

**GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2011**

**SESSION LAW 2012-201  
HOUSE BILL 953**

AN ACT TO MAKE CLARIFYING, CONFORMING, AND TECHNICAL AMENDMENTS TO VARIOUS LAWS RELATED TO ENVIRONMENT AND NATURAL RESOURCES, DELAY THE IMPLEMENTATION DEADLINE FOR LOCAL STORMWATER MANAGEMENT PROGRAMS UNDER THE JORDAN LAKE NEW DEVELOPMENT RULE, AND TO MAKE CHANGES TO THE CLEAN ENERGY AND ECONOMIC SECURITY ACT.

The General Assembly of North Carolina enacts:

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

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

**SECTION 2.(a)** G.S. 113A-115.1 is amended by adding a new subsection to read:  
**"§ 113A-115.1. Limitations on erosion control structures.**

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

- (1) The findings of the Commission required pursuant to subsection (f) of this section.
- (2) The status of construction and maintenance of the terminal groin and its accompanying beach fill project, including the status of the implementation of the plan for construction and maintenance and the inlet management plan.
- (3) A description and assessment of the benefits of the terminal groin and its accompanying beach fill project, if any.
- (4) A description and assessment of the adverse impacts of the terminal groin and its accompanying beach fill project, if any, including a description and assessment of any mitigation measures implemented to address adverse impacts."

**SECTION 2.(b)** Section 5 of S.L. 2011-387 is repealed.

**SECTION 3.** G.S. 130A-309.10(k) reads as rewritten:

"(k) A county or city may petition the Department for a waiver from the prohibition on disposal of a material described in subdivisions (9), (10), ~~(11) and (12)~~(11), (12), and (13) of



subsection (f) of this section and subsection (f3) of this section in a landfill based on a showing that prohibiting the disposal of the material would constitute an economic hardship."

**SECTION 4.** The title of Part 2 of Article 3B of Chapter 143 of the General Statutes reads as rewritten:

"Part 2. ~~Guaranteed Energy Savings Contracts for~~ Energy Saving Measures for Governmental Units."

**SECTION 5.(a)** G.S. 143-214.11 is amended by adding two new subsections to read:

**"§ 143-214.11. Ecosystem Enhancement Program: compensatory mitigation.**

...  
(i) The Ecosystem Enhancement Program shall exercise its authority to provide for compensatory mitigation under the authority granted by this section to use mitigation procurement programs in the following order of preference:

- (1) Full delivery/bank credit purchase program. – The Ecosystem Enhancement Program shall first seek to meet compensatory mitigation procurement requirements through the Program's full delivery program or by the purchase of credits from a private compensatory mitigation bank.
- (2) Existing local compensatory mitigation bank credit purchase program. – Any compensatory mitigation procurement requirements that are not fulfillable under subdivision (1) of this subsection shall be procured from an existing local compensatory mitigation bank, provided that the credit purchase is made to mitigate the impacts of a project located within the mitigation bank service area and hydrologic area of the existing local compensatory mitigation bank.
- (3) Design/build program. – Any compensatory mitigation procurement requirements that are not fulfillable under subdivision (1) or (2) of this subsection shall be procured under a program in which Ecosystem Enhancement Program contracts with one private entity to lead or implement the design, construction, and postconstruction monitoring of compensatory mitigation at sites obtained by the Ecosystem Enhancement Program. Such a program shall be considered the procurement of compensatory mitigation credits.
- (4) Design-bid-build program. – Any compensatory mitigation procurement requirements that are not fulfillable under either subdivision (1) or (2) of this subsection may be procured under the Ecosystem Enhancement Program's design-bid-build program. The Ecosystem Enhancement Program may utilize this program only when procurement under subdivision (1) or (2) of this subsection is not feasible. Any mitigation site design work currently being performed through contracts awarded under the design-bid-build program shall be allowed to continue as scheduled. Contracts for construction of projects with a design already approved by the Ecosystem Enhancement Program shall be awarded by the Ecosystem Enhancement Program by issuing a Request for Proposal (RFP). Only contractors who have prequalified under procedures established by the Ecosystem Enhancement Program shall be eligible to bid on Ecosystem Enhancement Program construction projects. Construction contracts issued under this subdivision shall be exempt from the requirements of Article 8B of Chapter 143 of the General Statutes.

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

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

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

"(f) The Secretary of Environment and Natural Resources shall report to the Environmental Review Commission and the ~~Joint Legislative Commission on Seafood and Aquaculture~~ ~~[Joint Legislative Commission on Governmental Operations]~~ Joint Legislative Commission on Governmental Operations within 30 days of the completion or substantial revision of each draft Coastal Habitat Protection Plan. The Environmental Review Commission and the Joint Legislative Commission on Governmental Operations shall concurrently review

each draft Coastal Habitat Protection Plan within 30 days of the date the draft Plan is submitted by the Secretary. The Environmental Review Commission and the Joint Legislative Commission on Governmental Operations may submit comments and recommendations on the draft Plan to the Secretary within 30 days of the date the draft Plan is submitted by the Secretary."

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

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

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

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

...."

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

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

(a) Beginning in 2011, the Task Force shall report to the Governor, the chairs of the ~~House Commerce, Small Business, and Entrepreneurship Committee~~House Committee on Commerce and Job Development, and the Senate Commerce Committee, and the Joint Legislative Commission on Governmental Operations no later than October 1 each year. The report shall include the following elements:

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

...."

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

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

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

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

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

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

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

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

**SECTION 11.(d)** Additional Rule-Making Authority. – The Commission shall adopt a rule to replace New Development Rule 15A NCAC 02B .0265. Notwithstanding G.S. 150B-19(4), the rule adopted by the Commission pursuant to this section shall be substantively identical to the provisions of Section 11(c) of this act. Rules adopted pursuant to this section are not subject to G.S. 150B-21.8 through G.S. 150B-21.14. 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 11.(e)** Sunset. – Section 11(c) of this act expires on the date that rules adopted pursuant to Section 11(d) of this act become effective.

**SECTION 12.(a)** If Senate Bill 820, 2011 Regular Session, becomes law, then Section 2(j) of that act reads as rewritten:

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

**SECTION 12.(b)** If Senate Bill 820, 2011 Regular Session, becomes law, then Section 2(k) of that act reads as rewritten:

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

**SECTION 12.(c)** If Senate Bill 820, 2011 Regular Session, becomes law, then Section 2(l) of that act reads as rewritten:

**"SECTION 2.(l)** The Mining and Energy Commission, in conjunction with the Department of Environment and Natural Resources and the Consumer Protection Division of the North Carolina Department of Justice, shall study the State's current law on the issue of integration or compulsory pooling and other states' laws on the matter. The Department shall

report its findings and recommendations, including legislative proposals, to the Joint Legislative Commission on Energy Policy, created under Section 6(a) of this act, and the Environmental Review Commission on or before ~~January~~ October 1, 2013."

**SECTION 12.(d)** If Senate Bill 820, 2011 Regular Session, becomes law, then G.S. 113-423(j), as enacted by Section 4(d) of that act, reads as rewritten:

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

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

In the General Assembly read three times and ratified this the 3<sup>rd</sup> day of July, 2012.

s/ Walter H. Dalton  
President of the Senate

s/ Thom Tillis  
Speaker of the House of Representatives

s/ Beverly E. Perdue  
Governor

Approved 11:44 a.m. this 1<sup>st</sup> day of August, 2012