

**GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2013**

**SESSION LAW 2014-120  
SENATE BILL 734**

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THE CITIZENS OF NORTH CAROLINA BY PROVIDING FOR VARIOUS ADMINISTRATIVE REFORMS, BY ELIMINATING CERTAIN UNNECESSARY OR OUTDATED STATUTES AND REGULATIONS AND MODERNIZING OR SIMPLIFYING CUMBERSOME OR OUTDATED REGULATIONS, AND BY MAKING VARIOUS OTHER STATUTORY CHANGES.

The General Assembly of North Carolina enacts:

**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, AND THE BOARD OF CORRECTIONS**

**SECTION 1.(a)** Part 20 of Article 10 of Chapter 143B of the General Statutes is repealed.

**SECTION 1.(b)** Article 6B of Chapter 115C of the General Statutes is repealed.

**SECTION 1.(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.(d)** G.S. 116C-2 is repealed.

**SECTION 1.(e)** Article 26 of Chapter 143 of the General Statutes is repealed.

**SECTION 1.(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 August 1, 2014."



**SECTION 1.(g)** Part 24 of Article 9 of Chapter 143B of the General Statutes is repealed.

**SECTION 1.(h)** G.S. 90-171.71 is repealed.

**SECTION 1.(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.(j)** G.S. 143B-715 is repealed.

## **CLARIFY PROCESS FOR READOPTION OF EXISTING RULES**

**SECTION 2.** 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 (e) and (f) 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 substantive 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 3.** 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 4.** 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 5.(a)** Article 3 of Chapter 150B of the General Statutes is amended by adding a new section to read:

**"§ 150B-23.3. Electronic filing.**

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

## **STREAMLINE RULE-MAKING PROCESS**

**SECTION 6.(a)** G.S. 150B-19.1(h) is repealed.

**SECTION 6.(b)** G.S. 150B-21.4 reads as rewritten:

### **"§ 150B-21.4. Fiscal notes and regulatory impact analysis on rules.**

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

(a1) DOT Analyses. – In addition to the requirements of subsection (a) of this section, any agency that adopts a rule affecting environmental permitting of Department of Transportation projects shall conduct an analysis to determine if the rule will result in an increased cost to the Department of Transportation. The analysis shall be conducted and submitted to the Board of Transportation when the agency submits the notice of text for publication. The agency shall consider any recommendations offered by the Board of Transportation prior to adopting the rule. Once a rule subject to this subsection is adopted, the Board of Transportation may submit any objection to the rule it may have to the Rules Review Commission. If the Rules Review Commission receives an objection to a rule from the Board of Transportation no later than 5:00 P.M. of the day following the day the Commission approves the rule, then the rule shall only become effective as provided in G.S. 150B-21.3(b1).

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

(b1) Substantial Economic Impact. – Before an agency ~~adopts~~ publishes in the North Carolina Register the proposed text of a permanent rule change that would have a substantial economic impact and that is not identical to a federal regulation that the agency is required to adopt, the agency 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%).

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

- (1) A description of the persons who would be affected by the proposed rule change.
- (2) A description of the types of expenditures that persons affected by the proposed rule change would have to make to comply with the rule and an estimate of these expenditures.
- (3) A description of the purpose and benefits of the proposed rule change.
- (4) An explanation of how the estimate of expenditures was computed.
- (5) A description of at least two alternatives to the proposed rule that were considered by the agency and the reason the alternatives were rejected. The alternatives may have been identified by the agency or by members of the public.

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

(d) If an agency proposes the repeal of an existing rule, the agency is not required to prepare a fiscal note on the proposed rule change as provided by this section."

**SECTION 6.(c)** This section is effective when it becomes law and applies to proposed rules published on or after that date.

## **REPRESENTATION OF SMALL BUSINESS ENTITIES IN ADMINISTRATIVE APPEALS**

**SECTION 7.(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.

A business entity may represent itself using a nonattorney representative who is one or more of the following of the business entity: (i) officer, (ii) manager or member-manager, if the business entity is a limited liability company, (iii) employee whose income is reported on IRS Form W-2, if the business entity authorizes the representation in writing, or (iv) owner of the business entity, if the business entity authorizes the representation in writing and if the owner's interest in the business entity is at least twenty-five percent (25%). Authority for and prior notice of nonattorney representation shall be made in writing, under penalty of perjury, to the Office on a form provided by the Office."

**SECTION 7.(b)** G.S. 105-290 is amended by adding a new subsection to read:

"(d2) Business Entity Representation. – If a property owner is a business entity, the business entity may represent itself using a nonattorney representative who is one or more of the following of the business entity: (i) officer, (ii) manager or member-manager, if the business entity is a limited liability company, (iii) employee whose income is reported on IRS Form W-2, if the business entity authorizes the representation in writing, or (iv) owner of the business entity, if the business entity authorizes the representation in writing and if the owner's interest in the business entity is at least twenty-five percent (25%). Authority for and prior notice of nonattorney representation shall be made in writing, under penalty of perjury, to the Commission on a form provided by the Commission."

**SECTION 7.(c)** This section is effective when it becomes law and applies to contested cases and appeals commenced on or after that date.

## **MERCHANT EXEMPTION FROM LOCKSMITH LICENSING**

**SECTION 9.** G.S. 74F-16 reads as rewritten:

### **"§ 74F-16. Exemptions.**

The provisions of this Chapter do not apply to:

- ...
- (6) ~~A merchant, or retail or hardware store, when the merchant or store does not purport to be a locksmith and lawfully (i) rekeys a lock at the time of sale of the lock, (ii) duplicates a key, except for duplicating a transponder type key that requires programming, or (iii) installs as a service a lock on a door if both the door and lock were purchased from the same merchant store, so long as all of the following apply:~~
    - a. It is lawfully duplicating keys or installing, servicing, repairing, rebuilding, reprogramming, rekeying, or maintaining locks in the normal course of its business.
    - b. It maintains a physical location in this State.
    - c. It maintains a sales and use tax permit in accordance with G.S. 105-164.16.
    - d. It does not represent itself as a locksmith.

...."

## **REPEAL OUTDATED PUBLIC UTILITIES STATUTES OR REPORTS**

**SECTION 10.(a)** G.S. 62-36A and G.S. 62-36.1 are repealed.

**SECTION 10.(b)** G.S. 62-158(d) reads as rewritten:

"(d) The Commission, after hearing, may adopt rules to implement this section, including rules for the establishment of expansion funds, for the use of such funds, for the remittance to the expansion fund or to customers of supplier and transporter refunds and expansion surcharges or other funds that were sources of the expansion fund, and for appropriate accounting, reporting and ratemaking treatment. ~~The Commission and Public Staff shall report to the Joint Legislative Commission on Governmental Operations on the operation of any expansion funds in conjunction with the reports required under G.S. 62-36A."~~

**SECTION 10.(c)** G.S. 62-159(d) reads as rewritten:

"(d) The Commission, after hearing, shall adopt rules to implement this section as soon as practicable. ~~The Commission and Public Staff shall report to the Joint Legislative Commission on Governmental Operations on the use of funding provided under this section in conjunction with the reports required under G.S. 62-36A."~~

**SECTION 10.(d)** G.S. 62-133.2(g) is repealed.

**SECTION 10.(e)** Section 14 of S.L. 2002-4 is repealed.

**SECTION 10.(f)** Section 14 of S.L. 2007-397 is repealed.

**SECTION 10.(g)** Section 6.1 of S.L. 1995-27 is repealed.

### **CLARIFY PROFESSIONAL ENGINEER EXEMPTION**

**SECTION 11.(a)** G.S. 89C-25 reads as rewritten:

#### **"§ 89C-25. Limitations on application of Chapter.**

This Chapter shall not be construed to prevent or affect ~~prevent the following activities:~~

- (1) ~~The practice of architecture, architecture as defined in Chapter 83A of the General Statutes, landscape architecture, landscape architecture as defined in Chapter 89A of the General Statutes, or contracting or any other legally recognized profession or trade, contracting as defined in Articles 1, 2, 4, and 5 of Chapter 87 of the General Statutes.~~
- (2) Repealed by Session Laws 2011-304, s. 7, effective June 26, 2011.
- (3) Repealed by Session Laws 2011-304, s. 7, effective June 26, 2011.
- (4) ~~Engaging in engineering or land surveying as an employee or assistant under the responsible charge of a professional engineer or professional land surveyor or as an employee or assistant of a nonresident professional engineer or a nonresident professional land surveyor provided for in subdivisions (2) and (3) of this section, provided that the work as an employee may not include responsible charge of design or supervision.~~ surveyor.
- (5) The practice of professional engineering or land surveying by any person not a resident of, and having no established place of business in this State, as a consulting associate of a professional engineer or professional land surveyor licensed under the provisions of this Chapter; provided, the nonresident is qualified for performing the professional service in the person's own state or country.
- (6) Practice by members of the Armed Forces of the United States; employees of the government of the United States while engaged in the practice of engineering or land surveying solely for the government on government-owned works and projects; or practice by those employees of the Natural Resources Conservation Service, county employees, or employees of the Soil and Water Conservation Districts who have federal engineering job approval authority that involves the planning, designing, or implementation of best management practices on agricultural lands.
- (7) ~~The internal engineering or surveying activities of a person, firm or corporation engaged in manufacturing, processing, or producing a product, including the activities of public service corporations, public utility companies, authorities, State agencies, railroads, or membership cooperatives, or the installation and servicing of their product in the field; or research and development in connection with the manufacture of that product or their service; or of their research affiliates; or their employees in the course of their employment in connection with the manufacture, installation, or servicing of their product or service in the field, or on the premises maintenance of machinery, equipment, or apparatus~~

~~incidental to the manufacture or installation of the product or service of a firm by the employees of the firm upon property owned, leased or used by the firm; inspection, maintenance and service work done by employees of the State of North Carolina, any political subdivision of the State, or any municipality including construction, installation, servicing, maintenance by regular full-time employees of streets, street lighting, traffic control signals, police and fire alarm systems, waterworks, steam, electric and sewage treatment and disposal plants; the services of superintendents, inspectors or foremen regularly employed by the State of North Carolina or any political subdivision of the State or a municipal corporation; provided, however, that the internal engineering or surveying activity is not a holding out to or an offer to the public of engineering or any service thereof as prohibited by this Chapter. Engineering work, not related to the foregoing exemptions, where the safety of the public is directly involved shall be under the responsible charge of a licensed professional engineer, or in accordance with standards prepared or approved by a licensed professional engineer.~~

(7a) The engineering or surveying activities of a person as defined by G.S. 89C-3(5) who is engaged in manufacturing, processing, producing, or transmitting and delivering a product, and which activities are reasonably necessary and connected with the primary services performed by individuals regularly employed in the ordinary course of business by the person, provided that the engineering or surveying activity is not a holding out or an offer to the public of engineering or surveying services, as prohibited by this Chapter. The engineering and surveying services may not be offered, performed, or rendered independently from the primary services rendered by the person. For purposes of this subdivision, "activities reasonably necessary and connected with the primary service" include the following:

- a. Installation or servicing of the person's product by employees of the person conducted outside the premises of the person's business.
- b. Design, acquisition, installation, or maintenance of machinery, equipment, or apparatus incidental to the manufacture or installation of the product performed by employees of the person upon property owned, leased, or used by the person.
- c. Research and development performed in connection with the manufacturing, processing, or production of the person's product by employees of the person.

Engineering or surveying activities performed pursuant to this subdivision, where the safety of the public is directly involved, shall be under the responsible charge of a licensed professional engineer or licensed professional surveyor.

(8) The (i) preparation of fire sprinkler planning and design drawings by a fire sprinkler contractor licensed under Article 2 of Chapter 87 of the General Statutes, or (ii) the performance of internal engineering or survey work by a manufacturing or communications common carrier company, or by a research and development company, or by employees of those corporations provided that the work is in connection with, or incidental to products of, or nonengineering services rendered by those corporations or their affiliates.

(9) The routine maintenance or servicing of machinery, equipment, facilities or structures, the work of mechanics in the performance of their established functions, or the inspection or supervision of construction by a foreman, superintendent, or agent of the architect or professional engineer, or services of an operational nature performed by an employee of a laboratory, a manufacturing plant, a public service corporation, or governmental operation.

(10) The design of land application irrigation systems for an animal waste management plan, required by G.S. 143-215.10C, by a designer who exhibits, by at least three years of relevant experience, proficiency in soil science and basic hydraulics, and who is thereby listed as an Irrigation



Design Technical Specialist by the North Carolina Soil and Water Conservation Commission."

**SECTION 11.(b)** G.S. 89C-19 reads as rewritten:

"§ 89C-19. **Public works; requirements where public safety involved.**

This State and its political subdivisions such as counties, cities, towns, or other political entities or legally constituted boards, commissions, public utility companies, or authorities, or officials, or employees of these entities shall not engage in the practice of engineering or land surveying involving either public or private property where the safety of the public is directly involved without the project being under the direct supervision of a professional engineer for ~~the preparations of plans and specifications for~~ engineering projects, or a professional land surveyor for land surveying projects, as provided for the practice of the respective professions by this Chapter.

An official or employee of the State or any political subdivision specified in this section, holding the positions set out in this section as of June 19, 1975, shall be exempt from the provisions of this section so long as such official or employee is engaged in substantially the same type of work as is involved in the present position.

Nothing in this section shall be construed to prohibit inspection, maintenance and service work done by employees of the State of North Carolina, any political subdivision of the State, or any municipality including construction, installation, servicing, and maintenance by regular full-time employees of, secondary roads and drawings incidental to work on secondary roads, streets, street lighting, traffic-control signals, police and fire alarm systems, waterworks, steam, electric and sewage treatment and disposal plants, the services of superintendents, inspectors or foremen regularly employed by the State of North Carolina or any political subdivision of the State, or municipal corporation.

The provisions in this section shall not be construed to alter or modify the requirements of Article 1 of Chapter 133 of the General Statutes."

#### **BAIL BOND SHIELD AMENDMENT**

**SECTION 12.(a)** G.S. 58-71-40(d1) reads as rewritten:

"(d1) While engaged in official duties, a licensee is authorized to carry, possess, and display a shield as described in this subsection. The shield shall fulfill all of the following requirements:

- (1) Be an exact duplicate in size, shape, color, and design of the shield approved under G.S. 74C-5(12) and pictured in 12 NCAC 07D. 0405 on ~~May 1, 2013~~ May 1, 2013, except that the design may be altered by stamping, inlaying, embossing, enameling, or engraving to accommodate the license number. With respect to size of the shield, the shield shall be 1.88 inches wide and 2.36 inches high.
- (2) Include the licensee's last name and corresponding license number in the same locations as the shield referenced in subdivision (1) of this subsection.
- (3) With reference to the shield described in subdivision (1) of this subsection, in lieu of the word "Private," the shield shall have the words "North Carolina," and in lieu of the word "Investigator," the shield shall have the words "Bail Agent."

Any shield that deviates from the design requirements as specified in this section shall be an unauthorized shield and its possession by a licensee shall constitute a violation of the statute by the licensee."

**SECTION 12.(b)** G.S. 15A-540 is amended by adding a new subsection to read:

"(d) A surety may utilize the services and assistance of any surety bondsman, professional bondsman, or runner licensed under G.S. 58-71-40 to effect the arrest or surrender of a defendant under subsection (a) or (b) of this section."

#### **ADA REQUIREMENTS FOR PRIVATE POOLS**

**SECTION 13.(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 13.(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 13(a) of this act.

**SECTION 13.(c)** Section 13(a) of this act expires on the date that the rule adopted pursuant to Section 13(b) of this act becomes effective.

### **ABC PERMITS/SCHOOLS AND COLLEGES**

**SECTION 14.** G.S. 18B-1006(a) reads as rewritten:

"(a) School and College Campuses. – No permit for the sale of ~~malt beverages, unfortified wine, or fortified wine~~ alcoholic beverages shall be issued to a business on the campus or property of a public ~~school, college, or university.~~ school or college, other than at a regional facility as defined by G.S. 160A-480.2 operated by a facility authority under Part 4 of Article 20 of Chapter 160A of the General Statutes except for a public school or college function, unless that business is a hotel or a nonprofit alumni organization with a mixed beverages permit or a special occasion permit. This subsection shall not apply on property owned by a local board of education which was leased for 99 years or more to a nonprofit auditorium authority created prior to 1991 whose governing board is appointed by a city board of aldermen, a county board of commissioners, or a local school board. This subsection shall also not apply to the constituent institutions of The University of North Carolina with respect to the sale of beer and wine at (i) performing arts centers located on property owned or leased by the institutions if the seating capacity does not exceed 2,000 seats; (ii) any golf courses owned or leased by the institutions and open to the public for use; or (iii) any stadiums that support a NASCAR-sanctioned one-fourth mile asphalt flat oval short track, that are owned or leased by the institutions, and that only sell malt beverages, unfortified wine, or fortified wine at events that are not sponsored or funded by the institutions. Notwithstanding this subsection, special one-time permits as described in G.S. 18B-1002(a)(5) may be issued to the University of North Carolina at Chapel Hill for the Loudermilk Center for Excellence facility. This subsection shall not apply to the following:

- (1) A regional facility as defined by G.S. 160A-480.2 operated by a facility authority under Part 4 of Article 20 of Chapter 160A of the General Statutes, unless the permit is for a public school or public college or university function.
- (2) Property owned by a local board of education and leased for 99 years or more to a nonprofit auditorium authority created prior to 1991 whose governing board is appointed by a city governing board, a county board of commissioners, or a local school board.
- (3) A hotel.
- (4) A nonprofit alumni organization.
- (5) Restaurants, eating establishments, food businesses, or retail businesses on the property defined by G.S. 116-198.33(4).
- (6) Any golf courses owned or leased by the public college or university and open to the public for use.
- (7) The sale of malt beverages, unfortified wine, or fortified wine at the following:
  - a. Performing arts centers located on property owned or leased by the public college or university.
  - b. Any stadiums that support a NASCAR-sanctioned one-fourth mile asphalt flat oval short track, that are owned or leased by the public college or university, and that only sell malt beverages, unfortified wine, or fortified wine at events that are not sponsored or funded by the public college or university.
- (8) Special one-time permits as described in G.S. 18B-1002(a)(5) for the Loudermilk Center for Excellence facility at the University of North Carolina at Chapel Hill."

### **ENFORCE MUNICIPAL FLOODPLAIN ORDINANCE IN ETJ**

**SECTION 15.** G.S. 160A-360(k) reads as rewritten:

"(k) As used in this subsection, "bona fide farm purposes" is as described in G.S. 153A-340. As used in this subsection, "property" means a single tract of property or an

identifiable portion of a single tract. Property that is located in the geographic area of a municipality's extraterritorial jurisdiction and that is used for bona fide farm purposes is exempt from exercise of the municipality's extraterritorial jurisdiction under this Article. Property that is located in the geographic area of a municipality's extraterritorial jurisdiction and that ceases to be used for bona fide farm purposes shall become subject to exercise of the municipality's extraterritorial jurisdiction under this Article. For purposes of complying with 44 C.F.R. Part 60, Subpart A, property that is exempt from the exercise of extraterritorial jurisdiction pursuant to this subsection shall be subject to the county's floodplain ordinance or all floodplain regulation provisions of the county's unified development ordinance."

## **PERMIT CHOICE**

**SECTION 16.(a)** Chapter 143 of the General Statutes is amended by adding a new Article to read:

"Article 80.  
"Permit Choice.

### **"§ 143-750. Permit choice.**

(a) If a permit applicant submits a permit for any type of development and a rule or ordinance changes between the time the permit application was submitted and a permit decision is made, the permit applicant may choose which version of the rule or ordinance will apply to the permit.

(b) This section applies to all development permits issued by the State and by local governments.

(c) This section shall not apply to any zoning permit."

**SECTION 16.(b)** Part 1 of Article 18 of Chapter 153A of the General Statutes is amended by adding a new section to read:

### **"§ 153A-320.1. Permit choice.**

If a rule or ordinance changes between the time a permit application is submitted and a permit decision is made, then G.S. 143-750 shall apply."

**SECTION 16.(c)** Part 1 of Article 19 of Chapter 160A of the General Statutes is amended by adding a new section to read:

### **"§ 160A-360.1. Permit choice.**

If a rule or ordinance changes between the time a permit application is submitted and a permit decision is made, then G.S. 143-750 shall apply."

**SECTION 16.(d)** This section is effective when it becomes law and applies to permits for which a permit decision has not been made by that date.

## **COMMUNITY COLLEGE BREWING COURSE WAIVER**

**SECTION 17.(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 17.(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 17.(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 17.(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.
- ...."

## GOOD SAMARITAN LAW

**SECTION 18.** 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.

...."

## PHARMACY BENEFITS MANAGEMENT

**SECTION 20.(a)** Chapter 58 of the General Statutes is amended by adding a new Article to read:

"Article 56A.

"Pharmacy Benefits Management.

**"§ 58-56A-1. Definitions.**

The following definitions apply in this Article:

- (1) Health benefit plan. – As defined in G.S. 58-50-110(11). This definition specifically excludes the State Health Plan for Teachers and State Employees.
- (2) Insurer. – Any entity that provides or offers a health benefit plan.
- (3) Maximum allowable cost price. – The maximum per unit reimbursement for multiple source prescription drugs, medical products, or devices.
- (4) Pharmacy. – A pharmacy registered with the North Carolina Board of Pharmacy.
- (5) Pharmacy benefits manager. – An entity who contracts with a pharmacy on behalf of an insurer or third-party administrator to administer or manage prescription drug benefits.
- (6) Third-party administrator. – As defined in G.S. 58-56-2.

**"§ 58-56A-3. Maximum allowable cost price.**

(a) In order to place a prescription drug on the maximum allowable cost price list, the drug must be available for purchase by pharmacies in North Carolina from national or regional wholesalers, must not be obsolete, and must meet one of the following conditions:

- (1) The drug is listed as "A" or "B" rated in the most recent version of the United States Food and Drug Administration's Approved Drug Products with Therapeutic Equivalence Evaluations, also known as the Orange Book.

(2) The drug has a "NR" or "NA" rating, or a similar rating, by a nationally recognized reference.

(b) A pharmacy benefits manager shall adjust or remove the maximum allowable cost price for a prescription drug to remain consistent with changes in the national marketplace for prescription drugs. A review of the maximum allowable cost prices for removal or modification shall be completed by the pharmacy benefits manager at least once every seven business days, and any removal or modification shall occur within seven business days of the review. A pharmacy benefits manager shall provide a means by which the contracted pharmacies may promptly review current prices in an electronic, print, or telephonic format within one business day of the removal or modification."

**SECTION 20.(b)** The Department of Insurance, in collaboration with the Department of Commerce and the North Carolina Board of Pharmacy, shall study the issue of pharmacy benefits management company regulation. Specifically, the study shall include: (i) frequency of disclosure of and methodology for calculating maximum allowable cost prices by the pharmacy benefits management companies; (ii) appeals procedures for pharmacies relating to maximum allowable cost pricing; (iii) consumer protections and the disclosure of consumer health information by pharmacy benefits managers; (iv) regulation of the various forms of incentives offered to a consumer by pharmacy benefits managers and its effects on choice of pharmacy; and (v) any further industry regulation deemed necessary to study. The Department of Insurance shall report the collective findings and recommendations, including any proposed legislation, to the 2015 General Assembly on or before January 20, 2015.

**SECTION 20.(c)** Section 20(a) of this section becomes effective January 1, 2015, and applies to contracts entered into, renewed, or amended on or after that date.

#### **LIMITED FOOD SERVICES AT LODGING FACILITIES**

**SECTION 21.(a)** G.S. 130A-247(7) reads as rewritten:

"(7) "Limited food services establishment" means an establishment as described in G.S. 130A-248(a4), with food handling operations that are restricted by rules adopted by the Commission pursuant to G.S. 130A-248(a4) and that prepares or serves food only in conjunction with amateur athletic events. Limited food service establishment also includes lodging facilities that serve only reheated food that has already been pre-cooked."

**SECTION 21.(b)** G.S. 130A-148(a4) reads as rewritten:

"(a4) For the protection of the public health, the Commission shall adopt rules governing the sanitation of limited food service establishments. In adopting the rules, the Commission shall not limit the number of days that limited food service establishments may operate. Limited food service establishment permits shall be issued only to the following:

- (1) ~~political~~ Political subdivisions of the State, State.
- (2) ~~establishments~~ Establishments operated by volunteers that prepare or serve food in conjunction with amateur athletic events, events.
- (3) Lodging facilities that serve only reheated food that has already been pre-cooked.
- (4) ~~or for establishments~~ Establishments operated by organizations that are exempt from federal income tax under section 501(c)(3) or section 501(c)(4) of the Internal Revenue Code."

**SECTION 21.(c)** The Commission for Public Health shall adopt rules to conform to the provisions of this section.

#### **AMEND HOTEL CARBON MONOXIDE ALARM REQUIREMENT**

**SECTION 22.(a)** Section 19(c) of S.L. 2013-413 is repealed.

**SECTION 22.(b)** Section 19(e) of S.L. 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. 2013."

**SECTION 22.(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. 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~~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 fossil fuel ~~burning~~combustion 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~~alarm 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 for the county in which the violation was discovered, or the local health director's designee, by verbal contact and shall also submit a written report documenting the violation of this subsection to the local health director for the county in which the violation was discovered, or the local health director's designee, 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 for the county in which the violation was discovered, or the local health director's designee, 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 a reinspection discovers 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 for the county in which the violation was discovered , or the local health director's designee, 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).
- (6) The requirements of subdivisions (2) through (5) of this subsection shall not apply to properties subject to the provisions of either G.S. 42-42 or G.S. 42A-31."

**SECTION 22.(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."

**SECTION 22.(e)** No later than March 31, 2015, the Building Code Council shall adopt a rule to amend the NC State Building Code (Fire Prevention) as it applies to structures required to comply with the provisions of G.S. 143-138(b2)(2), as enacted by this section, to adopt the standards for carbon monoxide alarms contained in the 2015 International Fire Code promulgated by the International Code Council. The effective date of the rule required by this section shall be no later than June 1, 2015.

## **CONTESTED CASES FOR CAMA PERMITS**

**SECTION 23.** 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."

## **OPEN BURNING**

**SECTION 24.(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 24.(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 24.(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 24.(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 24(c) 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 24.(e)** Sunset. – Section 24(c) of this section expires on the date that rules adopted pursuant to Section 24(d) of this section become effective.

**SECTION 24.(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 24.(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 the emissions from 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 24.(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."

### **COASTAL STORMWATER GRANDFATHER**

**SECTION 25.(a)** The definitions set out in G.S. 143-212, G.S. 143-213, and 15A NCAC 2H .1002 apply to this section.

**SECTION 25.(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 26(d) of this section, the Commission and the Department shall implement 15A NCAC 02H .1005 (Stormwater Requirements: Coastal Counties) as provided in Section 25(c) of this section.

**SECTION 25.(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 25.(d)** Additional Rule-Making Authority. – The Commission shall adopt a rule to amend 15A NCAC 02H .1005 (Stormwater Requirements: Coastal Counties) consistent with Section 25(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 25(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 25.(e)** Sunset. – Section 25(c) of this section expires on the date that rules adopted pursuant to Section 25(d) of this section become effective.

### **AMEND TRANSPLANTING OF OYSTERS AND CLAMS STATUTE**

**SECTION 26.** G.S. 113-203 reads as rewritten:

#### **"§ 113-203. Transplanting of oysters and clams.**

- (a) ~~It is unlawful to transplant oysters taken from public grounds to private beds except:~~
- ~~(1) When lawfully taken during open season and transported directly to a private bed in accordance with rules of the Marine Fisheries Commission.~~
  - ~~(2) Repealed by Session Laws 2009-433, s. 6, effective August 7, 2009.~~
  - ~~(3) When the transplanting is done in accordance with the provisions of this section and implementing rules.~~
- (a1) ~~It is lawful to transplant seed clams less than 12 millimeters in their largest dimension and seed oysters less than 25 millimeters in their largest dimension and when the seed clams and seed oysters originate from an aquaculture operation permitted by the Secretary.~~
- (a2) It is unlawful to do any of the following:
- (1) Transplant oysters or clams taken from public grounds to private beds except when lawfully taken during open season and transported directly to a private bed in accordance with rules of the Marine Fisheries Commission.
  - (2) Transplant oysters or clams taken from permitted aquaculture operations to private beds except from waters in the approved classification.
  - (3) Transplant oysters or clams from public grounds or permitted aquaculture operations utilizing waters in the restricted or conditionally approved classification to private beds except when the transplanting is done in accordance with the provisions of this section and implementing rules.
- (a3) It is lawful to transplant seed oysters or seed clams taken from permitted aquaculture operations that use waters in the restricted or conditionally approved classification

to private beds pursuant to an Aquaculture Seed Transplant Permit issued by the Secretary that sets times during which transplant is permissible and other reasonable restrictions imposed by the Secretary under either of the following circumstances:

- (1) When transplanting seed clams less than 12 millimeters in their largest dimension.
- (2) When transplanting seed oysters less than 25 millimeters in their largest dimension.

(a4) It is unlawful to conduct a seed transplanting operation pursuant to subsection (a3) of this section if the seed transplanting operation is not conducted in compliance with its Aquaculture Seed Transplant Permit.

(b) It is lawful to transplant from public bottoms to private beds oysters or clams taken from ~~polluted~~ waters in the restricted or conditionally approved classifications with a permit from the Secretary setting out the waters from which the oysters or clams may be taken, the quantities which may be taken, the times during which the taking is permissible, and other reasonable restrictions imposed by the Secretary for the regulation of transplanting operations. Any transplanting operation which does not substantially comply with the restrictions of the permit issued is unlawful.

(c) Repealed by Session Laws 2009-433, s. 6, effective August 7, 2009.

(d) It is lawful to transplant to private beds in North Carolina oysters taken from natural or managed public beds designated by the Marine Fisheries Commission as seed oyster management areas. The Secretary shall issue permits to all qualified individuals who are residents of North Carolina without regard to county of residence to transplant seed oysters from said designated seed oyster management areas, setting out the quantity which may be taken, the times which the taking is permissible and other reasonable restrictions imposed to aid the Secretary in the Secretary's duty of regulating such transplanting operations. Persons taking such seed oysters may, in the discretion of the Marine Fisheries Commission, be required to pay to the Department for oysters taken an amount to reimburse the Department in full or in part for the costs of seed oyster management operations. Any transplanting operation which does not substantially comply with the restrictions of the permit issued is unlawful.

(e) The Marine Fisheries Commission may implement the provisions of this section by rules governing sale, possession, transportation, storage, handling, planting, and harvesting of oysters and clams and setting out any system of marking oysters and clams or of permits or receipts relating to them generally, from both public and private beds, as necessary to regulate the lawful transplanting of seed oysters and oysters or clams taken from or placed on public or private beds.

(f) The Commission may establish a fee for each permit established pursuant to this subsection in an amount that compensates the Division for the administrative costs associated with the permit but that does not exceed one hundred dollars (\$100.00) per permit.

(g) Advance Sale of Permits; Permit Revenue. – To ensure an orderly transition from one permit year to the next, the Division may issue a permit prior to July 1 of the permit year for which the permit is valid. Revenue that the Division receives for the issuance of a permit prior to the beginning of a permit year shall not revert at the end of the fiscal year in which the revenue is received and shall be credited and available to the Division for the permit year in which the permit is valid."

## **EXEMPT CONSTRUCTION AND DEMOLITION LANDFILLS FROM THE MINIMUM FINANCIAL RESPONSIBILITY REQUIREMENTS APPLICABLE TO OTHER SOLID WASTE MANAGEMENT FACILITIES**

**SECTION 27.** G.S. 130A-295.2 reads as rewritten:

**"§ 130A-295.2. Financial responsibility requirements for applicants and permit holders for solid waste management facilities.**

...

(h) To meet the financial assurance requirements of this section, the owner or operator of a sanitary ~~landfill~~ landfill, other than a sanitary landfill for the disposal of construction and demolition debris waste, shall establish financial assurance sufficient to cover a minimum of two million dollars (\$2,000,000) in costs for potential assessment and corrective action at the facility. The Department may require financial assurance in a higher amount and may increase the amount of financial assurance required of a permit holder at any time based upon the types of waste disposed in the landfill, the projected amount of waste to be disposed in the landfill,

the location of the landfill, potential receptors of releases from the landfill, and inflation. The financial assurance requirements of this subsection are in addition to the other financial responsibility requirements set out in this section.

(h1) To meet the financial assurance requirements of this section, the owner or operator of a sanitary landfill for the disposal of construction and demolition debris waste shall establish financial assurance sufficient to cover a minimum of one million dollars (\$1,000,000) in costs for potential assessment and corrective action at the facility. The financial assurance requirements of this subsection are in addition to the other financial responsibility requirements set out in this section.

...  
(j) In addition to the other methods by which financial assurance may be established as set forth in subsection (f) of this section, the Department may allow the owner or operator of a sanitary landfill permitted on or before August 1, 2009, to meet the financial assurance requirement set forth in subsection (h) of this section by establishing a trust fund which conforms to the following minimum requirements:

- ...  
(4) Payments into the fund shall be made in equal annual installments in amounts calculated by dividing the current cost estimate for potential assessment and corrective action at the facility, ~~which~~ which, for a sanitary landfill, ~~other than a sanitary landfill for the disposal of construction and demolition debris waste,~~ shall not be less than two million dollars (\$2,000,000) in accordance with subsection (h) of this section, by the number of years in the pay-in period.
- (5) The trust fund may be terminated by the owner or operator only if the owner or operator establishes financial assurance by another method or combination of methods allowed under subsection (f) of this section.
- (6) The trust agreement shall be accompanied by a formal certification of acknowledgement."

#### **ON-SITE WASTEWATER APPROVAL CLARIFICATION**

**SECTION 28.(a)** G.S. 130A-343 is amended by adding a new subsection to read:  
"§ 130A-343. **Approval of on-site subsurface wastewater systems.**

...  
(j1) Clarification With Respect to Certain Dispersal Media. – In considering the application by a manufacturer of a wastewater system utilizing expanded polystyrene synthetic aggregate particles as a septic effluent dispersal medium for approval of the system under this section, neither the Commission nor the Department may condition, delay, or deny the approval based on the particle or bulk density of the expanded polystyrene material. With respect to approvals already issued by the Department or Commission that include conditions or requirements related to the particle or bulk density of expanded polystyrene material, the Commission or Department, as applicable, shall promptly reissue all such approvals with the conditions and requirements relating to the density of expanded polystyrene material permanently deleted while leaving all other terms and conditions of the approval intact.

...."  
**SECTION 28.(b)** Until the reissuance of approvals by the Department of Environment and Natural Resources or the Commission for Public Health as required by Section 28(a) of this act, conditions or requirements in existing approvals relating to the particle or bulk density of expanded polystyrene shall have no further force or effect.

#### **REFORM AGENCY REVIEW OF ENGINEERING WORK**

**SECTION 29.(a)** Definitions. – The following definitions apply to Section 6 of this act:

- (1) Practice of Engineering. – As defined in G.S. 89C-3.
- (2) Professional Engineer. – As defined in G.S. 89C-3.
- (3) Regulatory Authority. – The Department of Environment and Natural Resources, the Department of Health and Human Services, and any unit of local government operating a program (i) that grants permits, licenses, or approvals to the public and (ii) that is either approved by or delegated from

the Department of Environment and Natural Resources or the Department of Health and Human Services.

- (4) Regulatory Submittal. – An application or other submittal to a Regulatory Authority for a permit, license, or approval. In the case of a unit of local government, Regulatory Submittal shall mean an application or submittal submitted to a program approved by or delegated from the Department of Environment and Natural Resources or the Department of Health and Human Services.
- (5) Submitting Party. – The person submitting the Regulatory Submittal to the Regulatory Authority.
- (6) Working Job Title. – The job title a Regulatory Authority uses to publicly identify an employee with job duties that include the review of Regulatory Submittals. Working Job Title does not mean job titles that are used by the human resources department of a Regulatory Authority to classify jobs containing technical aspects related to the Practice of Engineering.

**SECTION 29.(b)** Standardize Certain Regulatory Review Procedures. – No later than December 1, 2014, each Regulatory Authority shall review and, where necessary, revise its procedures for review of Regulatory Submittals to accomplish the following:

- (1) Standardize the provision of review and comments on Regulatory Submittals so that revisions or requests for additional information that are required by the Regulatory Authority in order to proceed with the permit, license, or approval are clearly delineated from revisions or requests for additional information that constitute suggestions or recommendations by the Regulatory Authority. For purposes of this subdivision, "suggestions or recommendations by the Regulatory Authority" means comments made by the reviewer of the Regulatory Submittal to the Submitting Party that make a suggestion or recommendation for consideration by the Submitting Party but that are not required by the Regulatory Authority in order to proceed with the permit, license, or approval.
- (2) With respect to revisions or requests for additional information that are required by the Regulatory Authority in order to proceed with the permit, license, or approval, the Regulatory Authority shall identify the statutory or regulatory authority for the requirement.

**SECTION 29.(c)** Informal Review. – No later than December 1, 2014, each Regulatory Authority shall create a process for each regulatory program administered by the Regulatory Authority for an informal internal review at the request of the Submitting Party in each of the following circumstances:

- (1) The inclusion in a Regulatory Submittal of a design or practice sealed by a Professional Engineer but not included in the Regulatory Authority's existing guidance, manuals, or standard operating procedures. This review should first be conducted by the reviewing employee's supervisor or, in the case of a Regulatory Authority that is a unit of local government, either the reviewing employee's supervisor or the delegating or approving State agency. If this initial review was not conducted by a Professional Engineer, then the Submitting Party may request review by (i) a Professional Engineer on the staff of the Regulatory Authority or (ii) the delegating or approving State agency in the case of a Regulatory Authority that is a unit of local government. If the Regulatory Authority or delegating or approving State agency does not employ a Professional Engineer qualified and competent to perform the review, it may provide for review by a consulting Professional Engineer selected from a list developed and maintained by the Regulatory Authority. The Regulatory Authority may charge the Submitting Party for the costs of the review by the consulting Professional Engineer. Nothing in this subdivision is intended to limit the authority of the Regulatory Authority to make a final decision with regard to a Regulatory Submittal following the reviews described in this subdivision.
- (2) A disagreement between the reviewer of the Regulatory Submittal and the Submitting Party regarding whether the statutory or regulatory authority identified by the Regulatory Authority for revisions or requests for

additional information designated as "required" under the procedures set forth in Section 29(b) of this act justifies a required change.

**SECTION 29.(d)** Scope. – Nothing in Section 29(c) of this act shall limit or abrogate any rights available under Chapter 150B of the General Statutes to any Submitting Party.

**SECTION 29.(e)** Procedure to Develop List of Consulting Professional Engineers. – Regulatory Authorities shall develop formal written procedures to prepare and maintain a list of consulting Professional Engineers required pursuant to subdivision (1) of Section 29(c) of this act.

**SECTION 29.(f)** Pilot Study. – No later than March 1, 2015, the Department of Environment and Natural Resources shall complete a pilot study on the Pretreatment, Emergency Response and Collection System (PERCS) wastewater collection system permitting program and the stormwater permitting program and perform the following activities with the assistance and cooperation of the North Carolina Board of Examiners for Engineers and Surveyors and the Professional Engineers of North Carolina:

- (1) Produce an inventory of work activities associated with the operation of each regulatory program.
- (2) Determine the work activities identified under subdivision (1) of this subsection that constitute the Practice of Engineering.
- (3) Develop recommendations for ensuring that work activities constituting the Practice of Engineering are conducted with the appropriate level of oversight.

**SECTION 29.(g)** Report. – The Department shall report the results of the pilot study to the Environmental Review Commission no later than April 15, 2015.

**SECTION 29.(h)** Review of Working Job Titles. – No later than December 1, 2014, each Regulatory Authority and the Department of Transportation shall do the following:

- (1) Review the Working Job Titles of every employee with job duties that include the review of Regulatory Submittals.
- (2) Propose revisions to the Working Job Titles identified under subdivision (1) of this subsection or other administrative measures that will eliminate the public identification as "engineers" of persons reviewing Regulatory Submittals who are not Professional Engineers.

**SECTION 29.(i)** Initial Report. – Each Regulatory Authority shall report to the Environmental Review Commission prior to the convening of the 2015 Regular Session of the 2015 General Assembly on implementation of the following, if applicable:

- (1) The standardized procedures required by Section 29(b) of this act.
- (2) The informal review process required by Section 29(c) of this act.
- (3) The review of Working Job Titles required by Section 29(h) of this act.

**SECTION 29.(j)** Annual Report. – Beginning in 2016, each Regulatory Authority shall annually report to the Environmental Review Commission no later than January 15 on the informal review process required by Section 29(c) of this act. The report shall include the number of times the informal review process was utilized and the outcome of the review.

**SECTION 29.(k)** Annual Reporting Sunset. – Section 29(j) of this act expires on January 1, 2019.

## **SPEED LIMIT WAIVER IN STATE PARKS AND FORESTS**

**SECTION 31.(a)** G.S. 143-116.8 is amended by adding two new subsections to read:

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

(a) Except as otherwise provided in this section, all the provisions of Chapter 20 of the General Statutes relating to the use of highways and public vehicular areas of the State and the operation of vehicles thereon are made applicable to the State parks and forests road system. For the purposes of this section, the term "State parks and forests road system" shall mean the streets, alleys, roads, public vehicular areas and driveways of the State parks, State forests, State recreation areas, State lakes, and all other lands administered by the Department of Environment and Natural Resources or the Department of Agriculture and Consumer Services. This term shall not be construed, however, to include streets that are a part of the State highway system. Any person violating any of the provisions of Chapter 20 of the General Statutes hereby made applicable in the State parks and forests road system shall, upon conviction, be



punished in accordance with Chapter 20 of the General Statutes. Nothing herein contained shall be construed as in any way interfering with the ownership and control of the State parks road system by the Department of Environment and Natural Resources and the forests road system by the Department of Agriculture and Consumer Services.

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

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

...  
(f) Notwithstanding any other provision of this section, a person may petition the Department of Environment and Natural Resources for a waiver authorizing the person to operate a vehicle in the State parks road system at a speed in excess of 25 miles per hour in connection with a special event. The Secretary may impose any conditions on a waiver that the Secretary determines to be necessary to protect public health, safety, welfare, and the natural resources of the State park. These conditions shall include a requirement that the person receiving the waiver execute an indemnification agreement with the Department and obtain general liability insurance in an amount not to exceed three million dollars (\$3,000,000) covering personal injury and property damage that may result from driving in excess of 25 miles per hour in the State parks road system subject to the conditions determined by the Secretary.

(g) Notwithstanding any other provision of this section, a person may petition the Department of Agriculture and Consumer Services for a waiver authorizing the person to operate a vehicle in the State forests road system at a speed in excess of 25 miles per hour in connection with a special event. The Commissioner may impose any conditions on a waiver that the Commissioner determines to be necessary to protect public health, safety, welfare, and the natural resources of the State forest. These conditions shall include a requirement that the person receiving the waiver execute an indemnification agreement with the Department and obtain general liability insurance in an amount not to exceed three million dollars (\$3,000,000) covering personal injury and property damage that may result from driving in excess of 25 miles per hour in the State forests road system subject to the conditions determined by the Commissioner."

**SECTION 31.(b)** The Department of Environment and Natural Resources and the Department of Agriculture and Consumer Services shall amend their rules to be consistent with Section 31(a) of this act.

## **SCOPE OF LOCAL AUTHORITY FOR ORDINANCES**

**SECTION 32.(a)** Section 10.2 of S.L. 2013-413 is repealed.

**SECTION 32.(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 32.(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 32.(d)** In developing the reports pursuant to Sections 32(b) and 32(c) of this act, the Department of Environment and Natural Resources and the Department of

Agriculture and Consumer Services shall solicit and receive input from the public regarding any local government ordinances that impinge on or interfere with any area subject to regulation by the respective Department.

#### **FEE ROLLBACK FOR OYSTER PERMITS UNDER PRIVATE DOCKS**

**SECTION 33.(a)** Subsection (m) of G.S. 113-210 are repealed.

**SECTION 33.(b)** This section becomes effective July 1, 2014.

#### **LOCAL GOVERNMENT LEASES FOR RENEWABLE ENERGY FACILITIES**

**SECTION 34.** 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."~~

#### **INLET HAZARD AREAS**

**SECTION 35.(a)** The definitions set out in G.S. 113A-103 apply to this section.

**SECTION 35.(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 35(d) of this act, the Commission and the Department shall implement 15A NCAC 07H .0304 (AECs Within Ocean Hazard Areas) as provided in Section 35(c) of this act.

**SECTION 35.(c)** Implementation. – Notwithstanding Subparagraph (3) of 15A NCAC 07H .0304 (AECs Within Ocean Hazard Areas), the Commission shall not establish any new and shall repeal any existing 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 35.(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 35(c) of this act. Notwithstanding G.S. 150B-19(4), the rule adopted by the Commission pursuant to this section shall be substantively identical to the provisions of Section 35(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 35.(e)** Sunset. – Section 35(c) of this act expires on the date that rules adopted pursuant to Section 35(d) of this act become effective.

**SECTION 35.(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 35(c) of this act.

#### **HUNTING TRIALS**

**SECTION 36.(a)** The Wildlife Resources Commission shall adopt rules to clarify the requirements in 15A NCAC 10B .0114 addressing which participants in retriever field trials are required to possess a hunting license, including out-of-state participants, judges, and spectators.

**SECTION 36.(b)** In developing the rules pursuant to Section 36(a) of this act, the Wildlife Resources Commission shall hold public hearings and consult with field trial groups active in the State.

## **EXPEDITED IBT PROCESS FOR CERTAIN RESERVOIRS**

**SECTION 37.** 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."

## **ELIMINATE OUTDATED AIR QUALITY REPORTING REQUIREMENTS**

**SECTION 38.(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 38.(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 38.(c)** G.S. 143-215.108(g) is repealed.

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

**SECTION 39.** 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 crocodylian 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."

## **REFORM ON-SITE WASTEWATER REGULATION**

**SECTION 40.(a)** G.S. 130A-334 reads as rewritten:

**"§ 130A-334. Definitions.**

The following definitions shall apply throughout this Article:

...  
(1b) "Ground absorption system" means a system of tanks, treatment units, nitrification fields, and appurtenances for wastewater collection, treatment, and subsurface disposal.

...  
(7a) "Plat" means a property survey prepared by a registered land surveyor, drawn to a scale of one inch equals no more than 60 feet, that includes: the specific location of the proposed facility and appurtenances, the site for the proposed wastewater system, and the location of water supplies and surface waters. "Plat" also means, for subdivision lots approved by the local planning authority ~~and recorded with the county register of deeds~~, if a local planning authority exists at the time of application for a permit under this Article, a copy of the recorded-subdivision plat that has been recorded with the county register of deeds and is accompanied by a site plan that is drawn to scale.

...  
(15) "Wastewater system" means a system of wastewater collection, treatment, and disposal in single or multiple components, including a ground absorption system, privy, septic tank system, public or community wastewater system, wastewater reuse or recycle system, mechanical or biological wastewater treatment system, any other similar system, and any chemical toilet used only for human waste. A wastewater system located on multiple adjoining lots or tracts of land under common ownership or control shall be considered a single system for purposes of permitting under this Article."

**SECTION 40.(b)** G.S. 130A-335(f1) reads as rewritten:

"(f1) A preconstruction conference with the owner or developer, or an agent of the owner or developer, and a representative of the local health department shall be required for any authorization for wastewater system construction issued with an improvement permit under G.S. 130-336 when the authorization is greater than five years old. Following the conference,

the local health department shall ~~issue a revised authorization~~ advise the owner or developer of any rule changes for wastewater system construction that includes incorporating current technology that can reasonably be expected to improve the performance of the system. The local health department shall issue a revised authorization for wastewater system construction incorporating the rule changes upon the written request of the owner or developer."

**SECTION 40.(c)** G.S. 130A-336 reads as rewritten:

**"§ 130A-336. Improvement permit and authorization for wastewater system construction required.**

...  
(b) The local health department shall issue an authorization for wastewater system construction authorizing work to proceed and the installation or repair of a wastewater system when it has determined after a field investigation that the system can be installed and operated in compliance with this Article and rules adopted pursuant to this Article. This authorization for wastewater system construction shall be valid for a period equal to the period of validity of the improvement permit, ~~not to exceed five years, permit~~ and may be issued at the same time the improvement permit is issued. No person shall commence or assist in the installation, construction, or repair of a wastewater system unless an improvement permit and an authorization for wastewater system construction have been obtained from the Department or the local health department. No improvement permit or authorization for wastewater system construction shall be required for maintenance of a wastewater system. The Department and the local health department may impose conditions on the issuance of an improvement permit and an authorization for wastewater system construction.

(c) Unless the Commission otherwise provides by rule, plans, and specifications for all wastewater systems designed for the collection, treatment, and disposal of industrial process wastewater shall be reviewed and approved by the Department prior to the issuance of an authorization for wastewater system construction by the local health department.

(d) If a local health department repeatedly fails to issue or deny improvement permits for conventional septic tank systems within 60 days of receiving completed applications for the permits, then the Department of Environment and Natural Resources may withhold public health funding from that local health department."

## **REPEAL WASTE MANAGEMENT BOARD RULES**

**SECTION 41.(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 41.(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).

## **WELL CONTRACTOR LICENSING CHANGES**

**SECTION 42.(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 42.(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 42.(c)** This section is effective when it becomes law. The requirements of subsection (b) of G.S. 87-98.6, as enacted by Section 42(b) of this act, apply to applicants applying for certification on or after the date this section becomes effective.

## **STANDARDIZE LOCAL WELL PROGRAMS**

**SECTION 43.(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 43.(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 43.(c)** The Environmental Management Commission shall adopt a rule to amend 15A NCAC 02C .0107(j)(2) consistent with Section 43(b) of this act.

**SECTION 43.(d)** Section 43(b) of this act expires on the date that the rule adopted pursuant to Section 43(c) of this act becomes effective.

**SECTION 43.(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 on-site during the on-site predrill inspection, as long as the contractor is available by telephone to answer questions.

## **SENATOR JEAN PRESTON MARINE SHELLFISH SANCTUARY**

**SECTION 44.(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 44.(b)** The Division of Marine Fisheries of the Department of Environment and Natural Resources shall designate an area of appropriate acreage 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 percent (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 44.(c)** No later than December 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.

#### **CLARIFY GRAVEL UNDER STORMWATER LAWS**

**SECTION 45.(a)** G.S. 143-214.7(b2) reads as rewritten:

"(b2) For purposes of implementing stormwater programs, "built-upon area" means impervious surface and partially impervious surface to the extent that the partially impervious surface does not allow water to infiltrate through the surface and into the subsoil. "Built-upon area" does not include a ~~wooden-slatted deck, deck or~~ the water area of a swimming pool, ~~or gravel pool.~~"

**SECTION 45.(b)** The Environmental Management Commission shall amend its rules to be consistent with the definition of "built-upon area" set out in subsection (b2) of G.S. 143-214.7, as amended by Section 45(a) of this act.

**SECTION 45.(c)** Unless specifically authorized by the General Assembly, neither the Environmental Management Commission nor the Department of Environment and Natural Resources have the authority to define the term "gravel" for purposes of implementing stormwater programs. Any rule adopted by the Environmental Management Commission or the Department of Environment and Natural Resources that defines the term "gravel" for purposes of implementing stormwater programs is not effective and shall not become effective.

**SECTION 45.(d)** This section is effective when it becomes law. Subsection (b2) of G.S. 143-214.7, as amended by Section 45(a) of this act, applies to projects for which permit applications are received on or after that date.

#### **UNITED STATES POSTAL SERVICE CLUSTER BOX UNITS/NO STORMWATER PERMIT MODIFICATION REQUIRED**

**SECTION 46.(a)** Notwithstanding the requirements of Article 21 of Chapter 143 of the General Statutes and rules adopted pursuant to that Article, the addition of a cluster box unit to a single-family or duplex development permitted by a local government shall not require a modification to any stormwater permit for that development. This section shall only apply to single-family or duplex developments in which individual curbside mailboxes are replaced with cluster box units whereupon the associated built-upon area supporting the cluster box units shall be considered incidental and shall not be required in the calculation of built-upon area for the development for stormwater permitting purposes.

**SECTION 46.(b)** This section is effective when this act becomes law and expires on December 31, 2015, or when regulations on cluster box design and placement by the United States Postal Service become effective and those regulations are adopted by local governments, whichever is earlier.

#### **MODIFICATION OF APPROVED WASTEWATER SYSTEMS**

**SECTION 47.(a)** The definitions set out in G.S. 130A-343 shall apply to this section.

**SECTION 47.(b)** 15A NCAC 18A .1969(j) (Modification of Approved Systems). – Until the effective date of the revised permanent rule that the Commission is required to adopt pursuant to Section 47(d) of this act, the Commission and the Department shall implement 15A NCAC 18A .1969(j) (Modification of Approved Systems) as provided in Section 47(c) of this act.

**SECTION 47.(c)** Implementation. – Notwithstanding 15A NCAC 18A .1969(j) (Modification of Approved Systems), the rule shall be implemented so as to not require a survey or audit of installed modified accepted systems in order to confirm the satisfactory performance of such systems.

**SECTION 47.(d)** Additional Rule-Making Authority. – The Commission for Public Health shall adopt a rule to amend 15A NCAC 18A .1969(j) (Modification of Approved Systems) consistent with Section 47(c) of this act. Notwithstanding G.S. 150B-19(4), the rule adopted by the Commission pursuant to this section shall be substantively identical to the provisions of Section 47(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 47.(e)** Sunset. – Section 47(c) of this act expires on the date that the rule adopted pursuant to Section 47(d) of this act becomes effective.

#### **CAPSTONE PERMITTING**

**SECTION 48.** 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."

#### **CHANGES TO THE RESIDENTIAL PROPERTY DISCLOSURE ACT**

**SECTION 49.(a)** Chapter 47E of the General Statutes reads as rewritten:

**"Chapter 47E.**

**"Residential Property Disclosure Act.**

...  
**"§ 47E-2. Exemptions.**

The following transfers are exempt from the provisions of this Chapter:



- (1) Transfers pursuant to court order, including transfers ordered by a court in administration of an estate, transfers pursuant to a writ of execution, transfers by foreclosure sale, transfers by a trustee in bankruptcy, transfers by eminent domain, and transfers resulting from a decree for specific performance.
- (2) Transfers to a beneficiary from the grantor or his successor in interest in a deed of trust, or to a mortgagee from the mortgagor or his successor in interest in a mortgage, if the indebtedness is in default; transfers by a trustee under a deed of trust or a mortgagee under a mortgage, if the indebtedness is in default; transfers by a trustee under a deed of trust or a mortgagee under a mortgage pursuant to a foreclosure sale, or transfers by a beneficiary under a deed of trust, who has acquired the real property at a sale conducted pursuant to a foreclosure sale under a deed of trust.
- (3) Transfers by a fiduciary in the course of the administration of a decedent's estate, guardianship, conservatorship, or trust.
- (4) Transfers from one or more co-owners solely to one or more other co-owners.
- (5) Transfers made solely to a spouse or a person or persons in the lineal line of consanguinity of one or more transferors.
- (6) Transfers between spouses resulting from a decree of divorce or a distribution pursuant to Chapter 50 of the General Statutes or comparable provision of another state.
- (7) Transfers made by virtue of the record owner's failure to pay any federal, State, or local taxes.
- (8) Transfers to or from the State or any political subdivision of the State.

(b) The following transfers are exempt from the provisions of G.S. 47E-4 but not from the requirements of G.S. 47E-4.1:

- ~~(9)~~(1) Transfers involving the first sale of a dwelling never inhabited.
- ~~(10)~~(2) Lease with option to purchase contracts where the lessee occupies or intends to occupy the dwelling.
- ~~(11)~~(3) Transfers between parties when both parties agree not to complete a residential property disclosure statement or an owners' association and mandatory covenants disclosure statement.

...  
**"§ 47E-4. Required disclosures.**

...  
~~(b2) With regard to transfers described in G.S. 47E-1, the owner of the real property shall include in any real estate contract, an oil and gas rights mandatory disclosure as provided in this subsection:~~

- ~~(1) Transfers of residential property set forth in G.S. 47E-2 are excluded from this requirement, except that the exemptions provided under subdivisions (9) and (11) of G.S. 47E-2 specifically are not excluded from this requirement.~~
- ~~(2) The disclosure shall be conspicuous, shall be in boldface type, and shall be as follows:~~

~~**OIL AND GAS RIGHTS DISCLOSURE**~~

~~Oil and gas rights can be severed from the title to real property by conveyance (deed) of the oil and gas rights from the owner or by reservation of the oil and gas rights by the owner. If oil and gas rights are or will be severed from the property, the owner of those rights may have the perpetual right to drill, mine, explore, and remove any of the subsurface oil or gas resources on or from the property either directly from the surface of the property or from a nearby location. With regard to the severance of oil and gas rights, Seller makes the following disclosures:~~

	Yes	No	No Representation
<u>                    </u> Buyer Initials	1.	Oil and gas rights were severed from the property by a previous owner.	= = =
<u>                    </u> Buyer Initials	2.	Seller has severed the oil and gas rights from the property.	= =

		<u>Yes</u>	<u>No</u>
<u>                    </u>	3. <del>Seller intends to sever the oil and</del>	<u>—</u>	<u>—</u>
<u>Buyer Initials</u>	<del>gas rights from the property prior to</del>		
	<del>transfer of title to Buyer.</del>		

(c) The rights of the parties to a real estate contract as to conditions of the property of which the owner had no actual knowledge are not affected by this Article unless the residential disclosure statement or the owners' association and mandatory covenants disclosure statement, as applicable, states that the owner makes no representations as to those conditions. If the statement states that an owner makes no representations as to the conditions of the property, then the owner has no duty to disclose those conditions, whether or not the owner should have known of them.

**"§ 47E-4.1. Required mineral and oil and gas rights disclosures.**

(a) With regard to transfers described in G.S. 47E-1 and G.S. 47E-2(b), the owner of the real property shall furnish to a purchaser a mineral and oil and gas rights mandatory disclosure statement. The disclosure shall be conspicuous, shall be in boldface type, and shall be as follows:

**MINERAL AND OIL AND GAS RIGHTS DISCLOSURE**

Mineral rights and/or oil and gas rights can be severed from the title to real property by conveyance (deed) of the mineral rights and/or oil and gas rights from the owner or by reservation of the mineral rights and/or oil and gas rights by the owner. If mineral rights and/or oil and gas rights are or will be severed from the property, the owner of those rights may have the perpetual right to drill, mine, explore, and remove any of the subsurface mineral and/or oil or gas resources on or from the property either directly from the surface of the property or from a nearby location. With regard to the severance of mineral rights and/or oil and gas rights, Seller makes the following disclosures:

		<u>Yes</u>	<u>No</u>	<u>No Representation</u>
<u>                    </u>	1. <u>Mineral rights were severed from</u>	<u>—</u>	<u>—</u>	<u>—</u>
<u>Buyer Initials</u>	<u>the property by a previous owner.</u>			
		<u>Yes</u>	<u>No</u>	
<u>                    </u>	2. <u>Seller has severed the mineral</u>	<u>—</u>	<u>—</u>	
<u>Buyer Initials</u>	<u>rights from the property.</u>			
		<u>Yes</u>	<u>No</u>	
<u>                    </u>	3. <u>Seller intends to sever the mineral</u>	<u>—</u>	<u>—</u>	
<u>Buyer Initials</u>	<u>rights from the property prior to</u>			
	<u>transfer of title to Buyer.</u>			
		<u>Yes</u>	<u>No</u>	<u>No Representation</u>
<u>                    </u>	4. <u>Oil and gas rights were severed from</u>	<u>—</u>	<u>—</u>	<u>—</u>
<u>Buyer Initials</u>	<u>the property by a previous owner.</u>			
		<u>Yes</u>	<u>No</u>	
<u>                    </u>	5. <u>Seller has severed the oil and gas</u>	<u>—</u>	<u>—</u>	
<u>Buyer Initials</u>	<u>rights from the property.</u>			
		<u>Yes</u>	<u>No</u>	
<u>                    </u>	6. <u>Seller intends to sever the oil and</u>	<u>—</u>	<u>—</u>	
<u>Buyer Initials</u>	<u>gas rights from the property prior to</u>			
	<u>transfer of title to Buyer.</u>			

(b) The North Carolina Real Estate Commission shall develop and require the use of a mineral and oil and gas rights mandatory disclosure statement to comply with the requirements of this section. The disclosure statement shall specify that the transfers identified in G.S. 47E-2(a) are exempt from this requirement but the transfers identified in G.S. 47E-2(b) are not. The disclosure statement shall provide the owner with the option to indicate whether the owner has actual knowledge of the specified characteristics or conditions. The owner may make no representations only as to a previous severance of mineral rights and previous severance of oil and gas rights.

(c) The rights of the parties to a real estate contract as to the severance of minerals or the severance of oil and gas rights by the previous owner of the property and of which the owner had no actual knowledge are not affected by this Article unless the mineral and oil and

gas rights mandatory disclosure statement states that the owner makes no representations as to the severance of mineral rights or the severance of oil and gas rights by the previous owner of the property. If the statement states that an owner makes no representations as to the severance of mineral rights or the severance of oil and gas rights by the previous owner of the property, then the owner has no duty to disclose the severance of mineral rights or the severance of oil and gas rights, as applicable, by a previous owner of the property, whether or not the owner should have known of any such severance.

**"§ 47E-5. Time for disclosure; cancellation of contract.**

(a) The owner of real property subject to this Chapter shall deliver to the purchaser the disclosure statements required by this Chapter no later than the time the purchaser makes an offer to purchase, exchange, or option the property, or exercises the option to purchase the property pursuant to a lease with an option to purchase. ~~The residential property disclosure statement~~ statement, the mineral and oil and gas rights mandatory disclosure statement, or the owners' association and mandatory covenants disclosure statement may be included in the real estate contract, in an addendum, or in a separate document.

**"§ 47E-6. Owner liability for disclosure of information provided by others.**

~~The~~ With the exception of the disclosures required by G.S. 47E-4.1, the owner may discharge the duty to disclose imposed by this Chapter by providing a written report attached to the residential property disclosure statement and the owners' association and mandatory covenants disclosure statement by a public agency or by an attorney, engineer, land surveyor, geologist, pest control operator, contractor, home inspector or other expert, dealing with matters within the scope of the public agency's functions or the expert's license or expertise. The owner shall not be liable for any error, inaccuracy, or omission of any information delivered pursuant to this section if the error, inaccuracy, or omission was made in reasonable reliance upon the information provided by the public agency or expert and the owner was not grossly negligent in obtaining the information or transmitting it.

**"§ 47E-7. Change in circumstances.**

If, subsequent to the owner's delivery of a residential property disclosure ~~statement and statement, the mineral and oil and gas rights mandatory disclosure statement, or the owners' association and mandatory covenants disclosure statement~~ to a purchaser, the owner discovers a material inaccuracy in a disclosure statement, or a disclosure statement is rendered inaccurate in a material way by the occurrence of some event or circumstance, the owner shall promptly correct the inaccuracy by delivering a corrected disclosure statement or statements to the purchaser. Failure to deliver a corrected disclosure statement or to make the repairs made necessary by the event or circumstance shall result in such remedies for the buyer as are provided for by law in the event the sale agreement requires the property to be in substantially the same condition at closing as on the date of the offer to purchase, reasonable wear and tear excepted.

**"§ 47E-8. Agent's duty.**

A real estate broker ~~or salesman~~ acting as an agent in a residential real estate transaction has the duty to inform each of the clients of the real estate broker ~~or salesman~~ of the client's rights and obligations under this Chapter. Provided the owner's real estate broker ~~or salesman~~ has performed this duty, the broker or salesman shall not be responsible for the owner's willful refusal to provide a prospective purchaser with a residential property disclosure ~~statement~~ statement, the mineral and oil and gas rights mandatory disclosure statement, or an owners' association and mandatory covenants disclosure statement. Nothing in this Chapter shall be construed to conflict with, or alter, the ~~broker or salesman's~~ broker's duties under Chapter 93A of the General Statutes.

...."

**SECTION 49.(b)** This section becomes effective January 1, 2015, and applies to contracts executed on or after that date.

## **REPORTS ON MINIMUM DESIGN CRITERIA**

**SECTION 50.** Section 1 of S.L. 2013-82 reads as rewritten:

**"SECTION 1.** The Department of Environment and Natural Resources shall develop Minimum Design Criteria for permits issued by the stormwater runoff permitting programs authorized by G.S. 143-214.7. The Minimum Design Criteria shall include all requirements for siting, site preparation, design and construction, and post-construction monitoring and

evaluation necessary for the Department to issue stormwater permits that comply with State water quality standards adopted pursuant to G.S. 143-214.1, 143-214.7, and 143-215.3(a)(1). In developing and updating the Minimum Design Criteria, the Department shall consult with a technical working group that consists of industry experts, engineers, environmental consultants, relevant faculty from The University of North Carolina, and other interested stakeholders. The Department shall submit interim reports on its progress in developing the Minimum Design Criteria to the Environmental Review Commission no later than September 1, 2014, and December 1, 2014. The Department shall submit a final report, including its recommendations to the Environmental Review Commission no later than ~~September 1, 2014.~~February 1, 2015."

#### **CLARIFY EFFECTIVE DATE OF DEFINITION OF DISCHARGE OF WASTE**

**SECTION 51.(a)** Section 17 of S.L. 2012-187 reads as rewritten:

**"SECTION 17.** Section 11 of this act is effective when it becomes law and applies to contested cases filed or pending on or after that date. Except as otherwise provided, this act is effective when it becomes law."

**SECTION 51.(b)** This section becomes effective July 16, 2012.

#### **STATEWIDE VENUS FLYTRAP PENALTIES**

**SECTION 52.(a)** Article 22 of Chapter 14 of the General Statutes is amended by adding a new section to read:

**"§ 14-129.3. Felony taking of Venus flytrap.**

(a) Any person, firm, or corporation who digs up, pulls up, takes, or carries away, or aids in taking or carrying away, any Venus flytrap (*Dionaea muscipula*) plant or the seed of any Venus flytrap plant growing upon the lands of another person, or from the public domain, with the intent to steal the Venus flytrap plant or seed is guilty of a Class H felony.

(b) This section shall not apply to any person, firm, or corporation that has a permit to dig up, pull up, take, or carry away the plant or seed, signed by the owner of the land, or the owner's duly authorized agent. At the time of the digging, pulling, taking, or carrying away, the permit shall be in the possession of the person, firm, or corporation on the land."

**SECTION 52.(b)** 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. 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.~~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."

**SECTION 52.(c)** This section becomes effective December 1, 2014, and applies to offenses committed on or after that date.

### **EXPAND DAILY FLOW DESIGN EXEMPTION FOR LOW-FLOW FIXTURES**

**SECTION 53.** Section 34(b) of S.L. 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). Neither the State nor any local health department shall be liable for any damages caused by a system approved or permitted pursuant to this section."

### **AMEND ISOLATED WETLANDS REGULATION**

**SECTION 54.(a)** Until the effective date of the revised permanent rule that the Environmental Management Commission is required to adopt pursuant to Section 54(c) of this act, the Commission and the Department of Environment and Natural Resources shall implement 15A NCAC 02H .1305 (Review of Applications) as provided in Section 54(b) of this act.

**SECTION 54.(b)** Notwithstanding 15A NCAC 02H .1305 (Review of Applications), all of the following shall apply to the implementation of 15A NCAC 02H .1305:

- (1) The amount of impacts of isolated wetlands under 15A NCAC 02H .1305(d)(2) shall be less than or equal to one acre of isolated wetlands east of I-95 for the entire project and less than or equal to 1/3 acre of isolated wetlands west of I-95 for the entire project.
- (2) The mitigation ratio for impacts of greater than one acre for the entire project under 15A NCAC 02H .1305(g)(6) shall be 1:1 and may be located on the same parcel.
- (3) For purposes of Section 54(b) of this section, "isolated wetlands" means a Basin Wetland or Bog as described in the North Carolina Wetland Assessment User Manual prepared by the North Carolina Wetland Functional Assessment Team, version 4.1 October, 2010, that are not jurisdictional wetlands under the federal Clean Water Act. An "isolated wetland" does not include an isolated man-made ditch or pond constructed for stormwater management purposes or any other man-made isolated pond.

**SECTION 54.(c)** The Environmental Management Commission shall adopt rules to amend 15A NCAC 02H .1300 through 15A NCAC 02H .1305 consistent with Section 54(b) of this act. Notwithstanding G.S. 150B-19(4), the rule adopted by the Commission pursuant to this subsection shall be substantively identical to the provisions of Section 54(b) of this act. Rules adopted pursuant to this subsection are not subject to Part 3 of Article 2A of Chapter 150B of the General Statutes. Rules adopted pursuant to this subsection 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 54.(d)** The Department of Environment and Natural Resources shall study (i) how the term "isolated wetland" has been previously defined in State law and whether

the term should be clarified in order to provide greater certainty in identifying isolated wetlands; (ii) 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; and (iii) whether impacts to isolated wetlands should be combined with the project impacts to jurisdictional wetlands or streams for the purpose of determining when impact thresholds that trigger a mitigation requirement are met. The Department shall report its findings and recommendations to the Environmental Review Commission on or before November 1, 2014.

**SECTION 54.(e)** This section is effective when it becomes law. Section 54(b) of this act expires on the date that rules adopted pursuant to Section 54(c) of this act become effective.

## **ENERGY AUDIT REQUIREMENTS**

**SECTION 55.** 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.

...

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

## STUDY USE OF CONTAMINATED PROPERTY

**SECTION 56.(a)** The Department of Environment and Natural Resources shall study ways to improve the timeliness of actions necessary to address contaminated properties such that the property is safe for productive use, threats to the environment and public health are minimized to acceptable levels, and the risk of taxpayer-funded remediation is reduced. The Department shall specifically consider all of the following:

- (1) The expansion of risk-based remediation of groundwater to all remediation programs under the Department.
- (2) The resources needed within the Department to oversee remediation, including the potential to expand the use of Department-approved private environmental consulting and engineering firms to implement and oversee remedial actions.
- (3) That rules adopted by the Environmental Management Commission for water quality standards applicable to groundwater be no more stringent than the lower of the federal or State maximum contaminant levels for drinking water in cases where the maximum contaminant levels have been adopted.
- (4) Liability protection for innocent purchasers of nonresidential property who take actions consistent with the federal Comprehensive Environmental Response, Compensation, and Liability Act for due diligence and due care regarding investigations and contaminants found.
- (5) Other matters the Department deems appropriate to further the goals of this study.

**SECTION 56.(b)** The Department shall report the results of this study, including any recommendations, to the Environmental Review Commission no later than November 1, 2014.

## HARDISON AMENDMENT CLARIFICATION

**SECTION 57.** 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 following 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."

## **FORESTRY FEES CORRECTION**

**SECTION 58.** G.S. 106-1004, as enacted by S.L. 2014-100, reads as rewritten:

### **"§ 106-1004. Fees for forest management plans.**

The Board of Agriculture shall establish by rule a schedule of fees for the preparation of forest management plans developed pursuant to ~~Article 83~~ of this Chapter. The fees established by the Board shall not exceed the amount necessary to offset the costs of the Department of Agriculture and Consumer Services to prepare forest management plans."

## **RECOURSE WHEN AGENCY FAILS TO ACT**

**SECTION 59.(a)** 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 59.(b)** 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."~~

## **SEVERABILITY CLAUSE AND EFFECTIVE DATE**

**SECTION 60.** 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 61.** Except as otherwise provided, this act is effective when it becomes law.

In the General Assembly read three times and ratified this the 15<sup>th</sup> day of August, 2014.

s/ Phil E. Berger  
Presiding Officer of the Senate

s/ Thom Tillis  
Speaker of the House of Representatives

s/ Pat McCrory  
Governor

Approved 12:10 p.m. this 18<sup>th</sup> day of September, 2014