

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2021

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SENATE BILL 605
Agriculture, Energy, and Environment Committee Substitute Adopted 5/4/21
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Short Title: North Carolina Farm Act of 2021.

(Public)

Sponsors:

Referred to:

April 7, 2021

1 A BILL TO BE ENTITLED
2 AN ACT TO MAKE VARIOUS CHANGES TO THE LAWS CONCERNING
3 AGRICULTURE AND FORESTRY.

4 The General Assembly of North Carolina enacts:

5
6 **VOLUNTARY AGRICULTURAL DISTRICT TECHNICAL CHANGES**

7 **SECTION 1.** Article 61 of Chapter 106 of the General Statutes reads as rewritten:

8 "Article 61.

9 "Agricultural Development and Preservation of Farmland.

10 ...

11 "Part 2. Voluntary Agricultural Districts.

12 **"§ 106-737. Qualifying farmland.**

13 In order for farmland to qualify for inclusion in a voluntary agricultural district or an
14 enhanced voluntary agricultural district under Part 1 or Part 2 of this Article, it must be real
15 property that:

- 16 (1) ~~Is engaged in agriculture as that word is defined in G.S. 106-581.1.~~ Is used for
17 bona fide farm purposes, as that term is defined in G.S. 106-743.4(a) and
18 G.S. 160D-903.
- 19 (2) Repealed by Session Laws 2005-390, s. 11 effective September 13, 2005.
- 20 (3) Is managed in accordance with the Soil Conservation Service defined erosion
21 control practices that are addressed to highly erodable land; and
- 22 (4) Is the subject of a conservation agreement, as defined in G.S. 121-35, between
23 the county-local government administering the voluntary agricultural district
24 program and the owner of such land that prohibits nonfarm use or
25 development of such land for a period of at least 10 years, except for the
26 creation of not more than three lots that meet applicable county and municipal
27 zoning and subdivision regulations. The form of the conservation agreement
28 shall be approved by the agricultural advisory board created under
29 G.S. 106-739.

30 **"§ 106-737.1. Revocation of conservation agreement.**

31 By written notice to the ~~county~~, local government administering the voluntary agricultural
32 district program, the landowner may revoke this conservation agreement. Such revocation shall
33 result in loss of qualifying farm status.

34 **"§ 106-738. Voluntary agricultural districts.**



1 (a) An ordinance adopted under this Part shall provide:

2 (1) For the establishment of voluntary agricultural districts ~~consisting initially of~~
3 ~~at least the number of contiguous acres of agricultural land, and forestland or~~
4 ~~horticultural land that is part of a qualifying farm or the number of qualifying~~
5 ~~farms deemed appropriate by the governing board of the county or city~~
6 ~~adopting the ordinance; upon the execution of a conservation agreement as~~
7 ~~provided in G.S. 106-737(4).~~

8 (2) ~~For the formation of such districts upon the execution by the owners of the~~
9 ~~requisite acreage of an agreement to sustain agriculture in the district;~~

10 (3) ~~That the form of this agreement must be reviewed and approved by an~~
11 ~~agricultural advisory board established under G.S. 106-739 or some other~~
12 ~~county board or official;~~

13 (4) ~~That each such district have a representative on the agricultural advisory board~~
14 ~~established under G.S. 106-739.~~

15 (5) The minimum size, including acreage; number of tracts; and appropriate
16 proximity of multiple tracts of agricultural land, forestland, or horticultural
17 land that may comprise a voluntary agricultural district.

18 (b) The purpose of such agricultural districts shall be to increase identity and pride in the
19 agricultural community and its way of life and to ~~increase protection from nuisance suits~~ decrease
20 the likelihood of legal disputes, such as nuisance actions between farm owners and their
21 neighbors, and other negative impacts on properly managed farms. The county or city that
22 adopted an ordinance under this Part may take such action as it deems appropriate to encourage
23 the formation of such districts and to further their purposes and objectives.

24 (c) A county ordinance adopted pursuant to this Part is effective within the
25 unincorporated areas of the county. A city ordinance adopted pursuant to this Part is effective
26 within the corporate limits of the city. A city may amend its ordinances in accordance with
27 G.S. 160A-383.2 with regard to agricultural districts within its planning jurisdiction.

28 **"§ 106-739. Agricultural advisory board.**

29 (a) An ordinance adopted under this Part or Part 3 of this Article shall provide for the
30 establishment of an agricultural advisory board, organized and appointed ~~as the county or city~~
31 ~~that adopted the ordinance shall deem appropriate.~~ by the board of county commissioners or the
32 city council adopting the ordinance. The county or city that adopted the ordinance may confer
33 upon this advisory board authority to:

34 (1) Review and make recommendations or decisions concerning the
35 establishment and modification of agricultural ~~districts;~~ districts. The board of
36 county commissioners or the city council may make decisions regarding the
37 establishment and modification of voluntary agricultural districts or may
38 delegate that authority to the agricultural advisory board. If the authority is
39 delegated to the agricultural advisory board, the agricultural advisory board's
40 decisions shall be appealable to the board of county commissioners or city
41 council by an owner of land that has been denied enrollment in a voluntary
42 agricultural district or has been removed from a voluntary agricultural district
43 by the agricultural advisory board.

44 (1a) Execute agreements with landowners necessary for enrollment of land in a
45 voluntary agricultural district.

46 (2) Review and make recommendations concerning any ordinance or amendment
47 adopted or proposed for adoption under this Part or Part 3 of this
48 ~~Article;~~ Article.

49 (3) Hold public hearings on public projects likely to have an impact on
50 agricultural operations, particularly if such projects involve condemnation of
51 all or part of any qualifying ~~farm;~~ farm.

1 (4) Advise the governing board of the county or city that adopted the ordinance
2 on projects, programs, or issues affecting the agricultural economy or way of
3 life within the ~~county;~~county.

4 (5) Perform other related tasks or duties assigned by the governing board of the
5 county or city that adopted the ordinance.

6 (b) The members of the agricultural advisory board shall be chosen to provide the
7 broadest possible representation of the geographical regions of the local government and to
8 represent, to the extent possible, all segments of agricultural production existing within the local
9 government. A majority of the members of the agricultural advisory board shall be actively
10 engaged in agriculture.

11 (c) The agricultural advisory board may, at the discretion of the board of county
12 commissioners or the city council, utilize an existing local government agency for the purpose
13 of administration, recordkeeping, and other related tasks or duties.

14 ...

15 **"§ 106-741. Record notice of proximity to farmlands.**

16 (a) All counties shall require that land records include some form of notice reasonably
17 calculated to alert a person researching the title of a particular tract that such tract is located
18 within one-half mile of a ~~poultry, swine, or dairy qualifying farm or within 600 feet of any other~~
19 ~~qualifying farm or within one-half mile of a voluntary agricultural district.~~the property line of
20 any tract of land enrolled in a voluntary agricultural district.

21 ...

22 **"§ 106-743. Local ordinances.**

23 A county or a city adopting an ordinance under this Part or Part 3 of this Article may consult
24 with the North Carolina Commissioner of Agriculture or ~~his~~the Commissioner's staff before
25 adoption, and shall record the ordinance with the Commissioner's office after adoption.
26 Thereafter, the county or city shall submit to the Commissioner at least once a year, a written
27 report including the status, ~~progress~~progress, number of enrolled farms and acres, and activities
28 of its farmland preservation program under this Part or Part 3 of this Article.

29 "Part 3. Enhanced Voluntary Agricultural Districts.

30 **"§ 106-743.1. Enhanced voluntary agricultural districts.**

31 (a) A county or a municipality may adopt an ordinance establishing an enhanced
32 voluntary agricultural district. An ordinance adopted pursuant to this Part shall provide:

33 (1) For the establishment of an enhanced voluntary agricultural district that
34 initially consists of at least the number of contiguous acres of agricultural land,
35 and forestland and horticultural land that is part of a qualifying farm under
36 G.S. 106-737 or the number of qualifying farms deemed appropriate by the
37 governing board of the county or city adopting the ordinance.

38 (2) For the formation of the enhanced voluntary agricultural district upon the
39 execution of a conservation agreement, as defined in G.S. 121-35, that meets
40 the condition set forth in G.S. 106-743.2 by the landowners of the requisite
41 acreage to sustain agriculture in the enhanced voluntary agricultural district.

42 (3) That the form of the agreement under subdivision (2) of this subsection be
43 reviewed and approved by an agricultural advisory board established under
44 G.S. 106-739, or other governing board of the county or city that adopted the
45 ordinance.

46 (4) ~~That each enhanced voluntary agricultural district have a representative on the~~
47 ~~agricultural advisory board established under G.S. 106-739.~~

48 (b) The purpose of establishing an enhanced voluntary agricultural district is to allow a
49 county or a city to provide additional benefits to farmland beyond that available in a voluntary
50 agricultural district established under Part 2 of this Article, when the owner of the farmland
51 agrees to the condition imposed under G.S. 106-743.2. The county or city that adopted the

1 ordinance may take any action it deems appropriate to encourage the formation of these districts
2 and to further their purposes and objectives.

3 (c) A county ordinance adopted pursuant to this Part is effective within the
4 unincorporated areas of the county. A city ordinance adopted pursuant to this Part is effective
5 within the corporate limits of the city. A city may amend its ordinances in accordance with
6 G.S. 160A-383.2 with regard to agricultural districts within its planning jurisdiction.

7 (d) A county or city ordinance adopted pursuant to this Part may be adopted
8 simultaneously with the creation of a voluntary agricultural district pursuant to G.S. 106-738.

9"

10 11 **ALLOW MAGISTRATES TO WAIVE TRIALS FOR STATE FOREST RULE** 12 **OFFENSES**

13 **SECTION 2.(a)** G.S. 7A-273 reads as rewritten:

14 "**§ 7A-273. Powers of magistrates in infractions or criminal actions.**

15 In criminal actions or infractions, any magistrate has power:

16 ...

17 (2) In misdemeanor or infraction cases involving alcohol offenses under Chapter
18 18B of the General Statutes, traffic offenses, hunting, fishing, State park and
19 recreation area rule offenses under Chapters 113 and 143B of the General
20 Statutes, State forest rule offenses under Articles 74 and 75 of Chapter 106 of
21 the General Statutes, boating offenses under Chapter 75A of the General
22 Statutes, open burning offenses under Article 78 of Chapter 106 of the General
23 Statutes, and littering offenses under G.S. 14-399(c) and G.S. 14-399(c1), to
24 accept written appearances, waivers of trial or hearing and pleas of guilty or
25 admissions of responsibility, in accordance with the schedule of offenses and
26 fines or penalties promulgated by the Conference of Chief District Judges
27 pursuant to G.S. 7A-148, and in such cases, to enter judgment and collect the
28 fines or penalties and costs;

29"

30 **SECTION 2.(b)** This section becomes effective December 1, 2021, and applies to
31 offenses committed on or after that date.

32 33 **EXEMPT CERTAIN FIRES FROM OPEN BURNING LAWS**

34 **SECTION 3.(a)** G.S. 106-950 is amended by adding a new subsection to read:

35 "(a2) Except in cases where the Commissioner has prohibited all open burning during
36 periods of hazardous forest fire conditions or during air pollution episodes declared pursuant to
37 Article 21B of Chapter 143 of the General Statutes, this Article does not apply to any fires started,
38 or caused to be started, for cooking, warming, or ceremonial events, if the fire is confined (i)
39 within an enclosure from which burning material may not escape or (ii) within a protected area
40 upon which a watch is being maintained and which is provided with adequate fire protection
41 equipment."

42 **SECTION 3.(b)** This section becomes effective December 1, 2021, and applies to
43 offenses committed on or after that date.

44 45 **FOREST SERVICE OVERTIME MODIFICATION**

46 **SECTION 4.(a)** G.S. 106-903 reads as rewritten:

47 "**§ 106-903. Overtime compensation for forest fire fighting.**

48 The Department shall, within funds appropriated to the Department, provide either monetary
49 overtime compensation or compensatory leave at an hour-for-hour rate, at its discretion, to the
50 professional-employees of the North Carolina Forest Service who are exempt from the Fair Labor
51 Standards Act and involved in fighting forest fires-fires for overtime earned while conducting

1 fire suppression duties as defined in G.S. 106-955. If the Department provides compensatory
2 leave for overtime earned, it shall be provided in a manner consistent with the State's general
3 compensatory time policy for exempt employees established by the Office of State Human
4 Resources."

5 **SECTION 4.(b)** This section is effective when it becomes law and applies to
6 overtime earned on or after that date.

7
8 **INCREASE PUNISHMENT FOR TIMBER LARCENY AND INCREASE CIVIL**
9 **PENALTIES FOR DAMAGING TIMBER OR AGRICULTURAL COMMODITIES**

10 **SECTION 5.(a)** G.S. 14-135 reads as rewritten:

11 "**§ 14-135. Cutting, injuring, or removing another's Larceny of timber.**

12 (a) Offense. – Except as otherwise provided in subsection (b) of this section, a person
13 commits the offense of larceny of timber if the person does any of the following:

14 (1) If any person not being the bona fide owner thereof, shall knowingly and
15 willfully cut down, injure or remove any standing, growing or fallen tree or
16 log off the property of another, the person shall be punished the same as in
17 G.S. 14-72. Knowingly and willfully cuts down, injures, or removes any
18 timber owned by another person, without the consent of the owner of the land
19 or the owner of the timber, or without a lawful easement running with the land.

20 (2) Buys timber directly from the owner of the timber and fails to make payment
21 in full to the owner by (i) the date specified in the written timber sales
22 agreement or (ii) if there is no such agreement, 60 days from the date that the
23 buyer removes the timber from the property.

24 (b) Exceptions. – The following are exceptions to the offense set forth in subsection (a)
25 of this section:

26 (1) A person is not guilty of an offense under subdivision (1) of subsection (a) of
27 this section if the person is an employee or agent of an electric power supplier,
28 as defined in G.S. 62-133.8, and either of the following conditions is met:

29 a. The person believed in good faith that consent of the owner had been
30 obtained prior to cutting down, injuring, or removing the timber.

31 b. The person believed in good faith that the cutting down, injuring, or
32 removing of the timber was permitted by a utility easement or was
33 necessary to remove a tree hazard. For purposes of this
34 sub-subdivision, the term "tree hazard" includes a dead or dying tree,
35 dead parts of a living tree, or an unstable living tree that is within
36 striking distance of an electric transmission line, electric distribution
37 line, or electric equipment and constitutes a hazard to the line or
38 equipment in the event of a tree failure.

39 (2) A person is not guilty of an offense under subdivision (2) of subsection (a) of
40 this section if either of the following conditions is met:

41 a. The person remitted payment in full within the time period set in
42 subdivision (2) of subsection (a) of this section to a person he or she
43 believed in good faith to be the rightful owner of the timber.

44 b. The person remitted payment in full to the owner of the timber within
45 the 10-day period set forth in subsection (c) of this section.

46 (c) Prima Facie Evidence. – An owner of timber who does not receive payment in full
47 within the time period set in subdivision (2) of subsection (a) of this section may notify the timber
48 buyer in writing of the owner's demand for payment at the timber buyer's last known address by
49 certified mail or by personal delivery. The timber buyer's failure to make payment in full within
50 10 days after the mailing or personal delivery authorized under this subsection shall constitute

1 prima facie evidence of the timber buyer's intent to commit an offense under subdivision (2) of
2 subsection (a) of this section.

3 (d) Penalty; Restitution. – A person who commits an offense under subsection (a) of this
4 section is guilty of a Class G felony. Additionally, a defendant convicted of an offense under
5 subsection (a) of this section shall be ordered to make restitution to the timber owner in an amount
6 equal to either of the following:

7 (1) Three times the value of the timber cut down, injured, or removed in violation
8 of subdivision (1) of subsection (a) of this section.

9 (2) Three times the value of the timber bought but not paid for in violation of
10 subdivision (2) of subsection (a) of this section.

11 Restitution shall also include the cost incurred by the owner to determine the value of the
12 timber. For purposes of subdivisions (1) and (2) of this subsection, "value of the timber" shall be
13 based on the stumpage rate of the timber.

14 (e) Civil Remedies. – Nothing in this section shall affect any civil remedies available for
15 a violation of subsection (a) of this section."

16 **SECTION 5.(b)** G.S. 1-539.1 reads as rewritten:

17 **"§ 1-539.1. Damages for unlawful cutting, removal or burning of timber; misrepresentation**
18 **of property lines.**

19 (a) Any person, firm or corporation not being the bona fide owner thereof or agent of the
20 owner who shall without the consent and permission of the bona fide owner enter upon the land
21 of another and injure, cut or remove any valuable wood, timber, shrub or tree therefrom, shall be
22 liable to the owner of said land for ~~double-triple~~ the value of such wood, timber, shrubs or trees
23 so injured, cut or removed.

24 (b) If any person, firm or corporation shall willfully and intentionally set on fire, or cause
25 to be set on fire, in any manner whatever, any valuable wood, timber or trees on the lands of
26 another, such person, firm or corporation shall be liable to the owner of said lands for ~~double~~
27 triple the value of such wood, timber or trees damaged or destroyed thereby.

28"

29 **SECTION 5.(c)** G.S. 1-539.2B reads as rewritten:

30 **"§ 1-539.2B. ~~Double-Triple~~ damages for injury to agricultural commodities or production**
31 **systems; define value of agricultural commodities grown for educational, testing,**
32 **or research purposes.**

33 (a) Any person who unlawfully and willfully injures or destroys any other person's
34 agricultural commodities or production system is liable to the owner for ~~double-triple~~ the value
35 of the commodities or production system injured or destroyed.

36"

37 **SECTION 5.(d)** Subsection (a) of this section becomes effective December 1, 2021,
38 and applies to offenses committed on or after that date. Subsections (b) and (c) of this section
39 become effective December 1, 2021, and apply to civil actions filed on or after that date.

40 **REQUIRE TIMBER BUYERS AND TIMBER OPERATORS TO PROVIDE A WOOD** 41 **LOAD TICKET TO SELLERS OF CERTAIN WOOD PRODUCTS**

42 **SECTION 6.(a)** Article 22 of Chapter 14 of the General Statutes is amended by
43 adding a new section to read:

44 **"§ 14-135.1. Wood load tickets required for certain wood product sales; exceptions;**
45 **penalties.**

46 (a) Definition. – For purposes of this section, the term "wood product" means trees,
47 timber, wood, or any combination thereof.

48 (b) Requirement. – Except as provided in this section, whenever a timber buyer or timber
49 operator purchases wood product by the load directly from a timber grower or seller and the load
50 is sold by weight, cord, or measure of board feet, the timber buyer or operator shall furnish the
51

1 timber grower or seller, within 30 days of the completion of the wood product harvest, a separate,
 2 true, and accurate wood load ticket for each load of wood product removed from the timber
 3 grower's or seller's property. At a minimum, each wood load ticket shall include all of the
 4 following information provided by the timber grower or seller who sold the wood product:

- 5 (1) The name of the timber grower or seller.
- 6 (2) The county from which the wood product was severed.
- 7 (3) The amount of wood product severed.
- 8 (4) The date the wood product was delivered to the timber buyer or timber
 9 operator.

10 (c) Applicability. – The provisions of this section do not apply to the following:

- 11 (1) The sale of wood for firewood only.
- 12 (2) A landowner harvesting and processing their own timber.
- 13 (3) Bulk or lump-sum sales for an agreed total price for all timber purchased and
 14 sold in one transaction.

15 (d) Punishment. – Any person who violates this section is guilty of a Class 2
 16 misdemeanor."

17 **SECTION 6.(b)** This section becomes effective December 1, 2021, and applies to
 18 offenses committed on or after that date.

20 **EXPAND THE LAWS ENFORCED BY DEPARTMENT OF AGRICULTURE AND** 21 **CONSUMER SERVICES LAW ENFORCEMENT OFFICERS**

22 **SECTION 7.(a)** G.S. 106-897 reads as rewritten:

23 **"§ 106-897. Forest laws defined.**

24 The forest laws consist ~~of~~ of all of the following:

- 25 (1) ~~G.S. 14-136 to G.S. 14-140;~~ G.S. 14-135 to G.S. 14-140.1.
- 26 (2) Articles 74 through 84 of this ~~Chapter;~~ Chapter.
- 27 (3) G.S. 77-13 and ~~G.S. 77-14;~~ G.S. 77-14.
- 28 (4) Other statutes enacted for the protection of forests and woodlands from fire,
 29 insects, or disease and concerning obstruction of streams and ditches in forests
 30 and ~~woodlands;~~ and woodlands.
- 31 (5) Regulations and ordinances adopted under the authority of the above statutes."

32 **SECTION 7.(b)** This section becomes effective December 1, 2021, and applies to
 33 offenses committed on or after that date.

35 **REQUIRE PRODUCTION OF ELECTRONIC RECORDS FOR DEPARTMENT OF** 36 **AGRICULTURE AND CONSUMER SERVICES RECORD AUDITS**

37 **SECTION 8.(a)** G.S. 106-92.8 reads as rewritten:

38 **"§ 106-92.8. Tonnage fees: reporting system.**

39 For the purpose of defraying expenses connected with the registration, inspection and
 40 analysis of the materials coming under this Article, each manufacturer or registrant shall pay to
 41 the Department of Agriculture and Consumer Services tonnage fees in addition to registration
 42 fees as follows: for agricultural liming material, fifty cents (50¢) per ton; for landplaster, fifty
 43 cents (50¢) per ton; excepting that these fees shall not apply to materials which are sold to
 44 fertilizer manufacturers for the sole purpose for use in the manufacture of fertilizer or to materials
 45 when sold in packages of 10 pounds or less.

46 Any manufacturer, importer, jobber, firm, corporation or person who distributes materials
 47 coming under this Article in this State shall make application for a permit to report the materials
 48 sold and pay the tonnage fees as set forth in this section.

49 The Commissioner of Agriculture shall grant such permits on the following conditions: The
 50 applicant's agreement ~~that he will~~ to keep such records as may be necessary to indicate accurately
 51 the tonnage of liming materials, etc., sold in the State and ~~his~~ the applicant's agreement for the

1 Commissioner or ~~his~~ the Commissioner's authorized representative to examine such records to
2 verify the tonnage statement. If the records are available electronically, the electronic records
3 shall be made available to the Commissioner or the Commissioner's authorized representative.
4 The registrant shall report quarterly and pay the applicable tonnage fees quarterly, on or before
5 the tenth day of October, January, April, and July of each year. The report and payment shall
6 cover the tonnage of liming materials, etc., sold during the preceding quarter. The report shall be
7 on forms furnished by the Commissioner. If the report is not filed and the tonnage fees paid by
8 the last day of the month in which it is due, or if the report be false, the amount due shall bear a
9 penalty of ten percent (10%) which shall be added to the tonnage fees due. If the report is not
10 filed and the tonnage fees paid within 60 days of the date due, or if the report or tonnage be false,
11 the Commissioner may revoke the permit and cancel the registration."

12 **SECTION 8.(b)** G.S. 106-277.12 reads as rewritten:

13 "**§ 106-277.12. Records.**

14 All persons transporting or delivering for transportation, selling, offering or exposing for sale
15 agricultural or vegetable seeds if their name appears on the label shall keep for a period of two
16 years a file sample and a complete record of such seed, including invoices showing lot number,
17 kind and variety, origin, germination, purity, treatment, and the labeling of each lot. The
18 Commissioner or ~~his~~ the Commissioner's duly authorized agents shall have the right to inspect
19 such records in connection with the administration of this Article at any time during customary
20 business hours. If the records are available electronically, the electronic records shall be made
21 available to the Commissioner or the Commissioner's authorized representative."

22 **SECTION 8.(c)** G.S. 106-284.40(c)(2) reads as rewritten:

23 "(2) Keep such records as may be necessary or required by the Commissioner to
24 indicate accurately the tonnage of commercial feed distributed in this State,
25 and the Commissioner or ~~his~~ the Commissioner's duly designated agent shall
26 have the right to examine such records during normal business hours, to verify
27 statements of tonnage. If the records are available electronically, the electronic
28 records shall be made available to the Commissioner or the Commissioner's
29 authorized representative. Failure to make an accurate statement of tonnage
30 or to pay the inspection fee or comply as provided herein shall constitute
31 sufficient cause for the cancellation of all registrations on file for the
32 distributor."

33 **SECTION 8.(d)** G.S. 106-671(b) reads as rewritten:

34 "(b) Reporting System. – Each manufacturer, importer, jobber, firm, corporation or person
35 who distributes commercial fertilizers in this State shall make application to the Commissioner
36 for a permit to report the tonnage of commercial fertilizer sold and shall pay to the North Carolina
37 Department of Agriculture and Consumer Services an inspection fee of fifty cents (50¢) per ton.
38 The Commissioner is authorized to require each such distributor to keep such records as may be
39 necessary to indicate accurately the tonnage of commercial fertilizers sold in the State, and as are
40 satisfactory to the Commissioner. Such records shall be available to the Commissioner, or ~~his~~ the
41 Commissioner's duly authorized representative, at any and all reasonable hours for the purpose
42 of making such examination as is necessary to verify the tonnage statement and the inspection
43 fees paid. If the records are available electronically, the electronic records shall be made available
44 to the Commissioner or the Commissioner's authorized representative. Each registrant shall
45 report monthly the tonnage sold to non-registrants on forms furnished by the Commissioner.
46 Such reports shall be made and inspection fees shall be due and payable monthly on the fifteenth
47 of each month covering the tonnage and kind of commercial fertilizers sold during the past
48 month. If the report is not filed and the inspection fee paid by the last day of the month it is due,
49 the amount due shall bear a penalty of ten percent (10%), which shall be added to the inspection
50 fee due. If the report is not filed and the inspection fee paid within 60 days of the date due, or if
51 the report or tonnage be false, the Commissioner may revoke the permit."

TOBACCO TRUST FUND COMMISSION ADMIN EXPENSES**SECTION 9.** G.S. 143-717(i) reads as rewritten:

"(i) Limit on Operating and Administrative Expenses. – All administrative expenses of the Commission shall be paid from the Fund. No more than ~~three hundred fifty thousand dollars (\$350,000)~~ three hundred seventy-five thousand dollars (\$375,000) may be used each fiscal year for administrative and operating expenses of the Commission and its staff, provided that the Commission may annually adjust the administrative expense cap imposed by this subsection, so long as that any cap increase does not exceed the amount necessary to provide for statewide salary and benefit adjustments enacted by the General Assembly."

WORKERS' COMPENSATION DEFINITION CLARIFICATION**SECTION 10.** G.S. 97-2 reads as rewritten:**"§ 97-2. Definitions.**

When used in this Article, unless the context otherwise requires:

- (1) Employment. – The term "employment" includes employment by the State and all political subdivisions thereof, and all public and quasi-public corporations therein and all private employments in which three or more employees are regularly employed in the same business or establishment or in which one or more employees are employed in activities which involve the use or presence of radiation, except agriculture and domestic services, unless 10 or more full-time nonseasonal agricultural workers are regularly employed by the employer and an individual sawmill and logging operator with less than 10 employees, who saws and logs less than 60 days in any six consecutive months and whose principal business is unrelated to sawmilling or logging. For purposes of this section, "agriculture" has the same meaning as in G.S. 106-581.1.

...."

CREATE A NEW GENERAL PERMIT FOR FARMS WITH FARM DIGESTER SYSTEMS**SECTION 11.(a)** G.S. 143-213 reads as rewritten:**"§ 143-213. Definitions.**

Unless the context otherwise requires, the following terms as used in this Article and Articles 21A of this Chapter are defined as follows:

...

- (5a) The terms "animal waste" and "animal waste management system" have the same meaning as in G.S. 143-215.10B.

...

- (12a) The term "farm digester system" means a system, including all associated equipment and lagoon covers, by which gases are collected and processed from an animal waste management system for the digestion of animal biomass for use as a renewable energy resource. A farm digester system shall be considered an agricultural feedlot activity within the meaning of "animal operation" and shall also be considered a part of an "animal waste management system" as those terms are defined in G.S. 143-215.10B.

- (12b) The term "lagoon cover" means a structure or material that covers a lagoon receiving animal waste as part of an animal waste management system. For purposes of this subdivision, the term "lagoon" includes a lagoon as defined in G.S. 106-802(1) or a storage pond.

...

1 (14a) The term "renewable animal biomass energy resource" means any renewable
2 energy resource, as defined in G.S. 62-133.8(a)(8), that utilizes animal waste
3 as a biomass resource, including a farm digester system.

4 "

5 **SECTION 11.(b)** G.S. 143-215.10C reads as rewritten:

6 **"§ 143-215.10C. Applications and permits.**

7 (a) No person shall construct or operate an animal waste management system for an
8 animal operation or operate an animal waste management system for a dry litter poultry facility
9 that is required to be permitted under 40 Code of Federal Regulations § 122, as amended at 73
10 Federal Register 70418 (November 20, 2008), without first obtaining an individual permit or a
11 general permit under this Article. The Commission shall develop a system of individual and
12 general permits for animal operations and dry litter poultry facilities based on species, number
13 of animals, and other relevant factors. The Commission shall develop a general permit for animal
14 operations that includes authorization for the permittee to construct and operate a farm digester
15 system. It is the intent of the General Assembly that most animal waste management systems be
16 permitted under a general permit. The Commission, in its discretion, may require that an animal
17 waste management ~~system-system, including an animal waste management system that utilizes a~~
18 farm digester system, be permitted under an individual permit if the Commission determines that
19 an individual permit is necessary to protect water quality, public health, or the environment. After
20 the general permit for animal operations that includes authorization for the permittee to construct
21 and operate a farm digester system has been issued, the decision to require an individual permit
22 shall not be based solely on the fact that the animal waste management system utilizes a farm
23 digester system. The owner or operator of an animal operation shall submit an application for a
24 permit at least 180 days prior to construction of a new animal waste management system or
25 expansion of an existing animal waste management system and shall obtain the permit prior to
26 commencement of the construction or expansion. The owner or operator of a dry litter poultry
27 facility that is required to be permitted under 40 Code of Federal Regulations § 122, as amended
28 at 73 Federal Register 70418 (November 20, 2008), shall submit an application for a permit at
29 least 180 days prior to operation of a new animal waste management system.

30 ...

31 (c) The Commission shall act on a permit application as quickly as possible and may
32 conduct any inquiry or investigation it considers necessary before acting on an application.

33 (c1) Failure of the Commission to make a final permitting decision involving a notice of
34 intent for a certificate of coverage under a general permit for animal operations that includes
35 authorization for the permittee to construct and operate a farm digester system within 90 days of
36 the Commission's receipt of a completed notice of intent shall result in the deemed approval of
37 coverage under the permit. If the Commission fails to act within 90 days of the Commission's
38 receipt of a completed notice of intent, the permittee may request that the Commission provide
39 written confirmation that the notice of intent is deemed approved. Failure to provide this written
40 confirmation within 10 days of the request shall serve as a basis to seek a contested case hearing
41 pursuant to Article 3 of Chapter 150B of the General Statutes. Unless all parties to the case agree
42 otherwise in writing, the administrative law judge shall issue a final decision or order in the
43 contested case no later than 120 days after its commencement pursuant to G.S. 150B-23;
44 provided that, upon written request of the administrative law judge or any party to the hearing,
45 the Chief Administrative Law Judge may extend this deadline for good cause shown, no more
46 than two times, for not more than 30 days per extension. Upon review of a failure to act on a
47 notice of intent, the administrative law judge may either (i) direct the Commission to issue a
48 written certificate of coverage under the general permit or (ii) deny the petition.

49 "

50 **SECTION 11.(c)** For purposes of this section, the following definitions apply:

- 1 (1) "Certificate of coverage" means an approval granted to a person who meets
2 the requirements of coverage under a general permit as provided in 15A
3 NCAC 02T .0111 (Conditions for Issuing General Permits).
4 (2) "Commission" means the Environmental Management Commission.
5 (3) "Notice of intent" means a request for coverage under a general permit using
6 forms approved by the Division of Water Resources of the Department of
7 Environmental Quality.

8 **SECTION 11.(d)** The Commission shall immediately initiate the process of
9 developing and issuing a general permit for animal operations that includes authorization for the
10 permittee to construct and operate a farm digester system. In addition to conditions required to
11 describe and authorize the construction, monitoring, and proper operation of farm digester
12 systems, the general permit shall contain the same conditions that are included in the currently
13 existing general permits for animal operations. The general permit shall become effective no later
14 than 12 months after the effective date of this section and shall expire on the later of September
15 30, 2024, or the effective date of the next version of the currently existing general permit for
16 animal operations.

17 **SECTION 11.(e)** Until the general permit issued under subsection (d) of this section
18 becomes effective, any animal operation that holds a general or individual permit that (i) is in
19 effect on the effective date of this section and (ii) authorizes the construction and operation of a
20 farm digester system may construct and continue to operate the farm digester system as
21 authorized by that permit. For any animal operation that holds a general or individual permit that
22 is in effect on the effective date of this section, but that does not authorize the construction and
23 operation of a farm digester system, an operator may submit a notice of intent to be covered under
24 the general permit to be developed under subsection (d) of this section. If the submitted notice of
25 intent is incomplete, the Commission shall notify the applicant of the deficiency in the notice of
26 intent. When an operator submits a completed notice of intent, the Commission shall, within 90
27 days of receipt of the completed notice of intent, either issue a certificate of coverage allowing
28 the operator to construct and operate the farm digester system or notify the operator of the basis
29 for the denial of the certificate of coverage. If the Commission fails to take action on the notice
30 of intent within 90 days, authorization to construct and operate a farm digester system under the
31 existing general permit shall be deemed approved.

32 **SECTION 11.(f)** Nothing in this section shall apply to permits for facilities that are
33 required to be permitted under 40 C.F.R. § 122, as amended at 73 Federal Register 70418
34 (November 20, 2008).

35 **SECTION 11.(g)** G.S. 106-806 reads as rewritten:

36 **"§ 106-806. Construction or renovation of swine houses at preexisting swine farms.**

37 (a) As used in this section, the following definitions apply:

- 38 (1) "Farm digester system" means a farm digester system as defined in
39 G.S. 143-213(12a).
40 (2) "New swine farm" means any swine farm the operations of which were sited
41 on or after October 1, 1995. "New swine farm" does not include any
42 preexisting swine farm, even if a subsequent site evaluation is performed on
43 or after October 1, 1995, at the preexisting swine farm.
44 ~~(2)~~(3) "Preexisting swine farm" means any swine farm either the operations of which
45 were begun prior to October 1, 1995, or the site evaluation of which was
46 approved prior to October 1, 1995, by the Department of Environmental
47 Quality under Part 1A of Article 21 of Chapter 143 of the General Statutes.
48 ~~(3)~~(4) "Renovation or construction," "renovated or constructed," and any similar
49 phrase mean any activity to renovate, construct, reconstruct, rebuild, modify,
50 alter, change, restructure, upgrade, improve, enlarge, reduce, move, or

otherwise perform construction work on a swine house that is a component of a swine farm.

(e) Notwithstanding any other provision of this Article, a farm digester system that is a component of a preexisting swine farm may be constructed or renovated if the construction or renovation of the farm digester system satisfies all of the following requirements:

- (1) The construction or renovation of the farm digester system does not result in an increase in the permitted capacity of the swine farm, as measured by the annual steady state live weight capacity of the swine farm.
- (2) The construction or renovation of the farm digester system does not result in requiring an increase in the total permitted capacity of the animal waste management system or systems located at the swine farm.
- (3) The construction or renovation of the farm digester system shall comply with the siting requirements set out in G.S. 106-803 to the maximum extent practicable. Except as provided in subsection (c) of this section, construction or renovation of the farm digester system shall not result in any portion of the constructed or renovated farm digester system being located closer to the building, property, or well that is the object of the siting requirement than any existing component of the animal waste management system that fails to meet the siting requirements of G.S. 106-803.
- (4) Renovation or construction of a farm digester system shall not be allowed in the 100-year floodplain."

SECTION 11.(h) G.S. 105-275(8) is amended by adding a new sub-subdivision to read:

"a2. Notwithstanding sub-subdivision a1. of this subdivision, sub-subdivision a. of this subdivision applies to a farm digester system as defined in G.S. 143-213(12a)."

SECTION 11.(i) This section is effective when it becomes law.

CLARIFY THE DURATION OF DRIVERS LICENSES FOR H-2A WORKERS

SECTION 12.(a) G.S. 20-7(f)(3) reads as rewritten:

"(3) Duration of license for certain other drivers. – The durations listed in subdivisions (1), (2) and (2a) of this subsection are valid unless the Division determines that a license of shorter duration should be issued when the applicant holds valid documentation issued by, or under the authority of, the United States government that demonstrates the applicant's legal presence of limited duration in the United States. In no event shall a license of limited duration expire later than the expiration of the authorization for the applicant's legal presence in the United States. A drivers license issued to an H-2A worker expires three years after the date of issuance of the H-2A worker's visa; provided, if at any time during that three-year period an H-2A worker's visa duration is not extended by United States Citizenship and Immigration Services, the license expires on the date the H-2A worker's visa expires. For purposes of this subdivision, the term "H-2A worker" means a foreign worker who holds a valid H-2A visa pursuant to the Immigration and Nationality Act (8 U.S.C. § 1101(a)(15)(H)(ii)(a)) and who is legally residing in this State."

SECTION 12.(b) This section is effective when it becomes law.

RETALIATORY EMPLOYMENT DISCRIMINATION ACT AMENDMENT

SECTION 13. G.S. 95-242 reads as rewritten:

"§ 95-242. Complaint; investigation; conciliation.

1 (a) An employee allegedly aggrieved by a violation of G.S. 95-241 may file a written
2 complaint with the Commissioner of Labor alleging the violation. The complaint shall be filed
3 within 180 days of the alleged violation. Within 20 days following receipt of the complaint, the
4 Commissioner shall forward a copy of the complaint to the person alleged to have committed the
5 violation and shall initiate an investigation. If the Commissioner determines after the
6 investigation that there is not reasonable cause to believe that the allegation is true, the
7 Commissioner shall dismiss the complaint, promptly notify the employee and the respondent,
8 and issue a right-to-sue letter to the employee that will enable the employee to bring a civil action
9 pursuant to G.S. 95-243. The right-to-sue letter shall state that the Commissioner has investigated
10 the complaint and concluded that there is not reasonable cause to believe the allegation is true. If
11 the Commissioner determines after investigation that there is reasonable cause to believe that the
12 allegation is true, the Commissioner shall attempt to eliminate the alleged violation by informal
13 methods which may consist of conference, conciliation, and persuasion. The Commissioner shall
14 make a determination as soon as possible and, in any event, not later than 90 days after the filing
15 of the complaint.

16 (b) If the Commissioner is unable to resolve the alleged violation through the informal
17 methods, the Commissioner shall notify the parties in writing that conciliation efforts have failed.
18 The Commissioner shall then either file a civil action on behalf of the employee pursuant to G.S.
19 95-243 or issue a right-to-sue letter to the employee enabling the employee to bring a civil action
20 pursuant to G.S. 95-243.

21 (b1) The Commissioner may reopen an investigation under this Article for good cause
22 shown within 30 days of receipt of the right-to-sue letter. If an investigation is reopened pursuant
23 to this section, the 90-day time limit set forth in G.S. 95-243(b) shall not commence until the new
24 investigation is complete and either a new right-to-sue letter is issued or the Commissioner
25 notifies the parties in writing that conciliation efforts have failed.

26 (c) An employee may make a written request to the Commissioner for a right-to-sue letter
27 after 90 days following the filing of a complaint if the Commissioner has not issued a notice of
28 conciliation failure and has not commenced an action pursuant to G.S. 95-242.

29 (d) Nothing said or done during the use of the informal methods described in subsection
30 (a) of this section may be made public by the Commissioner or used as evidence in a subsequent
31 proceeding under this Article without the written consent of the persons concerned. However, a
32 right-to-sue letter issued by the Commissioner when the Commissioner has concluded that there
33 is not reasonable cause to believe the allegation is true may be used as evidence in a subsequent
34 proceeding under this Article.

35 (e) The Commissioner's files and the Commissioner's other records relating to
36 investigations and enforcement proceedings pursuant to this Article shall not be subject to
37 inspection and examination as authorized by G.S. 132-6 while such investigations and
38 proceedings are open or pending in the trial court division.

39 (f) In making inspections and investigations under this Article, the Commissioner or his
40 duly authorized agents may, in addition to exercising the authority granted in G.S. 95-4, issue
41 subpoenas to require the attendance and testimony of witnesses and the production of evidence
42 under oath. Witnesses shall be reimbursed for all travel and other necessary expenses which shall
43 be claimed and paid in accordance with the prevailing travel reimbursement requirements of the
44 State. In the case of failure or refusal of any person to obey a subpoena under this Article, the
45 district court judge or superior court judge of the county in which the inspection or investigation
46 is conducted shall, upon the application of the Commissioner, have jurisdiction to issue an order
47 requiring compliance."
48

49 SEVERABILITY CLAUSE AND EFFECTIVE DATE

50 SECTION 14.(a) If any provision of this act or the application thereof to any person
51 or circumstances is held invalid, such invalidity shall not affect other provisions or applications

1 of this act that can be given effect without the invalid provision or application, and, to this end,
2 the provisions of this act are declared to be severable.
3 **SECTION 14.(b)** Except as otherwise provided, this act is effective when it becomes
4 law.