GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

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SENATE BILL 734
Agriculture/Environment/Natural Resources Committee Substitute Adopted 5/20/14
PROPOSED COMMITTEE SUBSTITUTE S734-PCS35535-SBxf-40

Short Title: Regulatory Reform Act of 2014. (Public)

Sponsors:

Referred to:

May 15, 2014

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FURTHER REGULATORY RELIEF TO THE CITIZENS OF NORTH CAROLINA BY PROVIDING FOR VARIOUS ADMINISTRATIVE REFORMS, BY ELIMINATING CERTAIN UNNECESSARY OR OUTDATED STATUTES AND REGULATIONS AND MODERNIZING OR SIMPLIFYING CUMBERSOME OR OUTDATED REGULATIONS, BY MAKING VARIOUS OTHER STATUTORY CHANGES, AND BY UPDATING AND AMENDING CERTAIN ENVIRONMENTAL AND NATURAL RESOURCES LAWS.

The General Assembly of North Carolina enacts:

PART I. ADMINISTRATIVE REFORMS

HARDISON AMENDMENT CLARIFICATION

SECTION 1.1.(a) G.S. 150B-19.3 reads as rewritten:

"**§ 150B-19.3. Limitation on certain environmental rules.**

(a) An agency authorized to implement and enforce State and federal environmental laws may not adopt a rule for the protection of the environment or natural resources that imposes a more restrictive standard, limitation, or requirement than those imposed by federal law or rule, if a federal law or rule pertaining to the same subject matter has been adopted, unless adoption of the rule is required by one of the ~~following:~~subdivisions of this subsection. A rule required by one of the subdivisions of this subsection shall be subject to the provisions of G.S. 150B-21.3(b1) as if the rule received written objections from 10 or more persons under G.S. 150B-21.3(b2).

(1) A serious and unforeseen threat to the public health, safety, or welfare.
(2) An act of the General Assembly or United States Congress that expressly requires the agency to adopt rules.
(3) A change in federal or State budgetary policy.
(4) A federal regulation required by an act of the United States Congress to be adopted or administered by the State.
(5) A court order.

(b) For purposes of this section, "an agency authorized to implement and enforce State and federal environmental laws" means any of the following:

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

(2) The Environmental Management Commission created pursuant to G.S. 143B-282.
(3) The Coastal Resources Commission established pursuant to G.S. 113A-104.
(4) The Marine Fisheries Commission created pursuant to G.S. 143B-289.51.
(5) The Wildlife Resources Commission created pursuant to G.S. 143-240.
(6) The Commission for Public Health created pursuant to G.S. 130A-29.
(7) The Sedimentation Control Commission created pursuant to G.S. 143B-298.
(8) The North Carolina Mining and Energy Commission created pursuant to G.S. 143B-293.1.
(9) The Pesticide Board created pursuant to G.S. 143-436."

SECTION 1.1.(b) G.S. 150B-21.3A(a) reads as rewritten:

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

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

…

(3) Necessary with substantive public interest. – Means any rule for which the agency has received public comments within the past two years. A rule is also "necessary with substantive public interest" if either or both of the following applies:

a. ~~the~~ The rule affects the property interest of the regulated public and the agency knows or suspects that any person may object to the rule.

b. The rule imposes a more restrictive standard, limitation, or requirement than those imposed by federal law or rule, if a federal law or rule pertaining to the same subject matter has been adopted."

SECTION 1.1.(c) Section 1.1(a) of this section becomes effective July 1, 2014, and applies to rules adopted or readopted on or after that date. Section 1.1(b) of this section becomes effective August 23, 2013, and applies to rules reviewed on or after that date.

SCOPE OF LOCAL AUTHORITY FOR ORDINANCES

SECTION 1.2.(a) Section 10.2 of S.L. 2013-413 is repealed.

SECTION 1.2.(b) No later than November 1, 2014, and November 1, 2015, the Department of Agriculture and Consumer Services shall report to the Environmental Review Commission on any local government ordinances that impinge on or interfere with any area subject to regulation by the Department.

SECTION 1.2.(c) No later than November 1, 2014, and November 1, 2015, the Department of Environment and Natural Resources shall report to the Environmental Review Commission on any local government ordinances that impinge on or interfere with any area subject to regulation by the Department.

SECTION 1.2.(d) Article 56 of Chapter 106 of the General Statutes is amended by adding a new section to read:

"**§ 106-678. Authority of local governments to regulate fertilizers.**

No county or city shall adopt or continue in effect any ordinance, rule, regulation, or resolution regulating the use, sale, distribution, storage, transportation, disposal, formulation, labeling, registration, manufacture, or application of fertilizer. Nothing in this section shall prohibit a county, city, or other political subdivision of the State from exercising its planning and zoning authority under Article 19 of Chapter 160A of the General Statutes or Article 18 of Chapter 153A of the General Statutes or from exercising its fire prevention or inspection authority. Nothing in this section shall limit the authority of the Department of Environment and Natural Resources to enforce water quality standards."

LOTTERY OVERSIGHT COMMITTEE ELIMINATED

SECTION 1.4.(a) G.S. 18C-172 is repealed.

SECTION 1.4.(b) G.S. 18C-115 reads as rewritten:

"**§ 18C-115. Reports.**

The Commission shall send quarterly and annual reports on the operations of the Commission to the Governor, State Treasurer, ~~the Lottery Oversight Committee,~~ and to the General Assembly. The reports shall include complete statements of lottery revenues, prize disbursements, expenses, net revenues, and all other financial transactions involving lottery funds, including the occurrence of any audit."

REPRESENTATION OF SMALL BUSINESS ENTITIES IN ADMINISTRATIVE APPEALS

SECTION 1.5.(a) G.S. 150B-23(a) reads as rewritten:

"(a) A contested case shall be commenced by paying a fee in an amount established in G.S. 150B-23.2 and by filing a petition with the Office of Administrative Hearings and, except as provided in Article 3A of this Chapter, shall be conducted by that Office. The party who files the petition shall serve a copy of the petition on all other parties and, if the dispute concerns a license, the person who holds the license. A party who files a petition shall file a certificate of service together with the petition. A petition shall be signed by a party, an attorney representing a party, or other representative of the party as may specifically be authorized by law, and, if filed by a party other than an agency, shall state facts tending to establish that the agency named as the respondent has deprived the petitioner of property, has ordered the petitioner to pay a fine or civil penalty, or has otherwise substantially prejudiced the petitioner's rights and that the agency:

(1) Exceeded its authority or jurisdiction;
(2) Acted erroneously;
(3) Failed to use proper procedure;
(4) Acted arbitrarily or capriciously; or
(5) Failed to act as required by law or rule.

The parties in a contested case shall be given an opportunity for a hearing without undue delay. Any person aggrieved may commence a contested case hereunder.

A local government employee, applicant for employment, or former employee to whom Chapter 126 of the General Statutes applies may commence a contested case under this Article in the same manner as any other petitioner. The case shall be conducted in the same manner as other contested cases under this Article.

If the party is a small business entity, it may be represented by one or more of its owners with the written consent of all the owners, and the Office of Administrative Hearings may not require that the entity retain or be represented by an attorney. A small business entity is a limited liability company or a corporation that is owned, directly or indirectly, by no more than two individuals. An individual is an indirect owner if the individual is a member or shareholder of a limited liability company or a corporation that is an owner of the small business entity."

SECTION 1.5.(b) G.S. 105-290 is amended by adding a new subsection to read:

"(d2) Small Business Entity Representation. – If a property owner is a small business entity, that entity may be represented by one or more of its owners with the written consent of all the owners, and the Commission may not require that the entity retain or be represented by an attorney. A small business entity is a limited liability company or a corporation that is owned, directly or indirectly, by no more than two individuals. An individual is an indirect owner if the individual is a member or shareholder of a limited liability company or a corporation that is an owner of the small business entity."

SECTION 1.5.(c) This section is effective when it becomes law and applies to contested cases and appeals commenced on or after that date.

EXEMPT SMALL BUSINESS ENTITIES BUYING OR SELLING ENTITY-OWNED PROPERTY

SECTION 1.6.(a) G.S. 93A-2(c)(1) reads as rewritten:

"(c) The provisions of G.S. 93A-1 and G.S. 93A-2 do not apply to and do not include:

(1) Any partnership, corporation, limited liability company, association, or other business entity that, as owner or lessor, shall perform any of the acts aforesaid with reference to property owned or leased by them, where the acts are performed in the regular course of or as incident to the management of that property and the investment therein. The exemption from licensure under this subsection shall extend to the following persons when those persons are engaged in acts or services for which the corporation, partnership, limited liability company, or other business entity would be exempt hereunder:

a. The officers and employees of an exempt ~~corporation, the~~ corporation.

b. The general partners and employees of an exempt ~~partnership, and the~~partnership.

c. The managers and employees of an exempt limited liability ~~company when said persons are engaged in acts or services for which the corporation, partnership, or limited liability company would be exempt hereunder.~~company.

d. The owners of an exempt closely held business entity. For purposes of this subdivision, a closely held business entity is a limited liability company or a corporation with no more than two legal owners.

e. The officers, managers, and employees of a closely held business entity owned by a person exempt under sub-subdivision d. of this subdivision."

REDUCE STATE AGENCY MOBILE DEVICE REPORTING FREQUENCY

SECTION 1.7 Subsection 6A.14(a) of Session Law 2011-145 reads as rewritten:

"**SECTION 6A.14.(a)** Every executive branch agency within State government shall develop a policy to limit the issuance and use of mobile electronic devices to the minimum required to carry out the agency's mission. By September 1, 2011, each agency shall provide a copy of its policy to the Chairs of the Appropriations Committee and the Appropriations Subcommittee on General Government of the House of Representatives, the Chairs of the Appropriations/Base Budget Committee and the Appropriations Committee on General Government and Information Technology of the Senate, the Chairs of the Joint Legislative Oversight Committee on Information Technology, the Fiscal Research Division, and the Office of State Budget and Management.

State-issued mobile electronic devices shall be used only for State business. Agencies shall limit the issuance of cell phones, smart phones, and any other mobile electronic devices to employees for whom access to a mobile electronic device is a critical requirement for job performance. The device issued and the plan selected shall be the minimum required to support the employees' work requirements. This shall include considering the use of pagers in lieu of a more sophisticated device. The requirement for each mobile electronic device issued shall be documented in a written justification that shall be maintained by the agency and reviewed annually. All State agency heads, in consultation with the Office of Information Technology Services and the Office of State Budget and Management, shall document and review all authorized cell phone, smart phone, and other mobile electronic communications device procurement, and related phone, data, Internet, and other usage plans for and by their employees. Agencies shall conduct periodic audits of mobile device usage to ensure that State

employees and contractors are complying with agency policies and State requirements for their use.

Beginning October 1, 2011, each agency shall report ~~quarterly~~ annually to the Chairs of the House of Representatives Committee on Appropriations and the House of Representatives Subcommittee on General Government, the Chairs of the Senate Committee on Appropriations and the Senate Appropriations Committee on General Government and Information Technology, the Joint Legislative Oversight Committee on Information Technology, the Fiscal Research Division, and the Office of State Budget and Management on the following:

(1) Any changes to agency policies on the use of mobile devices.
(2) The number and types of new devices issued since the last report.
(3) The total number of mobile devices issued by the agency.
(4) The total cost of mobile devices issued by the agency.
(5) The number of each type of mobile device issued, with the total cost for each type."

ELIMINATE, AS OBSOLETE, THE SMALL BUSINESS CONTRACTOR AUTHORITY, THE COMMITTEE ON DROPOUT PREVENTION, THE STATE EDUCATION COMMITTEE, THE STATE EDUCATION COMMISSION, THE NATIONAL HERITAGE AREA DESIGNATION COMMISSION, THE GOVERNOR'S MANAGEMENT COUNCIL, THE BOARD OF DIRECTORS OF THE NORTH CAROLINA CENTER FOR NURSING, THE BOARD OF CORRECTIONS; AND TO ENCOURAGE THE CHIEF JUSTICE TO ABOLISH THE ACTUAL INNOCENCE COMMISSION

SECTION 1.8.(a) Part 20 of Article 10 of Chapter 143B of the General Statutes is repealed.

SECTION 1.8.(b) Section 7.32(e) of S.L. 2007-323, as rewritten by Section 7.14(a) of S.L. 2008-107 and Section 7.19(e) of S.L. 2010-31, reads as rewritten:

"**SECTION 7.32.(e)** Report. – The Committee shall report to the Joint Legislative Commission on Dropout Prevention and High School Graduation created in subsection (f) of this section by December 1, 2007, on the grants awarded under subsection (d) of this section. The Committee shall terminate July 1, 2014."

SECTION 1.8.(c) G.S. 116C-1 reads as rewritten:

"**§ 116C-1. Education Cabinet created.**

(a) The Education Cabinet is created. The Education Cabinet shall be located administratively within, and shall exercise its powers within existing resources of, the Office of the Governor. However, the Education Cabinet shall exercise its statutory powers independently of the Office of the Governor.

(b) The Education Cabinet shall consist of the Governor, who shall serve as chair, the President of The University of North Carolina, the State Superintendent of Public Instruction, the Chairman of the State Board of Education, the President of the North Carolina Community Colleges System, the Secretary of Health and Human Services, and the President of the North Carolina Independent Colleges and Universities. The Education Cabinet may invite other representatives of education to participate in its deliberations as adjunct members.

(c) The Education Cabinet shall be a nonvoting body that:

(1) Works to resolve issues between existing providers of education.
~~(2) Sets the agenda for the State Education Commission.~~
(3) Develops a strategic design for a continuum of education programs, in accordance with G.S. 116C-3.
(4) Studies other issues referred to it by the Governor or the General Assembly.

(d) The Office of the Governor, in coordination with the staffs of The University of North Carolina, the North Carolina Community College System, and the Department of Public Instruction, shall provide staff to the Education Cabinet."

SECTION 1.8.(d) G.S. 116C-2 is repealed.

SECTION 1.8.(e) Article 26 of Chapter 143 of the General Statutes is repealed.

SECTION 1.8.(f) Section 18.10 of S.L. 2001-491 reads as rewritten:

"**SECTION 18.10.** Notwithstanding G.S. 158-8.1, the Western North Carolina Regional Economic Development Commission shall develop a regional heritage tourism plan and shall present the plan to the 2002 Regular Session of the 2001 General Assembly no later than May 1, 2002. The National Heritage Area Designation Commission created pursuant to Section 18.4 of this act shall terminate July 1, 2014."

SECTION 1.8.(g) Part 24 of Article 9 of Chapter 143B is repealed.

SECTION 1.8.(h) G.S. 90-171.71 is repealed.

SECTION 1.8.(i) G.S. 143B-711 reads as rewritten:

"**§ 143B-711. Division of Adult Correction of the Department of Public Safety – organization.**

The Division of Adult Correction of the Department of Public Safety shall be organized initially to include the Post-Release Supervision and Parole Commission, ~~the Board of Correction,~~the Section of Prisons of the Division of Adult Correction, the Section of Community Corrections, the Section of Alcoholism and Chemical Dependency Treatment Programs, and such other divisions as may be established under the provisions of the Executive Organization Act of 1973."

SECTION 1.8.(j) G.S. 143B-715 is repealed.

SECTION 1.8.(k) The North Carolina Actual Innocence Commission was established by the Chief Justice of the North Carolina Supreme Court. Its primary purpose was to make recommendations which would reduce or eliminate the possibility of the wrongful conviction of an innocent person. In 2006, the General Assembly enacted S.L. 2006-184, which established the North Carolina Innocence Inquiry Commission, as recommended by the North Carolina Actual Innocence Commission. Inasmuch as it appears that the work of the Actual Innocence Commission is complete, the Chief Justice of the North Carolina Supreme Court is encouraged to take appropriate action to formally abolish the Commission.

CLARIFY PROCESS FOR READOPTION OF EXISTING RULES

SECTION 1.9. G.S. 150B-21.3A(d) reads as rewritten:

"(d) Timetable. – The Commission shall establish a schedule for the review and readoption of existing rules in accordance with this section on a decennial basis as follows:

(1) With regard to the review process, the Commission shall assign ~~by assigning~~ each Title of the Administrative Code a date by which the review required by this section must be completed. In establishing the schedule, the Commission shall consider the scope and complexity of rules subject to this section and the resources required to conduct the review required by this section. The Commission shall have broad authority to modify the schedule and extend the time for review in appropriate circumstances. Except as provided in ~~subsection~~ subsections (d1) and (e) of this section, if the agency fails to conduct the review by the date set by the Commission, the rules contained in that Title which have not been reviewed will expire. The Commission shall report to the Committee any agency that fails to conduct the review. The Commission may exempt rules that have been adopted or amended within the previous 10 years from the review required by this section. However, any rule exempted on this basis must be reviewed in

accordance with this section no more than 10 years following the last time the rule was amended.

(2) With regard to the readoption of rules as required by sub-subdivision (c)(2)g. of this section, once the final determination report becomes effective, the Commission shall establish a date by which the agency must readopt the rules. The Commission shall consult with the agency and shall consider the agency's rule-making priorities in establishing the readoption date. The agency may amend a rule as part of the readoption process. If a rule is readopted without change, the agency is not required to prepare a fiscal note as provided by G.S. 150B-21.4."

AUTHORIZE LICENSING BOARDS TO ADOPT RULES FOR PROFESSIONAL CORPORATIONS

SECTION 1.10. G.S. 55B-12 reads as rewritten:

"**§ 55B-12. Application of regulations of licensing boards.**

(a) A professional corporation shall be subject to the applicable rules and regulations adopted by, and all the disciplinary powers of, the licensing board as herein defined. Nothing in this Chapter shall impair the disciplinary powers of any licensing board applicable to a licensee as herein defined. No professional corporation may do any act which its shareholders as licensees are prohibited from doing.

(b) Subject to the requirements of Article 2A of Chapter 150B of the General Statutes, any licensing board subject to this Chapter may adopt rules to implement the provisions of this Chapter, including any rules needed to establish fees within the limits set by this Chapter."

OCCUPATIONAL LICENSING BOARD REPORTING AMENDMENTS

SECTION 1.11. G.S. 93B-2 reads as rewritten:

"**§ 93B-2. Annual reports required; contents; open to inspection; sanction for failure to report.**

(a) No later than October 31 of each year, each occupational licensing board shall file electronically with the Secretary of State, the Attorney General, and the Joint ~~Regulatory Reform~~Legislative Administrative Procedure Oversight Committee an annual report containing all of the following information:

(1) The address of the board, and the names of its members and officers.

(1a) The total number of licensees supervised by the board.

(2) The number of persons who applied to the board for examination.

(3) The number who were refused examination.

(4) The number who took the examination.

(5) The number to whom initial licenses were issued.

(5a) The number who failed the examination.

(6) The number who applied for license by reciprocity or comity.

(7) The number who were granted licenses by reciprocity or comity.

(7a) The number of official complaints received involving licensed and unlicensed activities.

(7b) The number of disciplinary actions taken against licensees, or other actions taken against nonlicensees, including injunctive relief.

(8) The number of licenses suspended or revoked.

(9) The number of licenses terminated for any reason other than failure to pay the required renewal fee.

(10) The substance of any anticipated request by the occupational licensing board to the General Assembly to amend statutes related to the occupational licensing board.

(11) The substance of any anticipated change in rules adopted by the occupational licensing board or the substance of any anticipated adoption of new rules by the occupational licensing board.

(b) No later than October 31 of each year, each occupational licensing board shall file electronically with the Secretary of State, the Attorney General, the Office of State Budget and Management, and the Joint ~~Regulatory Reform~~Legislative Administrative Procedure Oversight Committee a financial report that includes the source and amount of all funds credited to the occupational licensing board and the purpose and amount of all funds disbursed by the occupational licensing board during the previous fiscal year.

(c) The reports required by this section shall be open to public inspection.

(d) The Joint Legislative Administrative Procedure Oversight Committee shall notify any board that fails to file the reports required by this section. Failure of a board to comply with the reporting requirements of this section by October 31 of each year shall result in a suspension of the board's authority to expend any funds until such time as the board files the required reports. Suspension of a board's authority to expend funds under this subsection shall not affect the board's duty to issue and renew licenses or the validity of any application or license for which fees have been tendered in accordance with law. Each board shall adopt rules establishing a procedure for implementing this subsection and shall maintain an escrow account into which any fees tendered during a board's period of suspension under this subsection shall be deposited."

OAH ELECTRONIC FILING

SECTION 1.12.(a) Article 3 of Chapter 150B of the General Statutes is amended by adding a new section to read:

"**§ 150B-23.3. Electronic filing.**

(a) In addition to any other method specified in G.S. 150B-23, documents filed and served in a contested case may be filed and served electronically by means of an Electronic Filing Service Provider. For purposes of this section, the following definitions apply:

(1) Electronic filing means the electronic transmission of the petition, notice of hearing, pleadings, or any other documents filed in a contested case with the Office of Administrative Hearings, as further defined by rules adopted by the Office of Administrative Hearings.

(2) Electronic Filing Service Provider (EFSP) means the service provided by the Office of Administrative Hearings for e-filing and e-service of documents via the Internet.

(3) Electronic service means the electronic transmission of the petition, notice of hearing, pleadings, or any other documents in a contested case, as further defined by rules adopted by the Office of Administrative Hearings."

SECTION 1.12.(b) This section is effective when it becomes law and applies to contested cases filed on or after that date.

STATE BOARD OF EDUCATION RULEMAKING CLARIFICATION

SECTION 1.13.(a) G.S. 115C-12 reads as rewritten:

"**§ 115C-12. Powers and duties of the Board generally.**

The general supervision and administration of the free public school system shall be vested in the State Board of Education. The State Board of Education shall establish policy for the system of free public schools, subject to laws enacted by the General Assembly. The State Board of Education is subject to Article 2A of Chapter 150B of the General Statutes. The State Board of Education may not implement or enforce against any person a policy that meets the definition of a rule contained in G.S. 150B-2(8a) if the policy has not been adopted as a rule in

accordance with Article 2A of Chapter 150B of the General Statutes. The powers and duties of the State Board of Education are defined as follows:

…."

SECTION 1.13.(b) G.S. 150B-23 is amended by adding a new subsection to read:

"(a4) If an agency fails to take any required action within the time period specified by law, any person whose rights are substantially prejudiced by the agency's failure to act may commence a contested case in accordance with this section seeking an order that the agency act as required by law. If the administrative law judge finds that the agency has failed to act as required by law, the administrative law judge may order that the agency take the required action within a specified time period."

SECTION 1.13.(c) G.S. 150B-44 reads as rewritten:

"**§ 150B-44. Right to judicial intervention when final decision unreasonably delayed.**

~~Unreasonable delay on the part of any agency or administrative law judge in taking any required action shall be justification for any person whose rights, duties, or privileges are adversely affected by such delay to seek a court order compelling action by the agency or administrative law judge.~~ Failure of an administrative law judge subject to Article 3 of this Chapter or failure of an agency subject to Article 3A of this Chapter to make a final decision within 120 days of the close of the contested case hearing is justification for a person whose rights, duties, or privileges are adversely affected by the delay to seek a court order compelling action by the agency or by the administrative law judge.~~The Board of Trustees of the North Carolina State Health Plan for Teachers and State Employees is a "board" for purposes of this section.~~"

STREAMLINE RULE-MAKING PROCESS

SECTION 1.14.(a) G.S. 150B-19.1(h) is repealed.

SECTION 1.14.(b) G.S. 150B-21.4(b1) reads as rewritten:

"(b1) Substantial Economic Impact. – Before an agency adopts a permanent rule change that would have a substantial economic impact and that is not identical to a federal regulation that the agency is required to adopt, the agency shall prepare a fiscal note for the proposed rule change and have the note approved by the Office of State Budget and Management. The agency must also obtain from the Office a certification that the agency adhered to the regulatory principles set forth in G.S. 150B-19.1(a)(2), (5), and (6). The agency may request the Office of State Budget and Management to prepare the fiscal note only after, working with the Office, it has exhausted all resources, internal and external, to otherwise prepare the required fiscal note. If an agency requests the Office of State Budget and Management to prepare a fiscal note for a proposed rule change, that Office must prepare the note within 90 days after receiving a written request for the note. If the Office of State Budget and Management fails to prepare a fiscal note within this time period, the agency proposing the rule change shall prepare a fiscal note. A fiscal note prepared in this circumstance does not require approval of the Office of State Budget and Management.

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

As used in this subsection, the term "substantial economic impact" means an aggregate financial impact on all persons affected of at least one million dollars ($1,000,000) in a 12-month period. In analyzing substantial economic impact, an agency shall do the following:

(1) Determine and identify the appropriate time frame of the analysis.

(2) Assess the baseline conditions against which the proposed rule is to be measured.

(3) Describe the persons who would be subject to the proposed rule and the type of expenditures these persons would be required to make.

(4) Estimate any additional costs that would be created by implementation of the proposed rule by measuring the incremental difference between the baseline and the future condition expected after implementation of the rule. The analysis should include direct costs as well as opportunity costs. Cost estimates must be monetized to the greatest extent possible. Where costs are not monetized, they must be listed and described.

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

SECTION 1.14.(c) This section is effective when it becomes law and applies to proposed rules published on or after that date.

BURDEN OF PROOF IN CERTAIN CONTESTED CASES

SECTION 1.15.(a) Article 3 of Chapter 150B of the General Statutes is amended by adding a new section to read:

"**§ 150B-25.1. Burden of proof.**

(a) Except as provided by this section, the petitioner in a contested case has the burden of proving the facts alleged in the petition by a preponderance of the evidence.

(b) In a contested case involving the imposition of civil fines or penalties by a State agency for violation of the law, the burden of showing that the person who was fined actually committed the act for which the fine or penalty was imposed rests with the State agency.

(c) The burden of showing that a career State employee subject to Chapter 126 of the General Statutes was discharged, suspended, or demoted for just cause rests with the agency employer."

SECTION 1.15.(b) The Joint Legislative Administrative Procedure Oversight Committee shall study whether there are other categories of contested cases in which the burden of proof should be placed with the agency.

SECTION 1.15.(c) This section is effective when it becomes law and applies to contested cases commenced on or after that date.

LEGISLATIVE APPOINTMENTS

SECTION 1.16.(a) G.S. 120-121 is amended by adding two new subsections to read:

"(e) The following applies in any case where the Speaker of the House of Representatives or the President Pro Tempore of the Senate is directed by law to make a recommendation for an appointment by the General Assembly, and the legislator is also directed to make the recommendation in consultation with or upon the recommendation of a third party:

(1) The recommendation or consultation is discretionary and is not binding upon the legislator.

(2) The third party must submit the recommendation or consultation at least 60 days prior to the expiration of the term or within 10 business days from the occurrence of a vacancy.

(3) Failure by the third party to submit the recommendation or consultation to the legislator within the time periods required under this subsection shall be deemed a waiver by the third party of the opportunity.

(f) The following applies in any case where the Speaker of the House of Representatives or the President Pro Tempore of the Senate is directed by law to make a recommendation for an appointment by the General Assembly and the legislator is also directed to make the recommendation from nominees provided by a third party:

(1) The third party must submit the nominees at least 60 days prior to the expiration of the term or within 10 business days from the occurrence of a vacancy.

(2) Failure by the third party to submit the nomination to the legislator within the time periods required under this subsection shall be deemed a waiver by the third party of the opportunity."

SECTION 1.16.(b) Article 16 of Chapter 120 of the General Statutes is amended by adding a new section to read:

"**§ 120-124. Appointments made by legislators.**

(a) In any case where a legislator is called upon by law to appoint a member to a board or commission upon the recommendation of or in consultation with a third party, the recommendation or consultation is discretionary and is not binding upon the legislator. The third party must submit the recommendation or consultation at least 60 days prior to the expiration of the term or within 10 business days from the occurrence of a vacancy.

(b) In any case where a legislator is called upon by law to appoint a member to a board or commission from nominees provided by a third party, the third party must submit the nominees at least 60 days prior to the expiration of the term or within 10 business days from the occurrence of a vacancy. This subsection does not apply to nominations made under G.S. 120-99(a) or G.S. 120-100(b).

(c) Failure to submit the recommendation, consultation, or nomination within the time periods required under this section shall be deemed a waiver by the third party of the opportunity."

SECTION 1.16.(c) This section is effective when it becomes law and applies to recommendations, consultations, and nominations made on or after that date.

PART II. PERMITTING REFORMS

CAPSTONE PERMITTING

SECTION 2.1. G.S. 150B-23 is amended by adding a new subsection to read:

"**§ 150B-23. Commencement; assignment of administrative law judge; hearing required; notice; intervention.**

…

(g) Where multiple licenses are required from an agency for a single activity, the Secretary or chief administrative officer of the agency may issue a written determination that the administrative decision reviewable under Article 3 of this Chapter occurs on the date the last license for the activity is issued, denied, or otherwise disposed of. The written determination of the administrative decision is not reviewable under this Article. Any licenses issued for the activity prior to the date of the last license identified in the written determination are not reviewable under this Article until the last license for the activity is issued, denied, or otherwise disposed of. A contested case challenging the last license decision for the activity may include challenges to agency decisions on any of the previous licenses required for the activity."

CONTESTED CASES FOR AIR QUALITY PERMITS

SECTION 2.2. G.S. 143-215.108 reads as rewritten:

"**§ 143-215.108. Control of sources of air pollution; permits required.**

…

(e) A permit ~~applicant, permittee, or third party~~applicant or permittee who is dissatisfied with a decision of the Commission on a permit application may commence a contested case by filing a petition under G.S. 150B-23 within 30 days after the Commission notifies the applicant or permittee of its decision. If the permit ~~applicant, permittee, or third party~~applicant or permittee does not file a petition within the required time, the Commission's decision on the application is final and is not subject to review. The filing of a petition under this subsection will stay the Commission's decision until resolution of the contested case.

(e1) A person other than a permit applicant or permittee who is a person aggrieved by the Commission's decision on a permit application may commence a contested case by filing a petition under G.S. 150B-23 within 30 days after the Commission provides notice of its decision on a permit application, as provided in G.S. 150B-23(f), or by posting the decision on a publically available Web site. "Substantial prejudice" to the petitioner in a contested case filed under this subsection means the exceedance of a national ambient air quality standard. The filing of a petition under this subsection does not stay the Commission's decision except as ordered by the administrative law judge under G.S. 150B-33(b).

…."

CLOSURE OF CERTAIN ANIMAL WASTE CONTAINMENT BASINS

SECTION 2.3. Part 1A of Article 21 of Chapter 143 of the General Statutes is amended by adding a new section to read:

"**§ 143-215.10J Closure of certain animal waste containment basins.**

(a) The Department shall consider any waste containment basin to be a fresh water storage facility meeting all requirements for closure under 15A NCAC 02T. 1306 if the owner of the basin demonstrates to the satisfaction of the Department that the basin meets all of the following requirements:

(1) The basin has been used only for the containment of dairy cattle waste.

(2) The basin was constructed prior to 1967.

(3) The basin has not been used for the containment of dairy cattle waste after September 1, 2006, and the only liquid currently held in the basin is from rainwater or rainwater runoff.

(4) Nitrogen levels in the basin water do not exceed 40 parts per million.

(b) The Department shall provide written notification to the owner of a basin meeting the requirements of subsection (a) of this section that the basin is no longer considered an animal waste management system."

CONTESTED CASES FOR CAMA PERMITS

SECTION 2.4. G.S. 113A-121.1 reads as rewritten:

"**§ 113A-121.1. Administrative review of permit decisions.**

(a) An applicant for a minor or major development permit who is dissatisfied with the decision on his application may file a petition for a contested case hearing under G.S. 150B-23 within 20 days after the decision is made. When a local official makes a decision to grant or deny a minor development permit and the Secretary is dissatisfied with the decision, the Secretary may file a petition for a contested case within 20 days after the decision is made.

(b) A person other than a permit applicant or the Secretary who is dissatisfied with a decision to deny or grant a minor or major development permit may file a petition for a contested case hearing only if the Commission determines that a hearing is appropriate. A request for a determination of the appropriateness of a contested case hearing shall be made in writing and received by the Commission within 20 days after the disputed permit decision is

made. A determination of the appropriateness of a contested case shall be made within 15 days after a request for a determination is received and shall be based on whether the person seeking to commence a contested case:

(1) Has alleged that the decision is contrary to a statute or rule;
(2) Is directly affected by the decision; and
(3) Has alleged facts or made legal arguments that demonstrate that the request for the hearing is not frivolous.

If the Commission determines a contested case is appropriate, the petition for a contested case shall be filed within 20 days after the Commission makes its determination. A determination that a person may not commence a contested case is a final agency decision and is subject to judicial review under Article 4 of Chapter 150B of the General Statutes. If, on judicial review, the court determines that the Commission erred in determining that a contested case would not be appropriate, the court shall remand the matter for a contested case hearing under G.S. 150B-23 and final decision on the permit pursuant to G.S. 113A-122. Decisions in such cases shall be rendered pursuant to those rules, regulations, and other applicable laws in effect at the time of the commencement of the contested case.

(c) ~~A~~ When the applicant seeks administrative review of a decision concerning a permit under subsection (a) of this section, the permit is suspended from the time a person seeks administrative review of the decision concerning the permit until the Commission ~~determines that the person seeking the review cannot commence a contested case or the Commission~~ makes a final decision in ~~a~~ the contested ~~case, as appropriate,~~case, and no action may be taken during that time that would be unlawful in the absence of a permit.

(d) A permit challenged under subsection (b) of this section remains in effect unless a stay is issued by the administrative law judge as set forth in G.S. 150B-33 or by a reviewing court as set forth in G.S. 150B-48."

GUBERNATORIAL ENVIRONMENTAL PERMIT WAIVER AUTHORITY

SECTION 2.5.(a) G.S. 166A-19.30(a) reads as rewritten:

"**§ 166A-19.30. Additional powers of the Governor during state of emergency.**

(a) In addition to any other powers conferred upon the Governor by law, during a gubernatorially or legislatively declared state of emergency, the Governor shall have the following powers:

(1) To utilize all available State resources as reasonably necessary to cope with an emergency, including the transfer and direction of personnel or functions of State agencies or units thereof for the purpose of performing or facilitating emergency services.
(2) To take such action and give such directions to State and local law enforcement officers and agencies as may be reasonable and necessary for the purpose of securing compliance with the provisions of this Article and with the orders, rules, and regulations made pursuant thereto.
(3) To take steps to assure that measures, including the installation of public utilities, are taken when necessary to qualify for temporary housing assistance from the federal government when that assistance is required to protect the public health, welfare, and safety.
(4) Subject to the provisions of the State Constitution to relieve any public official having administrative responsibilities under this Article of such responsibilities for willful failure to obey an order, rule, or regulation adopted pursuant to this Article.
(5) Through issuance of an executive order, to waive requirements for an environmental document or permit issued under Articles 1, 4, and 7 of Chapter 113A of the General Statutes for the repair, protection, safety

enhancement, or replacement of a component of the State highway system that provides the sole road access to an incorporated municipality or an unincorporated inhabited area bordering the Atlantic Ocean or any coastal sound, where bridge or road conditions as a result of the events leading to the declaration of the state of emergency pose a substantial risk to public health, safety, or welfare. The executive order shall list the duration of the waiver and the activities to which the waiver applies. For purposes of this subdivision, "coastal sound" shall have the definition set forth in G.S. 113A-103, and "replacement" shall not be interpreted to exclude a replacement that increases size or capacity or that is located in a different location than the component that is replaced."

SECTION 2.5.(b) G.S. 113A-12 is amended by adding a new subdivision to read:

"(7) The issuance of an executive order under G.S. 166A-19.30(a)(5) waiving the requirement for an environmental document."

SECTION 2.5.(c) G.S. 113A-52.01 reads as rewritten:

"**§ 113A-52.01. Applicability of this Article.**

This Article shall not apply to the following land-disturbing activities:

…

(4) For the duration of an emergency, activities essential to protect human ~~life.~~life, including activities specified in an executive order issued under G.S. 166A-19.30(a)(5)."

SECTION 2.5.(d) G.S. 113A-103(5) reads as rewritten:

"**§ 113A-103. Definitions.**

As used in this Article:

…

(5) a. "Development" means any activity in a duly designated area of environmental concern (except as provided in paragraph b of this subdivision) involving, requiring, or consisting of the construction or enlargement of a structure; excavation; dredging; filling; dumping; removal of clay, silt, sand, gravel or minerals; bulkheading, driving of pilings; clearing or alteration of land as an adjunct of construction; alteration or removal of sand dunes; alteration of the shore, bank, or bottom of the Atlantic Ocean or any sound, bay, river, creek, stream, lake, or canal; or placement of a floating structure in an area of environmental concern identified in G.S. 113A-113(b)(2) or (b)(5).

b. The following activities including the normal and incidental operations associated therewith shall not be deemed to be development under this section:

1. Work by a highway or road agency for the maintenance of an existing road, if the work is carried out on land within the boundaries of the existing ~~right-of-way;~~right-of-way, or for emergency repairs and safety enhancements of an existing road as described in an executive order issued under G.S. 166A-19.30(a)(5).

…."

FEE ROLLBACK FOR OYSTER PERMITS UNDER PRIVATE DOCKS

SECTION 2.6.(a) Subsections (l) and (m) of G.S. 113-210 are repealed.

SECTION 2.6.(b) This section becomes effective July 1, 2014.

LOCAL GOVERNMENT LEASES FOR RENEWABLE ENERGY FACILITIES

SECTION 2.7. G.S. 160A-272 reads as rewritten:

"**§ 160A-272. Lease or rental of property.**

…

(c) The council may approve a lease for the siting and operation of a renewable energy facility, as that term is defined in G.S. 62-133.8(a)(7), for a term up to ~~20~~ 25 years without treating the lease as a sale of property and without giving notice by publication of the intended lease. ~~This subsection applies to Catawba, Mecklenburg, and Wake Counties, the Cities of Asheville, Raleigh, and Winston-Salem, and the Towns of Apex, Carrboro, Cary, Chapel Hill, Fuquay-Varina, Garner, Holly Springs, Knightdale, Morrisville, Rolesville, Wake Forest, Wendell, and Zebulon only.~~"

CLOSING-OUT SALES

SECTION 2.8. G.S. 66-77 reads as rewritten:

"**§ 66-77. License required; contents of applications; inventory required; fees; bond; extension of licenses; records; false statements.**

(a) No person shall advertise or offer for sale a stock of goods, wares or merchandise under the description of closing-out sale, or a sale of goods, wares or merchandise damaged by fire, smoke, water or otherwise, or a distress sale unless he shall have obtained a license to conduct such sale from the ~~clerk of the~~officer designated by the governing board of the city or town in which he proposes to conduct such a sale or from the officer designated by the Board of County Commissioners if the sale is conducted in an unincorporated area. The applicant for such a license shall make to ~~such clerk~~the designated officer an application ~~therefor,~~ in writing and under oath at least seven days prior to the opening date of sale, showing all the facts relating to the reasons and character of such sale, including the opening and terminating dates of the proposed sale, the opening and terminating dates of any previous distress sale or closing-out sale held by the applicant within that county during the preceding 12 months, a complete inventory of the goods, wares or merchandise actually on hand in the place ~~whereat such~~where the sale is to be conducted, and all details necessary to locate exactly and identify fully the goods, wares or merchandise to be sold. Provided, the seller in a distress sale need not file an inventory.

(b) If ~~such clerk~~ the designated officer shall be satisfied from said application that the proposed sale is of the character which the applicant desires to advertise and conduct, the ~~clerk~~ designated officer shall issue a license, upon the payment of a fee of fifty dollars ($50.00) therefor, together with a bond, payable to the city or town or county in the penal sum of five hundred dollars ($500.00), conditioned upon compliance with this Article, to the applicant authorizing him to advertise and conduct a sale of the particular kind mentioned in the application. The license fee provided for herein shall be good for a period of 30 days from its date, and if the applicant shall not complete said sale within said 30-day period then the applicant shall make application to ~~such clerk~~ the designated officer for a license for a new permit, which shall be good for an additional period of 30 days, and shall pay therefor the sum of fifty dollars ($50.00), and a second extension period of 30 days may be similarly applied for and granted by the ~~clerk~~ designated officer upon payment of an additional fee of fifty dollars ($50.00) and upon the ~~clerk~~ designated officer being satisfied that the applicant is holding a bona fide sale of the kind contemplated by this Article and is acting in a bona fide manner; provided, however, that the ~~clerk~~ designated officer may not grant an extension period as provided in this subsection if (i) the applicant conducted a distress sale immediately preceding the current sale for which the extension is applied for and (ii) the period of the extension applied for, when added to the period of the preceding sale and the period of the current sale, will exceed 120 days. No additional bond shall be required in the event of one or more extensions as herein provided for. Any merchant who shall have been conducting a business in the same location where the sale is to be held for a period of not less than one year, prior to the

date of holding such sale, or any merchant who shall have been conducting a business in one location for such period but who shall, by reason of the building being untenantable or by reason of the fact that said merchant shall have no existing lease or ownership of the building and shall be forced to hold such sale at another location, shall be exempted from the payment of the fees and the filing of the bond herein provided for.

…."

PART III. REGULATORY AND STATUTORY MODIFICATIONS

REGULATION OF IMPACT TO ISOLATED WETLANDS

SECTION 3.1.(a) Until the effective date of the revised permanent rule that the Environmental Management Commission is required to adopt pursuant to subsection (c) of this section, the Commission and the Department of Environment and Natural Resources shall implement 15A NCAC 02H .1305 (Review of Applications) as provided in subsection (c) of this section.

SECTION 3.1.(b) Notwithstanding 15A NCAC 02H .1305 (Review of Applications), both of the following shall apply to the implementation of 15A NCAC 02H .1305:

(1) The amount of impacts of isolated wetlands under 15A NCAC 02H .1305(d)(2) shall be less than or equal to 1 acre of isolated wetlands for the entire project.

(2) The mitigation ratio under 15A NCAC 02H .1305(g)(6) shall be 1:1.

SECTION 3.1.(c) The Environmental Management Commission shall adopt a rule to amend 15A NCAC 02H .1305 (Review of Applications) consistent with subsection (b) of this section. Notwithstanding G.S. 150B-19(4), the rule adopted by the Commission pursuant to this section shall be substantively identical to the provisions of subsection (b) of this section. Rules adopted pursuant to this section are not subject to Part 3 of Article 2A of Chapter 150B of the General Statutes. Rules adopted pursuant to this section shall become effective as provided in G.S. 150B-21.3(b1) as though 10 or more written objections had been received as provided by G.S. 150B-21.3(b2).

SECTION 3.1.(d) The Department of Environment and Natural Resources shall study the surface area thresholds for the regulation of mountain bog isolated wetlands, including whether mountain bog isolated wetlands should have surface area regulatory thresholds different from other types of isolated wetlands. The Department shall report its findings and recommendations to the Environmental Review Commission on or before November 1, 2014.

SECTION 3.1.(e) Subsection (b) of this section expires on the date that rules adopted pursuant to subsection (c) of this section become effective.

COMMUNITY COLLEGE BREWING COURSE WAIVER

SECTION 3.2.(a) Article 11 of Chapter 18B of the General Statutes is amended by adding a new section to read:

"**§ 18B-1114.6. Brewing, Distillation, and Fermentation course authorization.**

(a) Authorization. – The holder of a brewing, distillation, and fermentation course authorization may:

(1) Manufacture malt beverages on the school's campus or the school's contracted or leased property for the purpose of providing instruction and education on the making of malt beverages.

(2) Possess malt beverages manufactured during the brewing, distillation, and fermentation program for the purpose of conducting malt beverage tasting seminars and classes for students who are 21 years of age or older.

(3) Sell malt beverages produced during the course to wholesalers or to retailers upon obtaining a malt beverages wholesaler permit under G.S. 18B-1109, except that the permittee may not receive shipments of malt beverages from other producers.

(4) Sell malt beverages produced during the course, upon obtaining a permit under G.S. 18B-1001(2).

(b) Limitation. – Authorization for a brewing, distillation, and fermentation course shall be granted by the Commission only for a community college or college that offers a brewing, distillation, and fermentation program as a part of its curriculum offerings for students of the school. For purposes of this section, the term "brewing, distillation, and fermentation program" includes a fermentation sciences program offered by a community college or college as part of its curriculum offerings for students of the school.

(c) Malt Beverage Special Event Permit. – The holder of a brewing, distillation, and fermentation course authorization who obtains a malt beverages wholesaler permit under G.S. 18B-1109 subject to the limitation in subsection (a) of this section may obtain a malt beverage special event permit under G.S. 18B-1114.5 and where the permit is valid may participate in approved events and sell at retail at those events any malt beverages produced incident to the operation of the brewing, distillation, and fermentation program. The holder of a brewing, distillation, and fermentation course authorization may participate in not more than six malt beverage special events within a 12-month period and may sell up to 64 cases of malt beverages, or the equivalent volume of 64 cases of malt beverages, at each event. For purposes of this subsection, a "case of malt beverages" is a package containing not more than 24 12-ounce bottles of malt beverage. Net proceeds from the program's retail sale of malt beverages pursuant to this subsection shall be retained by the school and used for support of the brewing, distillation, and fermentation program.

(d) Limited Application. – The holder of a brewing, distillation, and fermentation course authorization shall not be considered a brewery for the purposes of this Chapter or Chapter 105 of the General Statutes."

SECTION 3.2.(b) G.S. 18B-1114.5(a) reads as rewritten:

"(a) Authorization. – The holder of a ~~brewery,~~brewery permit, a malt ~~beverage importer,~~beverages importer permit, a brewing, distillation, and fermentation course authorization, or a nonresident malt beverage vendor permit may obtain a malt beverage special event permit allowing the permittee to give free tastings of its malt beverages and to sell its malt beverages by the glass or in closed containers at trade shows, conventions, shopping malls, malt beverage festivals, street festivals, holiday festivals, agricultural festivals, balloon races, local fund-raisers, and other similar events approved by the Commission. Except for a brewery operating under the provisions of G.S. 18B-1104(7), all malt beverages sampled or sold pursuant to this section must be purchased from a licensed malt beverages wholesaler."

SECTION 3.2.(c) G.S. 18B-1001(2) reads as rewritten:

"**§ 18B-1001. Kinds of ABC permits; places eligible.**

When the issuance of the permit is lawful in the jurisdiction in which the premises are located, the Commission may issue the following kinds of permits:

…

(2) Off-Premises Malt Beverage Permit. – An off-premises malt beverage permit authorizes (i) the retail sale of malt beverages in the manufacturer's original container for consumption off the premises, (ii) the retail sale of malt beverages in a cleaned, sanitized, resealable container as defined in 4 NCAC 2T.0308(a) that is filled or refilled and sealed for consumption off the premises, complies with 4 NCAC 2T.0303, 4 NCAC 2T.0305, and 4 NCAC 2T.0308(d)-(e), and the container identifies the permittee and the date the container was filled or refilled, and (iii) the holder of the permit to

ship malt beverages in closed containers to individual purchasers inside and outside the State. The permit may be issued for any of the following:

a. ~~Restaurants;~~Restaurants.
b. ~~Hotels;~~Hotels.
c. Eating ~~establishments;~~establishments.
d. Food ~~businesses;~~businesses.
e. Retail businesses.
f. The holder of a brewing, distillation, and fermentation course authorization under G.S. 18B-1114.6. A school obtaining a permit under this subdivision is authorized to sell malt beverages manufactured during its brewing, distillation, and fermentation program at one noncampus location in a county where the permittee holds and offers classes on a regular full-time basis in a facility owned by the permittee.

…."

SECTION 3.2.(d) G.S. 66-58(c)(1a) reads as rewritten:

"**§ 66-58. Sale of merchandise or services by governmental units.**

…

(c) The provisions of subsection (a) shall not prohibit:

…

(1a) The sale of products raised or produced incident to the operation of a community college or college viticulture/enology program as authorized by ~~G.S. 18B-1114.4.~~G.S. 18B-1114.4 or the operation of a community college or college brewing, distillation, or fermentation program as authorized by G.S. 18B-1114.6.

…."

CARBON MONOXIDE ALARMS

SECTION 3.3.(a) Section 19(c) of Session Law 2013-413 is repealed.

SECTION 3.3.(b) Section 19(e) of Session Law 2013-413 reads as rewritten:

"**SECTION 19.(e)** This section is effective when it becomes law, except that ~~(i) subsection (b) of this section becomes effective October 1, 2013, and expires October 1, 2014; and (ii) subsection (c) of this section becomes effective October 1, 2014.~~subsection (b) of this section becomes effective October 1, 2013."

SECTION 3.3.(c) G.S. 143-138(b2) reads as rewritten:

"(b2) Carbon Monoxide ~~Detectors.~~Alarms. – The Code (i) may contain provisions requiring the installation of either battery-operated or electrical carbon monoxide ~~detectors~~alarms in every dwelling unit having a ~~fossil-fuel-burning~~combustion heater, appliance, or fireplace, and in any dwelling unit having an attached garage and (ii) shall contain provisions requiring the installation of electrical carbon monoxide ~~detectors~~alarms at a lodging establishment. The Building Code Council may require carbon monoxide alarms in dwelling units with no combustion heater, appliance, or fireplace other than a wood-burning fireplace only upon (i) a finding by the Council that carbon monoxide emissions from wood-burning fireplaces constitute a substantial threat to public health and safety and (ii) a report by the Council to the Joint Legislative Commission on Government Operations that provides the basis for the Council's finding of a substantial threat to public health and safety. Violations of this subsection and rules adopted pursuant to this subsection shall be punishable in accordance with subsection (h) of this section and G.S. 143-139. In particular, the rules shall provide:

(1) For dwelling units, carbon monoxide ~~detectors~~alarms shall be those listed by a nationally recognized testing laboratory that is OSHA-approved to test and certify to American National Standards Institute/Underwriters Laboratories

Standards ANSI/UL2034 or ANSI/UL2075 and shall be installed in accordance with either the standard of the National Fire Protection Association or the minimum protection designated in the manufacturer's instructions, which the property owner shall retain or provide as proof of compliance. A carbon monoxide ~~detector~~alarm may be combined with smoke detectors if the combined ~~detector~~alarm does both of the following: (i) complies with ANSI/UL2034 or ANSI/UL2075 for carbon monoxide alarms and ANSI/UL217 for smoke detectors; and (ii) emits an alarm in a manner that clearly differentiates between detecting the presence of carbon monoxide and the presence of smoke.

(2) For lodging establishments, including tourist homes that provide accommodations for seven or more continuous days (extended stay establishments), and bed and breakfast inns and bed and breakfast homes as defined in G.S. 130A-247, carbon monoxide ~~detectors~~alarms shall be installed in every ~~enclosed space~~dwelling unit or sleeping unit having a ~~fossil fuel burning~~combustion heater, appliance, or fireplace and in ~~any enclosed space, including a sleeping room,~~every dwelling unit or sleeping unit that shares a common wall, floor, or ceiling ~~with an enclosed space~~with a room having a combustion~~fossil fuel burning~~ heater, appliance, or fireplace. Carbon monoxide ~~detectors~~alarms shall be (i) listed by a nationally recognized testing laboratory that is ~~OSHA approved~~approved to test and certify to American National Standards Institute/Underwriters Laboratories (ANSI/UL) Standards ANSI/UL2034 or ANSI/UL2075, (ii) installed in accordance with either the standard of the National Fire Protection Association (NFPA) or the minimum protection designated in the manufacturer's instructions, which the lodging establishment shall retain or provide as proof of compliance, (iii) receive primary power from the building's wiring, where such wiring is served from a commercial source, and (iv) receive power from a battery when primary power is interrupted. A carbon monoxide ~~detector~~alarms may be combined with smoke detectors if the combined ~~detector~~alarm complies with the requirements of this subdivision for carbon monoxide alarms and ANSI/UL217 for smoke ~~detectors.~~alarms. In lieu of the carbon monoxide alarms required by this subsection, a carbon monoxide detection system, which includes carbon monoxide detectors and audible notification appliances installed and maintained in accordance with NFPA 720 shall be permitted. The carbon monoxide detectors shall be listed as complying with ANSI/UL2075. For purposes of this subsection, "lodging establishment" means any hotel, motel, tourist home, or other establishment permitted under authority of G.S. 130A-248 to provide lodging accommodations for pay to the ~~public.~~public, and "combustion heater, appliance, or fireplace" means any heater, appliance, or fireplace that burns combustion fuels, including, but not limited to, natural or liquefied petroleum gas, fuel oil, kerosene, wood, or coal, for heating, cooking, drying, or decorative purposes, including, but not limited to, space heaters, wall and ceiling heaters, ranges, ovens, stoves, furnaces, fireplaces, water heaters, and clothes dryers. For purposes of this subsection, candles and canned fuels are not considered to be combustion appliances.

(3) The Building Code Council shall modify the NC State Building Code (Fire Prevention) to regulate the provisions of this subsection in new and existing lodging establishments, including hotels, motels, tourist homes that provide

accommodations for seven or more continuous days (extended stay establishments), and bed and breakfast inns and bed and breakfast homes as defined in G.S. 130A-247; provided, nothing in this subsection shall prevent the Building Code Council from establishing more stringent rules regulating carbon monoxide alarms or detectors for new lodging establishments, including hotels, motels, tourist homes that provide accommodations for seven or more continuous days (extended stay establishments), and bed and breakfast inns and bed and breakfast homes as defined in G.S. 130A-247. The Building Code Council shall modify the NC State Building Code (Fire Prevention) minimum inspection schedule to include annual inspections of new and existing lodging establishments, including hotels, motels, and tourist homes that provide accommodations for seven or more continuous days (extended stay establishments), and bed and breakfast inns and bed and breakfast homes as defined in G.S. 130A-247 for the purpose of compliance with this subsection.

(4) Upon discovery of a violation of this subsection that poses an imminent hazard and that is not corrected during an inspection of a lodging establishment subject to the provisions of G.S. 130A-248, the code official responsible for enforcing the NC State Building Code (Fire Prevention) shall immediately notify the local health director, or the director's designee, for the county in which the violation was discovered by verbal contact and shall also submit a written report documenting the violation of this subsection to the local health director, or the director's designee, for the county in which the violation was discovered on the next working day following the discovery of the violation. Within one working day of receipt of the written report documenting a violation of this subsection, the local health director, or the director's designee, for the county in which the violation was discovered shall investigate and take appropriate action regarding the permit for the lodging establishment, as provided in G.S. 130A-248. Lodging establishments having five or more rooms that are exempted from the requirements of G.S. 130A-248 by G.S. 130A-250 shall be subject to the penalties set forth in the NC State Building Code (Fire Prevention).

(5) Upon discovery of a violation of this subsection that does not pose an imminent hazard and that is not corrected during an inspection of a lodging establishment subject to the provisions of G.S. 130A-248, the owner or operator of the lodging establishment shall have a correction period of three working days following the discovery of the violation to notify the code official responsible for enforcing the NC State Building Code (Fire Prevention) verbally or in writing that the violation has been corrected. If the code official receives such notification, the code official may reinspect the portions of the lodging establishment that contained violations, but any fees for reinspection shall not exceed the fee charged for the initial inspection. If the code official receives no such notification, or if the results of a reinspection reveal that previous violations were not corrected, the code official shall submit a written report documenting the violation of this subsection to the local health director, or the director's designee, for the county in which the violation was discovered within three working days following the termination of the correction period or the reinspection, whichever is later. The local health director shall investigate and may take appropriate action regarding the permit for the lodging establishment, as provided in G.S. 130A-248. Lodging establishments having five or more

rooms that are exempted from the requirements of G.S. 130A-248 by G.S. 130A-250 shall be subject to the penalties set forth in the NC State Building Code (Fire Prevention)."

SECTION 3.3.(d) G.S. 130A-248 reads as rewritten:

"**§ 130A-248. Regulation of food and lodging establishments.**

…

(b) No establishment shall commence or continue operation without a permit or transitional permit issued by the Department. The permit or transitional permit shall be issued to the owner or operator of the establishment and shall not be transferable. If the establishment is leased, the permit or transitional permit shall be issued to the lessee and shall not be transferable. If the location of an establishment changes, a new permit shall be obtained for the establishment. A permit shall be issued only when the establishment satisfies all of the requirements of the ~~rules and the requirements of subsection (g) of this section.~~rules. The Commission shall adopt rules establishing the requirements that must be met before a transitional permit may be issued, and the period for which a transitional permit may be issued. The Department may also impose conditions on the issuance of a permit or transitional permit in accordance with rules adopted by the Commission. A permit or transitional permit shall be immediately revoked in accordance with G.S. 130A-23(d) for failure of the establishment to maintain a minimum grade of C. A permit or transitional permit may otherwise be suspended or revoked in accordance with G.S. 130A-23.

…

(g) All hotels, motels, tourist homes, and other establishments that provide lodging for pay shall ~~install either a battery-operated or electrical carbon monoxide detector in every enclosed space having a fossil fuel burning heater, appliance, or fireplace and in any enclosed space, including a sleeping room, that shares a common wall, floor, or ceiling with an enclosed space having a fossil fuel burning heater, appliance, or fireplace. Carbon monoxide detectors shall be listed by a nationally recognized testing laboratory that is OSHA-approved to test and certify to American National Standards Institute/Underwriters Laboratories Standards ANSI/UL2034 or ANSI/UL2075, and installed in accordance with either the standard of the National Fire Protection Association or the minimum protection designated in the manufacturer's instructions, which the establishment shall retain or provide as proof of compliance. A carbon monoxide detector may be combined with smoke detectors if the combined detector complies with the requirements of this subdivision for carbon monoxide alarms and ANSI/UL217 for smoke detectors.~~comply with the requirements of G.S. 143-138(b2)(2). Upon notification of a violation of G.S. 143-138(b2)(2) by the code official responsible for enforcing the NC State Building Code (Fire Prevention) in accordance with G.S. 143-138(b2)(4), the local health department is authorized to suspend a permit issued pursuant to this section in accordance with G.S. 130A-23."

WATER SUPPLY WATERSHED CLASSIFICATIONS

SECTION 3.4.(a) G.S. 143-214.5 is amended by adding a new subsection to read:

"(c1) This subsection applies to water supply watersheds reclassified by the Commission after January 1, 2012. When the Commission receives a rule-making petition under G.S. 150B-20 that (i) is from a unit of local government with jurisdiction over an area affected by a proposed water intake that is impacted by a reclassification to which this subsection applies and (ii) requests repeal of the reclassification, the Commission shall grant the rule-making petition, and the reclassification as well as any local ordinance changes required under subsection (d) of this section shall be stayed until the Commission has promulgated rules in response to the rule-making petition that are retroactive to the effective date of the original water supply watershed reclassification."

SECTION 3.4.(b) Notwithstanding any other provision of law, a unit of local government shall repeal local ordinance changes required in order to implement a water supply watershed reclassification to which G.S. 143-214.5(c1), as enacted by subsection (a) of this section, applies. Local governments shall repeal local ordinances as required by this section on or before the date that rules adopted pursuant to G.S. 143-214.5(c1), as enacted by subsection (a) of this section, become effective.

SECTION 3.4.(c) This section is effective when it becomes law and applies to any petitions for rule making regarding water supply watershed reclassifications received by the Environmental Management Commission on or after January 1, 2012, and prior to the effective date of this section. Subsection (a) of this section expires when the Commission issues permanent rules in response to a rule-making petition under G.S. 143-214.5(c1), as enacted by subsection (a) of this section.

ADA REQUIREMENTS FOR PRIVATE POOLS

SECTION 3.5.(a) Notwithstanding Section 1109.14 of the 2012 NC State Building Code (Building Code), swimming pools shall be required to be accessible only to the extent required by the Americans with Disabilities Act, 42 U.S.C. § 12101 et. seq., and federal rules and regulations adopted pursuant to that act.

SECTION 3.5.(b) The Building Code Council shall adopt a rule to amend Section 1109.14 of the 2012 NC State Building Code (Building Code) consistent with Section 3.5(a) of this act.

SECTION 3.5.(c) Section 3.5(a) of this section expires on the date that the rule adopted pursuant to Section 3.5(b) of this section becomes effective.

ENVIRONMENTAL SELF AUDIT PRIVILEGE AND LIMITED IMMUNITY

SECTION 3.6.(a) Chapter 8 of the General Statutes is amended by adding a new Part to read:

"Part 7D. Environmental Audit Privilege and Limited Immunity.

"**§ 8-58.50. Purpose.**

(a) In order to encourage owners and operators of facilities and persons conducting activities regulated under those portions of the General Statutes set forth in G.S. 8-58.52, or conducting activities regulated under other environmental laws, to conduct voluntary internal environmental audits of their compliance programs and management systems and to assess and improve compliance with statutes, an environmental audit privilege is recognized to protect the confidentiality of communications relating to voluntary internal environmental audits.

(b) Notwithstanding any other provisions of law, nothing in this Part shall be construed to protect owners and operators of facilities and regulated persons from a criminal investigation or prosecution carried out by any appropriate governmental entity.

(c) Notwithstanding any other provision of law, any privilege granted by this Part shall apply only to those communications, oral or written, pertaining to and made in connection with the environmental audit and shall not apply to the facts relating to the violation itself.

"**§ 8-58.51. Definitions.**

The following definitions apply in this Part:

(1) "Department" means the Department of Environment and Natural Resources.

(2) "Environmental audit" means a voluntary, internal evaluation or review of one or more facilities or an activity at one or more facilities regulated under federal, State, regional, or local environmental law, or of compliance programs, or management systems related to the facility or activity if designed to identify and prevent noncompliance and to improve compliance with these laws. For the purposes of this Part, an environmental audit does not include an environmental site assessment of a facility conducted solely

in anticipation of the purchase, sale, or transfer of the business or facility. An environmental audit may be conducted by the owner or operator, the parent corporation of the owner or operator or by their officers or employees, or by independent contractors. An environmental audit must be a discrete activity with a specified beginning date and scheduled ending date reflecting the auditor's bona fide intended completion schedule.

(3) "Environmental audit report" means a document marked or identified as such with a completion date existing either individually or as a compilation prepared in connection with an environmental audit. An environmental audit report may include field notes and records of observations, findings, opinions, suggestions, recommendations, conclusions, drafts, memoranda, drawings, photographs, computer-generated or electronically-recorded information, maps, charts, graphs, and surveys, provided the supporting information is collected or developed for the primary purpose and in the course of an environmental audit. An environmental audit report, when completed, may include all of the following components:

a. An audit report prepared by an auditor, which may include the scope and date of the audit and the information gained in the audit, together with exhibits and appendices and may include conclusions, recommendations, exhibits, and appendices.

b. Memoranda and documents analyzing any portion of the audit report or issues relating to the implementation of an audit report.

c. An implementation plan that addresses correcting past noncompliance, improving current compliance, or preventing future noncompliance.

(4) "Enforcement agencies" means the Department, any other agency of the State, and units of local government responsible for enforcement of environmental laws.

(5) "Environmental laws" means all provisions of federal, State, and local laws, rules, and ordinances pertaining to environmental matters.

"**§ 8-58.52. Applicability.**

This Part applies to activities regulated under environmental laws, including all of the following provisions of the General Statutes, and rules adopted thereunder:

(1) Article 7 of Chapter 74.
(2) Chapter 104E.
(3) Article 25 of Chapter 113.
(4) Articles 1,4, and 7 of Chapter 113A.
(5) Article 9 of Chapter 130A.
(6) Articles 21, 21A, and 21B of Chapter 143.
(7) Part 1 of Article 7 of Chapter 143B.

"**§ 8-58.53. Environmental audit report; privilege.**

(a) An environmental audit report or any part of an environmental audit report is privileged and, therefore, immune from discovery and is not admissible as evidence in civil or administrative proceedings, except as provided in G.S. 8-58.54 and G.S. 8-58.55. Provided, however, all of the following documents are exempt from the privilege established by this Part:

(1) Information obtained by observation of an enforcement agency.
(2) Information obtained from a source independent of the environmental audit.
(3) Documents, communication, data, reports, or other information required to be collected, maintained, otherwise made available, or reported to a enforcement agency or any other entity by environmental laws, permit, order, consent agreement, or as otherwise provided by law.

(4) Documents prepared either prior to the beginning of the environmental audit or subsequent to the completion date of the audit report and, in all cases, any documents prepared independent of the audit or audit report.

(5) Documents prepared as a result of multiple or continuous self-auditing conducted in an effort to intentionally avoid liability for violations.

(6) Information which is knowingly misrepresented or misstated or which is knowingly deleted or withheld from an environmental audit report, whether or not included in a subsequent environmental audit report.

(7) Information in instances where the material shows evidence of noncompliance with environmental laws, permits, orders, consent agreements, and the owner or operator failed to either promptly take corrective action or eliminate any violation of law identified during the environmental audit within a reasonable period of time.

(b) If an environmental audit report or any part of an environmental audit report is subject to the privilege provided for in subsection (a) of this section, no person who conducted or participated in the audit or who significantly reviewed the audit report may be compelled to testify regarding the audit report or a privileged part of the audit report except as provided for in G.S. 8-58.53(d), 8-58.54, or 8-58.55.

(c) Nothing in this Part shall be construed to restrict a party in a proceeding before the Industrial Commission from obtaining or discovering any evidence necessary or appropriate for the proof of any issue pending in an action before the Commission, regardless of whether evidence is privileged pursuant to this Part. Further, nothing in this Part shall be construed to prevent the admissibility of evidence which is otherwise relevant and admissible in a proceeding before the Industrial Commission, regardless of whether the evidence is privileged pursuant to this Part. Provided, however, the Commission, upon motion made by a party to the proceeding, may issue appropriate protective orders preventing disclosure of information outside of the Commission's proceeding.

(d) Nothing in this Part shall be construed to circumvent the employee protection provisions provided by federal or State law.

(e) The privilege created by this Part does not apply to criminal investigations or proceedings. Where an audit report is obtained, reviewed, or used in a criminal proceeding, the privilege created by this Part shall continue to apply and is not waived in civil and administrative proceedings and is not discoverable or admissible in civil or administrative proceedings even if disclosed during a criminal proceeding.

"**§ 8-58.54. Waiver of privilege.**

(a) The privilege established under G.S. 8-58.53 does not apply to the extent that it is expressly waived in writing by the owner or operator of a facility at which an environmental audit was conducted and who prepared or caused to be prepared the audit report as a result of the audit.

(b) The audit report and information generated by the audit may be disclosed without waiving the privilege established under G.S. 8-58.53 to all of the following persons:

(1) A person employed by the owner or operator or the parent corporation of the audited facility.

(2) A legal representative of the owner or operator or parent corporation.

(3) An independent contractor retained by the owner or operator or parent corporation to conduct an audit on or to address an issue or issues raised by the audit.

(c) Disclosure of an audit report or information generated by the audit under all of the following circumstances shall not constitute a waiver of the privilege established under G.S. 8-58.53:

(1) Disclosure made under the terms of a confidentiality agreement between the owner or operator of the facility audited and a potential purchaser of the business or facility audited.

(2) Disclosure made under the terms of a confidentiality agreement between governmental officials and the owner or operator of the facility audited.

(3) Disclosure made under the terms of a confidentiality agreement between a customer, lending institution, or insurance company with an existing or proposed relationship with the facility.

"**§ 8-58.55. Notification of audit.**

In order to assert the privilege established under G.S. 8-58.53, the owner or operator of the facility conducting the environmental audit shall, upon inspection of the facility by an enforcement agency, or no later than 10 working days after completion of an agency's inspection, notify the enforcement agency of the existence of any audit relevant to the subject of the agency's inspection, as well as the beginning date and completion date of that audit. Any environmental audit report shall include a signed certification from the owner or operator of the facility that documents the date the audit began and the completion date of the audit.

"**§ 8-58.55. Revocation of privilege in civil and administrative proceedings.**

In a civil or administrative proceeding, an enforcement agency may seek by motion a declaratory ruling on the issue of whether an environmental audit report is privileged. The court shall revoke the privilege established under G.S. 8-58.53 for an audit report if the factors set forth in this section apply. In a civil proceeding, the court, after an in camera review, shall revoke the privilege established under G.S. 8-58.53 if the court determines that disclosure of the environmental audit report was sought after the effective date of this Part and either of the following apply:

(1) The privilege is asserted for purposes of deception or evasion.

(2) The material shows evidence of significant noncompliance with applicable environmental laws; the owner or operator of the facility has not promptly initiated and pursued with diligence appropriate action to achieve compliance with these environmental laws or has not made reasonable efforts to complete any necessary permit application; and, as a result, the owner or operator of the facility did not or will not achieve compliance with applicable environmental laws or did not or will not complete the necessary permit application within a reasonable period of time.

"**§ 8-58.56. Privilege in criminal proceedings.**

The privilege established under G.S. 8-58.53 is not applicable in any criminal proceeding.

"**§ 8-58.57. Burden of proof.**

A party asserting the privilege established under G.S. 8-58.53 has the burden of proving that (i) the materials claimed as privileged constitute an environmental audit report as defined by this Part and (ii) compliance has been achieved or will be achieved with a reasonable period of time. A party seeking disclosure under G.S.8-58.55 has the burden of proving the condition for disclosure set forth in that section.

"**§ 8-58.58. Stipulations; declaratory rulings.**

The parties to a proceeding may at any time stipulate to entry of an order directing that specific information contained in an environmental audit report is or is not subject to the privilege. In the absence of an ongoing proceeding, where the parties are not in agreement, an enforcement agency may seek a declaratory ruling from a court on the issue of whether the materials are privileged under G.S. 8-58.53 and whether the privilege, if existing, should be revoked pursuant to G.S. 8-58.55.

"**§ 8-58.59. Construction of Part.**

Nothing in this Part limits, waives, or abrogates any of the following:

(1) The scope or nature of any statutory or common law privilege, including the work-product privilege or the attorney-client privilege.
(2) Any existing ability or authority under State law to challenge privilege.
(3) An enforcement agency's ability to obtain or use documents or information that the agency otherwise has the authority to obtain under State law adopted pursuant to federally delegated programs.

"**§ 8-58.60. Voluntary disclosure; limited immunity from civil and administrative penalties and fines.**

(a) An owner or operator of a facility is immune from imposition of civil and administrative penalties and fines for a violation of environmental laws voluntarily disclosed subject to the requirements and criteria set forth in this section. Provided, however, that waiver of penalties and fines shall not be granted until the applicable enforcement agency has certified that the violation was corrected within a reasonable period of time. If compliance is not certified by the enforcement agency, the enforcement agency shall retain discretion to assess penalties and fines for the violation.

(b) If a person or entity makes a voluntary disclosure of a violation of environmental laws discovered through performance of an environmental audit, that person has the burden of proving (i) that the disclosure is voluntary by establishing the elements set forth in subsection (c) of this section and (ii) that the person is therefore entitled to immunity from any administrative or civil penalties associated with the issues disclosed. Nothing in this section may be construed to provide immunity from criminal penalties.

(c) For purposes of this section, disclosure is voluntary if all of the following criteria are met:

(1) The disclosure is made within 14 days following a reasonable investigation of the violation's discovery through the environmental audit.
(2) The disclosure is made to an enforcement agency having regulatory authority over the violation disclosed.
(3) The person or entity making the disclosure initiates an action to resolve the violation identified in the disclosure in a diligent manner.
(4) The person or entity making the disclosure cooperates with the applicable enforcement agency in connection with investigation of the issues identified in the disclosure.
(5) The person or entity making the disclosure diligently pursues compliance and promptly corrects the noncompliance within a reasonable period of time.

(d) A disclosure is not voluntary for purposes of this section if any of the following factors apply:

(1) Specific permit conditions require monitoring or sampling records and reports or assessment plans and management plans to be maintained or submitted to the enforcement agency pursuant to an established schedule.
(2) Environmental laws or specific permit conditions require notification of releases to the environment.
(3) The violation was committed intentionally, wilfully, or through criminal negligence by the person or entity making the disclosure.
(4) The violation was not corrected in a diligent manner.
(5) The violation posed or poses a significant threat to public health, safety, and welfare; the environment; and natural resources.
(6) The violation occurred within one year of a similar prior violation at the same facility, and immunity from civil and administrative penalties was granted by the applicable enforcement agency for the prior violation.
(7) The violation has resulted in a substantial economic benefit to the owner or operator of the facility.

(8) The violation is a violation of the specific terms of a judicial or administrative order.

(e) If a person meets the burden of proving that the disclosure is voluntary, the burden shifts to the enforcement agency to prove that the disclosure was not voluntary, based upon the factors set forth in this section. The person claiming immunity from civil or administrative penalties or fines under this section retains the ultimate burden of proving the violations were voluntarily disclosed.

(f) A voluntary disclosure made pursuant to this section is subject to disclosure pursuant to the Public Records Act in accordance with the provisions of Chapter 132 of the General Statutes.

"**§ 8-58.61. Preemption of local laws.**

No local law, rule, ordinance, or permit condition may circumvent or limit the privilege established by this Part or the exercise of the privileges or the presumption and immunity established by this Part.

SECTION 3.6.(b) This section becomes effective July 1, 2014, and applies to environmental audits, as defined in G.S. 8-58.51, as enacted by subsection (a) of this section, that are conducted on or after that date.

CLARIFY DEFINITION OF "CHILD CARE"

SECTION 3.7. G.S. 110-86(2)f. reads as rewritten:

"**§ 110-86. Definitions.**

Unless the context or subject matter otherwise requires, the terms or phrases used in this Article shall be defined as follows:

…

(2) Child care. – A program or arrangement where three or more children less than 13 years old, who do not reside where the care is provided, receive care on a regular basis of at least once per week for more than four hours but less than 24 hours per day from persons other than their guardians or full-time custodians, or from persons not related to them by birth, marriage, or adoption. Child care does not include the following:

…

f. Nonpublic schools described in Part 2 of Article 39 of Chapter 115C of the General Statutes that are accredited by national or regional accrediting agencies with early childhood standards and that operate a child care facility as defined in subdivision (3) of this section for less than six and one-half hours per day either on or off the school ~~site;~~site. For purposes of this sub-subdivision, the "six and one-half hours per day" requirement shall relate to instructional hours only and shall not include before or after school programs;"

AMBIENT AIR MONITORING

SECTION 3.9.(a) The Department of Environment and Natural Resources shall review its ambient air monitoring network and, in the next annual monitoring network plan submitted to the United States Environmental Protection Agency, shall request the removal of any ambient air monitors not required by applicable federal laws and regulations.

SECTION 3.9.(b) No later than September 1, 2014, the Department of Environment and Natural Resources shall discontinue all ambient air monitors not required by applicable federal laws and regulations if approval from the United States Environmental Protection Agency is not required for the discontinuance.

SECTION 3.9.(c) Nothing in this section is intended to prevent the Department from installing temporary ambient air monitors as part of an investigation of a suspected

violation of air quality rules, standards, or limitations or in response to an emergency situation causing an imminent danger to human health and safety.

SECTION 3.9.(d) The Department of Environment and Natural Resources, Division of Air Quality, shall report to the Environmental Review Commission no later than November 1, 2014, on the status of the ambient air monitoring network and the Division's implementation of the requirements of this section.

GOOD SAMARITAN LAW

SECTION 3.10. G.S. 90-21.14 reads as rewritten:

"**§ 90-21.14. First aid or emergency treatment; liability limitation.**

(a) Any person, including a volunteer medical or health care provider at a facility of a local health department as defined in G.S. 130A-2 or at a nonprofit community health center or a volunteer member of a rescue squad, who ~~receives no compensation for his services as an emergency medical care provider, who~~ voluntarily and without expectation of compensation renders first aid or emergency health care treatment to a person who is unconscious, ill or injured,

(1) When the reasonably apparent circumstances require prompt decisions and actions in medical or other health care, and

(2) When the necessity of immediate health care treatment is so reasonably apparent that any delay in the rendering of the treatment would seriously worsen the physical condition or endanger the life of the person,

shall not be liable for damages for injuries alleged to have been sustained by the person or for damages for the death of the person alleged to have occurred by reason of an act or omission in the rendering of the treatment unless it is established that the injuries were or the death was caused by gross negligence, wanton conduct or intentional wrongdoing on the part of the person rendering the treatment. The immunity conferred in this section also applies to any person who uses an automated external defibrillator (AED) and otherwise meets the requirements of this section.

…."

OPEN BURNING

SECTION 3.11.(a) The definitions set out in G.S. 143-212, G.S. 143-213, and 15A NCAC 02D .1902 (Definitions) apply to this section.

SECTION 3.11.(b) 15A NCAC 02D .1903 (Open Burning Without an Air Quality Permit). – Until the effective date of the revised permanent rule that the Commission is required to adopt pursuant to Section 3.11(d) of this section, the Commission and the Department shall implement 15A NCAC 02D .1903 (Open Burning Without an Air Quality Permit) as provided in Section 3.11(c) of this section.

SECTION 3.11.(c) Implementation. – Notwithstanding Paragraph (b) of 15A NCAC 02D .1903 (Open Burning Without an Air Quality Permit), no air quality permit is required for the open burning of leaves, logs, stumps, tree branches, or yard trimmings if the following conditions are met:

(1) The material burned originates on the premises of private residences and is burned on those premises.

(2) There are no public pickup services available.

(3) Nonvegetative materials, such as household garbage, lumber, or any other synthetic materials, are not burned.

(4) The burning is initiated no earlier than 8:00 A.M. and no additional combustible material is added to the fire between 6:00 P.M. on one day and 8:00 A.M. on the following day.

(5) The burning does not create a nuisance.

(6) Material is not burned when the North Carolina Forest Service has banned burning for that area.

The burning of logs or stumps of any size shall not be considered to create a nuisance for purposes of the application of the open burning air quality permitting exception described in this subsection.

SECTION 3.11.(d) Additional Rule-Making Authority. – The Commission shall adopt a rule to amend 15A NCAC 02D .1903 (Open Burning Without an Air Quality Permit) consistent with Section 3.11(c) of this section. Notwithstanding G.S. 150B-19(4), the rule adopted by the Commission pursuant to this section shall be substantively identical to the provisions of Section 3.11(c) of this act. Rules adopted pursuant to this section are not subject to Part 3 of Article 2A of Chapter 150B of the General Statutes. Rules adopted pursuant to this section shall become effective as provided in G.S. 150B-21.3(b1) as though 10 or more written objections had been received as provided by G.S. 150B-21.3(b2).

SECTION 3.11.(e) Sunset. – Section 3.11(c) of this section expires on the date that rules adopted pursuant to Section 3.11(d) of this section become effective.

SECTION 3.11.(f) Local Government Air Pollution Control Program Limitation. – G.S. 143-215.112(c) is amended by adding a new subdivision to read:

"**§ 143-215.112. Local air pollution control programs.**

…

(c) (1) The governing body of any county, municipality, or group of counties and municipalities within a designated area of the State, as defined in this Article and Article 21, subject to the approval of the Commission, is hereby authorized to establish, administer, and enforce a local air pollution control program for the county, municipality, or designated area of the State which includes but is not limited to:

a. Development of a comprehensive plan for the control and abatement of new and existing sources of air pollution;

b. Air quality monitoring to determine existing air quality and to define problem areas, as well as to provide background data to show the effectiveness of a pollution abatement program;

c. An emissions inventory to identify specific sources of air contamination and the contaminants emitted, together with the quantity of material discharged into the outdoor atmosphere;

d. Adoption, after notice and public hearing, of air quality and emission control standards, or adoption by reference, without public hearing, of any applicable rules and standards duly adopted by the Commission; and administration of such rules and standards in accordance with provisions of this section.

e. Provisions for the establishment or approval of time schedules for the control or abatement of existing sources of air pollution and for the review of plans and specifications and issuance of approval documents covering the construction and operation of pollution abatement facilities at existing or new sources;

f. Provision for adequate administrative staff, including an air pollution control officer and technical personnel, and provision for laboratory and other necessary facilities.

…

(6) No local air pollution control program may limit or otherwise regulate any combustion heater, appliance, or fireplace in private dwellings. For purposes of this subdivision, "combustion heater, appliance, or fireplace" means any heater, appliance, or fireplace that burns combustion fuels, including, but not

limited to, natural or liquefied petroleum gas, fuel oil, kerosene, wood, or coal, for heating, cooking, drying, or decorative purposes."

SECTION 3.11.(g) G.S. 143-215.108 is amended by adding a new subsection to read:

"**§ 143-215.108. Control of sources of air pollution; permits required.**

…

(j) No Power to Regulate Residential Combustion. – Nothing in this section shall be interpreted to give the Commission or the Department the power to regulate any combustion heater, appliance, or fireplace in private dwellings, except to the extent required by federal law. For purposes of this subsection, "combustion heater, appliance, or fireplace" means any heater, appliance, or fireplace that burns combustion fuels, including, but not limited to, natural or liquefied petroleum gas, fuel oil, kerosene, wood, or coal, for heating, cooking, drying, or decorative purposes."

SECTION 3.11.(h) G.S. 160A-193 is amended by adding a new subsection to read:

"**§ 160A-193. Abatement of public health nuisances.**

(a) A city shall have authority to summarily remove, abate, or remedy everything in the city limits, or within one mile thereof, that is dangerous or prejudicial to the public health or public safety. Pursuant to this section, the governing board of a city may order the removal of a swimming pool and its appurtenances upon a finding that the swimming pool or its appurtenances is dangerous or prejudicial to public health or safety. The expense of the action shall be paid by the person in default. If the expense is not paid, it is a lien on the land or premises where the nuisance occurred. A lien established pursuant to this subsection shall have the same priority and be collected as unpaid ad valorem taxes.

…

(c) The authority granted by this section does not authorize the application of a city ordinance banning or otherwise limiting outdoor burning to persons living within one mile of the city, unless the city provides those persons with either (i) trash and yard waste collection services or (ii) access to solid waste dropoff sites on the same basis as city residents."

INLET HAZARD AREAS

SECTION 3.12.(a) The definitions set out in G.S. 113A-103 apply to this section.

SECTION 3.12.(b) 15A NCAC 07H .0304 (AECs Within Ocean Hazard Areas). – Until the effective date of the revised permanent rule that the Commission is required to adopt pursuant to Section 3.12(d) of this section, the Commission and the Department shall implement 15A NCAC 07H .0304 (AECs Within Ocean Hazard Areas) as provided in Section 3.12(c) of this section.

SECTION 3.12.(c) Implementation. – Notwithstanding Subparagraph (3) of 15A NCAC 07H .0304 (AECs Within Ocean Hazard Areas), the Commission shall not establish any inlet hazard area in any location with the following characteristics:

(1) The location is the former location of an inlet, but the inlet has been closed for at least 15 years.

(2) Due to shoreline migration, the location no longer includes the current location of the inlet.

(3) The location includes an inlet providing access to a State Port via a channel maintained by the United States Army Corps of Engineers.

SECTION 3.12.(d) Additional Rule-Making Authority. – The Commission shall adopt a rule to amend 15A NCAC 07H .0304 (AECs Within Ocean Hazard Areas) consistent with Section 3.12(c) of this section. Notwithstanding G.S. 150B-19(4), the rule adopted by the Commission pursuant to this section shall be substantively identical to the provisions of Section 3.12(c) of this act. Rules adopted pursuant to this section are not subject to Part 3 of Article 2A

of Chapter 150B of the General Statutes. Rules adopted pursuant to this section shall become effective as provided in G.S. 150B-21.3(b1) as though 10 or more written objections had been received as provided by G.S. 150B-21.3(b2).

SECTION 3.12.(e) Sunset. – Section 3.12(c) of this section expires on the date that rules adopted pursuant to subsection (d) of this section become effective.

SECTION 3.12.(f) Nothing in this section is intended to prevent the Commission from (i) studying any current inlet hazard area or any other area considered by the Commission for designation as an inlet hazard area, (ii) designating new inlet hazard areas, or (iii) modifying existing inlet hazard areas consistent with Section 3.12(c) of this act.

HUNTING TRIALS

SECTION 3.13.(a) G.S. 113-274 reads as rewritten:

"**§ 113-274. Permits.**

(a) As used in this Article, the word "permit" refers to a written authorization issued without charge by an employee or agent of the Wildlife Resources Commission to an individual or a person to conduct some activity over which the Wildlife Resources Commission has jurisdiction. When sale of wildlife resources is permitted, rules or the directives of the Executive Director may require the retention of invoices or copies of invoices in lieu of a permit.

(b) Except as otherwise specifically provided, no one may engage in any activity for which a permit is required without having first procured a current and valid permit.

(c) The Wildlife Resources Commission may issue the following permits:

…

(3d) Field trial dog handler or judge permit. – Authorizes a person to participate as a dog handler or judge in a field trial authorized under G.S. 113-291.1(d) without possessing a hunting license so long as that person does not participate in any hunting activities with the dog. For purposes of this subdivision, the term "hunting activities" does not include field trials using exclusively either domestically raised waterfowl and game birds or legally taken dead game.

…."

SECTION 3.13.(b) This section becomes effective July 1, 2014.

SECTION 3.14. G.S. 143-215.22L(w) reads as rewritten:

"(w) Requirements for Coastal ~~Counties.~~Counties and Reservoirs Constructed by the United States Army Corps of Engineers. – A petition for a certificate (i) to transfer surface water to supplement ground water supplies in the 15 counties designated as the Central Capacity Use Area under 15A NCAC 2E.0501, ~~or~~ (ii) to transfer surface water withdrawn from the mainstem of a river to provide service to one of the coastal area counties designated pursuant to G.S. 113A-103, or (iii) to withdraw or transfer water stored in any multipurpose reservoir constructed by the United States Army Corps of Engineers and partially located in a state adjacent to North Carolina, provided the United States Army Corps of Engineers approved the withdrawal or transfer on or before July 1, 2014, shall be considered and a determination made according to the following procedures:

(1) The applicant shall file a notice of intent that includes a nontechnical description of the applicant's request and identification of the proposed water source.

(2) The applicant shall prepare an environmental document pursuant to subsection (d) of this section, except that an environmental impact statement shall not be required unless it would otherwise be required by Article 1 of Chapter 113A of the General Statutes.

(3) Upon determining that the documentation submitted by the applicant is adequate to satisfy the requirements of this subsection, the Department shall publish a notice of the petition in the North Carolina Register and shall hold a public hearing at a location convenient to both the source and receiving river basins. The Department shall provide written notice of the petition and the public hearing in the Environmental Bulletin, a newspaper of general circulation in the source river basin, a newspaper of general circulation in the receiving river basin, and as provided in subdivision (3) of subsection (c) of this section. The applicant who petitions the Commission for a certificate under this subdivision shall pay the costs associated with the notice and public hearing.

(4) The Department shall accept comments on the petition for a minimum of 30 days following the public hearing.

(5) The Commission or the Department may require the applicant to provide any additional information or documentation it deems reasonably necessary in order to make a final determination.

(6) The Commission shall make a final determination whether to grant the certificate based on the factors set out in subsection (k) of this section, information provided by the applicant, and any other information the Commission deems relevant. The Commission shall state in writing its findings of fact and conclusions of law with regard to each factor.

(7) The Commission shall grant the certificate if it finds that the applicant has established by a preponderance of the evidence that the petition satisfies the requirements of subsection (m) of this section. The Commission may grant the certificate in whole or in part, or deny the request, and may impose such limitations and conditions on the certificate as it deems necessary and relevant."

ADJUST UTILITY REGULATORY FEE

SECTION 3.15.(a) G.S. 62-302 reads as rewritten:

"**§ 62-302. Regulatory fee.**

(a) Fee Imposed. – It is the policy of the State of North Carolina to provide fair regulation of public utilities in the interest of the public, as provided in G.S. 62-2. The cost of regulating public utilities is a burden incident to the privilege of operating as a public utility. Therefore, for the purpose of defraying the cost of regulating public utilities, every public utility subject to the jurisdiction of the Commission shall pay a quarterly regulatory fee, in addition to all other fees and taxes, as provided in this section. The fees collected shall be used only to pay the expenses of the Commission and the Public Staff in regulating public utilities in the interest of the public.

It is also the policy of the State to provide limited oversight of certain electric membership corporations as provided in G.S. 62-53. Therefore, for the purpose of defraying the cost of providing the oversight authorized by G.S. 62-53 and G.S. 117-18.1, each fiscal year each electric membership corporation whose principal purpose is to furnish or cause to be furnished bulk electric supplies at wholesale as provided in G.S. 117-16 shall pay an annual fee as provided in this section.

(b) Public Utility Rate. –

(1) Repealed by Session Laws 2000-140, s. 56, effective July 21, 2000.

(2) ~~The~~ For noncompetitive jurisdictional revenues as defined in sub-subdivision (4)a. of this subsection, the public utility regulatory fee for each fiscal year ~~shall be~~ is the greater of (i) a percentage rate, established by the General Assembly, of each public utility's ~~North Carolina~~

noncompetitive jurisdictional revenues for each quarter or (ii) six dollars and twenty-five cents ($6.25) each quarter. For subsection (h) competitive jurisdictional revenues as defined in sub-subdivision (4)b. of this subsection and subsection (m) competitive jurisdictional revenues as defined in sub-subdivision (4)c. of this subsection, the public utility regulatory fee for each fiscal year is a percentage rate established by the General Assembly of each public utility's competitive jurisdictional revenues for each quarter.

When the Commission prepares its budget request for the upcoming fiscal year, the Commission shall propose a percentage rate of the public utility regulatory fee. For fiscal years beginning in an odd-numbered year, that proposed rate shall be included in the budget message the Governor submits to the General Assembly pursuant to G.S. 143C-3-5. For fiscal years beginning in an even-numbered year, that proposed rate shall be included in a special budget message the Governor shall submit to the General Assembly. The General Assembly shall set the percentage rate of the public utility regulatory fee by law.

The percentage rate may not exceed the amount necessary to generate funds sufficient to defray the estimated cost of the operations of the Commission and the Public Staff for the upcoming fiscal year, including a reasonable margin for a reserve fund. The amount of the reserve may not exceed the estimated cost of operating the Commission and the Public Staff for the upcoming fiscal year. In calculating the amount of the reserve, the General Assembly shall consider all relevant factors that may affect the cost of operating the Commission or the Public Staff or a possible unanticipated increase or decrease in North Carolina jurisdictional revenues.

(3) If the Commission, the Public Staff, or both experience a revenue shortfall, the Commission shall implement a temporary public utility regulatory fee surcharge to avert the deficiency that would otherwise occur. In no event may the total percentage rate of the public utility regulatory fee plus any surcharge established by the Commission exceed twenty-five hundredths percent (0.25%).

(4) As used in this ~~section, the term "North Carolina jurisdictional revenues" means:~~section:

a. ~~All~~"Noncompetitive jurisdictional revenues" means all revenues derived or realized from intrastate tariffs, rates, and charges approved or allowed by the Commission or collected pursuant to Commission order or rule, but not including tap-on fees or any other form of contributions in aid of construction.

b. ~~All~~"Subsection (h) competitive jurisdictional revenues" means all revenues derived from retail services provided by local exchange companies and competing local providers that have elected to operate under ~~no longer otherwise regulated by the operation of G.S. 62-133.5(h) or G.S. 62-133.5(m) for a local exchange company or competing local provider that has elected to be regulated under those subsections.~~G.S. 62-133.5(h).

c. "Subsection (m) competitive jurisdictional revenues" means all revenues derived from retail services provided by local exchange companies and competing local providers that have elected to operate under G.S. 62-133.5(m).

…

(e) Recovery of Fee Increase. – If a utility's regulatory fee obligation is increased, the Commission shall either adjust the utility's rates to allow for the recovery of the increased fee obligation or approve the utility's request for an accounting order allowing deferral of the increase in the fee obligation."

SECTION 3.15.(b) The percentage rate to be used in calculating the public utility regulatory fee under G.S. 62-302(b)(2) for each public utility's North Carolina subsection (h) competitive jurisdictional revenues as defined by G.S. 62-302(b)(4)b. earned during each quarter that begins on or after July 1, 2015, is six-hundredths of one percent (0.06%).

SECTION 3.15.(c) The percentage rate to be used in calculating the public utility regulatory fee under G.S. 62-302(b)(2) for each public utility's North Carolina subsection (h) competitive jurisdictional revenues as defined by G.S. 62-302(b)(4)b. earned during each quarter that begins on or after July 1, 2016, is four-hundredths of one percent (0.04%).

SECTION 3.15.(d) The percentage rate to be used in calculating the public utility regulatory fee under G.S. 62-302(b)(2) for each public utility's North Carolina subsection (m) competitive jurisdictional revenues as defined by G.S. 62-302(b)(4)c. earned during each quarter that begins on or after July 1, 2015, is five-hundredths of one percent (0.05%).

SECTION 3.15.(e) The percentage rate to be used in calculating the public utility regulatory fee under G.S. 62-302(b)(2) for each public utility's North Carolina subsection (m) competitive jurisdictional revenues as defined by G.S. 62-302(b)(4)c. earned during each quarter that begins on or after July 1, 2016, is two-hundredths of one percent (0.02%).

SECTION 3.15.(f) For the 2015-2016 and 2016-2017 fiscal years, the percentage rate to be used in calculating the public utility regulatory fee under G.S. 62-302(b)(2) for each public utility's North Carolina noncompetitive jurisdictional revenues as defined by G.S. 62-302(b)(4)a. shall be adjusted to reflect the decrease in the total regulatory fee collected as a result of subsections (b), (c), (d), and (e) of this section and shall be set to ensure the total regulatory fee collected for each fiscal year is at least an amount sufficient to defray the cost of the operations of the Commission and the Public Staff for the upcoming fiscal year, including a reasonable margin for a reserve fund.

SECTION 3.15.(g) This section becomes effective July 1, 2015.

AMEND JORDAN LAKE RULE FOR EXISTING RIPARIAN BUFFERS

SECTION 3.16. Section 2(c) of S.L. 2013-395 reads as rewritten:

"**SECTION 2.(c)** Implementation. – The Protection of Existing Riparian Buffers Rule shall be implemented as follows:

(1) Notwithstanding the Table of Uses set out in subdivision (9) of the Protection of Existing Riparian Buffers Rule, utility, nonelectric, other than perpendicular crossings that have impacts only in Zone Two shall be categorized as exempt.

(2) Notwithstanding the Table of Uses set out in subdivision (9) of the Protection of Existing Riparian Buffers Rule, the piping of a stream allowed under a permit issued by the United States Army Corps of Engineers shall be categorized as an ~~allowable~~exempt use.

(3) Notwithstanding the definition of "Airport Facilities" set out in sub-subdivision (b) of subdivision (2) of the Protection of Existing Riparian Buffers Rule, "Airport Facilities" shall include any aeronautic industrial facilities that require direct access to the airfield."

ELIMINATE OUTDATED AIR QUALITY REPORTING REQUIREMENTS

SECTION 3.17.(a) G.S. 143-215.3A reads as rewritten:

"**§ 143-215.3A. Water and Air Quality Account; use of application and permit fees; Title V Account; I & M Air Pollution Control Account; reports.**

…

(c) The Department shall report to the Environmental Review Commission and the Fiscal Research Division on the cost of the State's environmental permitting programs contained within the Department on or before 1 November of each year. ~~In addition, the Department shall report to the Environmental Review Commission and the Fiscal Research Division on the cost of the Title V Program on or before 1 November of each year.~~ The ~~reports~~ report shall include, but ~~are~~ is not limited to, fees set and established under this Article, fees collected under this Article, revenues received from other sources for environmental permitting and compliance programs, changes made in the fee schedule since the last report, anticipated revenues from all other sources, interest earned and any other information requested by the General Assembly."

SECTION 3.17.(b) The following sections of S.L. 2002-4 are repealed:

(1) Section 10.

(2) Section 11, as amended by Section 12 of S.L. 2006-79 and S.L. 2010-142.

(3) Section 12.

(4) Section 13.

SECTION 3.17.(c) G.S. 143-215.108(g) is repealed.

CLARIFYING CHANGES TO STATUTES PERTAINING TO THE MANAGEMENT OF VENOMOUS SNAKES AND OTHER REPTILES

SECTION 3.18. G.S. 114-419(b) reads as rewritten:

"**§ 14-419. Investigation of suspected violations; seizure and examination of reptiles; disposition of reptiles.**

…

(b) If the Museum or the Zoological Park or their designated representatives find that a seized reptile is a venomous reptile, large constricting snake, or crocodilian regulated under this Article, the Museum or the Zoological Park or their designated representative shall determine final disposition of the reptile in a manner consistent with the safety of the public, which in the case of a venomous reptile for which antivenin approved by the United States Food and Drug Administration is not readily available, ~~may include euthanasia.~~shall be euthanized unless the species is protected under the federal Endangered Species Act of 1973."

REPEAL WASTE MANAGEMENT BOARD RULES

SECTION 3.20.(a) The General Assembly finds that the statutory authority for the Governor's Waste Management Board was repealed by S.L. 1993-501 and, therefore, regulations previously promulgated by that Board are no longer enforceable or necessary.

SECTION 3.20.(b) The Secretary of Environment and Natural Resources shall repeal 15A NCAC Chapter 14 (Governor's Waste Management Board) on or before December 1, 2014. Until the effective date of the repeal of the rule required pursuant to this section, the Secretary, the Department of Environment and Natural Resources, the Environmental Management Commission, or any other political subdivision of the State shall not implement or enforce 15A NCAC Chapter 14 (Governor's Waste Management Board).

EXPAND DAILY FLOW DESIGN EXEMPTION FOR LOW-FLOW FIXTURES

SECTION 3.21. Section 34(b) of Session Law 2013-413 reads as rewritten:

"**SECTION 34.(b)** Implementation. – Notwithstanding the Daily Flow for Design rates listed for dwelling units in 15A NCAC 18A .1949(a) or for other establishments in Table No. 1 of 15A NCAC 18A .1949(b) (Sewage Flow Rates for Design Units), a wastewater system shall be exempt from the Daily Flow for Design, and any other design flow standards that are established by the Department of Health and Human Services or the Commission for Public Health provided flow rates that are less than those listed in ~~Table No. 1 of 15A NCAC 18A~~

~~.1949(b)~~15A NCAC 18A .1949 (Sewage Flow Rates for Design Units) can be achieved through engineering design that utilizes low-flow fixtures and low-flow technologies and the design is prepared, sealed, and signed by a professional engineer licensed pursuant to Chapter 89C of the General Statutes. The Department and Commission may ~~establish~~ establish, by rule, lower limits on reduced flow rates as necessary to ensure wastewater system integrity and protect public health, safety, and ~~welfare~~welfare, provided that the Commission relies on scientific evidence specific to soil types found in North Carolina that the lower limits are necessary for those soil types. Rules adopted pursuant to this section shall become effective as provided in G.S. 150B-21.3(b1) as though 10 or more written objections had been received as provided by G.S. 150B-21.3(b2). Proposed daily design flows for wastewater systems that are calculated to be less than 3,000 total gallons per day shall not require State review pursuant to 15A NCAC 18A .1938(e)."

REPEAL OBSOLETE STATUTES

SECTION 3.22. The following statues are repealed:

(1) G.S. 14-197. Using profane or indecent language on public highways; counties exempt.

(2) G.S. 14-401.8. Refusing to relinquish party telephone line in emergency; false statement of emergency.

INCREASE CERTAIN PENALTIES FOR TAKING OF PROTECTED PLANTS

SECTION 3.23.(a). G.S. 14-129 reads as rewritten:

"**§ 14-129. Taking, etc., of certain wild plants from land of another.**

No person, firm or corporation shall dig up, pull up or take from the land of another or from any public domain, the whole or any part of any Venus flytrap (Dionaea muscipula), trailing arbutus, Aaron's Rod (Thermopsis caroliniana), Bird-foot Violet (Viola pedata), Bloodroot (Sanguinaria canadensis), Blue Dogbane (Amsonia tabernaemontana), Cardinal-flower (Lobelia cardinalis), Columbine (Aquilegia canadensis), Dutchman's Breeches (Dicentra cucullaria), Maidenhair Fern (Adiantum pedatum), Walking Fern (Camptosorus rhizophyllus), Gentians (Gentiana), Ground Cedar, Running Cedar, Hepatica (Hepatica americana and acutiloba), Jack-in-the-Pulpit (Arisaema triphyllum), Lily (Lilium), Lupine (Lupinus), Monkshood (Aconitum uncinatum and reclinatum), May Apple (Podophyllum peltatum), Orchids (all species), Pitcher Plant (Sarracenia), Shooting Star (Dodecatheon meadia), Oconee Bells (Shortia galacifolia), Solomon's Seal (Polygonatum), Trailing Christmas (Greens-Lycopodium), Trillium (Trillium), Virginia Bluebells (Mertensia virginica), and Fringe Tree (Chionanthus virginicus), American holly, white pine, red cedar, hemlock or other coniferous trees, or any flowering dogwood, any mountain laurel, any rhododendron, or any ground pine, or any Christmas greens, or any Judas tree, or any leucothea, or any azalea, without having in his possession a permit to dig up, pull up or take such plants, signed by the owner of such land, or by his duly authorized agent. Any person convicted of violating the provisions of this section shall be guilty of a Class 3 misdemeanor only punished by a fine of not less than ~~ten dollars ($10.00)~~seventy-five dollars ($75.00) nor more than ~~fifty dollars ($50.00)~~one hundred seventy-five dollars ($175.00) for each ~~offense.~~offense, with each plant taken in violation of this section constituting a separate offense. The Clerk of Court for the jurisdiction in which a conviction occurs under this section involving any species listed in this section that also appears on the North Carolina Protected Plants list created under the authority granted by Article 19B of Chapter 106 of the General Statutes shall report the conviction to the Plant Conservation Board so the Board may consider a civil penalty under the authority of that Article.~~The provisions of this section shall not apply to the Counties of Cabarrus, Carteret, Catawba, Cherokee, Chowan, Cumberland, Currituck, Dare, Duplin, Edgecombe, Franklin,~~

~~Gaston, Granville, Hertford, McDowell, Pamlico, Pender, Person, Richmond, Rockingham, Rowan and Swain.~~"

SECTION 3.23.(b) G.S. 106-202.19 reads as rewritten:

"**§ 106-202.19. Unlawful acts; penalties; enforcement.**

(a) Unless the conduct is covered under some other provision of law providing greater punishment, it is unlawful to engage in any of the following conduct:

(1) To uproot, dig, take or otherwise disturb or remove for any purpose from the lands of another, any plant on a protected plant list without a written permit from the owner which is dated and valid for no more than 180 days and which indicates the species or higher taxon of plants for which permission is granted; except that the incidental disturbance of protected plants during agricultural, forestry or development operations is not illegal so long as the plants are not collected for sale or commercial use.

…

(a1) Any person convicted of violating this Article, or any rule of the Board adopted pursuant to this Article shall be guilty of a Class 2 misdemeanor. Each illegal movement or distribution of a protected plant shall constitute a separate violation. In addition, if any person continues to violate or further violates any provision of this Article after written notice from the Board, the court may determine that each day during which the violation continued or is repeated constitutes a separate violation subject to the foregoing penalties.

(a2) A civil penalty of not more than two thousand dollars ($2,000) ~~may~~ shall be assessed by the Board against any person guilty of violating this Article a second or subsequent time. The clear proceeds of civil penalties assessed pursuant to this subsection shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2.

…."

INCREASE PENALTIES FOR PARKING IN HANDICAPPED SPACE WITHOUT REQUIRED PLACARD

SECTION 3.24.(a) G.S. 20-37.6 reads as rewritten:

"**§ 20-37.6. Parking privileges for handicapped drivers and passengers.**

…

(d) Designation of Parking Spaces. – Designation of parking spaces for handicapped persons on streets and public vehicular areas shall comply with G.S. 136-30. A sign designating a parking space for handicapped persons ~~shall~~may state the maximum penalty for parking in the space in violation of the law. A sign designating a parking space for handicapped persons shall not state the incorrect maximum penalty for parking in the space in violation of the law.

…

(f) Penalties for Violation. –

(1) A violation of G.S. 20-37.6(e)(1), ~~(2)~~(2), or (3) is an infraction which carries a penalty of at least ~~one~~three hundred dollars ~~($100.00)~~($300.00) but not more than ~~two~~five hundred ~~fifty~~ dollars ~~($250.00)~~($500.00), and whenever evidence shall be presented in any court of the fact that any automobile, truck, or other vehicle was found to be parked in a properly designated handicapped parking space in violation of the provisions of this section, it shall be prima facie evidence in any court in the State of North Carolina that the vehicle was parked and left in the space by the person, firm, or corporation in whose name the vehicle is registered and licensed according to the records of the Division. No evidence tendered or presented under this authorization shall be admissible or competent in any respect in any court or tribunal except in cases concerned solely with a violation of this section.

…."

SECTION 3.24.(b) This section becomes effective December 1, 2014, and applies to violations committed on or after that date.

REPEAL OUTDATED PUBLIC UTILITIES STATUTES OR REPORTS

SECTION 3.25.(a) G.S. 62-36A and G.S. 62-36.1 are repealed.

SECTION 3.25.(b) G.S. 62-133.2(g) is repealed.

SECTION 3.25.(c) Section 14 of S.L. 2002-4 is repealed.

SECTION 3.25.(d) Section 14 of S.L. 2007-397 is repealed.

SECTION 3.25.(e) Section 6.1 of S.L. 1995-27 is repealed.

REPEAL ENERGY AUDIT REQUIREMENTS

SECTION 3.26. G.S. 143-64.12 reads as rewritten:

"**§ 143-64.12. Authority and duties of the Department; State agencies and State institutions of higher learning.**

(a) The Department of Environment and Natural Resources through the State Energy Office shall develop a comprehensive program to manage energy, water, and other utility use for State agencies and State institutions of higher learning and shall update this program annually. Each State agency and State institution of higher learning shall develop and implement a management plan that is consistent with the State's comprehensive program under this subsection to manage energy, water, and other utility use, and that addresses any findings or recommendations resulting from the energy audit required by subsection (b1) of this section. The energy consumption per gross square foot for all State buildings in total shall be reduced by twenty percent (20%) by 2010 and thirty percent (30%) by 2015 based on energy consumption for the 2002-2003 fiscal year. Each State agency and State institution of higher learning shall update its management plan ~~annually~~ biennially and include strategies for supporting the energy consumption reduction requirements under this subsection. Each community college shall submit to the State Energy Office ~~an annual~~a biennial written report of utility consumption and costs. Management plans submitted ~~annually~~biennially by State institutions of higher learning shall include all of the following:

(1) Estimates of all costs associated with implementing energy conservation measures, including pre-installation and post-installation costs.

(2) The cost of analyzing the projected energy savings.

(3) Design costs, engineering costs, pre-installation costs, post-installation costs, debt service, and any costs for converting to an alternative energy source.

(4) An analysis that identifies projected annual energy savings and estimated payback periods.

…

(b1) The Department of Administration, as part of the Facilities Condition and Assessment Program, shall identify and recommend energy conservation maintenance and operating procedures that are designed to reduce energy consumption within the facility of a State agency or a State institution of higher learning and that require no significant expenditure of funds. Every State agency or State institution of higher learning shall implement these recommendations. Where energy management equipment is proposed for any facility of a State agency or of a State institution of higher learning, the maximum interchangeability and compatibility of equipment components shall be required.~~As part of the Facilities Condition and Assessment Program under this section, the Department of Administration, in consultation with the State Energy Office, shall develop an energy audit and a procedure for conducting energy audits. Every five years the Department shall conduct an energy audit for each State agency or State institution of higher learning, and the energy audits conducted shall serve as a preliminary energy survey. The State Energy Office shall be responsible for system-level detailed surveys.~~

~~(b2) The Department of Administration shall submit a report of the energy audit required by subsection (b1) of this section to the affected State agency or State institution of higher learning and to the State Energy Office. The State Energy Office shall review each audit and, in consultation with the affected State agency or State institution of higher learning, incorporate the audit findings and recommendations into the management plan required by subsection (a) of this section.~~

(c) through (g) Repealed by Session Laws 1993, c. 334, s. 4.

~~(h) When conducting a facilities condition and assessment under this section, the Department of Administration shall identify and recommend to the State Energy Office any facility of a State agency or State institution of higher learning as suitable for building commissioning to reduce energy consumption within the facility or as suitable for installing an energy savings measure pursuant to a guaranteed energy savings contract under Part 2 of this Article.~~

~~(i) Consistent with G.S. 150B-2(8a)h., the Department of Administration may adopt architectural and engineering standards to implement this section.~~

(j) The State Energy Office shall submit a report by December 1 of ~~each~~every odd-numbered year to the Joint Legislative ~~Commission on Governmental Operations~~Energy Policy Commission describing the comprehensive program to manage energy, water, and other utility use for State agencies and State institutions of higher learning required by subsection (a) of this section. The report shall also contain the following:

(1) A comprehensive overview of how State agencies and State institutions of higher learning are managing energy, water, and other utility use and achieving efficiency gains.

(2) Any new measures that could be taken by State agencies and State institutions of higher learning to achieve greater efficiency gains, including any changes in general law that might be needed.

(3) A summary of the State agency and State institutions of higher learning management plans required by subsection (a) of this ~~section and the energy audits required by subsection (b1) of this~~ section.

(4) A list of the State agencies and State institutions of higher learning that did and did not submit management plans required by subsection (a) of this ~~section and a list of the State agencies and State institutions of higher learning that received an energy audit.~~section.

(5) Any recommendations on how management plans can be better managed and implemented."

COASTAL STORMWATER GRANDFATHER

SECTION 3.27.(a) The definitions set out in G.S. 143-212, G.S. 143-213, and 15A NCAC 2H .1002 apply to this section.

SECTION 3.27.(b) 15A NCAC 02H .1005 (Stormwater Requirements: Coastal Counties). – Until the effective date of the revised permanent rule that the Commission is required to adopt pursuant to Section 3.28(d) of this section, the Commission and the Department shall implement 15A NCAC 02H .1005 (Stormwater Requirements: Coastal Counties) as provided in Section 3.28(c) of this section.

SECTION 3.27.(c) Implementation. – Notwithstanding Paragraph (h) of 15A NCAC 02H .1005 (Stormwater Requirements: Coastal Counties), the provisions and requirements applicable to any grandfathered development activity subject to Subparagraph (a)(2) of 15A NCAC 02H .1005 shall also be applicable to an expansion of the development activity. For purposes of this subsection, "grandfathered development activity" means development activity that is regulated by provisions and requirements of 15A NCAC 02H .1005 (Stormwater Requirements: Coastal Counties) that was effective at the time of the

original issuance of any of the authorizations listed in Subparagraph (h)(2) of 15A NCAC 02H .1005, because the authorization meets the criteria set forth in that Subparagraph; and "expansion of the development activity" means development activity conducted on a contiguous property or properties under a subdivision plat approved by the local government prior to July 3, 2012.

SECTION 3.27.(d) Additional Rule-Making Authority. – The Commission shall adopt a rule to amend 15A NCAC 02H .1005 (Stormwater Requirements: Coastal Counties) consistent with Section 3.28(c) of this section. Notwithstanding G.S. 150B-19(4), the rule adopted by the Commission pursuant to this section shall be substantively identical to the provisions of Section 3.28(c) of this act. Rules adopted pursuant to this section are not subject to Part 3 of Article 2A of Chapter 150B of the General Statutes. Rules adopted pursuant to this section shall become effective as provided in G.S. 150B-21.3(b1) as though 10 or more written objections had been received as provided by G.S. 150B-21.3(b2).

SECTION 3.27.(e) Sunset. – Section 3.28(c) of this section expires on the date that rules adopted pursuant to Section 3.28(d) of this section become effective.

PESTICIDE USE FOR MOLES

SECTION 3.28. G.S. 113-300.2 is amended by adding a new subsection to read:

"(g) Notwithstanding any other provision of law, it is lawful to use any pesticide registered by the Pesticide Board to control any species of mole other than the Star-Nosed mole (Condyluria cristata parva), provided that (i) all rules regulating the application of pesticides adopted by the Pesticide Board are followed, and (ii) pesticides used to control these species are applied in a manner that minimizes hazards to nontarget species."

CLARIFY PERIODIC INSPECTIONS AUTHORITY OF HOUSING FINANCE AGENCY

SECTION 3.29.(a) G.S. 153A-364 reads as rewritten:

"**§ 153A-364. Periodic inspections for hazardous or unlawful conditions.**

…

(b) A county may require periodic inspections as part of a targeted effort within a geographic area that has been designated by the county commissioners. The county shall not discriminate in its selection of areas or housing types to be targeted and shall (i) provide notice to all owners and residents of properties in the affected area about the periodic inspections plan and information regarding a public hearing regarding the plan; (ii) hold a public hearing regarding the plan; and (iii) establish a plan to address the ability of low-income residential property owners to comply with minimum housing code standards. A residential building or structure that is subject to periodic inspections by the North Carolina Housing Finance Agency (hereinafter "Agency") shall not be subject to periodic inspections under this subsection if the Agency has issued a finding that the building or structure is in compliance with federal standards established by the United States Department of Housing and Urban Development to assess the physical condition of residential property. The owner or manager of a residential building or structure subject to periodic inspections by the Agency shall, within 10 days of receipt, submit to the inspection department a copy of the Compliance Results Letter issued by the Agency showing that the residential building or structure is in compliance with federal housing inspection standards. If the owner or manager fails to submit a copy of the Compliance Results Letter as provided in this subsection, the residential building or structure shall be subject to periodic inspections as provided in this subsection until the Compliance Results Letter is submitted to the inspection department.

…."

SECTION 3.29.(b) G.S. 160A-424 reads as rewritten:

"**§ 160A-424. Periodic inspections.**

…

(b) A city may require periodic inspections as part of a targeted effort within a geographic area that has been designated by the city council. The municipality shall not discriminate in its selection of areas or housing types to be targeted and shall (i) provide notice to all owners and residents of properties in the affected area about the periodic inspections plan and information regarding a public hearing regarding the plan; (ii) hold a public hearing regarding the plan; and (iii) establish a plan to address the ability of low-income residential property owners to comply with minimum housing code standards. A residential building or structure that is subject to periodic inspections by the North Carolina Housing Finance Agency (hereinafter "Agency") shall not be subject to periodic inspections under this subsection if the Agency has issued a finding that the building or structure is in compliance with federal standards established by the United States Department of Housing and Urban Development to assess the physical condition of residential property. The owner or manager of a residential building or structure subject to periodic inspections by the Agency shall, within 10 days of receipt, submit to the inspection department a copy of the Compliance Results Letter issued by the Agency showing that the residential building or structure is in compliance with federal housing inspection standards. If the owner or manager fails to submit a copy of the Compliance Results Letter as provided in this subsection, the residential building or structure shall be subject to periodic inspections as provided in this subsection until the Compliance Results Letter is submitted to the inspection department.

…."

SECURITY GRILLES

SECTION 3.30.(a) Notwithstanding Section 1008.1.4.5 of the 2012 NC State Building Code (Fire Code), horizontal sliding or vertical security grilles shall be permitted at all exits or exit access doorways, provided that the grilles are openable from the inside without the use of a key or special knowledge or effort during periods that the space is occupied by authorized persons and that the grilles remain secured in the full-open position during the period of occupancy by the general public.

SECTION 3.30.(b) The Building Code Council shall adopt a rule to amend Section 1008.1.4.5 of the 2012 NC State Building Code (Fire Code) consistent with Section 3.31(a) of this section.

SECTION 3.30.(c) Section 3.31(a) of this section expires on the date that the rule adopted pursuant to Section 3.31(b) of this section becomes effective.

REWRITE LANDSCAPE CONTRACTOR LICENSING STATUTES

SECTION 3.31.(a) G.S. 89D-1 through G.S. 89D-10 are repealed.

SECTION 3.31.(b) Chapter 89D of the General Statutes is amended by adding the following new sections to read:

"**§ 89D-11. Definitions.**

The following definitions apply in this Chapter:

(1) Board. – The North Carolina Landscape Contractors' Licensing Board.

(2) Landscape construction or contracting. – The act of providing services as a landscape contractor, as defined in this section, for compensation or other consideration.

(3) Landscape contractor. – Any person who, for compensation or other consideration, does any of the following:

a. Engages in the business requiring the art, experience, ability, knowledge, science, and skill to prepare contracts and bid for the performance of landscape services, including installing, planting, repairing, and managing gardens, lawns, shrubs, vines, trees, or other

decorative vegetation, including the finish grading and preparation of plots and areas of land for decorative utilitarian treatment and arrangement.

b. Practices the act of horticulture consultation or planting design for employment purposes.

c. Constructs, installs, or maintains landscape drainage systems and cisterns; provided the landscaping contractor makes no connection to pipes, fixtures, apparatus, or appurtenances installed upon the premises, or in a building, to supply water thereto or convey sewage or other waste therefrom as defined in G.S. 87-21.

d. Designs, installs, or maintains low-voltage landscape lighting systems; provided (i) the work does not exceed the scope of the exception set forth in G.S. 87-43.1(7); and (ii) the low-voltage lighting systems do not exceed 50 volts and constitute a Class II or Class III cord and plug connected power system.

e. Engages in the construction of garden pools, retaining walls, walks, patios, or other decorative landscape features.

(4) Person. – An individual, firm, partnership, association, corporation, or other legal entity.

"**§ 89D-12. License required; use of seal; posting license.**

(a) Except as otherwise provided in this Chapter, no person shall engage in the practice of landscape construction or contracting, use the designation "landscape contractor," or advertise using any title or description that implies licensure as a landscape contractor unless the person is licensed as a landscape contractor as provided by this Chapter. All landscape construction or contracting performed by a partnership, association, corporation, firm, or other group shall be performed under an individual who is readily available to exercise supervision over the landscape construction and contracting work and who is licensed by the Board under this Chapter.

(b) Nothing in this Chapter shall be construed to authorize a landscape contractor to engage in any of the following:

(1) The practice of landscape architecture as defined in G.S. 89A-1.

(2) The practice of engineering as defined in G.S. 89C-3.

(3) Practice as a well contractor certified under Article 7A of Chapter 87 of the General Statutes.

(4) The practice of irrigation contracting as defined in G.S. 89G-1.

(5) The practice of architecture as defined in G.S. 83A-1.

(6) The practice of plumbing, heating group number one, heating group number two, heating group number three, fire sprinkler, or fuel piping contracting as defined in G.S. 87-21; provided the landscaping contractor may install piping, fittings, valves, and associated components for the purpose of landscape contracting that is downstream of a potable water source, groundwater source, or grey water source, and downstream of a backflow prevention assembly.

(7) The practice of electrical contracting as defined in G.S. 87-43.

(c) A landscape contractor licensed under this Chapter is not required to be licensed as a general contractor under Article 1 of Chapter 87 of the General Statutes if the licensed landscape contractor is performing landscape construction or contracting work valued at an amount greater than thirty thousand dollars ($30,000).

(d) Upon licensure by the Board, each landscape contractor shall obtain a seal of the design authorized by the Board and bearing the name of the licensee, the number of the license,

and the legend "N.C. Licensed Landscape Contractor." A landscape contractor may use the seal only while the license is valid.

(e) Every landscape contractor issued a license under this Chapter shall display the license conspicuously in the landscape contractor's place of business. Every landscape contractor shall display the license number issued to the contractor by the Board on all business cards, contracts, and vehicles used by the contractor in the landscape contracting business.

"**§ 89D-13. Exemptions.**

The provisions of this Chapter shall not apply to the following:

(1) Any federal, State, or local governmental agency performing landscaping on public property.

(2) The North Carolina Department of Transportation (NCDOT). However, for landscape installations or establishment periods for any project that exceeds the current contract amount requiring performance and payment bonds according to State law, NCDOT shall require a licensed landscape contractor to perform the work. NCDOT, at its discretion, may require a licensed landscape contractor for landscape projects of any cost.

(3) Any property owner performing landscape work on his or her own property.

(4) Any person or business owning or operating a golf course.

(5) Any landscaping work where the price of all contracts for labor, material, and other items for a given job site during any consecutive 12-month period is less than twenty-five thousand dollars ($25,000). A local governmental unit shall not enact a local ordinance or regulation requiring licensure for landscaping work performed pursuant to this subdivision.

(6) Any person or business licensed pursuant to Article 1 of Chapter 87 of the General Statutes who possesses a classification under G.S. 87-10(b) as a building contractor, a residential contractor, or a public utilities contractor when the contractor uses the contractor's own employees to perform landscape construction or contracting. A public utilities contractor exempted by this subdivision may only perform the activities described in G.S. 87-10(b)(3)a.

(7) Any person or business licensed as an electrical contractor under Article 4 of Chapter 87 of the General Statutes who is designing, installing, or maintaining any electric work, wiring, devices, appliances, or equipment.

(8) Any person or business licensed as a plumbing contractor under Article 2 of Chapter 87 of the General Statutes who is installing pipes, fixtures, apparatus, or appurtenances to supply water thereto or convey sewage or other waste therefrom, including the installation, repair, or maintenance of water mains, water taps, services lines, water meters, or backflow prevention assemblies supplying water for irrigation systems or repairs to an irrigation system.

(9) A professional engineer licensed pursuant to Chapter 89C of the General Statutes.

(10) A professional landscape architect licensed under Chapter 89A of the General Statutes.

(11) An individual or a business engaged in any of the following activities while performing that activity:

a. Clearing and grading plots and areas of land.

b. Erosion control.

c. Arboriculture, including consultations on pruning and removal of trees.

d. The installation of sod, seed, or plugs by sod producers certified by the Plant Industry Division of the North Carolina Department of Agriculture and Consumer Services.

e. Landscape construction performed by utilities contractors for the purpose of grading and erosion control.

f. Lawn mowing, turf edging, and debris removal services.

g. Turf management or lawn care services only, including fertilization, aeration, weed control, or other turf management or lawn care practices other than mowing or edging.

h. Design, installation, and maintenance of on-site wastewater disposal or reuse systems within the on-site wastewater permit specifications.

(12) Any person performing landscaping work on a farm for use in agriculture production, farming, or ranching.

"**§ 89D-14. The North Carolina Landscape Contractors' Licensing Board.**

(a) There is created the North Carolina Landscape Contractors' Licensing Board. The Board shall consist of nine members appointed as follows:

(1) One member appointed by the Governor who is a member of the general public.

(2) One member appointed by the Commissioner of Agriculture pursuant to recommendations from The North Carolina Green Industry Council.

(3) One member appointed by the Board of Directors of the North Carolina Nursery and Landscape Association, Inc., who is a practicing nurseryman operating a nursery certified by the North Carolina Department of Agriculture and Consumer Services Plant Industry Division.

(4) Four members who are licensed landscape contractors in the business of landscape construction or contracting. One of the four members shall be appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives pursuant to recommendations from The North Carolina Green Industry Council; one shall be appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate pursuant to recommendations from the Carolinas Irrigation Association, who is also a licensed irrigation contractor; and two shall be appointed by the Board of Directors of the North Carolina Nursery and Landscape Association, Inc.

(5) One member appointed by the Board of Directors of the North Carolina Chapter of the American Society of Landscape Architects who is a registered landscape architect.

(6) One member appointed by the President of The University of North Carolina from within the land grant university community who is knowledgeable in landscaping methods and practices.

(b) All appointments shall be for three-year terms. No member shall serve more than two complete consecutive terms.

(c) A vacancy on the Board created by death, resignation, or otherwise shall be filled in the same manner as the original appointment, except that all unexpired terms of Board members appointed by the General Assembly shall be filled in accordance with G.S. 120-122. Appointees to fill vacancies shall serve the remainder of the unexpired term and until their successors are appointed and qualified.

(d) The Board shall elect annually a chair and other officers as it deems necessary to carry out the purposes of this Chapter and shall hold meetings at least twice a year. A majority of the Board shall constitute a quorum.

(e) Each member of the Board may receive per diem and reimbursement for travel and subsistence as set forth in G.S. 93B-5.

(f) The Board shall be entitled to the services of the Attorney General in connection with the affairs of the Board or may, in its discretion, employ an attorney to assist or represent it in the enforcement of this Chapter.

"**§ 89D-15. Powers and duties.**

The Board shall have the following powers and duties:

(1) Administer and enforce the provisions of this Chapter.
(2) Adopt, amend, or repeal rules to carry out the provisions of this Chapter.
(3) Examine and determine the qualifications and fitness of applicants for licensure and licensure renewal.
(4) Issue, renew, deny, restrict, suspend, or revoke licenses.
(5) Reprimand or otherwise discipline licensees under this Chapter.
(6) Receive and investigate complaints from members of the public.
(7) Conduct investigations to determine whether violations of this Chapter exist or constitute grounds for disciplinary action against licensees under this Chapter.
(8) Conduct administrative hearings in accordance with Article 3A of Chapter 150B of the General Statutes.
(9) Seek injunctive relief through any court of competent jurisdiction for violations of this Chapter.
(10) Collect fees required by G.S. 89D-21 and any other monies permitted by law to be paid to the Board.
(11) Require licensees to file and maintain an adequate surety bond.
(12) Establish and approve continuing education requirements for persons licensed under this Chapter.
(13) Employ a secretary-treasurer and any other clerical personnel the Board deems necessary to carry out the provisions of this Chapter and to fix compensation for employees.
(14) Maintain a record of all proceedings conducted by the Board and make available to licensees and other concerned parties an annual report of all Board action.
(15) Adopt and publish a code of professional conduct for all persons licensed under this Chapter.
(16) Adopt and publish a code of minimum practice standards for landscape construction and contracting.
(17) Adopt a seal containing the name of the Board for use on licenses and official reports issued by the Board.

"**§ 89D-16. Application for license; qualifications; examination; issuance.**

(a) Upon application to the Board and payment of the required fees, an applicant for licensure as a landscape contractor may sit for the examination if the applicant submits evidence demonstrating the applicant's qualifications for licensure under this Chapter as prescribed in rules adopted by the Board and meets all of the following qualifications:

(1) Is at least 18 years of age.
(2) Is of good moral character as determined by the Board.
(3) Provides evidence of business identification as required by the Board.
(4) Files with the Board and maintains a corporate surety bond executed by a company authorized to do business in this State or an irrevocable letter of credit issued by an insured institution. The surety bond or the letter of credit shall be in the amount of ten thousand dollars ($10,000). The surety bond or letter of credit shall be approved by the Board as to form and shall be

conditioned upon the obligor faithfully conforming to and abiding by the provisions of this Chapter. Any person claiming to be injured by an act of a licensed landscape contractor that constitutes a violation of this Chapter may institute an action to recover against the licensee and the surety.

(b) If the applicant meets all the qualifications in subsection (a) of this section, the applicant shall be required to pass an examination administered by the Board before the Board may issue the license. The Board shall establish the scope and subject matter of the examination to be administered. The Board shall administer examinations at least twice a year at a time and place to be determined by the Board.

(c) When the Board determines that an applicant has met all the qualifications for licensure, submitted the required fee, and passed the examination, the Board shall issue a license to the applicant.

"**§ 89D-17. Corporations; partnerships; persons doing business under trade name.**

(a) The Board may issue a license in the name of a corporation if the corporation complies with the following:

(1) One or more officers or full-time employees, or both, empowered to act for the corporation are individuals licensed under this Chapter.

(2) Only the officers or employees described in subdivision (1) of this subsection execute contracts for landscape construction or contracting in the name of a corporation and are readily available to exercise supervision over the work performed pursuant to the contract.

(b) The Board may issue a license in the name of a limited liability company if the company complies with the following:

(1) One or more managers, as defined in G.S. 57D-1-03, executives, or full-time employees, or a combination thereof, are individuals licensed under this Chapter.

(2) Only the managers, executives, or employees described in subdivision (1) of this subsection execute contracts for landscape construction or contracting in the name of the limited liability company and are readily available to exercise supervision over the work performed pursuant to the contract.

(c) The Board may issue a license in the name of a partnership if the partnership complies with the following:

(1) One or more general partners or full-time employees empowered to act for the partnership are individuals licensed under this Chapter.

(2) Only the partners or employees described in subdivision (1) of this subsection execute contracts for landscape construction or contracting in the name of the partnership and are readily available to exercise supervision over the work performed pursuant to the contract.

(d) The Board may issue a license in an assumed or designated trade name if the owner of the business complies with the following:

(1) The owner or one or more full-time employees empowered to act for the owner is an individual licensed under this Chapter.

(2) Only the persons described in subdivision (1) of this subsection execute contracts for landscape construction or contracting in the assumed or designated trade name of the business and are readily available to exercise supervision over the work performed pursuant to the contract.

(e) When the Board issues a license under this section, the Board shall indicate on the license the name and license number of the individual licensee connected to the corporation, partnership, or business conducted under an assumed or designated trade name.

(f) A person licensed pursuant to this section shall be readily available to exercise supervision over a contract for landscape construction or contracting until the contract is completed.

(g) When a licensee executes a contract for landscape construction or contracting in any capacity other than as a sole proprietor contracting on the licensee's own behalf, the person on whose behalf the licensee is executing the contract shall be licensed under this section.

(h) A corporation, partnership, or person doing business under an assumed or designated trade name shall notify the Board in accordance with rules adopted by the Board if an individual licensee who is indicated in the license issued under this section ceases to be an officer, partner, owner, or employee of the corporation, partnership, or person doing business under the assumed or designated trade name. If the corporation, partnership, or person no longer has an officer, general partner, owner, or employee described in subdivision (a)(1), (b)(1), or (c)(1) of this section, the corporation, partnership, or person shall have 120 days from the date the officer, general partner, owner, or employee ceases the relationship with the corporation, partnership, or person to satisfy the requirements described in subdivision (a)(1), (b)(1), or (c)(1) of this section. The Board may, in its discretion, grant the corporation, partnership, or person a period greater than 120 days to satisfy the requirements described in subdivision (a)(1), (b)(1), or (c)(1) of this section as it deems appropriate. After 120 days, or a time period greater than 120 days as approved by the Board, if the corporation, partnership, or person does not have an officer, general partner, owner, or employee as described in subdivision (a)(1), (b)(1), or (c)(1) of this section, the license issued under this section is automatically suspended and the corporation, partnership, or person shall cease practicing landscape construction or contracting.

"**§ 89D-18. Licensing of nonresidents.**

(a) Definitions. – The following definitions apply in this section:

(1) Delinquent income tax debt. – The amount of income tax due as stated in a final notice of assessment issued to a taxpayer by the Secretary of Revenue when the taxpayer no longer has the right to contest the amount.

(2) Foreign corporation. – A corporation as defined in G.S. 55-1-40.

(3) Foreign entity. – A foreign corporation, a foreign limited liability company, or a foreign partnership.

(4) Foreign limited liability company. – A company as defined in G.S. 57D-1-03.

(5) Foreign partnership. – One of the following that does not have a permanent place of business in this State:

a. A foreign limited partnership as defined in G.S. 59-102.

b. A general partnership formed under the laws of a jurisdiction other than this State.

(b) Licensing. – Except as provided in this section, the Board may issue a license to a nonresident individual or a foreign entity that meets the requirements for licensure under this Chapter.

(c) Certificate of Authority Required. – The Board shall not issue a license for a foreign corporation unless the corporation has obtained a certificate of authority from the Secretary of State pursuant to Article 15 of Chapter 55 of the General Statutes. The Board shall not issue a license for a foreign limited liability company unless the company has obtained a certificate of authority from the Secretary of State pursuant to Article 7 of Chapter 57D of the General Statutes.

(d) Information. – The Board, upon request, shall provide the Secretary of Revenue the name, address, and tax identification number of every nonresident individual and foreign entity licensed by the Board. The information to be provided under this section shall be in a form required by the Secretary of Revenue.

(e) Delinquents. – If the Secretary of Revenue determines that any nonresident individual or foreign entity licensed by the Board owes a delinquent income tax debt, the Secretary of Revenue may notify the Board of the nonresident individual and foreign entity and instruct the Board not to renew the nonresident individual or foreign entity's license. The Board shall not renew the license of a nonresident individual or foreign entity identified by the Secretary of Revenue unless the Board receives a written statement from the Secretary that (i) the debt has been paid or (ii) the debt is being paid pursuant to an installment agreement.

"**§ 89D-19. Reciprocity.**

The Board may issue a license, without examination, to any person who is a landscape contractor licensed, certified, or registered in another state or country if the requirements for licensure, certification, or registration in the other state or country are substantially equivalent to the requirements for licensure in this State.

"**§ 89D-20. License renewal and continuing education.**

(a) Every license issued under this Chapter shall be renewed on or before the first day of August of each year. Any person who desires to continue to practice shall apply for a license renewal and shall submit the required fee. Licenses that are not renewed shall be automatically revoked. A license may be renewed at any time within one year after its expiration if (i) the applicant pays the required renewal fee and late renewal fee, (ii) the Board finds that the applicant has not used the license in a manner inconsistent with the provisions of this Chapter or engaged in the practice of landscape construction or contracting after notice of revocation, and (iii) the applicant is otherwise eligible for licensure under the provisions of this Chapter. When necessary, the Board may require licensees to demonstrate continued competence as a condition of license renewal.

(b) As a condition of license renewal, a licensee shall meet the continuing education requirements set by the Board. Each licensee shall complete seven continuing education units per year. The Board may suspend a licensee's license for 30 days for failure to obtain continuing education units required by this subsection. Upon payment of a reinstatement fee, submitting to the Board proof of the continuing education units required by this subsection, and payment of the license renewal fee and late renewal fee, the licensee's license shall be reinstated. Failure to request a reinstatement of the license and failure to pay the reinstatement fee, renewal fee, and late renewal fee shall result in the forfeiture of a license. Upon forfeiture, a person shall be required to submit a new application and retake the examination as provided in this Chapter.

"**§ 89D-21. Expenses and fees.**

(a) The Board may impose the following fees not to exceed the amounts listed below:

(1)	Application fee	$100.00
(2)	Examination fee	250.00
(3)	Individual license fee and individual license renewal	100.00
(4)	Initial corporate, limited liability company, partnership, or trade name license	100.00
(5)	Corporate, limited liability company, partnership, or trade-name license renewal	100.00
(6)	Late renewal fee	50.00
(7)	Reinstatement fee	250.00
(8)	License by reciprocity	250.00
(9)	Duplicate license	25.00

(b) When the Board uses a testing service for the preparation, administration, or grading of examinations, the Board may charge the applicant the actual cost of the examination services and a prorated portion of the examination fee.

"**§ 89D-22. Disciplinary action.**

(a) The Board may deny, restrict, suspend, or revoke a license or refuse to issue or renew a license if a licensee or applicant does any of the following:

(1) Employs the use of fraud, deceit, or misrepresentation in obtaining or attempting to obtain a license or the renewal of a license.

(2) Practices or attempts to practice landscape construction or contracting by fraudulent misrepresentation.

(3) Commits an act of gross malpractice or incompetence as determined by the Board.

(4) Has been convicted of or pled guilty or no contest to a crime that indicates that the person is unfit or incompetent to practice as a landscape contractor or that indicates that the person has deceived or defrauded the public.

(5) Has been declared incompetent by a court of competent jurisdiction.

(6) Has willfully violated any provision in this Chapter or any rules adopted by the Board.

(7) Uses or attempts to use the seal in a fraudulent or unauthorized manner.

(8) Fails to file the required surety bond or letter of credit or to keep the bond or letter of credit in force.

(b) The Board may assess costs, including reasonable attorneys' fees and investigatory costs, in a proceeding under this section against an applicant or licensee found to be in violation of this Chapter.

"**§ 89D-23. Civil penalties.**

(a) In addition to taking any of the actions permitted under G.S. 89D-22, the Board may assess a civil penalty not in excess of two thousand dollars ($2,000) for each violation of any section of this Chapter or the violation of any rules adopted by the Board. The clear proceeds of any civil penalty assessed under this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2.

(b) Before imposing and assessing a civil penalty and fixing the amount of the penalty, the Board shall, as a part of its deliberations, take into consideration the following factors:

(1) The nature, gravity, and persistence of the particular violation.

(2) The appropriateness of the imposition of a civil penalty when considered alone or in combination with other punishment.

(3) Whether the violation was willful and malicious.

(4) Any other factors that would tend to mitigate or aggravate the violations found to exist.

"**§ 89D-24. Injunction to prevent violation; notification of complaints.**

(a) If the Board finds that a person who does not have a license issued under this Chapter is engaging in the practice of landscape construction or contracting, the Board may appear in its own name in superior court in actions for injunctive relief to prevent any person from violating the provisions of this Chapter or the rules adopted by the Board.

(b) A licensed landscape contractor shall notify the Board of any written complaints filed against the landscape contractor not resolved within 30 days from the date the complaint was filed by registered mail to the Board."

SECTION 3.31.(c) Members serving on the North Carolina Landscape Contractors' Registration Board on the effective date of this act shall continue to serve until members of the North Carolina Landscape Contractors' Licensing Board, newly structured under G.S. 89D-14(a), as enacted by Section 3.31(b) of this act, are appointed.

SECTION 3.31.(d) Once the term of one of the current public members appointed by the Governor expires, the General Assembly, upon the recommendation of the Speaker of the House of Representatives, shall appoint a licensed landscape contractor in the business of landscape construction and contracting. Once the term of one of the current members appointed by the Commissioner of Agriculture expires, the General Assembly, upon the recommendation

of the President Pro Tempore of the Senate, shall appoint a licensed landscape contractor in the business of landscape construction and contracting. All records, staff, funds, and other items of the North Carolina Landscape Contractors' Registration Board are transferred to and made the property of the North Carolina Landscape Contractors' Licensing Board.

SECTION 3.31.(e) Any person who, on or before December 31, 2014, meets at least one of the following criteria shall be issued a landscape contractor's license by the North Carolina Landscape Contractors' Licensing Board, without the requirement of examination, upon submission of a completed application and payment of the application fee on or before August 1, 2015:

(1) Is registered as a landscape contractor.
(2) Is licensed as an irrigation contractor.
(3) Is certified as a turf grass professional.
(4) Has three years of documented experience in the person's own business as a landscape contractor or three years of documented experience as an employee in a landscape contracting business and meets all other requirements and qualifications for licensure as a landscape contractor. Educational experience can be applied towards the three-year experience requirement as follows:
    a. One year of credit for a two-year degree in related educational training.
    b. Two years of credit for a four-year degree in related educational training.
    c. Up to two years of credit for education or business experience in general business management.

Landscape contractors currently registered under Chapter 89D of the General Statutes shall not be required to renew the registration for the 2015 calendar year to qualify for the landscape contractor's license, as enacted by Subsection 3.31(b) of this section.

SECTION 3.31.(f) Subsection (a) of this section becomes effective August 1, 2015.

TRANSFER SOLID WASTE RULE-MAKING AUTHORITY FROM COMMISSION FOR PUBLIC HEALTH TO ENVIRONMENTAL MANAGEMENT COMMISSION

SECTION 3.33.(a) G.S. 130A-29 reads as rewritten:

"**§ 130A-29. Commission for Public Health – Creation, powers and duties.**

…

(c) The Commission shall adopt rules:

(1) Repealed by Session Laws 1983 (Regular Session, 1984), c. 1022, s. 5.
(2) Establishing standards for approving sewage-treatment devices and holding tanks for marine toilets as provided in G.S. 75A-6(o).
(3) Establishing specifications for sanitary privies for schools where water-carried sewage facilities are unavailable as provided in G.S. 115C-522.
(4) Establishing requirements for the sanitation of local confinement facilities as provided in Part 2 of Article 10 of Chapter 153A of the General Statutes.
(5) Repealed by Session Laws 1989 (Regular Session, 1990), c. 1075, s. 1.
(5a) Establishing eligibility standards for participation in Department reimbursement programs.
~~(6) Requiring proper treatment and disposal of sewage and other waste from chemical and portable toilets.~~
(7) Establishing statewide health outcome objectives and delivery standards.

(8) Establishing permit requirements for the sanitation of premises, utensils, equipment, and procedures to be used by a person engaged in tattooing, as provided in Part 11 of Article 8 of this Chapter.

(9) Implementing immunization requirements for adult care homes as provided in G.S. 131D-9 and for nursing homes as provided in G.S. 131E-113.

(10) Pertaining to the biological agents registry in accordance with G.S. 130A-479.

(11) For matters within its jurisdiction that allow for and regulate horizontal drilling and hydraulic fracturing for the purpose of oil and gas exploration and development.

…."

SECTION 3.33.(b) G.S. 130A-290 reads as rewritten:

"**§ 130A-290. Definitions.**

(a) Unless a different meaning is required by the context, the following definitions shall apply throughout this Article:

…

(3a) "Commission" means the Environmental Management Commission.

…

(35) "Solid waste" means any hazardous or nonhazardous garbage, refuse or sludge from a waste treatment plant, water supply treatment plant or air pollution control facility, domestic sewage and sludges generated by the treatment thereof in sanitary sewage collection, treatment and disposal systems, and other material that is either discarded or is being accumulated, stored or treated prior to being discarded, or has served its original intended use and is generally discarded, including solid, liquid, semisolid or contained gaseous material resulting from industrial, institutional, commercial and agricultural operations, and from community activities. The term does not include:

a. Fecal waste from fowls and animals other than humans.

b. Solid or dissolved material in:

1. Domestic sewage and sludges generated by treatment thereof in sanitary sewage collection, treatment and disposal systems which are designed to discharge effluents to the surface waters.

2. Irrigation return flows.

3. Wastewater discharges and the sludges incidental to and generated by treatment which are point sources subject to permits granted under Section 402 of the Water Pollution Control Act, as amended (P.L. 92-500), and permits granted under G.S. 143-215.1 by the ~~Environmental Management Commission.~~Commission. However, any sludges that meet the criteria for hazardous waste under RCRA shall also be a solid waste for the purposes of this Article.

…."

SECTION 3.33.(c) G.S. 130A-291.1 reads as rewritten:

"**§ 130A-291.1. Septage management program; permit fees.**

…

(d) Septage shall be treated and disposed only at a wastewater system that has been approved by the Department under rules adopted by the Commission ~~or by the Environmental Management Commission~~ or at a site that is permitted by the Department under this section. A

permit shall be issued only if the site satisfies all of the requirements of the rules adopted by the Commission.

…."

SECTION 3.33.(d) G.S. 130A-294(a)(4) reads as rewritten:

"**§ 130A-294. Solid waste management program.**

(a) The Department is authorized and directed to engage in research, conduct investigations and surveys, make inspections and establish a statewide solid waste management program. In establishing a program, the Department shall have authority to:

…

(4) a. Develop a permit system governing the establishment and operation of solid waste management facilities. A landfill with a disposal area of 1/2 acre or less for the on-site disposal of land clearing and inert debris is exempt from the permit requirement of this section and shall be governed by G.S. 130A-301.1. Demolition debris from the decommissioning of manufacturing buildings, including electric generating stations, that is disposed of on the same site as the decommissioned buildings, is exempt from the permit requirement of this section and rules adopted pursuant to this section and shall be governed by G.S. 130A-301.3. The Department shall not approve an application for a new permit, the renewal of a permit, or a substantial amendment to a permit for a sanitary landfill, excluding demolition landfills as defined in the rules of the Commission, except as provided in subdivisions (3) and (4) of subsection (b1) of this section. No permit shall be granted for a solid waste management facility having discharges that are point sources until the Department has referred the complete plans and specifications to the ~~Environmental Management~~ Commission and has received advice in writing that the plans and specifications are approved in accordance with the provisions of G.S. 143-215.1. In any case where the Department denies a permit for a solid waste management facility, it shall state in writing the reason for denial and shall also state its estimate of the changes in the applicant's proposed activities or plans that will be required for the applicant to obtain a permit.

b. Repealed by Session Laws 2007-550, s. 1(a), effective August 1, 2007.

c. The Department shall deny an application for a permit for a solid waste management facility if the Department finds that:

1. Construction or operation of the proposed facility would be inconsistent with or violate rules adopted by the Commission.

2. Construction or operation of the proposed facility would result in a violation of water quality standards adopted by the ~~Environmental Management~~ Commission pursuant to G.S. 143-214.1 for waters, as defined in G.S. 143-213.

3. Construction or operation of the facility would result in significant damage to ecological systems, natural resources, cultural sites, recreation areas, or historic sites of more than local significance. These areas include, but are not limited to, national or State parks or forests; wilderness areas; historic sites; recreation areas; segments of the natural and scenic rivers system; wildlife refuges, preserves, and management areas; areas that provide habitat for threatened or endangered

species; primary nursery areas and critical fisheries habitat designated by the Marine Fisheries Commission; and Outstanding Resource Waters designated by the ~~Environmental Management~~ Commission.

…."

SECTION 3.33.(e) G.S. 130A-300 reads as rewritten:

"**§ 130A-300. Effect on laws applicable to water pollution control.**

This Article shall not be considered as amending, repealing or in any manner abridging or interfering with those sections of the General Statutes of North Carolina relative to the control of water pollution as now administered by the ~~Environmental Management~~ Commission nor shall the provisions of this Article be construed as being applicable to or in any way affecting the authority of the ~~Environmental Management~~ Commission to control the discharges of wastes to the waters of the State as provided in Articles 21 and 21A, Chapter 143 of the General Statutes."

SECTION 3.33.(f) G.S. 130A-302 reads as rewritten:

"**§ 130A-302. Sludge deposits at sanitary landfills.**

Sludges generated by the treatment of wastewater discharges which are point sources subject to permits granted under Section 402 of the Federal Water Pollution Act, as amended (P.L. 92-500), or permits generated under G. S. 143-215.1 by the ~~Environmental Management~~ Commission shall not be deposited in or on a sanitary landfill permitted under this Article unless in a compliance with the rules concerning solid waste adopted under this Article."

SECTION 3.33.(g) G.S. 130A-310.3 reads as rewritten:

"**§ 130A-310.3. Remedial action programs for inactive hazardous substance or waste disposal sites.**

…

(b) Where possible, the Secretary shall work cooperatively with any owner, operator, responsible party, or any appropriate agency of the State or federal government to develop and implement the inactive hazardous substance or waste disposal site remedial action program. The Secretary shall not take action under this section to the extent that the ~~Environmental Management~~ Commission, the Commissioner of Agriculture, or the Pesticide Board has assumed jurisdiction pursuant to Articles 21 or 21A of Chapter 143 of the General Statutes.

…

(d) In any inactive hazardous substance or waste disposal site remedial action program implemented hereunder, the Secretary shall ascertain the most nearly applicable cleanup standard as would be applied under CERCLA/SARA, and may seek federal approval of any such program to insure concurrent compliance with federal standards. State standards may exceed and be more comprehensive than such federal standards. The Secretary shall assure concurrent compliance with applicable standards set by the ~~Environmental Management~~ Commission.

…."

SECTION 3.33.(h) G.S. 130A-310.4(g) reads as rewritten:

"(g) The Commission ~~on Health Services [Commission for Public Health]~~ shall adopt rules prescribing the form and content of the notices required by this section. The proposed remedial action plan shall include a summary of all alternatives considered in the development of the plan. A record shall be maintained of all comment received by the Department regarding the remedial action plan."

SECTION 3.33.(i) G.S. 130A-310.31(b)(5) reads as rewritten:

"(5) "Unrestricted use standards" when used in connection with "cleanup", "remediated", or "remediation" means contaminant concentrations for each environmental medium that are considered acceptable for all uses and that comply with generally applicable standards, guidance, or established

methods governing the contaminants that are established by statute or adopted, published, or implemented by the ~~Environmental Management Commission, the~~ Commission, or the Department instead of the site-specific contaminant levels established pursuant to this Part."

SECTION 3.33.(j) G.S. 130A-310.65 reads as rewritten:

"**§ 130A-310.65. Definitions.**

As used in this Part:

(1) "Background standard" means the naturally occurring concentration of a substance in the absence of the release of a contaminant.

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

…

(12) "Unrestricted use standards" means contaminant concentrations for each environmental medium that are acceptable for all uses; that are protective of public health, safety, and welfare and the environment; and that comply with generally applicable standards, guidance, or methods established by statute or adopted, published, or implemented by the ~~Commission, the Commission for Public Health,~~Commission or the Department."

SECTION 3.33.(k) G.S. 113-391(a)f. reads as rewritten:

"f. Management of wastes produced in connection with oil and gas exploration and development and use of horizontal drilling and hydraulic fracturing treatments for that purpose. Such rules shall address storage, transportation, and disposal of wastes that may contain radioactive materials or wastes that may be toxic or have other hazardous wastes' characteristics that are not otherwise regulated as a hazardous waste by the federal Resource Conservation and Recovery Act (RCRA), such as top-hole water, brines, drilling fluids, additives, drilling muds, stimulation fluids, well servicing fluids, oil, production fluids, and drill cuttings from the drilling, alteration, production, plugging, or other activity associated with oil and gas wells. Wastes generated in connection with oil and gas exploration and development and use of horizontal drilling and hydraulic fracturing treatments for that purpose that constitute hazardous waste under RCRA shall be subject to rules adopted by the Environmental Management Commission ~~for Public Health~~ to implement RCRA requirements in the State."

SECTION 3.33.(l) G.S. 113-415 reads as rewritten:

"**§ 113-415. Conflicting laws.**

No provision of this Article shall be construed to repeal, amend, abridge or otherwise ~~affect: (i)~~ affect the authority and ~~responsibility~~responsibility (i) vested in the Environmental Management Commission by Article 7 of Chapter 87 of the General Statutes, pertaining to the location, construction, repair, operation and abandonment of ~~wells, or the authority and responsibility~~ wells; (ii) vested in the Environmental Management Commission related to the control of water and air pollution as provided in Articles 21 and 21A of Chapter 143 of the General Statutes; ~~or (ii) the authority or responsibility~~(iii) vested in the Department and the Environmental Management Commission ~~for Public Health~~ by Article 10 of Chapter 130A of the General Statutes pertaining to public water-supply ~~requirements,~~requirements; or ~~the authority and responsibility~~(iv) vested in the Environmental Management Commission ~~for Public Health~~ related to the management of solid and hazardous waste as provided in Article 9 of Chapter 130A of the General Statutes."

SECTION 3.33.(m) The Revisor of Statutes shall make any conforming statutory changes necessary to reflect the transfer of rule-making authority under Article 9 of Chapter 130A of the General Statutes from the Commission for Public Health to the Environmental Management Commission.

SECTION 3.33.(n) The Codifier of Rules shall make any conforming rule changes necessary to reflect the transfer of rule-making authority under Article 9 of Chapter 130A of the General Statutes from the Commission for Public Health to the Environmental Management Commission.

TRANSFER DRINKING WATER RULE-MAKING AUTHORITY FROM COMMISSION FOR PUBLIC HEALTH TO ENVIRONMENTAL MANAGEMENT COMMISSION

SECTION 3.34.(a) G.S. 130A-313 is amended by adding a new subdivision to read:

"(2a) "Commission" means the Environmental Management Commission."

SECTION 3.34.(b) G.S. 87-97(i) reads as rewritten:

"**§ 87-97. Permitting, inspection, and testing of private drinking water wells.**

…

(i) ~~Commission for Public Health~~Environmental Management Commission to Adopt Drinking Water Testing Rules. – The ~~Commission for Public Health~~Environmental Management Commission shall adopt rules governing the sampling and testing of well water and the reporting of test results. The rules shall allow local health departments to designate third parties to collect and test samples and report test results. The rules shall also provide for corrective action and retesting where appropriate. The ~~Commission for Public Health~~Commission may by rule require testing for additional parameters, including volatile organic compounds, if the Commission makes a specific finding that testing for the additional parameters is necessary to protect public health. If the Commission finds that testing for certain volatile organic compounds is necessary to protect public health and initiates rule making to require testing for certain volatile organic compounds, the Commission shall consider all of the following factors in the development of the rule: (i) known current and historic land uses around well sites and associated contaminants; (ii) known contaminated sites within a given radius of a well and any known data regarding dates of contamination, geology, and other relevant factors; (iii) any GIS-based information on known contamination sources from databases available to the Department of Environment and Natural Resources; and (iv) visual on-site inspections of well sites. In addition, the rules shall require local health departments to educate citizens for whom new private drinking water wells are constructed and for citizens who contact local health departments regarding testing an existing well on all of the following:

(1) The scope of the testing required pursuant to this Article.
(2) Optional testing available pursuant to this Article.
(3) The limitations of both the required and optional testing.
(4) Minimum drinking water standards."

SECTION 3.34.(c) The Codifier of Rules shall make any conforming rule changes necessary to reflect the transfer of rule-making authority under Article 10 of Chapter 130A of the General Statutes from the Commission for Public Health to the Environmental Management Commission.

WELL CONTRACTOR LICENSING CHANGES

SECTION 3.35.(a) G.S. 87-43.1 is amended by adding the following new subdivision to read:

"**§ 87-43.1. Exceptions.**

The provisions of this Article shall not apply:

…

(10) To the installation, construction, maintenance, or repair of electrical wiring, devices, appliances, or equipment by a person certified as a well contractor under Article 7A of this Chapter when running electrical wires from the well pump to the pressure switch."

SECTION 3.35.(b) G.S. 87-98.6 reads as rewritten:

"**§ 87-98.6. Well contractor qualifications and examination.**

(a) The Commission, with the advice and assistance of the Secretary, shall establish minimum requirements of education, experience, and knowledge for each type of certification for well contractors and shall establish procedures for receiving applications for certification, conducting examinations, and making investigations of applicants as may be necessary and appropriate so that prompt and fair consideration will be given to each applicant.

(b) The Commission, with the advice and assistance of the Secretary, shall establish minimum requirements of education, experience, and knowledge for each type of certification for well contractors for the installation, construction, maintenance, and repair of electrical wiring devices, appliances, and equipment related to the construction, operation, and repair of wells. Requirements developed pursuant to this subsection shall apply only to the initial certification of an applicant and shall not be required as part of continuing education or as a condition of certification renewal."

SECTION 3.35.(c) This section is effective when it becomes law. The requirements of subsection (b) of G.S. 87-98.6, as enacted by Section 3.35(b) of this section, apply to applicants applying for certification on or after the date this section becomes effective.

STANDARDIZE LOCAL WELL PROGRAMS

SECTION 3.36.(a) G.S. 87-97 reads as rewritten:

"**§ 87-97. Permitting, inspection, and testing of private drinking water wells.**

(a) Mandatory Local Well Programs. – Each county, through the local health department that serves the county, shall implement a private drinking water well permitting, inspection, and testing program. Local health departments shall administer the program and enforce the minimum well construction, permitting, inspection, repair, and testing requirements set out in this Article and rules adopted pursuant to this Article. No person shall unduly delay or refuse to permit a well that can be constructed or repaired and operated in compliance with the requirements set out in this Article and rules adopted pursuant to this Article.

(a1) Use of Standard Forms. – Local well programs shall use the standard forms created by the Department for all required submittals and shall not create their own forms unless the local program submits a petition for rule making to the Environmental Management Commission, and the Commission by rule finds that conditions or circumstances unique to the area served by the local well program constitute a threat to public health that will be mitigated by use of a local form different from the form used by the Department.

…

(k) Registry of Permits and Test Results. – Each local health department shall maintain a registry of all private drinking water wells for which a construction permit or repair permit is ~~issued.~~issued that is searchable by address or addresses served by the well. The registry shall specify the physical location of each private drinking water well and shall include the results of all tests of water from each well. The local health department shall retain a record of the results of all tests of water from a private drinking water well until the well is properly closed in accordance with the requirements of this Article and rules adopted pursuant to this Article.

…."

SECTION 3.36.(b) Notwithstanding 15A NCAC 02C .0107(j)(2), neither the Department of Environment and Natural Resources nor any local well program shall require that well contractor identification plates include the well construction permit numbers. Local

well programs may install a plate with the well construction permit number or any other information deemed relevant on a well at the expense of the local program.

SECTION 3.36.(c) The Environmental Management Commission shall adopt a rule to amend 15A NCAC 02C .0107(j)(2) consistent with Section 3.36(b) of this section.

SECTION 3.36.(d) Section 3.36(b) of this section expires on the date that the rule adopted pursuant to Section 3.36(c) of this section becomes effective.

SECTION 3.36.(e) If the well location marked on the map submitted with an application to a local well program is also marked with a stake or similar marker on the property, then the local well program may not require the contractor to be onsite during the on-site predrill inspection, as long as the contractor is available by telephone to answer questions.

MILITARY LANDS PROTECTION ACT AND MILITARY AFFAIRS COMMISSION AMENDMENTS

SECTION 3.37.(a) Article 8B of Chapter 143 of the General Statutes is amended by adding a new section to read:

"**§ 143-135.29. Review of Military Lands Protection Act Proposals.**

The State Construction Office shall maintain, and make available to the public, accurate maps of areas surrounding major military installations, including Military Trainings Routes and Military Operating Areas, as defined in G.S. 143-151.71, that are subject to the provisions of Article 9G of Chapter 143 of the General Statutes."

SECTION 3.37.(b) G. S. 143-151.71 reads as rewritten:

"**§ 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) "Building Code Council" means the Council created pursuant to Article 9 of Chapter 143 of the General Statutes.~~

(3) "Commissioner" means the Commissioner of Insurance.

(4) "Construction" includes reconstruction, alteration, or expansion.

(5) "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, Air Route Surveillance Radar (ARSR-4) at Fort Fisher, and Seymour Johnson Air Force Base, in its own right and as the responsible entity for the Dare County Bombing Range, and any facility located within the State that is subject to the installations' oversight and control.

(6) "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.

(6a) "State Construction Office" means the State Construction Office of 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" do not include buildings and structures listed individually or as

contributing resources within a district listed in the National Register of Historic Places."

SECTION 3.37.(c) G.S. 143-151.73 reads as rewritten:

"**§ 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 ~~Building Code Council~~State Construction Office pursuant to G.S. 143-151.75 or proof of the ~~Council's~~ State Construction 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."

SECTION 3.37.(d) G.S. 143-151.75 reads as rewritten:

"**§ 143-151.75. Endorsement for proposed 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 ~~Building Code Council~~State Construction Office or proof of the ~~Council's~~State Construction Office's failure to act within the time allowed.

(b) A person seeking endorsement for a proposed 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 base commander of the major military installation that is located within five miles of the proposed tall building or structure and shall provide all of the following to the ~~Building Code Council:~~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 tall building or structure.

(2) A copy of the written notice sent to the base commander of the installation identified in subdivision (1) of this subsection that is located within five miles of the proposed tall building or structure.

(3) A written "Determination of No Hazard to Air Navigation" issued by the Federal Aviation Administration pursuant to Subpart D of Part 77 of Title 14 of the Code of Federal Regulations (January 1, 2012, Edition) for the proposed tall building or structure.

(c) After receipt of the information provided by the applicant pursuant to subsection (b) of this section, the ~~Building Code Council~~State Construction Office shall, in writing, request a written statement concerning the proposed tall building or structure from the base commander of the major military installation identified in subdivision (1) of subsection (b) of this section. The ~~Building Code Council~~State Construction Office shall request that the following information be included in the written statement from the base commander:

(1) A determination whether the location of the proposed tall building or structure is within a protected area that surrounds the installation.

(2) A determination whether any activities of the installation may be adversely affected by the proposed 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 subdivision.

(d) The ~~Building Code Council~~State Construction Office shall not endorse a tall building or structure if the Council finds any one or more of the following:

(1) 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 ~~Building Code Council~~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 base commander as provided in subsection (c) of this section and written comments received by members of affected communities. Provided, however, if the ~~Building Code Council~~State Construction Office does not receive a written statement requested pursuant to subsection (c) of this section within 45 days of issuance of the request to the base commander, the ~~Building Code Council~~State Construction Office shall deem the tall building or structure as endorsed by the base commander.

(2) The ~~Council~~State Construction 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 (3) of subsection (b) of this section.

(e) The ~~Building Code Council~~State Construction Office shall make a final decision on the request for endorsement of a tall building or structure within 90 days from the date on which the ~~Council~~State Construction Office requested the written statement from the base commander of the major military installation identified in subdivision (1) of subsection (b) of this section. If the ~~Council~~State Construction Office determines that a request for a tall building or structure fails to meet the requirements for endorsement under this section, the ~~Council~~State Construction Office shall deny the request. The ~~Council~~State Construction Office shall notify the person of the denial, and the notice shall include a written statement of the reasons for the denial. If the ~~Council~~State Construction 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 tall building or structure.

(f) The ~~Building Code Council~~State Construction Office may meet by telephone, video, or Internet conference, so long as consistent with applicable law regarding public meetings, to make a decision on a request for endorsement for a tall building or structure pursuant to subsection (e) of this section."

SECTION 3.37.(e) G.S. 143-138(j2) is repealed.

SECTION 3.38. G.S. 127C-1 is amended by adding a new subsection to read:

"(d) Meetings and Records. – Notwithstanding Article 33C of Chapter 143 of the General Statutes and Chapter 132 of the General Statutes, the Commission may withhold documents and discussions related to the federal government's process to determine closure or realignment of military installations until a final decision has been made by the federal government in that process."

PART IV. STUDIES

HONEYBEE WORKING GROUP

SECTION 4.1.(a) The General Assembly recognizes the importance of the State's agriculture sector and heritage and the importance of honeybee pollination to this sector. In an effort to proactively address the issue of Colony Collapse Disorder and its damaging effects on honeybee populations, the Department of Agriculture and Consumer Services shall create the Honeybee Improvement for Vital Ecology (HIVE) working group. The group shall consist of nine members appointed as follows:

(1) The Commissioner of Agriculture, or the Commissioner's designee, serving ex officio.

(2) A representative from the Plant Protection Section of the Department of Agriculture and Consumer Services.
(3) A representative from the Department of Transportation.
(4) A representative from the Utilities Commission Public Staff.
(5) Two representatives from publicly owned utilities that operate within the State.
(6) Two representatives from the biotechnology sector whose company is actively involved in honeybee research.
(7) One researcher from North Carolina State University, who shall be an entomologist or apiculturist.

Vacancies in the HIVE group shall be filled by the Department of Agriculture and Consumer Services. A quorum of the group shall consist of five members.

The HIVE group may contract for professional, clerical, or consultant services.

SECTION 4.1.(b) Purpose. – The HIVE group shall create and issue a report containing the following:

(1) A list of bee-friendly vegetation and planting requirements for such vegetation. The list shall include a recommendation as to the appropriateness of locating each bee-friendly plant with respect to:
a. Department of Transportation public road rights-of-way,
b. Rights-of-way held by publicly owned utilities.
(2) Whether planting requirements for bee-friendly vegetation within rights-of-way for public utilities should be voluntary or required.
(3) A recommendation from the Department of Transportation as to whether priority should be given to bee-friendly vegetation for landscaping projects within Department-owned rights-of-way and rest areas. Any recommendation of priority shall also include a percentage breakdown of urban and rural areas to be targeted.
(4) A recommendation from the Utilities Commission Public Staff, publicly owned utilities, or both as to dedications of rural easements for bee-friendly vegetation, including a percentage breakdown of urban and rural areas to be targeted.
(5) A recommendation from the Department of Agriculture and Consumer Services as to whether a statewide bee-friendly vegetation planting program would be beneficial to the State's agriculture industry, including any estimated benefit. In doing so, the Department of Agriculture and Consumer Services shall address the following:
a. The willingness of farms to plant bee-friendly vegetation in rural areas;
b. The ability of the Department of Agriculture and Consumer Services to provide support for a farm planting program from existing funds; and
c. The ability of research stations or other properties to plant bee-friendly vegetation.

SECTION 4.1.(c) Staff. – The Department of Agriculture and Consumer Services shall assign professional and clerical staff to assist in the work of the HIVE group.

SECTION 4.1.(d) Report. – The HIVE group shall submit a final report to the Environmental Review Commission by November 30, 2014. The report shall contain the information required in this section and any findings, legislative proposals, cost/benefit analyses, or additional recommendations for legislative action to proactively address Colony Collapse Disorder or other honeybee-related issues that may threaten the economy, ecology, and agricultural heritage of the State.

SENATOR JEAN PRESTON MARINE SHELLFISH SANCTUARY

SECTION 4.2.(a) It is the intent of the General Assembly to establish a marine shellfish sanctuary in the Pamlico Sound to be named in honor of former Senator Jean Preston, to be called the "Senator Jean Preston Marine Shellfish Sanctuary."

SECTION 4.2.(b) The Division of Marine Fisheries of the Department of Environment and Natural Resources shall designate a contiguous area of approximately 10,000 acres within the Pamlico Sound as a recommendation to the Environmental Review Commission for establishment of the "Senator Jean Preston Marine Shellfish Sanctuary" and create a plan for managing the sanctuary that includes the following components:

(1) Location and delineation of the sanctuary. – The plan should include a location for the sanctuary that minimizes the impact on commercial trawling. In addition, the sanctuary should be gridded into areas leased to private parties for restoration and harvest and areas operated and maintained by the State for restoration that are not open for harvest. The leased and unleased areas should be arranged in a pattern where leased squares are surrounded on four sides by unleased squares.

(2) Administration. – The plan should include the prices to be charged for the leased portions of the sanctuary, including an administration fee to be retained by the Division to support the leasing and monitoring program. The plan shall also provide that the balance of lease payments collected by the Division be transferred to the General Fund with a recommendation that some or all of the proceeds be used for the support of the State's special education programs in memory of Senator Jean Preston.

(3) Funding. – The plan should include a request for appropriations sufficient to provide funds for the construction of appropriate bottom habitat and shellfish seeding and for Division staff necessary to conduct oyster restoration and monitoring activities. The plan should provide that, whenever possible, construction and shellfish seeding be carried out by contract with private entities.

(4) Commercial fisherman relief. – To promote the diversification of commercial fishing opportunities, the plan should include a program to award free or discounted leases under this section to commercial fishermen who (i) have held one or more commercial fishing licenses continually for a period of 10 or more years and (ii) receive at least fifty (50%) of their income from commercial fishing with those licenses.

(5) Recommendations. – The plan should include recommendations for statutory or regulatory changes needed to expedite the expansion of shellfish restoration and harvesting in order to improve water quality, restore ecological habitats, and expand the coastal economy.

SECTION 4.2.(c) No later than October 1, 2014, and quarterly thereafter until submission of a final plan to the Environmental Review Commission, the Department of Environment and Natural Resources shall report to the Environmental Review Commission regarding its implementation of this section and its recommended plan.

DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES TO STUDY INTERBASIN TRANSFERS

SECTION 4.3.(a) The Department of Environment and Natural Resources shall study the statutes and rules governing interbasin transfers and make recommendations as to whether the statutes and rules should be amended. The study shall specifically examine all of the following:

(1) Whether and to what extent temporary and emergency interbasin transfers, including interbasin transfers to provide drought relief, should be subject to different regulatory requirements than long-term interbasin transfers.
(2) Whether and to what extent interbasin transfers between river sub-basins should be subject to different regulatory requirements than interbasin transfers between major river basins.
(3) Whether there are types of interbasin transfers that should be exempted from the interbasin certification or other regulatory requirements.

SECTION 4.3.(b) No later than October 1, 2014, the Department of Environment and Natural Resources shall report its findings and recommendations to the Environmental Review Commission.

PROGRAM EVALUATION DIVISION TO STUDY WATER AND SEWER SYSTEMS

SECTION 4.4.(a) The Joint Legislative Program Evaluation Oversight Committee shall include in the 2014-2015 Work Plan for the Program Evaluation Division of the General Assembly a study of the benefits that may result from the merger of public water systems and wastewater collection and treatment works. The Program Evaluation Division shall specifically include the following in the study:

(1) Consideration of whether the benefits that have resulted from the merger of certain public water systems and certain wastewater collection and treatment works can be replicated for other systems. In considering this issue, the Program Evaluation Division shall investigate the performance of the Charlotte-Mecklenburg Utility Department, the Cape Fear Public Utility Authority, and Two Rivers Utilities.
(2) Whether the State can incentivize public water systems and wastewater collection and treatment works that provide service that is affordable, reliable, and in compliance with all applicable laws to purchase, to interconnect with, or enter into joint management agreements with public water systems and wastewater collection and treatment works that do not provide service that is affordable, reliable, and in compliance with all applicable laws.
(3) Whether the State can allow public water systems and wastewater collection and treatment works that provide service that is affordable, reliable, and in compliance with all applicable laws to apply for grant funding or other assistance on the behalf of public water systems and wastewater collection and treatment works that do not provide service that is affordable, reliable, and in compliance with all applicable laws if the award of such funding is contingent on purchase, interconnection, or a joint management agreement between the systems.

SECTION 4.4.(b) The Program Evaluation Division shall submit its findings and recommendations to the Joint Legislative Program Evaluation Oversight Committee and the Environmental Review Commission at a date to be determined by the Joint Legislative Program Evaluation Oversight Committee.

PART V. SEVERABILITY CLAUSE AND EFFECTIVE DATE

SECTION 5.1. If any section or provision of this act is declared unconstitutional or invalid by the courts, it does not affect the validity of this act as a whole or any part other than the part declared to be unconstitutional or invalid.

SECTION 5.2. Except as otherwise provided, this act is effective when it becomes law.