

**GENERAL ASSEMBLY OF NORTH CAROLINA**

**SESSION 1997**

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**SENATE BILL 194\***

Agriculture/Environment/Natural Resources Committee Substitute Adopted 4/28/97

Short Title: Amend Env. Laws.

(Public)

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Sponsors:

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Referred to:

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February 19, 1997

**A BILL TO BE ENTITLED**

1 AN ACT TO AMEND VARIOUS ENVIRONMENTAL LAWS TO: (1) PROVIDE  
2 FOR CONTINUING EDUCATION REQUIREMENTS FOR, AND THE  
3 EXPIRATION AND RENEWAL OF, CERTIFICATES ISSUED BY THE WATER  
4 POLLUTION CONTROL SYSTEM OPERATORS CERTIFICATION  
5 COMMISSION; (2) INCLUDE CONSIDERATION OF THE COMPLIANCE  
6 HISTORY IN OTHER STATES OF AN APPLICANT FOR A PERMIT UNDER  
7 THE COASTAL AREA MANAGEMENT ACT; (3) CLARIFY THE DISTINCTION  
8 BETWEEN A PUBLIC HEARING AND A PUBLIC MEETING IN CONNECTION  
9 WITH AN APPLICATION FOR A WATER QUALITY PERMIT; (4) ALLOW THE  
10 ENVIRONMENTAL MANAGEMENT COMMISSION TO DELEGATE ITS  
11 POWERS BY RESOLUTION RATHER THAN BY RULE; (5) CLARIFY THE  
12 ASSESSMENT OF CIVIL PENALTIES FOR CONTINUING VIOLATIONS OF  
13 AIR QUALITY STANDARDS; (6) REESTABLISH A SCHEDULE OF SIX-YEAR  
14 STAGGERED TERMS FOR THE MINING COMMISSION; AND (7)  
15 REESTABLISH A SCHEDULE OF TWO-YEAR STAGGERED TERMS FOR THE  
16 NORTH CAROLINA PARKS AND RECREATION AUTHORITY, AS  
17 RECOMMENDED BY THE ENVIRONMENTAL REVIEW COMMISSION.  
18

19 The General Assembly of North Carolina enacts:

1 Section 1. Part 1 of Article 3 of Chapter 90A is amended by adding a new  
2 section to read:

3 **"§ 90A-46.1. Expiration and renewal of certificates; continuing education**  
4 **requirements.**

5 A certificate issued under this Part expires on 31 December of the year in which it is  
6 issued or renewed. The Commission may establish minimum continuing education  
7 requirements that an applicant must meet to renew a certificate. The Commission shall  
8 renew a certificate if the applicant meets the continuing education requirement and pays  
9 the required renewal fee, any renewal fee in arrears, and any late application penalty."

10 Section 2. G.S. 113A-120(b1) reads as rewritten:

11 "(b1) In addition to those factors set out in subsection (a) of this section, and  
12 notwithstanding the provisions of subsection (b) of this section, the responsible official or  
13 body may deny an application for a permit upon finding that an applicant, or any parent  
14 or subsidiary corporation if the applicant is a corporation:

- 15 (1) Is conducting or has conducted any activity causing significant  
16 environmental damage for which a major development permit is  
17 required under this Article without having previously obtained such  
18 permit or has received a notice of violation with respect to any activity  
19 governed by this Article and has not complied with the notice within the  
20 time specified in the notice;
- 21 (2) Has failed to pay a civil penalty assessed pursuant to this Article, a local  
22 ordinance adopted pursuant to this Article, or Article 17 of Chapter 113  
23 of the General Statutes which is due and for which no appeal is pending;
- 24 (3) Has been convicted of a misdemeanor pursuant to G.S. 113A-126, G.S.  
25 113-229(k), or any criminal provision of a local ordinance adopted  
26 pursuant to this Article; or
- 27 (4) Has failed to substantially comply with ~~State~~state rules or local  
28 ordinances and regulations adopted pursuant to this Article or with other  
29 federal and ~~State~~state laws, regulations, and rules for the protection of  
30 the environment."

31 Section 3. G.S. 143-215.1(c) reads as rewritten:

32 "(c) Applications for Permits and Renewals for Facilities Discharging to the  
33 Surface Waters. –

- 34 (1) All applications for permits and for renewal of existing permits for  
35 outlets and point sources and for treatment works and disposal systems  
36 discharging to the surface waters of the State shall be in writing, and the  
37 Commission may prescribe the form of such applications. All  
38 applications shall be filed with the Commission at least 180 days in  
39 advance of the date on which it is desired to commence the discharge of  
40 wastes or the date on which an existing permit expires, as the case may  
41 be. The Commission shall act on a permit application as quickly as  
42 possible. The Commission may conduct any inquiry or investigation it  
43 considers necessary before acting on an application and may require an

1 applicant to submit plans, specifications, and other information the  
2 Commission considers necessary to evaluate the application.

- 3 (2) a. The Department shall refer each application for permit, or renewal of  
4 an existing permit, for outlets and point sources and treatment works  
5 and disposal systems discharging to the surface waters of the State to its  
6 staff for written evaluation and proposed determination with regard to  
7 issuance or denial of the permit. If the Commission concurs in the  
8 proposed determination, it shall give notice of intent to issue or deny the  
9 permit, along with any other data that the Commission may determine  
10 appropriate, to be given to the appropriate State, interstate and federal  
11 agencies, to interested persons, and to the public.

12 a1. The Commission shall prescribe the form and content of the  
13 notice. ~~The notice required herein~~ Public notice shall be given at  
14 least 45 days prior to any proposed final action granting or  
15 denying the permit. Public notice shall be given by publication  
16 of the notice one time in a newspaper having general circulation  
17 within the county.

18 b. Repealed by Session Laws 1987, c. 734.

- 19 (3) If any person desires a public ~~meeting~~ hearing on any application for  
20 permit or renewal of an existing permit provided for in this subsection,  
21 he shall so request in writing to the Commission within 30 days  
22 following date of the notice of intent. The Commission shall consider  
23 all such requests for ~~meeting~~ hearing, and if the Commission determines  
24 that there is a significant public interest in holding such ~~meeting~~ hearing,  
25 hearing, at least 30 days' notice of such ~~meeting~~ hearing shall be given to  
26 all persons to whom notice of intent was sent and to any other person  
27 requesting notice. At least 30 days prior to the date of ~~meeting~~ hearing,  
28 the Commission shall also cause a copy of the notice thereof to be  
29 published at least one time in a newspaper having general circulation in  
30 such county. In any county in which there is more than one newspaper  
31 having general circulation in that county, the Commission shall cause a  
32 copy of such notice to be published in as many newspapers having  
33 general circulation in the county as the Commission in its discretion  
34 determines may be necessary to assure that such notice is generally  
35 available throughout the county. The Commission shall prescribe the  
36 form and content of the notices.

37 The Commission shall prescribe the procedures to be followed in  
38 ~~such meetings~~ hearings. If the ~~meeting~~ hearing is not conducted by the  
39 Commission, detailed minutes of the ~~meeting~~ hearing shall be kept and  
40 shall be submitted, along with any other written comments, exhibits or  
41 documents presented at the ~~meeting~~ hearing, to the Commission for its  
42 consideration prior to final action granting or denying the permit.

- 1 (4) Not later than 60 days following notice of intent or, if a public hearing is  
2 held, within 90 days following consideration of the matters and things  
3 presented at such hearing, the Commission shall grant or deny any  
4 application for issuance of a new permit or for renewal of an existing  
5 permit. All permits or renewals issued by the Commission and all  
6 decisions denying application for permit or renewal shall be in writing.
- 7 (5) No permit issued pursuant to this subsection (c) shall be issued or  
8 renewed for a term exceeding five years.
- 9 (6) The Commission shall not act upon an application for a new  
10 nonmunicipal domestic wastewater discharge facility until it has  
11 received a written statement from each city and county government  
12 having jurisdiction over any part of the lands on which the proposed  
13 facility and its appurtenances are to be located which states whether the  
14 city or county has in effect a zoning or subdivision ordinance and, if  
15 such an ordinance is in effect, whether the proposed facility is consistent  
16 with the ordinance. The Commission shall not approve a permit  
17 application for any facility which a city or county has determined to be  
18 inconsistent with its zoning or subdivision ordinance unless it  
19 determines that the approval of such application has statewide  
20 significance and is in the best interest of the State. An applicant for a  
21 permit shall request that each city and county government having  
22 jurisdiction issue the statement required by this subdivision by mailing  
23 by certified mail, return receipt requested, a written request for such  
24 statement and a copy of the draft permit application to the clerk of the  
25 city or county. If a local government fails to mail the statement required  
26 by this subdivision, as evidenced by a postmark, within 15 days after  
27 receiving and signing for the certified mail, the Commission may  
28 proceed to consider the permit application notwithstanding this  
29 subdivision."

30 Section 4. G.S. 143-215.4(b) reads as rewritten:

31 "(b) Procedures for Public Input. –

- 32 (1) The Commission may, on its own motion or when required by federal  
33 law, request public comments on or hold public hearings on matters  
34 within the scope of its authority under this Article or Articles 21A or  
35 21B of this Chapter. To request public comments on a matter, the  
36 Commission shall notify appropriate agencies of the opportunity to  
37 submit written comments to the Commission on the matter and shall  
38 publish a notice in a newspaper having general circulation in the  
39 affected area, stating the matter under consideration by the Commission  
40 and informing the public of its opportunity to submit written comments  
41 to the Commission on the matter. A public comment period shall extend  
42 for at least 30 days after the notice is published.

1 (2) To hold a public hearing on a matter, the Commission shall notify, by  
2 personal service or certified mail, persons directly affected by the matter  
3 under consideration and shall publish a notice in a newspaper having  
4 general circulation in the affected area, stating the matter under  
5 consideration by the Commission and the time, date, and place of a  
6 public hearing to be held on the matter. A public hearing shall be held  
7 no sooner than 20 days after the notice is published. The proceedings at  
8 a public hearing held under this subsection shall be recorded. Upon  
9 payment of a fee established by the Commission, any person may obtain  
10 a copy of the record of the public hearing. After a public hearing, the  
11 Commission shall accept written comments for the time period  
12 prescribed by the Commission.

13 (3) This subsection does not apply to rule-making proceedings, contested  
14 case hearings, or the issuance of permits required under Title V. The  
15 Commission shall establish procedures for public hearings, public  
16 notice, and public comment respecting permits required by Title V as  
17 provided by G.S. 143-215.111(4).

18 (4) The Commission may hold a public meeting on any matter within its  
19 scope of authority. The Commission may hold a public meeting in  
20 addition to any public hearing that is required under any provision of  
21 law, but a public meeting may not be substituted for any required public  
22 hearing. Except as may be otherwise provided by law, the Commission  
23 may determine the procedures for any public meeting it holds."

24 Section 5. G.S. 143-215.3(a)(4) reads as rewritten:

25 "(4) To delegate such of the powers of the Commission as the Commission  
26 deems necessary to one or more of its members, to the Secretary or any  
27 other qualified employee of the Department. ~~Department; provided, that~~  
28 ~~the provisions of any such delegation of power shall be set forth in the rules of~~  
29 ~~the Commission; and provided further that the~~ The Commission shall not  
30 delegate to persons other than its own members and the designated  
31 employees of the Department the power to conduct hearings with  
32 respect to the classification of waters, the assignment of classifications,  
33 air quality standards, air contaminant source classifications, emission  
34 control standards, or the issuance of any special order except in the case  
35 of an emergency under subdivision (12) of this subsection for the  
36 abatement of existing water or air pollution. Any employee of the  
37 Department to whom a delegation of power is made to conduct a  
38 hearing shall report the hearing with its evidence and record to the  
39 Commission."

40 Section 6.1. G.S. 143-215.114A(b) reads as rewritten:

41 "(b) ~~Each day of continuing violation after written notification from the Secretary shall be~~  
42 ~~considered a separate offense.~~ If any action or failure to act for which a penalty may be

1 assessed under this section is continuous, the Secretary may assess a penalty not to  
2 exceed ten thousand dollars (\$10,000) per day for so long as the violation continues."

3 Section 6.2. G.S. 143-215.112(d)(1a) reads as rewritten:

4 "(1a) Each governing body, or its authorized agent, shall have the power  
5 to assess civil penalties under G.S. 143-215.114A. Any person  
6 assessed shall be notified of the assessment by registered or certified  
7 mail, and the notice shall specify the reasons for the assessment. If  
8 the person assessed fails to pay the amount of the assessment to the  
9 governing body or its authorized agent within 30 days after receipt  
10 of notice, or such longer period not to exceed 180 days as the  
11 governing body or its authorized agent may specify, the governing  
12 body may institute a civil action in the superior court of the county  
13 in which the violation occurred, to recover the amount of the  
14 assessment. ~~Each day of continuing violation after written notification~~  
15 ~~from the governing body or its authorized agent shall be considered a~~  
16 ~~separate offense. If any action or failure to act for which a penalty~~  
17 may be assessed under this section is continuous, the governing body  
18 or its authorized agent may assess a penalty not to exceed ten  
19 thousand dollars (\$10,000) per day for so long as the violation  
20 continues. In determining the amount of the penalty, the governing  
21 body or its authorized agent shall consider the degree and extent of  
22 harm caused by the violation, the cost of rectifying the damage, and  
23 the amount of money the violator saved by not having made the  
24 necessary expenditures to comply with the appropriate pollution  
25 control requirements."

26 Section 7. G.S. 143B-291 reads as rewritten:

27 "**§ 143B-291. North Carolina Mining Commission – members; selection; removal;**  
28 **compensation; quorum; services.**

29 (a) Members, Selection. – The North Carolina Mining Commission shall consist of  
30 nine members appointed by the Governor. ~~The Commission shall be composed of the~~  
31 ~~following: one Governor under a specified subdivision of this subsection as follows:~~

32 (1) One member who is the chairman of the North Carolina State  
33 University Minerals Research Laboratory Advisory Committee, ex  
34 officio. ~~Committee; three representatives of mining industries; three~~  
35 ~~representatives of nongovernmental conservation interests and two who~~  
36 ~~shall represent the Environmental Management Commission and be~~  
37 ~~knowledgeable in the principles of water and air resources management.~~

38 (2) One member who is a representative of the mining industry.

39 (3) One member who is a representative of the mining industry.

40 (4) One member who is a representative of the mining industry.

41 (5) One member who is a representative of nongovernmental  
42 conservation interests.

1           (6)     One member who is a representative of nongovernmental  
2                 conservation interests.

3           (7)     One member who is a representative of nongovernmental  
4                 conservation interests.

5           (8)     One who, at the time of the appointment to the Mining Commission,  
6                 is a member of the Environmental Management Commission and  
7                 knowledgeable in the principles of water and air resources  
8                 management.

9           (9)     One who, at the time of the appointment to the Mining Commission,  
10                is a member of the Environmental Management Commission and  
11                knowledgeable in the principles of water and air resources  
12                management.

13  ~~- The initial members of the North Carolina Mining Commission shall be those~~  
14  ~~members of the present North Carolina Mining Council who shall meet the above~~  
15  ~~requirements for membership on the North Carolina Mining Commission and who shall~~  
16  ~~serve on the North Carolina Mining Commission for a period equal to the remainder of~~  
17  ~~their current terms on the North Carolina Mining Council. The remaining initial~~  
18  ~~members shall be appointed by the Governor to staggered terms of six years.~~

19        (b)     Terms. – The term of office of a member of the Commission is six years. Any  
20  ~~appointment to fill a vacancy on the Commission created by the resignation, dismissal,~~  
21  ~~death or disability of a member shall be for the balance of the unexpired term. At the~~  
22  ~~expiration of each member's term, the Governor shall replace the member with a new~~  
23  ~~member of like qualifications for a term of six years. The term of members appointed~~  
24  ~~under subdivisions (2), (5), and (8) of subsection (a) of this section shall expire on 30~~  
25  ~~June of years that precede by one year those years that are evenly divisible by six. The~~  
26  ~~term of members appointed under subdivisions (3) and (6) of subsection (a) of this~~  
27  ~~section shall expire on 30 June of years that follow by one year those years that are~~  
28  ~~evenly divisible by six. The term of members appointed under subdivisions (4), (7), and~~  
29  ~~(9) of subsection (a) of this section shall expire on 30 June of years that follow by three~~  
30  ~~years those years that are evenly divisible by six. Upon the expiration of a six-year term,~~  
31  ~~a member may continue to serve until a successor is appointed and duly qualified as~~  
32  ~~provided by G.S. 128-7.~~

33        (c)     Vacancies. – An appointment to fill a vacancy shall be for the unexpired  
34  ~~balance of the term.~~

35        (d)     Removal. – The Governor shall have the power to may remove any member of  
36  ~~the Commission from office for misfeasance, malfeasance, or nonfeasance in accordance~~  
37  ~~with the provisions of G.S. 143B-13 of the Executive Organization Act of 1973. G.S. 143B-~~  
38  ~~13.~~

39        (e)     Compensation. – The members of the Commission shall receive per diem and  
40  ~~necessary traveling and subsistence expenses in accordance with the provisions of G.S.~~  
41  ~~138-5.~~

42        (f)     Quorum. – A majority of the Commission shall constitute a quorum for the  
43  ~~transaction of business.~~

1 (g) Staff. – All clerical and other services required by the Commission shall be  
2 supplied by the Secretary of the Department."

3 Section 8. In order to reestablish a schedule of six-year staggered terms for the  
4 Mining Commission as required by G.S. 143B-291, as amended by Section 7 of this act,  
5 the Governor, in making appointments to replace the two members of the Mining  
6 Commission who represent the mining industry and whose terms both expire on 30 June  
7 1997, shall appoint one member under G.S. 143B-291(a)(2) to a full six-year term  
8 expiring on 30 June 2003 and shall appoint one member under G.S. 143B-291(a)(4), to a  
9 four-year term expiring 30 June 2001.

10 Section 9. G.S. 143B-313.2 reads as rewritten:

11 "**§ 143B-313.2. North Carolina Parks and Recreation Authority; members;**  
12 **selection; compensation; meetings.**

13 (a) Membership. – The North Carolina Parks and Recreation Authority shall  
14 consist of 11 members. The members shall include persons who are knowledgeable about  
15 park and recreation issues in North Carolina or with expertise in finance. ~~Three members~~  
16 ~~shall be appointed by the Governor, four members shall be appointed by the General Assembly~~  
17 ~~upon the recommendation of the Speaker of the House of Representatives in accordance with~~  
18 ~~G.S. 120-121, and four members shall be appointed by the General Assembly upon the~~  
19 ~~recommendation of the President Pro Tempore of the Senate in accordance with G.S. 120-121.~~  
20 The members shall serve at the pleasure of the appointing authority. The Governor shall appoint  
21 one of the members to be Chair of the North Carolina Parks and Recreation Authority. Vacancies  
22 shall be appointed by the original appointing authority, and the term shall be for the balance of  
23 the unexpired term. The North Carolina Parks and Recreation Authority shall meet at a time and  
24 place as designated by the Chair, but no less frequently than quarterly. In making  
25 appointments, each appointing authority shall specify under which subdivision of this  
26 subsection the person is appointed. Members shall be appointed as follows:

27 (1) One member appointed by the Governor.

28 (2) One member appointed by the Governor.

29 (3) One member appointed by the Governor.

30 (4) One member appointed by the General Assembly upon the  
31 recommendation of the Speaker of the House of Representatives, as  
32 provided in G.S. 120-121.

33 (5) One member appointed by the General Assembly upon the  
34 recommendation of the Speaker of the House of Representatives, as  
35 provided in G.S. 120-121.

36 (6) One member appointed by the General Assembly upon the  
37 recommendation of the Speaker of the House of Representatives, as  
38 provided in G.S. 120-121.

39 (7) One member appointed by the General Assembly upon the  
40 recommendation of the Speaker of the House of Representatives, as  
41 provided in G.S. 120-121.



1           (8)     One member appointed by the General Assembly upon the  
2           recommendation of the President Pro Tempore of the Senate, as  
3           provided in G.S. 120-121.

4           (9)     One member appointed by the General Assembly upon the  
5           recommendation of the President Pro Tempore of the Senate, as  
6           provided in G.S. 120-121.

7           (10)    One member appointed by the General Assembly upon the  
8           recommendation of the President Pro Tempore of the Senate, as  
9           provided in G.S. 120-121.

10          (11)    One member appointed by the General Assembly upon the  
11          recommendation of the President Pro Tempore of the Senate, as  
12          provided in G.S. 120-121.

13          (b)     Terms. – Members shall serve two-year terms. Members shall serve no more  
14          than two full two-year terms. Upon the expiration of a two-year term, a member may  
15          continue to serve until a successor is appointed and duly qualified as provided by G.S.  
16          128-7. The term of members appointed under odd-numbered subdivisions of subsection  
17          (a) of this section shall expire on 30 June of odd-numbered years. The term of members  
18          appointed under even-numbered subdivisions of subsection (a) of this section shall expire  
19          on 30 June of even-numbered years.

20          (c)     Chair. – The Governor shall appoint one member of the North Carolina Parks  
21          and Recreation Authority to serve as Chair.

22          (d)     Vacancies. – A vacancy on the North Carolina Parks and Recreation Authority  
23          shall be filled by the appointing authority responsible for making the appointment to that  
24          position as provided in subsection (a) of this section. An appointment to fill a vacancy  
25          shall be for the unexpired balance of the term.

26          (e)     Removal. – The Governor may remove, as provided in G.S. 143-13, any  
27          member of the North Carolina Parks and Recreation Authority appointed by the Governor  
28          for misfeasance, malfeasance, or nonfeasance. The General Assembly may remove any  
29          member of the North Carolina Parks and Recreation Authority appointed by the General  
30          Assembly for misfeasance, malfeasance, or nonfeasance.

31          ~~(e)~~   (f) Compensation. – The members of the North Carolina Parks and Recreation  
32          Authority shall receive per diem and necessary travel and subsistence expenses according  
33          to the provisions of G.S. 138-5.

34          (g)     Meetings. – The North Carolina Parks and Recreation Authority shall meet at  
35          least quarterly at a time and place designated by the Chair.

36          ~~(d)~~   (h) Quorum. – A majority of the North Carolina Parks and Recreation  
37          Authority shall constitute a quorum for the transaction of business.

38          ~~(e)~~   (i) Staff. – All clerical and other services required by the North Carolina Parks  
39          and Recreation Authority shall be provided by the Secretary of Environment, Health, and  
40          Natural Resources."

41                 Section 10. In order to reestablish a schedule of two-year staggered terms for  
42                 the North Carolina Parks and Recreation Authority as required by G.S. 143B-313.2, as  
43                 amended by Section 9 of this act:

- 1           (1)       The Governor, in making appointments to replace the one member  
2                   of the North Carolina Parks and Recreation Authority appointed by  
3                   the Governor whose term expires on 30 June 1997, shall appoint a  
4                   member under G.S. 143B-313.2(a)(1) to a full two-year term  
5                   expiring on 30 June 1999.
- 6           (2)       The Governor, in making appointments to replace the two members  
7                   of the North Carolina Parks and Recreation Authority appointed by  
8                   the Governor whose terms expire on 30 June 1998, shall appoint one  
9                   member under G.S. 143B-313.2(a)(2) to a full two-year term  
10                  expiring on 30 June 2000 and shall appoint one member under G.S.  
11                  143B-313.2(a)(3) to a one-year term expiring 30 June 1999.
- 12          (3)       The General Assembly, in making appointments to replace the four  
13                   members of the North Carolina Parks and Recreation Authority  
14                   appointed by the General Assembly upon the recommendation of the  
15                   Speaker of the House of Representatives whose terms expire on 30  
16                   June 1998, shall appoint two members under G.S. 143B-313.2(a)(4)  
17                   and G.S 143B-313.2(a)(6) to full two-year terms expiring on 30 June  
18                   2000 and shall appoint two members under G.S. 143B-313.2(a)(5)  
19                   and G.S. 143B-313.2(a)(7) to one-year terms expiring 30 June 1999.
- 20          (4)       The General Assembly, in making appointments to replace the four  
21                   members of the North Carolina Parks and Recreation Authority  
22                   appointed by the General Assembly upon the recommendation of the  
23                   President Pro Tempore of the Senate whose terms expire on 30 June  
24                   1998, shall appoint two members under G.S. 143B-313.2(a)(8) and  
25                   G.S 143B-313.2(a)(10) to full two-year terms expiring on 30 June  
26                   2000 and shall appoint two members under G.S. 143B-313.2(a)(9)  
27                   and G.S. 143B-313.2(a)(11) to one-year terms expiring 30 June  
28                   1999.

29           Section 11. This act is effective when it becomes law.