

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

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HOUSE BILL 279
Committee Substitute Favorable 4/18/13
Committee Substitute #2 Favorable 4/24/13

Short Title: Transfer Environmental Permits.

(Public)

Sponsors:

Referred to:

March 13, 2013

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES TO TRANSFER CERTAIN ENVIRONMENTAL PERMITS ASSOCIATED WITH PROPERTY DEVELOPMENT WHEN THE ORIGINAL PROPERTY OWNER IS UNWILLING OR UNABLE TO AGREE TO THE PERMIT TRANSFER.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 143-214.7 is amended by adding a new subsection to read:

"§ 143-214.7. Stormwater runoff rules and programs.

...

(c5) The Department may transfer a permit issued pursuant to this section without the consent of the permit holder to a successor-owner of the property on which the permitted activity is occurring or will occur as provided in this subsection.

(1) The Department may transfer a permit if all of the following conditions are met:

a. The successor-owner of the property submits to the Department a written request for the transfer of the permit.

b. The Department finds all of the following:

1. The permit holder is one of the following:

I. A natural person who is deceased.

II. A corporation that has been dissolved.

III. A person who has been lawfully divested of title to the property on which the permitted activity is occurring or will occur.

IV. A person who has sold the property on which the permitted activity is occurring or will occur.

2. The successor-owner holds title to the property on which the permitted activity is occurring or will occur.

3. The successor-owner is the sole claimant of the right to engage in the permitted activity.

4. There will be no substantial change in the permitted activity.

(2) The permit holder shall comply with all terms and conditions of the permit until such time as the permit is transferred.

(3) The successor-owner shall comply with all terms and conditions of the permit once the permit has been transferred.



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1 (4) Notwithstanding changes to law made after the original issuance of the
2 permit, the Department may not impose new or different terms and
3 conditions in the permit without the prior express consent of the
4 successor-owner.

5 "

6 **SECTION 2.** G.S. 143-215.1 is amended by adding a new subsection to read:

7 **"§ 143-215.1. Control of sources of water pollution; permits required.**

8 ...

9 (d3) The Department may transfer a permit issued pursuant to subsection (d) of this
10 section without the consent of the permit holder to a successor-owner of the property on which
11 the permitted activity is occurring or will occur as provided in this subsection.

12 (1) The Department may transfer a permit if all of the following conditions are
13 met:

14 a. The successor-owner of the property submits to the Department a
15 written request for the transfer of the permit.

16 b. The Department finds all of the following:

17 1. The permit holder is one of the following:

18 I. A natural person who is deceased.

19 II. A corporation that has been dissolved.

20 III. A person who has been lawfully divested of title to the
21 property on which the permitted activity is occurring
22 or will occur.

23 IV. A person who has sold the property on which the
24 permitted activity is occurring or will occur.

25 2. The successor-owner holds title to the property on which the
26 permitted activity is occurring or will occur.

27 3. The successor-owner is the sole claimant of the right to
28 engage in the permitted activity.

29 4. There will be no substantial change in the permitted activity.

30 (2) The permit holder shall comply with all terms and conditions of the permit
31 until such time as the permit is transferred.

32 (3) The successor-owner shall comply with all terms and conditions of the
33 permit once the permit has been transferred.

34 (4) Notwithstanding changes to law made after the original issuance of the
35 permit, the Department may not impose new or different terms and
36 conditions in the permit without the prior express consent of the
37 successor-owner.

38 "

39 **SECTION 3.** G.S. 113A-54.1 reads as rewritten:

40 **"§ 113A-54.1. Approval of erosion control plans.**

41 (a) A draft erosion and sedimentation control plan must contain the applicant's address
42 and, if the applicant is not a resident of North Carolina, designate a North Carolina agent for
43 the purpose of receiving notice from the Commission or the Secretary of compliance or
44 noncompliance with the plan, this Article, or any rules adopted pursuant to this Article. Except
45 as provided in subsection (a1) of this section, if the applicant is not the owner of the land to be
46 disturbed, the draft erosion and sedimentation control plan must include the owner's written
47 consent for the applicant to submit a draft erosion and sedimentation control plan and to
48 conduct the anticipated land-disturbing activity. The Commission shall approve, approve with
49 modifications, or disapprove a draft erosion and sedimentation control plan for those
50 land-disturbing activities for which prior plan approval is required within 30 days of receipt.
51 The Commission shall condition approval of a draft erosion and sedimentation control plan

1 upon the applicant's compliance with federal and State water quality laws, regulations, and
2 rules. Failure to approve, approve with modifications, or disapprove a completed draft erosion
3 and sedimentation control plan within 30 days of receipt shall be deemed approval of the plan.
4 If the Commission disapproves a draft erosion and sedimentation control plan or a revised
5 erosion and sedimentation control plan, it must state in writing the specific reasons that the plan
6 was disapproved. Failure to approve, approve with modifications, or disapprove a revised
7 erosion and sedimentation control plan within 15 days of receipt shall be deemed approval of
8 the plan. The Commission may establish an expiration date for erosion and sedimentation
9 control plans approved under this Article.

10 (a1) If the applicant is not the owner of the land to be disturbed and the anticipated
11 land-disturbing activity involves the construction of utility lines for the provision of water,
12 sewer, gas, telecommunications, or electrical service, the draft erosion and sedimentation
13 control plan may be submitted without the written consent of the owner of the land, so long as
14 the owner of the land has been provided prior notice of the project.

15 (b) If, following commencement of a land-disturbing activity pursuant to an approved
16 erosion and sedimentation control plan, the Commission determines that the plan is inadequate
17 to meet the requirements of this Article, the Commission may require any revision of the plan
18 that is necessary to comply with this Article. Failure to approve, approve with modifications, or
19 disapprove a revised erosion and sedimentation control plan within 15 days of receipt shall be
20 deemed approval of the plan.

21 (c) The Commission shall disapprove an erosion and sedimentation control plan if
22 implementation of the plan would result in a violation of rules adopted by the Environmental
23 Management Commission to protect riparian buffers along surface waters. The Director of the
24 Division of Energy, Mineral, and Land Resources may disapprove an erosion and
25 sedimentation control plan or disapprove a transfer of a plan under subsection (d1) of this
26 section upon finding that an applicant or a parent, subsidiary, or other affiliate of the applicant:

- 27 (1) Is conducting or has conducted land-disturbing activity without an approved
28 plan, or has received notice of violation of a plan previously approved by the
29 Commission or a local government pursuant to this Article and has not
30 complied with the notice within the time specified in the notice;
- 31 (2) Has failed to pay a civil penalty assessed pursuant to this Article or a local
32 ordinance adopted pursuant to this Article by the time the payment is due;
- 33 (3) Has been convicted of a misdemeanor pursuant to G.S. 113A-64(b) or any
34 criminal provision of a local ordinance adopted pursuant to this Article; or
- 35 (4) Has failed to substantially comply with State rules or local ordinances and
36 regulations adopted pursuant to this Article.

37 (d) In the event that an erosion and sedimentation control plan or a transfer of a plan is
38 disapproved by the Director pursuant to subsection (c) of this section, the Director shall state in
39 writing the specific reasons that the plan was disapproved. The applicant or the proposed
40 transferee may appeal the Director's disapproval of the plan to the Commission. For purposes
41 of this subsection and subsection (c) of this section, an applicant's record or a proposed
42 transferee's record may be considered for only the two years prior to the application date.

43 (d1) The Department may transfer an erosion and sedimentation control plan approved
44 pursuant to this section without the consent of the plan holder to a successor-owner of the
45 property on which the permitted activity is occurring or will occur as provided in this
46 subsection.

- 47 (1) The Department may transfer a plan if all of the following conditions are
48 met:
 - 49 a. The successor-owner of the property submits to the Department a
50 written request for the transfer of the plan and an authorized
51 statement of financial responsibility and ownership.

1 **b.** The Department finds all of the following:

2 1. The plan holder is one of the following:

3 I. A natural person who is deceased.

4 II. A corporation that has been dissolved.

5 III. A person who has been lawfully divested of title to the
6 property on which the permitted activity is occurring
7 or will occur.

8 IV. A person who has sold the property on which the
9 permitted activity is occurring or will occur.

10 2. The successor-owner holds title to the property on which the
11 permitted activity is occurring or will occur.

12 3. The successor-owner is the sole claimant of the right to
13 engage in the permitted activity.

14 4. There will be no substantial change in the permitted activity.

15 (2) The plan holder shall comply with all terms and conditions of the plan until
16 such time as the plan is transferred.

17 (3) The successor-owner shall comply with all terms and conditions of the plan
18 once the plan has been transferred.

19 (4) Notwithstanding changes to law made after the original issuance of the plan,
20 the Department may not impose new or different terms and conditions in the
21 plan without the prior express consent of the successor-owner. Nothing in
22 this subsection shall prevent the Commission from requiring a revised plan
23 pursuant to G.S. 113A-54.1(b).

24 (e) The landowner, the financially responsible party, or the landowner's or the
25 financially responsible party's agent shall perform an inspection of the area covered by the plan
26 after each phase of the plan has been completed and after establishment of temporary ground
27 cover in accordance with G.S. 113A-57(2). The person who performs the inspection shall
28 maintain and make available a record of the inspection at the site of the land-disturbing activity.
29 The record shall set out any significant deviation from the approved erosion control plan,
30 identify any measures that may be required to correct the deviation, and document the
31 completion of those measures. The record shall be maintained until permanent ground cover
32 has been established as required by the approved erosion and sedimentation control plan. The
33 inspections required by this subsection shall be in addition to inspections required by
34 G.S. 113A-61.1."

35 **SECTION 4.** G.S. 113A-61 reads as rewritten:

36 **"§ 113A-61. Local approval of erosion and sedimentation control plans.**

37 (a) For those land-disturbing activities for which prior approval of an erosion and
38 sedimentation control plan is required, the Commission may require that a local government
39 that administers an erosion and sedimentation control program approved under G.S. 113A-60
40 require the applicant to submit a copy of the erosion and sedimentation control plan to the
41 appropriate soil and water conservation district or districts at the same time the applicant
42 submits the erosion and sedimentation control plan to the local government for approval. The
43 soil and water conservation district or districts shall review the plan and submit any comments
44 and recommendations to the local government within 20 days after the soil and water
45 conservation district received the erosion and sedimentation control plan or within any shorter
46 period of time as may be agreed upon by the soil and water conservation district and the local
47 government. Failure of a soil and water conservation district to submit comments and
48 recommendations within 20 days or within agreed upon shorter period of time shall not delay
49 final action on the proposed plan by the local government.

50 (b) Local governments shall review each erosion and sedimentation control plan
51 submitted to them and within 30 days of receipt thereof shall notify the person submitting the

1 plan that it has been approved, approved with modifications, or disapproved. A local
2 government shall only approve a plan upon determining that it complies with all applicable
3 State and local regulations for erosion and sedimentation control.

4 (b1) A local government shall condition approval of a draft erosion and sedimentation
5 control plan upon the applicant's compliance with federal and State water quality laws,
6 regulations, and rules. A local government shall disapprove an erosion and sedimentation
7 control plan if implementation of the plan would result in a violation of rules adopted by the
8 Environmental Management Commission to protect riparian buffers along surface waters. A
9 local government may disapprove an erosion and sedimentation control plan or disapprove a
10 transfer of a plan under subsection (b3) of this section upon finding that an applicant or a
11 parent, subsidiary, or other affiliate of the applicant:

- 12 (1) Is conducting or has conducted land-disturbing activity without an approved
13 plan, or has received notice of violation of a plan previously approved by the
14 Commission or a local government pursuant to this Article and has not
15 complied with the notice within the time specified in the notice.
- 16 (2) Has failed to pay a civil penalty assessed pursuant to this Article or a local
17 ordinance adopted pursuant to this Article by the time the payment is due.
- 18 (3) Has been convicted of a misdemeanor pursuant to G.S. 113A-64(b) or any
19 criminal provision of a local ordinance adopted pursuant to this Article.
- 20 (4) Has failed to substantially comply with State rules or local ordinances and
21 regulations adopted pursuant to this Article.

22 (b2) In the event that an erosion and sedimentation control plan or a transfer of a plan is
23 disapproved by a local government pursuant to subsection (b1) of this section, the local
24 government shall so notify the Director of the Division of Energy, Mineral, and Land
25 Resources within 10 days of the disapproval. The local government shall advise the applicant
26 or the proposed transferee and the Director in writing as to the specific reasons that the plan
27 was disapproved. Notwithstanding the provisions of subsection (c) of this section, the applicant
28 may appeal the local government's disapproval of the plan directly to the Commission. For
29 purposes of this subsection and subsection (b1) of this section, an applicant's record or the
30 proposed transferee's record may be considered for only the two years prior to the application
31 date.

32 (b3) A local government administering an erosion and sedimentation control program
33 may transfer an erosion and sedimentation control plan approved pursuant to this section
34 without the consent of the plan holder to a successor-owner of the property on which the
35 permitted activity is occurring or will occur as provided in this subsection.

- 36 (1) The local government may transfer a plan if all of the following conditions
37 are met:
 - 38 a. The successor-owner of the property submits to the local government
39 a written request for the transfer of the plan and an authorized
40 statement of financial responsibility and ownership.
 - 41 b. The local government finds all of the following:
 - 42 1. The plan holder is one of the following:
 - 43 I. A natural person who is deceased.
 - 44 II. A corporation that has been dissolved.
 - 45 III. A person who has been lawfully divested of title to the
46 property on which the permitted activity is occurring
47 or will occur.
 - 48 IV. A person who has sold the property on which the
49 permitted activity is occurring or will occur.
 - 50 2. The successor-owner holds title to the property on which the
51 permitted activity is occurring or will occur.

- 1 3. The successor-owner is the sole claimant of the right to
2 engage in the permitted activity.
3 4. There will be no substantial change in the permitted activity.
4 (2) The plan holder shall comply with all terms and conditions of the plan until
5 such time as the plan is transferred.
6 (3) The successor-owner shall comply with all terms and conditions of the plan
7 once the plan has been transferred.
8 (4) Notwithstanding changes to law made after the original issuance of the plan,
9 the local government may not impose new or different terms and conditions
10 in the plan without the prior express consent of the successor-owner.
11 Nothing in this subsection shall prevent the local government from requiring
12 a revised plan pursuant to G.S. 113A-54.1(b).
13 (c) The disapproval or modification of any proposed erosion and sedimentation control
14 plan by a local government shall entitle the person submitting the plan to a public hearing if the
15 person submits written demand for a hearing within 15 days after receipt of written notice of
16 the disapproval or modification. The hearings shall be conducted pursuant to procedures
17 adopted by the local government. If the local government upholds the disapproval or
18 modification of a proposed erosion and sedimentation control plan following the public
19 hearing, the person submitting the erosion and sedimentation control plan is entitled to appeal
20 the local government's action disapproving or modifying the plan to the Commission. The
21 Commission, by regulation, shall direct the Secretary to appoint such employees of the
22 Department as may be necessary to hear appeals from the disapproval or modification of
23 erosion and sedimentation control plans by local governments. In addition to providing for the
24 appeal of local government decisions disapproving or modifying erosion and sedimentation
25 control plans to designated employees of the Department, the Commission shall designate an
26 erosion and sedimentation control plan review committee consisting of three members of the
27 Commission. The person submitting the erosion and sedimentation control plan may appeal the
28 decision of an employee of the Department who has heard an appeal of a local government
29 action disapproving or modifying an erosion and sedimentation control plan to the erosion and
30 sedimentation control plan review committee of the Commission. Judicial review of the final
31 action of the erosion and sedimentation control plan review committee of the Commission may
32 be had in the superior court of the county in which the local government is situated.
33 (d) Repealed by Session Laws 1989, c. 676, s. 4."
34 **SECTION 5.** This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

H

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HOUSE BILL 480

Short Title: Environmental Permitting Reform. (Public)

Sponsors: Representatives Millis, Moffitt, Catlin, and Hardister (Primary Sponsors).

For a complete list of Sponsors, refer to the North Carolina General Assembly Web Site.

Referred to: Environment, if favorable, Regulatory Reform.

April 1, 2013

A BILL TO BE ENTITLED

AN ACT TO PROVIDE REGULATORY CERTAINTY FOR NORTH CAROLINA BY
REQUIRING THE DEVELOPMENT OF MINIMUM DESIGN CRITERIA FOR
STORMWATER PERMITS AND EROSION AND SEDIMENTATION CONTROL
PLANS TO GUIDE REGULATORY AGENCIES IN PERMIT ISSUANCE AND PLAN
APPROVAL AND TO REFORM THE PERMITTING PROCESS TO ALLOW A
FAST-TRACK PERMITTING PROCESS FOR APPLICATIONS AND PLAN
SUBMITTALS CERTIFIED BY A PROFESSIONAL ENGINEER TO BE IN
COMPLIANCE WITH THE MINIMUM DESIGN CRITERIA.

The General Assembly of North Carolina enacts:

SECTION 1.(a) Stormwater. – The Department of Environment and Natural Resources shall develop Minimum Design Criteria for permits issued by the stormwater runoff permitting programs authorized by G.S. 143-214.7. The Minimum Design Criteria shall include all requirements for siting, site preparation, design and construction, and post-construction monitoring and evaluation necessary for the Department to issue a stormwater permit.

SECTION 1.(b) Erosion and Sedimentation Control. – The Department of Environment and Natural Resources shall develop Minimum Design Criteria for erosion and sedimentation control plans issued by the Department and local governments under the authority of Article 4 of Chapter 113A of the General Statutes. The Minimum Design Criteria shall include all requirements for siting, site preparation, design and construction, and post-construction monitoring and evaluation necessary for the Department or a local government stormwater program to approve an erosion and sedimentation control plan.

SECTION 2. In developing the Minimum Design Criteria, the Department shall consult with a technical working group that consists of industry experts, environmental engineers or consultants, relevant faculty from The University of North Carolina, and other interested stakeholders. The Department shall submit its recommendations to the Environmental Review Commission no later than March 1, 2014.

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

§ 143-214.7B. Fast-track permitting.

The Commission shall adopt rules implementing a fast-track permitting process allowing for issuance of stormwater management system permits without a technical review when the permit applicant (i) complies with the Minimum Design Criteria for stormwater management developed by the Department and (ii) submits a permit application sealed by a professional engineer."



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1 **SECTION 4.** Article 4 of Chapter 113A of the General Statutes is amended by
2 adding a new section to read:

3 **"§ 113A-68. Fast-track plan approval.**

4 The Commission shall adopt rules implementing a fast-track plan approval process
5 allowing for approval of erosion and sedimentation control plans by the Department or a local
6 erosion and sedimentation control program without a technical review when the person files a
7 plan that (i) complies with the Minimum Design Criteria for erosion and sedimentation control
8 developed by the Department and (ii) is sealed by a professional engineer."

9 **SECTION 5.(a)** The Environmental Management Commission shall adopt rules
10 implementing Section 3 of this act no later than February 1, 2014.

11 **SECTION 5.(b)** The Sedimentation Control Commission shall adopt rules
12 implementing Section 4 of this act no later than February 1, 2014.

13 **SECTION 6.** This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

H

1

HOUSE BILL 94

Short Title: Amend Environmental Laws 2013. (Public)

Sponsors: Representatives McElraft, Samuelson, and McGrady (Primary Sponsors).

For a complete list of Sponsors, refer to the North Carolina General Assembly Web Site.

Referred to: Regulatory Reform Subcommittee on Environmental, if favorable, Environment, if favorable, Finance.

February 13, 2013

A BILL TO BE ENTITLED

AN ACT TO AMEND CERTAIN ENVIRONMENTAL AND NATURAL RESOURCES LAWS TO (1) ALLOW 10-YEAR PHASE LANDFILL DEVELOPMENTS TO APPLY FOR A PERMIT TO OPERATE; AND (2) CLARIFY THE PROCESS FOR APPEALS FROM CIVIL PENALTIES ASSESSED BY A LOCAL GOVERNMENT THAT HAS ESTABLISHED AND ADMINISTERS AN EROSION AND SEDIMENTATION CONTROL PROGRAM APPROVED UNDER G.S. 113A-60 AND PROVIDE THAT CIVIL PENALTIES ASSESSED BY A LOCAL GOVERNMENT PURSUANT TO THE SEDIMENTATION POLLUTION CONTROL ACT OF 1973 SHALL BE REMITTED TO THE CIVIL PENALTY AND FORFEITURE FUND, AS RECOMMENDED BY THE ENVIRONMENTAL REVIEW COMMISSION.

The General Assembly of North Carolina enacts:

SECTION 1. Section 15.1 of S.L. 2012-187 reads as rewritten:

"SECTION 15.1. No later than July 1, 2013, the Commission for Public Health shall adopt rules to allow applicants for sanitary landfills the option to (i) apply for a permit to construct and operate a five-year phase of landfill development and apply to amend the permit to construct and operate subsequent five-year phases of landfill development; or (ii) apply for a permit to construct and operate a 10-year phase of landfill development and apply to amend the permit to construct and operate subsequent 10-year phases of landfill development, with a limited review of the permit five years after issuance of the initial permit and five years after issuance of each amendment for subsequent phases of development. No later than July 1, 2013, the Commission shall also adopt rules to allow applicants for permits for transfer stations the option to (i) apply for a permit with a five-year duration to construct and operate a transfer station; or (ii) apply for a permit with a 10-year duration to construct and operate a transfer station, with a limited review of the permit five years after issuance of the initial permit and five years after issuance of any amendment to the permit. In developing these rules, the Department of Environment and Natural Resources shall examine the current fee schedule for permits for sanitary landfills and transfer stations as set forth under G.S. 130A-295.8 and formulate recommendations for adjustments to the current fee schedule sufficient to address any additional demands associated with review of permits issued for 10-year phases of landfill development and the issuance permits with a duration of up to 10 years for transfer stations. The Department shall report its findings and recommendations, including any legislative proposals, to the Environmental Review Commission on or before December 1, 2012. The rules required by this section shall not become effective until the fee schedule set forth under



1 G.S. 130A-295.8 is amended as necessary to address any additional demands associated with
2 review of permits issued for 10-year phases of landfill development and the issuance of permits
3 with a duration of up to 10 years to construct and operate transfer stations."

4 **SECTION 2.** G.S. 113A-64 reads as rewritten:

5 **"§ 113A-64. Penalties.**

6 (a) Civil Penalties. –

7 (1) Any person who violates any of the provisions of this Article or any
8 ordinance, rule, or order adopted or issued pursuant to this Article by the
9 Commission or by a local government, or who initiates or continues a
10 land-disturbing activity for which an erosion and sedimentation control plan
11 is required except in accordance with the terms, conditions, and provisions
12 of an approved plan, is subject to a civil penalty. The maximum civil penalty
13 for a violation is five thousand dollars (\$5,000). A civil penalty may be
14 assessed from the date of the violation. Each day of a continuing violation
15 shall constitute a separate violation.

16 (2) The Secretary or a local government that administers an erosion and
17 sedimentation control program approved under G.S. 113A-60 shall
18 determine the amount of the civil penalty and shall notify the person who is
19 assessed the civil penalty of the amount of the penalty and the reason for
20 assessing the penalty. The notice of assessment shall be served by any means
21 authorized under ~~G.S. 1A-1, Rule 4, and G.S. 1A-1~~. A notice of assessment
22 by the Secretary shall direct the violator to either pay the assessment or
23 contest the assessment within 30 days by filing a petition for a contested
24 case under Article 3 of Chapter 150B of the General Statutes. If a violator
25 does not pay a civil penalty assessed by the Secretary within 30 days after it
26 is due, the Department shall request the Attorney General to institute a civil
27 action to recover the amount of the assessment. A notice of assessment by a
28 local government shall direct the violator to either pay the assessment or
29 contest the assessment within 30 days by filing a petition for hearing with
30 the local government as directed by procedures within the local ordinances
31 or regulations adopted to establish and enforce the erosion and sedimentation
32 control program. If a violator does not pay a civil penalty assessed by a local
33 government within 30 days after it is due, the local government may institute
34 a civil action to recover the amount of the assessment. The civil action may
35 be brought in the superior court of any county where the violation occurred
36 or the violator's residence or principal place of business is located. A civil
37 action must be filed within three years of the date the assessment was due.
38 An assessment that is not contested is due when the violator is served with a
39 notice of assessment. An assessment that is contested is due at the
40 conclusion of the administrative and judicial review of the assessment.

41 (3) In determining the amount of the penalty, the Secretary or a local
42 government shall consider the degree and extent of harm caused by the
43 violation, the cost of rectifying the damage, the amount of money the
44 violator saved by noncompliance, whether the violation was committed
45 willfully and the prior record of the violator in complying or failing to
46 comply with this Article-~~Article~~, or any ordinance, rule, or order adopted or
47 issued pursuant to this Article by the Commission or by a local government.

48 (4) Repealed by Session Laws 1993 (Reg. Sess., 1994), c. 776, s. 11.

49 (5) The clear proceeds of civil penalties collected by the Department or other
50 State agency or a local government under this subsection shall be remitted to
51 the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2.

1 ~~Civil penalties collected by a local government under this subsection shall be~~
2 ~~credited to the general fund of the local government as nontax revenue.~~

3 (b) Criminal Penalties. – Any person who knowingly or willfully violates any provision
4 of this Article or any ordinance, rule, regulation, or order duly adopted or issued by the
5 Commission or a local government, or who knowingly or willfully initiates or continues a
6 land-disturbing activity for which an erosion and sedimentation control plan is required, except
7 in accordance with the terms, conditions, and provisions of an approved plan, shall be guilty of
8 a Class 2 misdemeanor that may include a fine not to exceed five thousand dollars (\$5,000)."

9 **SECTION 3.** This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

S

3

SENATE BILL 612
Commerce Committee Substitute Adopted 4/30/13
Third Edition Engrossed 5/2/13

Short Title: Regulatory Reform Act of 2013.

(Public)

Sponsors:

Referred to:

April 4, 2013

A BILL TO BE ENTITLED

1 AN ACT TO PROVIDE REGULATORY RELIEF TO THE CITIZENS OF NORTH
2 CAROLINA BY CREATING A FAST TRACK PERMITTING PROCESS FOR
3 CERTAIN ENVIRONMENTAL PERMITS; BY CLARIFYING THE PREEMPTION OF
4 CITY ORDINANCES AND CLARIFYING THAT SIMILAR RULES APPLY TO
5 COUNTY ORDINANCES; BY CLARIFYING THE LAWS RELATING TO
6 GROUNDWATER COMPLIANCE BOUNDARIES; BY EXTENDING THE TERMS OF
7 CERTAIN ENVIRONMENTAL PERMITS; BY AMENDING THE ADMINISTRATIVE
8 PROCEDURE ACT TO ELIMINATE THE REQUIREMENT THAT AN AGENCY
9 PREPARE A FISCAL NOTE WHEN REPEALING A RULE; BY REQUIRING THE
10 REPEAL OR REVISION OF EXISTING ENVIRONMENTAL RULES MORE
11 RESTRICTIVE THAN FEDERAL RULES PERTAINING TO THE SAME SUBJECT
12 MATTER; BY ALLOWING MUNICIPALITIES TO LEASE REAL PROPERTY FOR A
13 TERM OF UP TO TWENTY-FIVE YEARS TO PRIVATE COMPANIES
14 CONSTRUCTING RENEWABLE ENERGY FACILITIES; BY ALLOWING
15 GOING-OUT-OF-BUSINESS SALE LICENSES TO BE ISSUED BY ANY MUNICIPAL
16 OFFICIAL DESIGNATED BY THE GOVERNING BODY OF THE MUNICIPALITY;
17 BY DIRECTING THE DEPARTMENT OF ENVIRONMENT AND NATURAL
18 RESOURCES AND THE DEPARTMENT OF TRANSPORTATION TO JOINTLY
19 PETITION THE WILMINGTON DISTRICT OF THE UNITED STATES ARMY CORPS
20 OF ENGINEERS TO ALLOW FOR GREATER FLEXIBILITY AND OPPORTUNITY
21 TO PERFORM WETLANDS MITIGATION BEYOND THE IMMEDIATE
22 WATERSHED WHERE DEVELOPMENT WILL OCCUR; BY CLARIFYING THAT
23 THE DEFINITION OF "BUILT-UPON AREA" INCLUDES ONLY IMPERVIOUS
24 SURFACES; AND BY REQUIRING MEMBERS OF ADVISORY BODIES TO STATE
25 AGENCIES AND BOARDS TO DISCLOSE POTENTIAL CONFLICTS OF INTEREST
26 PRIOR TO MAKING ANY RECOMMENDATION.

27
28 The General Assembly of North Carolina enacts:

29
30 **PART I. FAST-TRACK PERMITTING FOR CERTAIN ENVIRONMENTAL**
31 **PERMITS**

32 **SECTION 1.1.(a)** Stormwater. – The Department of Environment and Natural
33 Resources shall develop Minimum Design Criteria for permits issued by the stormwater runoff
34 permitting programs authorized by G.S. 143-214.7. The Minimum Design Criteria shall include



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1 all requirements for siting, site preparation, design and construction, and post-construction
2 monitoring and evaluation necessary for the Department to issue a stormwater permit.

3 **SECTION 1.1.(b)** Erosion and Sedimentation Control. – The Department of
4 Environment and Natural Resources shall develop Minimum Design Criteria for erosion and
5 sedimentation control plans issued by the Department and local governments under the
6 authority of Article 4 of Chapter 113A of the General Statutes. The Minimum Design Criteria
7 shall include all requirements for siting, site preparation, design and construction, and
8 post-construction monitoring and evaluation necessary for the Department or a local
9 government stormwater program to approve an erosion and sedimentation control plan.

10 **SECTION 1.1.(c)** Designation of Appropriate Professionals. – In the development
11 of Minimum Design Criteria under this section, the Department shall specify types of licensed
12 professionals qualified to certify the design, effectiveness, and appropriateness of each
13 criterion. For purposes of this subsection, "licensed professionals" shall include, but not be
14 limited to, engineers certified under Chapter 89C of the General Statutes, geologists certified
15 under Chapter 89E of the General Statutes, and landscape architects certified under Chapter
16 89A of the General Statutes, and "qualified to certify" means, at a minimum, that the licensing
17 board for that professional has the statutory authority to discipline the professional for falsely
18 certifying design, effectiveness, or appropriateness of the particular criterion.

19 **SECTION 1.2.** Technical Working Group. – In developing the Minimum Design
20 Criteria, the Department may consult with a technical working group that consists of industry
21 experts, environmental engineers or consultants, relevant faculty from The University of North
22 Carolina, and other interested stakeholders. The Department shall submit the final Minimum
23 Design Criteria to the Environmental Review Commission no later than March 1, 2014.

24 **SECTION 1.3.** Article 21 of Chapter 143 of the General Statutes is amended by
25 adding a new section to read:

26 "**§ 143-214.7B. Fast-track permitting.**

27 The Commission shall adopt rules implementing a fast-track permitting process allowing
28 for issuance of stormwater management system permits without a technical review when the
29 permit applicant (i) complies with the Minimum Design Criteria for stormwater management
30 developed by the Department and (ii) submits a permit application sealed by the appropriate
31 professional specified in the criteria."

32 **SECTION 1.4.** Article 4 of Chapter 113A of the General Statutes is amended by
33 adding a new section to read:

34 "**§ 113A-68. Fast-track plan approval.**

35 The Commission shall adopt rules implementing a fast-track plan approval process
36 allowing for approval of erosion and sedimentation control plans by the Department or a local
37 erosion and sedimentation control program without a technical review when the person files a
38 plan that (i) complies with the Minimum Design Criteria for erosion and sedimentation control
39 developed by the Department and (ii) is sealed by the appropriate professional specified in the
40 criteria."

41 **SECTION 1.5.(a)** The Environmental Management Commission shall adopt
42 temporary rules implementing Section 1.3 of this act no later than May 1, 2014. The temporary
43 rules shall remain in effect until permanent rules that replace the temporary rules become
44 effective.

45 **SECTION 1.5.(b)** The Sedimentation Control Commission shall adopt temporary
46 rules implementing Section 1.4 of this act no later than May 1, 2014. The temporary rules shall
47 remain in effect until permanent rules that replace the temporary rules become effective.

48 **SECTION 1.6.** G.S. 89C-19 reads as rewritten:

49 "**§ 89C-19. Public works; requirements where public safety involved.**

50 This State and its political subdivisions such as counties, cities, towns, or other political
51 entities or legally constituted boards, commissions, public utility companies, or authorities, or

1 officials, or employees of these entities shall not engage in the practice of engineering or land
2 surveying involving either public or private property where the safety of the public is directly
3 involved without the project being under the supervision of a professional engineer for the
4 preparations of plans and specifications for engineering projects, or a professional land
5 surveyor for land surveying projects, as provided for the practice of the respective professions
6 by this Chapter. These entities shall not, in the course of conducting technical review of an
7 application for a permit or a plan submitted for approval by the entity, require revisions to that
8 part of the application or plan that constitutes the practice of engineering and that has been
9 supervised and sealed by a professional engineer unless the employee or official of the
10 reviewing entity requiring the revision is also a professional engineer or is an engineering
11 intern under the responsible charge of a professional engineer. Any revisions to the application
12 or plan that are required by the reviewing entity and that constitute the practice of engineering
13 shall be provided by written notice to the permit applicant or the person submitting a plan for
14 approval. The written notice shall be on agency letterhead and shall be signed by the
15 professional engineer reviewing or supervising the review of the submission and shall include
16 the engineer's state license number.

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

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

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

31 **SECTION 1.7.** The Department of Environment and Natural Resources shall
32 identify other permitting programs for which the fast-track permitting process described by this
33 Part would be appropriate and make a report, including proposed legislation, to the
34 Environmental Review Commission no later than May 1, 2014.

35 **PART II. CLARIFY LOCAL GOVERNMENT PREEMPTION**

36 **SECTION 2.1.** G.S. 160A-174(b) reads as rewritten:

37 "(b) A city ordinance shall be consistent with the Constitution and laws of North
38 Carolina and of the United States. An ordinance is not consistent with State or federal law
39 when:
40

- 41 (1) The ordinance infringes a liberty guaranteed to the people by the State or
42 federal Constitution;
- 43 (2) The ordinance makes unlawful an act, omission or condition which is
44 expressly made lawful by State or federal law;
- 45 (3) The ordinance makes lawful an act, omission, or condition which is
46 expressly made unlawful by State or federal law;
- 47 (4) The ordinance purports to regulate a subject that cities are expressly
48 forbidden to regulate by State or federal law;
- 49 (5) The ordinance purports to regulate a field for which a State or federal statute
50 clearly shows a legislative intent to provide a complete and integrated
51 regulatory scheme to the exclusion of local regulation;

- 1 (5a) The ordinance (i) regulates a field that is also regulated by a State or federal
2 statute enforced by, or a regulation promulgated by, an environmental
3 agency; and (ii) is more stringent than the State or federal statute or
4 regulation; or
- 5 (6) The elements of an offense defined by a city ordinance are identical to the
6 elements of an offense defined by State or federal law.

7 The fact that a State or federal law, standing alone, makes a given act, omission, or condition
8 unlawful shall not preclude city ordinances requiring a higher standard of conduct or condition.

9 (c) The limitation set forth in subdivision (5a) of subsection (b) of this section does not
10 apply to any ordinance if adoption of the ordinance was and continues to be required by one of
11 the following:

- 12 (1) A serious and unforeseen threat to the public health, safety, or welfare.
13 (2) An act of the General Assembly or United States Congress that expressly
14 requires the city to adopt an ordinance.
- 15 (3) A provision in federal or State budgetary policy.
16 (4) A federal regulation required by an act of the United States Congress to be
17 adopted or administered by the State.
- 18 (5) A court order.
- 19 (d) For purposes of this section, "an environmental agency" means any of the following:
20 (1) The Department of Environment and Natural Resources created pursuant to
21 G.S. 143B-279.1.
22 (2) The Environmental Management Commission created pursuant to
23 G.S. 143B-282.
24 (3) The Coastal Resources Commission established pursuant to G.S. 113A-104.
25 (4) The Marine Fisheries Commission created pursuant to G.S. 143B-289.51.
26 (5) The Wildlife Resources Commission created pursuant to G.S. 143-240.
27 (6) The Commission for Public Health created pursuant to G.S. 130A-29, when
28 regulating pursuant to the authority granted by Articles 9, 10, 11, 19, 19A,
29 and 19B of Chapter 130A of the General Statutes.
30 (7) The Sedimentation Control Commission created pursuant to G.S. 143B-298.
31 (8) The Mining and Energy Commission created pursuant to G.S. 143B-293.1.
32 (9) The Pesticide Board created pursuant to G.S. 143-436."

33 **SECTION 2.2.** G.S. 153A-121 is amended by adding a new subsection to read:

34 "(a1) A county ordinance shall be consistent with the Constitution and laws of North
35 Carolina and of the United States. An ordinance is not consistent with State or federal law
36 when:

- 37 (1) The ordinance infringes a liberty guaranteed to the people by the State or
38 federal Constitution;
- 39 (2) The ordinance makes unlawful an act, omission, or condition which is
40 expressly made lawful by State or federal law;
- 41 (3) The ordinance makes lawful an act, omission, or condition which is
42 expressly made unlawful by State or federal law;
- 43 (4) The ordinance purports to regulate a subject that counties are expressly
44 forbidden to regulate by State or federal law;
- 45 (5) The ordinance purports to regulate a field for which a State or federal statute
46 clearly shows a legislative intent to provide a complete and integrated
47 regulatory scheme to the exclusion of local regulation;
- 48 (6) The ordinance (i) regulates a field that is also regulated by a State or federal
49 statute enforced by, or a regulation promulgated by, an environmental
50 agency; and (ii) is more stringent than the State or federal statute or
51 regulation; or

1 (7) The elements of an offense defined by a county ordinance are identical to the
2 elements of an offense defined by State or federal law.

3 The fact that a State or federal law, standing alone, makes a given act, omission, or
4 condition unlawful shall not preclude county ordinances requiring a higher standard of conduct
5 or condition.

6 (a2) The limitation set forth in subdivision (6) of subsection (a1) of this section does not
7 apply to any ordinance if adoption of the ordinance was and continues to be required by one of
8 the following:

9 (1) A serious and unforeseen threat to the public health, safety, or welfare.

10 (2) An act of the General Assembly or United States Congress that expressly
11 requires the county to adopt an ordinance.

12 (3) A provision in federal or State budgetary policy.

13 (4) A federal regulation required by an act of the United States Congress to be
14 adopted or administered by the State.

15 (5) A court order.

16 (a3) For purposes of this section, "an environmental agency" means any of the following:

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

19 (2) The Environmental Management Commission created pursuant to
20 G.S. 143B-282.

21 (3) The Coastal Resources Commission established pursuant to G.S. 113A-104.

22 (4) The Marine Fisheries Commission created pursuant to G.S. 143B-289.51.

23 (5) The Wildlife Resources Commission created pursuant to G.S. 143-240.

24 (6) The Commission for Public Health created pursuant to G.S. 130A-29, when
25 regulating pursuant to the authority granted by Articles 9, 10, 11, 19, 19A,
26 and 19B of Chapter 130A of the General Statutes.

27 (7) The Sedimentation Control Commission created pursuant to G.S. 143B-298.

28 (8) The Mining and Energy Commission created pursuant to G.S. 143B-293.1.

29 (9) The Pesticide Board created pursuant to G.S. 143-436."

31 **PART III. ENVIRONMENTAL REGULATORY REFORM**

32 **SECTION 3.2.(a)** G.S. 143-215.1 is amended by adding three new subsections to

33 read:

34 **"§ 143-215.1. Control of sources of water pollution; permits required.**

35 ...

36 (i) Any person subject to the requirements of this section who is required to obtain an
37 individual permit from the Commission for a disposal system under the authority of
38 G.S. 143-215.1 or Chapter 130A of the General Statutes shall have a compliance boundary as
39 may be established by rule or permit for various categories of disposal systems and beyond
40 which groundwater quality standards may not be exceeded. The location of the compliance
41 boundary shall be established at the property boundary, except as otherwise established by the
42 Commission. Multiple contiguous properties under common ownership and permitted for use
43 as a disposal system shall be treated as a single property with regard to determination of a
44 compliance boundary under this subsection. Nothing in this subsection shall be interpreted to
45 require a revision to an existing compliance boundary previously approved by rule or permit.

46 (j) When operation of a disposal system permitted under this section results in an
47 exceedance of the groundwater quality standards adopted in accordance with G.S. 143-214.1,
48 the Commission shall require that the exceedances within the compliance boundary be
49 remedied through clean-up, recovery, containment, or other response only when any of the
50 following conditions occur:

1 (1) A violation of any water quality standard in adjoining classified waters of
2 the State occurs or can be reasonably predicted to occur considering
3 hydrogeological conditions, modeling, or any other available evidence.

4 (2) An imminent hazard or threat to the environment, public health, or safety
5 exists.

6 (3) A violation of any standard in groundwater occurring in the bedrock other
7 than limestones found in the Coastal Plain sediments, unless it can be
8 demonstrated that the violation will not adversely affect, or have the
9 potential to adversely affect, a water supply well.

10 (k) Where operation of a disposal system permitted under this section results in
11 exceedances of the groundwater quality standards at or beyond the compliance boundary
12 established under subsection (i) of this section, exceedances shall be remedied through
13 clean-up, recovery, containment, or other response as directed by the Commission."

14 **SECTION 3.2.(b)** With respect to exceedances of groundwater quality standards
15 within a compliance boundary and related remedy requirements, G.S. 143-215.1(j) as set forth
16 in Section 3.1(a) of this act shall apply in lieu of the restricted designation directives found in
17 15A NCAC 2L .0104(d) and (e) until the Department of Environment and Natural Resources
18 has adopted revisions to those rules to comply with this act.

19 **SECTION 3.3.(a)** G.S. 143-215.1 reads as rewritten:

20 **"§ 143-215.1. Control of sources of water pollution; permits required.**

21 ...

22 (d2) No permit issued pursuant to subsection (c) of this section shall be issued or
23 renewed for a term exceeding five years. All other permits issued pursuant to this section for
24 which an expiration date is specified shall be issued for a term not to exceed eight years.

25 (e) Administrative Review. – A permit ~~applicant or permittee~~ applicant, a permittee, or
26 a third party who is dissatisfied with a decision of the Commission may commence a contested
27 case by filing a petition under G.S. 150B-23 within 30 days after the Commission notifies the
28 applicant or permittee of its decision. If the permit applicant or permittee does not file a petition
29 within the required time, the Commission's decision is final and is not subject to review.

30 "

31 **SECTION 3.3.(b)** G.S. 143-215.108 reads as rewritten:

32 **"§ 143-215.108. Control of sources of air pollution; permits required.**

33 ...

34 (d1) No Title V permit issued pursuant to this section shall be issued or renewed for a
35 term exceeding five years. All other permits issued pursuant to this section shall be issued for a
36 term not to exceed eight years.

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

43 "

44 **SECTION 3.4.(a)** Section 2 of S.L. 2006-246 reads as rewritten:

45 **"SECTION 2. Definitions.** – The following definitions apply to this act and its
46 implementation:

47 ...

48 (7) "Built-upon area" means that portion of a project that is covered by
49 ~~impervious or partially impervious surface~~ impervious surface including, but
50 not limited to, buildings; ~~pavement and gravel~~ pavement areas such as roads,
51 parking lots, and paths; and recreation facilities such as tennis courts.

1 "Built-upon area" does not include a wooden slatted deck, the water area of a
2 swimming pool, gravel, or pervious or partially pervious paving material to
3 the extent that the paving material absorbs water or allows water to infiltrate
4 through the paving material.

5"

6 **SECTION 3.4.(b)** The Department shall adopt rules to implement this Section.
7 Until permanent rules to implement subsection (a) of this section take effect, the definition of
8 "built-upon area" in subsection (a) shall apply instead of any other definition of "built-upon
9 area" appearing in rules adopted pursuant to Session Law 2006-246.

10 11 **PART IV. NO FISCAL NOTE FOR RULE REPEAL**

12 **SECTION 4.1.** G.S. 150B-21.4 is amended by adding a new subsection to read:

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

15 16 **PART VI. REFORM OF EXISTING RULES**

17 **SECTION 6.1.(a)** Definitions. – For purposes of this section, "an agency
18 authorized to implement and enforce State and federal environmental laws" means any of the
19 following:

- 20 (1) The Department of Environment and Natural Resources created pursuant to
21 G.S. 143B-279.1.
- 22 (2) The Environmental Management Commission created pursuant to
23 G.S. 143B-282.
- 24 (3) The Coastal Resources Commission established pursuant to G.S. 113A-104.
- 25 (4) The Marine Fisheries Commission created pursuant to G.S. 143B-289.51.
- 26 (5) The Wildlife Resources Commission created pursuant to G.S. 143-240.
- 27 (6) The Commission for Public Health created pursuant to G.S. 130A-29.
- 28 (7) The Sedimentation Control Commission created pursuant to G.S. 143B-298.
- 29 (8) The Mining and Energy Commission created pursuant to G.S. 143B-293.1.
- 30 (9) The Pesticide Board created pursuant to G.S. 143-436.

31 **SECTION 6.1.(b)** An agency authorized to implement and enforce State and
32 federal environmental laws shall identify all existing rules for the protection of the environment
33 or natural resources that impose a more restrictive standard, limitation, or requirement than
34 those imposed by federal law or rule, if a federal law or rule pertaining to the same subject
35 matter has been adopted.

36 **SECTION 6.1.(c)** No later than September 1, 2013, agencies identifying rules
37 under subsection (b) of this section shall initiate rule-making proceedings to (i) repeal the
38 rules; or (ii) rewrite the rules to make them no more restrictive than the corresponding federal
39 laws or rules. Rules adopted pursuant to this subsection are not subject to G.S. 150B-21.9
40 through G.S. 150B-21.14.

41 **SECTION 6.1.(d)**. The rule-making proceedings required by subsection (c) of this
42 section are not required for any rule identified under subsection (b) of this section if adoption of
43 the rule was and continues to be required by one of the following:

- 44 (1) A serious and unforeseen threat to the public health, safety, or welfare.
 - 45 (2) An act of the General Assembly or United States Congress that expressly
46 requires the agency to adopt rules.
 - 47 (3) A provision in federal or State budgetary policy.
 - 48 (4) A federal regulation required by an act of the United States Congress to be
49 adopted or administered by the State.
 - 50 (5) A court order.
- 51

PART VII. PERMIT LONGER ALTERNATE ENERGY LEASING PERIODS

SECTION 7.(a) G.S. 160A-272 reads as rewritten:

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

...

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

SECTION 7.(b) Section 3 of S.L. 2010-57 reads as rewritten:

"SECTION 3. This act is effective when it becomes law ~~and~~but Section 1 expires June 30, 2015."

PART VIII. GOING-OUT-OF-BUSINESS SALE LICENSING FLEXIBILITY

SECTION 8. G.S. 66-77 reads as rewritten:

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

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

(b) If ~~such clerk~~the designated officer shall be satisfied from said application that the proposed sale is of the character which the applicant desires to advertise and conduct, the ~~clerk designated officer~~ shall issue a license, upon the payment of a fee of fifty dollars (\$50.00) therefor, together with a bond, payable to the city or town or county in the penal sum of five hundred dollars (\$500.00), conditioned upon compliance with this Article, to the applicant authorizing him to advertise and conduct a sale of the particular kind mentioned in the application. The license fee provided for herein shall be good for a period of 30 days from its date, and if the applicant shall not complete said sale within said 30-day period then the applicant shall make application to ~~such clerk~~the designated officer for a license for a new permit, which shall be good for an additional period of 30 days, and shall pay therefor the sum of fifty dollars (\$50.00), and a second extension period of 30 days may be similarly applied for and granted by the ~~clerk designated officer~~ upon payment of an additional fee of fifty dollars (\$50.00) and upon the ~~clerk designated officer~~ being satisfied that the applicant is holding a bona fide sale of the kind contemplated by this Article and is acting in a bona fide manner; provided, however, that the ~~clerk designated officer~~ may not grant an extension period as provided in this subsection if (i) the applicant conducted a distress sale immediately preceding the current sale for which the extension is applied for and (ii) the period of the extension

1 applied for, when added to the period of the preceding sale and the period of the current sale,
2 will exceed 120 days. No additional bond shall be required in the event of one or more
3 extensions as herein provided for. Any merchant who shall have been conducting a business in
4 the same location where the sale is to be held for a period of not less than one year, prior to the
5 date of holding such sale, or any merchant who shall have been conducting a business in one
6 location for such period but who shall, by reason of the building being untenable or by
7 reason of the fact that said merchant shall have no existing lease or ownership of the building
8 and shall be forced to hold such sale at another location, shall be exempted from the payment
9 of the fees and the filing of the bond herein provided for.

10"

11 12 **PART IX. WETLANDS AND STREAM MITIGATION HUC FLEXIBILITY**

13 **SECTION 9.1.** No later than October 1, 2013, the Department of Environment and
14 Natural Resources and the Department of Transportation shall jointly petition the Wilmington
15 District of the United States Army Corps of Engineers (Wilmington District) to allow for
16 greater flexibility and opportunity to perform wetlands and stream mitigation outside of the
17 eight-digit Hydrologic Unit Code (HUC) where development will occur. The Departments shall
18 seek this greater flexibility and opportunity for mitigation for both public and private
19 development. The Departments shall request that the Wilmington District review the flexibility
20 and opportunities for mitigation allowed by other Districts of the United States Army Corps of
21 Engineers.

22 **SECTION 9.2.** The Departments shall jointly report on their progress in petitioning
23 the Wilmington District as required by Section 9.1 of this act to the Environmental Review
24 Commission no later than January 1, 2014.

25 26 **PART X. ETHICS/ADVISORY BOARDS**

27 **SECTION 10.** G.S. 138A-15 is amended by adding a new subsection to read:
28 "**§ 138A-15. Duties of heads of State agencies.**

29 ...
30 (i) Before receiving or accepting any recommendation, the head of each State agency,
31 including the chair of each board subject to this Chapter, shall require each member of an
32 advisory body appointed or created by the State to serve that State agency or board, or
33 appointed or created by the State agency or board subject to this Chapter, to disclose all
34 reasonably foreseeable financial benefits from the matter under recommendation, which
35 financial benefit would impair the member of the advisory body's independence of judgment or
36 from which it could reasonably be inferred that the financial benefit would influence the
37 member of the advisory body participation in the advisory body. Each member of an advisory
38 body appointed or created by a State agency or board subject to this Chapter shall also provide
39 to that State agency or board subject to this Chapter a list of all grants or employment
40 pertaining to the matter under recommendation held or awarded within the previous 24 months
41 before the recommendation and a copy of any deliverable associated with such grants."

42 43 **PART XI. SEVERABILITY AND EFFECTIVE DATE PROVISIONS**

44 **SECTION 11.1.** If any section or provision of this act is declared unconstitutional
45 or invalid by the courts, it does not affect the validity of this act as a whole or any part other
46 than the part so declared to be unconstitutional or invalid.

47 **SECTION 11.2.** Sections 3.1 and 10 of this act become effective July 1, 2013.
48 Section 4.1 of this act is effective when it becomes law and applies to all proposed rules
49 published in the North Carolina Register on or after that date. Except as otherwise provided, the
50 remainder of this act is effective when it becomes law.