

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2017

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SENATE BILL 469  
Second Edition Engrossed 4/25/17  
House Committee Substitute Favorable 6/22/17  
House Committee Substitute #2 Favorable 6/27/17

Short Title: Amend Environmental Laws - 4.

(Public)

Sponsors:

Referred to:

March 30, 2017

1 A BILL TO BE ENTITLED  
2 AN ACT TO AMEND VARIOUS ENVIRONMENTAL LAWS.  
3 The General Assembly of North Carolina enacts:

4  
5 **CONSERVE MUNICIPAL SOLID WASTE LANDFILL CAPACITY**

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

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

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

14 (2) Repealed by Session Laws 1991, c. 621, s. 8.

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

19 (4) Notwithstanding G.S. 130A-291(b), units of local government shall not, by  
20 ordinance or otherwise, prohibit the disposal of construction and demolition  
21 debris in any sanitary landfill permitted for the disposal of construction and  
22 demolition debris, which landfill has a valid and operative franchise  
23 agreement and is otherwise properly permitted pursuant to G.S. 130A-294."  
24

25 **CLARIFY ROLES OF GEOLOGISTS AND SOIL SCIENTISTS IN WASTEWATER**  
26 **SYSTEM SITE EVALUATIONS**

27 **SECTION 2.(a)** G.S. 130A-335(a1) reads as rewritten:

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



1 applicable factors that involve accepted public health principles. A person licensed pursuant to  
2 Chapter 89E of the General Statutes as a licensed geologist may evaluate the proposed site or  
3 repair area, as applicable, for geologic and hydrogeologic conditions."

4 **SECTION 2.(b)** G.S. 130A-336.1(e) reads as rewritten:

5 "(e) Site Design, Construction, and Activities.

6 (1) The professional engineer designing the proposed wastewater system shall  
7 use recognized principles and practices of engineering and applicable rules  
8 of the Commission in the calculations and design of the wastewater system.  
9 The investigations and findings of the professional engineer shall include, at  
10 a minimum, the information required in rules adopted by the Commission  
11 pursuant to G.S. 130A-335(e). The professional engineer may, at the  
12 engineer's discretion, employ pretreatment technologies not yet approved in  
13 this State.

14 (2) Notwithstanding G.S. 130A-335(a1), the owner of the proposed wastewater  
15 system shall employ ~~either a licensed soil scientist or a geologist, licensed~~  
16 ~~pursuant to Chapter 89E of the General Statutes and who has applicable~~  
17 ~~professional experience, to evaluate soil conditions and site features.~~ a person  
18 licensed pursuant to Chapter 89F of the General Statutes as a licensed soil  
19 scientist to conduct soil and site evaluations and, as applicable, a person  
20 licensed pursuant to Chapter 89E of the General Statutes as a licensed  
21 geologist to evaluate geologic and hydrogeologic conditions.

22 "...."

## 23

### 24 **REPORT ON RULES FOR REMEDIATION OF CERTAIN UNDERGROUND**

### 25 **STORAGE TANKS**

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

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

### 34

### 35 **SHELLFISH ENTERPRISE AREAS**

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

37 "(d) The Marine Fisheries Commission may adopt rules to establish Shellfish  
38 Aquaculture Enterprise Areas to facilitate shellfish aquaculture opportunities through advanced  
39 siting and preapprovals from relevant federal and State agencies. The Secretary shall only issue  
40 nontransferrable leases within designated Shellfish Aquaculture Enterprise Areas. Any leased  
41 parcel within a Shellfish Aquaculture Enterprise Area that is relinquished or terminated shall  
42 revert to the State and be made available to other applicants."

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

44 "(3a) "Shellfish Aquaculture Enterprise Area" means an area designated and  
45 permitted by the Department that is subdivided into parcels and made  
46 available for shellfish aquaculture leasing."

### 47

### 48 **MARINE FISHERIES CLARIFYING CHANGES**

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

50 "**§ 113-203. Transplanting of oysters and clams.**

51 ...

1 (a2) It is unlawful to do any of the following:

- 2 (1) Transplant oysters or clams taken from public grounds to private beds except  
3 when lawfully taken during open season and transported directly to a private  
4 bed in accordance with rules of the Marine Fisheries Commission.  
5 (2) Transplant oysters or clams taken from permitted aquaculture operations to  
6 private beds except from waters in the approved classification.  
7 (3) Transplant oysters or clams from public grounds or permitted aquaculture  
8 operations utilizing waters in the prohibited, restricted or conditionally  
9 approved classification to private beds except when the transplanting is done  
10 in accordance with the provisions of this section and implementing rules.

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

- 17 (1) When transplanting seed clams less than 12 millimeters in their largest  
18 dimension.  
19 (2) When transplanting seed oysters less than 25 millimeters in their largest  
20 dimension.

21 ...."

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

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

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

## 34 **RIVER HERRING FISHERIES MANAGEMENT**

35 **SECTION 6.** The Division of Marine Fisheries shall review its Fishery  
36 Management Plan for river herring (blueback herring, *Alosa aestivalis*, and alewife, *Alosa*  
37 *pseudoharengus*) and report no later than December 15, 2017, to the Joint Legislative Oversight  
38 Committee on Agriculture and Natural and Economic Resources regarding the continuing  
39 validity and scientific basis for the continued status of both species as "overfished." If the  
40 Division does not have an adequate scientific basis to review the status of both species, then the  
41 report should include cost estimates for the restoration of spawning and nursery area surveys  
42 and age composition work for all coastal streams within the State that historically contained  
43 significant river herring fisheries.  
44

## 45 **ESTABLISH COASTAL STORM DAMAGE MITIGATION AND PREVENTION** 46 **FUND**

47 **SECTION 7.** Article 21 of Chapter 143 of the General Statutes is amended by  
48 adding a new Part to read:

49 "Part 8D. Coastal Storm Damage Mitigation and Prevention Fund.

50 "§ 143-215.73M. Coastal Storm Damage Mitigation and Prevention Fund.  
51

1        (a) Fund Established. – The Coastal Storm Damage Mitigation and Prevention Fund is  
2 established as a special revenue fund. The Fund consists of General Fund appropriations, gifts,  
3 grants, devises, monies contributed by a non-State entity for a particular beach nourishment or  
4 damage mitigation or prevention project or group of projects, and any other revenues  
5 specifically allocated to the Fund by an act of the General Assembly.

6        (b) Uses of the Fund. – Revenue credited to the Fund may only be allocated to the State  
7 or a unit of local government to cover costs associated with beach nourishment, artificial dunes,  
8 and other projects to mitigate, remediate, or prevent coastal storm damage to the ocean beaches  
9 and dune systems of the State.

10       (c) Conditions on Funding. – Any project funded by revenue from the Fund must be  
11 cost-shared with non-State dollars as follows:

12            (1) The cost share for dredging projects located, in whole or part, in a  
13 development tier one area, as defined in G.S. 143B-437.08, shall be at least  
14 one non-State dollar for every three dollars from the Fund.

15            (2) The cost share for dredging projects not located, in whole or part, in a  
16 development tier one area shall be at least one non-State dollar for every two  
17 dollars from the Fund.

18        (d) Return of Non-State Entity Funds. – Non-State entities that contribute to the Fund  
19 for a particular project or group of projects may make a written request to the Secretary that the  
20 contribution be returned if the contribution has not been spent or encumbered within two years  
21 of receipt of the contribution by the Fund. If the written request is made prior to the funds being  
22 spent or encumbered, the Secretary shall return the funds to the entity within 30 days after the  
23 later of (i) receiving the request or (ii) the expiration of the two-year period described by this  
24 subsection."

## 25 26 **AMEND GUARANTEED ENERGY SAVINGS CONTRACT STATUTES**

27        **SECTION 8.(a)** G.S. 143-64.17 reads as rewritten:

### 28 **"§ 143-64.17. Definitions.**

29        As used in this Part:

- 30            (1) "Energy conservation measure" means a facility or meter alteration, training,  
31            or services related to the operation of the facility or meter, when the  
32            alteration, training, or services provide anticipated energy savings or capture  
33            lost revenue. Energy conservation measure includes any of the following:
- 34            a.        Insulation of the building structure and systems within the building.
  - 35            b.        Storm windows or doors, caulking, weatherstripping, multiglazed  
36            windows or doors, heat-absorbing or heat-reflective glazed or coated  
37            window or door systems, additional glazing, reductions in glass area,  
38            or other window or door system modifications that reduce energy  
39            consumption.
  - 40            c.        Automatic energy control systems.
  - 41            d.        Heating, ventilating, or air-conditioning system modifications or  
42            replacements.
  - 43            e.        Replacement or modification of lighting fixtures to increase the  
44            energy efficiency of a lighting system without increasing the overall  
45            illumination of a facility, unless an increase in illumination is  
46            necessary to conform to the applicable State or local building code or  
47            is required by the light system after the proposed modifications are  
48            made.
  - 49            f.        Energy recovery systems.

- 1 g. Cogeneration systems that produce steam or forms of energy such as  
2 heat, as well as electricity, for use primarily within a building or  
3 complex of buildings.
- 4 h. Repealed by Session Laws 2006-190, s. 2, effective August 3, 2006,  
5 and applicable to contracts entered into or renewed on or after that  
6 date.
- 7 i. Faucets with automatic or metered shut-off valves, leak detection  
8 equipment, water meters, water recycling equipment, and wastewater  
9 recovery systems.
- 10 j. Other energy conservation measures that conserve energy, water, or  
11 other utilities.
- 12 (2) "Energy savings" means a measured reduction in fuel costs, energy costs,  
13 water costs, stormwater fees, other utility costs, or operating costs, including  
14 environmental discharge fees, water and sewer maintenance fees, and  
15 increased meter accuracy, created from the implementation of one or more  
16 energy conservation measures when compared with an established baseline  
17 of previous costs, including captured lost revenues, developed by the  
18 governmental unit.
- 19 (2a) "Excusable delay" means a delay in performance of a guaranteed energy  
20 savings contract caused by an event or circumstance beyond a party's  
21 reasonable control, including, without limitation, any act of war, hostile  
22 foreign action, nuclear explosion, riot, strikes, civil insurrection, quarantine  
23 restrictions, delays of common carriers, earthquake, hurricane, tornado, or  
24 other catastrophic natural event or act of God.
- 25 ~~(2a)~~(2b) "Governmental unit" means either a local governmental unit or a State  
26 governmental unit.
- 27 (3) "Guaranteed energy savings contract" means a contract for the evaluation,  
28 recommendation, or implementation of energy conservation measures,  
29 including the design and installation of equipment or the repair or  
30 replacement of existing equipment or meters, in which all payments, except  
31 obligations on termination of the contract before its expiration, are to be  
32 made over time, and in which energy savings are guaranteed to exceed costs.
- 33 (3a) "Interim period" means the period between the effective date of a guaranteed  
34 energy savings contract and the date the installation of the energy  
35 conservation measures is complete and has been accepted by the  
36 governmental unit.
- 37 (4) "Local governmental unit" means any board or governing body of a political  
38 subdivision of the State, including any board of a community college, any  
39 school board, or an agency, commission, or authority of a political  
40 subdivision of the State.
- 41 (5) "Qualified provider" means a person or business experienced in the design,  
42 implementation, and installation of energy conservation measures who has  
43 been prequalified by the State Energy Office according to the  
44 prequalification criteria established by that Office.
- 45 (5a) "Qualified reviewer" means an architect or engineer who is (i) licensed in  
46 this State and (ii) experienced in the design, implementation, and installation  
47 of energy efficiency measures.
- 48 (6) "Request for proposals" means a negotiated procurement initiated by a  
49 governmental unit by way of a published notice that includes the following:  
50 a. The name and address of the governmental unit.

- b. The name, address, title, and telephone number of a contact person in the governmental unit.
- c. Notice indicating that the governmental unit is requesting qualified providers to propose energy conservation measures through a guaranteed energy savings contract.
- d. The date, time, and place where proposals must be received.
- e. The evaluation criteria for assessing the proposals.
- f. A statement reserving the right of the governmental unit to reject any or all the proposals.
- g. Any other stipulations and clarifications the governmental unit may require.

(7) "State governmental unit" means the State or a department, an agency, a board, or a commission of the State, including the Board of Governors of The University of North Carolina and its constituent institutions."

**SECTION 8.(b)** G.S. 143-64.17B reads as rewritten:

**"§ 143-64.17B. Guaranteed energy savings contracts.**

(a) A governmental unit may enter into a guaranteed energy savings contract with a qualified provider if all of the following apply:

- (1) The term of the contract does not exceed 20 years from the date of the installation and acceptance by the governmental unit of the energy conservation measures provided for under the contract.
- (2) The governmental unit finds that the energy savings resulting from the performance of the contract will equal or exceed the total cost of the contract.
- (3) The energy conservation measures to be installed under the contract are for an existing building or utility system, or utility consuming device or equipment when the utility cost is paid by the governmental unit.

(b) Before entering into a guaranteed energy savings contract, the governmental unit shall provide published notice of the time and place or of the meeting at which it proposes to award the contract, the names of the parties to the proposed contract, and the contract's purpose. The notice must be published at least 15 days before the date of the proposed award or meeting.

(c) A qualified provider entering into a guaranteed energy savings contract under this Part shall provide security to the governmental unit in the form acceptable to the Office of the State Treasurer and in an amount equal to one hundred percent (100%) of the guaranteed savings for the term of the guaranteed energy savings contract to assure the provider's faithful performance. Any bonds required by this subsection shall be subject to the provisions of Article 3 of Chapter 44A of the General Statutes. If the savings resulting from a guaranteed energy savings contract are not as great as projected under the contract and all required shortfall payments to the governmental unit have not been made, the governmental unit may terminate the contract without incurring any additional obligation to the qualified provider.

(d) As used in this section, "total cost" shall include, but not be limited to, costs of construction, costs of financing, and costs of maintenance and training during the term of the contract less the application of the utility company, State, or federal incentives, grants, or rebates. "Total cost" does not include any obligations on termination of the contract before its expiration, provided that those obligations are disclosed when the contract is executed.

(e) A guaranteed energy savings contract may not require the governmental unit to purchase a maintenance contract or other maintenance agreement from the qualified provider who installs energy conservation measures under the contract if the unit of government takes appropriate action to budget for its own forces or another provider to maintain new systems installed and existing systems affected by the guaranteed energy savings contract.

1 (f) In the case of a State governmental unit, a qualified provider shall, when feasible,  
2 after the acceptance of the proposal of the qualified provider by the State governmental unit,  
3 conduct an investment grade audit. During this investment grade audit, the qualified provider  
4 shall perform in accordance with Part 1 of this Article a life cycle cost analysis of each energy  
5 conservation measure in the final proposal. If the results of the audit are not within ten percent  
6 (10%) of both the guaranteed savings contained in the proposal and the total proposal amount,  
7 either the State governmental unit or the qualified provider may terminate the project without  
8 incurring any additional obligation to the other party. However, if the State governmental unit  
9 terminates the project after the audit is conducted and the results of the audit are within ten  
10 percent (10%) of both the guaranteed savings contained in the proposal and the total proposal  
11 amount, the State governmental unit shall reimburse the qualified provider the reasonable cost  
12 incurred in conducting the audit, and the results of the audit shall become the property of the  
13 State governmental unit.

14 (g) A qualified provider shall provide an annual reconciliation statement based upon the  
15 results of the measurement and verification review. The statement shall disclose any shortfalls  
16 or surplus between guaranteed energy and operational savings specified in the guaranteed  
17 energy savings contract and actual, not stipulated, energy and operational savings incurred  
18 during a given guarantee year. Any guaranteed energy and operational savings shall be  
19 determined by using one of the measurement and verification methodologies listed in the  
20 United States Department of Energy's Measurement and Verification Guidelines for Energy  
21 Savings Performance Contracting, the International Performance Measurement and  
22 Verification Protocol (IPMVP) maintained by the Efficiency Valuation Organization, or  
23 Guideline 14-2002 of the American Society of Heating, Refrigerating, and Air-Conditioning  
24 Engineers. If due to existing data limitations or the nonconformance of specific project  
25 characteristics, none of the three methodologies listed in this subsection is sufficient for  
26 measuring guaranteed savings, the qualified provider shall develop an alternate method that is  
27 compatible with one of the three methodologies and mutually agreeable to the governmental  
28 unit. The guarantee year shall consist of a 12-month term commencing from the time that the  
29 energy conservation measures become fully operational. The qualified provider shall also  
30 provide a reconciliation statement for energy savings realized during the interim period to be  
31 provided within 90 days from the time that the energy conservation measures become fully  
32 operational. A qualified provider shall pay the governmental unit or its assignee any shortfall in  
33 the guaranteed energy and operational savings after the total year savings have been  
34 determined. In the case of a governmental unit, a surplus in any one year shall not be carried  
35 forward or applied to a shortfall in any other year.

36 (h) If completion of a project is delayed for reasons not the fault of the governmental  
37 unit or due to an excusable delay, the projected acceptance date for purposes of structuring the  
38 financing shall become the date when the energy savings guarantee begins and, if the measured  
39 and verifiable savings under the contract at the time of the scheduled payment of the financing  
40 contract are inadequate for making the payment, the qualified provider shall be responsible for  
41 such shortfall; however, actual savings realized during the interim period shall be held by the  
42 governmental unit for payment under the financing contract."

43 **SECTION 8.(c)** This section is effective when it becomes law and applies to  
44 guaranteed energy savings contracts entered into on or after that date.  
45

#### 46 **SEVERABILITY CLAUSE AND EFFECTIVE DATE**

47 **SECTION 9.(a)** If any section or provision of this act is declared unconstitutional  
48 or invalid by the courts, it does not affect the validity of this act as a whole or any part other  
49 than the part declared to be unconstitutional or invalid.

50 **SECTION 9.(b)** Except as otherwise provided, this act is effective when it  
51 becomes law.