

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2011

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HOUSE BILL 953  
Committee Substitute Favorable 6/21/12  
Senate Rules and Operations of the Senate Committee Substitute Adopted 6/28/12

Short Title: Amend Environmental Laws 2.

(Public)

Sponsors:

Referred to:

May 17, 2012

1 A BILL TO BE ENTITLED  
2 AN ACT TO MAKE CLARIFYING, CONFORMING, AND TECHNICAL AMENDMENTS  
3 TO VARIOUS LAWS RELATED TO ENVIRONMENT AND NATURAL RESOURCES,  
4 DELAY THE IMPLEMENTATION DEADLINE FOR LOCAL STORMWATER  
5 MANAGEMENT PROGRAMS UNDER THE JORDAN LAKE NEW DEVELOPMENT  
6 RULE, AND TO MAKE CHANGES TO THE CLEAN ENERGY AND ECONOMIC  
7 SECURITY ACT.

8 The General Assembly of North Carolina enacts:

9 SECTION 1. G.S. 113-182.1(e) reads as rewritten:

10 "(e) The Secretary of Environment and Natural Resources shall monitor progress in the  
11 development and adoption of Fishery Management Plans in relation to the Schedule for  
12 development and adoption of the plans established by the Marine Fisheries Commission. The  
13 Secretary of Environment and Natural Resources shall report to the Joint Legislative  
14 Commission on Governmental Operations on progress in developing and implementing the  
15 Fishery Management Plans on or before 1 September of each year. The Secretary of  
16 Environment and Natural Resources shall report to the ~~Joint Legislative Commission on~~  
17 ~~Seafood and Aquaculture~~ Joint Legislative Commission on Governmental Operations within 30  
18 days of the completion or substantial revision of each proposed Fishery Management Plan. The  
19 Joint Legislative Commission on Governmental Operations shall review each proposed Fishery  
20 Management Plan within 30 days of the date the proposed Plan is submitted by the Secretary.  
21 The Joint Legislative Commission on Governmental Operations may submit comments and  
22 recommendations on the proposed Plan to the Secretary within 30 days of the date the proposed  
23 Plan is submitted by the Secretary."

24 SECTION 2.(a) G.S. 113A-115.1 is amended by adding a new subsection to read:

25 "§ 113A-115.1. **Limitations on erosion control structures.**

26 ...

27 (i) No later than September 1 of each year, the Coastal Resources Commission shall  
28 report to the Environmental Review Commission on the implementation of this section. The  
29 report shall provide a detailed description of each proposed and permitted terminal groin and its  
30 accompanying beach fill project, including the information required to be submitted pursuant to  
31 subsection (e) of this section. For each permitted terminal groin and its accompanying beach  
32 fill project, the report shall also provide all of the following:

33 (1) The findings of the Commission required pursuant to subsection (f) of this  
34 section.





1 being performed through contracts awarded under the design-bid-build  
2 program shall be allowed to continue as scheduled. Contracts for  
3 construction of projects with a design already approved by the Ecosystem  
4 Enhancement Program shall be awarded by the Ecosystem Enhancement  
5 Program by issuing a Request for Proposal (RFP). Only contractors who  
6 have prequalified under procedures established by the Ecosystem  
7 Enhancement Program shall be eligible to bid on Ecosystem Enhancement  
8 Program construction projects. Construction contracts issued under this  
9 subdivision shall be exempt from the requirements of Article 8B of Chapter  
10 143 of the General Statutes.

11 (j) The regulatory requirements for the establishment, operation, and monitoring of a  
12 compensatory mitigation bank or full delivery project shall vest at the time of the execution of  
13 the mitigation banking instrument or the award of a full delivery contract."

14 **SECTION 5.(b)** Sections 1.2 and 1.3 of S.L. 2011-343 are repealed.

15 **SECTION 6.** G.S. 143B-279.8(f) reads as rewritten:

16 "(f) The Secretary of Environment and Natural Resources shall report to the  
17 Environmental Review Commission and the ~~Joint Legislative Commission on Seafood and~~  
18 ~~Aquaculture [Joint Legislative Commission on Governmental Operations]~~ Joint Legislative  
19 Commission on Governmental Operations within 30 days of the completion or substantial  
20 revision of each draft Coastal Habitat Protection Plan. The Environmental Review Commission  
21 and the Joint Legislative Commission on Governmental Operations shall concurrently review  
22 each draft Coastal Habitat Protection Plan within 30 days of the date the draft Plan is submitted  
23 by the Secretary. The Environmental Review Commission and the Joint Legislative  
24 Commission on Governmental Operations may submit comments and recommendations on the  
25 draft Plan to the Secretary within 30 days of the date the draft Plan is submitted by the  
26 Secretary."

27 **SECTION 7.** G.S. 143B-344.37(b)(1) reads as rewritten:

28 "**§ 143B-344.37. (Expires June 30, 2016) North Carolina Sustainable Communities Grant**  
29 **Fund.**

30 ...

31 (b) Purposes. – Funds in the North Carolina Sustainable Communities Grant Fund shall  
32 be used, as available, to provide funding to regional bodies, cities, or counties to improve  
33 regional planning efforts that integrate housing and transportation decisions, to increase the  
34 capacity to improve land use and zoning and to provide up to fifty percent (50%) of any  
35 required local matching funds for recipients of Federal Sustainable Communities Planning  
36 Grants and any other federal grants related to sustainable development and requiring local  
37 matching funds. In order to receive funds under this section, regions must meet all of the  
38 following requirements:

39 (1) The regional body, city, or county is a part of a regional sustainable  
40 development partnership that includes any of the metro regions as defined in  
41 ~~G.S. 143B-344.38(b)~~ G.S. 143B-344.38(c). Partnerships may also include  
42 any Metropolitan Planning Organizations, Regional Planning Organizations,  
43 regional transit agencies, and representation from involved State agencies.

44 ...."

45 **SECTION 8.** G.S. 143B-344.38 reads as rewritten:

46 "**§ 143B-344.38. (Expires June 30, 2016) North Carolina Sustainable Communities Task**  
47 **Force – reports.**

48 (a) Beginning in 2011, the Task Force shall report to the Governor, the chairs of the  
49 ~~House Commerce, Small Business, and Entrepreneurship Committee~~ House Committee on  
50 Commerce and Job Development, and the Senate Commerce Committee, and the Joint

1 Legislative Commission on Governmental Operations no later than October 1 each year. The  
2 report shall include the following elements:

3 ...  
4 (b) Prior to awarding any funding under G.S. 143B-344.37 and no later than February  
5 1, 2011, the Task Force shall report to the ~~House Commerce, Small Business, and~~  
6 ~~Entrepreneurship Committee~~ House Committee on Commerce and Job Development and the  
7 Senate Commerce Committee regarding the sustainable practices scoring system developed in  
8 accordance with G.S. 143B-344.35(7).

9 ...."

10 **SECTION 9.** G.S. 143B-432(a) reads as rewritten:

11 "(a) The Division of Economic Development of the Department of Natural and  
12 Economic Resources, the Science and Technology Committee of the Department of Natural  
13 and Economic Resources, and the Science and Technology Research Center of the Department  
14 of Natural and Economic Resources Resources, ~~and the Western North Carolina Public Lands~~  
15 ~~Council of the Department of Natural and Economic Resources~~ are each hereby transferred to  
16 the Department of Commerce by a Type I transfer, as defined in G.S. 143A-6."

17 **SECTION 10.** G.S. 18B-1105(b) reads as rewritten:

18 "**§ 18B-1105. Authorization of distillery permit.**

19 ...  
20 (b) Distilleries for Fuel Alcohol. – Any person in possession of a Federal Operating  
21 Permit pursuant to Title 27, Code of Federal Regulations, Part 19 (April 1, 2010 Edition),  
22 ~~201.64 through 201.65 or Part 201.131 through 201.138~~ shall obtain a fuel alcohol permit  
23 before manufacturing any alcohol. The permit shall entitle the permittee to perform only those  
24 acts allowed by the Federal Operating Permit, and all conditions of the Federal Operating  
25 Permit shall apply to the State permit."

26 **SECTION 11.(a)** Definition. – As used in this act, "New Development Rule 15A  
27 NCAC 02B .0265" means 15A NCAC 02B .0265 (Jordan Water Supply Nutrient Strategy:  
28 Stormwater Management for New Development) adopted by the Commission on May 8, 2008,  
29 and approved by the Rules Review Commission on November 20, 2008.

30 **SECTION 11.(b)** New Development Rule 15A NCAC 02B .0265. – Until the  
31 effective date of the revised permanent rule that the Commission is required to adopt pursuant  
32 to Section 11(d) of this act, the Commission and the Department shall implement New  
33 Development Rule 15A NCAC 02B .0265, as provided in Section 11(c) of this act.

34 **SECTION 11.(c)** Implementation. – Notwithstanding sub-subdivision (d) of  
35 subdivision (4) of New Development Rule 15A NCAC 02B .0265, by August 10, 2014, within  
36 three months after the Commission's approval of a local program, or upon the Division's first  
37 renewal of a local government's NPDES stormwater permit, whichever occurs later, the  
38 affected local government shall complete adoption of and implement its local stormwater  
39 management program.

40 **SECTION 11.(d)** Additional Rule-Making Authority. – The Commission shall  
41 adopt a rule to replace New Development Rule 15A NCAC 02B .0265. Notwithstanding  
42 G.S. 150B-19(4), the rule adopted by the Commission pursuant to this section shall be  
43 substantively identical to the provisions of Section 11(c) of this act. Rules adopted pursuant to  
44 this section are not subject to G.S. 150B-21.8 through G.S. 150B-21.14. Rules adopted  
45 pursuant to this section shall become effective as provided in G.S. 150B-21.3(b1) as though 10  
46 or more written objections had been received as provided by G.S. 150B-21.3(b2).

47 **SECTION 11.(e)** Sunset. – Section 11(c) of this act expires on the date that rules  
48 adopted pursuant to Section 11(d) of this act become effective.

49 **SECTION 12.(a)** If Senate Bill 820, 2012 Regular Session, becomes law, then  
50 Section 2(j) of that act reads as rewritten:

1 "SECTION 2.(j) The Mining and Energy Commission, in conjunction with the  
2 Department of Environment and Natural Resources, the Department of Transportation, the  
3 North Carolina League of Municipalities, and the North Carolina Association of County  
4 Commissioners, shall identify appropriate levels of funding and potential sources for that  
5 funding, including permit fees, bonds, taxes, and impact fees, necessary to (i) support local  
6 governments impacted by the industry and associated activities; (ii) address expected  
7 infrastructure impacts, including, but not limited to, repair of roads damaged by truck traffic  
8 and heavy equipment; (iii) cover any costs to the State for administering an oil and gas  
9 regulatory program, including remediation and reclamation of drilling sites when necessary due  
10 to abandonment or insolvency of an oil or gas operator or other responsible party; and (iv) any  
11 other issues that may need to be addressed in the Commission's determination. Any  
12 recommendation concerning local impact fees shall be formulated to require that all such fees  
13 be used exclusively to address infrastructure impacts from the drilling operation for which a fee  
14 is imposed. The Commission shall report its findings and recommendations, including  
15 legislative proposals, to the Joint Legislative Commission on Energy Policy, created under  
16 Section 6(a) of this act, and the Environmental Review Commission on or before ~~January~~  
17 October 1, 2013."

18 **SECTION 12.(b)** If Senate Bill 820, 2012 Regular Session, becomes law, then  
19 Section 2(k) of that act reads as rewritten:

20 "SECTION 2.(k) The Mining and Energy Commission, in conjunction with the  
21 Department of Environment and Natural Resources, the North Carolina League of  
22 Municipalities, and the North Carolina Association of County Commissioners, shall examine  
23 the issue of local government regulation of oil and gas exploration and development activities,  
24 and the use of horizontal drilling and hydraulic fracturing for that purpose. The Commission  
25 shall formulate recommendations that maintain a uniform system for the management of such  
26 activities, which allow for reasonable local regulations, including required setbacks,  
27 infrastructure placement, and light and noise restrictions, that do not prohibit or have the effect  
28 of prohibiting oil and gas exploration and development activities, and the use of horizontal  
29 drilling and hydraulic fracturing for that purpose, or otherwise conflict with State law. The  
30 Commission shall report its findings and recommendations, including legislative proposals, to  
31 the Joint Legislative Commission on Energy Policy, created under Section 6(a) of this act, and  
32 the Environmental Review Commission on or before ~~January~~October 1, 2013."

33 **SECTION 12.(c)** If Senate Bill 820, 2012 Regular Session, becomes law, then  
34 Section 2(l) of that act reads as rewritten:

35 "SECTION 2.(l) The Mining and Energy Commission, in conjunction with the  
36 Department of Environment and Natural Resources and the Consumer Protection Division of  
37 the North Carolina Department of Justice, shall study the State's current law on the issue of  
38 integration or compulsory pooling and other states' laws on the matter. The Department shall  
39 report its findings and recommendations, including legislative proposals, to the Joint  
40 Legislative Commission on Energy Policy, created under Section 6(a) of this act, and the  
41 Environmental Review Commission on or before ~~January~~October 1, 2013."

42 **SECTION 12.(d)** If Senate Bill 820, 2012 Regular Session, becomes law, then  
43 G.S. 113-423(j), as enacted by Section 4(d) of that act, reads as rewritten:

44 "(j) ~~Three-Day~~Seven-Day Right of Rescission. – Any lease of oil or gas rights or any  
45 other conveyance of any kind separating rights to oil or gas from the freehold estate of surface  
46 property shall be subject to a ~~three-day~~seven-day right of rescission in which the lessor or  
47 lessee may cancel the lease. A bold and conspicuous notice of this right of rescission shall be  
48 included in all such leases. In order to cancel the lease, the lessor or lessee shall notify the other  
49 party in writing within ~~three-seven~~seven business days of execution of the lease, and the lessor shall  
50 return any sums paid by the lessee to the lessor under the terms of the lease."

1           **SECTION 13.** Sections 12(a) through 12(c) of this act become effective August 1,  
2 2012. Section 12(d) of this act is effective when it becomes law and applies to leases or  
3 contracts entered into on or after that date. The remainder of this act is effective when it  
4 becomes law.