

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2017

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HOUSE BILL 56
Committee Substitute Favorable 4/20/17
Third Edition Engrossed 4/24/17
Senate Agriculture/Environment/Natural Resources Committee Substitute Adopted
5/31/17
PROPOSED SENATE COMMITTEE SUBSTITUTE H56-PCS10388-SB-26

Short Title: Amend Environmental Laws.

(Public)

Sponsors:

Referred to:

February 8, 2017

1 A BILL TO BE ENTITLED
2 AN ACT TO AMEND VARIOUS ENVIRONMENTAL LAWS.
3 The General Assembly of North Carolina enacts:

4
5 **FINANCIAL ASSURANCE MODIFICATIONS FOR RISK-BASED CLEANUPS**

6 SECTION 1. G.S. 130A-310.72 reads as rewritten:

7 "§ 130A-310.72. **Financial assurance requirement.**

8 The person conducting remediation of a contaminated ~~industrial~~ site pursuant to the
9 provisions of this Part shall establish financial assurance that will ensure that sufficient funds
10 are available to implement and maintain the actions or controls specified in the remedial action
11 plan for the site. The person conducting remediation of a site may establish financial assurance
12 through one of the following mechanisms, or any combination of the following mechanisms, in
13 a form specified or approved by the Department: insurance products issued from entities having
14 no corporate or ownership association with the person conducting the remediation; funded
15 trusts; surety bonds; certificates of deposit; letters of credit; corporate financial tests; local
16 government financial tests; corporate guarantees; local government guarantees; capital reserve
17 funds; or any other financial mechanism authorized for the demonstration of financial
18 assurance under (i) 40 Code of Federal Regulations Part 264, Subpart H (July 1, 2010 Edition)
19 and (ii) Section .1600 of Subchapter B of Chapter 13 of Title 15A of the North Carolina
20 Administrative Code. Proof of financial assurance shall be provided in the remedial action plan
21 and annually thereafter on the anniversary date of the approval of the plan. The Department
22 may waive the requirement for a person conducting remediation of a contaminated site
23 pursuant to the provisions of this Part to establish or maintain financial assurance if the
24 Department finds that the only actions or controls to be implemented or maintained as part of
25 the remedial action plan for the site include either or both of the following:

26 (1) Annual reporting of land-use controls.

27 (2) The maintenance of durable or low-maintenance covers for contaminated
28 soil."

29
30 **REPEAL OBSOLETE HAZARDOUS WASTE PROVISIONS**

31 SECTION 2.(a) G.S. 130A-294(k) is repealed.

32 SECTION 2.(b) G.S. 130A-309.17 is repealed.



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1
2 **LAND-USE RESTRICTIONS FOR PROPERTY CONTAMINATED BY A NON-UST**
3 **PETROLEUM DISCHARGE OR RELEASE**

4 **SECTION 3.(a)** G.S. 143B-279.9(b) reads as rewritten:

5 "(b) The definitions set out in G.S. 143-215.94A apply to this subsection. A remedial
6 action plan for the cleanup of environmental damage resulting from a discharge or release of
7 petroleum from an underground storage tank pursuant to Part 2A of Article 21A of Chapter 143
8 of the General ~~Statutes~~-Statutes, other petroleum sources, or from an aboveground storage tank
9 pursuant to Part 7 of Article 21A of Chapter 143 of the General Statutes must include an
10 agreement by the owner, operator, or other party responsible for the discharge or release of
11 petroleum to record a notice of any applicable land-use restrictions that meet the requirements
12 of this subsection as provided in G.S. 143B-279.11. All of the provisions of this section shall
13 apply except as specifically modified by this subsection and G.S. 143B-279.11. Any restriction
14 on the current or future use of real property pursuant to this subsection shall be enforceable
15 only with respect to: (i) real property on which the source of contamination is located and (ii)
16 any real property on which contamination is located at the time the remedial action plan is
17 approved and that was owned or controlled by any owner or operator of the underground
18 storage tank or other responsible party at the time the discharge or release of petroleum is
19 discovered or reported or at any time thereafter. No restriction on the current or future use of
20 real property shall apply to any portion of any parcel or tract of land on which contamination is
21 not located. This subsection shall not be construed to require any person to record any notice of
22 restriction on the current or future use of real property other than the real property described in
23 this subsection. For purposes of this subsection and G.S. 143B-279.11, the Secretary may
24 restrict current or future use of real property only as set out in any one or more of the following
25 subdivisions:

- 26 (1) Where soil contamination will remain in excess of unrestricted use
27 standards, the property may be used for a primary or secondary residence,
28 school, daycare center, nursing home, playground, park, recreation area, or
29 other similar use only with the approval of the Department.
- 30 (2) Where soil contamination will remain in excess of unrestricted use standards
31 and the property is used for a primary or secondary residence that was
32 constructed before the release of petroleum that resulted in the
33 contamination is discovered or reported, the Secretary may approve
34 alternative restrictions that are sufficient to reduce the risk of exposure to
35 contaminated soils to an acceptable level while allowing the real property to
36 continue to be used for a residence.
- 37 (3) Where groundwater contamination will remain in excess of unrestricted use
38 standards, installation or operation of any well usable as a source of water
39 shall be prohibited.
- 40 (4) Any restriction on the current or future use of the real property that is agreed
41 upon by both the owner of the real property and the Department.

42 Except with respect to land contaminated from a discharge or release of petroleum from an
43 underground storage tank, the imposition of restrictions on the current or future use of real
44 property on sites contaminated by the discharge or release of petroleum from an aboveground
45 storage tank, or another petroleum source, from which contamination has migrated to off-site
46 properties, as that term is defined under G.S. 130A-310.65(3a), shall only be allowed as
47 provided in G.S. 143-215.104AA or G.S. 130A-310.73A, as applicable."

48 **SECTION 3.(b)** G.S. 143B-279.11 reads as rewritten:

49 "**§ 143B-279.11. Recordation of residual petroleum from an—underground or**
50 **aboveground storage tank—tanks or other sources.**

1 (a) The definitions set out in G.S. 143-215.94A and G.S. 143B-279.9 apply to this
2 section. This section applies only to a cleanup pursuant to a remedial action plan that addresses
3 environmental damage resulting from a discharge or release of petroleum from an underground
4 storage tank pursuant to Part 2A of Article 21A of Chapter 143 of the General ~~Statutes~~.
5 or from an aboveground storage tank or other petroleum source pursuant to Part 7 of Article
6 21A of Chapter 143 of the General Statutes.

7 (b) The owner, operator, or other person responsible for a discharge or release of
8 petroleum from an underground storage ~~tank-tank~~, aboveground storage tank, or other
9 petroleum source shall prepare and submit to the Department a proposed Notice that meets the
10 requirements of this section. The proposed Notice shall be submitted to the Department (i)
11 before the property is conveyed, or (ii) when the owner, operator, or other person responsible
12 for the discharge or release requests that the Department issue a determination that no further
13 action is required under the remedial action plan, whichever first occurs. The Notice shall be
14 entitled "NOTICE OF RESIDUAL PETROLEUM". The Notice shall include a description that
15 would be sufficient as a description in an instrument of conveyance of the (i) real property on
16 which the source of contamination is located and (ii) any real property on which contamination
17 is located at the time the remedial action plan is approved and that was owned or controlled by
18 any owner or operator of the underground storage ~~tank-tank~~, aboveground storage tank, or other
19 petroleum source, or other responsible party at the time the discharge or release of petroleum is
20 discovered or reported or at any time thereafter. The Notice shall identify the location of any
21 residual petroleum known to exist on the real property at the time the Notice is prepared. The
22 Notice shall also identify the location of any residual petroleum known, at the time the Notice
23 is prepared, to exist on other real property that is a result of the discharge or release. The Notice
24 shall set out any restrictions on the current or future use of the real property that are imposed by
25 the Secretary pursuant to G.S. 143B-279.9(b) to protect public health, the environment, or users
26 of the property.

27 (c) If the contamination is located on more than one parcel or tract of land, the
28 Department may require that the owner, operator, or other person responsible for the discharge
29 or release prepare a composite map or plat that shows all parcels or tracts. If the contamination
30 is located on one parcel or tract of land, the owner, operator, or other person responsible for the
31 discharge or release may prepare a map or plat that shows the parcel but is not required to do
32 so. A map or plat shall be prepared and certified by a professional land surveyor, shall meet the
33 requirements of G.S. 47-30, and shall be submitted to the Department for approval. When the
34 Department has approved a map or plat, it shall be recorded in the office of the register of
35 deeds and shall be incorporated into the Notice by reference.

36 (d) The Department shall review the proposed Notice to determine whether the Notice
37 meets the requirements of this section and rules adopted to implement this section and shall
38 provide the owner, operator, or other person responsible for the discharge or release of
39 petroleum from an underground storage ~~tank-tank~~, aboveground storage tank, or other
40 petroleum source, with a notarized copy of the approved Notice. After the Department
41 approves the Notice, the owner, operator, or other person responsible for the discharge or
42 release of petroleum from an underground storage ~~tank-tank~~, aboveground storage tank, or
43 other petroleum source shall file a notarized copy of the approved Notice in the register of
44 deeds office in the county or counties in which the real property is located (i) before the
45 property is conveyed or (ii) within 30 days after the owner, operator, or other person
46 responsible for the discharge or release receives notice from the Department that no further
47 action is required under the remedial action plan, whichever first occurs. If the owner, operator,
48 or other person responsible for the discharge or release fails to file the Notice as required by
49 this section, any determination by the Department that no further action is required is void. The
50 owner, operator, or other person responsible for the discharge or release, may record the Notice
51 required by this section without the agreement of the owner of the real property. The owner,

1 operator, or other person responsible for the discharge or release shall submit a certified copy
2 of the Notice as filed in the register of deeds office to the Department.

3 (e) Repealed by Session Laws 2012-18, s. 1.23, effective July 1, 2012.

4 (f) In the event that the owner, operator, or other person responsible for the discharge
5 or release fails to submit and file the Notice required by this section within the time specified,
6 the Secretary may prepare and file the Notice. The costs thereof may be recovered by the
7 Secretary from any responsible party. In the event that an owner of the real property who is not
8 a responsible party submits and files the Notice required by this section, the owner may recover
9 the reasonable costs thereof from any responsible party.

10 (g) A Notice filed pursuant to this section shall, at the request of the owner of the real
11 property, be cancelled by the Secretary after the residual petroleum has been eliminated or
12 remediated to unrestricted use standards. If requested in writing by the owner of the land, the
13 Secretary shall send to the register of deeds of each county where the Notice is recorded a
14 statement that the residual petroleum has been eliminated, or that the residual petroleum has
15 been remediated to unrestricted use standards, and request that the Notice be cancelled of
16 record. The Secretary's statement shall contain the names of the owners of the land as shown in
17 the Notice and reference the plat book and page where the Notice is recorded.

18 (h) Except with respect to land contaminated from a discharge or release of petroleum
19 from an underground storage tank, the provisions of this section shall only apply to sites
20 contaminated by the discharge or release of petroleum from an aboveground storage tank, or
21 another petroleum source, from which contamination has migrated to off-site properties, as that
22 term is defined under G.S. 130A-310.65(3a), in compliance with the requirements of
23 G.S. 143-215.104AA or G.S. 130A-310.73A, as applicable."

24 25 CLARIFICATION FOR REPORTING OF WASTEWATER DISCHARGES

26 SECTION 4. G.S. 143-215.1C reads as rewritten:

27 "**§ 143-215.1C. Report to wastewater system customers on system performance; report**
28 **discharge of untreated wastewater to the Department; publication of notice of**
29 **discharge of untreated wastewater and waste.**

30 (a) Report to Wastewater System Customers. – The owner or operator of any
31 wastewater collection or treatment works, the operation of which is primarily to collect or treat
32 municipal or domestic wastewater and for which a permit is issued under this Part and having
33 an average annual flow greater than 200,000 gallons per day, shall provide to the users or
34 customers of the collection system or treatment works and to the Department an annual report
35 that summarizes the performance of the collection system or treatment works and the extent to
36 which the collection system or treatment works has violated the permit or federal or State laws,
37 regulations, or rules related to the protection of water quality. The report shall be prepared on
38 either a calendar or fiscal year basis and shall be provided no later than 60 days after the end of
39 the calendar or fiscal year.

40 (a1) Report Discharge of Untreated Wastewater to the Department. – ~~The~~ Except as
41 required in subsection (d) of this section, the owner or operator of any wastewater collection or
42 treatment works ~~for which a permit is issued under this Part~~ shall report a discharge of 1,000
43 gallons or more of untreated wastewater ~~to the surface to land, or a spill of any amount that~~
44 reaches waters of the ~~State~~ State, to the Department as soon as practicable, but no later than 24
45 hours after the owner or operator has ~~determined that the discharge has reached the surface~~
46 waters of the State ~~first knowledge of the spill.~~ This reporting requirement shall be in addition
47 to any other reporting requirements applicable to the owner or operator of the wastewater
48 collection or treatment works.

49 (b) Publication of Notice of Discharge of Untreated Wastewater. – ~~The~~ Except as
50 required in subsection (d) of this section, the owner or operator of any wastewater collection or

1 treatment works, the operation of which is primarily to collect or treat municipal or domestic
2 wastewater ~~and for which a permit is issued under this Part~~ shall:

3 ...
4 (c) Publication of Notice of Discharge of Untreated Waste. – ~~The~~ Except as required in
5 subsection (d) of this section, the owner or operator of any wastewater collection or treatment
6 works, other than a wastewater collection or treatment works the operation of which is
7 primarily to collect or treat municipal or domestic wastewater, ~~for which a permit is issued~~
8 ~~under this Part~~ wastewater shall:

9 ...
10 (d) During extraordinary circumstances, including major floods, named storms, or
11 extreme weather, which make it impracticable to measure or otherwise collect data regarding a
12 discharge, the Department may extend the time period for making, or the Department may
13 waive, reports required under subsection (a1) of this section, including any written, follow-up
14 report required pursuant thereto. In the event of extraordinary circumstances, the Department
15 may also extend the time period for issuing or publishing, or the Department may waive, any
16 press release or notice required under subsections (b) and (c) of this section."

17 18 **CONSOLIDATE VARIOUS WATER RESOURCES AND WATER QUALITY** 19 **REPORTS BY THE DEPARTMENT OF ENVIRONMENTAL QUALITY**

20 **SECTION 5.(a)** G.S. 143-355(m) is repealed.

21 **SECTION 5.(b)** G.S. 143-355(p) reads as rewritten:

22 "(p) Report. – The Department of Environmental Quality shall report to the
23 Environmental Review Commission on the implementation of this section, including ~~the~~
24 ~~development of the State water supply plan and the development of basinwide hydrologic~~
25 models, no later than November 1 of each year. The Department shall submit the report
26 required by this subsection with the report on basinwide water ~~quality~~-management plans
27 required by G.S. 143-215.8B(d) as a single report."
28

29 **COASTAL AREA MANAGEMENT ACT MODIFICATIONS**

30 **SECTION 6.(a)** G.S. 113A-124(c) is amended by adding a new subdivision to
31 read:

32 "(c) The Commission shall have the following additional powers and duties under this
33 Article:

- 34 (1) To recommend to the Secretary the acceptance of donations, gifts, grants,
35 contributions and appropriations from any public or private source to use in
36 carrying out the provisions of this Article.
- 37 (2) To recommend to the Secretary of Administration the acquisition by
38 purchase, gift, condemnation, or otherwise, lands or any interest in any lands
39 within the coastal area.
- 40 (3) To hold such public hearings as the Commission deems appropriate.
- 41 (4) To delegate the power to conduct a hearing, on behalf of the Commission, to
42 any member of the Commission or to any qualified employee of the
43 Department. Any person to whom a delegation of power is made to conduct
44 a hearing shall report his recommendations with the evidence and the record
45 of the hearing to the Commission for decision or action.
- 46 (5) Repealed by Session Laws 1987, c. 827, s. 141.
- 47 (6) To delegate the power to determine whether a contested case hearing is
48 appropriate in accordance with G.S. 113A-121.1(b).
- 49 (7) To delegate the power to grant or deny requests for declaratory rulings under
50 G.S. 150B-4 in accordance with standards adopted by the Commission.
- 51 (8) To adopt rules to implement this Article.

1 (9) To delegate the power to approve land-use plan for a county in accordance
2 with G.S. 113A-110(f) to any qualified employee of the Department."

3 **SECTION 6.(b)** G.S. 113A-119 reads as rewritten:

4 "**§ 113A-119. Permit applications generally.**

5 (a) Any person required to obtain a permit under this Part shall file with the Secretary
6 and (in the case of a permit sought from a city or county) with the designated local official an
7 application for a permit in accordance with the form and content designated by the Secretary
8 and approved by the Commission. The applicant must submit with the application a check or
9 money order payable to the Department or the city or county, as the case may be, constituting a
10 fee set by the Commission pursuant to G.S. 113A-119.1.

11 (b) Upon receipt of any application, a significant modification to an application for a
12 major permit, or an application to modify substantially a previously issued major permit, the
13 Secretary shall issue public notice of the proposed development (i) by mailing a copy of the
14 application or modification, or a brief description thereof together with a statement indicating
15 where a detailed copy of the proposed development may be inspected, to any citizen or group
16 which has filed a request to be notified of the proposed development, and to any interested
17 State agency; (ii) with the exception of minor permit applications, by posting or causing to be
18 posted a notice at the location of the proposed development stating that an application, a
19 modification of an application for a major permit, or an application to modify a previously
20 issued major permit for development has been made, where the application or modification
21 may be inspected, and the time period for comments; and (iii) with the exception of minor
22 permit applications, by publishing notice of the application or modification at least once in one
23 newspaper of general circulation in the county or counties wherein the development would be
24 located at least 20 days before final action on a major permit or before the beginning of the
25 hearing on a permit under G.S. 113A-122. The notice shall set out that any comments on the
26 development should be submitted to the Secretary by a specified date, not less than 15 days
27 from the date of the newspaper publication of the notice or 15 days after mailing of the mailed
28 notice, whichever is later.

29 (c) Within the meaning of this Part, the "designated local official" is the official who
30 has been designated by the local governing body to receive and consider permit applications
31 under this Part."

32 **CLARIFY SETBACK DETERMINATION FOR PERMITTED DISPOSAL SYSTEMS**

33 **SECTION 9.** G.S. 143-215.1(i) reads as rewritten:

34 "(i) Any person subject to the requirements of this section who is required to obtain an
35 individual permit from the Commission for a disposal system under the authority of
36 G.S. 143-215.1 or Chapter 130A of the General Statutes shall have a compliance boundary as
37 may be established by rule or permit for various categories of disposal systems and beyond
38 which groundwater quality standards may not be exceeded. Multiple contiguous properties
39 under common ownership and permitted for use as a disposal system shall be treated as a single
40 property with regard to determination of a compliance ~~boundary~~boundary and setbacks to
41 property lines."

42 **REPEAL PLASTIC BAG BAN**

43 **SECTION 10.(a)** Part 2G of Article 9 of Chapter 130A of the General Statutes is
44 repealed.

45 **SECTION 10.(b)** G.S. 130A-22(a) reads as rewritten:

46 "(a) The Secretary of Environmental Quality may impose an administrative penalty on a
47 person who violates Article 9 of this Chapter, rules adopted by the Commission pursuant to
48 Article 9, or any term or condition of a permit or order issued under Article 9. Each day of a
49 continuing violation shall constitute a separate violation. The penalty shall not exceed fifteen
50
51

1 thousand dollars (\$15,000) per day in the case of a violation involving nonhazardous waste.
2 The penalty shall not exceed thirty-two thousand five hundred dollars (\$32,500) per day in the
3 case of a first violation involving hazardous waste as defined in G.S. 130A-290 or involving
4 the disposal of medical waste as defined in G.S. 130A-290 in or upon water in a manner that
5 results in medical waste entering waters or lands of the State; and shall not exceed fifty
6 thousand dollars (\$50,000) per day for a second or further violation involving the disposal of
7 medical waste as defined in G.S. 130A-290 in or upon water in a manner that results in medical
8 waste entering waters or lands of the State. The penalty shall not exceed thirty-two thousand
9 five hundred dollars (\$32,500) per day for a violation involving a voluntary remedial action
10 implemented pursuant to G.S. 130A-310.9(c) or a violation of the rules adopted pursuant to
11 G.S. 130A-310.12(b). ~~The penalty shall not exceed one hundred dollars (\$100.00) for a first
12 violation; two hundred dollars (\$200.00) for a second violation within any 12-month period;
13 and five hundred dollars (\$500.00) for each additional violation within any 12-month period for
14 any violation of Part 2G of Article 9 of this Chapter.~~ For violations of Part 7 of Article 9 of this
15 Chapter and G.S. 130A-309.10(m): (i) a warning shall be issued for a first violation; (ii) the
16 penalty shall not exceed two hundred dollars (\$200.00) for a second violation; and (iii) the
17 penalty shall not exceed five hundred dollars (\$500.00) for subsequent violations. If a person
18 fails to pay a civil penalty within 60 days after the final agency decision or court order has been
19 served on the violator, the Secretary of Environmental Quality shall request the Attorney
20 General to institute a civil action in the superior court of any county in which the violator
21 resides or has his or its principal place of business to recover the amount of the assessment.
22 Such civil actions must be filed within three years of the date the final agency decision or court
23 order was served on the violator."

24 **SECTION 10.(c)** Section 13.10(c) of S.L. 2010-31 is repealed.

25 **SECTION 10.(d)** This section becomes effective July 1, 2017.

26 27 **AMEND THE RULE FOR POOL LIGHTING**

28 **SECTION 11.(a)** Definitions. – "Pool Lighting and Ventilation Rule" means 15A
29 NCAC 18A .2524 (Lighting and Ventilation) for purposes of this section and its
30 implementation.

31 **SECTION 11.(b)** Pool Lighting and Ventilation Rule. – Until the effective date of
32 the revised permanent rule that the Commission for Public Health is required to adopt pursuant
33 to subsection (d) of this section, the Commission and local inspectors shall implement the Pool
34 Lighting and Ventilation Rule, as provided in subsection (c) of this section.

35 **SECTION 11.(c)** Implementation. – The Commission shall require pool
36 illumination sufficient to illuminate the main drains of a pool. The Commission shall require
37 pool illumination sufficient to illuminate the deck area of a pool so that it is visible at all times
38 the pool is in use but shall not require specific foot candles of illumination for the deck area.

39 **SECTION 11.(d)** Additional Rule-Making Authority. – The Commission shall
40 adopt a rule to amend the Pool Lighting and Ventilation Rule consistent with subsection (c) of
41 this section. Notwithstanding G.S. 150B-19(4), the rule adopted by the Commission, pursuant
42 to this section, shall be substantively identical to the provisions of subsection (c) of this section.
43 Rules adopted pursuant to this section are not subject to Part 3 of Article 2A of Chapter 150B
44 of the General Statutes. Rules adopted pursuant to this section shall become effective as
45 provided in G.S. 150B-21.3(b1) as though 10 or more written objections had been received as
46 provided by G.S. 150B-21.3(b2).

47 **SECTION 11.(e)** Sunset. – This section expires when permanent rules adopted as
48 required by subsection (d) of this section become effective.

49 50 **COASTAL STORMWATER PROGRAM VARIANCE**

1 **SECTION 12.(a)** Notwithstanding S.L. 2008-211 and rules adopted to implement
2 the act, any subdivision meeting all of the following requirements shall be deemed to be in
3 compliance with the impervious surface limitations of the act and its implementing rules:

- 4 (1) The subdivision's original declaration of covenants was recorded at least 20
5 years prior to the effective date of this act.
- 6 (2) The original developer of the subdivision transferred the stormwater permit
7 to the homeowners association for the subdivision and, at the time of the
8 transfer, the homeowners association had no notice from the original
9 developer or any regulatory agency that the subdivision was not in
10 compliance with the impervious surface limitations.

11 **SECTION 12.(b)** This section applies only to impervious surface built prior to
12 January 1, 2017. Any impervious surface built on or after January 1, 2017, shall be subject to
13 S.L. 2008-211 and its implementing rules.

14
15 **AMEND THE PROTECTION OF EXISTING BUFFERS RULES TO EXEMPT**
16 **CERTAIN APPLICABILITY REQUIREMENTS FOR PUBLIC SAFETY**

17 **SECTION 13.(a)** Definitions. – "Protection of Existing Buffers Rules" means all
18 of the following rules for purposes of this section and its implementation:

- 19 (1) Neuse River Basin: Nutrient Sensitive Waters Management Strategy:
20 Protection and Maintenance of Existing Riparian Buffers (15A NCAC 02B
21 .0233).
- 22 (2) Tar-Pamlico River Basin: Nutrient Sensitive Waters Management Strategy:
23 Protection and Maintenance of Existing Riparian Buffers (15A NCAC 02B.
24 0259).
- 25 (3) Randleman Lake Water Supply Watershed: Protection and Maintenance of
26 Existing Riparian Buffers (15A NCAC 02B .0250).
- 27 (4) Jordan Water Supply Nutrient Strategy: Protection of Existing Riparian
28 Buffers (15A NCAC 02B .0267).
- 29 (5) Goose Creek Watershed Water Quality Management Plan (15A NCAC 02B
30 .0605, 15A NCAC 02B .0606, 15A NCAC 02B .0607, 15A NCAC 02B
31 .0608).
- 32 (6) Mitigation Program Requirements for Protection and Maintenance of
33 Riparian Buffers (15A NCAC 02B .0295).
- 34 (7) Catawba River Basin: Protection and Maintenance of Existing Riparian
35 Buffers (15A NCAC 02B .0243).

36 **SECTION 13.(b)** Protection of Existing Buffers Rules. – Until the effective date of
37 the revised permanent rules that the Environmental Management Commission is required to
38 adopt pursuant to subsection (d) of this section, the Commission and the Department of
39 Environmental Quality shall implement the Protection of Existing Buffers Rules, as provided in
40 subsection (c) of this section.

41 **SECTION 13.(c)** Implementation. – The Commission shall exempt from the
42 applicability requirements of the Protection of Existing Buffers Rules any publicly owned
43 spaces where it has been determined by the head of the local law enforcement agency with
44 jurisdiction over that area that the buffers pose a risk to public safety.

45 **SECTION 13.(d)** Additional Rule-Making Authority. – The Commission shall
46 adopt rules to amend the Protection of Existing Buffers Rules consistent with subsection (c) of
47 this section. Notwithstanding G.S. 150B-19(4), the rules adopted by the Commission, pursuant
48 to this section, shall be substantively identical to the provisions of subsection (c) of this section.
49 Rules adopted pursuant to this section are not subject to Part 3 of Article 2A of Chapter 150B
50 of the General Statutes. Rules adopted pursuant to this section shall become effective as

1 provided in G.S. 150B-21.3(b1) as though 10 or more written objections had been received as
2 provided by G.S. 150B-21.3(b2).

3 **SECTION 13.(e)** Sunset. – This section expires when permanent rules adopted as
4 required by subsection (d) of this section become effective.

5
6 **AMEND THE RULE FOR PROTECTION AND MAINTENANCE OF EXISTING**
7 **BUFFERS IN THE CATAWBA RIVER BASIN TO EXEMPT CERTAIN**
8 **APPLICABILITY REQUIREMENTS FOR PUBLIC WALKING TRAILS**

9 **SECTION 14.(a)** Definitions. – "Protection and Maintenance of Existing Riparian
10 Buffers Rule" means 15A NCAC 02B .0243 (Catawba River Basin: Protection and
11 Maintenance of Existing Riparian Buffers) for purposes of this section and its implementation.

12 **SECTION 14.(b)** Protection and Maintenance of Existing Riparian Buffers Rule. –
13 Until the effective date of the revised permanent rule that the Environmental Management
14 Commission is required to adopt pursuant to subsection (d) of this section, the Commission and
15 the Department of Environmental Quality shall implement the Protection and Maintenance of
16 Existing Riparian Buffers Rule, as provided in subsection (c) of this section.

17 **SECTION 14.(c)** Implementation. – The Commission shall exempt from the
18 applicability requirements of the Protection and Maintenance of Existing Riparian Buffers Rule
19 any publicly owned property that will be used for walking trails.

20 **SECTION 14.(d)** Additional Rule-Making Authority. – The Commission shall
21 adopt a rule to amend the Protection and Maintenance of Existing Riparian Buffers Rule
22 consistent with subsection (c) of this section. Notwithstanding G.S. 150B-19(4), the rule
23 adopted by the Commission, pursuant to this section, shall be substantively identical to the
24 provisions of subsection (c) of this section. Rules adopted pursuant to this section are not
25 subject to Part 3 of Article 2A of Chapter 150B of the General Statutes. Rules adopted pursuant
26 to this section shall become effective as provided in G.S. 150B-21.3(b1) as though 10 or more
27 written objections had been received as provided by G.S. 150B-21.3(b2).

28 **SECTION 14.(e)** Sunset. – This section expires when permanent rules adopted as
29 required by subsection (d) of this section become effective.

30
31 **RIPARIAN BUFFER TAX EXCLUSION STUDY**

32 **SECTION 15.(a)** The Fiscal Research Division of the North Carolina General
33 Assembly is directed to estimate the value of property that is subject to the following riparian
34 buffer rules and the value of property that is being used as a riparian buffer under these rules
35 for each county within the affected river basins:

- 36 (1) Neuse River Basin: Nutrient Sensitive Waters Management Strategy:
37 Protection and Maintenance of Existing Riparian Buffers (15A NCAC 02B
38 .0233).
- 39 (2) Tar-Pamlico River Basin: Nutrient Sensitive Waters Management Strategy:
40 Protection and Maintenance of Existing Riparian Buffers (15A NCAC 02B.
41 0259).
- 42 (3) Randleman Lake Water Supply Watershed: Protection and Maintenance of
43 Existing Riparian Buffers (15A NCAC 02B .0250).
- 44 (4) Jordan Water Supply Nutrient Strategy: Protection of Existing Riparian
45 Buffers (15A NCAC 02B .0267).
- 46 (5) Goose Creek Watershed Water Quality Management Plan (15A NCAC 02B
47 .0605, 15A NCAC 02B .0606, 15A NCAC 02B .0607, 15A NCAC 02B
48 .0608).
- 49 (6) Mitigation Program Requirements for Protection and Maintenance of
50 Riparian Buffers (15A NCAC 02B .0295).

1 (7) Catawba River Basin: Protection and Maintenance of Existing Riparian
2 Buffers (15A NCAC 02B .0243).

3 **SECTION 15.(b)** No later than May 1, 2018, the Fiscal Research Division shall
4 report its estimates and analysis to the Environmental Review Commission and the Revenue
5 Laws Study Committee.

6 7 **WATER QUALITY TESTING**

8 **SECTION 16.** The Division of Water Resources of the Department of
9 Environmental Quality shall conduct a water quality sampling program for nutrients along the
10 mainstem of the Catawba River. The study shall include water quality sampling for nutrients
11 above, in, and below each major tributary of the Catawba River. No later than October 1, 2018,
12 the Division shall report the results of the study to the Environmental Review Commission.

13 14 **MINING PERMITTING REVISIONS**

15 **SECTION 17.(a)** G.S. 74-50(d) reads as rewritten:

16 "(d) ~~An operating permit shall be granted for a period not exceeding 10 years. If~~Except
17 ~~as provided in subsection (d1) of this section, permits for mining operations shall be issued for~~
18 ~~the life-of-site of the operation unless revoked as otherwise provided under this Article. For~~
19 ~~purposes of this section, "life-of-site" means the period from the initial receipt of a permit from~~
20 ~~the operation until the mining operation terminates and the reclamation required under the~~
21 ~~approved reclamation plan is completed prior to the end of the period, completed, the permit~~
22 ~~shall terminate.~~completed. Termination of a permit shall not have the effect of relieving the
23 operator of any obligations that the operator has incurred under an approved reclamation plan
24 or otherwise. Where the mining operation itself has terminated, no permit shall be required in
25 order to carry out reclamation measures under the reclamation plan.

26 (d1) Permits for mining operations conducted on real property that is leased from a
27 public entity shall be issued for the life-of-lease. For purposes of this subsection, the following
28 terms apply: (i) "life-of-lease" means the duration of the lease between the owner or operator of
29 the mining operation and a public entity and (ii) "public entity" means the State, any State
30 agency, State college or university, county, municipal corporation, local board of education,
31 community college, special district, or other political subdivision of the State. Termination of a
32 permit shall not have the effect of relieving the operator of any obligations that the operator has
33 incurred under an approved reclamation plan or otherwise. Where the mining operation itself
34 has terminated, no permit shall be required in order to carry out reclamation measures under the
35 reclamation plan."

36 **SECTION 17.(b)** G.S. 74-51 reads as rewritten:

37 "**§ 74-51. Permits – Application, granting, conditions.**

38 ...

39 (c) If the Department determines, based on public comment relevant to the provisions
40 of this Article, that significant public interest exists, the Department shall conduct a public
41 hearing on any application for a new mining permit or for a modification of a mining permit to
42 add land to the permitted area, as defined in G.S. 74-50(b). The hearing shall be held before the
43 Department reaches a final decision on the application, and in making its determination, the
44 Department shall give full consideration to all comments submitted at the public hearing. The
45 public hearing shall be held within 60 days of the end of the 30-day period within which any
46 requests for the public hearing shall be made. A public hearing shall not be required for a
47 modification of a mining permit to extend the duration of the permit to a life-of-site, or
48 life-of-lease, pursuant to 74-50(d) or (d1), respectively.

49 (d) The Department may deny the permit upon finding:

50 ...

1 (7) That the applicant or any parent, subsidiary, or other affiliate of the applicant
 2 or parent has not been in substantial compliance with this Article, rules
 3 adopted under this Article, or other laws or rules of this State for the
 4 protection of the environment or has not corrected all violations that the
 5 applicant or any parent, subsidiary, or other affiliate of the applicant or
 6 parent may have committed under this Article or rules adopted under this
 7 Article and that resulted in:

- 8 a. Revocation of a permit,
- 9 b. Forfeiture of part or all of a bond or other security,
- 10 c. Conviction of a misdemeanor under G.S. 74-64,
- 11 d. Any other court order issued under G.S. 74-64, or
- 12 e. Final assessment of a civil penalty under G.S. 74-64.
- 13 f. Failure to pay the application processing fee required under
 14 G.S. 74-54.1.

15"

16 **SECTION 17.(c)** G.S. 74-52 reads as rewritten:

17 "**§ 74-52. Permits—~~Modification, renewal.~~Permit modifications.**

18 (a) Any operator engaged in mining under an operating permit may apply at any time
 19 for modification of the permit. ~~A permittee may apply for renewal of the permit at any time~~
 20 ~~during the two years prior to the expiration of the permit.~~ The application shall be in writing
 21 upon forms furnished by the Department and shall fully state the information called for. The
 22 applicant must provide the Department with any additional information necessary to satisfy
 23 application requirements. ~~The applicant is not required to resubmit information that remains~~
 24 ~~unchanged since the time of the prior application.~~ In addition, the applicant may be required to
 25 furnish any other information as may be deemed necessary by the Department in order
 26 adequately to enforce the Article.

27 (b) ~~The procedure to be followed and standards to be applied in renewing a permit shall~~
 28 ~~be the same as those for issuing a permit; provided, however, that in the absence of any~~
 29 ~~changes in legal requirements for issuance of a permit since the date on which the prior permit~~
 30 ~~was issued, the only basis for denying a renewal permit shall be an uncorrected violation of the~~
 31 ~~type listed in G.S. 74-51(7), or failure to submit an adequate reclamation plan in light of~~
 32 ~~conditions then existing.~~

33 (c) A modification under this section may affect the land area covered by the permit,
 34 the approved reclamation plan coupled with the permit, or other terms and conditions of the
 35 permit. A permit may be modified to include land neighboring the affected land, but not other
 36 lands. The reclamation plan may be modified in any manner, so long as the Department
 37 determines that the modified plan fully meets the standards set forth in G.S. 74-53 and that the
 38 modifications would be generally consistent with the bases for issuance of the original permit.
 39 Other terms and conditions may be modified only where the Department determines that the
 40 permit as modified would meet all requirements of G.S. 74-50 and [G.S.] 74-51. ~~No~~
 41 ~~modification shall extend the expiration date of any permit issued under this Article.~~

42 (d) No modification ~~or renewal~~ of a permit shall become effective until any required
 43 changes have been made in the performance bond or other security posted under the provisions
 44 of G.S. 74-54, so as to assure the performance of obligations assumed by the operator under the
 45 permit and reclamation plan."

46 **SECTION 17.(d)** G.S. 74-54 reads as rewritten:

47 "**§ 74-54. Bonds.**

48 (a) Each applicant for an operating permit, or for the ~~renewal of a~~modification of an
 49 existing permit shall, following the approval of the application, file and maintain in force a
 50 bond in favor of the State of North Carolina, executed by a surety approved by the
 51 Commissioner of Insurance, in the amount set forth below. The bond herein provided for must

1 be continuous in nature and shall remain in force until cancelled by the surety. Cancellation by
 2 the surety shall be effectuated only upon 60 days written notice thereof to the Department and
 3 to the operator.

4 (b) The applicant shall have the option of filing a separate bond for each operating
 5 permit or of filing a blanket bond covering all mining operations within the State for which the
 6 applicant holds a permit. The amount of each bond shall be based upon the area of affected land
 7 to be reclaimed under the approved reclamation plan or plans to which the bond pertains, less
 8 any area where reclamation has been completed and released from coverage by the Department,
 9 pursuant to G.S. 74-56, or based on any other criteria established by the
 10 ~~Commission~~. Commission, but shall not exceed one million dollars (\$1,000,000). The
 11 Department shall set the amount of the required bond in all cases, based upon a schedule
 12 established by the Commission.

13"

14 **SECTION 17.(e)** G.S. 74-54.1 reads as rewritten:

15 "**§ 74-54.1. Permit fees.**

16 (a) The fee schedule for the processing of permit ~~applications and permit renewals~~
 17 applications, transfers, and modifications is as follows:

	0-25 acres	26+ acres
18 New Permit Applications	\$3,750.00	\$5,000.00
19 Permit Modifications	\$750.00	\$1,000.00
20 Permit Renewals	\$750.00	\$1,000.00
21 <u>Permit Transfers</u>	<u>\$100.00</u>	<u>\$100.00</u>

22
 23 (a1) In addition to the fees set forth in subsection (a) of this section, permittees shall pay
 24 an annual operating fee of four hundred dollars (\$400.00) per permit per year as set forth in
 25 G.S. 74-55. The Department may charge a late fee of fifty dollars (\$50.00) per month per
 26 permit for every month or partial month that payment of the annual operating fee is delinquent.

27"

28 **SECTION 17.(f)** G.S. 74-55 reads as rewritten:

29 "**§ 74-55. Reclamation report.**

30 ~~(a) Within 30 days after completion or termination of mining on an area under permit or~~
 31 ~~within 30 days after each anniversary of the issuance of the operating permit, whichever is~~
 32 ~~earlier, or at such later date as may be provided by rules of the Department, and each year~~
 33 ~~thereafter until reclamation is completed and approved, the~~ By July 1 of each year, the operator
 34 shall file a report of activities completed during the preceding year on a form prescribed by the
 35 Department, which ~~shall~~ includes all of the following:

- 36 (1) Identify the mine, the operator and the permit ~~number;~~ number.
- 37 (2) State acreage disturbed by mining in the last 12-month ~~period;~~ period.
- 38 (3) State and describe amount and type of reclamation carried out in the last
 39 12-month ~~period;~~ period.
- 40 (4) Estimate acreage to be newly disturbed by mining in the next 12-month
 41 ~~period;~~ period.
- 42 (5) Provide such maps as may be specifically requested by the
 43 ~~Department.~~ Department.
- 44 (6) Include the annual operating fee pursuant to G.S. 74-54.1(a1).

45 (b) When filing the annual report, the permittee shall pay the annual operating fee for
 46 the permit to the Department until the permit has been terminated by the Department. The
 47 Department may assess and collect a monthly penalty for each annual report or annual
 48 operating fee not filed by July 31 of each year until the annual report and annual operating fee
 49 are filed with the Department. If the required annual report and operating fee, including any
 50 late payment penalties, are not filed by December 31 of each year, the Department shall give

1 written notice to the operator and shall then initiate permit revocation proceedings in
2 accordance with G.S. 74-58."

3 **SECTION 17.(g)** G.S. 74-58 reads as rewritten:

4 **"§ 74-58. Suspension or revocation of permit.**

5 (a) Whenever the Department shall have reason to believe that a violation of (i) this
6 Article, (ii) any rules adopted under this Article, or (iii) the terms and conditions of a permit,
7 including the approved reclamation plan, has taken place, it shall serve written notice of the
8 apparent violation upon the operator, specifying the facts constituting the apparent violation
9 and informing the operator of the operator's right to an informal conference with the
10 Department. The date for an informal conference shall be not less than 15 nor more than 30
11 days after the date of the notice, unless the Department and the operator mutually agree on
12 another date. If the operator or the operator's representative does not appear at the informal
13 conference, or if the Department following the informal conference finds that there has been a
14 violation, the Department may suspend the permit until the violation is corrected or may revoke
15 the permit where the violation appears to be ~~willful~~, willful, or where the permittee has failed to
16 pay the fee or late payment penalties required by G.S. 74-55(b).

17 (b) The effective date of any suspension or revocation shall be 30 days following the
18 date of the decision. The filing of a petition for a contested case under G.S. 74-61 shall stay the
19 effective date until issuance of a final decision. If the Department finds at the time of its initial
20 decision that any delay in correcting a violation would result in imminent peril to life or danger
21 to property or to the environment, it shall promptly initiate a proceeding for injunctive relief
22 under G.S. 74-64 hereof and Rule 65 of the Rules of Civil Procedure. The pendency of any
23 appeal from a suspension or revocation of a permit shall have no effect upon an action for
24 injunctive relief.

25 (c) Any operator whose permit has been suspended or revoked shall be denied a new
26 permit or ~~a renewal of an existing~~ reinstatement of the suspended permit to engage in mining
27 until the operator gives evidence satisfactory to the Department of the operator's ability and
28 intent to fully comply with the provisions of this Article and rules adopted under this Article,
29 and the terms and conditions of the permit, including the approved reclamation plan, and that
30 the operator has satisfactorily corrected all previous violations."

31 **SECTION 17.(h)** G.S. 74-60 reads as rewritten:

32 **"§ 74-60. Notice.**

33 Whenever in this Article written notice is required to be given by the Department, such
34 notice shall be mailed by registered or certified mail to the permanent address of the operator
35 set forth in his most recent application for an operating permit or for a modification ~~or renewal~~
36 of such permit. No other notice shall be required."

37 **SECTION 17.(i)** Notwithstanding G.S. 74.55(b), as enacted by subsection (f) of
38 this section, the initial annual operating fee imposed by G.S. 74-54.1, as enacted by subsection
39 (e) of this section, shall be due December 31, 2017.

40 **SECTION 17.(j)** This section becomes effective when it becomes law and applies
41 to (i) valid permits for existing mining operations issued before the date this act becomes
42 effective and (ii) any permit application for a mining operation, pending or submitted on or
43 after that date. No later than December 1, 2017, the Department shall issue life-of-site permits
44 or life-of-lease permits, as applicable, to replace valid permits for existing mining operations
45 issued before the date this act becomes effective in compliance with the provisions of this act.
46 Until such time as life-of-site permits or life-of-lease permits, as applicable, have been issued to
47 replace valid permits for existing mining operations issued before the date this act becomes
48 effective; any valid permit and its terms and conditions shall remain in effect and govern the
49 operations of the facility notwithstanding any termination date that may be included in such
50 permit.
51

1 **AUTHORIZE PRIVATE CONDEMNATION OF LAND FOR PIPELINES AND MAINS**
 2 **ORIGINATING OUTSIDE OF NORTH CAROLINA**

3 **SECTION 18.(a)** G.S. 40A-3(a) reads as rewritten:

4 **"§ 40A-3. By whom right may be exercised.**

5 (a) Private Condemnors. – For the public use or benefit, the persons or organizations
 6 listed below shall have the power of eminent domain and may acquire by purchase or
 7 condemnation property for the stated purposes and other works which are authorized by law.

8 (1) Corporations, bodies politic or persons have the power of eminent domain
 9 for the construction of railroads, power generating facilities, substations,
 10 switching stations, microwave towers, roads, alleys, access railroads,
 11 turnpikes, street railroads, plank roads, tramroads, canals, telegraphs,
 12 telephones, electric power lines, electric lights, public water supplies, public
 13 sewerage systems, flumes, bridges, and pipelines or mains ~~originating in~~
 14 ~~North Carolina~~ for the transportation of petroleum products, coal, gas,
 15 limestone or minerals. Land condemned for any liquid pipelines shall:

16 a. Not be less than 50 feet nor more than 100 feet in width; and

17 b. Comply with the provisions of G.S. 62-190(b).

18 The width of land condemned for any natural gas pipelines shall not be more
 19 than 100 feet.

20"

21 **SECTION 18.(b)** This section is effective when it becomes law and applies to
 22 takings occurring on or after that date.

23
 24 **MARINE FISHERIES COMMISSION AMENDMENTS**

25 **SECTION 20.(a)** G.S. 143B-289.52 reads as rewritten:

26 **"§ 143B-289.52. Marine Fisheries Commission – powers and duties.**

27 ...

28 (e1) A supermajority of the Commission shall be ~~six~~five members. A supermajority
 29 shall be necessary ~~to override recommendations from the Division of Marine Fisheries~~
 30 ~~regarding measures needed to end overfishing or to rebuild overfished stocks for any action~~
 31 taken under the powers and duties set forth in this section, including rule making and the
 32 regulation of fisheries under a fishery management plan.

33"

34 **SECTION 20.(b)** G.S. 143B-289.54 reads as rewritten:

35 **"§ 143B-289.54. Marine Fisheries Commission – members; appointment; term; oath;**
 36 **ethical standards; removal; compensation; staff.**

37 (a) Members, Selection. – The Marine Fisheries Commission shall consist of ~~nine~~seven
 38 members appointed by the Governor as follows:

39 (1) One person actively engaged in, or recently retired from, commercial fishing
 40 as demonstrated by currently or recently deriving at least fifty percent (50%)
 41 of annual earned income from taking and selling fishery resources in coastal
 42 fishing waters of the State. The spouse of a commercial fisherman who
 43 meets the criteria of this subdivision may be appointed under this
 44 subdivision.

45 (2) One person actively engaged in, or recently retired from, commercial fishing
 46 as demonstrated by currently or recently deriving at least fifty percent (50%)
 47 of annual earned income from taking and selling fishery resources in coastal
 48 fishing waters of the State. The spouse of a commercial fisherman who
 49 meets the criteria of this subdivision may be appointed under this
 50 subdivision.

- 1 (3) One person actively connected with, and experienced as, a licensed fish
2 dealer or in seafood processing or distribution as demonstrated by deriving
3 at least fifty percent (50%) of annual earned income from activities
4 involving the buying, selling, processing, or distribution of seafood landed in
5 this State. The spouse of a person qualified under this subdivision may be
6 appointed provided that the spouse is actively involved in the qualifying
7 business.
- 8 (4) One person actively engaged in recreational sports fishing in coastal waters
9 in this State. An appointee under this subdivision may not derive more than
10 ten percent (10%) of annual earned income from sports fishing activities.
- 11 (5) One person actively engaged in recreational sports fishing in coastal waters
12 in this State. An appointee under this subdivision may not derive more than
13 ten percent (10%) of annual earned income from sports fishing activities.
- 14 (6) One person actively engaged in the sports fishing industry as demonstrated
15 by deriving at least fifty percent (50%) of annual earned income from selling
16 goods or services in this State. The spouse of a person qualified under this
17 subdivision may be appointed provided that the spouse is actively involved
18 in the qualifying business.
- 19 ~~(7) One person having general knowledge of and experience related to subjects~~
20 ~~and persons regulated by the Commission.~~
- 21 ~~(8) One person having general knowledge of and experience related to subjects~~
22 ~~and persons regulated by the Commission.~~
- 23 (9) One person who is a fisheries scientist having special training and expertise
24 in marine and estuarine fisheries biology, ecology, population dynamics,
25 water quality, habitat protection, or similar knowledge. A person appointed
26 under this subdivision may not receive more than ten percent (10%) of
27 annual earned income from either the commercial or sports fishing
28 industries, including the processing and distribution of seafood.

29 (b) Residential Qualifications. – For purposes of providing regional representation on
30 the Commission, the following three coastal regions of the State are designated: (i) Northeast
31 Coastal Region comprised of Bertie, Camden, Chowan, Currituck, Dare, Gates, Halifax,
32 Hertford, Martin, Northampton, Pasquotank, Perquimans, Tyrrell, and Washington Counties,
33 (ii) Central Coastal Region comprised of Beaufort, Carteret, Craven, Hyde, Jones, and Pamlico
34 Counties; and (iii) Southeast Coastal Region comprised of Bladen, Brunswick, Columbus, New
35 Hanover, Onslow, and Pender Counties. Persons appointed under subdivisions (1), (2), (3), ~~(4),~~
36 ~~and (8)~~ and (4) of subsection (a) of this section shall be residents of one of the coastal regions of
37 the State. The membership of the Commission shall include at least one person who is a
38 resident of each of the three coastal regions of the State.

39 (c) Additional Considerations. – In making appointments to the Commission, the
40 Governor shall provide for appropriate representation of women and minorities on the
41 Commission.

42 (d) Terms. – The term of office of members of the Commission is three years. A
43 member may be reappointed to any number of successive three-year terms. Upon the expiration
44 of a three-year term, a member shall continue to serve until a successor is appointed and duly
45 qualified as provided by G.S. 128-7. The term of members appointed under subdivisions ~~(4),~~
46 ~~(4), and (7)~~ (1) and (4) of subsection (a) of this section shall expire on 30 June of years evenly
47 divisible by three. The term of members appointed under subdivisions ~~(2), (5), and (8)~~ (2) and
48 (5) of subsection (a) of this section shall expire on 30 June of years that precede by one year
49 those years that are evenly divisible by three. The term of members appointed under
50 subdivisions (3), (6), and (9) of subsection (a) of this section shall expire on 30 June of years
51 that follow by one year those years that are evenly divisible by three.

1"

2 **SECTION 20.(c)** G.S. 113-182.1(e1) reads as rewritten:

3 "(e1) If the Secretary determines that it is in the interest of the long-term viability of a
4 fishery, the Secretary may authorize the Commission to develop expedited temporary
5 management measures to supplement an existing Fishery Management Plan pursuant to this
6 subsection. Management measures considered in a supplement shall be strictly limited to those
7 management strategies contained in the original fishery management plan or subsequent
8 amendments to the plan adopted by the Marine Fisheries Commission and shall not include
9 management measures that either (i) were not originally developed in accordance with this
10 section or (ii) result in severe curtailment of the usefulness or value of equipment as provided
11 by G.S. 113-221(d). Development of temporary management measures pursuant to this
12 subsection is exempt from subsections (c), (c1), and (e) of this section and the Priority List,
13 Schedule, and guidance criteria established by the Marine Fisheries Commission under
14 G.S. 143B-289.52. During the next review period for a Fishery Management Plan
15 supplemented pursuant to this subsection, the Commission shall either incorporate the
16 temporary management measures into the revised Fishery Management Plan or the temporary
17 management measures shall expire on the date the revised Fishery Management Plan is
18 adopted."

19
20 **AMEND MITIGATION SERVICES LAW**

21 **SECTION 20.1.** G.S. 143-214.12 reads as rewritten:

22 "**§ 143-214.12. Division of Mitigation Services: Ecosystem Restoration Fund.**

23 (a) Ecosystem Restoration Fund. – The Ecosystem Restoration Fund is established as a
24 nonreverting fund within the Department. The Fund shall be treated as a special trust fund and
25 shall be credited with interest by the State Treasurer pursuant to G.S. 147-69.2 and
26 G.S. 147-69.3. The Ecosystem Restoration Fund shall provide a repository for monetary
27 contributions and donations or dedications of interests in real property to promote projects for
28 the restoration, enhancement, preservation, or creation of wetlands and riparian areas and for
29 payments made in lieu of compensatory mitigation as described in subsection (b) of this
30 section. No funds shall be expended from this Fund for any purpose other than those directly
31 contributing to the acquisition, perpetual maintenance, enhancement, restoration, or creation of
32 ~~wetlands and~~ wetlands, streams, and riparian areas in accordance with the basinwide plan as
33 described in G.S. 143-214.10. The cost of acquisition includes a payment in lieu of ad valorem
34 taxes required under G.S. 146-22.3 when the Department is the State agency making the
35 acquisition.

36 (a1) The Department may distribute funds from the Ecosystem Restoration Fund directly
37 to a federal or State agency, a local government, or a private, nonprofit conservation
38 organization to acquire, manage, and maintain real property or an interest in real property for
39 the purposes set out in subsection (a) of this section. ~~A recipient of funds under this subsection~~
40 ~~shall grant a conservation easement in the real property or interest in real property acquired~~
41 ~~with the funds to the Department in a form that is acceptable to the Department.~~ A recipient of
42 funds under this subsection that acquires a conservation easement or interest in real property
43 appurtenant to a restoration project delivered to the Division of Mitigation Services may
44 transfer the conservation easement or interest in real property to a federal or State agency, a
45 local government, or a private, nonprofit conservation organization approved by the Division of
46 Mitigation Services. The Department may convey real property or an interest in real property
47 that has been acquired under the Division of Mitigation Services to a federal or State agency, a
48 local government, or a private, nonprofit conservation organization approved by the Division of
49 Mitigation Services to acquire, manage, and maintain real property or an interest in real
50 property for the purposes set out in subsection (a) of this section. ~~A~~ When a grantee of real
51 property or an interest in real property under this subsection shall grant grants a conservation

1 easement in the real property or interest in real property to ~~the Department~~ a federal or State
2 agency, a local government, or a private, nonprofit conservation organization approved by the
3 Division of Mitigation Services, the grant shall be made in a form that is acceptable to the
4 Department.

5 (b) Authorized Methods of Payment. – A person subject to a permit or authorization
6 issued by the United States Army Corps of Engineers under 33 U.S.C. § 1344 may contribute
7 to the Division of Mitigation Services in order to comply with conditions to, or terms of, the
8 permit or authorization if participation in the Division of Mitigation Services will meet the
9 mitigation requirements of the United States Army Corps of Engineers. The Department shall,
10 at the discretion of the applicant, accept payment into the Ecosystem Restoration Fund in lieu
11 of other compensatory mitigation requirements of any authorizations issued by the United
12 States Army Corps of Engineers under 33 U.S.C. § 1344 if the contributions will meet the
13 mitigation requirements of the United States Army Corps of Engineers. Payment may be made
14 in the form of monetary contributions according to a fee schedule established by the
15 Environmental Management Commission or in the form of donations of real property provided
16 that the property is approved by the Department as a suitable site consistent with the basinwide
17 wetlands restoration plan.

18 (c) Accounting of Payments. – The Department shall provide an itemized statement that
19 accounts for each payment into the Fund. The statement shall include the expenses and
20 activities financed by the payment."
21

22 SEVERABILITY CLAUSE AND EFFECTIVE DATE

23 **SECTION 21.(a)** If any section or provision of this act is declared unconstitutional
24 or invalid by the courts, it does not affect the validity of this act as a whole or any part other
25 than the part declared to be unconstitutional or invalid.

26 **SECTION 21.(b)** Except as otherwise provided, this act is effective when it
27 becomes law.