

ADOPTED



NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 729

AMENDMENT NO. A15
(to be filled in by
Principal Clerk)

S729-ARI-203 [v.8]

Page 1 of 12

Comm. Sub. [YES]
Amends Title [NO]
Second Edition

Date _____, 2014

Senator Apodaca

1 moves to amend the bill on page 4, lines 14 through 16,
2 by rewriting those lines to read:

3
4 "covered during periods of deposition. "Coal combustion residuals surface
5 impoundment" shall only include impoundments owned by a public utility,
6 as defined in G.S. 62-3. "Coal";
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8
9 and on page 4, line 25,
10 by rewriting that line to read:

11
12 "covered with soil or other material after the final deposition of coal combustion";
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15
16 and on page 24, line 23, by deleting "Article 4" and substituting "Article 3";
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18
19 and on page 32, line 45, by deleting "G.S. 130A-290," and substituting "G.S. 130A-309.201,";
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21
22 and on 33, line 19,
23 by rewriting that line to read:

24
25 "Statutes, as enacted by Section 3(a) of this act, to determine if the requirements are sufficient
26 to protect public health,";
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29 and on page 34, line 10, by deleting "landfills" and substituting "landfill";
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32 and on page 37, line 43,



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NORTH CAROLINA GENERAL ASSEMBLY

AMENDMENT

Senate Bill 729

ADOPTED

AMENDMENT NO. A15

(to be filled in by
Principal Clerk)

S729-ARI-203 [v.8]

Page 2 of 12

1 by rewriting that line to read:

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3 "Department of Environment and Natural Resources and the ~~Commission~~ for
4 ~~Dam~~Environmental Management Commission.";

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8 and on page 43, line 18, by deleting "residuals" and substituting "products";

9

10

11 and on page 3, lines 17 through 24, by rewriting the lines to read

12

13 "SECTION 2.(a) Moratorium on Cost Recovery. – The Utilities Commission shall
14 not issue an order authorizing an electric public utility the recovery of any costs related to coal
15 combustion residuals surface impoundments that were not included in the utility's cost of
16 service approved in its most recent general rate case until the end of the moratorium provided
17 in this section. The moratorium established under this section shall not apply to the net
18 recovery of any fuel and fuel-related costs under G.S. 62-133.2. For the purposes of this
19 section, "coal combustion residuals surface impoundments" has the same meaning as in
20 G.S. 130A-309.201. The moratorium in this section shall end January 15, 2015.";

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23 and on page 18, lines 35 through 40,

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by rewriting those lines to read:

"fill or other beneficial use as allowed by law. The use of coal combustion products (i) as structural fill shall be conducted in accordance with the requirements Subpart 3 of this Part and (ii) for other beneficial uses shall be conducted in accordance with the requirements of Section .1700 of Subchapter B of Chapter 13 of Title 15A of the North Carolina Administrative Code, (Requirements for Beneficial Use of Coal Combustion By-Products), and Section .1200 of Subchapter T of Chapter 2 of Title 15A of the North Carolina Administrative Code (Coal Combustion Products Management).";

and on page 21, lines 26 through 30,

by rewriting those lines to read:

"e. A description of any plans for beneficial use of the coal combustion residuals in compliance with the requirements of Section .1700 of Subchapter B of Chapter 13 of Title 15A of the North Carolina Administrative Code, (Requirements for Beneficial Use of Coal Combustion By-Products), and Section .1200 of Subchapter T of

NORTH CAROLINA GENERAL ASSEMBLY

AMENDMENT

Senate Bill 729

ADOPTED

AMENDMENT NO. A15

(to be filled in by
Principal Clerk)

S729-ARI-203 [v.8]

Page 3 of 12

Chapter 2 of Title 15A of the North Carolina Administrative Code
(Coal Combustion Products Management).";

and on page 22, line 43,
by rewriting that line to read:

"m. Projected costs of assessment, corrective action, closure, and
post-closure care for each coal combustion residual surface
impoundment.

n. A description of the anticipated future use of the site and the";

and on page 31, lines 26 through 28,
by rewriting those lines to read:

"uses shall be conducted in accordance with the requirements of Section .1700 of Subchapter B
of Chapter 13 of Title 15A of the North Carolina Administrative Code, (Requirements for
Beneficial Use of Coal Combustion By-Products), and Section .1200 of Subchapter T of
Chapter 2 of Title 15A of the North Carolina Administrative Code (Coal Combustion Products
Management), as applicable.";

and on page 33, lines 10 through 12,
by rewriting those lines to read:

"and (ii) for other beneficial uses shall be conducted in accordance with the requirements of
Section .1700 of Subchapter B of Chapter 13 of Title 15A of the North Carolina Administrative
Code, (Requirements for Beneficial Use of Coal Combustion By-Products), and Section .1200
of Subchapter T of Chapter 2 of Title 15A of the North Carolina Administrative Code (Coal
Combustion Products Management), as applicable.";

and on page 33, lines 21 through 24,
by rewriting those lines to read:

"(2) Review the uses of coal combustion products for other beneficial uses and
the regulation of these uses under Section .1700 of Subchapter B of Chapter
13 of Title 15A of the North Carolina Administrative Code, (Requirements
for Beneficial Use of Coal Combustion By-Products), and Section .1200 of
Subchapter T of Chapter 2 of Title 15A of the North Carolina Administrative
Code (Coal Combustion Products Management), and other applicable rules,

ADOPTED

AMENDMENT NO. A15
(to be filled in by
Principal Clerk)

S729-ARI-203 [v.8]

Page 4 of 12

1 to determine if the rules are sufficient to protect public health, safety, and
2 welfare; the environment; and natural resources.";

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5 and on page 4, lines 37 and 41,
6 by rewriting those lines to read:

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9 "(10) "Minerals" means soil, clay, coal, phosphate, metallic ore, and any other
10 solid material or substance of commercial value found in natural deposits on
11 or in the earth.

12 "(11) "Open pit mine" means an excavation made at the surface of the ground for
13 the purpose of extracting minerals, inorganic and organic, from their natural
14 deposits, which excavation is open to the surface.";

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17 and on page 4, line 49, through page 5, line 4,
18 by rewriting those lines to read:

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21 "(14) "Structural fill" means an engineered fill with a projected beneficial end use
22 constructed using coal combustion products that are properly placed and
23 compacted. For purposes of this Part, the term includes fill used to reclaim
24 open pit mines and for embankments, greenscapes, foundations, construction
25 foundations, and for bases/sub-bases under a structure or a footprint of a
26 paved road, parking lot, sidewalk, walkway, or similar structure.";

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29 and on page 7, lines 30 through 38,
30 by rewriting those lines to read:

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33 "from the applicant. The Department shall issue a draft permit decision on an application
34 for a permit within 90 days after the Department determines that the application is complete.
35 The Department shall hold a public hearing and accept written comment on the draft permit
36 decision for a period of not less than 30 or more than 60 days after the Department issues a
37 draft permit decision. The Department shall issue a final permit decision on an application for a
38 permit within 60 days after the comment period on the draft permit decision closes. If the
39 Department fails to act within any time period set out in this subsection, the applicant may treat
40 the failure to act as a denial of the permit and may challenge the denial as provided in Chapter
41 150B of the General Statutes.";

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44 and on page 24, line 31,
45 by rewriting that line to read:

ADOPTED

AMENDMENT NO. A15

(to be filled in by
Principal Clerk)

S729-ARI-203 [v.8]

Page 5 of 12

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2 "change in accordance with the requirements of subdivision (2) of subsection (b) of this
3 section. Provided, however, minor technical modifications may be made in accordance with
4 standard Department procedures for such minor modifications, and may be made without
5 written approval of the Department, or public notice of the change.";
6

7
8 and on page 26, lines 3 through 6,
9 by rewriting those lines to read:

10
11 "(3) Coal combustion products shall be placed uniformly and shall be compacted
12 to standards, including in-situ density, compaction effort, and relative
13 density, specified by a registered professional engineer for a specific end-use
14 purpose.";
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16
17 and on page 25, line 43,
18 by rewriting that line to read:

19
20 **"§ 130A-309.215. Design, construction, and siting requirements for projects using coal**
21 **combustion products for";**
22

23
24 and on page 27, lines 8 through 13,
25 by rewriting those lines to read:

26 "(3) A cap system that is designed to minimize infiltration and erosion as
27 follows:

28 a. The cap system shall be designed and constructed to (i) have a
29 permeability less than or equal to the permeability of any base liner
30 system or the in-situ subsoils underlying the structural fill, or the
31 permeability specified for the final cover in the effective permit, or a
32 permeability no greater than 1 x 10⁻⁵ cm/sec, whichever is less; (ii)
33 minimize infiltration through the closed structural fill by the use of a
34 low-permeability barrier that contains a minimum 18 inches of
35 earthen material; and (iii) minimize erosion of the cap system and
36 protect the low-permeability barrier from root penetration by use of
37 an erosion layer that contains a minimum of six inches of earthen
38 material that is capable of sustaining native plant growth.

39 b. The Department may approve an alternative cap system if the owner
40 or operator can adequately demonstrate (i) the alternative cap system
41 will achieve an equivalent or greater reduction in infiltration as the
42 low-permeability barrier specified in sub-subdivision a. of this
43 subdivision; and (ii) the erosion layer will provide equivalent or

ADOPTED

AMENDMENT NO. A15

(to be filled in by
Principal Clerk)

S729-ARI-203 [v.8]

Page 6 of 12

improved protection as the erosion layer specified in sub-subdivision
a. of this subdivision.";

and on page 27, lines 43 and 44,
by inserting between those lines:

"(c) Siting for Structural Fill Facilities. – Coal combustion products used as a structural
fill shall not be placed:

- (1) Within 100 horizontal feet of a wetland, unless, after consideration of the
chemical and physical impact on the wetland, the United States Army Corps
of Engineers issues a permit or waiver for the fill.
- (2) Within 300 horizontal feet of the top of the bank of a perennial stream or
other surface water body.
- (3) Within four feet of the seasonal high groundwater table.
- (4) Within 500 horizontal feet of any source of drinking water, such as a well,
spring, or other groundwater source of drinking water.
- (5) Within an area subject to a 100-year flood, unless it can be demonstrated to
the Department that the project will be protected from inundation, and
washout, and the flow of water is not restricted and the storage volume of
the floodplain will not be significantly reduced.
- (6) Within 25 feet of a bedrock outcrop.
- (7) Within 200 feet of any property boundary."

and on page 29, lines 45 through 51,
by rewriting those lines to read:

"(4) Maintain and operate the leachate collection system. The Department may
allow the constructor or operator to stop managing leachate upon a
satisfactory demonstration that leachate from the project no longer poses a
threat to human health and the environment."

on page 13, line 4 through page 15, line 48,
by rewriting those lines to read:

""§ 130A-309.210. Identification and assessment of discharges; correction of unpermitted
discharges.

ADOPTED

AMENDMENT NO. A15(to be filled in by
Principal Clerk)

S729-ARI-203 [v.8]

Page 7 of 12

1 (a) Identification of Discharges from Coal Combustion Residuals Surface
2 Impoundments. –

3 (1) The owner of a coal combustion residuals surface impoundment shall
4 identify all discharges from the impoundment as provided in this subsection.
5 The requirements for identifying all discharges from an impoundment set out
6 in this subsection are in addition to any other requirements for identifying
7 discharges applicable to the owners of coal combustion residuals surface
8 impoundments.

9 (2) No later than December 31, 2014, the owner of a coal combustion residuals
10 surface impoundment shall submit a topographic map that identifies the
11 location of all: (i) outfalls from engineered channels designed or improved
12 for the purpose of collecting water from the toe of the impoundment and (ii)
13 seeps and weeps discharging from the impoundment that are not captured by
14 engineered channels designed or improved for the purpose of collecting
15 water from the toe of the impoundment to the Department. The topographic
16 map shall comply with all of the following:

- 17 a. Be at a scale as required by the Department.
18 b. Specify the latitude and longitude of each toe drain outfall, seep, and
19 weep.
20 c. Specify whether the discharge from each toe drain outfall, seep, and
21 weep is continuous or intermittent.
22 d. Provide an average flow measurement of the discharge from each toe
23 drain outfall, seep, and weep including a description of the method
24 used to measure average flow.
25 e. Specify whether the discharge from each toe drain outfall, seep, and
26 weep identified reaches the surface waters of the State. If the
27 discharge from a toe drain outfall, seep, or weep reaches the surface
28 waters of the State, the map shall specify the latitude and longitude
29 of where the discharge reaches the surface waters of the State.
30 f. Any other information related to the topographic map required by the
31 Department.

32 (b) Assessment of Discharges from Coal Combustion Residuals Surface Impoundments
33 to the Surface Waters of the State. – The owner of a coal combustion residuals surface
34 impoundment shall conduct an assessment of discharges from the coal combustion residuals
35 surface impoundment to the surface waters of the State as provided in this subsection. The
36 requirements for assessment of discharges from the coal combustion residuals surface
37 impoundment to the surface waters of the State set out in this subsection are in addition to any
38 other requirements for the assessment of discharges from coal combustion residuals surface
39 impoundments to surface waters of the State applicable to the owners of coal combustion
40 residuals surface impoundments.

41 (1) No later than December 31, 2014, the owner of a coal combustion residuals
42 surface impoundment shall submit a proposed Discharge Assessment Plan to
43 the Department. The Discharge Assessment Plan shall include information

ADOPTED

AMENDMENT NO. A15

(to be filled in by
Principal Clerk)

S729-ARI-203 [v.8]

Page 8 of 12

sufficient to allow the Department to determine whether any discharge, including a discharge from a toe drain outfall, seep, or weep, has reached the surface waters of the State and has caused a violation of surface water quality standards. The Discharge Assessment Plan shall include, at a minimum, all of the following:

- a. Upstream and downstream sampling locations within all channels that could potentially carry a discharge.
- b. A description of the surface water quality analyses that will be performed.
- c. A sampling schedule, including the frequency and duration of sampling activities.
- d. Reporting requirements.
- e. Any other information related to the assessment of discharges required by the Department.

(2) The Department shall approve the Discharge Assessment Plan if it determines that the Plan complies with the requirements of this subsection and will be sufficient to protect public health, safety, and welfare; the environment; and natural resources.

(3) No later than 30 days from the approval of the Discharge Assessment Plan, the owner shall begin implementation of the Plan in accordance with the Plan's schedule.

(c) Corrective Action to Prevent Unpermitted Discharges from Coal Combustion Residuals Surface Impoundments to the Surface Waters of the State. – The owner of a coal combustion residuals surface impoundment shall implement corrective action to prevent unpermitted discharges from the coal combustion residuals surface impoundment to the surface waters of the State as provided in this subsection. The requirements for corrective action to prevent unpermitted discharges from coal combustion residuals surface impoundments to the surface waters of the State set out in this subsection are in addition to any other requirements for corrective action to prevent unpermitted discharges from coal combustion residuals surface impoundments to the surface waters of the State applicable to the owners of coal combustion residuals surface impoundments.

(1) If the Department determines, based on information provided pursuant to subsection (a) or (b) of this section, that an unpermitted discharge from a coal combustion residuals surface impoundment, including an unpermitted discharge from a toe drain outfall, seep, or weep, has reached the surface waters of the State, the Department shall notify the owner of the impoundment of its determination.

(2) No later than 30 days from a notification pursuant to subdivision (1) of this subsection, the owner of the coal combustion residuals surface impoundment shall submit a proposed Unpermitted Discharge Corrective Action Plan to the Department for its review and approval. The proposed Unpermitted Discharge Corrective Action Plan shall include, at a minimum, all of the following:

NORTH CAROLINA GENERAL ASSEMBLY

AMENDMENT

Senate Bill 729

ADOPTED

AMENDMENT NO. A15

(to be filled in by
Principal Clerk)

S729-ARI-203 [v.8]

Page 9 of 12

- 1 a. One of the following methods of proposed corrective action:
2 1. Elimination of the unpermitted discharge.
3 2. Application for a National Pollutant Discharge Elimination
4 System (NPDES) permit amendment pursuant to G.S. 143-
5 215.1 and Subchapter H of Chapter 2 of Title 15A of the
6 North Carolina Administrative Code to bring the unpermitted
7 discharge under permit regulations.
8 b. A detailed explanation of the reasons for selecting the method of
9 corrective action.
10 c. Specific plans, including engineering details, to prevent the
11 unpermitted discharge.
12 d. A schedule for implementation of the Plan.
13 e. A monitoring plan for evaluating the effectiveness of the proposed
14 corrective action.
15 f. Any other information related to the correction of unpermitted
16 discharges required by the Department.
17 (3) The Department shall approve the Unpermitted Discharge Corrective Action
18 Plan if it determines that the Plan complies with the requirements of this
19 subsection and will be sufficient to protect public health, safety, and welfare;
20 the environment; and natural resources.
21 (4) No later than 30 days from the approval of the Unpermitted Discharge
22 Corrective Action Plan, the owner shall begin implementation of the Plan in
23 accordance with the Plan's schedule.
24 (d) Identification of New Discharges. – No later than August 1, 2014, the owner of a
25 coal combustion residuals surface impoundment shall submit a proposed Plan for the
26 Identification of New Discharges to the Department for its review and approval as provided in
27 this subsection.
28 (1) The proposed Plan for the Identification of New Discharges shall include, at
29 a minimum, all of the following:
30 a. A procedure for routine inspection of the coal combustion residuals
31 surface impoundment to identify indicators of potential new
32 discharges, including toe drain outfalls, seeps, and weeps.
33 b. A procedure for determining whether a new discharge is actually
34 present.
35 c. A procedure for notifying the Department when a new discharge is
36 confirmed.
37 d. Any other information related to the identification of new discharges
38 required by the Department.
39 (2) The Department shall approve the Plan for the Identification of New
40 Discharges if it determines that the Plan complies with the requirements of
41 this subsection and will be sufficient to protect public health, safety, and
42 welfare; the environment; and natural resources.

ADOPTED

AMENDMENT NO. A15

(to be filled in by
Principal Clerk)

S729-ARI-203 [v.8]

Page 10 of 12

(3) No later than 30 days from the approval of the Plan for the Identification of New Discharges, the owner shall begin implementation of the Plan in accordance with the Plan.

(e) Reporting. – In addition to any other reporting required by the Department, the owner of a coal combustion residuals surface impoundment shall submit an annual Surface Water Protection and Restoration Report to the Department no later than January 31 of each year. The Report shall include a summary of all surface water sampling, protection, and restoration activities related to the impoundment for the preceding year, including the status of the identification, assessment, and correction of unpermitted discharges from coal combustion residuals surface impoundments to the surface waters of the State. The owner of a coal combustion residuals surface impoundment shall also submit all information required to be submitted to the Department pursuant to this section to the Coal Ash Management Commission."

and on page 36, lines 35 and 36,
by inserting between those lines:

"SECTION 7.1 Part 3 of Article 21 of Chapter 143 of the General Statutes is amended by adding a new section to read:

"§ 143-215.27A. Closure of coal combustion residuals surface impoundments to render such facilities exempt from the North Carolina Dam Safety Law of 1967.

(a) Decommissioning Request. – The owner a coal combustion residuals surface impoundment, as defined by G.S. 130A-309.201, that seeks to decommission the impoundment shall submit a Decommissioning Request to the Division of Energy, Mineral, and Land Resources of the Department requesting that the facility be decommissioned. The Decommissioning Request shall include, at a minimum, all of the following:

(1) A proposed geotechnical investigation plan scope of work. Upon preliminary plan approval pursuant subsection (b) of this section, the owner shall proceed with necessary field work and submit a geotechnical report with site specific field data indicating that the containment dam and material impounded by the containment dam are stable, and that the impounded material is not subject to liquid flow behavior under expected static and dynamic loading conditions. Material testing should be performed along the full extent of the containment dam and in a pattern throughout the area of impounded material.

(2) A topographic map depicting existing conditions of the containment dam and impoundment area at two foot contour intervals or less.

(3) If the facility contains areas capable of impounding by topography, a breach plan must be included that ensures that there shall be no place within the facility capable of impounding. The breach plan shall include, at a minimum, proposed grading contours superimposed on the existing topographic map as

ADOPTED

AMENDMENT NO. A15

(to be filled in by
Principal Clerk)

S729-ARI-203 [v.8]

Page 11 of 12

well as necessary engineering calculations, construction details, and construction specifications.

(4) A permanent vegetation and stabilization or capping plan by synthetic liner or other means, if needed. These plans shall include at minimum, proposed grading contours superimposed on the existing topographic map where applicable as well as necessary engineering calculations, construction details, construction specifications, and all details for the establishment of surface area stabilization.

(5) A statement indicating that the impoundment facility has not received sluiced coal combustion residuals for at least three years and that there are no future plans to place coal combustion residuals in the facility by sluicing methods.

(b) Preliminary Review and Approval. – The Decommissioning Request shall undergo a preliminary review by the Division for completeness and approval of the proposed geotechnical investigation plan scope of work. The owner shall be notified by letter with results of the preliminary review including approval or revision requests relative to the proposed scope of work included in the geotechnical investigation plan. Upon receipt of a letter issued by the Division approving the preliminary geotechnical plan scope of work, the owner may proceed with field work and development of the geotechnical report.

(c) Final Determination and Approval. – Upon receipt of the geotechnical report, the Division shall complete the submittal review as provided in this subsection.

(1) If it is determined that sufficient evidence has been presented to clearly show that the facility no longer functions as a dam in its current state, a letter decommissioning the facility shall be issued by the Division and the facility shall no longer be under jurisdiction of the Dam Safety Law of 1967.

(2) If modifications such as breach construction or implementation of a permanent vegetation or surface lining plan are needed, such plans shall be reviewed per standard procedures for consideration of letter of approval to modify or breach.

(3) If approved, such plans shall follow standard procedure for construction including construction supervision by a North Carolina registered professional engineer, as-built submittal by a North Carolina registered professional engineer, and follow up final inspection by the Division.

(4) Final approval shall be issued by the Division in the form of a letter decommissioning the facility and the facility shall no longer be under jurisdiction of the Dam Safety Law of 1967."";

and on page 32, line 33,
by rewriting the line to read:

"SECTION 3.(f) This section is effective when it becomes law. G.S. 130A-309.202, as enacted by Section 3(a) of this act, is repealed June 30, 2030. Subpart 3 of Part 2I";

ADOPTED

AMENDMENT NO. A15

(to be filled in by
Principal Clerk)

S729-ARI-203 [v.8]

Page 12 of 12

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and on page 44, line 30,
by rewriting the line to read:

"SECTION 14.(e) Subsection (a) of this section becomes effective July 1, 2014,
and expires April 1, 2030, and applies to jurisdictional revenues earned on or after July 1, 2014,
and before April 1, 2030. The remainder of this section becomes effective July 1, 2014."

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

**The official copy of this document, with signatures
and vote information, is available in the
Senate Principal Clerk's Office**