

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

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SENATE BILL 112*
Agriculture/Environment/Natural Resources Committee Substitute Adopted 5/14/13
Third Edition Engrossed 5/15/13
House Committee Substitute Favorable 7/10/13
House Committee Substitute #2 Favorable 7/10/13

Short Title: Create Jobs Through Regulatory Reform.

(Public)

Sponsors:

Referred to:

February 21, 2013

1 A BILL TO BE ENTITLED
2 AN ACT TO IMPROVE AND STREAMLINE THE REGULATORY PROCESS IN ORDER
3 TO STIMULATE JOB CREATION, TO ELIMINATE UNNECESSARY REGULATION,
4 AND TO MAKE VARIOUS OTHER STATUTORY CHANGES.

5 The General Assembly of North Carolina enacts:

6
7 **PART I. IMPROVE RULE-MAKING PROCESS**

8 **SECTION 1.** G.S. 150B-2 is amended by adding a new subdivision to read:

9 "(7a) "Policy" means any nonbinding interpretive statement within the delegated
10 authority of an agency that merely defines, interprets, or explains the
11 meaning of a statute or rule. The term includes any document issued by an
12 agency which is intended and used purely to assist a person to comply with
13 the law, such as a guidance document."

14 **SECTION 3.** G.S. 150B-21.4 reads as rewritten:

15 **"§ 150B-21.4. Fiscal notes on rules.**

16 (a) State Funds. – Before an agency publishes in the North Carolina Register the
17 ~~proposed text of~~ adopts a permanent rule change that would require the expenditure or
18 distribution of funds subject to the State Budget Act, Chapter 143C of the General Statutes it
19 must ~~submit the text of the proposed rule change, an analysis of the proposed rule change, and~~
20 ~~a fiscal note on the proposed rule change to the Office of State Budget and Management and~~
21 obtain certification from the Office of State Budget and Management that the funds that would
22 be required by the proposed rule change are available. The agency shall submit the text of the
23 proposed rule change, an analysis of the proposed rule change, and a fiscal note on the
24 proposed rule change to the Office at the same time as the agency submits the notice of text for
25 publication pursuant to G.S. 150B-21.2. The fiscal note must state the amount of funds that
26 would be expended or distributed as a result of the proposed rule change and explain how the
27 amount was computed. The Office of State Budget and Management must certify a proposed
28 rule change if funds are available to cover the expenditure or distribution required by the
29 proposed rule change.

30 (a1) DOT Analyses. – In addition to the requirements of subsection (a) of this section,
31 any agency that adopts a rule affecting environmental permitting of Department of
32 Transportation projects shall conduct an analysis to determine if the rule will result in an
33 increased cost to the Department of Transportation. The analysis shall be conducted and



1 submitted to the Board of Transportation ~~before~~when the agency ~~publishes the proposed text of~~
2 ~~the rule change in the North Carolina Register.~~submits the notice of text for publication. The
3 agency shall consider any recommendations offered by the Board of Transportation prior to
4 adopting the rule. Once a rule subject to this subsection is adopted, the Board of Transportation
5 may submit any objection to the rule it may have to the Rules Review Commission. If the Rules
6 Review Commission receives an objection to a rule from the Board of Transportation no later
7 than 5:00 P.M. of the day following the day the Commission approves the rule, then the rule
8 shall only become effective as provided in G.S. 150B-21.3(b1).

9 (b) Local Funds. – Before an agency ~~publishes in the North Carolina Register the~~
10 ~~proposed text of~~adopts a permanent rule change that would affect the expenditures or revenues
11 of a unit of local government, it must submit the text of the proposed rule change and a fiscal
12 note on the proposed rule change to the Office of State Budget and Management as provided by
13 G.S. 150B-21.26, the Fiscal Research Division of the General Assembly, the North Carolina
14 Association of County Commissioners, and the North Carolina League of Municipalities. The
15 fiscal note must state the amount by which the proposed rule change would increase or
16 decrease expenditures or revenues of a unit of local government and must explain how the
17 amount was computed.

18 (b1) Substantial Economic Impact. – Before an agency ~~publishes in the North Carolina~~
19 ~~Register the proposed text of~~adopts a permanent rule change that would have a substantial
20 economic impact and that is not identical to a federal regulation that the agency is required to
21 adopt, the agency shall prepare a fiscal note for the proposed rule change and have the note
22 approved by the Office of State Budget and Management. The agency may request the Office
23 of State Budget and Management to prepare the fiscal note only after, working with the Office,
24 it has exhausted all resources, internal and external, to otherwise prepare the required fiscal
25 note. If an agency requests the Office of State Budget and Management to prepare a fiscal note
26 for a proposed rule change, that Office must prepare the note within 90 days after receiving a
27 written request for the note. If the Office of State Budget and Management fails to prepare a
28 fiscal note within this time period, the agency proposing the rule change shall prepare a fiscal
29 note. A fiscal note prepared in this circumstance does not require approval of the Office of
30 State Budget and Management.

31 If an agency prepares the required fiscal note, the agency must submit the note to the Office
32 of State Budget and Management for review. The Office of State Budget and Management
33 shall review the fiscal note within 14 days after it is submitted and either approve the note or
34 inform the agency in writing of the reasons why it does not approve the fiscal note. After
35 addressing these reasons, the agency may submit the revised fiscal note to that Office for its
36 review. If an agency is not sure whether a proposed rule change would have a substantial
37 economic impact, the agency shall ask the Office of State Budget and Management to
38 determine whether the proposed rule change has a substantial economic impact. Failure to
39 prepare or obtain approval of the fiscal note as required by this subsection shall be a basis for
40 objection to the rule under G.S. 150B-21.9(a)(4).

41 As used in this subsection, the term "substantial economic impact" means an aggregate
42 financial impact on all persons affected of at least ~~five hundred thousand dollars (\$500,000)~~
43 three million dollars (\$3,000,000) in a 12-month period. In analyzing substantial economic
44 impact, an agency shall do the following:

- 45 (1) Determine and identify the appropriate time frame of the analysis.
- 46 (2) Assess the baseline conditions against which the proposed rule is to be
47 measured.
- 48 (3) Describe the persons who would be subject to the proposed rule and the type
49 of expenditures these persons would be required to make.
- 50 (4) Estimate any additional costs that would be created by implementation of the
51 proposed rule by measuring the incremental difference between the baseline

1 and the future condition expected after implementation of the rule. The
 2 analysis should include direct costs as well as opportunity costs. Cost
 3 estimates must be monetized to the greatest extent possible. Where costs are
 4 not monetized, they must be listed and described.

5 (5) For costs that occur in the future, the agency shall determine the net present
 6 value of the costs by using a discount factor of seven percent (7%).

7 (b2) Content. – A fiscal note required by subsection (b1) of this section must contain the
 8 following:

9 (1) A description of the persons who would be affected by the proposed rule
 10 change.

11 (2) A description of the types of expenditures that persons affected by the
 12 proposed rule change would have to make to comply with the rule and an
 13 estimate of these expenditures.

14 (3) A description of the purpose and benefits of the proposed rule change.

15 (4) An explanation of how the estimate of expenditures was computed.

16 (5) A description of at least two alternatives to the proposed rule that were
 17 considered by the agency and the reason the alternatives were rejected. The
 18 alternatives may have been identified by the agency or by members of the
 19 public.

20 (c) Errors. – An erroneous fiscal note prepared in good faith does not affect the validity
 21 of a rule."

22 **SECTION 4.(a)** G.S. 150B-21.2(c) reads as rewritten:

23 "(c) Notice of Text. – A notice of the proposed text of a rule must include all of the
 24 following:

25 (1) The text of the proposed rule, unless the rule is a readoption without
 26 substantive changes to the existing rule proposed in accordance with
 27 G.S. 150B-21.3A.

28 (2) A short explanation of the reason for the proposed rule and a link to the
 29 agency's Web site containing the information required by G.S. 150B-19.1(c).

30 (3) A citation to the law that gives the agency the authority to adopt the rule.

31 (4) The proposed effective date of the rule.

32 (5) The date, time, and place of any public hearing scheduled on the rule.

33 (6) Instructions on how a person may demand a public hearing on a proposed
 34 rule if the notice does not schedule a public hearing on the proposed rule and
 35 subsection (e) of this section requires the agency to hold a public hearing on
 36 the proposed rule when requested to do so.

37 (7) The period of time during which and the person to whom written comments
 38 may be submitted on the proposed rule.

39 (8) If a fiscal note has been prepared for the rule, a statement that a copy of the
 40 fiscal note can be obtained from the agency.

41 (9) The procedure by which a person can object to a proposed rule and the
 42 requirements for subjecting a proposed rule to the legislative review
 43 process."

44 **SECTION 4.(b)** Part 2 of Article 2A of Chapter 150B of the General Statutes is
 45 amended by adding a new section to read:

46 **"§ 150B-21.3A. Periodic review and expiration of existing rules.**

47 (a) Definitions. – For purposes of this section, the following definitions apply:

48 (1) Commission. – Means the Rules Review Commission.

49 (2) Committee. – Means the Joint Legislative Administrative Procedure
 50 Oversight Committee.

- 1 (3) Necessary with substantive public interest. – Means any rule for which the
2 agency has received public comments within the past two years. A rule is
3 also "necessary with substantive public interest" if the rule affects the
4 property interest of the regulated public and the agency knows or suspects
5 that any person may object to the rule.
- 6 (4) Necessary without substantive public interest. – Means a rule for which the
7 agency has not received a public comment concerning the rule within the
8 past two years. A "necessary without substantive public interest" rule
9 includes a rule that merely identifies information that is readily available to
10 the public, such as an address or a telephone number.
- 11 (5) Public comment. – Means written comments objecting to the rule, in whole
12 or in part, received by an agency from any member of the public, including
13 an association or other organization representing the regulated community or
14 other members of the public.
- 15 (6) Unnecessary rule. – Means a rule that the agency determines to be obsolete,
16 redundant, or otherwise not needed.
- 17 (b) Automatic Expiration. – Any rule for which the agency that adopted the rule has not
18 conducted a review in accordance with this section shall expire on the date set in the schedule
19 established by the Commission pursuant to subsection (d) of this section.
- 20 (c) Review Process. – Each agency subject to this Article shall conduct a review of the
21 agency's existing rules at least once every 10 years in accordance with the following process:
- 22 (1) Step 1: The agency shall conduct an analysis of each existing rule and make
23 an initial determination as to whether the rule is (i) necessary with
24 substantive public interest, (ii) necessary without substantive public interest,
25 or (iii) unnecessary. The agency shall then post the results of the initial
26 determination on its Web site and invite the public to comment on the rules
27 and the agency's initial determination. The agency shall also submit the
28 results of the initial determination to the Office of Administrative Hearings
29 for posting on its Web site. The agency shall accept public comment for no
30 less than 60 days following the posting. The agency shall review the public
31 comments and prepare a brief response addressing the merits of each
32 comment. After completing this process, the agency shall submit a report to
33 the Commission. The report shall include the following items:
- 34 a. The agency's initial determination.
- 35 b. All public comments received in response to the agency's initial
36 determination.
- 37 c. The agency's response to the public comments.
- 38 (2) Step 2: The Commission shall review the reports received from the agencies
39 pursuant to subdivision (1) of this subsection. If a public comment relates to
40 a rule that the agency determined to be necessary and without substantive
41 public interest or unnecessary, the Commission shall determine whether the
42 public comment has merit and, if so, designate the rule as necessary with
43 substantive public interest. For purposes of this subsection, a public
44 comment has merit if it addresses the specific substance of the rule and
45 relates to any of the standards for review by the Commission set forth in
46 G.S. 150B-21.9(a). The Commission shall prepare a final determination
47 report and submit the report to the Committee for consultation in accordance
48 with subdivision (3) of this subsection. The report shall include the
49 following items:
- 50 a. The agency's initial determination.

- 1 b. All public comments received in response to the agency's initial
2 determination.
- 3 c. The agency's response to the public comments.
- 4 d. A summary of the Commission's determinations regarding public
5 comments.
- 6 e. A determination that all rules that the agency determined to be
7 necessary and without substantive public interest and for which no
8 public comment was received or for which the Commission
9 determined that the public comment was without merit be allowed to
10 remain in effect without further action.
- 11 f. A determination that all rules that the agency determined to be
12 unnecessary and for which no public comment was received or for
13 which the Commission determined that the public comment was
14 without merit shall expire on the first day of the month following the
15 date the report becomes effective in accordance with this section.
- 16 g. A determination that all rules that the agency determined to be
17 necessary with substantive public interest or that the Commission
18 designated as necessary with public interest as provided in this
19 subdivision shall be readopted as though the rules were new rules in
20 accordance with this Article.

21 (3) Step 3: The final determination report shall not become effective until the
22 agency has consulted with the Committee. The determinations contained in
23 the report pursuant to sub-subdivisions e., f., and g. of subdivision (2) of this
24 subsection shall become effective on the date the report is reviewed by the
25 Committee. If the Committee does not hold a meeting to hear the
26 consultation required by this subdivision within 60 days of receipt of the
27 final determination report, the consultation requirement is deemed satisfied,
28 and the determinations contained in the report become effective on the 61st
29 day following the date the Committee received the report. If the Committee
30 disagrees with a determination regarding a specific rule contained in the
31 report, the Committee may recommend that the General Assembly direct the
32 agency conduct a review of the specific rule in accordance with this section
33 in the next year following the consultation.

34 (d) Timetable. – Upon the effective date of this act, the Commission shall establish a
35 schedule for the review of existing rules in accordance with this section on a decennial basis by
36 assigning each Title of the Administrative Code a date by which the review required by this
37 section must be completed. In establishing the schedule, the Commission shall consider the
38 scope and complexity of rules subject to this section and the resources required to conduct the
39 review required by this section. If the agency fails to conduct the review by the date set by the
40 Commission, the rules contained in that Title will expire. The Commission may exempt rules
41 that have been adopted or amended within the previous 10 years from the review required by
42 this section. However, any rule exempted on this basis must be reviewed in accordance with
43 this section no more than 10 years following the last time the rule was amended.

44 (e) Other Reviews. – Notwithstanding any provision of this section, an agency may
45 subject a rule that it determines to be unnecessary to review under this section at any time by
46 notifying the Commission that it wishes to be placed on the schedule for the current year. The
47 Commission may also subject a rule to review under this section at any time by notifying the
48 agency that the rule has been placed on the schedule for the current year."

49 **SECTION 4.(c)** G.S. 150B-19.2 is repealed.

50 **SECTION 4.(d)** If G.S. 150B-21.3A, as enacted by subsection (b) of this section,
51 becomes law, the Rules Review Commission shall subject rules adopted by the Environmental

1 Management Commission related to surface water quality and wetlands to review in the first
2 year that the Rules Review Commission establishes for the review of existing rules in
3 accordance with G.S. 150B-21.3A.

4 **SECTION 5.** The Joint Legislative Administrative Procedure Oversight Committee
5 shall undertake a study of the exemptions from rule making contained in G.S. 150B-1(d) and
6 elsewhere in the General Statutes. For each exemption, the Committee shall evaluate the
7 continued need for the exemption and the potential consequences of repeal of the exemption.
8 The Committee shall report to the 2014 Session of the 2013 General Assembly on its findings
9 and recommendations, including any legislative recommendations for the repeal of exemptions.

10 **PART II. STATE AND LOCAL GOVERNMENT REGULATIONS**

11 **PROHIBIT DELAYED ENFORCEMENT OF LOCAL ORDINANCES AND PROHIBIT** 12 **CERTAIN CONTRACT REQUIREMENTS BY LOCAL GOVERNMENTS**

13 **SECTION 6.(a)** G.S. 153A-348 is amended by adding a new subsection to read:

14 "(d) When a use constituting a violation of a zoning or unified development ordinance is
15 in existence prior to adoption of the zoning or unified development ordinance creating the
16 violation, and that use is grandfathered and subsequently terminated for any reason, a county
17 shall bring an enforcement action within 10 years of the date of the termination of the
18 grandfathered status, unless the violation poses an imminent hazard to health or public safety."

19 **SECTION 6.(b)** G.S. 160A-364.1 is amended by adding a new subsection to read:

20 "(d) When a use constituting a violation of a zoning or unified development ordinance is
21 in existence prior to adoption of the zoning or unified development ordinance creating the
22 violation, and that use is grandfathered and subsequently terminated for any reason, a city shall
23 bring an enforcement action within 10 years of the date of the termination of the grandfathered
24 status, unless the violation poses an imminent hazard to health or public safety."

25 **SECTION 6.(c)** G.S. 153A-449 reads as rewritten:

26 **"§ 153A-449. Contracts with private entities.**

27 A county may contract with and appropriate money to any person, association, or
28 corporation, in order to carry out any public purpose that the county is authorized by law to
29 engage in. A county may not require a private contractor under this section to abide by any
30 restriction that the county could not impose on all employers in the county, such as paying
31 minimum wage or providing paid sick leave to its employees, as a condition of bidding on a
32 contract."

33 **SECTION 6.(d)** G.S. 160A-20.1 reads as rewritten:

34 **"§ 160A-20.1. Contracts with private entities.**

35 A city may contract with and appropriate money to any person, association, or corporation,
36 in order to carry out any public purpose that the city is authorized by law to engage in. A city
37 may not require a private contractor under this section to abide by any restriction that the city
38 could not impose on all employers in the city, such as paying minimum wage or providing paid
39 sick leave to its employees, as a condition of bidding on a contract."

40 **SECTION 6.(e)** This section is effective when it becomes law and applies to
41 zoning and unified development ordinances adopted before, on, or after the effective date of
42 this act and to contracts entered on or after that date.

43 **EQUAL TREATMENT FOR FRATERNITIES AND SORORITIES BY LOCAL** 44 **GOVERNMENT**

45 **SECTION 7.(a)** G.S. 153A-340 is amended by adding a new subsection to read:

46 "(k) A zoning or unified development ordinance may not differentiate in terms of the
47 regulations applicable to fraternities or sororities between those fraternities or sororities that are
48 approved or recognized by a college or university and those that are not."

1 **SECTION 7.(b)** G.S. 160A-381 is amended by adding a new subsection to read:
2 "(g) A zoning or unified development ordinance may not differentiate in terms of the
3 regulations applicable to fraternities or sororities between those fraternities or sororities that are
4 approved or recognized by a college or university and those that are not."

5 **SECTION 7.(c)** Part 3 of Article 1 of Chapter 116 of the General Statutes is
6 amended by adding a new section to read:

7 **"§ 116-40.11. Disciplinary proceedings; right to counsel for students and organizations.**

8 (a) Any student enrolled at a constituent institution who is accused of a violation of the
9 disciplinary or conduct rules of the constituent institution shall have the right to be represented
10 by a licensed attorney or nonattorney advocate who may fully participate during any
11 disciplinary procedure or other procedure adopted and used by the constituent institution
12 regarding the alleged violation. However, a student shall not have the right to be represented by
13 a licensed attorney or nonattorney advocate in either of the following circumstances:

14 (1) If the constituent institution has implemented a "Student Honor Court"
15 which is fully staffed by students to address such violations.

16 (2) For any allegation of "academic dishonesty" as defined by the constituent
17 institution.

18 (b) Any student organization officially recognized by a constituent institution that is
19 accused of a violation of the disciplinary or conduct rules of the constituent institution shall
20 have the right to be represented by a licensed attorney or nonattorney advocate who may fully
21 participate during any disciplinary procedure or other procedure adopted and used by the
22 constituent institution regarding the alleged violation. However, a student organization shall not
23 have the right to be represented by a licensed attorney or nonattorney advocate if the
24 constituent institution has implemented a "Student Honor Court" which is fully staffed by
25 students to address such violations."

26 **SECTION 7.(d)** Subsection (c) of this section is effective when it becomes law and
27 applies to all allegations of violations beginning on or after August 1, 2013.

29 AMEND PRIVATE CLUB DEFINITION

30 **SECTION 8.** G.S. 130A-247 reads as rewritten:

31 **"§ 130A-247. Definitions.**

32 The following definitions shall apply throughout this Part:

33 ...

34 (2) "Private club" means an organization that (i) maintains selective members, is
35 operated by the membership, does not provide food or lodging for pay to
36 anyone who is not a member or a member's guest, and is either incorporated
37 as a nonprofit corporation in accordance with Chapter 55A of the General
38 Statutes or is exempt from federal income tax under the Internal Revenue
39 Code as defined in ~~G.S. 105-130.2(1)~~ G.S. 105-130.2(1) or (ii) meets the
40 definition of a private club set forth in G.S. 18B-1000(5).

41 "

43 OUTDOOR ADVERTISING AMENDMENTS

44 **SECTION 9.(a)** G.S. 136-133.1 reads as rewritten:

45 **"§ 136-133.1. Outdoor advertising vegetation cutting or removal.**

46 ...

47 (a1) Notwithstanding any law to the contrary, in order to promote the outdoor
48 advertiser's right to be clearly viewed as set forth in G.S. 136-127, the Department of
49 Transportation, at the request of a selective vegetation removal permittee, may approve plans
50 for the cutting, thinning, pruning, or removal of vegetation outside of the cut or removal zone
51 defined in subsection (a) of this section along acceleration or deceleration ramps so long as the

1 view to the outdoor advertising sign will be improved and the total aggregate area of cutting or
2 removal does not exceed the maximum allowed in subsection (a) of this section.

3 ...
4 (f) Tree branches within a highway right-of-way that encroach into the zone created by
5 points A, ~~C~~, and ~~DB~~, D, and E may be cut or pruned. Except as provided in subsection (g) of
6 this section, no person, firm, or entity shall cut, trim, prune, or remove or otherwise cause to be
7 cut, trimmed, pruned, or removed vegetation that is in front of, or adjacent to, outdoor
8 advertising and within the limits of the highway right-of-way for the purpose of enhancing the
9 visibility of outdoor advertising unless permitted to do so by the Department in accordance
10 with this section, G.S. 136-93(b), 136-133.2, and 136-133.4.

11"
12 **SECTION 9.(b)** Article 11 of Chapter 136 of the General Statutes is amended by
13 adding a new section to read:

14 **"§ 136-131.2. Modernization of outdoor advertising devices.**

15 No municipality, county, local or regional zoning authority, or other political subdivision
16 shall, without the payment of just compensation as provided for in G.S. 136-131.1, regulate or
17 prohibit the repair or reconstruction of any outdoor advertising for which there is in effect a
18 valid permit issued by the Department of Transportation so long as the square footage of its
19 advertising surface area is not increased. As used in this section, reconstruction includes the
20 changing of an existing multipole outdoor advertising structure to a new monopole structure."

21
22 **DISPOSITION OF DMH/DD/SAS RECORDS**

23 **SECTION 10.** The Division of Mental Health, Developmental Disabilities, and
24 Substance Abuse Services shall amend its Records Retention and Disposition Schedule Manual
25 to provide that if a Medicaid service has been eliminated by the State, the provider must retain
26 records for three years after the last date of the service, unless a longer period is required by
27 federal law. At the termination of that time period, records may be destroyed or transferred to a
28 State agency or contractor identified by the Department of Health and Human Services.

29
30 **STUDY OCCUPATIONAL LICENSING BOARD AGENCY**

31 **SECTION 11.(a)** The Joint Legislative Program Evaluation Oversight Committee
32 shall include in the 2013-2014 Work Plan for the Program Evaluation Division of the General
33 Assembly a study to evaluate the structure, organization, and operation of the various
34 independent occupational licensing boards. For purposes of this act, the term "occupational
35 licensing board" has the same meaning as defined in G.S. 93B-1. The Program Evaluation
36 Division shall include the following within this study:

- 37 (1) Consideration of the feasibility of establishing a single State agency to
38 oversee the administration of all or some of the occupational licensing
39 boards.
40 (2) Whether greater efficiency and cost-effectiveness can be realized by
41 combining the administrative functions of the boards while allowing the
42 boards to continue performing the regulatory functions.
43 (3) Whether the total number of boards should be reduced by combining and/or
44 eliminating some boards.

45 **SECTION 11.(b)** The Program Evaluation Division shall submit its findings and
46 recommendations from Section 23(a) of this act to the Joint Legislative Program Evaluation
47 Oversight Committee and the Joint Legislative Administrative Procedure Oversight Committee
48 at a date to be determined by the Joint Legislative Program Evaluation Oversight Committee.

49 **SECTION 11.(c)** This section is effective when it becomes law.

50
51 **INDUSTRIAL COMMISSION**

1 **SECTION 12.(a)** G.S. 97-78(b) reads as rewritten:

2 "(b) The Commission may appoint an administrator whose duties shall be prescribed by
3 the ~~Commission, and who shall be subject to the State Personnel System-Commission.~~ The
4 Commission may appoint an executive secretary whose duties shall be prescribed by the
5 Commission, ~~and who shall be subject to the State Personnel System~~ and who, upon entering
6 upon his duties, shall give bond in such sum as may be fixed by the Commission. The
7 Commission may also employ such clerical or other assistance as it may deem necessary, and
8 fix the compensation of its staff, except that the salaries of the administrator and the executive
9 secretary shall be fixed by subsection (b1) of this section. The compensation of Commission
10 staff shall be in keeping with the compensation paid to the persons employed to do similar
11 work in other State departments."

12 **SECTION 12.(b)** G.S. 97-79(b) reads as rewritten:

13 "(b) The Commission may appoint deputies who shall have the same power as members
14 of the Commission pursuant to G.S. 97-80 and the same power to take evidence, and enter
15 orders, opinions, and awards based thereon as is possessed by the members of the Commission.
16 ~~The deputies shall be subject to the State Personnel System.~~ Deputies appointed pursuant to this
17 subsection shall not be considered hearing officers within the meaning of G.S. 126-5(d)(7)."

18 **PROHIBIT TRANSPORTATION IMPACT MITIGATION ORDINANCES**

19 **SECTION 13.(a)** Article 8 of Chapter 160A of the General Statutes is amended by
20 adding a new section to read as follows:

21 "§ 160A-203. Transportation impact mitigation ordinances prohibited.

22 No city may enact or enforce an ordinance, rule, or regulation that requires an employer to
23 assume financial, legal, or other responsibility for the mitigation of the impact of their
24 employees' commute or transportation to or from the employer's workplace, which may result
25 in the employer being subject to a fine, fee, or other monetary, legal, or negative
26 consequences."

27 **SECTION 13.(b)** Article 6 of Chapter 153A of the General Statutes is amended by
28 adding a new section to read as follows:

29 "§ 153A-145.1. Transportation impact mitigation ordinances prohibited.

30 No county may enact or enforce an ordinance, rule, or regulation that requires an employer
31 to assume financial, legal, or other responsibility for the mitigation of the impact of their
32 employees' commute or transportation to or from the employer's workplace, which may result
33 in the employer being subject to a fine, fee, or other monetary, legal, or negative
34 consequences."

35 **CLARIFY LOCAL GOVERNMENT PREEMPTION**

36 **SECTION 13.1.** G.S. 160A-174(b) reads as rewritten:

37 "(b) A city ordinance shall be consistent with the Constitution and laws of North
38 Carolina and of the United States. An ordinance is not consistent with State or federal law
39 when:

- 40 (1) The ordinance infringes a liberty guaranteed to the people by the State or
41 federal Constitution;
- 42 (2) The ordinance makes unlawful an act, omission or condition which is
43 expressly made lawful by State or federal law;
- 44 (3) The ordinance makes lawful an act, omission, or condition which is
45 expressly made unlawful by State or federal law;
- 46 (4) The ordinance purports to regulate a subject that cities are expressly
47 forbidden to regulate by State or federal law;
- 48 (4) The ordinance purports to regulate a subject that cities are expressly
49 forbidden to regulate by State or federal law;

1 (5) The ordinance purports to regulate a field for which a State or federal statute
2 clearly shows a legislative intent to provide a complete and integrated
3 regulatory scheme to the exclusion of local regulation;
4 (5a) The ordinance (i) regulates a field that is also regulated by a State or federal
5 statute enforced by, or a regulation promulgated by, an environmental
6 agency and (ii) is more stringent than the State or federal statute or
7 regulation; or
8 (6) The elements of an offense defined by a city ordinance are identical to the
9 elements of an offense defined by State or federal law.
10 ~~The~~ Except as provided in subdivision (5a) of this subsection, the fact that a State or federal
11 law, standing alone, makes a given act, omission, or condition unlawful shall not preclude city
12 ordinances requiring a higher standard of conduct or condition.

13 (c) The limitation set forth in subdivision (5a) of subsection (b) of this section does not
14 apply to any ordinance if adoption of the ordinance was and continues to be required by one of
15 the following:

- 16 (1) A serious and unforeseen threat to the public health, safety, or welfare.
- 17 (2) An act of the General Assembly or United States Congress that expressly
18 requires the city to adopt an ordinance.
- 19 (3) A provision in federal or State budgetary policy.
- 20 (4) A federal regulation required by an act of the United States Congress to be
21 adopted or administered by the State.
- 22 (5) A court order.
- 23 (6) A unique geographic, meteorological, or environmental condition and the
24 city complies with the requirements of subsection (d) of this section.
- 25 (7) A condition necessary to achieve discounted flood insurance rates under the
26 National Flood Insurance Program.

27 (d) Notwithstanding subdivision (5a) of subsection (b) of this section, a city may adopt
28 an ordinance which is more stringent than a State or federal statute or regulation only if the city
29 satisfies all of the following requirements:

- 30 (1) The ordinance addresses a unique geographic, meteorological, or
31 environmental condition that the city can demonstrate by substantial
32 evidence is not adequately met by the less stringent State or federal statute or
33 regulation.
- 34 (2) The city adopted the ordinance by a three-fourths vote of the council.
- 35 (3) Before the ordinance becomes effective, the city demonstrates to the
36 satisfaction of the environmental agency which regulates the subject of the
37 ordinance that a more stringent requirement is necessary and in the best
38 interest of the public health or safety. The ordinance shall not become
39 effective unless the environmental agency approves it within 30 days of
40 receipt from the city.

41 (e) For purposes of this section, "an environmental agency" means any of the following:

- 42 (1) The Department of Environment and Natural Resources created pursuant to
43 G.S. 143B-279.1.
- 44 (2) The Environmental Management Commission created pursuant to
45 G.S. 143B-282.
- 46 (3) The Coastal Resources Commission established pursuant to G.S. 113A-104.
- 47 (4) The Marine Fisheries Commission created pursuant to G.S. 143B-289.51.
- 48 (5) The Wildlife Resources Commission created pursuant to G.S. 143-240.
- 49 (6) The Commission for Public Health created pursuant to G.S. 130A-29, when
50 regulating pursuant to the authority granted by Articles 9, 10, 11, 19, 19A,
51 and 19B of Chapter 130A of the General Statutes.

1 (7) The Sedimentation Control Commission created pursuant to G.S. 143B-298.

2 (8) The Mining and Energy Commission created pursuant to G.S. 143B-293.1.

3 (9) The Pesticide Board created pursuant to G.S. 143-436.

4 (10) The Department of Transportation established pursuant to G.S. 143B-345."

5 **SECTION 13.2.** G.S. 153A-121 is amended by adding a new subsection to read:

6 "(a1) A county ordinance shall be consistent with the Constitution and laws of North
7 Carolina and of the United States. An ordinance is not consistent with State or federal law
8 when:

9 (1) The ordinance infringes a liberty guaranteed to the people by the State or
10 federal Constitution;

11 (2) The ordinance makes unlawful an act, omission, or condition which is
12 expressly made lawful by State or federal law;

13 (3) The ordinance makes lawful an act, omission, or condition which is
14 expressly made unlawful by State or federal law;

15 (4) The ordinance purports to regulate a subject that counties are expressly
16 forbidden to regulate by State or federal law;

17 (5) The ordinance purports to regulate a field for which a State or federal statute
18 clearly shows a legislative intent to provide a complete and integrated
19 regulatory scheme to the exclusion of local regulation;

20 (6) The ordinance (i) regulates a field that is also regulated by a State or federal
21 statute enforced by, or a regulation promulgated by, an environmental
22 agency and (ii) is more stringent than the State or federal statute or
23 regulation; or

24 (7) The elements of an offense defined by a county ordinance are identical to the
25 elements of an offense defined by State or federal law.

26 Except as provided in subdivision (6) of this subsection, the fact that a State or federal law,
27 standing alone, makes a given act, omission, or condition unlawful shall not preclude county
28 ordinances requiring a higher standard of conduct or condition.

29 (a2) The limitation set forth in subdivision (6) of subsection (a1) of this section does not
30 apply to any ordinance if adoption of the ordinance was and continues to be required by one of
31 the following:

32 (1) A serious and unforeseen threat to the public health, safety, or welfare.

33 (2) An act of the General Assembly or United States Congress that expressly
34 requires the county to adopt an ordinance.

35 (3) A provision in federal or State budgetary policy.

36 (4) A federal regulation required by an act of the United States Congress to be
37 adopted or administered by the State.

38 (5) A court order.

39 (6) A unique geographic, meteorological, or environmental condition and the
40 county complies with the requirements of subsection (a3) of this section.

41 (7) A condition necessary to achieve discounted flood insurance rates under the
42 National Flood Insurance Program.

43 (a3) Notwithstanding subdivision (6) of subsection (a1) of this section, a county may
44 adopt an ordinance which is more stringent than a State or federal statute or regulation only if
45 the county satisfies all of the following requirements:

46 (1) The ordinance addresses a unique geographic, meteorological, or
47 environmental condition that the city can demonstrate by substantial
48 evidence is not adequately met by the less stringent State or federal statute or
49 regulation.

50 (2) The county adopted the ordinance by a three-fourths vote of the commission.

1 (3) Before the ordinance becomes effective, the county demonstrates to the
2 satisfaction of the environmental agency which regulates the subject of the
3 ordinance that a more stringent requirement is necessary and in the best
4 interest of the public health or safety. The ordinance shall not become
5 effective unless the environmental agency approves it within 30 days of
6 receipt from the county.

7 (a4) For purposes of this section, "an environmental agency" means any of the following:

8 (1) The Department of Environment and Natural Resources created pursuant to
9 G.S. 143B-279.1.

10 (2) The Environmental Management Commission created pursuant to
11 G.S. 143B-282.

12 (3) The Coastal Resources Commission established pursuant to G.S. 113A-104.

13 (4) The Marine Fisheries Commission created pursuant to G.S. 143B-289.51.

14 (5) The Wildlife Resources Commission created pursuant to G.S. 143-240.

15 (6) The Commission for Public Health created pursuant to G.S. 130A-29, when
16 regulating pursuant to the authority granted by Articles 9, 10, 11, 19, 19A,
17 and 19B of Chapter 130A of the General Statutes.

18 (7) The Sedimentation Control Commission created pursuant to G.S. 143B-298.

19 (8) The Mining and Energy Commission created pursuant to G.S. 143B-293.1.

20 (9) The Pesticide Board created pursuant to G.S. 143-436.

21 (10) The Department of Transportation established pursuant to G.S. 143B-345."

22 23 **REPEAL PROTEST PETITIONS**

24 **SECTION 13.3.** G.S. 160A-385(a) is repealed.

25 26 **PART III. BUSINESS AND LABOR REGULATIONS**

27 28 **LET BED & BREAKFASTS OFFER THREE MEALS/DAY**

29 **SECTION 14.(a)** G.S. 130A-247 is amended by adding a new subdivision to read:

30 "(5a) "Bed and breakfast home" means a business in a private home of not more
31 than eight guest rooms that offers bed and breakfast accommodations for a
32 period of less than one week and that meets all of the following criteria:

33 a. Does not serve food or drink to the general public for pay.

34 b. Serves the breakfast meal, the lunch meal, the dinner meal, or a
35 combination of all or some of these three meals, only to overnight
36 guests of the home.

37 c. Includes the price of any meals served in the room rate.

38 d. Is the permanent residence of the owner or the manager of the
39 business."

40 **SECTION 14.(b)** G.S. 130A-248(a2) reads as rewritten:

41 "(a2) For the protection of the public health, the Commission shall adopt rules governing
42 the sanitation of ~~private homes offering bed and breakfast accommodations to eight or fewer~~
43 ~~persons per night,~~ bed and breakfast homes, as defined in G.S. 130A-247, and rules governing
44 the sanitation of ~~bed and breakfast inns-inns,~~ as defined in G.S. 130A-247. In carrying out this
45 function, the Commission shall adopt requirements that are the least restrictive so as to protect
46 the public health and not unreasonably interfere with the operation of bed and breakfast homes
47 and bed and breakfast inns."

48 **SECTION 14.(c)** This section becomes effective October 1, 2013.

49 50 **PEO ACT AMENDMENTS**

51 **SECTION 15.(a)** G.S. 58-89A-5(8) is repealed.

1 **SECTION 15.(b)** G.S. 58-89A-50 reads as rewritten:

2 "**§ 58-89A-50. Surety bond; letter of credit; other deposits.**

3 (a) An applicant for licensure shall file with the Commissioner a surety ~~bond for the~~
4 ~~benefit of the Commissioner~~ as follows:

5 (1) ~~If the applicant was initially licensed prior to October 1, 2008, the bond, or~~
6 ~~other items as provided for in subsection (f) of this section, shall be in the~~
7 ~~amount of one hundred thousand dollars (\$100,000).~~

8 (2) ~~If the applicant was not initially licensed prior to October 1, 2008, the bond,~~
9 ~~or other items as provided for in subsection (f) of this section, shall be in an~~
10 ~~amount equal to five percent (5%) of the applicant's prior year's total North~~
11 ~~Carolina wages, benefits, workers compensation premiums, and~~
12 ~~unemployment compensation contributions, but not greater than five~~
13 ~~hundred thousand dollars (\$500,000), or such greater amount as the~~
14 ~~Commissioner may require.~~

15 bond, or other items as set forth in subsection (f) of this section, in the amount of one hundred
16 thousand dollars (\$100,000) for the benefit of the Commissioner. An applicant whose current
17 assets do not exceed current liabilities pursuant to G.S. 58-89A-60(b) shall file an additional
18 surety bond or other items set forth in subsection (f) of this section equal to or in excess of
19 current liabilities less current assets.

20 (b) The surety bond required by this section shall be in a form acceptable to the
21 Commissioner, issued by an insurer authorized by the Commissioner to write surety business in
22 this State, and maintained in force while the license remains in effect or any obligations or
23 liabilities of the applicant, licensee or PEO previously licensed by this State remain
24 outstanding.

25 (c) The surety bond required by this section may be exchanged or replaced with another
26 surety bond if (i) the surety bond applies to obligations and liabilities that arose during the
27 period of the original surety bond, (ii) the surety bond meets the requirements of this section,
28 and (iii) 90 days' advance written notice is provided to the Commissioner.

29 ~~(d) A licensee shall not require a client company to contribute in any manner to the~~
30 ~~payment of the surety bond required by this section.~~

31 "

32 **SECTION 15.(c)** G.S. 58-89A-60(b) reads as rewritten:

33 "(b) Every applicant shall file with the Commissioner ~~evidence of financial~~
34 ~~responsibility. Evidence of financial responsibility includes~~ an audited GAAP financial
35 statement, prepared as of a date not more than 90 days before the date of application that
36 demonstrates that the applicant or licensee ~~is not in a hazardous financial condition~~ licensee's
37 current assets exceed current liabilities and attached to which is a separate document signed by
38 the chief executive and the chief financial officer certifying that (i) each has reviewed the
39 financial statement; (ii) based on each signatory's knowledge, the financial statement does not
40 contain any untrue or misleading statement of material fact or omit a fact with respect to the
41 period covered by the financial statement; and (iii) based on each signatory's knowledge, the
42 financial statement fairly presents in all material respects the financial condition of the licensee
43 as of, and for, the period presented in the financial statement.

44 Notwithstanding the requirements of this subsection, the Commissioner may, in the
45 Commissioner's discretion, accept an audited GAAP financial statement that has been prepared
46 more than 90 days before submission to the Commissioner if the Commissioner deems such
47 acceptance appropriate. The Commissioner may, in the Commissioner's discretion, impose
48 conditions upon such acceptance of financial statements prepared more than 90 days prior to
49 submission.

50 The audited GAAP financial statement shall be prepared in accordance with generally
51 accepted accounting principles and audited by an independent certified public accountant

1 licensed to practice in the jurisdiction in which such accountant is located and shall be without
2 qualification as to the going concern status of the PEO. A PEO group may submit combined or
3 consolidated audited financial statements to meet the requirements of this section, except that a
4 PEO that has not had sufficient operating history to have audited financial statements based
5 upon at least 12 months of operating history must meet the financial capacity requirements of
6 this subsection and present financial statements reviewed by a certified public accountant."

7 **SECTION 15.(d)** G.S. 58-89A-85 reads as rewritten:

8 "**§ 58-89A-85. Supervision; rehabilitation; liquidation.**

9 If at any time the Commissioner determines, after notice and an opportunity for the licensee
10 to be heard, that a licensee (i) has been or will be unable, in such a manner as may endanger the
11 ability of the licensee, to fully perform its obligations pursuant to this Article or (ii) is ~~bankrupt~~
12 ~~or in a hazardous financial condition, bankrupt,~~ the Commissioner may either (i) commence a
13 supervision proceeding pursuant to Article 30 of this Chapter or (ii) apply to the Superior Court
14 of Wake County or to the federal bankruptcy court that has previously taken jurisdiction over
15 the licensee, if applicable, for an order directing the Commissioner or authorizing the
16 Commissioner to rehabilitate or to liquidate a licensee in accordance with Article 30 of this
17 Chapter."

18 **SECTION 15.(e)** G.S. 58-89A-95 reads as rewritten:

19 "**§ 58-89A-95. Agreement; notice.**~~Agreement.~~

20 (a) A licensee shall establish the terms of a PEO agreement by a written contract
21 between the licensee and the client company.

22 (b) The licensee shall give written notice of the agreement, by agreement or otherwise,
23 as it affects assigned employees to each employee assigned to a client company work site. ~~This~~
24 ~~written notice shall be given to each assigned employee not later than the first payday after the~~
25 ~~date on which that individual becomes an assigned employee.~~

26 (c) ~~The licensee shall give each employee written notice when the employee ceases to~~
27 ~~be an employee of the licensee."~~

28 **SECTION 15.(f)** G.S. 58-89A-100 reads as rewritten:

29 "**§ 58-89A-100. Contract requirements.**

30 A contract between a licensee and a client company shall provide:

- 31 (1) ~~That the licensee reserves a right of direction and control over employees~~
32 ~~assigned to a client company's work sites. However, a~~ Unless otherwise
33 expressly agreed by a professional employer organization and a client
34 company in a PEO agreement, the client company may retain such sufficient
35 retains the exclusive right of direction and control over the assigned
36 employees as is necessary to conduct the client company's business and
37 without which the client company would be unable to conduct its business,
38 to discharge any fiduciary responsibility that it may have, or to comply with
39 any applicable licensure, regulatory, or statutory requirement of the client
40 ~~company.~~ company or an assigned employee. The PEO agreement shall
41 provide that employment responsibilities not allocated to the licensee by the
42 PEO agreement or this section remain with the client company.
- 43 (2) That the licensee assumes responsibility for the payment of wages to the
44 assigned employees as agreed to in the PEO agreement.
- 45 (3) That the licensee assumes responsibility for the payment of payroll taxes and
46 collection of taxes from payroll on assigned employees.
- 47 (4) ~~That the licensee reserves a right to hire, fire, and discipline the assigned~~
48 ~~employees.~~ That the licensee shall have a right to hire, discipline, and
49 terminate an assigned employee as may be necessary to fulfill the licensee's
50 responsibilities under this Chapter and a PEO agreement. The client

1 company shall have a right to hire, discipline, and terminate an assigned
2 employee.

3 (5) That the licensee retains a right of direction and control over the adoption of
4 employment policies and the management of workers' compensation claims,
5 claim filings, and related procedures in accordance with applicable federal
6 laws and the laws of this State.

7 (6) That responsibility to obtain workers' compensation coverage for assigned
8 employees, from an entity authorized to do business in this State and
9 otherwise in compliance with all applicable requirements, shall be
10 specifically allocated in the PEO agreement to either the client company or
11 the licensee. If the responsibility is allocated to the licensee under any such
12 agreement, that agreement shall require that the licensee maintain and
13 provide to the client company, at the termination of the agreement if
14 requested by the client company, records regarding the loss experience
15 related to workers' compensation insurance provided to assigned employees
16 pursuant to the agreement."

17 **SECTION 15.(g)** G.S. 58-89A-145 reads as rewritten:

18 **"§ 58-89A-145. Examinations.**

19 (a) The Commissioner may conduct an examination of a licensee as often as the
20 Commissioner considers appropriate.

21 (b) An examination under this Article shall be conducted in accordance with the
22 Examination Law of this Chapter, G.S. 58-2-131 through G.S. 58-2-134.

23 (c) In lieu of an examination of any foreign or alien person licensed under this Article,
24 the Commissioner may, in the Commissioner's discretion, accept an examination report on the
25 licensee prepared by the appropriate regulator for the licensee's state of domicile.

26 (d) When making an examination under this Article, the Commissioner may retain
27 attorneys, appraisers, independent actuaries, independent certified public accountants, or other
28 professionals and specialists as examiners, the reasonable cost of which ~~shall be borne by the~~
29 ~~licensee that is the subject of the examination~~ may only be recovered pursuant to
30 G.S. 58-89A-65(d)."

31 **SECTION 15.(h)** G.S. 58-89A-155(a)(4) is repealed.

32 **SECTION 15.(i)** This section becomes effective October 1, 2013.

33
34 **CHILD CARE PROVIDERS' CRIMINAL HISTORY CHECKS**

35 **SECTION 16.(a)** G.S. 110-90.2(a) is amended by adding a new subdivision to
36 read:

37 "(3a) "Provisional provider" means an employee who has started the preservice
38 criminal records check process to be hired and who is waiting for a
39 determination letter from the Department. A provisional provider may be
40 hired, begin orientation and training, and be counted in the staff to child ratio
41 so long as the provisional provider is accompanied by a qualified child care
42 provider when supervising any child and is clearly identifiable as a
43 provisional provider by means of a lanyard, name tag, or clothing. An
44 existing employee who is subject to a criminal records check every three
45 years in accordance with this section shall be treated as a provisional
46 provider during the pendency of the criminal record check process."

47 **SECTION 16.(b)** G.S. 110-90.2 is amended by adding a new subsection to read:

48 "(h) The check of the State and National Repositories for the criminal history of a person
49 required to be conducted by this section and directed to the State Bureau of Investigation shall
50 be completed within 15 calendar days of the receipt of the request from the Department of
51 Health and Human Services. The criminal history check of a person required to be conducted

1 by the Department of Health and Human Services by this section shall be completed within 15
2 calendar days of the receipt of the application from the child care provider."

4 **REGULATION OF DIGITAL DISPATCHING SERVICES**

5 **SECTION 17.(a)** G.S. 160A-194 reads as rewritten:

6 **"§ 160A-194. Regulating and licensing businesses, trades, etc.**

7 (a) A city may by ordinance, subject to the general law of the State, regulate and license
8 occupations, businesses, trades, professions, and forms of amusement or entertainment and
9 prohibit those that may be inimical to the public health, welfare, safety, order, or convenience.
10 In licensing trades, occupations, and professions, the city may, consistent with the general law
11 of the State, require applicants for licenses to be examined and charge a reasonable fee therefor.
12 Nothing in this section shall impair the city's power to levy privilege license taxes on
13 occupations, businesses, trades, professions, and other activities pursuant to G.S. 160A-211.

14 (b) Nothing in this section shall authorize a city to examine or license a person holding
15 a license issued by an occupational licensing board of this State as to the profession or trade
16 that he has been licensed to practice or pursue by the State.

17 (c) Nothing in this section shall authorize a city to regulate and license digital
18 dispatching services for prearranged transportation services for hire."

19 **SECTION 17.(b)** G.S. 160A-211 is amended by adding a new subsection to read:

20 "(e) Exemption. – A city may not impose a license, franchise, or privilege tax on a
21 person engaged in the business of digital dispatching services for prearranged transportation
22 services for hire."

23 **SECTION 17.(c)** G.S. 160A-304 is amended by adding a new subsection to read:

24 "(c) Nothing in this Chapter authorizes a city to adopt an ordinance doing any of the
25 following:

26 (1) Requiring licensing or regulation of digital dispatching services for
27 prearranged transportation services for hire connected with vehicles operated
28 for hire in the city if the business providing the digital dispatching services
29 does not own or operate the vehicles for hire in the city.

30 (2) Setting a minimum rate or minimum increment of time used to calculate a
31 rate for prearranged transportation services for hire.

32 (3) Requiring an operator to use a particular formula or method to calculate rates
33 charged.

34 (4) Setting a minimum waiting period between requesting prearranged
35 transportation services and the provision of those transportation services
36 when the prearranged transportation services are digitally dispatched.

37 (5) Requiring a final destination to be set at the time of requesting prearranged
38 transportation services through digital dispatching services.

39 (6) Requiring or prohibiting taxi franchises or taxi operators from contracting
40 with a person in the business of digital dispatching services for prearranged
41 transportation services for hire."

42 **SECTION 17.(d)** G.S. 153A-134 reads as rewritten:

43 **"§ 153A-134. Regulating and licensing businesses, trades, etc.**

44 (a) A county may by ordinance, subject to the general law of the State, regulate and
45 license occupations, businesses, trades, professions, and forms of amusement or entertainment
46 and prohibit those that may be inimical to the public health, welfare, safety, order, or
47 convenience. In licensing trades, occupations, and professions, the county may, consistent with
48 the general law of the State, require applicants for licenses to be examined and charge a
49 reasonable fee therefor. This section does not authorize a county to examine or license a person
50 holding a license issued by an occupational licensing board of this State as to the profession or
51 trade that he has been licensed to practice or pursue by the State.

1 (b) This section does not impair the county's power to levy privilege license taxes on
2 occupations, businesses, trades, professions, and other activities pursuant to G.S. 153A-152.

3 (c) Nothing in this section shall authorize a county to regulate and license digital
4 dispatching services for prearranged transportation services for hire."

5 **SECTION 17.(e)** G.S. 153A-152 is amended by adding a new subsection to read:

6 "(c) Exemption. – A city may not impose a license, franchise, or privilege tax on a
7 person engaged in the business of digital dispatching services for prearranged transportation
8 services for hire."

10 **WC INSURANCE CANCELLATION/ELECTRONIC COMMUNICATIONS**

11 **SECTION 18.(a)** G.S. 58-36-105(b) reads as rewritten:

12 (b) Any cancellation permitted by subsection (a) of this section is not effective unless
13 written notice of cancellation has been given ~~by registered or certified mail, return receipt~~
14 ~~requested,~~ to the insured not less than 15 days before the proposed effective date of
15 cancellation. The notice ~~shall~~ may be given by registered or certified mail, return receipt
16 requested, to the insured and any other person designated in the policy to receive notice of
17 cancellation at their addresses shown in the policy or, if not indicated in the policy, at their last
18 known addresses. The notice shall state the precise reason for cancellation. Whenever notice of
19 intention to cancel is ~~required to be~~ given by registered or certified mail, no cancellation by the
20 insurer shall be effective unless and until such method is employed and completed. Notice of
21 cancellation, termination, or nonrenewal may also be given by any method permitted for
22 service of process pursuant to Rule 4 of the North Carolina Rules of Civil Procedure. Failure to
23 send this notice, as provided in this section, to any other person designated in the policy to
24 receive notice of cancellation invalidates the cancellation only as to that other person's
25 interest."

26 **SECTION 18.(b)** Article 2 of Chapter 58 of the General Statutes is amended by
27 adding a new section to read:

28 **"§ 58-2-255. Electronic insurance communications and records.**

29 (a) Definitions. – As used in this section:

30 (1) "Communications" means notices, offers, disclosures, documents, forms,
31 information, and correspondence required or permitted to be provided to a
32 party in writing under the insurance laws of this State or that are otherwise
33 provided by an insurer, including, but not limited to, notices pertaining to the
34 cancellation, termination, or nonrenewal of insurance.

35 (2) "Delivered by electronic means" includes any of the following:

- 36 a. Delivery to an electronic mail address or an electronic account at
37 which a party has consented to receive electronic communications.
38 b. Displaying information, or a link to information, as an essential step
39 to completing the transaction to which such information relates.
40 c. Providing notice to a party at the electronic mail address or an
41 electronic account at which the party has consented to receive notice
42 of the posting of a communication on an electronic network or site.

43 (3) "Insurer" has the same meaning as in G.S. 58-1-5(3).

44 (4) "Party" means a recipient of any communications defined in this section.
45 "Party" includes an applicant, policyholder, insured, claimant, member,
46 provider, or beneficiary.

47 (b) When any insurance law of this State, except for cancellation, termination, or
48 nonrenewal of workers' compensation policies pursuant to G.S. 58-36-105(b), requires a
49 communication to be provided to a party in writing, signed by a party, provided by means of a
50 specific delivery method, or retained by an insurer, those requirements are satisfied if the
51 insurer complies with Article 40 of Chapter 66 of the General Statutes.

1 (c) Verification of communications delivered by electronic means shall constitute proof
2 of mailing in civil and administrative proceedings and under the insurance laws of this State.

3 (d) Nothing in this section affects requirements related to the content or timing of any
4 communication required under the insurance laws of this State.

5 (e) A recording of an oral communication between an insurer and a party that is reliably
6 stored and reproduced by an insurer shall constitute an electronic communication or record.
7 When a communication is required under the insurance laws of this State to be provided in
8 writing, the communication provided in accordance with this subsection shall satisfy the
9 requirement that the communication be in writing. When a communication is required under
10 the insurance laws of this State to be signed, a recorded oral communication in which a party
11 agrees to the terms stated in the oral communication shall satisfy the requirement."

12 **SECTION 18.(c)** G.S. 97-19 reads as rewritten:

13 **"§ 97-19. Liability of principal contractors; certificate that subcontractor has complied**
14 **with law; right to recover compensation of those who would have been liable;**
15 **order of liability.**

16 Any principal contractor, intermediate contractor, or subcontractor who shall sublet any
17 contract for the performance of any work without ~~requiring~~ obtaining from such subcontractor
18 or obtaining from the Industrial Commission a certificate, issued by a workers' compensation
19 insurance carrier, or a certificate of compliance issued by the Department of Insurance to a
20 self-insured subcontractor, stating that such subcontractor has complied with G.S. 97-93
21 ~~hereof,~~ for a specified term, shall be liable, irrespective of whether such subcontractor has
22 regularly in service fewer than three employees in the same business within this State, to the
23 same extent as such subcontractor would be if he were subject to the provisions of this Article
24 for the payment of compensation and other benefits under this Article on account of the injury
25 or death of any employee of such subcontractor due to an accident arising out of and in the
26 course of the performance of the work covered by such subcontract. If the principal contractor,
27 intermediate contractor or subcontractor shall obtain such certificate at ~~the any time of before~~
28 subletting such contract to the subcontractor, he shall not thereafter be held liable to any
29 employee of such subcontractor for compensation or other benefits under this ~~Article.~~ Article
30 and within the term specified by the certificate.

31 Notwithstanding the provisions of this section, any principal contractor, intermediate
32 contractor, or subcontractor who shall sublet any contract for the performance of work shall not
33 be held liable to any employee of such subcontractor if either (i) the subcontractor has a
34 workers' compensation insurance policy in compliance with G.S. 97-93 in effect on the date of
35 injury regardless of whether the principal contractor, intermediate contractor, or subcontractor
36 failed to timely obtain a certificate from the subcontractor; or (ii) the policy expired or was
37 cancelled prior to the date of injury provided the principal contractor, intermediate contractor,
38 or subcontractor obtained a certificate at any time before subletting such contract to the
39 subcontractor and was unaware of the expiration or cancellation.

40 Any principal contractor, intermediate contractor, or subcontractor paying compensation or
41 other benefits under this Article, under the foregoing provisions of this section, may recover the
42 amount so paid from any person, persons, or corporation who independently of such provision,
43 would have been liable for the payment thereof.

44 Every claim filed with the Industrial Commission under this section shall be instituted
45 against all parties liable for payment, and said Commission, in its award, shall fix the order in
46 which said parties shall be exhausted, beginning with the immediate employer.

47 The principal or owner may insure any or all of his contractors and their employees in a
48 blanket policy, and when so insured such contractor's employees will be entitled to
49 compensation benefits regardless of whether the relationship of employer and employee exists
50 between the principal and the contractor."

1 **SECTION 18.(d)** This section is effective when it becomes law and applies to
2 insurance policies and certificates of insurance in effect on or after that date.

3 4 **VETERANS PREFERENCE FOR PRIVATE EMPLOYERS**

5 **SECTION 19.** Article 3 of Chapter 95 of the General Statutes is amended by
6 adding a new section to read:

7 **"§ 95-28.4. Veterans preference.**

8 A private, nonpublic employer in the State may provide a preference to a veteran for
9 employment. Spouses of honorably discharged veterans who have a service-connected
10 permanent and total disability also may be preferred for employment. Granting of this
11 preference is not a violation of any State or local equal employment opportunity law."

12 13 **AGRICULTURAL RIGHT TO WORK**

14 **SECTION 20.** G.S. 95-79 reads as rewritten:

15 **"§ 95-79. Certain agreements declared illegal.**

16 (a) Any agreement or combination between any employer and any labor union or labor
17 organization whereby persons not members of such union or organization shall be denied the
18 right to work for said employer, or whereby such membership is made a condition of
19 employment or continuation of employment by such employer, or whereby any such union or
20 organization acquires an employment monopoly in any enterprise, is hereby declared to be
21 against the public policy and an illegal combination or conspiracy in restraint of trade or
22 commerce in the State of North Carolina.

23 (b) Any provision that directly or indirectly conditions the purchase of agricultural
24 products or the terms of an agreement for the purchase of agricultural products upon an
25 agricultural producer's status as a union or nonunion employer or entry into or refusal to enter
26 into an agreement with a labor union or labor organization is invalid and unenforceable as
27 against public policy in restraint of trade or commerce in the State of North Carolina. For
28 purposes of this subsection, the term "agricultural producer" means any producer engaged in
29 any service or activity included within the provisions of Section 3(f) of the Fair Labor
30 Standards Act of 1938, 29 U.S.C. § 203, or Section 3121(g) of the Internal Revenue Code of
31 1986, 26 U.S.C. § 3121."

32 33 **CLARIFY AGRICULTURAL ZONING**

34 **SECTION 22.(a)** G.S. 153A-340(b) reads as rewritten:

35 **"§ 153A-340. Grant of power.**

36 ...

37 (b) (1) These regulations may affect property used for bona fide farm purposes only
38 as provided in subdivision (3) of this subsection. This subsection does not
39 limit regulation under this Part with respect to the use of farm property for
40 nonfarm purposes.

41 (2) Except as provided in G.S. 106-743.4 for farms that are subject to a
42 conservation agreement under G.S. 106-743.2, bona fide farm purposes
43 include the production and activities relating or incidental to the production
44 of crops, grains, fruits, vegetables, ornamental and flowering plants, dairy,
45 livestock, poultry, and all other forms of ~~agriculture~~ agriculture, as defined
46 in G.S. 106-581.1. For purposes of this subdivision, "when performed on the
47 farm" in G.S. 106-581.1(6) shall include the farm within the jurisdiction of
48 the county and any other farm owned or leased to or from others by the bona
49 fide farm operator, no matter where located. For purposes of this
50 subdivision, the production of a nonfarm product that the Department of
51 Agriculture and Consumer Services recognizes as a "Goodness Grows in

1 North Carolina" product that is produced on a farm subject to a conservation
 2 agreement under G.S. 106-743.2 is a bona fide farm purpose. For purposes
 3 of determining whether a property is being used for bona fide farm purposes,
 4 any of the following shall constitute sufficient evidence that the property is
 5 being used for bona fide farm purposes:

- 6 a. A farm sales tax exemption certificate issued by the Department of
 7 Revenue.
- 8 b. A copy of the property tax listing showing that the property is
 9 eligible for participation in the present use value program pursuant to
 10 G.S. 105-277.3.
- 11 c. A copy of the farm owner's or operator's Schedule F from the owner's
 12 or operator's most recent federal income tax return.
- 13 d. A forest management plan.
- 14 e. A Farm Identification Number issued by the United States
 15 Department of Agriculture Farm Service Agency.

- 16 (3) The definitions set out in G.S. 106-802 apply to this subdivision. A county
 17 may adopt zoning regulations governing swine farms served by animal waste
 18 management systems having a design capacity of 600,000 pounds steady
 19 state live weight (SSLW) or greater provided that the zoning regulations
 20 may not have the effect of excluding swine farms served by an animal waste
 21 management system having a design capacity of 600,000 pounds SSLW or
 22 greater from the entire zoning jurisdiction."

23 **SECTION 22.(b)** G.S. 106-581.1 reads as rewritten:

24 **"§ 106-581.1. Agriculture defined.**

25 For purposes of this Article, the terms "agriculture", "agricultural", and "farming" refer to
 26 all of the following:

- 27 (1) The cultivation of soil for production and harvesting of crops, including but
 28 not limited to fruits, vegetables, sod, flowers and ornamental plants.
- 29 (2) The planting and production of trees and timber.
- 30 (3) Dairying and the raising, management, care, and training of livestock,
 31 including horses, bees, poultry, and other animals for individual and public
 32 use, consumption, and marketing.
- 33 (4) Aquaculture as defined in G.S. 106-758.
- 34 (5) The operation, management, conservation, improvement, and maintenance
 35 of a farm and the structures and buildings on the farm, including building
 36 and structure repair, replacement, expansion, and construction incident to the
 37 farming operation.
- 38 (6) When performed on the farm, "agriculture", "agricultural", and "farming"
 39 also include the marketing and selling of agricultural products, agritourism,
 40 the storage and use of materials for agricultural purposes, packing, treating,
 41 processing, sorting, storage, and other activities performed to add value to
 42 crops, livestock, and agricultural items produced on the farm, and similar
 43 activities incident to the operation of a farm.
- 44 (7) A public or private grain warehouse or warehouse operation where grain is
 45 held 10 days or longer and includes, but is not limited to, all buildings,
 46 elevators, equipment, and warehouses consisting of one or more warehouse
 47 sections and considered a single delivery point with the capability to receive,
 48 load out, weigh, dry, and store grain."

49
 50 **W/C/TAXI DRIVER/INDEPENDENT CONTRACTOR**

1 **SECTION 23.(a)** Article 1 of Chapter 97 of the General Statutes is amended by
2 adding a new section to read:

3 **"§ 97-5.1. Presumption that taxicab drivers are independent contractors.**

4 (a) It shall be a rebuttable presumption under this Chapter that any person who
5 operates, and who has an ownership or leasehold interest in, a passenger motor vehicle that is
6 operated as a taxicab is an independent contractor for the purposes of this Chapter and not an
7 employee as defined in G.S. 97-2. The presumption is not rebutted solely (i) because the
8 operator is required to comply with rules and regulations imposed on taxicabs by the local
9 governmental unit that licenses companies, taxicabs, or operators or (ii) because a taxicab
10 accepts a trip request to be at a specific place at a specific time, but the presumption may be
11 rebutted by application of the common law test for determining employment status.

12 (b) The following definitions apply in this section:

13 (1) Lease. – A contract under which the lessor provides a vehicle to a lessee for
14 consideration.

15 (2) Leasehold. – Includes, but is not limited to, a lease for a shift or a longer
16 period.

17 (3) Passenger motor vehicle that is operated as a taxicab. – Any vehicle that:

18 a. Has a passenger seating capacity that does not exceed seven persons
19 and

20 b. Is transporting persons, property, or both on a route that begins or
21 ends in this State and either:

22 1. Carries passengers for hire when the destination and route
23 traveled may be controlled by a passenger and the fare is
24 calculated on the basis of any combination of an initial fee,
25 distance traveled, or waiting time; or

26 2. Is in use under a contract between the operator and a third
27 party to provide specific service to transport designated
28 passengers or to provide errand services to locations selected
29 by the third party."

30 **SECTION 23.(b)** This section is effective when it becomes law and applies to
31 persons affected on or after that date.

32
33 **PART IV. ENVIRONMENTAL AND PUBLIC HEALTH REGULATIONS**

34
35 **SCRAP TIRE DISPOSAL**

36 **SECTION 25.** G.S. 130A-309.57 reads as rewritten:

37 **"§ 130A-309.57. Scrap tire disposal program.**

38 (a) The owner or operator of any scrap tire collection site shall, within six months after
39 October 1, 1989, provide the Department with information concerning the site's location, size,
40 and the approximate number of scrap tires that are accumulated at the site and shall initiate
41 steps to comply with subsection (b) of this section.

42 (b) On or after July 1, 1990:

43 (1) A person may not maintain a scrap tire collection site or a scrap tire disposal
44 site unless the site is permitted.

45 (2) It is unlawful for any person to dispose of scrap tires in the State unless the
46 scrap tires are disposed of at a scrap tire collection site or at a tire disposal
47 site, or disposed of for processing at a scrap tire processing facility.

48 (c) The Commission shall adopt rules to carry out the provisions of this section. Such
49 rules shall:

- 1 (1) Provide for the administration of scrap tire collector and collection center
 2 permits and scrap tire disposal site permits, which may not exceed two
 3 hundred fifty dollars (\$250.00) annually.
- 4 (2) Set standards for scrap tire processing facilities and associated scrap tire
 5 sites, scrap tire collection centers, and scrap tire collectors.
- 6 (3) Authorize the final disposal of scrap tires at a permitted solid waste disposal
 7 facility provided the tires have been cut into sufficiently small parts to assure
 8 their proper disposal.
- 9 (4) ~~Provide that permitted scrap tire collectors may not contract with a scrap tire
 10 processing facility unless the processing facility documents that it has access
 11 to a facility permitted to receive scrap tires.~~
- 12 (d) A permit is not required for:
- 13 (1) A tire retreading business where fewer than 1,000 scrap tires are kept on the
 14 business premises;
- 15 (2) A business that, in the ordinary course of business, removes tires from motor
 16 vehicles if fewer than 1,000 of these tires are kept on the business premises;
 17 or
- 18 (3) A retail tire-selling business which is serving as a scrap tire collection center
 19 if fewer than 1,000 scrap tires are kept on the business premises.
- 20 (e) The Department shall encourage the voluntary establishment of scrap tire collection
 21 centers at retail tire-selling businesses, scrap tire processing facilities, and solid waste disposal
 22 facilities, to be open to the public for the deposit of used and scrap tires. The Department may
 23 establish an incentives program for individuals to encourage them to return their used or scrap
 24 tires to a scrap tire collection center.
- 25 (f) Permitted scrap tire collectors may not contract with a scrap tire processing facility
 26 unless the processing facility documents that it has access to a facility permitted to receive the
 27 scrap tires."

29 CARBON MONOXIDE DETECTORS

30 SECTION 26. G.S. 143-138 reads as rewritten:

31 "§ 143-138. North Carolina State Building Code.

32 ...

33 (b2) ~~The Code-Code~~ (i) may contain provisions requiring the installation of either
 34 battery-operated or electrical carbon monoxide detectors in every dwelling unit having a
 35 fossil-fuel burning heater, appliance, or fireplace, and in any dwelling unit having an attached
 36 ~~garage-garage~~ and (ii) shall contain provisions requiring the installation of electrical carbon
 37 monoxide detectors at a lodging establishment. Violations of this subsection and rules adopted
 38 pursuant to this subsection shall be punishable in accordance with subsection (h) of this section
 39 and G.S. 143-139. In particular, the rules shall provide:

- 40 (1) For dwelling units, carbon-Carbon monoxide detectors shall be those listed
 41 by a nationally recognized testing laboratory that is OSHA-approved to test
 42 and certify to American National Standards Institute/Underwriters
 43 Laboratories Standards ANSI/UL2034 or ANSI/UL2075 and shall be
 44 installed in accordance with either the standard of the National Fire
 45 Protection Association or the minimum protection designated in the
 46 manufacturer's instructions, which the property owner shall retain or provide
 47 as proof of compliance. A carbon monoxide detector may be combined with
 48 smoke detectors if the combined detector does both of the following: (i)
 49 complies with ANSI/UL2034 or ANSI/UL2075 for carbon monoxide alarms
 50 and ANSI/UL217 for smoke detectors; and (ii) emits an alarm in a manner

1 that clearly differentiates between detecting the presence of carbon
2 monoxide and the presence of smoke.

3 (2) For lodging establishments, carbon monoxide detectors shall be installed in
4 every enclosed space having a fossil fuel burning heater, appliance, or
5 fireplace and in any enclosed space, including a sleeping room, that shares a
6 common wall, floor, or ceiling with an enclosed space having a fossil fuel
7 burning heater, appliance, or fireplace. Carbon monoxide detectors shall be
8 (i) listed by a nationally recognized testing laboratory that is
9 OSHA-approved to test and certify to American National Standards
10 Institute/Underwriters Laboratories Standards ANSI/UL2034 or
11 ANSI/UL2075, (ii) installed in accordance with either the standard of the
12 National Fire Protection Association or the minimum protection designated
13 in the manufacturer's instructions, which the lodging establishment shall
14 retain or provide as proof of compliance, (iii) receive primary power from
15 the building's wiring, where such wiring is served from a commercial source,
16 and (iv) receive power from a battery when primary power is interrupted. A
17 carbon monoxide detector may be combined with smoke detectors if the
18 combined detector complies with the requirements of this subdivision for
19 carbon monoxide alarms and ANSI/UL217 for smoke detectors. For
20 purposes of this subsection, "lodging establishment" means any hotel, motel,
21 tourist home, or other establishment permitted under authority of
22 G.S. 130A-248 to provide lodging accommodations for pay to the public.

23"

24 LAGOON CLOSURE RULE

25 **SECTION 27.(a)** The definitions set out in G.S. 143-212, 15A NCAC 02T .0103
26 (Definitions) and 15A NCAC 02T .1302 (Definitions) apply to this section.

27 **SECTION 27.(b)** 15A NCAC 02T .1306 (Closure Requirements). – Until the
28 effective date of the revised permanent rule that the Commission is required to adopt pursuant
29 to Section 27(d) of this act, the Commission and the Department shall implement 15A NCAC
30 02T .1306 (Closure Requirements) as provided in Section 27(c) of this act.

31 **SECTION 27.(c)** Implementation. – Notwithstanding 15A NCAC 02T .1306
32 (Closure Requirements), any containment basin, such as a lagoon or a waste storage structure,
33 permitted at a cattle facility under the Section 1300 Rules, shall continue to be subject to the
34 conditions and requirements of the facility's permit until that permit is rescinded by the
35 Division. Upon request of the permittee, the permit may be rescinded by the Division prior to
36 closure of the containment basin if the average size of the confined cattle herd at the cattle
37 facility, calculated on an annual basis during the three years prior to the request for rescission,
38 is less than one hundred confined cattle. Upon permit rescission, all of the following
39 requirements shall apply:

- 40
- 41 (1) The cattle facility shall be subject to the requirements of 15A NCAC 02T
42 .1303 (Permitting By Regulation) and 15A NCAC 02T .0113 (Permitting By
43 Regulation) until the containment area is closed in accordance with
44 standards adopted by the NRCS.
 - 45 (2) The farm owner shall maintain records of land application and weekly
46 records of containment basin waste levels on forms provided by or approved
47 by the Division.
 - 48 (3) Closure shall include prenotification to the Division and, within 15 days of
49 completion of closure, submittal of a closure form supplied by the Division
50 or closure forms approved by the Division that provide the same information
51 required by the forms supplied by the Division.

1 The Division shall have the authority to deny a request for permit rescission based on the
2 factors set out in subsection (e) of 15A NCAC 02T .0113 (Permitting By Regulation).

3 **SECTION 27.(d)** Additional Rule-Making Authority. – The Commission shall
4 adopt a rule to amend 15A NCAC 02T .1306 (Closure Requirements) consistent with Section
5 27(c) of this act. Notwithstanding G.S. 150B-19(4), the rule adopted by the Commission
6 pursuant to this section shall be substantively identical to the provisions of Section 27(c) of this
7 act. Rules adopted pursuant to this section are not subject to Part 3 of Article 2A of Chapter
8 150B of the General Statutes. Rules adopted pursuant to this section shall become effective as
9 provided in G.S. 150B-21.3(b1) as though 10 or more written objections had been received as
10 provided by G.S. 150B-21.3(b2).

11 **SECTION 27.(e)** Sunset. – Section 27(c) of this act expires on the date that rules
12 adopted pursuant to Section 27(d) of this act become effective.

13 **SECTION 28.(a)** 15A NCAC 02T .1302 (Definitions). – Until the effective date of
14 the revised permanent rule that the Environmental Management Commission is required to
15 adopt pursuant to Section 28(c) of this act, the Commission and the Department of
16 Environment and Natural Resources shall implement 15A NCAC 02T .1302 (Definitions) as
17 provided in Section 28(b) of this act.

18 **SECTION 28.(b)** Implementation. – Notwithstanding 15A NCAC 02T .1302
19 (Definitions), "new animal waste management system" means animal waste management
20 systems which are constructed and operated at a site where no feedlot existed previously, where
21 a system serving a feedlot has been abandoned or unused for a period of four years or more and
22 is then put back into service, or where a permit for a system has been rescinded, and is then
23 reissued when the permittee confines animals in excess of the thresholds established in
24 G.S. 143-215.10B.

25 **SECTION 28.(c)** Additional Rule-Making Authority. – The Environmental
26 Management Commission shall adopt a rule to amend 15A NCAC 02T .1302 (Definitions)
27 consistent with Section 28(b) of this act. Notwithstanding G.S. 150B-19(4), the rule adopted by
28 the Commission pursuant to this section shall be substantively identical to the provisions of
29 Section 28(b) of this act. Rules adopted pursuant to this section are not subject to Part 3 of
30 Article 2A of Chapter 150B of the General Statutes. Rules adopted pursuant to this section shall
31 become effective as provided in G.S. 150B-21.3(b1) as though 10 or more written objections
32 had been received as provided by G.S. 150B-21.3(b2).

33 **SECTION 28.(d)** Sunset. – Section 28(b) of this act expires on the date that rules
34 adopted pursuant to Section 28(c) of this act become effective.

35 36 **RECLAIMED WATER IRRIGATION SETBACK RULE**

37 **SECTION 29.(a)** The definitions set out in G.S. 143-212 and 15A NCAC 02U
38 .0103 (Definitions) apply to this section.

39 **SECTION 29.(b)** 15A NCAC 02U .0701 (Setbacks). – Until the effective date of
40 the revised permanent rule that the Commission is required to adopt pursuant to Section 29(d)
41 of this act, the Commission and the Department shall implement 15A NCAC 02U .0701
42 (Setbacks) as provided in Section 29(c) of this act.

43 **SECTION 29.(c)** Implementation. – Notwithstanding 15A NCAC 02U .0701
44 (Setbacks), the rule shall be implemented as provided in this section.

- 45 (1) Setbacks in subsection (c) of the rule for surface waters not classified as SA
46 shall not apply provided that the reclaimed water to be utilized contains no
47 more than 10 mg/l of Total Nitrogen and no more than 2 mg/l of Total
48 Phosphorus. The elimination of setbacks to surface waters does not exempt
49 any discharge of reclaimed water to waters of the State from meeting permit
50 requirements established in 15A NCAC 02U .0101 (Purpose).

1 (2) Notwithstanding subsections (a) and (b) of the rule, no setback shall be
2 required between final reclaimed water effluent storage facilities and
3 property lines provided that the proposed final effluent storage facility was
4 constructed prior to June 18, 2011.

5 (3) Setbacks between reclaimed water storage ponds and property lines or wells
6 under separate ownership may be waived by the adjoining property owner. A
7 copy of the signed waiver shall be provided to the Department.

8 (4) Setbacks between reclaimed water storage ponds and wells under the same
9 ownership as the reclaimed water storage pond may be waived by the
10 property owner.

11 **SECTION 29.(d)** Additional Rule-Making Authority. – The Environmental
12 Management Commission shall adopt a rule to amend 15A NCAC 02U .0701 (Setbacks)
13 consistent with Section 29(c) of this act. Notwithstanding G.S. 150B-19(4), the rule adopted by
14 the Commission pursuant to this section shall be substantively identical to the provisions of
15 Section 29(c) of this act. Rules adopted pursuant to this section are not subject to Part 3 of
16 Article 2A of Chapter 150B of the General Statutes. Rules adopted pursuant to this section shall
17 become effective as provided in G.S. 150B-21.3(b1) as though 10 or more written objections
18 had been received as provided by G.S. 150B-21.3(b2).

19 **SECTION 29.(e)** Sunset. – Section 29(c) of this act expires on the date that rules
20 adopted pursuant to Section 29(d) of this act become effective.

21 **SMOKING BAN RULES**

22 **SECTION 30.** No later than January 1, 2014, the Commission for Public Health
23 shall amend and clarify its rules adopted pursuant to G.S. 130A-497 for the implementation of
24 the prohibition on smoking in restaurants and bars. The rules shall ensure the consistent
25 interpretation and enforcement of Part 1C of Article 23 of Chapter 130A of the General
26 Statutes and shall specifically clarify the definition of enclosed areas for purposes of
27 implementation of the Part. Rules adopted pursuant to this section (i) shall be exempt from the
28 requirements of G.S. 150B-21.4, (ii) are not subject to Part 3 of Article 2A of Chapter 150B of
29 the General Statutes, and (iii) shall become effective as provided in G.S. 150B-21.3(b1) as
30 though 10 or more written objections had been received as provided by G.S. 150B-21.3(b2). No
31 later than November 1, 2013, the Commission shall report to the Joint Legislative Oversight
32 Committee on Health and Human Services on its progress in amending and clarifying the rules.

33 **PART V. SEVERABILITY CLAUSE AND EFFECTIVE DATE**

34 **SECTION 31.** If any provision of this act or its application is held invalid, the
35 invalidity does not affect other provisions or applications of this act that can be given effect
36 without the invalid provisions or application, and to this end the provisions of this act are
37 severable.

38 **SECTION 32.** Except as otherwise provided, this act is effective when it becomes
39 law.
40
41