewritten:

"**§ 147-33.101. ~~Board of Awards review.~~Award recommendation; State Chief Information Officer action.**

(a) When the dollar value of a contract for the procurement of information technology equipment, materials, and supplies exceeds the benchmark established by the State Chief Information Officer, an award recommendation shall be submitted to the State Chief Information Officer for approval or other action. The agency or institution making the recommendation, or for which the purchase is to be made, shall be notified promptly of the State Chief Information Officer's action. ~~the contract shall be reviewed by the Board of Awards pursuant to G.S. 143-52.1 prior to the contract being awarded.~~

(b) Prior to submission of any contract for review ~~by the Board of Awards~~ pursuant to this section for any contract for information technology being acquired for the benefit of the Office and not on behalf of any other State agency, the Director of the Budget shall review and approve the procurement to ensure compliance with the established processes, specifications, and standards applicable to all information technology purchased, licensed, or leased in State government, including established procurement processes, and compliance with the State government wide technical architecture as established by the State CIO.

(c) A report of all contract awards greater than twenty-five thousand dollars ($25,000), approved through the Statewide IT Procurement Office, shall be reported monthly by the State CIO's to the Cochairs of the Joint Legislative Oversight Committee on Information Technology. The report shall include the amount of the award, the award recipient, the using agency, and a short description of the nature of the award."

SECTION 6. G.S. 116-13(a) reads as rewritten:

"(a) The power and authority granted to the Board of Governors with regard to the acquisition, operation, maintenance and disposition of real and personal property and services shall be subject to, and exercised in accordance with, the provisions of Chapters 143 and 146 of the General Statutes and related sections of the North Carolina Administrative Code, except when a purchase is being made that is not covered by a State term contract and either:

(1) The funds used to procure personal property or services are not moneys appropriated from the General Fund or received as tuition or, in the case of multiple fund sources, moneys appropriated from the General Fund or received as tuition do not exceed thirty percent (30%) of the total funds; or

(2) The funds used to procure personal property or services are contract and grant funds or, in the case of multiple fund sources, the contract and grant funds exceed fifty percent (50%) of the total funds.

When a special responsibility constituent institution makes a purchase under subdivision (1) or (2) of this subsection, the requirements of Chapter 143, Article 3 shall apply, except the approval or oversight of the Secretary of ~~Administration,~~ Administration or the State Purchasing ~~Officer, or the Board of Awards~~ Officer shall not be required, regardless of dollar value."

SECTION 7. G.S. 120-36.6 reads as rewritten:

"**§ 120-36.6. Legislative Fiscal Research staff participation.**

The Legislative Services Officer shall designate a member of the Fiscal Research staff, and a member of the General Research or Bill Drafting staff who may attend all meetings of the ~~Board of Awards and~~ Council of State, unless the ~~Board or~~ Council has voted to exclude them from the specific meeting, provided that no final action may be taken while they are so excluded. The Legislative Services Officer and the Director of Fiscal Research shall be notified of all such meetings, hearings and trips in the same manner and at the same time as notice is given to members of the ~~Board or~~ Council. The Legislative Services Officer and the Director of Fiscal Research shall be provided with a copy of all reports, memoranda, and other informational material which are distributed to the members of the ~~Board or~~ Council; these reports, memoranda and materials shall be delivered to the Legislative Services Officer and the Director of Fiscal Research at the same time that they are distributed to the members of the ~~Board or~~ Council."

SECTION 8. G.S. 143-52(a) reads as rewritten:

"(a) The Secretary of Administration shall compile and consolidate all such estimates of goods and services needed and required by State departments, institutions and agencies to determine the total requirements of any given commodity. Where such total requirements will involve an expenditure in excess of the expenditure benchmark established under the provisions of G.S. 143-53.1 and where the competitive bidding procedure is employed as hereinafter provided, sealed bids shall be solicited by advertisement in a newspaper widely distributed in this State or through electronic means, or both, as determined by the Secretary to be most advantageous, at least once and at least 10 days prior to the date designated for opening. Except as otherwise provided under this Article, contracts for the purchase of goods and services shall be based on competitive bids and suitable means authorized by the Secretary as provided in G.S. 143-49. The acceptance of bid(s) most advantageous to the State shall be determined upon consideration of the following criteria: prices offered; best value, as the term is defined in G.S. 143-135.9(a)(1); the quality of the articles offered; the general reputation and performance capabilities of the bidders; the substantial conformity with the specifications and other conditions set forth in the request for bids; the suitability of the articles for the intended use; the personal or related services needed; the transportation charges; the date or dates of delivery and performance; and such other factor(s) deemed pertinent or peculiar to the purchase in question, which if controlling shall be made a matter of record. Competitive bids on such contracts shall be received in accordance with rules and regulations to be adopted by the Secretary of Administration, which rules and regulations shall prescribe for the manner, time and place for proper advertisement for such bids, the time and place when bids will be received, the articles for which such bids are to be submitted and the specifications prescribed for such articles, the number of the articles desired or the duration of the proposed contract, and the amount, if any, of bonds or certified checks to accompany the bids. Bids shall be publicly opened. Any and all bids received may be rejected. Each and every bid conforming to the terms of the invitation, together with the name of the bidder, shall be tabulated and that tabulation shall become public record in accordance with the rules adopted by the Secretary. All contract information shall be made a matter of public record after the award of contract. Provided, that trade secrets, test data and similar proprietary information may remain confidential. A bond for the faithful performance of any contract may be required of the successful bidder at bidder's expense and in the discretion of the Secretary of Administration. When the dollar value of a contract for the

purchase, lease, or lease/purchase of goods exceeds the benchmark established by G.S. 143-53.1, the contract shall be reviewed by the ~~Board of Awards~~ State Purchasing Officer pursuant to G.S. 143-52.1 prior to the contract being awarded. After contracts have been awarded, the Secretary of Administration shall certify to the departments, institutions and agencies of the State government the sources of supply and the contract price of the goods so contracted for."

SECTION 9. G.S. 143-59(b) reads as rewritten:

"(b) Reciprocal Preference. – For the purpose only of determining the low bidder on all contracts for equipment, materials, supplies, and services valued over twenty-five thousand dollars ($25,000), a percent of increase shall be added to a bid of a nonresident bidder that is equal to the percent of increase, if any, that the state in which the bidder is a resident adds to bids from bidders who do not reside in that state. Any amount due under a contract awarded to a nonresident bidder shall not be increased by the amount of the increase added by this subsection. On or before January 1 of each year, the Secretary of Administration shall electronically publish a list of states that give preference to in-State bidders and the amount of the percent increase added to out-of-state bids. All departments, institutions, and agencies of the State shall use this list when evaluating bids. If the reciprocal preference causes the nonresident bidder to no longer be the lowest bidder, the Secretary of Administration ~~may, after consultation with the Board of Awards,~~ may waive the reciprocal preference. In determining whether to waive the reciprocal preference, the Secretary of Administration ~~and the Board of Awards~~ shall consider factors that include competition, price, product origination, and available resources."

SECTION 10. G.S. 143-318.18(10) is repealed.

SECTION 11. The Department of Administration shall provide an individualized notice to the following State entities to ensure that the entities are aware of how the statutory amendments made in S.L. 2010-194, Section 15 of S.L. 2011-326, and this act apply to them:

(1) The North Carolina State Lottery Commission, which is subject to G.S. 18C-150.

(2) The Commissioner of Banks, who is subject to G.S. 53-320(d), 53-326(d), 53-391, and 53-401.

(3) The Commissioner of Insurance, who is subject to G.S. 53-401, 58-33-30(e)(4) and (5), 58-33-125(e), 58-33-130(a), and 58-71-40(d).

(4) The Global TransPark Authority, which is subject to G.S. 63A-24. The Secretary of Transportation shall be copied on the notice sent to the Global TransPark Authority.

(5) The North Carolina State Bar Council, which is subject to G.S. 84-23(d).

(6) The North Carolina Board for Licensing of Geologists, which is subject to G.S. 89E-5(e).

(7) The North Carolina Board for Licensing of Soil Scientists, which is subject to G.S. 89F-5(d).

(8) The constituent institutions of the University of North Carolina, which are subject to G.S. 114-8.3(b). For notification under this subdivision, the Department of Administration may provide the University of North Carolina system a notification to distribute to all of its constituent institutions. If the Department of Administration does so, the University of North Carolina system shall distribute those notifications to the system's constituent institutions.

(9) The North Carolina Center for Applied Textile Technology, which is subject to G.S. 115D-67.4.

(10) The North Carolina State Health Plan for Teachers and State Employees, which is subject to G.S. 135-48.33(b).
(11) The Department of Transportation, which is subject to G.S. 136-28.1(h) and G.S. 143-134(b).
(12) The North Carolina Turnpike Authority, which is subject to G.S. 136-89.194(g)(1). The Secretary of Transportation shall be copied on the notice sent to the Turnpike Authority.
(13) The Department of Health and Human Services, which is subject to G.S. 143-48.1(c).
(14) The Division of Adult Correction of the Department of Public Safety, which is subject to G.S. 143-134(b). The Secretary of Public Safety shall be copied on the notice sent to the Division of Adult Correction.
(15) The North Carolina Code Officials Qualification Board, which is subject to G.S. 143-151.16(d). The Commissioner of Insurance shall be copied on the notice sent to the Code Officials Qualification Board.
(16) The Roanoke Island Commission, which is subject to G.S. 143B-131.2(b)(15). The Secretary of Cultural Resources shall be copied on the notice sent to the Roanoke Island Commission.
(17) Any other State entity subject to contract review under G.S. 114-8.3.

The Department of Administration, as part of its notice, shall provide a means by which an entity may acknowledge receipt and understanding of the notice. If the Department of Administration has not received an acknowledgement from a State entity within 30 days of sending the notice, the Department of Administration shall send a second notice. If the Department of Administration has not received an acknowledgement from a State entity within 30 days of sending the second notice, the Department of Administration shall notify (i) the Joint Legislative Program Evaluation Oversight Committee and (ii) the House Appropriations Subcommittee on General Government and the Senate Appropriations Committee on General Government and Information Technology.

SECTION 12. The Attorney General's Office, the Department of Administration, and the Office of the General Counsel for The University of North Carolina shall establish procedures to implement the provisions of this act no later than June 30, 2013.

SECTION 13. G.S. 143-49 reads as rewritten:

"**§ 143-49. Powers and duties of Secretary.**

The Secretary of Administration shall have power and authority, and it shall be his duty, subject to the provisions of this Article:

...

(13) To ~~implement~~ implement, by January 1, 2014, a quality management system equivalent to the International Organization for Standardization (ISO) 9001:2008 to ensure that citizen and agency customer requirements are met. By ~~September 1, 2012,~~ June 1, 2013, and more frequently as requested, the Secretary shall report to the Joint Legislative Commission on Governmental Operations, the Program Evaluation Division, and the Fiscal Research Division concerning the progress of the Department's effort to comply with the provisions of this subdivision.
(14) To work in conjunction with the Office of State Personnel to create a Contracting Specialist career path to provide for the ~~designation~~ designation, by September 1, 2013, of one or more employees within each department, agency, or institution of the State to serve as the Contracting Specialist for the department, agency, or institution. Employees on the Contracting Specialist career path shall receive training and guidance as to the provisions of this Article.

(15) To work in conjunction with the Office of State Personnel, the Division of Purchase and Contract, and the University of North Carolina School of Government to ~~develop~~ implement, by July 1, 2014, a rigorous contract management training and certification program for State employees. The program shall be administered by the Office of State Personnel.

(16) To work in conjunction with the University of North Carolina School of Government to study and recommend improvements to State procurement laws, including the feasibility of adopting the provisions of the American Bar Association Model Procurement Code. The recommendations shall be reported by the Secretary to the Joint Legislative Commission on Governmental Operations and the Program Evaluation Division by September 1, 2013.

(17) To establish procedures to permit State government, or any of its departments, institutions, or agencies, to join with any federal, State, or local government agency, entity, or subdivision, or any nonprofit organization in cooperative purchasing plans, projects, arrangements, or agreements if the interest of the State would be served thereby."

SECTION 14. Sections 1 through 3 of this act become effective October 1, 2013, and apply to contracts entered into on or after that date. The remainder of this act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

H D

HOUSE BILL 56*

Committee Substitute Favorable 2/27/13
PROPOSED SENATE COMMITTEE SUBSTITUTE H56-CSSV-29 [v.7]
6/17/2013 3:34:06 PM

Short Title: Amend State Contract Review Laws. (Public)

Sponsors:

Referred to:

February 5, 2013

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH THE CONTRACT MANAGEMENT SECTION OF THE DIVISION OF PURCHASE AND CONTRACT, DEPARTMENT OF ADMINISTRATION, TO AMEND THE LAWS REQUIRING NEGOTIATION AND REVIEW OF CERTAIN STATE CONTRACTS, TO PROVIDE OVERSIGHT AND REPORTING OF CERTAIN CONTRACT AWARDS, AND TO PROVIDE FOR CONTRACT MANAGEMENT AND ADMINISTRATION, AS RECOMMENDED BY THE JOINT LEGISLATIVE PROGRAM EVALUATION OVERSIGHT COMMITTEE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 114-8.3 reads as rewritten:

"**§ 114-8.3. Attorney ~~General~~ General/General Counsel;~~to~~ review certain contracts.**

(a) Except as provided in ~~subsection~~ subsections (b) and (b1) of this section, the Attorney General or the Attorney General's designee shall perform the duties required pursuant to G.S. 143-49(3a) for ~~review all~~ proposed contracts for ~~supplies, materials, printing, equipment, and~~ contractual services that exceed ~~one~~ five million dollars ~~($1,000,000)~~ ($5,000,000). The designee shall confirm ~~to ensure~~ that the proposed contracts are (i) in proper legal form, (ii) contain all clauses required by North Carolina law, (iii) are legally enforceable, and (iv) accomplish the intended purposes of the proposed contract. The ~~term "review" as used in this section shall~~ designee's review does not constitute approval or disapproval of the policy merit or lack thereof of the proposed contract. For purposes of this subsection, the term "Attorney General's designee" ~~shall include~~ includes any attorney approved by the Attorney General to review contracts as provided in this subsection. The Attorney ~~General~~ General shall:

(1) Establish ~~establish~~ procedures regarding the review of contracts subject to this section and shall provide any attorney designated under G.S. 143-49(3a) with guidelines to be used in reviewing contracts. ~~shall require that any attorney designated under this subsection comply with any rules established by the Attorney General or the Department of Administration regarding the review of contracts.~~

(2) Advise and assist the Contract Management Section of the Division of Purchase and Contract, Department of Administration, in establishing procedures and guidelines for the review of contracts pursuant to G.S. 143-50.1.

(b) For the constituent institutions of The University of North Carolina, the General Counsel of each institution or the General Counsel's designee shall review all proposed contracts for supplies, materials, printing, equipment, and contractual services that exceed one

million dollars ($1,000,000) to ensure that the proposed contracts are (i) in proper legal form, (ii) contain all clauses required by North Carolina law, (iii) are legally enforceable, and (iv) accomplish the intended purposes of the proposed contract. The term "review" as used in this section ~~shall~~ does not constitute approval or disapproval of the policy merit or lack thereof of the proposed contract. For purposes of this subsection, the term "General Counsel's designee" ~~shall include~~ includes any attorney approved by the General Counsel to review contracts as provided in this subsection. The General Counsel shall establish procedures regarding the review of contracts subject to this section and shall require that any attorney designated under this subsection comply with any ~~rules~~ procedures established by the Attorney General or the Department of Administration regarding the review of contracts.

(b1) The General Counsel of the Department of State Treasurer or the General Counsel's designee shall review all proposed investment contracts, as defined in subdivision (4) of this subsection, and all proposed contracts for investment-related services entered pursuant to the State Treasurer's authority under G.S. 147-69.3 not constituting consulting contracts, to confirm that the proposed contracts (i) are in proper legal form, (ii) contain all clauses required by North Carolina law, (iii) are legally enforceable to the extent governed by North Carolina law, and (iv) accomplish the intended purposes of the proposed contract. The General Counsel shall establish, in consultation with the Attorney General and the Department of Administration, procedures regarding the review of contracts subject to this subsection. The following terms and requirements apply to contracts under this subsection:

(1) The term "review" as used in this section does not constitute approval or disapproval of the policy merit or lack thereof of the proposed contract.

(2) The term "General Counsel's designee" includes any attorney employed or retained by the General Counsel to review contracts as provided in this subsection.

(3) Any contract for services reviewed pursuant to this subsection must include the signature of the General Counsel or the General Counsel's designee confirming that the Department of State Treasurer has adhered to the procedures established by the General Counsel regarding the review of the contract. Except for a contract entered into as part of direct trading of bonds, instruments, equity securities, or other approved securities, a contract that has not been signed as required by this subdivision is voidable by the State, and any party or parties to the contract are entitled to receive the value of services rendered prior to the termination of the contract.

(4) For the purposes of this subsection, "investment contract" means any of the following:

a. Investments to be acquired, held, or sold, directly or indirectly, by or for the State Treasurer, the Department of State Treasurer, or an investment entity created by the Department of State Treasurer, either on its own behalf or on behalf of another beneficial owner.

b. Investments administered by the North Carolina Supplemental Retirement Board of Trustees.

(c) All State agencies, the constituent institutions of The University of North Carolina, or any person who will be entering into a contract on behalf of the State for supplies, materials, printing, equipment, or contractual services that exceeds one million dollars ($1,000,000) shall notify the Secretary of the Department of Administration or the Secretary's designee of the intent to enter into the contract and provide information as required by the Department for the purposes of maintaining a centralized log of contracts and identifying the location of the contract documents."

SECTION 2. G.S. 143-49 reads as rewritten:

"**§ 143-49. Powers and duties of Secretary.**

The Secretary of Administration ~~shall have~~ has the power and authority, and it ~~shall be his~~ is the Secretary's duty, subject to the provisions of this Article:

...

(3a) To ~~request, notify and~~ the Attorney General of pending contracts for contractual services exceeding a cost of five million dollars ($5,000,000) and that are not otherwise excepted by this subdivision. Upon notification, the Attorney General shall assign a representative ~~of~~ from within the office of the Attorney General, the Contract Management Section of the Division of Purchase and Contract, Department of Administration, or other qualified counsel to assist in negotiation for the award of ~~any~~ the contract. ~~contract for contractual services exceeding a cost of one hundred thousand dollars ($100,000) that requires negotiation with prospective contractors.~~ It ~~shall be~~ is the duty of ~~such~~ the representative to assist and advise in obtaining the most favorable contract for the State, to evaluate all proposals available from prospective contractors for that purpose, to interpret proposed contract terms and to advise the Secretary or his representatives of the liabilities of the State and validity of the contract to be awarded. An attorney from within the office of the Attorney General shall review all~~All~~ contracts and drafts of ~~such contracts shall be prepared by the office of the Attorney General~~ contracts, and the office shall retain copies ~~thereof shall be retained by such office~~ for a period of three years following the termination of ~~such~~ the contracts. The term "contractual services" as used in this subsection and G.S. 143-52.2 ~~shall mean~~ means work performed by an independent contractor requiring specialized knowledge, experience, expertise or similar capabilities wherein the service rendered does not consist primarily of acquisition by this State of equipment or materials and the rental of equipment, materials and supplies. ~~The term "negotiation" as used in this~~ This subdivision ~~shall~~ does not apply ~~be deemed to refer~~ to contracts entered into or to be entered into as a result of a competitive bidding process. In order to be valid, any contract for services reviewed pursuant to this subdivision must include the signature and title of the attorney designated from within the office of the Attorney General to review the contract. If the contract commences without the required signature, the State has the right to terminate the contract, and the other party or parties to the contract shall only be entitled to the value of all services provided to the State prior to the termination. The Secretary is not required to notify the Attorney General for the appointment of a representative for any contracts for contractual services to be entered into by the constituent institutions of The University of North Carolina pursuant to G.S. 114-8.3(b), or for contracts to be entered into by the Department of Treasurer pursuant to G.S. 114-8.3(b1), unless requested to do so by the General Counsel of The University of North Carolina or the General Counsel of the Department of State Treasurer, respectively.

...

~~(13) To implement a quality management system equivalent to the International Organization for Standardization (ISO) 9001:2008 to ensure that citizen and agency customer requirements are met. By September 1, 2012, and more frequently as requested, the Secretary shall report to the Joint Legislative Commission on Governmental Operations, the Program Evaluation Division, and the Fiscal Research Division concerning the progress of the Department's effort to comply with the provisions of this subdivision.~~

...

(16) To work in conjunction with the University of North Carolina School of Government to study and recommend improvements to State procurement laws, including the feasibility of adopting the provisions of the American Bar Association Model Procurement Code. The recommendations shall be reported by the Secretary to the Joint Legislative Commission on Governmental Operations and the Program Evaluation Division by June 30, 2014.

..."

SECTION 3. Article 3 of Chapter 143 of the General Statutes is amended by adding a new section to read:

"**§ 143.50.1. Division of Purchase and Contract; Contract Management Section.**

(a) The Contract Management Section (CMS) is established in the Division of Purchase and Contract, Department of Administration. The CMS shall include legal counsel with the duties and responsibilities included in this section.

(b) Unless otherwise provided in G.S. 114-8.3(b) or (b1), or in this section, for all proposed solicitations for supplies, materials, printing, equipment, or contractual services that exceed one million dollars ($1,000,000), the CMS shall:

(1) Participate and assist in the preparation of all proposed solicitations, and review all available proposals from prospective contractors, with the goal of obtaining the most favorable contract for the State.

(2) Interpret proposed contract terms and advise the Secretary or the Secretary's designee of the potential liabilities to the State.

(3) Review all proposed contracts to ensure that the contracts:

a. Are in proper legal form.

b. Contain all clauses required by law.

c. Are legally enforceable.

d. Require performance that will accomplish the intended purposes of the proposed contract.

The review and evaluation required by this subsection does not constitute approval or disapproval of the policy merit or lack thereof of the proposed contract.

(c) With respect to proposed contracts for services that exceed five million dollars ($5,000,000), the CMS shall perform the duties required under G.S. 143-49(3a).

(d) The CMS shall:

(1) Assist State departments, agencies, and institutions to establish formal contract administration procedures and functions.

(2) Advise personnel in contracting specialist roles as to appropriate contract management and administrative techniques and activities.

(3) Act as a general resource to State agencies on contracting issues related to procurement, including contract drafting, clarification of terms and conditions, proper solicitation and bid evaluation procedures, contract negotiation, and other matters as directed by the State Purchasing Officer.

(4) Assist representatives of the Attorney General, agency counsel, and other legal staff, as requested, in matters related to contracting for goods and services.

(e) The Department of Administration shall adopt procedures for the record keeping of the information provided by State agencies and that has been received by the Secretary or the Secretary's designee pursuant to G.S. 114-8.3(c). The Department shall keep the records, and shall include a log with information that provides identification of individual contracts and where the contract documents are located. The Secretary is authorized to require that entities reporting pursuant to G.S. 114-8.39(c) provide additional information that may be required to identify the individual contracts.

(f) The CMS shall consist of personnel designated by the Secretary and perform other functions as directed by the Secretary that are not inconsistent with this section."

SECTION 4. G.S. 143-52.1 reads as rewritten:

"**§ 143-52.1. ~~Board of Awards.~~Award recommendations; State Purchasing Officer action.**

(a) Award Recommendation. – When the dollar value of a contract to be awarded under Article 3 of Chapter 143 of the General Statutes exceeds the benchmark established pursuant to G.S. 143-53.1, an award recommendation shall be submitted to the State Purchasing Officer for approval or other action. The State Purchasing Officer shall promptly notify the agency or institution making the recommendation, or for which the purchase is to be made, of the action taken. ~~There is created the Board of Awards. The Board shall consist of three members at a time, appointed by the Chair of the Commission. Members of the Board shall be appointed on a rotating basis from the membership of the Commission and the Council of State. Two out of three members appointed for each meeting of the Board shall constitute a quorum of the Board.~~

~~(b) The Board shall meet weekly as called by the Chair of the Commission, except in weeks when no contracts have been submitted to the Board for review.~~

~~(c) When the dollar value of a contract exceeds the benchmark established either pursuant to G.S. 143-53.1 or G.S. 147-33.101, the Board shall review and make a recommendation on action to be taken by the Secretary of Administration on contracts to be awarded under Article 3 of Chapter 143 of the General Statutes and on contracts to be awarded by the Chief Information Officer under Article 3D of Chapter 147 of the General Statutes, prior to the awarding of the contract.~~

~~(d) The State Budget Officer shall designate a secretary for the Board. The Secretary of Administration and the State Chief Information Officer shall each submit their matters for consideration to the secretary for inclusion on the Board's agenda. Records shall be kept of each meeting and made public by the Secretary of Administration or State Chief Information Officer, as applicable unless the Secretary of Administration or State Chief Information Officer, as applicable, determines a specific record of the meeting needs to be confidential due to the nature of the contract. The Secretary of Administration or State Chief Information Officer, as applicable, may elect to proceed with the award of a contract without a recommendation of the Board in cases of emergencies or in the event that a Board is not available. In those cases, contracts awarded without Board review shall be reported to the next meeting of the Board as a matter of record.~~

(e) Reporting. – ~~Reports on recommendations made by the Board on matters presented by the State Chief Information Officer to the Board shall be reported monthly by the Board~~ The State Procurement Officer shall provide a monthly report of all contract awards greater than twenty-five thousand dollars ($25,000) approved through the Division of Purchase and Contract to the ~~chairs of the Joint Legislative Oversight Committee on Information Technology~~ Cochairs of the Joint Legislative Committee on Governmental Operations. The report shall include the amount of the award, the award recipient, the using agency, and a short description of the nature of the award."

SECTION 5. G.S. 147-33.101 reads as rewritten:

"**§ 147-33.101. ~~Board of Awards review.~~Award recommendation; State Chief Information Officer action.**

(a) Award Recommendation. – When the dollar value of a contract for the procurement of information technology equipment, materials, and supplies exceeds the benchmark established by the State Chief Information Officer, an award recommendation shall be submitted to the State Chief Information Officer for approval or other action. The State Chief Information Officer shall promptly notify the agency or institution making the recommendation, or for which the purchase is to be made, of the action taken. ~~the contract shall be reviewed by the Board of Awards pursuant to G.S. 143-52.1 prior to the contract being awarded.~~

(b) Review. – Prior to submission ~~of any contract~~ for review ~~by the Board of Awards~~ pursuant to this section ~~for~~ of any contract for information technology being acquired for the benefit of the Office and not on behalf of any other State agency, the Director of the Budget shall review and approve the procurement to ensure compliance with the established processes, specifications, and standards applicable to all information technology purchased, licensed, or leased in State government, including established procurement processes, and compliance with the State government wide technical architecture as established by the State CIO.

(c) Reporting. – The State CIOs shall provide a report of all contract awards approved through the Statewide IT Procurement Office as indicated below. The report shall include the amount of the award, the contract term, the award recipient, the using agency, and a short description of the nature of the award.

(1) For contract awards greater than twenty-five thousand dollars ($25,000), to the Cochairs of the Joint Legislative Oversight Committee on Information Technology on a monthly basis.

(2) For all contract awards outside the established purchasing system, to the Secretary of the Department of Administration on a quarterly basis."

SECTION 6. G.S. 116-13(a) reads as rewritten:

"(a) The power and authority granted to the Board of Governors with regard to the acquisition, operation, maintenance and disposition of real and personal property and services shall be subject to, and exercised in accordance with, the provisions of Chapters 143 and 146 of the General Statutes and related sections of the North Carolina Administrative Code, except when a purchase is being made that is not covered by a State term contract and either:

(1) The funds used to procure personal property or services are not moneys appropriated from the General Fund or received as tuition or, in the case of multiple fund sources, moneys appropriated from the General Fund or received as tuition do not exceed thirty percent (30%) of the total funds; or

(2) The funds used to procure personal property or services are contract and grant funds or, in the case of multiple fund sources, the contract and grant funds exceed fifty percent (50%) of the total funds.

When a special responsibility constituent institution makes a purchase under subdivision (1) or (2) of this subsection, the requirements of Chapter 143, Article 3 shall apply, except the approval or oversight of the Secretary of ~~Administration,~~ Administration or the State Purchasing ~~Officer, or the Board of Awards~~ Officer ~~shall not be~~ is not required, regardless of dollar value."

SECTION 7. G.S. 120-36.6 reads as rewritten:

"**§ 120-36.6. Legislative Fiscal Research staff participation.**

The Legislative Services Officer shall designate a member of the Fiscal Research staff, and a member of the General Research or Bill Drafting staff who may attend all meetings of the ~~Board of Awards and~~ Council of State, unless the ~~Board or~~ Council has voted to exclude them from the specific meeting, provided that no final action may be taken while they are so excluded. The Legislative Services Officer and the Director of Fiscal Research shall be notified of all such meetings, hearings and trips in the same manner and at the same time as notice is given to members of the ~~Board or~~ Council. The Legislative Services Officer and the Director of Fiscal Research shall be provided with a copy of all reports, memoranda, and other informational material which are distributed to the members of the ~~Board or~~ Council; these reports, memoranda and materials shall be delivered to the Legislative Services Officer and the Director of Fiscal Research at the same time that they are distributed to the members of the ~~Board or~~ Council."

SECTION 8. G.S. 143-52(a) reads as rewritten:

"(a) The Secretary of Administration shall compile and consolidate all ~~such~~ estimates of goods and services needed and required by State departments, institutions and agencies to

determine the total requirements of any given commodity. Where ~~such~~ the total requirements will involve an expenditure in excess of the expenditure benchmark established under the provisions of G.S. 143-53.1 and where the competitive bidding procedure is employed as hereinafter provided, sealed bids shall be solicited by advertisement in a newspaper widely distributed in this State or through electronic means, or both, as determined by the Secretary to be most advantageous, at least once and at least 10 days prior to the date designated for opening. Except as otherwise provided under this Article, contracts for the purchase of goods and services shall be based on competitive bids and suitable means authorized by the Secretary as provided in G.S. 143-49. The acceptance of bid(s) most advantageous to the State shall be determined upon consideration of the following criteria: prices offered; best value, as the term is defined in G.S. 143-135.9(a)(1); the quality of the articles offered; the general reputation and performance capabilities of the bidders; the substantial conformity with the specifications and other conditions set forth in the request for bids; the suitability of the articles for the intended use; the personal or related services needed; the transportation charges; the date or dates of delivery and performance; and such other factor(s) deemed pertinent or peculiar to the purchase in question, which if controlling shall be made a matter of record. Competitive bids on ~~such~~ contracts shall be received in accordance with rules and regulations to be adopted by the Secretary of Administration, which rules and regulations shall prescribe for the manner, time and place for proper advertisement for such bids, the time and place when bids will be received, the articles for which such bids are to be submitted and the specifications prescribed for ~~such~~ the articles, the number of the articles desired or the duration of the proposed contract, and the amount, if any, of bonds or certified checks to accompany the bids. Bids shall be publicly opened. Any and all bids received may be rejected. Each and every bid conforming to the terms of the invitation, together with the name of the bidder, shall be tabulated and that tabulation shall become public record in accordance with the rules adopted by the Secretary. All contract information shall be made a matter of public record after the award of contract. Provided, that trade secrets, test data and similar proprietary information may remain confidential. A bond for the faithful performance of any contract may be required of the successful bidder at bidder's expense and in the discretion of the Secretary of Administration. When the dollar value of a contract for the purchase, lease, or lease/purchase of goods exceeds the benchmark established by G.S. 143-53.1, the contract shall be reviewed by the ~~Board of Awards~~ State Purchasing Officer pursuant to G.S. 143-52.1 prior to the contract being awarded. After contracts have been awarded, the Secretary of Administration shall certify to the departments, institutions and agencies of the State government the sources of supply and the contract price of the goods so contracted for."

SECTION 9. G.S. 143-59(b) reads as rewritten:

"(b) Reciprocal Preference. – For the purpose only of determining the low bidder on all contracts for equipment, materials, supplies, and services valued over twenty-five thousand dollars ($25,000), a percent of increase shall be added to a bid of a nonresident bidder that is equal to the percent of increase, if any, that the state in which the bidder is a resident adds to bids from bidders who do not reside in that state. Any amount due under a contract awarded to a nonresident bidder shall not be increased by the amount of the increase added by this subsection. On or before January 1 of each year, the Secretary of Administration shall electronically publish a list of states that give preference to in-State bidders and the amount of the percent increase added to out-of-state bids. All departments, institutions, and agencies of the State shall use this list when evaluating bids. If the reciprocal preference causes the nonresident bidder to no longer be the lowest bidder, the Secretary of Administration ~~may, after consultation with the Board of Awards,~~ may waive the reciprocal preference. In determining whether to waive the reciprocal preference, the Secretary of Administration ~~and the Board of Awards~~ shall consider factors that include competition, price, product origination, and available resources."

SECTION 10. G.S. 143-318.18(10) is repealed.

SECTION 11. The Department of Administration shall provide an individualized notice to the following State entities to ensure that the entities are aware of how the statutory amendments made in S.L. 2010-194, Section 15 of S.L. 2011-326, and this act apply to them:

(1) The North Carolina State Lottery Commission, which is subject to G.S. 18C-150.

(2) The Commissioner of Banks, who is subject to G.S. 53-320(d), 53-326(d), 53-391, and 53-401.

(3) The Commissioner of Insurance, who is subject to G.S. 53-401, 58-33-30(e)(4) and (5), 58-33-125(e), 58-33-130(a), and 58-71-40(d).

(4) The Global TransPark Authority, which is subject to G.S. 63A-24. The Secretary of Transportation shall be copied on the notice sent to the Global TransPark Authority.

(5) The North Carolina State Bar Council, which is subject to G.S. 84-23(d).

(6) The North Carolina Board for Licensing of Geologists, which is subject to G.S. 89E-5(e).

(7) The North Carolina Board for Licensing of Soil Scientists, which is subject to G.S. 89F-5(d).

(8) The constituent institutions of the University of North Carolina, which are subject to G.S. 114-8.3(b). For notification under this subdivision, the Department of Administration may provide the University of North Carolina system a notification to distribute to all of its constituent institutions. If the Department of Administration does so, the University of North Carolina system shall distribute those notifications to the system's constituent institutions.

(9) The North Carolina Center for Applied Textile Technology, which is subject to G.S. 115D-67.4.

(10) The North Carolina State Health Plan for Teachers and State Employees, which is subject to G.S. 135-48.33(b).

(11) The Department of Transportation, which is subject to G.S. 136-28.1(h) and G.S. 143-134(b).

(12) The North Carolina Turnpike Authority, which is subject to G.S. 136-89.194(g)(1). The Secretary of Transportation shall be copied on the notice sent to the Turnpike Authority.

(13) The Department of Health and Human Services, which is subject to G.S. 143-48.1(c).

(14) The Division of Adult Correction of the Department of Public Safety, which is subject to G.S. 143-134(b). The Secretary of Public Safety shall be copied on the notice sent to the Division of Adult Correction.

(15) The North Carolina Code Officials Qualification Board, which is subject to G.S. 143-151.16(d). The Commissioner of Insurance shall be copied on the notice sent to the Code Officials Qualification Board.

(16) The Roanoke Island Commission, which is subject to G.S. 143B-131.2(b)(15). The Secretary of Cultural Resources shall be copied on the notice sent to the Roanoke Island Commission.

(17) Any other State entity subject to contract review under G.S. 114-8.3.

The Department of Administration, as part of its notice, shall provide a means by which an entity may acknowledge receipt and understanding of the notice. If the Department of Administration has not received an acknowledgement from a State entity within 30 days of sending the notice, the Department of Administration shall send a second notice. If the

Department of Administration has not received an acknowledgement from a State entity within 30 days of sending the second notice, the Department of Administration shall notify (i) the Joint Legislative Program Evaluation Oversight Committee and (ii) the House Appropriations Subcommittee on General Government and the Senate Appropriations Committee on General Government and Information Technology.

SECTION 12. The Attorney General's Office, the Department of Administration, and the Office of the General Counsel for The University of North Carolina shall establish procedures to implement the provisions of this act no later than October 1, 2013.

SECTION 13. Sections 1 through 3 of this act become effective October 1, 2013, and apply to contracts entered into on or after that date. The remainder of this act is effective when it becomes law.

HOUSE BILL 56:
Amend State Contract Review Laws

2013-2014 General Assembly

Committee:	Senate Commerce	**Date:**	June 18, 2013
Introduced by:	Rep. Howard	**Prepared by:**	Trina Griffin Committee Counsel
Analysis of:	PCS to Second Edition H56-CSSV-29		

SUMMARY: ***This bill would create a contract management section (CMS) in the Division of Purchase and Contract, Department of Administration, with responsibility for review of State contracts in excess of one million dollars ($1,000,000); would provide that the Attorney General's office shall designate counsel to review contracts for services in excess of five million dollars ($5,000,000) and complete an internal review of the contracts; and would repeal the Board of Awards and transfer its responsibilities. The contract review provisions would become effective October 1, 2013, and the remainder of the bill would become effective when it becomes law.***

House Bill 56 and Senate Bill 78 were originally companion bills but currently differ with respect to the treatment of investment and debt contracts entered into by the Treasurer. Specifically:

- ***HB 56 (2nd Edition) would require CMS review of any contract for services entered into by the Treasurer in excess of $1 million and Attorney General review of proposed Treasurer investment and debt contracts in excess of $5 million, but it would permit the Treasurer to seek approval from the Attorney General for the employment of outside counsel with regard to investment and debt contracts that exceed $5 million.***
- ***SB 78 (3rd Edition) would exempt from CMS review contracts for consultant services entered into by the Treasurer and would direct the Treasurer's General Counsel, rather than the Attorney General, to review proposed investment and debt contracts. The Senate passed this bill on May 9, 2013.***

<u>The PCS for HB 56 differs from the Second Edition of HB 56 as follows:</u>

- ***It includes the provision from Senate Bill 78 that would allow the Treasurer's General Counsel, rather than the Attorney General, to review proposed investment contracts and contracts for investment–related services, which would include the services of independent appraisers, auditors, attorneys, investment counseling firms, or other similar specialized professionals, as long as they do not constitute consulting contracts. Consulting contracts in excess of $5 million would have to be reviewed by the Attorney General.***
- ***It requires the Treasurer to develop procedures for the review of these contracts in consultation with the Department of Administration and the Attorney General.***
- ***It removes debt contracts from the scope of the Treasurer's carve-out. If they otherwise meet the definition of a contract for contractual services, then they would be subject to review by CMS if in excess of $1 million and review by the AG if in excess of $5 million.***
- ***It deletes the requirement under current law that the Secretary of the Department of Administration implement a quality management system equivalent to the International Organization for Standardization (ISO).***

- ***It requires all State Chief Information Officers to notify the Department of Administration of all contracts awarded outside the established purchasing system.***
- ***Under current law, the Secretary is authorized to create a Contracting Specialist career path to provide for employees within each agency to serve in that role. The bill would have required that this requirement be met by September 1, 2013. The PCS removes the deadline from the bill.***
- ***Under current law, the Secretary is required to develop, in conjunction with OSP, the Division of Purchase and Contract, and the UNC School of Government, a contract management training program. The bill would have required that this program be implemented by July 1, 2014. The PCS removes the deadline from the bill.***
- ***It extends from September 1, 2013, to June 30, 2014, the date by which recommendations must be made to the Joint Legislative Commission on Governmental Operations and the Program Evaluation Division regarding improvements to the State procurement laws.***

CURRENT LAW:

Duties of Attorney General's Office Regarding Contracts. – The Attorney General's Office is required to review all contracts for supplies, materials, printing, equipment, and contractual services in excess of $1,000,000. [Excludes the UNC system, see below] If the contract is for services and exceeds $100,000, then the Attorney General is required to designate an attorney to (i) assist and advise in obtaining the most favorable contract for the State, (ii) evaluate all proposals for that purpose, (iii) interpret proposed contract terms, and (iv) advise the Secretary or his representatives of the liabilities of the State and validity of the contract to be awarded.

UNC Contracts. – The General Counsel or designee for the constituent institutions of The University of North Carolina is responsible for reviewing all contracts to be entered into by those institutions.

Duties of Department of Administration Regarding Contracts. – The duties are as follows:

- Adopt a quality management system, and report to the Joint Legislative Commission on Governmental Operations, the Program Evaluation Division, and the Fiscal Research Division concerning the progress of the Department's efforts.
- To work in conjunction with the Office of State Personnel to create a Contracting Specialist career path to provide for the designation of one or more employees within each department, agency, or institution of the State to serve as the Contracting Specialist for the department, agency, or institution, and provide training and guidance as to this requirement.
- To work in conjunction with the Office of State Personnel, the Division of Purchase and Contract, and the University of North Carolina School of Government to develop a contract management training and certification program for State employees. The program will be administered by the Office of State Personnel.
- To work in conjunction with the University of North Carolina School of Government to study and recommend improvements to State procurement laws. The recommendations are to be reported to the Joint Legislative Commission on Governmental Operations and the Program Evaluation Division.
- To establish procedures to permit State government, or any of its departments, institutions, or agencies, to join with any federal, State, or local government agency, entity, or subdivision, or

any nonprofit organization in cooperative purchasing plans, projects, arrangements, or agreements if State interests would be served by doing so.

- For contracts involving competitive bidding in excess of a benchmark amount, the Secretary is required to comply with statutory requirements relating to publication, and the receipt and evaluation of bids. Award recommendations are submitted to the Board of Awards for action.

BILL ANALYSIS:

Section 1 would do the following:

- Remove contract review responsibility from the Attorney General's office for all contracts for supplies, materials, printing, equipment, and contractual services in excess of $1,000,000 and transfer that responsibility to a new section in the Department of Administration (see Section 3, below). The section also amends the law to provide that the Attorney General or designee is responsible for reviewing all proposed contracts for services in excess of $5 million dollars. The term "designee" includes any attorney approved by the Attorney General.
- Require the Attorney General's office to: (1) establish procedures regarding the review of contracts and provide any attorney designated to review a contract for services in excess of $5,000,000 with guidelines to be used in reviewing the contract, and (2) advise and assist the Contract Management Section of the Division of Purchase and Contract, Contract Management Section [See Section 3], in establishing procedures and guidelines for the review of contracts.
- Require all State agencies, the constituent institutions of UNC, or any person entering into a contract on behalf of the State for supplies, materials, printing, equipment, or contractual services that exceeds $1 million dollars to notify the Department of Administration for purposes of maintaining a centralized log of contracts.
- **The PCS adds an exception for the Treasurer that is a modified version of the exception in Senate Bill 78. Under this exception, the Treasurer's General Counsel would review, rather than CMS or the Attorney General, proposed investment contracts and contracts for investment-related services, which would include the services of independent appraisers, auditors, actuaries, attorneys, investment counseling firms, statisticians, custodians, or other specialized professionals related to the administration of investment programs, other than consulting contracts. Consulting contracts in excess of $1 million would be subject to CMS review, and consulting contracts in excess of $5 million would be subject to Attorney General review.**
- **The PCS would require the Treasurer to establish procedures for contract review in consultation with the Attorney General and the Department of Administration.**

Section 2 would do the following:

- Increase the threshold amount for a legal review of contracts for services from $100 thousand dollars to $5 million dollars. The attorney designated by the Attorney General's office to review the contracts would be required to fulfill the same requirements provided under current law: (i) assist and advise in obtaining the most favorable contract for the State, (ii) evaluate all proposals for that purpose, (iii) interpret proposed contract terms, and (iv) advise the Secretary or his representatives of the liabilities of the State and validity of the contract to be awarded.
- Require a review by an attorney from within the Attorney General's office, and the attorney's signature and title must be included on the contract in order for the contract to be valid. If the

contract commences without the required signature, the State would have the right to terminate the contract.

- Delete the requirement under current law that the Secretary of the Department of Administration implement a quality management system equivalent to the International Organization for Standardization (ISO).
- Extend from September 1, 2013, to June 30, 2014, the date by which recommendations must be made to the Joint Legislative Commission on Governmental Operations and the Program Evaluation Division regarding improvements to the State procurement laws.

Section 3 would do the following:

- Establish a Contract Management Section (CMS) in the Division of Purchase and Contract, Department of Administration. The primary responsibility of the CMS would be to review all proposed solicitations for supplies, materials, printing, equipment, or contractual services that exceed $1 million dollars. [UNC System excepted]

  The PCS would exempt from CMS review proposed investment contracts and contracts for investment-related services to be entered by the Treasurer. Those contracts would be reviewed by the Treasurer's General Counsel.

- Require legal counsel in the CMS to be responsible for: participating and assisting in the preparation of all proposed solicitations, evaluating all available proposals from prospective contractors with the goal of obtaining the most favorable contract for the State; interpreting proposed contract terms and advising the Secretary or the Secretary's designee of the potential liabilities to the State.
- Provide that counsel in the CMS would be subject to appointment by the Attorney General's office for review of contracts for services in excess of $5 million dollars.
- The CMS would also: (1) assist State departments, agencies, and institutions to establish formal contract administration procedures and functions, (2) advise personnel in contracting specialist roles as to appropriate contract management and administrative techniques and activities, (3) act as a general resource to State agencies on contracting issues related to procurement, including contract drafting, clarification of terms and conditions, proper solicitation and bid evaluation procedures, contract negotiation, and such other matters as directed by the State Purchasing Officer, and (4) assist representatives of the Attorney General, agency counsel, and other legal staff, as requested, in matters related to contracting for goods and services.

Sections 4 through 10 would transfer the authority to take action on contract award recommendations from the Board of Awards to the State Purchasing Officer, or the State Chief Information Officer, depending on the subject of the contract. The statute establishing the Board of Awards is repealed and the sections containing references to the Board are conformed.

Section 5 would require all State Chief Information Officers to notify the Department of Administration of all contracts that are awarded outside the established purchasing system.

Section 11 would require the Department of Administration to notify agencies of actions taken by the General Assembly regarding contract review.

Section 12 would require the Attorney General's Office, the Department of Administration, and the Office of the General Counsel for The University of North Carolina to establish procedures to implement the provisions of the act no later than October 1, 2013.

EFFECTIVE DATE: Sections 1 through 3 of the act are effective October 1, 2013, and apply to contracts entered into on or after that date. The remainder of the act is effective when it becomes law.

Hal Pell, Staff Attorney, substantially contributed to this summary.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

H 3

HOUSE BILL 201
Committee Substitute Favorable 5/13/13
Third Edition Engrossed 5/14/13

Short Title: Reinstate 2009 Energy Conservation Codes. (Public)

Sponsors:

Referred to:

March 5, 2013

A BILL TO BE ENTITLED

AN ACT TO REINSTATE THE 2009 NORTH CAROLINA ENERGY CONSERVATION CODES AND REPEAL THE 2012 NORTH CAROLINA ENERGY CONSERVATION CODES.

The General Assembly of North Carolina enacts:

SECTION 1.(a) Consistent with Chapter 150B of the General Statutes and G.S. 143-138, the Building Code Council shall adopt an energy conservation building code identical to the 2009 North Carolina State Building Code Energy Conservation Code.

SECTION 1.(b) The Building Code Council shall repeal the 2012 North Carolina State Building Code Energy Conservation Code.

SECTION 2. No permit shall be denied or revoked, certificate of compliance denied, order to correct violations issued, stop order issued, defect noted, building condemned, order to take corrective action issued, judicial action brought, or any other action be made under Part 4 of Article 18 of Chapter 153A or Part 5 of Article 19 of Chapter 160A of the General Statutes because of a violation of the 2012 North Carolina State Building Code Energy Conservation Code if it would not also be a violation of the 2009 North Carolina State Building Code Energy Conservation Code.

SECTION 3. Section 1(b) of this act is effective when rules adopted in accordance with Section 1(a) of this act become effective. The remainder of this act is effective when it becomes law except as to judicial actions referred to in Section 2, and as to those actions, this act applies only to judicial actions filed on or after the effective date of this act.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

H D

HOUSE BILL 201
Committee Substitute Favorable 5/13/13
Third Edition Engrossed 5/14/13
PROPOSED SENATE COMMITTEE SUBSTITUTE H201-CSTP-50 [v.3]
6/17/2013 1:40:30 PM

Short Title: Reinstate 2009 Energy Conservation Codes. (Public)

Sponsors:

Referred to:

March 5, 2013

A BILL TO BE ENTITLED

AN ACT TO REINSTATE THE 2009 NORTH CAROLINA ENERGY CONSERVATION CODES FOR COMMERCIAL BUILDINGS AND REPEAL THE PORTIONS OF THE 2012 NORTH CAROLINA ENERGY CONSERVATION CODES THAT APPLY TO COMMERCIAL BUILDINGS.

The General Assembly of North Carolina enacts:

SECTION 1.(a) Consistent with Chapter 150B of the General Statutes and G.S. 143-138, the Building Code Council shall adopt a North Carolina State Building Code Residential Energy Conservation Code applying to residential buildings that is identical to the portions of the 2012 North Carolina State Building Code Energy Conservation Code that apply to residential buildings.

SECTION 1.(b) Consistent with Chapter 150B of the General Statutes and G.S. 143-138, the Building Code Council shall adopt a North Carolina State Building Code Non-Residential Energy Conservation Code applying to non-residential buildings that is identical to the portions of the 2009 North Carolina State Building Code Energy Conservation Code that apply to non-residential buildings.

SECTION 2. The Building Code Council shall repeal the 2012 North Carolina State Building Code Energy Conservation Code.

SECTION 3. No permit shall be denied or revoked, certificate of compliance denied, order to correct violations issued, stop order issued, defect noted, building condemned, order to take corrective action issued, judicial action brought, or any other action be made under Part 4 of Article 18 of Chapter 153A or Part 5 of Article 19 of Chapter 160A of the General Statutes because of a violation of the 2012 North Carolina State Building Code Energy Conservation Code by a non-residential building if it would not also be a violation of the 2009 North Carolina State Building Code Energy Conservation Code.

SECTION 4. Section 2 of this act is effective when rules adopted in accordance with Section 1 of this act become effective. The remainder of this act is effective when it becomes law except as to judicial actions referred to in Section 3, and as to those actions, this act applies only to judicial actions filed on or after the effective date of this act.

HOUSE BILL 201:
Reinstate 2009 Energy Conservation Codes

2013-2014 General Assembly

Committee:	Senate Commerce	**Date:**	June 18, 2013
Introduced by:	Rep. Torbett	**Prepared by:**	Peter Ledford Committee Counsel
Analysis of:	PCS to Third Edition H201-CSTP-50		

SUMMARY: House Bill 201 would reinstate the 2009 North Carolina Energy Conservation Codes for non-residential buildings.

The PCS rewrites Sections 1.(a) and 1.(b).

CURRENT LAW: G.S. 143-138 authorizes the North Carolina Building Code Council (Building Code Council) to prepare and adopt a North Carolina State Building Code. In accordance with this mandate, the Building Code Council has adopted a Building Code, Electrical Code, Energy Conservation Code, Fire Code, Fuel Gas Code, Mechanical Code, Plumbing Code, and Residential Code. The Building Code Council is authorized to use as guidance, but not required to adopt, the requirements of various national and international codes. The North Carolina State Building Code is based on the model International Building Code, which is published by the International Code Council every three years. The Building Code Council reviews each version of the International Building Code and makes revisions specific to development in the State, and then publishes the revised code as the North Carolina State Building Code.

Article 8C of Chapter 143 of the General Statutes sets performance standards for sustainable, energy-efficient public buildings. G.S. 143-135.37 establishes the Sustainable Energy-Efficient Buildings Program within the Department of Administration. This program requires that every major facility construction or renovation project be designed to consume less energy and potable water than applicable standards. The statute also establishes that construction contracts shall include performance verification provisions and authorizes separate meters for each building.

BILL ANALYSIS:

Section 1.(a) of the PCS would direct the Building Code Council to adopt the residential portions of the 2012 Energy Conservation Code as the North Carolina State Building Code Residential Energy Conservation Code.

Section 1.(b) would direct the Building Code Council to adopt the non-residential portions of the 2009 Energy Conservation Code as the North Carolina State Building Code Non-Residential Energy Conservation Code.

Section 2 would direct the Building Code Council to repeal the 2012 Energy Conservation Code.

Section 3 would provide that no permit can be denied or revoked, certificate of compliance denied, order to correct violations issued, stop order issued, defect noted, building condemned, order to take corrective action issued, judicial action brought, or any other action made pursuant to the statutes that authorize units of local government to inspect buildings due to a violation of the 2012 North Carolina State Building Code Energy Conservation Code by a non-residential building if that violation would not also be a violation of the 2009 North Carolina State Energy Conservation Code.

EFFECTIVE DATE: Section 2 of this act is effective when rules adopted in accordance with Section 1 become effective. The remainder of the act is effective when it becomes law, except as to judicial actions referred to in Section 3, and as to those actions, the act applies only to judicial actions filed on or after the effective date of the act.

BACKGROUND: Under the federal Energy Policy Act of 1992, as amended by the Energy Policy Act of 2005, the Secretary of Energy is required to examine model building codes to determine if they would improve energy efficiency in residential buildings and publish such determination. 42 U.S.C. 6833(a)(5)(A). Within two years, each state must then review its residential building code regarding energy efficiency and determine whether it is appropriate to revise the code to meet or exceed the model code certified by the Secretary. 42 U.S.C. 6833(a)(5)(B). If the state determines it is not appropriate to update its residential building code, it must submit the reasons for the determination to the Secretary. 42 U.S.C. 6833(a)(4).

Under the same provisions, the Secretary of Energy is also required to examine model building codes to determine if they would improve energy efficiency in commercial buildings and publish such determination. 42 U.S.C. 6833(b)(2)(A). Within two years, each state must then review its commercial building code regarding energy efficiency and update the code in accordance with the model standard. 42 U.S.C. 6833(b)(2)(B)(i).

Jennifer Mundt, committee analyst to House Commerce and Job Development, substantially contributed to this summary.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

H 2

HOUSE BILL 700*
Committee Substitute Favorable 5/2/13

Short Title: Omnibus State IT Governance Changes. (Public)

Sponsors:

Referred to:

April 11, 2013

A BILL TO BE ENTITLED

AN ACT MAKING OMNIBUS CHANGES TO THE LAWS RELATING TO STATE INFORMATION TECHNOLOGY GOVERNANCE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 147-33.72B(b)(1) reads as rewritten:

"(b) The Plan shall include the following elements:

(1) An inventory of current information technology assets and major projects currently in progress. As used in this subdivision, the term "major project" includes projects subject to review and approval under ~~G.S. 147-33.72C, or that cost more than five hundred thousand dollars ($500,000) to implement.~~G.S. 147-33.72C."

SECTION 2. G.S. 147-33.72C reads as rewritten:

"**§ 147-33.72C. Project approval standards.**

(a) Project Review and Approval. – The State Chief Information Officer shall:

(1) Review all State agency information technology ~~projects that cost or are expected to cost more than five hundred thousand dollars ($500,000), whether the project is undertaken in a single phase or component or in multiple phases or components.~~ projects. If the State Chief Information Officer determines a project meets the quality assurance requirements established under this Article, the State Chief Information Officer shall approve the project.

~~(2) Establish thresholds for determining which information technology projects costing or expected to cost five hundred thousand dollars ($500,000) or less shall be subject to review and approval under subdivision (a)(1) of this section. When establishing the thresholds, the State Chief Information Officer shall consider factors such as project cost, potential project risk, agency size, and projected budget.~~

(b) Project Implementation. – No State agency shall proceed with an information technology project that is subject to review and approval under subsection (a) of this section until the State CIO approves the project. If a project is not approved, the State CIO shall specify in writing to the agency the grounds for denying the approval. The State CIO shall provide this information to the agency within five business days of the denial.

(c) Suspension of Approval. – The State Chief Information Officer may suspend the approval of any information technology project that does not continue to meet the applicable quality assurance standards. ~~This authority extends to any information technology project that costs more than five hundred thousand dollars ($500,000) to implement regardless of whether~~

~~the project was originally subject to review and approval under subsection (a) of this section.~~ If the State CIO suspends approval of a project, the State CIO shall specify in writing to the agency the grounds for suspending the approval. The State CIO shall provide this information to the agency within five business days of the suspension.

The Office of Information Technology Services shall report any suspension immediately to the Office of the State Controller and the Office of State Budget and Management. The Office of State Budget and Management shall not allow any additional expenditure of funds for a project that is no longer approved by the State Chief Information Officer.

~~(d) General Quality Assurance. Information technology projects that are not subject to review and approval under subsection (a) of this section shall meet all other standards established under this Article.~~

(e) Performance Contracting. – All contracts between a State agency and a private party for information technology projects shall include provisions for vendor performance review and accountability. The State CIO may require that these contract provisions require a performance bond, include monetary ~~penalties~~ penalties, or require other performance assurance measures for projects that are not completed or performed within the specified time period or that involve costs in excess of those specified in the contract. The State CIO may ~~require contract provisions requiring a vendor to provide a performance bond.~~utilize cost savings realized on government-vendor partnerships, as defined in G.S. 143-135.9, as performance incentives for an information technology project vendor.

(f) Notwithstanding the provisions of G.S. 114-2.3, any State agency developing and implementing an information technology project with a total cost of ownership in excess of five million dollars ($5,000,000) may be required by the State Chief Information Officer to engage the services of private counsel or subject matter experts with the appropriate information technology and intellectual property expertise. The private counsel or subject matter expert may review requests for proposals; review and provide advice and assistance during the evaluation of proposals and selection of any vendors; and review and negotiate contracts associated with the development, implementation, operation, and maintenance of the project. This requirement may also apply to information technology programs that are separated into individual projects, if the total cost of ownership for the overall program exceeds five million dollars ($5,000,000)."

SECTION 3. G.S. 147-33.72H reads as rewritten:

"**§ 147-33.72H. Information Technology Fund.**

There is established a special revenue fund to be known as the Information Technology Fund, which may receive transfers or other credits as authorized by the General Assembly. Money shall be appropriated from the Information Technology Fund to support the operation and administration of the Office of the State Chief Information Officer. Money may be appropriated from the Information Technology Fund to meet statewide requirements, including planning, project management, security, electronic mail, State portal operations, and the administration of systemwide procurement procedures. Expenditures involving funds appropriated to the Office of Information Technology Services from the Information Technology Fund shall be made by the CIO. By October 1 of each year, the State CIO shall submit to the Joint Legislative Oversight Committee on Information Technology a report on all expenditures involving funds appropriated to the Office of Information Technology Services from the Information Technology Fund for the preceding fiscal year. Interest earnings on the Information Technology Fund balance shall be credited to the Information Technology Fund."

SECTION 4. G.S. 147-33.77(a) reads as rewritten:

"(a) The State Chief Information Officer may appoint a Chief Deputy Information Officer. The salary of the Chief Deputy Information Officer shall be set by the State Chief Information Officer. The State Chief Information Officer may appoint all employees, including

legal counsel, necessary to carry out the powers and duties of the office. ~~These employees shall be subject to the State Personnel Act.~~"

SECTION 5. G.S. 126-5(c1) is amended by adding a new subdivision to read:

"(30) The State Chief Information Officer and employees of the Office of Information Technology Services and Office of the State Chief Information Officer."

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

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

H D

HOUSE BILL 700*
Committee Substitute Favorable 5/2/13
PROPOSED SENATE COMMITTEE SUBSTITUTE H700-CSSU-38 [v.1]
6/10/2013 5:57:15 PM

Short Title: Omnibus State IT Governance Changes. (Public)

Sponsors:

Referred to:

April 11, 2013

A BILL TO BE ENTITLED

AN ACT MAKING OMNIBUS CHANGES TO THE LAWS RELATING TO STATE INFORMATION TECHNOLOGY GOVERNANCE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 147-33.72B(b)(1) reads as rewritten:

"(b) The Plan shall include the following elements:

(1) An inventory of current information technology assets and major projects currently in progress. As used in this subdivision, the term "major project" includes projects subject to review and approval under ~~G.S. 147-33.72C, or that cost more than five hundred thousand dollars ($500,000) to implement.~~G.S. 147-33.72C."

SECTION 2. G.S. 147-33.72C reads as rewritten:

"**§ 147-33.72C. Project approval standards.**

(a) Project Review and Approval. – The State Chief Information Officer shall:

(1) Review all State agency information technology ~~projects that cost or are expected to cost more than five hundred thousand dollars ($500,000), whether the project is undertaken in a single phase or component or in multiple phases or components.~~ projects. If the State Chief Information Officer determines a project meets the quality assurance requirements established under this Article, the State Chief Information Officer shall approve the project.

~~(2) Establish thresholds for determining which information technology projects costing or expected to cost five hundred thousand dollars ($500,000) or less shall be subject to review and approval under subdivision (a)(1) of this section. When establishing the thresholds, the State Chief Information Officer shall consider factors such as project cost, potential project risk, agency size, and projected budget.~~

(b) Project Implementation. – No State agency shall proceed with an information technology project that is subject to review and approval under subsection (a) of this section until the State CIO approves the project. If a project is not approved, the State CIO shall specify in writing to the agency the grounds for denying the approval. The State CIO shall provide this information to the agency within five business days of the denial.

(c) Suspension of Approval. – The State Chief Information Officer may suspend the approval of any information technology project that does not continue to meet the applicable quality assurance standards. ~~This authority extends to any information technology project that~~

~~costs more than five hundred thousand dollars ($500,000) to implement regardless of whether the project was originally subject to review and approval under subsection (a) of this section.~~ If the State CIO suspends approval of a project, the State CIO shall specify in writing to the agency the grounds for suspending the approval. The State CIO shall provide this information to the agency within five business days of the suspension.

The Office of Information Technology Services shall report any suspension immediately to the Office of the State Controller and the Office of State Budget and Management. The Office of State Budget and Management shall not allow any additional expenditure of funds for a project that is no longer approved by the State Chief Information Officer.

~~(d) General Quality Assurance. Information technology projects that are not subject to review and approval under subsection (a) of this section shall meet all other standards established under this Article.~~

(e) Performance Contracting. – All contracts between a State agency and a private party for information technology projects shall include provisions for vendor performance review and accountability. The State CIO may require that these contract provisions require a performance bond, include monetary ~~penalties~~ penalties, or require other performance assurance measures for projects that are not completed or performed within the specified time period or that involve costs in excess of those specified in the contract. The State CIO may ~~require contract provisions requiring a vendor to provide a performance bond.~~ utilize cost savings realized on government-vendor partnerships, as defined in G.S. 143-135.9, as performance incentives for an information technology project vendor.

(f) Notwithstanding the provisions of G.S. 114-2.3, any State agency developing and implementing an information technology project with a total cost of ownership in excess of five million dollars ($5,000,000) may be required by the State Chief Information Officer to engage the services of private counsel or subject matter experts with the appropriate information technology and intellectual property expertise. The private counsel or subject matter expert may review requests for proposals; review and provide advice and assistance during the evaluation of proposals and selection of any vendors; and review and negotiate contracts associated with the development, implementation, operation, and maintenance of the project. This requirement may also apply to information technology programs that are separated into individual projects, if the total cost of ownership for the overall program exceeds five million dollars ($5,000,000)."

SECTION 3. G.S. 147-33.72H reads as rewritten:

"**§ 147-33.72H. Information Technology Fund.**

There is established a special revenue fund to be known as the Information Technology Fund, which may receive transfers or other credits as authorized by the General Assembly. Money shall be appropriated from the Information Technology Fund to support the operation and administration of the Office of the State Chief Information Officer. Money may be appropriated from the Information Technology Fund to meet statewide requirements, including planning, project management, security, electronic mail, State portal operations, and the administration of systemwide procurement procedures. Expenditures involving funds appropriated to the Office of Information Technology Services from the Information Technology Fund shall be made by the CIO. By October 1 of each year, the State CIO shall submit to the Joint Legislative Oversight Committee on Information Technology a report on all expenditures involving funds appropriated to the Office of Information Technology Services from the Information Technology Fund for the preceding fiscal year. Interest earnings on the Information Technology Fund balance shall be credited to the Information Technology Fund."

SECTION 4. G.S. 147-33.77(a) reads as rewritten:

"(a) The State Chief Information Officer may appoint ~~a Chief Deputy Information Officer.~~ one or more Deputy Chief Information Officers. The salary of ~~the Chief~~ a Deputy Information Officer shall be set by the State Chief Information Officer. The State Chief

Information Officer may appoint all employees, including legal counsel, necessary to carry out the powers and duties of the office. These employees shall be subject to the State Personnel Act."

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

services of private counsel or subject matter experts with the appropriate expertise. The private counsel or subject matter expert may (i) review requests for proposals; (ii) review and provide advice during the evaluation of proposals and selection of vendors; and (iii) review and negotiate contracts associated with the development, implementation, operation, and maintenance of the project. The requirement would also apply to IT programs that are separated into individual projects if the total cost of ownership for the overall program exceeds $5 million.

Section 3: G.S. 147-33.72H establishes the Information Technology Fund.

Section 3 would permit money appropriated from the Information Technology Fund to support the operation and administration of the Office of the State CIO.

Section 4: G.S. 147-33.77(a) authorizes the State CIO to appoint a Chief Deputy Information Officer.

Section 4 would authorize the State CIO to appoint one or more Chief Deputy Information Officers.

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

Kelly Quick and Kara McCraw, counsel to House Government, contributed to this summary.

VISITOR REGISTRATION SHEET

Senate **COMMERCE** Committee — June 18, 2013

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DEBBIE LOWN

NAME	FIRM OR AGENCY AND ADDRESS
David Seastrunk	UNC Law
John Anton	Imperial Design Builders 106 N. Johnson St Fuquay-Varina NC
Nathan Batts	NCBA
Daniel Cole	UNC Law
Len Hoey	Energy Office
Leon McKillop	Nelson Mullins
John Hall	NWC

VISITOR REGISTRATION SHEET

Senate **COMMERCE** Committee — June 18, 2013

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DEBBIE LOWN

NAME	FIRM OR AGENCY AND ADDRESS
Amanda Hanaker	TSS
Henry Jones	Jordan Price
William Lowe	Jordan Price
Dylan Watts	Smith A
Amy McCrea	UNC Law
Preston Howard	NCMA
Scott Lasater	BSGNC

VISITOR REGISTRATION SHEET

Senate **COMMERCE** Committee — June 18, 2013

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DEBBIE LOWN

NAME	FIRM OR AGENCY AND ADDRESS
Stan Wilson	NCS
Wendy Kelly	The Policy Group
JOE LANIER	NELSON MULLINS
Allison Waller	Nelson Mullins
Kirstin Gardner	Nelson Mullins
Stephanie Shaker	Nelson Mullins
Adam Berkland	Nelson Mullins
Deb Clary	NCSP
Sarah L. Miller	self
Debbie Hughes	KLG

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Senate **COMMERCE** Committee — June 18, 2013

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DEBBIE LOWN

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Brooks Rainey Pearson	SELC
Molly Diggins	Sierra Club
Dustin Chicurel-Bayard	Sierra Club.
Cassie Gavin	Sierra Club
Butch Gunnells	NC Bev
Nadia Luhr	NCCN
Kay Emanuel	School of Government
Will Sanner	Skanska
Laura Klauke	USGBC-NC
Betsy McCorkle	NCSEA
Julie Robinson	NCSEA
~~Tom Benn~~	NCSEA, EDF
Mildred Spearman	NCAOC

VISITOR REGISTRATION SHEET

Senate **COMMERCE** Committee — June 18, 2013

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DEBBIE LOWN

NAME	FIRM OR AGENCY AND ADDRESS
Chris Kardish	AP
Chreasea Dickerson	NCGA RD Intern
Lisa Martin	NCHBA
Steven Webb	NCHBA
Kim Lawson	NCDPI
Ben Matthews	NCDPI
Chris Erb	NC
Jay Chaudhuri	DST
Solari	DST
Bill Mixell	DST Mexas.
Meg Mcille Abbill	SELC

VISITOR REGISTRATION SHEET

Senate **COMMERCE** Committee — June 18, 2013

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DEBBIE LOWN

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Justin Mann	UNC School of Law
Benton Albritton	ABC Carolinas
Mike Gaubert	NCLCV
Logan Moles	NCLCV
DAN Crawford	NCLCV
Elaine Hartman	UNC Law
Andrew Blackburn	SSG NC
Tim McHugh	SSG NC
Will Coleman	MVA
Mac McCord	NCCN
Jarod Pitt	NCCN

VISITOR REGISTRATION SHEET

Senate **COMMERCE** Committee — June 18, 2013

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DEBBIE LOWN

NAME	FIRM OR AGENCY AND ADDRESS
Ed Lunsford	
Chris Wellborne	
KRISTEN THORNBURG	ENERGY FDN.
Carla Gray	UNC Law
William Dickey	UNC Law
Amy Fullbright	K&L Gates
D'Lane Wisner	DWA + ACC
Attucy	UNC
Rhonda Todd	DOA
Julia Guess	DOA

VISITOR REGISTRATION SHEET

Senate **COMMERCE** Committee — June 18, 2013

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DEBBIE LOWN

NAME	FIRM OR AGENCY AND ADDRESS
Rob Hamby	RLA
Michelle Frazier	MF+S
John Hardin	MF+S
Dave Simpson	CAUC
Henry M Lancaster	NCA
Keith Richards	City of Charlotte
Jack Tarpey	NCSC
David Crawford	AIANC
Betty Bailey	PENC
Chris Agner	DOJ
Chuck Stone	SEANC

Senate Committee on Commerce
Tuesday, July 2, 2013, 11:00 AM
1027/1128 Legislative Building

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

BILL NO.	SHORT TITLE	SPONSOR
HB 474	Redeposit Govt. Funds Into Ins. Deposit Acct.	Rep. S. Ross Rep. Dockham Rep. Lambeth Rep. Goodman
HB 476	Rewrite Underground Damage Prevention Act.	Rep. Hager Rep. Moffitt Rep. Murry
HB 616	Transitional Mortgage Loan Originator.	Rep. Szoka Rep. Dockham Rep. B. Brown
HB 761	Exempt Well K'ors/Electrical K'ors Lic Reqs.	Rep. Hardister Rep. Faircloth Rep. Malone
HB 796	Exempt Certain Columbariums/Cemetery Act.	Rep. Whitmire

Adjournment

Senate Commerce Committee
Tuesday, July 1, 2013
Room 1027 LB, 11:00 a.m.

Minutes

The Senate Committee on Commerce met on Tuesday, July 1, 2013, at 11:00 a.m. in room 1027 of the Legislative Building. Isabel Ferguson of Raleigh, Sawyer Strand of Faison and Karen Metts of Trenton served as pages. Twenty-one committee members attended the meeting. Senator Gunn served as Chair to the meeting.

H.B. 796 – Exempt Certain Columbariums/Cemetery Act

Senator Hise was recognized to explain the bill. Senator Brown moved to adopt the proposed committee substitute (PCS) for discussion and the motion carried. The bill would amend the North Carolina Cemetery Act to exempt certain columbariums from the provisions of the act. The PCS includes a sunset provision, so that the act would expire 18 months after it becomes effective. Senator Tillman moved for a favorable report and the motion carried. A copy of the PCS and the summary is attached.

H.B. 476 – Rewrite Underground Damage Prevention Act

Representative Hager was recognized to explain the bill and Senator Tucker moved to adopt the PCS for discussion. The motion carried. The PCS to HB 476 would repeal the State's existing Underground Damage Prevention Act and enact a new Underground Utility Safety and Damage Prevention Act. Peter Ledford, a staff attorney with the Research Division, was recognized to answer questions. Senator Tillman moved for a favorable report and the motion carried. A copy of the PCS and the summary is attached.

H.B. 616 – Transitional Mortgage Loan Originator

Wendy Graf Ray, an attorney with the Research Division, was recognized to explain the bill and answer questions. Senator Tillman moved to adopt the PCS for discussion and the motion carried. The bill amends the Secure and Fair Enforcement Mortgage Licensing Act to provide for the licensure of transitional mortgage loan originators. The PCS changes the effective date from July 1 to September 1, 2013. George Teague, representing the Mortgage Bankers Association, was recognized to answer questions and speak in favor of the bill. Senator Hunt moved for a favorable report and the motion carried. A copy of the PCS and the summary is attached.

H.B. 474 – Redeposit Govt. Funds Into Ins. Deposit Acct.

Senator Gunn explained the bill which amends the General Statutes to authorize local governments, community colleges, and the State Treasurer to invest their idle funds in insured demand, money market, and NOW deposit accounts through a deposit

placement service. Senator Woodward moved for a favorable report and the motion carried. A copy of the bill, the summary, and a letter from the NC Bankers Association is attached.

H.B. 761 – Exempt Well K'ors/Electrical K'ors Lic Regs.

Representative Hardister was recognized to explain the bill which would exempt certain electrical work associated with wells from the requirements of the electrical contractor statutes, including licensure, and would require new well contractors to have some education, experience, and knowledge of electrical work associated with wells. Senator Brown was recognized to offer a "renumbering" technical amendment, which Mr. Ledford explained. Senator Brown moved for the adoption of the amendment and the motion carried. Nick Fountain, representing the NC Electrical Board, was recognized to speak in opposition to the bill. He cited safety concerns. Alex Miller, representing the NC Groundwater Association, was recognized to speak in favor of the bill. He explained that no live wires are involved in the well installation. Henry Jones, representing the Carolina Electrical Contractors Association, was recognized to speak in opposition to the bill. Senator Newton moved for a favorable report as amended and the motion carried. A copy of the bill, the summary, and the amendment is attached.

The meeting adjourned at 11:53 p.m.

Senator Rick Gunn, Presiding Chair
Senate Commerce Committee

DeAnne Mangum
Senate Committee Assistant

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

COMMERCE COMMITTEE REPORT
Senator Gunn, Co-Chair
Senator Meredith, Co-Chair

Tuesday, July 02, 2013

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

FAVORABLE

HB 474 Redeposit Govt. Funds Into Ins. Deposit Acct.

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

TOTAL REPORTED: 1

Senator Richard Gunn will handle HB 474

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

COMMERCE COMMITTEE REPORT
Senator Gunn, Co-Chair
Senator Meredith, Co-Chair

Tuesday, July 02, 2013

Senator Gunn,
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 **761** **(CS#1)** Exempt Well Kors/Electrical Kors Lic Reqs.

Draft Number:	H761-PCS30589-TP-58
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

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

HB **476** **(CS#2)** Rewrite Underground Damage Prevention Act.

Draft Number:	H476-PCS30590-TPf-57
Sequential Referral:	Finance
Recommended Referral:	None
Long Title Amended:	No

TOTAL REPORTED: 2

Senator Trudy Wade will handle HB 761
Senator Tom Apodaca will handle HB 476

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

COMMERCE COMMITTEE REPORT
Senator Gunn, Co-Chair
Senator Meredith, Co-Chair

Tuesday, July 02, 2013

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

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

HB **796** Exempt Certain Columbariums/Cemetery Act.

Draft Number:	H796-PCS30591-SU-40
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 **616 (CS#1)** Transitional Mortgage Loan Originator.

Draft Number:	H616-PCS80411-SU-41
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

TOTAL REPORTED: 2

Senator Ralph Hise will handle HB 796
Senator Wesley Meredith will handle HB 616

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

H D

HOUSE BILL 796
PROPOSED SENATE COMMITTEE SUBSTITUTE H796-CSSU-40 [v.1]

6/19/2013 9:46:07 AM

Short Title: Exempt Certain Columbariums/Cemetery Act. (Public)

Sponsors:

Referred to:

April 11, 2013

A BILL TO BE ENTITLED

AN ACT EXEMPTING CERTAIN COLUMBARIUMS FROM THE NORTH CAROLINA CEMETERY ACT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 65-47 reads as rewritten:

"**§ 65-47. Scope.**

(a) The provisions of this Article shall apply to all persons engaged in the business of operating a cemetery as defined herein, except cemeteries owned and operated by governmental agencies or churches.

(b) Any cemetery beneficially owned and operated by a fraternal organization or its corporate agent for at least 50 years prior to September 1, 1975, shall be exempt from the provisions of Article 9 of this Chapter.

(c) The provisions of this Article shall not apply to persons licensed under Article 13D of Chapter 90 of the General Statutes when engaging in activities for which a license is required under the Article.

(d) A columbarium that is built on the grounds of a private, self-contained retirement community in a county where no commercially available columbarium exists, funded solely by the residents of that community, and reserved exclusively for the residents' use shall be exempt from the provisions of Article 9 of this Chapter."

SECTION 2. This act is effective when it becomes law and expires 18 months after that date.

HOUSE BILL 796:
Exempt Certain Columbariums/Cemetery Act

2013-2014 General Assembly

Committee:	Senate Commerce	**Date:**	July 2, 2013
Introduced by:	Rep. Whitmire	**Prepared by:**	Wendy Graf Ray Committee Counsel
Analysis of:	PCS to First Edition H796-CSSU-40		

SUMMARY: ***House Bill 796 would amend the North Carolina Cemetery Act to exempt certain columbariums from the provisions of the act. The PCS includes a sunset provision, so that the act would expire 18 months after it becomes effective.***

CURRENT LAW: Article 9 of Chapter 65 of the General Statutes regulates cemeteries that are not operated by government agencies or churches or intended solely for family use. A cemetery may include any one or a combination of a burial park, a mausoleum, or a columbarium. A columbarium is defined in statute as a structure or building substantially exposed aboveground and intended to be used for the interment of the cremated remains of a deceased person.

Under existing law, in order to engage in the business of operating a cemetery company, a person must obtain a license from the NC Cemetery Commission. The criteria for obtaining a cemetery company license include having a perpetual care trust fund agreement with an initial deposit of at least $50,000. In addition, most cemeteries must be at least 30 acres in size and the cemetery company must own the land in fee simple, free of encumbrances. There is an exception to the land requirement for counties with fewer than 35,000 residents. In those counties, the cemetery must be at least 15 acres.

BILL ANALYSIS: The PCS for House Bill 796 would amend the law to provide that a columbarium built on the grounds of a private, self-contained retirement community in a county where no commercially available columbarium exists, funded solely by the residents and reserved exclusively for their use, is exempt from the provisions of the act.

Thus, the residents of a private retirement community in a county with no commercial columbariums could build a columbarium without obtaining a cemetery company licensee or otherwise meeting the requirements of the law.

EFFECTIVE DATE: This act would be effective when it becomes law, and it would expire 18 months after that date.

Karen Cochrane-Brown and Chris Saunders, Research Division Staff Attorneys, substantially contributed to this summary.

O. Walker Reagan
Director

* H 7 9 6 - S M S U - 6 9 C S S U - 4 0 - V 2 *

Research Division
(919) 733-2578

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

H D

HOUSE BILL 476

Committee Substitute Favorable 5/2/13
Committee Substitute #2 Favorable 6/19/13
Fourth Edition Engrossed 6/20/13
PROPOSED SENATE COMMITTEE SUBSTITUTE H476-CSTPf-57 [v.1]
7/1/2013 11:03:36 AM

Short Title: Rewrite Underground Damage Prevention Act. (Public)

Sponsors:

Referred to:

April 1, 2013

A BILL TO BE ENTITLED

AN ACT REWRITING THE LAWS REGULATING UNDERGROUND UTILITY DAMAGE PREVENTION.

The General Assembly of North Carolina enacts:

SECTION 1. Article 8 of Chapter 87 of the General Statutes is repealed.

SECTION 2. Chapter 87 of the General Statutes is amended by adding the following new Article to read:

"Article 8A.

"Underground Utility Safety and Damage Prevention Act.

"**§ 87-115. Short title.**

This Article may be cited as the "Underground Utility Safety and Damage Prevention Act."

"**§ 87-116. Declaration of policy and purpose.**

The General Assembly of North Carolina hereby declares as a matter of public policy that it is necessary to protect the citizens and workforce of this State from the dangers inherent in excavating or demolishing in areas where underground lines, systems, or infrastructure are buried beneath the surface of the ground, and it is necessary to protect from costly damage underground facilities used for producing, storing, conveying, transmitting, or distributing communication, electricity, gas, petroleum, petroleum products, hazardous liquids, water, steam, or sewage. In order to carry out this public policy and to satisfy these compelling interests, the General Assembly has enacted the provisions of this Article providing for a systematic, orderly, and uniform process to identify existing facilities in advance of any excavation or demolition in this State and to implement safe digging practices.

"**§ 87-117. Definitions.**

The following definitions apply in this Article:

(1) APWA. – The American Public Works Association or its successors.

(2) Business continuation plan. – A plan that includes actions to be taken in an effort to provide uninterrupted service during catastrophic events.

(3) Contract locator. – A person hired by an operator to identify and mark facilities.

(4) Damage. – The substantial weakening of structural or lateral support of a facility; penetration or destruction of protective coating, housing, or other protective device of a facility; or the partial or complete severance of a facility.

(5) Demolish or demolition. – Any operation by which a structure or mass of material is wrecked, razed, rendered, moved, or removed by any means, including the use of any tools, equipment, or discharge of explosives.

(6) Designer. – Any architect, engineer, or other person who prepares or issues a drawing or blueprint for a construction or other project that requires excavation or demolition work.

(7) Design notice. – A communication to the Notification Center in which a request for identifying existing facilities for advance planning purposes is made. A design notice may not be used for excavation purposes.

(8) Emergency. – An event involving a clear and imminent danger to life, health, or property, the interruption of essential utility services, or the blockage of transportation facilities, including highways, railways, waterways, or airways that require immediate action.

(9) Excavate or excavation. – An operation for the purpose of the movement or removal of earth, rock, or other materials in or on the ground by use of manual or mechanized equipment or by discharge of explosives, including, but not limited to, auguring, backfilling, boring, digging, ditching, drilling, directional drilling, driving, grading, horizontal directional drilling, well drilling, plowing-in, pounding, pulling-in, ripping, scraping, trenching, and tunneling.

(10) Excavator. – A person engaged in excavation or demolition.

(11) Extraordinary circumstances. – Circumstances that make it impossible for the operator to comply with the provisions of this Article, including hurricanes, tornadoes, floods, ice, snow, and acts of God.

(12) Facility. – Any underground line, underground system, or underground infrastructure used for producing, storing, conveying, transmitting, identifying, locating, or distributing communication, electricity, gas, petroleum, petroleum products, hazardous liquids, water, steam, or sewage. Provided there is no encroachment on any operator's right-of-way, easement, or permitted use, for the purposes of this Article, the following shall not be considered an underground facility: (i) swimming pools and irrigation systems; (ii) petroleum storage systems under Part 2A of Article 21A of Chapter 143 of the General Statutes; (iii) septic tanks under Article 11 of Chapter 130A of the General Statutes; and (iv) liquefied petroleum gas systems under Article 5 of Chapter 119 of the General Statutes, unless the system is subject to Title 49 C.F.R. § 192 or § 195.

(13) Locator. – An individual who identifies and marks facilities for operators who has been trained and whose training has been documented.

(14) Mechanized equipment. – Equipment operated by means of mechanical power, including, but not limited to, trenchers, bulldozers, power shovels, augers, backhoes, scrapers, drills, horizontal directional drills, cable and pipe plows, and other equipment used for plowing-in or pulling-in cable or pipe.

(15) Nonmechanized equipment. – Hand tools.

(16) Notice. – Oral, written, or electronic communication to the Notification Center from any person planning to excavate or demolish in the State that informs an operator of the person's intent to excavate or demolish.

(17) Notification Center. – A North Carolina member-owned not-for-profit corporation sponsored by operators that will provide a system through which a person can notify operators of proposed excavations and demolitions and submit reports of alleged violations of this Article.

(18) Operator. – Any person, public utility, communications or cable service provider, municipality, electrical utility, or electric or telephone cooperative that owns or operates a facility in this State.

(19) Person. – Any individual, owner, corporation, partnership, association, or any other entity organized under the laws of any state, any political subdivision of a state, or any other instrumentality of a state, or any authorized representative thereof.

(20) Positive response. – An automated information system that allows excavators, locators, operators, and other interested parties to determine the status of a locate request.

(21) Subaqueous. – A facility that is under a body of water, including rivers, streams, lakes, waterways, swamps, and bogs.

(22) Tolerance zone. – If the diameter of the facility is known, the distance of one-half of the known diameter plus 24 inches on either side of the designated center line or, if the diameter of the facility is not marked, 24 inches on either side of the outside edge of the mark indicating a facility or, for subaqueous facilities, a clearance of 15 feet on either side of the indicated facility.

(23) Working day. – Every day, except Saturday, Sunday, or State legal holidays.

"**§ 87-118. Reserve to the State the power to regulate.**

The provisions in this Article supersede and preempt any ordinance adopted by a city or county that purports to do any of the following:

(1) Require operators to obtain permits from a city or county in order to identify facilities.

(2) Require premarking or marking of facilities.

(3) Specify the types of paint or other marking devices that are used to identify facilities.

(4) Require removal of unexpired marks. The removal of expired marks shall be the responsibility of the city or county.

"**§ 87-119. Costs associated with compliance; effect of permit.**

Any costs or expenses associated with an excavator's compliance with the requirements of this Article shall not be charged to any operator. Any costs or expenses associated with an operator's compliance with the requirements of this Article shall not be charged to any excavator. The Notification Center may not impose any charge on any person giving notice to the Notification Center. This section shall not affect costs related to the operation of the Notification Center apportioned to an operator pursuant to G.S. 87-120(b). This section shall not excuse an operator or excavator from liability for any damage or injury for which the operator or excavator would be responsible under applicable law.

"**§ 87-120. Notification Center; responsibilities.**

(a) The operators in the State shall maintain a Notification Center for the sole purpose of providing the services required by this Article. The Notification Center shall maintain information concerning receipt of notification of proposed excavation and demolition activities as provided in this Article and shall maintain information received from operators concerning the location of the operators' facilities and the operators' positive responses to marking of the facilities. The Notification Center shall also receive, maintain, and provide general administration of reports of alleged violations of this Article and responses. The Notification Center is not responsible in any way for identifying or marking facilities for operators. The Notification Center is not responsible in any way for resolving reports of alleged violations of this Article. All operators in the State shall join the Notification Center as provided in subsection (b) of this section, and they shall use the services of the Notification Center to perform the acts required by the provisions of this Article. There shall be only one Notification

Center for the State of North Carolina. The Notification Center is not an agency of the State or any of the State's political subdivisions and is not subject to the provisions of Chapter 132 or Chapter 133 of the General Statutes.

(b) Operators who are members of the Notification Center by whatever name that is in existence on October 1, 2013, must remain members. Operators with more than 50,000 customers or 1,000 miles of facilities who are not members on October 1, 2013, must join no later than October 1, 2014. Operators with more than 25,000 customers or 500 miles of facilities who are not members on October 1, 2013, must join no later than October 1, 2015. All operators that do not meet one of the criteria provided in this subsection must join no later than October 1, 2016. Each engineering division of the Department of Transportation established pursuant to G.S. 136-14.1 must join no later than October 1, 2016. The board of directors of the Notification Center shall develop a reasonable method of apportioning the costs of operating the Notification Center among the member operators. Prior to adopting a method of determining such cost allocation, the board of directors shall publish the proposed method of cost allocation to the member operators, and the proposed method of cost allocation shall be approved by the member operators.

(c) The Notification Center shall have the following duties and responsibilities:

(1) Maintain a record of the notices received under subsection (d) of this section for at least four years.

(2) Maintain a record of reports of alleged violations of this Article received under subsection (e) of this section for at least four years, including responses to such reports.

(3) Receive and transmit notices as provided in subsection (d) of this section.

(4) Develop and update, as needed, a business continuation plan.

(5) Notify those persons against whom reports of alleged violations of this Article have been made and receive and maintain information submitted from such persons in defense against the allegations.

(6) Provide a positive response system.

(7) Establish and operate a damage prevention training program for members of the Notification Center. No person may recover damages in any manner or form from the Notification Center arising out of or related to the manner in which the Notification Center conducts a damage prevention training program or receives, transmits, or otherwise administers a report of an alleged violation of this Article.

(d) The Notification Center shall receive notice from any person intending to excavate or demolish in the State and shall, at a minimum, transmit the following information to the appropriate operator:

(1) The name, address, and telephone number of the person providing the notice and, if different, the person responsible for the proposed excavation or demolition.

(2) The starting date of the proposed excavation or demolition.

(3) The anticipated duration of the proposed excavation or demolition.

(4) The type of proposed excavation or demolition operation to be conducted.

(5) The location of the proposed excavation or demolition.

(6) Whether or not explosives are to be used in the proposed excavation or demolition.

(e) The Notification Center shall receive reports of alleged violations of this Article. The Notification Center shall contact persons against whom reports have been filed to inform them of the alleged violation within 10 days of the filing of the report. The Notification Center shall maintain the following information regarding reports of alleged violations:

(1) The name, address, and telephone number of the person making the report;

(2) The nature of the report, including the statute that is alleged to have been violated;

(3) Information provided by the person making the report, including correspondence, both written and electronic, pictures, and videos; and

(4) Information provided by the person against whom the report has been filed, including correspondence, both written and electronic, pictures, and videos.

"**§ 87-121. Facility operator responsibilities.**

(a) An operator shall provide to the excavator the following:

(1) The horizontal location and description of all of the operator's facilities in the area where the proposed excavation or demolition is to occur. The location shall be marked by stakes, soluble paint, flags, or any combination thereof, as appropriate, depending upon the conditions in the area of the proposed excavation or demolition. The operator shall, when marking as provided under this subdivision, use the APWA Uniform Color Code. If the diameter or width of the facility is greater than four inches, the dimension of the facility shall be indicated at least every 25 feet in the area of the proposed excavation or demolition. An operator who operates multiple facilities in the area of the proposed excavation or demolition shall locate each facility.

(2) Any other information that would assist the excavator in identifying and thereby avoiding damage to the marked facilities.

(b) Unless otherwise provided in a written agreement between the operator and the excavator, the operator shall provide to the excavator the information required by subsection (a) of this section within the times provided below:

(1) For a facility, within three full working days after the day notice of the proposed excavation or demolition was provided to the Notification Center.

(2) For a subaqueous facility, within 10 full working days after the day notice of the proposed excavation or demolition was provided to the Notification Center.

(3) If the operator declares an extraordinary circumstance, the times provided in this subsection shall not apply.

(c) The operator shall provide a positive response to the Notification Center before the expiration of the time provided in subsection (b) of this section. The response shall indicate whether and to what extent the operator is able to provide the information required by subsection (a) of this section to respond to the notice from the excavator.

(d) If the operator determines that provisions for marking subaqueous facilities are required, the operator will provide a positive response to the Notification Center not more than three full working days after notice has been provided by the excavator.

(e) If extraordinary circumstances prevent the operator from marking the location of the facilities within the time specified in subsection (b) of this section, the operator shall either notify the excavator directly or notify the excavator through the Notification Center. When providing the notification under this subsection, the operator shall state the date and time when the location will be marked.

(f) An operator shall prepare or cause to be prepared installation records of all facilities installed on or after the date this Article becomes effective in a public street, alley, or right-of-way dedicated to public use, excluding service drops and services lines. The operator shall maintain these records in the operator's possession while the facility is in service.

(g) All facilities installed by or on behalf of operators on or after the date this Article becomes effective shall be electronically locatable using a locating method that is generally accepted by operators in the particular industry or trade in which the operator is engaged.

(h) A locator shall notify the operator if the locator becomes aware of an error or omission in the records or documentation showing the location of the operator's facilities. The operator must update its records to correct any error or omission.

(i) An operator may reject an excavation or demolition notice due to homeland security considerations based upon federal statutes or federal regulations until the operator can confirm the legitimacy of the notice. The operator shall notify the person making the notice of the denial and may request additional information through the positive response system.

(j) Gravity fed sanitary sewers installed prior to the date this Article becomes effective and all storm water facilities shall be exempt from the location requirements provided in subsection (a) of this section. Neither the excavator nor the person financially responsible for the excavation will be liable for any damage to an unmarked gravity fed sanitary sewer line or unmarked storm water facility if the person doing the excavation exercises due care to protect existing facilities when there is evidence of the existence of those facilities near the proposed excavation area.

(k) An operator who does not become a member of the Notification Center as required by G.S. 87-120(b) may not recover for damages to a facility caused by an excavator who has complied with the provisions of this Article and has exercised reasonable care in the performance of the excavation or demolition.

"**§ 87-122. Excavator responsibilities.**

(a) Before commencing any excavation or demolition operation, the person responsible for the excavation or demolition shall provide or cause to be provided notice to the Notification Center of his or her intent to excavate or demolish. Notice for any excavation or demolition that does not involve a subaqueous facility must be given within three to 12 full working days before the proposed commencement date of the excavation or demolition. Notice for any excavation or demolition in the vicinity of a subaqueous facility must be given within 10 to 20 full working days before the proposed commencement date of the excavation or demolition. Notice given pursuant to this subsection shall expire 15 full working days after the date notice was given. No excavation or demolition may continue after this 15-day period unless the person responsible for the excavation or demolition provides a subsequent notice which shall be provided in the same manner as the original notice required by this subsection. When demolition of a building is proposed, the operator shall be given a reasonable time in which to remove or protect the operator's facilities before the demolition commences.

(b) The notice required by subsection (a) of this section shall, at a minimum, contain all of the following:

(1) The name, address, and telephone number of the person providing the notice.

(2) The anticipated starting date of the proposed excavation or demolition.

(3) The anticipated duration of the proposed excavation or demolition.

(4) The type of proposed excavation or demolition operation to be conducted.

(5) The location of the proposed excavation or demolition, not to exceed one-quarter mile in geographical length, or five adjoining addresses, not to exceed one-quarter mile in geographical length.

(6) Whether or not explosives are to be used in the proposed excavation or demolition.

(c) An excavator shall comply with the following:

(1) When the excavation area cannot be clearly and adequately identified within the area described in the notice, the excavator shall designate the route, specific area to be excavated, or both by premarking the area before the operator performs a locate. Premarking shall be made with soluble white paint, white flags, or white stakes.

(2) Confirm through the Notification Center's positive response system prior to excavation or demolition that all operators have responded and that all

facilities that may be affected by the proposed excavation or demolition have been marked.

(3) Plan the excavation or demolition to avoid damage to or minimize interference with facilities in or near the construction area.

(4) Begin excavation or demolition prior to the specified waiting period only if the excavator has confirmed that all operators have responded with an appropriate positive response.

(5) If the operator declares extraordinary circumstances, the excavator shall not excavate or demolish until after the time and date that the operator has provided in the operator's response.

(6) If an operator fails to respond to the positive response system, the excavator may proceed if there are no visible indications of a facility at the proposed excavation or demolition area, such as a pole, marker, pedestal, meter, or valve. However, if the excavator is aware of or observes indications of an unmarked facility at the proposed excavation or demolition area, the excavator shall not begin excavation or demolition until an additional call is made to the Notification Center detailing the facility and an arrangement is made for the facility to be marked by the operator within three hours from the time the additional call is received by the Notification Center.

(7) Beginning on the date provided in the excavator's notice to the Notification Center, the excavator shall preserve the staking, marking, or other designation until they are no longer required. When a mark is no longer visible or is destroyed, but the excavation or demolition continues in the vicinity of the facility, the excavator shall request a re-mark from the Notification Center to ensure the protection of the facility.

(8) When demolition of a building is proposed, the excavator shall give the operator a reasonable time in which to remove or protect the operator's facilities before demolition commences.

(9) An excavator shall not perform any excavation or demolition within the tolerance zone unless the excavator complies with all of the following conditions:

a. The excavator shall not use mechanized equipment, except noninvasive equipment specifically designed or intended to protect the integrity of the facility, within the marked tolerance zone of an existing facility until:

1. The excavator has visually identified the precise location of the facility or has visually confirmed that no facility is present up to the depth of excavation;

2. The excavator has taken reasonable precautions to avoid any substantial weakening of the facility's structural or lateral support, or both, or penetration or destruction of the facilities or their protective coatings; and

3. The excavator may use mechanical means, as necessary, for the initial penetration and removal of pavement or other materials requiring use of mechanical means of excavation but only to the depth of the pavement or other materials. For parallel type excavations within the tolerance zone, the existing facility shall be visually identified at intervals not to exceed 50 feet along the line of excavation to avoid damages. The excavator shall exercise due care at all times to protect the facilities when exposing these facilities.

b. The excavator shall maintain clearance between a facility and the cutting edge or point of any mechanized equipment, taking into account the known limit of control of the cutting edge or point, as may be reasonably necessary to avoid damage to the facility.

c. The excavator shall provide support for facilities in and near the excavation or demolition area, including backfill operations, as may be reasonably required by the operator for the protection of the facilities.

(10) The excavator shall not use mechanized equipment within 24 inches of a facility that is a gas, oil, petroleum, or electric transmission line unless the facility operator has consented to the use in writing and the operator's representative is on site during the use of the mechanized equipment. For purposes of this subdivision, the term "gas, oil, petroleum transmission line" has the same meaning as the term "transmission line" in Title 49 C.F.R. § 192.3, and the term "electric transmission line" has the same meaning as the term "transmission line" in G.S. 62-100(7).

"**§ 87-123. Training.**

(a) Every person who is an excavator, locator, or operator under this Article by virtue of engaging in these activities in the course of a business or trade has a duty to provide education and training to employees and to document such education and training. The training shall include sufficient information, guidance, and supervision such that employees can competently and safely operate the equipment used in the course of the business or trade and complete assigned tasks in a competent and safe manner while minimizing the potential for damage.

(b) When an excavator, locator, or operator under this Article retains an independent contractor to perform activities regulated by this Article, the duty set forth in subsection (a) of this section shall not apply to the excavator, locator, or operator. Independent contractors shall provide training to their employees in accordance with this section.

(c) Excavation shall be conducted in accordance with OSHA Standard 1926 and under the direction of a competent person, as defined therein.

(d) Locators shall be properly trained. Locator training shall be documented.

"**§ 87-124. Exemptions.**

The notice requirements in G.S. 87-122(a) and G.S. 87-122(b) do not apply to the following:

(1) An excavation or demolition performed by the owner of a single-family residential property on his or her own land that meets all of the following requirements:

a. Does not encroach on any operator's right-of-way, easement, or permitted use.

b. Is performed with nonmechanized equipment.

c. Is less than 10 inches in depth.

(2) An excavation or demolition that involves the tilling of soil for agricultural purposes.

(3) An excavation with nonmechanized equipment by an operator or surveyor for the following purposes:

a. Locating for a valid notification request or for the minor repair, connection, or routine maintenance of an existing facility or survey pin.

b. Probing underground to determine the extent of gas or water migration.

(4) When the Department of Transportation, a local government, special purpose district, or public service district is conducting maintenance

activities within its designated right-of-way. Maintenance activities shall include resurfacing, milling, emergency replacement of signs critical for maintaining safety, or the reshaping of shoulders and ditches to the original road profile. Maintenance activities do not include the initial installation of traffic signs, traffic control equipment, or guardrails.

(5) An excavation or demolition performed by a railroad entirely on land which the railroad owns or operates or, in the event of an emergency, on adjacent land. No provision of this Article shall apply to any railroad which owns, operates, or permits facilities under land which the railroad owns or operates.

(6) An excavation or demolition performed by a farmer on his or her own property that does not encroach on any operator's right-of-way, easement, or permitted use.

"**§ 87-125. Notice in case of emergency excavation or demolition.**

(a) An excavator performing an emergency excavation or demolition is not required to give notice to the Notification Center as provided in G.S. 87-122. However, the excavator shall, as soon as practicable, give oral notice to the Notification Center which shall include a description of the circumstances justifying the emergency. The excavator may request emergency assistance from each affected operator in locating and providing immediate protection to the facilities in the affected area.

(b) The declaration of an emergency excavation or demolition shall not relieve any party of liability for causing damage to an operator's facilities even if those facilities are unmarked.

(c) Any person who falsely claims that an emergency exists requiring an excavation or demolition shall be guilty of a Class 3 misdemeanor.

"**§ 87-126. Notification required when damage is done.**

(a) The excavator performing an excavation or demolition that results in any damage to a facility shall immediately upon discovery of the damage notify the Notification Center and the facility operator, if known, of the location and nature of the damage. The excavator shall allow the operator reasonable time to accomplish necessary repairs before completing the excavation or demolition in the immediate area of the facility. The excavator shall delay any backfilling in the immediate area of the damaged facility until authorized by the operator. The operator or qualified personnel authorized by the operator shall repair any damage to the facility.

(b) An excavator who is responsible for an excavation or demolition where any damage to a facility results in the discharge of electricity or escape of any flammable, toxic, or corrosive gas or liquid, or that endangers life, health, or property shall immediately notify emergency responders, including 911 services, the Notification Center, and the facility operator. The excavator shall take reasonable measures to protect himself or herself, other persons in immediate danger, members of the general public, property, and the environment until the operator or emergency responders arrive and complete an assessment of the situation.

"**§ 87-127. Design notices.**

(a) A designer may submit a design notice to the Notification Center. The design notice shall describe the tract or parcel of land for which the design notice has been submitted with sufficient particularity, as defined by policies and procedures adopted by the Notification Center, to allow the operator to ascertain the precise tract or parcel of land involved.

(b) Within 10 working days, not including the day the notice was given, after a design notice for a proposed project has been submitted to the Notification Center, the operator shall respond in one of the following manners:

(1) By designating the location of all facilities owned by the operator within the area of the proposed excavation as provided in G.S. 87-121(a).

(2) By providing to the person submitting the design notice the best available description of all facilities in the area designated by the design notice, which may include drawings marked with a scale, dimensions, and reference points for underground utilities already built in the area or other facility records that are maintained by the operator.

(3) Allowing the person submitting the design notice or any other authorized person to inspect the drawings or other records for all facilities within the proposed area of excavation at a location that is acceptable to the operator.

(c) An operator may reject a design notice based upon homeland security considerations pending the operator obtaining additional information confirming the legitimacy of the notice. The operator shall notify the person making the request through a design notice of the denial and may request additional information through the positive response system.

"**§ 87-128. Absence of facility location.**

If an operator who has been given notice as provided in G.S. 87-120(d) by the Notification Center fails to respond to that notice as provided in G.S. 87-121 or fails to properly locate the facility, the person excavating is free to proceed with the excavation. Neither the excavator nor the person financially responsible for the excavation will be liable to the nonresponding or improperly responding operator for damages to the operator's facilities if the person doing the excavating exercises due care to protect existing facilities when there is evidence of the existence of those facilities near the proposed excavation area.

"**§ 87-129. Underground Damage Prevention Review Board; enforcement; civil penalties.**

(a) The Notification Center shall establish an Underground Damage Prevention Review Board to review reports of alleged violations of this Article. The members of the Board shall be appointed by the Governor. The Board shall consist of the following members:

(1) A representative from the North Carolina Department of Transportation;

(2) A representative from a facility contract locator;

(3) A representative from the Notification Center;

(4) A representative from an electric public utility;

(5) A representative from the telecommunications industry;

(6) A representative from a natural gas utility;

(7) A representative from a hazardous liquid transmission pipeline company;

(8) A representative recommended by the League of Municipalities;

(9) A highway contractor licensed under G.S. 87-10(b)(2) who does not own or operate facilities;

(10) A public utilities contractor licensed under G.S. 87-10(b)(3) who does not own or operate facilities;

(11) A surveyor licensed under Chapter 89C of the General Statutes;

(12) A representative from a rural water system;

(13) A representative from an investor-owned water system;

(14) A representative from an electric membership corporation; and

(15) A representative from a cable company.

(b) The Notification Center shall transmit all reports of alleged violations of this Article to the Board, including any information received by the Notification Center regarding the report. The Board shall meet at least quarterly to review all reports filed pursuant to G.S. 87-120(e). The Board shall act as an arbitrator between the parties to the report. If, after reviewing the report and any accompanying information, the Board determines that a violation of this Article has occurred, the Board shall notify the violating party in writing of its determination and the recommended penalty. The violating party may request a hearing before the Board, after which the Board may reverse or uphold its original finding. If the Board recommends a penalty, the Board shall notify the Utilities Commission of the recommended penalty, and the Utilities Commission shall issue an order imposing the penalty.

(c) A party determined by the Board under subsection (b) of this section to have violated this Article may initiate an arbitration proceeding before the Utilities Commission. If the violating party elects to initiate an arbitration proceeding, the violating party shall pay a filing fee of two hundred fifty dollars ($250.00) to the Utilities Commission, and the Utilities Commission shall open a docket regarding the report. The Utilities Commission shall direct the parties enter into an arbitration process. The parties shall be responsible for selecting and contracting with the arbitrator. Upon completion of the arbitration process, the Utilities Commission shall issue an order encompassing the outcome of the binding arbitration process, including a determination of fault, a penalty, and assessing the costs of arbitration to the non-prevailing party. Any party may appeal an order issued by the Utilities Commission pursuant to this section to the superior court division of the General Court of Justice in the county where the alleged violation of this Article occurred or in Wake County, for trial de novo. The authority granted to the Utilities Commission within this section is limited to this section and does not grant the Utilities Commission any authority that they are not otherwise granted under Chapter 62 of the General Statutes.

(d) Any person who violates any provision of this Article shall be subject to a penalty as set forth in this subsection. The provisions of this Article do not affect any civil remedies for personal injury or property damage otherwise available to any person, except as otherwise specifically provided for in this Article. The penalty provisions of this Article are cumulative to and not in conflict with provisions of law with respect to civil remedies for personal injury or property damage. The clear proceeds of any civil penalty assessed under this section shall be used as provided in Section 7(a) of Article IX of the North Carolina Constitution. The penalties for a violation of this Article shall be as follows:

(1) If the violation was the result of an accident, the penalty shall be a requirement of training, a requirement of education, or both.

(2) If the violation was the result of ordinary negligence, the penalty shall be a civil penalty of one thousand dollars ($1,000), a requirement of training, a requirement of education, or a combination of the three.

(3) If the violation was the result of gross negligence or willful or wanton conduct, the penalty shall be a civil penalty of two thousand five hundred dollars ($2,500), a requirement of training, and a requirement of education.

"**§ 87-130. Severability.**

If any provision of this Article or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications, and to this end the provisions of this Article are severable."

SECTION 3. This act becomes effective October 1, 2014, and applies to all activities regulated by the provisions of Article 8A of Chapter 87 of the General Statutes, as enacted by this act, that occur on or after that date.

HOUSE BILL 476:
Rewrite Underground Damage Prevention Act

2013-2014 General Assembly

Committee:	Senate Ref to Commerce. If fav, re-ref to Finance	**Date:**	July 2, 2013
Introduced by:	Reps. Hager, Moffitt, Murry	**Prepared by:**	Peter Ledford Committee Counsel
Analysis of:	PCS to Fourth Edition H476-CSTPf-57		

SUMMARY: ***The PCS to House Bill 476 would repeal the State's existing Underground Damage Prevention Act and enact a new Underground Utility Safety and Damage Prevention Act.***

The PCS renumbers G.S. 87-122.1 as G.S. 87-123, and renumbers the following sections accordingly.

CURRENT LAW: The existing Underground Damage Prevention Act requires anyone excavating in an area containing highways, public spaces, or private easements owned by a utility to notify each utility owner with underground utilities located in the area. The utility owner is then required to provide the location and description of all underground utilities which may be damaged by the excavation, the location and description of all utility markers in the area, and any other information that would assist in locating and avoiding damage to underground utilities, such as temporary markings. The excavator is then required to plan the excavation to avoid damage to any underground utilities, to maintain a clearance between the underground utilities and any mechanized equipment, and provide structural support to protect the underground utilities.

The current Act has not been significantly amended since it was introduced in 1985.

BILL ANALYSIS: **Section 1** repeals the existing Underground Damage Prevention Act. **Section 2** enacts a new Underground Utility Safety and Damage Prevention Act.

Notification Center. – G.S. 87-120 would create a Notification Center for the purpose of providing services under the Act. The Notification Center would receive notifications from excavators and designers, and would transmit the information to utility operators.

All utility owners would be required to join the Notification Center no later than October 1, 2016. The Notification Center would be required to maintain records, receive and transmit notifications, provide a response system that allows parties to determine the status of a notification, and provide damage prevention training.

Responsibilities of Utility Owners. – Utility owners would be required to join the Notification Center under G.S. 87-120(b) by a set date based on the facilities they own in the State. G.S. 87-121(g) would require all underground facilities installed after the Act becomes effective to be electronically locatable. Subsection (j) of the section would exempt existing gravity fed sanitary sewers and new and existing stormwater facilities from the Act, and would provide that an excavator is not liable for damage to an unmarked gravity fed sanitary sewer or stormwater facility if due care was used to protect the facilities. Utility owners would also be required by G.S. 87-123 to educate and train their employees.

G.S. 87-121 would require utility operators to provide an excavator with the horizontal location and description of underground facilities in the area of the proposed excavation, including temporary markings, as well as any other information that would assist the excavator in avoiding damage to

underground facilities. Utility operators are required to provide the information within three working days of the request being provided to the Notification Center for most requests, as well as to provide a response to the Notification Center indicating the extent to which the utility operator was able to provide the required information. Subsection (k) would also provide that an excavator is not liable for damage to underground utilities owned by a utility that is not a member of the Notification Center if due care was used to protect the facilities.

Under G.S. 87-127, utility owners would be required to respond to requests from design professionals by either (1) designating the location of facilities as they would for an excavator, (2) providing the best available description of all facilities in the area, or (3) allowing the professional to inspect drawings and other records for facilities in the area.

Responsibilities of Excavators. – G.S. 87-122 would require an excavator to provide notice of proposed work to the Notification Center between three and twelve working days before the start of excavation. An excavator would be required to take steps to verify that the underground utilities have been marked and to take due care not to damage underground utilities. The section would establish a tolerance zone of 24 inches, inside which the excavator is prohibited from using mechanized equipment unless specified precautions are taken. G.S. 87-123 would require excavators train employees in accordance with the applicable OSHA standard and to document the training.

Under G.S. 87-125, in the event of an emergency excavation, an excavator would not be required to provide advance notice to the Notification Center. The excavator would be required to provide oral notice as soon as practicable to the Notification Center describing the circumstances of the emergency.

When damage to a facility occurs, under G.S. 87-126 an excavator must notify the Notification Center and the utility owner. The excavator would be required to delay backfilling the area until the utility owner has been able to repair the facility.

G.S. 87-128 would allow an excavator to commence excavation if a utility operator fails to respond to a location request or fails to properly locate underground facilities. If the excavator exercises due care, he would not be liable to the utility operator for any damages that occur.

Design Professionals. – G.S. 87-127 would establish a procedure for architects, engineers, and other design professionals to request location information for underground utilities to allow for the design of a proposed project.

Exemptions. – G.S. 87-124 would provide exemptions from the Act for homeowners under certain circumstances, agricultural tilling, excavation with non-mechanized equipment by a utility operator or surveyor, for certain governmental entities conducting maintenance activities within their right-of-way, for railroads own land they own or operate, and for farmers on property that does not encroach on any operator's right-of-way, easement, or permitted use.

Enforcement. – G.S. 87-129 would create the Underground Damage Prevention Review Board (Board) consisting of representatives from various stakeholder groups. The Notification Center would be required to transmit all reports of alleged violations of the Act to the Board, which would then act as an arbitrator between the parties to the report. If the Board determines that a violation of the Act occurred, it is required to notify the violating party, who may request a hearing before the Board. If the Board recommends a penalty, it is required to notify the Utilities Commission, who will issue an order imposing the penalty. If the violating party wishes to contest the penalty, it may pay a $250.00 filing fee and request the Utilities Commission send the issue to a binding arbitration process. Upon completion of the arbitration process, the Utilities Commission is required to issue an order encompassing the outcome of the arbitration process, including a determination of fault, a penalty, and an award of the costs of arbitration. Any party may then appeal the order of the Utilities Commission to superior court.

Under G.S. 87-129(d), penalties for violations of this Act are as follows:

- If the violation was the result of an accident, the penalty is a requirement of training, a requirement of education, or both
- If the violation was the result of ordinary negligence, the penalty is a civil penalty of $1,000.00, a requirement of training, a requirement of education, or a combination of the three.
- If the violation was the result of gross negligence or willful or wanton conduct, the penalty is a civil penalty of $2,500.00, a requirement of training, and a requirement of education.

Costs. – G.S. 87-119 would require that costs incurred by a party associated with compliance with the Act would be borne by that party, and will not be passed on. Under G.S. 87-120(b), costs associated with the operation of the Notification Center are to be apportioned among the member operators.

EFFECTIVE DATE: This act becomes effective October 1, 2014, and applies to all activities regulated by the provisions of Article 8A of Chapter 87 of the General Statutes that occur on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

H D

HOUSE BILL 616
Committee Substitute Favorable 5/6/13
PROPOSED SENATE COMMITTEE SUBSTITUTE H616-CSSU-41 [v.2]
7/1/2013 1:00:50 PM

Short Title: Transitional Mortgage Loan Originator. (Public)

Sponsors:

Referred to:

April 10, 2013

A BILL TO BE ENTITLED

AN ACT AMENDING THE SECURE AND FAIR ENFORCEMENT MORTGAGE LICENSING ACT TO PROVIDE FOR THE LICENSURE OF A TRANSITIONAL MORTGAGE LOAN ORIGINATOR.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 53-244.030 reads as rewritten:

"**§ 53-244.030. Definitions.**

For purposes of the Article, the following definitions apply:

...

(15) "Licensee" means a mortgage loan originator, transitional mortgage loan originator, mortgage broker, mortgage lender, or mortgage servicer or other person who is licensed pursuant to this Article.

...

(33a) "Transitional mortgage loan originator" means an individual who is authorized to act as a mortgage loan originator subject to a transitional mortgage loan originator license which is limited to a term of no more than 120 days and is not subject to reapplication, renewal, or extension by the Commissioner.

...."

SECTION 2. G.S. 53-244.040 reads as rewritten:

"**§ 53-244.040. License and registration requirements.**

(a) Except as provided in subsection (d) of this section, no person may engage in the mortgage business or act as a mortgage loan originator with respect to any dwelling located in this State without first obtaining and maintaining a license under this Article. It shall be unlawful for any person, other than an exempt ~~person,~~ person or a person licensed as a transitional mortgage loan originator, to act as a mortgage loan originator without a mortgage loan originator license, which authorizes an individual who is employed by a licensee holding a license as provided in subsection (b) of this section to conduct the business of a mortgage loan originator.

(a1) In anticipation of satisfaction of all requirements necessary to obtain a license as a mortgage loan originator under this Article, a transitional mortgage loan originator license may be granted to an individual who has an active license to originate mortgage loans pursuant to the laws of any state or territory of the United States other than North Carolina, provided the individual registers, is fingerprinted, and maintains a unique identifier with the Nationwide Mortgage Licensing System and Registry at the time the individual submits a transitional

mortgage loan originator application to the Commissioner. A transitional mortgage loan originator license may also be issued to a registered loan originator for the purpose of satisfying all requirements necessary to obtain a license as a mortgage loan originator under this Article if permitted by a guideline, rule, regulation, or interpretive letter which clarifies section 1503 of Title V of the Housing and Economic Recovery Act of 2008, P.L. 110-289, and only to the extent of such an issuance or determination.

...."

SECTION 3. G.S. 53-244.050 reads as rewritten:

"**§ 53-244.050. License and registration application; claim of exemption.**

...

(b) The eligibility requirements for an application for licensure under this Article are as follows:

...

(1a) Each individual applicant for licensure as a transitional mortgage loan originator shall:

a. Be at least 18 years of age;

b. Have an active license to originate mortgage loans pursuant to the laws of any state or territory of the United States other than North Carolina;

c. Have a valid unique identifier, registration, and fingerprints on file with the Nationwide Mortgage Licensing System and Registry;

d. Have been employed for a period of no less than two years as a mortgage loan originator; and

e. Have provided certification of employment with a mortgage lender or mortgage broker licensed under this Article, including an attestation by the employer that the applicant is in his or her employ.

...

(c) In connection with an application for licensing as a mortgage loan originator, transitional mortgage loan originator, mortgage lender, mortgage broker, or mortgage servicer, the applicant and its owners, qualifying individual, and controlling persons shall furnish to the Nationwide Mortgage Licensing System and Registry information concerning the applicant's identity, including:

...

(f) For purposes of this section, the Commissioner may request and the North Carolina Department of Justice may provide a criminal record check to the Commissioner for any person who has applied for or holds a mortgage lender, mortgage broker, mortgage servicer, ~~or~~ mortgage loan ~~originator~~ originator, or transitional mortgage loan originator license as provided by this section. The Commissioner shall provide the Department of Justice, along with the request, the fingerprints of the person, any additional information required by the Department of Justice, and a form signed by the person consenting to the check of the criminal record and to the use of the fingerprints and other identifying information required by the State or national repositories. The person's fingerprints shall be forwarded to the State Bureau of Investigation for a search of the State's criminal history record file, and the State Bureau of Investigation shall forward a set of the fingerprints to the Federal Bureau of Investigation for a national criminal history check. The Department of Justice may charge a fee for each person for conducting the checks of criminal history records authorized by this section.

...."

SECTION 4. G.S. 53-244.060 reads as rewritten:

"**§ 53-244.060. Issuance of license.**

If an applicant satisfies the requirements of G.S. 53-244.050, the Commissioner shall issue a mortgage lender, mortgage broker, mortgage servicer, ~~or~~ mortgage loan ~~originator~~ originator,

or transitional mortgage loan originator license unless the Commissioner finds any of the following:

...

(4) The applicant has demonstrated a lack of financial responsibility, character, or general fitness such as to fail to command the confidence of the community and to warrant a determination that the mortgage loan ~~originator~~ originator, transitional mortgage loan originator, or other licensee will operate honestly, fairly, and efficiently within the purposes of this Article. For purposes of this subdivision, a person shows a lack of financial responsibility when the person has shown a disregard in the management of the person's own financial affairs. Evidence that a person has not shown financial responsibility may include:

...."

SECTION 5. G.S. 53-244.090 reads as rewritten:

"**§ 53-244.090. License application fees.**

(a) Every applicant for initial licensure shall pay a nonrefundable filing fee of one thousand two hundred fifty dollars ($1,250) for licensure as a mortgage broker, mortgage lender, or mortgage servicer, three hundred dollars ($300.00) for licensure as an exclusive mortgage broker, or one hundred twenty-five dollars ($125.00) for licensure as a mortgage loan ~~originator.~~originator or transitional mortgage loan originator. In addition, an applicant must pay the actual cost of obtaining a credit report, State and national criminal history record checks, and the processing fees required by the Nationwide Mortgage Licensing System and Registry.

...."

SECTION 6. G.S. 53-244.100 reads as rewritten:

"**§ 53-244.100. Active license requirements and assignability.**

(a) It is unlawful for any person to engage in the mortgage business without first obtaining a license as a mortgage loan originator, transitional mortgage loan originator, mortgage lender, mortgage broker, or mortgage servicer issued by the Commissioner under this Article. It is unlawful for any person to employ, to compensate, or to appoint as its agent a mortgage loan originator unless the person is a licensed mortgage loan originator or a transitional mortgage loan originator under this Article. Persons defined in G.S. 53-244.030(8) or G.S. 53-244.030(29) are not subject to this subsection.

(b) The license of a mortgage loan originator or transitional mortgage loan originator is not effective during any period when that person is not employed by a mortgage lender, mortgage broker, or mortgage servicer licensed under this Article. When a mortgage loan originator or transitional mortgage loan originator ceases to be employed by a mortgage lender, mortgage broker, or mortgage servicer licensed under this Article, the mortgage loan ~~originator,~~originator or transitional mortgage loan originator and the mortgage lender, mortgage broker, or mortgage servicer licensed under this Article by whom that person is employed shall promptly notify the Commissioner in writing. The mortgage lender, mortgage broker, or mortgage servicer shall include a statement of the specific reason for the termination of the mortgage loan originator's or transitional mortgage loan originator's employment. A mortgage loan originator or transitional mortgage loan originator shall not be employed simultaneously by more than one mortgage lender, mortgage broker, or mortgage servicer licensed under this Article.

(c) Each mortgage lender, mortgage broker, and mortgage servicer licensed under this Article shall maintain on file with the Commissioner a list of all mortgage loan originators and transitional mortgage loan originators who are employed with the mortgage lender, mortgage broker, or mortgage servicer.

(d) No person, other than an exempt person, shall hold himself or herself out as a mortgage lender, a mortgage broker, a mortgage servicer, ~~or~~ a mortgage loan ~~originator~~

originator, or a transitional mortgage loan originator unless the person is licensed in accordance with this Article.

...."

SECTION 7. G.S. 53-244.103 reads as rewritten:

"**§ 53-244.103. Surety bond requirements.**

(a) Each mortgage loan originator or transitional mortgage loan originator shall be covered by a surety bond through employment with a licensee in accordance with this section. The surety bond shall provide coverage for each mortgage loan originator or transitional mortgage loan originator employed by the licensee in an amount as prescribed by subsection (b) of this section and shall be in a form prescribed by the Commissioner. The Commissioner may adopt rules with respect to the requirements for the surety bonds as needed to accomplish the purposes of the Article.

...."

SECTION 8. G.S. 53-244.104 reads as rewritten:

"**§ 53-244.104. Minimum net worth requirements.**

(a) A minimum net worth shall be continuously maintained for licensees in accordance with this section. In the event that the mortgage loan originator or transitional mortgage loan originator is an employee or exclusive agent of a person subject to this Article, the net worth of the person subject to this Article can be used in lieu of the mortgage loan originator's or transitional mortgage loan originator's minimum net worth requirement. The minimum net worth to be maintained for each license is as follows:

...."

SECTION 9. G.S. 53-244.106 reads as rewritten:

"**§ 53-244.106. Display of license.**

Each mortgage broker or mortgage lender licensed under this Article shall display, in plain public view, the certificate of licensure issued by the Commissioner in its principal office and in each branch office. Each mortgage loan originator or transitional mortgage loan originator licensed under this Article shall display, in plain public view, in each branch office in which the individual acts as a mortgage loan originator or transitional mortgage loan originator the certificate of licensure issued by the Commissioner."

SECTION 10. G.S. 53-244.107 reads as rewritten:

"**§ 53-244.107. Unique identifier shown.**

The unique identifier of any mortgage loan ~~originator~~ originator, transitional mortgage loan originator, or other person engaged in the mortgage business as defined in G.S. 53-244.030(11) shall be clearly shown on all residential mortgage loan application forms, solicitations, advertisements, including business cards or Web sites, and any other documents as established by rule or order of the Commissioner."

SECTION 11. G.S. 53-244.111 reads as rewritten:

"**§ 53-244.111. Prohibited acts.**

In addition to the activities prohibited under other provisions of this Article, it shall be unlawful for any person in the course of any residential mortgage loan transaction:

...

(3) To fail to account for or to deliver to any person any funds, documents, or other thing of value obtained in connection with a mortgage loan, including money provided by a borrower for a real estate appraisal or a credit report, which the mortgage lender, mortgage broker, mortgage servicer, ~~or~~ mortgage loan ~~originator~~ originator, or transitional mortgage loan originator is not entitled to retain under the circumstances.

...."

SECTION 12. G.S. 53-244.114 reads as rewritten:

"**§ 53-244.114. Licensure authority.**

(a) The Commissioner may, by order, deny, suspend, revoke, or refuse to issue or renew a license of a licensee or applicant under this Article, or may restrict or limit the manner in which a licensee, applicant, or any person who owns an interest in or participates in the business of a licensee engages in the mortgage business, if the Commissioner finds both of the following:

...

(2) That any of the following circumstances apply to the applicant, licensee, or any partner, member, manager, officer, director, loan officer, limited loan officer, qualifying individual, or any person occupying a similar status or performing similar functions or any person directly or indirectly controlling the applicant or licensee. The person:

...

d. Is the subject of an order of the Commissioner denying or suspending that person's license as a mortgage loan ~~originator,~~originator, transitional mortgage loan originator, mortgage broker, mortgage lender, or mortgage servicer;

e. Is the subject of an order entered within the past five years by the authority of any state with jurisdiction over that state's mortgage brokerage, mortgage lending, or mortgage servicing industry denying that person's license as a mortgage loan ~~originator,~~originator, transitional mortgage loan originator, mortgage broker, mortgage lender, or mortgage servicer;

...

h. Has been the qualifying individual, branch manager, ~~or~~ mortgage loan ~~originator~~ originator, or transitional mortgage loan originator of a licensee who had knowledge of or reasonably should have had knowledge of, or participated in, any activity that resulted in the entry of an order under this Article suspending or withdrawing the license of a licensee;

...."

SECTION 13. G.S. 53-244.115 reads as rewritten:

"**§ 53-244.115. Investigation and examination authority.**

...

(b) For purposes of investigating violations or complaints arising under this Article, or for the purposes of examination, the Commissioner may review, investigate, or examine any licensee, individual, or person subject to this Article as often as necessary in order to carry out the purposes of this Article. The Commissioner may interview the officer, principals, person with control, qualified individual, mortgage loan ~~originators,~~originators, transitional mortgage loan originators, employees, independent contractors, agents, and customers of the licensee, individual, or person concerning their business. The Commissioner may direct, subpoena, or order the attendance of and examine under oath all persons whose testimony may be required about the loans or the business or subject matter of any examination or investigation and may direct, subpoena, or order the person to produce books, accounts, records, files, and any other documents the Commissioner deems relevant to the inquiry. The assessment set forth in G.S. 53-244.100A is for the purpose of meeting the cost of regulation under this Article. Any investigation or examination that, in the opinion of the Commissioner of Banks, requires extraordinary review, investigation, or special examination shall be subject to the actual costs of additional expenses and the hourly rate for the staff's time, to be determined annually by the Banking Commission.

(c) Each licensee, individual, or person subject to this Article shall make available to the Commissioner upon request the books and records relating to the operations of the licensee,

individual, or person. No licensee, individual, or person subject to investigation or examination under this section may knowingly withhold, abstract, remove, mutilate, destroy, or secrete any books, records, computer records, or other information. Each licensee, individual, or person subject to this Article shall also make available for interview by the Commissioner the officers, principals, persons with control, qualified individuals, mortgage loan ~~originators,~~originators, transitional mortgage loan originators, employees, independent contractors, agents, and customers of the licensee, individual, or person concerning their business.

...."

SECTION 14. G.S. 53-244.118 reads as rewritten:

"**§ 53-244.118. Rule-making authority; records.**

(a) The Commissioner may adopt any rules that the Commissioner deems necessary to carry out the provisions of this Article, to provide for the protection of the borrowing public, to prohibit unfair or deceptive practices, to instruct mortgage lenders, mortgage brokers, mortgage servicers, ~~or~~ mortgage loan ~~originators~~ originators, or transitional mortgage loan originators in interpreting this Article, and to implement and interpret the provisions of G.S. 24-1.1E, 24-1.1F, and 24-10.2 as they apply to licensees under this Article.

...

(c) The Commissioner shall keep a current roster showing the names and places of business of all licensees that shows their respective mortgage loan ~~originators~~ originators and transitional mortgage loan originators and a roster of exempt persons required to file a notice under G.S. 53-244.050(g). The roster shall:

...."

SECTION 15. G.S. 53-244.119 reads as rewritten:

"**§ 53-244.119. Commissioner's participation in nationwide registry.**

(a) The Commissioner shall require mortgage loan ~~originators~~ originators and transitional mortgage loan originators to be licensed and registered through the Nationwide Mortgage Licensing System and Registry. In order to carry out this requirement, the Commissioner is authorized to participate in the Nationwide Mortgage Licensing System and Registry. For this purpose, the Commissioner may establish by rule any requirements as necessary, including:

...."

SECTION 16. G.S. 53-244.120 reads as rewritten:

"**§ 53-244.120. Confidentiality of information.**

...

(e) The confidentiality provisions contained in subsection (c) of this section shall not apply with respect to the information or material relating to the employment history of and publicly adjudicated disciplinary and enforcement actions against mortgage lenders, mortgage brokers, mortgage servicers, ~~or~~ mortgage loan ~~originators~~ originators, or transitional mortgage loan originators that are included in the Nationwide Mortgage Licensing System and Registry for access by the public."

SECTION 17. This act becomes effective September 1, 2013, and applies to applications for licensure as a transitional mortgage loan originator filed on or after that date.

HOUSE BILL 616:
Transitional Mortgage Loan Originator

2013-2014 General Assembly

Committee:	Senate Commerce	**Date:**	July 2, 2013
Introduced by:	Reps. Szoka, Dockham, B. Brown	**Prepared by:**	Wendy Graf Ray Committee Counsel
Analysis of:	PCS to Second Edition H616-CSSU-41		

SUMMARY: ***House Bill 616 amends the Secure and Fair Enforcement Mortgage Licensing Act to provide for the licensure of transitional mortgage loan originators.***

The PCS pushes the effective date to September 1, 2013, since the original effective date has passed.

CURRENT LAW: In 2009, the General Assembly enacted the Secure and Fair Enforcement Mortgage Licensing Act (S.A.F.E.) in order to conform to the requirements of Title V of the federal Housing and Economic Recovery Act of 2008. The federal act required that any residential mortgage loan originator be either State licensed or federally registered. States had until August 1, 2009, to conform their statutes to the federal standards. After that date, loan originators in states that did not have conforming licensing statutes became subject to the federal registration system.

The act established license and registration requirements for mortgage loan originators as well as mortgage brokers, mortgage lenders, and mortgage servicers, and is administered by the Commissioner of Banks. Under the law, each applicant must be at least 18 years of age, have completed within 3 years, the mortgage lending prelicensing education, and have passed, within 3 years, a test developed and administered by the Nationwide Mortgage Licensing System and Registry. Licenses must be renewed annually and licensees must complete at least 8 hours of continuing education including State and federal laws, ethics, and training related to lending standards for nontraditional mortgage products. The Commissioner of Banks has specific regulatory authority including authority to discipline licensees and impose civil penalties.

BILL ANALYSIS: House Bill 616 amends the S.A.F.E. Act to authorize the licensure of transitional mortgage loan originators. The bill defines a "transitional mortgage loan originator" as "an individual who is authorized to act as a mortgage loan originator subject to a transitional mortgage loan originator license which is limited to a term of no more than 120 days and is not subject to reapplication, renewal, or extension by the Commissioner."

The bill authorizes the Commissioner to grant a transitional mortgage loan originator license to a person who has an active loan originator license in another state provided the person has registered, been fingerprinted, and maintains a unique identifier with the Nationwide Mortgage Licensing System and Registry. The bill would also allow a license to be issued to a person who is registered, but not licensed in this or another state, if permitted by federal regulation, but only to the extent permitted by federal regulation. Currently, no federal regulations on this issue have been promulgated.

An applicant for licensure under this provision must:

- Be at least 18 years of age
- Have an active license to originate mortgage loans in another state.

- Have a valid identifier, registration and fingerprints on file with the Nationwide Mortgage Licensing System and Registry
- Have been employed for at least 2 years as a loan originator
- Have provided certification of employment with a mortgage lender or broker licensed in this State, including an attestation by the employer.

An applicant for a transitional mortgage loan originator license would be required to pay the nonrefundable application fee of $125.

The remainder of the bill makes a number of conforming changes to the law to subject transitional mortgage loan originators to the same requirements as other loan originators under the Act.

EFFECTIVE DATE: This act becomes effective September 1, 2013, and applies to applications for licensure as a transitional mortgage loan originator filed on or after that date.

Karen Cochrane-Brown, counsel to House Regulatory Reform, substantially contributed to this summary.

HOUSE BILL 474

Short Title:	Redeposit Govt. Funds Into Ins. Deposit Acct.	(Public)
Sponsors:	Representatives S. Ross, Dockham, Lambeth, and Goodman (Primary Sponsors). *For a complete list of Sponsors, refer to the North Carolina General Assembly Web Site.*	
Referred to:	Government, if favorable, Finance.	

April 1, 2013

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE REDEPOSIT OF STATE AND LOCAL GOVERNMENT FUNDS INTO INSURED DEMAND, MONEY MARKET, AND NEGOTIABLE ORDER OF WITHDRAWAL DEPOSIT ACCOUNTS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 159-30(b1) reads as rewritten:

"(b1) In addition to deposits authorized by subsection (b) of this section, the finance officer may deposit any portion of idle funds in accordance with all of the following conditions:

(1) The funds are initially deposited through a bank or savings and loan association that is an official depository and that is selected by the finance officer.

(2) The selected bank or savings and loan association arranges for the ~~deposit~~redeposit of funds in ~~certificates of~~ deposit ~~for the account~~accounts of the local government or public authority in one or more federally insured banks or savings and loan associations wherever located, provided that no funds shall be deposited in a bank or savings and loan association that at the time holds other deposits from the local government or public authority.

(3) The full amount of principal and any accrued interest of each ~~certificate of~~ deposit account are covered by federal deposit insurance.

(4) The selected bank or savings and loan association acts as custodian for the local government or public authority with respect to the ~~certificates of~~ deposit ~~issued for~~in the local government's or public authority's account.

(5) ~~At the same time~~On the same date that the local government or public authority funds are ~~deposited and the certificates of deposit are issued,~~redeposited, the selected bank or savings and loan association receives an amount of federally insured deposits from customers of other ~~federally insured~~ financial institutions wherever located equal to or greater than the amount of the funds invested by the local government or public authority through the selected bank or savings and loan association."

SECTION 2. G.S. 115D-58.6(a1) reads as rewritten:

"(a1) Deposits. – The institution may deposit at interest all or part of the cash balance of any fund in an official depository of the institution. Moneys may be deposited at interest in any official depository of the institution in the form of ~~certificates of~~such deposit ~~or such other forms of time deposits~~accounts as may be approved for county governments. In addition, moneys may be deposited in the form of ~~certificates of~~such deposit accounts as provided for a

local government or public authority in G.S. 159-30(b1). Investment deposits shall be secured as provided in G.S. 159-31(b)."

SECTION 3. G.S. 147-69.1(c)(5) reads as rewritten:

"(5) Certificates of deposit and other ~~time deposits~~deposit accounts of financial institutions under any of the following conditions:

a. With financial institutions with a physical presence in the State for the purpose of receiving commercial or retail deposits; provided that any principal amount of such deposit in excess of the amount insured by the federal government or any agency thereof, be fully secured by surety bonds, or be fully collateralized; provided further that the rate of return or investment yield may not be less than that available in the market on United States government or agency obligations of comparable maturity.

b. With financial institutions with a physical presence inside or outside the State, in accordance with all of the following conditions:

1. The funds are initially deposited through a bank or savings and loan association in the State that is an official depository and that is selected by the State Treasurer, provided that the rate of return or investment yield shall not be less than that available in the market on United States government or agency obligations of comparable maturity.

2. The selected bank or savings and loan association arranges for the ~~deposit~~redeposit of the funds in ~~certificates of~~ deposit ~~for the account~~accounts of the State in one or more federally insured banks or savings and loan associations wherever located, provided that no State funds shall be deposited in a bank or savings and loan association that at the time holds other ~~time~~ deposits from the State.

3. The full amount of principal and any accrued interest of each ~~certificate of~~ deposit account are covered by federal deposit insurance.

4. The selected bank or savings and loan association acts as custodian for the State with respect to the ~~certificates of~~ deposit ~~issued for~~in the State's account.

5. ~~At the same time~~On the same date that the State funds are ~~deposited and the certificates of deposit are issued,~~redeposited, the selected bank or savings and loan association receives an amount of federally insured deposits from customers of other ~~federally insured~~ financial institutions wherever located equal to or greater than the amount of the funds invested by the State through the selected bank or savings and loan association pursuant to this sub-subdivision."

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

HOUSE BILL 474:
Redeposit Govt. Funds Into Ins. Deposit Acct

2013-2014 General Assembly

Committee:	Senate Commerce	**Date:**	July 2, 2013
Introduced by:	Reps. S. Ross, Dockham, Lambeth, Goodman	**Prepared by:**	Trina Griffin
Analysis of:	First Edition		Committee Counsel

SUMMARY: ***House bill 474 amends the General Statutes to authorize local governments, community colleges, and the State Treasurer to invest their idle funds in insured demand, money market, and NOW deposit accounts through a deposit placement service.***

CURRENT LAW:

S.L. 2005-394 amended the General Statutes to authorize the State Treasurer, local governments, and community colleges to invest in certificates of deposit and other time deposits with a financial institution inside or outside the State provided the following conditions are met in relation to the investment:

- Funds are invested through a bank or savings and loan association that has a rate of return equal to or greater than the rate of return available in the market on US government or agency obligations of comparable maturity.
- The selected financial institution arranges for the deposit of the funds in one or more federally insured financial institutions where no other applicable government funds are deposited.
- The full amount of the deposit and the interest are covered by federal deposit insurance.
- The selected financial institution acts as the custodian of the applicable government funds for CD's issued for the account.
- At the time the funds are deposited and CD's are issued, the selected financial institution receives deposits from customers of other federally insured financial institutions equal to or greater than the amounts invested by the applicable government entity in the selected financial institution.

BILL ANALYSIS:

House Bill 474 amends the law to allow local governments, community colleges and the State Treasurer to place idle funds in a local bank or savings and loan association and to utilize deposit placement services to redeposit the funds in demand, money market, and NOW deposit accounts in federally insured financial institutions located in or out of the State.

Currently, the law only applies to certificates of deposit and other time deposit accounts. The other conditions that must be met for these deposits remains unchanged from the current law.

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

Walker Reagan substantially contributed to this summary.

O. Walker Reagan
Director

Research Division
(919) 733-2578

NCBANKERS
1897 NORTH CAROLINA BANKERS ASSOCIATION

P. O. BOX 19999, RALEIGH, NC 27619-9916 / 800-662-7044 / FAX: 919/881-9909

From: Nathan Batts, SVP and Counsel

Re: H 474 - Redeposit Govt. Funds Into Ins. Deposit Acct.

Current Law

- The standard insurance protection provided by the Federal Deposit Insurance Corporation (FDIC) for deposits placed in a bank is up to $250,000 per ownership category.
- Under North Carolina law, deposits by an entity of state or local government must be either fully insured through FDIC insurance or backed by assets that a bank has pledged to secure those deposits. Thus, in the event of a failure of a bank, there is no loss to a government depositor.
- As an alternative to pledging assets, banks are permitted by law to use a reciprocal deposit placement service, in which a large deposit placed at a bank that would otherwise exceed the standard deposit insurance amount is divided into amounts that are each below the FDIC insurance limit and placed in certificates of deposit at other banks. In return, the bank receives an equal amount of matched funds from other banks. Depositors see on a single bank statement where their funds are currently being held and can withdraw their funds by interacting with just one bank. The FDIC permits these reciprocal or matched deposits, and in this way the government depositor gets full FDIC protection for every dollar of deposits. Current North Carolina statutes only allow this structure for certificates of deposit.

Proposed Changes in H 474

- H 474 would change the references in applicable North Carolina statutes from "certificates of deposit" to "deposit accounts."
- This simple change would allow deposit placement services to also be available for demand deposit accounts and short term time deposits.

Reason for the Change

- Computer technology has advanced substantially since the first reciprocal deposit services were created. Deposit balances in a bank can now be rebalanced with reciprocal or matched deposits from other banks in a matter of seconds. This has led to the creation of reciprocal deposit services nationwide for demand deposit accounts and short term deposits.
- The key advantage for government depositors is greater flexibility, with some funds placed in higher return certificates of deposit of months or years in duration, and others placed in deposit accounts that have a lower rate of interest, but which provide immediate access. From a bank perspective, deposit placement services are often a better alternative than pledging bank assets that could be income producing or used to make loans.
- There appears to be no opposition to this change. Both the North Carolina Department of the State Treasurer and the Office of the Commissioner of Banks have been consulted and have stated that they are not opposed to the change.
- The legislation would bring North Carolina in line with the approach taken in other states. Most states either already allow deposit placement services for demand or short-term deposits or are in the process of passing legislation.
    - Recent enactments of changes to state law authorizing this approach:
        - 2009: Florida; 2010: Kansas, Maryland, Virginia, and West Virginia;
        - 2011: Oregon and Ohio;
        - 2012: Arizona, Connecticut, Indiana, Iowa, Michigan, Minnesota, Mississippi, Missouri, Nebraska, New York, South Dakota, Tennessee, and Wisconsin.
    - Legislation was not needed for the following because of the manner in which the existing statutes were written: Alabama, Alaska, Delaware, Idaho, Illinois, Kentucky, Louisiana, Maine, Oklahoma, Rhode Island, South Carolina, Texas, Vermont, and Washington. The District of Columbia can also be included.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

H 3

HOUSE BILL 761
Committee Substitute Favorable 4/24/13
Third Edition Engrossed 4/25/13

Short Title: Exempt Well K'ors/Electrical K'ors Lic Reqs. (Public)

Sponsors:

Referred to:

April 11, 2013

A BILL TO BE ENTITLED

AN ACT TO EXEMPT WELL CONTRACTORS FROM ELECTRICAL CONTRACTORS LICENSING REQUIREMENTS AND TO REQUIRE ELECTRICAL TRAINING FOR INITIAL WELL CONTRACTOR CERTIFICATION.

The General Assembly of North Carolina enacts:

SECTION 1. 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:

...

(8) 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 2. 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. This act is effective when it becomes law. The requirements of subsection (b) of G.S. 87-98.6, as enacted by Section 2 of this act, apply to applicants applying for certification on or after the date this act becomes effective.

HOUSE BILL 761:
Exempt Well K'ors/Electrical K'ors Lic Reqs

2013-2014 General Assembly

Committee:	Senate Commerce	**Date:**	July 2, 2013
Introduced by:	Reps. Hardister, Faircloth, Malone	**Prepared by:**	Peter Ledford
Analysis of:	Third Edition		Committee Counsel

SUMMARY: ***House Bill 761 would exempt certain electrical work associated with wells from the requirements of the electrical contractor statutes, including licensure, and would require new well contractors to have some education, experience, and knowledge of electrical work associated with wells.***

CURRENT LAW:

Under current law, no person may engage in electrical contracting without having received a license from the State Board of Examiners of Electrical Contractors. Electrical contracting is defined as engaging in the business of installing, maintaining, altering, or repairing any electric work, wiring, devices, appliances, or equipment.

BILL ANALYSIS:

House Bill 761 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. The bill 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.

EFFECTIVE DATE:

This act would become effective when it becomes law. The new minimum education requirements for electrical work associated with wells would apply to applicants applying for certification on or after the date the act becomes effective.

Jeff Hudson, counsel to House Regulatory Reform Subcommittee on Environment, substantially contributed to this summary.

O. Walker Reagan
Director

H761-SMTP-98-E3-V2

Research Division
(919) 733-2578

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 761

AMENDMENT NO. 1
(to be filled in by Principal Clerk)

H761-ATP-50 [v.1]

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

Date July 2 ,2013

Senator Brown

moves to amend the bill on page 1, line 11, by deleting the phrase "(8)" and substituting the phrase "(10)".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED X FAILED _____ TABLED _____

VISITOR REGISTRATION SHEET

Senate Commerce Committee
Name of Committee

July 2, 2013
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

NAME	FIRM OR AGENCY AND ADDRESS
BERRY JENKINS	CAROLINAS AGC
Bill McAulay	PSNC Energy
	NCBEEC
Kim Winslow	Arnova Financial
Steve Kirmse	Dromontory
Danny Cartel	Fromontory
Nathan Batts	NCBA
Doug Lassiter	NCSTA
	School of Gov
	P.W.C & Fayetteville
	McGuire Woods
	DOC

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Senate **COMMERCE** Committee — July 2, 2013

Name of Committee — **Date**

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Paul Meyer	NCLM
Elizabeth Biser	Brooks Pierce
Mike Carpenter	NCCBA
Wendy Kay	Biz Bio
Rob Lamm	TCEA
Richard Estes	Rep. Insko
Allison Waller	Helms Mullins

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Senate Commerce Committee — **Name of Committee**

July 2, 2013 — **Date**

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David Anders	PFFPNC
Jim Morrill	Charlotte Observer
Jake Caslin	NC Chamber
Dane Fenwick	CLT
Henry Jones	Jordan Price
[illegible]	NCAFC
Bruce Thompson	Pacific Pork
Marion Fennell	K+2 Gator
Joy Peters	CSS
Cody Thomas	NCAR

VISITOR REGISTRATION SHEET

Senate Commerce Committee — July 2, 2013

Name of Committee — **Date**

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[illegible]	NMRS
[illegible]	Smith Anderson
[illegible]	WMP
[illegible]	[illegible]
Jon [illegible]	[illegible]
David McGowan	NCPC
Ellen Hanner	CRC
George Smith	NP
JGOODMAN	KC CHAMBER

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Senate Commerce Committee
Name of Committee

July 2, 2013
Date

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Carrison Mann	MVA
Michael Hamrick	Hamrick Consulting
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Daniel Boone	Mountain Sand MC
Kelli Kuhn	Duke Energy
Annalise Franks	N + O
John McMillan	MFS
Steve Brewer	CTL
Sarah Hardin	CTL

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Senate Commerce Committee — **Name of Committee**

July 2, 2013 — **Date**

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Sara Weed	NCCOB
Rhian Merwald	Staff
Lindsey Dowling	Staff
Laura Spratley	Staff
Adam Stofer	DHHS
Andrew Morgan	DNNS
Heather Robinson	NCRMA
Will Morgan	TNC
Stephen White	DRNC
John Monaghan	Piedmont Natural Gas

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Senate Commerce Committee
Name of Committee

July 2, 2013
Date

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Justin DeLaney	NC DOT
Sarah L. Miller	Self
Lauren Wheeler	NCCUC
Lisa Martin	NC HBA
Tommy Roberson	TWC
Mary Miller	KLG
ALLEN GRAY	CAGC
Dave Simpson	CAGC
Chris Ayers	Public Staff - NCUC
Dianna Downey	PSNCUC
Rick Zechini	WM

VISITOR REGISTRATION SHEET

Senate Commerce Committee
Name of Committee

July 2, 2013
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DeANNE MANGUM

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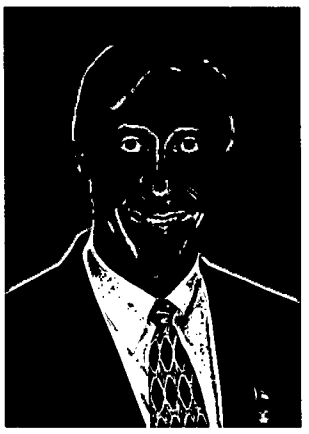
COMMERCE SENATE COMMITTEE

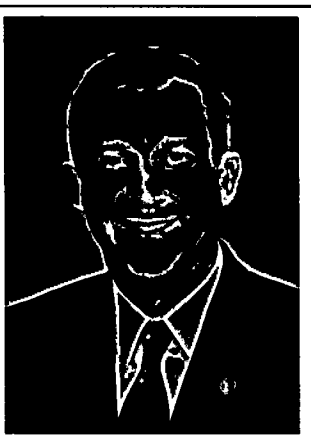
2013 - 2014

Wesley Meredith
Co-Chair



Rick Gunn
Co-Chair

Tamara Barringer
Vice-Chair



Harry Brown
Vice-Chair

Tom Apodaca

Dan Blue

Angela Bryant

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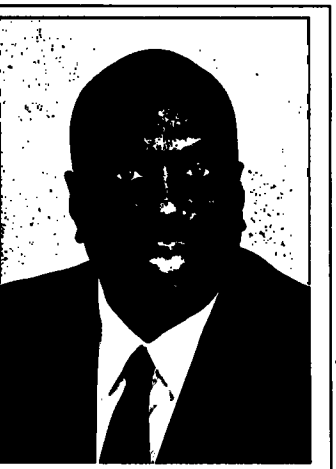
David Curtis

Don Davis

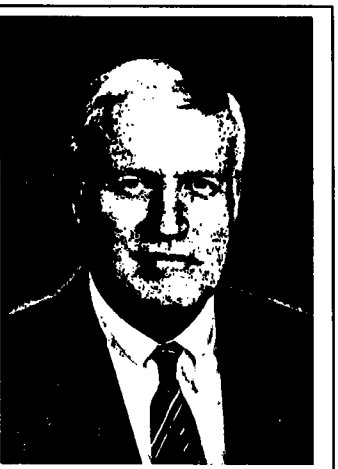
Jim Davis

Thom Goolsby

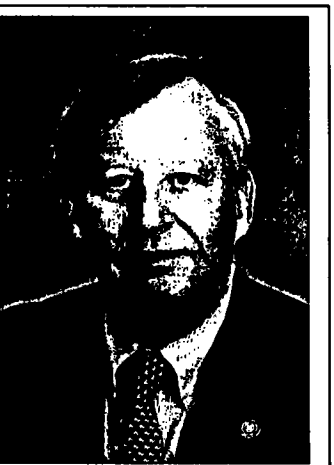


Malcolm Graham

Kathy Harrington



Neal Hunt



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Joyce Krawiec

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Gladys Robinson

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Norman Sanderson

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Terry Van Duyn

Mike Woodard

BILL INDEX
For the Senate Committee on
COMMERCE
2013-14 Session

Bill	Date In Committee
SB 786 Energy Modernization Act	Tuesday, May 20, 2014
SB 743 NC Econ. Dev. Partnership Modifications	Wednesday June 4, 2014
SB 742 Adjust the Utility Regulatory Fee	Wednesday June 11, 2014
HJR 1074 Confirm Linda Combs as State Controller	Wednesday June 11, 2014
HJR 1112 Confirm Charlton L. Allen to Industrial Comm.	Wednesday, June 11, 2014
HB 1031 NC Econ. Dev. Partnership Modifications	Tuesday, June 17, 2014
HB 894 Source Water Protection Planning	Wednesday, June 18, 2014
HB 1043 Prequalification Update	Wednesday, June 18, 2014
SB 794 Disapprove Industrial Commission Rules	Wednesday, June 18, 2014
SB 769 Boost State Nature/Heritage Tourism Industry	Wednesday, June 18, 2014
HB 680 Jump-Start Our Business Start-Up Acts	Wednesday, July 16, 2014

Principal Clerk ____
Reading Clerk ____

Corrected #1: Bill Scheduled

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

The **Senate Committee on Commerce** will meet at the following time:

DAY	DATE	TIME	ROOM
Tuesday	May 20, 2014	2:00 PM	1027/1128 LB

The following will be considered:

BILL NO.	SHORT TITLE	SPONSOR
SB 786	Energy Modernization Act.	Senator Rucho Senator Newton Senator Brock

Agenda to be determined.

Senator Rick Gunn, Co-Chair
Senator Wesley Meredith, Co-Chair

Senate Committee on Commerce
Tuesday, May 20, 2014, 2:00 PM
1027/1128 Legislative Building

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

BILL NO.	SHORT TITLE	SPONSOR
SB 786	Energy Modernization Act.	Senator Rucho Senator Newton Senator Brock

Senate Committee on Commerce
Tuesday, May 20, 2014 at 2:00 PM
Room 1027/1128 of the Legislative Building

MINUTES

The Senate Committee on Commerce met at 2:00 PM on May 20, 2014 in Room 1027/1128 of the Legislative Building. Twenty three members were present.

Senator Rick Gunn, Chair, presided.

Max Shafer from Clinton, Maggie Shafer from Clinton, Daisy McAteer from Fayetteville, Jennifer Rogers from Fayetteville, and Ashton Craft from Vanceboro served as pages.

SB 786 Energy Modernization Act

Senator Tucker moved to adopt the proposed committee substitute (PCS) to the committee for discussion and it was carried. Senators Rucho, Newton and Brock, the bill sponsors, made introductory comments to the bill. Attorneys Jennifer McGinnis and Heather Fennel from the Research Division with Jennifer Mundt a legal analyst from the Research Division, explained the PCS by the use of the Bill Summary. Taking turns, they spoke on each section. Many questions were asked by the members and were responded to by the bill sponsors and Jennifer McGinnis. Jim Womack, Lee County Commissioner, Chairman of the NC Mining and Energy Commission who was visiting the committee, was asked to assist with a question. Upon the conclusion of the member's discussion, Senator Gunn allowed people to speak from the audience. Elizabeth Ouzts, State Director for Environment North Carolina spoke against the bill. David McGowan, Executive Director for the North Carolina Petroleum Council spoke in favor of the bill. Jim Womack spoke a second time claiming previous statements made by Elizabeth Ouzts regarding the NC mining and Energy Commission to be incorrect. Senator Tucker moved – unfavorable to the bill – favorable to the PCS and it carried.

The meeting adjourned at 3:40 PM.

Senator Rick Gunn, Chair
Presiding

Debbie Lown, Committee Clerk

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

COMMERCE COMMITTEE REPORT
Senator Gunn, Co-Chair
Senator Meredith, Co-Chair

Tuesday, May 20, 2014

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

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

SB **786** Energy Modernization Act.

Draft Number:	S786-PCS35529-RIxf-35
Sequential Referral:	Finance
Recommended Referral:	None
Long Title Amended:	Yes

TOTAL REPORTED: 1

Senator Robert Rucho will handle SB 786

SENATE BILL 786

Short Title:	Energy Modernization Act.	(Public)
Sponsors:	Senators Rucho, Newton, Brock (Primary Sponsors); Curtis, J. Davis, Gunn, B. Jackson, Krawiec, and Wade.	
Referred to:	Commerce.	

May 19, 2014

A BILL TO BE ENTITLED

AN ACT TO (1) EXTEND THE DEADLINE FOR DEVELOPMENT OF A MODERN REGULATORY PROGRAM FOR THE MANAGEMENT OF OIL AND GAS EXPLORATION, DEVELOPMENT, AND PRODUCTION IN THE STATE AND THE USE OF HORIZONTAL DRILLING AND HYDRAULIC FRACTURING TREATMENTS FOR THAT PURPOSE; (2) ENACT OR MODIFY CERTAIN EXEMPTIONS FROM REQUIREMENTS OF THE ADMINISTRATIVE PROCEDURE ACT APPLICABLE TO RULES FOR THE MANAGEMENT OF OIL AND GAS EXPLORATION, DEVELOPMENT, AND PRODUCTION IN THE STATE AND THE USE OF HORIZONTAL DRILLING AND HYDRAULIC FRACTURING TREATMENTS FOR THAT PURPOSE; (3) CREATE THE NORTH CAROLINA OIL AND GAS COMMISSION AND RECONSTITUTE THE NORTH CAROLINA MINING COMMISSION; (4) AMEND MISCELLANEOUS STATUTES GOVERNING OIL AND GAS EXPLORATION, DEVELOPMENT, AND PRODUCTION ACTIVITIES; (5) ESTABLISH A SEVERANCE TAX APPLICABLE TO OIL AND GAS EXPLORATION, DEVELOPMENT, AND PRODUCTION ACTIVITIES; (6) AMEND MISCELLANEOUS STATUTES UNRELATED TO OIL AND GAS EXPLORATION, DEVELOPMENT, AND PRODUCTION ACTIVITIES; AND (7) DIRECT STUDIES ON VARIOUS ISSUES, AS RECOMMENDED BY THE JOINT LEGISLATIVE COMMISSION ON ENERGY POLICY.

The General Assembly of North Carolina enacts:

PART I. EXTENSION OF RULE DEVELOPMENT DEADLINE

SECTION 1. Section 2(m) of S.L. 2012-143 reads as rewritten:

"**SECTION 2.(m)** All rules required to be adopted by the Mining and Energy Commission, the Environmental Management Commission, and the Commission for Public Health pursuant to this act shall be adopted no later than ~~October 1, 2014.~~January 1, 2015. In order to provide for the orderly, efficient, and effective development and adoption of rules and to prevent the adoption of duplicative, inconsistent, or inadequate rules by these Commissions, the Department of Environment and Natural Resources shall coordinate the adoption of the rules. The Commissions and the Department shall develop the rules in an open and collaborative process that includes (i) input from scientific and technical advisory groups; (ii) consultation with the North Carolina League of Municipalities, the North Carolina Association of County Commissioners, the Division of Energy of the Department of Commerce, the Department of Transportation, the Division of Emergency Management of the Department of

Public Safety, the Consumer Protection Division of the Department of Justice, the Department of Labor, the Department of Health and Human Services, the State Review of Oil and Natural Gas Environmental Regulations (STRONGER), the American Petroleum Institute (API), and the Rural Advancement Foundation (RAFI-USA); and (iii) broad public participation. During the development of the rules, the Commissions and the Department shall identify changes required to all existing rules and statutes necessary for the implementation of this act, including repeal or modification of rules and statutes. Until such time as all of the rules are adopted pursuant to this act, the Department shall submit quarterly reports to the Joint Legislative Commission on Energy Policy, created under Section 6(a) of this act, and the Environmental Review Commission on its progress in developing and adopting the rules. The quarterly reports shall include recommendations on changes required to existing rules and statutes and any other findings or recommendations necessary for the implementation of this act. The first report required by this subsection is due January 1, 2013."

PART II. EXEMPTIONS FROM ADMINISTRATIVE PROCEDURE ACT

SECTION 2.(a) Notwithstanding G.S. 150B-21.3(b1) and Section 1(a) of S.L. 2013-365, all rules adopted pursuant to Section 2(m) of S.L. 2012-143 shall be subject to legislative review during the next regular session of the General Assembly that begins after the date the Rules Review Commission approved the rule or during the regular session that is underway on the date the Commission approved the rule.

SECTION 2.(b) Notwithstanding G.S. 150B-21.3(b1) and any rule of either house of the General Assembly, any member of the General Assembly may introduce a bill to disapprove any rule adopted pursuant to Section 2(m) of S.L. 2012-143 that has been approved by the Rules Review Commission and that either has not become effective or has become effective by executive order, as follows: (i) if the Rules Review Commission approves the rule prior to the start of a legislative session, during the first 30 calendar days of the regular session of the General Assembly that begins after the date the Commission approved all rules adopted pursuant to Section 2(m) of S.L. 2012-143; or (ii) if the Rules Review Commission approves the rule during a legislative session, 30 calendar days from the date the Rules Review Commission approved all rules adopted pursuant to Section 2(m) of S.L. 2012-143.

SECTION 2.(c) Notwithstanding G.S. 150B 21.3(b1) and any rule of either house of the General Assembly, all rules adopted pursuant to Section 2(m) of S.L. 2012-143 become effective on the earlier of the following:

(1) If the Rules Review Commission approves all rules adopted pursuant to Section 2(m) of S.L. 2012-143 prior to the start of a legislative session, the earlier of (i) the 31st calendar day of the regular session of the General Assembly that begins after the date the Commission approved all rules adopted pursuant to Section 2(m) of S.L. 2012-143 if a bill that specifically disapproves any of these rules has not been introduced in either house of the General Assembly by that date; (ii) if a bill that specifically disapproves a rule is introduced in either house of the General Assembly before the 31st calendar day of that session, the rule becomes effective on the earlier of either the day an unfavorable final action is taken on the bill, or the 61st calendar day of that session if by that date a bill that specifically disapproves the rule has not been ratified; or (iii) the day that session of the General Assembly adjourns without ratifying a bill that specifically disapproves the rule.

(2) If the Rules Review Commission approves all rules adopted pursuant to Section 2(m) of S.L. 2012-143 during a legislative session, the earlier of: (i) the 31st calendar day after the date the Commission approved all rules adopted pursuant to Section 2(m) of S.L. 2012-143 if a bill that specifically

disapproves a rule has not been introduced in either house of the General Assembly by that date; (ii) if a bill that specifically disapproves a rule is introduced in either house of the General Assembly within 30 calendar days of the date that the Commission approved all rules adopted pursuant to Section 2(m) of S.L. 2012-143, the rule becomes effective on the earlier of either the day an unfavorable final action is taken on the bill, or the 61st day after the date that the Commission approved all rules adopted pursuant to Section 2(m) of S.L. 2012-143 if by that date a bill that specifically disapproves the rule has not been ratified; or (iii) the day that session of the General Assembly adjourns without ratifying a bill that specifically disapproves the rule.

SECTION 2.(d) Notwithstanding G.S. 150B-21.9, the Rules Review Commission must review any permanent rule adopted pursuant to Section 2(m) of S.L. 2012-143 submitted to it by the end of a month by the last day of the next month.

SECTION 2.(e) G.S. 150B-19.3 shall not apply to rules adopted by the Mining and Energy Commission, the Environmental Management Commission, and the Commission for Public Health for the management of oil and gas exploration, development, and production activities in the State, including the use of horizontal drilling and hydraulic fracturing for that purpose.

SECTION 2.(f) Section 1(b) of S.L. 2013-365 reads as rewritten:

"**SECTION 1.(b)** The Mining and Energy Commission, the Environmental Management Commission, and the Commission for Public Health are exempt from the provisions of Chapter 150B of the General Statutes that require the preparation of fiscal ~~notes~~ notes, including the requirement established by G.S. 150B-19.1(f), for any rule proposed ~~for the creation of a modern regulatory program for~~ that pertains to 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."

SECTION 2.(g) This Part is effective when it becomes law. Section 2(f) of this act shall expire December 31, 2017.

PART III. CREATE OIL AND GAS COMMISSION AND RECONSTITUTE MINING COMMISSION

SECTION 3.(a) Part 6A of Article 7 of Chapter 143B of the General Statutes reads as rewritten:

"Part 6A. North Carolina ~~Mining and Energy~~ Oil and Gas Commission.

"**§ 143B-293.1. North Carolina ~~Mining and Energy~~ Oil and Gas Commission – creation; powers and duties.**

(a) There is hereby created the North Carolina ~~Mining and Energy~~ Oil and Gas Commission of the Department of Environment and Natural Resources with the power and duty to adopt rules necessary to administer the Oil and Gas Conservation Act pursuant to G.S. 113-391 and for the development of the ~~oil, gas, and mining~~oil and gas resources of the State. The Commission shall make such rules consistent with the provisions of this Chapter. All rules adopted by the Commission shall be enforced by the Department of Environment and Natural Resources.

(b) The Commission shall have the authority to make determinations and issue orders pursuant to the Oil and Gas Conservation Act to (i) regulate the spacing of wells and to establish drilling units as provided in G.S. 113-393; (ii) ~~require the operation of wells with efficient gas-oil ratios and to fix such ratios; (iii)~~ limit and prorate the production of oil or gas, or both, from any pool or field for the prevention of waste as provided in G.S. 113-394; (iii) classify wells for taxing purposes; and (iv) require integration of interests as provided in G.S. 113-393.

(c) The Commission shall submit ~~quarterly~~ annual written reports as to its operation, activities, programs, and progress to the Joint Legislative Commission on Energy Policy and 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 Joint Legislative Commission on Energy Policy and 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.

"§ 143B-293.2. North Carolina ~~Mining and Energy~~ Oil and Gas Commission – members; selection; removal; compensation; quorum; services.

~~(a) Members Selection. The North Carolina Mining and Energy Commission shall consist of 15 members appointed as follows:~~

~~(1) The Chair of the North Carolina State University Minerals Research Laboratory Advisory Committee, or the Chair's designee, ex officio.~~

~~(2) The State Geologist, or other designee of the Secretary of Environment and Natural Resources.~~

~~(3) Repealed by Session Laws 2013-365, s. 3(a), effective July 29, 2013.~~

~~(3a) One appointed by the Governor, at large.~~

~~(4) One appointed by the General Assembly upon recommendation of the Speaker of the House of Representatives who is a member of a nongovernmental conservation interest.~~

~~(5) One appointed by the General Assembly upon recommendation of the Speaker of the House of Representatives who, at the time of initial appointment, is an elected official of a municipal government located in a region of North Carolina that has oil and gas potential. A person serving in this seat may complete a term on the Commission even if the person is no longer serving as an elected official of a municipal government but may not be reappointed to a subsequent term.~~

~~(6) One appointed by the General Assembly upon recommendation of the Speaker of the House of Representatives who is a representative of the mining industry.~~

~~(7) One appointed by the General Assembly upon recommendation of the Speaker of the House of Representatives who shall be a geologist with experience in oil and gas exploration and development.~~

~~(8) One appointed by the General Assembly upon recommendation of the President Pro Tempore of the Senate who is a member of a nongovernmental conservation interest.~~

~~(9) One appointed by the General Assembly upon recommendation of the President Pro Tempore of the Senate who, at the time of initial appointment, is a member of a county board of commissioners of a county located in a region of North Carolina that has oil and gas potential. A person serving in this seat may complete a term on the Commission even if the person is no longer serving as county commissioner but may not be reappointed to a subsequent term.~~

~~(10) One appointed by the General Assembly upon recommendation of the President Pro Tempore of the Senate who is a representative of the mining industry.~~

~~(11) One appointed by the General Assembly upon recommendation of the President Pro Tempore of the Senate who shall be an engineer with experience in oil and gas exploration and development.~~

~~(12) One appointed by the Governor who shall be a representative of a publicly traded natural gas company.~~

~~(13) One appointed by the Governor who shall be a licensed attorney with experience in legal matters associated with oil and gas exploration and development.~~

~~(14) One appointed by the Governor who is a member of the Environmental Management Commission.~~

~~(15) One appointed by the Governor who is a member of the Commission for Public Health.~~

(a1) Members Selection. – The North Carolina Oil and Gas Commission shall consist of nine members appointed as follows:

(1) One appointed by the General Assembly upon recommendation of the Speaker of the House of Representatives who, at the time of initial appointment, is an elected official of a municipal government located in a region of North Carolina that has oil and gas potential. A person serving in this seat may complete a term on the Commission even if the person is no longer serving as an elected official of a municipal government but may not be reappointed to a subsequent term.

(2) One appointed by the General Assembly upon recommendation of the Speaker of the House of Representatives who shall be a geologist with experience in oil and gas exploration and development.

(3) One appointed by the General Assembly upon recommendation of the Speaker of the House of Representatives who is a member of a nongovernmental conservation interest.

(4) One appointed by the General Assembly upon recommendation of the President Pro Tempore of the Senate who, at the time of initial appointment, is a member of a county board of commissioners of a county located in a region of North Carolina that has oil and gas potential. A person serving in this seat may complete a term on the Commission even if the person is no longer serving as county commissioner but may not be reappointed to a subsequent term.

(5) One appointed by the General Assembly upon recommendation of the President Pro Tempore of the Senate who is a member of a nongovernmental conservation interest.

(6) One appointed by the General Assembly upon recommendation of the President Pro Tempore of the Senate who shall be an engineer with experience in oil and gas exploration and development.

(7) One appointed by the Governor who shall be a representative of a publicly traded natural gas company.

(8) One appointed by the Governor who shall be a licensed attorney with experience in legal matters associated with oil and gas exploration and development.

(9) One appointed by the Governor with experience in matters related to public health.

(b) Terms. – The term of office of members of the Commission 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 (a) 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 ~~(4), (6), (9), and (12)~~ (1), (4), and (7) of subsection ~~(a)~~(a1) of this section shall expire on June 30 of years evenly divisible by three. The terms of members appointed under subdivisions ~~(7), (10), (13), and (14)~~(2), (5), and (8) of subsection ~~(a)~~(a1) of this section shall expire on June 30 of years that precede by one year those years that are evenly divisible by

three. The terms of members appointed under subdivisions ~~(5), (8), (11), and (15)~~(3), (6), and (9) of subsection ~~(a)~~(a1) of this section shall expire on June 30 of years that follow by one year those years that are evenly divisible by three.

(c) Vacancies; Removal from Office. –

(1) Any appointment by the Governor 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 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.

(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.

(d) Compensation. – The members of the Commission shall receive per diem and necessary traveling and subsistence expenses in accordance with the provisions of G.S. 138-5.

(e) Quorum. – A majority of the Commission shall constitute a quorum for the transaction of business.

(f) Staff. – All staff support required by the Commission shall be supplied by the Division of Energy, Mineral, and Land Resources and the North Carolina Geological Survey.

(g) Committees. – In addition to the Committee on Civil Penalty Remissions required to be established under G.S. 143B-293.6, the chair may establish other committees from members of the Commission to address specific issues as appropriate. No member of a committee may hear or vote on any matter in which the member has an economic interest. A majority of a committee shall constitute a quorum for the transaction of business. ~~At a minimum, the chair shall establish a Committee on Mining, which shall consist of members appointed under subdivisions (1), (4), (6), (8), (10), (14), and (15) of subsection (a) of this section. The Committee on Mining shall have exclusive responsibility and authority over matters pertaining to mining and implementation of the Mining Act of 1971, including all of the following powers and duties:~~

~~(1) To act as the advisory body to the Governor pursuant to Article V(a) of the Interstate Mining Compact, as set out in G.S. 74-37.~~

~~(2) To adopt rules necessary to administer the Mining Act of 1971 pursuant to G.S. 74-63.~~

~~(3) To adopt rules necessary to administer the Control of Exploration for Uranium in North Carolina Act of 1983 pursuant to G.S. 74-86.~~

~~(4) To adopt rules, not inconsistent with the laws of this State, as may be required by the federal government for grants-in-aid for mining resource purposes which may be made available to the State by the federal government. This section is to be liberally construed in order that the State and its citizens may benefit from such grants-in-aid.~~

(h) Office May Be Held Concurrently With Others. – Membership on the ~~Mining and Energy~~ Oil and Gas Commission is hereby declared to be an office that may be held concurrently with other elective or appointive offices in addition to the maximum number of offices permitted to be held by one person under G.S. 128-1.1.

"§ 143B-293.3. Reserved for future codification purposes.

"§ 143B-293.4. North Carolina ~~Mining and Energy~~ Oil and Gas Commission – officers.

The ~~Mining and Energy~~ Oil and Gas 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 one-year terms beginning August 1 and ending

July 31 of the following year. The chair and vice-chair may serve any number of terms, but not more than two terms consecutively.

"**§ 143B-293.5.** North Carolina ~~Mining and Energy~~ Oil and Gas Commission – meetings.

The ~~North Carolina Mining and Energy~~ Oil and Gas Commission 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 ~~nine~~ five members.

"**§ 143B-293.6. North Carolina ~~Mining and Energy~~ Oil and Gas Commission – quasi-judicial powers; procedures.**

(a) With respect to those matters within its jurisdiction, the ~~Mining and Energy~~ Oil and Gas Commission shall exercise quasi-judicial powers in accordance with the provisions of Chapter 150B of the General Statutes.

(b) The chair shall appoint a Committee on Civil Penalty Remissions from the members of the Commission. No member of the Committee on Civil Penalty Remissions may hear or vote on any matter in which the member has an economic interest. In determining whether a remission request will be approved, the Committee shall consider the recommendation of the Secretary or the Secretary's designee and all of the following factors:

(1) Whether one or more of the civil penalty assessment factors in subsection (b) of this section were wrongly applied to the detriment of the petitioner.

(2) Whether the violator promptly abated continuing environmental damage resulting from the violation.

(3) Whether the violation was inadvertent or a result of an accident.

(4) Whether the violator had been assessed civil penalties for any previous violations.

(5) Whether payment of the civil penalty will prevent payment for the remaining necessary remedial actions.

(c) The Committee on Civil Penalty Remissions may remit the entire amount of the penalty only when the violator has not been assessed civil penalties for previous violations and when payment of the civil penalty will prevent payment for the remaining necessary remedial actions."

SECTION 3.(b) The terms of all members of the Mining and Energy Commission serving on July 31, 2015, shall expire on that date. A new Oil and Gas Commission of nine members shall be appointed in the manner provided by G.S. 143B-293.2(a1), as enacted by Section 3(a) of this act, and this section. Members appointed in the manner provided by G.S. 143B-293.2(a1), as enacted by Section 3(a) of this act, shall be appointed no later than August 1, 2015.

SECTION 3.(c) The Revisor of Statutes shall make the conforming statutory changes necessary to the General Statutes to reflect renaming of the Mining and Energy Commission to the Oil and Gas Commission, effective August 1, 2015, as provided in this section.

SECTION 4.(a) Part 6 of Article 7 of Chapter 143B of the General Statutes is reenacted and reads as rewritten:

"Part 6. North Carolina Mining Commission.

"**§ 143B-290. North Carolina Mining Commission – creation; powers and duties.**

There is hereby created the North Carolina Mining Commission of the Department of Environment and Natural Resources with the power and duty to promulgate rules for the enhancement of the mining resources of the State.

(1) The North Carolina Mining Commission shall have the following powers and duties:

a. To act as the advisory body to the Governor pursuant to Article V(a) of the Interstate Mining Compact, as set out in G.S. 74-37.

b. Repealed by Session Laws 2002-165, s. 1.10, effective October 23, 2002.

c. To hear permit appeals, conduct a full and complete hearing on such controversies and affirm, modify, or overrule permit decisions made by the Department pursuant to G.S. 74-61.

d. To promulgate rules necessary to administer the Mining Act of 1971, pursuant to G.S. 74-63.

e. To promulgate rules necessary to administer the Control of Exploration for Uranium in North Carolina Act of 1983, pursuant to G.S. 74-86.

(2) The Commission is authorized to make such rules, not inconsistent with the laws of this State, as may be required by the federal government for grants-in-aid for mining resource purposes which may be made available to the State by the federal government. This section is to be liberally construed in order that the State and its citizens may benefit from such grants-in-aid.

(3) The Commission shall make such rules consistent with the provisions of this Chapter. All rules adopted by the Commission shall be enforced by the Department of Environment and Natural Resources.

(4) Recodified as § 74-54.1 by c. 1039, s. 16, effective July 24, 1992.

"**§ 143B-291. North Carolina Mining Commission – members; selection; removal; compensation; quorum; services.**

~~(a) Members, Selection. – The North Carolina Mining Commission shall consist of nine members appointed by the Governor under a specified subdivision of this subsection as follows:~~

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

~~(2) One member who is a representative of the mining industry.~~

~~(3) One member who is a representative of the mining industry.~~

~~(4) One member who is a representative of the mining industry.~~

~~(5) One member who is a representative of nongovernmental conservation interests.~~

~~(6) One member who is a representative of nongovernmental conservation interests.~~

~~(7) One member who is a representative of nongovernmental conservation interests.~~

~~(8) One who, at the time of the appointment to the Mining Commission, is a member of the Environmental Management Commission and knowledgeable in the principles of water and air resources management.~~

~~(9) One who, at the time of the appointment to the Mining Commission, is a member of the Environmental Management Commission and knowledgeable in the principles of water and air resources management.~~

(a1) Members, Selection. – The North Carolina Mining Commission shall consist of seven members appointed as follows:

(1) One member who is the chair of the North Carolina State University Minerals Research Laboratory Advisory Committee.

(2) The State Geologist.

(3) One member appointed by the Governor who is a representative of the mining industry.

(4) One member appointed by the General Assembly upon recommendation of the Speaker of the House of Representatives who is a representative of the mining industry.

(5) One member appointed by the General Assembly upon recommendation of the President Pro Tempore of the Senate who is a representative of the mining industry.

(6) One member appointed by the General Assembly upon recommendation of the Speaker of the House of Representatives who is a representative of nongovernmental conservation interests.

(7) One member appointed by the General Assembly upon recommendation of the President Pro Tempore of the Senate who is a representative of nongovernmental conservation interests.

(b) Terms. – The term of office of a member of the Commission is six years. At the expiration of each member's term, the ~~Governor~~appointing authority shall replace the member with a new member of like qualifications for a term of six years. The term of ~~members~~ the member appointed under ~~subdivisions (2), (5), and (8)~~subdivision (5) of subsection ~~(a)~~ (a1) of this section shall expire on ~~30~~ June 30 of years that precede by one year those years that are evenly divisible by six. The term of members appointed under subdivisions (3) and (6) of subsection ~~(a)~~ (a1) of this section shall expire on ~~30~~ June 30 of years that follow by one year those years that are evenly divisible by six. The term of members appointed under subdivisions ~~(4), (7), and (9)~~ (4) and (7) of subsection ~~(a)~~ (a1) of this section shall expire on ~~30~~ June 30 of years that follow by three years those years that are evenly divisible by six. Upon the expiration of a six-year term, a member may continue to serve until a successor is appointed and duly qualified as provided by G.S. 128-7.

(c) Vacancies. – An appointment to fill a vacancy shall be for the unexpired balance of the term.

(d) Removal. – The Governor may remove any member of the Commission from office for misfeasance, malfeasance, or nonfeasance in accordance with the provisions of G.S. 143B-13.

(e) Compensation. – The members of the Commission shall receive per diem and necessary traveling and subsistence expenses in accordance with the provisions of G.S. 138-5.

(f) Quorum. – A majority of the Commission shall constitute a quorum for the transaction of business.

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

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

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

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

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

SECTION 4.(b) The terms of all members of the Mining and Energy Commission serving on July 31, 2015, shall expire on that date. A new Mining Commission of seven members shall be appointed in the manner provided by G.S. 143B-291(a1), as enacted by Section 4(a) of this act, and this section. Members appointed in the manner provided by G.S. 143B-291(a1), as enacted by Section 4(a) of this act, shall be appointed no later than August 1, 2015.

SECTION 4.(c) The Revisor of Statutes shall make the conforming statutory changes necessary to the General Statutes to reflect renaming of the Mining and Energy Commission to the Mining Commission, effective August 1, 2015, as provided in this section.

SECTION 5. This Part becomes effective July 31, 2015.

PART IV. MISCELLANEOUS STATUTORY AMENDMENTS RELATED TO SHALE GAS EXPLORATION, DEVELOPMENT, AND PRODUCTION

SECTION 6.(a) G.S. 113-391(a2) reads as rewritten:

"(a2) In addition to the matters for which the Commission is required to adopt rules pursuant to subsection (a) of this section, the Commission may adopt rules as it deems necessary for any of the following purposes:

~~(1) To require the operation of wells with efficient gas-oil ratios and to fix such ratios.~~

(2) To limit and prorate the production of oil or gas, or both, from any pool or field for the prevention of waste as defined in this Article and rules adopted thereunder.

(3) To require, either generally or in or from particular areas, certificates of clearance or tenders in connection with the transportation of oil or gas.

(4) To prevent, so far as is practicable, reasonably avoidable drainage from each developed unit which is not equalized by counter-drainage."

SECTION 6.(b) G.S. 143B-293.1(b) reads as rewritten:

"(b) The Commission shall have the authority to make determinations and issue orders pursuant to the Oil and Gas Conservation Act to (i) regulate the spacing of wells and to establish drilling units as provided in G.S. 113-393; (ii) ~~require the operation of wells with efficient gas-oil ratios and to fix such ratios; (iii)~~ limit and prorate the production of oil or gas, or both, from any pool or field for the prevention of waste as provided in G.S. 113-394; (iii) classify wells for taxing purposes; and (iv) require integration of interests as provided in G.S. 113-393."

SECTION 7.(a) Article 27 of Chapter 113 of the General Statutes is amended by adding a new section to read:

"**§ 113-391A. Trade secret and confidential information determination; protection; retention; disclosure to emergency personnel.**

(a) Legislative Findings. – The General Assembly finds that while confidential information must be maintained as such with the utmost care, for the protection of public health, safety, and the environment, the information should be immediately accessible to first responders and medical personnel in the event that the information is deemed necessary to address an emergency.

(b) Determination and Treatment of Confidential Information. – Information obtained by the Commission and the Department pursuant to this Article, and rules adopted thereunder, shall be available to the public except that, upon a showing satisfactory to the Commission by any person that information to which the Commission and Department has access, if made public, would divulge methods or processes entitled to protection as confidential information pursuant to G.S. 132-1.2, the Commission shall consider the information confidential. In accordance with subsection (b1) of G.S. 113-391, the State Geologist shall serve as the custodian of the confidential information and shall ensure that it is maintained securely as provided in G.S. 132-7.

(c) Exceptions to Disclosure Prohibitions. – Confidential information obtained by the Commission and the Department pursuant to this Article, and rules adopted thereunder, may be disclosed to any officer, employee, or authorized representative of any federal or state agency if disclosure is necessary to carry out a proper function of the Department or other agency or when relevant in any proceeding under this Article. Confidential information shall be disclosed to the following:

(1) The Division of Emergency Management of the Department of Public Safety. The Division shall maintain this information as confidential except if

disclosure is necessary to carry out a proper function of the Division, including for the purposes of emergency planning and emergency response. For purposes of this section, the term "emergency" is defined as provided in G.S. 166A-19.3.

(2) A treating health care provider who determines that a medical emergency exists and that the information is necessary for emergency or first-aid treatment. Regardless of the existence of a written statement of need or a confidentiality agreement, the Department shall immediately disclose the confidential information to the treating health care provider upon request. If confidential information is disclosed pursuant to this subdivision, the Department shall notify the owner of the confidential information as soon as practicable, but no later than 24 hours after disclosure. The owner of the confidential information may require execution of a written statement of need and a confidentiality agreement from the treating health care provider as soon as circumstances permit. The confidentiality agreement (i) may restrict the use of the information to the health purposes indicated in a written statement of need; (ii) may provide for appropriate legal remedies in the event of a breach of the agreement, including stipulation of a reasonable pre-estimate of likely damages; and (iii) may not include requirements for the posting of a penalty bond. The parties are not precluded from pursuing noncontractual remedies to the extent permitted by law.

(3) A Fire Chief, as that term is defined in G.S. 95-174, who determines that an emergency exists and that the information is necessary to address the emergency. Regardless of the existence of a written statement of need or a confidentiality agreement, the Department shall immediately disclose the confidential information to the Fire Chief upon request. If confidential information is disclosed pursuant to this subdivision, the Department shall notify the owner of the confidential information as soon as practicable, but no later than 24 hours after disclosure. The owner of the confidential information may require execution of a written statement of need and a confidentiality agreement from the Fire Chief as soon as circumstances permit. The confidentiality agreement (i) may restrict the use of the information to the emergency purposes indicated in a written statement of need; (ii) may provide for appropriate legal remedies in the event of a breach of the agreement, including stipulation of a reasonable pre-estimate of likely damages; and (iii) may not include requirements for the posting of a penalty bond. The parties are not precluded from pursuing noncontractual remedies to the extent permitted by law.

(d) Penalties for Unlawful Disclosure. – Except as provided in subsection (c) of this section or as otherwise provided by law, any person who has access to confidential information pursuant to this section and who discloses it knowing it to be confidential information to any person not authorized to receive it shall be guilty of a Class I felony, and if knowingly or negligently disclosed to any person not authorized, shall be subject to civil action for damages and injunction by the owner of the confidential information, including, without limitation, actions under Article 24 of Chapter 66 of the General Statutes.

(e) Appeal From Commission Decisions Concerning Confidentiality. – Within 10 days of any decision made pursuant to subsection (b) of this section, the Commission shall provide notice to any person who submits information asserted to be confidential (i) that the information is not entitled to confidential treatment and (ii) of any decision to release such information to any person who has requested the information. Notwithstanding the provisions of G.S. 132-9, or procedures for appeal provided under Article 4 of Chapter 150B of the

General Statutes, any person who requests information and any person who submits information who is dissatisfied with a decision of the Commission to withhold or release information made pursuant to subsection (b) of this section shall have 30 days after receipt of notification from the Commission to bring an action in Business Court to appeal the decision in accordance with the procedures for a mandatory business case set forth in G.S. 7A-45.4, and the Business Court shall have exclusive jurisdiction over such actions. The information may not be released by the Commission until the earlier of (i) the 30 day period for filing of an appeal has expired without filing of an appeal or (ii) a final judicial determination has been made in an action brought to appeal a decision of the Commission. In addition, the following shall apply to actions brought pursuant to this section:

(1) Such actions shall be set down for immediate hearing.

(2) The burden shall be on the owner of the information to show that the information is entitled to protection as confidential information pursuant to G.S. 132-1.2.

(3) The court shall allow a party seeking disclosure of information who substantially prevails to recover its reasonable attorneys' fees if attributed to the information. The court may not assess attorneys' fees against the Commission or the Department, however, but shall impose such fees on the owner of the information asserting confidentiality.

(4) If the court determines that an action brought pursuant to this section was filed in bad faith or was frivolous, the court shall assess reasonable attorneys' fees against the person or persons instituting the action and award to the prevailing party or parties."

SECTION 7.(b) G.S. 113-391(b1) reads as rewritten:

"(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~~ Geologist, or the State Geologist's designee, shall serve as the custodian of all data, information, and records received by the Department pursuant to this ~~subsection~~subsection, including 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, and shall ensure that all of the ~~information~~ information, including 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, is maintained securely as provided in G.S. 132-7."

SECTION 8. G.S. 113-391(a)(6) is repealed.

SECTION 9. G.S. 113-392(c) is repealed.

SECTION 10. G.S. 113-395(a) reads as rewritten:

"(a) Before any well, in search of oil or gas, shall be drilled, the person desiring to drill the same shall submit an application for a permit to the Department upon such form as the Department may prescribe and shall pay a fee of three thousand dollars ($3,000) for ~~each well.~~the first well to be drilled on a pad, and fifteen hundred dollars ($1,500) for each additional well to be drilled on the same pad. The drilling of any well is prohibited unless the Department has issued a permit for the activity."

SECTION 11. G.S. 113-420 reads as rewritten:

"**§ 113-420. Notice and entry to property.**

(a) Notice Required for Activities That Do Not Disturb Surface of ~~Property.~~Property to Surface Owner. – If an oil or gas developer or operator is not the surface owner of the property on which oil and gas operations are to occur, before entering the property for oil or gas operations that do not disturb the surface, including inspections, staking, surveys, measurements, and general evaluation of proposed routes and sites for oil or gas drilling operations, the developer or operator shall give written notice to the surface owner at least 14 days before the desired date of entry to the property. Notice shall be given by certified mail, return receipt requested. The requirements of this subsection may not be waived by agreement of the parties. The notice, at a minimum, shall include all of the following:

(1) The identity of person(s) requesting entry upon the property.
(2) The purpose for entry on the property.
(3) The dates, times, and location on which entry to the property will occur, including the estimated number of entries.

(b) Notice Required for Land-Disturbing ~~Activities.~~Activities to Surface Owner. – If an oil or gas developer or operator is not the surface owner of the property on which oil or gas operations are to occur, before entering the property for oil or gas operations that disturb the surface, the developer or operator shall give written notice to the surface owner at least 30 days before the desired date of entry to the property. Notice shall be given by certified mail, return receipt requested. The notice, at a minimum, shall include all of the following:

(1) A description of the exploration or development plan, including, but not limited to (i) the proposed locations of any roads, drill pads, pipeline routes, and other alterations to the surface estate and (ii) the proposed date on or after which the proposed alterations will begin.
(2) An offer of the oil and gas developer or operator to consult with the surface owner to review and discuss the location of the proposed alterations.
(3) The name, address, telephone number, and title of a contact person employed by or representing the oil or gas developer or operator who the surface owner may contact following the receipt of notice concerning the location of the proposed alterations.

(b1) Persons Entering Land; Identification Required; Presumption of Proper Protection While on Surface Owners' Property. – Persons who enter land on behalf of an oil or gas developer or operator for oil and gas operations shall carry on their person identification sufficient to identify themselves and their employer or principal and shall present the identification to the surface owner upon request. Entry upon land by such a person creates a rebuttable presumption that the surface owner properly protected the person against personal injury or property damage while the person was on the land.

(b2) Notice of Initiation of Exploration, Development, and Production Activities to Owner of Subsurface Oil or Gas Resources. – If an oil or gas developer or operator is the lessee of subsurface oil or gas resources, before initiating oil or gas exploration or development operations with respect to those resources, the developer or operator shall give written notice to the lessor of those resources at least 30 days before the oil and gas operations are to be initiated. The notice, at a minimum, shall include all of the following:

(1) A description of the exploration or development plan, including, the proposed date on which the exploration or development will begin.
(2) The name, address, telephone number, and title of a contact person employed by or representing the oil or gas developer or operator who the lessor may contact following the receipt of notice.

(c) Venue. – If the oil or gas developer or operator fails to give notice or otherwise comply with the provisions of this section, the surface owner may seek appropriate relief in the superior court for the county in which the oil or gas well is located and may receive actual damages."

SECTION 12.(a) G.S. 113-421 reads as rewritten:

"**§ 113-421. Presumptive liability for water contamination; compensation for other damages; responsibility for reclamation.**

(a) Presumptive Liability for Water Contamination. – It shall be presumed that an oil or gas developer or operator is responsible for contamination of all water supplies that are within ~~5,000 feet~~a one-half mile radius of a wellhead that is part of the oil or gas developer's or operator's activities unless the presumption is rebutted by a defense established as set forth in subsection (a1) of this subsection. If a contaminated water supply is located within ~~5,000 feet~~ a one-half mile radius of a wellhead, in addition to any other remedy available at law or in equity, including payment of compensation for damage to a water supply, the developer or operator shall provide a replacement water supply to the surface owner and other persons using the water supply at the time the oil or gas developer's activities were commenced on the property, which water supply shall be adequate in quality and quantity for those persons' use.

(a1) [Rebuttal of Presumption. –] In order to rebut a presumption arising pursuant to subsection (a) of this section, an oil or gas developer or operator shall have the burden of proving by a preponderance of the evidence any of the following:

(1) The contamination existed prior to the commencement of the drilling activities of the oil or gas developer or operator, as evidenced by a pre-drilling test of the water supply in question conducted in conformance with G.S. 113-423(f).

(2) The surface owner or owner of the water supply in question refused the oil or gas developer or operator access to conduct a pre-drilling test of the water supply conducted in conformance with G.S. 113-423(f).

(3) The water supply in question is not within ~~5,000 feet~~ a one-half mile radius of a wellhead that is part of the oil or gas developer's or operator's activities.

(4) The contamination occurred as the result of a cause other than activities of the developer or operator.

...

(e) Joint and Several Liability. – In order to provide maximum protection for the public interest, any actions brought for recovery of cleanup costs, damages, or for civil penalties brought pursuant to this section or any other section of this Article or rules adopted thereunder may be brought against any one or more of the persons having control over the activities that contributed to the contamination, damage to property, or other violations. All such persons shall be jointly and severally liable, but ultimate liability as between the parties may be determined by common-law principles."

SECTION 12.(b) G.S. 113-423(f) reads as rewritten:

"(f) Pre-Drilling Testing of Water Supplies. – Any lease of oil or gas rights or any other conveyance of any kind separating rights to oil or gas from the freehold estate of surface property shall include a clause that requires the oil or gas developer or operator to conduct a test of all water supplies within ~~5,000 feet~~ a one-half mile radius from a proposed wellhead that is part of the oil or gas developer's or operator's activities at least 30 days prior to initial drilling activities and at least two follow-up tests within a 24-month period after production has commenced. The Department shall identify the location of all water supplies, including wells, on a property on which drilling operations are proposed to occur. A surface owner may elect to have an independent third party selected from a laboratory certified by the Department's Wastewater/Groundwater Laboratory Certification program ~~the Department~~ sample wells located on their property, in lieu of sampling conducted by the oil or gas developer or operator, in which case the developer or operator shall pay ~~reimburse the Department~~ for the reasonable costs involved in testing of the wells in question. Developers and operators (i) shall provide all analytical results to the Department within 30 days of testing and (ii) may share analytical results obtained with other developers and operators as necessary or advisable. Nothing in this

subsection shall be construed to preclude or impair the right of any surface owner to refuse pre-drilling testing of wells located on their property."

SECTION 13. Article 27 of Chapter 113 of the General Statutes is amended by adding a new section to read:

"**§ 113-415A. Local ordinances prohibiting oil and gas exploration, development, and production activities invalid; petition to preempt local ordinance.**

(a) It is the intent of the General Assembly to maintain a uniform system for the management of oil and gas exploration, development, and production activities, and the use of horizontal drilling and hydraulic fracturing for that purpose, and to place limitations upon the exercise by all units of local government in North Carolina of the power to regulate the management of oil and gas exploration, development, and production activities by means of special, local, or private acts or resolutions, ordinances, property restrictions, zoning regulations, or otherwise. Notwithstanding any authority granted to counties, municipalities, or other local authorities to adopt local ordinances, including, but not limited to, those imposing taxes, fees, or charges or regulating health, environment, or land use, any local ordinance that prohibits or has the effect of prohibiting oil and gas exploration, development, and production activities that the Mining and Energy Commission has preempted pursuant this section, shall be invalid to the extent necessary to effectuate the purposes of this Article. To this end, all provisions of special, local, or private acts or resolutions are repealed that do the following:

(1) Prohibit the siting of wells for oil and gas exploration, development, and production within any county, city, or other political subdivision.

(2) Prohibit the use of horizontal drilling or hydraulic fracturing for the purpose of oil or gas exploration or development within any county, city, or other political subdivision.

(3) Place any restriction or condition not placed by this Article upon oil and gas exploration, development, and production activities and use of horizontal drilling or hydraulic fracturing for that purpose within any county, city, or other political subdivision.

(4) In any manner are in conflict or inconsistent with the provisions of this Article.

(b) No special, local, or private act or resolution enacted or taking effect hereafter may be construed to modify, amend, or repeal any portion of this Article, unless it expressly provides for such by specific references to the appropriate section of this Article. Further to this end, all provisions of local ordinances, including those regulating land use, adopted by counties, municipalities, or other local authorities that prohibit or have the effect of prohibiting oil and gas exploration, development, and production activities and use of horizontal drilling or hydraulic fracturing for that purpose within the jurisdiction of a local government are invalidated to the extent preempted by the Commission pursuant to this section.

(c) When oil and gas exploration, development, and production activities would be prevented from construction or operation by a county, municipal, or other local ordinance, the operator of the proposed activities may petition the Mining and Energy Commission to review the matter. After receipt of a petition, the Commission shall hold a hearing in accordance with the procedures in subsection (d) of this section and shall determine whether or to what extent to preempt the local ordinance to allow for the proposed oil and gas exploration, development, and production activities.

(d) When a petition described in subsection (c) of this section has been filed with the Mining and Energy 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.

(e) Any interested person may appear before the Mining and Energy 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.

(f) 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 Mining and Energy 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 for the establishment and operation of the facility 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 prohibit or have the effect of prohibiting oil and gas exploration, development, and production activities, or use of horizontal drilling or hydraulic fracturing for that purpose.

(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 oil and gas exploration, development, and production activities, and use of horizontal drilling or hydraulic fracturing for that purpose, 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.

(g) If the Mining and Energy Commission does not make all of the findings under subsection (f) 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.

(h) The decision of the Mining and Energy 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, all written material presented to the Commission regarding the location of the oil and gas exploration, development, and production activities, the specific findings required by subsection (f) of this section, and any minority positions on the specific findings required by subsection (f) of this section. The scope of judicial review shall be that the court may affirm the decision of the

Commission, or may remand the matter for further proceedings, or may reverse or modify the decision if the substantial rights of the parties may have been prejudiced because the Commission's findings, inferences, conclusions, or decisions are any of the following:

(1) In violation of constitutional provisions.
(2) In excess of the statutory authority or jurisdiction of the Commission.
(3) Made upon unlawful procedure.
(4) Affected by other error of law.
(5) Unsupported by substantial evidence admissible under G.S. 150B-29(a) or G.S. 150B-30 in view of the entire record as submitted.
(6) Arbitrary or capricious.

(i) If the court reverses or modifies the decision of the Mining and Energy Commission, the judge shall set out in writing, which writing shall become part of the record, the reasons for the reversal or modification.

(j) In computing any period of time prescribed or allowed by this procedure, the provisions of Rule 6(a) of the Rules of Civil Procedure, G.S. 1A-1, shall apply."

SECTION 14. Article 27 of Chapter 113 of the General Statutes is amended by adding four new sections to read:

"**§ 113-395A. Miscellaneous permit requirements.**

The Department shall require that all natural gas compressor stations associated with an oil and gas drilling operation be located inside a baffled building.

"**§ 113-395B. Subsurface injection of waste prohibited.**

Disposal of wastes produced in connection with oil and gas exploration, development, and production, and use of horizontal drilling and hydraulic fracturing treatments for that purpose by injection to subsurface or groundwaters of the State by means of wells is prohibited in accordance with G.S. 143-214.2.

"**§ 113-395C. Environmental compliance review requirements for applicants and permit holders.**

(a) For purposes of this section, "applicant" means an applicant for a permit and a permit holder and includes the owner or operator of the facility, and if the owner or operator is a business entity, applicant also includes (i) the parent, subsidiary, or other affiliate of the applicant; (ii) a partner, officer, director, member, or manager of the business entity, parent, subsidiary, or other affiliate of the applicant; and (iii) any person with a direct or indirect interest in the applicant, other than a minority shareholder of a publicly traded corporation who has no involvement in management or control of the corporation or any of its parents, subsidiaries, or affiliates.

(b) The Department shall conduct an environmental compliance review of each applicant for a new permit 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.

(c) The Department shall determine the extent to which the applicant, or a parent, subsidiary, or other affiliate of the applicant or parent, or a joint venturer with a direct or indirect interest in the applicant, has substantially complied with the requirements applicable to any activity in which any of these entities previously engaged, and has substantially complied with federal, North Carolina, and other states' laws, regulations, and rules for the protection of the environment. The Department may deny an application for a permit if the applicant has a history of significant or repeated violations of statutes, rules, orders, or permit terms or conditions for the protection of the environment or for the conservation of natural resources as evidenced by civil penalty assessments, administrative or judicial compliance orders, or criminal penalties.

(d) A permit holder shall notify the Department of any significant change in its environmental compliance history or any significant change in the (i) identity of any person or structure of the business entity that holds the permit for the facility; (ii) identity of any person or structure of the business entity that owns or operates the facility; or (iii) assets of the permit holder, owner, or operator of the facility. The permit holder shall notify the Department within 30 days of a significant change. A change shall be considered significant if it would result in a change in the identity of the permit holder, owner, or operator for purposes of environmental compliance review. Based on its review of the changes, the Department may modify or revoke a permit, or require issuance of a new permit.

"**§ 113-395D. Seismic or geophysical data collection.**

(a) Notwithstanding any other provision of law, no liability for trespass shall arise from activities conducted for the purpose of seismic or geophysical data collection. Provided, however (i) persons conducting seismic and geophysical data collection may only conduct such activity by undershooting from an off-site location and without physical entry to private land, unless the landowner's consent for such activity is obtained in writing and (ii) persons conducting seismic or geophysical data collection shall be civilly liable for any physical or property damage determined to be a direct result of their seismic or geophysical data collection activities, whether or not the seismic or geophysical data collection was conducted by undershooting the land at an off-site location or by physical entry to land as permitted by the landowner.

(b) Conduct of seismic or geophysical data collection activities through physical entry to land without a landowner's written consent shall constitute a Class 1 misdemeanor."

SECTION 15. G.S. 87-98.4(b) is amended by adding a new subdivision to read:

"**§ 87-98.4. Well contractor certification required; exemptions.**

(a) Certification Required. – No person shall perform, manage, or supervise any well contractor activity without being certified under this Article. A person who is not a certified well contractor or who is not employed by a certified well contractor shall not offer to perform any well contractor activity unless the person utilizes a certified well contractor to perform the well contractor activity and, prior to the performance of the well contractor activity, the person discloses to the landowner in writing the name of the certified well contractor who will perform the well contractor activity, the certification number of the well contractor, and the name of the company that employs the certified well contractor.

(b) Exempt persons and activities. – This Article does not apply to any of the following persons or activities:

...

(14) Construction, repair, or abandonment of a well used for the exploration or development of oil or gas.

...."

PART V. ESTABLISH SEVERANCE TAX

SECTION 16.(a) Chapter 105 of the General Statutes is amended by adding a new Article to read:

"Article 5I.
"Severance Tax.

"**§ 105-187.71. Definitions.**

The following definitions apply in this Article:

(1) Casinghead gas. – Gas or vapor indigenous to an oil stratum and produced from the stratum with oil.
(2) Commission. – The Mining and Energy Commission.
(3) Condensate. – Liquid hydrocarbon that is or can be recovered from gas by a separator or other means.
(4) Energy mineral. – All forms of natural gas, oil, and related condensates.
(5) First purchaser. – A person who purchases an energy mineral from a producer.
(6) Gas. – All natural gas, including casinghead gas, and all other hydrocarbons not defined as condensates.
(7) Gross price. – The total price paid by the first purchaser of the energy mineral at the wellhead.
(8) Marginal gas well. – A well incapable of producing more than 100 MCF per day, as determined by the Commission using the current wellhead deliverability rate methodology utilized by the Commission, during the calendar month for which the severance tax report is filed.
(9) MCF. – One thousand cubic feet of natural gas.
(10) Oil. – Crude petroleum oil, and other hydrocarbons, regardless of gravity, which are produced at the well in liquid form by ordinary production methods and which are not the result of condensation of gas after it leaves the reservoir.
(11) Owner. – An owner of a landowner's royalty interest, of an overriding royalty, of profits and working interests, or any combination thereof in energy minerals. The term does not include an owner of federal, State, or local governmental royalty interest.
(12) Person. – Defined in G.S. 105-228.90.
(13) Producer. – A person who takes an energy mineral from the soil or water in this State.
(14) Return. – Any report or statement required to be filed under this Article to determine the tax due.
(15) Royalty interest. – An interest in mineral rights in a producing leasehold in the State. A royalty interest does not include the interest of a person having only the management and operation of a well.
(16) Secretary. – The Secretary of Revenue.
(17) Severance. – The extraction or other removal of an energy mineral from the soil or water of this State.
(18) Severed. – The point at which the energy mineral has been separated from the soil or water of this State.
(19) Standard barrel of oil. – A barrel of oil containing 42 gallons.
(20) Taxpayer. – Any person required to pay the severance tax levied by this Article.

"**§ 105-187.72. Tax on severance of energy minerals.**

(a) Purpose. – An excise tax is levied on the privilege of engaging in the severance of energy minerals from the soil or water of this State. The purpose of the tax is to provide revenue to administer and enforce the provisions of this Article, to administer the State's natural gas and oil reclamation regulatory program, to meet the environmental and resource management needs of this State, and to reclaim land affected by exploration for, drilling for,

and production of natural gas and oil. The severance tax is imposed upon all energy minerals severed when sold.

(b) Calculation of Tax. – The amount of the severance tax is calculated as follows:

(1) Condensates. – The applicable percentage rate of the gross price paid.

(2) Gas. – The applicable percentage rate of the market value as determined in G.S. 105-187.73.

(3) Oil. – The applicable percentage rate of the gross price paid.

(c) Oil and Condensates Rate. – The percentage rate for condensates and oil is two percent (2%).

(d) Marginal Gas Rate. – The producer of a proposed or existing gas well may apply to the Mining and Energy Commission for a determination that the well qualifies as a marginal gas well. The producer may elect to have the gas taxed at the marginal gas rate or the gas rate. For severance of gas from a marginal gas well the percentage rate is four-tenths of one percent (.4%).

(e) Gas Rate. – The percentage rate for gas is nine-tenths of one percent (.9%).

"**§ 105-187.73. Delivered to Market Value.**

(a) Delivered to Market Value of Natural Gas. – The delivered to market value of natural gas is the total actual gross price as adjusted in this section. The delivered to market value of gas is determined by subtracting the producer's actual costs to deliver the gas to the market from the producer's total gross cash receipts from the sale of the natural gas. A producer receiving a cost reimbursement from the gas purchaser shall include the reimbursement in the gross cash receipts and is entitled to deduct the actual costs of delivering the gas to market incurred.

(b) Records. – In order to be eligible to subtract the actual costs to deliver the gas to the market from the producer's gross receipts for purposes of calculating the delivered to market value of natural gas, the producer shall provide any information required by the Secretary. Every producer subtracting the costs to deliver the gas to the market as permitted under this subsection shall maintain and make available for inspection by the Secretary any records the Secretary considers necessary to determine and verify the amount of the costs to deliver the gas to the market the producer is eligible to subtract. The burden of proving eligibility for subtracting the costs to deliver the gas to the market and the amount of the costs to deliver the gas to the market to be subtracted shall rest upon the producer, and no subtraction of costs to deliver the gas to the market shall be allowed to a producer that fails to maintain adequate records or to make them available for inspection.

(c) Costs to Deliver the Gas to the Market and Facilities Used to Deliver the Gas to the Market. – A "facility used to deliver the gas to market" includes flow lines or gathering systems from the separator to the purchaser's transmission line; compressor stations, dehydration units, line heaters after the separator, and treating facilities. "Costs to deliver the gas to the market" are the actual and reasonable costs incurred by the producer to get the gas from the mouth of the well to the first purchaser, except costs incurred in normal lease separation of the oil or condensate from the gas, and costs associated with insurance premiums on a facility used to deliver the gas to market. Costs to deliver the gas to the market include only the following:

(1) Costs for compressing the gas sold.

(2) Costs for dehydrating the gas sold.

(3) Costs for sweetening and treating the gas sold.

(4) Costs for delivering the gas to the purchaser.

(5) Reasonable charges for depreciation of the facility used to deliver the gas to market being used, provided that, if the facility is rented, the actual rental fee is added.

(6) Costs of direct or allocated labor associated with the facility used to deliver the gas to market.

(7) Costs of materials, supplies, maintenance, repairs, and fuel associated with the facility used to deliver the gas to market.
(8) Property taxes paid on the facility used to deliver the gas to market.
(9) Charges for fees paid by the producer to any provider of dehydration, treating, compression, and delivery services.

"**§ 105-187.74. On-site use exemption from the tax.**

On-site use is exempt from the tax imposed under this Article. On-site use is the severance of energy minerals from land or water in this State owned legally or beneficially by the producer, which energy minerals are used on the land from which they are taken by the producer as part of the improvement of or use in the producer's homestead and which have a yearly cumulative delivered to market value of not greater than one thousand two hundred dollars ($1,200). When severed energy minerals so used exceed a cumulative delivered to market value of one thousand two hundred dollars ($1,200) during any year, the further severance of energy minerals shall be subject to the tax imposed by this Article.

"**§ 105-187.75. Returns and payment of tax.**

(a) General. – Severance taxes are payable when a return is due. A return is due quarterly or monthly as specified in this section. A return must be filed by the producer of the energy mineral with the Secretary on a form prescribed by the Secretary and in the manner required by the Secretary. A return must be signed by the taxpayer or the taxpayer's agent.

(b) Payment. – A producer of energy minerals shall pay the tax for all owners of the energy minerals. The producer shall withhold from any payment due owners the proportionate tax due for remittance to the Secretary.

(c) Quarterly. – A taxpayer who is consistently liable for less than one thousand dollars ($1,000) a month in severance taxes must file a return and pay the taxes due on a quarterly basis. A quarterly return covers a calendar quarter and is due by the 25th day of the second month following the end of the quarter.

(d) Monthly. – A taxpayer who is consistently liable for at least one thousand dollars ($1,000) a month in severance taxes must file a return and pay the taxes due on a monthly basis. A monthly return is due by the 25th day of the second month following the calendar month covered by the return.

(e) Category. – The Secretary must monitor the amount of severance taxes paid by a taxpayer or estimate the amount of taxes to be paid by a new taxpayer and must direct each taxpayer to pay tax and file returns as required by this section. In determining the amount of taxes due from a taxpayer, the Secretary must consider the total amount due from all places of business owned or operated by the same person as the amount due from that person. A taxpayer must file a return and pay tax in accordance with the Secretary's direction.

(f) Information on Return. – The amount of tax due and any other information required by the Secretary must be included on the return. Returns that do not contain the required information will not be accepted. When an unacceptable return is submitted, the Secretary will require a corrected return to be filed. The return must contain the following information concerning energy minerals produced during the month being reported:

(1) The gross amount of energy minerals produced that are subject to the tax imposed by this Article.
(2) The leases from which the energy minerals were produced.
(3) The names and addresses of the first purchasers of the energy minerals.

(g) Additional Information. – To claim an exemption for on-site use, the producer or taxpayer of a proposed or existing gas well shall apply to the Secretary for determination of eligibility. The Secretary may require an applicant to provide any information required to administer this provision. The Secretary shall make the determination within 15 calendar days of the receipt of all information required by the Secretary from the producer or taxpayer, and the producer or taxpayer shall attach the determination of eligibility to its severance tax form

next due, as applicable. The taxpayer shall provide any information required by the Secretary. Every taxpayer claiming the exemption shall maintain and make available for inspection by the Secretary of Revenue any records the Secretary considers necessary to determine and verify the claim to which the taxpayer is entitled. The burden of proving eligibility shall rest upon the taxpayer, and no exemption shall be allowed to a taxpayer who fails to maintain adequate records or to make them available for inspection. The portion of the severance tax that is required to be deducted from the royalty owner or other interest shall be calculated in the same manner as the portion of the severance tax borne by the producer.

(h) Commission Determination. – To claim the marginal gas rate, the producer or taxpayer of a proposed or existing gas well shall provide to the Secretary proof that the Mining and Energy Commission has determined the well qualifies as a marginal gas well.

"§ 105-187.76. Bond or letter of credit required.

A producer must file with the Secretary a bond or an irrevocable letter of credit if the producer fails to file a return required under this Article. A bond or an irrevocable letter of credit must be conditioned upon compliance with the requirements of this Article, be payable to the State, and be in the form required by the Secretary. The amount of the bond or irrevocable letter of credit is two times the applicant's average expected monthly tax liability under this Article, as determined by the Secretary. When notified to do so by the Secretary, a person who is required to file a bond or an irrevocable letter of credit must file the bond or irrevocable letter of credit in the amount required by the Secretary within 30 days after receiving the notice from the Secretary.

"§ 105-187.77. Liability of producer for tax.

The tax imposed by this Article is the primary liability of the producer, except as provided in this section. A first purchaser may not take delivery of energy minerals from a producer unless the producer furnishes the purchaser with a taxpayer identification number assigned by the Secretary. A first purchaser failing to secure the producer's taxpayer number, either from the producer or the Secretary, will be liable for any tax, penalty, and interest due on the energy minerals purchased from the producer.

"§ 105-187.78. Royalty owner's records.

The owner of a royalty interest shall keep and provide to the Secretary, upon request, both of the following:

(1) A record of all money received as royalty from each producing leasehold in the State.

(2) A copy of all settlement sheets furnished by a purchaser or operator or other statement showing the amount of energy minerals for which a royalty was received and the amount of severance tax deducted.

"§ 105-187.79. Permits suspended for failure to report.

If an entity fails to file any report or return or to pay any tax or fee required by this Article for 90 days after it is due, the Secretary shall inform the Secretary of Environment and Natural Resources of this failure. The Secretary of Environment and Natural Resources shall suspend permits for oil and gas exploration using horizontal drilling and hydraulic fracturing under G.S. 113-395 of any entity that fails to file a return under this Article. The Secretary of Environment and Natural Resources shall immediately notify by mail an entity of a suspension under this section.

"§ 105-187.80. No local taxation.

A city or county may not impose a franchise, privilege, license, income, or excise tax on the severing, production, treating, processing, ownership, sale, storage, purchase, marketing, or transportation on any energy minerals produced in the State, or upon the business of severing, producing, treating, processing, owning, selling, buying, storing, marketing, or transporting such energy minerals, or upon the ownership, operation, or maintenance of plants, facilities, machinery, pipelines, and gathering lines related to the severing, production, treating,

processing, ownership, storage, sale, purchase, marketing, or transportation of energy minerals. This section does not preclude the taxation of the property in accordance with Article 11 of this Chapter."

SECTION 16.(b) G.S. 105-259(b) is amended by adding a new subdivision to read:

"(44) To furnish to the Department of Environment and Natural Resources the name, address, tax year end, and account and identification numbers of an entity liable for severance tax to enable the Secretary of Environment and Natural Resources to notify the entity that the Department of Environment and Natural Resources shall suspend permits of the entity for oil and gas exploration using horizontal drilling and hydraulic fracturing under G.S. 113-395."

SECTION 16.(c) G.S. 113-387 and G.S. 113-388 are repealed.

SECTION 16.(d) G.S. 105-187.72, as enacted by Section 16(a) of this act, reads as rewritten:

"§ 105-187.72. Tax on severance of energy minerals.

...

(c) Oil and Condensates Rate. – The percentage rate for condensates and oil is ~~two percent (2%).~~three and one-half percent (3.5%).

(d) Marginal Gas Rate. – The producer of a proposed or existing gas well may apply to the Mining and Energy Commission for a determination that the well qualifies as a marginal gas well. The producer may elect to have the gas taxed at the marginal gas rate or the gas rate. For severance of gas from a marginal gas well the percentage rate is six-tenths of one percent (.6%).~~four-tenths of one percent (.4%).~~

(e) Gas Rate. – The percentage rate for gas ~~is nine-tenths of one percent (.9%).~~is set in the table below. The tax rate is applied to the delivered to market value of the gas sold.

Over	Up to	Rate
-0-	$3.00 per mcf	0.9%
$3.01 per mcf	$4.00	1.9%
$4.01	N/A	2.9%"

SECTION 16.(e) G.S. 105-187.72, as enacted by Section 16(a) of this act, and amended by Section 16(d) of this act, reads as rewritten:

"§ 105-187.72. Tax on severance of energy minerals.

...

(c) Oil and Condensates Rate. – The percentage rate for condensates and oil is ~~three and one-half percent (3.5%).~~five percent (5%).

(d) Marginal Gas Rate. – The producer of a proposed or existing gas well may apply to the Mining and Energy Commission for a determination that the well qualifies as a marginal gas well. The producer may elect to have the gas taxed at the marginal gas rate or the gas rate. For severance of gas from a marginal gas well the percentage rate is eight-tenths of one percent (.8%).

(e) Gas Rate. – The percentage rate for gas is set in the table below. The tax rate is applied to the delivered to market value of the gas sold.

Over	Up to	Rate
-0-	$3.00 per mcf	0.9%
$3.01 per mcf	$4.00	1.9%
$4.01	~~N/A~~$5.00	2.9%
$5.01	$6.00	3.9%
$6.01	$7.00	4.9%
$7.01	N/A	5%"

SECTION 16.(f) G.S. 105-187.72(e), as enacted by Section 16(a) of this act, and amended by Sections 16(d) and 16(e) of this act, reads as rewritten:

"(e) Gas Rate. – The percentage rate for gas is set in the table below. The tax rate is applied to the delivered to market value of the gas sold.

Over	Up to	Rate
-0-	$3.00 per mcf	0.9%
$3.01 per mcf	$4.00	1.9%
$4.01	$5.00	2.9%
$5.01	$6.00	3.9%
$6.01	$7.00	4.9%
$7.01	~~N/A~~$8.00	~~5%~~5.9%
$8.01	$9.00	6.9%
$9.01	$10.00	7.9%
$10.01	N/A	9%"

SECTION 17. G.S. 105-275 is amended by adding a new subdivision to read:

"(47) Energy mineral interest in property for which a permit has not been issued under G.S. 113-395. For the purposes of this subdivision "energy mineral" has the same meaning as in G.S. 105-187.71."

SECTION 18. G.S. 153A-149 reads as rewritten:

"**§ 153A-149. Property taxes; authorized purposes; rate limitation.**

(a) Pursuant to Article V, Sec. 2(5) of the Constitution of North Carolina, the General Assembly confers upon each county in this State the power to levy, within the limitations set out in this section, taxes on property having a situs within the county under the rules and according to the procedures prescribed in the Machinery Act (Chapter 105, Subchapter II). County property tax revenues for a fiscal year may increase no more than eight percent (8%) from the county property tax revenues for the prior fiscal year.

(b) ~~Each~~ Other than the restriction in subsection (a) of this section, each county may levy property taxes without restriction as to rate or amount for the following purposes:

(1) Courts. – To provide adequate facilities for and the county's share of the cost of operating the General Court of Justice in the county.

(2) Debt Service. – To pay the principal of and interest on all general obligation bonds and notes of the county.

(3) Deficits. – To supply an unforeseen deficiency in the revenue (other than revenues of public enterprises), when revenues actually collected or received fall below revenue estimates made in good faith and in accordance with the Local Government Budget and Fiscal Control Act.

(4) Elections. – To provide for all federal, State, district and county elections.

(5) Jails. – To provide for the operation of a jail and other local confinement facilities.

(6) Joint Undertakings. – To cooperate with any other county, city, or political subdivision in providing any of the functions, services, or activities listed in this subsection.

(7) Schools. – To provide for the county's share of the cost of kindergarten, elementary, secondary, and post-secondary public education.

(8) Social Services. – To provide for public assistance required by Chapters 108A and 111 of the General Statutes.

...."

SECTION 19. G.S. 160A-209 reads as rewritten:

"**§ 160A-209. Property taxes.**

(a) Pursuant to Article V, Sec. 2(5) of the Constitution of North Carolina, the General Assembly confers upon each city in this State the power to levy, within the limitations set out

in this section, taxes on property having a situs within the city under the rules and according to the procedures prescribed in the Machinery Act (Chapter 105, Subchapter II). City property tax revenues for a fiscal year may increase no more than eight percent (8%) from the city property tax revenues for the prior fiscal year.

(b) ~~Each~~ Other than the restriction in subsection (a) of this section, each city may levy property taxes without restriction as to rate or amount for the following purposes:

(1) Debt Service. – To pay the principal of and interest on all general obligation bonds and notes of the city.

(2) Deficits. – To supply an unforeseen deficiency in the revenue (other than revenues of any of the enterprises listed in G.S. 160A-311), when revenues actually collected or received fall below revenue estimates made in good faith in accordance with the Local Government Budget and Fiscal Control Act.

(3) Civil Disorders. – To meet the cost of additional law-enforcement personnel and equipment that may be required to suppress riots or other civil disorders involving an extraordinary breach of law and order within the jurisdiction of the city.

...."

SECTION 20. Sections 16(a), 16(b), and 16(c) become effective July 1, 2015, and apply to energy minerals severed on or after that date. Section 16(d) becomes effective January 1, 2019, and applies to energy minerals severed on or after that date. Section 16(e) becomes effective January 1, 2021, and applies to energy minerals severed on or after that date. Section 16(f) becomes effective January 1, 2023, and applies to energy minerals severed on or after that date. Sections 18 and 19 become effective for taxable years beginning on or after July 1, 2015. The remainder of this Part is effective when it becomes law.

PART VI. STUDIES

SECTION 21. The Local Government Division of the Department of Revenue shall study how other states value energy minerals for the purpose of property taxation. The Division shall establish guidelines for counties to ensure the consistent and fair taxation of energy minerals throughout the State. The Local Government Division shall report its findings to the Joint Legislative Commission on Energy Policy by January 1, 2015.

SECTION 22.(a) The Department of Commerce, in consultation with the Department of Environment and Natural Resources, the North Carolina Ports Authority, and the Department of Administration, shall study the desirability and feasibility of siting, constructing, and operating a liquefied natural gas (LNG) export terminal in North Carolina. At a minimum, as a part of the study, the agencies shall:

(1) Identify the State, federal, and local regulatory programs under which LNG export terminals are permitted and approved.

(2) Identify any State statutory or regulatory barriers to siting, constructing, or operating a LNG export terminal in the State.

(3) Evaluate infrastructure needs and impacts as follows:

a. Identify the infrastructure that is necessary to support a LNG export terminal.

b. Identify any idle publicly-owned infrastructure that may be utilized to support LNG export terminal operations.

c. Identify publicly-owned unutilized or underutilized lands that may be used to support LNG export terminal operations.

d. Identify potential impacts on infrastructure, including roads, pipelines, and water and wastewater services, and other provision of

services by local governments including schools, law enforcement, and development.

(4) Conduct a cost-benefit analysis for the construction and operation of an LNG export terminal. The analysis shall evaluate scenarios in which the State is the primary producer of the exported natural gas and scenarios in which the State is not the primary producer of the exported natural gas.

(5) Examine potential economic impacts, including:

a. Possible sources of revenue that could accrue to the benefit of the State if LNG is exported from a terminal in North Carolina.

b. The number of jobs that may be expected as a result from the construction and operation of a LNG export terminal.

(6) Identify and evaluate potential environmental impacts of construction and operation of a LNG export terminal. In examining this issue, the agencies shall gather information on regulatory programs in other states where LNG export terminals are in operation.

(7) Identify potential social impacts, including impacts of construction and operation of a LNG export terminal on nearby communities and quality of life within those communities, recreational activities, and commercial and residential development.

(8) Examine any other pertinent issues that the agencies deem relevant to the construction and operation of a LNG export facility in the State.

SECTION 22.(b) The Department of Commerce shall report its findings and recommendations to the Joint Legislative Commission on Energy Policy and the Environmental Review Commission on or after January 1, 2015.

SECTION 23.(a) The Department of Transportation shall study (i) additional statutory authority that may be necessary or advisable for the Department to adequately address energy-related traffic, including authority that pertains to permitting and assessment of fees; (ii) the feasibility and advisability of including any requirements that the Department may recommend to manage energy-related traffic, and resulting impacts, in a coordinated permit in conjunction with requirements of the Department of Environment and Natural Resources, or whether such requirements should be implemented through a separate permitting process; and (iii) performance bonding and other surety mechanisms, including road use agreements, to reclaim and repair any State posted roads that are damaged due to heavy vehicle, equipment, and machinery traffic used in support of and conjunction with horizontal drilling and hydraulic fracturing operations on State posted roads. For purposes of this study, the term "posted roads" means a system that records any secondary road on the State Highway System that is unable to carry heavy vehicles or equipment. In the conduct of its study, the Department shall do the following:

(1) Consider mechanisms for requiring performance bonds running to the Department.

(2) Develop criteria for setting the amount of the bond, including the weight and size of the proposed vehicles, equipment and machinery projected to utilize posted roads, the planned route and projected number of trips, and the duration of the activity necessitating travel of heavy vehicles, equipment, and machinery along posted roads.

(3) Identify documentation necessary to support bonding of posted roads.

(4) Identify any statutory or regulatory changes necessary to maintain and protect the State's transportation infrastructure network.

SECTION 23.(b) The Department of Transportation shall report its finding and recommendations, including any legislative proposals, to the Joint Legislative Energy Policy

Commission and the Joint Legislative Transportation Oversight Committee on or before January 1, 2015.

SECTION 24.(a) The State Board of Community Colleges shall study the feasibility and desirability of developing a program to prepare students with a general education foundation and technical competencies for employment opportunities in the oil and natural gas drilling, gathering, and field operations industry. In particular, the State Board shall consider developing such a program at one or more of the community colleges located where the potential for shale gas resources is highest. In the conduct of its study, the State Board shall evaluate similar education programs in community college systems in other states.

SECTION 24.(b) The State Board shall report its findings and recommendations, including any legislative proposals, to the Joint Legislative Energy Policy Commission and the Joint Legislative Education Oversight Committee on or before January 1, 2015.

SECTION 25.(a) The General Assembly finds the following:

(1) Section 2(l) of S.L. 2012-143 directed the Mining and Energy Commission, in conjunction with the Department of Environment and Natural Resources and the Consumer Protection Division of the North Carolina Department of Justice, to study the State's current law on the issue of integration or compulsory pooling and other states' laws on the matter; and

(2) Whereas, the Department was directed to report its findings and recommendations, including legislative proposals, to the Joint Legislative Commission on Energy Policy, and the Environmental Review Commission on or before January 1, 2013; and

(3) The Mining and Energy Commission and the Department issued separate reports pursuant to the study; and

(4) The Mining and Energy Commission's report included specific recommendations for legislative changes related to compulsory pooling; and

(5) The Department's report did not include specific recommendations for legislative changes related to compulsory pooling; and

(6) In lieu of specific recommendations for legislative changes, the Department recommended that "prior to establishing new laws related to compulsory pooling, the General Assembly should consider the rules adopted by the Mining and Energy Commission related to oil and gas exploration, including, but not limited to, rules concerning drilling units, spacing requirements, and setbacks, all of which will affect the regulation of compulsory pooling in the State." And the Department further recommended that "decisions on the status and implementation of a compulsory pooling law precede decisions related to cost sharing, notifications, and compensation for damages" and "further study on the issue of amending current dormant mineral statutes regarding extinguishment and other consumer protection issues related to split estates."

SECTION 25.(b) Based upon the findings of Section 25(a) of this act, the General Assembly directs the Department to do the following:

(1) Examine the Mining and Energy Commission's rules, once adopted, related to oil and gas exploration, including, but not limited to, rules concerning drilling units, spacing requirements, and setbacks, and all rules the Department determines will affect the regulation of compulsory pooling in the State.

(2) Study, in conjunction with the Mining and Energy Commission and the Consumer Protection Division of the North Carolina Department of Justice, the issue of amending current dormant mineral statutes regarding extinguishment and other consumer protection issues related to split estates.

(3) Issue specific recommendations for legislative action related to compulsory pooling and dormant mineral statutes and report the findings of their study, including specific proposals for legislative action, to the Joint Legislative Commission on Energy Policy and the Environmental Review Commission on or before October 1, 2015.

SECTION 26. The Mining and Energy Commission and the Department of Environment and Natural Resources shall study the development of midstream infrastructure in North Carolina, which is necessary or advisable to facilitate the exploration, development, and production of the State's oil and gas resources. Infrastructure examined shall include development of pipelines, gathering systems, compressor stations, pumping systems, on-site and near-site storage tanks, and natural gas liquids processing systems. All State agencies, including the constituent institutions of The University of North Carolina, shall provide information and support to the Commission and the Department in the conduct of this study. The Commission shall report the findings of this study, including specific proposals for legislative action, to the Joint Legislative Commission on Energy Policy on or before March 1, 2015.

SECTION 27. The State Energy Office in the Department of Environment and Natural Resources shall study and make legislative recommendations on a comprehensive long-range State energy policy to achieve maximum effective management and use of present and future sources of energy. The Office shall study all of the following:

(1) The long-term environmental impact of base load power generation of electric public utilities.

(2) The use of all forms of energy, including renewable and alternative sources of energy.

(3) The implementation of S.L. 2007-397, including recommendations on any changes to the law as necessary.

(4) The impact of the elimination of natural gas franchise areas in order to allow competition in the provision of piped natural gas service in the State.

The State Energy Office shall report its findings to the Joint Legislative Commission on Energy Policy on or before January 1, 2015.

SECTION 28.(a) The Division of Purchase and Contract in the Department of Administration shall, in coordination with the Department of Public Instruction, provide that any fuel option may be considered for the award of a school bus contract. In the development of requests for proposals for school buses, the Departments shall include any fuel option practicable, including diesel, propane, liquefied natural gas, compressed natural gas, and electricity.

SECTION 28.(b) The consideration of any fuel sources in Section 28(a) of this act shall apply to any changes or modifications to term contracts executed on or after the effective date of this section.

SECTION 28.(c) The Department of Administration and the Department of Public Instruction shall jointly study the infrastructure that would be necessary to support school bus fleets fueled by natural gas and report any findings and recommendations to the Joint Legislative Energy Policy Commission on or before January 1, 2015.

PART VII. MISCELLANEOUS PROVISIONS UNRELATED TO SHALE GAS

SECTION 29.(a) G.S. 114-4.2D is repealed.

SECTION 29.(b) G.S. 113B-11(e) reads as rewritten:

"(e) Staff support required by the Council shall be supplied by the Division of Energy, Mineral, and Land Resources of the Department of Environment and Natural Resources. The Department of Environment and Natural Resources shall provide legal support to the Council as needed from the Department's staff. The Department of Commerce and the Utilities

Commission are hereby authorized to make their staff available to the Council to assist in the development of a State energy policy."

SECTION 30.(a) G.S. 105-449.130 is amended by adding a new subdivision to read:

"(1f) Diesel gallon equivalent of liquefied natural gas. – The energy equivalent of 6.06 pounds of liquefied natural gas."

SECTION 30.(b) G.S. 105-449.130 is amended by adding a new subdivision to read:

"(1g) Gas gallon equivalent of compressed natural gas. – The energy equivalent of 5.66 pounds of compressed natural gas."

SECTION 30.(c) G.S. 105-449.136 reads as rewritten:

"**§ 105-449.136. Tax on alternative fuel.**

(a) Rate. – A tax at the motor fuel rate is imposed on liquid alternative fuel used to operate a highway vehicle by means of a vehicle supply tank that stores fuel only for the purpose of supplying fuel to operate the vehicle. The tax on liquefied natural gas is imposed on each diesel gallon equivalent of liquefied natural gas. A tax at the equivalent of the motor fuel rate is imposed on all other alternative fuel used to operate a highway vehicle. The tax on compressed natural gas is imposed on each gas gallon equivalent of compressed natural gas. The Secretary must determine the equivalent ~~rate.~~rate for all other non-liquid alternative fuels.

(b) Administration. – The exemptions from the tax on motor fuel in G.S. 105-449.88 apply to the tax imposed by this section. The refunds for motor fuel tax allowed by Part 5 of Article 36C of this Chapter apply to the tax imposed by this section, except that the refund allowed by G.S. 105-449.107(b) for certain vehicles that use power takeoffs does not apply to a vehicle whose use of alternative fuel is taxed on the basis of miles driven. The proceeds of the tax imposed by this section must be allocated in accordance with G.S. 105-449.125."

SECTION 30.(d) This section becomes effective January 1, 2015.

PART VIII. SEVERABILITY AND EFFECTIVE DATE

SECTION 31.(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 31.(b) Except as otherwise provided, this act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

S D

SENATE BILL 786
PROPOSED COMMITTEE SUBSTITUTE S786-PCS35529-RIxf-35

Short Title: Energy Modernization Act. (Public)

Sponsors:

Referred to:

May 19, 2014

A BILL TO BE ENTITLED

AN ACT TO (1) EXTEND THE DEADLINE FOR DEVELOPMENT OF A MODERN REGULATORY PROGRAM FOR THE MANAGEMENT OF OIL AND GAS EXPLORATION, DEVELOPMENT, AND PRODUCTION IN THE STATE AND THE USE OF HORIZONTAL DRILLING AND HYDRAULIC FRACTURING TREATMENTS FOR THAT PURPOSE; (2) ENACT OR MODIFY CERTAIN EXEMPTIONS FROM REQUIREMENTS OF THE ADMINISTRATIVE PROCEDURE ACT APPLICABLE TO RULES FOR THE MANAGEMENT OF OIL AND GAS EXPLORATION, DEVELOPMENT, AND PRODUCTION IN THE STATE AND THE USE OF HORIZONTAL DRILLING AND HYDRAULIC FRACTURING TREATMENTS FOR THAT PURPOSE; (3) ESTABLISH A DATE CERTAIN OF JULY 1, 2015, FOR ISSUANCE FOR PERMITS FOR OIL AND GAS EXPLORATION, DEVELOPMENT, AND PRODUCTION ACTIVITIES; (4) CREATE THE NORTH CAROLINA OIL AND GAS COMMISSION AND RECONSTITUTE THE NORTH CAROLINA MINING COMMISSION; (5) AMEND MISCELLANEOUS STATUTES GOVERNING OIL AND GAS EXPLORATION, DEVELOPMENT, AND PRODUCTION ACTIVITIES; (6) ESTABLISH A SEVERANCE TAX APPLICABLE TO OIL AND GAS EXPLORATION, DEVELOPMENT, AND PRODUCTION ACTIVITIES; (7) AMEND MISCELLANEOUS STATUTES UNRELATED TO OIL AND GAS EXPLORATION, DEVELOPMENT, AND PRODUCTION ACTIVITIES; AND (8) DIRECT STUDIES ON VARIOUS ISSUES, AS RECOMMENDED BY THE JOINT LEGISLATIVE COMMISSION ON ENERGY POLICY.

The General Assembly of North Carolina enacts:

PART I. EXTENSION OF RULE DEVELOPMENT DEADLINE

SECTION 1. Section 2(m) of S.L. 2012-143 reads as rewritten:

"**SECTION 2.(m)** All rules required to be adopted by the Mining and Energy Commission, the Environmental Management Commission, and the Commission for Public Health pursuant to this act shall be adopted no later than ~~October 1, 2014.~~ January 1, 2015. In order to provide for the orderly, efficient, and effective development and adoption of rules and to prevent the adoption of duplicative, inconsistent, or inadequate rules by these Commissions, the Department of Environment and Natural Resources shall coordinate the adoption of the rules. The Commissions and the Department shall develop the rules in an open and collaborative process that includes (i) input from scientific and technical advisory groups; (ii) consultation with the North Carolina League of Municipalities, the North Carolina Association of County Commissioners, the Division of Energy of the Department of Commerce, the Department of

Transportation, the Division of Emergency Management of the Department of Public Safety, the Consumer Protection Division of the Department of Justice, the Department of Labor, the Department of Health and Human Services, the State Review of Oil and Natural Gas Environmental Regulations (STRONGER), the American Petroleum Institute (API), and the Rural Advancement Foundation (RAFI-USA); and (iii) broad public participation. During the development of the rules, the Commissions and the Department shall identify changes required to all existing rules and statutes necessary for the implementation of this act, including repeal or modification of rules and statutes. Until such time as all of the rules are adopted pursuant to this act, the Department shall submit quarterly reports to the Joint Legislative Commission on Energy Policy, created under Section 6(a) of this act, and the Environmental Review Commission on its progress in developing and adopting the rules. The quarterly reports shall include recommendations on changes required to existing rules and statutes and any other findings or recommendations necessary for the implementation of this act. The first report required by this subsection is due January 1, 2013."

PART II. EXEMPTIONS FROM ADMINISTRATIVE PROCEDURE ACT

SECTION 2.(a) Notwithstanding G.S. 150B-21.3(b1) and Section 1(a) of S.L. 2013-365, all rules adopted pursuant to Section 2(m) of S.L. 2012-143 shall be subject to legislative review during the next regular session of the General Assembly that begins after the date the Rules Review Commission approved the rule or during the regular session that is underway on the date the Commission approved the rule.

SECTION 2.(b) Notwithstanding G.S. 150B-21.3(b1) and any rule of either house of the General Assembly, any member of the General Assembly may introduce a bill to disapprove any rule adopted pursuant to Section 2(m) of S.L. 2012-143 that has been approved by the Rules Review Commission and that either has not become effective or has become effective by executive order, as follows: (i) if the Rules Review Commission approves the rule prior to the start of a legislative session, during the first 30 calendar days of the regular session of the General Assembly that begins after the date the Commission approved all rules adopted pursuant to Section 2(m) of S.L. 2012-143 or (ii) if the Rules Review Commission approves the rule during a legislative session, 30 calendar days from the date the Rules Review Commission approved all rules adopted pursuant to Section 2(m) of S.L. 2012-143.

SECTION 2.(c) Notwithstanding G.S. 150B-21.3(b1) and any rule of either house of the General Assembly, all rules adopted pursuant to Section 2(m) of S.L. 2012-143 become effective on the earlier of the following:

(1) If the Rules Review Commission approves all rules adopted pursuant to Section 2(m) of S.L. 2012-143 prior to the start of a legislative session, the earlier of (i) the 31st calendar day of the regular session of the General Assembly that begins after the date the Commission approved all rules adopted pursuant to Section 2(m) of S.L. 2012-143 if a bill that specifically disapproves any of these rules has not been introduced in either house of the General Assembly by that date; (ii) if a bill that specifically disapproves a rule is introduced in either house of the General Assembly before the 31st calendar day of that session, the rule becomes effective on the earlier of either the day an unfavorable final action is taken on the bill or the 61st calendar day of that session if by that date a bill that specifically disapproves the rule has not been ratified; or (iii) the day that session of the General Assembly adjourns without ratifying a bill that specifically disapproves the rule.

(2) If the Rules Review Commission approves all rules adopted pursuant to Section 2(m) of S.L. 2012-143 during a legislative session, the earlier of (i) the 31st calendar day after the date the Commission approved all rules

adopted pursuant to Section 2(m) of S.L. 2012-143 if a bill that specifically disapproves a rule has not been introduced in either house of the General Assembly by that date; (ii) if a bill that specifically disapproves a rule is introduced in either house of the General Assembly within 30 calendar days of the date that the Commission approved all rules adopted pursuant to Section 2(m) of S.L. 2012-143, the rule becomes effective on the earlier of either the day an unfavorable final action is taken on the bill or the 61st day after the date that the Commission approved all rules adopted pursuant to Section 2(m) of S.L. 2012-143 if by that date a bill that specifically disapproves the rule has not been ratified; or (iii) the day that session of the General Assembly adjourns without ratifying a bill that specifically disapproves the rule.

SECTION 2.(d) Notwithstanding G.S. 150B-21.9, the Rules Review Commission must review any permanent rule adopted pursuant to Section 2(m) of S.L. 2012-143 submitted to it by the end of a month by the last day of the next month.

SECTION 2.(e) G.S. 150B-19.3 shall not apply to rules adopted by the Mining and Energy Commission, the Environmental Management Commission, and the Commission for Public Health for the management of oil and gas exploration, development, and production activities in the State, including the use of horizontal drilling and hydraulic fracturing for that purpose.

SECTION 2.(f) Section 1(b) of S.L. 2013-365 reads as rewritten:

"**SECTION 1.(b)** The Mining and Energy Commission, the Environmental Management Commission, and the Commission for Public Health are exempt from the provisions of Chapter 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~~ that pertains to 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."

SECTION 2.(g) The Mining and Energy Commission, the Environmental Management Commission, and the Commission for Public Health are exempt from the provisions of Chapter 150B of the General Statutes that require that a certification be obtained from the Office of State Budget and Management, including requirements under G.S. 150B-19.1(h) and G.S. 150B-21.4, and any requirement for preliminary review by the Office of State Budget and Management pursuant to G.S. 150B-21.26, 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.

SECTION 2.(h) This Part is effective when it becomes law. Section 2(f) of this act shall expire December 31, 2017.

PART III. DATE CERTAIN FOR ISSUANCE OF PERMITS TO JULY 1, 2015

SECTION 3.(a) Effective July 1, 2015, the Department of Environment and Natural Resources and the Mining and Energy Commission are authorized to issue permits for oil and gas exploration, development, and production activities using horizontal drilling and hydraulic fracturing treatments in the State pursuant to G.S. 113-395.

SECTION 3.(b) Section 3(d) of S.L. 2012-143 is repealed.

SECTION 3.(c) Section 1(c) of S.L. 2013-365 is repealed.

PART IV. CREATE OIL AND GAS COMMISSION AND RECONSTITUTE MINING COMMISSION

SECTION 4.(a) Part 6A of Article 7 of Chapter 143B of the General Statutes reads as rewritten:

"Part 6A. North Carolina ~~Mining and Energy~~ Oil and Gas Commission.

"§ 143B-293.1. North Carolina ~~Mining and Energy~~ Oil and Gas Commission – creation; powers and duties.

(a) There is hereby created the North Carolina ~~Mining and Energy~~ Oil and Gas Commission of the Department of Environment and Natural Resources with the power and duty to adopt rules necessary to administer the Oil and Gas Conservation Act pursuant to G.S. 113-391 and for the development of the ~~oil, gas, and mining~~ oil and gas resources of the State. The Commission shall make such rules consistent with the provisions of this Chapter. All rules adopted by the Commission shall be enforced by the Department of Environment and Natural Resources.

(b) The Commission shall have the authority to make determinations and issue orders pursuant to the Oil and Gas Conservation Act to (i) regulate the spacing of wells and to establish drilling units as provided in G.S. 113-393; (ii) ~~require the operation of wells with efficient gas-oil ratios and to fix such ratios; (iii)~~ limit and prorate the production of oil or gas, or both, from any pool or field for the prevention of waste as provided in G.S. 113-394; (iii) classify wells for taxing purposes; and (iv) require integration of interests as provided in G.S. 113-393.

(c) The Commission shall submit ~~quarterly~~ annual written reports as to its operation, activities, programs, and progress to the Joint Legislative Commission on Energy Policy and 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 Joint Legislative Commission on Energy Policy and 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.

"§ 143B-293.2. North Carolina ~~Mining and Energy~~ Oil and Gas Commission – members; selection; removal; compensation; quorum; services.

~~(a) Members Selection. The North Carolina Mining and Energy Commission shall consist of 15 members appointed as follows:~~

~~(1) The Chair of the North Carolina State University Minerals Research Laboratory Advisory Committee, or the Chair's designee, ex officio.~~

~~(2) The State Geologist, or other designee of the Secretary of Environment and Natural Resources.~~

~~(3) Repealed by Session Laws 2013-365, s. 3(a), effective July 29, 2013.~~

~~(3a) One appointed by the Governor, at large.~~

~~(4) One appointed by the General Assembly upon recommendation of the Speaker of the House of Representatives who is a member of a nongovernmental conservation interest.~~

~~(5) One appointed by the General Assembly upon recommendation of the Speaker of the House of Representatives who, at the time of initial appointment, is an elected official of a municipal government located in a region of North Carolina that has oil and gas potential. A person serving in this seat may complete a term on the Commission even if the person is no longer serving as an elected official of a municipal government but may not be reappointed to a subsequent term.~~

~~(6) One appointed by the General Assembly upon recommendation of the Speaker of the House of Representatives who is a representative of the mining industry.~~

~~(7) One appointed by the General Assembly upon recommendation of the Speaker of the House of Representatives who shall be a geologist with experience in oil and gas exploration and development.~~

~~(8) One appointed by the General Assembly upon recommendation of the President Pro Tempore of the Senate who is a member of a nongovernmental conservation interest.~~

~~(9) One appointed by the General Assembly upon recommendation of the President Pro Tempore of the Senate who, at the time of initial appointment, is a member of a county board of commissioners of a county located in a region of North Carolina that has oil and gas potential. A person serving in this seat may complete a term on the Commission even if the person is no longer serving as county commissioner but may not be reappointed to a subsequent term.~~

~~(10) One appointed by the General Assembly upon recommendation of the President Pro Tempore of the Senate who is a representative of the mining industry.~~

~~(11) One appointed by the General Assembly upon recommendation of the President Pro Tempore of the Senate who shall be an engineer with experience in oil and gas exploration and development.~~

~~(12) One appointed by the Governor who shall be a representative of a publicly traded natural gas company.~~

~~(13) One appointed by the Governor who shall be a licensed attorney with experience in legal matters associated with oil and gas exploration and development.~~

~~(14) One appointed by the Governor who is a member of the Environmental Management Commission.~~

~~(15) One appointed by the Governor who is a member of the Commission for Public Health.~~

(a1) Members Selection. – The North Carolina Oil and Gas Commission shall consist of nine members appointed as follows:

(1) One appointed by the General Assembly upon recommendation of the Speaker of the House of Representatives who, at the time of initial appointment, is an elected official of a municipal government located in a region of North Carolina that has oil and gas potential. A person serving in this seat may complete a term on the Commission even if the person is no longer serving as an elected official of a municipal government but may not be reappointed to a subsequent term.

(2) One appointed by the General Assembly upon recommendation of the Speaker of the House of Representatives who shall be a geologist with experience in oil and gas exploration and development.

(3) One appointed by the General Assembly upon recommendation of the Speaker of the House of Representatives who is a member of a nongovernmental conservation interest.

(4) One appointed by the General Assembly upon recommendation of the President Pro Tempore of the Senate who, at the time of initial appointment, is a member of a county board of commissioners of a county located in a region of North Carolina that has oil and gas potential. A person serving in this seat may complete a term on the Commission even if the person is no longer serving as county commissioner but may not be reappointed to a subsequent term.

(5) One appointed by the General Assembly upon recommendation of the President Pro Tempore of the Senate who is a member of a nongovernmental conservation interest.

(6) One appointed by the General Assembly upon recommendation of the President Pro Tempore of the Senate who shall be an engineer with experience in oil and gas exploration and development.

(7) One appointed by the Governor who shall be a representative of a publicly traded natural gas company.

(8) One appointed by the Governor who shall be a licensed attorney with experience in legal matters associated with oil and gas exploration and development.

(9) One appointed by the Governor with experience in matters related to public health.

(b) Terms. – The term of office of members of the Commission 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 (a) 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 ~~(4), (6), (9), and (12)~~ (1), (4), and (7) of subsection ~~(a)~~ (a1) of this section shall expire on June 30 of years evenly divisible by three. The terms of members appointed under subdivisions ~~(7), (10), (13), and (14)~~ (2), (5), and (8) of subsection ~~(a)~~ (a1) of this section shall expire on June 30 of years that precede by one year those years that are evenly divisible by three. The terms of members appointed under subdivisions ~~(5), (8), (11), and (15)~~ (3), (6), and (9) of subsection ~~(a)~~ (a1) of this section shall expire on June 30 of years that follow by one year those years that are evenly divisible by three.

(c) Vacancies; Removal from Office. –

(1) Any appointment by the Governor 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 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.

(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.

(d) Compensation. – The members of the Commission shall receive per diem and necessary traveling and subsistence expenses in accordance with the provisions of G.S. 138-5.

(e) Quorum. – A majority of the Commission shall constitute a quorum for the transaction of business.

(f) Staff. – All staff support required by the Commission shall be supplied by the Division of Energy, Mineral, and Land Resources and the North Carolina Geological Survey.

(g) Committees. – In addition to the Committee on Civil Penalty Remissions required to be established under G.S. 143B-293.6, the chair may establish other committees from members of the Commission to address specific issues as appropriate. No member of a committee may hear or vote on any matter in which the member has an economic interest. A majority of a committee shall constitute a quorum for the transaction of business. ~~At a minimum, the chair shall establish a Committee on Mining, which shall consist of members appointed under subdivisions (1), (4), (6), (8), (10), (14), and (15) of subsection (a) of this section. The Committee on Mining shall have exclusive responsibility and authority over matters pertaining to mining and implementation of the Mining Act of 1971, including all of the following powers and duties:~~

~~(1) To act as the advisory body to the Governor pursuant to Article V(a) of the Interstate Mining Compact, as set out in G.S. 74-37.~~

~~(2) To adopt rules necessary to administer the Mining Act of 1971 pursuant to G.S. 74-63.~~

~~(3) To adopt rules necessary to administer the Control of Exploration for Uranium in North Carolina Act of 1983 pursuant to G.S. 74-86.~~

~~(4) To adopt rules, not inconsistent with the laws of this State, as may be required by the federal government for grants in aid for mining resource purposes which may be made available to the State by the federal government. This section is to be liberally construed in order that the State and its citizens may benefit from such grants in aid.~~

(h) Office May Be Held Concurrently With Others. – Membership on the ~~Mining and Energy~~ Oil and Gas Commission is hereby declared to be an office that may be held concurrently with other elective or appointive offices in addition to the maximum number of offices permitted to be held by one person under G.S. 128-1.1.

"**§ 143B-293.3. Reserved for future codification purposes.**

"**§ 143B-293.4. North Carolina ~~Mining and Energy~~ Oil and Gas Commission – officers.**

The ~~Mining and Energy~~ Oil and Gas 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 one-year terms beginning August 1 and ending July 31 of the following year. The chair and vice-chair may serve any number of terms, but not more than two terms consecutively.

"**§ 143B-293.5.** North Carolina ~~Mining and Energy~~ Oil and Gas Commission – meetings.

The ~~North Carolina Mining and Energy~~ Oil and Gas Commission 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 ~~nine~~ five members.

"**§ 143B-293.6. North Carolina ~~Mining and Energy~~ Oil and Gas Commission – quasi-judicial powers; procedures.**

(a) With respect to those matters within its jurisdiction, the ~~Mining and Energy~~ Oil and Gas Commission shall exercise quasi-judicial powers in accordance with the provisions of Chapter 150B of the General Statutes.

(b) The chair shall appoint a Committee on Civil Penalty Remissions from the members of the Commission. No member of the Committee on Civil Penalty Remissions may hear or vote on any matter in which the member has an economic interest. In determining whether a remission request will be approved, the Committee shall consider the recommendation of the Secretary or the Secretary's designee and all of the following factors:

(1) Whether one or more of the civil penalty assessment factors in subsection (b) of this section were wrongly applied to the detriment of the petitioner.

(2) Whether the violator promptly abated continuing environmental damage resulting from the violation.

(3) Whether the violation was inadvertent or a result of an accident.

(4) Whether the violator had been assessed civil penalties for any previous violations.

(5) Whether payment of the civil penalty will prevent payment for the remaining necessary remedial actions.

(c) The Committee on Civil Penalty Remissions may remit the entire amount of the penalty only when the violator has not been assessed civil penalties for previous violations and when payment of the civil penalty will prevent payment for the remaining necessary remedial actions."

SECTION 4.(b) The terms of all members of the Mining and Energy Commission serving on July 31, 2015, shall expire on that date. A new Oil and Gas Commission of nine

members shall be appointed in the manner provided by G.S. 143B-293.2(a1), as enacted by Section 4(a) of this act, and this section. Members appointed in the manner provided by G.S. 143B-293.2(a1), as enacted by Section 4(a) of this act, shall be appointed no later than August 1, 2015.

SECTION 4.(c) The Revisor of Statutes shall make the conforming statutory changes necessary to the General Statutes to reflect renaming of the Mining and Energy Commission to the Oil and Gas Commission, effective August 1, 2015, as provided in this section.

SECTION 5.(a) Part 6 of Article 7 of Chapter 143B of the General Statutes is reenacted and reads as rewritten:

"Part 6. North Carolina Mining Commission.

"§ 143B-290. North Carolina Mining Commission – creation; powers and duties.

There is hereby created the North Carolina Mining Commission of the Department of Environment and Natural Resources with the power and duty to promulgate rules for the enhancement of the mining resources of the State.

(1) The North Carolina Mining Commission shall have the following powers and duties:
   a. To act as the advisory body to the Governor pursuant to Article V(a) of the Interstate Mining Compact, as set out in G.S. 74-37.
   b. Repealed by Session Laws 2002-165, s. 1.10, effective October 23, 2002.
   c. To hear permit appeals, conduct a full and complete hearing on such controversies and affirm, modify, or overrule permit decisions made by the Department pursuant to G.S. 74-61.
   d. To promulgate rules necessary to administer the Mining Act of 1971, pursuant to G.S. 74-63.
   e. To promulgate rules necessary to administer the Control of Exploration for Uranium in North Carolina Act of 1983, pursuant to G.S. 74-86.

(2) The Commission is authorized to make such rules, not inconsistent with the laws of this State, as may be required by the federal government for grants-in-aid for mining resource purposes which may be made available to the State by the federal government. This section is to be liberally construed in order that the State and its citizens may benefit from such grants-in-aid.

(3) The Commission shall make such rules consistent with the provisions of this Chapter. All rules adopted by the Commission shall be enforced by the Department of Environment and Natural Resources.

(4) Recodified as § 74-54.1 by c. 1039, s. 16, effective July 24, 1992.

"§ 143B-291. North Carolina Mining Commission – members; selection; removal; compensation; quorum; services.

~~(a) Members, Selection. The North Carolina Mining Commission shall consist of nine members appointed by the Governor under a specified subdivision of this subsection as follows:~~

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

~~(2) One member who is a representative of the mining industry.~~

~~(3) One member who is a representative of the mining industry.~~

~~(4) One member who is a representative of the mining industry.~~

~~(5) One member who is a representative of nongovernmental conservation interests.~~

~~(6) One member who is a representative of nongovernmental conservation interests.~~

~~(7) One member who is a representative of nongovernmental conservation interests.~~

~~(8) One who, at the time of the appointment to the Mining Commission, is a member of the Environmental Management Commission and knowledgeable in the principles of water and air resources management.~~

~~(9) One who, at the time of the appointment to the Mining Commission, is a member of the Environmental Management Commission and knowledgeable in the principles of water and air resources management.~~

(a1) Members, Selection. – The North Carolina Mining Commission shall consist of seven members appointed as follows:

(1) One member who is the chair of the North Carolina State University Minerals Research Laboratory Advisory Committee.

(2) The State Geologist.

(3) One member appointed by the Governor who is a representative of the mining industry.

(4) One member appointed by the General Assembly upon recommendation of the Speaker of the House of Representatives who is a representative of the mining industry.

(5) One member appointed by the General Assembly upon recommendation of the President Pro Tempore of the Senate who is a representative of the mining industry.

(6) One member appointed by the General Assembly upon recommendation of the Speaker of the House of Representatives who is a member of nongovernmental conservation interests.

(7) One member appointed by the General Assembly upon recommendation of the President Pro Tempore of the Senate who is a member of nongovernmental conservation interests.

(b) Terms. – The term of office of a member of the Commission is six years. At the expiration of each member's term, the ~~Governor~~ appointing authority shall replace the member with a new member of like qualifications for a term of six years. The term of ~~members~~ the member appointed under ~~subdivisions (2), (5), and (8)~~ subdivision (5) of subsection ~~(a)~~ (a1) of this section shall expire on ~~30~~ June 30 of years that precede by one year those years that are evenly divisible by six. The term of members appointed under subdivisions (3) and (6) of subsection ~~(a)~~ (a1) of this section shall expire on ~~30~~ June 30 of years that follow by one year those years that are evenly divisible by six. The term of members appointed under subdivisions ~~(4), (7), and (9)~~ (4) and (7) of subsection ~~(a)~~ (a1) of this section shall expire on ~~30~~ June 30 of years that follow by three years those years that are evenly divisible by six. Upon the expiration of a six-year term, a member may continue to serve until a successor is appointed and duly qualified as provided by G.S. 128-7.

(c) Vacancies. – An appointment to fill a vacancy shall be for the unexpired balance of the term.

(d) Removal. – The Governor may remove any member of the Commission from office for misfeasance, malfeasance, or nonfeasance in accordance with the provisions of G.S. 143B-13.

(e) Compensation. – The members of the Commission shall receive per diem and necessary traveling and subsistence expenses in accordance with the provisions of G.S. 138-5.

(f) Quorum. – A majority of the Commission shall constitute a quorum for the transaction of business.

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

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

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

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

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

SECTION 5.(b) The terms of all members of the Mining and Energy Commission serving on July 31, 2015, shall expire on that date. A new Mining Commission of seven members shall be appointed in the manner provided by G.S. 143B-291(a1), as enacted by Section 5(a) of this act, and this section. Members appointed in the manner provided by G.S. 143B-291(a1), as enacted by Section 5(a) of this act, shall be appointed no later than August 1, 2015.

SECTION 5.(c) The Revisor of Statutes shall make the conforming statutory changes necessary to the General Statutes to reflect renaming of the Mining and Energy Commission to the Mining Commission, effective August 1, 2015, as provided in this section.

SECTION 6. This Part becomes effective July 31, 2015.

PART V. MISCELLANEOUS STATUTORY AMENDMENTS RELATED TO SHALE GAS EXPLORATION, DEVELOPMENT, AND PRODUCTION

SECTION 7.(a) G.S. 113-391 reads as rewritten:

"**§ 113-391. Jurisdiction and authority; rules and orders.**

...

(a5) Entry of rules in the North Carolina Administrative Code that address the areas identified by subsections (a) and (a3) of this section by July 1, 2015, create a rebuttable presumption that the rules are sufficient to meet the requirements for development of a modern regulatory program pursuant to this section.

...."

SECTION 7.(b) G.S. 143B-293.1(b) reads as rewritten:

"(b) The Commission shall have the authority to make determinations and issue orders pursuant to the Oil and Gas Conservation Act to (i) regulate the spacing of wells and to establish drilling units as provided in G.S. 113-393; (ii) ~~require the operation of wells with efficient gas-oil ratios and to fix such ratios; (iii)~~ limit and prorate the production of oil or gas, or both, from any pool or field for the prevention of waste as provided in G.S. 113-394; (iii) classify wells for taxing purposes; and (iv) require integration of interests as provided in G.S. 113-393."

SECTION 8.(a) Article 27 of Chapter 113 of the General Statutes is amended by adding a new section to read:

"**§ 113-391A. Trade secret and confidential information determination; protection; retention; disclosure to emergency personnel.**

(a) Legislative Findings. – The General Assembly finds that while confidential information must be maintained as such with the utmost care, for the protection of public health, safety, and the environment, the information should be immediately accessible to first responders and medical personnel in the event that the information is deemed necessary to address an emergency.

(b) Determination and Treatment of Confidential Information. – Information obtained by the Commission and the Department pursuant to this Article, and rules adopted thereunder, shall be available to the public except that, upon a showing satisfactory to the Commission by any person that information to which the Commission and Department has access, if made public, would divulge methods or processes entitled to protection as confidential information pursuant to G.S. 132-1.2, the Commission shall consider the information confidential. In accordance with subsection (b1) of G.S. 113-391, the State Geologist shall serve as the custodian of the confidential information and shall ensure that it is maintained securely as provided in G.S. 132-7.

(c) Exceptions to Disclosure Prohibitions. – Confidential information obtained by the Commission and the Department pursuant to this Article, and rules adopted thereunder, may be disclosed to any officer, employee, or authorized representative of any federal or State agency if disclosure is necessary to carry out a proper function of the Department or other agency or when relevant in any proceeding under this Article. Confidential information shall be disclosed to the following:

(1) The Division of Emergency Management of the Department of Public Safety. The Division shall maintain this information as confidential except if disclosure is necessary to carry out a proper function of the Division, including for the purposes of emergency planning and emergency response. For purposes of this section, the term "emergency" is defined as provided in G.S. 166A-19.3.

(2) A treating health care provider who determines that a medical emergency exists and that the information is necessary for emergency or first aid treatment. Regardless of the existence of a written statement of need or a confidentiality agreement, the Department shall immediately disclose the confidential information to the treating health care provider upon request. If confidential information is disclosed pursuant to this subdivision, the Department shall notify the owner of the confidential information as soon as practicable, but no later than 24 hours after disclosure. The owner of the confidential information may require execution of a written statement of need and a confidentiality agreement from the treating health care provider as soon as circumstances permit. The confidentiality agreement (i) may restrict the use of the information to the health purposes indicated in a written statement of need; (ii) may provide for appropriate legal remedies in the event of a breach of the agreement, including stipulation of a reasonable pre-estimate of likely damages; and (iii) may not include requirements for the posting of a penalty bond. The parties are not precluded from pursuing noncontractual remedies to the extent permitted by law.

(3) A Fire Chief, as that term is defined in G.S. 95-174, who determines that an emergency exists and that the information is necessary to address the emergency. Regardless of the existence of a written statement of need or a confidentiality agreement, the Department shall immediately disclose the confidential information to the Fire Chief upon request. If confidential information is disclosed pursuant to this subdivision, the Department shall notify the owner of the confidential information as soon as practicable, but no later than 24 hours after disclosure. The owner of the confidential information may require execution of a written statement of need and a confidentiality agreement from the Fire Chief as soon as circumstances permit. The confidentiality agreement (i) may restrict the use of the information to the emergency purposes indicated in a written statement of need; (ii) may provide for appropriate legal remedies in the event of a breach

of the agreement, including stipulation of a reasonable pre-estimate of likely damages; and (iii) may not include requirements for the posting of a penalty bond. The parties are not precluded from pursuing noncontractual remedies to the extent permitted by law.

(d) Penalties for Unlawful Disclosure. – Except as provided in subsection (c) of this section or as otherwise provided by law, any person who has access to confidential information pursuant to this section and who discloses it knowing it to be confidential information to any person not authorized to receive it shall be guilty of a Class I felony, and if knowingly or negligently disclosed to any person not authorized, shall be subject to civil action for damages and injunction by the owner of the confidential information, including, without limitation, actions under Article 24 of Chapter 66 of the General Statutes.

(e) Appeal From Commission Decisions Concerning Confidentiality. – Within 10 days of any decision made pursuant to subsection (b) of this section, the Commission shall provide notice to any person who submits information asserted to be confidential (i) that the information is not entitled to confidential treatment and (ii) of any decision to release such information to any person who has requested the information. Notwithstanding the provisions of G.S. 132-9, or procedures for appeal provided under Article 4 of Chapter 150B of the General Statutes, any person who requests information and any person who submits information who is dissatisfied with a decision of the Commission to withhold or release information made pursuant to subsection (b) of this section shall have 30 days after receipt of notification from the Commission to bring an action in Business Court to appeal the decision in accordance with the procedures for a mandatory business case set forth in G.S. 7A-45.4, and the Business Court shall have exclusive jurisdiction over such actions. The information may not be released by the Commission until the earlier of (i) the 30-day period for filing of an appeal has expired without filing of an appeal or (ii) a final judicial determination has been made in an action brought to appeal a decision of the Commission. In addition, the following shall apply to actions brought pursuant to this section:

(1) Such actions shall be set down for immediate hearing.

(2) The burden shall be on the owner of the information to show that the information is entitled to protection as confidential information pursuant to G.S. 132-1.2.

(3) The court shall allow a party seeking disclosure of information who substantially prevails to recover its reasonable attorneys' fees if attributed to the information. The court may not assess attorneys' fees against the Commission or the Department, however, but shall impose such fees on the owner of the information asserting confidentiality.

(4) If the court determines that an action brought pursuant to this section was filed in bad faith or was frivolous, the court shall assess reasonable attorneys' fees against the person or persons instituting the action and award to the prevailing party or parties."

SECTION 8.(b) G.S. 113-391(b1) reads as rewritten:

"(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~~ Geologist, or the State Geologist's designee, shall serve as the custodian of all data, information, and records received by the Department pursuant to this ~~subsection~~ subsection,

including 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, and shall ensure that all of the ~~information~~ information, including 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, is maintained securely as provided in G.S. 132-7."

SECTION 8.(c) This section is effective when it becomes law, except that 113-391A(d), as enacted by Section 8(a) of this act, shall become effective December 1, 2014.

SECTION 9. G.S. 113-391(a)(6) is repealed.

SECTION 10. G.S. 113-392(c) is repealed.

SECTION 11. G.S. 113-395(a) reads as rewritten:

"(a) Before any well, in search of oil or gas, shall be drilled, the person desiring to drill the same shall submit an application for a permit to the Department upon such form as the Department may prescribe and shall pay a fee of three thousand dollars ($3,000) for ~~each well.~~ the first well to be drilled on a pad, and fifteen hundred dollars ($1,500) for each additional well to be drilled on the same pad. The drilling of any well is prohibited unless the Department has issued a permit for the activity."

SECTION 12. G.S. 113-420 reads as rewritten:

"**§ 113-420. Notice and entry to property.**

(a) Notice Required for Activities That Do Not Disturb Surface of ~~Property.~~Property to Surface Owner. – If an oil or gas developer or operator is not the surface owner of the property on which oil and gas operations are to occur, before entering the property for oil or gas operations that do not disturb the surface, including inspections, staking, surveys, measurements, and general evaluation of proposed routes and sites for oil or gas drilling operations, the developer or operator shall give written notice to the surface owner at least 14 days before the desired date of entry to the property. Notice shall be given by certified mail, return receipt requested. The requirements of this subsection may not be waived by agreement of the parties. The notice, at a minimum, shall include all of the following:

(1) The identity of person(s) requesting entry upon the property.

(2) The purpose for entry on the property.

(3) The dates, times, and location on which entry to the property will occur, including the estimated number of entries.

(b) Notice Required for Land-Disturbing ~~Activities.~~Activities to Surface Owner. – If an oil or gas developer or operator is not the surface owner of the property on which oil or gas operations are to occur, before entering the property for oil or gas operations that disturb the surface, the developer or operator shall give written notice to the surface owner at least 30 days before the desired date of entry to the property. Notice shall be given by certified mail, return receipt requested. The notice, at a minimum, shall include all of the following:

(1) A description of the exploration or development plan, including, but not limited to (i) the proposed locations of any roads, drill pads, pipeline routes, and other alterations to the surface estate and (ii) the proposed date on or after which the proposed alterations will begin.

(2) An offer of the oil and gas developer or operator to consult with the surface owner to review and discuss the location of the proposed alterations.

(3) The name, address, telephone number, and title of a contact person employed by or representing the oil or gas developer or operator who the surface owner may contact following the receipt of notice concerning the location of the proposed alterations.

(b1) Persons Entering Land; Identification Required; Presumption of Proper Protection While on Surface Owners' Property. – Persons who enter land on behalf of an oil or gas developer or operator for oil and gas operations shall carry on their person identification sufficient to identify themselves and their employer or principal and shall present the

identification to the surface owner upon request. Entry upon land by such a person creates a rebuttable presumption that the surface owner properly protected the person against personal injury or property damage while the person was on the land.

(b2) Notice of Initiation of Exploration, Development, and Production Activities to Owner of Subsurface Oil or Gas Resources. – If an oil or gas developer or operator is the lessee of subsurface oil or gas resources, before initiating oil or gas exploration or development operations with respect to those resources, the developer or operator shall give written notice to the lessor of those resources at least 30 days before the oil and gas operations are to be initiated. The notice, at a minimum, shall include all of the following:

(1) A description of the exploration or development plan, including, the proposed date on which the exploration or development will begin.

(2) The name, address, telephone number, and title of a contact person employed by or representing the oil or gas developer or operator who the lessor may contact following the receipt of notice.

(c) Venue. – If the oil or gas developer or operator fails to give notice or otherwise comply with the provisions of this section, the surface owner may seek appropriate relief in the superior court for the county in which the oil or gas well is located and may receive actual damages."

SECTION 13.(a) G.S. 113-421 reads as rewritten:

"**§ 113-421. Presumptive liability for water contamination; compensation for other damages; responsibility for reclamation.**

(a) Presumptive Liability for Water Contamination. – It shall be presumed that an oil or gas developer or operator is responsible for contamination of all water supplies that are within ~~5,000 feet~~ a one-half mile radius of a wellhead that is part of the oil or gas developer's or operator's activities unless the presumption is rebutted by a defense established as set forth in subsection (a1) of this subsection. If a contaminated water supply is located within ~~5,000 feet~~ a one-half mile radius of a wellhead, in addition to any other remedy available at law or in equity, including payment of compensation for damage to a water supply, the developer or operator shall provide a replacement water supply to the surface owner and other persons using the water supply at the time the oil or gas developer's activities were commenced on the property, which water supply shall be adequate in quality and quantity for those persons' use.

(a1) [Rebuttal of Presumption. –] In order to rebut a presumption arising pursuant to subsection (a) of this section, an oil or gas developer or operator shall have the burden of proving by a preponderance of the evidence any of the following:

(1) The contamination existed prior to the commencement of the drilling activities of the oil or gas developer or operator, as evidenced by a pre-drilling test of the water supply in question conducted in conformance with G.S. 113-423(f).

(2) The surface owner or owner of the water supply in question refused the oil or gas developer or operator access to conduct a pre-drilling test of the water supply conducted in conformance with G.S. 113-423(f).

(3) The water supply in question is not within ~~5,000 feet~~ a one-half mile radius of a wellhead that is part of the oil or gas developer's or operator's activities.

(4) The contamination occurred as the result of a cause other than activities of the developer or operator.

...

(e) Joint and Several Liability. – In order to provide maximum protection for the public interest, any actions brought for recovery of cleanup costs, damages, or for civil penalties brought pursuant to this section or any other section of this Article or rules adopted thereunder may be brought against any one or more of the persons having control over the activities that contributed to the contamination, damage to property, or other violations. All such persons

shall be jointly and severally liable, but ultimate liability as between the parties may be determined by common-law principles."

SECTION 13.(b) G.S. 113-423(f) reads as rewritten:

"(f) Pre-Drilling Testing of Water Supplies. – Any lease of oil or gas rights or any other conveyance of any kind separating rights to oil or gas from the freehold estate of surface property shall include a clause that requires the oil or gas developer or operator to conduct a test of all water supplies within ~~5,000 feet~~ a one-half mile radius from a proposed wellhead that is part of the oil or gas developer's or operator's activities at least 30 days prior to initial drilling activities and at least two follow-up tests within a 24-month period after production has commenced. The Department shall identify the location of all water supplies, including wells, on a property on which drilling operations are proposed to occur. A surface owner may elect to have ~~the Department~~ 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 oil or gas developer or operator, in which case the developer or operator shall ~~reimburse the Department~~ pay for the reasonable costs involved in testing of the wells in question. Developers and operators (i) shall provide all analytical results to the Department within 30 days of testing and (ii) may share analytical results obtained with other developers and operators as necessary or advisable. Nothing in this subsection shall be construed to preclude or impair the right of any surface owner to refuse pre-drilling testing of wells located on their property."

SECTION 14. Article 27 of Chapter 113 of the General Statutes is amended by adding a new section to read:

"**§ 113-415A. Local ordinances prohibiting oil and gas exploration, development, and production activities invalid; petition to preempt local ordinance.**

(a) It is the intent of the General Assembly to maintain a uniform system for the management of oil and gas exploration, development, and production activities, and the use of horizontal drilling and hydraulic fracturing for that purpose, and to place limitations upon the exercise by all units of local government in North Carolina of the power to regulate the management of oil and gas exploration, development, and production activities by means of special, local, or private acts or resolutions, ordinances, property restrictions, zoning regulations, or otherwise. Notwithstanding any authority granted to counties, municipalities, or other local authorities to adopt local ordinances, including, but not limited to, those imposing taxes, fees, or charges or regulating health, environment, or land use, any local ordinance that prohibits or has the effect of prohibiting oil and gas exploration, development, and production activities that the Mining and Energy Commission has preempted pursuant this section, shall be invalid to the extent necessary to effectuate the purposes of this Article. To this end, all provisions of special, local, or private acts or resolutions are repealed that do the following:

(1) Prohibit the siting of wells for oil and gas exploration, development, and production within any county, city, or other political subdivision.

(2) Prohibit the use of horizontal drilling or hydraulic fracturing for the purpose of oil or gas exploration or development within any county, city, or other political subdivision.

(3) Place any restriction or condition not placed by this Article upon oil and gas exploration, development, and production activities and use of horizontal drilling or hydraulic fracturing for that purpose within any county, city, or other political subdivision.

(4) In any manner are in conflict or inconsistent with the provisions of this Article.

(b) No special, local, or private act or resolution enacted or taking effect hereafter may be construed to modify, amend, or repeal any portion of this Article, unless it expressly provides for such by specific references to the appropriate section of this Article. Further to this

end, all provisions of local ordinances, including those regulating land use, adopted by counties, municipalities, or other local authorities that prohibit or have the effect of prohibiting oil and gas exploration, development, and production activities and use of horizontal drilling or hydraulic fracturing for that purpose within the jurisdiction of a local government are invalidated to the extent preempted by the Commission pursuant to this section.

(c) When oil and gas exploration, development, and production activities would be prevented from construction or operation by a county, municipal, or other local ordinance, the operator of the proposed activities may petition the Mining and Energy Commission to review the matter. After receipt of a petition, the Commission shall hold a hearing in accordance with the procedures in subsection (d) of this section and shall determine whether or to what extent to preempt the local ordinance to allow for the proposed oil and gas exploration, development, and production activities.

(d) When a petition described in subsection (c) of this section has been filed with the Mining and Energy 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.

(e) Any interested person may appear before the Mining and Energy 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.

(f) 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 Mining and Energy 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 for the establishment and operation of the facility 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 prohibit or have the effect of prohibiting oil and gas exploration, development, and production activities, or use of horizontal drilling or hydraulic fracturing for that purpose.

(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 oil and gas exploration, development, and production activities, and use of horizontal drilling or hydraulic fracturing for that purpose, 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.

(g) If the Mining and Energy Commission does not make all of the findings under subsection (f) 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.

(h) The decision of the Mining and Energy 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, all written material presented to the Commission regarding the location of the oil and gas exploration, development, and production activities, the specific findings required by subsection (f) of this section, and any minority positions on the specific findings required by subsection (f) of this section. The scope of judicial review shall be that the court may affirm the decision of the Commission, or may remand the matter for further proceedings, or may reverse or modify the decision if the substantial rights of the parties may have been prejudiced because the Commission's findings, inferences, conclusions, or decisions are any of the following:

(1) In violation of constitutional provisions.
(2) In excess of the statutory authority or jurisdiction of the Commission.
(3) Made upon unlawful procedure.
(4) Affected by other error of law.
(5) Unsupported by substantial evidence admissible under G.S. 150B-29(a) or G.S. 150B-30 in view of the entire record as submitted.
(6) Arbitrary or capricious.

(i) If the court reverses or modifies the decision of the Mining and Energy Commission, the judge shall set out in writing, which writing shall become part of the record, the reasons for the reversal or modification.

(j) In computing any period of time prescribed or allowed by this procedure, the provisions of Rule 6(a) of the Rules of Civil Procedure, G.S. 1A-1, shall apply."

SECTION 15.(a) Article 27 of Chapter 113 of the General Statutes is amended by adding four new sections to read:

"**§ 113-395A. Miscellaneous permit requirements.**

The Department shall require that all natural gas compressor stations associated with an oil and gas drilling operation be located inside a baffled building.

"**§ 113-395B. Subsurface injection of waste prohibited.**

Disposal of wastes produced in connection with oil and gas exploration, development, and production, and use of horizontal drilling and hydraulic fracturing treatments for that purpose by injection to subsurface or groundwaters of the State by means of wells is prohibited in accordance with G.S. 143-214.2.

"**§ 113-395C. Environmental compliance review requirements for applicants and permit holders.**

(a) For purposes of this section, "applicant" means an applicant for a permit and a permit holder and includes the owner or operator of the facility, and if the owner or operator is a business entity, applicant also includes (i) the parent, subsidiary, or other affiliate of the applicant; (ii) a partner, officer, director, member, or manager of the business entity, parent, subsidiary, or other affiliate of the applicant; and (iii) any person with a direct or indirect interest in the applicant, other than a minority shareholder of a publicly traded corporation who

has no involvement in management or control of the corporation or any of its parents, subsidiaries, or affiliates.

(b) The Department may conduct an environmental compliance review of each applicant for a new permit under this Article. The environmental compliance review may 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 may 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, at the request of the Department, 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.

(c) The Department may determine the extent to which the applicant, or a parent, subsidiary, or other affiliate of the applicant or parent, or a joint venturer with a direct or indirect interest in the applicant, has substantially complied with the requirements applicable to any activity in which any of these entities previously engaged, and has substantially complied with federal, North Carolina, and other states' laws, regulations, and rules for the protection of the environment. The Department may deny an application for a permit if the applicant has a history of significant or repeated violations of statutes, rules, orders, or permit terms or conditions for the protection of the environment or for the conservation of natural resources as evidenced by civil penalty assessments, administrative or judicial compliance orders, or criminal penalties.

(d) Upon request of the Department, a permit holder shall notify the Department of any significant change in its environmental compliance history or any significant change in the (i) identity of any person or structure of the business entity that holds the permit for the facility; (ii) identity of any person or structure of the business entity that owns or operates the facility; or (iii) assets of the permit holder, owner, or operator of the facility. If requested by the Department, the permit holder shall notify the Department within 30 days of a significant change. A change shall be considered significant if it would result in a change in the identity of the permit holder, owner, or operator for purposes of environmental compliance review. Based on its review of the changes, the Department may modify or revoke a permit, or require issuance of a new permit.

"**§ 113-395D. Seismic or geophysical data collection.**

(a) Notwithstanding any other provision of law, no liability for trespass shall arise from activities conducted for the purpose of seismic or geophysical data collection. Provided, however, (i) persons conducting seismic and geophysical data collection may only conduct such activity by undershooting from an off-site location and without physical entry to private land, unless the landowner's consent for such activity is obtained in writing and (ii) persons conducting seismic or geophysical data collection shall be civilly liable for any physical or property damage determined to be a direct result of their seismic or geophysical data collection activities, whether or not the seismic or geophysical data collection was conducted by undershooting the land at an off-site location or by physical entry to land as permitted by the landowner.

(b) Conduct of seismic or geophysical data collection activities through physical entry to land without a landowner's written consent shall constitute a Class 1 misdemeanor."

SECTION 15.(b) This section is effective when it becomes law, except that G.S. 113-395D(b), as enacted by Section 15(a) of this act, shall become effective December 1, 2014.

SECTION 16. G.S. 87-98.4(b) is amended by adding a new subdivision to read:

"**§ 87-98.4. Well contractor certification required; exemptions.**

(a) Certification Required. – No person shall perform, manage, or supervise any well contractor activity without being certified under this Article. A person who is not a certified well contractor or who is not employed by a certified well contractor shall not offer to perform any well contractor activity unless the person utilizes a certified well contractor to perform the well contractor activity and, prior to the performance of the well contractor activity, the person discloses to the landowner in writing the name of the certified well contractor who will perform the well contractor activity, the certification number of the well contractor, and the name of the company that employs the certified well contractor.

(b) Exempt persons and activities. – This Article does not apply to any of the following persons or activities:

...

(14) Construction, repair, or abandonment of a well used for the exploration or development of oil or gas.

...."

PART VI. ESTABLISH SEVERANCE TAX

SECTION 17.(a) Chapter 105 of the General Statutes is amended by adding a new Article to read:

"Article 5I.

"Severance Tax.

"**§ 105-187.71. Definitions.**

The following definitions apply in this Article:

(1) Casinghead gas. – Gas or vapor indigenous to an oil stratum and produced from the stratum with oil.

(2) Commission. – The Mining and Energy Commission.

(3) Condensate. – Liquid hydrocarbon that is or can be recovered from gas by a separator or other means.

(4) Energy mineral. – All forms of natural gas, oil, and related condensates.

(5) First purchaser. – A person who purchases an energy mineral from a producer.

(6) Gas. – All natural gas, including casinghead gas, and all other hydrocarbons not defined as condensates.

(7) Gross price. – The total price paid by the first purchaser of the energy mineral at the wellhead.

(8) Marginal gas well. – A well incapable of producing more than 100 MCF per day, as determined by the Commission using the current wellhead deliverability rate methodology utilized by the Commission, during the calendar month for which the severance tax report is filed.

(9) MCF. – One thousand cubic feet of natural gas.

(10) Oil. – Crude petroleum oil, and other hydrocarbons, regardless of gravity, which are produced at the well in liquid form by ordinary production methods and which are not the result of condensation of gas after it leaves the reservoir.

(11) Owner. – An owner of a landowner's royalty interest, of an overriding royalty, of profits and working interests, or any combination thereof in energy minerals. The term does not include an owner of federal, State, or local governmental royalty interest.
(12) Person. – Defined in G.S. 105-228.90.
(13) Producer. – A person who takes an energy mineral from the soil or water in this State.
(14) Return. – Any report or statement required to be filed under this Article to determine the tax due.
(15) Royalty interest. – An interest in mineral rights in a producing leasehold in the State. A royalty interest does not include the interest of a person having only the management and operation of a well.
(16) Secretary. – The Secretary of Revenue.
(17) Severance. – The extraction or other removal of an energy mineral from the soil or water of this State.
(18) Severed. – The point at which the energy mineral has been separated from the soil or water of this State.
(19) Standard barrel of oil. – A barrel of oil containing 42 gallons.
(20) Taxpayer. – Any person required to pay the severance tax levied by this Article.

"**§ 105-187.72. Tax on severance of energy minerals.**

(a) Purpose. – An excise tax is levied on the privilege of engaging in the severance of energy minerals from the soil or water of this State. The purpose of the tax is to provide revenue to administer and enforce the provisions of this Article, to administer the State's natural gas and oil reclamation regulatory program, to meet the environmental and resource management needs of this State, and to reclaim land affected by exploration for, drilling for, and production of natural gas and oil. The severance tax is imposed upon all energy minerals severed when sold.

(b) Calculation of Tax. – The amount of the severance tax is calculated as follows:
(1) Condensates. – The applicable percentage rate of the gross price paid.
(2) Gas. – The applicable percentage rate of the market value as determined in G.S. 105-187.73.
(3) Oil. – The applicable percentage rate of the gross price paid.

(c) Oil and Condensates Rate. – The percentage rate for condensates and oil is two percent (2%).

(d) Marginal Gas Rate. – The producer of a proposed or existing gas well may apply to the Mining and Energy Commission for a determination that the well qualifies as a marginal gas well. The producer may elect to have the gas taxed at the marginal gas rate or the gas rate. For severance of gas from a marginal gas well the percentage rate is four-tenths of one percent (0.4%).

(e) Gas Rate. – The percentage rate for gas is nine-tenths of one percent (0.9%).

"**§ 105-187.73. Delivered to Market Value.**

(a) Delivered to Market Value of Natural Gas. – The delivered to market value of natural gas is the total actual gross price as adjusted in this section. The delivered to market value of gas is determined by subtracting the producer's actual costs to deliver the gas to the market from the producer's total gross cash receipts from the sale of the natural gas. A producer receiving a cost reimbursement from the gas purchaser shall include the reimbursement in the gross cash receipts and is entitled to deduct the actual costs of delivering the gas to market incurred.

(b) Records. – In order to be eligible to subtract the actual costs to deliver the gas to the market from the producer's gross receipts for purposes of calculating the delivered-to-market

value of natural gas, the producer shall provide any information required by the Secretary. Every producer subtracting the costs to deliver the gas to the market as permitted under this subsection shall maintain and make available for inspection by the Secretary any records the Secretary considers necessary to determine and verify the amount of the costs to deliver the gas to the market the producer is eligible to subtract. The burden of proving eligibility for subtracting the costs to deliver the gas to the market and the amount of the costs to deliver the gas to the market to be subtracted shall rest upon the producer, and no subtraction of costs to deliver the gas to the market shall be allowed to a producer that fails to maintain adequate records or to make them available for inspection.

(c) Costs to Deliver the Gas to the Market and Facilities Used to Deliver the Gas to the Market. – A "facility used to deliver the gas to market" includes flow lines or gathering systems from the separator to the purchaser's transmission line, compressor stations, dehydration units, line heaters after the separator, and treating facilities. "Costs to deliver the gas to the market" are the actual and reasonable costs incurred by the producer to get the gas from the mouth of the well to the first purchaser, except costs incurred in normal lease separation of the oil or condensate from the gas, and costs associated with insurance premiums on a facility used to deliver the gas to market. Costs to deliver the gas to the market include only the following:

(1) Costs for compressing the gas sold.
(2) Costs for dehydrating the gas sold.
(3) Costs for sweetening and treating the gas sold.
(4) Costs for delivering the gas to the purchaser.
(5) Reasonable charges for depreciation of the facility used to deliver the gas to market being used, provided that, if the facility is rented, the actual rental fee is added.
(6) Costs of direct or allocated labor associated with the facility used to deliver the gas to market.
(7) Costs of materials, supplies, maintenance, repairs, and fuel associated with the facility used to deliver the gas to market.
(8) Property taxes paid on the facility used to deliver the gas to market.
(9) Charges for fees paid by the producer to any provider of dehydration, treating, compression, and delivery services.

"**§ 105-187.74. On-site use exemption from the tax.**

On-site use is exempt from the tax imposed under this Article. On-site use is the severance of energy minerals from land or water in this State owned legally or beneficially by the producer, which energy minerals are used on the land from which they are taken by the producer as part of the improvement of or use in the producer's homestead and which have a yearly cumulative delivered to market value of not greater than one thousand two hundred dollars ($1,200). When severed energy minerals so used exceed a cumulative delivered to market value of one thousand two hundred dollars ($1,200) during any year, the further severance of energy minerals shall be subject to the tax imposed by this Article.

"**§ 105-187.75. Returns and payment of tax.**

(a) General. – Severance taxes are payable when a return is due. A return is due quarterly or monthly as specified in this section. A return must be filed by the producer of the energy mineral with the Secretary on a form prescribed by the Secretary and in the manner required by the Secretary. A return must be signed by the taxpayer or the taxpayer's agent.

(b) Payment. – A producer of energy minerals shall pay the tax for all owners of the energy minerals. The producer shall withhold from any payment due owners the proportionate tax due for remittance to the Secretary.

(c) Quarterly. – A taxpayer who is consistently liable for less than one thousand dollars ($1,000) a month in severance taxes must file a return and pay the taxes due on a quarterly

basis. A quarterly return covers a calendar quarter and is due by the 25th day of the second month following the end of the quarter.

(d) Monthly. – A taxpayer who is consistently liable for at least one thousand dollars ($1,000) a month in severance taxes must file a return and pay the taxes due on a monthly basis. A monthly return is due by the 25th day of the second month following the calendar month covered by the return.

(e) Category. – The Secretary must monitor the amount of severance taxes paid by a taxpayer or estimate the amount of taxes to be paid by a new taxpayer and must direct each taxpayer to pay tax and file returns as required by this section. In determining the amount of taxes due from a taxpayer, the Secretary must consider the total amount due from all places of business owned or operated by the same person as the amount due from that person. A taxpayer must file a return and pay tax in accordance with the Secretary's direction.

(f) Information on Return. – The amount of tax due and any other information required by the Secretary must be included on the return. Returns that do not contain the required information will not be accepted. When an unacceptable return is submitted, the Secretary will require a corrected return to be filed. The return must contain the following information concerning energy minerals produced during the month being reported:

(1) The gross amount of energy minerals produced that are subject to the tax imposed by this Article.

(2) The leases from which the energy minerals were produced.

(3) The names and addresses of the first purchasers of the energy minerals.

(g) Additional Information. – To claim an exemption for on-site use, the producer or taxpayer of a proposed or existing gas well shall apply to the Secretary for determination of eligibility. The Secretary may require an applicant to provide any information required to administer this provision. The Secretary shall make the determination within 15 calendar days of the receipt of all information required by the Secretary from the producer or taxpayer, and the producer or taxpayer shall attach the determination of eligibility to its severance tax form next due, as applicable. The taxpayer shall provide any information required by the Secretary. Every taxpayer claiming the exemption shall maintain and make available for inspection by the Secretary of Revenue any records the Secretary considers necessary to determine and verify the claim to which the taxpayer is entitled. The burden of proving eligibility shall rest upon the taxpayer, and no exemption shall be allowed to a taxpayer who fails to maintain adequate records or to make them available for inspection. The portion of the severance tax that is required to be deducted from the royalty owner or other interest shall be calculated in the same manner as the portion of the severance tax borne by the producer.

(h) Commission Determination. – To claim the marginal gas rate, the producer or taxpayer of a proposed or existing gas well shall provide to the Secretary proof that the Mining and Energy Commission has determined the well qualifies as a marginal gas well.

"**§ 105-187.76. Bond or letter of credit required.**

A producer must file with the Secretary a bond or an irrevocable letter of credit if the producer fails to file a return required under this Article. A bond or an irrevocable letter of credit must be conditioned upon compliance with the requirements of this Article, be payable to the State, and be in the form required by the Secretary. The amount of the bond or irrevocable letter of credit is two times the applicant's average expected monthly tax liability under this Article, as determined by the Secretary. When notified to do so by the Secretary, a person who is required to file a bond or an irrevocable letter of credit must file the bond or irrevocable letter of credit in the amount required by the Secretary within 30 days after receiving the notice from the Secretary.

"**§ 105-187.77. Liability of producer for tax.**

The tax imposed by this Article is the primary liability of the producer, except as provided in this section. A first purchaser may not take delivery of energy minerals from a producer

unless the producer furnishes the purchaser with a taxpayer identification number assigned by the Secretary. A first purchaser failing to secure the producer's taxpayer number, either from the producer or the Secretary, will be liable for any tax, penalty, and interest due on the energy minerals purchased from the producer.

"**§ 105-187.78. Royalty owner's records.**

The owner of a royalty interest shall keep and provide to the Secretary, upon request, both of the following:

(1) A record of all money received as royalty from each producing leasehold in the State.

(2) A copy of all settlement sheets furnished by a purchaser or operator or other statement showing the amount of energy minerals for which a royalty was received and the amount of severance tax deducted.

"**§ 105-187.79. Permits suspended for failure to report.**

If an entity fails to file any report or return or to pay any tax or fee required by this Article for 90 days after it is due, the Secretary shall inform the Secretary of Environment and Natural Resources of this failure. The Secretary of Environment and Natural Resources shall suspend permits for oil and gas exploration using horizontal drilling and hydraulic fracturing under G.S. 113-395 of any entity that fails to file a return under this Article. The Secretary of Environment and Natural Resources shall immediately notify by mail an entity of a suspension under this section.

"**§ 105-187.80. No local taxation.**

A city or county may not impose a franchise, privilege, license, income, or excise tax on the severing, production, treating, processing, ownership, sale, storage, purchase, marketing, or transportation on any energy minerals produced in the State, or upon the business of severing, producing, treating, processing, owning, selling, buying, storing, marketing, or transporting such energy minerals, or upon the ownership, operation, or maintenance of plants, facilities, machinery, pipelines, and gathering lines related to the severing, production, treating, processing, ownership, storage, sale, purchase, marketing, or transportation of energy minerals. This section does not preclude the taxation of the property in accordance with Article 11 of this Chapter."

SECTION 17.(b) G.S. 105-259(b) is amended by adding a new subdivision to read:

"(46) To furnish to the Department of Environment and Natural Resources the name, address, tax year end, and account and identification numbers of an entity liable for severance tax to enable the Secretary of Environment and Natural Resources to notify the entity that the Department of Environment and Natural Resources shall suspend permits of the entity for oil and gas exploration using horizontal drilling and hydraulic fracturing under G.S. 113-395."

SECTION 17.(c) G.S. 113-387 and G.S. 113-388 are repealed.

SECTION 17.(d) G.S. 105-187.72, as enacted by Section 17(a) of this act, reads as rewritten:

"**§ 105-187.72. Tax on severance of energy minerals.**

...

(c) Oil and Condensates Rate. – The percentage rate for condensates and oil is ~~two percent (2%).~~three and one-half percent (3.5%).

(d) Marginal Gas Rate. – The producer of a proposed or existing gas well may apply to the Mining and Energy Commission for a determination that the well qualifies as a marginal gas well. The producer may elect to have the gas taxed at the marginal gas rate or the gas rate. For severance of gas from a marginal gas well the percentage rate is ~~four-tenths of one percent (0.4%).~~six-tenths of one percent (0.6%).

(e) Gas Rate. – The percentage rate for gas ~~is nine tenths of one percent (0.9%).~~is set in the table below. The tax rate is applied to the delivered to market value of the gas sold.

Over	Up to	Rate
-0-	$3.00 per MCF	0.9%
$3.01 per MCF	$4.00	1.9%
$4.01	N/A	2.9%"

SECTION 17.(e) G.S. 105-187.72, as enacted by Section 17(a) of this act, and amended by Section 17(d) of this act, reads as rewritten:

"**§ 105-187.72. Tax on severance of energy minerals.**

...

(c) Oil and Condensates Rate. – The percentage rate for condensates and oil is ~~three and one-half percent (3.5%).~~five percent (5%).

(d) Marginal Gas Rate. – The producer of a proposed or existing gas well may apply to the Mining and Energy Commission for a determination that the well qualifies as a marginal gas well. The producer may elect to have the gas taxed at the marginal gas rate or the gas rate. For severance of gas from a marginal gas well the percentage rate is ~~six tenths of one percent (0.6%).~~eight-tenths of one percent (0.8%).

(e) Gas Rate. – The percentage rate for gas is set in the table below. The tax rate is applied to the delivered to market value of the gas sold.

Over	Up to	Rate
-0-	$3.00 per MCF	0.9%
$3.01 per MCF	$4.00	1.9%
$4.01	~~N/A~~$5.00	2.9%
$5.01	$6.00	3.9%
$6.01	$7.00	4.9%
$7.01	N/A	5%"

SECTION 17.(f) G.S. 105-187.72(e), as enacted by Section 17(a) of this act, and amended by Sections 17(d) and 17(e) of this act, reads as rewritten:

"(e) Gas Rate. – The percentage rate for gas is set in the table below. The tax rate is applied to the delivered to market value of the gas sold.

Over	Up to	Rate
-0-	$3.00 per MCF	0.9%
$3.01 per MCF	$4.00	1.9%
$4.01	$5.00	2.9%
$5.01	$6.00	3.9%
$6.01	$7.00	4.9%
$7.01	~~N/A~~$8.00	~~5%~~5.9%
$8.01	$9.00	6.9%
$9.01	$10.00	7.9%
$10.01	N/A	9%"

SECTION 18. G.S. 105-275 is amended by adding a new subdivision to read:

"(47) Energy mineral interest in property for which a permit has not been issued under G.S. 113-395. For the purposes of this subdivision, "energy mineral" has the same meaning as in G.S. 105-187.71."

SECTION 19. Sections 17(a), 17(b), and 17(c) become effective July 1, 2015, and apply to energy minerals severed on or after that date. Section 17(d) becomes effective January 1, 2019, and applies to energy minerals severed on or after that date. Section 17(e) becomes effective January 1, 2021, and applies to energy minerals severed on or after that date. Section 17(f) becomes effective January 1, 2023, and applies to energy minerals severed on or after that date. Section 18 is effective for taxes imposed for taxable years beginning on or after July 1, 2015. The remainder of this Part is effective when it becomes law.

PART VII. STUDIES

SECTION 20. The Local Government Division of the Department of Revenue shall study how other states value energy minerals for the purpose of property taxation. The Division shall establish guidelines for counties to ensure the consistent and fair taxation of energy minerals throughout the State. The Local Government Division shall report its findings to the Joint Legislative Commission on Energy Policy by January 1, 2015.

SECTION 21. The Joint Legislative Commission on Energy Policy shall study how the development of the oil and gas industry in the State would affect the property tax revenues of local governments. The study shall examine how the presence of energy minerals will affect property enrolled in the present use value program. The study shall also study ways to limit the growth of property tax revenues that result from increased property valuations due to the development of the oil and gas industry in the State. The Commission shall report to the 2015 General Assembly on its findings and recommendations, including any legislative recommendations.

SECTION 22.(a) The Department of Commerce, in consultation with the Department of Environment and Natural Resources, the North Carolina Ports Authority, and the Department of Administration, shall study the desirability and feasibility of siting, constructing, and operating a liquefied natural gas (LNG) export terminal in North Carolina. At a minimum, as a part of the study, the agencies shall:

(1) Identify the State, federal, and local regulatory programs under which LNG export terminals are permitted and approved.

(2) Identify any State statutory or regulatory barriers to siting, constructing, or operating a LNG export terminal in the State.

(3) Evaluate infrastructure needs and impacts as follows:

a. Identify the infrastructure that is necessary to support a LNG export terminal.

b. Identify any idle publicly owned infrastructure that may be utilized to support LNG export terminal operations.

c. Identify publicly owned unutilized or underutilized lands that may be used to support LNG export terminal operations.

d. Identify potential impacts on infrastructure, including roads, pipelines, and water and wastewater services, and other provision of services by local governments including schools, law enforcement, and development.

(4) Conduct a cost-benefit analysis for the construction and operation of an LNG export terminal. The analysis shall evaluate scenarios in which the State is the primary producer of the exported natural gas and scenarios in which the State is not the primary producer of the exported natural gas.

(5) Examine potential economic impacts, including:

a. Possible sources of revenue that could accrue to the benefit of the State if LNG is exported from a terminal in North Carolina.

b. The number of jobs that may be expected as a result from the construction and operation of a LNG export terminal.

(6) Identify and evaluate potential environmental impacts of construction and operation of a LNG export terminal. In examining this issue, the agencies shall gather information on regulatory programs in other states where LNG export terminals are in operation.

(7) Identify potential social impacts, including impacts of construction and operation of a LNG export terminal on nearby communities and quality of

life within those communities, recreational activities, and commercial and residential development.

(8) Examine any other pertinent issues that the agencies deem relevant to the construction and operation of a LNG export facility in the State.

SECTION 22.(b) The Department of Commerce shall report its findings and recommendations to the Joint Legislative Commission on Energy Policy and the Environmental Review Commission on or after January 1, 2015.

SECTION 23.(a) The Department of Transportation shall study (i) additional statutory authority that may be necessary or advisable for the Department to adequately address energy-related traffic, including authority that pertains to permitting and assessment of fees; (ii) the feasibility and advisability of including any requirements that the Department may recommend to manage energy-related traffic, and resulting impacts, in a coordinated permit in conjunction with requirements of the Department of Environment and Natural Resources, or whether such requirements should be implemented through a separate permitting process; and (iii) performance bonding and other surety mechanisms, including road use agreements, to reclaim and repair any State posted roads that are damaged due to heavy vehicle, equipment, and machinery traffic used in support of and conjunction with horizontal drilling and hydraulic fracturing operations on State posted roads. For purposes of this study, the term "posted roads" means a system that records any secondary road on the State Highway System that is unable to carry heavy vehicles or equipment. In the conduct of its study, the Department shall do the following:

(1) Consider mechanisms for requiring performance bonds running to the Department.

(2) Develop criteria for setting the amount of the bond, including the weight and size of the proposed vehicles, equipment and machinery projected to utilize posted roads, the planned route and projected number of trips, and the duration of the activity necessitating travel of heavy vehicles, equipment, and machinery along posted roads.

(3) Identify documentation necessary to support bonding of posted roads.

(4) Identify any statutory or regulatory changes necessary to maintain and protect the State's transportation infrastructure network.

SECTION 23.(b) The Department of Transportation shall report its findings and recommendations, including any legislative proposals, to the Joint Legislative Energy Policy Commission and the Joint Legislative Transportation Oversight Committee on or before January 1, 2015.

SECTION 24.(a) The State Board of Community Colleges shall study the feasibility and desirability of developing a program to prepare students with a general education foundation and technical competencies for employment opportunities in the oil and natural gas drilling, gathering, and field operations industry. In particular, the State Board shall consider developing such a program at one or more of the community colleges located where the potential for shale gas resources is highest. In the conduct of its study, the State Board shall evaluate similar education programs in community college systems in other states.

SECTION 24.(b) The State Board shall report its findings and recommendations, including any legislative proposals, to the Joint Legislative Energy Policy Commission and the Joint Legislative Education Oversight Committee on or before January 1, 2015.

SECTION 25.(a) The General Assembly finds the following:

(1) Section 2(l) of S.L. 2012-143 directed the Mining and Energy Commission, in conjunction with the Department of Environment and Natural Resources and the Consumer Protection Division of the North Carolina Department of Justice, to study the State's current law on the issue of integration or compulsory pooling and other states' laws on the matter; and

(2) Whereas, the Department was directed to report its findings and recommendations, including legislative proposals, to the Joint Legislative Commission on Energy Policy and the Environmental Review Commission on or before January 1, 2013; and

(3) The Mining and Energy Commission and the Department issued separate reports pursuant to the study; and

(4) The Mining and Energy Commission's report included specific recommendations for legislative changes related to compulsory pooling; and

(5) The Department's report did not include specific recommendations for legislative changes related to compulsory pooling; and

(6) In lieu of specific recommendations for legislative changes, the Department recommended that "prior to establishing new laws related to compulsory pooling, the General Assembly should consider the rules adopted by the Mining and Energy Commission related to oil and gas exploration, including, but not limited to, rules concerning drilling units, spacing requirements, and setbacks, all of which will affect the regulation of compulsory pooling in the State." And the Department further recommended that "decisions on the status and implementation of a compulsory pooling law precede decisions related to cost sharing, notifications, and compensation for damages" and "further study on the issue of amending current dormant mineral statutes regarding extinguishment and other consumer protection issues related to split estates."

SECTION 25.(b) Based upon the findings of Section 24(a) of this act, the General Assembly directs the Department to do the following:

(1) Examine the Mining and Energy Commission's rules, once adopted, related to oil and gas exploration, including, but not limited to, rules concerning drilling units, spacing requirements, and setbacks, and all rules the Department determines will affect the regulation of compulsory pooling in the State.

(2) Study, in conjunction with the Mining and Energy Commission and the Consumer Protection Division of the North Carolina Department of Justice, the issue of amending current dormant mineral statutes regarding extinguishment and other consumer protection issues related to split estates.

(3) Issue specific recommendations for legislative action related to compulsory pooling and dormant mineral statutes and report the findings of their study, including specific proposals for legislative action, to the Joint Legislative Commission on Energy Policy and the Environmental Review Commission on or before October 1, 2015.

SECTION 26. The Mining and Energy Commission and the Department of Environment and Natural Resources shall study the development of midstream infrastructure in North Carolina, which is necessary or advisable to facilitate the exploration, development, and production of the State's oil and gas resources. Infrastructure examined shall include development of pipelines, gathering systems, compressor stations, pumping systems, on-site and near-site storage tanks, and natural gas liquids processing systems. All State agencies, including the constituent institutions of The University of North Carolina, shall provide information and support to the Commission and the Department in the conduct of this study. The Commission shall report the findings of this study, including specific proposals for legislative action, to the Joint Legislative Commission on Energy Policy on or before March 1, 2015.

SECTION 27. The State Energy Office in the Department of Environment and Natural Resources shall study and make legislative recommendations on a comprehensive

long-range State energy policy to achieve maximum effective management and use of present and future sources of energy. The Office shall study all of the following:

(1) The long-term environmental and economic impact of base load power generation of electric public utilities.

(2) The comparison of base load power generation alongside all other forms of energy used for power generation, including renewable and alternative sources of energy, and the environmental and economic impact of all forms of power generation.

(3) The implementation of S.L. 2007-397, including environmental and economic impacts of the law, and recommendations on any changes to the law as necessary.

The State Energy Office shall report its findings to the Joint Legislative Commission on Energy Policy on or before December 1, 2014.

SECTION 28.(a) The Division of Purchase and Contract in the Department of Administration shall, in coordination with the Department of Public Instruction, provide that any fuel option may be considered for the award of a school bus contract. In the development of requests for proposals for school buses, the Departments shall include any fuel option practicable, including diesel, propane, liquefied natural gas, compressed natural gas, and electricity.

SECTION 28.(b) The consideration of any fuel sources in Section 27(a) of this act shall apply to any changes or modifications to term contracts executed on or after the effective date of this section.

SECTION 28.(c) The Department of Administration and the Department of Public Instruction shall jointly study the infrastructure that would be necessary to support school bus fleets fueled by natural gas and report any findings and recommendations to the Joint Legislative Energy Policy Commission on or before January 1, 2015.

PART VIII. MISCELLANEOUS PROVISIONS UNRELATED TO SHALE GAS

SECTION 29.(a) G.S. 114-4.2D is repealed.

SECTION 29.(b) G.S. 113B-11(e) reads as rewritten:

"(e) Staff support required by the Council shall be supplied by the Division of Energy, Mineral, and Land Resources of the Department of Environment and Natural Resources. The Department of Environment and Natural Resources shall provide legal support to the Council as needed from the Department's staff. The Department of Commerce and the Utilities Commission are hereby authorized to make their staff available to the Council to assist in the development of a State energy policy."

SECTION 30.(a) G.S. 105-449.130 is amended by adding a new subdivision to read:

"(1f) Diesel gallon equivalent of liquefied natural gas. – The energy equivalent of 6.06 pounds of liquefied natural gas."

SECTION 30.(b) G.S. 105-449.130 is amended by adding a new subdivision to read:

"(1g) Gas gallon equivalent of compressed natural gas. – The energy equivalent of 5.66 pounds of compressed natural gas."

SECTION 30.(c) G.S. 105-449.136 reads as rewritten:

"**§ 105-449.136. Tax on alternative fuel.**

(a) Rate. – A tax at the motor fuel rate is imposed on liquid alternative fuel used to operate a highway vehicle by means of a vehicle supply tank that stores fuel only for the purpose of supplying fuel to operate the vehicle. The tax on liquefied natural gas is imposed on each diesel gallon equivalent of liquefied natural gas. A tax at the equivalent of the motor fuel rate is imposed on all other alternative fuel used to operate a highway vehicle. The tax on

compressed natural gas is imposed on each gas gallon equivalent of compressed natural gas. The Secretary must determine the equivalent ~~rate.~~ rate for all other non-liquid alternative fuels.

(b) Administration. – The exemptions from the tax on motor fuel in G.S. 105-449.88 apply to the tax imposed by this section. The refunds for motor fuel tax allowed by Part 5 of Article 36C of this Chapter apply to the tax imposed by this section, except that the refund allowed by G.S. 105-449.107(b) for certain vehicles that use power takeoffs does not apply to a vehicle whose use of alternative fuel is taxed on the basis of miles driven. The proceeds of the tax imposed by this section must be allocated in accordance with G.S. 105-449.125."

SECTION 30.(d) This section becomes effective January 1, 2015.

PART IX. SEVERABILITY AND EFFECTIVE DATE

SECTION 31.(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 31.(b) Except as otherwise provided, this act is effective when it becomes law.

SENATE BILL 786:
Energy Modernization Act

2013-2014 General Assembly

Committee:	Senate Ref to Commerce. If fav, re-ref to Finance	**Date:**	May 20, 2014
Introduced by:	Sens. Rucho, Newton, Brock	**Prepared by:**	Jennifer McGinnis and Heather Fennell, Staff Attorneys Jennifer Mundt, Legislative Analyst
Analysis of:	PCS to First Edition S786-CSRIxf-35		

SUMMARY: The Proposed Committee Substitute (PCS) to Senate Bill 786 does the following:

PART I. EXTENSION OF RULE DEVELOPMENT DEADLINE

SECTION 1 of the PCS would extend the rule development deadline to January 1, 2015. Under current law, Section 2(m) of S.L. 2012-143 requires the Mining and Energy Commission (MEC) to adopt rules for a modern regulatory program for the management of oil and gas, including the use of hydraulic fracturing for that purpose by October. 1, 2014.

PART II. EXEMPTIONS FROM THE ADMINISTRATIVE PROCEDURE ACT (APA)

SECTION 2.(a) of the PCS would modify a provision in the APA that requires that rules be adopted by the Rules Review Commission (RRC) 25 days before the start of a legislative session in order to be eligible for legislative review during that session. The PCS would eliminate the 25 day requirement, as it applies to rules for the management of oil and gas, thus making such rules eligible for legislative review no matter when approved, including if they are approved while a session is underway.

SECTION 2.(b) of the PCS would modify a provision in the APA that provides that a legislator may introduce a bill during the first 30 legislative days of any regular session to disapprove a rule that has been approved by the RRC. The PCS would change the time allowed to file a disapproval bill from 30 legislative days to 30 calendar days. The language allows for the circumstance in which the rules are approved while session is underway (and at that point become subject to legislative review).

SECTION 2.(c) of the PCS would modify a provision under the APA that governs filing of disapproval bills in connection with the legislative review process for rules. Specifically, the APA provides that if a disapproval bill is filed in connection with a rule or suite of rules, the rule(s) cannot become effective until the earlier of either: (i) the day an unfavorable final action is taken on a disapproval bill, or (ii) the day that session adjourns without ratifying a disapproval bill.

The PCS would provide instead that rules for the management of oil and gas would become effective on the earlier of: (i) the 31st calendar day of a regular session that begins after the date the RRC approved the rule if a bill that specifically disapproves the rule has not been introduced in either house of the General Assembly by that date; or, (ii) if a bill that specifically disapproves the rule is introduced in either house of the General Assembly before the 31st calendar day of that session, the rule becomes effective on the earlier of either the day an unfavorable final action is taken on the bill, or the 61st calendar day of the session if by that date a bill that specifically disapproves the rule has not been ratified. The language allows for the circumstance in

which the rules are approved while session is underway (and at that point become subject to legislative review).

SECTION 2.(d) of the PCS would modify a provision under the APA that provides that rules received by the 20th day of a month must be reviewed by the RRC by the "last day of the second subsequent month." Instead, the PCS would provide that the RRC must review any rule for the management of oil and gas submitted to it by the end of a month by the last day of the next month (thereby potentially expediting review by a month).

SECTION 2.(e) of the PCS would exempt the rules for the management of oil and gas from the limitations under the APA that govern certain environmental rules.

SECTION 2.(f) of the PCS would modify a provision enacted in 2013 that exempted rules for the management of oil and gas from any requirements under the APA to prepare fiscal notes to provide that the fiscal note exemption for such rules may operate until the provision sunsets on December 31, 2017.

SECTION 2.(g) of the PCS would exempt rules for the management of oil and gas from any requirements under the APA that require that a certification be obtained from the Office of State Budget and Management (OSBM), and any requirement for preliminary review of the rules by OSBM.

PART III. DATE CERTAIN FOR ISSUANCE OF PERMITS TO JULY 1, 2015

SECTION 3.(a) of the PCS would, effective July 1, 2015, authorize the Department of Environment and Natural Resources (DENR) and MEC to issue permits for oil and gas exploration, development, and production activities using horizontal drilling and hydraulic fracturing treatments.

SECTION 3.(b) of the PCS would repeal Section 3(d) of S.L. 2012-143 (S820), which prohibited the issuance of permits for oil and gas exploration and development activities using the processes of horizontal drilling and hydraulic fracturing in the State until the General Assembly took legislative action to allow the issuance of such permits, in order to allow the Mining and Energy Commission to create a modern regulatory program to govern all aspects of such activities.

SECTION 3.(c) of the PCS would repeal Section 1(c) of S.L. 2013-365 (S76), which amended the moratorium on issuance of permits for oil and gas exploration and development activities enacted by Section 3(d) of S.L. 2012-143 (S820), to prohibit issuance of permits until: (i) all rules required to be adopted by MEC, the Environmental Management Commission, and the Commission for Public Health pursuant to S.L. 2012-143 (S820) have become effective and (ii) the General Assembly takes affirmative legislative action, including repeal of Section 3(d) of S.L. 2012-143 (S820), to allow the issuance of such permits.

PART IV. CREATE OIL AND GAS COMMISSION AND RECONSTITUTE MINING COMMISSION

SECTIONS 4, 5, and 6 of the PCS would, effective July 31, 2015, reinstate the Mining Commission (to consist of 7 members) and establish the Oil and Gas Commission (to consist of 9 members) as separate entities. The terms of all members serving on MEC would expire on July 31, 2015, and new appointments to the two distinct commissions would be required by August 1, 2015.

PART V. MISCELLANEOUS STATUTORY CHANGES RELATED TO SHALE GAS EXPLORATION, DEVELOPMENT, AND PRODUCTION

SECTION 7 of the PCS would: (i) eliminate two references in the statutes concerning MEC's authority to require operation of wells with efficient gas oil ratios, based upon information that the language

is antiquated and does not readily adapt to unconventional oil and gas wells such as those found in the Triassic basin; and (ii) provide that that entry of rules in the North Carolina Administrative Code that address areas identified in subsections (a) and (a3) of G.S. 113-391 by July 1, 2015, create a rebuttable presumption that the rules are sufficient to meet the requirements for development of a modern regulatory program pursuant to that section of the General Statutes.

SECTION 8 of the PCS would clarify requirements applicable to trade secrets received in connection with permitted oil and gas activities. Specifically, the provision would explicitly require: (i) MEC and DENR to retain trade secret information received; (ii) provision of the information to the Division of Emergency Management; and (iii) immediate disclosure of the information to first responders and medical personnel in the event of an emergency. Unlawful disclosure of information in violation of the provision would constitute a Class I felony[1]. Appeals of decisions concerning trade secrets would be directed to the Business Court.

SECTION 9 of the PCS would repeal a provision in the statutes that requires State involvement regarding an owner's request for a survey. Specifically, current law reads as follows:

> "(6) To require surveys upon application of any owner who has reason to believe that a well has been unlawfully drilled by another person into land of the owner without permission. In the event such surveys are required, the costs thereof shall be borne by the owner making the request."

SECTION 10 of the PCS would repeal a provision in the statutes that requires each well to be drilled in the center of a drilling unit, based upon information that the language does not readily adapt to unconventional oil and gas wells such as those found in the Triassic basin.

SECTION 11 of the PCS would reduce the fee due upon application to drill, from $3,000 for each well drilled, to $3,000 for a first well on a pad and $1,500 for each additional well on the same pad.

SECTION 12 of the PCS would amend a provision in existing law that requires oil and gas operators to provide surface owners with advance notice prior to entry to property (14 days for non-land disturbing; 30 days for land-disturbing), to add language requiring notice to subsurface owners as well (30 days for initiation of exploration, development, and production activities).

SECTION 13 of the PCS would:

- Amend a provision enacted in 2011 that established an oil and gas operator's presumptive liability for contamination of water supplies located within 5,000 feet of a wellhead, to change the distance to water supplies located within a ½ mile radius of a wellhead.
- Amend a provision enacted in 2011 that required an oil and gas operator to conduct pre-drilling testing of water supplies within 5,000 feet of a wellhead, to change the required distance to a ½ mile radius. Under current law, the provision also allows a surface owner to elect to have DENR sample the water supplies, in lieu of the operator – the PCS would specify that rather than DENR, a surface owner could elect to have an independent third party from a DENR-approved list conduct the sampling (with the costs of testing still reimbursed by the operator). In addition, the PCS would explicitly state that an operator must provide the results of any testing conducted

[1] Assuming no prior convictions, the presumptive minimum sentence for a Class I felony is 4-6 months community punishment. The disposition may range from supervised or unsupervised probation, community service, restitution, or fines. The amount of the fine would be in the discretion of the court.

within 30 days of sampling to DENR, and allow operators to share results of testing with other operators.

- Specify that actions for recovery of cleanup costs, damages, or for civil penalties may be brought against any of the persons having control over the activities that contributed to the contamination, damage to property, or other violations, and provides that such persons would be jointly and severally liable, with ultimate liability between the parties determined by common-law principles.

SECTION 14 of the PCS would invalidate local ordinances that prohibit or have the effect of prohibiting oil and gas exploration, development, and production activities (including, those that would impose taxes, fees, or charges, or that regulate health, environment, or land use). The provision mirrors a statute preempting local government regulation of hazardous waste facilities (G.S. 130A-293). Specifically, the PCS would invalidate ordinances that:

- Prohibit the siting of wells for oil and gas exploration, development, and production within any county, city, or other political subdivision.
- Prohibit the use of horizontal drilling or hydraulic fracturing for the purpose of oil or gas exploration or development within any county, city, or other political subdivision.
- Place any restriction or condition not placed by the statutes governing oil and gas upon oil and gas exploration, development, and production activities and use of horizontal drilling or hydraulic fracturing for that purpose within any county, city, or other political subdivision.
- In any manner are in conflict or inconsistent with the provisions of the statutes governing oil and gas.

SECTION 15 of the PCS would:

- Require that all natural gas compressor stations associated with an oil and gas drilling operation be located inside a baffled building.
- Include a provision in the statutes governing oil and gas that prohibits the injection of wastes produced in connection with oil and gas exploration, development, and production, and use of horizontal drilling and hydraulic fracturing treatments to subsurface or groundwaters of the State by means of wells. Note that this is prohibited in another Chapter of the General Statutes, and is also prohibited under a draft rule pending with MEC.
- Provide that DENR may conduct an environmental compliance review of each applicant for a new permit for oil and gas activities in order to determine the extent to which the applicant, or affiliated entity, has substantially complied with the requirements applicable to any activity in which any of these entities previously engaged, and has substantially complied with federal, North Carolina, and other states' laws, regulations, and rules for the protection of the environment. DENR is authorized to deny an application for a permit if the applicant has a history of significant or repeated violations of statutes, rules, orders, or permit terms or conditions for the protection of the environment or for the conservation of natural resources as evidenced by civil penalty assessments, administrative or judicial compliance orders, or criminal penalties. DENR is also authorized to modify or revoke a permit, or require issuance of a new permit, based on substantial changes to environmental compliance history after a permit's issuance.
- Provide that no liability for trespass would arise from activities conducted for the purpose of seismic or geophysical data collection if a person has a landowner's written consent to enter the land for the activities, or if the person conducts seismic and geophysical data collection by undershooting from an off-site location and without physical entry to private land. If such activities are conducted through physical entry to land without a landowner's written consent, the

violation would constitute a Class 1 misdemeanor[2]. The language further provides that persons conducting seismic or geophysical data collection are civilly liable for any physical or property damage determined to be a direct result of their seismic or geophysical data collection activities, whether or not the seismic or geophysical data collection was conducted by undershooting the land at an off-site location or by physical entry to land as permitted by the landowner.

SECTION 16 of the PCS would exempt persons engaged in activities involving the construction, repair, or abandonment of a well used for the exploration or development of oil or gas from the water well contractor certification requirements under Chapter 87 of the General Statutes.

PART VI. SEVERANCE TAX

SECTIONS 17 THROUGH 19:

The draft proposal would repeal North Carolina's current severance tax and levies a new severance tax on the removal of energy minerals from the soil and water of the State. The current State severance tax was enacted in 1945 and has not been modified since 1973. The current tax is five mills on each barrel of oil (the equivalent of .5¢ per barrel of oil) and one-half mill on each 1000 cubic feet of gas (the equivalent of .05¢ per 1000 cubic feet of gas). No tax is collected under the current law. The new severance tax would add condensates to the tax base, raise the tax rate on oil, and create a floating tax rate for gas.

Energy minerals are defined in the draft to include all forms of natural gas, oil, and related condensates. Thirty-three states, including North Carolina, currently impose some form of severance taxes on the extraction of oil and gas. Of the 33 states, 25 states impose a tax as a percentage of the value of the resource extracted, 7 states impose a tax on the volume extracted, and 1 state imposes a tax that is a combination of the two methods.

Tax Rate – Marginal gas is the gas produced from a well that is only capable of producing a small amount of gas (no more than 100 MCF of gas). The tax rate for the severance of energy minerals would be as follows:

	2015-2018	2019-2020			2021-2023			2023 and thereafter		
Oil and condensates	2%	3.5%			5%			5%		
Marginal Gas	.4%	.6%			.8%			.8%		
Gas	.9%	Based on *delivered to market* price per mcf			Based on *delivered to market* price per mcf			Based on *delivered to market* price per mcf		
		Over	Up to	Rate	Over	Up to	Rate	Over	Up to	Rate
		-0-	$3	.9%	-0-	$3	.9%	-0-	$3	.9%
		$3.01	$4	1.9%	$3.01	$4	1.9%	$3.01	$4	1.9%
		$4.01	NA	2.9%	$4.01	$5	2.9%	$4.01	$5	2.9%
					$5.01	$6	3.9%	$5.01	$6	3.9
					$6.01	$7	4.9%	$6.01	$7	4.9%
					$7.01	NA	5%	$7.01	$8	5.9%
								$8.01	$9	6.9%
								$9.01	$10	7.9%
								$10.01	NA	9%

[2] Assuming no prior convictions the presumptive minimum sentence for a Class 1 misdemeanor is 1-45 days community punishment. The disposition may range from supervised or unsupervised probation, community service, restitution, or fines. The amount of the fine would be in the discretion of the court.

Tax Base – For condensates and oil, is applied to the total actual gross price paid by the first purchaser of the condensate or oil. For gas, the tax rate is applied to the "delivered to market" value of the mineral sold. The "delivered to market value" of gas is the actual gross price paid minus the costs incurred by the producer to get the gas from the mouth of the well to the first purchaser.

Administration – The tax would be the liability of the producer of the gas. The producer is the entity that extracts the mineral from the soil or the water of the State. Returns and taxes are due on either a monthly or quarterly basis, depending on the tax liability of the producer. A bond or letter of credit would be required for producers that fail to file a return or make a payment of tax due.

Permit Suspension – Permits for oil and gas exploration using horizontal drilling or hydraulic fracturing would be suspended for any producer that fails to file a return or make a payment for severance taxes.

No Local Taxes – Local governments would not be authorized to impose any additional taxes on the severance of energy minerals in the State.

Property Taxes – The value of real property attributable to the presence of energy minerals is exempt from taxation where a permit to drill on the property has not been issued.

PART VII. STUDIES

SECTION 20 of the PCS would direct the Local Government Division of the Department of Revenue to: (i) study how other states value energy minerals for the purpose of property taxation; and, (ii) establish guidelines for counties to ensure the consistent and fair taxation of energy minerals throughout the State. The Division would report its findings to the Joint Legislative Commission on Energy Policy on or before January 1, 2015.

SECTION 21 of the PCS would direct the Joint Legislative Commission on Energy Policy to study how the development of the energy industry will affect the property tax revenues of local governments. The study shall examine how the industry will affect property enrolled in the present use value program, and ways to limit the growth of property tax revenues resulting from increased property valuations due to energy production. The Commission shall report its findings to the 2015 General Assembly.

SECTION 22 of the PCS would direct the Department of Commerce, in consultation with DENR, the North Carolina Ports Authority, and the Department of Administration, to study the desirability and feasibility of siting, constructing, and operating a liquefied natural gas (LNG) export terminal in North Carolina. The Department of Commerce would report its findings and recommendations to the Joint Legislative Commission on Energy Policy and the Environmental Review Commission (ERC) on or before January 1, 2015.

SECTION 23 of the PCS would direct the Department of Transportation to study: (i) additional statutory authority that may be necessary or advisable for DOT to adequately address energy-related traffic, including authority that pertains to permitting and assessment of fees; (ii) the feasibility or advisability of including any requirements that DOT may recommend to manage energy-related traffic, and resulting impacts, in a coordinated permit in conjunction with requirements of the Department of Environment and Natural Resources, or whether such requirements should be implemented through a separate permitting process; and (iii) performance bonding and other surety mechanisms, including road use agreements, to reclaim and repair any State posted roads that are damaged due to heavy vehicle, equipment, and machinery traffic used in support of and conjunction with horizontal drilling and hydraulic fracturing operations on State posted roads. DOT would report its finding and recommendations, including any legislative proposals, to the Joint Legislative Energy Policy Commission and the Joint Legislative Transportation Oversight Committee on or before January 1, 2015.

SECTION 24 of the PCS would direct the State Board of Community Colleges to study the feasibility and desirability of developing a program to prepare students with a general education foundation and technical competencies for employment opportunities in the oil and natural gas drilling, gathering, and field operations industry. Specifically, the State Board would be required to consider developing such a program at one or more of the community colleges located where the potential for shale gas resources is highest and would evaluate similar education programs in community college systems in other states. The State Board would report its findings and recommendations, including any legislative proposals to the Joint Legislative Energy Policy Commission and the Joint Legislative Education Oversight Committee on or before January 1, 2015.

SECTION 25 of the PCS would direct DENR to:

(1) Examine MEC's rules, once adopted, related to oil and gas exploration, including, but not limited to, rules concerning drilling units, spacing requirements, and setbacks, and all rules DENR determines will affect the regulation of compulsory pooling in the State.

(2) Study, in conjunction with MEC and the Consumer Protection Division of the North Carolina Department of Justice, the issue of amending current dormant mineral statutes regarding extinguishment and other consumer protection issues related to split estates.

(3) Issue specific recommendations for legislative action related to compulsory pooling and dormant mineral statutes and report the findings of their study, including specific proposals for legislative action, to the Joint Legislative Commission on Energy Policy and the Environmental Review Commission on or before October 1, 2015.

SECTION 26 of the PCS would direct MEC and DENR to study the development of midstream infrastructure in North Carolina, which is necessary or advisable to facilitate the exploration, development, and production of the State's oil and gas resources. Infrastructure examined must include development of pipelines, gathering systems, compressor stations, pumping systems, on-site and near-site storage tanks, and natural gas liquids processing systems. MEC would report the findings of this study, including specific proposals for legislative action, to the Joint Legislative Commission on Energy Policy on or before March 1, 2015.

SECTION 27 of the PCS would direct the State Energy Office to study and make legislative recommendations on a comprehensive long-range State energy policy to achieve maximum effective management and use of present and future sources of energy. The Office shall study all of the following:

(1) The long-term environmental and economic impact of base load power generation of electric public utilities.

(2) The comparison of base load power generation alongside all other forms of energy used for power generation, including renewable and alternative sources of energy, and the environmental and economic impact of all forms of power generation.

(3) The implementation of S.L. 2007-397, including environmental and economic impacts from the law, and recommendations on any changes to the law as necessary.

The State Energy Office shall report its findings to the Joint Legislative Commission on Energy Policy on or before December 1, 2014.

SECTION 28 of the PCS would direct the Division of Purchase and Contract in the Department of Administration, in coordination with the Department of Public Instruction, to allow any fuel option to be considered for the award of a school bus contract. DOA and DPI would also be directed to study the infrastructure that would be necessary to support school bus fleets fueled by natural gas and report any findings and recommendations to the Joint Legislative Energy Policy Commission on or before January 1, 2015.

PART VIII. MISCELLANEOUS PROVISIONS UNRELATED TO SHALE GAS

SECTION 29 of the PCS would repeal a provision that requires the Energy Policy Council to use an attorney assigned by the AG's office, and instead allow the Council to have legal support provided by DENR.

SECTION 30 of the PCS would adopt the gas gallon equivalent (GGE) equivalent for compressed natural gas and the (diesel gas equivalent) DGE equivalent for liquid natural gas for the purpose of motor fuel taxation. The GGE equivalent is 5.66 pounds of compressed natural gas. The DGE equivalent of liquefied natural gas is 6.06 pounds of liquefied natural gas.

PART IX. SEVERABILITY AND EFFECTIVE DATE

SECTION 31 of the PCS would provide a severability clause in the event that any section or provision of the act were declared unconstitutional or invalid by the courts, and would provide that the act would be effective when it becomes law (except as otherwise provided).

VISITOR REGISTRATION SHEET

Senate **COMMERCE** Committee — May 20, 2014

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DEBBIE LOWN

NAME	FIRM OR AGENCY AND ADDRESS
Dan Conrad	NCUC
Nadia Luhr	NCCN
Erica Eggenes	nccn
Matt Doolin	nccn
Kirin Watch	NCCN
Ian McDonald	NCCN
Kevin McClees	McClees Consulting
Kaitlin Rattnecker	McGuire Woods
Jane Porter	INDY Week
Sarah Ovaska	NC Policy Watch
Bobby Jones	NC DOC

VISITOR REGISTRATION SHEET

Senate **COMMERCE** Committee — May 20, 2014

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DEBBIE LOWN

NAME	FIRM OR AGENCY AND ADDRESS
Rebecca Troxler	NCACC
David Baker	NCDOR
Kristen Laster	SSGNC
Scott Laster	SSGNC
Julie Robinson	NCSEA
Bill McAulay	PSNC Energy
Jim Womack	MEC
Layla Cummings	DENR
Tom BEAN	EDF
Mary Maile Gsbill	SELC
Brooks Rainey Pearson	SELC

VISITOR REGISTRATION SHEET

Senate **COMMERCE** Committee — May 20, 2014

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DEBBIE LOWN

NAME	FIRM OR AGENCY AND ADDRESS
Katelyn Ferral	Assoc. Press.
Daniel Ball	Tartman Sanders
Tonya Horton	Tartman Sanders
Robert Broome	NCAR
Alan Briggs	NC Food Banks
Paul Sherman	NCFB
Nickisha Livingston	Intern - Sen. Van Dyke
Derek Graham	NCDPI
Vance Holloman	NCDOT
Martha Jenkins	DCR
Jonathan Brubaker	Brubaker + Assoc.

VISITOR REGISTRATION SHEET

Senate **COMMERCE** Committee — May 20, 2014

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DEBBIE LOWN

NAME	FIRM OR AGENCY AND ADDRESS
Amanda Stanton	NCMA
Chris McClam	BOP
Preston Howard	NCMA
Alex Mills	KCG
Joe McClees	McClees Consulting
Doug Lassiter	NCSTA
Betsy Bailey	PENC
Michelle Frazier	MFTS

VISITOR REGISTRATION SHEET

Senate **COMMERCE** Committee — May 20, 2014

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DEBBIE LOWN

NAME	FIRM OR AGENCY AND ADDRESS
[illegible]	[illegible]
Laurie Orrico	LELC
Adam Pridemore	NCASA
Jaz Tunnell	PNG
Tom Friedman	DST
Tony Solari	DST
Sabrina O'Hare	DENR
Katie Mills	NCDENR
Chris Anderson	
TJ Bugbee	NP
TRACY DAVIS	DENR-DENR
Carr McLamb	NCDENR
[illegible]	Mrs.

VISITOR REGISTRATION SHEET

Senate **COMMERCE** Committee — May 20, 2014

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DEBBIE LOWN

NAME	FIRM OR AGENCY AND ADDRESS
Hugh Johnson	NC Gov. Affairs
Teresa Rosenbergen	Environment NC
Chris Emanuel	The C.G. Emanuel Group

SENATE SERGEANT-AT-ARMS

SENATE COMMITTEE ON COMMERCE

DATE: 05-20-2014 ROOM: 1027

1. CHARLES HARPER
2. ERNIE SHERRELL
3. STEVE WILSON
4. MATT URBEN
5. _____
6. _____

SENATE PAGES ATTENDING

COMMITTEE: Commerce ROOM: 1027

DATE: 5-20 TIME: 2 pm

PLEASE PRINT LEGIBILY!!!!!!!!!!!!!....*or else!*

Page Name	Hometown	Sponsoring Senator
1. Max Shafer	Clinton	Phil Berger
2. Maggie Shafer	Clinton	Phil Berger
3. Daisy McAteer	Fayetteville	Wesley Meredith
4. Jennifer Rogers	Fayetteville	Wesley Meredith
5. ~~Madison Henderson~~	~~Dunn~~	~~Brent Jackson~~
6. Ashton Craft	Vanceboro	Sanderson
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.

REQUEST TO SPEAK

Senate Commerce Committee

5-20-14

STATEMENT: The number of speakers allowed to speak and the time allowed by each will be announced during this meeting. This will be contingent on time remaining. The allowed speakers may be taken out of order as they are listed below. By placing your name below acknowledges that you understand this statement.

PLEASE PRINT

NAME	FIRM OR AGENCY AND ADDRESS
ELIZABETH OUZTS	ENVIRONMENT NORTH CAROLINA
David McGowan	NC Petroleum Council

Principal Clerk
Reading Clerk

Corrected #1: Bill added.

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

The **Senate Committee on Commerce** will meet at the following time:

DAY	DATE	TIME	ROOM
Wednesday	June 4, 2014	2:30 PM	1027/1128 LB

The following will be considered:

BILL NO.	SHORT TITLE	SPONSOR
SB 743	NC Econ. Dev. Partnership Modifications.	Senator Brown

Senator Rick Gunn, Co-Chair
Senator Wesley Meredith, Co-Chair

Senate Committee on Commerce
Wednesday, June 4, 2014, 2:30 PM
1027/1128 Legislative Building

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

BILL NO.	SHORT TITLE	SPONSOR
SB 743	NC Econ. Dev. Partnership Modifications.	Senator Brown

Senate Committee on Commerce
Wednesday, June 4, 2014 at 2:30 PM
Room 1027/1128 of the Legislative Building

MINUTES

The Senate Committee on Commerce met at 2:30 PM on June 4, 2014 in Room 1027/1128 of the Legislative Building. Twenty five members were present.

Senator Rick Gunn, Chair, presided.

Nick Williams from Albertson, Gerard Wilder from Raleigh, Lance Coffey from Boone, Gabrielle Nutter from Oxford, Keshaun Rhodie from Greensboro, Thomas Barr from Chocowinity, Caroline Haller from Clayton and Cameron McNeill served as pages.

SB 743 NC Econ. Dev. Partnership Modifications. (Senator Brown)

Senator Harrington moved to adopt the proposed committee substitute (PCS) to the committee for discussion and it was carried. The PCS for Senate Bill 743 would (i) permit the Department of Commerce to contract with a North Carolina nonprofit corporation for the performance of certain economic development functions currently performed by the Department, (ii) eliminate the Economic Development Board, (iii) modify the duties and membership of the North Carolina Board of Science and Technology, and (iv) establish 8 geographic zones in the State for inter-departmental cooperation purposes. Senator Brown was recognized to introduce the bill. Dan Ettefagh an attorney from the Bill Drafting Department also spoke on the bill and shared with the members technical changes for the bill. Senator Stein suggested that the before mentioned technical changes be placed into an amendment. Secretary of Commerce, Sharon Decker spoke in favor of the bill by sharing benefits it would offer to the state. Senator Gunn then opened the floor for questions from the members. Senator Brown, Dan Ettefagh and Secretary Decker were able to respond to the questions asked. Senator Gunn brought forth the amendment addressing the technical corrections. Senator Tillman moved to accept the amendment and it carried. A. John Hoomani, General Counsel for the State of North Carolina Department of Commerce was asked to speak in regards to the bill and also assisted with responses from additional questions from the members. From the discussion, Senator Tillman asked for a 2nd amendment to be drafted deleting "State Budget and Management" and substituting "State Auditor". The amendment also included that on page 2, line 20, by deleting "biannually" and substituting "annually". This amendment was also approved by the committee. Senator Tillman moved – unfavorable to the bill – favorable to the PCS as amended and the motion carried.

The meeting adjourned at 3:40 PM.

Senator Rick Gunn, Chair

Debbie Lown, Committee Clerk Presiding

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

COMMERCE COMMITTEE REPORT
Senator Gunn, Co-Chair
Senator Meredith, Co-Chair

Wednesday, June 04, 2014

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

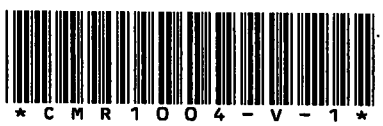
UNFAVORABLE AS TO BILL, BUT FAVORABLE AS TO COMMITTEE SUBSTITUTE BILL

SB **743** NC Econ. Dev. Partnership Modifications.

Draft Number:	S743-PCS35557-MC-24
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

TOTAL REPORTED: 1

Senator Harry Brown will handle SB 743



GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

S D

SENATE BILL 743*
PROPOSED COMMITTEE SUBSTITUTE S743-CSMC-24 [v.5]
6/3/2014 3:29:38 PM

Short Title: NC Econ. Dev. Partnership Modifications. (Public)

Sponsors:

Referred to:

May 15, 2014

A BILL TO BE ENTITLED

AN ACT TO FACILITATE ECONOMIC DEVELOPMENT WITHIN THE STATE.

The General Assembly of North Carolina enacts:

PART I. AUTHORIZE CONTRACTING OF ECONOMIC DEVELOPMENT FUNCTIONS BY THE DEPARTMENT OF COMMERCE

SECTION 1.1.(a) Part 1 of Article 10 of Chapter 143B of the General Statutes is amended by adding a new section to read:

"**§ 143B-431A. Department of Commerce – contracting of functions.**

(a) Purpose. – The purpose of this section is to establish a framework whereby the Department of Commerce may contract with a North Carolina nonprofit corporation to assist the Department in fostering and retaining jobs and business development, international trade, marketing, and travel and tourism. It is the intent of the General Assembly that the Department develops a plan to work cooperatively with a nonprofit corporation for these purposes while safeguarding programmatic transparency and accountability as well as the fiscal integrity of economic development programs of the State.

(b) Contract. – The Department of Commerce is authorized to contract with a North Carolina nonprofit corporation to perform one or more of the Department's functions, powers, duties, and obligations set forth in G.S. 143B-431, except as provided in this subsection. If the Department contracts with a North Carolina nonprofit corporation to promote and grow the travel and tourism industries, then all funds appropriated to the Department for tourism marketing purposes shall be used for a research-based comprehensive marketing program directed toward consumers in key markets most likely to travel to North Carolina and not for ancillary activities, such as statewide branding and business development marketing. The Department may not contract with a North Carolina nonprofit corporation regarding any of the following:

(1) The obligation or commitment of funds under this Article, such as the One North Carolina Fund, the Job Development Investment Grant Program, the Industrial Development Fund, or the Job Maintenance and Capital Development Fund.

(2) The Division of Employment Security, including the administration of unemployment insurance.

(3) The functions set forth in G.S. 143B-431(a)(2).

(4) The administration of funds or grants received from the federal government or its agencies.

(c) Oversight. – There is established the Economic Development Accountability & Standards Committee, which is a Board as that term is defined in G.S. 138A-3 of the State Government Ethics Act. The Committee shall consist of seven members as follows: the Secretary of Commerce as Chair of the Committee, the Secretary of Transportation, the Secretary of Environment and Natural Resources, the Secretary of Revenue, one member appointed by the Speaker of the House of Representatives, one member appointed by the President Pro Tempore of the Senate, and one member jointly appointed by the Speaker of the House of Representatives and the President Pro Tempore of the Senate.

The members of the Committee who are appointed by the Speaker of the House of Representatives or by the President Pro Tempore of the Senate may not be members of the General Assembly. The Committee shall meet at least quarterly upon the call of the chair. The duties of the Committee shall include all of the following:

(1) Monitoring and oversight of the performance of a contract entered into pursuant to this section by the Department with a North Carolina nonprofit corporation.

(2) Receiving, reviewing, and referring complaints regarding the contract or the performance of the North Carolina nonprofit corporation, as appropriate.

(3) Requesting enforcement of the contract by the Attorney General or the Department.

(4) Auditing, at least biennially, by the Office of State Budget and Management the records of the North Carolina nonprofit corporation with which the Department has contracted pursuant to this section during and after the term of the contract to review financial documents of the corporation, performance of the corporation, and compliance of the corporation with applicable laws.

(5) Coordination of economic development grant programs of the State between the Department of Commerce, the Department of Transportation, and the Department of Environment and Natural Resources.

(6) Any other duties deemed necessary by the Committee.

(d) Limitations. – Prior to contracting with a North Carolina nonprofit corporation pursuant to this section and in order for the North Carolina nonprofit corporation to receive State funds, the following conditions shall be met:

(1) At least 45 days prior to entering into or amending in a nontechnical manner a contract authorized by this section, the Department shall submit the contract or amendment, along with a detailed explanation of the contract or amendment, to the Joint Legislative Commission on Governmental Operations and the Fiscal Research Division.

(2) The nonprofit corporation adheres to the following governance provisions related to its governing board:

a. The board shall be composed of 17 voting members as follows: eight members and the chair appointed by the Governor, four members appointed by the Speaker of the House of Representatives, and four members appointed by the President Pro Tempore of the Senate. The Governor, the Speaker of the House of Representatives, and the President Pro Tempore of the Senate shall each use best efforts to select members so as to reflect the diversity of the State's geography, and the Governor shall use best efforts to ensure that each member appointed by the Governor has expertise in one or more of the following areas:

1. Agribusiness, as recommended by the Commissioner of Agriculture.

2. Financial services.
3. Information technology.
4. Biotechnology or life sciences.
5. Energy.
6. Manufacturing.
7. Military or defense.
8. Tourism, as recommended by the North Carolina Travel and Tourism Coalition.
9. Tourism, as recommended by the North Carolina Travel Industry Association.

b. The nonprofit corporation shall comply with the prohibitions on lobbying set forth in Section 501(c)(3) of the Internal Revenue Code.

c. No State officer or employee may serve on the board.

d. The board shall meet at least quarterly at the call of its chair. Each quarter and upon request, the board shall report to the Chair of the Economic Development Accountability and Standards Committee on the progress of the State's economic development.

e. The board is required to perform the following duties, if the Department contracts pursuant to G.S. 143B-431A for the performance of the Secretary's responsibilities under G.S. 143B-434.01:

1. To provide advice concerning economic and community development planning for the State, including a strategic business facilities development analysis of existing, available buildings or shell or special-use buildings and sites.
2. To recommend economic development policy to the Secretary of Commerce, the General Assembly, and the Governor.
3. To recommend annually to the Governor biennial and annual appropriations for economic development programs.
4. To recommend how best to coordinate economic development efforts among the various agencies and entities, including those created by executive order of the Governor, that receive economic development appropriations, including the assignment of key responsibilities for different aspects of economic development and resource allocation and planning designed to encourage each agency to focus on its area of primary responsibility and not diffuse its resources by conducting activities assigned to other agencies.

(3) The amount of State funds that may be used for the annual salary of any one officer, employee, or member of a governing board of the nonprofit corporation with which the Department contracts pursuant to this section shall not exceed the greater of (i) one hundred twenty thousand dollars ($120,000) or (ii) the amount most recently set by the General Assembly in a Current Operations Appropriations Act.

(4) The nonprofit corporation shall have received from fundraising efforts and sources, other than State funds, an amount totaling at least two hundred fifty thousand dollars ($250,000) to support operations and functions of the corporation.

(e) Mandatory Contract Terms. – Any contract entered into under this section must include all of the following:

(1) A provision requiring the North Carolina nonprofit corporation provide to the Joint Legislative Economic Development and Global Engagement Oversight Committee, the Department of Commerce, and the Fiscal Research Division a copy of the corporation's annual audited financial statement within seven days of issuance of the statement.

(2) A provision requiring the nonprofit corporation to provide, by September 1 of each year, and more frequently as requested, a report to the Department on prior State fiscal year program activities, objectives, and accomplishments and prior State fiscal year itemized expenditures and fund sources. The report shall also include all of the following:

a. Jobs anticipated to result from efforts of the nonprofit corporation. This includes project leads that were not submitted to the Department for possible discretionary incentives pursuant to Chapter 143 of the General Statutes.

b. Developed performance metrics of economic development functions itemized by county, by development tier area designation, as defined by G.S. 143B-437.08, and by Collaboration for Prosperity Zones created pursuant to G.S. 143B-28.1.

c. Any proposed amendments to the areas of expertise required to be represented on the governing board of the nonprofit corporation.

d. A detailed explanation of how annual salaries are determined, including base pay schedules and any additional salary amounts or bonuses that may be earned as a result of job performance. The explanation shall include the proportion of State and private funds for each position and shall include the means used by the nonprofit corporation to foster employee efforts for economic development in rural and low-income areas in the State. Any bonuses paid to employees shall be based upon overall job performance and not be based on a specific project lead.

e. Any other information requested by the Department.

(3) A provision providing that, upon termination of the contract, or upon dissolution of, or repeal by the General Assembly of, the charter of the nonprofit corporation with which the Department has contracted under this section, all assets and funds of the nonprofit corporation, including interest on funds, financial and operational records, and the right to receive future funds pursuant to the contract, will be surrendered to the Department within 30 days of the termination, dissolution, or repeal. During the 30-day period, the corporation may not further encumber any assets or funds. For purposes of this subdivision, assets and funds of the nonprofit corporation include assets and funds of any subsidiary or affiliate of the nonprofit corporation. An affiliate of the nonprofit corporation exists when both are directly or indirectly controlled by the same parent corporation or by the same or associated financial interests by stock ownership, interlocking directors, or by any other means whatsoever, whether the control is direct or through one or more subsidiary, affiliated, or controlled corporations.

(4) A provision providing that the nonprofit corporation shall adopt and publish a resolution or policy containing a code of ethics, conflict of interest policy and gift policy to guide actions by the governing board members, officers and employees of the nonprofit corporation in the performance of their duties. The resolution or policy required by this subdivision shall address at least all of the following:

a. The need to obey all applicable laws regarding actions taken.
b. The need to uphold the integrity and independence of the board and the nonprofit corporation.
c. The need to avoid impropriety in the exercise of their duties.
d. The need to faithfully perform their duties.
e. The need to conduct the affairs of the governing board and the nonprofit corporation in an open and public manner and to avoid conflicts of interest.

(5) The conflict of interest policy required by subdivision (4) of this section shall contain at a minimum the information in this subdivision. No subject person of the nonprofit corporation may take any official action or use the subject person's official position to profit in any manner the subject person, the subject person's immediate family, a business with which the subject person or the subject person's immediate family has a business association, or a client of the subject person or the subject person's immediate family with whom the subject person, or the subject person's immediate family, has an existing business relationship. No subject person shall attempt to profit from a proposed project lead if the profit is greater than that which would be realized by other persons living in the area where the project lead is located. If the profit under this sub-subdivision would be greater for the subject person than other persons living in the area where the project lead is located, not only shall the subject person abstain from voting on that issue, but once the conflict of interest is apparent the subject person shall not discuss the project lead with any other subject person or representative of the Department except to state that a conflict of interest exists. Under this sub-subdivision, a subject person is presumed to profit if the profit would be realized by the subject person, the subject person's immediate family, a business with which the subject person or the subject person's immediate family has a business association, or a client of the subject person or the subject person's immediate family with whom the subject person, or the subject person's immediate family, has an existing business relationship with a company that is the subject of a proposed project lead. No subject person, in contemplation of official action by the subject person, or in reliance on information that was made known to the subject person in the subject person's official capacity and that has not been made public, shall (i) acquire a pecuniary interest in any property, transaction, or enterprise or gain any pecuniary benefit that may be affected by such information or official action or (ii) intentionally aid another to do any of the above acts. As used in this sub-subdivision, the following terms mean:

a. Board. – The governing board of the nonprofit corporation with which the Department contracts pursuant to this section.
b. Board member. – A member of the board.
c. Business association. – A director, employee, officer, or partner of a business entity, or owner of more than ten percent (10%) interest in any business entity.
d. Subject Person. – A board member, officer or employee of the nonprofit corporation.
e. Department. – The Department of Commerce.
f. Immediate family. – Spouse, children, parents, brothers, and sisters.
g. Official action. – Actions taken in connection with the subject person's duties, including, but not limited to, voting on matters before

the board, proposing or objecting to proposals for economic development actions by the Department, discussing economic development matters with other subject persons or Department staff in an effort to further the matter after the conflict of interest has been discovered, or taking actions in the course and scope of the position as a subject person and actions leading to or resulting in profit.

h. Profit. – Receive monetary or economic gain or benefit, including an increase in value whether or not recognized by sale or trade.

(6) The gift policy required by subdivision (4) of this subsection shall at a minimum prohibit an employee, officer, or member of the board of the corporation from knowingly accepting a gift from a person whom the employee, officer, or member of the board knows or has reason to know (i) is seeking to do business of any kind in the State, or (ii) has financial interests that may be substantially and materially affected, in a manner distinguishable from the public generally, by the performance or nonperformance of official duties of the employee, officer, or member of the board. This prohibition shall not apply to either of the following:

a. Gifts given to the employee, officer, or member of the board where the gift is food or beverages, transportation, lodging, entertainment or related expenses associated with industry recruitment, promotion of international trade, or the promotion of travel and tourism, and the employee, officer, or member of the board is responsible for conducting the business on behalf of the State, provided (i) the employee, officer, or member of the board did not solicit the gift and did not accept the gift in exchange for the performance or nonperformance of corporate duties, and (ii) the employee, officer, or member of the board reports electronically to the corporation within 30 days of receipt of the gift, including a description and value of the gift and a description how the gift contributed to industry recruitment, promotion of international trade, or the promotion of travel and tourism.

b. Gifts of personal property valued at less than one hundred dollars ($100.00) given to the employee, officer, or member of the board in the commission of corporate duties if the gift is given as a personal gift in another country as part of an overseas trade mission, and the giving and receiving of such personal gifts is considered a customary protocol in the other country.

(7) A provision providing that the nonprofit corporation maintain a record containing the name of all persons who have contributed to the nonprofit corporation, the date of each contribution and the aggregate total of all contributions to the nonprofit corporation. The nonprofit corporation shall include the record in the report required to be filed with the Department pursuant to subdivision (2) of subsection (e) of this section.

(8) A provision requiring the nonprofit corporation to maintain separate accounting records for and separate accounts for State and private funds and prohibiting any commingling of State and private funds. Records and accounts must be maintained according to generally accepted accounting principles.

(9) A provision stating that the nonprofit corporation will not engage in the awarding of grants of the public or private funds of the nonprofit corporation.

(10) A provision limiting the term of the contract to no more than five years. The term of the contract may be extended in one-year increments up to four times after no less than four-fifths of the original contract term has passed. A contract extension may not extend the remaining term of the contract, including the term of the extension, to more than two years. Nothing in this subdivision shall be construed as a prohibition against entering into a new contract with the nonprofit corporation.

(11) A provision limiting the severance pay for the chief executive officer and other officers of the nonprofit corporation to no more than the lesser of the following:

a. The salary limitation contained in subdivision (3) of subsection (d) of this section.

b. The salary limitation contained in subdivision (3) of subsection (d) of this section multiplied by a fraction, the numerator of which is the number of whole years the chief officer has been chief officer of the corporation and the denominator of which is four.

(12) A provision requiring annual certification by the nonprofit corporation that it is in compliance with the following:

a. The requirements of Chapter 55A of the General Statutes.

b. The requirements of each of the provisions listed in subsection (e) of this section. For any provision in this subsection that the nonprofit corporation did not comply with, the corporation shall provide a detailed explanation of the circumstances and time of the noncompliance.

(13) A provision requiring the nonprofit corporation to comply with and perform the duties set out in G.S. 143B-434.2, in the event the Department contracts with the non-profit corporation to promote and market tourism.

(14) A provision requiring the nonprofit corporation to receive from fundraising efforts and sources other than State funds an amount totaling at least five million seven hundred fifty thousand dollars ($5,750,000) during the term of the contract to support operations and functions of the corporation. The corporation shall raise at least seven hundred fifty thousand dollars ($750,000) during the first year of the term of the contract and shall raise at least one million two hundred fifty thousand dollars ($1,250,000) during each subsequent year of the term of the contract. Amounts raised prior to entering the contract or during a year preceding the current year of the contract shall not apply to the amount required to be raised during the current year.

(15) A provision that the limitation of G.S. 143C-6-8 applies.

(f) Report. – By September 30 of each year, and more frequently as requested, the Department shall submit a report to the Joint Legislative Commission on Governmental Operations, the Joint Legislative Economic Development and Global Engagement Oversight Committee, and the Fiscal Research Division on any performance for which the Department has contracted pursuant to this section. The report shall contain, at a minimum, each of the following:

(1) A copy of the most recent report required by the Department pursuant to subdivision (2) of subsection (e) of this section.

(2) An executive summary of the report required by subdivision (1) of this subsection.

(3) A listing of each entity referred to the Department by a North Carolina nonprofit corporation with which the Department contracts pursuant to this

section, and any other information the Secretary determines is necessary or that is specifically requested in writing.

(4) An explanation of the response by the Department to any notifications of noncompliance submitted to the Department by the nonprofit corporation, as required by G.S. 143B-431A(e), including actions taken by the Department to prevent repeat or similar instances of noncompliance.

(5) For each activity in which the Secretary of Commerce solicits funds for the corporation, as permitted by subsection (i) of this section, a listing of each activity, including the date and the name of each person or entity from whom funds were solicited.

(6) If the nonprofit corporation or any affiliated entity of the corporation has received, directly or indirectly, any gift, contribution, or item or service of value for which fair market value was not paid and if an entity making the gift or contribution receives an award, a list of the entity and the amount of the award.

(g) Public Funds. – A North Carolina nonprofit corporation with which the Department contracts pursuant to this section shall comply with the requirements provided in this subsection regarding the use of State funds.

(1) Interest earned on State funds after receipt of the funds by the nonprofit corporation shall be used for the same purposes for which the principal was to be used.

(2) The travel and personnel policies and regulations of the State of North Carolina Budget Manual limiting reimbursement for expenses of State employees apply to reimbursements for expenses of officers, employees, or members of a governing board of the nonprofit corporation. Deviations from the policies and regulations shall be approved by the Secretary.

(3) State funds shall not be used to hire a lobbyist.

(h) Applicable Laws. – A North Carolina nonprofit corporation with which the Department contracts pursuant to this section is subject to the requirements and the exceptions of (i) Chapter 132 of the General Statutes and (ii) Article 33C of Chapter 143 of the General Statutes.

(i) Prohibition. – A State officer or employee, other than the Secretary of Commerce, shall not solicit funds for a North Carolina nonprofit corporation with which the Department contracts pursuant to this section. The Secretary of Commerce may solicit funds for the nonprofit corporation pursuant to G.S. 138A-31(b)(5).

(j) Benefits. – An officer, employee, or member of a governing board of a North Carolina nonprofit corporation with which the Department contracts pursuant to this section is not a State employee, is not covered by Chapter 126 of the General Statutes, and is not entitled to State-funded employee benefits, including membership in the Teachers' and State Employees' Retirement System and the State Health Plan for Teachers and State Employees."

SECTION 1.1.(b) G.S. 143B-431A(i), as enacted by this act, does not apply to employees of the Department of Commerce, other than employees involved in the recommendation and administration of State economic development incentive programs, prior to the time the Department contracts with a North Carolina nonprofit corporation pursuant to this act.

SECTION 1.1.(c) G.S. 132-6(d) reads as rewritten:

"(d) Notwithstanding the provisions of subsections (a) and (b) of this section, public records relating to the proposed expansion or location of specific business or industrial projects may be withheld so long as their inspection, examination or copying would frustrate the purpose for which such public records were created; provided, however, that nothing herein shall be construed to permit the withholding of public records relating to general economic

development policies or activities. Once the State, a local government, or the specific business has announced a commitment by the business to expand or locate a specific project in this State and that the business will receive a discretionary incentive for the project pursuant to Chapter 143B of the General Statutes,~~or a final decision not to do so and the business has communicated that commitment or decision to the State or local government agency involved with the project,~~ the provisions of this subsection allowing public records to be withheld by the agency no longer apply. If the specific business has requested discretionary incentives for the project pursuant to Chapter 143B of the General Statutes, but decides to not expand or locate the project in this State or does not receive such discretionary incentives, then the only records that are subject to disclosure pursuant to this Chapter are the records submitted to the Department of Commerce by the nonprofit corporation with which the Department contracts pursuant to G.S. 143B-431A. If a business decides to expand or locate a specific project in this State, but the nonprofit corporation with which the Department contracts pursuant to G.S. 143B-431A does not submit any documentation to the Department regarding a request for any discretionary incentives by the State pursuant to Chapter 143B of the General Statutes, and the business does not receive any such discretionary incentives, then any records regarding such project are not subject to disclosure pursuant to this Chapter. Once the provisions of this subsection no longer apply, the agency shall disclose as soon as practicable, and within 25 business days, public records requested for the announced project that are not otherwise made confidential by law. An announcement that a business or industrial project has committed to expand or locate in the State shall not require disclosure of local government records relating to the project if the business has not selected a specific location within the State for the project. Once a specific location for the project has been determined, local government records must be disclosed, upon request, in accordance with the provisions of this section. For purposes of this section, "local government records" include records maintained by the State that relate to a local government's efforts to attract the project."

SECTION 1.2.(a) G.S. 143B-434 is repealed.

SECTION 1.2.(b) G.S. 143B-434.01 reads as rewritten:

"**§ 143B-434.01. Comprehensive Strategic Economic Development Plan.**

(a) Definitions. – The following definitions apply in this section:

~~(1) Board. – The Economic Development Board.~~

...

(6) Secretary. – The Secretary of Commerce or the governing board of a North Carolina nonprofit corporation with which the Department contracts pursuant to G.S. 143B-431A for the performance of the Secretary's responsibilities under this section.

(b) ~~Board to Prepare~~ Plan. – The ~~Board~~ Secretary shall ~~prepare~~ review and update the existing Plan ~~by April 1, 1994,~~on or before April 1 of each year. ~~The Board shall review and update this Plan by April 1 of each year.~~ The ~~original~~ Plan shall cover a period of four years and each annual update shall extend the time frame by one year so that a four-year plan is always in effect. The ~~Board~~ Secretary shall provide copies of the Plan and each annual update to the Governor and the Joint Legislative Commission on Governmental Operations. The Plan shall encompass all of the components set out in this section.

(c) Purpose. – The purpose of this section is to require the ~~Board~~ Secretary to apply strategic planning principles to its economic development efforts. This requirement is expected to result in:

(1) The selection of a set of priority development objectives that recognizes the increasingly competitive economic environment and addresses the changing needs of the State in a more comprehensive manner.

(2) The effective utilization of available and limited resources.

(3) A commitment to achieve priority objectives and to sustain the process.

(d) (1) Public and Private Input. – At each stage as it develops and updates the Plan, the ~~Board~~ Secretary shall solicit input from all parties involved in economic development in North Carolina, including:

a. Each of the programs and organizations that, for State budget purposes, identifies economic development as one of its global goals.

b. Local economic development departments and regional economic development organizations.

c. The Board of Governors of The University of North Carolina.

(2) The ~~Board~~ Secretary shall also hold hearings in each of the Regions to solicit public input on economic development before the initial Plan is completed. The purposes of the public hearings are to:

a. Assess the strengths and weaknesses of recent regional economic performance.

b. Examine the status and competitive position of the regional resource base.

c. Identify and seek input on issues that are key to improving the economic well-being of the Region.

The ~~Board~~ Secretary shall hold additional hearings from time to time to solicit public input regarding economic development activities.

(3) Each component of the Plan shall be based on this broad input and, to the extent possible, upon a consensus among all affected parties. The ~~Board~~ Secretary shall coordinate its planning process with any State capital development planning efforts affecting State infrastructure such as roads and water and sewer facilities.

(e) Environmental Scan. – The first step in developing the Plan shall be to develop an environmental scan based on the input from economic development parties and the public and on information about the economic environment in North Carolina. To prepare the scan, the ~~Board~~ Secretary shall gather the ~~following~~ information required in this subsection and ensure that the information is updated periodically. The updated information may be provided in whatever format and through whatever means is most efficient. The information required to prepare the scan includes all of the following:

...

(f) Repealed by Session Laws 2012-142, s. 13.4(a), effective July 1, 2012.

(g) Vision and Mission Statements. – The ~~Board~~ Secretary shall develop a vision statement for economic development that would describe the preferred future for North Carolina and what North Carolina would be like if all economic development efforts were successful. The ~~Board~~ Secretary shall then develop a mission statement that outlines the basic purpose of each of North Carolina's economic development programs. Because special purpose nonprofit organizations are uniquely situated to conduct the entrepreneurial and high-risk activity of investing in and supporting new business creation in the State, they should be assigned a dominant role in this key component of economic development activity.

(h) Goals and Objectives. – The ~~Board~~ Secretary, using data from the public input and the environmental scan, shall formulate a list of goals and objectives. Goals shall be long-range, four years or more, and shall address both needs of economically distressed Regions and counties as well as opportunities for Regions and counties not distressed. The goals shall be developed with realism but should also be selected so as to encourage every Region and county within the State to develop to its maximum potential. Objectives shall be one year or less in scope and shall, if achieved, lead to the realization of the goals formulated by the ~~Board~~ Secretary as provided in this section.

Both goals and objectives should be stated largely in economic terms, that is, they should be related to specific population, employment, demographic targets, or economic sector targets.

Both efficiency and equity considerations are to be addressed and balanced with special emphasis placed on the needs of disadvantaged or economically distressed populations and communities. The goals and objectives should not state how the economic targets are to be reached, but rather what the economic conditions will be if they are obtained. So that the progress of North Carolina's economic development efforts can be monitored, the ~~Board~~ Secretary shall set objectives for each goal that allow measurement of progress toward the goal. Objectives should be quantifiable and time-specific in order to serve as performance indicators.

...

(j) Implementation Plan. – Based upon all of the foregoing steps, the ~~Board~~ Secretary shall establish an implementation plan assigning to the appropriate parties specific responsibilities for meeting measurable objectives. The implementation plan shall contain all necessary elements so that it may be used as a means to monitor performance, guide appropriations, and evaluate the outcomes of the parties involved in economic development in the State.

(k) Annual Evaluation. – The ~~Board~~ Secretary shall annually evaluate the State's economic performance based upon the statistics listed in this subsection and upon the ~~Board's~~ Secretary's stated goals and objectives in its Plan. The statistics upon which the evaluation is made should be available to policymakers. The information may be provided in whatever format and through whatever means is most efficient.

...

(l) Accountability. – The ~~Board~~ Secretary shall make all data, plans, and reports available to the General Assembly, the Joint Legislative Commission on Governmental Operations, the Joint Legislative Economic Development and Global Engagement Oversight Committee, the Senate Appropriations Committee on Natural and Economic Resources, and the House of Representatives Appropriations Subcommittee on Natural and Economic Resources at appropriate times and upon request. The ~~Board~~ Secretary shall prepare and make available on an annual basis public reports on each of the major sections of the Plan and the Annual Report indicating the degree of success in attaining each development objective."

SECTION 1.2.(c) G.S. 143B-437.03 is repealed.

SECTION 1.3. The Department of Commerce shall study and develop a plan for contracting with a North Carolina nonprofit corporation pursuant to G.S. 143B-431A, as enacted by this act, for the performance of economic development activities and duties of the Department. The study shall include each of the following:

(1) The Department shall develop a plan for private fundraising efforts for the nonprofit corporation for the performance of economic development functions. The study shall include the creation of a budget for the nonprofit corporation that provides for the performance of core functions of the corporation, including economic development functions, in the absence of private funds. The study shall compare the budget of the Department and budget developed for the nonprofit corporation according to Department division and budget category, including personal services; purchased services; supplies; property, plant, and equipment; other expenses and adjustments; aid and public assistance; and other budget categories used by the Department. The study shall include a measurement and estimation of expected private fundraising potential, and the Department shall examine the efforts of other states that have permitted public-private partnerships for economic development activities and report on the source or sources of funds for those partnerships, separately accounting for funds provided by the state and private funds.

(2) The Department shall report on each performance metric listed in this subdivision. The report shall analyze the Department's performance for each

metric for (i) the last full year prior to contracting for performance of the metric, and (ii) the annual average for the five-year period preceding contracting for performance of the metric. The performance metrics to be reported upon are as follows:

a. For business recruitment:
   1. Number of jobs announced by the Department in total.
   2. Number of jobs announced resulting from recruitment of new businesses.
   3. Number of jobs announced resulting from existing business expansions.
   4. Total U.S. dollar amount of investment resulting from new projects.
   5. Total U.S. dollar amount of investment resulting from recruitment of new businesses.
   6. Total U.S. dollar amount of investment resulting from existing business expansions.
   7. Total U.S. dollar amount of foreign direct investment.

b. For business services:
   1. Number of existing businesses receiving support.
   2. Number of Business Services Team leads that lead to an expansion of existing businesses.
   3. Number of businesses receiving export assistance.
   4. Total U.S. dollar amount of exports by assisted companies.

c. For tourism and marketing:
   1. Number of consumer inquiries about travel to the North Carolina.
   2. Total U.S. dollar amount of spending by visitors while in North Carolina.
   3. Total U.S. dollar amount of state and local tax revenues resulting from visitors' spending while in North Carolina.
   4. Number of business inquires for business relocation, investment and expansion.

d. Any other information or performance metrics allowing comparison between departmental and corporate performance for any other economic development division in the Department for which the Department contracts for performance with a North Carolina nonprofit corporation pursuant to this act.

e. Any other information or performance metrics deemed useful or necessary by the Department in the listed areas or other areas.

The Department shall make a report to the Office of State Budget Management, to the Joint Legislative Commission on Governmental Operations, to the Joint Legislative Economic Development and Global Engagement Oversight Committee, and to the Fiscal Research Division no later than December 1, 2014.

The Department shall require the nonprofit corporation to include in each report mandated by G.S. 143B-431A(e)(2) an analysis of the corporation's performance and a comparison to departmental performance using the same performance metrics studied and reported by the Department, as required by subdivision (2) of this section.

SECTION 1.4. G.S. 126-5 reads as rewritten:

"**§ 126-5. Employees subject to Chapter; exemptions.**

...

(c2) The provisions of this Chapter shall not apply to:

...

(5) Officers, employees, and members of the governing board of a North Carolina nonprofit corporation with which the Department of Commerce has contracted pursuant to the authority granted in G.S. 143B-431A.

...

(d) (1) Exempt Positions in Cabinet Department. – Subject to the provisions of this Chapter, which is known as the State Personnel Act, the Governor may designate a total of 1,000 exempt positions throughout the following departments:

...

(2b) Designation of Liaison Positions. – Liaisons to the Collaboration for Prosperity Zones set out in G.S. 143B-28.1 for the Departments of Commerce, Environment and Natural Resources, and Transportation are designated as exempt.

...."

SECTION 1.5. Section 15.7A of S.L. 2013-360 is repealed.

SECTION 1.6. Section 1.5 of this act is effective when it becomes law. The remainder of this Part becomes effective July 1, 2014.

PART II. MODIFY NORTH CAROLINA BOARD OF SCIENCE AND TECHNOLOGY

SECTION 2.1. Part 18 of Article 10 of Chapter 143B of the General Statutes reads as rewritten:

"Part 18. North Carolina Board of ~~Science and Technology.~~Science, Technology, and Innovation.

"**§ 143B-472.80. North Carolina Board of ~~Science and Technology;~~ Science, Technology, and Innovation; creation; powers and duties.**

The North Carolina Board of ~~Science and Technology~~ Science, Technology, and Innovation of the Department of Commerce is created. The Board has the following powers and duties:

...

(4) To advise and make recommendations to the Governor, the General Assembly, the Secretary of Commerce, and ~~the Economic Development Board~~ any North Carolina nonprofit corporation with which the Department of Commerce contracts pursuant to G.S. 143B-431A on the role of ~~science and technology~~ science, technology, and innovation in the economic growth and development of North Carolina.

...

"**§ 143B-472.81. North Carolina Board of ~~Science and Technology;~~ Science, Technology, and Innovation; membership; organization; compensation; staff services.**

(a) The North Carolina Board of ~~Science and Technology~~ Science, Technology, and Innovation consists of the Governor, the Secretary of Commerce, and ~~17~~ 23 members appointed as follows: the Governor shall appoint one member from the University of North Carolina at Chapel Hill, one member from North Carolina State University at Raleigh, and two members from other components of the University of North Carolina, one of which shall be from a historically black college or university, all nominated by the President of the University of North Carolina; one member from Duke University, nominated by the President of Duke University; one member from a private college or university, other than Duke University, in North Carolina, nominated by the President of the Association of Private Colleges and Universities; one member of the North Carolina Community College System; one member representing K-12 public education; ~~one member from the Research Triangle Institute, nominated by the executive committee of the board of that institute; one member from the Microelectronics Center of North Carolina, nominated by the executive committee of the board~~

~~of that center; one member from the North Carolina Biotechnology Center, nominated by the executive committee of the board of that center; four~~ six members from private industry in North ~~Carolina, at least one of whom shall be a professional engineer registered pursuant to Chapter 89C of the General Statutes or a person who holds at least a bachelors degree in engineering from an accredited college or university; and two members from public agencies in North Carolina.~~Carolina; and seven at-large members. Two members shall be appointed by the General Assembly, one shall be appointed upon the recommendation of the President Pro Tempore of the Senate, and one shall be appointed upon the recommendation of the Speaker of the House of Representatives in accordance with G.S. 120-121. The nominating authority for any vacancy on the Board among members appointed by the Governor shall submit to the Governor two nominations for each position to be filled, and the persons so nominated shall represent different disciplines.

...."

SECTION 2.2. G.S. 143B-437.80 reads as rewritten:

"**§ 143B-437.80. North Carolina SBIR/STTR Incentive Program.**

(a) Program. – There is established the North Carolina SBIR/STTR Incentive Program to be administered by the North Carolina Board of ~~Science and Technology.~~Science, Technology, and Innovation. In order to foster job creation and economic development in the State, the Board may provide grants to eligible businesses to offset costs associated with applying to the United States Small Business Administration for Small Business Innovative Research (SBIR) grants or Small Business Technology Transfer Research (STTR) grants. The grants shall be paid from the One North Carolina Small Business Account established in G.S. 143B-437.71.

...

(c) Grant. – The North Carolina Board of ~~Science and Technology~~Science, Technology, and Innovation may award grants to reimburse an eligible business for up to fifty percent (50%) of the costs of preparing and submitting a SBIR/STTR Phase I proposal, up to a maximum of three thousand dollars ($3,000). A business may receive only one grant under this section per year. A business may receive only one grant under this section with respect to each federal proposal submission. Costs that may be reimbursed include costs incurred directly related to preparation and submission of the grant such as word processing services, proposal consulting fees, project-related supplies, literature searches, rental of space or equipment related to the proposal preparation, and salaries of individuals involved with the preparation of the proposals. Costs that shall not be reimbursed include travel expenses, large equipment purchases, facility or leasehold improvements, and legal fees.

(d) Application. – A business shall apply, under oath, to the North Carolina Board of ~~Science and Technology~~ Science, Technology, and Innovation for a grant under this section on a form prescribed by the Board that includes at least all of the following:

...."

SECTION 2.3. G.S. 143B-437.81 reads as rewritten:

"**§ 143B-437.81. North Carolina SBIR/STTR Matching Funds Program.**

(a) Program. – There is established the North Carolina SBIR/STTR Matching Funds Program to be administered by the North Carolina Board of ~~Science and Technology.~~ Science, Technology, and Innovation. In order to foster job creation and economic development in the State, the Board may provide grants to eligible businesses to match funds received by a business as a SBIR or STTR Phase I award and to encourage businesses to apply for Phase II awards.

...

(c) Grant. – The North Carolina Board of ~~Science and Technology~~ Science, Technology, and Innovation may award grants to match the funds received by a business through a SBIR/STTR Phase I proposal up to a maximum of one hundred thousand dollars

($100,000). Seventy-five percent (75%) of the total grant shall be remitted to the business upon receipt of the SBIR/STTR Phase I award and application for funds under this section. Twenty-five percent (25%) of the total grant shall be remitted to the business upon submission by the business of the Phase II application to the funding agency and acceptance of the Phase I report by the funding agency. A business may receive only one grant under this section per year. A business may receive only one grant under this section with respect to each federal proposal submission. Over its lifetime, a business may receive a maximum of five awards under this section.

(d) Application. – A business shall apply, under oath, to the North Carolina Board of ~~Science and Technology~~ Science, Technology, and Innovation for a grant under this section on a form prescribed by the Board that includes at least all of the following:

...."

SECTION 2.4. This Part becomes effective July 1, 2014.

PART III. CREATION OF COLLABORATION FOR PROSPERITY ZONES

SECTION 3.1. Intent to create Collaboration for Prosperity Zones. – It is the intent of the General Assembly to establish geographically uniform zones in this State to facilitate collaborative and coordinated planning and use of resources, to improve cooperation with other governmental and nonprofit entities at the local and regional level, to facilitate administrative efficiencies within State government, to receive advice on economic development issues by local boards established by a North Carolina nonprofit corporation with which the Department of Commerce contracts, and, to the extent feasible, to establish one-stop sources in each region for citizens and businesses seeking State services at a regional level.

SECTION 3.2. Article 1 of Chapter 143B of the General Statutes is amended by adding a new section to read:

"**§ 143B-28.1. Create Collaboration for Prosperity Zones.**

For purposes of enhanced collaboration and cooperation between governmental agencies, planning, use of resources, and improved efficiency at a regional level, the State is hereby divided into eight permanent zones as follows:

(1) Western Region, consisting of Buncombe, Cherokee, Clay, Graham, Haywood, Henderson, Jackson, Macon, Madison, Polk, Rutherford, Swain, and Transylvania Counties.

(2) Northwest Region, consisting of Alleghany, Ashe, Alexander, Avery, Burke, Caldwell, Catawba, McDowell, Mitchell, Watauga, Wilkes, and Yancey Counties.

(3) Southwest Region, consisting of Anson, Cabarrus, Cleveland, Gaston, Iredell, Lincoln, Mecklenburg, Rowan, Stanly, and Union Counties.

(4) Piedmont-Triad (Central) Region, consisting of Alamance, Caswell, Davidson, Davie, Forsyth, Guilford, Randolph, Rockingham, Stokes, Surry, and Yadkin Counties.

(5) North Central Region, consisting of Chatham, Durham, Edgecombe, Franklin, Granville, Harnett, Johnston, Lee, Nash, Orange, Person, Vance, Wake, Warren, and Wilson Counties.

(6) Sandhills (South Central) Region, consisting of Bladen, Columbus, Cumberland, Hoke, Montgomery, Moore, Richmond, Robeson, Sampson, and Scotland Counties.

(7) Northeast Region, consisting of Beaufort, Bertie, Camden, Chowan, Currituck, Dare, Gates, Halifax, Hertford, Hyde, Martin, Northampton, Pasquotank, Perquimans, Pitt, Tyrrell, and Washington Counties.

(8) Southeast Region, consisting of Brunswick, Carteret, Craven, Duplin, Greene, Jones, Lenoir, New Hanover, Onslow, Pamlico, Pender, and Wayne Counties."

SECTION 3.3. Agencies shall, by January 1, 2015, report to the Joint Legislative Commission on Governmental Operations, the Senate Appropriations/Base Budget Committee, and the House Appropriations Committee on how they plan to establish Collaboration for Prosperity Zones as defined by this act.

SECTION 3.4. G.S. 115C-65 reads as rewritten:

"**§ 115C-65. State divided into districts.**

The State of North Carolina shall be divided into eight educational ~~districts~~ districts, which shall match the composition of the zones set forth in G.S. 143B-28.1.~~embracing the counties herein set forth:~~

~~**FIRST DISTRICT**~~

~~Beaufort, Bertie, Camden, Chowan, Currituck, Dare, Gates, Hertford, Hyde, Martin, Pasquotank, Perquimans, Pitt, Tyrrell, Washington.~~

~~**SECOND DISTRICT**~~

~~Brunswick, Carteret, Craven, Duplin, Greene, Jones, Lenoir, New Hanover, Onslow, Pamlico, Pender, Sampson, Wayne.~~

~~**THIRD DISTRICT**~~

~~Durham, Edgecombe, Franklin, Granville, Halifax, Johnston, Nash, Northampton, Vance, Wake, Warren, Wilson.~~

~~**FOURTH DISTRICT**~~

~~Bladen, Columbus, Cumberland, Harnett, Hoke, Lee, Montgomery, Moore, Richmond, Robeson, Scotland.~~

~~**FIFTH DISTRICT**~~

~~Alamance, Caswell, Chatham, Davidson, Forsyth, Guilford, Orange, Person, Randolph, Rockingham, Stokes.~~

~~**SIXTH DISTRICT**~~

~~Anson, Cabarrus, Cleveland, Gaston, Lincoln, Mecklenburg, Stanly, Union.~~

~~**SEVENTH DISTRICT**~~

~~Alexander, Alleghany, Ashe, Avery, Burke, Caldwell, Catawba, Davie, Iredell, Rowan, Surry, Watauga, Wilkes, Yadkin.~~

~~**EIGHTH DISTRICT**~~

~~Buncombe, Cherokee, Clay, Graham, Haywood, Henderson, Jackson, Macon, Madison, McDowell, Mitchell, Polk, Rutherford, Swain, Transylvania, Yancey.~~"

SECTION 3.5. Section 3.4 of this act becomes effective April 1, 2015. Members of the State Board of Education appointed by the Governor and confirmed by the General Assembly prior to 2015 with terms ending in 2017, 2019, and 2021 shall be designated as the appointees of the following districts for the remainder of the member's current term:

a. Western Region: Wayne McDevitt
b. Southwest Region: Gregory Alcorn
c. Piedmont Triad (Central) Region: A.L. Collins
d. Sandhills (South Central) Region: Olivia Oxendine
e. Northeast Region: Rebecca Taylor
f. Southeast Region: Reginald Kenan

The remainder of this Part becomes effective July 1, 2014.

PART IV. REQUIRE AT LEAST ONE LIAISON IN EACH COLLABORATION FOR PROSPERITY ZONE

SECTION 4.1. No later than January 1, 2015, the Departments of Commerce, Environment and Natural Resources, and Transportation shall have at least one employee physically located in the same office in each of the Collaboration for Prosperity Zones set out in G.S. 143B-28.1 to serve as that department's liaison with the other departments and with local governments, schools and colleges, planning and development bodies, and businesses in that zone. The departments shall jointly select the office. For purposes of this Part, the Department of Commerce may contract with a North Carolina nonprofit corporation pursuant to G.S. 143B-431A, as enacted by this act, to fulfill the departmental liaison requirements for each office in each of the Collaboration for Prosperity Zones.

No later than January 1, 2015, the Community Colleges System Office shall designate at least one representative from a community college or from the Community Colleges System Office to serve as a liaison in each Collaboration for Prosperity Zone for the community college system, the community colleges in the zone, and other educational agencies and schools within the zone. A liaison may be from a business center located in a community college. These liaisons are not required to be collocated with the liaisons from the Departments of Commerce, Environment and Natural Resources, and Transportation.

No later than January 1, 2015, the State Board of Education shall designate at least one representative from a local school administrative unit or from the Department of Public Instruction to serve as a liaison in each Collaboration for Prosperity Zone for the local school administrative units and other public schools within the zone. These liaisons are not required to be collocated with the liaisons from the Departments of Commerce, Environment and Natural Resources, and Transportation.

SECTION 4.2. In addition to other related tasks assigned by their respective agencies, liaisons in each Collaboration for Prosperity Zone shall work to enhance collaboration and cooperation between their departments and other State agencies, local governmental agencies, and other regional public and nonprofit entities. The liaisons from the Departments of Environment and Natural Resources and Transportation shall work to consolidate and simplify the process for citizens and businesses seeking permits from their respective agencies. The liaisons from the Department of Commerce shall be used to support local economic development efforts, to coordinate such efforts, and to coordinate the Department of Commerce's activities within each Collaboration for Prosperity Zone. The liaisons from the community college system and local school administrative units shall work closely with the Department of Commerce and other State and local governmental agencies and local businesses in the zone to promote job development through career technical education.

SECTION 4.3.(a) The Departments of Transportation and Environment and Natural Resources shall jointly report to the Office of State Budget and Management, the Joint Legislative Commission on Governmental Operations, the Joint Legislative Transportation

Oversight Committee, the Environmental Review Commission, the Senate Appropriations/Base Budget Committee, and the House Appropriations Committee, as follows:

(1) No later than January 1, 2015, on the establishment of collocated liaisons within each Collaboration for Prosperity Zone and a description of the activities the liaisons have been assigned to perform.

(2) No later than April 1, 2015, on the activities of the liaisons, specifically any activities undertaken that resulted in enhanced collaboration and coordination with the other Department and with other governmental agencies, improved administrative efficiencies, and any steps taken to make services to citizens and businesses within each zone more efficient, economical, and user-friendly.

SECTION 4.3.(b) The Community Colleges System Office and the State Board of Education shall each report to the Office of State Budget and Management, the Joint Legislative Commission on Governmental Operations, the Joint Legislative Education Oversight Committee, and the Senate Appropriations/Base Budget Committee, and the House Appropriations Committee, as follows:

(1) No later than January 1, 2015, on the establishment of liaisons within each Collaboration for Prosperity Zone and a description of the activities the liaisons have been assigned to perform.

(2) No later than April 1, 2015, on the activities of the liaisons, specifically any activities undertaken that resulted in enhanced collaboration and coordination with other governmental agencies, improved planning on use of educational resources, and improved administrative efficiencies.

SECTION 4.3.(c) The Department of Commerce shall include in its first report under G.S. 143B-431(f), as enacted by this act, a report on the establishment and activities of its liaisons in each Collaboration for Prosperity Zone. The Department of Commerce shall send a copy of this report to the Office of State Budget and Management and to the Senate Appropriations/Base Budget Committee, and the House Appropriations Committee.

SECTION 4.4. The Departments of Commerce, Environment and Natural Resources, and Transportation, the Community Colleges System Office, and the State Board of Education shall use funds available to carry out the requirements of this section. Nothing in this act shall be construed as an authorization for payment of additional compensation for persons serving as liaisons.

SECTION 4.5. This Part becomes effective July 1, 2014, and expires July 1, 2018.

PART V. GENERAL ASSEMBLY REVIEW OF REPORTS

SECTION 5. It is the intent of the General Assembly to receive and review the reports required by Section 4.3 of this act concerning the creation of the Collaboration for Prosperity Zones and to use those reports to further address the following topics:

(1) Enhancing collaboration and cooperation between State and other governmental agencies in order to streamline and improve services to citizens and businesses, to make such services more user-friendly, and to implement collaborative and cooperative interagency measures to enhance access to services.

(2) Reducing barriers faced by citizens and businesses in accessing services that are unnecessarily caused by agency specialization, which may produce a "silo mentality."

(3) Additional recommendations regarding liaison personnel, including expanding the requirement to other State departments.

(4) Ways to integrate collaboration between educational institutions in each Collaboration for Prosperity Zone on the one hand and other governmental agencies and local businesses on the other.
(5) Requiring the establishment of interagency one-stop shops in each Collaboration for Prosperity Zone.
(6) Consolidating programs or services.
(7) Cross-training employees.
(8) Identifying offices, equipment, and support services that may be efficiently and economically shared between agencies in each Collaboration for Prosperity Zone.
(9) The grouping of counties within each Collaboration for Prosperity Zone to determine whether there is a better configuration while keeping the same overall number of zones.

PART VI. EFFECTIVE DATE AND CONSTRUCTION

SECTION 6.1. Nothing in this act shall be construed to obligate the General Assembly to appropriate funds to implement this act.

SECTION 6.2. Except as otherwise provided, this act is effective when it becomes law.

SENATE BILL 743:
NC Econ. Dev. Partnership Modifications

2013-2014 General Assembly

Committee:	Senate Commerce	**Date:**	June 3, 2014
Introduced by:	Sen. Brown	**Prepared by:**	Dan Ettefagh Committee Counsel
Analysis of:	PCS to First Edition S743-CSMC-24		

SUMMARY: ***The PCS for Senate Bill 743 would (i) permit the Department of Commerce to contract with a North Carolina nonprofit corporation for the performance of certain economic development functions currently performed by the Department, (ii) eliminate the Economic Development Board, (iii) modify the duties and membership of the North Carolina Board of Science and Technology, and (iv) establish 8 geographic zones in the State for inter-departmental cooperation purposes.***

[As introduced, this bill was identical to H1031, as introduced by Rep. Murry, which is currently in House Commerce and Job Development Subcommittee on Biotechnology and Health Care.]

BILL ANALYSIS:

Part I of the bill establishes the framework for the Department of Commerce to contract with a nonprofit corporation to assist the Department in fostering and retaining jobs and business development, international trade, marketing, and travel and tourism. The bill incorporates a number of requirements regarding contracting that can be broadly categorized as follows: limitations on scope, oversight requirements, contractual pre-requisites, mandatory contract terms, reporting requirements, applicability of laws provisions.

Limitations on Scope: The contract for performance is limited in scope by disallowing for the contracting of the following economic development functions of the Department:

- The obligation or commitment of funds under Article 10 (Commerce) of Chapter 143B of the General Statutes; however, recruitment, negotiation, and recommendations relating to economic development programs would fall within the purview of the nonprofit corporation.
- The Division of Employment Security, including the administration of unemployment insurance.
- The functions, powers, duties, and obligations vested in the State Board of Alcoholic Control, the North Carolina Utilities Commission, the North Carolina Industrial Commission, the State Banking Commission and the Commissioner of Banks, the Savings Institutions Division, the Credit Union Commission, the North Carolina Mutual Burial Association Commission, and the North Carolina Rural Electrification Authority.
- The administration of federal funds or grants.

Oversight: A nonprofit corporation contracted with by the Department would be overseen by an Economic Development Accountability & Standards Committee, consisting of the Secretaries of Commerce (Chair), Transportation, Environment and Natural Resources, and Revenue, one member appointed by the Speaker of the House, one member appointed by the President Pro Tempore of the Senate, and one member jointly appointed by the Speaker and President Pro Temp. No member may be

a member of the General Assembly. The Committee would meet at least quarterly and would function to do the following:

- Monitor/oversee the performance of the contract by the nonprofit corporation.
- Receive, review, and refer complaints, as appropriate.
- Request enforcement of the contract by the Attorney General or the Department.
- Audit, via OSBM, the records of the nonprofit corporation to verify data affecting performance and reports.
- Coordinate economic development grant programs between the Departments of Commerce, Transportation, and Environment and Natural Resources.
- Perform other contractual duties.

Contractual Pre-requisites: The contractual authority granted in the bill and the permission to receive State funds by a nonprofit pursuant to a contract exist only if certain requirements are satisfied, as follows:

- At least 45 days prior to entering or substantively amending the contract, the Department submits the contract and a detailed explanation to GovOps and the Fiscal Research Division.
- The nonprofit corporation's governing board meets the following requirements:
    - It is composed of 17 members (9 Governor appointees, including the chair, 4 Senate appointees, and 4 House appointees). The appointees should reflect the geographic diversity of the State, and the Governor's appointees should meet expertise requirements.
    - No member of the board may take actions or use their position for self, business, or familial profit.
    - No State officer or employee may serve on the board.
    - The board must meet at least quarterly and report to the Economic Development Accountability & Standards Committee on economic development progress.
    - The board must provide advice concerning economic and community development planning for the State, recommend economic development policy, recommend appropriations levels for economic development programs, and recommend how to coordinate economic development efforts amount involved agencies and entities.
    - The nonprofit corporation must adhere to the prohibitions on lobbying set forth in Section 501(c)(3) of the Internal Revenue Code.
- The amount of State funds used for annual salaries for individual employees and officers of the corporation is capped at the greater of $120,000 per annum or the amount most recently set by the General Assembly in a budget act.
- The nonprofit corporation receives from sources other than the State funds totaling at least $250,000.

Mandatory Contract Terms: A contract authorized by the bill must contain the following terms:

- A provision requiring annual audited financial statements be submitted within 7 days of issuance to the Fiscal Research Division, the Joint Legislative Economic Development and Global Engagement Oversight Committee, and the Department.
- A provision requiring annual reporting to the Department on program activities, objectives, accomplishments, expenditures, and fund sources, as well as jobs anticipated to result from the nonprofit's activities (including project leads not submitted to the Department for possible discretionary incentives), itemized performance metrics, proposed amendments to areas of expertise for the governing board, and an explanation of how salaries are determined (base pay and bonus pay, including bonuses designed to aid rural/low-income area development). The report must also include any additional information requested by the Department.
- A provision requiring that, upon termination or repeal of the charter of the corporation or dissolution of the corporation, the corporation's assets and funds (including those of affiliated and subsidiary entities) must be returned to the Department within 30 days (during which no further encumbering may occur).
- A provision requiring the corporation to adopt and publish policies on ethics, conflicts of interest, and gifts.

  The ethics policy should provide, at a minimum, for the need to obey all applicable laws re: actions taken, the need to uphold the integrity/independence of the board and nonprofit, the need to avoid impropriety and faithfully perform their duties, and the need to conduct the affairs of the board and nonprofit in an open and public manner and to avoid conflicts of interest.

  The conflict of interest provision should provide, at a minimum, the need to avoid use of the official position to profit themselves, their immediate families or businesses in a way that is greater than similarly located and situated people or businesses. Otherwise, abstinence from voting on or discussing the matter is appropriate.

  The gift policy should provide, at a minimum, that an employee, officer, or member of the board should not knowingly accept a gift from a person seeking to do business in the State or that has a financial interests that may be substantially and materially affected in a way different than the public due to the corporate personnel's job performance. Excepted from the gift prohibition are gifts of food, beverages, transportation, lodging, entertainment, or related expenses associated with recruitment, travel, tourism, and trade if unsolicited and not in trade for job performance and if reported within 30 days to the corporation, including value, description, and explanation of how the gift contributed to recruitment, travel, tourism, or trade. Also excepted are gifts less than $100 in value if customarily given in another country as protocol.
- A provision requiring the corporation to maintain a record of all contributors, including date and aggregate total of all contributions, which is included in the report to the Department.
- A provision requiring separate accounts and bookkeeping by the corporation for State and private funds and prohibiting commingling of funds.
- A provision providing the corporation will not engage in awarding public or private funds of the nonprofit corporation.
- A provision limiting the term and renewal provisions of the contract between the Department and the nonprofit corporation. The maximum initial term is 5 years. The maximum number

of term extensions is 4. The maximum single term extension is 1 year. No extension may occur prior to 4/5 of the initial term passing.

- A provision limiting the severance pay of the chief officers to the lesser of $120,000 or (number of whole years in chief officer position/4) x ($120,000).
- An annual certification that the corporation is in compliance with the North Carolina Nonprofit Corporation Act and has complied with all mandatory contract terms (or an explanation of noncompliance).
- A provision requiring the nonprofit to comply with the travel and tourism policy act if the Department contracts with the nonprofit to promote and market tourism.
- A provision requiring fundraising results of at least $750k in the first year of the contract and at least $1.25M in each additional year of the contract.
- A provision that that financial obligations by State agencies are subject to the availability of appropriated funds or available funds that are not State funds as defined by Chapter 143C.

Reporting and Applicability of Laws: The Department must annually report to EDGE, GovOps, and the Fiscal Research Division on any performance for which the Department has contracted with a nonprofit corporation. The report must contain the report received by the Department from the nonprofit, an executive summary of that report, a listing of each entity for which the corporation has referred to the Department, an explanation of response by the Department for corporate noncompliance with mandatory contract terms, and any soliciting of funds by the Secretary of Commerce on behalf of the corporation. A corporation contracted with must adhere to public records laws and open meetings laws. Regarding State funds, the PCS provides (i) interest earned on State funds must be used for the same purposes as the principal, (ii) travel and personnel expenses reimbursed by State funds must adhere to reimbursement limitations in the North Carolina Budget manual used for State employees (deviations must be approved by the Secretary), and (iii) State funds may not be used for hiring a lobbyist.

The PCS makes clear the Secretary can engage in solicitation of funds for the corporation, but other State employees cannot engage in solicitation of funds for the corporation. In addition, corporate personnel are not State employees, are not covered by the State Personnel Act, and are not entitled to State-funded employee benefits.

Although made subject to the open records law, the PCS modifies the open records laws in the following ways:

- Under current law, once the State, a local government or specific business announce a committed to expand or located a project in the State (or a final, communicated decision not to), the provisions allowing the withholding of public records would no longer apply (i.e., it becomes public record).
- Under the PCS, a final, communicated decision not to expand or locate no longer removes the provision allowing the withholding of public records (i.e. those would remain outside of the public record). Also, if a business requests discretionary incentives for a project but does not expand or locate in the State or does not receive the discretionary incentives, the only records subject to the open records law are the records submitted to the Department by the nonprofit. If a business expands/located in the State but the nonprofit submits no documentation to the Department regarding discretionary incentives (regardless of such were requested) and if the business does not receive discretionary incentives, the records regarding the project are not subject to the open records laws.

The remaining provisions of Part I include (i) a repeal of the Economic Development Board, (ii) an authorization to allow the Secretary to delegate the Secretary's responsibilities with respect to a comprehensive strategic economic development plan to the governance board of the nonprofit corporation with which the Department has contracted, (iii) a requirement that the governing board of the nonprofit corporation continue functions previously performed by the Economic Development Board, (iv) an exemption for Collaboration for Prosperity Zone liaisons and officers, board members, and employees of the nonprofit corporation from certain provisions of the State Personnel Act, and (v) a requirement that the Department study and develop:

- A plan for private fundraising efforts for the nonprofit corporation, including private fundraising potential, private fundraising in other states, creating a budget for the corporation without private fundraising and comparing the budget with amounts required by the Department for the same functions.
- A report on various performance metrics for the Department for the last year and annual averages for the last 5 years. The Department must report to OSBM, GovOps, EDGE, and FRD no later than 12/1/14, and the Department must require the nonprofit corporation to report on the same metrics for comparison purposes to Departmental performance.

Part I of the bill repeals the budgetary provision authorizing privatization of Departmental functions.

Part II of the bill renames the North Carolina Board of Science and Technology as the North Carolina Board of Science, Technology, and Innovation, which would gain the duty to advise and make recommendations to the nonprofit corporation on the role of science, technology, and innovation. The composition of the Board would be changed, increasing from 17 to 23 members. New members include one member of the North Carolina Community Colleges System, one member representing K-12 public education, 2 additional private industry members, and 7 at-large members. Of the existing two members appointed by the Governor from components of The University of North Carolina system other than UNC-CH and NCSU, one member must be from a historically black college or university.[1] Eliminated members include one member from the Research Triangle Institute (nominated by its executive committee), one member from the Microelectronics Center of NC (nominated by its executive committee), one member from the Biotechnology Center (nominated by its executive committee), and two members from public agencies in the State. An additional elimination is the requirement that at least one member be a professional, registered engineer with a degree from an accredited college or university.

Part III of the bill divides the State into 8 geographic regions to facilitate collaborative and coordinated planning and resource use, improve cooperation, facilitate increased efficiencies, receive advice on economic development issues by local boards established by a nonprofit corporation, and establish one-stop assistance in each region for citizens and businesses. The bill would require that the Departments of Commerce, Environment and Natural Resources, and Transportation each provide one employee to each regional office to serve as that department's liaison with other departments and with local governments, schools and colleges, businesses, and other developmental planning bodies. The Community Colleges System Office and State Board of Education would also be required to designate one representative to serve as a liaison in each zone. Office location shall be jointly selected, and Commerce would be authorized to contract with the nonprofit corporation to fulfill the Department's liaison responsibilities. Part IV includes reporting requirements on the establishment and activities of liaisons by Commerce, the Community Colleges System Office, the State Board of Education, the

[1] The appointments from UNC-Chapel Hill and NCSU are unchanged by the bill.

Department of Transportation and DENR. Finally, Part IV modifies the existing educational districts to match the Prosperity Zone composition.

Part V of the bill provides for review of reports and intent to address certain topics by the General Assembly.

EFFECTIVE DATE: Other than the repeal of the budgetary privatization provision, which becomes effective when the act becomes law, Parts I, II, and III become effective 7/1/14. Part IV becomes effective 7/1/14 and expires 7/1/18. The remainder of the act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

S 1

SENATE BILL 743*

Short Title:	NC Econ. Dev. Partnership Modifications.	(Public)
Sponsors:	Senator Brown (Primary Sponsor).	
Referred to:	Commerce.	

May 15, 2014

A BILL TO BE ENTITLED

AN ACT TO FACILITATE ECONOMIC DEVELOPMENT WITHIN THE STATE.

The General Assembly of North Carolina enacts:

PART I. AUTHORIZE CONTRACTING OF ECONOMIC DEVELOPMENT FUNCTIONS BY THE DEPARTMENT OF COMMERCE

SECTION 1.1.(a) Part 1 of Article 10 of Chapter 143B of the General Statutes is amended by adding a new section to read:

"**§ 143B-431A. Department of Commerce – contracting of functions.**

(a) Purpose. – The purpose of this section is to establish a framework whereby the Department of Commerce may support through financial and other means a nonprofit corporation that will render advisory, research, and recruiting recommendations regarding incentives or grant awards for fostering and retaining jobs and business development, marketing, and consultation in the development of a comprehensive, long-range strategic plan for economic development through public and private means. It is the intent of the General Assembly that the Department develops a plan to work cooperatively with a nonprofit corporation for these purposes while safeguarding programmatic transparency and accountability as well as the fiscal integrity of economic development programs of the State.

(b) Contract. – The Department of Commerce is authorized to contract with a North Carolina nonprofit corporation to perform one or more of the Department's functions, powers, duties, and obligations set forth in G.S. 143B-431, except as provided in this subsection. If the Department contracts with a North Carolina nonprofit corporation to promote and grow the travel and tourism industries, then all funds appropriated to the Department for tourism marketing purposes shall be used for a research-based comprehensive marketing program directed toward consumers in key markets most likely to travel to North Carolina and not for ancillary activities, such as statewide branding and business development marketing. The Department may not contract with a North Carolina nonprofit corporation regarding any of the following:

(1) The obligation or commitment of funds under this Article, such as the One North Carolina Fund, the Job Development Investment Grant Program, the Industrial Development Fund, or the Job Maintenance and Capital Development Fund.

(2) The Division of Employment Security, including the administration of unemployment insurance.

(3) The functions set forth in G.S. 143B-431(a)(2).

(4) The administration of funds or grants received from the federal government or its agencies.

(c) Oversight. – There is established the Economic Development Accountability & Standards Committee, which is a Board as that term is defined in G.S. 138A-3 of the State Government Ethics Act. The Committee shall consist of seven members as follows: the Secretary of Commerce as Chair of the Committee, the Secretary of Transportation, the Secretary of Environment and Natural Resources, the Secretary of Revenue, one member appointed by the Speaker of the House of Representatives, one member appointed by the President Pro Tempore of the Senate, and one member jointly appointed by the Speaker of the House of Representatives and the President Pro Tempore of the Senate.

The members of the Committee who are appointed by the Speaker of the House of Representatives or by the President Pro Tempore of the Senate may not be members of the General Assembly. The Committee shall meet at least quarterly upon the call of the chair. The duties of the Committee shall include all of the following:

(1) Monitoring and oversight of the performance of a contract entered into pursuant to this section by the Department with a North Carolina nonprofit corporation.

(2) Receiving, reviewing, and referring complaints regarding the contract or the performance of the North Carolina nonprofit corporation, as appropriate.

(3) Requesting enforcement of the contract by the Attorney General or the Department.

(4) Auditing, at least biennially, either by use of the State Auditor or internal auditors of the Department, of the records of the North Carolina nonprofit corporation with which the Department has contracted pursuant to this section during and after the term of the contract to verify data affecting performance and reports.

(5) Coordination of economic development grant programs of the State between the Department of Commerce, the Department of Transportation, and the Department of Environment and Natural Resources.

(6) Any other duties deemed necessary by the Committee.

(d) Limitations. – Prior to contracting with a North Carolina nonprofit corporation pursuant to this section and in order for the North Carolina nonprofit corporation to receive State funds, the following conditions shall be met:

(1) At least 45 days prior to entering into or amending in a nontechnical manner a contract authorized by this section, the Department shall submit the contract or amendment, along with a detailed explanation of the contract or amendment, to the Joint Legislative Commission on Governmental Operations and the Fiscal Research Division.

(2) The nonprofit corporation adheres to the following governance provisions related to its governing board:

a. The board shall be composed of 17 voting members as follows: eight members and the chair appointed by the Governor, four members appointed by the Speaker of the House of Representatives, and four members appointed by the President Pro Tempore of the Senate. The Governor, the Speaker of the House of Representatives, and the President Pro Tempore of the Senate shall each select members so as to reflect the diversity of the State's geography, and each member appointed by the Governor shall have expertise in one or more of the following areas:

1. Agribusiness, as recommended by the Commissioner of Agriculture.

2. Financial services.
3. Information technology.
4. Biotechnology or life sciences.
5. Energy.
6. Manufacturing.
7. Military or defense.
8. Tourism, as jointly recommended by the North Carolina Travel and Tourism Coalition and the North Carolina Travel Industry Association.
9. Retail, distribution, and logistics.

b. No member of the board may take any official action or use the member's official position to profit in any manner the board member's immediate family, a business with which the board member or the board member's immediate family has a business association, or a client of the board member or the board member's immediate family with whom the board member or the board member's immediate family has an existing business relationship for matters before the board. No board member shall attempt to profit from a proposed project of the Department if the profit is greater than that which would be realized by other persons living in the area where the project is located. If the profit under this sub-subdivision would be greater for the board member than other persons living in the area where the project is located, not only shall the member abstain from voting on that issue, but once the conflict of interest is apparent, the member shall not discuss the project with any other board member or other officer or employee of the Department except to state that a conflict of interest exists. Under this sub-subdivision, a board member is presumed to profit if the profit would be realized by a board member's immediate family, a business with which the board member or the board member's immediate family has a business association, or a client of the board member or the board member's immediate family with whom the board member or the board member's immediate family has an existing business relationship for matters before the board. No board member, in contemplation of official action by the board member, by the board, or in reliance on information that was made known to the board member in the board member's official capacity and that has not been made public, shall (i) acquire a pecuniary interest in any property, transaction, or enterprise or gain any pecuniary benefit that may be affected by such information or official action or (ii) intentionally aid another to do any of the above acts. As used in this sub-subdivision, the following terms mean:

1. Board. – The governing board of the nonprofit corporation with which the Department contracts pursuant to this section.
2. Board member. – A member of the board.
3. Business association. – A director, employee, officer, or partner of a business entity, or owner of more than ten percent (10%) interest in any business entity.
4. Department. – The Department of Commerce.
5. Immediate family. – Spouse, children, parents, brothers, and sisters.

6. Official action. – Actions taken while a board member related to or in connection with the person's duties as a board member, including, but not limited to, voting on matters before the board, proposing or objecting to proposals for economic development actions by the Department or the board, discussing economic development matters with other board members or Department staff or employees in an effort to further the matter after the conflict of interest has been discovered, or taking actions in the course and scope of the position as a board member and actions leading to or resulting in profit.

7. Profit. – Receive monetary or economic gain or benefit, including an increase in value whether or not recognized by sale or trade.

c. No State officer or employee may serve on the board.

d. The board shall meet at least quarterly at the call of its chair. Each quarter and upon request, the board shall report to the Chair of the Economic Development Accountability and Standards Committee on the progress of the State's economic development.

e. The board is required to perform the following duties, if the Department contracts pursuant to G.S. 143B-431A for the performance of the Secretary's responsibilities under G.S. 143B-434.01:

1. To provide advice concerning economic and community development planning for the State, including a strategic business facilities development analysis of existing, available buildings or shell or special-use buildings and sites.

2. To recommend economic development policy to the Secretary of Commerce, the General Assembly, and the Governor.

3. To recommend annually to the Governor biennial and annual appropriations for economic development programs.

4. To recommend how best to coordinate economic development efforts among the various agencies and entities, including those created by executive order of the Governor, that receive economic development appropriations, including the assignment of key responsibilities for different aspects of economic development and resource allocation and planning designed to encourage each agency to focus on its area of primary responsibility and not diffuse its resources by conducting activities assigned to other agencies.

(3) The amount of State funds that may be used for the annual salary of any one officer, employee, or member of a governing board of the nonprofit corporation with which the Department contracts pursuant to this section shall not exceed one hundred twenty thousand dollars ($120,000).

(4) The nonprofit corporation shall have received from fundraising efforts and sources, other than State funds, an amount totaling at least ten million dollars ($10,000,000) to support operations and functions of the corporation.

(e) Mandatory Contract Terms. – Any contract entered into under this section must include all of the following:

(1) A provision requiring the North Carolina nonprofit corporation provide to the Joint Legislative Economic Development and Global Engagement Oversight Committee, the Department of Commerce, and the Fiscal Research Division a copy of the corporation's annual audited financial statement within seven days of issuance of the statement.

(2) A provision requiring the nonprofit corporation to provide, by September 1 of each year, and more frequently as requested, a report to the Department on prior State fiscal year program activities, objectives, and accomplishments and prior State fiscal year itemized expenditures and fund sources. The report shall also include all of the following:

a. Jobs anticipated to result and actually resulting from efforts of the nonprofit corporation, itemized by county, by development tier area designation, as defined by G.S. 143B-437.08, and by Collaboration for Prosperity Zones created pursuant to G.S. 143B-28.1.

b. Developed performance metrics of economic development functions, itemized by county, by development tier area designation, as defined by G.S. 143B-437.08, and by Collaboration for Prosperity Zones created pursuant to G.S. 143B-28.1.

c. Any proposed amendments to the areas of expertise required to be represented on the governing board of the nonprofit corporation.

d. A detailed explanation of how annual salaries are determined, including base pay schedules and any additional salary amounts or incentives that may be earned as a result of job performance. The explanation shall include the proportion of State and private funds for each position and shall include the means used by the nonprofit corporation to foster employee efforts for economic development in rural and low-income areas in the State.

(3) A provision providing that, upon termination of the contract or a request by the Department for enforcement of the contract by the Attorney General, or upon repeal of the charter of the nonprofit corporation with which the Department has contracted under this section by the General Assembly, all assets and funds of the nonprofit corporation, including interest on funds, financial and operational records, and the right to receive future funds pursuant to the contract, will be surrendered to the Department within 30 days of the termination, request, or repeal. During the 30-day period, the corporation may not further encumber any assets or funds. For funds surrendered pursuant to this provision that are subject to a written agreement signed by the board to create a legal and enforceable obligation of the corporation pursuant to subdivision (8) of this subsection, the Department shall use the funds for the same purposes for which the funds were obligated; for all other funds surrendered pursuant to this provision, the Department shall deposit the funds in the General Fund, and the funds shall remain unexpended and unencumbered until appropriated by the General Assembly. For purposes of this subdivision, assets and funds of the nonprofit corporation include assets and funds of any subsidiary or affiliate of the nonprofit corporation. An affiliate of the nonprofit corporation exists when both are directly or indirectly controlled by the same parent corporation or by the same or associated financial interests by stock ownership, interlocking directors, or by any other means whatsoever, whether the control is direct or through one or more subsidiary, affiliated, or controlled corporations.

(4) A provision providing that any recommendation or advice to the Department be accompanied by a statement indicating whether the nonprofit corporation or any affiliated member of the corporation has received, directly or indirectly, any gift, contribution, or item or service of value for which fair market value was not paid if such was received from an entity that is the subject of the recommendation or advice. The statement shall also include the amount and date of each gift, contribution, or item or service of value received.

(5) A provision providing that the nonprofit corporation maintain a Web site disclosing, within 30 days of occurrence, each of the following:

a. The receipt, including the name of any entity from which the nonprofit corporation or any affiliated member of the corporation has received, directly or indirectly, of any gift, contribution, or item or service of value for which fair market value was not paid. The statement shall also include the amount and date of each gift, contribution, or item or service of value received. If the entity listed on the Web site has a contract with this State, the nonprofit corporation shall note expressly the existence of contract with the State.

b. The disbursement, including amount, recipient, and purpose and date of disbursement, of any funds awarded, granted, or loaned by the corporation.

(6) A provision encouraging the nonprofit corporation to seek private funds from businesses and entities that are unlikely to seek economic development incentives from or contracts with the State.

(7) A provision requiring the nonprofit corporation to maintain separate accounting records for and separate accounts for State and private funds and prohibiting any commingling of State and private funds. Records and accounts must be maintained according to generally accepted accounting principles.

(8) A provision requiring any lending, awarding, or granting of private funds of the nonprofit corporation be in a written agreement and signed by the Board in order to create a legal and enforceable obligation of the corporation.

(9) A provision limiting the term of the contract to no more than four years. The term of the contract may be extended in one-year increments up to four times after no less than three-fourths of the original contract term has passed. A contract extension may not extend the remaining term of the contract, including the term of the extension, to more than two years. Nothing in this subdivision shall be construed as a prohibition against entering into a new contract with the nonprofit corporation.

(10) A provision limiting the severance pay for the chief executive officer and other officers of the nonprofit corporation to no more than the lesser of the following:

a. The salary limitation contained in subdivision (3) of subsection (d) of this section.

b. The salary limitation contained in subdivision (3) of subsection (d) of this section multiplied by a fraction, the numerator of which is the number of whole years the chief officer has been chief officer of the corporation and the denominator of which is four.

(11) A provision requiring annual certification by the nonprofit corporation that it is in compliance with the following:

a. The requirements of Chapter 55A of the General Statutes.
b. The requirements of each of the provisions listed in subsection (e) of this section. For any provision in this subsection that the nonprofit corporation did not comply with, the corporation shall provide a detailed explanation of the circumstances and time of the noncompliance.

(12) A provision requiring the nonprofit corporation to contract with the Office of State Budget Management for performance review, including verifying eligibility for disbursement of funds from and reimbursement by the Department to the corporation. The performance review required by this section must occur no less than annually and must be according to generally accepted auditing principles.

(f) Report. – By September 30 of each year, and more frequently as requested, the Department shall submit a report to the Joint Legislative Commission on Governmental Operations, the Joint Legislative Economic Development and Global Engagement Oversight Committee, and the Fiscal Research Division on any performance for which the Department has contracted pursuant to this section. The report shall contain, at a minimum, each of the following:

(1) A copy of the most recent report required by the Department pursuant to subdivision (2) of subsection (e) of this section.
(2) An executive summary of the report required by subdivision (1) of this subsection.
(3) A listing of each entity to which a North Carolina nonprofit corporation with which the Department contracts pursuant to this section has recommended awarding funds and the amount of funds recommended to be awarded, and any other information the Secretary determines is necessary or that is specifically requested in writing.
(4) An explanation of the response by the Department to any notifications of noncompliance submitted to the Department by the nonprofit corporation, as required by G.S. 143B-431A(e), including actions taken by the Department to prevent repeat or similar instances of noncompliance.
(5) For each activity in which the Secretary of Commerce solicits funds for the corporation, as permitted by subsection (i) of this section, a listing of each activity, including the date and the name of each person or entity from whom funds were solicited.

(g) Public Funds. – A North Carolina nonprofit corporation with which the Department contracts pursuant to this section shall comply with the requirements provided in this subsection regarding the use of State funds.

(1) Interest earned on State funds after receipt of the funds by the nonprofit corporation shall be used for the same purposes for which the principal was to be used.
(2) The travel and personnel policies and regulations of the State of North Carolina Budget Manual limiting reimbursement for expenses of State employees apply to reimbursements for expenses of officers, employees, or members of a governing board of the nonprofit corporation.

(h) Applicable Laws. – A North Carolina nonprofit corporation with which the Department contracts pursuant to this section is subject to the requirements of (i) Chapter 132 of the General Statutes and (ii) Article 33C of Chapter 143 of the General Statutes. Officers, employees, and members of the governing board of the corporation are public servants, as defined in G.S. 138A-3, and are subject to the requirements of Chapter 138A of the General Statutes. Officers, members of the governing board, and employees of the corporation whose

annual compensation is equal to or greater than sixty thousand dollars ($60,000) are subject to G.S. 138A-22.

(i) Prohibition. – A State officer or employee, other than the Secretary of Commerce, shall not solicit funds for a North Carolina nonprofit corporation with which the Department contracts pursuant to this section. The Secretary of Commerce may solicit funds for the nonprofit corporation pursuant to G.S. 138A-31(b)(5).

(j) Benefits. – An officer, employee, or member of a governing board of a North Carolina nonprofit corporation with which the Department contracts pursuant to this section is not a State employee, is not covered by Chapter 126 of the General Statutes, and is not entitled to State-funded employee benefits, including membership in the Teachers' and State Employees' Retirement System and the State Health Plan for Teachers and State Employees."

SECTION 1.1.(b) G.S. 143B-431A(i), as enacted by this act, does not apply to employees of the Department of Commerce, other than employees involved in the recommendation and administration of State economic development incentive programs, prior to the time the Department contracts with a North Carolina nonprofit corporation pursuant to this act.

SECTION 1.2.(a) G.S. 143B-434 is repealed.

SECTION 1.2.(b) G.S. 143B-434.01 reads as rewritten:

"**§ 143B-434.01. Comprehensive Strategic Economic Development Plan.**

(a) Definitions. – The following definitions apply in this section:

~~(1) Board. – The Economic Development Board.~~

...

(6) Secretary. – The Secretary of Commerce or the governing board of a North Carolina nonprofit corporation with which the Department contracts pursuant to G.S. 143B-431A for the performance of the Secretary's responsibilities under this section.

(b) ~~Board to Prepare~~ Plan. – The ~~Board~~ Secretary shall ~~prepare~~ review and update the existing Plan ~~by April 1, 1994~~ on or before April 1 of each year. ~~The Board shall review and update this Plan by April 1 of each year.~~ The ~~original~~ Plan shall cover a period of four years and each annual update shall extend the time frame by one year so that a four-year plan is always in effect. The ~~Board~~ Secretary shall provide copies of the Plan and each annual update to the Governor and the Joint Legislative Commission on Governmental Operations. The Plan shall encompass all of the components set out in this section.

(c) Purpose. – The purpose of this section is to require the ~~Board~~ Secretary to apply strategic planning principles to its economic development efforts. This requirement is expected to result in:

(1) The selection of a set of priority development objectives that recognizes the increasingly competitive economic environment and addresses the changing needs of the State in a more comprehensive manner.

(2) The effective utilization of available and limited resources.

(3) A commitment to achieve priority objectives and to sustain the process.

(d) (1) Public and Private Input. – At each stage as it develops and updates the Plan, the ~~Board~~ Secretary shall solicit input from all parties involved in economic development in North Carolina, including:

a. Each of the programs and organizations that, for State budget purposes, identifies economic development as one of its global goals.

b. Local economic development departments and regional economic development organizations.

c. The Board of Governors of The University of North Carolina.

(2) The ~~Board~~ Secretary shall also hold hearings in each of the Regions to solicit public input on economic development before the initial Plan is completed. The purposes of the public hearings are to:

a. Assess the strengths and weaknesses of recent regional economic performance.

b. Examine the status and competitive position of the regional resource base.

c. Identify and seek input on issues that are key to improving the economic well-being of the Region.

The ~~Board~~ Secretary shall hold additional hearings from time to time to solicit public input regarding economic development activities.

(3) Each component of the Plan shall be based on this broad input and, to the extent possible, upon a consensus among all affected parties. The ~~Board~~ Secretary shall coordinate its planning process with any State capital development planning efforts affecting State infrastructure such as roads and water and sewer facilities.

(e) Environmental Scan. – The first step in developing the Plan shall be to develop an environmental scan based on the input from economic development parties and the public and on information about the economic environment in North Carolina. To prepare the scan, the ~~Board~~ Secretary shall gather the ~~following~~ information required in this subsection and ensure that the information is updated periodically. The updated information may be provided in whatever format and through whatever means is most efficient. The information required to prepare the scan includes all of the following:

...

(f) Repealed by Session Laws 2012-142, s. 13.4(a), effective July 1, 2012.

(g) Vision and Mission Statements. – The ~~Board~~ Secretary shall develop a vision statement for economic development that would describe the preferred future for North Carolina and what North Carolina would be like if all economic development efforts were successful. The ~~Board~~ Secretary shall then develop a mission statement that outlines the basic purpose of each of North Carolina's economic development programs. Because special purpose nonprofit organizations are uniquely situated to conduct the entrepreneurial and high-risk activity of investing in and supporting new business creation in the State, they should be assigned a dominant role in this key component of economic development activity.

(h) Goals and Objectives. – The ~~Board~~ Secretary, using data from the public input and the environmental scan, shall formulate a list of goals and objectives. Goals shall be long-range, four years or more, and shall address both needs of economically distressed Regions and counties as well as opportunities for Regions and counties not distressed. The goals shall be developed with realism but should also be selected so as to encourage every Region and county within the State to develop to its maximum potential. Objectives shall be one year or less in scope and shall, if achieved, lead to the realization of the goals formulated by the ~~Board~~ Secretary as provided in this section.

Both goals and objectives should be stated largely in economic terms, that is, they should be related to specific population, employment, demographic targets, or economic sector targets. Both efficiency and equity considerations are to be addressed and balanced with special emphasis placed on the needs of disadvantaged or economically distressed populations and communities. The goals and objectives should not state how the economic targets are to be reached, but rather what the economic conditions will be if they are obtained. So that the progress of North Carolina's economic development efforts can be monitored, the ~~Board~~ Secretary shall set objectives for each goal that allow measurement of progress toward the goal. Objectives should be quantifiable and time-specific in order to serve as performance indicators.

...

(j) Implementation Plan. – Based upon all of the foregoing steps, the ~~Board~~ Secretary shall establish an implementation plan assigning to the appropriate parties specific responsibilities for meeting measurable objectives. The implementation plan shall contain all necessary elements so that it may be used as a means to monitor performance, guide appropriations, and evaluate the outcomes of the parties involved in economic development in the State.

(k) Annual Evaluation. – The ~~Board~~ Secretary shall annually evaluate the State's economic performance based upon the statistics listed in this subsection and upon the ~~Board's~~ Secretary's stated goals and objectives in its Plan. The statistics upon which the evaluation is made should be available to policymakers. The information may be provided in whatever format and through whatever means is most efficient.

...

(l) Accountability. – The ~~Board~~ Secretary shall make all data, plans, and reports available to the General Assembly, the Joint Legislative Commission on Governmental Operations, the Joint Legislative Economic Development and Global Engagement Oversight Committee, the Senate Appropriations Committee on Natural and Economic Resources, and the House of Representatives Appropriations Subcommittee on Natural and Economic Resources at appropriate times and upon request. The ~~Board~~ Secretary shall prepare and make available on an annual basis public reports on each of the major sections of the Plan and the Annual Report indicating the degree of success in attaining each development objective."

SECTION 1.2.(c) G.S. 143B-437.03 is repealed.

SECTION 1.3. The Department of Commerce shall study and develop a plan for contracting with a North Carolina nonprofit corporation pursuant to G.S. 143B-431A, as enacted by this act, for the performance of economic development activities and duties of the Department. The study shall include each of the following:

(1) The Department shall develop a plan for private fundraising efforts for the nonprofit corporation for the performance of economic development functions. The study shall include the creation of a budget for the nonprofit corporation that provides for the performance of core functions of the corporation, including economic development functions, in the absence of private funds. The study shall compare the budget of the Department and budget developed for the nonprofit corporation according to Department division and budget category, including personal services; purchased services; supplies; property, plant, and equipment; other expenses and adjustments; aid and public assistance; and other budget categories used by the Department. The study shall include a measurement and estimation of expected private fundraising potential, and the Department shall examine the efforts of other states that have permitted public-private partnerships for economic development activities and report on the source or sources of funds for those partnerships, separately accounting for funds provided by the state and private funds.

(2) The Department shall report on each performance metric listed in this subdivision. The report shall analyze the Department's performance for each metric for (i) the last full year prior to contracting for performance of the metric, (ii) the annual average for the five-year period preceding contracting for performance of the metric, and (iii) the annual average for the 10-year period preceding contracting for performance of the metric. The performance metrics to be reported upon are as follows:

a. For business and industry:

1. Number of projects announced by the Department.

2. Number of projects pursued by the Department that were not subsequently announced.
3. The originating source of and number of projects identified in sub-sub-subdivisions 1. and 2. of this sub-subdivision, including a designation of whether the project was identified by Departmental staff, local economic development partner, business source, or other source.
4. Percentage of projects pursued by the Department that resulted in announcement.
5. Number of jobs anticipated to be created at the time the projects are announced.
6. Cost per job in incentives awarded or granted.
7. Average number of years required for recoupment by the State of incentives awarded and authorized by the Department through increased State tax revenues.
8. Any foreign direct investment resulting from departmental activities or expenditures or both.

b. For marketing:
1. Advertising and marketing budget for the State. Expenditures shall be itemized by print media, radio, television, Internet, business trade shows and conventions, and other communication media.
2. Efficacy and means of evaluating efficacy of marketing efforts in promoting the State as a business destination, including instances of positive mentions of the State or the business environment of the State resulting from marketing efforts.

c. For international trade:
1. Expenditures of the Department, itemized by departmental staff, independent entities with which the Department contracts, marketing and communication, trade shows, trade missions, and conventions.
2. Information on additional exports generated as a result of departmental activities or expenditures or both.

d. For small business:
1. List of each service and support offered for small businesses in or exploring expansion in or into the State.
2. Number of small businesses to which services or support has been provided.
3. Number of jobs created or retained as a result of services or support provided.

e. For tourism:
1. Advertising and marketing budget for the State. Expenditures shall be itemized by print media, radio, television, Internet, industry shows and conventions, and other communication media.
2. Efficacy and means of evaluating efficacy of marketing efforts in promoting the State as a tourism destination, including instances of positive mentions of the State or the tourism environment of the State resulting from marketing efforts.

3. Number of tourists attracted as a result of departmental efforts.

f. Any other information or performance metrics allowing comparison between departmental and corporate performance for any other economic development division in the Department for which the Department contracts for performance with a North Carolina nonprofit corporation pursuant to this act.

g. Any other information or performance metrics deemed useful or necessary by the Department in the listed areas or other areas.

The Department shall make a report to the Office of State Budget Management, to the Joint Legislative Commission on Governmental Operations, to the Joint Legislative Economic Development and Global Engagement Oversight Committee, and to the Fiscal Research Division no later than December 1, 2014.

The Department shall require the nonprofit corporation to include in each report mandated by G.S. 143B-431A(e)(2) an analysis of the corporation's performance and a comparison to departmental performance using the same performance metrics studied and reported by the Department, as required by subdivision (2) of this section.

SECTION 1.4. G.S. 126-5 reads as rewritten:

"**§ 126-5. Employees subject to Chapter; exemptions.**

...

(c2) The provisions of this Chapter shall not apply to:

...

(5) Officers, employees, and members of the governing board of a North Carolina nonprofit corporation with which the Department of Commerce has contracted pursuant to the authority granted in G.S. 143B-431A.

...

(d) (1) Exempt Positions in Cabinet Department. – Subject to the provisions of this Chapter, which is known as the State Personnel Act, the Governor may designate a total of 1,000 exempt positions throughout the following departments:

...

(2b) Designation of Liaison Positions. – Liaisons to the Collaboration for Prosperity Zones set out in G.S. 143B-28.1 for the Departments of Commerce, Environment and Natural Resources, and Transportation are designated as exempt.

...."

SECTION 1.5. Section 15.7A of S.L. 2013-360 is repealed.

SECTION 1.6. Section 1.5 of this act is effective when it becomes law. The remainder of this Part becomes effective July 1, 2014.

PART II. MODIFY NORTH CAROLINA BOARD OF SCIENCE AND TECHNOLOGY

SECTION 2.1. Part 18 of Article 10 of Chapter 143B of the General Statutes reads as rewritten:

"Part 18. North Carolina Board of ~~Science and Technology.~~Science, Technology, and Innovation.

"**§ 143B-472.80. North Carolina Board of ~~Science and Technology;~~ Science, Technology, and Innovation; creation; powers and duties.**

The North Carolina Board of ~~Science and Technology~~ Science, Technology, and Innovation of the Department of Commerce is created. The Board has the following powers and duties:

...

(4) To advise and make recommendations to the Governor, the General Assembly, the Secretary of Commerce, and ~~the Economic Development Board~~ any North Carolina nonprofit corporation with which the Department of Commerce contracts pursuant to G.S. 143B-431A on the role of ~~science and technology~~ science, technology, and innovation in the economic growth and development of North Carolina.

...

"§ 143B-472.81. North Carolina Board of ~~Science and Technology;~~ Science, Technology, and Innovation; membership; organization; compensation; staff services.

(a) The North Carolina Board of ~~Science and Technology~~ Science, Technology, and Innovation consists of the Governor, the Secretary of Commerce, and ~~17~~ 23 members appointed as follows: the Governor shall appoint one member from the University of North Carolina at Chapel Hill, one member from North Carolina State University at Raleigh, and two members from other components of the University of North Carolina, one of which shall be from a historically black college or university, all nominated by the President of the University of North Carolina; one member from Duke University, nominated by the President of Duke University; one member from a private college or university, other than Duke University, in North Carolina, nominated by the President of the Association of Private Colleges and Universities; one member of the North Carolina Community College System; one member representing K-12 public education; ~~one member from the Research Triangle Institute, nominated by the executive committee of the board of that institute; one member from the Microelectronics Center of North Carolina, nominated by the executive committee of the board of that center; one member from the North Carolina Biotechnology Center, nominated by the executive committee of the board of that center; four~~ six members from private industry in North ~~Carolina, at least one of whom shall be a professional engineer registered pursuant to Chapter 89C of the General Statutes or a person who holds at least a bachelors degree in engineering from an accredited college or university; and two members from public agencies in North Carolina.~~Carolina; and seven at-large members. Two members shall be appointed by the General Assembly, one shall be appointed upon the recommendation of the President Pro Tempore of the Senate, and one shall be appointed upon the recommendation of the Speaker of the House of Representatives in accordance with G.S. 120-121. The nominating authority for any vacancy on the Board among members appointed by the Governor shall submit to the Governor two nominations for each position to be filled, and the persons so nominated shall represent different disciplines.

...."

SECTION 2.2. G.S. 143B-437.80 reads as rewritten:

"§ 143B-437.80. North Carolina SBIR/STTR Incentive Program.

(a) Program. – There is established the North Carolina SBIR/STTR Incentive Program to be administered by the North Carolina Board of ~~Science and Technology.~~Science, Technology, and Innovation. In order to foster job creation and economic development in the State, the Board may provide grants to eligible businesses to offset costs associated with applying to the United States Small Business Administration for Small Business Innovative Research (SBIR) grants or Small Business Technology Transfer Research (STTR) grants. The grants shall be paid from the One North Carolina Small Business Account established in G.S. 143B-437.71.

...

(c) Grant. – The North Carolina Board of ~~Science and Technology~~Science, Technology, and Innovation may award grants to reimburse an eligible business for up to fifty percent (50%) of the costs of preparing and submitting a SBIR/STTR Phase I proposal, up to a maximum of three thousand dollars ($3,000). A business may receive only one grant under this section per year. A business may receive only one grant under this section with respect to each federal

proposal submission. Costs that may be reimbursed include costs incurred directly related to preparation and submission of the grant such as word processing services, proposal consulting fees, project-related supplies, literature searches, rental of space or equipment related to the proposal preparation, and salaries of individuals involved with the preparation of the proposals. Costs that shall not be reimbursed include travel expenses, large equipment purchases, facility or leasehold improvements, and legal fees.

(d) Application. – A business shall apply, under oath, to the North Carolina Board of ~~Science and Technology~~ Science, Technology, and Innovation for a grant under this section on a form prescribed by the Board that includes at least all of the following:

...."

SECTION 2.3. G.S. 143B-437.81 reads as rewritten:

"**§ 143B-437.81. North Carolina SBIR/STTR Matching Funds Program.**

(a) Program. – There is established the North Carolina SBIR/STTR Matching Funds Program to be administered by the North Carolina Board of ~~Science and Technology.~~ Science, Technology, and Innovation. In order to foster job creation and economic development in the State, the Board may provide grants to eligible businesses to match funds received by a business as a SBIR or STTR Phase I award and to encourage businesses to apply for Phase II awards.

...

(c) Grant. – The North Carolina Board of ~~Science and Technology~~ Science, Technology, and Innovation may award grants to match the funds received by a business through a SBIR/STTR Phase I proposal up to a maximum of one hundred thousand dollars ($100,000). Seventy-five percent (75%) of the total grant shall be remitted to the business upon receipt of the SBIR/STTR Phase I award and application for funds under this section. Twenty-five percent (25%) of the total grant shall be remitted to the business upon submission by the business of the Phase II application to the funding agency and acceptance of the Phase I report by the funding agency. A business may receive only one grant under this section per year. A business may receive only one grant under this section with respect to each federal proposal submission. Over its lifetime, a business may receive a maximum of five awards under this section.

(d) Application. – A business shall apply, under oath, to the North Carolina Board of ~~Science and Technology~~ Science, Technology, and Innovation for a grant under this section on a form prescribed by the Board that includes at least all of the following:

...."

PART III. CREATION OF COLLABORATION FOR PROSPERITY ZONES

SECTION 3.1. Intent to create Collaboration for Prosperity Zones. – It is the intent of the General Assembly to establish geographically uniform zones in this State to facilitate collaborative and coordinated planning and use of resources, to improve cooperation with other governmental and nonprofit entities at the local and regional level, to facilitate administrative efficiencies within State government, to receive advice on economic development issues by local boards established by a North Carolina nonprofit corporation with which the Department of Commerce contracts, and, to the extent feasible, to establish one-stop sources in each region for citizens and businesses seeking State services at a regional level.

SECTION 3.2. Article 1 of Chapter 143B of the General Statutes is amended by adding a new section to read:

"**§ 143B-28.1. Create Collaboration for Prosperity Zones.**

For purposes of enhanced collaboration and cooperation between governmental agencies, planning, use of resources, and improved efficiency at a regional level, the State is hereby divided into eight permanent zones as follows:

(1) Western Region, consisting of Buncombe, Cherokee, Clay, Graham, Haywood, Henderson, Jackson, Macon, Madison, Polk, Rutherford, Swain, and Transylvania Counties.

(2) Northwest Region, consisting of Alleghany, Ashe, Alexander, Avery, Burke, Caldwell, Catawba, McDowell, Mitchell, Watauga, Wilkes, and Yancey Counties.

(3) Southwest Region, consisting of Anson, Cabarrus, Cleveland, Gaston, Iredell, Lincoln, Mecklenburg, Rowan, Stanly, and Union Counties.

(4) Piedmont-Triad (Central) Region, consisting of Alamance, Caswell, Davidson, Davie, Forsyth, Guilford, Randolph, Rockingham, Stokes, Surry, and Yadkin Counties.

(5) North Central Region, consisting of Chatham, Durham, Edgecombe, Franklin, Granville, Harnett, Johnston, Lee, Nash, Orange, Person, Vance, Wake, Warren, and Wilson Counties.

(6) Sandhills (South Central) Region, consisting of Bladen, Columbus, Cumberland, Hoke, Montgomery, Moore, Richmond, Robeson, Sampson, and Scotland Counties.

(7) Northeast Region, consisting of Beaufort, Bertie, Camden, Chowan, Currituck, Dare, Gates, Halifax, Hertford, Hyde, Martin, Northampton, Pasquotank, Perquimans, Pitt, Tyrrell, and Washington Counties.

(8) Southeast Region, consisting of Brunswick, Carteret, Craven, Duplin, Greene, Jones, Lenoir, New Hanover, Onslow, Pamlico, Pender, and Wayne Counties."

SECTION 3.3. Agencies shall, by January 1, 2015, report to the Joint Legislative Commission on Governmental Operations and the Study Commission on Collaboration for Prosperity on how they plan to establish Collaboration for Prosperity Zones as defined by this act.

SECTION 3.4. G.S. 115C-65 reads as rewritten:

"**§ 115C-65. State divided into districts.**

The State of North Carolina shall be divided into eight educational ~~districts~~ districts, which shall match the composition of the zones set forth in G.S. 143B-28.1.~~embracing the counties herein set forth:~~

~~**FIRST DISTRICT**~~

~~Beaufort, Bertie, Camden, Chowan, Currituck, Dare, Gates, Hertford, Hyde, Martin, Pasquotank, Perquimans, Pitt, Tyrrell, Washington.~~

~~**SECOND DISTRICT**~~

~~Brunswick, Carteret, Craven, Duplin, Greene, Jones, Lenoir, New Hanover, Onslow, Pamlico, Pender, Sampson, Wayne.~~

~~**THIRD DISTRICT**~~

~~Durham, Edgecombe, Franklin, Granville, Halifax, Johnston, Nash, Northampton, Vance, Wake, Warren, Wilson.~~

~~**FOURTH DISTRICT**~~

~~Bladen, Columbus, Cumberland, Harnett, Hoke, Lee, Montgomery, Moore, Richmond, Robeson, Scotland.~~

~~FIFTH DISTRICT~~

~~Alamance, Caswell, Chatham, Davidson, Forsyth, Guilford, Orange, Person, Randolph, Rockingham, Stokes.~~

~~SIXTH DISTRICT~~

~~Anson, Cabarrus, Cleveland, Gaston, Lincoln, Mecklenburg, Stanly, Union.~~

~~SEVENTH DISTRICT~~

~~Alexander, Alleghany, Ashe, Avery, Burke, Caldwell, Catawba, Davie, Iredell, Rowan, Surry, Watauga, Wilkes, Yadkin.~~

~~EIGHTH DISTRICT~~

~~Buncombe, Cherokee, Clay, Graham, Haywood, Henderson, Jackson, Macon, Madison, McDowell, Mitchell, Polk, Rutherford, Swain, Transylvania, Yancey.~~"

SECTION 3.5. Section 3.4 of this act becomes effective April 1, 2015. Members of the State Board of Education appointed by the Governor and confirmed by the General Assembly prior to 2015 with terms ending in 2017, 2019, and 2021 shall be designated as the appointees of the following districts for the remainder of the member's current term:

a. Western Region: Wayne McDevitt
b. Southwest Region: Gregory Alcorn
c. Piedmont Triad (Central) Region: A.L. Collins
d. Sandhills (South Central) Region: Olivia Oxendine
e. Northeast Region: Rebecca Taylor
f. Southeast Region: Reginald Kenan

The remainder of this Part becomes effective July 1, 2014.

PART IV. REQUIRE AT LEAST ONE LIAISON IN EACH COLLABORATION FOR PROSPERITY ZONE

SECTION 4.1. No later than January 1, 2015, the Departments of Commerce, Environment and Natural Resources, and Transportation shall have at least one employee physically located in the same office in each of the Collaboration for Prosperity Zones set out in G.S. 143B-28.1 to serve as that department's liaison with the other departments and with local governments, schools and colleges, planning and development bodies, and businesses in that zone. The departments shall jointly select the office. For purposes of this Part, the Department of Commerce may contract with a North Carolina nonprofit corporation pursuant to G.S. 143B-431A, as enacted by this act, to fulfill the departmental liaison requirements for each office in each of the Collaboration for Prosperity Zones.

No later than January 1, 2015, the Community Colleges System Office shall designate at least one representative from a community college or from the Community Colleges System Office to serve as a liaison in each Collaboration for Prosperity Zone for the community college system, the community colleges in the zone, and other educational agencies and schools within the zone. A liaison may be from a business center located in a community college. These liaisons are not required to be collocated with the liaisons from the Departments of Commerce, Environment and Natural Resources, and Transportation.

No later than January 1, 2015, the State Board of Education shall designate at least one representative from a local school administrative unit or from the Department of Public Instruction to serve as a liaison in each Collaboration for Prosperity Zone for the local school administrative units and other public schools within the zone. These liaisons are not required to be collocated with the liaisons from the Departments of Commerce, Environment and Natural Resources, and Transportation.

SECTION 4.2. In addition to other related tasks assigned by their respective agencies, liaisons in each Collaboration for Prosperity Zone shall work to enhance collaboration and cooperation between their departments and other State agencies, local governmental agencies, and other regional public and nonprofit entities. The liaisons from the Departments of Environment and Natural Resources and Transportation shall work to consolidate and simplify the process for citizens and businesses seeking permits from their respective agencies. The liaisons from the Department of Commerce shall be used to support local economic development efforts, to coordinate such efforts, and to coordinate the Department of Commerce's activities within each Collaboration for Prosperity Zone. The liaisons from the community college system and local school administrative units shall work closely with the Department of Commerce and other State and local governmental agencies and local businesses in the zone to promote job development through career technical education.

SECTION 4.3.(a) The Departments of Transportation and Environment and Natural Resources shall jointly report to the Office of State Budget and Management, the Joint Legislative Commission on Governmental Operations, the Joint Legislative Transportation Oversight Committee, the Environmental Review Commission, and the Study Commission on Interagency Collaboration for Prosperity, as follows:

(1) No later than January 1, 2015, on the establishment of collocated liaisons within each Collaboration for Prosperity Zone and a description of the activities the liaisons have been assigned to perform.

(2) No later than April 1, 2015, on the activities of the liaisons, specifically any activities undertaken that resulted in enhanced collaboration and coordination with the other Department and with other governmental agencies, improved administrative efficiencies, and any steps taken to make services to citizens and businesses within each zone more efficient, economical, and user-friendly.

SECTION 4.3.(b) The Community Colleges System Office and the State Board of Education shall each report to the Office of State Budget and Management, the Joint Legislative Commission on Governmental Operations, the Joint Legislative Education Oversight Committee, and the Study Commission on Interagency Collaboration for Prosperity, as follows:

(1) No later than January 1, 2015, on the establishment of liaisons within each Collaboration for Prosperity Zone and a description of the activities the liaisons have been assigned to perform.

(2) No later than April 1, 2015, on the activities of the liaisons, specifically any activities undertaken that resulted in enhanced collaboration and coordination with other governmental agencies, improved planning on use of educational resources, and improved administrative efficiencies.

SECTION 4.3.(c) The Department of Commerce shall include in its first report under G.S. 143B-431(c1), as enacted by this act, a report on the establishment and activities of its liaisons in each Collaboration for Prosperity Zone. The Department of Commerce shall send a copy of this report to the Office of State Budget and Management and to the Study Commission on Interagency Collaboration for Prosperity.

SECTION 4.4. The Departments of Commerce, Environment and Natural Resources, and Transportation, the Community Colleges System Office, and the State Board of

Education shall use funds available to carry out the requirements of this section. Nothing in this act shall be construed as an authorization for payment of additional compensation for persons serving as liaisons.

SECTION 4.5. This Part becomes effective July 1, 2014, and expires July 1, 2018.

PART V. STUDY COMMISSION ON INTERAGENCY COLLABORATION FOR PROSPERITY

SECTION 5.1.(a) Creation of Commission. – The Study Commission on Interagency Collaboration for Prosperity is established in the General Assembly.

SECTION 5.1.(b) Membership. – The Study Commission on Interagency Collaboration for Prosperity shall consist of eight members, four members of the Senate appointed by the President Pro Tempore of the Senate and four members of the House of Representatives appointed by the Speaker of the House of Representatives.

SECTION 5.1.(c) Cochairs; Vacancies; Quorum. – The Study Commission on Interagency Collaboration for Prosperity shall have two cochairs, one designated by the President Pro Tempore of the Senate and one designated by the Speaker of the House of Representatives from among their respective appointees. The Commission shall meet upon the call of the cochairs. Any vacancy on the Commission shall be filled by the original appointing authority. A majority of the members of the Commission constitutes a quorum.

SECTION 5.1.(d) Compensation; Administration. – Members of the Study Commission on Interagency Collaboration for Prosperity shall receive per diem, subsistence, and travel allowances in accordance with G.S. 120-3.1. The Commission, while in the discharge of its official duties, may exercise all powers provided for under G.S. 120-19 and G.S. 120-19.1 through G.S. 120-19.4. The Commission may meet in the Legislative Building or the Legislative Office Building.

With approval of the Legislative Services Commission, the Legislative Services Officer shall assign professional staff to assist the Study Commission on Interagency Collaboration for Prosperity in its work. The House of Representatives' and the Senate's Directors of Legislative Assistants shall assign clerical staff to the Study Commission on Interagency Collaboration for Prosperity, and the expenses relating to the clerical employees shall be borne by the Commission. The Study Commission on Interagency Collaboration for Prosperity may contract for professional, clerical, or consultant services, as provided by G.S. 120-32.02.

SECTION 5.2.(a) Duties. – The Study Commission on Interagency Collaboration for Prosperity shall review the reports submitted by the Departments of Commerce, Environment and Natural Resources, and Transportation, the Community Colleges System Office, and the State Board of Education pursuant to Part IV of this act and any other information the Commission deems relevant. The Commission may also study and recommend to the 2015 Regular Session of the General Assembly legislation on the following topics:

(1) Enhancing collaboration and cooperation between State and other governmental agencies in order to streamline and improve services to citizens and businesses, to make such services more user-friendly, and to implement collaborative and cooperative interagency measures to enhance access to services.

(2) Reducing barriers faced by citizens and businesses in accessing services that are unnecessarily caused by agency specialization (which may produce a "silo mentality").

(3) Additional recommendations regarding liaison personnel, including expanding the requirement to other State departments.

(4) Ways to integrate collaboration between educational institutions in each Collaboration for Prosperity Zone on the one hand and other governmental agencies and local businesses on the other.
(5) Requiring the establishment of interagency one-stop shops in each Collaboration for Prosperity Zone.
(6) Consolidation of programs or services.
(7) Cross-training of employees.
(8) Identification of offices, equipment, and support services that may be efficiently and economically shared between agencies in each Collaboration for Prosperity Zone.
(9) The grouping of counties within each Collaboration for Prosperity Zone to determine whether there is a better configuration while keeping the same overall number of zones.

The report containing the recommendations shall identify any savings or costs identified by the Commission as likely to result from its recommendations.

SECTION 5.2.(b) Report. – The Study Commission on Interagency Collaboration for Prosperity shall report its recommendations under this section to the 2015 Regular Session of the General Assembly.

SECTION 5.2.(c) Agency Cooperation. – All State departments and agencies and local governments and their subdivisions shall furnish the Study Commission on Interagency Collaboration for Prosperity with any information in their possession or available to them.

SECTION 5.2.(d) Commission Termination. – The Study Commission on Interagency Collaboration for Prosperity shall terminate on the filing of its report or on July 1, 2015, whichever is later.

PART VI. EFFECTIVE DATE AND CONSTRUCTION

SECTION 6.1. Nothing in this act shall be construed to obligate the General Assembly to appropriate funds to implement this act.

SECTION 6.2. Except as otherwise provided, this act is effective when it becomes law.

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. _____ DATE 6/4/2014

S. B. No. 743 Amendment No. _____ (to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE X

Rep.) Brown
Sen.)

moves to amend the bill on page 3, line 11

( ) WHICH CHANGES THE TITLE

by deleting "prohibitions" and substituting "restrictions"; and

on page 4, line 13, by deleting "143" and substituting "143B"; and

on page 13, line 7, by rewriting the line to read: "Chapter, which is known as ~~the State Personnel Act~~, State Human Resources, the Governor may"; and

on page 16, line 4, by deleting "Agencies" and substituting "The Departments of Commerce, Environment and Natural Resources, and Transportation, the Community Colleges System Office, and the State Board of Education"

SIGNED _____

ADOPTED _____ FAILED _____ TABLED _____

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

• **NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT**

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. _____ DATE 6-4-14

S. B. No. 743 Amendment No. _____
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE _____

Rep.)
Sen.) Tillman

1 moves to amend the bill on page 2, line 20
2 ( ) WHICH CHANGES THE TITLE
3 by deleting "State Budget and Management" and
4 substituting "State Auditor";
5
6 and on page 2, line 20, by deleting
7 "biennially" and substituting "annually".
8
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19

SIGNED _____

ADOPTED _____ FAILED _____ TABLED _____

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

VISITOR REGISTRATION SHEET

Senate **COMMERCE** Committee — June 4, 2014

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DEBBIE LOWN

NAME	FIRM OR AGENCY AND ADDRESS
Tonya Horton	Troutman Sanders
TJ Gurley	MSV
Tony Chiotakis	Town of Morrisville
Emily Atkinson	GRCC
Lucas Peirce	TC
Nicole Dozier	TC- Apex
Gene Schulze	TC - Apex
Lori Ann Harris	LAHA
Nathan Batts	NCBA
Bill Rowe	NC Justice Center
Thomas W. Harper III	City of Laurinburg

VISITOR REGISTRATION SHEET

Senate **COMMERCE** Committee — June 4, 2014

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DEBBIE LOWN

NAME	FIRM OR AGENCY AND ADDRESS
Mia Bailey	ElectriCities
Jobe Handley	MTJS
Bruce Deichl	Tax Credits, LLC
Mel Cohen	City of Morganton
Sally Sandy	City of Morganton
Louis Vinay	" "
John Cantrell	" "
Scott Hildebran	" "
Adrian Miller	City of Belmont
Dot Martin	City of Belmont
Charlie Martin	City of Belmont

VISITOR REGISTRATION SHEET

Senate **COMMERCE** Committee — June 4, 2014

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DEBBIE LOWN

NAME	FIRM OR AGENCY AND ADDRESS
John Hoomani	NCDOC
Shaun Allred Decker	NCDOC
[illegible]	NCDOC
Michael Ebert	NCDOC
Merrilee Benton	OSBM
Rhiannon Beel	NCMMC
Julie White	NCMMC
[illegible]	Gov Office
Laura Gunter	NCBIO
Dion Terry	Governor
John Rieger	NCEDA

VISITOR REGISTRATION SHEET

Senate **COMMERCE** Committee — June 4, 2014

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DEBBIE LOWN

NAME	FIRM OR AGENCY AND ADDRESS
Estherine Davis	Estherine Davis & Assoc. Inc.
	NCAMM
Jonathan Robinson	NCRMA
Steven Pennington	Commerce - LEAD
	NCACC
	NCACC
David Heinen	NC Center for Nonprofits
Dana Simpson	SVA
John Beatty	NCTTC
Kara Weishaar	SA

VISITOR REGISTRATION SHEET

Senate **COMMERCE** Committee — June 4, 2014

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DEBBIE LOWN

NAME	FIRM OR AGENCY AND ADDRESS
Chris McClure	Brooks Pierce
Amanda Seymour	NCRA
Morgan Abbott	CTNC
Christopher Greenidge	Intern

VISITOR REGISTRATION SHEET

Senate **COMMERCE** Committee — June 4, 2014

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DEBBIE LOWN

NAME	FIRM OR AGENCY AND ADDRESS
Chris Emanuel	The C.G. Emanuel Group
Matt Curran	Sen. Krawiec office
Ken Bowman	Sen. Bryant's office
Patrick Buffkin	NCAEC
Jay Rouse	"
Sarah Wolfe	MWC
Jim Blyth	Town of Maggie Valley
Ron DeSimone	Mayor - Maggie Valley
Mary Catherine Starns	Governors Office/Page
Amelia Mangum	Governors office/Page
JJ Jackson	Governors office/Page

VISITOR REGISTRATION SHEET

Senate **COMMERCE** Committee — June 4, 2014

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DEBBIE LOWN

NAME	FIRM OR AGENCY AND ADDRESS
Susanna Davis	WM
Charles King	school of government
Mark Lanier	UNCW
Zeb Smathers	Town of Cary
Chip Killian	nelson mullins
ROBERT BROOME	NCAR
Whitney Christensen	NCLM
Bill Downing	NCOSHR
Mary McCargo	NMRS
Tim Robson	AT&T
Jubal Carlton	NC Chamber

VISITOR REGISTRATION SHEET

Senate **COMMERCE** Committee — June 4, 2014

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DEBBIE LOWN

NAME	FIRM OR AGENCY AND ADDRESS
Alex Kelly	KCG
Gary Salamido	NC Chamber
Ellen Hanner	
Jeff R. Sakash	UCPCOG-Wilson, NC
Drew Williamson	City of Lawrenburg
Troy Alexander	City of Albemarle
Mitch Jones	Jordan Price
Rochelle Garner	Carolina Farm Stewardship Assn
Meghan Lewis	NC Chamber
J Goodman	"
Jonathan Barbaker	Barbaker + Assoc.

SENATE PAGES ATTENDING

COMMITTEE: Commerce ROOM: 1027

DATE: 6-4 TIME: 2:30

PLEASE PRINT LEGIBILY!!!!!!!!!!!!!....*or else!*

Page Name	Hometown	Sponsoring Senator
1. Nick Williams	Albertson	Brent Jackson
2. Gerard Wilder	Raleigh	S. Berger
3. Lance Coffey	Boone	Dan Soucek
4. Gabrielle Nutter	Oxford	McKissick
5. KeShaun Rhodie	Greensboro	Robinson
6. Thomas Barr	Chocowinity	Cook
7. Caroline Haller	Clayton	Ron Rabin
8. Cameron McNeill	Greensboro	Sen. Berger
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.

Principal Clerk ____
Reading Clerk ____

Corrected #2: Removal of SB794

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

The **Senate Committee on Commerce** will meet at the following time:

DAY	DATE	TIME	ROOM
Wednesday	June 11, 2014	3:30 PM	1027/1128 LB

The following will be considered:

BILL NO.	SHORT TITLE	SPONSOR
HJR 1074	Confirm Linda Combs as State Controller.	Representative T. Moore
HJR 1112	Confirm Charlton L. Allen to Industrial Comm.	Representative T. Moore
SB 742	Adjust the Utility Regulatory Fee.	Senator Brown

Agenda to be determined.

Senator Rick Gunn, Co-Chair
Senator Wesley Meredith, Co-Chair

Senate Committee on Commerce
Wednesday, June 11, 2014, 3:30 PM
1027/1128 Legislative Building

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

BILL NO.	SHORT TITLE	SPONSOR
HJR 1074	Confirm Linda Combs as State Controller.	Representative T. Moore
HJR 1112	Confirm Charlton L. Allen to Industrial Comm.	Representative T. Moore
SB 742	Adjust the Utility Regulatory Fee.	Senator Brown

Senate Committee on Commerce
Wednesday, June 11, 2014 at 4:30 PM
Room 1027/1128 of the Legislative Building

MINUTES

The Senate Committee on Commerce met at 4:30 PM on June 11, 2014 in Room 1027/1128 of the Legislative Building. Twenty six members were present.

Senator Wesley Meredith, Chair, presided.

Sean Kurz from Raleigh, Cadeala Troublefield from Troy, Amelia Fox from Greensboro, Coley Mizell from Wendell, Matthew Stevens from Cornelius, Will Havsen from Durham, and Grant Brehanan from Wilson served as pages.

Senator Meredith went out of the order of the agenda. The order is reflected below.

SB 742 Adjust the Utility Regulatory Fee

Senator Brown was introduced to speak on his bill and to ask for support. Senator Woodard moved for a favorable report and it passed.

HJR 1074 Confirm Linda Combs as State Controller

Representative Moore was asked to introduce Linda Combs. She then spoke and asked for the Commerce Committee's support. Senator Hunt moved for a favorable report and it carried.

HJR 1112 Confirm Charlton L. Allen to Industrial Comm

Representative Moore was asked to introduce Charlton L. Allen. Mr. Allen then spoke and asked for the commerce Committee's Support. There were many questions. Senator Tucker moved for a favorable report and it carried.

The meeting adjourned at 4:47 PM.

Senator Wesley Meredith, Chair
Presiding

Debbie Lown, Committee Clerk

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

COMMERCE COMMITTEE REPORT
Senator Gunn, Co-Chair
Senator Meredith, Co-Chair

Wednesday, June 11, 2014

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

FAVORABLE

HJR **1074** Confirm Linda Combs as State Controller.

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

HJR **1112** Confirm Charlton L. Allen to Industrial Comm.

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

SB **742** Adjust the Utility Regulatory Fee.

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

TOTAL REPORTED: 3

Senator Wesley Meredith will handle HJR 1074
Senator Wesley Meredith will handle HJR 1112
Senator Harry Brown will handle SB 742

HOUSE JOINT RESOLUTION 1074

Sponsors: Representative T. Moore (Primary Sponsor).
For a complete list of Sponsors, refer to the North Carolina General Assembly Web Site.

Referred to: Rules, Calendar, and Operations of the House.

May 15, 2014

A JOINT RESOLUTION PROVIDING FOR THE CONFIRMATION OF LINDA COMBS AS STATE CONTROLLER.

Whereas, under the provisions of G.S. 143B-426.37, the appointment by the Governor of a person to be State Controller is subject to confirmation by the General Assembly; and

Whereas, the Governor has submitted to the presiding officers of the House of Representatives and the Senate the name of his appointee, Linda Combs, to be State Controller, to serve the remainder of the term expiring June 30, 2015; Now, therefore,

Be it resolved by the House of Representatives, the Senate concurring:

SECTION 1. The appointment of Linda Combs as State Controller to serve the remainder of the term expiring June 30, 2015, is confirmed.

SECTION 2. This resolution is effective upon ratification.

HOUSE JOINT RESOLUTION 1074: Confirm Linda Combs as State Controller

2013-2014 General Assembly

Committee:	Senate Commerce	**Date:**	June 11, 2014
Introduced by:	Rep. T. Moore	**Prepared by:**	Wendy Graf Ray
Analysis of:	First Edition		Committee Counsel

SUMMARY: House Joint Resolution 1074 confirms the appointment of Linda Combs as State Controller to serve the remainder of the term expiring June 30, 2015.

BACKGROUND: The State Controller is appointed by the Governor subject to confirmation by the General Assembly in accordance with G.S. 143B-426.37. The State Controller is responsible for maintaining the State accounting system and administering the State disbursing system, in accordance with Part 28 of Article 9 of Chapter 143B of the General Statutes. (See G.S. 143B-426.39 below for powers and duties.)

§ 143B-426.39. Powers and duties of the State Controller.

The State Controller shall:

(1) Prescribe, develop, operate, and maintain in accordance with generally accepted principles of governmental accounting, a uniform state accounting system for all state agencies. The system shall be designed to assure compliance with all legal and constitutional requirements including those associated with the receipt and expenditure of, and the accountability for public funds. The State Controller may elect to review a State agency's compliance with prescribed uniform State accounting system standards, as well as applicable legal and constitutional requirements related to compliance with such standards.

(2) On the recommendation of the State Auditor, prescribe and supervise the installation of any changes in the accounting systems of an agency that, in the judgment of the State Controller, are necessary to secure and maintain internal control and facilitate the recording of accounting data for the purpose of preparing reliable and meaningful statements and reports. The State Controller shall be responsible for seeing that a new system is designed to accumulate information required for the preparation of budget reports and other financial reports.

(3) Maintain complete, accurate and current financial records that set out all revenues, charges against funds, fund and appropriation balances, interfund transfers, outstanding vouchers, and encumbrances for all State funds and other public funds including trust funds and institutional funds available to, encumbered, or expended by each State agency, in a manner consistent with the uniform State accounting system.

(4) Prescribe the uniform classifications of accounts to be used by all State agencies including receipts, expenditures, assets, liabilities, fund types, organization codes, and purposes. The State Controller shall also, after consultation with the Office of State Budget and Management, prescribe a form for the periodic reporting of financial accounts, transactions, and other matters that is compatible with systems and reports required by the State Controller under this section. Additional records, accounts, and accounting systems may be maintained by agencies when required for reporting to funding sources provided prior approval is obtained from the State Controller.

(4a) Prescribe that, unless exempted by the State Controller, newly created or acquired component units of the State are required to have the same fiscal year as the State.

(5) Prescribe the manner in which disbursements of the State agencies shall be made and may require that warrants, vouchers, electronic payments, or checks, except those drawn by the State Auditor, State Treasurer, and Administrative Officer of the Courts, shall bear two signatures of officers as designated by the State Controller.

(6) Prescribe, develop, operate, and maintain a uniform payroll system, in accordance with G.S. 143B-426.40G and G.S. 143C-6-6 for all State agencies. This uniform payroll system shall be designed to assure compliance with all legal and constitutional requirements. When the State Controller finds it expedient to do so because of a State agency's size and location, the State Controller may authorize a State agency to operate its own payroll system. Any State agency authorized by the State Controller to operate its own payroll system shall comply with the requirements adopted by the State Controller.

(7) Keep a record of the appropriations, allotments, expenditures, and revenues of each State agency.

(8) Make appropriate reconciliations with the balances and accounts kept by the State Treasurer.

(9) Develop, implement, and amend as necessary a uniform statewide cash management plan for all State agencies in accordance with G.S. 147-86.11.

(9a) Implement a statewide accounts receivable program in accordance with Article 6B of Chapter 147 of the General Statutes.

(10) Prepare and submit to the Governor, the State Auditor, the State Treasurer, and the Office of State Budget and Management each month, a report summarizing by State agency and appropriation or other fund source, the results of financial transactions. This report shall be in the form that will most clearly and accurately set out the current fiscal condition of the State. The State Controller shall also furnish each State agency a report of its transactions by appropriation or other fund source in a form that will clearly and accurately present the fiscal activities and condition of the appropriation or fund source.

(11) Prepare and submit to the Governor, the State Auditor, the State Treasurer, and the Office of State Budget and Management, at the end of each quarter, a report on the financial condition and results of operations of the State entity for the period ended. This report shall clearly and accurately present the condition of all State funds and appropriation balances and shall include comments, recommendations, and concerns regarding the fiscal affairs and condition of the State.

(12) Prepare on or before October 31 of each year, a Comprehensive Annual Financial Report in accordance with generally accepted accounting principles of the preceding fiscal year, in accordance with G.S. 143B-426.40H. The report shall include State agencies and component units of the State, as defined by generally accepted accounting principles.

(13) Perform additional functions and duties assigned to the State Controller, within the scope and context of the State Budget Act, Chapter 143C of the General Statutes.

(14) through (16) Recodified as G.S. 143B-472.42 (1), (2), and (3) by Session Laws 1997-148, s. 3.

(17) Coordinate data integration and data sharing pursuant to G.S. 143B-426.38A across State agencies, departments, and institutions to support the State's enterprise-level business intelligence initiative.

Dr. Linda Morrison Combs

Dr. Linda Morrison Combs is a leading expert on what works in running and turning around large organizations with complex budgets and big challenges.

From 2005-2007 she was Controller of the United States. As Controller, Executive Office of the President, Office of Management and Budget, she worked on the widest possible range of issues at the highest levels of government. She routinely briefed the President of the United States on the status of financial management in the Federal departments, and frequently testified before numerous Congressional oversight committees. She led Sarbanes-Oxley compliance for the entire Federal government. Dr. Combs headed the Chief Financial Officers Council for the entire Federal government and was responsible for establishing financial management policies and requirements for the Executive branch of the Federal government, totaling $2.7 trillion in revenue.

Key selected accomplishments as Controller of the United States included:

1. Reduced audit completion time (from five months) to 45 days from end of fiscal year for the entire Federal Government – first time in history.
2. Reduced improper payments by $9 billion.
3. Disposed of $4.5 billion of unneeded real property

During her career she has worked for three U.S. Presidents and has earned five Senate confirmations. In previous positions, Combs has been the Chief Financial Officer at the Environmental Protection Agency ($8 billion budget) where she led that agency to obtain a clean audit opinion with no material weaknesses, and received the highest honor awarded—the prestigious Crystal Eagle Award from the President. As Assistant Secretary of the Department of Transportation ($58 billion budget), she led that agency to be the first Federal Department to install a single core financial system Department-wide, resulting in the Department of Transportation being designated a Federal Financial Center of Excellence. Dr. Combs also held Assistant Secretary or equivalent COO roles at the Departments of Treasury, Veterans Affairs, and Education.

Not only does Dr. Combs understand government on the inside, she knows first-hand its impact on the private sector. In the private sector Combs' achievement record is equally significant. She founded three successful companies and took their products to worldwide distribution. She held line management positions with significant profit and loss responsibilities at a large southeastern bank.

She has a doctor's degree from Virginia Tech, undergraduate and master's degrees from Appalachian State University, and is a graduate of the Program for Senior Managers at Harvard University.

Numerous organizations have honored Combs for her excellence in leadership, exemplary performance and outstanding service. These awards include three from the President of the United States, and nine awards from various Members of the President's Cabinet. Other recognitions include over one hundred and fifty awards, citations, and honors by non-profit, volunteer organizations, higher education institutions and corporations.

Linda was born in Caldwell County and resides in Winston-Salem, North Carolina.

HOUSE JOINT RESOLUTION 1112

Sponsors: Representative T. Moore (Primary Sponsor).
For a complete list of Sponsors, refer to the North Carolina General Assembly Web Site.

Referred to: Rules, Calendar, and Operations of the House.

May 19, 2014

A JOINT RESOLUTION TO CONFIRM THE APPOINTMENT OF CHARLTON L. ALLEN TO THE NORTH CAROLINA INDUSTRIAL COMMISSION.

Whereas, G.S. 97-77(a1) provides that appointments by the Governor to the North Carolina Industrial Commission are subject to confirmation by the General Assembly; and

Whereas, the Governor has appointed Charlton L. Allen to the North Carolina Industrial Commission; Now, therefore,

Be it resolved by the House of Representatives, the Senate concurring:

SECTION 1. The appointment of Charlton L. Allen to a term on the North Carolina Industrial Commission to begin on July 1, 2014, and expire on June 30, 2020, is confirmed.

SECTION 2. This resolution is effective upon ratification.

HOUSE JOINT RESOLUTION 1112: Confirm Charlton L. Allen to Industrial Comm

2013-2014 General Assembly

Committee:	Senate Commerce	**Date:**	June 11, 2014
Introduced by:	Rep. T. Moore	**Prepared by:**	Wendy Graf Ray
Analysis of:	First Edition		Committee Counsel

SUMMARY: House Joint Resolution 1112 confirms the appointment of Charlton L. Allen to the Industrial Commission for a term of six years. His term begins on July 1, 2014, and will expire on June 30, 2020.

Confirmation by the General Assembly of Industrial Commission appointments made by the Governor is required by G.S. 97-77(a1). The resolution is effective upon ratification.

BACKGROUND: The North Carolina Industrial Commission is an agency of the State of North Carolina created by the General Assembly in 1929 to administer the North Carolina Workers' Compensation Act. In 1949, the Industrial Commission was also given authority by the General Assembly to administer the Tort Claims Act. Additionally, the Industrial Commission is charged with administering the Death Benefits Act for Law Enforcement Officers, Firemen, Rescue Squad Workers and Civil Air Patrol Members; the Childhood Vaccine-Related Injury Compensation Program; and Compensation to Persons Erroneously Convicted of Felonies.

In 2011, the General Assembly enacted numerous changes to the law related to workers' compensation. Among other changes, S.L. 2011-287 reduced the number of Commissioners on the North Carolina Industrial Commission from seven to six members. The legislation prohibits any person from serving more than two terms, including any term served prior to June 24, 2011, unless the person served a partial term of less than three years. The legislation also made the Governor's appointments subject to confirmation by the General Assembly by Joint Resolution, a process that is similar to the appointment and confirmation of members of the Utilities Commission. No person while in office as a commissioner may be nominated or appointed on an interim basis to fill the remainder of an unexpired term, or to a full term that commences prior to the expiration of the term that the Commissioner was currently serving.

Members of the Industrial Commission are subject to the same standards of conduct as a judge. They may be removed during their term of office only for cause, by impeachment. G.S. 97-77(a) provides, in part, that members of the Industrial Commission "shall devote their entire time to the duties of the Commission."

CHARLTON L. ALLEN

244 MOTT ROAD, MOORESVILLE, NC 28115
(704) 490-7444•CHARLTONALLEN@MSN.COM

Professional Experience

2013-Present	**Law Offices of Charlton Allen, PLLC** Member/Manager	Mooresville, NC
2010-2012	**Crosswhite, Crosswhite, Ashley, Johnson & Allen, PLLC** *(formerly Crosswhite, Crosswhite Ashley & Johnson)* Member	Statesville, NC
2009	**Crosswhite, Crosswhite, Ashley, & Johnson, PLLC** Associate	Statesville, NC
2006-2008	**The Allen Law Firm** Proprietor	Concord, NC
2005	**Seay & Allen** *(formerly Seay Law Firm)* Partner	Wilmington, NC
1997-2005	**Seay Law Firm** *(formerly predecessor firm of Poisson, Barnhill & Seay)* Associate	Wilmington, NC

Education

1993-1996 **Juris Doctor**	University of North Carolina School of Law	Chapel Hill, NC
1989-1993 **A.B. Ed**	University of North Carolina	Chapel Hill, NC

Bar Admissions

North Carolina, 1997
U.S. District Court Eastern District of North Carolina
U.S. District Court Western District of North Carolina
U.S. Court of Appeals, Fourth Circuit

Professional Associations and Memberships

- North Carolina Dispute Resolution Commission (NCDRC) Certified Mediator for Civil Superior Court Mediations , 2006-Present
- Member, NC State Bar, 1997-Present
- Member, North Carolina Bar Association
- Member, Judicial District 22A
- Member, NCBA Dispute Resolution Section
- Secretary, Judicial District 19A Bar, 2008

Community Involvement, Honors and Awards

- Iredell County Republican Party, Chairman, 2007-2011
- New Hanover County Republican Party Chairman, 2003-2006
- North Carolina Federation of Republican Men, President, 2006-2007
- E.A. Morris Fellowship for Emerging Leaders, Fellow, Class of 2008
- Carolina Review, Founder and Publisher, 1993-1996
- North Carolina Industrial Commission Advisory Council, Member, 2013-Present
- Charlotte Regional Partnership, Member of Board of Directors

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

S 1

SENATE BILL 742*

Short Title:	Adjust the Utility Regulatory Fee.	(Public)
Sponsors:	Senator Brown (Primary Sponsor).	
Referred to:	Commerce.	

May 15, 2014

A BILL TO BE ENTITLED

AN ACT TO ADJUST THE UTILITY REGULATORY FEE TO REFLECT THE CHANGING REGULATORY CLIMATE FOR THE TELECOMMUNICATIONS INDUSTRY, AS RECOMMENDED BY THE LRC COMMITTEE ON THE ASSESSMENT OF REGULATED AND NON-REGULATED INDUSTRY UTILITY FEES.

The General Assembly of North Carolina enacts:

SECTION 1. 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. "Noncompetitive jurisdictional revenues" means all~~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. "Subsection (h) competitive jurisdictional revenues" means all~~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(h).~~G.S. 62-133.5(m) for a local exchange company or competing local provider that has elected to be regulated under those subsections.~~

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 2.(a) 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 2.(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, 2016, is four hundredths of one percent (0.04%).

SECTION 3.(a) 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.(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 (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 4. 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 Sections 2 and 3 of this act 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 5. This act becomes effective July 1, 2015.

SENATE BILL 742:
Adjust the Utility Regulatory Fee

2013-2014 General Assembly

Committee:	Senate Ref to Commerce. If fav, re-ref to Finance	**Date:**	June 11, 2014
Introduced by:	Sen. Brown	**Prepared by:**	Peter Ledford Committee Counsel
Analysis of:	First Edition		

SUMMARY: ***Senate Bill 742 would allow the General Assembly to establish a different utility regulatory fee for the retail services of telecommunications providers that have elected to be regulated under G.S. 62-133.5(h) or G.S. 62-133.5(m) and would set those rates for the 2015 and 2016 fiscal years.***

[As introduced, this bill was identical to H1052, as introduced by Rep. Hager, which is currently in House Finance.]

CURRENT LAW: Currently, all public utilities operating in the State pay a regulatory fee 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. The amount of the fee is set by the General Assembly.

G.S. 62-133.5(h), enacted in 2009, allows a local exchange company whose territory is open to competition from other local providers to elect to participate in an alternative form of regulation. After electing to be regulated under (h), local exchange companies are no longer required to file tariffs and certain reports, including service line, access line, and service quality reports with the Utilities Commission. Local exchange companies may not elect regulation under subsection (h) unless they commit to providing stand-alone basic service to rural customers at rates comparable to rates charged to urban customers. Once a local exchange company elects regulation under the plan, it may not increase the rates for stand-alone basic service by more than the GDP price index unless otherwise authorized by the Utilities Commission. Other than to enforce this rate increase standard, the Commission cannot regulate rates or service standards for basic service.

G.S. 62-133.5(m), enacted in 2011, allows a local exchange company whose territory is open to competition from other local providers to elect to participate in another alternative form of regulation. After electing to be regulated under subsection (m), regulation is the same as for companies that are regulated under subsection (h), except that local exchange companies no longer have carrier of last resort responsibilities, are not eligible to receive funds from a state fund that may be established to support universal service, and are not required to provide stand-alone basic service to rural companies at rates comparable to rates charged to urban customers.

BILL ANALYSIS: **Section 1** of the bill would amend the statute governing the regulatory fee paid by public utilities by dividing the revenues of public utilities into three categories, non-competitive jurisdictional revenues, subsection (h) competitive jurisdictional revenues, and subsection (m) competitive jurisdictional revenues. Each category of revenue will be subject to its own regulatory fee, as established by the General Assembly.

Sections 2.(a) and 2.(b) would set the regulatory fee for subsection (h) competitive jurisdictional revenues at 0.06% for each quarter that begins on or after July 1, 2015, and at 0.04% for each quarter that begins on or after July 1, 2016.

Sections 3.(a) and 3.(b) would set the regulatory fee for subsection (m) competitive jurisdictional revenues at 0.05% for each quarter that begins on or after July 1, 2015, and at 0.02% for each quarter that begins on or after July 1, 2016.

Section 4 would direct that the regulatory fee for non-competitive jurisdictional revenues be adjusted to reflect the overall decrease in the total regulatory fee collected as a result of the fee for subsection (h) and subsection (m) competitive jurisdictional revenues such that the total regulatory fee collected for each fiscal year is at least sufficient to cover the operations of the Utilities Commission and the Public Staff.

EFFECTIVE DATE: This act becomes effective July 1, 2015.

VISITOR REGISTRATION SHEET

Senate **COMMERCE** Committee — June 11, 2014

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DEBBIE LOWN

NAME	FIRM OR AGENCY AND ADDRESS
Kathy Hawks	Duke Energy
John Handley	MFLS
Fred Aikens	Sen Blue's ofc
Mike Carpenter	NCSBA
Lisa Martin	"
Stewart Webb	"
Nicole Hines	Gov office
Walt Hamm	NCIC
Dwight Allen	Allen Law Offices
Chuck Greene	AT+T
Trey Rabon	AT+T

VISITOR REGISTRATION SHEET

Senate **COMMERCE** Committee — June 11, 2014

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DEBBIE LOWN

NAME	FIRM OR AGENCY AND ADDRESS
Amanda martin	NCLM
Charles King	School at Govt
Steven Pennington	Commerce - LEAD
Jimmy Broughton	Womble Carlyle
MARK EASLEY	NC JOBS ACT TEAM
John Delbrorno	Brubaker Assoc.
Tracy Kimbrell	Parker Poe

VISITOR REGISTRATION SHEET

Senate **COMMERCE** Committee — June 11, 2014

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DEBBIE LOWN

NAME	FIRM OR AGENCY AND ADDRESS
Sam Spinner	NCACC
R. Zack Wallace	Rep. T. Moore
Greg Behr	GBW.
Doug Mitchell	PSG
Hugh Johnson	Governor's Office
Jim Johnson	BSA
Patrick Buffkin	NCAEC
Crystie Collins	NC Trucking Assn
Lisa Martin	NC HBA
Summit Upton	NC IC
Mike Carpenter	NCHBA

VISITOR REGISTRATION SHEET

Senate **COMMERCE** Committee — June 11, 2014

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DEBBIE LOWN

NAME	FIRM OR AGENCY AND ADDRESS
Sam	N&O
Lori Ann Harris	N&O
Sarah Hardin	CTR
Steve Brewer	CTR
Tom Beam	EDE, NC SEA
John Cooper	Cap. Tal City Strategies
Carmen Hoke	NVA
Joey Stansbury	office of Senator Tucker
Jim Harrell	ASNC
Paul Sherman	NCFB
Rick Taylor	Kaylor Law Firm

SENATE PAGES ATTENDING

COMMITTEE: Commerce ROOM: 1027

DATE: 6-11 TIME: 3:30

PLEASE PRINT LEGIBILY!!!!!!!!!!!!....*or else!*

Page Name	Hometown	Sponsoring Senator
1. Sean ~~Kate~~ Kurz	Raleigh	Stein
2. Cadeala Troublefield	Troy	Bingham
3. Amelia ~~Fox~~	Greensboro	Berger
4. Gabby Mizell	Wendell	Jackson
5. Matthew Stevens	Cornelius	Ford
6. Will Hansen	Durham	Woodard
7. Grant Buchanan	Wilson	Newton
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 Committee on Commerce

DATE: June 11, 2014 ROOM: 1027/1128

1. ANDERSON MEADOWS
2. GILES JEFFREYS
3. ISAAC WALKER
4. _____
5. _____
6. _____

Principal Clerk ____
Reading Clerk ____

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

The **Senate Committee on Commerce** will meet at the following time:

DAY	DATE	TIME	ROOM
Tuesday	June 17, 2014	11:00 AM	1027/1128 LB

The following will be considered:

BILL NO.	SHORT TITLE	SPONSOR
HB 1031	NC Econ. Dev. Partnership Modifications.	Representative Murry

Senator Rick Gunn, Co-Chair
Senator Wesley Meredith, Co-Chair

Senate Committee on Commerce
Tuesday, June 17, 2014, 11:00 AM
1027/1128 Legislative Building

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

BILL NO.	SHORT TITLE	SPONSOR
HB 1031	NC Econ. Dev. Partnership Modifications.	Representative Murry

Senate Committee on Commerce
Tuesday, June 17, 2014 at 11:00 AM
Room 1027/1128 of the Legislative Building

MINUTES

The Senate Committee on Commerce met at 11:00 AM on June 17, 2014 in Room 1027/1128 of the Legislative Building. Twenty two members were present.

Senator Rick Gunn, Chair, presided.

Lilli Canaday from Burlington, Lilly Black from Burlington, Robert Bahner from Pinehurst, Jackson Carr from Dunn, Rachel Figard from Davidson, Cheri Caggia from Cary, Meredith Roach from Wendell, Destini Morton from Rocky Mount and Trey Jones from Tabor City served as pages.

HB 1031 NC Econ. Dev. Partnership Modifications

Senator Brown was introduced to speak on the bill. Dan Ettefagh an attorney from Bill Drafting explained the bill. During the discussion, the questions raised were responded to by Sen. Brown and Mr. Ettefagh. Senator Tillman moved for a favorable report and it carried.

The meeting adjourned at 11:18 AM.

Senator Rick Gunn, Chair
Presiding

Debbie Lown, Committee Clerk

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

COMMERCE COMMITTEE REPORT
Senator Gunn, Co-Chair
Senator Meredith, Co-Chair

Tuesday, June 17, 2014

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

FAVORABLE

HB **1031 (CS#1)** NC Econ. Dev. Partnership Modifications.

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

TOTAL REPORTED: 1

Senator Harry Brown will handle HB 1031

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

H 4

HOUSE BILL 1031*
Committee Substitute Favorable 6/4/14
Third Edition Engrossed 6/5/14
Fourth Edition Engrossed 6/10/14

Short Title: NC Econ. Dev. Partnership Modifications. (Public)

Sponsors:

Referred to:

May 15, 2014

A BILL TO BE ENTITLED

AN ACT TO FACILITATE ECONOMIC DEVELOPMENT WITHIN THE STATE.

The General Assembly of North Carolina enacts:

PART I. AUTHORIZE CONTRACTING OF ECONOMIC DEVELOPMENT FUNCTIONS BY THE DEPARTMENT OF COMMERCE

SECTION 1.1.(a) Part 1 of Article 10 of Chapter 143B of the General Statutes is amended by adding a new section to read:

"**§ 143B-431A. Department of Commerce – contracting of functions.**

(a) Purpose. – The purpose of this section is to establish a framework whereby the Department of Commerce may contract with a North Carolina nonprofit corporation to assist the Department in fostering and retaining jobs and business development, international trade, marketing, and travel and tourism. It is the intent of the General Assembly that the Department develop a plan to work cooperatively with a nonprofit corporation for these purposes while safeguarding programmatic transparency and accountability as well as the fiscal integrity of economic development programs of the State.

(b) Contract. – The Department of Commerce is authorized to contract with a North Carolina nonprofit corporation to perform one or more of the Department's functions, powers, duties, and obligations set forth in G.S. 143B-431, except as provided in this subsection. If the Department contracts with a North Carolina nonprofit corporation to promote and grow the travel and tourism industries, then all funds appropriated to the Department for tourism marketing purposes shall be used for a research-based, comprehensive marketing program directed toward consumers in key markets most likely to travel to North Carolina and not for ancillary activities, such as statewide branding and business development marketing. The Department may not contract with a North Carolina nonprofit corporation regarding any of the following:

(1) The obligation or commitment of funds under this Article, such as the One North Carolina Fund, the Job Development Investment Grant Program, the Industrial Development Fund, or the Job Maintenance and Capital Development Fund.

(2) The Division of Employment Security, including the administration of unemployment insurance.

(3) The functions set forth in G.S. 143B-431(a)(2).

(4) The administration of funds or grants received from the federal government or its agencies.

(c) Oversight. – There is established the Economic Development Accountability & Standards Committee, which is a Board as that term is defined in G.S. 138A-3 of the State Government Ethics Act. The Committee shall consist of seven members as follows: the Secretary of Commerce as Chair of the Committee, the Secretary of Transportation, the Secretary of Environment and Natural Resources, the Secretary of Revenue, one member appointed by the Speaker of the House of Representatives, one member appointed by the President Pro Tempore of the Senate, and one member jointly appointed by the Speaker of the House of Representatives and the President Pro Tempore of the Senate.

The members of the Committee who are appointed by the Speaker of the House of Representatives or by the President Pro Tempore of the Senate may not be members of the General Assembly. The Committee shall meet at least quarterly upon the call of the Chair. The duties of the Committee shall include all of the following:

(1) Monitoring and oversight of the performance of a contract entered into pursuant to this section by the Department with a North Carolina nonprofit corporation.

(2) Receiving, reviewing, and referring complaints regarding the contract or the performance of the North Carolina nonprofit corporation, as appropriate.

(3) Requesting enforcement of the contract by the Attorney General or the Department.

(4) Auditing, at least biennially, by the Office of State Budget and Management, State Auditor, or internal auditors of the Department, the records of the North Carolina nonprofit corporation with which the Department has contracted pursuant to this section during and after the term of the contract to review financial documents of the corporation, performance of the corporation, and compliance of the corporation with applicable laws.

(5) Coordination of economic development grant programs of the State between the Department of Commerce, the Department of Transportation, and the Department of Environment and Natural Resources.

(6) Any other duties deemed necessary by the Committee.

(d) Limitations. – Prior to contracting with a North Carolina nonprofit corporation pursuant to this section and in order for the North Carolina nonprofit corporation to receive State funds, the following conditions shall be met:

(1) At least 45 days prior to entering into or amending in a nontechnical manner a contract authorized by this section, the Department shall submit the contract or amendment, along with a detailed explanation of the contract or amendment, to the Joint Legislative Commission on Governmental Operations and the Fiscal Research Division.

(2) The nonprofit corporation adheres to the following governance provisions related to its governing board:

a. The board shall be composed of 17 voting members as follows: eight members and the chair appointed by the Governor, four members appointed by the Speaker of the House of Representatives, and four members appointed by the President Pro Tempore of the Senate. The Governor, the Speaker of the House of Representatives, and the President Pro Tempore of the Senate shall each use best efforts to select members so as to reflect the diversity of the State's geography. The Speaker of the House and the President Pro Tempore shall each select their appointed members so that one-fourth come from a development tier one area, one-fourth come from a development tier

two area, and no two members come from the same Collaboration for Prosperity Zone. The Governor shall select appointed members so that two-ninths come from a development tier one area, two-ninths come from a development tier two area, and no more than two members come from the same Collaboration for Prosperity Zone. The Governor shall use best efforts to ensure that each member appointed by the Governor has expertise in one or more of the following areas:

1. Agribusiness, as recommended by the Commissioner of Agriculture.
2. Financial services.
3. Information technology.
4. Biotechnology or life sciences.
5. Energy.
6. Manufacturing.
7. Military or defense.
8. Tourism, as recommended by the North Carolina Travel and Tourism Coalition.
9. Tourism, as recommended by the North Carolina Travel Industry Association.

b. The nonprofit corporation shall comply with the limitations on lobbying set forth in section 501(c)(3) of the Internal Revenue Code.

c. No State officer or employee may serve on the board.

d. The board shall meet at least quarterly at the call of its chair. Each quarter and upon request, the board shall report to the Chair of the Economic Development Accountability and Standards Committee on the progress of the State's economic development.

e. The board is required to perform the following duties if the Department contracts pursuant to G.S. 143B-431A for the performance of the Secretary's responsibilities under G.S. 143B-434.01:

1. To provide advice concerning economic and community development planning for the State, including a strategic business facilities development analysis of existing, available buildings or shell or special-use buildings and sites.
2. To recommend economic development policy to the Secretary of Commerce, the General Assembly, and the Governor.
3. To recommend annually to the Governor biennial and annual appropriations for economic development programs.
4. To recommend how best to coordinate economic development efforts among the various agencies and entities, including those created by executive order of the Governor, that receive economic development appropriations, including the assignment of key responsibilities for different aspects of economic development and resource allocation and planning designed to encourage each agency to focus on its area of primary responsibility and not diffuse its resources by conducting activities assigned to other agencies.

(3) The amount of State funds that may be used for the annual salary of any one officer or employee of the nonprofit corporation with which the Department

contracts pursuant to this section shall not exceed the greater of (i) one hundred twenty thousand dollars ($120,000) or (ii) the amount most recently set by the General Assembly in a Current Operations Appropriations Act. Members of the governing board may receive only per diem and allowances pursuant to G.S. 138-5.

(4) The nonprofit corporation shall have received from fundraising efforts and sources, other than State funds, an amount totaling at least two hundred fifty thousand dollars ($250,000) to support operations and functions of the corporation.

(e) Mandatory Contract Terms. – Any contract entered into under this section must include all of the following:

(1) A provision requiring the North Carolina nonprofit corporation provide to the Joint Legislative Economic Development and Global Engagement Oversight Committee, the Department of Commerce, and the Fiscal Research Division a copy of the corporation's annual audited financial statement within seven days of issuance of the statement.

(2) A provision requiring the nonprofit corporation to provide by September 1 of each year, and more frequently as requested, a report to the Department on prior State fiscal year program activities, objectives, and accomplishments and prior State fiscal year itemized expenditures and fund sources. The report shall also include all of the following:

a. Jobs anticipated to result from efforts of the nonprofit corporation. This includes project leads that were not submitted to the Department for possible discretionary incentives pursuant to Chapter 143B of the General Statutes.

b. Developed performance metrics of economic development functions itemized by county, by development tier area designation, as defined by G.S. 143B-437.08, and by Collaboration for Prosperity Zones created pursuant to G.S. 143B-28.1.

c. Any proposed amendments to the areas of expertise required to be represented on the governing board of the nonprofit corporation.

d. A detailed explanation of how annual salaries are determined, including base pay schedules and any additional salary amounts or bonuses that may be earned as a result of job performance. The explanation shall include the proportion of State and private funds for each position and shall include the means used by the nonprofit corporation to foster employee efforts for economic development in rural and low-income areas in the State. Any bonuses paid to employees shall be based upon overall job performance and not be based on a specific project lead.

e. Any other information requested by the Department.

(3) A provision providing that, upon termination of the contract, or upon dissolution of, or repeal by the General Assembly of, the charter of the nonprofit corporation with which the Department has contracted under this section, all assets and funds of the nonprofit corporation, including interest on funds, financial and operational records, and the right to receive future funds pursuant to the contract, will be surrendered to the Department within 30 days of the termination, dissolution, or repeal. During the 30-day period, the corporation may not further encumber any assets or funds. For purposes of this subdivision, assets and funds of the nonprofit corporation include assets and funds of any subsidiary or affiliate of the nonprofit corporation.

An affiliate of the nonprofit corporation exists when both are directly or indirectly controlled by the same parent corporation or by the same or associated financial interests by stock ownership, interlocking directors, or by any other means whatsoever, whether the control is direct or through one or more subsidiary, affiliated, or controlled corporations.

(4) A provision providing that the nonprofit corporation shall adopt and publish a resolution or policy containing a conflict of interest policy and gift policy to guide actions by the governing board members, officers, and employees of the nonprofit corporation in the performance of their duties.

(5) The conflict of interest policy required by subdivision (4) of this subsection shall contain at a minimum the information in this subdivision. No subject person of the nonprofit corporation may take any official action or use the subject person's official position to profit in any manner the subject person, the subject person's immediate family, a business with which the subject person or the subject person's immediate family has a business association, or a client of the subject person or the subject person's immediate family with whom the subject person, or the subject person's immediate family, has an existing business relationship. No subject person shall attempt to profit from a proposed project lead if the profit is greater than that which would be realized by other persons living in the area where the project lead is located. If the profit under this subdivision would be greater for the subject person than other persons living in the area where the project lead is located, not only shall the subject person abstain from voting on that issue, but once the conflict of interest is apparent, the subject person shall not discuss the project lead with any other subject person or representative of the Department except to state that a conflict of interest exists. Under this subdivision, a subject person is presumed to profit if the profit would be realized by the subject person, the subject person's immediate family, a business with which the subject person or the subject person's immediate family has a business association, or a client of the subject person or the subject person's immediate family with whom the subject person, or the subject person's immediate family, has an existing business relationship with a company that is the subject of a proposed project lead. No subject person, in contemplation of official action by the subject person, or in reliance on information that was made known to the subject person in the subject person's official capacity and that has not been made public, shall (i) acquire a pecuniary interest in any property, transaction, or enterprise or gain any pecuniary benefit that may be affected by such information or official action or (ii) intentionally aid another to do any of the above acts. As used in this subdivision, the following terms mean:

a. Board. – The governing board of the nonprofit corporation with which the Department contracts pursuant to this section.

b. Board member. – A member of the board.

c. Business association. – A director, employee, officer, or partner of a business entity, or owner of more than ten percent (10%) interest in any business entity.

d. Subject person. – A board member, officer, or employee of the nonprofit corporation.

e. Department. – The Department of Commerce.

f. Immediate family. – Spouse, children, parents, brothers, and sisters.

g. Official action. – Actions taken in connection with the subject person's duties, including, but not limited to, voting on matters before the board, proposing or objecting to proposals for economic development actions by the Department, discussing economic development matters with other subject persons or Department staff in an effort to further the matter after the conflict of interest has been discovered, or taking actions in the course and scope of the position as a subject person and actions leading to or resulting in profit.

h. Profit. – Receive monetary or economic gain or benefit, including an increase in value whether or not recognized by sale or trade.

(6) The gift policy required by subdivision (4) of this subsection shall at a minimum prohibit an employee, officer, or member of the board of the corporation from knowingly accepting a gift from a person whom the employee, officer, or member of the board knows or has reason to know (i) is seeking to do business of any kind in the State or (ii) has financial interests that may be substantially and materially affected, in a manner distinguishable from the public generally, by the performance or nonperformance of official duties of the employee, officer, or member of the board. This prohibition shall not apply to either of the following:

a. Gifts given to the employee, officer, or member of the board where the gift is food or beverages, transportation, lodging, entertainment or related expenses associated with industry recruitment, promotion of international trade, or the promotion of travel and tourism, and the employee, officer, or member of the board is responsible for conducting the business on behalf of the State, provided (i) the employee, officer, or member of the board did not solicit the gift and did not accept the gift in exchange for the performance or nonperformance of corporate duties, and (ii) the employee, officer, or member of the board reports electronically to the corporation within 30 days of receipt of the gift, including a description and value of the gift and a description of how the gift contributed to industry recruitment, promotion of international trade, or the promotion of travel and tourism.

b. Gifts of personal property valued at less than one hundred dollars ($100.00) given to the employee, officer, or member of the board in the commission of corporate duties if the gift is given as a personal gift in another country as part of an overseas trade mission and the giving and receiving of such personal gifts is considered a customary protocol in the other country.

(7) A provision providing that the nonprofit corporation maintain a record containing the name of all persons who have contributed to the nonprofit corporation, the date of each contribution, and the aggregate total of all contributions to the nonprofit corporation. The nonprofit corporation shall include the record in the report required to be filed with the Department pursuant to subdivision (2) of subsection (e) of this section.

(8) A provision requiring the nonprofit corporation to maintain separate accounting records for and separate accounts for State and private funds and prohibiting any commingling of State and private funds. Records and accounts must be maintained according to generally accepted accounting principles.

(9) A provision stating that the nonprofit corporation will not engage in the awarding of grants of the public or private funds of the nonprofit corporation.

(10) A provision limiting the term of the contract to no more than five years. The term of the contract may be extended in one-year increments up to four times after no less than four-fifths of the original contract term has passed. A contract extension may not extend the remaining term of the contract, including the term of the extension, to more than two years. Nothing in this subdivision shall be construed as a prohibition against entering into a new contract with the nonprofit corporation.

(11) A provision prohibiting the use of State funds for the severance pay of the chief executive officer and other officers of the nonprofit corporation and otherwise limiting the severance pay from funds other than State funds to no more than the lesser of the following:

a. The salary limitation contained in subdivision (3) of subsection (d) of this section.

b. The salary limitation contained in subdivision (3) of subsection (d) of this section multiplied by a fraction, the numerator of which is the number of whole years the chief officer has been chief officer of the corporation and the denominator of which is four.

(12) A provision requiring annual certification by the nonprofit corporation that it is in compliance with the following:

a. The requirements of Chapter 55A of the General Statutes.

b. The requirements of each of the provisions listed in subsection (e) of this section. For any provision in this subsection that the nonprofit corporation did not comply with, the corporation shall provide a detailed explanation of the circumstances and time of the noncompliance.

(13) A provision requiring the nonprofit corporation to comply with and perform the duties set out in G.S. 143B-434.2 in the event the Department contracts with the nonprofit corporation to promote and market tourism.

(14) A provision requiring the nonprofit corporation to receive from fund-raising efforts and sources other than State funds an amount totaling at least five million seven hundred fifty thousand dollars ($5,750,000) during the term of the contract to support operations and functions of the corporation. The corporation shall raise at least seven hundred fifty thousand dollars ($750,000) during the first year of the term of the contract and shall raise at least one million two hundred fifty thousand dollars ($1,250,000) during each subsequent year of the term of the contract. Amounts raised prior to entering the contract or during a year preceding the current year of the contract shall not apply to the amount required to be raised during the current year.

(15) A provision that the limitation of G.S. 143C-6-8 applies.

(16) For any entity reported pursuant to subdivision (6) of subsection (f) of this section for a gift, contribution, or item or service of value for which fair market value exceeds one thousand dollars ($1,000) and was not paid, a provision requiring the nonprofit corporation to publish within seven days of the award: (i) the entity, (ii) the fair market value and description of that which was received from the entity by the nonprofit corporation or the affiliate entity of the corporation, and (iii) the date and amount of the award to the entity. This publication requirement is satisfied if the Department

publishes the information required in this subdivision within seven days of the award either separately or as part of a press release concerning the award.

(f) Report. – By September 30 of each year, and more frequently as requested, the Department shall submit a report to the Joint Legislative Commission on Governmental Operations, the Joint Legislative Economic Development and Global Engagement Oversight Committee, and the Fiscal Research Division on any performance for which the Department has contracted pursuant to this section. The report shall contain, at a minimum, each of the following:

(1) A copy of the most recent report required by the Department pursuant to subdivision (2) of subsection (e) of this section.

(2) An executive summary of the report required by subdivision (1) of this subsection.

(3) A listing of each entity referred to the Department by a North Carolina nonprofit corporation with which the Department contracts pursuant to this section and any other information the Secretary determines is necessary or that is specifically requested in writing.

(4) An explanation of the response by the Department to any notifications of noncompliance submitted to the Department by the nonprofit corporation, as required by G.S. 143B-431A(e), including actions taken by the Department to prevent repeat or similar instances of noncompliance.

(5) For each activity in which the Secretary of Commerce solicits funds for the corporation, as permitted by subsection (i) of this section, a listing of each activity, including the date and the name of each person or entity from whom funds were solicited.

(6) If the nonprofit corporation or any affiliated entity of the corporation has received, directly or indirectly, any gift, contribution, or item or service of value for which fair market value was not paid and if an entity making the gift or contribution receives an award, a list of the entity and the amount of the award.

(g) Public Funds. – A North Carolina nonprofit corporation with which the Department contracts pursuant to this section shall comply with the requirements provided in this subsection regarding the use of State funds.

(1) Interest earned on State funds after receipt of the funds by the nonprofit corporation shall be used for the same purposes for which the principal was to be used.

(2) The travel and personnel policies and regulations of the State of North Carolina Budget Manual limiting reimbursement for expenses of State employees apply to reimbursements for expenses of officers, employees, or members of a governing board of the nonprofit corporation. Deviations from the policies and regulations shall be approved by the Secretary.

(3) State funds shall not be used to hire a lobbyist.

(h) Applicable Laws. – A North Carolina nonprofit corporation with which the Department contracts pursuant to this section is subject to the requirements of (i) Chapter 132 of the General Statutes and (ii) Article 33C of Chapter 143 of the General Statutes. Officers, employees, and members of the governing board of the corporation are public servants, as defined in G.S. 138A-3, and are subject to the requirements of Chapter 138A of the General Statutes. Officers, members of the governing board, and employees of the corporation whose annual compensation is equal to or greater than sixty thousand dollars ($60,000) are subject to G.S. 138A-22.

(i) Prohibition. – A State officer or employee, other than the Secretary of Commerce, shall not solicit funds for a North Carolina nonprofit corporation with which the Department contracts pursuant to this section. The Secretary of Commerce may solicit funds for the nonprofit corporation pursuant to G.S. 138A-31(b)(5).

(j) Benefits. – An officer, employee, or member of a governing board of a North Carolina nonprofit corporation with which the Department contracts pursuant to this section is not a State employee, is not covered by Chapter 126 of the General Statutes, and is not entitled to State-funded employee benefits, including membership in the Teachers' and State Employees' Retirement System and the State Health Plan for Teachers and State Employees."

(k) Raised Funds. – For funds raised from sources other than State funds by the nonprofit corporation, at least twenty-five percent (25%) of the funds shall be used for the benefit of or for salaried positions located in or working solely on development in development tier one or two areas, as defined in G.S. 143B-437.08."

SECTION 1.1.(b) G.S. 143B-431A(i), as enacted by this act, does not apply to employees of the Department of Commerce, other than employees involved in the recommendation and administration of State economic development incentive programs, prior to the time the Department contracts with a North Carolina nonprofit corporation pursuant to this act.

SECTION 1.1.(c) G.S. 132-6(d) reads as rewritten:

"(d) Notwithstanding the provisions of subsections (a) and (b) of this section, public records relating to the proposed expansion or location of specific business or industrial projects may be withheld so long as their inspection, examination or copying would frustrate the purpose for which such public records were created; provided, however, that nothing herein shall be construed to permit the withholding of public records relating to general economic development policies or activities. Once the State, a local government, or the specific business has announced a commitment by the business to expand or locate a specific project in this State ~~or a final decision not to do so and the business has communicated that commitment or decision to the State or local government agency involved with the project,~~and that the business will receive a discretionary incentive for the project pursuant to Chapter 143B of the General Statutes, the provisions of this subsection allowing public records to be withheld by the agency no longer apply. If the specific business has requested discretionary incentives for the project pursuant to Chapter 143B of the General Statutes, but decides to not expand or locate the project in this State or does not receive such discretionary incentives, then the only records that are subject to disclosure pursuant to this Chapter are the records submitted to the Department of Commerce by the nonprofit corporation with which the Department contracts pursuant to G.S. 143B-431A. If a business decides to expand or locate a specific project in this State, but the nonprofit corporation with which the Department contracts pursuant to G.S. 143B-431A does not submit any documentation to the Department regarding a request for any discretionary incentives by the State pursuant to Chapter 143B of the General Statutes, and the business does not receive any such discretionary incentives, then any records regarding such project are not subject to disclosure pursuant to this Chapter. Once the provisions of this subsection no longer apply, the agency shall disclose as soon as practicable, and within 25 business days, public records requested for the announced project that are not otherwise made confidential by law. An announcement that a business or industrial project has committed to expand or locate in the State shall not require disclosure of local government records relating to the project if the business has not selected a specific location within the State for the project. Once a specific location for the project has been determined, local government records must be disclosed, upon request, in accordance with the provisions of this section. For purposes of this section, "local government records" include records maintained by the State that relate to a local government's efforts to attract the project."

SECTION 1.2.(a) G.S. 143B-434 is repealed.

SECTION 1.2.(b) G.S. 143B-434.01 reads as rewritten:

"**§ 143B-434.01. Comprehensive Strategic Economic Development Plan.**

(a) Definitions. – The following definitions apply in this section:

~~(1) Board. – The Economic Development Board.~~

...

(6) Secretary. – The Secretary of Commerce or the governing board of a North Carolina nonprofit corporation with which the Department contracts pursuant to G.S. 143B-431A for the performance of the Secretary's responsibilities under this section.

(b) ~~Board to Prepare~~ Plan. – The ~~Board~~ Secretary shall ~~prepare~~ review and update the existing Plan ~~by April 1, 1994,~~ on or before April 1 of each year. ~~The Board shall review and update this Plan by April 1 of each year.~~ The ~~original~~ Plan shall cover a period of four years and each annual update shall extend the time frame by one year so that a four-year plan is always in effect. The ~~Board~~ Secretary shall provide copies of the Plan and each annual update to the Governor and the Joint Legislative Commission on Governmental Operations. The Plan shall encompass all of the components set out in this section.

(c) Purpose. – The purpose of this section is to require the ~~Board~~ Secretary to apply strategic planning principles to its economic development efforts. This requirement is expected to result in:

(1) The selection of a set of priority development objectives that recognizes the increasingly competitive economic environment and addresses the changing needs of the State in a more comprehensive manner.

(2) The effective utilization of available and limited resources.

(3) A commitment to achieve priority objectives and to sustain the process.

(d) (1) Public and Private Input. – At each stage as it develops and updates the Plan, the ~~Board~~ Secretary shall solicit input from all parties involved in economic development in North Carolina, including:

a. Each of the programs and organizations that, for State budget purposes, identifies economic development as one of its global goals.

b. Local economic development departments and regional economic development organizations.

c. The Board of Governors of The University of North Carolina.

(2) The ~~Board~~ Secretary shall also hold hearings in each of the Regions to solicit public input on economic development before the initial Plan is completed. The purposes of the public hearings are to:

a. Assess the strengths and weaknesses of recent regional economic performance.

b. Examine the status and competitive position of the regional resource base.

c. Identify and seek input on issues that are key to improving the economic well-being of the Region.

The ~~Board~~ Secretary shall hold additional hearings from time to time to solicit public input regarding economic development activities.

(3) Each component of the Plan shall be based on this broad input and, to the extent possible, upon a consensus among all affected parties. The ~~Board~~ Secretary shall coordinate its planning process with any State capital development planning efforts affecting State infrastructure such as roads and water and sewer facilities.

(e) Environmental Scan. – The first step in developing the Plan shall be to develop an environmental scan based on the input from economic development parties and the public and on information about the economic environment in North Carolina. To prepare the scan, the

~~Board~~ Secretary shall gather the ~~following~~ information required in this subsection and ensure that the information is updated periodically. The updated information may be provided in whatever format and through whatever means is most efficient. The information required to prepare the scan includes all of the following:

...

(f) Repealed by Session Laws 2012-142, s. 13.4(a), effective July 1, 2012.

(g) Vision and Mission Statements. – The ~~Board~~ Secretary shall develop a vision statement for economic development that would describe the preferred future for North Carolina and what North Carolina would be like if all economic development efforts were successful. The ~~Board~~ Secretary shall then develop a mission statement that outlines the basic purpose of each of North Carolina's economic development programs. Because special purpose nonprofit organizations are uniquely situated to conduct the entrepreneurial and high-risk activity of investing in and supporting new business creation in the State, they should be assigned a dominant role in this key component of economic development activity.

(h) Goals and Objectives. – The ~~Board~~ Secretary, using data from the public input and the environmental scan, shall formulate a list of goals and objectives. Goals shall be long-range, four years or more, and shall address both needs of economically distressed Regions and counties as well as opportunities for Regions and counties not distressed. The goals shall be developed with realism but should also be selected so as to encourage every Region and county within the State to develop to its maximum potential. Objectives shall be one year or less in scope and shall, if achieved, lead to the realization of the goals formulated by the ~~Board~~ Secretary as provided in this section.

Both goals and objectives should be stated largely in economic terms, that is, they should be related to specific population, employment, demographic targets, or economic sector targets. Both efficiency and equity considerations are to be addressed and balanced with special emphasis placed on the needs of disadvantaged or economically distressed populations and communities. The goals and objectives should not state how the economic targets are to be reached, but rather what the economic conditions will be if they are obtained. So that the progress of North Carolina's economic development efforts can be monitored, the ~~Board~~ Secretary shall set objectives for each goal that allow measurement of progress toward the goal. Objectives should be quantifiable and time-specific in order to serve as performance indicators.

...

(j) Implementation Plan. – Based upon all of the foregoing steps, the ~~Board~~ Secretary shall establish an implementation plan assigning to the appropriate parties specific responsibilities for meeting measurable objectives. The implementation plan shall contain all necessary elements so that it may be used as a means to monitor performance, guide appropriations, and evaluate the outcomes of the parties involved in economic development in the State.

(k) Annual Evaluation. – The ~~Board~~ Secretary shall annually evaluate the State's economic performance based upon the statistics listed in this subsection and upon the ~~Board's~~ Secretary's stated goals and objectives in its Plan. The statistics upon which the evaluation is made should be available to policymakers. The information may be provided in whatever format and through whatever means is most efficient.

...

(l) Accountability. – The ~~Board~~ Secretary shall make all data, plans, and reports available to the General Assembly, the Joint Legislative Commission on Governmental Operations, the Joint Legislative Economic Development and Global Engagement Oversight Committee, the Senate Appropriations Committee on Natural and Economic Resources, and the House of Representatives Appropriations Subcommittee on Natural and Economic Resources at appropriate times and upon request. The ~~Board~~ Secretary shall prepare and make available on

an annual basis public reports on each of the major sections of the Plan and the Annual Report indicating the degree of success in attaining each development objective."

SECTION 1.2.(c) G.S. 143B-437.03 is repealed.

SECTION 1.3. The Department of Commerce shall study and develop a plan for contracting with a North Carolina nonprofit corporation pursuant to G.S. 143B-431A, as enacted by this act, for the performance of economic development activities and duties of the Department. The study shall include each of the following:

(1) The Department shall develop a plan for private fund-raising efforts for the nonprofit corporation for the performance of economic development functions. The study shall include the creation of a budget for the nonprofit corporation that provides for the performance of core functions of the corporation, including economic development functions, in the absence of private funds. The study shall compare the budget of the Department and the budget developed for the nonprofit corporation according to Department division and budget category, including personal services; purchased services; supplies; property, plant, and equipment; other expenses and adjustments; aid and public assistance; and other budget categories used by the Department. The study shall include a measurement and estimation of expected private fund-raising potential, and the Department shall examine the efforts of other states that have permitted public-private partnerships for economic development activities and report on the source or sources of funds for those partnerships, separately accounting for funds provided by the State and private funds.

(2) The Department shall report on each performance metric listed in this subdivision. The report shall analyze the Department's performance for each metric for (i) the last full year prior to contracting for performance of the metric and (ii) the annual average for the five-year period preceding contracting for performance of the metric. The performance metrics to be reported upon are as follows:

a. For business recruitment:
   1. Number of jobs announced by the Department in total.
   2. Number of jobs announced resulting from recruitment of new businesses.
   3. Number of jobs announced resulting from existing business expansions.
   4. Total U.S. dollar amount of investment resulting from new projects.
   5. Total U.S. dollar amount of investment resulting from recruitment of new businesses.
   6. Total U.S. dollar amount of investment resulting from existing business expansions.
   7. Total U.S. dollar amount of foreign direct investment.

b. For business services:
   1. Number of existing businesses receiving support.
   2. Number of Business Services Team leads that lead to an expansion of existing businesses.
   3. Number of businesses receiving export assistance.
   4. Total U.S. dollar amount of exports by assisted companies.

c. For tourism and marketing:
   1. Number of consumer inquiries about travel to North Carolina.

2. Total U.S. dollar amount of spending by visitors while in North Carolina.
3. Total U.S. dollar amount of State and local tax revenues resulting from visitors' spending while in North Carolina.
4. Number of business inquiries for business relocation, investment, and expansion.

d. Any other information or performance metrics allowing comparison between departmental and corporate performance for any other economic development division in the Department for which the Department contracts for performance with a North Carolina nonprofit corporation pursuant to this act.

e. Any other information or performance metrics deemed useful or necessary by the Department in the listed areas or other areas.

The Department shall make a report to the Office of State Budget Management, to the Joint Legislative Commission on Governmental Operations, to the Joint Legislative Economic Development and Global Engagement Oversight Committee, and to the Fiscal Research Division no later than December 1, 2014.

The Department shall require the nonprofit corporation to include in each report mandated by G.S. 143B-431A(e)(2) an analysis of the corporation's performance and a comparison to departmental performance using the same performance metrics studied and reported by the Department, as required by subdivision (2) of this section.

SECTION 1.4. G.S. 126-5 reads as rewritten:

"**§ 126-5. Employees subject to Chapter; exemptions.**

...

(c2) The provisions of this Chapter shall not apply to:

...

(5) Officers, employees, and members of the governing board of a North Carolina nonprofit corporation with which the Department of Commerce has contracted pursuant to the authority granted in G.S. 143B-431A.

...

(d) (1) Exempt Positions in Cabinet Department. – Subject to the provisions of this Chapter, which is known as the State Personnel Act, the Governor may designate a total of 1,000 exempt positions throughout the following departments:

...

(2b) Designation of Liaison Positions. – Liaisons to the Collaboration for Prosperity Zones set out in G.S. 143B-28.1 for the Departments of Commerce, Environment and Natural Resources, and Transportation are designated as exempt.

...."

SECTION 1.5. Section 15.7A of S.L. 2013-360 is repealed.

SECTION 1.6. Section 1.5 of this act is effective when it becomes law. The remainder of this Part becomes effective July 1, 2014.

PART II. MODIFY NORTH CAROLINA BOARD OF SCIENCE AND TECHNOLOGY

SECTION 2.1. Part 18 of Article 10 of Chapter 143B of the General Statutes reads as rewritten:

"Part 18. North Carolina Board of ~~Science and Technology.~~Science, Technology, and Innovation.

"**§ 143B-472.80. North Carolina Board of ~~Science and Technology;~~ Science, Technology, and Innovation; creation; powers and duties.**

The North Carolina Board of ~~Science and Technology~~ Science, Technology, and Innovation of the Department of Commerce is created. The Board has the following powers and duties:

...

(4) To advise and make recommendations to the Governor, the General Assembly, the Secretary of Commerce, and ~~the Economic Development Board~~ any North Carolina nonprofit corporation with which the Department of Commerce contracts pursuant to G.S. 143B-431A on the role of ~~science and technology~~ science, technology, and innovation in the economic growth and development of North Carolina.

...

"**§ 143B-472.81. North Carolina Board of ~~Science and Technology;~~ Science, Technology, and Innovation; membership; organization; compensation; staff services.**

(a) The North Carolina Board of ~~Science and Technology~~ Science, Technology, and Innovation consists of the Governor, the Secretary of Commerce, and ~~17~~ 23 members appointed as follows: the Governor shall appoint one member from the University of North Carolina at Chapel Hill, one member from North Carolina State University at Raleigh, and two members from other components of the University of North Carolina, one of which shall be from a historically black college or university, all nominated by the President of the University of North Carolina; one member from Duke University, nominated by the President of Duke University; one member from a private college or university, other than Duke University, in North Carolina, nominated by the President of the Association of Private Colleges and Universities; one member of the North Carolina Community College System; one member representing K-12 public education; ~~one member from the Research Triangle Institute, nominated by the executive committee of the board of that institute; one member from the Microelectronics Center of North Carolina, nominated by the executive committee of the board of that center; one member from the North Carolina Biotechnology Center, nominated by the executive committee of the board of that center; four~~ six members from private industry in North ~~Carolina, at least one of whom shall be a professional engineer registered pursuant to Chapter 89C of the General Statutes or a person who holds at least a bachelors degree in engineering from an accredited college or university; and two members from public agencies in North Carolina.~~Carolina; and seven at-large members. Two members shall be appointed by the General Assembly, one shall be appointed upon the recommendation of the President Pro Tempore of the Senate, and one shall be appointed upon the recommendation of the Speaker of the House of Representatives in accordance with G.S. 120-121. The nominating authority for any vacancy on the Board among members appointed by the Governor shall submit to the Governor two nominations for each position to be filled, and the persons so nominated shall represent different disciplines.

...."

SECTION 2.2. G.S. 143B-437.80 reads as rewritten:

"**§ 143B-437.80. North Carolina SBIR/STTR Incentive Program.**

(a) Program. – There is established the North Carolina SBIR/STTR Incentive Program to be administered by the North Carolina Board of ~~Science and Technology.~~Science, Technology, and Innovation. In order to foster job creation and economic development in the State, the Board may provide grants to eligible businesses to offset costs associated with applying to the United States Small Business Administration for Small Business Innovative Research (SBIR) grants or Small Business Technology Transfer Research (STTR) grants. The grants shall be paid from the One North Carolina Small Business Account established in G.S. 143B-437.71.

...

(c) Grant. – The North Carolina Board of ~~Science and Technology~~Science, Technology, and Innovation may award grants to reimburse an eligible business for up to fifty percent (50%) of the costs of preparing and submitting a SBIR/STTR Phase I proposal, up to a maximum of three thousand dollars ($3,000). A business may receive only one grant under this section per year. A business may receive only one grant under this section with respect to each federal proposal submission. Costs that may be reimbursed include costs incurred directly related to preparation and submission of the grant such as word processing services, proposal consulting fees, project-related supplies, literature searches, rental of space or equipment related to the proposal preparation, and salaries of individuals involved with the preparation of the proposals. Costs that shall not be reimbursed include travel expenses, large equipment purchases, facility or leasehold improvements, and legal fees.

(d) Application. – A business shall apply, under oath, to the North Carolina Board of ~~Science and Technology~~ Science, Technology, and Innovation for a grant under this section on a form prescribed by the Board that includes at least all of the following:

...."

SECTION 2.3. G.S. 143B-437.81 reads as rewritten:

"**§ 143B-437.81. North Carolina SBIR/STTR Matching Funds Program.**

(a) Program. – There is established the North Carolina SBIR/STTR Matching Funds Program to be administered by the North Carolina Board of ~~Science and Technology.~~ Science, Technology, and Innovation. In order to foster job creation and economic development in the State, the Board may provide grants to eligible businesses to match funds received by a business as a SBIR or STTR Phase I award and to encourage businesses to apply for Phase II awards.

...

(c) Grant. – The North Carolina Board of ~~Science and Technology~~ Science, Technology, and Innovation may award grants to match the funds received by a business through a SBIR/STTR Phase I proposal up to a maximum of one hundred thousand dollars ($100,000). Seventy-five percent (75%) of the total grant shall be remitted to the business upon receipt of the SBIR/STTR Phase I award and application for funds under this section. Twenty-five percent (25%) of the total grant shall be remitted to the business upon submission by the business of the Phase II application to the funding agency and acceptance of the Phase I report by the funding agency. A business may receive only one grant under this section per year. A business may receive only one grant under this section with respect to each federal proposal submission. Over its lifetime, a business may receive a maximum of five awards under this section.

(d) Application. – A business shall apply, under oath, to the North Carolina Board of ~~Science and Technology~~ Science, Technology, and Innovation for a grant under this section on a form prescribed by the Board that includes at least all of the following:

...."

SECTION 2.4. This Part becomes effective July 1, 2014.

PART III. CREATION OF COLLABORATION FOR PROSPERITY ZONES

SECTION 3.1. Intent to create Collaboration for Prosperity Zones. – It is the intent of the General Assembly to establish geographically uniform zones in this State to facilitate collaborative and coordinated planning and use of resources, to improve cooperation with other governmental and nonprofit entities at the local and regional level, to facilitate administrative efficiencies within State government, to receive advice on economic development issues by local boards established by a North Carolina nonprofit corporation with which the Department of Commerce contracts, and, to the extent feasible, to establish one-stop sources in each region for citizens and businesses seeking State services at a regional level.

SECTION 3.2. Article 1 of Chapter 143B of the General Statutes is amended by adding a new section to read:

"**§ 143B-28.1. Create Collaboration for Prosperity Zones.**

For purposes of enhanced collaboration and cooperation between governmental agencies, planning, use of resources, and improved efficiency at a regional level, the State is hereby divided into eight permanent zones as follows:

(1) Western Region, consisting of Buncombe, Cherokee, Clay, Graham, Haywood, Henderson, Jackson, Macon, Madison, Polk, Rutherford, Swain, and Transylvania Counties.

(2) Northwest Region, consisting of Alleghany, Ashe, Alexander, Avery, Burke, Caldwell, Catawba, McDowell, Mitchell, Watauga, Wilkes, and Yancey Counties.

(3) Southwest Region, consisting of Anson, Cabarrus, Cleveland, Gaston, Iredell, Lincoln, Mecklenburg, Rowan, Stanly, and Union Counties.

(4) Piedmont-Triad (Central) Region, consisting of Alamance, Caswell, Davidson, Davie, Forsyth, Guilford, Randolph, Rockingham, Stokes, Surry, and Yadkin Counties.

(5) North Central Region, consisting of Chatham, Durham, Edgecombe, Franklin, Granville, Harnett, Johnston, Lee, Nash, Orange, Person, Vance, Wake, Warren, and Wilson Counties.

(6) Sandhills (South Central) Region, consisting of Bladen, Columbus, Cumberland, Hoke, Montgomery, Moore, Richmond, Robeson, Sampson, and Scotland Counties.

(7) Northeast Region, consisting of Beaufort, Bertie, Camden, Chowan, Currituck, Dare, Gates, Halifax, Hertford, Hyde, Martin, Northampton, Pasquotank, Perquimans, Pitt, Tyrrell, and Washington Counties.

(8) Southeast Region, consisting of Brunswick, Carteret, Craven, Duplin, Greene, Jones, Lenoir, New Hanover, Onslow, Pamlico, Pender, and Wayne Counties."

SECTION 3.3. The Departments of Commerce, Environment and Natural Resources, and Transportation, the Community Colleges System Office, and the State Board of Education shall, by January 1, 2015, report to the Joint Legislative Commission on Governmental Operations, the Senate Appropriations/Base Budget Committee, and the House Appropriations Committee on how they plan to establish Collaboration for Prosperity Zones as defined by this act.

SECTION 3.4. G.S. 115C-65 reads as rewritten:

"**§ 115C-65. State divided into districts.**

The State of North Carolina shall be divided into eight educational ~~districts~~ districts, which shall match the composition of the zones set forth in G.S. 143B-28.1.~~embracing the counties herein set forth:~~

~~**FIRST DISTRICT**~~

~~Beaufort, Bertie, Camden, Chowan, Currituck, Dare, Gates, Hertford, Hyde, Martin, Pasquotank, Perquimans, Pitt, Tyrrell, Washington.~~

~~**SECOND DISTRICT**~~

~~Brunswick, Carteret, Craven, Duplin, Greene, Jones, Lenoir, New Hanover, Onslow, Pamlico, Pender, Sampson, Wayne.~~

~~THIRD DISTRICT~~

~~Durham, Edgecombe, Franklin, Granville, Halifax, Johnston, Nash, Northampton, Vance, Wake, Warren, Wilson.~~

~~FOURTH DISTRICT~~

~~Bladen, Columbus, Cumberland, Harnett, Hoke, Lee, Montgomery, Moore, Richmond, Robeson, Scotland.~~

~~FIFTH DISTRICT~~

~~Alamance, Caswell, Chatham, Davidson, Forsyth, Guilford, Orange, Person, Randolph, Rockingham, Stokes.~~

~~SIXTH DISTRICT~~

~~Anson, Cabarrus, Cleveland, Gaston, Lincoln, Mecklenburg, Stanly, Union.~~

~~SEVENTH DISTRICT~~

~~Alexander, Alleghany, Ashe, Avery, Burke, Caldwell, Catawba, Davie, Iredell, Rowan, Surry, Watauga, Wilkes, Yadkin.~~

~~EIGHTH DISTRICT~~

~~Buncombe, Cherokee, Clay, Graham, Haywood, Henderson, Jackson, Macon, Madison, McDowell, Mitchell, Polk, Rutherford, Swain, Transylvania, Yancey.~~"

SECTION 3.5. Section 3.4 of this act becomes effective April 1, 2015. Members of the State Board of Education appointed by the Governor and confirmed by the General Assembly prior to 2015 with terms ending in 2017, 2019, and 2021 shall be designated as the appointees of the following districts for the remainder of the member's current term:

a. Western Region: Wayne McDevitt
b. Southwest Region: Gregory Alcorn
c. Piedmont Triad (Central) Region: A.L. Collins
d. Sandhills (South Central) Region: Olivia Oxendine
e. Northeast Region: Rebecca Taylor
f. Southeast Region: Reginald Kenan

The remainder of this Part becomes effective July 1, 2014.

PART IV. REQUIRE AT LEAST ONE LIAISON IN EACH COLLABORATION FOR PROSPERITY ZONE

SECTION 4.1. No later than January 1, 2015, the Departments of Commerce, Environment and Natural Resources, and Transportation shall have at least one employee physically located in the same office in each of the Collaboration for Prosperity Zones set out in G.S. 143B-28.1 to serve as that department's liaison with the other departments and with local governments, schools and colleges, planning and development bodies, and businesses in that zone. The departments shall jointly select the office. For purposes of this Part, the Department of Commerce may contract with a North Carolina nonprofit corporation pursuant to G.S. 143B-431A, as enacted by this act, to fulfill the departmental liaison requirements for each office in each of the Collaboration for Prosperity Zones.

No later than January 1, 2015, the Community Colleges System Office shall designate at least one representative from a community college or from the Community Colleges System Office to serve as a liaison in each Collaboration for Prosperity Zone for the community college system, the community colleges in the zone, and other educational agencies and schools within the zone. A liaison may be from a business center located in a community college. These liaisons are not required to be collocated with the liaisons from the Departments of Commerce, Environment and Natural Resources, and Transportation.

No later than January 1, 2015, the State Board of Education shall designate at least one representative from a local school administrative unit or from the Department of Public Instruction to serve as a liaison in each Collaboration for Prosperity Zone for the local school administrative units and other public schools within the zone. These liaisons are not required to be collocated with the liaisons from the Departments of Commerce, Environment and Natural Resources, and Transportation.

SECTION 4.2. In addition to other related tasks assigned by their respective agencies, liaisons in each Collaboration for Prosperity Zone shall work to enhance collaboration and cooperation between their departments and other State agencies, local governmental agencies, and other regional public and nonprofit entities. The liaisons from the Departments of Environment and Natural Resources and Transportation shall work to consolidate and simplify the process for citizens and businesses seeking permits from their respective agencies. The liaisons from the Department of Commerce shall be used to support local economic development efforts, to coordinate such efforts, and to coordinate the Department of Commerce's activities within each Collaboration for Prosperity Zone. The liaisons from the community college system and local school administrative units shall work closely with the Department of Commerce and other State and local governmental agencies and local businesses in the zone to promote job development through career technical education.

SECTION 4.3.(a) The Departments of Transportation and Environment and Natural Resources shall jointly report to the Office of State Budget and Management, the Joint Legislative Commission on Governmental Operations, the Joint Legislative Transportation Oversight Committee, the Environmental Review Commission, the Senate Appropriations/Base Budget Committee, and the House Appropriations Committee, as follows:

(1) No later than January 1, 2015, on the establishment of collocated liaisons within each Collaboration for Prosperity Zone and a description of the activities the liaisons have been assigned to perform.

(2) No later than April 1, 2015, on the activities of the liaisons, specifically any activities undertaken that resulted in enhanced collaboration and coordination with the other Department and with other governmental agencies, improved administrative efficiencies, and any steps taken to make services to citizens and businesses within each zone more efficient, economical, and user-friendly.

SECTION 4.3.(b) The Community Colleges System Office and the State Board of Education shall each report to the Office of State Budget and Management, the Joint Legislative Commission on Governmental Operations, the Joint Legislative Education Oversight Committee, the Senate Appropriations/Base Budget Committee, and the House Appropriations Committee, as follows:

(1) No later than January 1, 2015, on the establishment of liaisons within each Collaboration for Prosperity Zone and a description of the activities the liaisons have been assigned to perform.

(2) No later than April 1, 2015, on the activities of the liaisons, specifically any activities undertaken that resulted in enhanced collaboration and coordination with other governmental agencies, improved planning on use of educational resources, and improved administrative efficiencies.

SECTION 4.3.(c) The Department of Commerce shall include in its first report under G.S. 143B-431A(f), as enacted by this act, a report on the establishment and activities of its liaisons in each Collaboration for Prosperity Zone. The Department of Commerce shall send a copy of this report to the Office of State Budget and Management, the Senate Appropriations/Base Budget Committee, and the House Appropriations Committee.

SECTION 4.4. The Departments of Commerce, Environment and Natural Resources, and Transportation, the Community Colleges System Office, and the State Board of Education shall use funds available to carry out the requirements of this section. Nothing in this act shall be construed as an authorization for payment of additional compensation for persons serving as liaisons.

SECTION 4.5. This Part becomes effective July 1, 2014, and expires July 1, 2018.

PART V. GENERAL ASSEMBLY REVIEW OF REPORTS

SECTION 5. It is the intent of the General Assembly to receive and review the reports required by Section 4.3 of this act concerning the creation of the Collaboration for Prosperity Zones and to use those reports to further address the following topics:

(1) Enhancing collaboration and cooperation between State and other governmental agencies in order to streamline and improve services to citizens and businesses, to make such services more user-friendly, and to implement collaborative and cooperative interagency measures to enhance access to services.

(2) Reducing barriers faced by citizens and businesses in accessing services that are unnecessarily caused by agency specialization, which may produce a "silo mentality."

(3) Additional recommendations regarding liaison personnel, including expanding the requirement to other State departments.

(4) Ways to integrate collaboration between educational institutions in each Collaboration for Prosperity Zone on the one hand and other governmental agencies and local businesses on the other.

(5) Requiring the establishment of interagency one-stop shops in each Collaboration for Prosperity Zone.

(6) Consolidating programs or services.

(7) Cross-training employees.

(8) Identifying offices, equipment, and support services that may be efficiently and economically shared between agencies in each Collaboration for Prosperity Zone.

(9) The grouping of counties within each Collaboration for Prosperity Zone to determine whether there is a better configuration while keeping the same overall number of zones.

PART VI. EFFECTIVE DATE AND CONSTRUCTION

SECTION 6.1. Nothing in this act shall be construed to obligate the General Assembly to appropriate funds to implement this act.

SECTION 6.2. Except as otherwise provided, this act is effective when it becomes law.

HOUSE BILL 1031:
NC Econ. Dev. Partnership Modifications

2013-2014 General Assembly

Committee:	Senate Commerce	**Date:**	June 17, 2014
Introduced by:	Rep. Murry	**Prepared by:**	Dan Ettefagh
Analysis of:	Fourth Edition		Committee Counsel

SUMMARY: ***House Bill 1031 would (i) permit the Department of Commerce to contract with a North Carolina nonprofit corporation for the performance of certain economic development functions currently performed by the Department, (ii) eliminate the Economic Development Board, (iii) modify the duties and membership of the North Carolina Board of Science and Technology, and (iv) establish 8 geographic zones in the State for inter-departmental cooperation purposes. The substantive differences between H1031 and S743 last considered by the committee are as follows:***

1. Re: the audit in G.S. 143B-431A(c)(4), H1031 requires it to be biennially and by either OSBM, the State Auditor, or internal departmental auditors. S743 requires it to be annually and by the State Auditor.

2. Re: the governance board requirements in G.S. 143B-431A(d)(2)a., H1031 adds a new requirement that ¼ of legislative appointees and 2/9 of the Governor's appointees be from tier one or tier two areas with no legislative appointees being from the same Prosperity Zone and no more than 2 Governor appointees being from the same Prosperity Zone. No similar requirement in S743.

3. Re: salary limitations in G.S. 143B-431A(d)(3), H1031 limits the salary of board members to per diems and allowances as provided in G.S. 138-5. S743 limits it to $120,000 per year (unless raised in a budget bill).

4. Re: ethics in G.S. 143B-431A(e)(4), H1031 makes the P3 subject to the State Ethics Act. The Senate version requires adoption of a code of ethics containing certain minimum provisions.

5. Re: severance pay in G.S. 143B-431A(e)(11), H1031 disallows State funds to be used for severance. Both bills cap total available severance at the same amount.

6. Re: fundraising in G.S. 143B-431A(k): H1031 requires that, of funds raised by the nonprofit from sources other than the State, 25% of those funds be used for tier one/two development or for salaries/bonuses, etc. of employees working in or solely for the benefit of tier one/two. No similar requirement in S743.

7. Re: the study in Section 1.3 of the bill: H1031 adds a new requirement that the study look to other states' compensation for P3-type employees for the purposes of determining the average and appropriate compensation that could be expected to be paid by our P3. No similar requirement in S743.

8. Re: Part VI, the Senate added the Film Grant Program. No similar provision in H1031.

[As introduced, this bill was identical to S743, as introduced by Sen. Brown, which is currently in House Finance.]

BILL ANALYSIS:

Part I of the bill establishes the framework for the Department of Commerce to contract with a nonprofit corporation to assist the Department in fostering and retaining jobs and business development, international trade, marketing, and travel and tourism. The bill incorporates a number of requirements regarding contracting that can be broadly categorized as follows: limitations on scope, oversight requirements, contractual pre-requisites, mandatory contract terms, reporting requirements, applicability of laws provisions.

Limitations on Scope: The contract for performance is limited in scope by disallowing for the contracting of the following economic development functions of the Department:

- The obligation or commitment of funds under Article 10 (Commerce) of Chapter 143B of the General Statutes; however, recruitment, negotiation, and recommendations relating to economic development programs would fall within the purview of the nonprofit corporation.
- The Division of Employment Security, including the administration of unemployment insurance.
- The functions, powers, duties, and obligations vested in the State Board of Alcoholic Control, the North Carolina Utilities Commission, the North Carolina Industrial Commission, the State Banking Commission and the Commissioner of Banks, the Savings Institutions Division, the Credit Union Commission, the North Carolina Mutual Burial Association Commission, and the North Carolina Rural Electrification Authority.
- The administration of federal funds or grants.

Oversight: A nonprofit corporation contracted with by the Department would be overseen by an Economic Development Accountability & Standards Committee, consisting of the Secretaries of Commerce (Chair), Transportation, Environment and Natural Resources, and Revenue, one member appointed by the Speaker of the House, one member appointed by the President Pro Tempore of the Senate, and one member jointly appointed by the Speaker and President Pro Temp. No member may be a member of the General Assembly. The Committee would meet at least quarterly and would function to do the following:

- Monitor/oversee the performance of the contract by the nonprofit corporation.
- Receive, review, and refer complaints, as appropriate.
- Request enforcement of the contract by the Attorney General or the Department.
- Audit, via OSBM, the records of the nonprofit corporation to verify data affecting performance and reports.
- Coordinate economic development grant programs between the Departments of Commerce, Transportation, and Environment and Natural Resources.
- Perform other contractual duties.

Contractual Pre-requisites: The contractual authority granted in the bill and the permission to receive State funds by a nonprofit pursuant to a contract exist only if certain requirements are satisfied, as follows:

- At least 45 days prior to entering or substantively amending the contract, the Department submits the contract and a detailed explanation to GovOps and the Fiscal Research Division.
- The nonprofit corporation's governing board meets the following requirements:

- It is composed of 17 members (9 Governor appointees, including the chair, 4 Senate appointees, and 4 House appointees). The appointees should reflect the geographic diversity of the State, and the Governor's appointees should meet expertise requirements.
- No member of the board may take actions or use their position for self, business, or familial profit.
- No State officer or employee may serve on the board.
- The board must meet at least quarterly and report to the Economic Development Accountability & Standards Committee on economic development progress.
- The board must provide advice concerning economic and community development planning for the State, recommend economic development policy, recommend appropriations levels for economic development programs, and recommend how to coordinate economic development efforts amount involved agencies and entities.
- The nonprofit corporation must adhere to the prohibitions on lobbying set forth in Section 501(c)(3) of the Internal Revenue Code.

- The amount of State funds used for annual salaries for individual employees and officers of the corporation is capped at the greater of $120,000 per annum or the amount most recently set by the General Assembly in a budget act.
- The nonprofit corporation receives from sources other than the State funds totaling at least $250,000.

Mandatory Contract Terms: A contract authorized by the bill must contain the following terms:

- A provision requiring annual audited financial statements be submitted within 7 days of issuance to the Fiscal Research Division, the Joint Legislative Economic Development and Global Engagement Oversight Committee, and the Department.
- A provision requiring annual reporting to the Department on program activities, objectives, accomplishments, expenditures, and fund sources, as well as jobs anticipated to result from the nonprofit's activities (including project leads not submitted to the Department for possible discretionary incentives), itemized performance metrics, proposed amendments to areas of expertise for the governing board, and an explanation of how salaries are determined (base pay and bonus pay, including bonuses designed to aid rural/low-income area development). The report must also include any additional information requested by the Department.
- A provision requiring that, upon termination or repeal of the charter of the corporation or dissolution of the corporation, the corporation's assets and funds (including those of affiliated and subsidiary entities) must be returned to the Department within 30 days (during which no further encumbering may occur).
- A provision requiring the corporation to adopt and publish policies on ethics, conflicts of interest, and gifts.

  The ethics policy should provide, at a minimum, for the need to obey all applicable laws re: actions taken, the need to uphold the integrity/independence of the board and nonprofit, the need to avoid impropriety and faithfully perform their duties, and the need

to conduct the affairs of the board and nonprofit in an open and public manner and to avoid conflicts of interest.

The conflict of interest provision should provide, at a minimum, the need to avoid use of the official position to profit themselves, their immediate families or businesses in a way that is greater than similarly located and situated people or businesses. Otherwise, abstinence from voting on or discussing the matter is appropriate.

The gift policy should provide, at a minimum, that an employee, officer, or member of the board should not knowingly accept a gift from a person seeking to do business in the State or that has a financial interests that may be substantially and materially affected in a way different than the public due to the corporate personnel's job performance. Excepted from the gift prohibition are gifts of food, beverages, transportation, lodging, entertainment, or related expenses associated with recruitment, travel, tourism, and trade if unsolicited and not in trade for job performance and if reported within 30 days to the corporation, including value, description, and explanation of how the gift contributed to recruitment, travel, tourism, or trade. Also excepted are gifts less than $100 in value if customarily given in another country as protocol.

- A provision requiring the corporation to maintain a record of all contributors, including date and aggregate total of all contributions, which is included in the report to the Department.
- A provision requiring separate accounts and bookkeeping by the corporation for State and private funds and prohibiting commingling of funds.
- A provision providing the corporation will not engage in awarding public or private funds of the nonprofit corporation.
- A provision limiting the term and renewal provisions of the contract between the Department and the nonprofit corporation. The maximum initial term is 5 years. The maximum number of term extensions is 4. The maximum single term extension is 1 year. No extension may occur prior to 4/5 of the initial term passing.
- A provision limiting the severance pay of the chief officers to the lesser of $120,000 or (number of whole years in chief officer position/4) x ($120,000).
- An annual certification that the corporation is in compliance with the North Carolina Nonprofit Corporation Act and has complied with all mandatory contract terms (or an explanation of noncompliance).
- A provision requiring the nonprofit to comply with the travel and tourism policy act if the Department contracts with the nonprofit to promote and market tourism.
- A provision requiring fundraising results of at least $750k in the first year of the contract and at least $1.25M in each additional year of the contract.
- A provision that that financial obligations by State agencies are subject to the availability of appropriated funds or available funds that are not State funds as defined by Chapter 143C.

Reporting and Applicability of Laws: The Department must annually report to EDGE, GovOps, and the Fiscal Research Division on any performance for which the Department has contracted with a nonprofit corporation. The report must contain the report received by the Department from the nonprofit, an executive summary of that report, a listing of each entity for which the corporation has referred to the Department, an explanation of response by the Department for corporate noncompliance

with mandatory contract terms, and any soliciting of funds by the Secretary of Commerce on behalf of the corporation. A corporation contracted with must adhere to public records laws and open meetings laws. Regarding State funds, the bill provides (i) interest earned on State funds must be used for the same purposes as the principal, (ii) travel and personnel expenses reimbursed by State funds must adhere to reimbursement limitations in the North Carolina Budget manual used for State employees (deviations must be approved by the Secretary), and (iii) State funds may not be used for hiring a lobbyist.

The bill makes clear the Secretary can engage in solicitation of funds for the corporation, but other State employees cannot engage in solicitation of funds for the corporation. In addition, corporate personnel are not State employees, are not covered by the State Personnel Act, and are not entitled to State-funded employee benefits.

Although made subject to the open records law, the bill modifies the open records laws in the following ways:

- Under current law, once the State, a local government or specific business announce a committed to expand or located a project in the State (or a final, communicated decision not to), the provisions allowing the withholding of public records would no longer apply (i.e., it becomes public record).
- Under the bill, a final, communicated decision not to expand or locate no longer removes the provision allowing the withholding of public records (i.e. those would remain outside of the public record). Also, if a business requests discretionary incentives for a project but does not expand or locate in the State or does not receive the discretionary incentives, the only records subject to the open records law are the records submitted to the Department by the nonprofit. If a business expands/located in the State but the nonprofit submits no documentation to the Department regarding discretionary incentives (regardless of such were requested) and if the business does not receive discretionary incentives, the records regarding the project are not subject to the open records laws.

The remaining provisions of Part I include (i) a repeal of the Economic Development Board, (ii) an authorization to allow the Secretary to delegate the Secretary's responsibilities with respect to a comprehensive strategic economic development plan to the governance board of the nonprofit corporation with which the Department has contracted, (iii) a requirement that the governing board of the nonprofit corporation continue functions previously performed by the Economic Development Board, (iv) an exemption for Collaboration for Prosperity Zone liaisons and officers, board members, and employees of the nonprofit corporation from certain provisions of the State Personnel Act, and (v) a requirement that the Department study and develop:

- A plan for private fundraising efforts for the nonprofit corporation, including private fundraising potential, private fundraising in other states, creating a budget for the corporation without private fundraising and comparing the budget with amounts required by the Department for the same functions.
- A report on various performance metrics for the Department for the last year and annual averages for the last 5 years. The Department must report to OSBM, GovOps, EDGE, and FRD no later than 12/1/14, and the Department must require the nonprofit corporation to report on the same metrics for comparison purposes to Departmental performance.

Part I of the bill repeals the budgetary provision authorizing privatization of Departmental functions.

Part II of the bill renames the North Carolina Board of Science and Technology as the North Carolina Board of Science, Technology, and Innovation, which would gain the duty to advise and make

recommendations to the nonprofit corporation on the role of science, technology, and innovation. The composition of the Board would be changed, increasing from 17 to 23 members. New members include one member of the North Carolina Community Colleges System, one member representing K-12 public education, 2 additional private industry members, and 7 at-large members. Of the existing two members appointed by the Governor from components of The University of North Carolina system other than UNC-CH and NCSU, one member must be from a historically black college or university.[1] Eliminated members include one member from the Research Triangle Institute (nominated by its executive committee), one member from the Microelectronics Center of NC (nominated by its executive committee), one member from the Biotechnology Center (nominated by its executive committee), and two members from public agencies in the State. An additional elimination is the requirement that at least one member be a professional, registered engineer with a degree from an accredited college or university.

Part III of the bill divides the State into 8 geographic regions to facilitate collaborative and coordinated planning and resource use, improve cooperation, facilitate increased efficiencies, receive advice on economic development issues by local boards established by a nonprofit corporation, and establish one-stop assistance in each region for citizens and businesses. The bill would require that the Departments of Commerce, Environment and Natural Resources, and Transportation each provide one employee to each regional office to serve as that department's liaison with other departments and with local governments, schools and colleges, businesses, and other developmental planning bodies. The Community Colleges System Office and State Board of Education would also be required to designate one representative to serve as a liaison in each zone. Office location shall be jointly selected, and Commerce would be authorized to contract with the nonprofit corporation to fulfill the Department's liaison responsibilities. Part IV includes reporting requirements on the establishment and activities of liaisons by Commerce, the Community Colleges System Office, the State Board of Education, the Department of Transportation and DENR. Finally, Part IV modifies the existing educational districts to match the Prosperity Zone composition.

Part V of the bill provides for review of reports and intent to address certain topics by the General Assembly.

EFFECTIVE DATE: Other than the repeal of the budgetary privatization provision, which becomes effective when the act becomes law, Parts I, II, and III become effective 7/1/14. Part IV becomes effective 7/1/14 and expires 7/1/18. The remainder of the act is effective when it becomes law.

[1] The appointments from UNC-Chapel Hill and NCSU are unchanged by the bill.

VISITOR REGISTRATION SHEET

Senate **COMMERCE** Committee — June 17, 2014

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DEBBIE LOWN

NAME	FIRM OR AGENCY AND ADDRESS
John Hoeman	NCDOC
Ashley [illegible]	NCDOC
C. Smi	UNC
PAIGE WORSHAM	NC Center for Public Policy Research
Sarah Wolfe	MWC
Laura Gunter	NCBIO
Susanna Davis	WM
BRUCE THOMPSON	PRESCOTT POST
Jackie Keeney	NCDOC
Tony McEwen	City of Fayetteville
[illegible]	CSS

VISITOR REGISTRATION SHEET

Senate **COMMERCE** Committee — June 17, 2014

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DEBBIE LOWN

NAME	FIRM OR AGENCY AND ADDRESS
Patrick Baffi	NCAEC
Samantha Yarborough	UNC Law
Elizabeth Li	UNC Law
Madeline Rieker	Smith Anderson
Sharon Decker	Dept of Commerce
Patricia Mitchell	Dept of Commerce
Michael Ebert	Dept of Commerce
Rhiannon Bell	NCMMC
John Hardin	MFS
William Stirling	Brubaker and Associates
John Tuttle	MWC

VISITOR REGISTRATION SHEET

Senate **COMMERCE** Committee — June 17, 2014

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DEBBIE LOWN

NAME	FIRM OR AGENCY AND ADDRESS
Tonya Horton	Tratman Sanders
Shawnda Martin	NCLM
[illegible]	[illegible]
Mike Caputo	NCHBA
Adam Pridemore	NCAHA
Jay W. Rabury	Corrections Education
[illegible]	NCSBA
[illegible]	NCTIA - NCMA
Erin Jones	TWC
Sammy Roberson	TWC
Chris Agan	DOT

VISITOR REGISTRATION SHEET

Senate **COMMERCE** Committee — June 17, 2014

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DEBBIE LOWN

NAME	FIRM OR AGENCY AND ADDRESS
Gary Robertson	AP
Elizabeth B	BD
Mike Smallwood	SOG
Steven Pennington	Commerce - LEAP
Nathan Batts	NCBA
MARK EDSLEY	NC JOBS ACT TEAM
C Stubbs	C Stubbs
Greg Hanna	CRL
John Herrera	Self Help

SENATE SERGEANT-AT-ARMS

COMMITTEE: Senate Committee on Commerce

DATE: 06-17-2014 ROOM: 1027

1. ERNIE SHERRELL
2. ED KESLER
3. CANTON LEWIS
4. _____
5. _____
6. _____

PAGES ATTENDING

Date: 6-17 **11 AM**

Committee: Commerce **Room:** 1027

PLEASE PRINT LEGIBILY!!!!!

Page Name	Hometown	Sponsoring Senator
1 Lilli Canaday	Burlington	Gunn
2 Lilly Black	"	"
3 Robert Bahner	Pinehurst	Tilman
4 ~~Ed~~ Jackson Carr	Dunn	B. Jackson
5 Rachel Figard	Davidson	Tarte
6 Chri Caggia	Cary	Barringer
7 Meredith Roach	Wendell	Barefoot
8 Destini Morton	Rocky Mount	Bryant
9 Trey Jones	Tabor City	Walters

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.

Principal Clerk
Reading Clerk

Corrected #2: HB894 Added

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

The **Senate Committee on Commerce** will meet at the following time:

DAY	DATE	TIME	ROOM
Wednesday	June 18, 2014	11:00 AM	1027/1128 LB

The following will be considered:

BILL NO.	SHORT TITLE	SPONSOR
HB 1043	Prequalification Update.	Representative Arp Representative Hager
SB 769	Boost State Nature/Heritage Tourism Industry.	Senator Rabon Senator Brock
SB 794	Disapprove Industrial Commission Rules.	Senator Brown
HB 894	Allocation of Excess Stormwater/Local Govt.	Representative Catlin Representative Hamilton Representative Moffitt

Agenda to be determined.

Senator Rick Gunn, Co-Chair
Senator Wesley Meredith, Co-Chair

Senate Committee on Commerce
Wednesday, June 18, 2014, 11:00 AM
1027/1128 Legislative Building

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

BILL NO.	SHORT TITLE	SPONSOR
HB 1043	Prequalification Update.	Representative Arp Representative Hager
SB 769	Boost State Nature/Heritage Tourism Industry.	Senator Rabon Senator Brock
SB 794	Disapprove Industrial Commission Rules.	Senator Brown
HB 894	Allocation of Excess Stormwater/Local Govt.	Representative Catlin Representative Hamilton Representative Moffitt

Senate Committee on Commerce
Wednesday, June 18, 2014 at 11:00 AM
Room 1027/1128 of the Legislative Building

MINUTES

The Senate Committee on Commerce met at 11:00 AM on June 18, 2014 in Room 1027/1128 of the Legislative Building. Twenty two members were present.

Senator Wesley Meredith, Chair, presided.

Jackson Carr from Dunn, Grayson Flake from Wake Forest, Parker Castleberry from Raleigh, Spencer Mangum from Raleigh, Connor Badgett from Statesville, Lilly Black from Burlington, Lilli Canaday from Burlington, and Trey Jones from Taber City served as pages.

By the requests of visiting bill sponsors, the order of the bills heard is reflected below.

HB 894 Source Water Protection Planning

Senator Woodard moved to adopt the proposed committee substitute (PCS) to the committee for discussion and it was carried. Representative Catlin was introduced to explain the bill. The questions that came from the members were answered by Representative Catlin, Peter Ledford an attorney from the Research Department and Jay Frick/Branch Head from the Protection and Enforcement Department for the Public Water Supply Section of DWR. Senator Tillman moved unfavorable to the bill – favorable to the PCS and the motion carried. Senator Goolsby was asked to manage the bill on the Senate Floor.

HB 1043 Prequalification Update

Senator Tillman moved to adopt the proposed committee substitute (PCS) to the committee for discussion and it was carried. Representative Arp was introduced to explain the bill. The questions from the members were answered by Representative Arp, Peter Ledford, and Senator Gunn. Senator Tillman moved unfavorable to the bill - favorable to the PCS and the motion carried. Senator Hunt was asked to manage the bill on the Senate Floor.

SB 794 Disapprove Industrial Commission Rules

Senator Tillman moved to adopt the proposed committee substitute (PCS) to the committee for discussion and it was carried. Wendy Graf Ray an attorney from the Research Department on behalf of Senator Brown, explained the bill by use of the bill summary. Ms. Graf Ray responded to the questions from the members. Senator McKissick moved unfavorable to the bill – favorable to the PCS and the motion carried.

SB 769 Boost State Nature/Heritage Tourism Industry

Peter Ledford an attorney from the Research Department was asked to introduce the bill on behalf of Senator Rabon and Senator Brock. After discussion it was decided to make no motion on this bill.

The meeting adjourned at 11:30 AM.

Senator Wesley Meredith, Chair
Presiding

Debbie Lown, Committee Clerk

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

COMMERCE COMMITTEE REPORT
Senator Gunn, Co-Chair
Senator Meredith, Co-Chair

Wednesday, June 18, 2014

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

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

SB 794 Disapprove Industrial Commission Rules.
Draft Number: S794-PCS35562-SU-51
Sequential Referral: None
Recommended Referral: None
Long Title Amended: Yes

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

HB 894 Allocation of Excess Stormwater/Local Government.
Draft Number: H894-PCS30777-MH-24
Sequential Referral: None
Recommended Referral: None
Long Title Amended: Yes

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 1, BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL

HB 1043 (CS#1) Prequalification Update.
Draft Number: H1043-PCS10588-TP-71
Sequential Referral: None
Recommended Referral: None
Long Title Amended: No

TOTAL REPORTED: 3

Senator Harry Brown will handle SB 794
Senator Thomas Goolsby will handle HB 894
Senator Neal Hunt will handle HB 1043

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

H D

HOUSE BILL 1043*
Committee Substitute Favorable 6/9/14
PROPOSED SENATE COMMITTEE SUBSTITUTE H1043-CSTP-71 [v.2]
6/17/2014 5:39:16 PM

Short Title: Prequalification Update. (Public)

Sponsors:

Referred to:

May 15, 2014

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THE STATUTES RELATED TO THE USE OF PREQUALIFICATION IN PUBLIC CONSTRUCTION CONTRACTING, AS STUDIED BY THE JOINT PURCHASE AND CONTRACT STUDY COMMITTEE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 143-135.8 reads as rewritten:

"**§ 143-135.8. Prequalification.**

(a) Except as provided in this section, ~~Bidders~~bidders may not be prequalified for any ~~public~~ construction or repair work project.

(b) A governmental entity may prequalify bidders for a particular construction or repair work project when all of the following apply:

(1) The governmental entity is using one of the construction methods authorized in G.S. 143-128(a1)(1) through G.S. 143-128(a1)(3).

(2) The board or governing body of the governmental entity adopts an objective prequalification policy applicable to all construction or repair work prior to the advertisement of the contract for which the governmental entity intends to prequalify bidders.

(3) The governmental entity has adopted the assessment tool and criteria for that specific project, which must include the prequalification scoring values and minimum required score for prequalification on that project.

(c) The objective prequalification policy adopted by a governmental entity pursuant to subdivision (2) of subsection (b) of this section shall meet all of the following criteria:

(1) Must be uniform, consistent, and transparent in its application to all bidders.

(2) Must allow all bidders who meet the prequalification criteria to be prequalified to bid on the construction or repair work project.

(3) Clearly state the prequalification criteria, which must comply with all of the following:

a. Be rationally related to construction or repair work.

b. Not require that the bidder has previously been awarded a construction or repair project by the governmental entity.

c. Permit bidders to submit history or experience with projects of similar size, scope, or complexity.

(4) Clearly state the assessment process of the criteria to be used.

(5) Establish a process for a denied bidder to protest to the governmental entity denial of prequalification, which process shall be completed prior to the

opening of bids under G.S. 143-129(b) and which allows sufficient time for a bidder subsequently prequalified pursuant to a protest to submit a bid on the contract for which the bidder is subsequently prequalified.

(6) Outline a process by which the basis for denial of prequalification will be communicated in writing, upon request, to a bidder who is denied prequalification.

(d) If the governmental entity opts to prequalify bidders, bids submitted by any bidder not prequalified shall be deemed nonresponsive. This subsection shall not apply to bidders initially denied prequalification that are subsequently prequalified pursuant to a protest under the governmental entity's prequalification policy.

(e) Prequalification may not be used for the selection of any qualification-based services under Article 3D of this Chapter, G.S. 143-128.1A, G.S. 143-128.1B, G.S. 143-128.1C, or the selection of the construction manager at risk under G.S. 143-128.1.

(f) For purposes of this section, the following definitions shall apply:

(1) Governmental entity. – As defined in G.S. 143-128.1B(a)(6).

(2) Prequalification. – A process of evaluating and determining whether potential bidders have the skill, judgment, integrity, sufficient financial resources, and ability necessary to the faithful performance of a contract for construction or repair work."

SECTION 2. G.S. 143-128.1 reads as rewritten:

"**§ 143-128.1. Construction management at risk contracts.**

(a) For purposes of this section and G.S. 143-64.31:

(1) "Construction management services" means services provided by a construction manager, which may include preparation and coordination of bid packages, scheduling, cost control, value engineering, evaluation, preconstruction services, and construction administration.

(2) "Construction management at risk services" means services provided by a person, corporation, or entity that (i) provides construction management services for a project throughout the preconstruction and construction phases, (ii) who is licensed as a general contractor, and (iii) who guarantees the cost of the project.

(3) "Construction manager at risk" means a person, corporation, or entity that provides construction management at risk services.

(4) "First-tier subcontractor" means a subcontractor who contracts directly with the construction manager at risk.

(b) The construction manager at risk shall be selected in accordance with Article 3D of this Chapter. Design services for a project shall be performed by a licensed architect or engineer. The public owner shall contract directly with the architect or engineer. The public owner shall make a good-faith effort to comply with G.S. 143-128.2, G.S. 143-128.4, and to recruit and select small business entities when selecting a construction manager at risk.

(c) The construction manager at risk shall contract directly with the public entity for all construction; shall publicly advertise as prescribed in G.S. 143-129; and shall prequalify and accept bids from first-tier subcontractors for all construction work under this section. The construction manager at risk shall use the prequalification ~~criteria~~ process ~~shall be~~ determined by the public entity ~~and the construction manager at risk to address quality, performance, the time specified in the bids for performance of the contract, the cost of construction oversight, time for completion, capacity to perform, and other factors deemed appropriate by the public entity.~~in accordance with G.S. 143-135.8, provided that public entity and the construction manager at risk shall jointly develop the assessment tool and criteria for that specific project, which must include the prequalification scoring values and minimum required score for prequalification on that project. The public entity shall require the construction manager at risk

to submit its plan for compliance with G.S. 143-128.2 for approval by the public entity prior to soliciting bids for the project's first-tier subcontractors. A construction manager at risk and first-tier subcontractors shall make a good faith effort to comply with G.S. 143-128.2, G.S. 143-128.4, and to recruit and select small business entities. A construction manager at risk may perform a portion of the work only if (i) bidding produces no responsible, responsive bidder for that portion of the work, the lowest responsible, responsive bidder will not execute a contract for the bid portion of the work, or the subcontractor defaults and a prequalified replacement cannot be obtained in a timely manner, and (ii) the public entity approves of the construction manager at risk's performance of the work. All bids shall be opened publicly, and once they are opened, shall be public records under Chapter 132 of the General Statutes. The construction manager at risk shall act as the fiduciary of the public entity in handling and opening bids. The construction manager at risk shall award the contract to the lowest responsible, responsive bidder, taking into consideration quality, performance, the time specified in the bids for performance of the contract, the cost of construction oversight, time for completion, compliance with G.S. 143-128.2, and other factors deemed appropriate by the public entity and advertised as part of the bid solicitation. The public entity may require the selection of a different first-tier subcontractor for any portion of the work, consistent with this section, provided that the construction manager at risk is compensated for any additional cost incurred.

When contracts are awarded pursuant to this section, the public entity shall provide for a dispute resolution procedure as provided in G.S. 143-128(f1).

(d) The construction manager at risk shall provide a performance and payment bond to the public entity in accordance with the provisions of Article 3 of Chapter 44A of the General Statutes.

(e) Construction management at risk services may be used by the public entity only after the public entity has concluded that construction management at risk services is in the best interest of the project, and the public entity has compared the advantages and disadvantages of using the construction management at risk method for a given project in lieu of the delivery methods identified in G.S. 143-128(a1)(1) through G.S. 143-128(a1)(3). The public entity may not delegate this determination."

SECTION 3. G.S. 143-64.31(b), (c), and (d) are recodified as G.S. 143-133.1(a), (b), and (c).

SECTION 4. G.S. 143-64.31, as amended by Section 3 of this act, is amended to add a new subsection to read:

"(f) Except as provided in this subsection, no work product or design may be solicited, submitted, or considered as part of the selection process under this Article; and no costs or fees, other than unit price information, may be solicited, submitted, or considered as part of the selection process under this Article. Examples of prior completed work may be solicited, submitted, and considered when determining demonstrated competence and qualification of professional services; and discussion of concepts or approaches to the project, including impact on project schedules, is encouraged."

SECTION 5. G.S. 143-133.1, as created by Section 3 of this act, reads as rewritten:

"**§ 143-133.1. Reporting.**

(a) ~~Public~~ Governmental entities that contract with a construction manager at risk, design-builder, or private developer under a public-private partnership ~~under this section~~ shall report to the Secretary of Administration the following information on all projects where a construction manager at risk, design-builder, or private developer under a public-private partnership is utilized:

(1) A detailed explanation of the reason why the particular construction manager at risk, design-builder, or private developer was selected.

(2) The terms of the contract with the construction manager at risk, design-builder, or private developer.

(3) A list of all other firms considered but not selected as the construction manager at risk, design-builder, or private ~~developer, and the amount of their proposed fees for services.~~developer.

(4) A report on the form of bidding utilized by the construction manager at risk, design-builder, or private developer on the project.

(5) A detailed explanation of why the particular delivery method was used in lieu of the delivery methods identified in G.S. 143-128(a1) subdivisions (1) through (3) and the anticipated benefits to the public entity from using the particular delivery method.

(b) The Secretary of Administration shall adopt rules to implement the provisions of this ~~subsection~~ section, including the format and frequency of reporting.

(c) A ~~public body~~governmental entity letting a contract pursuant to any of the delivery methods identified in subdivisions (a1)(4), (a1)(6), (a1)(7), or (a1)(8) of G.S. 143-128 shall submit the report required by ~~G.S. 143-64.31(b)~~this section no later than 12 months from the date the ~~public body~~governmental entity takes beneficial occupancy of the project. In the event that the ~~public body~~governmental entity fails to do so, the ~~public body~~governmental entity shall be prohibited from utilizing subdivisions (a1)(4), (a1)(6), (a1)(7), or (a1)(8) of G.S. 143-128 until such time as the ~~public body~~governmental entity completes the reporting requirement under this this section. Contracts entered into in violation of this prohibition shall not be deemed ultra vires and shall remain valid and fully enforceable. Any person, corporation or entity, however, which has submitted a bid or response to a request for proposals on any construction project previously advertised by the ~~public body~~governmental entity shall be entitled to obtain an injunction against the ~~public body~~governmental entity compelling the ~~public body~~governmental entity to comply with the reporting requirements of this section and from commencing or continuing a project let in violation of this subdivision until such time as the ~~public body~~governmental entity has complied with the reporting requirements of this section. The plaintiff in such cases shall not be entitled to recover monetary damages caused by the ~~public body's~~governmental entity's failure to comply with this reporting requirements section, and neither the plaintiff nor the defendant shall be allowed to recover attorneys fees except as otherwise allowed by G.S. 1A-11 or G.S. 6-21.5. An action seeking the injunctive relief allowed by this subdivision must be filed within four years from the date that the ~~owner~~ governmental entity took beneficial occupancy of the project for which the report remains due.

(d) For purposes of this section, the governmental entity shall have the same meaning as in G.S. 143-128.1B(a)(6)."

SECTION 6. G.S. 143-128.1B(b)(6) reads as rewritten:

"(6) The criteria utilized by the governmental entity, including a comparison of the ~~cost and benefit~~advantages and disadvantages of using the design-build delivery method for a given project in lieu of the delivery methods identified in subdivisions (1), (2), and (4) of G.S. 143-128(a1)."

SECTION 7. G.S. 143-128.1A(b)(6) reads as rewritten:

"(6) The criteria utilized by the governmental entity, including a comparison of the ~~costs and benefits~~ advantages and disadvantages of using the design-build delivery method for a given project in lieu of the delivery methods identified in subdivisions (1), (2), and (4) of G.S. 143-128(a1)."

SECTION 8.(a) There is established a Blue Ribbon Commission to Study the Building and Infrastructure Needs of the State (Commission).

SECTION 8.(b) The Commission shall be composed of twenty members as follows:

(1) Seven members appointed by the Speaker of the House of Representatives, as follows:
  a. Three members of the House of Representatives.
  b. One person upon recommendation of the North Carolina League of Municipalities.
  c. One member of the public, licensed as an architect in this State.
  d. One member of the public, licensed as a professional engineer in this State.
  e. One person upon recommendation of the North Carolina Chamber.

(2) Seven members appointed by the President Pro Tempore of the Senate, as follows:
  a. Three members of the Senate.
  b. One person upon recommendation of the North Carolina County Commissioners Association.
  c. One person upon recommendation of the North Carolina School Boards Association.
  d. One member of the public, licensed as a general contractor in this State.
  e. One member of the public, licensed as an attorney in this State, with experience in infrastructure financing or infrastructure bonds.

(3) Six members appointed by the Governor, as follows:
  a. The State Treasurer, or the Treasurer's designee.
  b. The Secretary of Administration, or the Secretary's designee.
  c. The President of The University of North Carolina, or the President's designee.
  d. The President of the State System of Community Colleges, or the President's designee.
  e. A member of the State Water Infrastructure Authority.
  f. The Secretary of the Department of Commerce, or the Secretary's designee.

SECTION 8.(c) The Commission shall study the following matters related to building and infrastructure needs, including new repairs, renovations, expansion, and new construction, in North Carolina:

(1) The anticipated building construction needs of State agencies, The University of North Carolina, and the State System of Community Colleges until 2025.
(2) The anticipated water and sewer infrastructure construction needs of counties and cities until 2025.
(3) The anticipated building needs of the local school boards until 2025.
(4) The anticipated costs of such building and infrastructure needs.
(5) A process that would prioritize needs within each infrastructure category and among all categories, with an emphasis on developing criteria that focuses on public safety and economic development.
(6) The feasibility of establishing a building and infrastructure fund, which would be a dedicated source of revenue for capital funding for counties, cities, local school boards, The University, the State System of Community Colleges, and State agencies.
(7) Funding options for meeting the anticipated capital needs until 2025.
(8) Other matters the Commission deems relevant and related.

SECTION 8.(d) The Speaker of the House of Representatives shall designate one Representative as cochair, and the President Pro Tempore of the Senate shall designate one

Senator as cochair. The Commission shall meet upon the call of the cochairs. A quorum of the Commission shall be 10 members. Any vacancy on the Commission shall be filled by the appointing authority.

SECTION 8.(e) Members of the Commission shall receive per diem, subsistence, and travel allowances in accordance with G.S. 120-3.1, G.S. 138-5, or G.S. 138-6, as appropriate. The Commission, while in the discharge of its official duties, may exercise all powers provided for under G.S. 120-19 and G.S. 120-19.4. The Commission may meet upon the call of the cochairs. The Commission may meet in the Legislative Building or the Legislative Office Building. With approval of the Legislative Services Commission, the Legislative Services Officer shall assign professional staff to assist the Commission in its work. The House of Representatives' and the Senate's Directors of Legislative Assistants shall assign clerical staff to the Commission, and the expenses relating to the clerical employees shall be borne by the Commission.

All State departments and agencies and local governments and their subdivisions shall furnish the Commission with any information in their possession or available to them.

SECTION 8.(f) The Commission may make an interim report of its findings and recommendations to the 2015 General Assembly and shall make a final report of its findings and recommendations to the 2016 Regular Session of the 2015 General Assembly. The Commission shall terminate on December 31, 2016, or upon the filing of its final report, whichever occurs first.

SECTION 9. S.L. 1979-183 is repealed.

SECTION 10. Section 8 of this act is effective when it becomes law. The remainder of this act becomes effective October 1, 2014, and applies to contracts awarded on or after that date.

HOUSE BILL 1043: Prequalification Update

2013-2014 General Assembly

Committee:	Senate Commerce	**Date:**	June 18, 2014
Introduced by:	Reps. Arp, Hager	**Prepared by:**	Peter Ledford
Analysis of:	PCS to Second Edition H1043-CSTP-71		Committee Counsel

SUMMARY: ***The PCS to House Bill 1043 clarifies the statutes related to the use of prequalification in public construction contracting, as recommended by the Joint Purchase and Contract Study Committee, establishes a Blue Ribbon Commission to Study the Building and Infrastructure Needs of the State, and repeals a session law regarding a supplemental retirement fund for firefighters in the Town of Mebane.***

The PCS makes changes to the membership of the Blue Ribbon Commission and adds the provision regarding the supplemental retirement fund for firefighters in the Town of Mebane.

[As introduced, this bill was identical to S814, as introduced by Sen. Hunt, which is currently in Senate Judiciary I.]

CURRENT LAW: Article 8 of Chapter 143 sets out the laws governing public building contracts awarded by the State and any county, municipality, or other public body. G.S. 143-135.8, enacted in 1995, allows bidders to be prequalified for any public construction project. Since the enactment of G.S. 143-135.8, the State Construction Office has developed a standard format of prequalification criteria and scoring of those criteria, which may be used by State agencies in their building construction.

BILL ANALYSIS:

Section 1 of the PCS amends G.S. 143-135.8 to provide that bidders may not be prequalified for any public or private construction or repair work project except as provided by this statute.

The PCS authorizes the State, any county, municipality, or other public body, when awarding contracts for the erection, construction, alteration, or repair of any building, to prequalify bidders for a particular construction or repair work project when the governmental entity is using separate-prime bidding, single-prime bidding, or dual bidding construction methods and the governmental entity adopts an objective prequalification policy applicable to all construction or repair work.

The objective prequalification policy adopted by the governmental entity must meet all of the following criteria:

- Be uniform, consistent, and transparent in its application to all bidders.
- Allow all bidders who meet the prequalification criteria to be prequalified to bid on the construction or repair work project.
- Clearly state prequalification criteria, which must be rationally related to the construction and repair work, include scoring values and the minimum required score; not require that the bidder has previously been awarded a construction or repair project by that governmental entity; and permit bidders to submit related history or experience with similar projects.
- Clearly state the assessment process of the criteria to be used.

- Establish a process for a denied bidder to protest the governmental entity's denial of prequalification.
- Outline a process by which the basis for denial of prequalification will be communicated in writing to a bidder who is denied prequalification.

If a governmental entity opts to prequalify bidders, bids submitted by any bidder who was not prequalified will be deemed non-responsive, except for those who were subsequently prequalified after protesting an initial denial.

Prequalification cannot be used for the selection of any qualification-based services under any of the following:

- Article 3D of Chapter 143 (public procurement of architectural, engineering, and surveying services)
- G.S. 143-128.1A (design-build contracts)
- G.S. 143-128.1B (design-build bridging contracts)
- G.S. 143-128.1C (public-private partnership construction contracts)
- Construction manager at risk under G.S. 143-128.1

Section 2 of the PCS makes conforming changes to prequalification for construction management at risk projects. The construction manager at risk must use the prequalification process determined by the public entity in accordance with G.S. 143-135.8. Additionally, the PCS requires that construction management at risk services can only be used after the public entity has determined that construction management at risk services is in the best interest of the project, and the public entity has compared the advantages and disadvantages of using the construction management at risk method in lieu of separate-prime bidding, single-prime bidding, or dual bidding construction methods.

Section 3 of the PCS clarifies that in the selection of qualification-based services, the State, any county, municipality, or other public body may not solicit or consider any work product or design, or solicit or consider any costs or fees, other than unit price information. Examples of prior completed work may be solicited and considered when determining demonstrated competence and qualification of professional services, and discussion of concepts or approaches to the project is encouraged.

Sections 4 through 7 of the PCS make conforming changes.

Section 8 of the PCS establishes the Blue Ribbon Commission to Study the Building and Infrastructure Needs of the State (Commission), which is directed to study various matters related to building and infrastructure needs in the State. Specifically, the Commission is directed to study:

- The anticipated building construction needs of State agencies, the University of North Carolina, and the State System of Community Colleges until 2025.
- The anticipated water and sewer infrastructure construction needs of counties and cities until 2025.
- The anticipated building needs of local school boards until 2025.
- The anticipated costs of such building and infrastructure needs.
- A process that would prioritize needs within each infrastructure category and among all categories, with an emphasis on developing criteria that focuses on public safety and economic development.

- The feasibility of establishing a building and infrastructure fund, which would be a dedicated source of revenue for capital funding for counties, cities, local school boards, the University of North Carolina, the State System of Community Colleges, and State agencies.
- Funding options for meeting the anticipated capital needs until 2025.

The Commission is may make an interim report to the 2015 General Assembly and is required to make a final report to the 2016 Regular Session of the 2015 General Assembly.

Section 9 of the PCS would repeal S.L. 1979-183, which created a supplemental retirement fund for firefighters in the Town of Mebane.

EFFECTIVE DATE: The Blue Ribbon Commission is effective when the act becomes law; otherwise, the act becomes effective October 1, 2014, and applies to contracts awarded on or after that date.

BACKGROUND: S.L. 2013-401 (HB 857) authorized three new methods of bidding for construction of public buildings: the design build method, the design build bridging method, and the Public Private Partnership method. The law also established a Purchase and Contract Study Committee to study the issue of prequalification on public non-transportation construction work for both local and State government projects.

Erika Churchill, counsel to House Government, and Kelly Quick, staff to House Government, substantially contributed to this summary.

HOUSE BILL 1043*
Committee Substitute Favorable 6/9/14

Short Title: Prequalification Update. (Public)

Sponsors:

Referred to:

May 15, 2014

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THE STATUTES RELATED TO THE USE OF PREQUALIFICATION IN PUBLIC CONSTRUCTION CONTRACTING, AS STUDIED BY THE JOINT PURCHASE AND CONTRACT STUDY COMMITTEE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 143-135.8 reads as rewritten:

"**§ 143-135.8. Prequalification.**

(a) Except as provided in this section, ~~Bidders~~bidders may not be prequalified for any ~~public~~ construction or repair work project.

(b) A governmental entity may prequalify bidders for a particular construction or repair work project when all of the following apply:

(1) The governmental entity is using one of the construction methods authorized in G.S. 143-128(a1)(1) through G.S. 143-128(a1)(3).

(2) The board or governing body of the governmental entity adopts an objective prequalification policy applicable to all construction or repair work prior to the advertisement of the contract for which the governmental entity intends to prequalify bidders.

(3) The governmental entity has adopted the assessment tool and criteria for that specific project, which must include the prequalification scoring values and minimum required score for prequalification on that project.

(c) The objective prequalification policy adopted by a governmental entity pursuant to subdivision (2) of subsection (b) of this section shall meet all of the following criteria:

(1) Must be uniform, consistent, and transparent in its application to all bidders.

(2) Must allow all bidders who meet the prequalification criteria to be prequalified to bid on the construction or repair work project.

(3) Clearly state the prequalification criteria, which must comply with all of the following:

a. Be rationally related to construction or repair work.

b. Not require that the bidder has previously been awarded a construction or repair project by the governmental entity.

c. Permit bidders to submit history or experience with projects of similar size, scope, or complexity.

(4) Clearly state the assessment process of the criteria to be used.

(5) Establish a process for a denied bidder to protest to the governmental entity denial of prequalification, which process shall be completed prior to the opening of bids under G.S. 143-129(b) and which allows sufficient time for

a bidder subsequently prequalified pursuant to a protest to submit a bid on the contract for which the bidder is subsequently prequalified.

(6) Outline a process by which the basis for denial of prequalification will be communicated in writing, upon request, to a bidder who is denied prequalification.

(d) If the governmental entity opts to prequalify bidders, bids submitted by any bidder not prequalified shall be deemed nonresponsive. This subsection shall not apply to bidders initially denied prequalification that are subsequently prequalified pursuant to a protest under the governmental entity's prequalification policy.

(e) Prequalification may not be used for the selection of any qualification-based services under Article 3D of this Chapter, G.S. 143-128.1A, G.S. 143-128.1B, G.S. 143-128.1C, or the selection of the construction manager at risk under G.S. 143-128.1.

(f) For purposes of this section, the following definitions shall apply:

(1) Governmental entity. – As defined in G.S. 143-128.1B(a)(6).

(2) Prequalification. – A process of evaluating and determining whether potential bidders have the skill, judgment, integrity, sufficient financial resources, and ability necessary to the faithful performance of a contract for construction or repair work."

SECTION 2. G.S. 143-128.1 reads as rewritten:

"**§ 143-128.1. Construction management at risk contracts.**

(a) For purposes of this section and G.S. 143-64.31:

(1) "Construction management services" means services provided by a construction manager, which may include preparation and coordination of bid packages, scheduling, cost control, value engineering, evaluation, preconstruction services, and construction administration.

(2) "Construction management at risk services" means services provided by a person, corporation, or entity that (i) provides construction management services for a project throughout the preconstruction and construction phases, (ii) who is licensed as a general contractor, and (iii) who guarantees the cost of the project.

(3) "Construction manager at risk" means a person, corporation, or entity that provides construction management at risk services.

(4) "First-tier subcontractor" means a subcontractor who contracts directly with the construction manager at risk.

(b) The construction manager at risk shall be selected in accordance with Article 3D of this Chapter. Design services for a project shall be performed by a licensed architect or engineer. The public owner shall contract directly with the architect or engineer. The public owner shall make a good-faith effort to comply with G.S. 143-128.2, G.S. 143-128.4, and to recruit and select small business entities when selecting a construction manager at risk.

(c) The construction manager at risk shall contract directly with the public entity for all construction; shall publicly advertise as prescribed in G.S. 143-129; and shall prequalify and accept bids from first-tier subcontractors for all construction work under this section. The construction manager at risk shall use the prequalification ~~criteria process shall be~~ determined by the public entity ~~and the construction manager at risk to address quality, performance, the time specified in the bids for performance of the contract, the cost of construction oversight, time for completion, capacity to perform, and other factors deemed appropriate by the public entity.~~in accordance with G.S. 143-135.8, provided that public entity and the construction manager at risk shall jointly develop the assessment tool and criteria for that specific project, which must include the prequalification scoring values and minimum required score for prequalification on that project. The public entity shall require the construction manager at risk to submit its plan for compliance with G.S. 143-128.2 for approval by the public entity prior to

soliciting bids for the project's first-tier subcontractors. A construction manager at risk and first-tier subcontractors shall make a good faith effort to comply with G.S. 143-128.2, G.S. 143-128.4, and to recruit and select small business entities. A construction manager at risk may perform a portion of the work only if (i) bidding produces no responsible, responsive bidder for that portion of the work, the lowest responsible, responsive bidder will not execute a contract for the bid portion of the work, or the subcontractor defaults and a prequalified replacement cannot be obtained in a timely manner, and (ii) the public entity approves of the construction manager at risk's performance of the work. All bids shall be opened publicly, and once they are opened, shall be public records under Chapter 132 of the General Statutes. The construction manager at risk shall act as the fiduciary of the public entity in handling and opening bids. The construction manager at risk shall award the contract to the lowest responsible, responsive bidder, taking into consideration quality, performance, the time specified in the bids for performance of the contract, the cost of construction oversight, time for completion, compliance with G.S. 143-128.2, and other factors deemed appropriate by the public entity and advertised as part of the bid solicitation. The public entity may require the selection of a different first-tier subcontractor for any portion of the work, consistent with this section, provided that the construction manager at risk is compensated for any additional cost incurred.

When contracts are awarded pursuant to this section, the public entity shall provide for a dispute resolution procedure as provided in G.S. 143-128(f1).

(d) The construction manager at risk shall provide a performance and payment bond to the public entity in accordance with the provisions of Article 3 of Chapter 44A of the General Statutes.

(e) Construction management at risk services may be used by the public entity only after the public entity has concluded that construction management at risk services is in the best interest of the project, and the public entity has compared the advantages and disadvantages of using the construction management at risk method for a given project in lieu of the delivery methods identified in G.S. 143-128(a1)(1) through G.S. 143-128(a1)(3). The public entity may not delegate this determination."

SECTION 3. G.S. 143-64.31(b), (c), and (d) are recodified as G.S. 143-133.1(a), (b), and (c).

SECTION 4. G.S. 143-64.31, as amended by Section 3 of this act, is amended to add a new subsection to read:

"(f) Except as provided in this subsection, no work product or design may be solicited, submitted, or considered as part of the selection process under this Article; and no costs or fees, other than unit price information, may be solicited, submitted, or considered as part of the selection process under this Article. Examples of prior completed work may be solicited, submitted, and considered when determining demonstrated competence and qualification of professional services; and discussion of concepts or approaches to the project, including impact on project schedules, is encouraged."

SECTION 5. G.S. 143-133.1, as created by Section 3 of this act, reads as rewritten:

"**§ 143-133.1. Reporting.**

(a) ~~Public~~ Governmental entities that contract with a construction manager at risk, design-builder, or private developer under a public-private partnership ~~under this section~~ shall report to the Secretary of Administration the following information on all projects where a construction manager at risk, design-builder, or private developer under a public-private partnership is utilized:

(1) A detailed explanation of the reason why the particular construction manager at risk, design-builder, or private developer was selected.

(2) The terms of the contract with the construction manager at risk, design-builder, or private developer.

(3) A list of all other firms considered but not selected as the construction manager at risk, design-builder, or private ~~developer, and the amount of their proposed fees for services.~~developer.

(4) A report on the form of bidding utilized by the construction manager at risk, design-builder, or private developer on the project.

(5) A detailed explanation of why the particular delivery method was used in lieu of the delivery methods identified in G.S. 143-128(a1) subdivisions (1) through (3) and the anticipated benefits to the public entity from using the particular delivery method.

(b) The Secretary of Administration shall adopt rules to implement the provisions of this ~~subsection~~ section, including the format and frequency of reporting.

(c) A ~~public body~~governmental entity letting a contract pursuant to any of the delivery methods identified in subdivisions (a1)(4), (a1)(6), (a1)(7), or (a1)(8) of G.S. 143-128 shall submit the report required by ~~G.S. 143-64.31(b)~~this section no later than 12 months from the date the ~~public body~~governmental entity takes beneficial occupancy of the project. In the event that the ~~public body~~governmental entity fails to do so, the ~~public body~~governmental entity shall be prohibited from utilizing subdivisions (a1)(4), (a1)(6), (a1)(7), or (a1)(8) of G.S. 143-128 until such time as the ~~public body~~governmental entity completes the reporting requirement under this this section. Contracts entered into in violation of this prohibition shall not be deemed ultra vires and shall remain valid and fully enforceable. Any person, corporation or entity, however, which has submitted a bid or response to a request for proposals on any construction project previously advertised by the ~~public body~~governmental entity shall be entitled to obtain an injunction against the ~~public body~~governmental entity compelling the ~~public body~~governmental entity to comply with the reporting requirements of this section and from commencing or continuing a project let in violation of this subdivision until such time as the ~~public body~~governmental entity has complied with the reporting requirements of this section. The plaintiff in such cases shall not be entitled to recover monetary damages caused by the ~~public body's~~governmental entity's failure to comply with this reporting requirements section, and neither the plaintiff nor the defendant shall be allowed to recover attorneys fees except as otherwise allowed by G.S. 1A-11 or G.S. 6-21.5. An action seeking the injunctive relief allowed by this subdivision must be filed within four years from the date that the ~~owner~~ governmental entity took beneficial occupancy of the project for which the report remains due.

(d) For purposes of this section, the governmental entity shall have the same meaning as in G.S. 143-128.1B(a)(6)."

SECTION 6. G.S. 143-128.1B(b)(6) reads as rewritten:

"(6) The criteria utilized by the governmental entity, including a comparison of the ~~cost and benefit~~advantages and disadvantages of using the design-build delivery method for a given project in lieu of the delivery methods identified in subdivisions (1), (2), and (4) of G.S. 143-128(a1)."

SECTION 7. G.S. 143-128.1A(b)(6) reads as rewritten:

"(6) The criteria utilized by the governmental entity, including a comparison of the ~~costs and benefits~~ advantages and disadvantages of using the design-build delivery method for a given project in lieu of the delivery methods identified in subdivisions (1), (2), and (4) of G.S. 143-128(a1)."

SECTION 8.(a) There is established a Blue Ribbon Commission to Study the Building and Infrastructure Needs of the State (Commission).

SECTION 8.(b) The Commission shall be composed of 17 members as follows:

(1) Six members appointed by the Speaker of the House of Representatives, as follows:

a. Three members of the House of Representatives.

b. One person upon recommendation of the North Carolina League of Municipalities.
c. One member of the public, licensed as an architect in this State.
d. One member of the public, licensed as a professional engineer in this State.

(2) Six members appointed by the President Pro Tempore of the Senate, as follows:
a. Three members of the Senate.
b. One person upon recommendation of the North Carolina County Commissioners Association.
c. One person upon recommendation of the North Carolina School Boards Association.
d. One member of the public, licensed as a general contractor in this State.

(3) Five members appointed by the Governor, as follows:
a. The State Treasurer, or the Treasurer's designee.
b. The Secretary of Administration, or the Secretary's designee.
c. The President of The University of North Carolina, or the President's designee.
d. The President of the State System of Community Colleges, or the President's designee.
e. A member of the State Water Infrastructure Authority.

SECTION 8.(c) The Commission shall study the following matters related to building and infrastructure needs, including new repairs, renovations, expansion, and new construction, in North Carolina:

(1) The anticipated building construction needs of State agencies, The University of North Carolina, and the State System of Community Colleges until 2025.
(2) The anticipated water and sewer infrastructure construction needs of counties and cities until 2025.
(3) The anticipated building needs of the local school boards until 2025.
(4) The anticipated costs of such building and infrastructure needs.
(5) A process that would prioritize needs within each infrastructure category and among all categories, with an emphasis on developing criteria that focuses on public safety and economic development.
(6) The feasibility of establishing a building and infrastructure fund, which would be a dedicated source of revenue for capital funding for counties, cities, local school boards, The University, the State System of Community Colleges, and State agencies.
(7) Funding options for meeting the anticipated capital needs until 2025.
(8) Other matters the Commission deems relevant and related.

SECTION 8.(d) The Speaker of the House of Representatives shall designate one Representative as cochair, and the President Pro Tempore of the Senate shall designate one Senator as cochair. The Commission shall meet upon the call of the cochairs. A quorum of the Commission shall be 10 members. Any vacancy on the Commission shall be filled by the appointing authority.

SECTION 8.(e) Members of the Commission shall receive per diem, subsistence, and travel allowances in accordance with G.S. 120-3.1, G.S. 138-5, or G.S. 138-6, as appropriate. The Commission, while in the discharge of its official duties, may exercise all powers provided for under G.S. 120-19 and G.S. 120-19.4. The Commission may meet upon the call of the cochairs. The Commission may meet in the Legislative Building or the

Legislative Office Building. With approval of the Legislative Services Commission, the Legislative Services Officer shall assign professional staff to assist the Commission in its work. The House of Representatives' and the Senate's Directors of Legislative Assistants shall assign clerical staff to the Commission, and the expenses relating to the clerical employees shall be borne by the Commission.

All State departments and agencies and local governments and their subdivisions shall furnish the Commission with any information in their possession or available to them.

SECTION 8.(f) The Commission may make an interim report of its findings and recommendations to the 2015 General Assembly and shall make a final report of its findings and recommendations to the 2016 Regular Session of the 2015 General Assembly. The Commission shall terminate on December 31, 2016, or upon the filing of its final report, whichever occurs first.

SECTION 9. Section 8 of this act is effective when it becomes law. The remainder of this act becomes effective October 1, 2014, and applies to contracts awarded on or after that date.

SENATE BILL 769:
Boost State Nature/Heritage Tourism Industry

2013-2014 General Assembly

Committee:	Senate Ref to Commerce. If fav, re-ref to Appropriations/Base Budget	**Date:**	June 18, 2014
Introduced by:	Sens. Rabon, Brock	**Prepared by:**	Peter Ledford Committee Counsel
Analysis of:	First Edition		

SUMMARY: ***Senate Bill 769 would create the Nature and Heritage Tourism Advisory Board, direct the Department of Commerce to develop a guidebook on the State's nature and heritage tourism sites, and appropriate funds for the Department of Commerce to hire a consultant to review the operation of the State's nature and heritage tourism sites.***

[As introduced, this bill was identical to H1100, as introduced by Reps. Presnell, McNeill, Dollar, which is currently in House Commerce and Job Development, if favorable, Appropriations.]

BILL ANALYSIS: **Section 1** of the bill would create the Nature and Heritage Tourism Advisory Board within the Division of Tourism, Film, and Sports Development of the Department of Commerce. The Advisory Board would consist of nine members who have knowledge and experience of the nature and heritage tourism industry, with three appointed by the Governor, three appointed by the Speaker of the House of Representatives, and three appointed by the President Pro Tempore of the Senate. The Advisory Board would be authorized to make recommendations to the Secretary of the Department of Commerce and to the General Assembly regarding methods for increasing nature and heritage tourism, methods for increasing the level of private investment in the State's nature and heritage tourism industry, identification of the nature and heritage tourism potential of State-owned facilities and assets, methods of advertising the State's nature and heritage tourism industry, and improvement of interagency cooperation with respect to enhancing and marketing the State's nature and heritage tourism industry.

Section 2 of the bill would direct the Department of Commerce, in conjunction with the Department of Cultural Resources, the Wildlife Resources Commission, the Department of Agriculture and Consumer Services, and the Department of Environment and Natural Resources, to develop a guidebook on the State's nature and heritage tourism sites containing information about sites in all regions of the State. The Department of Commerce would be directed to make the guidebook available without charge to the public no later than October 1, 2015.

Section 3 of the bill would appropriate $100,000 from the General Fund to the Department of Commerce to hire a consultant to review the operation of State historic and cultural sites and to make recommendations for maximizing their value while simultaneously reducing the cost to the State for their operation. The consultant would be required to report its findings to the Department of Cultural Resources, the Department of Environment and Natural Resources, the Department of Agriculture and Consumer Services, the Wildlife Research Commission, the Legislative Research Commission, and the Fiscal Research Division no later than October 1, 2015. The recommendations are not to include recommendations to sell State properties or to change the present use and character of State historic and cultural sites, and are to address whether cost-savings could be realized by allowing private entities to operate certain State sites and whether limiting operating hours, mothballing, or imposing other cost-savings measures should be adopted at certain historic and cultural sites.

EFFECTIVE DATE: This act becomes effective July 1, 2014.

O. Walker Reagan
Director

S769-SMTP-112 E1 -V1

Research Division
(919) 733-2578

BACKGROUND: Senate Bill 769 is a recommendation of the Legislative Research Commission Committee on Cultural and Natural Resources.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

S 1

SENATE BILL 769*

Short Title:	Boost State Nature/Heritage Tourism Industry.	(Public)
Sponsors:	Senators Rabon and Brock (Primary Sponsors).	
Referred to:	Commerce.	

May 19, 2014

A BILL TO BE ENTITLED

AN ACT TO CREATE THE NATURE AND HERITAGE TOURISM ADVISORY BOARD; TO REQUIRE THE CREATION OF A STATE NATURE AND HERITAGE TOURISM GUIDE; AND TO REQUIRE CONTRACTING WITH A CONSULTANT TO MAKE RECOMMENDATIONS REGARDING THE OPERATION OF STATE HISTORIC AND CULTURAL SITES, AS RECOMMENDED BY THE LRC COMMITTEE ON CULTURAL AND NATURAL RESOURCES.

The General Assembly of North Carolina enacts:

SECTION 1. Article 10 of Chapter 143B of the General Statutes is amended by adding a new Part to read:

"Part 2L. Nature and Heritage Tourism Advisory Board.

"**§ 143B-437.110. Nature and Heritage Tourism Advisory Board.**

(a) Creation. – There is created the Nature and Heritage Tourism Advisory Board, hereinafter referred to in this Part as the Advisory Board. The Advisory Board shall be located administratively within the Division of Tourism, Film, and Sports Development of the Department of Commerce but shall exercise its authority independently of that Department.

(b) Membership. – The Advisory Board shall consist of nine members who have knowledge and experience of the nature and heritage tourism industry, appointed as follows:

(1) Three members shall be appointed by the Governor.

(2) Three members shall be appointed by the Speaker of the House of Representatives.

(3) Three members shall be appointed by the President Pro Tempore of the Senate.

(c) Terms of Office and Vacancies. – Appointed members shall serve four-year terms of office beginning on September 1. Vacancy appointments shall be made by the appointing authority for the remainder of the term of office.

(d) Chair and Quorum. – The Advisory Board shall annually elect a chair from among its membership. The chair shall preside over the Advisory Board's meetings. A majority of the Advisory Board constitutes a quorum.

(e) Staffing and Expenses. – Staff to the Advisory Board shall be provided by the Department of Commerce. Members of the Advisory Board shall be reimbursed for travel and subsistence expenses at the rates allowed to State officers and employees by G.S. 138-6(a).

(f) Meetings. – Meetings of the Advisory Board shall be held upon the call of the chair.

(g) Powers. – The Advisory Board shall have the power to make recommendations to the Secretary of the Department of Commerce and to the General Assembly with respect to the following:

(1) Methods for increasing nature and heritage tourism to and within the State.
(2) Methods for increasing the level of private investment in the State's nature and heritage tourism industry.
(3) Identification of the nature and heritage tourism potential of State-owned facilities and assets.
(4) Methods of advertising the State's nature and heritage tourism industry.
(5) Improvement of interagency cooperation with respect to enhancing and marketing the State's nature and heritage tourism industry."

SECTION 2. The Department of Commerce, in conjunction with the Department of Cultural Resources, the Wildlife Resources Commission, the Department of Agriculture and Consumer Services, and the Department of Environment and Natural Resources, shall develop a guidebook on the State's nature and heritage tourism sites. The guidebook shall meet industry standards for tour guidebooks and shall contain information about nature and heritage tourism sites in all regions of the State. No later than October 1, 2015, the Department of Commerce shall make the guidebook available without charge to the public electronically and in physical form at all places at which information about tourism in this State is routinely distributed.

SECTION 3. There is appropriated from the General Fund to the Department of Commerce the sum of one hundred thousand dollars ($100,000) for the 2014-2015 fiscal year to hire a consultant to review the operation of State historic and cultural sites and to make recommendations for maximizing their value to the citizens of this State while simultaneously reducing the cost to the State for their operation. State agencies and employees shall fully cooperate with the consultant by providing requested information about the operation of State historic and cultural sites. The consultant shall report its findings to the Department of Cultural Resources, to the Department of Environment and Natural Resources, to the Department of Agriculture and Consumer Services, to the Wildlife Resources Commission, to the Legislative Research Commission, and to the Fiscal Research Division no later than October 1, 2015. The recommendations shall not include recommendations to sell State properties or to change the present use and character of State historic and cultural sites. The recommendations shall address at least the following:

(1) Whether cost-savings could be realized by allowing private entities to operate certain State sites.
(2) Whether limiting operating hours, mothballing, or imposing other cost-savings measures should be adopted at certain historic and cultural sites.

SECTION 4. This act becomes effective July 1, 2014.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

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SENATE BILL 794
PROPOSED COMMITTEE SUBSTITUTE S794-CSSU-51 [v.7]
6/17/2014 10:12:11 PM

Short Title: Disapprove Industrial Commission Rules. (Public)

Sponsors:

Referred to:

May 20, 2014

A BILL TO BE ENTITLED

AN ACT TO DISAPPROVE CERTAIN RULES ADOPTED BY THE NORTH CAROLINA INDUSTRIAL COMMISSION, TO PROVIDE SPECIFIC DIRECTIONS TO THE INDUSTRIAL COMMISSION TO REPLACE THE RULES, AND TO AMEND CERTAIN PROVISIONS OF THE WORKERS' COMPENSATION LAW.

The General Assembly of North Carolina enacts:

SECTION 1. Pursuant to G.S. 150B-21.3(b1), 04 NCAC 10A .0605 (Discovery), 04 NCAC 10A .0701 (Review by the Full Commission), 04 NCAC 10C .0109 (Vocational Rehabilitation Services and Return to Work), 04 NCAC 10E .0203 (Fees Set by the Commission), 04 NCAC 10L .0101 (Form 21 – Agreement for Compensation for Disability), 04 NCAC 10L .0102 (Form 26 – Supplemental Agreement as to Payment of Compensation), and 04 NCAC 10L .0103 (Form 26A – Employer's Admission of Employee's Rights to Permanent Partial Disability), as adopted by the Industrial Commission on March 11, 2014, and approved by the Rules Review Commission on March 20, 2014, are disapproved.

SECTION 2. Pursuant to G.S. 150B-21.3(b1), 04 NCAC 10A .0609A (Medical Motions and Emergency Medical Motions), as adopted by the Industrial Commission on March 11, 2014, and approved by the Rules Review Commission on April 17, 2014, is disapproved.

SECTION 3. 04 NCAC 10A.0202 (Hearing Costs or Fees), as adopted by the Industrial Commission on March 11, 2014, and approved by the Rules Review Commission on March 20, 2014, is disapproved.

SECTION 4. G.S. 97-25 reads as rewritten:

"**§ 97-25. Medical treatment and supplies.**

(a) Medical compensation shall be provided by the employer.

(b) Upon the written request of the employee to the employer, the employer may agree to authorize and pay for a second opinion examination with a duly qualified physician licensed to practice in North Carolina, or licensed in another state if agreed to by the parties or ordered by the Commission. If, within 14 calendar days of the receipt of the written request, the request is denied or the parties, in good faith, are unable to agree upon a health care provider to perform a second opinion examination, the employee may request that the Industrial Commission order a second opinion examination. The expense thereof shall be borne by the employer upon the same terms and conditions as provided in this section for medical compensation.

(c) Provided, however, if the employee so desires, an injured employee may select a health care provider of the employee's own choosing to attend, prescribe, and assume the care and charge of the employee's case subject to the approval of the Industrial Commission. In addition, in case of a controversy arising between the employer and the employee, the

Industrial Commission may order necessary treatment. In order for the Commission to grant an employee's request to change treatment or health care provider, the employee must show by a preponderance of the evidence that the change is reasonably necessary to effect a cure, provide relief, or lessen the period of disability. When deciding whether to grant an employee's request to change treatment or health care provider, the Commission may disregard or give less weight to the opinion of a health care provider from whom the employee sought evaluation, diagnosis, or treatment before the employee first requested authorization in writing from the employer, insurer, or Commission.

(d) The refusal of the employee to accept any medical compensation when ordered by the Industrial Commission shall bar the employee from further compensation until such refusal ceases, and no compensation shall at any time be paid for the period of suspension unless in the opinion of the Industrial Commission the circumstances justified the refusal. Any order issued by the Commission suspending compensation pursuant to G.S. 97-18.1 shall specify what action the employee should take to end the suspension and reinstate the compensation.

(e) If in an emergency on account of the employer's failure to provide medical compensation, a physician other than provided by the employer is called to treat the injured employee, the reasonable cost of such service shall be paid by the employer if so ordered by the Industrial Commission.

(f) In claims subject to G.S. 97-18(b) and (d), a party may file ~~an expedited, emergency, or other medical motion with the Office of the Chief Deputy Commissioner. The nonmoving party shall have the right to contest the motion. Motions and responses shall be submitted via electronic mail to the Commission, the opposing party and the opposing party's attorney, simultaneously. The Commission shall conduct an informal telephonic pretrial conference to determine if the motion warrants an expedited or emergency hearing. If the Commission determines that the motion does not warrant an expedited or emergency hearing, the motion shall be decided administratively within 60 days of the date the motion was filed pursuant to rules governing motions practices in contested cases. If the Commission determines that any party has acted unreasonably by initiating or objecting to a medical motion, the Commission may assess costs associated with any proceeding, including reasonable attorneys' fees and deposition costs, against the offending party.~~

~~(g) If the Commission determines that a medical motion should be expedited, each party shall be afforded an opportunity to state its position and to submit documentary evidence at an informal telephonic hearing. The medical motion shall contain documentation and support of the request, including the most relevant medical records and a representation that informal means of resolving the issue have been attempted in good faith, and the opposing parties' position, if known. The Commission shall determine whether deposition testimony of medical and other experts is necessary and if so shall order that the testimony be taken within 35 days of the date the motion is filed. For good cause shown, the Commission may reduce or enlarge the time to complete depositions of medical and other experts. Transcripts of depositions shall be expedited and paid for by the administrator, carrier, or employer. Transcripts shall be submitted electronically to the Commission within 40 days of the date the motion is filed unless the Commission has reduced or enlarged the time to complete the depositions. The Commission shall render a decision on the motion within five days of the date transcripts are due to the Commission.~~

~~(h) If the Commission determines that a medical motion is an emergency, the Commission shall make a determination on the motion within five days of receipt by the Commission of the medical motion. Motions requesting emergency medical relief shall contain the following:~~a motion as set forth in this subsection regarding a request for medical compensation or a dispute involving medical issues. The nonmoving party shall have the right to contest the motion. Motions and responses shall be submitted contemporaneously via electronic mail to the Commission and to the opposing party or the opposing party's attorney.

(1) A party may file a motion with the Executive Secretary for an administrative ruling regarding a request for medical compensation or a dispute involving medical issues. The motion shall be decided administratively pursuant to rules governing motions practices in contested cases. The Commission shall decide the motion within 30 days of the filing of the motion unless an extension of time to respond to the motion has been granted for good cause shown. Either party may file a motion for reconsideration of the administrative order with the Executive Secretary. Either party may request an expedited formal hearing pursuant to G.S. 97-84 and subdivision (2) of this subsection to appeal the decision of the Executive Secretary approving or denying the orginal motion or the motion for reconsideration. Within five days of the filing of a request for an expedited formal hearing pursuant to G.S. 97-84 and subdivision (2) of this subsection to appeal the decision of the Executive Secretary, the Commission shall assign a Deputy Commissioner to conduct the formal hearing. The decision shall not be stayed during the pendency of an appeal pursuant to G.S. 97-84 and subdivision (2) of this subsection except under those circumstances set out in subdivision (4) of this subsection. A motion to stay shall be filed with the Deputy Commissioner scheduled to conduct the formal hearing pursuant to G.S. 97-84. Either party may appeal the decision of the Deputy Commissioner pursuant to G.S. 97-84 to the Full Commission pursuant to G.S. 97-85. The decision of the Deputy Commissioner shall not be stayed during the pendency of an appeal, except under those circumstances set out in subdivision (4) of this subsection. A motion to stay the decision of the Deputy Commissioner pursuant to G.S. 97-84 shall be directed to the Chair of the Commission. The Full Commission shall render a decision on the appeal of the Deputy Commissioner's decision on the motion within 60 days of the filing of the notice of appeal.

(2) In lieu of filing a motion with the Executive Secretary for an administrative ruling pursuant to subdivision (1) of this subsection, or when appealing a ruling made pursuant to subdivision (1) of this subsection, a party may request a full evidentiary hearing pursuant to G.S. 97-84 on an expedited basis, limited to a request for medical compensation or a dispute involving medical issues, by filing a motion with the Office of the Chief Deputy Commissioner. The case will not be ordered into mediation based upon a party's request for hearing on the motion or appeal under this subdivision, except upon the consent of the parties. The Commission shall set the date of the expedited hearing, which shall be held within 30 days of the filing of the motion or appeal and shall notify the parties of the time and place of the hearing on the motion or appeal. Upon request, the Commission may order expedited discovery. The record shall be closed within 60 days of the filing of the motion, or in the case of an appeal pursuant to subdivision (1), within 60 days of the filing of the appeal, unless the parties agree otherwise or the Commission so orders. Transcripts of depositions shall be expedited if necessary and paid pursuant to rules promulgated by the Commission related to depositions, and shall be submitted electronically to the Commission. The Commission shall decide the issue in dispute and make findings of fact based upon the preponderance of the evidence in view of the entire record. The award, together with a statement of the findings of fact, rulings of law, and other matters pertinent to the questions at issue shall be filed with the record of the proceedings within 15 days of the close of the hearing record,

and a copy of the award shall immediately be sent to the parties. Either party may appeal the decision of the Deputy Commissioner pursuant to G.S. 97-84 to the Full Commission pursuant to G.S. 97-85. The decision of the Deputy Commissioner pursuant to G.S. 97-84 shall not be stayed during the pendency of an appeal, except under those circumstances set out in subdivision (4) of this subsection. A motion to stay the decision of the Deputy Commissioner pursuant to G.S. 97-84 shall be directed to the Chair of the Commission. The Full Commission shall render a decision on the appeal of the Deputy Commissioner's decision on the motion within 60 days of the filing of the notice of appeal.

(3) An emergency medical motion filed by either party shall be filed with the Office of the Chief Deputy Commissioner. The Chief Deputy or Chief Deputy's designee shall rule on the motion within five days of receipt unless the Chief Deputy or Chief Deputy's designee determines that the motion is not an emergency, in which case the motion shall be referred to the Executive Secretary for an administrative ruling pursuant to subdivision (1) of this subsection. Motions requesting emergency medical relief shall contain all of the following:

~~(1)~~a. An explanation of the medical diagnosis and treatment recommendation of the health care provider that requires emergency attention.

~~(2)~~b. A specific statement detailing the time-sensitive nature of the request to include relevant dates and the potential for adverse consequences to the ~~employee~~ movant if the recommended ~~treatment~~ relief is not provided emergently.

~~(3)~~c. An explanation of opinions known and in the possession of the ~~employee~~ movant of additional medical or other relevant experts, independent medical examiners, and second opinion examiners.

~~(4)~~d. Documentation known and in the possession of the ~~employee~~ movant in support of the request, including relevant medical records.

~~(5)~~e. A representation that informal means of resolving the issue have been attempted.

Either party may appeal the decision of the Chief Deputy or the Chief Deputy's designee on the emergency motion by filing an appeal with the Docket Section at the Commisison. The decision of the Chief Deputy or the Chief Deputy's designee shall not be stayed during the pendency of an appeal, except under those circumstances set out in subdivision (4) of this subsection. Any motion to stay shall be filed with the Chair of the Commission. The Chair of the Commission or the Chair's designee shall render an administrative decision on the appeal of the emergency motion within five days. Either party may request an expedited formal hearing pursuant to G.S. 97-84 and subdivision (2) of this subsection to appeal the administrative decision of the Chair or the Chair's designee on the emergency motion. Within five days of the filing of a request for an expedited formal hearing pursuant to G.S. 97-84 and subdivision (2) of this subsection, the Commission shall assign a Deputy Commissioner to conduct the formal hearing. The decision of the Chair or the Chair's designee shall not be stayed during the pendency of an appeal of the administrative decision, except under those circumstances set out in subdivision (4) of this subsection. Any motion to stay shall be filed with the Deputy Commissioner scheduled to conduct the expedited formal hearing pursuant to G.S. 97-84

and subdivision (2) of this subsection. Either party may appeal the decision of the Deputy Commissioner pursuant to G.S. 97-84 to the Full Commission pursuant to G.S. 97-85. If so, the decision of the Deputy Commissioner shall not be stayed during the pendency of an appeal, except under those circumstances set out in subdivision (4) of this subsection. Any motion to stay the decision of the Deputy Commissioner pursuant to G.S. 97-84 shall be directed to the Chair of the Commission. The Full Commission shall render a decision on the appeal of the Deputy Commissioner's decision on the motion within 60 days of the filing of the notice of appeal.

(4) The Commission shall consider, among other factors, all of the following when determining whether to grant a motion to stay filed pursuant to this subsection:

a. Whether there would be immediate and irreparable injury, harm, loss, or damage to either party.

b. The nature and cost of the medical relief sought.

c. The risk for further injury or disability to the employee inherent in the treatment or its delay.

d. Whether it has been recommended by an authorized physician.

e. Whether alternative therapeutic modalities are available and reasonable.

(5) If the Commission determines that any party has acted unreasonably by initiating or objecting to a motion filed pursuant to this section, the Commission may assess costs associated with any proceeding, including any reasonable attorneys' fees and deposition costs, against the offending party."

SECTION 5. G.S. 97-78(g)(2) reads as rewritten:

"(2) The total number of requests for, and disputes involving, medical compensation under G.S. 97-25 in which final disposition was not made within ~~45~~ 75 days of the filing of the motion with the Commission, and, for each such request or dispute, the date the motion or other initial pleading was filed, the date on which final disposition was made and, where reasonably ascertainable, the date on which any ordered medical treatment was actually provided."

SECTION 6. The Industrial Commission shall adopt rules to replace the rules disapproved by Sections 1, 2, and 3 of this act, in accordance with the following directions:

(1) With regard to 04 NCAC 10A .0605 (DISCOVERY), the Commission shall amend subsection (6) of the rule by deleting the following sentence: "Until a matter is calendared for hearing, parties may serve requests for production of documents without leave of the Commission" and by inserting the following sentence: "The parties may serve requests for production of documents without leave of the Commission until 35-days prior to the date of hearing"; and by changing the word "shall" to "may" in subsection (7) of the rule.

(2) With regard to 04 NCAC 10A .0609A (MEDICAL MOTIONS AND EMERGENCY MEDICAL MOTIONS), the Commission shall amend subsection (a) of the rule by adding the word "either" between the word "before" and "the"; adding the phrase "or the Executive Secretary" after the word "Commissioner"; changing the word "simultaneously" to "contemporaneously"; and changing the word "and" that appears between the words "party" and "opposing" to "or." Subsection (b) of the rule shall be amended by deleting the phrase "Once notification has been received by the parties that a medical motion has been assigned to a Deputy Commissioner, subsequent"; adding the word "Subsequent" before the word "filings";

adding the word "electronically" between the words "submitted" and "directly"; and adding the phrase "either the Executive Secretary or" between the words "to" and "the." The Commission shall amend subsection (c) of the rule by deleting the sentence "Upon receipt of a medical motion, carriers, third party administrators, and employers send notification of the name, email address, telephone number and fax number of the attorney appearing on their behalf to medicalmotions@ic.nc.gov." and deleting the word "also" from the subsection. The Commission shall amend subsection (d)(2) by substituting the word "employee" for the word "claimant" throughout. The Commission shall amend subsection (d)(6) by substituting the following phrase "if an attorney has been retained for the employer or carrier, the attorney's" for the phrase "the counsel for employer and carrier's." The Commission shall amend subsection (d)(8): by adding the word "the" between the words "of" and "claimant"; by substituting the word "employee" for "claimant"; by deleting the phrase "and the treatment recommendation"; by adding the word "the" between the words "and" and "name"; and by substituting the word "any" for the word "the" that appears between the word "of" and "health." The Commission shall add the phrase ", if any" after the word "request" in subsection (d)(10). The Commission shall amend subsection (d)(11) by substituting the word "movant" for the word "employee"; and by substituting the phrase "of additional medical or other" with the phrase "by any." In subsection (d)(12), the Commission shall substitute the word "employee" for "plaintiff." The Commission shall substitute the word "employee" for the word "claimant" throughout subsection (e)(2). The Commission shall amend subsection (e)(3) by adding the phrase ", if known" after the word "code." The Commission shall amend subsection (e)(8) by substituting the word "relief" for the word "treatment." The Commission shall amend subsection (e)(9) by substituting the word "movant" for the word "employee"; and substituting the phrase "of additional medical or other" with the phrase "by any." The Commission shall amend subsection (e)(11) by substituting the word "documents" for the word "documentation"; and substituting the phrase "employee in support of" with the phrase "movant relevant to." The Commission shall amend the rule by deleting subsections (f), (g) and (i); former subsection (j) shall become new subsection (f); former subsection (k) shall become new subsection (i). The Commission shall amend subsection (h) by deleting the phrase "deemed necessary by the Deputy Commissioner"; by adding the phrase "pursuant to G.S. 97-25" between the words "order" and "within"; and by deleting the phrase "within 35 days of the date the motion is filed. Transcripts of depositions shall be submitted electronically to the Commission within 40 days of the date of the filing of the motion"; and by adding the phrase "or upon agreement of the parties" after the phrase "for good cause shown." The Commission shall amend the rule by adding a new subsection (g) that shall read as follows: "A party may appeal an order of the Executive Secretary on a motion brought pursuant to G.S. 97-25(f)(1) or receipt of a ruling on a motion to reconsider filed pursuant to Rule .0703(b) of the Subchapter by giving notice of appeal to the Docket Section within fifteen calendar days. A letter expressing an intent to appeal a decision of the Executive Secretary shall be considered a request for an expedited hearing pursuant to G.S. 97-25 and G.S. 97-84. The letter shall specifically identify the order from which appeal is taken. After receipt of a notice of appeal, the

appeal shall be assigned to a Deputy Commissioner by the Docket Section and an order under the name of the Deputy Commissioner to which the appeal is assigned shall be issued within three days of receipt of the notice of appeal." The Commission shall amend the rule by adding a new subsection (j) that shall read as follows: "(j) A party may appeal the administrative decision of the Chair or the Chair's designee filed pursuant to G.S. 97-25(f)(3) by giving notice of appeal to the Docket Section within 15 calendar days of receipt of the Order. A letter expressing an intent to appeal the Chair or the Chair's designee's Order filed pursuant to G.S. 97-25(f)(3) shall be considered a notice of appeal, provided that the letter specifically identifies the Order from which appeal is taken. After receipt of notice of appeal, the appeal shall be acknowledged by the Docket Section within three days by sending an Order under the name of the Deputy Commissioner to which the appeal is assigned. The appeal of the administrative decision of the Chair or the Chair's designee shall be subject to G.S. 97-25(f)(2) and G.S 97-84." The Commission shall amend new subsection (i) by substituting the phrase "the decision of a Deputy Commissioner, Chief Deputy, or Chief Deputy's designee filed" for the phrase "a Deputy Commissioner's Order on a motion brought"; by adding the phrase "(f)(2)" between the words "G.S. 97-25" and "by"; by deleting the phrase "or receipt of the ruling on a Motion to Reconsider the Order filed pursuant to Rule .0703(b) of this Subchapter"; by substituting the word "filed" for the phrase "on a motion brought"; and by substituting the phrase "briefs and set the schedule for filing." for the phrase "briefs and the schedule for filing them. At the time the motion is set for informal hearing, the Chair of the Panel shall also indicate to the parties if oral arguments are to be by telephone, in person, or waived."; and by adding "A Full Commission hearing on an appeal of a medical motion filed pursuant to G.S. 97-25(f)(1) and (f)(2) shall be held telephonically and shall not be recorded unless unusual circumstances arise and the Commission so orders."

(3) With regard to 04 NCAC 10A .701 (REVIEW BY THE FULL COMMISSION), the Commission shall amend subsection (b) of the rule by inserting the sentences "Parties represented by counsel shall sign a joint certification acknowledging receipt of the Form 44 Application for Review and the official transcript and exhibits and submit the certification within ten days of receipt of the Form 44 Application for Review and the official transcript and exhibits. The certification shall stipulate the date the Form 44 Application for Review and the official transcript and exhibits were received by the parties and shall note the date the appellant's brief is due." after the sentence that reads "The e-mail shall also provide instructions for the submission of the parties' acknowledgement of receipt of the Form 44 Application for Review and the official transcript and exhibits to the Commission."

(4) With regard to 04 NCAC 10C .0109 (VOCATIONAL REHABILITATION SERVICES AND RETURN TO WORK), the Commission shall amend subsection (b) of the rule by deleting the phrase "only toward prospective employers offering the opportunity for suitable employment." The Commission shall change the word "shall" to "should" in subsection (c) of the rule. The Commission shall change subsection (d)(3) of the rule by substituting the phrase "the likely duration until completion of the requested retraining or education, the number of credits needed to complete the

retraining or education, the course names and schedules for the retraining or education, and which courses are available on-line versus in person" for the phrase "the likely duration until completion of the requested retraining or education and the likely class schedules, class attendance requirements, and out-of-class time required for homework and study." The Commission shall substitute the phrase "initiate or continue placement activities" for the phrase "place the worker in suitable employment" within subsection (j) of the rule.

(5) With regard to 04 NCAC 10E .0202 (HEARING COSTS), the Commission shall amend subsection (a) of the rule to insert the following phrase "other than workers' compensation cases" after the word "Commission" effective July 1, 2015. The Commission shall amend the rule by deleting the following sentence from subsection (a) of the rule effective July 1, 2015: "In workers' compensation cases, these fees shall be paid by the employer unless the Commission orders otherwise, except as specified in subsection (2) above."

(6) With regard to 04 NCAC 10E .0203 (FEES SET BY THE COMMISSION), the Commission shall delete subsection (a)(2) of the rule effective July 1, 2015.

(7) With regard to 04 NCAC 10L .0101 (Form 21 – Agreement for Compensation for Disability), 04 NCAC 10L .0102 (Form 26 – Supplemental Agreement as to Payment of Compensation), and 04 NCAC 10L .0103 (Form 26A – Employer's Admission of Employee's Rights to Permanent Partial Disability), the Commission shall delete any references to fees for processing agreements and the party responsible for payment of fees effective July 1, 2015.

SECTION 7. Notwithstanding G.S. 150B-21.2, the Industrial Commission shall adopt permanent rules in accordance with the provisions of this act using the procedure and time lines for temporary rules set forth in G.S. 150B-21.1(a3). Rules adopted by the Industrial Commission in accordance with this section shall be subject to review by the Rules Review Commission as provided by G.S. 150B-21.1(b); provided however, that if the rules are approved by the Rules Review Commission, they shall become effective as provided by G.S. 150B-21.3(b). Rules adopted pursuant to this section shall not be subject to G.S. 150B-19.1(h) or G.S. 150B-21.4. The Industrial Commission shall consult with the Office of Administrative Hearings to ensure that rules adopted in accordance with this section are submitted to the Rules Review Commission in time to be eligible for legislative disapproval in the 2015 Regular Session of the 2015 General Assembly. The rules of the Industrial Commission that were in effect on the effective date of S.L. 2011-287 shall remain in effect with regard to rules disapproved by Sections 1, 2, and 3 of this act until rules adopted to replace the disapproved rules become effective pursuant to this section.

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

SENATE BILL 794:
Disapprove Industrial Commission Rules

2013-2014 General Assembly

Committee:	Senate Commerce	**Date:**	June 18, 2014
Introduced by:	Sen. Brown	**Prepared by:**	Wendy Graf Ray Committee Counsel
Analysis of:	PCS to First Edition S794-CSSU-51		

SUMMARY: ***The Proposed Committee Substitute for Senate Bill 794 disapproves various rules adopted by the Industrial Commission, directs the Industrial Commission on how to replace the disapproved rules, and makes amendments to related statutes.***

CURRENT LAW AND BACKGROUND: Prior to 2011, the Industrial Commission was exempt from the rulemaking requirements of the Administrative Procedure Act (APA). The Workers Compensation Act of 2011, S.L. 2011-287, removed the exemption and directed the Industrial Commission to readopt its rules in accordance with Article 2A of Chapter 150B (APA), by December 31, 2012.

Last year the General Assembly passed S.L. 2013-294, disapproving a number of the rules adopted by the Industrial Commission as required by S.L. 2011-287. The APA provides that a rule adopted by an agency cannot become effective if the General Assembly enacts a bill to disapprove the rule. In such cases, the agency must readopt the rule, avoiding whatever the legislature found to be objectionable. S.L. 2013-294 went on to direct the Commission on how to replace the disapproved rules.

BILL ANALYSIS: Sections 1 through 3 of the PCS for Senate Bill 794 disapprove nine rules adopted by the Industrial Commission as required by S.L. 2013-294.

Section 4 of the PCS amends G.S. 97-25, setting out procedures for motions regarding requests for medical compensation or disputes involving medical issues.

Section 5 of the PCS amends G.S. 97-78(g)(2), requiring the Commission to report annually the number of requests for, and disputes involving, medical compensation in which final disposition was not made within 75 days (currently 45 days).

Section 6 of the PCS directs the Industrial Commission to adopt rules to replace rules disapproved by Sections 1 through 3, subject to the specific direction of this section.

Section 7 of the PCS directs the Industrial Commission to adopt permanent rules to replace the rules disapproved by this act. In order to expedite the process, the Commission is authorized to use the temporary rulemaking procedure and time line. The rules also will be exempted from the certification and fiscal note requirements of the APA. The current rules will remain in effect until rules adopted to replace them become effective.

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

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

S 1

SENATE BILL 794

Short Title:	Disapprove Industrial Commission Rules.	(Public)
Sponsors:	Senator Brown (Primary Sponsor).	
Referred to:	Commerce.	

May 20, 2014

A BILL TO BE ENTITLED

AN ACT TO DISAPPROVE CERTAIN RULES ADOPTED BY THE NORTH CAROLINA INDUSTRIAL COMMISSION.

The General Assembly of North Carolina enacts:

SECTION 1. Pursuant to G.S. 150B-21.3(b1), 04 NCAC 10A .0605 (Discovery), 04 NCAC 10A .0701 (Review by the Full Commission), 04 NCAC 10C .0109 (Vocational Rehabilitation Services and Return to Work), 04 NCAC 10E .0203 (Fees Set by the Commission), 04 NCAC 10L .0101 (Form 21 – Agreement for Compensation for Disability), 04 NCAC 10L .0102 (Form 26 – Supplemental Agreement as to Payment of Compensation), and 04 NCAC 10L .0103 (Form 26A – Employer's Admission of Employee's Rights to Permanent Partial Disability), as adopted by the Industrial Commission on March 11, 2014, and approved by the Rules Review Commission on March 20, 2014, are disapproved.

SECTION 2. Pursuant to G.S. 150B-21.3(b1), 04 NCAC 10A .0609A (Medical Motions and Emergency Medical Motions), as adopted by the Industrial Commission on March 11, 2014, and approved by the Rules Review Commission on April 17, 2014, is disapproved.

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

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

H D

HOUSE BILL 894
PROPOSED SENATE COMMITTEE SUBSTITUTE H894-CSMH-24 [v.3]

5/27/2014 2:44:24 PM

Short Title: Source Water Protection Planning. (Public)

Sponsors:

Referred to:

April 15, 2013

A BILL TO BE ENTITLED

AN ACT TO IMPROVE SOURCE WATER PROTECTION PLANNING.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 130A-320 reads as rewritten:

"**§ 130A-320. Sanitation of watersheds; rules; ~~inspections.~~inspections; local source protection planning.**

(a) The Commission shall adopt rules governing the sanitation of watersheds from which public drinking water supplies are obtained. In adopting these rules the Commission is authorized to consider the different classes of watersheds, taking into account general topography, nature of watershed development, density of population and need for frequency of sampling of raw water. The rules shall govern the keeping of livestock, operation of recreational areas, maintenance of residences and places of business, disposal of sewage, establishment of cemeteries or burying grounds, and any other factors which would endanger the public water supply.

(b) Any ~~person~~ supplier of water operating a public water system and furnishing water from unfiltered surface supplies shall inspect the watershed area at least quarterly, and more often when the Department determines that more frequent inspections are necessary.

(c) Every supplier of water shall create and implement a source water protection plan (SWPP). The Commission shall adopt rules that provide all of the following:

(1) A standardized format for use by suppliers of water in creating their SWPP. The Commission may create different formats and required plan elements for public water systems based on the system type, source type, watershed classification, population served, source susceptibility to contamination, proximity of potential contamination sources to the intake, lack of water supply alternatives, or other characteristics the Commission finds to be relevant.

(2) Schedules for creating a SWPP, implementing mandatory provisions of the SWPP, and for review and update of the SWPP by suppliers of water.

(3) Reporting requirements sufficient for the Department to monitor the creation, implementation, and revision by suppliers of water. The Commission may provide different reporting requirements based on the public water system characteristics set forth in subdivision (1) of this subsection.

SECTION 2. The Commission shall provide an interim report to the Environmental Review Commission no later than April 1, 2015 regarding its progress in

implementing the requirements of this section, and a final report within six months of adopting final rules implementing the requirements of this section.

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

HOUSE BILL 894:
Source Water Protection Planning

2013-2014 General Assembly

Committee:	Senate Commerce	**Date:**	June 18, 2014
Introduced by:	Reps. Catlin, Hamilton, Moffitt	**Prepared by:**	Peter Ledford Committee Counsel
Analysis of:	PCS to First Edition H894-CSMH-24		

SUMMARY: The PCS to House Bill 894 would require every person who owns, operates, or controls a public water system to create and implement a source water protection plan and would authorize the Commission for Public Health to adopt rules governing such plans.

CURRENT LAW: G.S. 130A-320 requires the Commission for Public Health (Commission) adopt rules governing the sanitation of watersheds from which public drinking waters are obtained. The Commission has done so in 15A NCAC 18C .1100, et seq. (Protection of Unfiltered Public Water Supplies) and 15A NCAC 18C .1200, et seq. (Protection of Filtered Water Supplies).

BILL ANALYSIS: Section 1 of the PCS would require every person who owns, operates, or controls a water system that provides water to 15 or more service connections or 25 or more individuals prepare a source water protection plan. Section 1 also directs the Commission for Public Health to adopt rules regarding these plans. The rules would be required to include all of the following:

- A standardized format for plans, which may vary based on the following factors:
    - System type
    - Source type
    - Watershed classification
    - Population served
    - Source susceptibility to contamination
    - Proximity of potential contamination sources to the intake
    - Lack of water supply alternatives
    - Other characteristics the Commission finds to be relevant
- Schedules for creating plans, implementing mandatory provisions of plans, and review and update of plans
- Reporting requirements sufficient for the Department of Environment and Natural Resources to monitor the plans

Section 2 of the PCS would require the Commission provide an interim report to the Environmental Review Commission no later than April 1, 2015 and a final report within six months of adopting final rules.

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

HOUSE BILL 894

Short Title:	Allocation of Excess Stormwater/Local Govt.	(Public)
Sponsors:	Representatives Catlin, Hamilton, and Moffitt (Primary Sponsors). *For a complete list of Sponsors, refer to the North Carolina General Assembly Web Site.*	
Referred to:	Government.	

April 15, 2013

A BILL TO BE ENTITLED

AN ACT AUTHORIZING CITIES AND COUNTIES TO ALLOCATE EXCESS STORMWATER CAPACITY FOR URBAN REDEVELOPMENT PROJECTS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 160A-459 reads as rewritten:

"**§ 160A-459. Stormwater control.**

...

(f) Notwithstanding any other provision of law, a city may calculate its stormwater infrastructure capacity and, where excess capacity exists, may allocate the excess capacity to urban redevelopment projects. The allocation authorized under this subsection may be used in lieu of on-site storage requirements. For purposes of this subsection, the term "redevelopment project" has the same meaning as in G.S. 160A-503(19)."

SECTION 2. G.S. 153A-454 reads as rewritten:

"**§ 153A-454. Stormwater control.**

...

(e) Notwithstanding any other provision of law, a county may calculate its stormwater infrastructure capacity and, where excess capacity exists, may allocate the excess capacity to urban redevelopment projects. The allocation authorized under this subsection may be used in lieu of on-site storage requirements. For purposes of this subsection, the term "redevelopment project" has the same meaning as in G.S. 160A-503(19)."

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

VISITOR REGISTRATION SHEET

Senate **COMMERCE** Committee — June 18, 2014

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DEBBIE LOWN

NAME	FIRM OR AGENCY AND ADDRESS
Jeremy Adams	NCIC
Sumit Gupta	NCIC
Carol Tingley	DENR-Parks
Matthew Domingue	HSUS
Kim Alborn	HSUS
Donna Beard	citizen
Benton Albritton	ABC Carolinas
Kaitlin Rothecker	McGuire Woods
Esthefanie Davis	E Davis & Assoc Inc.
BRUCE THOMPSON	PARKER POE
William Stirling	Brubaker and Associates

VISITOR REGISTRATION SHEET

Senate **COMMERCE** Committee — June 18, 2014

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DEBBIE LOWN

NAME	FIRM OR AGENCY AND ADDRESS
Clark Drummond	Industrial Commission
Meredith Henderson	NC Industrial Commission
Amanda Flynn	NCRAA
Jake Hanel	MFJS
Kristen Laster	SSGNC
Bryan Gupton	Commerce

VISITOR REGISTRATION SHEET

Senate **COMMERCE** Committee — June 18, 2014

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DEBBIE LOWN

NAME	FIRM OR AGENCY AND ADDRESS
[illegible] Patterson, Jr.	Patterson Harkavy LLP
GEORGE LOWN	LOWN, CAMPBELL & BREYER, PLLC
Mike Carpenter	NCOSA
John Bode	B & H
[illegible]	CATC
Brian Schoolman	Sahm Law Offices
Neal Robbins	NC DENR
Martha Jenkins	DCR
Ashley Jones	NCDOC
[illegible]	DOA
[illegible]	NCMA

VISITOR REGISTRATION SHEET

Senate **COMMERCE** Committee — June 18, 2014

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO DEBBIE LOWN

NAME	FIRM OR AGENCY AND ADDRESS
Doug Howey	NCPCM
Corey Clark	UNC Asheville
Ed [illegible]	NJP
Richard Stevens	Sen Ford
Jane [illegible]	Lumberton NC
Whitney Christensen	NCLM
Rebecca Troutman	NCACC
Lexi Morgan	Connie Wilson Consulting
Deborah Hughes	KCG
Brianna VanSteenkenburg	Sierra Club
[illegible]	NCTIA

SENATE SERGEANT-AT-ARMS

COMMITTEE: Senate Commerce

DATE: 06-18-2014 ROOM: 1027

1. ANDERSON MEADOWS
2. STEVE McKAIG
3. GILES JEFFREYS
4. _____
5. _____
6. _____

SENATE PAGES ATTENDING

COMMITTEE: Commerce ROOM: 1027 LB

DATE: 6-18 TIME: 11 AM

PLEASE PRINT LEGIBILY!!!!!!!!!!!!!....*or else!*

Page Name	Hometown	Sponsoring Senator
1. Jackson Carr	Dunn	B. Jackson
2. Grayson Flake	Wake Forest	Berger
3. Parker Castleberry	Raleigh	Tillman
4. Spencer Mangum	Raleigh	Daniel
5. Connor Badgett	Statesville	Brock
6. Lilly Black	Burlington	Gunn
7. Lilli Cainaday	Burlington	Gunn
8. Trey Jones	Tabor City	Walters
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.

Principal Clerk ____
Reading Clerk ____

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

The **Senate Committee on Commerce** will meet at the following time:

DAY	DATE	TIME	ROOM
Wednesday	July 16, 2014	12:00 PM	1027/1128 LB

The following will be considered:

BILL NO.	SHORT TITLE	SPONSOR
HB 680	Jump-Start Our Business Start-Ups Act.	Representative Murry Representative Moffitt Representative Shepard Representative Hastings

Senator Rick Gunn, Co-Chair
Senator Wesley Meredith, Co-Chair

Senate Committee on Commerce
Wednesday, July 16, 2014, 12:00 PM
1027/1128 Legislative Building

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

BILL NO.	SHORT TITLE	SPONSOR
HB 680	Jump-Start Our Business Start-Ups Act.	Representative Murry Representative Moffitt Representative Shepard Representative Hastings

Senate Committee on Commerce
Wednesday, July 16, 2014 at 12:00 PM
Room 1027/1128 of the Legislative Building

MINUTES

The Senate Committee on Commerce met at 12:00 PM on July 16, 2014 in Room 1027/1128 of the Legislative Building. Twenty two members were present.

Senator Tamara Barringer, Vice - Chair, presided.

Weston Davis from Raleigh, Carly Robertson from Cary, Candace Brown from Raleigh, Michalia Smith from Holly Springs, Autumn Fulton from Pleasant Garden, Erin Ray from Raleigh and Jazmin McNeil from Raleigh served as pages.

HB 680 Jump-Start Our Business Start-Ups Act

Senator Bryant moved to adopt the proposed committee substitute (PCS) to the committee for discussion and it was carried. Rep. Murry was recognized to explain a portion of the bill. Upon the completion of his explanation there were questions from the members. Rep. Murry responded to these questions and also asked visiting Angela Dunston, Legislative Affairs Program Coordinator from the North Carolina Department of the Secretary of State to assist with the responses. Senator Gunn was then recognized to explain the remaining portion of the bill. Senator Hise also spoke in favor of the bill sharing its benefits. Questions from the members followed and were responded to by Senator Gunn and Jeffrey Craver, Principal for Advantage Capital Partners. Senator McKissick and Senator Jenkins made the motion unfavorable to the bill – favorable to the PCS and the motion carried.

The meeting adjourned at 12:36 PM.

Senator Tamara Barringer, Vice - Chair
Presiding

Debbie Lown, Committee Clerk

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

COMMERCE COMMITTEE REPORT
Senator Gunn, Co-Chair
Senator Meredith, Co-Chair

Thursday, July 17, 2014

Senator Barringer,
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 **680** **(CS#2)** Jump-Start Our Business Start-Ups Act.

Draft Number:	H680-PCS30786-TMxf-61
Sequential Referral:	Finance
Recommended Referral:	None
Long Title Amended:	Yes

TOTAL REPORTED: 1

Senator Richard Gunn will handle HB 680

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

H D

HOUSE BILL 680
Committee Substitute Favorable 5/9/13
Committee Substitute #2 Favorable 6/19/13
PROPOSED SENATE COMMITTEE SUBSTITUTE H680-PCS30786-TMxf-61

Short Title: Start-Ups Act/New Markets Tax Credit Act. (Public)

Sponsors:

Referred to:

April 11, 2013

A BILL TO BE ENTITLED

AN ACT TO ENACT THE JUMP-START OUR BUSINESS START-UPS ACT AND TO ENACT THE NEW MARKETS JOBS ACT OF 2014.

Whereas, start-up companies play a critical role in creating new jobs and sources of revenue; and

Whereas, crowd funding, or raising money through small contributions from a large number of investors, allows smaller enterprises in North Carolina to have access to the capital they need to initiate new business ventures; and

Whereas, by promoting crowd funding, the General Assembly can give new businesses access to additional financing tools, can assist in democratizing start-up capital, and can facilitate investment by North Carolina residents in North Carolina start-ups; and

Whereas, by facilitating investment with appropriate restrictions to protect the interests of North Carolina investors, the General Assembly can promote the formation and growth of smaller North Carolina enterprises, along with additional job formation, and can permit businesses to raise capital using crowd funding unencumbered by excessive government regulation; Now, therefore,

The General Assembly of North Carolina enacts:

PART I. JUMP-START OUR BUSINESS START-UPS ACT.

SECTION 1. G.S. 78A-17 is amended by adding a new subdivision to read:

"(20) Any offer or sale of a security by an issuer if the offer or sale is conducted in accordance with G.S. 78A-17.1."

SECTION 2. Article 3 of Chapter 78A of the General Statutes is amended by adding a new section to read:

"**§ 78A-17.1. Invest NC exemption.**

(a) Exemption. – Except as otherwise provided in this Chapter, an offer or sale of a security by an issuer is exempt from G.S. 78A-24 and G.S. 78A-49(d) if the offer or sale is conducted in accordance with each of the following requirements:

(1) The issuer of the security is a business entity formed under the laws of the State and registered with the Secretary of State.

(2) The transaction meets the requirements of the federal exemption for intrastate offerings in section 3(a)(11) of the Securities Act of 1933, 15 U.S.C. § 77c(a)(11), and SEC rule 147, 17 C.F.R. § 230.147.

(3) The sum of all cash and other consideration to be received for all sales of the security in reliance upon this exemption does not exceed the cap provided in this subdivision.

a. One million dollars ($1,000,000), less the aggregate amount received for all sales of securities by the issuer within the 12 months before the first offer or sale made in reliance upon this exemption, if the issuer has not undergone and made available to each prospective investor and the Administrator the documentation resulting from a financial audit with respect to its most recently completed fiscal year and meeting generally accepted accounting principles.

b. Two million dollars ($2,000,000), less the aggregate amount received for all sales of securities by the issuer within the 12 months before the first offer or sale made in reliance upon this exemption, if the issuer has undergone and made available to each prospective investor and the Administrator the documentation resulting from a financial audit with respect to its most recently completed fiscal year and meeting generally accepted accounting principles.

(4) The issuer has not accepted more than two thousand dollars ($2,000) from any single purchaser unless the purchaser is an accredited investor as defined by rule 501 of SEC regulation D, 17 C.F.R. § 230.501.

(5) Not less than 10 days prior to the commencement of an offering of securities in reliance on this exemption or the use of any publicly available Web site in connection with any such offering, the issuer shall file a notice with the Administrator, in writing or in electronic form as specified by the Administrator, containing the following:

a. A notice of claim of exemption from registration, specifying that the issuer will be conducting an offering in reliance upon this exemption, accompanied by the filing fee as specified in this section.

b. A copy of the disclosure statement to be provided to prospective investors in connection with the offering, containing the following:

1. A description of the company, its type of entity, the address and telephone number of its principal office, its history, its business plan, and the intended use of the offering proceeds, including any amounts to be paid, as compensation or otherwise, to any owner, executive officer, director, managing member, or other person occupying a similar status or performing similar functions on behalf of the issuer.

2. The identity of all persons owning more than ten percent (10%) of the ownership interests of any class of securities of the company.

3. The identity of the executive officers, directors, managing members, and other persons occupying a similar status or performing similar functions in the name of and on behalf of the issuer, including their titles and their prior experience.

4. The terms and conditions of the securities being offered and of any outstanding securities of the company, the minimum and maximum amount of securities being offered, if any, and either the percentage ownership of the company represented by the offered securities or the valuation of the company implied by the price of the offered securities.

5. The identity of any person who has been or will be retained by the issuer to assist the issuer in conducting the offering and sale of the securities, including any Web sites, but excluding persons acting solely as accountants or attorneys and employees whose primary job responsibilities involve the operating business of the issuer rather than assisting the issuer in raising capital, and for each person identified in response to this paragraph, a description of the consideration being paid to such person for such assistance.
6. A description of any litigation or legal proceedings involving the company or its management.
7. The names and addresses, including URL, of any Web sites that will be used in connection with the offering.

c. An escrow agreement with a bank or other depository institution located within this State in which the investor funds will be deposited, providing that all offering proceeds will be released to the issuer only when the aggregate capital raised from all investors is equal to or greater than the minimum target offering amount specified in the business plan as necessary to implement the business plan and that all investors may cancel their commitments to invest if that target offering amount is not raised by the time stated in the disclosure document.

(6) The issuer is not, either before or as a result of the offering, an investment company, as defined in section 3 of the Investment Company Act of 1940, 15 U.S.C. § 8a-3, or an entity that would be an investment company but for the exclusions provided in section 3(c) of the act, or subject to the reporting requirements of section 13 or 15(d) of the Securities Exchange Act of 1934, 15 U.S.C. § 78m and 78o(d).

(7) The issuer shall inform all prospective purchasers under this section that the securities have not been registered under federal or State securities law and that the securities are subject to limitations on resale. The issuer shall display the following legend conspicuously on the cover page of the disclosure document:

"IN MAKING AN INVESTMENT DECISION, INVESTORS MUST RELY ON THEIR OWN EXAMINATION OF THE ISSUER AND THE TERMS OF THE OFFERING, INCLUDING THE MERITS AND RISKS INVOLVED. THESE SECURITIES HAVE NOT BEEN RECOMMENDED BY ANY FEDERAL OR STATE SECURITIES COMMISSION OR REGULATORY AUTHORITY. FURTHERMORE, THE FOREGOING AUTHORITIES HAVE NOT CONFIRMED THE ACCURACY OR DETERMINED THE ADEQUACY OF THIS DOCUMENT. ANY REPRESENTATION TO THE CONTRARY IS A CRIMINAL OFFENSE. THESE SECURITIES ARE SUBJECT TO RESTRICTIONS ON TRANSFERABILITY AND RESALE AND MAY NOT BE TRANSFERRED OR RESOLD EXCEPT AS PERMITTED BY SUBSECTION (E) OF SEC RULE 147, 17 C.F.R. § 230.147(E) AS PROMULGATED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, AND THE APPLICABLE STATE SECURITIES LAWS, PURSUANT TO REGISTRATION OR EXEMPTION THEREFROM. INVESTORS SHOULD BE AWARE

THAT THEY WILL BE REQUIRED TO BEAR THE FINANCIAL RISKS OF THIS INVESTMENT FOR AN INDEFINITE PERIOD OF TIME."

(8) The issuer shall require each purchaser to certify in writing "I understand and acknowledge that:

a. I am investing in a high-risk, speculative business venture. I may lose all of my investment, and I can afford the loss of my investment.

b. This offering has not been reviewed or approved by any state or federal securities commission or other regulatory authority and that no such person or authority has confirmed the accuracy or determined the adequacy of any disclosure made to me relating to this offering.

c. The securities I am acquiring in this offering are illiquid, that there is no ready market for the sale of such securities, that it may be difficult or impossible for me to sell or otherwise dispose of this investment, and that, accordingly, I may be required to hold this investment indefinitely.

d. I may be subject to tax on my share of the taxable income and losses of the company, whether or not I have sold or otherwise disposed of my investment or received any dividends or other distributions from the company.

(9) If the offer and sale of securities is made through an Internet Web site, the following requirements apply:

a. Prior to the offer of an investment opportunity to residents of this State through a Web site, the issuer shall provide to the Web site and to the Administrator evidence that the issuer is organized under North Carolina law and that it is authorized to do business within the State.

b. The issuer shall obtain from each purchaser of a security under this section evidence that the purchaser is a resident of North Carolina and, if applicable, an accredited investor.

c. The Web site operator shall register with the Administrator by filing a statement that it is a business entity that is organized under North Carolina law and that it is authorized to do business within the State and that it is being utilized to offer and sell securities pursuant to this exemption. As part of the registration, the Web site shall notify the Administrator of its and the issuer's identity, location, and contact information.

d. The issuer and the Web site must keep and maintain records of the offers and sales of securities effected through the Web site and must provide ready access to the records to the Administrator, upon request. The Administrator may access, inspect, and review any Web site and its records.

(10) All payments for purchase of securities must be directed to and held by the bank or depository institution subject to the provisions of sub-subdivision (a)(5)c. of this section. The bank or depository institution shall notify the Administrator of the receipt of payments for securities and the identity and residence of the investors. The information shall be confidential and considered trade secrets within the scope of G.S. 132-1.2 while in the possession of the Administrator.

(11) No offers or sales of a security shall be made through an Internet Web site unless the Web site is registered with the Administrator pursuant to sub-subdivision (a)(9)c. of this section. The Web site shall not be subject to the registration provisions of G.S. 78A-36 provided that all of the following apply:

a. It does not offer investment advice or recommendations.

b. It does not solicit purchases, sales, or offers to buy the securities offered or displayed on the Web site.

c. It does not compensate employees, agents, or other persons for the solicitation or based on the sale of securities displayed or referenced on the Web site.

d. It is not compensated based on the amount of securities sold, and it does not hold, manage, possess, or otherwise handle investor funds or securities.

e. It does not engage in such other activities as the Administrator, by rule, determines appropriate.

(12) An executive officer, director, managing member, or person occupying a similar status or performing similar functions in the name of and on behalf of the issuer shall be exempt from the registration provisions of G.S. 78A-36, provided that the person does not receive, directly or indirectly, any commission or remuneration for offering and selling securities of the issuer pursuant to this exemption.

(13) The issuer must provide a copy of the disclosure document provided to the Administrator pursuant to sub-subdivision (a)(5)b. of this section to each prospective investor at the time the offer of securities is made to the prospective investor. In addition to the information described in sub-subdivision (a)(5)b. of this section, the disclosure document provided to the Administrator and to prospective investors should include additional information material to the offering, including, where appropriate, a discussion of significant factors that make the offering speculative or risky. This discussion must be concise and organized logically and should not present risks that could apply to any issuer or any offering.

(b) Indexing. – The dollar limitations provided in subdivision (a)(3) of this section shall be cumulatively adjusted every fifth year by the Administrator to reflect the change in the Consumer Price Index for All Urban Consumers published by the Bureau of Labor Statistics, setting each dollar limitation to the nearest fifty thousand dollars ($50,000).

(c) Report. – An issuer of a security, the offer and sale of which is exempt under this section, shall provide a quarterly report to the issuer's investors until no securities issued under this section are outstanding. The report required by this subsection shall be free of charge. An issuer may satisfy the reporting requirement of this subsection by making the information available on an Internet Web site address if the information is made available within 45 days of the end of each fiscal quarter and remains available until the succeeding quarterly report is issued. An issuer shall file each such quarterly report with the Administrator and must provide a written copy of the report to any investor upon request. The report must contain each of the following:

(1) Compensation received by each director and executive officer, including cash compensation earned since the previous report and on an annual basis and any bonuses, stock options, other rights to receive securities of the issuer or any affiliate of the issuer, or other compensation received.

(2) An analysis by management of the issuer of the business operations and financial condition of the issuer.

(d) Offers and Sales to Controlling Persons. – The exemption provided in this section shall not be used in conjunction with any other exemption under this Chapter, except offers and sales to controlling persons shall not count toward the limitation in subdivision (3) of subsection (a) of this section. A controlling person is an officer, director, partner, trustee, or individual occupying similar status or performing similar functions with respect to the issuer or to a person owning ten percent (10%) or more of the outstanding shares of any class or classes of securities of the issuer.

(e) Disqualification. – The exemption allowed by this section shall not apply if an issuer or person affiliated with the issuer or offering is subject to any disqualification contained in 18 NCAC 06A .1207(a)(1) through (a)(6) or contained in Rule 262 as promulgated under the Securities Act of 1933 (17 C.F.R. § 230.262). The provisions of this subsection shall not apply if (i) upon a showing of good cause and without prejudice to any other action by the Administrator, the Administrator determines that it is not necessary under the circumstances that an exemption be denied and (ii) the issuer establishes that it made factual inquiry into whether any disqualification existed under this subsection but did not know, and in the exercise of reasonable care could not have known, that a disqualification existed under this subsection. The nature and scope of the requisite inquiry will vary based on the circumstances of the issuer and the other offering participants.

(f) Rules. – The Administrator may adopt rules to implement the provisions of this section and to protect investors who purchase securities under this section.

(g) Fee. – The Administrator shall charge a nonrefundable filing fee of one hundred fifty dollars ($150.00) for filing an exemption notice required by subsection (a) of this section. The fees paid to the Administrator pursuant to this subsection shall be used to pay the costs incurred in administering and enforcing this Chapter. The revenue derived from the fee shall be credited to a nonreverting agency revenue account."

SECTION 3. G.S. 78A-49(d) reads as rewritten:

"(d) The Administrator may by rule or order require the filing of any prospectus, pamphlet, circular, form letter, advertisement, or other sales literature or advertising communication addressed or intended for distribution to prospective investors, unless the security or transaction is exempted by ~~G.S. 78A-16 or 78A-17 (except 78A-17(9), (17), and (19))~~G.S. 78A-16 and G.S. 78A-17 (except G.S. 78A-17(9), (17), (19), and (20)) and such exemption has not been denied or revoked under G.S. 78A-18 or the security is a security covered under federal law or the transaction is with respect to a security covered under federal law."

SECTION 4.(a) Notwithstanding any provision of Article 2A of Chapter 150B of the General Statutes, within 12 months of the effective date of this act, the Secretary of State shall adopt rules to implement the provisions of this act in accordance with the following procedure:

(1) At least 15 business days prior to adopting a rule, submit the rule and a notice of public hearing to the Codifier of Rules. The Codifier of Rules shall publish the proposed rule and the notice of public hearing on the Internet within five business days.

(2) At least 15 business days prior to adopting a rule, notify persons on the mailing list maintained pursuant to G.S. 150B-21.2(d) and any other interested parties of the Secretary's intent to adopt a rule and of the public hearing.

(3) Accept written comments on the proposed rule for at least 15 business days prior to adoption of the rule.

(4) Hold at least one public hearing on the proposed rule no less than five days after the rule and notice have been published.

A rule adopted in accordance with this section becomes effective on the first day of the month following the month the Secretary adopts the rule and submits the rule to the Codifier of Rules for entry into the North Carolina Administrative Code. Any rule adopted more than 12 months after the effective date of this act shall comply with the requirement of Article 2A of Chapter 150B of the General Statutes.

SECTION 4.(b) This section is effective when it becomes law and expires 12 months after the effective date of this act.

PART II. NEW MARKETS JOBS ACT OF 2014.

SECTION 5.(a) Chapter 105 of the General Statutes is amended by adding a new Article to read:

"Article 3L.

"North Carolina New Markets Jobs Act of 2014.

"**§ 105-129.100. Short title.**

The provisions of this Article shall be known and may be cited as the "North Carolina New Markets Jobs Act of 2014."

"**§ 105-129.101. Definitions.**

The following definitions apply in this Article:

(1) Affiliate. – An entity that directly, or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with, the entity specified.

(2) Applicable percentage. – Zero percent (0%) for the first two reduction allowance dates, twelve percent (12%) for the next three reduction allowance dates, and eleven percent (11%) for the following two reduction allowance dates.

(3) Below the line reduction of tax or "reduction." – A subtraction from the total amount of State premium tax liability made after all additions and deductions have been made to the gross premium amount and after the appropriate rates of tax have been applied; for the purposes of constitutional, statutory, and common law interpretation and enforcement, the reduction shall be afforded the same property and contractual protections as a credit.

(4) Department. – The Department of Commerce.

(5) Long-term debt security. – Any debt instrument issued by a qualified community development entity, at par value or a premium, with an original maturity date of at least seven years from the date of its issuance, with no acceleration of repayment, amortization, or prepayment features prior to its original maturity date. The qualified community development entity that issues the debt instrument may not make cash interest payments on the debt instrument during the period beginning on the date of issuance and ending on the final reduction allowance date in an amount that exceeds the cumulative operating income, as defined by regulations adopted under section 45D of the Internal Revenue Code of 1986, as amended, of the qualified community development entity for that period prior to giving effect to the interest expense of such long-term debt security. The foregoing shall in no way limit the holder's ability to accelerate payments on the debt instrument in situations where the qualified community development entity has defaulted on covenants designed to ensure compliance with this section or section 45D of the Internal Revenue Code of 1986, as amended.

(6) Purchase price. – The amount paid to the qualified community development entity upon the issuance of a qualified equity investment.

(7) Qualified active low-income community business. – The meaning given such term in section 45D of the Internal Revenue Code of 1986, as amended, and 26 C.F.R. § 1.45D-1 but limited to those businesses meeting the SBA size eligibility standards established in 13 C.F.R. § 121.101-201 at the time the qualified low-income community investment is made. A business shall be considered a qualified active low-income community business for the duration of the qualified community development entity's investment in or loan to the business if the entity reasonably expects, at the time it makes the investment or loan, that the business will continue to satisfy the requirements for being a qualified active low-income community business, other than the SBA size standards, throughout the entire period of the investment or loan. The term excludes any business that derives or projects to derive fifteen percent (15%) or more of its annual revenue from the rental or sale of real estate. This exclusion does not apply to a business that is controlled by or under common control with another business if the second business (i) does not derive or project to derive fifteen percent (15%) or more of its annual revenue from the rental or sale of real estate and (ii) is the primary tenant of the real estate leased from the first business.

(8) Qualified community development entity. – The meaning given such term in section 45D of the Internal Revenue Code of 1986, as amended; provided that such entity has entered into; for the current year or any prior year, an allocation agreement with the Community Development Financial Institutions Fund of the U.S. Treasury Department with respect to credits authorized by section 45D of the Internal Revenue Code of 1986, as amended, which includes the State of North Carolina within the service area set forth in the allocation agreement. The term shall include qualified community development entities that are controlled by or are under common control with the qualified community development entity.

(9) Qualified equity investment. – Any equity investment in or long-term debt security issued by a qualified community development entity that meets each of the following requirements:

a. Is acquired after the effective date of this act at its original issuance solely in exchange for cash.

b. Has at least eighty-five percent (85%) of its cash purchase price used by the qualified community development entity to make qualified low-income community investments in qualified active low-income community businesses located in this State by the first anniversary of the initial reduction allowance date.

c. Is designated by the qualified community development entity as a qualified equity investment under this subdivision and is certified by the Department as not exceeding the limitation contained in G.S. 105-129.102(d)(5). This term shall include any qualified equity investment that does not meet the provisions of sub-subdivision a. of this subdivision if such investment was a qualified equity investment in the hands of a prior holder.

(10) Qualified low-income community investment. – Any capital or equity investment in or loan to any qualified active low-income community business. With respect to any one qualified active low-income community business, the maximum amount of qualified low-income community investments made in such business, on a collective basis with all of the businesses' affiliates, with the proceeds of qualified equity investments

certified under G.S. 105-129.102(d) that shall count toward satisfaction of the requirements of sub-subdivision b. of G.S. 105-129.101(9) and sub-subdivision c. of G.S. 105-129.102(e)(1) shall be seven million dollars ($7,000,000), exclusive of qualified low-income community investments made with repaid or redeemed qualified low-income community investments or interest or profits realized thereon.

(11) Reduction allowance date. – With respect to any qualified equity investment, the date on which the investment is initially made and each of the six anniversary dates thereafter.

(12) Rural census tracts. – Any census tract in which a qualified active low-income community business is located that also is located in a county designated as Tier 1 or Tier 2 by the North Carolina Department of Commerce as of or after 2014.

(13) Secretary. – The Secretary of Commerce.

(14) State premium tax liability. – Any liability incurred by any entity under the gross premiums tax or the retaliatory premium tax levied in Article 8B of this Chapter, or, if the tax liability under the gross premiums tax or the retaliatory premium tax levied in Article 8B of this Chapter is eliminated or reduced, the term shall also mean any tax liability imposed on an insurance company or other person that had premium tax liability under the laws of this State.

"**§ 105-129.102. Reduction for qualified equity investment.**

(a) Reduction Established. – An entity that makes a qualified equity investment earns a vested contractual right to a below-the-line reduction of tax applicable to the entity's State premium tax liability on future premium tax reports filed under Article 8B of Chapter 105 of the General Statutes. On or after each reduction allowance date of the qualified equity investment, the taxpayer or subsequent holder of the qualified equity investment may utilize a portion of the tax reduction during the taxable year, including the reduction allowance date. The tax reduction amount is equal to the applicable percentage for the reduction allowance date multiplied by the purchase price paid to the qualified community development entity. The amount of the tax reduction claimed in that taxable year by a taxpayer shall not exceed the amount of such taxpayer's State tax liability for the tax year for which the tax reduction is claimed. Any amount of tax reduction that the taxpayer is prohibited from claiming in a taxable year as a result of this section may be carried forward for use in any subsequent taxable year.

(b) Transferability. – A tax reduction claimed pursuant to this Article is not refundable or saleable on the open market. Tax reductions earned by or allocated to a partnership, limited liability company, or S Corporation may be allocated to the partners, members, or shareholders of such entity for their use in accordance with the provisions of any agreement among such partners, members, or shareholders. These allocations are not considered a sale for purposes of this section. The department shall issue a certificate to each entity allocated a tax reduction under this Article.

(c) Certification of Qualified Equity Investments. – A qualified community development entity that seeks to have an equity investment or long-term debt security designated as a qualified equity investment and eligible for tax reductions under this section shall apply to the Department, which shall begin accepting applications on January 2, 2015. The qualified community development entity must submit an application on a form that the Department provides that includes each of the following:

(1) Evidence of the entity's certification as a qualified community development entity, including evidence of the service area of the entity that includes this State.

(2) A copy of an allocation agreement executed by the entity or its controlling entity and the Community Development Financial Institutions Fund.
(3) A certificate executed by an executive officer of the entity attesting that the allocation agreement remains in effect and has not been revoked or cancelled by the Community Development Financial Institutions Fund.
(4) A description of the proposed amount, structure, and purchaser of the qualified equity investment.
(5) If known, identifying information for any taxpayer eligible to utilize tax reductions earned as a result of the issuance of the qualified equity investment.
(6) Examples of the types of qualified active low-income businesses in which the applicant, its controlling entity, or affiliates of its controlling entity have invested under the Federal New Markets Tax Credit Program. Applications are not required to identify qualified active low-income community businesses in which they will invest when submitting an application.
(7) A nonrefundable application fee of five thousand dollars ($5,000).
(8) The refundable performance deposit required by G.S. 105-129.104.
(9) Whether the application is for the Rural Reserve under G.S. 105-129.109.

(d) (1) Within 30 days after receipt of a completed application containing the information set forth in subsection (c) of this section, including the payment of the application fee and the performance deposit, the Department shall grant or deny the application in full or in part. If the Department denies any part of the application, it shall inform the qualified community development entity of the grounds for the denial. If the qualified community development entity provides any additional information required by the Department or otherwise completes its application within 15 days of the notice of denial, the application shall be considered completed as of the original date of submission. If the qualified community development entity fails to provide the information or complete its application within the 15-day period, the application is denied and must be resubmitted in full with a new submission date.
(2) If the application is deemed complete, the Department shall certify the proposed equity investment or long-term debt security as a qualified equity investment that is eligible for a reduction under this section, subject to the limitations contained in subdivision (5) of this subsection; provided that the Department shall not certify qualified equity investments for any applicant, on a combined basis with all of its affiliates, in excess of sixty million dollars ($60,000,000) unless such applicant has (i) already had qualified equity investments certified under this section, (ii) satisfied the requirements of subdivision (6) of this subsection with respect to such qualified equity investments, and (iii) filed a new application after satisfying the requirements of (i) and (ii) of this subdivision. The Department shall provide written notice of the certification to the qualified community development entity. The notice shall include the names of those taxpayers who are eligible to utilize the reductions and their respective reduction amounts. If the names of the taxpayers who are eligible to utilize the reductions change due to a transfer of a qualified equity investment or a change in an allocation pursuant to subsection (b) of this section, the qualified community development entity shall notify the Department of such change.
(3) Once the Department has certified a qualified equity investment, the qualified community development entity may suballocate all or any portion

of the amount of the certified qualified equity investment to one or more qualified community development entities with the same controlling entity as the applicant qualified community development entity, provided that the applicant qualified community development entity files a notice of such suballocation with the Department and the recipient of the suballocation meets all the requirements of a qualified community development entity under this section. The notice of suballocation shall include the information required in the application for all suballocatees.

(4) The Department shall certify qualified equity investments in the order applications are received by the Department. Applications received on the same day shall be deemed to have been received simultaneously. For applications received on the same day and deemed complete, the Department shall certify, consistent with remaining tax reduction capacity, qualified equity investments in proportionate percentages based upon the ratio of the amount of qualified equity investment requested in an application to the total amount of qualified equity investments requested in all applications received on the same day.

(5) The Department shall certify two hundred eight million three hundred thirty-three thousand three hundred thirty-three dollars ($208,333,333) in qualified equity investment authority pursuant to two allocations, one for the Rural Reserve and one for the Statewide Reserve, each as described in G.S. 105-129.109(a). If a pending request cannot be fully certified due to this limit, the Department shall certify the portion that may be certified unless the qualified community development entity elects to withdraw its request rather than receive partial certification.

(6) Within 45 days after receiving notice of certification, the qualified community development entity or any transferee under this section shall issue the qualified equity investment and receive cash in the amount of the certified amount. The qualified community development entity or transferee must provide the Department with evidence of the receipt of the cash investment within 50 days of the applicant receiving notice of certification. If the qualified community development entity or transferee does not receive the cash investment and issue the qualified equity investment within 45 days following receipt of the certification notice, the certification shall lapse and the entity may not issue the qualified equity investment without reapplying to the Department for certification. A certification that lapses reverts back to the Department and shall be reissued pro rata to other applicants whose qualified equity investment allocations were reduced under this section and thereafter in accordance with the application process.

(e) Disallowance. –

(1) The Department may determine that reductions previously claimed or to be claimed by a taxpayer under this Article should be disallowed. Notice that a reduction shall be disallowed shall be transmitted in writing to the taxpayer and the Department of Revenue. Disallowance may be determined if any of the following occurs:

a. Any amount of the federal tax credit available with respect to a qualified equity investment that is eligible for a tax reduction under this section is recaptured under section 45D of the Internal Revenue Code of 1986, as amended. In such case, the Department's disallowance shall be proportionate to the federal recapture with respect to such qualified equity investment.

b. The qualified community development entity redeems or makes principal repayment with respect to a qualified equity investment prior to the seventh anniversary of the issuance of such qualified equity investment. In such case, the Department's disallowance shall be proportionate to the amount of the redemption or repayment with respect to such qualified equity investment.

c. The qualified community development entity fails to (i) invest at least eighty-five percent (85%) of the purchase price of the qualified equity investment in qualified low-income investments in the State within 12 months of the issuance of the qualified equity investment and (ii) maintain such level of investment in qualified low-income community investments in the State until the last reduction allowance date for the qualified equity investment. For qualified equity investments made under the Rural Reserve, all qualified low-income community investments required to meet the requirements of this subsection must be made in qualified active low-income community businesses located in rural census tracts within this State.

d. Any distribution or debt payment in violation of G.S. 105-129.107(a).

e. Failure to comply with G.S. 105-129.108, 105-129.109, or 105-129.110.

(2) For purposes of this section, an investment shall be considered held by a qualified community development entity even if the investment has been sold or repaid if the qualified community development entity reinvests an amount equal to the capital returned to or recovered by the qualified community development entity from the original investment, exclusive of any profits realized, in another qualified low-income community investment within 12 months of the receipt of such capital. Periodic amounts received as repayment of principal on a loan that is a qualified low-income community investment shall be treated as continuously invested in a qualified low-income community investment if the amounts are reinvested in one or more qualified low-income community investments by the end of the following calendar year. A qualified community development entity shall not be required to reinvest capital returned from qualified low-income community investments after the sixth anniversary of the issuance of the qualified equity investment, and the qualified low-income community investment shall be considered held by the qualified community development entity through the seventh anniversary of the issuance of the qualified equity investment.

(3) A recaptured reduction and the related qualified equity investment authority under the Rural Reserve or the Statewide Reserve, as applicable, reverts back to the Department and shall be reissued pro rata to other applicants whose qualified equity investment allocations were reduced under this section and thereafter in accordance with the application process.

"**§ 105-129.103. Notice of noncompliance.**

Enforcement of the disallowance under this Article shall not occur until the qualified community development entity shall have been given notice of noncompliance and afforded six months from the date of such notice to cure the noncompliance.

"**§ 105-129.104. Refundable performance deposit.**

(a) For each application submitted, a qualified community development entity that seeks to have an equity investment or long-term debt security designated as a qualified equity

investment and eligible for a reduction under this Article shall make a performance deposit in the amount of the greater of one-quarter of one percent (.25%) of the amount of the equity investment or long-term debt security requested to be designated as a qualified equity investment or five hundred thousand dollars ($500,000) to the Department for deposit in the New Markets performance guarantee account, which is hereby established. The entity shall forfeit the amount deposited if (i) the qualified community development entity together with any qualified community development entities to which it has suballocated qualified equity investment authority pursuant to G.S. 105-129.102(d), if any, fail to issue the total amount of qualified equity investments certified by the Department and receive cash in the total amount certified under G.S. 105-129.102 within 45 days after receiving notice of certification, or (ii) the qualified community development entity or any qualified community development entity that issues suballocated qualified equity investment authority pursuant to G.S. 105-129.102(d) certified under this Article fails to invest at least eighty-five percent (85%) of the purchase price of any qualified equity investment issued in qualified low-income community investments within 12 months of the issuance of the qualified equity investment; provided that forfeiture for the failure under clauses (i) and (ii) of this subsection is not subject to the cure period established in G.S. 105-129.103.

(b) The performance deposit required under this section shall be paid to the Department and held in the New Markets performance guarantee account without any portion being repaid until such time as compliance with clause (ii) of subsection (a) of this section has been established. The qualified community development entity may request a refund of the performance deposit from the Department no sooner than 30 days after having met the requirements of clause (ii) of subsection (a) of this section. The State Treasurer shall have 30 days to comply with the request or give notice of noncompliance.

"**§ 105-129.105. Letter rulings.**

(a) The Secretary shall issue letter rulings regarding the tax reduction program authorized under this Article, subject to the terms and conditions set forth in this section. For the purposes of this Article, the term "letter ruling" means a written interpretation of law to a specific set of facts provided by the applicant requesting a letter ruling.

(b) The Secretary shall respond to a request for a letter ruling within 60 days of receipt of such request. The applicant may provide a draft letter ruling for the Secretary's consideration. The applicant may withdraw the request for a letter ruling, in writing, prior to the issuance of the letter ruling. The Secretary may refuse to issue a letter ruling for good cause but must list the specific reasons for refusing to issue the letter ruling. Good cause includes any of the following:

(1) The applicant requests the director to determine whether a statute is constitutional or a regulation is lawful.

(2) The request involves a hypothetical situation or alternative plan.

(3) The facts or issues presented in the request are unclear, overbroad, insufficient, or otherwise inappropriate as a basis upon which to issue a letter ruling.

(4) The issue is currently being considered in a rule-making procedure, contested case, or other agency or judicial proceeding that may definitely resolve the issue.

(c) Letter rulings shall bind the Secretary and the Secretary's agents and their successors and all other State agencies until such time as the entity or its shareholders, members, or partners, as applicable, claim all of the reductions on a North Carolina tax return or report, subject to the terms and conditions set forth in properly published regulations. The letter ruling shall apply only to the applicant.

(d) In rendering letter rulings and making other determinations under this Article, to the extent applicable, the Department and the Department of Revenue shall look for guidance to

section 45D of the Internal Revenue Code of 1986, as amended, and the rules and regulations issued thereunder.

"**§ 105-129.106. Retaliatory tax.**

An entity claiming a reduction under this Article is not required to pay any additional retaliatory tax levied under G.S. 105-228.8 as a result of claiming the reduction. It is the intent of the General Assembly that an entity claiming a reduction under this Article is not required to pay any additional tax that may arise as a result of claiming that reduction.

"**§ 105-129.107. Decertification.**

(a) Once certified under this Article, a qualified equity investment may not be decertified unless all of the requirements of this section have been met. Until all qualified equity investments issued by a qualified community development entity or any transferee qualified community development entity under G.S. 105-129.102(d) are decertified under this section, the qualified community development entity or any transferee qualified community development entity under G.S. 105-129.102(d) shall not be entitled to distribute to its equity holders or make cash payments on long-term debt securities that have been designated as qualified equity investments in an amount that exceeds the sum of (i) the cumulative operating income, as defined by regulations adopted under section 45D of the Internal Revenue Code of 1986, as amended, earned by the qualified community development entity since issuance of the qualified equity investment, prior to giving effect to any interest expense of long-term debt securities designated as qualified equity investments and (ii) fifty percent (50%) of the purchase price of the qualified equity investments issued by the qualified community development entity.

(b) To be decertified, all of the following conditions must be met:

(1) The qualified equity investment is beyond its seventh reduction allowance date.

(2) The qualified equity investment was in compliance with the requirements of this Article through its seventh reduction allowance date, including any cures.

(3) The qualified equity investment has its proceeds invested in qualified active low-income community investments such that the total qualified active low-income community investments made, cumulatively including reinvestments, exceeds one hundred fifty percent (150%) of its qualified equity investment. For purposes of making this calculation, qualified low-income community investments to any one qualified active low-income community business, on a collective basis with affiliates, in excess of seven million dollars ($7,000,000) are not included unless the investments are made with capital returned or repaid from qualified low-income community investments made by the qualified community development entity in other qualified active low-income community businesses or interest earned on or profits realized from any qualified low-income community investments.

(c) A qualified community development entity that seeks to have a qualified equity investment decertified under this section shall send notice to the Department of its request for decertification along with evidence supporting the request. The provisions of subdivision (2) of subsection (b) of this section are met if no disallowance action has been commenced by the Department as of the seventh reduction allowance date. A request under this section shall not be unreasonably denied and shall be responded to within 30 days of receiving the request. If the request is denied for any reason, the burden of proof shall be on the Department in any administrative or legal proceeding that follows.

"**§ 105-129.108. Limitation on fees.**

No qualified community development entity shall be entitled to pay any affiliate of such qualified community development entity any fees in connection with any activity under this

Article prior to decertification under G.S. 105-129.107 of all qualified equity investments issued by the qualified community development entity. The foregoing shall not prohibit a qualified community development entity from allocating or distributing income earned by it to the affiliates or paying reasonable interest on amounts lent to the qualified community development entity by such affiliates.

"**§ 105-129.109. Rural Investment Reserve.**

(a) Of the maximum total two hundred eight million three hundred thirty-three thousand three hundred thirty-three dollars ($208,333,333) of qualified equity investments eligible for certification by the Department under G.S. 105-129.102, one hundred fifty-six million two hundred fifty thousand dollars ($156,250,000) of the total shall be reserved for applications submitted for a portion of the New Markets Jobs Act of 2014 hereby designated the "Rural Reserve." The fifty-two million eighty-three thousand three hundred thirty-three dollars ($52,083,333) not in the Rural Reserve shall be designated the "Statewide Reserve."

(b) A qualified community development entity may apply for both the Rural Reserve and the Statewide Reserve, provided it does so in separate applications.

(c) All qualified low-income community investments made under the Rural Reserve of qualified equity investment authority shall only be made in qualified active low-income community businesses located in rural census tracts in the State, including those necessary to meet the standards for decertification contained in G.S. 105-129.107.

(d) Qualified low-income community investments made under the Statewide Reserve of qualified equity investment authority shall not be geographically restricted so long as the qualified active low-income community business is located in the State.

"**§ 105-129.110. New capital requirement.**

No qualified active low-income community business that receives a qualified low-income community investment from a qualified community development entity that issues qualified equity investments under this Article, or any affiliates of such a qualified active low-income community business, may directly or indirectly (i) own or have the right to acquire an ownership interest in a qualified community development entity or member or affiliate of a qualified community development entity, including, but not limited to, a holder of a qualified equity investment issued by the qualified community development entity, or (ii) loan to or invest in a qualified community development entity or member or affiliate of a qualified community development entity, including, but not limited to, a holder of a qualified equity investment issued by a qualified community development entity, where the proceeds of such loan or investment are directly or indirectly used to fund or refinance the purchase of a qualified equity investment hereunder. For purposes of this section, a qualified community development entity shall not be considered an affiliate of a qualified active low-income community business solely as a result of its qualified low-income community investment in such business.

"**§ 105-129.111. Reporting.**

(a) A qualified community development entity that issues qualified equity investments shall submit a report to the Department within the first five business days after the first anniversary of the initial reduction allowance that provides documentation as to the investment of eighty-five percent (85%) of the purchase price in qualified low-income community investments in qualified active low-income community businesses located in the State. The report shall include the following:

(1) A bank statement of the qualified community development entity evidencing each qualified low-income community investment.

(2) Evidence that the business was a qualified active low-income community business at the time of the qualified low-income community investment.

(3) Evidence that the qualified active low-income community business was located in a rural census tract at the time of the qualified low-income community investment, if applicable under the Rural Reserve.

(b) After the initial report under subsection (a) of this section, a qualified community development shall submit an annual report to the Department on or before April 1 of the calendar year during the compliance period. An annual report is not due before the first anniversary of the initial reduction allowance date. The annual report shall include the following:

(1) The number of employment positions created and retained as a result of qualified low-income community investments.

(2) The average annual salary of positions described in subsection (b)(1).

(3) Certification from the qualified community development entity that the grounds for disallowance under G.S. 105-129.102(e) have not occurred."

SECTION 5.(b) This section applies to qualified equity investments made on or after January 2, 2015.

SECTION 6. Except as otherwise provided, this act is effective when it becomes law. Sections 1, 2, 3, and 4 expire on July 1, 2017.

HOUSE BILL 680:
Start-Ups Act/New Markets Tax Credit Act

2013-2014 General Assembly

Committee:	Senate Commerce. If fav, re-ref to Finance	**Date:**	July 16, 2014
Introduced by:	Reps. Murry, Moffitt, Shepard, Hastings	**Prepared by:**	Greg Roney Committee Counsel
Analysis of:	PCS to Third Edition H680-CSTMxf-61		

SUMMARY: ***The Proposed Committee Substitute (PCS) for House Bill 680 would enact:***

- ***<u>The Jump-Start Our Business Start-Ups Act</u> – Sections 1-4 of the PCS allows NC companies to sell $1 million ($2 million in some cases) of unregistered securities to NC residents. The Secretary of State is authorized to charge a nonrefundable filing fee of $150 for filing a notice for unregistered securities.***
- ***<u>New Markets Jobs Act of 2014</u> – Section 5 provides a subsidy (tax credit) to investors who commit capital for a 7-year term in the form of loans or equity investment to borrowers in low-income communities. Investors receive a tax credit against the gross premium tax equal to 58% of the amount invested through federally-recognized development entities in small businesses. The statewide total investment that could qualify for the tax credit is $208.3 million with a maximum investment in any one business of $7 million, yielding $120.8 million in tax credits. The $208.3 million investment pool is divided into 2 funds as follows:***
  - ***Rural Reserve: $156 million allocated to credit investments located in rural census tracts in Tier 1 or Tier 2 counties.***
  - ***Statewide Reserve: $52 million allocated to credit investments in the State.***

BILL ANALYSIS:

<u>The Jump-Start Our Business Start-Ups Act</u> – The PCS for House Bill 680 would add a new exemption to the list of transactions that are exempt from the registration and filing requirements for the offer or sale of securities. Specifically, the PCS creates the Invest NC exemption that requires:

- **NC Issuer** – The issuer must be a North Carolina business entity formed under the laws of the State and registered with the Secretary of State.
- **Intrastate Offering** – The transaction must meet the federal exemption for an intrastate offering, which means that the issuer and all purchasers must be located in NC, that purchasers cannot transfer the securities for a period of time, that a certain percentage of the proceeds must be used in the State, and that the issuer cannot sell or have an economic impact outside the state.
- **$1/$2 Million Maximum Per Offering** – If the issuer has not undergone a financial audit, the maximum amount of cash raised under the exemption must not exceed $1 million minus the amount received in the 12 months before the exemption. If the issuer has undergone a financial audit, the maximum amount allowed is $2 million minus the amount received in the 12 months before the exemption. Offers and sales to controlling persons of the issuer are exempt from the funding cap. The funding cap will be adjusted for inflation every fifth year.
- **$2,000 Maximum Per Purchaser** – The issuer has not accepted more than $2,000 from a single purchaser, unless the purchaser is an accredited investor.

- **Notice to Secretary of State** – The issuer must file a notice with the Secretary of State no less than 10 days before beginning to offer securities under the exemption. The notice must include a disclosure statement with specified financial information that will be provided to investors and an escrow agreement between the issuer and a NC bank providing that funds received from investors will be held until the minimum target offering amount is reached and that investors may cancel their purchase if the target is not reached.
- **Issuer Not Investment Company** – The issuer may not be an investment company.
- **Notice of Unregistered Securities and Limitations on Resale** – The issuer must conspicuously display on the cover of the disclosure document a notice to investors that the securities being offered have not been registered under federal or State law, that the investor bears the risk of the investment, and that the securities are subject to limitations on resale.
- **Written Acknowledgement by Purchaser** – The issuer shall require each purchaser to certify in writing that the purchaser understands and acknowledges the securities are a high-risk speculative business venture; no state or federal governmental authority has reviewed the offering; the securities are illiquid; and the purchaser may be subject to tax on a share of the taxable income and losses of the company whether or not the purchaser sold or otherwise disposed of the securities.
- **Registration and Recordkeeping by Internet Web Sites** – If the offer and sale are made through an internet web site, the issuer and the website must provide certain information to the Secretary of State, including evidence that both are NC businesses and that all purchasers are NC residents.
- **Notice and Recordkeeping by Escrow Holder** – The bank holding the escrow funds shall notify the Secretary of State of the receipt of payments for securities and the identity and residence of the investors.
- **Registration Exemption for Web Site** – The web site is exempt from the requirement to register as a dealer or salesperson if the web site meets specified conditions.
- **Registration Exemption for Issuer's Employees** – The executives and management of the issuer are exempt from the requirement to register as a dealer or salesperson as long as they do not receive any remuneration or commission for offering and selling securities under the exemption.
- **Quarterly Reporting** – The issuer must provide a quarterly report to investors until no securities issued under the exemption are outstanding.
- **Disqualification** – The exemption does not apply if the issuer or someone affiliated with the issuer is subject to any disqualification under State or federal law.
- **Rules** – The Secretary of State may adopt rules to implement the exemption and protect investors.

The PCS authorizes the Secretary of State to charge a nonrefundable filing fee of $150 for filing the exemption notice. The PCS also authorizes the Secretary of State to adopt rules to implement the exemption on an expedited basis for the first year.

<u>New Markets Jobs Act of 2014</u> – Section 5 of the PCS would create a State-level tax credit that generally follows the federal New Markets Tax Credit (NMTC) under §45D of the Internal Revenue Code (I.R.C.). The NMTC provides a subsidy (tax credit) to investors who commit capital for a 7-year term in the form of loans or equity investment to borrowers in low-income communities.

The State tax credit would be available for investments receiving the federal credit, acting as an incentive to attract the federally credited investments to the State. Additionally, the State tax credit is available where the federal credit is not received.

North Carolina levies insurance premium tax upon insurers for the privilege of engaging in the business of providing insurance in this State. The PCS would allow a tax credit to insurers paying the gross premium tax. To receive tax credits, the insurers must make investments in qualified community development entities.

The PCS would allow a tax credit against the gross premium tax equal to 58% of the amount invested through federally-recognized development entities in small businesses. The statewide total investment that could qualify for the tax credit is $208.3 million with a maximum investment in any one business of $7 million, yielding $120.8 million in tax credits.

The tax credit equals 58% of the investment and is claimed during a 7 year credit period as follows: Year One: 0%; Year Two: 0%; Year Three: 12%; Year Four: 12%; Year Five: 12%; Year Six: 11%; Year Seven: 11%. The federal credit is 39% of the investment but is claimed at different percentages over the 7 year credit period. Investments could receive both the federal credit (39%) and State credit (58%), totaling 97% tax credit.

The $208.3 million investment pool is divided into 2 funds as follows:

- $156 million is allocated to the Rural Reserve to credit investments located in rural census tracts in a county designated as Tier 1 or Tier 2 by the NC Department of Commerce.
- $52 million is allocated to the Statewide Reserve to credit investments made anywhere within the State.

Qualifying investments must be made in a qualified active low-income community business (QALICB) that does not receive 15% or more of its annual revenue from the rental or sale of real estate and meets the following requirements:

- Definition of a QALICB under I.R.C. §45D includes any corporation, nonprofit corporation, or partnership if
    - At least 50% of the total gross income is derived from the active conduct of a qualified business within any low-income community.
    - A substantial portion of the use of the tangible property is within any low-income community.
    - A substantial portion of the services performed by employees are performed in any low-income community.
    - Less than 5% of the average of the aggregate unadjusted bases of the property is attributable to collectibles.
    - Less than 5% of the average of the aggregate unadjusted bases of the property is attributable to nonqualified financial property.
- US Small Business Administration (SBA) size eligibility standards that govern small business status under federal programs. The SBA sets size standards by NAICS codes. Depending on their NAICS code, small businesses must satisfy either the size limit or the employee limit:
    - Number of employees (50 to 1,500).
    - Revenues ($0.75 million to $550 million).

The program would be administered by the Department of Commerce. Entities applying to the Department of Commerce to participate must pay a nonrefundable application fee of $5,000 and pay a refundable performance deposit equal to the greater of.25% of the amount of the investment requested to be designated as a qualified investment or $500,000 to the Department for deposit in the New Markets performance guarantee account.

EFFECTIVE DATE: The PCS for House Bill 680 would be effective when it becomes law. The Jump-Start Our Business Start-Ups Act expires on July 1, 2017. The New Markets Jobs Act of 2014 applies to qualified equity investments made on or after January 2, 2015.

Karen Cochrane-Brown with the Research Division substantially contributed to this summary.

HOUSE BILL 680
Committee Substitute Favorable 5/9/13
Committee Substitute #2 Favorable 6/19/13

Short Title: Jump-Start Our Business Start-Ups Act. (Public)

Sponsors:

Referred to:

April 11, 2013

A BILL TO BE ENTITLED

AN ACT TO ENACT THE JUMP-START OUR BUSINESS START-UPS ACT.

Whereas, start-up companies play a critical role in creating new jobs and sources of revenue; and

Whereas, crowd funding, or raising money through small contributions from a large number of investors, allows smaller enterprises in North Carolina to have access to the capital they need to initiate new business ventures; and

Whereas, by promoting crowd funding, the General Assembly can give new businesses access to additional financing tools, can assist in democratizing start-up capital, and can facilitate investment by North Carolina residents in North Carolina start-ups; and

Whereas, by facilitating investment with appropriate restrictions to protect the interests of North Carolina investors, the General Assembly can promote the formation and growth of smaller North Carolina enterprises, along with additional job formation, and can permit businesses to raise capital using crowd funding unencumbered by excessive government regulation; Now, therefore,

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 78A-17 is amended by adding a new subdivision to read:

"(20) Any offer or sale of a security by an issuer if the offer or sale is conducted in accordance with G.S. 78A-17.1."

SECTION 2. Article 3 of Chapter 78A of the General Statutes is amended by adding a new section to read:

"**§ 78A-17.1. Invest NC exemption.**

(a) Exemption. – Except as otherwise provided in this Chapter, an offer or sale of a security by an issuer is exempt from G.S. 78A-24 and G.S. 78A-49(d) if the offer or sale is conducted in accordance with each of the following requirements:

(1) The issuer of the security is a business entity formed under the laws of the State and registered with the Secretary of State.

(2) The transaction meets the requirements of the federal exemption for intrastate offerings in section 3(a)(11) of the Securities Act of 1933, 15 U.S.C. § 77c(a)(11), and SEC rule 147, 17 C.F.R. § 230.147.

(3) The sum of all cash and other consideration to be received for all sales of the security in reliance upon this exemption does not exceed the cap provided in this subdivision.

a. One million dollars ($1,000,000), less the aggregate amount received for all sales of securities by the issuer within the 12 months before

the first offer or sale made in reliance upon this exemption, if the issuer has not undergone and made available to each prospective investor and the Administrator the documentation resulting from a financial audit with respect to its most recently completed fiscal year and meeting generally accepted accounting principles.

b. Two million dollars ($2,000,000), less the aggregate amount received for all sales of securities by the issuer within the 12 months before the first offer or sale made in reliance upon this exemption, if the issuer has undergone and made available to each prospective investor and the Administrator the documentation resulting from a financial audit with respect to its most recently completed fiscal year and meeting generally accepted accounting principles.

(4) The issuer has not accepted more than two thousand dollars ($2,000) from any single purchaser unless the purchaser is an accredited investor as defined by rule 501 of SEC regulation D, 17 C.F.R. § 230.501.

(5) Not less than 10 days prior to the commencement of an offering of securities in reliance on this exemption or the use of any publicly available Web site in connection with any such offering, the issuer shall file a notice with the Administrator, in writing or in electronic form as specified by the Administrator, containing the following:

a. A notice of claim of exemption from registration, specifying that the issuer will be conducting an offering in reliance upon this exemption, accompanied by the filing fee as specified in this section.

b. A copy of the disclosure statement to be provided to prospective investors in connection with the offering, containing the following:

1. A description of the company, its type of entity, the address and telephone number of its principal office, its history, its business plan, and the intended use of the offering proceeds, including any amounts to be paid, as compensation or otherwise, to any owner, executive officer, director, managing member, or other person occupying a similar status or performing similar functions on behalf of the issuer.

2. The identity of all persons owning more than ten percent (10%) of the ownership interests of any class of securities of the company.

3. The identity of the executive officers, directors, managing members, and other persons occupying a similar status or performing similar functions in the name of and on behalf of the issuer, including their titles and their prior experience.

4. The terms and conditions of the securities being offered and of any outstanding securities of the company, the minimum and maximum amount of securities being offered, if any, and either the percentage ownership of the company represented by the offered securities or the valuation of the company implied by the price of the offered securities.

5. The identity of any person who has been or will be retained by the issuer to assist the issuer in conducting the offering and sale of the securities, including any Web sites, but excluding persons acting solely as accountants or attorneys and employees whose primary job responsibilities involve the operating business of the issuer rather than assisting the issuer

in raising capital, and for each person identified in response to this paragraph, a description of the consideration being paid to such person for such assistance.

6. A description of any litigation or legal proceedings involving the company or its management.

7. The names and addresses, including URL, of any Web sites that will be used in connection with the offering.

c. An escrow agreement with a bank or other depository institution located within this State in which the investor funds will be deposited, providing that all offering proceeds will be released to the issuer only when the aggregate capital raised from all investors is equal to or greater than the minimum target offering amount specified in the business plan as necessary to implement the business plan and that all investors may cancel their commitments to invest if that target offering amount is not raised by the time stated in the disclosure document.

(6) The issuer is not, either before or as a result of the offering, an investment company, as defined in section 3 of the Investment Company Act of 1940, 15 U.S.C. § 8a-3, or an entity that would be an investment company but for the exclusions provided in section 3(c) of the act, or subject to the reporting requirements of section 13 or 15(d) of the Securities Exchange Act of 1934, 15 U.S.C. § 78m and 78o(d).

(7) The issuer shall inform all prospective purchasers under this section that the securities have not been registered under federal or State securities law and that the securities are subject to limitations on resale. The issuer shall display the following legend conspicuously on the cover page of the disclosure document:

"IN MAKING AN INVESTMENT DECISION, INVESTORS MUST RELY ON THEIR OWN EXAMINATION OF THE ISSUER AND THE TERMS OF THE OFFERING, INCLUDING THE MERITS AND RISKS INVOLVED. THESE SECURITIES HAVE NOT BEEN RECOMMENDED BY ANY FEDERAL OR STATE SECURITIES COMMISSION OR REGULATORY AUTHORITY. FURTHERMORE, THE FOREGOING AUTHORITIES HAVE NOT CONFIRMED THE ACCURACY OR DETERMINED THE ADEQUACY OF THIS DOCUMENT. ANY REPRESENTATION TO THE CONTRARY IS A CRIMINAL OFFENSE. THESE SECURITIES ARE SUBJECT TO RESTRICTIONS ON TRANSFERABILITY AND RESALE AND MAY NOT BE TRANSFERRED OR RESOLD EXCEPT AS PERMITTED BY SUBSECTION (E) OF SEC RULE 147, 17 C.F.R. § 230.147(E) AS PROMULGATED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, AND THE APPLICABLE STATE SECURITIES LAWS, PURSUANT TO REGISTRATION OR EXEMPTION THEREFROM. INVESTORS SHOULD BE AWARE THAT THEY WILL BE REQUIRED TO BEAR THE FINANCIAL RISKS OF THIS INVESTMENT FOR AN INDEFINITE PERIOD OF TIME."

(8) The issuer shall require each purchaser to certify in writing "I understand and acknowledge that:

a. I am investing in a high-risk, speculative business venture. I may lose all of my investment, and I can afford the loss of my investment.

b. This offering has not been reviewed or approved by any state or federal securities commission or other regulatory authority and that no such person or authority has confirmed the accuracy or determined the adequacy of any disclosure made to me relating to this offering.

c. The securities I am acquiring in this offering are illiquid, that there is no ready market for the sale of such securities, that it may be difficult or impossible for me to sell or otherwise dispose of this investment, and that, accordingly, I may be required to hold this investment indefinitely.

d. I may be subject to tax on my share of the taxable income and losses of the company, whether or not I have sold or otherwise disposed of my investment or received any dividends or other distributions from the company.

(9) If the offer and sale of securities is made through an Internet Web site, the following requirements apply:

a. Prior to the offer of an investment opportunity to residents of this State through a Web site, the issuer shall provide to the Web site and to the Administrator evidence that the issuer is organized under North Carolina law and that it is authorized to do business within the State.

b. The issuer shall obtain from each purchaser of a security under this section evidence that the purchaser is a resident of North Carolina and, if applicable, an accredited investor.

c. The Web site operator shall register with the Administrator by filing a statement that it is a business entity that is organized under North Carolina law and that it is authorized to do business within the State and that it is being utilized to offer and sell securities pursuant to this exemption. As part of the registration, the Web site shall notify the Administrator of its and the issuer's identity, location, and contact information.

d. The issuer and the Web site must keep and maintain records of the offers and sales of securities effected through the Web site and must provide ready access to the records to the Administrator, upon request. The Administrator may access, inspect, and review any Web site and its records.

(10) All payments for purchase of securities must be directed to and held by the bank or depository institution subject to the provisions of sub-subdivision (a)(5)c. of this section. The bank or depository institution shall notify the Administrator of the receipt of payments for securities and the identity and residence of the investors. The information shall be confidential and considered trade secrets within the scope of G.S. 132-1.2 while in the possession of the Administrator.

(11) No offers or sales of a security shall be made through an Internet Web site unless the Web site is registered with the Administrator pursuant to sub-subdivision (a)(9)c. of this section. The Web site shall not be subject to the registration provisions of G.S. 78A-36 provided that all of the following apply:

a. It does not offer investment advice or recommendations.

b. It does not solicit purchases, sales, or offers to buy the securities offered or displayed on the Web site.

c. It does not compensate employees, agents, or other persons for the solicitation or based on the sale of securities displayed or referenced on the Web site.

d. It is not compensated based on the amount of securities sold, and it does not hold, manage, possess, or otherwise handle investor funds or securities.

e. It does not engage in such other activities as the Administrator, by rule, determines appropriate.

(12) An executive officer, director, managing member, or person occupying a similar status or performing similar functions in the name of and on behalf of the issuer shall be exempt from the registration provisions of G.S. 78A-36, provided that the person does not receive, directly or indirectly, any commission or remuneration for offering and selling securities of the issuer pursuant to this exemption.

(13) The issuer must provide a copy of the disclosure document provided to the Administrator pursuant to sub-subdivision (a)(5)b. of this section to each prospective investor at the time the offer of securities is made to the prospective investor. In addition to the information described in sub-subdivision (a)(5)b. of this section, the disclosure document provided to the Administrator and to prospective investors should include additional information material to the offering, including, where appropriate, a discussion of significant factors that make the offering speculative or risky. This discussion must be concise and organized logically and should not present risks that could apply to any issuer or any offering.

(b) Indexing. – The dollar limitations provided in subdivision (a)(3) of this section shall be cumulatively adjusted every fifth year by the Administrator to reflect the change in the Consumer Price Index for All Urban Consumers published by the Bureau of Labor Statistics, setting each dollar limitation to the nearest fifty thousand dollars ($50,000).

(c) Report. – An issuer of a security, the offer and sale of which is exempt under this section, shall provide a quarterly report to the issuer's investors until no securities issued under this section are outstanding. The report required by this subsection shall be free of charge. An issuer may satisfy the reporting requirement of this subsection by making the information available on an Internet Web site address if the information is made available within 45 days of the end of each fiscal quarter and remains available until the succeeding quarterly report is issued. An issuer shall file each such quarterly report with the Administrator and must provide a written copy of the report to any investor upon request. The report must contain each of the following:

(1) Compensation received by each director and executive officer, including cash compensation earned since the previous report and on an annual basis and any bonuses, stock options, other rights to receive securities of the issuer or any affiliate of the issuer, or other compensation received.

(2) An analysis by management of the issuer of the business operations and financial condition of the issuer.

(d) Offers and Sales to Controlling Persons. – The exemption provided in this section shall not be used in conjunction with any other exemption under this Chapter, except offers and sales to controlling persons shall not count toward the limitation in subdivision (3) of subsection (a) of this section. A controlling person is an officer, director, partner, trustee, or individual occupying similar status or performing similar functions with respect to the issuer or

to a person owning ten percent (10%) or more of the outstanding shares of any class or classes of securities of the issuer.

(e) Disqualification. – The exemption allowed by this section shall not apply if an issuer or person affiliated with the issuer or offering is subject to any disqualification contained in 18 NCAC 06A .1207(a)(1) through (a)(6) or contained in Rule 262 as promulgated under the Securities Act of 1933 (17 C.F.R. § 230.262). The provisions of this subsection shall not apply if (i) upon a showing of good cause and without prejudice to any other action by the Administrator, the Administrator determines that it is not necessary under the circumstances that an exemption be denied and (ii) the issuer establishes that it made factual inquiry into whether any disqualification existed under this subsection but did not know, and in the exercise of reasonable care could not have known, that a disqualification existed under this subsection. The nature and scope of the requisite inquiry will vary based on the circumstances of the issuer and the other offering participants.

(f) Rules. – The Administrator may adopt rules to implement the provisions of this section and to protect investors who purchase securities under this section.

(g) Fee. – The Administrator shall charge a nonrefundable filing fee of one hundred fifty dollars ($150.00) for filing an exemption notice required by subsection (a) of this section. The fees paid to the Administrator pursuant to this subsection shall be used to pay the costs incurred in administering and enforcing this Chapter. The revenue derived from the fee shall be credited to a nonreverting agency revenue account."

SECTION 3. G.S. 78A-49(d) reads as rewritten:

"(d) The Administrator may by rule or order require the filing of any prospectus, pamphlet, circular, form letter, advertisement, or other sales literature or advertising communication addressed or intended for distribution to prospective investors, unless the security or transaction is exempted by ~~G.S. 78A-16 or 78A-17 (except 78A-17(9), (17), and (19))~~G.S. 78A-16 and G.S. 78A-17 (except G.S. 78A-17(9), (17), (19), and (20)) and such exemption has not been denied or revoked under G.S. 78A-18 or the security is a security covered under federal law or the transaction is with respect to a security covered under federal law."

SECTION 4.(a) Notwithstanding any provision of Article 2A of Chapter 150B of the General Statutes, within 12 months of the effective date of this act, the Secretary of State shall adopt rules to implement the provisions of this act in accordance with the following procedure:

(1) At least 15 business days prior to adopting a rule, submit the rule and a notice of public hearing to the Codifier of Rules. The Codifier of Rules shall publish the proposed rule and the notice of public hearing on the Internet within five business days.

(2) At least 15 business days prior to adopting a rule, notify persons on the mailing list maintained pursuant to G.S. 150B-21.2(d) and any other interested parties of the Secretary's intent to adopt a rule and of the public hearing.

(3) Accept written comments on the proposed rule for at least 15 business days prior to adoption of the rule.

(4) Hold at least one public hearing on the proposed rule no less than five days after the rule and notice have been published.

A rule adopted in accordance with this section becomes effective on the first day of the month following the month the Secretary adopts the rule and submits the rule to the Codifier of Rules for entry into the North Carolina Administrative Code. Any rule adopted more than 12 months after the effective date of this act shall comply with the requirement of Article 2A of Chapter 150B of the General Statutes.

SECTION 4.(b) This section is effective when it becomes law and expires 12 months after the effective date of this act.

SECTION 5. Except as otherwise provided, this act is effective when it becomes law and expires on July 1, 2017.

VISITOR REGISTRATION SHEET

Senate **COMMERCE** Committee — July 16, 2014

Name of Committee — **Date**

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[signature]	SOS
Shaunda Martin	NCLM
Whitney Christensen	NCLM
Brent Lane	UNC Center for Competitive Economies

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Meghan Cook	ITS
Ryan J. Ohm	DOR
J Wjoyner	NEWFRAME
Laurie Osmond	LALC
Charles King	School of Govt.
Jake Carlton	ncjobsact@gmail.com
William Brubaker	Brubaker and Associates

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Nathan Batts	NCBA
[illegible]	NMRS
Chip Killian	Nelson Mullins
Chris McClure	[illegible]
Elizabeth Bass	[illegible]
Weldon Jones	Jordan Price
Carr McLamb	NCDENR
Sammy Roberson	TWC
Trey Hyden	[illegible]
Erin Jones	TWC

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Tommy Sein	INVA
Cameron Hanby	MVA
Stephen Roach	CCS
Lexi Morgan	C. Wilson Consulting

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Senate **COMMERCE** Committee — July 16, 2014

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Kara Weishaar	SA
Doug Miskelly	PSG
Frank Hill	PSG
Brendan Burns	NCGA
Julie White	NC Mine
Marie Tyndall	K+C Gerber
Amanda Honaker	TSS
Ed Thuleen	B/I
Rochelle Sparko	CFSA
[illegible]	NCFarm

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Michael Hauser	THCG
Paul Hodgkinson	Infocom Inc.
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Steven Woods	NCHBA
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SENATE PAGES ATTENDING

COMMITTEE: Commerce ROOM: 1027

DATE: 7-16 TIME: Noon

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SENATE SERGEANT-AT-ARMS

COMMITTEE: **Senate Committee on Commerce**

DATE: 07-16-2014 ROOM: 1027

1. CHARLES MARSALIS
2. GILES JEFFREYS
3. MATT URBEN
4. BILLY FRITSCHER
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