

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2017

SESSION LAW 2018-114
HOUSE BILL 374

AN ACT TO PROVIDE FURTHER REGULATORY RELIEF TO THE CITIZENS OF NORTH CAROLINA.

The General Assembly of North Carolina enacts:

ELECTRONIC DELIVERY OF DECISION DOCUMENTS IN CONTESTED CASES

SECTION 1. G.S. 150B-23 reads as rewritten:

"§ 150B-23. Commencement; assignment of administrative law judge; hearing required; notice; intervention.

...
(f) Unless another statute or a federal statute or regulation sets a time limitation for the filing of a petition in contested cases against a specified agency, the general limitation for the filing of a petition in a contested case is 60 days. The time limitation, whether established by another statute, federal statute, or federal regulation, or this section, shall commence when notice is given of the agency decision to all persons aggrieved who are known to the agency by personal ~~delivery-delivery~~, electronic delivery, or by the placing of the notice in an official depository of the United States Postal Service wrapped in a wrapper addressed to the person at the latest address given by the person to the agency. The notice shall be in writing, and shall set forth the agency action, and shall inform the persons of the right, the procedure, and the time limit to file a contested case petition. When no informal settlement request has been received by the agency prior to issuance of the notice, any subsequent informal settlement request shall not suspend the time limitation for the filing of a petition for a contested case hearing.

...."

ALLOW TEMPORARY FOOD ESTABLISHMENTS TO OPERATE FOR UP TO 30 DAYS AND OPERATE AT AGRITOURISM BUSINESSES

SECTION 2. G.S. 130A-247 reads as rewritten:

"§ 130A-247. Definitions.

The following definitions shall apply throughout this Part:

- ...
(8) "Temporary food establishment" means an establishment not otherwise exempted from this part pursuant to G.S. 130A-250 that (i) prepares or serves food, (ii) operates for a period of time not to exceed ~~21~~30 days in one location, and (iii) is affiliated with and endorsed by a transitory fair, carnival, circus, festival, ~~or public exhibition~~public exhibition, or agritourism business. For purposes of this subdivision, "agritourism" means the same as in G.S. 153A-340(b)(2a). Notwithstanding the time limit set out in this subdivision, a local health department may, upon the request of a temporary food establishment, grant a one-time, 15-day extension of the establishment's permit if the establishment continues to meet all of the requirements of its permit and applicable rules.



CHANGE REQUIRED OFFICE LOCATION FOR THE NORTH CAROLINA BOARD OF COSMETIC ART EXAMINERS FROM RALEIGH TO WAKE COUNTY

SECTION 3. G.S. 88B-6(a) reads as rewritten:

"(a) The Board shall maintain its office in Raleigh, Wake County, North Carolina."

AMEND LAW ON CONTRACTS WITH AUTOMATIC RENEWAL CLAUSES

SECTION 4.(a) G.S. 75-41 reads as rewritten:

"§ 75-41. Contracts with automatic renewal clauses.

(a) Any person engaged in commerce that sells, leases, or offers to sell or lease, any products or services to a consumer pursuant to a contract, where the contract automatically renews unless the consumer cancels the contract, shall do all of the following:

- (1) Disclose the automatic renewal clause clearly and conspicuously in the contract or contract offer.
- (2) Disclose clearly and conspicuously how to cancel the contract in the initial contract, contract offer, or with delivery of products or services.
- (3) For any automatic renewal exceeding 60 days, provide written notice to the consumer by personal delivery, electronic mail, or first-class mail, at least 15 days but no earlier than 45 days before the date the contract is to be automatically renewed, stating the date on which the contract is scheduled to automatically renew and notifying the consumer that the contract will automatically renew unless it is cancelled by the consumer prior to that date.
- (4) If the terms of the contract will change upon the automatic renewal of the contract, disclose the changing terms of the contract clearly and conspicuously on the notification in at least 12 point type and in bold print.

(b) Repealed by Session Laws 2016-113, s. 16(a), effective July 26, 2016, and applicable to contracts entered into on or after that date.

(c) A person that fails to comply with the requirements of this section is in violation of this section unless the person demonstrates that all of the following are its routine business practice:

- (1) The person has established and implemented written procedures to comply with this section and enforces compliance with the procedures.
- (2) Any failure to comply with this section is the result of error.
- (3) Where an error has caused the failure to comply with this section, the person provides a full refund or credit for all amounts billed to or paid by the consumer from the date of the renewal until the date of the termination of the contract, or the date of the subsequent notice of renewal, whichever occurs first.

(d) This section does not apply to insurers licensed under Chapter 58 of the General Statutes, or to banks, trust companies, savings and loan associations, savings banks, or credit unions licensed or organized under the laws of any state or the United States, or any foreign bank maintaining a branch or agency licensed under the laws of the United States, or any subsidiary or affiliate thereof, nor does this section apply to any entity subject to regulation by the Federal Communications Commission under Title 47 of the United States Code or by the North Carolina Utilities Commission under Chapter 62 of the General Statutes, or to any entity doing business directly or through an affiliate pursuant to a franchise, license, certificate, or other authorization issued by a political subdivision of the State or an agency thereof.

(d1) This section does not apply to real estate professionals licensed under Chapter 93A of the General Statutes.

(e) A violation of this section renders the automatic renewal clause void and unenforceable."

SECTION 4.(b) This section becomes effective October 1, 2018, and applies to contracts entered into or renewed on or after that date.

MOTORCYCLE FINANCING CHANGES

SECTION 5.(a) G.S. 25A-34 reads as rewritten:

"§ 25A-34. Balloon payments.

With respect to a consumer credit sale, other than one pursuant to a revolving charge account, no scheduled payment may be more than ten percent (10%) larger than the average of earlier scheduled payments, (except except that the final payment may be twenty-five percent (25%)) (25%) larger than the average of earlier scheduled payments. This ~~provision~~ section does not apply when the payment schedule is adjusted to the seasonal or irregular income of the buyer. This section does not apply to the sale of a motorcycle as defined in G.S. 20-4.01(27) with a purchase price of seven thousand five hundred dollars (\$7,500) or more."

SECTION 5.(b) This section becomes effective December 1, 2018, and applies to contracts entered into on or after that date.

CLARIFY REGISTRATION REQUIREMENTS FOR EMPLOYEES OF ALARM SYSTEMS BUSINESSES

SECTION 6. G.S. 74D-8 reads as rewritten:

"§ 74D-8. Registration of persons employed.

(a)(1) A licensee of an alarm systems business shall register with the Board within 30 days after the employment begins, all of the following employees that are within the State, unless in the discretion of the Director, the time period is extended for good cause:

- a. Any employee that has access to confidential information detailing the design, installation, or application of any location specific electronic security system or that has access to any code, number, or program that would allow the system to be modified, altered, or circumvented.
- b. Any employee who installs or services an electronic security system in a commercial business establishment or a personal residence.

Employees engaged only in sales or marketing that does not involve any of the above are not required to be registered.

- (1a) To register an employee, a licensee shall submit to the Board as to the employee: set(s) of classifiable fingerprints on standard F.B.I. applicant cards; recent color photograph(s) of acceptable quality for identification; and statements of any criminal records as deemed appropriate by the Board.
- (2) Except during the period allowed for registration in subdivision (a)(1) of this section, no alarm systems business may employ any employee unless the employee's registration has been approved by the Board as set forth in this section.

(b) The Director shall be notified in writing of the termination of any employee registered under this Chapter within 20 days after the termination.

(c) The Board shall issue a registration card to each employee of a licensee who is registered under this Chapter. The registration card shall expire two years after its date of issuance and shall be renewed before the expiration of the term of the registration. If a registered person changes employment to another licensee, the registration card may remain valid; however, persons changing employment must pay the fee authorized by G.S. 74D-7(e)(5).

(d) If all required documents, properly completed, have been submitted to the Board no later than 20 days after an employee begins employment, the employer of each applicant for registration shall give the applicant a copy of the complete application which the employee can use until a registration card issued by the Board is received."

MODIFY RENEWABLE PRECERTIFICATION FOR PERSONS TRANSPORTING ESSENTIALS OR RESTORING UTILITIES DURING EMERGENCY DECLARATIONS

SECTION 7. G.S. 166A-19.70(c) reads as rewritten:

"(c) Certification System. – The Secretary shall develop a system pursuant to which a person who transports essentials in commerce, or assists in ensuring their availability, and persons who assist in the restoring of utility services can be certified as such. The certification system shall allow for both ~~preemergency~~ pre-emergency declaration and ~~postemergency~~ post-emergency declaration certification and ~~may include an annually~~with renewable precertification. The Secretary shall only allow those who routinely transport or distribute essentials or assist in the restoring of utility services to be certified. A certification of the employer shall constitute a certification of the employer's employees. The Secretary shall create an easily recognizable indicium of certification in order to assist local officials' efforts to determine which persons have received certification by the system established under this subsection."

MITIGATION BONDING REFORM

SECTION 8. The Division of Mitigation Services shall review and revise its bidding and contracting procedures for procurement of mitigation services to include, at a minimum, the following policies:

- (1) Bonding or other financial surety required for the construction of a mitigation project shall reflect only the minimum amount necessary to secure State funds provided through a contract between the Division and a private mitigation provider.
- (2) Post-construction bonding periods and amounts shall reflect the minimum length of time necessary to determine with a reasonable degree of certainty project success and the reasonably determined level of financial risk to the State from total or partial failure of the mitigation project.

The Division shall report to the Environmental Review Commission regarding the review and revisions required by this section no later than December 1, 2018. The report shall include an explanation of the methodology followed in setting bonding amounts and time lines for procured mitigation projects and a description of any changes made to the Division's procedures as a result of the review required by this section.

CLARIFY IMPROVEMENT PERMIT AND CONSTRUCTION AUTHORIZATION EXTENSIONS FOR WASTEWATER SYSTEMS

SECTION 9. G.S. 130A-336(b1) reads as rewritten:

"(b1) An improvement permit or authorization for wastewater system construction issued by a local health department from January 1, 2000, to January 1, 2015, which has not been acted on and would have otherwise expired, shall remain valid until January 1, 2020, without penalty, unless there are changes in the hydraulic flows or wastewater characteristics from the original local health department evaluation. Permits are transferrable with ownership of the property. Permits shall retain the site, soil evaluations, and construction conditions of the original permit. Site activities begun or completed pursuant to requirements from the local health department under the original permit, however, shall not be construed to be altered conditions and shall not constitute a basis for refusal of the permit extension. The property owner may contract with a person licensed pursuant to Chapter 89F of the General Statutes as a licensed soil scientist to conduct a site verification to determine whether the conditions of the original permit are unchanged. Written verification by the licensed soil scientist shall be accepted by the local health department, used in lieu of verification by the local health department, and be attached to the permit."

STUDY MANDATORY CONNECTION AUTHORITY RELATING TO USE OF ENGINEER OPTION PERMIT FOR WASTEWATER

SECTION 10. Section 24.3(c) of S.L. 2017-57 reads as rewritten:

"**SECTION 24.3.(c)** The Legislative Research Commission shall study the issues raised in this section and make recommendations to the General Assembly on:

- (1) Fee and charge setting by units of local government in the operation of a water or sewer system, including collection rates of those fees and charges.
- (2) Proper accounting controls to ensure transparency in budgeting and accounting for expenditures and interfund transfers of public enterprise services by units of local government.
- (3) Legislation that may be necessary to ensure proper funding of infrastructure maintenance and improvements for the provision of water and sewer services, including whether regionalization could facilitate financially healthy systems with lower fees and charges to customers.
- (4) Legislation that may be necessary to ensure that units of local government monitor aging water and sewer infrastructure to ensure proper maintenance and repair, including how this responsibility impacts the financial health of the public enterprise.
- (5) Legislation that may be necessary to grant or clarify mandatory connection authority relating to use of the engineer option permit for wastewater and relating to multiple public systems operating as one, however constituted, or public-private partnerships."

REVISE WASTEWATER PERMITTING REQUIREMENTS

SECTION 11.(a) G.S. 130A-334(9a) reads as rewritten:

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

SECTION 11.(b) G.S. 130A-334(15) reads as rewritten:

"(15) "Wastewater system" means a system of wastewater collection, treatment, and disposal in single or multiple components, including a ground absorption system, privy, septic tank system, public or community wastewater system, wastewater reuse or recycle system, mechanical or biological wastewater treatment system, any other similar system, and any chemical toilet used only for human waste. ~~A wastewater system located on multiple adjoining lots or tracts of land under common ownership or control shall be considered a single system for purposes of permitting under this Article."~~

SECTION 11.(c) G.S. 130A-335 reads as rewritten:

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

...

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

geologist may evaluate the proposed site or repair area, as applicable, for geologic and hydrogeologic conditions.

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

- (1) The evaluation of soil conditions, site features, or geologic and hydrogeologic conditions satisfies all requirements of this Article. The evaluation shall not cover areas outside the scope of the applicable license.
- (2) The licensed soil scientist or licensed geologist conducting the evaluation maintains an errors and omissions liability insurance policy issued by an insurer licensed under Chapter 58 of the General Statutes in an amount commensurate with the risk.

...

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

- (1) The local board of health, on its own motion, has requested the Department to review its proposed rules concerning wastewater systems; and
- (2) The local board of health has adopted by reference the wastewater system rules adopted by the Commission, with any more stringent modifications or additions deemed necessary by the local board of health to protect the public ~~health;~~health. Local boards of health shall use historical experience to establish modifications or additions to rules established by the Commission; and
- (3) The Department has found that the ~~rules~~rules, including modifications or additions to the Commission's rules, of the local board of health concerning wastewater collection, treatment and disposal systems are at least as stringent as rules adopted by the Commission and are sufficient and necessary to safeguard the public health.

...."

EXPAND DEFINITION OF ACCEPTED WASTEWATER DISPERSAL SYSTEM TO INCLUDE APPROVED TRENCH DISPERSAL SYSTEMS

SECTION 12. G.S. 130A-343 reads as rewritten:

"§ 130A-343. Approval of on-site subsurface wastewater systems.

(a) Definitions. – As used in this section:

- (1) "Accepted wastewater dispersal system" means any subsurface wastewater dispersal system, other than a conventional wastewater system, that: (i) has been previously approved as an innovative wastewater dispersal system or other approved trench dispersal system by the Department; (ii) has been in general use in this State as ~~an innovative~~a wastewater dispersal system for more than five years; and (iii) has been approved by the Commission for general use or use in one or more specific applications. An accepted wastewater dispersal system may be approved for use in applications for which a conventional wastewater system is unsuitable. The Commission may impose any design, operation, maintenance, monitoring, and management requirements on the use of an accepted wastewater dispersal system that it determines to be appropriate.

...

(h) Accepted Wastewater Dispersal Systems. – A manufacturer of an innovative wastewater dispersal system or other approved trench dispersal system that has been in general use in this State for a minimum of five years may petition the Commission to have the system designated as an accepted wastewater system as provided in this subsection. The manufacturer shall provide the Commission with the data and findings of all prior evaluations of the performance of the system in this State and other states referenced in the petition, including disclosure of any conditions found to result in unacceptable structural integrity, treatment, or hydraulic performance. In addition, the manufacturer shall provide the Commission with information sufficient to enable the Commission to fully evaluate the performance of the system in this State for at least the five-year period immediately preceding the petition. The Commission shall designate a wastewater system as an accepted wastewater system only if it finds that there is clear, convincing, and cogent evidence (i) to confirm the findings made by the Department at the time the Department approved the system as ~~an innovative wastewater system~~ a wastewater dispersal system and (ii) that the system performs in a manner that is equal or superior to a conventional wastewater system under actual field conditions in this State. The Commission shall specify the circumstances in which use of the system is appropriate and any conditions and limitations related to the use of the system.

...."

CAP CERTAIN TITLE V AIR QUALITY PERMIT FEES

SECTION 13.(a) Definitions. – "Permit and Application Fees Rule" means 15A NCAC 02Q .0203 (Permit and Application Fees) for purposes of this section and its implementation.

SECTION 13.(b) Permit Fee Rule. – Until the effective date of the revised permanent rule that the Environmental Management Commission is required to adopt pursuant to subsection (d) of this section, the Commission and local air permitting programs shall implement the Permit and Application Fees Rule as provided in subsection (c) of this section.

SECTION 13.(c) Implementation. – With respect to air curtain burner facilities with emissions below the Title V major source threshold that are subject to the Title V permitting program due to regulations in 40 C.F.R. Part 60 that require facilities to obtain a Title V permit regardless of actual or potential emissions, the Permit and Application Fees Rule shall be implemented to provide that the annual permit fee and permit application fee for a general permit for these facilities shall be ten percent (10%) of the otherwise applicable fee.

SECTION 13.(d) Additional Rule-Making Authority. – The Commission shall adopt a rule to amend the Permit and Application Fees Rule consistent with subsection (c) of this section. Notwithstanding G.S. 150B-19(4), the rule adopted by the Commission pursuant to this section shall be substantively identical to the provisions of subsection (c) of this section. Rules adopted pursuant to this section are not subject to Part 3 of Article 2A of Chapter 150B of the General Statutes. Rules adopted pursuant to this section shall become effective as provided in G.S. 150B-21.3(b1) as though 10 or more written objections had been received as provided in G.S. 150B-21.3(b2).

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

ENVIRONMENTAL MANAGEMENT COMMISSION TO REVIEW LOCAL GOVERNMENT IMPLEMENTATION OF CERTAIN WATER QUALITY LAWS

SECTION 14. The Environmental Management Commission shall review the delegated stormwater management programs implemented by local governments to determine (i) which local governments are enforcing stormwater regulations that exceed the requirements of State law, including requirements for inspection and maintenance of stormwater controls and

best management practices, and (ii) which local governments have taken enforcement actions since August 1, 2015, based on requirements in Total Maximum Daily Load (TMDL) calculations or National Pollutant Discharge Elimination System (NPDES) permits that exceed the requirements of State law. The Commission shall report its findings to the Environmental Review Commission no later than January 1, 2019.

AUTHORIZE REPLACEMENT OF CERTAIN TEMPORARY EROSION CONTROL STRUCTURES

SECTION 15. G.S. 113A-115.1 reads as rewritten:

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

(a) As used in this section:

- (1) "Erosion control structure" means a breakwater, bulkhead, groin, jetty, revetment, seawall, or any similar structure.
- (1a) "Estuarine shoreline" means all shorelines that are not ocean shorelines that border estuarine waters as defined in G.S. 113A-113(b)(2).
- (2) "Ocean shoreline" means the Atlantic Ocean, the oceanfront beaches, and frontal dunes. The term "ocean shoreline" includes an ocean inlet and lands adjacent to an ocean inlet but does not include that portion of any inlet and lands adjacent to the inlet that exhibits characteristics of estuarine shorelines.
- (3) "Terminal groin" means one or more structures constructed at the terminus of an island or on the side of an inlet, with a main stem generally perpendicular to the beach shoreline, that is primarily intended to protect the terminus of the island from shoreline erosion and inlet migration. A "terminal groin" shall be pre-filled with beach quality sand and allow sand moving in the littoral zone to flow past the structure. A "terminal groin" may include other design features, such as a number of smaller supporting structures, that are consistent with sound engineering practices and as recommended by a professional engineer licensed to practice pursuant to Chapter 89C of the General Statutes. A "terminal groin" is not a jetty.

(b) No person shall construct a permanent erosion control structure in an ocean shoreline. The Commission shall not permit the construction of a temporary erosion control structure that consists of anything other than sandbags in an ocean shoreline. This subsection shall not apply to any of the following:

- (1) Any permanent erosion control structure that is approved pursuant to an exception set out in a rule adopted by the Commission prior to July 1, 2003.
- (2) Any permanent erosion control structure that was originally constructed prior to July 1, 1974, and that has since been in continuous use to protect an inlet that is maintained for navigation.
- (3) Any terminal groin permitted pursuant to this section.

(b1) This section shall not be construed to limit the authority of the Commission to adopt rules to designate or protect areas of environmental concern, to govern the use of sandbags, or to govern the use of erosion control structures in estuarine shorelines.

(c) ~~The Commission may renew a permit for an erosion control structure issued a permanent erosion control structure originally permitted pursuant to a variance granted by the Commission prior to July 1, 1995. The Commission may authorize the replacement of a permanent erosion control structure that was permitted by the Commission pursuant to a variance granted by the Commission prior to July 1, 1995, if the Commission finds that: (i) the structure will not be enlarged beyond the dimensions set out in the original permit; (ii) there is no practical alternative to replacing the structure that will provide the same or similar benefits; and (iii) the replacement structure will comply with all applicable laws and with all rules, other than the rule~~

or rules with respect to which the Commission granted the variance, that are in effect at the time the structure is replaced.

(c1) The Commission may authorize the repair or replacement of a temporary erosion control structure that was originally permitted prior to July 1, 1995, if the Commission finds that (i) the structure is located adjacent to an intertidal marine rock outcropping designated by the State as a Natural Heritage Area pursuant to Part 42 of Article 2 of Chapter 143B of the General Statutes and (ii) the replacement structure will comply with all applicable laws and with all rules, other than the rule or rules with respect to which the Commission granted the variance, that are in effect at the time the structure is replaced.

...."

COASTAL STORMWATER PROGRAM VARIANCES

SECTION 16.(a) Notwithstanding S.L. 2008-211 and rules adopted to implement the act, any subdivision meeting all of the following requirements shall be deemed to be in compliance with the impervious surface limitations of the act and its implementing rules:

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

SECTION 16.(b) This section applies only to impervious surface built prior to January 1, 2017. Any impervious surface built on or after January 1, 2017, shall be subject to S.L. 2008-211 and its implementing rules.

SECTION 16.(c) Notwithstanding S.L. 2008-211 and rules adopted to implement the act, a regional water facility shall not be required to increase the size of its wet detention ponds or decrease the amount of development or impervious surface for which it has been permitted based on an incorrect calculation in its stormwater management permit. This section shall not apply to a regional water facility that intentionally provided inaccurate information upon which the incorrect calculation is based.

SECTION 16.(d) This section is effective when it becomes law and applies to permits issued before and after that date.

ALLOW AMERICAN EELS TO BE IMPORTED FROM MARYLAND FOR AQUACULTURE PURPOSES

SECTION 17. Section 3.1(c) of S.L. 2017-190 reads as rewritten:

"SECTION 3.1.(c) Implementation. – Use of American eels imported from ~~Virginia~~ Maryland, Virginia, or South Carolina in an aquaculture operation is exempt from the permitting requirements of the Importation of Marine and Estuarine Organisms Rule."

ABOVEGROUND TANKS INSTITUTIONAL CONTROLS CLARIFICATION

SECTION 18.(a) G.S. 143B-279.9 reads as rewritten:

"§ 143B-279.9. Land-use restrictions may be imposed to reduce danger to public health at contaminated sites.

...

~~Except with respect to land contaminated from a discharge or release of petroleum from an underground storage tank, the imposition of restrictions on the current or future use of real property on~~ With respect to sites contaminated by the discharge or release of petroleum from an aboveground storage tank, or another petroleum source, from which contamination has migrated to off-site properties, as that term is defined under G.S. 130A-310.65(3a), the imposition of

restrictions on the current or future use of real property on such a site shall only be allowed as provided if the Department has determined that the requirements of G.S. 143-215.104AA or G.S. 130A-310.73A, as applicable-applicable, have been satisfied for the site.

...."

SECTION 18.(b) G.S. 143B-279.11 reads as rewritten:

"§ 143B-279.11. Recordation of residual petroleum from underground or aboveground storage tanks or other sources.

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

SECTION 18.(c) This section becomes effective retroactively to October 4, 2017.

MODIFY OTHER REQUIREMENTS FOR UNDERGROUND STORAGE TANKS (USTS)

SECTION 19.(a) Definitions. – "General Requirements Applicable to Performance Standards for UST System or UST System Component Installation or Replacement Rule" means 15A NCAC 2N .0901 (General Requirements) for purposes of this section and its implementation.

SECTION 19.(b) General Requirements Applicable to Performance Standards for UST System or UST System Component Installation or Replacement Rule. – Until the effective date of the revised permanent rule that the Environmental Management Commission is required to adopt pursuant to subsection (d) of this section, the Commission shall implement the General Requirements Applicable to Performance Standards for UST System or UST System Component Installation or Replacement Rule, as provided in subsection (c) of this section.

SECTION 19.(c) Implementation. – Notwithstanding subsection (n) of the General Requirements Applicable to Performance Standards for UST System or UST System Component Installation or Replacement Rule, the Commission shall not require overfill prevention equipment to be checked annually for operability, proper operating condition and proper calibration in accordance with the manufacturer's written guidelines, but shall instead require such equipment to be checked for these purposes once every three years as provided for under federal law.

SECTION 19.(d) Additional Rule-Making Authority. – The Commission shall adopt a rule to amend the General Requirements Applicable to Performance Standards for UST System or UST System Component Installation or Replacement Rule consistent with subsection (c) of this section. Notwithstanding G.S. 150B-19(4), the rule adopted by the Commission pursuant to this section shall be substantively identical to the provisions of subsection (c) of this section. Rules adopted pursuant to this section are not subject to Part 3 of Article 2A of Chapter 150B of the General Statutes. Rules adopted pursuant to this section shall become effective as provided in G.S. 150B-21.3(b1) as though 10 or more written objections had been received as provided by G.S. 150B-21.3(b2).

SECTION 19.(e) Sunset. – This section expires when permanent rules adopted as required by subsection (d) of this section become effective.

SECTION 19.1.(a) Definitions. – For purposes of this section and its implementation, "UST Rules" means Subchapter 2N (Underground Storage Tanks) of 15A NCAC.

SECTION 19.1.(b) UST Rules. – Until the effective date of the revised permanent rule that the Environmental Management Commission is required to adopt pursuant to subsection (d) of this section, the Commission shall implement the UST Rules, as provided in subsection (c) of this section.

SECTION 19.1.(c) Implementation. – Notwithstanding any prohibition under the UST Rules, or guidance adopted by the Department of Environmental Quality thereunder, the Department shall allow owners or operators of USTs to use all test methods and testing equipment that are approved by the United States Environmental Protection Agency, including the use of a Testable Drop Tube, for required testing of UST equipment.

SECTION 19.1.(d) Additional Rule-Making Authority. – The Commission shall adopt a rule to amend the UST Rules consistent with subsection (c) of this section. Notwithstanding G.S. 150B-19(4), the rule adopted by the Commission pursuant to this section shall be substantively identical to the provisions of subsection (c) of this section. Rules adopted pursuant to this section are not subject to Part 3 of Article 2A of Chapter 150B of the General Statutes. Rules adopted pursuant to this section shall become effective as provided in G.S. 150B-21.3(b1) as though 10 or more written objections had been received as provided by G.S. 150B-21.3(b2).

SECTION 19.1.(e) Sunset. – This section expires when permanent rules adopted as required by subsection (d) of this section become effective.

EXPAND EXEMPTIONS FOR CERTAIN LOCAL GOVERNMENTS' AUTHORITY TO ENACT FLOW CONTROL

SECTION 20.(a) G.S. 130A-291(c) reads as rewritten:

"(c) Except as provided in subsections (d) and (e) of this section, a unit of local government may, by ordinance, franchise, business license, contract, or otherwise, require that all solid waste generated within the geographic area and placed in the waste stream for disposal be delivered to the permitted solid waste management facility or facilities serving the geographic area only under one of the following conditions:

- (1) If the unit of local government has debt associated with solid waste management facilities and equipment outstanding on September 1, 2017, the unit of local government may adopt and enforce such an ordinance until the date that such debt has matured.
- (2) If the unit of local government incurs debt after September 1, 2017, and the issuance of the debt will be conditioned upon the unit of local government requiring that all waste collected within the county be disposed of within the landfill, for expansion of a landfill or construction of a new landfill after all necessary approvals for issuance of the debt have been obtained from the Local Government Commission in compliance with Chapter 159 of the General Statutes, including the demonstration of need and cost required by G.S. 159-211, the unit of local government may adopt and enforce such an ordinance until the date the debt associated with expansion of the landfill, or construction of the new landfill, has matured.
- (3) If the unit of local government is a party to an exclusive franchise agreement with a private entity governing the management or disposal of waste within the jurisdiction in effect on September 1, 2017, the unit of local government may adopt and enforce such an ordinance until the date that such franchise has expired.
- (4) If the unit of local government purchased or otherwise acquired title to property between January 1, 2006, and September 1, 2017, with the specific intent of adding the property to an existing landfill for the disposal of municipal solid waste, which landfill (i) is contiguous to the property

acquired; (ii) had been issued an operating permit on or before September 1, 2017; and (iii) received less than 55,000 tons of waste in fiscal year 2016-2017."

SECTION 20.(b) This section expires on June 30, 2019.

CLARIFY LANDFILL LIFE-OF-SITE/FRANCHISE REQUIREMENTS

SECTION 21.(a) G.S. 130A-294(a4) reads as rewritten:

"§ 130A-294. Solid waste management program.

...
(a4) In order to preserve long-term disposal capacity, a life-of-site permit issued for a sanitary landfill shall survive the expiration of a local government approval or ~~franchise~~franchise, and the local government shall allow the sanitary landfill to continue to operate until the term of the landfill's life-of-site permit expires provided that the owner or operator has complied with the terms of the local government approval or franchise agreement, and remains in compliance with those terms after expiration of the approval or agreement until the life-of-site permit has expired. In order to preserve any economic benefits included in the franchise, the County may extend the franchise under the same terms and conditions for the term of the life-of-site permit. The extension of the franchise hereby shall not trigger the requirements for a new permit, a major permit modification, or a substantial amendment to the permit. This subsection only applies to valid and operative franchise agreements in effect on October 1, 2015."

SECTION 21.(b) G.S. 160A-319(a) reads as rewritten:

"§ 160A-319. Utility franchises.

(a) A city shall have authority to grant upon reasonable terms franchises for a telephone system and any of the enterprises listed in G.S. 160A-311, except a cable television system. A franchise granted by a city authorizes the operation of the franchised activity within the city. No franchise shall be granted for a period of more than 60 years, ~~including a franchise granted to a sanitary landfill for the life-of-site of the landfill pursuant to G.S. 130A-294(b1); provided, however, that a~~ years. A franchise granted for a sanitary landfill shall be subject to all requirements pertaining thereto under G.S. 130A-294. A franchise for solid waste collection or disposal systems and facilities, other than sanitary landfills, shall not be granted for a period of more than 30 years. Except as otherwise provided by law, when a city operates an enterprise, or upon granting a franchise, a city may by ordinance make it unlawful to operate an enterprise without a franchise.

...."

SECTION 21.(c) G.S. 153A-136(a) reads as rewritten:

"§ 153A-136. Regulation of solid wastes.

(a) A county may by ordinance regulate the storage, collection, transportation, use, disposal, and other disposition of solid wastes. Such an ordinance may:

- ...
(3) Grant a franchise to one or more persons for the exclusive right to commercially collect or dispose of solid wastes within all or a defined portion of the county and prohibit any other person from commercially collecting or disposing of solid wastes in that area. The board of commissioners may set the terms of any franchise; provided, however, no franchise shall be granted for a period of more than 30 years, except for a franchise granted to a sanitary landfill for the life-of-site of the landfill pursuant to G.S. 130A-294(b1), which may not exceed 60 years. A franchise granted for a sanitary landfill shall be subject to all requirements pertaining thereto under G.S. 130A-294. No franchise by its terms may impair the authority of the board of commissioners to regulate fees as authorized by this section.

...."

AMEND RECOVERABLE COSTS IN FUEL CLAUSE RIDER FOR ELECTRIC PUBLIC UTILITIES THAT HAVE FEWER THAN 150,000 NORTH CAROLINA RETAIL JURISDICTIONAL CUSTOMERS TO INCLUDE THE COST OF PURPA QF PURCHASED POWER AND SUBJECT THEM TO THE CURRENT 1% ANNUAL CAP ON COST INCREASES

SECTION 22. G.S. 62-133.2 reads as rewritten:

"§ 62-133.2. Fuel and fuel-related charge adjustments for electric utilities.

(a) The Commission shall permit an electric public utility that generates electric power by fossil fuel or nuclear fuel to charge an increment or decrement as a rider to its rates for changes in the cost of fuel and fuel-related costs used in providing its North Carolina customers with electricity from the cost of fuel and fuel-related costs established in the electric public utility's previous general rate case on the basis of cost per kilowatt hour.

(a1) As used in this section, "cost of fuel and fuel-related costs" means all of the following:

- (1) The cost of fuel burned.
- (2) The cost of fuel transportation.
- (3) The cost of ammonia, lime, limestone, urea, dibasic acid, sorbents, and catalysts consumed in reducing or treating emissions.
- (4) The total delivered noncapacity related costs, including all related transmission charges, of all purchases of electric power by the electric public utility, that are subject to economic dispatch or economic curtailment.
- (5) The capacity costs associated with all purchases of electric power from qualifying cogeneration facilities and qualifying small power production facilities, as defined in 16 U.S.C. § 796, that are subject to economic dispatch by the electric public utility.
- (6) Except for those costs recovered pursuant to G.S. 62-133.8(h), the total delivered costs of all purchases of power from renewable energy facilities and new renewable energy facilities pursuant to G.S. 62-133.8 or to comply with any federal mandate that is similar to the requirements of subsections (b), (c), (d), (e), and (f) of G.S. 62-133.8.
- (7) The fuel cost component of other purchased power.
- (8) Cost of fuel and fuel-related costs shall be adjusted for any net gains or losses resulting from any sales by the electric public utility of fuel and other fuel-related costs components.
- (9) Cost of fuel and fuel-related costs shall be adjusted for any net gains or losses resulting from any sales by the electric public utility of by-products produced in the generation process to the extent the costs of the inputs leading to that by-product are costs of fuel or fuel-related costs.
- (10) The total delivered costs, including capacity and noncapacity costs, associated with all purchases of electric power from qualifying cogeneration facilities and qualifying small power production facilities, as defined in 16 U.S.C. § 796, that are not subject to economic dispatch or economic curtailment by the electric public utility and not otherwise recovered under subdivision (6) of this subsection.
- (11) All nonadministrative costs related to the renewable energy procurement pursuant to G.S. 62-159.2 not recovered from the program participants.

...

(a3) Notwithstanding subsections (a1) and (a2) of this section, for an electric public utility that has fewer than 150,000 North Carolina retail jurisdictional customers as of December 31, 2006, the costs identified in subdivisions (1), (2), (6), ~~and (7)(7)~~, and (10) of subsection (a1) of this section and the fuel cost component, as may be modified by the Commission, of electric

power purchases identified in subdivision (4) of subsection (a1) of this section shall be recovered through the increment or decrement rider approved by the Commission pursuant to this section. For the costs identified in ~~subdivision~~ subdivisions (6) and (10) of subsection (a1) of this section that are incurred on or after January 1, 2008, the annual increase in the amount of these costs shall not exceed one percent (1%) of the electric public utility's total North Carolina retail jurisdictional gross revenues for the preceding calendar year. These costs described in ~~subdivision~~ subdivisions (6) and (10) of subsection (a1) of this section shall be recoverable from each class of customers as a separate component of the rider. For the costs described in ~~subdivision~~ subdivisions (6) and (10) of subsection (a1) of this section, the specific component for each class of customers shall be determined by allocating these costs among customer classes based on the electric public utility's North Carolina peak demand for the prior year, as determined by the Commission, until the Commission determines how these costs shall be allocated in a general rate case for the electric public utility commenced on or after January 1, 2008.

...."

AMEND PROCESS FOR VACANCY APPOINTMENTS TO THE UTILITIES COMMISSION AND THE INDUSTRIAL COMMISSION

SECTION 23.(a) G.S. 62-10(g) reads as rewritten:

"(g) If a vacancy arises or exists pursuant to either subsection (a) or (c) or (f) of this section when the General Assembly is not in session, and the appointment is deemed urgent by the Governor, the commissioner may be appointed and serve on an interim basis pending confirmation by the General ~~Assembly~~-Assembly; provided, however, no person may be appointed to serve on an interim basis pending confirmation by the General Assembly if the person was subject to but not confirmed by the General Assembly within the preceding four years. The limitation on appointment contained in this subsection includes, among other things, unfavorable action on a joint resolution for confirmation, such as the resolution failing on any reading in either chamber of the General Assembly, and failure to ratify a joint resolution for confirmation prior to adjournment of the then current session of the General Assembly."

SECTION 23.(b) G.S. 97-77(a1) reads as rewritten:

"(a1) Appointments of commissioners are subject to confirmation by the General Assembly by joint resolution. The names of commissioners to be appointed by the Governor shall be submitted by the Governor to the General Assembly for confirmation by the General Assembly on or before March 1 of the year of expiration of the term. If the Governor fails to timely submit nominations, the General Assembly shall appoint to fill the succeeding term upon the joint recommendation of the President Pro Tempore of the Senate and the Speaker of the House of Representatives in accordance with G.S. 120-121 not inconsistent with this section.

In case of death, incapacity, resignation, or any other vacancy in the office of any commissioner prior to the expiration of the term of office, a nomination to fill the vacancy for the remainder of the unexpired term shall be submitted by the Governor within four weeks after the vacancy arises to the General Assembly for confirmation by the General Assembly. If the Governor fails to timely nominate a person to fill the vacancy, the General Assembly shall appoint a person to fill the remainder of the unexpired term upon the joint recommendation of the President Pro Tempore of the Senate and the Speaker of the House of Representatives in accordance with G.S. 120-121 not inconsistent with this section. If a vacancy arises or exists pursuant to this subsection when the General Assembly is not in session, and the appointment is deemed urgent by the Governor, the commissioner may be appointed and serve on an interim basis pending confirmation by the General ~~Assembly~~-Assembly; provided, however, no person may be appointed to serve on an interim basis pending confirmation by the General Assembly if the person was subject to but not confirmed by the General Assembly within the preceding four years. The limitation on appointment contained in this subsection includes, among other things, unfavorable action on a joint resolution for confirmation, such as the resolution failing on any

reading in either chamber of the General Assembly, and failure to ratify a joint resolution for confirmation prior to adjournment of the then current session of the General Assembly. For the purpose of this subsection, the General Assembly is not in session only (i) prior to convening of the Regular Session, (ii) during any adjournment of the Regular Session for more than 10 days, and (iii) after sine die adjournment of the Regular Session.

No person while in office as a commissioner may be nominated or appointed on an interim basis to fill the remainder of an unexpired term, or to a full term that commences prior to the expiration of the term that the commissioner is serving."

SECTION 23.(c) This section is effective when it becomes law and applies to appointments made on or after that date.

ADJUST NUMBER OF ASSISTANT DISTRICT ATTORNEYS

SECTION 24.(a) Section 18B.6 of S.L. 2018-5 reads as rewritten:

"**SECTION 18B.6.** Effective January 1, 2019, ~~G.S. 7A-41(a1)~~ G.S. 7A-60(a1) reads as rewritten:

...."

SECTION 24.(b) Effective January 1, 2019, G.S. 7A-60(a1), as amended by Section 18B.6 of S.L. 2018-5, reads as rewritten:

"(a1) The counties of the State are organized into prosecutorial districts, and each district has the counties and the number of full-time assistant district attorneys set forth in the following table:

Prosecutorial District	Counties	No. of Full-Time Asst. District Attorneys
1	Camden, Chowan, Currituck, Dare, Gates, Pasquotank, Perquimans	11
2	Beaufort, Hyde, Martin, Tyrrell, Washington	8
3	Pitt	12
4	Carteret, Craven, Pamlico	13
5	Duplin, Jones, Onslow, Sampson	19
6	New Hanover, Pender	19
7	Bertie, Halifax, Hertford, Northampton	11
8	Edgecombe, Nash, Wilson	19
9	Greene, Lenoir, Wayne	14
10	Franklin, Granville, Person Vance, Warren	14 <u>15</u>
11	Wake	42
12	Harnett, Lee	11
13	Johnston	10
14	Cumberland	25
15	Bladen, Brunswick, Columbus	14
16	Durham	18
17	Alamance	12
18	Orange, Chatham	10
19	Scotland, Hoke	7
20	Robeson	12
21	Anson, Richmond	6
22	Caswell, Rockingham	9 <u>8</u>

23	Stokes, Surry	8
24	Guilford	34
25	Cabarrus	9
26	Montgomery, Randolph	10
27	Rowan	9
28	Moore	5
29	Stanly	5
30	Union	11
31	Forsyth	27
32	Alexander, Iredell	12
33	Davidson, Davie	12
34	Alleghany, Ashe, Wilkes, Yadkin	9
35	Avery, Madison, Mitchell, Watauga, Yancey	8
36	Burke, Caldwell, Catawba	19
37	Mecklenburg	58
38	Gaston	15
39	Cleveland, Lincoln	12
40	Buncombe	14
41	McDowell, Rutherford	8
42	Henderson, Polk, Transylvania	9
43	Cherokee, Clay, Graham, Haywood, Jackson, Macon, Swain."	12

EXEMPT PERSONAL PROPERTY OF CHARTER SCHOOLS FROM PROPERTY TAX

SECTION 25.(a) G.S. 105-275 reads as rewritten:

"§ 105-275. Property classified and excluded from the tax base.

The following classes of property are designated special classes under Article V, Sec. 2(2), of the North Carolina Constitution and are excluded from tax:

...
 (46) Real and personal property that is occupied by a charter school and is wholly and exclusively used for educational purposes as defined in ~~G.S. 105-278.4(f)~~G.S. 105-278.4(f), regardless of the ownership of the property.

...
 (49) A mobile classroom or modular unit that is occupied by a school and is wholly and exclusively used for educational purposes, as defined in G.S. 105-278.4(f), regardless of the ownership of the property. For the purposes of this subdivision, the term "school" means a public school, including any school operated by a local board of education in a local school administrative unit; ~~a nonprofit charter school~~; a regional school; a nonprofit nonpublic school regulated under Article 39 of Chapter 115C of the General Statutes; or a community college established under Article 2 of Chapter 115D of the General Statutes."

SECTION 25.(b) This section becomes effective for taxes imposed for taxable years beginning on or after July 1, 2018.

MAINTENANCE OF ROADS SURROUNDING SCHOOLS

SECTION 26. If Senate Bill 335, 2018 Regular Session, becomes law, Sections 7.4(a) and 7.4(b) are repealed.

REPEAL STATE BOARD OF EDUCATION POLICIES INCONSISTENT WITH STATE LAW, AS AFFIRMED BY NC SUPREME COURT

SECTION 27.(a) The General Assembly finds that the North Carolina Supreme Court, in *North Carolina State Board of Education v. State of North Carolina and Mark Johnson*, No. 333PA17 (June 8, 2018), affirmed the facial constitutionality of S.L. 2016-126 in clarifying the authority of the Superintendent of Public Instruction as the administrative head of the Department of Public Instruction and the Superintendent's role in the direct supervision of the public school system. SBOP-011 (Responsibilities of the SBE in supervising/administering the public school system of NC and the funds provided for its support) and SBOP-013 (Delegation of Authority from the State Board of Education to the Superintendent of Public Instruction) are repealed. The State Board of Education may readopt rules or policies related to internal management that are not inconsistent with the statutory requirements of S.L. 2016-126, including, but not limited to, the requirements of G.S. 115C-11, 115C-19, 115C-21, and 143A-441.

STATE BOARD OF EDUCATION INTERIM RULES

SECTION 27.(b) The General Assembly finds that the North Carolina Supreme Court, in *North Carolina State Board of Education v. State of North Carolina and North Carolina Rules Review Commission*, No. 110PA16-2 (June 8, 2018), affirmed the authority of the General Assembly to delegate authority to the Rules Review Commission to review and approve the administrative rules that are proposed by the State Board of Education for codification. To ensure that administration of the free public schools shall continue without interruption, the existing policies of the State Board of Education subject to rule making as provided in Chapter 150B of the General Statutes shall be deemed interim rules so long as they do not conflict with any provisions of the General Statutes. Any interim rule authorized by this section shall become null and void May 30, 2019, if the State Board of Education has failed to publish a notice of text in the North Carolina Register to adopt that interim rule as a permanent rule, as required by G.S. 150B-21.2. Any interim rule authorized by this section shall become null and void May 30, 2020, if the State Board of Education has failed to adopt that interim rule as a permanent rule by that date in accordance with Article 2A of Chapter 150B of the General Statutes.

PROHIBIT THE NORTH CAROLINA BOARD OF FUNERAL SERVICE FROM REVOKING OR REFUSING TO RENEW A FUNERAL LICENSE UNDER CERTAIN CIRCUMSTANCES

SECTION 28. The North Carolina Board of Funeral Service (Board) shall not revoke or refuse to renew a license to practice funeral directing, embalming, or funeral service based on a test score invalidated by the International Conference of Funeral Service Examining Boards (Conference) if, prior to January 1, 2018, the Conference notified the Board that the licensee had achieved a passing score on the licensing tests required by G.S. 90-210.25. This section shall not apply if the Conference provides the Board with specific proof that a licensee has acted in a manner that requires invalidation of a test score.

SEVERABILITY CLAUSE AND EFFECTIVE DATE

SECTION 29. If any section or provision of this act is declared unconstitutional or invalid by the courts, it does not affect the validity of this act as a whole or any part other than the part declared to be unconstitutional or invalid.

law. **SECTION 30.** Except as otherwise provided, this act is effective when it becomes
In the General Assembly read three times and ratified this the 15th day of June, 2018.

s/ Bill Rabon
Presiding Officer of the Senate

s/ David R. Lewis
Presiding Officer of the House of Representatives

VETO Roy Cooper
Governor

Became law notwithstanding the objections of the Governor at 5:57 p.m. this 27th day
of June, 2018.

s/ Sarah Lang Holland
Senate Principal Clerk