

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2017

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SENATE BILL 469
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PROPOSED HOUSE COMMITTEE SUBSTITUTE S469-PCS45463-SB-28

Short Title: Amend Environmental Laws - 4.

(Public)

Sponsors:

Referred to:

March 30, 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 **CONSERVE MUNICIPAL SOLID WASTE LANDFILL CAPACITY**

6 **SECTION 1.** G.S. 130A-309.09B(a) reads as rewritten:

7 "(a) Each unit of local government shall establish and maintain a solid waste reduction
8 program. The following requirements shall apply:

9 (1) Demolition debris consisting of used asphalt or used asphalt mixed with dirt,
10 sand, gravel, rock, concrete, or similar nonhazardous material may be used
11 as fill and need not be disposed of in a permitted landfill or solid waste
12 disposal facility, provided that demolition debris may not be placed in the
13 waters of the State or at or below the seasonal high water table.

14 (2) Repealed by Session Laws 1991, c. 621, s. 8.

15 (3) Units of local government are encouraged to separate marketable plastics,
16 glass, metal, and all grades of paper for recycling prior to final disposal and
17 are further encouraged to recycle yard trash and other organic solid waste
18 into compost available for agricultural and other acceptable uses.

19 (4) Notwithstanding G.S. 130A-291(b), units of local government shall not, by
20 ordinance or otherwise, prohibit the disposal of construction and demolition
21 debris in any sanitary landfill permitted for the disposal of construction and
22 demolition debris, which landfill has a valid and operative franchise
23 agreement and is otherwise properly permitted pursuant to G.S. 130A-294."

24
25 **WASTEWATER/SEPTIC RULES AND PERMITTING MODIFICATIONS**

26 **SECTION 2.(a)** G.S. 130A-334(9a) reads as rewritten:

27 "(9a) "Repair" means the extension, alteration, replacement, or relocation of
28 existing components of a wastewater system. Replacement of a damaged
29 distribution device by an on-site wastewater contractor certified under
30 Article 5 of Chapter 90A of the General Statutes shall not constitute a repair
31 to a permitted wastewater system."

32 **SECTION 2.(b)** G.S. 130A-337 reads as rewritten:

33 **"§ 130A-337. Inspection; operation permit required.**

34 (a) No system of wastewater collection, treatment and disposal shall be covered or
35 placed into use by any person until an inspection by the local health department has determined



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1 that the system has been installed or repaired in accordance with any conditions of the
2 improvement permit, the rules, and this Article.

3 (b) Upon determining that the system is properly installed or ~~repaired and that the~~
4 ~~system is capable of being operated in accordance with the conditions of the improvement~~
5 ~~permit, the rules, this Article and any conditions to be imposed in the operation permit, as~~
6 ~~applicable, repaired, and upon the written release of an on-site wastewater contractor certified~~
7 ~~under Article 5 of Chapter 90A of the General Statutes that the system has been installed or~~
8 ~~repaired as per the conditions of the improvement permit and authorization for wastewater~~
9 ~~system construction, the local health department shall issue an operation permit-permit, along~~
10 ~~with any conditions imposed in the operation permit, authorizing the residence, place of~~
11 ~~business or place of public assembly to be occupied and for the system to be placed into use or~~
12 ~~reuse. Subsequent findings or interpretation of rules of the local board of health by the local~~
13 ~~health department outside the initial site evaluation and conditions of the initial improvement~~
14 ~~permit and authorization for wastewater system construction shall not be used to deny issuance~~
15 ~~of the operation permit.~~

16"

17 **SECTION 2.(c)** G.S. 130A-335 reads as rewritten:

18 **"§ 130A-335. Wastewater collection, treatment and disposal; rules.**

19 ...

20 (a1) Any proposed site for a residence, place of business, or a place of public assembly
21 located in an area that is not served by an approved wastewater system for which a new
22 wastewater system is proposed or repair is necessary for compliance may be evaluated for soil
23 conditions and site features by a ~~licensed soil scientist or licensed geologist. person licensed~~
24 ~~pursuant to Chapter 89F of the General Statutes as a licensed soil scientist.~~ For purposes of this
25 subsection, "site features" include topography and landscape position; soil characteristics
26 (morphology); soil wetness; soil depth; restrictive horizons; available space; and other
27 applicable factors that involve accepted public health principles. A person licensed pursuant to
28 Chapter 89E of the General Statutes as a licensed geologist may evaluate the proposed site or
29 repair area, as applicable, for geologic and hydrogeologic conditions.

30 (a2) Evaluations for soil conditions and site features conducted by a licensed soil
31 scientist or licensed geologist for special hydrologic conditions pursuant to subsection (a1) of
32 this section shall be approved by the applicable permitting authorities under G.S. 130A-336 and
33 G.S. 130A-336.1 to produce the design and construction features of the new proposed
34 wastewater system or the proposed repair project for an existing wastewater system, including
35 to address any special hydrologic conditions that may be required under the applicable rules for
36 an authorization to construct or for permitting, provided both of the following conditions are
37 met:

- 38 (1) The evaluation of soil conditions, site features, or special hydrologic
39 conditions satisfies all requirements of this Article. The evaluation shall not
40 cover areas outside the scope of the applicable license.
41 (2) A licensed soil scientist or licensed geologist conducting such evaluation
42 maintains an errors and omissions liability insurance policy in an amount
43 commensurate with the risk that is issued by a licensed insurer. Liability
44 shall only attach for areas within the scope of work of the applicable license.

45 ...

46 (c) A wastewater system subject to approval under rules of the Commission shall be
47 reviewed and approved under rules of a local board of health in the following circumstances:

- 48 (1) The local board of health, on its own motion, has requested the Department
49 to review its proposed rules concerning wastewater systems; and
50 (2) The local board of health has adopted by reference the wastewater system
51 rules adopted by the Commission, with any more stringent modifications or

1 additions deemed necessary by the local board of health to protect the public
 2 ~~health;health. Local boards of health shall use historical experience to~~
 3 ~~establish modifications or additions to rules established by the Commission;~~
 4 and

- 5 (3) The Department has found that the ~~rules—rules, including modifications or~~
 6 ~~additions to the Commission's rules,~~ of the local board of health ~~concerning~~
 7 ~~wastewater collection, treatment and disposal systems are at least as~~
 8 ~~stringent as rules adopted by the Commission and are sufficient and~~
 9 ~~necessary to safeguard the public health.~~

10 ...

11 (e) The rules of the Commission and the rules of the local board of health shall address
 12 at least the following: Wastewater characteristics; Design unit; Design capacity; Design
 13 volume; Criteria for the design, installation, operation, maintenance and performance of
 14 wastewater collection, treatment and disposal systems; Soil morphology and drainage;
 15 Topography and landscape position; Depth to seasonally high water table, rock and water
 16 impeding formations; Proximity to water supply wells, shellfish waters, estuaries, marshes,
 17 wetlands, areas subject to frequent flooding, streams, lakes, swamps and other bodies of surface
 18 or groundwaters; Density of wastewater collection, treatment and disposal systems in a
 19 geographical area; Requirements for issuance, suspension and revocation of permits; and Other
 20 factors which affect the effective operation and performance of wastewater collection,
 21 treatment and disposal systems. The rules regarding required design capacity and required
 22 design volume for wastewater systems shall provide that exceptions may be granted upon a
 23 showing that a system is adequate to meet actual daily water consumption. The rules of the
 24 Commission and the rules of a local board of health shall not (i) establish limitations on depths
 25 to suitable, provisionally suitable, or unsuitable soils or saprolite, or limitations based solely on
 26 gallons per day or (ii) require sufficient available space for a replacement wastewater system of
 27 480 gallons per day or less of domestic wastewater.

28"

29 **SECTION 2.(d)** G.S. 130A-336.1 reads as rewritten:

30 **"§ 130A-336.1. Alternative process for wastewater system approvals.**

31 ...

32 (e) Site Design, Construction, and Activities.

- 33 (1) The professional engineer designing the proposed wastewater system shall
 34 use recognized principles and practices of engineering and applicable rules
 35 of the Commission in the calculations and design of the wastewater system.
 36 The investigations and findings of the professional engineer shall include, at
 37 a minimum, the information required in rules adopted by the Commission
 38 pursuant to G.S. 130A-335(e). The professional engineer may, at the
 39 engineer's discretion, employ pretreatment technologies not yet approved in
 40 this State.
- 41 (2) Notwithstanding G.S. 130A-335(a1), the owner of the proposed wastewater
 42 system shall employ ~~either a licensed soil scientist or a geologist, licensed~~
 43 ~~pursuant to Chapter 89E of the General Statutes and who has applicable~~
 44 ~~professional experience, to evaluate soil conditions and site features.~~ a person
 45 licensed pursuant to Chapter 89F of the General Statutes as a licensed soil
 46 scientist to conduct soil and site evaluations and, as applicable, a person
 47 licensed pursuant to Chapter 89E of the General Statutes as a licensed
 48 geologist to evaluate geologic and hydrogeologic conditions.

49"

50 **SECTION 2.1.(a)** Until the effective date of the revised permanent rule that the
 51 Commission for Public Health is required to adopt pursuant to subsection (c) of this section, the

1 Commission and any local board of health shall implement 15A NCAC 18A .1945 (Available
2 Space) as provided in subsection (b) of this section.

3 **SECTION 2.1.(b)** Notwithstanding 15A NCAC 18A .1945, the Commission and
4 the rules of a local board of health shall not require sufficient available space for a replacement
5 wastewater system of 480 gallons per day or less of domestic wastewater.

6 **SECTION 2.1.(c)** The Commission for Public Health shall adopt rules to amend
7 15A NCAC 18A .1945 consistent with subsection (b) of this section. Notwithstanding
8 G.S. 150B-19(4), the rule adopted by the Commission pursuant to this section shall be
9 substantively identical to the provisions of subsection (b) of this section. Rules adopted
10 pursuant to this section are not subject to Part 3 of Article 2A of Chapter 150B of the General
11 Statutes. Rules adopted pursuant to this section shall become effective as provided in
12 G.S. 150B-21.3(b1) as though 10 or more written objections had been received as provided by
13 G.S. 150B-21.3(b2).

14 **SECTION 2.1.(d)** This section is effective when it becomes law. Subsection (b) of
15 this section expires on the date that rules adopted pursuant to subsection (c) of this section
16 become effective.

17 **SECTION 2.2.(a)** Until the effective date of the revised permanent rule that the
18 Commission for Public Health is required to adopt pursuant to subsection (c) of this section, the
19 Commission and any local board of health shall implement 15A NCAC 18A .1943 (Soil Depth)
20 as provided in subsection (b) of this section.

21 **SECTION 2.2.(b)** Notwithstanding 15A NCAC 18A .1943, the Commission and
22 the rules of a local board of health shall not establish limitations on depths to suitable,
23 provisionally suitable, or unsuitable soils or saprolite, or limitations based solely on gallons per
24 day.

25 **SECTION 2.2.(c)** The Commission for Public Health shall adopt rules to amend
26 15A NCAC 18A .1943 consistent with subsection (b) of this section. Notwithstanding
27 G.S. 150B-19(4), the rule adopted by the Commission pursuant to this section shall be
28 substantively identical to the provisions of subsection (b) of this section. Rules adopted
29 pursuant to this section are not subject to Part 3 of Article 2A of Chapter 150B of the General
30 Statutes. Rules adopted pursuant to this section shall become effective as provided in
31 G.S. 150B-21.3(b1) as though 10 or more written objections had been received as provided by
32 G.S. 150B-21.3(b2).

33 **SECTION 2.2.(d)** This section is effective when it becomes law. Subsection (b) of
34 this section expires on the date that rules adopted pursuant to subsection (c) of this section
35 become effective.

36 37 **REPORT ON RULES FOR REMEDIATION OF CERTAIN UNDERGROUND** 38 **STORAGE TANKS**

39 **SECTION 3.(a)** The Environmental Management Commission shall adopt
40 temporary rules implementing Section 14.16B of S.L. 2015-241 no later than October 1, 2017.
41 Notwithstanding G.S. 150B-21.1(d), the temporary rules shall remain in effect until the
42 effective date of the permanent rule adopted to replace the temporary rule.

43 **SECTION 3.(b)** The Commission shall report regarding the status of the rule
44 making required by this act and by Section 14.16B of S.L. 2015-241 to the Fiscal Research
45 Division and the chairs of the Joint Legislative Oversight Committee on Agriculture and
46 Natural and Economic Resources no later than December 31, 2017.

47 48 **SHELLFISH ENTERPRISE AREAS**

49 **SECTION 4.(a)** G.S. 113-201 is amended by adding a new subsection to read:

50 "(d) The Marine Fisheries Commission may adopt rules to establish Shellfish
51 Aquaculture Enterprise Areas to facilitate shellfish aquaculture opportunities through advanced

1 siting and preapprovals from relevant federal and State agencies. The Secretary shall only issue
2 nontransferrable leases within designated Shellfish Aquaculture Enterprise Areas. Any leased
3 parcel within a Shellfish Aquaculture Enterprise Area that is relinquished or terminated shall
4 revert to the State and be made available to other applicants."

5 **SECTION 4.(b)** G.S. 113-201.1 is amended by adding a new subdivision to read:

6 "(3a) "Shellfish Aquaculture Enterprise Area" means an area designated and
7 permitted by the Department that is subdivided into parcels and made
8 available for shellfish aquaculture leasing."

10 MARINE FISHERIES CLARIFYING CHANGES

11 **SECTION 5.(a)** G.S. 113-203 reads as rewritten:

12 "§ 113-203. Transplanting of oysters and clams.

13 ...
14 (a2) It is unlawful to do any of the following:

- 15 (1) Transplant oysters or clams taken from public grounds to private beds except
16 when lawfully taken during open season and transported directly to a private
17 bed in accordance with rules of the Marine Fisheries Commission.
- 18 (2) Transplant oysters or clams taken from permitted aquaculture operations to
19 private beds except from waters in the approved classification.
- 20 (3) Transplant oysters or clams from public grounds or permitted aquaculture
21 operations utilizing waters in the prohibited, restricted or conditionally
22 approved classification to private beds except when the transplanting is done
23 in accordance with the provisions of this section and implementing rules.

24 (a3) ~~It~~ Unless the Secretary determines that the nursery of shellfish in an area will
25 present a risk to public health, it is lawful to transplant seed oysters or seed clams taken from
26 permitted aquaculture operations that use waters in the prohibited, restricted or conditionally
27 approved classification to private beds pursuant to an Aquaculture Seed Transplant Permit
28 issued by the Secretary that sets times during which transplant is permissible and other
29 reasonable restrictions imposed by the Secretary under either of the following circumstances:

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

34"

35 **SECTION 5.(b)** G.S. 113-168.4(b) reads as rewritten:

36 "(b) Except as otherwise provided in this section, it is unlawful for any person licensed
37 under this Article to sell fish taken outside the territorial waters of the State or to sell fish taken
38 from coastal fishing waters. A person licensed under this Article may sell fish taken outside the
39 territorial waters of the State or sell fish taken from coastal fishing waters under any of the
40 following circumstances:

- 41 (1) The sale is to a fish dealer licensed under G.S. 113-169.3.
- 42 (2) The sale is to the public and the seller is a licensed fish dealer under
43 G.S. 113-169.3.
- 44 (3) The sale is of ~~oysters or clams from~~ fish reared in a hatchery or aquaculture
45 operation to the holder of an Aquaculture Operation Permit, an Under Dock
46 Culture Permit, or a shellfish cultivation lease for further grow out."

48 RIVER HERRING FISHERIES MANAGEMENT

49 **SECTION 6.** The Division of Marine Fisheries shall review its Fishery
50 Management Plan for river herring (blueback herring, *Alosa aestivalis*, and alewife, *Alosa*
51 *pseudoharengus*) and report no later than December 15, 2017, to the Joint Legislative Oversight

1 Committee on Agriculture and Natural and Economic Resources regarding the continuing
2 validity and scientific basis for the continued status of both species as "overfished." If the
3 Division does not have an adequate scientific basis to review the status of both species, then the
4 report should include cost estimates for the restoration of spawning and nursery area surveys
5 and age composition work for all coastal streams within the State that historically contained
6 significant river herring fisheries.

7
8 **STATE PARTICIPATION IN SITING OF ATLANTIC INTRACOASTAL**
9 **WATERWAY DREDGED MATERIAL DISPOSAL EASEMENTS**

10 **SECTION 7.(a)** The Division of Water Resources of the Department of
11 Environmental Quality and the State Property Office are authorized to negotiate with
12 appropriate agencies of the federal government an agreement for the State to assume
13 responsibility for acquiring dredged material easement sites appropriate for maintenance
14 dredging of the Atlantic Intracoastal Waterway between Beaufort Inlet and the border with the
15 Commonwealth of Virginia in exchange for the reduction in size and possible change in
16 location of dredged material disposal easement sites currently held by the federal government.
17 The agreement shall provide for the federal government to relinquish certain dredged material
18 disposal easements that are excess to maintenance project needs in exchange for the acquisition
19 and furnishing to the federal government other easements that are sited and permitted by the
20 Division of Coastal Management and acquired by the State Property Office under its powers of
21 condemnation or otherwise using such funds as may be appropriated by the General Assembly
22 from the Shallow Draft Navigation Channel Dredging and Aquatic Weed Fund established
23 under Part 8B of Article 21 of Chapter 143 of the General Statutes for that purpose.

24 **SECTION 7.(b)** G.S. 143-215.73F(b) is amended by adding a new subdivision to
25 read:

26 "(4) To provide funding for siting and acquisition of dredged disposal easement
27 sites associated with the maintenance of the Atlantic Intracoastal Waterway
28 north of Beaufort Inlet and south of the border with the Commonwealth of
29 Virginia, under a Memorandum of Agreement between the State and the
30 federal government."

31
32 **SEVERABILITY CLAUSE AND EFFECTIVE DATE**

33 **SECTION 8.(a)** If any section or provision of this act is declared unconstitutional
34 or invalid by the courts, it does not affect the validity of this act as a whole or any part other
35 than the part declared to be unconstitutional or invalid.

36 **SECTION 8.(b)** Except as otherwise provided, this act is effective when it
37 becomes law.